

IN THE SUPREME COURT  
OF THE STATE OF NEVADA

MICHAEL PATRICK LATHIGEE,

Appellant,

— *vs.* —

BRITISH COLUMBIA SECURITIES COMMISSION,

Respondent.

Case No. 78833

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**JOINT APPENDIX**  
**Volume 2, Bates Nos. JAX212–394**

Appeal from Case No. A-18-771407-C  
Eighth Judicial District Court For Clark County  
Hon. Adriana Escobar

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# EXHIBIT 5

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Sept 16, 2013 - 10:00 a.m.

MR. CHAPMAN: Mr. Chair, for the executive director  
Derek Chapman.

MR. ANDERSON: Please, Mr. Chairman, my name is  
Anderson, my initials are H R. With me is  
Mr. Ahmed, initial O. We appear for all the  
respondents. And sitting right behind me is  
Mr. Pasquill, I assume it's okay if he sits there,  
so that he can take notes and do other preparation  
while we proceed.

THE CHAIR: Certainly. Mr. Chapman?

MR. CHAPMAN: In advance I'm just apologizing for my  
voice. I was telling the hearing officer I feel  
much better than I sound, if that's any  
consolation. But I spoke with my friends this  
morning, and we've talked about some admissibility  
issues that have arisen over our documents, and  
we've had, I think, a helpful phone call this  
morning, and I am suggesting that if we could have  
perhaps some time, while the panel stands down for,  
just going to guess, half an hour-ish, okay; if we  
could have some time just to resolve them, I think  
that we should be able to resolve, if not all of  
them, almost all of them, so that we won't have to

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trouble the panel with that.

MR. ANDERSON: I think it's a good idea, Mr. Chairman,  
and then I don't think there would be any issues  
that would slow us down. We'll just plow right  
ahead.

THE CHAIR: Okay, sounds like a good use of time. Do  
you figure half an hour is enough?

MR. CHAPMAN: Erring on the side of being a horrible  
estimator, yes.

THE CHAIR: You are a lawyer, after all.

MR. ANDERSON: Depends on his reasonableness, I suppose,  
Mr. Chairman.

THE CHAIR: Well, why don't we just say ten forty-five.

MR. CHAPMAN: Okay, thank you.

(PROCEEDINGS ADJOURNED AT 10:05 A.M.)

(PROCEEDINGS RECONVENED AT 10:45 A.M.)

MR. CHAPMAN: Good morning again. I'm happy to report  
that our time was well used, and we've reached an  
agreement on the admissibility of the documents.  
And in talking to the hearing officer, my  
understanding is, and I will obviously let my  
friend just confirm this on the record, that we  
have got an agreement between counsel of which  
documents are out or which documents are in  
partially, and we've got a discrete list for each

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of these documents. And my understanding is from

2 the hearing officer that as far as the hearing goes  
3 at this stage, we will proceed to just have  
4 everything entered in bulk at this stage, subject  
5 this agreement, and then after, I guess at the end  
6 of the day or at some point we will provide  
7 redacted versions of the various documents where  
8 there's only some pages going in as opposed to the  
9 entire document. So that when the documents are  
10 going through Ms. Lyon, the executive director's  
11 only witness, it would all be subject to this  
12 agreement, that we just won't deal with it during  
13 her evidence.

14 So I will just -- that's my understanding of  
15 what transpired, so hopefully my friend has a  
16 similar recollection.

17 MR. ANDERSON: Yes, I am agreeable to that. I just want  
18 to maybe give you an example what my friends  
19 talking about. We both have carefully gone over  
20 the list we have each separately created, for  
21 example, on some documents, like, it would be the  
22 first two pages, and we have comprehensive lists,  
23 and it's my understanding that with respect to the  
24 documents we have agreements on, and some are going  
25 right out as well, that my friend won't be

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1 referring to them during the chief of Ms. Lyon  
2 anyway. And so the thinking would be at the end of  
3 the day, like on what I have a note here, document  
4 BCSC number, for example 88, the first few pages  
5 would be redacted from it. And rather than waste  
6 your time going through it, we thought it might be  
7 more efficient if we just bulk marked all those  
8 documents, I suppose, except the ones that are  
9 coming out -- yes, that works as well, either or.

10 THE CHAIR: Well, then that works, Madam Hearing  
11 Officer?

12 HEARING OFFICER: Yes.

13 THE CHAIR: Okay. Now we know who really runs things  
14 here. Okay, that sounds reasonable.

15 MR. CHAPMAN: Thank you. My voice hasn't improved a  
16 whole lot since this morning, but with that,  
17 there's nothing else procedural, and I would like  
18 to start then with a brief opening statement.

19 THE CHAIR: Go ahead.

20 MR. CHAPMAN: Nothing strikes more viciously at the  
21 integrity of our capital markets than fraud. This  
22 is a case about fraud. The executive director  
23 alleges that Mike Lathigee, Earle Pasquill and  
24 three companies they controlled perpetrated a \$21.7  
25 fraud against 699 investors. The 699 investors

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1 were all members of the Freedom Investment Club.  
2 What is the Freedom Investment Club. The executive  
3 director will lead evidence that it's a club that

4 combines investment opportunities with an  
5 educational component. After you pay about \$1,500  
6 to join, you become a member of FIC. This allowed  
7 you to take part in educational things like  
8 listening to Mike Lathigee's monthly webcast about  
9 the state of the economy. Being a member of FIC  
10 also allowed you to take part in the various  
11 investments it offered from time to time.

12 FIC is made up of a number of different  
13 companies which FIC refers to as funds. Each of  
14 these funds has different investment guidelines.  
15 If you were a member of FIC you were allowed to  
16 invest in a specific fund for additional fee of  
17 \$1,000. Together, these funds or companies make up  
18 the FIC group of companies.

19 Mike Lathigee was the CEO and chairman of the  
20 FIC group of companies during the relevant period.  
21 Earle Pasquill was the chief operating officer,  
22 president and director of various companies that  
23 made up the FIC group of companies during the  
24 relevant period. Lathigee and Pasquill controlled  
25 all of the companies in the FIC group of companies

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1 and that includes the respondents, the WBIC Canada  
2 Ltd., FIC Real Estate Projects Ltd. and FIC  
3 foreclosure fund LLD.

4 Although FIC represented that investments in  
5 various funds were individual investments, the  
6 executive director will lead evidence that the  
7 reality was that Lathigee and Pasquill treated all  
8 money raised from FIC members as one pool of money.  
9 Money raised by one FIC company was effectively  
10 available to fund any other FIC company.

11 There are two fraud allegations in the notice  
12 of hearing. Now the panel is well aware that the  
13 essential elements of fraud are dishonesty and  
14 deprivation or the risk of deprivation. The first  
15 allegation deals with the category of fraud where  
16 the dishonesty is the nondisclosure of important  
17 facts. The executive director alleges that the  
18 respondents aggressively promoted and distributed  
19 about \$21.7 million worth of securities to members  
20 of FIC without disclosing that the FIC group of  
21 companies was close to insolvency, and that  
22 therefore the investments were extremely risky. To  
23 put it another way, the respondents deceived the  
24 members of FIC by failing to inform them how badly  
25 the FIC group of companies was actually doing.

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1 This took place between February 1st and November  
2 15th, 2008.

3 February 2008 is an important date that I will  
4 come back to, but I will first go into a bit more  
5 detail about FIC. In 2008 FIC's largest asset by

6 far was a multi phased real estate development in  
7 Stoney Plain, Alberta which is just west of  
8 Edmonton called Genesis on the Lakes. Now, FIC  
9 also had some smaller real estate investments in  
10 the Edmonton area including the Calmar, Pigeon Lake  
11 and Ascot projects.

12 In 2007, Genesis on the Lakes Ltd., an FIC  
13 company, entered into a \$22 million loan agreement  
14 with the TD Bank to acquire and service the Genesis  
15 properties. The TD loan was guaranteed by a number  
16 of other FIC companies. As part of the security  
17 for the loan an investment portfolio held by  
18 another FIC company was assigned to the TD Bank  
19 and had to have a minimum balance of \$9 million  
20 during the life of the loan.

21 Fast forward to February of 2008, how were  
22 things going to the Genesis project. The executive  
23 director will lead evidence that things were going  
24 horribly. On February 7, 2008, one of the  
25 contractors for Genesis, Kran Construction, filed a

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1 \$5 million builder's lien for unpaid work. On  
2 February 26, 2008, the general contractor for the  
3 Genesis project, Gentech Developments, advised that  
4 the out standing contract invoices were now above  
5 \$8 million. To make matters worse, the Genesis  
6 project was now \$12 million overbudget. FIC was  
7 also having serious cash flow issues, to be more  
8 precise FIC had no cash flow.

9 Now, before I go any further I will tell you  
10 about a few of the other people whose names will be  
11 recurring in the evidence led by the executive  
12 director. Graham Woods, he's a chartered accountant  
13 and was the chief financial officer for FIC during  
14 the relevant period. John Tansowny, he was FIC's  
15 vice-president of real estate during the relevant  
16 period. He was in Alberta overseeing the Genesis  
17 project and FIC's other real estate projects while  
18 the rest of FIC's management was based here in  
19 Vancouver. And lastly Steven Rea, and that's  
20 R-e-a, he was FIC's managing contractor during the  
21 relevant period.

22 Now, I touched on how badly the Genesis  
23 project was going for FIC by February of 2008, and  
24 early, in early March of 2008 a series of internal  
25 e-mails among FIC's upper management illustrates

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1 how desperate things were getting at FIC. On March  
2 2nd, 2008, Mike Lathigee e-mails Mr. Pasquill and  
3 the rest of the FIC management team as follows:  
4 "Our first priority is to save the company. If  
5 Genesis loan is to be called by TD which is a real  
6 possibility, we have to factor then we are doomed.  
7 Given the extreme circumstances that we have only



8 fully known this week, the plan below suggests all  
9 our conversations this week will only relate to  
10 sales and bringing in cash, everything else is  
11 secondary."

12 On March 3rd, 2008, Lathigee e-mails Tansowny  
13 and Pasquill as follows: "Earle, I am on over load  
14 trying to get cash into FIC. I don't have time for  
15 this until Wednesday. John, organization is sucked  
16 dry of cash." Later the same day, Lathigee e-mails  
17 Tansowny and Pasquill again as follows: "We are in  
18 a very bad situation and I can't waste any time  
19 other than focusing on saving FIC for the next 30  
20 days. You are to keep this e-mail confidential as  
21 an internal e-mail only. Focus on sales and  
22 bringing in cash and nothing else. If it relates  
23 to that I am happy to chat. Anything else, I do  
24 not have the time or interest." Again, later that  
25 same day, March 3rd, 2008, Lathigee e-mails

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1 Tansowny and Pasquill again as follows: "John,  
2 there was much cash that was said to be coming in  
3 from you, and it has not or it has been delayed by  
4 months. We need about \$10 million to stay  
5 solvents. I am all over this right now and  
6 couldn't have any time to he can to us on anything  
7 except this. The TD loan is a serious concern and  
8 the dominoes that would fall. Just create pressure  
9 to buyers to get funds in where you can, and you  
10 can come to the man meeting," which is management  
11 meeting, "on Wednesday. Please allow me to go back  
12 to getting money in for FIC. This is the worst  
13 situation we have ever been in. Earle will be your  
14 point of contact as I don't have any time to tie up  
15 if its not bringing in cash."

16 And the last internal e-mail I will share with  
17 you at this point was on March 5th, 2008, from  
18 Lathigee to Tansowny as follows: "John, the  
19 seriousness is that the company is close to  
20 insolvency with the TD loan that could be called.  
21 We have no cash flow. There was much talk from  
22 yourself about delivery of cash but there the  
23 results are not there. We are suffering from no  
24 cash flow and now in desperation we are doing a  
25 promissory note offering that will encompass the

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1 entire staff for one month to save the company. As  
2 stated the best thing you can do is focus on sales,  
3 rezoning and getting money that is owed to us in  
4 the fastest manner possible. Call on favours,  
5 pressure those who owe us money, and do your best  
6 to stave off those we owe money."

7 Now, the promissory note offering that  
8 Mr. Lathigee was referring to in that e-mail about  
9 doing in desperation is the \$9.759 million amount

in the notice of hearing raised by selling FIC Real Estate Projects Ltd. promissory notes to 267 members of FIC. The executive director will be tendering a conference call from March 7th, 2008, where Lathigee and Pasquill promote this offering to what Lathigee says were "hundreds and hundreds and hundreds and hundreds" of FIC members who were on the call that night. Ironically, as FIC had no cash flow, they called this promissory note offering a cash flow opportunity.

During the conference call Lathigee and Pasquill offered many reasons why the cash flow opportunity was a good investment, and here's a couple of examples. They said that FIC has offered 7 previous cash flow opportunities; they have a hundred per cent track record with all interest

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payments and all principal amounts being repaid. They said that FIC has over \$100 million of real estate assets, sorry, real estate projects in Edmonton and they are only raising \$10 million through this offer, and the interest rates that were being offered ranged from 12 to 15 per cent based on how much was invested.

Now, Lathigee and Pasquill withheld from the members during the conference call how badly FIC was really doing at the time and that it was close to insolvency. And with respect to the hundred million dollar in real estate assets, they also withheld from the members that those assets were encumbered with mortgages and a builder's lien.

Now, FIC raised almost \$9.78 million from this cash flow opportunity. That money was quickly divvied up among the various FIC companies. In fact, as FIC had no cash flow, about \$1.7 million was put aside for the interest payments on those very promissory notes. Around the same time, FIC also raised about \$2 million through WBIC Canada Ltd. using an offering memorandum that was certified by Lathigee and Pasquill. The offering memorandum didn't disclose how badly things were going for FIC at the time, or that it was close to

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insolvency.

Now, the promissory notes by FIC Real Estate Projects and the funds raised by WBIC Canada amount to roughly \$12 million of the fraud being alleged. That leaves the remaining \$10 million or so that was raided by FIC Foreclosure Fund Ltd. beginning in April of 2008.

Now, I've told you that the executive director will laide evidence about how badly things were going for FIC around the Genesis project in February and March of 2008. Well, despite raising

almost \$10 million from its cash flow opportunity, things were not look any better for FIC or its Genesis project by April of 2008.

On April 16th, 2008, Lathigee e-mails FIC senior management about the possibility of getting members to become equity partners in the Genesis project because as he says, it is perceived very positively by them. On April 17th, 2008, the CFO, Graham Woods, replies to the suggestion with a very stern rebuke which I will quote: "No way I am having anything to do with getting our members into FIC's Vietnam. I could see the lawsuits coming now." This was the chief financial officer.

On April 24th, 2008, Pasquill e-mails

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Tansowny, and the e-mail includes this information: "They found there are additional cost over runs to the tune of about \$1.3 million on Genesis. Obviously the grave concerns we have about lack of cost control and for the losses on phase one of this project are heightened further."

Move to April 30th, 2008. Lathigee held another conference call to promote the raising of the \$10 million through the FIC Foreclosure Fund which the executive director will also be tendering into evidence. Now, according to Lathigee, over 2,000 attendees registered for this conference call. He said it was the most important conference call FIC has ever done. Why? Because he discovered an opportunity buying foreclosed propertied in the United States where they could all make a fortune and the returns will like be hire than any other opportunity they have pursued as a club. In fact, he says he's never seen a better opportunity in his entire career. He adds that they will achieve massive returns in a real estate market where the average investor is discouraged or is given up.

He then explains the mechanics of the foreclosure opportunity, and how the foreclosed

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properties are bought and then sold for a profit, and he said that they were raising the money to buy about 400 foreclosed properties in the US. Finally, he concludes that if any deal he has ever explained to members, he said this was the best. Once again, Lathigee didn't disclose how badly FIC was really doing during the conference call.

Now, FIC foreclosure used an OM for this investment, which was again certified by Lathigee and Pasquill, which also didn't disclose how badly things were really going for FIC. So much like the \$12 million that was raised by WBIC Canada, and FIC Real Estate Projects, the executive director

14 alleges that the respondents fraudulently raised  
15 nearly \$10 million for FIC Foreclosure Fund Ltd. by  
16 not disclosing the continuing problems at FIC,  
17 which made the investments much more risky.

18 For the FIC foreclose fund though, there's a  
19 second allegation that deals with the category of  
20 fraud where the dishonesty is using investors money  
21 for reasons different than what you told them you  
22 would be using it for. The executive director will  
23 lead evidence that only \$1.4 million of the amount  
24 raised by FIC Foreclosure Fund Ltd. actually went  
25 to purchase foreclosed properties. The rest was

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1 divvied up by the other FIC companies for things  
2 like paying trades on the real estate projects,  
3 paying taxes owing by other FIC company, and paying  
4 about \$1 million to Lathigee and Pasquill's  
5 management company. That use of about \$8.6 million  
6 for a purpose other than what was stated to  
7 investors is the second aspect of the fraud  
8 allegations in the notice of hearing.

9 As a result of the 2 fraud allegations, the  
10 executive director alleges the respondents breached  
11 S.57(b) of the act. Now, where it is I will end up  
12 going as far as these companies and this  
13 development. Well, in November of 2008 Gentek  
14 Developments filed its own builder's lien for \$6.1  
15 million. In December of 2008, the TD Bank  
16 determined that Genesis committed a number of  
17 defaults under the loan. The TD Bank entered into  
18 a forbearance agreement with the FIC companies in  
19 February of 2009. However, they failed to pay the  
20 outstanding balance by the end of May 2009. And  
21 finally, the TD Bank then applied to appoint a  
22 receiver, which occurred in January of 2010. As a  
23 result, the 699 members of FIC, who the executive  
24 director alleges were defrauded by the respondents,  
25 lost most of their money.

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1 The executive director intends to call only  
2 one witness, and that is the commission lead  
3 investigator, Sharmin Lyon. And with that, I would  
4 like to call Sharmin Lyon to the stand.

5 (witness swears oath)

6 HEARING OFFICER: Please state your full name and spell  
7 your last name for the record.

8 THE WITNESS: Sharmin Lyon, Lyon.

9 MR. CHAPMAN:

10 Q Ms. Lyon, I understand that you're currently  
11 employed by the commission?

12 A Yes.

13 Q Okay. If you can please state your current  
14 position?

15 A I'm a lead investigator in enforcement.

- 16 Q And how long have you been with the commission?  
17 A Since September 2003.  
18 Q And when you started in 2003 what was the position  
19 at that point?  
20 A Investigator.  
21 Q Okay. Do you have any post-secondary education?  
22 A I have a commerce degree in finance.  
23 Q Okay. Where did you get that and when?  
24 A From Dalhousie University in 1989.  
25 Q Have you ever been licenced under the act?

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- 1 A I was, yes.  
2 Q Okay. If you can explain when and how so?  
3 A From 1990 to 2003, first as a registered  
4 representative and later as an investment investor.  
5 Q And other the years have you taken any securities  
6 courses?  
7 A I have taken several, yes.  
8 Q Can you give us some examples?  
9 A The securities course, the branch manager's course,  
10 the options course, trader training course, PFP.  
11 Q Now, at some point I understand that you were  
12 assigned to this investigation?  
13 A Yes.  
14 Q Let's just briefly talk about how the investigation  
15 began. If the hearing officer can please bring up  
16 what's been premarked as Exhibit 76. And if you  
17 can, if the hearing officer can please also just  
18 scroll to the second page. Do you recognize this  
19 document?  
20 A Yes. This is the investigation order we obtained  
21 in June of 2009.  
22 Q And then if the hearing officer can please go to  
23 page 3, in the affidavit and just quickly scroll  
24 through the rest of that document. Do you  
25 recognize the affidavit that the hearing officer is

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- 1 now scrolling through?  
2 A Yes. That is my affidavit to obtain that  
3 investigation order.  
4 Q Okay. Just generally, how did this investigation  
5 start?  
6 A In September of 2008, we received an anonymous  
7 complaint. It was regarding a promissory note  
8 offering by a company called FIC Real Estate  
9 Projects.  
10 Q And I take it you weren't the only one working on  
11 this investigation?  
12 A No, there were several investigators involved.  
13 Q Can you just generally describe the steps that were  
14 taken in the investigation?  
15 A We issued various demands to FIC group, to several  
16 banks; we issued a demand to the receiver for  
17 electronic e-mail evidence; we examined, examined

18 distribution reports and offering memorandums filed  
 19 by the companies, exempt distribution reports, and  
 20 collected documents from investors.  
 21 Q If I could ask the hearing officer please put the  
 22 list of premarked exhibits to Ms. Lyon. Now Ms.  
 23 Lyon, you should be looking at a list of exhibits  
 24 which would go up to Exhibit 414 as they relate to  
 25 the executive director. Now, can you just confirm

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1 that, are you familiar with this list of documents?  
 2 A I am, yes.  
 3 Q And the documents that are listed there?  
 4 A Yes.  
 5 Q Can you confirm whether there were either obtained  
 6 or created in the course of the investigation?  
 7 A They were, yes.  
 8 Q And at this stage then, I would ask that subject to  
 9 the agreement amongst counsel about the  
 10 admissibility of these documents, and any  
 11 redactions or changes that this, this these  
 12 exhibits then be entered as exhibits.  
 13 THE CHAIR: So ordered.  
 14 MR. CHAPMAN: Thank you. That made sense then.  
 15 MR. ANDERSON: Just with the one comment that some of  
 16 the documents are coming right out, just so we're  
 17 clear.  
 18 MR. CHAPMAN: Yes, absolutely. I assume that by  
 19 tomorrow morning we'll have a revised now and  
 20 improved list which will reflect the agreement  
 21 amongst counsel about what's in and what's out.  
 22 THE CHAIR: Okay, thank you.  
 23 MR. CHAPMAN: Thank you.  
 24 Q If the hearing officer can please bring up Exhibit  
 25 21. Do you recognize this document?

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1 A Yes.  
 2 Q Can you tell me what it is?  
 3 A This is a print out of a page from the Freedom  
 4 Investment Club web site.  
 5 Q Could you read the first paragraph, please under  
 6 the heading overview?  
 7 A Do you mind making it just a little bit bigger?  
 8 "The Freedom Investment Club is a unique education  
 9 and investment concept. When people join the club  
 10 they then have right to attend meetings,  
 11 participate in club votes, get discounts on  
 12 educational events and products and listen to  
 13 educational conference calls designed for members.  
 14 When offering of shares are open members may buy  
 15 shares if they so choose. The proceeds of such  
 16 sale of shares are pooled and reinvested for the  
 17 benefits of the shareholder members."  
 18 Q And if the hearing officer could now please go to  
 19 page 2. Ms. Lyon, under the heading FIC group of

20 companies, can you read the first sentence and then  
21 the actual names of the companies listed?

22 A "The FIC group of companies operates through the  
23 North America and it is comprised of the following  
24 entities: FIC Investments Limited" --

25 THE CHAIR: If I could just -- Mr. Chapman, the

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1 document's in the record. Feel free to refer to it  
2 as you wish in submissions; I'm not sure what it  
3 adds to have the investigator read it to us.

4 MR. CHAPMAN: I am just giving some of the background  
5 about what FIC is. I mentioned in my opening what  
6 we would be saying. It is not to -- just on that  
7 note, my estimate is that Ms. Lyon's direct will  
8 take 2 hours, and then the case of the executive  
9 director will close. So I just wanted to just  
10 highlight on some points from the web site about  
11 what it is and how it operates.

12 THE CHAIR: Okay. Carry on, but you can keep my comment  
13 in mind.

14 MR. CHAPMAN:

15 Q Okay.

16 A "WBIC Canada Limited, FIC Investments USA Corp.  
17 China Dragon fund, FIC Southeast Asia Fund, FIC  
18 Real Estate Fund, FIC Income Fund and FIC  
19 Management Group."

20 Q And are you aware of any other companies in the FIC  
21 group of which is which aren't listed on this web  
22 site?

23 A Yes. There was also FIC Real Estate Projects and  
24 FIC Foreclosure Fund.

25 Q And on page 3, if the hearing officer could go to

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1 page 3. Please read the first three paragraphs  
2 under the heading Investments?

3 A "Each fund that we operate has specific guidelines  
4 that dictate the investment decisions made by that  
5 fund. Our investments are intended primarily to be  
6 for no more than a term of 24 to 36 months ensuring  
7 reasonable liquidity and ability to respond to  
8 changing market conditions. For certain funds such  
9 as those targeting lock term returns and foreign  
10 markets such as the China Dragon fund investment  
11 horizon -- longer than 24 than 36 months. We are  
12 very conscious of the need for diligent risk  
13 management. That is why there is such a good due  
14 diligence process in place designed to protect our  
15 members and minimize any risk that may exist on any  
16 particular investment. All deals are thoroughly  
17 vetted through a rigorous due diligence process  
18 that involves initial screening, in-depth  
19 investigation, review by the due -- and on larger  
20 deals presentation to the membership. Potential  
21 development deals come to the club from many

22 sources including our alliance partners and network  
 23 of contacts, organizations and associations to  
 24 which it belongs, the web site, and members."  
 25 Q Thank you. We'll step away from the web site now.

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1 And if the hearing officer could please bring up  
 2 Exhibit 51, page 2. Do you recognize the document  
 3 that starts on page 2 of this document?  
 4 A This is a combined financial statement for the FIC  
 5 group of companies for March 31st, 2008.  
 6 Q And if the hearing officer could please go to page  
 7 4. Under the heading Principals of Combination,  
 8 can you read just the first 2 and a half lines  
 9 there?  
 10 A "This combined financial statement includes the  
 11 accounts of the companies over which Michael  
 12 Lathigee and Earle Pasquill together hold either  
 13 control or de facto control," and there is a list  
 14 of corporations there.  
 15 Q Does the list include any of the respondent  
 16 companies from those appearing?  
 17 A All 3 are there, FIC Real Estate Projects, FIC  
 18 Foreclosure Fund, and WBIC Canada.  
 19 Q If the hearing officer can please go to Exhibit  
 20 140. Could you recognize this document?  
 21 A This is information sent to us by FIC.  
 22 Q If the hearing officer can please go to page 6.  
 23 And if you can please read the first paragraph  
 24 under the heading Genesis on the Lakes Development  
 25 Ltd. Investment criteria?

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1 A "Genesis on the Lakes Development is a corporation  
 2 created solely and specifically for the  
 3 acquisition, development and selling of the real  
 4 estate project known as the Genesis development  
 5 acquired by working with John Tansowny, a  
 6 contracted real estate consultant."  
 7 Q And if the hearing officer can please go back to  
 8 the financial statements which were Exhibit 51 and  
 9 then go to page 8. Under the heading at the top of  
 10 the page there, 12 loans payable, can you read the  
 11 first paragraph under Toronto Dominion Bank?  
 12 A "On May 31st, 2007, Genesis on the Lakes Limited  
 13 and the Toronto Dominion Bank entered into a land  
 14 servicing and letter of credit loan facility  
 15 agreement. The TD loan is comprised of a \$5.5  
 16 million land loan, a \$13.6 million servicing loan,  
 17 and a \$3 million letter of credit facility. The  
 18 land servicing and letter of credit facility bear  
 19 interest at prime plus 1.25 per cent, prime plus 1  
 20 per cent, and prime plus 1.75 per cent  
 21 respectively. Interest is payable monthly. All  
 22 three loans are due on demand with any deposits  
 23 received by Genesis relating to the Genesis project



24 to be applied to the servicing loan all amounts due  
25 no later than 18 months after the initial draw

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1 down."

2 Q Can you read the first sentence of the next  
3 paragraph please?

4 A "TD Bank received a \$22 million first mortgage on  
5 the Genesis property as security for the TD loan."

6 Q If the hearing officer can just scroll down a  
7 little further, if you can just read the  
8 first paragraphs under both the heading IMOR  
9 Capital Corporation and C, Liberty Mortgage  
10 Services Ltd.?

11 A "On November 16th, 2007, FIC Investments USA and  
12 IMOR Capital Corp. entered into a \$4 million  
13 mortgage loan. IMOR loan bears interest at the  
14 Royal Bank prime plus 7.75 per cent per annum with  
15 a minimum of 14 per cent per annum. And Liberty  
16 Mortgage Services on March 7th, 2008, an \$8.94  
17 million mortgage loan was signed between Aspen  
18 Hills Development and Liberty Mortgage Services.  
19 The loan bears interest at 15 per cent per annum  
20 calculated and payable monthly, has a 12 month term  
21 and includes a \$357,000 broker fee."

22 Q Thank you. Let's switch gears a little bit. If  
23 the hearing officer can please bring up Exhibit 30.  
24 There's an e-mail at the middle of the page from  
25 Graham Woods. Who is Graham Woods?

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1 A His signature line says he's a CA and CFO of FIC  
2 Investment Limited.

3 Q Could you please just read this e-mail, who it's  
4 too?

5 A This is from Graham Woods to Earle Pasquill or not  
6 January 24th, 2008, the subject is cash: So the  
7 \$210,000 isn't covering a borrowing position but is  
8 for a private placement. We have to ensure that  
9 Mike and the brokers are fully aware that we are  
10 not presently in a position to get into private  
11 placements. In fact even with funds already in the  
12 brokerage accounts we may fund ourselves in a  
13 position where I need to collapse some of the  
14 positions. The private placements are impossible  
15 to collapse and we may need the cash over the next  
16 couple of months. This \$210,000 has to be the  
17 last. You or Mike need to speak with each and  
18 every broker ensuring that liquidity is -- I fully  
19 concur that this reality stinks but I have to be a  
20 hundred per cent honest with the situation. Any  
21 private placements are horrible for cash flow right  
22 now."

23 Q And if you can just, if the hearing officer can  
24 please scroll up a little bit to the top of the  
25 page, this will be a reply from Mr. Pasquill. Can

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- 1 you read that e-mail please?
- 2 A "We've told Rick that we can only give him \$150,000
- 3 and to redeploy the stock elsewhere. But it means
- 4 that \$150,000 of the 760838 cash will have to go to
- 5 Canaccord. Mike, Graham's point about private
- 6 placement cash calls is an important one going
- 7 forward, at least until we get enough real estate
- 8 proceeds to breathe easy."
- 9 Q And do you know who Mike is?
- 10 A I believe that's Mike Lathigee.
- 11 Q If the hearing officer can please bring up Exhibit
- 12 330. If you can explain who its to and from, this
- 13 e-mail and read the e-mail?
- 14 A This is an e-mail from Earle Pasquill to Mike on
- 15 January 28th, 2008, subject is cash: "John and I
- 16 have discussed cash and we have decided to use the
- 17 money that Malcolm is holding supplemented with a
- 18 bit from here in order to pay off Craig Nelson's
- 19 loan. I have told John -- replace the Malcolm
- 20 monies ASAP so that TD doesn't get upset."
- 21 Q Madam hearing officer, please bring up Exhibit 331.
- 22 The same thing, if you can just read this e-mail,
- 23 who it's to and from?
- 24 A This is from Earle Pasquill to John Tansowny,
- 25 Graham Woods, Steve Rea. Its January 29th, 2008.

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- 1 We're still talking about the Craig Nelson loan.
- 2 "Wire transfers went out today repaying US just
- 3 over \$1 million. John, we must now replenish the
- 4 funds with Malcolm ASAP before TD finds out."
- 5 Q If the hearing officer can now please bring up
- 6 Exhibit 196 and page 50. Do you recognize this
- 7 letter?
- 8 A This is a letter from TD Bank to Genesis on the
- 9 Lakes from April 2007 and its outlining the details
- 10 of the borrowing facility they provided to FIC.
- 11 Q If the hearing officer did please go to page 53.
- 12 On the top of the page it says security and other
- 13 documentation, can the hearing officer scroll down
- 14 a little bit, can you please read paragraph E?
- 15 A "Assignment of small cap fund portfolio held within
- 16 760838 B C limited."
- 17 Q Are you aware of whether or not that numbered
- 18 company is or isn't part of the FIC group
- 19 companies?
- 20 A It is, yes.
- 21 Q And if the hearing officer can please go to page
- 22 54. Just under -- you see it says conditions, and
- 23 then if the hearing officer can scroll down at page
- 24 55, and at the very bottom it should be paragraph
- 25 T, if you can read the paragraph T at the bottom

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1 there?

2 A "Borrower to provide monthly imposed statements  
3 details the small cap fund photograph held within  
4 760838 B C limited."

5 Q This paragraph continues, I believe on the next  
6 page, please if you can just read the rest of that  
7 at the top?

8 A "Market value of the portfolio is maintain a  
9 minimum value of \$9 million for the life of the  
10 project."

11 Q If the hearing officer can now please bring up  
12 Exhibit 210. And focused on this e-mail, about  
13 half-way down the page from rose Harvey do you see  
14 the e-mail that I'm referring to, Ms. Lyon?

15 A Yes.

16 Q Who is Rose Harvey?

17 A She was a controller at FIC.

18 Q Okay. And can you read this e-mail, please?

19 A This is from January 29th, 2008 to Ken at cran.ca.  
20 "Hi Ken, I have looked through the payables that  
21 were paid last week. They were all for a different  
22 project. Can you e-mail me your outstanding  
23 invoices."

24 Q And then go up, read, I guess, the reply of January  
25 --

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1 A Ken replies, "This is a copy of the out standing  
2 amounts owed to us on the Stoney Plain project  
3 Genesis on the Lake. Please review and give me a  
4 call as soon as you can."

5 Q And I see in the top that's an attachment that  
6 refers to a spreadsheet. If the hearing officer  
7 can please go to page 2, and turn that exhibit,  
8 please. What was the total amount outstanding to  
9 Cran Construction at that point?

10 A Just over \$5 million.

11 Q If the hearing officer can now please go to Exhibit  
12 211. There is an e-mail at the bottom of the page  
13 of February 6, '08, the e-mail says Gentek  
14 Developments, Gentek Western Group. Who is Gentek  
15 Developments?

16 A Gentek was the general contractor FIC was using in  
17 Alberta.

18 Q Can you please read this e-mail?

19 A "I just received a call from Ken Gora [phonetic] of  
20 Cran Construction Limited. He will be placing a  
21 lien on the project for \$5 million after meeting  
22 with his lawyers this afternoon."

23 Q And who's that from and who's it to?

24 A That is from Terry Ofram [sp] at Gentek, the  
25 operations manager, and it went to Randy Brown and

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1 Cindy Jansen [sp].

2 Q And then if you can explain the next e-mail above

- 3 that from Cindy Jansen?
- 4 A Cindy forwarded this e-mail on to David MacDonald
- 5 and John Tansowny on February 6, 2008. "Good
- 6 morning, Dave and John, here is the newest update
- 7 on the Genesis on the Lake project."
- 8 Q If the hearing officer can please bring up Exhibit
- 9 196 and page 36. Do you recognize this document?
- 10 A This is an Alberta land title certificate for the
- 11 town of Stoney Plain for property owned by Genesis
- 12 on the Lake.
- 13 Q And if the hearing officer can please go to page
- 14 37, the next page. The third item down, can you
- 15 read the third item down on the title search, it
- 16 says it was July 10, 2007?
- 17 A That's the mortgage for the Toronto Dominion Bank
- 18 in the amount of \$22 million.
- 19 Q And if the hearing officer can go to the next page.
- 20 Can you read the entry there on February 7, 2008,
- 21 at the top of the page?
- 22 A That's a builder's lien for Cran Construction in
- 23 the amount of \$5 million.
- 24 Q If the hearing officer can now please go to Exhibit
- 25 334. And there is an e-mail at the bottom of that

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- 1 document from John Tansowny, can you please read
- 2 that e-mail, who it's to and from et cetera?
- 3 A This is from John Tansowny to Earle Pasquill,
- 4 Graham Woods, and Steve Rea on February 10th, 2008.
- 5 "I have just been advised that one of our
- 6 contractors, Cran construction, gave instructions
- 7 to its legal counsel to file a lien on the Genesis
- 8 project on Friday. I have not received anything to
- 9 confirm that, I believe the information is valid.
- 10 While this is not a desired action, it will have
- 11 little impact on anything since the bank security
- 12 takes precedence. However the more serious issue
- 13 is the TD deposit situation and we need to discuss
- 14 the situation on Monday and determine what our
- 15 options are."
- 16 Q If the hearing officer can now go to Exhibit 409,
- 17 page 2. And can you just perhaps, just summarize
- 18 very, without reading this entire e-mail, if
- 19 hearing officer can also go to page 3 as well and
- 20 then back to page 2, please. Can you just
- 21 summarize, if you can in a sentence or two, what
- 22 this e-mail from Mr. Lathigee of February 23, 2008
- 23 is about, who its to?
- 24 A It was sent to Steve, Earle and Graham at FIC.
- 25 He's outlining concerns that he has with the work

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- 1 of John Tansowny over the past year, I believe.
- 2 Q And if the hearing officer can please go to page 1,
- 3 and at the bottom of the payment it looks like its
- 4 a reply. Can you read the, this e-mail, please and

- 5 explain who its to and from?
- 6 A This is from Graham Woods to Mike Lathigee on
- 7 February 23rd, 2008. "Mike, personally from me to
- 8 you at this page, your timing on this ties right in
- 9 with the high degree of uncertainty that I am
- 10 feeling in regards to the real estate projects. As
- 11 you are aware, we base our selling prices almost
- 12 entirely on future profits of the real estate
- 13 projects. I think that there is a chance that they
- 14 are way off and this will really make me looking
- 15 like a chum. Something like this could impact my
- 16 chartered accountant designation. As such it is
- 17 personal to me. I can't tell you over the past
- 18 week or so how many of the items you have outlined
- 19 I have been thinking about."
- 20 Q That's fine. If the hearing officer can please go
- 21 to Exhibit 212, page 2, and then please scroll down
- 22 to the bottom of the page. Can you please just
- 23 identify the e-mail at the bottom of the page and
- 24 then I will ask you questions about -- continue on
- 25 the next page?

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- 1 A This is from Steve Rea to Dave MacDonald on
- 2 February 26, 2008.
- 3 Q Okay, if you can read what we can see there at
- 4 least on that page of e-mail.
- 5 A "Hi Dave".
- 6 Q And if the hearing officer can please go to the
- 7 next page, if you can read the next paragraph then
- 8 at the top of the page?
- 9 A "Great news on the sale of lots. No financial from
- 10 TD. Presales are the issue for us for any new
- 11 funds from TD. Our refinancing is not in play
- 12 until the end of March. This is an internal
- 13 time-line and is not to be disclosed to any third
- 14 party."
- 15 Q If you can read a couple of paragraphs down, the
- 16 one that starts "phase 2 funding"?
- 17 A "Phase 2 funding from TD is nonexistent as they
- 18 want 50 per cent minimum of these lots having 15
- 19 per cent deposits in full on them and cash in
- 20 hand."
- 21 Q And then if you can read the last paragraph that
- 22 says "great news"?
- 23 A "Great news on sales. We are working on pay-outs
- 24 to remove liens. 12 million in phase 2 work done
- 25 ahead of budget schedule is no small undertaking to

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- 1 refinance."
- 2 Q And if the hearing officer can now go to Exhibit
- 3 213. This is similar in the sense that I've asked
- 4 you just to go to the very bottom of the page. And
- 5 you'll see there's an e-mail there, if you can move
- 6 on to the next page. Can you maybe go back to page

7 1, please, Madam Hearing Officer, if can you go to  
 8 page one it you explain the e-mail who its from and  
 9 to and then I will ask you to read part of it on  
 10 page 2?

11 A This is from R Brown at Gentech to Steve Rea and  
 12 John Tansowny on February 26th, 2008.

13 Q And then if the hearing officer can then go to the  
 14 next page. Can you please, the subject line and  
 15 then read the first 2 paragraphs below "hello  
 16 Steve"?

17 A The subject is Genesis on the Lake, Stoney Plain,  
 18 Alberta. "Hello Steve. After speaking to John  
 19 Tansowny last week (February 22nd) we have left a  
 20 message with you today requesting an update on the  
 21 status of our outstanding contract invoices plus \$  
 22 8 million."

23 Q And then the next sentence, please?

24 A "As you can imagine, this late statement has caused  
 25 serious damage to our Alberta supplier and

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1 subcontracts."

2 Q If the hearing officer can go back to page 1,  
 3 please. And scrolling down, if you can -- there's  
 4 an e-mail from Steve Rea, can you explain again who  
 5 its too and from and then read that e-mail?

6 A This e-mail from Steve to John Tansowny, still  
 7 February 26, 2008. "John, I am pissed we are in  
 8 this and I only found out in January the phase 2  
 9 bills total 12 million. -- are going ahead with  
 10 this in such a cavalier way. Its our money and I  
 11 cannot believe somehow he thought to go ahead  
 12 especially when he knew we were light on our equity  
 13 contribution."

14 Q If you could read the next sentence too then?

15 A "There is my vent now. Now how do you want to  
 16 proceed."

17 Q And if the hearing officer can just scroll up a  
 18 little bit to the top, and if you can again explain  
 19 the e-mails to and from, and if you can read the  
 20 first three paragraphs of that e-mail please?

21 A John Tansowny relies to Steve Rea, also on February  
 22 26, 2008. "There are always two sides to every  
 23 story, my friend. Decisions made in August did not  
 24 contemplate in anyone wildest nightmare when TD  
 25 funding was eminent that in February '08 we would

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1 not be funded. We have been at this with the TD  
 2 ICI for over six months while wheels were turning  
 3 on site. In fact we are the ones that have let him  
 4 and our contractors down by not having the funds on  
 5 hand when they were supposed to be. So I am in his  
 6 court on that one, as I did not know the reality  
 7 either?

8 Q And if the hearing officer could please bring up

9 Exhibit 26. And this e-mail about half-way down  
10 from Graham Woods, if you can explain again, who  
11 its to and from, and then I could ask if you could  
12 read the middle paragraph?  
13 A This is from Graham Woods to Mike Lathigee, Earle  
14 Pasquill, Steve Rea on March 1st, 2008. "You have  
15 indicated the fact that Genesis is the priority. I  
16 would like to use the \$700,000 on Monday to pay  
17 down or off some of the Genesis trades that are  
18 owed money. My plan is to make the mid to small  
19 trades happy. I believe that irregardless or how  
20 much they are owed they could slap liens on Genesis  
21 land the same as the big trades. Steve and I need  
22 to discuss a plan on Monday as there are many  
23 moving parts and both of us need to be involved in  
24 any such decision. It will probably involve a call  
25 updating the bigger trades as well."

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1 Q If the hearing officer could then just move up a  
2 little bit to the top of the page, if you can  
3 explain who the e-mail is to and from and then read  
4 this entire e-mail please?  
5 A Mike Lathigee responds to Graham, Steve and Earle  
6 and John on March 2nd, 2008. "Our first priority  
7 is to save the company. If Genesis loan is to be  
8 called by TD which is a real possibility we have to  
9 factor then we are doomed. Given the extreme  
10 circumstances that we have only fully known this  
11 week the plan below suggests all our conversations  
12 this week will only relate to sales and bringing in  
13 cash, everything else is secondary."  
14 Q If the hearing officer can now please go to Exhibit  
15 305, page 3. And at the bottom of the page, again  
16 explain who the e-mail is to and from and then I am  
17 going to ask you to start reading the first line at  
18 the bottom of the e-mail, it starting with other  
19 than?  
20 A This is from Mike Lathigee to John Tansowny, Earle  
21 Pasquill on March the 3rd, 2008. "Other than  
22 monthly retainers, there is no other out going  
23 funds at this point due to the very difficult  
24 situation FIC is in. You will receive \$21,000  
25 until FIC is caught up on its payments to

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1 suppliers, contractors, et cetera in Edmonton.  
2 Q If the hearing officer could now go back to page 3  
3 of this document. I think its Mr. Tansowny, that's  
4 an e-mail from Mr. Tansowny. Can you again explain  
5 that e-mail and then read Mr. Tansowny's reply?  
6 A Mr. Tansowny replies to Mike and Earle on March  
7 3rd, "all the agreements around this have been  
8 signed and are in Earle's hands and have been for  
9 at least six months and what does this have to do  
10 with our payment."

- 11 Q And then Mr. Lathigee replies at the top of the  
12 page?  
13 A To John and Earle, also on March 3rd, 2008.  
14 "Earle, I am on overload trying to get cash into  
15 FIC. I don't have time for this to address until  
16 Wednesday. John, organization is sucked dry of  
17 cash."  
18 Q And if the hearing officer can go to page 2, please  
19 and scrolling down to the bottom of the page there  
20 is another e-mail from Mr. Tansowny. Can you again  
21 describe the e-mail and then read the first line  
22 and the last line of the e-mail?  
23 A This is from Mr. Tansowny to Mike and Earle on  
24 March 3rd, 2008.  
25 Q And if you can just the first line of the --

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- 1 A "I have brought to your attention many times that  
2 the cash needs were reported and known for months."  
3 Q And the last sentence?  
4 A "How much more do we need."  
5 Q And then if you can just again explain the e-mail  
6 above, Mike Lathigee?  
7 A This is from Mike to John and Earle, March 3rd,  
8 2008. "These issues and many others will be  
9 addressed at the management retreat. I will speak  
10 with you then. In the meantime I have instructed  
11 Earle to hold all cash. Your 21 K is released and  
12 that is it. We are in a very bad situation and I  
13 can't waste any time other than focusing on saving  
14 FIC for the next 30 days. You are to keep this  
15 e-mail confidential as an internal e-mail only.  
16 Focus on sales and bringing in cash and nothing  
17 else. If it relates to that, I am happy to chat.  
18 Anything else I do not have the time or interest."  
19 Q And if the hearing officer can go to Exhibit 40,  
20 please, page 1. And if the hearing officer can  
21 please scroll down, looks like this is in response  
22 then to the previous e-mail that bee just talked  
23 about. Can you explain then, read the e-mail from  
24 John Tansowny of March 3rd, 2008 at 11:53 a.m.?  
25 A This is to Mike, "I was serious and out of the

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- 1 loop, how much more do we need."  
2 Q Then if you can read at the top of the page,  
3 Mr. Lathigee's reply?  
4 A This is to John and Earle on March 3rd, 2008.  
5 "Still John there was much cash that was said to be  
6 coming in from you and it has not or it has been  
7 delayed by months. We need about ten million to  
8 stay solvent. I am all over this right now and  
9 don't have any time to focus on anything except  
10 this. The TD loan is a serious concern and the  
11 dominoes that would fall. Just create pressure to  
12 buyers to get funds in where you can and you come



13 to the man meeting on Wednesday. Please allow me  
 14 to go back to getting money in for FIC. This is  
 15 the worst situation we have ever been in. Earle  
 16 will be your point of contact as I don't have any  
 17 time to tie up if it is not bringing in cash."

18 Q And if the hearing officer could go to Exhibit 41,  
 19 page 1. Can you read the e-mail at the top of the  
 20 page, describe who its to and from?

21 A This is from Michael Lathigee to John Tansowny on  
 22 March the 5th, 2008. "John, the seriousness is  
 23 that the company is close to insolvency with the TD  
 24 loan that could be called. We have no cash flow.  
 25 There was much talk from yourself about delivery of

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1 cash but the results are not there. We are  
 2 suffering from no cash flow and now in test  
 3 operation we are doing a promissory note offering  
 4 that will encompass the entire staff for one month  
 5 to save the company. As stated the best thing you  
 6 can do is focus on sales, rezoning, and get in  
 7 money that is owed to us in the fastest manner  
 8 possible. Call on favours, pressure those who owe  
 9 us money, and do your best to stave off those we  
 10 owe money. I am expecting everyone to burn the  
 11 midnight oil until results are attained. The last  
 12 week while you were on vacation has been very hard  
 13 on the entire management team to deal with the  
 14 reality of what is going on but they have worked  
 15 diligently on a plan to save FIC. I'm going to bed  
 16 now and will see you tomorrow."

17 Q Now, I'm just going to move back in time a few days  
 18 if the hearing officer can please bring up Exhibit  
 19 410. Can you just at the bottom of the page, can  
 20 you just -- explain who the e-mail is to and from  
 21 and then read the subject line and the e-mail  
 22 itself?

23 A This is from Michael Lathigee to Graham Earle Ivan,  
 24 Jennifer, Bob, Keith and Steve on March the 1st,  
 25 2008. "Urgent that everyone reads promotional

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1 piece as you are all mentioned with action steps is  
 2 the subject line. For March this has gone to the  
 3 top of the list as the top priority."

4 Q Okay, and if you could read the next above that  
 5 from Graham Woods and then just the first paragraph  
 6 of Mr. Woods' e-mail?

7 A From Graham Woods to Mike, Earle and Steve on March  
 8 1st, 2008. "Mike, I am going to read this in more  
 9 detail tomorrow. However it is important that you  
 10 in no fashion indicate that the promissory note is  
 11 backed or secured by the real estate. It does not  
 12 appear that you do this in your document so that is  
 13 good."

14 Q And then if the hearing officer could scroll up to

15 the top, if you can just again explain who the  
 16 e-mail is to and from and then read this entire  
 17 e-mail please?

18 A Mike replies to Graham, Steve and Earle, still  
 19 March 1st, 2008. "I show a degree of certainty  
 20 with 100 million in assets and only a \$10 million  
 21 or 10 million loan but do not say it is security.  
 22 Earle, edit as Graham suggests."

23 Q If the hearing officer could now go to Exhibit 376.  
 24 Again, if you could just explain who the e-mail is  
 25 to and from and then I would ask you to read the

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1 first sentence and then the first four points?

2 A This is from Earle to Mike, John, Graham, Keith and  
 3 Steve on March 3rd, 2008. Subject is promissory  
 4 note terms. "The new round of promissory note  
 5 financing will be done with these terms, issuer is  
 6 FIC Real Estate Projects limited. It will be open  
 7 to all members except non accredited in Ontario,  
 8 minimum investment is \$10,000 Canadian. Closing  
 9 April 1st, interest is paid quarterly."

10 Q And then can you read please the point that's  
 11 second from the bottom?

12 A The maximum we will take in under this arrangement  
 13 is ten million dollars.

14 Q And then if the hearing officer can please go to  
 15 Exhibit 374. The same questions, if you can  
 16 explain who the e-mail is to and from, and then I  
 17 would ask if you could then read the e-mail all the  
 18 way down to the line that follows under frequently  
 19 asked questions?

20 A This e-mail is from Michael Lathigee to Keith  
 21 Hirsch on March 3rd, 2008. The subject is more  
 22 refinement on script. "Keith, more of the same but  
 23 the script is so important. Hello, I am Russ  
 24 calling from the Freedom Investment Club. I have  
 25 an important update about the club, could I have a

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1 few minutes. If yes, then for five years, members  
 2 have been requesting a cash flow opportunity that  
 3 all members could participate. We have had seven  
 4 previous cash flow opportunities but this is the  
 5 first opportunity that both accredited and  
 6 nonaccredited investors can participate. That  
 7 could the opening. Frequently asked questions, is  
 8 the loan secured. They must be taught to never say  
 9 no directly, but use a softer response that still  
 10 says no."

11 Q And if you can just read the next paragraph there  
 12 as well, please?

13 A "None of the previous cash flow opportunities have  
 14 been secured. The 7 previous offerings like this  
 15 one all had fixed rates of interest and a fixed  
 16 term and all members received their full interest

17 payments plus their original principal. We have  
 18 over 100 million in real estate and are only  
 19 raising ten million so that we can in a more  
 20 expedient fashion develop our projects and realize  
 21 the profits for our members."

22 Q If the hearing officer can next go to Exhibit 400,  
 23 page 3. I would ask if you could just focus please  
 24 on the e-mail about half-way down the page to Mike  
 25 Lathigee. Can you read just again explain who the

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1 e-mail is to and from and then read this e-mail?  
 2 A This is from Michael Lathigee to Ivan, Earle,  
 3 Margaret and Keith on March 3rd, 2008. Subject is  
 4 for the first time in FIC a cash flow opportunity  
 5 that all members can participate. "Ivan, change  
 6 promissory note to cash flow opportunity. Received  
 7 a fixed rate of interest, not fixed rate of  
 8 interest, first paragraph. Make sure when they  
 9 register in here that that feature works. After 4  
 10 per cent inflation you write no great with you not  
 11 terrible, remove that line as 4 per cent is  
 12 terrible, 8 per cent is devastating. Get Earle to  
 13 check it after these changes, take out the line you  
 14 read that right members, we have. Great work and  
 15 proceed to get it out tonight. Earle, do the final  
 16 proof read."

17 Q And if the hearing officer can please bring up  
 18 Exhibit 167 starting on page 7. Do you recognize  
 19 this document?

20 A This is page print-out from the FIC web site.

21 Q Can you read the bold heading to this document?

22 A It says "important announcement, we have listened  
 23 to your requests, for the first time FIC has a cash  
 24 flow opportunity open to all members."

25 Q And then if you can read the opening paragraph and

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1 then the next area in that rectangular box?

2 A "Dear members, we have listened to our thousands of  
 3 requests for a cash flow opportunity in which all  
 4 members can participate. Whether you are Canadian  
 5 or American, accredited or none accredited, you can  
 6 take part in this cash flow opportunity. And it  
 7 details, there's an informational webcast for the  
 8 new cash flow opportunity on Friday, March 7th,  
 9 2008."

10 Q If the hearing officer can please scroll a little  
 11 bit further down in the page please. Can you read  
 12 the first two sentences in the last paragraph  
 13 there?

14 A "This cash flow loan is different in that it is a  
 15 cash flow opportunity open to all members. The  
 16 programme closes March 30th and the club is only  
 17 raising \$10 million."

18 Q And if the hearing officer can go to the next page

19 please, and if you can read the first three lines  
20 there that are in --  
21 A "Make sure you listen to the cash flow opportunity  
22 conference call for full details when, this Friday,  
23 March 7 at 5:00 p.m. PT.  
24 Q And finally, if the hearing officer can just scroll  
25 down a bit further down to the bottom of the page,

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1 if you can read the paragraph that starts the FIC  
2 group of companies, just that paragraph through?  
3 A "The FIC group of companies has over \$100 million  
4 in real estate assets. With spring nearly upon us  
5 we wish to quickly develop a few projects and reap  
6 huge profits for the clubs."  
7 Q And if the hearing officer can now bring up Exhibit  
8 201. Do you recognize this document?  
9 A This is a transcript we had made of that particular  
10 webcast for the cash flow opportunity.  
11 MR. CHAPMAN: And if the hearing officer can please go  
12 to page 3. Before I proceed any further, I shared  
13 this with my friends, but we have the actual  
14 recording itself, and what I would propose to do  
15 through Ms. Lyon is have this entered, and then I  
16 just wanted to play just some of the snippets from  
17 this recording, it's a 40 minute roughly recording,  
18 but it, and obviously the entire transcript is in  
19 evidence, but I just wanted to highlight a few of  
20 the aspects of it.  
21 MR. ANDERSON: I must say that I always find it  
22 concerning when, if its something that flows for 45  
23 minutes or however long it is, why you would play  
24 snippets if you're using a transcript in the first  
25 place, and I don't understand why we would be doing

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1 that. I mean, I don't want something to be taken  
2 out of context by just playing snippets.  
3 MR. CHAPMAN: As I said, the entire transcript is in as  
4 evidence. Mr. Lathigee talks about the economy and  
5 other issues, my suggestion would be that if for  
6 some reason just listening to part of the audio of  
7 the transcript because my plan is also to have the  
8 hearing officer follow along with the transcript of  
9 the parts I'm playing. My suggestion would be that  
10 if my friend thinks that something is somehow taken  
11 out of context or if there is got to be something  
12 added that perhaps at cross-examination of Ms. Lyon  
13 he could say I wanted to play the other 20 minutes  
14 or 3 minutes of this or whatever, I suspect that  
15 won't happen. But I just don't see the point of  
16 having to have the panel listen for 40 minutes of  
17 an entire broadcast when the transcript itself is  
18 in evidence. I just wanted to touch on the actual  
19 details about the investment itself rather than  
20 just the sort of bigger picture stuff that

21 Mr. Lathigee talks about.  
22 THE CHAIR: Are you planning to enter the audio disk  
23 into evidence?  
24 MR. CHAPMAN: Yes. I assume I have to, if I'm having it  
25 played in the hearing room.

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1 THE CHAIR: Does that make it evidence, Mr. Anderson?  
2 MR. ANDERSON: I don't know, I feel that there's  
3 something up here that my friend's really not  
4 letting us in on but I suppose that as long as the  
5 audio recording is marked as well, I'm not going to  
6 -- I may have an objection that I will take later.  
7 But I won't impede the process now.  
8 MR. CHAPMAN: Okay.  
9 THE CHAIR: Just one moment, please. Go ahead,  
10 Mr. Chapman. I note the time. I also note that we  
11 usually break about twelve thirty for our noon  
12 break, but then we started late, and it's a  
13 question of whether we take a short break before  
14 then or just take our noon break now and come back  
15 at one thirty. I assume you need a couple of  
16 minutes to get this thing set up. Is that  
17 convenient for everyone if we took the noon break  
18 now and come back at one thirty?  
19 MR. ANDERSON: Absolutely, Mr. Chair.  
20 THE CHAIR: Thank you.  
21 (PROCEEDINGS ADJOURNED AT 12:00 P.M.)  
22 (PROCEEDINGS RECONVENED AT 1:35 P.M.)  
23 MR. ANDERSON: Sorry, Mr. Chairman, I was having some  
24 technical difficulties and I naturally wasn't  
25 capable of solving any way.

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1 THE CHAIR: That's fine. Just before we resume?  
2 MR. CHAPMAN: Yes.  
3 THE CHAIR: Does counsel have any estimate for the total  
4 length of the hearing? Are we still looking at the  
5 full time you have set aside, or are you in a  
6 position to say anything about that yet?  
7 MR. CHAPMAN: I'll defer to my friend. We've talked  
8 about this, and we do have enough time. Ms. Lyon  
9 should be done in her direct, I'm hoping in about  
10 an hour-ish or so, and then that's the last witness  
11 for the executive director.  
12 MR. ANDERSON: I can address that. What my intent would  
13 be is, I don't know how long I will be with Ms.  
14 Lyon, I don't know how long, maybe today or  
15 tomorrow. We will make a brief opening, I will  
16 perhaps be a little bit longer than my friend.  
17 After that, I intend to call Mr. Pasquill, I think  
18 his evidence will be lengthy. And then we're going  
19 to call the person that was the CFO at the time,  
20 whose name I don't know, just escapes me at the  
21 moment, and then the subsequent CEO, although he's  
22 not available till Monday. And our hope was that

23 we would finish all the evidence but him by Friday  
24 night, if not before, and then call him Monday and  
25 be done, in the absence of something coming up that

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1 we don't now foresee. And what we intend to do,  
2 Mr. Pasquill will take the lions share of giving  
3 evidence and we will be calling the CFOs on  
4 specific issues that relate to accounting and  
5 things like that.

6 THE CHAIR: Okay, that's fine. Thank you. Carry on,  
7 Mr. Chapman.

8 MR. CHAPMAN: Thank you. I see that Exhibit 201 is  
9 still on the screen. What we talked about just  
10 before we broke, I can pass up to the hearing  
11 officer, it's a CD of the -- the CD actually  
12 contains two conference calls that we will be  
13 playing snippets from, and I would ask if should be  
14 one that's, do you have a date on it saying March  
15 7? I'm not sure you do.

16 HEARING OFFICER: It takes a little while. It looks  
17 like April 30th, 2008, and September 22nd, 2008.

18 MR. CHAPMAN: The other one should be -- oh, there is  
19 link 2, that one's from March 7, 2008.

20 Q Maybe it just says -- before we proceed any  
21 further, Ms. Lyon, are you aware of whether or not  
22 there was any recordings made of these conference  
23 calls?

24 A Yes.

25 Q Can you discuss which recordings or which -- sorry,

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1 which conference calls were recorded, and maybe  
2 where they came from?

3 A The cash flow opportunity webcast that we've been  
4 speaking about is from March 2008, and it was  
5 posted on the FIC web site and recorded from there.

6 Q And then the -- there was a second one?

7 A The second one we'll be referring to was for the  
8 FIC foreclosure fund, and that was from the end of  
9 April 2008, and I believe that we did an audio  
10 recording of that while it was happening.

11 MR. CHAPMAN: So perhaps as a formality, if I could have  
12 the recording perhaps entered as an exhibit before  
13 we play it, if that's the proper procedure.

14 THE CHAIR: That will be Exhibit 415, I believe.

15 \*\*\* Exhibit 415 \*\*\*

16 MR. CHAPMAN: Thank you. And with the, if I could ask  
17 for the assistance of the hearing officer, start to  
18 play the first minute and 34 seconds of the  
19 recording and if we could follow through, you'll  
20 see where sort of the natural break there, and if  
21 we could just follow, follow through on the pages  
22 of the transcript.

23 (recording played)

24 MR. CHAPMAN: And then if the hearing officer could

25 please turn to page 19 of this transcript, and  
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1 we'll skip quite a bit ahead. And I think that at  
2 the 23 minute and 27 second mark of the recording,  
3 which should start I believe somewhere at the  
4 bottom of, it should start with the last sentence  
5 on page 19.  
6 (recording played)  
7 MR. CHAPMAN: And if the hearing officer could move  
8 ahead first of all to page 24 of the transcript,  
9 and then towards the bottom of the page, the last  
10 paragraph says members holding much higher than  
11 normal amount of their portfolio in cash, that  
12 should be -- just maybe in advance for the hearing  
13 officer's benefit, my plan is to go to the next  
14 page, which is 25, line 18, ten million in the next  
15 week. Sorry, yes, sorry, so it should be at the 31  
16 minute and 11 second mark of the recording, I hope.  
17 MR. CHAPMAN: If we could just play the next paragraph,  
18 my timing is --  
19 (recording played)  
20 MR. CHAPMAN: And just to conclude, now, this will just  
21 require playing the rest of the tape, the hearing  
22 officer will be -- can you go to page 29, please.  
23 At the bottom of the page, Mr. Pasquill is -- that  
24 should be somewhere around 38 minutes and 48  
25 seconds, I hope.

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1 (recording played)  
2 MR. CHAPMAN:  
3 Q Thank you. If the hearing officer has a chance if  
4 we could go next to Exhibit 204. Ms. Lyon, do you  
5 recognize this letter?  
6 A Yes.  
7 Q Can you explain what it is?  
8 A This is a letter from David Goult, who is counsel  
9 for FIC Real Estate Projects, in response to a  
10 request from commission staff.  
11 Q Can you read please the first two numbered  
12 paragraph?  
13 A "A list of the names, addresses and telephone  
14 numbers of all persons to whom promissory notes  
15 were issued as set out in the enclosed spreadsheet  
16 the dollar amounts in Canadian dollars invested by  
17 each of the investors and the date of each  
18 investment are also set out in the enclosed  
19 spreadsheet."  
20 Q If the hearing officer can please go to page 2.  
21 And can you read the first two sentences on  
22 paragraph 4?  
23 A "There were 2 forms of promissory note issued by  
24 the company. Blank copies are enclosed."  
25 Q If the hearing officer could please now go to page

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- 1 14. Do you recognize this document?
- 2 A Yes, that is the copy of one of the promissory
- 3 notes.
- 4 Q And if the hearing officer can control through to
- 5 page, up to 18. And do you recognize this
- 6 document?
- 7 A This is the other form of promissory note they
- 8 provided.
- 9 Q And if the hearing officer can please just scroll
- 10 through up to and including page 21. Thank you.
- 11 Now, if the hearing officer could then also go to
- 12 page 24, explain what we're looking at here?
- 13 A This is the referenced list of investors in the
- 14 promissory note offering, the first part of the
- 15 list here is the Canadian residents.
- 16 Q Okay, and if the hearing officer can go to page 27,
- 17 please. Are you able to tell from this document
- 18 how much was raised from Canadian investors?
- 19 A This page shows the Canadian total of just over
- 20 \$5.2 million.
- 21 Q And what does the rest of the spreadsheet relate
- 22 to?
- 23 A The rest starts the list of the US resident
- 24 investors.
- 25 Q Okay. And if the hearing officer can please go to

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- 1 page 30. Is there any figure that refers to how
- 2 much was raised in total from the US investors?
- 3 A The last page of US investors, and it shows 4.476
- 4 million.
- 5 Q Thank you. If the hearing officer could now again
- 6 return please to Exhibit 51, which is the FIC
- 7 groups of finances as of March 31, 2008. And I
- 8 guess page 2, please, and then page 3. According
- 9 to these documents, Ms. Lyon, what were the total
- 10 assets for the FIC group of companies by that point
- 11 in time?
- 12 A On March 31st, 2008, 97,288,000.
- 13 Q And how about the total liabilities?
- 14 A 49,193,000.
- 15 Q And if the hearing officer could please go to page
- 16 5. There is under the heading number 4, can you
- 17 just read the first sentence under portfolio
- 18 investments?
- 19 A The portfolio investments are in the accounts of
- 20 the following companies.
- 21 Q And can you read the first company listed there?
- 22 A That is 760838 B.C. Limited.
- 23 Q And what was the total amount of that investment
- 24 portfolio by that point?
- 25 A It was 5,863,000.

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- 1 Q And as based on your real estate investigator are



2 you aware of how that amount related to the amount  
3 in the loan from the TD Bank?

4 A That is the account they were required to hold as  
5 security that was supposed to be \$9 million.

6 Q Okay. If the hearing officer could then please go  
7 to page 7. Can you read the heading in the  
8 paragraph under number 8 at the top of the page?

9 A "Accounts payable and accrued liability, the March  
10 31st, 2008 accounts payable and accrued liabilities  
11 balance includes \$7,732,000 owing to Genesis  
12 contractors for work completed to March 31st, 2008.

13 Q If the hearing officer could now please go to  
14 Exhibit 262, page 2. Back into the e-mail section  
15 of your evidence, as before the lunch break, if you  
16 could please just again e-mail who its to and from  
17 and then if could read that entire e-mail please?

18 A This is from Michael Lathigee to Earle, Graham and  
19 Steve on April 15th, 2008. "I need as much money  
20 as possible to buy foreclosures. I believe I can  
21 make 100 per cent on the money I receive no matter  
22 what the amount in less than a year. This is the  
23 best use of proceeds and I don't want to put all  
24 our money in things that are not generating income.  
25 Let me know, all our assets and what I can get cash

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1 immediately or soon, how much of the ten million  
2 can I have."

3 Q Are you aware of what \$10 million he's referring to  
4 there?

5 A I believe that's the cash flow --

6 MR. ANDERSON: I really think that we're getting a  
7 little bit too far here, because I can tell that  
8 you Mr. Lathigee's not being interviewed and the  
9 document speaks for itself. I don't think we  
10 should be speculating as to what it means. She  
11 didn't author it.

12 MR. CHAPMAN:

13 Q Okay, the next couple of e-mails -- I'm happy to go  
14 on. If the hearing officer can turn to page 1,  
15 please, and scrolling down to the bottom, Ms. Lyon  
16 can you please explain, read that e-mail from  
17 Graham Woods of April 15, 2008?

18 A This is to Michael Lathigee, Earle Pasquill, Steve  
19 Rea. Graham Woods says, "the \$1 million that I  
20 moved to Prospera foreclosure yesterday, that is  
21 it."

22 Q And then if the hearing officer can please just  
23 move up a little bit higher, and if you can read  
24 Mr. Lathigee's reply?

25 A He responds on April 15th, 2008, to Graham, Earle,

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1 Steve. "Sorry guys not good enough. Putting the  
2 ten million in into something that is going to rent  
3 rate less profit makes no sense. I want a meeting

4 with the two of you today to discuss where I can  
 5 get funds. My responsibility is to maximize gains  
 6 for shareholders and so we have to take out cash on  
 7 under performing assets."

8 Q And then if you can move to the top of the screen  
 9 please, and read and explain Mr. Pasquill's reply?

10 A This e-mail is from Earle Pasquill to Mike  
 11 Lathigee, Graham Woods, Steve Rea on April 15th,  
 12 2008. "Just a reminder Mike that we raised the \$10  
 13 million to solve our cash flow pressures related to  
 14 the real estate not for new investments. Graham's  
 15 putting together both the current cash position and  
 16 the disposition of the \$10 million. We will have  
 17 some WBIC funds flowing soon and if you choose we  
 18 can divert what you were going to give to Rick into  
 19 foreclosures."

20 Q And if the hearing officer can please go to Exhibit  
 21 264. Can you read please the first top half of  
 22 that e-mail and explain who its from, and the dates  
 23 up until the line that says foreclosure fund?

24 A This is from Earle Pasquill to Mike and Graham  
 25 Woods on April 15th, 2008. The subject is cash.

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1 "Here is Graham's cash report as of today. Also  
 2 here is the disposition of the \$10 million. \$3  
 3 million to since Wood Gundy to top up the account  
 4 to the minimums required by TD for security on  
 5 Genesis, 2 and a half million dollar to Genesis  
 6 trade payable to remove liens, \$1.695 million to be  
 7 kept in reserve for interest payments and  
 8 operations, \$1.675 million to foreclosure fund,  
 9 \$660,000 used for operation, \$230,000 payment to  
 10 crossroads, \$240,000 advance to CD and WBIC for  
 11 Rick Langer, totalling \$10 million."

12 Q Thank you. If the hearing officer could now please  
 13 go to Exhibit 284. Ms. Lyon, if you can explain  
 14 the e-mails to and from at the bottom of the page,  
 15 Mike Lathigee, and then read the first 3 and a half  
 16 lines of that e-mail ending partner the project  
 17 with us?

18 A Sorry, the bottom there?

19 Q Yes. The April 16, 2008 at 944 p.m.?

20 A This is from Michael Lathigee to Earle, Steve,  
 21 Graham, subject, idea to bring in capital quickly.  
 22 Which paragraph?

23 Q And then after Gents, the first three and a half  
 24 lines that ends with the line "partner in the  
 25 project with us" which is the fourth one down?

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1 A "Gents, I can sell this and need you guys to figure  
 2 out how we can do it."

3 Q Sorry, I misguided you. I meant the first  
 4 paragraph, sorry, and in that first paragraph if  
 5 you can just read the first three lines and then

6 the next little bit that goes on to line 4 --

7 A I see.

8 Q Sorry.

9 A "We raise 10.25 million in 16 business days for our  
10 promissory note. Our Genesis project is perceived  
11 very positively by members. They perceive it as a  
12 hugely profitable project and it is if we see it  
13 all the way through and get rid of the bank. I  
14 would like the three of you to discuss if it is  
15 possible for members to become an equity partner in  
16 the project with us."

17 Q Thank you. And if the hearing officer can scroll  
18 to the top of the page, and if you can read the  
19 e-mail response from Graham Woods and describing  
20 who its from et cetera?

21 A This is from Graham Woods to Earle and Steve on  
22 April 17th, 2008. "No way am I having anything to  
23 do with getting our members into FIC's Vietnam. I  
24 can see the lawsuits coming now."

25 Q Thank you. And if the hearing officer can please

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1 go to Exhibit 271. Can you go to the top of the  
2 page there, and then explain this e-mail?

3 A This is another e-mail from Graham Woods to Steve  
4 and Earle on April 17th, 2008. "No more good money  
5 at troubled money."

6 Q And if the hearing officer can now go to Exhibit  
7 259, page 2. Actually, if you read this entire  
8 e-mail if you don't mind, the one that starts  
9 Steven Rea, April 17, 2008.

10 A This is from Steve Rea to Mike Lathigee, Earle  
11 Pascal, Graham Woods. "I appreciate the importance  
12 of solving our challenges. And I also am aware of  
13 the huge risks associated with this plan.  
14 Therefore here are our action steps. We cannot  
15 market profit participation because there is no  
16 profit in face 1 A/1 B. Our profit will not be  
17 realized for 3 to 4 years from now; and at this  
18 time our best return is maybe 10 million excluding  
19 financing charges et cetera. Unless we tell the  
20 whole story to members I don't support selling them  
21 on the idea of investing. How can they invest in a  
22 ship taking on water right now without knowing the  
23 risks. Therefore, I am proposing we focus on  
24 raising money and having to pay for it from those  
25 sources that can afford the risk, such as high net

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1 worth, institutions, instafund et cetera. All we  
2 need is a good solid lending partner for 12 months  
3 to see us through. We will talk at 1 p.m. today.  
4 Creative solutions must be in the context of  
5 responsibility."

6 Q If the hearing officer can go to page 1, please,  
7 and scroll down to the bottom. After sort of

8 saying who the e-mail is to and from and when, if  
 9 you could please then go on to read the first two  
 10 paragraphs of that?  
 11 A This is from Earle to Steve, Michael, Graham, April  
 12 17th, 2008. "I have similar thoughts, selling  
 13 equity would be a security and since FIC USA holds  
 14 the property it is further complicated. We could  
 15 set up a new company but it is complicated. And  
 16 there are intercompany -- of interest and it would  
 17 take some time. Even if we sold two accredited the  
 18 risk involved dictates that, for our own  
 19 protection, we need the disclosure of an OM. But  
 20 as Steve points out, attracting capital to a  
 21 project that, at best, would have a rate of return  
 22 under 10 per cent, and maybe zero, is very  
 23 difficult. And Steve is right. We cannot and will  
 24 not sell without full disclosure. Even if we were  
 25 able to attract some equity capital we would be

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1 setting ourselves up for failure later. I don't  
 2 recommend selling equities."  
 3 Q And if you can read the next paragraph please, the  
 4 next sentence?  
 5 A It seems to me that our first property should be to  
 6 try to satisfy TD with a plan, in ten days, that  
 7 extends our time past invest fest."  
 8 Q And if the hearing officer can please go to page 2  
 9 up at the top of the page, it continues. Can you  
 10 read the last sentence of that e-mail at the top of  
 11 the page?  
 12 A "In short, I think we can weather this without  
 13 going the equity route which would be slow, time  
 14 consuming and very risky."  
 15 Q If the hearing officer can now please go to Exhibit  
 16 273, page 2. And at the very bottom of the page,  
 17 if you can explain again the dates and who the  
 18 e-mail is to and from and read that first  
 19 paragraph, please?  
 20 A This is from Graham Woods to Wayne Sims on April  
 21 11th, 2008. "Wayne, I am in briefly today.  
 22 However, FYI, I am wiring \$100,000 to top up the  
 23 interest account and we are one step away from  
 24 moving \$3 million into the 760838 brokerage  
 25 account."

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1 Q If the hearing officer could please go to page 3,  
 2 and if you could read the rest of the e-mail at the  
 3 top of the page?  
 4 A "We should have all in place on Monday."  
 5 Q And then back please to page 2, and if you could go  
 6 up the next e-mail then, above that, from Wayne  
 7 Sims, April 17, 2008.  
 8 A Mr. Sims responds to Graham Woods and Kevin Homoka  
 9 [phonetic]. "Graham, can you give me documentation

- 10 showing the deposit being placed as I have to  
11 verify the margining is in line. We have given  
12 Steve the required control agreement and power of  
13 attorney 4760838 B.C. Limited. Due to changes in  
14 legislation these documents are not optional and  
15 are required. Please forward the docs ASAP."
- 16 Q I'm going to ask you then to read the reply above  
17 that, but I think that means you have to go Madam  
18 Hearing Officer to 81 at the bottom of that page.  
19 So we can just maybe start with what we're seeing  
20 at the bottom of page 1 in?
- 21 A Graham Woods responding to Wayne Sims April 17,  
22 2008.
- 23 Q And then in, continue on around read the rest of  
24 that e-mail?
- 25 A Copy Steve Rea. "Wayne see attached.

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- 1 Unfortunately today I have wired another \$300,000  
2 to CIBC Wood Gundy as the amount further  
3 spreadsheet -- in regards to the control agreement  
4 and power of attorney I will talk to Steve when I  
5 see him but whose registration changed, TD  
6 government, et cetera."
- 7 Q And then if the hearing officer can please go to  
8 page 1, at the bottom of the page the e-mail from  
9 Steve Rea?
- 10 A Steve replies to Graham, also April 17, 2008. "I  
11 have the document here. No more money is to be  
12 sent into a TD account of any kind. They are  
13 obviously nervous and grabbing everything."
- 14 Q And then move up just one more e-mail in the chain  
15 there and Graham Woods, April 17, 2008 e-mail?
- 16 A Graham responds to Steve and copies Earle, if we  
17 sign these documents, TD will take the \$9 million  
18 that is in 760838. That would be terrible. It is  
19 even worse considering that we owe \$2 million in  
20 tax from 760838. Steve, how much time would we  
21 have to take out the TD with other financing or a  
22 repayment. Any idea? Personally, I will feel as a  
23 complete failure if I sign over a \$9 million  
24 portfolio. I just don't know how all this works,  
25 if they call the loan. I wish I understood better.

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- 1 Is the best bet still IMOR. Perhaps the loan to  
2 asset ratio would be crappier. However we could  
3 borrow enough to -- I have no idea what I'm talking  
4 about anymore."
- 5 Q And then if the hearing officer could just scroll  
6 to the top of that page. Can you explain and read  
7 the e-mail from Mr. Pasquill?
- 8 A Mr. Pasquill to Graham, Steve, still April 17th,  
9 2008. "Guys, let's not panic. In the next couple  
10 of days let's sit down and revisit the cash flow  
11 projections in light of this. I really think we

12 can find a way to take out TD. One of the biggest  
13 unknowns to me is Genesis sales, namely A, to date,  
14 and where the money is, and B, how quickly you  
15 could sell and get payment for 8 to 10 million  
16 dollars in lot sales."

17 Q As the investigator on this file, to your  
18 knowledge, was that lessee ever able to take out  
19 the TD loan?

20 A No.

21 Q If the hearing officer could now please bring up  
22 Exhibit 124. Do you recognize this document?

23 A Yes. This is a transcript we had prepared of the  
24 foreclosure conference call which I earlier  
25 misspoke. We recorded this call from the web site

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1 as well as the other one.

2 Q And if the hearing officer could go to page 3,  
3 please. And now that we're a pro at doing this,  
4 hopefully it will go somewhat smoother, that was my  
5 fault. If the hearing officer could please play  
6 the other recording on the CD, and if the hearing  
7 officer can perhaps just as a heads up before this  
8 first snippet will stop, it will be all of page 3  
9 and then if the hearing officer goes to page 4,  
10 this perhaps that says first let me discuss several  
11 reasons, at line ten there, that's the first time  
12 I'd like to stop this recording, please.  
13 (Recording played)

14 MR. CHAPMAN: That's fine, I think. And then on page 19  
15 of the transcript, my plan is to give you the time  
16 period for where roughly line 6 begins, and then as  
17 far as where this one stops, and then continuing  
18 on, so the rest of that page, all of page 18, and  
19 then going to page 19, this will be the stopping  
20 point.

21 MR. ANDERSON: Are you -- going just straight there?

22 MR. CHAPMAN: Sorry, thank you, I'm going by the  
23 transcript rather than my disclosure. So starting  
24 on page 19 and then continuing up to page 21, and  
25 towards the very bottom there, the sentence on line

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1 16 that says -- ending with that paragraph, ending  
2 with line 20, please. So with that, I'm hoping  
3 that somewhere around the 25 minute and 12 second  
4 mark, we should be back on page 19.  
5 (recording played)

6 MR. CHAPMAN: Thank you. And if the hearing officer can  
7 now go to page 23. When I ask you to start the  
8 recording, its going to be somewhere around, I  
9 hope, the paragraph that starts at line 13, just or  
10 somewhere in that vicinity, and then I'll ask if  
11 that goes all the way to page 26. And where it  
12 says the minimum investment is \$10,000, you will  
13 get your forms -- actually the minimum investment

14 is ten thousand, that line is fine. So going back  
15 to page 23 please, and hopefully somewhere around  
16 the 32 minute mark and 35 second is where that tape  
17 should pick up.  
18 (recording played)  
19 MR. CHAPMAN: Thank you, an the last portion of the  
20 recording that I would like to play, hearing  
21 officer, it's on, starts on page 27, and it's going  
22 to be somewhere in the vicinity of line 12, it says  
23 members, Freedom Investment Club has and it will  
24 continue to the next page, page 28 and the  
25 recording can play until -- huge gains -- and

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1 again, the timing then going back to page 27, it  
2 should be around the 39 minute and 38 second mark.  
3 (Recording played)  
4 MR. CHAPMAN: Thank you.  
5 Q If the hearing officer can please bring up Exhibit  
6 387. Ms. Lyon, do you recognize this document?  
7 A Yes.  
8 Q Can you explain where it came from?  
9 A This is a chart I prepared summarizing the total  
10 raised for the three funds in question, WBIC, FIC  
11 Foreclosure Fund and FIC Real Estate Projects  
12 limited. It's based on the exempt distribution  
13 reports filed by FIC with the commission and on the  
14 responses to requests we made to FIC Real Estate  
15 Projects.  
16 Q On, if you can maybe start then with lines 4  
17 through 6, can you explain where those rows are  
18 showing and where that information came from?  
19 A FIC Foreclosure Fund filed three exempt  
20 distribution reports, the first was for a  
21 distribution dated April 9th, 2008. They stated  
22 they raised over \$1.4 million from 39 investors.  
23 Then a report from July 15th, 2008 stated a  
24 distribution total of \$7,774,000 from 262  
25 investors. And the final foreclosure fund report

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1 was dated November 15th, 2008, for a distribution  
2 of \$681,000 from 31 investors.  
3 Q Now for two of those three rows the column three  
4 over from the left, there's a date there. Can you  
5 explain what that date refers to?  
6 A The OM stands for offering memorandum dates, that  
7 was the date on the offering memorandum used for  
8 that distribution.  
9 Q And according to the exempt distribution reports  
10 then the total amount raised for the FIC  
11 Foreclosure Fund?  
12 A Was \$9,936,271.  
13 Q And if you can then go to row 8 and 9 and if you  
14 can explain what those numbers are, those figures  
15 are, and where they came from, please?

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16 A Those are based on the information provided by  
 17 David Goult, counsel for FIC Real Estate Projects,  
 18 the total funds raised was \$9,759,405 from 267  
 19 investors.

20 Q And then going back up and working in reverse, if  
 21 you can explain the information then on the first  
 22 three rows of this table?

23 A WBIC Canada limited filed two exempt distribution  
 24 reports, the first one was April 11th, 2008, for a  
 25 total distribution of \$963,000 from 62 investors.

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1 Their second report was on May 14th, 2008, and that  
 2 was for a distribution of \$1,000,036 from 3  
 3 investors. The total that WBIC raised in 2008 was  
 4 \$1,999,731.

5 Q And again, same question, three columns from the  
 6 left in those two rows there's a date there. Can  
 7 you explain what that date refers to?

8 A Those distributions were based on an offering  
 9 memorandum dated February 1st, 2008.

10 Q Thank you. If the hearing officer could now please  
 11 go to Exhibit 294. If the hearing officer could  
 12 focus on the e-mail on the bottom half of the page  
 13 there and then perhaps if you could also look at  
 14 the e-mail above it, can you read -- starting with  
 15 the Earle Pasquill one, May 5th, the e-mail who its  
 16 to and from and then can you can read the first  
 17 full two paragraphs ending with damage control?

18 A This is an e-mail from Mr. Pasquill to Mike and  
 19 Mr. McKechnie. It's subject revised draft and I  
 20 believe the small caps are from Mr. Pasquill and  
 21 Mr. Lathigee according to the e-mail above has  
 22 added his comments in as well in caps. The e-mail  
 23 reads "your thoughts. Dear John, as we are at  
 24 another month end and have your invoice for another  
 25 \$21,000 fee, I think we need to take stock of the

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1 situation. Genesis has turned out to be a  
 2 financial disaster and while I hear your comments  
 3 about not getting good info, it did occur on your  
 4 watch. A \$25 million publicly stated profit was  
 5 never the case. Even from the start based on  
 6 professional outside analysis, and in the end we  
 7 are likely going to see loss. In addition, you  
 8 received a healthy commission on what has turned  
 9 out to be a dog and has set the entire management  
 10 team and company into major damage control."

11 Q And then just go down a few lines, one, two, three,  
 12 four, five lines down you'll see the phrase that  
 13 starts "and Matthew isn't the only cost". If you  
 14 can read from that to the end of the capitalized  
 15 words, "great damage"?

16 A "And Matthew isn't the only cost. For example, it  
 17 now appears that Pigeon Lake approval could be



18 months away, which will mean we will have to refund  
 19 investors money, forego expected profits, incur  
 20 some legal costs, et cetera. We want to remind you  
 21 this project was sold on the premise that you said  
 22 that rezoning would occur in a reasonable time and  
 23 this has caused the company further grave damage."

24 Q If the hearing officer can maybe just go to the  
 25 stop of the page, if you can refer to the e-mail

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1 above you could maybe explain, or read that e-mail  
 2 and explain?

3 A This was from Mike Lathigee to Earle Pasquill May  
 4 6th, 2008, and it says "see below. Call me".

5 Q And the subject line?

6 A "Revised draft".

7 Q If the hearing officer can now go to Exhibit 18.  
 8 And scrolling down to the bottom of page 1, if you  
 9 can just read the portion that you can see at the  
 10 bottom of page 1, please Ms. Lyon, where it says  
 11 from Michael Lathigee?

12 A Its an e-mail from May 6, 2008 from Mr. Lathigee to  
 13 Mr. Pasquill, Mr. Rea and Mr. Woods.

14 Q And if the hearing officer can please go to page 2,  
 15 you can continue to read the rest of the  
 16 information in the e-mail, please?

17 A "Gents, the foreclosure deal is the most profitable  
 18 I have ever seen. We are letting cash sit idle and  
 19 not proactive enough to earn profits for our  
 20 members. Graham, by the end of tomorrow I would  
 21 like to know how much available cash we have in  
 22 other funds that can be used for the foreclosure  
 23 opportunity. We all buy in and I'm very concern  
 24 that we must quickly be to show results for you're  
 25 members in all funds and this is a great way to do

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1 it."

2 Q If the hearing officer can go back to page 1,  
 3 please. At the bottom of the, towards the bottom  
 4 of the page, if you can tell us, read the e-mail  
 5 from Graham Woods of Tuesday, May 6?

6 A It's to Mr. Lathigee, Mr. Pasquill, Mr. Rea.

7 "There is no cash available from any of the other  
 8 funds at present. All amounts are presently spoken  
 9 for with various required payments. As bulks of  
 10 funds become available I will indicate so and we  
 11 can consider the foreclosure deal accordingly.  
 12 Mike please remember that despite the good feeling  
 13 around the sale of foreclosure fund right now there  
 14 are many moving parts and payment requirements that  
 15 Steve, Earle and myself monitor on a daily basis.  
 16 I like the foreclosure deal and would certainly  
 17 tell you if we had money available to invest."

18 Q And if the hearing officer can please go to the top  
 19 of the page and if you can read the reply?

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- 20 A Mr. Lathigee replies to Graham, Steve and Earle on  
21 May 6, 2008. "Gents, I need your help to get  
22 funds. Edmonton is not going well and better we  
23 plug into something that makes money. I trust your  
24 judgment and need to be kept updated."  
25 Q If the hearing officer could now please go to

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- 1 Exhibit 385. And focus a bit on that e-mail in the  
2 bottom part of the page. You'll see Ms. Lyon there  
3 is an e-mail from Brad Hess. Who is Brad Hess?  
4 A Mr. Hess was with Mohawk.  
5 Q Okay. And who is Mohawk?  
6 A Mohawk was a company that signed an agreement with  
7 FIC for providing foreclosed homes in the US.  
8 Q Can you then as before explain the e-mail, who its  
9 to and from, and then read the first three full  
10 paragraphs under hey guys?  
11 A The e-mail from Mr. Hess is to Graham and Earle,  
12 subject Mohawk contract and properties. This is  
13 from May 6th, 2008. "Hey guys, great meeting with  
14 you today. Attached is the standard Mohawk  
15 purchase contract. It has a place to put the  
16 purchase price and the total amount. Just to  
17 review, you will be purchasing 100 properties. You  
18 will be wiring the purchase funds Tuesday the 13th  
19 in the amount of \$1.4 million."  
20 Q And the next paragraph too, please?  
21 A "Also I have attached an excel spreadsheet with 100  
22 properties we have issued to your company. We have  
23 not ordered signs on any of these properties yet  
24 but we will very shortly."  
25 Q And if the hearing officer could go to Exhibit 286.

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- 1 And if you can read the e-mail from Graham Woods  
2 and again, who it's who and from and when, and then  
3 read the entire e-mail?  
4 A From Mr. Woods to Mr. Pasquill on May 6, 2008.  
5 "Earle, I would recommend to assure that we can  
6 make the \$1.4 million payment next Tuesday. You  
7 should make a cash call to 5 brokerage accounts,  
8 each for \$200,000, total of \$1 million. Right now  
9 I don't want to rely on foreclosure money coming to  
10 us and if Tuesday is a firm date, I would get the  
11 balance rolling now. Remember no money can come  
12 from the CIBC Wood Gundy account."  
13 Q And if the hearing officer could please go to  
14 Exhibit 335, page 2. And if you can again read and  
15 explain the date of the e-mail at the bottom of the  
16 page there, Earle Pasquill?  
17 A Mr. Pasquill e-mails Mr. Woods on May 7th, 2008,  
18 "Smile, we got \$1 million in cheques today. FYI,  
19 Mike is wanting to do some foreclosure short sells  
20 to the tune of about \$2 million as funds are  
21 available."

22 Q If the hearing officer can please go to page 1, and  
23 look at the e-mail at the bottom. Can you explain  
24 the e-mail, who its to and from, Graham Woods  
25 there, May 8, '08 and then read the entire e-mail,  
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1 please?

2 A Mr. Woods to Mr. Pasquill and Mr. Rea, May 8th,  
3 2008. "Earle, what is foreclosure short sales.  
4 Also I am willing to commit the \$1.4 million to  
5 Mohawk next week and the amount that Rogue needs in  
6 the bank of America account. But that is it in the  
7 week after next. We are still in serious dire  
8 straights here with Genesis and other payments that  
9 need to be made before any short sales.  
10 Unfortunately we cannot forget about Genesis and  
11 must still consider that we may need to use  
12 foreclosure funds. Also on the horizon is the June  
13 1st interest payments to the first promissory note  
14 round. I don't mean to be the one peeing in the  
15 pool but I am firm on this until we have clarity  
16 around Genesis. In particular we need to have cash  
17 available so that we don't lose \$17 million.

18 Q Then if you can read Mr. Pasquill, explain the  
19 timing of it and to, from, on the next e-mail above  
20 that?

21 A Mr. Pasquill forwards to Mr. Lathigee, "Graham is  
22 correct, we need to be sure about the real estate  
23 situation before more funds are released."

24 Q And then at the top of the page please, if you can  
25 explain and read the e-mail from Mike Lathigee?

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1 A Mr. Lathigee replies to Earle and Graham, still on  
2 May the 8th, 2008. "I understand the situation and  
3 have frustration that with IF coming I have a great  
4 way to generate at least another \$1 million in  
5 profit and cannot as we have to use elsewhere. I  
6 need to be kept closely updated what funds are  
7 available and when."

8 Q In case the panel is wondering, I am probably got  
9 about maybe 10 minutes or so left, so that will  
10 take us to what I assume will be the afternoon  
11 break.

12 THE CHAIR: Sounds about right. Go ahead.

13 MR. CHAPMAN:

14 Q If the hearing officer can please bring up Exhibit  
15 282, and if the hearing officer could scroll  
16 through the four pages of this document. Ms. Lyon,  
17 do you recognize this document?

18 A Yes, I do.

19 Q Can you explain where it came from?

20 A This is a summary I prepared of the FIC Foreclosure  
21 Fund bank account at the Prospera Credit Union and  
22 if you go to page 1, the dates are February 2008 to  
23 August 2008.

24 Q Okay. And there's some sort of a colour coding  
25 system involved here. Can you explain please what  
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1 the various different colours mean?

2 A This is a combined summary for both the Canadian  
3 and US transactions for this account. The white  
4 lines are the Canadian transactions, the yellow are  
5 US dollar transactions.

6 Q And there is also some blue number?

7 A The blue is highlighting investor deposits, we're  
8 able to identify.

9 Q And if you can go please to page 4?

10 A There are totals at the bottom.

11 Q Okay, if you can explain then the last 3 rows  
12 there, beneath the big black bar?

13 A You can see investor totals, approximately 10.9  
14 million. There were some chargebacks and  
15 reversals, those are the red or orange items. So  
16 net investor deposits were about ten and a half  
17 million dollar in this account.

18 Q Okay. And if the hearing officer could then go to  
19 Exhibit 283, please. Do you recognize this  
20 document?

21 A Yes.

22 Q Okay, where did it come from?

23 A This is a chart I prepared based on the bank  
24 account we just looked at. It's a summary of the  
25 major withdrawals from that account and then

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1 categorized by colour.

2 Q And what's the time period of the withdrawals?

3 A This is the same as the accounts, February until  
4 late July 2008.

5 Q Okay. And again, there's a colour coding system  
6 that seems to be involved here. Can you explain  
7 what the various colours mean, please?

8 A Yes. So the total of withdrawals that we looked at  
9 here are \$10.3 million, the white line is a  
10 transfer to Mohawk diversified, \$1.4 million, which  
11 is the payment we saw in the previous e-mail for  
12 foreclosed properties. The orange lines are  
13 payments to the FIC management group as well as  
14 holding companies for Mr. Lathigee and Mr. Pasquill  
15 which total just under a million dollars. The  
16 yellow lines are related party transfer, those are  
17 transfers to any of the other FIC corporations or  
18 to pay bills on behalf of those corporations. They  
19 total about \$7.8 million, and then there's some  
20 other miscellaneous payments that are in blue that  
21 total 145,000.

22 Q On the, starting on row 12 there's an, I think it  
23 says \$440,000 for that numbered company that we  
24 were talking about, 760. Do you see that there?

25 A Yes.

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- 1 Q Do you know what that amount related to?
- 2 A Yes. That was a transfer to the bank account for
- 3 the numbered company which was forwarded on as a
- 4 tax payment.
- 5 Q Okay. And is that, that appear anywhere else?
- 6 A There were 3 all together for 440,000. The next
- 7 one is on line 28 of the chart, and another one on
- 8 line 38 of the chart.
- 9 Q Okay, thank you. If the hearing officer can now
- 10 please go to Exhibit 145.
- 11 MR. ANDERSON: Can you give me a second? I just want to
- 12 get a note of something, please. Thank you.
- 13 MR. CHAPMAN:
- 14 Q Ms. Lyon, do you recognize these documents, this
- 15 document?
- 16 A This is an interim financial statement for FIC
- 17 Foreclosure Funds from May 31st, 2009.
- 18 Q Okay. And if the hearing officer can please go to
- 19 page 2? Towards the top of the page there under
- 20 assets, according to the financial statements, how
- 21 much was invested in foreclosed homes by that point
- 22 in time?
- 23 A It says as of May 31st 2009 it was 1,288,000, in
- 24 the first column, and you can go over to the very
- 25 right hand column for May 31st, 2008, it shows the

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- 1 \$1.4 million.
- 2 Q That line I see has a note 3, so if the hearing
- 3 officer can please go to page 6, and perhaps if you
- 4 could read the first paragraph under that note 3 at
- 5 the top and maybe if the hearing officer can
- 6 perhaps zoom in on it a little bit?
- 7 A Thank you. "Investments in foreclosed homes, on
- 8 May 10th, 2008, the company entered into a bulk
- 9 foreclosure purchasing agreement with Mohawk
- 10 diversified LLC. With a payment of \$1.4 million,
- 11 the company agreed to purchase and Mohawk agreed to
- 12 sell 100 foreclosed homes. Under the terms of the
- 13 purchasing agreement, Mohawk was to provide the
- 14 company with ownership to the properties along with
- 15 a clear and marketable title, transferred with a
- 16 warranty deed. Mohawk is to exchange any property
- 17 that is found to be unsalable, including any
- 18 property that does not qualify for environmental
- 19 contamination insurance."
- 20 Q Thank you. Just to wrap up, let's move into a
- 21 little bit further along the time period to the
- 22 fall of 2008. If the hearing officer could please
- 23 bring up Exhibit 143. And then also look at the
- 24 second page. Do you recognize this document?
- 25 A Yes.

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- 1 Q What is it?
- 2 A This is a cease trade order issued --
- 3 Q If the hearing officer could please go back to page
- 4 1 if possible, please.
- 5 A Issued by the corporate finance division of the
- 6 commission back in September 2008 against WBIC
- 7 Canada.
- 8 Q And at least according to the cease trade order,
- 9 did it have anything to do with any of the monies
- 10 that are the subject of this proceeding?
- 11 A It refers to the February the first, 2008 offering
- 12 memorandum which we just looked at in the chart,
- 13 WBIC fundraising from 2008.
- 14 Q Okay. And if the hearing officer then could please
- 15 go to Exhibit 196, and I think I'm going to ask for
- 16 page 36. Ms. Lyon, you will recall that you were
- 17 asked some questions earlier today about this title
- 18 search?
- 19 A Yes.
- 20 Q And then just to refresh everyone's memory, can you
- 21 explain what this property is and where it's
- 22 located?
- 23 A It's the land title certificate for the Genesis on
- 24 the Lakes property in the town of Stoney Plain,
- 25 Alberta.

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- 1 Q And if the hearing officer can please go to page
- 2 38. Can you please read what occurred according to
- 3 this document on November 3rd, 2008?
- 4 A There was a builders lien placed by Gentech
- 5 developments limited for \$6,100,000.
- 6 Q Thank you. If the hearing officer can now go to
- 7 Exhibit 247. And I'm asking you to focus on the
- 8 e-mail to the bottom. There's an e-mail from Bill
- 9 Baker and if the hearing officer can please go to
- 10 the next page which shows his signature line. Ms.
- 11 Lyon, who is Bill Baker?
- 12 A He's a CA who became a CFO of FIC.
- 13 Q If the hearing officer can go back to page 1,
- 14 please. Half-way down the page, can you explain
- 15 the e-mail, who it's to and from, the re line, and
- 16 then read the first, the e-mail up until that first
- 17 paragraph number 1?
- 18 A This is from Bill Baker to Mr. Pasquill,
- 19 Mr. McKechnie and chairman, who should be
- 20 Mr. Lathigee. It's from November 14th, 2008. The
- 21 subject is minutes of executive committee meeting.
- 22 It says please review and advise if there are any
- 23 errors or omissions, Bill. The title is minutes of
- 24 executive committee meeting held in FIC boardroom
- 25 on February 14th, 2008, at ten thirty a.m.

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- 1 Q Now, that date February 14th, 2008, was Mr. Baker
- 2 to your knowledge the CEO of FIC back at that

3 point?

4 A No, he wasn't.

5 Q So continuing on, if you can go under present and  
6 then read the first sentence after that, under  
7 paragraph number 1?

8 A The committee discussed cash flow issues,  
9 particularly relating to the various fund  
10 companies.

11 Q And then if you can read all of page 2, please or  
12 sorry, all of paragraph 2?

13 A "The committee agreed that we must be much more  
14 rigorous in separating the activities of the  
15 various funds and the management company. Bill was  
16 tasked with you putting together a plan to reduce  
17 or eliminate intercompany loans and guarantees  
18 among the companies. It was recognized that this  
19 may take a considerable amount of time in cases  
20 where cross guarantees and asset pledges are in  
21 place for real estate projects. Nevertheless, the  
22 goal is to ensure that each fund is managed as if  
23 it was a single entity like a silo and to ensure  
24 that when and if loans or guarantees are provided  
25 that they are fully documented, including a list of

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1 benefits for the funds involved."

2 Q Thank you.

3 MR. ANDERSON: Just for the record, I don't think this  
4 is dated April the 14th, which is what the  
5 transcript shows right now. I think the date of  
6 the document appears from its face to be November  
7 the 14th, 2008.

8 MR. CHAPMAN: Okay. All right, I don't disagree with  
9 that.

10 Q If the hearing officer can please go to Exhibit  
11 352. And I'm going to ask if you can go to the  
12 bottom of the page Ms. Lyon, this might be the  
13 least e-mail I'm going to ask you to read so  
14 there's a plus side to that. If you can explain  
15 again the date of the e-mail at the bottom, who its  
16 to and from, and then read everything that's on  
17 that page of the e-mail, start on that page?

18 A This is from Bill Baker to chairman, Mr. McKechnie  
19 and Mr. Pasquill, on December 2nd, 2008. Mike,  
20 Matthew and Earle. "There are some areas where I  
21 believe we need to tighten up our  
22 procedures/processes so that we can better protect  
23 the companies and its management. Intercompany  
24 transactions. There are a number of intercompany  
25 transactions that have occurred over the past

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1 couple of years resulting in a myriad of  
2 arrangements among the various funds. These  
3 include co -- "

4 Q And then if you can read down and stop where it

5 says recommendations, please.

6 A "Co-investments, independent company loans and  
7 allocations of expenses. The documentation and  
8 formal approval process of the investments and  
9 loans is lacking. Such that there is no way of  
10 determining what the investment committee  
11 considered when generating the investment or loan.  
12 Each of the funds is a separate legal entity with  
13 an investment focus based on the offering  
14 memorandum of the individual fund. As such, while  
15 they do form an associated group of companies, they  
16 can't be considered as one entity. Each fund has a  
17 different mix of shareholders and needs to be  
18 treated as a stand alone pool of capital, a silo,  
19 to be invested for the benefit of the shareholders.  
20 In a number of cases, and certainly in the case of  
21 Genesis, we had a situation where a number of the  
22 funds have participated either directly as an  
23 investor or indirectly through loans and/or loan  
24 guarantees. While I have no doubt that the funds  
25 were deployed in a manner that was designed to

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1 benefit both the fund that provided the capital as  
2 well as the total group, I am concerned that the  
3 expected benefits to the fund that provided the  
4 capital were not articulated in a written document.  
5 The form of the documentation in my opinion should  
6 be at least the minutes from the investment  
7 committee meeting plus if for example a loan was  
8 approved a promissory note, the purpose in all of  
9 this is to ensure that the directors and officers  
10 can demonstrate that they have executed their  
11 fiduciary responsibilities in a professional manner  
12 and can provide corporate documents to support that  
13 position. It also provides a framework for making  
14 better more informed investment decisions that  
15 ultimately benefit the members."

16 Q And just to wrap up here the exhibit, if the  
17 hearing officer can please bring up Exhibit 197.  
18 Ms. Lyon, this is an affidavit of Kenneth Malcolm.  
19 Do you know what lawsuit this affidavit was sworn  
20 in?

21 A I believe this was part of the Toronto Dominion  
22 Bank application to have the Genesis companies  
23 placed in receivership.

24 Q If the hearing officer can go to page 5, please of  
25 this affidavit. And can you read paragraph 15,

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1 please, under the heading Default?

2 A "Effective the end of December 2008, the bank  
3 determined that Genesis had committed a number of  
4 defaults under the commitment letter, mortgage and  
5 security. Defaults then known to the bank included  
6 A, failure to pay all sums outstanding under the



commitment letter and mortgage not later than 18 months following initial drawdown. B, failure to provide a quantity surveyors progress report reported by an engineer's certificate on a monthly basis. C, subsequent encumbrances in the form of builder's lien were placed on the lance subject to the mortgage. D, failure to provide evidence of property tax payments on an annual basis. E, failure to provide monthly in-house statements detailing the investment portfolios held within the small cap fund portfolio held by 076; and F, failing to achieve a minimum of \$3 million in unit sales to arm's length purchasers with a minimum of ten per cent deposit."

Q And if you can read the next paragraph under forbearance agreement paragraph 16?

A On February 4th, 2009, in an effort by the bank to allow Genesis to complete the Stoney Plain project the bank and Genesis FIC WBIC, FIC USA, FIC Real

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Estate Fund Limited and FIC Asia entered into a forbearance agreement."

Q And if the hearing officer can go to page 6, please. If you can read the paragraph at the top of the page, paragraph 18?

A "Notwithstanding the terms of the forbearance agreement, the defendants failed to pay the outstanding balance on or before the deadline date of May 31st, 2009."

Q And if the hearing officer can please move to page 8. If you can read paragraph 27?

A "I do verily believe that it is desirable that PWC be appointed as receiver and manager or alternatively as receiver of the defendants."

Q And the last exhibit I will refer to, Exhibit 198, please. Do you recognize what this document is?

A This is one of the reports filed by Price Waterhouse in their capacity as receiver and manager.

Q If the hearing officer can please go to page 2. And if you can read paragraph 2 and the first sentence in paragraph 3?

A "The receiver was appointed as such by a consent receivership order granted by the court of Queens bench of Alberta on January 12, 2010. On January

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15th, 2010, a recognition order was issued by the court of British Columbia."

MR. CHAPMAN: Thank you. And with that, those are all my questions, so I take it it's a good time for the afternoon break.

THE CHAIR: Yes. We'll come back at 3:35.

MR. ANDERSON: Mr. Chairman, it would be my preference to go to just four today, because the evidence has

9           been put in very, very quickly today, and I am, you  
10          know, happy to go from 335 on, but I wouldn't mind  
11          finishing at four.

12       THE CHAIR: That's fine.

13       MR. ANDERSON: Thank you.

14          (PROCEEDINGS ADJOURNED AT 3:10 P.M.)

15          (PROCEEDINGS RECONVENED AT 3:35 P.M.)

16       MR. ANDERSON:

17       Q   Ms. Lyons, I want to ask a few questions about your  
18          background first, and then I want to move into an  
19          overview of who did what in this investigation.

20       A   Okay.

21       Q   And I suppose my first question is, is that you,  
22          although you took finance at university I would  
23          think in your commerce degree, you may have had  
24          some accounting courses but you don't have any  
25          professional designation as an accountant; do you?

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1       A   No, I'm not an accountant.

2       Q   Not that there's anything wrong with that, I want  
3          to make that clear. But you have had a little bit  
4          of experience doing you know, some accounting stuff  
5          as an investigator, but its not something that you  
6          have considerable expertise at, is it?

7       A   Not at financial statement compilation, no.

8       Q   And now, in this particular case, and I'm going  
9          just from some of the documents, the first time I  
10         actually see anything with your name on it is in  
11         August-ish of 2009, is that about when you started?

12      A   I believe it was April of '09.

13      Q   Okay. Did you have any notes or anything that  
14         would indicate when you started?

15      A   There would be a referral memo perhaps from case  
16         investment to investigations. I don't have any  
17         thing other than that. I know I signed the  
18         affidavit in June of 2009 for the investigation for  
19         --

20      Q   Okay. And so up until, I will use April of 2009,  
21         you had no involvement before that in this  
22         investigation?

23      A   I don't think so.

24      Q   And when you -- did you take over the investigation  
25         from someone else?

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1       A   Well, the way it works, cases generally start in  
2          our case assessment team, and at some point they're  
3          referred to my department, which is investigations.

4       Q   So the reason that I want to go there a little bit  
5          is when you get the file, do you go and actually  
6          sit down with the other investigators to find out  
7          what's transpired up to that point?

8       A   Yes.

9       Q   And you would have done that here?

10      A   Yes.

- 11 Q And from what I can tell, you would have  
12 communicated with Margo Trogadis?  
13 A Yes.  
14 Q And I may have this name wrong, Wayne Chew?  
15 A I don't know that name.  
16 Q Okay. He worked with Ms. Trogadis on it, I'll just  
17 get the name here -- Warren Chow?  
18 A Warren Chow. He left the commission, I'm not sure  
19 at what point. Margo originally had the file,  
20 Warren worked on it after Margo, and Margo ended up  
21 with it again after Warren.  
22 Q Okay. But did you actually talk to him about this?  
23 A I don't know if I talked to Warren or not. I may  
24 have just been Ms. Trogadis.  
25 Q Now, if you could just quickly go to, if I could

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- 1 please have -- I better -- Exhibit 200, please.  
2 And this should be some notes dated March the 7th,  
3 2008. I take it these notes are not in your  
4 handwriting?  
5 A No, that's probably from 2009.  
6 Q Well, do you know whose handwriting it is?  
7 A I believe its Ms. Trogadis.  
8 Q So you doesn't know whether this was 2008 or 2009?  
9 A I believe if you scroll to the top, is it February?  
10 March, it would have to be '09 because she didn't  
11 start the file until mid 2008.  
12 Q Well, you say that, but my understanding from some  
13 evidence you gave evidence today was that the  
14 second audio clip that we listened to part of was  
15 taped directly from the, well, the presentation was  
16 being made?  
17 A Yes. And that was a mistake I think I corrected  
18 when we got to the foreclosure fund call. I was  
19 thinking of a different call from 2009. The 2008  
20 calls were definitely from the web site because  
21 you're right, we weren't investigating at that  
22 point.  
23 Q Okay, so then I move on here. As far as you know,  
24 the first -- at least from disclosure I have seen,  
25 the first evidence of any documents on this

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- 1 investigation were the cease trade order and the  
2 letter from Mr. Eady dated September the 2nd, 2008?  
3 A That's, yes, that should be right.  
4 Q Do you remember that being right?  
5 A Yes.  
6 Q And there was certain correspondence between the  
7 commission and the company through the fall of  
8 2008, do you remember that?  
9 A Yes.  
10 Q And in early 2009 there was a substantial amount of  
11 correspondence if a gentleman named John Tansowny,  
12 do you remember that?

13 I know we did have correspondence from  
14 Mr. Tansowny, yes  
15 Q And you understood at the time him to be I guess in  
16 a difference of interest with my clients?  
17 A We knew that he was an ex-employee of FIC, yes,  
18 sort of consultant at FIC.  
19 Q If I put the word disgruntled ex-employee, would  
20 that be a fair summary?  
21 A I believe so, yes.  
22 Q And correct me if I'm wrong, but I've looked at all  
23 of the documents I've been given and I think the  
24 initial disclosure list was somewhere in the order  
25 of 430 documents. There was not one compelled

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1 interview taken of any individual? This  
2 investigation?  
3 A That's right.  
4 Q The only in person interview that was done was a  
5 voluntary interview where Mr. Lathigee,  
6 Mr. Pasquill, and their lawyer came in and sat down  
7 with commission staff? Do you remember that?  
8 A I wasn't at that interview. That was before I was  
9 assigned to the file, but I believe that's correct.  
10 Q Okay. If you would go to BCSC 109, please.  
11 Unfortunately, we don't have an electronic copies  
12 of the exhibit list, so when we -- like of course  
13 we can load everything into submission, we have the  
14 BCSC number, and I unfortunately never had a chance  
15 to move it all over.  
16 THE CHAIR: That's fine. We're bilingual in that  
17 respect.  
18 MR. ANDERSON: I will by the morning though.  
19 Q These are from some notes dated February 19th,  
20 2009. Have you seen these before?  
21 A Yes.  
22 Q And do you know who prepared the notes?  
23 A I believe they're Ms. Trogadis.  
24 Q Okay. And as far as you know, this was a voluntary  
25 interview?

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1 A Yes.  
2 Q And I see that Mr. William Baker was there as well?  
3 A Yes.  
4 Q Now, do you recall in the fall of 2009 the  
5 commission issuing a freeze order against some of  
6 the assets of various entities of the FIC group,  
7 tying up several million dollars worth of assets?  
8 A We did issue a freeze order, yes.  
9 Q And you would agree that that freeze order was not  
10 varied until after the receiver was appointed?  
11 A I believe so, yes.  
12 THE CHAIR: Mr. Anderson, BCSC 109 is not an exhibit at  
13 the moment. Did you want that entered?  
14 MR. ANDERSON: I'd like to mark it then.

- 15 THE CHAIR: I believe that's number 406.  
16 MR. ANDERSON:  
17 Q Now, after the -- you had made some demands on the  
18 FIC group pursuant to demands for production in the  
19 fall of 2009?  
20 A Yes.  
21 Q And the company complied with those demands?  
22 A Yes.  
23 Q When, shortly after the receivership order was  
24 granted and approved in British Columbia, did you  
25 attend a meeting with the receiver?

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- 1 A Yes.  
2 Q And at that meeting the court appointed receiver  
3 said that it had copied the server from the FIC  
4 group?  
5 A Right, yes.  
6 Q And as a consequence, commission issued a demand  
7 for production on the receiver, correct?  
8 A Right.  
9 Q And you would agree that there was a consent order  
10 entered into shortly after that, so that the  
11 computer hard drive could be forensically copied  
12 and then vetted for privilege?  
13 A Yes.  
14 Q And indeed, most of the documents that you've been  
15 referred to today are from that computer hard  
16 drive, correct?  
17 A The e-mail documents would be, yes.  
18 Q I think basically, accept for the ones that are  
19 obviously not, they're all from that server, like  
20 what I mean by that is if you e-mailed somebody  
21 after the fact, of course, that would be not on it,  
22 but all of the -- all of the e-mails in the early  
23 part of 2008 are all from that?  
24 A The e-mails are, yes.  
25 Q If the witness could please have Exhibit 58.

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- 1 Exhibit 58 is an e-mail cover from Mr. Tansowny to  
2 Ms. Trogadis and it attaches to it what I  
3 understand to be a civil claim brought by  
4 Mr. Tansowny against the FIC group in Alberta, is  
5 that fair?  
6 A Yes.  
7 Q And I think if it's probably Exhibit 60, is a  
8 further court document which is an application by  
9 the FIC defendants to amend their defence and  
10 counterclaim? Is that correct?  
11 A That's what it looks like, yes.  
12 Q And there are a number of allegations made against  
13 Mr. Tansowny in that defence and the counterclaim.  
14 Did you investigate any of those matters such as  
15 the alleges of breach of duty against Mr. Tansowny?  
16 A I don't believe so, no.

- 17 Q Well, when you were investigating this, was there,  
18 after you took the file over, was anybody else  
19 working with you?  
20 A There were several of us who worked on this file,  
21 yes.  
22 Q Pardon?  
23 A There were several investigators who worked on this  
24 file.  
25 Q Who else was on it when you were working on it?

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- 1 A Myself, Katherine Palmer, Lori Chambers, Liz Chan,  
2 Margo Trogadis continued to do some work. Karen  
3 Chernoff did some work.  
4 Q Just so I'm clear on it though -- sorry, I didn't  
5 mean to cut you off.  
6 A Do you want me to continue?  
7 Q Is there more than that?  
8 A Larry Wilkins and --  
9 Q Is there --  
10 A There may be others.  
11 Q You see, the reason I kind of find that puzzling at  
12 this point is I don't think, with the exception of  
13 Margo Trogadis and yourself, I don't think anybody  
14 else made any notes. Did you look for stuff like  
15 that?  
16 A Yes. Yeah.  
17 Q And there wasn't any?  
18 A It was all passed on to our litigation department.  
19 Q There were other notes that were passed on?  
20 A Yes. Yeah.  
21 Q I take it that you did produce all the notes from  
22 your case management system as well, did you?  
23 A We didn't have a case management system at this  
24 point. That's a fairly new system.  
25 Q Okay. If you could then go to Exhibit -- if we can

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- 1 go to disclosure number 436, Mr. Chairman. It's  
2 been marked so it's Exhibit 387. Now, this is a  
3 document that you said summarizes the funds raised  
4 in these 3 funds from February 2008 through  
5 November of 2008?  
6 A Yes.  
7 Q Okay. Now, in dealing with foreclosure fund, for  
8 example, you say the distribution date is reflected  
9 in the, in the column that says distribution date?  
10 A Yes.  
11 Q But that just comes straight from the report exempt  
12 distribution, correct?  
13 A Right, yes.  
14 Q So you didn't go to any of the underlying documents  
15 to see when the subscription agreements were  
16 signed?  
17 A No, that's based solely on the exempt reports the  
18 BCSC filed with us.

BCSC\_000360

19 Q So for example, we see the distribution date  
20 immediately before that, which is presumably the  
21 report of exempt distribution that was filed on  
22 July the 15th, 2008. Those 31 investors may have  
23 invested early on that time frame, and you don't  
24 know?

25 A I'm sorry, which line are you looking at in.

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1 Q Six.  
2 A The November 15th, '08 report?  
3 Q Well, I'm making an assumption that there's three  
4 reports of exempt distribution filed that you saw.  
5 A Yes.  
6 Q And I'm assuming that probably one of the ones that  
7 was filed on July the 15th, it included a whole  
8 pile of investors, so they're probably the ones up  
9 to that date. But you don't know, for example,  
10 between July the 15th and November the 15th, the  
11 date the investments were actually made?  
12 A No. FIC declares there the distribution date on  
13 the form.  
14 Q But you didn't look at any of the back-up  
15 documents?  
16 A No.  
17 Q And is the same true on WBIC Canada Ltd. and FIC  
18 Real Estate Projects Ltd.?  
19 A For WBIC, yes. That's strictly based on the exempt  
20 reports filed with us. There were no exempt  
21 reports for the real estate projects, that was the  
22 promissory note so that information came from David  
23 Gault.  
24 Q So, but did you actually look at the promissory  
25 notes to see what the dates on them were?

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1 A No. I don't believe they were provided.  
2 Q I take it you didn't ask for them?  
3 A I don't think we did. I'm not sure, you would have  
4 to look at the demand. My memory's not great that  
5 far back.  
6 Q If I could have BCSC disclosure document number 50,  
7 page 5, please. And if you look at this, this is a  
8 list of the investors that are disclosed, and if  
9 you just scroll it down, they all have exactly the  
10 same date?  
11 A Yes.  
12 Q From your investigation, are you able to remember  
13 the date that Mr. Baker came on as the CFO of the  
14 FIC group?  
15 A No, I don't know what date that was.  
16 Q If the witness could see Exhibit 294, please. You  
17 were -- you read extensively from this particular  
18 e-mail string, and just so we're all clear on it,  
19 this is a draft?  
20 A Yes.

21 Q It's --  
22 A It says draft. That's all I know.  
23 Q Right. And so it was never sent in this form, was  
24 it?  
25 A No, obviously they're still considering what they

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1 were going to send in this particular e-mail.  
2 Q Right. And it's going to Mr. Tansowny, who's just  
3 about to get fired?  
4 A I believe so.  
5 Q I asked you at the beginning about interviews, but  
6 is there any particular reason why you chose not to  
7 interview anybody?  
8 A No. It was the way that the case evolved,  
9 basically.  
10 Q So basically your position was that the documents  
11 spoke for themselves, and you proceeded on that  
12 basis?  
13 A That's how it ended up, yes.  
14 Q Okay. I take it that -- well, I should put it this  
15 way. It is true that you did receive some  
16 appraisals from the FIC with respect to some of its  
17 project?  
18 A Yes.  
19 Q But it is also true that you yourself never did any  
20 investigation as to the value of those projects?  
21 A No.  
22 Q It's also fair to say that you recognize that the  
23 values that are attributed to many of these assets  
24 in the financial statements of the companies were  
25 done at book value?

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1 A We don't know what basis FIC did their unaudited  
2 accounting on.  
3 Q And you didn't ask?  
4 A That's right.  
5 MR. ANDERSON: I see it's four, Mr. Chairman. I won't  
6 be too long tomorrow, but I do want to talk to  
7 Mr. Ahmed and we will be ready to go first thing  
8 tomorrow morning.  
9 THE CHAIR: Okay, tomorrow morning at ten o'clock.  
10 4 p.m.  
11  
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# EXHIBIT 6

2013-09-17 Lathigee Transcript Sept 17, 2013.txt

1

1 ROUGHT DRAFT TRANSCCRIPT  
2 September 17, 2013  
3 Michael Patrick Lathigee and Earl Douglas Pasquill, FIC Real  
4 Estate Projects Ltd. and FIC Foreclosure fund Ltd. and WBIC  
5 Canada Ltd.  
6 Section 161 of the Securities Act RSBC 1996, c. 418.  
7  
8 Panel: Brent W Aitken AITKEN. Mr. Aitken vice chair  
9 Judith Downes commissioner  
10 Audrey Ho commissioner  
11 Location: At the British Columbia Securities  
12 Commission, Main Hearing Room, 12th floor, 701  
13 West Georgia, Vancouver, BC  
14  
15 Appearing: Derek Chapman for the Executive Director.  
16 B.C. Securities Commission  
17 H Roderick Anderson for Michael Patrick Lathigee and  
18 Earl Douglas Pasquill and FIC Real Estate Projects  
19 Ltd. and FIC Foreclosure Funds Ltd. and WBIC  
20 Canada Ltd. September 17, 2013

21

22 MR. CHAPMAN: Mr. Chair, if I could just start very quickly,  
23 I just want to advise the panel that further to  
24 the arrangement or the agreement that we had  
25 amongst counsel yesterday morning on admissibility

2

1 of documents, a new version of the exhibits has  
2 been submitted to the commission secretary,  
3 redacting the documents we agreed to take out and

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then taking out some documents entirely. So

there's a new and improved version has been  
submitted to comsect and I understand there's  
going to take some surgeon around to get the  
marbling I can works to make them into brand new  
exhibits but that parts are parts all been done.

VICE CHAIR: Okay. Thank you. I see we're looking at  
hieroglyphics here on my --

(OFF THE RECORD DISCUSSION)

MR. ANDERSON: I assume that the court reporter will clean  
that up later, but we were with Ms. Lyon in  
cross-examination. I have three more documents I  
would like to ask her some questions about.

VICE CHAIR: Okay. And if we can start where Exhibit 282.

MR. ANDERSON:

1 Q You may recall Ms. Lyon yesterday you told us that  
2 you had prepared this spreadsheet by combining the  
3 US and Canadian dollar deposits in the FIC  
4 Foreclosure Fund at Prospera Credit Union between  
5 the dates indicated.

6 A Transactions, yes. Not just deposits.  
7 Withdrawals and deposits, yes.

3

1 2 Q And this represents all of the transactions in  
2 that account during that time period?

3 A Yes.

4 3 Q And did you obtain any records post August of 2008  
5 with respect to that account or any other account  
6 of FIC Foreclosure Fund Ltd.?

7 A This account was closed I believe in August 2008.  
8 There were other accounts that were held by

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9 Foreclosure Fund, yes.

10 4 Q Did you do any analysis of those to see whether  
11 there were any deposits from investors post  
12 August 2008?

13 A I did you look at all the statements. I can't  
14 remember if there were deposits, but I did look at  
15 the Bank of Montreal account, as well, yes.

16 5 Q But you can't tell us as you sit there whether  
17 there was any deposit from investors post  
18 August 2008, can you?

19 A I don't remember.

20 6 Q If the witness could please see Exhibit 83. This  
21 is a document that represents withdrawals from  
22 this same account, albeit for a more limited time  
23 period.

24 A Yes.

25 7 Q Now, the FIC management Group Ltd. is a limited 4  
1 company. Correct?

2 A Yes.

3 8 Q And I take it you didn't ever obtain banking  
4 records for that company in the course of your  
5 investigation?

6 A I believe we did.

7 9 Q They were not in the disclosure material. Are you  
8 sure that you did?

9 A Yes.

10 10 Q And I guess there's nothing, though, that you can  
11 point to that would suggest any reason why you  
12 should include, in the remaining expenditures  
13 column, the names Lathigee and Pasquill with FIC

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14 management group at the bottom. Correct?  
15 A Sorry. You are asking me why I included them  
16 together in the same group?  
17 11 Q Yeah. I mean, there's nothing -- no reason to put  
18 it there, because all you did was an analysis of  
19 the money that went to a corporate account.  
20 A That category includes the money that went to  
21 management account and then there were the  
22 personal accounts, the numbered company, the  
23 779243 B.C. Ltd. Yes. So it was mostly the  
24 management group of -- but also the -- that  
25 numbered company, as well.

5

1 12 Q But why didn't you just put the numbered company  
2 in there, rather than the names?  
3 A I don't know what you mean.  
4 13 Q Well, I guess I am -- Were there any payments made  
5 from this account directly to Mr. Pasquill or  
6 Mr. Lathigee?  
7 A The numbered company belongs to Mr. Lathigee.  
8 14 Q But you didn't trace what happened to that money?  
9 A No.  
10 15 Q Okay. So the money was paid to the numbered  
11 company, not to Mr. Lathigee?  
12 A That's right.  
13 16 Q If the witness could please have Exhibit 197. And  
14 I just want to draw your attention what this is  
15 and then I am going to ask you to go to page 5.  
16 This is the affidavit of Mr. Malcolm that you  
17 referred to yesterday. Do you remember that?  
18 A Right. Yes.

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19 17 Q If we could please go to page 5. Yes, paragraph  
20 15. You may recall that my learned friend Mr.  
21 Chapman took you on to paragraph 15 and asked you  
22 to read a couple of the subparagraphs. Do you  
23 remember that?

24 A Yes.

25 18 Q Okay. What investigation did you make of the 6

1 alleged default at December 31, 2008 with respect  
2 to (a)?

3 A With did not investigate the defaults.

4 19 Q And didn't investigate what -- any of what those  
5 defaults are, did you?

6 A That's right.

7 20 Q So you don't know, for example, if it was \$10 was  
8 at default in 15A that's alleged. You don't know  
9 if it was a \$10 payment or a \$100,000 payment?

10 A I believe it is in the documents. I can't tell  
11 you what the number is right now.

12 21 Q But you didn't investigate any of it?

13 A That's right. Other than the documents.

14 22 Q Thank you. Those are my questions.

15 MR. CHAPMAN: I have nothing arising.

16 VICE CHAIR: The panel has no questions. You are excused.

17 Thank you.

18 MR. CHAPMAN: And with that, the Executive Director closes  
19 its case.

20 MR. ANDERSON: Mr. Ahmed will open for us and then we'll get  
21 on with the evidence.

22 LEFT2: Now, I am just going to make a short opening,  
23 primarily because our first witness is going to be

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24 Mr. Pasquill and he's going to go over all the  
25 evidence in detail. But I would like to provide 7

1 you with a very short overview of what the defence  
2 is going to lead.

3 Now, there are of course two primary  
4 allegations at issue in this hearing. First, that  
5 FIC was raising money on the verge of collapse.  
6 And second, that FIC was using the funds that it  
7 was raising during the relevant periods not in  
8 accordance with the stated purpose set out in the  
9 offering memorandum.

10 Now, the evidence is going to show that  
11 the fact is that the company was not on -- on the  
12 verge of insolvency, that the company in fact was  
13 solvent. We're going to take you to the financial  
14 statements, both audited and unaudited, which will  
15 show that the assets of the company outstripped  
16 the liabilities of the company in the tens of  
17 millions.

18 We're also going to show you what the  
19 management of the company knew at the relevant  
20 period of time with respect to the financial  
21 assets of the company.

22 And that will corroborate or be  
23 consistent with what the financial statement said,  
24 some of which were done after the fact.

25 Mr. Pasquill will testify and he will 8

1 explain that he believed the company was  
2 financially secure. The fact of the matter is  
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3           that notwithstanding the fact that the notice of  
4           hearing makes reference to a time period of  
5           February to November 2008, all of the funds raised  
6           under the various offering memorandums and the  
7           promissory note were raised well before November.  
8           In fact, the evidence will be that the last  
9           investment raised was on August 21st, 2008.

10                   Now, that's an important point because  
11           we're all aware that in September of 2008 dramatic  
12           things began to happen in the economy. Lehman's  
13           Brothers collapsed on September 15th of 2008.  
14           That was when the management of the company first  
15           began to realize that Canada was not going to be  
16           spared the real estate crisis, which hit the  
17           United States. And also, that credit was going to  
18           be far more difficult to obtain in Canada.

19                   Now, all of the information management  
20           had at the time -- the time period of February to  
21           August was that the Alberta properties were  
22           holding their value, if not increasing in value.  
23           We're going to take you to a series of appraisals  
24           done in 2007 and two appraisals done in 2008 --  
25           or, rather, than appraisal done in 2008, crucially<sup>9</sup>

1           on the March 2008 time period, and that appraisal  
2           will show in that Genesis project which is the  
3           largest property in Alberta in fact increased in  
4           value between 2007 and 2008.

5                   Now, at the same time that management  
6           was making decisions about how much money to raise  
7           and how to spend that money, their expert in

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8 Alberta, Mr. John Tansowny, who was in charge of  
9 all the real estate properties -- and Mr. Pasquill  
10 will give evidence on this -- was telling them  
11 that the projects remained profitable. In fact,  
12 as late as March 5th or 6th of 2008,  
13 Mr. Tansowny was telling them that the properties  
14 were going to, at a minimum, provide the clubs --  
15 the group of clubs with \$66 million in profit.

16 Management was also acutely aware of the  
17 fact that sales in Alberta only occur during a  
18 certain period of the year, especially in the  
19 Edmonton region, because of the winter.

20 Management was being told that sales were going to  
21 pick up once the summer -- the selling season  
22 began, which was spring of 2008. So management  
23 had a belief that revenue was going to be coming  
24 in from those sales, sales that they were told  
25 were going to be profitable, and they had no

10

1 reason to think otherwise.

2 They also knew that they had a mortgage  
3 with the TD Bank in the amount of 18 million that  
4 was going to be due in December of 2008 and they  
5 were -- that was a live issue for them. There's  
6 no doubt about it.

7 But the evidence is going to be -- and  
8 there will be a series of e-mails -- showing that  
9 TD Bank continued to work with the group of  
10 companies, that there was no sense of panic on TD  
11 side, and in fact the FIC group of companies had  
12 an offer to take out TD Bank within the relevant

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13 period of time and to take out TD Bank in its  
14 entirety. Now, for reasons Mr. Pasquill is going  
15 to explain, they did not to pursue that offer, but  
16 they had a written offer to take out TD.

17 It's important to keep in mind that what  
18 put the clubs into receivership was TD's decision  
19 to call the mortgage and to -- and to make an  
20 application in court to have a receiver appointed.  
21 And that didn't happen in 2008, that happened in  
22 November of 2009, well after the time period at  
23 issue here.

24 Management, the evidence is going to  
25 show that management could not have anticipated

11

1 that that's something that would happen. And in  
2 fact, the evidence is to the contrary, that the  
3 management was working with TD. That TD was --  
4 was willing to work with them, that TD in fact  
5 entered into a forbearance agreement with a group  
6 of companies in February of 2009.

7 We're also going to take you to a series  
8 of cash flow statements generated by the CFO for  
9 the companies at the relevant time period. That's  
10 Graham Woods. And those cash statements are going  
11 to show that, yes, the company was facing cash  
12 problems, but they were confident that those cash  
13 problems would be overcome. This is not a company  
14 with zero dollars in the bank account. The  
15 company had millions of dollars in the bank  
16 account. And that's not to say that cash wasn't  
17 an issue.

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18                   The management expected that cash  
19                   problems could be resolved from a number of  
20                   revenues sales, since the selling season was  
21                   coming up in Alberta, profitable sales, they were  
22                   told. They had unencumbered assets which they  
23                   then did encumber with on March 7th, 2008, right  
24                   in the relevant time period. Management took out  
25                   a mortgage in the amount of 8 or \$9 million.

12

1                   Now, all of this of course is contrasted  
2                   with the handful of March e-mails which my friend  
3                   took you to during his opening and which Ms. Lyons  
4                   read from during her testimony. Now, obviously  
5                   the language used in those March e-mails, all of  
6                   which came from Mr. Lathigee, paint a different  
7                   picture.

8                   My friend hasn't provided you with the  
9                   context of those e-mails. All of those e-mails  
10                  were sent to all of those March e-mails were sent  
11                  to Mr. Tansowny, and the context of those e-mails  
12                  was shortly prior to the management of  
13                  Mr. Tansowny entering into negotiation with  
14                  respect to his future in the company.  
15                  Mr. Pasquill is going to explain that they were  
16                  concerned about Mr -- the rate of pay Mr. Tansowny  
17                  was receiving. He was receiving a very  
18                  significant monthly salary and he was receiving  
19                  very significant commissions on the front end of  
20                  purchasing the properties and on the back end of  
21                  selling, on whatever profit was obtained on the  
22                  properties.

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23 And management was concerned about his  
24 performance in that respect. Not with respect to  
25 identifying properties, but with respect to 13

1 managing their development.

2 Mr. Pasquill is going to explain that  
3 one of the concerns was on cost overruns on the  
4 property.

5 And so those e-mails were sent in the  
6 context of trying to soften up an employee, who  
7 they were shortly going to ask to take a  
8 significant pay increase. In fact, Mr. Tansowny  
9 was served with notice that -- oh, sorry. A  
10 decrease, yes.

11 Mr. Tansowny was in fact served with  
12 notice that he was going to be terminated in April  
13 of 2008 and eventually was suspended in May of  
14 2008.

15 Now finally, with respect to the second  
16 allegation, we're going to, in large part, rely on  
17 the language of the offering memorandums and we're  
18 going to show you that the offering memorandums  
19 are essentially consistent with what -- or the  
20 stated purpose for the funds in -- in the offering  
21 memorandum are essentially consistent with what  
22 the management then used the funds for.

23 Now in addition to Mr. Pasquill, we're  
24 also going the call Graham Woods and Bill Baker.  
25 Graham Woods, as I mention earlier, was the CFO of 14

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1 the company and he was the CFO of the company

2 until November 15, 2008. And Mr. Bill Baker was  
3 the CFO immediately after that date.

4 Graham Woods is going to provide  
5 evidence on what he thought the financial state to  
6 the group of companies was during that key time  
7 period of February to November 2008, and Mr. Baker  
8 is going to give evidence about what he thought  
9 about the company's finances when he joined the  
10 company November 15, 2008.

11 And it's our view that once the panel  
12 has been provided with the full store, rather than  
13 just snippets of the story from isolated e-mails,  
14 the only determination the panel will be able to  
15 make is that the management was confident in the  
16 financial state of the company and that management  
17 appropriately then disbursed that money to where  
18 they thought their investors could make the most  
19 money.

20 Now, our first witness is going to be  
21 Mr. Pasquill. Mr. Anderson is going to lead his  
22 evidence, but I would ask Mr. Pasquill to please  
23 take the box.

24 Earle Pasquill, sworn:

25 HEARING OFFICER: Please state your full name and spell your  
15

1 last name for the record.

2 THE WITNESS: Earl Pasquill P-a-s-q-u-i-l-l.

3 MR. ANDERSON:

4 23 Q Mr. Pasquill, how old are you?

5 A I am sorry?

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6 24 Q How old are you?

7 A 70.

8 25 Q And where were you born?

9 A Trail, British Columbia.

10 26 Q Are you married?

11 A Yes, I am.

12 27 Q How long have you been married for?

13 A 41 years.

14 28 Q Do you have any children?

15 A Yes, I have two daughters.

16 29 Q How old are they?

17 A 33 and 37.

18 30 Q And I understand you also have a couple of

19 grandsons?

20 A Yes. One is two years old and the other is four

21 months.

22 31 Q I would like to get into your educational

23 background?

24 A Sure.

25 32 Q Did you attend university?

16

1 A I did.

2 33 Q And where did you go?

3 A First, the University of British Columbia, where I

4 received a degree, Bachelor of Commerce, 1968.

5 And then the University of Western Ontario for an

6 MBA in 1972.

7 34 Q Okay. And as I understand it, you took a couple

8 of years out of school between 1968 and 1970?

9 A That's right. I worked for two years before going

10 back for post-graduate work.

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11 35 Q Can you tell us what you were doing in that couple  
12 of years.

13 A Yeah. I worked -- I worked for Eaton's at that  
14 time. First, as a stock auditor, and then as a  
15 merchandise analyst.

16 36 Q And you said that you got your MBA in 1972.

17 A That's right.

18 37 Q After that, what did you do for employment?

19 A I went back to Eaton's and worked through --  
20 through various jobs in sales management,  
21 merchandise management. I became a buyer and then  
22 a group department manager, sales and merchandise  
23 manager for a group of departments. And  
24 ultimately worked my way up, so became a store  
25 manager and then ultimately the area general

17

1 manager.

2 38 Q Was that in BC?

3 A Yes, it was. Actually, BC, and I had  
4 responsibility for Alberta, as well.

5 39 Q And at some point you resigned from Eaton's?

6 A I did.

7 40 Q When was that?

8 A That would have been in 1993, I believe.

9 41 Q Okay. And after you resigned from Eaton's, what  
10 if anything did you do for employment?

11 A I did a couple of things. First of all, I did  
12 some consulting for a while. And I was what was  
13 called a chairman for an organization called the  
14 Executive Committee, which is really a body that's  
15 designed for groups of CEOs to get together, share



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16           their experience, share their understanding,

17           learn, have education and stuff, and help them to  
18           help each other build their businesses.

19    42    Q   Was there any fees paid to belong to this  
20           organization?

21           A   Oh, yes. Each one of those CEOs paid I think it  
22           was something like a thousand dollars a month plus  
23           taxes.

24    43    Q   How long did you -- how long were you involved in  
25           that organization?

18

1           A   I am thinking about two years.

2    44    Q   And are you able to give us the year you left so  
3           we can keep on a time line?

4           A   Probably I am thinking that was probably around  
5           1998, something like that.

6    45    Q   Okay. And after you left there did you -- what  
7           did you do for employment?

8           A   Again, I did some consulting. I was on the board  
9           of advisors of a local company and I did some  
10          private things.

11   46    Q   Do you know a gentleman by the name of Mike  
12          Lathigee?

13          A   I do.

14   47    Q   And when did you first meet Mr. Lathigee?

15          A   I believe it was 1999.

16   48    Q   Can you tell us the circumstances in which you met  
17          him?

18          A   Sure. My wife was interested in real estate and I  
19          was assisting her to look at some possibilities,  
20          and Mike became aware of that fact, and he

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21           called -- called me up, wanted to meet, talk about  
22           that. And he wanted to sell me some property.  
23    49    Q   Do you know which company he was working for at  
24           the time?  
25           A   I think it was called International Properties. 19

1    50    Q   After you met him and he tried to get you to get  
2           involved or buy this property, what if anything  
3           did you do?  
4           A   Well, what he was offering was not of interest to  
5           me and he wanted to know why. So I gave him a  
6           pretty thorough analysis of it, and he was quite  
7           impressed with that analysis and asked me to do  
8           some more analysis for him.  
9    51    Q   Okay. And did, within the next year, did you run  
10          into Mr. Lathigee again?  
11          A   Yes. Yes. He approached me, I think it was in  
12          2000, with this concept of an investment club and  
13          asked if I would help him out, which I agreed to  
14          do on a part-time basis.  
15    52    Q   Okay. And can you -- can you give the panel an  
16          idea of what this club was, what conceptually it  
17          was going to do.  
18          A   Yeah. Sure. His idea of this investment club was  
19          to create an entity whereby individuals who  
20          wouldn't necessarily have the opportunity to do  
21          so, could network, could learn, could develop  
22          their skills as investors, get some education and  
23          also have an opportunity to participate in  
24          investments that they wouldn't otherwise be able  
25          to have, because each one was too small. And by 20

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1 pooling it, there was economies of scale and  
2 availability of investment.

3 53 Q You indicated a minute ago that at first you were  
4 involved part time. Can you give the panel an  
5 idea of what sort of things you would be doing at  
6 the beginning.

7 A Sure. Strictly, administrative stuff. I mean, it  
8 was -- it was pretty clear right from the start  
9 and continued throughout that Mike took on the  
10 task of -- of building the membership and of  
11 handling the investments, and I took care of  
12 administrative and office stuff.

13 54 Q Did you -- Did this particular club have events?

14 A Yes. Yes, as a matter of fact, right from the  
15 start we had regular meetings with the members.  
16 Again, partly for the networking, partly for the  
17 communications. There would be some education  
18 that went on at these meetings, and we held them  
19 in each city so long as we could afford it and  
20 until we got to the size where the cost was  
21 prohibitive.

22 But, yeah, we went around city to city  
23 where the clubs existed and had had ongoing  
24 regular meetings.

25 55 Q Okay. Did you frequently speak at these meetings?  
21

1 A No. Mike was always the speaker. I mean, he  
2 occasionally would call me up for a comment, but  
3 mostly Mike was the presenter.

4 56 Q What was the first club called?

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5 A Performance Capital Group was the name attached to  
6 the club, which was the Vancouver one, the  
7 starting one. We subsequently opened up clubs in  
8 Calgary, Edmonton, Toronto and those were known as  
9 the Wealth Builder Investment Club.

10 57 Q And at some point were these separate branches  
11 merged?

12 A Yes. In early 2003, I believe it was, we realized  
13 that it wasn't efficient -- cost efficient to run  
14 separate clubs in separate cities as separate  
15 entities. So we went through a process of getting  
16 approval from shareholders and they were merged I  
17 think it was at the end of May in 2003. And they  
18 became WBIC Canada Ltd. Ltd.

19 58 Q And what is the Freedom Investment Club?

20 A Freedom Investment Club is really the generic  
21 umbrella term that applies now to all of the --  
22 all of the clubs within the FIC group. Initially,  
23 it started out as a new entity, a new club, called  
24 FIC Investment Ltd. And FIC being short for  
25 Freedom Investment Club.

22

1 59 Q How did the FIC group generate revenue?

2 A Well, there is really several sources of revenue.  
3 First of all, the concept was that there would be  
4 membership fees for the education component that  
5 these people were going to receive, and that there  
6 would be some additional sources of revenue, such  
7 as events in which admissions were charged of an  
8 educational nature.

9 There would be ultimately things like  
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10           Investfest, which were kind of investment seminars  
11           where outside speakers would come, products were  
12           sold, and we would receive some commissions on  
13           those. And generally that revenue source was  
14           intended to cover as much as possible the costs of  
15           operating.

16                       Now, obviously there's also the  
17           investments where you know interest and capital  
18           gains and so on generated some revenue, but that's  
19           different from what I think you are asking.

20       60       Q   Structurally, how was the FIC Group structured?

21           A   Well, each -- each one of the clubs was an  
22           incorporated incorporation, all in British  
23           Columbia, except for WBIC, which was federally  
24           incorporated. And so each one stood alone. There  
25           was no interactive structure, other than the

23

1           common management. So there's the umbrella of the  
2           FIC or the Freedom Investment Club overriding all  
3           of these individual entities with common  
4           management, common control.

5       61       Q   Now, the FIC Group offer various investment  
6           opportunities to its members?

7           A   Sure.

8       62       Q   What I would like you to do, Mr. Pasquill, if you  
9           can, is you indicated here a moment ago that  
10          essentially Freedom Investment Club was set up as  
11          of 2003. I think you said May.

12                       And can you give the panel an idea of  
13          what sorts of investments the group had been in  
14          between May 2003 and let's say January of 2008.

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15 Kind of up to the point where we get to the  
16 material period.  
17 A Sure. Okay. It started out that it was mostly  
18 publicly traded and private placement investments.  
19 And to that we added some other things as we went  
20 along. There was some real estate, a couple of  
21 apartment buildings in Alberta. There was a bit  
22 of purchase of tax liens, for example. We had  
23 some colour diamonds that we purchased.

24 And so, yeah, I think those are pretty  
25 much the kind of things that were invested in at 24

1 the time.

2 63 Q Okay. Are you able to tell the panel how  
3 successful in a generic way these previous  
4 investments had been leading up to 2008?

5 A Yeah. I mean, obviously you get some good ones  
6 and you get some bad ones, but overall we had some  
7 excellent successes. I mean, the values of the  
8 shares rose steadily. I mean, if -- once we got  
9 past the -- the, you know, the original  
10 Performance Capital Group, for example, suffered  
11 through the tech meltdown. Once we got past that,  
12 and WBIC was formed and FIC was formed, there was  
13 a constant and steady growth in share value. And,  
14 you know, we have -- we have a long list of  
15 comments from people who redeemed and were very  
16 happy with the happy profits that they made.

17 64 Q As of January 2008 how many members would you  
18 estimate the FIC Group had?

19 A Gosh, that's -- just ballpark, I am guessing,  
Page 20

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20                   between 2 and 3000.

21       65       Q   Now, you mentioned some properties in Alberta. Do  
22                   you recall when the FIC Group began investing in  
23                   Alberta real estate?

24                   A   That would have been about 2005.

25       66       Q   And what was the first purchase there by FIC?

25

1                   A   There was an apartment building in Calgary.

2       67       Q   How long was it owned by the FIC Group?

3                   A   Not very long. As we'll get into, when John came  
4                   on board we -- John Tansowny -- he did some  
5                   analysis. He didn't think it had a lot of  
6                   potential and we ultimately divested it in 2006.

7       68       Q   Was it sold for a loss or a profit?

8                   A   We made a little bit on it. It -- Actually the  
9                   vehicle got turned into a debt instrument and we  
10                  made some interest on it, made a bit of profit,  
11                  but nothing to shout about.

12       69       Q   Now, you mentioned John Tansowny. When did you  
13                   first meet him?

14                  A   That would have been in 2005.

15       70       Q   And can you tell the panel about the circumstances  
16                   of how you and/or the FIC Group became involved  
17                   with Mr. Tansowny.

18                  A   Yeah. I met him when -- when Mike introduced him  
19                   to me. This is Mike Lathi gee. And Mike had been  
20                   introduced to John by one of our brokers that we  
21                   worked with here in Vancouver at Canaccord. And,  
22                   you know, Mike I guess I learned more about John's  
23                   background and John appeared, and we certainly  
24                   believed that he had all the credentials to be

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25                   able to help us.

26

1       71       Q   Okay. I would like to -- if you could just for  
2                   the sake of making the record clear, do you  
3                   remember the name of the broker at Canaccord?

4               A   Sure. It was Brent Todd. I am not sure that he  
5                   was at Canaccord at the time. I think he was at  
6                   Yorkton, which then got changed to Black  
7                   something, before he moved over to Canaccord. So  
8                   he was at Yorkton at the time.

9       72       Q   I think of all those firms gone now that I used to  
10                  do so much work for.

11                         Anyway, as of when you met Mr. Tansowny,  
12                         and got to know a little bit about him, what was  
13                         your understanding of his prior professional or  
14                         work experience?

15               A   John presented himself very, very well. I mean,  
16                   we knew -- and he represented himself to be a very  
17                   experienced business person. He had extensive  
18                   background with the government of Alberta. He  
19                   represented that he handled a lot of projects  
20                   multimillion dollar levels. He was certainly well  
21                   connected in Alberta. I know that he worked  
22                   briefly here in Vancouver as an assistant to Jimmy  
23                   Pattison on Expo 86.

24                         But it was his -- his experience and his  
25                         background in Alberta that attracted our

27

1                   attention.

2       73       Q   As of -- as of early 2006, what if any



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3 understanding did you have of his familiarity with

4 the real estate market in Alberta?

5 A Oh, my understanding was that John was very

6 familiar. I mean, in conversations and sometimes

7 in presentations that he would make, he had -- he

8 had excellent analysis of all the data and the

9 trends and what was happening. He came across as

10 a very knowledgeable person and of course he

11 represented that he worked in that field through

12 the government of Alberta.

13 74 Q Did any of the FIC companies enter into contracts

14 with him?

15 A Yes. Yes. There were actually three contracts

16 over the course of the term. An initial one, one

17 that got updated subsequently and then the final

18 one from February of 2007, which is the one that

19 we have been operating under.

20 75 Q Okay. Are you able to tell us I guess I might as

21 well deal with the latter contract, but what was

22 he hired to do?

23 A He was hired to analyse the real estate market in

24 Alberta, source out potential opportunities,

25 acquire the properties, manage and oversee their

28

1 development, and their sale. That in essence is

2 it.

3 76 Q How was he paid on that last contract?

4 A He was given a salary of 21,000 a month, plus a

5 commission of 1.5 percent on acquisition, and I

6 believe it was 2 percent of the profit on the

7 sales going out. He also had stock options and

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8                   some expense items.

9       77       Q     Okay. So the 1.5 percent, I just want to talk

10                   about that.

11               A     Sure.

12       78       Q     Was that the 1.5 percent on the purchase price of

13                   a property?

14               A     Yes, that's right.

15       79       Q     And was the 2 percent of gross or net profit?

16               A     Net profit.

17       80       Q     And you mentioned stock options.

18               A     Yes.

19       81       Q     Which company was he given options in?

20               A     Actually, he was given options in I think most or

21                   if not all of the companies. And they would --

22                   the amount of stock options varied depending on

23                   the companies.

24       82       Q     Apart from -- and I am I suppose dealing with the

25                   period of time from when Mr. Tansowny first became

29

1                   involved in late 2005 or 2006 up until he's

2                   ultimately suspended.

3                   Did FIC invest in any Alberta project

4                   not recommended by Tansowny, with the exception of

5                   the apartment building that you previously

6                   described?

7               A     Actually, I think there were two apartment

8                   buildings in that package initially. But after

9                   that, no. We were reliant on John.

10       MR. ANDERSON: If the witness could please see BCSC409

11                   please.

12       MR. ANDERSON:

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13 83 Q What you have before you, Mr. Pasquill, is an  
14 e-mail from Graham Woods to a number of persons,  
15 including yourself, dated May the 10th, 2008.  
16 And it has combined financial statements attached  
17 to it.

18 Do you recognize this document?

19 A I do.

20 84 Q And would you have read it on or about the 10th  
21 of May 2008?

22 A Yes.

23 85 Q And Mr. Graham Woods, who was he?

24 A He was our chief financial officer at the time,  
25 chartered accountant.

30

1 86 Q Okay. And if you go down, he says in the second  
2 paragraph: A couple of things to consider. And  
3 he says: The amounts presented for the asset  
4 values are, in my opinion, what would be the total  
5 of all of the audited statements, if combined,  
6 i.e. real asset is at cost.

7 I think I quoted that correctly. And he  
8 goes on to talk about the with appreciation for  
9 unrealized land values the total assets are  
10 between 95 and a hundred million dollars?

11 A Yes.

12 87 Q And was that your understanding?

13 A Yes, it was. When we talk about that, he's  
14 talking about book values, as I understand it.

15 88 Q Okay. Now, what I would like you to do is to go  
16 to page 6 and 7 and I just want to make sure --  
17 yeah, some of the investments of the company --

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18 group of companies are set out here and can you  
19 tell us what item 6 is about.

20 A Real estate held for sale? That would have  
21 been -- I see the Blackhawk. That's a property in  
22 Alberta is on there for 838,286.

23 And that's held for sale. That means  
24 that it's in a position to be ready to be sold,  
25 not to be confused with some raw land, which had 31

1 yet to be developed.

2 89 Q And this financial statement purports to be the --  
3 the financial statement for the period ended  
4 January 31, 2008 for the whole group?

5 A Yes. This is FIC Group of companies combined  
6 financial statements.

7 90 Q Item 7 --

8 A Okay.

9 91 Q -- what's that? Creative biotech at White Fang --  
10

11 A It's -- That's the China Dragon, the investment we  
12 had. China Dragon had invested in a plant  
13 undeveloped -- built plant actually in China, a  
14 manufacturing plant, and that's what that  
15 represents.

16 92 Q If you go over the page to page 7, item 8, real  
17 estate under or held for development.

18 A Yes.

19 93 Q Perhaps you could take us through those various  
20 projects.

21 A Okay. I mean, we will be showing a more detailed  
22 summary coming up in -- later, but a quick

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23 summary. As you can see, there's Willow Park,  
24 Genesis, Pigeon Lake, Ascot -- which is sometimes  
25 known as Aspen Hills -- Calmar, Devon, the Dome 32

1 and Crossroads. And they're all located in the  
2 Edmonton area. Crossroads, for example -- going  
3 up from the bottom -- very desirable piece of  
4 property, in Sherwood park, with the capability of  
5 large luxury lots, and also to be subdivided to  
6 enhance the resale value.

7 94 Q Okay.

8 A The Dome project was a share of a piece of  
9 property, which now has -- it's called Dome  
10 because it has an inflatable tennis Dome on it at  
11 the moment. And that was to be developed with the  
12 idea of working jointly with a hotel to develop  
13 that property.

14 Devon, there was actually two pieces,  
15 Devon Robin and Devon Trucking -- or Devon Robin,  
16 which was sometimes called Devon Trucking, and  
17 Devon Church, which was two pieces of property?

18 Riverside property in the Edmonton area.

19 Calmar is in Leduc, about -- I believe  
20 it was 91 lots, 108 acres, something to that  
21 effect, some of which -- in fact most of it was  
22 actually developed and getting ready for sale.

23 Ascot was another raw land opportunity  
24 in Edmonton.

25 Pigeon Lake, raw land adjacent to a lake 33

1 just west of Edmonton. Again, 100-some acres. I  
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2 can't remember exactly how much.

3 And of course Genesis is the big one  
4 that we've already talked about and we'll talk a  
5 whole lot more about, which is the big one in  
6 Stony Plain.

7 95 Q Okay. You are right. I was just trying to get --

8 These are essentially are these shown at  
9 book value?

10 A Yes, they are.

11 96 Q Okay. If the witness could please see BCSC 274.

12 MR. ANDERSON:

13 97 Q Mr. Pasquill, you should have a four-page document  
14 in front of you. At the top of the document is an  
15 e-mail from you to --

16 A Peter Kinch (phonetic).

17 98 Q Right. And to Bob Lathigee. Perhaps you can tell  
18 us first of all, who is Peter Kinch?

19 A Peter Kinch, to the best of my recollection, is a  
20 mortgage broker with who we were in contact. I  
21 don't know that we did much of anything with him,  
22 but one of the things that we were talking about  
23 was the ability to -- if members wanted to buy  
24 some of these properties, needed financing, that  
25 he would be of help with it.

34

1 99 Q Okay. And what we have attached to this is -- I  
2 don't know if you want to call it an appraisal,  
3 but at pages 3 and 4 Colliers International is  
4 giving valuations?

5 A Yes.

6 100 Q And these are valuations are as of March 9th,  
Page 28

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7 2007.

8 A Right. Agreed.

9 101 Q And this first one at page 3 is for Willow Park at  
10 Stony Plain Alberta?

11 A That's correct.

12 102 Q And the -- I don't want to lead too much, but I  
13 don't want to read from the letters either.

14 But it's suggesting a final retail  
15 market value of the proposed sites as complete on  
16 an individual sale bases at 3.3 -- well,  
17 \$3,320,000?

18 A That's correct.

19 103 Q Okay.

20 A As of March 9th, 2007.

21 104 Q Yeah. And then on -- over the page,  
22 November 13th, 2007 is the date of the letter  
23 and it basically is providing an update as of  
24 September 21st, 2007 with respect to Calmar.

25 A Right.

35

1 105 Q And again, is this on a retail basis?

2 A Yes, it is.

3 106 Q And just so we're all clear, what did you  
4 understand the word retail to mean in that  
5 context?

6 A Retail would mean market value sold to individual  
7 buyers, as opposed to an institution.

8 107 Q And it gives a value of 7,215,000?

9 A That's correct. As of September 21st, 2007,  
10 value of \$7,215,000.

11 108 Q Now, let me ask you this.  
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12 Did you -- As of January 2008, did you  
13 believe these values were accurate?

14 A Yes. Absolutely. I had no reason -- no reason to  
15 doubt them.

16 109 Q Why did you not doubt these values?

17 A First of all, they were done by Colliers  
18 International, which has a reputation in the  
19 marketplace. And John Tansowny was in agreement  
20 that they were realistic.

21 110 Q Now, when you said Colliers International had a  
22 reputation in the marketplace, perhaps you can  
23 tell us what you understood that to be as at  
24 January 2008?

25 A They were reputable international realty advisors  
36

1 that did appraisals and they could be relied upon.

2 111 Q Now, we're going to get to a couple of documents  
3 that have not yet been marked, and the first one  
4 as I have is ID-ZR, which should be an  
5 October 2007 appraisal.

6 Mr. Pasquill, do you recognize this  
7 document, which is a short narrative appraisal  
8 update for 152 acres at Stony Plain, Alberta?

9 A Yes.

10 112 Q Okay. And what property, as you understand it,  
11 does this relate to?

12 A That would be Calmar.

13 113 Q And is this a --

14 A I believe. Hang on. Stony Plain. No. I am  
15 sorry. Calmar is in -- So this would be Genesis.

16 114 Q This is the main property?

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17 A This is the big one, Genesis.  
18 115 Q And did you see this document in October of 2007?  
19 A Yes.  
20 116 Q And it looks like, if you go to the second page,  
21 it's prepared for IPM Ltd.?  
22 A Right.  
23 117 Q Who is that?  
24 A IPM is one of the contractors that was developing  
25 the project. 37

1 118 Q Okay.  
2 A Under John's supervision.  
3 MR. ANDERSON: Could this please be marked as the next  
4 exhibit.  
5 VICE CHAIR: It will be 417.  
6 MR. ANDERSON: Thank you.  
7 Exhibit 417.  
8 MR. ANDERSON:  
9 119 Q If you could go to page 23. Page 23 is the  
10 conclusions of the report, and the value of  
11 152 acres at 120,000 per acre gave a value of  
12 18,240,000?  
13 A That's correct.  
14 120 Q Okay. And that was what, as basically raw land?  
15 A Just raw land, yeah. At that stage, there was  
16 nothing on it.  
17 121 Q Now, as of October 2007 did you have any  
18 understanding of what the Genesis might be worth  
19 if it was developed out?  
20 A Sure. John had done his own projections and had  
21 repeatedly predicted to us that we could expect

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22           between \$25 and \$30 million of profit off of the  
23           project.

24   122   Q   If the witness could please have document,  
25           presently unmarked, ID-ZS.

38

1                           This document is an appraisal report of  
2           Genesis on the Lakes Land Stony Plain, Alberta  
3           prepared by Colliers International for FIC  
4           Investments Ltd. Is that right?

5           A   Yes. Excuse me. Yes.

6   123   Q   And did you see this report in March of 2008?

7           A   I did.

8   124   Q   Could that please be marked as the next exhibit.

9   VICE CHAIR: 418.

10   MR. ANDERSON: Thank you.

11   MR. ANDERSON:

12   125   Q   If you could go to -- Let me -- I want to just --

13                           The name Steve Rea -- R-e-a -- shows up  
14           on a fair number of documents. Who is Mr. Rea?

15           A   Steve Rea at that time was one of our employees.  
16           He was in the management team and he was -- he  
17           took on various responsibilities.

18                           At this stage of the game, he did a lot  
19           of the interaction with the lenders.

20   126   Q   Page -- If you can please go to page 2. That's  
21           who the letter is written to at FIC by Colliers.  
22           Is that fair?

23           A   Yes.

24   127   Q   The value shows up at page 56. If you could go  
25           there, please. I see what's happening. If you

39

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1           could go three more -- three more pages further,  
2           please. Yes.

3                       Did you understand that the total raw  
4           land value as at March 2008 was 18,700,000?

5           A Yes.

6   128   Q   Okay. If we can go one page further. There is,  
7           at page 56, a valuation there, which I think again  
8           goes back to this concept of retail value.

9           A Yes.

10   129   Q   And as I read it, built out the appraised value of  
11           this project was \$61,800,000?

12           A That's correct.

13   130   Q   And as of March 2008, did you have any reason to  
14           doubt the accuracy of this appraisal report?

15           A No. No. We had -- We had every confidence that  
16           it was indeed accurate.

17   131   Q   If the witness could please see BCSC 13. And I am  
18           blaming Mr. Ahmed for these BCSC numbers, just so  
19           you don't --Mr. .

20                       Ahmed has just made the point that the  
21           one appraisal from the fall of 2007 had given the  
22           Genesis raw land value at 18.2 million, the  
23           Colliers one in March 2008 gave it an  
24           \$18.7 million value.

25           A I think that's right.

40

1   132   Q   And that shows an increase, I don't know what it  
2           is percentage wise, but not an insignificant  
3           increase over a six-month period?

4           A Yeah.

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- 5       133     Q     Did you, in March 2008, believe land values in  
6               Alberta were rising?
- 7             A     Oh, yeah. Absolutely. I mean, there's no  
8               question that through this period of time every  
9               piece of information that we were given said that  
10              values and prices were rising. I mean, and we'll  
11              show evidence that the prices really didn't fall  
12              until later.
- 13       134     Q     Now, do you recall that there were demands for  
14               information made on the FIC Group in -- I think it  
15               was August 2009, formal demands from the B.C.  
16               Securities Commission?
- 17             A     Yeah. Sure. There was demand for production.  
18               That's why we're all here.
- 19       135     Q     Well, maybe only one of the reasons.  
20                    But this document that we're looking at  
21               right now, Exhibit 155, was this produced by FIC  
22               or its counsel?
- 23             A     It would have been produced by FIC and I suspect  
24               the person that actually did it was Graham Woods.
- 25       136     Q     Okay. Are you familiar with this document?

41

- 1             A     Yes, I've seen it.
- 2       137     Q     And -- and was the purpose of this document to set  
3               out what the most recent -- a summary of the most  
4               recent appraisals the FIC Group had as of the fall  
5               of 2009?
- 6             A     Yeah. I mean, the purpose was to provide the  
7               commission with the information they asked for and  
8               give them as much information on all those points.  
9               But, yeah, one of them was certainly the most

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10 recent appraisals.

11 138 Q And perhaps we can go through what the status of  
12 some of these properties were as of -- it looks  
13 like most of these appraisals were done in the  
14 spring of 2009. Is that right?

15 A Most of them. I think there was one from 2007 and  
16 I can't recall if one of them was 2008, but most  
17 of them were spring of 2009.

18 139 Q And did you believe these were accurate values of  
19 these various properties as of the dates set out  
20 in the appraisals?

21 A Yes, I did.

22 140 Q Just if we go through them, I take it that Ascot  
23 Hills as of April 2009 was still raw land?

24 A Yes. That's right.

25 141 Q And was given a value of \$3 million?

42

1 A 3 million. That's correct.

2 142 Q Calmar, had it been developed into --

3 A Yeah. It was -- It was for sale as lots at that  
4 point. 91 retail lot value, 9.6 million.

5 143 Q Crossroads, had it been built out?

6 A No, it had not. It was raw land. Retail value of  
7 6 million.

8 144 Q Devon was still raw land?

9 A Yes, Devon was raw land, value of 2.3 million.

10 145 Q Genesis?

11 A Genesis had been under development. So Genesis  
12 was really a three-phase project. Phase one was  
13 the only one development had taken place. And by  
14 this stage, most of the development was completed

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15 on phase 1 so part of it was -- was salable as  
16 developed lots and part of it was not.  
17 146 Q Can you just briefly describe the three phases for  
18 the panel so they can get some kind of  
19 understanding, because I think it will become more  
20 important with some later questioning.  
21 A First of all, it's a big project, and clearly it  
22 makes sense from a number of points of view, both  
23 from the financial management side of it and the  
24 market absorption side of it and simply the  
25 logistics of completing all of the work to split 43  
  
1 it up. And the whole idea was that we would  
2 develop phase 1 and sell that out, generate the  
3 revenues and profits, and that would help them to  
4 fund the development of the next phase and so on.  
5 147 Q And can you just tell us what was phase 1  
6 comprised of; what was phase 2 comprised of and  
7 what was phase 3 comprised of?  
8 A I can't remember the exact number of lots. I  
9 think it was something like somewhere in the  
10 neighbourhood of 100 or 120 lots in phase 1 and  
11 then the next two phases were each slightly  
12 bigger.  
13 148 Q Pigeon Lake appraisal looks to be dated there  
14 July 2009. It was still raw land?  
15 A Yes, it was.  
16 149 Q And given a value of 3,530,000?  
17 A That's correct.  
18 150 Q Willow Park, stage 8, March '07 appraisal.  
19 A 3,320,000.

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20 151 Q And I take it these lots were serviced lots?

21 A Yes, that's right.

22 VICE CHAIR: Mr. Anderson, this is when we usually take the  
23 midmorning break, if it suits you.

24 MR. ANDERSON: It's a good time.

25 VICE CHAIR: I have a small matter to attend to so we'll

44

1 take a slightly longer break than usual, a half  
2 hour. So we'll come back at 11P:45.

3 (RECESSED)

4 (OFF THE RECORD DISCUSSION)

5 MR. ANDERSON:

6 152 Q Now, as of January, February 2008, did you believe  
7 any of the real estate projects of the FIC Group  
8 would not be profitable?

9 A No. Our firm belief was that the profit was  
10 there.

11 153 Q If the witness could please have a document which  
12 is identification number is ID-0.

13 Mr. Pasquill, you should have before you  
14 a document headed Real Estate Project Overview and  
15 it's got a revision number and it says Executive  
16 Management Meeting November 1, 2007, Real Estate  
17 Project Overview.

18 Do you recognize this document?

19 A Yes, I do.

20 154 Q Did you first see this document on November 1st,  
21 2007?

22 A On or about November 1st, 2007.

23 155 Q Do you know who prepared the document?

24 A This would have come from John Tansowny.

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25 156 Q Could that please be marked as the next exhibit? 45

1 VICE CHAIR: E419.

2 (Exhibit for identification: )

3 MR. ANDERSON:

4 157 Q And can you was this document discussed at that  
5 executive management meeting?

6 A Yes it was.

7 158 Q Okay. And can you highlight for us what you  
8 recall of this document and what was discussed at  
9 the meeting?

10 A Sure. Clearly our eyes go immediately to the  
11 profit that's there. And we were certainly well  
12 encouraged by his projections that Genesis would  
13 produce \$26 million worth of profit and that in  
14 total there was \$74.7 million worth of profit to  
15 be had, once these profits were developed and  
16 built out.

17 Just let me add another thing. The  
18 column on the left shows the 32,000,750 invested.

19 159 Q Excuse me. I missed that. Oh, the -- under the  
20 amount invested.

21 A Yes.

22 160 Q So that was the total invested by the FIC Group in  
23 these projects to that point?

24 A To that point.

25 161 Q And I guess what the expected profit was?

46

1 A I don't know the profit would be in addition the  
2 profit would be after recovery of that.

3 162 Q If the witness could please have document ID-X.  
Page 38



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4 MR. ANDERSON:

5 163 Q This document is an e-mail string Mr. Pasquill  
6 with e-mails the oldest being near the moment of  
7 the page date January 31, 2008 from Mr. Tansowny  
8 to you.

9 Your response and then his response to  
10 you on February the 21st. Is that right?

11 A Yes that's correct.

12 164 Q Okay. Now, if you could go to the third paragraph  
13 in the earlier e-mail of the bunch. It starts,  
14 and just read it to yourself, where it says also  
15 if you check the map on the website.

16 A Yes.

17 165 Q Tell me when you have finished reading it.

18 A Yes.

19 166 Q Now, what if any impact did it have on you that he  
20 was approaching confirming 30 lot sales and  
21 5 million in revenue?

22 A This is obviously this was positive news.  
23 Certainly this and others that we were getting  
24 indicated that in fact sales were continuing even  
25 at this time of year. I mean in some of these we

47

1 we make reference to the dead of winter. Clearly  
2 those of us on the West Coast are a little spoiled  
3 by the climate but I am sure you can understand in  
4 Edmonton it gets pretty brutal from November to  
5 and and so that impacts a number of things  
6 including the ability to get into the ground and  
7 do development but in particular the sales. So  
8 the fact that sales were coming was a very

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9           posi tive sign to us.  
10   167   Q   I think I probably forgot to ask that be marked.  
11           The 42?  
12   VICE CHAIR:   B420.  
13   MR. ANDERSON:   Thank you.  
14   MR. ANDERSON:  
15   168   Q   If the witness could please be shown document  
16           i denti fi ca ti on number is ID-W.  
17   MR. ANDERSON:  
18   169   Q   What you have in front of you is an e-mail string.  
19           Both e-mails are dated February the 1st, 2008.  
20           The initial one is from a \*\*\*Kirk at RCR to  
21           Mr. Tansowny, with a copy to Kevin, and that  
22           e-mail is forwarded to you?  
23           A   Yes.  
24   170   Q   Did you see this e-mail on or about February 12,  
25           2008?

48

1           A   Yes, I did.  
2   171   Q   Could this please be marked as the next exhibit.  
3   VICE CHAIR:   B421.  
4           (Exhi bi t   for i denti fi ca ti on:           )  
5   MR. ANDERSON:  
6   172   Q   Do you know who Kirk is?  
7           A   Kirk Qui gley is his name.  
8   173   Q   And how does he fit in?  
9           A   He's with RCR Construction so he's one of the  
10           people that John worked with.  
11   174   Q   And in Mr. Tansowny e-mail he refers to the 8 lots  
12           that are referred to in Kirk's e-mail and says the  
13           8 lots will give us about 1.2 million. Is that

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14 right?

15 A Yes, that's exactly what it says.

16 175 Q And was that significant to you in February?

17 A Yes. Absolutely. Again, another example of  
18 activity happening of producing some revenue. The  
19 other thing I need to point out is that -- and  
20 this was certainly in the back of our mind very  
21 prominently -- is that the real selling season in  
22 Edmonton is May through October. When the weather  
23 turns, the uptake in activity is very significant.  
24 So the fact that we were getting sales now and  
25 anticipating the peak of the market later in the

49

1 year was a very good sign.

2 176 Q And this seems to relate to a different property  
3 than the earlier e-mail?

4 A Yes, I believe this was Willow Park.

5 177 Q And in fact I think we'll come across some other  
6 e-mails that indicate it's 1.3 million instead of  
7 1.2.

8 178 Q You will have to keep your voice up. I don't know  
9 if --

10 A Okay. Did you get that?

11 179 Q If the witness could please be shown a document  
12 with ID number ID-Z.

13 This is a further e-mail string, dated  
14 Feb -- well, the oldest e-mail on the bottom of  
15 page 1 is February 13, 2008 from a David S Welsh,  
16 W-e-l-s-h, to a Meghann, M-e-g-h-a-n-n, Gregg,  
17 G-r-e-g-g and Bob Lathigee, with a copy to  
18 Mr. Tansowny?

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19 A Yes.

20 180 Q And who is Mr. Welsh?

21 A He is a lawyer in Edmonton.

22 181 Q Okay. And these payments that are being referred  
23 to, what if any understanding did you have of  
24 them?

25 A That these are people who were making payments on  
50

1 the purchase of lot of Calmar project.

2 182 Q And Mr. Tansowny forwarded this to you on  
3 February 14th, 2008?

4 A That's correct.

5 183 Q Could this please be marked.

6 VICE CHAIR: Be number 422.

7 MR. ANDERSON:

8 184 Q If the witness could please be shown document ID  
9 number ID-ZA. I was just talking to Mr. Ahmed  
10 here and it appears for whatever reason we don't  
11 have the second page of this e-mail.

12 MR. ANDERSON:

13 185 Q Anyway, what we have here is a part of an e-mail  
14 which appears -- the oldest part -- to be an  
15 e-mail from Mr. Tansowny to Graham Woods and Steve  
16 Rea re Calmar profitability, and an e-mail back to  
17 Mr. Tansowny, with a copy to Mr. Rea, re Calmar  
18 profitability, and then Mr. Tansowny sending a  
19 further e-mail to you, dated February 26th,  
20 2008, as well as to Mr. Woods and Mr. Rea.

21 Do you recall having received this  
22 e-mail?

23 A Yes, I do.

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24 186 Q Could that please be marked.

25 VICE CHAIR: Be Exhibit 423.

51

1 MR. ANDERSON:

2 187 Q In the third paragraph, he talks about he has  
3 spoken to -- excuse me -- 20 additional lots  
4 spoken for from four builders but not reflected in  
5 the sold list.

6 He goes on to say, in the next  
7 paragraph, so we should be sitting somewhere  
8 around 62 lots in total sold. This should  
9 represent somewhere in the neighbourhood of  
10 9 million of sales in the dead of winter.

11 I think I quote that correctly?

12 A Yes, that's correct.

13 188 Q And this is the dead winter e-mail that you  
14 referred to earlier?

15 A Yes, it was.

16 189 Q Okay. And was the expected 9 million in sales  
17 significant to you in late February 2008?

18 A Yes. Absolutely. Again, I reiterate that the  
19 timing is so much a part of our expectations and  
20 we were certainly looking forward to the peak of  
21 the season coming up, May to October. And so, you  
22 know, talking about 9 million over the course of  
23 the winter for one project, excuse me, was not  
24 only good news, but it -- it gave us a lot of  
25 optimism about where this was all going.

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1 190 Q If the witness could please have document ID

2013-09-17 Lathigee Transcript Sept 17, 2013.txt  
number 1DZB.

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Here, Mr. Pasquill, we have a one-page e-mail, initially an e-mail from Mr. Tansowny on February 28th, 2008 to Linda Gould, Steve Rea and Mike Lathigee. It says, management minutes Calmar sales.

A Yes.

191 Q And the e-mail is copied to you by Mike Lathigee later that same day. Is that right?

A That's correct.

192 Q And did you receive it on or about that date?

A Yes, I did.

193 Q And did you read it?

A Yes I did.

194 Q Please be marked as the next exhibit.

VICE CHAIR: That will be Exhibit 424.

MR. ANDERSON:

195 Q Now, was your feeling near the end of February 2008 one of doom and gloom?

A No. Absolutely not. We're just seeing that some sales were starting to happen and as we'll see later the financial data that we had was good. Not to say that we didn't have to be focused and careful about cash flow. Clearly there were

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obligations coming up that had to be met. But we felt very strongly that those short term cash flows would be handled. So no doom and gloom is far from -- from the tone and I think Mike kind of reflects some of that here.

In particular, if you want -- if I

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7           should expand here, where he notes that we must  
8           focus on this goal and everything will be fine. I  
9           mean, I have to tell you that those -- some of the  
10          e-mails that were heard yesterday were constructed  
11          for an agenda, and that this more fairly reflects  
12          the tone and frame of mind that we had at the  
13          time, that we must focus on this goal and  
14          everything will be fine.

15       196    Q   If the witness could please be shown Exhibit 370,  
16               please. This is -- This was referred to I think  
17               yesterday, but this is a three-page e-mail which  
18               starts on the second page, approximately a third  
19               of the way down, which is an e-mail from  
20               Mr. Tansowny to Mr. Woods, yourself, with a copy  
21               to Mr. Rea, dated March the 28th, 2008.

22               A   Yes. That's right.

23       197    Q   Do you remember receiving this e-mail --

24               A   Yes.

25       198    Q   -- at about that time?

54

1                       And this e-mail is it in reference to  
2                       the Genesis project, as well as other things?

3               A   Yes, it is.

4       199    Q   Okay. Now, do you know what the mistake is that's  
5               being referred to in the quote in the second  
6               paragraph?

7               A   Well, my recollection of it was that we were  
8               talking about some cost overruns and John is  
9               questioning the amount of -- of the overrun and is  
10              referring to an error there.

11                     But, quite frankly, I can't specifically

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12 remember the nature of it.  
13 200 Q Okay. And what he goes on to say right under the  
14 items that are numbered 1, 2, 3, is he talks about  
15 a total, and I think it's in reference to the  
16 overrun there, of about 10 million more than when  
17 the first estimates were prepared.  
18 A That's correct.  
19 201 Q And was it your understanding that there would be  
20 a 10 million cost increase?  
21 A Yes. That cost overruns would impact the total --  
22 the total amount of cost, but ultimately this was  
23 still going to be a very profitable project.  
24 202 Q Now, Mr -- The next e-mail, which is at page 1, is  
25 an e-mail from Mr. Woods to Mr. Rea and yourself 55

1 on Genesis?  
2 A Yes.  
3 203 Q And he's -- I think this was maybe read in  
4 yesterday. It says, kind of half way through,  
5 guys, this is simple math. If I could guarantee  
6 10 million profit on this project I would take it,  
7 however revenues are uncertain and costs are  
8 absolutely uncertain. Do you see that?  
9 A I do.  
10 204 Q Did Mr --. Okay. Then there's a further e-mail  
11 up the page and Mr. Woods writes to you and Mr.  
12 Rea saying, I have spoken with John and I  
13 misunderstood some of the figures. We will  
14 discuss on Monday.  
15 A That's correct.  
16 205 Q And then you say, does that mean his profit



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projections are attainable?

17

18

And I don't see an answer there, but do

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you remember having any further discussions on

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that?

21

A Yeah. I think we met on the Monday and my

22

recollection of it was that when we came away

23

Graham was satisfied that the projections were

24

reasonable.

25

206

Q If the witness could please have a document which

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is ID-Y6.

2

Now, at this document is an e-mail dated

3

February 4th, 2008 from Mr. Woods to

4

Mr. Lathigee, with a copy to yourself?

5

A Yes.

6

207

Q Do you recognize this as a document that you saw

7

on or about February the 4th, 2008?

8

A Yes, I do.

9

208

Q Okay. Could that please be marked as the next

10

exhibit.

11

VICE CHAIR: That will be 425.

12

MR. ANDERSON: Thank you.

13

MR. ANDERSON:

14

209

Q Now, what did you understand this e-mail to be

15

accomplishing?

16

A Well, first of all, it kind of summarizes the

17

financial information of some of the projects,

18

particularly how much was invested, what it's

19

appraised at. And ultimately, down below, he

20

summarizes that he's calculated that there's

21

\$20,368,000 in unrealized profit after corporate

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22 tax but net of unrelated JV partner share.

23 210 Q You said, after corporate tax.

24 A After corporate tax but net of unrelated JV -- JV

25 partner share that will flow to the FIC Group from  
57

1 Ascot, Genesis and Calmar projects in total.

2 So he's saying basically 20.368 million

3 of profit on three projects.

4 211 Q From the way I read this -- and perhaps you can

5 help us, but -- what he's calculating is the

6 return to a specific company or anticipated return

7 to a specific company of the FIC Group?

8 A Well, then he goes on to say, FIC Canada, which is

9 FIC Investment Ltd., their estimated share is 7.3

10 and gross to the shareholders is 5.98 million.

11 So he goes on to split that a little bit

12 into ownership and then he goes on to estimate

13 what that means in terms of the NAV for that

14 company.

15 212 Q And the NAV being?

16 VICE CHAIR: If I can just interrupt, I think we've lost the

17 mic on the witness.

18 THE WITNESS: I am sorry. Maybe I am moving too far away

19 from it. Sorry.

20 Net asset value.

21 MR. ANDERSON: You've got lots there now.

22 MR. ANDERSON:

23 213 Q Did you understand --

24 A Just to follow up on that.

25 214 Q Yes.

58

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1 A He says that the net asset value is \$2.10 per  
2 share. We're presently selling at 2.70 per share  
3 and these numbers indicate it would be about 3.19  
4 per share.

5 If we were to assume that John's  
6 estimate are bang on -- and he's obviously  
7 discounted John's estimate -- if we were to assume  
8 John's estimate are bang on, it would be 3.46 a  
9 share.

10 215 Q Now, over the page he talks about FIC can -- has a  
11 controlling interest in 076083 B.C. Ltd. and Aspen  
12 Hills Development Ltd.

13 A That's correct.

14 216 Q And then he goes on to talk about the financials  
15 now posted to the website.

16 A Yes.

17 217 Q Now, were financial statements routinely posted to  
18 the FIC Group website?

19 A Yes. Yes.

20 218 Q And available to anybody that had access to that  
21 website?

22 A That's correct. All the shareholders, all the  
23 members had access.

24 219 Q If the witness could please have ID-ZC.

25 Mr. Pasquill, this is another e-mail

59

1 chain, with the oldest e-mail at the bottom of the  
2 page, from Mr. Tansowny, dated March 2nd, 2008  
3 from Mr. Tansowny to Mr. Lathigee, with a copy to  
4 you, Mr. Woods, and Steve Rea.

5 A That's correct.

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6 220 Q And the key part really I think is in the -- well,  
7 perhaps the second -- the second full paragraph,  
8 he says he's negotiating for quite some time in  
9 earnest today and today with two parties to  
10 complete a bulk sale of lots in Willow Park?

11 A Yes.

12 221 Q And he had just received a conditional acceptance  
13 on a deal in the amount of \$1.35 million for 10  
14 lots.

15 A That's correct.

16 222 Q And he goes on to say, in the fourth paragraph,  
17 our cost on these was 89,583.33. Did you  
18 understand that to be by lot?

19 A Yes.

20 223 Q Which was, he says, a 51 percent cash on cash  
21 return?

22 A That's right.

23 224 Q Was that significant to you?

24 A Yes, it certainly was. Again, we've seen about  
25 three of these so far and once again it's a

60

1 indication that we are moving some product, that  
2 sales are happening, cash is flowing. You know, I  
3 don't want to pretend that we weren't cognizant of  
4 all the cash needs, and we wanted to maximize  
5 these sales, but this was indeed very encouraging.

6 225 Q Now, Mr. Woods, did he -- I just -- I am  
7 looking at -- He says in his e-mail back, FYI John  
8 and I spoke on this offer earlier today and I gave  
9 the okay at 10 lots for 135 each, as he was back  
10 and forth with the buyer today.

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11 Did he have the authority to make those  
12 decisions?

13 A Yes, I would -- I would say he did.

14 226 Q And he concurred that the cost was about \$90 per  
15 lot -- \$90,000 per lot?

16 A 90,000, yes.

17 227 Q Getting worse as I get older, Mr. Ahmed.

18 May I please have that marked as an  
19 exhibit.

20 VICE CHAIR: That will be Exhibit 426.

21 MR. ANDERSON:

22 228 Q If the witness could please have document ID-ZD.

23 The document that you should have before  
24 you, Mr. Pasquill, is an e-mail from Mr. Tansowny,  
25 dated March 3, 2008, to Mr. Lathigee with a copy  
61

1 to you.

2 A That's correct.

3 229 Q Did you receive this document?

4 A I did.

5 230 Q Could that please be marked.

6 VICE CHAIR: Be Exhibit 427.

7 MR. ANDERSON:

8 231 Q And the subject of this document is stage 8 lot  
9 sales payout?

10 A Yes.

11 232 Q And does this relate to Willow Park?

12 A Yes, it is. This is just confirmation of what we  
13 just discussed in the last one.

14 233 Q And Mr. Tansowny says, in his last paragraph, that  
15 is a 53 percent cash on cash return?

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- 16 A That's correct.
- 17 234 Q And are you able to remember whether that property  
18 was acquired in August of 2007?
- 19 A That sounds familiar. I don't have it in front of  
20 me so I can't be precise about the date, but  
21 sounds about right.
- 22 235 Q Mr. Tansowny says that in the very last sentence  
23 of his e-mail.
- 24 A Yes. I have no reason to doubt that.
- 25 236 Q If the witness could please have ID-ZF.

62

- 1 This document is an e-mail, dated April  
2 14th, 2008 from Mr. Tansowny to you, with copy to  
3 Mr. Woods, Mr. Rea and Mr. Lathigee.
- 4 Do you recall receiving this on or about  
5 that date?
- 6 A Yes, I certainly do.
- 7 237 Q Could that please be marked as the next exhibit.
- 8 VICE CHAIR: Be Exhibit 428.
- 9 MR. ANDERSON:
- 10 238 Q He's talking here about an offer coming on  
11 Crossroads?
- 12 A That's correct.
- 13 239 Q Now, Crossroads, that was in the Edmonton area, as  
14 well?
- 15 A Yes, it is. It's in Sherwood Park area of  
16 Edmonton.
- 17 240 Q Do you recall whether there was an offer  
18 forthcoming?
- 19 A Oh, yes. Absolutely.
- 20 241 Q Do you -- and what --

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21 A It took a while to actually unfold and get in  
22 place, but we did indeed receive a bona fide offer  
23 for I think it was \$7.3 million.

24 242 Q And was it for the entire project?

25 A Yes.

63

1 243 Q If the witness could please see ID-7G.

2 Did I say "-ZG".

3 This is another e-mail chain. It  
4 appears to be dated April the 22nd, 2008, from  
5 Mr. Steve Rea to A. Hayne -- which is H-a-y-n-e --  
6 at Instafund.com, with a copy to a Brett Laseour.

7 A That's not what I am seeing.

8 244 Q I turned the page and I had a different page  
9 there. I'll start again.

10 This is an e-mail from Mr. Tansowny,  
11 dated May 5th, 2008, to you in relation to  
12 project profitability. Is that right?

13 A Yes, that's correct.

14 245 Q Did you receive this document on or about  
15 May 5th --

16 A Yes, I did.

17 246 Q -- 2008?

18 May I please have that marked.

19 VICE CHAIR: That will be Exhibit 429.

20 MR. ANDERSON:

21 247 Q And Mr. Tansowny appears to be dealing with a  
22 conversation that you must have had with him in  
23 the prior week regarding profitability.

24 A Yes.

25 248 Q And do you recall what it was in that conversation  
Page 53

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1           that triggered this?

2           A   Well, --

3   249   Q   -- response?

4           A   -- basically this was around the time when there  
5           was some dispute with John Tansowny. It was just  
6           before he was suspended. It was after we had  
7           given him termination. And we had been pushing  
8           hard for a report and in so doing I challenged  
9           whether what the profit levels of his projects  
10          were and he was responsive to it.

11   250   Q   And so what he's -- he says the reality is that  
12          not a single one of the projects has yet to be  
13          proven profitable?

14          A   That's correct.

15   251   Q   Including Genesis?

16          A   That's correct.

17   252   Q   And he estimates there's at least 10 million in  
18          future profits?

19          A   That is correct. And that was our belief, too. I  
20          mean, we went through a period of time there where  
21          we were trying to assess and get a handle on the  
22          cost overruns and the impact of this and where  
23          this would go.

24                   At no time did we think that this would  
25          be unprofitable. At no time did we think that it

65

1           was unviable. The only question was how much  
2           profit. And given that we were talking initially  
3           about between \$20 and \$25,000 worth of profit on



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4 Genesis, and that we had \$10 million -- I am  
5 sorry -- 20 to 25 million of profit on Genesis,  
6 and that we had \$10 million of cost overruns, this  
7 was perfectly consistent with that and we believed  
8 it.

9 253 Q In the fourth paragraph, he says that is why I  
10 felt the lot deal is a good one.

11 Are you able to tell us what you  
12 understood he was referring to?

13 A No. I am sorry. I can't. I am not sure which  
14 lot deal he was talking about, because we were  
15 selling a number of lots in different projects.  
16 One could -- you know, I can speculate that he was  
17 talking about the lot prices in -- in Genesis, but  
18 I don't know that for sure.

19 254 Q Okay. And he's complaining there about selling at  
20 lower prices affects his back end --

21 A Yes.

22 255 Q -- bonus or commission or whatever it is.

23 A That's right. That's exactly what would happen.

24 256 Q If the witness could please have document ID-ZK.

25 Mr. Pasquill, you should have before you  
66

1 an e-mail string, each e-mail dated February 21,  
2 2008. The initial e-mail is from Mr. Tansowny to  
3 Alex Albrecht, with copies to Bob Lathigee, Russ  
4 Lathigee, and Linda Wang.

5 A Yes.

6 257 Q And then subsequently an e-mail from Mr. Tansowny  
7 to Mr. Lathigee, with copies to you, Steve Rea and  
8 Graham Woods?

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9 A That is correct.

10 258 Q And did you receive this e-mail or or about  
11 February 21, 2008?

12 A Yes, I did.

13 259 Q May that please be marked as the next exhibit.

14 VICE CHAIR: Yes. Madam hearing officer, I notice on the  
15 printed list of exhibits there's an exhibit marked  
16 as 430. So should we go to 431 for this one?

17 MR. ANDERSON: You keep better track of it than I do.

18 VICE CHAIR: I think my job is still easier.

19 REGISTRAR: That one is misnumbered. I will fix that error.  
20 So the next exhibit will be 430.

21 VICE CHAIR: Okay. 430. It's Exhibit 430.

22 MR. ANDERSON: Okay.

23 MR. ANDERSON:

24 260 Q Now, he's talking in the second last -- well third  
25 last paragraph of this letter, as follows. He

67

1 says, the good news is that prices have continued  
2 to escalate in the area, but the most exciting  
3 good news is we now have a financing organization  
4 that's prepared to finance lot purchases. Details  
5 concerning that will be provided shortly and I am  
6 certain many of you will be interested to examine  
7 that prospect.

8 Now, do you have any knowledge of  
9 what -- first of all, this is the Pigeon Lake  
10 property. Is that right?

11 A Yes, that's correct.

12 261 Q That what he's talking about in terms of financing  
13 lot purchases?

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14 A Yes.

15 262 Q Can you tell us about that.

16 A Yes, I can. One of the things that Mike was  
17 critical of -- of John about was attempting to  
18 sell individual lots without having financing in  
19 place for those people who would like to buy and  
20 needed financing.

21 So John is basically saying here that  
22 he's now arranged for that to be available. But,  
23 you know, as -- what I would like to underline  
24 there is that he notes that the prices have  
25 continued to escalate in this area. And in fact, 68

1 that's perfectly consistent with some of the  
2 independent data that we were getting, and we'll  
3 enter that into evidence later, that -- that  
4 basically shows that employment was healthy,  
5 unemployment in the region was way below all other  
6 areas of the country, and that in fact prices were  
7 up from the previous year through this period of  
8 time.

9 263 Q So we have something on the record, where was this  
10 Pigeon Lake development in relation --

11 A It was adjacent to Pigeon Lake, which is just west  
12 of Edmonton

13 264 Q If the witness could please have document ID-Z0.

14 This is an e-mail from Mr. Lathi gee,  
15 dated March 28th, 2008, to Mr. Tansowny  
16 yourself, Mr. Rea and Mr. Woods. Is that right?

17 A Yes, that's correct.

18 265 Q And -- and its subject is update?

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19 A Yes.  
20 266 Q And my question to you is whether you received  
21 this e-mail string.  
22 A Yes, I did.  
23 267 Q Okay. On or about March 28th, 2008?  
24 A That is correct.  
25 268 Q May that please be marked as the next exhibit.

69

1 VICE CHAIR: Be number 431.  
2 MR. ANDERSON:  
3 269 Q There's a number of things here let's see if you  
4 agree with.  
5 Item 2, underneath where it says Team,  
6 is, John has stated he's made fantastic purchases  
7 that are profitable. We are encouraged by this.  
8 And my question I guess is, did you share that  
9 belief?  
10 A Yes. Absolutely. As I have stated on some of the  
11 other e-mails, these sales that we had been seeing  
12 were indeed very encouraging.  
13 270 Q The -- mid page it says, Graham, please send me a  
14 list of the projects that the club has realized  
15 gains. Realized means the lot is sold and we have  
16 the profit in our bank account.  
17 A That's correct.  
18 271 Q And it goes on to say, John, I am confident that  
19 by the end of the summer with your hard work and  
20 dedication to sell these projects we will realize  
21 gains and you will be fully paid for your  
22 performance on both the buy and sell side.  
23 A Yes. That's correct.

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24 272 Q Did you share that optimism?

25 A Yes, I did.

70

1 273 Q Now, item 2 deals with the issue of Mr. Tansowny  
2 being paid?

3 A Yes.

4 274 Q And what did you understand the issue was there in  
5 late March of 2008?

6 A Well, I will just take a moment to read that  
7 paragraph to make sure I have it in the right  
8 context that you ask.

9 This relates -- This is dated March the  
10 28th, so this was right during the period where  
11 Mike and John were having disagreements and  
12 disputes about the payment of some invoices. And  
13 basically Mike is saying that he wants payments to  
14 be tied to the actual payouts.

15 275 Q By payouts, you mean --

16 A I mean, when projects are sold and we actually get  
17 the money.

18 276 Q If you could go over the page to item 8. It talks  
19 about all the management team will have skin in  
20 the game and we will all make money together based  
21 on performance?

22 A Yes.

23 277 Q Were some of the salaries and other payments to  
24 management being deferred at this time?

25 A Subsequently, there was, but at this point some of  
71

1 John's commissions would have been deferred. And  
2 for the rest of it, the skin in the game would

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3 mean relative to either the shares that we owned  
4 personally or for options.

5 278 Q Okay. If the witness could please have Exhibit  
6 371.

7 Exhibit 371 is a three-page e-mail  
8 chain, essentially comprised of an e-mail from  
9 Mr. Woods, dated April 6, 2008 to yourself, Mr.  
10 Rea and Mr. Lathigee?

11 A Yes.

12 279 Q And is this the response of an update from Graham  
13 in relation to the last e-mail we looked at, where  
14 Mr. Lathigee asked him to send a list of projects  
15 that the club realized on and an update when we  
16 expect to realize gains on the remaining project?

17 A I believe so, yes.

18 280 Q Did you receive -- Sorry. You read this e-mail?

19 A Yes, I did.

20 281 Q It summarizes the situation at Genesis?

21 A Yes.

22 282 Q Calmar?

23 A You have to roll to the next page for Calmar.

24 283 Q Yeah.

25 A Yeah.

72

1 284 Q Aspen Hills?

2 A Yeah, Pigeon Lake, Aspen Hills, and then the  
3 non-incorporated entities, Willow Park, Devon --  
4 Devon Church, Crossroads.

5 285 Q And the non-incorporated entities, what were  
6 those?

7 A Well, those were entities that were owned directly  
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8 by FIC companies. You see, the other ones a  
9 company was set up for the projects, Pigeon Lake  
10 Development Ltd., Aspen Hills Development Ltd.  
11 Whereas, in this case, they were just purchased  
12 outright by the corporations.  
13 286 Q Did you understand this to be an accurate summary  
14 of the situation --  
15 A Yes, I did.  
16 287 Q -- as of April the 6th, 2008?  
17 A That's correct.  
18 MR. ANDERSON: If the witness could please see Exhibit 402.  
19 MR. ANDERSON:  
20 288 Q Exhibit 402 is a two-page e-mail chain. All of  
21 the e-mails bear the date May 7th, 2008. The  
22 oldest of which is an e-mail from Steve Rea to  
23 M. McKechnie -- spelled M-c-k-e-c-h-n-i-e --  
24 yourself, Mr. Woods, with a copy to Mr. Lathigee.  
25 Correct?

73

1 A That's correct.  
2 289 Q And did you -- did you read this on or about May  
3 7th, 2008?  
4 A Yes, I did.  
5 290 Q And the subject is, builder progress and general  
6 info?  
7 A Yes.  
8 291 Q Now, who is M McKechnie? I don't think we've seen  
9 that name to this point.  
10 A No. M McKechnie is Matthew McKechnie, a former  
11 CEO of the Cooperators Real Estate Group and we  
12 hired him as a consultant to look at our Alberta

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13 real estate stuff, and in particular, to help us  
14 sift through our conflict with -- with John  
15 Tansowny.

16 292 Q I am going to come back to that in more depth.

17 What was McKechnie's main area of  
18 expertise?

19 A Oh, he was -- He's had at least 30 years senior  
20 management experience in real estate and project  
21 development. As I say the Cooperators Group is a  
22 big outfit.

23 293 Q Okay. So he's -- he has been -- I don't know, if  
24 I read this thing, I may be mischaracterizing.

25 But he's doing some bird dogging in

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1 Alberta to see what interest builders?

2 A Yeah, he was doing a number of things. He was  
3 helping us to analyse the situation of our real  
4 estate projects, what John had done and had not  
5 done, what went wrong with the process that led to  
6 the cost overruns. And really helping us  
7 understand if we had the grounds to terminate or  
8 to suspend John. And in the process, also keeping  
9 his eye open for sales opportunities.

10 294 Q He relates in this e-mail to a one-hour  
11 conversation with Paul Betz. B-e-t-z. And it  
12 looks like there's an attachment, which is not  
13 here, but he says, in the second last paragraph --  
14 excuse me, third last paragraph on the first page:  
15 The point to highlight is that, one, the Edmonton  
16 market is in correction; two, the issue is  
17 inventory in Edmonton, not price.

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18 And he goes on to talk about Mr. Betz,  
19 which I am not interested in right now.

20 Did you get any understanding as to what  
21 Mr. McKechnie meant with points one and two?

22 A Yes.

23 295 Q Can you tell the panel what that --

24 A I can. That there was some indication that sales  
25 were not as brisk as we had anticipated to start 75

1 the season. We still had high hopes for the total  
2 season, but they were not as brisk at this point.  
3 The conclusion here is that there was some surplus  
4 inventory, but in fact that the prices were  
5 holding, and in fact we know that to be  
6 substantiated by some independent information that  
7 we had received.

8 296 Q Well, you're right. It's actually Mr. Rea I think  
9 that was doing the bird dogging, rather than  
10 Mr. McKechnie, because this is copied to Mr.  
11 McKechnie.

12 A Yes, I see that.

13 297 Q I am wrong. I misled you on that.

14 Now, the third paragraph he talks about  
15 Beatty Homes -- B-e-a-t-t-y Homes -- and the fact  
16 that it has a significant relationship with the TD  
17 Bank. Do you see that?

18 A Yes, I do.

19 298 Q Was there any further discussion about involving  
20 Beatty Homes in the Genesis project?

21 A Well, we were always looking for potential buyers  
22 or potential joint venture marketers of some kind,

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23                   and Steve probably was in touch with these people  
24                   for further discussions. I wasn't personally  
25                   involved with it.

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1                   (RECESSED UNTIL 2:50 P.M.)

2                   MR. ANDERSON:

3                   299    Q   Did this report of the market being in correction  
4                   have any impact on the management's view or cash  
5                   flow issues?

6                   A   Not really. I mean, clearly any time you get  
7                   information it's helpful. Our belief was still  
8                   very very much that there was profit to be made in  
9                   these projects, that over the long term certainly  
10                  these projects and our companies would be -- would  
11                  be well positioned.

12                 MR. ANDERSON: I think we managed to recover. There was  
13                   some audio that was left over from the machine  
14                   broke down and madam reporter was able to recover  
15                   that from her audio trail, and it looks to me to  
16                   be accurate in terms of the question that was  
17                   asked and the answer that was given.

18                 RIGHT1: I'll take my friend's word for it.

19                 VICE CHAIR: Just thought I would ask.

20                 MR. ANDERSON: Is that reasonable reliance, I guess is the  
21                   question.

22                 VICE CHAIR: I gather it's limited to this issue.

23                 MR. ANDERSON:

24                 300    Q   Anyway, to move on Mr. Pasquill, you had testified  
25                   just before the break that there were some cash

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1 flow concerns at this time in April and mid-May of  
2 2008 but I think you said that you expected that  
3 there would be sources of funds to get the company  
4 through those issues.

5 A Yes. That's correct. Like any company of course  
6 we have to be cognizant of the cash flow and pay  
7 close attention to it and so that was no exception  
8 here. And we did have obligations coming up and  
9 so we had to be mindful of that. But we  
10 definitely, I can assure you, believe that there  
11 was sources of revenue and sources of funds that  
12 in fact we would be able to manage the cash flow  
13 and move forwards towards selling out the  
14 projects.

15 We had a number of potential sources of  
16 revenue on the horizon. I have already made  
17 mention of the summer selling season. So we had  
18 high expectations that there would be a good  
19 source of revenue from sale of lots over the  
20 course of the summer.

21 We had expectations of the completion of  
22 the sale of Crossroads in its entirety. We ended  
23 up with a \$7.3 million offer for that. We had  
24 Investfest, which is our major annual source of  
25 revenue coming up beginning of the summer, and we

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1 had projected that we would generate between \$4-  
2 and \$5 million worth of revenue.

3 And we had the potential of course of  
4 refinancing at any time and we had diamonds that  
5 were available for sale.

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6

So there were quite a number of

7

different sources of potential revenue that we

8

foresaw as going to be available and that in fact

9

our cash flow could indeed be managed.

10

301

Q

Just -- I don't know if the diamonds have been

11

mentioned before. They might have.

12

But can you just describe a little bit

13

more detail what you're talking about.

14

A

Sure. One of the investments was colour diamonds.

15

We had about \$3 million worth of diamonds

16

invested, with a view to -- they appreciating and

17

reselling the diamonds.

18

302

Q

By this first part of April 2008, what if any

19

belief did you have as to whether these real

20

estate projects in Alberta would be profitable?

21

A

I am sorry. Could you repeat the question.

22

303

Q

As of early April 2008, that's when we were

23

talking about, what if anything did you have in

24

terms of expectations as to whether these Alberta

25

real estate projects would be profitable?

79

1

A

Well, we had the projections that John had given

2

us. We had the information related to what was

3

going on in the market. We had the early

4

indications of some of these sales through

5

February and March and April that were very

6

encouraging.

7

And later on, we got reports that

8

suggested that even Genesis, which had the cost

9

overruns, still had profitability in it, and there

10

were the other projects.

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11                   As I say, at our meeting on March 5th  
12                   we were still projecting a minimum of \$66 million  
13                   of profit in them. And while the cost overruns  
14                   evolved out of that, even if you took out  
15                   \$10 million out of that, that's still a pretty  
16                   healthy profit expectation.  
17       304     Q     Now, I want to go back a little bit in time before  
18                   we go forward again. And you've previously  
19                   mentioned that there were some concerns about  
20                   Mr. Tansowny's performance, and my question to you  
21                   is, when -- when, as far as you recall, did  
22                   anybody in management start to have concerns about  
23                   Mr. Tansowny?  
24               A     Well, Mike indicated in some of his correspondence  
25                   that he had concerns for some time.

80

1                   From my point of view, most of that --  
2                   the concerns started and triggered around  
3                   mid-February, when we started to get some sense  
4                   that there may be these cost overruns in place.  
5                   In reality, a lot of Mike's dispute with  
6                   John had to do with, first of all, his performance  
7                   in relation to Mike's expectations; and, secondly,  
8                   in relation to how much we were paying him and the  
9                   way he was billing us. So there was disputes  
10                  about some of his expenses and an expense that he  
11                  was billing us a year late. Some of those kind  
12                  much things, which were burrs under the saddle of  
13                  Mike, if you want.  
14                  But in terms of our concerns about the  
15                  project, we were starting to get concerns about

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16 the flow of information, we were starting to get  
17 concerns about these cost overruns. And while  
18 indeed we did have concerns about some of these  
19 factors, at no time did we think that the projects  
20 weren't going to make money.

21 305 Q Okay. If the witness could please have Exhibit  
22 409.

23 Exhibit 409 is a five-page e-mail chain  
24 and if I could take you to page 4 of 5, please.  
25 And what we have on this page is an e-mail dated 81

1 February 20, 2008 from a Peggy Arbeu --  
2 A-r-b-e-u -- to yourself, with a copy to  
3 Mr. Tansowny, and it says, subject, Crown Capital  
4 Corporation meetings.

5 Did you receive this e-mail on or about  
6 February the 20th of 2008?

7 A Yes, I did.

8 306 Q Okay. Now, there's apparently two invoices  
9 attached, one for \$5300 from 2006, I assume, or  
10 maybe it's the other way around, given the invoice  
11 numbers, and another for \$41,870.

12 A Yes.

13 307 Q And what did you understand these invoices to  
14 relate to?

15 A They relate obviously from 2006 and 2007 meetings  
16 and they would be related to the fees that John  
17 reportedly earned.

18 I should explain that Peggy Arbeu is  
19 John Tansowny's wife. She's also president of  
20 Crown Capital Corporation. And our contract with

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21 John was really with Crown Capital Corporation,  
22 specifying that in fact he was the one providing  
23 the services. So it's Peggy asking for payment of  
24 invoices in 2008 from 2006 and 2007.

25 308 Q Now, if you go -- then jump back to page 2 of 5, 82

1 please. We have then a lengthy e-mail from  
2 Mr. Lathigee to Steve. And I take it that must be  
3 Steve Rea?

4 A Yes.

5 309 Q Yourself and Mr. Woods?

6 A Yes.

7 310 Q The subject being, urgent and very confidential  
8 for Steve, Earle and Graham only!

9 A Yes.

10 311 Q Now, is this an example of the frustration that  
11 Mr. Lathigee was having with Mr. Tansowny?

12 A Yeah. Yeah. This is dated February 23rd, which  
13 is obviously around the time, and he's responding,  
14 I think probably triggered by this invoice, and it  
15 kind of stirred up Mike a little bit. And Mike's  
16 kind of an emotional guy. And so it just stirred  
17 the waters, if you like, about his relationship  
18 with John.

19 312 Q And I take it you had read this e-mail about the  
20 time that it was sent?

21 A Yes, I did. And I guess what I saw in it was, you  
22 know, some of Mike's frustrations bubbling up.  
23 And he makes the point about some of his  
24 dissatisfaction, things like lack of information  
25 flowing from John. He wanted more information.

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1 And not getting monthly reporting. He talks about  
2 mistakes and that would be in relation to some of  
3 the cost overruns, for example. He notes that he  
4 should have -- I referred to this earlier -- he  
5 should have known to have financing in place  
6 before presenting the projects -- the properties  
7 for sale on stage. And he notes in December we  
8 paid his monthly bill, albeit he was away when his  
9 father was sick.

10 And basically he's saying he's not very  
11 pleased, he's not going to pay an invoice that's  
12 over a year old. So you can see that some of the  
13 frustration is kind of bubbling there.

14 And while there are dissatisfactions  
15 with John, at this stage, at least, they related  
16 to those kind of issues. Mostly around the  
17 invoices.

18 313 Q If you go to page 1 of 5, there is a response from  
19 Mr. Woods to Mr. Lathigee only, but which is I  
20 think later sent to you, where he expresses in the  
21 first paragraph his concern about the selling  
22 price is being based entirely on future profits of  
23 the real estate projects.

24 He says, I think there is a chance they  
25 are way off and this would really make me look

84

1 like a chump. He says, something like this could  
2 impact my chartered accountant designation. And  
3 he goes on I think to confirm more or less he's  
4 been thinking about the same sort of things.

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5                   Were you, when you got this e-mail, were  
6                   you concerned about his apparent concern about the  
7                   future prices of the real estate project?

8           A   Well, I was -- I was aware that cost overruns  
9                   would -- would impact that. But what I read into  
10                  that was -- and quite rightly so, because I know  
11                  Graham. Graham gets very concerned about minute  
12                  detail. And if in fact it turns out that any of  
13                  his numbers were wrong, that would reflect on him  
14                  personally as an accountant, and -- and he takes  
15                  that very personally and would get upset about it.  
16                  And I took it in that light.

17   314   Q   Were there --

18           A   But at no point did I read that in terms of  
19                  reflecting that projects weren't going to make  
20                  money.

21   315   Q   Were there cost overruns on projects other than  
22                  Genesis at this time?

23           A   No, this was really the one that -- that was the  
24                  burr in everybody's saddle that people were  
25                  focusing on. That's where the -- the big run was,  
85

1                  particularly the phase 2 expenses that were  
2                  incurred in phase 1.

3   316   Q   If the witness could please have Exhibit 26.

4                         Mr. Pasquill, this is a three-page  
5                         e-mail chain from February 28th, 2008 and it  
6                         goes all the way over to the first page to  
7                         March 2, 2008, with an e-mail from Mr. Lathi gee to  
8                         Mr. Woods, Steve Rea, yourself, with a copy to  
9                         John Tansowny.

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- 10 A Yes.
- 11 317 Q And it says, SEA. I guess it could be SEAsia  
12 call?
- 13 A Yes. That's right.
- 14 318 Q Okay. And did you receive this e-mail chain and  
15 some of the ones in it on or about the dates  
16 referred to throughout it?
- 17 A Yes, I did.
- 18 319 Q Okay. Now, just so we know -- I will lead this --  
19 the SE Asia call, what is that, Southeast Asia  
20 call?
- 21 A That is correct.
- 22 320 Q And what does that relate to?
- 23 A Southeast Asia is short for FIC SE Asia Fund Ltd.,  
24 which is one of our clubs.
- 25 321 Q And had there been a call on this?

86

- 1 A Yes, I believe there was.
- 2 322 Q Now, Mr. Lathi gee in his e-mail on page 1 of 3  
3 says, our first priority is to save the company.  
4 It goes on to say, if Genesis loan is to  
5 be called by TD, which is a real possibility, we  
6 have to factor then we are "doomed". The word  
7 "doomed" is in quotes.
- 8 Now, did you understand -- Did you  
9 understand the company at that time, the FIC Group  
10 of companies, were doomed?
- 11 A No. And I just want to take some time on this  
12 because, you know, yesterday we heard a number of  
13 these, which suggested this kind of doom and  
14 gloom.

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15                   In fact, I didn't -- I didn't take that  
16                   word very seriously in this e-mail or in the  
17                   others and I can tell you why.

18                   First of all, from some of the  
19                   information that you have already heard, we  
20                   actually had some pretty good hope of some good  
21                   sales. We had the prospect of revenue coming.

22                   When we get to the financial statements,  
23                   you will see that our equity and our cash and our  
24                   assets were in a reasonably healthy state. I knew  
25                   the facts. And I also knew that Mike here was

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1                   responding emotionally. He was addressing it to  
2                   John Tansowny. I knew that he was preparing for  
3                   the negotiations with John coming up on the 5th  
4                   of March. And that in fact he called me on or  
5                   around, I don't know whether it was the 2nd or  
6                   3rd or 4th of that month, to tell me  
7                   basically, don't worry, don't take this too  
8                   literally, this is targeted to John to light a  
9                   fire under John.

10                   So I knew -- I knew the way Mike  
11                   operates. I knew that this was triggered by those  
12                   expense claims and the bubbling emotions that that  
13                   brought up in him about -- about John.

14                   He was taking this opportunity to set  
15                   the stage for his negotiations with John and quite  
16                   simply that's the way I understood it. That's the  
17                   way I read it. And I had absolutely no sense of  
18                   doom or gloom during this period of time.

19                   323    0    Okay. And if the witness could please have

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20 Exhibit 424.

21 Now, we had already looked at this one  
22 here and it's basically just before Mr. Lathigee's  
23 e-mail about the companies being doomed. And of  
24 course this one is quite different.

25 A All right.

88

1 324 Q I think he says, in the second sentence of the top  
2 e-mail, we're all on the same team and I am sure  
3 we will come up with a plan on March 5th that  
4 call I can agree and be happy.

5 A That's right.

6 325 Q And what was this meeting on March 5th about?

7 A This was the management meeting, but before we get  
8 into that, I will just back it up to the previous  
9 sentence where he says, we must focus on this goal  
10 and everything will be fine.

11 As I said, I think that's more  
12 indicative of the true sense of feeling about  
13 things at that time.

14 The meeting of March 5th and 6th was  
15 a scheduled management conference and at that time  
16 Mike had planned and arranged for some  
17 negotiations with John about his future.

18 326 Q If the witness could please have Exhibit 217.  
19 Unfortunately, my eyes aren't really good enough  
20 to be reading this from any distance. I  
21 apologize.

22 Okay. What we have here is an e-mail  
23 chain of March 1st and 2nd of 2008. Do you  
24 recognize this, Mr. Pasquill?

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25 A Yes, I do.

89

1 327 Q Okay. And there's discussion being had in Mr.  
2 Woods' e-mail of March 1, 2008 near the bottom of  
3 the page talking about making some payments.

4 Do you see that?

5 A Yes.

6 328 Q And then you indicate there will be some -- a  
7 deposit and a transfer.

8 And then Mr. Wood says, could we talk a  
9 bigger payment to Gentech? Steve and I will be  
10 calling Gentech early Monday to determine how much  
11 to them this week will keep the trades under them  
12 from putting liens on Genesis. And he goes on to  
13 say, I think we can make everyone happy for the  
14 time being.

15 And was that consistent with your view  
16 at the time?

17 A Well, understand that part of our cash flow  
18 challenge -- not that there wouldn't be enough  
19 cash over the longer haul -- was the day-to-day  
20 kind of thing. So especially in light of the fact  
21 the TD was being tardy with their payments. We  
22 had specifically had with the Toronto Dominion  
23 Bank as far as the mortgage this operating line  
24 that was designed under their management to pay  
25 the trades. And there was some problems with the

90

1 speed at which the quantity survey -- surveyor,  
2 who was under their direction, was processing

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3 things. So there was this issue of trade payments  
4 that we had to deal with, and there were times  
5 when we covered off those payments, even though  
6 they should have come out of that credit line.

7 329 Q If the witness could please be shown Exhibit 40.

8 This document is an e-mail chain. It  
9 starts from March 3rd to -- excuse me --  
10 March 2nd, 2008 on page 3 to March 3 on page 1.

11 A Yes.

12 330 Q Now, the e-mail I would like to focus on --  
13 There's an exchange of e-mails mainly between  
14 Mr. Tansowny and Mr. Lathigee, but the one I would  
15 like to focus on is on page 1.

16 And what he talks about is -- the  
17 subject is, re cash, and he talks about  
18 initially -- in the first paragraph -- about money  
19 coming in from Mr. Tansowny. He's talking about  
20 needing 10 million to stay solvent. And then, in  
21 the second paragraph, he says, please allow me to  
22 go back to getting money in for FIC. This is the  
23 worst situation we have ever been in.

24 And do you recall seeing this e-mail?

25 A Yes, I do.

91

1 331 Q Did you agree with that assessment?

2 A No, I didn't.

3 332 Q Can you tell the panel why.

4 A Sure. This falls into the same category as the  
5 previous e-mail. Note the date here is March the  
6 3rd, which was the day after the last e-mail. I  
7 don't think it was the last one we'll see. This

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8 period of time between March the 2nd and March

9 the 5th, when they were sitting down for  
10 negotiations, was all part of -- of Mike --

11 I can tell you that prior, below here,  
12 the issue that triggered this was that John had  
13 arranged for the companies to get a piece of  
14 property in the Dominican Republic as a result of  
15 some arrangements that we had made during the  
16 previous Investfest and that hadn't been  
17 delivered. John had failed to work correctly with  
18 the people to make that happen. So that was  
19 another annoyance that bubbled up with Mike at  
20 that particular time.

21 So again, what we see here is this kind  
22 of emotional response to some of these little  
23 triggers in Mike, and then him kind of saying,  
24 well, I am going to be negotiating with John and  
25 I am going to paint a bad picture here to soften  
92

1 up that negotiation.

2 That's the way I read it.

3 Now, he mentions in both of those  
4 concerns about TD calling the loan.

5 Again, to my mind, that's a tactical  
6 ploy in his dealings with John. In reality, the  
7 mortgage with TD was not up until December of  
8 2008. Throughout we will probably show some of  
9 these.

10 We had ongoing interactions with the  
11 Toronto Dominion. They were an annoyance to us.  
12 We didn't like them particularly. So we were

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13 actually looking at potentially taking them out.

14 But I didn't believe for a minute they were going  
15 to call the loan.

16 They had on various occasions said they  
17 were happy with us and they were going to offer us  
18 extensions, which they ultimately did.

19 I just tell you, seriously, I did not  
20 believe for a moment that they were going to call  
21 the loan.

22 333 Q If the witness could please have Exhibit 41.

23 This is another document I think that  
24 was reviewed yesterday, and the last e-mail is one  
25 about 12:00 a.m., March 5th, 2008, from

93

1 Mr. Lathigee to Mr. Tansowny.

2 Did you at some point get to see this  
3 e-mail?

4 A Yes, I did.

5 334 Q Okay. And he's talking about the DR Condo  
6 Contracts.

7 A Yes. That's what I was just mentioning before.

8 335 Q Okay. What he says is, the second last sentence,  
9 the last week while you were on vacation has been  
10 very hard on the entire management team to deal  
11 with the reality of what is going on, but they  
12 have worked diligently on a plan to save FIC.

13 Do you see that?

14 A Yes, I do.

15 336 Q Okay. Were you concerned at this time that FIC  
16 would fail?

17 A No, not for a moment.



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- 18                   You see, this again I don't know how  
19                   much more I can say about it, but there's these  
20                   series of three or four e-mails all bunched  
21                   together just before this meeting. It's the same  
22                   story.
- 23       337    Q   And it appears what, this was sent at midnight?  
24                   A   Yes. That's right.
- 25       338    Q   And that was before this -- basically before the                   94
- 1                   meeting of May --
- 2                   A   Yes. Our meeting started at 9:00 a.m. the next  
3                   morning and carried on for the subsequent day.
- 4       339    Q   I am going to jump ahead a little bit to the early  
5                   part of May.
- 6                   A   Sure.
- 7       340    Q   If the witness could have Exhibit 294, please.  
8                               This document is an e-mail exchange on  
9                   May 5th between yourself, and Mike Rae and Mr.  
10                  McKechnie. And what it is is a draft e-mail. Is  
11                  this supposed to be going to John Tansowny?  
12                  A   Yes.
- 13       341    Q   Okay. And I see there's bold print in it. Did  
14                   you put the bolding in or is it somebody else  
15                   adding --
- 16                  A   No. That -- I suspect, I believe that was Mike  
17                   that added that in.
- 18       342    Q   Okay. And what was the purpose of this letter, or  
19                   e-mail, I guess, more accurately?  
20                  A   I just want to take a second to look through some  
21                   of the details here, if you don't mind.
- 22       343    Q   No. Go ahead. Take your time.

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23 A Okay. The context of it is that here we are at

24 May the 5th, okay. We had already given John

25 his notice of termination, three months notice.

95

1 We were a week ahead of when we ended up

2 suspending him. We got another invoice and just

3 took the opportunity to stand back and take stock

4 of -- of the value for the money. And -- and

5 that's the context.

6 I know -- Well, we'll get to paragraph 2

7 that I think probably needs some clarification.

8 344 Q Okay. And what would you say?

9 A Well, what I said there is, Genesis has turned out

10 to be a financial disaster. And I think you need

11 to clarify that I meant by that.

12 345 Q Why don't you tell the panel.

13 A Sure. What we knew about Genesis was that we

14 were -- we were promised and, you know, right up

15 until the beginning of March, that the profit in

16 Genesis would be in the \$20 to \$30 million range.

17 It was now looking like it was going to be more

18 like \$10 million. To my mind, that constituted in

19 itself a disaster. That does not mean that

20 couldn't still make profit.

21 The fact that there was something like

22 \$10 million cost overrun. That to my mind is a

23 disaster. Nobody should allow that on their

24 watch. But it didn't mean that we still couldn't

25 make money on -- on the project.

96

1 The reporting that we got from John was  
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2 not good enough and one could reasonably argue  
3 that in the context of what had happened that was  
4 a disaster.

5 So those are the kind of things that I  
6 am talking about by disaster. I don't mean this  
7 is a wipeout, we're going to lose money on it,  
8 that kind of disaster. But any time you can't  
9 account for over spending by \$10 million and cut  
10 your profits lower than half, that to my mind is a  
11 disaster.

12 346 Q If you could then go to Exhibit 295.

13 This document appears to be an e-mail  
14 from you to Mr. Lathigee, dated May 6, 2008. And  
15 your subject line goes, final draft?

16 A Right. Yes. That's correct.

17 347 Q So is this a revised version of the document that  
18 we looked at before, the document immediately  
19 before this, the --

20 A I am sorry. Can we have the other one back as for  
21 date. I think it was May the 5th, wasn't it?  
22 So, yeah. That's what this would be. You recall  
23 that Mike had put some suggested modifications in  
24 so this would have been my revision.

25 348 Q And with respect to describing Genesis as turned 97

1 out to be a financial disaster, are your comments  
2 the same about what you meant by that?

3 A Yes. Exactly.

4 349 Q Do you know whether this was the form that finally  
5 went to Mr. Tansowny?

6 A I can't categorically say that, but I think so.

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7 350 Q And you say in the e-mail portion that -- or  
8 immediately before the draft to Dear John, I  
9 tweaked it a bit. Remember that we are trying to  
10 get him to agree to a lesser fee, not set him off  
11 by using this document to lay blame, which will be  
12 covered separately once we're at a stage where he  
13 can't cause us harm.

14 A That's correct.

15 351 Q Can you elaborate on that at all, what you meant?

16 A Well, clearly there was a lot at stake in these  
17 projects. John had been the key guy that was very  
18 much involved. We were coming to a stage where we  
19 still needed some of his assistance with this.

20 So the fact that we had Matthew  
21 McKechnie on board and was paying him to do some  
22 of the things that John would otherwise have done  
23 meant that John was doing less and therefore  
24 rightfully we should be paying him less.

25 So we were kind of preparing for some of  
98

1 that kind of discussion about how much -- how much  
2 we pay him, if we pay him at all.

3 And so we wanted to maintain a  
4 relationship of sorts going forward where he would  
5 still be contributing on some things where we  
6 needed him and yet we were working towards  
7 separating.

8 352 Q As of -- Up until Mr. McKechnie was engaged by the  
9 FIC Group, did FIC have anyone else on the ground  
10 in the Edmonton area supervising these projects?

11 A No. As I explained in my description of John's  
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12                   responsibilities, he was the guy. He was the only  
13                   guy. We were dependent on John.

14       353     Q     If the witness could please have ID-ZE.

15                               What this is, Mr. Pasquill, is an e-mail  
16                   string. The oldest e-mail, which is dated  
17                   March 19th, 2008, from yourself to Mr. Lathigee,  
18                   Mr. Rea and Mr. Tansowny and Graham Woods.

19               A     Yes.

20       354     Q     And then there's Mr -- a further e-mail from you  
21                   to the same gentlemen again on March the 20th,  
22                   2008, and then an e-mail on March 20th, 2008  
23                   from Mr. Tansowny to you and Mr. Rea.

24                               Do you recognize this document?

25               A     Yes, I do.

99

1       355     Q     Is this -- Are these e-mails that you sent or  
2                   received, as indicated?

3               A     That's correct.

4       356     Q     May that please be marked as the next exhibit.

5     VICE CHAIR: That will be Exhibit 432.

6     MR. ANDERSON: Thank you.

7     MR. ANDERSON:

8       357     Q     And the subject line of the letter is re meeting  
9                   action steps.

10              A     Yes.

11       358     Q     And this is not, obviously, I would think, not the  
12                   March the fifth meeting. It's a later meeting?

13              A     No. I think -- well, there would have been -- It  
14                   would have been triggered initially by the  
15                   March 5th meeting. There would have been some  
16                   subsequent meetings to fine tune our thoughts on

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17           these things, and then this action list would have  
18           come out of the combination of that.

19     359   Q   Okay. And you drafted these action steps, as you  
20           described them, which appear to be 11 items?

21           A   Yes.

22     360   Q   12 being just noting when the next meeting.

23           A   Yes. That's right.

24     361   Q   And then you later sent a further e-mail saying  
25           that John, you were going to talk to Graham on

100

1           Tuesday about his take on RCR and out of that  
2           discussion look at initiating action plan against  
3           RCR for what is owed to us.

4           A   Yes.

5     362   Q   Did you or any of the other members of management  
6           have any -- any sense of panic or deep concern  
7           regarding the collapse of the FIC Group at this  
8           point?

9           A   No. Absolutely not.

10    363   Q   Just so that we know, the RCR situation, can you  
11           just tell us very briefly what that was.

12                   It seems like Mr. Tansowny is saying in  
13           the top e-mail, just so you know, I have already  
14           asked Malcolm to research -- excuse me -- to  
15           search the title on the two previously purchased  
16           Blackhawk lots and they're in RCR's name. We may  
17           need to lien them regardless just to protect our  
18           interests.

19                   Do you have any recollection of that  
20           situation?

21           A   I can't recall the details. I know that RCR owed

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22           us at that stage, but right off the top of the  
23           head, I don't know the details. I am sorry.  
24   364   Q   Okay. If the witness could please have document  
25           ID-ZH.

101

1                           This document appears to be the minutes  
2           of an executive management team retreat from  
3           March 5 and 6, 2008?

4           A   That's correct.

5   365   Q   Do you recognize this document?

6           A   Yes, I do.

7   366   Q   Do you know who prepared it?

8           A   Linda Gould, who was one of our assistants, sat in  
9           on the meetings and typed up minutes.

10   367   Q   Okay. And you've had a chance to review these  
11           minutes prior to testifying here today?

12           A   Yes, I have.

13   368   Q   And to the best of your recollection, do they  
14           accurately reflect the gist of what was discussed?

15           A   Yes, they do.

16   369   Q   Could that please be marked as the next exhibit.

17   VICE CHAIR: Be Exhibit 433.

18   MR. ANDERSON: Thank you.

19   MR. ANDERSON:

20   370   Q   Approximately two-thirds of the way down the page  
21           there's a discussion. It says, a backup plan  
22           needs to be ready in case TD fails. 19,000,000,  
23           30 days foreclosure process.

24                           Can you expand on that?

25           A   Well, as I said, we certainly had, you know, our

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1 feelings about TD. We weren't particularly happy.  
2 We had no expectation that they would call the  
3 loan. It was good until December of 2008. We  
4 were making all the payments. Everything was up  
5 to date. There was no credible reason why -- why  
6 it should -- should be a problem.

7 Most of the dissatisfaction I think was  
8 on our side. We were looking for ways to take out  
9 the TD. Clearly they had plenty of security  
10 there. And in fact removal of some of that  
11 security would give us more flexibility.

12 But, yeah, as I say, we -- we were the  
13 initiators I think of removing TD, as opposed to  
14 TD removing us.

15 371 Q Okay. And then you see under item 2 it says,  
16 scenario if TD called the loan/mortgage.

17 A Yes.

18 372 Q Okay. Can you take us through some of these  
19 things and tell us what they mean, because they  
20 seem to deal with the issue of both equity and  
21 potential cash flow from sale proceeds.

22 A Sure. There's -- As we note there, there's  
23 \$4 million already sitting in equity. 7 million  
24 is first equity. 3 million did not go into phase  
25 1. That's first equity we're talking about phase

103

1 1. Net cost on construction is 64 million  
2 already. I am sorry. \$67 million. They hold a  
3 mortgage on the loan and we need to show that we  
4 are moving progress on the property. Close on



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presales.

5  
6                   There's an indication that we had  
7                   \$5.4 million in presales. 25 percent of those  
8                   proceeds will go to us, 75 percent Toronto  
9                   Dominion Bank. Conversion -- or conversation with  
10                  Wayne Simms shows that our fears were not  
11                  inflated.

12                  And I am not sure what that means,  
13                  actually, because I can't recall.

14                  And then we talk about if we want to get  
15                  rid of TD, what number would we need. 35 million  
16                  phase 1 and phase 2 funded, 10.5 percent interest  
17                  rate, 3.5 million in fees, and secured only by  
18                  Genesis.

19                  And in fact subsequent to this, out of  
20                  the action steps, I believe, we did a more  
21                  detailed analysis of what it would take if we  
22                  wanted to take out TD and where the funds would  
23                  come from.

24       373     Q     Okay. The next item, though, talks about  
25                  Instafund. Can you tell us what that --

104

1               A     Instafund is a lender and is one of the sources we  
2                    turned to for alternate financing. And in fact,  
3                    as we'll show later, we did in fact get an offer  
4                    for financing to take out TD in the amount of  
5                    something over \$18 million.

6       374     Q     And if you go over the page, it says -- the third  
7                    line down from the top -- timeframe on Instafund  
8                    working toward end of March for ending date.

9                    Can you tell us what, if anything, that

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means.

11 A Well, I think it was Steve personal objective  
12 to -- I think it was Steve Rea's personal  
13 objective to try and have something in place with  
14 Instafund as an option by the end of March.

15 MR. ANDERSON: If the witness could -- if you could go to --  
16 I don't know how this shows up. I have it as 5 of  
17 9 at the bottom. It might be 6 on the electronic  
18 version. It says, action to second and third  
19 Tuesday. Yes, that's it. Thank you.

20 MR. ANDERSON:

21 375 Q Just underneath the written part there's a chart.

22 A Yes.

23 376 Q And can you -- do you know who prepared this?

24 A Yes. These were the numbers -- I mean, obviously  
25 Linda Gould typed it up as part of the minutes.

105

1 But they were the input of John that John brought  
2 to the meeting regarding the cost, the current  
3 appraisal, market value and potential profits of  
4 each of the projects.

5 377 Q And I see -- I don't know who totalled it up, but  
6 at the bottom it says --

7 A That's my writing.

8 378 Q That's your writing?

9 A Yes.

10 379 Q And it's, \$66 million?

11 A Yeah. That 66 million assumes you take the 20 --  
12 on the Genesis there's a range of 20 to 25 and the  
13 66 assumes that it's the 20. If it were the 25,  
14 it would be 71 million.

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15 380 Q That's on Genesis?

16 A Yes, that's right.

17 381 Q Did we lose that mic again?

18 A No, I just backed away from it. Sorry. The  
19 answer was yes.

20 382 Q If the witness could please have the document  
21 which is identified as ZI.

22 This document is Executive Management  
23 Minutes from I am assuming February the 2nd of  
24 2008 by the --

25 A Yes, that's correct.

106

1 383 Q Okay. And did you attend that meeting?

2 A Yes, I did.

3 384 Q And do you know who prepared these minutes?

4 A Again, it would have been Linda Gould.

5 385 Q Do they -- Excuse me. Do they accurately reflect  
6 the gist of what was discussed?

7 A Yes, they do.

8 386 Q And could I have that please marked as the next  
9 exhibit?

10 VICE CHAIR: That will be 434.

11 MR. ANDERSON: Thank you.

12 MR. ANDERSON:

13 387 Q Item 1 talks about a China update. Do you  
14 remember what that was about?

15 A Well, that's China Dragon Fund Ltd. and Steve was  
16 working on that and so he gave an update.

17 388 Q If you look at item 2, cash flow, there's  
18 discussion there about Calmar.

19 A Yes.

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20 389 Q And if you go down a little bit, like the last  
21 paragraph of item 2 says, bottom line - no  
22 emergencies at this moment.  
23 A I am sorry. I remember that. Where are you  
24 pointing?  
25 390 Q Right about mid page.

107

1 A Oh, yes. I see it. Bottom line no emergencies at  
2 this moment.  
3 That's right.  
4 391 Q Do you agree with that?  
5 A Yes, I do.  
6 392 Q Now, if you go back up the page, the second item  
7 says, big numbers in real estate. And there's  
8 reference there to John reports we're still in  
9 struggling mode. Solutions to cash sits in  
10 Calmar, well over 30 lots -- excuse me -- well  
11 over 30 sold lots (6 million)?  
12 A Yes.  
13 393 Q Money flowing in should solve our short term  
14 issues.  
15 Is that your understanding?  
16 A Yes. Yes. I mean, it's not the only solution.  
17 This sort of implies that everything hinges  
18 entirely on Calmar, which wasn't the case. But  
19 that is one of the solutions.  
20 394 Q There's a -- Our items 1 through 4 what are they  
21 relate to, just his reporting on what's being  
22 sold?  
23 A Certainly closing on Calmar. Yeah, they would  
24 have been John's reporting on the closing of

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Calmar. Financing letters, TD financing approval. 108

1 And, yeah, those would be John's reporting items.

2 395 Q Please bear with me.

3 Now, you had mentioned earlier that  
4 Mr. Tansowny was given notice of termination.

5 A Yes. That's correct.

6 396 Q Do you know which date that was?

7 A That was May the 12th of 2008.

8 397 Q Was he given a prior notice to that?

9 A He was given notice of termination on April 7th  
10 I believe to take effect July the 7th. That's  
11 his three-month notice.

12 398 Q Okay. And can you tell the panel why that was  
13 advanced to May 12th, 2008?

14 A Yeah. As we discussed Matthew McKechnie had been  
15 doing some research. He went to Alberta and dug  
16 into where we are with all of this. And we  
17 concluded that John had -- was not serving the  
18 best interests of the company, that there was some  
19 irregularities that we weren't too pleased with,  
20 that his performance was -- was suspect. Clearly  
21 the \$10 million over -- over expenditure was on  
22 his watch. We had some suspicions, but no  
23 evidence at that stage that there may be some  
24 irregularities with some of the property  
25 purchases.

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1 And it was a combination of those kind  
2 of things, value for the money, but mostly the  
3 things I just mentioned.

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4 399 Q Okay. And ultimately did the FIC Group end up in  
5 litigation with Mr. Tansowny?

6 A Yes, we did. He -- He commenced an action for  
7 somewhere in the neighbourhood of \$1 million for  
8 commissions that he claimed we owed him. We  
9 subsequently defended and initiated a counterclaim  
10 for somewhere in the neighbourhood of \$30 million  
11 for damages he caused to us.

12 400 Q I will get you the proper exhibit number. Exhibit  
13 58. Could we please have that.

14 As I understand it, Exhibit 58 is a copy  
15 of an affidavit of Mr. Tansowny's together with a  
16 copy of a Statement of Claim, which is found at  
17 page 10 of 38. Have you seen that before?

18 A Yes, I have.

19 401 Q Okay. Is that the claim that Mr. Tansowny brought  
20 against -- I guess it includes a whole pile of  
21 defendants, including various of the FIC Group of  
22 Companies we have discussed here today and  
23 apparently Mr. Lathigee, yourself and Mr. Woods  
24 are also defendants.

25 A Yes. That's correct.

110

1 402 Q Okay. And the counterclaim -- the counterclaim I  
2 think was separately sent. I don't know. I can't  
3 find it here.

4 I think it's -- I think it's Exhibit 60,  
5 if we could please have that.

6 In that document -- it may be that I  
7 won't go through much further, because I thought I  
8 had a hard copy here to work with it a little

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9 easier. -- there are a number of things referred  
10 to which are skip transfers.

11 A Yes.

12 403 Q And can you tell us what your understanding of a  
13 skip transfer is.

14 A Yes. My understanding of it, what we observed was  
15 that -- when we dug into it was that, for example,  
16 a piece of property which John Tansowny purchased  
17 on behalf of FIC Group, purchased on a particular  
18 day for a particular price, was that same day skip  
19 transferred through his friends at a lower price.  
20 So that there was rake offs on a single day of  
21 between 600,000 and a million dollars on some of  
22 these properties. And there's several examples of  
23 those.

24 404 Q Mr. Chairman, I can -- unfortunately, I had a  
25 copy, but I don't have it with me. And I don't

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1 know the page numbers off the top of my head. And  
2 I am wondering, I've got a fair bit to go anyway,  
3 if we could adjourn now and then pick this up and  
4 I can do it more efficiently in the morning.

5 VICE CHAIR: Sure.

6 MR. ANDERSON: Otherwise, I am going to be scrambling  
7 through these pages and I don't want to --

8 MR. CHAPMAN: My friend has already told me he's going to be  
9 giving me a similar indulgence I've asked for in  
10 my cross-examination so I am happy to consent.

11 MR. ANDERSON: I still have, just so you know, an hour and a  
12 half anyway of chief left.

13 RIGHT1: Maybe on that note, then, just as far as scheduling  
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14 goes, what I was alluding to was that I was -- my  
15 friend was erring on the side of caution and I was  
16 expecting that the direct would last for up to two  
17 days, and I was saying just for scheduling  
18 purposes I would expect to begin my  
19 cross-examination of Mr. Pasquill on Thursday  
20 morning at 10, and that's regardless of whether he  
21 finishes at noon or 2:00 or whatever. That's  
22 still my plan and my friend has agreed with this.  
23 So I just wanted to let the panel know in advance.  
24 We certainly won't be here all day long on  
25 Thursday, with that accommodation. So I am hoping  
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1 to narrow it down quite a bit.

2 MR. ANDERSON: I agree with that, as long as my client is  
3 not under cross-examination overnight, because  
4 we've still got witnesses we're preparing and will  
5 need instructions. And we're -- we have the  
6 other -- I am assuming that -- that it won't be  
7 more than a day, because the witness on Friday is  
8 from out of town.

9 MR. CHAPMAN: Yes. Yes. Absolutely. If I am -- I will rue  
10 these words if I am standing here at this point  
11 still in two days and not being and at the very  
12 least saying those are all my questions. I expect  
13 to be done certainly well before the end of the  
14 day on Thursday.

15 VICE CHAIR: Based on what you are telling us now I guess  
16 you will be rueing.

17 MR. ANDERSON: Well, it's just, you know, it's just -- I  
18 think we sometimes can shorten these things



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19               because we try to do -- we do try to get some  
20               stuff done by agreement, as best we can.  
21   VICE CHAIR:   We've seen evidence of that.   All right.   We'll  
22               adjourn for the day then and I will see you  
23               tomorrow morning at 10:00.  
24  
25

# EXHIBIT 7

2013-09-18 Lathigee transcript of September 18, 2013, proceedings.txt

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September 18, 2013 -- 10:00 a.m.

1

THE CHAIR: Good morning.

2

MR. CHAPMAN: Good morning.

3

THE CHAIR: Are you ready, Mr. Anderson?

4

MR. ANDERSON: Thank you.

5

Q Just to get us back to where I was yesterday, and I don't intend to take Mr. Pasquill through some of the other documents that pertain to this Alberta lawsuit, but the initial statement of claim as found at -- I'll give you the BCSC numbers, 207, the initial statement of defence was 208, and the document that I would like to go to is BCSC 209 which I had introduced yesterday. And it speaks for itself. I intend to take Mr. Lathigee through some of the paragraphs. But it's comprised of the first 14 pages are an application by the defendants for amendments to the statement of defence and counterclaim, and 15 through the end are an entered copy of the order allowing the amendment, attaching the amended defence and counterclaim. And I, what I'm going to do is I'm going to ask Mr. Lathigee to go to page 19 out of 27 of BCSC 209. Now, Mr. Lathigee, yesterday you talked about the amendments dealing with the issue of skip transfers.

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A Yes. Excuse me, before we start there, just for the record, I'm Mr. Pasquill, not Mr. Lathigee.

2

Q I'm sorry, okay. I'm trying to cause a conflict of interest at this late part of the hearing, but anyway. Mr. Pasquill, we went through these in my office before?

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A Yes, we did.

8

Q You testified, and I would like you to take, starting at paragraph 15 at the bottom of page 19 of this exhibit, take us through the five transactions that are complained about, and if you don't mind, describe each one in terms of what your knowledge is of the allegation?

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A Sure. I'll just start with since we mentioned paragraph 15, it points out that there are further particulars of Crown Capital and Tansowny's breach of the consulting agreement, and those relate to the skip transfers, and pursuant to which Crown Capital improperly received, directly or indirectly some benefit.

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So will you scroll to the next page, thank you. So skip transfer transaction number 1 is highlighted there, and this is the first example, and this is from the Pigeon Lake acquisition of the Pigeon Lake property. And as we can see from that,

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the FIC acquired that property for 3.85 million, 3,859,800. On May 15th the original sellers sold the property to 1218011 Alberta Limited, nominee Dave A McDonald, who was one of the people that John Tansowny hired to manage some of our project in Genesis, and that was for 2.4 -- 2 million 2,497,800. Then on that same day, 1218011 sold that property to Phoenix Ventures, which is owned

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9 by Dennis O'Dowd, another one of John Tansowny's  
 10 friends, for \$3,059,000. Then on that same day  
 11 Phoenix turned around and sold it to FIC with the  
 12 assistance of John Tansowny to \$3,859,800. So you  
 13 can see that there was an \$800,000 bump in the  
 14 price to John Tansowny's friend Mr. O'Dowd and his  
 15 company Phoenix on that same day.  
 16 Q And at this time was Mr. Tansowny under contract to  
 17 FIC, or the FIC --  
 18 A Yes, he was. His responsibility was to the best  
 19 interest of FIC, and our contention in this claim  
 20 was that he did not do that.  
 21 Q Okay. If you could takes then through skip  
 22 transfer transaction number 2 at paragraph 21?  
 23 A Right. This is related to Calmar I -- the Calmar  
 24 properties are split into two parts, this is Calmar  
 25 I -- in which FIC purchased the property for \$5

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 1 million. As we can see, there was, the predecessor  
 2 on title to Calmar I property was Calmar  
 3 Southbridge Developments Inc., and so far as the  
 4 plaintiffs are aware, Calmar transferred from  
 5 Calmar Southbridge to Phoenix in July of 2007 for a  
 6 transfer amount of 4,200,000, and then immediately  
 7 turned around and sold it through John Tansowny to  
 8 the FIC group for 5 million, with a bump of  
 9 \$800,000.  
 10 Q If you'd go over to paragraph 25 on page 21?  
 11 A Skip transfer number 3. This is related to Devon  
 12 Robin, one of the two Devon properties, and we  
 13 purchased that property for \$1,950,000 on March the  
 14 1st, 2007. On March -- pursuant to a letter of  
 15 intent dated March the 1st, I'm sorry, and the  
 16 purchase of March 23rd. The letter of intent I  
 17 should point out was for \$1,950,000, and  
 18 subsequently Mr. Tansowny manipulated or Crown  
 19 Capital manipulated the price to \$2.55 million.  
 20 This manipulation was done without authorization of  
 21 the FIC group. Subsequently came to our tension  
 22 that on that same day, March 23rd, Phoenix  
 23 purchased that property from 1098872 Alberta  
 24 Limited for \$2.2 million, and then on that same  
 25 day, sold it through John Tansowny to the FIC group

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 1 for \$2,550,000. The result was that the transfer  
 2 gave rise to a payment to Phoenix in the amount of  
 3 \$350,000 for which we believe Crown Capital and  
 4 Tansowny shared directly or indirectly.  
 5 Q If you go to paragraph 30 of transaction number 4?  
 6 A Sure. Transaction number 4 relates to Devon  
 7 Church, and this property was purchased for 990,000  
 8 pursuant to an offer to purchase of April 14th, and  
 9 the title transferred in June of 2008. It  
 10 subsequently came to our attention that immediately  
 11 prior to the offer to purchase dated April 14th,  
 12 Phoenix acquired the Devon property from Devon  
 13 Baptist Church. At the time of this filing we did  
 14 not have the details of the amounts but it appeared  
 15 to have the same patterns as the other three.  
 16 Q If you go to page 22, paragraph 35, and transaction  
 17 number 5.

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18 A Right. This is related to Calmar II, the second  
19 part of that, and an offer to purchase dated  
20 October 15th, 2007, for 6,330,000 pursuant to an  
21 offer dated October 15th, as I said. Again,  
22 there's a relationship between Phoenix, Crown  
23 Capital and Tansowny in this. We don't have  
24 details of a particular flip or skip transfer in  
25 this case, but it became, subsequently became

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2 apparent to the defendants that Phoenix improperly  
3 received payment of \$350,000 in respect to this  
4 purchase.  
5 Q Thank you. If the witness could please have  
6 document identified as ZZZF.  
7 A Just before we leave this, I should point out that  
8 during the time frame of 2008 which we're talking  
9 about, it is here we were unaware of this skip  
10 transfers. This came to light later.  
11 Q Yesterday you had mentioned an offer that had been  
12 received by FIC investments Ltd. concerning the  
13 Crossroads property?  
14 A Yes, I do.  
15 Q Okay, and the document you have before you, is that  
16 a copy of that offer?  
17 A Yes, it is.  
18 MR. ANDERSON: And I'd ask that that be marked as the  
19 next exhibit, please.  
20 THE CHAIR: That will be number 435, I believe.  
21 MR. ANDERSON:  
22 Q And if you could go to page 6 of 9, I don't have a  
23 copy. It would be -- it's 6 of 9 in the lower  
24 right-hand corner, and it should be at the top  
25 paragraph, 8, closing. If you look at paragraph  
8.1 of this agreement, the closing date is December

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2 9, 2008?  
3 A That's correct, yes. And I might also point out  
4 you may be coming to it, but the amount of it was  
5 7.3 million dollars.  
6 Q Right. And did it close on that date?  
7 A No, it didn't.  
8 Q Okay.  
9 A But through the period of 2008 in its entirety, we  
10 fully expected it would. We expected the money to  
11 flow.  
12 Q If the witness could have BCSC 409, which are the  
13 combined financial statements for the period ended  
14 January 31, 2008. We've already been to this once  
15 before. If you could go to page 8 of 10, please.  
16 Item 12 is, do you see that item?  
17 A Yes, I do.  
18 Q Can you explain to the panel what those deposits  
19 represent?  
20 A Those were deposits against a purchase of  
21 properties, and this separated into those from  
22 builders to those from retail buyers.  
23 Q If the witness could now have BCSC 133 which are  
24 the March 31, 2008 combined statements. Now, if  
25 you look at the first page, Mr. Pasquill, it  
appears these were completed on September the 8th,

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1 2008?  
 2 A That's correct.  
 3 Q Okay. And Mr. Woods e-mails yourself, Mr. Lathigee  
 4 and Mr. McKechnie these statements?  
 5 A Yes.  
 6 Q Mr. Woods will be here, he will give evidence on  
 7 this as well, but he notes that almost 10 million  
 8 in asset growth during the month as a result of  
 9 obtaining and 8.94 million loan from liberty?  
 10 A Yes.  
 11 Q And purchasing Calmar II and other assets?  
 12 A Right.  
 13 Q Book value of assets nearing 100 million?  
 14 A That's correct.  
 15 Q He notes the portfolio investments are a  
 16 consolidated punch in the stomach in March?  
 17 A Yes.  
 18 Q And that's in reference to what, says tradeable  
 19 securities in the company --  
 20 A Exactly right, yes.  
 21 Q And the rest of the things were more or less  
 22 self-explanatory. I'd like you to go over to page  
 23 3 of 9, if you would. Total assets appear to be  
 24 \$97,288,000?  
 25 A That's correct, up from February.

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1 Q Against liabilities of approximately 50 million?  
 2 A That's correct.  
 3 Q And if you go over to page 7 of 9, as of -- and  
 4 under item number 9 of deposits, approximately 4  
 5 million deposits?  
 6 A That's correct.  
 7 Q Up 1.3 million from February 29th?  
 8 A That's correct.  
 9 Q Do you know what the difference was in terms of the  
 10 increase?  
 11 A It would be lot sale activity. You recall that  
 12 yesterday we had reports from John Tansowny about  
 13 sales and deposits and so on.  
 14 Q If the witness could please have document ID ZV as  
 15 in Victor. We don't have a cover e-mail here, but  
 16 this is the combined financial statement for the  
 17 FIC group for the period ended May 31, 2008?  
 18 A Yes, it is.  
 19 Q And if you could go, please, to the second page,  
 20 and the total assets appear to have been valued at  
 21 \$108,453,000?  
 22 A That's correct, and that's up from April.  
 23 Q And the liabilities are --  
 24 A Are down from April.  
 25 Q They're about 4 million from the month before --

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1 excuse me, down?  
 2 A Down.  
 3 Q At 54 million; that's right?  
 4 A Yes, that's correct.  
 5 Q If you could go to, unfortunately -- the one at the  
 6 top, two more, three more pages over and it should  
 7 say item 4, portfolio investments. And under item  
 8 5, there is two references, one to Mohawk re

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9 foreclosed homes in US dollars, investments made  
10 under the Rogue deal?  
11 A Yes, that's correct.  
12 Q We'll come back to that in more depth. And if you  
13 could go two more pages to -- one at the top it  
14 will say 9, item 9, accounts payable and accrued  
15 liabilities, please. And the deposits indicate  
16 that there had been deposits of almost 5.8 million  
17 as at the end of April 2008, and 5,526,000  
18 approximately as of May 31, 2008?  
19 A That's correct.  
20 Q And item 13 at the bottom of the page, we see the  
21 loans to various financial institutions of  
22 26,753,000?  
23 A That's correct.  
24 Q If the witness could please have --  
25 THE CHAIR: would you like that document entered?

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1 MR. ANDERSON: Oh, yes, please.  
2 THE CHAIR: It will be number 436.  
3 MR. ANDERSON:  
4 Q If the witness could have ID number ZU. Mr.  
5 Pasquill, you should have before you document ZU  
6 which starts with an e-mail from Mr. Woods to  
7 yourself, Mr. Lathigee and Mr. McKechnie dated  
8 October 22, 2008?  
9 A Yes, I do.  
10 Q Okay, and did you receive this document on or about  
11 that date?  
12 A Yes, I did.  
13 Q Could that please be marked before I forget,  
14 Mr. Chairman.  
15 THE CHAIR: It will be Exhibit 437.  
16 MR. ANDERSON:  
17 Q And are these the financial statements, combined  
18 financial statements for the FIC group as at June  
19 30, 2008?  
20 A You'd have to flip the page for me to verify it,  
21 but I believe yes, that's correct.  
22 Q Okay. If we could go one page further, were the  
23 total assets \$113,586,000 in round figures?  
24 A That's correct; again, up from May.  
25 Q Against total liabilities of almost 55 million?

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1 A That's correct.  
2 Q And if we could go one page further, please.  
3 There's a note to, says restricted cash of  
4 \$5,456,000 in round numbers?  
5 A That's correct.  
6 Q Which is up from May 31, 2008. Can you tell us  
7 what, why this money was tied up?  
8 A Sure. The first amount was a requirement of the  
9 Toronto Dominion Bank to hold an account which was  
10 for restricted use. We had processed some credit  
11 cards around that time, and VanCity had set aside  
12 130,000 for security use, the card processing. And  
13 then there's amounts held by Trevoy which would  
14 have been amounts in trust for purchases of  
15 property.  
16 Q If we could go over 3 pages to the purchase that  
17 has item 9 at the top. You see on 10, deposits,

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 18 slightly -- well, \$5,268,000 in round numbers?

19 A That's correct.

20 Q Were audited financial statements prepared for the  
 21 individual companies?

22 A Yes, they were.

23 Q Were audited and unaudited financial statements  
 24 posted on the web site regularly?

25 A Yes, they were.

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1 Q And I think you said yesterday that anybody who was  
 2 a member or shareholder could access that web site?

3 A Yes, that's right.

4 Q Including the financial statements?

5 A Yes.

6 Q If the witness could please have ID ZX. This is a  
 7 two page document, Mr. Pasquill, and what is  
 8 reflected there are two share certificates in your  
 9 name of the capital of FIC Investments Ltd.?

10 A That's correct.

11 Q And how did you come to acquire these shares?

12 A One is dated for April and one is dated for July of  
 13 2008. And on those occasions I exercised options  
 14 and purchased shares in aggregate over 70,000  
 15 shares I purchased. Clearly that is not something  
 16 I would have done had I thought that the company  
 17 was near insolvency. It's -- I just would not have  
 18 done this. This reflected my faith that the  
 19 company would get through this and we'd realize  
 20 sizeable profits from these projects. But before  
 21 we leave the financial statements, folks, I just  
 22 have to say that in light of those numbers which  
 23 are very strong, the notion that we were near  
 24 insolvency or that we believed we were near  
 25 insolvency is just plain wrong.

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1 Q Just, you indicated you bought 70,000 shares. Are  
 2 you able to tell the panel what the purchase price  
 3 for those shares was?

4 A Yes. They were one dollar per share.

5 Q If the witness could have BCSC 59, please. I don't  
 6 know, I didn't ask to have these marked,  
 7 Mr. Chairman. I don't think I did.

8 THE CHAIR: No. That's Exhibit 438.

9 MR. ANDERSON: Thank you.

10 Q You have before you BCSC document 59, which is an  
 11 offering memorandum with a date of February 1,  
 12 2008?

13 A Yes.

14 Q In relation to WBIC Canada Ltd.?

15 A That's correct.

16 Q And WBIC Canada Ltd., was it one of the FIC  
 17 entities that was raising funds in 2008?

18 A Yes, that's correct.

19 Q I just want to take you through a couple of  
 20 sections of this document. If you could please go  
 21 to page 5 of 61. You see item 1.2, approximately a  
 22 third of the way down the page, this is use of net  
 23 proceeds?

24 A Yes I do.

25 Q And what were the net proceeds of this financing

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1 for?  
 2 A Investing in publically traded companies and real  
 3 estate.  
 4 Q And 1.3 basically says we intend to spend the note  
 5 proceeds as stated reallocate funds only for sound  
 6 business reasons?  
 7 A That's correct.  
 8 Q And do you know how, are you able to say how these  
 9 funds were spent generically, funds raised in this  
 10 offer?  
 11 A The funds offering generically, the money was  
 12 invested either directly or indirectly in the  
 13 Alberta real estate projects.  
 14 Q And item 1.4 talks about working capital?  
 15 A Yes, it does.  
 16 Q And can you tell us what your knowledge of that is?  
 17 A well, we had a current working capital deficit of  
 18 2,099,622 as of November 30th, 2007.  
 19 Q If you could please go to page 25 of 61. Item 8,  
 20 risk factors, in your view, were the risk factors  
 21 related to this offering set out accurately?  
 22 A Yes, in my view they were.  
 23 Q And if you go down to approximately half-way down  
 24 the page it says these Kurt securities are not  
 25 suited for investors who might need to dispose of

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1 their investment in a timely manner do I wrote that  
 2 directly?  
 3 A I've got to find it on the page here. Sounds  
 4 familiar but where is it.  
 5 Q The last sentence of the bolded paragraph  
 6 immediately above where it says --  
 7 A Yes, I see it now. Yes, that is correct. These  
 8 securities are not suit for investors who may need  
 9 to dispose of their investments in a timely manner.  
 10 Q Page 27 of 61, please. I don't intend to read it  
 11 out, but the security, the offering is described as  
 12 a highly speculative investment?  
 13 A Yes, that's correct.  
 14 Q And under Nature of Investment, there is a  
 15 disclosure of certain things may be beyond the  
 16 control of management?  
 17 A Yes that's correct.  
 18 Q Including downturns in the economy generally?  
 19 A Yes, exactly.  
 20 Q Downturn in the markets generally?  
 21 A Yes.  
 22 Q If the witness could please have BCSC 49.  
 23 Mr. Pasquill, you should have before you an  
 24 offering memorandum dated April 30, 2008, for the  
 25 FIC Foreclosure Fund Ltd.?

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1 A That is correct.  
 2 Q And I take you to a few things in this. If the  
 3 witness -- if you could please go to page 4 of 27.  
 4 1.2 in the middle of that page talks about use of  
 5 net proceeds?  
 6 A Yes it does.  
 7 Q And it says there foreclosures and other real  
 8 estate investments?

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9 A That is correct.  
 10 Q Underneath that, item 1.3, reallocation, the corpse  
 11 intends to spend the note proceeds as stated and  
 12 will reallocate funds for sound business reasons as  
 13 market opportunities dictate?  
 14 A That is correct.  
 15 MR. CHAPMAN: I'm just going to stand up at this point.  
 16 I haven't -- I have resisted so far, but this is a  
 17 direct-examination. The offering memorandum is --  
 18 the offering memorandum, it says what it says, and  
 19 obviously the panel is going to decide the issue of  
 20 the case. But if my friend has a question about  
 21 the OM, if he wants to have Mr. Pasquill read the  
 22 OM I won't object to that, but I will ask if he has  
 23 open ended questions about what he is putting to  
 24 him. It says what it says, and I would ask him to  
 25 ask a question in open ended manner if he has

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 1 something to put to Mr. Pasquill about his certain  
 2 specific portion, so far this morning most of the  
 3 evidence appears to be coming from Mr. Anderson and  
 4 Mr. Pasquill been saying yes. Again this is a  
 5 direct-examination not a cross-examination, so I  
 6 just ask my friend to perhaps rain that in a bit  
 7 and keep that in mind when we go through this  
 8 offering memorandum because again this is a  
 9 direct-examination and it's a document.  
 10 MR. ANDERSON: I am fine to do that, it doesn't matter  
 11 to me.  
 12 Q In your mind, were the funds spent that were raised  
 13 on this offering in accordance with the use of  
 14 proceeds and reallocation?  
 15 A Yes, in my mind that's exactly what we did.  
 16 Q If you could go to page 5, please. Do you see  
 17 approximately a third of the way down the page the  
 18 words general investment strategy?  
 19 A I see that.  
 20 Q Yes. And as you reflect back, did the management  
 21 follow the general investment strategy described in  
 22 this offering memorandum?  
 23 A Yes, we did. And I can say in there that it talks  
 24 about identifying foreclosure, investment  
 25 opportunity, but it also says the corporation will

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 1 look at other suitable real estate investment  
 2 opportunities as they arise.  
 3 Q If we could please go to page 6 of 27. If you go  
 4 approximately a quarter of the way down the page,  
 5 clause 1.7 is headed development of business. Do  
 6 you see that?  
 7 A I do, yes.  
 8 Q Does that paragraph accurately describe, I'm  
 9 thinking specifically from about half-way down the  
 10 paragraph to the end, what the company ultimately  
 11 did?  
 12 A Just let me read the part you're saying. Yes, it  
 13 does, and it specifically talks about what happens  
 14 in the short run until such time as enough  
 15 foreclosure properties can be located.  
 16 Q At page 17 of 27, please. If you could just read  
 17 that to yourself, the paragraph headed speculative

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18 investment and then just tell me when you finish  
19 reading it.  
20 A Yes, I've read it.  
21 Q As you reflect back, was that what is set out there  
22 true?  
23 A Yes, it was.  
24 Q Okay. The nature of investment, read that to  
25 yourself and tell me when you've finished, please.

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1 A Yes.  
2 Q Did you -- and you certified this and later  
3 believed that this was truthful disclosure?  
4 A Yes, I did.  
5 Q And we're going to come to it later, but was there  
6 a downturn in the economy at any time in 2008?  
7 A Oh, yes, yes. It was in the fall of 2008, well  
8 after this was -- these monies were raised.  
9 Q Then the next paragraph says "available  
10 opportunities". Did that accurately describe the  
11 intent, as far as you're concerned, at the time  
12 this offering memorandum was assigned?  
13 A Yes, it does.  
14 Q And we'll come later to how the money was used. I  
15 want to get to the point, Mr. Chairman, of  
16 describing the money that was invested in the  
17 states, foreclosures. If the witness could please  
18 have ID ZW. These, the document here is a couple  
19 of, several interest agreements?  
20 A Yes.  
21 Q Can you have a look at them, and tell the panel  
22 whether you recognize them or not?  
23 A Yes, I do.  
24 Q Okay. And are these interest agreements between  
25 various FIC companies?

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1 A Yes, they are.  
2 Q Could they please be marked as the next exhibit.  
3 THE CHAIR: 439.  
4 MR. ANDERSON:  
5 Q Perhaps, Mr. Pasquill, you could just take us  
6 through these documents?  
7 A Sure.  
8 Q Starting from the first page, and it appears to  
9 have a date, although the exact day is not in it,  
10 looks like October 2005?  
11 A Yes, October 2005, sure.  
12 Q Keep your voice up, please.  
13 A Yes, October of 2005 they're dated.  
14 Q And can you -- I mean, the document more or less  
15 speaks for itself, but can you tell us what it is?  
16 A Basically it's an agreement whereby the FIC group  
17 of companies and the Freedom Investment Club, had  
18 identifies that monies have been loaned, and it  
19 identifies the rate of interest that will be paid.  
20 Obviously we were interested in keeping the  
21 interests of each club protected, and that where  
22 monies moved between the clubs, it was done so as  
23 an investment, earning a respectable rate of  
24 interest.  
25 Q And is the same so with respect to the balance of

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1 these agreements?

2 A Yes, that's correct.

3 Q If the witness could have ID number ZZA. Were  
4 there three reports of exempt distribution filed in  
5 relation to the foreclosure fund?

6 A Yes, there were.

7 Q And we have the evidence of Ms. Lyons and her  
8 spreadsheet that there were 31 investors reflected  
9 in the report of exempt distribution that was filed  
10 with the B.C. Securities Commission in November of  
11 2008?

12 A That's correct.

13 Q And did Mr. Ahmed request you to get true copies of  
14 the subscription agreements of each of those 31  
15 investors?

16 A Yes, he did.

17 Q And you provided them to him?

18 A I did.

19 Q And is this document ZZA one of those 31  
20 subscriptions?

21 A Yes, it is.

22 Q And I don't know if there is an issue, but I can  
23 take you through each one. These documents  
24 continue through until ID ZZZE, and perhaps --  
25 perhaps we can go through them and identify them as

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1 being the balance of the 30 subscriptions. I would  
2 like to think I didn't have to do this, but I'm  
3 prepared. What my friend is saying, and it's not a  
4 problem, I don't know if it will be true, Mr.  
5 Pasquill, but he wants a couple of copies of  
6 subscription agreements from the two prior groups  
7 that were exempt distribution reports were filed,  
8 and I'm perfectly happy to do that. Subscription  
9 agreements were never requested during the  
10 investigation, and the purpose of me putting these  
11 31 subscription agreements into evidence is to show  
12 when these funds were raised in the context of the  
13 time as things changed through that summer, because  
14 I think it's probably obvious to you that come  
15 September of 2008, the world had changed much more  
16 dramatically than any time in, I don't know,  
17 probably before the '87 crash, which was bad  
18 enough, or the tech bubble. And just to  
19 demonstrate the time-line of when these funds were  
20 raised, although the exempt distribution report was  
21 filed late I'm just trying to establish when the  
22 last funds were actually raised from investors?

23 THE CHAIR: Well, Mr. Chapman, is there any contention  
24 that the items ID ZZA to ID ZZZE are the  
25 subscription agreements in question, and can we

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1 just enter them in a batch?

2 MR. CHAPMAN: We can. Just as I said, I received these  
3 yesterday, I've seen them, so I'm prepared to do  
4 that, but I just wanted to make it clear that I --  
5 if they were this easy to obtain them, I would be  
6 interested in getting some of the very, very first  
7 ones that were ready as well, and with that I'm  
8 happy to let these go in by --

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9 THE CHAIR: So all I'm suggesting is with that, maybe  
 10 you would save the time of not having to put all 31  
 11 to the witness.  
 12 MR. ANDERSON: Absolutely.  
 13 Q Now, I'll just perhaps ask Mr. Pasquill, Mr.  
 14 Pasquill, are the other ones in binders and readily  
 15 available?  
 16 A They are. We don't have them here, obviously, but  
 17 we can make them available.  
 18 Q Okay. What I'm inclined to probably do is if  
 19 Mr. Chapman wants, I could let him come over to my  
 20 office have a look at the originals decide what he  
 21 wants and take them away. I don't know if I can do  
 22 them this afternoon, but probably --  
 23 A No, actually the -- no, we've got, here in your  
 24 office we've got the November ones.  
 25 Q No, but I'm talking about the other ones.

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 1 A Yeah, they're not in your office. I have them in  
 2 our storage, but not at your office.  
 3 Q How long will it take you to get them?  
 4 A I can get them probably by the end of the day,  
 5 depending on when we get finished here.  
 6 MR. ANDERSON: Well, and what we could always do so --  
 7 well, I'm going to try to get them today, if not  
 8 first thing in the morning for Mr. Chapman. But if  
 9 push comes to shove on it, we could always put them  
 10 in through Mr. Woods, because he was an employee at  
 11 that time anyway.  
 12 THE CHAIR: You can do that, or else when Mr. Chapman  
 13 has seen them and considered them, we could just  
 14 enter them by consent.  
 15 MR. CHAPMAN: And I should just, on that point, I may  
 16 not put them in. But if these were -- I just want  
 17 to be able to see them.  
 18 THE CHAIR: Sure. Okay. Well, in the meantime then,  
 19 are we going to enter ID ZZA through ID ZZZE as  
 20 exhibits 440 through 470 respectively?  
 21 MR. ANDERSON: Thank you.  
 22 THE CHAIR: Okay, I think I have that correctly. I'm  
 23 not sure, the hearing officer will straighten me  
 24 out if I erred.  
 25 MR. ANDERSON: Thank you.

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 1 MR. CHAPMAN: May I go back a second, what that puts us  
 2 up to for the last --  
 3 THE CHAIR: After we did that, I think the next exhibit  
 4 number will be 471, but you can just check at the  
 5 break.  
 6 MR. ANDERSON: I'm trusting you, Mr. Chairman.  
 7 THE CHAIR: I'll make no comment on the wisdom of that.  
 8 MR. ANDERSON:  
 9 Q Now, the subscription agreements, if the subscriber  
 10 was a Canadian, would it include a signed risk  
 11 acknowledgment?  
 12 A Yes. Each one of them had that.  
 13 Q And if the subscriber was an American citizen, what  
 14 would it have?  
 15 A It would have the appropriate forms, and I believe  
 16 the Americans were a credit, so.  
 17 Q Now, you reviewed these 31 agreements --

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18 A Yes.  
 19 Q And were you able to say the latest date that a  
 20 subscription agreement was executed?  
 21 A I think you'll find that it was August 21st.  
 22 Q Of what year?  
 23 A 2008.  
 24 Q If the witness could please have BCSC 73, which is  
 25 a transcript of the call concerning the note,

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 1 promissory note. And my question to you is, you  
 2 heard part of the call played by Mr. Chapman when  
 3 Ms. Lyon was testifying?  
 4 A Yes, I did.  
 5 Q And you spoke for a short period during the  
 6 conference call?  
 7 A Yes.  
 8 Q At page 21 of this document, at lines 1 through 4,  
 9 it states there, I don't intend to read it, you can  
 10 read it to yourself, that the note was not secured?  
 11 A That's correct.  
 12 Q Was that true?  
 13 A Yes, it was not secured.  
 14 Q As of this, if you go back to page 20, as of the  
 15 date of this call, did you believe that the real  
 16 estate projects of the FIC group in Edmonton were  
 17 valued over a hundred million dollars?  
 18 A Yes, absolutely.  
 19 Q The funds raised pursuant to the promissory note,  
 20 which is around 10 million if my memory serves me  
 21 correctly, how were those funds spent?  
 22 A They were spent either directly or indirectly on  
 23 the Alberta projects.  
 24 Q If the witness could please have BCSC 142. This  
 25 document, sir, is an e-mail dated March 3rd, 2008,

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 1 from you to Mr. Lathigee, Mr. Tansowny, Mr. Woods,  
 2 Keith and I'm not sure who that is, as well as  
 3 Steve Rea?  
 4 A Yes, that's correct.  
 5 Q About half-way down, just a little bit more than  
 6 half-way through it you'll see you state the notes  
 7 are not -- the words are not underlined, secured by  
 8 the real estate projects?  
 9 A That's correct.  
 10 Q Was it important to you that it be clear to  
 11 everybody, including potential investors, that the  
 12 notes were not secured by the real estate projects?  
 13 A Yes. It was important to me, which is why I  
 14 underlined it.  
 15 Q If the witness could please be shown BCSC 48, which  
 16 is the transcript with respect to the conference  
 17 call regarding foreclosure fund. And I only have  
 18 one question, did you participate in this  
 19 conference call?  
 20 A No, I was not there. I didn't participate so I  
 21 really can't comment on this.  
 22 Q Now, talking about the foreclosure fund, we know, I  
 23 think, that we discussed this already, 1 million  
 24 400,000 US went to Mohawk with respect to acquiring  
 25 properties in foreclosure in the United States?

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1 A That's correct.  
 2 Q I'd like you to explain what Mohawk is to start  
 3 with?  
 4 A Mohawk was a US company which, whose objective was  
 5 to acquire, gather either directly from the banks  
 6 or directly foreclosed properties. They had an  
 7 inventory which they then sold to us. They also  
 8 provided a management service for that, for those  
 9 properties, and with a view to either selling the  
 10 paper or ultimately selling the property. And we  
 11 bought, we bought a hundred of these homes at  
 12 \$14,000 a piece.  
 13 Q And where were most of them situate?  
 14 A In the United States.  
 15 Q Any particular part?  
 16 A They're scattered throughout. There was some in  
 17 Michigan, some in Kansas, some in Missouri, various  
 18 places.  
 19 Q And can you tell us what happened with that  
 20 investment post, I think it was April of 2008?  
 21 A Right. We had high hopes for this investment. The  
 22 basic concept sounded very sound, very good. We  
 23 had sent Matthew McKechnie down to have a look at  
 24 them, and he was satisfied with them. And things  
 25 seemed to be moving along fairly well through the

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1 summer. When we got into the fall season it became  
 2 clear that this company, and really through that  
 3 period we were trying to assess how well they were  
 4 doing, we began to be disappointed with the  
 5 results. And in fact it was clear by well into the  
 6 fall season that they simply did not have the  
 7 inventory, they simply did not have the  
 8 infrastructure and the capability to handle large  
 9 amounts of purchase.  
 10 Q And as a result, was any more money --  
 11 A No.  
 12 Q -- invested through that company?  
 13 A We did not.  
 14 Q There is another company --  
 15 A And I might add it was fortunate that we didn't,  
 16 because they did not perform well in the end.  
 17 Q Is there litigation involving now?  
 18 A Yes, there has been.  
 19 Q Okay. There's another company with whom the FIC  
 20 Foreclosure Fund dealt called Rogue?  
 21 A Yes, Rogue. Rogue Investors LLC.  
 22 Q And can you tell us about what it was that Rogue  
 23 did?  
 24 A Rogue did similar kind of thing, only theirs was  
 25 not -- theirs was not one of attaching the same

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1 kind of disposition. They were simply bought  
 2 higher end, larger properties out of foreclosure,  
 3 and with a view to doing, in some cases fixing them  
 4 up and in some cases simply selling.  
 5 Q Who was the principal of Rogue?  
 6 A Brian Rundel [phonetic] was the principal  
 7 initially, and unfortunately on July 1st of 2008,  
 8 he died which put their company into a bit of a



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9 tailspin in terms of taking on any more business.  
 10 And ultimately their company just didn't, didn't  
 11 carry on the business in the long run.  
 12 Q why wasn't the full ten million raised spent with  
 13 Rogue and/or Mohawk?  
 14 A well, as we mentioned in the offering memorandum,  
 15 there's a question of availability of inventory,  
 16 and also we'd these 2 suppliers. Quite frankly, we  
 17 wanted to wait for a couple of reasons. One is, it  
 18 looked like probably the prices hadn't bottomed out  
 19 yet and there might be better deals down the road,  
 20 and secondly, we were trying to test these two  
 21 suppliers to see which one would be most suitable  
 22 for us. And so we made these initial investments,  
 23 and waited to see how that would develop, see where  
 24 the property prices were going, what the inventory  
 25 would be like, because there wasn't immediate

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 1 inventory available to that level.  
 2 Q Okay. If the witness could please have BCSC 46.  
 3 Do you recognize this document, sir?  
 4 A I recognize the information. Its format is, I  
 5 would say I need some refresher as to where it came  
 6 from.  
 7 Q Okay. If you look at the bottom of the page, it  
 8 appears that it was printed from a web site, do you  
 9 see that?  
 10 A I can't see. The bottom doesn't show here. Can we  
 11 move it up?  
 12 Q It won't go any higher?  
 13 A Yes, it looks like it could be from a web site.  
 14 Q Okay. And if you could go and look at the pages  
 15 that follow behind it, are you able to recognize  
 16 the information there as coming from the company?  
 17 A Yes, that's correct.  
 18 Q Did you believe that the November 30, 2008  
 19 financial statements for FIC foreclosure fund were  
 20 posted on the web site?  
 21 A Yes.  
 22 Q If you could go to page 4 of 10, please. The  
 23 paragraph, there's a paragraph, the top paragraph  
 24 on the page, can you read that to yourself and when  
 25 you've finished, please tell me.

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 1 A Yes.  
 2 Q Okay. Was that true?  
 3 A Yes.  
 4 Q What is stated there?  
 5 A Just a sec here.  
 6 Q If you could go to page 9 of 10, and note 1,  
 7 related party, due from related parties, and just  
 8 have a look at that, and I'm going to ask you a  
 9 question once you've finished reviewing it.  
 10 A Yes.  
 11 Q Does that accurately set out, as far as you know,  
 12 the amounts due from related party?  
 13 A Yes. The amounts due and the interest, the  
 14 interest rate.  
 15 Q If the witness could please have BCSC 423. This is  
 16 a four page document. Do you recognize it, Mr. --  
 17 A Yes, I do.



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18 Q And is this the financial statement for the FIC  
19 foreclosure Ltd. for the period ended May 31, 2008?  
20 A Yes.  
21 Q And if we could just scroll through it I want to  
22 get to the related parties. And it, the document  
23 indicates on the third page due from related  
24 parties, at that point, the sum of \$4,871,000 in  
25 round figures?

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1 A Yes, that's correct.  
2 Q Did you believe that was the correct amount at that  
3 time?  
4 A Yes, I did.  
5 Q Would this have been posted on the web site for the  
6 FIC group when it was prepared?  
7 A Yes, it would have been posted.  
8 Q If the witness could please have BCSC 158. This  
9 document is an e-mail string between a number of  
10 different people including yourself; is that right?  
11 A Yes.  
12 Q And I'd like to take you to page 4 of 6, and in  
13 particular there is an e-mail at the bottom of the  
14 page dated July 24th, 2008?  
15 A Yes. I see that.  
16 Q And it's from a Glenys, G-l-e-n-y-s, Pike, P-i-k-e,  
17 to you?  
18 A Yes, that's right.  
19 Q And if you go over to page 5, she's raising  
20 questions about the use of the funds?  
21 A Yes, that's correct.  
22 Q Okay and who is Glenys Pike?  
23 A One of the shareholders.  
24 Q And you responded a few days later?  
25 A Yes, the screen we just saw, I believe was my

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1 response.  
2 Q Page 4. And if you look in the third paragraph of  
3 your letter, and read it to yourself; tell me when  
4 you finish reading it. And just for the record  
5 while he does that, I'll say that the paragraph  
6 "there has been nearly 10 million raised for the  
7 fund," just so I have identified it for the record.  
8 A Yes, I've read it.  
9 Q Is what's set out in that paragraph true?  
10 A Yes, that's correct.  
11 Q And what about the next paragraph which starts "we  
12 are not ignoring the fund"?  
13 A Yes, that is correct.  
14 Q Is that a good time, Mr. Chairman, to take the  
15 morning break?  
16 THE CHAIR: It is. Eleven thirty-fives.  
17 MR. ANDERSON: Thank you.  
18 (PROCEEDINGS ADJOURNED AT 11:15 A.M.)  
19 (PROCEEDINGS RECONVENED AT 11:35 A.M.)  
20 MR. ANDERSON:  
21 Q I want to talk a little bit about the compensation  
22 that yourself and Mr. Lathigee received, and I'd  
23 ask the witness to be shown BCSC 184. Now, Mr.  
24 Pasquill, this appears to be a response to a BCSC  
25 request for information?

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1 A That's correct.  
 2 Q And who prepared it?  
 3 A That would have been prepared, I believe, by Graham  
 4 Woods.  
 5 Q And was he still there in \$2,009?  
 6 A Oh, no, I'm sorry. Then it wouldn't have been  
 7 produced by Graham Woods. It would have been  
 8 produced by either Bill Baker or Bonnie Zang  
 9 [phonetic].  
 10 Q Okay. And --  
 11 A From our accounting department.  
 12 Q The first paragraph talks about the compensation  
 13 received by Mr. Lathigee or companies controlled by  
 14 him. Is that right?  
 15 A Yes, that's right.  
 16 Q And to the best of your knowledge, is that \$785,779  
 17 the amount that he received directly or indirectly  
 18 between November 1, 2006 and August 31, 2009?  
 19 A Yes, that's correct.  
 20 Q And the next paragraph deals with your compensation  
 21 for the same period?  
 22 A That's correct.  
 23 Q And is that accurate?  
 24 A Yes.  
 25 Q I want to talk now about the relationship that FIC

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1 management had with the TD Bank?  
 2 A Yes.  
 3 Q And I'd ask you first of all to describe the  
 4 relationship with the bank up to the end of  
 5 November 2008?  
 6 A Our relationship with the bank was certainly  
 7 cordial, and we had ongoing communications back and  
 8 forth with them. We didn't particularly like some  
 9 of the demands that they put on us, the restriction  
 10 on the trading account and the money that had to be  
 11 set aside and held. Subsequently of course, we get  
 12 into their exorbitant charges for extending, but at  
 13 -- during 2008, any particular differences, you  
 14 know, if it looked like the value of the trading  
 15 account was going to dip, we put -- we  
 16 communicated, we put more money in, we brought it  
 17 up. And there's ongoing indication from them that  
 18 they're happy with us, and we have every reason to  
 19 believe that the loan will continue to its end in  
 20 December of 2008, and in fact, that they would  
 21 offer an extension.  
 22 Q Okay. If the witness could please have BCSC 103.  
 23 Mr. Pasquill, you should have before you an  
 24 agreement dated February 4, 2009, between the  
 25 Toronto Dominion Bank and a variety of FIC

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1 entities?  
 2 A Yes, I do.  
 3 Q And is this a forbearance agreement?  
 4 A Yes, it is.  
 5 Q And was there an earlier one than this?  
 6 A No, I believe this was the first one, because the  
 7 original, original loan went to December of 2008,  
 8 and the fact that this is dated February is simply

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9 the catchup with the paperwork on our agreement to  
10 carry on.  
11 Q If the witness could please have ID-Q. ID-Q is a 5  
12 page e-mail, at the top of it on page 1 it's an  
13 e-mail from Steve Rea dated May the 13th, 2008 to  
14 Kevin Hamaoka as well as a number of other people,  
15 including yourself are copied on it; is that right?  
16 A That's correct.  
17 Q Okay. Now, Mr. and I don't know if I'm pronouncing  
18 it right, Hamaoka, who is he?  
19 A He is the representative of Toronto Dominion Bank.  
20 Q Okay. And we see, if you go half-way down the  
21 page, it says lien remediation?  
22 A Yes.  
23 Q Completed?  
24 A Yes.  
25 Q Can you tell us what your understanding of that

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1 was?  
2 A Sure. Just to set the stage, this document is  
3 again part of the communications back and forth  
4 between the bank and ourselves, and Steve is giving  
5 the bank an update on some of things that they had  
6 been discussing. Mentioned earlier by opposing  
7 counsel was the fact that there were two liens on  
8 the property. First of all, I should explain that  
9 those liens were actually duplicate accounting  
10 because Kran actually was employed by Gentech, and  
11 Gentech's lien of \$8 million included the \$5  
12 million of Kran. So it was not 13, it was 8  
13 million. At any rate, what this reports and is  
14 correct, that we negotiated and established an  
15 agreement with Kran and Gentech, that they would  
16 remove the lien on stage 1, 1-A, which was the lots  
17 that we had developed and which were available for  
18 sale. What that meant, of course, was that the  
19 lien really had no effect on cash flow whatsoever,  
20 because it now applied to stage 2. And if it  
21 survived, because we were challenging it, given  
22 that most of the work covered by their claim was  
23 not authorized, it was unapproved work, so we had a  
24 court case going about that. But even if it  
25 survived, it would be paid off the phase 2. And

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1 therefore, we're free to settle developed part of  
2 the project, and it really had -- it was irrelevant  
3 in terms of the cash flow.  
4 Q The next item is phase 1 completion.  
5 A Yes.  
6 Q And was phase one completed in the summer of 2008?  
7 A I think it was virtually completed, yes. There may  
8 have been some minor things like finishing some of  
9 the lamp standards or something like that, but I  
10 think so, yes.  
11 Q And item 3 talks about enhanced lot sales?  
12 A Yes.  
13 Q This had been raised before in an earlier e-mail  
14 that we looked at yesterday about identifying  
15 various builders?  
16 A Yes.  
17 Q Now, if you would go over to page 4 of 5, you will

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18 find an e-mail here that ultimately received as  
 19 part of this string from Steve Rea to Mr. Hamaoka  
 20 dated May the 8th, 2008. Do you have that?  
 21 A Yes I do.  
 22 Q And in that, he says I spoke to Vince Laberge today  
 23 and will be meeting him Wednesday next week on site  
 24 to discuss go forward?  
 25 A Yes.

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 1 Q And if you could go to page 3 please of this  
 2 document. We have here another e-mail dated May  
 3 the 8th of 2008 from Mr. Hamaoka to Mr. Rea, copied  
 4 to a number of other peoples, that says that's  
 5 great, Vince is a good builder and a great guy to  
 6 deal with. I don't have a problem giving him a  
 7 call if you think that it will help. Did I quote  
 8 that correctly?  
 9 A Yes, that's correct.  
 10 Q And was it your understanding that Mr. Rea had a  
 11 good relationship with the bank?  
 12 A Yes, he did.  
 13 Q If that could be marked please as the next exhibit.  
 14 THE CHAIR: Okay, 471.  
 15 MR. ANDERSON:  
 16 Q Now, Mr. Chairman, yesterday, one of my usual  
 17 fumblings around, there's a document that has been  
 18 included as part of ZF which is now Exhibit 428,  
 19 and the second document that was under that that  
 20 did not have a separate number is an e-mail dated  
 21 April 22, 2008 from Mr. Rea to Graham Woods and  
 22 Earle Pasquill as the top one, and I'm wondering if  
 23 we can find that in the package; yes. Mr.  
 24 Pasquill, do you recognize this e-mail string?  
 25 A Yes.

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 1 Q And did you receive these e-mails on April 22nd,  
 2 2008?  
 3 A Yes, I did.  
 4 Q If this could please be marked as the next exhibit?  
 5 THE CHAIR: well it's page 2, Exhibit 428.  
 6 MR. ANDERSON: Okay, fair enough. They're really  
 7 unrelated, but I'm happy with that.  
 8 THE CHAIR: Okay.  
 9 MR. ANDERSON:  
 10 Q The bottom e-mail is talking about, its subject  
 11 matter is TD takeout?  
 12 A Yes.  
 13 Q And the e-mail is to an A Hayne at InstaFund,  
 14 correct?  
 15 A Yes, that's correct.  
 16 Q Okay. And can you describe what happened with  
 17 InstaFund in a general way, in the efforts to take  
 18 TD out?  
 19 A Sure. Steve worked with them and in May of 2008,  
 20 they offered us, I think it was something over \$18  
 21 million. Clearly he's a professional group and  
 22 they had enough confidential in our ability to  
 23 offer us \$18 million.  
 24 Q If the witness could please have ID ZJ. Do you  
 25 recognize this document, Mr. Pasquill?

00042

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1 A Yes.  
 2 Q And what it is, is it's a revised loan application  
 3 letter dated Tuesday, May 13th, 2008?  
 4 A Yes, that's right, May 13th.  
 5 MR. CHAPMAN: I don't want to be too involved again  
 6 here, but perhaps my friend could just ask him what  
 7 is it as opposed to -- again this is Mr. Pasquill's  
 8 direct evidence, try some open ended questions.  
 9 MR. ANDERSON: I don't mind, makes no difference to me.  
 10 Q What is this document, Mr. Pasquill?  
 11 A Can we flip to page 2, please?  
 12 Q Yes.  
 13 A This is a loan subdivision financing, land  
 14 subdivision financing loan application.  
 15 Q For how much money?  
 16 A 8, I believe it was 18 point something, I can't  
 17 remember off the top of my head exactly how much,  
 18 but if we scroll down it will say.  
 19 Q Well if you look, look at the right underneath  
 20 where it --  
 21 A Oh, yes, 18,000 -- 18,800,000 first mortgage.  
 22 Q And if you could go over, this -- does this relate  
 23 to the Genesis project?  
 24 A Yes, it does. Yes, it does. It's the purpose of  
 25 it is to take out the TD Bank, which as I said is

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1 one of the options we were considering, and then  
 2 that would have given us more flexibility.  
 3 Q And it talks at the third page of the document,  
 4 please, about the use of the funds. Do you see  
 5 that?  
 6 A Yes I do.  
 7 Q And were those the intended uses of the funds if  
 8 this mortgage had ultimately been entered into?  
 9 A Yes, that's correct.  
 10 Q Was this, was this mortgage ever entered into, or  
 11 this loan ever entered into?  
 12 A No. They offered it to us. We ultimately decided  
 13 not to take it. I mean, it was one of the options,  
 14 but I think we felt that there would be better  
 15 terms available perhaps elsewhere, and we didn't  
 16 feel like there was any gun to our head in terms of  
 17 TD; we were good to the end of the year, and  
 18 indications that they would extend it.  
 19 MR. ANDERSON: Could that please be marked as the next  
 20 exhibit?  
 21 THE CHAIR: It will be Exhibit 472.  
 22 MR. ANDERSON:  
 23 Q If the witness could please be shown document ID ZP  
 24 as in Peter. Do you have before you a letter from  
 25 Liberty Mortgage Services Ltd. to Aspen Hills dated

00044

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1 March 7, 2008?  
 2 A Yes, I do.  
 3 Q Can you please tell the panel what this document  
 4 is?  
 5 A Sure. This is a mortgage lending commitment from  
 6 Liberty Mortgage Services Ltd. for a loan in the  
 7 amount of \$8,940,000 broken into initial advance of  
 8 \$1,560,000 and final advance of 7,380,000. Those

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 9 advances dated February 29th, 2008, and March 12th,  
 10 2008.

11 Q Was this commitment letter accepted?

12 A Yes, it was. And again, I have to say that  
 13 professional mortgage service advancing us multi  
 14 millions of dollars speaks to their confidence in  
 15 our viability.

16 MR. ANDERSON: Could that please be marked as the next  
 17 exhibit?

18 THE CHAIR: 473.

19 MR. ANDERSON:

20 Q If the witness could please be shown BCSC 288. Mr.  
 21 Pasquill, this is an e-mail string with two e-mails  
 22 of March 11, 2008?

23 A Yes.

24 Q And can you tell us what Mr. Woods was asking you?

25 A Yes. Mr. Woods was asking if he could take money

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 2 raised from the promissory note, that is FIC  
 3 Projects Ltd. and use it for this broker account,  
 4 and I told him no, we could not do that.

5 Q And why was that, from your point of view?

6 A Well, we had indicated in our offering memorandum  
 7 the real estate projects money was for real estate  
 8 and not the broker account. I'm sorry, it wasn't  
 9 the offering memorandum, but in our -- because we  
 10 didn't have an offering memorandum, in our  
 11 documentation, in our statements to the investors,  
 12 that's what we said we were going to use it for.

13 Q If the witness could please be shown ID-C, as in  
 14 Charlie. Do you recognize this document, Mr.  
 15 Pasquill?

16 A Yes, I do.

17 Q And can you tell the panel what it is, please?

18 A It's one of Mr. Woods's regular productions of our  
 19 cash status.

20 Q And how frequently were these prepared?

21 A To the best of my recollection, I think he did  
 22 these weekly.

23 Q And what does this show, like, for example it has  
 24 FIC management group Ltd. and there's a number  
 25 there, \$11,008?

A Right. That shows what the cash balances are in

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 2 that particular day in each of those entities  
 3 totalling up to, I can't see the bottom there, but  
 4 2 million, looks like 612,124 on that date.

5 MR. ANDERSON: Could that please be marked as the next  
 6 exhibit.

7 THE CHAIR: 474.

8 MR. ANDERSON:

9 Q If the witness could please be shown document ID-D  
 10 as in David. Do you recognize this document, Mr.  
 11 Pasquill?

12 A Yes, I do. It's again one of Mr. Woods's weekly  
 13 productions of cash status.

14 Q And I'm just pointing this out, I don't want to  
 15 lead you, there's a reference right near the top  
 16 left corner, end of February 21, 2008?

17 A Yes, that's correct.

Q And what would the significance of that be?

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18 A well, at February 21, 2008, when we were in the  
19 process of preparing offerings, we'd a significant  
20 amount of cash.

21 Q And what was the balance?

22 A At that point it was \$3,057,415.

23 MR. ANDERSON: Can that please be marked as the next  
24 exhibit.

25 THE CHAIR: 475.

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1 MR. ANDERSON: Thank you.

2 Q If the witness could please have ID-E as in Edward.  
3 Do you recognize this document?

4 A Yes. This is another one of Mr. Woods status dated  
5 February 24th, 2008, again showing significant  
6 amounts of cash on hand.

7 MR. ANDERSON: May this please be marked as the next  
8 exhibit?

9 THE CHAIR: 476.

10 MR. ANDERSON:

11 Q If the witness could please be shown ID-F for Fred.  
12 Do you recognize this document, Mr. Pasquill?

13 A Yes. Again, another one of Mr. Woods's cash status  
14 reports.

15 Q As at February --

16 A As at February 28th, 2008, sorry about that. And  
17 as you can see, at that point there was at the  
18 bottom \$2,849,653.

19 MR. ANDERSON: May that please be marked as the next  
20 exhibit.

21 THE CHAIR: 477.

22 MR. ANDERSON:

23 Q If the witness could be shown ID-G. Do you  
24 recognize this document, Mr. Pasquill?

25 A Yes. This is another of Mr. Woods's cash status

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1 dated March the 9th, 2008.

2 Q Showing the --

3 A The balance of \$2,918,284 cash.

4 MR. ANDERSON: May that please be marked as the next  
5 exhibit?

6 THE CHAIR: 479 -- I'm sorry, 478.

7 MR. ANDERSON:

8 Q Please show the witness ID-H. Do you recognize  
9 this document, Mr. Pasquill?

10 A Yes, I do. This again is another of Mr. Woods's  
11 cash status reports dated March 18th, 2008.

12 Q And it shows a balance of?

13 A If we can scroll down, I'll tell you what it is,  
14 \$4,604 -- looks like 696 dollars.

15 MR. ANDERSON: May that please be marked as the next  
16 exhibit.

17 THE CHAIR: 479.

18 THE WITNESS: I could just point out it also shows where  
19 there's some restricted money in there, so there's  
20 about two, \$3 million of some restricted money, but  
21 still that would leave us with \$1.6 million of  
22 useable cash.

23 MR. ANDERSON:

24 Q If the witness could please see ID-I. Do you do  
25 you recognize this document Mr. Pasquill?

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1 A Yes I do. This is another one of Mr. Woods's cash  
2 status report, this one dated, is there a chance of  
3 blowing that up a little larger -- thank you,  
4 that's April 6th; April 6th, 2008. And this one  
5 has a sizeable increase in the cash, it appears if  
6 I can read this correctly, \$12,050,234.  
7 Q Just and you had mentioned this before, if you look  
8 at Genesis by the lakes, there's, it appears that  
9 those funds are restricted?  
10 A Yes, that's right.  
11 MR. ANDERSON: May that please be marked as the next  
12 exhibit.  
13 THE CHAIR: 480.  
14 MR. ANDERSON:  
15 Q If the witness could please have ID-J. Mr.  
16 Pasquill, do you recognize this document?  
17 A Yes. This is another of Mr. Woods's cash status,  
18 this one dated April the 10th, 2008, and the total  
19 cash at that point was \$12,432,543.  
20 MR. ANDERSON: May that please be marked as the next  
21 exhibit.  
22 THE CHAIR: 481.  
23 MR. ANDERSON:  
24 Q If the witness could please see ID-K. Do you  
25 recognize this document.

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1 A Yes I recognize this as another of Mr. Woods's cash  
2 status, this one dated April 14th, 2008, and with  
3 the cash balance here of, looks like 12 thousand,  
4 652,037.  
5 Q Is that 12,000 or --  
6 A No, 12 million, I'm sorry.  
7 MR. ANDERSON: Could that please be marked as the next  
8 exhibit?  
9 THE CHAIR: 482.  
10 MR. ANDERSON:  
11 Q Not too much further. If the witness could please  
12 have ID-L. Do you recognize this document, Mr. --  
13 A Yes, this is another of Mr. Woods's cash status  
14 report, this one dated May the first, 2008, with a  
15 cash balance of \$4,419,440.  
16 MR. ANDERSON: If that could please be marked as the  
17 next exhibit.  
18 THE CHAIR: 483.  
19 MR. ANDERSON:  
20 Q And if the witness could please be shown ID-M as in  
21 Mary. Do you recognize this document, Mr.  
22 Pasquill?  
23 A Yes, I do.  
24 Q And --  
25 A This is another cash balance snapshot, this one

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1 dated November 23rd, 2008, this one is split into  
2 Canadian dollars and US dollars, and while I can't  
3 see the grand total because it has been  
4 highlighted, I can tell you that it is the sum of  
5 the US and Canadian dollars, and there was US  
6 dollars of 1.4, 1,450,000,100, Canadian dollars of  
7 3 million 736, looks like 182. So the total would  
8 be somewhere in the neighbourhood of \$5.1 million.



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9 MR. ANDERSON: Can that please be marked as the next  
10 exhibit.  
11 THE CHAIR: 484.  
12 MR. ANDERSON:  
13 Q If the witness could please have BCSC 155. Do you  
14 recognize this document, Mr. Pasquill?  
15 A Yes, I do.  
16 Q And if you go to the bottom of page 2, there's an  
17 e-mail there from Graham Woods to Wayne Sims?  
18 A Yes.  
19 Q And was Mr. Sims with the TD Bank?  
20 A Yes, that's right.  
21 Q And if you could go to the bottom of page 1,  
22 Mr. Rea writes Mr. Woods on April 17th, 2008 at  
23 10:04 a.m. and said amongst other things no more  
24 money is to be sent into a TD accounts of any kind.  
25 They're obviously nervous and grabbing everything.

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1 A Yes.  
2 Q And did you receive a copy of that e-mail later  
3 that same day?  
4 A Yes. I got it attached to the subsequent e-mail  
5 from Graham.  
6 Q And at the top of the page you write later that  
7 morning on April 17th, 2008?  
8 A Yes.  
9 Q And you say guys let's not panic.  
10 A Yes. Guys, let's not panic, in the next couple of  
11 days let's sit down and visit the cash flow  
12 projections in light of this. I really think we  
13 can find a way to take out TD. One of the biggest  
14 unknowns to me is Genesis sales, namely to date  
15 where the money is and how quickly we could sell  
16 and get payment for 8 to \$10 million in lot sales.  
17 So we were in the process of, you know, thinking  
18 about taking out TD. This was prior to the  
19 InstaFund activity, and I really felt that you  
20 know, if in fact we wanted to get rid of this  
21 annoyance, nuisance that TD was causing us that  
22 there were options where we could do that.  
23 Q If the witness could please be shown BCSC 367.  
24 First of all, I guess Mr. Pasquill, I'll ask you if  
25 you recognize this e-mail chain?

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1 A Yes, I do.  
2 Q And it appears the originating e-mail is the e-mail  
3 from Graham Woods to Mr. Rea and yourself on April  
4 the 19th, 2008?  
5 A Yes.  
6 Q And was Mr. Woods asked to prepare this document?  
7 A Can we scroll down to the Graham Woods document?  
8 Yeah, Graham was in the process of -- was asked to  
9 look at what it would take to take out the TD Bank,  
10 and Steve Rea sets out some of the criteria that  
11 he'd like to see in that. So we were -- what it  
12 shows is we were actively in the process of looking  
13 at other alternatives and refinancing.  
14 Q Okay. Now, if you go over to page 2 of 3, he  
15 appears -- let me ask you this. Did he lay out  
16 some steps from the vendor's perspective?  
17 A He set out steps for both of the vendors

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18 perspective and the purchaser's perspective. He  
19 has a better handle on, you know, to understand the  
20 conditions and circumstances surrounding it, how it  
21 would work.

22 Q And he says, and I'm going to quote from it in the  
23 latter half of the third last paragraph, hence a  
24 potential profit of at least 16,500,000 before tax  
25 exists?

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1 A Yes. And he underlines "at least", so I believe he  
2 was of the belief that potentially it could be  
3 higher.

4 Q If the witness could please see BCSC 303. Do you  
5 recognize this e-mail?

6 A Yes, I do.

7 Q And did you receive the e-mail from Mr. Woods?

8 A I did.

9 Q Okay. And what did you understand Mr. Woods was  
10 talking about in this e-mail?

11 A A price for selling the Genesis project.

12 Q Was that --

13 A And he talks about, he estimates that if we were to  
14 get \$36 million for it, and assumed that 8 million  
15 owing to the trades and 1 million deposits, we're  
16 still looking at about \$8.6 million amicable,  
17 before applicable corporate tax or profit. Now  
18 what he's talking about there is not building it  
19 out and selling it to maximize the profit, what  
20 he's saying is if we chose, just to sell it off  
21 right now as is, there's still at least \$9 million  
22 of profit right there.

23 Q I note that it says at the second -- the last  
24 phrase of the second last sentence of the first, I  
25 guess second paragraph, it says "and to repay the

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1 FIC group 17.1 million"?

2 A Right.

3 Q And what did you understood that to represent?

4 A That we had relation invested capital in it, and  
5 that capital would be recouped as part of it.

6 Q And as you understood it, it would include interest  
7 owed?

8 A Yes.

9 Q If the witness could please be shown BCSC 224. Do  
10 you recognize this document, Mr. Pasquill?

11 A Yes.

12 Q This is an e-mail from Mr. Tansowny to you, Mr. Rea  
13 and Graham Woods dated April 19th, 2008?

14 A Yes, it is.

15 Q And it appears to be talking about Calmar  
16 marketing, that's the subject line?

17 A That's correct.

18 Q Okay. So what understanding did you get from  
19 reading this e-mail?

20 A I think the important thing is that it was John's  
21 belief that as he says in the second to last  
22 paragraph, FIC profit is not at issue as our unit  
23 cost per lot is about \$105,000. However, without  
24 marketing, I don't see our members buyers making  
25 the kind of money they expected. But it was my

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1 belief that he was saying in essence that these  
2 could be sold out and still, and make profits. He  
3 was bullish about profitability of it.  
4 Q If the witness could please see BCSC 306. Mr.  
5 Pasquill, you should have before you be an e-mail  
6 chain from April of 2008?  
7 A Yes, I do.  
8 Q Do you recognize this document?  
9 A Yes, I do.  
10 Q Okay. Did you receive this e-mail from Mr. Rea on  
11 or about April 29th, 2008?  
12 A Yes, I did.  
13 Q Okay. It appears there from the first sentence  
14 there had been some meetings, and I'm wondering if  
15 you attended those?  
16 A Yes, I believe I did.  
17 Q Okay. And what did -- what was your understanding  
18 of what this e-mail was about in terms of its  
19 relation to the earlier meetings?  
20 A well, Steve was laying out some proposal of action  
21 steps involving taking out TD, and he sizes up some  
22 key factors and some key risks, and some comments  
23 on IMOR's raising capital to replace TD and take  
24 out purged money.  
25 Q And the talking now at page, you make two comments?

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1 A Yes.  
2 Q The VTB payment what is that a reference to?  
3 A Vendor takeback. Vendor takeback, rather than tie,  
4 the vendor takeback repayment to the lot sales, can  
5 we treat it like any other mortgage, where they  
6 then have a monthly payment of principal plus  
7 interest to meet.  
8 Q The second point, what are you talking about there?  
9 A Quite frankly, I am not entirely sure at this  
10 point. It says Mike should be aware that sale  
11 could trigger a loss on the books that will impact  
12 NAV. I suppose it depends on what sale, but that's  
13 inconsistent with what Graham and Steve were  
14 projecting in terms of regaining profit if we sold  
15 out Genesis.  
16 Q If the witness could please see ID-P as in Peter.  
17 Do you recognize this document, Mr. Pasquill?  
18 A Yes, I do.  
19 Q And what is it?  
20 A Mike sent a note to myself, Steve and Graham and  
21 Matthew, looking ahead to InvestFest. I had  
22 already mentioned that InvestFest is a major  
23 revenue generator for us, and he was looking ahead  
24 and was projecting on May the 10th that our  
25 revenues would be between 3.9 million and 5.5

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1 million. So we had that expectation that we were  
2 likely to get an infusion of cash as a result of  
3 Investfest.  
4 MR. ANDERSON: Could that please be marked as the next  
5 exhibit?  
6 THE CHAIR: 485.  
7 MR. ANDERSON:  
8 Q Do you know what ultimately the revenues from

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9 Investfest were?  
 10 A Yes, it was just over \$3 million.  
 11 Q If the witness could please have ID-S. Do you  
 12 recognize this document, Mr. Pasquill?  
 13 A Yes, I do.  
 14 Q And does it represent e-mails that you sent or  
 15 received on May 25 and 26, 2008?  
 16 A Yes, it does.  
 17 MR. ANDERSON: Could this please be marked as the next  
 18 exhibit?  
 19 THE CHAIR: 486.  
 20 MR. ANDERSON: Thank you.  
 21 Q Refreshing your memory from this e-mail, can you  
 22 tell us what was happening with the InstaFund loan?  
 23 A This was May 26. InstaFund at that point would  
 24 have given us the -- their offer, and we were in  
 25 the process of considering whether to take it.

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 1 Q If you could go over to page 2, the first full  
 2 paragraph on the page?  
 3 A Yes.  
 4 Q Mr. Woods appears to be talking about his  
 5 conversations with Kevin of TD?  
 6 A That's correct. He says specifically I spoke with  
 7 Kevin of TD on Friday, we had a good conversation.  
 8 I feel that I can work with TD. However the  
 9 biggest problem with TD now in my opinion is that  
 10 they're there are only 6 months left on the loan.  
 11 Kevin confirmed to me that the amount the TD was  
 12 still looking to lend us from he was about \$3.5  
 13 million. Basically I think what this says is,  
 14 again reiterates what we've said before, is that  
 15 we'd ongoing conversations we had on going  
 16 communications with TD. Our relationship from  
 17 their point of view of us was that, you know, from  
 18 time to time they had things they wanted us to  
 19 address, but that our relationship was good. It  
 20 confirms that the loan is good till the end of the  
 21 year, and as I say, we believe that if we choose  
 22 not to take out TD, that we would be good not only  
 23 to the end of the year but that they would, they  
 24 would extent the forbearance agreement, which they  
 25 did.

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 1 Q If the witness could please see ID-U. Do you  
 2 recognize this document, Mr. Pasquill?  
 3 A Yes, I do. This is an e-mail from Graham Woods  
 4 dated September 15th, 2008, in which he lays out  
 5 comparatives showing the NAVs as of 12 months an  
 6 ago and where they are as of September 15th, 2008.  
 7 I think the important part here is to note that  
 8 while there has been a bit of erosion, it's not  
 9 huge, and they're still pretty strong relative to  
 10 the previous year.  
 11 Q And this was as of --  
 12 A As of September 15th, 2008.  
 13 MR. ANDERSON: Can that please be marked as the next  
 14 exhibit.  
 15 THE CHAIR: 487.  
 16 MR. ANDERSON:  
 17 Q If the witness could please be shown ID ZT as in

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18 Tom. You recognize this document and its  
19 attachment, Mr. Pasquill?  
20 A Yes, I do.  
21 Q And is this a document you received on or about  
22 November the 4th, 2008?  
23 A Yes, it is.  
24 MR. ANDERSON: Could that please be marked as the next  
25 exhibit?

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1 THE CHAIR: 488.  
2 MR. ANDERSON: Thank you.  
3 Q Mr. Pasquill, could you please tell the panel what  
4 this is?  
5 A Yes. Do you want to scroll down, but it is a cash  
6 flow projection, shows a cash balance of nearly \$2  
7 million -- I'm sorry, this is not the cash flow  
8 projection. This is the, one of his cash status  
9 reports, and as you can see, it's got both the US  
10 and the Canadian dollars, and the balances you can  
11 see after, that there's the \$7 million Canadian,  
12 the 5 million ultimately, the unrestricted balance  
13 of still nearly 2 million.  
14 Q As of --  
15 A As of October 31st, 2008.  
16 Q If the witness could please see document ID-ZZ.  
17 Mr. Pasquill, do you recognize this e-mail and the  
18 attachment?  
19 A I recognize the e-mail and I'm sure when I see the  
20 attachment I'll recognize that as well, but this is  
21 a six month cash forecast flow as of October 2008,  
22 and it goes out to March of 2009. The important  
23 thing here is that you can see that we're projected  
24 to be in a positive cash position right throughout  
25 that period.

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1 MR. ANDERSON: If that could please be marked as the  
2 next exhibit?  
3 THE CHAIR: 489.  
4 MR. ANDERSON: Thank you.  
5 Q Did you understand whether this was a liberal or a  
6 conservative forecast?  
7 A This was definitely a conservative. Graham does  
8 things in a very conservative way.  
9 Q I'll just do one more, Mr. Chairman, and I'll kind  
10 of tell you where I'm at here. If the witness  
11 could please have ID-ZY. This document, sir, is an  
12 e-mail dated November 4, 2008, from Mr. Bill Baker  
13 to yourself and others?  
14 A Yes.  
15 Q Do you recognize it?  
16 A Yes, I do.  
17 Q The last one was done by Mr. Woods. Did Mr. Baker  
18 replace him?  
19 A Yes. There was an overlap, but Mr. Baker was  
20 Mr. Woods's replacement and he started in November  
21 of 2008, but Mr. Woods stayed on and they  
22 overlapped for the continuity for a while.  
23 Q And perhaps if we could go to the, some of the  
24 additional pages to this document, I may be, I'll  
25 see if you recognize what is there. Once you've

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1 had a chance to --  
 2 A Yes. This is, I recognize this as being  
 3 Mr. Baker's tweaking or fine tuning of the  
 4 projection that Mr. Woods had done earlier,  
 5 projecting out again to May 2009. Once again as  
 6 you can see, we're in a positive cash flow position  
 7 in each of the months through that period and again  
 8 I have to say it's a conservative estimate.  
 9 MR. ANDERSON: Could that please be marked as the next  
 10 exhibit.  
 11 THE CHAIR: 490.  
 12 MR. ANDERSON: Now, I have obviously misled you on my  
 13 timing. I thought I would be quicker. I don't  
 14 have a ton to go, but I think my preference would  
 15 be to take a lunch break before I finish. I might  
 16 be a half hour or so. I just think it's, I was  
 17 going to suggest pushing ahead, but I would rather  
 18 go back through my notes and make sure that I  
 19 hadn't missed anything.  
 20 THE CHAIR: That's fine. So back at two o'clock.  
 21 MR. ANDERSON: Thank you.  
 22 (PROCEEDINGS ADJOURNED AT 12:30 P.M.)  
 23 (PROCEEDINGS RECONVENED AT 2:00 P.M.)  
 24 MR. ANDERSON: I'm not going to be very much longer.  
 25 Don't ask me why that is, but I don't think I'll be

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1 a half an hour.  
 2 THE CHAIR: Well, you've said earlier that you misled  
 3 us.  
 4 MR. ANDERSON: I just --  
 5 THE CHAIR: To mislead someone, first they have to  
 6 believe you.  
 7 MR. ANDERSON: Well, what I have is, I usually just have  
 8 it all typed out into pages and you get a rhythm,  
 9 you get so many pages an hour or whatever, and then  
 10 all of a sudden it doubles for the next three or  
 11 whatever it; just never seems to be consistent.  
 12 Q I want to ask you about a few things that relate  
 13 to, I suppose, the real estate market in general  
 14 economy in Alberta from your perspective.  
 15 A Yes.  
 16 Q And I would ask that the witness be shown document  
 17 ID-ZM as in mother. And have you seen this e-mail  
 18 string before?  
 19 A Yes, I have. This particular one came to myself,  
 20 Michael Lathigee, Graham Woods and Steve Rea, and  
 21 it's from John Tansowny, dated February 21st, 2008.  
 22 What it does is it, John is sharing with us some  
 23 news about the economic activity in Alberta, and  
 24 specifically he says with this project a total  
 25 committed expenditure in Alberta now for the area

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1 north of Red Deer exceeds \$200 billion. So what  
 2 he's talking about there is just the level of  
 3 economic activity that's happening, and you know  
 4 that's why he would tell us from time to time about  
 5 some of the projects that were going on that  
 6 probably formed part of that \$200 billion, talks  
 7 about -- he would talk about the inland container  
 8 terminal in Leduc which is very close to our Calmar



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9 project, talk about the airport expansion, talking  
10 about some of the investment that is were happening  
11 by the major oil companies, those kinds of  
12 activities, all of which led to economic activity  
13 that generated employment and demand for housing.

14 MR. ANDERSON: May that please be marked as the next  
15 exhibit.

16 THE CHAIR: Exhibit 491.

17 MR. ANDERSON:

18 Q If the witness could please see Exhibit ID-R. Do  
19 you recognize this document?

20 A Yes, I do. This is an e-mail from Matthew  
21 McKechnie to myself and Graham Woods regarding Mike  
22 Lathigee, and the subject matter is Edmonton real  
23 estate market, and it's an independent report which  
24 is attached.

25 Q Okay. And if we could -- and did you review this

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1 report when you received it?

2 A Yes, I did.

3 MR. ANDERSON: May that please be marked as the next  
4 exhibit.

5 THE CHAIR: 492.

6 MR. ANDERSON:

7 Q If this could, if you could please go to the next  
8 page. The first portion of the report refers to  
9 sales and listings and my question to you was, was  
10 any of the information set out thereunder  
11 significant to you when you read this?

12 A Yes, they were. Clearly we could see that at the  
13 number of listings had listen, the number of  
14 properties sold had dropped a bit, but in fact, the  
15 average price, both on a year to date basis and for  
16 March year to year for that month, the prices were  
17 up. So you know, it was he very encouraging to see  
18 the prices were holding. This is what we were  
19 reading. We were reading this in May, it's  
20 actually from March, but we were reading it in May  
21 so that was our mindset. And on the next page,  
22 there's some information about the employment.

23 Q Thank you. So fourth page?

24 A The fourth page, again talking there about, you can  
25 see the unemployment rate, which is the fourth line

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1 down, the national average is 5.9 per cent, 3.3 in  
2 Alberta, 3.0 in Calgary, 3.7 in Edmonton. And so  
3 you know, we were -- those figures kind of gave us  
4 the sense that, and we believed combined with what  
5 we were hearing from John, was that we could have  
6 good success selling through the summer period, and  
7 we were looking at this in May.

8 Q Thank you. Now, in terms -- and I want to deal  
9 mainly with the projects that the company in  
10 Edmonton, Alberta area, but can you describe what  
11 happened in terms of sales of real estate of the  
12 FIC group between June 1st and, to September the  
13 14th, 2008?

14 A Sure. Over the course of the summer we did have  
15 sales, clearly; they picked up significantly from  
16 the winter, the winter season. However, there's no  
17 question that the farther along we got, the more we

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18 could see that there was some softening in the  
19 market, and so they weren't as high as we expected.  
20 But nevertheless, we were still hopeful of being  
21 able to sell the project, maybe taking a little  
22 longer, but the prices seemed to be holding in the  
23 market, and that was encouraging.

24 Q Now, did an event occur on September the 15th, 2008  
25 that had an effect on the FIC group?

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1 A Yes. It was the date that the Lehman Brothers went  
2 down.

3 Q And can you describe to the panel what the effect  
4 was on the company and the several months following  
5 September 15th, 2008?

6 A Sure. Well, effects weren't immediate, but there  
7 obviously were some effects. Clearly the financial  
8 industry was shaken. There was a lot of turmoil.  
9 Stocks fell, so that impacted what we held in terms  
10 of our portfolio of stocks. Generally in the  
11 stages we thought that because of the strength of  
12 the oil patch, and what was happening in Alberta,  
13 there would be a certain insulation from all of  
14 that. And I guess there was to some extent, but  
15 ultimately even the Canadian banks, which we knew  
16 were stronger placed than the American banks, got  
17 nervous about risk and started withholding credit,  
18 which meant that some of our booked sales got  
19 cancelled because the buyers didn't have the credit  
20 to buy them. And as we went farther and farther  
21 along in the fall, it became more and more apparent  
22 that we were going to have some impact that  
23 actually affected us as well.

24 Q Do you recall, we talked this morning about a  
25 forbearance agreement which was dated, I think

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1 February the 4th of 2009 between the FIC group of  
2 companies, or some of them, and TD Bank?

3 A Yes, that's correct.

4 Q And how long was that extension for as set out in  
5 the forbearance --

6 A That forbearance agreement, while it was actually  
7 executed the beginning of February, was effective  
8 as of November, and extended for six month  
9 forbearance agreement, extended to the end of May  
10 of 2009.

11 Q And do you recall when TD commenced its proceedings  
12 in the court of Alberta Queens Bench to have a  
13 receiver appointed?

14 A Sure. They made application in mid-November, and  
15 we opposed it. The order was issued, I think it  
16 was January 10th, early January of 2009.

17 Q 2009 or 2010 --

18 A 2010, I'm sorry.

19 Q And ultimately what assets did the receiver  
20 liquidate as part of the --

21 A Well, the receiver went, went at it, taking  
22 whatever the lowest fruit it could get. It, in our  
23 opinion, the receiver did not execute the kind of  
24 judgment that I would have expected in terms of  
25 trying to maximize the value. They tried to sell

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off everything from whatever companies they could to generate cash as quickly as they could, and that meant that they sold off, you know, likely stock portfolio at its all-time low sort of thing. That was disappointing for us.

Q Since the date that the receiver was appointed, what have you and Mr. Lathigee done in relation to the FIC group of companies?

A Well, I can tell you that I'm aware that a lot of companies that were caught off guard through that credit melt-down just packed up and folded and went away, and their officers went on to other things. But that's not what we did. We've hung around. We've tried our very best to try and recover as much value as we can. We went through a period after the receivership where we took no salary but we continued to work through it. We've developed plans for recovery. We're in communication with our shareholders regularly. We have regular update webinars to try and keep them informed of where we are. We've had our annual meetings and interfaced with our shareholders, and we continue to this day to try and recover as much value as we can.

Q Now, during the time frame February of 2008 to November 2008, did the FIC group have offices?

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A I'm sorry, what period of time, I'm sorry?

Q February of 2008 through November 2008?

A Yes, we'd an office on Hastings Street.

Q In Vancouver?

A In Vancouver.

Q And were you generally there on a daily basis?

A I was there every day.

Q And during that period, was Mr. Lathigee frequently in the office?

A No, he wasn't. He also had a home office. I mean, he would come into the office from time to time as was necessary for things he had to do, but he tended to work out of his home office, and he was also on the road at that time. We had meetings in the various cities, I alluded to this before, so Mike travelled to Calgary and Edmonton and Toronto and Winnipeg and New York and Atlanta and Dallas and Los Angeles and Seattle, so he was on the road quite a bit.

Q What involvement did Mr. Lathigee have on a routine basis in terms of the administration of the FIC group?

A Well, as I indicated before, Mike was the, really the on-stage spokesperson at the meetings. He was the visionary and he was the person that could best

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articulate that vision. So he was the spokesperson. He focused on things like the membership, building the membership, and putting on educational events and doing his regular economy updates, things like that. And the rest of us tend to look after the day-to-day administration.

Q As of the end of November 2008, what if anything did you think with respect to whether the Genesis

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9 project would be profitable or not?  
10 A well, at that point I still had expectations that,  
11 you know, in the time frame you're talking about  
12 was before the receivership, our expectations were  
13 that ultimately we could sell out the project. It  
14 may make a small profit or it may not make a small  
15 profit. But you recall that there were other  
16 projects, so we expected that the companies would  
17 still be viable, still make money.  
18 Q And what was your expectation with respect to the  
19 repayment of the related party loans and interest?  
20 A well, you know, one of the reasons we considered  
21 treating them as loans is that of course, even if  
22 there was no profit on this project, or no profit  
23 on many of the projects, or whatever the outcome of  
24 it was, the loans would have first claim and they  
25 would be paid back first. So the risk was

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1 mitigated in that sense.  
2 MR. ANDERSON: Thank you. Those are my questions. I  
3 finally told the truth.  
4 THE CHAIR: Thank you.  
5 MR. CHAPMAN: And I think, as I alluded to yesterday, I  
6 plan on starting my cross-examination at ten and I  
7 expect at the very least to be finishing by four  
8 o'clock tomorrow, hopefully before then.  
9 THE CHAIR: Okay, very well. We're adjourned till ten  
10 o'clock.  
11 2:20 P.M.  
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