

In The Matter Of:
Rhode Island Economic Development Corporation vs
Wells Fargo Securities, LLC

Alfred J. Verrecchia
July 7, 2014



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1	STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
2	PROVIDENCE, SC. SUPERIOR COURT
3	
4	RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION
5	VS. C.A. NO. PB-12-5616
6	WELLS FARGO SECURITIES, LLC;
7	BARCLAYS CAPITAL, INC.; FIRST
8	SOUTHWEST COMPANY; STARR INDEMNITY
9	and LIABILITY COMPANY;
10	CURT SCHILLING; THOMAS ZACCAGNINO;
11	RICHARD WESTER; JENNIFER MACLEAN;
12	ROBERT I. STOLZMAN; ADLER POLLOCK &
13	SHEEHAN, P.C.; MOSES AFONSO RYAN, LTD.;
14	ANTONIO AFONSO, JR.; KEITH
15	STOKES; and J. MICHAEL SAUL
16	
17	DEPOSITION OF ALFRED J. VERRECCHIA, a Witness
18	in the above entitled cause, taken on behalf of the
19	Defendants, before Linda L. Guglielmo, RPR-RMR, a
20	Notary Public in and for the State of Rhode Island,
21	at the offices of Hinckley, Allen & Snyder, LLP,
22	1500 Fleet Center, Providence, Rhode Island, on
23	July 7, 2014, at 9:30 A.M.
24	ALSO PRESENT:
25	Andrew Tugan, Esq., Hinckley, Allen & Snyder, LLP
	Dean Ellway

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1	APPEARANCES:
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4	-and-
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6	Counsel for Plaintiff
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	Counsel for Defendant,
	Wells Fargo Securities, LLC
	Greenberg Traurig, LLP
	BY: MARK BERTHIAUME, ESQ.
	Counsel for Defendant Jennifer MacLean

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1	(COMMENCED AT 9:30 A.M.)
2	ALFRED J. VERRECCHIA
3	Being duly sworn, deposes and testifies as follows:
4	THE REPORTER: State your name for
5	the record.
6	THE WITNESS: Alfred J. Verrecchia,
7	V-e-r-r-e-c-c-h-i-a.
8	MR. PETROS: Good morning, Mr.
9	Verrecchia. My name is Gerry Petros, I represent
10	First Southwest Company in this litigation. Why
11	don't we take a moment to go around the room and
12	identify who the lawyers are.
13	MR. TUGAN: Andrew Tugan,
14	representing Southwest.
15	MR. BERTHIAUME: Mark Berthiaume,
16	Greenberg Traurig from Boston, on behalf of Jen
17	MacLean.
18	MR. DOLAN: William Dolan, on behalf
19	or Rob Stolzman and Adler, Pollock & Sheehan.
20	MR. VALENTE: Good morning,
21	Christopher Valente, on behalf of Wells Fargo.
22	MR. LEDSHAM: Benjamin Ledsham, I'm
23	with Max on behalf of the plaintiffs.
24	MR. WISTOW: Here I am.
25	MR. PETROS: Do you mind identifying

<p style="text-align: right;">Page 5</p> <p>1 yourself for the record?</p> <p>2 MR. WISTOW: She knows who I am.</p> <p>3 MR. PETROS: But the record doesn't.</p> <p>4 MR. WISTOW: But she makes the</p> <p>5 record.</p> <p>6 MR. PETROS: Is anyone on the phone?</p> <p>7 (PAUSE)</p> <p>8 MR. PETROS: We noticed this</p> <p>9 deposition for 9:30. It's a little after 9:30,</p> <p>10 we're going to get started.</p> <p>11 EXAMINATION BY MR. PETROS</p> <p>12 Q. Mr. Verrecchia, have you ever been deposed before?</p> <p>13 A. Yes, I am.</p> <p>14 Q. How many times have you testified at a deposition?</p> <p>15 A. More than six, less than twelve.</p> <p>16 Q. Have you ever testified in a courtroom before?</p> <p>17 A. Yes.</p> <p>18 Q. How many times have you testified in a courtroom?</p> <p>19 A. Once.</p> <p>20 Q. Okay. Based on your experience, you probably know</p> <p>21 the rules, let me just repeat some ground rules</p> <p>22 for today, if you have any questions, let me know.</p> <p>23 I'm going to ask you a series of questions.</p> <p>24 Linda, the court reporter, is going to take down</p> <p>25 everything that anyone says today, including your</p>	<p style="text-align: right;">Page 7</p> <p>1 A. Yes.</p> <p>2 Q. Was anybody representing you in connection with</p> <p>3 the 38 Studios matter before that?</p> <p>4 A. No.</p> <p>5 Q. Who is paying the fees for your attorney?</p> <p>6 MR. WISTOW: Let me just say, there</p> <p>7 is going to be no fee to him. I'm not getting</p> <p>8 paid, except on the contingent basis that</p> <p>9 everybody knows about.</p> <p>10 Q. All right. Mr. Verrecchia, I'd like to start</p> <p>11 talking about your early involvement in the 38</p> <p>12 Studios matter okay?</p> <p>13 A. Okay.</p> <p>14 Q. All right. Do you recall that the 38 Studios</p> <p>15 transaction was first presented to the full EDC</p> <p>16 board on or about June 9, 2010?</p> <p>17 A. I recall it being presented to the board, you</p> <p>18 know, in that general time frame. To say June --</p> <p>19 a specific date, I don't recall, but it was in</p> <p>20 that May, June time frame.</p> <p>21 Q. Let's fair enough. Let me show you the minutes</p> <p>22 for the meeting to see if we can clear that up.</p> <p>23 A. Sure.</p> <p>24 Q. Mr. Verrecchia, some of the exhibits I'm going to</p> <p>25 show you have previously been marked at other</p>
<p style="text-align: right;">Page 6</p> <p>1 answers to my questions, hopefully. If at any</p> <p>2 point in time I ask you a question that you do not</p> <p>3 understand, will you let me know that?</p> <p>4 A. Yes.</p> <p>5 Q. If you do that, I promise I'll try to rephrase the</p> <p>6 question in a way that's clear for you; okay?</p> <p>7 A. Okay.</p> <p>8 Q. If you answer my question, I'm going to assume you</p> <p>9 understood it; is that fair?</p> <p>10 A. That's fair.</p> <p>11 Q. Okay. If you need to take a break at some point</p> <p>12 in time, let me know, I'll try to accommodate you</p> <p>13 as soon as you can?</p> <p>14 A. Okay.</p> <p>15 Q. Do you have any questions about the procedures</p> <p>16 today?</p> <p>17 A. No.</p> <p>18 Q. You understand the oath you just took is the same</p> <p>19 oath you would give in a court of law?</p> <p>20 A. Yes.</p> <p>21 Q. Who is representing you here today?</p> <p>22 A. Max Wistow.</p> <p>23 Q. When did you retain him as your attorney?</p> <p>24 A. When I was subpoenaed.</p> <p>25 Q. Subpoenaed for this deposition?</p>	<p style="text-align: right;">Page 8</p> <p>1 depositions; this is one of those. It is marked</p> <p>2 as Plaintiffs' Exhibit 116. It is the minutes of</p> <p>3 the directors' executive session of the EDC dated</p> <p>4 June 9, 2010?</p> <p>5 A. Okay.</p> <p>6 Q. If you just look at it briefly, the bottom of Page</p> <p>7 1, top of Page 2 I want to ask if that refreshes</p> <p>8 your recollection that the June 9 meeting was the</p> <p>9 first meeting where Governor Carcieri and others</p> <p>10 presented the 38 Studios transaction to the EDC</p> <p>11 board at a board meeting?</p> <p>12 A. Okay.</p> <p>13 Q. Does that appear to be the board meeting at which</p> <p>14 Governor Carcieri introduced the 38 Studios</p> <p>15 transaction to the board as a whole?</p> <p>16 A. This is what it says June. I can't remember</p> <p>17 it was specifically June 9, but I certainly don't</p> <p>18 disagree with what's on here. If you say it was</p> <p>19 June 9, that's fine with me.</p> <p>20 Q. The heading on this document is June 9, 2010,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And did you -- you do recall you were vice</p> <p>24 chair of the board at that time?</p> <p>25 A. Yes.</p>

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<p>1 Q. Did you regularly receive minutes of board 2 meetings after the meeting took place? 3 A. Yes. 4 Q. And did you review those minutes when you received 5 them? 6 A. Yes. 7 Q. Okay. Did you keep copies of those minutes? 8 A. No. 9 Q. What did you do with them? 10 A. I destroyed them. 11 Q. Did you receive them electronically or physically? 12 A. I would -- minutes were in a binder that we 13 would receive at each of the board meetings, but 14 we would also get a packet prior to the board 15 meetings, and the minutes of the meeting would 16 oftentimes be there, if they were in. 17 Q. How would you receive that packet before the board 18 meeting, was that electronic? 19 A. No, hard copy. 20 Q. Hard copy. Was it mailed to you? 21 A. I believe so. 22 Q. Okay. Fair enough. We'll talk more about Exhibit 23 116 later, Mr. Verrecchia. Let me talk about your 24 early involvement. Did you learn about the 38 25 Studios transaction or possible transaction with</p>	<p>1 MR. CONNOLLY: Mike Connolly, I'm 2 going to be on for a little bit. I thought I 3 would listen for a bit. Mike Connolly for 4 Zaccagnino and Wester. 5 (MR. GLADSTONE ENTERED AT THIS POINT) 6 MR. PETROS: Dave Martland is now in 7 the room on behalf of Keith Stokes. 8 MR. GLADSTONE: Bruce Gladstone is 9 essentially in the room for J. Michael Saul. 10 MR. WISTOW: I don't know about 11 essentially. You're taking up a good part of it. 12 (OFF THE RECORD) 13 Q. Mr. Verrecchia, let me go back to ask you a more 14 precise question. When did you personally first 15 learn about a possible transaction between EDC and 16 38 Studios? 17 A. I don't recall the date. Again, I didn't 18 learn about it at any different time than the 19 board. It was presented to the board first as a 20 transaction with a company not identified as 38 21 Studios, and then when it was presented as 38 22 Studios. 23 Q. So you didn't learn about the possible transaction 24 with 38 Studios until the whole board learned 25 about it?</p>
Page 10	Page 12
<p>1 38 Studios before this June 9, 2010 board meeting? 2 A. We learned about a potential transaction. 38 3 Studios was not identified initially. 4 Q. Okay. Did you, you specifically, did you learn 5 about a possible transaction with 38 Studios some 6 time before this June 9, 2010 board meeting? 7 (DAVID MARTLAND ENTERED AT THIS POINT) 8 A. I might have. When I say that, the board was 9 presented -- the staff at EDC presented to the 10 board a potential transaction. They did not 11 identify at that time that it was 38 Studios. 12 What they indicated was that the Legislature had 13 approved a \$125 million loan fund, and they were 14 working with a potential company in a potential 15 transaction. 16 Now, again, all of this is taking place some 17 time in the May, June time frame. So, as to 18 specifically when 38 Studios was mentioned, I 19 don't recall. It could have been this June 9th. 20 It could have been a meeting before then. But 21 there was a meeting where they talked about a 22 potential transaction, didn't give a lot of 23 details, but did not indicate it was 38 Studios. 24 MR. PETROS: Just for the record, did 25 someone sign on to the phone?</p>	<p>1 A. That's my recollection, yes. 2 Q. Are you fairly certain about that? 3 A. You know, it was four years ago, but yes. 4 Q. Okay. Were you -- there was another board member 5 named Steve Lane who was on the board at that 6 time? 7 A. Yes. 8 Q. Did you know Mr. Lane? 9 A. Yes. 10 Q. What was your relationship with him? 11 A. He's a friend, not a close friend, but 12 someone that I knew for a quite some number of 13 years. 14 Q. You knew each other before you were both appointed 15 to the EDC board? 16 A. Yes. 17 Q. Okay. Were you and Steve Lane, as directors of 18 EDC, working with the staff of EDC on the 38 19 Studios transaction before the full board knew 20 about that transaction? 21 A. No. 22 Q. Is it your testimony that this June 9, 2010 board 23 meeting was the first time you learned that there 24 was a -- EDC was discussing a possible transaction 25 with 38 Studios?</p>

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<p>1 A. Again, as I said a moment ago, it was during 2 that May, June time frame that we learned about 38 3 Studios. Could that have been before June 9th? 4 It could have been. I just don't recall. 5 Q. But you do recall that when you learned of it, you 6 learned of it at a board meeting with the rest of 7 the board present, right? 8 A. Yes. I believe so. 9 Q. Okay. And you indicated there may have been an 10 earlier board meeting where some unidentified 11 transaction was discussed, but 38 Studios was not 12 mentioned? 13 A. That's correct. 14 Q. That earlier board meeting, is it possible that 15 that board meeting was the meeting where the board 16 was briefed on the Job Creation Guaranty Program 17 which provided about \$125 million in funding for 18 certain projects? 19 A. Yes. 20 Q. Is it possible that was the meeting you were 21 referring to where a transaction was talked about 22 but not identified? 23 A. Yes. 24 Q. Did you have any discussions with the Governor 25 about the 38 Studios transaction before that</p>	<p>1 A. Yes. 2 Q. It included the board of EDC and some other 3 recipients as well, right? 4 A. Yes. 5 Q. If you turn to the second page of that document, 6 there's a memo from Keith Stokes. He was 7 executive director of EDC at that time? 8 A. Yes. 9 Q. And does that memo generally discuss the Job 10 Creation Guaranty Program we talked about a moment 11 ago? 12 MR. WISTOW: If you want to give him 13 a minute to read it. 14 A. Yes, it appears to do that. 15 Q. Does it attach what appears to be draft 16 legislation or draft resolution concerning the 17 RIEDC Job Creation Guaranty Program? 18 A. Yes. 19 Q. Okay. Do you recall that at about this time, back 20 in April of 2010, EDC was proposing this Job 21 Creation Guaranty Program? 22 A. No. 23 Q. Do you recall it was being proposed later in the 24 summer -- later in the spring of May 2010? 25 A. No. The -- my recollection, this was never</p>
Page 14	Page 16
<p>1 transaction was discussed with the board as a 2 whole? 3 A. No. 4 Q. What was your relationship with Governor Carcieri? 5 A. Again, I knew him as Governor. I also knew 6 him from the Town of East Greenwich. He had also 7 asked myself and Paul Choquette to chair a 8 committee, to review the operations of the EDC, 9 this was prior to my becoming on the board, so we 10 did that, and that was my exposure to him. 11 Q. Was he a friend? 12 A. Yeah. I mean, we didn't see each other 13 socially. We didn't go out to dinner. We'd see 14 each other in town. 15 Q. So you've never had dinner together socially with 16 Governor Carcieri? 17 A. No. 18 Q. Did you know him before he was Governor? 19 A. Yes. 20 Q. I'm going to show you what has been previously 21 marked as Plaintiffs' Exhibit 46, Mr. Verrecchia. 22 A. Okay. 23 Q. All right. You can see, I think, that Exhibit 46 24 it's a cover e-mail by Sharon Penta to the board 25 dated April 5, 2010; is that correct?</p>	<p>1 being proposed to the EDC. Keith Stokes announced 2 to the board that the Legislature had approved 3 this program. I was unaware that we -- that the 4 program was even being considered by the 5 Legislature until the time Keith Stokes indicated 6 they approved this \$125 million job creation 7 program. 8 Q. Let's take that one step at a time. Did you 9 receive this exhibit that's marked as Plaintiffs' 10 Exhibit 46? 11 A. If my name is on it, then I would have 12 received it. 13 Q. Would you have reviewed the contents of the e-mail 14 when you received it? 15 A. I certainly perused it, yes. 16 Q. Okay. And as we said, the second page is a memo 17 from Keith Stokes to the RIEDC board of directors, 18 correct? 19 A. Uh-huh. 20 Q. The heading is EDC Job Creation Guaranty Program, 21 Legislative Approval, right? 22 A. Uh-huh. 23 Q. You have to say yes or no. 24 A. Yes. I'm sorry. 25 Q. Thank you. And in this memo does Keith Stokes</p>

<p style="text-align: right;">Page 17</p> <p>1 announce that the Legislature has already approved 2 an act or resolution establishing the Job Creation 3 Guaranty Program? 4 A. Let me read it. 5 MR. PETROS: Sure. 6 (PAUSE) 7 A. Well, it says here, "The General Assembly has 8 asked us to propose a program that would respond 9 to the need for the credit enhancement in these 10 growth areas and at these levels," et cetera. 11 Q. EDC was proposing a program? 12 A. Apparently, yes. 13 Q. Okay. And in this memo, Keith Stokes is briefing 14 the board, including yourself, about the status of 15 that program, right? 16 A. Correct. 17 Q. Was this the program that eventually was used to 18 fund the 38 Studios transaction? 19 A. I believe so. 20 Q. Now, if you look at the third paragraph, they're 21 talking about funding up to \$125 million, correct? 22 A. Correct. 23 Q. Mr. Verrecchia, when did you go on to the EDC 24 board? 25 A. It would have been -- I don't recall the</p>	<p style="text-align: right;">Page 19</p> <p>1 was Keith Stokes, indicated that the original 2 request had been for \$50 million and the 3 Legislature had increased the amount to \$125 4 million for this specific transaction, which later 5 turned out to be 38 Studios. 6 Q. Okay. Did this discussion take place at a board 7 meeting? 8 A. Yes. 9 Q. In executive session? 10 A. I don't recall. 11 Q. Was it one of the early board meeting discussing 12 the 38 Studios transaction? 13 A. Again, all this was taking place during 14 April, May, June time frame. As to exactly what 15 meeting and what time, whether it was in executive 16 session, I just don't recall. 17 Q. Was it one of the earlier board meetings where 38 18 Studios was discussed? 19 A. The first time -- 20 MR. WISTOW: Objection. Don't pay 21 attention to me. 22 THE WITNESS: When you say earlier 23 board meeting, earlier than? 24 Q. I just mean you recall that there were three or 25 four board meetings where 38 Studios was</p>
<p style="text-align: right;">Page 18</p> <p>1 exact date, but I believe it would have been 2 towards the beginning of 2010, but I don't recall 3 the time that the Governor appointed me until the 4 full board was approved by the Senate. 5 Q. Did you know whether or not EDC proposed a program 6 similar to this in prior years? 7 A. No. 8 Q. Do you know anything about that history? 9 A. No. 10 Q. Do you recall an earlier proposal by EDC for a 11 similar job creation program that was funded at a 12 level of \$50 million? 13 A. No. 14 Q. Did you ever learn about that in your role as vice 15 chair of the EDC? 16 A. Yes. 17 Q. Okay. When did you learn about it? 18 A. I learned about it when the -- when Keith 19 Stokes and EDC staff indicated to the board that 20 the Legislature had approved a \$125 million loan, 21 and they were considering a transaction involving 22 \$75 million of that. The board asked the 23 question, why would we be giving 75 million of a 24 \$125 million loan to a single transaction, and 25 after some discussion Keith Stokes, I believe it</p>	<p style="text-align: right;">Page 20</p> <p>1 discussed? 2 A. Yes. 3 Q. Was this discussion you just described with Keith 4 Stokes, did it occur at one of the earlier of 5 those board meetings? 6 A. The first discussion -- there was a 7 discussion regarding the \$125 million loan, and 8 that \$75 million was being earmarked for a 9 particular transaction. At that time we did not 10 know it was 38 Studios. 11 Subsequent to that it was disclosed to us it 12 was 38 Studios because the board was questioning 13 whether we should give \$75 million to one company, 14 and Keith Stokes indicated that, he used the term, 15 the Legislature/Speaker, I don't forget which, 16 specifically added \$75 million to that fund for 17 this transaction. 18 Q. Keith Stokes in that conversation indicated to you 19 and the board that Speaker Fox was aware of the 20 fact that 38 Studios was looking for \$75 million? 21 MR. WISTOW: Objection. 22 A. What he said was that \$75 million was added 23 to the fund specifically for this transaction. 24 Q. And you later found out that this transaction was 25 the 38 Studios transaction?</p>

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1 A. Yes.
2 Q. So, did he indicate that the Speaker had
3 specifically added \$75 million to the fund for
4 that transaction?
5 A. He used the term, "Speaker" and
6 "Legislature," almost interchangeably.
7 Q. Okay. Did he talk about legislative leaders as
8 well?
9 A. No.
10 Q. Do you recall Steve Costantino's name coming up?
11 A. No.
12 MR. WISTOW: I want to take a break
13 for a minute. I want to talk to my client.
14 (WITNESS AND COUNSEL LEFT ROOM AND RETURNED)
15 MR. WISTOW: Thank you.
16 MR. PETROS: You're welcome. Did I
17 have a choice?
18 (OFF THE RECORD)
19 THE WITNESS: Let's move it along,
20 you guys are getting paid to do this, so...
21 Q. Mr. Verrecchia, I want to show you a document that
22 we've marked now as Exhibit D-120.
23 (DEFENDANTS' EXHIBIT D-120
24 MARKED FOR IDENTIFICATION)
25 Q. I'll state for the record, this document is an

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1 e-mail, at least the initial, top e-mail is from
2 Sharon Penta dated April 8, 2010 to Keith Stokes.
3 There are a couple of short e-mails. Let me know
4 when you've reviewed them, Mr. Verrecchia, and
5 I'll ask you a few questions about them.
6 (PAUSE)
7 A. Okay.
8 Q. All right. Who is Sharon Penta at this time?
9 A. I believe she was one of the clerical staff
10 people at EDC.
11 Q. Was she someone who frequently sent information to
12 board members like yourself?
13 A. Yes.
14 Q. At the bottom of the first page there is an e-mail
15 from Sharon Penta to you and Steve Lane, correct?
16 A. Correct.
17 Q. That date is April 8, 2010?
18 A. That's correct.
19 Q. Did you receive that e-mail?
20 A. I don't recall.
21 Q. Do you have any reason to dispute that you
22 received this e-mail?
23 A. No.
24 Q. Do you recall this e-mail; do you remember it
25 today?

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1 A. No.
2 Q. The heading of the e-mail is, Meeting with Curt
3 Schilling on Friday at 9:00 A.M. at the EDC; do
4 you see that?
5 A. Yes.
6 Q. And the substance of the e-mail Sharon is
7 informing you that Keith wanted to let you know
8 about a meeting being held the next day on a
9 Friday, at 9:00 A.M. with the Governor, Curt
10 Schilling, Mike Corso, Keith and Mike Saul; do you
11 see that?
12 A. Yes.
13 Q. Now, Curt Schilling, was he one of the -- part of
14 the 38 Studios' management team?
15 A. Yes.
16 Q. Did you later understand he was the principal
17 investor in 38 Studios?
18 A. Yes.
19 Q. Okay. Do you know why you were being invited on
20 April 8 to a meeting involving Curt Schilling --
21 A. I don't recall.
22 Q. -- by the Governor. Do you know why the
23 invitation went out to you and to Steve Lane?
24 A. No.
25 Q. Was this the first -- had you heard anything about

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1 38 Studios before you received this e-mail?
2 A. I don't recall. Again, this is all happening
3 during that April, May, June time frame.
4 Q. Okay. Do you see any other board members who are
5 on this e-mail, apart from you and Steve Lane?
6 A. No.
7 Q. To your knowledge, were any other EDC board
8 members invited to this meeting on Friday in
9 April, which would have been April 9?
10 A. I'm not aware of any.
11 Q. Can you help me at all, Mr. Verrecchia, as we sit
12 here today, do you have any recollection of you
13 and Steve Lane being asked by anybody to
14 participate in early discussions with 38 Studios?
15 A. No.
16 Q. Is it still your testimony that you had no
17 involvement in the 38 Studios transaction until
18 that deal was announced to the full board at a
19 meeting?
20 A. That's correct.
21 Q. Did you go to this meeting?
22 A. No.
23 Q. Do you know why you didn't go?
24 A. No.
25 Q. Look at the second page, it says, "Al, Keith knows

<p style="text-align: right;">Page 25</p> <p>1 you are going to be out of town tomorrow, but 2 wanted you to be aware of the meeting." "Steve, 3 Keith would like you to attend if at all possible. 4 Please let me know." Do you recall talking with 5 Keith Stokes about attending this April 9 meeting 6 some time before you received this e-mail? 7 A. No, I don't recall that. 8 Q. The e-mail indicates that Keith knew you were 9 going to be out of town before this e-mail was 10 sent, right? 11 A. Yes. 12 Q. Does that refresh your recollection about an early 13 discussion with Keith Stokes involving 38 Studios? 14 A. No. 15 Q. Do you deny that such a conversation took place? 16 THE WITNESS: What conversation? 17 Q. Do you deny that you spoke with Keith Stokes about 18 attending a meeting on April 9 with Curt Schilling 19 and others, including the Governor? 20 A. I don't deny it. I don't recall having that 21 conversation. 22 Q. Okay. Fair enough. Do you recall a discussion 23 with the Governor or Keith Stokes or anybody else 24 associated with EDC in which you were asked to 25 participate early in the 38 Studios discussions</p>	<p style="text-align: right;">Page 27</p> <p>1 Mr. Verrecchia, given your knowledge and 2 experience and your resources at Hasbro, will you 3 agree to help us on the 38 Studios transaction? 4 A. I remember Mike Saul asking if he could speak 5 to anyone at Hasbro about the video game business. 6 Q. Did he tell you why? 7 A. I don't recall specifically. 8 Q. Did he mention the 38 Studios transaction in that 9 discussion? 10 A. He may have. I just don't recall. 11 Q. Do you recall that discussion taking place before 12 the June 9 board of directors' meeting that we 13 referred to earlier in this deposition? 14 A. Again, I don't recall exactly when he asked 15 that question. 16 Q. Just going back to the exhibit in front of you 17 which we've marked. Do you believe that was the 18 first time that Governor Carcieri was meeting with 19 Curt Schilling or somebody from 38 Studios? 20 MR. WISTOW: Objection. 21 A. I have no idea. 22 Q. Mike Corso was mentioned in that e-mail at the 23 bottom of the page. Did you know Mike Corso at 24 the time you received this e-mail? 25 A. No.</p>
<p style="text-align: right;">Page 26</p> <p>1 because of your particular knowledge, experience 2 and expertise? 3 A. I don't recall. 4 Q. What was your position at Hasbro at that time, 5 Mr. Verrecchia? 6 A. Chief executive officer. 7 Q. Did Hasbro have any other -- was Hasbro 8 participating in the video game market at that 9 time? 10 A. Yes. 11 Q. In what way? 12 A. We licensed our properties to video game 13 developers to, you know, exploit our intellectual 14 property in the video game market. 15 Q. Did you have some knowledge of the video game 16 market at that time? 17 A. Yes. 18 Q. Did you have employees who worked for you who had 19 considerable knowledge of the video game market at 20 that time? 21 MR. WISTOW: Objection. 22 A. Yes. 23 Q. Okay. Let me just trying to find out, do you 24 recall anybody associated with the EDC coming to 25 you and saying to you words to the effect of,</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Did you know who he was? 2 A. No. 3 Q. Did you know anything about him? 4 A. No. 5 Q. Did you later learn that he was working for 38 6 Studios on this transaction? 7 A. Only from reading it in the newspaper during 8 the last six months or so. 9 Q. Did you ever meet with Mike Corso in the spring or 10 summer of 2010? 11 A. No. 12 Q. Did you ever attend a meeting where Mike Corso was 13 present? 14 A. Not to my knowledge. 15 Q. Well you would have known if you met with him, 16 right? 17 MR. WISTOW: Objection. 18 A. No. If we were at a meeting, there are -- 19 EDC meeting, oftentimes there were a whole host of 20 people sitting in the background. He could have 21 been there, and I wouldn't have known that. 22 Q. He could have been at a board meeting and you 23 might not have known it? 24 A. Right. 25 Q. Apart from a board meeting were you ever at a</p>

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<p>1 meeting discussing 38 Studios where Mike Corso was 2 present? 3 A. No. 4 Q. Let me show you another document, it's been 5 previously marked as Plaintiffs' Exhibit 86. For 6 the record, this is an e-mail, at least the first 7 page is an e-mail from Mike Saul to Mike Corso and 8 Rob Stolzman dated April 12, 2010. 9 THE WITNESS: Could I correct an 10 answer? 11 MR. PETROS: Go right ahead. 12 THE WITNESS: You asked me what my 13 position was in 2010? 14 MR. PETROS: Right. 15 THE WITNESS: I was chairman at the 16 time. I had stepped down as CEO in '08. I was 17 chairman of Hasbro. 18 Q. Do you see a reference here to the current CEO was 19 Goldner? 20 A. Yes. 21 Q. What was Mr. Goldner's first name? 22 A. Brian. 23 Q. Have you ever seen this document before? 24 A. I don't believe so. 25 Q. I want to direct your attention to a couple of</p>	<p>1 you had such a discussion or did not have such a 2 discussion, or do you just have no memory of it 3 either way? 4 MR. WISTOW: Objection. 5 A. No recollection at all. 6 Q. You worked with Keith Stokes for more than a year 7 as director of -- when he was executive director 8 of EDC, correct? Let me back up, it was a bad 9 question. You became vice chair of the EDC board 10 in the beginning of 2010, that's your memory? 11 A. I believe so. 12 Q. And how long had you remained on -- did you remain 13 on the EDC board? 14 A. Until the end of 2010. 15 Q. Why did you leave at the end of 2010? 16 A. I had made the decision in the fall of 2010 17 that after the election I would offer my 18 resignation to the new Governor. I would offer to 19 stay on the board, but offer my resignation as 20 vice chair and a member of the EDC board to allow 21 the new Governor, whoever that may be, the 22 flexibility of having his own team. And so I 23 submitted my resignation letter at the end of 24 December, very early January. 25 Q. Was that decision influenced by the fact that the</p>
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<p>1 things in this document, and then I'll ask you 2 about it. If you look down about halfway down the 3 first page, you see the bullet that begins, 4 "Schedule meeting with Al Verrecchia, vice chair 5 EDC board, Steve Lane, EDC board member, Brian 6 Goldner, Hasbro CEO (if possible), and Keith 7 Stokes with Curt Schilling, 38 Studios' management 8 team, and one to two 38 Studios board members." 9 Do you see that? 10 A. Yes. 11 Q. Do you recall that in the middle of April of 2010 12 EDC was trying to schedule a meeting between -- 13 meeting involving you, Steve Lane, Brian Goldner 14 and the 38 Studios' management team? 15 A. No, I do not. 16 Q. Did you talk to Mike Saul and/or Keith Stokes 17 about such a meeting prior to the date of this 18 e-mail April 12, 2010? 19 A. I don't recall. 20 Q. So you may have had a discussion with Mike Saul 21 and/or Keith Stokes about meeting with the 38 22 Studios' management team, you just have no 23 recollection at this point in time, correct? 24 A. That is correct. 25 Q. Do you have a sense one way or the other whether</p>	<p>1 incoming Governor had threatened to sue EDC board 2 members? 3 A. No. 4 Q. You were aware of that, though, right? 5 A. Yes. 6 Q. During that one-year period did you work with 7 Keith Stokes as the executive director? 8 A. Yes. 9 Q. What was Mike Saul's position during your tenure 10 at EDC? 11 A. He was in charge of the financial side of 12 EDC, loans, grant programs, things of that nature. 13 Q. Is that why he was deeply involved in the 38 14 Studios transaction? 15 MR. WISTOW: Objection. 16 A. I don't know specifically why he was 17 involved, but it seemed natural. 18 Q. Was he deeply involved in the 38 Studios 19 transaction? 20 A. From my perspective, yes. 21 Q. Who was handling the 38 Studios transaction within 22 the EDC staff on a day-to-day basis? 23 A. I don't know. 24 Q. Do you believe that either Keith Stokes or Mike 25 Saul would have tried to schedule a meeting with</p>

<p style="text-align: right;">Page 33</p> <p>1 you and the 38 Studios' management team without 2 talking to you first? 3 MR. WISTOW: Objection. 4 A. I have no idea. 5 Q. Do you think they might have done that without 6 talking to you? 7 A. I don't know. 8 Q. Do you think that either Keith Stokes or Mike Saul 9 would have invited the CEO from Hasbro, Brian 10 Goldner, to a meeting with 38 Studios' management 11 without talking to you about that first? 12 MR. WISTOW: Objection. 13 A. Again, I don't know. He certainly could 14 have. I don't know that he did or didn't, or what 15 he would or wouldn't do. 16 Q. Do you think most likely Mr. Verrecchia would have 17 talked to you about that and gotten Mr. Goldner's 18 name from you before inviting him to a meeting? 19 A. They didn't need me to get Brian 20 Goldner's name. He was the CEO of Hasbro, so he 21 was well known in the community. Common courtesy 22 would have been to contact me, but I don't recall 23 them ever asking me about such a meeting. 24 Q. Can you turn to the second page of this document. 25 I want to just ask you about a statement down</p>	<p style="text-align: right;">Page 35</p> <p>1 response. Did you think it was important to 2 convince the board that the 38 Studios' business 3 model and projections would sell the bonds? 4 A. I think it was important for the board to 5 ensure that the business model and projections 6 were sound. To sell the bonds in the context of 7 what you're saying here, you know, I mean, I'm not 8 quite sure how to answer that question in regards 9 to sell the bonds. 10 MR. WISTOW: The complete phrase was 11 versus the credit enhancement, if that helps. 12 THE WITNESS: Okay, yes. 13 Q. Did you believe when you were approving this 14 transaction that the 38 Studios' business plan 15 would sell the bonds as opposed to the credit 16 enhancement? 17 THE WITNESS: Would you repeat that? 18 Q. Sure. You eventually voted to approve the loan to 19 38 Studios, right? 20 A. Yes. 21 Q. When you cast that vote, did you believe at that 22 time that the 38 Studios' business plan and 23 projections would sell the bonds as opposed to the 24 credit enhancement? 25 A. When I voted for the bonds, I believed that</p>
<p style="text-align: right;">Page 34</p> <p>1 here. If you look about two paragraphs down you 2 will see the following statement, "Wells 3 understands they will need to convince the EDC 4 board that 38 Studios' business model and 5 projections are what will sell the bond versus the 6 credit enhancement. EDC board will need a high 7 confidence moral obligation will never be called" 8 (sic). I just want to ask you about those two 9 statements. What was Wells Fargo's role in this 10 transaction? 11 A. There were three professional advisor firms, 12 Wells Fargo, First Southwest and Strategy 13 Analytics were engaged by the EDC to provide 14 professional advice to the EDC. I don't know 15 specifically what the EDC asked each of them to 16 do. I did not read any of the contracts or 17 anything like that. 18 Q. But you did participate in board meetings where 19 each of those parties made presentations to the 20 board, right? 21 A. Yes. 22 Q. And at least in part, in those presentations they 23 described what they had done, right? 24 A. Yes. 25 Q. Okay. We'll get to that later. I appreciate your</p>	<p style="text-align: right;">Page 36</p> <p>1 the business model and financial projections were 2 sufficient to complete the development of the game 3 and get it to market. So that was an important 4 consideration in selling the bonds. 5 Q. My question was, did you believe that investors 6 would buy those bonds because of the 38 Studios' 7 business model and projections, or because of the 8 credit enhancement? 9 A. If you're asking do I think the bonds could 10 have been sold without the credit enhancement? I 11 don't know. I never made the distinction in my 12 mind as to which of those two elements were the 13 most important. I looked at the complete package. 14 Q. Did any of the professional advisors inform you 15 that the bonds could not be sold without the 16 credit enhancement? 17 A. I don't recall. 18 Q. Did you agree that, "The EDC board would need a 19 high confidence moral obligation will never be 20 called." Do you agree with that statement? 21 A. I can't comment on the statement. I mean, it 22 was not a -- I don't recall having a discussion at 23 the board, you know, in those terms. 24 I recall having a discussion that we had a 25 sound financial plan, and that would get the game</p>

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<p>1 to completion. And I'm sure you will ask later, 2 we required or requested a third-party overseer. 3 But the idea that we would have a high confidence, 4 moral obligation would never be called, we wanted 5 to have a high confidence that the bond would be 6 paid off. 7 Q. Let me ask you a few questions. When you say you 8 had a sound plan to get the game to completion, 9 what do you mean by completion? 10 A. It would go to market. 11 Q. What does that mean, it would be on the shelves 12 for sale? 13 A. Yes. Well, in this particular case, it was 14 not on the shelf for sale as much it was an MMOG, 15 so it would be released electronically in most 16 cases. 17 Q. Was the MMOG also referred to as Copernicus? 18 A. Yes. 19 Q. All right. What did you understand the moral 20 obligation to be here? That was the credit 21 enhancement, right? Let me back up. What did you 22 understand the credit enhancement to be in this 23 transaction, Mr. Verrecchia? 24 A. To me it would have been the combination of 25 the moral obligation and the fact that the bonds</p>	<p>1 had also required as a condition of closing a 2 third-party monitoring agreement. We had actually 3 wanted a completion bond, but weren't able to get 4 a completion bond. We were requiring a 5 third-party oversight, independent third-party 6 oversight to review both game development and the 7 budget. 8 Q. Let me unpack that answer and ask you a few 9 questions about it. First, you said that the 10 financial plan was reviewed by EDC staff, correct? 11 A. Yes. 12 Q. Who on the EDC staff reviewed the financial plan? 13 A. Mike Saul made the presentations. Who on 14 Mike Saul's staff, whether it was Mike or members 15 of his staff, I couldn't tell you. 16 Q. Okay. Did you receive a credit memo with regard 17 to the 38 Studios transaction? 18 A. I believe we did. 19 Q. Was it the standard practice of EDC to prepare a 20 credit memo when the board was considering a loan? 21 A. At that time that was the first loan we had 22 looked at, so I can't comment on past practice. 23 Q. Did you later learn that it was, as you served for 24 a year, that it was standard practice at EDC to 25 prepare a credit memo for the board when the board</p>
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<p>1 were insured. 2 Q. What did you understand the moral obligation to 3 be? 4 A. That if 38 Studios was unable to pay back the 5 bonds, that the Legislature would have to approve 6 each year the payment of any interest and 7 principal that it was due, but it was not a 8 general obligation bond. 9 Q. Did you have a high degree of confidence that the 10 moral obligation would never be called on when you 11 voted to approve this transaction? 12 A. Yes. 13 Q. And what was the basis for your high degree of 14 confidence? 15 A. There were several. First and foremost, we 16 had a financial plan that was reviewed, or at 17 least my understanding is it was reviewed by EDC 18 staff and the three professional advisory firms. 19 Again, I'm using all three, I'm not saying all 20 three had the same job, but were looking at that. 21 They made a recommendation to the board to do the 22 transaction. 23 EDC staff indicated that they had a sound 24 financial plan, that the net proceeds of the bond 25 were sufficient to get Copernicus to market. We</p>	<p>1 was considering the approval of a loan? 2 A. Yes. 3 Q. Was that practice followed here? 4 A. I believe so. 5 Q. Who prepared the credit memo? 6 A. I use the term ED staff to cover everyone, 7 from professionals advising them to outside firms. 8 It was presented to us by either Mike Saul or 9 Keith Stokes or Rob Stolzman. 10 Q. Okay. Did you know someone named Sean Esten who 11 worked at EDC? 12 A. No. 13 Q. Did you know any of the credit analysts that 14 worked on the financial side at EDC? 15 A. No. 16 Q. So you said EDC staff reviewed the financial plan. 17 You also said that -- let me see if I understand 18 what you're saying, you told us earlier there were 19 three professional advisors advising EDC on this 20 transaction, correct? 21 A. There were more than that. These were the 22 three professionals. I'm excluding at this point 23 in time the law firms. 24 Q. Let's identify -- you identified Wells Fargo, 25 First Southwest and Strategy Analytics?</p>

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<p>1 A. Yes.</p> <p>2 Q. With respect to those three firms, do you know</p> <p>3 whether EDC asked one or more of those three firms</p> <p>4 to review the financial plan?</p> <p>5 A. No. I do not specifically know that.</p> <p>6 Q. But you believe that EDC asked one or more of</p> <p>7 those three firms to review the financial plan?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. What is that understanding based on?</p> <p>10 A. Presentations that were made to the board,</p> <p>11 and recommendations from the three firms to move</p> <p>12 ahead with the transaction.</p> <p>13 Q. Okay. First of all, EDC staff, did EDC staff</p> <p>14 recommend to the board that it approve this</p> <p>15 transaction?</p> <p>16 A. Mike Saul and Keith Stokes did.</p> <p>17 Q. How did they do that, was it orally, or was it in</p> <p>18 writing, was it in a credit memo; how did they do</p> <p>19 it?</p> <p>20 A. It was orally to the board.</p> <p>21 Q. At a board meeting?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember whether it was Keith or Mike or</p> <p>24 both who made this recommendation?</p> <p>25 A. Most of the presentations were made by Mike</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. What words did he use?</p> <p>3 A. I can't recall his specific words.</p> <p>4 Q. Did he indicate that he was making a</p> <p>5 recommendation, or did he say that the staff was</p> <p>6 making a recommendation?</p> <p>7 A. I can't recall.</p> <p>8 Q. Do you recall whether the credit memo you believe</p> <p>9 you reviewed contained a recommendation to approve</p> <p>10 or not approve the transaction?</p> <p>11 A. I don't recall what was in the credit memo.</p> <p>12 Q. Do you recall Keith Stokes making a recommendation</p> <p>13 either way with respect to this transaction?</p> <p>14 A. No.</p> <p>15 Q. Okay. Do you recall Rob Stolzman making a</p> <p>16 recommendation with respect to this transaction to</p> <p>17 the board?</p> <p>18 A. No.</p> <p>19 Q. Do you recall Wells Fargo making a recommendation</p> <p>20 to the board on whether they should or should not</p> <p>21 approve this transaction?</p> <p>22 A. The three professional firms. Again, I can't</p> <p>23 remember specifically who said what, when, but it</p> <p>24 was made clear to the board that the professional</p> <p>25 advisors were recommending this transaction. Now,</p>
Page 42	Page 44
<p>1 Saul, but it was clear that Mike and/or Keith were</p> <p>2 working in tandem with each other.</p> <p>3 Q. I want to try to be as precise as we can on this</p> <p>4 point. At a board meeting did Mike Saul ever say</p> <p>5 to the board that either he or EDC staff</p> <p>6 recommended that the board approve this</p> <p>7 transaction?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. What meeting did that take place?</p> <p>10 A. I couldn't tell you the specific meeting.</p> <p>11 Q. Was it early, late, middle meeting; do you recall</p> <p>12 anything about it?</p> <p>13 A. It would have been probably in June, July,</p> <p>14 August time frame as opposed to the April, May</p> <p>15 time frame.</p> <p>16 Q. You have a specific recollection of Mike Saul</p> <p>17 indicating that either he or the EDC staff</p> <p>18 recommended the board approve this loan?</p> <p>19 A. Yes. I would not have voted for the loan</p> <p>20 without ED staff recommending it.</p> <p>21 Q. What you've just described is an inference. I</p> <p>22 know it was four years ago, Mr. Verrecchia, as you</p> <p>23 told us earlier. As we sit here today, do you</p> <p>24 have a specific recollection of Mike Saul</p> <p>25 recommending that the board approve this loan?</p>	<p>1 was it Wells Fargo versus First Southwest versus</p> <p>2 Strategy Analytics, I can't recall.</p> <p>3 Q. The best you can recall is that one or more of the</p> <p>4 professional advisors recommended that the board</p> <p>5 approve the deal?</p> <p>6 A. Yes.</p> <p>7 Q. You can't recall which one or which two or which</p> <p>8 three it might have been?</p> <p>9 A. That's correct.</p> <p>10 Q. And you believe they expressed this at a board</p> <p>11 meeting?</p> <p>12 A. Yes.</p> <p>13 Q. All three of these advisors you've named</p> <p>14 presented, spoke to the board at one or more board</p> <p>15 meetings, correct?</p> <p>16 A. I believe so.</p> <p>17 Q. Okay. And there were minutes prepared for each</p> <p>18 one of those board meetings, correct?</p> <p>19 A. I believe so.</p> <p>20 Q. Do you recall whether any of the minutes, any of</p> <p>21 the minutes for the meetings at which those</p> <p>22 professional advisors made presentations to the</p> <p>23 board indicate that they recommended that the</p> <p>24 board approve the transaction?</p> <p>25 A. I don't recall.</p>

<p style="text-align: right;">Page 45</p> <p>1 Q. Did you ever receive any piece of paper in which 2 any one of those professional advisors indicated 3 that they recommended that the board approve the 4 transaction? 5 A. I don't recall. 6 Q. As you sit here today, do you recall any specific 7 statement made by any one of those three 8 professional advisors where they said to the 9 board, we recommend that you approve this 10 transaction? 11 A. I don't recall. 12 Q. By the way, when you referred to the term 13 financial plan in your earlier answer, the 38 14 Studios' financial plan what do you mean by that 15 term? 16 A. There was a budget and cash flow that was 17 prepared by 38 Studios and reviewed by EDC staff, 18 Mike Saul, Keith Stokes, whomever, and we relied 19 upon the review of that specifically to determine 20 whether or not there was sufficient funding to get 21 the project to completion, completion meaning get 22 it to market. 23 Q. Okay. And you recall that when EDC -- when Mike 24 Saul made PowerPoint presentations to you, he 25 included in those presentations summaries of the</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. And you, as you've told us, you knew that there 2 was a written financial plan that had been 3 reviewed -- prepared by 38 Studios and reviewed by 4 the EDC staff? 5 A. Yes. 6 Q. Did you ever ask to see that financial plan? 7 A. We asked to see a financial plan, and it was 8 presented to us as a PowerPoint at one of the 9 meetings. Which meeting, I don't recall. 10 Q. Did you ever ask to review yourself the financial 11 plan prepared by 38 Studios? 12 A. No. 13 Q. Why not? 14 A. I was relying upon the staff of EDC. It 15 would have taken me an awful lot of time and 16 energy that I didn't have to go in and review 17 their financial plan. 18 Q. Mr. Verrecchia, you had risen to the -- you had at 19 one point been the CEO of Hasbro, right? 20 A. Yes. 21 Q. And then you became the chairman of the board of 22 Hasbro? 23 A. Yes. 24 Q. Did you hold those two positions together at one 25 point in time?</p>
<p style="text-align: right;">Page 46</p> <p>1 financial plan you're referring to of 38 Studios, 2 correct? 3 MR. WISTOW: Objection. 4 A. I don't recall each of the presentations he 5 made specifically. 6 Q. Okay. My question was a different one. Do you 7 recall that in one or more of his PowerPoint 8 presentations Mike Saul included information from 9 the 38 Studios' financial plan? 10 MR. WISTOW: Objection. 11 A. Again, I can't make that assumption on his 12 part, but I assume so. 13 Q. Do you recall receiving information, for example, 14 about the critical assumptions in the financial 15 plan of 38 Studios? 16 A. No, I don't recall that. 17 Q. Do you recall seeing information about the level 18 of sales 38 Studios anticipated? 19 A. There was discussion about that, yes. 20 Q. Okay. Do you recall PowerPoint presentations 21 presenting that information to the board? 22 A. Yes. 23 Q. Did you understand that that information came from 24 the financial plan of 38 Studios? 25 A. Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. No. 2 Q. Had you been with -- when did you first start with 3 Hasbro? 4 A. October 1, 1965. 5 Q. And by the time you resigned as CEO, can you give 6 us some sense of the size of Hasbro in the 7 particular market it was in? 8 A. It had revenues of approximately \$4.2 billion 9 within the toy game industry and market 10 capitalization of about 5 billion. 11 Q. Was it one of the larger companies in the toy and 12 game industry? 13 A. At the time it was the second largest toy 14 company. 15 Q. In the United States or in the world? 16 A. In the world. 17 Q. Okay. You had considerable business experience -- 18 A. Yes. 19 Q. -- as a CEO. Had you had considerable business 20 experience prior to 2010 reviewing business plans, 21 for example? 22 A. Yes. 23 Q. So, you had the expertise where you could have 24 digested and reviewed and understood a business 25 plan, correct?</p>

<p style="text-align: right;">Page 49</p> <p>1 A. Yes. 2 Q. Is there any reason why you didn't do that here? 3 MR. WISTOW: Asked and answered. 4 A. Once again, I was depending upon the staff to 5 look at that plan and ask detailed questions about 6 the plan. As an example, someone will say 7 revenues are projected at X. The question is how 8 did you get to that number, what is it based upon, 9 how many products going to market, what is the 10 pricing. All of that would go into reviewing the 11 financial plan in-depth. I was depending upon the 12 ED staff to do that with the people at 38 Studios. 13 Q. Okay. At the time that you voted to approve the 14 loan to 38 Studios, did you understand that 38 15 Studios' ability to repay that loan was dependent 16 upon the success of the MMOG? 17 A. Yes. 18 Q. And did you also understand that it was also 19 dependent on the success of the RPG, the 20 role-playing game? 21 A. To me it was dependent upon the success of 22 the MMOG. 23 Q. You believed at the time you voted to approve the 24 loan that 38 Studios could repay that loan even if 25 the RPG failed?</p>	<p style="text-align: right;">Page 51</p> <p>1 MR. PETROS: Take your time. 2 A. The RPG -- the RPG, in my mind, had to be 3 reasonably successful in order for the MMOG to be 4 successful. 5 Q. Right. Because the RPG sales would provide 6 additional funding to complete the MMOG, was that 7 your understanding? 8 A. That's not why I just made that statement. 9 Q. Tell me why. 10 A. The RPG was sort of the first installment of 11 the MMOG. If the RPG were not successful, then 12 the question is how successful would the MMOG be? 13 The RPG, from a financial perspective, was funded 14 by EA, and we knew that. And we knew that most of 15 the revenue coming in initially would have to pay 16 off the EA loan. So I was more concerned with the 17 market success of the RPG to support the MMOG. 18 Q. Did you know whether the business plan of 38 19 Studios relied upon revenue from the RPG to fund 20 ongoing activities including the -- including 21 completing the development of the MMOG, 22 Copernicus? 23 A. Yes. I knew that it relied upon a level of 24 revenue. What that level was, I don't recall. 25 Q. Did you ever ask anybody that question?</p>
<p style="text-align: right;">Page 50</p> <p>1 THE WITNESS: Could you repeat that? 2 Q. Sure. Let me give you a little context. You 3 understood when you voted on the transaction that 4 38 Studios was developing two games, correct? 5 A. Yes. 6 Q. The RPG game I think was referred to as Project 7 Mercury; does that sound right? 8 A. Yes. 9 Q. You understood that game was in development, 10 correct? -- 11 A. Yes. 12 Q. -- and scheduled to be released some time late in 13 2011? 14 A. Yes. 15 Q. You also understood that the MMOG game Copernicus 16 was in development -- 17 A. Yes. 18 Q. -- scheduled to be released late in 2012? 19 A. Yes. 20 Q. So my question is, at the time that you approved 21 the loan to 38 Studios, did you understand that 38 22 Studios could pay back that loan even if the RPG 23 game, for example, never made it to market? 24 (PAUSE) 25 A. I'm trying to think.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. It was presented to us. I just don't recall 2 what the number was. 3 Q. Fair enough. So you understood when you approved 4 the plan that the ability of 38 Studios to pay 5 back the loan was dependent upon the both the RPG 6 and the MMOG? 7 A. Yes. 8 Q. Did anyone ever tell you that either one or both 9 of those games were going to be successful? 10 A. Every new product introduction that people 11 want to take to market claim they're going to be 12 successful. So in that context, yes, people said 13 it's going to be successful. 14 Q. Apart from the 38 Studios representatives -- 15 A. No one guaranteed success, no. 16 Q. Let me back up. The 38 Studios team, did they 17 tell the board they believed their products were 18 going to be successful? 19 A. Yes. 20 Q. Do you think it would be prudent for a lender to 21 accept recommendations from a borrower about the 22 likely success of a product that's in development? 23 A. Yes. 24 Q. Okay. And EDC was acting as a lender here? 25 A. Yes.</p>

1 Q. Okay. Apart from 38 Studios, did anyone else tell
2 you that one or both games, in their opinion, were
3 going to be successful?
4 A. No.
5 Q. Did you ask that question to anyone during the
6 time period when you were considering whether or
7 not to approve the 38 Studios transaction?
8 A. No.
9 Q. Did you believe at that time that it was possible
10 for a qualified person to give you an opinion on
11 whether or not either or both games would be
12 successful?
13 A. Project Mercury was being funded by EA. At
14 the time, maybe even today, EA was the largest
15 video game distributor, certainly in the United
16 States, and I believe worldwide. They had
17 advanced \$50 million for this game. That lent
18 some credibility to the game in their minds, and
19 they were clearly more expert in that than anyone
20 else, including myself on the board. I certainly
21 didn't view that as assuring or guaranteeing
22 success. There wasn't anyone else that could do
23 more than that. I mean, you look at the game,
24 it's a great game, it should do well, but until
25 the kid sees it, you don't know.

1 Q. So you viewed the EA distribution agreement with
2 respect to the RPG as some level of outside
3 validation that that RPG had some likelihood of
4 success?
5 A. Yes.
6 Q. Was there any similar third-party validation with
7 respect to the MMOG, in your view?
8 A. No.
9 Q. Did you ask anyone about the likelihood of the
10 MMOG succeeding in the marketplace, if it got
11 there?
12 A. Yes. We had discussion at the board as to
13 not the -- how do I describe this -- the specifics
14 of Copernicus, but more, the likelihood of
15 success, and we like ended it to the movie
16 business. It's a hit-driven business. You know,
17 there was considerable market risk which we
18 understood. Our focus was on the development and
19 getting the game to market.
20 Q. In fact, Mr. Verrecchia, at some of the board
21 meetings you specifically told the other board
22 members that there was a high degree of risk here
23 with respect to a video game success in the
24 marketplace?
25 A. That's correct.

1 Q. There is a high degree of risk in the video game
2 market, isn't there?
3 A. Absolutely.
4 Q. And there is a high degree of risk that any
5 particular game will fail in the video game
6 market?
7 A. Yes.
8 Q. Okay. So you understood that EA had a
9 distribution agreement with 38 Studios with
10 respect to the RPG?
11 A. Yes.
12 Q. And that EA was funding some aspects of the
13 development and/or distribution of the RPG?
14 A. Yes.
15 Q. At the time that you approved the loan, did EA
16 have a distribution agreement with 38 Studios
17 concerning the MMOG?
18 A. No.
19 Q. Did anybody -- let me rephrase that. Did 38
20 Studios have a distribution agreement with any
21 third party regarding the MMOG?
22 A. No. As a condition of the loan, of the loan
23 payments, if I recall correctly, they had to get a
24 distribution agreement and they were working on
25 that with EA.

1 Q. And you knew that from your own experience in the
2 game market?
3 A. Yes.
4 Q. You told them that -- is it fair to say you said
5 to the board, while it seems clear there's going
6 to be growth in this industry sector, you don't
7 know whether that growth is going to come from
8 game A or game B or some other game?
9 A. That's correct.
10 Q. And you warned the board that in particular
11 Copernicus or the MMOG might fail?
12 A. Yes.
13 Q. That was a risk of this transaction?
14 A. It was a market risk of that transaction --
15 yes, it was a market risk of that transaction.
16 Q. I take it then from your answer, then, at no time
17 did you or the board receive advice from a third
18 party that Copernicus was likely to succeed in the
19 marketplace; is that correct?
20 A. That's correct.
21 Q. Let me show you another document. This was
22 previously marked I think in Steve Lane's
23 deposition as D-73. This is an e-mail from Al
24 Verrecchia to Steve Lane dated April 13, 2010, and
25 there are two e-mails on the one page. Just take

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1 a minute, let me know when you've read them,
2 Mr. Verrecchia.
3 A. Okay.
4 Q. This is an e-mail exchange you had with Steve
5 Lane, correct?
6 A. Yes.
7 Q. And the subject line is the Curt Schilling
8 "Pitch," correct?
9 A. Correct.
10 Q. All right. And Steve Lane is telling you that he
11 was in the "Pitch" meeting last Friday; do you see
12 that in the second e-mail?
13 A. Yes.
14 Q. Just to get the dates right. So this Lane e-mail
15 is dated April 13 on a Tuesday. So the previous
16 Friday would have been April 9, right?
17 A. Yes.
18 Q. And that's -- do you remember the earlier e-mail
19 we showed you where you were invited to a meeting
20 that was going to take place on April 9?
21 A. Yes.
22 Q. So Steve Lane seems -- it seems from this e-mail
23 that Steve Lane attended that meeting and is now
24 sending an e-mail to you about it, right?
25 A. Yes.

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1 Q. So why was Steve Lane reporting to you about that
2 meeting and not other members of the board?
3 MR. WISTOW: Objection.
4 A. I don't know, you'd have to ask Steve Lane.
5 Q. I'm asking you if you know.
6 A. I don't know.
7 Q. Here's an e-mail reporting on that meeting to you
8 and nobody else, at least based on this document,
9 right?
10 A. That's correct.
11 Q. Okay. Does it appear from that e-mail that the
12 two of you have talked about this transaction
13 before?
14 MR. WISTOW: Objection.
15 Q. Is it fair to infer that?
16 MR. WISTOW: Objection.
17 Q. Let me ask the question again; it was a bad
18 question. Is it reasonable to infer from this
19 e-mail, Mr. Verrecchia, that you and Mr. Lane had
20 spoken about the 38 Studios transaction before he
21 sent you this e-mail?
22 MR. WISTOW: Objection.
23 A. It's possible. As board members, we spoke
24 about this transaction on any number of occasions
25 once we knew about it. I can't, again, tell you

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1 what sequence and dates and that sort of thing.
2 Q. Well, let's look at his e-mail for a second. He's
3 not explaining to you what the "Pitch" meeting was
4 all about. He's writing this as if you knew what
5 the "Pitch" meeting was about, isn't he?
6 MR. WISTOW: I object. Look at the
7 second sentence.
8 MR. PETROS: The witness can answer,
9 Max.
10 A. I was not at the "Pitch" meeting. I don't
11 know what went on at the "Pitch" meeting. He was
12 there. He's asking me if I had been appraised of
13 the ask, and I said I have not appraised, so I
14 have no idea what went on at the Curt Schilling
15 "Pitch" meeting, which is his terminology, not
16 mine.
17 Q. My question was a little different. Let me try it
18 a different way. Having read this e-mail
19 exchange, Mr. Verrecchia, do you now agree that
20 you were involved in discussions involving 38
21 Studios long before the board was appraised of the
22 38 Studios transaction on June 9, 2010?
23 MR. WISTOW: Objection.
24 A. No.
25 Q. You don't agree with that?

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1 MR. WISTOW: That's what he said.
2 Q. Is Steve Lane talking to you in this e-mail about
3 the 38 Studios transaction?
4 A. I said to you earlier at some time during the
5 April, May, June time frame we became aware of the
6 38 Studios. I don't recall specifically. But I
7 was not made aware of the 38 Studios -- I do not
8 recall being made aware of the 38 Studios
9 transaction before the full board. Now whether
10 that happened June 9th or before that, I can't
11 tell you or recall. But I'm not -- I was not
12 working -- I've never worked with Steve on the 38
13 Studios transaction. I talked to directors about
14 it. I talked to Steve and other directors about
15 it, but I can't tell you specifically when we
16 found out that it was 38 Studios. Obviously, it
17 was, you know, in April, but it wasn't -- I didn't
18 know two months ahead of time before the rest of
19 the board, no.
20 Q. Okay. Let me unpack that a little bit. You sent
21 this e-mail to Steve Lane on Tuesday, April 3,
22 correct?
23 A. I responded to an e-mail.
24 Q. You sent an e-mail back to Steve Lane, that's on
25 the top of the page, right?

<p style="text-align: right;">Page 61</p> <p>1 A. Yes. 2 Q. That's your e-mail. You admit that you sent that 3 e-mail, right? 4 A. Yes. 5 Q. Okay. Now, Steve Lane's e-mail, he's talking 6 about the 38 Studios transaction, is that what you 7 understood when you read it? 8 A. Yes. 9 Q. Did you call Steve up when you received this 10 e-mail and say, Steve, what the heck are you 11 talking about? 12 A. I don't recall what I did. I don't recall if 13 we ever talked before the meeting or not. 14 Q. Were you aware that there had been a meeting on 15 April 9 that you were invited to but could not 16 attend because you were out of town, concerning 17 the 38 Studios transaction? 18 A. The only -- I do not recall that other than 19 you showing me the e-mail a little while ago. 20 Q. Fair enough. So, you may have been told, you may 21 not? 22 A. May have been told. 23 Q. But clearly in this e-mail from Steve Lane he's 24 talking about the 38 Studios' deal? 25 A. He is.</p>	<p style="text-align: right;">Page 63</p> <p>1 EDC making a loan to 38 Studios was to bring jobs 2 to Rhode Island? 3 A. Yes. 4 Q. And that that would necessarily mean having 38 5 Studios relocate to Rhode Island? 6 A. Yes. 7 Q. EDC was not going to fund 38 Studios if they 8 stayed in Massachusetts, were they? 9 A. That's correct. 10 Q. Okay. All right. So, your comment about a 11 stalking horse, were you concerned at that time 12 that 38 Studios was trying to see what kind of an 13 offer it could get from Rhode Island before going 14 to Massachusetts, and seeing if they would match 15 or better that offer; was that your concern? 16 A. I don't recall. 17 Q. Do you think it reasonable that that was your 18 concern? 19 MR. WISTOW: Objection. 20 A. I don't recall. It could have been but I 21 don't recall. 22 Q. Now, Steve Lane is reporting to you in this e-mail 23 that he has serious questions about the 38 Studios 24 transaction; do you see that? 25 A. Yes.</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. And you responded to Steve Lane? 2 A. Yes. 3 MR. WISTOW: Look at the first 4 sentence of his response. 5 MR. PETROS: Max, please. 6 Q. One of your suggestions to Steve Lane is you meet 7 before the next EDC board meeting? 8 A. Yes. 9 Q. And you asked him to call you when he got back? 10 A. Yes. 11 Q. And you wondered if you were being used as a 12 stalking horse; do you see that? 13 A. Yes. 14 Q. What did you mean by that comment? 15 A. I don't recall. 16 Q. Did you understand at that time that 38 Studios 17 was located in Massachusetts? 18 A. I don't recall when I found that out. 19 Q. Did you understand at that time that EDC was 20 interested in bringing 38 Studios to Rhode Island? 21 A. I don't recall the time in which we were told 22 that they were considering moving their operation 23 from Massachusetts to Rhode Island. 24 Q. Well, is it reasonable -- did you always 25 understand, Mr. Verrecchia, that the purpose of</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Did you speak to Steve Lane when he got back as 2 you had suggested? 3 A. As it relates to this e-mail, I don't recall. 4 Q. Did Steve Lane share with you his serious 5 questions about the 38 Studios transaction? 6 A. Yes. 7 Q. Okay. What did he tell you that those questions 8 were? 9 A. He shared his concerns with me and other 10 members at the board, at a board meeting. As to 11 having a specific conversation with Steve outside 12 of the board meeting, I don't recall. 13 Q. Well, do you recall whether you spoke with Steve 14 Lane when he got back about the subject of this 15 e-mail? 16 A. I don't recall. 17 Q. Do you recall whether Steve Lane told you about 18 his serious questions outside of a board meeting? 19 A. Again, I don't recall specifically. There 20 were several of us on the board who initially had 21 questions about the transaction that we had to get 22 comfortable with before we would move along, and 23 we did that over a period of time. 24 Q. Okay. As vice chair of the board, when you 25 received this e-mail from another board member</p>

<p style="text-align: right;">Page 65</p> <p>1 saying he had serious questions about a proposed 2 transaction with 38 Studios, were you interested 3 in finding out what his serious questions were? 4 MR. WISTOW: Objection. 5 A. Let me clarify one thing. As vice chair of 6 the -- as vice-chair of the board I had no 7 responsibility different from any other board 8 member. I never chaired a board meeting in the 9 absence of the Governor who was at all the board 10 meetings, and I had no specific authority or 11 responsibilities different than any other board 12 member. Steve had questions, I had questions 13 there were several directors had questions about 14 the 38 Studios transaction, both before we knew it 15 was 38 Studios and after, and we discussed those 16 at board meetings and we could have had telephone 17 conversations outside of the board meetings, but I 18 can't recall who and when. 19 Q. Okay. Do you recall what concerns Steve Lane 20 expressed at a board meeting about the 38 Studios 21 transaction? 22 A. I can't recall specific to Steve Lane. 23 Q. We'll cover them in general later on, if that's 24 okay with you. 25 A. Fine.</p>	<p style="text-align: right;">Page 67</p> <p>1 A. I'm not quite sure. Did I ever come to 2 understand? 3 Q. Did you ever believe that you were asked to have 4 early involvement in the 38 Studios transaction so 5 that you could help get the 38 Studios' deal done? 6 MR. WISTOW: You mean before the rest 7 of the board; is that what you mean? 8 MR. PETROS: Yes. 9 A. I don't recall ever being asked to do that. 10 I certainly never did. 11 Q. Do you recall as we sit here today any discussions 12 with Governor Carcieri about the 38 Studios' deal 13 I mean, between you and him, not at a board 14 meeting? 15 A. I don't recall having a personal discussion 16 with Governor Carcieri about this transaction. 17 Q. Do you recall having a discussion with him about 18 this transaction outside of an EDC board meeting? 19 A. I do not recall having any such discussion. 20 Q. Do you deny that you had such discussions? 21 A. I don't recall having any. 22 Q. All right. Mr. Verrecchia, I will ask you at 23 times whether you deny something happened or just 24 don't recall. So I'm not meaning to challenge, I 25 just want to make sure I understand what your</p>
<p style="text-align: right;">Page 66</p> <p>1 Q. He's reporting here, it says, "I was in partnery 2 cheerleader mode in meeting"; do you see that? 3 A. Yes. 4 Q. Do you know why he was in -- did ever tell you he 5 was in partnery cheerleading mode at the meeting? 6 A. No. 7 Q. Were you and Steve Lane asked to participate early 8 in the 38 Studios transaction to help get this 9 deal done and move 38 Studios to Rhode Island? 10 A. I don't recall. 11 Q. Did the Governor ever come to you, Mr. Verrecchia, 12 and tell you about the 38 Studios' deal and say I 13 would like your help in seeing if we can get 38 14 Studios to relocate to Rhode Island? 15 A. I don't recall him ever doing that. 16 Q. Did anyone else say that to you, Keith Stokes, 17 Mike Saul, anybody? 18 A. I don't recall anyone asking me to do that. 19 Q. Did you understand -- did you ever come to 20 understand that you were asked to have early 21 involvement in the 38 Studios transaction so that 22 you could help get the deal done? 23 MR. PETROS: Can you read it back, 24 Linda. 25 (QUESTION READ)</p>	<p style="text-align: right;">Page 68</p> <p>1 testimony is? 2 A. I understand. 3 Q. Your testimony on that is you may have had 4 personal discussions with the Governor about 38 5 Studios transaction outside of a board meeting, 6 but as you sit here today, you don't recall one 7 way or the other? 8 A. That's correct. 9 Q. Did anyone ever ask you to cheerlead the 38 10 Studios transaction? 11 MR. WISTOW: Objection. 12 A. I don't recall ever being asked to do that. 13 Q. Do you see that Mr. Lane says, "Off the record," 14 in the second line from the bottom of his e-mail? 15 A. Yes. 16 Q. What did you understand him to mean when he said 17 off the record? 18 A. I have no idea. 19 Q. Did you ever have concerns about criticizing the 20 38 Studios' deal on the record? 21 A. No. 22 Q. Did Mr. Lane ever express to you that he was 23 concerned about criticizing the 38 Studios' deal 24 on the record? 25 A. I don't recall him ever saying that to me.</p>

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1 Q. Did you ask him why he was using the term off the
2 record in this e-mail to you?
3 A. No. I don't recall.
4 Q. Did you ever ask him why he said he was going to
5 lie low until otherwise needed?
6 A. I don't recall.
7 Q. Do you recall any discussion with Mr. Lane or
8 communication apart from your e-mail following up
9 on this e-mail exchange?
10 A. No, I do not.
11 Q. What did you know about the 38 Studios, status of
12 the discussions with 38 Studios as of April 13,
13 2010 at 6:34 P.M., the time and date of your
14 e-mail to Mr. Lane?
15 A. I have no idea. I don't recall.
16 Q. You knew at that point in time that the state was
17 talking to 38 Studios, right?
18 A. Obviously.
19 Q. You knew that EDC was talking to 38 Studios?
20 A. Obviously.
21 Q. Okay. Did you know at that time that legislative
22 leaders had already met with 38 Studios?
23 A. No, I did not know that.
24 Q. Did you learn that later?
25 MR. WISTOW: You mean any time up to

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1 the present?
2 MR. PETROS: Yup.
3 A. Other than Governor Carcieri having gone to
4 fund-raisers and being introduced to Curt
5 Schilling, the only other time that I became aware
6 of legislators, officials, would have been long
7 after I was off the EDC board.
8 Q. Let me ask you some more about that. You told us
9 earlier that Keith Stokes informed you that the
10 Legislature or legislative leaders had earmarked
11 \$75 million out of the \$125 million funding for
12 the job creation program for 38 Studios, right?
13 A. Yes.
14 Q. And you indicated, I think, that he reported that
15 to you at one of the earlier board meetings where
16 38 Studios was discussed, right?
17 A. Yes.
18 Q. Okay. Did he also indicate when he relayed that
19 information to you, did he tell you that the
20 legislative leaders had already met with 38
21 Studios?
22 A. I don't recall him saying that.
23 Q. Well, did you ask him why and how the legislative
24 leaders had already decided to fund \$75 million
25 for a loan to 38 Studios?

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1 A. The Governor of the State of Rhode Island is
2 sitting at the board. He indicated that he had
3 met with or met Curt Schilling at this fundraiser
4 at Curt Schilling's home where Schilling indicated
5 he was looking for funding, moving his business,
6 whatever the case may be, and the Governor
7 recommended he meet with people at the EDC. And
8 that's how the transaction was initiated, and
9 that's what was presented to us. He may have -- I
10 don't know what other people, but when you say the
11 leadership in the General Assembly, all Keith
12 Stokes said was that the Legislature had passed
13 this job creation bill and that the \$75 million
14 was earmarked at that time for 38 Studios, and he
15 indicated that the Speaker will be unhappy if we
16 were to take that \$75 million and give it to
17 somebody else.
18 Q. So that statement certainly indicated to you that
19 the Speaker was aware of the 38 Studios
20 transaction, right?
21 A. Yes.
22 Q. Okay. Did that suggest to you that -- would you
23 have expected the Speaker would have met with 38
24 Studios before earmarking those funds for them?
25 MR. WISTOW: Objection.

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1 A. You asked me if I were aware of meetings, and
2 I was not aware of any meetings.
3 Q. Did the fact that the Speaker had earmarked \$75
4 million for 38 Studios suggest to you that the
5 Speaker may have met with 38 Studios?
6 MR. WISTOW: Objection.
7 A. It may have, it might have suggested it.
8 This is four years ago.
9 Q. At this time, on April 13, 2010, did you -- what
10 did you understand to be the extent of EDC's
11 discussions with 38 Studios?
12 MR. WISTOW: April 13, 2010?
13 Q. Yes. I want to find out whether or not they had
14 already started discussing terms with 38 Studios
15 based on your understanding.
16 THE WITNESS: Terms of a loan?
17 MR. PETROS: Yes.
18 A. I don't recall when that actually took place.
19 Q. You don't recall one way or the other?
20 A. Yes.
21 MR. PETROS: Mr. Verrecchia, let me
22 show you a document we've marked today as
23 Defendants' D-121. It is, at least the top of the
24 document, an e-mail from Mike Saul to you dated
25 April 29, 2010. There are several fairly short

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<p>1 e-mails. Just take a minute and let me know when 2 you've read through them. 3 (DEFENDANTS' EXHIBIT D-121 4 MARKED FOR IDENTIFICATION) 5 A. Okay. 6 Q. The e-mail on the bottom, it's an e-mail from Mike 7 Saul to you dated April 22 at 2:05 P.M.; do you 8 see that? 9 A. Yes. 10 Q. The subject is 38 Studios due diligence? 11 A. Yes. 12 Q. Okay. Mike Saul is indicating in this e-mail that 13 he had a discussion with you on Tuesday, right? 14 A. Yes. 15 Q. And would you agree from the context of the e-mail 16 that you talked to Mike Saul about the 38 Studios 17 transaction? 18 A. I don't recall, but that would appear to be 19 the case. 20 Q. It would appear to be reasonable, right? 21 A. Yes. 22 Q. Do you recall anything about that discussion? 23 A. No. 24 Q. Do you know where it took place? 25 A. No.</p>	<p>1 minutes or so of his e-mail? 2 A. Yes. 3 Q. And you agreed to contact Mark and check his 4 schedule for a meeting with Mike Saul? 5 A. Yes. 6 Q. And then up above that, you look at the top 7 e-mail, Mike Saul sends another e-mail to you 8 letting you know that he met with Mark, very 9 insightful, and thanked you, correct? 10 A. Yes. 11 Q. So that meeting had to take place some time 12 between Thursday April 22 and April 29, right? 13 A. Yes. 14 Q. Did you -- 15 MR. WISTOW: Actually, it says today, 16 so it was on the 29th. Just trying to be helpful. 17 MR. PETROS: You're very helpful as 18 always. 19 MR. WISTOW: Thank you. 20 Q. So as your counsel points out, the meeting between 21 Mike Saul and Mark Blecher appears to have taken 22 place on April 29, correct? 23 A. Correct. 24 Q. Did you talk to Mark Blecher about that meeting 25 and what happened at it?</p>
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<p>1 Q. Do you know who was involved, apart from you and 2 Mike Saul? 3 A. No. 4 Q. Mike Saul indicates in his e-mail that, "You 5 agreed to introduce us to Mark Blecher as part of 6 the 38 Studios' due diligence"; do you see that? 7 A. Yes. 8 Q. Who was Mark Blecher at the time? 9 A. Mark Blecher worked for Hasbro and was 10 responsible for video game activities, primarily 11 licensing agreements with video game distributors, 12 licensed intellectual property. 13 Q. Was he VP digital media and gaming at Hasbro; does 14 that sound right? 15 A. I don't recall what his title was at that 16 time. 17 Q. And do you recall why you agreed to introduce Mark 18 Blecher to the EDC staff? 19 A. Mike Saul wanted to get some background 20 information on the video game business, and he 21 asked me, and I recommended that he talk with Mark 22 who was far more knowledgeable about the business 23 than I was. 24 Q. And you can see I guess from the e-mails up above, 25 you responded to Mike Saul, correct, within ten</p>	<p>1 A. I don't recall. 2 Q. Did you talk to Mike Saul about what happened at 3 that meeting? 4 A. Again, I don't recall. 5 Q. Let me show you what was previously marked as 6 Plaintiffs' Exhibit 94. For the record, 7 Plaintiffs' Exhibit 94 is an e-mail from Rob 8 Stolzman dated April 29, 2010 to Mike Saul, Fred 9 Hashway, the subject is RIEDC/38 Studios. Let me 10 know when you've read through that, 11 Mr. Verrecchia? 12 (PAUSE) 13 A. Okay. I read through it. 14 Q. Now, you're not copied on this e-mail, correct? 15 A. Correct. 16 Q. But the subject of the e-mail indicates that it's 17 a discussion about the meeting with Mark Blecher; 18 do you see that? 19 A. Yes. 20 Q. It also indicates that James Jones participated in 21 that meeting. Who was James Jones? Was he the 22 vice president of creative production digital 23 media and gaming at Hasbro? 24 A. He might have been. I don't know James. 25 Q. That's what the e-mail says, right?</p>

<p style="text-align: right;">Page 77</p> <p>1 A. Yes.</p> <p>2 Q. Both James Jones and Mark Blecher were involved in</p> <p>3 the video gaming industry, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And they are both senior Hasbro employees?</p> <p>6 A. Yes.</p> <p>7 Q. You understand them both to be knowledgeable in</p> <p>8 that area, that industry?</p> <p>9 A. I knew Mark Blecher to be knowledgeable. I'm</p> <p>10 not familiar with James Jones.</p> <p>11 (OFF THE RECORD)</p> <p>12 MR. PETROS: On that note, why don't</p> <p>13 we take a five-minute break, we've been going</p> <p>14 about an hour and a half.</p> <p>15 (BRIEF RECESS)</p> <p>16 Q. Let's go back on the record. Mr. Verrecchia, you</p> <p>17 have before you Plaintiffs' Exhibit 94. I want to</p> <p>18 ask you a few questions about that. This seems to</p> <p>19 be, again, reporting on a meeting between</p> <p>20 Mr. Stolzman, Mike Saul, and maybe some others,</p> <p>21 with Mark Blecher and James Jones from Hasbro?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. I want to just talk about a few of the --</p> <p>24 Rob Stolzman indicates at the top of the e-mail,</p> <p>25 "Our conversation with them was wide-ranging and I</p>	<p style="text-align: right;">Page 79</p> <p>1 considering voting on this loan to 38 Studios, and</p> <p>2 by that I mean a concern about whether or not the</p> <p>3 games would be released on time?</p> <p>4 A. Yes.</p> <p>5 Q. And I think you've indicated you were aware of the</p> <p>6 fact this was an industry that was known for</p> <p>7 delayed releases?</p> <p>8 A. Yes.</p> <p>9 Q. Delayed releases could have significant impacts on</p> <p>10 the cash flow of a company like 38 Studios?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did you understand at this time that 38</p> <p>13 Studios was a prerevenue company?</p> <p>14 A. Yes.</p> <p>15 Q. When did you learn that 38 Studios was a</p> <p>16 prerevenue company, did you know that right away</p> <p>17 war, or did you learn it some time later?</p> <p>18 A. Earlier in the process opposed to later.</p> <p>19 Q. What does that mean, a prerevenue company?</p> <p>20 A. Well, primarily products in development that</p> <p>21 are about to go to market, but they're actually</p> <p>22 not generating revenue at that time based on that</p> <p>23 particular product line.</p> <p>24 Q. Okay. And did you know from your own business</p> <p>25 experience that prerevenue companies often had a</p>
<p style="text-align: right;">Page 78</p> <p>1 took away the following questions from our</p> <p>2 discussion." Then he lists 11 questions; do you</p> <p>3 see that?</p> <p>4 A. Yes.</p> <p>5 Q. Let me ask you about a couple of those. Question</p> <p>6 Number 3 is, "How realistic is their time to</p> <p>7 release projection? Industry known for delayed</p> <p>8 releases." Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. First of all, let me ask you, was the video game</p> <p>11 industry known for delayed releases; do you agree</p> <p>12 with that statement?</p> <p>13 A. Yes.</p> <p>14 Q. And the question being asked, how realistic is</p> <p>15 their time to release projection. Is that a</p> <p>16 question you were concerned about, too?</p> <p>17 MR. WISTOW: You're talking about at</p> <p>18 the time he voted.</p> <p>19 Q. Let me back up and clarify. I want you to assume</p> <p>20 for a moment that the question, "How realistic is</p> <p>21 their time to release projection?" Let me assume</p> <p>22 that -- how realistic is their time to release the</p> <p>23 games, okay?</p> <p>24 A. Yes.</p> <p>25 Q. Was that a concern of yours as you were</p>	<p style="text-align: right;">Page 80</p> <p>1 difficult time financing their activities?</p> <p>2 A. Yes.</p> <p>3 Q. And was that because of the lack of a revenue</p> <p>4 stream?</p> <p>5 A. I think it was more risk associated with a</p> <p>6 prerevenue company than one that has generated</p> <p>7 revenue.</p> <p>8 Q. Fair enough. Did you understand -- was the</p> <p>9 release date a concern for you because you</p> <p>10 understood that releasing the games on time was</p> <p>11 necessary for the company to generate revenue to</p> <p>12 pay for ongoing activities?</p> <p>13 A. In a broad sense. Any new development, any</p> <p>14 development going on, and here we're talking about</p> <p>15 the video game business. You're always concerned</p> <p>16 about how long it's going to take and how much</p> <p>17 money is going to be spent. That was a concern</p> <p>18 that I had, and it's one that the board had, and</p> <p>19 we tried to take steps to mitigate that risk.</p> <p>20 Q. What steps did you take to mitigate the risk of a</p> <p>21 delayed release of one or both games?</p> <p>22 A. In addition to assuring ourselves through</p> <p>23 question and answer that the staff had done due</p> <p>24 diligence on the financial plan, we insisted as a</p> <p>25 condition of closing on the loan that we have --</p>

<p style="text-align: right;">Page 81</p> <p>1 first, we wanted a completion bond, couldn't get a 2 completion bond. So we insisted upon a 3 third-party oversight to come in and, first of 4 all, validate that the schedule and the budget was 5 reasonable, and then to provide reports to the EDC 6 on a periodic basis that game development and, 7 therefore, the cash flow were proceeding as 8 planned. 9 Q. So, you're telling me that the board wanted a 10 third-party monitor to come in to validate that 11 the schedule and budget for the 38 Studios games 12 was reasonable? 13 A. Yes. 14 Q. And when did you expect the monitor to do that, 15 before or after the closing? 16 A. Prior to the closing. 17 Q. And was that a condition that the board set for 18 the closing? 19 A. Yes. 20 Q. And did you receive a report from a third-party 21 monitor that validated the schedule and budget for 22 the games? 23 A. No. 24 Q. Why not? 25 A. I was later told -- well, the loan closed in</p>	<p style="text-align: right;">Page 83</p> <p>1 staff to ensure that all the conditions of closing 2 are met. They don't necessarily have to bring 3 everything to the board unless one of those 4 conditions were not met. 5 So, I assumed, you know, I won't speak for 6 anybody else, that all the conditions of closing 7 were met, that we had third-party oversight 8 arrangement in place, it had been reviewed and it 9 was okay to close, as far as I was concerned. 10 Q. So you assumed that -- did you assume that before 11 closing a third-party monitor had come in and 12 validated the reasonableness of 38 Studios' budget 13 and schedule? 14 A. I assumed that we had a third-party 15 monitoring agreement in place, which would have 16 included a baseline, reports, use what terminology 17 that you want, that the financial plan and 18 development plan were reasonable. Not a guarantee 19 they would achieve it, but it was reasonable. 20 Q. And you understood that that was to take place 21 before the closing? 22 A. Yes. 23 Q. And what did you understand was going to happen if 24 that third party came in and said that the budget 25 and schedule were not reasonable?</p>
<p style="text-align: right;">Page 82</p> <p>1 November. I went off the board in December. I 2 was later told that we never entered into such an 3 agreement with, at that time it was IBM, when we 4 first made the proposal. IBM was not involved. 5 As to why, I never really knew. I never talked to 6 anyone at EDC other than some time, some years 7 actually down the road, somebody, I forget who 8 made the comment, that IBM refused to engage with 9 the EDC, which I found rather strange and 10 shocking, but by then I was off the board and 11 didn't have specific knowledge as to what happened 12 and why. 13 Q. Let me see if I understand the sequence of events. 14 So as a condition of closing, the board required a 15 report from a monitor that would validate the 16 reasonableness of 38 Studios' financial budget and 17 schedule, correct? 18 A. Yes. 19 Q. Okay. And you just testified that the board never 20 received such a report prior to closing? 21 A. When I say the board, you know, I'm referring 22 to the board EDC. I mean, we're relying at that 23 point in time -- once the deal was approved, July, 24 August, I forget the exact time frame, you know, 25 the board is relying on its outside counsel and</p>	<p style="text-align: right;">Page 84</p> <p>1 A. We wouldn't close, and they would come back 2 to the board and tell us we couldn't do it, and 3 the board would have to determine what to do next. 4 Q. You understood that was a condition of closing 5 that was satisfied before the closing took place? 6 A. It had to be satisfied before the closing 7 would take place, yes. 8 Q. Right. And at some point in time did any of the 9 EDC staff come to you before the closing, come to 10 the board, and report on the status of their 11 negotiations with a third-party monitor? 12 A. The only recollection I have is that they 13 couldn't get a completion bond, and they were 14 going to get a third-party monitor put in place, 15 but I don't recall any other communication beyond 16 that. 17 Q. And that third-party monitor would be the person 18 who would, prior to closing, validate the 19 reasonableness of the budget and the schedule of 20 38 Studios? 21 A. Yes. And then make periodic reports to 22 ensure that we were -- 23 Q. In addition, the monitor would have certain 24 post-closing responsibilities? 25 A. Yes.</p>

<p style="text-align: right;">Page 85</p> <p>1 Q. I'm focusing on preclosing responsibilities. The 2 preclosing responsibility you identified was 3 reviewing the budget and schedule of 38 Studios to 4 validate it was reasonable? 5 A. Yes. 6 Q. How would, post-closing, how would the monitor 7 mitigate the risk of delayed release of one or 8 both games? 9 A. I don't know that the monitor would mitigate 10 a specific delay. What we wanted -- what I wanted 11 the monitor to do is to be monitoring that we were 12 on target, and if we were either spending more 13 than we should have or game development was being 14 delayed, we would be advised immediately and you 15 could take corrective action. 16 Q. Okay. I understand. I thought earlier you 17 indicated the monitor was going to help mitigate 18 against the risk of a delayed release? 19 A. Mitigate by watching and making sure so you 20 know early enough that there's a problem, and you 21 can take corrective action as opposed to waking up 22 at the end of the 2012 and saying, we're late. 23 Q. If you look at the fifth question on Exhibit 94, 24 it says, "What is the residual asset and venture 25 value if the MMOG fails." Do you see that?</p>	<p style="text-align: right;">Page 87</p> <p>1 to pay a substantial amount of the EDC loan? 2 MR. WISTOW: Objection. 3 A. I don't recall ever thinking along those 4 lines, but the answer would be -- asking the 5 question today, no. 6 Q. Well, when you were considering the loan to 38 7 Studios, did one of the things you consider -- was 8 one of the things you considered what would happen 9 if a year or two out these games fail? 10 A. Sure. Yes. 11 Q. And did you consider whether or not the 38 12 Studios' assets would be substantial enough to pay 13 a substantial portion of the EDC loan or whether 14 the EDC loan would go largely unpaid; did you 15 consider that? 16 A. I didn't consider that. I did not feel 17 that the -- if the game ever came to market, that 18 the residual value of the MMOG would be that 19 substantial. 20 Q. So when you voted to approve the loan to 38 21 Studios from EDC, you understood that if these 22 games failed, or if the MMOG failed, 38 Studios 23 would not be able to repay the loan to EDC? 24 A. I would rephrase that to say that if the MMOG 25 was not successful, 38 Studios would be in</p>
<p style="text-align: right;">Page 86</p> <p>1 A. Yes. 2 Q. That was an important question, would you agree? 3 A. In some instances, yes. 4 Q. What about in this instance with respect to 38 5 Studios, was that an important question? 6 A. Well, you know, if you are looking in terms 7 of the value, if the company doesn't do well, goes 8 bankrupt, what kind of assets does it have. The 9 residual value of the MMOG could be substantial 10 depending upon how far along in development it is 11 and what kind of game it is. So, you know, it 12 certainly has, you know, potential. 13 Q. At the time that you voted to approve the 38 14 Studios' loan, I think the final vote came on July 15 26, 2010; does that sound reasonable -- 16 A. Yes. 17 Q. -- we'll show you the minutes later on today. 18 What did you believe would be the residual value 19 of the 38 Studios' assets if the company failed in 20 2012? 21 A. I didn't have any value. I couldn't assign a 22 value to that. 23 Q. Did you think that the residual value of the 38 24 Studios' assets of the 38 Studios if the company 25 failed a year or two years out would be sufficient</p>	<p style="text-align: right;">Page 88</p> <p>1 trouble. Whether or not they'd go bankrupt, 2 that's another thing. But they clearly needed 3 that game to be successful, or they would need 4 other cash somewhere. 5 Q. And did you also believe that if the game was 6 unsuccessful, EDC would be in trouble on that \$75 7 million loan? 8 MR. WISTOW: Objection. 9 A. Yeah. 10 Q. Let me ask it unvarnished. Mr. Verrecchia, answer 11 any way you seem fit. When you voted to approve 12 that loan, did you believe that if the MMOG 13 failed, 38 Studios would default on that loan and 14 the moral obligation would be called? 15 A. Yes. 16 Q. Would you look at one other question with me, 17 Mr. Verrecchia, Question Number 8; do you see 18 that? 19 A. Yes. 20 Q. Were those questions that you had as a director 21 being asked to approve the EDC loan to 38 Studios? 22 A. Yes. But in a different manner. And that is 23 when someone presents a set of financials and they 24 indicate a certain level of revenue, I was 25 depending -- and profitability and cash flow -- I</p>

<p style="text-align: right;">Page 89</p> <p>1 was depending on the ED staff to have reviewed 2 in-depth those projections. So that they would be 3 asking the questions, what is the price point and 4 gross margin and net margin, et cetera, and how 5 does that compare to what's in the market now, to 6 sort of validate the revenue expense. 7 The one question we did ask is, you know, how 8 successful, and when I say how successful, when 9 you look at the video game business, MMOG, World 10 of Warcraft is the one that is most well-known. 11 But most of the MMOGs, World of Warcraft is way up 12 top, and then most others are down here somewhere 13 (indicating). 14 So, 38 Studios' MMOG had to be reasonably 15 successful. It didn't have to be World of 16 Warcraft. It had to be reasonably successful. 17 And the level of success that the financials were 18 supposedly based on, were reasonable. They 19 weren't high, high expectations, and that's what 20 Mike Saul and the presentations that were made 21 were told to the board. 22 Q. He gave you a break-even scenario for 38 Studios; 23 do you remember that? 24 A. I believe so. 25 Q. And I think as you've told us earlier,</p>	<p style="text-align: right;">Page 91</p> <p>1 we need -- did it have to be one of the top five 2 games, no, not for them to have sufficient cash 3 flow to be a viable business and go forward and 4 pay the loan and develop other games. 5 Q. Let me see if I can unpack that a little bit. It 6 was a hit-driven business. You told the board 7 that, right? 8 A. Yes. 9 Q. It's in the minutes, right? 10 A. I don't know if that's specifically in the 11 minutes, I remember saying that to the board. 12 Q. What does that mean, a hit-driven business? 13 A. You have games that are very, very 14 successful. You can put out in a given year 500 15 games, only a handful are successful, relative 16 handful are successful that are really top games, 17 top five that sell millions of copies, but then 18 there is a second layer of games that will be 19 reasonably successful, they're not hits in that 20 sense of the word, but financially successful, and 21 there are a whole host of games that don't make it 22 at all. It's like the movie business. 23 Q. Let me ask you about that. You said there is a 24 handful, maybe the top five that make millions, 25 right?</p>
<p style="text-align: right;">Page 90</p> <p>1 Mr. Verrecchia, no one gave you an opinion that 2 Copernicus was going to be reasonably successful, 3 correct? 4 A. No one was validating that specific game. 5 Q. So as a director, you're trying to decide whether 6 to make this loan, and you vote in favor of this 7 loan. Did you reach some conclusion on the 8 likelihood of whether or not the game would be 9 successful before you voted in favor of it? 10 A. I knew that the -- I expressed to the board, 11 because we had discussion about this, that the 12 video game business -- let me break the discussion 13 up in two parts, that is, the development of the 14 game and getting it to market, and then the market 15 risk that goes on with the video game or any new 16 product. We were funding the development. We 17 wanted to get the game to market. Assuming the 18 game got to market, the question is how successful 19 would it be. The level of success that the 20 financial projections were based upon were not 21 unreasonable, but it is a hit-driven business. 22 It's high risk. We talked about that, and people 23 were willing to take the market risk. We were 24 focused on the development risk, getting the 25 product to market. And what level of success did</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Yes. 2 Q. And then you said there is a second level -- 3 MR. WISTOW: Sell millions. 4 MR. PETROS: Sell millions. 5 Q. Then you said there is a second level that have 6 some financial success out of the 500. Is that 5 7 percent, 12 percent, you tell me? 8 A. I don't recall the percentage. It's a 9 relatively small number. 10 Q. Less than 20 percent? 11 A. Again, I don't want to get hung up with a 12 particular number. It's a relatively small 13 number. 14 Q. And then the relatively large number of games, 15 they fail? 16 A. They fail. 17 Q. So, the board was betting when it approved the 38 18 Studios transaction, that Copernicus would be in 19 one of those first two levels and not the third 20 level, right? 21 A. Probably the second level. 22 Q. It was betting it would be in the second level and 23 not the third level? 24 A. Yes. 25 Q. Did you think it was reasonable to make that bet</p>

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1 when you knew that the vast majority of games
2 fail?
3 MR. WISTOW: Objection.
4 A. Yes. There's new product risk in everything
5 you do. So the question, you know -- there are a
6 whole lot of things that companies fund that have
7 market risk.
8 MR. PETROS: Mike Connolly, you're
9 talking. Can you put the mute button back on.
10 MR. CONNOLLY: Sorry about that.
11 Q. I'm sorry. Do you want to start again?
12 A. There is a market risk on any new product
13 that goes out there. The Governor, Speaker of the
14 House, the Legislature wanted to take that risk.
15 They felt it was a risk worth taking. We looked
16 at that, we talked about that risk, we understood
17 that risk, and we were willing to take that risk.
18 Q. When you say that the Legislature understood that
19 risk, what is that statement based on?
20 A. The statement is based upon the fact that,
21 you know, Keith Stokes reported to the board that
22 the Legislature has taken what was going to be a
23 \$50 million fund and increased it to a 75 million
24 fund specifically for 38 Studios.
25 Now, I drew an assumption from that that the

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1 Legislature, since they approved the legislation
2 wanted to do that. It was years later that
3 members of the Legislature indicated they did not
4 know it was earmarked for 38 Studios and all that
5 sort of stuff. Certainly I didn't, and I don't
6 believe any other member of the board had any
7 knowledge of that whatsoever.
8 Q. Just to correct, I think a mistake you made
9 inadvertently. You said the Legislature increased
10 the fund from 50 million to 75?
11 A. By 75 million.
12 Q. They increased it by 75 million to 125 million?
13 A. To 125 million. My apologies.
14 Q. You inferred from that that the Legislature wanted
15 this deal to happen?
16 A. Yeah.
17 Q. And you understood as a board member that that 75
18 million as you told us earlier was available only
19 for 38 Studios, it was earmarked?
20 A. Yes.
21 Q. So the board was in a position where it was sort
22 of fair to say it was use it or lose it, either
23 use it for 38 Studios, or don't use it at all?
24 A. You know, I never got to that point. I mean,
25 Keith indicated that the Speaker would have been

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1 unhappy if we gave the money to somebody else, and
2 it was earmarked for 38 Studios and that was it.
3 We didn't get into any further discussion as to
4 what, suppose, we want to give it to somebody.
5 Never had that discussion.
6 Q. Did you or the EDC board or anybody on the EDC
7 staff ever go to any of the member of the
8 Legislature and say before we approve this loan,
9 you should know that the vast majority of video
10 games fail?
11 A. I didn't.
12 Q. Did anybody else, to your knowledge?
13 A. I don't know.
14 Q. All right. You indicated a moment ago in your
15 answer, Mr. Verrecchia, that the Governor was
16 aware of the risk here?
17 A. Yes.
18 Q. Was Governor Carcieri aware that most video games
19 fail?
20 A. He was at the meetings when we had those
21 discussions.
22 Q. In addition to that, did you have any discussions
23 with the Governor's staff concerning 38 Studios?
24 A. Outside of discussions at the board meetings
25 with ED staff, no.

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1 Q. Point of fact, at some meetings, the Governor's
2 staff attended some of the EDC board meetings; do
3 you recall that?
4 A. No. I mean, again, you got people sitting in
5 the background, if they're members of the
6 Governor's staff, so be it.
7 Q. Do you know Andy Hodgkin?
8 A. I know the name. I think I -- I mean, if he
9 walked in the room. He'd look familiar, but I
10 wouldn't necessarily be sure it was him.
11 Q. Do you know Rosemary Gallogly?
12 A. I don't know. I've met her on several
13 occasions at, you know, various events, seen her
14 on television in the terms in her role in state
15 government.
16 Q. What do you understand her role to be?
17 A. She's a financial -- she was, I don't know
18 her title, but she is responsible for budgets. I
19 know she's been involved in the Central Falls deal
20 and, you know, she's a financial executive for the
21 state, put it that way.
22 Q. Fair enough. How about Jamia McDonald, do you
23 know who she is?
24 A. No, I don't believe so.
25 Q. Let me go back to another part of your previous

1 answer, Mr. Verrecchia. You said that the board
2 was focused on development risk and not focused on
3 market risk; did I say that correctly?
4 A. That's correct.
5 Q. And you described development risk as getting the
6 game developed and also getting it to market?
7 A. Yes.
8 Q. I want to ask you about that. In fact, isn't
9 there -- isn't one part of the video game process
10 developing the game, getting a completed game and
11 a second part launching and distributing that game
12 to get it to market?
13 A. Yes.
14 Q. And did you understand EDC to be financing one or
15 both parts of that sequence -- both production --
16 let me break it into production and launch; is
17 that fair?
18 A. Go on.
19 Q. Let me back up. I butchered that. The first
20 phase in a game is you got to develop a game; you
21 can't sell something you haven't developed yet?
22 A. That's correct.
23 Q. Someone in the video game industry, they have to
24 develop a game so they have a game they can sell?
25 A. That's correct.

1 Q. So, where was the money going to come from to
2 complete the second phase, the launch of
3 Copernicus?
4 A. They would do a distribution deal probably
5 with EA.
6 Q. Do you remember that Strategy Analytics presented
7 information to the board about how many
8 applications for distribution EA receives and how
9 many they accept?
10 A. I don't recall that.
11 Q. Do you know from your own industry knowledge that
12 EA accepts for distribution only a small number of
13 the games that apply for distribution agreements
14 with EA?
15 A. Yes.
16 Q. Okay. Like less than five percent?
17 A. I don't recall the number, but I know it's a
18 relatively small number.
19 Q. It's in that range, right?
20 A. If you say so.
21 Q. I'm asking you.
22 A. I don't know, specifically the range of five
23 percent. I know they get a lot of requests for
24 distribution, and they accept relatively a few in
25 number. As to whether it's five or ten percent, I

1 Q. A second part of that is what I think is referred
2 to in the industry as the launch portion of it,
3 correct?
4 A. Yes.
5 Q. Launching a game includes advertising,
6 distribution, getting it into the marketplace,
7 getting in a position where people can buy it,
8 right?
9 A. Yes.
10 Q. That's also a significant portion of creating and
11 selling a successful video game?
12 A. That's correct.
13 Q. In fact, that's one of the things that EA
14 specializes in, the launch of a video game?
15 A. Yes.
16 Q. And did you understand they were going to be
17 responsible for the launch of the RPG that 38
18 Studios was developing?
19 A. Yes.
20 Q. Okay. And what did you understand that EDC was
21 providing funds for in this loan to 38 Studios?
22 A. Development of the game.
23 Q. Okay. You understood that the launch was a
24 separate phase?
25 A. Yes.

1 don't know.
2 Q. Would you have any reason to disagree with
3 statistics provided by Strategy Analytics on that?
4 A. No.
5 Q. So was it reasonable for you to assume when you
6 voted in favor of the 38 Studios transaction that
7 38 Studios would be able to reach a distribution
8 agreement with EA for Copernicus?
9 A. Yes.
10 Q. Why?
11 A. They had a distribution agreement on the RPG
12 where EA was prefunding \$50 million. So they
13 weren't just another guy off the street. EA had
14 already had an arrangement or distribution
15 agreement with the RPG, which was sort of the
16 introduction for the MMOG. So I thought it was
17 quite reasonable if we got the game to completion
18 that EA would distribute the MMOG as well.
19 Q. Did you ask anybody that question, as a board
20 member?
21 A. It was discussed -- I believe it was
22 discussed at the board, yes. I don't know who
23 asked the question. I might have, but I don't
24 recall.
25 Q. To your memory, did you ask anybody that question,

<p style="text-align: right;">Page 101</p> <p>1 whether or not it was reasonable to think that EA 2 would sign a distribution agreement for 3 Copernicus? 4 A. There was discussion about distribution. 5 Q. Let me take it one step at a time. I'll ask you 6 about that discussion, I promise. Did you ask 7 that question? 8 A. I don't recall whether or not I asked that 9 specific question. 10 Q. You recall that topic being discussed at a board 11 meeting? 12 A. Yes. 13 Q. Who discussed it? 14 A. I don't recall which -- it was a general 15 discussion amongst the staff and directors, and as 16 the game has got to be completed, need a 17 distribution agreement, probably with EA, and 18 there was also discussion about the, I use the 19 term maintenance of the game once it's into the 20 marketplace. 21 Q. My question is a little different. Did anybody 22 offer an opinion to the board, whether it's 23 another board member or staff or anybody else, did 24 anybody offer an opinion as to the likelihood that 25 EA would sign a distribution agreement for</p>	<p style="text-align: right;">Page 103</p> <p>1 A. Yes. 2 Q. All right. So, did you understand that EA would 3 be paid back entirely before 38 Studios was able 4 to keep any profits generated by the RPG? 5 A. Yes. 6 Q. Let me show you another exhibit that we marked at 7 Steve Lane's deposition, I think, D-74. I'm 8 sorry, I don't have copies of everybody, but 9 everybody has it from an earlier deposition. I've 10 got a copy for you, though, Mr. Verrecchia. This 11 is Exhibit D-74. For the record, this is an 12 e-mail, the first e-mail is from Mike Saul, the 13 top of the first page, Mike Saul to Mike Corso and 14 others dated May 4, 2010. 15 A. Okay. 16 Q. At the beginning of this e-mail, the first e-mail 17 drafted by Mike Saul he's indicating the plan is 18 to have you, Keith Stokes and Steve Lane visit 19 with 38 Studios; am I reading -- is that correct, 20 is that your understanding of what this e-mail is? 21 A. Well, having never seen the e-mail, I can 22 only see what's written here, but that's what 23 apparently it's doing. 24 Q. Let me just pause there. Did you put that plan 25 together with Mike Saul, the plan to have you and</p>
<p style="text-align: right;">Page 102</p> <p>1 Copernicus? 2 A. Yes. 3 Q. Who? 4 A. But I do not recall who said that. But it 5 was clear in my mind that the board was 6 comfortable that EA would distribute the MMOG -- 7 strong likelihood that they would do it. We 8 didn't have an agreement. The game had to be 9 developed, but there was a high level of 10 confidence that EA would distribute that game 11 based upon the fact that they were distributing 12 the RPG and prefunded the RPG. 13 Q. Okay. Did any expert, apart from the members of 14 the board, anybody outside the board offer an 15 opinion on that, on the likelihood that EA would 16 sign a distribution agreement in the future with 17 38 Studios for Copernicus? 18 A. No, I don't recall anyone doing that. 19 Q. Incidentally, how did you understand EA would be 20 repaid for its investment in the RPG? 21 A. It was my understanding that that was an 22 advance against royalties. 23 Q. So, did you understand EA would get paid back 24 first out of the net revenues or profits produced 25 by the RPG, if any?</p>	<p style="text-align: right;">Page 104</p> <p>1 Keith and Steve visit the 38 Studios location? 2 A. I did not put a plan together. I never had 3 any discussion with Keith and Mike Saul to go 4 visit 38 Studios. 5 Q. So you don't believe you ever discussed with Mike 6 Saul or Keith Stokes a visit by you to 38 Studios? 7 A. I don't recall ever having such a discussion. 8 Q. Do you deny it? 9 A. No. 10 Q. Do you think that Mike Saul is just making this up 11 in this e-mail? 12 MR. WISTOW: It says, "I have 13 discussed this with Keith Stokes." It doesn't say 14 I discussed it with Al. 15 Q. Mr. Verrecchia, do you think that Mike Saul would 16 have been making appointments for you to go visit 17 38 Studios without talking to you about it first? 18 MR. WISTOW: There is no appointment 19 schedule. I instruct him not to answer that. 20 MR. PETROS: Read the question back. 21 MR. WISTOW: Why don't you let him 22 read the e-mail. 23 Q. Do you want to spend more time reading the e-mail 24 before I question you? 25 MR. WISTOW: Show me where he</p>

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1 scheduled an appointment?
2 MR. PETROS: I'll change it to
3 visit, Max. Why don't you calm down.
4 MR. WISTOW: He didn't schedule a
5 visit, either.
6 MR. PETROS: Let me ask the question.
7 If you have an objection, you can object.
8 MR. WISTOW: I'm going to instruct
9 him not to answer the way you asked it. You can
10 file a motion if you want.
11 Q. Do you believe Mr. Saul would have taken steps to
12 arrange for you to visit 38 Studios without
13 discussing it with you first?
14 MR. WISTOW: Objection.
15 A. I have no idea.
16 Q. If you take a look at the second sentence, he
17 talks about that visit happening after some due
18 diligence, and he talks about this opportunity
19 being as attractive as we all believed. Can you
20 just read that sentence and tell me when you've
21 read it?
22 A. I've read it.
23 Q. Did you believe in early May of 2010 that this was
24 an attractive opportunity for EDC?
25 THE WITNESS: Is what an attractive

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1 opportunity?
2 Q. Fair enough. Did you believe in early May of 2010
3 that lending money to 38 Studios in exchange for
4 their relocation to Rhode Island was an attractive
5 opportunity for EDC?
6 MR. WISTOW: At what point?
7 MR. PETROS: I said early May 2010.
8 A. It's not a characterization that I would use.
9 Q. How would you have described that opportunity at
10 that time frame, early May 2010, around the time
11 of this e-mail?
12 A. I would describe it as an opportunity that
13 was, given the economy in Rhode Island and the
14 need to get jobs as something that we wanted to
15 take a look at, the fair amount of risk associated
16 with it, but if we understand the risk and we try
17 to put some things in place to mitigate that risk,
18 then maybe it's something we could do, but that's
19 not what I would call attractive.
20 Q. Okay. What was the state of the economy in Rhode
21 Island at that time?
22 A. Same as it is today. It sucks. Pardon me.
23 Don't put that.
24 MR. PETROS: It's all on the record,
25 Mr. Verrecchia.

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1 A. I've said worse. It's tough. There are a
2 lot of people out of work and, you know, average
3 incomes in Rhode Island are low, and there is a
4 lot of demand by the public on the leaders of our
5 state to try and get the economy moving.
6 Q. And did that -- did the state of the economy
7 influence your decision in voting to approve the
8 loan to 38 Studios?
9 A. Yes.
10 Q. How so?
11 A. Well, certainly the -- let me answer it
12 first, not in relationship to 38 Studios. I think
13 when the economy is poor, you're struggling to do
14 something to create some jobs and sort of prime
15 the pump and get things going. You may be willing
16 to take a little bit more risk than you otherwise
17 would have because you have to.
18 If unemployment is at 1 percent, everybody
19 has got a great job, and someone comes in with a
20 proposal, you can be a bit stricter on that
21 proposal. But when unemployment is -- we were
22 certainly at the highest unemployment in the
23 nation, or if not second the highest, and for a
24 long period of time, you know, you've got to take
25 some steps to try to do something, you may take a

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1 bit more risk.
2 I think in that light, 38 Studios opportunity
3 presents itself, you're going to move jobs here,
4 you're going to be hiring people. These are going
5 to be good-paying jobs. Does the state of the
6 economy have some influence? Sure. It's part of
7 the -- it's one of the things that you consider.
8 I don't think it's something that says to you this
9 is a terrible plan, it's not going to work, but
10 let's do it anyway type stuff.
11 I think it's one of those things where it's
12 going to be a little risky, but given the state of
13 affairs, maybe we need to take a little bit more
14 risk to do something. It's more a gray area than
15 it is a black-and-white type thing.
16 Q. Okay. Did anyone at that point in time, that same
17 time period, early May of 2010, express their
18 belief that they thought this was an attractive
19 opportunity for EDC?
20 A. I don't recall if anyone used the term
21 "attractive." I know that Keith Stokes and Mike
22 Saul were, you know, very high on the opportunity.
23 I don't know -- I don't recall whether they used
24 the term "attractive" or not.
25 Q. How about the Governor, was he also high on the

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1 opportunity?
2 A. I think the Governor was looking at it from
3 the standpoint that I just described a moment ago.
4 You know, I think -- I don't recall him ever using
5 the word "attractive" in describing it. I think
6 it was something attractive from the standpoint
7 that this could bring in some jobs, get things
8 going and prime the pump. We need to do something
9 in this state. I think it was in sort of that
10 state of mind or framework that it was looked at.
11 But I don't recall him ever using the word
12 "attractive" or saying at a board meeting I think
13 this is an attractive opportunity. He was clearly
14 in support of it.
15 Q. Is it fair to say based on his comments at the
16 board meetings the Governor was clearly in support
17 of the transaction?
18 A. Yes.
19 Q. That was true from the first meeting to the last
20 meeting, right?
21 A. I don't recall him ever not being supportive.
22 Q. Do you see the reference down below, "I think the
23 week of the 24th is the best time to schedule. Al
24 and Steve will have just been briefed at the EDC
25 board meeting on the new \$125 million Jobs

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1 Guaranty Program." Do you see that?
2 A. Yes.
3 Q. And in fact, were you briefed on May 24th on the
4 \$125 million Job Guaranty Program?
5 A. I don't recall, again --
6 Q. Do you know why Mike Corso was on this e-mail?
7 A. I've never seen the e-mail until today so I
8 can't say.
9 Q. Did you have any better understanding of Mike
10 Corso's role in the transaction in May than you
11 did in April?
12 A. No. My only involvement, knowledge of Mike
13 Corso being involved in this transaction at all
14 was after 38 Studios went bankrupt.
15 Q. What did you learn then?
16 A. Just what was written in the newspaper.
17 Q. What was that?
18 A. That he was somebody who brokered the media
19 tax credits. That he was involved in introducing
20 Schilling to the state, apparently to Gordon Fox,
21 that he was involved to some degree with the
22 property that was rented. But whatever was in the
23 paper, that's it.
24 Q. Did you learn anything whether or not Mr. Corso
25 had a relationship with Mr. Fox?

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1 A. Only from what was written in the newspaper.
2 Q. Did you learn they knew each other?
3 A. Again, from reading it in the newspaper.
4 Q. What did you learn from reading the newspaper on
5 that topic?
6 A. That they knew each other and apparently were
7 close friends.
8 Q. Let me show you Exhibit 97, this is Plaintiffs'
9 Exhibit 97, it's an e-mail from Rob Stolzman to
10 Mike Saul and others dated May 5, 2010. Why don't
11 you take a minute and tell me when you've read
12 through that.
13 (PAUSE)
14 A. Okay.
15 MR. WISTOW: Let him read the entire
16 thing. There's a second page.
17 THE WITNESS: Oh, sorry.
18 MR. WISTOW: Just take your time.
19 A. Okay.
20 Q. First of all, Mr. Verrecchia, the e-mail itself,
21 Rob Stolzman, what was Rob's involvement in this
22 transaction?
23 A. I believe he was acting as general counsel to
24 the EDC.
25 Q. And the e-mail is to Mike Saul. You know who is

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1 he is. Tom Zaccagnino, did you learn who he was?
2 A. Yes.
3 Q. Who was he?
4 A. He was a member of the 38 Studios team, I
5 believe he's an investor.
6 Q. We've already talked about Mike Corso, and
7 obviously, Keith Stokes was the executive
8 director, those are the recipients of the e-mail.
9 In the second paragraph of this e-mail Rob
10 Stolzman is telling these folks, quote, "Three
11 things need to happen before this is voted on by
12 the RIEDC board." Do you see that?
13 A. Yes.
14 Q. And let me read into the record the first item and
15 I'll ask you a few questions about it. "First,
16 the RIEDC board needs to have a briefing on the
17 RIEDC financial programs so that this is
18 understood to be a piece of the overall RIEDC
19 capital continuum function. Al Verrecchia
20 specifically recommended that this occur prior to
21 the board voting on any specific credit facility,
22 (in fact, semi-colon, "this process will be used
23 for all RIEDC programs). That briefing will occur
24 on May 24 at the regularly scheduled RIEDC board
25 meeting." Have I read that paragraph correctly?

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<p>1 A. Yes.</p> <p>2 MR. LEDSHAM: Objection as to</p> <p>3 semicolon.</p> <p>4 MR. PETROS: Good to hear from you,</p> <p>5 Ben.</p> <p>6 Q. Now, do you recall a discussion -- the discussion,</p> <p>7 a discussion with Rob Stolzman on this topic I've</p> <p>8 just read?</p> <p>9 A. I don't recall a discussion specifically with</p> <p>10 Rob Stolzman. I do recall a discussion and,</p> <p>11 again, I will use the umbrella term EDC staff,</p> <p>12 which could have included Rob, that the EDC has a</p> <p>13 wide variety of financial programs, and the board</p> <p>14 ought to get a review of these programs so when</p> <p>15 we're voting on a particular transaction it has a</p> <p>16 sense of where this fits into the strategy of the</p> <p>17 EDC and its various programs. So that was the</p> <p>18 context in which that discussion was had, and they</p> <p>19 were going to make that presentation to the board</p> <p>20 which, in fact, I'm pretty sure I recall they did.</p> <p>21 Q. I think they did, I'll show you those minutes in a</p> <p>22 moment. So I understand what your testimony is,</p> <p>23 so you do recall that you made a recommendation to</p> <p>24 EDC staff, which may have included Rob Stolzman,</p> <p>25 that the EDC staff should review with the board</p>	<p>1 likely to make its way to the board at some point</p> <p>2 in the future?</p> <p>3 A. I believe so. Again, don't hold me to a</p> <p>4 date.</p> <p>5 MR. WISTOW: I didn't hear the end.</p> <p>6 MR. PETROS: He said yes, I believe</p> <p>7 so. Don't hold me to a date.</p> <p>8 MR. WISTOW: Okay.</p> <p>9 Q. Did you have some concern -- did you have a</p> <p>10 concern at that time when you made this</p> <p>11 recommendation to EDC staff that the public might</p> <p>12 view the 38 Studios' loan as a special deal?</p> <p>13 A. No, I don't believe so.</p> <p>14 Q. Did you later come to have that concern?</p> <p>15 A. Well, yes. It wasn't a concern, it became a</p> <p>16 fact. I mean, 38 Studios' deal became a cause</p> <p>17 celebre during the election year.</p> <p>18 Q. At this point in May did you foresee that and we</p> <p>19 say we need to be public, because the public may</p> <p>20 view this as a special deal for Curt Schilling and</p> <p>21 his company?</p> <p>22 A. Not the way you characterize it.</p> <p>23 Q. Please, correct me.</p> <p>24 A. I think the board was concerned that we were</p> <p>25 giving -- early on we were giving \$75 million of a</p>
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<p>1 the broader continuum of financial programs</p> <p>2 available to fund opportunities --</p> <p>3 A. Yes.</p> <p>4 Q. -- before the board considers a specific proposal</p> <p>5 relating to 38 Studios; did I get that right?</p> <p>6 A. Before it approves the proposal to anybody.</p> <p>7 Q. Was there any loan proposal that was being</p> <p>8 discussed by EDC staff at this time other than the</p> <p>9 38 Studios' loan to your knowledge?</p> <p>10 A. You know, in that same general time frame,</p> <p>11 periodically they would bring to us grants,</p> <p>12 somebody wants to put a solar panel in, and it's</p> <p>13 going to cost, you know, \$1 million and the</p> <p>14 company is going to spend 300,000, we're going to</p> <p>15 lend them 300,000 and give them a grant for</p> <p>16 300,000. We had programs like that. That would</p> <p>17 sort of encourage me to ask this question, we have</p> <p>18 all these programs and they're coming up and we're</p> <p>19 approving these things, but we don't have a sense</p> <p>20 of what the continuum is. So that was the context</p> <p>21 in which that came up. There could have been</p> <p>22 other programs going on, but they were relatively</p> <p>23 small programs.</p> <p>24 Q. And you knew at this time that 38 Studios</p> <p>25 transaction was being worked on by staff and</p>	<p>1 \$125 million fund to a single company, putting</p> <p>2 aside whether it was Curt Schilling or 38 Studios.</p> <p>3 Why were we doing that. And it became apparent</p> <p>4 about the 38 Studios, I think the board then</p> <p>5 wanted to be sure that, you know, we do good</p> <p>6 diligence, had a good financial plan because it</p> <p>7 became a cause celebre during the election. I</p> <p>8 forget when, then candidate Chafee actually came</p> <p>9 to a meeting to debate the issue.</p> <p>10 Q. In addition to being concerned about the 75</p> <p>11 million for one loan being such a large part of</p> <p>12 the overall funding, were you also concerned about</p> <p>13 how the public would perceive this loan to a</p> <p>14 company that Curt Schilling was involved in?</p> <p>15 A. You know, it didn't occur to me, and I mean,</p> <p>16 his celebrity status, being a baseball player and</p> <p>17 all that sort of stuff?</p> <p>18 MR. PETROS: Yes.</p> <p>19 A. I don't recall that ever occurring to me.</p> <p>20 That didn't have a lot of play in my mind.</p> <p>21 Q. Were you speaking with Rob Stolzman or Mike Saul</p> <p>22 and Keith Stokes on a regular basis about the 38</p> <p>23 Studios transaction at the time of this e-mail</p> <p>24 that's in front of you?</p> <p>25 MR. WISTOW: Objection.</p>

1 A. I'm not sure what you mean by regular basis.
2 I mean, certainly when the transaction was in
3 development, there were discussions that were
4 taking place at the board meeting, and did
5 somebody send me an e-mail make a telephone call
6 where things were or something like that,
7 absolutely, that could have happened, but I don't
8 recall specifically. It certainly wasn't -- I was
9 not a key member of the team putting it together.
10 Q. Do you believe that any other members of the
11 board, apart from the Governor, yourself and Steve
12 Lane, even knew about the 38 Studios transaction
13 as of May 5, 2010?
14 THE WITNESS: Repeat that?
15 (QUESTION READ)
16 A. I don't believe -- I don't recall that I knew
17 about this transaction well before the rest of the
18 board did is the only way I can answer that. I
19 know what you're showing me here and e-mails that
20 are going out, but I was not part of any team,
21 never went to Massachusetts, don't ever recall
22 being asked to go to Massachusetts, understood it
23 to be 38 Studios at the same time or at least at
24 about the same time. Did I know a day before, two
25 days before? But the idea that I knew, you know,

1 I told Keith Stokes he needed to let people
2 know what was going on. You know, the board wants
3 to know why are we doing this.
4 And then he indicated to the board that the
5 original request from the Legislature was for a
6 \$50 million fund, they added 75 to get it to 125,
7 \$75 million was for 38 Studios, and if we gave the
8 \$75 million to somebody else or other people, the
9 Speaker of the House would be unhappy, and I
10 personally took Speaker of the House to mean the
11 Legislature, correct or incorrect, and it was at
12 that time that we first learned about 38 Studios,
13 and to say that I knew about that more than a day
14 before the rest of the board would be --
15 Q. Would be what?
16 A. Maybe I found out the day before he could
17 have told me a day before. The idea that I knew
18 about it and -- I think the board itself might
19 have known before June 9th. Again, I don't know
20 the dates, you know, but clearly if I was asked to
21 have someone at Hasbro talk to Mike Saul about
22 doing due diligence, I would have known about 38
23 Studios at that time, and the board would have
24 known it at that time as well. I was not sitting
25 there, you know, knowing that there's a

1 a month, two months before the rest of the board,
2 no.
3 Q. Okay. Mr. Verrecchia, we looked, at the beginning
4 of the deposition we looked briefly at the June 9
5 meeting minutes of the board of EDC; do you recall
6 that?
7 A. Yes.
8 Q. All right. So as we sit here today, can you refer
9 me to any other document that indicates that the
10 rest of the board or other members of the board,
11 apart from the three I named, were aware of the
12 discussions involving 38 Studios before that June
13 9 meeting?
14 MR. WISTOW: Objection.
15 A. I can't show you documents, but there were
16 discussions in executive session. Again, I can't
17 put a time frame other than a sort of a grouping
18 of months in that April, May, June time frame.
19 When Keith Stokes indicated that they were working
20 on a transaction that involved \$75 million of \$125
21 million fund to one company, the board was
22 concerned about giving \$75 million to one company
23 and why. And they were pushing back a little bit
24 as to why, and what was going on, why were we
25 doing that.

1 transaction with 38 Studios going on and the rest
2 of the board not knowing that.
3 Q. Okay. So what's the basis for your -- the last
4 statement you made that if you were asked to
5 provide employees from Hasbro to help out with the
6 due diligence, you would have known about 38
7 Studios and the rest of the board would have known
8 at the same time. What is the basis for the last
9 part of your statement that the rest of the board
10 would have known if you were asked to help out
11 with due diligence on 38 Studios?
12 A. Because it would have been discussed at the
13 board meeting. I wouldn't have done it behind the
14 back of the board.
15 Q. I'll represent to you that I've reviewed the board
16 meetings, the first reference I've seen to 38
17 Studios in the board meeting minutes including
18 executive session is June 9, 2010 --
19 MR. WISTOW: Since you're making
20 representations and not asking questions, I'll
21 represent there are many errors in the minutes,
22 period. You can represent, I'll represent -- and
23 omissions.
24 Q. So can you tell me how other board members would
25 have known in May of 2010, or how they did know in

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<p>1 May of 2010 about the 38 Studios transaction? Do 2 you have knowledge, personal information that 3 Dooley or other members knew about the -- 4 A. I can't sit here with a date on a calendar, 5 but I'm sitting in a meeting when they're being 6 told about 38 Studios, and you and I both know 7 that if I have two attorneys write the minutes for 8 a meeting, one is going to write the board had a 9 discussion about a transaction, period, the end. 10 The other guy is going to write, you know, chapter 11 and verse. 12 So, the fact that something is not in the 13 minutes doesn't mean it wasn't discussed at the 14 meeting. I did not find out about 38 Studios 15 months before the rest of the board, no way. 16 Q. Okay. Are you done? 17 A. I am. 18 Q. All right. Let me point you to the next 19 paragraph, Second. Why don't you take a moment 20 and read that to yourself if you want to, I'm 21 going to ask you questions about it. I want to be 22 fair. Read it to yourself, it begins with, 23 Second. 24 A. Oh, okay. 25 (PAUSE)</p>	<p>1 due diligence needed to be conducted to lead to a 2 vigorous staff recommendation for approval of the 3 38 Studios loan transaction"? 4 MR. WISTOW: Could you read that 5 back, please. 6 (QUESTION READ) 7 MR. WISTOW: I object. I don't 8 understand that question at all. I'm not going to 9 allow him to answer it without me understanding 10 it. I'm going to instruct him not to answer. 11 Q. Did you agree at this time period, Mr. Verrecchia, 12 that it was important to have a vigorous staff 13 recommendation in favor of the 38 Studios' loan 14 transaction? 15 THE WITNESS: Are you talking May 16 5th? 17 MR. PETROS: Yes, I am. 18 A. I've never seen this document, so the only 19 way I can answer that question is in order for -- 20 as a director of the EDC, I would not have voted 21 for the transaction without a recommendation from 22 EDC staff as one of the components. 23 Q. And if the recommendation from EDC staff had been 24 to reject the loan application, would you have 25 voted against it?</p>
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<p>1 A. Okay. 2 Q. Were you and Steve Lane acting as an ad hoc 3 committee on the 38 Studios transaction? 4 A. No. 5 Q. Do you know why Rob Stolzman would have 6 characterized it that way? 7 A. No. 8 Q. Did you anticipate that you and Steve Lane would 9 be making a recommendation on the 38 Studios 10 transaction to the board? 11 A. No. 12 Q. Can you explain why you had that exchange earlier 13 that we looked at with Steve Lane about the 38 14 Studios transaction? 15 MR. WISTOW: Why don't we show it to 16 him. 17 THE WITNESS: You mean the stalking 18 horse? 19 MR. PETROS: Yes. 20 A. No. 21 Q. Did anyone ask you and Steve Lane to serve as an 22 ad hoc committee on the 38 Studios transaction? 23 A. I don't recall ever being asked that 24 question. 25 Q. Did you agree with the statement that, "Sufficient</p>	<p>1 A. Yes. 2 Q. So you would have accepted and followed the 3 recommendation of EDC staff? 4 A. As one element of approving the loan. 5 Q. Right. But that was -- 6 A. That was a necessary representation. 7 Q. It may not be sufficient, but it was a necessary 8 element? 9 A. Yes. 10 Q. Let me -- so the record is clear, you would not 11 have voted in favor of the loan to 38 Studios if 12 the staff recommended rejecting that loan, 13 correct? 14 A. Correct. 15 Q. But a staff recommendation in favor of the loan 16 was necessary, but not necessarily sufficient for 17 you to vote in favor of it? 18 A. Correct. 19 Q. Now, do you remember having a discussion with Rob 20 Stolzman or EDC staff about whether the due 21 diligence needed to produce a rigorous staff 22 recommendation for the transaction? 23 A. No. 24 Q. Do you deny that you had such a conversation, or 25 is it possible you had it and have forgotten it?</p>

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<p>1 A. Possible.</p> <p>2 Q. You see again there is another reference in this</p> <p>3 paragraph to you, Steve and Keith visiting the 38</p> <p>4 Studios?</p> <p>5 A. Yes.</p> <p>6 Q. Your testimony is that you never went there?</p> <p>7 A. Never went there.</p> <p>8 Q. Did Steve Lane go there --</p> <p>9 A. I don't know.</p> <p>10 Q. Did he ever tell you that he went to visit there?</p> <p>11 A. I don't recall him ever telling me that.</p> <p>12 Q. I didn't finish my question. Did he ever tell you</p> <p>13 that he went to visit 38 Studios in Massachusetts?</p> <p>14 A. I don't recall him ever telling me that.</p> <p>15 Q. Did you -- strike that. The third point he makes,</p> <p>16 it starts with Third, "The Kushner needs to have</p> <p>17 been approved by the General Assembly, either as</p> <p>18 part of the FY '10 supplemental or closed." Do</p> <p>19 you see that?</p> <p>20 A. Yes.</p> <p>21 Q. What does the term "Kushner" refer to?</p> <p>22 A. I have no idea.</p> <p>23 Q. Does that refer to the process in the job creation</p> <p>24 program to allow for a moral obligation to support</p> <p>25 the bonds to be issued under that program?</p>	<p>1 the \$125 million Job Creation Guaranty Program?</p> <p>2 A. Okay. Let me read it.</p> <p>3 MR. PETROS: Sure.</p> <p>4 (PAUSE)</p> <p>5 A. Okay.</p> <p>6 Q. Do you see that he's talking there about the \$125</p> <p>7 Job Creation Guaranty Program?</p> <p>8 A. Yes.</p> <p>9 Q. He actually uses -- the minutes use the term</p> <p>10 capital continuum when he's talking about the</p> <p>11 programs available through RIEDC, right?</p> <p>12 A. Yes.</p> <p>13 Q. Similar to one of the terms that Rob Stolzman used</p> <p>14 in the last e-mail we looked at?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall in that prior e-mail Mr. Stolzman</p> <p>17 indicated that the board was going to be briefed</p> <p>18 on this on May 24, 2010?</p> <p>19 A. Yes.</p> <p>20 Q. And recognizing you weren't at that meeting, based</p> <p>21 on this minutes, does it appear that briefing took</p> <p>22 place?</p> <p>23 MR. WISTOW: Objection.</p> <p>24 Q. The briefing on the capital continuum and Job</p> <p>25 Creation Guaranty Program?</p>
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<p>1 MR. WISTOW: Do you want him to</p> <p>2 guess?</p> <p>3 MR. PETROS: I'm asking him if he</p> <p>4 knows.</p> <p>5 MR. WISTOW: He just said he has no</p> <p>6 idea what that means.</p> <p>7 A. I have no idea what the Kushner refers are.</p> <p>8 Q. Let me show you the minutes of the May 24 EDC</p> <p>9 board meeting. I'm going to show you what was</p> <p>10 previously marked as D-82. This document is</p> <p>11 entitled Meeting of Directors Public Session,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. Does it appear to be minutes of a meeting of the</p> <p>15 EDC board?</p> <p>16 A. Yes.</p> <p>17 Q. And you're noted as being absent from this</p> <p>18 meeting, correct?</p> <p>19 A. Yes.</p> <p>20 Q. As you told us, you would have received a copy of</p> <p>21 these minutes in your capacity as vice chair and</p> <p>22 member of the board?</p> <p>23 A. Yes.</p> <p>24 Q. If you would turn to Page 3. Do you see the</p> <p>25 discussion there about Mr. Stokes commenting on</p>	<p>1 A. If that's what the minutes say, then I assume</p> <p>2 that's what happened.</p> <p>3 Q. Do the minutes say that?</p> <p>4 MR. WISTOW: Objection. The document</p> <p>5 speaks for itself.</p> <p>6 MR. PETROS: You can answer.</p> <p>7 MR. WISTOW: What's the question?</p> <p>8 MR. PETROS: Do the minutes say</p> <p>9 that?</p> <p>10 MR. WISTOW: Say what?</p> <p>11 Q. Do the minutes indicate that the board was briefed</p> <p>12 on the Job Creation Guaranty Program,</p> <p>13 Mr. Verrecchia?</p> <p>14 A. Yes. It says that, "The RIEDC hosted</p> <p>15 approximately 50 private capital and equity</p> <p>16 program directors and professionals to discuss</p> <p>17 recapitalizing the Slater," et cetera.</p> <p>18 Q. Does it also indicate board members were briefed</p> <p>19 on the broader capital continuum available through</p> <p>20 RIEDC?</p> <p>21 MR. WISTOW: I'm going to object.</p> <p>22 I'm going to instruct him not to answer. It says,</p> <p>23 "Additionally, the General Assembly is considering</p> <p>24 creating \$125 million Job Creation Guaranty</p> <p>25 program for the RIEDC." That's what it says. It</p>

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1 doesn't indicate any briefing or anything else.
2 MR. PETROS: What's the basis of the
3 witness not to answer?
4 MR. WISTOW: Because the document
5 speaks for itself. It's unfair to try to put
6 words in his mouth.
7 MR. PETROS: You've asked witnesses
8 what documents say for six months in this case,
9 Max. How can you assert that as an objection?
10 MR. WISTOW: I'm asserting it as an
11 objection. The thing speaks for itself. He
12 wasn't there.
13 Q. Mr. Verrecchia, do these minutes, which you
14 received as a member of the board, indicate that
15 the board was briefed on May 24 on the capital
16 programs available to RIEDC?
17 MR. WISTOW: Object to the term
18 "briefed."
19 A. Actually, it doesn't. No, it does not.
20 Q. Okay. Does this -- do these minutes reference the
21 38 Studios transaction?
22 MR. WISTOW: When it comes time for
23 you to try to get him to come back here, you may
24 have to get an order from the court. We are
25 wasting time.

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1 MR. PETROS: I haven't wasted any
2 time, Max. I resent that suggestion.
3 MR. WISTOW: This document speaks for
4 itself. You're now asking a witness to read
5 through it and see if he can find the word 38
6 Studios. That is a waste of time.
7 MR. PETROS: I'm asking him. Do you
8 want to stipulate it doesn't?
9 A. I don't see any reference to 38 Studios.
10 MR. PETROS: Thank you, Mr.
11 Verrecchia. That took about 30 seconds. Less
12 time than your objection took.
13 Q. Mr. Verrecchia, we're going to turn in a moment to
14 the June 9 meeting minutes. I'm going to ask you
15 questions about that meeting which you did attend,
16 we talked about that briefly already. But I first
17 want to ask you, did you have any other
18 involvement with respect to the 38 Studios
19 transaction prior to that June 9 meeting, other
20 than what we've talked about already?
21 A. Not to my knowledge. I don't recall any.
22 Q. You may have, but you cannot recall any today; is
23 that fair to say?
24 A. Fair to say.
25 Q. All right. Did you talk with any private equity

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1 or venture cap firms about a possible investment
2 or loan to 38 Studios?
3 A. I don't recall ever doing that, no.
4 Q. Did you talk to any of the candidates for public
5 office about the 38 Studios transaction?
6 A. I don't recall ever doing that, no.
7 Q. Did you talk to candidate Chafee at any point in
8 time prior to the closing?
9 A. No.
10 Q. Did you talk to Treasurer Caprio at any point in
11 time prior to the closing?
12 A. I'm hesitating because there was something
13 that the treasurer's office was involved in
14 regarding 38 Studios. I just don't recall what
15 the details were and what it was about, and I
16 recall having a very brief discussion about --
17 something with him as regards that, but I can't
18 recall what it was about or what the details were.
19 Q. But you believe you had a discussion with
20 Treasurer Caprio about the 38 Studios transaction?
21 A. I have some recollection having to do with
22 it, but I can't tell you the details at all. To
23 my knowledge, he's not -- he wasn't involved in
24 the transaction, didn't need his approval or
25 anything like that. But there was something that

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1 his name came up, I saw him somewhere, had a
2 discussion, but I can't remember the details, and
3 it wasn't anything substantive that I'm aware of.
4 Q. Do you recall anything about that discussion,
5 apart from what you've told us already?
6 A. No.
7 Q. Did you have any discussions with Gina Raimondo
8 about the 38 Studios transaction?
9 A. No.
10 Q. Did you know her in the summer of 2010?
11 A. I think I met her as a candidate, but I
12 didn't know her.
13 Q. Did you support her candidacy financially?
14 MR. WISTOW: This is the United
15 States -- oh, financially?
16 MR. PETROS: Financially.
17 A. I believe I did.
18 Q. Did you talk to her about this transaction before
19 the closing?
20 A. No, I don't recall ever having a discussion
21 with anybody, any public official or candidate
22 relative to 38 Studios other than what I said
23 about Frank Caprio and, obviously, the Governor.
24 Q. Do you recall learning about Ms. Raimondo's view
25 of this transaction?

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1 A. Yes.
2 Q. When did you learn about it?
3 A. I certainly -- I recall reading about it long
4 after -- I say long after, after 38 Studios went
5 bust or at the time it was going bust when they
6 were looking for more help from the state, and I
7 recall her talking about the letter that she
8 wrote. I do not recall ever getting that letter
9 or ever having seen that letter while I was on the
10 EDC board or prior to the transaction closing or
11 being voted upon. That's the best I can do with
12 that.
13 Q. So prior to the closing on the 38 Studios
14 transaction, did you know that she had sent a
15 letter to the EDC in opposition to that
16 transaction?
17 MR. WISTOW: Object to the
18 characterization of EDC.
19 Q. To EDC or any of its staff or members concerning
20 the 38 Studios transaction?
21 THE WITNESS: Did I know at the time
22 before we voted?
23 MR. PETROS: Before the closing.
24 A. Before the closing, I don't recall whether or
25 not we had received a copy of the letter that was

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1 then referenced to many months down the road.
2 Q. Did you learn prior to the closing that she had
3 serious concerns about the transaction?
4 A. I don't recall.
5 Q. You may have, you may not have?
6 A. May or may not.
7 Q. Did you learn before your final vote on the
8 transaction that she had serious concerns about
9 it?
10 A. I don't recall. There was a lot of talk by a
11 lot of people running for office about that
12 transaction. Chafee being the most notable. So
13 she might have said something prior to the
14 transaction, but I don't recall.
15 Q. Okay. In April and May of 2010 what was your
16 understanding concerning the amount of money that
17 38 Studios was seeking from EDC?
18 A. Mike Saul made a presentation to the board
19 indicating that they were looking for \$75 million.
20 They were looking for \$75 million. That was the
21 first time -- the first number that we had heard
22 was that time frame you're talking about, I can't
23 pinpoint it, but the first number we heard was \$75
24 million.
25 Q. Mike Saul made presentations to the EDC board

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1 beginning in June of 2010. I want to ask you
2 about a period of time before that, in April and
3 May of 2010, before there was a presentation to
4 the EDC board. I want to know what you understood
5 to be the amount of money during that time frame
6 that 38 Studios was seeking from EDC?
7 A. Again, I can't put a time frame on it, but
8 the first time I had heard anything about how much
9 money they needed was from Mike Saul, and I recall
10 it being at a board meeting. Could he have called
11 me up and told me that a week beforehand? Look,
12 it's possible, I suppose. But what I recall is
13 Mike Saul at a board meeting talking about the
14 need for \$75 million.
15 Q. Okay. Do you recall discussions about grossing up
16 the amount of the loan to \$85 million or a higher
17 number?
18 A. I don't recall that discussion, no.
19 Q. Do you recall any discussions about grossing up
20 the amount of the loan to 38 Studios?
21 A. I don't recall any discussions about
22 gross-up, no.
23 Q. Did you discuss that, do you recall discussing
24 that with Rob Stolzman or Mike Saul?
25 A. No, I don't recall having that discussion.

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1 Q. And your recollection was that when Mike Saul did
2 provide you with a number, it was 38 Studios was
3 asking for or needed 75 million; have I got that
4 right?
5 A. Yes.
6 Q. Okay. And did you understand that to be a net
7 number?
8 A. The first time it was presented to us it
9 wasn't a discussion, net, gross, it was just a
10 number that was thrown out there. It was very
11 early on in the process, and it wasn't presented
12 to us as here's their need, it's what they were
13 asking for. They hadn't done any due diligence or
14 gone through financials or anything like that.
15 Q. Who hadn't done any due diligence?
16 A. EDC.
17 Q. EDC staff?
18 A. Mike Saul, staff. I'm putting it all under
19 one umbrella.
20 Q. In fact, the first time Mike Saul presented a
21 PowerPoint presentation to the board in June of
22 2010 on the 38 Studios transaction, did he
23 indicate to the EDC board that they were largely
24 done with due diligence already?
25 A. I don't recall, but you keep -- that the

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1 first time Mike Saul presented was June 9th. When
2 Mike Saul presented the 38 Studios proposition,
3 the first time he talked about it was in the
4 context of they had been out looking for equity,
5 hadn't found equity -- not that they hadn't found
6 equity, but that the equity wanted too big of a
7 piece of Schilling's company, and he didn't think
8 the state would have to put in equity, that he
9 thought that a loan program might be workable and
10 they were going to start to work on that. And
11 there were several meetings. Again, I can't put a
12 date on the calendar where he would be asking the
13 board to continue working on the project. So, the
14 idea that the first time we heard the 75 million
15 was after all due diligence had been completed, I
16 can't answer that question because I don't know,
17 you know, when he did his due diligence and how
18 much he did when. But I know the first time he
19 spoke about 75 million was very early on in the
20 process. I had the impression that it was early
21 on. We hadn't completed all due diligence --
22 certainly, the first time we heard about it, no
23 one had made -- we hadn't had Strategy Analytics
24 or Wells Fargo or First Southwest, nobody had made
25 a presentation to us or anything like that.

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1 Q. So the number you heard and the number you always
2 heard was 75 million, that's what --
3 A. That's what I recall.
4 Q. That's what you recall. Let's turn back to
5 Exhibit 116, which is the minutes of the June 9
6 meeting. Now, I'm showing you what are the board
7 meeting, executive session minutes, right?
8 A. Yes.
9 Q. Those minutes indicated that you attended that
10 meeting, correct?
11 A. Yes.
12 Q. Do you recall -- do you have any independent
13 recollection, apart from what's in the meeting
14 minutes, what was said or done at that meeting?
15 A. No.
16 Q. Okay. Read to yourself the first paragraph on the
17 bottom of Page 1, tell me when you've done that.
18 (PAUSE)
19 A. I've read it.
20 Q. Does that language suggest to you that Governor
21 Carcieri was introducing the 38 Studios
22 transaction to the board?
23 MR. WISTOW: Objection.
24 A. It would appear so.
25 Q. Do you have any personal knowledge that indicates

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1 that at any earlier meeting Governor Carcieri or
2 anybody else had presented information on the 38
3 Studios transaction to the EDC board?
4 A. I don't have any -- I don't have any, you
5 know, written documentation but, you know, the
6 notion that the board is first finding out about
7 38 Studios in June relative to all the other
8 e-mails you've shown me doesn't connect.
9 Q. Why not?
10 A. Because it's suggesting there is discussions
11 about 38 Studios going on in the April and May
12 period, you know, and that I'm part of those
13 discussions, and the board's first finding out
14 about this June, and that is not the case. So I
15 don't know what was written here and -- but the
16 idea that I knew two months ahead of time is just
17 not true.
18 Q. Well, you knew two months before June 9, you're
19 not disputing that, right?
20 A. I'm not disputing that. But to say that's
21 the first time that the board -- the rest of the
22 board knew about it, and I knew this thing about
23 two months beforehand, no.
24 Q. So can you identify for me any fact indicating
25 that the rest of the board, other than you and

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1 Steve Lane and Governor Carcieri, knew about the
2 38 Studios transaction in April of 2010?
3 A. Obviously not, no.
4 Q. Or in May of 2010?
5 A. No.
6 MR. WISTOW: It's five to one, I'm
7 getting a little hypoglycemic.
8 (OFF THE RECORD)
9 MR. PETROS: We'll break until 1:30.
10 Thank you, Mr. Verrecchia.
11 (LUNCH RECESS 12:54 TO 1:35 P.M.)
12 (MR. MARTLAND NO LONGER PRESENT)
13 Q. Mr. Verrecchia, when we broke for lunch, we just
14 started a discussion about the June 9 minutes, but
15 before I return to that, I want to show you one
16 other exhibit and ask you a few questions about
17 that and then we'll go back to June 9. We're
18 marking this as Defendants' Exhibit D-122. The
19 top of it is an e-mail from Keith Stokes to Mike
20 Saul, cc to others dated May 12, 2010.
21 (DEFENDANTS' EXHIBIT D-122
22 MARKED FOR IDENTIFICATION)
23 A. Okay.
24 Q. I'm going to ask you questions on the second page,
25 why don't you go ahead and read through that.

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1 (PAUSE)
2 Q. Starting with the top e-mail from Keith Stokes, he
3 refers to the fact that he just finished speaking
4 to the Governor regarding 38 Studios; do you see
5 that?
6 A. Yes.
7 Q. Let me just go below that, there's an e-mail at
8 12:38 P.M. it says, "Mike Saul," e-mail address,
9 "wrote:" Do you see that?
10 A. Yes.
11 Q. Then it says, "See comments below," some of which
12 we have discussed?
13 A. Okay.
14 Q. The reason I want to point that out to you to be
15 fair, Mr. Verrecchia, it looks like you looked
16 down at the longer e-mail, which is the first
17 e-mail in the chain, so to speak, it looks like
18 there are points being made by Rob Stolzman, A, B,
19 C, D; do you see those?
20 A. Yes.
21 Q. Then underneath that it looks like in the smaller
22 font there's a response to A and a response to B
23 and a response to D. It's not critical to my line
24 of questioning, but to be fair to you, I think the
25 etiology is such that those comments are from Mike

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1 Saul, the ones in smaller print?
2 A. Okay.
3 Q. I'm not going to ask you to verify that. I just
4 wanted to be fair with you. If you turn to the --
5 this is an e-mail from Rob Stolzman at 2:35 P.M.,
6 the one on the bottom. I want to direct your
7 attention to that, okay?
8 A. Yup.
9 Q. This is an e-mail discussing moving the 38 Studios
10 transaction forward, correct?
11 A. Correct.
12 Q. Okay. And on the second page there's a paragraph
13 that begins, I'll read it into the record, it
14 says, "Keith, have you asked Sharon to schedule a
15 special meeting on 6-9 with backup date of 6-10?
16 How do we want to communicate with the board for
17 the purpose of the special meeting? This ties to
18 C below. I have only discussed the opportunity
19 with Al and Steve. How do you want to brief other
20 board members, if at all? I see phone call
21 briefings and meeting purpose as different but
22 linked from a communication strategy. Can we
23 build the briefing and meeting purpose into one
24 e-mail from Keith to the board?" Have I read that
25 correctly?

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1 A. Yes.
2 Q. Okay. If I'm correct, please assume for these
3 purposes that Mike Saul is writing this paragraph
4 I just read, okay --
5 A. Okay.
6 Q. -- in response to e-mail from Rob Stolzman. If
7 that's correct, then Mike is telling Rob Stolzman
8 that he's only discussed the opportunity with you
9 and Steve Lane, right?
10 A. Yes.
11 Q. And he's indicating -- he's asking Rob, how do we
12 want to brief the other board members, if at all,
13 correct?
14 A. Yes.
15 Q. Does that impact your recollection so far, your
16 belief, Mr. Verrecchia, that you did not know
17 about the 38 Studios transaction before the other
18 board members learned of it?
19 A. You know, it doesn't, not for length of time
20 that some of these e-mails appear to indicate that
21 I was aware of this, you know, back in April 9th
22 or 10th, and here it is two months later. It's
23 just not in my head that I knew this transaction
24 60 days before the rest of the board. I certainly
25 didn't have a participation in any ad hoc

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1 committee or, you know, any special meeting other
2 than having Mike Saul talk to Mark Blecker at
3 Hasbro, and I don't have an explanation as to you
4 know to that.
5 Q. Just to be clear on that, you've testified,
6 correct me if I'm wrong, that you did know about
7 38 Studios transaction in that early time frame, I
8 think you said April 9 is the date you threw?
9 A. It appeared I did, given the e-mails I did, I
10 can't dispute that.
11 Q. Is it your belief that the other board members
12 also knew about it in early April, notwithstanding
13 this e-mail and the others I've shown you?
14 A. I might have known about it a very brief time
15 frame before the other board members, I can't say
16 that, you know, the very first time I heard about
17 it was, you know, the day that they announced it
18 at a board meeting, but I don't recall having been
19 involved with the 38 Studios transaction 60 days
20 before the rest of the board.
21 Q. Can you think of any reason why Mike Saul might
22 have communicated with Mike Stolzman he only
23 discussed it with you and Steve, if that wasn't
24 true?
25 A. No, I can't. They're talking about a lot of

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<p>1 things here that didn't take place.</p> <p>2 Q. What else in this --</p> <p>3 A. Well, the idea we're arranging a meeting --</p> <p>4 that I'm supposed to go to Massachusetts and meet</p> <p>5 with Curt Schilling. I never went, and I don't</p> <p>6 ever recall being asked to go. Steve Lane,</p> <p>7 obviously, had a meeting based upon that, but I</p> <p>8 never participated in any meeting, you know,</p> <p>9 whatsoever.</p> <p>10 The first time I saw Schilling and any member</p> <p>11 of his team was when they made the presentation to</p> <p>12 the EDC board or introduced themselves to the EDC</p> <p>13 board is probably a better characterization.</p> <p>14 Q. Mr. Verrecchia, are you denying that you were</p> <p>15 asked to meet with 38 Studios prior to --</p> <p>16 A. I'm not denying. I don't recall being asked.</p> <p>17 Q. Your testimony, and I'm not disputing it is that</p> <p>18 you did not have a meeting?</p> <p>19 A. I did not have a meeting.</p> <p>20 Q. Do you know whether the absence of that meeting</p> <p>21 was because of a scheduling conflict or some other</p> <p>22 reason?</p> <p>23 A. I don't recall why I didn't have the meeting.</p> <p>24 I don't recall being asked to have the meeting.</p> <p>25 Q. But you may have been asked but simply forgot?</p>	<p>1 Q. That's fair. Let's go back to the June 9 minutes</p> <p>2 and talk about those. This is Plaintiffs' Exhibit</p> <p>3 116?</p> <p>4 MR. DOLAN: 116?</p> <p>5 MR. PETROS: 116.</p> <p>6 Q. Do you have it now?</p> <p>7 A. Yes, I do.</p> <p>8 Q. In the bottom of the first page that we looked at</p> <p>9 earlier before the lunch break it indicates that</p> <p>10 the Governor indicated that he wanted to talk</p> <p>11 about a fairly significant transaction; do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. Would you agree 38 Studios' loan was a fairly</p> <p>15 significant transaction for EDC?</p> <p>16 A. Yes.</p> <p>17 Q. He also described it as an interesting opportunity</p> <p>18 for Rhode Island?</p> <p>19 A. Yes.</p> <p>20 Q. And I think you testified earlier it was an</p> <p>21 interesting opportunity for Rhode Island?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember anything else the Governor said</p> <p>24 about the transaction during that meeting that you</p> <p>25 attended?</p>
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<p>1 A. I may have been asked, but I didn't have the</p> <p>2 meeting.</p> <p>3 Q. There's indication in capital C on this page, do</p> <p>4 you see where it starts off with, "RIEDC board,"</p> <p>5 indicating that Steve Lane did go up to Maynard</p> <p>6 that very morning; do you see that?</p> <p>7 A. Yup.</p> <p>8 Q. And again, this e-mail is dated May 12, 2010,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. You see right after that it says, "Both Tom and</p> <p>12 Michael indicated that Steve did not think the</p> <p>13 RIEDC board was yet aware of this opportunity for</p> <p>14 the RIEDC in Rhode Island," and you indicated that</p> <p>15 Steve was concerned and they are concerned that</p> <p>16 our board has not been getting any background</p> <p>17 information or quiet calls or briefings on this;</p> <p>18 do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. That would be another indication that this time</p> <p>21 Steve Lane was discussed that the rest of the</p> <p>22 board members don't know about this transaction,</p> <p>23 right?</p> <p>24 A. It does. I know where you're going, I don't</p> <p>25 have a response.</p>	<p>1 A. No.</p> <p>2 Q. But you did testify earlier that in general the</p> <p>3 Governor spoke very positively about this</p> <p>4 opportunity and was a supporter?</p> <p>5 A. Yes. He was a supporter of the transaction.</p> <p>6 Q. Do you recall, and I apologize, I may be repeating</p> <p>7 this question, do you recall any discussion with</p> <p>8 the Governor regarding 38 Studios before he spoke</p> <p>9 at this meeting?</p> <p>10 A. No.</p> <p>11 Q. Is it possible that you had such a discussion and</p> <p>12 you've forgotten, or do you have a clear memory</p> <p>13 that you had no such discussion?</p> <p>14 A. No, I don't recall having a discussion.</p> <p>15 Q. Did the Governor in his opening comments at this</p> <p>16 meeting identify any risk associated with the</p> <p>17 transaction?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you recall any negative statement that the</p> <p>20 Governor made about the 38 Studios transaction at</p> <p>21 any time prior to the closing?</p> <p>22 A. No.</p> <p>23 Q. But you do recall many supportive positive</p> <p>24 statements he made about the transaction during</p> <p>25 those meetings, correct?</p>

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<p>1 A. Well, I wouldn't say many supportive 2 statements. I would say that he was, you know, 3 supportive of the transaction. 4 Q. Among the board members, was anybody on the board 5 during the series of meetings now, concerning 38 6 Studios, was anybody on the board more active 7 about pointing out risks than you were? 8 A. I don't know that anyone was more active. 9 There were people who were actively concerned 10 about the risks. To say that I was -- I pointed 11 it out more than somebody else. I couldn't make 12 that judgment call. 13 Q. You do recall you pointed out a number of risks 14 associated with this transaction in the series of 15 meetings, didn't you? 16 A. Yes. 17 Q. Did anybody else do that? 18 A. Well, if I point out a risk in a transaction, 19 you might say, yeah, I agree I was thinking the 20 same thing. Now, does that mean I pointed it out 21 or you pointed it out. I happened to speak first, 22 you could have spoken first. There were a number 23 of -- there were certainly a number of people in 24 that board that were beginning to understand the 25 risks associated with the video game business and</p>	<p>1 Q. Based on what you heard, was there any other board 2 member that pointed out as many risks associated 3 with that loan as you did? 4 A. You know, I think, certainly Steve Lane 5 pointed out the risks involved with new product 6 development I think Dave Dooley I believe spoke 7 about, you know, the risks associated with new 8 product development. So there were several board 9 members who had a pretty decent understanding of 10 the risks associated with a new product 11 development or development program. 12 Q. What are the unique risks associated with new 13 product development? 14 A. The fact that it's new and unknown is one. 15 Q. Is that risk the risk that the consumers, whatever 16 your product is, might not buy it? 17 A. That comes later on. I think any product has 18 market risk. There is not a lot of product 19 development involved in deciding instead of making 20 white shirts, we're going to make blue shirts. 21 But whether or not those blue shirts would be 22 accepted by the marketplace is another story. 23 On the other hand, the fellow who develops a 24 shirt to begin with, there's much more risk 25 involved in that development because it's the</p>
Page 150	Page 152
<p>1 the risks associated with any transaction like 2 this, and you'd get people, you know, nodding 3 their heads. 4 There were some people that would say, could 5 you explain that to me a little bit more and that 6 sort of thing. There were certainly, you know -- 7 certainly, you know, Donna Cupelo understood the 8 risk. She and I wanted the third-party 9 monitoring, and other members of the board 10 wholeheartedly agreed with that. 11 So, to say that two of us were more active in 12 pointing out the risk than the other people, I 13 don't know that I'd go far. I think a lot of 14 people agreed about the risks we were talking 15 about. 16 Q. My question was different, you may have beat 17 people to the gun, you may have been quicker, they 18 may have agreed with you. But there were a series 19 of discussions where the board talked about the 38 20 Studios transaction, right? 21 A. Yes. 22 Q. My question is during those discussions you've 23 told us you pointed out a number of risks 24 associated with the loan to 38 Studios, right? 25 A. Yes.</p>	<p>1 first time it's being done. There are unknowns as 2 to how much something will or will not cost. 3 There are estimates, and people put those 4 estimates together. They appear reasonable when 5 you first do them, and then the issue is to 6 monitor those as you go forward to ensure that 7 you're staying with the budget. 8 We pointed out the risk in the video game 9 business that the late introduction is not an 10 uncommon thing. So we need to really be focused 11 on that and watch that as best we could. 12 Q. So any other -- I just want to understand new 13 product development risks, one of them is a market 14 risk, one is what you call the development risk 15 which means you have to actually develop the new 16 product. 17 (TELEPHONE INTERRUPTION) 18 MR. PETROS: Hi, who is on the phone? 19 MR. MARTLAND: Dave Martland. 20 Q. Mr. Verrecchia, you were identifying the 21 particular risks associated with new product 22 development, one was a market risk? 23 A. Yes. 24 Q. One is the development risk -- 25 A. Yes.</p>

<p style="text-align: right;">Page 153</p> <p>1 Q. -- which is all the risks associated with trying 2 to develop a new product? 3 A. Yes. 4 Q. Another risk is the risk of cost overruns? 5 A. Cost overruns or not adhering to the plan. 6 Q. Another risk would be delayed release, that's more 7 specific to the video game market? 8 A. Well, it's more specific to any new product 9 development. The notion that video games miss 10 schedule. A lot is not unique to the video game 11 business, but it is something that you need to be 12 aware of. 13 Q. Any other risks that you associate with new 14 product development apart from what you've 15 mentioned already? 16 A. No. Just all the things associated with 17 causing something to be delayed or not be delayed. 18 People leave, you know, you run into a snag or 19 something. A whole host of things that impact new 20 product development of any kind. 21 Q. What about the risk that, in the video game 22 market, the technology may change while you're 23 developing a game based on one set of technology? 24 A. That is a risk. 25 Q. Was that a risk that was present here in the 38</p>	<p style="text-align: right;">Page 155</p> <p>1 based more on intellectual capital rather than 2 hard assets, video games was one example. It 3 could be a host of other companies, asset value, 4 intellectual capital the company had versus hard 5 assets, brick, machinery, brick and mortar. 6 Q. Did Mr. Stolzman in your view describe the deal 7 accurately and objectively? 8 MR. WISTOW: What deal? 9 MR. PETROS: The proposed 38 10 transaction. 11 A. You need -- when you say accurately -- 12 Q. Mr. Stolzman summarized for the board the current 13 status of the discussions with 38 Studios, right? 14 MR. WISTOW: If you remember. 15 A. The introduction of the 38 Studios' deal 16 was -- there were three people who talked about 17 that. Stokes made comments about it, Saul made 18 comments about it and Stolzman made comments about 19 it. To say that it was, you know, an accurate 20 representation, I'm not quite sure what you mean 21 by that. 22 Q. Well, did you -- 23 A. They told us what they told us. I mean, to 24 say that it was accurate or inaccurate, I can only 25 assume it was accurate.</p>
<p style="text-align: right;">Page 154</p> <p>1 Studios transaction? 2 A. That's a risk always present when you're 3 talking about technology. 4 Q. A game like an MMOG, that's a long-lead 5 development? 6 A. Yes. 7 Q. Several years at least? 8 A. It can be. 9 Q. The minutes indicate on Page 2, Mr. Verrecchia, 10 near the top of the page that Mr. Stokes asked 11 Attorney Stolzman to present a summary of the 12 matter before the board? 13 A. Yes. 14 Q. And did Mr. Stolzman do that at the meeting? 15 A. I believe so. 16 Q. And did he -- do you remember what he said? 17 A. Not specifically. 18 Q. So your memory would be -- is your memory 19 refreshed by what's written on the page in front 20 of you from the minutes? 21 A. A little bit. They talked about -- if you 22 read further down, they talk about the jobs 23 creation program or Job Creation Guarantee 24 Program. That was a program designed, according 25 to Stokes and Stolzman, that would fund projects</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. Well, you had known about the deal since roughly 2 April 9 of 2010, right? 3 A. Apparently. 4 Q. Did they say anything at that meeting that you 5 thought was inaccurate? 6 A. No, I don't recall them saying anything was 7 inaccurate. 8 Q. Did you feel at that meeting they left anything 9 out concerning the possible transaction that you 10 knew about? 11 A. No. 12 Q. Based on what you knew about the transaction, did 13 they describe it in a manner that was fair and 14 reasonable for the rest of the board members? 15 A. To the best of my knowledge, yeah. 16 Q. Okay. There's a reference here that "Mr. Stolzman 17 indicated the opportunity presented itself to the 18 corporation by a chance meeting earlier in the 19 year between Governor Carcieri and Curt Schilling, 20 retired Red Sox baseball player." Do you see 21 that? 22 A. Yes. 23 Q. Based on what you know today, do you believe that 24 was a chance meeting between Governor Carcieri and 25 Curt Schilling?</p>

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<p>1 A. Oh, I can't -- I don't have an opinion on 2 that whether it was a chance meeting. 3 Q. Fair enough. Based on what you know today, do you 4 believe that legislative leaders had met with 38 5 Studios before the meeting being referred to here 6 between Governor Carcieri and Curt Schilling? 7 A. Based upon what I read in the paper, I don't 8 know -- I personally don't know other than what 9 I've read in the paper. 10 Q. All right. Did Mike Saul present some description 11 of the financial information and details 12 surrounding the possible deal with 38 Studios at 13 this meeting? 14 A. I believe so. 15 Q. Do you remember anything in particular that he 16 said that night apart from what's reported in the 17 minutes? 18 A. It doesn't appear -- I don't believe he left 19 anything out -- what was the question? 20 (QUESTION READ) 21 A. No. 22 Q. And again, what you heard Mr. Stolzman, Mr. Saul 23 and Mr. Stokes say to the board, based on your 24 knowledge, appeared to be complete and accurate? 25 A. Yes.</p>	<p>1 talked to the board about the risks and 2 opportunities associated with the video game. 3 Tell me what risks you identified that night? 4 A. Well, I thought the video game business 5 itself was a growing business, was a growth 6 business, but when you get into the 7 success/failure rate of a specific game, that's 8 where the risk comes in. 9 It's a hit-driven business, it's a lot like 10 the movie business, and I believe I also said that 11 even with a great team, you know, even Spielberg 12 will occasionally turn out a movie that doesn't do 13 so well. 14 You know, certainly the team that was being 15 put together seemed to be, by reputation, a good 16 team. It was a growth industry, but it was a 17 hit-driven business, and the risks, once you got 18 the game to market, was that it wouldn't be 19 successful. 20 Q. If we look on the bottom of Page 3, there is a 21 statement that says, "First of all, you spoke 22 about what Hasbro has been doing in the video game 23 industry." Do you see that? 24 A. Yes. 25 Q. Did you talk about Hasbro's activities in the</p>
Page 158	Page 160
<p>1 Q. Now you made some comments during this meeting? 2 A. Yes. 3 Q. And without looking at the minutes, I'm going to 4 have you look at them in a second, do you have any 5 independent recollection of what you said at that 6 particular meeting? 7 A. Yeah. I talked generally about the video 8 game business and some of the risks and 9 opportunities associated with them. I also 10 indicated that there were two members of the 38 11 Studios board who I didn't know personally but was 12 familiar with, one was R.A. Salvatore who was a 13 writer, and the other was Todd McFarland was a -- 14 I knew him as a toy designer. I didn't know them 15 personally, but knew of their reputations. And 16 Salvatore had actually done work and continued to 17 do work for Hasbro's Wizards of the Coast 18 subsidiary out in Seattle. 19 Q. Did you tell the board that you were impressed by 20 the reputations or the talent of these two 21 individuals? 22 A. Yeah. I said, you know, these are quality 23 people who have very good reputations that have 24 been successful in their respective industries. 25 Q. All right. Mr. Verrecchia, you indicated that you</p>	<p>1 video game industry at that meeting? 2 THE WITNESS: Repeat that? 3 Q. The minutes indicate that you discussed what 4 Hasbro has been doing in the video game 5 industry -- 6 A. Yes. 7 Q. -- is that correct? 8 A. Yes. 9 Q. It also says in the bottom of that paragraph that, 10 "Mr. Verrecchia explained that creation of MMOGs 11 is similar to the creation of a movie, in that a 12 lot of money can be spent in production but the 13 product may or may not be successful"? 14 A. Yes. That's the market risks you'd have with 15 a new product. 16 Q. You recall telling the board that -- 17 A. Yes. 18 Q. -- you could spend a lot of money but you could 19 still end up with a game that fails? 20 A. That's right. 21 Q. On the next page, third paragraph, it says -- you 22 talk about online games and one of Hasbro's games; 23 is that an accurate statement? 24 A. I don't recall, but I'll accept having said 25 that, yes.</p>

<p style="text-align: right;">Page 161</p> <p>1 Q. You also indicate -- the minutes indicate that you 2 explained that, "It takes a large distributor such 3 as Electronic Arts to get games out to market"? 4 A. Yes. 5 Q. Is that a statement that you believe you made to 6 the board? 7 A. Yes. 8 Q. Do you agree with that statement? 9 A. Less so today than I did back then. 10 Q. So back then did you believe that was an accurate 11 statement? 12 A. Yes. 13 Q. Do you think it's an accurate statement today? 14 A. It is, but technology is changing. So, you 15 know, to get something to market today with, you 16 know, technology and, you know, social media is a 17 little bit different than it was back in 2010. 18 Q. Further down, two paragraphs down it says, "Mr. 19 Verrecchia stated that betting on the industry is 20 a slam dunk, but betting on specific games is 21 where the gamble lies, some are very good, others 22 not so good." Did you say words to that effect to 23 the board at that meeting? 24 A. I don't recall, but I'll accept the fact that 25 I said it.</p>	<p style="text-align: right;">Page 163</p> <p>1 A. I think, as I said a moment ago, it's a 2 hit-driven business, so you bring a lot of games 3 to market and some are home runs, they sell a 4 billion dollars in the first 24 hours. Others 5 will do well over a little bit longer period of 6 time, and there is a whole host of others that 7 don't do well as all. 8 Q. What's the Hasbro Fun Lab? 9 A. The Hasbro Fun Lab is where we invite 10 children of different age groups to come in and 11 test our products. They do that for a variety of 12 reasons, safety and quality, see how the kids play 13 with the toys, to see whether or not they do play 14 with them, and it's part of our marketing 15 research. But we don't take -- these are toys, 16 not video games. 17 Q. These are toys, not video games, but you do that 18 in part to help you predict which toys might be 19 successful in the market? 20 A. Yes. 21 Q. Is there an analog to that in the video game 22 industry? 23 A. Actually, I don't know. I don't really know. 24 Q. None that you're aware of? 25 A. None that I'm aware of.</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. Can you explain what you meant by that? 2 A. I think a video game business as an industry 3 is a good bet in terms of the industry. 4 Q. That was your perspective in 2010? 5 A. And it is today. 6 Q. Please continue. 7 A. That said any specific game, some are good, 8 some are not. If they're good, you can make an 9 awful lot of money and do very very well. If 10 they're not, they're not. 11 Q. Without repeating it all, you're referring now to 12 the game risk we talked about earlier where you 13 kind of broke it up into three different tiers? 14 A. Yeah. 15 Q. A little further down it says, "Mr. Verrecchia 16 noted that although the video gaming industry has 17 a lot of risk, it can also be a very worthwhile 18 investment for Rhode Island." First of all, did 19 you indicate to the board that the video gaming 20 industry has a lot of risk? 21 A. Yeah. 22 Q. Did you believe at that time that the video gaming 23 industry did in fact have a lot of risk? 24 A. Sure. 25 Q. Can you describe that risk?</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. With respect to the 38 Studios transaction, before 2 voting to approve that deal, did you have any 3 information about a similar experience where 4 somebody had tested the games in development to 5 see if they were going to be popular or not -- 6 that's a bad question. Let me break it up, unless 7 you want to answer it, go right ahead. 8 A. You can't take a movie that's half done and 9 show it to a group of people and ask them whether 10 it's going to be successful or not. That's what 11 you'd be doing with a video game. All the cost is 12 in the game. So, by the time you get to the stage 13 where you're at a beta, you've spent all the 14 money, you know, and that's the only time somebody 15 can really test it. You do beta testing, but the 16 money is already spent. When you're dealing with 17 a toy product, we can take a doll concept, 18 sculptured, not having spent a lot of money, and 19 then put it in front of kids and all the kids go 20 to that doll right out of the box and play with 21 it. Then the next day when they come back in, 22 they don't go to that doll again, so you know 23 right away. You do things like that. 24 It's very difficult to take a movie or a 25 video game halfway through development and have a</p>

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<p>1 consumer look at it. They do, people do that, but 2 it's to enhance the game. It's not a decision 3 maker, per se. 4 Q. And that fact you've just described that paradigm 5 is part of what contributes to the uncertainty in 6 developing and marketing video games? 7 A. For any product. 8 Q. But as more so with video games than with a toy 9 that you can sort of beta test before you've 10 invested millions of dollars and years of 11 development in, right? 12 A. It's easier to do with a toy, yes. 13 Q. You just told us it's not practical to do that 14 with a video game, right? 15 A. It's much, much harder, yes. 16 Q. Why did you want the board to know that there was 17 a significant risk that the game would not be 18 successful, the games developed by 38 Studios 19 might not be successful? 20 A. Well, I think there is a -- the board was 21 being presented with a business proposition, and I 22 think as part of our due diligence, we had 23 responsibilities to have some understanding of 24 what that business proposition was and what the 25 risks were associated with that. To do that, you</p>	<p>1 the RPG were successful, it would lend credence to 2 the success of the MMOG. Contrary, if the RPG was 3 not successful, then there would be less credence 4 that the MMOG, you know, would be successful. 5 Q. At that June 9 meeting did Steve Lane share any of 6 the serious questions he had referred to in that 7 e-mail exchange with you back in, I think it was 8 April? 9 A. I don't know because I don't recall what, if 10 any, serious questions were. So I couldn't answer 11 that. 12 Q. Let me change that. Did he raise any concerns 13 about the 38 Studios transaction at that initial 14 June 9 meeting? 15 A. There were a number of directors who raised 16 concerns. I can't recall who said what 17 specifically. 18 Q. Okay. Did you at any point in that June 9 meeting 19 indicate to the board that you had some 20 involvement with the 38 Studios transaction -- 21 discussions with 38 Studios -- let me start again. 22 Did you at any point in that June 9 meeting 23 indicate to the board that you had had some 24 involvement in the discussions concerning a 25 possible loan to 38 Studios beginning in April of</p>
Page 166	Page 168
<p>1 need to depend upon staff, a group of outside 2 experts or consultants and anyone else on the 3 board who may have knowledge about a particular 4 type of industry or transaction. 5 If we were talking about the construction 6 business, we would look to Paul Choquette from 7 Gilbane. If you're talking about development of 8 research, and even here we're talking about 9 development, people like Dave Dooley and Tim 10 Babineau had appreciation for development and 11 risks associated with development of any product. 12 So, we were having that discussion to try and 13 understand as much as we could about this 14 transaction. 15 Q. Did anyone at any of the board meetings disagree 16 with your statement that there was a significant 17 risk that the games might not be successful? 18 A. I don't recall anyone disagreeing with that. 19 Q. Do you recall anyone at any of the board meetings 20 expressing the opinion that it was likely that 21 both games would be successful? 22 A. I don't think we had a discussion in that 23 context. The RPG was -- I don't want to call it 24 the first installment of the MMOG, but the MMOG 25 was the same fantasy, the genre of game. So, if</p>	<p>1 2010. 2 A. I don't recall that having said anything like 3 that. 4 Q. There was a PowerPoint presentation made by EDC at 5 that meeting, and I want to show it to you and ask 6 you a few questions about it. I'm going to mark 7 this as D-123. 8 (DEFENDANTS' EXHIBIT D-123 9 MARKED FOR IDENTIFICATION) 10 Q. The cover sheet on Exhibit D-123 is an e-mail from 11 Sharon Penta to Tim Babineau, and it's entitled 12 subject of special board meeting, and it lists as 13 an attachment the final draft executive session, 14 38 Studios' PowerPoint. Do you see that in the 15 body of the e-mail to Mr. Babineau, Sharon 16 indicates she's attaching a copy of the PowerPoint 17 that was discussed at the meeting? 18 A. Yes. 19 Q. And this is the day after the June 9 meeting, 20 correct? 21 A. Correct. 22 Q. And she says at the beginning that, "Yesterday's 23 meeting was to review and discuss an opportunity 24 for 38 Studios to relocate their operations to 25 Rhode Island" --</p>

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<p>1 A. Yes. 2 Q. -- correct? 3 A. Correct. 4 Q. If we turn back a few pages, there's a PowerPoint 5 presentation entitled Executive Session Briefing 6 Video Game Industry and 38 Studios Opportunity, 7 RIEDC Board Meeting 6-9-10, J. Michael Saul? 8 A. Yes. 9 Q. Do you recall Mr. Saul making a PowerPoint 10 presentation at that June 9 board meeting? 11 A. Yes. 12 Q. I just want to ask you a few questions about that, 13 about that presentation. If you turn to Page 6. 14 The pages are numbered on the left-hand side. 15 Page 6 includes a description of the company and 16 the company background, correct? 17 A. Yup. 18 Q. And Page 6 provides a description of the two games 19 that 38 Studios is working on, Project Mercury, 20 which is the RPG, and Project Copernicus, which is 21 the MMOG, correct? 22 A. Yes. 23 Q. Those are the two games we've been talking about 24 during the course of this deposition, right? 25 A. Yes.</p>	<p>1 to be inaccurate? 2 MR. WISTOW: When you say inaccurate, 3 you mean as of the time he saw it, as of today? 4 MR. PETROS: As of the time he saw 5 it. 6 MR. WISTOW: One thing is not 7 accurate, total state return being greater than 10 8 percent. 9 MR. PETROS: Point made. I agree 10 with you. 11 A. There's nothing that's inaccurate. I just 12 don't recall whether the job shortfall penalty fee 13 was \$7500 per job. There's nothing glaring here 14 that says, hey, that's wrong. 15 Q. There is a fair amount of detail about the 16 transaction here; would you agree? 17 MR. WISTOW: Objection. 18 A. Yes. 19 Q. So if you are sitting as a board member who had 20 not yet known anything about this transaction, 21 this page suggests there was a lot of discussion 22 with 38 Studios about what the project was going 23 to look like, correct? 24 MR. WISTOW: Objection. 25 A. Yeah, there would have had to have some</p>
Page 170	Page 172
<p>1 Q. Okay. And on Page 6 Mr. Saul indicates in this 2 PowerPoint presentation that the RPG was scheduled 3 for release in the fall of 2011; do you see that? 4 A. Yes. 5 Q. And he also indicates that Copernicus was targeted 6 for release in the second half of 2012? 7 A. Yes. 8 Q. By the way, did you understand -- who did you 9 believe prepared this presentation we're looking 10 at now? 11 A. I would have assumed, you know, EDC did. 12 Q. You understood it was Mike Saul and the EDC 13 preparing and presenting this? 14 A. Yes. 15 Q. There's some discussion about -- on this page 16 about the arrangement with Electronic Arts for 17 distributing the RPG? 18 A. Yes. 19 Q. Is that discussion consistent with what your 20 understanding was of that deal? 21 A. Yes. 22 Q. Let's turn to Page 9. This is a presentation by 23 EDC staff of the project details? 24 A. Yes. 25 Q. Is there anything on that page that appears to you</p>	<p>1 discussion with the people at 38 Studios, you 2 know, for this. 3 Q. This is a lot more than 38 Studios is thinking 4 about moving to Rhode Island. This is, they're 5 thinking about moving to Rhode Island based on 6 terms that look like this? 7 A. Yes. I mean, I don't recall how Mike Saul 8 characterized this. But remember, the board 9 certainly had been told that they had been working 10 with a company that they couldn't disclose. So, 11 the idea that they're now disclosing it's 38 12 Studios, you know, is no surprise. They had been 13 working on it, because they made the statement 14 they had been working with a company they weren't 15 able to yet disclose who it was. 16 Q. Who made that statement? 17 A. It would have been Keith Stokes, Mike Saul. 18 Q. When do you believe they made that statement to 19 the board? 20 A. Well before June 9th. 21 Q. We looked at the May 24th minutes, do you recall 22 that, you weren't at that meeting but we looked at 23 the minutes, right? 24 A. Yes. 25 Q. You read through those minutes?</p>

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1 MR. WISTOW: To save time, there is
2 no mention of 38 Studios in the minutes. Do you
3 have like a radar system where you're getting
4 close to the issues in the case, a warning goes
5 off and you get away from them?
6 Q. Are you aware of any mention in any EDC minutes
7 that the staff was telling the board about a
8 transaction which later turned out to be the 38
9 Studios transaction but they couldn't identify the
10 parties involved?
11 A. I don't know that anything was put in the
12 minutes, but I know that's what they said.
13 Q. When did they say it, at what meeting?
14 A. I don't recall specifically what meeting. It
15 would have been -- you know, you're asking me to
16 put a time date -- unless I took notes of every
17 meeting and kept them, I just don't recall
18 specifically, but before they indicated it was 38
19 Studios, they indicated that they were working
20 with a company that they couldn't disclose who
21 that company was, and they were talking about
22 allocating \$75 million of the 125 million fund,
23 and the board, before it knew it was 38 Studios,
24 was questioning why are we giving so much to one
25 company. I can't tell you what date that was.

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1 Q. Have you completed your answer?
2 A. Yes.
3 Q. At the June 9 meeting when the Governor and others
4 introduced the 38 Studios transaction did any of
5 them say, by the way, this is the company we were
6 talking about earlier that we were unable to
7 disclose?
8 A. I don't know. I don't remember that specific
9 language.
10 Q. Let's turn to Page 10. This is entitled Project
11 Risks and Rewards?
12 A. Okay.
13 Q. The EDC staff identified some of the project risks
14 in this and the subsequent pages, correct?
15 THE WITNESS: Say that again?
16 Q. Starting on Page 10, this PowerPoint presentation
17 prepared by EDC staff, it identifies some of the
18 project risks, correct?
19 A. Correct.
20 Q. And the first risk they identify is 38 Studios is
21 a prerevenue company, right?
22 A. Correct.
23 Q. And you talked about that earlier as being a risk
24 that you identified right away?
25 A. I don't know that I identified that right

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1 away, no. I recognized -- you asked me what the
2 risk was associated with a prerevenue company, I
3 don't believe I indicated that was the first risk.
4 Q. That was a bad question on my part. As soon as
5 you understood the background for the 38 Studios'
6 loan, is it fair to say is that you would have
7 identified to yourself, not necessarily telling
8 everybody else, that one of the risks in this deal
9 is that we're dealing with a prerevenue company?
10 A. Not unless I saw a set of financials, which I
11 don't believe I did. I certainly don't recall
12 seeing a set of financials that would have
13 indicated whether or not they had revenue coming
14 in from any other sources, so I'm not really
15 prepared to make that statement.
16 Q. All right. Do you agree with EDC's identification
17 of 38 Studios as a prerevenue company as a project
18 risk?
19 A. Yeah.
20 Q. And what are the risks associated with a
21 prerevenue company?
22 MR. WISTOW: At some point -- this is
23 probably the fifth time. If you look at the
24 complaint --
25 Q. Don't describe what the complaint says.

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1 MR. WISTOW: At some point we're
2 going to stop this. We can't go over and over and
3 again what is a prerevenue company, what's the
4 risk.
5 MR. PETROS: I haven't gone over it
6 with this witness.
7 MR. WISTOW: You have. If we keep
8 being repetitive, I'm going to instruct him and
9 you can file motions if you want.
10 MR. PETROS: Please don't suggest an
11 answer.
12 MR. WISTOW: You're at a point that
13 this has become harassment.
14 MR. PETROS: That's totally
15 unfounded.
16 MR. WISTOW: I know it's your plan to
17 try to get him back again.
18 MR. PETROS: Don't try to make --
19 MR. WISTOW: There is just a limit
20 how far we can go with this. Go ahead, let's
21 answer the question if you have it in mind.
22 Q. What are the risks associated with lending money
23 to a prerevenue company, Mr. Verrecchia?
24 A. Well, if there is no other revenue, the only
25 revenue they have is the capital, and is that

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<p>1 enough to complete whatever project they're 2 involved in. So, you know, other streams of 3 income coming in, and there is a risk that what 4 they have is not enough. 5 Q. Based on your knowledge in the business world, are 6 traditional means of financing generally available 7 to prerevenue companies? 8 MR. WISTOW: Objection. 9 A. When you say traditional means -- 10 MR. WISTOW: That's why I objected. 11 THE WITNESS: What do you mean by 12 that? 13 MR. PETROS: Going into Bank of 14 America and getting a commercial lending facility 15 or agreement. 16 A. Well, depending upon what entity of Bank of 17 America they go to, they do venture capital. 18 Q. Is that the type of investment or lending we're 19 talking about here with this company, it's really 20 similar to a venture cap investment? 21 MR. WISTOW: Objection. 22 A. This was an existing company. They had, if I 23 remember correctly, acquired a studio down in 24 Maryland. I believe they acquired that studio. 25 They were close to releasing a game. They had EA</p>	<p>1 A. Well, they had gotten \$50 million from EA. 2 They -- Schilling had put in 30 plus million 3 dollars of his own money. So we weren't the first 4 money going in. 5 Q. Is venture cap always the first money going in? 6 A. I'm not an expert in venture capital or 7 private equity stuff. 8 Q. Did 38 Studios have any history of successfully 9 developing, distributing and marketing a video 10 game? 11 A. I'm trying to think about the video they 12 acquired, if it had. I don't recall, I need to 13 think back, because if I recall correctly, they 14 acquired a studio in Maryland, and I don't know 15 what their history was. 16 Q. Let me put that aside. Your recollection is they 17 acquired another studio? 18 A. Yes. 19 Q. I'm talking about this management team for 38 20 Studios, the people you've identified? 21 THE WITNESS: Did they have any 22 history? 23 Q. As 38 Studios -- 24 A. No. 25 Q. So, you understood 38 Studios had never</p>
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<p>1 funding that game for \$50 million, and we're being 2 presented with this project, and Mike Saul starts 3 off, this is prerevenue, meaning, this is -- we're 4 not generating any revenue from this game, listen 5 and just keep going through the presentation. 6 At that point in time, I don't think anyone is 7 doing anything but listening to the presentation 8 until it's complete, and then try to understand 9 what the deal is and what the risks are associated 10 with it. The risk being -- of investing in a 11 prerevenue company are greater than investing in a 12 company that has a stream of revenue, obviously. 13 But it happens, it happens all the time. 14 Q. Would you agree with this definition: Venture 15 capital is financial capital provided to early 16 stage, high potential, high risk, growth start-up 17 companies? 18 MR. WISTOW: Can I have that read 19 back? 20 (QUESTION READ) 21 A. I wouldn't argue with it. 22 Q. Did that definition apply to 38 Studios at the 23 time you were considering your loan to them? 24 A. Not quite, but close. 25 Q. What did not fit?</p>	<p>1 successfully developed, distributed, marketed a 2 video game at that time? 3 A. At that time. 4 Q. You understood that 38 Studios had not generated 5 any revenue from games they had developed and 6 marketed? 7 A. Correct. 8 Q. Okay. And you understood that the projected 9 release date for the first game was still more 10 than a year away, some time in the fall of 2011? 11 A. Correct. 12 Q. If you take a look down that page, it says, "EA 13 reviews 500 plus proposals per year and selects 14 less than 10 percent." Do you see that? 15 A. Yup. 16 Q. Do you believe that is a correct statement? 17 A. I don't have any reason to doubt it. 18 Q. Okay. Turn to Page 11. It identifies as a 19 project risk that the product was not yet branded; 20 do you see that? 21 A. Say that again? 22 Q. At the top of Page 11 it says, "Product not yet 23 branded." Do you see that? 24 A. Yes. 25 Q. Is that a project risk here?</p>

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<p>1 A. Yeah. But I mean, it's one of the lesser 2 risks in my mind. 3 Q. Why did you view it as a lesser risk? 4 A. You know, we're in a business today where 5 some of the largest, most -- largest market 6 capitalized companies in the world, market 7 companies didn't exist ten years ago. The Googles 8 of the world. You look at new companies coming on 9 board and some associated with social media. 10 The fact that they haven't branded the game, 11 it's not like, gee, it doesn't have the name 12 Scrabble associated with it is a risk, but it's 13 not a big risk. Because if it's a great game and 14 does well, the branding in and of itself is not 15 going to be as big an issue. It certainly is an 16 issue, but it's not as big an issue as getting the 17 game to market. 18 MR. WISTOW: I want to take a five- 19 ten-minute break. 20 MR. PETROS: Sure. 21 (BRIEF RECESS) 22 Q. Why don't we go back on. Mr. Verrecchia, can you 23 turn to Page 12 of the exhibit we're discussing. 24 The exhibit at the top of Page 12, does it 25 identify changing industry dynamics due to</p>	<p>1 would be unable to repay the loan? 2 A. Yes. 3 Q. Did you point that out while this PowerPoint was 4 being presented at that meeting? 5 A. Point it out? I believe I made the 6 statement, you know, that if the game was not 7 successful, you know, 38 Studios would be in tough 8 shape and people certainly got the sense of that. 9 I didn't have to say it will be bankrupt because I 10 don't know that specifically, but I certainly made 11 it clear, and I think everyone on the board 12 recognized that if the game wasn't successful, it 13 was a complete failure, the probability to paying 14 the loan out was pretty low. 15 Q. Did it concern you that the company's financial 16 projections according to this bullet point showed 17 that even in the worst-case they would make full 18 repayment? Did that cause any concern on your 19 part? 20 THE WITNESS: In what sense? 21 MR. PETROS: In the sense that you 22 knew you that the worst-case would not be full 23 repayment, and yet you got financial projections 24 that indicate worst-case you still get all your 25 money back.</p>
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<p>1 technology as another project risk? 2 A. Yes. 3 Q. Did you believe that was a project risk here? 4 A. Yes. It always is a project risk, and as 5 they pointed out, they've also pointed out some of 6 the mitigating factors here to mitigate that risk 7 but, yes, it's always a risk. 8 Q. It identifies product revenue shortfall/repayment 9 as a project risk below that; do you see it? 10 A. Yes. 11 Q. Was that project risk here? 12 A. Sure. 13 Q. Mr. Verrecchia, this is a statement below that 14 says, "Company's worst-case 70 percent reduction 15 in EBITDA financial projections reflects full 16 repayment." Do you see that? 17 A. Yup. 18 Q. Now, as a person with considerable business 19 experience, did you believe at the time this 20 PowerPoint presentation was being shown to you 21 that the 38 Studios worst-case would still be full 22 repayment of the loan? 23 A. No. 24 Q. Did you understand that the company's 38 Studios 25 worst-case was that the games would fail and it</p>	<p>1 MR. WISTOW: You have little 2 quotations around worst-case. 3 MR. PETROS: Okay. Do you want to 4 testify, Max? 5 MR. WISTOW: No, I don't. 6 A. At this stage, you know, because I think when 7 people put best-case, worst-case, most probable 8 case, worst-case really isn't worst-case, and 9 best-case really isn't best-case. What people are 10 trying to do is put some fences around a set of 11 projections. You put a set of fences around, if 12 things don't go well, this is what a worst-case 13 scenario will look like. One can say worst-case 14 is they go bankrupt. People understand that, but 15 that's not what they mean by worst-case. Worst is 16 not worst I guess is what I'm saying. Worst is 17 not worst. I know it's hard to understand. 18 Q. Were you concerned that this statement in the 19 PowerPoint presentation caused concern on your 20 part that the financial projections were 21 overstated? 22 A. At this stage of the game I didn't have any 23 opinion on the financial projections. 24 Q. I know you didn't. I'm asking if you had an 25 opinion after you saw this?</p>

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<p>1 A. No, not yet.</p> <p>2 Q. Did you see this and say, gee, I want to review</p> <p>3 those financial projections because this doesn't</p> <p>4 look right?</p> <p>5 A. No. I don't believe I was along those lines</p> <p>6 at the time this presentation was being made.</p> <p>7 Q. Did this presentation and that statement prompt</p> <p>8 you to ask to see the financial projections?</p> <p>9 A. Not when he's making this statement, no.</p> <p>10 Q. Did you say during this presentation or any time</p> <p>11 after it, did you say to Mike Saul or anybody else</p> <p>12 within the EDC staff, I want to see those</p> <p>13 financial projections because I want to see how</p> <p>14 they're predicting that under their worst-case</p> <p>15 they would be able to pay us back?</p> <p>16 A. I didn't use that language. What the board</p> <p>17 asked for and I asked, but others asked and agreed</p> <p>18 is we wanted the EDC staff, specifically Mike Saul</p> <p>19 and his team to review the financials and ensure</p> <p>20 we had a viable business plan, and that we would</p> <p>21 be able to complete the development of the game.</p> <p>22 In terms of the market risks, which is really what</p> <p>23 he was talking about here, that was a risk that</p> <p>24 ultimately the board and the state was willing to</p> <p>25 take. My focus, and I think the board's focus was</p>	<p>1 to make sure the game got developed.</p> <p>2 So, our focus was more around what is it</p> <p>3 going to take to get this game developed and get</p> <p>4 it to market.</p> <p>5 Q. You talked about the uniqueness of the video game</p> <p>6 market, and one of those unique attributes you</p> <p>7 talked about earlier was the high risk of failure</p> <p>8 in a video game?</p> <p>9 A. Yes.</p> <p>10 Q. Now, in terms of the development risk, if the</p> <p>11 games were never fully developed, they were going</p> <p>12 to fail, and EDC was not going to have money to</p> <p>13 repay the loan, right; you understood that?</p> <p>14 A. Yes.</p> <p>15 Q. And by the same token, if the games were fully</p> <p>16 developed and got to the market and failed in the</p> <p>17 marketplace, EDC was not going to have money to</p> <p>18 repay the loan, right?</p> <p>19 A. More than likely, no.</p> <p>20 Q. So the impact of a failure on the development risk</p> <p>21 or failure due to the market risk was the same on</p> <p>22 EDC, the loan wasn't going to be paid back if that</p> <p>23 happened, right?</p> <p>24 A. Yes.</p> <p>25 Q. So why were you more focused on the first risk</p>
Page 186	Page 188
<p>1 getting the game to market. And that was the</p> <p>2 intent of the loan, and that was the essence of</p> <p>3 the transaction. So we were aware of the</p> <p>4 market -- I think market risk as opposed to the</p> <p>5 development risk.</p> <p>6 Q. Why was the board focused on the development risk</p> <p>7 and not focused on the marketing risk?</p> <p>8 A. Well, probably saying not focused is probably</p> <p>9 not the right terminology. They were more focused</p> <p>10 on getting the game to market. We knew based upon</p> <p>11 some of the discussions we had had, were having</p> <p>12 and did have over the next several weeks or months</p> <p>13 that if the game were developed and released on</p> <p>14 time, there was still market risk out there, and</p> <p>15 that market risk, in part, was consistent with any</p> <p>16 other new product that you put out there. It had</p> <p>17 some uniqueness because it was a video game</p> <p>18 business.</p> <p>19 We talked about some of the mitigating</p> <p>20 factors, so to speak, but until the game is out</p> <p>21 there in the marketplace, you don't know whether</p> <p>22 it's going to be successful or not. And we talked</p> <p>23 about the risk associated with that. And the</p> <p>24 board was willing to take that risk. We were not</p> <p>25 willing to take the development risk. We wanted</p>	<p>1 than the second risk, when they had the same</p> <p>2 impact?</p> <p>3 A. There were things I could do with the first</p> <p>4 risk. There is no second risk if you don't get</p> <p>5 the game to market. We were -- when I say we, we</p> <p>6 were funding a development and we wanted to make</p> <p>7 sure the game got developed. We knew, or at least</p> <p>8 certainly I was looking at it from this</p> <p>9 perspective. EA was distributing and had a</p> <p>10 distribution agreement on the RPG. The RPG was,</p> <p>11 somewhat, the first installment of the MMOG. They</p> <p>12 had a good team put together. In my mind EA was</p> <p>13 lending some credence to this team's capabilities</p> <p>14 and while these folks had not developed a game as</p> <p>15 38 Studios, they have a lot of experience in</p> <p>16 developing and marketing successful video games at</p> <p>17 other studios. They're not a bunch of novices.</p> <p>18 There was risk in the marketplace, clearly. If</p> <p>19 the game failed, you weren't going to be able to</p> <p>20 pay back the loan, more than likely. But we were</p> <p>21 being asked to fund a project to get this game to</p> <p>22 completion. You know, that was our focus, how do</p> <p>23 we do that, because we were going to be giving</p> <p>24 money out based upon certain milestones, et</p> <p>25 cetera. That's where most of the focus was.</p>

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<p>1 Now, at some point in time, one would 2 probably be looking more at what was happening 3 with the game in the marketplace but there is not 4 a lot I can do, quite frankly, you produce the 5 game, you've done a great job, now it goes to 6 market. It's like any new market. I can get that 7 blue shirt to the marketplace, but if the 8 consumers don't want it, I got a problem on my 9 hands. We knew what the problem was, there wasn't 10 a lot I could do to mitigate that other than look 11 at who was supporting it, who was involved, what 12 was the staff of people you had working on there 13 to say that these were not a bunch of novices, 14 these are people who have some experience and were 15 successful in the past. There's a good chance 16 they could be successful again, but, not a 17 guarantee. 18 Q. I think you said a moment ago that EDC's interest 19 was in funding the game to get it to the 20 marketplace; did I say that right? 21 A. Development, getting it to market. Once you 22 get it to market, then you've got distribution 23 costs, et cetera. 24 Q. So, to say it the way you said it, EDC's interest 25 was in funding the game to get it through the</p>	<p>1 to be successful. There was risk associated with 2 that, and we were willing to take that risk. 3 Q. And the market risk for a video game is very 4 different from the market risk for many other 5 products, isn't it? 6 A. In some cases less risk, in some cases more 7 risk but, yes, it's risky. 8 Q. Is it on the riskier side of the spectrum, Mr. 9 Verrecchia, or the less riskier side of the 10 spectrum in terms of business ventures, based on 11 your experience? 12 A. It's far less riskier than new drugs, and 13 probably more risky than a new television set. 14 You know, when you say more or less risky, 15 compared to what? 16 Q. Let's use your terms. It's high risk, right? 17 A. Yes. 18 MR. WISTOW: Are you going to ask him 19 what the chances of success are if the product 20 never gets to market at all? 21 Q. Let's turn to Page 13, Mr. Verrecchia. This page 22 is entitled Company's Most Likely Projections; do 23 you see that? 24 A. Yes. 25 Q. Underneath that on the bottom half of that page</p>
Page 190	Page 192
<p>1 development stage? 2 A. Yes. I wanted the completed game. 3 Q. Wasn't EDC's interest in this entire project in 4 creating a cluster development that would bring 5 well paying jobs to Rhode Island over an extended 6 period of time? 7 A. Oh, sure. 8 Q. So, if the game got through the development stage 9 and was unsuccessful, was EDC going to succeed in 10 creating high-paying jobs, bringing high-paying 11 jobs to Rhode Island for any extended period of 12 time? 13 A. No more than any biotech companies that we're 14 funding, prerevenue. Many of them don't have a 15 project, but you're funding them. That's somewhat 16 the nature of the business. All I'm saying to you 17 is that we weren't -- the amount of money that we 18 were -- they were asking for was to get the 19 product completed and ready to go to market. And 20 there was a market risk, and that market risk 21 exists whether it's a video game, some biotech 22 product or anything else that's out there, and 23 clearly, if it's successful, we had the 24 opportunity of creating a center of excellence, 25 you know, call it what you may. But the game had</p>	<p>1 there are assumptions, correct? 2 A. Yes. 3 Q. It's a big heading, it says, Assumptions, right? 4 A. Yes. 5 Q. Did you understand these were assumptions drawn 6 from the financial projections or financial plan 7 of 38 Studios? 8 A. Yes. 9 Q. And so these were assumptions made by 38 Studios, 10 the party that was seeking the loan from EDC, 11 right? 12 A. Yes. 13 Q. Would you agree that these assumptions listed on 14 this page are critical assumptions with respect to 15 38 Studios' financial plan? 16 MR. WISTOW: Objection. 17 A. Well, yeah. 18 Q. These assumptions include projections as to how 19 many games they will sell in different years, 20 correct? 21 A. Correct. 22 Q. And how many subscriptions for the MMOG they will 23 generate in given years? 24 A. Yup. Correct. 25 Q. Did you understand that MMOGs generated revenue,</p>

<p style="text-align: right;">Page 193</p> <p>1 in part, through subscriptions?</p> <p>2 A. Yes.</p> <p>3 Q. Did they also generate revenue through sales or</p> <p>4 was it through -- through box sales, it says so</p> <p>5 here, right?</p> <p>6 A. Yes.</p> <p>7 Q. What's different between a box sale and a</p> <p>8 subscription?</p> <p>9 A. Box sale, you buy the game, you go online and</p> <p>10 pay it. A subscription, it come in different</p> <p>11 forms. You can play per play, you can buy a</p> <p>12 monthly subscription. So pay to play, monthly</p> <p>13 subscription.</p> <p>14 Q. Okay. If you look through this page, beginning on</p> <p>15 13, 14 and 15, there's a most likely projection, a</p> <p>16 worst-case projection, and then a break-even</p> <p>17 projection, and to be more accurate, the first two</p> <p>18 projections indicate they were company projections</p> <p>19 and the third one indicates it's an RIEDC</p> <p>20 projection, correct?</p> <p>21 A. Yeah.</p> <p>22 Q. Did you understand that the company prepared the</p> <p>23 first two projections, and then RIEDC had some</p> <p>24 involvement in the preparation in the break-even</p> <p>25 projection?</p>	<p style="text-align: right;">Page 195</p> <p>1 Q. And the sales price as reflected, if you look</p> <p>2 above, it's got revenues projected; do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. That would be based on the unit sales times sales</p> <p>6 price, right?</p> <p>7 A. Yes. But I don't know the mix at this stage.</p> <p>8 Right now these are just numbers on the page.</p> <p>9 Q. In 2011 the only thing they're selling are Mercury</p> <p>10 releases, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And they're projecting \$20,748,000 in sales, in</p> <p>13 revenues in 2011, correct?</p> <p>14 A. These are numbers on a page. The 20 million</p> <p>15 was that, just the 1.7 million units or was that</p> <p>16 the 1.7 units plus some other stuff they had going</p> <p>17 in. I don't know that. I don't know that level</p> <p>18 of detail at this stage of the game. Again, these</p> <p>19 are just numbers on a page. We're looking at the</p> <p>20 number of units they're selling. At this stage of</p> <p>21 the game I'm more interested in are they</p> <p>22 forecasting, you know, a million, a million and a</p> <p>23 half units, are they looking at 5 million units.</p> <p>24 5 million units it's one of the top games, 1.7,</p> <p>25 it's in that second category, good game, not the</p>
<p style="text-align: right;">Page 194</p> <p>1 A. Yes.</p> <p>2 Q. Were all these projections based on the critical</p> <p>3 assumptions based on 13 with some adjustments as</p> <p>4 noted on Pages 14 and 15?</p> <p>5 A. I assume so.</p> <p>6 Q. If you turn to 14, for example, you see how it</p> <p>7 changes the other projections for the Copernicus</p> <p>8 subscriptions?</p> <p>9 A. Yes.</p> <p>10 Q. And if you turn to 15, it notes changes in several</p> <p>11 other assumptions, right?</p> <p>12 A. Yes.</p> <p>13 Q. Would you agree that the sales and revenue</p> <p>14 forecasts that are grounded upon the assumptions</p> <p>15 on Page 13 were the key metric for determining 38</p> <p>16 Studios' ability to repay the loan to EDC?</p> <p>17 A. It was certainly one of them, yes.</p> <p>18 Q. What were the other metrics, apart from what's</p> <p>19 listed on Page 13?</p> <p>20 A. Well, the 1.7 million units would tell you</p> <p>21 what your revenues would be based on the sales</p> <p>22 price, and the question is what was your gross</p> <p>23 margin, what were your expense levels. But</p> <p>24 clearly, in terms of revenue, the assumption of</p> <p>25 1.7, 1.4 were important critical.</p>	<p style="text-align: right;">Page 196</p> <p>1 greatest game, but it's a good game, you'd make</p> <p>2 some money on it.</p> <p>3 So I haven't sat down and said, well, tell me</p> <p>4 how many units you're selling at what price, and</p> <p>5 that sort of expense. Those are just sort of</p> <p>6 numbers on the page.</p> <p>7 Q. Did you ever ask to look behind the numbers?</p> <p>8 A. I asked staff to do it.</p> <p>9 Q. Did you ever look behind the numbers?</p> <p>10 A. Did I ever look, no.</p> <p>11 Q. When you say you asked staff to do that, tell me</p> <p>12 what and when you asked them to do?</p> <p>13 A. I think the board throughout this process</p> <p>14 asked the EDC and its professional advisors to,</p> <p>15 you know, validate the assumptions, look at the</p> <p>16 business plan, see that it made sense and give us</p> <p>17 a recommendation. As we got closer, we asked for</p> <p>18 an independent third party to come in and validate</p> <p>19 the plan, the development plan and the budget and</p> <p>20 to agree to monitor that on a periodic basis and</p> <p>21 advise the EDC staff/board whomever, that they</p> <p>22 were operating according to plan.</p> <p>23 Q. How does EDC staff validate that 38 Studios is</p> <p>24 going to sell 1.7 million units of Mercury in the</p> <p>25 fall of -- last quarter of 2011?</p>

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1 A. I think there would be a number of ways that
2 you could come up with an assumption. I mean, the
3 question is -- it's like any other new product
4 assumption. You look at similar games, what
5 they've sold, where are you in the overall mix.
6 We do the same thing in the toy business. So if
7 you're talking to people like EA, what do they
8 think? How many games are selling in that one to
9 two million units. You know, is it 25 percent of
10 the games, is it 50 percent of the games, is it
11 the top two percent of the games. You're looking
12 at what other games have done. There is a whole
13 host of things you look at to try and see whether
14 or not that 1.7 million units, you know, is
15 reasonable. How many markets are you going into?
16 So there are a variety of ways of looking at that
17 stuff.
18 Q. And was there a board meeting where --
19 A. You're also looking at that point in time,
20 you're also looking at your professional advisors
21 who have some expertise in this area to also
22 validate it. They have a method in which they
23 would go do that, not to dissimilar to what I just
24 described.
25 Q. Was there a board meeting at which EDC staff or

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1 somebody else said to you and the other board
2 members, we have validated 38 Studios' financial
3 plan?
4 MR. WISTOW: Objection. In those
5 words?
6 MR. PETROS: Words to that effect.
7 A. Words to that effect, yes. I can't tell you
8 what date that meeting was, but it was prior to
9 the vote on the -- to do the transaction. We got
10 a recommendation from EDC staff and the outside
11 experts to recommend doing the deal, and we were
12 also told that we were going to have a third-party
13 monitor who would give us a baseline prior to
14 closing, and they would report to us on a periodic
15 basis, report to EDC who could then report to the
16 board as to whether they were adhering to plan or
17 not. That would have happened prior to the --
18 what's the date of the meeting that the final vote
19 took place?
20 MR. PETROS: July 26.
21 A. That would have happened prior to the July 26
22 meeting.
23 Q. Let's turn to Page 16. This page is headed Due
24 Diligence Process, correct?
25 A. Yes.

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1 Q. Okay. And this page outlines the due diligence
2 process associated with the 38 Studios
3 transaction, correct?
4 A. Yes.
5 Q. The first bullet says, Wells Fargo; do you see
6 that?
7 A. Yes.
8 Q. It indicates under Wells Fargo, it states,
9 "Reviewed private placement memorandum for equity
10 offering." What did you understand that to mean?
11 (PAUSE)
12 A. I'm trying to think back. If I remember
13 correctly, they were going to do an equity
14 offering after the game was -- after the MMOG was
15 released or in about that same point in time. So
16 if my recollection is correct, and I'm not sure
17 that it is, that would be the equity offering they
18 talked about. The only other equity offering that
19 we were made aware of, some small firm had tried
20 to get money from other investors, but they wanted
21 too big a piece of his company. He didn't want to
22 give that up. That's how he ended up coming. So
23 I presume the Wells Fargo review was for the
24 equity offering that would come after the MMOG was
25 released, but I've got a hazy recollection of

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1 that.
2 Q. Let me back up, because I wanted to focus on the
3 due diligence process with you now if I can, Mr.
4 Verrecchia. Page 16 is part of a PowerPoint
5 presentation prepared by EDC staff, right?
6 A. Yes.
7 Q. It's a summary description of the board of the due
8 diligence process associated with 38 Studios,
9 correct?
10 A. Yes.
11 Q. Okay. And who did EDC identify as the players
12 involved in the EDC due diligence process on this
13 page?
14 A. Wells Fargo, Strategy Analytics and RIEDC,
15 according to -- I guess I don't have it here. At
16 some point in time, whether it's at this meeting
17 or just before First Southwest is identified as
18 well.
19 Q. Identified as what?
20 A. As one of the advisors that EDC was working
21 with.
22 Q. And you've told us earlier that First Southwest
23 was one of the advisors that EDC was working with?
24 A. Yes.
25 Q. On this page EDC is describing the due diligence

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<p>1 process, correct?</p> <p>2 A. Yeah. I don't know that it is the entire due</p> <p>3 diligence process. To me the due diligence</p> <p>4 process, they're highlighting three things, but I</p> <p>5 can't tell you that this is conclusive in and of</p> <p>6 itself.</p> <p>7 Q. Did they mention at this meeting anybody else who</p> <p>8 was conducting due diligence, apart from what's on</p> <p>9 this sheet?</p> <p>10 A. At some points in time, you know, First</p> <p>11 Southwest was involved, and I remember that, you</p> <p>12 know, the woman there, Maureen, but you know,</p> <p>13 exactly what each of these people, what First</p> <p>14 Southwest was doing, versus what Wells Fargo was</p> <p>15 doing, was not something that the board was</p> <p>16 intimately involved in. We knew they were</p> <p>17 principally advisors, we wanted their opinions.</p> <p>18 But as to what their contract work called for, we</p> <p>19 don't know what Strategy Analytics tended to focus</p> <p>20 more around the economic opportunities, you know,</p> <p>21 for the State of Rhode Island around 38 Studios,</p> <p>22 and so-called cluster development and that sort of</p> <p>23 thing. But I don't know what the -- we never</p> <p>24 reviewed -- I certainly never reviewed the</p> <p>25 specific work product that any of them presented.</p>	<p>1 A. I believe so.</p> <p>2 Q. Did EDC present to the board on multiple</p> <p>3 occasions?</p> <p>4 A. Yes.</p> <p>5 Q. Did others, including counsel, present to the</p> <p>6 board on various occasions?</p> <p>7 THE WITNESS: By counsel, you mean</p> <p>8 whom?</p> <p>9 MR. PETROS: Moses Afonso, Tony</p> <p>10 Afonso.</p> <p>11 A. I don't recall Tony Afonso making a</p> <p>12 presentation to the board.</p> <p>13 Q. Okay. How about Rob Stolzman?</p> <p>14 A. Rob was sitting at the table all the time,</p> <p>15 and so he was making comments.</p> <p>16 Q. Did he get up and make a PowerPoint presentation</p> <p>17 on something of 38 Studio?</p> <p>18 A. I don't recall.</p> <p>19 Q. How about Strategy Analytics?</p> <p>20 A. Yes, I believe they made a presentation.</p> <p>21 Q. Okay. I'm going to get in a moment to what they</p> <p>22 all said. I do want to get through Page 16. At</p> <p>23 this point in time Page 16 of the PowerPoint in</p> <p>24 front of you, there's a description of what each</p> <p>25 party is doing with respect to due diligence, the</p>
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<p>1 Again, we were -- when the recommendation came</p> <p>2 down from the EDC, it was presented in terms of</p> <p>3 we, the EDC, meaning Stokes and Mike Saul speaking</p> <p>4 on behalf of the EDC, were recommending going</p> <p>5 forward with this project. The advisors were</p> <p>6 there, they were recommending going forward with</p> <p>7 the project. Now, does that mean Strategy</p> <p>8 Analytics said it, versus Wells Fargo versus First</p> <p>9 Southwest, I didn't get to that level of detail.</p> <p>10 Q. Let me ask you --</p> <p>11 A. There was certainly not anyone not wanting to</p> <p>12 do the project.</p> <p>13 Q. You said you never reviewed the work product of</p> <p>14 these advisors, but you were at meetings when</p> <p>15 these advisors came and presented themselves to</p> <p>16 you?</p> <p>17 A. Yes.</p> <p>18 Q. And made themselves available for questions?</p> <p>19 A. Yes.</p> <p>20 Q. At one point Wells Fargo presented it to you; do</p> <p>21 you recall that?</p> <p>22 A. I don't recall the specific presentation, but</p> <p>23 I know they all presented.</p> <p>24 Q. Did First Southwest at one point present to the</p> <p>25 board?</p>	<p>1 three parties identified here, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And EDC staff indicated that RIEDC was</p> <p>4 completing the normal credit due diligence; do you</p> <p>5 see that?</p> <p>6 A. Yes.</p> <p>7 Q. Did Mike Saul or the EDC staff indicate on this</p> <p>8 page that anybody else was doing credit due</p> <p>9 diligence?</p> <p>10 A. I don't recall.</p> <p>11 Q. Take a look at the page.</p> <p>12 A. I'm sorry. He's saying he has had</p> <p>13 independent conversations with industry players,</p> <p>14 Providence Equity, Hasbro and others. I don't</p> <p>15 believe he had a -- I don't know what he did with</p> <p>16 Providence Equity. But you know, to the best of</p> <p>17 my knowledge, the only involvement Hasbro had was</p> <p>18 the meeting he had with Mark Blecker doing some</p> <p>19 due diligence. Certainly Hasbro wouldn't have</p> <p>20 been in a position to comment on the</p> <p>21 creditworthiness of 38 Studios or any deals he was</p> <p>22 doing.</p> <p>23 Q. Try to focus. Mr. Verrecchia, my question was</p> <p>24 very narrow. He's indicating here that RIEDC</p> <p>25 completed normal credit due diligence, right, they</p>

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<p>1 said it's already done?</p> <p>2 A. Yes.</p> <p>3 Q. Past tense, right?</p> <p>4 A. Yes.</p> <p>5 Q. Does he indicate here, does EDC staff indicate</p> <p>6 here that anybody else is doing any credit due</p> <p>7 diligence, apart from the completed normal credit</p> <p>8 due diligence by RIEDC?</p> <p>9 A. Well, it seems to be indicating the Wells</p> <p>10 Capital market team is also doing due diligence.</p> <p>11 By the way, it's credit due diligence -- I don't</p> <p>12 know. I would assume when you say -- when Wells</p> <p>13 Capital Market or Wells Fargo is involved in due</p> <p>14 diligence, that to me is they're doing financial</p> <p>15 due diligence as opposed to market due diligence.</p> <p>16 So, if he says here discuss with Wells Capital</p> <p>17 Market team their due diligence process and</p> <p>18 conclusions, I would assume that had to do with</p> <p>19 the same credit due diligence activities or</p> <p>20 questions that EDC had.</p> <p>21 Q. Why do you make that assumption?</p> <p>22 A. They're financial people, they're capital</p> <p>23 markets. I don't think they're going to opine on</p> <p>24 the quality of the game. I don't think they're</p> <p>25 going to be opining on game development, per se.</p>	<p>1 confined to Page 16; is that right?</p> <p>2 THE WITNESS: Say that again?</p> <p>3 Q. The due diligence discussion appears to be</p> <p>4 confined to Page 16 of this PowerPoint</p> <p>5 presentation, correct?</p> <p>6 A. In terms of the PowerPoint presentation, yes.</p> <p>7 Q. Now, is it your belief that parties other than</p> <p>8 these three parties identified here were</p> <p>9 conducting due diligence in connection with the 38</p> <p>10 Studios transaction?</p> <p>11 A. The only other firm whose name I recall was</p> <p>12 First Southwest.</p> <p>13 Q. And I think you've told us, but tell me if I'm</p> <p>14 wrong, you do not know what First Southwest was</p> <p>15 asked to do in connection with this transaction;</p> <p>16 is that right?</p> <p>17 A. Not specifically.</p> <p>18 Q. Okay. Do you have some general understanding of</p> <p>19 what they were asked to do?</p> <p>20 A. Yeah. The general understanding that I had,</p> <p>21 and I believe the rest of the board had, obviously</p> <p>22 you can ask them, is that these advisors in this</p> <p>23 particular case, especially -- I won't even</p> <p>24 discriminate between the three advisors, between</p> <p>25 Wells, Strategy Analytics and First Southwest,</p>
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<p>1 I could be wrong on that, but that would be my</p> <p>2 assumption.</p> <p>3 Q. What does capital market mean?</p> <p>4 A. Capital markets, you're talking equity and</p> <p>5 debt markets.</p> <p>6 Q. Okay. Did you ask Mike Saul or anybody else any</p> <p>7 questions about what Wells Fargo was doing at this</p> <p>8 presentation?</p> <p>9 A. I don't recall who asked what. There were</p> <p>10 questions asked, but I don't recall who was asking</p> <p>11 what question.</p> <p>12 Q. Do you recall any questions about what the</p> <p>13 particular assignment was that Wells Fargo was</p> <p>14 doing in connection with the 38 Studios</p> <p>15 transaction?</p> <p>16 A. No. As I said before, I don't recall the</p> <p>17 specifics.</p> <p>18 Q. And there's also a description of the tasks that</p> <p>19 Strategy Analytics is undertaking here, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And if you turn to the next page, 17, it's</p> <p>22 entitled Next Steps, correct; it's entitled Next</p> <p>23 Steps, correct?</p> <p>24 A. Yes.</p> <p>25 Q. The due diligence discussion appears to be</p>	<p>1 they were working with EDC in terms of making a</p> <p>2 recommendation to the board as to whether or not</p> <p>3 we should go forth with this deal. All three.</p> <p>4 That's what they were doing. Did they all do the</p> <p>5 same thing, did some have one piece versus the</p> <p>6 other? That level of detail, the board didn't</p> <p>7 have. And we -- and the question was asked</p> <p>8 whether or not anyone did not think we should go</p> <p>9 through with the deal. I didn't ask that</p> <p>10 question, but someone did, and no one stepped up</p> <p>11 to say no, we shouldn't do the deal, or no one</p> <p>12 stepped up and said no, we don't recommend doing</p> <p>13 the deal.</p> <p>14 Q. Have you finished your answer?</p> <p>15 A. Yes.</p> <p>16 Q. Now let's go to the recommendations. You've been</p> <p>17 talking about that a lot, let me ask you about it.</p> <p>18 I think you testified earlier that at some point</p> <p>19 in time EDC staff stood up at a board meeting and</p> <p>20 recommended approval of this deal; is that</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Do you have a specific recollection of that?</p> <p>24 A. Yes.</p> <p>25 Q. Who said that?</p>

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<p>1 A. Mike Saul. 2 Q. What meeting -- 3 A. Mike Saul on behalf of the EDC. 4 Q. What meeting did he say it at? 5 A. I can't tell you. It would have -- I can't 6 tell you specifically, other than deducing it 7 would have had to have been the meeting prior to 8 the 26th, or perhaps at the meeting, but I believe 9 it was prior to the meeting on the 26th. 10 Q. Now, that's a fairly significant recommendation, 11 right, the staff recommending approval of this 12 transaction; do you agree? 13 A. Yes. 14 Q. Okay. And would you also agree that that kind of 15 recommendation would find its way into the minutes 16 of that meeting? 17 MR. WISTOW: Objection. 18 A. It should. 19 Q. Would you agree, Mr. Verrecchia, if Mike Saul 20 stood up at a board meeting and says, on behalf of 21 EDC staff we recommend the board approve this 22 transaction, that you would expect that statement 23 to be in the meeting minutes? 24 A. It should be, but whether it is or isn't is 25 not relevant to me. He said it.</p>	<p>1 was in the minutes or not, I don't recall, and 2 quite frankly, I don't care. He said that. The 3 board was not going to vote for something that the 4 ED staff didn't recommend. 5 Q. What words did he use when he said it? 6 A. I don't remember the exact words. I don't 7 remember the exact language. They brought the 8 transaction to the board. 9 Q. When you receive a credit memo on a loan, it 10 typically includes a recommendation to either 11 approve or not approve the loan, correct? 12 A. Yes. I presume so. I mean, we don't see 13 many credit memos. 14 Q. You testified earlier today that you thought there 15 was a credit memo delivered to the board in 16 connection with this transaction, correct? 17 A. I think there was, yes. 18 Q. Did that credit memo include a recommendation to 19 approve or not approve the loan? 20 A. I don't recall what was in the credit memo. 21 Q. As you said earlier, Mike Saul presented several 22 PowerPoint presentations to the board concerning 23 this transaction, correct? 24 A. Correct. 25 Q. In any of those PowerPoint presentations, did Mike</p>
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<p>1 Q. It might be relevant to whether he said it or not, 2 right? 3 MR. WISTOW: Objection. 4 Q. I'll withdraw the question. When you received the 5 minutes following this board meeting where you 6 claim that Mike Saul stood up and recommended that 7 the board approve the application for a loan by 38 8 Studios, when you reviewed those minutes, did you 9 see in those minutes a statement that Mike Saul, 10 on behalf of EDC, recommended approval of the 11 loan? 12 A. I don't recall that. 13 Q. Is there any such statement in any board meeting 14 minutes concerning 38 Studios? 15 A. I know you're asking me the questions. 16 MR. PETROS: I am. 17 A. I don't want to be rude, but let me be 18 straight with you, you're suggesting that the 19 board would vote for a deal that was presented by 20 the staff at EDC that EDC staff didn't recommend 21 we do. So EDC staff, along with the advisors they 22 had employed were recommending to the board we do 23 the deal. Virtually all the presentations were 24 made by Mike Saul, but on behalf of Keith Stokes 25 and EDC staff. That was pretty clear. Whether it</p>	<p>1 Saul or the staff recommend approval of the loan 2 to 38 Studios? 3 A. Again, Mike Saul on behalf of the staff of 4 the EDC and Keith Stokes recommended we go forward 5 with this transaction. Whether or not it appeared 6 in a PowerPoint presentation or not, I just don't 7 recall. And why it was or was not in the minutes, 8 if you say it wasn't in the minutes, I'll accept 9 that. Why it wasn't, you will have to ask Rob 10 Stolzman who wrote the minutes. But we did not go 11 forward with a transaction that wasn't recommended 12 by staff. 13 Q. Okay. Let me switch to the professional advisors 14 you've talked about a few times. I think you've 15 told us that they were asked to do various things, 16 you're not sure what the specific scope of their 17 work was; is that correct? 18 A. Correct. 19 Q. Okay. You believe that one of those advisors had 20 some responsibility for validating the financial 21 projections? 22 A. I believed that that team of people had a 23 responsibility to look at the financial 24 projections and opine on them, recognizing the 25 projections, and recommend to the board whether or</p>

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<p>1 not we should go forward with that transaction 2 using their expertise and the specializations that 3 they had. 4 Q. What is your belief based on that that the group 5 of them had some obligation to review the 6 financial projections and opine on whether the 7 board should go forward with the deal or not; what 8 is that based upon? 9 A. It's based upon Mike Saul making a 10 presentation to the board that he was working with 11 this team of people who were advising EDC, and 12 it's based upon presentations that they made, and 13 at the end of the transaction based upon the fact 14 that we asked whether or not they supported the 15 transaction, or if any of them objected to it, and 16 no one objected to doing it. 17 Q. Okay. You mentioned the first reason was that 18 Mike Saul made a presentation to the board about 19 what he was working with these people on, correct? 20 MR. WISTOW: That's not how he 21 phrased it. 22 MR. PETROS: Why don't you read it 23 back. 24 (ANSWER READ) 25 Q. One of the bases you gave was Mike Saul was</p>	<p>1 day, that's his team, they've worked together, and 2 we asked the question again, do you recommend 3 doing the deal? And we also asked the question, 4 does anyone not recommend doing the deal? So if 5 someone was a minority opinion, we'd hear that, 6 and no one said they were not recommending doing 7 the deal. 8 Q. And what Mike Saul said in the presentation you 9 pointed to a moment ago, the PowerPoint 10 presentation on Page 16 is he described what at 11 least three people were doing in connection with 12 the due diligence process, correct? 13 A. Yes. 14 Q. Okay. What do you understand due diligence to 15 refer to, Mr. Verrecchia? 16 A. Well, due diligence means, you know, in this 17 particular case it's doing a number of things. 18 First of all, understanding as much as you can 19 about the company, you know, what's their 20 financial condition, understanding the 21 marketplace, trying to get a sense of what is the 22 product they're trying to develop, you know, do 23 they have any hidden liabilities that we're 24 unaware of, any encumbrances on the assets that 25 may or may not be put up as security for a loan.</p>
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<p>1 working with a team of advisors who were advising 2 EDC; do you recall that? 3 A. Yes. 4 Q. And you said he made a presentation about what 5 they were doing. Do you want me to have it read 6 back again? 7 A. No, no. 8 Q. I don't want to misstate your words. I'm happy 9 with what you said. 10 A. This is a presentation that Mike Saul made. 11 Q. You're referring to the PowerPoint presentation we 12 just talked about? 13 A. The PowerPoint. In the PowerPoint he's 14 saying, I'm working with these people. So it's in 15 that context he's telling us he's working with 16 this team of advisors. The only advisor that's 17 not mentioned in this PowerPoint that I know was 18 involved was First Southwest, and so that's what I 19 mean by that. You can ask me the same question 20 lots of different ways. That's the only way I can 21 say it. I don't know specifically what the 22 description specifically -- the specific job or 23 questions that he wanted answered by one of the 24 advisors versus the other advisor. You know, 25 quite frankly, I don't care. At the end of the</p>	<p>1 There is a whole host that go on there. Are key 2 employees under contract, not under contract. 3 Depending upon the nature of the transaction, 4 there is a huge list of things that you would go 5 through to make sure that you have reviewed the 6 transaction and all of the different things that 7 could impact that transaction. 8 Q. Okay. Did Wells Fargo make a recommendation to 9 the board on whether or not to approve this 10 transaction? 11 A. I don't recall any one of the advisors 12 standing up and specifically saying, you know, I 13 recommend doing this. What we asked and what Mike 14 Saul said is that staff and the advisors recommend 15 doing this transaction. And we asked does anyone 16 not recommend doing the transaction, and we did 17 not hear anyone say. But I can't recall whether 18 Joe Smith or Mary Jones stood up on behalf of 19 anyone and said some specific thing. 20 Q. You told me earlier a couple of times that Mike 21 Saul stood up and said that the EDC staff 22 recommended this transaction, correct? 23 A. Yes. When I say EDC staff, that's him and 24 his team. 25 Q. Now you've changed it, now you're telling me that</p>

<p style="text-align: right;">Page 217</p> <p>1 Mike Saul stood up and said EDC staff and the 2 advisors recommend this deal -- 3 MR. WISTOW: Objection. 4 Q. -- is that your testimony? 5 MR. WISTOW: I objection. 6 A. I didn't change my testimony at all. I've 7 said that now for about the last two hours. Mike 8 Saul on behalf of the EDC made a recommendation. 9 I don't know if six people who work for him voted 10 in favor or not. But Mike Saul stood up and Keith 11 Stokes stood there, the two principals, saying 12 yes, we should do this transaction. 13 Recommendations -- and the advisors were there, 14 they supported that recommendation. We gave them 15 the opportunity to say they didn't support the 16 thing. I don't remember the specific language, 17 but anyone who was at that meeting would come away 18 with the understanding that the EDC and the 19 advisors recommended to the board going forward 20 with that transaction. And then you know, whether 21 somebody said and, but, if or what, I can't 22 remember that level of detail. 23 Q. You told us a moment ago that you don't remember 24 any advisor standing up and saying I recommend or 25 we recommend this transaction?</p>	<p style="text-align: right;">Page 219</p> <p>1 Q. Now, your testimony is that at some point during 2 one of these meetings, someone on behalf of the 3 EDC board said does anybody not recommend approval 4 of this deal? 5 A. Yes. 6 Q. Who said that? 7 A. I don't recall which director said that, but 8 it was asked. 9 Q. Did you say it? 10 A. No. 11 Q. Did Steve Lane say it? 12 A. I don't recall who said it, but it was asked. 13 Q. Is it in the minutes? 14 A. I don't know. I don't recall if it's in the 15 minutes. 16 Q. What do you recall? Tell me about your specific 17 recollection about this? 18 MR. WISTOW: This is going to be the 19 absolute last time I'm going to allow this 20 question. This has to be the fifth time you've 21 asked him. One more time. 22 MR. PETROS: You're totally wrong. 23 MR. WISTOW: I'll run the risk. 24 MR. PETROS: It's the first time I 25 focused on this.</p>
<p style="text-align: right;">Page 218</p> <p>1 A. I don't recall any specific advisor. I don't 2 recall -- the only name I recall in terms of the 3 advisors was the woman from First Southwest, 4 Maureen, because she had been at a couple of other 5 meetings because she had done other financial 6 advisory work, I guess, for EDC. The rest of the 7 people, I don't recall their names. And if they 8 walked in here today, I wouldn't recognize their 9 faces. So that's what I mean, I can't recall 10 them, who stood up and said what. 11 Q. But you said more than that, you said you don't 12 recall any particular professional advisor 13 standing up and saying to the board we recommend 14 that the board approve this deal; do I have that 15 right? 16 A. I don't recall that happening, no. 17 Q. Okay. All right. You do recall Mike Saul 18 standing up and saying that EDC recommends 19 approval of this deal? 20 A. Yes. 21 Q. Do you recall any written presentation by any of 22 the professional advisors where they said in their 23 presentation to the board, anywhere in their 24 PowerPoints, we recommend approval of this deal? 25 A. No, I couldn't recall that.</p>	<p style="text-align: right;">Page 220</p> <p>1 MR. WISTOW: You must be in a coma. 2 MR. DOLAN: No, he's not. 3 MR. PETROS: You're worried about the 4 testimony; that's inappropriate. 5 MR. WISTOW: I'm worried about 6 getting out of here and not dragging this into 7 another day. 8 MR. PETROS: We're not going to 9 finish today, whatever instruction you give. 10 MR. WISTOW: Well, you know what, 11 I've been trying to get a date from you to get 12 your client to come in. I get no response. We've 13 continued it several times. You're going to have 14 a problem. This man is not yours to just treat 15 like -- I've lost it. Let's just keep going. 16 Q. Can you repeat the last question, please -- never 17 mind, I'll ask it again. Mr. Verrecchia, I'd like 18 you to focus and tell me if whether or not you 19 have a specific recollection of a board member 20 asking whether anybody objected to this deal? 21 A. I do not recall which board member asked that 22 question. 23 Q. Do you have a specific recollection of that 24 question being asked? 25 A. Yes.</p>

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<p>1 Q. What is that specific recollection, what does it 2 include? 3 A. Does anyone not recommend going forward with 4 this transaction, or words to that effect. 5 Q. Was this in an executive session or a public 6 session? 7 A. I don't recall whether it was executive or 8 public session. 9 Q. Who was in the room when it was asked, do you 10 know? 11 A. The financial advisors, and I'm including all 12 the advisors in this case, Mike Saul, Keith 13 Stokes. There were members of staff sitting 14 around the table. Who they were and what their 15 jobs were, I don't know specifically, and the 16 board. 17 Q. What meeting was it asked at? 18 A. It was a meeting prior to the approval or 19 just at the approval. I don't remember which one. 20 Q. You don't know what meeting it happened at, 21 correct? 22 A. I don't recall the specific date, correct. 23 Q. You don't know who asked the question? 24 A. Don't recall who asked the question. 25 Q. Did it come at the beginning of a meeting, the</p>	<p>1 Q. Did you want to add something to your testimony or 2 change it? 3 A. Yeah. When you say recommendation, maybe you 4 don't characterize it as a recommendation, but if 5 the board of the EDC -- I'm sorry, if the staff of 6 the EDC presents the board, you know, with a 7 document to go forward with a loan agreement that 8 they have worked on, they've approved, you know, 9 that's in addition to Mike Saul on behalf of EDC 10 staff saying we recommend going forward with the 11 transaction. 12 I mean, there were several meetings where 13 this transaction was discussed and at each meeting 14 they were working on it, the board would say, keep 15 moving along, Mike Saul and his staff would do it, 16 they come back and say yes, we recommend we go 17 forward with the transaction, and here's the 18 things we put in place. 19 Why it wasn't in the minutes of the meeting, 20 I don't know. But I'll be shocked, I'll be 21 shocked if some other board member stands up and 22 says to you, no, the EDC didn't recommend going 23 forward with the transaction. 24 Q. Okay. Have you completed your answer? 25 A. Yes.</p>
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<p>1 middle of a meeting, the end of a meeting? 2 A. Don't recall whether it was -- well, it 3 wasn't at the very beginning of the meeting. It 4 was during the meeting. 5 Q. You don't recall whether it was executive or 6 public session, correct? 7 A. No, I don't recall. 8 Q. You don't recall any minutes that repeat this 9 question being asked; is that right? 10 A. That's correct. 11 Q. You don't recall any written presentations where a 12 recommendation was given by either EDC staff or 13 the professional advisors, right? 14 A. Correct. 15 Q. Are you aware of any document that refers -- I'll 16 give you a chance to add in a second -- but do you 17 remember any document, are you aware of any 18 document that makes any reference to that question 19 being asked by some member of the EDC board? 20 THE WITNESS: The question being 21 asked, did anyone object to it? 22 Q. Does anyone recommend not approving this loan. 23 Can you point me to any document that references 24 that question was ever asked? 25 A. No, I can't point you to a document.</p>	<p>1 Q. Mr. Verrecchia, have you reviewed either the 2 original complaints or the amended complaint filed 3 in this action? 4 A. No. 5 Q. Have you discussed with anyone the allegations set 6 forth in either one of those complaints? 7 MR. WISTOW: Other than me? 8 Q. When did you -- you retained Mr. Wistow to 9 represent you when you received the deposition 10 notice in this case, right? 11 A. When I received the subpoena, yes. 12 Q. So, I'm not -- don't reveal anything that happened 13 after you retained him, any of your discussions 14 with him after you retained him, but otherwise I'd 15 like you to answer my question. 16 THE WITNESS: Your question again 17 was? 18 Q. Have you discussed with anyone any of the 19 allegations made by EDC against the defendants in 20 this case? 21 A. Not in any substance, no. 22 Q. Well, who have you discussed that topic with? 23 A. Well, I play golf with Paul Choquette, Did 24 you read in the paper that Fox and Corso had a 25 meeting; and that was it. In terms of any</p>

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<p>1 substantive discussions about the case, no, I've 2 been very careful not to. 3 Q. What do you understand -- do you have any 4 understanding what the claims are in this case are 5 against the defendants? 6 A. I do now. 7 Q. Okay. What are they? 8 MR. WISTOW: Well let's hang on just 9 one second. Hang on just one second. I'll let 10 him answer the question if there is an express 11 agreement by anybody that I'm not waiving any 12 attorney/client privilege, otherwise, I'm going to 13 instruct him not to answer. 14 MR. PETROS: I guess I need you to 15 step out for a second while we talk about that 16 (WITNESS AND COUNSEL LEFT ROOM AND RETURNED) 17 MR. WISTOW: Let's make sure what 18 we're doing here. He's going to be talking about 19 some of the conversations that he had, which I'm 20 going to allow him to do based on a stipulation 21 that I want to have entered on the record at any 22 time that I feel that I want to instruct him not 23 to answer, I'm going to do that. That's part of 24 the stipulation. In other words, I don't want to 25 be dragged into something that goes deeper and</p>	<p>1 case failed to disclose information to the EDC 2 board? 3 A. Yes, now I do. 4 Q. Which defendants do you believe failed to disclose 5 information to the EDC board? 6 A. Based upon the discussions I've had with Max, 7 I would say the EDC team, which included Stolzman, 8 Stokes, Saul, and the professional advisors, and I 9 would add into that group Moses and Afonso. 10 Q. What information do you believe some or all of 11 them failed to disclose to the EDC board? 12 A. That the net amount of the proceeds from the 13 loan would not be sufficient to fund the project 14 to completion and the third-party monitoring 15 agreement that we were -- we said had to be a 16 condition of closing and were told it would be a 17 condition of closing never happened. 18 Q. What do you mean when you say fund the project to 19 completion? 20 A. Get the game ready to go to market to be in a 21 position to launch. 22 Q. So you mean complete development of the game? 23 A. Complete development of the game. 24 Q. You view the launch as a separate phase? 25 A. Separate phase, yes.</p>
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<p>1 deeper and deeper. Furthermore, we don't have 2 everybody in the case here or on the line. So 3 what I'd like to make clear as part of the 4 stipulation, if somebody wants to come along and 5 say, look, I wasn't there, and I'm not bound by 6 this, then this testimony will be stricken. 7 MR. PETROS: Let's see if we can do 8 this without a stipulation. I'm going to try it a 9 different way. 10 (OFF THE RECORD) 11 Q. Apart from what your attorney told you after you 12 retained him to represent you, do you have an 13 understanding regarding the basis for EDC's 14 complaint against the defendants in this case? 15 THE WITNESS: Other than what I've 16 heard from my attorney? 17 MR. PETROS: After you retained him, 18 yes. 19 THE WITNESS: Come back again? 20 Q. Do you have any understanding regarding the basis 21 for EDC's complaint against the defendants in this 22 case? 23 A. The only understanding I have is discussions 24 with my attorney. 25 Q. Do you believe that any of the defendants in this</p>	<p>1 Q. And with respect to that first contention 2 regarding the net amount of the proceeds of the 3 loan, is the basis for your belief entirely what 4 your lawyer told you? 5 A. Yeah. I mean, he's the only person I've 6 discussed that with. 7 Q. So you believe based on what Mr. Wistow told you 8 that some or all of the Defendants failed to 9 disclose to the EDC board that the net amount of 10 the proceeds of the loan would not be sufficient 11 to complete the development of Copernicus? Did I 12 say that correct? 13 A. Correct. 14 Q. And the entire basis for that belief is what 15 Mr. Wistow has told you? 16 A. He told me, and to some degree I found out in 17 the newspapers as well that there was no 18 third-party monitoring agreement. 19 Q. The third-party monitoring agreement, you believe 20 that some or all of the defendants failed to 21 disclose to the EDC board that there was no 22 third-party monitoring agreement before the deal 23 closed; is that your contention or belief? 24 A. Yeah, I can't -- you know, certainly I would 25 hold EDC staff, Stokes, Stolzman and Saul</p>

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1 responsible for that, along with Moses and Afonso.
2 Q. That being what, the third-party monitoring?
3 A. The third-party monitoring agreement. I
4 don't know what role Strategy Analytics, for
5 example, would play in that. But you know,
6 certainly, we were led to believe that we would
7 have that -- we had a third-party monitoring
8 agreement in place. I left the board, and it was
9 later on that I found out that there was no
10 agreement in place.
11 Q. Okay. And who do you -- who would you hold
12 responsible for the first contention regarding the
13 net proceeds of the loan not being sufficient to
14 complete development of Copernicus?
15 MR. WISTOW: He's already answered
16 this.
17 A. I would say the broader team.
18 Q. Do you believe that the defendants failed to
19 disclose any other information to the EDC board
20 apart from those two contentions based upon what
21 Mr. Wistow has told you? That was a bad question,
22 let me rephrase it. You've told us about two
23 areas where you feel that information was not
24 disclosed to the board, correct?
25 A. Yes.

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1 Q. Okay. Do you believe today that any other
2 information -- there was other information that
3 the defendants failed to disclose to the board?
4 A. Yes.
5 Q. Okay. What is that information? Tell me what the
6 information is first?
7 A. The nature of the meeting between Carcieri
8 and Schilling, that first meeting at his house was
9 how this all started turns out not to be the case.
10 Q. What do you believe to be the case?
11 A. Well, again, from reading in the newspaper,
12 Corso and Fox had meetings with Schilling prior to
13 the Governor going to Schilling's house for that
14 fundraiser. So that was something that I
15 certainly as a board member was not aware of and
16 don't know that any other board member was aware
17 of.
18 Q. Who do you believe failed to disclose that to the
19 board?
20 A. You know, to me it would be -- probably --
21 it's hard. You know, I would be asking people
22 like Stokes and Stolzman and Saul about that as
23 opposed to the three advisors.
24 Q. As we sit here today, Mr. Verrecchia, do you have
25 any knowledge or information that Stolzman, Stokes

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1 or Saul knew about meetings between 38 Studios and
2 legislative leaders prior to the time that
3 Governor Carcieri met with Curt Schilling?
4 A. No, I don't.
5 Q. Then why do you believe that they failed to
6 disclose that to the board when you don't know if
7 they knew it at all?
8 A. It would be a question I would want to ask
9 them.
10 Q. Do you believe that Governor Carcieri knew there
11 had been prior meetings between legislative
12 leaders and 38 Studios before he met with 38
13 Studios?
14 A. I don't know. I mean -- I'm not going to say
15 the Governor was lying to the board, but I don't
16 know. Clearly, there were meetings held before
17 then.
18 Q. If the Governor did know about those early
19 meetings, would you hold him responsible for
20 failing to disclose that information to the board
21 during discussions?
22 MR. WISTOW: Objection.
23 A. Yes. I'd be disappointed with him.
24 Q. Any other information that you believe that the
25 defendants failed to disclose to the EDC board?

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1 A. There was some things I read about in the
2 newspapers over the last, you know, 12, 18 months
3 that, you know, surprised me. I'm just trying to
4 think through some of those things. You know, the
5 money that Corso was getting, stuff like that.
6 Arrangements that Corso had that we weren't aware
7 of. You know, some of these things may have
8 impacted our decision making, some may have not,
9 but the whole notion of Corso, I was unaware of
10 the guy, and then to read about all of his
11 involvement was very surprising and, you know,
12 clearly, there were people at EDC who at some
13 point knew of his involvement in this transaction.
14 I just think it's part of full disclosure, the
15 board should have at least been aware of that.
16 Q. You knew of his involvement in this transaction,
17 didn't you, you knew Mike Corso was involved in
18 this transaction?
19 A. No, I did not. First I knew Mike Corso was
20 involved in this transaction is when I read about
21 it in the paper.
22 Q. His name is referenced in e-mails to you on this
23 transaction, Mr. Verrecchia, isn't it?
24 A. Mike Corso is Joe Blow as far as I'm
25 concerned. I have no knowledge of that guy, don't

1 know him, and as far as I know, he was somebody on
2 the staff.
3 Q. You told me, I think, and I apologize if I'm
4 misremembering, you told me you understood he was
5 representing 38 Studios in this transaction?
6 A. No. You've got to go back?
7 MR. WISTOW: As of when? When did he
8 have that understanding?
9 A. I didn't know that until -- I don't think I
10 said that. You go back and find where I said
11 that.
12 Q. We have a record, Mr. Verrecchia. Do you
13 remember -- wasn't he on some of the e-mails that
14 you received regarding 38 Studios?
15 MR. WISTOW: He just explained to
16 you --
17 MR. PETROS: Please don't answer for
18 him.
19 A. Here are the e-mails --
20 Q. That's okay, Mr. Verrecchia, if you don't recall,
21 just say you don't recall?
22 A. I don't recall. I don't know Mike Corso. I
23 did not know that he was involved at all in this
24 transaction until I read about it in the paper,
25 and there are a whole bunch of names on those

1 that have impacted your vote?
2 A. I don't know. You know, depends upon --
3 well, the fact that Corso is representing 38
4 Studios or Joe Blow is representing 38 Studios in
5 and of itself doesn't, you know, make a whole lot
6 of difference. Now, when you understand that
7 somebody -- you find out later on that somebody
8 was representing them and no one told you that.
9 If you find out it was intentionally withheld from
10 you, you want to say, well, okay, what else did
11 you withhold from me. It sort of goes to the
12 credibility or nature of full disclosure. The
13 fact that Mike Corso represents him in and of
14 itself doesn't cause me to vote yay or nay on
15 something.
16 Q. Do you believe any defendants intentionally
17 withheld from you that Mike Corso was representing
18 38 Studios?
19 A. I don't know that.
20 Q. Do you believe that any of the defendants
21 engaged -- apart from what you identified, engaged
22 in any kind of wrongful conduct in connection with
23 the 38 Studios transaction?
24 A. I'm not a lawyer. Couldn't tell you.
25 Q. As a board member, do you believe that any of the

1 e-mails. I have no idea who they are, and they
2 don't register with me at all. Corso would have
3 been one of them.
4 Q. Did you ask who he was?
5 A. No.
6 Q. So did you think that some of the defendants, one
7 or more of the defendants in this case had some
8 particular information about Corso they should
9 have disclosed to the board?
10 A. Look, you asked me what I thought the board
11 should be aware of. When I find out reading in
12 the paper that Corso was getting all of this money
13 and was involved in representing 38 Studios and
14 took him to meet with Fox and stuff like that, I
15 think the board should have known that. Do I know
16 specifically that Stolzman or Saul or Stokes knew
17 that and didn't tell me? No, I don't. But if
18 they were in sitting in the room, I'd want to ask
19 them, because I felt the board was left out. I'm
20 not saying they did something, but you know,
21 somebody knew that.
22 Q. Would that have affected your vote if you knew
23 that Corso was representing 38 Studios and was
24 getting a lot of money for representing 38 Studios
25 and introducing the deal to Speaker Fox; would

1 defendants did anything wrong that led to your
2 vote in favor of the 38 Studios transaction?
3 A. Yes.
4 Q. What?
5 A. We asked the question, and they answered in
6 the affirmative, is the financial plan and net
7 proceeds of the loan sufficient to get the game to
8 completion, completion as we discussed, and the
9 answer was yes. And in that context we asked, do
10 you recommend doing this transaction, and Mike
11 Saul said yes, he recommends doing the
12 transaction, and the advisors stood behind that
13 recommendation recommending the transaction.
14 Again, we asked, does anyone not recommend doing
15 this? I'm finding out now that certainly Mike
16 Saul and Keith Stokes for sure, and it looks like
17 some of the advisors knew that the financial plan
18 was faulty and there wasn't enough funding -- the
19 net proceeds would not complete the project,
20 that's one. Secondly, certainly Mike Saul and
21 Keith Stokes and Rob Stolzman knew that they
22 didn't have a third-party monitoring agreement,
23 and Afonso knew that. It was a condition of
24 closing, and why he would allow a deal to close
25 when one of the principal conditions were violated

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<p>1 I don't know, and that representation was made in 2 the loan documents and in the public documents for 3 the loan. So, yes, I feel those two principal 4 things. 5 The other stuff is, you know, it's clutter, 6 it's nice to know how it would have impacted me in 7 making a decision is hard to say because you would 8 have asked ten follow-up questions, and who knows 9 what they would have been. The fact that Mike 10 Corso represented somebody in and of itself, no. 11 The fact that Mike Corso was doing this with the 12 film tax credits, his family was involved in the 13 property that Schilling was involved in, you know, 14 let's put it on the table, guys, and see what's 15 going on here. You know, whether that would have 16 caused us to vote for or against something, I 17 can't make that statement. 18 Q. Have you now given me a complete answer to my 19 question? 20 A. Yes. 21 Q. If you thought that the loan would not be 22 sufficient or might not be sufficient for 38 23 Studios to complete production of Copernicus, 24 would you have voted against the loan? 25 A. Yes.</p>	<p>1 questions here. Taking a risk that the financial 2 plan was reasonable and sound, and now we had to 3 monitor that is very different than having the 4 financial plan that on its face the recommendation 5 is no good. 6 Q. Did EDC staff and/or any outside advisor ever tell 7 you that the financial projections were 8 reasonable? 9 A. Yes. 10 Q. Tell me first when that happened. 11 A. It happened on several occasions between June 12 9th and July 26th. 13 Q. It happened at board meetings? 14 A. Yeah. 15 Q. And who made the specific statement that 38 16 Studios' financial projections are reasonable? 17 A. All the presentations were made by Mike Saul 18 with input from the advisors at times. 19 Q. Let's be specific. You're saying that Mike Saul 20 on several occasions said that the financial 21 projections are reasonable, or did he present to 22 you information about the financial projections? 23 There's a difference. 24 MR. WISTOW: Objection. 25 Q. Let me back up and break it down, Mr. Verrecchia.</p>
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<p>1 Q. That would have changed your vote? 2 A. Yes. 3 Q. You're certain of that? 4 A. Yes. 5 Q. Okay. So if EDC had told you that there was still 6 a risk that Copernicus would not -- 38 Studios 7 would not complete development of Copernicus even 8 with the \$75 million loan, you would have voted 9 against making that loan? 10 MR. WISTOW: Objection. 11 A. No. You asked two different questions. 12 Q. Please explain why your answer is no in my second 13 question. 14 A. The first question was if you knew that there 15 was not -- that the net proceeds of the loan was 16 not sufficient to get the game to completion would 17 you have voted against the loan, and I would have 18 said yes, I would not have approved the loan. The 19 next question talks about risk. So, if there was 20 enough money to -- if the financial plan was 21 sound, there was enough money, you know, in the 22 projections and the third party -- independent 23 third-party oversight said they agreed those 24 projections were reasonable, would I vote to take 25 the risk, yes. So there are two different</p>	<p>1 We've already looked at a presentation that's in 2 front of you now -- if I can lean across, it's 3 Exhibit D-123. And that exhibit presents 4 information about the 38 Studios' financial 5 projections, correct? 6 A. You're talking about the break-even and the 7 company worst-case and most likely? 8 Q. Right. Where it presents, for example, 9 assumptions underlying the financial projections, 10 correct? 11 A. Yes. 12 Q. Assumptions concerning the sales of Mercury and 13 the sales of Copernicus? 14 A. That's correct. 15 Q. And statements about revenues they expected to 16 earn and EBITDA and similar financial information, 17 right? 18 A. Yes. 19 Q. Is your answer yes? 20 A. Yes. 21 Q. So Mike Saul presented to the board at different 22 times information about 38 Studios' financial 23 projections; is that right? 24 A. That's correct. 25 Q. Was there a specific occasion where Mike Saul</p>

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<p>1 said, we have reviewed 38 Studios' financial 2 projections and we have concluded that they are 3 reasonable? 4 A. I don't recall whether he used his specific 5 term reasonable. I do recall the board asking and 6 him assuring the board that the financial 7 projections and the cash flow supported that the 8 net proceeds, whatever the net proceeds, whatever 9 the net proceeds were, and we did not have a 10 specific number, was sufficient to get the game to 11 completion. Now, that's what I recall. You're 12 picking on a particular word, and I can't lock in 13 on that specific word. But I can lock in on the 14 fact that the whole purpose of the due diligence 15 or major purpose of the due diligence was to 16 ensure that this game got to completion, otherwise 17 it doesn't go to market, there's no revenue and 18 nobody pays off the loans, and even though we got 19 that assurance, we still wanted that independent 20 third party to support that. 21 Q. Okay. Your testimony is that you received that 22 assurance from Mike Saul? 23 A. Yes, in his role as second in command at EDC. 24 Q. Let me ask you this question, Mr. Verrecchia, 25 related to it. So the financial projections,</p>	<p>1 project and give people the opportunity to 2 correct -- to take corrective action. 3 I mean, there's no question that projections 4 are projections. You know, I'm not saying nothing 5 out of school when we say, you know, the one thing 6 we know about projections is they're wrong; right? 7 So the question is, you know, you need to monitor 8 those so you can make adjustments and take 9 corrective action and get the project done on time 10 and on budget, and that's what the essence of the 11 third party was. Even though Mike said that we 12 wanted that independent third party, and the 13 reason we wanted that is that nobody at the EDC 14 had the expertise in game development which was 15 critical to going with the budget. So, IBM in 16 this case was supposed to be, was going to be 17 looking at game development and the expenditures 18 and advising the EDC staff that they were, you 19 know, on plan, or if they were away from plan, 20 what corrective action could we take. 21 Any plan is a plan, and you're short/long 22 every other month and you take corrective to get 23 back on plan. 24 Q. Let's get back to my question. I think you've 25 acknowledged the fact that 38 Studios said we need</p>
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<p>1 let's pick out a number, they say it's going to 2 take X dollars to complete development of 3 Copernicus, and that the EDC loan will provide X 4 dollars for that. How does that ensure that 5 you're going to get to completion of production? 6 Because isn't the estimate of costs just that, an 7 estimate to begin with? 8 A. Sure. 9 Q. So, how is the EDC board ensured or assured that 10 the game is going to get to production based on 11 financial projections? 12 A. The same way you would, you know, in any 13 other business. You have a financial plan and now 14 you have to monitor that plan closely, and if 15 you're looking at the cash flow on a monthly 16 basis, your forecast calls to spend \$1 million a 17 month, and the first month you spend a million and 18 a half. You say, wait, time out, how are you 19 going to adjust and get back the half million 20 dollars you've overspent. So you spent \$1 21 million, like you said, but the game development 22 is not quite where it's supposed to be. Stop. 23 What are we doing, what corrective action can we 24 take. The third-party monitor was no guarantor of 25 success. But it would allow us to monitor the</p>	<p>1 X amount of dollars to complete the production of 2 Copernicus, as you said was a projection and 3 projections are almost always wrong, right? 4 A. Yes. 5 Q. So, the board, even if it was providing X amount 6 of dollars, still had no assurance that the game 7 would be completed -- production would be 8 completed within that budget, right? 9 A. No. There's no guarantee. That's why we 10 took the additional steps that we could take to, 11 you know, mitigate that risk the best we could. 12 Q. Which still provided no guarantee, as you 13 acknowledge? 14 A. No guarantee. There's no guarantee it's not 15 going to rain tomorrow. 16 Q. If there are cost overruns on the production of 17 the games, there wouldn't be sufficient funds to 18 complete production of the game? 19 A. Unless you took corrective action. 20 Q. Unless you could take corrective action? 21 A. Well, in most cases you can, if you learn 22 early enough, you find out there is a problem 23 early enough, you can take corrective action. 24 MR. WISTOW: Hang on one second. 25 Let's step out for just one minute.</p>

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<p>1 (RECESS)</p> <p>2 MR. WISTOW: The witness has</p> <p>3 expressed his desire to me to go as late as</p> <p>4 necessary today to finish up. I can't physically</p> <p>5 force counsel to do anything. I'm a little</p> <p>6 concerned we've been fooling around with the</p> <p>7 30(b)(6) dates, we've never heard back from you.</p> <p>8 We've changed them three times. Can you tell me</p> <p>9 how late you're willing to go tonight?</p> <p>10 MR. PETROS: Max, you suggested going</p> <p>11 to 7:00 or later. I've represented to you that we</p> <p>12 wouldn't finish if we go to 7:00, anyway.</p> <p>13 MR. WISTOW: The witness is ready to</p> <p>14 stay here all night.</p> <p>15 MR. PETROS: I'm not. My plan is to</p> <p>16 break at 5:00. We've had, God knows how many</p> <p>17 depositions in this case, over 20, probably close</p> <p>18 to 30. I think fewer than two have been completed</p> <p>19 in one day. I'm sorry if we can't complete it</p> <p>20 today.</p> <p>21 MR. WISTOW: I accommodated</p> <p>22 Mr. Zaccagnino, we went past 7:00 in Boston,</p> <p>23 starting at 9:00 A.M. I'm asking for that for the</p> <p>24 record.</p> <p>25 MR. PETROS: If I thought we could</p>	<p>1 A. Yes.</p> <p>2 Q. What did you understand their role to be?</p> <p>3 A. If I recall, they were going to look at the</p> <p>4 economic impact of game development here in Rhode</p> <p>5 Island and whether or not -- I forget the</p> <p>6 terminology they use, it's in here.</p> <p>7 Q. Just for the record, can you tell us what exhibit</p> <p>8 you're looking at, it's on the front page?</p> <p>9 A. I'm sorry. D-123.</p> <p>10 Q. What page are you referring to?</p> <p>11 A. I'll tell you in a moment.</p> <p>12 MR. PETROS: I think Page 16 is due</p> <p>13 diligence process.</p> <p>14 MR. WISTOW: You are trying to move</p> <p>15 it along.</p> <p>16 A. Cluster development is the term. They were</p> <p>17 talking about the potential for a cluster</p> <p>18 development here in Rhode Island, and Rhode Island</p> <p>19 becoming a center for video game and</p> <p>20 ancillary-type developments, and they referred to</p> <p>21 Hasbro and GTECH as, you know, two examples of</p> <p>22 companies using similar skill sets.</p> <p>23 Q. Did Strategy Analytics makes a recommendation on</p> <p>24 whether the EDC board should approve the loan to</p> <p>25 38 Studios?</p>
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<p>1 finish at 7:00 or 7:30, I'd stay. We're not going</p> <p>2 to.</p> <p>3 MR. WISTOW: Why don't we try and see</p> <p>4 what happens.</p> <p>5 MR. PETROS: It's hard for me and</p> <p>6 it's hard for the witness.</p> <p>7 MR. WISTOW: Because what I think it</p> <p>8 will demonstrate if we go to that time is that you</p> <p>9 have no legitimate questions to go past that.</p> <p>10 MR. PETROS: Save your argument for</p> <p>11 the judge.</p> <p>12 MR. WISTOW: I'm putting this on the</p> <p>13 record for the judge.</p> <p>14 MR. PETROS: I know you are. I</p> <p>15 understand. Can we resume now? Do you want to</p> <p>16 take another ten-minute break for a phone call and</p> <p>17 accuse me of going too slow?</p> <p>18 MR. WISTOW: The reason I made a</p> <p>19 phone call is personal business, none of your</p> <p>20 business. Yeah, I'm accusing you of going too</p> <p>21 slow. Yeah, go ahead.</p> <p>22 Q. Mr. Verrecchia, we talked a little bit about</p> <p>23 Strategy Analytics but not in depth yet. Strategy</p> <p>24 Analytics is one of the outside advisers brought</p> <p>25 in by EDC in connection with this transaction?</p>	<p>1 A. I don't recall specifically that they made a</p> <p>2 recommendation. That was just part of the</p> <p>3 professional advisory team that EDC was using.</p> <p>4 Q. Were they similarly in the room when you've</p> <p>5 testified that someone on the board asked whether</p> <p>6 or not anybody recommended not approving the loan?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Did they say anything when that question</p> <p>9 was asked?</p> <p>10 A. No one said anything.</p> <p>11 Q. Do you remember who from Strategy Analytics was in</p> <p>12 the room when that question was asked by the board</p> <p>13 members to the professional team?</p> <p>14 A. No, I don't recall the individuals from any</p> <p>15 of the professional advisors, other than Maureen</p> <p>16 from First Southwest.</p> <p>17 Q. Do you remember whether Strategy Analytics, when</p> <p>18 they presented, had two people in the room or one</p> <p>19 person?</p> <p>20 A. Don't recall.</p> <p>21 Q. Male or female?</p> <p>22 A. Don't recall.</p> <p>23 Q. Did you review -- do you remember -- you were</p> <p>24 actually provided with a copy of their report</p> <p>25 before they presented to the board, do you recall</p>

<p style="text-align: right;">Page 249</p> <p>1 that?</p> <p>2 A. I recall getting a report, yes.</p> <p>3 Q. Did you review their report?</p> <p>4 A. I went through it, yes, but I don't recall</p> <p>5 what was in it.</p> <p>6 Q. But you did review it?</p> <p>7 A. Yes.</p> <p>8 Q. Did you understand this was a fairly important</p> <p>9 transaction for EDC?</p> <p>10 THE WITNESS: The 38 Studios</p> <p>11 transaction?</p> <p>12 MR. PETROS: Yes.</p> <p>13 A. Yeah, I'm not sure what you mean by that.</p> <p>14 Q. That was a bad question. Did you understand this</p> <p>15 was a large loan that EDC was considering to 38</p> <p>16 Studios, \$75 million?</p> <p>17 A. Yes. Yes.</p> <p>18 Q. Did you give this transaction the attention it</p> <p>19 deserved given the size of that loan?</p> <p>20 THE WITNESS: Did I give?</p> <p>21 MR. PETROS: Yes.</p> <p>22 A. Yes, I believe I did.</p> <p>23 Q. You mentioned earlier in your testimony and again</p> <p>24 more recently you talked about this third-party</p> <p>25 monitoring agreement. I want to ask you a few</p>	<p style="text-align: right;">Page 251</p> <p>1 know. So, I just wanted to clarify that.</p> <p>2 And in terms of when you say specifically</p> <p>3 what did I know about IBM --</p> <p>4 (SOMEONE ENTERED AT THIS POINT)</p> <p>5 Q. That wasn't exactly my question.</p> <p>6 A. What I and Donna Cupelo said was that we</p> <p>7 wanted a third-party monitor, and prior to the</p> <p>8 closing we wanted to have them validate, vet the</p> <p>9 financials and development schedule and then</p> <p>10 monitor that schedule throughout the process and</p> <p>11 make reports to the EDC, and that was a condition</p> <p>12 of closing; meaning, that if we didn't get that,</p> <p>13 the loan wouldn't close, so we wouldn't close if</p> <p>14 we didn't have that first or the benchmark line in</p> <p>15 the sand, if you want to use that term.</p> <p>16 MR. DOLAN: Before you continue, I'm</p> <p>17 misapprehending --</p> <p>18 MR. WISTOW: This is my grandson.</p> <p>19 MR. DOLAN: That's fine. I'm not</p> <p>20 sure his presence is appropriate, given you have a</p> <p>21 witness testifying subject to a pretty broad</p> <p>22 point.</p> <p>23 MR. WISTOW: He works in my office.</p> <p>24 MR. DOLAN: He's an employee?</p> <p>25 MR. WISTOW: Not a permanent</p>
<p style="text-align: right;">Page 250</p> <p>1 questions about that. You've told us that when</p> <p>2 the board approved the 38 Studios' loan, a</p> <p>3 condition of closing was getting an independent</p> <p>4 third party who was going to validate the schedule</p> <p>5 and budget proposed by 38 Studios to complete</p> <p>6 these games?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And determine, again, the schedule and</p> <p>9 budget were reasonable?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And where does your understanding of that</p> <p>12 condition of closing come from, what is that based</p> <p>13 on? Your understanding -- before the closing took</p> <p>14 place, this third-party monitor was going to vet</p> <p>15 the schedule and budget and confirm that it was</p> <p>16 reasonable or validate it?</p> <p>17 A. Let me clarify one thing before I answer that</p> <p>18 question. You talk about 38 Studios' financials.</p> <p>19 I would characterize that as the financials that</p> <p>20 EDC staff presented to, when I say presented,</p> <p>21 talked about to the board.</p> <p>22 Now, I believe what Mike was presenting was</p> <p>23 based upon the financials that 38 Studios provided</p> <p>24 them with, but to what degree it would change,</p> <p>25 modified, et cetera at that point in time I didn't</p>	<p style="text-align: right;">Page 252</p> <p>1 employee. He's working this summer. You can't</p> <p>2 repeat anything you hear.</p> <p>3 MR. ELLWAY: Okay.</p> <p>4 MR. DOLAN: He's subject to all</p> <p>5 orders in the case.</p> <p>6 MR. WISTOW: He's subject to the</p> <p>7 confidentiality. If you want, I'll get his pay</p> <p>8 stubs.</p> <p>9 MR. DOLAN: Because I was going to</p> <p>10 invite my son to one of these depositions.</p> <p>11 MR. WISTOW: I have no problem, just</p> <p>12 make sure you hire him. I'm being facetious. If</p> <p>13 you want to bring your son, I don't mind.</p> <p>14 Q. Going back to the question and answer, you told us</p> <p>15 earlier you wanted this third party to validate</p> <p>16 both the budget and the schedule?</p> <p>17 A. Yeah.</p> <p>18 Q. Correct?</p> <p>19 A. Yes. They go hand-in-hand.</p> <p>20 Q. And the budget would have been in the 38 Studios'</p> <p>21 financial plan, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And you wanted this to third party -- you expected</p> <p>24 this third party would review the 38 Studios'</p> <p>25 financial plan to get his arms around or her arms</p>

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<p>1 around the budget, right?</p> <p>2 A. Yes.</p> <p>3 Q. Now, my question that we started with, Mr.</p> <p>4 Verrecchia, was you've told us what your</p> <p>5 understanding was of this condition of closing,</p> <p>6 what was that understanding based on, who told you</p> <p>7 that was going to happen?</p> <p>8 A. We told staff it had to happen and Keith</p> <p>9 Stokes and Rob Stolzman assured us it would</p> <p>10 happen.</p> <p>11 Q. When you say we, who is we?</p> <p>12 A. The board.</p> <p>13 Q. Who on the board said this?</p> <p>14 A. The entire board. I mean, the motion was</p> <p>15 made by myself and Donna Cupelo, but the entire</p> <p>16 board supported that and agreed that the loan</p> <p>17 should not close without that condition being</p> <p>18 fulfilled.</p> <p>19 Q. Okay. And the minutes will reflect what that</p> <p>20 motion was, correct?</p> <p>21 MR. WISTOW: Objection.</p> <p>22 A. I believe it does.</p> <p>23 Q. Okay. You received a copy of the minutes</p> <p>24 following the motion you made, right?</p> <p>25 A. But I have -- I don't have them in my mind.</p>	<p>1 minutes?</p> <p>2 MR. WISTOW: Objection.</p> <p>3 A. No. But you're asking me to express an</p> <p>4 opinion on the minutes. I'd like to review them</p> <p>5 before I say yes, that's all.</p> <p>6 MR. WISTOW: I've given it to the</p> <p>7 witness. I've given him the minutes.</p> <p>8 MR. PETROS: Please don't put</p> <p>9 anything in front of the witness.</p> <p>10 MR. WISTOW: July 15.</p> <p>11 MR. PETROS: Let me put the</p> <p>12 documents -- appreciate your attempt.</p> <p>13 MR. WISTOW: I know mine are</p> <p>14 authentic.</p> <p>15 MR. PETROS: I appreciate your</p> <p>16 attempt to help.</p> <p>17 MR. WISTOW: It's in the executive</p> <p>18 session, second page.</p> <p>19 Q. This is exhibit, Plaintiffs' Exhibit 123. Do you</p> <p>20 recognize these as the minutes from the directors'</p> <p>21 meeting of July 15, 2010?</p> <p>22 A. I don't recall them, but I assume they are.</p> <p>23 Q. These are the minutes that your attorney used in</p> <p>24 an earlier deposition?</p> <p>25 MR. WISTOW: I'm going to stipulate</p>
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<p>1 Q. But, Mr. Verrecchia, wouldn't it have been your</p> <p>2 practice to review the minutes to make sure that</p> <p>3 they accurately reflected the substance of your</p> <p>4 motion that the board voted on?</p> <p>5 A. Yes.</p> <p>6 Q. And if you thought -- when you reviewed that</p> <p>7 motion, if you found the minutes were inaccurate,</p> <p>8 you would have corrected the minutes, right?</p> <p>9 A. Yes.</p> <p>10 Q. So if the minutes are -- whatever the minutes are,</p> <p>11 they accurately reflect your motion, is that a</p> <p>12 fair conclusion?</p> <p>13 MR. WISTOW: Objection.</p> <p>14 A. No. Show me the minutes, let me read what it</p> <p>15 says, and I'll tell you whether it accurately</p> <p>16 reflects my motion or not.</p> <p>17 Q. You just told us, Mr. Verrecchia, you would have</p> <p>18 reviewed the minutes and corrected any inaccuracy,</p> <p>19 right?</p> <p>20 A. Yes. But you're asking me to recall stuff</p> <p>21 that happened four years ago. Show me the piece</p> <p>22 of paper, let me read it and I'll say yes, it's</p> <p>23 not correct, and we'll move on.</p> <p>24 Q. Do you think your memory four years later would be</p> <p>25 more accurate than the motions as set forth in the</p>	<p>1 these are the minutes, not necessarily as to</p> <p>2 accuracy, but we also have the handwritten notes</p> <p>3 of Mr. Stolzman from which these were taken if</p> <p>4 you're interested in seeing those.</p> <p>5 Q. Mr. Verrecchia, would you look at the second page?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. You see the second paragraph that says,</p> <p>8 "Mr. Verrecchia commented on the need for</p> <p>9 third-party confirmation and monitoring the game,</p> <p>10 which was also endorsed by Ms. Cupelo"?</p> <p>11 A. Yes.</p> <p>12 Q. Was a vote taken on that?</p> <p>13 A. A vote was taken on the need for a</p> <p>14 third-party confirmation, and it was a condition</p> <p>15 of closing. So, you know, I don't know if --</p> <p>16 MR. WISTOW: I'm pointing to</p> <p>17 something. Put it on the record.</p> <p>18 MR. PETROS: That's fine.</p> <p>19 Q. Why don't you read what your attorney just pointed</p> <p>20 out to?</p> <p>21 A. "Upon motion duly made by the executive</p> <p>22 director, seconded by Ms. Cupelo, the following</p> <p>23 vote was adopted to authorize the executive</p> <p>24 director to proceed with the transaction publicly</p> <p>25 described pursuant to the terms and conditions</p>

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<p>1 described today."</p> <p>2 Q. Is that the vote you were referring to earlier</p> <p>3 regarding the third-party monitor?</p> <p>4 A. I'm getting confused a little bit by the</p> <p>5 vote, not vote. Let me get right to it. We made</p> <p>6 it clear to EDC that without the third-party</p> <p>7 monitoring agreement we would not approve the</p> <p>8 loan, and all of the board members agreed.</p> <p>9 Now, was a formal vote taken versus a</p> <p>10 consensus or an understanding, you know, knock</p> <p>11 yourself out, I'm not trying to be a wise guy, but</p> <p>12 no one left that room, or no board member was</p> <p>13 voting for the transaction without the third-party</p> <p>14 monitoring agreement.</p> <p>15 Q. Okay. Now, following that vote did EDC staff</p> <p>16 report back to you about their efforts to reach a</p> <p>17 third-party monitoring agreement?</p> <p>18 A. No. The only thing they reported to back is</p> <p>19 they couldn't get a completion bond, but they were</p> <p>20 going to put the third-party monitoring agreement</p> <p>21 in place, and that was the last I had heard of</p> <p>22 that until some time after I was on the board, I</p> <p>23 became aware that there was no monitoring</p> <p>24 agreement in place, and was very surprised and</p> <p>25 shocked by that.</p>	<p>1 A. Ran out of cash.</p> <p>2 Q. Do you know why they ran out of cash?</p> <p>3 A. Not specifically. I haven't had any</p> <p>4 discussions with anybody, nor have I looked at</p> <p>5 financials or seen anything like that. So only</p> <p>6 what I read in the paper.</p> <p>7 Q. Do you know if they had cost overruns in the</p> <p>8 development of Copernicus?</p> <p>9 A. I've had no knowledge of what 38 Studios was</p> <p>10 doing with regards to game development and</p> <p>11 budgeting from the time I left the board.</p> <p>12 Q. Do you know whether they had a delayed release of</p> <p>13 the RPG game that caused them to receive -- not to</p> <p>14 receive revenue as early as they forecasted?</p> <p>15 A. No. I'm not aware of that.</p> <p>16 Q. Do you know whether they were successful -- let me</p> <p>17 back up a step. You understood when you approved</p> <p>18 this transaction that 38 Studios' plan called for</p> <p>19 them to raise additional equity -- additional</p> <p>20 funds through equity in 2012, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And you understood that their plan called for them</p> <p>23 to raised 20 million in private equity through a</p> <p>24 private equity offering in 2012, right?</p> <p>25 A. I believe so.</p>
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<p>1 (OFF THE RECORD)</p> <p>2 (MR. MITCHELL EDWARDS PRESENT - ANDY TUGAN</p> <p>3 NO LONGER PRESENT)</p> <p>4 Q. Mr. Verrecchia, do you recall receiving a memo</p> <p>5 from Keith Stokes that updated the board on their</p> <p>6 efforts to obtain a third-party monitoring</p> <p>7 agreement and what it was that the EDC staff</p> <p>8 planned to do to address the board's concern?</p> <p>9 A. I don't recall if there was a memo, I don't</p> <p>10 recall getting it or receiving.</p> <p>11 Q. You've told us your understanding is that right up</p> <p>12 until the time of closing that a condition of</p> <p>13 closing remained the board's requirement that a</p> <p>14 third party be brought in to validate the</p> <p>15 reasonableness of the budget and schedule of 38</p> <p>16 Studios for completing the two games?</p> <p>17 A. Prior to the closing they would validate --</p> <p>18 not validate -- they would look at the budget and</p> <p>19 schedule, opine on its reasonableness and then on</p> <p>20 a go-forward basis after the closing, provide</p> <p>21 periodic reports as to the game development being</p> <p>22 on schedule along with the budget.</p> <p>23 Q. What is your understanding now about what happened</p> <p>24 in 2012 that caused 38 Studios as a company to</p> <p>25 fail?</p>	<p>1 Q. Okay. Were they successful in raising that money</p> <p>2 in 2012?</p> <p>3 A. I don't know. I mean, when I went off the</p> <p>4 board at the end of 2010, I lost all contact with</p> <p>5 the transaction, what was happening, how game</p> <p>6 development was going or anything like that, other</p> <p>7 than what I would read in the paper.</p> <p>8 Q. Do you know whether a failure to raise that</p> <p>9 private equity financing in 2012 impacted 38</p> <p>10 Studios' cash flow in 2012?</p> <p>11 A. I don't know that. I don't know.</p> <p>12 Q. You now have a belief that the net proceeds from</p> <p>13 the \$75 million loan were not going to provide</p> <p>14 enough cash for 38 Studios to complete development</p> <p>15 of Copernicus, is that your belief?</p> <p>16 A. Yes.</p> <p>17 Q. That's your belief based on what you've been told</p> <p>18 by your attorney?</p> <p>19 A. Yes, and documents that he showed me.</p> <p>20 Q. What documents did he show you?</p> <p>21 A. Financial projections.</p> <p>22 Q. So you've now reviewed the financial projections</p> <p>23 because your attorney showed them to you, right?</p> <p>24 A. When you say I've now reviewed the financial</p> <p>25 projections, he showed me financial projections</p>

<p style="text-align: right;">Page 261</p> <p>1 that showed that the net proceeds were not going 2 to be sufficient to get the game done. I had 3 relied upon staff as the full board relied on 4 staff when we were reviewing the loan that they 5 had a financial projection that the net proceeds 6 would be sufficient. I found that out now through 7 my attorney that that wasn't the case. 8 Q. Let me back up. My question was a simple one. 9 You've now seen the 38 Studios' financial 10 projections, right? 11 A. Yes. 12 Q. Okay. And you were shown them by your attorney? 13 A. Yes. 14 Q. You reviewed them with your attorney? 15 A. Yes. 16 Q. And you confirmed based on your review with your 17 attorney that the net proceeds from the 75 million 18 loan would not be enough to complete production of 19 Copernicus? 20 A. Yes. 21 Q. Okay. And when did you determine they would run 22 out of cash? 23 THE WITNESS: When did I know that? 24 Q. At what point, based on your review, at what point 25 did you determine that the company would run out</p>	<p style="text-align: right;">Page 263</p> <p>1 if you put in 47, they weren't going to make it. 2 Q. Did you have to make other adjustments to account 3 for capitalized interest or debt service reserve 4 funds or other costs did that affect other parts 5 of the financial projections? 6 A. Well, it couldn't, but I didn't go through 7 that analysis. I depend on staff to go through 8 the detail of the analysis -- of the cash flow. 9 Q. But you're saying that your attorney showed you 10 something and you accepted it, without analyzing 11 it? 12 (INTERRUPTION) 13 Q. Let me back up. With financial projections, if 14 the net proceeds were less because interest was 15 being prepaid, you'd have to make an adjustment to 16 the financial projections where they might have 17 called for a payment to be made that was now being 18 prepaid, right? 19 A. Yes. 20 Q. And that might balance the reduction in net 21 proceeds from the loan, right -- 22 A. Yes. 23 Q. -- over time, at least. So did you do that kind 24 of analysis when you reviewed the financial 25 projections?</p>
<p style="text-align: right;">Page 262</p> <p>1 of cash? 2 A. I didn't have that level of detail. 3 Q. Was it in 2012, 2011, 2013, what year? 4 A. I believe that they would run out of cash 5 according to their plan -- well, probably 2012. I 6 didn't have that level of detail, though. All you 7 got is an annual forecast. 8 Q. Okay. So you took the time to review those 9 financial projections when you met with your 10 attorney? 11 A. He showed me one sheet of paper, yes. 12 Q. You could make that determination by looking at 13 one sheet of paper? 14 A. No. I said he indicated to me that the net 15 proceeds of the loan, which turned out to be \$47 16 million, I believe, were not sufficient to 17 complete the project. 18 When we approved the project, we were 19 assured, my staff, that the net proceeds of the 20 loan, although they did not indicate an amount, 21 was sufficient to complete the project, and then 22 obviously we wanted a third-party monitoring 23 agreement. When he said to me that they were not 24 sufficient, he showed me a set of financials from 25 38 Studios, that if you showed the need for 75 and</p>	<p style="text-align: right;">Page 264</p> <p>1 A. No. I didn't do any analysis. 2 MR. WISTOW: Maybe because he's not 3 taking any action based on it, he's not voting to 4 give people money. He's not doing anything. 5 Q. What other documents did you review to prepare for 6 this deposition, apart from the financial 7 projections? 8 A. There was some documents that were shown to 9 me by Attorney Wistow, several e-mails. 10 Q. Tell us what they were? 11 MR. WISTOW: If you remember. 12 A. I don't even remember. I mean, I see this 13 e-mail -- I don't recall specifically what the 14 e-mails were, but there were several e-mails. I 15 believe he showed me, I believe he showed me a 16 copy of the PowerPoint presentation. 17 Q. By EDC? The EDC PowerPoint presentation, D-123? 18 A. Yeah. I believe he showed me a copy of an 19 inducement resolution, copies of a couple of 20 minutes. 21 Q. Did you look at the letter agreement or the term 22 sheet? 23 A. I believe Max showed me the term sheet. 24 Q. What e-mails did he show you? 25 A. I don't recall specific e-mails.</p>

1 Q. What did they talk about, what was the subject of
2 the e-mails?

3 A. I don't recall. Nothing -- I don't recall.

4 I mean, there was one e-mail -- he showed me an
5 e-mail that you have here from Steve Lane, I
6 recall that one. There were several others that I
7 don't recall what they said.

8 Q. When did EDC staff assure the board that the loan
9 would be -- would provide enough funding for 38
10 Studios to complete production of Copernicus?

11 A. Some time between June 9 and July 26.

12 Q. And was that done in writing?

13 A. I don't recall whether it was done in
14 writing, but it was certainly done verbally.

15 Q. Was it done at a board meeting?

16 A. I believe so.

17 Q. Was it done as part of a presentation or in
18 response to a question?

19 A. It was part of a presentation and -- as to
20 both.

21 Q. Say that again.

22 A. Both.

23 Q. So, there's a written presentation by --

24 A. No, I said there was a verbal presentation.

25 I don't know if anything was written, but again,

1 you keep asking me the same question and expecting
2 a different answer. Mike Saul indicated to the
3 board that EDC staff, meaning he, Keith Stokes,
4 whomever else, along with Stolzman, recommend
5 doing the transaction. There was sufficient
6 funding from the net proceeds of the loan to
7 complete the -- get the game to completion. We
8 understood that, we insisted upon a third-party
9 monitoring agreement, and yada, yada, yada.

10 MR. PETROS: It's 5:00, I'm going to
11 adjourn or suspend the deposition.

12 MR. WISTOW: He just came in. Can't
13 he take over and go to midnight?

14 MR. PETROS: I'm going to suspend.
15 I'll work with your attorney to try to schedule
16 another date to complete the deposition. Thank
17 you.

18 MR. WISTOW: Read and sign.
19 (DEPOSITION ADJOURNED AT 4:58 P.M.)
20
21
22
23
24
25

C-E-R-T-I-F-I-C-A-T-E

I, LINDA L. GUGLIELMO, do hereby certify that I
am expressly approved as a person qualified and
authorized to take depositions pursuant to Rules
of Civil Procedure of the Superior Court of Rhode
Island, especially, but without restriction
thereto, under Rule 28 of said Rules; that the
witness was first sworn by me; that the transcript
contains a true record of the proceedings.

Reading and signing of the transcript was
requested by counsel for the deponent.

IN WITNESS WHEREOF, I have hereunto set my hand
this 11th day of July 2014.

Linda L. Guglielmo
Notary Public

LINDA L. GUGLIELMO, NOTARY PUBLIC/RPR-RMR
(MY COMMISSION EXPIRES AUGUST 13, 2017)

IN RE: RIEDC VS. WELLS FARGO, ET AL.
DATE: JULY 7, 2014
WITNESS NAME: ALBERT J. VERRECCHIA

	according (5) 154:24;183:16; 196:22;200:15;262:5	128:23	Afonso (6) 203:9,10,11;227:9; 229:1;236:23	Al (7) 24:25;30:4;56:23; 104:14;109:23;112:19; 142:19
\$		address (2) 141:8;258:8		
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