

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MEYERS DIVISION

IN RE: )  
)  
ULRICH FELIX ANTON ENGLER; )  
and PRIVATE COMMERCIAL ) Case No.  
OFFICE, INC., ) 9:08BK-04360-ALP  
)  
Debtor. )

- AND -

IN RE: )  
)  
ULRICH FELIX ANTON ENGLER; )  
and PRIVATE COMMERCIAL )  
OFFICE, INC., )  
)  
Debtor. )  

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 )  
ROBERT E. TARDIF, )  
As Chapter 7 Trustee, )  
)  
Plaintiff, )  
) Adv. Proc. Case No.  
vs. ) 9:09-AP-1026-ALP  
)  
FIDELITY NATIONAL )  
FINANCIAL, INC., and )  
FIDELITY NATIONAL TIMBER )  
RESOURCES, INC., f/k/a )  
FIDELITY NATIONAL RANCH )  
PROPERTIES, )  
)  
Defendants. )

DEPOSITION OF BRADLEY T. FREEMAN

Volume II of II

Pages 170 - 341

June 15, 2010

1                   The deposition of BRADLEY T. FREEMAN  
2                   called by the Defendants for examination, pursuant  
3                   to the Federal Rules of Civil Procedure of the  
4                   United States District Courts pertaining to the  
5                   taking of depositions, taken before Linda D.  
6                   Hansen, CSR No. 084.003027, RDR, CRR, a notary  
7                   public within and for the County of DeKalb and  
8                   State of Illinois, at the Law Offices of Bazos,  
9                   Freeman, Kramer, Schuster, Vanek & Kolb, 1250  
10                  Larkin Avenue, Suite 100, Elgin, Illinois, on June  
11                  14, 2010, commencing at the hour of 9:03 a.m.

12

## 13                  APPEARANCES:

14                  GENOVESE, JOBLOVE & BATTISTA, P.A., by  
15                  MR. ROBERT F. ELGIDELY  
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19                  relgidely@gjb-law.com

20                  On behalf of the Plaintiff, via  
21                  telephone;

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APPEARANCES (CONT'D):

SHUMAKER, LOOP & KENDRICK, LLP, by  
MR. STEVEN M. BERMAN  
101 East Kennedy Boulevard, Suite 2800  
Tampa, FL 33602  
813.229.7600 | 813.229.1660 (Fax)  
sberman@slk-law.com

On behalf of the Defendants.

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I N D E X

DEPOSITION OF BRADLEY T. FREEMAN  
CONT'D CROSS EXAMINATION BY MR. ELGIDELY: 174  
REDIRCT EXAMINATION BY MR. BERMAN: 319  
RE CROSS EXAMINATION BY MR. ELGIDELY: 334

EXHIBITS

Trustee's  
No. 2 303

Note: The original of Trustee's Exhibit 2 was returned to the witness and a copy was substituted therefor.

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MR. ELGIDELY: Back on the record.

CROSS EXAMINATION

(Continued.)

BY MR. ELGIDELY:

Q. Mr. Freeman, you are looking at a document that was previously marked as Fidelity Exhibit 34. It is a name affidavit.

And when we -- before I'd asked to you turn to this exhibit, you had indicated that you had made it clear or had previously advised Mr. Douglas that Mr. Engler should obtain his own counsel; is that accurate?

A. Yes.

Q. Okay. In this name affidavit, it says that you are the attorney for Mr. Engler; correct?

A. It says that in reference to this document.

Q. Okay. When you say, "It says that in reference to this document," that's not -- that's not what this document says, does it, sir? It says that --

A. Okay, I follow you.

Q. Let me -- Mr. Freeman, let me -- I'm sorry. I just don't -- I want to finish my question before you start to answer.

1                   The document says, "The  
2                   undersigned, being the attorney for Mr. Ulrich  
3                   Engler, 91 Southport Cove, Bonita Springs,  
4                   Florida, 34134, does hereby certify and represent  
5                   that Ulrich Engler is one and the same as Richie  
6                   Engler as it relates to the real estate described  
7                   on the attached Exhibit A," and it purports to be  
8                   signed by you.

9                   Did I read that accurately?

10                  A.    Yes, you did.

11                  Q.    Okay. Is that, in fact, your  
12                  signature?

13                  A.    Yes, it is.

14                  Q.    Okay. The first sentence -- actually,  
15                  there's only one sentence -- it doesn't say that  
16                  you're the attorney for Mr. Engler only with  
17                  respect to the real estate described on the  
18                  attached Exhibit A, does it?

19                  MR. BERMAN: Objection; argumentative.

20                  A.    It does not say that.

21                  MR. ELGIDELY: Okay. I'm asking the  
22                  witness what it says, Mr. Berman. I'm not trying  
23                  to argue with him.

24                  MR. BERMAN: I'm just stating my  
25                  objection for the record.

1 BY MR. ELGIDELY:

2 Q. Okay. And, Mr. Freeman, this is a  
3 document that you caused to be recorded in the  
4 public records of Charlotte County, Florida;  
5 correct?

6 A. Correct.

7 Q. Okay. Okay. Let's turn to packet No.  
8 3 if we could, your packet No. 3, Mr. Freeman.

9 A. Yeah. And what is that? Is that the  
10 one with, for example, Douglas Investments, LLC,  
11 history?

12 Q. Correct. That's the first document in  
13 the packet.

14 And let me ask you this before we  
15 keep going: Do you have copies of the packet that  
16 you sent just to myself and Mr. Berman with you in  
17 the deposition today?

18 A. Yeah. All those documents are here.  
19 They're not as nicely organized as what I sent to  
20 you, however. But they are here.

21 Q. Well, I will do my best to -- to  
22 identify the documents that I'd like to ask you a  
23 few questions about.

24 A. Sure.

25 Q. Okay. Let's turn to -- there are some

1 notes -- they're actually in the binder, as well,  
2 as Fidelity Exhibit 2.

3 A. Okay.

4 Q. I believe you testified they're your  
5 handwritten notes on June 16, 2006.

6 A. Yes.

7 Q. Let me know when you have that in front  
8 of you.

9 A. Exhibit 2?

10 Q. Yes, sir.

11 A. I have that.

12 Q. Okay. Thank you. You have the word  
13 "Rich" right above the circle that says, "New,  
14 underlined, LLC."

15 Do you see that?

16 A. I do.

17 Q. Okay. Do you recall what was being  
18 said when you took those notes?

19 A. As I recall, this was relating to Mr.  
20 Douglas and Mr. Engler negotiating how to set up  
21 the purchase to invest in some real estate.

22 Q. Okay. Well, who is Rich?

23 A. I wrote that for Richie Engler. That's  
24 what Mr. Douglas called him.

25 Q. Oh, okay, okay. Then you have a dash



1 underneath the circle that says, "Buy some land,"  
2 and there's something else there. I can't read  
3 it, the handwriting.

4 A. Okay.

5 Q. What's that say?

6 A. It says, "Buy some land," and the word  
7 below that is "together."

8 Q. Okay. Who was it that was buying the  
9 land together?

10 A. Well, at that date that was in  
11 reference to Mr. Douglas and Mr. Engler.

12 Q. Okay. To the right, there is a figure  
13 there.

14 What is that figure?

15 A. Right below that?

16 Q. No, to the right of that, sir.

17 A. 158 million, and I don't recall what  
18 that is.

19 Q. You would agree that 158 million is a  
20 lot of money?

21 MR. BERMAN: Objection; relevance and  
22 form.

23 BY MR. ELGIDELY:

24 Q. Would you agree with that, sir?

25 A. It would be a lot of money to me.

1 Q. Okay. And you have no recollection as  
2 to what -- what that number meant?

3 A. Not offhand, I do not.

4 Q. Okay. Underneath "together," there is  
5 a dash and it says, "6.0 from Richie."

6 Do you know what those notes are  
7 concerning?

8 A. I think that was the amount of money  
9 that Mr. Engler was going to loan to Mr. Douglas  
10 initially.

11 Q. How much -- how much is 6.0?

12 A. 6.0 million.

13 Q. \$6 million?

14 A. That's my understanding -- that's my  
15 recollection.

16 Q. Okay. And underneath that it says  
17 50/50; is that correct?

18 A. Yes.

19 Q. What does that mean?

20 A. That relates, as I recall, to how the  
21 profits were to be split after payment of  
22 expenses.

23 Q. Profit?

24 A. In other words --

25 Q. I'm sorry. Go ahead.

1           A.     Okay.  In other words, Mr. Douglas had  
2     said that Mr. Engler was going to make a loan to  
3     the LLC, Mr. Douglas was going to select some  
4     property to invest in, which would be owned by the  
5     LLC; and then if and when there were profits  
6     generated from the disposition of that, those  
7     profits would be split 50/50.

8           **Q.     Okay.  In the 20 or so loan**  
9     **transactions you've been involved in over the 40**  
10    **years that you've been practicing as an attorney,**  
11    **how many lenders required a portion of the**  
12    **profits, in addition to repayment of the principal**  
13    **and interest loaned?**

14           MR. BERMAN:  Objection; relevance and  
15    foundation.

16           Go ahead.

17           A.     I have had a few where it is private  
18    party with private party.  I have had none with  
19    banks that did that.

20    BY MR. ELGIDELY:

21           **Q.     Okay.  What are the names of the**  
22    **private parties that did that?**

23           A.     I have no recollection.

24           **Q.     Okay.  You have no recollection of who,**  
25    **as a lender, required a split of the profits in**

1 **addition to repayment of the principal and**  
2 **interest?**

3 A. No. It just seems that I -- I must  
4 have had one or two deals like that. It sounds --  
5 it seems like I do, and I can't remember who they  
6 might have been.

7 **Q. Okay. When was -- when do you believe**  
8 **the last time that you had a similar transaction?**

9 MR. BERMAN: Objection; relevance.

10 A. Oh, I have no idea.

11 BY MR. ELGIDELY:

12 **Q. Okay. And I mean this with all due**  
13 **respect, sir; I just need to be clear for the**  
14 **record: Are you taking any medication today that**  
15 **could affect your testimony?**

16 MR. BERMAN: Objection; argumentative.

17 A. No, I'm not.

18 BY MR. ELGIDELY:

19 **Q. Okay. Do you suffer from any memory**  
20 **condition?**

21 A. No, not that I know of. Not that I  
22 remember.

23 **Q. Okay. Okay.**

24 MR. BERMAN: I think that last comment  
25 was made in jest.

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THE WITNESS: It was.

BY MR. ELGIDELY:

**Q. Which comment is that?**

A. Where I said that I don't remember.

**Q. Okay. Oh, I didn't hear that.**

**You've never been diagnosed as suffering from dementia or Alzheimer's?**

A. I have not.

**Q. And sitting here today, you have no recollection of any transactions that the lender required a repayment of profit in addition to repayment of the principal and interest?**

A. Not offhand, I do not.

**Q. Okay. All right. Let's go to page 2 of the handwritten notes.**

**You have "Richie Engler." Did you understand Richie Engler to be the same person as Ulrich Engler?**

A. Yes. That's how Mr. Douglas referred to him.

**Q. Oh, okay. Let's go to the Fidelity Exhibit 4, if we can.**

A. Okay.

**Q. Let me know when you have that.**

A. I have it.

1           **Q.    Okay.  It says, "Debbie Douglas," at**  
2 **the top.**

3           A.    Uh-huh.

4           **Q.    Do you know if this was an e-mail from**  
5 **Debbie Douglas or whether it was from someone**  
6 **else?**

7           A.    All right.  It says that where?  I'm  
8 sorry.

9           **Q.    At the top in bold, underscored.  It**  
10 **says, "Debbie Douglas."**

11          A.    Okay.

12          **Q.    The upper left-hand corner.**

13          A.    I don't know.  I'm guessing that's from  
14 their home computer.  I don't know.  Debbie is  
15 David's wife.

16          **Q.    Okay.  It says from urichiee@aol.com.**  
17                   **Do you know whose e-mail address**  
18 **that is?**

19          A.    I believe it is Richie Engler.

20          **Q.    And it says to davidbdoug@tetontel.**  
21 **com.**

22                   **Do you know whose e-mail address**  
23 **that is?**

24          A.    David Douglas.

25          **Q.    And it says, "Subject, Douglas**

1 **Investments, LLC"; correct?**

2 A. Yes.

3 **Q. Okay. Let me take a step back, sir,**  
4 **and go back to Fidelity Exhibit 2. I'm going to**  
5 **come back to this one. I want to ask you a**  
6 **question before I forget.**

7 A. Okay.

8 **Q. We talked about a 50/50 split of**  
9 **profits in your handwritten notes.**

10 **Do you recall that?**

11 A. Yes. That's what was -- that's what  
12 was discussed at that time.

13 **Q. Okay. Where was the 50/50 split of**  
14 **profits to come from?**

15 A. I believe from the sale of any  
16 properties that they bought and sold.

17 **Q. Okay. Was there an entity that was**  
18 **going to be used to acquire property and to sell**  
19 **property?**

20 MR. BERMAN: Objection; asked and  
21 answered.

22 A. Douglas Investments, LLC, was to be the  
23 entity.

24 BY MR. ELGIDELY:

25 **Q. Okay. Did you understand that the**

1 50/50 split of profits was to be a split from  
2 sales of assets by Douglas Investments, LLC?

3 A. Yes.

4 Q. Okay. Let's go back to Exhibit 4. And  
5 I apologize for bouncing back and forth here; I  
6 just want to make sure I cover all the territory I  
7 need to.

8 A. Okay.

9 Q. Okay. What were the circumstances  
10 under which you received this e-mail from Mr.  
11 Engler to David Douglas?

12 A. Mr. Douglas forwarded this to me on  
13 June 19, 2006, and he called me and said that  
14 these are some of the discussion points between  
15 him and Mr. Engler, and he wanted to discuss these  
16 with me.

17 Q. Is this a copy of a document that was  
18 maintained in your file concerning these matters?

19 A. Yes.

20 Q. Is it a true and correct copy?

21 A. Beg your pardon?

22 Q. Is it a true and correct copy of the  
23 document that was maintained in your files?

24 A. Yes.

25 Q. Was this document altered by you or any



1 of your staff or fellow colleagues in any way?

2 A. No.

3 Q. Okay. It opens by, "Dear Mr.  
4 President."

5 Do you know what that meant?

6 A. No.

7 Q. It says, "I'll give you some ideas and  
8 thoughts about our partnership."

9 Did you know what was meant by the  
10 phrase "partnership" or the term "partnership"?

11 A. I think he is describing, in general,  
12 their idea to invest some money and make -- make  
13 some profits off of real estate. So I'm assuming  
14 it was generically talking about a relationship  
15 between two people.

16 Q. Okay. Well, let's talk about No. 2.  
17 It says, "The ownership of the LLC will be split  
18 between you and me 50/50."

19 Did I read that accurately?

20 A. Yes.

21 Q. And to the right, there is some  
22 handwriting.

23 Do you know whose handwriting that  
24 is?

25 A. That's mine.

1           **Q.    Okay.  It says, "No, underscore,**  
2 **underscore, he is not, underscore, in LLC."**

3           A.    Uh-huh.

4           **Q.    Did I read that accurately?**

5           A.    You did.

6           **Q.    Okay.  And what did you mean by those**  
7 **handwritten notes?**

8           A.    That's what David Douglas said to me as  
9 we were going through these points.  He said that,  
10 no, he is not going to be in the LLC.

11          **Q.    Okay.  Why did you underscore "no"**  
12 **twice?**

13          A.    Why did I do it twice?  I don't know.

14          **Q.    Why did you underscore not once?**

15          A.    I don't know.

16          **Q.    Okay.**

17          A.    Well, I underscored it at least once,  
18 one of them, both of them, just so I would  
19 remember.

20          **Q.    Okay.  Was that an important thing to**  
21 **remember?**

22          A.    To me, everything is important to  
23 remember.

24          **Q.    Okay.  You didn't underscore everything**  
25 **in this document, did you?**

1 MR. BERMAN: Objection; argumentative.

2 A. Well, the only other thing I wrote -- I  
3 underscored it when I was talking to him on the  
4 phone. But anyway, go ahead.

5 BY MR. ELGIDELY:

6 Q. You said, "Everything is important."  
7 I'm just trying to understand. You said you  
8 underscore because it was important.

9 Did you underscore anywhere else,  
10 any other language in this document?

11 A. No.

12 Q. Okay. No. 3 says, "If possible, my  
13 name shouldn't be on the papers of the LLC.  
14 Please ask your attorney how to do it."

15 Did I read that accurately?

16 A. You did.

17 Q. Do you know why Mr. Engler did not want  
18 his name to be on the papers of the LLC?

19 MR. BERMAN: Objection; foundation,  
20 calls for speculation.

21 A. I do not.

22 BY MR. ELGIDELY:

23 Q. You didn't ask your client, Mr.  
24 Freeman, why Mr. Douglas -- Mr. Engler did not  
25 want his name on the papers of the LLC?

1           A.     Well, I mentioned it in my June 20  
2 letter to Mr. Douglas, item No. 3 -- is this one  
3 of the exhibits, your exhibits?

4           MR. BERMAN:   Yes, it is Exhibit 5.

5           A.     (Continuing.) Exhibit 5, if you want  
6 to turn to that.

7 BY MR. ELGIDELY:

8           **Q.     I don't want to turn to that, sir.**

9                               **My question is: On this document,**  
10 **Exhibit 4, what conversation, if any, did you have**  
11 **with Mr. Douglas or Mr. Engler concerning item No.**  
12 **3, "If possible, my name shouldn't be on the**  
13 **papers of the LLC. Please ask your attorney how**  
14 **to do it"?**

15           MR. BERMAN:   Objection; asked and  
16 answered.

17           MR. ELGIDELY:   He didn't answer yet,  
18 Mr. Berman.

19           MR. BERMAN:   He did, for the record.  
20 He referred you to the June 20 letter, wherein he  
21 dealt with that issue. And you didn't like his  
22 answer, but he did answer it.

23 BY MR. ELGIDELY:

24           **Q.     Okay. Mr. Freeman, what conversation**  
25 **did you have with Mr. Douglas concerning item 3?**

1           A.    I -- now you are talking about the item  
2    3 of Exhibit 5?

3           **Q.    Exhibit 4, sir.**

4           A.    You mean -- wait.  Excuse me.  No. 3.

5           **Q.    Let me rephrase the question.**

6           A.    Okay.

7           **Q.    What did David Douglas tell you about**  
8    **item 3 on Exhibit 4 where it says, "If possible,**  
9    **my name shouldn't be on the papers of the LLC.**  
10   **Please ask your attorney how to do it"?**

11          A.    Well, he -- he didn't know why Mr.  
12    Engler didn't want it on there, whether it was  
13    privacy or whatever.  I don't know.

14          **Q.    Okay.  Mr. Douglas testified on Friday**  
15    **that the reason Mr. Engler did not want his name**  
16    **on the LLC was because Mr. Engler was concerned**  
17    **about double taxation and divorce issues.**

18                 MR. BERMAN:  Objection;  
19    mischaracterization.

20                 MR. ELGIDELY:  Okay.  The record speaks  
21    for itself, Mr. Berman.

22                 MR. BERMAN:  I agree.

23    BY MR. ELGIDELY:

24                 **Q.    Mr. Freeman, that was the answer that**  
25    **Mr. Douglas gave in response to our request as to**

1 why Mr. Engler's name did not appear on Douglas  
2 Investments, LLC.

3 I'm asking you: Did Mr. Douglas  
4 tell you that?

5 A. No.

6 Q. What did Mr. Douglas tell you about No.  
7 3?

8 MR. BERMAN: Objection; asked and  
9 answered.

10 A. He didn't really tell me anything. He  
11 just mentioned that it shouldn't be on there.

12 And then I followed up with that  
13 in my letter, saying, "I'm not exactly sure what  
14 Richie means by this," et cetera.

15 BY MR. ELGIDELY:

16 Q. Okay. I'm going to look at your  
17 Fidelity Exhibit 5 and there's a paragraph 3 in  
18 your letter that says, "Richie's name on the  
19 papers of the LLC. I am not exactly sure what  
20 Richie means by this. If he wishes not to have  
21 his name appear with the LLC in any fashion, then  
22 he should simply be a lender, underscore, to the  
23 LLC as opposed to a member of the LLC."

24 Was this your advice to Mr.  
25 Douglas?

1 A. That was my suggestion, yeah.

2 Q. Okay. Your suggestion as Mr. Douglas's  
3 attorney?

4 A. Yes.

5 Q. Okay. Mr. Douglas did not have any  
6 discussions with you, sir, whatsoever concerning  
7 the reason Mr. Engler did not want his name to  
8 appear on the corporate records for Douglas  
9 Investments, LLC; is that your testimony?

10 MR. BERMAN: Objection; asked and  
11 answered.

12 A. That is correct. And the first time I  
13 heard that, what you just said, was today from  
14 you.

15 BY MR. ELGIDELY:

16 Q. Okay. The first time you've heard  
17 about the double taxation and divorce issues? Is  
18 that what you are referring to?

19 A. Yes.

20 Q. Okay. You've had no conversations with  
21 Mr. Douglas since June 18, 2006, to this present  
22 day concerning the double taxation and divorce  
23 issues; is that your testimony?

24 MR. BERMAN: Objection; asked and  
25 answered.

1 A. Yeah, not that I recall.

2 BY MR. ELGIDELY:

3 Q. Okay. And you've -- you've spoken with  
4 Mr. Douglas several times since June 18, 2006;  
5 correct?

6 A. I have.

7 Q. You've socialized with Mr. Douglas;  
8 right?

9 A. I have.

10 Q. You were aware Mr. Douglas's deposition  
11 had been taken a few times in connection with  
12 litigation in the bankruptcy matters; correct?

13 A. Correct.

14 Q. Okay. Is it your testimony that Mr.  
15 Douglas did not advise you concerning the  
16 substance of his testimony at those depositions?

17 A. That's absolutely correct.

18 Q. Okay. Sir, were you curious as to why  
19 Mr. Engler's name shouldn't be on the papers of  
20 the LLC?

21 A. Not particularly. A lot of times  
22 people just like to be private and not have their  
23 name out there.

24 Q. Okay. It says, "Please ask your  
25 attorney how to do it."



1                   Did you recognize, sir, that both  
2 **Mr. Engler and Mr. Douglas were looking for a way**  
3 **that their relationship could be structured such**  
4 **that Mr. Engler's name should not appear on the**  
5 **papers of Douglas Investments, LLC?**

6           A.    Yes.

7           **Q.    Okay.**

8           A.    They're -- yeah, they're looking for a  
9 way to structure -- yeah, exactly, what you said  
10 is correct.

11           **Q.    Okay. In Exhibit 5, in your letter,**  
12 **you're the one that indicates that the**  
13 **relationship should be structured as**  
14 **lender/borrower as opposed to co-members of the**  
15 **Douglas Investments, LLC; correct?**

16           A.    Yes.

17           **Q.    You're the one that came up with that**  
18 **structure; correct?**

19           A.    Yeah, along with Mr. Douglas's  
20 accountant.

21           **Q.    Okay. You jointly had come up with a**  
22 **structure that, instead of Mr. Engler being a**  
23 **member of Douglas Investments, LLC, that he should**  
24 **be a lender; correct?**

25           A.    Yes. But also Mr. Douglas did not want

1 Mr. Engler in the LLC. Mr. Douglas wanted to be  
2 the sole member of the LLC and be in charge of  
3 things.

4 Q. Okay. Sir, my question is: In this  
5 paragraph it says, "If he does not wish to have  
6 his name appear with the LLC in any fashion, then  
7 he should simply be a lender, underscore, to the  
8 LLC as opposed to a member of the LLC."

9 Did I read that sentence  
10 accurately?

11 MR. BERMAN: Objection to form.

12 A. Yes.

13 BY MR. ELGIDELY:

14 Q. Now, my question again, sir, is: It  
15 was you, perhaps in conjunction with other  
16 parties, that determined that instead of being a  
17 member of Douglas Investments, LLC, that Mr.  
18 Engler should be characterized as a lender of the  
19 LLC; correct?

20 MR. BERMAN: Objection;  
21 mischaracterization of prior testimony.

22 BY MR. ELGIDELY:

23 Q. Is that correct?

24 A. Yeah, the answer is yes.

25 Q. Okay. And that -- and that by

1 structure -- by characterizing Mr. Engler as a  
2 lender of the LLC, that would accomplish Mr.  
3 Engler's objective, would it not, that, if  
4 possible, my name shouldn't be on the papers of  
5 the LLC as reflected in Fidelity Exhibit 4, item  
6 No. 3; correct?

7 A. Well, at least it wouldn't be on -- he  
8 wouldn't be on there as a member or a manager.

9 I suppose if he was later going to  
10 have a mortgage or some public document, then he  
11 would be on there.

12 Q. Okay. But again, you're talking about  
13 a point in time, being June 18 and June 20, 2006;  
14 correct?

15 A. That's correct.

16 Q. Okay. And what did you understand the  
17 phrase "papers of the LLC" to mean?

18 A. The operating agreement.

19 Q. Okay. And --

20 A. Yeah; and any public filing that might  
21 be required.

22 Q. Okay. And it's your understanding,  
23 sir, is it not, that Mr. Engler's name was not put  
24 on the operating agreement of Douglas Investments,  
25 LLC; correct?

1 A. Correct.

2 Q. And it's your understanding that Mr.  
3 Engler's name did not appear on any of the public  
4 filings for Douglas Investments, LLC; correct?

5 A. Correct.

6 Q. Okay. Item No. 10, sir, of Fidelity  
7 Exhibit 4 states, "We have also to find a solution  
8 in the case that one of us will not be around for  
9 a while."

10 Did I read that accurately?

11 A. You did.

12 Q. When we talked earlier about the --  
13 your letter where you had "miscellaneous" in  
14 Exhibit 5, you say, "I am not sure what Richie  
15 means in item 10 in his e-mail to you regarding  
16 find a solution, quote, 'in the case that one of  
17 you will not be around for a while,' close quote."

18 Did I read that accurately?

19 A. You did.

20 MR. BERMAN: Objection to form.

21 BY MR. ELGIDELY:

22 Q. Sir?

23 A. I said you did.

24 Q. Okay.

25 A. You read that correctly.

1 Q. I'm sorry.

2 A. You did read that correctly.

3 Q. Okay. And then you ask the question,  
4 "Is he talking about a situation where one of you  
5 might be traveling and might not be able to be  
6 contacted, question mark."

7 Did you send this letter to Mr.  
8 Douglas?

9 A. Yes. I faxed it to him.

10 Q. Okay. What did Mr. Douglas say  
11 concerning that question that you asked?

12 A. I don't remember, offhand.

13 Q. Okay. You understand that Mr. Engler  
14 is currently a fugitive from justice, do you not?

15 A. That's my understanding.

16 Q. You understand that there's an  
17 international warrant for Mr. Engler's arrest as a  
18 result of perpetrating a Ponzi scheme; is that  
19 correct?

20 MR. BERMAN: Objection; foundation.

21 A. I don't know that.

22 BY MR. ELGIDELY:

23 Q. What part don't you know?

24 Did you know that there was a  
25 warrant for Mr. Engler's arrest?

1           A.    I -- I knew there had been, based on  
2 the information in the VTS Investigations.

3           **Q.    Okay. Did you know that Mr. Engler is**  
4 **accused of perpetrating a Ponzi scheme?**

5           MR. BERMAN: Objection; foundation.

6           A.    I heard that from Mr. Douglas.

7 BY MR. ELGIDELY:

8           **Q.    When did you hear that?**

9           A.    I'm not sure. Sometime in the last  
10 year or so. I don't remember exactly.

11           **Q.    Okay. Okay. No. 11 says, "We only buy**  
12 **land or do business with third parties when both**  
13 **of us 100 percent agree."**

14                       **What was your understanding of**  
15 **item 11?**

16           A.    My understanding was that if parcels of  
17 real estate were going to be purchased, they'd  
18 each have to agree that that would be a proper  
19 piece of property to purchase.

20           **Q.    Okay. When -- when you say that they**  
21 **would purchase, are you referring to them**  
22 **individually or through an entity?**

23           A.    I'm talking about when Douglas  
24 Investments, LLC, was going to buy something and  
25 obtain a loan from Engler, that, you know, they

1 had to agree between them that -- that that was --  
2 that was a proper investment and that, therefore,  
3 Engler would loan the money to the LLC.

4 Q. Okay. You agree, sir, that item No. 11  
5 not only says, "We only buy land with third  
6 parties when both of us 100 percent agree," but it  
7 also says, "We only do business with third parties  
8 when both of us 100 percent agree?" Is that what  
9 the --

10 MR. BERMAN: Objection.

11 BY MR. ELGIDELY:

12 Q. Isn't that what it says, sir?

13 MR. BERMAN: Objection; best evidence.

14 A. That's what it says.

15 BY MR. ELGIDELY:

16 Q. Okay. Item No. 12 says, "Please no  
17 hard feelings if I don't agree for a piece of land  
18 which will be offered by family members. It's all  
19 about business, DAD."

20 What was your understanding about  
21 item 12?

22 A. Let's see. I don't recall what that  
23 means.

24 Q. Okay. No. 15, it says, "It's agreed  
25 that personal information will always be a secret

1       **between you and me. Otherwise, you will not be**  
2       **able to perform. Love again," followed by at**  
3       **least ten exclamation marks and an Internet smiley**  
4       **face.**

5                               **What was your understanding of**  
6       **item 15, sir?**

7                               MR. BERMAN: Objection; foundation and  
8       relevance.

9                               A. Yeah, my only recollection of that is  
10       that's -- is that he didn't want to have his name  
11       on as part of the LLC.

12       BY MR. ELGIDELY:

13                              **Q. Okay. Well, he already said that**  
14       **earlier in the e-mail; correct?**

15                              A. Excuse me?

16                              **Q. He already said that he didn't want his**  
17       **name on the papers of the LLC in item 3 of the**  
18       **e-mail; correct?**

19                              A. Yeah.

20                              **Q. Okay. This is a separate item, No. 15;**  
21       **correct?**

22                              A. Yes, it is. I don't know what it  
23       meant.

24                              **Q. Okay. Well, right above that, it says,**  
25       **"Please write down all your questions about me, my**



1 **past and my goals."**

2 A. Okay.

3 **Q. Did I read that accurately?**

4 A. Yep.

5 **Q. Item 15, did I read that accurately**  
6 **previously?**

7 A. You did.

8 **Q. Okay. It says, "Personal information**  
9 **will always be a secret between you and me."**

10 **What did you understand by that?**

11 A. I didn't know what that meant. That's  
12 between him and Mr. Douglas.

13 **Q. Okay. As Mr. Douglas's attorney, who**  
14 **is preparing the corporate records and the**  
15 **structure for these transactions, did you have any**  
16 **concerns about the statements that are made in**  
17 **this e-mail?**

18 A. No. People have a lot of reasons they  
19 want to keep secrets. That has nothing to do with  
20 the business transaction, in my opinion.

21 **Q. Okay. Let's go to the next document,**  
22 **which is your correspondence dated June 20, 2006,**  
23 **Fidelity Exhibit 5 --**

24 A. Okay.

25 **Q. -- "In re Douglas Investments, LLC."**

1                   **Was this feedback -- would it be**  
2 **fair to characterize this correspondence as**  
3 **feedback concerning the e-mail we just discussed?**

4           A.    Yes.

5           **Q.    Whose handwriting is on this document?**

6           A.    Mine.

7           **Q.    Okay.  And item No. 1 underneath the**  
8 **date, 6/23, it says, "Wants no, underscore, tax,**  
9 **underscore, consequences."**

10                   **Do you see that there?**

11          A.    I do.

12          **Q.    Okay.  What discussion did you have**  
13 **concerning those handwritten notes?**

14          A.    What this related to -- there was a  
15 possibility that Engler might contribute property  
16 to the LLC, and since David was the -- was a  
17 member of the LLC -- in fact, the sole member -- I  
18 thought that was a red flag that -- whereby that  
19 conveyance to the LLC might trigger immediate  
20 recognition of income tax.  And when I mentioned  
21 that, Dave said he doesn't want to have any income  
22 tax consequences like that.

23          **Q.    But it's true that Mr. Engler did**  
24 **convey property to the LLC; correct?**

25          A.    He did.  I think, just off the top of

1 my head, he did convey some property at some point  
2 in time. I think it was the -- the Punta Gorda  
3 properties, I believe.

4 **Q. Isn't that the deed that you notarized,**  
5 **sir?**

6 A. Yeah, that -- yeah, okay.

7 **Q. And had the same name affidavit that**  
8 **you signed?**

9 A. Yes, okay.

10 **Q. Okay. So if Mr. Engler wanted no tax**  
11 **consequences and those tax consequences were all**  
12 **by virtue of Mr. Engler conveying to the LLC**  
13 **property that he owned in his own name, how were**  
14 **you able to avoid tax consequences on that**  
15 **transaction?**

16 MR. BERMAN: Objection  
17 mischaracterization of prior testimony?

18 A. Yeah. I was talking about Mr. Douglas  
19 not wanting to have any income tax consequence,  
20 whereby -- which I mentioned before, was that if  
21 property were transferred into the LLC, I was  
22 concerned that Mr. Douglas, as the 100 percent  
23 member, would have income tax triggered  
24 immediately by having that occur. I was not  
25 talking about, nor did I mention, Mr. Engler.

1 BY MR. ELGIDELY:

2 Q. Okay. Well, let's -- let's start at  
3 the top of the page then, where it says, "Income  
4 tax issues." It says, "If Richie contributes cash  
5 and/or other property to the LLC and you own a 50  
6 percent interest of all assets in the LLC, then  
7 you will have to pay ordinary income tax on the 50  
8 percent fair market value of those items. The  
9 reason is that you are not paying for any of those  
10 assets, and the Internal Revenue Service would  
11 consider that to be 'earned income.'"

12 Do you see that statement there?

13 A. I do.

14 Q. Okay. Why did you say the reason is  
15 that you are not paying for any of those assets?

16 A. Because he is -- before was talking  
17 about Richie contributing cash and/or property.

18 Q. Okay. Do you know what Mr. Douglas's  
19 contribution was to the capital of Douglas  
20 Investments, LLC?

21 A. I do not.

22 Q. Okay. And underneath that you state,  
23 "Since there could be a significant amount of tax  
24 to pay, I would suggest that Richie not be a  
25 member of the LLC but, rather, he would be a

1 lender to the LLC."

2 Do you see that there?

3 A. Yep. I -- yes.

4 Q. And again, it was your suggestion that  
5 these parties structure their relationship so that  
6 they weren't co-members of Douglas Investments,  
7 LLC, but, rather, they were lender and borrower;  
8 correct?

9 MR. BERMAN: Objection; asked and  
10 answered.

11 A. Yes, that was my advice to Mr. Douglas.

12 BY MR. ELGIDELY:

13 Q. Sir, let me ask you this: You  
14 testified that if Mr. Engler conveyed property to  
15 the LLC that Mr. Douglas would have a tax issue  
16 because he didn't contribute any of those -- those  
17 assets; correct?

18 A. Correct.

19 Q. Okay. If Mr. Engler had been a 50  
20 percent member of the LLC, isn't it true that Mr.  
21 Engler would have borne 50 percent of the tax  
22 liability?

23 MR. BERMAN: Objection. That calls for  
24 a legal conclusion, and it certainly is beyond the  
25 scope of this deposition in that this witness has

1 not been designated as an expert witness.

2 MR. ELGIDELY: You can answer, Mr.  
3 Freeman.

4 A. I think it is important that you look  
5 at the last paragraph of No. 1.

6 BY MR. ELGIDELY:

7 **Q. I'm getting to that one.**

8 **My question, sir: Isn't --**

9 MR. BERMAN: Please let the witness  
10 finish the answer, counselor.

11 MR. ELGIDELY: I'm sorry, Mr. Berman.  
12 I heard a pause. I don't have the benefit of body  
13 language over the phone.

14 MR. ELGIDELY: Go ahead, Mr. Freeman.

15 THE WITNESS: No, that's --

16 BY MR. ELGIDELY:

17 **Q. My question, sir, is: In this letter,**  
18 **you were providing income tax advice to Mr.**  
19 **Douglas; correct?**

20 A. I'm raising income tax issues.

21 **Q. Okay. As Mr. Douglas's counsel;**  
22 **correct?**

23 A. Correct.

24 **Q. Okay. And one of the points that you**  
25 **raise is that if Mr. Engler contributes property**

1       **that is in his own name to the entity Douglas**  
2       **Investments, LLC, that Mr. Douglas would have tax**  
3       **consequences because he was the sole member of the**  
4       **LLC; correct?**

5           A.    Yes.

6           **Q.    Okay.**

7           A.    Well --

8           **Q.    I'm sorry.  What --**

9           A.    I'm sorry.  I -- I did say that.

10                        Now that I reread this, he's going  
11       to have tax consequences if he -- I see it here it  
12       says 50 percent.  I said 100 percent, which is  
13       what it turned out to be.

14                        But originally they were thinking  
15       about 50 percent when they were deciding how to  
16       structure this.  Do you follow me?

17           **Q.    I do follow you.**

18           A.    So --

19           **Q.    My question, sir, is:  Isn't it true**  
20       **that if there were other members of the LLC, i.e.**  
21       **Mr. Engler, that Mr. Douglas's tax burden would be**  
22       **lower?**

23                        MR. BERMAN:  Same objection.

24           A.    Yeah.

25                        MR. BERMAN:  Calls for a legal

1 conclusion and tax advice, which I think is beyond  
2 the purview of this fact deposition.

3 MR. ELGIDELY: You can answer, sir.

4 A. (Continuing.) Yeah, well, Mr.  
5 Douglas's tax liability would be based on the  
6 percentage of the value of the property  
7 contributed.

8 BY MR. ELGIDELY:

9 Q. Okay. And item No. 2, you say, "If I  
10 was" Richie's "attorney," Richie Engler, "I would  
11 not advise him to do so," meaning contribute land  
12 to the LLC that he already owns. "It would" serve  
13 -- "seem to serve no legitimate business purpose."

14 Did I read that accurately?

15 A. You did.

16 Q. Okay. Why did you say that it would  
17 serve no legitimate business purpose?

18 A. I couldn't think of one.

19 Q. Were you ever informed of any  
20 legitimate business purpose for Mr. Engler  
21 transferring property that he owned individually  
22 into the entity Douglas Investments, LLC?

23 A. I'm sorry. Would you please repeat  
24 that?

25 Q. Okay. Were you ever informed of a



1 **legitimate business reason for Mr. Engler**  
2 **contributing property that he owned personally to**  
3 **Douglas Investments, LLC?**

4 MR. BERMAN: Objection; relevance.

5 A. No, I was never told why he -- he would  
6 or might.

7 BY MR. ELGIDELY:

8 Q. Okay. In the last paragraph or the  
9 second-to-last paragraph, you suggest that Mr.  
10 Engler obtain separate counsel; correct?

11 A. I'm sorry. Where are you reading?

12 Q. Where the paragraph says, "Please let  
13 Richie know."

14 A. Okay, I see that.

15 Q. Okay. Would it be fair to say that you  
16 were advising Mr. Douglas that Mr. Engler needed  
17 separate counsel or should consider having  
18 separate counsel?

19 A. That's correct.

20 Q. Okay. Were you informed at any point  
21 in time that Mr. Engler had obtained separate  
22 counsel?

23 A. It was mentioned once by Mr. Douglas  
24 when we were negotiating the terms of the business  
25 loan agreement that Mr. Engler's attorney wanted

1 certain language in the agreement. That was the  
2 only reference to another attorney that I have.

3 **Q. Okay. When did you speak with that**  
4 **attorney?**

5 A. I never did speak with him. I don't  
6 know who it is.

7 **Q. Okay. In transactions in which you're**  
8 **representing a party for which the other party has**  
9 **counsel, is it customary to speak with that**  
10 **counsel?**

11 MR. BERMAN: Objection; relevance,  
12 foundation and form.

13 A. Well, it's going to depend on the  
14 nature of the relationship between that client and  
15 their attorney and what that -- that client asks  
16 their attorney's opinion on.

17 BY MR. ELGIDELY:

18 **Q. Okay. More -- would you say it is more**  
19 **or less often that you speak with the other**  
20 **party's counsel in the transaction?**

21 A. More.

22 MR. BERMAN: Objection; relevance and  
23 foundation.

24 A. I'd say more often.

25 BY MR. ELGIDELY:

1           **Q.    Okay.  Did you know how much Mr. Engler**  
2 **was going to transfer to your client, David**  
3 **Douglas, or one of the entities he owns?**

4           MR. BERMAN:  Objection to form.

5           A.    I -- I don't.  The only reference that  
6 I recall initially was that figure of \$6 million.

7 BY MR. ELGIDELY:

8           **Q.    Are you aware, sitting here today, that**  
9 **Mr. Engler transferred \$40,815,000 to Douglas**  
10 **Investments in the 11-month period commencing**  
11 **August 8, 2006, to July 16, 2007?**

12           MR. BERMAN:  Objection; foundation and  
13 relevance.

14           A.    No.  I have no idea what amount was  
15 loaned at any point in time by Engler to Douglas  
16 Investments, LLC.

17 BY MR. ELGIDELY:

18           **Q.    Mr. Freeman, you testified that you've**  
19 **known Mr. Douglas for a long time; correct?**

20           A.    Yes.

21           **Q.    Okay.  You've handled transactions for**  
22 **him?**

23           A.    Yes.

24           **Q.    Okay.  And would you -- the sale of his**  
25 **business, that was a significant transaction;**

1 **would that be fair?**

2 A. Relatively.

3 **Q. The sale of his business in Illinois?**

4 A. Yeah. I don't remember the exact  
5 amount, but, yeah, it was over a million dollars.

6 **Q. These transactions with Mr. Engler, you**  
7 **would also agree they're significant transactions;**  
8 **correct?**

9 A. Well --

10 MR. BERMAN: Objection to form,  
11 relevance. Go ahead.

12 A. (Continuing.) -- I knew that they  
13 could be significant based on what Mr. Douglas  
14 told me that they hoped to accomplish.

15 BY MR. ELGIDELY:

16 **Q. Okay. You knew at least there was \$6**  
17 **million involved at the initial stage; correct?**

18 MR. BERMAN: Objection; asked and  
19 answered.

20 A. That's what had been mentioned to me  
21 they were planning on doing.

22 BY MR. ELGIDELY:

23 **Q. \$6 million is a lot of money, isn't it?**

24 A. It is to me.

25 MR. BERMAN: Objection; foundation and

1 relevance.

2 BY MR. ELGIDELY:

3 Q. Sir?

4 A. It is to me.

5 Q. Okay. And you've socialized with Mr.  
6 Douglas from time to time; correct?

7 A. Yes.

8 Q. You testified earlier that if you were  
9 in Florida, you would call him to see if he was  
10 there and your families would get together and  
11 socialize; correct?

12 A. We have done that, that's correct.

13 Q. And you testified that you were the  
14 party that was tasked with organizing Douglas  
15 Investments, LLC, in the State of Idaho; correct?

16 A. Yes.

17 Q. And you were the attorney also tasked  
18 with organizing Engler Land Investments in the  
19 State of Florida; correct?

20 A. Yes; our firm did that.

21 Q. Okay. Despite your involvement as Mr.  
22 Douglas's attorney in these transactions with Mr.  
23 Engler and your longstanding friendship, is it  
24 your testimony that at no point in time did he  
25 advise you that he received over \$40 million from

1 **Mr. Engler?**

2 MR. BERMAN: Objection; asked and  
3 answered and foundation.

4 A. Yeah. He never told me that. He never  
5 told me what amount of money he got from him.

6 BY MR. ELGIDELY:

7 **Q. You never asked him?**

8 A. No.

9 **Q. You weren't even curious?**

10 MR. BERMAN: Objection; argumentative.

11 A. Not really. I figured it was none of  
12 my business.

13 BY MR. ELGIDELY:

14 **Q. Okay. Okay. Let's turn to Fidelity**  
15 **Exhibit 6, please.**

16 A. Okay.

17 **Q. Okay. In the -- towards the bottom,**  
18 **sir, it says, "Profit interest partner."**

19 **Did I read that correctly?**

20 A. You did.

21 **Q. Is this your handwriting, sir?**

22 A. It is.

23 **Q. All right. What does profit interest**  
24 **partner mean to you or what did that note mean?**

25 A. That is the language utilized by Mr.

1 Walter -- or Walther -- who was the accountant for  
2 Mr. Douglas in our discussion on June 26.

3 **Q. Okay. Who were you referring to as a**  
4 **profit interest partner?**

5 A. I wasn't referring to it. Mr. Walther  
6 was. He was referring to Mr. Engler.

7 **Q. You have an arrow that goes down to**  
8 **another circle that says, "Capital gain to**  
9 **Richie"; correct?**

10 A. Yes, that's what it says.

11 **Q. Okay. Sir, is it customary, in your**  
12 **experience of 40 years as a practicing attorney,**  
13 **for someone to receive capital gains distributions**  
14 **from a limited liability company when they're not**  
15 **a member of that entity?**

16 A. Well, now you're getting in the income  
17 tax issues that I -- I really don't deal with.  
18 That's why we asked Mr. Douglas to get his -- talk  
19 to his tax advisor, and I just simply wrote down  
20 what the guy told me.

21 **Q. Okay. So these are just notes based**  
22 **upon something the accountant was telling you;**  
23 **correct?**

24 A. That's exactly correct.

25 **Q. Okay. In your 40 years as a practicing**

1 lawyer, have you ever been involved in a  
2 transaction in which a nonmember of an LLC is  
3 receiving distributions from that LLC that they  
4 would have to report as capital gains?

5 MR. BERMAN: Objection; relevance and  
6 foundation.

7 A. I'm not aware of any.

8 BY MR. ELGIDELY:

9 Q. Okay. Let's turn to Fidelity 8,  
10 please.

11 A. Okay.

12 Q. In item No. 2, which you've testified  
13 previously is the handwriting of Mr. Douglas, it  
14 says, "We will split all net profit 50/50 between  
15 David and Ulrich."

16 Did I read that accurately?

17 A. Yes.

18 Q. Okay. Was that your understanding, is  
19 that Mr. Engler and Mr. Douglas would split net  
20 profit 50/50 at that time?

21 A. At that time, yes.

22 Q. Okay. And -- and again, this net  
23 profit, was this net profit that was coming from a  
24 legal entity?

25 A. That related to Douglas Investments,



1 LLC.

2 Q. Okay. About that 50/50 split, if we  
3 could go to Fidelity Exhibit 32 for a moment.

4 A. What is that?

5 Q. That's the form business loan  
6 agreement.

7 A. Okay. Bear with me. I have that.

8 Q. Okay. I believe you testified, sir,  
9 that this is the template that you prepared at the  
10 commencement of the relationship between Mr.  
11 Engler and Mr. Douglas to evidence the financial  
12 transactions between the two parties; is that  
13 accurate?

14 A. It is.

15 Q. Okay. On this document, it says,  
16 "Lender is an individual with a business address  
17 of 91 Southport Cove, Bonita Springs, Florida,  
18 34134."

19 Why did you include that statement  
20 in the recital section?

21 A. Because the form of document I was  
22 using called for, you know, an identity of the  
23 party and where they're located.

24 Q. Okay. Weren't you familiar, sir, with  
25 the entity Private Commercial Office?

1 A. No, I never heard of it.

2 Q. Okay. Well, weren't you familiar with  
3 the address 1217 Cape Coral Parkway, unit 121,  
4 Cape Coral, Florida?

5 A. No.

6 Q. Okay. Isn't that the address that you  
7 utilized on the articles of organization for  
8 Engler Land Investments, LLC?

9 A. Might have been. I don't recall  
10 offhand. Whatever address I used was given to me  
11 by Mr. Douglas.

12 Q. Okay. Is there a reason why you used  
13 the address 91 Southport Cove, Bonita Springs,  
14 Florida?

15 A. That's where Mr. Engler was living at  
16 that time.

17 Q. Okay.

18 A. That's Mr. Douglas's home that he was  
19 renting.

20 Q. Okay. Do you know whether Mr. Engler  
21 was doing business out of that home?

22 A. That was my understanding. I didn't  
23 know whether or not he had a business office,  
24 another office.

25 Q. Okay. What was your understanding?

1 MR. BERMAN: Objection; asked and  
2 answered.

3 MR. ELGIDELY: Well, the witness said,  
4 "That is my understanding." I'm asking him: What  
5 is that?

6 MR. BERMAN: Oh, okay. I withdraw my  
7 objection.

8 A. Oh, my understanding is that's the only  
9 address in Florida that I knew that Mr. Engler  
10 had.

11 BY MR. ELGIDELY:

12 Q. Okay. Let's turn to page 2, and it  
13 says in 3B, "The funds represented by the credit  
14 facility will be used only as follows: To  
15 purchase real estate and to divide it into  
16 parcels, if appropriate, and to resell it."

17 Was it your understanding that Mr.  
18 Douglas had any discretion concerning use of the  
19 loan proceeds?

20 A. It was my understanding that there were  
21 -- you know, they're going to select properties  
22 that they thought would be good for investment;  
23 and then for each transaction, there would be a  
24 separate loan agreement, depending on what funds  
25 were needed to be loaned by Mr. Engler to the LLC.

1 Does that answer your question?

2 Q. Do you know whether Mr. Engler -- I'm  
3 sorry -- Mr. Douglas had any discretion concerning  
4 use of the loan proceeds?

5 A. I don't know.

6 Q. Okay. All right. Let's turn to page  
7 -- numbered page 7, item 10A.

8 A. Okay.

9 Q. It says, "In the event that the  
10 borrower and lender are not able to mutually agree  
11 upon future business decisions of the borrower."

12 Did I read that accurately, that  
13 first clause?

14 A. Yes.

15 Q. And how many loan transactions have you  
16 been involved in, out of the 20 over your 40-year  
17 career as a lawyer -- has the lender been involved  
18 in the business decisions of the borrower?

19 A. I can't remember any, off the top of my  
20 head.

21 Q. Okay. Do you believe this was the  
22 first one?

23 A. Might have been.

24 Q. Okay. Let's go to 10B, sir.

25 A. Okay.

1           Q.    10B says, "Upon the sale of each parcel  
2 of real estate owned by the borrower, the  
3 distribution of the sales proceeds shall be  
4 distributed as follows: 10 percent of the gross  
5 sales price shall be distributed to lender."

6                   Did I read that accurately?

7           A.    Yes.

8           Q.    Okay. I thought you had stated earlier  
9 that the business loan agreement provided for an  
10 -- initially provided for a split of profit  
11 equally and was later reduced to 10 percent.

12                   If this is the template that you  
13 initially prepared, why does it reflect the 10  
14 percent split?

15           A.    As opposed to what?

16           Q.    50/50.

17           A.    I don't recall, offhand, at what point  
18 in time in 2006 they might have -- maybe they  
19 changed the terms. I forget.

20           Q.    Okay.

21           A.    I know on --

22           Q.    I'm sorry. Go ahead.

23           A.    I'm sorry. On August 2, based on the  
24 language in Exhibit 8, Mr. Douglas said they'll  
25 split it 50/50. I don't recall why this now says

1 10 percent.

2 Let me just keep reading here for  
3 a second, if I may.

4 **Q. Okay, absolutely. Take your time.**

5 A. Thank you.

6 Well, my only recollection might  
7 be that they decided not to do a 50/50 and wanted  
8 to do the 10 percent.

9 Now --

10 **Q. Mr. Freeman, if I represent to you that**  
11 **Mr. Douglas testified that the initial business**  
12 **loan agreements provided for an equal splitting of**  
13 **profits from Douglas Investments, LLC, and were**  
14 **later revised to provide that Mr. Engler received**  
15 **10 percent of the profits, how would you -- how**  
16 **would you reconcile Mr. Douglas's testimony in**  
17 **this template that you provided and that is marked**  
18 **as Fidelity Exhibit 32?**

19 MR. BERMAN: Objection; foundation,  
20 lack of personal knowledge.

21 A. No, that -- that -- I think that can't  
22 be reconciled. The fact is apparently that they  
23 decided not to do the 50/50, and then this is the  
24 draft they did to reflect the 10 percent.

25 BY MR. ELGIDELY:

1           **Q.    Okay.  Well, again, Mr. Douglas**  
2 **testified that initially there was a 50/50 split,**  
3 **and it was later reduced to 10 percent to Mr.**  
4 **Engler.**

5                       **So again, my question is:  Is this**  
6 **a template you prepared at the outset of the**  
7 **relationship between Mr. Engler and Mr. Douglas,**  
8 **or is this a template that you prepared at some**  
9 **future point in time; do you know?**

10           **A.    Well, there must have been another**  
11 **draft of this then that I don't currently have**  
12 **then that would have been the 50/50.  This -- what**  
13 **I'm looking at here then would have been the final**  
14 **one.**

15           **Q.    Okay.  So when you testified earlier**  
16 **that this was the initial template, do you wish to**  
17 **correct that testimony?**

18           **A.    I don't know if I said --**

19                       **MR. BERMAN:  Objection;**  
20 **mischaracterization.**

21           **A.    Yeah.  I don't -- I don't think I said**  
22 **this was the initial template.  I just said that**  
23 **it was a template that I thought they were using.**

24 **BY MR. ELGIDELY:**

25           **Q.    Well, you testified, sir, that this was**

1 a template that was provided and that was attached  
2 to your e-mail. I think you recall Mr. Berman's  
3 testimony where you forwarded Mr. Douglas an  
4 e-mail, noting you attached a business loan  
5 agreement, and Mr. Berman had inquired where that  
6 attachment is, and you referenced this document.

7 So my question, sir, is: Was this  
8 the document that was attached to that e-mail --

9 A. Well, no --

10 Q. -- or where was it?

11 MR. BERMAN: Objection to form.

12 Go ahead.

13 A. No; I think what I said earlier in my  
14 testimony was that the one attachment I know I had  
15 for sure, that was the operating agreement.

16 Now, apparently, there must have  
17 been another draft of this business loan agreement  
18 before the one that I have in my hands was  
19 finalized. But I don't have that.

20 BY MR. ELGIDELY:

21 Q. Okay. So going to Fidelity Exhibit 7,  
22 which is an e-mail from you to Mr. Douglas dated  
23 June 28, 2006 --

24 A. Okay.

25 Q. -- Mr. Berman asked you about the



1 attachment that's referenced as Loan Agreement  
2 Douglas Investments.doc.

3 Do you now believe that Fidelity  
4 Exhibit 32 was not that document as of June 28,  
5 2006?

6 MR. BERMAN: Objection; foundation.

7 A. It may -- it may not be.

8 BY MR. ELGIDELY:

9 Q. Okay. Okay.

10 A. My guess is it's probably not. But  
11 this is the only one that I had in my file.

12 Q. Okay. All right. Let's go back to  
13 Fidelity Exhibit 8, please.

14 A. Okay.

15 Q. The second page of that, "Brad, any  
16 questions, please call me on cell. Mr. Engler and  
17 myself are about to buy a lot of property,  
18 exclamation point. Could you please revise as  
19 quick as possible. Thanks again, Dave."

20 Did I read that accurately?

21 A. Yes.

22 Q. Okay. When -- when it says, "Mr.  
23 Engler and myself are about to buy a lot of  
24 property," who did you understand would be the  
25 buyer of that property?

1 A. Douglas Investments.

2 Q. Okay. Let's turn to the next document  
3 in Exhibit 10. It is a promissory note dated  
4 January 1, 2007.

5 A. Yeah, Exhibit 9.

6 Q. I don't know what --

7 A. I'm sorry. Excuse me. Which one are  
8 you looking for?

9 Q. It's in packet No. 3, it is a  
10 promissory note in the amount of \$1 million dated  
11 January 1, 2006.

12 A. All right. Let me find that.

13 MR. BERMAN: It's in the notebook at  
14 Exhibit 13.

15 A. (Continuing.) Okay, I have that.

16 BY MR. ELGIDELY:

17 Q. Okay. What were the circumstances that  
18 caused to you prepare Fidelity Exhibit 13?

19 A. Mr. Douglas had called me and said that  
20 he had borrowed money from Mr. Engler on a  
21 personal basis for \$1 million, interest-free, and  
22 he wanted me to do a note to -- to memorialize  
23 that.

24 Q. Okay. How common were the terms of  
25 this promissory note in relation to the other loan

1 **transactions in which you represented borrowers?**

2 MR. BERMAN: Objection; relevance.

3 A. I'm sorry. In which I represented  
4 what?

5 BY MR. ELGIDELY:

6 **Q. Borrowers.**

7 A. And I'm sorry. Would you ask the  
8 question again, please.

9 **Q. How common were the terms of this**  
10 **promissory note marked as Fidelity Exhibit 13 to**  
11 **the terms of other promissory notes in which you**  
12 **represented borrowers?**

13 MR. BERMAN: Same objections.

14 A. Well, all documents are different.  
15 This was just something simple that Mr. Douglas  
16 wanted to reflect the transaction.

17 BY MR. ELGIDELY:

18 **Q. Okay. Is it common for borrowers to**  
19 **borrow funds without interest?**

20 MR. BERMAN: Objection; relevance and  
21 foundation.

22 A. I don't -- this was a personal loan,  
23 not a business loan.

24 BY MR. ELGIDELY:

25 **Q. Okay. I understand that. I'm asking**

1       **you if it's common for borrowers to borrow funds,**  
2       **in your experience --**

3           A.    I don't know.

4           **Q.    -- without interest?**

5           A.    I don't know.

6           **Q.    Okay.  How many of your clients have**  
7       **borrowed funds without interest in transactions in**  
8       **which you counseled them?**

9           MR. BERMAN:  Objection; relevance.

10          A.    I don't recall.

11       BY MR. ELGIDELY:

12          **Q.    Okay.  How many of your clients have**  
13       **borrowed money that were to be repaid from time to**  
14       **time as profits were received from one of two**  
15       **entities?**

16          MR. BERMAN:  Objection; relevance.

17          A.    I don't know if I've had any.

18       BY MR. ELGIDELY:

19          **Q.    And you testified earlier that Mr.**  
20       **Engler was renting the property at 91 Southport**  
21       **Cove, Bonita Springs, Florida; correct?**

22          A.    Yes.  That's -- that's my understanding  
23       of how Mr. Engler and Mr. Douglas met.

24          **Q.    Okay.  Do you know why this note**  
25       **provides for payments to be made at 90 Southport**

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**Cove?**

A. Oh, instead of 91?

**Q. Correct.**

A. That's a typo.

**Q. Okay. All right. Let's go to Fidelity Exhibit 9, please.**

A. Okay.

**Q. Again, what were the circumstances that caused you to prepare this document?**

A. Mr. Douglas had mentioned to me that Mr. Engler was going to buy half of an interest in that property on Southport Cove, and he wanted just some memorandum prepared to reflect that; that there was not going to be a transfer of any deed or anything, just an agreement that he and Mr. Engler could sign.

**Q. Okay. What was your understanding concerning the future recordation of the memorandum?**

A. I -- I had no understanding on that. I didn't -- I don't -- I don't even know if this ever got signed, to be honest with you.

**Q. Let's go, sir, to Fidelity Exhibit 1, if we can.**

A. Okay.

1 Q. Is this a document that you prepared,  
2 sir?

3 A. Yes.

4 Q. I believe you testified that you  
5 prepared it in 2007 or 2008?

6 A. Best I can recall.

7 Q. Okay. Would you say your recollection  
8 of events concerning transactions was better in  
9 2007 and 2008 than they are today?

10 A. Probably.

11 MR. BERMAN: Objection.

12 A. (Continuing.) Probably.

13 MR. BERMAN: Objection; foundation.

14 A. (Continuing.) I don't know.

15 BY MR. ELGIDELY:

16 Q. Well, No. 5, sir, you say -- I don't  
17 want to read the whole paragraph. I'm asking you  
18 questions about it. "On August 4, 2006, I spoke  
19 with David Douglas. He wanted to prepare a  
20 memorandum of agreement reflecting that Richie  
21 Engler had purchased one half of the Southport  
22 property from David. The memorandum was not to be  
23 recorded; but, rather, David would continue to  
24 hold title to the property as a nominee on behalf  
25 of themselves. Also," this is underscored, "by

1 virtue of that memorandum, Engler and David were  
2 to transfer their economic interest in and to the  
3 property to Douglas Investments, LLC. The  
4 memorandum further provided that the terms of the  
5 business loan agreement previously executed on  
6 August, blank, 2006, was incorporated by reference  
7 and made part of the memorandum."

8 Did I read that accurately?

9 A. Yes.

10 MR. BERMAN: Objection to form.

11 BY MR. ELGIDELY:

12 Q. Okay. In the second sentence, it  
13 states that Richie Engler had purchased one half  
14 of the Southport property from David; correct?

15 A. Let's see here. Yes.

16 Q. Okay. It doesn't say that Mr. Engler  
17 was contemplating a purchase of one half of the  
18 Southport property from David, does it?

19 A. No.

20 Q. And it -- you just testified that you  
21 did not have any understanding about whether the  
22 memorandum would be recorded but that the next  
23 sentence provides the memorandum was not to be  
24 recorded, but, rather, David would continue to  
25 hold title to the property as a nominee on behalf

1 of themselves?

2 A. Correct.

3 Q. Okay. What's accurate, your statement  
4 in the memorandum or your testimony that you had  
5 no understanding concerning the recordation?

6 A. The statement in the memorandum.

7 Q. Okay. Do you know why the memorandum  
8 was not to be recorded?

9 A. No, I don't.

10 Q. Okay. What discussion or -- did you  
11 have with Mr. Douglas or what did Mr. Douglas tell  
12 you concerning the recordation of the memorandum?

13 A. He just said it was a private  
14 transaction between the two of them, that we  
15 didn't have to record anything.

16 Q. How many transactions have you been  
17 involved in where there's been a partial or full  
18 sale of an interest in property and there were  
19 instructions not to record the document in the  
20 public records?

21 MR. BERMAN: Objection; relevance.

22 A. Are you talking about a deed?

23 BY MR. ELGIDELY:

24 Q. I'm talking about a transfer of an  
25 interest by deed, either a partial interest or --



1 or full title.

2 MR. BERMAN: Same objections.

3 A. All right. I'm sorry. And your  
4 question was how many?

5 BY MR. ELGIDELY:

6 Q. Yes. Out of how many -- you testified  
7 earlier that over 40 -- in your 40 years of  
8 experience as an attorney, you've handled  
9 approximately 1,000 real estate transactions;  
10 correct?

11 A. Yeah, yes.

12 Q. Okay. Out of those thousand real  
13 estate transactions, how many have you been  
14 involved in where there's been an outright sale of  
15 a partial or full interest in the property and the  
16 parties have determined not to record the  
17 documents conveying the interest?

18 A. The only times I can think of would  
19 have been if they would have -- if it were, for  
20 example, in a land trust, oftentimes there is no  
21 public recording with that.

22 But if it were a deed, deeds get  
23 recorded.

24 Q. Okay. And in this paragraph, sir, it  
25 doesn't talk about a land trust, does it?

1 A. No.

2 Q. Okay. It just talks about -- and it's  
3 underscored -- that Richie Engler had purchased  
4 one half of the Southport property from David.

5 That sounds like a conveyance,  
6 doesn't it?

7 MR. BERMAN: Objection, objection to  
8 form and argumentative and lack of foundation,  
9 also.

10 MR. ELGIDELY: I will rephrase.

11 BY MR. ELGIDELY:

12 Q. Mr. Freeman, this is your memorandum?

13 A. It is.

14 Q. Okay. Were you the one that typed the  
15 terms on here or did you dictate it and have a  
16 secretary type it?

17 A. I probably dictated and had a secretary  
18 type it, I believe.

19 Q. Would you have reviewed it after it was  
20 prepared?

21 A. Probably.

22 Q. Okay. Would you have reviewed this  
23 before you sent this to myself and Mr. Berman for  
24 purposes of this deposition today?

25 A. Did I review it?

1 Q. Yes.

2 A. I looked at it briefly.

3 Q. Okay. I asked you earlier what's more  
4 accurate, the testimony that you had no  
5 understanding concerning the recordation or the  
6 memorandum, and you testified the memorandum;  
7 correct?

8 A. Right.

9 Q. I'm going to ask you about this  
10 sentence: "He wanted to prepare a memorandum of  
11 agreement reflecting that Richie Engler had  
12 purchased one half of the Southport property from  
13 David."

14 What was your understanding  
15 concerning that sentence?

16 A. Just what it says. I don't -- I don't  
17 know what the value was or the price.

18 Q. All right. I haven't asked you the  
19 price, sir.

20 I'm asking you: What was your  
21 understanding of that sentence?

22 A. It was my understanding that Mr. Engler  
23 had paid some consideration to Mr. Douglas to buy  
24 half the property.

25 Q. Okay. And in your experience as an

1 attorney, having handled approximately a thousand  
2 real estate transactions, did that sound like a  
3 conveyance to you?

4 MR. BERMAN: Objection; lack of  
5 foundation.

6 A. Well, as a -- yeah, it is a transfer of  
7 real estate interest.

8 BY MR. ELGIDELY:

9 Q. Okay. Out of the thousand transactions  
10 you've been involved in in which there's been a  
11 transfer or -- of interest in real estate, out of  
12 how many of those transactions has that transfer  
13 not been recorded in the public records?

14 A. I can't think of any offhand.

15 Q. Okay. What did you mean by, "David  
16 would continue to hold title to the property as a  
17 nominee on behalf of themselves"?

18 A. That's what he told me.

19 Q. "He," being whom?

20 A. Mr. Douglas.

21 Q. What did he specifically state about  
22 that?

23 A. Well, I don't recall what -- exactly  
24 what he said about it. I really don't recall.

25 Q. Did Mr. Douglas use the word "nominee"

1 **or is that the word that you used?**

2 A. I don't -- I don't recall. I -- I  
3 think he probably just said that he would continue  
4 to hold title or be no -- no need for any deed at  
5 this time. That's the best I can recall.  
6 Something like that.

7 **Q. Okay. Do you know what a nominee is,**  
8 **sir?**

9 A. Yes.

10 **Q. What is a nominee?**

11 A. Well, in this context, it would be  
12 somebody who's of record as owning something, even  
13 though somebody else may have an interest in it.

14 **Q. Do you have a Black's Law Dictionary in**  
15 **your office?**

16 A. I don't know. We might. Probably  
17 somewhere.

18 **Q. Okay. Just give me one moment, sir.**

19 **Do you know whether Mr. Douglas**  
20 **used the word "nominee" or whether you used it?**

21 MR. BERMAN: Objection; asked and  
22 answered.

23 A. I -- I probably used the term  
24 "nominee."

25 BY MR. ELGIDELY:

1 Q. Okay. Is that how you would have --  
2 you characterize their relationship, with respect  
3 to this memorandum?

4 A. For this particular transaction?

5 Q. Yes.

6 A. Yes.

7 Q. You believe that that is an appropriate  
8 characterization for purposes of this transaction?

9 A. I thought it was.

10 Q. Sitting here today, do you believe it  
11 is?

12 A. Well, I don't --

13 MR. BERMAN: Objection; relevance.

14 A. (Continuing.) I don't see -- I do.

15 BY MR. ELGIDELY:

16 Q. Okay. Fidelity Exhibit 9, in the third  
17 whereas clause, it states, "Engler and Douglas  
18 have decided that Douglas shall remain the fee  
19 simple title holder of record as the joint nominee  
20 on their behalves."

21 Did I read that accurately?

22 A. Yes.

23 Q. Isn't it true, sir, that had Mr.  
24 Engler's interest been recorded in the public  
25 records, that third parties would have been

1       **noticed -- on notice of his interest?**

2           A.     Yes.

3           **Q.     Okay.  By virtue of Mr. Douglas being**  
4 **the nominee with respect to the title ownership of**  
5 **91 Southport Cove, isn't it true that Engler's**  
6 **interest would have been concealed by third**  
7 **parties?**

8           MR. BERMAN:  Objection; calls for  
9 speculation, lack of foundation, and it's  
10 inconsistent with prior testimony.

11           MR. ELGIDELY:  Mr. Freeman, you can  
12 answer.

13           A.     Yeah, I'm sorry.  Could you repeat  
14 that, please?

15       BY MR. ELGIDELY:

16           **Q.     Yes.  You testified that if Mr.**  
17 **Engler's interest in 91 Southport Cove had been**  
18 **recorded in the public records, third parties**  
19 **would have been on notice of that interest;**  
20 **correct?**

21           MR. BERMAN:  Objection, same objection.

22           A.     Yeah.

23           MR. BERMAN:  Go ahead.

24           A.     (Continuing.)  I'm sorry.  It'd be a  
25 matter of public record, yes.

1 BY MR. ELGIDELY:

2 Q. And third parties would have been on  
3 notice of that interest; correct?

4 MR. BERMAN: Objection; calls for  
5 speculation.

6 A. They certainly have access to it.

7 BY MR. ELGIDELY:

8 Q. Okay. Mr. Freeman, you've been  
9 involved in approximately, in your words, a  
10 thousand real estate transactions over the past 40  
11 years; correct?

12 A. Yes.

13 Q. Okay. Is it -- is it your testimony --  
14 well, Mr. Berman is suggesting -- that you are  
15 speculating as to whether items in the public  
16 record are -- provide notice to third parties?

17 MR. BERMAN: Objection; argumentative.

18 A. No. Things are public notice -- do  
19 provide notice. Is that --

20 BY MR. ELGIDELY:

21 Q. My question, sir -- I would ask you to  
22 answer my question -- is that: If Engler's  
23 interest in 91 Southport Cove had been a matter of  
24 public record, isn't it true that third parties  
25 would have been on notice of his interest?



1 MR. BERMAN: Same objections.

2 A. Yes.

3 BY MR. ELGIDELY:

4 Q. Okay. And I asked you the flip side:  
5 If Mr. Engler's interest was not a matter of  
6 public record because Mr. Douglas was serving as  
7 the nominee with respect to 91 Southport Cove,  
8 isn't it true that that would have been concealed  
9 by third parties?

10 MR. BERMAN: Objection; calls for  
11 speculation.

12 A. It would not --

13 MR. BERMAN: Lack of foundation.

14 A. (Continuing.) It would not become a  
15 matter of public notice, that's correct.

16 BY MR. ELGIDELY:

17 Q. Okay. And that's because in your  
18 memorandum that's Fidelity Exhibit 1, you were  
19 instructed not to record the memorandum of  
20 agreement; correct?

21 MR. BERMAN: Objection;  
22 mischaracterization.

23 MR. ELGIDELY: Mr. Freeman, I will  
24 rephrase.

25 BY MR. ELGIDELY:

1           **Q.    Doesn't your memorandum, Fidelity**  
2 **Exhibit 1, state the memorandum was not to be**  
3 **recorded?  Isn't that what it says?**

4           MR. BERMAN:  Which part of Exhibit No.  
5 1?

6           MR. ELGIDELY:  Paragraph No. 5, the  
7 same paragraph we have been talking about for at  
8 least ten minutes.

9           MR. BERMAN:  Objection;  
10 mischaracterization of prior testimony.  He has  
11 already said he doesn't know if the document was  
12 ever executed.  You keep asking questions as if  
13 there was a conveyance of an interest in real  
14 estate, and the testimony has consistently been he  
15 doesn't know.

16           MR. ELGIDELY:  Okay.  What I'm --  
17 BY MR. ELGIDELY:

18           **Q.    What I'm asking you, Mr. Freeman, just**  
19 **to be clear for the record, is:  The document that**  
20 **you prepared and the instructions that you**  
21 **obtained in preparing it -- not whether it was**  
22 **executed, I'm asking you about the instructions**  
23 **that you received.**

24                           **Can we agree upon that?**

25           A.    Sure.

1           **Q.    Okay.  Somebody told you to prepare the**  
2 **memorandum of agreement; correct?**

3           A.    That's correct, Mr. Douglas.

4           **Q.    Who was that person?**

5           A.    Mr. Douglas.

6           **Q.    Okay.  Is the document that's marked as**  
7 **Fidelity Exhibit 9 the document that you prepared**  
8 **pursuant to Mr. Douglas's instructions?**

9           A.    Yes.

10          **Q.    And when it says, "Richie Engler has**  
11 **purchased one half of the Southport property from**  
12 **David," and it's underlined, did you have any**  
13 **reason to question Mr. Douglas as to whether that**  
14 **was true or not?**

15                   MR. BERMAN:  Objection; asked and  
16 answered, lack of personal knowledge, lack of  
17 foundation.

18                   MR. ELGIDELY:  You can answer.

19           A.    Yeah, no, I didn't ask him any details  
20 about the purchase --

21 BY MR. ELGIDELY:

22           **Q.    Okay.**

23           A.    -- what the price was or anything.

24           **Q.    I'm sorry.  Go ahead.**

25           A.    Yeah, no, I didn't ask him any details

1 or anything. Just Richie had bought half of it.

2 Q. That's why in the first whereas clause  
3 of Fidelity Exhibit 9, "Whereas Douglas owns the"  
4 -- let me rephrase the question.

5 When I just asked you, Mr.  
6 Freeman, about the statement in your memorandum  
7 that says, "Richie Engler purchased one half of  
8 Southport property from David," those were  
9 instructions that you received or a statement that  
10 you received from Mr. Douglas; correct?

11 A. That is correct.

12 Q. Okay. And that's why, in the second  
13 whereas clause of the document that you prepared,  
14 Fidelity Exhibit 9, it states, "Whereas Engler has  
15 purchased the one half interest in the property  
16 from Douglas"; correct?

17 A. That's correct.

18 Q. And the next sentence, sir, says, "The  
19 memorandum was not to be recorded, but, rather,  
20 David would continue to hold title to the property  
21 as a nominee on behalf of themselves."

22 A. Correct.

23 Q. Are those also instructions that you  
24 received from Mr. Douglas?

25 A. That's correct.

1 Q. Okay. And is that why the third  
2 whereas clause in Fidelity Exhibit 9 appears?

3 A. Yes.

4 Q. What did you understand by the meaning  
5 "themselves," the last word in that sentence?

6 A. I'm sorry. The last word where?

7 Q. "As a nominee on behalf of themselves,"  
8 what did you understand by the meaning of  
9 "themselves"?

10 A. On their behalves? Which whereas are  
11 you on?

12 Q. I'm sorry. I apologize. We are going  
13 back and forth.

14 Fidelity Exhibit 1, where it says  
15 that, "The memorandum was not to be reported, but  
16 rather, David would continue to hold title to the  
17 property as a nominee on behalf of themselves."

18 A. Okay. Your question is what?

19 Q. What did you understand the meaning of  
20 "themselves" to be?

21 A. Mr. Engler and Mr. Douglas.

22 Q. Okay. The next sentence says, "Also by  
23 virtue of that memorandum, Engler and David were  
24 to transfer their economic interest in and to the  
25 property to Douglas Investments, LLC."

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Do you see that statement there?

A. I do.

Q. Okay. And again, is that instructions you received from Mr. Douglas?

A. Yes.

Q. Did you ask Mr. Douglas what the business purpose was of a transfer of a half interest in a residential -- single-family residence to Mr. Engler followed by a memorandum that was not to be recorded?

A. No, I didn't ask about that.

Q. Okay. Did you ask Mr. Douglas what the business purpose was of a conveyance of this single-family residence to Douglas Investments following the sale of a one half interest to Mr. Engler?

A. No, uh-uh.

Q. Okay. Was there any discussion with Mr. Douglas concerning those matters?

A. No. He just asked -- he just asked me to prepare it based on the terms that are recited here.

Q. Did you find it unusual, sir, that Mr. Douglas -- or a client, for that matter -- was asking you to prepare a document that was not to

1       **be recorded which reflected a transfer of a half**  
2       **interest in real estate to a third party and a**  
3       **future conveyance of that property to a**  
4       **corporation by the name of Douglas Investments,**  
5       **LLC?**

6                   MR. BERMAN:  Objection; lack of  
7       foundation and mischaracterization of prior  
8       testimony again.

9                   A.  No.  I just figured that what they were  
10       doing was -- you know, as far as business  
11       transactions, Mr. Douglas, in my opinion, had been  
12       a successful businessperson and he had confidence  
13       in doing what he was doing and just asked me to do  
14       the documentation for him.

15       BY MR. ELGIDELY:

16                   **Q.  Okay.  So because your experience with**  
17       **Mr. Douglas has been that he was a successful**  
18       **businessperson, you felt no reason to question him**  
19       **concerning the structure of these transactions?**

20                   A.  Of this transaction.

21                   **Q.  Okay.  Of this transaction you felt**  
22       **comfortable not questioning him about the**  
23       **structure; is that accurate?**

24                   A.  That's accurate.

25                   **Q.  Okay.  And because of -- because Mr.**

1 Douglas was an experienced businessman, you felt  
2 comfortable just simply preparing documents as he  
3 requested them; is that accurate?

4 A. Yes.

5 Q. Okay.

6 A. That is accurate.

7 Q. Okay. In that statement, "By virtue of  
8 that memorandum, Engler and David were to transfer  
9 their economic interests in and to the property to  
10 Douglas Investments, LLC," what did you understand  
11 that sentence to mean?

12 A. Well, that's what he told me. So I  
13 assumed that they were going to then somehow  
14 assign their interests over to the LLC. Whether  
15 it happened or -- I -- I have no idea.

16 Q. In your 40 years of experience, sir, as  
17 a member of the Bar Association of Illinois and  
18 having closed -- or been involved in, I should say  
19 -- approximately a thousand real estate  
20 transactions, would you say that the instructions  
21 concerning this memorandum of agreement were --  
22 were a conventional transaction?

23 A. No, I don't think they were  
24 conventional.

25 Q. Why did you use the word "nominee" when



1 **referring to the manner in which Douglas would**  
2 **hold fee simple title to the property?**

3 A. I just meant that nothing -- no  
4 interest was going to be transferred by deed at  
5 that time and, therefore, Mr. Douglas was, in my  
6 words, the nominee on -- for both of them. He was  
7 going to hold title.

8 And this memorandum was going to  
9 reflect Mr. Engler had half an interest as well as  
10 Mr. Douglas.

11 **Q. But this memorandum was not to be**  
12 **recorded, according to Mr. Douglas's instructions;**  
13 **correct?**

14 A. That's right.

15 **Q. Okay. Let's go to Fidelity Exhibit 10,**  
16 **please.**

17 A. Okay.

18 **Q. Towards the bottom of Fidelity Exhibit**  
19 **10, first page, it states, "Don't show one half of**  
20 **transfer."**

21 **Did I read that accurately?**

22 A. Yeah, yes.

23 **Q. Okay. What did you mean by that?**

24 A. I don't know. Let me go back and look  
25 at this.

1 I'm trying to read my writing  
2 above that. Oh, okay. That relates to the  
3 property we're just talking about in the  
4 memorandum. Because right above, where it says,  
5 "Douglas, don't show one half of transfer," right  
6 above that, it says, "One half of" -- that's  
7 supposed to be, "Bonita p-r-i-n," I think, for  
8 principal residence.

9 Q. Okay.

10 A. Okay?

11 Q. Okay.

12 A. So that must have been -- well, okay.  
13 That's the same date, that August 4 date that I  
14 referenced in Douglas Investments, LLC, history  
15 No. 5. So those are my notes from my conversation  
16 with Mr. Douglas.

17 Q. Okay. You state that this property, 91  
18 Southport Cove, is a principal residence?

19 A. It had been for -- for Mr. Douglas for  
20 a number of years; and then he had a second  
21 residence in Idaho, as I'm sure you know.

22 Q. Do you know: Is this the notes from  
23 your telephone conversation with Mr. Douglas on  
24 August 4 -- does that say 2008 or 2006?

25 A. 2006.

1           **Q.    What did Mr. Douglas tell you, where**  
2 **you have the asterisks, "Don't show one half of --**

3           A.    I'm sorry, what?

4           **Q.    What did Mr. Douglas tell you when you**  
5 **wrote, "Don't show one half of transfer"?**

6           A.    As I recall, you know, not to do a deed  
7 and record it, I'm assuming. In other words, he  
8 was just going to continue to hold title to it.

9           **Q.    Okay. All right. Let's turn to your**  
10 **correspondence dated December 27, 2006. I don't**  
11 **know what number in the binder.**

12          A.    I'm sorry. What's the date of it?

13          **Q.    December 27, 2006, the miscellaneous**  
14 **legal issues.**

15          A.    Do you know where that is?

16          **Q.    It was also -- I'm going in order in**  
17 **packet 3 that you e-mailed to me -- you e-mailed**  
18 **to me.**

19          A.    It is correspondence from whom to whom?

20          **Q.    From you, your letterhead, to Mr.**  
21 **Douglas.**

22                   MR. BERMAN: That's 12.

23                   THE WITNESS: 12, okay.

24 BY MR. ELGIDELY:

25           **Q.    That's marked as Fidelity Exhibit 12 as**

1 well.

2 A. Yes.

3 Q. Okay. What were the circumstances that  
4 caused you to prepare Fidelity Exhibit 12, which  
5 purports to be a correspondence from you to Mr.  
6 Douglas, dated December 27, 2006?

7 A. The best I can recall is that Mr.  
8 Douglas had called me and indicated that he and  
9 Mr. Engler might consider soliciting funds from  
10 outside investors, and that prompted me to send  
11 this to him.

12 Q. Okay. Did you prepare this document on  
13 or about December 27, 2006?

14 A. Yes.

15 Q. And would this document be reflected by  
16 a time entry in the time sheets that you provided  
17 or you're going to provide today?

18 A. It should be in there.

19 Q. Okay. Do you have those time sheets in  
20 front of you?

21 A. No. Are they -- hang on. Are they in  
22 the room?

23 MR. BERMAN: Yes, they're in that  
24 stack.

25 BY MR. ELGIDELY:

1           **Q. If you could take a look and see if**  
2 **there is an entry for December 11, 2006.**

3           A. Hang on a second.

4           MR. ELGIDELY: If somebody has a cell  
5 phone by the telephone, if you could move that,  
6 because we're getting some interference.

7           MR. BERMAN: Okay. I'm going to move  
8 it a little bit.

9           A. (Continuing.) I don't have those  
10 invoices right here.

11           MR. BERMAN: They're underneath that  
12 stack.

13           THE WITNESS: Under here?

14           MR. BERMAN: I think so.

15           THE WITNESS: What was your question?

16 BY MR. ELGIDELY:

17           **Q. I'm asking you if there is a time entry**  
18 **on December 27, 2006, for the preparation of this**  
19 **correspondence.**

20           A. Let's see here. I don't see one.

21                        What I do show is entries of 12/13  
22 and 12/14. 12/13 was a telephone conversation  
23 with a client regarding miscellaneous, and 12/14  
24 was an e-mail regarding Punta Gorda issues.

25                        So, no, I think he owes me money.

1 Q. Okay. I hate when I leave an entry off  
2 of --

3 A. Okay.

4 Q. I should have said that off the record.

5 A. I do, too.

6 Q. Okay. Well, looking at this  
7 correspondence, sir, marked as Fidelity Exhibit  
8 12, I have no doubt that you prepared it. "I  
9 think that it would be important if you checked  
10 this out, just to be sure that everything is being  
11 done in compliance with the rules and  
12 regulations."

13 Do you know whether Mr. Douglas,  
14 in fact, looked into issues with the Securities  
15 and Exchange Commission concerning the  
16 solicitation of investments from outside  
17 investors?

18 A. I have no idea.

19 Q. Were you aware, sir, that the party  
20 could not solicit investments in the United States  
21 unless they were licensed or registered with a  
22 governing authority, such as the Securities and  
23 Exchange Commission?

24 MR. BERMAN: Objection; calls for a  
25 legal conclusion.

1           A.    There are some exceptions to that, as I  
2 understand it, based on the amount being solicited  
3 and the nature of the investment.

4 BY MR. ELGIDELY:

5           **Q.    Did you -- did you say anything to Mr.**  
6 **Douglas in this correspondence concerning those**  
7 **exemptions that could be applicable?**

8           A.    No. I just told him to get good  
9 advice.

10          **Q.    Okay. All right. Let's go to the**  
11 **e-mail from Debbie Douglas to you dated January**  
12 **5th, 2007. And it looks like it is tabbed 14 in**  
13 **Mr. Berman's binder, Fidelity Exhibit 14.**

14          A.    Okay.

15          **Q.    Okay. At the top it says, "Brad, let's**  
16 **start on the first of '07. 60 percent me, 40**  
17 **percent Deb. She still stares at black men.**  
18 **Dave."**

19                       **What did he mean, "She still**  
20 **stares at black men?"**

21                       MR. BERMAN: Objection; relevance.

22          A.    That's a joke.

23 BY MR. ELGIDELY:

24          **Q.    What does that mean? I mean, it says,**  
25 **"She still." I don't know what that means in**

1 **relation to the percentage interest in Douglas**  
2 **Investments.**

3 A. It has --

4 MR. BERMAN: Objection; relevance.

5 A. (Continuing.) -- nothing to do with  
6 the percentages.

7 MR. BERMAN: Objection; relevance.

8 Go ahead.

9 A. (Continuing.) It has nothing to do  
10 with the percentages. It is a totally separate  
11 issue. It is a joke.

12 BY MR. ELGIDELY:

13 **Q. Okay. Let's go to -- let's go to**  
14 **Exhibit 21.**

15 A. Okay.

16 **Q. Do you have that?**

17 A. I do.

18 **Q. Did you receive Fidelity Exhibit 21 on**  
19 **or about December 11, 2007?**

20 A. Well, I received -- there are two  
21 e-mails there. The first -- the earliest one is  
22 December 10 from Bill Vincent to me.

23 Is that what you're asking?

24 That's when I received that. The second one I  
25 sent on December 11th to Mr. Moulton.



1 Q. Okay. So what date would you have  
2 received this on or about?

3 A. Which one?

4 Q. I'm sorry. What date would you have  
5 received a letter that's attached from the German  
6 investigating company?

7 A. December 10, 2007.

8 Q. Okay.

9 A. It was attached to Mr. Vincent's  
10 e-mail, as I recall.

11 Q. Okay. And if we can just go to that  
12 letter from the German investigation agency.

13 A. Okay.

14 Q. Okay. On page 2 of that letter, it  
15 says, "A registration concerning fraud was found  
16 at the district attorney of," et cetera, et  
17 cetera, "This file was closed due to limitation.  
18 In this file exists an address in the USA."

19 What were your thoughts concerning  
20 this registration concerning fraud?

21 A. Well, I think to be fair to everybody  
22 here, I didn't have any specific thoughts on any  
23 of this. It's just that there were several red  
24 flags referenced here that I then advised David,  
25 and that's reflected in my December 12 e-mail to

1 him, which is tab 22.

2 Q. Okay. Well, did that statement raise  
3 any concerns with you, sir?

4 A. Yes.

5 Q. Okay. In the next paragraph it says,  
6 "Several registrations were found at the district  
7 attorney of," and there is an address provided.  
8 "However, there exists an information ban.  
9 Without a court order, there is no access to the  
10 files. The German Federal Criminal Authority has  
11 instructed to have the files closed."

12 Is that accurate?

13 A. That's what it says.

14 Q. Okay. This letter was reporting about  
15 prior registrations concerning Mr. Engler's  
16 criminal history; correct?

17 MR. BERMAN: Objection; lack of  
18 foundation, lack of personal knowledge.

19 A. Well, this document was reporting what  
20 this agency had ascertained. That's all I can  
21 say.

22 BY MR. ELGIDELY:

23 Q. Okay. Towards the bottom of that page,  
24 it says -- it refers to, "The raids at the  
25 beginning of August and the order by the Federal

1 **Bureau to Oversee Financial Services."**

2 **Did you read that statement?**

3 A. I'm sorry. Where was that?

4 **Q. At the bottom of the page, page 2 of**  
5 **the letter, it says, "The raids at the beginning**  
6 **of August and the order by the Federal Bureau to**  
7 **Oversee Financial Services."**

8 A. Excuse me.

9 **Q. Did you read that statement on or about**  
10 **December 11, 2007?**

11 A. I still can't -- do you know where he  
12 is talking about? Excuse me one second. I'm  
13 trying to find it.

14 **Q. Sure.**

15 A. Page 2 of this letter -- okay. I'm  
16 sorry. I see the language you're talking about.  
17 What's your question?

18 **Q. Did you read that on or about December**  
19 **11, 2007?**

20 A. Yeah, I read this document at that  
21 time.

22 **Q. Okay. Did that give you any concerns?**

23 A. A lot of things in here gave me a  
24 concern.

25 **Q. Page 3 of the letter, it says, "In the**

1 '90s, Ulrich Engler, a German citizen, was  
2 sentenced to imprisonment and payments on account  
3 of fraudulent misusing credit cards, received high  
4 three figures millions through many agents, mainly  
5 located in Germany."

6 Did I read that accurately?

7 A. Yes.

8 Q. The next sentence says, "His two  
9 investment products, Daytrading and  
10 US-Land-Banking, promised high profits to his  
11 customers in Germany, Austria, Liechtenstein,"  
12 which is L-i-e-c-h-t-e-n-s-t-e-i-n, "Switzerland,  
13 France and Belgium."

14 Did those statements give you any  
15 concerns?

16 A. Sure.

17 Q. Okay. Had you heard of US-Land-Banking  
18 prior to receiving this correspondence?

19 A. Have I heard of what?

20 Q. US-Land-Banking.

21 A. No. Why? Is that referenced in here?

22 Q. I just read the sentence. "Two  
23 investment products" --

24 A. I'm sorry. I see that, what you are  
25 talking about.

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Have I heard of this before this?

**Q. Correct.**

A. I had not.

**Q. Were you aware that Mr. Engler had been representing to would-be investors that he was acquiring and developing property for profit in the United States?**

A. I was not aware of what he was telling anybody.

**Q. Okay. Were -- in this correspondence it refers to, "The verdict of the Hamburg Higher Court of February 21, 2007, describes Ulrich Engler's criminal past in detail."**

**Did I read that accurately?**

A. Yep.

**Q. Okay.**

A. Yes.

**Q. When Mr. Berman asked you whether your investigators were aware of any improper conduct by Mr. Engler prior to December, 2007, that doesn't -- the fact that you answered no does not necessarily mean that there wasn't information out there concerning Mr. Engler's criminal past; correct?**

MR. BERMAN: Objection;

1 mischaracterization and lack of foundation, no  
2 personal knowledge.

3 A. All it means to me is that the people  
4 hired by Mr. Vincent didn't find anything and  
5 report it to him until December of 2007.

6 BY MR. ELGIDELY:

7 Q. Okay. Well, they ultimately did find  
8 it right; sir?

9 A. Yes.

10 Q. Okay. And they found information that  
11 dated back prior to December, 2007; correct?

12 MR. BERMAN: Objection; lack of  
13 personal knowledge.

14 A. Yes, that's what it says.

15 BY MR. ELGIDELY:

16 Q. That's what the letter says; correct?

17 A. Yes.

18 Q. Okay. And the letter refers to a  
19 lawsuit between JPMorgan and Mr. Engler concerning  
20 a verdict as of August 28, 2007. It says,  
21 "Verdict led to suspect that the moneys obtained  
22 had not been invested in the promised products and  
23 got lost in a snowball system."

24 Did I read that accurately?

25 A. Yes.

1           Q.    I didn't see in the VTS materials any  
2 reference to the lawsuit between JPMorgan Chase  
3 and Mr. Engler.

4                           Do you know whether they conducted  
5 a federal docket search of Mr. Engler?

6           A.    I don't know.

7           Q.    Okay. Mr. -- I believe Mr. Berman  
8 asked you -- and if I'm misquoting I apologize,  
9 I'm sure he will remind me -- that there was no  
10 reason to suspect Mr. Engler had been involved in  
11 any improper activities prior to December, 2007.

12                           Was that consistent with your  
13 testimony?

14           A.    Would you repeat that again? Who?

15           Q.    All right.

16           A.    Who are you talking about?

17           Q.    Would it -- I believe your testimony  
18 was that there was no reason to suspect that Mr.  
19 Engler had been involved in any improper  
20 activities prior to receiving this paperwork from  
21 the investigator on December, 2007.

22           A.    We had no knowledge of it. Well, we --  
23 well, I should say I had no knowledge of it.

24                           Mr. Douglas -- I don't know what  
25 knowledge he might have had. He apparently had

1 some insecurities or sense of discomfort with Mr.  
2 Engler, which prompted him to ask me to have him  
3 investigated --

4 **Q. Okay.**

5 A. -- earlier in the year.

6 **Q. Okay.**

7 A. And what -- and I don't know what those  
8 issues were.

9 **Q. Okay. If we could go to Fidelity**  
10 **Exhibit 18, please.**

11 A. Okay.

12 **Q. Do you know why Douglas Investments was**  
13 **asking these lawyers to prepare a memorandum**  
14 **analyzing Douglas Investments's potential criminal**  
15 **liability for money laundering, which was issued**  
16 **on November 2nd, 2007?**

17 A. My belief is that -- No. 1, I don't  
18 have a lot of knowledge about the details of it.  
19 Mr. Moulton had told me that he had hired these --  
20 this outside law firm to do this memorandum and  
21 just indicated to me that this is -- this is Mr.  
22 Moulton -- that, you know, Mr. Douglas was nervous  
23 about Mr. Engler and just wanted everything  
24 checked out make sure he was doing everything the  
25 way he was supposed to do it.



1           **Q. Do you know when he hired these lawyers**  
2 **to look into potential criminal liability for**  
3 **money laundering?**

4           A. I do not.

5           **Q. Okay. Would you agree that it was**  
6 **probably sometime prior to November 2nd, 2007?**

7           MR. BERMAN: Objection; lack of  
8 personal knowledge, calls for speculation.

9           A. You want me to guess?

10          MR. ELGIDELY: I will --

11          MR. BERMAN: He doesn't want you to  
12 guess.

13          MR. ELGIDELY: I withdraw the question.

14 BY MR. ELGIDELY:

15           **Q. Okay. You had testified on direct that**  
16 **Mr. Douglas had done an Internet search of Mr.**  
17 **Engler and didn't come up with any -- anything --**  
18 **any issues.**

19                   **Do you recall that testimony?**

20           A. I do. I -- I believe that he did. I  
21 -- you know, I'm not 100 percent sure on that.

22           **Q. Did he tell you he did?**

23           A. Well, that's what I'm trying to  
24 remember. You know, I'm not a hundred percent  
25 sure, so I really can't say.

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**Q. Okay.**

A. Somehow, I had the impression that he did, but I don't know.

**Q. Okay. At the bottom of the page, sir, of this Fidelity Exhibit 18, it says, "Based on the Internet research we have done, it appears Mr. Engler may have engaged in a large-scale financial fraud in a few European countries."**

**Did you have any reason to dispute that that's what the lawyers had found?**

A. I'm sorry. Did I have any reason to what?

**Q. To dispute what the lawyers had found on the Internet.**

MR. BERMAN: Objection to form.

A. You mean did I disagree with it?

BY MR. ELGIDELY:

**Q. Yes. Did you ask the lawyers --**

A. I didn't --

**Q. Let me rephrase the question, Mr. Freeman.**

A. Okay.

**Q. You received this memorandum from Mr. Douglas; correct?**

A. Yes.

1           **Q.    Okay.  And you reviewed the memorandum**  
2 **after you received it?**

3           A.    Yeah.  I looked at it.

4           **Q.    Okay.  Did you call these lawyers to**  
5 **follow up about any issues they raised in the**  
6 **memorandum?**

7           A.    No.  They -- this memorandum was  
8 prepared at the request of Sean Moulton.

9           **Q.    I understand.**  
10                               **What did you think Mr. Douglas**  
11 **wanted you to do with this memorandum?**

12                               MR. BERMAN:  Objection; asked and  
13 answered.

14           A.    I just think he wanted a second opinion  
15 about how did that look, that kind of thing --  
16 BY MR. ELGIDELY:

17           **Q.    Okay.**

18           A.    -- and did --

19           **Q.    I'm sorry.  Did you give him a second**  
20 **opinion?**

21           A.    I did.  I said in my e-mail to him that  
22 I thought it was well drafted.

23           **Q.    Okay.  The last sentence on page 1**  
24 **says, "There is even reference to US-Land-Banking**  
25 **activity, where Mr. Engler is being accused of**

1 taking investor money to buy undeveloped property  
2 in the United States and then absconding with the  
3 money."

4 What, if any, discussion did you  
5 have with Mr. Douglas concerning that statement in  
6 the memorandum?

7 A. We didn't have any discussion about the  
8 memorandum. All we had was -- I sent him that  
9 e-mail indicating I was concerned about it, and  
10 that's spelled out here in -- I don't know where  
11 that is -- one of these -- let's see.

12 Q. Are you done with your answer?

13 A. No. I'm sorry. On tab 22, that was my  
14 response to Mr. Douglas.

15 Q. Okay. Oh, okay. We will go back to  
16 that.

17 A. Because he and I did not have a  
18 telephone conversation about this. The extent of  
19 our communication was my e-mail to him.

20 Q. Okay. So Fidelity Exhibit 2 represents  
21 your response to having reviewed the memorandum?

22 A. Yeah. Fidelity 22, yes.

23 Q. Okay. In the memorandum it states,  
24 "Although Douglas Investments had some suspicions  
25 that led to a background check on Mr. Engler,

1       **which showed that Mr. Engler is not licensed to**  
2       **give investment advice in Austria due to several**  
3       **investor complaints."**

4                       **Do you know what investigation**  
5       **this memorandum is talking about or what**  
6       **background check would have reflected that?**

7                       MR. BERMAN:  Objection;  
8       mischaracterization.

9                       A.  No, I have no idea.

10                      MR. ELGIDELY:  Okay.  What am I  
11       mischaracterizing, Mr. Berman?

12                      MR. BERMAN:  Your reading of the  
13       sentence.

14                      MR. ELGIDELY:  Okay.  I will read it  
15       again.

16                      MR. BERMAN:  No, you don't need to read  
17       it.  I just would ask that you not misquote it.

18       BY MR. ELGIDELY:

19                      **Q.  Okay.  "Although Douglas Investments"**  
20       **-- I'm reading the first part of the sentence --**  
21       **"Although Douglas Investments had some suspicions**  
22       **that led to a background check on Mr. Engler" --**

23                      MR. BERMAN:  What sentence are you  
24       reading?

25                      MR. ELGIDELY:  I'm reading page 2,

1 Fidelity Exhibit 18, under the heading, "Knowledge  
2 of unlawful activity and intent to conceal such."

3 THE WITNESS: And which paragraph  
4 thereafter?

5 MR. ELGIDELY: Second paragraph.

6 THE WITNESS: Starts with unlawful  
7 activity?

8 MR. ELGIDELY: Correct, third sentence.

9 MR. BERMAN: Okay.

10 BY MR. ELGIDELY:

11 Q. "Although Douglas Investments had some  
12 suspicions that led to a background check on Mr.  
13 Engler" --

14 A. Okay.

15 Q. Can I finish?

16 -- "which showed that Mr. Engler  
17 is not licensed to give investment advice in  
18 Austria due to several investor complaints."

19 Have I read that portion of the  
20 sentence correctly?

21 A. Yes.

22 Q. Okay. I'm asking you, sir: What  
23 background check reflected that Mr. Engler was not  
24 licensed to give investment advice in Austria?

25 MR. BERMAN: Objection; lack of

1 foundation.

2 A. I don't know. I'm not aware of any  
3 other background check on Mr. Engler.

4 BY MR. ELGIDELY:

5 Q. Okay. You would agree, would you not,  
6 that the documents that you've produced consisting  
7 of the investigative material that I e-mailed to  
8 you -- back to you last -- yesterday afternoon and  
9 that are marked as separate exhibits by Mr.  
10 Berman, do not reflect the lack of licensure by  
11 Mr. Engler in Austria due to several investor  
12 complaints? Would you agree with that statement?

13 A. To be --

14 MR. BERMAN: Objection to form.

15 A. (Continuing.) To be honest, I didn't  
16 reread those. I don't know.

17 BY MR. ELGIDELY:

18 Q. Okay. Well, I guess they speak for  
19 themselves.

20 A. Yeah.

21 Q. Okay. The next sentence says, "In  
22 addition, while we understand that Mr. Engler told  
23 Douglas Investments that he was in trouble with  
24 the German government and Douglas Investments has  
25 observed him to engage in some unusual financial

1 **behavior, such information would not appear**  
2 **sufficient to establish knowledge."**

3 **What, if any, discussion did you**  
4 **have with Mr. Douglas concerning Mr. Engler being**  
5 **in trouble with the German government?**

6 MR. BERMAN: Objection; foundation.

7 A. I don't think he ever mentioned that to  
8 me.

9 You know, I'm trying to remember  
10 back in the early part of 2007, when Mr. Douglas  
11 expressed some concerns about Mr. Engler and asked  
12 me to have him investigated. I don't know if he  
13 used this kind of language at that time. I  
14 honestly don't recall.

15 BY MR. ELGIDELY:

16 **Q. Okay. What, if any, conversations did**  
17 **you have with Mr. Douglas concerning unusual**  
18 **financial behavior of Mr. Engler?**

19 A. I -- he didn't mention any details  
20 about anything like that. So -- I -- I don't  
21 know.

22 BY MR. ELGIDELY:

23 **Q. Okay.**

24 A. I don't know -- I don't know what that  
25 references.



1           **Q. You testified just a few minutes ago**  
2 **that Mr. Engler [sic] at some point in time had**  
3 **advised you of some issues concerning Mr. Engler.**

4                   **What issues did he advise of you?**

5           THE REPORTER: Mr. Elgidely, I believe  
6 either you misspoke or I misheard, so I'm going to  
7 read the question back to you.

8                   (Question read.)

9           MR. ELGIDELY: Oh, I'm sorry. Thank  
10 you, Linda.

11 BY MR. ELGIDELY:

12           **Q. You testified a few minutes ago that**  
13 **Mr. Douglas had previously advised you or at some**  
14 **point advised you that there were issues**  
15 **concerning Mr. Engler.**

16                   **What do you recall of those**  
17 **conversations?**

18           MR. BERMAN: Objection;  
19 mischaracterization.

20           A. I don't recall he mentioned any  
21 specifically. He just said he was starting to  
22 feel uneasy about Mr. Engler, and he didn't give  
23 me specifics. You know, he might have mentioned  
24 something about -- again, I'm speculating, so  
25 maybe I shouldn't, about the German government.

1 But that's why -- you know, he wanted him checked  
2 out, because he -- whatever was causing the  
3 concern, I don't know what it was specifically,  
4 but he -- but he wanted Engler checked out.

5 BY MR. ELGIDELY:

6 Q. Okay. Did you ask Mr. Douglas at that  
7 time, "Why are you uneasy?"

8 A. Well, he may have mentioned -- again,  
9 I'm speculating. He may have mentioned something  
10 about having trouble with the German government.  
11 That's the best I can recall.

12 Q. Okay. Fair enough, fair enough.

13 All right. Let's go back to your  
14 e-mail that you mentioned, Fidelity 22.

15 A. Okay.

16 Q. It's an e-mail from to David Douglas  
17 carbon copying Sean Moulton forwarding the Richie  
18 Engler information.

19 Did I reference the e-mail header  
20 correctly?

21 A. Yes.

22 Q. In the second sentence you indicate,  
23 "At this point in time, I would recommend you take  
24 no more money from Engler since it may be  
25 considered, open quote, 'laundering,' close quote,

1 based on the recently discovered information we  
2 got from the VTS Investigations."

3 Did I read that accurately?

4 A. Yes.

5 Q. Okay. What, if any, discussions did  
6 you have with Mr. Douglas concerning the use of  
7 Mr. Engler's funds that had already been provided?

8 A. We didn't talk about it. Well, excuse  
9 me. The second paragraph in that letter talks  
10 about that.

11 Q. Okay. My -- my question, sir, before  
12 we go to the second paragraph is: What, if any,  
13 discussions did you have with Mr. Douglas  
14 concerning the use of Mr. Engler's money after you  
15 learned this information?

16 A. We had no --

17 MR. BERMAN: Objection; foundation.

18 Go ahead.

19 A. (Continuing.) We had no discussions.

20 BY MR. ELGIDELY:

21 Q. Okay. If you had the opinion, as  
22 expressed in Fidelity Exhibit 22, that Mr. Douglas  
23 should not take any more money from Engler because  
24 it may be considered laundering, did you have an  
25 opinion at the time concerning Mr. Douglas's use

1 **of Mr. Engler's money?**

2 MR. BERMAN: I'm going to interpose an  
3 objection to the extent that that calls for an  
4 expert opinion. This witness is not here as an  
5 expert witness. He is here as a lay witness.

6 A. We had no discussions on that.

7 BY MR. ELGIDELY:

8 Q. Okay. Well, Mr. Freeman, in the second  
9 sentence of this e-mail, you're making a  
10 recommendation; correct?

11 A. Yes.

12 Q. Okay. You even used the word  
13 "recommend" --

14 A. Yes.

15 Q. -- don't you?

16 A. Yes.

17 Q. Okay. And you sent this e-mail from  
18 your law firm's Internet domain?

19 A. Yes.

20 Q. Okay. And in the e-mail that you're  
21 making a recommendation to Mr. Douglas, your  
22 recommendation is that he not take any more money  
23 from Engler because it could be considered  
24 laundering; correct?

25 A. Yes.

1           **Q.    Okay.  Were you Mr. Douglas's counsel**  
2           **on the date that you sent this e-mail to him?**

3                   MR. BERMAN:  Objection; asked and  
4           answered.

5           A.    Yeah, in certain capacity.  I wasn't  
6           his only one.

7           BY MR. ELGIDELY:

8           **Q.    Okay.**

9           A.    I was not -- I was not representing him  
10           in any of these criminal analyses that we're  
11           talking about here.

12           **Q.    Okay.  Turning to your time records for**  
13           **December 12, 2007, is there a time entry?**

14           A.    Let me look.

15                   Wait a minute.  I'm in the wrong  
16           year.  Hang on.  I thought maybe he owed me money  
17           again.  Let's see here.

18                   I have an entry 12/11.  Let's see  
19           here.  Or I show the e-mail going to Sean Moulton  
20           regarding VTS.

21           **Q.    Can you read that entry into the**  
22           **record, please?**

23           A.    Yes, it is telephone conference with --  
24           well, it says telephone conference with Dave, and  
25           then it says, "E-mail to Sean Moulton regarding

1 VTS data as dated 12/11." Okay.

2 **Q. Is there an entry for December 12th?**

3 A. I don't see one. I see one for the  
4 11th and the 13th. Let me see here.

5 On the 11th, I show that -- that's  
6 one I just mentioned to you. I'm sorry.

7 I see nothing for the 12th. I see  
8 something for the 13th, a letter to David  
9 regarding VTS. I'm wondering if she wrote down  
10 the wrong date.

11 **Q. Okay. Could you read again -- I didn't**  
12 **hear your entry for -- I think you said December**  
13 **11, 2007.**

14 A. Yeah. As it relates to this?

15 **Q. Just read the whole entry, please.**

16 A. Okay. Well, it says, "Revised  
17 operating agreements, letter and operating  
18 agreements to Brett and Dave." I don't know what  
19 transaction that's on. "E-mail to Brett" --  
20 that's David's son-in-law, Borshell.

21 **Q. Okay.**

22 A. That's on a separate transaction  
23 involving them, apparently.

24 "Telephone conference with David,  
25 e-mail to Sean Moulton regarding VTS data."

1           **Q.    Okay.  And this e-mail to Mr. Douglas**  
2 **is for the VTS data; correct?**

3           A.    Is for what?  I'm sorry.

4           **Q.    At the end you refer to VTS**  
5 **Investigations, at the end of the first paragraph**  
6 **of Fidelity --**

7           A.    Yes.

8           **Q.    Can you read the entry for December 13,**  
9 **please?**

10          A.    It says, "Letter to David regarding  
11 VTS."

12                                So what I'm guessing is that the  
13 -- the December 12 entry is what should have been  
14 typed on the bill, instead of 12/13.

15          **Q.    Okay.  Is that the entirety of the**  
16 **entry for December 13th?**

17          A.    Yes, it is.

18          **Q.    So you billed Mr. Douglas for reviewing**  
19 **the VTS information?**

20          A.    Yes.

21          **Q.    And did he pay you for that entry?**

22                       MR. BERMAN:  Objection; relevance.

23          A.    He did.

24 BY MR. ELGIDELY:

25          **Q.    Okay.  In this second sentence, when**

1 you're making a recommendation to Mr. Douglas  
2 concerning taking more money from Engler based  
3 upon laundering concerns, did you have an opinion,  
4 as his counsel at the time, concerning the -- the  
5 use of Mr. Engler's funds?

6 MR. BERMAN: Same objection as before;  
7 that this witness is not providing expert witness  
8 testimony in this deposition, he is merely a fact  
9 witness to talk about things that happened.

10 A. And the answer is, no, I had no opinion  
11 on that.

12 BY MR. ELGIDELY:

13 Q. Okay. Well, you were giving Mr.  
14 Douglas your opinion based on whether he should  
15 take any more money from Engler; correct?

16 A. Yes.

17 Q. So it's fair to say that you were  
18 giving your opinion to your client on whether he  
19 should take any more money from Engler based upon  
20 the results of the VTS investigation; correct?

21 A. Yes.

22 Q. Okay. Do you believe, sitting here  
23 today, that the use of Mr. Engler's money at the  
24 time was proper?

25 MR. BERMAN: Same objection as before.



1           A.    Yeah, Mr. Elgidely, I have no opinion  
2           on that. I don't do criminal law work, my  
3           comments in here were simply based on the -- the  
4           memorandum that have been prepared by these  
5           attorneys that were doing research on criminal  
6           issues, so I didn't have an opinion on -- one way  
7           or another -- on the money that he may have  
8           already had.

9           BY MR. ELGIDELY:

10          **Q.    Okay.**

11          A.    Okay. Fair enough?

12          **Q.    I'm sorry. I didn't mean to interrupt**  
13          **you, Mr. Freeman. Go ahead.**

14          A.    Fair enough?

15          **Q.    Yes. My -- my next question then, sir:**  
16          **Why did you send Mr. Douglas any opinion or**  
17          **recommendation concerning the VTS investigation if**  
18          **he had already had separate counsel that had**  
19          **specialized in criminal law?**

20          A.    Well, he wanted me to read the -- the  
21          memo and give whatever comments I had on it, which  
22          I did.

23          **Q.    Okay. Is there a reason why in this**  
24          **e-mail, sir, you do not advise Mr. Douglas to**  
25          **report his relationship to Mr. Engler to the**

1 **authorities?**

2 A. You mean --

3 MR. BERMAN: Objection; lack of  
4 foundation.

5 A. (Continuing.) Do you mean immediately?

6 BY MR. ELGIDELY:

7 **Q. Yeah, I mean, you get an investigation**  
8 **that says there is a warrant for Mr. Engler's**  
9 **arrest and there are fraud -- there is a history**  
10 **of fraud with Mr. Engler.**

11 **Why did you not advise Mr. Douglas**  
12 **to go to the authorities voluntarily and disclose**  
13 **his relationship with Mr. Engler?**

14 A. Well, I -- I wasn't counseling him on  
15 those criminal matters. You know, Sean Moulton  
16 and this other firm were working on that, and it  
17 didn't enter my mind.

18 What I did suggest, as you can  
19 read, if any properties were sold, he had to pay  
20 Engler any money, contact the FBI.

21 **Q. Right. So in the e-mail, you say wait**  
22 **to contact the FBI until you close on any**  
23 **properties and need to repay Engler; correct?**

24 A. I didn't say that.

25 **Q. Okay. It says, "Once you closed on any**

1 **properties and need to repay Engler, then I**  
2 **suggest that you contact the FBI"?**

3 A. It does say that.

4 **Q. Okay.**

5 A. It doesn't say --

6 **Q. Your e-mail does not say for Mr.**  
7 **Douglas to go confer with the FBI prior to closing**  
8 **on any properties, does it?**

9 A. No.

10 **Q. Okay. All right. Let's go to Fidelity**  
11 **Exhibit 1 again, please.**

12 MR. BERMAN: Can we go ahead and take a  
13 break? We've been going non-stop for about two  
14 hours. I need a break.

15 MR. ELGIDELY: Sure, we can take five  
16 minutes.

17 (Whereupon, a recess was  
18 taken at 3:27 and  
19 resumed at 3:34 as  
20 follows:)

21 MR. ELGIDELY: Let's go back on the  
22 record.

23 MR. BERMAN: I was starting to say off  
24 the record, Bob, the witness expressed to me that  
25 he is tired. I asked how he was doing at the

1 break because I think we actually went more than  
2 two straight hours just now. It looks like we  
3 present went probably --

4 THE WITNESS: Two and 45.

5 MR. BERMAN: Yeah, two and a half hours  
6 or two and three-quarters hours.

7 But if you have a full hour, I  
8 have some followup questions. I probably don't  
9 have a half an hour. That's, obviously, going to  
10 be more than a traditional seven-hour day.

11 But the witness also shared with  
12 me earlier, and I think he did with you on the  
13 record, that he has some medical issues, and he  
14 said he is tired. So it's really up to him. I  
15 would ask that he give us his judgment. We can  
16 resume this on another day if we need to.

17 I do have some followup questions,  
18 and I know you're trudging through these documents  
19 and you have more questions, and I don't know that  
20 we're going to be able to get through it all  
21 today. But we can try.

22 MR. ELGIDELY: Well, Steve, let me just  
23 -- for the record, we started at 10:00 a.m.  
24 Eastern time, and we broke at, I believe it was,  
25 1:00 p.m. Eastern time. So that would be a total

1 of four hours. We reconvened at 1:00 p.m. It is  
2 now 4 -- I'm sorry -- we reconvened at 1:45 p.m.,  
3 and it is now 4:35 p.m.

4 MR. BERMAN: Right. We haven't hit our  
5 seven-hour mark, but we are approaching it. That  
6 was my only point.

7 MR. ELGIDELY: Okay. I just need -- we  
8 have a significant evidentiary hearing on  
9 Thursday. We've noticed Mr. Freeman's deposition  
10 in the main bankruptcy case as well as the  
11 adversary proceeding.

12 THE WITNESS: We can keep going.

13 MR. ELGIDELY: So, you know, I will go  
14 through this as quickly as we can, Mr. Freeman,  
15 but, you know, these issues are important to our  
16 hearing, and we'd prefer not to call you back on  
17 another day.

18 MR. BERMAN: No, and I'd like to get  
19 through it as well, but I want to be sensitive to  
20 the witness's needs. He indicated that we will  
21 keep going, see how we do.

22 MR. ELGIDELY: Great.

23 BY MR. ELGIDELY:

24 Q. Let's go back to Fidelity Exhibit 1, if  
25 we could.

1 A. Okay.

2 Q. Why don't we take a moment to glance at  
3 that while I find might my spot here.

4 A. Any particular section?

5 Q. If you can review the -- I think it is  
6 a two- to three-page memo, if you could just  
7 review it.

8 A. No. I meant what section of it?

9 Q. The whole thing, sir.

10 Sir, would it be fair to  
11 characterize Fidelity Exhibit 1 as notes of the  
12 timeline of events that occurred in your  
13 representation of David Douglas as it related to  
14 Richie Engler?

15 MR. BERMAN: Objection; asked and  
16 answered.

17 A. Yes.

18 BY MR. ELGIDELY:

19 Q. Okay. Sir, in paragraph No. 4 in the  
20 first page in the last sentence, it says, "I  
21 assume that Dave and Ron have discussed how this,  
22 quote, 'distributions of profits to Richie,' close  
23 quote, would be recorded for income tax purposes."

24 Did I read that accurately?

25 A. You read that accurately, yes.

1 Q. Okay. And by "Richie" again, are you  
2 referring to Richie Engler?

3 Sir?

4 A. Yeah. I'm pausing to reread this, sir.  
5 Yeah, Richie Engler. Yeah, that's  
6 who it is.

7 Q. Okay. And these distributions are  
8 profits from Douglas Investments, LLC, as the  
9 document is titled?

10 A. I'm sorry, what?

11 Q. When you are referring to distributions  
12 of profits to Richie, are you referring to  
13 distributions from Douglas Investments, LLC?

14 A. I am.

15 Q. Okay. In the next paragraph, sir, you  
16 indicate that you had a conversation with Mr.  
17 Walther, W-a-l-t-h-e-r, and that he confirmed  
18 Douglas Investments would be a single-member LLC,  
19 which was going to lend money to the LLC, and  
20 after all expenses were paid, Richie and David  
21 would split the profits.

22 Again, are you referring to the  
23 splitting of profits from Douglas Investments,  
24 LLC?

25 A. Yes.

1           **Q. To both Richie Engler and David**  
2 **Douglas?**

3           A. Yes, that's what I'm referring to  
4 there.

5           **Q. In the next sentence you say that there**  
6 **would be a K-1 issued only when gain is**  
7 **distributed and there would be capital gain to**  
8 **Richie.**

9                           **What is your understanding of that**  
10 **sentence?**

11           MR. BERMAN: Objection; foundation.

12           A. My understanding is that the K-1, which  
13 would be issued by the LLC for income tax  
14 purposes, would show any gain -- well, whoever  
15 might be the members at the time would show gain.  
16 BY MR. ELGIDELY:

17           **Q. Okay. But I thought it was your**  
18 **testimony that Mr. Engler was not going to be on**  
19 **the papers of the LLC.**

20           A. Well, I think what he is talking about  
21 here or -- excuse me -- would be -- apparently Mr.  
22 Walther must have told me that a K-1 would be  
23 issued -- well, he just said a K-1 would be  
24 issued. So I'm --

25           **Q. Well --**



1 A. -- I'm just --

2 Q. I'm sorry, Mr. Freeman.

3 It doesn't state a K-1 would just  
4 be issued. It says, "He further indicated that  
5 there would be a K-1 issued only when gain is  
6 distributed and there would be capital gain to  
7 Richie"; correct?

8 A. That's what it says.

9 Q. Okay. Is that what he told you?

10 A. That's what he told me.

11 Q. Okay. Okay. Let's go to paragraph 9  
12 on page 2. It says, "Amendment to business loan  
13 agreement and operating agreement," and the last  
14 sentence states, "If both he and Deb were to die  
15 before Richie, then Richie was to receive the  
16 membership interest. Richie was then to liquidate  
17 everything and divide 50/50 between himself and  
18 the Douglas heirs."

19 Did I read that accurately?

20 A. Yes, you did.

21 Q. Okay. What business -- I'm sorry.  
22 What operating agreement are you referring to in  
23 this paragraph?

24 A. Douglas Investments, LLC.

25 Q. Okay. Why was it contemplated, if you

1 know, that -- for Richie Engler to receive the  
2 membership interest in Douglas Investments, LLC,  
3 upon the death of David and Debbra Douglas?

4 A. As I recall, the purpose of this was to  
5 provide a mechanism, in the event that Debbie and  
6 David Douglas were deceased, so as to go ahead and  
7 liquidate the assets, have somebody be in charge.

8 Q. Okay. In your profile, sir, it  
9 indicates that you do some estate planning work?

10 A. I do.

11 Q. Okay. Isn't it customary, when an  
12 individual dies, that the executor of their estate  
13 would administer their assets?

14 A. Yeah.

15 Q. Okay. Have --

16 A. So that was --

17 Q. Have you ever been involved in a  
18 transaction where a third party had requested  
19 their name not to be on an LLC but that they would  
20 receive the membership interest upon the deaths of  
21 the borrower?

22 A. No.

23 Q. No, what?

24 A. No, I have not been involved in that.

25 Q. Okay.

1 A. You asked if I had been involved in a  
2 prior transaction or any other?

3 Q. Yes, sir.

4 A. And I said no.

5 Q. Okay. How typical was it for a third  
6 party to receive membership interest upon the  
7 death of the members of an LLC?

8 MR. BERMAN: Objection; relevance.

9 A. Well, I would say it was not common.

10 BY MR. ELGIDELY:

11 Q. Okay. Paragraph 11, sir, page 3, of  
12 Fidelity Exhibit 1.

13 A. Okay.

14 Q. The second sentence says, "He also  
15 wanted to make changes in the agreement to provide  
16 that if you were to die that Deb and Richie would  
17 continue to operate the business."

18 Did I read that accurately?

19 A. Yes.

20 Q. Okay. What business were you referring  
21 to?

22 A. Douglas Investments, LLC.

23 Q. Okay. How common is it, in your 40  
24 years of practice, for a lender to become an  
25 operator of a borrower's business upon the

1       **borrower's death?**

2           A.     It's not common.

3           Q.     Okay. Let's go Fidelity Exhibit 3,  
4       **please.**

5           A.     Okay.

6           Q.     Okay. I believe your testimony earlier  
7       **was that David Douglas had given you the address**  
8       **for -- to be used for Engler Land Investments,**  
9       **LLC; is that correct?**

10          A.     Yes.

11          Q.     Okay. Sir, you indicated in paragraph  
12       **5 that you prepared a contract dated October 29,**  
13       **2006, in which Engler Land Investments was**  
14       **purchasing from Douglas Investments the property**  
15       **commonly known as Teton Creek Resort for a**  
16       **purchase price of \$12 million, and you also**  
17       **testified that you had recorded that deed from**  
18       **Engler Land Investments to Douglas Investments in**  
19       **the public records in the Teton County Recorder's**  
20       **Office; is that correct?**

21          A.     Yes.

22          Q.     Okay. Prior to recording the deed, did  
23       **you have any conversations with Mr. Douglas as to**  
24       **whether the \$12 million purchase price had been**  
25       **paid?**

1 A. No.

2 **Q. Why not?**

3 A. Because when I did the credit, then he  
4 called me and said to go ahead and do the deed. I  
5 mean, it was -- I simply assumed that there had  
6 been consideration paid.

7 **Q. Did you ask him whether he wanted you**  
8 **to be present at the closing of that transaction?**

9 A. No. I didn't ask him; assumed he  
10 didn't.

11 **Q. Do you know if there was a closing for**  
12 **that transaction?**

13 A. I have no idea.

14 **Q. Okay. Did you prepare any HUD-1**  
15 **settlement statements to reflect the consideration**  
16 **that flowed between the parties for that**  
17 **transaction?**

18 A. No. I wasn't --

19 MR. BERMAN: Objection; asked and  
20 answered.

21 A. (Continuing.) I was not involved in  
22 the closing, if there was one.

23 BY MR. ELGIDELY:

24 **Q. Well, whether you -- you were not**  
25 **involved in the closing or the preparation of any**

1 closing documents other than the deed and the  
2 contract?

3 A. That is correct.

4 Q. Okay. Okay. Let's go to an e-mail  
5 from you to Sean Moulton dated December 18, 2008.  
6 I'm going to try to find it in the Fidelity binder  
7 here. It looks like it's Fidelity 26.

8 A. Okay.

9 Q. Okay. In this e-mail that purports to  
10 be from you to Sean Moulton, carbon copied to  
11 David Douglas, the reference is "Congro versus  
12 Douglas, Idaho."

13 Did I read the header correctly?

14 A. You did.

15 Q. Okay. In the e-mail you state, "Sean,  
16 I do not recall what the original purpose was for  
17 Engler Land Investments, LLC, other than to give  
18 Dave and Richie another entity to use. Brad."

19 What other entity were you  
20 referring to?

21 A. Douglas Investments, LLC.

22 Q. Okay. Let's turn to packet 10, if we  
23 can, sir.

24 A. And refresh my memory. What's -- are  
25 those the deeds?

1 Q. Yes, those are the deeds. I'm sorry.

2 A. Okay.

3 Q. If we could turn to the Fidelity  
4 Exhibit 35, if you have it separately, that works,  
5 obviously, as well.

6 It's the deed concerning the Punta  
7 Gorda condominium and vacant parcels of land from  
8 Ulrich Engler to Douglas Investments, LLC.

9 A. Okay. We will find that.

10 Q. Okay.

11 A. I think I've got it right here. You  
12 said it is the deed?

13 Q. Yes, sir.

14 A. I do have that.

15 Q. Okay. Is this a deed that you caused  
16 to be recorded in the public record in Charlotte  
17 County, Florida?

18 A. Yes.

19 Q. Okay. Did you prepare this deed?

20 A. I did.

21 Q. Okay. That's why your name appears in  
22 the upper left-hand corner?

23 A. Yeah. That's not my writing. That's  
24 probably the recorder's information.

25 Q. No, no. In the upper -- I'm sorry if I

1 **said upper right. I meant upper left-hand corner.**

2 A. That's not my writing, but I assume  
3 that's what the Charlotte County recorder wrote on  
4 there. But it says on page 2 that I prepared it,  
5 the lower left-hand corner.

6 **Q. Oh, okay. Great. Thank you.**

7 **This deed is dated September 25th,**  
8 **2006; correct?**

9 A. Yes.

10 **Q. I thought you testified earlier that**  
11 **you did not meet Mr. Engler until 2007, when you**  
12 **were golfing with him and Mr. Douglas in Florida?**

13 A. That's correct.

14 **Q. Okay. How did you go about notarizing**  
15 **Mr. Engler's signature?**

16 A. First of all, Mr. Douglas called me and  
17 asked me to prepare this deed, and I said I would.  
18 And then also Mr. Engler sent me a fax that's in  
19 -- that I believe you have -- I know you have it  
20 -- where it's dated August 8, 2006, where it says,  
21 "Brad, I would like to quick deed properties into  
22 Douglas Investments, LLC. Please find enclosed  
23 the warranty deeds on those properties. Should  
24 you have any questions, please call David Douglas.  
25 Thank you, Richie Engler."



1           Q.    Okay.  In the notary block, sir, it  
2           says, "I, the undersigned, notary public in and  
3           for said County, in the State aforesaid, do hereby  
4           certify that Ulrich Engler, personally known to me  
5           to be the same person whose name is ascribed to  
6           the foregoing instrument, appeared before me this  
7           day in person and acknowledged that he signed,  
8           sealed and delivered said instrument as his free  
9           and voluntary act for the uses and purposes  
10          therein set forth and including the release and  
11          waiver of the right to homestead."

12                                Was that a true or false statement  
13          that Mr. Engler was -- appeared before you on  
14          September 25, 2006?

15           A.    That would be false.

16           Q.    Okay.  Now, the -- Mr. Engler's  
17          signature is also witnessed by two individuals.  
18          It looks like Peter Bazos.

19                                Would that be your partner?

20           A.    Yes.

21           Q.    And who is the other name that appears  
22          there?

23           A.    Not sure who that is.  Oh, that -- you  
24          know, I just know -- I don't know if that says  
25          Dennis Harris maybe.

1           **Q.    Okay.  You can't recognize that**  
2           **signature?**

3           A.    No.  But to me, it looks like Dennis  
4           Harris, and Dennis Harris is a person in Florida  
5           that was involved with David Douglas in the Punta  
6           Gorda project.  So maybe he witnessed that.

7           **Q.    Okay.  Well --**

8           A.    So --

9           **Q.    You don't know one way or another**  
10          **whether that's Dennis Harris's signature, do you?**

11          A.    I don't.  I'm just trying to read it.

12          **Q.    Okay.  Well, Peter Bazos is your**  
13          **partner; correct?**

14          A.    He is.

15          **Q.    What about Peter Bazos?  Did he**  
16          **physically witness Mr. Engler ascribe his**  
17          **signature to this deed?**

18          A.    No.

19          **Q.    Isn't it your understanding, sir, based**  
20          **upon the thousand or so real estate transactions**  
21          **you've been involved in, when you witness**  
22          **somebody's signature, you actually have to witness**  
23          **them sign the document?**

24                 MR. BERMAN:  Objection; argumentative.

25          A.    What happens, from time to time, Mr.

1 Elgidely, is that as an accommodation to clients,  
2 sometimes they're not present when we do notarize  
3 their signatures.

4 BY MR. ELGIDELY:

5 **Q. Okay. Was Mr. Engler your client in**  
6 **transaction?**

7 A. No. But Mr. Douglas asked me to do the  
8 deed, and Mr. Engler had sent me a request to do  
9 the deed, so I felt comfortable doing that.

10 **Q. Okay. Did you call Mr. Engler to**  
11 **confirm that he wanted you to do this deed?**

12 A. No. He sent me that written letter I  
13 mentioned.

14 **Q. Did you follow up with a phone call?**

15 A. No.

16 **Q. All right. Mr. Freeman, I ask you to**  
17 **go further into the fax that you labeled as ten,**  
18 **and there is a warranty deed. It says, "Prepared**  
19 **by Gary Kahle," and it's for the condo units in**  
20 **Punta Gorda?**

21 A. I'm sorry. Prepared by whom?

22 **Q. Gary Kahle, which is K-a-h-l-e, Deep**  
23 **Creek Development I, to Richie Engler for the**  
24 **Punta Gorda condominiums that we were just talking**  
25 **about.**

1 A. I have located that.

2 Q. Okay. If you look at the signature for  
3 Deep Creek Developments I, LLC, there is a  
4 signature block for Dennis Harris. I'd just ask  
5 you to compare that to the witness in the deed  
6 that you notarized for Mr. Engler and see if those  
7 signature blocks -- see if those signatures look  
8 the same.

9 Do the signatures look the same?

10 A. Let me check. I just put the other  
11 deed back. Do you have that handy?

12 MR. BERMAN: Yes, it is Exhibit 35.

13 THE WITNESS: Oh, okay.

14 MR. BERMAN: It is not back in your  
15 book. It is loose in that stack over there. It's  
16 got your letterhead on top, dated October 12 --

17 THE WITNESS: 34, 33.

18 MR. BERMAN: You can borrow mine.

19 THE WITNESS: Sorry about the delay  
20 here.

21 MR. ELGIDELY: Take your time, as long  
22 as we can get through this.

23 A. (Continuing.) Okay. So you're asking  
24 me to look at the two signatures for Mr. Harris?

25 BY MR. ELGIDELY:

1 Q. Yes. You thought that the signature as  
2 a witness for Mr. Engler in Fidelity Exhibit 35  
3 was Mr. Harris's signature, and I've located Mr.  
4 Harris's signature. I would ask you to just  
5 glance at them and see if they look familiar, look  
6 similar.

7 A. No, they don't.

8 Q. Okay, thank you.

9 Mr. Freeman, you testified earlier  
10 that you had dissolved Engler Land Investments,  
11 LLC, with the Florida Division of Corporations?

12 A. Yes.

13 Q. Okay. What, if any, discussions did  
14 you have with Mr. Douglas concerning this  
15 dissolution of Engler Land Investments, LLC?

16 A. He called me and said he didn't need to  
17 use it anymore so we might as well dissolve it.  
18 That's what he said to me.

19 Q. Was that the extent of your  
20 conversations concerning that issue?

21 A. Yes.

22 Q. Okay. All right. Let's turn to packet  
23 3, 4 and 7 and the amendment to the loan agreement  
24 and second amended operating agreement of Douglas  
25 Investments, LLC. That's the document on top.

1 **That's --**

2 A. And I'm sorry. It is the amendments to  
3 the business loan agreements?

4 **Q. Right; and second amendment to**  
5 **operating agreements.**

6 A. Okay. I do have that.

7 MR. ELGIDELY: Okay. Great. I think I  
8 marked one exhibit previously, Linda. Let's mark  
9 this as Trustee Exhibit 2, please.

10 THE REPORTER: I've marked it, and I'm  
11 passing it to Mr. Freeman.

12 (Trustee's Exhibit No.  
13 2, Witness Freeman, was  
14 marked for identification  
15 June 15, 2010.)

16 BY MR. ELGIDELY:

17 **Q. Mr. Freeman, do you recognize this**  
18 **document?**

19 A. I do.

20 **Q. Okay. Is this a document that you**  
21 **prepared?**

22 A. Yes.

23 **Q. And is this document maintained in your**  
24 **files?**

25 A. Yes.

1 Q. Okay. Underneath paragraph 1, it says,  
2 "If Debbra does not survive David, then all of  
3 David's membership interest shall be transferred  
4 to Engler subject to the terms and conditions  
5 hereinafter set forth."

6 Did I read that accurately?

7 A. You did.

8 Q. Are you referring to Mr. Douglas's  
9 membership interest in Douglas Investments, LLC?

10 A. I am.

11 Q. Okay. How typical was it for borrowers  
12 to, I guess, provide for the transfer of their  
13 membership interest in the borrower entity to a  
14 lender upon their death?

15 MR. BERMAN: Objection; asked and  
16 answered.

17 A. It would be unusual.

18 BY MR. ELGIDELY:

19 Q. Okay. And the same thing underneath  
20 paragraph 2, which says, "If David does not  
21 survive Debbra, then all of Debbra's membership  
22 interest shall be transferred to Engler subject to  
23 the terms and conditions hereinafter set forth."

24 That was unusual as well?

25 A. Yes, it is.

1           **Q.    Okay.  I'm going to turn to I think the**  
2 **third amendment, if you can follow me in the**  
3 **stack, to the operating agreement of Douglas**  
4 **Investments, LLC.**

5           A.    Okay.  Hang on.  I have the amendment  
6 to the business loans here.  Let me find -- hang  
7 on.  I know where they are.  The operating  
8 agreement?

9           **Q.    Yes, sir, the third amendment to the**  
10 **operating agreement.**

11          A.    Okay.

12                MR. BERMAN:  For the record, the  
13 witness is looking at Exhibit 31.

14          A.    (Continuing.)  Okay.  I have that in  
15 front of me, and I have the original operating  
16 agreement, the first amendment, second, the third,  
17 and you mentioned the third one?

18 BY MR. ELGIDELY:

19          **Q.    Yes, sir.**

20          A.    I have that in front of me.

21          **Q.    Okay.  I don't have it in front of me,**  
22 **as things would have it.  Give me one moment to**  
23 **locate it.**

24                        **Was that included, sir, in your**  
25 **production as part of the operating agreement?**



1 A. I'm sorry?

2 Q. Was that -- the third amendment to the  
3 operating agreement, was that included in your  
4 document production as an attachment to the  
5 operating agreement?

6 A. Yes.

7 Q. Okay. Then let me try to find it.

8 A. Do you have the other amendment, sir?

9 Q. Yes, sir, I do. Okay. Let's mark the  
10 third amendment as Trustee Exhibit 3, please.

11 MR. BERMAN: It's already marked as  
12 part of Exhibit 31.

13 MR. ELGIDELY: So I will mark it as  
14 Fidelity's Composite Exhibit 31.

15 MR. BERMAN: Yes. For the record, the  
16 operating agreement, plus all the amendments  
17 thereto, were reproduced by Mr. Freeman, I  
18 believe, including -- let me make sure all the  
19 operating agreements were copied. All of the  
20 amendments were copied as Exhibit 31.

21 MR. ELGIDELY: Okay.

22 BY MR. ELGIDELY:

23 Q. Mr. Freeman, looking at Section 13.01  
24 of the third amendment to the operating agreement  
25 of Douglas Investments, LLC, it provides for Mr.

1 Engler to become the sole person in charge to  
2 manage the business and affairs of the company  
3 upon the deaths of David and Debra Douglas; is  
4 that correct?

5 A. Yes.

6 Q. And is this a document that you  
7 prepared?

8 A. It is.

9 Q. And it is maintained in your files?

10 A. Yeah, I've got a copy of it.

11 Q. Okay. I asked you before how typical  
12 it was for a lender to become a member of the  
13 entity that was the borrower.

14 I will ask you now: How typical  
15 is it for a lender to become the sole person in  
16 charge of the management of the business and  
17 affairs of the borrower following the deaths of  
18 the principals of the borrower?

19 A. It would not be common.

20 Q. Would that be unusual?

21 A. Yes.

22 Q. This document provides for a management  
23 committee following the deaths of David Douglas,  
24 Debra Douglas and Richie Engler, and there's a  
25 column for Douglas and there's a column for

1 **Engler.**

2 **Do you know how the individuals**  
3 **were determined in the column for Douglas?**

4 A. By Mr. Douglas.

5 **Q. Okay. Do you know how the individuals**  
6 **were selected for the column for Mr. Engler?**

7 A. I believe Mr. Engler selected those  
8 people.

9 **Q. Okay. Were you involved in any way in**  
10 **those discussions?**

11 A. The only involvement I had is Mr.  
12 Douglas asked me if I would agree to serve on that  
13 committee, and I said yes, along with his -- with  
14 his kids.

15 **Q. Okay. Did you have any conversations**  
16 **concerning the Engler side of the table, if you**  
17 **will?**

18 A. No.

19 **Q. Okay. Let's turn to the fourth**  
20 **amendment to the operating agreement, please.**

21 A. Okay.

22 **Q. This document provides for Mr. Engler**  
23 **to become the owner -- or I'm sorry -- provides**  
24 **for Mr. Engler to be in charge of managing the**  
25 **business affairs of Douglas Investments, LLC, upon**

1 **the death of David and Debbra Douglas; correct?**

2 A. Yes, it does.

3 **Q. Is this a document that you prepared?**

4 A. Yes.

5 **Q. Is this a document that's maintained in**  
6 **your files?**

7 A. Yes.

8 **Q. Did you prepare this document based**  
9 **upon the discussions with Mr. Douglas?**

10 A. I did.

11 **Q. Okay. The document also provides for a**  
12 **management committee, much like the third**  
13 **amendment to the operating agreement of Douglas**  
14 **Investments, LLC.**

15 **What, if any, discussions did you**  
16 **have concerning those members of the management**  
17 **committee other than yourself?**

18 A. None. Mr. Douglas just gave me names  
19 to put in there.

20 **Q. Okay. And I assume that's also**  
21 **included in the Composite Exhibit 31?**

22 MR. BERMAN: All of the amendments,  
23 including the fourth amendment to the operating  
24 agreement, are part of Composite Exhibit 31.

25 MR. ELGIDELY: Thank you, Mr. Berman.

1 I'm almost done here. I just need  
2 to look through some exhibits.

3 BY MR. ELGIDELY:

4 Q. Mr. Freeman, if we could turn to the  
5 packet that's marked packet 2, please.

6 A. Generally -- okay. I've got it. Let  
7 me bring it over to where I was sitting.

8 Can I put away the operating  
9 agreement?

10 Q. Yes, sir. Thank you.

11 A. It is a matter of space.

12 Q. Okay. Okay.

13 A. I have No. 2 in front of me.

14 Q. Okay. In the first page of packet No.  
15 2, it has some handwritten notations.

16 Do you know whose handwriting that  
17 is?

18 A. Oh, I'm sorry. I'm hoping that what I  
19 have is in the same order that you have. It  
20 probably is. Is that where it says at the top  
21 10/24?

22 Q. Yes, sir.

23 A. Okay. That's not my handwriting.  
24 Let's see. I think this is my secretary's  
25 printing, because I can't read her handwriting.

1 Q. Okay.

2 A. But go ahead.

3 Q. I guess that says a lot about me  
4 because I can read it.

5 It says in here, sir, "Dave called  
6 and the unit number needs to be changed to 121  
7 instead of 161, which means that we need to send  
8 in" an article -- "articles of corrections for  
9 which I have prepared."

10 A. Okay.

11 Q. Do you know why the unit number for  
12 Engler Land Investments, LLC, was being changed  
13 from unit 161 to unit 121?

14 A. I don't, unless it was a typo  
15 initially. That's -- you know, I'm not sure.

16 Q. Okay. Do you know whether that's the  
17 exact same address for an entity by the name of  
18 Private Commercial Office, Inc.?

19 A. I do not know.

20 Q. Okay. Sir, on the -- there is a  
21 packet, UPS Next Day Air, and attached to it is a  
22 -- there are two receipts, shipping documents.  
23 There is a letter dated -- I'm sorry. Attached to  
24 a letter dated April 23rd, 2007, is articles of  
25 dissolution for Engler Land Investments, LLC.

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**That's a letter going to whom?**

**Q. The letter was to the Florida Department of State, enclosing the articles of --**

A. Okay. I do have that.

**Q. Okay. The articles of dissolution, do you know who prepared these articles?**

A. I think our office did.

**Q. Okay. Under No. 5, it says, "All debts, obligations and liabilities of the limited liability company have been paid or discharged."**

**How did you go about obtaining the information to check that box?**

A. I believe that Mr. Douglas just said that they really didn't transact any business and they didn't owe anybody any money.

**Q. Okay. Did you ask Mr. Douglas what about the \$12 million for the Teton Creek Resort?**

A. No.

**Q. Did he mention anything about the \$12 million for the Teton Creek Resort?**

A. He did not.

**Q. Okay. Is there a reason why you didn't ask him about the \$12 million for the Teton Creek Resort?**

A. No particular reason, didn't even think

1 about it, and it seemed outside of the scope of  
2 what I was doing.

3 Q. Okay. Well, you prepared the contract  
4 that provided for a \$12 million purchase price for  
5 the Teton Creek Resort; correct?

6 A. I did.

7 Q. Okay. So that -- that was -- that  
8 contract was written in the scope your duties  
9 since you prepared it; correct?

10 A. It was in the scope of my duties to  
11 prepare the contract, yeah.

12 Q. Okay. And you were preparing articles  
13 of dissolution for Engler Land Investments that  
14 you were submitting to a governmental agency, the  
15 Florida Division of Corporations; correct?

16 A. Yes.

17 Q. And that document asked whether all  
18 debts, obligations and liabilities of the limited  
19 liability company have been paid or discharged?

20 A. Yeah, well, I --

21 MR. BERMAN: Objection; asked and  
22 answered.

23 A. (Continuing.) You know, I assume there  
24 are no outstanding issues. I think, as I recall,  
25 by this time the property had been reconveyed back



1 to Douglas Investments, LLC.

2 BY MR. ELGIDELY:

3 Q. Do you know if there is any paper that  
4 Engler Land Investments owed money on to Douglas  
5 Investments for the conveyance of that property?

6 A. I do not know.

7 Q. Okay. And you didn't follow up as to  
8 whether -- whether it had paid the 12 million?

9 A. I --

10 MR. BERMAN: Objection; asked and  
11 answered.

12 A. (Continuing.) Yeah, no, the only thing  
13 I did, I suggested -- I believe that Mr. Douglas  
14 -- that he discussed with his accountant whether  
15 or not there should be a promissory note put in  
16 the file because I didn't know what -- I didn't  
17 know how the consideration was to be paid.

18 BY MR. ELGIDELY:

19 Q. Okay. Mr. Freeman, you produced a  
20 number of handwritten notes to us, and I thank you  
21 for that.

22 Do you have the original notes in  
23 your files?

24 A. I do.

25 Q. Okay. Let's go to the e-mail from you

1 to Amy Potter dated July 23rd, 2009.

2 A. I see one July 20. Is that that same  
3 packet? Excuse me. Yeah, I have it here.

4 Q. Okay. On page 2 of that document, it  
5 says on July 21, 2009, at 6:42 p.m. Brad Freeman  
6 wrote -- it says, "Just FYI, I have no capital  
7 letters, financial information on Engler, and I  
8 have no idea who would. I only represented David  
9 Douglas. Brad."

10 A. Okay.

11 Q. Was that a true statement on July 21,  
12 2009?

13 A. Yes.

14 Q. Had you at any time obtained any  
15 financial information on Richie Engler?

16 A. No.

17 MR. ELGIDELY: Okay. Okay. Like I  
18 said, I think I'm almost done. I'm going on to  
19 the last packet here to see if there is anything I  
20 need to ask about.

21 THE REPORTER: Can we take a  
22 couple-minute break?

23 MR. ELGIDELY: Sure.

24 (Whereupon, a recess was  
25 taken at 1:11 and

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resumed at 1:14 as follows:)

MR. ELGIDELY: Mr. Freeman, we are back on the record.

BY MR. ELGIDELY:

**Q. What did you do to prepare for your deposition today?**

A. What I did, I went through the subpoena list and tried to find everything that you gentlemen wanted. I did that.

And I talked to Mr. Douglas a few weeks ago about the documents in the file and wanted to see if he would decide to waive his attorney-client privilege, and he decided that he would do that.

**Q. Okay. What, if any, conversations -- and by conversations, I mean telephone, e-mail, video, any form of conversations -- did you have with Mr. Berman prior to the commencement of your deposition today?**

A. I have had none.

**Q. Okay. Have you had any conversations with Mr. Berman or anybody from Mr. Berman's offices prior to the commencement of your deposition today?**

1           A.    Yes.  I had a conversation with Mr.  
2   Traub quite a while ago.  It was right after I  
3   sent to both counsel the -- what was it I sent --  
4   oh, I know.  I sent the VTS investigation results,  
5   and then I sent a copy of that e-mail that I had  
6   sent to David Douglas and to Sean Moulton  
7   regarding the FBI and all that stuff.

8                   And Mr. Traub called me and wanted  
9   to know if Mr. Douglas was waiving his  
10  attorney-client privilege, and I said, "Not that I  
11  know of," at that time.  And that was the extent  
12  of our conversation.

13           **Q.    Oh, okay.  Okay.  If I represent to you**  
14 **that Mr. Engler and/or -- let me rephrase the**  
15 **question.**

16                   **If I represent to you that Private**  
17 **Commercial Office, Inc., had transferred**  
18 **\$40,815,000 to Douglas Investments, LLC, between**  
19 **the period August, 2006, and July, 2007, are you**  
20 **aware of any investigations, whether it be civil,**  
21 **criminal or international, that were conducted**  
22 **prior to August, 2007?**

23           A.    Is that August, 2007, is that the date  
24  I -- of my request of Mr. Vincent?

25           **Q.    Yeah.  According to the documents you**

1 provided, you made a request of Mr. Vincent on  
2 August 27, 2007. That's the first e-mail in the  
3 collection of documents you provided labeled,  
4 "Investigative material."

5 A. Yeah. That -- that's the --

6 Q. And I reforwarded that to you yesterday  
7 afternoon. I don't know if you have that in front  
8 of you or not.

9 A. Yeah, actually, I do. That's the only  
10 investigation of which I'm aware.

11 Q. Okay. Do you know whether Mr. Douglas  
12 had a civil, criminal or international  
13 investigation conducted of Mr. Engler prior to  
14 August 27, 2007?

15 A. I do not know that.

16 Q. Okay.

17 A. Well, I don't know whether he did or  
18 not.

19 Q. Okay. And, Mr. Freeman, you indicated  
20 that you were going to be forwarding to us, via  
21 Federal Express, the statements or rendition of  
22 professional services that you rendered to Mr.  
23 Douglas personally, Douglas Investments, LLC, and  
24 Engler Land Investments, LLC?

25 A. Yes. Now, whether -- well, yeah, the

1 answer is, yes, I shall do that. It's going to be  
2 a matter of logistics here, whether they go out  
3 today or tomorrow.

4 **Q. You know what? Tomorrow is fine with**  
5 **me.**

6 A. Oh, okay.

7 **Q. I wanted to confirm that you are indeed**  
8 **sending those documents.**

9 A. Yes. In fact, I think we already got  
10 the label ready.

11 MR. ELGIDELY: Perfect. Okay. With  
12 that being said, I have no further questions at  
13 this time, Mr. Freeman, and I thank you very much  
14 for your time.

15 THE WITNESS: You are very welcome.

16 MR. BERMAN: I have some redirect.

17 REDIRECT EXAMINATION

18 BY MR. BERMAN:

19 **Q. Mr. Freeman, we talked about your**  
20 **business loan template, and you testified about**  
21 **the form of it maybe changing over time.**

22 **Do you know if your business loan**  
23 **template was provided to -- strike that.**

24 **Take a look at Exhibit 7.**

25 A. Okay.

1 Q. It is the e-mail --

2 A. Uh-huh.

3 Q. -- from you dated June 28, 2006, where  
4 you appear to be transmitting the Douglas  
5 Investments operating agreement and the form of  
6 the business loan agreement.

7 Do you see that --

8 A. I do.

9 Q. -- exhibit?

10 Did you intend to provide Mr.  
11 Douglas with the template for the business loan  
12 agreement before any of the loans were made?

13 A. Yes.

14 Q. Okay. And -- and Mr. Elgidely asked  
15 you questions about how common it is for loans to  
16 be made or funded before the loan documents are  
17 signed.

18 Do you remember those questions?

19 A. I do.

20 Q. And do you have any reason to believe  
21 that any of these loans were funded before you  
22 provided Mr. Douglas with the business loan  
23 agreement template?

24 A. I have no way of knowing that.

25 Q. Okay. Your intention was to provide

1       **him a template to document these loan**  
2       **transactions?**

3           A.     Right, because it is my understanding  
4       that as each transaction came along, there would  
5       be separate documents, which I think you have  
6       copies of.

7           Q.     Okay. Did Mr. Engler direct you in any  
8       of the aspects of the structure or formation of  
9       Douglas Investments, LLC?

10          A.     No.

11          Q.     And when you testified that Mr. Douglas  
12       indicated to you that he wanted to be the sole  
13       owner of Douglas Investments, LLC, I think you  
14       testified that was sort of consistent with your  
15       experience with him because he generally didn't  
16       have partners and liked to be in charge of a  
17       business operation.

18                       Do you have any reason to believe  
19       that the structure of Mr. Douglas owning Douglas  
20       Investments, LLC, 100 percent was a sham or a  
21       ruse?

22                       MR. ELGIDELY: Object to form.

23          A.     Not in my opinion.

24       BY MR. BERMAN:

25          Q.     Okay. In fact, you testified that it



1 was consistent with your understanding of the way  
2 Mr. Douglas did business, that he would be in  
3 charge of the corporation?

4 A. That is correct.

5 Q. And you were asked a series of  
6 questions about modifying the operating agreement  
7 and modifying the business loan agreements to  
8 provide for a mechanism of, whereupon Mr.  
9 Douglas's and Mrs. Douglas's death, that ownership  
10 would transfer to Mr. Engler.

11 Do you remember that testimony?

12 A. Yes.

13 Q. How common is it, in your experience in  
14 various loan transactions and real estate  
15 transactions, for a lender such as a bank to have  
16 a stock power of attorney to provide them with  
17 further collateral for a loan transaction?

18 A. I'm sorry. To do what?

19 Q. Have a -- have you ever heard of the  
20 term "stock power of attorney" or "stock pledge"?

21 A. You mean a pledge of stock?

22 Q. Yes.

23 A. Yes, okay. I have, uh-huh.

24 Q. Okay. And generally --

25 A. Sure.

1 Q. -- what's your experience --

2 A. Uh-huh.

3 Q. -- with the purpose of a stock pledge?

4 A. Yeah, in order to collateralize the  
5 loan.

6 Q. Okay. So did it surprise you at all  
7 that Mr. Douglas wanted to provide that, upon his  
8 death and his wife's death, that Mr. Engler would  
9 have additional collateral by virtue of a transfer  
10 of the ownership interest in the operating entity?

11 A. No. I think that was really the  
12 purpose.

13 Q. Okay. And the -- strike that.

14 You were asked some questions  
15 about the Exhibit No. 1. Let's turn to that. Mr.  
16 Elgidely asked you questions, maybe for half an  
17 hour, about the language in paragraph 5 of Exhibit  
18 1.

19 Do you see that?

20 A. I do.

21 Q. And he was very careful and -- he was  
22 very careful to sort of hint to you that the  
23 property at 61 Southport Cove --

24 A. 91?

25 Q. I'm sorry.

1                   -- 91 Southport Cove had, in fact,  
2 **been transferred.**

3                   MR. ELGIDELY: I object to that  
4 characterization.

5                   MR. BERMAN: I haven't asked my  
6 question yet.

7                   MR. ELGIDELY: Okay.

8 BY MR. BERMAN:

9                   **Q. Do you know if the property at**  
10 **Southport Cove had, in fact, been transferred by**  
11 **Mr. Douglas to Mr. Engler?**

12                  A. Well, depends on how you define  
13 "transferred." Mr. Douglas had indicated that Mr.  
14 Engler had bought half an interest in the  
15 property.

16                  **Q. Okay. Well, I don't --**

17                  A. Well, he --

18                  MR. ELGIDELY: Mr. Berman, please don't  
19 interrupt the witness when he is trying to answer.

20                  A. (Continuing.) So in my opinion, that's  
21 a type of transfer.

22 BY MR. BERMAN:

23                  **Q. Okay. I thought your earlier testimony**  
24 **reflected that in your history and in your**  
25 **recollection that you prepared the memorandum of**

1 agreement that's reflected in paragraph 5 in  
2 anticipation of a transfer of an interest in the  
3 Southport Cove property.

4 Did I understand your testimony  
5 correctly?

6 A. No, I don't think I said in  
7 anticipation of. I thought I said that Mr.  
8 Douglas told me that Mr. Engler had purchased --  
9 had acquired a half interest --

10 Q. Okay.

11 A. -- and that Mr. Douglas wanted a  
12 document to memorialize that.

13 Q. Okay. The language you used seems to  
14 reflect a prospective anticipation of a transfer  
15 when you say, "He wanted to prepare a memorandum  
16 of agreement reflecting that Richie Engler had  
17 purchased the property."

18 A. Right, had purchased.

19 Q. And then if you read on, you say, "By  
20 virtue of the memorandum, Engler and David were to  
21 transfer their interest, their economic interest  
22 in the property."

23 A. Uh-huh, yes. You're talking about two  
24 separate things.

25 Q. Okay. Do you know, of your own

1       **personal knowledge, if there was a transfer of**  
2       **ownership in the property?**

3           A.     To whom?

4           **Q.     From -- from Mr. Douglas to Mr. Engler.**

5           A.     The only thing that I -- that I -- you  
6       know, I don't know what actually happened besides  
7       the memorandum I prepared. I don't know if it was  
8       ever signed or what happened.

9           **Q.     Okay. And were you aware that the**  
10       **property that we're talking about, the Southport**  
11       **Cove property, is tenancy by the entireties**  
12       **property in the State of Florida, owned by Mr. and**  
13       **Mrs. Douglas together?**

14           MR. ELGIDELY: Objection; calls for  
15       speculation.

16           A.     Did I know that?

17       BY MR. BERMAN:

18           **Q.     Did you know that?**

19           A.     I did not know that.

20           **Q.     Do you know that in Florida,**  
21       **homesteaded property that's owned by husband and**  
22       **wife, whether by joint tenancy or tenancy by the**  
23       **entireties, or as tenants in common, cannot be**  
24       **conveyed without both co-owners', both of the**  
25       **married couple's, signature? Are you aware of**

1 **that?**

2 MR. ELGIDELY: Objection; calls for a  
3 legal conclusion based upon Florida law. The  
4 witness has testified he is not a member of the  
5 Florida Bar.

6 MR. BERMAN: I wasn't asking for your  
7 opinion. I was just asking if you knew that.

8 A. I would -- that would be my assumption.

9 BY MR. BERMAN:

10 **Q. Okay. So if there was a memorandum**  
11 **proposed to reflect a transfer of ownership in**  
12 **homesteaded property owned by husband and wife in**  
13 **Florida, it couldn't effectively transfer any**  
14 **ownership interest in property without the wife's**  
15 **signature; correct?**

16 MR. ELGIDELY: Objection; calls for a  
17 legal conclusion based upon Florida law.

18 MR. BERMAN: If you know.

19 A. That would be my assumption, yes.

20 BY MR. BERMAN:

21 **Q. Okay. And the memorandum of**  
22 **understanding that you did prepare did not call**  
23 **for Mrs. Douglas's signature?**

24 A. It did not.

25 **Q. Okay. You were asked questions about**

1 Exhibit 14, and let's see. Sorry. Strike that.

2 You were asked questions about the  
3 advice you provided to David Douglas with respect  
4 to potential risks in soliciting funds from  
5 clients or from investors.

6 Do you remember that testimony?

7 A. Yes, uh-huh.

8 Q. You don't know one way or another if  
9 David Douglas elicited any funds from investors,  
10 do you?

11 A. I have no idea.

12 Q. Okay. You weren't giving Mr. Engler  
13 any advice with respect to soliciting funds from  
14 investors, were you?

15 A. No.

16 Q. You talked about the investigative work  
17 you requested to be performed by VTS at David  
18 Douglas's request. You talked about the reports  
19 you got at various times, including the reports  
20 you got in mid December, 2007. We've talked about  
21 the fact that you communicated the results of  
22 those investigations to Mr. Douglas at the various  
23 times they came in.

24 Do you remember all that  
25 testimony?

1 A. I do.

2 Q. Do you have any reason to believe that  
3 Mr. Douglas had information available to him which  
4 reflected some potential fraud or criminality  
5 concern with respect to Mr. Engler prior to your  
6 providing the information to him in December of  
7 2007?

8 A. Well, earlier that year, when Mr.  
9 Douglas asked me to hire the investigator, at that  
10 point he said he had some concerns or something --  
11 some language to that effect. Again, I don't  
12 recall exactly what his concerns were. I don't  
13 remember -- he might have said something about  
14 problems in Germany. I don't recall.

15 Q. Okay.

16 A. But that sounds familiar.

17 Q. Okay.

18 A. But what -- I don't have -- I don't  
19 know if he had any knowledge. I think that's why  
20 he wanted to have it checked out by an  
21 investigator.

22 Q. Okay. Well, did he ever tell you,  
23 "Hey, I just heard that Engler did X, Y and Z?  
24 Can you confirm it?"

25 A. He never told me that.



1 Q. Okay. So he never shared with you if  
2 he knew any additional information prior to you  
3 providing him that background?

4 A. He did not.

5 Q. And do you know if at any point in time  
6 prior to December, 2007, if Mr. Douglas shared the  
7 results of any investigations with Fidelity  
8 Timber, the seller of the Linderman Ranch  
9 property?

10 A. I have no idea.

11 Q. And do you know of your own personal  
12 knowledge if Mr. Douglas shared any of the results  
13 you found in mid December of 2007 -- if Mr.  
14 Douglas shared those results with anyone at  
15 Fidelity Timber leading up to, say, the spring of  
16 2008?

17 A. I have no knowledge of that.

18 Q. Did Mr. Douglas ever tell you that he  
19 communicated the investigative results that you  
20 were able to find through the VTS work with anyone  
21 at Fidelity Timber?

22 A. No. He never told me he shared them  
23 with anybody.

24 Q. Okay. You were asked a series of  
25 questions about your communications with Mr.

1 Douglas which are set forth at Exhibit 22 of the  
2 notebook. You communicated with Mr. Douglas on  
3 December 12, 2007.

4 Do you see that memo?

5 A. I have that.

6 Q. Okay. And you were asked a lot of  
7 questions about sort of the advice you gave Mr.  
8 Douglas not to take any more money from Mr. Engler  
9 after December 12, 2007.

10 Do you remember those questions  
11 and answers?

12 A. I do.

13 Q. Do you know if -- strike that.

14 Do you know if Mr. Douglas  
15 received any additional moneys from Mr. Engler or  
16 any entities with which he was associated  
17 subsequent to December 12, 2007?

18 A. I do not know.

19 Q. Were you aware that consistent with the  
20 collateral provisions in your business loan  
21 agreements Mr. Douglas, on behalf of Douglas  
22 Investments, Inc., did supply a mortgage but,  
23 instead of to Mr. Engler, to Mr. Tardif, who  
24 stands in Mr. Engler's shoes?

25 A. Do I know if he did that?

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**Q. Yeah.**

A. I do not know that.

**Q. Okay. And did you know that all of the moneys that were funded through business loan agreements to Douglas Investments, LLC, with respect to payments made for the Linderman Ranch on the installment contract with Fidelity Timber -- that all of those payments are supported by the mortgage which has been provided and recorded in the public records in Idaho?**

MR. ELGIDELY: Object to form; mischaracterization.

BY MR. BERMAN:

**Q. Were you aware of that?**

A. No.

I will tell you what I am aware of.

**Q. Okay.**

A. In line with your question, Mr. Douglas said that he had, quote, turned everything back over to the Trustee and was getting a release.

**Q. Okay.**

A. Those were his words, so I -- I know that.

**Q. Okay. But when you crafted the**

1       **business loan agreement template, it was your**  
2       **understanding and intention that these business**  
3       **loan transactions would all be supported by a lien**  
4       **on the real estate being purchased?**

5           A.     Yeah, well, whether it was going to be  
6       a recorded lien or otherwise, Mr. Douglas was  
7       supposed to make sure that Mr. Engler had the  
8       first rights to it.

9           **Q.     Okay.**

10          A.     Okay?

11          **Q.     Okay.**

12          A.     What they did after that, I have no  
13       idea.

14          **Q.     I understand.**

15                       **Did -- based upon your preparation**  
16       **of the operating agreement for Douglas**  
17       **Investments, LLC, which we've marked as Exhibit**  
18       **31, along with all of the amendments thereto,**  
19       **based upon those agreements and amendments, did**  
20       **David Douglas have the authority on behalf of**  
21       **Douglas Investments, LLC, to enter into and close**  
22       **an installment land sales agreement with Fidelity**  
23       **Timber at the end of -- at the end of 2006 and the**  
24       **beginning of 2007?**

25          A.     Yes.

1 MR. ELGIDELY: Objection; calls for  
2 speculation.

3 A. (Continuing.) You want to know if he  
4 had the authority under the agreement?

5 BY MR. BERMAN:

6 Q. Yes.

7 A. My opinion is yes.

8 Q. Okay. Why?

9 A. Well, again, he was the sole member of  
10 the LLC.

11 Q. Okay.

12 A. In order to get money to make any  
13 purchase, he had to get money apparently from Mr.  
14 Engler --

15 Q. Okay.

16 A. -- so --

17 MR. BERMAN: I don't have any further  
18 questions.

19 MR. ELGIDELY: I just have a couple,  
20 Mr. Freeman. I'm sorry about the late hour. I  
21 know it is 4:30 up there in Chicago. I just have  
22 a couple questions.

23 RECROSS EXAMINATION

24 BY MR. ELGIDELY:

25 Q. Mr. Berman asked you about a stock

1       pledge or stock power.

2                               Do you recall those questions?

3           A.     I do.

4           Q.     Have you ever prepared a stock power or  
5       a stock pledge with respect to the Douglas Engler  
6       transactions?

7           A.     No.

8           Q.     Okay. You didn't produce any stock  
9       powers or stock pledges, either, did you?

10          A.     No.

11          Q.     Okay. Let's go back to -- I guess it's  
12       Fidelity Exhibit 5 -- no; I'm sorry -- Fidelity  
13       Exhibit 9, which is the memorandum of agreement  
14       relating to 91 Southport Cove.

15          A.     Okay.

16          Q.     I believe Mr. Berman said that the  
17       language used in this document is prospective in  
18       nature.

19                       When it says, "Douglas owns fee  
20       simple title to the property," that's present  
21       tense; correct?

22          A.     Correct.

23          Q.     And when it says, "Engler has purchased  
24       a one-half interest in the property from Douglas,"  
25       that's past tense?

1           A.     That's correct.

2           **Q.     And when it says, "Engler and Douglas**  
3 **have decided that Douglas shall remain the fee**  
4 **simple title holder of record as the joint nominee**  
5 **on their" behalf -- "on their behalves," that**  
6 **reflects information that you had obtained from**  
7 **Mr. Douglas concerning the way the transaction**  
8 **would -- would be -- would be reflected, I guess;**  
9 **is that accurate?**

10           MR. BERMAN:  Objection to form.

11           A.     That is accurate.

12           BY MR. ELGIDELY:

13           **Q.     Okay.  And when it says, "Whereas,**  
14 **Engler and Douglas desire to transfer their**  
15 **economic interests in and to the property to**  
16 **Douglas Investments, LLC," that's again based upon**  
17 **discussions you had with Mr. Douglas; correct?**

18           A.     That is correct.

19           MR. ELGIDELY:  Mr. Freeman, I have no  
20 further questions.  Thank you very much for your  
21 time.

22           THE WITNESS:  You are very welcome.

23           MR. ELGIDELY:  Steve, if you want to  
24 advise Mr. Freeman about the reading and waiving  
25 of the -- reading of the transcript.

1 MR. BERMAN: Yes. You have the right,  
2 certainly under Florida law and in most state's  
3 law, to read the transcript, make any additions or  
4 deletions or modifications of -- with respect to  
5 your testimony, or you can waive that right.

6 We are having this typed up now  
7 and sent to Florida for a trial on Thursday, but  
8 you can always read it and, within a reasonable  
9 period of time provided by the court reporter,  
10 provide any addenda to the --

11 THE WITNESS: Yeah, I'd like to read  
12 it.

13 THE REPORTER: Bob, before you hang up,  
14 you are taking a copy of the transcript?

15 MR. ELGIDELY: Yes. I asked Pam to  
16 provide obviously the E-tran when it is ready --  
17 hopefully, that's tomorrow -- as well as a hard  
18 copy delivered to my hotel.

19 THE REPORTER: What about the draft?

20 MR. ELGIDELY: Whenever you send it to  
21 Steve, send it to me. Tomorrow morning is fine  
22 with me.

23 MR. BERMAN: Yes, that's fine. I'm not  
24 going to need it tonight.

25 AND FURTHER DEPONENT SAITH NOT AT 4:39 P.M.



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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MEYERS DIVISION

IN RE: )  
)  
ULRICH FELIX ANTON ENGLER; )  
and PRIVATE COMMERCIAL ) Case No.  
OFFICE, INC., ) 9:08BK-04360-ALP  
Debtor. )  
- AND -

IN RE: )  
)  
ULRICH FELIX ANTON ENGLER; )  
and PRIVATE COMMERCIAL )  
OFFICE, INC., )  
)  
Debtor. )  

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ROBERT E. TARDIF, )  
As Chapter 7 Trustee, )  
)  
Plaintiff, )

vs. ) Adv. Proc. Case No.  
) 9:09-AP-1026-ALP  
)

FIDELITY NATIONAL )  
FINANCIAL, INC., and )  
FIDELITY NATIONAL TIMBER )  
RESOURCES, INC., f/k/a )  
FIDELITY NATIONAL RANCH )  
PROPERTIES, )  
)  
Defendants. )

I, BRADLEY T. FREEMAN, hereby certify  
that I have read the foregoing transcript of my  
deposition taken on June 15, 2010, Volume II,  
consisting of pages 170 to 341, and that to the  
best of my knowledge it is a true and correct  
transcript of said deposition, except as I have

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changed it on the attached sheets in accordance  
with the rules provided by the said court.

\_\_\_\_\_

BRADLEY T. FREEMAN

No errata sheets submitted (Please initial)\_\_\_\_\_.

Number of errata sheets submitted \_\_\_\_\_(pgs.)

SUBSCRIBED AND SWORN TO

before me this \_\_\_\_\_ day

of \_\_\_\_\_, 2010.

\_\_\_\_\_

Notary Public

	ERRATA SHEET			
	PAGE	LINE	CHANGE	REASON
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1 STATE OF ILLINOIS )  
 ) SS.  
 2 COUNTY OF DE KALB )

3 I, Linda D. Hansen, CSR, RDR, CRR, a  
 4 notary public in and for the County of DeKalb and  
 5 State of Illinois, do hereby certify that the  
 6 witness was by me first duly sworn to testify to  
 7 the truth and that the preceding deposition was  
 8 recorded stenographically by me and reduced to  
 9 typewriting by computer transcription.

10 I FURTHER CERTIFY that the foregoing  
 11 transcript is a true and correct transcript of the  
 12 testimony given by the said witness at the time  
 13 and place specified hereinbefore.

14 I FURTHER CERTIFY that I am not a  
 15 relative or employee or attorney or counsel of any  
 16 of the parties, nor a relative or employee of such  
 17 attorney or counsel, nor financially interested  
 18 directly or indirectly in this action.

19 IN WITNESS WHEREOF, I have hereunto set  
 20 my hand and affixed my notarial seal this 16th  
 21 day of June, 2010.

22 



23 Linda D. Hansen, C.S.R. No. 084.005027  
 24 Notary Expires March 4, 2014

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