

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RNS SERVICING, INC., an)
Illinois Limited)
Liability Company,)
Plaintiff,)
vs.) No. 1:17-CV-108
SPIRIT CONSTRUCTION)
SERVICES, INC., a)
Delaware Corporation,)
STEVEN CAN DEN HEUVEL, a)
citizen of the State of)
Wisconsin, ST PAPER, LLC,)
a Delaware Limited)
Liability Company, and)
SHARAD TAK, a citizen of)
the State of Maryland,)
Defendants.)

The deposition of MARC LANGS, called
by the Defendants for examination, taken pursuant to
notice and pursuant to the Federal Rules of Civil
Procedure for the United States District Courts
pertaining to the taking of depositions, taken before
Meagan M. Cahill, Certified Shorthand Reporter, at
120 South Riverside Plaza, Suite 2200, Chicago,
Illinois, commencing at 1:30 p.m. on the 18th day of
December, 2018.

1	I N D E X	
2	WITNESS	PAGE
3	MARC LANGS	
4		
5	Examination by Mr. Romashko.....	5
6	Examination by Mr. Spahn.....	123
7	Further Examination by Mr. Romashko.....	165
8	Examination by Mr. Langs.....	176
9	Further Examination by Mr. Spahn.....	197
10	Further Examination by Mr. Romashko.....	203
11		
12		
13	E X H I B I T S	
14	LANGS DEPOSITION EXHIBIT	PAGE
15		
16	Exhibit No. 1.....	17
17	Exhibit No. 2.....	34
18	Exhibit No. 3.....	46
19	Exhibit No. 4.....	56
20	Exhibit No. 5.....	63
21	Exhibit No. 6.....	89
22	Exhibit No. 7.....	91
23	Exhibit No. 8.....	93
24	Exhibit No. 9.....	101

1 (Witness sworn.)
2 WHEREUPON:
3 MARC LANGS,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:
6 EXAMINATION
7 BY MR. ROMASHKO:
8 Q. And Mr. Langs, you are here under notice
9 of deposition from Spirit Construction Services,
10 correct?
11 A. Yes.
12 Q. You're here in connection with your role
13 at RNS Servicing?
14 A. Yes.
15 Q. And we've met before, correct?
16 A. Yes.
17 Q. At the deposition of Sharad Tak in this
18 case?
19 A. Yes.
20 Q. You've also attended the deposition of
21 Steve Van Den Heuvel in this case?
22 A. Today?
23 Q. Yes.
24 A. Yes.

<p style="text-align: right;">Page 6</p> <p>1 Q. Admittedly, I knew the answer to that 2 question when I asked. 3 So let's just start. Before we get 4 into your background and everything like that, can 5 you just describe your role with RNS? 6 A. RNS hired me as an independent consultant 7 to help them look at and see if there was any value 8 related to the contracts that they had bought out of 9 the bankruptcy trust. 10 Q. And which -- is there a specific set of 11 contracts that they asked you to look at? 12 A. It would have been the leases associated 13 with the buyout of Fortress and eventually leasing 14 back additional monies based on collateral and other 15 considerations as a second transaction out of the 16 Fortress transaction. 17 Q. And one of those leases that you are 18 engaged to look at is related to Ron Van Den Heuvel? 19 A. Correct. 20 Q. And what's your compensation arrangement? 21 A. Compensation is some participation in any 22 proceeds that may be derived out of that. 23 Q. Okay. When you say participation in the 24 proceeds or -- sorry. I may have misunderstood. Did</p>	<p style="text-align: right;">Page 8</p> <p>1 start at the beginning. What's your highest level of 2 education? 3 A. Master's. 4 Q. I should have asked you a couple of basic 5 questions. Where do you live? 6 A. I live in Traverse City, Michigan. 7 Q. What's your address? 8 A. 1011 Lake Ridge Drive, 303, Traverse 9 City, Michigan. 10 Q. And I'm sorry. I asked you, but your 11 highest level of education? 12 A. Master's. 13 Q. In? 14 A. MBA, business administration. 15 Q. Where is that from? 16 A. Cal State, Long Beach. 17 Q. Where did you go college? 18 A. Undergraduate? 19 Q. Yeah. 20 A. I went to UCLA and Cal State, Long Beach. 21 Q. Take me briefly through your educational 22 background. What did you do after college -- or 23 after your MBA? 24 A. Started work a Mattel toys in California,</p>
<p style="text-align: right;">Page 7</p> <p>1 you say "and" or "in"? 2 A. "In." 3 Q. Okay. Got it. 4 So participation in the proceeds? 5 A. Uh-huh. 6 Q. So what is your level of participation in 7 any proceeds out of this suit? 8 A. I have looked at the original agreements 9 processed, what was the original value transactions, 10 and worked on pursuing those entities that were 11 involved in the original contracts. 12 Q. Let me rephrase that. That was 13 confusing. 14 What do you stand to be compensated 15 for for your participation in this lawsuit in 16 particular? 17 A. A percentage of the proceeds. 18 Q. What's that percentage? 19 A. I tell you what, I'd have to say 20 approximately 25 percent, but there's an agreement, 21 which I don't remember exactly what it was. 22 Q. That's a written agreement? 23 A. Uh-huh. 24 Q. Okay. Turning to your background, let's</p>	<p style="text-align: right;">Page 9</p> <p>1 and then I went to work for a subsidiary of Norton 2 Simon, which was Max Factor, in California. And then 3 I came back to work for Beachum Pharmaceuticals, 4 Beachum Cosmetics Holding Company in the United 5 States, out of Chicago, always in finance and 6 eventually becoming CFO for many positions with the 7 cosmetics company. We did an LBO. Management bought 8 that, which I participated in. We then sold the 9 company, and then at that point, I made a decision to 10 work on consulting for smaller companies, founders, 11 inventors, and early stage companies. 12 Q. About what year did you start consulting? 13 A. '89, '90. 14 Q. And then did you consult -- at some 15 point, you go to work for IFC Credit Corporation? 16 A. Uh-huh. 17 Q. Did you consult straight through to that? 18 A. No. Before that, I worked with a 19 specialty printing company for several years. I 20 worked with a medical device company for several 21 years, two to four years, both of them. And then I 22 ended up actually coming into IFC as a consultant and 23 then very quickly converted that into a full-time 24 position.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. Before you arrived at IFC, did you ever 2 work in the paper manufacturing industry? 3 A. This printing company had some 4 specialized papers that were made, so I had some 5 knowledge of paper and paper manufacturing with that 6 company. 7 Q. But they didn't produce paper themselves? 8 A. No. 9 Q. Okay. So as an industrial consumer; is 10 that fair? 11 A. Yes. 12 Q. And when you did first go to work for 13 IFC? 14 A. 2003. 15 Q. And at some point you became CFO of IFC? 16 A. Yeah, probably three years later. 17 Q. You were consulting in the interim or -- 18 A. No. I was corporate development. I was 19 primarily working with them in terms of selling a 20 company or selling a percentage of the company for 21 new capital and bringing liquidity to the company. 22 Q. That was as a consultant? 23 A. No. 24 Q. And so you become CFO -- and let me back</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Typically, the leasing would work where 2 there would be somebody who wanted to purchase 3 certain assets. The purchase of those assets, we 4 would pay the vendor for it. We'd finance it. We'd 5 set up a lease contract for payment from the 6 customer. And so we would finance those assets, and 7 the customer would then turn around and pay us on a 8 contract basis over a period of time. 9 Q. How long are those contracts, generally? 10 A. Generally, three to five years. 11 Q. And this is for, generally, transactions 12 up to about 250,000? 13 A. Correct. 14 Q. Okay. 15 A. Now, the company also did what's called 16 middle market, and that's \$2 million to \$5 million 17 and that was a section of the company that also did 18 was -- and that was where the leasing got involved 19 with the Oconto Falls and Ron Van Den Heuvel. 20 Q. So they got involved in this \$2- to 21 \$5 million range? 22 A. They did other transactions besides -- 23 with this person, but that's where this came in, yes. 24 Q. What was your involvement, in general --</p>
<p style="text-align: right;">Page 11</p> <p>1 up. I'm sorry. So that capital raise that you just 2 described, is that before you become CFO or as you're 3 CFO as well? 4 A. I began prior to CFO. I continued to do 5 that responsibility as a CFO as well. 6 Q. This is going to seem pretty obvious, but 7 can you describe what IFC's business was? 8 A. They were an independent leasing company. 9 And when you talk about leasing, they're a small 10 ticket, middle market, and large ticket. Large 11 ticket is boats and planes and huge, huge 12 transactions over \$10 million. This company was 13 primarily in commercial leasing. Only 5,000 to 14 \$250,000 was the majority of what they did. 15 Q. Okay. You said this company. That's 16 IFC? 17 A. Uh-huh. 18 Q. And so when you say leasing, you're not 19 saying that they, you know, have a bunch of assets 20 they're ready to lease out? That's not the business 21 model we're talking about here? 22 A. No. 23 Q. So can you describe how this leasing 24 works?</p>	<p style="text-align: right;">Page 13</p> <p>1 before we get into any specific transactions, what's 2 your involvement with these leasing transactions as 3 CFO of the company? 4 A. You want to make sure that you have all 5 things working properly, that you're in compliance 6 with your banks, because you have relationships with 7 banks which provide you financing. You want to make 8 sure that your documentation and process is working 9 probably, that your credit and underwriting process 10 is working properly, and that the internal cost 11 structure of the company allows you to make money 12 versus losing money on leasing. 13 Q. Sure. 14 A. I was also involved with providing 15 reporting financial results to the board of directors 16 on the ownership of the company. 17 Q. Sorry. Reporting financials to the 18 ownership of the company? 19 A. Yeah, and board of directors. 20 Q. Did you have any ownership in the 21 company? 22 A. I did not. 23 Q. Okay. Were you involved in due diligence 24 on leases at all?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. Minerly [sic]. We had people that 2 specialized in that. 3 Q. Okay. So where would you come into the 4 due diligence stage, when you would? 5 A. To make sure that it was part of a credit 6 committee. So these results would be presented by 7 the people who were responsible for it to a credit 8 committee, depending on the size of the transaction. 9 And I would be involved in that in terms of making a 10 decision if it would be go or no-go as part of the 11 team. And then, also, in the case of the middle 12 market transactions that we were talking about, IFC 13 typically would sell those off as asset rights or 14 contract rights to larger players so that they 15 weren't a liability for the company directly. We 16 just had a certain profit sharing of that. So we 17 generate the transaction and sell the transaction. 18 Q. Okay. And did your role include any 19 involvement in litigation? 20 A. In litigation, no, not particularly. 21 Q. Okay. And you did mention these large 22 ticket items as well, airplanes I think you threw out 23 there. Is that something that IFC did ever or not? 24 A. Ever, I don't know. Not particularly in</p>	<p style="text-align: right;">Page 16</p> <p>1 A. The borrower was an entity that was Ron 2 Van Den Heuvel and Ron Van Den Heuvel companies, 3 which -- I'd had have to look at the documentation, 4 but it included TPTC, PDI, Ron Van Den Heuvel, and 5 Oconto Falls. 6 Q. Okay. 7 MR. LANGS: Is it possible when you said PDI, 8 you meant PCIDI? 9 THE WITNESS: Maybe. I'd have to look at -- 10 there's definitions in these agreements which is 11 called the Ron Van Den Heuvel companies. 12 BY MR. ROMASHKO: 13 Q. So this is specifically the transactions 14 we're here about today that you did with Fortress? 15 A. This is the beginning of those 16 transactions. 17 Q. Okay. When you say the beginning -- so 18 when did this transaction with Fortress and -- let's 19 just call it the Ron Van Den Heuvel companies for 20 now -- start? 21 A. So the transaction was completed. It was 22 to finance the construction of a line. So in this 23 case of Oconto Falls, they had two lines, and these 24 lines are including the pulping, making of paper,</p>
<p style="text-align: right;">Page 15</p> <p>1 my time that I worked there. 2 Q. Okay. 3 A. The transactions were less in volume and 4 size. 5 Q. And with respect to the transactions that 6 we're here today about with Ron Van Den Heuvel, those 7 are sort of those middle market transactions you 8 described? 9 A. So normally it would be middle market 10 with Ron, but IFC was involved with one large 11 transaction, which is the Fortress transaction. That 12 was about a \$16 million transaction in which IFC 13 immediately found a financing partner, which was 14 Fortress. They were a hedge fund. So Fortress, 15 combined with IFC, did the due diligence and 16 underwriting of the transaction and Fortress took 17 that off and the security interest nonrecourse. 18 Q. And so let's just go ahead and start 19 there. So you mentioned the transaction, but kind of 20 took it as a given that I know what you were talking 21 about. But explain what exactly this Fortress 22 transaction is. And let's -- if it helps, let's 23 start this way. Who's the borrower on that 24 transaction?</p>	<p style="text-align: right;">Page 17</p> <p>1 spitting out of the paper, the cutting and of 2 wrapping of paper, so from beginning to end. And 3 they were financing a line. It was, like I said, 4 approximately \$16 million. And Fortress and IFC 5 generated the -- Fortress obviously was the big 6 brother on this situation -- the documentation, 7 everything, and the transaction was financed and paid 8 for so that Line 1 would be constructed in Oconto 9 Falls. 10 Q. So help me understand here. Let's just 11 start by cleaning up something. I'm going to mark an 12 exhibit. 13 (Langs Deposition Exhibit 14 No. 1 marked as 15 requested.) 16 BY MR. ROMASHKO: 17 Q. So you've just been handed what's marked 18 as Exhibit 1, and I will represent to you that this 19 document is out of the chronology we're talking 20 about. But you mentioned a couple of parties, and I 21 just wanted to put this in front of you and see if it 22 helps you remember. So if you look at the paragraph 23 below, "witnesseth." 24 A. Uh-huh.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. Just take a second to take a look at that 2 paragraph. 3 A. (Reviewing exhibit.) 4 So just look at the witnesses? 5 Q. Yeah. 6 A. Okay. Yeah. 7 Q. So those are the parties to the 8 transaction you were describing, correct, with the 9 exception of Fortress? 10 A. This is not for the Fortress transaction, 11 but these are the parties that were involved in the 12 Fortress transaction. That's correct. 13 Q. Right. And the only reason I wanted to 14 mention that is just because I wanted to make sure. 15 So if you take a look at -- we're talking about, 16 specifically, Tissue Products, Technology Corp, 17 Partners Concepts Development, Inc., Eco-Fibre, Inc., 18 and Ron Van Den Heuvel, as well as Oconto Falls 19 Tissue Inc.; is that correct? 20 A. Yes. 21 Q. So those are the parties to Fortress 22 transaction on the Ron Van Den Heuvel side? 23 A. Well, I would just say there, you know, 24 the Fortress agreement's available, and it's got</p>	<p style="text-align: right;">Page 20</p> <p>1 Den Heuvel and Ron Van Den Heuvel's companies. And 2 as a result of that experience, through financing 3 smaller equipment -- financing in those periods of 4 time, the ability to finance this whole 5 reconstruction of Line No. 1 came about. And because 6 of a relationship that Ron had with certain parts of 7 management at IFC, we put together the transaction, 8 went out and see if we could finance that with 9 partners that we had knowledge of that would be 10 interested in that size of transaction. 11 Q. Okay. So when did the relationship with 12 Ron start with IFC? 13 A. I don't know. Prior to my being there, 14 so prior to 2004. 15 Q. Okay. 16 A. 2003. 17 Q. And you mentioned that he had -- so you 18 arrive and Ron is already -- 19 A. Had done some business with IFC, correct. 20 Q. Do you know the nature of that business? 21 A. No. I don't know what the regional -- 22 exact transaction was. 23 Q. Okay. Do you know -- 24 A. Or I don't recall. Let me put it that</p>
<p style="text-align: right;">Page 19</p> <p>1 parties in there. But essentially, this is -- I 2 think, my understanding, of approximately Ron and 3 everything he touches is what you tried to do, yeah. 4 Q. Okay. And so what I'm trying to 5 understand now, then, is -- so the \$16 million 6 transaction, that's fair to say that's outside the 7 normal range of transactions that IFC is engaging in? 8 A. Correct. 9 Q. And what year does this transaction 10 originate? 11 A. It's been a long time ago, but probably 12 sometime around 2007. 13 Q. Okay. 14 A. Documents can be presented that would -- 15 Q. And we may get there, but -- so you just 16 testified it's fair to say that this is outside the 17 normal range of contracts that IFC engages in? 18 A. Uh-huh. 19 Q. Does Fortress bring this to IFC or does 20 IFC bring it to Fortress? 21 A. IFC brings it to Fortress. 22 Q. This may seem obvious, but who brought it 23 to IFC? 24 A. IFC had done previous leases with Ron Van</p>	<p style="text-align: right;">Page 21</p> <p>1 way. 2 Q. Fair enough. 3 You knew at some point, but you 4 don't know today? 5 A. You know, I don't think I really ever 6 knew the original story. When I got there, we 7 started -- we continued to do transactions and at 8 that point in my position, I was involved in the 9 underwriting, the credit, the documentation, and the 10 syndication of transactions. 11 Q. Okay. And when you say syndication, can 12 you explain what that is? 13 A. We will -- for large transactions, which 14 Ron always -- what we call our middle market section, 15 IFC did not have the ability to take those 16 transactions on book. We didn't have a large enough 17 equity base to be taking that kind of debt. So we 18 would find asset buyers, banks, hedge funds, and we 19 would then turn around and sell those off nonrecourse 20 with those players with all of our security interests 21 as they were contracted. These players were well 22 versed in this asset purchase sphere, so they would 23 look at the documentation, be satisfied with it, and 24 they would buy the transaction for their own book.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q. Okay. And so you had mentioned that Ron 2 and his -- or his companies -- you had mentioned that 3 Ron had a relationship with members of IFC 4 management? 5 A. Correct. 6 Q. Who were those people that he had that 7 relationship with? 8 A. Primarily Rudy Trebles and -- I'm going 9 to forget the other gentleman's name, but it's 10 somebody -- Wykowski (phonetic)? I have forgotten 11 his first name. 12 Q. And just for the record, Trebles, what 13 was his role? 14 A. He was president of IFC. 15 Q. Okay. And Rykowski -- 16 A. Vice -- 17 Q. Or Wykowski -- 18 A. -- president that assisted Rudy with 19 middle market transactions. 20 Q. Okay. And you weren't necessarily 21 familiar with what Ron's business with IFC was when 22 you arrived, but did you develop some sort of 23 familiarity before this Fortress transaction? 24 A. Yeah. I would say before the Fortress</p>	<p style="text-align: right;">Page 24</p> <p>1 What is an after dryer? 2 A. I'm probably only a little closer to you. 3 But the after dryer is part of the line. So you have 4 this line; it takes wood pellets and makes it up into 5 pulp, and then it starts to pull that pulp through 6 surface area viscosity into paper. And then there's 7 these after dryers that basically take and turn that 8 into a paper that is then continued to stretch and 9 rolled under pressure, and engineering stuff that I 10 don't have the ability to talk about. So in the end, 11 it comes to be a very specific paper grade and then 12 rolled up or cut or sliced, depending on what's being 13 made. It could be tissue paper. It could be liner 14 board. It could be all kinds things that can be made 15 out of this. So the after dryer is part of the 16 after-pulping situation to create paper. 17 Q. And so Ron already has those after 18 dryers, at least ahead of the Fortress transaction? 19 A. Correct. 20 Q. And IFC has an interest in those and has 21 money against them; is that right? 22 A. Yes. 23 Q. Backing up for a second, by the way. I 24 probably should have asked you. So in your role with</p>
<p style="text-align: right;">Page 23</p> <p>1 transaction, I developed some familiarity with Ron's 2 transactions. 3 Q. And what were you involved in, generally, 4 with Ron's transactions between when you arrive at 5 IFC and the Fortress transactions? 6 A. He purchased a number of what's called 7 after dryers, quite a few of them, and he would use 8 those after dryers as collateral for him to have 9 funds available for him to do things within the paper 10 industry. 11 Q. Okay. 12 A. So we financed those dryers for Ron, and 13 I was involved with those transactions. 14 Q. So you helped fund the initial purchase 15 of the after dryers? 16 A. No. 17 Q. Okay. 18 A. He purchased the after dryers in some 19 kind of transaction, but then we did review and found 20 out what the value of the after dryers were, and as 21 collateral, we used those to provide sale and 22 leaseback activity for Ron for funds available. 23 Q. And this case has been pending for almost 24 two years, and I still don't know. Maybe you do.</p>	<p style="text-align: right;">Page 25</p> <p>1 RNS, you're familiar with who the members of RNS, 2 which is an LLC, are? 3 A. Yes. 4 Q. And who are those members? 5 A. Steve Csar and Rebecca Elli. 6 Q. And they have roles at IFC as well? 7 A. Correct. 8 Q. Okay. So what were their roles at IFC? 9 A. Rebecca was a contract for a long time. 10 I'm not sure if she ever actually became an employee, 11 but she did a significant amount of her work as 12 general counsel and as transactional lawyer for the 13 documentation for these types of activities. And 14 Steve was involved and headed up the credit function 15 for IFC, a hundred percent for transactions. Middle 16 market, he was part of the credit committee, but he 17 was not responsible for a hundred percent for the 18 middle market transactions. So he sat with Rudy 19 Trebles and nonrecourse opportunities. 20 Q. And, really, the only reason I'm asking 21 now is because I looked over and saw Mr. Csar is in 22 the room, and I figured I should establish that. 23 So a couple more questions about 24 IFC, and then we'll go back to the Ron transactions.</p>

<p style="text-align: right;">Page 26</p> <p>1 Have you been involved in other 2 litigation, first -- well, let me just ask, have you 3 been involved in other litigation? 4 A. Yes. 5 Q. Have you ever testified before? 6 A. Yes. 7 Q. Given a deposition? 8 A. Yes. 9 Q. Testified at trial? 10 A. Yes. 11 Q. I guess going back, let's just try to 12 break -- well, how many times have you testified? 13 A. I'm going to say twice. 14 Q. Just tell me what those matters were 15 then. 16 A. One of them was in this particular 17 activity when IFC went to a default judgment against 18 Ron Van Den Heuvel, and I gave a deposition as well 19 as testified. Once, his deposition and testimony in 20 the bankruptcy filing for IFC as an officer of the 21 company. And then I was involved with that specialty 22 printing paper company. We had a trademark issue, 23 which went to trial, and I gave deposition and 24 testimony in that.</p>	<p style="text-align: right;">Page 28</p> <p>1 BY THE WITNESS: 2 A. So the part of it I can speak to with 3 some knowledge is that Ron Van Den Heuvel had 4 off-take agreements, which is contracts with paper 5 users who would contract with him. He would take 6 these contracts and give them to the paper companies. 7 So in the case of Oconto Falls, where I have 8 knowledge, he had several what they call off-take 9 contracts, to supply paper which were multiple 10 tonnage that occupied in excess of 50 percent of the 11 capacity of the Oconto Falls plant. 12 Q. Okay. 13 A. So the combination of having these 14 off-take contracts and having a plant to make paper 15 create a certain value -- business value that I 16 understood and that was part of the approval of the 17 transactions of interest for Ron Van Den Heuvel and 18 Oconto Falls. 19 Q. I am just asking about some specific 20 companies, and you can tell me if you know anything 21 about their business or not. Do you know anything 22 about what partners -- or did you know anything at 23 the time about what Concepts Development, Inc. did? 24 A. So -- no. Here's what I didn't know --</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. And those were the only matters you 2 recall testifying on? 3 A. Yeah. 4 Q. So now going back to the transaction, the 5 Fortress transaction that is. So by the time you 6 are -- excuse me -- by the time IFC is doing this 7 transaction with Fortress and with Ron Van Den 8 Heuvel's companies, you acquired some familiarity 9 with Ron's companies? 10 A. Uh-huh. 11 Q. Okay. You understood them to be in the 12 paper business? 13 A. Uh-huh. 14 Q. Did you understand what the function of 15 each of his companies was? 16 A. Not in depth. 17 Q. Okay. But what did you understand about 18 his business, generally? Forget what individual 19 entities did. 20 MR. LANGS: What point in time are we talking 21 here? 22 MR. ROMASHKO: Right before entering his 23 transaction with Fortress. 24</p>	<p style="text-align: right;">Page 29</p> <p>1 because you're going to ask about a whole bunch of 2 companies. Ron Van Den Heuvel had ownership, 3 including Oconto Falls and Tissue Products, which 4 were the two that were primarily mentioned in 5 contracts, TPTC, ownership among all these other 6 companies. So he created this structure that gave 7 him the ability to function with very specific -- 8 applications by industry was what he said. So as we 9 did agreements with Ron Van Den Heuvel, we did the 10 normal searches for title and ownership, and we 11 wanted to always make sure that we had all of that 12 ownership as contract parties to this. They were all 13 Ron and Ron-associated entities. He made the 14 representations, our underwriting and due diligence 15 proved that's what it was in terms of ownership. So 16 that's why these other companies are in here. But 17 Oconto Falls -- really, what was going on there, is 18 the one that we had -- or I had some specific 19 knowledge to in terms of what they did. 20 Q. So in about 2007 -- you were guessing, 21 but whenever IFC and Fortress are about to enter into 22 that \$16 million transaction, were you familiar with 23 Ron's -- let me ask it a different way. Were you 24 familiar with the performance of the loans that IFC</p>

8 (Pages 26 - 29)

<p style="text-align: right;">Page 30</p> <p>1 had previously made to Ron and his companies?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. How were those performing?</p> <p>4 A. Poorly.</p> <p>5 Q. Okay.</p> <p>6 A. But adequately.</p> <p>7 Q. When you say poorly but adequately, can</p> <p>8 you spell that out a little more?</p> <p>9 A. Ron was always late with payment, but</p> <p>10 eventually he provided payment or he bought off the</p> <p>11 transaction and created some other transaction.</p> <p>12 Q. Okay.</p> <p>13 A. But Ron was not in default with us.</p> <p>14 Q. When you say he bought off the</p> <p>15 transaction but created some other transaction, can</p> <p>16 you just explain that?</p> <p>17 A. So Ron would use these dryers for</p> <p>18 collateral. He would take that and do some type of</p> <p>19 interim financing or some type of financing for</p> <p>20 something that was to improve the manufacturing</p> <p>21 process or some kind of -- one of his operations. He</p> <p>22 would be late with that. He would come back with</p> <p>23 cash, and he would pay us off. And then he would</p> <p>24 look to do some additional financing with other</p>	<p style="text-align: right;">Page 32</p> <p>1 buyers ended up suing Ron over the debts?</p> <p>2 A. When IFC went into bankruptcy, banks were</p> <p>3 owed monies on these leases, and I believe they did</p> <p>4 pursue those interests in terms of trying to collect</p> <p>5 some kind of money against these security interests</p> <p>6 that they had and asset collateral value.</p> <p>7 Q. So when you say IFC went into bankruptcy,</p> <p>8 you're saying you didn't know in 2000- -- you didn't</p> <p>9 know when you were getting ready to do this</p> <p>10 transaction with Ron in Fortress, but you've learned</p> <p>11 that since?</p> <p>12 A. No. I just -- well, I shouldn't say</p> <p>13 that. I do know that as a result of IFC going into</p> <p>14 bankruptcy, the banks came back and the trustee</p> <p>15 basically consolidated all of the actions of banks.</p> <p>16 So they control those because that's how bankruptcy</p> <p>17 law works. I'm no expert in bankruptcy. So those</p> <p>18 claims were part of the trustee's filings, which I</p> <p>19 was asked for in testimony in deposition.</p> <p>20 Q. Okay. But as IFC's getting ready to do</p> <p>21 this transaction with Fortress and Ron, you</p> <p>22 personally don't know at that point whether Ron's</p> <p>23 been sued by any creditors?</p> <p>24 A. We were aware at that point that Ron was</p>
<p style="text-align: right;">Page 31</p> <p>1 collateral, dryers may be or may not be included.</p> <p>2 And I think we did -- while I was there, I think we</p> <p>3 did maybe twice those types of transactions before we</p> <p>4 did the Fortress transaction.</p> <p>5 Q. And so you said Ron would put up cash</p> <p>6 in -- when he did this. Did you know when this</p> <p>7 happened where the cash came from?</p> <p>8 A. No.</p> <p>9 Q. Is it something you inquired about?</p> <p>10 A. Not particularly. Again, those</p> <p>11 transactions that we had were sold off to another</p> <p>12 asset buyer and those asset buyers were paid off, the</p> <p>13 liens and the security interest were canceled</p> <p>14 accordingly. So, again, we were not taking these</p> <p>15 transactions for our books. These transactions were</p> <p>16 being taken off nonrecourse to other larger</p> <p>17 players.</p> <p>18 Q. Okay. And who would you sell -- well,</p> <p>19 forget who you would sell, generally. But who did</p> <p>20 you sell Ron's debts to prior to the Fortress</p> <p>21 transaction?</p> <p>22 A. I don't remember. I'd have to go back</p> <p>23 and look at documentation.</p> <p>24 Q. Are you aware of whether any of those</p>	<p style="text-align: right;">Page 33</p> <p>1 being sued by certain creditors.</p> <p>2 Q. Do you know who those creditors were?</p> <p>3 A. I don't remember their names, but, again,</p> <p>4 there's documents at that particular time. Nicolet</p> <p>5 Banks and a couple others.</p> <p>6 Q. Do you know why Ron was being sued by</p> <p>7 those creditors?</p> <p>8 A. For monies that he had borrowed that he</p> <p>9 wasn't paying currently.</p> <p>10 Q. Is it fair to say that lawsuits by</p> <p>11 creditors was the sort of thing that IFC would have</p> <p>12 looked into for a borrower or prospective borrower?</p> <p>13 A. Yes.</p> <p>14 Q. So at the time you're preparing for this</p> <p>15 transaction with Ron and Fortress -- and when I say</p> <p>16 Ron and Fortress, I mean, generally, Ron's</p> <p>17 companies -- you and IFC are aware that Ron has been</p> <p>18 sued by other creditors --</p> <p>19 A. Yes.</p> <p>20 Q. -- to collect on debts?</p> <p>21 You're aware that his debt to IFC --</p> <p>22 his past debts with IFC had some performance issues?</p> <p>23 A. Yes.</p> <p>24 Q. And the transaction being proposed, is it</p>

<p style="text-align: right;">Page 34</p> <p>1 the largest transaction IFC has ever done?</p> <p>2 A. I can't speak to that.</p> <p>3 Q. Okay.</p> <p>4 A. Certainly, it was the largest transaction</p> <p>5 that was done in my time there.</p> <p>6 Q. Okay. But IFC decides to proceed with</p> <p>7 that transaction?</p> <p>8 A. Correct.</p> <p>9 Q. Why does it decide to proceed with that</p> <p>10 transaction?</p> <p>11 A. Because it has a partner that is going to</p> <p>12 buy this transaction off nonrecourse on execution.</p> <p>13 Q. And that's Fortress?</p> <p>14 A. Uh-huh.</p> <p>15 Q. So Ron and IFC and Fortress agree to the</p> <p>16 terms of this transaction, the transaction closes?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And do you recall exactly when</p> <p>19 that transaction closes?</p> <p>20 A. 2007. As I said, sometime around then, I</p> <p>21 think. But it could be a little bit before that.</p> <p>22 (Langs Deposition Exhibit</p> <p>23 No. 2 marked as</p> <p>24 requested.)</p>	<p style="text-align: right;">Page 36</p> <p>1 whatever it is and was prepared to take over the</p> <p>2 Oconto Falls facility at the security interest</p> <p>3 associated with the original contract. Fortress had</p> <p>4 expertise when they did the transaction. They had</p> <p>5 people that could run a paper plant. So they were</p> <p>6 very satisfied with taking over Oconto Falls. Fairly</p> <p>7 quickly in that process, Ron came back and said he</p> <p>8 had a new financial partner, Sharad Tak, in a company</p> <p>9 that was being created called Sharad Tak Paper and</p> <p>10 that they were interested in buying -- or coming to</p> <p>11 an arrangement with Fortress and IFC. So that they</p> <p>12 had purchased those rights, the original lease rights</p> <p>13 and security interest, and continued to run Oconto</p> <p>14 Falls as some kind of combination of Sharad Tak Paper</p> <p>15 and Ron Van Den Heuvel going forward.</p> <p>16 Q. Okay. So --</p> <p>17 A. And this is a memorandum outlining the</p> <p>18 moving parts of that transaction.</p> <p>19 Q. Okay. So all of that had happened by</p> <p>20 this December 22nd, 2006 day?</p> <p>21 A. Well, this was -- I think the memorandum</p> <p>22 of understanding was kind of a process to get us to,</p> <p>23 eventually, an actual contract and buyout -- you</p> <p>24 know, with cash exchanging hands on the basis that's</p>
<p style="text-align: right;">Page 35</p> <p>1 BY MR. LANGS:</p> <p>2 Q. Go ahead and take a look at that document</p> <p>3 and familiarize yourself with what it is. I don't</p> <p>4 necessarily need you to read through the whole</p> <p>5 document.</p> <p>6 A. (Reviewing exhibit.)</p> <p>7 Q. So you're familiar with this document?</p> <p>8 A. Uh-huh.</p> <p>9 Q. And you've seen this before?</p> <p>10 A. Yes.</p> <p>11 Q. And you signed it?</p> <p>12 A. Yes.</p> <p>13 Q. And so this is titled "Memorandum of</p> <p>14 Understanding for Equipment Purchase Agreement and</p> <p>15 Lease Payoff." It's dated December 22nd, 2006?</p> <p>16 A. (Nodding.)</p> <p>17 Q. So how does this fit into the Fortress</p> <p>18 transaction you described?</p> <p>19 A. So seeing this date now, the Fortress</p> <p>20 transaction would have been before this. So rather</p> <p>21 than 2007, it would have been 2006. So the</p> <p>22 transaction was completed with Fortress. Ron</p> <p>23 defaulted on payments. Fortress then basically</p> <p>24 looked for and got a declaration of default or</p>	<p style="text-align: right;">Page 37</p> <p>1 outlined in this document.</p> <p>2 Q. Let me rephrase that, then. So the</p> <p>3 initial Fortress transaction --</p> <p>4 A. The sale of -- okay, yeah.</p> <p>5 Q. So, yeah, the official \$16 million loan,</p> <p>6 right, and its subsequent default, had all taken</p> <p>7 place prior to --</p> <p>8 A. Correct.</p> <p>9 Q. -- the date on this document?</p> <p>10 A. Uh-huh.</p> <p>11 Q. So the initial transaction with Fortress,</p> <p>12 is that the master lease agreement referenced in</p> <p>13 Paragraph A?</p> <p>14 A. Yes.</p> <p>15 Q. So then just to put a date on it, the</p> <p>16 transaction with Fortress is June 30th, 2005 or</p> <p>17 around then?</p> <p>18 A. Uh-huh.</p> <p>19 MR. LANGS: I think it says June 10th, right?</p> <p>20 MR. ROMASHKO: I'm sorry. There's two.</p> <p>21 There's a supplement --</p> <p>22 MR. LANGS: Yeah.</p> <p>23 BY MR. ROMASHKO:</p> <p>24 Q. So the master lease agreement is</p>

<p style="text-align: right;">Page 38</p> <p>1 June 10th, 2005 or thereabouts?</p> <p>2 A. Uh-huh.</p> <p>3 Q. So these initial conversations between</p> <p>4 Ron and Fortress are back -- and IFC are back around</p> <p>5 2005?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And let me also ask you. You've</p> <p>8 mentioned sale of various pieces of debt. Do you</p> <p>9 recall if IFC had ever sold any of Ron's debts to</p> <p>10 George Washington State Bank?</p> <p>11 A. It's not Ron's debts. So leasing is not</p> <p>12 debts. It's not a loan.</p> <p>13 Q. Right.</p> <p>14 A. So George Washington Bank looked at the</p> <p>15 dryers for equipment collateral in case there was a</p> <p>16 default and then looked for the contract payments for</p> <p>17 Ron as a company and wrote a contract for fixed</p> <p>18 payments.</p> <p>19 Q. Okay.</p> <p>20 A. And George Washington, yes, had bought a</p> <p>21 stream of payments based on dryers as collateral.</p> <p>22 Q. So they bought the right to receive those</p> <p>23 payments?</p> <p>24 A. And all security rights associated with</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- 2006?</p> <p>3 And judging by the existence of this</p> <p>4 memorandum of understanding, the parties to the</p> <p>5 transaction are looking for some solution to the</p> <p>6 problem, this money that's owed? I can rephrase</p> <p>7 that. The parties to the transaction are looking for</p> <p>8 some way for the creditors to get paid?</p> <p>9 A. The only creditor at that point was</p> <p>10 Fortress, and Fortress was perfectly content to take</p> <p>11 over Oconto Falls. Ron came back and said, I would</p> <p>12 like to not lose Oconto Falls. So he came back with</p> <p>13 Sharad Tak and some additional collateral, which are</p> <p>14 these after dryers -- these after dryers show up as</p> <p>15 collateral several times in Ron's history, but they</p> <p>16 always had separate tag numbers. They had UCC</p> <p>17 filings against them and UCC filings that were paid</p> <p>18 off. So when you look at them as a security</p> <p>19 interest, they would always be, at some point,</p> <p>20 pledged and at some point paid off. So he used the</p> <p>21 collateral of the dryers and Sharad Tak's financing</p> <p>22 to come in and do a deal to pay off Fortress and to</p> <p>23 pay off IFC.</p> <p>24 Q. Okay.</p>
<p style="text-align: right;">Page 39</p> <p>1 the contracts.</p> <p>2 Q. Okay. But George Washington State Bank</p> <p>3 did -- or George Washington Bank was, then, the</p> <p>4 purchaser --</p> <p>5 A. Yes.</p> <p>6 Q. -- of that stream of payments?</p> <p>7 Do you recall when that was?</p> <p>8 A. I -- No. George Washington bought some</p> <p>9 payments -- contract on their dryers once. I think</p> <p>10 that got paid off at a certain period of time, and</p> <p>11 they came back and did it again with the Fortress</p> <p>12 transaction as it got bought out.</p> <p>13 Q. Okay.</p> <p>14 A. But I don't remember specifically without</p> <p>15 now looking at documents, dates.</p> <p>16 Q. Okay. And so 2005, IFC enters into that</p> <p>17 Fortress transaction?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And then by 2006 -- the end of 2006,</p> <p>20 there's been a default and everyone's looking for</p> <p>21 some -- I don't know what to -- let me back up. Let</p> <p>22 me reask that question.</p> <p>23 So by 2006, there's been a default,</p> <p>24 correct? By December 22nd --</p>	<p style="text-align: right;">Page 41</p> <p>1 A. There was no other creditors at that</p> <p>2 point.</p> <p>3 Q. Got it. So then -- going back to 2005,</p> <p>4 the transaction with Fortress closes. And is it at</p> <p>5 closing IFC is owed no more money --</p> <p>6 A. No.</p> <p>7 Q. -- Fortress -- okay.</p> <p>8 A. At the -- which closing? At the --</p> <p>9 Q. The closing of the 2005 Fortress --</p> <p>10 A. Fortress transaction?</p> <p>11 Q. Yeah.</p> <p>12 A. IFC is only owed money as additional</p> <p>13 residual considerations per the lease contract at the</p> <p>14 end of the lease with Fortress.</p> <p>15 Q. And does IFC ever sell those rights or</p> <p>16 does it just retain those?</p> <p>17 A. Retains them.</p> <p>18 Q. So by 2006, when there's a default, IFC's</p> <p>19 only interest is that residual, but the rest of it is</p> <p>20 Fortress's problem; is that fair?</p> <p>21 A. Correct.</p> <p>22 Q. But IFC, nonetheless, gets back involved</p> <p>23 in 2006?</p> <p>24 A. Correct.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. Okay. So by that point, you've got</p> <p>2 another instance of Ron having some problems paying</p> <p>3 off debts; is that fair?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Or obligations?</p> <p>6 A. (Nodding.)</p> <p>7 Q. Are you aware of a creditor forcing Ron</p> <p>8 or some of his companies into bankruptcy in 2006?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. So Ron comes to IFC in 2006 about trying</p> <p>11 to keep the mill?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And who participates in the</p> <p>14 decision about whether to do some sort of transaction</p> <p>15 in 2006?</p> <p>16 A. IFC?</p> <p>17 Q. On the IFC side. Sorry.</p> <p>18 A. So Ron -- Rudy Trebles would have done</p> <p>19 most of the work on that with me being involved with</p> <p>20 a credit committee and documentation.</p> <p>21 Q. Okay. And so you and Trebles plus the</p> <p>22 credit committee as a whole are sort of the decision</p> <p>23 makers here?</p> <p>24 A. Uh-huh.</p>	<p style="text-align: right;">Page 44</p> <p>1 had something that was outside of Ron Van Den Heuvel,</p> <p>2 and that was -- VHC, is that the holding company for</p> <p>3 the brothers in the family, VCH, VHS?</p> <p>4 Q. There's --</p> <p>5 A. There's a --</p> <p>6 (Simultaneous colloquy.)</p> <p>7 BY THE WITNESS:</p> <p>8 A. -- guarantee of the Fortress transaction</p> <p>9 of an outside company that had substance.</p> <p>10 Q. Okay.</p> <p>11 A. Outside of Ron Van Den Heuvel and Ron Van</p> <p>12 Den Heuvel companies, there are the rest of the</p> <p>13 family, which is represented by Spirit, Vos, and</p> <p>14 VHC -- whatever --</p> <p>15 Q. Okay.</p> <p>16 A. So David Van Den Heuvel and VHC made a</p> <p>17 personal guarantee on the payments to Fortress. When</p> <p>18 the buyout came to be, IFC was not going to</p> <p>19 participate on the buyout. They would let Fortress</p> <p>20 take over and we would take our chance on the</p> <p>21 residual downstream based upon what would happen in</p> <p>22 the original contract or this transaction. Sharad</p> <p>23 Tak and the parties didn't have enough money to pay</p> <p>24 off IFC's residual interest plus Fortress's interest,</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. And with respect to this specific</p> <p>2 transaction, this -- what's referenced in Exhibit 2</p> <p>3 here, what exactly was your role with respect to that</p> <p>4 transaction?</p> <p>5 A. IFC's role or my role?</p> <p>6 Q. Your role personally.</p> <p>7 A. To work with the lawyers and the</p> <p>8 documentation to provide a secured interest -- which</p> <p>9 some of those secured interests were later then,</p> <p>10 again, sold off nonrecourse to certain financing</p> <p>11 sources. That was my responsibility.</p> <p>12 Q. Okay.</p> <p>13 A. I'm sorry. There was another</p> <p>14 responsibility. So Ron had just defaulted on the</p> <p>15 Fortress transaction.</p> <p>16 Q. Right.</p> <p>17 A. Ron had been long in payments before</p> <p>18 and -- so from my point of view and from the credit</p> <p>19 committee's point of view, you know, Ron's promise to</p> <p>20 pay would not have stood up to be involved with</p> <p>21 allowing the Fortress transaction not to go forward.</p> <p>22 There was no reason for us to participate any</p> <p>23 additional liability for the Fortress transaction</p> <p>24 because the Fortress transaction, in itself, already</p>	<p style="text-align: right;">Page 45</p> <p>1 so they came up, again, with using the dryers as</p> <p>2 additional collateral and also other considerations.</p> <p>3 The other considerations, as it says in here, is</p> <p>4 stock and the EPC contracts. IFC had no trust in the</p> <p>5 EPC contracts, but they did have trust in the</p> <p>6 parties' contractor, which is Spirit Construction,</p> <p>7 which had a very strong reputation and is one of the</p> <p>8 leading construction companies in this category for</p> <p>9 paper and paper technology, as well as Sharad Tak who</p> <p>10 was the owner.</p> <p>11 And so we did due diligence into</p> <p>12 having conversations and meetings with Sharad Tak and</p> <p>13 Ron in terms of his involvement in signing of EPC</p> <p>14 contracts. And we had meetings with Steve Van Den</p> <p>15 Heuvel up in Wisconsin. Rudy Trebles and I attended</p> <p>16 those meetings. So I hear Steve say he doesn't</p> <p>17 recall them, but those were very important</p> <p>18 underwriting aspects for us to be satisfied that</p> <p>19 there was additional collateral value to replace</p> <p>20 David Van Den Heuvel and VHC in this transaction.</p> <p>21 Q. And --</p> <p>22 A. And then the only other thing I think</p> <p>23 worth mentioning is that at that point, it was told</p> <p>24 to us that because of the nature that they're raising</p>

<p style="text-align: right;">Page 46</p> <p>1 tremendous bonded debt, there is a confidentiality 2 that you cannot see these EPC contracts, but they 3 showed us other EPC contracts and they showed us how 4 a tremendous amount of cash is invested in the 5 engineering and upfront costs and up on the EPC 6 contract signing, that there's monies that are 7 exchanging hands that create real economic value on 8 the EPC contracts, whether they go forward with 9 financing or not.</p> <p>10 So for someone to lose \$250,000 to 11 two-and-a-half million dollars because they didn't 12 get their financing, as I think Steve Van Den Heuvel 13 said in his deposition here, again, you know, 14 95 percent of these contracts that are written are 15 completed and construction. That was our 16 understanding at the time. We spent a lot of time on 17 this due diligence aspect of it, which was outside of 18 Ron Van Den Heuvel and his companies, as part of our 19 reason and consideration to go forward.</p> <p>20 Q. Okay. So there's a lot to unpack there. 21 So let me just back up for a second first and maybe 22 we'll come back to that. I have a document to mark.</p> <p>23 (Langs Deposition Exhibit 24 No. 3 marked as</p>	<p style="text-align: right;">Page 48</p> <p>1 after the June loan -- not loan, but the June 2 transaction with Fortress closest in the first place 3 in 2005?</p> <p>4 A. Yeah.</p> <p>5 Q. Okay. And more than a year before this 6 December 22nd, 2006 document that was marked as 7 Exhibit 2?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Okay. So by November 25th, 2005, Ron was 10 already in default?</p> <p>11 A. I can't speak to this.</p> <p>12 Q. Okay.</p> <p>13 A. And I don't think Ron was in default. I 14 think Ron was looking to finance here -- what he's 15 talking about here, this tissue plant. And he was 16 trying to finance this tissue plant and maintain 17 significant ownership with Sharad Tak, which is ST 18 Paper.</p> <p>19 Q. Okay.</p> <p>20 A. Subsequent to that, Ron lost his ability, 21 I think, to participate equity or value. And Sharad 22 Tak -- you know, so Ron was losing ownership interest 23 as these transactions didn't happen later on.</p> <p>24 Q. Got it.</p>
<p style="text-align: right;">Page 47</p> <p>1 requested.)</p> <p>2 BY MR. ROMASHKO:</p> <p>3 Q. So I've handed what's been marked a fax 4 transmittal sheet, the first page is dated 5 November 25th, 2005, to Rebecca Elli, IFC Credit 6 Corporation, transmitted by Attorney C. David 7 Stellpflug. And if you flip to the next page, the 8 document transmitted is called Maryland Tissue 9 Project summary of key business terms, July 22nd, 10 2005.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Have you seen this document before?</p> <p>13 A. This was part of some discussions that 14 were going back and forth between IFC and Rudy, and 15 in this case, Rebecca, who was in-house that worked 16 on documentation, and attorney for Stellpflug. So 17 this, kind of, is early in that whole process. I was 18 not directly involved with this specifically. But 19 this is consistent with the type of transaction that 20 ended up happening in terms of EPC contracts and 21 representations, yes.</p> <p>22 Q. Okay. So this is dated 11/25/2005?</p> <p>23 A. Right.</p> <p>24 Q. Okay. So that's roughly five months</p>	<p style="text-align: right;">Page 49</p> <p>1 But this isn't necessarily the 2 beginnings of a workout of this default?</p> <p>3 A. No.</p> <p>4 Q. And is workout a fair characterization of 5 it?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. When do you understand that the 8 attempts to start this workout actually took place?</p> <p>9 A. I'd have to go back, but -- Ron defaulted 10 on his payments to Fortress early in that agreement.</p> <p>11 Q. Okay.</p> <p>12 A. I'd have to go back -- the dates speak 13 for themselves in the documentation.</p> <p>14 Q. Okay. So let me direct your attention 15 back to Exhibit 2, which is the December 22nd, 2006 16 memorandum of understanding.</p> <p>17 A. Uh-huh.</p> <p>18 Q. You had mentioned a guarantee by VHC on 19 the previous -- and David Van Den Heuvel on the 20 previous --</p> <p>21 A. Fortress deal.</p> <p>22 Q. And I think -- and maybe I'm 23 misunderstanding, but you said a lot about this 24 memorandum of understanding, but I thought you</p>

<p style="text-align: right;">Page 50</p> <p>1 referenced it -- that guarantee being referenced in 2 this document. I don't see that and -- 3 A. No -- 4 Q. -- I just wanted to make sure I 5 understand. 6 A. So this document was to take -- I'm 7 going -- is it VHC? 8 Q. It's VHC. 9 A. This document was a methodology for all 10 parties to approve -- Fortress to approve it, IFC to 11 approve it, and certainly VHC had a significant -- 12 they were not going to go forward with another 13 transaction. They were content to let Fortress to 14 default on Ron and take Oconto Falls. 15 Q. And when you say "they" there -- 16 A. The rest of the Van Den Heuvel family, 17 particularly represented by VHC. 18 Q. And how did you come to understand that 19 that was the case? 20 A. They said they would not sign any 21 additional -- we couldn't get them to sign the 22 guarantee again for this workout for this new 23 transaction for Ron. 24 Q. Got it.</p>	<p style="text-align: right;">Page 52</p> <p>1 this is what we all kind of believe. Should we go 2 forward and spend the money and the legal fees and 3 the documentation and the due diligence to get to the 4 next level of the transaction. 5 Q. Okay. But this is -- and at this stage, 6 no one is asking Spirit to sign this document, 7 correct? 8 A. Correct. 9 Q. And we haven't talked about them yet, but 10 I will represent -- and you tell me if you agree -- 11 this reference to an August 4th, 2006 EPC is not the 12 same as the EPCs that Spirit later signed the 13 document marked as -- the document labeled Schedule B 14 that we'll get to in a little bit? 15 A. So from here, once we got this level of 16 understanding, then we proceeded to see whether this 17 could happen. 18 Q. Okay. 19 A. So all we knew was there was a 20 discussion. The discussion was participated at that 21 point by -- definitely Ron and Sharad Tak. I'm not 22 sure if we got involved with Spirit at that point 23 because I don't know if we knew enough about the EPC 24 contracts.</p>
<p style="text-align: right;">Page 51</p> <p>1 But that's not reflected in the 2 document; that's just background you're telling me, 3 right? 4 A. Right. But there's no VHC in this 5 document. 6 Q. Right. But there is a reference to the 7 EPCs; is that correct? 8 A. Yes. 9 Q. And that is Page 6. See romanette 4 10 there, a signed agreement? 11 A. Yes. 12 Q. So that says, "The RVDH entity shall 13 assign and provide to IFC the first and paramount 14 rights to receive payments under the fixed price 15 engineering, procurement, and construction agreement 16 dated as of August 4th, 2006 between ST Paper, LLC, 17 and Spirit Construction up to \$340,000 per month and 18 an aggregate amount of \$3,400,000." 19 A. Uh-huh. 20 Q. That's -- the only reference to EPC is in 21 this document, correct? 22 A. This was getting all the parties to kind 23 of -- whatever it says, a memorandum of understanding 24 to say, Hey, there's a lot of moving parts here, but</p>	<p style="text-align: right;">Page 53</p> <p>1 But the eventual dynamic was that 2 IFC was looking for two people, not named Ron Van Den 3 Heuvel, that had knowledge of these EPC contracts, to 4 give us a feeling of materiality and value associated 5 with industry standard EPC contracts that we did know 6 enough about to know that they worked a certain way. 7 So this was a concept at this point, later on the 8 work of the due diligence and the eventual 9 documentation and meetings that took place happened. 10 Q. Okay. And you mentioned industry 11 standard EPC contracts? 12 A. Uh-huh. 13 Q. So you had some familiarity with EPC 14 contracts? 15 A. At this particular period of time, yes. 16 We were coming up to speed significantly on it. 17 Q. And that's both you personally and IFC; 18 is that fair? 19 A. Yes. 20 Q. Okay. And who else's familiarity with 21 IFC were you relying on at that point? 22 A. I would say Rudy was the middle market 23 person. Wykowski had some involvement with it, and 24 then we tried, again, to use the credit committee.</p>

<p style="text-align: right;">Page 54</p> <p>1 We had a middle market credit committee that would 2 also sit there and make sure we were doing something 3 that was consistent with credit policy. 4 Q. Okay. So you mentioned you had done, I 5 think your term -- please let me know if you think 6 I'm misquoting you or this is unfair, but you had 7 done significant due diligence on Spirit? 8 A. I wouldn't say significant, but yes. 9 Q. Regardless, what was that due diligence? 10 A. We went in and looked at them in terms of 11 a normal type of underwriting due diligence. Did 12 they have litigation? Did they have liens against 13 them? Did they have bad practices? Did they have a 14 history of having problems in terms of what it was 15 they did as a construction company? 16 Q. Right. 17 And you mentioned you wanted two 18 people who weren't Ron Van Den Heuvel to tell you 19 these EPCs were okay; is that right? 20 A. Uh-huh. 21 Q. Were you aware that Ron had some 22 ownership interest in Spirit or Spirit's parent 23 company? 24 A. At the time we did our due diligence, it</p>	<p style="text-align: right;">Page 56</p> <p>1 dotting their I's and crossing their T's. It wasn't 2 our primary responsibility because they were buying 3 it, but they had done a very rigorous analysis of the 4 parties. 5 Q. Okay. So a lot of that came when Dave 6 Van Den Heuvel and VHC were doing the guarantee? 7 A. Uh-huh. 8 Q. Okay. So by 2006, you had a fair amount 9 of familiarity with VHC and Spirit's business? 10 A. Uh-huh. 11 Q. So I was asking you about when you sort 12 of developed this familiarity with Spirit, and no 13 question in your mind, Ron was not running the 14 company when you looked to do this deal -- 15 A. Right. 16 Q. -- the 2006 deal? 17 Okay. Which does not actually close 18 in 2006. So I'll have a document marked. 19 (Langs Deposition Exhibit 20 No. 4 marked as 21 requested.) 22 BY MR. LANGS: 23 Q. So I have handed you -- actually, the 24 court reporter has handed you what's been marked as</p>
<p style="text-align: right;">Page 55</p> <p>1 was told to us, clearly -- because Ron owed them. He 2 had, for whatever reason -- we didn't get into 3 reasons, but for unsuccessful practices, he owed the 4 family businesses significant money. His stock at 5 one point had been pledged to cover that, but that 6 became a problem because they had ownership, so they 7 froze it. So they had no real relationship with Ron 8 Van Den Heuvel any longer. So we knew that at one 9 point, a long, long time ago, Ron was the president, 10 but that was something that had changed, and Ron had 11 no longer had any responsibility, officer, stock 12 ownership in Vos, VHC, or Spirit. 13 Q. Okay. And you were satisfied that that 14 was the case? 15 A. I think we even saw their board minutes 16 basically saying that these had all been canceled. 17 Q. And where did you get a copy of the board 18 minutes? 19 A. From Spirit and David Van Den Heuvel. 20 Q. Okay. And I know you mentioned that you 21 met with -- 22 A. And part of that due diligence, again, 23 came from the original Fortress transaction, who -- 24 you know, they were pretty rigorous in terms of</p>	<p style="text-align: right;">Page 57</p> <p>1 the settlement agreement. It's dated March 28th, 2 2007. And if you just -- well, the parties listed in 3 the first paragraph between IFC Credit Corporation, 4 Tissue Products Technology Corporation, Partners 5 Concepts Development, Inc., Ron Van Den Heuvel, 6 Eco-Fibre, Oconto Falls Tissue, Inc. -- and that's 7 all of the entities. Are you familiar with this 8 document? 9 A. (Reviewing exhibit.) 10 MR. LANGS: Are you all right with him 11 scanning the document and saying it -- 12 MR. ROMASHKO: Yeah -- 13 MR. LANGS: -- looks like something that was 14 part of these transactions? 15 MR. ROMASHKO: Yeah, I would be completely 16 happy with that. 17 MR. LANGS: I would say go ahead and flip 18 through it and, you know, if he has specific 19 questions while he's asking you questions about it, 20 Marc, then we can stop and read it. 21 BY MR. ROMASHKO: 22 Q. And if it helps, I'll represent to you 23 this was attached to RNS's complaint as Exhibit D. 24 A. Okay. Yes.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q. Okay. And so does this settlement 2 agreement, then, what ultimately comes out of that 3 December 22nd, 2006 framework? 4 A. I -- 5 MR. LANGS: And if you know. Don't guess. 6 BY THE WITNESS: 7 A. Yeah. I don't know. The only thing is 8 there was several agreements put together and there 9 was eventually, associated with a final settlement, a 10 pay proceeds letter that showed all the various money 11 going to various parties. If that's part of it, then 12 yes. 13 Q. I don't believe it's attached to the 14 document in front of you -- 15 A. So this is definitely part of the 16 process. It would be the final part of the process 17 if it was the one that was signed and it had the pay 18 proceeds. Is this signed by Ron, Ron, Ron -- yeah. 19 See? There's an agreement there -- includes the pay 20 proceeds letter and the payment of Fortress and 21 Fortress signing, and all the people who had security 22 interest were leasing their security interest. So, 23 again, this was part of a process. I'm not sure if 24 this is the final agreement, but it has -- just like</p>	<p style="text-align: right;">Page 60</p> <p>1 But you can elaborate if you want. 2 BY THE WITNESS: 3 A. I would say there is a settlement 4 agreement and resolution that includes the signature 5 of all the parties and a pay proceeds letter, which 6 is -- there's so many drafting of these things. I 7 just don't want to mislead anybody. 8 Q. Right. 9 A. So there's a final that has all the 10 parties signing it and a pay proceeds letter which 11 would be the final agreement. 12 Q. Okay. So the pay proceeds letter is sort 13 of the functional -- 14 A. That ties into this date. Well, it has 15 Fortress -- well, I mean, you know, this aspect of 16 paying off Fortress. It says what Fortress is going 17 to get in this agreement. But like I said, several 18 of these went across the board. This one only has 19 Ron's signatures on it. It doesn't have any of the 20 parties' signatures in it. There's a document that 21 has IFC, George -- all the entities that are 22 mentioned in this agreement -- 23 Q. Right. 24 A. -- signatures on it.</p>
<p style="text-align: right;">Page 59</p> <p>1 the memorandum of understanding, this gets towards a 2 final one, but there's a document that shows the 3 final agreement signed by Fortress, signed by IFC, 4 signed by George Washington Bank, it looks like in 5 this case. And it got that far that there was 6 interest that had to be taken care of. 7 Q. Right. 8 A. And the pay proceeds letter that 9 indicates the funding's going to the various parties. 10 Q. Okay. Backing up for a second, were you 11 involved in the preparation of the complaint in this 12 litigation? 13 A. Was I involved with the preparation of 14 the complaint? Yes. 15 Q. Did you review it before it was filed? 16 A. I don't recall. 17 Q. Okay. If this document was -- I 18 understand, making a representation to you right 19 now -- but if this document was attached to the 20 complaint and is the settlement agreement, you would 21 agree that was the settlement agreement that was 22 reached with Ron? 23 MR. LANGS: I think it's been asked and 24 answered.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. And when you say mentioned in the 2 agreement, you mean in that first paragraph on the 3 first page? 4 A. It's been a long time. But Fortress 5 would have to be involved in it. 6 MR. LANGS: You mean, there's also whereas 7 the other parties are -- George Washington -- 8 THE WITNESS: Right. George Washington Bank 9 is in here. 10 MR. LANGS: I don't know if Fortress is 11 mentioned in this or not, but there's an RV Jet, 12 Inc. -- 13 THE WITNESS: Yeah. 14 MR. LANGS: -- about the airplane in here -- 15 there's a lot, but -- 16 BY THE WITNESS: 17 A. So I'd need to go through all the 18 whereas, then I believe -- so on Page 4, "Whereas 19 Fortress and Fortress opportunities." 20 Q. So you would expect that party -- 21 A. Yes. 22 Q. -- to -- that's mentioned in this to have 23 signed it at some point? 24 A. Yes.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. Okay. So you did reach an agreement with 2 Ron whether or not this is the document? 3 A. Correct. 4 Q. Okay. Do you recall, roughly, when that 5 was? 6 A. Obviously, my memory of dates is a little 7 bit off, but this was written as of, what, 2005. 8 Q. This being -- sorry. What are you -- 9 A. Oh, no, no. That's when they entered in 10 the lease -- master lease agreement. 11 MR. LANGS: This settlement's dated April 12 13th, 2007, with the signatures. 13 BY THE WITNESS: 14 A. Okay. So 2007. That's kind of when I 15 was starting -- I didn't realize how far back -- but 16 yeah, 2007. 17 Q. And do you understand that Spirit 18 signed -- putting aside the settlement agreement for 19 a second. Do you understand Spirit had to sign some 20 representations in relation to your settlement 21 ground? 22 A. Yes. 23 MR. ROMASHKO: I'm having a document marked. 24 MR. LANGS: Whenever it's good to take a</p>	<p style="text-align: right;">Page 64</p> <p>1 Steve, Ron Van Den Heuvel, IFC, and other parties. 2 Q. So you saw this in 2007? 3 A. Whatever the date is, yeah. 4 Q. And who generated this document? 5 A. We were using an outside law firm. I'm 6 not sure if they were involved with this. We had 7 internal capacity, generating this type of 8 documentation with Rebecca. 9 Q. But IFC would have been -- would have 10 directed the generation of this document? 11 A. Well, it's a negotiation, so IFC and 12 their lawyers and Ron Van Den Heuvel and his lawyers 13 and any other parties that were having lawyers 14 involved. 15 Q. Okay. And do you recall any other 16 parties having lawyers involved in the negotiation of 17 this document? 18 A. I don't recall. 19 Q. Do you recall there being negotiation of 20 this document? 21 A. You can see it starts all way up back to 22 the memorandum of understanding. I mean, this 23 document is the result of discussions -- business 24 discussions that started all the way back in the</p>
<p style="text-align: right;">Page 63</p> <p>1 two-minute break. 2 MR. ROMASHKO: Sure. Why don't we do that 3 before we get into the document. 4 (Langs Deposition Exhibit 5 No. 5 marked as 6 requested.) 7 (A short break was had.) 8 BY MR. ROMASHKO: 9 Q. So before the break, I handed you a 10 document entitled -- it's marked Exhibit 5. It also 11 has an exhibit stamped from prior use of Exhibit 5. 12 And if you look, attached to that is a Schedule A, 13 "Notice of Assignment Irrevocable Instructions." 14 A. Uh-huh. 15 Q. And Schedule B, "Acknowledgement of a 16 Consent to Assignment." 17 A. Uh-huh. 18 Q. Prior to today, had you seen this 19 document? 20 A. Yes. 21 Q. When did you first see it? 22 A. This was part of the documentation that 23 resulted in the payoff of Fortress and the 24 refinancing of the transaction with Sharad Tak,</p>	<p style="text-align: right;">Page 65</p> <p>1 memorandum -- master -- the memorandum of 2 understanding. 3 Q. And so on Exhibit 5, specifically the 4 portion entitled "Continuing pledge agreement" -- the 5 pages aren't numbered, and I didn't bring you a 6 Bates-stamped copy, so that's on me. But if you flip 7 through, you'll get to that signature page signed by 8 Tissue Products Technology Corporation, Partners 9 Concepts Development, Inc., and IFC Credit 10 Corporation. 11 A. Uh-huh. 12 Q. It's dated March 28th, 2007. So -- just 13 to be clear, that's roughly when that was signed, 14 then? 15 A. Uh-huh. 16 Q. Turning -- and in this first part of it, 17 Spirit Construction Services is not a signatory? 18 A. Uh-huh. 19 MR. LANGS: Make sure you're saying yes or 20 no -- 21 THE WITNESS: I'm sorry. 22 BY THE WITNESS: 23 A. What's your question? 24 Q. On this first part of it, Spirit</p>

<p style="text-align: right;">Page 66</p> <p>1 Construction Services is not a signatory?</p> <p>2 A. Correct.</p> <p>3 Q. And Spirit isn't asked to sign on that</p> <p>4 page that you signed on?</p> <p>5 A. Correct.</p> <p>6 Q. And then if you turn to the next page,</p> <p>7 it's the one titled Schedule A.</p> <p>8 A. Uh-huh.</p> <p>9 Q. So that's addressed to Spirit</p> <p>10 Construction Services?</p> <p>11 A. Uh-huh.</p> <p>12 Q. And if you turn to the very next page of</p> <p>13 that, I think that's the signature page for the</p> <p>14 Schedule A signed by Ron Van Den Heuvel?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. That's not signed by Spirit</p> <p>17 either?</p> <p>18 A. No, it's not signed by Spirit.</p> <p>19 Q. Okay. Then you turn to Schedule B. So</p> <p>20 Schedule B is signed by Spirit?</p> <p>21 A. Uh-huh.</p> <p>22 Q. And there are actually two copies of it?</p> <p>23 A. Right.</p> <p>24 Q. And we are -- we'll get to those two</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Do you know who gave the signed copy of</p> <p>2 this to IFC?</p> <p>3 A. I know I was on the phone call and Steve</p> <p>4 Van Den Heuvel was on the phone call, and we were</p> <p>5 faxing these -- we were signing and faxing them. At</p> <p>6 the time that happened, we realized there was a</p> <p>7 mistake because the financing increased. And so</p> <p>8 while we're on the phone, we took the old one and we</p> <p>9 marked it up to make the new and signed it. He faxed</p> <p>10 it and then it was replaced with a final copy on the</p> <p>11 documentation side of this. So I do recall that we</p> <p>12 were all sitting there on the phone and everyone was</p> <p>13 executing and faxing. So that all the documents</p> <p>14 were in a lawyer's hand at one point.</p> <p>15 Q. Okay. So you understand this was faxed</p> <p>16 to IFC or to your lawyers?</p> <p>17 A. I think that the escrow and the lawyer</p> <p>18 who was collecting all of this was at IFC, but it</p> <p>19 might have been in New York. You know what? It was</p> <p>20 probably in New York. I take it back. It was being</p> <p>21 handled out of New York with Fortress as the lead on</p> <p>22 this.</p> <p>23 Q. Okay.</p> <p>24 MR. LANGS: If you don't know something,</p>
<p style="text-align: right;">Page 67</p> <p>1 copies. But -- so who presented this document to</p> <p>2 Spirit?</p> <p>3 A. I don't know.</p> <p>4 Q. Was it you?</p> <p>5 MR. LANGS: Don't guess.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I don't know.</p> <p>8 Q. But sitting here today, you don't have</p> <p>9 any memory that you presented to Spirit?</p> <p>10 A. What I recall is there was a major</p> <p>11 closing on this transaction. There was people in New</p> <p>12 York in Fortress. There was people in Chicago, IFC,</p> <p>13 and some other parties, and there were people up in</p> <p>14 Wisconsin, Ron Van Den Heuvel and Steve Van Den</p> <p>15 Heuvel, that all basically had to look at it and</p> <p>16 simultaneously sign this and participate in an escrow</p> <p>17 agreement. That would be the basis, then, for</p> <p>18 someone -- an escrow agent to make pay proceeds. So</p> <p>19 it all kind of, in my recollection, happened</p> <p>20 simultaneously.</p> <p>21 Q. Okay.</p> <p>22 A. Now, was this specifically happening</p> <p>23 simultaneously or did it happen before? I don't</p> <p>24 remember. But I think it was all simultaneous.</p>	<p style="text-align: right;">Page 69</p> <p>1 that's totally fine. It's 10 years ago.</p> <p>2 MR. ROMASHKO: Yeah. Right.</p> <p>3 BY MR. ROMASHKO:</p> <p>4 Q. So go back to Exhibit 3 for a second, if</p> <p>5 you would. It's been a long time since I've used a</p> <p>6 fax machine, but that's a document with a fax cover</p> <p>7 sheet on it. And if you look at the top of each</p> <p>8 page, there's a date and some transmission</p> <p>9 information that's put there by the fax machine,</p> <p>10 right?</p> <p>11 A. Okay.</p> <p>12 Q. Is that your understanding?</p> <p>13 A. I don't have any knowledge of fax</p> <p>14 machines, but yeah. Okay.</p> <p>15 Q. If you look at the next page, you've got</p> <p>16 the same marking at the top, 11/25/2005, 17:26?</p> <p>17 A. Are you talking about this document</p> <p>18 (indicating)?</p> <p>19 Q. Yes.</p> <p>20 A. Okay. Yes.</p> <p>21 Q. In fact, that carries through to every</p> <p>22 page of the document?</p> <p>23 A. Yes.</p> <p>24 Q. And if you go back to Exhibit 5, take a</p>

<p style="text-align: right;">Page 70</p> <p>1 look at Schedule B, either copies of it -- both 2 copies of it. So neither of those has a similar 3 marking from a fax machine, correct? 4 A. I don't know. I'm not an expert on a fax 5 machine. I don't know. It looks like there's 6 something at the top. 7 Q. And I will represent to you that that is 8 the case information from the court docket, because 9 this was attached to the complaint. 10 MR. LANGS: I think it might even be a double 11 court docket because I think it might have been filed 12 in the original case. 13 MR. ROMASHKO: I think that's right. Or 14 possibly to -- 15 MR. LANGS: Or double -- 16 (Simultaneous colloquy.) 17 MR. ROMASHKO: But, Counsel, you'd agree that 18 that's page cert markings? 19 MR. LANGS: This copy doesn't seem to have 20 any fax markings on it. I don't think that means it 21 never got faxed, but this -- 22 MR. ROMASHKO: Yeah. 23 MR. LANGS: -- particular copy -- yeah. 24</p>	<p style="text-align: right;">Page 72</p> <p>1 come up with a half million dollars, and so it was 2 decided to add that to this particular pledge -- 3 pledge agreement based on the value of the collateral 4 so the transaction can take place. 5 Q. Other than that difference and then a 6 following difference on the monthly payment, the two 7 documents are the same, correct? 8 A. I didn't read them, but my recollection 9 at the time was they were just marked up from the 10 existing document to change the amounts. 11 Q. So let's just walk through this. So is 12 it correct Spirit represents that there are four 13 fixed price engineering procurement and construction 14 agreements with ST Paper? 15 A. What are you looking at? 16 Q. Sorry. Schedule B. 17 MR. LANGS: Are you looking at the one with 18 3.9? 19 MR. ROMASHKO: Yeah. 20 BY THE WITNESS: 21 A. So you're looking at the one that has the 22 typed \$3.9 million? 23 Q. Yeah. 24 A. Okay.</p>
<p style="text-align: right;">Page 71</p> <p>1 BY MR. ROMASHKO: 2 Q. And that's the next question. So are you 3 aware of the copy of this that has fax markings? 4 A. No. 5 Q. But if it was faxed to IFC or its 6 lawyers, it stands to reason that a copy existed 7 somewhere? 8 A. No opinion. 9 Q. So there's one difference between these 10 two Schedule Bs. Actually, there's a couple 11 differences, but the one I want to focus on is in 12 paragraph one of the two Schedule Bs. The amount is 13 different, correct? 14 A. Uh-huh. 15 Q. So explain to me. On the first copy of 16 it, it's \$3,900,222 and on the second one, it's 17 3.4 million? 18 A. Correct. 19 Q. Can you explain to me the difference 20 between those two? 21 A. Ron had a certain amount of money he was 22 bringing to this transaction with Sharad Tak and 23 various other financing that he had to take out this 24 deal. At the end of that period, Ron was unable to</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. So is it fair to say Spirit represents 2 that there are four fixed priced engineering, 3 procurement, construction agreements with ST paper? 4 A. Uh-huh. 5 Q. And -- 6 MR. LANGS: Say yes or no. 7 THE WITNESS: Yes. 8 BY MR. ROMASHKO: 9 Q. And then Spirit acknowledges the Tissue 10 Products Technology Corporation, TPTC, and Partners 11 Consent Development, Inc. are subcontractors in 12 connection with said contracts, correct? 13 A. Yes. 14 Q. And substantial sums of money in excess 15 of \$3,000,922 will become owing to them, that being 16 TPTC and PCBI, correct -- 17 A. Yes. 18 Q. -- Pursuant to said contract? 19 And then it goes on to say, "Notice 20 of and consent to the assignment to IFC Credit 21 Corporation of the pledge of all rights to payment up 22 to \$390,222 per month and in the aggregate, the 23 amount of 300- -- excuse me -- 3,922,000 is 24 acknowledged?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. Uh-huh.</p> <p>2 Q. IFC is first and paramount right to</p> <p>3 receive payments under those contracts for collateral</p> <p>4 purposes is acknowledged.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Going on, I understand this next</p> <p>7 paragraph. Tell me if you disagree. I'll try not to</p> <p>8 read the entire letter to you and have you</p> <p>9 acknowledge that it says what I say it says. But the</p> <p>10 next paragraph, does that confirm that -- in the next</p> <p>11 paragraph, I understand that to mean that Spirit is</p> <p>12 confirming that until they receive written notice,</p> <p>13 they'll direct any payments due to Ron to you?</p> <p>14 MR. LANGS: Objection to form.</p> <p>15 You can answer if you understand.</p> <p>16 BY THE WITNESS:</p> <p>17 A. You're on paragraph 3?</p> <p>18 Q. 2. The one that starts "We confirm."</p> <p>19 A. Uh-huh.</p> <p>20 Q. Yes or no? Sorry.</p> <p>21 MR. LANGS: Could you repeat the question?</p> <p>22 BY MR. ROMASHKO:</p> <p>23 Q. I will ask it a different way.</p> <p>24 So let me just ask. What do you</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. And then that next paragraph references</p> <p>2 setoffs. That would be the fourth paragraph on the</p> <p>3 page.</p> <p>4 A. Yes.</p> <p>5 Q. And the fifth paragraph, Spirit's just</p> <p>6 representing that they haven't been informed that</p> <p>7 these interests have already been assigned to someone</p> <p>8 else?</p> <p>9 A. Yes.</p> <p>10 Q. So nowhere on this document does Spirit</p> <p>11 represent that these jobs will go at any particular</p> <p>12 time?</p> <p>13 A. No.</p> <p>14 Q. Okay. There's nothing in here about the</p> <p>15 jobs being funded?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And this document was put</p> <p>18 together -- Schedule B, mind you, was put the</p> <p>19 together by IFC?</p> <p>20 MR. LANGS: Mischaracterizes the prior</p> <p>21 testimony.</p> <p>22 BY MR. ROMASHKO:</p> <p>23 Q. Do you know who put together Schedule B?</p> <p>24 A. Well, Schedule B would've been a</p>
<p style="text-align: right;">Page 75</p> <p>1 understand Paragraph 2 to do -- to mean?</p> <p>2 A. That Spirit is agreeing to make all</p> <p>3 payments that would've been made to Ron and his</p> <p>4 companies, particularly defined as what -- TPTC and</p> <p>5 PCDI, to IFC until some kind of written notice</p> <p>6 changes that.</p> <p>7 Q. And take a look at Paragraph 3, if you</p> <p>8 would.</p> <p>9 A. Uh-huh.</p> <p>10 Q. So that first sentence, does Spirit</p> <p>11 represent that the EPC contracts are in full force</p> <p>12 and effect and that TPTC and PCDI are subcontractors</p> <p>13 under them?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And that neither is presently at that</p> <p>16 point in breach of those contracts?</p> <p>17 A. Uh-huh. Yes. I'm sorry.</p> <p>18 Q. And then Spirit goes on to represent that</p> <p>19 the terms of this acknowledgement and consent to</p> <p>20 assignment shall not be varied or modified without</p> <p>21 your, being IFC's, consent?</p> <p>22 MR. LANGS: It's the last sentence.</p> <p>23 BY THE WITNESS:</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 77</p> <p>1 negotiated agreement between the parties.</p> <p>2 Q. Okay. But do you know who was</p> <p>3 responsible for drafting that negotiated agreement?</p> <p>4 MR. LANGS: If you know.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I don't.</p> <p>7 Q. Can you turn to the Second copy of</p> <p>8 Schedule B. At the very bottom, there's a little</p> <p>9 string of texts. It's very small, "N:" And then has</p> <p>10 some stuff after it.</p> <p>11 A. Are you talking about where it ends in</p> <p>12 "Assignment doc"?</p> <p>13 Q. Yes.</p> <p>14 A. Okay.</p> <p>15 Q. Does that mean anything to you? It may</p> <p>16 not.</p> <p>17 A. It really doesn't. I'm sorry.</p> <p>18 Q. No --</p> <p>19 A. There was a conversation earlier, though,</p> <p>20 of this separation of Schedule A and Schedule B.</p> <p>21 Q. Yes.</p> <p>22 A. Because Ron signed Schedule A and Steve</p> <p>23 signed Schedule B.</p> <p>24 Q. Okay.</p>

<p style="text-align: right;">Page 78</p> <p>1 A. I would just point out that it was our 2 understanding, and you can see here, that Steve Van 3 Den Heuvel was included in this and Ron and Steve 4 participated in meetings on this discussion that 5 Spirit and Steve Van Den Heuvel were aware of these 6 contracts, not some contracts. That's why they're 7 specifically here. I understand that as this is 8 drafted, they don't show up on B. But Schedule A and 9 Schedule B were presented at the same time as part of 10 this overall agreement. And it was our understanding 11 that Steve was aware of and knowledgeable of the 12 aspect of the integration of this concept. 13 Q. So let me break that down a little bit. 14 So you said -- you can see here that -- I think you 15 said -- tell me if I'm misunderstanding you. You 16 said you can see here that Steve participated in 17 this? 18 A. It's addressed -- Spirit Construction, 19 Attention: Steve Van Den Heuvel. 20 Q. Okay. So it's addressed to Steve? 21 A. (Nodding.) 22 Q. Steve doesn't sign it? 23 A. Correct. 24 Q. Schedule B? So --</p>	<p style="text-align: right;">Page 80</p> <p>1 contracts, specifically. 2 Q. So specifically, when were these 3 discussions? 4 A. Ron had discussions with Rudy and myself 5 on numerous occasions. Steve was on the phone for 6 some of those because, again, IFC was trying to 7 validate beyond Ron's credibility. Then Rudy Trebles 8 and I traveled up to Wisconsin. Ron attended those 9 meetings, as well as -- his brother Dave came in and 10 had some discussions on those meetings specifically 11 to talk about EPC contracts, these EPC contracts, to 12 try to see these EPC contracts to say there was 13 something in black and white. 14 We were told that we could not -- 15 because of the nature of the funding of this 16 securitization, we could not see them, but were told 17 these were real contracts signed by the parties. 18 Sharad Tak confirmed that, that he'd signed these 19 specific contracts, and Spirit confirmed that they 20 were the contractor in these specific contracts. 21 Q. Okay. So -- 22 A. But unfortunately, because of 23 securitization issues and confidentiality, we 24 couldn't see the contracts at the time. So the</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. LANGS: Schedule A. 2 BY MR. ROMASHKO: 3 Q. Excuse me. Yes. Steve, in fact, signed 4 Schedule B. Schedule A is not signed by Steve? 5 A. Correct. 6 Q. There is nothing on the page as far as 7 you're aware that is written by Steve on Schedule A 8 on either page? It's two pages long. It is 9 signed -- 10 A. There's no signature by Steve. 11 Q. Right. But there is a space for 12 signatures? 13 A. Of Steve's? 14 Q. No. There's a space for signatures, 15 generally, in Schedule A? 16 A. Yes. 17 Q. And the only signatory to Schedule A is 18 Ron? 19 A. Uh-huh. 20 Q. Okay. So you said Steve participated in 21 this and you're basing it on the notion that it's 22 addressed to Steve? 23 A. And that we had discussions with Steve 24 and Ron regarding the value and these particular</p>	<p style="text-align: right;">Page 81</p> <p>1 drafting of some of these agreements tried to reflect 2 that. But it was -- it is my testimony that there 3 was significant involvement in this concept and this 4 agreement is trying to capture that. Steve didn't 5 sign A, but it's addressed to his company and his 6 attention, and he was definitely integrated in this 7 process from IFC's point of view. 8 Q. Okay. And -- 9 A. Whether we were successful or not, 10 somebody else will decide. 11 Q. And your testimony is that you had 12 meetings with Dave. Did you ever meet with Steve Van 13 Den Heuvel before? 14 A. Yes. 15 Q. When specifically did you meet with 16 Steve? 17 A. Based on these dates, it would have been 18 somewhere around -- between the memorandum of 19 understanding and the final master agreement. So 20 December 2006 until April 2007. 21 Q. Okay. And what specifically was 22 discussed in the meeting in person with -- was there 23 one meeting in person with Steve? 24 A. Yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. What specifically was discussed in that 2 meeting?</p> <p>3 A. The nature of EPC contracts --</p> <p>4 MR. LANGS: Asked and answered already. 5 But go ahead say.</p> <p>6 BY THE WITNESS:</p> <p>7 A. The nature of these EPC contracts. 8 Spirit, as a well-known construction company, having 9 put these together for signature by a customer, an 10 owner, which was Sharad Tak who had already had -- 11 you know, had interest in paper and represented a 12 legitimate owner not associated with Ron; Spirit, a 13 construction company, not associated with Ron.</p> <p>14 Q. You said there were multiple 15 conversations with Steve on the phone as well?</p> <p>16 A. There was at least two conversations with 17 Ron and Steve on the phone.</p> <p>18 Q. Okay. Now, did you interact with anyone 19 else at Ron's companies besides Ron?</p> <p>20 A. Yes.</p> <p>21 Q. Who did you interact with there?</p> <p>22 A. Steve Peters -- Steven Peters, something 23 like that. Paul Damm and John Jez.</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 84</p> <p>1 losses or damages associated with that transaction.</p> <p>2 Q. Okay. So let's look at Schedule A. Does 3 anything on Schedule A talk about the timing under 4 which these contracts would be performed under, the 5 four EPC contracts?</p> <p>6 A. I got the wrong one.</p> <p>7 Q. You've got right one.</p> <p>8 A. Does A talk about timing?</p> <p>9 Q. Yes.</p> <p>10 A. Not that I see, no.</p> <p>11 Q. And nothing there addresses whether the 12 contracts have been funded?</p> <p>13 A. Correct.</p> <p>14 Q. You mentioned you asked to see the EPC 15 contracts?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And were told you couldn't because they 18 were confidential?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Did you ask Spirit to see them?</p> <p>21 A. Yes.</p> <p>22 Q. And did you also ask Tak to see them?</p> <p>23 A. I don't recall.</p> <p>24 Q. But you believe you asked Spirit?</p>
<p style="text-align: right;">Page 83</p> <p>1 A. I think. I'm not -- I'm terrible with 2 names, but the right names are correct -- the last 3 names are correct.</p> <p>4 Q. Okay. And Steve Peters, you've 5 interacted with on the phone and in person as well?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And sitting here 10 years out, can you 8 tell me which conversations were on the phone were 9 with Steve Peters on the line and which were with 10 Ron -- excuse me -- which were with Steve Van Den 11 Heuvel on the line?</p> <p>12 A. Steve Van Den Heuvel?</p> <p>13 Q. Yeah.</p> <p>14 A. Steve Van Den Heuvel was conversations 15 with Ron in our office trying to put together this 16 transaction based on somehow coming up with 17 additional creditworthy collateral considerations so 18 that this deal with Fortress could be bought out 19 versus defaulted.</p> <p>20 Q. So --</p> <p>21 A. Which would've included taking VHC off of 22 the guarantee with Fortress. But for this 23 transaction, Fortress would've owned Oconto, backed 24 up by a corporate guarantee from VHC for any kind of</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Yes.</p> <p>2 Q. The -- what would you have been looking 3 for if you saw those contracts?</p> <p>4 A. Two things: One, that they were signed 5 by the right legal entities versus representations, 6 more importantly to the extent that we saw signed EPC 7 contracts. IFC's understanding at the time is that 8 IFC contract has two components to it --</p> <p>9 MR. LANGS: EPC contracts?</p> <p>10 THE WITNESS: EPC contracts. I'm sorry.</p> <p>11 BY THE WITNESS:</p> <p>12 A. That before a company like Spirit can 13 provide an EPC contract, they have done a significant 14 evaluation, engineering, cost, zoning, permitting 15 land cost, due diligence, perhaps even got permitted, 16 depending on what kind of financing they were going 17 to be participating in terms of their expertise. 18 They bring their expertise to build a plant from soup 19 to nuts.</p> <p>20 So our -- again, our understanding 21 at that point is that a signed EPC contract has 22 material costs at the point that it's been signed, in 23 terms of legal terms to negotiate \$150 -- 24 \$150,000,000 contract with 160 pages of agreements</p>

<p style="text-align: right;">Page 86</p> <p>1 and engineering drawing specifications. Significant 2 legal costs, down payment. And usually, upon the 3 signing, there's additional monies that come that are 4 somewhere between 10 and 20 percent for an EPC 5 contract. So we kind of wanted to see that that was 6 well contained in this. We couldn't. But we had 7 lots of discussions about this is what an EPC 8 contract looks like, and all indications were these 9 were real EPC contracts. 10 Q. Okay. And you have now seen the four EPC 11 contracts in question? 12 A. Correct. 13 Q. Okay. If you had seen them then, would 14 you have closed on this deal? 15 A. No. 16 Q. Why not? 17 A. Because they did not have the cash paid 18 upon signing that should have been paid. If you look 19 at the contract, it asks for payment, but that money 20 didn't happen. 21 Q. Okay. 22 A. I shouldn't say -- it was not my decision 23 alone to say that, but I will tell you from the way 24 we went through this and why this was such important</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Correct. 2 Q. And so there's a lawsuit filed? 3 A. Correct. I shouldn't say correct. I'm 4 now getting out of my technical legal -- 5 Q. Okay. 6 A. We had a set of lawyers that went forward 7 to basically get some kind of decision against the 8 default of the payments. 9 Q. Okay. You understand at some point TPC 10 got some force of -- excuse me -- you understand that 11 at some point, IFC got some sort of judgment against 12 Ron? 13 A. Yes. 14 Q. Okay. Did Ron pay that judgment? 15 A. No. I shouldn't say -- now we're 16 starting to get into a time frame where things happen 17 very -- so this process happens -- you know, if 18 somebody shows me documents -- but now, we've got 19 this litigation and the decision on this litigation 20 and the bankruptcy of IFC. And my resignation 21 happened at a very quick period of time now. So at 22 the point that the judgment was made, Ron did not 23 make payment for a period of time. After that, I 24 can't really speak to it. I was no longer involved</p>
<p style="text-align: right;">Page 87</p> <p>1 collateral for the transaction, that we would 2 probably have not have done the transaction. 3 Q. Your recommendation would have been not 4 to do it? 5 A. Yes. 6 Q. And you had some influence in the 7 process? 8 A. Yes. 9 Q. As the CFO of the company? 10 A. Uh-huh. 11 Q. So Spirit signs this document; you close 12 on the transaction. Does Ron ever make any payments 13 under this settlement agreement? 14 A. I do not think so. 15 Q. Fair to say we wouldn't be here if he 16 hadn't defaulted -- 17 A. He defaulted very quickly. I don't think 18 he made many payments. He may have made one payment. 19 I don't recall. 20 Q. At some point, there's a notice and 21 demand made to Ron? 22 A. Uh-huh. 23 Q. That doesn't result in the desired 24 payments, correct?</p>	<p style="text-align: right;">Page 89</p> <p>1 with it. 2 MR. ROMASHKO: Let me have a document marked. 3 (Langs Deposition Exhibit 4 No. 6 marked as 5 requested.) 6 BY MR. ROMASHKO: 7 Q. I will represent to you this is the first 8 amended complaint filed by RNS in this case. 9 A. I'm sorry. This is filed by RNS? 10 Q. In this case. 11 MR. LANGS: This is the complaint for this 12 lawsuit. 13 BY THE WITNESS: 14 A. Okay. Gotcha. Thanks. 15 Q. I just want to refresh your memory on the 16 dates, really. Let me get you to the paragraph in 17 question. Take a look at paragraph 63. 18 A. Uh-huh. 19 Q. So -- I'm sorry. Paragraph 64. So that 20 states that on September 6th, 2007, IFC filed a 21 second lawsuit against the Ron defendants and also of 22 Spirit. 23 MR. LANGS: I'm sorry. Which paragraph are 24 you looking at?</p>

<p style="text-align: right;">Page 90</p> <p>1 MR. ROMASHKO: 64. 2 BY THE WITNESS: 3 A. Okay. 4 Q. So that's the lawsuit that ensues after 5 Ron enters into this settlement agreement and then 6 defaults, correct? 7 A. It appears so. 8 Q. Okay. And were you involved in that suit 9 at all? 10 A. Which suit? 11 Q. The one that was filed September 6th, 12 2007. 13 A. I believe so. 14 Q. Do you remember what your involvement 15 with that suit was? 16 A. I was still functioning as CFO for IFC 17 with outside legal trying to pursue resolutions. 18 Q. Okay. So were you overseeing the filings 19 in the case or what were you doing? 20 A. I don't know. I don't know what 21 overseeing filings means, but I was involved with my 22 responsibilities as a CFO and outside law -- outside 23 legal counsel giving me advice in terms of perfecting 24 our rights under these leases.</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. If you just flip through that, a numbered 2 Page 10, you signed that and it's notarized? 3 A. Okay. 4 Q. Do you have any -- first, you did sign 5 this document, correct? 6 A. Yes. 7 Q. Do you have any memory of having been 8 involved in the preparation of this document? 9 A. Again, our outside counsel was working 10 with me in terms of the proper way to pursue our 11 rights in this situation, so yes. 12 Q. And do you recall the motion for summary 13 judgement filing that's referenced in the title of 14 this document? 15 A. Yes. 16 Q. And you worked with outside counsel on 17 deciding what the facts were? 18 A. Yes. 19 Q. What facts to present, I suppose, would 20 be fair? 21 A. Yes. 22 Q. And what the arguments to make were? 23 A. Yes. 24 Q. Okay. Do you recall that there was a</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. Did you review any of the filings 2 that your counsel is putting into the court in that 3 case? 4 A. Probably. 5 Q. Okay. Do you recall signing an affidavit 6 in that case? 7 A. It was a long time ago. I would not -- 8 MR. LANGS: If you don't remember something, 9 you don't remember -- 10 THE WITNESS: Yeah -- 11 MR. LANGS: -- something. If he wants to 12 show you the affidavit, he can show you the 13 affidavit. 14 BY THE WITNESS: 15 A. I don't remember. 16 (Langs Deposition Exhibit 17 No. 7 marked as 18 requested.) 19 BY MR. ROMASHKO: 20 Q. So Exhibit 7, the first page is a cover 21 page. It says Tab 11, but if you turn past that, it 22 says "Affidavit of Marc Langs in support of IFC 23 Credit Corporation's motion for summary judgment." 24 A. Uh-huh.</p>	<p style="text-align: right;">Page 93</p> <p>1 larger statement of facts that this document was 2 prepared to be attached to? 3 A. It wouldn't surprise me. 4 (Langs Deposition Exhibit 5 No. 8 marked as 6 requested.) 7 BY MR. ROMASHKO: 8 Q. Exhibit 8 is a document titled "IFC 9 Credit Corporation's rule 56.1 statement in support 10 of its motion for summary judgement." 11 A. This right here, right (indicating)? 12 Q. Yeah. 13 A. Yeah. 14 Q. Is that larger statement of facts that 15 your affidavit was attached to? 16 A. I don't recall. 17 Q. Okay. You don't recall whether you 18 reviewed this document at the time it was filed? 19 A. No. I don't recall whether this is 20 relating to this affidavit, if there's an integration 21 between the two of them. 22 Q. If you would -- 23 A. But it says on the third line that -- 24 affidavit of Marc Langs. Okay. So they are related.</p>

<p style="text-align: right;">Page 94</p> <p>1 Okay.</p> <p>2 Q. It's consistent with your memory that</p> <p>3 there would have been --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- a statement of facts that your</p> <p>6 affidavit was related to?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So just one moment. So take a</p> <p>9 look, if you would, at paragraph 35 of this document.</p> <p>10 It starts on Page 13. Just take a second to read</p> <p>11 that whole paragraph, if you would, and tell me when</p> <p>12 you're done.</p> <p>13 A. Just Paragraph 35?</p> <p>14 Q. Yeah.</p> <p>15 A. Okay.</p> <p>16 Q. So the last sentence of that paragraph</p> <p>17 states, "Therefore, Spirit Construction's</p> <p>18 representations to IFC under the acknowledgement of</p> <p>19 and consent to assignment were not true or accurate</p> <p>20 at the time they were made or at any time since."</p> <p>21 And then it cites to your affidavit?</p> <p>22 A. My affidavit says that?</p> <p>23 MR. LANGS: The -- it's citing to it.</p> <p>24</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Okay. Well, let me ask you this: So the</p> <p>2 date at the top of this document is June 18th, 2008.</p> <p>3 So, roughly, at that point, you're in that litigation</p> <p>4 against Spirit and against Ron?</p> <p>5 A. Uh-huh.</p> <p>6 Q. There's been discovery conducted. Do you</p> <p>7 think -- at that point -- did you personally think at</p> <p>8 that point that the acknowledgement of and consent to</p> <p>9 assignment signed by Spirit was untrue?</p> <p>10 A. No.</p> <p>11 Q. You didn't? But you let IFC's attorneys</p> <p>12 put that representation in?</p> <p>13 A. So at this point -- so what's my</p> <p>14 affidavit say on this? So it's --</p> <p>15 Q. Well, hang on. Answer the question</p> <p>16 first.</p> <p>17 A. Well, it's making reference to an</p> <p>18 affidavit. I'm just trying to remember how point A</p> <p>19 gets to point B.</p> <p>20 MR. LANGS: For the record, he did answer the</p> <p>21 question already.</p> <p>22 MR. ROMASHKO: The question of did -- but you</p> <p>23 left IFC's attorneys put that representation into</p> <p>24 this filing?</p>
<p style="text-align: right;">Page 95</p> <p>1 BY MR. ROMASHKO:</p> <p>2 Q. The Rule 56.1 statement marked as</p> <p>3 Exhibit --</p> <p>4 MR. LANGS: See here --</p> <p>5 THE WITNESS: Yeah --</p> <p>6 MR. LANGS: -- saying --</p> <p>7 THE WITNESS: -- is that this affidavit?</p> <p>8 MR. LANGS: That's what he's --</p> <p>9 BY MR. ROMASHKO:</p> <p>10 Q. Yeah, citing to your affidavit.</p> <p>11 MR. LANGS: -- representing. So if you want</p> <p>12 to look here and read 12, that's what it's citing to.</p> <p>13 BY MR. ROMASHKO:</p> <p>14 Q. Well, first answer the question pending,</p> <p>15 which is the document does say that, correct?</p> <p>16 A. The document does say that, yes.</p> <p>17 Q. And you would have reviewed this document</p> <p>18 with IFC's attorneys?</p> <p>19 A. Yes.</p> <p>20 Q. So you would have seen that</p> <p>21 representation?</p> <p>22 MR. LANGS: If you remember.</p> <p>23 BY THE WITNESS:</p> <p>24 A. Yeah. I mean...</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. LANGS: This is what it's citing to,</p> <p>2 right here (indicating).</p> <p>3 BY THE WITNESS:</p> <p>4 A. So I think the documents speaks for</p> <p>5 itself. So if you look at 12, the affidavit talks</p> <p>6 about what was told to us to be the timing by Ron Van</p> <p>7 Den Heuvel of the revenue associated with these EPC</p> <p>8 contracts. If you look at these EPC contracts, you</p> <p>9 go back -- it happens on signing. There's</p> <p>10 significant deposits and the dryers are bought, day</p> <p>11 one. So, again, these topics talked about with</p> <p>12 Spirit, Ron, Ron and Tak. So the aspect of the</p> <p>13 timing and the collateral of these payments to be</p> <p>14 reasonable to this transaction to be allowed to get</p> <p>15 forward was part of what we did and how we got from</p> <p>16 point A to B. So the affidavit here talks about</p> <p>17 these payments. Okay? Specifically, very specific</p> <p>18 representations which were all talked about with</p> <p>19 Spirit as well as Sharad Tak.</p> <p>20 Now, we get to later on and there's</p> <p>21 nonpayments and now it becomes clear -- it becomes</p> <p>22 clear that these payments -- that all three of the</p> <p>23 parties should've understood those payments were not</p> <p>24 going to be made. So that's what this is relating to</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 here in terms of what is in my affidavit and the 2 knowledge of Spirit as a contractor and constructor 3 of EPC contracts and the payment considerations. 4 Now, are those things sitting in the words of these 5 documents? No. But in terms of process and -- here, 6 this goes to, you know, exactly how we got to that 7 answer. This is saying that at the time that they 8 told us there were signed documents -- and those 9 documents show 18 percent of EPC contract payment on 10 signing and dryers, which we know the dryers are 11 owned free and clear, those monies should have been 12 available. And that was how these revenues were 13 going to be paid back to us in a very short period of 14 time. 15 Q. Okay. And so those monies you said 16 should have been available, but they weren't? 17 A. They weren't. 18 Q. Okay. And you knew that by 2008 when 19 you -- 20 A. Yeah, we didn't -- 21 Q. -- signed this -- 22 A. -- get paid. 23 Q. -- affidavit? 24 A. Yeah. So we didn't get paid. And that's</p>	<p style="text-align: right;">Page 100</p> <p>1 A. No. We understood the payments hadn't 2 been made to us. 3 Q. Okay. So then how did it get into this 4 filing that Spirit's representations were not true or 5 accurate at the time they were made, if you don't 6 believe that that's a correct characterization? 7 MR. LANGS: It's not what it says in his 8 affidavit, but ... 9 BY THE WITNESS: 10 A. Yeah. Again, I don't tend to be -- you 11 know, all this is drafted. This statement to me 12 refers to my affidavit, and my affidavit goes to what 13 was the understanding at the time it was made. These 14 payments weren't made. Spirit's saying these 15 contracts haven't generated funding that would make 16 these payments made. So the lawyers, through this 17 conclusion in terms of trying to find, I guess, a 18 position or a complaint against Spirit. 19 Q. Right. And your understanding is that 20 this representation from the lawyers was filed in 21 court? 22 A. Yes. 23 Q. On behalf of IFC? 24 A. Yes.</p>
<p style="text-align: right;">Page 99</p> <p>1 why Spirit was brought into this case because if the 2 monies were available and they didn't pay us, then we 3 felt that that was a breach of understanding. Maybe 4 not of contract, but a breach of understanding that 5 our lawyers felt had value or had merit. 6 Q. Okay. So to just make sure I understand 7 that -- so you said a breach of understanding. So 8 you understood Spirit's representations to mean 9 something? You did -- let me rephrase that. You 10 understood the written representation Spirit made, 11 that Schedule B, to have a certain meaning, correct? 12 A. We understood Schedule A, Schedule B -- 13 we understood Schedule A. We understood Schedule B 14 and we understood certain other verbal communications 15 that went into the process of trying to craft this 16 agreement. 17 Q. Okay. And by 2008, when these 18 documents -- these two documents, Exhibits 7 and 8 19 are filed, you believed that Spirit's representations 20 did not match your understanding? 21 A. No -- 22 MR. LANGS: Asked and answered and also 23 mischaracterizes the testimony he just said. 24 BY THE WITNESS:</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. And this was IFC's position in this 2 litigation? 3 A. I can't answer that. I mean, we're 4 taking the advice of lawyers regarding this topic. 5 It's our case represented by lawyers. 6 (Langs Deposition Exhibit 7 No. 9 marked as 8 requested.) 9 BY MR. ROMASHKO: 10 Q. Exhibit 9 is a document entitled "IFC 11 Credit Corporation's motion to strike certain of the 12 denials by defendants to IFC Credit Corporation's 13 Rule 56.1 statement for failure to conform to Rule 14 56.1 of the local rules of the US District Court for 15 the Northern District of Illinois." 16 Now, this is another filing in that 17 same litigation? 18 MR. LANGS: I can represent this was filed in 19 the litigation. It's on the top. 20 Do you understand that, Marc, that 21 when this was up here, it means it was filed in your 22 case? 23 THE WITNESS: Okay. 24 MR. LANGS: So he's asking if it was filed in</p>

<p style="text-align: right;">Page 102</p> <p>1 the case. That's all he's asking you. Was this 2 filed in the case? 3 THE WITNESS: Okay. Yes. 4 BY MR. ROMASHKO: 5 Q. And you were reviewing filings with the 6 lawyers in the case? 7 A. Yes. 8 Q. Take a look at Page 3 of this document, 9 first full paragraph on the page. 10 A. Paragraph 35? I'm sorry. I don't even 11 know why I said that. Paragraph 35 is the first two 12 words there? 13 Q. Yeah. If you go down to the first full 14 paragraph after that. 15 A. "Defendants generally"? 16 Q. Yes. 17 A. Okay. 18 Q. So if you look at the third sentence of 19 that paragraph, it says "These three statements are 20 important to IFC's claim and its motion for summary 21 judgement because they evidence the fraud committed 22 by Spirit Construction to induce IFC to enter into 23 the settlement agreement". 24 So that's what that says, correct?</p>	<p style="text-align: right;">Page 104</p> <p>1 the settlement agreement." 2 MR. LANGS: Right here (indicating). 3 BY THE WITNESS: 4 A. I'm not catching it. "Defendants" -- 5 MR. LANGS: Right here (indicating). He's 6 just asking you if it says that. 7 BY MR. ROMASHKO: 8 Q. Yeah. 9 A. Okay. So yes. 10 Q. Okay. And so that's a filing by IFC's 11 attorneys, accusing Spirit of inducing the settlement 12 via fraud? 13 A. Yes. Apparently, yes. 14 Q. Okay. And IFC let its attorneys make 15 that representation in court? 16 A. Yes. 17 Q. Okay. And this was filed, according to 18 the top of the page, on October 8th, 2008? 19 A. Yes. 20 Q. And did you review this document before 21 it was filed? 22 MR. LANGS: If you remember. 23 BY THE WITNESS: 24 A. It's a long time ago. I don't understand</p>
<p style="text-align: right;">Page 103</p> <p>1 A. I'm not catching the fraud in here. So 2 you're in "Defendants generally deny," the first and 3 third statements? 4 Q. It's the third sentence on the page. It 5 says, "These 3." It has a 3 in parentheses -- 6 MR. LANGS: Right here (indicating). 7 BY THE WITNESS: 8 A. (Reviewing document.) 9 Q. Is that what that says? 10 MR. LANGS: You can just read it if you want 11 to read it. It says what it says. But go ahead and 12 read the paragraph for him if he wants you to. 13 BY THE WITNESS: 14 A. I'm not catching fraud -- 15 (Simultaneous colloquy.) 16 BY THE WITNESS: 17 A. What? 18 Q. "Defendants however" -- 19 A. What line? 20 Q. Excuse me. I'm the fifth line down in 21 that paragraph. "These three statements are 22 important to IFC's claim and its motion for summary 23 judgement because they evidence the fraud committed 24 by Spirit Construction to induce IFC to enter into</p>	<p style="text-align: right;">Page 105</p> <p>1 exactly what's being said here. If you go down from 2 "fraud" one, two, three, four, five, where it says 3 "is paid the balance of total settlement amount," and 4 then it goes, "it is clear" -- 5 Q. Mr. Langs, I'm going to stop you there 6 because you can ask anything -- your counsel can ask 7 you anything you want, but -- 8 A. Okay. 9 Q. But you understand what fraud means, 10 generally? 11 A. Yes. I understand what fraud means. 12 Q. You understand it's a pretty serious 13 allegation? 14 A. Yes. 15 Q. One your attorneys didn't take lightly in 16 this case? 17 A. I don't recall their basis for fraud. 18 Q. But you read the filings in this case as 19 they were being filed? 20 A. I don't recall that I specifically 21 concentrated on it. My statements never said fraud. 22 The affidavit doesn't say fraud. I'm not exactly 23 sure what fraud refers to in here. 24 Q. Someone at IFC is overseeing this</p>

<p style="text-align: right;">Page 106</p> <p>1 litigation as it's going on?</p> <p>2 A. Yes.</p> <p>3 Q. Who is that?</p> <p>4 A. It's a combination of Rebecca, outside</p> <p>5 counsel, and myself.</p> <p>6 Q. Okay. And you understood that outside</p> <p>7 counsel's representations on behalf of IFC were IFC's</p> <p>8 representations?</p> <p>9 A. Generally, yes.</p> <p>10 Q. That when a lawyer files something on</p> <p>11 behalf of their client, that that's the client's</p> <p>12 position?</p> <p>13 A. I can't comment on that, whether that's</p> <p>14 through or not.</p> <p>15 Q. To the best of your knowledge -- Forget</p> <p>16 it.</p> <p>17 Do you recall what the outcome of</p> <p>18 this litigation was?</p> <p>19 A. Default judgment against Ron and his</p> <p>20 companies. And regarding Spirit, I believe -- and,</p> <p>21 again -- I'm not a lawyer, but --</p> <p>22 Q. Understood.</p> <p>23 A. The gist of it was there was no standing</p> <p>24 on this particular complaint because these contracts</p>	<p style="text-align: right;">Page 108</p> <p>1 involved with them, they didn't do anything further</p> <p>2 with regard to this litigation. But I have no</p> <p>3 personal knowledge after that.</p> <p>4 Q. Okay. So IFC files bankruptcy in 2009;</p> <p>5 is that right?</p> <p>6 A. I got to look at the dates. Again, a lot</p> <p>7 of stuff was happening, but --</p> <p>8 Q. But regardless --</p> <p>9 A. This is when? 2000- --</p> <p>10 MR. LANGS: I don't know when the ruling --</p> <p>11 when the case was over, but this filing is October 8,</p> <p>12 2008. But I'm not sure what the order was.</p> <p>13 BY MR. ROMASHKO:</p> <p>14 Q. And so if you can go back to -- and this</p> <p>15 is, again, just to help you put the dates together in</p> <p>16 your head. If you can go back to Exhibit 6, which is</p> <p>17 RNS's complaint in this case. I know you have a lot</p> <p>18 of documents in over there.</p> <p>19 So Paragraph 66 says that on March</p> <p>20 31st, 2009 the court granted summary judgement to</p> <p>21 Spirit. Does that sound about right in terms of the</p> <p>22 timing?</p> <p>23 A. March? Okay. Yeah.</p> <p>24 Q. Okay. And then 67, on July 27th, 2009,</p>
<p style="text-align: right;">Page 107</p> <p>1 hadn't occurred. So the contracts not occurring at</p> <p>2 that point based on the judge's reading of this or</p> <p>3 our filings said that there's no ruling that can be</p> <p>4 made, so he said there's no standing on this issue.</p> <p>5 Q. Okay. Did you understand that meant</p> <p>6 that -- if you -- did you have any understanding</p> <p>7 about what that meant about IFC's rights against</p> <p>8 Spirit, going forward?</p> <p>9 A. No, not particularly.</p> <p>10 Q. Okay.</p> <p>11 A. Just that in the summary judgment, that</p> <p>12 didn't get included in any kind of decision.</p> <p>13 Q. Right. And, I guess, let me ask you this</p> <p>14 a different way. Did you understand that IFC might</p> <p>15 later have some cause of action against Spirit?</p> <p>16 A. I hadn't gotten that far.</p> <p>17 Q. Okay. So the litigation ends. Does IFC</p> <p>18 continue to make attempts to collect against Ron?</p> <p>19 A. This is where all things started</p> <p>20 happening, because this date and the bankruptcy</p> <p>21 happened very quickly. At that point, I resigned</p> <p>22 very quickly. And what -- with the trustee and their</p> <p>23 existing resources internally, according to my</p> <p>24 knowledge now from RNS, in terms of when I got</p>	<p style="text-align: right;">Page 109</p> <p>1 IFC filed for Chapter 7?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Does that sound about right, generally?</p> <p>4 A. Uh-huh.</p> <p>5 Q. So you resign shortly thereafter?</p> <p>6 A. Right.</p> <p>7 Q. And then -- so I think you said you</p> <p>8 weren't involved for a while?</p> <p>9 A. Involved?</p> <p>10 Q. With IFC.</p> <p>11 A. After I resigned?</p> <p>12 Q. Right.</p> <p>13 A. I wasn't involved with IFC.</p> <p>14 Q. But at some point, you get involved with</p> <p>15 RNS; is that correct?</p> <p>16 A. (Nodding.)</p> <p>17 Q. So when do you become involved with RNS?</p> <p>18 A. Two years ago, a year and a half ago.</p> <p>19 I'd have to go back and look at the consulting</p> <p>20 agreement, but...</p> <p>21 Q. Okay. And I guess let me ask. Other</p> <p>22 than testifying --</p> <p>23 A. You know, probably a couple of months</p> <p>24 before this complaint was filed.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q. Okay. Let me ask you this: So you said 2 you testified in the bankruptcy proceeding? 3 A. Yes. 4 Q. So do you recall when you testified in 5 the bankruptcy proceeding? 6 A. Just general dates. 7 Q. So you were -- 8 A. Six months from the bankruptcy filing, 9 sometime from that period of time. 10 Q. Were you still working for IFC -- 11 A. No. 12 Q. -- at that point? 13 So you had already resigned? 14 A. Yes. 15 Q. And you testified in the bankruptcy 16 proceeding? 17 A. Yes. 18 Q. Do you have any other involvement in the 19 bankruptcy after that? 20 A. The trustee was pursuing complaints 21 against me as an officer and so there was litigation 22 going on between me as an officer of the company and 23 the trustee for a period of a couple of years. 24 Q. And what were those complaints against</p>	<p style="text-align: right;">Page 112</p> <p>1 way? 2 A. No. 3 Q. And your only involvement with the 4 bankruptcy is just to the extent that RNS may also be 5 doing something -- 6 A. My only involvement with the bankruptcy 7 is that RNS -- the relationship -- 8 Q. Yeah -- 9 (Simultaneous colloquy.) 10 MR. LANGS: Objection. It mischaracterizes 11 the evidence, and I don't think RNS was involved in 12 the bankruptcy either, but... 13 BY MR. ROMASHKO: 14 Q. Well, you're aware that RNS has a 15 services contract in the bankruptcy, correct? 16 A. No, not particularly. 17 Q. Okay. But you're aware that RNS 18 purchased certain -- 19 A. Yes. 20 Q. -- assets from IFC? 21 A. Yes. 22 Q. Okay. And those assets include 23 receivables? Is that a fair way to put it? 24 A. It includes the rights of certain</p>
<p style="text-align: right;">Page 111</p> <p>1 you as an officer? 2 A. Primarily, it was breach of fiduciary 3 responsibility to the assets of the company. 4 Q. Okay. And what was the alleged breach of 5 fiduciary responsibility? 6 A. Proceeds for the company were not 7 allocated properly in terms of priority to senior 8 debt versus other obligations of the company. 9 Q. So you were paying creditors out of 10 order; is that a fair -- let me rephrase that. 11 That's the allegation? 12 A. That's the allegation. 13 Q. Right -- 14 A. And as a result of that, there was 15 eventually a settlement and release of all issues 16 with no wrongdoing. 17 Q. So -- and then after that -- so other 18 than that litigation or while that litigation is 19 pending, you're not assisting the bankruptcy estate 20 in any way? 21 A. No. 22 Q. And after that litigation, until you are 23 hired by RNS or until you sign a contract with RNS, 24 you're not assisting the bankruptcy estate in any</p>	<p style="text-align: right;">Page 113</p> <p>1 contractual obligations to third parties. 2 Q. Okay. Including some payments rights? 3 A. Yeah. Payment rights -- 4 Q. The right to -- 5 (Simultaneous colloquy.) 6 BY MR. ROMASHKO: 7 Q. Sometimes on some of these things, we 8 mean the same thing, but you have more precise 9 language for it than I do. 10 Have you reviewed the asset purchase 11 agreements that RNS used to purchase those assets out 12 of the bankruptcy estate? 13 A. No. 14 Q. Okay. Are you aware of how much RNS paid 15 for any of these assets? 16 A. No. 17 Q. Okay. I will have a document marked. I 18 understand that you said you're not aware of that, 19 but ... 20 (Langs Deposition Exhibit 21 No. 10 marked as 22 requested.) 23 BY MR. LANGS: 24 Q. So I've handed you a document that's</p>

<p style="text-align: right;">Page 114</p> <p>1 titled "Supplemental asset purchase and transition 2 services agreement." 3 A. Uh-huh. 4 Q. I understand from what you just said. 5 That there's no reason you would be familiar with 6 this document? 7 A. I have not seen this document. 8 Q. Okay. Now, we'll represent to you that 9 this is -- this was attached to RNS's complaint in 10 this case and that according to the complaint -- and 11 I think the face of the document -- this is the 12 document whereby RNS purchased the, I guess, stream 13 of payments owned by Ron or judgment my Ron to IFC. 14 A. Okay. 15 Q. Also purchased -- and I don't know if 16 you're familiar with this -- all notes and other 17 claims and rights against any of First Mac Trucks 18 Inc., First Mac Trucks II, LLC, the Canham Group, 19 Thomas E. Canham and Erick E. Salazar. Are you 20 familiar with that transaction that IFC apparently 21 engaged in? 22 A. The Canham transaction rings a bell for 23 me, but not specifically the details to it. 24 Q. Okay. And then take a look at Page 3 of</p>	<p style="text-align: right;">Page 116</p> <p>1 BY MR. ROMASHKO: 2 Q. Let me ask you about that 2007/2008 3 litigation against the Ron companies and Spirit. In 4 this case, you've attended a few depositions. Did 5 you attend anyone else's deposition in that case? 6 A. I don't recall -- yeah, I don't recall. 7 Q. You don't recall whether you attended the 8 deposition of Steve Van Den Heuvel? 9 A. I don't recall. 10 Q. Do you recall whether you ever read a 11 transcript of it? 12 A. I don't recall whether I read it then or 13 with this complaint. I don't recall. 14 Q. You don't recall reading it at the time? 15 A. Uh-huh. 16 Q. You don't know whether you did? 17 A. Yeah. 18 Q. And if I can direct your attention back 19 to Exhibit 6, which is RNS's complaint in this case. 20 A. Uh-huh. 21 Q. Before I get into any specific paragraph, 22 you understand that, generally, RNS is accusing 23 Spirit of several kinds of fraud in this case? 24 A. Point me to specific -- I guess the</p>
<p style="text-align: right;">Page 115</p> <p>1 the document. It lists a purchase price. 2 A. Uh-huh. 3 Q. And for the claims and judgment against 4 TPTC, PCDI, and Ron and the Mac Trucks and Canham 5 transaction, RNS paid \$10,012.50. And my question 6 for you -- I understand you haven't seen this 7 document, but my question for you is, does that 8 amount of money surprise you? 9 A. No opinion. 10 Q. You understand that part of the 11 bankruptcy trustee's job is to try and get as much 12 for the assets of the estate as they can? 13 A. I don't have an opinion on that. My 14 experience with this bankruptcy process is that I 15 don't believe he, in any way, maximized the value of 16 th assets in terms of the administration of what he 17 did and how he approached it. So how he values 18 materiality and those types of aspects, I don't have 19 an opinion, but I don't think he maximized the assets 20 of the estate. 21 Q. Okay. 22 MR. ROMASHKO: You want to take a minute? 23 MR. LANGS: That's fine with me. 24 (A short break was had.)</p>	<p style="text-align: right;">Page 117</p> <p>1 answer to that is no. 2 Q. Okay. Take a look, if you would, at 3 paragraph -- well, excuse me. Take a look at 4 Page 17. So this first one is Count 14 and it's not 5 fraud. It's negligent representation against Steve 6 and Spirit. 7 A. Uh-huh. 8 Q. And you understand that to mean that RNS 9 is alleging that Steve and Spirit made 10 misrepresentations? 11 A. I see it says at least three false 12 statements of material fact that induced IFC into 13 executing a settlement agreement, yes. 14 Q. And then take a look at Count II, 15 fraudulent inducement against Steve and Spirit. 16 A. What page is that? 17 Q. Page 240. 18 A. Uh-huh, yes. 19 Q. Okay. And so you understand that to mean 20 that you're accusing -- not you, but RNS -- 21 A. Uh-huh. 22 Q. -- is accusing Steve and Spirit of fraud? 23 A. Yes. 24 Q. And I could go on, but I think the</p>

<p style="text-align: right;">Page 118</p> <p>1 point's been made.</p> <p>2 So my question -- and not in</p> <p>3 reference to the complaint, but do you believe that</p> <p>4 Steve and Spirit defrauded RNS?</p> <p>5 A. I'm sorry. RNS?</p> <p>6 Q. I'm sorry --</p> <p>7 A. IFC?</p> <p>8 Q. I'll reask the whole question.</p> <p>9 Do you believe Steve and Spirit</p> <p>10 defrauded IFC?</p> <p>11 A. With what I know today from seeing</p> <p>12 discovery and having picked up this issue many years</p> <p>13 later, yes.</p> <p>14 Q. And what do you base that on?</p> <p>15 A. At the time, the EPC contracts were</p> <p>16 material to the transaction of taking Fortress out</p> <p>17 versus letting Fortress default. VHC and David Van</p> <p>18 Den Heuvel and family companies came off the</p> <p>19 guarantee that were replaced by some kind of economic</p> <p>20 consideration, and we relied on Steve Van Den Heuvel</p> <p>21 and his representation as a known and top tier</p> <p>22 construction company in this industry, that these EPC</p> <p>23 contracts were real and had value.</p> <p>24 And we even talked extensively about</p>	<p style="text-align: right;">Page 120</p> <p>1 A. But for that consideration, we wouldn't</p> <p>2 have done the transaction.</p> <p>3 Q. Okay. And so he showed you these other</p> <p>4 EPC contracts?</p> <p>5 A. Correct.</p> <p>6 Q. And from your memory, do these -- do the</p> <p>7 four EPC contracts involved in this case look like</p> <p>8 those contracts that you were shown?</p> <p>9 A. No.</p> <p>10 Q. And so if you had seen those, you would</p> <p>11 have thought there would have been an issue?</p> <p>12 A. We probably would have done some more due</p> <p>13 diligence.</p> <p>14 Q. It would have been a red flag; is that</p> <p>15 fair?</p> <p>16 A. Yes.</p> <p>17 Q. Let's go back to Exhibit 5, continuing</p> <p>18 pledge agreement. Do you still have that over there?</p> <p>19 A. Yeah.</p> <p>20 Q. So go back to Schedule B -- just -- the</p> <p>21 first Schedule B.</p> <p>22 A. Uh-huh.</p> <p>23 Q. It's the one without the handwritten note</p> <p>24 on it. So you said it was represented to you that</p>
<p style="text-align: right;">Page 119</p> <p>1 the value of these EPC contracts upon signing -- not</p> <p>2 upon funding, upon signing -- and he was unable to</p> <p>3 show us these contracts or have that specific</p> <p>4 discussion because of the confidentiality. But he</p> <p>5 certainly, at that point, participated in indicating</p> <p>6 to us that these were real and valuable -- real</p> <p>7 IPC -- standard IPC -- EPC contracts. As I look at</p> <p>8 this today, it becomes somewhat clear that</p> <p>9 somebody -- Steve Van Den Heuvel put these agreements</p> <p>10 together. He had no involvement with putting these</p> <p>11 agreements together. He had no problem assigning the</p> <p>12 proceeds of these, if there were proceeds. But the</p> <p>13 aspect of his participation, the value of a signed</p> <p>14 EPC contract, economic occurrence, I believe was</p> <p>15 false.</p> <p>16 Q. Okay. And what do you base the notion</p> <p>17 that it was false on?</p> <p>18 A. Because at that time, he educated us and</p> <p>19 participated in showing us other EPC contracts. He</p> <p>20 showed us timelines which had significant economic</p> <p>21 values paid upon signing the contract -- not funding,</p> <p>22 signing of the contract -- and indicated those were</p> <p>23 consistent with these contracts as well.</p> <p>24 Q. And --</p>	<p style="text-align: right;">Page 121</p> <p>1 there was a value behind these contracts?</p> <p>2 A. It was represented that there was</p> <p>3 economic value towards the signing of the EPC</p> <p>4 contract. Significant money had been at risk.</p> <p>5 Q. Okay. Can you point me to where in this</p> <p>6 document it says that?</p> <p>7 A. Doesn't say that.</p> <p>8 Q. So it's not in the document that he</p> <p>9 signed?</p> <p>10 A. No.</p> <p>11 Q. Okay. And, again, it doesn't speak to</p> <p>12 when anything is going to happen, this document?</p> <p>13 MR. LANGS: Asked and answered.</p> <p>14 You can answer again.</p> <p>15 BY THE WITNESS:</p> <p>16 A. Not that I see, no.</p> <p>17 Q. And so what on this page is false?</p> <p>18 A. I'll repeat what I said before. Our</p> <p>19 process -- my recollection is that there was a</p> <p>20 memorandum of understanding which outlined how this</p> <p>21 was all going to work and why it was going to work</p> <p>22 and proceeded through a due diligence process of --</p> <p>23 which Steve Van Den Heuvel was involved with, David</p> <p>24 Van Den Heuvel was involved with, Sharad Tak was</p>

<p style="text-align: right;">Page 122</p> <p>1 involved with. That resulted in this which is a 2 letter to Steve Van Den Heuvel that is giving certain 3 considerations that Ron signed because he's the one 4 who has to provide those considerations with his 5 knowledge. They're brothers. They were involved 6 with this process. So to me, A and B are related. 7 That was our understanding at the time. And so 8 that's what the value of the consideration is coming 9 from. 10 Q. And so the memorandum of understanding 11 is -- it's the document you were shown early today, 12 or is it? 13 A. This is an -- consistent of part of a 14 drafting process that went through lots of 15 discussions, but it has most of the moving pieces in 16 it, yes. 17 Q. And that's the document marked as 18 Exhibit 2. 19 A. Uh-huh. 20 Q. And -- but there is no signing of that by 21 any Spirit or any other VHC-related entity? 22 A. You know, at some point -- well, I guess 23 is -- when it's signed by Ron, Ron, Ron, Ron, Ron -- 24 I don't know if this was the final. I don't recall.</p>	<p style="text-align: right;">Page 124</p> <p>1 A. I recall that there was a letter -- some 2 formal letter between Stellpflug and it was signed by 3 Sharad Tak talking about the EPC contracts and 4 that -- 5 MR. LANGS: You got to listen to his 6 questions. Just answer the questions that he's 7 asking you. 8 BY MR. SPAHN: 9 Q. I'll let you finish your response. So 10 you understand -- you recall seeing some form of 11 letter between Mr. Stellpflug, who I understand from 12 your earlier testimony, was counsel for IFC; is that 13 correct? 14 A. No. Stellpflug is counsel for -- I will 15 say, generally, Ron Van Den Heuvel and as well as 16 other Spirit, VHC -- he worked variously through all 17 those companies. 18 Q. Okay. 19 A. The Van Den Heuvel brothers' companies. 20 Q. Okay. A document between Mr. Stellpflug 21 and Mr. Tak about these EPC contracts? 22 A. Uh-huh. 23 Q. Do you recall the date of that document? 24 A. No.</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. ROMASHKO: I don't think I have anything 2 else for the moment. I'll pass it over to you, 3 Brian. 4 EXAMINATION 5 BY MR. SPAHN: 6 Q. Mr. Langs, we met earlier today. My name 7 is Brian Spahn. I represent the defendant, Sharad 8 Tak, in this lawsuit. You understand that in 9 addition to Spirit Construction and Steve Van Den 10 Heuvel, RNS has brought claims against Mr. Tak? 11 A. Yes. 12 Q. I'm going to try not to cover a terrible 13 amount of ground that you've already testified on, 14 but I do have some questions. And I guess I'll pick 15 up first where counsel just left off, and that's with 16 these EPC contracts, the four EPC contracts that 17 you've now been providing significant testimony on. 18 I think you testified -- or responded to counsel's 19 question when asked, whenever you asked Mr. Tak to 20 see the four EPC contracts, I think you said you 21 don't recall; is that correct? 22 A. I don't recall. 23 Q. Do you recall Mr. Tak ever offering to 24 show you the four EPC contracts?</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Do you recall when you saw saw that 2 document? 3 A. In the meetings we had with Sharad Tak 4 and Ron in our offices. 5 Q. And what do you recall that document 6 stating? 7 A. It was talking about the EPC contracts 8 that were in place as part of a process of something 9 that had been negotiated and signed. 10 Q. Anything else? 11 A. No. 12 Q. Did it say anything about the funding 13 aspects of any of the four projects? 14 A. No. 15 Q. Did it say anything about the intent to 16 proceed on any of the four contracts? 17 A. They had been signed -- that the four 18 contracts had been signed. 19 Q. Did it say anything with respect to what 20 subcontractor, Spirit, intended on using? 21 A. I don't recall. 22 Q. Let me take a step back. So I understand 23 from your previous testimony, that at some point over 24 the course of what I'll call the Fortress</p>

<p style="text-align: right;">Page 126</p> <p>1 transaction -- and I'm not going to have you recite 2 the history that you went through with counsel here. 3 But my understanding is that at some point, Fortress 4 was prepared to take over the Oconto Falls mill; is 5 that summary of your previous testimony? 6 A. Correct. 7 Q. And that around that time, you discovered 8 that Mr. Tak was involved in some form or fashion? 9 Is that -- 10 A. Correct. 11 Q. And prior to -- and when approximately 12 was that, if you recall? 13 A. I don't recall, but it would have been 14 from the point that Fortress declared default and 15 began that process to what was eventually the 16 settlement agreement with the memorandum of 17 understanding in the documents related to the 18 transaction that are in the funding of the Fortress 19 agreement. 20 Q. And prior to that date, were you familiar 21 with Mr. Tak? 22 A. No. 23 Q. Were you familiar with ST paper? 24 A. No.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. We did spend time talking to Spirit about 2 certain considerations, yes. 3 Q. Did you do any due diligence on Mr. Tak 4 prior to executing these documents? 5 A. Yes. 6 Q. Okay. And can you describe what you did? 7 A. The company had the ability to basically 8 do an underwriting of a person. They do credit 9 checking, FICOs. There's a whole credit function 10 that we have available, and that process was done on 11 Sharad Tak. 12 Q. Who was involved in that process at IFC? 13 A. The credit function, probably Steve Csar 14 had some involvement with that. Middle market also 15 had other people that worked into it extensively as 16 well. 17 Q. Do you recall what the outcome of that 18 underwriting process was, specific to Mr. Tak? 19 A. That Mr. Tak had a very good history and 20 was capable of being involved with large commercial 21 transactions and had been involved with commercial 22 transactions previously. I believe also it came out 23 that he had done some funding with Goldman Sachs on a 24 transaction.</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Were you familiar with any Tak-related 2 entities? 3 A. No. 4 Q. After learning -- and who specifically 5 informed you that Mr. Tak might become involved in 6 this situation? 7 A. Ron Van Den Heuvel. 8 Q. What did Ron say? 9 A. That he believed he had an additional 10 financing partner that would allow, potentially, 11 Fortress and IFC to be bought out and the collateral 12 value in the security interest associated with the 13 original lease contracts under the Fortress agreement 14 would come back to Ron and ownership, whoever that 15 was. 16 Q. Okay. So after that initial 17 conversation, what happened in the case with respect 18 to anything that IFC did, specific to Mr. Tak or his 19 company, ST Paper? 20 A. I don't understand the question. 21 Q. Okay. You talked a little bit about 22 diligence that you ran on Spirit prior to executing 23 the documents that you've been testifying about 24 earlier today. Is that a fair summary?</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. At some point, did you meet Mr. Tak? 2 A. Yes. 3 Q. And when was your first face-to-face 4 meeting with Mr. Tak? 5 A. I can't tell you the exact dates, but it 6 would have been consistent with this construction of 7 this memorandum of understanding. So those dates 8 would have been plus or minus -- it took about three 9 or four months to put the deal together. 10 Q. So the record's clear, you're referring 11 to what's been marked as Exhibit 2 -- 12 A. Uh-huh. 13 Q. -- the MOU that's dated December 22nd, 14 2006? 15 A. Yes. 16 Q. In or around that period, you first met 17 with Mr. Tak? 18 A. Correct. 19 Q. Where was that meeting? 20 A. In Morton Grove at IFC's offices. 21 Q. Who was in that meeting? 22 A. Ron Van Den Heuvel, Rudy Trebles, myself, 23 Sharad Tak and probably one or two other people 24 probably wandered in and out as part of that process.</p>

<p style="text-align: right;">Page 130</p> <p>1 Q. Who would those individuals be affiliated 2 with?</p> <p>3 A. Patrick -- that was his name, Patrick 4 Mackowski (phonetic) definitely.</p> <p>5 Q. And is he affiliated with IFC?</p> <p>6 A. Yes.</p> <p>7 Q. And someone else maybe?</p> <p>8 A. I don't recall anybody else particularly, 9 but ...</p> <p>10 Q. And we'll circle back to that meeting. 11 Beyond that meeting, did you ever meet with Mr. Tak 12 face to face?</p> <p>13 A. I believe there was another phone 14 conversation later on to validate some of the 15 information that we had been putting together to 16 do -- make this transaction hang together. And then 17 Sharad Tak was very involved, eventually, with the 18 overall documentation and the purchase of Oconto 19 Falls and all the relative aspects of that 20 transaction which resulted in his ownership of Oconto 21 Falls.</p> <p>22 Q. Did you have personal meetings with 23 Mr. Tak as it related to the his purchase of the 24 Oconto Falls mill?</p>	<p style="text-align: right;">Page 132</p> <p>1 A. I don't recall.</p> <p>2 Q. When you met with Mr. Tak in Morton 3 Grove, what did he say about these EPC contracts?</p> <p>4 A. I don't recall, specifically.</p> <p>5 Q. Approximately -- well, taking a step 6 back, do you recall who called the meeting that took 7 place in Morton Grove that Mr. Tak attended? Who 8 asked for the meeting?</p> <p>9 A. I don't recall. Probably Ron Van Den 10 Heuvel.</p> <p>11 Q. How long did the meeting last?</p> <p>12 A. Several hours.</p> <p>13 Q. Were there breaks involved?</p> <p>14 A. I don't recall.</p> <p>15 Q. This took place at IFC's office?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall talking with Mr. Tak about 18 the fact that he had to travel to the meeting?</p> <p>19 A. No, I don't recall that.</p> <p>20 Q. So over a several-hour meeting in Morton 21 Grove, who would you say did the bulk of the 22 speaking?</p> <p>23 A. Probably Ron Van Den Heuvel.</p> <p>24 Q. And, again, going into the Morton Grove</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I don't recall.</p> <p>2 Q. So other than the Morton Grove meeting, 3 you don't recall ever -- any other face-to-face 4 meetings with Mr. Tak?</p> <p>5 A. Correct.</p> <p>6 Q. Okay.</p> <p>7 A. Only telephone conversation.</p> <p>8 Q. Okay. And approximately --</p> <p>9 A. Same dates.</p> <p>10 Q. But approximately how many telephone 11 conversations?</p> <p>12 A. At least one.</p> <p>13 Q. And what was the subject of that one 14 conversation -- telephone conversation?</p> <p>15 A. It was validation going back and forth 16 between Spirit and Sharad Tak on the validity and 17 consistencies of these EPC contracts that had been 18 executed and signed.</p> <p>19 Q. What did Mr. Tak say on the conversation?</p> <p>20 A. Yes.</p> <p>21 Q. Yes what?</p> <p>22 A. That these contracts were valid and 23 signed.</p> <p>24 Q. Anything else?</p>	<p style="text-align: right;">Page 133</p> <p>1 meeting, what was your understanding as to its 2 purpose?</p> <p>3 A. That there was potentially a structure 4 where Ron could maintain his ownership, request new 5 partners in Oconto Falls, and avoid the default of 6 Fortress taking the plant away from him.</p> <p>7 Q. Anything else?</p> <p>8 A. No. They were talking about a structure 9 that they -- thought they wanted to develop and talk 10 to us about.</p> <p>11 Q. Do you recall if you took any notes of 12 that meeting?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you know if anybody at that meeting 15 took notes, if you recall?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall there being an agenda?</p> <p>18 A. I don't recall, specifically.</p> <p>19 Q. Was it in the morning, afternoon? What 20 time of day?</p> <p>21 A. I don't recall.</p> <p>22 Q. If you look at what's been marked 23 Exhibit 6, which is the first amended complaint and 24 flip to Page 14, specifically, Paragraph 60.</p>

<p style="text-align: right;">Page 134</p> <p>1 So Paragraph 60 starts off by</p> <p>2 stating, "Given the distrust between IFC and the Ron</p> <p>3 defendants created by the Ron defendants continued</p> <p>4 defaults on payments owed to IFC as a condition for</p> <p>5 and to induce IFC to enter into the settlement</p> <p>6 agreement, master lease No. 801109, master amendment</p> <p>7 agreement, and to agree to use the Ron defendants'</p> <p>8 rights to payment under the EPC contracts as</p> <p>9 collateral for the loan through their continuing</p> <p>10 pledge agreement and Schedule B to the continuing</p> <p>11 pledge agreement titled 'Acknowledgement and consent</p> <p>12 assignment.' Sharad met with Ron and IFC's CEO,</p> <p>13 Rudolph Trebles, and CFO Marc Langs at IFC's office</p> <p>14 in Morton Grove, Illinois in late March, early April</p> <p>15 of 2007." Did I read that correctly?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is that the meeting that you've been</p> <p>18 referring to?</p> <p>19 A. Yes.</p> <p>20 Q. Does reading that now, which is, again,</p> <p>21 contained in RNS's amended complaint refresh your</p> <p>22 recollection as to the timing of that meeting?</p> <p>23 A. Yes.</p> <p>24 Q. And so you say that as stated in the</p>	<p style="text-align: right;">Page 136</p> <p>1 MR. LANGS: He's just asking the date of the</p> <p>2 document --</p> <p>3 BY THE WITNESS:</p> <p>4 A. The date of the document is as it states.</p> <p>5 Q. Right. And I just wanted to make sure</p> <p>6 because you testified previously that your</p> <p>7 recollection was that the Morton Grove meeting took</p> <p>8 place in or around the time that this MOU was signed,</p> <p>9 and I just wanted to --</p> <p>10 A. Not this MOU.</p> <p>11 Q. Okay. Which MOU are you referring to?</p> <p>12 A. There was several transactions. There's</p> <p>13 an MOU that is in the Fortress contract and the</p> <p>14 buyout of that, which is the official final contract.</p> <p>15 I don't know what the date of that was exactly, but I</p> <p>16 would use that date as a reference point.</p> <p>17 Q. Well, if you flip to Exhibit 4, which is</p> <p>18 Exhibit D to the amended complaint. That's the</p> <p>19 settlement agreement that Mr. Romashko was asking you</p> <p>20 about. Do you see that?</p> <p>21 A. 4, yes.</p> <p>22 Q. Is that the memorandum of understanding</p> <p>23 that you were referring to, but --</p> <p>24 A. Same answer I gave to him. There's a</p>
<p style="text-align: right;">Page 135</p> <p>1 amended complaint, that that's accurate, that the</p> <p>2 meeting took place in March or April of 2007?</p> <p>3 A. To the best of my recollection.</p> <p>4 Q. And, again, the memorandum of</p> <p>5 understanding that you were referring to earlier,</p> <p>6 which is Exhibit 2, is dated December 22nd, 2006; is</p> <p>7 that fair?</p> <p>8 MR. LANGS: It's right there (indicating).</p> <p>9 BY THE WITNESS:</p> <p>10 A. Yes.</p> <p>11 MR. LANGS: Are you looking at it?</p> <p>12 BY MR. SPAHN:</p> <p>13 Q. I apologize. A lot of these questions</p> <p>14 are going to be obvious, but I need to make a record</p> <p>15 and so I just want to make sure that I get the</p> <p>16 chronology correct.</p> <p>17 MR. LANGS: I know you're getting tired too.</p> <p>18 You have to listen to the question he's asking before</p> <p>19 you answer it.</p> <p>20 BY THE WITNESS:</p> <p>21 A. The aspect -- what I answered was, this</p> <p>22 is one of many drafts being put together. So is this</p> <p>23 the final memorandum of understanding that resulted</p> <p>24 in the transaction --</p>	<p style="text-align: right;">Page 137</p> <p>1 document that's the final agreement that has all the</p> <p>2 signatures of all the parties, including Fortress,</p> <p>3 and the pay proceeds letter. So that would be the</p> <p>4 one that I would say is the correct one for the</p> <p>5 dates, if we're trying to establish dates.</p> <p>6 Q. And did Mr. Tak sign that document?</p> <p>7 A. He must have been involved in some aspect</p> <p>8 of the document because he provided the funding for</p> <p>9 the transaction.</p> <p>10 Q. Specifically, I want to make sure I</p> <p>11 understand what transaction you're referring to. As</p> <p>12 we're talking about the transaction that's reflected</p> <p>13 in Exhibit 4 --</p> <p>14 A. This is just one piece of the final</p> <p>15 document that is the Fortress -- that is the whole</p> <p>16 Fortress payoff document.</p> <p>17 Q. Okay. Do you recall ever seeing a</p> <p>18 document that was part of the Fortress deal that</p> <p>19 Mr. Tak signed?</p> <p>20 A. I don't recall.</p> <p>21 Q. Okay. And we've spent a lot of time</p> <p>22 talking about Exhibit 5, which I'll give you a chance</p> <p>23 to flip to. It's the continuing pledge agreement.</p> <p>24 A. Uh-huh.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q. And specifically the two schedules, 2 Schedule A and Schedule B. Mr. Tak didn't sign this 3 document, correct? 4 A. The document speaks for itself. No. 5 Q. Well, did IFC, as part of its seeking a 6 notice of assignment and -- did IFC in its pursuit 7 and acknowledgement of and consent to assignment did 8 Spirit ask Mr. Tak to sign any similar type of 9 document? 10 A. I don't recall. 11 Q. Fair to say that if Mr. Tak had signed 12 any document in or around March 28, 2007, you would 13 have produced it in this litigation? You would have 14 provided it to your counsel? 15 A. I'm not sure that we have the actual 16 Fortress buy/sell agreement at RNS or in the files 17 that we have. Those would have been IFC documents. 18 Q. I was asking you about paragraph 60 to 19 the amended complaint. 20 A. Which exhibit? 21 Q. Exhibit 6. 22 A. Paragraph 60. 23 Q. If you move down to Paragraph 61, you'll 24 see that it states, "At this meeting, Sharad made</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Okay. The next paragraph is that Sharad 2 confirmed that he fully intended to build the four 3 projects contemplated by the CPA EPC contracts. Is 4 that consistent with your recollection? 5 A. Yes. 6 Q. What did he say to the best of your 7 recollection that confirmed in your mind that he 8 intended to build the four projects? 9 A. That -- there's a lot of discussion. 10 They were very important meetings. But I think the 11 one thing that I recall that there pretty specific 12 was that there were off-take contracts that would 13 provide the customer volume for the basis of these 14 contracts -- these plans to be constructed. And 15 based on these off-take contracts and Spirit's 16 credibility for building these plants, he felt these 17 EPC contracts could be taken out and financing be 18 completed. 19 Q. And, again, just explain to me what an 20 off-take contracts is. 21 A. So an off-take contract is a customer 22 who's going to buy the finished paper product. 23 Simply put, let's say it's Georgia Pacific who's 24 going buy toilet paper. And so these plants make</p>
<p style="text-align: right;">Page 139</p> <p>1 multiple misrepresentations to IFC which IFC relied 2 on in order to enter into the settlement agreement, 3 master lease No. 801109 and master amendment 4 agreement." Did I read that correctly? 5 A. Yes. 6 Q. And then it goes on to recite five 7 lettered paragraphs, A through E; is that correct? 8 A. Uh-huh. 9 Q. So I'm just going to paraphrase. In 10 paragraph one, it says that Sharad confirmed that the 11 EPC contracts had been executed. Is that consistent 12 with your recollection? 13 A. Yes. 14 Q. Paragraph B says that Sharad confirmed 15 that Ron's TPTC and PCDI, Ron's companies, would be 16 used as subcontractors under the CPA and EPC 17 contracts. Again, is that consistent with your 18 recollection? 19 A. Yes. 20 Q. So, again, I asked you a couple minutes 21 ago. You don't recall, but having read this, that 22 now refreshes your recollection? 23 A. I don't recall you asking me that 24 question previously.</p>	<p style="text-align: right;">Page 141</p> <p>1 that kind of paper and they give you a contract that 2 says we're going to take 90 tons a paper a year for 3 five years at a price of this with an index to it. 4 So these off-take contracts are contracts from 5 customers that they're going to use the plant for 6 volume. And the basis of that credit worthiness and 7 the size of that customer, provided with the ability 8 to build a paper plant is why you create an EPC 9 contract to go out and provide financing to basically 10 build a plant and satisfy the demand. 11 Q. Okay. And you attribute those comments 12 made specific to off-take contracts at this Morton 13 Grove meeting were made by Mr. Tak? 14 A. Yes, and Ron. 15 Q. Okay. What, if anything, else do you 16 recall Mr. Tak sharing at that meeting with respect 17 to whether these projects were funded? 18 A. Nothing about the funding. 19 Q. The next paragraph, Paragraph D, says 20 "Sharad told IFC that due to confidentiality 21 concerns, Spirit and Sharad could not allow IFC 22 review the Fortress CPA EPC contracts? 23 A. Correct. 24 Q. So does that refresh your recollection?</p>

<p style="text-align: right;">Page 142</p> <p>1 Do you recall now reading that paragraph that at some</p> <p>2 point during that meeting, Mr. Tak made that</p> <p>3 statement?</p> <p>4 A. Yes.</p> <p>5 Q. And was that in response to a request</p> <p>6 or what do you recall prompted that specific</p> <p>7 statement by Mr. Tak?</p> <p>8 A. We were trying to get to whatever fact</p> <p>9 patterns we could as related to these two parties</p> <p>10 outside Ron Van Den Heuvel, all right, in terms of</p> <p>11 the EPC contract.</p> <p>12 Q. Paragraph E states that "Sharad confirmed</p> <p>13 the four CPA EPC contracts were sufficient to secure</p> <p>14 financing for the projects contemplated; however, he</p> <p>15 knew they were not." So let's start with the first</p> <p>16 half of that sentence. Did he say anything beyond</p> <p>17 what you've testified to about the off-take contracts</p> <p>18 that provided you an understanding that he thought</p> <p>19 there was going to be sufficient financing for those</p> <p>20 projects?</p> <p>21 A. The only topic that I think I would add</p> <p>22 at this point was that we were trying to understand,</p> <p>23 with these signed EPC contracts -- and to be signed</p> <p>24 EPC contracts significance dollars had already been</p>	<p style="text-align: right;">Page 144</p> <p>1 today. One involved St. George Utah. Is that</p> <p>2 consistent with your understanding?</p> <p>3 A. We did not see any contract at that</p> <p>4 point. So short of those titles a they were put</p> <p>5 together in these memorandum of understandings [sic],</p> <p>6 the rest of it was just verbal communications in</p> <p>7 terms of what these things are.</p> <p>8 Q. Was there any discussing at the Morton</p> <p>9 Grove meeting whether these projects were to be built</p> <p>10 versus upgrades to existing mills?</p> <p>11 A. Yeah. To be built.</p> <p>12 Q. All of the projects were to be built?</p> <p>13 A. Same -- there was the same discussion.</p> <p>14 There was one upgrade to an existing plant in De Pere</p> <p>15 and the other two were to be built.</p> <p>16 Q. New construction?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Was there any discussion as to where the</p> <p>19 new construction was going to take place?</p> <p>20 A. Just to the titles that -- identification</p> <p>21 of the titles as -- that's in the memorandum of</p> <p>22 understanding, nothing -- no greater detail than</p> <p>23 that.</p> <p>24 Q. Going back to page 15 of the amended</p>
<p style="text-align: right;">Page 143</p> <p>1 spent to be able to have something that would be</p> <p>2 considered capable of providing financing</p> <p>3 documentation as it traditionally and commercially</p> <p>4 was understood for EPC contracts and funding sources.</p> <p>5 Q. So --</p> <p>6 A. Sharad Tak had a history of that. He</p> <p>7 used that to finance the Oconto Falls transaction and</p> <p>8 that discussion of concepts was what this meeting was</p> <p>9 about.</p> <p>10 Q. And so did he discuss those specific</p> <p>11 concepts that you just described as it relates to</p> <p>12 projects beyond Oconto Falls?</p> <p>13 A. To the extent there was off-take</p> <p>14 contracts that he and Ron were aware of that would</p> <p>15 satisfy that demand.</p> <p>16 Q. Okay. So he made specific</p> <p>17 representations with respect to off-take contracts as</p> <p>18 it relates to the to-be built mill in Pennsylvania?</p> <p>19 A. I would say that he collaborated Ron's</p> <p>20 assertions that this was all a true fact pattern.</p> <p>21 Q. What about the to-be built mill in Utah?</p> <p>22 A. I don't understand the question.</p> <p>23 Q. Sorry. My understanding -- again, we've</p> <p>24 spent some time looking at the EPC contracts earlier</p>	<p style="text-align: right;">Page 145</p> <p>1 complaint we were just reading. But the last clause</p> <p>2 of subpart 61E states, "However, he knew they were</p> <p>3 not." What's the basis of the belief that Mr. Tak at</p> <p>4 the time knew that there was not sufficient -- strike</p> <p>5 that -- that there was -- that the four EPC contracts</p> <p>6 were not sufficient to secure financing for the</p> <p>7 projects contemplated?</p> <p>8 A. That these EPC contracts actually did not</p> <p>9 represent what were standard industry commercial EPC</p> <p>10 contracts that had significant funding behind them,</p> <p>11 that had capital committed to them in terms of the</p> <p>12 cost we've talked about, the down payment, the stroke</p> <p>13 of the zero. So that from going to an EPC contract</p> <p>14 that's signed to financing, somebody had invested a</p> <p>15 pretty significant amount of money so they knew what</p> <p>16 they were doing and they were -- had skin in the game</p> <p>17 towards that process. And I think at the time, that</p> <p>18 Ron -- that Sharad Tak was talking about this and</p> <p>19 this process for IFC, he was well aware that wasn't</p> <p>20 the case.</p> <p>21 Q. Okay. And so when IFC brought its</p> <p>22 initial lawsuit against Ron, his entities, and</p> <p>23 Spirit, in 2007 that was the subject of some</p> <p>24 significant questions from Mr. Romashko. What was</p>

<p style="text-align: right;">Page 146</p> <p>1 your understanding with respect to the financing for 2 these projects?</p> <p>3 A. I don't think I knew that there was a 4 problem with this whole aspect of this until I got 5 involved with RNS at a much, much later date. We 6 considered both Spirit and Sharad Tak and ST Paper as 7 being consistent with the nature of these contracts.</p> <p>8 Q. What do you mean by that?</p> <p>9 A. That they were signed contracts that had 10 significant economic dollars spent against the 11 ability to take these out to be financed. And we 12 were told that they were based on that; they weren't 13 funding this internally out of their own money. 14 These were going put to have financing in the 15 commercial market. And that's why there was a 16 confidentiality associated with the securitization of 17 those, and we couldn't see them.</p> <p>18 Q. If you flip to page 25 of the amended 19 complaint, you'll that RNS is bringing claims against 20 Mr. Tak for negligent misrepresentation. Page 27 21 says "Fraudulent inducement." It goes on. Page 29 22 is a claim against Mr. Tak for violations of the 23 Illinois Consumer Fraud and Deceptive Business 24 Practices Act, and then there's a claim for civil</p>	<p style="text-align: right;">Page 148</p> <p>1 around those topics.</p> <p>2 Q. And that was the -- I think you 3 referenced one telephone conference so far?</p> <p>4 A. (Nodding.)</p> <p>5 Q. Any others?</p> <p>6 A. Definitely one, maybe more.</p> <p>7 Q. And did Mr. Tak make any representations 8 in any of those telephone conversations beyond what 9 is stated in the five-lettered paragraphs in number 10 100 to the best of your recollection?</p> <p>11 A. These are consistent with what would have 12 been the topic of our conversations.</p> <p>13 Q. And if you flip Page 27, again, you'd see 14 that RNS has brought a claim against Mr. Tak for 15 fraudulent inducement?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And, again, Paragraph 110 restates those 18 five lettered paragraphs; is that fair to say?</p> <p>19 A. Yes.</p> <p>20 Q. So any other statements attributed to 21 Mr. Tak that you believe form the basis of RNS's 22 claim for fraudulent inducement against Mr. Tak?</p> <p>23 A. I mean, I would generally add here, 24 again, I think there was probably a phone</p>
<p style="text-align: right;">Page 147</p> <p>1 conspiracy on Page 31. Is that consistent with your 2 understanding?</p> <p>3 A. There's a lot going on here. Point to me 4 something specific and I can tell you the answer's 5 yes or no.</p> <p>6 Q. Sure. Let's start with Page 25. 7 Count VI for negligent misrepresentation. Do you see 8 that --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- that's a claim brought against 11 Mr. Tak?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And Paragraph 100 recites what we've just 14 gone over, which are the statements attributed to 15 Mr. Tak that were allegedly made at that Morton Grove 16 meeting --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- is that fair?</p> <p>19 Are there other statements beyond 20 what were alleged to have been made in Morton Grove 21 that form the basis of RNS's claims against Mr. Tak 22 for negligent misrepresentation?</p> <p>23 A. I think I would add that it's my 24 recollection there were a couple phone conversations</p>	<p style="text-align: right;">Page 149</p> <p>1 conversation on top of Morton Grove meeting.</p> <p>2 Q. Okay. Same goes for the claim that's 3 recited on Page 29 for violations of the Deceptive 4 Business Practices Act.</p> <p>5 A. Yes.</p> <p>6 Q. Your response is the same?</p> <p>7 A. (Nodding.)</p> <p>8 Q. Yes? Is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And other than letter that you 11 referenced earlier that you recall seeing between 12 Mr. Tak and Mr. Stellpflug, do you recall seeing any 13 other writings signed by Mr. Tak that give rise to 14 your claims against him in this lawsuit?</p> <p>15 A. After I was engaged by RNS, I had 16 meetings with Van Den Heuvel and Sharad Tak. In 17 those conversations between phone conversations and 18 e-mails, Sharad Tak made reference to these frivolous 19 EPC contracts that Ron used just to garner financing. 20 I'm not sure if all of that is in writing some. Of 21 it is definitely in writing. I'd have to go review 22 the documents. But between phone conversation and 23 comments that were actually in an e-mail, that 24 concept was put forth by Sharad Tak.</p>

<p style="text-align: right;">Page 150</p> <p>1 Q. We'll get to that e-mail in a second. I 2 believe it's attached to the complaint. But were 3 there in-person meetings that took place when you 4 were serving as a consultant to RNS? 5 A. With Sharad Tak? 6 Q. With Mr. Tak. 7 A. I had a meeting with Sharad Tak, a 8 personal meeting yes. And it was after I was engaged 9 by RNS. 10 Q. Approximately when was that? 11 A. I don't know. I'm bad on dates. 12 Probably about the time the complaint happened, 13 within a couple of months before that. 14 Q. Where was that meeting? 15 A. At his office -- yes. The offices of ST 16 paper. I'd have to go back and look at my agenda. 17 Somewhere on the East Coast. 18 Q. What did you discuss? 19 A. We discussed -- was there any progress on 20 these EPC contracts? Was there any future plans, any 21 viability? How are you functioning with Ron on this 22 whole situation, because he was involved with 23 integrated in these parts of it. Those are the 24 general topics.</p>	<p style="text-align: right;">Page 152</p> <p>1 (Langs Deposition Exhibit 2 No. 11 marked as 3 requested.) 4 BY MR. SPAHN: 5 Q. Mr. Langs, I've handed you what's now 6 been marked as Exhibit 11, which is Exhibit L to 7 RNS's amended complaint, and I'll give you a chance 8 to look at that and let me know when you're ready. 9 You don't have to read it front to back, but 10 familiarize yourself with it. 11 MR. LANGS: It's on back-to-back pages, too. 12 BY MR. SPAHN: 13 Q. It's double-sided. 14 A. Okay. 15 Q. So this is an e-mail chain that starts 16 with an e-mail from you to Mr. Tak dated March 14, 17 2016; is that fair to say, leading backwards? 18 A. Uh-huh. 19 Q. And it goes through an e-mail to you -- 20 I'm sorry -- from you to Mr. Tak dated March 21, 21 2016. If you flip to the first page of the 22 document -- 23 A. You want to look at the March 21st 24 e-mail?</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. What do you recall him sharing with 2 respect to the status of any of the EPC contracts? 3 A. There was no progress. There was no 4 funding of the EPC contracts. And I think he -- 5 that's all I recall. There was no funding of the EPC 6 contracts, so they had not gone forward. 7 MR. LANGS: Can we take a break? 8 MR. SPAHN: Sure. 9 (A short break was had.) 10 BY THE WITNESS: 11 A. So I want to go back and correct that I 12 had a meeting with Sharad Tak separate from the 13 deposition. I went back for the deposition with 14 Sharad Tak. I had conversations on the phone and 15 e-mails with Sharad Tak. I'd have to go back and 16 check, but I don't think I did have another meeting 17 with Sharad Tak besides the deposition that I was 18 back there for. That was my recollection of going 19 back there for Sharad Tak, but it wasn't a meeting 20 with Sharad Tak separate from the deposition. 21 Q. Okay. 22 A. So it was only e-mails and phone calls 23 with Sharad Tak. 24 Q. Okay. Thank you for that clarification.</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. My first question is more general. Is 2 this the e-mail exchange that you were just 3 referencing as it relates to communications? 4 A. Yes. 5 Q. -- you had with Mr. Tak? 6 Beyond what is reflected in 7 Exhibit 11, do you recall having any other written 8 communications with Mr. Tak about this case? 9 A. No. I do not recall any others. 10 Q. And turning your attention to March 18th, 11 2016 e-mail -- I'm not going read it again -- you 12 summarize some questions about the EPC contracts, 13 correct? 14 A. I summarize something? 15 Q. You're summarizing -- you're discussing 16 EPC contracts; is that fair to say? 17 A. Yes. 18 Q. And then a couple paragraphs down, you 19 state, "Let me repeat and make clear, we are not 20 looking to any cause or rights against you for any of 21 your companies. This information is only important 22 in improving malfeasance and fraudulent activity 23 between Ron and his family. As we both know, Ron is 24 by living very well by monies that are funneled</p>

<p style="text-align: right;">Page 154</p> <p>1 through friends and family, eventually to Ron's 2 benefit." Did I read that correctly? 3 A. Yes. 4 Q. My question is, you reference "Let me 5 repeat and make clear." Had you made similar 6 statements to Mr. Tak prior to this e-mail on March 7 18th, 2016? 8 A. We had a phone conversation, at least 9 one, maybe two. 10 Q. In the 2016 time period? 11 A. Yes. And I was looking for information 12 around these EPC contracts of which he was the owner 13 who had signed them. At that time, I was not aware 14 of his comment that he made subsequent to those phone 15 conversations. 16 Q. Which comment are you referring to? 17 A. The frivolous contracts. 18 Q. The e-mails -- 19 A. And that Ron tries to raise money for 20 these but was unsuccessful. 21 Q. That's the e-mail that he sends to you -- 22 A. Uh-huh. 23 Q. -- on March 24th, 2016? 24 A. Right.</p>	<p style="text-align: right;">Page 156</p> <p>1 don't think -- yeah. 2 Q. Did you consider asking Mr. Tak at the 3 time of your receipt of his e-mail on March 21, 2016, 4 why his use of the term "frivolous" may have been 5 inconsistent with your recollection of what he stated 6 in 2007? 7 A. I think I tried to have another phone 8 conversation with him to follow up, and he was 9 unavailable. 10 MR. SPAHN: Let me take a look at a couple 11 documents and see if I have that much more here. 12 (Brief pause.) 13 BY MR. SPAHN: 14 Q. Flipping back to the amended complaint, 15 which is Exhibit 6, and then going to Page 26. -- 16 I'm sorry -- 25, which is a recitation of the 17 allegations for negligent misrepresentation against 18 Mr. Tak. Paragraph 101 states, "Sharad owed IFC a 19 duty to provide accurate information related to the 20 complex transaction contemplated by the settlement 21 agreement, master lease No. 801109, master agreement 22 and continuing pledge agreement." Did I read that 23 correctly? 24 A. Yes.</p>
<p style="text-align: right;">Page 155</p> <p>1 Q. Okay. And then you respond on that same 2 date, March 21, 2016, at 1:47; is that fair to say? 3 A. Uh-huh. 4 Q. Second paragraph of that, you state, 5 "Question: Regarding these 'frivolous contracts,' 6 were they ever actually presented to your ST Paper 7 companies, and do they represent actual plants' 8 locations? If so, would it be possible to get exact 9 headings and dates for these documents? Better yet, 10 actually created copies of these proposals?" Is that 11 a fair reading? 12 A. Yes. 13 Q. Did he respond to that request, if you 14 know? 15 A. No, he did not, to my recollection, 16 respond to that request. 17 Q. You didn't state anything in this e-mail 18 with respect to how his use of the word "frivolous" 19 was inconsistent with anything that he said in Morton 20 Grove in 2007; is that a fair statement? 21 MR. LANGS: He's just asking him about what's 22 in the e-mail. 23 BY THE WITNESS: 24 A. Yeah. Documents speaks for itself. I</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. What's the basis of RNS's allegations as 2 stated in that paragraph? 3 THE WITNESS: Should I respond to this? 4 MR. LANGS: If you know the answer. 5 BY THE WITNESS: 6 A. You know, this statement, I think, was 7 made as the belief of IFC during this process that 8 Sharad was dealing good faith, understanding that he 9 was part of a transaction to provide his ownership of 10 Oconto Falls, and the payment of that was based on 11 these considerations that he participated in. 12 Q. Anything else? 13 A. No. 14 Q. You've referred to the Oconto Falls 15 transaction, but, again, the basis of your 16 allegations or your claims against Mr. Tak are four 17 different EPC projects or contracts; is that fair? 18 A. Yes. 19 Q. Okay. So beyond the Oconto Falls mill, 20 what would form the basis of that allegation in 101 21 as it relates to the three other projects? 22 A. As I stated. Just as I stated it, yes. 23 Q. I will show you a couple more documents, 24 and I'm sure I'm done.</p>

<p style="text-align: right;">Page 158</p> <p>1 (Langs Deposition Exhibit 2 No. 12 marked as 3 requested.) 4 BY MR. SPAHN: 5 Q. Take a second, Mr. Langs, and let me know 6 if you've ever seen what's now been marked as 7 Exhibit 12. 8 A. Okay. 9 Q. Have you seen this document before? 10 A. Yes. 11 Q. What is this document? 12 A. It's an e-mail written by me to Ron Van 13 Den Heuvel and our attorneys beginning the process of 14 acceleration for the collateral and the assigned 15 rights towards the payments and amounts owed. 16 Q. And dated June 21, 2007; is that fair? 17 A. Uh-huh. 18 Q. When you say "The acceleration of all 19 collateral and assigned rights for payments and 20 amounts owed," specifically what are you referring to 21 as it relates to assigned rights towards payment and 22 amounts owed in that e-mail? 23 A. The collateral of the dryers, which is 24 the actual equipment dryer, to the extent possible</p>	<p style="text-align: right;">Page 160</p> <p>1 Ron had a habit of creating new companies very 2 quickly that he used many times, as it turns out, to 3 create problems with payment. 4 Q. At this time in your e-mail, did you 5 consider whether IFC had any rights to pursue against 6 ST Paper and Mr. Tak? 7 A. No. At this point, we still considered 8 these EPC contracts to be real EPC contracts. 9 Q. And when you say "real," what do you mean 10 by the use of the word "real"? 11 A. That they were signed -- 12 MR. LANGS: Hang on. 13 Objection, asked and answered. 14 Go ahead. 15 BY THE WITNESS: 16 A. That they were signed documents, that it 17 had significant economic considerations paid against 18 the -- what shows to be the payments due upon 19 signing. 20 Q. Flip to what has been marked as Exhibit 7 21 to your deposition, which is the affidavit that you 22 signed in the previous IFC lawsuit. 23 A. Okay. 24 Q. Flip to Page 4.</p>
<p style="text-align: right;">Page 159</p> <p>1 any other considerations were included in that 2 original -- that original continuing pledge 3 agreement. So perhaps stock, personal guarantees, 4 and to the extent we could find any money in the EPC 5 contracts. EPC contracts were included in that 6 process as well. 7 Q. And so at this time, did you consider -- 8 A. And that was the basis for the lawyers 9 beginning to make the complaints in the filings that 10 we reviewed earlier that were made by our attorneys 11 against this process. 12 Q. And that was the lawsuit that was filed 13 in 2007; is that correct? The first lawsuit? 14 A. The lawsuit filed by -- that resulted in 15 default judgment against Ron, that case. 16 Q. Okay. That was a lawsuit that was filed 17 against Ron's companies as well as Spirit, correct? 18 A. Well, Spirit was only included in a very 19 discreet and distinct matter. 20 Q. What do you mean by that? 21 A. One issue was that they were looking for 22 a declared something -- I'm not a lawyer -- so that 23 any payments that may happen out of this situation 24 would be directed by the courts to be paid to us.</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Uh-huh. 2 Q. Paragraph 11. First sentence states, "In 3 agreeing to the terms of the settlement agreement, 4 IFC was also relying on the statements and 5 representations made by PCDI, TPTC, and Spirit 6 Construction in the continued pledge agreement and th 7 related schedules, including the acknowledgement of 8 and consent to assignment dated March 28, 2007 that 9 was provided to IFC by Spirit Construction." Did I 10 read that correctly? 11 A. Yes. 12 Q. There's nothing in that paragraph that 13 references representations that were made by Mr. Tak; 14 is that fair to say? 15 A. Correct. 16 Q. Flipping to Paragraph 12, which you were 17 looking at -- 18 A. The next page? 19 Q. Yeah. 20 A. Okay. 21 Q. "Furthermore, IFC was told in March 22 of 2007 by Ron Van Den Heuvel that the EPC contracts 23 described in the pledge agreement and acknowledgement 24 of and consent to assignment would definitely be</p>

<p style="text-align: right;">Page 162</p> <p>1 executed and funded within a matter of weeks." Did I 2 read that correctly? 3 A. Yes. 4 Q. Did Mr. Tak make similar statements to 5 that effect in March of 2007? 6 A. I'm not sure when the dates were, but 7 when we had the meetings regarding these EPC 8 contracts and the nature of the value, the aspect of 9 them being signed, that dryers were included in those 10 initial critical milestones, and that funds had been 11 committed against this were definitely discussed. 12 And Sharad Tak could have said, you know, no, but he 13 didn't say no; he indicated that these were real 14 contracts and it was that basis -- Sharad Tak wasn't 15 included at this point because, again, we didn't 16 think they were fraudulent because they were not real 17 EPC contracts. That came on later as more due 18 diligence was done in terms of the nature of these 19 contracts after I was engaged by RNS. 20 Q. The next sentence says, "IFC would not 21 have agreed to allow PCDI and TPTC a 10-month 22 pavement schedule if we had known that the EPC 23 contracts were not going to be funded for many 24 months. To our knowledge, the EPC contracts are</p>	<p style="text-align: right;">Page 164</p> <p>1 The funding was a secondary consideration based upon 2 being -- putting together EPC contracts and, again, 3 kind of what Steve said now and Sharad Tak said back 4 then is EPC contracts, when you put a couple million 5 dollars in to a contract, most times they get funded 6 because you're not going to spend \$2 million and not 7 know your business. 8 Q. What was your understanding as of 9 June 18, 2008 as to whether money had been exchanged 10 between ST Paper and Spirit regarding these EPC 11 contracts? 12 A. We were still under the assumption that 13 these had had significant costs associated with them 14 and why they didn't go forward was surprising. 15 Q. You knew they had not moved forward? 16 A. Huh? 17 Q. You knew as of June 18, 2008, that the 18 projects had not moved forward; is that fair to say? 19 A. Well, that's why there was -- that began 20 a legal process against this. 21 Q. Okay. 22 A. Which started and ended because the 23 bankruptcy got in -- and where it would have gone, I 24 don't know, but this was the first step of a process.</p>
<p style="text-align: right;">Page 163</p> <p>1 still not funded." Did I read correctly? 2 A. Yes. 3 Q. So as of June 18th, 2008, IFC was aware 4 that the EPC contracts were not funded, correct? 5 A. So there's a very technical term here in 6 EPC contracts. We'd be bouncing back and forth. So 7 there's an EPC contract. It's a contract. That 8 contract, upon signing, has consideration, which are 9 these down payments and these month zero signing 10 payments. That's different than funded. There's a 11 Paragraph 6 which talks about the eventual commercial 12 funding of these contracts to go forward. So simply 13 put, if you got \$135 million contract, somewhere 14 between -- documents speak for themselves. 15 18 percent. What's in these EPC contracts? So 16 somewhere around 20 percent or significant millions 17 of dollars are due upon the signing of the EPC 18 contract. If they never get funded, thee guys -- 19 this money's out. It's been spent; it's been used; 20 it's been paid for for equipment or for engineering 21 work or for -- I'm not an expert. But the nature of 22 this significant payment on signing, which is the 23 down payment and the zero month on signing payment, 24 is the contract payment that we believe happened.</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Last sentence of Paragraph 12 states, 2 "Nor would IFC have allowed PCDI or TPTC a 10-month 3 payment schedule if we knew those companies were not 4 going receive 'substantial payments' under the EPC 5 contracts." Did I read that correctly? 6 A. Yes. 7 Q. So, again, as of June 18, 2008, IFC was 8 aware that PCDI and TPTC had not received substantial 9 payments under the EPC contracts; fair? 10 A. Or that they had not made the payments 11 that they agreed to make, which was what this whole 12 lawsuit was about, yes. 13 MR. SPAHN: Let's take a break. I think I'm 14 done, but I'm going to gather up my stuff and give 15 Bob an opportunity to ask follow-up if he's got it. 16 But I think I'm done. 17 (A short break was had.) 18 FURTHER EXAMINATION 19 BY MR. ROMASHKO: 20 Q. Mr. Langs, let me just ask you -- strike 21 that. 22 Mr. Langs, do you know why RNS 23 didn't sue Ron Van Den Heuvel in this case? 24 A. Again, they got me involved with this a</p>

<p style="text-align: right;">Page 166</p> <p>1 little bit because of my knowledge of the case. So</p> <p>2 IFC had sued Ron Van Den Heuvel and won and had a --</p> <p>3 a declared judgment against him which I believe RNS</p> <p>4 basically had available to them as part of what they</p> <p>5 purchased. They had already beaten Ron. Ron had no</p> <p>6 money. Ron had this plus many other creditors by the</p> <p>7 time I got back involved with this case. So the</p> <p>8 value of Ron and the original contract and the</p> <p>9 obligations didn't really have much materiality. But</p> <p>10 now with 20/20 hindsight in terms of some of this --</p> <p>11 getting involved in location, you know, the regional</p> <p>12 value consideration that made this transaction happen</p> <p>13 now appears to have had some problems. And so that's</p> <p>14 why this complaint was drafted the way it was</p> <p>15 including, you know, Spirit and Sharad Tak. Ron had</p> <p>16 been tested and lost so there was no real reason to</p> <p>17 continue to go on -- anything related to Ron Van Den</p> <p>18 Heuvel.</p> <p>19 Q. And how did you find out -- I think you</p> <p>20 said the original value consideration had problems?</p> <p>21 A. Because when I got back involved, there</p> <p>22 hadn't been any payments made against those</p> <p>23 considerations.</p> <p>24 Q. Okay. And when did you realize some sort</p>	<p style="text-align: right;">Page 168</p> <p>1 to the original --</p> <p>2 Q. No, no --</p> <p>3 A. -- lawsuit --</p> <p>4 Q. Sorry.</p> <p>5 MR. LANGS: You got to listen.</p> <p>6 THE WITNESS: I apologize.</p> <p>7 BY MR. ROMASHKO:</p> <p>8 Q. So you formed that belief in 2016?</p> <p>9 A. With my engagement with RNS and the work</p> <p>10 I had done towards those contracts?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And these conversations with</p> <p>14 Sharad Tak?</p> <p>15 A. And -- conversations with Sharad Tak and</p> <p>16 my knowledge of what we had in the original lawsuit</p> <p>17 that IFC had as we did some work and some discovery</p> <p>18 of the fact patterns at that time, yes.</p> <p>19 Q. Okay. Could you take a look at what's</p> <p>20 been marked as Exhibit 11 in this deposition. That's</p> <p>21 an e-mail thread between you and Mr. Tak?</p> <p>22 A. Uh-huh.</p> <p>23 Q. So if you turn to Page 2 of this, take</p> <p>24 look at the e-mail dated March 18th, 2016. So you</p>
<p style="text-align: right;">Page 167</p> <p>1 of claim against Spirit in this case?</p> <p>2 A. When I had conversations with Sharad and</p> <p>3 that seemed to indicate that most of these very</p> <p>4 knowledgeable people had signed EPC contracts that</p> <p>5 were used purely for providing funding for the</p> <p>6 original transaction and didn't really represent</p> <p>7 commercial EPC contracts as they had educated us and</p> <p>8 we had discussed at the time.</p> <p>9 Q. And I guess I'm still a little confused</p> <p>10 on this. What led to you conclude -- I understand</p> <p>11 now, you -- seeing the contracts, but in 2016, what</p> <p>12 led you to conclude that these contracts weren't EPC</p> <p>13 contracts as you understood them to be?</p> <p>14 A. I didn't have any -- I did not have that</p> <p>15 belief in 2016.</p> <p>16 Q. So when did you form that belief?</p> <p>17 A. I formed that belief when I came back</p> <p>18 with RNS and we got back involved with these</p> <p>19 agreements much later --</p> <p>20 MR. LANGS: You're getting tired. 2016 is</p> <p>21 two years ago when you had this conversation with</p> <p>22 Sharad --</p> <p>23 BY THE WITNESS:</p> <p>24 A. I'm sorry. I thought you were going back</p>	<p style="text-align: right;">Page 169</p> <p>1 stated in there in the -- and there's a lot of line</p> <p>2 breaks, but the fourth paragraph down, "If you have</p> <p>3 records or knowledge of these agreements and can help</p> <p>4 us put details to these agreements, we may have</p> <p>5 substantial leverage with Spirit Construction against</p> <p>6 our RVDH."</p> <p>7 A. Uh-huh.</p> <p>8 Q. And that's March 18, 2016?</p> <p>9 A. Yes.</p> <p>10 Q. And Mr. Tak's response on March 21st,</p> <p>11 2016 is "These were frivolous contracts"?</p> <p>12 A. Uh-huh.</p> <p>13 Q. So you were already investigating how you</p> <p>14 might collect from Spirit before you ever heard</p> <p>15 Mr. Tak say these were frivolous contracts?</p> <p>16 A. I think they're all simultaneously moving</p> <p>17 a process forward.</p> <p>18 Q. Well, they're not simultaneous. One's</p> <p>19 March 18, one's March 21st. So you were already</p> <p>20 investigating before -- you were already</p> <p>21 investigating how to collect from Spirit before</p> <p>22 Mr. Tak said the contracts were frivolous?</p> <p>23 MR. LANGS: Objection. I don't think that's</p> <p>24 what the e-mail says.</p>

<p style="text-align: right;">Page 170</p> <p>1 BY THE WITNESS:</p> <p>2 A. Yeah. I don't either.</p> <p>3 Q. Okay. So when you state that you --</p> <p>4 excuse me -- so you --</p> <p>5 A. So --</p> <p>6 MR. LANGS: Let him ask a question.</p> <p>7 BY MR. ROMASHKO:</p> <p>8 Q. Let me ask the question. So you state,</p> <p>9 "If you have records or knowledge of these agreements</p> <p>10 and can help us put details to these agreements, we</p> <p>11 may have substantial leverage with Spirit</p> <p>12 Construction against RVDH." Your testimony is that</p> <p>13 at that point, you weren't investigating how to</p> <p>14 collect on these --</p> <p>15 A. I was trying to find information out to</p> <p>16 understand where in this later date all the facts sat</p> <p>17 versus the original assumptions that went into the</p> <p>18 transactions that provided funding for Fortress, yes.</p> <p>19 Q. So what spurred that investigation?</p> <p>20 A. Trying to prove, now later, because it</p> <p>21 was no longer confidential, that there had been the</p> <p>22 type of considerations when these EPC contracts were</p> <p>23 signed that both parties had indicated were part of a</p> <p>24 normal commercial process that we relied on when we</p>	<p style="text-align: right;">Page 172</p> <p>1 A. Okay.</p> <p>2 Q. So that's about four hours after Tak told</p> <p>3 you the contracts were frivolous?</p> <p>4 A. Okay.</p> <p>5 Q. So is the decision to go after Spirit</p> <p>6 made in that window?</p> <p>7 A. This was part of -- again, familiarize</p> <p>8 ourselves with the fact patterns that were in place</p> <p>9 today versus what were the original process that we</p> <p>10 got to through these very extensive drafted</p> <p>11 understanding settlement agreements, buyout</p> <p>12 considerations, et cetera, et cetera, for additional</p> <p>13 collateral.</p> <p>14 Q. So before Tak told you that the contracts</p> <p>15 were frivolous, you were already planning on going</p> <p>16 after Spirit?</p> <p>17 MR. LANGS: Objection. Again, it</p> <p>18 mischaracterizes his testimony. It's not what he</p> <p>19 said. But go ahead if you can answer.</p> <p>20 BY MR. ROMASHKO:</p> <p>21 Q. I'll ask you a different question. When</p> <p>22 was the decision made to go after Spirit?</p> <p>23 A. To go after Spirit?</p> <p>24 Q. Yes.</p>
<p style="text-align: right;">Page 171</p> <p>1 made the transaction.</p> <p>2 Q. Did you ask for the EPC contracts in</p> <p>3 discovery in the 2007, 2008 litigation?</p> <p>4 A. I don't recall.</p> <p>5 Q. Okay. It would have been a nice thing to</p> <p>6 have them?</p> <p>7 A. I think we ran into the same situation,</p> <p>8 that these continued to be something that were</p> <p>9 unavailable to us. But I don't recall whether they</p> <p>10 showed up or not. I don't think they did.</p> <p>11 Q. Okay. So March 21st, 201 at 9:40 a.m.,</p> <p>12 Mr. Tak says "These were frivolous contracts."</p> <p>13 A. Uh-huh.</p> <p>14 Q. Then if you go to Page 1 here, the last</p> <p>15 e-mail in the chain.</p> <p>16 A. Yeah?</p> <p>17 Q. So second sentence of the first</p> <p>18 paragraph: "The group I'm representing is planning</p> <p>19 to go after Spirit and Vos for various bad faith</p> <p>20 representations related to Ron and his companies."</p> <p>21 Is that what that says?</p> <p>22 A. Yes.</p> <p>23 Q. That's at 1:47 p.m. on Monday, March</p> <p>24 21st?</p>	<p style="text-align: right;">Page 173</p> <p>1 A. After I had conversations with Sharad</p> <p>2 Tak, I had conversations with Spirit. We looked at</p> <p>3 what the fact pattern was today versus the fact</p> <p>4 pattern was when these things were put together</p> <p>5 originally and in review with RNS and with counsel,</p> <p>6 we felt there was a case there.</p> <p>7 Q. So when you said -- Strike that.</p> <p>8 So moving on -- just a couple more</p> <p>9 questions. So if you can take a look again at</p> <p>10 Exhibit 7 to this deposition, which is your</p> <p>11 affidavit. So Mr. Tak's counsel, Mr. Spahn, asked</p> <p>12 you about Paragraph 11 and pointed out that Mr. Tak</p> <p>13 wasn't named?</p> <p>14 A. I'm sorry. I got -- so this goes back --</p> <p>15 this is my affidavit that goes back to the original</p> <p>16 case IFC had against Ron Van Den Heuvel and Spirit.</p> <p>17 Q. Yes.</p> <p>18 A. And now we're looking at 11. Okay.</p> <p>19 Q. So Mr. Spahn asked you -- or pointed out</p> <p>20 that Paragraph 11 doesn't reference Mr. Tak anywhere?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And your response was, well he</p> <p>23 wasn't a party to this suit?</p> <p>24 A. No, that wasn't my response.</p>

<p style="text-align: right;">Page 174</p> <p>1 Q. Okay. What was your response?</p> <p>2 A. My response was, I believe, this was the</p> <p>3 beginning of a process to look at and go back and</p> <p>4 find out what happened. So the first step of this</p> <p>5 was a case against Ron and Ron familiarly to Spirit</p> <p>6 and Vos and VHC and they came off at a guarantee.</p> <p>7 They were replaced by a guarantee. Something more</p> <p>8 may have gone down further from that, but at that</p> <p>9 point, bankruptcy came in, management changed, the</p> <p>10 ownership of the company changed before the</p> <p>11 bankruptcy. We owed these guys money that they -- at</p> <p>12 that point. So the wheels basically came off the</p> <p>13 bus. This was one part of the process, a step that</p> <p>14 got interrupted, I would say, best case.</p> <p>15 Q. Okay. So this, then, reflects the best</p> <p>16 information you had at the time?</p> <p>17 A. Correct.</p> <p>18 Q. Take a look at Paragraph 12 on the next</p> <p>19 page. And that starts, "Furthermore, IFC was told in</p> <p>20 March 2007 by Ron Van Den Heuvel that the EPC</p> <p>21 contracts described in the pledge agreement and</p> <p>22 acknowledgement of and consent to assignment would</p> <p>23 definitely be executed and funded within a matter of</p> <p>24 weeks. IFC would not have agreed to allow PCDI and</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. ROMASHKO: Okay. Nothing further.</p> <p>2 EXAMINATION</p> <p>3 BY MR. LANGS:</p> <p>4 Q. I just have a few questions. I'm not</p> <p>5 sure who asked you about this previously. It may</p> <p>6 have been both counsel for Spirit and Mr. Tak, but I</p> <p>7 think there was some questions that insinuated that</p> <p>8 when you were doing your due diligence when -- this</p> <p>9 was back working for IFC -- that you already knew</p> <p>10 that Ron Van Den Heuvel had defaulted on or had maybe</p> <p>11 not defaulted specifically but had not -- had made</p> <p>12 late payments on different loans; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. This suit that you filed on behalf of RNS</p> <p>15 against Spirit and against Sharad Tak isn't about</p> <p>16 whether or not Ron Van Den Heuvel defaulted, is it?</p> <p>17 A. No.</p> <p>18 Q. It's about representations that Spirit,</p> <p>19 Steve, and Sharad Tak made to you and IFC that</p> <p>20 induced you or that you relied on in order to enter</p> <p>21 into, not just the memorandum of understanding, not</p> <p>22 just the settlement agreement, but all the agreements</p> <p>23 that were part of the transaction that paid off</p> <p>24 Fortress back in 2007, 2008; is that correct?</p>
<p style="text-align: right;">Page 175</p> <p>1 TPTC a 10-month payment schedule if we had known that</p> <p>2 the EPC contracts were not going to be funded for</p> <p>3 many months. (To our knowledge the EPC contracts are</p> <p>4 still not funded." Nor would IFC had allowed PCDI or</p> <p>5 TPTC a 10-month payment schedule if we knew that</p> <p>6 those companies were not going to receive</p> <p>7 "substantial payments" under the EPC contracts."</p> <p>8 That's what that says?</p> <p>9 A. Yes.</p> <p>10 Q. That doesn't mention Spirit making any</p> <p>11 representations, does it?</p> <p>12 A. It speaks for itself.</p> <p>13 Q. Yes or no? I can't hear the document.</p> <p>14 A. Well, the document doesn't make any</p> <p>15 comment about what Spirit -- what was your point you</p> <p>16 want me to say? It -- does it mention Spirit?</p> <p>17 Q. You don't mention Spirit here as making</p> <p>18 any representations?</p> <p>19 MR. LANGS: Objection. I think we've been</p> <p>20 over this.</p> <p>21 But you can say it again.</p> <p>22 BY THE WITNESS:</p> <p>23 A. In that particular paragraph, there's</p> <p>24 nothing about Spirit.</p>	<p style="text-align: right;">Page 177</p> <p>1 A. That is correct.</p> <p>2 Q. There's also been some talk about what is</p> <p>3 or isn't in the acknowledgement and consent or</p> <p>4 Schedule A or Schedule B. Do you recall talking</p> <p>5 about that ad nauseam today?</p> <p>6 A. Yes.</p> <p>7 Q. Besides what's in those schedules and</p> <p>8 besides what's in that agreement, you also testified</p> <p>9 today that you spoke with -- on the phone with Steve</p> <p>10 Van Den Heuvel multiple times during this process</p> <p>11 that started sometime in 2006 and ran through the end</p> <p>12 of the lawsuit in 2007 and into the bankruptcy; is</p> <p>13 that correct?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And you also, during that time, testified</p> <p>16 you had spoken to Sharad Tak on the phone about this</p> <p>17 whole entire transaction; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you also had a meeting in Morton</p> <p>20 Grove with Sharad Tak about this transaction,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And at any time during all these</p> <p>24 transactions when you -- the ones that you were</p>

<p style="text-align: right;">Page 178</p> <p>1 involved in, your conversations with Rudy Trebles as 2 CEO, was there ever any doubt in your mind that these 3 EPC contracts, one, were already executed? 4 A. So I'm going to be specific here. 5 Execution means -- 6 Q. Let me rephrase my question. When I say 7 the word "executed" -- and this happened earlier -- I 8 mean signed. So from now on, I'm going to say the 9 word "signed." 10 A. Yes. 11 Q. Was there any question in your mind that 12 when you agreed all these transaction documents and 13 when you finally agreed to the Fortress transaction 14 and pay off Fortress and to loan the additional \$3.9 15 million to Ron Van Den Heuvel, that these EPC 16 contracts that are referenced in your discussions and 17 in these documents were signed by both parties 18 that -- when I say both parties, I mean Sharad Tak 19 and I mean Steve Van Den Heuvel on behalf of -- 20 A. It was our understanding, correct. 21 Q. That's what Steve told you and that's 22 what Sharad Tak told you, correct? 23 A. Correct. 24 Q. And was there any doubt in your mind or</p>	<p style="text-align: right;">Page 180</p> <p>1 ST Paper or some other entity that Sharad Tak owned 2 was going to be the owner of these paper plants that 3 were going to be built or that there were going to be 4 upgrades to? 5 A. Yes. 6 MR. ROMASHKO: Objection to form. 7 BY MR. LANGS: 8 Q. And was it your understanding that when 9 these contracts were signed, with Sharad Tak being 10 the owner at this point in time when you're going to 11 enter into these contracts in 2006 and 2007, was it 12 your understanding that the owner of a project is the 13 one that obtains financing for a project? 14 A. Yes. 15 Q. Did at any point in time, did you think 16 that Ron Van Den Heuvel was going to be the party 17 that was responsible -- solely responsible for 18 obtaining financing for those projects? 19 A. No. 20 Q. If you knew that, would you have entered 21 into these transactions? 22 A. No. 23 Q. Why is that? 24 A. Because Ron had no ability to generate a</p>
<p style="text-align: right;">Page 179</p> <p>1 Rudy Trebles' mind that those contracts, both Sharad 2 Tak and Steve Van Den Heuvel and Spirit 3 Construction -- well, maybe not Steve Van Den Heuvel 4 personally, but Spirit Construction as a company -- 5 had paid out monies -- significant amount of monies 6 in order to get those EPC contracts in a place where 7 they can actually sign them in? 8 MR. SPAHN: Object to form. 9 BY THE WITNESS: 10 A. Should I answer that? 11 Q. Yes. 12 A. Yes. 13 Q. Did IFC rely on those representations 14 that these EPC contracts are -- that both parties had 15 expended amounts of money in order to get these EPC 16 contracts into a position where they can be signed by 17 both parties, did IFC rely on that information when 18 they entered into these transactions that ended up 19 with Fortress getting paid off and IFC loaning Ron 20 \$3.9 million? 21 A. Yes. 22 Q. And with respect to that reliance, were 23 you -- did both of those parties also represent to 24 you that in those EPC contracts, Sharad Tak or</p>	<p style="text-align: right;">Page 181</p> <p>1 commercial transaction. He had been damaged through 2 all kinds of situations, particularly default on 3 Oconto Falls which was a paper plant that was based 4 on the model of performance that was going to used 5 for financing of the other plants going forward. 6 Q. Are you aware of the criminal proceedings 7 that have been instigated that ended up with Ron Van 8 Den Heuvel being incarcerated currently? 9 A. Subsequent, yes. 10 Q. Are you aware that the reason he's 11 incarcerated right now is because no banks would loan 12 him money so he used straw buyers to get loans? 13 A. I'm aware of the cases that he -- 14 criminally -- he lost those cases, yes. 15 Q. And no banks would loan him money, so he 16 got straw buyers to take out loans for him and his 17 companies. Is that your understanding? 18 A. Yes. 19 Q. I think you also said earlier -- and I 20 want to make sure this testimony's correct -- that if 21 you would have seen these EPC contracts with your own 22 eyes, you wouldn't have entered in the settlement 23 agreement. And my question for you is, if you would 24 have seen these EPC contracts, that wouldn't have</p>

<p style="text-align: right;">Page 182</p> <p>1 changed the representations that Spirit made and that</p> <p>2 Sharad Tak made that these EPC contracts were in a</p> <p>3 position to be -- to get financed by banks or</p> <p>4 lenders; is that correct?</p> <p>5 A. Help me out. Restate it. I'm sorry.</p> <p>6 Q. I think you said that if you saw th EPC</p> <p>7 contracts before you entered into these transactions,</p> <p>8 you wouldn't have entered into these transactions.</p> <p>9 Do you remember saying that?</p> <p>10 A. Yes.</p> <p>11 Q. My question for you is, why would that</p> <p>12 have changed anything? If you saw those EPC</p> <p>13 contracts, would that have though -- would that have</p> <p>14 changed the representations that Sharad Tak was going</p> <p>15 to obtain financing for those contracts?</p> <p>16 A. Probably yes.</p> <p>17 Q. And why is that?</p> <p>18 A. Because EPC contracts are all</p> <p>19 boilerplate. They all have the exact same -- the EPC</p> <p>20 contract is a very detailed document, including</p> <p>21 engineering specifications, unique to the land,</p> <p>22 unique to the building, unique to the zoning, unique</p> <p>23 to -- and all that's accomplished and in there at the</p> <p>24 signing of the EPC contract, and that's the basis</p>	<p style="text-align: right;">Page 184</p> <p>1 did anyone ever tell you that entire time that all</p> <p>2 four of those EPC contracts they were referencing</p> <p>3 over and over and over again in telephone calls, did</p> <p>4 they ever tell you they were all signed in one day?</p> <p>5 A. I don't recall. I don't think so, but I</p> <p>6 don't recall.</p> <p>7 Q. Counsel had been asking you about the</p> <p>8 lawsuit that you filed in 2007. And when I say</p> <p>9 "you," that IFC filed in 2007. And he's put a few</p> <p>10 different documents in front of you that were filed</p> <p>11 on behalf of IFC in that litigation. One of those is</p> <p>12 an affidavit that you signed, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Was there any doubt in your mind that</p> <p>15 back in 2007 if you were going to sign an affidavit,</p> <p>16 that you read the affidavit?</p> <p>17 A. Yes. That would have, yes.</p> <p>18 Q. They also asked you if you reviewed every</p> <p>19 single document before it was filed in that case --</p> <p>20 that your attorneys filed in that case; is that</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Is it your testimony, as you sit here</p> <p>24 today, that every single time something was filed in</p>
<p style="text-align: right;">Page 183</p> <p>1 where that credibility and that work and the company</p> <p>2 that did it, Spirit Construction, to get financing</p> <p>3 with an owner like Sharad Tak. So if we would have</p> <p>4 seen these contracts and have seen that these things</p> <p>5 were not negotiated by counsel, there wasn't any</p> <p>6 difference. They were basically boilerplate</p> <p>7 contracts being put together for what it appears to</p> <p>8 be exactly what Sharad Tak -- frivolous for purposes</p> <p>9 of financing. I mean, the due diligence would have</p> <p>10 broken down at that point if we had seen those</p> <p>11 contracts.</p> <p>12 Q. Not only that --</p> <p>13 A. If those contracts were the contracts I'm</p> <p>14 reviewing today as the EPC contracts that are being</p> <p>15 presented in discovery as the signed EPC contracts.</p> <p>16 Q. Not only that, you would have also seen</p> <p>17 they were all signed on the same day, wouldn't --</p> <p>18 A. Yeah.</p> <p>19 Q. Would that have been a red flag?</p> <p>20 A. Yes. \$500 million of transactions, yeah.</p> <p>21 Q. Did anyone -- did Steve Van Den Heuvel or</p> <p>22 did Sharad Tak during all these months and months of</p> <p>23 negotiations that got to a point where this Fortress</p> <p>24 transaction finally went forward sometime in 2007,</p>	<p style="text-align: right;">Page 185</p> <p>1 that case, you reviewed that word for word?</p> <p>2 A. No. I mean, yes -- the answer is i did</p> <p>3 not, no. I did not review everything word for word.</p> <p>4 Q. You relied on your attorneys to file some</p> <p>5 things?</p> <p>6 A. Yes.</p> <p>7 Q. And when that case ended -- that case</p> <p>8 ended in -- I wrote it down earlier. So the end of</p> <p>9 that litigation, from my recollection that I wrote</p> <p>10 down today, was March 31st, 2009, and that was when</p> <p>11 there was a denial of your summary judgement motion</p> <p>12 against Spirit for preliminary injunction. Does that</p> <p>13 ring a bell?</p> <p>14 A. Yes.</p> <p>15 Q. And I also wrote down -- I think it's in</p> <p>16 ur complaint as well -- that the bankruptcy was --</p> <p>17 petition was -- for IFC was filed on July 27th, 2009?</p> <p>18 A. Correct.</p> <p>19 Q. Beginning in January 2009, end of 2008,</p> <p>20 what was going on with the finances and the accounts</p> <p>21 receivable and the other aspects of the business at</p> <p>22 IFC?</p> <p>23 A. Lots of stuff. The financial crisis</p> <p>24 began to show itself. Our subordinated debt/equity</p>

<p style="text-align: right;">Page 186</p> <p>1 investor that provided equity -- or part of the 2 equity for IFC that allowed the bank financing the 3 senior debt to be in place defaulted and called his 4 loan. That created a change of ownership because 5 Mr. Trebles' stock was pledged against that. So I 6 was a new owner. Rudy lost control of the company to 7 the new ownership -- 8 Q. Let me stop you there. What was the new 9 owner's name? 10 A. Len Ludwig. 11 Q. Why did he become the new owner? 12 A. He was the administrative agent 13 recognized by the subordinated note that was 14 the mezzanine financing that was provided to IFC in 15 its capital structure going back many, many years. 16 Q. Is it fair to say that in the beginning 17 of 2009, before this litigation even concluded, that 18 the writing was on the wall that this company was 19 going under? 20 A. Yeah. Banks -- when the subordinated 21 debt called their loans, the banks called their loans 22 because that was a form of default, then the 23 bankruptcy -- there was a case there that was in 24 voluntarily bankruptcy that turned into a voluntarily</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Yes. 2 Q. Are you a lawyer? 3 A. No. 4 Q. Is -- do you know -- is it part of your 5 expertise whether or not somebody has a fiduciary 6 duty when they're negotiating complex transactions? 7 A. I'm not a lawyer so the answer's no. 8 Q. Did you rely on your lawyer to draft some 9 of the allegations in this complaint? 10 A. Yes. 11 Q. The complaint also lists some specific 12 written representations that you now believe were 13 misrepresentations made by both Steve Van Den Heuvel 14 on behalf of Spirit Construction and Sharad Tak; is 15 that correct? 16 A. Specifically -- 17 Q. I'm sorry. Written ones that are Spirit 18 Construction? 19 A. For what? 20 Q. With respect to the pledge agreement? 21 A. Yes. 22 Q. And there's also, in the complaint, where 23 that you're asked about some moral misrepresentations 24 that Sharad Tak made at a meeting in Morton Grove.</p>
<p style="text-align: right;">Page 187</p> <p>1 plan for organization. That was the thought that was 2 there. Previous to that, I was asked to resign 3 because they wanted to move forward with the new 4 ownership of the company towards trying to do 5 something in the restructuring. So it was very 6 chaotic that whole time. 7 Q. In fact, one of the creditors in the IFC 8 bankruptcy was the attorneys that was representing 9 you in this IFC lawsuit; is that correct? 10 A. That's correct. 11 Q. Down how much money IFC owed them when 12 they went into bankruptcy? 13 A. I don't recall exactly, but it was 14 \$50,000, give or take. 15 Q. And there was some questioning from you 16 about the complaint that RNS Services filed in this 17 case, and I think there was a question about an 18 allegation of whether or not Steve Van Den Heuvel or 19 Sharad Tak had a duty to provide you with truthful 20 statements in negotiating these transactions. Do you 21 remember that? 22 A. Yes. 23 Q. And you said, I thought that they did; is 24 that correct?</p>	<p style="text-align: right;">Page 189</p> <p>1 Do you remember that? 2 A. Yes. 3 Q. Besides those misrepresentations that 4 they made, during this entire process when you were 5 talking to Steve Van Den Heuvel, people at Spirit 6 Construction, Ron Van Den Heuvel and Sharad Tak -- 7 and you've also testified that there was phone calls 8 that were involved. That entire process, did -- was 9 the representation being made to you by Spirit and 10 Sharad Tak the same? 11 MR. SPAHN: Object to form. 12 BY THE WITNESS: 13 A. Yes. 14 Q. And that representation was we have these 15 EPC contracts; they're valid, and they've been 16 signed, correct? 17 A. Yes. 18 Q. And in your mind, and everyone else's 19 mind in talking to these people, these contracts also 20 had significant money paid towards them by both 21 parties such that they'd be able to obtain financing 22 from -- to get these projects done; is that correct? 23 A. Correct. 24 Q. And now, after seeing these EPC contracts</p>

<p style="text-align: right;">Page 190</p> <p>1 and after talking to Sharad Tak, you no longer 2 believe that those contracts were in a position where 3 they could -- where any bank would provide funding 4 for them; is that correct? 5 A. Correct. 6 Q. There was also some questions asked to 7 you as you sit here today whether you remembered 8 certain documents that nobody put in front were -- 9 existed or not. Do you remember some of those 10 questions? I think there was a question that 11 Mr. Tak's counsel posed towards you. Was there any 12 other document that Sharad Tak signed in this entire 13 ordeal? Do you remember that? 14 A. Yes. 15 Q. You said there might have been. I don't 16 know. Correct? 17 A. Uh-huh. 18 Q. In the IFC bankruptcy, all of IFC's 19 records with respect to all these transactions went 20 into that bankruptcy; is that correct? 21 A. I wasn't there, but I don't -- yes, I 22 guess. 23 Q. Then RNS bought certain documents, 24 certain claims out of that bankruptcy; is that</p>	<p style="text-align: right;">Page 192</p> <p>1 would obtain the financing for these projects, 2 correct? 3 A. Yes. 4 Q. Were you surprised in 2016 when Sharad 5 Tak e-mailed you and told you these contracts were 6 frivolous and that Ron was the one that was in charge 7 of obtaining financing for these projects? 8 A. Did he say that in the e-mail or in his 9 deposition? 10 Q. I think he said it in his e-mail. If you 11 want to look at Exhibit 11, and we're looking at 12 Page 2, and we're looking at the March 21st, 2016 13 e-mail. I think it says "These were frivolous 14 contracts. Ron tried to raise money for these, but 15 was unsuccessful." Would that surprise you that Ron 16 was doing that? 17 A. Yes. 18 Q. I think while Spirit's counsel and Tak's 19 counseling were questioning you, you kept referencing 20 this memorandum of understanding. Do you remember 21 that? 22 A. Yes. 23 Q. And that memorandum of understanding, -- 24 one of the memorandums of understanding that was put</p>
<p style="text-align: right;">Page 191</p> <p>1 correct? 2 A. I'm not part of that transaction. 3 Q. Is that your understanding? 4 A. Yes. 5 Q. Are there any documents that you've 6 looked at since you've been retained by RNS Servicing 7 or that RNS Servicing has given you that are -- used 8 to be IFC documents that you didn't give to me to 9 produce to both of them? 10 A. No -- 11 Q. Let me rephrase that. You're not 12 withholding documents -- 13 A. Yeah. I have no documents expect for the 14 documents RNS has as a result of their purchase of 15 information from IFC bankruptcy trustee. 16 Q. And to the best of your knowledge, 17 everything that RNS has had been produced in this 18 litigation; is that correct? 19 A. Yes. 20 Q. During the time when you were talking to 21 Spirit and you were talking to Sharad Tak and you 22 were talking to everybody about these EPC contracts, 23 you expected that Sharad Tak was going to be the 24 person or his companies were going to be person that</p>	<p style="text-align: right;">Page 193</p> <p>1 in front of you is -- has been marked as Exhibit 2 No. 2; is that correct? 3 A. Yes. 4 Q. During that questioning, you also 5 referenced what you were calling another memorandum 6 of understanding and also another settlement 7 agreement that you believed Fortress had signed; is 8 that correct? 9 A. Yes. 10 Q. And is it your recollection that there 11 were other documents involved in this pretty complex 12 transaction that weren't put in front of you today? 13 A. Yes. 14 Q. Is it your recollection that Fortress was 15 involved in negotiating those contracts and those 16 agreements and those documents? 17 A. Yes. 18 Q. Is it your recollection that Steve Van 19 Den Heuvel was involved in that negotiation of that? 20 Let me rephrase that question. 21 Is it your recollection that Steve 22 Van Den Heuvel was involved, at least with the 23 negotiation of him signing the pledge agreement and 24 the pledge he made according to that agreement --</p>

<p style="text-align: right;">Page 194</p> <p>1 A. Yes.</p> <p>2 Q. -- to finally convince IFC that there was</p> <p>3 some sort of collateral in this agreement that was</p> <p>4 going to replace the Dave Van Den Heuvel collateral?</p> <p>5 A. That's true.</p> <p>6 Q. And speaking of collateral, the pledge</p> <p>7 agreement, do you have that in front of you still?</p> <p>8 Here it is (indicating). This is Exhibit -- what's</p> <p>9 been marked as Exhibit 5 to your deposition. It's a</p> <p>10 continuing pledge agreement. It has Schedule A and</p> <p>11 Schedule B. The front page of this pledge agreement,</p> <p>12 first section is titled "Schedule of collateral;" is</p> <p>13 that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And in that section, does it name these</p> <p>16 EPC contracts and the payments that are pledged under</p> <p>17 these EPC contracts as collateral?</p> <p>18 A. Yes.</p> <p>19 Q. And when you received the signed exhibit</p> <p>20 or Schedule B from Steve Van Den Heuvel, was it your</p> <p>21 understanding that Steve Van Den Heuvel would have</p> <p>22 been presented with this continuing pledge agreement,</p> <p>23 also Schedule A and Schedule B when he signed</p> <p>24 Schedule B?</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. But where did money come from?</p> <p>2 A. D&O Insurance is part of the policy.</p> <p>3 Q. And part of that settlement agreement,</p> <p>4 there was no admission of any liability; is that</p> <p>5 correct?</p> <p>6 A. Correct, or any wrongdoing.</p> <p>7 Q. And besides that, as you sit here today,</p> <p>8 did you breach any fiduciary duties at IFC as CFO of</p> <p>9 that company?</p> <p>10 A. No.</p> <p>11 Q. I think there was also some talk about --</p> <p>12 I forget what the e-mail was, but I think somebody</p> <p>13 pointed out an e-mail, and it might have been in the</p> <p>14 e-mail with Sharad Tak. Do you have that one in</p> <p>15 front of you? So this is Exhibit 11 here. And if</p> <p>16 you look at Page 204 -- and it's the Friday, March</p> <p>17 18th, 2016 e-mail. And if you go four paragraphs</p> <p>18 down, I think, Mr. Van Den Heuvel's counsel was</p> <p>19 asking you about whether or not you had planned to go</p> <p>20 after Spirit Construction at this point in time. Do</p> <p>21 you remember him asking you about that?</p> <p>22 A. Yes.</p> <p>23 Q. And doesn't this e-mail say that we may</p> <p>24 have substantial leverage with Spirit Construction</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Yes.</p> <p>2 Q. Did anyone tell you that Ron Van Den</p> <p>3 Heuvel only gave him Schedule B and told him to sign</p> <p>4 it?</p> <p>5 A. No.</p> <p>6 Q. I think we kind of went through it</p> <p>7 already, but I just want to make it clear for the</p> <p>8 record. After IFC went into bankruptcy, you didn't</p> <p>9 have any association with or input into how the</p> <p>10 bankruptcy trustee ran the (unintelligible); is that</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. In fact, the bankruptcy trustee filed</p> <p>14 lawsuit against you; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And I think that you said that some of</p> <p>17 the claims in that lawsuit were for breach of</p> <p>18 fiduciary duty as an officer of that company, of IFC;</p> <p>19 is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. I also want to make clear for the record</p> <p>22 that that claim was eventually settled with your</p> <p>23 insurance company; is that correct?</p> <p>24 A. Settled with the trustee.</p>	<p style="text-align: right;">Page 197</p> <p>1 against RVDH?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Who is RVDH?</p> <p>4 A. Ron Van Den Heuvel.</p> <p>5 MR. LANGS: I think that's all I have for</p> <p>6 you.</p> <p>7 MR. SPAHN: I have some more.</p> <p>8 FURTHER EXAMINATION</p> <p>9 BY MR. SPAHN:</p> <p>10 Q. Well, your counsel was just asking you</p> <p>11 some questions to include questions about the first</p> <p>12 IFC lawsuit that was filed against Ron and Spirit?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Okay. You, I think, over the course of</p> <p>15 the day had said that you were involved in that</p> <p>16 lawsuit. You were in touch with your counsel as that</p> <p>17 lawsuit progressed; is that fair to say?</p> <p>18 A. Uh-huh.</p> <p>19 Q. You understand that IFC's counsel, as</p> <p>20 part of that lawsuit, took a number of depositions,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And I think you responded to Mr. Romashko</p> <p>24 earlier that you don't recall whether you actually</p>

50 (Pages 194 - 197)

<p style="text-align: right;">Page 198</p> <p>1 sat in on any of those depositions; is that right?</p> <p>2 A. Correct.</p> <p>3 Q. Do you recall having sat through, now,</p> <p>4 hours of testimony today whether you sat through</p> <p>5 Steve Van Den Heuvel's deposition that was taken in</p> <p>6 April of 2008?</p> <p>7 A. I don't recall.</p> <p>8 Q. You understand, though, that Steve's</p> <p>9 deposition was taken?</p> <p>10 A. Yes.</p> <p>11 MR. SPAHN: So if we can go off the record</p> <p>12 for a second.</p> <p>13 (Discussion off the</p> <p>14 record.)</p> <p>15 (Langs Deposition Exhibit</p> <p>16 No. 13 marked as</p> <p>17 requested.)</p> <p>18 BY MR. SPAHN:</p> <p>19 Q. I just have a couple questions. Again,</p> <p>20 take a look at it -- you don't obviously have to read</p> <p>21 it, but familiarize yourself with the front page of</p> <p>22 it, at least. In the upper left-hand corner, it's</p> <p>23 got the caption IFC Credit Corporation versus Tissue</p> <p>24 Products Technology and then there are a number of</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. So three quarters the way down that page,</p> <p>2 Mr. Underhill is asking Steve, "Sir, this isn't that</p> <p>3 complicated. I'm asking you to look at the</p> <p>4 acknowledgement and consent document, and it says 'We</p> <p>5 confirm that the terms of the EPC contracts remain in</p> <p>6 full force and effect.' Do you see that sentence?"</p> <p>7 His answer is yes?</p> <p>8 A. Yes.</p> <p>9 Q. Based on what's there, do you have any</p> <p>10 reason to believe that they're not talking about the</p> <p>11 acknowledgement and consent document that we've been</p> <p>12 discussing today?</p> <p>13 A. I have no opinion.</p> <p>14 Q. Okay. He moves down and says, "What EPC</p> <p>15 contracts were you referring to when you signed this</p> <p>16 document?" Answer: --</p> <p>17 A. Where -- I'm sorry. Where did you bounce</p> <p>18 from? You went from --</p> <p>19 Q. Sorry. I'm on the bottom of Page 75.</p> <p>20 A. Okay.</p> <p>21 Q. "What EPC contracts were you referring to</p> <p>22 when you signed this document?" Answer: "We were</p> <p>23 referring to Oconto Falls Tissue. That was the</p> <p>24 fourth one that I left out earlier when I said there</p>
<p style="text-align: right;">Page 199</p> <p>1 defendants. Is that your understanding that that's</p> <p>2 the IFC lawsuit that we've been discussing?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you see this is a deposition</p> <p>5 taken of Steve Van Den Heuvel on April 8, 2008?</p> <p>6 A. Yes.</p> <p>7 Q. And your understanding is that counsel</p> <p>8 for IFC at the time took this deposition; is that</p> <p>9 fair?</p> <p>10 A. Yes.</p> <p>11 Q. That was --</p> <p>12 MR. LANGS: Right here (indicating), is that</p> <p>13 your counsel?</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. SPAHN:</p> <p>16 Q. Underhill?</p> <p>17 A. Yes.</p> <p>18 Q. So flip to Page 73 of 76. It's -- yeah,</p> <p>19 Pages 73 through 76. It's Page 19 of the actual</p> <p>20 document.</p> <p>21 A. Yep.</p> <p>22 Q. Specifically, Page 75. Tell me when</p> <p>23 you're with me.</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 201</p> <p>1 were four. One in Oconto Falls, one in De Pere, one</p> <p>2 in Utah, and one in Pennsylvania. Those are the</p> <p>3 four."</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. And then there's an objection made on the</p> <p>7 record by Mr. Van Den Heuvel's counsel. And skipping</p> <p>8 down, Mr. Underhill then asks, "And of those four</p> <p>9 contracts, none of them is Exhibit 3?" Response:</p> <p>10 "Exhibit 3 is the contract I signed so that they</p> <p>11 could go out and get funding for the purchase of</p> <p>12 Oconto Falls." Question: "Who is they?" Response:</p> <p>13 "I believe ST Paper or Goldman Sachs." Did I read</p> <p>14 that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Question: "And that was the sole purpose</p> <p>17 for that document?" Response: "Yes." Is that</p> <p>18 correct? Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. So the next question is, So it was --</p> <p>21 wasn't -- strike that. Start over.</p> <p>22 Page 76 of Mr. Van Den Heuvel's</p> <p>23 April 8, 2008 deposition. Question: "So it wasn't</p> <p>24 really a genuine contract by which you would perform</p>

<p style="text-align: right;">Page 202</p> <p>1 work?" Answer: "No." Question: "It was done 2 merely to allow ST Paper or Barclays or whomever to 3 try and find funding for the project?" Response: 4 "Yes." 5 Did I read that correctly? 6 A. Uh-huh. 7 Q. So at least counsel for IFC was aware of 8 that testimony as of April 8, 2008; is that a fair 9 statement? 10 MR. LANGS: He was there, right, your 11 attorney? 12 THE WITNESS: Uh-huh. 13 MR. LANGS: Say yes or no. 14 THE WITNESS: Yes. My attorney was. 15 BY MR. SPAHN: 16 Q. Did you have occasion to talk with Mr. 17 Underhill following Steve Van Den Heuvel's deposition 18 in or around April of 2008, to the best of your 19 recollection? 20 A. Yes. 21 Q. Okay. What do you recall discussing? 22 A. That nothing was accomplished. Just as 23 you see here, the answer's, Yes; it's a contract. 24 No, it wasn't intention to falsify for financing for</p>	<p style="text-align: right;">Page 204</p> <p>1 question. 2 BY THE WITNESS: 3 A. So I don't know what participated in -- 4 what term did you use? Participated -- 5 Q. I'll just ask you -- forget what your 6 testimony was then. 7 Did Steve Van Den Heuvel participate 8 in the negotiation of this contract -- not 9 contract -- continuing pledge agreement? 10 A. Yes. 11 Q. What did he -- what were his negotiation 12 points? 13 A. Not negotiation. You just -- he 14 participated in this process. His participation in 15 this process was to provide his third-party 16 industrial credibility and expertise in terms of why 17 these are real EPC contracts. 18 Q. But -- 19 A. Not EPC contracts which later on were 20 said to be only used for financing for Goldman Sachs 21 under some guise that would never satisfy as an EPC 22 contract for funding. 23 MR. ROMASHKO: Nothing further. 24 MR. LANGS: We'll waive.</p>
<p style="text-align: right;">Page 203</p> <p>1 IFC. Went back and forth in terms of this definition 2 of an EPC contract, which we didn't have a copy of to 3 specifically identify and show the steps necessary to 4 be either the same or different from the EPC 5 contracts on a commercial basis -- discussed when the 6 funding was put together. So if you read through 7 this deposition, it goes back and forth between, Did 8 you intentionally falsify? Was it used for this? 9 Yes. Shouldn't it have been used for this? No 10 comment. So that discussion went back and forth. 11 What I recall is that they came up with, kind of, 12 nothing more, nothing less except gray. 13 MR. SPAHN: Nothing further. 14 FURTHER EXAMINATION 15 BY MR. ROMASHKO: 16 Q. Very briefly. If you take a look at 17 Exhibit 5, the continuing pledge agreement. 18 A. Uh-huh. 19 Q. So your testimony with your counsel just 20 now was that Steve Van Den Heuvel participated in the 21 negotiation of this document? 22 MR. LANGS: I don't think that's exactly what 23 he said. 24 But go ahead and answer the</p>	<p style="text-align: right;">Page 205</p> <p>1 2 UNITED STATES OF AMERICA) 3 NORTHERN DISTRICT OF) 4 ILLINOIS 5 EASTERN DIVISION) SS. 6 STATE OF ILLINOIS) 7 COUNTY OF COOK) 8 I, Meagan M. Cahill, Certified 9 Shorthand Reporter, do hereby certify that MARC LANGS 10 was first duly sworn by me to testify to the whole 11 truth and that the above deposition was reported 12 stenographically by me and reduced to typewriting 13 under my personal direction. 14 I further certify that the said 15 deposition was taken at the time and place specified 16 and that the taking of said deposition commenced on 17 the 18th day of December, 2018, at 1:10 p.m. 18 I further certify that I am not a 19 relative or employee or attorney or counsel of any of 20 the parties, nor a relative or employee of such 21 attorney or counsel, nor financially interested 22 directly or indirectly in this action. 23 24</p>

1 In witness whereof, I have hereunto
2 set my hand and affixed my seal of office at Chicago,
3 Illinois, this 7th day of January 2019.

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