

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 3, Bates Nos. JAX395–536

Appeal from Case No. A-18-771407-C
Eighth Judicial District Court For Clark County
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EXHIBIT 8

1 SEPTEMBER 19, 2013

2 VANCOUVER, BC

3 (PROCEEDINGS COMMENCED AT 10:35 A.M.)

4 THE HEARING OFFICER: All rise.

5 THE CHAIR: Good morning.

6 MR. CHAPMAN: Good morning.

7 MR. ANDERSON: I want to take the blame for this morning. It

8 took us longer than we had thought it would to get

9 the subscription agreements because they weren't

10 where Mr. Pasquill thought they were to begin with

11 and he had to go through some stuff in storage.

12 And we sent Mr. Chapman the information at about

13 9:45 this morning, we had it scanned, but it

14 literally took over half an hour to get through

15 the e-mail system. And I don't know why, we're

16 going to follow up with our technical people, but

17 I apologize for the delay that that caused.

18 THE CHAIR: Okay. Thank you.

19 MR. CHAPMAN: And just to follow on my friend's comments. As a

20 result of that I will have, there's a couple of --

21 some hard copies of documents that I plan to be

22 putting to Mr. Pasquill that I believe the e-mail

23 was also sent to come sec, but when I start

24 referring to pile of white paper that's what we

25 are going to be talking about as a warn.

1 THE CHAIR: Okay. So, Mr. Pasquill, you're still under oath.

2 THE WITNESS: I am.

3 CROSS-EXAMINATION BY MR. CHAPMAN:

4 1 Q If the hearing officer can please bring up exhibit

5 125. You recognize this document, Mr. Pasquill?

6 A Yes, I do.

7 2 Q This is the offering memorandum for FIC

8 Foreclosure Fund Ltd.?

9 A Yes.

10 3 Q And that's dated April 30th, 2008?

11 A That's correct.

12 4 Q Who prepared this document?

13 A We did in house.

14 5 Q And when you say is it safe to say that you would

15 have worked off an earlier precedent, and also did

16 one for WBIC as well?

17 A Yes.

18 6 Q So is that how this would have been prepared you

19 would have worked off a previous precedent for

20 offering memorandum?

21 A Yes.

22 7 Q If you can please turn to page 12, Madam Hearing

23 Officer. Just so we're clear, all of the
24 investors who invested in FIC Foreclosure Fund,
25 received this offering memorandum?

2

1 A For the second two. The first batch was the
2 credit, the investors only. So, yes after this
3 date.

4 8 Q Okay. We'll come back to that. I'm just going --
5 I'm going to take -- I'm going to have you look at
6 the third paragraph there?

7 A Yes.

8 9 Q Do you see about five lines, six lines down it
9 says on June 27, 2007, do you see that line there?

10 A Yes, I do.

11 10 Q Okay. It says Michael Lathigee, Earle Pasquill,
12 China Dragon, WBIC and the corporation entered
13 into a settlement agreement with the British
14 Columbia Securities Commission that acknowledged
15 certain securities law infractions found by the
16 British Columbia Securities Commission and
17 undertook to complete a revised offering
18 memorandum for China Dragon and offer a decision
19 to its shareholders and to pay fines in the

20 amounts of \$65,000 by Michael Lathigee and 30,000
21 by Earle Pasquill?
22 A That is correct.
23 11 Q And that was correct?
24 A Yes.
25 12 Q Now, you see the line that I started with it's

3

1 June 27, 2007. In that settlement the last
2 company that you have listed as part of that
3 settlement is the corporation. Do you see that
4 there?
5 A Excuse me, just for clarification, the third
6 paragraph down starts on June 2nd, 2006, not 2007.
7 13 Q Yes, sorry, I meant the line I read that said on
8 June 27th, 2007?
9 A Yes.
10 14 Q So on that line it says Mr. Lathigee, yourself,
11 China Dragon WBIC and the corporation. Do you see
12 that? Corporation is capitalized?
13 A Yes.
14 15 Q If the hearing officer can go back to page 1,
15 please. FIC Foreclosure Fund is defined as the
16 corporation?

17 A Yes, you were correct in saying that it was made
18 from a prior template, and I'm sorry, that was a
19 typo, an error, I'm sorry.

20 16 Q And that's because FIC Foreclosure Fund didn't
21 exist yet?

22 A That's exactly right.

23 17 Q Now, the \$30,000 fine that you undertook to pay,
24 did you pay that fine?

25 A Yes.

4

1 18 Q And if the hearing officer can just go back,
2 pleadings to that same page, page 12. And I'm
3 reading now from the third line from the bottom
4 where it says the infractions cited were. Do you
5 see where I'm reading from?

6 A Yes.

7 19 Q Illegal distribution during the period is it
8 during the cease trade orders, making unwarranted
9 claims about no management expense ratio and
10 improperly exercising and cashing out options?

11 A That is correct.

12 20 Q Is that an accurate reflex of what the settlement
13 was?

- 14 A Yes. We acknowledge we made some mistakes. We
15 learned our lesson, paid our fines and we moved
16 on.
- 17 21 Q How would you describe what you learned from going
18 through that settlement process and having to pay
19 a \$30,000 fine?
- 20 A Well, it was obviously painful, and I learned that
21 we had to be more careful about what we were
22 doing.
- 23 22 Q In particular as a came as it related to
24 securities?
- 25 A Yes.

- 1 23 Q Okay. If the hearing officer can please go to
2 exhibit 126, page 10. Mr. Pasquill, do you
3 recognize this document?
- 4 A This is a report of exempt distribution.
- 5 24 Q And if the hearing officer could go to page 12,
6 please. Do you see the date on that agreement?
- 7 A It says 15th of November 2008.
- 8 25 Q So this is after our relevant period?
- 9 A Yes, that's right.
- 10 26 Q After the settlement?

- 11 A Yes.
- 12 27 Q Okay. If the hearing officer can go to page 14,
- 13 and start to scan down. You've outlined the
- 14 various investment there, and it says that all --
- 15 all are distributed November 15, 2008. Do you see
- 16 that there?
- 17 A I see that, yes.
- 18 28 Q If the hearing officer can scroll to page 15,
- 19 November 15, '08, all the way down, do you see
- 20 that?
- 21 A I do.
- 22 29 Q And if the hearing officer can go to page 16.
- 23 November 15th again all the way down?
- 24 A Yes.
- 25 30 Q And hearing officer go to page 17. Still all the

6

- 1 way down those investments November 15, 2008?
- 2 A Yes.
- 3 31 Q And then on page 18 all of those investments
- 4 November 15, 2008?
- 5 A That's correct.
- 6 32 Q If the hearing officer can go back, please to page
- 7 12. Do you see the bold heading saying

8 certificate?

9 A I'm still on page 3.

10 33 Q I'm sorry.

11 A I'm still on page 3.

12 34 Q Page 3 of the document that's page 12 of this

13 exhibit?

14 A I see.

15 35 Q There's a bold heading that says certificate?

16 A Yes.

17 36 Q Can you see that line there. Can you read that

18 line below that?

19 A On behalf of the issuer I certify those statements

20 made in this report to be true.

21 37 Q That's your signature below?

22 A That's right.

23 38 Q Of course those statements weren't true, were

24 they?

25 A Which statements are you talking about.

1 39 Q The statement that says every person who invested

2 on November 15, 2008?

3 A Every person did not invest on November 15th,

4 2008. My understanding that was to be the date

5 this form was filed.

6 40 Q I understand that. But yesterday you had some
7 subscription agreements that went in through you,
8 exhibits 440 to 470?

9 A Sure. The reality the subscriptions were executed
10 all before August 21st.

11 41 Q So there were some in May, there were some in
12 June?

13 A That's correct.

14 42 Q Some in July?

15 A Yes.

16 43 Q Some in August?

17 A Yes.

18 44 Q So they weren't all on November 15, 2008, were
19 they?

20 A They weren't all executed on November the 15th,
21 that's right.

22 45 Q Is there a reason you didn't put those dates down?

23 A Yeah, because it was my understanding what was put
24 in there was the date of this filing. I mean you
25 can check all of our distribution documents and

1 they would have been done the same way, on that

2 belief.

3 46 Q If the hearing officer can go to page 18. You see
4 the bold heading that says instructions?

5 A Yes.

6 47 Q And paragraph 3, the instructions here said one
7 report may be used for multiple distributions
8 occurring within ten days of each other provided
9 that the report is filed on or before the tenth
10 date following such distributions?

11 A Yes, that's what it says.

12 48 Q Now, these distributions didn't occur within ten
13 days of each other, did they?

14 A No, they did not.

15 49 Q Did you put the same date to save the filing fees
16 so you could put it all in the same exempt
17 distribution report?

18 A No, that was just a misunderstanding of what the
19 correct process was. As I say it was my
20 impression that that date was to be the date of
21 this filing.

22 50 Q If the hearing officer can please bring up Exhibit
23 387. Now, Mr. Pasquill, you were here when Ms.
24 Lyon was talking about her table summarizing the
25 exempt distribution reports?

1 A Yes.

2 51 Q You see in her first two rows for WBIC Canada?

3 A Yes.

4 52 Q The total raised was \$1,999,731?

5 A That's correct.

6 53 Q And while all that money was raised there were two

7 exempt distribution reports that you certified as

8 being true?

9 A Yes.

10 54 Q And in both of those reports you put down that

11 they all occurred on the same date, the first one

12 being August 11, 2008, the second one being March

13 14 -- sorry, May 14, 2008?

14 A That's correct.

15 55 Q That wasn't accurate, because of course all that

16 money didn't come in D-

17 A As I said all the distributions would have been

18 done on the basis of my understanding of that date

19 being the date of filing.

20 56 Q Okay. Moving down to rows 4, 5 and 6, FIC

21 Foreclosure Fund, so we're we've already talked

22 about row 6, but two earlier distributions for the

23 FIC Foreclosure Fund?

24 A That's correct.

25 57 Q You certified as being except distribution

1 reports?

2 A Yes, I did.

3 58 Q And, again, for the first batch of \$1.48 million

4 you had a distribution date of April 8, 2008?

5 A Yes.

6 59 Q And again you had that date for all of that money

7 in the exempt distribution reports?

8 A Yes, just as we said, it's the same for all of

9 them.

10 60 Q And July 15, 2008 exempt distribution report,

11 \$7,774,000 in the exempt distribution report, all

12 that money according to your report it occurred on

13 July 17, 2008?

14 A That's what it said.

15 61 Q And that wasn't correct?

16 A That's correct.

17 62 Q And again there was nothing -- you weren't bunking

18 these together for any other reason for cost

19 savings?

20 A It was my understanding of what the correct

21 process was, and obviously you're saying it was

22 wrong, so.

23 63 Q I'm going to ask if the hearing officer is five

24 copies enough?

25 THE HEARING OFFICER: Yes.

11

1 MR. CHAPMAN: I'm going to ask if Mr. Pasquill can be handed a

2 copy of subscription agreements that I received

3 from my friends this morning, and this one -- I'll

4 just wait.

5 64 Q Do you have the document in front of you, Mr.

6 Pasquill?

7 A Yes, I do. Actually there are several documents

8 stapled together.

9 65 Q Yes. And does the date on the first page say

10 February 14, 2008?

11 A Yes, it does.

12 66 Q Okay. And if you skip ahead one, two, three,

13 four, five, six pages there should be another

14 subscription agreement of February 13?

15 A That's correct.

16 MR. ANDERSON: If I could ask my friend for an indulgence. We

17 don't have an exact copy of what he's using right

18 now, and I'd just like to find out what it is

19 because we have the stuff here but I want to at

20 least see what we're looking at.

21 MR. CHAPMAN: As the panel is aware these documents are still

22 warm.

23 MR. ANDERSON: I'm not being critical, I just want to be

24 looking at the same thing, that's all.

25 MR. CHAPMAN:

12

1 67 Q Sorry, I'm not sure where I was. Were we on

2 February 13?

3 A We were on February 13th.

4 68 Q Okay. If you move ahead one, two, three, four,

5 five, six, seven, eight, nine, ten, eleven, twelve

6 more pages I get to another one dated February 13?

7 A That's correct.

8 69 Q And there's one more in here, so if you go ahead,

9 one, two, three, four more pages there's one of

10 February 28, 2008?

11 A That's correct.

12 70 Q Now, these subscription agreements, were these

13 prepared in house as well?

14 A Yes, they were.

15 71 Q Okay. Now, the offering memorandum that we spoke

16 about earlier, it's dated April 30th, 2008?

17 A Yes, that's right.

18 72 Q Can you just read for the panel the first sentence
19 of the first paragraph under 2 FIC Foreclosure
20 Fund Ltd.?
21 A Sure. The undersigned herein referred to as the
22 subscriber having received an offering memorandum
23 hereby irrevocably subscribes for and agrees to
24 purchase number of class A voting shares,
25 etcetera.

13

1 73 Q Is it possible that they received a draft of the
2 offering memorandum that was signed on April 30?
3 A This was the first batch which were all accredited
4 investors, and as such the offering memorandum had
5 not been prepared yet.
6 74 Q So my question was going to be that people have
7 signed off saying they have received an offering
8 memorandum, so my question was what offering
9 memorandum did they receive?
10 A The first batch did not receive an offering
11 memorandum.
12 75 Q Okay. So this was a mistake in the subscription
13 agreement?
14 A Yes, it was.

15 76 Q By chance were you working off an earlier
16 precedent as well when you prepared this?
17 A Yes.
18 77 Q And when you were signing up these investors did
19 nobody ask you -- the very first sentence says
20 it's an offering memorandum. Did nobody ask you
21 what that meant?
22 A No, I don't remember anybody asking that question.
23 78 Q You'll agree that the purpose of the raising of
24 the money was same pre versus post offering
25 memorandum FIC Foreclosure Fund?

14

1 A They were it both intended for foreclosure
2 investments. The first batch was specifically
3 intended for the road investment, and the other
4 batches were either road or Mohawk or other real
5 estate investments as stated in the offering
6 memorandum.
7 79 Q If the hearing officer go to Exhibit 30.
8 THE CHAIR: Just before you move on.
9 MR. CHAPMAN: Oh, sorry it should be marked as the next
10 exhibit.
11 THE CHAIR: It will be 493.

12 MR. CHAPMAN:

13 80 Q If the hearing officer can go to the bottom of

14 this page. Mr. Pasquill, you recognize at the

15 very bottom of this page is a line that says it's

16 from Sandra Alsop at Canaccord?

17 A Yes.

18 81 Q And if the hearing officer can please go to the

19 second page. And she writes Earle, this is

20 obviously addressed to yourself, Mr. Pasquill?

21 A Yes.

22 82 Q Okay. We are still committed to the private

23 placements so please send the \$210,000 total or

24 \$50,000 per account. And then if you can the

25 hearing officer can please go back to page 1. And

15

1 priest scroll down to the bottom. You replied to

2 that e-mail or it looks like you forwarded that

3 e-mail to Graham Woods on January 24th, 2008 and

4 you say not the news I was hoping for. Do you see

5 that there?

6 A Yes, I see that.

7 83 Q Now, just so we're clear that reference to private

8 placement a private placement investment that one

9 of the FIC companies made itself, this wasn't a
10 private placement being raised by one. FIC
11 companies?

12 A That's correct.

13 84 Q Just moving up the page a bit. Graham Woods
14 replies to you on January 4th, 2008 with what we
15 just said. So the \$210,000 isn't covering a
16 borrowing position but is for private placement.
17 We have to ensure that Mike, and that's a
18 reference your understanding to Mike Lathigee?

19 A Yes, it is.

20 85 Q And the brokers are fully aware that we are not
21 presently in a position to get into private
22 placements. In fact, even with the funds already
23 in the brokerage accounts we may find ourselves in
24 apologies where we need to collapse some of the
25 positions. The private placements are impossible

1 to collapse and we may need the cash over the next
2 couple of months. The 210,000 has to be the last.
3 You or Mike need to speak with each other with
4 each and every broker ensuring that liquidity is
5 available if needed. I fully concur that this

6 rally stinks, but I have to be a hundred percent
7 honest with the situation. Any private placements
8 are horrible for cash flow right now. Thanks.
9 That was your understanding as well?
10 A Yes, it was.
11 86 Q Private placements are horrible for cash flow?
12 A Clearly they don't have the liquidity that other
13 investments have.
14 87 Q And if the hearing officer could scroll up to the
15 top of the page. Then you reply to Woods and you
16 copy Mr. Lathigee into the e-mail?
17 A Yes.
18 88 Q The second part says Mike, Graham's point about
19 private placement cash calls is an important one
20 going forward at least until we get enough real
21 estate proceeds to breathe easy. That was
22 accurate?
23 A Yes, but I think it requires some explanation of
24 the context.
25 89 Q Well you're indicating to Mr. Woods and Mr.

1 Lathigee as far as private placements go they were
2 a concern because you were waiting to breathe easy

3 once you had enough real estate proceeds, that's
4 what it says; right?

5 A That's what it says, but when I talked about
6 breathing easy, as I mentioned before there are --
7 we have to pay close attention to the day-to-day
8 kind of cash flows and their ups and downs. Not
9 that we didn't have the ability to cover them but
10 we just had to be cognizant of them, and to go
11 heavily into private placements would reduce our
12 flexibility. That just makes good sense.

13 90 Q Just so we have this in the timeline this is
14 towards the end of January, 2008?

15 A Yes, that's right.

16 91 Q If the hearing officer can go to Exhibit 330,
17 please. Now, if I recall yesterday in your
18 testimony you talked about how you had a good
19 relationship with the TD Bank and there was open
20 communication back and forth. You recall that was
21 sort of the gist of your direct evidence about
22 your relationship with the bank?

23 A Yeah, what I said was we had open communications,
24 the communications with -- we did not believe they
25 were going to terminate the loan. It ran till

1 December.

2 92 Q This is an e-mail from yourself to Mr. Lathigee of
3 January 28, 2008, subject line's cash, and it says
4 John and I have discussed cash and we've decided
5 to use the money that Malcolm is holding
6 supplemented with a bit from here in order to pay
7 off Craig Nelson's loan. Who is Malcolm?

8 A He's the lawyer in Edmonton that was handling a
9 number of the properties which we have since had
10 some disputes with.

11 93 Q Is that Malcolm Lenny?

12 A Yes, it is.

13 94 Q The second line says I have told John and he has
14 agreed that we need to replace the Malcolm money
15 asap (within a week) so that TD doesn't get upset.
16 Do you see that there?

17 A Yes.

18 95 Q What were you concerned about TD finding out?

19 A It wasn't so much a matter of them finding out
20 because they knew from time to time that the money
21 in the account would dip below what they wanted in
22 it, but as I said we were talking to them and we
23 made commitments to get it up to where it should
24 be, and we did, and they were happy.

25 96 Q My question was what were you worried about TD

1 getting upset about if they found out about that

2 use of that money in that fashion?

3 A Well, clearly they had set an amount that was

4 supposed to be in the account, and that was part

5 of their security. Any lender would want the

6 security to be what they thought it would be. We

7 understood that, and we -- we were in

8 communication indication with them and if dipped

9 below we ended up getting it back within an

10 acceptable period of time.

11 97 Q And how much had to be kept in that account?

12 A I believe that was the one that was about \$3

13 million, if I remember correctly.

14 98 Q So was it your understanding that you were in

15 breach of the loan if that amount of -- if the

16 amount in that account got below that amount?

17 A No, I wouldn't have called it a breach of the

18 loan.

19 99 Q Okay. If the hearing officer can go to Exhibit

20 331. This is an e-mail from yourself to Mr.

21 Tansowny, Mr. Woods, Mr. Rea, the next day,

22 January 29, 2008, talking about the Craig Nelson

23 loan. And you say wire transfers went out today

24 repaying US roughly \$1 million. John, we must now

25 replenish the funds with Malcolm before TD finds

20

1 out. Earle.

2 A Yes, that's what's there.

3 100 Q So again you've got the money out of the account

4 and you want to quickly put it back in before the

5 TD finds out?

6 A Yeah, finds out is probably is overstating the

7 thing.

8 101 Q That's your words, sir?

9 A Yes, I know. Sometimes you don't always say what

10 you -- it's just what pops in your head at the

11 time, but clearly we didn't want to annoy the TD

12 Bank and so clearly we wanted to get -- get the

13 account back to where it should be.

14 102 Q So is it your view that if you weren't satisfying

15 the security requirements of the loan that that

16 would be annoying to TD Bank?

17 A I think there's a risk that there might be some

18 annoyance, but I don't know that for sure.

19 103 Q Wasn't it a bit more serious than annoyance, this

20 is the terms of your loan agreement?

21 A No, I don't think it was ever more serious than

22 annoying.

23 104 Q Was that million dollars paid back without TD

24 finding out?

25 A I don't honestly know that. It was paid back, I

21

1 don't know whether -- it probably came to light,

2 it was probably part of the discussions between

3 Steve and TD.

4 105 Q If the hearing officer can please go to Exhibit

5 210, and scroll down to -- sorry, I think I just

6 solved my mic'ing problems. Okay. Mr. Pasquill,

7 there's an e-mail about half way down the page

8 from Rose Harvy January 29, 2008. Who is Rose

9 Harvy?

10 A She was the controller within our organization at

11 the time.

12 106 Q And she's e-mailing Ken Gora from Kran

13 Construction and she says can you e-mail me your

14 outstanding invoices. Do you see that there?

15 A Yes, I do.

16 107 Q And Ken Gora replies it looks like the next day,

17 January 30, 2008. Rose, this is copy of the

18 outstanding amounts owed to us on the Stoney

19 Plains project Genesis on the Lake. And if you go
20 to the very top of that e-mail you'll see that
21 there's an attachment which is a spreadsheet, so I
22 ask the hearing officer to please turn the page
23 and lift this image if possible. You see the
24 amount here being claimed by Kran Construction,
25 the total amount outstanding is just a hair over

22

1 \$5 million?
2 A Yes, that's correct.
3 108 Q When did you first find out about that?
4 A I don't recall offhand, but if I was copied on the
5 e-mail then I would have seen it.
6 109 Q Were you aware before February of 2008 that there
7 was \$5 million owing to one of the contractors on
8 the Genesis project?
9 A No, I was not.
10 110 Q Do you know how it came to your attention?
11 A No, I don't. If I were copied on that that's
12 where I would have, and I can't recall whether I
13 was copied on it or not. But that is the amount
14 that ultimately got liened, if I was correct,
15 which I explained yesterday turned out to be

16 irrelevant.

17 111 Q If the hearing officer can please go to Exhibit

18 334. This might help refresh your memory.

19 There's in the middle of the page an e-mail from

20 John Tansowny, do you see that e-mail?

21 A Yes, I do.

22 112 Q You were one of the recipients of the e-mail, the

23 subject line lien on Genesis, and Mr. Tansowny

24 writes I've just been advised that one of our

25 contractors, Kran Construction, gave instructions

23

1 to appeal counsel to file a lien on the Genesis

2 project on Friday. I have not received anything

3 to confirm that, I believe the information is

4 valid. Is it fair to say that was probably the

5 first time you were aware there was amounts owing?

6 A I believe so.

7 113 Q Now, the next line Mr. Tansowny notes while this

8 is not a desired action -- perhaps a bit of an

9 understatement on Mr. Tansowny's part, it will

10 have little impact on anything since the bank's

11 security takes precedence. Do you see where he

12 says that?

13 A Yes, I do.

14 114 Q Now, was it your understanding of the loan with

15 the TD Bank for the general sis project that a

16 builder's lien being filed on title was not a

17 problem at all or no way in violation of your loan

18 agreement?

19 A I would not have taken it as being a violation of

20 the loan agreement. I would have seen it as

21 impediment to making the sales we needed to make.

22 But as I explained yesterday the agreement was set

23 up between both Kran and Gentech to remove it from

24 phase one of the Genesis project to phase 2, so

25 from a cash point of view it was irrelevant.

24

1 115 Q So the 5 million builders lien filed on your

2 flagship property was irrelevant?

3 A I said it was irrelevant to cash flow because we

4 could still sell the properties.

5 116 Q Was it relevant to anything?

6 A I'm sorry.

7 117 Q Did you consider it relevant to anything?

8 A Oh, sure, any time there's a debt out there, but

9 construction were to be paid out of the TD loan,

10 and ultimately in phase 2 it would have been
11 discharged if in fact it stood, because we had
12 challenged these costs. There was money spent
13 that was unauthorized, it was outside the scope of
14 work, and so it was the subject of a legal matter
15 and a challenge, but the fact that the agreements
16 permitted us to continue to sell phase 1, which is
17 the only phase that was ready to sell, then it
18 didn't impact the flow of cash from sales.

19 118 Q Let's go back to Mr. Tansowny's e-mail here of
20 February 10th. He continues after bringing the
21 builders lien to your attention. However, the
22 more serious issue is the TD deposit situation,
23 and we need to discuss the situation on Monday and
24 determine what our options are. Do you see where
25 he says that?

25

1 A I do.

2 119 Q What's he talking about?

3 A I'm not entirely sure except that this was before
4 that agreement so that if it was on phase 1 then
5 obviously TD would have some concern about the
6 potential sales, and we would have concern about

7 potential sales, but we got past that one.

8 120 Q Okay. This e-mail is advising you there's a \$5

9 million builders lien being filed on your project,

10 Mr. Tansowny he was your eyes and ears on the

11 ground for the project?

12 A Yes.

13 121 Q He's telling you that there's a more serious issue

14 than a \$5 million builder's lien. He's saying

15 it's the TD deposit situation. Is it your

16 evidence today that you don't know what he's

17 talking about?

18 A My evidence is that the particular deposit

19 situation that he's talking about I don't recall

20 it. Obviously we met on Monday and we sorted it

21 out. We moved forward with the agreements to take

22 it off of the critical piece of property, and we

23 got through it. As I've said before there are ups

24 and downs through all of this. We always had

25 confidence that we would overcome it and we did.

1 122 Q Was there more than one deposit situation with the

2 TD Bank at the time?

3 A As I said I'm not sure which deposit situation

- 4 he's talking about, so I don't know.
- 5 123 Q Why don't you tell me how many deposit situations
- 6 were you having with TD Bank at that point in
- 7 time?
- 8 A I don't recall we were having deposit situation,
- 9 clearly John thinks there's a deposit situation,
- 10 but sitting here today I don't recall what it was.
- 11 124 Q All you recall the builders lien for \$5 million
- 12 was not a big deal at the time?
- 13 A It wasn't that it wasn't a big deal, it was a big
- 14 deal, but there was ways to deal with it, ways to
- 15 mitigate it, we found those ways and we moved on.
- 16 125 Q I can take you to a loan agreement if it will help
- 17 refresh your memory, but you do recall as one
- 18 parts of the security for the TD loan was that the
- 19 numbered company, the 076 company had a portfolio
- 20 investment account?
- 21 A Yes.
- 22 126 Q And that had to be kept at \$9 million for the life
- 23 of the loan?
- 24 A Yes, that's correct.
- 25 127 Q Is it possible that's the situation he's talking

1 about?

2 A I don't see how that connects, but --

3 128 Q Whatever situation that is is a different

4 situation than a \$9 million minimum balance in the

5 numbered company's investment account?

6 A You're asking me to conclude something I've

7 already said I don't know what it is.

8 129 Q If the hearing officer can go to exhibit 409, and

9 please scroll down to the bottom of the page.

10 This is an e-mail from Graham Woods to Mike

11 Lathigee, the subject line is re urgent and very

12 confidential for Steve, Earle and Graham only.

13 And again Graham Woods, he was the CFO for FIC

14 group of companies at the time?

15 A That's correct.

16 130 Q He was a chartered accountant?

17 A Yes.

18 131 Q Okay. Mr. Woods writes in his e-mail Mike,

19 personally for me to you at this time, your timing

20 on this ties in with a high degree of uncertainty

21 that I am feeling in regards to the real estate

22 projects. As you are aware we base our selling

23 prices almost entirely on the future profits of

24 the real estate projects. I think that there is a

25 chance that they are way off and this will really

1 make lee looking like a chum. Something like this
2 could impact my chartered accountant designation.
3 As such it is personal to me, I can't tell you
4 over the past week or so how many of the items you
5 have outlined I've been thinking about. Now, that
6 e-mail was then forwarded, if the hearing officer
7 can go to the top of the page, Mr. Lathigee then
8 forwards that e-mail the next day February 4,
9 2008?

10 A Yes.

11 132 Q He copies it to Steve Rea?

12 A Yes.

13 133 Q And his e-mail is Graham is very concerned?

14 A Yes.

15 134 Q How did you react when you got that e-mail
16 forwarded from Mr. Woods that said he was so
17 concerned about the Genesis project that he was
18 learning about losing his CA designation?

19 A Well, obviously it bothered me. I recollect I had
20 some conversation with Graham, but I'll repeat
21 what I said yesterday, and that is what Graham is
22 talking about here is the accuracy of the prices.
23 He's very particular kind of guy, and it would
24 bother him personally if it were out by one cent,
25 and I believe this was in relation to Mike's

1 suggestion that we do some equity financing
2 relative to a share of phase 1 of Genesis which
3 was one part fortunate project. So, you know,
4 ultimately Graham's concern was subsided over
5 time, but at that particular moment he weighs
6 concerned that he be absolutely accurate about how
7 the share prices were determined.

8 135 Q Now, this is February 24th, 2008?

9 A Yes.

10 136 Q The CFO of your company is so concerned with the
11 project he's concerned he might lose his
12 designation as a CA?

13 A Well, I can tell you after talking to him it was
14 a, you know, a momentary flash of terminology, and
15 I think there were others that he let the emotion
16 of the moment override his reason. But you can
17 ask him about that when he testifies.

18 137 Q So based on your discussions after with him about
19 this e-mail your conclusion was he was just
20 letting his emotions get the best of him and let
21 that slip out that he was worried about losing his
22 CA designation?

23 A I think he was clearly overstating his concern.
24 But as I say the guy is the kind of guy that was
25 very precise and would worry about a few penny's

30

1 of difference, yeah.
2 138 Q Isn't that what you're paying him for as CFO?
3 A Oh, sure, I don't criticize that, I'm just
4 explaining it.
5 139 Q If the hearing officer please go to Exhibit 312,
6 page 2. At the very bottom of the page -- I'm
7 sorry. You'll see there's an e-mail here of
8 February 26, '08 from Steve Rea to Dave McDonald
9 and John Tansowny?
10 A Yes.
11 140 Q Hi, Dave. If the hearing officer can please go to
12 page 3, and the first paragraph says great news on
13 the sale of lots. No financing from TD, pre-sales
14 are the issue for us for any new funding from TD.
15 Our refinancing is not in play until March. This
16 is internal timeline and not to be disclosed to
17 any third party. What was the pre sale issue you
18 were having at that point to get new funding from
19 TD?

20 A Well, my recollection is that TD wanted certain
21 levels of sales as evidence that the project was
22 moving along, so marketing to get the pre-sales is
23 that evidence is the topic.
24 141 Q Just move down about three more paragraphs down.
25 He says, this is Mr. Rea phase 2 funding from TD

31

1 is nonexistent as they want 50 percent minimum of
2 those lots having 15 percent deposits in full on
3 them and cash in hand?
4 A Yes, that's right.
5 142 Q Does that accurately describe what the problem was
6 for funding for phase 2?
7 A I have to Steve at his word. There is two parts
8 to the funding. One was the general loan and was
9 really a line of credit for trades payable, and I
10 suspect this has to do with the latter.
11 143 Q Let's move to the last paragraph of his e-mail
12 here. Agreed news on sales, we are working on
13 payouts to remove liens. When he says liens do
14 you know besides the Kran Construction be lien at
15 that point in time were you aware of any liens?
16 A I can't recall the time of the Gentech lien, but

17 it was around the same time I believe.

18 144 Q His e-mail continues 12 capital M, which I take it

19 to be 12 M, in facia work done ahead of budget

20 schedule is no small undertaking to refinance.

21 What's the \$12 million in phase 2 work done ahead

22 of budget schedule. What's he referring to there?

23 A Certainly 10 million of that was the cost overrun

24 that we spoke about where they dug a hole in the

25 ground it was not due to be done, in fact they

32

1 built a lake, was not due to be done until a later

2 phase and was outside the scope of work.

3 145 Q Just correct me if I'm wrong because I'm trying to

4 understand this cost overrun issue and how it

5 affected the company, and again tell me where my

6 understanding is wrong on this, but from the TD

7 loan my understanding the cost overrun was done

8 for phase 2 work?

9 A Yes.

10 146 Q But there was no funding in place for phase 2

11 work?

12 A That's right.

13 147 Q So the funding you had was for phase 1 work?

- 14 A Yes.
- 15 148 Q So you had no funding for the cost overrun?
- 16 A That's correct.
- 17 149 Q So I do understand it correctly?
- 18 A Yes.
- 19 150 Q So the 12 million cost overrun you had no funding
- 20 for?
- 21 A That's correct.
- 22 151 Q If the hearing officer can please go to Exhibit
- 23 410, and just down to the bottom of the page. Mr.
- 24 Pasquill, you'll see an e-mail from Mr. Lathigee
- 25 March 1, 2008 to Graham Woods, Earle Pasquill,

- 1 Ivan Martinez. Who is that person?
- 2 A Ivan Martinez was our marketing person.
- 3 152 Q Okay. Jennifer Pasquill, any relation?
- 4 A Yes, my daughter.
- 5 153 Q Okay. What was she doing?
- 6 A She was just clerical help.
- 7 154 Q Bob Lathigee, who's that?
- 8 A Michael's brother.
- 9 155 Q Keith Hirsch, who was that?
- 10 A He was sales manager.

- 11 156 Q And then Steve Rea?
- 12 A Right.
- 13 157 Q The subject line reads urgent that everyone reads
- 14 promotional piece as your all mentioned with
- 15 action steps. The actual e-mail itself says for
- 16 March this has gone to the top of the list as the
- 17 top priority. You're aware that Mr. Lathigee is
- 18 referring to the promotional piece -- or the
- 19 promotional e-mail or mailing that whatever you
- 20 want to call it, that went out for the March 7
- 21 conference call for the cash flow opportunity?
- 22 A It's not clear from this e-mail that that's what
- 23 it's for, but sounds about right.
- 24 158 Q And it sounds about right that that fund-raising,
- 25 the promissory notes or cash flow opportunity,

34

- 1 whatever you want to call it, as Mr. Lathigee says
- 2 that was going to the top of the list in March as
- 3 the top priority?
- 4 A Yes.
- 5 159 Q Okay.
- 6 A That was his assessment, yeah.
- 7 160 Q And he's the chair of FIC?

8 A Yes.

9 161 Q And Mr. Woods replies above that and he says Mike,

10 I'm going to read this in more detail tomorrow,

11 however it is important that you in no fashion

12 indicate that the promissory note is backed or

13 secured by the real estate. You see that

14 sentence?

15 A Yes, I do.

16 162 Q And then if the hearing officer can go just to the

17 top of the page, Mr. Lathigee replies: I show a

18 degree of certainty with a hundred million dollars

19 in assets and only a \$10 million loan but do not

20 say it is a security. And then below that Earle

21 edit letter as Graham suggests. Do you see that

22 there?

23 A Yes, I do.

24 163 Q What was your understanding of why you mentioned

25 that you had a hundred million dollars in assets

35

1 in the promotional piece and then later on from

2 the conference call itself on March 7th, 2008?

3 A Well, I mean first of all, that's what was in

4 Mike's mind about it, but from my point of view

5 it's just a statement about the relative
6 relationship between the assets and what we're
7 asking for, that's all.

8 164 Q So in other words you're looking for \$10 million
9 and you have assets ten times that amount?

10 A That's true.

11 165 Q Now --

12 A In fact more if you take it at market value.

13 166 Q But you knew there was also liabilities against
14 those assets; correct?

15 A Of course.

16 167 Q Roughly \$50 million at that point in time
17 approximately?

18 A I think that -- well, maybe. Could be, could be
19 that high.

20 168 Q Mortgages, for example?

21 A Yeah, sure.

22 169 Q Liens?

23 A Yes.

24 170 Q Unpaid contractors?

25 A Right.

1 171 Q Didn't you think it was misleading not to

2 disclose?

3 A No, I didn't think it in those terms at all. That

4 was not my.

5 172 Q Let me finish my question first?

6 A That did not go through my mind. It's just a fact

7 we had a hundred million in assets.

8 173 Q I'll start again, Mr. Pasquill. My question was

9 didn't you think it was misleading to mention that

10 you had a hundred million in assets which was ten

11 times the amount you were raising without

12 mentioning that you had \$50 million in

13 liabilities, including mortgages, and new builders

14 liens?

15 A No, I mean we did have financial statements on the

16 website, and people could dig deeper if they

17 wanted.

18 174 Q But obviously financial statements, what, six

19 months lead time from when they're finished and

20 when they're actually posted on the website?

21 A Every one is different, but there is a lead time,

22 I couldn't tell you how much it was.

23 175 Q Is it fair to say for the March 31, 2008

24 financials they wouldn't have been done until

25 December 2008?

1 A Well, in some cases they would have been done
2 sooner, in some cases it might be that long.

3 176 Q We can come back to that if you like. If the
4 hearing officer can go to Exhibit 374. Now, this
5 is an e-mail from Mr. Lathigee to Keith Hirsch on
6 March 3rd, 2008. The subject more refinement on
7 script. Please remind me again who Keith Hirsch
8 is?

9 A He was sales manager.

10 177 Q Okay. And Mr. Lathigee says: Keith, more of the
11 same but the script is so important. And I'm
12 going to read the paragraph where it says for five
13 years members. Do you see where I'm starting
14 there.

15 A Yes.

16 178 Q I guess it's the fourth paragraph down: For five
17 years members have been requesting a cash flow
18 opportunity that all members could participate.
19 We have had 7 previous cash flow opportunities but
20 this is the first opportunity that both accredited
21 and non-accredited investors can participate. And
22 then Mr. Lathigee puts down: That could be the
23 opening. So that was the start of an opening for
24 the conference call and for the promo piece?

25 A Yes.

1 179 Q Next heading frequently asked questions. Is the
2 loan secured? They must be taught to never say no
3 directly but use a softer response that still says
4 "no". Who is the they Mr. Lathigee is talking
5 about to.

6 Who have to be taught to say no directly?

7 A It could be staff in the case of where people
8 called in to subscribe.

9 MR. ANDERSON: Just a sec, please. I'm going to object. I
10 find that Mr. Pasquill not even on this e-mail,
11 and without establishing that he has knowledge of
12 it somehow to have him commenting on it I think's
13 inappropriate.

14 MR. CHAPMAN: Maybe I'll try it this way.

15 180 Q Are you aware if any of the staff were taught for
16 the March 7th, 2008 promissory note offering, was
17 any of the FIC staff taught, to your knowledge, to
18 never say no directly about the loan being
19 security -- they must be taught to never say no
20 directly but use a softer response that still says
21 no to your knowledge?

22 A I don't have any firsthand knowledge. I'm reading
23 what you're reading.

24 181 Q So it could have happened, but you're not aware of
25 it?

39

1 A That's right.

2 182 Q If that was happening would that have concerned
3 you at all if you were aware of it at the time?

4 A I would have probably been more direct.

5 183 Q Okay. More direct in the sense of that's pretty
6 misleading, isn't it?

7 A No, I wouldn't call it misleading, I think it
8 would be more direct is my personal style.

9 MR. CHAPMAN: This might be a good time for the morning break.

10 THE CHAIR: If this is a good time for the break we'll take it
11 now. Come back at 11:50.

12 (PROCEEDINGS ADJOURNED AT 11:26 A.M.)

13 (PROCEEDINGS RESUMED AT 11:50 A.M.)

14 THE HEARING OFFICER: All rise.

15 THE CHAIR: Carry on.

16 MR. CHAPMAN:

17 184 Q Mr. Pasquill, I think you indicated in your direct
18 evidence that you have a bachelor's of commerce
19 degree?

20 A That's correct.

- 21 185 Q A MBA?
- 22 A That's right.
- 23 186 Q You've been a businessman for many, many years?
- 24 A Yes.
- 25 187 Q And you're truly familiar that one of the

40

- 1 definitions of being insolvent is simply not being
- 2 able to pay your debts on time when they become
- 3 due?
- 4 A Yeah.
- 5 188 Q Okay. If the hearing officer can go to Exhibit
- 6 40, please. There's an e-mail here from Mr.
- 7 Lathigee, I'm reading it towards the top of the
- 8 page there, March 3rd, 2008 at 11:52 a.m. to Mr.
- 9 Tansowny. Do you see where I'm reading from?
- 10 A Yes, I do.
- 11 189 Q And Mr. Lathigee says: John, there was much cash
- 12 that was said to be coming in from you and it is
- 13 not or it has been delayed by months. Follow me
- 14 so far there? We need about \$10 million to stay
- 15 solvent and I am all over this right now and don't
- 16 have any time to focus on anything except this.
- 17 The TD loan is a serious concern and the dominoes

18 that would fall, just create pressure to buyers to
19 get funds in where you can and come to the man
20 meeting, which I take to be the management
21 meeting, on Wednesday. Please allow me to go back
22 to getting money for FIC. This is the worst
23 situation we've ever been in. Earle will be your
24 point of contact as I don't have any time to tie
25 up if it is not bringing in cash.

41

1 You've seen this e-mail that you got from Mr.
2 Lathigee?
3 A Yes, I have.
4 190 Q He's the chair of the FIC group of companies?
5 A Yes.
6 191 Q And he was telling the truth there, wasn't he?
7 A As I explained before he was overstating the
8 situation. That was written with a specific
9 agenda of lighting the fire under John Tansowny.
10 192 Q He says we need about \$10 million to stay solvent.
11 And \$10 million, you'll agree, was the amount of
12 the cost overruns of the Genesis project?
13 A \$10 million was the amount of the cost overrun. I
14 don't agree that we required \$10 million to stay

- 15 solvent.
- 16 193 Q \$10 million was the exact amount you were seeking
- 17 to raise through the cash flow opportunity?
- 18 A That's correct. That was the maximum, yes.
- 19 194 Q That was the amount you were raising to solve your
- 20 cash flow problems and to pay down your debts?
- 21 A It was the amount we were raising to invest in
- 22 real estate, and that would have paid down some
- 23 debts, it would have allowed us to flow forward
- 24 with the projects a lot easier.
- 25 195 Q If the hearing officer can please go to Exhibit

42

- 1 41. This is an e-mail from Mr. Lathigee to Mr.
- 2 Tansowny March 5, 2008. I'm reading from the top
- 3 of the page. Do you see where I am?
- 4 A Yes.
- 5 196 Q It says, I'm just going to read part of it here.
- 6 It said John the seriousness is that the company
- 7 is close to insolvency with TD low that could be
- 8 called. We have no cash flow. There was much
- 9 talk from yourself about the delivery of cash but
- 10 the results are not there. We are suffering from
- 11 no cash flow and now in desperation we are doing a

12 promissory note offering that will encompass the
13 entire staff for one month to save the company.
14 That was true, wasn't it
15 A It was true that he wrote it, but as I explained
16 yesterday, you know, we were all aware, first of
17 all, that Mike was preparing for negotiations with
18 John. He phoned me and told me not to take him
19 literally because that was the purpose of these,
20 and there's about three -- I don't know if there's
21 three or four e-mails. We know that that was
22 Mike's style of negotiating. And quite frankly,
23 Mike was on the road a lot, not in the office all
24 that much, and was not in the same position to
25 really understand the finances as we were.

43

1 197 Q Mr. Pasquill, the \$10 million raised for the
2 promissory notes that was desperation money,
3 wasn't it?
4 A I wouldn't use the term desperation, no. It was
5 certainly advantageous to have it, there's no
6 question.
7 198 Q You never told the investors this is desperation
8 money, did you?

9 A I didn't believe it was desperation money. That
10 was an opportunity for them to participate in the
11 66 to \$71 million of potential profit that we were
12 looking at.

13 199 Q If the hearing officer can please go to Exhibit
14 14, page 1. Mr. Pasquill, there's an e-mail here
15 for Mr. Woods to yourself and Mr. Rea of March 29,
16 2008 subject commissions?

17 A Yes, that's correct.

18 200 Q Mr. Tansowny is not on this e-mail, is he?

19 A No, he's not.

20 201 Q Okay. And again he's the CFO of the company?

21 A Mr. Lathigee, yes.

22 202 Q Mr. Woods.

23 A Oh, sorry, CFO.

24 203 Q If the hearing officer can please turn the page.
25 Is this Exhibit 14?

1 THE HEARING OFFICER: Yes, it is.

2 MR. CHAPMAN:

3 204 Q I'm going to read to you from three lines down.

4 You see where it says also we are in a tight cash
5 situation?

6 A Yes, I see that.

7 205 Q This is Mr. Woods. People cannot view this

8 promissory note money as free money in quotations

9 as it is "desperation money". In effect this

10 money is already spent. That was the -- Mr. Woods

11 was correct, wasn't he?

12 A Mr. Woods was correct that it was already spoken

13 for or spent. He was correct that it's free

14 money. I don't agree that it was desperation

15 money.

16 206 Q This e-mail wasn't part of some secret plot to

17 trick Mr. Tansowny about how company was doing,

18 was it?

19 A No, not this one. The other ones were intended to

20 influence Mr. Tansowny. I wouldn't use the word

21 trick, but they were different e-mails. I just

22 want to make sure that we're clear about the

23 intent of the other ones.

24 207 Q I'm going to put it to you, Mr. Pasquill, this is

25 an internal e-mail between yourself, Mr. Rea and

1 Mr. Woods?

2 A Yes.

3 208 Q This is upper management of FIC?

4 A Yes.

5 209 Q Mr. Woods is telling yourself and Mr. Rea,

6 reminding you that the promissory note money was

7 not free money, it was desperation money?

8 A You will also note the term desperation money is

9 in quotation marks. He could very well have been

10 quoting Mr. Lathigee's term.

11 210 Q You never told investors in either the promotional

12 piece or conference call that the money was

13 desperation money, did you?

14 A I didn't consider it to be desperation money as I

15 just explained.

16 211 Q You didn't tell him that and it was very

17 misleading, wasn't it?

18 A No, it wasn't.

19 212 Q I'm going to try and keep moving along

20 chronologically if possible. If the hearing

21 officer can please go to Exhibit 433. Mr.

22 Pasquill, you recognize these as the executive

23 management team retreat minutes from March 5 and

24 6, 2008?

25 A Yes, I do.

1 213 Q How well do you remember this retreat?

2 A Quite well. I remember being there, I remember
3 some of the conversations. I don't remember every
4 detail. It was over five years ago.

5 214 Q Where was it?

6 A It was here in Vancouver.

7 215 Q Like in a hotel, in an office?

8 A Yeah, it was a hotel room in a Delta on Hastings
9 Street.

10 216 Q If the hearing officer can please go to page 6.

11 The second bold heading on the top of the page
12 says numbered company tax stock company. Your
13 recollection that numbered company, the stock
14 company is the 076 numbered company?

15 A Yes, that's correct.

16 217 Q It says 2.2 M, which I take it to be million, need
17 to file by March 8. Do you see that there?

18 A Yes.

19 218 Q So this numbered company had a tax bill that was
20 coming or at least you had to deal with by the end
21 of March of 2008?

22 A Yes. I don't specifically recall that that was a
23 tax bill. I read what you read. I don't have a
24 lot of recollection about that particular line.

25 219 Q Well, maybe it will refresh your memory if we go a

1 bit further. The question how we spread the
2 payments out. If we don't file by end of March we
3 will incur 10 percent interest tax interest that
4 is not tax deductible. Action Graham to speak
5 with government and see when we can pay the
6 minimum amount with attached plan as we are in
7 cash crunch. Do you see that there?

8 A I see that.

9 220 Q So obviously by that point in time, the time of
10 your retreat FIC didn't have the money to pay the
11 full amount of that \$2.2 million?

12 A I assume so, although I can't be absolutely sure
13 about the way you stated it. Clearly we would
14 like to have a payment plan, and that -- I guess
15 maybe what I should do is just pause for a second
16 to back up a little bit and say we really need to
17 make a distinction here between the pressures of
18 the day-to-day cash which we had every confidence
19 we could meet, and in fact we did. We were still
20 around in the beginning of 2010 when the
21 receivership came into place. And the larger
22 picture of whether or not we were solvent or can
23 carry on as a organization. I think there's a big
24 distinction there. And we will see through here

25 that we were working with the day-to-day

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1 pressures. That didn't mean that there was an
2 overall problem, we were still offering
3 shareholders an opportunity to participate in 66
4 to \$71 million worth of potential profits.

5 221 Q Let's go back to the minutes, these are the
6 minutes prepared for the upper management, senior
7 management of FIC?

8 A Yes.

9 222 Q Okay. Again in bold action Graham to speak with
10 government and see when we can pay the minimum
11 amount with attached plan as we are in a cash
12 crunch. That minute says that because FIC was in
13 a cash crunch at the time, wasn't it?

14 A There was need to manage the short term cash, yes.

15 223 Q That was a cash crunch?

16 A You call it whatever you want. Obviously somebody
17 there called it, I didn't make the minutes, but,
18 yeah there was an upcoming payment due and like
19 any upcoming payments, we had to manage it and
20 make sure do it in the best way, in this
21 particular case the best answer was to spread it

22 over a period of time.

23 224 Q What was the source of the cash crunch at the
24 time?

25 A I don't recall off the top except that -- no, I'm

49

1 not going for speculate. I could speculate, but

2 I'm not going to.

3 225 Q So from this executive committee retreat meeting
4 the reference to cash crunch, you don't recall
5 what that relates to? There was a cash crunch,
6 you just don't know what it was.

7 A Yeah, we keep coming back to the term cash crunch.

8 I'll come back to the term of cash management.

9 226 Q I'm simply referring, Mr. Pasquill, to the wording
10 that's in the company's minutes from your
11 executive retreat on March 5th, 6th, 2008?

12 A And those words would have been produced by our
13 secretary, so it's a term.

14 227 Q Before we move on can I summarize and tell me if I
15 have your evidence on this correct. You knew
16 there was a cash crunch, you just didn't know what
17 the source of it was?

18 A I don't recall what the source of it was now.

19 It's not that I didn't know then.

20 228 Q The next action note here, Mike has agreed not to

21 do any private placements without consulting the

22 committee, and Graham in particular from an

23 accounting perspective. Now, I take it that point

24 goes back to what we spoke about in January with

25 the private placements?

50

1 A Yes, that's my belief too.

2 229 Q And that's because private placements were bad for

3 cash flow?

4 A They were -- they gave us less flexibility, that's

5 right.

6 230 Q Go down to the bottom of the page. There's a

7 heading that says builders income concept, do you

8 see that there?

9 A Yes, I do.

10 231 Q It says potential to solve cash flow problems.

11 Now I'm not sure whether your cash crunch is

12 different than cash flow problems. What was the

13 source of your cash flow problems?

14 A Same as above, I don't particularly remember them

15 at that particular moment.

16 232 Q Now, this is March 5th and 6th?

17 A Yeah.

18 233 Q So this is the day or two leading up to the

19 conference call on March 7, 2008 for the

20 promissory note offering?

21 A Yes.

22 234 Q Obviously the cash flow opportunity, the

23 promissory notes was meant to try and solve FIC's

24 cash flow problems; isn't that correct?

25 A The promissory note as stated was for investment

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1 into the real estate opportunities, and give the

2 participants a chance for a cash flowing

3 opportunity. It would also have a secondary

4 effect of facilitating our investment, our real

5 estate investments.

6 235 Q You were on the call on March 7, 2008?

7 A I was.

8 236 Q And you never disclosed to any investors, I think

9 Mr. Lathigee said there were hundreds, and

10 hundreds and hundreds of listeners. Is that your

11 recollection?

12 A I remember him talking about a lot of people being

13 on the call, I don't specifically remember how
14 many, nor do I know how many were there.
15 237 Q And at no time did you disclose or did Mr.
16 Lathigee disclose FIC's cash crunch or cash flow
17 problems at the time, did you?
18 A I would not have disclosed them because I wasn't
19 speaking to the topics. But I don't think there
20 was any mention of cash flow issues within our
21 company.
22 238 Q And that was very misleading to not mention that,
23 wasn't it?
24 A No, I don't think so. I don't think -- like I
25 told you before we're managing it day to day and

52

1 we were doing it and we were succeeding. I don't
2 think it was an issue for that call.
3 239 Q Let's look at where that \$10 million that was
4 raised went to. If the hearing officer can please
5 go to Exhibit 264. Do you have -- it's your
6 e-mail of April 15, 2008 to Mike Lathigee and
7 Graham Woods?
8 A Yes, I do.
9 240 Q And it looks like what's attached is cash flow

- 10 report as of today?
- 11 A Yes.
- 12 241 Q And then the line below says that also here is the
- 13 disposition of the \$10 million. That's obviously
- 14 the \$10 million raised on the promissory note
- 15 offering?
- 16 A I take it as that, yes.
- 17 242 Q The first item, \$3 million for CIBC Wood Gundy to
- 18 top up the account to the minimums required by TD
- 19 for security on Genesis?
- 20 A That's correct.
- 21 243 Q That's the amount that had to be kept at \$9
- 22 million for the life of the loan?
- 23 A Yes, that's right.
- 24 244 Q The next item. \$2.5 million to Genesis trade
- 25 payable to remove be liens?

53

- 1 A Yes.
- 2 245 Q The next item \$1.695 million to be kept in reserve
- 3 for interest payments and operations.
- 4 A That's correct.
- 5 246 Q So from the very \$10 million that you collected
- 6 from the investors you put aside their interest

7 rate payments?

8 A Interest rate payments fund was reserved for

9 interest rate payments, that's right. Whether it

10 was that or not I can't specifically recall.

11 Makes sense it might be.

12 247 Q You recall there was a graduated rate of return on

13 these between 12 and 15 percent?

14 A Yes.

15 248 Q And I think they were paid quarterly?

16 A Yes, that's my recollection.

17 249 Q So obviously at the time this money was raised you

18 realized that you had no way of paying that

19 interest payment without putting the original

20 investment money aside?

21 A No, I wouldn't draw that conclusion. It's

22 probably just a safe thing to do.

23 250 Q Let's continue on here. There was some money

24 transferred to the foreclosure fund. Let's go to

25 the next one here. \$660,000 used for operations?

1 A Yes.

2 251 Q To keep the lights on basically?

3 A I don't know which operations it's talking about

4 offhand.

5 252 Q The day-to-day costs of just running the business?

6 A You can draw that conclusion, I'm not sure.

7 253 Q Do you know what it was for?

8 A No.

9 254 Q 230,000 payment on Crossroads?

10 A Yes.

11 255 Q What does that relate to?

12 A That's one of the projects.

13 256 Q What was the payment for?

14 A Purchase of Crossroads.

15 257 Q 240,000 advanced to CD, which I take it to be

16 China Dragon?

17 A Yes.

18 258 Q And WBIC for Rick Langer.

19 A That's right.

20 259 Q What's that for?

21 A Rick Langer was a broker at Canaccord that we

22 worked with.

23 260 Q If the hearing officer can please go to Exhibit

24 201. This is the transcript of the conference

25 call that you were on with Mr. Lathigee on March

1 7, 2008?

2 A Yes.

3 261 Q If the hearing officer can please go to page 20.

4 And at line \$17 the listeners were told the FIC

5 group of companies has over a hundred million

6 dollars of real estate projects in Edmonton,

7 Alberta. Once again this is the best real estate

8 market in North America FIC could have invested in

9 the last few years. We are raising \$10 million

10 only with a promissory note with the two year term

11 and the ability for FIC to renew the funds or

12 return the funds after six months. You see that

13 there?

14 A Yes, I do.

15 262 Q So again when you're actually on the phone with

16 the investors you mention a hundred million

17 dollars in assets?

18 A I didn't mention it, but it was mentioned, yes.

19 263 Q By the chair of the FIC companies?

20 A That's correct.

21 264 Q He made no mention of the \$50 million or so in

22 liabilities?

23 A Clearly not.

24 265 Q He made no mention of the mortgages and of the

25 builders liens?

1 A Clearly not.

2 266 Q And you made no mention that there was trades owed
3 millions of dollars on that project?

4 A No, we've already established that the liabilities
5 weren't mentioned.

6 267 Q And by not mentioning any of that on the
7 conference call, that was highly misleading,
8 wasn't it?

9 A I don't think so. There still was a huge amount
10 of profit to be made in these projects that --
11 this was still liable. I mean, if in fact -- the
12 answer is no.

13 268 Q We have a nice combination of a hundred million
14 dollars being raised, we're only raising \$10
15 million, a ten to one ratio if you want to say
16 that. You obviously knew that if Mr. Lathigee
17 mentioned the \$50 million in liabilities, the
18 mortgages, the new builders liens, the unpaid
19 trades to the tune of millions of dollars, that
20 wasn't going to help sales at all, would it?

21 A I didn't know that, we could speculate that it
22 wouldn't, but as I told you my opinion was this
23 wasn't the place for it.

24 269 Q If the hearing officer can please go to page 25.
25 -- association, sorry, page 25.

1 THE HEARING OFFICER: Is that 201?

2 MR. CHAPMAN: I'm sorry.

3 THE HEARING OFFICER: What document.

4 MR. CHAPMAN: That was Exhibit 201.

5 270 Q Now, at line 19 the members were told if you
6 follow the teachings of the club we have had
7 uncanny accuracy to guide members. We are now
8 guiding you to go very heavy in cash and seek a
9 cash flow opportunity that outperforms inflation.
10 This opportunity has a success of 7 previous
11 offerings and is a product that makes complete
12 sense in the market. Do you see that there?

13 A Yes, I do.

14 271 Q Now, at the time did you realize what you were
15 really trying to do you were raising the money to
16 pay the bills of FIC; correct?

17 A No, we were raising the money to invest in the
18 real estate projects. There was a potential huge
19 profit out there and the objective was to get to
20 that.

21 272 Q The \$3 million that was transferred to the CIBC
22 Wood Gundy account?

23 A Yes.

24 273 Q That was real estate investment?

25 A It was part of the requirements for the general

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1 sis project to do that.

2 274 Q How could that possibly be a real estate

3 investment?

4 A Because it was a condition of the loan on Genesis

5 which is one of the real estate projects.

6 275 Q I'll ask the hearing officer to please move to

7 Exhibit 264. Now, if the hearing officer you'll

8 see again we talked about this previously, the

9 e-mail from yourself to Graham Woods of April 15,

10 2008 and to Mike Lathigee?

11 A Yes.

12 276 Q The first line says here's Graham's cash report as

13 of today. Do you see that there?

14 A Yes.

15 277 Q And down below at the bottom of the page you'll

16 see Mr. Woods e-mailing you and Mr. Rea subject

17 cash saying to reiterate my position, and if the

18 hearing officer can please go to page 2. Now, you

19 recall in your direct you put in a lot of these

- 20 cash -- these daily cash flow summaries?
- 21 A Yes, we did.
- 22 278 Q From Mr. Woods into evidence. This is the only
- 23 one I've seen where there's a new column added on
- 24 the right side. Do you see that there?
- 25 A Yes.

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- 1 279 Q And this is Mr. Woods' notation about what could
- 2 be done with these amounts, isn't it?
- 3 A Yes.
- 4 280 Q So if we start at the top FIC Management Group
- 5 Ltd., those are all for operations?
- 6 A That's what it says.
- 7 281 Q And for the next amounts FIC Investment Ltd. he
- 8 has next to all those amounts minimal?
- 9 A Right.
- 10 282 Q FIC Investments USA, for all those amounts he's
- 11 written minimal?
- 12 A Yes.
- 13 283 Q WBIC Canada all those amounts are listed as
- 14 minimal?
- 15 A Yes.
- 16 284 Q China Dragon Fund, all those amounts are listed as

- 17 being minimal?
- 18 A Yes.
- 19 285 Q The 0760838 BC Ltd. amount, there's \$3 million and
- 20 his note is gone to Wood Gundy now for TD
- 21 security?
- 22 A Yes.
- 23 286 Q The next item, FIC Real Estate Fund he has down
- 24 minimal?
- 25 A Yes.

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- 1 287 Q FIC Southeast Asia Fund Ltd. minimal?
- 2 A Yes.
- 3 288 Q Is it Genesis by the Lake Ltd., all of those
- 4 amounts he's put down can't touch?
- 5 A That's what he says, yes.
- 6 289 Q Well, this is correct, isn't it, this is
- 7 Mr. Woods' assessment?
- 8 A Yes, it's on the left-hand side --
- 9 290 Q He's not just making this up, Mr. Pasquill?
- 10 A No, he indicates that it's restricted, that's
- 11 right.
- 12 291 Q Thank you. Let's go down to FIC employee real
- 13 estate minimal?

- 14 A Yes.
- 15 292 Q FIC income fund for this company only?
- 16 A Yes.
- 17 293 Q If the hearing officer can scroll a little bit
- 18 further down here. FIC financial services
- 19 minimal?
- 20 A Yes.
- 21 294 Q FIC portfolio fund. Now, you have some money in
- 22 there, I see Mr. Woods puts yes to that amount?
- 23 A Right.
- 24 295 Q And that's a total of one point roughly \$3
- 25 million?

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- 1 A Yes.
- 2 296 Q And FIC real estate projects he's noted that \$2.5
- 3 of it is Genesis, the rest is interest reserve;
- 4 correct?
- 5 A Right.
- 6 297 Q So it couldn't be touched?
- 7 A Right.
- 8 298 Q And below that is minimal?
- 9 A Right.
- 10 299 Q So when we have Mr. Woods adding his notations to

11 what these cash flow summaries mean, if we just
12 looked at the amount in the bottom it's roughly
13 what, \$12 million?
14 A That's right.
15 300 Q But in reality --
16 A It's more like six.
17 301 Q -- when we look at what Mr. Woods is talking
18 about, well you have the amounts going out to Wood
19 Gundy, you have the two and a half million going
20 out to Genesis, the only amount he has yes next to
21 here is the 1.3 million for photo fund?
22 A No, I think the way you have to take it is take
23 the total and deduct the ones that he can't touch,
24 so you take out 3.3 or whatever that is and
25 another 3 something for restricted, basically what

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1 you're getting down to is five or six million.
2 302 Q The point being, Mr. Pasquill, simply is that once
3 we actually have these notations from Mr. Woods
4 added down the far column the amount at the bottom
5 becomes --
6 A Becomes much less, but it's still a sizeable sum.
7 303 Q He's telling you how much of that amount you can

8 actually access?

9 A Yes.

10 304 Q If the hearing officer can please go to Exhibit

11 262. And page 2, please. This is an e-mail from

12 Mr. Lathigee to yourself, Graham Woods and Steve

13 Rea of April 15, 2008. Do you see that there?

14 A Yes.

15 305 Q Subject I will make us huge profit. Do you see

16 that there?

17 A Yes.

18 306 Q And he says I need as much money as possible to

19 buy foreclosures, I believe I can make a hundred

20 percent on the money I receive no matter what the

21 amount in less than a year. This is the best use

22 of proceeds and I do not want to put all our money

23 into things that are not generating income. Let

24 me know all our assets and what I can get for cash

25 or soon. How much of the 10 million can I have

63

1 you see that there?

2 A Yes.

3 307 Q You understand the 10 million is the cash flow

4 opportunity?

5 A Yes.

6 308 Q And if the hearing officer can please go to page

7 1. Mr. Woods replies at the bottom of the page,

8 do you see that there?

9 A Yes.

10 309 Q And he says the \$1 million I moved to Prospera

11 foreclosure yesterday, that is it?

12 A I see that.

13 310 Q And Mr. Lathigee, if we can move a little bit

14 higher up isn't satisfied, if that's a fair way of

15 saying it, he says sorry, guys not good enough.

16 Do you see that there?

17 A Yes, I do.

18 311 Q And can you please read your reply of April 15,

19 2008 to Mr. Lathigee, Mr. Woods, and Mr. Rea?

20 A Just a remind determine that we raised \$10 million

21 to resolve our cash flow pressures related to the

22 real estate, not for new investment is that far

23 enough.

24 312 Q Yes. Again that's exactly what the money was for,

25 for the promissory note offering?

1 A As I said there was cash flow pressures in the

2 short run related to the real estate, and that was
3 -- and we stated that that was the purpose for the
4 real estate investment and that's what enabled us
5 to do.

6 313 Q Neither yourself nor Mr. Lathigee mentioned on
7 that call that the \$10 million being raised was to
8 solve FIC's cash flow pressures related to the
9 real estate, did you?

10 A That was a consequence.

11 314 Q You never disclosed that on the call?

12 A We didn't talk about as we already have discussed
13 here the liability side.

14 315 Q And by not mentioning that, that was very
15 misleading, it wasn't it?

16 A I didn't think so.

17 316 Q Did someone else think so that mentioned it to
18 you?

19 A No, you said it, but --

20 317 Q Let's move ahead. If the hearing officer can
21 please go to exhibit 259. And if the hearing
22 officer can please go to page 2. And down at the
23 bottom. Do you see Mr. Lathigee's e-mail of April
24 16, '08 with the subject line idea to bring in
25 capital quickly?

1 A April 16th, this one?

2 318 Q Yeah, at the bottom of the page.

3 A Yes.

4 319 Q He says Gents, we raised 10.25 -- I'll try one
5 more time. Gents, we raised 10.25 million in 16
6 business days for our promissory note. Our
7 Genesis project is perceived very positively by
8 members. Do you see that there?

9 A Yes.

10 320 Q Is that correct it was perceived positively by
11 members?

12 A Yes, we had talked about, and John had stood in
13 front of members and talked about the potential of
14 25 or 25 million or maybe 30 million at some
15 points in time of.

16 321 Q He continues: They perceive it as a hugely
17 profitable project as is and would see it all the
18 way through and get rid of the bank. I would like
19 the three of you to discuss if it is possible for
20 members to become an equity partner in the project
21 with us. You see his e-mail there?

22 A Yes, I do.

23 322 Q And if the hearing officer can go up to the top of
24 that page. Mr. Rea replies on April 17, 2008 to
25 Mr. Lathigee, yourself and Mr. Woods. Do you see

1 this?

2 A Yes, I do.

3 323 Q Is it fair to say it looks like he's -- sorry. He

4 says I appreciate the importance of solving our

5 challenges and I am also aware of the huge risks

6 associated with this plan therefore, here are our

7 action steps. One, we cannot market profit

8 participation because there is no profit in phase

9 1A 1B. Our profit will not be realized for three

10 to four years from now and at this time our best

11 return may be 10 million excluding financing

12 charges, etcetera. Two, unless we tell the whole

13 story to members I don't support selling them on

14 the idea of investing. How can they invest in a

15 ship taking on water right now without knowing the

16 risks. Do you see that e-mail there?

17 A I do.

18 324 Q So Mr. Rea was aware obviously by that point in

19 time there could be no profit whatsoever on

20 Genesis?

21 A No, that's not true, he said no profit on phase 1A

22 and B, which is the issue.

23 325 Q The profit --

24 A There's still profit on the entire project.

25 326 Q So possibly \$10 million three to four years from

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1 now?

2 A Yeah, and that's consistent with John's comments.

3 Around this time he was predicting 10 to \$20

4 million of profit, perhaps more if a joint venture

5 is done with a builder.

6 327 Q If the hearing officer can go to page 1, please.

7 You replied to Mr. Rea at the bottom of the page

8 April 17, 2008?

9 A Yes.

10 328 Q And your first line says I have similar thoughts;

11 correct?

12 A Yes.

13 329 Q And I'm going to read the second paragraph that

14 says but as Steve points out attracting capital to

15 a project that at best would have a rate of return

16 under 10 percent and maybe zero is very difficult.

17 So you were obviously aware -- alive to the fact

18 that at that point in time there could be no

19 profit potentially?

20 A No, we were talking about the phase 1A, 1B. There

21 was profit in the larger picture.

22 330 Q If the hearing officer can go, please to Exhibit

23 284. Now, Mr. Woods also replies to Mr.

24 Lathigee's suggestion. He just does it to you and

25 Mr. Rea. Do you see that e-mail at the top of the

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1 page. Can you read that e-mail to us?

2 A He says no way am I having anything to do with

3 getting our members in FIC's Vietnam. I can see

4 the lawsuits coming now.

5 331 Q So your CFO at the time replies to this idea that

6 Mr. Lathigee raises and is comparing it to if

7 FIC's Vietnam?

8 A Yeah, it's silly comparison, and you can see it

9 was written at 5:14 a.m. and probably had

10 something to do with the colourful language, you

11 can ask Graham about it, but I don't think he

12 really seriously intended to allude to a direct

13 comparison to Vietnam.

14 332 Q You at least agree to me comparing FIC's situation

15 to Vietnam was negative?

16 A Sure, nobody thinks of Vietnam as positive.

17 333 Q Exactly, nobody does. So your CFO at the time is

18 saying there's no way I'm having our members to
19 get into FIC's Vietnam?
20 A That's what he says, but I think you'll find if
21 you ask him he'll probably regret his use of those
22 terms.
23 334 Q This is a private e-mail to yourself and Mr. Rea.
24 I assume that you had very candid discussions
25 amongst yourself as to how the company was doing?

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1 A Sure. Like I say this was 5:14 a.m., but the
2 whole thing is that Mike was proposing something
3 that we didn't agree with, and he was strenuously
4 making a point not to do it.
5 MR. CHAPMAN: Mr. Chair, I note the time, and it might be the
6 time for our afternoon break.
7 MR. ANDERSON: Yes, Mr. Chairman, I mentioned this to my
8 friend, I'm -- I have been struggling a little bit
9 this week because I've had some pain in my neck
10 and my back, and I have an appointment at one, but
11 can probably be back here by ten after two. Would
12 that be okay?
13 THE CHAIR: Yes. I think that's an easy call. 2:15 then.
14 (PROCEEDINGS ADJOURNED AT 12:31 P.M.)

15 (PROCEEDINGS RESUMED AT 2:15 P.M.)

16 THE HEARING OFFICER: All rise.

17 THE CHAIR: Good afternoon.

18 MR. CHAPMAN: Good afternoon. If we can continue and if the

19 hearing officer can please bring up Exhibit 272,

20 page 2. Sorry, I have the wrong exhibit number.

21 I'm looking for I hope BCSC 403, so give me one

22 more chance. 273. I was wrong. If we can start

23 on page 2, please. And the bottom of the page,

24 please.

25 335 Q Mr. Pasquill?

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1 A Yes.

2 336 Q You see the e-mail at the bottom of the page there

3 for Mr. Woods April 11, 2008 to Wayne Sims?

4 A Yes, I do.

5 337 Q And Wayne Sims is the TV commercial backing guy?

6 A That's right.

7 338 Q And it says Wayne I am briefly in today, however,

8 FYI I am wiring 100,000 to top up the interest

9 account and we are one step away from moving \$3

10 million into 0760838 brokerage account. I'll get

11 you to turn over to the next page.

- 12 A That's correct.
- 13 339 Q I think the e-mail goes to the next page. We
- 14 should have all in place on Monday. Thanks. Now,
- 15 you see the e-mail?
- 16 A Yes.
- 17 340 Q And that's obviously the \$9 million minimum
- 18 account we've been talking about today for the
- 19 loan?
- 20 A I believe so.
- 21 341 Q If the hearing officer can go please back to page
- 22 2. Mr. Sims replies. You see that e-mail April
- 23 17th, 2008. Graham, can you give me documentation
- 24 showing the deposit being in place as I have to
- 25 verify the margining is in line. We have given

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- 1 Steve the required control agreement and power of
- 2 attorney for 0760838 BC Ltd. Due to changes in
- 3 legislation these documents are not optional and
- 4 are required. Please forward the docs asap. I
- 5 take it the reference there to Steve would be
- 6 Steve Rae?
- 7 A That's correct.
- 8 342 Q And if the hearing officer could please go to page

9 at the very bottom of the page. There's another
10 e-mail from Graham Woods to Wayne Sims on April
11 17, 2008. If the hearing officer could please go
12 to page 2. Wayne, see attached. Unfortunately
13 today I have wired another 300,000 to CIBC Wood
14 Gundy per the amount of the spreadsheet that's
15 just under \$9 million ... I will talk to Steve
16 when I see him, but whose legislation changed, TD,
17 government, etcetera? And one more e-mail over,
18 please, sorry to page 1. And my question leading
19 up to this e-mail here, Steve Rae e-mails Graham
20 Woods on April 17, 2008, I have the document here,
21 which is presumable the power of attorney
22 document, and in capital letters no more money is
23 to be sent into any TD account of any kind. They
24 are obviously nervous and grabbing everything. Do
25 you see Mr. Rea's e-mail there?

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1 A I do, yes.
2 343 Q What was the TD Bank nervous about at that time?
3 A I don't know. Those are Steve Rea's words. I'm
4 not even on the e-mail.
5 344 Q You're not aware around that time what Steve Rea

6 is talking about?

7 A I know they had put forward a power of attorney.

8 345 Q Okay. Well, let's go up to Mr. Woods's next

9 e-mail where you are copied on it. If Mr. Woods

10 on April 17, 2008 e-mails back or replies to Mr.

11 Rea and copies you into the string, if we sign

12 these documents TD will take the \$9 million that

13 is in 0760838. That would be terrible. It is

14 even worse considering that we owe \$2 million in

15 tax from 076038. I take it that's the tax payment

16 that we were talking about from the --

17 A Yes, that's what I would take too.

18 346 Q Okay. And you reply at the very top, if hearing

19 officer can scroll a bit higher. Guys, let's not

20 panic. In the next couple of days let's sit down

21 and revisit the ... I really think we can find a

22 way to take out TD. Now, obviously you told them

23 not to panic because they were panicking?

24 A Well, that's a form of expression. Clearly

25 everyone was getting upset about it so I'm just

1 calming things down a bit. Putting things back in

2 perspective.

3 347 Q Remind me again, because for some reason he never
4 has signature line on the had I e-mails, but Steve
5 Rea's actual position with FIC?

6 A We called him managing director.

7 348 Q You received a string of e-mails on this date
8 where you thought your managing director and your
9 CFO were panicking about the TD Bank?

10 A I think you're reading too much into the word
11 panic. Basically what I'm saying is calm down
12 guys, let's talk about this.

13 349 Q Okay. If the hearing officer please go to Exhibit
14 35, and the hearing officer can scroll just down
15 to middle of the page. This is an e-mail from
16 yourself April 20th, 2008 to Mr. Lathigee with the
17 subject roles?

18 A Yes.

19 350 Q And it says here are some thoughts. The first
20 heading or first paragraph plan for TD. And your
21 last sentence under that first heading plan for TD
22 obviously this is urgent, and it was urgent,
23 wasn't it, dealing with the TD Bank?

24 A I'm sorry, where are you directing my.

25 351 Q Where it says number one plan for TD?

1 A Yes.

2 352 Q See that paragraph and the last sentence in that
3 paragraph?

4 A Yes.

5 353 Q Obviously this is urgent?

6 A Those are the words, yes.

7 354 Q So getting a plan for TD at that time was urgent?

8 A Yeah, I mean it wasn't life and death urgent, but

9 clearly the sooner we could do it the more

10 flexibility we would have the better off we'd be.

11 And as I said we weren't all that happy with the

12 way TD was treating us, so the sooner the better.

13 355 Q So your other two items that you've numbered there

14 to the extent possible manage the relations with

15 TD, Matthew and Steve, and three, take out TD?

16 A Yes.

17 356 Q If the hearing officer can go to page 2, please.

18 Can you read the last sentence of your e-mail?

19 A Also, we must recognize that this will slow down

20 our response to the S B 1 responses. This real

21 estate crisis needs to be number one priority.

22 357 Q The real estate crisis you were talking about of

23 course was FIC's real estate crisis?

24 A Well, again crisis may be an overstatement. But

25 FIC's real estate challenges relative to making

1 the payments on some purchases, and moving
2 forward, which is part of the day-to-day, week to
3 week, month to month cash management that I spoke
4 about.

5 358 Q This is an e-mail between just yourself and Mr.
6 Lathigee?

7 A Yeah.

8 359 Q So and it was obviously confidential?

9 A I mean it probably would turn out that way, but it
10 wasn't marked confidential, and it wasn't intended
11 to be as such.

12 360 Q And you can talk to him obviously freely, and you
13 did talk to him freely?

14 A I can talk to him freely, sure.

15 361 Q The word you put in there this real estate crisis
16 needs to be number one priority.

17 A Those are the words. I don't want to overstate
18 the word crisis because I think some of these
19 words have been overused, but that's what the
20 words say.

21 362 Q That's because it was true; correct?

22 A Well, depends, crisis is very subjective term.

23 You obviously attach more to it than I do.

24 363 Q That's the term you just throw around?

25 A No, but there is some range of interpretation of

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1 it.

2 364 Q If the hearing officer could please go to exhibit

3 124. Mr. Pasquill, you're familiar with this

4 document here. Maybe if the hearing officer can

5 --

6 A Yes, conference call.

7 365 Q And this is the one about the foreclosure funds?

8 A Yes.

9 366 Q Now, in the electronic form of this document and

10 our list of documents this is dated April 30th,

11 2008. Does that sound around the right date when

12 this would have been broadcast for the first time?

13 A I don't remember precisely, but that's about the

14 date I saw in the documentation of things, yeah.

15 367 Q Maybe this helps you. The offering memorandum was

16 also dated April 30th, 2008?

17 A Yes.

18 368 Q Would it make sense they would occur around the

19 same time?

20 A Yes, it would.

21 369 Q Like all conference calls or web casts they're

22 available after they're played the first time for
23 members to log into the website?
24 A Typically, yes. Sometimes there are technical
25 difficulties that prevent that, but typically yes.

77

1 370 Q We saw earlier today some of the team effort that
2 went up for the script for the March 7, 2008
3 conference call?
4 A Yes.
5 371 Q I take it there would have been some collaboration
6 involved above the management of FIC for this
7 conference call as well?
8 A I don't recall specifically that that was the
9 case. I mean one could conclude that there was
10 some consultation, certainly marketing would have
11 been a part of it, Mike would have been part of
12 it, perhaps Steve, maybe even parts of it myself I
13 just don't recall.
14 372 Q When did you first listen to this?
15 A I don't think I've ever listened to it. I saw
16 what I saw was your transcript.
17 373 Q Let's go to page 3?
18 MR. ANDERSON: Just before my learned friend moves on. I do

19 want to make a point about what he just put to the
20 witness. I don't think the witness ever agreed
21 earlier that the document that he referred to was
22 a script for the conference call, and I may deal
23 with that on re-examination, but that was not what
24 the evidence was this morning, and quite frankly I
25 don't think there's anything in that particular

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1 exhibit that has any linkage to the earlier
2 conference call.
3 MR. CHAPMAN: If the hearing officer can go to page 4 now.
4 Sorry, I guess page 3. Now, Mr. Lathigee opens up
5 good evening, members, tonight's conference call
6 is the most educational conference call the
7 Freedom Investment Club has ever done. Was that
8 correct.
9 A I read that too.
10 374 Q Was that true?
11 A I can't say that.
12 375 Q Okay.
13 A It was an important one, but I certainly can't say
14 it's the most important one I've ever done.
15 376 Q What made it so important?

16 A Well, again this is something I wasn't a part of
17 and I'm saying that it may not be the most
18 important one.

19 377 Q Okay. Maybe just back up a little bit. The way
20 you raised money was when you had a new investment
21 vehicle or a new investment that came around. You
22 promoted it to your members?

23 A This is a call offering -- that's right, and so
24 raising money has importance in that sense, yeah.

25 378 Q And so when you were promoting a new offering to

79

1 your members they could participate in these kind
2 of either conference calls or they could also
3 participate through the web cast.

4 A Yes.

5 379 Q And this was FIC's way of talking to the potential
6 investors in FIC's investments?

7 A That's one of the ways, yes.

8 380 Q And if we can go back to page 3 the second
9 paragraph says we have over 2,000 attendees
10 registered for tonight's call which makes this
11 largest attendance we have seen in the history of
12 Freedom Investment Club? Does that sound right?

- 13 A I have no idea how many people were on the call.
- 14 Absolutely no idea.
- 15 381 Q You have no reason to doubt that number, do you?
- 16 A I'm sorry.
- 17 382 Q You have to reason to doubt that number?
- 18 A It seems a high percentage of our members. Yeah,
- 19 I do doubt that number.
- 20 383 Q You do doubt that number?
- 21 A Yeah, I'm not sure that's true or not. I just
- 22 don't know. It just seems a high percent among of
- 23 our numbers, that's all.
- 24 384 Q Are you suspicious whether there was really that
- 25 many people registered for the call?

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- 1 A You're asking me to make an opinion about
- 2 something I don't know.
- 3 385 Q Was it buzz in the office about having that many
- 4 people registered for this call?
- 5 A I don't recall.
- 6 386 Q Okay. Let's go to page 19, please. You see line
- 7 15 there, Mr. Lathigee's explaining this
- 8 investment where it says here is how we do it?
- 9 A Yes.

10 387 Q And if the hearing officer can just kind of scroll
11 down a bit, I know you were here we went through
12 this Ms. Lyon's direct evidence, and if the
13 hearing officer can please go to page 20, and sort
14 of scroll down a bit further Mr. Lathigee is
15 talking about how this investment works, and if
16 the hearing officer can now please go to page 21.
17 And on line 6 with his -- he's giving an example
18 he said that's a whopping 132 percent per year,
19 once again, using the most conservative
20 calculations. The profits are massive when you
21 repeat this process several hundred times.
22 So the example Mr. Lathigee gave to the 2000
23 members allegedly registered for this event this
24 model using the most conservative calculations
25 generated an a whopping 132 percent return per

81

1 year. You agree with what he says

2 A That's what he says, I haven't checked the
3 calculations.

4 388 Q Assuming his math is correct?

5 A Assuming his math is correct.

6 389 Q Is that your understanding as well how this

7 investment worked?

8 A Again I hadn't done the calculation, I can't

9 comment on whether 132 percent was right, but it

10 was my belief she's had the potential to be highly

11 profitable.

12 390 Q And the way this investment worked Mr. Lathigee

13 was accurate in describing it in those three pages

14 that we scrolled through, just the mechanics of

15 it?

16 A I'd have to go back and re-read them, 'cause I --

17 391 Q Do you want me to do that then?

18 A If you're going to ask me about them.

19 392 Q Sure. I don't want to be unfair to the witness.

20 If the hearing officer wouldn't mind going back to

21 page 19.

22 MR. ANDERSON: Right, and it's clear in his evidence yesterday

23 he said he wasn't a participant in the call, so

24 what my friend's trying to do, I think, is to ask

25 him questions here about something he didn't

1 participate in, which I'm not going to object to,

2 but I think it should be clear he said he didn't

3 participate in this phone call.

4 MR. CHAPMAN: My line of questioning is that Mr. Pasquill's
5 understanding of how this investment worked as
6 well, at least the way he's describing it.

7 MR. ANDERSON: I understand that, but I think it should be
8 clear he wasn't a participant in this particular
9 event.

10 MR. CHAPMAN:

11 393 Q So, Mr. Pasquill, if you wanted to go back to page
12 19, page 19 and line 15 and perhaps let the
13 witness know when you're done reading that page
14 and read the next few pages?

15 A Fine. Okay. If we could move to the next page.
16 Okay. Next page. Okay. In answer to your
17 question, yes, my understanding was that's the way
18 the mechanics of it worked.

19 394 Q Okay. And again assuming his math is correct?

20 A Right.

21 395 Q Using the most conservative calculations that was
22 a whopping 132 percent per year profit?

23 A Assuming the math is correct.

24 396 Q Okay. Now, if the hearing officer can go on the
25 same page here, I'm sorry, you see at line ten it

1 says we've been doing it dozens of times now the
2 Freedom Investment Club is going to move into
3 hundreds of times?
4 A Yes.
5 397 Q Was that true?
6 A We had -- we had started it doing it. I can't
7 tell you the numbers.
8 398 Q Okay. Roughly dozens of times, does that sound
9 approximately correct?
10 A Could be in the ballpark, yeah.
11 399 Q And on those dozens of investments was it 132
12 percent roughly that you would have been making?
13 A I don't know.
14 400 Q Okay. If the hearing officer can please bring up
15 exhibit 125. Now, this is the offering memorandum
16 for FIC Foreclosure Fund which is again April
17 30th, 2008 which would be right around the same
18 time as this call?
19 A Yes, it is.
20 401 Q If the hearing officer can please go to page 8.
21 Now, again this is the document you prepared?
22 A Yes.
23 402 Q Okay. Can you read under the heading item 2
24 investments, can you read that paragraph?
25 A I think I may have the wrong page because I'm

1 looking at option agreements. Oh, I'm sorry,

2 you're down to the next.

3 403 Q Sorry, towards the bottom of the page?

4 A I'm sorry, I was looking for paragraph 2, I'm

5 sorry. As of April 15, 2008 foreclosure property

6 had been purchased at a cost of ... as a single

7 family residence located in Kansas City, Missouri.

8 404 Q Is that a more accurate description of how many

9 times?

10 A It is for foreclosure fund, although FIC USA had

11 dabbled as well, a different company.

12 405 Q So the offering memorandum refers to one property

13 had been purchased by --

14 A In this particular company. The FIC group of

15 companies had other investments in other companies

16 as well.

17 406 Q If the hearing officer can go back, please, to

18 the transcript which is exhibit 124, and then

19 please go to page 24. And could you please, Mr.

20 Pasquill, read lines 17 to 22. I guess that whole

21 paragraph that starts line 17 and runs to 22?

22 A The Freedom Investment Club is raising \$10 million

23 for the purchase of approximately 400 homes in the

24 new FIC Foreclosure Fund with the remaining funds

25 to be used for other real estate deals. I'm

1 sorry, how far did you want me to go?

2 407 Q The rest of the paragraph, please.

3 A The purchase is to occur in just a few weeks as we

4 are final stages of negotiation with a major

5 banks.

6 408 Q Is that accurate to your understanding?

7 A I totally believe Mike thought, the reality is we

8 could not absorb all of that within a few weeks.

9 409 Q The reference to negotiations, the final stages of

10 negotiations with a few major banks?

11 A I was not part of the mechanics of the

12 investments, I was -- I really focused on the

13 administration stuff, so I was not part of any

14 negotiations, so I really can't comment on it.

15 410 Q So you're not aware what major banks Mr. Lathigee

16 is referring to there?

17 A No, I'm not.

18 411 Q You're aware you only ever bought a hundred homes

19 from Mohawk, a company called Mohawk?

20 A No, that's not quite true, we bought a hundred

21 homes initially and then we came back and bought

22 some additional ones, but not in foreclosure fund.

23 412 Q Okay. To your understanding was Mohawk a major
24 bank?
25 A No.

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1 413 Q If the hearing officer can please go to exhibit
2 145. You recognize these statements to be interim
3 financial statements for FIC Foreclosure Fund as
4 of May 31, 2009?

5 A Yes.

6 414 Q If the hearing officer can please go to page 2.
7 Just so we're clear here under the top of the page
8 you have assets and the bottom of that section it
9 says investment in foreclosed homes, and if you go
10 over to the far right-hand side May 31, 2008, \$1.4
11 million, do you see that?

12 A Yes, I do.

13 415 Q That's the Mohawk investment?

14 A That's the Mohawk investment.

15 416 Q That was to purchase of 100 homes?

16 A That's right.

17 417 Q And that's -- those are the only homes that this
18 was the --

19 A No, tax remuns, which is a form of foreclosure and

20 investment in rental properties which came out of
21 foreclosures is similar which is also legitimately
22 a foreclosure situation.
23 418 Q According to your financial statements, sir,
24 there's one line that says investment in
25 foreclosed properties. You would agree with me?

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1 A That's what it says, but it doesn't accurately
2 describe all of the foreclosed properties.
3 419 Q Let's look at note 3 then for that entry, page 6,
4 please. I'm just going to look at the first
5 paragraph there at the page 3, investment in
6 foreclosed homes. On May 10, 2008 the company it
7 entered into a bulk foreclosure agreement with
8 Mohawk Diversified LLC with the payment of \$1.4
9 million the company agreed to purchase and Mohawk
10 agreed to sell 100 foreclosed homes?
11 A That's right.
12 420 Q No other foreclosed homes referred to in that
13 section, is there?
14 A May we go back and look at note 2.
15 421 Q Well, note 2 is for a different entry in your
16 financial statements?

17 A Sure, and those are road investments, which are
18 basically foreclosed properties as well.
19 422 Q When did FIC first determine that it was never
20 going to be able to buy 400 homes?
21 A Oh, I don't think we never determined that we
22 would never buy it. As I explained before we had
23 every intention of buying 400 homes and you know
24 that Mike was really keen to get on with that. We
25 really felt with two suppliers we needed to slow

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1 down an a bit, assess them, assess whether or not
2 we're at the bottom of the market, which one of
3 these out fits is going to serve the interest of
4 the shareholders best, and we fully expected at
5 some point that we would -- we would fulfill
6 buying 400 homes. The money that was unused
7 rather than sit idle was invested at, at least 12
8 percent, and that seemed to make sense for the
9 best interest of the shareholders. Never did we
10 think we were not going to do it.
11 423 Q And of course if there was the 2000 people or so
12 listening to that conference call they would never
13 be left with that impression that you were going

14 to do anything other than buy the properties?

15 A Sure they would, it was clearly said it would be

16 for foreclosures and other real estate

17 opportunities.

18 424 Q If the hearing officer can please go to Exhibit

19 294. And you talked about this letter, and you

20 recognize this e-mail, this draft letter, or

21 sorry, a draft of a letter I guess or in an

22 e-mail?

23 A Yes, I recall some discussion about it being a

24 draft.

25 425 Q Now, your e-mail of May 5, 2008 e-mail to Mr.

1 Lathigee and Mr. McKechnie, so I understand your

2 evidence about this, the paragraph that says, and

3 this is the first sentence in the second paragraph

4 Genesis turned out to be a financial disaster.

5 That was your writing?

6 A Yes, that's what we discussed the other day.

7 426 Q And then in capital letters the part that says \$25

8 million publically stated profit that never the

9 case even from the start based on professional

10 outside analysis and in the end we are likely

11 going to see a loss, that was Mr. Lathigee's
12 addition?
13 A Yes, it was.
14 427 Q And that was -- that was true, wasn't it?
15 A That was Mr. Lathigee venting about John Tansowny.
16 Clearly you have to take this in the context of
17 the fact this was a few days before we suspended
18 him, and some emotions were running high. In fact
19 at this stage in May, May the 5th we cited several
20 examples of where various people concluded that
21 Genesis alone produced at least \$10 million and
22 maybe as high as 20 profit.
23 428 Q Let's move a few more days then. If the hearing
24 officer can bring up Exhibit 335, page 2. Sorry,
25 page 2 of that. This is your e-mail to Mr. Woods

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1 about foreclosure fund May 7, 2008. Do you see
2 this?
3 A Yes.
4 429 Q You're talking about get a million dollars in
5 cheques today. Second line FYI Mike is wanting to
6 do foreclosure short sales to the tune of about \$2
7 million as funds are available. Do you recognize

- 8 this e-mail?
- 9 A I don't specifically recognize, but yes.
- 10 430 Q It's your e-mail?
- 11 A Yes.
- 12 431 Q Looking at the e-mail at the bottom of the page
- 13 from Graham Woods May 8, 2006?
- 14 A Yes.
- 15 432 Q He is replying to your e-mail and can you read the
- 16 -- see the paragraph that says we are still, it's
- 17 the third one down?
- 18 A Yes.
- 19 433 Q Can you read that paragraph, please?
- 20 A We are still in serious dire straits here with
- 21 Genesis and other payments that need to be made
- 22 before any short sales. Unfortunately we cannot
- 23 forget about Genesis and must still consider that
- 24 we need to use foreclosure funds.
- 25 434 Q And then the next sentence?

- 1 A Also on the horizontal is June 1st interest
- 2 payments to the first promissory note.
- 3 435 Q And so by that date the CFO for FIC is saying that
- 4 you're still in serious dire straits with Genesis,

5 and if you can please read your reply to this

6 e-mail right above it on May 8?

7 A Graham is correct. We need to be sure about the

8 real estate situation before more funds are

9 released.

10 436 Q If the hearing officer can please go to Exhibit

11 283. Mr. Pasquill, you recognize perhaps this

12 document from Ms. Lyon's evidence on Monday?

13 A Yes, I do.

14 437 Q You understand this is the withdrawals coming out

15 of the foreclosure fund account between February

16 28 and July 18, 2008?

17 A Yes, I do.

18 438 Q FIC foreclosure had an account at Prospera credit

19 union?

20 A Yes.

21 439 Q So the first amount that's withdrawn there

22 February 28, 2008, \$700,000 Malcolm J. Lenny,

23 professional corporation, you see that there?

24 A Yes.

25 440 Q That wasn't for foreclosed properties, was it?

1 A No, that falls into the category of other real

2 estate.

3 441 Q Malcolm Lenny professional corporation was not a
4 physical company?

5 A No. He was -- that was the lawyer that was land
6 hinge real estate transactions in Alberta.

7 442 Q The next three lines, I'm looking at rows 2, 3 and
8 4, property 1372007 Alberta Ltd.?

9 A Yes.

10 443 Q That's Dave McDonald's Alberta company?

11 A I don't remember the numbers specifically, but it
12 could well be.

13 444 Q One thing we haven't really talked about Genesis
14 is that it was a joint venture, wasn't it?

15 A Yes, it was.

16 445 Q And so when we are talking about profits FIC's
17 share was only its share of the joint venture?

18 A Yes, but it was the lion's share.

19 446 Q 80 percent?

20 A Yes.

21 447 Q So when you're talking of profit coming back to
22 FIC, we've got to remember that FIC was 08 percent
23 of whatever the numbers were?

24 A I understand that when John's talking about how
25 much profit is in it for us he's talking about our

1 share.

2 448 Q So the notes to these transfers from Prospera's

3 records for rows 2, 3 and 4 is about 1.05 million

4 roughly transferred. It says transfer of funds to

5 pay trades. Do you see that there?

6 A Yes, I do.

7 449 Q Paying trades was not the main focus of those

8 properties, was it?

9 A No, we acknowledged that the offering memorandum

10 stated very specifically that it was for

11 foreclosure on other real estate opportunities.

12 We also talked about why this was the case, that

13 while money was sitting idle because of the

14 reasons I stated they were going to be used

15 productively earning interest for the best

16 interest of the shareholders and that's what's

17 happening here.

18 450 Q My question was that you've paid that amount in

19 three payments to a numbered company from Alberta,

20 and you don't know where that numbered company is

21 if I recall?

22 A I just don't recall, there's a lot of numbered

23 companies, and this is five and a half years ago.

24 451 Q The Alberta numbered company is not one of the FIC

25 group of companies; correct?

1 A That's correct.

2 452 Q Item number 5, Trevoy LLP \$1.2 million?

3 A Yes.

4 453 Q That wasn't to buy foreclosed properties?

5 A No, it was to do the other thing we said in the

6 offering memorandum.

7 454 Q Who is Trevoy LLP?

8 A That's one of the lawyers who was handling Pigeon

9 Lake transactions.

10 455 Q Now, if you see there's some red, red rows?

11 A Yes.

12 456 Q Number 6, FIC Management Group \$100,000?

13 A Yes.

14 457 Q And then we skip down to 14 and 15, 150,000,

15 100,000, row 20, 200,000, row 24, 200,000, row 39,

16 200,000. Those amounts were all transfers to FIC

17 Management Group Ltd.?

18 A That's correct.

19 458 Q That's a company that you and Mr. Lathigee

20 controlled?

21 A Yes, we do for control purposes only.

22 459 Q And that company has no investments?

23 A No, that is the company through which the

24 education revenues run is the company through
25 which expenses are paid, and in this case it's the

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1 company we served as a clearing house for payment
2 on some of the real estate stuff. So that if, you
3 know, there was an invoice for which more than one
4 our companies had an interest in it and therefore
5 an obligation then they would pay into that and it
6 would and then a cheque would be issued that
7 covered all of them.

8 460 Q Let's back up?

9 A Mr. Baker Mr. Woods would probably be better to
10 describe the mechanics of how all that worked, but
11 basically my understanding it was a clearing house
12 account.

13 461 Q It wasn't to buy foreclosed properties, was it?

14 A To buy foreclosed properties.

15 462 Q It wasn't to buy foreclosed properties?

16 A No, it was to facilitate the other thing that we
17 indicated in the offering memorandum, namely other
18 real estate under the terms I explained.

19 463 Q If the hearing officer can please bring up Exhibit
20 140. You recall that there was a demand made to

21 the FIC group of companies asking for the
22 investment guidelines for the various funds in the
23 companies of FIC?

24 A Yes.

25 464 Q And this is your company's response?

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1 A Yes.

2 465 Q Okay. And let's look at FIC Management Group
3 Ltd., it's the second row from the top there, and
4 the comment that your company gave us or FIC has
5 no investments. Do you see that there?

6 A That's correct.

7 466 Q And that was true, wasn't it?

8 A That's true.

9 467 Q Now, that -- those amounts totalled that we've
10 been talking about from FIC Management about just
11 shy of a million dollars, \$990,000?

12 A Yes.

13 468 Q Is that the company that pays your compensation
14 and Mr. Lathigee's compensation?

15 A Yes, it is.

16 469 Q Going back to the chart, if I could, which is
17 Exhibit 283, it's item number 11. There's a

- 18 numbered company there 779243 BC Ltd. Do you see
- 19 that on row 11?
- 20 A Yes, I do.
- 21 470 Q That's another company that you Mr. Lathigee and
- 22 control?
- 23 A Yes.
- 24 471 Q That wasn't to buy foreclosed properties?
- 25 A That was a staff real estate fund.

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- 1 472 Q Okay. So it wasn't to buy foreclosed properties?
- 2 A No, it's again connected to the real estate stuff.
- 3 473 Q Okay. I'm going to take you through three --
- 4 threes three payments in a row, or three payments
- 5 for the same amount of money. You zero 12 where
- 6 there's \$440,000 and the note is 760838 BC Ltd?
- 7 A Yes.
- 8 474 Q And if you go down a bit further to row 28 you'll
- 9 see that there's another 440,000 to 760838 BC Ltd?
- 10 A Yes.
- 11 475 Q And if you go down to row 38 there's another
- 12 amount of \$440,000 to 760838 BC Ltd?
- 13 A That's correct.
- 14 476 Q Now, if the hearing officer can bring up exhibit

15 118. All right. Mr. Pasquill, you recognize --
16 you'll recognize these are the
17 Prospera Credit Union statement of accounts for
18 that numbered company's account there?
19 A Yes, that's correct.
20 477 Q And just so we recall, this is the account that
21 had the requirement to have a \$9 million balance
22 in its portfolio?
23 A Yes, that's right.
24 478 Q If the hearing officer can go to page 32, please.
25 And if you look at the top of the page here, as of

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1 April 30th the last entry about half way down the
2 balance in that account is just over \$4200. Do
3 you see that there?
4 A That's correct.
5 479 Q And then you see the \$440,000 coming in from the
6 FIC foreclosure amount?
7 A I see \$440,000, I can't remember whether 2646149
8 is the foreclosure account.
9 480 Q Perhaps just to assist. If the hearing officer
10 can bring up Exhibit 283 again. You'll note at
11 the top of this table it's talking about the FIC

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- 12 Foreclosure Fund account number 2646149?
- 13 A Yes, I see that.
- 14 481 Q Does that help refresh your memory?
- 15 A Yes, it does. Thank you.
- 16 482 Q If the hearing officer can go back to the document
- 17 I was just looking at, which I believe was 118,
- 18 and we were on page 32. So again down to May
- 19 12th, 2008 we see the \$440,000 coming in. You see
- 20 that there?
- 21 A I see that.
- 22 483 Q The next day there's a cheque for \$440,000, cheque
- 23 number 11, you see that there?
- 24 A Yes, I see that.
- 25 484 Q And if the hearing officer can please go to

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- 1 Exhibit 121. Now, Mr. Pasquill, these are
- 2 cancelled cheques from this account, from the
- 3 Prospera account, if the hearing officer can
- 4 please go to page 2. And zoom in a bit if
- 5 possible. You'll notice this is cheque number 11?
- 6 A Yes.
- 7 485 Q And it's payable to the receiver general Canada
- 8 Revenue Agency?

9 A It is.

10 486 Q This is to pay taxes?

11 A I assume it is. We wouldn't send.

12 487 Q That wasn't to buy foreclosed properties, was it?

13 A No, it would have been to facilitate carrying on

14 with the real estate stuff.

15 488 Q Paying the company's taxes wasn't a real estate

16 investment either, was it?

17 A No.

18 489 Q If we can go back to Exhibit 118 and page 34.

19 We'll follow the little journey for the next two

20 amounts. You see as of June 1st, at the top of

21 the page the balance roughly \$4200?

22 A Yes.

23 490 Q And you see the money coming in on June 10th for

24 440,000?

25 A Yes.

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1 491 Q And you see it going out June 16 for \$440,000?

2 A Yes.

3 492 Q It's cheque number 13?

4 A Yes.

5 493 Q I'll ask if the hearing officer can go back to

6 Exhibit 118. Sorry, that's what we're on right
7 now. Exhibit 121, please, page 3. And you'll see
8 Mr. Pasquill, this is cheque number 13?
9 A Yes, it is.
10 494 Q And it's \$440,000?
11 A Yes, it is.
12 495 Q And it's payable to the receiver general Canada
13 Revenue Agency?
14 A That's correct.
15 496 Q Again it's taxes?
16 A Yes.
17 497 Q It's not to buy foreclosed properties?
18 A Clearly not.
19 498 Q That's not a real estate investment?
20 A It's not a direct real estate investment, that's
21 right.
22 499 Q Let's follow that last cheque, and if I can have
23 the hearing officer go back to Exhibit 118, page
24 36. Okay. July 2nd, 2008 you see the balance is
25 roughly \$4100?

101

1 A Yes.
2 500 Q July 8, \$440,000 comes in?

3 A Yes.

4 501 Q July 11, \$440,000 goes out in cheque what, 14?

5 A 14.

6 502 Q And if the hearing officer can please go to

7 Exhibit 121, page 4. And you'll note, sir, this

8 is the cheque at the bottom of the page, cheque

9 14?

10 A Yes.

11 503 Q And that's \$440,000 and it's payable to the

12 receiver general Canada Revenue Agency?

13 A That's correct.

14 504 Q And it's again to pay taxes?

15 A Yes.

16 505 Q It wasn't to buy foreclosed properties?

17 A It was not to buy foreclosed properties.

18 506 Q And it was not a real estate investment?

19 A And it was not a real estate investment, however,

20 it was one of the intercompany loans that we

21 talked about when we said we would make use of the

22 idle funds and earn interest on it.

23 507 Q Now, during that conference call you recall, and

24 we talked about it on Monday, Mr. Lathigee

25 mentioned that the FIC foreclosure investment that

1 he came across was the best he's ever seen?

2 A Yeah, he was very enthusiastic about it.

3 508 Q He obviously wasn't talking about paying the

4 company's tax bills owed by FIC companies?

5 A No, he really believed in the foreclosures. It

6 was everybody's intent that ultimately we would

7 put all of this money into foreclosures. At the

8 time we raised the money that was the full intent.

9 As I explained, for the reasons I explained, it

10 wasn't all utilized. The idle money was put to

11 work on the -- with those interest agreements to

12 earn the foreclosure money interest.

13 509 Q And when he said it was the best investment he had

14 ever seen in his lifetime he wasn't paying trades

15 who owed money on the --

16 A No, he's talking about foreclosures.

17 510 Q Thank you. Just a couple of miscellaneous

18 amounts. If the hearing officer can go back to

19 Exhibit 283. There's a few items in lieu there,

20 rows 29 and 30. Row 29, Brian Tracey

21 International, \$40,000. Is that an InvestFest

22 account invoice?

23 A It was related to InvestFest, yes.

24 511 Q So it wasn't to buy foreclosed properties?

25 A No.

1 512 Q It wasn't a real estate investment?

2 A No.

3 513 Q Row 30 \$41,500 approximately Bill Barkman

4 Enterprise?

5 A Yes.

6 514 Q That wasn't to buy foreclosed properties?

7 A No, it wasn't.

8 515 Q And that wasn't a real estate investment?

9 A No.

10 516 Q Row 33, foreclosures Daley dot com LLC \$77,523,

11 and the subject line says InvestFest settlement.

12 Do you recall what that related to?

13 A I don't recall the details of it, but it was

14 related to InvestFest.

15 517 Q So it wasn't to buy foreclosed properties?

16 A No, it wasn't. Again these are all utilization of

17 funds after the funds were invested in the

18 intercompany loans bearing interest.

19 518 Q And that amount also wasn't a real estate

20 investment?

21 A That's right.

22 519 Q And the last one I'll ask you about, row 37, Brian

23 Tracey International \$5995 invoice, that --

24 A That was another InvestFest.

25 520 Q Okay. So that wasn't to buy foreclosed

104

1 properties?

2 A That's correct.

3 521 Q And it wasn't for real estate investment?

4 A That's right.

5 522 Q If the hearing officer can please bring up Exhibit

6 250. Now, you mentioned Mr. Baker, Bill Baker.

7 He was the CFO who came over sometime in the late

8 fall of '08 and took over for Mr. Woods?

9 A That's correct.

10 523 Q In Mr. Baker's e-mail here, March 30, '09 he says:

11 Real estate projects has loaned money to any of

12 the other companies in the group at 12 percent.

13 REP, which I take is real estate projects?

14 A Yes.

15 524 Q Is paying and accruing interest to promissory note

16 holders average between 12 and 14 percent?

17 A That's correct.

18 525 Q This is not a reasonable deal for REP, and in fact

19 there are tax consequences to this policy that are

20 not advantageous. Witness in mind effective April

21 1, 2009 I recommend the interest rate charged on

22 outstanding loans will be 15 percent. The current
23 intercompany loan agreements will need to be
24 amended?
25 A That's what it says, yes.

105

1 526 Q So if I can paraphrase, if I understand what he's
2 saying, the promissory note money where people
3 were getting between 12, and I think it was
4 actually 15 percent, depending how much they
5 invested, the intercompany loans are booked at 12
6 percent interest, so it's not actually even
7 generating the amount to cover that. Is that my
8 understanding of what he's trying to say there?
9 A That's correct.
10 527 Q Okay. Can you read your reply then on March 30,
11 2009?
12 A Sure. Let's audit what intercompany agreements
13 are in place and do documents for what is missing.
14 Do you have a list of the loans that are affected?
15 528 Q So by that point in time you weren't -- were you
16 not familiar with what kind of intercompany
17 agreements were in place? You say you use the
18 word --

19 A I knew there was a batch of them, I just wanted to
20 make sure that they were complete.
21 MR. CHAPMAN: Sorry, there's some paper which I thought I had
22 in front of me, and I just ask the panel to bear
23 with me.
24 THE CHAIR: We can take the afternoon break now if you want.
25 MR. CHAPMAN: Oh, that would be -- I'll come across as being

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1 prepared then after the break.
2 THE CHAIR: 3:30.
3 MR. CHAPMAN: Thank you.
4 (PROCEEDINGS ADJOURNED AT 3:13 P.M.)
5 (PROCEEDINGS RESUMED AT 3:30 P.M.)
6 THE HEARING OFFICER: All rise.
7 THE CHAIR: So just before we resume how are we doing on time.
8 MR. CHAPMAN: Surprisingly well. I know that the clock is
9 tolling at four p.m. and my plan is to be done
10 before that.
11 THE CHAIR: Okay. And I assume there will be some re-direct.
12 MR. ANDERSON: I'm not sure about that. What I would ask is
13 that we go to the end of the chief and take
14 literally two minutes and I'll have a quick
15 discussion with Mr. Ahmed.

16 THE CHAIR: The panel may have a few questions or not, but it
17 sounds like we're fine. Carry on.
18 MR. CHAPMAN: If the hearing officer can please go back to
19 exhibit 250. Mr. Pasquill, before the break we
20 were talking about your e-mail here of March 30th,
21 2009 to Mr. Baker.
22 A Yes.
23 529 Q And you said again let's audit what intercompany
24 agreements are in place and do documents for what
25 is missing. You see that there?

107

1 A Yes.
2 530 Q If the hearing officer can now go to Exhibit 439.
3 You'll recall this interest agreement and various
4 amendments that you discussed yesterday?
5 A Yes.
6 531 Q Was this one of the documents that was missing
7 which you prepared then after talking to Mr. Baker
8 around March of 2009?
9 A No.
10 532 Q Okay. If the hearing officer can go to page 2,
11 please. And then 3. And then 4. Are and then 5.
12 Now, Mr. Pasquill, looks like you signed all these

- 13 agreements?
- 14 A Yes, I did.
- 15 533 Q But you never dated them. Is there a reason the
- 16 date was left blank in every agreement?
- 17 A No, other than obviously I wasn't cogent to fill
- 18 in that part, but I don't know, I guess I assumed
- 19 that the date was already -- I didn't read it
- 20 closely enough to fill in the date, so, but it was
- 21 June of 2008 or whatever month or whatever year is
- 22 on them.
- 23 534 Q Okay. So the month -- the month that's typed at
- 24 the bottom by the signature lines would have been
- 25 the month when they were prepared and signed?

108

- 1 A That's correct.
- 2 535 Q So if we can go to page 2, please. Sorry. I'll
- 3 try page 3. Four. Thank you. Mr. Pasquill, you
- 4 recognize that these are two of the respondent
- 5 companies in this proceeding?
- 6 A Yes.
- 7 536 Q And this says it's dated March of 2008. So your
- 8 evidence this would have been, this document would
- 9 have been created and signed sometime in March of

10 2008?

11 A To the best of my knowledge.

12 537 Q Okay. And it says at the top whereas companies

13 which comprise the FIC group of companies and the

14 Freedom Investment Club have loaned principal

15 amounts amongst FIC G R P and FIC, and then

16 secondly and whereas management of the companies

17 comprising the FIC G R P and FIC recognize there

18 should be a stated interest cost associated with

19 the principal amounts, you then proceed. Now, the

20 very first paragraph talks about loaning principal

21 amounts amongst FIC companies. You see -- am I

22 understanding that correctly?

23 A I'm sorry, you're talking about the very first

24 paragraph.

25 538 Q Yes, the gist of what these agreements are, if I

109

1 understand what they are, is that the companies

2 have been loaning money back and forth between

3 each other?

4 A Whatever loans were made between these companies

5 are due interest is basically what it's saying.

6 539 Q So there's no actual loan agreements that talk

7 about the amounts back and forth, the documents,
8 the actual owe oath terms of the loan, etcetera,
9 etcetera, beyond this interest agreement?

10 A Not that I'm aware of.

11 540 Q If the hearing officer can please go to page --
12 sorry, exhibit 125. This is going back to the
13 offering memorandum that you prepared for FIC
14 foreclosure?

15 A Yes.

16 541 Q And if you can please go to page 7. And you see
17 the second heading there, second paragraph
18 material agreements?

19 A Yes.

20 542 Q Can you point out to the panel where this interest
21 agreement involving FIC foreclosure Ltd. is listed
22 there?

23 A From what I can see at least on that page it does
24 not appear to be there.

25 543 Q If the hearing officer can scroll down a bit and

1 then perhaps go to the next page so Mr. Pasquill
2 can see the whole document. So having looked at
3 that document, Mr. Pasquill, you'll agree that the

4 interest agreement with respect to FIC foreclosure

5 group is not referred to in the offering

6 memorandum?

7 A That's right, I don't see it there.

8 544 Q Let's just switch gears a little bit as we get to

9 the end of the day here. You've talked a lot

10 about in your direct how you met Mr. Lathigee, and

11 how you got involved in FIC. Are you still on

12 good terms with Mr. Lathigee?

13 A Yeah, we talk from time to time, sure.

14 545 Q What's he doing now?

15 A He's -- he's doing his own business, and I don't

16 know how a whole lot of details about it, but he

17 lives in Las Vegas, but he still actively tries to

18 assist wherever he can and he stands ready if we

19 need his help, particularly on some of the legal

20 matters.

21 546 Q And what business to your knowledge second ducting

22 in Las Vegas?

23 A Investing or real estate, I just don't know. I

24 haven't asked him a lot of details about that.

25 547 Q When was the last time you saw Mr. Lathigee?

1 A A few minutes ago.

2 548 Q Is he in this hearing room?

3 A Yes.

4 549 Q Can you identify him for this panel?

5 MR. ANDERSON: How is this relevant to any of the allegations

6 in the notice of hearing?

7 MR. CHAPMAN: Mr. Pasquill has talked about Mr. Lathigee and

8 his role in the company and when did you last see

9 him and he said he last saw him a few minutes ago,

10 and knowing that we're in the hearing room I made

11 the assumption, I made the leap of logic that

12 perhaps Mr. Lathigee is with us today.

13 MR. ANDERSON: I told my friend that, he asked me this morning

14 and I told him. I mean, I've never had this line

15 of questioning in any hearing here so far. I can

16 see if identification was an issue, but I don't

17 think I've raised that as a defence for this case

18 so far.

19 MR. CHAPMAN: Mr. Pasquill has identified Mr. Lathigee. Just

20 to give my friends the heads up of where I

21 potentially would be going with this down the road

22 would if my friends were just to try to use Mr.

23 Pasquill's evidence to explain away Mr. Lathigee's

24 e-mails for example and not call Mr. Lathigee. I

25 want the panel to know that Mr. Lathigee is

1 available and actually here. So to support an
2 adverse inference argument potentially it's very
3 relevant. If Mr. Lathigee was overseas, then
4 that's different, but that's the basis for why I
5 was asking the question.

6 MR. ANDERSON: Well, my friend can make whatever submissions he
7 wants, but I can tell you I'll conduct the case in
8 the manner in which I see fit and in accordance
9 with my instructions. And my friend knows exactly
10 what my position is and who I'm calling, and I
11 have my own reasons for whatever it is I do, but
12 I'll argue the case however I want to.

13 MR. CHAPMAN: I was never challenging my friend's ability to do
14 that.

15 THE CHAIR: Fair enough. Well, you got your answer and you can
16 move on.

17 MR. CHAPMAN: Yes, thank you.

18 550 Q Let's go back just to wrap things up here, please
19 Mr. Pasquill?

20 A Yes.

21 551 Q If the hearing officer can go back to Exhibit 433.
22 These are again the executive management team
23 retreat minutes of March 5 and 6, 2008 that we
24 were talking about earlier today?

25 A Yes, I recall these are the ones where we showed

1 the projections of the profits.

2 552 Q And the first heading is overview and about
3 two-thirds of the way down the line do you see a
4 phrase that says a backup plan?

5 A Yes.

6 553 Q Can you read that sentence that starting with a
7 backup plan?

8 A A backup plan needs to be ready in case TD fails.
9 19 million, 30 days foreclosure process.

10 554 Q And what did the 19 million and 30 days reference
11 relate to as far as you're aware?

12 A As far as I'm aware 19 million would be the amount
13 that we would probably borrow in the case of a
14 refinancing to cover not only the cost of taking
15 out TD's but related costs. 30 days would be our
16 own target for trying to put something together.
17 And I don't know what foreclosure process means,
18 and I'm not sure why Linda typed that, I just
19 don't know.

20 555 Q Okay. So having said all that you talked about
21 the need for backup plan in case TD Bank fails?

22 A We've always talked about having a backup plan for

23 TD.

24 556 Q And just the next line down, number 2 scenario if

25 TD called the loan/mortgage?

114

1 A Yes.

2 557 Q Now, maybe you can just read that paragraph to me

3 or sorry read that paragraph to yourself and maybe

4 explain to us what your understanding is of what

5 this is -- what this is saying.

6 A Okay. Well, it's fragmented and in bits of pieces

7 here that appears to cover several parts of the

8 whole thing. There's some talk about equities

9 sitting there, but I don't know which equity he's

10 talking about. 7 million appears to be I suspect

11 relates to stage one. It says 3 million did not

12 go into phase 1. It talks about net cost of

13 instruction there, construction. He indicates

14 that we are moving progress on the property. I

15 suspect that's progress in sales he's talking

16 about, or whoever was talking at the moment. It

17 doesn't say who was putting this out there. 5.4

18 million in pre-sales. 25 percent of the proceeds

19 would go to us, 75 percent to TD and Genesis is

20 the only security. I take it that's looking
21 forward to a new loan that would take out TD.
22 Some of this I'm speculating a little bit. The
23 conversation with Wayne Sims shows our fears were
24 not inflated. And what number do we need to get
25 rid of TD suggesting completely 35 million phase

115

1 one and phase 2 fully funded. So suggested
2 interest rates.
3 558 Q Could I ask you about a sentence that you just
4 read?
5 A Sure.
6 559 Q It says conversation with Wayne Sims shows our
7 fears were not inflated. Wayne Sims is again the
8 TD Bank person?
9 A Yes, right.
10 560 Q What fears did you have if the TD loan was called?
11 A I don't recall having excessive fears about it,
12 but -- and I didn't make the statement, so I'm not
13 sure I can comment other than the fact that we
14 continually wanted to get rid of TD, but I don't
15 know the fears. I mean I really -- as I've said
16 before I really did not believe that TD was going

17 to call the loan, but you also recall that we
18 talked a little bit about our concern that they
19 wanted to fill their pockets a bit more and were
20 always looking for more security, more
21 restrictions.
22 561 Q This is all under the heading if TD called the
23 loan mortgage and then it says conversation with
24 Wayne Sims shows our fears were not inflated. I
25 take it someone spoke to the TD Bank to see if the

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1 fears that you had were in fact inflated?
2 A That's what that sentence would imply, but the
3 fact that the scenario of a TD -- if TD called the
4 loan/mortgage is inconsistent with some of the
5 parts in there, but, you know, 'cause I say it's
6 fragmented, and five years ago I can't give you a
7 whole lot more enlightenment than that.
8 562 Q Now, this occurs at the start of the minutes, so
9 presumably this is on the first day of your
10 retreat, March 5th, 2008?
11 A That's correct, March 5th was the first day.
12 563 Q So let's go back four days in time. Exhibit 26,
13 please. You see this e-mail from Graham Woods to

14 Mr. Lathigee, Mr. Pasquill, yourself, and Steve
15 Rea?
16 A Yes.
17 564 Q And the middle paragraph says to Mike, you have
18 indicated the fact that Genesis is a priority.
19 You see that there?
20 A Yes, I do.
21 565 Q And Mr. Lathigee responds on the Sunday March 2nd,
22 you see that there?
23 A Yes.
24 566 Q So this is now three days before your executive
25 retreat is about to start?

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1 A That's right.
2 567 Q And it says our first priority is to save the
3 company. If Genesis loan is to be called by TD,
4 which is a real possibility we have to factor then
5 we are doomed given the extreme circumstances that
6 we have only fully known this week, the plans
7 below suggests all our conversations this week
8 only relate to sales and bringing in cash and
9 everything else is secondary. So the second
10 sentence there if the Genesis loan is to be called

11 by TD which is a real possibility we have to
12 factor then we are doomed. If we can go back to
13 the minutes then three days later after this
14 e-mail from Mr. Lathigee, which is exhibit?
15 A I just need to comment on that.
16 568 Q I have a question for you first. Mr. Lathigee on
17 March 2nd, 2008 says?
18 THE HEARING OFFICER: What was the previous document.
19 MR. CHAPMAN: Sorry. The previous document is Exhibit 26.
20 569 Q So my question for you, Mr. Pasquill, here on
21 March 2nd, 2008 Mr. Lathigee says if Genesis loan
22 is to be called by TD which is a real possibility
23 we have to factor then we are doomed. Now move to
24 Exhibit 433, we move ahead three days to your
25 executive retreat on March 5th?

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1 A Yes.
2 570 Q One of the first things you do is you talk about a
3 backup plan needed to be ready in case TD fails,
4 correct, we just talked about this in the minutes?
5 A Yeah, that's what the heading of that paragraph
6 was.
7 571 Q The 19 million and the 30 days?

8 A Correct.

9 572 Q You then you discuss a scenario if TD called the
10 loan/mortgage, correct, according to the minutes
11 that's what was discussed at the meeting?

12 A That's what the heading of the paragraph was, yes.

13 573 Q And someone had a discussion with Wayne Sims that
14 shows that your fears were not inflated; correct?

15 A Is there a question in there.

16 574 Q Yes, it is. So it was one of the very first
17 things you discussed at your retreat the calling
18 of the Genesis loan it was a real possibility that
19 you had to factor and that's because you
20 considered it at your retreat; isn't that correct?

21 A No, not in that way. I have to go back to the
22 e-mails with Mike Lathigee recognizing that it was
23 on the 2nd of March. If we do go back to that
24 you'll see that the e-mail from Mr. Woods was
25 between himself and Mike and possibly me, but that

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1 when Mike formed his reply for no particular
2 reason connected to the content he added in John
3 Tansowny which goes back to my original point that
4 these e-mails, several of them through that week,

5 were done for that purpose.

6 575 Q I'm just going -- I'm going to put to you, Mr.

7 Pasquill, that Mr. Lathigee on March 2nd, 2008

8 raised this possibility if the Genesis loan is to

9 be called by TD which is a real possibility we

10 have to factor then we are doomed. That

11 possibility was one of the first things you did

12 when you considered at your executive retreat

13 three days later, isn't that correct, based on

14 your minutes?

15 A We discussed plans for taking out TD, that would

16 have been naturally one of the priority topics on

17 the agenda, because we had been talking about

18 that, but I maintain that Mike's comments on that

19 e-mail when he added John Tansowny into it, he

20 didn't have to be added into it, was that it was

21 for the purpose that we've already discussed.

22 576 Q And if the TD loan was called then you were

23 doomed, weren't you?

24 A No, not necessarily. Not necessarily. Remember

25 how much equity was in there. And we had other

1 options. We had other refinancing options and we

2 were in the process of discussing all of that. In
3 the worst case scenario if in fact we disposed, we
4 talked about other options where Graham and Steve
5 were talking about what was the scenario if we
6 just sold it off right now, and there was still
7 some profit left in it.

8 577 Q You never disclosed to any of FIC's investors
9 about the real possibility of the TD loan being
10 called, did you?

11 A Because we never believed that it would really be
12 called.

13 578 Q And I'm going to put to you that if I'm not doing
14 that you misled all the investors?

15 A I disagree.

16 579 Q And I put to you that by not disclosing that you
17 didn't tell them how risky those investments
18 actually were?

19 A I disagree. We certainly told them that this was
20 a risky investment. That was in the offering
21 memorandum, it was in the subscription agreement,
22 and they signed off the risk acknowledgement form
23 that said they could lose all of their money. We
24 never maintained it was anything but a risky
25 investment.

1 MR. CHAPMAN: Those are all my questions. Thank you.

2 THE CHAIR: Would you like five minutes, Mr. Anderson?

3 MR. ANDERSON: Yeah, if you don't mind. Thank you.

4 (PROCEEDINGS ADJOURNED AT 3:54 P.M.)

5 (PROCEEDINGS RESUMED AT 4:03 P.M.)

6 THE HEARING OFFICER: All rise.

7 MR. ANDERSON: I don't have any re-examination.

8 THE CHAIR: Okay. The panel just has a couple of questions.

9 A Sure.

10 THE CHAIR: Mr. Pasquill. FIC had diamonds in its investment

11 portfolio.

12 A I'm sorry, what about the diamonds.

13 THE CHAIR: Had diamonds in your investment portfolio.

14 A It was one of the investments to which I think

15 three of the clubs had money invested, but not one

16 of these neither foreclosure fund or real estate

17 projects.

18 THE CHAIR: I'm just curious how that came to be, do you know

19 how they came to invest in diamonds.

20 A Sure. Again Mike Lathigee was familiar with the

21 work of local diamond expert, and in fact he met

22 him through Y E O, I believe it was, young

23 executives organization, and when he did some

24 research he founded a pretty good record of buying

25 and selling diamonds, and he was on the cusp of

1 the burgeoning coloured diamond market, so an
2 arrangement was struck whereby really a joint
3 venture arrangement, we funded the purchase of
4 diamonds, we traded on his skills for resale.

5 THE CHAIR: Okay. Thank you. Bear with me for a second. Now,
6 in July you exercised some stock options.

7 A Yes, I did.

8 THE CHAIR: July 2008.

9 A Yes.

10 THE CHAIR: And can you just tell me how the -- how the stock
11 option plan worked at FIC. In other words you
12 would exercise your options and how would you
13 liquidate what you got, how would you turn that
14 into cash?

15 A Well, the only way that could turn into cash would
16 be to redeem the shares or retract -- I guess if
17 it's retract or redeem, anyway, you know what I
18 mean.

19 THE CHAIR: Right.

20 A So that would be the only method, so that would be
21 somewhere down the road to hopefully the share
22 value had risen.

23 THE CHAIR: So were the options that you exercised, were they

24 due to expire.

25 A Yes, yes.

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1 THE CHAIR: So that's why you exercised.

2 A Yeah, the timing of that came up where they were
3 going to expire, so I asked myself do I believe
4 this is going to be a profitable expenditure, or
5 let them expire, and I thought that I had high
6 hopes and expectations that these projects would
7 be seen to completion and the companies would make
8 a lot of money.

9 THE CHAIR: Thank you. If the witness could be shown Exhibit
10 435, please. This is the purchase agreement
11 relating to Crossroads; is that right?

12 A Yes, this is the Robinson offer, that's right.

13 THE CHAIR: And you brief that you testified you were confident
14 to right through practically the very end that
15 they would be completing that transaction.

16 A Yes, that's right.

17 THE CHAIR: So I'm just looking at the purchase price which is
18 70.3 million, and then if you look at page 2 (7.3)
19 that was to be made up of \$50,000 in deposits and
20 7.2 million in seller financing, which is by you

- 21 guys; right?
- 22 A Yes, that's right.
- 23 THE CHAIR: And then under seller financing on the right it
- 24 says as per attached financing schedule; right?
- 25 A I'm sorry, what am I -- oh, yes, that's right.

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- 1 THE CHAIR: So then if you go to page 14, the last page, which
- 2 is the financing schedule it says seller financing
- 3 3 million. So that looked like there was actually
- 4 another 4 million that had to be financed
- 5 somewhere else. Have I got that right?
- 6 A Yeah, something over 4 million.
- 7 THE CHAIR: Yeah.
- 8 A I would draw that same conclusion.
- 9 THE CHAIR: And in fact I believe if we just find the
- 10 conditions here there's a reference to financing.
- 11 Yes, if you look at page 10, the very bottom
- 12 condition 7 is subject to suitable financing to
- 13 the buyer.
- 14 A Yes.
- 15 THE CHAIR: So then in August and September comes along and
- 16 there's a notorious credit crunch all over the
- 17 world.

18 A Yes.

19 THE CHAIR: No flags went up whether these guys would be able

20 to raise the 4 million they had to raise to close

21 the deal.

22 A Certainly, there was a concern, but we still had

23 reasonable confidence that they could, and

24 certainly -- but we were now into -- well, into

25 the fall season before we got to that stage. I

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1 mean, Lehman Brothers collapsed on -- in

2 mid-September. It was well after that before the

3 Canadian banks tightened down to a great extent.

4 THE CHAIR: Thank you. Anything arising out of the panel's

5 questions.

6 MR. ANDERSON: Nothing from me, Mr. Aitken.

7 MR. CHAPMAN: No.

8 THE CHAIR: Okay. No further questions. You're excused.

9 (WITNESS ASIDE)

10 MR. ANDERSON: We'll be ready to roll at ten a.m. with the next

11 witness. Mr. Ahmed will get the pleasure of his

12 witness. And we've talked to my learned friend

13 Mr. Chapman and the anticipation is we'll complete

14 that witness tomorrow which would then leave us

15 one witness for Monday.

16 THE CHAIR: Okay. Just looking ahead a little bit, I'm

17 thinking about the submissions process. As you

18 may know we're trying to get the filing of

19 submissions and any oral hearing on submissions

20 kind of closer to the end of the evidence part, if

21 we can, just to put this in everybody's mind, so

22 if we can maybe counsel can turn their minds over

23 the next day or two for a schedule of filing

24 submissions and even thinking about a date for

25 oral submissions with that in mind and we can talk

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1 about that at the conclusion of the hearing.

2 MR. ANDERSON: What kind of time are we looking at where the

3 panel has a day available? The reason I'm asking

4 that question is of course then we can look the

5 commitments the three of us have right now and see

6 how that works.

7 THE CHAIR: M'h'm. Why don't I undertake to give you that

8 tomorrow morning.

9 MR. ANDERSON: Sure, and we can work it out either tomorrow or

10 Monday over the weekend. I'm assuming Mr. Chapman

11 will be here Saturday or Sunday.

12 MR. CHAPMAN: Not before ten.

13 THE CHAIR: All right. Thank you very much. We'll see you

14 tomorrow at ten.

15 (PROCEEDINGS ADJOURNED AT 4:12 P.M.)

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