

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

---

*Donald Carcieri*  
*Vol. III*  
*August 22, 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  
6 VS. C.A. NO. PB-12-5616  
7  
8 WELLS FARGO SECURITIES, LLC;  
BARCLAYS CAPITAL, INC.; FIRST  
9 SOUTHWEST COMPANY; STARR INDEMNITY  
and LIABILITY COMPANY;  
10 CURT SCHILLING; THOMAS ZACCAGNINO;  
RICHARD WESTER; JENNIFER MACLEAN;  
ROBERT I. STOLZMAN; ADLER POLLOCK &  
SHEEHAN, P.C.; MOSES AFONSO RYAN, LTD.;  
ANTONIO AFONSO, JR.; KEITH  
STOKES; and J. MICHAEL SAUL  
11  
12  
13 VOLUME III  
14  
15  
16  
17 VIDEOTAPED DEPOSITION OF DONALD CARCIERI, a  
Witness in the above entitled cause, taken on  
18 behalf of the Defendants, before Linda L.  
Guglielmo, RPR-RMR, a Notary Public in and for the  
19 State of Rhode Island, at the offices of Duffy &  
Sweeney, Ltd., 1800 Financial Plaza, Providence,  
Rhode Island, on August 22, 2014, at 9:00 A.M.  
20  
21  
22 ALSO PRESENT:  
William White, Videographer  
23  
24  
25

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1 (COMMENCED AT 9:00 A.M.)  
2 DONALD CARCIERI  
3 (PREVIOUSLY SWORN)  
4 THE VIDEOGRAPHER: We're on the  
5 record.  
6 EXAMINATION BY MR. HOLT (CONT.)  
7 Q. Governor, I just wanted to remind you, and I'm  
8 certain you know this, but you remain under oath  
9 at the present time?  
10 A. Yes.  
11 Q. Now, between the last time that we were together  
12 for your deposition a couple of weeks back and  
13 today, did you do anything further to prepare for  
14 today's segment of your deposition?  
15 A. I met with Max and Marc this morning prior to  
16 coming here a couple of hours.  
17 Q. You met for two hours this morning?  
18 A. Yes.  
19 Q. So, did either Mr. DeSisto or Mr. Wistow show you  
20 any documents this morning?  
21 A. Yes, you know, a bunch of them, to be honest  
22 with you, I don't remember them all right now, but  
23 yes.  
24 Q. What did they show you?  
25 A. I think the term sheet that -- and the Wells

1 Q. Now, and you recall that we spoke also at your  
2 last session about the June 9, 2010 meeting at  
3 which Mr. Saul made a presentation, do you  
4 remember talking about that?  
5 A. Yes.  
6 Q. Now, and I think we also were discussing the 38  
7 Studios financial projections, do you remember our  
8 talking about that the last time you were here?  
9 A. Yes.  
10 Q. And actually before I forget, do you recall when  
11 the first time it was that you became aware that  
12 38 Studios had prepared financial projections in  
13 connection with the contemplated bond transaction?  
14 A. No, I don't recall that time, Tom.  
15 Q. It would have been some time prior to July 26, I  
16 take it?  
17 A. I just don't recall. Yeah, there were  
18 projections that would have been certainly before  
19 the final approval, but I don't remember exactly  
20 when.  
21 Q. But you would certainly have known that prior to  
22 July 26, 2010 that 38 Studios had prepared  
23 projections, revenue projections, cash flow  
24 projections and the like, right?  
25 A. Yes.

1 Fargo presentation, a couple of slides from that,  
2 a couple of slides from the Strategy Analytics  
3 presentation, things that we had talked about  
4 previously. I don't remember others.  
5 Q. Did they show you any financial projections of 38  
6 Studios?  
7 A. No.  
8 Q. Now, when we were here in our last session, I  
9 think we were wrapping up with a discussion of the  
10 June 14, 2010 board meeting of the EDC; do you  
11 recall that?  
12 A. Yes.  
13 Q. And we were talking about various presentations  
14 that had been made at that particular board  
15 meeting, right?  
16 A. Yes.  
17 Q. And that was the second of four board meetings  
18 that were dedicated to 38 Studios; does that  
19 accord with your recollection?  
20 A. Yes.  
21 Q. And there was one subsequent one for July 15, and  
22 then there was the July 26th EDC board meeting  
23 where the vote was taken to proceed with the 38  
24 Studios deal, right?  
25 A. Yes.

1 Q. And they had provided those to the EDC staff,  
2 right?  
3 A. Yes.  
4 Q. And to the best of your knowledge, were other  
5 board members aware that 38 Studios had  
6 provided -- had prepared projections?  
7 A. I don't recall. I recall, you know,  
8 presentation being made, but I don't recall  
9 whether, you know, when the other board members  
10 were made aware other than the presentations at  
11 the board meetings.  
12 Q. Now, did you ever ask to see the 38 Studios  
13 projections?  
14 A. I don't recall that. I mean, I think that  
15 there was a series of presentations as we've  
16 discussed over the four different board meetings,  
17 two of which were at -- were confidential private  
18 non-public board meetings, and they were special  
19 meetings devoted specifically to the 38 Studios  
20 transaction, two hours of length, roughly, so  
21 there was a lot discussed and a lot of  
22 presentations; I just don't recall.  
23 Q. Well, my question is actually more simple than  
24 that, did you ever say to Mr. Stokes or anyone at  
25 the EDC, I would like to see the financial

Page 350	Page 352
<p>1 projections that you've been discussing at the 2 board meetings? 3 A. I don't recall that. I really don't. 4 Q. Now, while we were off the record today, you were 5 talking about the New England Merchants Bank, you 6 were working there in the '60s as a banker, right? 7 A. It was in the computer department. 8 Q. For a bank? 9 A. Yeah. 10 Q. You later went to work for Old Stone Bank right? 11 A. Right. 12 Q. You were on the credit committee of Old Stone 13 Bank, right? 14 A. Yes, and one of many. 15 Q. Why don't you tell me briefly and in a general way 16 what the function of the credit committee of Old 17 Stone Bank was when you were a member of that 18 credit committee? 19 A. Reviewed the large loan transactions. 20 Q. In other words, when you say review loan 21 transactions, what do you mean? 22 A. Well, when you go to a bank for a loan and 23 your law firm, or whatever, they would provide 24 financial information, that would be analyzed by 25 credit analysts in the credit department, the loan</p>	<p>1 Q. So, in a business plan, as you've just used that 2 term, would potentially include projections, 3 correct? 4 A. Yes. 5 Q. Why would it be important to look at a business 6 plan that contained projections in determining 7 whether or not to make a loan? 8 A. Ascertain the likelihood of them paying it 9 back, obviously. 10 Q. Now, is it your testimony here today that you 11 never once prior to July 26, 2010 looked at the 38 12 Studios financial projections that had been 13 mentioned at various points in your testimony? 14 A. No. What I'm -- I didn't say that. I said I 15 don't recall when the projections were reviewed, 16 whether it was the 26th or a prior meeting, or at 17 a prior time, but I do recall, you know, 18 projections being reviewed that anticipated the 19 cash flow from the bond underwriting, the loan 20 guarantee and other sources of revenue that would 21 be coming in and the likelihood. There was a best 22 case, I think at our last session, we reviewed a 23 best case, likely case, et cetera. 24 Q. Actually, my question is did you ever see a 25 complete set of financial projections prepared by</p>
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<p>1 officer would come in with a recommendation to 2 lend the whole law firm so much money based upon 3 the analysis being done, the credit committee had 4 levels, certain levels that had passed through the 5 credit committee, and they would approve those 6 transactions to be submitted to the board. 7 Q. Now, to the extent that -- is that sometimes 8 referred to as the underwriting process? 9 A. Well, underwriting usually refers to 10 securities from my background. This would just be 11 the process that a bank used in those days for 12 reviewing a loan and making a recommendation. 13 Q. And the objective of that, at least one objective 14 would be to determine whether or not the potential 15 borrower, customer, could actually pay the money 16 back, right? 17 A. All parts of that. Security, if there was 18 security required, what the security would be, the 19 value of the security, you know, the business plan 20 if they were -- in anticipation of growing the 21 business. If it were an accounts receivable loan 22 for example, you know, who is controlling the 23 receivables and what percentage of the 24 receivables. So it would depend on the nature of 25 the loan.</p>	<p>1 38 Studios in anticipation of the \$75 million loan 2 outside of those portions that would be 3 presented at the board meetings? 4 A. You know, I don't recall is all I can say, 5 Tom. There were lots of discussion, and there 6 were projections and cash flow projections that 7 were reviewed and, you know, Strategic Analytics, 8 as well, as I recall, we hired them and Wells 9 Fargo to advise the board and review not only the 10 industry but review the projections of the 11 company. 12 Q. My question is do you have any specific memory as 13 you sit here today of having asked Keith Stokes or 14 anyone at the EDC for a complete set of the 38 15 Studios projections, other than what was shown at 16 board meetings, other than what was shown at 17 outside board meetings? 18 A. I don't recall outside of the board meetings, 19 I don't recall. 20 Q. Don't you think it would have been important as a 21 former banker and chairman of the EDC board to 22 have had in your possession all of the cash flows, 23 all of the projections before submitting this 24 deal? 25 A. I think I said at our first session that from</p>

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<p>1 my perspective, you know, the governor serves as 2 the chairman ex-officio on the board, 1 of 12 at 3 the time. What information the board had, and I 4 had to make that decision with information that 5 was presented to the full board. 6 Q. But my question to you is -- 7 MR. WISTOW: Why don't you let him 8 finish, Mr. Holt. 9 MR. WISTOW: Mr. Holt -- 10 Q. Were you finished? 11 A. Go ahead. 12 Q. My question to you is, do you have any present 13 recollection of having asked anyone at EDC for the 14 financial projections, a complete set of financial 15 projections other than what was shown in 16 presentations at EDC board meetings? 17 A. No, I said no. 18 Q. No. Okay. Thank you. After, at the conclusion 19 of the June 14, 2010 board meeting, what did you 20 expect would be done next by the EDC staff? 21 A. Again, I don't recall the substance of each 22 of the separate meetings. It was a process that 23 we had undertaken. The public -- with the 14th, I 24 forgot which ones were confidential, they were 25 non-public sessions. Was that the non-public</p>	<p>1 an inducement resolution that was -- that came 2 before the board that basically gave EDC the 3 authority to pursue negotiations. As the process 4 proceeded, and there were different presentations, 5 my general recollection being most all those 6 positive about the transaction, understanding the 7 risks, but the mitigating factors in that, and 8 questions that the board had, that the process 9 would, you know, unfold, further negotiations in 10 terms of what the actual transaction would look 11 like. 12 Q. Further due diligence, for example? 13 A. Yes. There was a process. 14 Q. Who was responsible for doing the further due 15 diligence after June 14, 2010? 16 A. Well, when you say responsible, I mean, the 17 executive director, EDC staff, you know, was 18 responsible, in my judgment. They enlisted 19 outside expertise, as Wells Fargo, Strategy 20 Analytics and others, all right, to assist the 21 presentation, assist providing data to the board. 22 Q. Let me ask you this: You say that the EDC staff 23 enlisted Wells Fargo. Do you have any specific 24 evidence that the EDC had hired Wells Fargo to 25 work on behalf of the EDC prior to July 26, 2010,</p>
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<p>1 session? 2 Q. There was a non-public session as part of the June 3 14th -- 4 A. There were two, actually. 5 Q. There was the June 14, 2010, it was a non-public 6 portion then, there was a non-public portion July 7 15, there was a non-public portion July 26? 8 A. There were special meetings, all right, that 9 were devoted to 38 Studios, a special meeting as I 10 recall, of the board, devoted to 38 Studios and 11 that alone, no other business. And they were much 12 longer than the normal meetings. So, I think 13 that, answer to your question, I don't remember 14 exactly what transpired at which meeting. 15 Q. Well, you know that after -- at the June 14, 2010 16 meeting that presentations were made by Strategy 17 Analytics, Wells Fargo and others, correct? 18 A. If you say so. As I said, I don't remember 19 exactly when, which meeting, so I'll take what 20 you're saying as fact. 21 Q. After that meeting at which the presentations were 22 made, what did you expect the EDC staff to do next 23 in connection with the 38 Studios deal? 24 A. Well, there was a process. I think at one 25 point, I don't remember which meeting, there was</p>	<p>1 specific evidence of that? 2 A. No, I don't have any specific -- I don't 3 recall, okay, who did what to whom. All I recall 4 is that I had the strong impression that Wells 5 Fargo had been hired by EDC as an independent 6 advisor to review the industry and review 38 7 Studios, and the reasonableness of their 8 projections, and the same with Strategy Analytics. 9 I mean, why else would they be coming before the 10 board? I'm not interested in hearing from 11 somebody who had a vested interest. The idea was 12 to have independent advisors. And so my 13 presumption was that they had been hired by EDC. 14 Q. What's the specific factual basis to support that 15 presumption? 16 A. I just said I don't know, Tom. Okay. 17 Q. You have no factual basis that you can recollect 18 as you sit here today and testify that -- to 19 support your presumption that someone Wells Fargo 20 had been hired by the EDC prior to July 26? 21 A. I do not have a factual basis for that. I 22 don't have a piece of paper. I don't recall a 23 piece of paper. All I'm saying is as a board 24 member and EDC represented that they were going to 25 seek outside independent counsel, if you will, in</p>

1 the sense of analyzing this industry and analyzing  
2 38 Studios, the reasonableness of their business  
3 plan and their projections. That's why Wells  
4 Fargo was there. Why else would Wells Fargo be  
5 there making a lengthy presentation?  
6 Q. I want to know specifically what specific facts  
7 support your presumption that EDC had actually  
8 hired Wells Fargo as opposed to Wells Fargo  
9 working on behalf of 38 Studios?  
10 A. Well --  
11 Q. Specific facts.  
12 A. First of all, it would make no sense to have  
13 Wells Fargo working on behalf of 38 Studios making  
14 a presentation to the board when it's supposed to  
15 be an independent objective analysis. So that was  
16 the presumption that the board had asked EDC for  
17 outside independent appraisal, not just the EDC  
18 staff, because they didn't have expertise in this  
19 particular area. And so I presumed that those  
20 firms had been engaged to do that.  
21 Q. But I want to know specifically the basis for your  
22 presumption that Wells Fargo had been hired by EDC  
23 as an independent objective advisor, specific  
24 factual basis for that presumption?  
25 A. I just said I don't have one, I don't have a

1 Q. It says, "For approval for financing for 38  
2 Studios, LLC"?  
3 A. Yes.  
4 Q. And the next paragraph goes down, it says,  
5 "Mr. Stokes explained that the EDC has been  
6 deliberating this matter, performing its due  
7 diligence for the last several months." Do you  
8 see that?  
9 A. Yes.  
10 Q. Let's go down to the next paragraph, these notes  
11 say that, "After several months of engaged due  
12 diligence by staff as well as by the board, final  
13 terms and conditions are to be presented at this  
14 meeting. Mr. Stokes introduced Deputy Director J.  
15 Michael Saul to make a presentation to the board."  
16 Do you see that?  
17 A. Yes.  
18 Q. And he did make a presentation that day, did he  
19 not?  
20 A. Yes.  
21 Q. And then the next paragraph down begins with, "Mr.  
22 Saul stated that this process," he's referring to  
23 the due diligence process, right?  
24 A. Yes.  
25 Q. That's been going on for the last five months,

1 factual basis. I'm just giving you my impression  
2 and my sense, because it would make no sense to  
3 have Wells Fargo there presenting, you know, and  
4 selling on behalf of 38 Studios to the board. We  
5 don't need somebody selling us. We wanted  
6 independent analysis.  
7 Q. Well, did Wells Fargo, anyone at Wells Fargo ever  
8 say at that June 14 meeting, I'm Mark Lamarre from  
9 Wells Fargo, I have been hired by EDC to do an  
10 independent analysis?  
11 A. I don't recall that. I don't recall that.  
12 Q. Take a look at Exhibit 85. I put before you  
13 Exhibit 85, which is the meeting minutes for the  
14 meeting of the directors of the EDC public session  
15 dated July 26, 2010. Do you have that?  
16 A. Yes, I do.  
17 Q. Now, let's go to -- let's go to Page 6 of the  
18 meeting minutes of the July 26, 2010 meeting at  
19 which the EDC approved proceeding with the 38  
20 Studios transaction. Do you have that in front of  
21 you, Governor?  
22 A. Yes, I do.  
23 Q. Let's take a look at Item 6. Do you see that on  
24 Page 6?  
25 A. Yes.

1 right?  
2 A. Yes.  
3 Q. Okay. Then the next paragraph down, can you read  
4 that aloud, please?  
5 A. It says, "The EDC hired two reputable  
6 consultant companies, Strategy Analytics and  
7 Perimeter Partners, to evaluate the video game  
8 industry as well as 38 Studios and provide  
9 detailed information to the board."  
10 Q. Okay. Does that paragraph mention Wells Fargo  
11 anywhere?  
12 A. No.  
13 Q. In fact, it only represents -- it only indicates  
14 that two consultants had been hired by EDC,  
15 Strategy Analytics and Perimeter Partners, right?  
16 A. No, it doesn't say only two. It says these  
17 two had been hired.  
18 Q. But there's no reference to Wells Fargo?  
19 A. It does not. It didn't.  
20 Q. Now, let's -- now after the -- withdraw that  
21 question. Now as we were discussing earlier, the  
22 next board meeting was on July 15, 2010, right?  
23 A. I believe so -- you say the next, this is  
24 July 26.  
25 Q. I understand. I'm not on this -- let's just leave

1 Exhibit 85 for a moment; okay?  
2 A. Okay.  
3 Q. We're going to go on to some other exhibits, all  
4 right?  
5 A. Okay.  
6 Q. So, again, just to put us in a time line here, we  
7 had the June 14 board meeting, and then the next  
8 board meeting was going to be on July 15; does  
9 that accord with your recollection?  
10 A. As I said, I don't recollect these dates  
11 exactly, Tom. I'll take your word.  
12 Q. Now, do you recall at day one of your deposition  
13 that we talked about an e-mail with some  
14 attachments dated April 1, 2010 that were sent to  
15 Andy Hodgkin which included a draft term sheet or  
16 letter of intent; do you remember that?  
17 A. Yes.  
18 Q. Now, do you recall prior to the July 15, 2010  
19 board meeting receiving any other drafts of the  
20 so-called letter of intent which later became  
21 known as a term sheet?  
22 A. I just don't recall.  
23 Q. Governor, I'm going to ask you to take a look at  
24 Exhibit 122, please. Now, Exhibit 122 is an  
25 e-mail from Sharon Penta at the EDC which is

1 says, "Attached please find two documents for your  
2 review for the July 15 special board meeting." Do  
3 you see that?  
4 A. Yes.  
5 Q. It says it's a draft term sheet and then a  
6 memorandum from Mike Saul attached, right?  
7 A. Yes.  
8 Q. Let's go to the term sheet itself, which is on the  
9 second page of Exhibit 122, Bates stamp APS0  
10 00442; do you see that?  
11 A. Yes.  
12 Q. Now, let's go down to the third paragraph, do you  
13 see that?  
14 A. Yes.  
15 Q. It begins with, "We understand"?  
16 A. Yes.  
17 Q. Okay. And maybe you could read the first sentence  
18 of Paragraph 3 aloud for us, please?  
19 A. "We understand your capital needs to bring  
20 Project Copernicus to completion to be  
21 approximately \$75 million."  
22 Q. Now can you tell us in your own words what you  
23 understand that sentence to mean?  
24 A. Well, I think it explains it further in the  
25 paragraph.

1 addressed to the board members at the EDC, right?  
2 A. Yes.  
3 Q. And you're shown as having received a copy of  
4 this, third line down to the far right-hand  
5 margin, it says Governor Donald L. Carcieri, and  
6 then it has mgartelman@gov.state.ri.us, right?  
7 A. Yes.  
8 Q. And that's Marge Gartelman, right?  
9 A. Yes.  
10 Q. And I think you told us before that basically  
11 information that would sent electronically to you  
12 would essentially go through Marge Gartelman as  
13 your staff member, right?  
14 A. Correct.  
15 Q. Do you have any reason to believe that you did not  
16 receive this e-mail, Exhibit 122?  
17 A. No.  
18 Q. And by the way --  
19 A. I don't recall, but there is no reason to  
20 believe one way or the other.  
21 Q. Well, this was dated July 13, 2010, which was two  
22 days before the July 15 board meeting to discuss  
23 the 38 Studios deal, right?  
24 A. Uh-huh -- yes.  
25 Q. Now, it goes on to say, "Dear board members." It

1 Q. Well tell us in your own words what you understand  
2 that sentence to mean?  
3 A. That \$75 million of financing and the net  
4 proceeds of which, along with their other cash  
5 flow projections which they had of revenues would  
6 be sufficient to complete Copernicus.  
7 Q. Well, the first sentence on a stand-alone basis  
8 just says the capital needs to bring Copernicus to  
9 completion, you know, are approximately \$75  
10 million, right?  
11 A. Yes.  
12 Q. Okay. So, where do you understand that that \$75  
13 million came from?  
14 A. The following sentences made clear. We  
15 understand that the net proceeds -- we're willing  
16 to issue, the net proceeds will be sufficient to  
17 finance the relocation, complete Copernicus and  
18 capitalize the company's growth and expansion.  
19 Q. I think a couple of questions back you said you  
20 offered that in addition to other funds that might  
21 be available; do you remember telling me that?  
22 A. Well, they had a cash flow projection that I  
23 recall that assumed sales of the first game, which  
24 I don't remember, Mercury, whatever it was called,  
25 the first game, and there were cash flow

1 projections that assumed revenues in conjunction  
2 with whatever the net proceeds would be from this  
3 financing.  
4 Q. Of course we know those projections were simply  
5 someone best's guess as to what might happen in  
6 the future?  
7 A. All projections are. That's what they are.  
8 Q. So, in fact, if sales were less robust than  
9 projected on financial projections, that would  
10 adversely affect cash flow, right?  
11 A. Yes.  
12 Q. And if in fact you had less cash flow than  
13 projected, you'd have to get cash from some other  
14 source to continue in business, would you not?  
15 A. Yes. Sales could exceed projections, in  
16 which case you'd have plenty. They're  
17 projections, that's what they are.  
18 Q. Of course, sales did not exceed projections, did  
19 it?  
20 A. I don't recall. I wasn't in office when the  
21 first game came out. So from what I read in the  
22 press accounts, the sales of the first game were  
23 reasonably successful.  
24 Q. But that first sentence focuses on capital needs  
25 of \$75 million, does it not?

1 first game, is my recollection, the first game was  
2 anticipated to be completed, you know, a year or  
3 so and into the marketplace before Copernicus.  
4 So, there would be revenues coming from, and  
5 projections of revenues coming from the sale of  
6 the first game, that's what they had anticipated.  
7 But of course, the anticipated revenues for the  
8 first game, they were simply projections, right?  
9 A. Yes, all these things are projections.  
10 Q. And this company had not made any money as of July  
11 26, 2010, had it?  
12 A. Well, they were developing the game, correct.  
13 Q. Sure. And can we agree that the board was aware  
14 that this company was prerevenue as of July 26,  
15 2010?  
16 A. The board understood that they were  
17 developing the game -- two games, all right, the  
18 first one was well along, and that was likely to  
19 be released to the public. Now fairly soon, when  
20 I say fairly soon, within a year or so, I just  
21 don't remember the exact time frame, Copernicus,  
22 which is a much more complex game, multi-player,  
23 was going to take longer, and that's what the  
24 financing that we were providing would assist them  
25 with.

1 A. Yes.  
2 Q. Okay. Now, let's assume for the sake of  
3 discussion that in these projections that are  
4 inherently unknowable, that revenues were  
5 significantly less than projected, that would have  
6 an adverse impact on cash flow, would it not?  
7 A. Yes.  
8 Q. And in that case, 38 Studios would have to go and  
9 source funding someone else, either through  
10 additional debt or through an equity raise, right?  
11 A. Well, somehow, yeah. There would be  
12 additional -- if all that you're posulating  
13 occurred. All I'm saying is at the time we  
14 approved this, based on the projections,  
15 projections that were given it was our  
16 understanding that this financing, the net  
17 proceeds of which would be less than 75, how much,  
18 we at this point was not clear, but with all the  
19 other sources, would be sufficient to have them  
20 move, complete Copernicus and, in fact, I think  
21 capitalize the company's growth is what it says.  
22 Q. When you use the term other sources, what did you  
23 have in mind?  
24 A. Well, other revenues from -- from the first  
25 game, for example, that was going to be -- the

1 Q. And the board understood that the revenue  
2 projections that were presented to the board were  
3 just what that name implies, something you  
4 couldn't really guarantee and verify, right?  
5 MR. WISTOW: Asked and answered four  
6 times.  
7 A. Yeah. Yes.  
8 Q. Now, can we also agree that as of July 26, 2010,  
9 that the board was aware that if in fact the  
10 revenue projections were not met, that the company  
11 would have to seek funding from some other source,  
12 either through an additional equity raise or  
13 additional borrowed funds; is that fair to say?  
14 MR. WISTOW: Objection. Asked and  
15 answered.  
16 A. The board approved this after, you know,  
17 input from outside consultants, et cetera,  
18 reviewing the industry, reviewing the track  
19 record, understanding the risks that this is, you  
20 know, a business where they've got to produce a  
21 game, but that they had lots of factors in their  
22 favor and deemed to be a good management team,  
23 deemed to be one of the best creative teams,  
24 deemed to be a talented group of people, backed by  
25 Entertainment Arts (sic), the largest distributor



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<p>1 in the first game who seemed to be, as I recall, 2 enthused about a multi-player game. Based on all 3 of that, the package that the board approved, we 4 felt, would be sufficient to accomplish the goal 5 of getting Copernicus completed and the company 6 relocated to Rhode Island. 7 Q. Well, did the board ever consider the possibility 8 that the projections would not be met and that 38 9 Studios would not achieve projected revenue levels 10 that would require them to seek additional 11 infusion of capital, either equity capital or debt 12 capital? 13 A. Well, I think the board understood the risk. 14 There was a lengthy conversation about -- I think 15 the board, again, is my recollection was, how 16 would I say it, was reasonably comfortable that if 17 the game were produced, you know, we were willing 18 to take the risk that the game would be a hit, a 19 flop or somewhere in between. That's the nature 20 of these things. But that the creative team and 21 talent 38 Studios had put together understood the 22 market well enough that they were designing a game 23 that would have a reasonable prospect of success. 24 The board was concerned about whether their cash 25 flow projections anticipated were sufficient. Let</p>	<p>1 for myself, with a degree of comfort that they 2 knew how to develop a game, and that that game had 3 a reasonable prospect of succeeding. So I don't 4 think there's always a risk that it would be a 5 total flop, that wasn't the case, by the way, the 6 game that they developed, you know, as I said, I 7 don't know, I wasn't there, but the media accounts 8 that I've read indicated it was a reasonable 9 success and, in fact, the media reported they were 10 negotiating for a sequel. I don't know that. I'm 11 only reflecting what was in the press. 12 Q. But in any event, we know the board was aware that 13 the projected revenues could come up short, and if 14 those projected revenues came up short, in other 15 words, were less than projected, in order to stay 16 in business, the company would have to get 17 additional source of liquidity, either through 18 additional equity investment or loans, right? 19 Only stands to reason, can we agree on that? 20 A. If what you say transpired, they needed more 21 cash, because for whatever reason, then, yes, you 22 know, any company is faced with that -- every 23 company is faced with that as you're growing and 24 expanding. 25 Q. And that's something that the board was aware of</p>
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<p>1 me say it another way, that they would need more 2 money to complete Copernicus, okay, than was 3 indicated at the time. There was concern about 4 that, all right, and a discussion about the first 5 game had a completion bond, for example, as I 6 recall. And there were discussions about that, so 7 the board was concerned, not that the projections 8 were necessarily, you know, how would I say, 9 completely erroneous. You do projections. But 10 when you get into any project, there are unknowns, 11 and the cost could possibly be larger, it could 12 take longer to develop the game than they had 13 anticipated themselves. 14 Q. And the board was aware of all of those facts you 15 just recited for me, correct? 16 A. Yeah. Well, the board understood that and 17 was prepared to, as I said, make a decision based 18 upon all the mitigating factors that this was a 19 risk that we were prepared to take. 20 Q. So the board understood that in fact the games 21 could be, in your words, a flop, right? 22 A. Anything can be. Sure. There's no 23 guarantees in life. But as I said, on review of 24 the talent that had been assembled, the creative 25 talent, I think the board came away, I'll speak</p>	<p>1 on or before July 26, 2010, right? 2 A. Yes. There was discussion about that. 3 Q. There was a discussion in fact there could be a 4 shortfall between the \$75 million and the actual 5 net proceeds and whether the net proceeds would be 6 sufficient to actually achieve the development of 7 the RPG game Copernicus and the move; isn't that 8 true? 9 MR. WISTOW: Objection. 10 A. No. It was not that specific. I think that 11 the board was assured that the net proceeds along 12 with the other -- cash flow projections and other 13 sources of revenue would be sufficient. 14 Q. Well, when you say the board was comfortable with 15 the notion that the net proceeds along other cash 16 projections would be sufficient, if in fact the 17 RPG game was delayed, and they didn't have that 18 cash flow, and that was a possibility that was 19 certainly -- the board was aware of, in that case, 20 unavoidably, 38 Studios would have to seek 21 additional liquidity, right? 22 MR. WISTOW: Objection. 23 A. Well, you've postulated a lot of ifs. I 24 think, speaking for myself, there was a 25 reasonable -- you know, a reasonable degree of</p>

1 confidence that the RPG game, the first game which  
2 had been in development and was well along, most  
3 likely would come to market, you know, in a  
4 reasonable time period, not too far off from what  
5 they projected.  
6 Q. But of course, there was no guarantee as of July  
7 26?  
8 A. There is no guarantees in any of these  
9 things, we said that.  
10 Q. Now, the RPG was in fact delayed, was it not?  
11 A. I don't know. It was after I left office, so  
12 I don't know exactly what happened and what the  
13 time frame was.  
14 Q. So just I'm clear on your testimony, in terms of  
15 what the board understood, the board was  
16 comfortable, in your words, that the so-called net  
17 proceeds from the bond offering together with I  
18 think you said other monies available, and I think  
19 you specifically referred to revenues, would be  
20 sufficient to keep the company in business; is  
21 that -- did you tell me that?  
22 MR. WISTOW: Other monies set forth  
23 in financial projections, that's what he said.  
24 A. The net proceeds -- what it says in the term  
25 sheet, I think is what the board felt the net

1 how would that affect the company's liquidity  
2 position?  
3 A. Well, they'd have a problem.  
4 Q. And there was no guarantee as of July 26 that they  
5 would receive those, right?  
6 A. No, there were -- these were all projections.  
7 You do, in life, in business, you make the best  
8 estimates you can, you test those. Are they  
9 reasonable in the market, you know, Wells Fargo  
10 concluded that the sales that they were requiring  
11 looked reasonable, you know, in the marketplace,  
12 they weren't going to have to command an overly  
13 large share of the market. These are the kinds of  
14 things you assess, and in that overall assessment,  
15 you know, the board concluded that this was a risk  
16 worth taking, that we were aiming to develop a new  
17 industry in the state. These were high-paying  
18 jobs, all right, and jobs for which we were  
19 producing talent at our higher education  
20 institutions here that this, you know, had the  
21 potential to be a very good economic impetus to  
22 the state, not just this deal but, you know, as an  
23 industry.  
24 Q. Now, I think you just testified that Wells Fargo  
25 concluded that the projections were reasonable,

1 proceeds of the financing would be sufficient.  
2 Q. Along with other --  
3 A. You know, whatever all the other sources  
4 were, but this financing -- with this financing,  
5 they could accomplish the move, the relocation and  
6 the completion of Copernicus.  
7 Q. But --  
8 A. That is what we, you know, believed.  
9 Q. But that assumption or that belief was predicated  
10 on the fact that the company would be making  
11 revenues, would actually be achieving revenue  
12 projections that were presented to the board,  
13 right?  
14 A. That they were -- I don't remember all the  
15 detail, which the years, et cetera, things were  
16 going to occur, but the presumption was that the  
17 RPG game was going to be completed before  
18 Copernicus, and that it would generate revenues  
19 that would be available now to help the company  
20 with its financing.  
21 Q. Okay. And those revenues would be over and above  
22 the net proceeds, right?  
23 A. Yes.  
24 Q. And now if, in fact, there were no revenues  
25 achieved, let's say for the sale of the RPG game,

1 what's the specific basis for that statement?  
2 A. If I recall, you got to go back to the slide,  
3 you had slides that indicated that their sales  
4 didn't -- seemed in line with their peers and that  
5 the market share they had to command was not  
6 outlandish, my words, okay. There was, again, I'm  
7 using the word reasonable. There was nothing in  
8 that -- I remember some bullet statements and the  
9 slide presentation, you showed them, we went over  
10 them I think the last time I was here.  
11 Q. So, other than the slide presentations that I  
12 showed you in your previous deposition session,  
13 what other specific basis do you have for the  
14 statement you made that Wells Fargo concluded that  
15 the projections were reasonable, other than the  
16 slides?  
17 A. No. I'm basing it on the slides.  
18 Q. Now, you said that there was a comparison, or  
19 there was a comparison between the sales and  
20 industry peers. Were you referring to sales by 38  
21 Studios?  
22 A. Sales of 38 Studios games, yes.  
23 Q. But of course as of June 14, 2010 when Wells Fargo  
24 made that projection, the board was well aware  
25 that there had been no sales whatsoever?

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1 A. We're talking about the projections that the  
2 company made that you referred to earlier. So  
3 that Wells Fargo, my assumption, had looked at  
4 those projections and was testing, from their  
5 expertise, the reasonableness of achieving those  
6 projections in the marketplace, and that the  
7 bullets that I recall in the slides, you know,  
8 seemed to indicate that these projections were, my  
9 words, reasonable. They weren't outlandish, they  
10 weren't crazy in the context of the marketplace,  
11 that's all I'm saying.  
12 Q. Specifically, what is your assumption that Wells  
13 Fargo tested the reasonableness of 38 Studios'  
14 projections based upon, the slides?  
15 A. There was a lengthy analysis done by Wells  
16 Fargo, as I recall, and you showed me the  
17 presentation the last time, I don't remember it,  
18 but it talked about the industry, an overview of  
19 the industry, and then 38 Studios and 38 Studios'  
20 projections of game sales, you know, in the  
21 context of that industry. I don't know what Wells  
22 Fargo's methodology is, I assume they just said,  
23 well, these, you know -- are these crazy in what  
24 they're projecting, are they going to have to own  
25 the whole market in order to achieve these

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1 projections? Do they need 10 percent of the  
2 market, 5 percent of the market? I don't know  
3 what your protocol is at Wells Fargo. I assume  
4 they had a protocol when they said these seemed to  
5 be in line with peers is what I remember, and that  
6 the market share was not extraordinarily large.  
7 Q. So, we can agree then, basically, your statement  
8 that Wells Fargo concluded the projections were  
9 reasonable, that statement you made is based upon  
10 the slides that were presented at the June 14  
11 meeting, right?  
12 A. Yes.  
13 Q. And did you see any other reports or any other  
14 written documentation of any sort that you  
15 understood it to have been prepared by Wells Fargo  
16 in connection with the 38 Studios deal, other than  
17 the slide projection presented at the June 14  
18 meeting?  
19 A. No. I don't recall any other, you know.  
20 That's the one I recall.  
21 Q. Okay. So, other than the slide projections that  
22 we had discussed at some length in our last  
23 session, you have no specific factual basis to  
24 support the notion that Wells Fargo concluded that  
25 the projects were reasonable, correct?

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1 A. No. But the slides were prepared by Wells  
2 Fargo. So I'm, you know, presuming that reflected  
3 Wells Fargo's opinion.  
4 Q. I take it you stand by your earlier testimony that  
5 you gave me when questioned on the slides that  
6 were presented by Wells Fargo?  
7 MR. WISTOW: I object to that.  
8 MR. HOLT: You can answer.  
9 MR. WISTOW: Do you want to read him  
10 his testimony?  
11 A. I don't recall what I said. Tom, we've  
12 covered --  
13 Q. Did you ever meet face-to-face with anyone from  
14 Wells Fargo?  
15 THE WITNESS: Me, personally?  
16 MR. HOLT: Yes.  
17 A. Outside of the board meeting, no, that I  
18 recall.  
19 Q. Now let's return to Exhibit 122, please.  
20 THE WITNESS: This is the e-mail?  
21 Q. Yes. That you said you received. Do you see  
22 that?  
23 A. I presume I received.  
24 Q. Well, you've been presuming a lot. So you  
25 presumed you received it, right?

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1 A. I'm not presuming a lot.  
2 MR. WISTOW: I object.  
3 A. I don't remember specifically receiving it is  
4 what I'm saying, okay. I'm on this, it's e-mailed  
5 to my assistant, so I'm -- assuming that.  
6 Q. When you say it was e-mailed to your assistant,  
7 you knew it was e-mailed to your assistant because  
8 in fact it has mgartelman@gov.state.ri.us, right?  
9 A. For the record, I didn't have an e-mail in  
10 the governor. All the e-mail came through my  
11 assistant.  
12 MR. DOLAN: I think I said how  
13 liberating when you said that.  
14 A. It's wonderful.  
15 Q. We can agree you didn't have an e-mail account.  
16 To the extent someone wanted to get information  
17 sent to you electronically, it would have to go  
18 through Ms. Gartelman?  
19 A. Yes.  
20 Q. Or your chief of staff or deputy chief of staff?  
21 A. Yes.  
22 Q. Or somebody on your staff, right?  
23 A. Yes.  
24 Q. And that's how information would get transmitted  
25 to you electronically, right?

1 A. Yes.  
2 Q. And that gov.state.ri.us, that's the URL that's  
3 indicative of the governor's office, right?  
4 A. I have no idea. You're quickly getting over  
5 my head, so...  
6 Q. Now as of July 12, 2010, Andrew Hodgkin was your  
7 chief of staff, right?  
8 A. Yes.  
9 Q. And Jamia McDonald was your deputy chief of staff,  
10 right?  
11 A. Yes.  
12 Q. And you had hired Ms. McDonald to be your deputy  
13 chief of staff, had you not?  
14 A. Yes.  
15 Q. And you interviewed her for that position, right?  
16 A. Well, she had other positions that she held  
17 within the governor's office and she was, you  
18 know, well regarded.  
19 Q. And did you consider her to be qualified to serve  
20 as your deputy chief of staff?  
21 A. Yes.  
22 Q. I'm going to ask you to take a look at D-6,  
23 Exhibit D-6 that we talked about before. Do you  
24 have that in front of you?  
25 A. Yes, I do.

1 A. Yes.  
2 Q. And that's --  
3 A. -- gov.state.ri.us.  
4 Q. That's identical to McDonald's URL,  
5 gov.state.ri.us, right?  
6 A. yes.  
7 Q. This e-mail from Mr. Saul at the EDC is being  
8 shown as having been sent to Ms. McDonald on July  
9 12, 2010 with attachments, right?  
10 A. Yes.  
11 Q. And do you have any reason to believe that this  
12 was not sent to Ms. McDonald on July 12, 2010?  
13 A. No. I have no idea.  
14 Q. You have no reason to believe it was not sent?  
15 A. She's listed on here, so I'm presuming it  
16 was.  
17 Q. Along with the attachments?  
18 A. I don't know how -- again, I've got no basis  
19 for making that.  
20 Q. But you assume this e-mail went to Ms. McDonald?  
21 MR. WISTOW: Objection.  
22 MR. HOLT: Answer.  
23 A. She is listed on here. Whether all of this  
24 went to her, I have no way of knowing that.  
25 Q. Do you have any reason to believe it didn't go to

1 Q. I'm going to confine your attention to the first  
2 page of that, and that's an e-mail from Michael  
3 Saul dated Monday, July 12, 2010; do you see that?  
4 A. Yes.  
5 Q. And if we go down to the cc line; do you see that?  
6 A. Yes.  
7 Q. It begins with Antonio Afonso?  
8 A. Yes.  
9 Q. Can you read aloud what the next name is there?  
10 A. After Afonso, Jamia McDonald.  
11 Q. That's your deputy chief of staff, right?  
12 A. Yes.  
13 Q. That's addressed to jmcDonald@gov.state.ri.us, is  
14 it not?  
15 A. Yes.  
16 Q. That's the same URL that Ms. Gartelman has, right?  
17 A. I don't know. Is it? As I said, you're  
18 above my head here.  
19 Q. Well, do you want to compare them?  
20 A. Yeah, if -- if they are, I mean --  
21 Mr. HOLT: Sure.  
22 A. I mean, I don't know.  
23 Q. Let's go to Exhibit 40 -- I'm sorry, Exhibit 122  
24 please. Do we see Ms. Gartelman; mgartelman, do  
25 you see that?

1 her?  
2 A. No. But I have no way of knowing that.  
3 Q. As of July 12, she was your deputy chief of staff,  
4 right?  
5 A. Yes.  
6 Q. All right. Let's --  
7 MR. WISTOW: Are you through with  
8 this exhibit?  
9 MR. HOLT: Yes. We're going to move  
10 on to another exhibit.  
11 MR. WISTOW: Let the record reflect  
12 that at his last deposition the Governor testified  
13 that he could, quote, "Guarantee" --  
14 MR. HOLT: Don't testify, Max. That  
15 is way out of bonds. Wait, please -- no, no.  
16 MR. WISTOW: You said you were  
17 finished with the exhibit.  
18 MR. HOLT: No testimony. None, nada.  
19 MR. WISTOW: Just stop, okay. You  
20 indicated you didn't want me to say --  
21 MR. HOLT: Don't say something.  
22 MR. WISTOW: Wait. I'm going to say  
23 something.  
24 MR. HOLT: It's speaking -- I'm going  
25 to ask the witness to leave the room, please. I'm

1 going to ask the witness to leave the room,  
2 please.  
3 MR. WISTOW: Please leave the room  
4 for one moment.  
5 THE WITNESS: If I know where you're  
6 going, I agree with you, but I'm off the record.  
7 (WITNESS LEFT THE ROOM AT THIS POINT)  
8 MR. WISTOW: I just would like the  
9 record to reflect that at his last deposition the  
10 Governor said that he could, quote, "guarantee,"  
11 unquote, that that exhibit was not sent to him,  
12 period. That's all I wanted to say.  
13 MR. HOLT: I didn't suggest it was --  
14 it was sent to Jamia McDonald, she testified she  
15 had no reason to believe it wasn't sent to her,  
16 that was my question to him.  
17 MR. WISTOW: So, we're all through.  
18 MR. HOLT: Max, stay here. Well,  
19 let's get the witness back in. No coaching.  
20 You're leaving the room to go out and talk to the  
21 witness.  
22 MR. WISTOW: Wait. Just a second.  
23 If I want to go out of the room to talk to the  
24 witness, when there is no question pending, I'm  
25 going to do it. I have no desire to do that at

1 connection with 38 Studios without getting  
2 particularly something like the term sheet without  
3 getting board approval?  
4 MR. WISTOW: Objection.  
5 A. There was a process ongoing, and I'm  
6 presuming this was drafted by legal counsel, which  
7 would be the norm, and this is, as it says, a  
8 draft of a term sheet. And so, you know, I don't  
9 know what more I could add to that.  
10 Q. Now, do you have any reason to believe that anyone  
11 at the EDC or any of their advisors ever  
12 intentionally withheld any financial projections  
13 regarding 38 Studios from you or the board?  
14 A. No.  
15 Q. Now, let's go on --  
16 A. I would hope not.  
17 Q. Let's go on to the next section of that -- phrase  
18 of that sentence that begins with, "Based on our  
19 understanding to date of your financial  
20 projections," do you see that?  
21 A. Yes.  
22 Q. And they're referring to 38 Studios' financial  
23 projections, right?  
24 A. All right -- yes, the term sheet is addressed  
25 to 38 Studios, so --

1 this point.  
2 MR. HOLT: Okay. Thanks. Why don't  
3 you bring him back in.  
4 (WITNESS RETURNED TO THE ROOM AT THIS POINT)  
5 Q. Okay. Let's go back to Exhibit 122 which is --  
6 there you go, get you re-mic'd here?  
7 THE WITNESS: You got me?  
8 Q. Okay. Let's go back to Exhibit 122, please.  
9 Again, that's the term sheet that was sent to the  
10 board on July 13, 2010 by Ms. Penta at the EDC; do  
11 you have that in front of you?  
12 A. Yes, I do.  
13 Q. Now, the second sentence in the third paragraph  
14 says, "Based on our understanding to date of your  
15 financial projections," do you see that?  
16 A. Yes.  
17 Q. And in your own words, what is your understanding  
18 of the phrase, "Based on our understanding," mean?  
19 The "our," does that mean EDC, the board, what is  
20 it referring to?  
21 A. Well, this is Keith. I'm assuming EDC, but  
22 it would be a board, it went before the board,  
23 it's Keith and Mike Saul.  
24 Q. And -- but can we agree Keith and Mike Saul would  
25 not have undertaken any substantive actions in

1 Q. Now, it says, "Subject to the terms and conditions  
2 set forth herein and required legal procedures,"  
3 it says, "The RIEDC is willing to issue \$75  
4 million of revenue bonds." Do you see that?  
5 A. Yes.  
6 Q. And then it goes down the next sentence, which  
7 begins with the words, "Net proceeds"; do you see  
8 that?  
9 A. Yes.  
10 Q. And it says net proceeds of which would provide --  
11 MR. WISTOW: That's not the next  
12 sentence. It's part of the same sentence.  
13 MR. HOLT: Let's go back.  
14 Q. Do you see on Exhibit 122, the first page of the  
15 term sheet, the phrase, "Net proceeds"?  
16 A. Yes.  
17 Q. And what do you understand that term to mean, "net  
18 proceeds"?  
19 A. Just what it says, that there would be  
20 deductions. The 75 was the gross amount of the  
21 bonds being issued, but that there would be  
22 set-asides, holdbacks, there were reserve funds,  
23 there were a whole bunch of things, so that was to  
24 be determined.  
25 Q. So, the board knew at least as of July 13, 2010

1 that the 38 Studios would be receiving something  
2 less than \$75 million --  
3 A. Yes.  
4 Q. -- right.  
5 A. Yes.  
6 Q. And can we agree that if 38 Studios had based  
7 their projections that are referenced here on  
8 actually having a disbursement of \$75 million and  
9 not something less than that, that would adversely  
10 affect cash available for operations for 38  
11 Studios, would it not?  
12 MR. WISTOW: Objection.  
13 A. I don't know how to answer the question. You  
14 know, every borrower has a number in mind that  
15 they deem that they would like to receive, and  
16 they've got that factored into their cash flows.  
17 Whether they were anticipating 75 million or some  
18 amount less, I don't know. I believe they  
19 understood, but I could be wrong, that there were  
20 going to be reserves and set asides, and there  
21 were fees that came out of the net, and so that 75  
22 million was not the amount that they were going to  
23 actually receive. How much they anticipated, I  
24 don't know.  
25 Q. Okay. So you have no way of knowing as to what

1 Q. My question is a little more simple. Let's  
2 confine our attention to July 26, the day of the  
3 vote. To the best of your recollection, the board  
4 didn't know as of July 26 what the exact net  
5 proceeds were going to be, did they?  
6 A. I just don't recall. I don't recall, Tom.  
7 Q. Well, in fact, there were deductions that were yet  
8 to be determined as they progressed toward the  
9 bond issuance, right?  
10 MR. WISTOW: Objection.  
11 A. Yeah, there were going to be deductions and  
12 fees and all the set asides, I indicated.  
13 Q. So, to the extent that the EDC and 38 Studios as  
14 of July 26, 2010 did not know the exact amount of  
15 the net proceeds, no one could say with certainty  
16 that the net proceeds would provide the necessary  
17 financing to relocate 38 Studios to Rhode Island,  
18 complete production of Copernicus and capitalize  
19 the company's growth and expansion in Rhode Island  
20 because they simply didn't know that amount,  
21 right?  
22 MR. WISTOW: Objection.  
23 MR. DeSISTO: Objection.  
24 A. Well, they didn't. But I'm presuming they,  
25 you know, they had an idea of a ballpark range in

1 the projections assumed relative to the net amount  
2 they would receive?  
3 A. No. All we're saying here is that whatever  
4 the net was, that they understood there was a net  
5 amount, what they understood that to be, I don't  
6 know. That, along with the other revenues, et  
7 cetera, would be sufficient to accomplish the move  
8 and completion of Copernicus.  
9 Q. As of July 13, 2010, what was the dollar amount of  
10 the net proceeds that are referenced in this  
11 Exhibit 122?  
12 A. I don't recall. I don't know as that was  
13 discussed. I think that was still being  
14 developed.  
15 Q. So, do you know what the net proceeds were going  
16 to be as of the July 26 board meeting? Was the  
17 the board aware what the net proceeds were going  
18 to be with any degree of precision?  
19 A. I don't remember when the final amount that  
20 was resolved, it was 48, 49 million, whatever it  
21 was after these reserves were set up. I don't  
22 know whether it was the 26th or -- my recollection  
23 is the board understood that the amount was going  
24 to be, you know, where it ended up being, close to  
25 that.

1 these things. It's never exact until it's  
2 completed.  
3 Q. So, in fact, as of July 26, nobody really knew  
4 what the exact net proceeds were going to be,  
5 right?  
6 MR. WISTOW: Objection.  
7 A. No, I don't know that. That's what I'm  
8 saying, I don't recall. It could have been  
9 specified at that point. I just don't recall.  
10 Q. Where do you think it might have been specified?  
11 MR. WISTOW: Objection.  
12 A. It could have been in a discussion at the  
13 board meeting, I just don't recall.  
14 Q. Do you recall any specific discussions at the  
15 board meeting, let's say regarding Mr. Wadensten  
16 asking the question that what happens if in fact  
17 38 Studios doesn't meet their revenue projections,  
18 and where they're going to get the money, and you  
19 responded, well, they can always go out and get  
20 more equity or borrow more money; do you recall  
21 that discussion?  
22 MR. WISTOW: Objection.  
23 A. Yes. But that was in the context of a  
24 concern the board had of their ability to get  
25 the -- Copernicus completed as they had forecast

1 it at the cost and the time frame that they  
2 forecast. And all you can do is make your best  
3 judgments based on what are projections. What  
4 Karl had indicated, well, what if they're wrong,  
5 what if they overrun their cost? And I think,  
6 well, any business person that's in that position,  
7 my response was if that happens, then they're  
8 going to have to, you know, raise additional  
9 capital in some form. That happens to every  
10 business all the time.  
11 Q. Fair enough. And that's something that the board  
12 would have been aware of as of July 26, 2010?  
13 A. Yeah, I think the board felt at that point  
14 that based upon the, you know, the analysis of the  
15 independent review we had, that it looked like  
16 this could be and would be completed, all right.  
17 There was discussion, as I indicated, I don't  
18 remember all the details about -- because there  
19 was concern about, how do I say it -- their over  
20 running, taking longer to get the game completed,  
21 so that led into a discussion about, you know,  
22 performance bond or guarantee and failing that  
23 what other options there might be.  
24 Q. Well, so the board, as of July 26, 2010, was aware  
25 of the fact that if there were cost overruns or

1 possibility, you know, that there's something that  
2 crops up that you weren't aware of, didn't expect,  
3 and it overruns the cost.  
4 Q. Well, let's confine our discussion to the  
5 situation where in fact there were delays that  
6 were not anticipated and there were costs that  
7 could --  
8 A. But that wasn't known at the time.  
9 Q. Of course.  
10 A. At the time the board made the decision, it  
11 was a decision that these looked reasonable, it  
12 looked like, because they were pretty much on  
13 track to develop the first game and get it  
14 launched, that these people had the expertise to  
15 produce the game. And that looked reasonable.  
16 And that was the basis on which the board approved  
17 the financing. You know, what happens after that,  
18 you know, anybody -- nobody knows, you know, it's  
19 the uncertainties of the business world.  
20 Q. But the board was aware, at least as of July 26,  
21 that there was a possibility that the revenue  
22 projections would not come to fruition and that  
23 there would be a need for additional financing?  
24 MR. WISTOW: Asked and answered  
25 probably 25 times.

1 delays, that 38 Studios would have to go out and  
2 get additional funding, correct?  
3 A. Yeah. Well, I think you have to separate two  
4 different issues. One is the reasonableness of 38  
5 Studios' projection that they could complete the  
6 game with the financing that had been approved,  
7 okay, or was going to be approved by the board.  
8 With those own projections, you know, reasonable,  
9 and that's what led to the discussion about, you  
10 know, a performance bond or somebody that could --  
11 that ultimately I ended up I guess being IBM, but  
12 somebody that could make a judgment on that.  
13 That's separate, because one piece is, as you  
14 indicated earlier, are these projections, they're  
15 projections. They could be high, they could be  
16 low, they could be wrong. There's no guarantee on  
17 the projections, but are they reasonable. That's  
18 all you can ask, are they reasonable.  
19 Now, you can agree they're reasonable and go  
20 forward, and they can still be unknowns that occur  
21 in the future that you just didn't anticipate.  
22 That I think, you'll have to ask Karl, but I think  
23 that was a separate sort of, you know, we were  
24 first of all trying to deal with the first part,  
25 that was the part. You always have the

1 A. All these things, all these things were  
2 projections and the board understood that. I  
3 mean, these are executives of large companies in  
4 our state that run big businesses. They  
5 understand what projections are. They deal with  
6 them every day.  
7 Q. So, they would have understood then that there was  
8 the possibility that projections were not met and  
9 38 Studios would have to get additional funding  
10 beyond the net proceeds, right?  
11 MR. WISTOW: At some point I'm going  
12 to instruct him not to answer.  
13 MR. HOLT: You can answer. Read the  
14 question back.  
15 (QUESTION READ)  
16 A. Did they understand intuitively that that's  
17 possible, of course, these are intelligent  
18 business people running big businesses. They  
19 understood that. But they were making a decision  
20 based upon the facts before them presented and the  
21 reasonableness of those, you know, those facts.  
22 Q. But these sophisticated business people on the  
23 board would certainly have been aware of the fact  
24 that 38 Studios might have to get additional  
25 funding beyond the net proceeds?

1 MR. WISTOW: Objection. asked and  
2 asked.  
3 Q. If some projections weren't met?  
4 MR. WISTOW: Objection. Asked and  
5 answered.  
6 A. I think there was not -- that I recall a  
7 lengthy conversation about that, all right, but  
8 any business person knows that, you know, there  
9 are things that occur that may cause you to need  
10 additional capital. Yeah, that's a given.  
11 Q. Let's take a look at the July 26 meeting minutes  
12 again. We were talking about them before Exhibit  
13 85, please. Is now a good time to take a quick  
14 break, Linda?  
15 THE REPORTER: That would be good.  
16 Thank you.  
17 THE VIDEOGRAPHER: Going off the  
18 record, this is the end of Disk Number 1.  
19 (RECESS)  
20 THE VIDEOGRAPHER: Back on the  
21 record. This is the beginning of Disk Number 2  
22 Q. Governor, returning to Exhibit 122, and again, the  
23 term sheet which is attached to 122, do you have  
24 that in front of you?  
25 A. Yes, I do.

1 to me about certain risks that Mr. Saul had  
2 brought to the board's attention; do you remember  
3 that?  
4 A. Yeah. Well, he pointed out in his  
5 presentation that, you know, as most people did,  
6 that there are risks. This was an industry that,  
7 you know, there could be a risk that the game is a  
8 flop, maybe a risk that, you know, as we indicated  
9 earlier, it takes longer to develop than it did.  
10 You know, there were a host of risks here, but  
11 there were also a lot of mitigating factors that  
12 were positives on the side of 38 Studios that  
13 mitigated those risks.  
14 Q. And you recall that he indicated that the company  
15 was prerevenue, right?  
16 A. Yes.  
17 Q. And it was not branded?  
18 A. Yes. I don't know what branded -- I mean,  
19 they didn't have a product in the marketplace yet.  
20 Q. And he cited that as a possible risk, right?  
21 A. Yes.  
22 Q. And indicated that it was a dynamic industry,  
23 right?  
24 A. Yes.  
25 Q. And that it was a hit-driven business?

1 Q. And now after you received this, did you request  
2 any further documentation or any further  
3 information on any of the topics addressed in the  
4 term sheet?  
5 A. I don't recall. I don't recall asking for  
6 any further information.  
7 Q. But had you asked for additional information on  
8 any of the items addressed in the Exhibit 122,  
9 term sheet letter, had you asked anyone at EDC for  
10 additional information, they would have provided  
11 it to you, wouldn't they have?  
12 MR. DeSISTO: Objection.  
13 MR. WISTOW: Objection.  
14 A. Yeah. If I asked them a question, they would  
15 answer. They would get an answer for me.  
16 Q. So you have no reason to believe that if in fact  
17 you had requested more information regarding  
18 financial projections, that they would have  
19 refused to provide it?  
20 A. No.  
21 Q. Okay. Now, let's turn to -- you have 122 in front  
22 of you, Governor?  
23 A. Yes, I do.  
24 Q. Before I actually delve into that further, I think  
25 you recall the last time we were here you talked

1 A. Yes.  
2 Q. Now let's take a look at, going in on Exhibit 122,  
3 after the term sheet on Bates stamp page APS 448;  
4 do you have that in front of you?  
5 A. Yes.  
6 Q. Now, this is a memorandum that was sent to you as  
7 part of the package and to all the other board  
8 members on July 13, right?  
9 A. Yes. That's what it indicates.  
10 Q. Now, this says that, "This memorandum," quote,  
11 "Summarized below are some key risk mitigation  
12 business terms relating to the 38 Studios  
13 transaction term letter." Quote. Do you see  
14 that?  
15 A. Yes.  
16 Q. And again, it references net proceeds, but we've  
17 agreed that at this point in time no one knew for  
18 sure what the amount of the proceeds -- the amount  
19 of the net proceeds, right?  
20 A. Yes.  
21 Q. Let's go to Paragraph Number 2, it says, "To  
22 mitigate risk, bond proceeds will be delivered to  
23 the company according to a job creation  
24 performance schedule, with \$15 million being  
25 disbursed at closing, \$10 million being disbursed



1 when the company announces its relocation date,  
2 \$20 million being disbursed when the company  
3 relocates to RI and increments thereafter based on  
4 job growth." Right?  
5 A. Yes.  
6 Q. Now, when he's talking about mitigating risk here,  
7 how did a schedule of progress payments mitigate  
8 made the risk of making a loan to a prerevenue  
9 company?  
10 A. I think -- well, my interpretation, as I  
11 recall, this was the issue of disbursing the  
12 money, and then not relocating, in other words,  
13 the whole point of this, not the whole point, but  
14 a significant part was that they were going to  
15 relocate 38 Studios, headquarter in Providence and  
16 that on their own projections, the employment was  
17 going to grow from what it was then somewhere  
18 around 150, 180, I don't remember, but up to 350,  
19 400 jobs. So, I think this was indicative of  
20 making sure that, you know, they actually  
21 transition and relocate. That's the way I  
22 interpreted this to mean.  
23 Q. But this Item 2 on Exhibit 122, that contemplates  
24 essentially conditions on disbursement of funds  
25 from the bond proceeds, right?

1 things I said earlier were the positives of that.  
2 We wanted to make sure if we gave them all the  
3 money up front, what's the assurance that they're  
4 actually going to, you know, move the company. So  
5 the risk mitigation, I believe, or I interpreted  
6 it to mean the risk that, you know, they wouldn't  
7 fulfill that side of it and relocate the company.  
8 Q. So number 2 was mitigating a relocation risk as  
9 opposed to a performance risk?  
10 A. Yes. Because there's nothing that speaks to  
11 this disbursement about performance or cash flows  
12 or anything in the company. It only speaks to the  
13 relocation of the company. So, these cash flows  
14 were not tied to what you might think of as  
15 milestones of achievement in terms of the game  
16 itself being produced. These were milestones of  
17 relocating the company.  
18 Q. Do you recall seeing a complete set of cash flows  
19 as opposed to simply revenue projections at any  
20 time prior to July 26, 2010?  
21 A. I just don't -- I don't recall.  
22 Q. Okay. Well, is that something you think you might  
23 have wanted to see, a complete set of cash flows  
24 before you continued your support of 38 Studios?  
25 MR. WISTOW: Asked and answered four

1 A. Yes.  
2 Q. And that set of restrictions would restrict the  
3 amount of cash available to 38 Studios as a  
4 prerevenue company, right?  
5 A. Well, again, 38 Studios signed this.  
6 Q. You're saying the term sheet?  
7 A. They signed the term sheet, so they  
8 understood what was going on. The disbursement  
9 schedule, as I recall, had been reviewed with  
10 them. So there's nothing in here in terms of the  
11 disbursement schedule that should have been a  
12 surprise to them.  
13 Q. But whether it was a surprise or not, to call this  
14 mitigation or mitigating the risk, it really  
15 didn't mitigate the risk that 38 Studios would,  
16 you know, produce a flop, it simply -- you know,  
17 held back on cash disbursements over a period of  
18 time, right?  
19 A. To ensure that they relocated. The risk  
20 you're referring to is a risk that the company not  
21 complete the game. The reason, one of the reasons  
22 for doing this was to have the company relocate  
23 all of their headquarters (sic) and all their  
24 employees to Rhode Island and those people, the  
25 income levels they were high-paying jobs, all the

1 times.  
2 A. The board's role, you know, on any board, you  
3 serve on boards, particularly these are unpaid  
4 people that serve on the board, you are dependent  
5 upon the staff to prepare the information and  
6 provide those, do those analyses. In this case as  
7 we talked about, we even enlisted the -- EDC  
8 enlisted outside independent expertise. So, the  
9 board would not necessarily get enmeshed into the  
10 details of these things. You're relying on the  
11 staff. If there's a problem and a cash flow,  
12 you're relying on the staff to tell you, hey, wait  
13 a minute, this thing doesn't synch, and there's a  
14 big problem here.  
15 These are all people, including me, that have  
16 lots of other things that they are doing and they  
17 were serving in this as a public service.  
18 Q. How many other \$75 million loan transactions were  
19 you involved in as of July 2010 as Governor and  
20 chairman of the EDC?  
21 A. No, this was the first.  
22 Q. Now, did you take any independent steps at any  
23 time to validate any of the information that was  
24 being provided to you by the EDC staff regarding  
25 the 38 Studios bond transaction?

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1 MR. WISTOW: Objection. Asked and  
2 answered.  
3 A. We hired, EDC hired, they indicated, the two  
4 they indicated, my belief and representation that,  
5 I can't recall exactly, but from either Mike Saul  
6 or Keith Stokes, is that Wells Fargo had been  
7 hired to do the same. So the notion was that  
8 these were outside experts that were assisting the  
9 board's deliberations as well as the EDC due  
10 diligence.  
11 Q. But did you take any independent steps to validate  
12 any information that was provided to you by the  
13 EDC board or by the two companies that were hired  
14 by EDC as independent advisors, did you as  
15 chairman of the board take any independent steps  
16 to validate any of that information?  
17 MR. WISTOW: He said there were three  
18 companies, not two.  
19 MR. HOLT: He didn't say that.  
20 A. Yeah, I said there was Strategy Analytics,  
21 Perimeter, whatever it was called, and Wells  
22 Fargo.  
23 Q. But you told me earlier you have no specific  
24 evidence showing that Wells Fargo was actually  
25 hired; yes or no?

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1 A. I said I don't have detailed evidence of a  
2 document, but clearly the board was led to believe  
3 that -- and from either Mike Saul or Keith Stokes,  
4 I don't remember whom, but that Wells Fargo had  
5 also been engaged.  
6 Q. And that representation would have been made by,  
7 according to your testimony, Mike Saul or Keith  
8 Stokes?  
9 A. One of them, yes.  
10 Q. But not anybody at Wells Fargo?  
11 A. No.  
12 Q. Now, let's go back to the question that I think is  
13 a very narrow one. Can you tell the court and  
14 jury what steps you took to validate any  
15 information that was provided to you concerning  
16 the 38 Studios deal by any outside advisors or EDC  
17 staff?  
18 MR. WISTOW: Objection. Asked and  
19 answered.  
20 A. No. I said, you know, the board -- my goal  
21 from the beginning of this was not for me to do  
22 independent analysis, all right, that the board  
23 should have before it all the same information as  
24 I had available, and that should be presented by  
25 EDC staff along with the consultants and advisors

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1 that they had hired, and on that basis, the  
2 decision would be made. I did not, to my  
3 knowledge, I don't remember, undertake any  
4 independent second-guessing in terms of what the,  
5 quote, independent advisors were giving us;  
6 they're the industry experts.  
7 Q. So you relied upon information provided by EDC  
8 staff and outside advisors exclusively in  
9 supporting the 38 Studios bond transaction,  
10 correct?  
11 A. Yes.  
12 MR. HOLT: Let's take a look at Item  
13 3 on 122 Bates stamp APS 448, the Stokes  
14 memorandum. Do you have that? I think it's on  
15 the very last page, if you turn that over --  
16 reverse it. I think it's right there, Governor.  
17 THE WITNESS: Oh, okay. This, okay,  
18 sorry.  
19 Q. Let's go down to Item Number 3. It says, "To  
20 further mitigate performance risk, the bond  
21 documents will include various cash distribution  
22 limitations on the company, including limits on  
23 dividends, distributions, salaries and bonuses."  
24 Did I read that correctly?  
25 A. Yes.

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1 Q. How did that restriction on cash flow mitigate the  
2 risk that 38 Studios would not achieve a -- let me  
3 back up. Do you see Number 3, right?  
4 A. Yes.  
5 Q. Okay. Now how did Number 3 mitigate the risk that  
6 was articulated by Mr. Saul that 38 Studios was  
7 prevenue?  
8 MR. WISTOW: Objection.  
9 A. Well, again, my interpretation of this, and  
10 it's not uncommon, all right, and this would be  
11 fairly common in lending documents, that you want  
12 to make certain that the cash you were disbursing  
13 is going into the company to be used for the  
14 intended purpose. So, hence, limitations on  
15 dividends, distributions to the owners or salaries  
16 and bonuses is fairly consistent with that. It's  
17 only -- it is only an assurance that -- or trying  
18 to ensure that the distributions coming from the  
19 bond proceeds in this case are in fact going to  
20 employ the people to complete the game and the  
21 company's growth and not being siphoned off in any  
22 way, because if that money went to dividends,  
23 distributions or whatever, it wouldn't be  
24 available to the company.  
25 Q. But specifically, how did Item Number 3 mitigate

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<p>1 the risk that, for example, 38 Studios would not 2 achieve -- 3 A. If all the cash was going in the company and 4 staying in the company, you know, when you're 5 going to need cash, you want to make sure the cash 6 is staying in the company, you know, I think 7 that's pretty straightforward. 8 Q. But that would mean that that cash -- to the 9 extent that's a restriction, that cash would not 10 have been available to the company to develop, 11 let's say, Copernicus, right? 12 MR. WISTOW: Objection. What? What? 13 A. I don't follow you at all. 14 Q. Let's take a look at Number 4. 15 A. I don't follow you. That to me is assuring 16 that cash is not leaving the company in the form 17 of dividends and distributions, unusually large 18 salaries or bonuses. The cash is staying in the 19 company that should enhance the prospects of the 20 game being completed. 21 Q. But how did Number 3 mitigate the risk that 38 22 Studios was in a hit-driven business? 23 A. No. That didn't deal with that issue. 24 Q. Okay. And it didn't deal with the issue that 38 25 Studios was in a so-called dynamic industry, a</p>	<p>1 guarantee fee, 1.5 percent of balance due on 2 bonds, deferred fee to be paid based on earnings, 3 but which will, in any event, yield between 4 15,250,000 and 18,800,000." Do you see that? 5 A. Yes. 6 Q. Now, how would that risk mitigation item mitigate 7 the fact that 38 Studios was in a hit-driven 8 business? 9 A. No. This particular item would not. This 10 again, as I recall, in reading it was designed so 11 that there would be -- the company were as 12 successful as we had all hoped and continued to 13 grow and expand and create jobs here, that this 14 would allow EDC to receive some further 15 compensation for having assisted in the growth of 16 this. But it was out in the future, future 17 earnings of the company, so it did not address the 18 issue you're referring to. 19 Q. And same with Item 5, that didn't address the 20 prerevenue risk, the non-branded risk, non-dynamic 21 industry risk or hit-driven business risk that 22 Mr. Saul identified in his June 9 presentation, 23 does it? 24 A. No. This was just, again, I take this to be 25 a bit of a control on the cash flow. If the -- if</p>
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<p>1 risk that had previously been identified, did it? 2 MR. WISTOW: Objection. 3 A. No. No. I'll say it again, all I interpret 4 this is to make sure that all of the cash being 5 disbursed through the loan proceeds, any of the 6 revenues coming in from the sales of the RPG game, 7 that that cash would stay in the company to fund 8 the company and not be siphoned out, you know, 9 either to the shareholders or owners. That's what 10 that's designed to do. 11 Q. Okay. Fair enough. But so that would not have 12 addressed the issues that were raised regarding 13 the fact that the company wasn't branded, it was 14 in a dynamic industry, and it was a hit-driven 15 business, right; that's not what that was intended 16 to address, right? 17 A. No. The things that addressed that, as I 18 said, on the other hand, were the quality of the 19 creative team, the quality of the technical team, 20 the quality of the distribution outlet, et cetera, 21 and all of those were deemed in this case by 22 independent analysis to be strong. 23 Q. Let's take a look at Number 4; do you see that? 24 A. Yes. 25 Q. This says that, "The RIEDC will receive a base</p>	<p>1 the sales of these games in the first one in 2 particular were to exceed expectations, et cetera, 3 that that money would be set aside, you know, in a 4 reserve fund, as they call it, so that it's the 5 same sort of thing, the money would stay in the 6 company, either to pay back the bonds or fund the 7 growth. 8 Q. Now, let's turn our attention to the July 15, 2010 9 board meeting, did you attend that meeting? 10 A. Yes. 11 Q. And what was discussed at that meeting? 12 MR. WISTOW: Objection. 13 A. I don't recall. Again, I just don't recall, 14 Tom, what the subject of each meeting was. I'd 15 have to review the minutes and refresh my memory. 16 Q. Do you have any recollection of Mr. Saul's 17 memorandum being discussed at that meeting? 18 A. I don't. Sorry. 19 Q. Do you recall if any board members asked for any 20 further information as a follow-up to the term 21 sheet that was distributed on July 13? 22 A. No, I don't. There was a lot of meetings, a 23 lot of different topics. I just don't have a 24 recollection of specific ones. 25 Q. If I could direct your attention to Exhibit 67.</p>

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1 Handing you a copy of Exhibit 67 previously  
2 marked. Now, this document, Exhibit 67, is  
3 comprised of a number of pages that begin with  
4 Bates stamp APS0 00328; do you see that?  
5 A. Yes.  
6 Q. And this has attached to it a confidential memo  
7 regarding 38 Studios from Keith; do you see that?  
8 A. Yes.  
9 Q. And that was from Sharon Penta at the EDC  
10 addressed to board members, including yourself,  
11 via Marge Gartelman, your assistant, right?  
12 A. Yes.  
13 Q. And a copy was also sent to Clare Sedlock, who was  
14 also on your staff, right, third line down on the  
15 cc list after Costantino?  
16 A. I'm just curious why it would have been sent  
17 to Clare. She's a scheduler. Maybe to make  
18 sure --  
19 Q. Consistent with our earlier conversation, to the  
20 extent Ms. Gartelman would have gotten it, it was  
21 the intention that she would provide this document  
22 to you, Exhibit 67, right?  
23 A. Yes.  
24 Q. And do you have any reason to believe you didn't  
25 receive it at the time?

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1 A. No.  
2 Q. Now let's take a look at the confidential  
3 memorandum that is attached, next page, APS 329;  
4 do you see that?  
5 A. Yes.  
6 Q. That's a memo from Mr. Stokes, the executive  
7 director of the EDC to the board dated July 22,  
8 2010, right?  
9 A. Yes.  
10 Q. And can you tell me to what extent that you relied  
11 on this July 22nd, 2010 memorandum from Mr. Stokes  
12 in deciding to continue your support for the 38  
13 Studios transaction?  
14 MR. WISTOW: Would you allow him to  
15 read the memo?  
16 MR. HOLT: Why don't you read the  
17 memo.  
18 THE WITNESS: I've got to.  
19 Q. Do you want to take a moment and read Keith  
20 Stokes' memorandum dated July 22, 2010?  
21 A. If I could, please, thank you.  
22 MR. WISTOW: That's what he's doing,  
23 I think.  
24 (WITNESS READING DOCUMENT)  
25 A. I didn't take the time, but there is a lot of

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1 changes that are underlined to the, you know, the  
2 draft letter. So, I haven't reviewed all of  
3 those, Tom, I don't know if that's relevant or  
4 not.  
5 Q. Sure. Let's take it a step at a time here. I'd  
6 ask you to focus your attention on the two-page  
7 memorandum that was addressed to the board and  
8 which you received a copy of from Mr. Stokes July  
9 22, 2010; do you have that?  
10 A. Yes.  
11 Q. Now, just in reference to this two-page document,  
12 can you tell me how, if at all, you relied upon  
13 any information contained in Mr. Stokes's  
14 memorandum, which is APS 329330 in continuing your  
15 support for the 38 Studios transaction?  
16 A. Well, as I indicated earlier, what this is  
17 reflecting is a discussion the board had. It's  
18 about the previous meeting, presumably, about the  
19 ability or the likelihood or the reasonableness of  
20 the assumptions that 38 Studios had made in terms  
21 of their completing the Copernicus game, you know,  
22 with the financing that we were making available  
23 and the whole question of, as it had occurred in  
24 the first RPG game, whether there was any kind  
25 of -- what's the word I'm looking for, you know --

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1 bonding guarantor that might be available, IFG  
2 here, which was the film guarantor, that had been  
3 utilized in the production of Mercury.  
4 So the board, as I indicated, including me,  
5 were just concerned that they be able to complete  
6 this game. We were willing to take the risk that  
7 the game might be a big hit, a big flop or  
8 somewhere in between, but we're concerned that it  
9 get completed. And so this memo is a reflection  
10 of the EDC staff's discussion following that board  
11 meeting of looking to see what was available. And  
12 because the MMOG was a new game and more complex,  
13 et cetera, there were not a readily available  
14 market for somebody that would give a performance  
15 bond to ensure the completion of that. In the  
16 absence of that, there was discussion about what  
17 other options might be available, and I think  
18 that's what ensued where it ultimately ended up  
19 with, which it doesn't indicate in here, I'm  
20 trying to remember the sequence, but ended up with  
21 an engagement or a process of discussion with IBM  
22 to do an assessment and a monitoring agreement  
23 that would be in place. And because, as I recall,  
24 and I don't see it here, but this is probably a  
25 reflection, the board's authorization to proceed

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1 was contingent upon there being something in  
2 place, an assessment having been done and a  
3 monitoring agreement or a performance bond. So  
4 this is in response to that, Tom.  
5 Q. Well, let's take that a step at a time. Again,  
6 looking at the July 22, 2010 memo that you just  
7 described. You said that the board was willing to  
8 take the risk, but was concerned that the actual  
9 Copernicus game get completed; do you recall  
10 telling me?  
11 A. We were willing to take the risk, whether it  
12 would be a hit or not, the market risk, let me put  
13 it that way. The board understood that when you  
14 produce these kinds of games, it's like producing  
15 a movie, you know, it can be a big hit, it can be  
16 a flop, or most likely usually is somewhere in  
17 between. And that was a risk the board understood  
18 and was willing, based upon the quality, the  
19 creative staff, technical team, et cetera, were  
20 willing to take. The concern was that their own  
21 projections could be met and that the game could  
22 be produced within the confines of the financing  
23 that had been outlined, and that they agreed to.  
24 Q. When you say --  
25 MR. WISTOW: Are you finished,

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1 Governor?  
2 THE WITNESS: Yes.  
3 MR. WISTOW: Okay.  
4 Q. I'm sorry, Governor. If I interrupt, just hold  
5 your hand up and I'll stop. I don't mean to be  
6 rude.  
7 A. No, that's good.  
8 Q. Let's go back to their concern. You said that  
9 there was a concern on the part of the board that  
10 38 Studios' projections would not be met; do you  
11 recall just telling me that?  
12 A. Well, as we talked before, projections are  
13 projections, all right. They had given us a  
14 projection and the cash flow projection that with  
15 the -- end of the term sheet that had been agreed  
16 and the financing that we were prepared to give  
17 them, and the cash flow that they then projected  
18 from sales of the other games, et cetera, and the  
19 ramp up of costs that people in the staff, that  
20 they had indicated to the board that they could  
21 complete Copernicus within that financing and  
22 within that cash flow. And so I think the board,  
23 you know, some additional caution, was just  
24 looking for a way to mitigate that, if you will,  
25 by either, A, getting a performance bond as it

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1 existed on the first game, or failing that, some  
2 third-party independent analysis that would give  
3 comfort that the assessment would indicate that  
4 their projections were reasonable, again, and a  
5 mechanism for monitoring it after the fact. So  
6 that you could see -- because all these things,  
7 you have milestones, benchmarks, there is a  
8 process. And you set up, you know, any good  
9 company, you set up mechanisms that keep track of  
10 that. So that you get sort of an early warning  
11 system if your costs are running ahead or you're  
12 delaying -- the development is taking longer,  
13 you've got to take some action. It's either raise  
14 additional capital or reduce your costs. There's  
15 two sides to that equation. But you've got to  
16 manage that process.  
17 So, the board was concerned that there be a  
18 mechanism in place that would give more comfort  
19 that that process was being overseen.  
20 Q. You indicated that I think, quote, "They had given  
21 cash flow projections." You're referring to 38  
22 Studios?  
23 A. Yes.  
24 Q. And you said that those cash flow projected cash  
25 flow revenues, do you remember just saying that to

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1 me?  
2 A. Yes.  
3 Q. And also that they had shown some projections  
4 regarding the ramp up distribution of costs; do  
5 you remember telling me that?  
6 A. Yes.  
7 Q. Now, did you ever see any set of projections that  
8 showed costs, not simply projected revenues for,  
9 let's say a three- or four-year period, did you  
10 ever see a set of cash flows that showed not only  
11 revenue, but also anticipated cost disbursements?  
12 A. You know, again, I don't recall, Tom --  
13 you're talking about a detailed cash flow that  
14 showed the elements of cost, et cetera, and I  
15 don't recall, you know.  
16 Q. Did you ever ask for a detailed cash flow  
17 projection?  
18 A. Not to my knowledge.  
19 Q. And, of course, had you asked for that, you have  
20 no reason to believe that anyone would have  
21 intentionally withheld that from you at EDC?  
22 A. No.  
23 Q. Now, but specifically, maybe you could just tell  
24 me how did you actually rely upon this July 22,  
25 2010 Stokes memorandum in actually finally saying

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1 yes, I favor the 38 Studios loan? Specifically,  
2 what facts in here did you rely upon?  
3 A. Well, not just here, but the discussion that  
4 I recall at the board was -- can we get a  
5 performance bond to ensure that the money would be  
6 available. EDC or whomever went out and the  
7 answer came back that, no, that -- what's the  
8 company here -- IFG, International Film Guarantors  
9 that guaranteed the completion of the first one,  
10 which is an RPG, indicated that MMOGs were too  
11 new, and they didn't have the protocols in place  
12 and all the things, and they were not prepared to  
13 do that.  
14 They indicated, as I guess what Keith is  
15 reporting here, they might be able to help us in  
16 developing those protocols, doing an assessment to  
17 tell us that the assumptions that the company had  
18 made to the time it takes and the cost to complete  
19 this game looked reasonable, and then a mechanism  
20 and a process for keeping track -- monitoring on a  
21 monthly basis going forward. Because that's what  
22 a guarantor will do, they want to make sure, you  
23 know, if there's some kind of early warning system  
24 in place, if they're getting off track, they being  
25 the company is getting off track from their

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1 projections.  
2 So, the answer to your question is that the  
3 board and I were concerned about that. I think  
4 what came out of this was, you know, a discussion,  
5 I don't remember the details or any -- but IBM  
6 wound up as the source, other than IFG, that would  
7 do the assessment and would develop the monitoring  
8 protocol, and that was important. That was  
9 important. I'm not saying it was the whole basis  
10 for the decision but, you know, it was an  
11 important concern on my part and the board's.  
12 Q. So, you've told me everything you can now recall  
13 about the July 22, 2010 memorandum that you relied  
14 upon, right?  
15 A. Yes.  
16 Q. Now, let's go back to IFG. You mentioned -- who  
17 is IFG, International Film Guarantors, who did you  
18 understand IFG to be?  
19 A. I understood them to be the firm that were  
20 the performance guarantors, the bonding company,  
21 if you will, on the first game, Mercury, RPG game.  
22 Q. Okay. And was it your understanding that they  
23 were a specialty line carrier?  
24 A. I don't know enough about them to recall, but  
25 they were the people that had done this for the

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1 first game.  
2 Q. Okay. So, IFG -- can we agree IFG was a bonding  
3 company that had issued a bond, performance bond  
4 with respect to the RPG game, right?  
5 A. Yes.  
6 Q. And IFG refused, however, to issue a performance  
7 bond with respect to the Copernicus, the MMOG  
8 game, right?  
9 A. Yes. They said that's not a business line  
10 that they were in because this was -- the MMOG was  
11 an entirely new game and a new product, and there  
12 wasn't enough track record in their mind.  
13 Q. Now, I take it the board had directed Mr. Stokes  
14 and Mr. Saul to seek out a company that would  
15 provide a performance bond on the MMOG game,  
16 right?  
17 A. Yes.  
18 Q. Why did the board do that?  
19 A. As I said, the board's concern was that the  
20 company be able to produce the game and complete  
21 the game within the projections and cash flows and  
22 the financing we were providing. In other words,  
23 if it looked like this was going to be, you know,  
24 totally impossible to do, that is, complete the  
25 Copernicus game with the financing that we were

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1 offering and the other elements of the cash flow,  
2 then you know, that's something the board would  
3 want to know because, obviously, they would need  
4 to raise additional capital and, therefore, we  
5 would be having a discussion and say, wait a  
6 minute, you're going to need another 50 million,  
7 25 million, whatever it is, so where is that going  
8 to come from? So it would have been, you know, a  
9 more extended process.  
10 Q. And that was a concern that the board had as of  
11 July 22nd, 2010, which had caused --  
12 A. I think it came up at the prior meeting which  
13 was a response to that.  
14 Q. So the board was concerned that in fact the game  
15 might not be completed and the cash flows achieved  
16 within the parameters of the projections, and as a  
17 result, wanted to get a performance bond, right?  
18 A. Well, the board was -- how would I say it --  
19 they were all sort of seeking -- it's like  
20 anything else, if you would be mitigating another  
21 risk, if you could have a performance bond,  
22 something that made sure that the money was going  
23 to be available to complete the game, and so that  
24 would enhance the transaction, clearly.  
25 Q. So, the board then was attempting to mitigate

1 against a risk that they were concerned about,  
2 namely, that the company would need more money to  
3 complete the game beyond the -- beyond the net  
4 proceeds?  
5 A. They may need more money. In other words,  
6 again, you said earlier, I said these are  
7 projections, these are people's good faith best  
8 estimates of what's going to happen in the future  
9 going forward. So, if there were a way, the board  
10 felt if there were a way to, you know, lessen that  
11 uncertainty with a performance guarantee by a  
12 third party, then that would be a positive.  
13 Q. So the board was aware that there was this  
14 possibility, at least as of July 15, that 38  
15 Studios would need funding beyond the net  
16 proceeds, and that's one of the reasons why they  
17 sought out a performance bond; is that fair to  
18 say?  
19 A. I wouldn't say a certain date. I would say  
20 the board generally recognized that in a  
21 transaction like this the risk is the company  
22 can't complete the project, if you will, with the  
23 financing, and although we had, you know, cash  
24 flow projections from the company that had been,  
25 you know, verified and tested, if you will, by

1 we buy, you know, casualty insurance for, you know  
2 it's not that you expect it's going to happen, but  
3 it's possible.  
4 Q. Okay. So the board was aware as of July 26, 2010  
5 that there was a possibility, at least, that  
6 that --  
7 A. The board was aware from the beginning that  
8 there was a possibility --  
9 Q. That they would need funding beyond the net  
10 proceeds?  
11 A. All of these things are projections. Okay.  
12 There was a belief that as presented, as reviewed  
13 by independent outside experts, that this project  
14 would work, and that this company would be  
15 successful. If we didn't believe that, we  
16 wouldn't have voted for it. All right.  
17 But like anything else, if there's some  
18 insurance you can buy in case something goes  
19 wrong, that's all I'm trying to make the  
20 distinction. The board didn't just automatically  
21 assume they're going to need more money. If we  
22 assumed that, we would have been sitting down  
23 having a discussion about what, how much more are  
24 you going to need and how are you going to get it.  
25 Q. But the board was aware that that possibility

1 some, quote, industry experts, you know, if it  
2 were possible to have a performance bond, that  
3 would be a good thing and would help in the  
4 board's mind to make -- in the eventuality  
5 something went wrong would, you know, would  
6 mitigate that.  
7 Q. And the board was aware of the risk that, I think  
8 in your words, that 38 Studios would need funding  
9 to complete the project beyond the loan proceeds  
10 and that would have been something they would have  
11 been aware of in July --  
12 A. No, I wouldn't say that. The board was not  
13 aware, the board was concerned that the  
14 possibility could exist and, therefore, is there  
15 some way we could protect against that  
16 possibility, hence, the performance -- but the  
17 board didn't -- we were assuming, based upon all  
18 of the input that we got, that this transaction  
19 would work as it had been designed, and that they  
20 would complete Copernicus, they would complete  
21 Mercury, it would be in the market, it would  
22 generate revenues.  
23 We accepted that, but there's always a  
24 possibility, you know, something can go wrong and  
25 so, you know, it's what we buy life insurance for,

1 existed, they would need more than the net  
2 proceeds, right?  
3 MR. WISTOW: Asked and answered.  
4 A. Yes.  
5 Q. And that was one of the motivating factors going  
6 out and seeking the performance bond, right?  
7 A. It was to ensure against the risk that that  
8 would occur.  
9 Q. Now, IFG didn't issue a performance bond, right;  
10 you told me that a few questions back?  
11 MR. WISTOW: For Copernicus.  
12 MR. HOLT: For Copernicus, right.  
13 A. Correct.  
14 Q. Did that raise any red flags for the board when  
15 that happened?  
16 A. Well, I think it was explained in the context  
17 of this is a different game, it's a more complex  
18 game and, therefore, I don't think it was  
19 necessarily a surprise, there wasn't a lot of  
20 expertise or, you know, a lot of experience, let  
21 me put it that way, in watching the development of  
22 MMOGs, and hence a history that anybody that's  
23 going to ensure it could rely on it.  
24 So, I don't think the board was shocked. I  
25 wasn't, that they were not prepared to issue a

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<p>1 performance bond for Copernicus. 2 Q. Are you familiar with the term uninsurable risk? 3 A. Yes. 4 Q. What do you understand that term to mean? 5 A. The risk is too great for anyone to insure. 6 Q. And that's what happened in this case with IFG, 7 right? 8 A. Well, you will have to ask them. What I said 9 is they were apparently unwilling to issue a 10 performance bond on this. They just didn't feel 11 comfortable doing it. 12 Q. Hence, they were not willing to insure against a 13 risk of non-completion of Copernicus, according to 14 the projected schedules, right? 15 A. That's my understanding. 16 Q. Now, Mr. Subramaniam was on the board, right? 17 A. Yes. 18 Q. And you appointed Mr. Subramaniam? 19 A. Yes. 20 Q. And he was the CEO of FM Global, right? 21 A. That's correct. 22 Q. And what's the business of FM Global? 23 A. Casualty insurance. 24 Q. Is it sometimes his work called specialty line 25 carrier?</p>	<p>1 lower right-hand corner? 2 A. Yes. 3 Q. And that, just so you're aware, the convention 4 being used here in terms of labeling documents to 5 identify the source of the documents typically is 6 the letters in front of the number, and this 7 stands for Office of the Governor, okay. Do you 8 understand that? 9 A. Uh-huh -- yes. I'm sorry. 10 Q. Now, this document is an e-mail from -- 11 (OFF THE RECORD) 12 MR. WISTOW: Just so it's not a 13 mystery, what happened is during the discovery 14 requests made to the Office of the Governor for 15 certain documents, and this document was produced 16 by the Office of the Governor. That's what that 17 means. 18 Q. Now, Governor, this is, on its face an e-mail from 19 Clare Sedlock; she was your scheduler, right? 20 A. Yes. 21 Q. And it's dated Friday, July 23, 2010, right? 22 A. Yes. 23 Q. And that would have been two days before or three 24 days before the July 26 meeting that was held to 25 have the vote approving the 38 Studios loan,</p>
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<p>1 A. I don't know enough about their business. 2 They started out insuring against fires and 3 casualties, that's what they did for businesses. 4 Q. Now, as among all of the EDC board members that 5 you appointed, who do you believe, at least as of 6 July 26, 2010, had the most expertise in the area 7 of insurance matters? 8 A. Well, you know, Shivan was very experienced 9 in casualty insurance of, you know, companies. 10 That's what their business is, so he understands 11 insurance risk. 12 (MR. CONNOLLY ENTERED AT THIS POINT) 13 Q. That's Shivan Subramaniam we're talking about? 14 A. Yes. 15 Q. Now let's take a look at -- I'll withdraw that 16 question. 17 MR. WISTOW: Let's take a five-minute 18 break. 19 MR. HOLT: Okay. 20 (BRIEF RECESS) 21 THE VIDEOGRAPHER: Back on the 22 record. 23 Q. Governor, I'm going to have you take a look at 24 Exhibit 515, please. Exhibit 515, which has the 25 Bates stamp OOG 03987; do you see that in the</p>	<p>1 right? 2 A. Yes. 3 Q. This is from Ms. Sedlock addressed to Andrew 4 Hodgkin, your chief of staff, right? 5 A. Yes. 6 Q. Amy Kempe, who was your communications director, 7 right? 8 A. Yes. 9 Q. And Jamia McDonald, right? 10 A. Yes. 11 Q. Also copied are two other staff members, Chris 12 DiFilippo in your office, right? 13 A. Yes. 14 Q. And Donna Dell'Aquila, right? 15 A. Yes. 16 Q. This appears to have attached to it the same 17 information, it was attached to Exhibit 122 that 18 was the e-mail from Sharon Penta at EDC attaching 19 the Stokes memorandum of July 22, the term sheet 20 as well as some other documents, right? 21 A. Well, 122 that I have, Tom, only has the 22 draft term sheet and then the back sheet -- 23 MR. HOLT: Memorandum, okay. 24 A. But it does not have the confidential 25 memorandum here that you're referring to. That's</p>



1 67.  
2 Q. I'm sorry, forgive me. I misspoke here. Exhibit  
3 67. --  
4 A. Okay.  
5 Q. -- Exhibit 67 you will recall was the Sharon Penta  
6 e-mail of July 22, we've been discussing a few  
7 questions back, right?  
8 A. Yes.  
9 Q. And the -- point of clarification, Exhibit 67 was  
10 an e-mail sent by Sharon Penta on Thursday, July  
11 22, 2010 at 10:59 P.M.; do you see that?  
12 A. Yes.  
13 Q. So that would have been after business hours,  
14 right?  
15 A. Yes.  
16 Q. Now let's take a look at Exhibit 515; do you see  
17 that?  
18 A. Yes.  
19 Q. And that is from Ms. Sedlock to Mr. Hodgkin, Ms.  
20 Kempe and Ms. McDonald, and that is the following  
21 morning at 10:52, after Exhibit 67 was e-mailed to  
22 the board, right?  
23 A. I'm trying to follow you here, Tom. The  
24 one -- I'm sorry, I'm on the wrong page. Yes, the  
25 next morning.

1 A. Yes.  
2 Q. Let's go to Exhibit D-6, if we can return to that  
3 for a moment.  
4 A. D-6, okay.  
5 Q. And this is an e-mail that was sent a little less  
6 than two weeks before the e-mail from Ms. Sedlock  
7 to Ms. McDonald, right?  
8 A. Yeah, this is an e-mail from Mike Saul.  
9 Q. Correct?  
10 A. To Maureen Gurghigian and Rosemary Gallogly.  
11 Q. A copy of which went to Jamia McDonald?  
12 A. Yes. I assume -- this is the one we went  
13 through before that was in response to Rosemary's  
14 questions, okay.  
15 Q. Yes. Now Mr. Saul would have been sending this to  
16 Ms. McDonald as your deputy chief of staff, right?  
17 A. Yes.  
18 Q. Now let's go back to --  
19 A. But this is something I did not see, I don't  
20 recall seeing this.  
21 MR. WISTOW: That's Exhibit D-6?  
22 THE WITNESS: Yes.  
23 Q. Do you have any reason to believe that -- let me  
24 go back. We're on Exhibit 515 -- I'll withdraw  
25 that question. We're going to move on, here, I

1 Q. Okay. Now, this contains, the memorandum that  
2 Mr. Stokes, and I'm saying this, Exhibit 515, had  
3 the Stokes memorandum as well as the draft term  
4 sheet?  
5 THE WITNESS: This is all the same  
6 information?  
7 MR. HOLT: Yes.  
8 Q. So this would have been sent by Ms. Sedlock, your  
9 scheduler, and it would have been sent to  
10 Mr. Hodgkin, Ms. Kempe and McDonald on that  
11 Friday, again, the following morning after the  
12 previous evening's e-mail from EDC, right?  
13 A. I'm trying to figure out how she got it.  
14 Q. Well --  
15 A. Oh, she's cc'd on the first one --  
16 Q. She was cc'd on the first one --  
17 A. -- because they had a date she had to crank  
18 into the schedule.  
19 Q. And I take it Ms. Sedlock would have been sending  
20 this e-mail with the attachments to Mr. Hodgkin in  
21 his capacity as your chief of staff, right?  
22 A. Yes.  
23 Q. And she would have been sending it to Ms. McDonald  
24 in her capacity as your deputy chief of staff,  
25 right?

1 think. I'm going to direct your attention to  
2 Exhibit 85, which it should be two more down,  
3 Governor, the very bottom one, I believe.  
4 A. The minutes of July 26, yes.  
5 Q. These are the meeting minutes of both the public  
6 and private session of the July 26 board meeting  
7 where the board voted to proceed with the 38  
8 Studios loan, right?  
9 A. Yes, I see the public --  
10 Q. Now, either the public session or the private  
11 session of the July 26th, 2010 board meeting, did  
12 the board see any additional reports or  
13 presentations other than those that were presented  
14 at the July -- the June 14 -- actually, let me  
15 withdraw that question. I'm going to ask you a  
16 new question. Let's go -- again, we're on Exhibit  
17 85, let's go to the public session. Do you see  
18 that -- and those public session meeting minutes  
19 are on the first page here?  
20 A. Yes.  
21 Q. And it goes on to, then, to the second page of  
22 Exhibit 85?  
23 A. Yes.  
24 Q. Now, do the meeting minutes of the public session  
25 indicate whether or not any additional

1 presentations or reports were presented to the EDC  
2 board concerning the 38 Studios loan transaction?  
3 You can take a minute to look through that.  
4 A. I'm just looking, trying to see because there  
5 was a number of matters taken up beforehand.  
6 Q. I'm confining your attention now to the public  
7 session.  
8 A. Yup -- yes.  
9 Q. I guess this is all public session, I'm sorry.  
10 A. I was just going to say I don't think I  
11 recall --  
12 Q. Forgive me, I'm confusing this unnecessarily.  
13 Confining your attention to Exhibit 85, they are  
14 the meeting minutes of the public session of the  
15 July 26, 2010 board meeting, right?  
16 A. Yes.  
17 Q. Now, is there any reference in Exhibit 85, the  
18 July 26, 2010 meeting minutes, regarding any  
19 presentations or reports that were presented to  
20 the board at that time on July 26 concerning the  
21 38 Studios loan transaction?  
22 A. Well, I'd have to read them, Tom, here, I  
23 just don't know.  
24 MR. HOLT: Why don't you take a  
25 minute and read it.

1 MR. HOLT: It is.  
2 THE WITNESS: A whole bunch of --  
3 Mr. HOLT: It is -- let's go towards  
4 the end.  
5 THE WITNESS: I see some RIEDC so  
6 maybe I'm honing in on it here, Max.  
7 MR. WISTOW: Why don't I just hand  
8 you --  
9 THE WITNESS: Ta-da. I got it.  
10 Q. Other than Exhibit D, which on its face purports  
11 to be and, again, I'm referring to Exhibit D as a  
12 sub exhibit of Exhibit 887?  
13 MR. WISTOW: 85.  
14 Q. 85. This is a slide dec. of a presentation that  
15 was made at that board meeting, right?  
16 A. I assume. As I said earlier, I just don't  
17 recollect what was given at what board meeting,  
18 but if this is attached as an exhibit, I'm  
19 assuming that it was.  
20 Q. Okay. Now, other than this presentation, sub  
21 Exhibit D to Exhibit 85, that was the only  
22 presentation that was made at the July 26th, 2010  
23 public meeting, correct?  
24 A. I just -- I don't recall, but if these are  
25 the minutes and this is what it's reflecting, I

1 A. I see Mike Saul referring to Exhibit D but --  
2 (PAUSE)  
3 (WITNESS READING DOCUMENT)  
4 MR. WISTOW: Mr. Holt, at the risk of  
5 you're saying I'm coaching the reason, any reason  
6 we can't point him to Exhibit D?  
7 MR. HOLT: Let me try it this way.  
8 Q. With respect to --  
9 A. The two I see underlined are Exhibit D and  
10 Exhibit E but, you know, whether those were new to  
11 this board meeting or not, I don't -- I can  
12 comment on.  
13 Q. If I were to suggest to you that Exhibit D refers  
14 to a version of the Wells Fargo slide dec. that  
15 was -- I'm sorry, Exhibit D refers to the RIEDC  
16 board meeting July 26, 2010 presentation, that's  
17 attached to Exhibit 85; do you see that?  
18 A. No, I'm lost there.  
19 Q. Okay. Let's go in, again, confining our attention  
20 to exhibit --  
21 MR. WISTOW: Can I show him what  
22 you're talking about. Exhibit D on its face says  
23 July 26, 2010.  
24 THE WITNESS: Where is it, it's deep  
25 in here?

1 accept that.  
2 Q. Let's go back into the minutes, go to the first  
3 page of Exhibit 85.  
4 A. Yes.  
5 Q. If we take a look at the page numbered Page 7 of  
6 Exhibit 85.  
7 A. Yes.  
8 Q. Do you see on the fourth paragraph down?  
9 THE WITNESS: On the risk analysis  
10 side?  
11 MR. HOLT: Yes.  
12 A. Yes.  
13 Q. And there Mr. Saul is pointing out again risks  
14 associated with the 38 Studios loan, namely, that  
15 it's an investment in the prerevenue company, a  
16 binary revenue stream, the fact the company is  
17 focused on a hit-driven product and concentration  
18 of 60 percent of the state's Job Creation Program  
19 to one company, right?  
20 A. That's what it says, yes.  
21 Q. Again, we know the board was well aware of those  
22 risks on July 26, 2010 when it voted in favor of  
23 the loan, right?  
24 A. Yes, because the next paragraph describes all  
25 the positives.

1 Q. Well, let's take a look at that -- you say  
2 positives, it talks about experienced management,  
3 right?  
4 A. Yes.  
5 Q. And then it goes on and talks about an ROI, that  
6 means return on investment, right?  
7 A. Yes.  
8 Q. And it says as a positive there would be a total  
9 ROI to the state of 47 percent, right?  
10 A. Yes.  
11 Q. How was that calculated?  
12 A. I don't recall. You know, frankly, from my  
13 perspective, I can't speak for the other board  
14 members, this was not a significant item. We  
15 entered into this or went into this transaction  
16 with a goal to -- have a company relocate here,  
17 employ lots of people here, hopefully grow and  
18 expand and be a real beacon for new industry in  
19 our state that's, and then understanding all the  
20 risks in that. What the state's return on  
21 investment, to me personally, was not a  
22 significant factor. I don't remember how they  
23 calculated it. It was all based on a bunch of  
24 assumptions, I'm sure.  
25 Q. Is there anything that you know now that you wish

1 Q. That begins with Governor Carcieri?  
2 A. Yes.  
3 Q. And these meeting minute notes purport to  
4 essentially provide notes of a statement that you  
5 made at that July 26, 2010 meeting, right?  
6 A. Yes.  
7 Q. It says on the sixth line down, quote, "He,"  
8 referring to you, "Agrees that there is risk, but  
9 that it is a risk worth taking." Do you recall  
10 making that statement or using words to that  
11 effect at that time?  
12 A. Yes.  
13 Q. And what did you have in mind when you used those  
14 words, or words to that effect?  
15 A. Just what it says here. Just what I said a  
16 moment ago, this was an -- we all felt -- by the  
17 way, I'm not reflecting my own view. I think the  
18 vast majority, with one exception, and that  
19 exception was not excited about the company, it  
20 was just concerned with the amount, but we were  
21 very hopeful, very excited and hopeful that this  
22 could be something very positive for the state  
23 with lots of high-paying jobs as the presentation  
24 here indicated, dovetailed with expertise that  
25 were producing at our hired institutions.

1 you had known on July 26, 2010 before that vote  
2 was taken?  
3 A. I wouldn't -- you know, when you look back  
4 with 20/20 hindsight, you know, there is a number  
5 of different questions. I think the issue, from  
6 my perspective, I felt the board did its work, did  
7 a lot of due diligence, required outside input  
8 into that process, understood the risks,  
9 understood the benefits and made a decision  
10 balancing all those that they thought would be  
11 good for our state and, you know, good in terms of  
12 all the things I said, in creating new jobs, new  
13 industry, et cetera. I wouldn't say there's  
14 anything necessarily that I can't look back and  
15 answer that question from where I am here today.  
16 Q. Nothing comes to mind other than what you've just  
17 told us?  
18 A. No.  
19 Q. Okay. Let's take a look at exhibit -- stay on  
20 that page, let's go to the next page, Page Number  
21 8. If we go down to the bottom paragraph.  
22 A. Yes.  
23 Q. And basically the sixth line down which begins  
24 with, "In this field," do you see that?  
25 A. Last paragraph.

1 Understood there was risk. There's always risk in  
2 these things, but there were mitigating factors in  
3 that, and that it was a risk worth our taking and  
4 that I was supportive of that.  
5 Q. Let's go on to the next page, Page 9, the top  
6 paragraph. It says, "Mr. Wadensten asked where  
7 the money would come from if it turns out the  
8 company needs more? To which Governor Carcieri  
9 explained, "The company could get more investors,  
10 if nothing else." Do you recall that conversation  
11 with Mr. Wadensten?  
12 A. Yes, there was a back-and-forth with Karl,  
13 yes.  
14 Q. And Karl -- when you say Karl, you're referring to  
15 Mr. Wadensten, right?  
16 A. Yes.  
17 Q. Was it your understanding Mr. Wadensten was  
18 concerned that if in fact projections weren't met,  
19 where would the company get additional money?  
20 A. Yes.  
21 Q. And you responded -- explained that the company  
22 could get more investors, if nothing else. So, at  
23 least as of July 26, 2010, you believed that in  
24 the event that the projections were not met, that  
25 38 Studios would go out and get additional capital

1 to provide whatever shortfall there might be?  
2 A. I believe that they would have options, like  
3 any good business. If they needed additional  
4 capital as their business was unfolding -- in  
5 fact, I believed that the transaction the state  
6 was doing in the loan guarantee would in fact  
7 strengthen the likelihood and possibilities for  
8 raising capital if they needed to, but that was --  
9 this was sort of just a side, what happens if they  
10 need more money than we're providing here, and the  
11 answer was, well, they're going to have to --  
12 that's a possibility, the projections were, and  
13 they signed the term sheet, that said they  
14 believed that they could live with and could  
15 produce Copernicus with the financing that we were  
16 providing, and it's on that basis that the board  
17 approved it.  
18 Q. With the expectation if there was a shortfall,  
19 that 38 Studios would go out and raise additional  
20 capital, right?  
21 A. Always the possibility, yes, that they might  
22 possibly need more, and they would have to raise  
23 that capital, yeah.  
24 Q. Do you have any reason to believe that Wells Fargo  
25 at any time made any statements or representations

1 Hinckley, Allen to -- you know, I didn't know  
2 where this was going, didn't understand it, and  
3 said -- asked Bob to discuss it with Max.  
4 Q. And at that point then Mr. Flanders discussed that  
5 with Mr. Wistow; that's your understanding?  
6 A. Yes.  
7 Q. Now, let's take a look at the Exhibit 912. And  
8 you signed that affidavit, right?  
9 A. Yes.  
10 Q. Now, let's look at the bottom left-hand corner, it  
11 has a number on it, 50934297; do you see that?  
12 A. Yes.  
13 Q. Do you know what that number signifies?  
14 A. No, I don't.  
15 Q. Now, before executing this on October 3rd, how  
16 many conversations did you have with Mr. Wistow?  
17 A. No, I didn't have any beyond the first one.  
18 The conversations I had were with Bob Flanders.  
19 Q. From that point forward Mr. Flanders had the  
20 communication with Mr. Wistow?  
21 A. Yes.  
22 Q. Okay. Now, this actual physical document, Exhibit  
23 912, the one-page affidavit which has two  
24 attachments, one is the inducement resolution and  
25 the second one is the July 22, 2010 executive

1 that were in any way false and misleading to the  
2 EDC board?  
3 A. No. I would say nothing that was false and  
4 misleading that I can recall.  
5 MR. HOLT: Thank you. I'm going to  
6 take a break here.  
7 MR. DOLAN: Is this lunch?  
8 (OFF THE RECORD)  
9 (BRIEF RECESS)  
10 (DEFENDANTS' EXHIBITS 912 AND 914  
11 MARKED FOR IDENTIFICATION)  
12 THE VIDEOGRAPHER: Back on the  
13 record.  
14 Q. Governor, I'm going to show you Exhibit 912 for  
15 identification, please, and before we specifically  
16 get into that, you executed two affidavits in  
17 connection with this case, right?  
18 A. Yes.  
19 Q. And who asked you to execute these affidavits?  
20 A. Max Wistow's office.  
21 Q. I'm sorry?  
22 A. Max Wistow.  
23 Q. And was that a telephone call to you or --  
24 A. Initially it was a telephone call to me and  
25 then, you know, I engaged Bob Flanders from

1 session -- executive directors of the EDC's memo  
2 to you and the board, right?  
3 A. Well, I see -- I have got to go through this.  
4 There's a resolution authorizing the issuance and  
5 sale. That's the inducement resolution. The next  
6 one I have looks like the term sheet which was  
7 signed by 38 Studios, and then the letter from  
8 Keith about the -- you know, having an insurance  
9 bond on there. And then this looks like a term  
10 sheet that was changed. This was the  
11 presentation, apparently.  
12 Q. And as you sit here today, do you have any  
13 specific memory of having reviewed those  
14 attachments to your Exhibit 912 before you  
15 executed your affidavit?  
16 A. It was about at the same time. I think these  
17 were forwarded, you know, to me from Bob Flanders,  
18 and that was the first that I had seen them.  
19 Q. And was it your understanding that Mr. Flanders  
20 had gotten them from Mr. Wistow's office?  
21 A. Again, I don't know.  
22 Q. Now, focusing on 912, the affidavit, which bears  
23 the date October 3, 2012. Did you write this out  
24 in longhand or type this before it was put into  
25 its final -- you, yourself?

1 A. I don't remember. I'm not good at that, Tom,  
2 so I don't -- I think, if I recall, this was  
3 something that Bob had drafted and sent it to me  
4 and, you know, I don't have a printer at home, I  
5 must have printed it off somewhere, probably my  
6 daughter's, and then signed this.  
7 Q. Without asking you the substance of the  
8 conversation you had with Mr. Flanders, are you  
9 telling me that you would have had a conversation  
10 with Mr. Flanders, Mr. Flanders would have reduced  
11 that conversation to writing in the form of an  
12 affidavit, sent it to you for your review, and you  
13 would have signed it?  
14 A. Yes.  
15 MR. DeSISTO: Hold on. You've  
16 answered, but you're getting close to  
17 attorney/client.  
18 MR. HOLT: I'm not asking -- I'm  
19 trying to get the process here.  
20 A. The process is correct.  
21 Q. And are these all your words that you would have  
22 actually drafted in the first instance?  
23 MR. DeSISTO: Objection. Hold on.  
24 Let me think about that.  
25 MR. DOLAN: What was the question?

1 Paragraph 3 aloud, please?  
2 A. It says, "I understood based on Exhibit A to  
3 the resolution and the presentation and  
4 representations by the staff of the EDC that the  
5 proceeds of the EDC loan authorized by the  
6 resolution, together with other cash available or  
7 to become available to 38 Studios as set forth in  
8 the 38 Studios' financial projections would be  
9 sufficient to fund the so-called MMOG game,  
10 Project Copernicus, to completion."  
11 Q. What did you mean when you used the words,  
12 "Together with other cash available or to become  
13 available to 38 Studios as set forth in the 38  
14 Studios' financial projections"?  
15 A. Just what we've been talking about, as I  
16 recall, 38 Studios' projections projected revenues  
17 coming in from the RPG, since it was going to come  
18 out first before Copernicus. So there was -- all  
19 I was saying here or trying to reiterate is that  
20 I, as most of the board members, were relying on  
21 the presentation made and the representation  
22 signed by 38 Studios. They signed that term sheet  
23 and that letter, that the proceeds, net proceeds  
24 of our financing would be sufficient.  
25 Q. But you say, "Together with other cash available

1 (QUESTION READ)  
2 MR. DeSISTO: I think you're getting  
3 very close to attorney/client. Don't answer that.  
4 (SO NOTED)  
5 Q. Let's go on to the next -- did there come a time  
6 when you executed a second affidavit with some  
7 changes?  
8 A. I don't recall. I think I only executed one,  
9 you know, one affidavit. There were discussions  
10 about different, you know, feedback from Bob in  
11 terms of different iterations and something that I  
12 was comfortable with.  
13 Q. Well, let's take a look at Paragraph 1, it states  
14 here in your sworn affidavit you say, "In my  
15 capacity as Governor of Rhode Island during 2010,  
16 I served as chairman of the board of directors of  
17 the Rhode Island Economic Development Corporation,  
18 EDC." Did I read that correctly?  
19 A. Yes.  
20 Q. And in fact, it was in your capacity as Governor  
21 was the reason you were actually serving on that  
22 board?  
23 A. Yeah. It's statutory, right.  
24 Q. Statutory. So let's go down to Paragraph 3, it  
25 says that -- can you read the first sentence of

1 or to become available"?  
2 A. As set forth -- well, I think the projection  
3 just said there was other cash flow than our  
4 funding, that's all.  
5 Q. As we've agreed on numerous occasions, in all  
6 fairness in your deposition, those projections  
7 were just what the name applies, there was no  
8 certainty to that, right?  
9 A. We said that many times. These are  
10 projections that were done, reviewed by  
11 independent people to give us the sense of  
12 reasonableness.  
13 Q. And to the extent that those -- that other cash  
14 available or which might become available in fact  
15 did not become available because the assumptions  
16 and the projections were not met, 38 Studios would  
17 have to seek some additional funding from some  
18 other source, right?  
19 A. We said that earlier. If they did not have  
20 enough money, then they would have to, you know,  
21 find some other sources of financing, but the  
22 presumption was there was a reasonable expectation  
23 that this financing would provide them what they  
24 needed to get the job done.  
25 Q. Now, this affidavit does not mention Wells Fargo,

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1 does it, specifically?  
2 A. No.  
3 Q. Governor, I'm going to have you take a look at  
4 what's been marked for identification purposes as  
5 Exhibit 914.  
6 MR. DOLAN: Were there additional  
7 copies?  
8 MR. VALENTE: I handed them out.  
9 Q. Now, Exhibit 914 is a second affidavit that was on  
10 its face executed by you on October 14  
11 approximately 11 days after your October 3  
12 affidavit, Exhibit 913, we've just been talking  
13 about, right?  
14 A. Yes.  
15 Q. Let's go down to Paragraph 4. You say that, "I  
16 also reviewed and relied upon a July 22, 2010  
17 memorandum that I received from the EDC's  
18 Executive Director Keith Stokes, a true copy of  
19 which is attached hereto as Exhibit 2." In what  
20 respect specifically did you rely upon the July  
21 22, 2010 memorandum that you've just referenced  
22 here?  
23 A. I can't remember what it was here, so let me  
24 see what it was. This was just the discussion,  
25 you know, the possibility of having a guarantee

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1 insurance for completion.  
2 Q. But Paragraph 4 says you relied upon that, but we  
3 know the insurance wasn't issued because IFG  
4 refused to insure against the risk of  
5 non-completion of Copernicus, right?  
6 A. Yes. We said that in the memo. All I'm  
7 trying to get at is that this memo and these other  
8 things were part of the information flow that was  
9 presented to me and the other board members in the  
10 course of making the decision we made.  
11 Q. How specifically did you rely upon the July 22,  
12 2010 memorandum from Mr. Stokes?  
13 A. Well, as I said, I think there was a lengthy  
14 conversation, to repeat myself, about the  
15 possibility of securing insurance for the  
16 completion, because that was a concern of mine, a  
17 concern of the board's. Keith and the team, I  
18 don't know who, but the team at EDC, you know,  
19 pursued that. But there were no commercially  
20 available products out there. In the alternative  
21 they came up with another option, which was IBM  
22 who was commissioned, my understanding, to do an  
23 assessment of the plan, if you will, the cash  
24 flows in the plan, the timing, et cetera, that 38  
25 Studios had done. And in addition to that, set up

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1 a protocol for monitoring it to go forward. So  
2 this was important to the board, I think, if I  
3 recall, I've got to look back, I may be getting  
4 confused here, the board made it clear -- Keith's  
5 memo here says that I will not proceed to closing  
6 without -- "If such a mechanism is not achieved to  
7 our reasonable satisfaction." So there was  
8 concern, and it proceeded, we assumed the  
9 assessment was going to be done and then the  
10 monitoring protocol put in place.  
11 Q. But that July 22nd, 2010 memorandum from  
12 Mr. Stokes to the board doesn't mention Wells  
13 Fargo having any responsibility of that?  
14 A. No.  
15 Q. No. Okay. Let's go to Paragraph 5 of Exhibit  
16 914, that is an additional paragraph to the four  
17 numbered paragraphs in your October 3, 2012  
18 affidavit, Exhibit 912, right?  
19 A. Yes.  
20 Q. What caused you to execute a second affidavit  
21 adding Paragraph 5?  
22 A. You know, I don't recall. These were  
23 conversations with Bob and, you know, this might  
24 have been a suggestion on his part, but I just  
25 don't recall.

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1 Q. Now, Exhibit 914 does not mention Wells Fargo by  
2 name, does it?  
3 A. No.  
4 Q. Let's turn to another exhibit here, Exhibit 756,  
5 please. Directing your attention to what's been  
6 marked for identification as Exhibit 756. Do you  
7 have that?  
8 A. Yes.  
9 Q. And that's an e-mail from Melissa Chambers at  
10 RIEDC dated September 8, 2010 to you and other  
11 board members of the EDC, right?  
12 A. Yes.  
13 Q. And did you have any reason to believe that you  
14 would not have received this?  
15 A. No.  
16 Q. So, this basically is a cover memorandum that's  
17 referring to certain calls and requests for  
18 information coming from both the public and from  
19 the Providence Journal regarding the 38 Studios  
20 transaction, right?  
21 A. Yes. As I recall, Melissa Chambers was the  
22 communications, you know, person from EDC. She  
23 was the focal point for any inquiries from the  
24 media at EDC.  
25 Q. To the best of your recollection, why would Ms.

1 Chambers have prepared this e-mail and the  
2 attachments thereto?  
3 MR. WISTOW: If you know.  
4 A. I don't know why she prepared it. I'm just  
5 presuming that in her job she's responding, so she  
6 wanted a set of bullet points that would summarize  
7 or -- yes.  
8 Q. Summarize the transaction?  
9 A. Yeah. Be able to answer inquiries from the  
10 media.  
11 Q. Essentially provide talking points to the board,  
12 right?  
13 A. Not to the board. I think it was more -- as  
14 I recall -- it does say -- prefer that, you know,  
15 comments or inquiries be channeled to the  
16 communications department not -- if you can avoid  
17 everybody talking, it's a better thing.  
18 Q. Now, the next to the last paragraph says, "Over  
19 the next few weeks we anticipate more coverage  
20 regarding the transaction and urge you to reach  
21 out to Keith or meet with questions and comments."  
22 Lastly, it says, "Attached is an updated terms and  
23 conditions fact sheet." Do you see that?  
24 A. Yes.  
25 Q. Let's go to the terms and conditions fact sheet

1 something less, not for sure, but that and other  
2 cash flows, revenues from the first game and other  
3 cash flows would be providing the funding they  
4 required.  
5 Q. So that all assumed that the \$24 million shortfall  
6 would have been provided by 38 Studios having met  
7 all of its revenue projections, correct?  
8 MR. WISTOW: Object to the form,  
9 shortfall.  
10 A. Well, met its projections. All right. They  
11 understood this, they had projections, and if they  
12 felt this was going to put them in a deep hole and  
13 a big problem, I would have thought before they  
14 signed it they would flag that up. So the  
15 presumption was they understood in the cash flow  
16 here that there were other funding -- proceeds  
17 from the sale of the first game, et cetera, that  
18 would provide the cash they needed.  
19 Q. So the other funding that you're referring to  
20 would have been coming from revenues generated by  
21 the sale of product by 38 Studios, right?  
22 A. That's what they had in their cash flow.  
23 Q. And do you know if anything that was in any  
24 projections that were presented by 38 Studios to  
25 anyone at the EDC was somehow in error? Do you

1 that's attached to the e-mail you received,  
2 Exhibit 756. The third item down it says, "38  
3 Studios receives approximately \$50 million of the  
4 \$75 million bond"?  
5 MR. WISTOW: It actually says 51.  
6 That's material. I guess a million bucks is  
7 material to some people; not to you, Mr. Holt.  
8 Q. Governor, do you have this exhibit --  
9 A. Yes, I do.  
10 Q. Go down to the third bullet which says, "38  
11 Studios receives approximately \$51 million of the  
12 \$75 million bond proceeds." Do you see that?  
13 A. Right.  
14 Q. And so was it your understanding that at least as  
15 of September 8 that 38 Studios was going to  
16 receive approximately \$24 million less than the  
17 face amount of the bond offering?  
18 A. Yes.  
19 Q. Okay. And to the extent that 38 Studios had  
20 indicated on various occasions it was going to  
21 require \$75 million to essentially complete the  
22 project, where were they going to get that \$24  
23 million shortfall?  
24 A. Well, the term sheet said that the net  
25 proceeds that they signed, you know, would be

1 have any reason to believe that's the cases?  
2 A. No. They were given and we had staff review  
3 them. So if the staff, you know, found an error,  
4 reviewed them and thought they were in error, they  
5 would have flagged that up to the board or to the  
6 company.  
7 Q. Do you have any reason to believe that any of the  
8 projections that were provided by 38 Studios to  
9 the EDC were in any way false or misleading?  
10 A. No, I don't.  
11 Q. Do you have any reason to believe that Keith  
12 Stokes intentionally withheld any material  
13 information regarding the financial circumstance  
14 of 38 Studios from the EDC board prior to July 26,  
15 2010?  
16 A. No.  
17 Q. Do you have any reason to believe that anyone  
18 intentionally withheld any material financial  
19 information regarding the 38 Studios from the  
20 board prior to July 26?  
21 A. No, I would hope not. By the way, she must  
22 have drafted these because the first one actually  
23 is not correct. "75 million loan guarantee will  
24 assist 38 Studios in obtaining private financing,"  
25 that's not -- that may have been her

1 understanding; that's not the transaction. So,  
2 unfortunately, I think this was a draft by the  
3 communications people.  
4 Q. This would have been reviewed by anyone on your  
5 staff before it went out?  
6 A. Not my staff. This came from EDC, so...  
7 Q. But again, going back to I think a principle we've  
8 established in this deposition, the revenue  
9 projections as a means of providing the difference  
10 between the \$75 million in face proceeds and net  
11 proceeds was simply something based on a  
12 projection with no guarantee that that could  
13 happen, right?  
14 A. Yes. There's no guarantees. We were trying  
15 to see if we could get a guarantee in the form of  
16 insurance, but that was not doable.  
17 Q. The insurance company refused to issue that type  
18 of guarantee, right?  
19 A. Well, there was not a product in the market  
20 for -- this is a new game, an MMOG, and it had  
21 just not anything commercially available, I think  
22 is what they said.  
23 Q. So the short answer is you were unable to obtain a  
24 commercially available product in the marketplace  
25 to insure against that risk, right?

1 Q. As you know, I represent Robert Stolzman and  
2 Adler, Pollock & Sheehan in this case. I have  
3 some questions that will follow up to Mr. Holt's  
4 inquiries. I'll try not to duplicate things, but  
5 there's some topical areas we may have to go over  
6 again just to satisfy my clients' inquiries. Let  
7 me just say this, I have tremendous respect for  
8 you, and I know we've interacted a lot over years,  
9 and I don't want you to take away from any of my  
10 questions that I mean any disrespect whatsoever.  
11 I have to inquire because of the nature of the  
12 allegations --  
13 A. You got a job to do, I understand that.  
14 Q. -- that have been asserted against my client.  
15 I'll do so as respectfully as I can and, please,  
16 don't take anything I say or ask as anything  
17 indicating otherwise. Okay. So this 38 Studios  
18 transaction was a very important transaction for  
19 the RIEDC, was it not?  
20 A. Yes.  
21 Q. In fact, during the course of your administration,  
22 this was one of the biggest, if not the biggest  
23 transaction that RIEDC undertook, correct?  
24 A. Yes. Of this nature, a loan guarantee.  
25 Q. Right. At the time that the transaction was

1 A. Right. That's why we undertook the second  
2 step, which was to engage IBM to do an assessment  
3 that would have given some reasonableness,  
4 judgments about, you know, the plan that they had  
5 for completing the game and then set in place a  
6 whole protocol for monitoring against those  
7 benchmarks.  
8 MR. HOLT: I have no further  
9 questions. Tender the witness.  
10 MR. WISTOW: Let's take a lunch  
11 break.  
12 MR. HOLT: Are you going to ask any  
13 questions, Max?  
14 MR. WISTOW: I don't know. I'm going  
15 to think about it.  
16 THE VIDEOGRAPHER: Going off the  
17 record, this is the end of Disk Number 2.  
18 (LUNCH RECESS 12:34 TO 1:20 P.M.)  
19 (MESSRS. EDWARDS AND GLADSTONE  
20 PRESENT AFTER LUNCH RECESS)  
21 THE VIDEOGRAPHER: Back on the record,  
22 this is the beginning of Disk Number 3.  
23 EXAMINATION BY MR. DOLAN  
24 Q. Good afternoon, Governor.  
25 A. Good after, Bill.

1 considered by the RIEDC board in 2010, the Rhode  
2 Island economy was suffering significantly, right?  
3 A. Yeah. We got hit hard by the recession.  
4 Q. There was substantial unemployment, correct, in  
5 the state?  
6 A. Yes.  
7 Q. In fact, at one point the highest unemployment  
8 rate in the entire country, correct?  
9 A. I don't know if we got that honor, but we  
10 were pretty high.  
11 Q. But up in one or two, right?  
12 A. It was very high, but we got hurt very hard  
13 with the housing bust.  
14 Q. As a consequence of that, the RIEDC board had  
15 undertaken a process in early 2010 to try to  
16 recast the organization itself, right?  
17 A. Yeah. There was a very lengthy, you know,  
18 process where the board, the whole organization  
19 was restructured with, you know, new statutes, et  
20 cetera. The board reconstituted, like I said  
21 earlier, one of the sessions that we used to have  
22 an economic policy council that was separate from  
23 this. It was a lengthy process that we went  
24 through, and also as part of that process, once it  
25 had been restructured, undertook a nationwide



1 search for a new executive director. So, yeah, a  
2 lot of focus on economic development.  
3 Q. And part of the objective of that reorganization  
4 was to try to identify companies in sort of the  
5 knowledge and information sector, correct?  
6 A. Well, one -- we had identified, if memory  
7 serves me, Bill, you know, six or seven different  
8 areas. We already had a large marine trade  
9 industry here, defense is very important, large  
10 here in the state, and so we were looking at, you  
11 know, segments of the economy and where there was  
12 growth potential and the whole -- well, digital  
13 media was an area that had some interest because,  
14 as you're aware, and I think I said earlier,  
15 Hasbro has built a studio here. RISD and a number  
16 of institutions were producing people with those  
17 backgrounds, and it seemed to be -- gaming, you  
18 know, a big new area, but we had had conversations  
19 years before about a studio, a movie studio that  
20 did digital animation that was on the West Coast  
21 about relocating here. So this had been an area  
22 that we had talked about and focused on.  
23 Q. So when the opportunity first presented itself, it  
24 was attractive to you as a member of the RIEDC  
25 board, correct?

1 Q. And you would say, would you not, that the board  
2 did carefully consider all the material that was  
3 presented to it by way of written material or  
4 presentations that were presented by either the  
5 EDC staff and/or the outside consultants?  
6 A. Yeah, that would be my judgment. They were  
7 all conscientious people, and they did that.  
8 Q. You mentioned something about the nature of the  
9 people on the board, these were people from  
10 various businesses in the state, correct?  
11 A. Yes, some of the largest, you know, big  
12 businesses in our state.  
13 Q. And these were people that you trusted enough to  
14 appoint yourself to the board, correct?  
15 A. Yes.  
16 Q. And among the persons that you appointed were  
17 people who were very experienced and savvy  
18 business people, correct?  
19 A. Yeah. I would, you know, consider we had  
20 some labor leadership there, we had -- I don't  
21 mean that negatively.  
22 Q. I don't mean to overstate the cast.  
23 A. I don't mean that, but I mean, we had a good  
24 representation. Lynn Singleton, running an  
25 entertainment with PPAC and Veterans and, you

1 A. Yes.  
2 Q. And it was in an area that the RIEDC in fact had a  
3 charge to grow in, right?  
4 A. Well, it was an area we had identified as  
5 having good potential, we felt, for the state.  
6 Q. I take it you would agree with me, would you not,  
7 that given the importance of this opportunity, the  
8 38 Studios opportunity, it was important for the  
9 board to deliberate carefully over whether to do  
10 the transaction or not, correct?  
11 A. Yes.  
12 Q. And you'd also agree with me, would you not, that  
13 it was important for the board to carefully  
14 consider any materials that were provided to it by  
15 the EDC staff and/or the outside consultants that  
16 had been engaged, correct?  
17 A. Yes. Of all my years on the board, the board  
18 spent more time on this transaction than anything  
19 we had ever done. As I think I said earlier, we  
20 had two meetings that were special meetings just  
21 devoted to this transaction, and these were people  
22 on the board that had very important roles in the  
23 community, and so the time that they put into this  
24 and listening to the presentations that were made,  
25 there was a lot of effort that went into it.

1 know, so we had a really good board. Tim Babineau  
2 running Rhode Island Hospital as well as  
3 industrial, insurance. So we had, in my judgment,  
4 we had some really outstanding people.  
5 Q. People who were capable of understanding and  
6 analyzing financial information, correct?  
7 A. Yes.  
8 Q. So you yourself, for instance, having extensive  
9 credit background, correct?  
10 A. Yeah, but keep in mind, too, these are people  
11 that are serving without pay as a public service  
12 and that are concerned about the state. So, you  
13 know, when you sit on a board like that,  
14 particularly people like that, and my role, you  
15 got lots of other responsibilities. You are  
16 relying heavily, heavily on the staff.  
17 Q. I understand --  
18 A. And the consultants, et cetera, and advisors  
19 you bring in. That's the nature of what you do.  
20 Q. To the extent you were relying on the staff and  
21 consultants, you would, as a director, necessarily  
22 have to read and consider what it was that those  
23 persons were presenting to you, correct?  
24 A. Yes. But keep in mind, too, some of these,  
25 they're lengthy and were going to be

1 presentations. So, you know, speaking for myself,  
2 it might be -- all these things generally have  
3 executive summaries. You generally go through in  
4 detail, then a lot of backup. From my standpoint  
5 you kind of go through the backup, get a sense,  
6 and then you wait for the presentation, because  
7 that's where you get the opportunity and ask  
8 questions.  
9 Q. Okay. Now I think you've said that the  
10 transaction, that 38 Studios transaction was first  
11 presented to the full EDC board in or about June  
12 of 2010, right?  
13 A. I believe that's the case. I don't remember  
14 the exact dates, but you know the first meeting  
15 and presentation to the board of this possibility  
16 was about that time frame.  
17 Q. Now, yourself had learned about the prospect of a  
18 transaction involving RIEDC and 38 Studios before  
19 that, correct?  
20 A. Yes.  
21 Q. In fact, you had some very early involvement in  
22 the possibility of a transaction involving 38  
23 Studios, correct?  
24 A. Well, I don't know what you mean by early  
25 involvement. As I've indicated previously, my

1 heard of the prospect, correct?  
2 A. Yeah.  
3 Q. And at the time, to your knowledge, no other  
4 member of the board was aware of that at that  
5 time?  
6 A. To my knowledge, I was the first.  
7 Q. Okay. And there were some other directors that  
8 learned of the possibility of the transaction  
9 before it was considered by the full board in June  
10 of 2010; isn't that right?  
11 A. I don't know that. I don't -- it's very  
12 possible. I don't know that, Bill.  
13 Q. All right. For instance, are you aware that  
14 Mr. Steve Lane, a member of the board, had some  
15 knowledge about the prospect of the transaction  
16 before it actually was considered by the full  
17 board in June of 2010?  
18 A. Timing, I won't recollect. I do remember  
19 that I think it was Keith or Mike Saul or  
20 whatever, reached out to Steve. He had some  
21 background and experience in start-ups and new  
22 companies and digital, and he had offered  
23 apparently to, you know, take a look at it. When  
24 that occurred in relation to the board meetings,  
25 it's very possible it was before the actual board

1 wife and I had gone to a family -- actually, to a  
2 fund-raiser at Curt Schilling's house for PBS, and  
3 in the course of that, which I do often, is just,  
4 what-are-you-doing kind of thing. And out of that  
5 he said he had a gaming studio he started, bought  
6 a company down in, I think it was Philadelphia,  
7 and they were excited about the growth prospects.  
8 So, you know, I relayed that to Keith at EDC  
9 as a possible lead on something, not knowing  
10 anything about the company, nothing whatsoever.  
11 And then it just, you know, went from there.  
12 The conversations I would have had outside  
13 the board meeting, I think Keith had said, you  
14 know, I don't remember when, but my recollection  
15 would be, you know, there could be something here.  
16 They really are interested, they have a need,  
17 they're growing and, you know, there were those  
18 kind of conversations, but nothing definitive or  
19 in great detail. We didn't even have a loan  
20 program, at that point, a guarantee program, so --  
21 Q. Right -- but that information -- I'm sorry, had  
22 you finished?  
23 A. No. No go ahead.  
24 Q. That information you learned as a consequence of  
25 going to that fund-raiser, that was the first you

1 presentation, but I don't --  
2 Q. I understand. Who was it that involved Mr. Lane  
3 in that exercise?  
4 A. I don't know.  
5 Q. Did you learn of that from Mr. Stokes?  
6 A. Again, I can't say with certainty. I know at  
7 some point that it was -- I think it might have  
8 even been reported to the board that Steve but --  
9 Steve Lane was helping a little bit, giving, you  
10 know, his viewpoint on this company or the  
11 industry.  
12 Q. Did you have any involvement in having Mr. Lane do  
13 that?  
14 A. Not to my knowledge. I don't remember any  
15 conversation. It's possible Keith said, you know,  
16 would it be okay if I asked Steve. That's  
17 possible, I don't remember.  
18 Q. If Mr. Stokes testifies that you asked Mr. Lane to  
19 get involved with that, would you dispute that?  
20 A. You know, not necessarily. I just don't  
21 recall. I just don't recall. I like Steve a lot.  
22 He represented a whole aspect of the economy in  
23 the state that this sort of -- it had some  
24 similarities, wasn't exactly what he was doing.  
25 He was a guy who was pretty familiar with that; so

1 it's very possible.  
2 Q. If Mr. Stokes said that, you wouldn't dispute  
3 that?  
4 A. Yeah. I would not dispute that.  
5 Q. How about Mr. Verrecchia, was Mr. Verrecchia  
6 apprised of the 38 Studios transaction before the  
7 full board considered it in June of 2010?  
8 A. Again, I don't recall. It's very possible.  
9 Al is vice chairman. He was also, you know,  
10 heavily involved in the restructuring of the whole  
11 process we went through. So it's possible, Bill,  
12 I might have asked him, or Keith or somebody  
13 suggested that Al might, because, again, Hasbro  
14 had evolved and built a studio here and digital  
15 media was something they had some familiarity  
16 with, that's very possible.  
17 Q. If other people involved in the case testified  
18 that Mr. Verrecchia learned about the possibility  
19 of the transaction before the full board in June  
20 of 2010, you really would have no basis to dispute  
21 that?  
22 A. No. No.  
23 Q. Okay. Let's talk a little bit about your role in  
24 this early stage before the June, I think it's the  
25 June 9, 2010 meeting of the board where this is

1 Q. What, if any, direction did you give Mr. Stokes  
2 about what he should do to look at the  
3 transaction?  
4 A. None that recall. I think I just said here's  
5 what I thought was a lead on a business  
6 opportunity, a possibility, and after that left,  
7 it was up to Keith and the team there. Now it may  
8 have been conversations, as I said, to keep me  
9 abreast of what was happening, but I don't recall  
10 giving any direction because I didn't know  
11 anything about it. So you know, I was sort of in  
12 the position of let's -- I hadn't made up any  
13 decision, but thought that this was something that  
14 we needed to do homework on and participate in  
15 that with the board members.  
16 Q. At some point you became favorably disposed  
17 towards the transaction, correct?  
18 A. Yeah. And I think that was generally true of  
19 the board. In other words, at each step it was  
20 sort of get a sense of how felt people about it,  
21 even after the first meeting, and the general  
22 sense, as I remember, not that there were votes,  
23 per se, anything to vote on, but just the general,  
24 okay, what do you think, does this sound like  
25 something we should encourage the staff and the

1 first outlined. Tell me what, as best you can  
2 recall, what your role was in that early period  
3 before the proposed transaction was first  
4 presented to the full board in June of 2010?  
5 A. I'm trying to think back, Bill, you know,  
6 because from the time, which was I think in March  
7 or something, when I was at Schilling's house, and  
8 thought I was giving a lead to EDC, subsequently I  
9 find out there's lots of conversations going on  
10 unbeknownst to me before that, so I wasn't the  
11 first, but I didn't know that at the time. Then,  
12 you know, it was periodically after an EDC meeting  
13 or if I would see Keith, is anything happening?  
14 He might verbally say, you know, we're having  
15 discussions, it looks interesting.  
16 I don't remember, I might have met, you know,  
17 Schilling at EDC before the first board, I don't  
18 think so, but it's possible he could have been  
19 there in discussions, and Keith asked before a  
20 board meeting to come in and sit down and say  
21 hello. But I was not involved in any negotiation,  
22 any structuring any of that. It was just sort of  
23 being apprised of whether this thing was  
24 progressed to something that the board should  
25 consider or not.

1 team to pursue. And I think my recollection is  
2 that, you know, each of those points, it was not  
3 just me, you know, people felt that this was  
4 something worth pursuing.  
5 Q. So you expressed to other members of the board  
6 your belief that it was something that could be --  
7 should be looked at, correct?  
8 A. Well, in the course of -- that's not my  
9 style. I didn't have a lot of conversations that  
10 I recall with any of the individual board members,  
11 that's not what I would do. I had them -- I had  
12 huge respect for them individually and their  
13 abilities. So -- you assemble a board like that  
14 to advise you.  
15 MR. DOLAN: Sure.  
16 A. I'm not even a voting member of the board.  
17 So, it was more, you know, a general conversation,  
18 what do you think; is that consistent with what  
19 we're trying to do? There's risk elements to  
20 this, for sure, but does this have the makings of,  
21 you know, something we should look at in more  
22 detail and each step along the way. So when I --  
23 I wouldn't say I became a believer, I was like  
24 everybody else, let's get the facts, let's get  
25 more information, because I didn't know anything

1 about the industry and, you know, I have a lot of  
2 business background, but none of it in this  
3 particular area.  
4 Q. And that's why the board engaged outside  
5 consultants, correct?  
6 A. Yeah. Exactly.  
7 Q. At some point, Governor, you must have indicated  
8 to other members of the board you were favorably  
9 disposed towards the transaction; is that fair?  
10 A. In the board meeting, you know, we would go  
11 around and get different reactions, and I'm sure  
12 at some point, you know, I said, you know, I think  
13 is something that I would be reasonable to  
14 continue to pursue this and could possibly support  
15 if all of the facts and due diligence comes out.  
16 Q. Ultimately, you did support it, right?  
17 A. Yes. I didn't have a vote, but I supported  
18 it.  
19 Q. How did you demonstrate that support to other  
20 members of the board?  
21 A. No, just as we went around the table, we went  
22 around the table.  
23 Q. Articulating views about the transaction?  
24 A. Yes.  
25 Q. And you spoke favorably towards it at some point

1 was one that flagged up the risk that I felt of it  
2 possibly overrunning, the cost overrunning what  
3 the company anticipated as a bigger risk, but you  
4 know, we talked about the pluses and the minuses  
5 as you do, and I think as I recall many of them  
6 directors did.  
7 Q. If you had spoken against the transaction, do you  
8 think it likely that the board would have,  
9 nevertheless, have approved it?  
10 MR. WISTOW: Objection.  
11 MR. DeSISTO: Objection.  
12 A. I don't know. I don't know.  
13 Q. You don't have a view on that at all?  
14 A. No.  
15 MR. WISTOW: Object.  
16 A. You know, chances are, if I were saying, you  
17 know, I've got no interest in it, that, yeah, most  
18 of them would, you know, have, you know, take that  
19 into consideration. But again, I don't know they  
20 could have said, hey, you lost your mind, this is  
21 a wonderful thing, let's do it.  
22 Q. You would agree with me that your view as chairman  
23 of the board and Governor would have some impact  
24 on the way in which others would perceive the  
25 transaction, correct?

1 in time?  
2 A. Yeah. I said there's risks and there's  
3 rewards, and I felt this is something that could  
4 be a good thing for the state.  
5 Q. Now, in your experience, the Office of Governor,  
6 your position as His Excellency has some sway with  
7 it, does it not?  
8 MR. WISTOW: Objection.  
9 A. No, I wouldn't -- these are people I know and  
10 respect and people that I would expect that if  
11 they thought this was a crazy thing to do, would  
12 say that. I mean, you surround yourself with  
13 people that, you know, whose judgments you have  
14 some confidence and you don't want them -- the  
15 last thing I want somebody to say is because I  
16 want to do it. No, I mean this was -- this was a  
17 complex transaction with lots of elements to it.  
18 So I don't think -- well, you'll have to ask the  
19 other members, but I'd be surprised if anybody  
20 said they felt that I pressured them in any way.  
21 Q. I wasn't suggesting that --  
22 A. Or whatever.  
23 Q. -- I wasn't suggesting that at all. You didn't  
24 speak against the transaction, correct?  
25 A. No. I spoke, as many did, the risks and I

1 A. Well, it's funny, you learn in this life, in  
2 this job that it often isn't what you think, okay.  
3 There's lots of other -- lots of other people that  
4 have interests in things and have agendas, et  
5 cetera. So, I may think as Governor you've got,  
6 you know, some sway, but I learned in many cases  
7 not what you think.  
8 Q. I didn't mean by my question to suggest that you  
9 held sway. I'm saying your view as articulated  
10 would have some impact, we don't know the  
11 magnitudes of it on the views of others; would you  
12 agree with that?  
13 A. I would not dispute -- you're saying if I  
14 said, look, you know, I don't want to do this, and  
15 I think this is a bad deal, you know, I think they  
16 would have respected that. The reverse isn't  
17 necessarily, because I said that I think this is  
18 something worth pursuing, that they would all just  
19 jump on board. I know that group well enough that  
20 that's not the case. There's several outspoken  
21 enough, you know, that would have said, you know,  
22 if not publicly, would have gotten me aside and  
23 said, Governor, I don't know what you're thinking  
24 about here, I've known you a long time, I respect  
25 you, this is I think really way over the edge.

1 That's what I would have expected from this group.  
2 Q. No one ever had any such -- none of the board  
3 members ever made any such statement like that to  
4 you?  
5 A. No.  
6 Q. So you would agree with me, wouldn't you, that  
7 your view as expressed had some impact on --  
8 A. You have to ask them, Bill.  
9 Q. Let me just finish. -- had some impact on the  
10 views of other members of the board?  
11 A. You know, you'll have to ask them. You  
12 really do, okay. You'll have to ask them. Did  
13 they support this because they felt I wanted to do  
14 it? You know --  
15 Q. Governor --  
16 A. -- I would be surprised.  
17 Q. Governor is a political office, correct?  
18 MR. WISTOW: A what?  
19 MR. DOLAN: Political office?  
20 MR. WISTOW: I think we can agree to  
21 that.  
22 A. I'll agree to that one.  
23 Q. There is a certain cachet that comes with the  
24 office of Governor?  
25 A. That's how you get all the grief there is,

1 had actually done a stint as acting director  
2 and -- how soon you forget. He's a good guy. He  
3 left -- but, anyway, Mike was in there for a  
4 period of time. He was the acting while we  
5 actually did the search.  
6 Q. But relative to 38 Studios, was Mr. Saul the  
7 person within the agency that had principal  
8 responsibility for the underwriting of the  
9 analysis?  
10 A. That I don't know. You'd have to ask --  
11 Keith would have assembled the team and then how  
12 they were allocating it, obviously Mike made the  
13 presentations. He made a couple of presentations  
14 to the board after Keith had introduced it. So my  
15 presumption would be he was, you know, from  
16 Keith's standpoint, you know, the lead person  
17 within the agency.  
18 Q. When Mr. Stokes or Mr. Saul or others from RIEDC  
19 wanted to communicate with you in your capacity as  
20 chairman ex-officio of the board, how did they go  
21 about doing that?  
22 A. Well, I'm not sure I follow your question  
23 Bill. I mean, Keith and I had a relationship  
24 where he might call and apprise me of something.  
25 He sometimes was in the building, might stop in,

1 Bill. I learned that a long time ago.  
2 Q. And the governor sits as the chairman ex-officio  
3 of the EDC board?  
4 A. Yes.  
5 Q. The governor presides over the board meetings of  
6 EDC, correct?  
7 A. Yes.  
8 Q. The governor establishes, in part, the agenda for  
9 some of the meetings, correct?  
10 A. Yeah, generally, I might see the agenda  
11 beforehand, I relied on Keith and the staff there  
12 to flag up what needed to come before the board.  
13 Q. Right. Let's talk about that a little bit. So  
14 what was Mr. Stokes' general role as it pertains  
15 to the 38 Studios transaction?  
16 A. Well, from my perspective, he would have been  
17 the point person, since he's head of Economic  
18 Development. This is the largest transaction that  
19 they had -- we had undertaken. So he was the  
20 point person.  
21 Q. What about Michael Saul, what was his -- what was  
22 your understanding of his role in connection with  
23 the 38 Studios?  
24 A. Supportive. He was the deputy. Mike had a  
25 background in banking and finance, et cetera. He

1 if I were available to go over, it could be  
2 anything, not just 38, it could be anything. You  
3 know, but generally, with the exception of 38  
4 Studios, which as I said, we spent an incredible  
5 amount of time on it in terms of -- the board, I  
6 mean, the board.  
7 Normally, most of my interaction would have  
8 been, you know, just prior to the board meeting,  
9 go there a few minutes early to go over what the  
10 agenda and are there any hot-button issues I  
11 should be aware of and, you know, it was that  
12 limited.  
13 Q. Was it customary for Mr. Saul and Mr. Stokes to  
14 communicate with your office through your chief of  
15 staff or your deputy chief of staff in connection  
16 with 38 Studios?  
17 A. You know, I wouldn't say customary. I just  
18 don't know. I mean, they're trying to keep the  
19 office apprised and, often, I might be away, I may  
20 be traveling or whatever, and they want to get a  
21 message to me, it might have gone through my chief  
22 of staff or somebody else in the office.  
23 Q. And that was a way in which the EDC could  
24 communicate with the office of the Governor in his  
25 capacity as chairman ex-officio of the board?

1 A. Yes.  
2 Q. You've seen some things over the course of these  
3 several days that suggest there were such  
4 communications, right?  
5 A. Yes.  
6 Q. There is nothing unusual about that, right?  
7 A. No. No. You know, I mean, this was  
8 obviously -- this was, as I said, a big  
9 transaction, a lot of focus, a lot of energy and a  
10 lot of resources went into it, but it would not be  
11 unusual, you know, for a communication from Keith  
12 to go to Andy Hodgkin about something that he  
13 wants me to be aware of, I'm out of town, I'm  
14 traveling, I'm at meetings, whatever.  
15 Q. And that's true in respect to 38 Studios, right?  
16 A. Yes.  
17 Q. Okay. What role did you understand my client,  
18 Robert Stolzman, had in connection with the 38  
19 Studios transaction?  
20 A. Well, Rob was legal counsel, and he was, from  
21 all my years on the EDC board, you know, heavily  
22 involved in these things. He was somebody that,  
23 you know, the director, executive director relied  
24 upon and others. So, he would have been deeply  
25 immersed.

1 there. I just would not be able to judge that.  
2 Most of my interaction with Rob would have been at  
3 the board meetings, because he was charged with  
4 keeping us straight.  
5 Q. In that regard, you observed him to be a person of  
6 ability, correct?  
7 MR. WISTOW: Objection.  
8 A. Yeah.  
9 Q. And you observed him to be a person of integrity,  
10 correct?  
11 MR. WISTOW: Objection.  
12 A. I like Rob, okay, I liked him personally. I  
13 have no problem saying that, you know, and I had  
14 no reason to think, you know, his abilities would  
15 be inadequate.  
16 Q. As far as you could tell, he was fulfilling his  
17 responsibilities, correct?  
18 A. Everything that we asked him to do, that I  
19 was aware of, minutes, board meetings, et cetera,  
20 as I said. I cannot respond, Bill, to what his  
21 involvement was in 38 Studios and the  
22 conversations, because my sense is he was being  
23 relied upon by Keith and the team there, and there  
24 was heavy involvement, which there should be, he's  
25 counsel for the corporation.

1 His job is to make sure the board is, you  
2 know, were following legally what the board is  
3 supposed to do, keep the board organized, if you  
4 will, in the resolutions and all those kind of  
5 things, but he is somebody that, my sense is, that  
6 Keith, in particular, relied a lot on.  
7 Q. And he had been the outside general counsel for  
8 the RIEDC for the entire time that you were  
9 Governor, right?  
10 A. I believe that's true. I believe that's  
11 true. So we had -- you know, we had a lot of  
12 changes in members, but I think Rob was there from  
13 the beginning.  
14 Q. You had occasion to observe him in his function,  
15 his role as outside general counsel, right?  
16 A. Yes.  
17 Q. You observed him as a person of ability, did you  
18 not?  
19 MR. WISTOW: Objection.  
20 A. Yeah -- no, I'm -- I respected the job he  
21 did. He seemed to do a good job in what he did  
22 for the board in preparing resolutions and all of  
23 that kind of thing. But I did not, it would be  
24 unfair of me to make a judgment about his  
25 activities within EDC and working with the team

1 Q. You know in this case one of the central questions  
2 is this question of the financial projections of  
3 38 Studios, right? You know that's an issue in  
4 this case?  
5 A. Yes.  
6 Q. And you're aware, are you not, that staff within  
7 EDC, particularly Michael Saul, looked at the  
8 financial projections for 38 Studios, correct?  
9 MR. MARTLAND: Objection.  
10 A. I don't know who looked at them. You rely on  
11 the staff, and Mike was the point person whether  
12 he did that, or he delegated that. Who did that,  
13 I don't know specifically, but those projections,  
14 you know, should have been, and in my judgment,  
15 I'm assuming were.  
16 Q. Well, in fact, you've seen a presentation, have  
17 you not, in your deposition where Mr. Saul is  
18 presenting certain information to the board --  
19 A. Right.  
20 Q. -- in connection with 38 Studios relating to the  
21 financial projections, right?  
22 A. Yes.  
23 Q. And you have a memory of Mr. Saul doing that,  
24 right?  
25 A. Yes.

1 Q. Now, was Mr. Saul responsible for determining  
2 whether the financial projections were reasonable  
3 or not?  
4 A. Well, somebody should have looked at them,  
5 you know. You've got to ask Keith who he was  
6 relying on. If he was relying on Mike, and Mike  
7 is the point person because he had the financial  
8 background and the other staff within the --  
9 because there are other staffers there, yes,  
10 somebody should have been reviewing these  
11 projections.  
12 Q. And Mr. Saul made a presentation to the board  
13 about those projections, right?  
14 A. Yes.  
15 Q. And you necessarily relied on that presentation,  
16 did you not?  
17 MR. WISTOW: Objection.  
18 A. What we relied on is, I think I've said  
19 previously, there were a lot of -- Mike -- this is  
20 four years ago. He introduced the concept, you  
21 know, what we were trying to do, introduce 38  
22 Studios, introduce the loan guarantee concept,  
23 overview of what they were as a company, the  
24 things that they were doing, et cetera. But we  
25 didn't have expertise within the EDC on this kind

1 Q. Understood. But you would at least agree with me  
2 you at least considered the information that the  
3 EDC staff was presenting to you in your capacity  
4 as a board member?  
5 MR. GLADSTONE: Objection. Asked and  
6 answered, repeatedly.  
7 Q. Fair?  
8 A. Yes.  
9 Q. And one of those areas was information about the  
10 38 Studios financial projections, correct?  
11 A. Yes.  
12 Q. Now, you mentioned before that you relied on  
13 certain people to assess the reasonableness of the  
14 financial projection, right?  
15 A. Yes.  
16 Q. Was Mr. Saul one of those persons that you relied  
17 upon to assess the reasonableness of 38 Studios'  
18 financial projections?  
19 MR. GLADSTONE: Objection. Asked and  
20 answered.  
21 A. Well, I would have thought in his role he  
22 would have his own review, but then we  
23 commissioned two or three outside reviews to see  
24 if they're consistent. If somebody flagged up a  
25 contrary opinion, that would have been something

1 of analysis, and that's what precipitated, you  
2 know, seeking an outside consultants, independent  
3 that would look at the industry and look at 38  
4 Studios, look at some of those projections and  
5 give the board some feedback as to whether they  
6 seemed reasonable. Not asking them to say do the  
7 deal, don't do the deal, just tell us, do these  
8 projections look reasonable, or are they way out  
9 of line.  
10 MR. DOLAN: I understand.  
11 A. All I'm saying, there was a lot of data, you  
12 know, not just Mike Saul and the team at EDC,  
13 there was a lot of input that went into reviewing  
14 those.  
15 Q. I understand. But certainly you took into in your  
16 deliberations as a member of the board the  
17 presentations of the RIEDC staff?  
18 MR. GLADSTONE: Objection.  
19 A. One of several. Speaking for myself, I  
20 wouldn't make a determination or decision just  
21 based on EDC's staff recommendation alone because  
22 I think the board felt this was, you know, an area  
23 in which we didn't have expertise. It's not the  
24 typical sort of transaction. So, go get people  
25 that could be deemed to be industry experts.

1 that obviously the board would want to know about.  
2 So EDC did theirs, and I would have expected Mike  
3 in his capacity, you know, to either be -- either  
4 questioning some of the work being done, reviewing  
5 the work that was being done, and see if he  
6 thought it looked reasonable.  
7 Q. Well, I know that your answer suggests that you  
8 would have hoped or perceived that perhaps you  
9 should have done that. My question is much more  
10 specific, Governor, which is, did you rely upon,  
11 you in your capacity as director, did you rely  
12 upon Mr. Saul to give you information about the  
13 reasonableness of 38 Studios' financial  
14 projection?  
15 MR. GLADSTONE: Objection. Asked and  
16 answered.  
17 A. I don't know what you mean by rely upon. As  
18 I said in my affidavit, we -- all of the directors  
19 were in a position of needing to rely upon the  
20 work being done by the team there and their  
21 assessment as well as the outsiders. So it was  
22 all of this coming together that you were relying  
23 on that if there was a consistency. If there were  
24 major inconsistencies in the views, then it would  
25 have flagged up, you know, what's going on, and we

1 needed a lot more discussion.  
2 Q. I understand that. But my question is much more  
3 simple than that. Which is, Mr. Saul as a member  
4 of the EDC staff, right, correct?  
5 A. Yes.  
6 Q. He's presenting to you information about 38  
7 Studios' financial projections?  
8 A. I would take what he's presenting --  
9 MR. GLADSTONE: Objection. Asked and  
10 answered.  
11 A. To be important and factual and his best --  
12 his best assessment.  
13 Q. And something that you would rely upon in your  
14 capacity as a member of the board, correct?  
15 MR. GLADSTONE: Objection. Asked and  
16 answered.  
17 A. Yes.  
18 MR. GLADSTONE: Argumentative.  
19 Q. Now, you had mentioned before -- strike that. Do  
20 you have a discrete memory, specific memory as you  
21 sit here today of Mr. Stolzman ever making any  
22 statements to you in your capacity as director  
23 about the reasonableness of 38 Studios' financial  
24 projections?  
25 A. No.

1 Q. Do you know what I mean by that?  
2 A. No, I think -- the board considered very  
3 deliberatively lots of information and came to a  
4 decision, okay. The fact that there might have  
5 been conversations going on unbeknownst to me  
6 by -- I would have been very upset if that came  
7 from my staff. The fact that it came from the  
8 Legislature or somewhere else, you know,  
9 unfortunately, that's the realities of the  
10 political world. I'm not happy about it, I tried  
11 to keep them occasionally abreast of them.  
12 Sometimes it's not a two-way street.  
13 Q. By the leadership, you're talking about Speaker  
14 Fox?  
15 A. I only know what I've read in the paper, and  
16 I think, you know, Former Speaker Murphy had  
17 actually visited the company, and I think it was  
18 more than Fox. I thought a couple signed  
19 non-disclosure agreements. Again, only what I  
20 read in the paper. I have no knowledge of that,  
21 to be honest.  
22 Q. You know that there was a statute that had to be  
23 passed in order for the RIEDC to be able to be in  
24 a position to fund this transaction with 38  
25 Studios, correct?

1 Q. As between --  
2 A. He was legal counsel. He's not a financial  
3 analyst. I would not have expected him to be  
4 opining on the projections.  
5 Q. Nor do you have a memory of him doing so?  
6 A. No, I don't.  
7 Q. You mentioned before, Governor, at some point  
8 after the fact, after the transaction was  
9 approved, you learned that there was earlier  
10 contact between 38 Studios and representatives of  
11 the state; do I have that right?  
12 MR. WISTOW: Objection.  
13 A. Yeah, I don't know who. Clearly, I read in  
14 the media, and that's come out subsequently in  
15 discussions that, you know, some of the leadership  
16 in the house had visited. All right. Now I don't  
17 know whether anybody from EDC was involved in any  
18 of those discussions. I have no knowledge of  
19 that. I would hope not, because I would hope they  
20 would have told me instead of letting me feel like  
21 I'm giving them a good lead.  
22 Q. I mean no disrespect by this, but based upon what  
23 you've learned subsequently, do you feel like you  
24 were led down the primrose path by this?  
25 MR. WISTOW: Objection.

1 A. Yeah. There were two, if memory serves me,  
2 two levels, one was to establish a loan guarantee  
3 program, because we didn't have one, and initially  
4 the amount was 50 million. I could be wrong, but  
5 memory -- and then -- but that wouldn't  
6 accommodate a transaction like 38 Studios. So  
7 there had to be a subsequent legislation passed  
8 that would increase the amount of the authority.  
9 Q. And that required the support of the leadership of  
10 the General Assembly, correct?  
11 A. Yes.  
12 Q. In your experience, legislation doesn't get passed  
13 without the participation and approval of the  
14 leadership of the General Assembly?  
15 A. That's usually the case.  
16 Q. And it was the case as well that -- strike that.  
17 Speaker Fox specifically was a proponent of the  
18 Job Creation Guaranty Program, correct?  
19 A. Well, he supported it. The first piece  
20 passed, and then they supported the second piece.  
21 He voted for it.  
22 Q. RIEDC really couldn't have been in a position to  
23 fund this transaction without that legislation,  
24 right?  
25 A. That's correct.



1 Q. Really had no access to the kind of capital that  
2 this transaction called for, correct?  
3 A. Right. Correct.  
4 Q. And that legislation was pushed through -- was  
5 passed in the General Assembly in the spring of  
6 2010, correct?  
7 A. I don't remember the time frame. As I said,  
8 there were two pieces, Bill, I remember, there was  
9 the creation of the Job Guaranty Fund which I  
10 thought, I could be wrong, I thought actually took  
11 place or was in process, but then the increase of  
12 the amount to the 125 I thought was later than  
13 that. But maybe it's late spring, but I don't  
14 recall exactly. I mean, I had to sign it, so...  
15 Q. Do you recall learning at some point in time that  
16 Speaker Fox was a proponent of the legislation was  
17 in favor?  
18 A. It wouldn't have passed without him, yes.  
19 Q. Did you learn that he was in favor of it before it  
20 was passed?  
21 A. I don't recall conversation, you know, I just  
22 don't recall. It's possible.  
23 Q. Did Andy Hodgkin have any role in the passage of  
24 the legislation, job?  
25 A. Not to my knowledge.

1 part of this legislative exercise was to increase  
2 the available funding from 50 million to 125  
3 million?  
4 A. Yes.  
5 Q. And the difference between 125 and 50 million is  
6 75 million, correct?  
7 A. Right.  
8 Q. And that was the amount of the 38 Studios  
9 transaction, right?  
10 A. Right.  
11 Q. Is there any relationship, in your mind, between  
12 those two facts?  
13 A. Yeah. Absolutely.  
14 Q. What is that?  
15 A. I think Keith and the EDC team, you know,  
16 needed to get the amount increased in order to  
17 possibly accommodate. By the way, no decision  
18 made, but we wouldn't even have the opportunity to  
19 make a decision if the total amount were not  
20 increased and so, yeah, clearly, there was a  
21 connection between the amount of increase and the  
22 potential, no decision has been made. The board  
23 hadn't even begun the vetting process at that  
24 point, as I recall, but you know, the legislation  
25 had to enable it.

1 Q. Now, I think you said before that --  
2 A. I should say normally legislation that's  
3 being proposed, you know, because we got  
4 departments, human services, they all have, when  
5 they're in session, legislation that they're going  
6 to propose sometimes coming from the departments.  
7 Rarely does any legislation, well, it can't come  
8 from the governor's office. You need to be  
9 sponsored by a legislator. So, generally, at that  
10 time of year, there would be a flow going on from  
11 departments so that Andy -- why I'm saying that,  
12 Andy very well could have been in the loop in  
13 terms of what legislation was being proposed by  
14 whom, and that's all.  
15 Q. Do you recall him having a specific role in the  
16 passage --  
17 A. No.  
18 Q. Let me finish. You may even know the answer to my  
19 question before I articulate it?  
20 A. Sorry.  
21 Q. Do you recall him having a specific role in any  
22 way in the passage of the Job Creation Guaranty  
23 Program?  
24 A. No. I don't recall.  
25 Q. Now, you're aware, Governor, are you not, that

1 Q. Did you ever hear Mr. Verrecchia make any  
2 statements at any RIEDC board meetings to the  
3 effect that the Speaker, Speaker Fox, wanted the  
4 75 million increase to go to 38 Studios?  
5 A. You know, I can't say definitively that I  
6 remember. I mean, there were conversations and,  
7 you know, whether it was that specific, I don't  
8 remember.  
9 Q. But do you remember anybody making statements at  
10 any of the RIEDC board meetings concerning the  
11 position of any of the leadership, Speaker Fox,  
12 Senate President Paiva-Weed, Mr. Costantino and  
13 their view on the transaction?  
14 A. I really don't. I mean, there would be,  
15 generally, you know, where there is a legislature,  
16 you know, support of a transaction like this of  
17 this size, that kind of conversation, but as to  
18 who was on board or not, I don't recall.  
19 Q. So if Mr. Verrecchia testifies that he said at a  
20 board meeting that Speaker Fox would be displeased  
21 if the additional 75 million didn't go to 38  
22 Studios, you'd have no factual basis to dispute  
23 that statement?  
24 A. No. If Al testified that's what he said, I  
25 wouldn't dispute that.

1 Q. Did you learn at any time what Mr. Costantino,  
2 Steve Costantino's position was on either the Job  
3 Creation Program or the 38 Studios transaction?  
4 A. No. I've been around there long enough to  
5 know, you know, he was the finance chair at that  
6 point, if I recall, I lost track. So, generally,  
7 when legislation is going forward, you know, it's  
8 either the finance chair that usually bears the  
9 burden of making the case on behalf of the  
10 leadership.  
11 Q. And this legislation, Job Creation Guaranty  
12 Program, emanated out of Finance Committee, did it  
13 not, sir?  
14 A. It would have to, I believe. I shouldn't say  
15 that. I don't know for certain, but the Finance  
16 Committee is generally the most powerful committee  
17 there.  
18 Q. You don't recall learning at any point in time in  
19 connection with the transaction what  
20 Mr. Costantino's position was with respect to it?  
21 A. No. I mean, I really don't.  
22 Q. You're hesitating there?  
23 A. No. Only because if the leadership wanted  
24 it, and the sense I got, the leadership was in  
25 favor of it, that I got from Keith and others that

1 speed, just to give him a heads-up on something.  
2 Q. You would say it's likely that you spoke to the  
3 Speaker about this transaction at the time it was  
4 being considered?  
5 A. At some point I would have.  
6 Q. As you sit here today, you actually have a memory  
7 of having done so, don't you?  
8 A. I'm saying -- no, not clearly I don't, but it  
9 would have -- I most likely would have. I don't  
10 remember when, where or how.  
11 Q. And is the same true with respect to the remainder  
12 of the General Assembly leadership, for instance,  
13 is it likely that you had a conversation with  
14 Representative Costantino about the 38 Studios at  
15 the time it was being considered by the EDC board  
16 in 2010?  
17 A. Less likely, okay, because the other thing I  
18 learned is that there's a pecking order, you know,  
19 so you make sure you touch base with the Speaker  
20 and the Senate President, which is where I would  
21 tend to go. Okay. Would I run into them out in  
22 the halls and made a point of, you know,  
23 interacting with different members if I saw them,  
24 but that would not be the norm for me to talk to,  
25 you know, Costantino, the finance chair.

1 were talking to them.  
2 Q. So you remember learning from --  
3 MR. WISTOW: Wait a minute. He  
4 didn't finish.  
5 A. All I'm saying is that you've been there long  
6 enough that if the leadership is supportive,  
7 generally it means it will go through, and it  
8 generally means, you know, one or more of them are  
9 supportive and want to see it get done. Now,  
10 whether privately, you know, anybody is expressing  
11 reservations to one another there, I don't know.  
12 Q. Did you ever speak with Representative Fox about  
13 the 38 Studios transaction --  
14 A. I think I probably did.  
15 Q. -- at the time it was being considered?  
16 A. I think I probably, you know, apprised him of  
17 the fact that we were considering this thing and  
18 that, you know, we would want him to be aware of  
19 it. It's a big transaction, et cetera, yeah, I  
20 don't remember exactly when or at what point, but  
21 it would not be uncommon. I would generally talk  
22 with the Speaker on, you know, major issues  
23 regarding education funding, you know, we got that  
24 big grant from Washington on Race to the Top. It  
25 would be fairly common for me to bring him up to

1 Q. But it would have been the norm for you to talk to  
2 Senate President Paiva-Weed about a transaction  
3 such as 38 Studios?  
4 A. Yes.  
5 Q. And do you have a memory of having done so, sir?  
6 A. Not crystal clear but...  
7 Q. It sounds like you have some memory?  
8 A. No, I think I would have, okay. Again,  
9 because my -- generally what I tried to do when I  
10 was in office is -- it wasn't reciprocated,  
11 believe me, it was not reciprocated a lot, but I  
12 would try and keep the leadership in both the  
13 House and Senate apprised of what I thought were  
14 major things that they should be aware of. Often  
15 I found they already were because they've got  
16 better sources than I have, but -- so I would do  
17 that in the normal course, whatever it is, so I'm  
18 sure I would have. I don't have a specific memory  
19 of exactly having that conversation with the  
20 Senate President.  
21 Q. Now, you've heard the name Michael Corso before,  
22 Governor?  
23 A. Yes.  
24 Q. And you heard that name in connection with the 38  
25 Studios transaction, correct?

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1 A. Yes.  
2 Q. What did you understand at the time that you first  
3 heard his name his role to be?  
4 A. Well, as I think I testified in one of our  
5 first meetings, I didn't know Michael Corso from  
6 the door stop. If he walked in today, I wouldn't  
7 know Michael Corso. I met him in one of the  
8 meetings at Keith's office with Curt Schilling and  
9 Jen MacLean, and he was introduced as a financial  
10 advisor to 38 Studios, that's it. It's not  
11 uncommon for companies to have a financial  
12 advisor. So I didn't think more or less of it.  
13 Q. Did you learn anything else about his role during  
14 the time that you were considering 38 Studios  
15 transaction?  
16 A. No, no. He was working with 38 Studios and  
17 trying to secure funding for them for Copernicus  
18 and what they needed, but that's it.  
19 Q. Now, you understood, did you not, sir, that this  
20 proposed transaction with -- the proposed  
21 transaction with 38 Studios involved a high degree  
22 of risk?  
23 MR. WISTOW: Objection.  
24 A. Well, you know, risk. All these things have  
25 elements of risk, and the board understood that

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1 this had elements of risk, as you've heard about  
2 me talk about, you know, previously. But they  
3 were offset in the board's mind by a lot of  
4 positives about it, okay. And because this is a  
5 board that is trying to do what it thinks is best  
6 for the state, doesn't want to make, you know, bad  
7 decisions, they're considering all of the  
8 different aspects, and at the end of the day, you  
9 know, approve this, given all of the flow of  
10 information they receive, all of the due  
11 diligence, you know, on the belief that this was  
12 going to be an exciting new company for our state.  
13 Q. I understand that. But you understood, Governor,  
14 did you not, that the transaction involved a high  
15 degree of risk?  
16 MR. WISTOW: Objection.  
17 A. It involved risk. Everybody understood that.  
18 Q. You knew, for instance, that the success of the  
19 transaction depended upon the company's ability to  
20 successfully complete two video games, right?  
21 A. Yes. They were already, what we knew, if  
22 memory serves me, again, he being Schilling, had  
23 acquired Big Hugh Games or whatever it was, a  
24 company that had already produced games. In fact,  
25 I think they had reported that they had a big

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1 success back in the early 2000s, that company.  
2 So -- and they were well along the way on Mercury  
3 or the RPG we've been talking about. So I  
4 think -- and Entertainment Arts (sic), which is  
5 the largest distributor was, you know, right in  
6 there. They don't take every deal that comes  
7 along and that. So I think the board felt that  
8 there's a demonstrated ability here. They've got  
9 expertise, Big Hugh Games had done one, already  
10 was working on the second one and that, you know,  
11 there are risks in these things, yes, but that  
12 risk seemed to be less because they were well  
13 along.  
14 The biggest risk that the board focused on  
15 was Copernicus and getting that completed in a  
16 time frame that they had indicated, because in all  
17 of those things, the longer they overrun, then the  
18 more cash they're chewing up.  
19 So it was important to understand that they  
20 would be able to do this the way they had  
21 projected it.  
22 Q. You'd agree with me that one risk was the risk  
23 that 38 Studios would not complete the first game,  
24 Mercury, that was a risk?  
25 A. Yes. But I think because, again, there was a

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1 completion bond on that, EA was in there. I  
2 think, to speak for myself, I won't speak for the  
3 rest of the board, there was a sense that the  
4 likelihood of them not completing Mercury was not  
5 great. The question was how successful the game  
6 would be, whether it would be a long success,  
7 whether it would be mediocre or whether it would  
8 be a flop.  
9 Q. But no one could predict with 100 percent  
10 assurance that the game would be completed?  
11 A. No. Nobody can predict anything with 100  
12 percent assurance.  
13 Q. That was one risk?  
14 A. Yes.  
15 Q. Another risk was that the company, 38 Studios,  
16 wouldn't complete the second game, right?  
17 A. Yes.  
18 Q. And the video game business, you learned in the  
19 course of your work as a director, that the video  
20 game business is a hit-driven business, right?  
21 A. Yes.  
22 Q. Just like the movies, right?  
23 A. Yes.  
24 Q. Some movies are successful and some aren't, right?  
25 A. Yes.

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1 MR. DOLAN: Okay.  
2 MR. WISTOW: Can I just make a brief  
3 comment. You said there's nothing that could be  
4 100 percent assured. One thing is assured, that  
5 no deposition will be taken here without the use  
6 of the term "hit-driven." There's 100 percent  
7 certainty of that.  
8 Q. There is a lot of statements about the fact that  
9 this is a hit-driven business, but we'll get to  
10 that. Would you say, Governor, that there was an  
11 urgency to this proposal?  
12 A. Urgency? I don't know what you mean.  
13 Q. On the board, part of the board to consider this?  
14 A. No. Not on the part of the board. I think  
15 the company was at a critical juncture is my sense  
16 that they were looking at -- as I think I've  
17 indicated earlier, they were looking at raising  
18 equity, because they needed more money to continue  
19 to develop these games. So, they had -- were  
20 evaluating a number of different options,  
21 apparently, when we were introduced to them and  
22 EDC got involved. So I think the urgency was not  
23 on the board's part. I think the urgency, if  
24 there was one, that the company really was on a  
25 path that they needed the capital to continue to

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1 develop these games.  
2 Q. You wouldn't say that the board had a sense of  
3 urgency that it was important to do something  
4 dramatic for the Rhode Island economy that this  
5 presented a real opportunity?  
6 A. No. There was some, I don't remember --  
7 somebody at the board that might have said, you  
8 know, we need -- we need to do something that  
9 would make a statement, that would be, you know,  
10 good in a technology area and so forth. But you  
11 had a lot of different opinions on that. You had  
12 Karl Wadensten that said, look, you know, I want  
13 to support this, but at less money, I just -- this  
14 is too much money. It wasn't that he thought this  
15 was, the company was, you know, not sustainable or  
16 a bad company, he just felt that the amount of  
17 money and exposure, and I respected that.  
18 Q. Do you recall seeing -- strike that. At some  
19 point in time the details of the Job Creation  
20 Guaranty Program were disclosed to the RIEDC  
21 board, correct?  
22 MR. WISTOW: Can I have that repeated  
23 again?  
24 Q. Details of the Job Creation Guaranty Program were  
25 disclosed to the RIEDC board at some point?

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1 A. Yeah, I think at some point, whether it was  
2 an inducement resolution, at some point the  
3 board -- once the Legislature had passed it, then  
4 the board had to adopt, you know, the program for  
5 EDC, and then I think there was a discussion of  
6 the elements of the guarantee program. I don't  
7 have a detailed recollection of it, Bill.  
8 Q. When that was first presented, it wasn't presented  
9 as a 38 Studios-specific piece of legislation,  
10 right?  
11 A. No. It was presented as -- again, what  
12 you're indicating when we first started it was a  
13 whole review of EDC, and part of that was  
14 restructuring the board, part of that was merging  
15 the economic policy council, but part of it was  
16 also assessing what tools, because economic  
17 development is a competitive thing between states.  
18 All right.  
19 We were bidding on, you know, a chemical  
20 company that ended up in Massachusetts. Well,  
21 Massachusetts gave them 100 million bucks or  
22 something. We couldn't compete with that at that  
23 time. So the point of that is that there was an  
24 assessment of what kinds of tools should EDC have  
25 to be able to do economic development and respond

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1 to our own businesses and others, and one of those  
2 is, you know, a loan guaranty program.  
3 Q. Right. But to my question, when it was first  
4 presented to the RIEDC board, it wasn't presented  
5 as a 38 Studios specific initiative?  
6 A. No. It was another tool that EDC would have  
7 available to it to support companies and growing  
8 here, relocating here, whatever it is.  
9 Q. At the time that the Jobs Creation Guaranty  
10 Program was first presented to the board, you were  
11 aware that the EDC staff was having conversations  
12 with 38 Studios about a possible transaction?  
13 A. Yes.  
14 Q. Was there a reason why it wasn't disclosed to the  
15 board at that time?  
16 A. No. Just that I think that it was getting  
17 all -- getting everything together in a form and  
18 then presenting it to the board, because there was  
19 a lot of due diligence that was going on and so,  
20 no, it was just a matter of setting up a process.  
21 Q. Now, you were chairman of the board, right?  
22 A. Yes.  
23 Q. Did you have any involvement in determining when  
24 it was that the 38 Studios transaction would be  
25 presented to the board for consideration?

1 A. Again, I don't recall. I think it was after  
2 the Loan Guarantee Fund legislation was completed  
3 and the due diligence of the discussions were ripe  
4 enough so that there was a potential transaction  
5 and just sort of -- we only met monthly, so I  
6 think it was probably, all right, May is when the  
7 legislation was completed, you know, so June,  
8 whatever, would have been a logical next meeting,  
9 and then I think we had a couple of special  
10 meetings, because this just wasn't the kind of  
11 thing you could cover in a regular meeting. We  
12 had other focus.  
13 Q. Mr. Stokes and Mr. Saul didn't each have the  
14 ability to unilaterally present this to the board,  
15 right? They couldn't show up one day and say  
16 let's have a board discussion of this, they'd have  
17 to review this with you or your office before  
18 doing so, right?  
19 A. Yes. Normally this is what you do in  
20 protocol, and they knew I was, you know,  
21 knowledgeable about discussions they were having,  
22 since I thought I was the one that gave them the  
23 lead. So, they were aware that I -- enough to be  
24 reporting to me periodically that these  
25 discussions looked like they're going somewhere,

1 Video Gaming Briefing, and 38 Studios Opportunity,  
2 RIEDC Board Meeting, June 9 of 2010, J. Michael  
3 Saul; do you see that?  
4 A. Yes.  
5 Q. You're familiar with this, are you not, sir?  
6 A. Well, I'm not -- I remember a presentation,  
7 details of it, you know, I'm not -- I'd have to go  
8 through it, Bill.  
9 Q. You have no reason to doubt this is the  
10 presentation that Mr. Saul made to the RIEDC board  
11 on June 9?  
12 A. No. The minutes would reflect if this were  
13 attached.  
14 Q. If you could turn your attention to, I don't know  
15 that there's page numbers on here, Governor, but  
16 page numbers in the bottom right-hand corner. The  
17 page that I'm at is 587, it's very small print.  
18 MR. WISTOW: What's the heading at  
19 the top?  
20 MR. DOLAN: 38 Studios Company  
21 Background.  
22 Q. Do you have the page in front of you?  
23 A. Yes.  
24 Q. You remember Mr. Saul presenting information about  
25 38 Studios and the company background at one of

1 and they could be the elements of a deal. Then  
2 when it got to the point, okay, now we need to get  
3 the board engaged, and we've got to go through a  
4 whole process because we need lots of due  
5 diligence, and the board is going to need a lot of  
6 help on this.  
7 Q. My question is that presentation, the first  
8 presentation to the board wouldn't have happened  
9 if you hadn't said, let's go ahead and present it  
10 to the board?  
11 A. Yeah. I think that's a fair statement.  
12 Q. Let me show you some documents here. First, let  
13 me show you what's been marked as Exhibit 15,  
14 Governor. You may have looked at this earlier in  
15 your deposition. But I'll represent to you this  
16 is a copy of an e-mail from Michael Saul to  
17 Maureen Gurchigian?  
18 MR. WISTOW: What's the date of that?  
19 MR. DOLAN: It's dated June 9, 2010.  
20 Q. It's got an attachment that says, Final Draft  
21 Executive Session. It says, "Tony and Maureen:  
22 This is the dec. being presented on 38 Studios in  
23 executive session today." And then there's an  
24 attachment, Governor. If you could look at the  
25 attachment, it says, Executive Session Briefing

1 the board meetings, right?  
2 A. Yes.  
3 Q. And he's describing, among other things, the two  
4 studios that exist, correct?  
5 A. Yes.  
6 Q. He's also describing the two games, one, Project  
7 Mercury, the other being Copernicus, correct?  
8 A. Yes.  
9 Q. And he notes under Project Mercury there is a  
10 publishing and retail distribution agreement  
11 between EA and 38 Studios, correct?  
12 A. Yes.  
13 Q. And that's something that you as a board member  
14 attach some particular significance to, correct?  
15 A. Yes. I think that, if I recall, I mean,  
16 somebody at some point said, you know, this is a  
17 good sign, Entertainment Arts, they just don't  
18 take on anybody and say I'm going to distribute  
19 Don Carcieri's game or Bill Dolan's game or  
20 whatever. They've got a lot of these that they're  
21 confronted with. So the fact that EA had entered  
22 into an agreement, I think generally was viewed  
23 positively, yes.  
24 Q. Now it was the case, was it not, that at the time  
25 the RIEDC considered and approved the 38 Studios

1 transaction, there was no publishing or  
2 distribution agreement with respect to Copernicus,  
3 correct?  
4 A. I don't know that. I don't know that, Bill.  
5 Q. As you look here on this particular page, do you  
6 see any reference to the existence of a publishing  
7 and retail distribution agreement between EA and  
8 38 Studios with respect to Project Copernicus?  
9 A. No.  
10 Q. Do you remember as a board member ever inquiring  
11 about whether or not such a publication and  
12 distribution agreement existed with respect to  
13 Copernicus now?  
14 A. No, I understand that. I think I recall  
15 discussion that actually EA, Entertainment Arts  
16 was reasonably optimistic about Copernicus and an  
17 MMOG. This was a new area, a new game, but you  
18 know, not having an agreement at that point, you  
19 know, I'm not aware of it.  
20 Q. Well, it's a positive that Mercury had a  
21 publishing and retail distribution agreement?  
22 A. Right.  
23 Q. That made it more likely that the game would be  
24 successfully completed and sold, right?  
25 A. Yes. And I think the board, I could be

1 Q. Now if you could turn your attention to the page  
2 marked, it's 591, Governor.  
3 MR. WISTOW: What's the heading?  
4 MR. DOLAN: Project risks and  
5 rewards.  
6 Q. Do you have that page in front of you?  
7 A. Yes, I do.  
8 Q. So this at the very top contains an entry for  
9 prevenue company, right?  
10 A. Yes.  
11 Q. And that was a risk of the transaction, correct?  
12 A. Yes.  
13 Q. And then it presents additional facts that appear  
14 to speak towards the gravity of the risk?  
15 A. I wouldn't use the word gravity of the risk.  
16 You know, there's a whole list of things here. In  
17 fact, this is, I guess, where it came to mind. EA  
18 assumed four to five million sales of Copernicus,  
19 and 38 Studios cut that to three. So I think  
20 somehow the board -- there was a connection that  
21 EA understood this and understood what 38 was  
22 doing was, in effect, you know, I wouldn't say  
23 excited, but they saw some potential here.  
24 Q. In fact, here Mr. Saul, states, does he not, in  
25 the third bottom from the entry, "EA reviews 500

1 wrong, but my presumption -- bad word -- but I  
2 felt that, most likely, that they would do the  
3 same for Copernicus. Whether there was an  
4 agreement in place at that juncture, I don't know.  
5 I don't know -- Mercury was very different, a very  
6 different game and a very different protocol,  
7 so --  
8 Q. Now, what facts were you relying on, Governor, to  
9 form the conclusion that it was likely that  
10 Electronic Arts would enter into a publishing and  
11 retail distribution agreement with 38 Studios  
12 regarding Copernicus?  
13 A. Well, the discussions that I recall,  
14 Schilling and 38 Studios people felt they had a  
15 good relationship with Entertainment Arts, and  
16 somehow this game would get distributed.  
17 Q. Was that it?  
18 A. That's it.  
19 Q. So there were no other facts that formed your  
20 conclusion that was --  
21 A. None I recall right now.  
22 Q. Let me finish. -- that it was likely that  
23 Electronic Arts would enter into a distribution  
24 agreement with 38 Studios?  
25 A. Not that I can recall.

1 plus proposals a year and selects less than 10  
2 percent," correct?  
3 A. Yes.  
4 Q. So, the fact that there was an agreement in place  
5 with respect to Mercury was significant to you,  
6 correct?  
7 A. Yes.  
8 Q. But you also knew that in respect to the Project  
9 Copernicus, that there were lots of proposals that  
10 EA considered every year and only selected 10  
11 percent of them; that was a risk with respect to  
12 Copernicus, right?  
13 A. To be -- I don't recall a lengthy discussion  
14 about this issue at the board meeting. I think  
15 the board -- my sense was EA, if the first one  
16 works out, most likely they will be supportive of  
17 the second one, and the fact that they were  
18 optimistic about the potential sales, you know,  
19 would seem to indicate that they would be a  
20 candidate to distribute it.  
21 Q. You and other members of the board knew that EA  
22 reviews 500 plus proposals per year and selects  
23 less than 10 percent of them, right?  
24 A. Yes.  
25 Q. And that was a risk relative to Copernicus as

1 well, was it not, sir?  
2 A. As I said, I think that was mitigated by the  
3 fact that they also know this company. Like  
4 anything else, once you've worked with somebody,  
5 you know their product, you know what they're able  
6 to do, and your reasonable success with that, and  
7 you tend to go back with them.  
8 Q. If you go to the page marked Company's Most-Likely  
9 projections, Governor?  
10 THE WITNESS: What's the number on  
11 that?  
12 MR. DOLAN: This would be 594.  
13 Q. Do you have that in front of you?  
14 A. Yes.  
15 Q. This contains, does it not, statements of  
16 prospective revenues and expenses, right, for 38  
17 Studios?  
18 A. Yes.  
19 Q. And it's showing that company is going to have  
20 negative EBITDA all the way through the end of  
21 2012, right?  
22 A. Yes.  
23 Q. In fact, EBITDA is earnings before interest,  
24 taxes, depreciation, et cetera?  
25 A. Yeah.

1 well as revenues that would come from the sales of  
2 Mercury, yes.  
3 Q. And you understood as well, Governor, did you not,  
4 that if the publication or release of Mercury was  
5 delayed into 2012, that that would impact the  
6 revenue that?  
7 A. That was a risk.  
8 Q. That 38 Studios could realize?  
9 A. Yes.  
10 Q. If that were the case, that could potentially  
11 delay the completion of Copernicus, correct?  
12 A. Well, not necessarily. I mean, there were  
13 two -- my understanding, there were two different  
14 teams working on these. They weren't the -- there  
15 might have been some overlap but Mercury was being  
16 developed by Big Hugh Games, okay, and had its own  
17 team and that -- I shouldn't say Big Hugh Games, I  
18 don't know how they were organized internally, but  
19 there was a group working on Mercury that had been  
20 working on that, and there was another group that  
21 was working on Copernicus. So, they wouldn't  
22 necessarily. It would impact the cash flow to  
23 your point, but not necessarily impact, you know,  
24 the projected completion date. I don't know,  
25 you'd have to ask them. Maybe I'm all -- I'm

1 Q. And what, if anything --  
2 A. Copernicus wasn't due out until the fall of  
3 2012. So, I mean, that's -- this was the game  
4 they were all hoping would be the big success  
5 because it's an MMOG, it's new, it's exciting.  
6 That's what the projections were -- these  
7 projections would reflect that. In 2012 you don't  
8 have much in the way of sales from Copernicus, and  
9 that's why you see in 2013, you know, a big jump.  
10 Q. So in 2011 the revenue that's reflected, there was  
11 revenue that was projected to be obtained from the  
12 sale of Mercury, correct?  
13 A. Right. And that was only a portion of the  
14 year as well because I believe these are calendar  
15 year -- it doesn't say, does it? But I thought  
16 these were calendar year cash flow projections,  
17 and Mercury wasn't planned to be released until  
18 September of 2011, so you only got a quarter of  
19 sales there; hence, you see it ramping up.  
20 Q. And you understood, did you not, that the revenue  
21 for Mercury was going to be utilized, in part, to  
22 help in the development of Copernicus, right?  
23 A. Yes. That the cash flow -- we were talking  
24 about this earlier, the cash flow projections  
25 anticipated the net proceeds from EDC financing as

1 incorrect in that.  
2 MR. DOLAN: Okay. Let's take five  
3 minutes, if we could.  
4 THE VIDEOGRAPHER: Going off the  
5 record, this is the end of Disk Number 3.  
6 (BRIEF RECESS)  
7 THE VIDEOGRAPHER: Back on the  
8 record, this is the beginning of Disk Number 4  
9 Q. Governor, in terms of the EDC staff, did you give  
10 them any particular instructions as to how they  
11 should proceed in terms of looking at the 38  
12 Studios transaction?  
13 A. I don't recall giving them any instructions,  
14 Bill. You know, the only reason I'm hesitating  
15 whether I suggested, or they already concluded we  
16 needed some outside independent expertise, because  
17 this was not an area that EDC had any expertise  
18 in, this particular industry and that, but I can't  
19 say with certainty that I did not.  
20 Q. I mean no disrespect by this question, but you  
21 didn't say to either Mr. Stokes or Mr. Saul or  
22 other members of the RIEDC staff, you should get  
23 this transaction approved?  
24 A. No.  
25 Q. You didn't say to any EDC personnel that their

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1 jobs depended upon whether the --  
2 A. No.  
3 Q. -- the transaction was approved by the board or  
4 not?  
5 A. I would never do that.  
6 Q. Nothing like that?  
7 A. No.  
8 Q. That's not your style, is it?  
9 A. No.  
10 Q. You've mentioned before that one of the things  
11 that was positive for Project Mercury was the  
12 existence of the completion bond for that project,  
13 right?  
14 A. Yes.  
15 Q. And you mentioned as well that the board had  
16 expressed a desire to have Mr. Stokes explore that  
17 prospect with respect to Copernicus, right?  
18 A. Yes.  
19 Q. And he went ahead and did that. He at least as he  
20 reported back to you, he inquired as to whether a  
21 completion bond was available for Copernicus and  
22 learned that it wasn't, right?  
23 A. Correct.  
24 Q. He reported that fact to the board, right?  
25 A. Yes.

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1 Q. That wasn't a positive, right, the fact that you  
2 couldn't get a performance bond?  
3 THE WITNESS: Well, it was not a  
4 positive?  
5 MR. DOLAN: That you couldn't get  
6 one.  
7 A. It wouldn't be a positive. The board, as I  
8 said earlier, I think felt if we could get a  
9 completion bond, it would be like an insurance  
10 policy and a good thing. It wasn't a  
11 deal-breaker, if you will. On the other hand, the  
12 board felt that they would like an independent  
13 assessment of, you know, the reasonableness,  
14 again, of the company's projections and their  
15 ability to complete Copernicus. And that I think  
16 is what ultimately, it wasn't at the time, but  
17 when Keith said that there was not a commercially  
18 available bond, they came up with an alternative,  
19 in fact, had been discussing with IFG, indicated  
20 they might be able to help them with developing,  
21 using their protocols, and I don't -- I wasn't a  
22 part of any of those conversations, but all I do  
23 know is ultimately ended up with IBM and there  
24 was, you know, a pretty good discussion at the  
25 board, I don't remember which one it was before

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1 final approval but about getting this assessment  
2 done and a monitoring plan in place. There seemed  
3 to be some confusion and who said what to whom,  
4 you know, I don't know exactly but, you know, my  
5 recollection is that there would be an assessment  
6 of the reasonableness of the company's  
7 projections, you know, prior to the closing. And  
8 Keith's memo sort of indicates that, although he  
9 uses the term monitoring, but as I recall the  
10 conversation with the board, it was two parts, one  
11 an assessment that it looked reasonable, and then  
12 second part would be a monitoring process and  
13 procedure in place so that you could keep track of  
14 how they're doing against what they said they were  
15 going to do. That I don't believe got done, to my  
16 knowledge, it was not done. I think many of us  
17 expected there would be some feedback. The fact  
18 that there wasn't, I took to mean, and I think  
19 others did that, you know, there was no problem  
20 with the assessment, and that they were going to  
21 put the monitoring process in place. But there  
22 was, you know, a fair amount of discussion about  
23 that, keeping track of how well they were doing  
24 and meeting their own schedule. Because that, as  
25 I said earlier, that the board felt was the risk

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1 here.  
2 Q. You have a specific memory of a member of the  
3 board specifying to the EDC staff that there would  
4 be an assessment done before the closing of the  
5 loan?  
6 A. Yeah, I think there was several people that  
7 voiced concern about it, and that there was an  
8 indication that Keith understood that, and that's  
9 what his memo reflected and -- but you know, who  
10 said what to whom, I don't recall exactly, you  
11 know, but I do recall that there was a concern  
12 that we get this assessment done before because it  
13 wouldn't do any good afterward if they came back  
14 and said there's no way they can produce this game  
15 in this time frame with this, you know, this cash  
16 flow.  
17 Q. How was it that the board expressed that view to  
18 the EDC staff or the lawyers? Was it specified in  
19 writing?  
20 A. Well, I believe Keith's memo reflected he  
21 understood the board's direction, and I don't  
22 remember which one it was, it's in one of these,  
23 Bill, where he understood that the board wanted  
24 this analysis done and a piece of it had to be  
25 done before, and that a piece of it would be done,



1 you know, at some time frame around that, but  
2 there was a lot of ambiguity in that I think the  
3 memo that I saw, but clearly there were several  
4 people, including me, that said, you know, we  
5 really should have this done before because if  
6 they come back and say, you know, this isn't going  
7 to fly, we need to sit down -- it doesn't mean we  
8 won't go ahead, but we need to sit back down and  
9 say, wait a minute, we've got somebody here saying  
10 this doesn't look like, or gravely concerned that  
11 you can't get this done, so if you're going to  
12 need more money, then where is that going to come  
13 from?  
14 Q. What I want to focus on, Governor, is what you  
15 believe to be a requirement or directive that  
16 prior to closing there be an assessment. My  
17 question to you is how did the board expressly  
18 direct the staff to do that?  
19 A. I don't recall exactly, okay. I know there  
20 was a discussion, and I'd have to go back. I  
21 think the approval, and I don't remember if it was  
22 the 22nd, which meeting, I indicated to EDC to  
23 Keith and the team that they needed to get this  
24 done prior to the closing, and he understood it  
25 because I think his memo said he understood that

1 Copernicus in a time frame that they indicated and  
2 whether that looked reasonable. And so I remember  
3 that being, you know, voiced as a concern.  
4 Q. Now, let me ask this, typically when the board  
5 would act, it would do so by resolutions, right?  
6 MR. WISTOW: Objection.  
7 A. Well, not always, sometimes it was a  
8 formal -- it would be a resolution voted on and so  
9 forth. Other times it would just be a sense of  
10 the board in giving direction to the staff.  
11 Q. Do you recall the board issuing any resolution  
12 that required an assessment of the game prior to  
13 closing, specifically?  
14 A. I recall the board issuing, I don't remember  
15 it was a resolution or not, I don't recall that,  
16 Bill, but a strong opinion that there needs to --  
17 this needs to get done, whether there was a  
18 resolution or not I don't recall. What I don't  
19 recall is the expression of that opinion.  
20 MR. DOLAN: Actually what I want to  
21 get at is the expression of that opinion.  
22 MR. WISTOW: There is a resolution  
23 that deals with that.  
24 Q. I want to get at the expression of the opinion by  
25 the board. And you don't recall there being a

1 something had to be done here prior to closing. I  
2 think those were the words in there. So, what  
3 happened after that, I don't know, and I don't  
4 remember exactly who said what and how that was  
5 conveyed, except that Keith -- his memo would seem  
6 to be indicating that he understood that.  
7 Q. You believe his memo specified that there would be  
8 an assessment undertaken prior to closing?  
9 MR. WISTOW: Objection.  
10 A. Well, he didn't say it exactly that way, but  
11 clearly that was the impression that several of  
12 us, you know, gave him.  
13 Q. So you have a memory --  
14 MR. WISTOW: You interrupted him.  
15 Let him finish.  
16 A. There were several people focused on this.  
17 As I remember, Al Verrecchia very much because he  
18 was into the cost of this thing. Donna Cupelo,  
19 she's managed a lot of large projects, et cetera,  
20 and I don't remember others, but there was -- but  
21 there were several that had concerns that we've  
22 got nothing, you know, we had independent advisors  
23 look at the cash flow and said it looked  
24 reasonable, but nobody has really looked at their  
25 internal projection in terms of completing

1 specific resolution dictating a preclosing  
2 assessment as you sit here?  
3 A. I don't recall that.  
4 Q. So then help me out to understand how it is the  
5 board expressed as a board to either Mr. Stokes,  
6 Mr. Saul or anyone else, professionals or lawyers,  
7 that there needed to specifically be a preclosing  
8 assessment of the game?  
9 A. I don't know exactly. All I do know, if I  
10 can find Keith's memo that came out later, it's  
11 very clear, you know -- yeah, July 22nd, he's very  
12 clear where --  
13 Q. You're looking at Exhibit --  
14 A. Exhibit 515. McDonald, but there's several  
15 of these in here where he says, "While we have not  
16 been yet able to outline the details of that  
17 monitoring," this is while he's talking about a  
18 cost, they -- "a third-party entity on a cost  
19 protocol on a cost and protocol for such  
20 monitoring." Monitoring was two parts in the  
21 discussion. He's only using the word monitoring  
22 here, but I think those that had expressed the  
23 concern talked about two parts, two pieces, an  
24 assessment and then the monitoring agreement. The  
25 assessment would set the basis for the monitoring

1 agreement, you know what I mean. You've got to do  
2 an assessment that says in order for them to  
3 succeed, they've got to meet these milestones, and  
4 then that becomes the basis for setting in place  
5 the monitoring to make sure they're meeting that.  
6 The assessment on the part of several of the board  
7 members was designed to test the reasonableness of  
8 the company's assumptions here. Now Keith  
9 understood here, "I will not proceed to close the  
10 transaction without consulting with you if such a  
11 mechanism cannot be achieved to our reasonable  
12 satisfaction."

13 And then asked for some input back and so,  
14 you know, four years -- I don't remember all the  
15 conversations and all the details, Bill, but I  
16 think there was a strong indication to Keith, and  
17 Keith understood this had to be in place, you  
18 know, prior to the closing.

19 Q. Now his memo doesn't mention anything about a  
20 preclosing assessment, does it?

21 A. No. He's using the term monitoring, but I  
22 think the context of the whole discussion was  
23 assessment and monitoring, two steps.

24 Q. I understand that completely. I'm asking a  
25 specific question, which is, the communication to

1 Q. How did he know that?

2 A. Because it says that.

3 MR. MARTLAND: Move to strike.

4 Q. How did he know that?

5 A. It says it. It was a communication as part  
6 of the board. I think there may have been a  
7 resolution that in fact directed that. I don't  
8 recall, but there may have been.

9 Q. So the board could express its directive through a  
10 resolution if it wanted, right, that was one way  
11 of doing it, right?

12 A. Yes.

13 Q. Another way was a board member saying something  
14 specifically to one of the staff, right?

15 A. No. That wouldn't be -- not a board member.

16 The board -- it would be a sense of the board, not  
17 some board member going to EDC staff and saying do  
18 this.

19 Q. There would have to be statements by board members  
20 at board meetings?

21 A. Exactly.

22 Q. Directing the staff to do something specific like  
23 this?

24 A. Exactly.

25 Q. Do you have a memory?

1 the board on this subject says nothing about a  
2 preclosing assessment, does it?  
3 A. No, I understand. But the board was  
4 concerned about in the absence of being able to  
5 get insurance, that there was a reassurance in  
6 some way that this game could be completed on the  
7 time frame and in the financing that they  
8 indicated. So, you know, all I know is that was  
9 the sense of the board and would have expected  
10 that the assessment would be done prior to the  
11 closing, it would make no sense to do one  
12 afterwards.

13 Q. I understand completely. What I'm trying to get  
14 at, Governor, is how it is that any member of the  
15 board instructed the staff to do this very  
16 important assessment before the closing?

17 MR. WISTOW: He's already testified  
18 to that several times.

19 Q. No, he hasn't. He has given me generalities, his  
20 belief?

21 A. I said I don't remember exactly, Bill, what  
22 was said by whom when, you know, at what point.  
23 All I know is that, you know, Keith understood  
24 that there was a step to take place here before  
25 the closing.

1 A. And there were --

2 Q. Do you have a memory of specific statements --

3 MR. WISTOW: You cut him off.

4 Q. -- by members of the board --

5 MR. WISTOW: You cut him off.

6 MR. DOLAN: Max. --

7 MR. WISTOW: Did you catch it, he  
8 said, "and there were" --

9 Q. That's what I'm getting at. As you sit here today  
10 under oath, do you have a specific memory of a  
11 board member, one or more board members  
12 specifically telling Stokes, Saul or Stolzman to  
13 do a preclosing assessment?

14 A. Yes. I remember conversations. Now who they  
15 were, as I said, two that were very concerned were  
16 the ones I mentioned, whether there were others,  
17 because there were a number of people that shared  
18 the same concern about this.

19 Q. You've mentioned Mr. Verrecchia?

20 A. Right.

21 Q. What did Mr. Verrecchia specifically state to  
22 either Mr. Saul, Mr. Stokes or Mr. Stolzman --

23 A. I don't recall specifically, Bill.

24 Q. -- about the requirement of a preclosing  
25 assessment?

1 MR. WISTOW: You mean the substance  
2 or precise words?  
3 MR. DOLAN: The topic.  
4 MR. WISTOW: You mean the substance.  
5 A. I don't recall exactly what they said, what  
6 I'm saying to you is the substance, to use my  
7 counsel's word here of what the intention was, was  
8 that there be an assessment done prior to the  
9 move.  
10 Q. How was that expressed?  
11 A. It was expressed at the meeting and whether  
12 there was a minutes or resolution, I don't know.  
13 Q. But you can't remember who said what to whom on  
14 that topic, right?  
15 A. No.  
16 MR. DOLAN: Okay. Why don't you give  
17 me five minutes, Max?  
18 MR. WISTOW: Sure.  
19 THE VIDEOGRAPHER: We're off.  
20 (RECESS)  
21 THE VIDEOGRAPHER: Back on the  
22 record.  
23 Q. Governor, on the subject of the initial assessment  
24 before closing, did any member of the board of  
25 directors ever inquire from and after the time

1 bankruptcy. I thought we had a monitoring  
2 agreement in place, I thought there was a process  
3 that we were supposed to be following, that's all.  
4 But I had no knowledge, this was just my general,  
5 you know, view of what was happening and just  
6 being surprised. Now, I could be all wrong, there  
7 may have been all kinds of discussions going on  
8 that were not in the paper because my only source  
9 of information of what was being reported, and I  
10 should know better than pay much attention to  
11 that, but...  
12 Q. You were surprised as an ex-banker that the lender  
13 here apparently was stating its belief publicly;  
14 that came as a surprise, right?  
15 A. Yes. I'm just reacting to what I read in the  
16 newspaper, Bill, okay, and then I would have  
17 thought that if this thing were running out of  
18 cash, you know, there would be a lot of signals a  
19 lot earlier and there would have been, you know,  
20 activity taking place to try and find additional  
21 capital or whatever, but again, this was just a  
22 gut reaction, not knowing anything. As I said,  
23 there may have been discussions going on for  
24 additional capital, for all I know, but I was just  
25 sort of surprised.

1 that the transaction was approved in July of 2010  
2 until the time of the closing in November of 2010  
3 what the status of the preliminary assessment was?  
4 A. Not to my knowledge. I just don't recall.  
5 Q. You don't remember any member of the board ever  
6 asking a question about that from and after the  
7 closing?  
8 A. No.  
9 Q. You gave an interview in the wake of the collapse  
10 of 38 Studios, do you remember that?  
11 A. I remember giving an interview. I don't  
12 remember what I said.  
13 Q. Did you remember expressing the view that it  
14 shouldn't have come as a surprise to RIEDC that 38  
15 Studios was running out of money?  
16 A. Yes.  
17 Q. And why did you hold that view?  
18 A. Well, again, I had been out of office for a  
19 year and a half, Bill, so I had no contact with  
20 anybody at EDC, 38 Studios, nothing. I was just,  
21 you know, John Q. Public reading the paper when  
22 these things were breaking. It just startled me,  
23 that's all, that you know, we're just finding out  
24 that they're running out of cash the day before  
25 bankruptcy -- I'm exaggerating, but the day before

1 Q. Have you read the amended complaint in this case?  
2 THE WITNESS: The amended complaint?  
3 Q. The complaint that the plaintiff filed against the  
4 defendants?  
5 A. No.  
6 Q. Have you learned anything about the claims that  
7 the plaintiff in this case is bringing against the  
8 defendants, the nature of the claims?  
9 A. You know, not a whole lot of substance, no.  
10 Q. Are you aware that, among other things, that  
11 plaintiff here is suggesting that certain of the  
12 defendants committed fraud?  
13 A. Yes. What's been reported. I didn't read  
14 the complaint, but that's been reported in the  
15 paper.  
16 Q. Do you have a view as to the -- strike that. The  
17 RIEDC here approved the transaction to 38 Studios,  
18 correct?  
19 A. Yes.  
20 Q. And the board approved that transaction?  
21 A. The board approved the transaction.  
22 Q. And now the very same agency is suing the  
23 financial advisors and the lawyers who were  
24 involved in the transaction for fraud, correct?  
25 A. Well, you said it. I don't know it. I'm

1 taking your word for it. I did not read the  
2 complaint. All I'm saying is that the board,  
3 which I said in my affidavit, and I'm sure all the  
4 board members would say the same thing, made a  
5 decision based upon information provided, you  
6 know, by advisors, by consultants and by the  
7 company, and from what I read in the complaint,  
8 the board was not necessarily given all the  
9 information. I understand that's what the  
10 plaintiff is claiming.  
11 MR. WISTOW: You mean the complaint  
12 or the newspaper?  
13 THE WITNESS: The newspaper.  
14 MR. DOLAN: Freudian slip there.  
15 THE WITNESS: I should know better.  
16 Q. You're not in possession of any facts, Governor,  
17 to suggest these defendants misled the board, are  
18 you?  
19 A. No, I'm not.  
20 Q. Do you have a view on the wisdom of a public  
21 agency, such as RIEDC, approving a transaction,  
22 making a loan and then suing all the financial  
23 advisors associated and the lawyers associated  
24 with the transaction when the loan fails?  
25 MR. DeSISTO: Objection.

1 process, Bruce, I understand.  
2 Q. Yes, Judge -- yes, Governor. I called you judge.  
3 See, I'm trying to give you another job.  
4 A. It's a better job, actually.  
5 MR. GLADSTONE: It doesn't pay  
6 enough.  
7 MR. WISTOW: Better tenure.  
8 (OFF THE RECORD)  
9 Q. Governor, going back, a little ancient history,  
10 you were once, was it president of Old Stone Bank?  
11 A. No, I was executive vice president. I lost  
12 out on the presidency.  
13 Q. All right. Back when you were executive vice  
14 president of Old Stone Bank, do you have an  
15 opinion as to whether, based on the information  
16 that was given to the board by the staff and the  
17 outside experts, whether Old Stone Bank would have  
18 approved a loan to 38 Studios?  
19 MR. WISTOW: Objection.  
20 MR. DeSISTO: Objection.  
21 A. No, I can't -- it's an entirely different --  
22 this was an economic development incentive. You  
23 know, banks don't -- that's not what they're in  
24 business to do, as I said earlier.  
25 MR. WISTOW: I agree with that.

1 Q. Do you have a view on that?  
2 MR. WISTOW: Objection.  
3 A. No. I'm not going to respond to that, I  
4 don't -- no.  
5 MR. HOLT: You don't have a view, or  
6 you don't want to respond?  
7 THE WITNESS: Neither.  
8 MR. DOLAN: Thank you very much,  
9 Governor.  
10 MR. WISTOW: Maybe the answer is it  
11 depends on the facts.  
12 THE VIDEOGRAPHER: We're off.  
13 (OFF THE RECORD)  
14 (BRIEF RECESS)  
15 THE VIDEOGRAPHER: Back on the  
16 record.  
17 EXAMINATION BY MR. GLADSTONE  
18 Q. Governor, my name is Bruce Gladstone, I'm an  
19 attorney representing J. Michael Saul in the case?  
20 A. Okay.  
21 Q. I know you've been here a long time today and  
22 you've had several prior days --  
23 A. Multiple days.  
24 Q. -- multiple days.  
25 A. But that's all right. That's part of the

1 A. I don't know what they do today, but in the  
2 days when I was at the bank, you tried to make  
3 loans, but this was different. This was, you  
4 know -- this was -- states compete heavily for  
5 economic development. I mean, as you heard me say  
6 earlier, we had the -- we really -- maybe I didn't  
7 say it, but Brown & Sharpe was going to leave the  
8 state and go down to Connecticut. I mean, we had  
9 to wind up working a deal with them that basically  
10 gave them the land at Quonset to build a new plant  
11 to keep them here. We recruited Yardney Electric  
12 that was in Connecticut here with inducements and  
13 incentives.  
14 So, from an economic development standpoint,  
15 the programs that states compete on are very  
16 different than a bank's basis for making loans.  
17 Q. So would it be fair to say it's a difference  
18 between public financing and private financing?  
19 A. No, I wouldn't say that. It's not the  
20 financing, it's just the objective is different.  
21 The bank isn't necessarily interested in, you  
22 know, what might be good economic development for  
23 the state. They're just interested in making a  
24 loan and making sure they get paid back from that  
25 loan. So I think they're just apples and oranges,

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<p>1 that's all.</p> <p>2 Q. Now, there were no personal guarantees given by</p> <p>3 any of the members of 38 Studios guaranteeing</p> <p>4 repayment of this loan, were there?</p> <p>5 A. Not to my knowledge. You know, I don't</p> <p>6 believe so, but again -- I was not involved.</p> <p>7 Q. I'm sorry. Was that an issue that was brought up</p> <p>8 to the board?</p> <p>9 A. I don't recall it being discussed, you know,</p> <p>10 at any length, no.</p> <p>11 Q. But it was discussed to some extent?</p> <p>12 A. I don't recall it. I just don't. I just</p> <p>13 don't remember it.</p> <p>14 Q. Governor, there was a prior deposition, as you</p> <p>15 know, of Stephen Lane, one of the members of the</p> <p>16 board, and at that deposition, and I think the</p> <p>17 best way to do this is I'll refer to the</p> <p>18 transcript in Mr. Lane's deposition, which is Page</p> <p>19 262, starting with -- I'm sorry, yes, Page 262,</p> <p>20 starting with Line 21. And what I asked Mr. Lane,</p> <p>21 Governor, was, "Do you recall at some point, be it</p> <p>22 Donna Cupelo or somebody asking Mike Saul the</p> <p>23 question as to his opinion, do you recall Governor</p> <p>24 Carcieri, in essence, cutting off that discussion</p> <p>25 and saying, we have a sophisticated board and</p>	<p>1 understand the first part of that.</p> <p>2 Q. Well, what it was, if I may try to rephrase it</p> <p>3 Governor?</p> <p>4 MR. WISTOW: No, no, don't rephrase</p> <p>5 it. You read him some testimony --</p> <p>6 Q. Let me ask it in a different way. At some point</p> <p>7 at a meeting did Director Cupelo say -- ask Mike</p> <p>8 Saul whether he had an opinion as to whether the</p> <p>9 EDC board should vote to approve this loan or not,</p> <p>10 and prior to Mr. Saul answering, you interjected,</p> <p>11 stopping him from answering, saying this is a very</p> <p>12 sophisticated board or words to the effect of this</p> <p>13 is a very sophisticated board who can make their</p> <p>14 own decisions based on the information given?</p> <p>15 MR. WISTOW: Objection. There is no</p> <p>16 foundation for what you're suggesting Cupelo was</p> <p>17 asking. No foundation. I object.</p> <p>18 A. To answer your question, I don't remember</p> <p>19 that at all, okay. I mean, again, it would be out</p> <p>20 of character for me, if Donna asked a question for</p> <p>21 me to say to Mike or to anybody, don't answer that</p> <p>22 question. I mean, there's no reason for me to say</p> <p>23 that, that's not my style. You know, if a board</p> <p>24 member had a question and asked the question -- so</p> <p>25 I don't have any recollection whatsoever of that</p>
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<p>1 they're capable of making their own decisions?"</p> <p>2 Then Mr. Lane answered that, Governor. "I have a</p> <p>3 recollection of Mike being cut off by the</p> <p>4 governor. I can't give you specifics around what</p> <p>5 was being said specifically at a specific meeting</p> <p>6 but it was during the -- it was during, clearly,</p> <p>7 like when we're near the decision making point,</p> <p>8 and that's when I referred earlier to this kind of</p> <p>9 the Governor made the recommendation. There was a</p> <p>10 bit of this last word. This is what we're voting</p> <p>11 for, and he articulated the deal in the highest --</p> <p>12 I'm sorry, in the highest, most simplistic terms.</p> <p>13 Obviously, it had been well beaten down by then,</p> <p>14 and I believe that was kind of like the end of the</p> <p>15 conversation. So do I remember specifically what</p> <p>16 he was saying, I truly don't." I then asked</p> <p>17 Mr. Lane the question, "But you do have a</p> <p>18 recollection of him" -- and that means you,</p> <p>19 Governor, I apologize for the him -- "cutting Mike</p> <p>20 off?" And the answer by Mr. Lane was,</p> <p>21 "Absolutely." Do you recall a conversation of</p> <p>22 that sort at the meeting?</p> <p>23 A. Not at all. I'm sorry, Bruce, but I don't</p> <p>24 recall. I don't recall even the context of the</p> <p>25 discussion that he's referring to. I don't</p>	<p>1 conversation, no.</p> <p>2 Q. Governor, I understand you're saying, it's not</p> <p>3 your style and that you don't recall it, but in</p> <p>4 that Mr. Lane does recall it, it's possible that</p> <p>5 did happen; is that correct?</p> <p>6 A. Well, I don't even understand what he was</p> <p>7 saying.</p> <p>8 MR. WISTOW: It's completely unclear.</p> <p>9 A. And what his response was, truthfully, Bruce,</p> <p>10 I'd have to read it. I didn't follow what he was</p> <p>11 saying.</p> <p>12 Q. Do you think it would be helpful if I marked this</p> <p>13 page and showed it to you, Governor, so you could</p> <p>14 read it?</p> <p>15 A. I can't --</p> <p>16 MR. WISTOW: You don't have to mark</p> <p>17 it, just show it to you.</p> <p>18 A. I'm not going to guess. If Steve Lane</p> <p>19 testified under oath that this is something he</p> <p>20 observed or whatever, you know, I'm not going to</p> <p>21 say it didn't happen. What I'm saying is I have</p> <p>22 no memory or recollection of anything like that</p> <p>23 or -- no. That's all.</p> <p>24 MR. WISTOW: Do you want to tell him</p> <p>25 what Donna Cupelo testified to about that?</p>

1 MR. GLADSTONE: Please. I'll ask the  
2 questions, Max.  
3 MR. WISTOW: Okay.  
4 Q. Governor, back in either the end of 2009 or the  
5 beginning of 2010, many of the board members on  
6 the EDC board were replaced; is that correct?  
7 A. I don't remember the exact time frame, but as  
8 we were discussing earlier, the whole board was  
9 restructured and what we did, because there was an  
10 Economic Policy Council that I co-chaired with,  
11 Paul Choquette chaired that. It had a lot of  
12 business leadership. And then there was EDC  
13 board, much smaller, and I had always felt in my  
14 years of dealing with the two, that there was  
15 duplicity, they really weren't communicating,  
16 first of all, an economic policy and strategy  
17 should be connected to economic development, and  
18 so the Legislature passed a statute that  
19 reconstituted the EDC board, enlarged it, and I  
20 don't remember the exact date of that, Bruce, but  
21 then so following on that, then, yes, we had to  
22 appoint all new members. I took some members from  
23 the former Economic Policy Council and retained  
24 some that were already on the EDC board. So --  
25 but it was a whole new board that was constituted,

1 further questions. Thank you, Governor.  
2 THE WITNESS: Thank you, Bruce.  
3 THE VIDEOGRAPHER: We're off.  
4 (OFF THE RECORD)  
5 THE VIDEOGRAPHER: Back on the  
6 record.  
7 EXAMINATION BY MR. MARTLAND  
8 Q. Good afternoon, Governor. David Martland, I  
9 represent Keith Stokes.  
10 A. Okay, David.  
11 Q. I will try to be brief, as I know it's been a very  
12 long day and actually most of my co-counsel have  
13 covered many of the topics I was going to get  
14 into. If I could ask you, do you recall when and  
15 how you met Keith Stokes?  
16 A. Well, Keith had been on the board of EDC for  
17 years, and so when I came in, he might have been  
18 on the board when I came in, I don't recall that,  
19 but he was on the board of the old EDC and, you  
20 know, I had a lot of respect and admiration for  
21 him. I used to run into him down on Aquidneck  
22 Island and in his role down there doing some  
23 terrific things.  
24 When we reconstituted the board, and we did  
25 the national search, which turned into a debacle

1 and I don't remember exactly the time frame.  
2 Q. Governor, do you remember which board members were  
3 on the Economic Policy Council who you did appoint  
4 to the reconstituted EDC board?  
5 A. I just -- I can't. I don't remember who was  
6 where.  
7 Q. Governor, my final question, and I'll acknowledge  
8 before I ask it, I'll use the language to say it's  
9 a loaded question. If you had remained Governor  
10 as opposed to Governor Chafee, do you think there  
11 are things you could have done to have helped 38  
12 Studios survive their economic hardships?  
13 MR. DeSISTO: Objection.  
14 MR. WISTOW: Objection.  
15 A. I can't answer that. As I said earlier in  
16 response to Bill's question, you know, I was out a  
17 year and a half. Okay. When I left, we were all  
18 excited, okay, the company was moving, we were --  
19 you know, we were excited about the prospects.  
20 What happened, I don't know, you know, I really  
21 don't. I had no contact with anybody at 38  
22 Studios or with EDC. So that would not be a fair  
23 thing for me to even answer because I just don't  
24 know.  
25 MR. GLADSTONE: Fair enough. No

1 in the sense that we identified somebody, brought  
2 her in, and then she backed out. And then  
3 after -- this was a lengthy search using, you  
4 know, a top flight placement firm, and so I, in  
5 consultation with some of the other board members  
6 said, look, you know, I think the guy that could  
7 do this job and could do it well would be Keith,  
8 and approached him to see if he would be  
9 interested because he had the job down on  
10 Aquidneck Island.  
11 So, I had known him and worked with him on  
12 the EDC board in his role as a board member and  
13 had seen him in action, if you will, on Aquidneck  
14 Island and a number of things he was working on.  
15 Q. When you decided to appoint him as executive  
16 director, what was involved in that selection  
17 process for you?  
18 A. Well, I think a lot of different elements. I  
19 thought in speaking to Keith and his strengths,  
20 you know, he knew the entity. I mean, he had been  
21 involved in the board, so he understood the  
22 economic development board. He understood the  
23 mission and was doing some of that kind of work,  
24 if you will, down on Aquidneck Island. In my  
25 judgment, doing a good job down there.

1 I also felt that at that point EDC was sort  
2 of suffering from, you know, somebody to be out --  
3 Mr. Outside, let me put it that way, somebody who  
4 would convey economic development strategies and  
5 that to the broad community, business community  
6 and the community in general, and Keith was well  
7 liked, well respected, handled himself very well  
8 on his feet and was a good spokesperson, if you  
9 will, and a good representation.

10 So, I thought the mix of all those things put  
11 together that, you know, he would be a very good  
12 person in that job.

13 Q. Were you aware of any particular business  
14 background that Mr. Stokes may have had?

15 A. No. No. Outside of the EDC, you know, which  
16 I would see him at all the monthly board meetings.  
17 My involvement with him or observation of him  
18 would have been in his work in Aquidneck Island,  
19 but I've forgotten his actual title there, but he  
20 was involved in a lot of the economic development  
21 on the island. So business background outside of  
22 that, no.

23 Q. Would it be fair to say that he was more of a  
24 public policy type of figure?

25 A. Well, I think public policy is something he

1 in this case, is that Mr. Stokes pushed through  
2 the 38 Studios deal through the board to remain in  
3 your good graces?

4 MR. WISTOW: Objection.

5 A. I was leaving office so I don't know -- that  
6 would make no sense to me, all right. He  
7 wouldn't -- if you had a question, I'm sorry I  
8 interjected. But whatever your question is.

9 Q. I was going to ask if you had any thoughts  
10 regarding that particular allegation?

11 A. That's absurd -- not absurd. First of all,  
12 as I testified earlier, when I became aware of who  
13 38 Studios was, and Curt Schilling, I referred  
14 Keith to them, and then as far as I was concerned,  
15 Keith and the team, not just Keith, they had a  
16 whole team, Mike Saul and all the others, you  
17 know, then ran, took the ball to see whether there  
18 was anything here or not in terms of a transaction  
19 but, you know, I don't believe I ever conveyed to  
20 Keith that, you know, this is a deal we got to get  
21 done. I didn't know enough about it to even do  
22 that. You've got to have, you know, the due  
23 diligence and the whole process.

24 So, why he would want to stay in my good  
25 graces when I'm leaving offices in three, four

1 obviously had a background in. But as I said,  
2 when I looked at the things that he had done and  
3 was doing on Aquidneck Island, there were a lot of  
4 really good things. And by the way, one of the  
5 things he spent a lot of time on, which I think  
6 was a positive for our state, was trying to get  
7 the America's Cup back again and, you know, he was  
8 really the point person. I give Keith the credit  
9 for orchestrating all that, meeting with the  
10 Oracle syndicate people and trying to identify  
11 what we had to do to possibly get the Cup races  
12 here. We didn't succeed, but we got the trials  
13 here. So I think he was a good business  
14 development guy.

15 Q. In your interactions with Mr. Stokes, was he  
16 forthright with you with information?

17 A. Yes, I believe so.

18 Q. I believe you testified earlier you don't believe  
19 that Mr. Stokes kept any information from you or  
20 the board in connection with the 38 Studios  
21 transaction?

22 A. No. I'd be hugely disappointed, obviously,  
23 but, you know, I trusted him and had confidence in  
24 his abilities.

25 Q. One of the contentions of the EDC, the plaintiff

1 months, wouldn't make any sense to me.

2 Q. Right. You never instructed Mr. Stokes to get  
3 this deal done?

4 A. No. No.

5 Q. Are you aware of anyone in the General Assembly  
6 that instructed Mr. Stokes to get this deal done?

7 A. No. I'm not aware of that.

8 Q. Previously you testified that you had some  
9 conversations with Speaker Fox regarding 38  
10 Studios?

11 A. I think it was just what I said is that my  
12 style, and I believe I did in this case was to  
13 apprise both the Speaker and the Senate President  
14 of a sizable transaction, that this was under  
15 discussion, which I would do on a lot of different  
16 policy issues. So, that would just be the way I  
17 tried to operate. It wasn't a lengthy  
18 conversation. It wasn't any of the details of the  
19 deal or anything like that, it was just that, you  
20 know, EDC and the team there had been evaluating  
21 and in discussion with 38 Studios, and this looked  
22 it, you know, could potentially be a good  
23 transaction, a good opportunity for the state.

24 Q. Do you recall specifically what was discussed?

25 A. No.

1 Q. Do you recall having any discussions with General  
2 Assembly leadership regarding the Rhode Island  
3 Jobs Creation Guaranty Program?  
4 A. No, I really don't. I think that, you know,  
5 Keith, as part of the restructuring, as I said  
6 earlier of EDC, that there were several programs  
7 that we felt needed to be sort of arrows in the  
8 quiver from an economic development standpoint  
9 that needed the General Assembly to pass  
10 legislation that the loan guarantee was just one  
11 of them. I just don't remember, there were two or  
12 three others we needed to update the capacity on,  
13 et cetera.  
14 So, I don't recall there being any lengthy  
15 discussion. I don't recall a discussion with the  
16 leadership on those things. I think as part of  
17 the whole restructuring that was being done of  
18 EDC, these were pieces that were put in place that  
19 were deemed to be, you know, part of the whole  
20 package.  
21 Q. And would it be fair to say that Keith was  
22 undertaking a lot of those discussions regarding  
23 the program with the General Assembly leadership?  
24 A. Yes. That would be the norm. His  
25 predecessors did the same thing. You know, Mike

1 through, successfully through the EDC?  
2 A. No.  
3 Q. Did you ever hear that he had an agreement to get  
4 a broker's commission if the loan by the EDC to 38  
5 Studios went through?  
6 A. No.  
7 Q. Now, I'm going to show you Exhibit 36 -- I don't  
8 have additional copies, I didn't anticipate we'd  
9 be using this, I think you all have Exhibit 36.  
10 MR. DOLAN: Could you identify it?  
11 MR. WISTOW: It's an e-mail from Rob  
12 Stolzman, Wednesday, March 31st, 2010 at 2:05 to  
13 Keith Stokes, Fred Hashway and Michael Saul,  
14 subject, RIEDC 38 Studios.  
15 MR. DOLAN: Thank you.  
16 Q. I'm just going to read this to you, Governor, and  
17 then I have some questions about it. "Hello, all.  
18 I just got a call from Michael Corso. He told me  
19 that his post meetings went well last night and  
20 that Gordon and Steve C. want to put the moral ob.  
21 program in the fiscal year 2010 supplemental  
22 budget, which currently might be heard as early as  
23 next week, that coincides with Sharon Reynolds  
24 calling me from the House Fiscal while I was at  
25 your office and leaving me a message that Steve C.

1 McMahon for the first four years, generally, you  
2 know, when he was trying to get some things  
3 through the General Assembly, he and his team  
4 would be having conversations with the leadership.  
5 If they had a problem or needed some help, they  
6 would come to me and say could you maybe talk to  
7 the Speaker about this or that, but that didn't  
8 happen in this case.  
9 I think the legislative leadership was pretty  
10 supportive of what we were trying to do in terms  
11 of all the programs, the whole package of things  
12 that were restructuring EDC.  
13 Q. Is it fair to say that you wanted Keith to see if  
14 he could get those programs implemented?  
15 A. Yes.  
16 MR. MARTLAND: Thank you. I don't  
17 have any further questions.  
18 MR. WISTOW: I just got a couple to  
19 keep things lively.  
20 EXAMINATION BY MR. WISTOW  
21 Q. You were asked some questions about Michael Corso  
22 earlier. During the time that you were involved  
23 as chairman of the board of EDC, had you ever  
24 heard that Corso had an agreement to get a  
25 finder's fee if the 38 Studios transaction went

1 said I'll have something for her (while she didn't  
2 say what or for the supplemental). I've returned  
3 her call. Good news." I'm going to skip down to  
4 the next to last paragraph, "As a soft heads-up,  
5 Michael," and it was agreed at Mr. Stolzman's  
6 deposition that the Michael referred to here was  
7 Corso -- "As a soft heads-up, Michael said he  
8 thinks there's some confusion that he believes  
9 Gordon and Steve see this as a, "digital media  
10 industry program," with 75 million of 125 million  
11 committed to 38 Studios and the rest to be worked  
12 out on an industry-based program. The details of  
13 which are to be developed by the RIEDC and the  
14 legislative policy folks with industry output."  
15 Now, had you heard by March 31st, 2010 that Gordon  
16 Fox -- by the way, the testimony of Stolzman was  
17 Gordon was Gordon Fox and Steve C. was Steve  
18 Costantino. Had you heard by March 31st that  
19 Gordon and Steve -- and Gordon Fox and Steve  
20 Costantino, this as a digital media industry  
21 program with 75 million of 125 million committed  
22 to 38 Studios. Had you heard that?  
23 A. No.  
24 Q. Would you expect Stolzman to have relayed this  
25 information to you as counsel, if he was aware of



1 it?  
2 MR. DOLAN: Form. Foundation.  
3 Q. I'll withdraw the question.  
4 THE WITNESS: Refresh my memory,  
5 when did I go up to Schilling's house?  
6 MR. WISTOW: March 6th.  
7 MR. HOLT: No question pending.  
8 MR. WISTOW: We're done.  
9 THE VIDEOGRAPHER: We're off.  
10 (DEPOSITION CLOSED AT 3:45 P.M.)  
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1 C-E-R-T-I-F-I-C-A-T-E  
2  
3 I, LINDA L. GUGLIELMO, do hereby certify that I  
4 am expressly approved as a person qualified and  
5 authorized to take depositions pursuant to Rules  
6 of Civil Procedure of the Superior Court of Rhode  
7 Island, especially, but without restriction  
8 thereto, under Rule 28 of said Rules; that the  
9 witness was first sworn by me; that the transcript  
10 contains a true record of the proceedings.  
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12 Reading and signing of the transcript was not  
13 requested by counsel for the deponent upon  
14 completion of the deposition.  
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16 IN WITNESS WHEREOF, I have hereunto set my hand  
17 this 29th day of August 2014.  
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