

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

**In re:**

**The Cliffs Club & Hospitality Group, Inc., et  
al.,<sup>1</sup> d/b/a The Cliffs Golf & Country Club,**

**Debtors.**

**CHAPTER 11**

**Case No. 12-01220**

**Jointly Administered**

**NOTICE OF FILING OF DEPOSITION TRANSCRIPTS**

COME NOW, The Cliffs Club & Hospitality Group, Inc. and its affiliated debtors in the above-captioned Chapter 11 cases, as debtors and debtors-in-possession (collectively, the “Debtors”), and hereby file copies of transcripts of the deposition taken on July 30, 2012 of Keowee Falls Investment Group, LLC, by and through its designated representatives, Mr. James Billy Anthony and Mr. Timothy Pate Cherry, under Rule 30(b)(6) of the Federal Rules of Civil Procedure, which is incorporated by reference into bankruptcy cases by Bankruptcy Rule 7030.

The Debtors will file the original transcripts in the Bankruptcy Court tomorrow.

*[signatures follow]*

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<sup>1</sup> The Debtors, followed by the last four digits of their respective taxpayer identification numbers and Chapter 11 case numbers, are as follows: The Cliffs Club & Hospitality Group, Inc. (6338) (12-01220); CCHG Holdings, Inc. (1356) (12-01223); The Cliffs at Mountain Park Golf & Country Club, LLC (2842) (12-01225); The Cliffs at Keowee Vineyards Golf & Country Club, LLC (5319) (12-01226); The Cliffs at Walnut Cove Golf & Country Club, LLC (9879) (12-01227); The Cliffs at Keowee Falls Golf & Country Club, LLC (3230) (12-01229); The Cliffs at Keowee Springs Golf & Country Club, LLC (2898) (12-01230); The Cliffs at High Carolina Golf & Country Club, LLC (7576) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC (9665) (12-01237).

Dated: August 5, 2012

Respectfully submitted,

/s/ Däna Wilkinson

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District Court I.D. No. 4663  
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*Attorneys for the Debtors and Debtors in Possession*

**EXHIBIT A**

1 UNITED STATES BANKRUPTCY COURT  
2 DISTRICT OF SOUTH CAROLINA

3 IN RE:  
4 THE CLIFFS CLUB & HOSPITALITY GROUP, INC., et al.,  
5 d/b/a THE CLIFFS GOLF & COUNTRY CLUB,  
6 Debtors,

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7 THE CLIFFS CLUB & HOSPITALITY GROUP, INC., et al.,  
8 d/b/a THE CLIFFS GOLF & COUNTRY CLUB,  
9 Movant,

10 vs. CASE NO. 12-01220

11 THE CLIFFS AT GLASSY INC., (VALLEY) - Claim No. 1251;  
12 KEOWEE INVESTMENT GROUP, LLC - Claim No. 1252;  
13 LABASTIDE MANAGEMENT GROUP, LLC - Claim No. 1253;  
14 KEOWEE FALLS INVESTMENT GROUP, LLC - Claim No. 1254;  
15 THE CLIFFS AT KEOWEE SPRINGS, LLC - Claim No. 1255;  
16 THE CLIFFS AT MOUNTAIN PARK, LLC - Claim No. 1258;  
17 THE CLIFFS AT MOUNTAIN PARK, LLC - Claim No. 1259;  
18 KEOWEE FALLS INVESTMENT GROUP, LLC - Claim No. 1261;  
19 THE CLIFFS AT MOUNTAIN PARK, LLC - Claim No. 1262;  
20 THE CLIFFS AT KEOWEE SPRINGS, LLC - Claim No. 1263;  
21 CLIFFS MANAGEMENT SERVICES, LLC - Claim No. 1268;  
22 LABASTIDE MANAGEMENT GROUP, LLC - Claim No. 1270;  
23 LABASTIDE MANAGEMENT GROUP, LLC - Claim No. 1271;  
24 THE CLIFFS AT GLASSY INC., (VALLEY) - Claim No. 1272;  
25 ENVIRONMENTAL LEASING, LLC - Claim No. 1273; and  
CLIFFS MANAGEMENT SERVICES, LLC - Claim No. 1274;  
Respondents.

D E P O S I T I O N

18 WITNESS: JAMES BILLY ANTHONY  
19 DATE: Monday, July 30, 2012  
20 TIME: 11:23 a.m.  
21 LOCATION: The Cliffs Club & Hospitality Group  
22 3598 Highway 11  
23 Travelers Rest, South Carolina  
24 TAKEN BY: Attorneys for the Debtors  
25 REPORTED BY: RITA A. DEROUEN  
Registered Professional Reporter

1 APPEARANCES:

2 ATTORNEY FOR THE DEBTORS:

3 MCKENNA LONG & ALDRIDGE, LLP  
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7

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8

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12

13 ATTORNEY FOR THE UNSECURED CREDITORS  
COMMITTEE AND CLIFFS CLUB & HOSPITALITY GROUP,  
INC., CASES:

14

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(Appearing by phone.)

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24 (INDEX AT REAR OF TRANSCRIPT)

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P R O C E E D I N G S

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JAMES BILLY ANTHONY, being first duly sworn, testified as follows:

MR. LEVENGOOD: This is the deposition of Keowee Falls Investment Group, LLC, by and through its representative, or representatives, designated by the company pursuant to Rule 7030 of the Federal Rules of Bankruptcy Procedure, which incorporates by reference Rule 30 of the Federal Rules of Civil Procedure, including Rule 30(b)(6).

It is taken before a court reporter pursuant to notice and may be used for any and all purposes permitted under the Federal Rules of Bankruptcy Procedure and by applicable law. By agreement of counsel, we have changed the location of this deposition from counsel's office in Columbia to the company's office in Travelers Rest, South Carolina.

Pursuant to Rule 30(b)(6), the deponent is required to designate one or more officers, directors, managing agents, or other persons knowledgeable of the subject areas described in the notice upon which this deposition is being taken and who consent to testify on its behalf, and the person or persons who testify shall testify as to matters known or reasonably available to

1 the deponent.

2 I would propose that we reserve all  
3 objections except as to the form of the question and  
4 responsiveness of the answer until the time of trial.

5 MR. LEVY: Agreeable.

6 MR. LEVENGOOD: And does the deponent wish  
7 to read and review the transcript before it is  
8 finalized or waive that right?

9 MR. LEVY: You have the right to read the  
10 transcript if you would like before it's finalized.  
11 These folks are very, very accurate.

12 THE WITNESS: I'm fine.

13 MR. LEVY: So waive the reading?

14 THE WITNESS: Exactly.

15 MR. LEVENGOOD: So signature is waived as  
16 well?

17 THE WITNESS: Yes.

18 EXAMINATION

19 BY MR. LEVENGOOD:

20 Q. Mr. Anthony, would you please state your  
21 full name for the record.

22 A. James Billy Anthony.

23 Q. And where do you reside?

24 A. 3101 Table Rock Road, Pickens, 29671.

25 Q. Thank you, sir. Let me just do some

1 preliminary statements before we get started. First,  
2 this deposition is being taken in 11 jointly  
3 administered Chapter 11 cases pending in the United  
4 States Bankruptcy Court for the District of South  
5 Carolina.

6 This deposition is what is known as a  
7 30(b)(6) deposition. You have been identified as a  
8 corporate representative of Keowee Falls Investment  
9 Group, Limited Liability Company, and will be answering  
10 questions based on that limited liability company's  
11 knowledge, some of which may be your personal knowledge  
12 and some of which may be the personal knowledge of some  
13 other representative of Keowee Falls Investment Group,  
14 LLC.

15 Do you consent to testify on behalf of  
16 Keowee Falls Investment Group, LLC?

17 A. I do.

18 Q. And I represent the debtors in the jointly  
19 administered Chapter 11 cases. I will be asking you  
20 some questions. My questions and your answers will be  
21 recorded by this court reporter. Please understand  
22 that you need to speak up and answer all questions  
23 verbally so that the court reporter can hear you.

24 Please don't shake your head or nod your  
25 head or answer saying uh-huh. Also, to make it easier



1 for the court reporter, please let me finish my  
2 question before you start your answer.

3 Is that acceptable?

4 A. Absolutely.

5 Q. And if you do not understand a question that  
6 I ask, either because I am not clear or you simply do  
7 not understand, please let me know and I will try to  
8 rephrase the question.

9 A. Yes, sir.

10 Q. It is important that we communicate well,  
11 and everything will be taken down. You've waived the  
12 opportunity to read the transcript and make  
13 corrections, and so we'll proceed.

14 If you need to take a break at any time,  
15 please let me or your attorney know, and I'll ask that  
16 you finish your answer to the question that I've posed  
17 and then we can take a break.

18 Is that acceptable?

19 A. Yes, sir.

20 Q. If, as sometimes happens, you recall  
21 something and wish to add to an earlier answer or you  
22 remember something that requires you to clarify an  
23 earlier answer, just tell us and we can add that to  
24 your testimony before we close the transcript.

25 A. Yes, sir.

1 Q. Do you understand these instructions?

2 A. Yes.

3 Q. Is there any reason why you think you will  
4 not be able to answer my questions fully and truthfully  
5 today?

6 A. No, sir.

7 (Debtors' Exhibit No. 1 marked for  
8 identification.)

9 BY MR. LEVENGOOD:

10 Q. Let me hand you a document that will be  
11 marked as Debtors' Exhibit No. 1 and tell you that that  
12 is the notice of deposition of Keowee Falls Investment  
13 Group, LLC.

14 Do you have that in front of you?

15 A. I do.

16 Q. Do you see the legend at the top of each  
17 page of your exhibit, Debtors' Exhibit No. 1, that  
18 identifies Debtors' Exhibit No. 1 as Docket No. 578,  
19 filed on July 18, 2012 in Case No. 12-01220-JW?

20 A. I do.

21 MR. LEVENGOOD: I'm not sure if your copy  
22 shows that.

23 MR. LEVY: It doesn't.

24 MR. LEVENGOOD: Mine doesn't either.

25 MR. LEVY: Okay.

1 BY MR. LEVENGOOD:

2 Q. Have you seen the document that has been  
3 marked as Debtors' Exhibit 1 before?

4 A. I've seen a lot of documents. I couldn't  
5 swear that I've seen it, but I've looked at a lot of  
6 documents.

7 Q. Let me ask you to look at page 4 of Debtors'  
8 Exhibit 1. Do you see that?

9 A. Yes, sir.

10 Q. It has the title at the top Exhibit A, areas  
11 upon which examination is to be taken.

12 A. Yes, sir.

13 Q. Are you prepared to testify about the  
14 subject matter of all 11 areas identified on page 4 of  
15 Debtors' Exhibit 1?

16 A. To the best of my ability, I am.

17 Q. Have you had any conversations with anyone  
18 other than counsel concerning your deposition?

19 A. No, sir.

20 Q. Did you review any documents in preparation  
21 for this deposition?

22 A. No, sir. I have had conversations with Tim,  
23 but just nothing substantive, just to say -- you know,  
24 Tim Cherry.

25 Q. Who is Tim Cherry?

1 A. He is -- was a previous CFO of Cliffs  
2 Communities.

3 MR. LEVENGOOD: And, Jeff, I understand that  
4 Tim is present, not in the room today, but is available  
5 to testify also.

6 MR. LEVY: Yes, he is.

7 MR. LEVENGOOD: As a designated  
8 representative of Keowee Falls Investment Group?

9 MR. LEVY: He is available.

10 MR. LEVENGOOD: Thanks.

11 BY MR. LEVENGOOD:

12 Q. Mr. Anthony, who owns Keowee Falls  
13 Investment Group, LLC?

14 A. I believe I do. There may be some more  
15 fractional shareholders, but I believe -- I believe I'm  
16 the president and owner.

17 (Debtors' Exhibit No. 2 marked for  
18 identification.)

19 BY MR. LEVENGOOD:

20 Q. Let me show you a document which has been  
21 marked for identification purposes as Debtors' Exhibit  
22 2 and ask if you are familiar with this document?

23 A. I've seen this document before, yes.

24 Q. And can you describe what this document is?

25 A. It's an overall configuration of Cliffs

1 Communities companies and mine and Vicki Anthony's  
2 holdings.

3 Q. So looking at Debtors' Exhibit 2, I see at  
4 the top of the page there are blocks for Jim Anthony  
5 and Victoria Anthony; and under Jim Anthony's name  
6 there's the percentage 79.12 percent, and under  
7 Victoria Anthony's name there's a percentage, 0.80  
8 percent; is that correct?

9 A. To the best of my knowledge, that's right.

10 Q. That's what the page says; isn't that right?

11 A. Yes, sir.

12 Q. Would it be fair to say that you own 79.12  
13 percent of the stock of the Cliffs Communities, Inc.?

14 A. I believe that's correct, and that's what  
15 the page says.

16 Q. And that's your understanding of your  
17 ownership?

18 A. Yes, sir.

19 Q. And who is Victoria Anthony?

20 A. That's my wife.

21 Q. The other block under her name to the right  
22 says Cliffs Tradition, LLC, with a line to Lucas  
23 Anthony. Who is Lucas Anthony?

24 A. Lucas Anthony is our son.

25 Q. Does Cliffs Tradition own a 0.08 percent

1 shareholder interest in the Cliffs Communities, Inc.?

2 A. That's what the page says. I wouldn't --  
3 that's the only information I have to give you, and I  
4 don't have any reason not to believe that.

5 Q. And then it says ESOP a block over to the  
6 left with 20 percent. What does that stand for?

7 A. That's the employees profit sharing, and I  
8 am aware that the ESOP owns 20 percent, so I believe  
9 this is correct.

10 Q. And so the ownership of the Cliffs  
11 Communities, Inc., is yourself at 79.12 percent;  
12 Victoria Anthony at 0.80 percent; Cliffs Tradition,  
13 LLC, at 0.08 percent; and an ESOP at 20 percent?

14 A. Yes, sir.

15 Q. Now, as we look down below the Cliffs  
16 Communities, Inc., I see there are five columns, the  
17 tops of which are Cliffs Commercial Properties  
18 Division; Cliffs Real Estate, Sales, and Marketing  
19 Division; Cliffs Development Division; CCHG Holding,  
20 Inc.; and Cliffs Operations Division.

21 Do you see those are columns?

22 A. Yes, sir.

23 Q. Does that refresh your recollection with  
24 regard to the organizational structure of the Cliffs  
25 Communities, Inc.?

1           A.     You know, I have to be absolutely honest. I  
2     assume this to be correct, but my expertise is  
3     bulldozers. And I've hired people from, you know,  
4     KPMG, professionals, and so I'm having to look at this  
5     page and say my knowledge is very limited, but I have  
6     no reason to disbelieve this.

7           Q.     Would Mr. Cherry be a better person to  
8     confirm the accuracy of this chart?

9           A.     Absolutely.

10          Q.     If we look down the center column entitled  
11     Cliffs Development Division --

12          A.     Yes, sir.

13          Q.     -- do you see the fifth block down in that  
14     column?

15          A.     Yes, sir.

16          Q.     What's that?

17          A.     Keowee Falls Investment Group.

18          Q.     LLC; is that right?

19          A.     LLC.

20          Q.     And is that the entity that you're  
21     testifying on behalf of in this deposition today?

22          A.     Yes, sir.

23          Q.     And so would it be fair to say that Keowee  
24     Falls Investment Group, LLC, is owned by the Cliffs  
25     Communities, Inc.?

1 A. Again, that's a -- you know, that's a  
2 technical question that I'm not savvy to answer.

3 Q. Okay.

4 A. I'm not dodging you, I'm just giving you my  
5 limited knowledge.

6 Q. I appreciate that. I'm not asking you to  
7 guess. Let me point you to the legend in the bottom  
8 left-hand corner of this chart.

9 You have a color exhibit, do you not?

10 A. Yes, sir, uh-huh.

11 Q. And there are, it looks like, five different  
12 colors in addition to white that blocks may be?

13 A. Yes, sir.

14 Q. And the legend indicates 100 percent CCI if  
15 it's a white block. Do you see that?

16 A. Yes, sir.

17 Q. And is the Keowee Falls Investment Group,  
18 LLC, in a color other than white?

19 A. No, sir.

20 Q. Who are the directors of The Cliffs  
21 Communities, Inc.?

22 A. I believe right now -- I'm not sure of this,  
23 but Tim could probably give a -- I think it may be me,  
24 James Anthony.

25 Q. And are you the chairperson of the boards of



1 The Cliffs Communities, Inc.?

2 A. I suppose I would be. I wouldn't swear to  
3 that. That's to the best of my knowledge. Again,  
4 we're in an area that's not my expertise.

5 Q. Are you the chief executive officer of The  
6 Cliffs Communities, Inc.?

7 A. I would think so, yes, sir.

8 Q. This chart indicates that The Cliffs  
9 Communities, Inc., is an S Corp. Can you explain what  
10 that means?

11 A. No, sir.

12 Q. To your knowledge, does The Cliffs  
13 Communities, Inc., pay corporate taxes as a  
14 corporation?

15 A. I do not know.

16 Q. Does The Cliffs Communities, Inc., own a  
17 number of subsidiaries?

18 A. Yes, sir, according to this chart they do.

19 Q. Do any of the subsidiaries of The Cliffs  
20 Communities, Inc., file corporate income tax returns  
21 with the Internal Revenue Service?

22 A. I believe they do.

23 Q. Which ones are they?

24 A. I do not know.

25 Q. Now, to the immediate right of the column

1 that is entitled Cliffs Development Division, there's a  
2 block that says CCHG Holding, Inc.

3 Do you see that?

4 A. Yes, sir.

5 Q. Is CCHG Holding, Inc., a wholly-owned  
6 subsidiary of The Cliffs Communities, Inc.?

7 A. Again, I believe so.

8 Q. And what is CCHG Holding, Inc.? What does  
9 it do?

10 A. I'm not sure.

11 Q. Are you familiar with a transaction in April  
12 of 2010 whereby members of The Cliffs community golf  
13 and country club, and I say that in a general term, not  
14 specifically, loaned a total of \$64,050,000 to The  
15 Cliffs Club and Hospitality Group, Inc.?

16 A. I'm aware of that transaction.

17 Q. Did you personally guarantee that  
18 obligation?

19 A. Yes, sir.

20 Q. And are you familiar with the formation of  
21 CCHG Holding, Inc., to be a special-purpose entity to  
22 own the stock of The Cliffs Club and Hospitality Group,  
23 Inc.?

24 A. To the best of my understanding, that's what  
25 happened, yes.

1 Q. Let me say -- isn't it true that CCHG  
2 Holding, Inc., and the ten boxes beneath it on Debtors'  
3 Exhibit 2 are the debtors in the Chapter 11 cases that  
4 I represent there that are referred to as the golf  
5 clubs or the ClubCos?

6 A. I believe that to be true.

7 Q. So the ClubCos are the entities starting  
8 with CCHG Holding, Inc., and going down?

9 A. Yes, sir.

10 Q. On that chart?

11 A. Yes, sir.

12 Q. When I refer to the ClubCos for purposes of  
13 questions in the deposition today, I'm going to be  
14 referring to the 11 entities that are described in the  
15 boxes starting with CCHG Holding, Inc.; and underneath  
16 that The Cliffs Club and Hospitality Group, Inc.; and  
17 underneath that, The Cliffs at Mountain Park Golf and  
18 Country Club, LLC; The Cliffs at Keowee Vineyards Golf  
19 and Country Club, LLC; The Cliffs at Walnut Cove Golf  
20 and Country Club, LLC; The Cliffs at Keowee Falls Golf  
21 and Country Club, LLC; The Cliffs at Keowee Springs  
22 Golf and Country Club, LLC; The Cliffs at High Carolina  
23 Golf and Country Club, LLC; the Cliffs at Glassy Golf  
24 and Country Club, LLC; The Cliffs Valley Golf and  
25 Country Club, LLC; and The Cliffs Club and Hospitality

1 Service Company, LLC.

2 Do you understand that?

3 A. Yes, sir, I do.

4 Q. And when I refer to The Cliffs Development  
5 Company affiliates or I refer to DevCos, I'm referring  
6 to the other blocks on Debtors' Exhibit 2 that are not  
7 ClubCos.

8 A. I understand.

9 Q. Keowee Falls Investment Group, Inc., which  
10 is one of the DevCos, is also a debtor in a Chapter 11  
11 case, isn't it?

12 A. Yes, sir.

13 Q. Does The Cliffs Communities, Inc., file  
14 income tax returns with the Internal Revenue Service?

15 A. I'm not sure.

16 Q. Who would know?

17 A. Tim Cherry.

18 Q. Is the financial activity of the  
19 subsidiaries of The Cliffs Communities, Inc.,  
20 consolidated for purpose of filing corporate income tax  
21 returns?

22 A. I'm not sure.

23 Q. And does The Cliffs Communities, Inc.,  
24 produce financial statements?

25 A. I'm not sure.

1 Q. Are these financial statements reported on a  
2 consolidated basis?

3 A. I'm not sure.

4 Q. Please explain your role in the development  
5 of The Cliffs Communities.

6 A. My primary role is with the land and  
7 acquiring the land, land planning and coordinating  
8 development of the property, and also sales and  
9 marketing. You know, in the area of sales and  
10 marketing, branding, the overall concept of marketing  
11 and sales.

12 And my weakest area is the one we're in now,  
13 and I've tried to hire professionals over the period of  
14 time to look after that. So that's pretty much my  
15 involvement.

16 Q. Are you familiar with the term "intercompany  
17 payables"?

18 A. Yes, sir.

19 Q. And what does that mean to you?

20 A. It's the -- intercompany payables would be  
21 the funds that the intercompanies owed the other  
22 companies.

23 Q. And when you say "the funds that the  
24 intercompanies owed the other companies," what do you  
25 mean by that?

1           A.       Well, these companies, you know, to -- to  
2       the best of my knowledge, these companies were set up  
3       to stand on their own. And you'd take, for instance,  
4       the land sales and, for instance, land that we  
5       contributed to different entities, and there was a  
6       recordkeeping of the money that went into those  
7       entities. And if there was monies advanced to other  
8       companies, there was a record kept of those transfers.

9           Q.       And who kept that record?

10          A.       Our accounting staff of Tim Cherry, if he  
11       was here, he had -- I don't know where he physically  
12       did that, but that was his responsibility while he was  
13       here; and before that it would have been other folks.

14          Q.       Would it be fair to say that if you had a  
15       development company affiliate that had bought land for  
16       the development of a golf course and you had a ClubCo  
17       that was going to operate the golf and country club,  
18       occasionally you would transfer the capital asset from  
19       the development company affiliate that you owned to the  
20       ClubCo that you owned and you would track that transfer  
21       of that capital asset for the intercompany payables  
22       journal?

23          A.       Can you repeat that one more time?

24          Q.       Would it be fair to say that if a  
25       development company affiliate that you owned had

1 purchased land for the construction of a golf course  
2 and had built that golf course and was going to  
3 transfer that capital asset to a ClubCo that you owned,  
4 that it was going to operate a golf and country club  
5 using that golf course, that at the time you  
6 transferred that capital asset from the development  
7 company affiliate to the ClubCo, that you tracked that  
8 transfer on the intercompany payables journal?

9 A. I'm not sure. That's an accounting  
10 question, that's above my pay grade.

11 Q. Do you know when The Cliffs Communities,  
12 Inc., began to track intercompany payables?

13 A. No, sir.

14 Q. When you started with your first community,  
15 when was that?

16 A. Approximately -- the first community  
17 started, Cliffs Communities, was The Cliffs at Glassy,  
18 and we began to purchase the land I believe in '89.

19 Q. And when you started with The Cliffs at  
20 Glassy, what was the -- did you form a corporation or a  
21 partnership to own the land?

22 A. That's 20 years ago. I'm not sure.

23 Q. Did you hold title to it in your name  
24 individually?

25 A. I don't believe so. I may have for a short

1 period of time, but I don't believe over a length -- I  
2 think it was a corporate transfer.

3 Q. Mr. Anthony, why, from 1990, when you  
4 started The Cliffs Communities, to now did you -- were  
5 these companies that are described on or listed on  
6 Debtors' Exhibit 2, why were they formed?

7 A. I think there were several reasons; one, I'm  
8 sure there was an effort made to keep these companies  
9 -- creating individual companies that tracked the  
10 resources in and out; and I think a lot of it was  
11 certainly tax structure, but that's an opinion that I'm  
12 venturing that I don't know for sure.

13 Q. Are there any other reasons why these  
14 corporations were formed?

15 A. I'm sure there's lots of reasons, but,  
16 again, that's not my area of expertise.

17 Q. What reasons are you aware of today as we  
18 sit here for the formation of the corporate entities on  
19 Debtors' Exhibit 2?

20 A. I think, you know, just managing the  
21 organization of -- there's reasons to how companies --  
22 for organizational purposes and tax purposes and to  
23 just facilitate all of the dozens and dozens of  
24 activities that happen.

25 Q. Well, let's start with The Cliffs Commercial



1 Properties Division and the six or seven boxes on  
2 Debtors' Exhibit 2 that are on the left-hand column.

3 Do you see that, starting with LaBastide  
4 Investment Group, LLC?

5 A. I do.

6 Q. LaBastide Management Group, LLC; The Cliffs  
7 Commercial Properties, LLC; Cliffs Wellness, LLC;  
8 Cliffs Retail Operations, LLC; and then off to the  
9 right of that, The Market at Keowee Town, LLC; and then  
10 Cliffs Natural, LLC.

11 Can you tell me what those entities do?

12 A. Well, The Cliffs LaBastide was an EN that we  
13 brought marketing guests in and provided that -- you  
14 know, a seamless experience for marketing guests.  
15 LaBastide Management was the entity that managed that  
16 facility.

17 The Cliffs Commercial Properties, just from  
18 the name, I would say that maybe that company held  
19 title to -- I'm getting into an area I don't know, so  
20 I'll retract that, I'm not sure about that. Cliffs  
21 Wellness --

22 Q. I think it's Wellsong.

23 A. Is that Wellsong? That was a name that we  
24 really wanted to process, and I'm not sure that any --  
25 well, I think there was -- there's some properties that

1 were maybe in that company, maybe, I'm not sure, that  
2 related to Wellness. Again, I'm venturing guesses, and  
3 I'm not supposed to guess.

4 And then Cliffs Retail Operations, I'm not  
5 sure. And Cliffs Natural is a company we set up for  
6 the water. So I think -- you know, I didn't help you  
7 much, but I don't know much.

8 Q. So the Commercial Properties Division, would  
9 it be fair to say, was the division of The Cliffs  
10 Communities, Inc., that you owned substantially that  
11 operated the commercial activities of the business?

12 A. I would say that it operated some of the  
13 commercial activities, I'm not sure it operated all of  
14 the commercial activities.

15 Q. Then let's move over to the right, The  
16 Cliffs Real Estate, Sales and Marketing Division, and  
17 you have four boxes underneath that division. Do you  
18 see those? It looks like Cliffs Real Estate, Inc., an  
19 S Corp; and underneath that, Skyland Properties, LLC,  
20 and underneath that -- excuse me, not under Cliffs Real  
21 Estate, Inc. but there's a separate affiliate, Cliffs  
22 Communities Real Estate, Inc., an S Corp; and then  
23 Ridgetop Communications, LLC.

24 Do you see those boxes under the column  
25 entitled Cliffs Real Estate, Sales, and Marketing

1 Division?

2 A. I do.

3 Q. And what did The Cliffs Real Estate, Sales,  
4 and Marketing Division do?

5 A. They were primarily in the sales and  
6 marketing of Cliffs Real Estate.

7 Q. And when you say "the sales and marketing of  
8 Cliffs Real Estate," what do you mean?

9 A. The lots that we developed and sold.

10 Q. When you developed and sold a lot -- excuse  
11 me. When you developed a lot, which of the entities in  
12 your organizational chart was responsible for that?

13 A. I would -- Cliffs Development, I'd say  
14 that's the -- what's the last word there? Cliffs  
15 Development, what's that last word?

16 Q. Looks like "division."

17 A. Division. I would think that's where the  
18 development occurred.

19 Q. And then so the block that we're talking  
20 about now, Cliffs Real Estate, Sales, and Marketing  
21 Division, that was the group of companies that were  
22 tasked with the responsibility for the retail sale of  
23 lots that had been developed for residential home  
24 ownership?

25 A. I think that would be true.

1 Q. Were there any other reasons that -- any  
2 other reasons that the Real Estate, Sales and Marketing  
3 Division sold property?

4 A. I don't believe so.

5 Q. We've talked about Development Division,  
6 we've talked about CCHG Holding. On the right we have  
7 Cliffs Operations Division, and you have seven  
8 companies listed in blocks underneath that division  
9 column.

10 Do you see that?

11 A. Yes, sir.

12 Q. And tell me what Cliffs Operations Division  
13 did for The Cliffs Communities, Inc.

14 A. As the name indicates, I would suppose that  
15 they were primarily empowered to manage The Cliffs'  
16 operations.

17 Q. In the top right-hand corner of Debtors'  
18 Exhibit 2, there is a gray box entitled Cliffs Retreat  
19 Collection, and underneath that there are two blocks  
20 Pelican Cays, C-A-Y-S, LLC; and Cornish Cays, LLC.

21 Do you see that?

22 A. I do.

23 Q. Can you tell me what that's all about?

24 A. We purchased island properties. We were --  
25 when that happened, we were -- our brand included

1 international properties, and so with the downturn of  
2 the economy, we didn't have enough money to finance  
3 those and we sold them. So we no longer have those  
4 properties.

5 Q. When you say "we," who do you mean by "we"?

6 A. I'd say myself and the management team at  
7 that point in time.

8 Q. Now, none of the management team at that  
9 point in time were owners, were they, of The Cliffs  
10 Communities, Inc.?

11 A. That's correct.

12 Q. You were the owner of 79.12 percent?

13 A. Right.

14 Q. Of The Cliffs Communities, Inc.; is that  
15 correct?

16 A. Yes, sir.

17 Q. In the top left-hand corner of Debtors'  
18 Exhibit 2, there's a blue box that says Longview Land  
19 Co., LLC, and an orange box that says Waterfall  
20 Investment Group, LLC.

21 Do you see those blocks?

22 A. Yes, sir.

23 Q. Can you tell me what those entities do or  
24 did?

25 A. They purchased -- did some initial

1 purchasing of land to be developed.

2 Q. And could you be a little bit more specific  
3 about what land they purchased for development and  
4 where? Let's start with Longview.

5 A. Longview purchased land at High Carolina.  
6 Longview purchased a tract at Keowee, 600 acres.  
7 Longview -- several parcels, but those are two of the  
8 big ones. I'd really have to look at a list.

9 They -- the limit of my knowledge is  
10 Longview did purchase properties, initial purpose, and  
11 helped land to be developed of development companies.

12 Q. Now, when you say that Longview purchased  
13 land at High Carolina, please explain what the High  
14 Carolina development is. What do you mean by that?

15 A. High Carolina was a piece of land we put  
16 together to be the eighth community, to build an eighth  
17 golf course, and we -- Longview purchased some of those  
18 tracts, not all, but I think some of those tracts.

19 Q. Are you familiar with the term "land bank"?

20 A. Yes, sir.

21 Q. What does that mean?

22 A. You know, you buy land and bank it till the  
23 proper time to develop it.

24 Q. I believe you also testified that Longview  
25 Land acquired a tract of property at Keowee?

1 A. That's correct.

2 Q. Please tell me about that tract of land.

3 A. We purchased 600 acres in Longview, and  
4 times got tough and we sold it with a right to  
5 repurchase, and that right to repurchase -- there's  
6 some gray area about whether that right's expired or  
7 not.

8 Q. When you say "at Keowee," do you mean at  
9 Lake Keowee?

10 A. Yes, sir.

11 Q. Now, there are some developments currently  
12 at Lake Keowee that are Cliffs Communities, are they  
13 not?

14 A. Yes, sir.

15 Q. And those include Cliffs at Keowee Falls,  
16 Cliffs at Keowee Springs, and Cliffs at Keowee  
17 Vineyards?

18 A. That's correct.

19 Q. Is this 600 acres that you're talking about  
20 at one of those three locations?

21 A. No, sir.

22 Q. Was this land that you anticipated being a  
23 fourth community at Lake Keowee?

24 A. No, sir. It was to be part of the Springs.

25 Q. So it was supposed to be part of The Cliffs

1 at Keowee Springs?

2 A. Yes, sir.

3 Q. Does any of that land relate to the golf  
4 course at The Cliffs at Keowee Springs?

5 A. No, sir.

6 Q. Does it relate to any of the amenities for  
7 the country club, the wellness center?

8 A. No, sir.

9 Q. When Keowee Falls Investment Group, Inc.,  
10 transferred capital assets to The Cliffs at Keowee  
11 Falls Golf and Country Club, Inc., what record was made  
12 in the intercompany payable ledger?

13 A. I'm not sure. I don't know.

14 Q. Did you conduct an appraisal to determine  
15 the fair market value of the capital assets when you  
16 transferred the assets on the books from Keowee Falls  
17 Investment Group to The Cliffs at Keowee Falls Golf and  
18 Country Club to determine how much of a liability to  
19 create?

20 A. I do not know.

21 Q. Do you know whether the intercompany payable  
22 accounts on which you base your development company  
23 affiliate proofs of claim, including Keowee Falls  
24 Investment Group, LLC, are based on the fair market  
25 value of the capital assets that were transferred by a



1 developing company affiliate to the ClubCo?

2 A. No, sir, I do not know.

3 Q. At the time the intercompany payable  
4 accounts on which you base your development company  
5 affiliate proofs of claims arose and were tracked, the  
6 ClubCo transferee did not have cash to pay the  
7 transferor for the capital assets, did it?

8 A. I'm not sure.

9 Q. Well, if it had had cash to pay for them,  
10 wouldn't a more direct way to have documented the  
11 transfer to have had a bill of sale from one of your  
12 companies to the other of your companies and a payment  
13 of cash or a wire transfer for the value of that asset  
14 that was being transferred from the transferee back to  
15 the transferor?

16 A. You know, that seems to make sense, but I  
17 don't know.

18 Q. Why didn't you get a bank loan so that the  
19 ClubCo debtor transferee could pay cash for the capital  
20 asset when it was transferred?

21 A. I'm not sure. It could have been no bank  
22 would have loaned to us, but I'm not sure.

23 Q. Do you know any other reason?

24 A. I do not. And I'm not sure about -- the  
25 timing that we're talking about, it's a date that's in

1 the past, and I'm not sure about financial  
2 circumstances at that point in time. So I guess I  
3 should not have answered that question in the way I  
4 did.

5 Q. Do you know whether the ClubCo that received  
6 the capital asset from your development company  
7 affiliate had the ability to pay cash for that asset?

8 A. I do not.

9 Q. Do you know whether the ClubCo that received  
10 the capital asset had the ability to obtain third-party  
11 arm's length financing to pay cash for that asset?

12 A. No, sir.

13 Q. Do you know whether the ClubCo transferee  
14 that received the capital asset was insolvent at the  
15 time that the transfer occurred?

16 A. To my knowledge, they were not.

17 Q. So is it your testimony that the ClubCos  
18 were solvent at the time the transfers occurred from a  
19 Cliffs development company affiliate of a capital asset  
20 to a ClubCo?

21 A. Maybe a better way to answer that question  
22 is: I'm not sure.

23 Q. So you just don't know whether they were  
24 solvent or not?

25 A. Again -- repeat the question.

1 Q. You don't know whether the ClubCo affiliates  
2 that received capital assets from development company  
3 affiliates were solvent at the time the transfer of the  
4 capital assets occurred?

5 A. To my best knowledge, they were solvent.

6 Q. And what do you base that opinion on?

7 A. On my best recollection. I'm basing it on  
8 my best recollection.

9 Q. Mr. Anthony, there's two classical ways of  
10 determining solvency. The bankruptcy solvency, or  
11 insolvency, is a balance sheet test in which you value  
12 all of the assets of the company and then you value all  
13 of the liabilities of the company, and if the assets  
14 are less than the liabilities, the company is  
15 insolvent.

16 Do you understand?

17 A. Yes, sir.

18 Q. The other definition of insolvency,  
19 sometimes referred to as the Uniform Commercial Code  
20 definition of insolvency that really only comes into  
21 play into bankruptcy in an involuntary proceeding, is  
22 when the company is unable to pay its debts as they  
23 mature; it may be balance sheet solvent, but if it's  
24 cash strapped, if it's unable to pay its debts as they  
25 mature, then it's insolvent in that UCC sense.

1 Do you understand that?

2 A. Yes, sir.

3 Q. Is it your testimony today that each of the  
4 ClubCo affiliates that received a transfer of a capital  
5 asset from a development company affiliate was balance-  
6 sheet solvent at the time the transfers occurred?

7 A. I don't know. There's -- you've asked me a  
8 lot of questions dealing with -- that I've answered. I  
9 don't know appraisals and all those kind of things, so  
10 that's a very complicated question, and I don't know  
11 for sure. I have my inkling, but to -- I raised my  
12 right hand earlier, so I don't know.

13 Q. But you said --

14 A. I think our experts that -- that Mr. Cherry  
15 will know.

16 Q. You said that you believed at the time the  
17 transfers occurred that the ClubCo entities were  
18 solvent. I'm just trying to understand what you base  
19 that belief on. And so I'm asking you again, what is  
20 the basis for your belief; is it your hope that they  
21 were, or do you have some facts to base it on?

22 A. Actually, once you gave me the definitions  
23 of it, then that led me to conclude that there's --  
24 that, with my limited knowledge, and again, I spent my  
25 time on sales, developing, and marketing, that I needed

1 to depend on the experts to do what was prudent, and  
2 that's what I did.

3 Q. So you don't know whether the companies were  
4 solvent or insolvent?

5 A. Right, right.

6 (Debtors' Exhibit No. 3 marked for  
7 identification.)

8 BY MR. LEVENGOOD:

9 Q. Mr. Anthony, let me show you a document  
10 that's been marked as Debtors' Exhibit 3. Would you  
11 please identify Debtors' Exhibit 3?

12 A. It's a proof of claim. The name of the  
13 debtor is The Cliffs at Keowee Vineyards Golf and  
14 Country Club, LLC; Case No. 12-01226.

15 Q. And who is the claimant? Who is the  
16 creditor?

17 A. Name of creditor is Keowee Falls Investment  
18 Group, LLC.

19 Q. Thank you. Debtors' Exhibit 3 is a copy of  
20 the proof of claim bearing the notation on the bottom  
21 right-hand corner, right above the Debtors' Exhibit  
22 label, do you see it, that says Cliffs POC 01254?

23 A. Yes, sir.

24 Q. And this is the proof of claim that Keowee  
25 Falls Investment Group, LLC, filed in the case of The

1 Cliffs at Keowee Vineyards Golf and Country Club, LLC;  
2 isn't that right.

3 A. Yes, sir.

4 Q. Who signed the proof of claim that has been  
5 marked as Debtors' Exhibit 3? Would you look at page  
6 2?

7 A. I signed that.

8 Q. And you signed it as the member of Keowee  
9 Falls Investment Group, LLC, right?

10 A. Correct.

11 Q. And you signed it on May 29, 2012?

12 A. That's correct.

13 Q. Who prepared the proof of claim that has  
14 been marked as Debtors' Exhibit 3?

15 A. I do not know.

16 Q. Let me ask you to look at page 3 of Debtors'  
17 Exhibit 3.

18 A. Yes, sir.

19 Q. Can you tell me what that document is  
20 intended to communicate, page 3?

21 A. That the debtor, Cliffs at Keowee Vineyards  
22 Golf and Country Club, and the creditors, Keowee Falls  
23 Investment Group, LLC, and that the attachments are  
24 intercompany balance accounts, and the balance was  
25 incurred on May 15, 2008.

1 Q. And what does the statement under paragraph  
2 one that says, Intercompany account balance -- would  
3 you please read that?

4 A. Were historically used to control  
5 intercompany transactions between legal entities of The  
6 Cliffs Communities, Inc., up until the time of the  
7 formation of The Cliffs Club and Hospitality Group,  
8 Inc.

9 Q. What does that mean?

10 A. It's pretty self-explanatory. That  
11 intercompany accounts were used to control intercompany  
12 transactions between legal entities of The Cliffs  
13 Communities up until the time of formation of The  
14 Cliffs Club and Hospitality Group, Inc.

15 Q. Just to clarify, these are intercompany  
16 transactions between legal affiliates of The Cliffs  
17 Communities, Inc.?

18 A. Right.

19 Q. And The Cliffs Communities, Inc., at all  
20 points in time, was owned 79.12 percent, by you?

21 A. Correct.

22 Q. Now, what is the basis for the statement  
23 that the balance was incurred May 15, 2008?

24 A. I would assume that that was -- there was a  
25 transfer of assets, but I'm not sure -- strike my

1 answer. I'm not sure.

2 Q. Do you know who prepared page 3 of the proof  
3 of claim that's been marked as Debtors' Exhibit 3?

4 A. No, sir.

5 Q. Let me ask you to look at page 4 of Debtors'  
6 Exhibit 3 and ask you the same question. What is that  
7 document?

8 A. Keowee Vineyards Golf and Country Club trial  
9 balance, February 2012.

10 Q. And the title of the page is Closing Period  
11 Balances?

12 A. Yes, sir.

13 Q. Do you know who prepared page 4 of Debtors'  
14 Exhibit 3?

15 A. No, sir.

16 Q. Do you know when it was prepared?

17 A. No, sir.

18 Q. Do you know in the bottom left-hand corner  
19 of page 4 a date and a time?

20 A. May 7, 2012, 9:26 a.m.

21 Q. Then over in the right-hand, bottom right,  
22 it says a user, and then there's a word there. Can you  
23 tell me what that word is?

24 A. MOWENS, Term S8.

25 Q. Do you have an employee who uses the letters



1 MOWENS?

2 A. I think that would probably be Marie Owens.

3 Q. Marie Owens?

4 A. I believe.

5 Q. And who does Marie Owens work for?

6 A. She works for -- you know, I'm not sure if  
7 she works for the club or if she works for the  
8 development side. She works for Cliffs.

9 Q. Before the bankruptcy, do you know who she  
10 worked for? And when I say "the bankruptcy," I mean  
11 the bankruptcy of the ClubCos on February 28, 2012.

12 A. I don't know. I think some of those people  
13 might have worked both sides, I'm not sure.

14 Q. It didn't matter because you owned the  
15 company that was the parent company; isn't that true?

16 A. I'm not sure whether it would matter or not.

17 Q. Now, on page 4, there is a line that says,  
18 Account -- do you see it -- 1824, due to/from Keowee  
19 Falls Investment Group?

20 A. Yes, sir, I see that.

21 Q. And then it says, Closing balance credit,  
22 and it's a negative number, \$449.66.

23 Do you see that?

24 A. Yes, sir, I do.

25 Q. Is that the document upon which you base

1 your proof of claim that is Debtors' Exhibit 3?

2 A. Again, I'm not privy to how this document  
3 was calculated, and I have to rely on the professionals  
4 that we have hired to do this. So I don't know.

5 Q. Mr. Anthony, you signed the proof of claim;  
6 isn't that right?

7 A. Yes, sir.

8 Q. And you signed that under the legend on page  
9 2 that says, I declare under penalty of perjury that  
10 the information provided in this claim is true and  
11 correct to the best of my knowledge, information, and  
12 reasonable belief?

13 A. "The best of my knowledge" is the keyword  
14 there.

15 Q. So to the best of your knowledge, is page 3  
16 and page 4 of Debtors' Exhibit 3 the documents on which  
17 you base the proof of claim that's been marked as  
18 Debtors' Exhibit 3?

19 A. Yeah, I have no reason to believe that this  
20 is not an honest representation.

21 (Debtors' Exhibit No. 4 marked for  
22 identification.)

23 BY MR. LEVENGOOD:

24 Q. I'm going to show you a document that's been  
25 marked as Debtors' Exhibit 4. Mr. Anthony, I'm handing

1 you a nine-page document that has been marked for  
2 identification purposes as Debtors' Exhibit 4.

3 Debtors' Exhibit 4 is a copy of a proof of  
4 claim bearing the notation in the bottom right-hand  
5 side of the first page Cliffs POC 01261.

6 A. Yes, sir.

7 Q. And this claim was filed by Keowee Falls  
8 Investment Group, LLC, in the case of The Cliffs at  
9 Keowee Falls Golf and Country Club, LLC; isn't that  
10 right?

11 A. Yes, sir.

12 Q. Who signed the proof of claim that has been  
13 marked as Debtors' Exhibit 4?

14 A. Page 2, I signed that.

15 Q. Who prepared the proof of claim that has  
16 been marked as Debtors' Exhibit 4?

17 A. I do not know.

18 Q. When was page 3 -- let me ask you to turn to  
19 page 3 of the proof of claim. Do you know when page 3  
20 of the proof of claim was prepared?

21 A. Page 3 doesn't have a date on when it was  
22 prepared, so I do not know.

23 Q. Do you know who prepared page 3?

24 A. No, sir. I assume that -- well, no, sir.

25 Q. With regard to the information in the bullet

1 that's under the heading Account Transactions Attached,  
2 would you please read into the record what that says?

3 A. These transactions were made between  
4 December 2005 and September 2011. The balance of these  
5 transactions is for the transfer of the cost of the  
6 construction of The Falls golf course from the  
7 development company Keowee Falls Investment Group, LLC,  
8 and the club entity.

9 Q. And what does that mean?

10 A. I believe it means that the cost was  
11 transferred from the balance sheet of the development  
12 entity over to the golfing entity, the club entity.

13 Q. Mr. Anthony, let me ask you now to look at  
14 page 4 of the proof of claim that's been marked as  
15 Debtors' Exhibit 4.

16 A. Yes, sir.

17 Q. Would you tell me what that page is?

18 A. It's Keowee Falls South Golf and Country  
19 Club trial balance for February 2012 closing period  
20 balances.

21 Q. And I note that it has the label down at the  
22 bottom user MOWENS in the bottom right-hand corner.

23 A. Yes, sir.

24 Q. And the bottom left-hand corner says May 7,  
25 2012, 9:27 a.m.; is that right?

1 A. Yes, sir.

2 Q. Do you know who prepared this document?

3 A. I believe, again, that was Maria Owens,  
4 that's what's on the page, and I would suspect that she  
5 certainly had input into this document.

6 Q. And if you look at the second line in the  
7 closing period balances, account number 1824,  
8 description, due to/from Keowee Falls Investment Group,  
9 there's a negative number under the column entitled  
10 Closing Balance Credit, and it is \$16,669,860.46; is  
11 that right?

12 A. Yes, sir.

13 Q. Now let me ask you to look at page 5 of the  
14 proof of claim that's marked for identification  
15 purposes as Debtors' Exhibit 4.

16 A. Yes, sir.

17 Q. Do you know who prepared page 5?

18 A. It says M. Ritsch.

19 Q. And who is that?

20 A. That's Marty Ritsch, who is -- was another  
21 employee of Cliffs.

22 Q. And do you know when this page was prepared?

23 A. It says May 29, 2012.

24 Q. And what is this document?

25 A. It's a history of payables from January 1,

1 2006 to February 28, 2012.

2 Q. Let me ask you to look at the very first  
3 entry. What's the date of that judgment?

4 A. December 31, '06.

5 Q. And what does it say?

6 A. It says Open Balance, and then on the  
7 amounts, it's \$18,283,720.56.

8 Q. And then the next line says April 17, 2007,  
9 and it says, Due to Co. 24, and it's negative  
10 \$523,967.28; is that right?

11 A. Yes, sir.

12 Q. And then June 30, 2007, there's a Due from  
13 Co. 24, \$1,885,456.32; is that right?

14 A. Yes, sir.

15 Q. Next line is December 11, 2007, Due from Co.  
16 24, and it's \$20,000.

17 A. Yes, sir.

18 Q. And the next line is December 31, 2008, Due  
19 to Co. 24, it's \$98,091,12?

20 A. Yes, sir.

21 Q. And then September 8, 2011, something about  
22 remove LAN, 99, dash, CCI, dash, transfers, and it's  
23 \$330,462.18; is that right?

24 A. Yes, sir.

25 Q. And all of these entries add up to

1 \$16,669,860.46; is that right?

2 A. Yes, sir.

3 Q. And that's the basis for the proof of claim,  
4 if you look on page 1 of Debtors' Exhibit 4, of  
5 \$16,669,860?

6 A. Yes, sir.

7 Q. Do you know what these line items are  
8 intended to show? And now I'm looking at page 4  
9 again.

10 A. I believe they're a listing of the  
11 intercompany balances.

12 Q. Would it be fair to say that they appear to  
13 be adjustments to the intercompany balances?

14 A. I'm not sure.

15 Q. Let me ask you to look at page 5 of the  
16 proof of claim that's been marked as Debtors' Exhibit  
17 4.

18 A. Yes, sir.

19 Q. What is that document?

20 A. Let me count the pages to be sure I'm on the  
21 right page. Keowee Falls South Golf and Country Club  
22 detailed G/L history from January 1, 2006 to February  
23 28, 2012.

24 Q. Let's count pages again. I think we just  
25 talked about that page.

1 A. Yes, sir.

2 Q. I believe that's page 5. Is that what I  
3 just asked you?

4 A. Yes.

5 Q. Then don't mind me. Let's go to page 6.

6 A. Yes, sir.

7 Q. Please describe page 6 for me.

8 A. General ledger detailed report, KFC, The  
9 Cliffs at Keowee Falls, detailed posting for dates  
10 01-01-01 through 12-31-06.

11 Q. And what's the first entry?

12 A. The first entry is 12-31-05, AJ-J0001 AJE  
13 land transfer to fixed assets. I'm sorry, the first  
14 entry is probably --

15 Q. I think that's the first entry. The rest of  
16 the stuff is headings, I guess, unless you're saying  
17 due to/from KIF may be the first line?

18 A. Yes.

19 Q. But those are zeros?

20 A. Yes.

21 Q. So the first entry that has an amount in it  
22 is the line you just described as December 31, 2005?

23 A. Yes, sir.

24 Q. Do you know what this document purports to  
25 show?



1 A. I think it's an accounting of flow of  
2 resources -- you know, flow of resources from -- I'm  
3 not absolutely sure.

4 Q. Let me ask you to go to page -- well, still  
5 on page 6, do you know who prepared this document?

6 A. I believe that's Marty -- no, I'm not sure  
7 who -- MAS, I'm not sure who did that.

8 Q. What's the date of the document?

9 A. 05-29-12.

10 Q. Let me ask you to go to page 7 of the proof  
11 of claim marked as Debtors' Exhibit 4. First of all,  
12 can you tell me who prepared this document?

13 A. It has MAS. And, again, I'm not sure who  
14 prepared that document.

15 Q. And when was it prepared?

16 A. 05-29-12.

17 Q. And why is this document attached to the  
18 proof of claim?

19 A. I'm not sure.

20 Q. What's the title of the document?

21 A. KFC, The Cliffs at Keowee Falls Golf and  
22 Country Club, JC job posting register, posting for date  
23 12-31-06.

24 Q. And the first line?

25 A. Says, 11-14-04, due to/from KIF, job posting

1 cost batch, and the amount credited, \$23,797.77.

2 Q. And the second line?

3 A. Golf course WIP, cost, and the number is a  
4 debit of \$23,797.77.

5 Q. Does that refresh your recollection about  
6 why this document is attached to the proof of claim?

7 A. No, sir.

8 Q. Let me ask you to look at page 7, I  
9 believe.

10 A. The next page?

11 Q. The next page.

12 A. Yes, sir.

13 Q. It would be page 8 of Debtors' Exhibit 4.  
14 What is that document?

15 A. I'm not sure. I can read the -- it says job  
16 posting register for date 12-31-06.

17 Q. And do you know who prepared it?

18 A. No, sir, I do not.

19 Q. And do you know when it was prepared?

20 A. 05-29-12.

21 Q. And this document has two entries, due  
22 to/from KIF, job posting cost batch, with a credit of  
23 \$10,724.21?

24 A. That's correct.

25 Q. And then a golf course WIP, with a cost and

1 a debit of \$10,724.21; is that right?

2 A. Yes, sir.

3 Q. Does that refresh your recollection as to  
4 why this document is attached to this proof of claim?

5 A. No, sir.

6 MR. LEVY: Would you mind if we take about a  
7 five-minute break here?

8 MR. LEVENGOOD: I don't at all.

9 (A break was taken from 12:34 p.m. to  
10 12:41 p.m.)

11 BY MR. LEVENGOOD:

12 Q. Mr. Anthony, let me ask you to look at the  
13 document that's been marked Debtors' Exhibit 4, it's  
14 the proof of claim 1261 that we've been talking about.

15 A. Yes, sir.

16 Q. It's the proof of claim filed by Keowee  
17 Falls Investment Group, LLC, in the case of The Cliffs  
18 at Keowee Falls Golf and Country Club, LLC.

19 A. Yes, sir.

20 Q. Let me ask you to look at page 2 of Exhibit  
21 No. 4.

22 A. Yes, sir.

23 Q. And I'd like you to read the instructions  
24 for proof of claim form, paragraph number 7.

25 A. Attached --

1 Q. That's redacted.

2 A. I'll take your word -- okay. Copies of any  
3 document that show the debt exists and a lien secures  
4 the debt. You must also attach copies of documents  
5 that evidence perfection of any security interest. You  
6 may also attach a summary in addition to the documents  
7 themselves. FRBP 3001(c) and (d).

8 If the claim is based on delivering health  
9 care goods or services, limit disclosing confidential  
10 health care information. Do not send original  
11 documents, as attachments may be destroyed after  
12 scanning.

13 Q. Thank you, Mr. Anthony. Did you comply with  
14 the instructions, including paragraph 7 on page 2 of  
15 the proof of claim that's been marked as Debtors'  
16 Exhibit 4?

17 A. I relied on professionals that did these  
18 documents and assured me that we were doing the best we  
19 could to comply.

20 Q. Let me ask the question again. To the best  
21 of your knowledge, did you comply with the  
22 instructions, specifically instruction 7?

23 A. I would believe that our professionals would  
24 have done their very best to comply before they would  
25 ask me to sign.

1 Q. So far as you're aware, you did not fail to  
2 comply with the instructions?

3 A. I'm not aware that we failed.

4 Q. So pages 3 through 8 of the proof of claim  
5 that's been marked as Debtors' Exhibit 4, which are the  
6 pages that we've been talking about in your testimony  
7 that I've been asking you questions about, page 3  
8 through 8 are all of the documents that show the debt  
9 exists?

10 A. That's what the instructions say.

11 Q. So to make sure I understand your testimony,  
12 there are no documents other than pages 3 through 8  
13 that show that Keowee Falls Investment Group has a  
14 claim against The Cliffs at Keowee Falls Golf and  
15 Country Club?

16 A. The only thing I can testify to is that I  
17 have to assume that we would have made our best efforts  
18 to comply with these instructions. I can't make a  
19 statement past that.

20 Q. Are you aware of any other documents to  
21 support this claim?

22 A. No, sir.

23 Q. There is no promissory note to evidence any  
24 part of the intercompany payable between Keowee Falls  
25 Investment Group and The Cliffs at Keowee Falls Golf

1 and Country Club, right?

2 A. I would not know whether there is or not, so  
3 I can't -- my testimony to that would be worthless one  
4 way or the other.

5 Q. If there was a promissory note, you would  
6 have attached it to the proof of claim marked as  
7 Debtors' Exhibit 4, would you not?

8 A. I know that in some intercompany there's  
9 promissory notes, but again, you're asking me to  
10 testify to something that their best efforts might not  
11 have been enough.

12 Q. Is it your testimony that there is a  
13 promissory note?

14 A. No, sir, it's not. And I testified that I  
15 don't know yes or no. You know, I'm not testifying --

16 Q. Your testimony is you don't know whether  
17 there is a note or not?

18 A. Yes, sir, that's my testimony.

19 Q. But you acknowledge that there is no  
20 promissory attached as a document in support of the  
21 proof of claim that's been marked as Debtors' Exhibit  
22 4?

23 A. That is correct.

24 Q. Are you aware that Keowee Falls Investment  
25 Group issued an invoice to The Cliffs at Keowee Falls

1 Golf and Country Club when the intercompany payable was  
2 created?

3 A. No, sir, I'm not aware of that.

4 Q. Is there any written obligation to pay  
5 interest on this claim?

6 A. I don't know one way or the other.

7 Q. Is there a written obligation regarding a  
8 maturity date?

9 A. I'm not sure.

10 Q. Is there a written obligation regarding any  
11 terms of repayment?

12 A. You know, they're recorded, so -- I mean,  
13 the intercompany is recorded, so I think that recording  
14 does bring, in itself, a -- and to my best  
15 understanding, those intercompanies are recorded to --  
16 the ultimate goal is that they would be repaid.

17 Q. I appreciate your answer, but I'm asking  
18 you: What are the terms of repayment?

19 A. I'm not aware of the terms of repayment.

20 Q. Is there a schedule of payments to be made?

21 A. I'm not aware of that.

22 Q. Are there any default provisions?

23 A. I'm not aware one way or the other.

24 Q. Has any collateral been pledged to security  
25 for the intercompany payable between Keowee Falls

1 Investment Group, LLC, and The Cliffs at Keowee Falls  
2 Golf and Country Club, LLC?

3 A. I'm not aware if there was.

4 Q. You understand that under the instructions,  
5 that if you claimed that you had a secured claim, you  
6 were supposed to attach copies of any security  
7 documents?

8 A. That's above my pay grade.

9 Q. Well, we can read paragraph 7 again. My  
10 question was: Do you understand that if you claim you  
11 have a lien, you must attach copies of documents that  
12 evidence perfection of any security interest?

13 A. That's what these instructions say, yes,  
14 sir.

15 Q. What you're saying is you don't know whether  
16 there's any documents that create a security interest  
17 to secure the repayment of this intercompany payable?

18 A. That's correct.

19 Q. There is no mortgage, deed of trust, or  
20 security deed related to the intercompany payable, is  
21 there?

22 A. Not that I'm aware of.

23 Q. There are no rates of interest payable on  
24 any of the intercompany payables between The Cliffs  
25 Development Company affiliates and the ClubCo debtors,



1 are there?

2 A. You know, I'm not sure. I understand that  
3 in some of the companies, that there is an interest  
4 rate stated. I'm not sure whether there's an interest  
5 rate stated on this particular company or not. It's my  
6 understanding that with some of those intercompanies,  
7 there is an interest rate stated.

8 Q. With regard to the intercompanies, however,  
9 between The Cliffs Development Company affiliates on  
10 the one hand and the ClubCo debtors on the other hand,  
11 are you aware of any instance in which there is an  
12 interest rate stated?

13 A. I'm not aware one way or the other; yes,  
14 sir, I'm not. I couldn't tell you that there is or  
15 there's not.

16 Q. Sitting here today, you can't tell me if  
17 there is?

18 A. Yes, sir, you're correct.

19 Q. Is there a sinking fund to repay  
20 intercompany payables?

21 A. Not that I'm aware of.

22 Q. The Cliffs at Keowee Falls Golf and Country  
23 Club, LLC, has never made any payments to Keowee Falls  
24 Investment Group, LLC, to satisfy any part of the  
25 intercompany payable, has it?

1           A.       There's a gray area that's gray. So I know  
2 when this land was deeded over to ClubCo from the  
3 different entities, I know in some instances they paid  
4 for those assets.

5           Q.       "They" who?

6           A.       ClubCo paid for those transfers. I'm not  
7 sure that, in this case, that happened, in this  
8 particular instance, but I know that in some instances  
9 that ClubCo paid for those assets.

10          Q.       My question, however, is: Did any ClubCo  
11 entity make a payment on any intercompany payable to a  
12 development company affiliate?

13          A.       I'm not -- I'm not sure that would have  
14 affected the intercompany or not. I'm not sure about  
15 that.

16          Q.       Are you aware of any payments made by any  
17 ClubCos to pay down intercompany payables owed to  
18 development company affiliates?

19          A.       Again, going back to my explanation, I  
20 understand that ClubCo paid for those assets, but I'm  
21 not sure how it was handled, whether it went against  
22 the intercompany, so the answer is no.

23          Q.       Before filing proofs of claim in the  
24 debtors' Chapter 11 case, did any development company  
25 affiliate, including Keowee Falls Investment Group,

1 make a demand for payment of any of the intercompany  
2 payables that were owed by any of the ClubCo debtors?

3 A. I can't testify to that one way or the  
4 other.

5 Q. Who would know?

6 A. I suspect Tim may know; I wouldn't swear to  
7 that either.

8 Q. Anyone besides Tim Cherry?

9 A. I really wouldn't know. Tim would be your  
10 best bet.

11 Q. So as far as you're aware, no demand was  
12 made for payment of an intercompany payable?

13 A. That's not my area, so I wouldn't have known  
14 one way or the other whether it was made or not.

15 Q. So you have no knowledge of whether a demand  
16 for payment of an intercompany payment was made?

17 A. That's correct.

18 Q. Before filing proofs of claim in the  
19 debtors' Chapter 11 cases, did any development company  
20 affiliate, including Keowee Falls Investment Group,  
21 make a payment of any other intercompany payables that  
22 existed to any of the ClubCo debtors?

23 A. Again, I wasn't aware of the inner workings  
24 of the intercompany transfer, so I have no knowledge  
25 one way or the other.

1 Q. But you do know that at the time  
2 intercompany payables were tracked, you were the 79.12  
3 percent owner of the parent company, The Cliffs  
4 Communities, Inc.?

5 A. Yes, sir.

6 Q. If you had not controlled both sides of the  
7 transaction, the transferor and the transferee, of  
8 these capital assets, you would not have transferred  
9 these assets without obtaining cash, would you?

10 A. I think -- you know, I think there's a  
11 benefit -- there was benefit to both sides, so I -- you  
12 know, we were building the brand to enhance lot sales,  
13 so at the same time, the whole goal was to build value  
14 for the lots. So I can't answer that question a yes or  
15 no because it's a very complicated question.

16 Q. It's really a simple question. If you  
17 didn't own the transferee, would you have allowed a  
18 development company affiliate to part with title to a  
19 capital asset?

20 A. I may have, because, you know, each side was  
21 receiving benefit; for instance, the golf course being  
22 built benefited the lots, and so it was -- so I really  
23 -- that's a -- I wouldn't answer that question yes or  
24 no because it's more -- there's more to that question  
25 than just the strict economics of deeding someone an

1 asset and not being paid for it. There's different  
2 ways of being paid.

3 Q. Let's talk about that. Let's say if you  
4 wanted to be paid and you were willing to finance the  
5 purchase price, how would you go about doing that?

6 A. I'm not sure.

7 Q. Well, wouldn't you ask for a promissory  
8 note?

9 A. Again, there is -- in some cases maybe, in  
10 some cases maybe not.

11 Q. Let's talk about the cases maybe not. Why  
12 wouldn't you ask for a promissory note?

13 A. It may be that you're receiving value that  
14 -- receiving value other than a monetary -- a monetary  
15 -- again, if I restate where I am, it's that what  
16 complicates this issue is, again, we were building a  
17 brand, and the fact that Fall South benefited from  
18 being able to play Vineyards, so there was -- that was  
19 a consideration.

20 But, overall, we had these intercompanies,  
21 and the goal was, at the end of the day, to be able to  
22 true these up. And because the amenities at Fall South  
23 weren't complete, to be able to true that up, for  
24 instance, when the Springs came on, Springs would be  
25 taking initiation deposits to be able to come back over

1 and repay that balance over to KFIG. So I may not be  
2 making sense, but the way I understood it, that was the  
3 goal.

4 Q. I understand and I appreciate your testimony  
5 with regard to your aspiration for the development of  
6 these properties.

7 I'm asking, if the transferee had not been  
8 controlled by you, would you have permitted that  
9 transferee to take title without reducing to writing  
10 its obligation to repay you?

11 A. And I'd say, under certain circumstances,  
12 that I possibly may have.

13 Q. What are those circumstances?

14 A. If there's value being transferred and if  
15 you're receiving value in some other manner.

16 Q. All right.

17 A. And I said the value -- the value could have  
18 well been the value received to building the brand, so  
19 -- I think that's my answer.

20 Q. Are there any other reasons why you would  
21 have done that?

22 A. I can't think of any right now. Again,  
23 we're in an area to where -- a very complicated area  
24 for my limited knowledge of intercompany finances.

25 Q. Keowee Falls Investment Group was a

1 development company affiliate, is that right, of The  
2 Cliffs Communities, Inc.?

3 A. Yes, sir.

4 Q. And what was the purpose of Keowee Falls  
5 Investment Group?

6 A. Keowee Falls Investment Group was to develop  
7 property and ultimately bring it to market.

8 Q. When you say "the property," what do you  
9 mean?

10 A. The lots. The lots.

11 Q. The residential lots?

12 A. Yeah. Your question was the development  
13 entity, correct?

14 Q. Yes. My question is: What was the purpose  
15 -- what role did Keowee Falls Investment Group, LLC,  
16 play?

17 A. And its purpose was to bring the land to the  
18 marketplace, development, and prepare it for sale.

19 Q. And how did it go about doing that?

20 A. Building roads and water systems and  
21 managing the lots and surveying the lots out, dividing  
22 it, and land planning, and all those things.

23 Q. So let's start at the beginning. Did Keowee  
24 Falls Investment Group buy raw land for development?

25 A. Yes, sir. Yes, sir. In some cases, land

1 banks -- I believe they owned the land directly at  
2 Falls South, or KFIG.

3 Q. So what you're saying, if I understand your  
4 testimony, let me make sure I understand, it's possible  
5 that one of the development company affiliates may have  
6 bought the land from a land bank that you controlled  
7 that bought the land from a third party in the first  
8 instance; but in the situation involving Keowee Falls  
9 South, Keowee Falls Investment Group, you believe,  
10 bought the land from the third party to develop; is  
11 that your testimony?

12 A. I believe that's correct.

13 Q. So after it bought the land for the  
14 development, how did it decide what part was going to  
15 be the golf course and what part was going to be the  
16 residential lots?

17 A. Well, we brought in -- in that case, we  
18 brought in Nicholas and their design team, and they  
19 designed the course. And our philosophy was that we  
20 wanted to build the very best golf course possible and  
21 kind of gave him the authority to choose the length.

22 Q. Was that a transaction that was entered into  
23 between Keowee Falls Investment Group on the one hand  
24 and Jack Nicholas and his company on the other?

25 A. I believe that to be true.



1 Q. Golden Bear?

2 A. Sure, I believe that to be true.

3 Q. And then at some point in time Keowee Falls  
4 Investment Group transferred title to the golf course  
5 to The Cliffs at Keowee Falls Golf and Country Club; is  
6 that right?

7 A. There was a transfer made, and what I know  
8 for sure is that when ClubCo was formed, at that point  
9 in time, everything was transferred over; I don't know  
10 whether it was an earlier transfer or not, but at that  
11 point in time, certainly the club entities owned the  
12 golf course.

13 Q. And when you say ClubCo was formed, are you  
14 talking about the transaction in April of 2010, when  
15 the members loaned \$64,050,000 to the ClubCo entities?

16 A. Yes, sir.

17 Q. Would you please describe the circumstances  
18 that led to the creation on the books and records of  
19 The Cliffs Communities, Inc., of receivables owed by  
20 the shareholder?

21 A. Repeat that, sir.

22 Q. Would you please describe the circumstances  
23 that led to the creation on the books and records of  
24 The Cliffs Communities, Inc., of receivables owed by  
25 the shareholder?

1 A. I'm not -- I don't believe I can answer  
2 that.

3 Q. You don't know?

4 A. Repeat it one more time.

5 Q. Would you please describe the circumstances  
6 that led to the creation on the books and records of  
7 The Cliffs Communities, Inc., of receivables owed by  
8 the shareholder?

9 A. The shareholders, myself, and my wife and  
10 ESOP, and the circumstances -- I'm not absolutely sure  
11 whether it was the organizational structure or if it  
12 was tax structure or -- so I'm not sure.

13 Q. Were entries indicating that there was a  
14 receivable owed by the shareholder created when you  
15 received a dividend for Cliffs Communities, Inc.?

16 A. If I received a dividend, I didn't take it  
17 home.

18 Q. Did you ever receive a dividend as the  
19 shareholder of Cliffs Communities, Inc.?

20 A. If we did, it was an internal transaction.  
21 Like I said, I never took any home.

22 Q. So it's your testimony you never received  
23 any money in the form of a dividend from The Cliffs  
24 Communities, Inc.?

25 A. I'm not -- I don't recall receiving a check

1 that said, This is a dividend; not to swear that it  
2 wasn't on an intercompany accounting or those kind of  
3 things.

4 Q. If you received money from The Cliffs  
5 Communities -- or did you receive money from The Cliffs  
6 Communities that you characterized as shareholder loans  
7 on the books and records of that company?

8 A. Yeah, that possibly could have been a  
9 shareholder -- you know, you're in an area that I don't  
10 know.

11 Q. To your knowledge, have you repaid any  
12 shareholder loans to The Cliffs Communities, Inc.?

13 A. I know there's been transfers out and back  
14 over a period of time, but past that, I don't know.

15 Q. When you say "transfers out and back,"  
16 transfers from whom to whom?

17 A. When -- you know, when we would -- if it's a  
18 land bank company and we would sell a piece of land --  
19 excuse me, get ready to develop a piece of land, then  
20 we would transfer that piece of land over to the  
21 development company, and so there would be a credit  
22 come back to -- come back to the shareholder loan, I  
23 suppose. That's about the limit to my knowledge.

24 Q. So you're not aware of any instances where  
25 you paid cash to pay down a shareholder loan? And when

1 I say "shareholder loan," I mean a loan from Cliffs  
2 Communities, Inc., or one of its subsidiaries to the  
3 shareholder.

4 A. I couldn't answer that yes or no. It may  
5 have happened and it may not have happened. Just  
6 because I'm not aware of it doesn't mean it didn't  
7 happen.

8 Q. Isn't it true that you have claimed that you  
9 don't have to repay shareholder loans because they  
10 weren't documented as notes?

11 A. I'm not aware that -- that may be a position  
12 that the professionals have taken, and I would concur  
13 if that's their position; or if that's not their  
14 position, then I'd probably concur on the other side.

15 Q. And this would be your professionals  
16 representing you individually as to whether or not you  
17 had an obligation to repay money that you received from  
18 Cliffs Communities, Inc., if it wasn't reduced to  
19 writing as a promissory note?

20 A. You know, the -- repeat the question, sir.

21 Q. You have claimed that your receipt of money  
22 from Cliffs Communities, Inc., does not have to be  
23 repaid if it was not documented as a loan; isn't that  
24 true?

25 A. I'm not sure that's true. Possibly. And if

1 our professionals have taken that position, then I know  
2 that -- well, I'm just going to leave it at that. I'm  
3 not sure.

4 Q. Why haven't you repaid shareholder loans  
5 from Cliffs Communities, Inc.?

6 A. My best recollection is there are still some  
7 shareholder loans out there; I believe that's correct.  
8 I have not -- repeat the question.

9 Q. Why haven't you repaid shareholder loans you  
10 received from Cliffs Communities, Inc.?

11 A. I'll say probably the economic circumstances  
12 that -- economic circumstances.

13 Q. Are there any promissory notes to evidence  
14 your obligation to repay your shareholder loans from  
15 Cliffs Communities, Inc.?

16 A. I'm not aware whether there is or there  
17 isn't.

18 Q. Keowee Falls Investment Group, LLC, has  
19 filed a motion for temporary allowance of its claim for  
20 voting purchases in the ClubCo debtors' Chapter 11  
21 cases. Are you aware of that?

22 A. No, sir.

23 Q. Let me show you a document.

24 A. Are we finished with this document?

25 Q. Yes.

1 (Debtors' Exhibit No. 5 marked for  
2 identification.)

3 BY MR. LEVENGOOD:

4 Q. I'm going to show you a document that's been  
5 marked for purposes of identification as Debtors'  
6 Exhibit 5 and ask you to identify this document.

7 A. The case is 12-01220-JW, Docket 559, filed  
8 7-16-12. Page 1 of 2. Case No. 12-01220 -- let's see,  
9 the docket, In re to The Cliffs Golf and Hospitality  
10 Group, et al., d/b/a, The Cliffs Golf and Country Club,  
11 debtors. Motion for an order pursuant to Bankruptcy  
12 Rule 3018(a).

13 Q. Why don't you take a minute to look at this  
14 document, I'm going to ask you some questions about  
15 it.

16 A. I've read it.

17 Q. Debtors' Exhibit 5 is a copy of Docket No.  
18 559 in the Chapter 11 cases of the ClubCo, is it not?

19 A. Yes, sir.

20 Q. And it's a motion for an order temporarily  
21 allowing Keowee Falls Investment Group's claim numbers  
22 1254 in the amount of \$450 and 1261 in the amount of  
23 \$16,669,860 for purposes of voting to accept or reject  
24 the debtors' plan.

25 A. That's correct.

1 Q. Has Keowee Falls Investment Group cast a  
2 ballot to accept or reject the ClubCo debtors' plan  
3 yet?

4 A. To my knowledge, we have not.

5 Q. Do you intend to cast a ballot to accept a  
6 plan?

7 A. I don't think we've made up our mind yet;  
8 "we" being all of the legal representation and all the  
9 people I rely on for consultation.

10 Q. The motion respectfully denies that there is  
11 any valid reason to either disallow its claim or to  
12 deny it the right to vote to accept or reject the  
13 debtors' plan; is that correct?

14 A. That's what it says, yes, sir.

15 Q. Let me show you a document that's been  
16 marked as Debtors' Exhibit 6.

17 (Debtors' Exhibit No. 6 marked for  
18 identification.)

19 BY MR. LEVENGOOD:

20 Q. And I'll ask you if you've ever seen  
21 Debtors' Exhibit 6 before?

22 A. Yes, sir, I've seen that.

23 Q. And this is the objection filed by the  
24 ClubCo debtors to the allowance of The Cliffs  
25 Development Company affiliate claims; isn't that right?

1 A. Yes, sir.

2 Q. And that includes the two Keowee Falls  
3 Investment Group claims that we've been talking about  
4 today, claim number 1254 and claim number 1261?

5 A. That is correct.

6 Q. Let me ask you to look at the allegation in  
7 paragraph 7 on page 3 and continuing onto page 5.

8 A. I see that.

9 Q. The Cliffs Development Company affiliates  
10 have filed claims totaling \$94,679,844.48 in the ClubCo  
11 Chapter 11 cases; isn't that right?

12 A. Yes, sir.

13 Q. And you signed all of those proofs of claim,  
14 did you not?

15 A. Yes, sir.

16 Q. And the basis for these claims is all  
17 intercompany payables; isn't that right?

18 A. Yes, sir, I believe that's right.

19 It says I signed that, but I don't see my  
20 signature on it.

21 Q. You didn't sign -- the objection claim is a  
22 document that was filed by counsel for the debtors.

23 A. Right.

24 Q. Let me do this, I'm going to mark for  
25 identification purposes each of the -- the other proofs



1 of claim that were filed by The Cliffs Development  
2 Company affiliates and go through each of those with  
3 you so you can confirm whether you signed the proofs of  
4 claim or not.

5 A. Good.

6 Q. And at this point, if it's okay, why don't  
7 we just take a break. It will take me a minute to put  
8 those all together, and then we can do that.

9 (A break was taken from 1:19 p.m. to  
10 1:42 p.m.)

11 (Mr. Butler joined proceedings by phone.)

12 (Debtors' Exhibit No. 7 through Debtors'  
13 Exhibit No. 20 marked for identification.)

14 BY MR. LEVENGOOD:

15 Q. Mr. Anthony, I have put in front of you  
16 copies of proofs of claim filed in the ClubCo debtor  
17 cases, and they're identified as Debtors' Exhibits 7 --  
18 or they are marked for identification purposes as  
19 Debtors' Exhibit 7 through Debtors' Exhibit 20.

20 And I'd like, if we could, to go through  
21 each of them individually and let you identify them.  
22 The first one is Debtors' Exhibit 7, and it is Cliffs'  
23 proof of claim number 01251 filed by The Cliffs at  
24 Glassy, Inc. (Valley), against The Cliffs at Mountain  
25 Park Golf and Country Club; LLC; is that correct?

1 A. Yes, sir.

2 Q. And you signed that proof of claim on page  
3 2?

4 A. Yes, sir.

5 Q. And you have attached all of the documents  
6 there that support that proof of claim as pages 3 and 4  
7 of Debtors' Exhibit 7?

8 A. Yes, sir.

9 Q. Let me now turn to Debtors' Exhibit 8. This  
10 is Cliffs' proof of claim number 01252. You filed it  
11 on behalf of Keowee Investment Group -- let's go off  
12 the record for just one second.

13 (Discussion off the record.)

14 BY MR. LEVENGOOD:

15 Q. Debtors' Exhibit 8 is Cliffs' proof of claim  
16 01252 filed by Keowee Investment Group, LLC, against  
17 The Cliffs at Keowee Vineyards Golf and Country Club,  
18 LLC; is that right?

19 A. That's right.

20 Q. And you signed that proof of claim as  
21 evidenced by your signature on page 2?

22 A. Yes, sir.

23 Q. And pages 3, 4, 5, 6, and 7 of Debtors'  
24 Exhibit 8 are the documents upon which Keowee  
25 Investment Group, LLC, relies for its claim?

1 A. Yes, sir.

2 Q. The next document is Debtors' Exhibit 9,  
3 it's Cliffs' proof of claim number 01253, filed by  
4 LaBastide Management Group, LLC, against The Cliffs at  
5 Keowee Vineyards Golf and Country Club, LLC; is that  
6 correct?

7 A. Yes, sir.

8 Q. And you signed that proof of claim as  
9 evidenced by your signature on page 2?

10 A. Yes, sir.

11 Q. And pages 3 through 6 inclusive are all of  
12 the documents that support proof of claim number 1253?

13 A. Yes, sir.

14 Q. Let me show you -- you have before you  
15 document D-10, Exhibit D-10; that's Cliffs' proof of  
16 claim 01255. It is a proof of claim filed by The  
17 Cliffs at Keowee Springs, LLC, against The Cliffs at  
18 Keowee Vineyards Golf and Country Club, LLC; is that  
19 correct?

20 A. Yes, sir.

21 Q. You signed that proof of claim as evidenced  
22 by your signature on page 2?

23 A. Yes, sir.

24 Q. And pages 3 and 4 of the proof of claim  
25 that's been marked as Exhibit D-10 are all of the

1 documents that support proof of claim number 01255?

2 A. Yes, sir.

3 Q. Now in front of you is Exhibit D-11. It is  
4 Cliffs' proof of claim number 01258, filed by The  
5 Cliffs at Mountain Park, LLC, against The Cliffs at  
6 Walnut Cove Golf and Country Club, LLC; is that  
7 correct?

8 A. Yes, sir.

9 Q. And you signed that proof of claim as  
10 evidenced by your signature on page 2 of Debtors'  
11 Exhibit 11?

12 A. Yes, sir.

13 Q. And pages 3, 4, and 5 of Debtors' Exhibit 11  
14 are all of the documents upon which you rely in support  
15 of proof of claim number 01258?

16 A. Yes, sir.

17 Q. The next exhibit is Debtors' Exhibit 12. It  
18 is Cliffs' proof of claim number 01259 filed by The  
19 Cliffs at Walnut Cove, LLC, against The Cliffs at  
20 Walnut Cove Golf and Country Club, LLC; is that  
21 correct?

22 A. Yes, sir.

23 Q. And you signed that proof of claim, as  
24 evidenced by your signature on page 2?

25 A. Yes, sir.

1 Q. And pages 3, 4, 5, 6, 7, and 8, pages 3  
2 through 8, are all of the documents upon which you rely  
3 in support of this proof of claim?

4 A. Yes, sir.

5 Q. The next document has been marked for  
6 identification purposes as Debtors' Exhibit 13. It is  
7 Cliffs' proof of claim number 01262, filed by The  
8 Cliffs at Mountain Park, LLC, against The Cliffs at  
9 Keowee Falls Golf and Country Club, LLC; is that right?

10 A. Yes, sir.

11 Q. And you signed that proof of claim, as  
12 evidenced by your signature on page 2?

13 A. Yes, sir.

14 Q. Pages 3 through 5 inclusive are all of the  
15 documents upon which you rely in support of Cliffs'  
16 claim number 01262?

17 A. Yes, sir.

18 Q. The next document before you, Mr. Anthony,  
19 is Debtors' Exhibit 14. It is Cliffs' proof of claim  
20 number 01263 filed by The Cliffs at Keowee Springs,  
21 LLC, against The Cliffs at Keowee Falls Golf and  
22 Country Club, LLC; is that correct?

23 A. Yes, sir.

24 Q. And you signed that proof of claim, as  
25 evidenced by your signature on page 2?

1 A. Yes, sir.

2 Q. And pages 3 through 5 inclusive are all of  
3 the documents upon which you rely in support of proof  
4 of claim number 01263?

5 A. Yes, sir.

6 Q. Debtors' Exhibit 15 before you is Cliffs'  
7 proof of claim number 01268, filed by Cliffs Management  
8 Services, LLC, against The Cliffs at Keowee Springs  
9 Golf and Country Club, LLC; is that correct?

10 A. Yes, sir.

11 Q. And you signed that proof of claim, as  
12 evidenced by your signature on page 2?

13 A. Yes, sir.

14 Q. And pages 3 and 4 are the -- are all of the  
15 documents upon which you rely in support of Cliffs'  
16 proof of claim number 01268?

17 A. Yes, sir.

18 Q. The next document is Debtors' Exhibit 16; is  
19 that right? I'm just making sure my numbers are  
20 right.

21 A. Yes, sir.

22 Q. This is Cliffs' proof of claim number 01270,  
23 filed by LaBastide Management Group, LLC, against The  
24 Cliffs at Glassy Golf and Country Club, LLC; is that  
25 right?

1 A. Correct.

2 Q. And you signed that proof of claim, as  
3 evidenced by your signature on page 2?

4 A. Yes, sir.

5 Q. And pages 3 through 6 inclusive of Debtors'  
6 Exhibits D-16 are all of the documents upon which you  
7 rely in support of proof of claim number 01270?

8 A. That's correct.

9 Q. The next document is Debtors' Exhibit 17.  
10 It is Cliffs' proof of claim number 01271 filed by  
11 LaBastide Management Group, LLC, against The Cliffs  
12 Valley Golf and Country Club, LLC; is that right?

13 A. Correct.

14 Q. And you signed that proof of claim, as  
15 evidenced by your signature on page 2 of Debtors'  
16 Exhibit 17?

17 A. Yes, sir.

18 Q. And pages 3 through 8 inclusive are all of  
19 the documents upon which you rely in support of Cliffs'  
20 proof of claim number 01271?

21 A. Yes, sir.

22 Q. The next document is Debtors' Exhibit 18.  
23 It is Cliffs' proof of claim number 01272. It is a  
24 claim by The Cliffs at Glassy, Inc., (Valley) against  
25 The Cliffs Valley Golf and Country Club, LLC; is that

1 correct?

2 A. Yes, sir.

3 Q. And you signed that proof of claim, as  
4 evidenced by your signature on page 2?

5 A. Yes, sir.

6 Q. And pages 4 through 7 of Debtors' Exhibit 18  
7 are all of the documents upon which you rely in support  
8 of Cliffs' proof of claim number 01272?

9 A. Yes, sir.

10 Q. The next document has been marked for  
11 identification purposes as Debtors' Exhibit 19. It is  
12 Cliffs' proof of claim number 01273 filed by  
13 Environmental Leasing, LLC, against The Cliffs Club and  
14 Hospitality Service Company, LLC; is that right?

15 A. Yes, sir.

16 Q. And you signed that proof of claim, as  
17 evidenced by your signature on page 2 of that exhibit?

18 A. Yes, sir.

19 Q. And pages 3 through 6 inclusive are all of  
20 the documents upon which you rely in support of proof  
21 of claim number 1273?

22 A. Yes, sir.

23 Q. Then, finally, Debtors' Exhibit 20 is  
24 Cliffs' proof of claim number 01274, filed by Cliffs  
25 Management Services, LLC against Cliffs Club and



1 Hospitality Service Company, LLC; is that correct?

2 A. Yes, sir.

3 Q. And you signed Debtors' Exhibit 20, as  
4 evidenced by your signature on page 2?

5 A. Yes, sir.

6 Q. And page 3 and 4 inclusive are all of the  
7 documents upon which you rely in support of Cliffs'  
8 proof of claim number 01274?

9 A. Yes, sir. But as we -- coming back to my  
10 earlier testimony, your question as to paragraph number  
11 7 as to whether there were promissory notes or interest  
12 bearing or any other item that was -- any other proofs,  
13 I have to -- I don't -- I'm relying on that -- the fact  
14 that our professional team believed or did their best  
15 job to bring everything to bear, all the documents to  
16 bear.

17 But I -- but as -- personally, I can't swear  
18 that there's no promissory note or there's any other  
19 document that would parallel these. So I'm -- my  
20 testimony is relying -- solely relying on the people  
21 that prepared these documents.

22 Q. Thank you, Mr. Anthony, for that statement.  
23 My question was: Are pages 3 and 4 of Debtors' Exhibit  
24 20 all of the documents upon which you rely in support  
25 of proof of claim number 1274?

1           A.       And I answered that by saying that, again --  
2 I answered that yes, with the understanding that I'm  
3 relying on professionals that prepared the documents.  
4 I have no knowledge that they aren't correct, but I  
5 wasn't involved in the preparation; so, again, my  
6 statement relies on the accuracy of the people that  
7 prepared them.

8           Q.       Mr. Anthony, thank you. You have just  
9 identified the proofs of claim marked for  
10 identification purposes as Debtors' Exhibit 7 through  
11 Debtors' Exhibit 20 as the other Cliffs affiliate  
12 proofs of claim filed in the ClubCo debtor cases in  
13 addition to the two Keowee Falls Investment Group  
14 proofs of claim; is that right?

15          A.       That is correct.

16          Q.       And the two Keowee Falls Investment Group  
17 claims that we talked about this morning were Debtors'  
18 Exhibit 3, which is Cliffs' proof of claim number  
19 01254, and Debtors' Exhibit 4, which was Cliffs' proof  
20 of claim number 01261?

21          A.       That is correct.

22          Q.       From your review of all of those proofs of  
23 claim and the documents that are attached to those  
24 proofs of claim, isn't it fair to say that there is not  
25 a single promissory note that's attached in support of

1 any of those proofs of claim?

2 A. There's no promissory note attached, yes,  
3 sir.

4 Q. As far as you know, there is no interest  
5 rate with regard to the repayment of any of those  
6 proofs of claim?

7 A. I would have no way of knowing whether  
8 there's an interest rate applicable or not, really, on  
9 the intercompany -- intercompany -- but there's nothing  
10 on these documents that relates to an interest rate.

11 Q. So there's nothing in any of the proofs of  
12 claim that were filed by The Cliffs Development Company  
13 affiliates in the ClubCo debtor cases indicating a  
14 specific interest rate?

15 A. Yes, sir.

16 Q. Are you aware of any cash payments by the  
17 ClubCo debtors to reduce the intercompany payables that  
18 are evidenced by The Cliffs Development Company  
19 affiliate proofs of claim that you just identified?

20 A. As I spoke earlier, there was some when --  
21 when the assets -- final assets were transferred over  
22 to ClubCo. When we raised the \$64,500,000, ClubCo made  
23 some payments. I don't know how those transactions  
24 were handled.

25 Q. And you're referring now to the use by the

1 ClubCos to purchase from certain development company  
2 affiliates land that was then titled in the development  
3 company affiliates that was golf course and country  
4 club amenity land; is that right?

5 A. Yes, sir.

6 Q. So with the exception of those isolated  
7 instances in which some of the \$64 million was used to  
8 purchase land from a development company affiliate, are  
9 you aware of any instances where a ClubCo debtor paid a  
10 development company affiliate cash to reduce the  
11 intercompany payable?

12 A. I would have no way of knowing one way or  
13 the other, because I wasn't involved to that level in  
14 the accounting procedures in that time frame. But, to  
15 answer your question, I'm not aware of any cash  
16 payment.

17 Q. Thank you, Mr. Anthony. And with regard to  
18 the documentation filed in support of the proofs of  
19 claim filed by The Cliffs Development Company  
20 affiliates that you've identified today, there's no  
21 mortgage, security deed, deed of trust, or security  
22 agreement attached to any of these proofs of claim, is  
23 there?

24 A. No, sir, there's nothing attached.

25 Q. And so far as you're aware, were the ClubCo

1 debtors able to pay cash for the assets, the capital  
2 assets, that were transferred by the development  
3 company affiliates to the ClubCos that are evidenced by  
4 these intercompany payables?

5 A. I know in some cases they paid cash, but I'm  
6 not sure if in all cases they paid cash.

7 Q. If they paid cash, it wouldn't have shown up  
8 as an intercompany payable, would it?

9 A. That's why I'm not sure. I'll say in some  
10 cases they paid cash, but I'm not sure if in all cases  
11 it was cash.

12 Q. And these assets that were transferred that  
13 are evidenced by the intercompany payables were all  
14 capital assets in that they were the golf course  
15 amenities?

16 A. Can you repeat that, sir?

17 Q. And the assets that were transferred that  
18 are the source of the intercompany payables that are  
19 evidenced by the proofs of claim that you're filing in  
20 the ClubCo cases, those were capital assets, right;  
21 they were the golf course land and development that was  
22 transferred by the development company affiliate, on  
23 the one hand, to a ClubCo entity on the other hand?

24 A. I know that was part of it, I'm not sure  
25 that's all of it.

1 Q. What else was it if it wasn't the capital  
2 assets?

3 A. I'm not sure. I just don't know -- I don't  
4 know for sure that that was all of it, and I'm not sure  
5 what else it could have been, but I'm just giving you  
6 my honest answer.

7 Q. And your testimony earlier this morning that  
8 there's no sinking fund to repay any of these  
9 intercompany payables as it relates to KFIG  
10 specifically, is that also true with regard to the  
11 other Cliffs Development Company affiliate claims?

12 A. I'm not sure what "sinking fund" means, but  
13 I'm not aware of any fund out there.

14 Q. Let me ask you now to go to page 6 of  
15 Debtors' Exhibit 6, which is the objection to claim.

16 A. Okay. Yes, sir.

17 Q. And it's page 6 I want you to look at,  
18 paragraph 11.

19 MR. LEVY: Johnny, for your benefit, since  
20 you weren't here when we went through this exhibit  
21 initially, this is the contested matter that's been  
22 filed by Cliffs Club regarding various claims.

23 MR. BUTLER: Right.

24 MR. LEVY: I just wanted to make sure you  
25 understood what document we were dealing with. It was

1 filed on July 12th, entitled Contested Matter.

2 MR. BUTLER: All right. Thank you very  
3 much.

4 MR. LEVENGOOD: And, Johnny, it's Docket No.  
5 528.

6 MR. BUTLER: Great. Thank you very much.

7 BY MR. LEVENGOOD:

8 Q. Mr. Anthony, I want you to read paragraph 11  
9 and let me know if you disagree with anything in that  
10 paragraph.

11 A. I don't agree or disagree, but I assume that  
12 the professionals that did these allocations and kept  
13 these balances -- I assume it is correct. I have no  
14 reason to believe it's not correct.

15 Q. And going back to the proofs of claim and  
16 the intercompany payables that you filed that we've  
17 identified as exhibits today where the development  
18 company affiliate under the intercompany payables is  
19 identified as being owed some money by a ClubCo debtor,  
20 as you testified this morning as it related to KFIG  
21 specifically, is it also true with regard to all of The  
22 Cliffs Development Company affiliates that at all times  
23 when you transferred assets from a development company  
24 affiliate to a ClubCo debtor, that you owned 79.12  
25 percent of the stock of the parent, Cliffs Communities,

1 Inc.?

2 A. I don't believe so. I believe that at one  
3 point in time I owned more than that, before we -- I  
4 think some of those transfers may have been done before  
5 the ESOP came into existence.

6 Q. Before the ESOP came into existence, what  
7 was your ownership interest in The Cliffs Communities,  
8 Inc.?

9 A. I think it would have been more. I think it  
10 would have been 20 percent more, I think. I'm not  
11 sure.

12 Q. So would it be fair to say that at all times  
13 during which the transfers occurred from a Cliffs  
14 Development Company affiliate to a ClubCo, that you  
15 owned at least 79 percent of the stock of the parent,  
16 The Cliffs Communities, Inc.?

17 A. I believe that to be correct.

18 Q. And paragraph 11 is a listing of the  
19 intercompany payables that represent, according to the  
20 intercompany payables records of the company,  
21 obligations by The Cliffs Development Company  
22 affiliates to one or more of the ClubCos; isn't that  
23 right?

24 A. Yes, sir.

25 Q. And the total of those obligations -- well,



1 before I get to that, and then also listed in those  
2 records is an obligation by James B. Anthony in the  
3 amount of \$5,707,138 and an obligation by James B.  
4 Anthony in the amount of \$700,000.

5 Do you see that? That's on page 8.

6 A. I see that.

7 Q. And the total of all of that is  
8 \$136,914,170.52?

9 A. That's correct.

10 Q. And so when the intercompany payables of The  
11 Cliffs Development affiliates and you, on the one hand,  
12 and the ClubCo debtors on the other hand were netted in  
13 a consolidated financial statement, they reflected a  
14 balance due in favor of the ClubCos in the amount of  
15 \$42,234,326.04?

16 A. That's correct.

17 (Debtors' Exhibit No. 21 marked for  
18 identification.)

19 BY MR. LEVENGOOD:

20 Q. Mr. Anthony, let me show you a document -- a  
21 nine-page document that's been marked as Debtors'  
22 Exhibit 21 and ask you to identify that for me.  
23 Mr. Anthony, have you seen these documents before?

24 A. You know, I may have and I may not have. I  
25 looked at a lot of documents, and I couldn't swear one

1 way or the other.

2 Q. Let me say that this is an assemblage of a  
3 number of different documents that were used to try to  
4 identify the sources and uses of the funds that were  
5 raised in the \$64,050,000 loan by certain members of  
6 the clubs who were willing to advance money to the  
7 clubs on a secured basis. Okay?

8 A. Yes, sir.

9 Q. The first page is a spreadsheet, a one-page  
10 spreadsheet, that you see Member Notes in part D,  
11 64,050.

12 A. Yes, sir.

13 Q. And that's in thousands. Do you see the  
14 note on the fourth row in the top left-hand corner?

15 A. Yes, sir, I see that.

16 Q. It says, Summary, Sources, and Uses of Cash,  
17 May 2010 through July 2011.

18 A. Yes, sir.

19 Q. And this reflects that \$8,283,000 was used  
20 to fund clubs operating cash losses; is that right?

21 A. That's correct.

22 Q. That \$27,291,000 was used for loan repayment  
23 and asset acquisition?

24 A. That's correct.

25 Q. That \$19,638,000 was used for capital

1 projects, less capitalized interest?

2 A. Yes, sir.

3 Q. And that \$7,963,000 was used for dues,  
4 credits, and interest to the note holders?

5 A. That's correct.

6 Q. So far as you're aware, is that an accurate  
7 statement of the summary, sources, and uses of cash  
8 from the indentured trustee transaction?

9 A. I have no reason to believe it's not  
10 accurate.

11 Q. And then the second page has some additional  
12 annotations with regard to that summary information,  
13 and it specifically has below that summary information  
14 Exhibit A.

15 Do you see that?

16 A. I'm looking at the Exhibit A.

17 Q. You're looking at page 2 of Debtors' Exhibit  
18 21?

19 A. Yes, sir, I've got it.

20 Q. And what I'm saying is, the information at  
21 the top appears to be what was on page 1?

22 A. That's correct.

23 Q. And then underneath that it says Exhibit A,  
24 and there appears to be some additional detail that  
25 breaks out how the money was spent among the various

1 clubs?

2 A. Yes, sir, I see that.

3 Q. And you testified earlier today, didn't you,  
4 that there were certain of the funds raised from the  
5 note holder transaction that were used to actually  
6 purchase property from Cliffs Development Company  
7 affiliates for cash?

8 A. Yes, sir, I did.

9 Q. And, for example, Springs, it says land  
10 acquisition cost \$57,000?

11 A. Yes, sir.

12 Q. Is that it?

13 A. Yes, sir.

14 Q. \$57,000?

15 A. I believe that's right.

16 Q. Golf and wellness equipment, \$175,000; beach  
17 club, \$1,762,000; and wellness infrastructure,  
18 \$1,540,000?

19 A. Correct.

20 Q. So that a total of \$3,534,000 of the note  
21 holder money went to pay for either the acquisition of  
22 or the improvement of the amenities at The Cliffs at  
23 Keowee Springs Golf and Country Club?

24 A. That's correct.

25 Q. And I want you to look down at the other

1 detailed entries with regard to Falls South, which I  
2 believe Falls South is another way you refer to Cliffs  
3 at Keowee Falls Golf and Country Club; is that correct?

4 A. That's correct.

5 Q. Why did you call it Falls South at one point  
6 in time and then changed it to Cliffs at Keowee Falls?

7 A. We developed Falls -- there's a waterfall at  
8 -- we call it Falls North, and so we didn't own the  
9 property at Falls South, so when we purchased the Falls  
10 South property, it was necessary to kind of  
11 differentiate between the two areas, so we added Falls  
12 South.

13 Q. Is there a residential neighborhood called  
14 Cliffs at Falls North?

15 A. That's kind of an internal -- I'm not -- you  
16 know, Falls North is on the marketing, but I'm not  
17 sure -- if you go back to ownership, it falls under,  
18 you know, KIG; and Falls South is KFIG. So it was two  
19 different entities; the timing was different.

20 Q. Are the properties adjacent to each other on  
21 Lake Keowee?

22 A. They're on the north and south side of  
23 Highway 11. So what's separating them is Highway 11.

24 Q. And are they both served by The Cliffs at  
25 Keowee Falls Golf and Country Club, or are they served

1 by a different golf and country club as the home club?  
2 And I realize that's a compound question. How are they  
3 served?

4 A. To the best of my knowledge, and I believe  
5 I'm 90 -- I believe I'm 90 percent correct, is that  
6 Falls North, the home club is Vineyards, but there may  
7 have been a change there, I don't believe so. So I  
8 probably shouldn't even be talking. I should say I  
9 don't know. But for sure the Falls South, their home  
10 club is Falls South.

11 Q. Is Keowee Falls' golf and country club?

12 A. Yes, sir.

13 Q. And then Mountain Park is detailed after  
14 Falls South, right?

15 A. Correct.

16 Q. And Walnut Cove, High Carolina?

17 A. Correct.

18 Q. Glassy, Valley, and then Vineyards?

19 A. And High Carolina, right.

20 Q. Now, High Carolina says golf course  
21 construction. Did the ClubCos use \$2,290,000 to permit  
22 design, erosion control, and clear land at High  
23 Carolina?

24 A. I know that we did permitting design,  
25 erosion control, and clearing, and that figure sounds

1 about right.

2 Q. Let me ask you to look at page 3 of Debtors'  
3 Exhibit 21. That's a copy of a letter from The Cliffs  
4 Club and Hospitality Group, Inc., signed by J. Scott  
5 Carlton as president to Nelson, Mullins, Riley &  
6 Scarborough, to which is attached as Schedule 1 an  
7 exhibit that comprises the balance of Debtors' Exhibit  
8 21 entitled Schedule 1 to Letter Agreement Regarding  
9 Flow of Funds.

10 A. I see that, yes, sir.

11 Q. And so far as you're aware, is this an  
12 accurate statement of the sources and uses of funds  
13 from the closing of the indentured trustee transaction?

14 A. I have no reason to disbelieve that they  
15 aren't, but my personal knowledge is that I don't know.

16 Q. And some of the money from the indentured  
17 trustee transaction was actually used to pay off  
18 existing secured debt at the various club facilities,  
19 wasn't it?

20 A. That's correct.

21 Q. And take a look at these payments that are  
22 reflected as line payoffs and let me know if they look  
23 right to you.

24 A. I have no reason not to believe they're  
25 correct, but there's no way I could testify yes or no.

1 I assume that the people who prepared that knew  
2 what they were doing.

3 Q. And as far as you're aware, page 1,  
4 which is the summary of services and uses of cash  
5 from May 2010 through July 2011 is an accurate  
6 summary of how the indentured trustee loan  
7 transaction is disbursed?

8 A. I have no reason to not believe it's  
9 correct.

10 Q. Thank you. That's all the questions I have  
11 of Mr. Anthony at this time. I am going to have some  
12 questions of Mr. Cherry, so this might be a good  
13 time to take a break.

14 (Signature waived.)

15 (The deposition concluded at 2:20 p.m.)

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CERTIFICATE OF REPORTER

I, Rita A. DeRouen, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this day of 2012, at Columbia, Richland County, South Carolina.

---

Rita A. DeRouen  
Registered Professional Reporter  
Notary Public  
State of South Carolina at Large  
My Commission expires:  
August 12, 2019

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**EXHIBIT B**

1 UNITED STATES BANKRUPTCY COURT  
2 DISTRICT OF SOUTH CAROLINA

3 IN RE:  
4 THE CLIFFS CLUB & HOSPITALITY GROUP, INC., et al.,  
5 d/b/a THE CLIFFS GOLF & COUNTRY CLUB,  
6 Debtors,

-----  
7 THE CLIFFS CLUB & HOSPITALITY GROUP, INC., et al.,  
8 d/b/a THE CLIFFS GOLF & COUNTRY CLUB,  
9 Movant,

10 vs. CASE NO. 12-01220

11 THE CLIFFS AT GLASSY INC., (VALLEY) - Claim No. 1251;  
12 KEOWEE INVESTMENT GROUP, LLC - Claim No. 1252;  
13 LABASTIDE MANAGEMENT GROUP, LLC - Claim No. 1253;  
14 KEOWEE FALLS INVESTMENT GROUP, LLC - Claim No. 1254;  
15 THE CLIFFS AT KEOWEE SPRINGS, LLC - Claim No. 1255;  
16 THE CLIFFS AT MOUNTAIN PARK, LLC - Claim No. 1258;  
17 THE CLIFFS AT MOUNTAIN PARK, LLC - Claim No. 1259;  
18 KEOWEE FALLS INVESTMENT GROUP, LLC - Claim No. 1261;  
19 THE CLIFFS AT MOUNTAIN PARK, LLC - Claim No. 1262;  
20 THE CLIFFS AT KEOWEE SPRINGS, LLC - Claim No. 1263;  
21 CLIFFS MANAGEMENT SERVICES, LLC - Claim No. 1268;  
22 LABASTIDE MANAGEMENT GROUP, LLC - Claim No. 1270;  
23 LABASTIDE MANAGEMENT GROUP, LLC - Claim No. 1271;  
24 THE CLIFFS AT GLASSY INC., (VALLEY) - Claim No. 1272;  
25 ENVIRONMENTAL LEASING, LLC - Claim No. 1273; and  
CLIFFS MANAGEMENT SERVICES, LLC - Claim No. 1274;  
Respondents.

D E P O S I T I O N

18 WITNESS: TIMOTHY PATE CHERRY  
19 DATE: Monday, July 30, 2012  
20 TIME: 2:49 p.m.  
21 LOCATION: The Cliffs Club & Hospitality Group  
22 3598 Highway 11  
23 Travelers Rest, South Carolina  
24 TAKEN BY: Attorneys for the Debtors  
25 REPORTED BY: RITA A. DEROUEN  
Registered Professional Reporter

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COMMITTEE AND CLIFFS CLUB & HOSPITALITY GROUP,  
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18

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24 (INDEX AT REAR OF TRANSCRIPT)

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P R O C E E D I N G S

- - - - -

MR. LEVENGOOD: This is the continuation of the deposition of Keowee Falls Investment Group, LLC, by and through its representative or representatives designated by that company pursuant to Rule 7030 of the Federal Rules of Bankruptcy Procedure, which incorporates by reference Rule 30 of the Federal Rules of Civil Procedure, including Rule 30(b)(6).

It is being taken before a court reporter pursuant to notice and may be used for any and all purposes permitted by the Federal Rules of Bankruptcy Procedure and by applicable law.

Pursuant to Rule 30(b)(6), the deponent is required to designate one or more officers, directors, managing agents, or other persons knowledgeable of the subject areas described in the notice upon which this deposition is being taken to consent to testify on its behalf, and the person or persons who testify shall testify as to matters known or reasonably available to the deponent.

Mr. Cherry, at the beginning of this deposition, Mr. Levy spoke with Mr. Anthony, who indicated he did not wish to reserve signature, so he waived the right to review the transcript and sign it.



1 We'll make the same offer to you. Do you wish to --

2 MR. LEVY: Tim, you have the right whenever  
3 a deposition is taken to read it and to sign it. You  
4 can't change your testimony, but if you see some minor  
5 editing error or something, you can bring it to the  
6 attention of the court reporter.

7 As I said to Jim, these folks are very  
8 efficient, and so most of my clients waive the reading  
9 and signing. It's entirely up to you. If you would  
10 rather read it before you sign it, then you're  
11 certainly entitled to do it.

12 THE WITNESS: I'd prefer to read it, please.

13 MR. LEVENGOOD: Just for your information,  
14 we've ordered this on an expedited basis, so you'll  
15 probably have a transcript to look at at the end of  
16 this week, and I need you to turn it quickly because we  
17 may need to use it at the planning confirmation hearing  
18 on Monday.

19 THE WITNESS: Understood. Thank you.

20 MR. LEVENGOOD: Would you please swear the  
21 witness.

22 TIMOTHY PATE CHERRY, being first duly sworn,  
23 testified as follows:

24

25

1 EXAMINATION

2 BY MR. LEVENGOOD:

3 Q. Would you please state your full name for  
4 the record.

5 A. Yes. Timothy Pate Cherry.

6 Q. And where do you reside?

7 A. 115 Duck Hawk Way, Marietta, South Carolina  
8 29661.

9 Q. Mr. Cherry, this deposition is being taken  
10 in 11 jointly administered Chapter 11 cases pending in  
11 the United States Bankruptcy Court for the District of  
12 South Carolina. The deposition is what is known as a  
13 Rule 30(b)(6) deposition.

14 You have been identified as one of the  
15 corporate representatives of Keowee Falls Investment  
16 Group, LLC, and will be answering questions based on  
17 that company's knowledge, some of which may be your  
18 personal knowledge and some of which may be the  
19 personal knowledge of some other representatives of  
20 Keowee Falls Investment Group, LLC.

21 Do you consent to testify on behalf of  
22 Keowee Falls Investment Group, LLC?

23 A. I do. But, for clarity, I'm no longer an  
24 officer or an employee of any of The Cliffs entities.

25 Q. Mr. Cherry, as you know, because you were an

1 officer of the debtors, I represent the debtors in the  
2 jointly administered Chapter 11 cases, and we  
3 appreciate all your help when you were employed by the  
4 debtors.

5 I'm going to be asking you some questions,  
6 and my questions and your answers will be recorded by  
7 the court reporter. Please understand that you need to  
8 speak up and answer all my questions verbally so that  
9 the court reporter can hear you clearly. Also, to make  
10 it easier for the court reporter, please let me finish  
11 my question before you begin answering.

12 Is that acceptable?

13 A. Yes.

14 Q. If you do not understand a question I ask,  
15 either because I am not clear or you simply do not  
16 understand, please let me know and I will try to  
17 rephrase or repeat it for you.

18 It is important that we communicate well,  
19 everything will be taken down. And you have an  
20 opportunity to read the transcript, as you have  
21 indicated you wish to do, before you sign it so that  
22 you can make corrections.

23 If you make more than clerical changes, we  
24 may comment on your changes; therefore, it is important  
25 to try and get your testimony right the first time.

1 Is that acceptable?

2 A. Yes.

3 Q. If you need to take a break at any time,  
4 please let me or your attorney know. I'll ask that you  
5 finish your answer to the question I have posed and  
6 then we can take a break.

7 Is that acceptable?

8 A. Yes.

9 Q. If, as sometimes happens, you recall  
10 something and wish to add to an earlier answer or you  
11 remember something that requires an earlier answer to  
12 be clarified, just speak up and let us know and we'll  
13 make sure to get that on the transcript.

14 Is that acceptable?

15 A. Yes.

16 Q. Is there any reason you can think of why you  
17 will not be able to answer my questions fully and  
18 truthfully today?

19 A. Dependent upon the scope of your questions,  
20 I will do my best.

21 Q. There's no physical inability to testify?

22 A. That's correct.

23 Q. Mr. Cherry, you have in front of you a  
24 series of documents that were previously identified in  
25 this deposition, specifically Debtors' Exhibits 1

1 through 21. Let me ask you to look at Debtors' Exhibit  
2 1.

3 I'm going to tell you that this is the  
4 notice of deposition of Keowee Falls Investment Group,  
5 LLC, that we served as counsel for the debtor, and  
6 you're looking now at the page that is schedule -- I  
7 think Exhibit A to the notice of deposition that  
8 identifies 11 categories of subject matter area inquiry  
9 that are going to be the topic of the deposition today.

10 Are you prepared to talk about those 11  
11 subject matters today?

12 A. To the best of my ability.

13 Q. Have you had any conversations with anyone  
14 other than counsel concerning your deposition?

15 A. Jim Anthony asked me a question in a break  
16 from his earlier discussion dealing with the definition  
17 of insolvency, and that's been the sole extent of any  
18 dialogue.

19 Q. Let me ask you to look at Debtors' Exhibit 2  
20 and ask if you can identify that document for me?

21 A. Yes, I can.

22 Q. Please do.

23 A. This is an org chart of related companies  
24 comprising the consolidating CCI, Cliffs Communities,  
25 Inc., subsidiaries as well as related companies.

1 Q. And does James B. Anthony own at least 70  
2 percent -- 79 percent -- excuse me, does he own at  
3 least 79 percent of the stock in the parent company  
4 that is The Cliffs Communities, Inc.?

5 A. Yes, he does.

6 Q. Now, Mr. Anthony testified that at some  
7 point in time before the ESOP was put into place he may  
8 have actually owned more of the stock of The Cliffs  
9 Communities, Inc., than he does today.

10 Do you know how much he used to own?

11 A. Yes. He owned 99 percent and his wife,  
12 Vicki, owned 1 percent before the dilutive transaction  
13 of the ESOP by the newly issued shares and also a  
14 conveyance of shares to their son, Lucas, an employee  
15 of The Cliffs, through his single-member LLC.

16 Q. And, the ESOP, what is that?

17 A. It's an employee stock ownership plan. It's  
18 an ERISA plan created to be a methodology of sharing  
19 company profits with associates.

20 Q. Do you know who the directors of The Cliffs  
21 Communities, Inc., are?

22 A. Currently, the only director is Jim Anthony.

23 Q. And is he the chairman of Cliffs  
24 Communities?

25 A. Yes.

1 Q. Is he also the chief executive officer?

2 A. He is.

3 Q. Are there any other officers of Cliffs  
4 Communities, Inc., today?

5 A. No.

6 Q. Mr. Anthony said he relied upon you for the  
7 -- some of the organizational issues with regard to  
8 taxes and the like, and so one of my questions for him  
9 was: Is Cliffs Communities a Subchapter S company for  
10 tax purposes; and he said he wasn't sure but to ask  
11 you. So let's start with that question.

12 The chart shows that The Cliffs Communities,  
13 Inc., is a Subchapter S corporation; is that right?

14 A. That is correct.

15 Q. What does it mean to say that a company is a  
16 Subchapter S corporation?

17 A. Subchapter S entities are flow-through  
18 entities for tax purposes, meaning that the company  
19 itself does not pay any federal or state income tax,  
20 but instead, the shareholders are taxed on their  
21 applicable share of the net income or expense unless  
22 otherwise exempted from such tax, as in the case of the  
23 ESOP.

24 Q. And does The Cliffs Communities, Inc., own a  
25 number of subsidiary entities?

1 A. Yes, it does.

2 Q. Are those entities that are described or  
3 listed in Debtors' Exhibit 2 an accurate list of those  
4 subsidiary entities?

5 A. This particular org chart appears to be  
6 dated to me, because one of the entities listed not as  
7 a subsidiary but as a -- the Retreat Collection,  
8 international properties, was disposed of over two  
9 years ago, so this may not be the most current form.

10 But subject to the color coding, which  
11 indicates some entities that are owned 99 percent by  
12 The Cliffs, this appears to be generally correct.

13 Q. And unless on that chart a subsidiary entity  
14 is listed as a Subchapter S entity itself, are the  
15 single-member limited liability companies that are  
16 subsidiaries flow-through entities for tax purposes?

17 A. Yes, they are. There's only one C Corp. in  
18 the entire configuration, and that is The Cliffs at  
19 Panther Mountain.

20 Q. Is that on that chart?

21 A. Actually, I'm looking. We need a little  
22 larger font for my eyesight, Mr. Levensgood. Yes, it is  
23 on here. It's under the development division, The  
24 Cliffs at Panther Mountain, Inc., C Corp. And that is  
25 simply a contiguous property to Valley that the seller



1 wouldn't sell the land and instead insisted on selling  
2 the stock of his corporation.

3 Q. I see. When I refer in my deposition  
4 questions to you, I'm going to use the ClubCo debtors,  
5 and when I say that I'm going to be describing the  
6 entities that are Chapter 11 debtors that I represent  
7 that have as their parent CCHG Holding, Inc.; and, in  
8 turn, that owns The Cliffs Club and Hospitality Group,  
9 Inc.; and then the nine limited liability companies  
10 that either own the clubs or is the service company  
11 that manages them. Okay?

12 So when I refer to the ClubCos, I'm talking  
13 about those 11 entities. Okay?

14 A. Understood.

15 Q. And then when I talk about the DevCos or the  
16 develop -- The Cliffs Development Company affiliates,  
17 I'm talking about The Cliffs Communities, Inc., and all  
18 of the other subsidiaries of The Cliffs Communities,  
19 Inc., other than the ClubCo debtors.

20 Okay?

21 A. Understood.

22 Q. Does The Cliffs Communities, Inc., file  
23 corporate tax returns with the Internal Revenue  
24 Service?

25 A. It does.

1 Q. And is the financial activity of the  
2 subsidiaries of The Cliffs Communities consolidated for  
3 purposes of filing the corporate tax returns?

4 A. In most cases, but not all.

5 Q. Please describe.

6 A. As noted in the color coding in your Exhibit  
7 No. 2, the yellow coded entities are owned 1 percent by  
8 Jim Anthony, 99 percent by The Cliffs. Those entities  
9 have to file partnership tax returns, and so the  
10 allocable share reported by The Cliffs showed up in the  
11 form of a K-1 and not consolidated activities of all  
12 the revenue and expense within that particular entity.

13 Said differently, the activity of these  
14 partnerships is manifested in usually one or two single  
15 line items that are included in the taxable income of  
16 The Cliffs.

17 Q. And using your explanation, if there is a  
18 white box, which indicates that The Cliffs Communities  
19 owns 100 percent of the member interest or stock of  
20 subsidiary, are the activities of that subsidiary  
21 consolidated for purposes of the tax return?

22 A. Yes, they are.

23 Q. And does The Cliffs Communities produce  
24 financial statements?

25 A. It does.

1 Q. And are the financial statements generally  
2 reported on a consolidated basis?

3 A. Yes, they are.

4 Q. And when reporting on a consolidated basis,  
5 Cliffs Communities, Inc., nets out intercompany  
6 payables and receivables that it tracks, doesn't it?

7 A. It does.

8 Q. Please explain to me why intercompany  
9 payables between Keowee Falls Investment Group and any  
10 one or more of the debtors exist.

11 A. Even though these are disregarded entities  
12 for federal income tax purposes, they are separate and  
13 distinct corporate or formal entities for state law  
14 purposes. The historic methodology, then, has included  
15 tracking the use of funds that were provided from one  
16 entity to the other as an intercompany account.

17 Q. Was it limited to use of funds?

18 A. The scope of the intercompanies  
19 traditionally were funds; although, as I answer, there  
20 have been instances where the transfer of property from  
21 an entity that owned it to another entity gave rise to  
22 an impact on the intercompanies between those two  
23 properties, so cash itself may not have been exchanged  
24 in all cases.

25 Q. Do you know when The Cliffs Communities

1 started tracking intercompany payables?

2 A. Specifically, I do not.

3 Q. When Keowee Falls Investment Group, LLC,  
4 transferred capital assets to The Cliffs at Keowee  
5 Falls Golf and Country Club, Limited Liability Company,  
6 what record was made in the intercompany's payables  
7 ledger?

8 A. The KFIG, Keowee Falls Investment Group,  
9 Inc., recorded a receivable equal to the amount of the  
10 cost basis of land it conveyed to Keowee Falls Golf and  
11 Country Club plus the sum of the dollars expended for  
12 the construction of the golf course.

13 Q. At the time that intercompany payable record  
14 was created, did either KFIG or The Cliffs at Keowee  
15 Falls Golf and Country Club obtain an appraisal of the  
16 fair market value of the assets that were transferred?

17 A. Not to my knowledge. I believe the land was  
18 at cost.

19 Q. And so the transfer, if it was done at cost,  
20 might be greater than the value of the asset being  
21 transferred if it was valued for fair market value  
22 purposes; is that fair?

23 A. Potentially.

24 Q. Or it could be less than?

25 A. Correct.

1 Q. Are you aware of any instances where  
2 intercompany payable entries were based on fair market  
3 value determinations as opposed to cost?

4 A. Yes.

5 Q. Please describe what those were.

6 A. Beginning in, I believe, 2008, we began --  
7 and when I use the term "we," I'm speaking in my former  
8 capacity, CCI -- began to require appraisals for any  
9 transfers or conveyances between entities.

10 Q. So would it be fair to say that intercompany  
11 payable entries before 2008 were not based on  
12 appraisals, but intercompany payables after 2008 were  
13 based on appraisals if it was a capital asset?

14 A. If it was a noncash transaction, it was  
15 based on an appraisal. If it was, as an example, the  
16 construction of a golf course in the KFIG circumstance,  
17 then the thought was the cash exchanged with a third-  
18 party contractor was reflective of fair market value,  
19 so the cash would have been stated simply at its face.

20 Q. So in KFIG's circumstances, the \$18 million  
21 that was tracked as an intercompany payable was a  
22 combination of the cost of the land that was then  
23 developed into a golf course and the cost of  
24 construction to convert that raw land into a golf  
25 course?

1 A. That's my understanding.

2 Q. At the time the intercompany payable account  
3 was created involving KFIG, Keowee Falls Investment  
4 Group, did the ClubCo entity that received the  
5 transfer, in this case The Cliffs at Keowee Falls Golf  
6 and Country Club, have cash to pay in return for the  
7 transfer of that asset?

8 A. I don't know.

9 Q. How would we determine that?

10 A. By looking at historic financial statements  
11 and trial balances for those periods.

12 Q. Why didn't the company -- why didn't CCI  
13 have cash be exchanged at the time a capital asset was  
14 transferred?

15 A. Would you repeat the question, please?

16 Q. At the time KFIG transferred the golf course  
17 to The Cliffs at Keowee Falls Golf and Country Club,  
18 why didn't CCI cause Keowee Falls Golf and Country Club  
19 to pay cash in an amount equal to the transfer amount,  
20 the \$18 million that was placed on the intercompany  
21 payable amount?

22 A. I don't know, again, as stated, whether the  
23 club had that requisite cash at that point in time.

24 Q. Do you know if The Cliffs at Keowee Falls  
25 Golf and Country Club, at the time of the transfer, had

1 the ability to obtain third-party arm's length  
2 financing to pay for that asset?

3 A. I do not know that. It is important though,  
4 I think, to understand the global business model of  
5 what Jim Anthony envisioned and embraced as he created  
6 these communities and these clubs.

7 Q. Why don't you describe that so that we have  
8 a clear understanding of it.

9 A. Well, this is my understanding of his goal.  
10 While recognizing each of these subsidiary companies  
11 exist for legal liability and their own organizational  
12 structure purpose, Mr. Anthony's vision was the  
13 creation of eight different communities but each  
14 sharing the right to use these various clubs and  
15 recognizing that at various times in the life cycle of  
16 the development there would be times when cash was  
17 required to build amenities, and then there would be  
18 other times when cash was provided and available from  
19 the generation of club membership fees.

20 And, historically, Mr. Anthony looked at  
21 this as an aggregate business model.

22 Q. Thank you for that explanation. Would it be  
23 fair to say that it really didn't matter to Mr. Anthony  
24 whether cash moved from a ClubCo to a development  
25 company affiliate at the time an asset was transferred

1 because he controlled both sides of the transaction?

2 A. I think that certainly was a factor in the  
3 analysis. The other aspect dealt with the ability to  
4 obtain financing in a larger pool of assets as opposed  
5 to looking at each club standing -- or each entity  
6 standing on its own for its financing purposes.

7 Q. Do you know whether, at the time the capital  
8 assets were transferred by Keowee Falls Investment  
9 Group to The Cliffs at Keowee Falls Golf and Country  
10 Club, The Cliffs at Keowee Falls Golf and Country Club  
11 was solvent in a balance sheet test?

12 A. Without looking, I don't know. I believe  
13 so, but that would need to be confirmed by looking at  
14 the financial statements.

15 Q. Do you know when the transfer of the golf  
16 course from KFIG to The Cliffs at Keowee Falls Golf and  
17 Country Club occurred?

18 A. The records I've looked at indicate the land  
19 was transferred in 2005, and the golf course  
20 construction occurred during the year 2006, and then a  
21 small portion was incurred and transferred in early  
22 2007.

23 Q. So let me make sure I understand this. KFIG  
24 acquired the land in 2005; in 2006, spent money to turn  
25 it into a golf course; and then, in 2007, transferred



1 it to The Cliffs at Keowee Falls Golf and Country Club;  
2 did I understand that right or were you saying  
3 something else?

4 A. Slightly different. I'm not sure of the  
5 date of the acquisition by KFIG of that property, but  
6 at the end of 2005, land was transferred to the clubs  
7 for the footprint of the golf course; and then during  
8 2006, the cost of construction of the golf course was  
9 essentially completed, a little bit was paid in 2007.

10 So the actual date of conveyance, you know,  
11 it's really as if KFIG was finishing the construction  
12 of the golf course in 2006 and early 2007.

13 Q. Thank you for clarifying. So KFIG  
14 transferred the golf course land to The Cliffs at  
15 Keowee Falls Golf and Country Club in 2005?

16 A. That's my understanding from what I've  
17 looked at.

18 Q. Let me ask you to look at Debtors' Exhibit  
19 3. That is a five-page document that had been  
20 identified by Mr. Anthony as a proof of claim filed by  
21 Keowee Falls Investment Group, LLC, in the case of The  
22 Cliffs at Keowee Vineyards Golf and Country Club.

23 A. Okay.

24 Q. That proof of claim that's been marked for  
25 identification purposes as Debtors' Exhibit 3 has been

1 signed by Jim Anthony; isn't that right?

2 A. It appears so.

3 Q. And attached to that proof of claim as pages  
4 3 and 4 are two documents that support the claim. Can  
5 you tell me what those documents are?

6 A. This is the first time I've seen this  
7 attachment. It appears this is making reference to the  
8 intercompany accounts and transactions between all  
9 legal entities and deals with each of the clubs  
10 separately on the following page looking at the net  
11 impact of, I guess, the aggregate transactions between  
12 the clubs and the development company entities.

13 Q. And let me ask you to look at Debtors'  
14 Exhibit 4 as well. And I'm going to tell you that this  
15 is a document Mr. Anthony has identified as the proof  
16 of claim that was filed by Keowee Falls Investment  
17 Group in the case of The Cliffs at Keowee Falls Golf  
18 and Country Club.

19 A. All right.

20 Q. And with regard to the supporting documents  
21 that appear as pages 3 through 8 of that proof of  
22 claim, can you identify what those documents are for  
23 me? And, again, if you haven't seen them before, it's  
24 fine to say that, but if you can describe them for me,  
25 that would be helpful.

1           A.       Some of these I have seen before but not in  
2       this context.  Again, the first page you reference  
3       appears to be the statement dealing with the  
4       intercompany balances, and the trial balance that  
5       follows was pulled as of the end of February, the date  
6       that I understand KFIG filed -- excuse me, the clubs  
7       filed for reorg.

8                        So this would, again, show the intercompany  
9       transactions between the DevCo entities and the club  
10      entities that existed as a balance at that date of  
11      filing, end of February.

12                      And then continuing is a segment of the  
13      financial analysis, a detailed general ledger list  
14      chronicling the components making up the net  
15      \$16,669,000.  And, again, following that is other  
16      supporting detail for that, adjustments to the net  
17      number.

18           Q.       Did The Cliffs at Keowee Falls Golf and  
19      Country Club execute a promissory note in favor of  
20      Keowee Falls Investment Group when the intercompany  
21      payable was created?

22           A.       Not to my knowledge.

23           Q.       Did it execute a promissory note to pay this  
24      amount at any other time?

25           A.       Not to my knowledge.

1 Q. Did Keowee Falls Investment Group issue an  
2 invoice to The Cliffs at Keowee Falls Golf and Country  
3 Club when the intercompany payable was created?

4 A. I don't know. I know all job costs were  
5 accumulated and tracked, but how that was  
6 memorialized, I do not know.

7 Q. There is no written obligation to pay  
8 interest on this intercompany payable amount?

9 A. Not to my knowledge.

10 Q. There's no written maturity date?

11 A. Not to my knowledge.

12 Q. Are there's no written agreement regarding  
13 any terms of repayment?

14 A. Not to my knowledge.

15 Q. There's no schedule of payments to be made?

16 A. Not to my knowledge.

17 Q. There are no default provisions?

18 A. Not to my knowledge.

19 Q. No collateral has been pledged to security  
20 for the intercompany payables between Keowee Falls  
21 Investment Group and The Cliffs at Keowee Falls Golf  
22 and Country Club?

23 A. Not to my knowledge.

24 Q. There is no security agreement relating to  
25 this intercompany payable?

1 A. Not to my knowledge.

2 Q. There's no mortgage, deed of trust, or  
3 security deed relating to this intercompany payable?

4 A. Not to my knowledge.

5 Q. Would it be true to say that there are no  
6 rates of interest payable on any of the intercompany  
7 payables between the DevCos and the ClubCo debtors?

8 A. I believe that's true.

9 Q. And there is no sinking fund to repay  
10 intercompany payables?

11 A. That is true.

12 MR. LEVENGOOD: Off the record.

13 (Discussion off the record.)

14 BY MR. LEVENGOOD:

15 Q. Would it be fair to say that The Cliffs at  
16 Keowee Falls Golf and Country Club has never made any  
17 payments to Keowee Falls Investment Group to satisfy  
18 any part of the intercompany payable?

19 A. I believe that's correct.

20 Q. And before filing the proofs of claim in the  
21 debtors' Chapter 11 cases, did any of the DevCos,  
22 including Keowee Falls Investment Group, make a demand  
23 for payment of any of the intercompany payables to any  
24 of the ClubCo debtors?

25 A. Not to my knowledge.

1 Q. And before filing proofs of claim on the  
2 debtors' Chapter 11 cases, did any DevCo, including  
3 Keowee Falls Investment Group, make a payment of the  
4 intercompany payables they did owe to any of the ClubCo  
5 debtors?

6 A. I believe so.

7 Q. And which were they?

8 A. I do not have the details, but I believe  
9 that there were payments made -- let me clarify, if I  
10 may. Because they're shared service arrangements  
11 whereby part of an administrative cost was housed in  
12 ClubCo, for example, HR, yet the DevCo entities with  
13 employees also benefited from the existence of that HR,  
14 there was an invoice generated between the entities  
15 that was intended to fairly compensate the payer of  
16 that expense for any benefit obtained by the other  
17 party.

18 Initially, IT, information technology, was  
19 housed within the DevCo entities; so it, in turn,  
20 issued an invoice to ClubCo for its share of IT costs.  
21 So there were transfers that occurred through the  
22 course of time, and I think monthly, that were the  
23 attempts to make sure both parties were paying  
24 currently for their use of the shared services.

25 Q. If a company paid an invoice when it was

1 submitted in the example that you've given, was there a  
2 need to record an intercompany payable?

3 A. If it were done within the period, no. But,  
4 typically, the accounting cycle would have been a  
5 payment the following month, so you would have recorded  
6 the intercompany account.

7 Q. So there may be some instances, you've  
8 testified to an example, where a ClubCo affiliate would  
9 send an invoice to -- I'm sorry, a DevCo affiliate  
10 would send an invoice to a ClubCo affiliate, in the  
11 case of information technology, for example, to pay for  
12 its access to the computer; and the ClubCo affiliate  
13 wouldn't pay it right away, it would show up as an  
14 intercompany payable, and then when the ClubCo  
15 affiliate paid the invoice, it would come off the  
16 intercompany payable record?

17 A. That's my understanding.

18 Q. Are there any other instances that you can  
19 recall?

20 A. Not offhand.

21 Q. Would you please describe the circumstances  
22 that led to the creation on the books and records of  
23 The Cliffs Communities, Inc., of either notes  
24 receivable or other types of receivables owed by the  
25 shareholder.

1           A.       Specifically, as I understand the  
2 question -- is that looking at the consolidating  
3 financial statements of CCI, what transactions gave  
4 rise to the receivables from shareholders?

5           Q.       Yes.

6           A.       That goes back well before my tenure with  
7 The Cliffs; but, for the most part, at the advice of  
8 KPMG, the land banks and the international properties  
9 were structured outside of the consolidating group;  
10 therefore, any amounts paid, distributed, or loaned to  
11 any of those land banks or international properties  
12 would have been recorded as either a receivable from  
13 shareholder or a receivable from affiliate, because in  
14 those cases, the Anthony family were the primary owners  
15 of those nine consolidating entities.

16          Q.       And did those transactions get documented  
17 with a promissory note?

18          A.       I know many of them were, but I don't know  
19 that all of them were.

20          Q.       Now, if Mr. Anthony received a dividend from  
21 Cliffs Communities, would that show up as a receivable  
22 from a shareholder?

23          A.       It would not.

24          Q.       Has Mr. Anthony refused to pay shareholder  
25 loans of the type we've just talked about stating that



1 he doesn't have to pay it because he didn't execute a  
2 promissory note?

3 A. I have not heard that from him.

4 Q. Has he said that his lawyers have advised  
5 him that he doesn't have to pay it because there's no  
6 promissory note?

7 A. Yes.

8 Q. And I should have asked you this at the  
9 beginning, but what was your relationship with The  
10 Cliffs Communities when you first joined The Cliffs  
11 Communities, and did it change over time?

12 A. I initially was employed as a senior vice  
13 president for corporate strategic planning in July of  
14 2006. I executed an employment agreement with The  
15 Cliffs at that time.

16 In spring, late spring, early summer 2008, I  
17 was asked to assume duties as the CFO and did at that  
18 point, and none of the employment agreements changed at  
19 that juncture. I served then in that capacity and as a  
20 treasurer of ClubCo after its formation until the  
21 resignation of its president and CEO, Scott Carlton, at  
22 which point I became the interim president and CEO of  
23 ClubCo.

24 Q. And have you served on the board of  
25 directors of The Cliffs Communities, Inc.?

1 A. I have.

2 Q. And have you served on the board of  
3 directors of the ClubCos?

4 A. Yes. I served as chair.

5 Q. And when did that cease?

6 A. I believe the effective date of those  
7 resignations was February 28th -- excuse me, 24th  
8 2012. I'll have to confirm the date.

9 Q. Shortly before the Chapter 11 filings by the  
10 ClubCo debtors or after?

11 A. Actually, in an unusual structure  
12 recommended by the McKenna firm, sometime in March I  
13 resigned effective February 24th. So I had to first  
14 get to the filing and then my resignation was  
15 retroactive.

16 Q. We needed an officer to authorize the  
17 filing.

18 MR. LEVY: That's helpful, isn't it?

19 A. I was confused. But, nevertheless, that was  
20 the transaction.

21 MR. LEVY: There's been more than one case  
22 that's been booted for lack thereof.

23 (Debtors' Exhibit No. 22 marked for  
24 identification.)

25 BY MR. LEVENGOOD:

1 Q. Mr. Cherry, I'm showing you a document that  
2 is a portion of a self-contained appraisal report  
3 prepared by CB Richard Ellis. And when I say it's a  
4 portion, it's the first part, through the table of  
5 contents; it doesn't contain the backing information.

6 But I wanted to ask you a couple of  
7 questions about this report, if I may. First of all,  
8 it indicates there that it was prepared for Tim Cherry,  
9 senior vice president of The Cliffs Communities; is  
10 that correct?

11 A. Yes.

12 Q. And did you request a fair market value  
13 appraisal of The Cliffs at Keowee Falls South?

14 A. Yes.

15 Q. And is this the appraisal or is this a copy  
16 of a portion of the appraisal that you received from CB  
17 Richard Ellis?

18 A. It is, or appears to be.

19 Q. And what is the fair market value  
20 determination made by CB Richard Ellis?

21 A. They have valued a leasehold interest on the  
22 golf course proper at \$9.5 million.

23 Q. And when you say "a leasehold interest,"  
24 what do you mean?

25 A. This is the value of a long-term lease on

1 the property, not fee-simple ownership; and it excludes  
2 the clubhouses, turn houses, and any other personal  
3 property.

4 Q. And did you recommend a lease-purchase  
5 transaction to Mr. Anthony with regard to certain of  
6 the golf club amenities?

7 A. Yes, I did.

8 Q. And would you please describe that?

9 A. With the Carolina Foothills Tax Court case,  
10 it became impossible for developers of real property to  
11 take any difference between the cost and the fair  
12 market value of amenities that had been built and to  
13 deduct those by adding them to the basis of the lots  
14 being sold.

15 So the methodology from a tax and financial  
16 standpoint was the creation of a newly formed entity,  
17 the Cliffs Golf Course Holding Company; owned 50  
18 percent by The Cliffs Communities, Inc., and 25 percent  
19 each by two unrelated third parties.

20 So that entity purchased three golf courses,  
21 Springs, Falls, and Walnut Cove, for the appraised  
22 aggregate value of \$23.5 million based upon the sum of  
23 the appraisals from CB Richard Ellis. That transaction  
24 was monetized with \$5 million as a down payment and a  
25 seller financing of the remainder, \$18,350,000, bearing

1 market interest through the course of time.

2 The clubs then immediately leased back these  
3 three courses in a triple net lease action and reserved  
4 the option to repurchase the clubs after a three-year  
5 term at the greater of their then-appraised fair market  
6 value or the original cost of the clubs plus 3 percent  
7 appreciation per year not compounded.

8 And as a result of that, there was an  
9 ability to take advantage of a tax loss and raise  
10 capital at the same time of the \$5 million, two and a  
11 half of which was new money to The Cliffs, the other  
12 two and a half came from The Cliffs itself.

13 The intent was then to go to the marketplace  
14 and monetize the seller financing. And we had one  
15 quote to do so, but it was at an 18 percent interest  
16 rate to an outside third party, and we declined that  
17 option and simply continued amortizing the loan.

18 Q. And at some point in time did you exercise  
19 the option to repurchase the properties?

20 A. Yes. Three clubs exercised their respective  
21 options in January of 2011.

22 Q. And what was the consideration furnished at  
23 that time?

24 A. It would have been the aggregate 23.5 plus 3  
25 percent per year for three years less the amount of the

1 seller financing canceled.

2 Q. And let me ask you, with regard to that  
3 transaction that you just described, the sale leaseback  
4 transaction, was the appraisal that's been -- a portion  
5 of which has been marked as Debtors' Exhibit 22, was  
6 that used by you in determining the sales leaseback  
7 price?

8 A. It was.

9 Q. And it was at a value of \$9.5 million?

10 A. That's correct.

11 Q. And what was the lease term? You said long-  
12 term lease, I'm trying to understand.

13 A. I'll have to review. I think it was either  
14 a seven- or ten-year lease.

15 Q. What I'm trying to understand is, if KFIG  
16 had entered into the sale leaseback transaction rather  
17 than creating an intercompany payable, would the  
18 transfer have been at \$9 1/2 million or would it have  
19 been at \$18 million, as it was in the intercompany  
20 payable?

21 A. I'm sorry, say that again, please.

22 Q. If KFIG had entered into the sale leaseback  
23 transaction rather than what it did, which was transfer  
24 the asset at cost to the Keowee Falls Golf and Country  
25 Club, I'm trying to understand, would it have

1 recognized a loss at that time of the difference  
2 between the \$18 million cost it had on the project and  
3 the \$9 1/2 million value it was obtaining as opposed to  
4 transferring that over to Cliffs at Keowee Falls Golf  
5 and Country Club?

6 A. I'm sorry, I do understand. Yes, in all  
7 likelihood, had that been the sequence, then that loss  
8 would have been recognized by KFIG.

9 Q. Was that loss recognized by The Cliffs at  
10 Keowee Falls Golf and Country Club?

11 A. For tax purposes, it was. For financial  
12 statements, under GAAP, because the option to reacquire  
13 existed, it was treated as a financing transaction.

14 Q. And in any event, because The Cliffs at  
15 Keowee Falls Golf and Country Club is a pass-through  
16 entity, or a disregarded entity, that hit at The Cliffs  
17 Communities, Inc., level when the tax return was filed?

18 A. That's correct, subject to certain bases and  
19 at-risk limitations. But, essentially, it flowed  
20 through into the tax position of the shareholders.

21 (Debtors' Exhibit No. 23 marked for  
22 identification.)

23 BY MR. LEVENGOOD:

24 Q. Mr. Cherry, I'm showing you a document  
25 consisting of four pages that has been marked for

1 identification purposes as Debtors' Exhibit 23. Could  
2 you identify that for me?

3 A. This appears to be the consolidated balance  
4 sheet of the club entities as of December 30, 2011.

5 Q. And after the indenture trustee transaction  
6 was closed in 2010 and a number of members loaned the  
7 ClubCos \$64,050,000, were the clubs required to provide  
8 reporting on a periodic basis to the indentured trustee  
9 with regard to the performance of the clubs?

10 A. We were to advise them of the tests on the  
11 liquid cash flow covenant model. We were to meet with  
12 the advisory board at least quarterly and then have the  
13 normal board meeting monthly, including the two  
14 independent directors, and we exceeded all of those  
15 requirements.

16 Q. And is this consolidated balance sheet as of  
17 September 30, 2011 one of the financial documents that  
18 was shared with the advisory committee? I didn't hear  
19 what you said, advisory group or advisory committee?

20 A. It's actually the ClubCo advisory board. It  
21 was shared with them and also the board itself, the  
22 formal board of directors of CCHG and ClubCo.

23 Q. And the board of directors of CCHG and  
24 ClubCo consisted of yourself, three other employee  
25 directors, and then two outside directors who were also



1 note holders; is that correct?

2 A. That's correct.

3 Q. And with regard to this Debtors' Exhibit 23,  
4 let me ask you to look at the line item under Other  
5 Receivables Primarily From Affiliates and Owners and  
6 ask what that is intended to show.

7 A. At the formation of ClubCo, CCHG Holding and  
8 The Cliffs Club and Hospitality Group, Inc., there was  
9 a consolidation or a combining of all the  
10 intercompanies, and that reflected then the aggregate  
11 amount that the DevCo entities owed to the ClubCo  
12 entities.

13 Q. Let me ask you to look at Debtors' Exhibit  
14 6, and specifically paragraph 11 that starts on page  
15 6.

16 A. Okay.

17 Q. And I'll ask if your answer to the prior  
18 question is consistent with the recitation that I have  
19 made as debtors' counsel in this objection that's been  
20 marked as Debtors' Exhibit 6?

21 A. Assuming your math is right.

22 Q. The point is, there were approximately \$137  
23 million of intercompany payables owed by development  
24 company affiliates and Mr. Anthony to the ClubCos, and  
25 there were apparently approximately 94 or \$95 million

1 worth of intercompany payables owed by the ClubCos to  
2 The Cliffs Development Company affiliates.

3 A. Yes.

4 Q. That's summarized on page 5 in front of that  
5 list. It's the listing of all the claims added up, and  
6 when you net those two, you come up with a difference  
7 of about \$42 million in favor of the ClubCos; is that  
8 right?

9 A. Understood.

10 Q. And assuming my math is right, that's  
11 generally consistent with the \$42,288,000 number that  
12 appears in the September actual on the consolidated  
13 balance sheet for the ClubCos?

14 A. That's the intent, yes.

15 Q. Let me show you a document that's been  
16 marked as Debtors' Exhibit 24.

17 (Debtors' Exhibit No. 24 marked for  
18 identification.)

19 BY MR. LEVENGOOD:

20 Q. Mr. Cherry, would you please look at this  
21 document which consists of five pages.

22 A. Yes. These are internally prepared  
23 financial statements for The Cliffs Club and  
24 Hospitality Group for the year and with a calculation  
25 of the cash covenant and cash flows.

1 Q. And in this case, the intercompany -- I'm  
2 sorry, the other receivables primarily from affiliates  
3 and owners have dropped slightly to \$41,923,000?

4 A. It appears so.

5 Q. And does the reconciliation of cash that is  
6 the last two pages of that exhibit, does that identify  
7 how that reduction occurred, or do you have to look  
8 somewhere else for that?

9 A. It should state in the reconciliation of  
10 cash on the last page, Changes in Balance Sheet  
11 Accounts. The increase in an asset is a use of cash to  
12 the reduction of a liabilities of use of cash. A  
13 decrease in asset is a source of cash. An increase in  
14 a liability is a source of cash.

15 So this appears to then have, under other  
16 assets, the change being noted of a \$1,388,283,  
17 assuming that corresponds to the beginning balance.  
18 And then there's also -- right above that it says,  
19 Other receivables from affiliates.

20 A. Yes. So it would have been the sum of those  
21 two.

22 (Debtors' Exhibit No. 25 marked for  
23 identification.)

24 BY MR. LEVENGOOD:

25 Q. I'm now going to show you Debtors' Exhibit

1 25. This is Exhibits 1, 2, and 3 from The Cliffs Club  
2 and Hospitality Group Confidential Private Placement  
3 Memorandum.

4 And if it's okay with you, let's take a  
5 break.

6 (A break was taken from 3:53 p.m. to  
7 4:00 p.m.)

8 BY MR. LEVENGOOD:

9 Q. Mr. Cherry, let's go back for just a minute  
10 to the sale leaseback transaction you just described  
11 between certain of the clubs and the affiliate that was  
12 created, the golf course holding company.

13 In that transaction, was the obligation to  
14 pay for the clubs that wasn't paid in cash, was the  
15 portion that was financed, I think you testified it was  
16 about \$18 million, was that reduced to writing in the  
17 promissory note?

18 A. Yes.

19 Q. And I believe you said that had an interest  
20 rate?

21 A. It did.

22 Q. And there were payments that were due under  
23 it?

24 A. Yes.

25 Q. And payments were made under it?

1 A. Yes.

2 Q. Let me ask you to now look at Debtors'  
3 Exhibit 25. And, again, this is the cover page of the  
4 private placement memorandum on the \$100,000,000 of  
5 senior notes to members of the golf and country clubs  
6 of The Cliffs Golf and Hospitality Group, Inc., dated  
7 March 11, 2010.

8 And then I have -- to not kill any trees, I  
9 have not copied the private placement memorandum  
10 itself, but I have copied for purposes of our  
11 discussion today Exhibits 1, 2, and 3. And I would ask  
12 you to take a look at those exhibits and tell me what  
13 those Exhibits 1, 2, and 3 are.

14 A. Exhibit No. 1 is the audited financial  
15 statements for the years ended 2007 and 2006 complete  
16 with accompanying footnotes.

17 Q. That's Exhibit No. 1. What's Exhibit No. 2?

18 A. Exhibit No. 2 would be the unaudited  
19 financial statements for the period ended December 31,  
20 2009.

21 Q. And does Exhibit No. 1 contain, in addition  
22 to the combined financial statements for The Cliffs  
23 Communities and certain affiliates for the years ended  
24 in 2007 and 2006, also the combined financial  
25 statements for those same entities for the years ending

1 December 31, 2008 and 2007?

2 A. I'm sorry, Mr. Levengood, would you repeat  
3 that one more time?

4 Q. You testified that Exhibit No. 1 was the  
5 combined financial statements for the years ended 2007  
6 and 2006, and I stopped you before you got all the way  
7 through Exhibit No. 1. And keep looking at Exhibit No.  
8 1. Do you also see in there the combined financial  
9 statements for the years ending 2008 and 2007?

10 A. I do.

11 Q. So there are actually two separate financial  
12 statements together with accompanying notes for the  
13 same entities that are attached as Exhibit No. 1?

14 A. Yes.

15 Q. Now to Exhibit No. 2. You were testifying  
16 that's the unaudited combined balance sheets for 2009?

17 A. Yes.

18 Q. And are there notes attached to that  
19 unaudited statement as well?

20 A. No, there are not, other than the MD and A;  
21 management, analysis, and discussion.

22 Q. And then what is Exhibit No. 3?

23 A. Exhibit No. 3 is a projection under the  
24 assumptions noted for the seven-year period for the  
25 Club and Hospitality Group.

1 Q. Let me ask you some questions, if I may,  
2 about the financial statement that's attached as  
3 Exhibit No. 1 to Debtors' Exhibit 25 for the year  
4 ending December 31, 2007 and 2006.

5 And the questions I want to ask you about  
6 have to do with where intercompanies payables show up  
7 in this financial statement.

8 A. Is that a question?

9 Q. Yes.

10 A. Intercompany accounts in a combined balance  
11 sheet are eliminated.

12 Q. And is the result of the inter -- is the  
13 difference after the elimination of the intercompany  
14 accounts, does that show up either as an asset or a  
15 liability in the balance sheet?

16 A. No. It should be a zero sum and gain with  
17 amounts being transferred, allocated, and used between  
18 companies; one creates a payable, the other a  
19 receivable, the net of which should be zero.

20 Q. With regard to other receivables, primarily  
21 from affiliated organizations, note five; and other  
22 receivables primarily from owner, note six; do you see  
23 that on the balance sheet that's page 2 of the  
24 financial statement?

25 A. I do.

1 Q. And then there's the reference to the  
2 notes. Let's talk about first the dollar amounts and  
3 then the notes. What was the -- as of December 31,  
4 2007, what was the total amount of other receivables  
5 primarily from affiliated organizations under the  
6 financial statement?

7 A. \$131,281,290.

8 Q. And then the other receivables primarily  
9 from owner, what was that amount?

10 A. \$49,206,389.

11 Q. Then we go to note five and note six,  
12 there's a breakdown or a detail, if you will, of what  
13 comprises those numbers, right? Is that true?

14 A. That is correct.

15 Q. And the big numbers are the note receivable  
16 from Longview Land and the receivables from Longview  
17 Land and Waterfall Investment; isn't that right?

18 A. Yes.

19 Q. Then it says, Miscellaneous receivables from  
20 affiliates, \$789,000. I'll state the question a  
21 slightly different way. Where does the \$16 million  
22 that KFIG contends The Cliffs at Keowee Falls Golf and  
23 Country Club appear in this financial statement?

24 A. It does not. Because if that were the only  
25 transaction between subsidiaries in a combined balance



1 sheet, you are required to eliminate the intercompany  
2 transactions.

3 Q. So they don't appear in here at all?

4 A. That's correct.

5 Q. I'd like you to go now to Exhibit No. 3 of  
6 Debtors' Exhibit 25, which I think you previously  
7 testified was the income projections for the ClubCo  
8 entities.

9 A. Projection of all the financial statements,  
10 balance sheets, and income statements, statement of  
11 cash flows.

12 Q. For the ClubCos?

13 A. Correct.

14 Q. And let me ask you to go to -- the pages  
15 aren't numbered so it's hard to give you a page number  
16 to point you to, but after the numbers, when you get  
17 into the notes, it's on the first page of the notes  
18 after that particular set of projections.

19 A. Okay.

20 Q. Now go to the second page; one further. In  
21 the paragraph that says, Other receivables primarily  
22 from affiliates and owner -- do you see that?

23 A. I do.

24 Q. What is the meaning of the sentence that  
25 ends that paragraph, The intercompany receivable is

1 fixed from this point on as all transactions between  
2 the two par offset by notes receivable from historic  
3 transactions between ClubCo and other Cliffs entities?

4 A. Not understanding the use of the term "par"  
5 in that sentence, I'm obviously --

6 Q. Let's assume it was a typo for "are."

7 A. The intent was to describe this projection  
8 without the assumption of any reductions or changes in  
9 that account balance. So if you'll look at the balance  
10 sheet, you see that that number, in this case, shown at  
11 \$35 million approximately, is unchanged through the  
12 projection period.

13 The idea was that the readers of this should  
14 not assume that there would be payments made on that  
15 receivable during the pendency of the notes.

16 Q. And that's the note receivable primarily  
17 from affiliates and owner?

18 A. Yes.

19 Q. Let me ask you to look at Debtors' Exhibit  
20 21. Mr. Cherry, I'd like you to look at Debtors'  
21 Exhibit 21. And I'm telling you that this is a  
22 compilation of a number of different documents to try  
23 to identify the sources and uses of cash from the  
24 indentured trustee note holder transaction. I'll ask  
25 you if you have seen those documents before?

1 A. I have.

2 Q. And so far as you're aware, is the summary  
3 of sources and uses of cash on page 1 that is then  
4 replicated at the top of page 2 of that exhibit with  
5 additional detail spread out by the clubs? Is that  
6 accurate?

7 A. I believe so.

8 Q. Which clubs purchased land from a  
9 development company affiliate with money from the note  
10 holder transaction?

11 A. The Cliffs at Keowee Springs Golf and  
12 Country Club would have purchased the Wellness Center  
13 location from The Cliffs at Keowee Springs, LLC. It  
14 actually purchased The Beach Club at \$1,762,000, but  
15 that was a contract undertaken -- paid for by the DevCo  
16 entities with the expectation and the understanding  
17 that, upon closing, it would be purchased for just a  
18 reimbursement of cost.

19 Q. So the Springs was one example. Were there  
20 other examples where money from the indentured trustee  
21 note holder transaction was used to purchase land from  
22 a development company affiliate?

23 A. Yes. At Mountain Park it shows a \$1,004,000  
24 purchase. In several of the other categories, for  
25 example, Walnut Cove shows an \$11,000 land cost. Well,

1 that was simply the title insurance and the obtaining  
2 -- the legal cost of closing that transaction. Same is  
3 true of Vineyards. So I think that's the extent.

4 There were other acquisitions of land by the  
5 clubs that came from the cancellation of intercompany  
6 debt. For clarity, whenever there was an acquisition  
7 of land for the footprint of an amenity or an existing  
8 amenity that was still owned by the DevCo entities, and  
9 if the DevCo entities owed money to the clubs, then  
10 that property was transferred for cancellation of debt  
11 and not the exchange of cash.

12 But where there were no receivables from the  
13 DevCo entity that owned the land, then the  
14 corresponding golf and country club actually paid  
15 appraised fair market value for the property it  
16 acquired.

17 Q. So let's see if I can state in my own words  
18 what you just said. If the DevCo affiliate owned land  
19 on which the golf course sat and had been improved to  
20 be a golf course or some other amenity for the country  
21 club and there was not an intercompany payable where it  
22 owed money to a ClubCo affiliate at the time of the  
23 closing of the indentured trustee note holder  
24 transaction, then a fair market value appraisal was  
25 used to determine the purchase price and a portion of

1 the note holder funds was used to buy the land from  
2 that development company affiliate at that appraised  
3 price?

4 A. That's correct.

5 Q. And cash was transferred to the development  
6 company affiliate?

7 A. (The witness nodded head up and down.)

8 Q. In the instance where the development  
9 company affiliate owed money to the ClubCos at the time  
10 of that transaction under the intercompany payables,  
11 there was still an appraisal used, but if there was a  
12 balance due from the development company affiliate that  
13 owned the land at the closing, the ClubCos got credit  
14 for the satisfaction of that intercompany payable as a  
15 credit at closing and didn't have to pay cash?

16 A. That's correct.

17 Q. Why didn't The Cliffs at Keowee Falls Golf  
18 and Country Club pay \$18 million of the note holder  
19 money to pay off the debt to Keowee Falls Investment  
20 Group with those monies?

21 A. Because, as illustrated in the projection,  
22 that was never the intended source of use of cash.  
23 Recognizing that, for financial statement purposes,  
24 intercompany accounts eliminate, as do the interest  
25 expense and interest income that would have been

1 associated with those intercompany accounts, all that,  
2 again, is eliminated in these combining returns.

3           However, the use of funds and the entity  
4 that, if you will, created the cash through sales or  
5 initiation deposits or whatever the case may be, it was  
6 always the intent, as I understood it, that once  
7 development and construction ceased, that those amounts  
8 would be paid over the course of time.

9           So they were really subordinated to the  
10 other cash flow requirements between the entities,  
11 that's why the attempted language in the misstated last  
12 sentence was to say that there will be no payments back  
13 and forth during the pendency of these notes so that  
14 the note holders investing knew they weren't, if you  
15 will, taking care of an old problem; nor did they  
16 expect to be paid any time during the note offering, or  
17 the -- again, the period of time the notes were  
18 outstanding, as originally projected.

19           Q.     Thank you. That's all the questions I  
20 have.

21                     (Signature reserved.)

22                     (The deposition concluded at 4:21 p.m.)

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SIGNATURE OF DEPONENT

I, the undersigned, TIMOTHY PATE  
CHERRY, do hereby certify that I have read the  
foregoing deposition and find it to be a true and  
accurate transcription of my testimony, with the  
following corrections, if any:

PAGE	LINE	CHANGE	REASON
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TIMOTHY PATE CHERRY Date

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CERTIFICATE OF REPORTER

I, Rita A. DeRouen, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this day of 2012, at Columbia, Richland County, South Carolina.

---

Rita A. DeRouen  
Registered Professional Reporter  
Notary Public  
State of South Carolina at Large  
My Commission expires:  
August 12, 2019



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