

COMPOSITE EXHIBIT B

1 placed on the record by the lawyers, please let the
2 lawyers finish with their dialog back and forth
3 with respect to the objection areas and then you
4 can generally give your answer. The only time that
5 you might not give an answer is if the answer that
6 you would give would require you to divulge
7 information that you shared with your lawyer which
8 might be attorney/client privilege information.
9 Otherwise, let the objections play out on the
10 record and then you answer the question after the
11 objections are stated. I think that's it.

12 Do you have any questions?

13 A. No.

14 Q. Would you please state and spell your name
15 for the record.

16 A. Richard Alexander Maher. Want me to spell
17 it?

18 Q. Just the last name.

19 A. M-a-h-e-r.

20 Q. What is your business address?

21 A. Business address is 802 West Broadway,
22 second floor, Jackson, Wyoming 83001.

23 Q. Do you have a business telephone number?

24 A. 307 734-6100.

25 Q. What do you do for a living?

1 and Douglas than DPS, so they didn't do much with
2 us. He did go and see it and got my marketing
3 materials and a very thorough overview when we were
4 there, but we didn't process any offer or any
5 letter of intent.

6 Q. And we'll talk about the Engler and the
7 Douglas interest in the property. But were there
8 any other individuals or entities that expressed an
9 interest in the property that you would sort of
10 consider serious interest in that sort of July to
11 October timeframe?

12 A. I don't recall any. I'm sure we took phone
13 calls and sent materials out, but those were the
14 qualified parties.

15 Q. Okay. You used the term qualified parties.
16 What do you mean by that?

17 A. There are a lot of speculators running
18 around trying to option parcels and go recruit
19 money in hopes of flipping. And as a broker we had
20 to try and determine how to best use our time and
21 also not expose our client to a party who didn't
22 have the funds.

23 Q. And you used the term qualified parties in
24 discussing Bernard Andres, DPS and the Engler
25 Douglas team. Did I understand your testimony

1 correctly?

2 A. Yes.

3 Q. Why did you believe the Douglas Engler team
4 was a qualified party in your estimation?

5 A. They -- well, a number of things. First off
6 the guy shows up, demands I show up at the Driggs
7 FBO, the private airport, and he's in a Gulfstream,
8 G3 or whatever it was, and wants me to see that.
9 And that was why he wanted me to come to the
10 conference room at the Driggs airport.

11 Q. Who's the he?

12 A. Engler.

13 Q. Did Mr. Engler and Mr. Douglas arrive
14 together at the meeting?

15 A. They were there when I arrived, so they were
16 in the conference room at the Driggs airport when I
17 arrived.

18 Q. Was that your first interaction with Mr.
19 Douglas and Mr. Engler?

20 A. Yes.

21 Q. Approximately when was that?

22 A. I think I submitted those dates. Had to
23 have been mid October.

24 Q. Okay.

25 A. Of '06.

1 Q. Let me show you what's been marked in the
2 exhibit book as Exhibit 43. And take a look at
3 that. I don't know if that's the first contact or
4 an early contact, but see if that refreshes your
5 recollection about your first interaction.

6 A. This is the first contact. The second one I
7 think is dated October 27. So our meeting predated
8 this by a week, maybe two. But certainly we had --
9 the price raise was October 3rd. That's the first
10 time Bret Borshell as a broker could have known
11 about it, would have been October 3rd when it
12 showed up on the MLS system as a new listing.

13 Q. Okay. I want to finish your thought on why
14 you believe Douglas and Engler were qualified
15 parties, and then I want to talk through the
16 timeline of your communications with them. So they
17 showed up at the airport and they wanted to have a
18 meeting at the airport in Driggs. And they showed
19 up on a private jet?

20 A. Correct.

21 Q. And who wanted you to see the private jet?

22 A. It seemed like Engler was the one who wanted
23 everybody to know how wealthy he was.

24 Q. Okay. And did you go on a tour of the jet?

25 A. No.

1 Q. What else about Mr. Engler and Mr. Douglas
2 led you to believe they were qualified?

3 A. Bret Borshell indicated that Douglas had
4 developed real estate for a number of years in
5 Florida -- I believe it was the Naples area -- I
6 want to say 15, 16 years, something like that. He
7 had owned a second home in Teton Valley for five or
8 seven years. So he had been around a while. They
9 pointed me to a website for a local charity.

10 Q. Who is the they?

11 A. Bret Borshell.

12 Q. And who did Bret Borshell represent?

13 A. He represented Engler and Douglas.

14 Q. Okay.

15 A. He was the buyer's broker.

16 Q. Okay. And he pointed you to a website?

17 A. They gave us several things. They -- or
18 Bret, I should say, showed us -- the local charity
19 had a website. I want to say tetonhabitat.org.
20 The picture on the website was of Douglas I believe
21 handing a local I recognized -- must have been the
22 guy running the nonprofit -- a check, I think it
23 was 50 thousand dollars as a show of commitment to
24 the valley, which was a big gesture, but a smart
25 gesture as an incoming developer who isn't known

1 around the valley.

2 Q. Is that something that's culturally unique
3 to development in the west, donating to local
4 communities?

5 A. I would think it would be universal. I mean
6 if you want to win some fans in your local valley
7 that's a great way to do it. And that's a big
8 number, not just a little lip service to I love
9 this community. 50 thousand dollars is a serious
10 number.

11 Q. Okay. What else about them led you to
12 believe they were qualified.

13 A. They had closed on the Teton Creek Resort
14 purchase, which was -- I reviewed my notes over the
15 weekend and I saw 5,6 and 5,8 and 6,5. I think it
16 was 5,8.

17 Q. When you say 5,8?

18 A. 5.8 million for the purchase price. I've
19 seen several different numbers.

20 Q. Was that a cash deal?

21 A. I was told it was a cash deal, no financing
22 involved in that.

23 Q. Okay.

24 A. I didn't go to try to verify that.

25 Q. Who gave you that information?

1 A. Bret Borshell.

2 Q. Why did he give you that information?

3 A. As a -- to answer our question we asked for
4 evidence of financial capability.

5 Q. Why?

6 A. Because we would do that really with
7 anybody --

8 Q. Okay.

9 A. -- who is going to buy property of this
10 magnitude.

11 Q. Anything else that led you to conclude that
12 Mr. Douglas and Mr. Engler were qualified parties?

13 A. Bret also pointed us to this data that
14 became our Ulrich PDF, which I think you have as an
15 exhibit because I submitted it last time. I
16 submitted it post-deposition. But e-mail to Mr.
17 Elgidely. The cover sheet is -- I actually found
18 the original in the file, which is just a piece of
19 different color paper. But it has Mr. Ulrich
20 Engler, Engler Land Investments, LLC out of Cape
21 Coral, Florida. Systembrokerage.com is the name of
22 the website. He says 25 years in the investment
23 business. Attached to that they sent us articles
24 of organization for the LLC.

25 Q. Which LLC?

1 A. Engler Land Investments, LLC.

2 MR. BERMAN: And let's mark that as 130.

3 Q. From whom did you receive Exhibit 130?

4 A. Bret Borshell.

5 Q. Again why, in your understanding why did you
6 receive that from Bret?

7 A. Because we asked for evidence of financial
8 capability.

9 Q. Did you look at that website?

10 A. I did. The website was in German. It was
11 very professional crisp layout and looked like
12 every other equity or investment company website
13 you would see. Passed it on to Fidelity as well as
14 took notes on a phone conversation with Bret, which
15 I have here for submittal. These notes indicate
16 these individuals purchased Teton Creek Resort,
17 that Engler managed 250 million dollars or the U.S.
18 equivalent of that with the German company. They,
19 quote, flipped companies in Europe, also dealt with
20 stocks and properties. And then my notes went on
21 to indicate their desire for ten percent down, deal
22 five years at longest for an owner carry. A 20
23 million dollar total price. I wrote usually three
24 year payoff. They were -- I may be jumping ahead
25 of your timeline. They were adamant that they

1 would pay the balance off before the end of the
2 payment schedule.

3 Q. We'll talk about the negotiation in a
4 minute.

5 MR. BERMAN: Let's mark that 131.

6 Q. Anything else that helped lead you to
7 conclude that Mr. Engler and Mr. Douglas were
8 qualified parties?

9 A. Another set of notes indicates that Dave
10 Douglas had been in the area for seven years and
11 had looked at the Bott farm and understood it. The
12 Bott farm was a similar property, but I don't
13 believe had river. But in the path of development
14 with the big views of the Tetons and up in that
15 area west of Tetonia. This note also says 5.8
16 million cash Teton Creek Resort. And restaurant --
17 I have a note that says restaurant 630 K, so
18 whether they purchased the restaurant in
19 conjunction with the Teton Creek Resort I don't
20 know. But that was some additional data that
21 Borshell gave me regarding what they were doing.

22 MR. BERMAN: Let's mark that as 132.

23 Q. Mr. Maher, before you go on with the next
24 exhibits you're producing, the two sets of notes,
25 Exhibit 131 and 132, whose notes are they?

1 A. They're mine.

2 Q. And are they in your handwriting?

3 A. Yes.

4 Q. Where were they located when you made
5 photocopies of them?

6 A. In my files.

7 Q. An can you explain to me the circumstances
8 under which you created those notes?

9 A. I don't have dates on them. 131 must be
10 very close to the 10/24/06 offer date. I would
11 assume days earlier, maybe a week earlier, possibly
12 right before I met Engler and Douglas. It just
13 kind of gives a little background that would
14 indicate maybe I hadn't met them yet. Exhibit 132
15 I believe these notes have to be dated sometime
16 around the 27, 28, 29, somewhere when we were
17 negotiating these counteroffers and changing
18 language in the contract.

19 Q. Okay. And did you prepare the notes at the
20 time that you gathered the information that is
21 depicted in the notes? Meaning are these
22 contemporaneous notes or did you learn the
23 information and then days later write the notes
24 down?

25 A. These are notes I wrote while I was on the

1 phone with somebody.

2 Q. Do you know with whom you spoke when you
3 gathered the information?

4 A. 131 is going to be on the phone with Bret
5 Borshell. And 132 I think would have been Sean
6 Moulton and Bret Borshell.

7 Q. Who is Sean Moulton as you understood it?

8 A. Sean was representing Douglas and Engler in
9 writing the real estate contract, doing the real
10 estate closing diligence work for this transaction.

11 Q. Have these exhibits, 131 and 132, been
12 contemporaneously maintained in your files at your
13 office?

14 A. They just have been in my files. Is that
15 what you mean?

16 Q. When you wrote the notes what did you do
17 with the notes?

18 A. Stuck them in the file.

19 Q. And have they always been located in those
20 files after you stuck them in the files?

21 A. I think so.

22 Q. And is that part of your practice as a real
23 estate broker to take and keep notes in files on
24 particular deals?

25 A. We sure try to. And normally I will date --

1 well, at least the last few years I date
2 everything. It helps. But those aren't dated.

3 Q. Any other bits of information that helped
4 you conclude that Mr. Douglas and Mr. Engler were
5 qualified parties?

6 A. Well, one other piece that comes later in
7 the timeline was the receipt of the earnest money
8 deposit, which was 500 thousand dollars. It was
9 due within two banking days of mutual acceptance of
10 the offer, and it came in on time on a wire
11 transfer. And as brokers we are sure our property
12 is under correct when earnest money is received and
13 verified. So this was a large piece of data
14 confirming their ability to perform.

15 MR. BERMAN: Let's mark that as 133.

16 Q. Why was Exhibit 133 of significance in
17 determining that Mr. Engler and Mr. Douglas were
18 qualified parties?

19 A. Confirm their ability to borrow large sums
20 of money on a deadline.

21 Q. Is there anything about your interactions
22 with them or your communications with Bret Borshell
23 or Sean Moulton that caused you to conclude that
24 they were not qualified parties?

25 A. No.

1 properties they were trying to pick up. They
2 wanted to be private about that with us, which I
3 understand.

4 Q. And in meeting with Mr. Douglas and Mr.
5 Engler in that first airport meeting as between the
6 two of them which one of them struck you as the
7 person more experienced in real estate development,
8 if you drew a conclusion?

9 A. I didn't draw a conclusion.

10 Q. And what did they share with you at the
11 meeting about their interest? What did they say?

12 A. Their interest in the valley specifically --
13 they were very excited about the upcoming events in
14 the valley, like Grand Targhee Resort expansion and
15 some of these golf course developments just
16 bringing more people, more wealth into the valley,
17 but specifically they wanted to develop out an
18 ultra high-end resort community.

19 Q. And was there, given your experience and
20 your observation of sort of the run-up in the
21 market, was that sort of a development approach
22 consistent with what you thought would be feasible
23 or did it seem foolish to you?

24 A. We believed it was feasible.

25 Q. And did these two individuals strike you as

1 Saturday morning meeting.

2 Q. You walked me through a number of the items
3 that led you to conclude they were qualified
4 parties. Did the detail of their level of
5 questioning also assist in you making that
6 evaluation, their questioning at the meeting?

7 A. Yes.

8 Q. These were questions of people who knew what
9 they were doing in the development world in your
10 opinion?

11 A. Yes.

12 Q. What else did they talk about?

13 A. They were very familiar with the other
14 valley developments, all the ones we mentioned;
15 River Rim, Huntsman, Grand Targhee, Teton Springs,
16 Saddleback Vistas. You name it, they knew what it
17 was. They knew the number of lots, the zoning
18 regulations. They had done a lot of background
19 work regarding the valley development climate, much
20 more in depth than I had.

21 Q. Did they express an interest in making an
22 offer in that first meeting?

23 A. They did.

24 Q. What did they say about your asking price?

25 A. I'm not sure they commented on the asking

1 Q. Was Exhibit 43 the first offer you received?

2 A. Yes.

3 Q. You pulled out -- you produced 130 which has
4 a printout of Engler Land Investments, LLC,
5 articles of incorporation. Remind me who gave you
6 that information?

7 A. Bret Borshell.

8 Q. And is the name of the entity on the
9 contract the same as the printout of the
10 information that Bret Borshell provided you?

11 A. Yes.

12 Q. So Engler Land Investments, LLC was the
13 purchaser's name under the Exhibit 43 contract.
14 Did Mr. Borshell give you information about Engler
15 Land Investments, LLC?

16 A. Correct.

17 Q. And from the information you got who are the
18 officers or parties associated with Engler Land
19 Investments according to what Bret Borshell told
20 you?

21 A. Registered agent David Douglas, managing
22 member David Douglas.

23 MR. BERMAN: That is a fine stopping
24 point for lunch.

25

1 Q. Okay. What about the October 27 offer which
2 we've now marked as Exhibit 137?

3 A. Bret or Bret and Sean Moulton.

4 Q. And Bret and Sean represented Mr. Douglas
5 and Mr. Engler or Engler Land or Douglas
6 Investments to the best of your knowledge, did they
7 not?

8 A. Yes.

9 Q. Okay. What happened with counteroffer
10 number two?

11 A. Another clarification of the seller's right
12 to terminate the agreement relating to their review
13 of evidence of the buyer's ability to make the
14 payments. I guess from the buyer's perspective.

15 12, another clarification of the water right
16 situation regarding Bruce Arnold.

17 Q. Counter two was prepared by the buyers,
18 right?

19 A. Yes.

20 Q. Okay.

21 A. And a note about CRP payments, an assignment
22 of the CRP contracts, which is inclusive.

23 Q. What about counteroffer three, that was from
24 the seller, right?

25 A. Yes, counteroffer three is from the seller,

1 Q. So all these counteroffers are going back
2 and forth?

3 A. Yes. I've just trying to think if this was
4 after the 10/24 counter or after, maybe they gave
5 us the 10/27 contract a day early, I don't know.
6 This is received 8 a.m. 10/27, so that wouldn't
7 make sense.

8 Q. Well, you were --

9 A. This is dated 10/26. But anyway while we
10 were negotiating at any rate.

11 Q. What was in addition to proposing changes,
12 did this e-mail have any other purpose?

13 A. Yes, it was asking my client what other
14 financial information they would like for me to
15 request from Borshell on Mr. Engler to make them
16 comfortable with his financial capability. I
17 informed them that we confirmed he closed the 5.8
18 million dollar Teton Creek Resort deal a few months
19 back, all cash at closing.

20 Q. And you walked us through before the lunch
21 break a number of factors that you considered in
22 concluding that Mr. Engler and Mr. Douglas and
23 their companies were qualified purchasers of this
24 property, if I understood your testimony.

25 A. Correct.

1 were agreed to through the back and forth of the
2 10/27 offer and the three counteroffers.
3 Essentially the desire was to write a clean final
4 contract and not have any differing opinions or
5 misunderstanding that arose from the back and forth
6 in trying to match up the amendments.

7 Q. Okay. And you indicated that the initial
8 earnest money came in, the 500 thousand?

9 A. Yes.

10 Q. Were you at an event where that contract was
11 signed?

12 A. Yes.

13 Q. Tell me about it.

14 A. A meeting in Sean Moulton's law office in
15 Driggs, Idaho. Paul Dunn was present with me. My
16 belief is that Sean Mouton, Bret Borshell, Dave
17 Douglas and Ulrich Engler were present. I base
18 that off of the fact that I believe we have a
19 signature dated that day from Engler on this
20 document.

21 Q. Okay. Do you remember how the document was
22 circulated before it was signed? Did Mr. Moulton
23 hand it out or Mr. Borshell hand it out.

24 A. Physically in the room?

25 Q. Yes. Was there only one copy?

1 A. Well, often individuals will form an LLC or
2 they will have living trusts that they need to go
3 ask an estate planning attorney how should I title
4 this, should I divide it up between my kids, should
5 I do this, that or the other. So very common in
6 our business is an initial contract that gives the
7 buyer the right is assign to an entity of their
8 choosing. And sometimes a seller will come back
9 and say we have the right to review and approve the
10 assignment, it won't be unreasonably withheld, so
11 long as you're an owner of the entity you're
12 assigned to so they eliminate the flip possibility.
13 But it's very common to see the right to assign the
14 contract.

15 Q. Okay. Do you remember any discussion about
16 who would sign the contract on behalf of Engler
17 Land Investments?

18 A. No.

19 Q. Was there any point in time where the
20 meeting was conducted outside of the presence of
21 either Mr. Engler or Mr. Douglas to the best of
22 your knowledge?

23 A. No.

24 Q. There was just one meeting with everyone in
25 it?

1 November 9 contract leading up to the closing?

2 A. I think we continued to work with them on
3 the water rights issue, which was evolving with
4 Arnold. And Paul Dunn made himself available for
5 Douglas. I believe there were phone conversations
6 that took place there regarding Arnold's legal
7 position versus Fidelity's legal position and what
8 might occur to secure that water right.

9 Q. Okay.

10 A. Same sort of water right diligence regarding
11 the Sugar City water right, but it focused more
12 upon if you strip the water right from the Sugar
13 City property and transfer it to Linderman what
14 will the Sugar City property be worth without the
15 water versus its overall cost with water, what is
16 the cost of transfer the water, what does that
17 process look like in the Idaho water court, how
18 long will it take and how sure are we that it will
19 work. Kent Foster was the counsel working on that
20 with Paul Dunn. And they had I believe a thorough
21 understanding and a large amount of confidence that
22 they could transfer the Sugar City water right.

23 Q. Okay.

24 A. Meanwhile, and I shouldn't say unbeknownst
25 to us; we had an idea that Douglas and Engler were

1 trying to buy neighboring properties. I have an
2 e-mail in front of me to submit that is an e-mail
3 from my assistant dated December 1st, 2006. And he
4 says good news, Engler has the Neely parcel and the
5 Arnold parcel under contract which has solved the
6 water rights issues.

7 Q. We haven't marked that yet, have we?

8 A. Last deposition, not this one.

9 MR. BERMAN: Let's mark that 139 please.

10 Q. Will you identify Exhibit 139 please.

11 A. It's an e-mail from my assistant to me
12 December 1st, 2006 indicating Engler had the Neely
13 parcel and the Arnold parcel under contract. So
14 the water rights issue with Arnold had been
15 effectively resolved because they now control the
16 real estate and the water right. And that was the
17 major diligence item outstanding. So we were set
18 to close on December 22nd.

19 Q. So now the buyer -- go ahead.

20 A. My assistant went on to say I'm going to
21 contact the title company to make sure they know
22 and we believe we've moving forward for closing.
23 And Paul has offered the Parkinson piece to Engler,
24 he will assign the option to them if they want it,
25 which essentially doubles the amount of water they

1 findings, essentially consultant's report on the
2 entire project dated October 28th, 2008.

3 Q. Okay. And all of these were provided to you
4 by Bret Borshell, who was the broker who
5 represented Mr. Engler and Mr. Douglas or their
6 companies?

7 A. Correct.

8 Q. Finally you also brought some disks, and I
9 know opposing counsel has taken their disk. What
10 is on the disk?

11 A. The disk is a copy of everything I brought
12 today to submit.

13 Q. Okay. There is nothing on the disk that
14 we've not talked about today, is there?

15 A. These are items that are on the disk we
16 haven't covered. Would you like me to go through
17 them?

18 Q. Those are ones you identified earlier, but
19 we didn't mark; is that correct?

20 A. Yes. Although I'm not sure we've identified
21 all of them individually.

22 Q. Let me take a quick look. You can take
23 those back. Let's mark these documents.

24 Mr. Maher, would you take a look at 148 and
25 149 and tell me if you recognize them.

1 Q. What I want to then clarify is with the
2 exception of Exhibit 130 where you actually went to
3 the website and saw it to follow up about financial
4 wherewithal, in all those other instances
5 information came to you without you conducting
6 independent examination.

7 MR. BERMAN; objection;
8 mischaracterization.

9 THE WITNESS: Correct.

10 Q. (BY MR. CIMO) Did I mischaracterize when I
11 asked you that question? Counsel said I
12 mischaracterized. Did I?

13 A. I don't know. Your questions are leading,
14 so I would love to answer that once I read the
15 deposition.

16 Q. I'll rephrase it for you. I'm just trying
17 to find out the instances where you physically went
18 beyond just getting data or learning something to
19 learn something more about Mr. Engler. Other than
20 Exhibit 130 is there any other instance from the
21 ones you've identified where you undertook --

22 A. Mr. Engler specifically?

23 Q. Yes.

24 A. No.

25 Q. Let's talk about Mr. Douglas. What

1 documents did Bret Borshell give you about Mr.

2 Douglas?

3 A. I don't think he gave me documents so much
4 as answered our questions verbally.

5 Q. Did you know Mr. Douglas was the
6 father-in-law of Mr. Borshell?

7 A. Yes.

8 MR. BERMAN: Objection; relevance.

9 Q. (BY MR. CIMO) How did you learn that?

10 A. I believe Bret told me.

11 Q. Did you know Mr. Borshell before you got
12 involved in the Linderman transaction?

13 A. I did not.

14 Q. Had you heard about him?

15 A. No.

16 Q. What specifically do you recall discussing
17 with Mr. Borshell about Mr. Douglas?

18 A. Bret first came to our office, had to be
19 weeks before these contracts, but had to be after
20 the 3rd of October when the property showed up, so
21 sometime after the 3rd of October when the property
22 showed up on the MLS, explained to us that he was
23 looking at all of these different ranches across
24 the west. And he picked our brain because we deal
25 with ranches all across these resort communities

1 Q. When you went to the website and you saw it
2 was in German you couldn't make out what it said?

3 A. Correct.

4 Q. You said it was clean and crisp, it looked
5 like a real website.

6 A. Professionally laid out in design.

7 Q. Did you know when you Google there is a
8 function you can hit the translation button and
9 translate any website from a foreign language into
10 English?

11 A. I've never done it. I'm sure there is a way
12 to do it.

13 Q. At some point did you transmit Fidelity
14 Exhibit 130 to your client?

15 A. Yes.

16 Q. Let me show you now Exhibit 47, Trustee 47.

17 Is that an e-mail transmission?

18 A. Yes.

19 Q. This e-mail attaches, which is an e-mail
20 from you to Mr. Paul Dunn. Who is Mr. Dunn?

21 A. Paul Dunn.

22 Q. Your client representative at Fidelity?

23 A. Correct.

24 Q. You transmitted to him the one, two, three
25 pages that Mr. Borshell gave you involving Mr.

1 Engler, which is Exhibit 130, correct?

2 A. Correct.

3 Q. Can you please into the record what you told
4 Mr. Dunn in your e-mail?

5 A. "We have limited information on this buyer
6 that apparently bought Teton Creek Resort on Ski
7 Hill Road at a reported 6.5 million on a similar
8 structured deal. They have told us that they have
9 developed property in the Naples, Florida, area for
10 16 years. The attached scan provides some limited
11 information. I would suggest a further inquiry
12 through a professional service to assure their
13 qualification."

14 Q. Okay. Let's break that up, if I may. You
15 say we have limited information on this buyer. As
16 of -- I know it was a while ago -- but as of
17 October 26 of 2006 what would have been included in
18 that limited information that you knew as of that
19 date?

20 A. Again those notes of mine I don't think have
21 dates on them, but they're going to be in the same
22 time period.

23 Q. Can I have my copy too?

24 A. There are two of them.

25 Q. Let's do this one first. Fidelity Exhibit

1 131, you don't have a date on these handwritten
2 notes, but you believe this would have been around
3 October 26, 2006?

4 A. I believe it would have predated -- you
5 know, it's tough to say. Since the first offer of
6 10/24 was at 21 million, this note says 20. So
7 this is going to be somewhere between 10/20 and
8 10/27 when we received the second offer that was at
9 20. So it's going to be in the same week.

10 Q. Thank you.

11 So the first bullet point in the handwritten
12 notes of Exhibit 131 say bought Teton Creek Resort.
13 That's mentioned in Trustee Exhibit 47, correct?

14 A. Correct.

15 Q. Now Teton Creek Resort was not -- do you
16 know what entity took title to that property?

17 A. I don't.

18 Q. You don't know if it was Engler Land
19 Investments or another entity?

20 A. I don't know.

21 Q. Then it says in the second bullet point, 250
22 million dollar German company in Exhibit 131.

23 A. Yes.

24 Q. Did you check that out on the website to see
25 if it was actually a 250 million dollar German

1 Dunn at Fidelity?

2 A. Verbally, yes.

3 Q. More handwritten notes about conversations
4 with Bret Borshell.

5 A. I think the second one might have been
6 Moulton and Borshell because it has Moulton's phone
7 numbers on the top.

8 Q. Let's see if we can find that. Does it look
9 like that one?

10 A. It is. It's on the same scratch paper.

11 Q. From the desk of Alex Maher?

12 A. That's right.

13 Q. I think I found it. Is that it?

14 A. Yes.

15 Q. That's Exhibit 132 of Fidelity. Any other
16 information on these handwritten notes which has
17 any pertinence at all to paragraph 3B of Exhibit
18 138 regarding financial capability?

19 A. Yes.

20 Q. What is that?

21 A. The note about 5.8 million dollar cash
22 purchase of Teton Creek Resort I assume three weeks
23 ago at this point in time. And a restaurant at 630
24 thousand dollars, which may have been connected to
25 Teton Creek Resort. I simply don't remember. And

1 that Dave had been in the area for seven years. He
2 had looked at the Bott farm and understood the
3 landscape and the development pressure of the
4 market.

5 Q. Anything else on that, Mr. Maher, about the
6 financial ability issue?

7 A. I would have to check on the deal points and
8 which ones they relate to in the counteroffer if
9 we're going to get hyper-technical.

10 Q. So we're going back to 137?

11 A. Yes, this is --

12 Q. My question is not about deal points. But
13 anything in the financial information inconsistent
14 with what is requested and required in 3B.

15 MR. BERMAN: Objection; calls for a
16 legal conclusion.

17 THE WITNESS: No.

18 Q. (BY MR. CIMO) Thank you.

19 And on Exhibit 132 other than what you
20 testified about, no other financial information
21 referenced in there?

22 A. Correct.

23 MR. CIMO: Let's have this one marked as
24 the next exhibit, Exhibit 48.

25 Q. Exhibit 48, is this an e-mail that you sent

1 A. I believe he did.

2 Q. And do you know when you spoke to Mr. Lane
3 whether you talked to him in the capacity as a
4 representative of the parent?

5 A. No, I believe in the capacity of the
6 subsidiary.

7 Q. And what makes you believe that?

8 A. The background of setting up the subsidiary,
9 the focus of the subsidiary and Greg's involvement
10 in those discussions, the office for the subsidiary
11 in Whitefish, Montana, and his occupancy in that
12 office, his involvement in the transactions for the
13 subsidiary.

14 Q. Any other reason?

15 A. No.

16

17 Discussion off the record.

18

19 Q. The information that you read off the notes,
20 Exhibit 132, did you convey that information as
21 well to Mr. Lane or Mr. Dunn or someone else at
22 Fidelity?

23 A. Yes.

24 Q. I want to show you the next exhibit, Exhibit

25 49. Take a moment to look at Exhibit 49 and I'll

1 ask you questions about the e-mails. Ready?

2 A. Yes.

3 Q. I would like to go to the first page of
4 Exhibit 49 and I would like to go to the e-mail
5 from you dated October 26, 2006 at 9:39 a.m. to Mr.
6 Lane and Mr. Dunn at Fidelity. It says proposed
7 changes written by Alex. Then you say here are the
8 proposed changes as I wrote them. I have not
9 delivered them to the buyer's broker yet. I would
10 like you to read into the record the next
11 paragraph.

12 A. "Greg, let me know what type of financial
13 information you would require from Mr. Engler to
14 assure his capability. He did close a 5.8 million
15 dollar deal in Driggs, Idaho, a few months back,
16 all cash at closing, no structured deal like this
17 one. I just found out the details of that Teton
18 Creek Resort deal from Bret a few minutes ago."

19 Q. Why did you make that inquiry, Greg, let me
20 know what type of financial information you require
21 from Mr. Engler?

22 A. I think related to the discussion that led
23 up to number three in the proposed changes.

24 Q. Sufficient funds to close?

25 A. Evidence.

1 Q. When you met with Mr. Engler and Mr. Douglas
2 did you understand one of them to be the money man?

3 MR. BERMAN: Objection to form.

4 Q. (BY MR. CIMO) Do you know what I mean by
5 that term?

6 A. The source of the funds?

7 Q. Yes.

8 A. Yes. Engler was believed to be the source
9 of funds.

10 Q. The guy who asked you to go to the Driggs
11 airport to meet him when you got off the private
12 jet?

13 A. They both asked me to do that, but it
14 appeared that was Engler's style more than David
15 Douglas's style to showcase his wealth.

16 Q. In all the years that you've done real
17 estate transactions have you ever had a potential
18 buyer ask you to go to the airport to meet as they
19 got off their private jet?

20 A. Yes.

21 Q. How many times?

22 A. Dozens.

23 Q. A common occurrence?

24 A. Yes.

25 Q. So you going to the airport to see Mr.

1 MR. BERMAN: Objection; relevance.

2 THE WITNESS: I don't know how many
3 times.

4 Q. (BY MR. CIMO) Look at Number 75 in the
5 Fidelity exhibits document called Assignment of
6 Land Buy Sell Agreement. Have you seen such a
7 document before today?

8 A. I don't know if we received this in the
9 closing documents or not given the Parkinson piece
10 was not a transaction I was involved with.

11 Q. Have you ever seen a document of this type
12 before in your practice?

13 A. Yes.

14 Q. In what context?

15 A. In the same context the buyer assigning a
16 purchase contract to a different entity than on the
17 purchase contract.

18 MR. CIMO: Okay. This one should be
19 marked as the next exhibit. We won't mark this
20 Exhibit 50. We'll keep the 40 on there.

21 Q. So show you Exhibit 40. Read it and I'll
22 ask you questions about it.

23 A. Okay.

24 Q. I want to first go to looks like multiple
25 e-mails. Go to the earliest one chronologically.

1 For the record Trustee Exhibit 40, Fidelity 2541
2 and 2542. What's the first e-mail in the chain?

3 A. E-mail from me to Greg Lane indicating buyer
4 plans to wire two million dollars on Monday, then
5 be available to talk to you.

6 Q. What was Mr. Lane's response to this e-mail,
7 if any?

8 A. He said huh, give me a call at 904 254-8479.

9 Q. He didn't just say huh. He said huh,
10 question mark, exclamation point, question mark,
11 right?

12 A. Yes.

13 Q. What did you understand the huh to mean
14 before you spoke to him?

15 A. He wanted more explanation, wanted to talk
16 to me.

17 Q. Go to the next one in the chain. Which one
18 is that chronologically?

19 A. From me back to him.

20 Q. And you say what?

21 A. The same day.

22 Q. The same day?

23 A. The next day.

24 Q. Shame on you. You took too long to get
25 back. What does it say the next day?

1 A. It's a Sunday. I got back to him and said
2 just as a show of financial strength with the 500 K
3 as earnest money and the remainder awaiting closing
4 November 9.

5 Q. Let's stop for a moment and ask what does
6 the two million dollars represent that you informed
7 Greg about?

8 A. Well, I believe that's the amount that had
9 been stated as a down payment in their offer that
10 predates these e-mails.

11 Q. This is before November 9 of 2006 before the
12 final agreement was signed?

13 A. Correct.

14 Q. And then you also respond that this is a
15 show of financial strength. Was there a question
16 about financial strength at least in your mind as
17 of October 29th of 2006?

18 A. I suppose there was some question leading up
19 to receiving the 500 thousand dollars earnest money
20 wire and the rest of the other million five on the
21 November, no, sorry, December 22nd.

22 Q. Let's now take a step back, if I may, before
23 we go to the next chronological step. You have
24 gone over handwritten notes, e-mails, a two-page
25 document -- three-page document, Exhibit 130, all

1 company. There should be information available.

2 Q. (BY MR. CIMO) You looked up the website in
3 German and didn't translate it, correct?

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

6 THE WITNESS: Correct.

7 Q. (BY MR. CIMO) You had all of this data that
8 you got and you're telling me that on October 29 of
9 2006 there needed to be a financial commitment of
10 two million dollars proposed in order for your
11 client to consider doing a deal with these
12 gentlemen.

13 A. I didn't say there needed to be.

14 Q. Who did?

15 A. You did.

16 Q. What is the two million dollars for then?

17 A. Something that came forth from Borshell and
18 Engler and Douglas.

19 Q. Why did they propose it?

20 MR. BERMAN: Objection; foundation,
21 speculation.

22 Q. (BY MR. CIMO) Do you know why they proposed
23 it?

24 A. To show financial strength as they're
25 negotiating the transaction.

1 response did Mr. Lane get back to you?

2 A. Do you want me the read the e-mail?

3 Q. Yes.

4 A. "That I figured, but still strange. I'll be
5 out of cell phone range from around nine to one on
6 Monday. If he is east coast he can call me early
7 in the morning if he wants. Have him use number
8 below. Thanks, enjoy your weekend."

9 Q. You use the word strange; is that correct?

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

12 MR. CIMO: No, that wasn't my question,
13 counsel.

14 MR. BERMAN: He just read the e-mail to
15 you, including the word strange.

16 MR. CIMO: I did not ask the question if
17 that word is used.

18 Q. I'm pointing out you used the word strange.

19 MR. BERMAN: Same objection.

20 THE WITNESS: Yes.

21 Q. (BY MR. CIMO) Why did you use the word
22 strange. Did you find out why he used the word
23 strange?

24 A. No.

25 Q. Did you ever have any understanding why your

1 Q. You made mention of other interested
2 parties. Do you recall that testimony?

3 A. That's correct.

4 Q. Who were the other interested parties that
5 were referenced when you mentioned these
6 individuals or people?

7 A. Bernard Andres was one. And DPS was the
8 other. The gentleman I spoke with at DPS is Tyler
9 Congleton. Tyler viewed the ranch with me.
10 Bernard, I don't think I toured the ranch with
11 Bernard. But he knew all the ranches, had maps and
12 ownership, the whole bit, researched himself.

13 Q. Other than those two, any other interested
14 parties around October 29th, 2006?

15 A. None that were ready to move forward in any
16 serious capacity.

17 Q. I want to understand this two million
18 dollars. Is it your understanding this two million
19 was to be deposited before a contract was signed,
20 if you know?

21 A. I think that's what they were suggesting,
22 yes.

23 Q. And in all the ranches you closed in all the
24 other commercial transactions you've been involved
25 in how many times have you seen a seven figure

1 interest. We didn't give him names or details of
2 how far along the interest was. With DPS we were
3 waiting to hear back from them on whether they
4 could get out of their hundred-mile radius clause
5 with Snake River Sporting Club and then pursue it.

6 Q. Ultimately neither of those parties made a
7 written offer?

8 A. Correct. It was only a one-month public
9 period of time here.

10 Q. Let's talk about the offer. Was there an
11 initial offer approximately two week closing?

12 A. Yes, I believe that's right.

13 Q. Did you come to understand why two weeks was
14 referenced for a transaction of this magnitude?

15 A. They were very confident they understood the
16 property and the surrounding properties given their
17 research and work diligence ahead of time we had
18 provided them.

19 Q. They meaning Mr. Douglas and Mr. Engler?

20 A. Correct.

21 Q. Did you ever get introduced to them as
22 business partners?

23 A. The first meeting I understood them to be
24 doing business together, looking at the investments
25 together. I did not inquire as to the form of

1 their partnership.

2 Q. Did you ever have a belief or form an
3 understanding as to what the exact nature of the
4 relationship was?

5 A. Partners or developer lender, they were both
6 satisfactory forms in the seller's eye.

7 Q. I want to go back to Exhibit Number T47
8 again. And if I asked you, my apologies, but I
9 want to make sure we move on. Have you ever seen
10 any report done by a professional service to assure
11 the qualifications of either Mr. Douglas or Mr.
12 Engler to financially qualify to do this
13 transaction?

14 A. I have not.

15

16 Short break.

17

18 Q. (BY MR. CIMO) Show you now Exhibit 50,
19 Trustee Exhibit 50. Ask you if you can identify
20 that document. Let's start chronologically. These
21 are e-mails between you and Mr. Lane.

22 A. Correct.

23 Q. Can you chronologically talk about the first
24 one.

25 A. The first one is 9:13 a.m. mountain time

1 February 23rd, '07, e-mail from Borshell to me.

2 Q. Read into the record what Mr. Borshell tells
3 you.

4 A. He says attached is the NDA, thanks for your
5 patience. Also Dave/Rich are very aware of the
6 dates for the payments, but appreciate the
7 reminder. In regards to the Bar Cross we do not
8 any further interest at this time, but I would like
9 to learn about the projects which add value to the
10 Bar Cross. Can you tell me a little about them.

11 Q. In regard to the Bar Cross what is the NDA
12 he's referring to?

13 A. The nondisclosure agreement that's attached
14 which essentially binds Live Water to not disclose
15 information regarding the transaction. I believe
16 that the identify -- let's see here. All
17 information and materials furnished from the buyer
18 concerning the above referenced property, which is
19 the Linderman property, is confidential and may not
20 be used for any purpose other the contemplated
21 transaction. Access to any information furnished
22 by the buyer will be limited to attorneys,
23 accountants, banking representatives and business
24 advisors directly involved with the property.
25 Seller, buyer and broker all agree not to disclose