

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DIVISION

BRIARWOOD CAPITAL, LLC, a	)	
Delaware Limited Liability	)	
Corporation, individually and	)	
derivatively on behalf of HCC	)	
INVESTORS LLC and LENNAR	)	
BRIDGES LLC,	)	
Plaintiff,	)	
	)	
vs.	)	Case No. GIC877446
	)	
LENNAR LAND PARTNERS II, a	)	VOLUME II
Florida General Partnership,	)	
et al.,	)	
	)	
Defendants.	)	
_____	)	

VIDEOTAPED DEPOSITION OF MICHEL KUCINSKI

Friday, May 22, 2009

San Diego, California

Reported by:

KATHY BAUERNFEIND

CSR No. 11921

Michel Kucinski

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 COUNTY OF SAN DIEGO  
3 CENTRAL DIVISION  
4

5 BRIARWOOD CAPITAL, LLC, a )  
6 Delaware Limited Liability )  
7 Corporation, individually and )  
8 derivatively on behalf of HCC )  
9 INVESTORS LLC and LENNAR )  
10 BRIDGES LLC, )  
11 Plaintiff, )

12 vs. ) Case No. GIC877446  
13 )

14 LENNAR LAND PARTNERS II, a ) VOLUME II  
15 Florida General Partnership, )  
16 et al., )  
17 Defendants. )

18 Videotaped Deposition of MICHEL  
19 KUCINSKI, taken on behalf of the  
20 Defendants, at 1230 Columbia Street, San  
21 Diego, California, beginning at 9:14 a.m.  
22 and ending at 3:13 p.m. on Friday,  
23 May 22, 2009, before Kathy Bauernfeind,  
24 Certified Shorthand Reporter No. 11921.  
25

1 APPEARANCES:

2 For the Deponent:  
3 BLANCHARD, KRASNER & FRENCH  
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5 BY: ROBERT W. BLANCHARD  
6 Attorneys at Law  
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11 For Plaintiffs Nicolas Marsch, III, and Briarwood Capital:  
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14 Attorney at Law  
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17 (619) 696-0444

18 For Defendants Lennar San Jose Holdings, Inc. and Lennar  
19 Corporation:  
20 O'MELVENY & MYERS, LLP  
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22 Attorney at Law  
23 1999 Avenue of the Stars  
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Also Present:  
DAVID REEVE, Videographer  
NICOLAS MARSCH, III

1 I N D E X  
2 WITNESS EXAMINATION  
3 MICHEL KUCINSKI  
4 BY MS. HOLMES 203  
5 BY MR. PETROCELLI 364  
6

7 EXHIBITS  
8 DEFENDANTS' PAGE  
9 678 Declaration of Michel Kucinski in 298  
10 Response to the Declaration of  
11 Nicolas Marsch; 2 pages  
12 679 4/7/09 Letter to Nicolas Marsch, III 303  
13 from Michel Kucinski; 1 page  
14 680 5/20/09 Letter to Nicolas Marsch, III 310  
15 from Michel Kucinski; 2 pages  
16 681 8/12/08 Letter to Nicolas Marsch, III 325  
17 from Shawn Wamstad; 5 pages  
18 682 Bridges Litigation Due Diligence 336  
19 Inventory; 6 pages  
20 683 Plaintiff Briarwood Capital, LLC's 339  
21 Amended Notice of Videotaped Deposition  
22 of Michel Kucinski; 4 pages  
23 684 1/16/09 E-mail Subject Nevitt 340  
24 Tentative Ruling; 1 page  
25 685 4/3/09 E-mail to Stuart Miller and 341  
Jon Jaffe from Michel Kucinski;  
1 page  
686 9/28/08 E-mail from Michel Kucinski 346  
to Shawn Wamstad, Randy Rivera and  
Taryn Germond with attachment;  
3 pages

1 EXHIBITS (CONTINUED)  
2 DEFENDANTS' PAGE  
3 687 3/25/09 E-mail from Randy Rivera to 349  
4 Nicolas Marsch with attachments;  
5 10 pages  
6 688 2/11/09 E-mail from Taryn Germond 352  
7 with attached meeting minutes; 4 pages  
8 689 9/24/08 E-mail from Robert Blanchard 353  
9 to Richard Mager; 2 pages  
10 690 3/12/09 E-mail chain with attachment 355  
11 of Pre-Negotiation Agreement; 6 pages

12 QUESTIONS INSTRUCTED NOT TO ANSWER  
13 PAGE LINE  
14 364 10  
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1 San Diego, California; Friday, May 22, 2009  
 2 9:14 a.m.  
 3  
 4  
 09:14 5 THE VIDEOGRAPHER: Good morning. We are on the  
 6 record. This is the videotaped deposition of Michel  
 7 Kucinski, Volume No. 2, in the matter of Briarwood Capital  
 8 versus Lennar Land Partners on May 22, 2009, at 9:14 a.m.  
 9 My name is David Reeve. I am the videographer  
 09:15 10 representing U.S. Legal Support, located at 1230 Columbia  
 11 Street, Suite 800, San Diego, California 92101, where this  
 12 deposition is taking place.  
 13 Video and audio recording will be taking place  
 14 unless all counsel have agreed to go off the record.  
 09:15 15 Would all present please identify themselves  
 16 beginning with the witness.  
 17 THE WITNESS: Michel Kucinski.  
 18 MR. WILLIAMS: Kipp Williams.  
 19 MR. PETROCELLI: Daniel Petrocelli for Lennar.  
 09:15 20 MR. BLANCHARD: Robert Blanchard for the witness.  
 21 MS. HOLMES: Rhonda Holmes on behalf of Nicolas  
 22 Marsch, Briarwood Capital, LLC and related entities.  
 23 THE VIDEOGRAPHER: Thank you.  
 24 Would you please swear in the witness.  
 09:16 25

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1 MICHEL KUCINSKI,  
 2 having been first duly sworn, was  
 3 examined and testified as follows:  
 4  
 09:16 5 MR. WILLIAMS: Before we begin, I want to make a  
 6 couple of comments. First, I think we were supposed to  
 7 start at 9:00, and just for the record, it's 9:15.  
 8 And between the last -- the last or the first  
 9 volume of Mr. Kucinski's deposition and today, he knew  
 09:16 10 that there were a couple of areas where he may have  
 11 misspoke and wanted to review his testimony. And so  
 12 without reading the whole deposition, he skimmed through,  
 13 pulled out a couple of areas that he wanted to comment on  
 14 and correct at the beginning of this deposition, and I  
 09:16 15 think he would like to do that before we begin the  
 16 testimony today.  
 17 THE WITNESS: Again, on a cursory review --  
 18 MS. HOLMES: I haven't asked you any questions  
 19 yet. Sorry.  
 09:16 20 MR. WILLIAMS: Do you want to know his comments  
 21 on his prior testimony or not?  
 22 MS. HOLMES: I'm getting there.  
 23 EXAMINATION  
 24 BY MS. HOLMES:  
 09:17 25 Q. All right. Welcome back, Mr. Kucinski. You

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1 understand there was a hearing between Volume I of your  
 2 deposition, which was the 14th of May, and today, correct?  
 3 A. Correct.  
 4 Q. Do you understand anything that happened at that  
 09:17 5 hearing?  
 6 A. I do not.  
 7 Q. It was represented to me off the record, and  
 8 again just now, that you wanted to make some changes or  
 9 supplements to your testimony that you already gave in  
 09:17 10 this case.  
 11 You understand that the testimony you gave in  
 12 Volume I was given under the penalty of perjury, correct?  
 13 A. I do.  
 14 Q. And before we started that deposition, you had  
 09:17 15 indicated there was no reason you couldn't give your best  
 16 and most truthful and most accurate testimony. Do you  
 17 remember that?  
 18 A. I do.  
 19 Q. And are you prepared again today to give your  
 09:18 20 most accurate testimony?  
 21 A. I do.  
 22 Q. What is it that now, after having time to reflect  
 23 between Volume I and Volume II, that you felt you needed  
 24 to comment on about your earlier deposition testimony?  
 09:18 25 A. Thanks for asking. Let me get to those exact

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1 ones.  
 2 The first one would be on page 22, line 25, in  
 3 which you had asked what my understanding of the security  
 4 was. And I answered, "I believe it was a 65 percent  
 09:18 5 interest." And that comment is incorrect. The correct  
 6 answer in line -- again, page 23, line 19, "It was 100  
 7 percent of the award." "Do you recall how much was --  
 8 what interest in the litigation was contributed," you had  
 9 asked line 17. Line 19, "It was 10 percent of the award."  
 09:19 10 That number should have been a hundred percent of the  
 11 award.  
 12 Q. And what preparation, what document did you look  
 13 at between May 14 and today to cause you to change that  
 14 answer?  
 09:19 15 A. It was the partnership agreement. The 10 percent  
 16 is what I'm entitled to retain if I exercise my put, or if  
 17 Mr. Marsch repurchases my option. But the collateral or  
 18 the guarantee on that put option is a hundred percent of  
 19 the interest.  
 09:19 20 Q. Okay. Anything else?  
 21 A. And the document speaks for itself, I believe.  
 22 Q. Anything else you wanted to change?  
 23 A. Yeah, a couple more. On page 27, line 20, where  
 24 I was asked, what other financial materials were given to  
 09:20 25 me, and I think there were also financial statements and

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1 tax returns. I think came from Lennar.  
 2 Q. From Lennar, you got those?  
 3 A. No, I got those from Mr. Marsch, but they were  
 4 the final ones, I think, that both Nick and Lennar had  
 09:20 5 received, or used to file tax returns.  
 6 Q. Now, what documents did you look at to enable you  
 7 to change that answer between May 14th and today?  
 8 A. Just in reading -- kind of slightly reading over  
 9 this. There were more than just balance sheets, I know I  
 09:20 10 had seen actual tax returns.  
 11 Q. What else? What else do you want to change?  
 12 A. If you permit me, I go to page 70 -- page 76, you  
 13 had asked, "Has KBR ever been involved in any litigation  
 14 as a plaintiff." KBR has not been involved in litigation  
 09:21 15 as a plaintiff, and that's how I answered. However, KBR  
 16 Opportunity Fund I has been involved in litigation as a  
 17 plaintiff, suing a guarantor on a transaction, and is also  
 18 a defendant in the same property.  
 19 Q. What property is involved?  
 09:21 20 A. It's called Yucaipa, I think Yucaipa Retail.  
 21 Q. And are you attempting in that litigation to  
 22 foreclose on that property?  
 23 A. We are attempting to foreclose on that property,  
 24 correct.  
 09:21 25 Q. When was that suit filed?

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1 A. I don't believe we have filed a suit. I don't  
 2 believe we have filed a suit. We are enforcing our  
 3 guarantees.  
 4 Q. Okay.  
 09:21 5 A. We did issue a notice of foreclosure.  
 6 Q. All right. And where is it in that process in  
 7 terms of the foreclosure?  
 8 A. I don't recall specifically, but it's coming up.  
 9 Q. Anything else you wanted to change?  
 09:22 10 A. Yes. Page 77, line -- or line 2, you had asked,  
 11 "What about USA Properties, has USA Properties ever been  
 12 involved in litigation as a plaintiff or defendant." And  
 13 there is one small matter in which I had, it's called  
 14 Colours USA versus USA Properties.  
 09:22 15 Q. And that's been concluded?  
 16 A. No.  
 17 Q. Who represents you on the Yucaipa litigation?  
 18 A. Mr. Blanchard's firm.  
 19 Q. And who represents you on the US --  
 09:22 20 A. Mr. Blanchard's firm as well.  
 21 Q. And has suit been filed in the litigation you  
 22 just mentioned?  
 23 A. Yes.  
 24 Q. And in that litigation, are you attempting to  
 09:22 25 foreclose on property?

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1 A. No.  
 2 Q. Did you make a loan in connection with the  
 3 litigation you just mentioned?  
 4 A. No.  
 09:22 5 Q. Just in summary form, what is your involvement  
 6 that caused you to sue?  
 7 A. We're actually defendant.  
 8 Q. I'm sorry. What are you being sued for?  
 9 A. It's a prior partnership, having to do with some  
 09:23 10 rent amount.  
 11 Q. Is it a prior partner suing you?  
 12 A. Yes.  
 13 Q. Does your prior partner allege in that lawsuit  
 14 that you made misrepresentations?  
 09:23 15 A. No. I don't believe that's the case, no.  
 16 Q. In the Yucaipa litigation, did KBR Opportunity  
 17 Fund I make a loan collateralized by property in Yucaipa?  
 18 A. Yes.  
 19 Q. Did KBR Opportunity Fund I also make an  
 09:23 20 investment?  
 21 A. No.  
 22 Q. What did you look at to refresh your memory and  
 23 cause you to change your answers with respect to  
 24 litigation you have been involved in?  
 09:23 25 A. Again, just reading through it, the question was,

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1 "Has KBR ever been involved," and KBR, as I refer to KBR,  
 2 is the LLC, the general partner. KBR Opportunity Fund I,  
 3 being a separate entity, I just wanted to correct the  
 4 record that it's a separate entity.  
 09:24 5 Q. What I'm asking is, did you look at any documents  
 6 to --  
 7 A. No.  
 8 Q. -- to help you to change that answer?  
 9 A. No.  
 09:24 10 Q. Anything else you wanted to change in your prior  
 11 testimony?  
 12 (Mr. Marsch joins the deposition.)  
 13 A. Yes. On page 101.  
 14 Q. What is it that is inaccurate on page 101?  
 09:24 15 A. Starting with line 14, where you said -- where I  
 16 answered, I'm sorry, "We had a 10 percent interest in  
 17 Mr. Marsch's -- in Briarwood's 50 percent, so it would be  
 18 5 percent total development."  
 19 You followed up with saying, "What do you  
 09:25 20 currently understand your interest to be in the Bridges  
 21 development."  
 22 As I understand the question to be, what it was  
 23 after, which is correct, the 10 percent of the 50 percent.  
 24 If the question was before, it should have been answered  
 09:25 25 65 percent.

4 (Pages 206 to 209)

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<p style="text-align: right;">Page 210</p> <p>1 Q. Before what? 2 A. Before either exercise of the option -- before 3 the exercise of the option and/or Mr. Marsch's repurchase. 4 Q. And did you look at any documents to assist you 09:25 5 in changing your answer on page 101? 6 A. I did in the document that we have. The KRMW 7 agreement is pretty specific and speaks for itself, so I 8 would refer you to that specific document. 9 Q. The KRMW agreement meaning the operating 09:25 10 agreement? 11 A. The partnership agreement. 12 Q. Okay. Anything else you wanted to change in your 13 May 14th testimony? 14 A. I believe there is one more. On page 185. 09:26 15 Q. What was inaccurate there? 16 A. On page 185, line number 3, you had made a 17 comment, "And were you shown the letter before it was 18 sent." And I believe I -- that answer should have been, 19 no, and I clarified that on page 193 of the same 09:26 20 deposition, when we concluded that day. 21 And you asked, "And do you know for certain one 22 way or the other," this is on page 193. I said, "I know 23 for certain by my e-mails." 24 "Why did you say probably?" 09:27 25 "Because I believe this July 12th was a Saturday,</p>	<p style="text-align: right;">Page 212</p> <p>1 changes? 2 A. Yeah, I have. 3 Q. Is it true, however, that after seeing the letter 4 Mr. Marsch wrote to the Lennar board, you determined it 09:28 5 appropriate to enter into KBR Opportunity Fund II with 6 Mr. Marsch, correct? 7 MR. PETROCELLI: The question is vague and 8 ambiguous. 9 BY MS. HOLMES: 09:28 10 Q. Let me reask it. The -- it's true that you 11 decided to loan -- or strike that. 12 It is true that you decided to do what you are 13 calling an investment in the -- Mr. Marsch's claims in the 14 Bridges litigation, after seeing that letter to the board, 09:29 15 right? 16 A. I don't recall specific dates. I think our 17 investment was done before that letter was sent out. 18 Q. And if you have an e-mail that you produced in 19 this case which confirms that the -- that you reviewed the 09:29 20 letter to the board before deciding to, as you say, invest 21 in the Bridges litigation, would your e-mail be the most 22 accurate indication of the order of events? 23 A. Correct. 24 Q. I want to get back to something we touched on on 09:30 25 the 14th, and that is this Saturday meeting which occurred</p>
<p style="text-align: right;">Page 211</p> <p>1 so this was sent out on -- it would be a Federal Express 2 July 11 on a Friday. I'm sure the board did not receive 3 it until Monday." 4 Q. And by -- and on page 185, the letter we were 09:27 5 discussing was the letter to the board? 6 A. That is correct. 7 Q. And my question is whether you recall having seen 8 a draft of that letter before it had been sent to the 9 board? 09:27 10 A. I did not. I was shown the e-mail and the e-mail 11 was on the -- I believe the 12th. 12 Q. Did anyone, including Rick Mager, tell you of the 13 contents of the letter to the board before the letter was 14 sent? 09:27 15 A. He did not. 16 Q. Do you have an e-mail or a note confirming that 17 you did not -- you were not informed by anyone of the 18 contents of the letter to the board before it was sent? 19 A. I do not have an e-mail. I think you showed me 09:28 20 an e-mail confirming the date of the 11th. 21 Q. Dated the 11th meaning what? 22 A. I think that's the date the e-mail that you 23 showed me on our last deposition showed a copy of the 24 transmittal of the letter that was sent out. 09:28 25 Q. Well, it is true -- have you finished all of your</p>	<p style="text-align: right;">Page 213</p> <p>1 on April 3, 2009, with the members from Lennar, 2 Mr. Petrocelli, you and your two partners, and 3 Mr. Blanchard. I believe you indicated -- 4 MR. PETROCELLI: Ms. Holmes, so I don't have to 09:30 5 object, how about if we have a stipulation that all my 6 objections are reserved and that I don't have to make any? 7 MS. HOLMES: Well, I won't do that, just make 8 appropriate objections. 9 MR. PETROCELLI: Just trying to speed things up. 09:30 10 MS. HOLMES: Yeah, and I appreciate that, but 11 that would be unwise. But you're certainly welcome to 12 make appropriate objections. 13 BY MS. HOLMES: 14 Q. You had indicated that you made notes after that 09:31 15 meeting. Where are those notes? 16 A. I do not have them with me. And I'm sorry, to 17 clarify, they were not notes, they were simply the offer 18 that was communicated to me for a settlement to be 19 communicated to Mr. Marsch via Mr. Miller. 09:31 20 Q. So this was a document where you, in your 21 handwriting, had written down the terms of the proposed 22 settlement? 23 A. Correct. 24 Q. Anything else you had written down? 09:31 25 A. That is it. That was done after the meeting.</p>

5 (Pages 210 to 213)

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1 Q. Why is it that after the meeting you decided to  
 2 write down that information?  
 3 A. I wanted to recap it so that I could present it  
 4 to Mr. Marsch.  
 09:31 5 Q. Did you tell Mr. Marsch before participating --  
 6 or strike that.  
 7 It's true that the April 3rd meeting was a  
 8 meeting which took place at the request of Mr. Petrocelli,  
 9 right?  
 09:32 10 A. I believe he communicated with our counsel and  
 11 suggested that it was a good time to meet.  
 12 Q. And what did you understand to be the purpose of  
 13 the meeting?  
 14 A. I believe it's to discuss some sort of position  
 09:32 15 on the case. They wanted to try to meet with -- I believe  
 16 that Lennar had an understanding after Mr. Marsch's --  
 17 after Mr. Mager's deposition, that the interest in  
 18 Briarwood had been assigned to a different party. And I  
 19 think that Lennar probably wanted to know who that other  
 09:32 20 party was.  
 21 Q. And you felt it appropriate to meet with Lennar's  
 22 litigation lawyer as well as their owner, Stuart Miller,  
 23 and president, Jon Jaffe, just to show them who that  
 24 entity or person was?  
 09:33 25 A. No, I have a financial interest in KRMW, and it

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1 was appropriate for -- if they wanted to try to have some  
 2 discussions, it's appropriate for me to try to meet with  
 3 them. Sure.  
 4 Q. And when you say you have a financial interest in  
 09:33 5 KRMW, part of that financial interest entails your -- a  
 6 partnership with Mr. Marsch, correct?  
 7 A. Correct.  
 8 Q. And as his partner, you understand you have  
 9 certain fiduciary obligations to Mr. Marsch, right?  
 09:33 10 MR. WILLIAMS: Objection. Calls for a legal  
 11 conclusion.  
 12 THE WITNESS: I don't know my legal rights.  
 13 BY MS. HOLMES:  
 14 Q. All right. You have made how many loans in your  
 09:33 15 professional career?  
 16 A. Three.  
 17 Q. And how many partnership agreements have you  
 18 entered into in your professional career?  
 19 A. 40.  
 09:34 20 Q. And in all of those -- strike that.  
 21 In any of those 40 partnership agreements you  
 22 have entered into, have you ever become aware of what's  
 23 known as fiduciary duty?  
 24 A. I think almost every single case I was a general  
 09:34 25 partner, and I am aware of the duties, fiduciary duties of

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1 a general partner.  
 2 Q. What are those?  
 3 MR. WILLIAMS: Calls for a legal conclusion.  
 4 THE WITNESS: I don't know specifically, but  
 09:34 5 certainly to disclose any information that is pertinent,  
 6 which is what I would hope Mr. Marsch would have been  
 7 doing to me as a limited partner in that.  
 8 BY MS. HOLMES:  
 9 Q. Let me just stick on your understanding. Your  
 09:34 10 understanding of your fiduciary obligations as a partner  
 11 are to disclose any pertinent information to your partner,  
 12 is that correct?  
 13 A. I would say that's part of it, sure.  
 14 Q. And you understood before you met with the Lennar  
 09:35 15 people, including their litigation counsel, on April 3rd,  
 16 that Lennar was in litigation adverse to Mr. Marsch,  
 17 correct?  
 18 A. Correct.  
 19 Q. And was that -- do you think Mr. Marsch would  
 09:35 20 have been interested to know that you were going to be  
 21 meeting with Lennar's litigation counsel on April 3, 2009?  
 22 MR. WILLIAMS: Calls for speculation.  
 23 THE WITNESS: I don't know what he would have  
 24 thought.  
 09:35 25 BY MS. HOLMES:

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1 Q. And in fact, you didn't ask Mr. Marsch before  
 2 meeting with the Lennar folks on April 3, 2009, what he  
 3 might think of your meeting with them, correct?  
 4 A. I did not.  
 09:35 5 Q. And in fact, you did not have Mr. Marsch's  
 6 authority to meet with the Lennar folks on April 3, 2009,  
 7 correct?  
 8 MR. PETROCELLI: Objection. Lacks foundation.  
 9 MR. WILLIAMS: And assumes that authority was  
 09:36 10 required.  
 11 MS. HOLMES: And that's a speaking objection and  
 12 that will be the last one or we'll stop right now. Do you  
 13 understand that?  
 14 MR. WILLIAMS: I'll make my objections as I see  
 09:36 15 appropriate. Don't talk to me in that tone of voice,  
 16 Rhonda, because I'm not going to put up with it. You may  
 17 have gotten away with it with Jennifer, but you're not  
 18 going to get away with it with me.  
 19 MS. HOLMES: Okay.  
 09:36 20 MR. WILLIAMS: When the deposition -- we'll go  
 21 back and talk to Judge Nevitt, because I heard about your  
 22 conduct and it's not going to happen here today. Just  
 23 move on with your next question.  
 24 MS. HOLMES: Okay. Now, we have a videotape, you  
 09:36 25 know.

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1 MR. WILLIAMS: That's great. We'll take it down  
2 to Judge Nevitt. I'm sure we've got lots of videotapes of  
3 your own conduct in these depositions, and we'll take them  
4 all down to Judge Nevitt.  
09:36 5 MS. HOLMES: Let's do that. Now, you don't have  
6 an interest in this litigation, do you, Mr. Williams?  
7 MR. WILLIAMS: Just move on to your next  
8 question.  
9 MS. HOLMES: All right.  
09:36 10 Q. As I said --  
11 MR. WILLIAMS: You know, Rhonda, here's the deal,  
12 we're not going to go off track --  
13 MS. HOLMES: No speaking objections.  
14 MR. WILLIAMS: We are not going to go off  
09:36 15 track --  
16 MS. HOLMES: Please. Thank you.  
17 MR. WILLIAMS: We are not going to go off --  
18 MR. PETROCELLI: Let's just get back to the Q and  
19 A here. I want this to be over so I can go home.  
09:37 20 MS. HOLMES: Well, you know what, though, we'll  
21 take a break and just go down and see the judge right  
22 away, because we're just not going to have you coaching  
23 the witness today. I know you don't like me saying that,  
24 but I'm just not going to stand for it.  
09:37 25 MR. WILLIAMS: I wasn't coaching the witness.

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1 MS. HOLMES: Okay.  
2 Now, would you please read back my question  
3 before I was rudely interrupted.  
4 (The record was read by the reporter  
09:37 5 as follows:  
6 "And in fact, you did not have  
7 Mr. Marsch's authority to meet with the  
8 Lennar folks on April 3, 2009, correct?")  
9 THE WITNESS: I did not have his authority, nor  
09:37 10 did I believe his authority was needed.  
11 BY MS. HOLMES:  
12 Q. And you characterized the meeting -- in part, you  
13 characterized the meeting you had on April 3, 2009, with  
14 Mr. Marsch as -- strike that.  
09:38 15 Did you think you were doing some type of  
16 settlement negotiation during the April 3, 2009 meeting?  
17 MR. PETROCELLI: The question is vague and  
18 ambiguous.  
19 THE WITNESS: Can you -- I'm not sure I  
09:38 20 understand that question.  
21 BY MS. HOLMES:  
22 Q. Right. Well, after the meeting, you wrote down  
23 some notes of some settlement terms, correct?  
24 A. Right.  
09:38 25 Q. And did you understand that those terms Lennar

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1 wanted you to communicate to Mr. Marsch?  
2 A. Yes.  
3 Q. Before going in to the April 3, 2009 meeting, you  
4 did not have Mr. Marsch's authority to engage in any  
09:38 5 settlement negotiations on his behalf with Lennar,  
6 correct?  
7 A. I did not.  
8 MR. PETROCELLI: Lacks foundation.  
9 BY MS. HOLMES:  
09:38 10 Q. During the April 3, 2009 meeting, you stepped  
11 outside -- while it was ongoing, you stepped outside with  
12 Mr. Miller to have a private talk with him for a couple  
13 hours, true?  
14 A. I did not. I went to lunch with Mr. Miller.  
09:39 15 Q. And did you not say -- talk at all with  
16 Mr. Miller during lunch?  
17 A. I did.  
18 Q. What did you talk about during your lunch?  
19 A. We talked about our kids. We talked about our  
09:39 20 families. We talked about living in Florida.  
21 Q. Did you talk at all about Mr. Marsch during --  
22 strike that.  
23 Did that -- did the time spent with Mr. Miller  
24 last approximately two hours?  
09:39 25 A. It was a lunch, I don't know, could have been an

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1 hour, it could have been two, I don't recall.  
2 Q. Do you recall telling Mr. Marsch that you spent  
3 approximately two hours with Mr. Miller alone during that  
4 Saturday on April 3rd?  
09:39 5 A. I don't recall how much time I told him I spent  
6 with him. I did go to lunch with him after the meeting on  
7 a one-on-one basis.  
8 Q. Do you recall one way or the other how much time  
9 you reported to Mr. Marsch that you had spent with  
09:39 10 Mr. Miller?  
11 A. I don't recall how much time specifically, no.  
12 Q. My question is a little different. Do you recall  
13 one way or the other what you told Mr. Marsch about how  
14 much time you spent with him?  
09:40 15 A. I do not recall what I told Mr. Marsch about how  
16 much time I spent with him.  
17 Q. All right. And during the time you spent with  
18 Mr. Miller, is it your testimony today that you never  
19 discussed anything about Mr. Marsch with him?  
09:40 20 A. We discussed the Bridges, we discussed the  
21 concerns and litigation, we discussed the defamation suit,  
22 I think, briefly in Florida.  
23 Q. What did you discuss about the defamation suit in  
24 Florida with Mr. Miller?  
09:40 25 A. He was just mentioning some impact that it had on

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<p style="text-align: right;">Page 222</p> <p>1 his personal life. How much of his time had been spent 2 trying to correct misinformation that was being 3 disseminated through Mr. Marsch and Mr. Minkow. 4 Q. Was misinformation Mr. Miller's word or is that 09:41 5 yours? 6 A. I don't recall. 7 Q. Is it your belief that Mr. Marsch and Mr. Minkow 8 disseminated misinformation in connection with the Florida 9 litigation? 09:41 10 A. I don't recall. I'm not familiar with that 11 litigation. I'm more familiar with the letter that was, I 12 believe, the impetus for that litigation. 13 Q. And what is it that causes you to believe the 14 letter was the impetus for that litigation? 09:41 15 A. I believe on a meeting we had with Fred Gordon, 16 shortly after -- I believe it was after closing our 17 transaction, or somewhere -- I don't recall the specific 18 date, he had mentioned something about a lawsuit being 19 brought in Florida -- 09:41 20 Q. All right. 21 A. -- for defamation. 22 Q. And what is it -- what is your source of 23 information that it was the letter to the board written by 24 Mr. Marsch that was the impetus for Lennar suing 09:42 25 Mr. Marsch?</p>	<p style="text-align: right;">Page 224</p> <p>1 the Bridges to the highest court? 2 A. I don't know if he said "the highest court," but 3 he did say he was -- they were planning on pushing this 4 litigation all the way through. 09:43 5 Q. Because in part, he was angry with Mr. Marsch, 6 wasn't he? 7 MR. PETROCELLI: The question assumes -- 8 THE WITNESS: I don't know. 9 MR. PETROCELLI: -- facts not in evidence. 09:43 10 MR. WILLIAMS: Join. 11 BY MS. HOLMES: 12 Q. He didn't tell you that he was angry at 13 Mr. Marsch? 14 A. He never used the word "angry." 09:43 15 Q. What words did he use to express how he felt 16 about Mr. Marsch? 17 A. I don't specifically recall, but "angry" was not 18 a word he used. 19 Q. Did he say he was irritated? 09:44 20 A. I don't believe I ever heard the word 21 "irritated." 22 Q. Frustrated? 23 A. I don't believe I heard the word "frustrated." 24 Q. Do you recall any words Mr. Miller used to 09:44 25 describe how he felt about Mr. Marsch?</p>
<p style="text-align: right;">Page 223</p> <p>1 A. I don't. It's my belief. 2 Q. Did Mr. Miller tell you during your lunch meeting 3 with him on Saturday, April 3rd, that he was personally 4 annoyed by the, what he viewed to be the facts leading up 09:42 5 to that Florida litigation? 6 MR. PETROCELLI: I'm sorry, Rhonda, can I hear 7 the question back, please? 8 MS. HOLMES: I'll restate it. 9 Q. Did Mr. Miller share with you that he was 09:42 10 personally annoyed by what he believed to be the facts 11 leading up to the Florida litigation? 12 A. I don't recall specifically, but he certainly 13 was -- it was a hassle for him. 14 Q. And did he tell you that he takes the -- his 09:43 15 company's cases against Mr. Marsch and by Mr. Marsch 16 personally? 17 MR. PETROCELLI: The question is vague and 18 ambiguous. 19 THE WITNESS: I don't recall specifically. He 09:43 20 may have. I don't recall specifically. 21 BY MS. HOLMES: 22 Q. One way or the other? 23 A. One way or the other. 24 Q. Did he tell you that no matter what, that he was 09:43 25 going to see this litigation he has with Mr. Marsch and</p>	<p style="text-align: right;">Page 225</p> <p>1 A. I don't know that he said anything specific about 2 Mr. Marsch. I think he was mentioning that it was an 3 annoyance to him to have to deal with the repercussions. 4 Q. And did Mr. Miller explain to you that part of 09:44 5 Lennar's strategy in the litigation with Mr. Marsch, 6 including the Bridges litigation, was to try and outspend 7 Mr. Marsch? 8 A. He did not. Those were words that Mr. Marsch had 9 used many times in the past. 09:44 10 Q. Did you ask Mr. Miller if that was part of his 11 strategy against Mr. Marsch in the Bridges litigation? 12 A. I did not. 13 Q. Why not? 14 A. I had probably assumed that to be the case, being 09:45 15 that was something Mr. Marsch had repeatedly said. But I 16 did not specifically ask the question. 17 Q. So the point of which you met with Mr. Miller for 18 lunch on April 3rd, you still regarded representations 19 Mr. Marsch made to you as representations you could trust 09:45 20 as being accurate? 21 MR. PETROCELLI: The question is vague and 22 ambiguous. Overbroad. 23 MR. WILLIAMS: Join. 24 THE WITNESS: And I'm not sure I understand the 09:45 25 question.</p>

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1 BY MS. HOLMES:  
 2 Q. Sure. At the point in time you were -- on -- by  
 3 April 3, 2009, you still believed everything Mr. Marsch  
 4 had told you up until then, is that right?  
 09:45 5 A. No. He had lied on many occasions.  
 6 Q. In going through your deposition testimony on May  
 7 14th, we had talked about the examples in which you felt  
 8 Mr. Marsch had lied. Had you come up with any additional  
 9 ones that we didn't explore on May 14th?  
 09:46 10 A. I don't believe I've gone back to double-check.  
 11 Q. As you sit here now, can you think of additional  
 12 ways in which Mr. Marsch you think lied to you, other than  
 13 what you've already testified to?  
 14 A. Just quickly off memory, certain dates, starting  
 09:46 15 of trial, and what judges may or may not have said, you  
 16 know, we continuously asked for written proof and were  
 17 very scatterly sent information.  
 18 Q. Anything else?  
 19 A. Nope.  
 09:46 20 Q. We'll get back to that in just a minute.  
 21 So why is it that you still believed Mr. Marsch,  
 22 as of April 3, 2009 anyway, that Lennar had a campaign to  
 23 outspend him in the litigation against Mr. Marsch,  
 24 including the Bridges litigation?  
 09:46 25 MR. PETROCELLI: Objection. No foundation.

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1 THE WITNESS: I never said that.  
 2 BY MS. HOLMES:  
 3 Q. You were of the mindset that it was probably true  
 4 that Lennar was attempting to outspend Mr. Marsch in the  
 09:47 5 Bridges litigation, at least as of April 3, 2009, right?  
 6 MR. PETROCELLI: Vague and ambiguous.  
 7 MR. WILLIAMS: Join.  
 8 THE WITNESS: I don't think it's outspend as much  
 9 as outlast. I think Mr. Marsch -- Mr. Miller, it was my  
 09:47 10 impression, would have gone to any length to make sure  
 11 that he would not -- they wouldn't drop the suit.  
 12 BY MS. HOLMES:  
 13 Q. And when you say Mr. Miller would have gone to  
 14 any length to outlast Mr. Marsch in the litigation, what  
 09:47 15 did you understand Mr. Miller to mean by that?  
 16 A. Well, they were my words, but he said that he was  
 17 going to see this through, and I assume that to be all the  
 18 way through the end. So it didn't matter whether it was  
 19 favorable, appealable, they were just going to see it  
 09:47 20 through.  
 21 Q. And you had testified earlier, though, that you  
 22 believed that Lennar was -- as part of that effort to see  
 23 the Bridges litigation all the way through, that they were  
 24 trying to outspend Mr. Marsch, right?  
 09:48 25 MR. PETROCELLI: Objection. Lacks foundation.

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1 THE WITNESS: Again, I think "outspend" is a word  
 2 used by Mr. Marsch. I think Lennar has no issues with  
 3 doing whatever legal work needs to be done to achieve  
 4 their point. I don't --  
 09:48 5 BY MS. HOLMES:  
 6 Q. Go ahead.  
 7 A. I know litigation is expensive, and I know  
 8 Mr. Marsch is not in the same financial position as  
 9 Lennar.  
 09:48 10 Q. And when you say that Lennar has no issues in  
 11 seeing whatever needs to be done in litigation, you mean  
 12 financial issues?  
 13 MR. PETROCELLI: Objection.  
 14 THE WITNESS: Those are my words, yes.  
 09:48 15 MR. PETROCELLI: Vague and ambiguous.  
 16 BY MS. HOLMES:  
 17 Q. And you believed that to be true at least still  
 18 as of April 3, 2009, right?  
 19 MR. PETROCELLI: Vague and ambiguous.  
 09:49 20 THE WITNESS: I believed what to be true, I'm  
 21 sorry?  
 22 BY MS. HOLMES:  
 23 Q. That Lennar was in a stronger financial position  
 24 than Mr. Marsch in the litigation against him, and that  
 09:49 25 Lennar had no financial issues with respect to fully and

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1 zealously litigating their claims against Mr. Marsch.  
 2 MR. PETROCELLI: Vague and ambiguous and  
 3 compound.  
 4 THE WITNESS: Yes. Mr. Marsch had repeatedly  
 09:49 5 said to me in meeting after meeting that Lennar has spent  
 6 in the order of 25 to \$30 million on the case, as opposed  
 7 to where he was at, and they were not going away.  
 8 BY MS. HOLMES:  
 9 Q. Did you ask Mr. Miller about that, the money that  
 09:49 10 Lennar has spent against Mr. Marsch in litigation?  
 11 A. I did not.  
 12 Q. Do you have any reason to believe the  
 13 representations Mr. Marsch made to you about the money  
 14 Lennar has spent in litigating its claims against  
 09:50 15 Mr. Marsch is a correct amount?  
 16 MR. PETROCELLI: No foundation.  
 17 THE WITNESS: I think we may have had a  
 18 conversation at one point with -- while we were all  
 19 together at a meeting discussing the amount of legal bills  
 09:50 20 incurred by Lennar, and I remember somebody, I can't  
 21 remember who specifically, when I mentioned that number,  
 22 saying it was nowhere near that number.  
 23 BY MS. HOLMES:  
 24 Q. So when you -- you're talking about the meeting  
 09:50 25 that you had on April 3, 2009, where the issue came up how

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1 much money Lennar has spent in litigation against  
2 Mr. Marsch?  
3 A. It came up in the meeting somehow, and I don't  
4 recall who answered when I mentioned, you know, we had  
09:50 5 heard a number of 30 million being spent in litigation.  
6 Somebody may have said that's not even close.  
7 Q. Do you remember who said that?  
8 A. I do not.  
9 Q. Do you remember whether or not whoever said that  
09:51 10 it wasn't 30 million, represented how much money they have  
11 spent against Mr. Marsch?  
12 A. I don't recall. I remember the words, "not even  
13 close."  
14 Q. Did you see any document or any bills or anything  
09:51 15 to substantiate whether the estimates -- or strike that.  
16 Did you see any documents whatsoever to -- that  
17 disclosed how much money Lennar has spent trying to  
18 outlast Mr. Marsch in this litigation?  
19 MR. PETROCELLI: Objection. Vague and ambiguous  
09:51 20 and compound.  
21 THE WITNESS: I did not.  
22 BY MS. HOLMES:  
23 Q. Was it you who raised the issue of how much money  
24 Lennar has spent in prosecuting its claims against  
09:51 25 Mr. Marsch during the April 3, 2009 meeting?

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1 MR. PETROCELLI: Vague and ambiguous.  
2 THE WITNESS: I don't recall if it was me. I  
3 know we had discussions as to this has been an expensive  
4 process, and the number coming up. I don't recall  
09:52 5 specifically who said that.  
6 BY MS. HOLMES:  
7 Q. When you say this being an expensive process,  
8 what do you mean?  
9 A. Litigation process.  
09:52 10 Q. And why is it that the specific litigation and  
11 the amounts spent by Lennar against Mr. Marsch were  
12 discussed during the April 3rd meeting, not just  
13 litigation in general, but Lennar's litigation against  
14 Mr. Marsch?  
09:52 15 A. I don't recall.  
16 Q. Could the amount of money Lennar has spent  
17 against Mr. Marsch exceed \$30 million?  
18 MR. WILLIAMS: Calls for speculation.  
19 MR. PETROCELLI: No foundation.  
09:52 20 THE WITNESS: I don't know.  
21 BY MS. HOLMES:  
22 Q. You don't know one way or the other, right?  
23 A. I don't know one way or the other.  
24 Q. Did the person who represented that the \$30  
09:53 25 million figure was, quote, "not even close," say anything

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1 else about the amount?  
2 A. I do not recall.  
3 Q. Going back to your lunch with Mr. Miller, what  
4 else did you discuss specifically having to do with the  
09:53 5 litigation Lennar has against Mr. Marsch, besides what  
6 you've already testified to?  
7 A. I don't recall specifically. We talked about  
8 some of the waterfall provisions, capital accounts. You  
9 know, I remember, I believe, inquiring about capital  
09:54 10 accounts, as it's something that I had not quite grasped  
11 to that point.  
12 Q. What did you ask specifically of Mr. Miller about  
13 the capital account issue?  
14 A. I believe I specifically asked whether  
09:54 15 Mr. Marsch's capital account was \$37 and a half million as  
16 he had indicated, or was it half of that as stated in the  
17 agreement.  
18 Q. As stated in what agreement?  
19 A. The HCC agreement.  
09:54 20 Q. It's your opinion that the HCC agreement states  
21 that Mr. Marsch's capital account is half the 37-5  
22 million?  
23 A. I don't have the agreement in front of me, but I  
24 believe that that's what it calls for.  
09:54 25 Q. Now, is that something that was told to you by

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1 someone, or is that your interpretation of the HCC  
2 agreement?  
3 A. Both.  
4 MR. PETROCELLI: Vague and ambiguous.  
09:54 5 BY MS. HOLMES:  
6 Q. When did Mr. Marsch represent to you that his  
7 capital account was 37-5?  
8 A. The first day we met, and all the way through --  
9 I believe all the way through funding.  
09:55 10 Q. Your funding?  
11 A. Correct.  
12 Q. So up until the time you funded, Mr. Marsch was  
13 representing to you that his capital account in the  
14 Bridges development was 37 and a half million?  
09:55 15 A. Correct.  
16 Q. And you were in receipt of the HCC operating  
17 agreement before you funded, right?  
18 A. I was.  
19 Q. What else did Mr. Miller say to you about  
09:55 20 Mr. Marsch's capital account?  
21 A. I can't recall anything else.  
22 Q. What did you tell him about Mr. Marsch's capital  
23 account?  
24 A. I can't recall. They just have asked  
09:56 25 specifically whether it was 37 and a half, or half of

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1 that.

2 Q. And did you tell Mr. Miller that Mr. Marsch had

3 represented to you that it was 37 and a half million, his

4 capital account?

09:56 5 A. I don't recall if I specifically said that, but

6 if I were to guess, I would guess I did.

7 Q. Because in your question to Mr. Miller, you had

8 indicated that you -- you had information that

9 Mr. Marsch's capital account was 37 and a half million,

09:56 10 and you wanted to verify that, right?

11 MR. PETROCELLI: Objection. Lacks foundation and

12 compound.

13 THE WITNESS: I don't specifically recall how I

14 asked that.

09:56 15 BY MS. HOLMES:

16 Q. But in your question, you somehow implied that

17 Mr. Marsch's capital account, as you had understood it, to

18 be 37 and a half million, right?

19 MR. PETROCELLI: Vague and ambiguous.

09:56 20 THE WITNESS: Right.

21 BY MS. HOLMES:

22 Q. But you don't recall one way or the other whether

23 you told Mr. Miller the source of your understanding as to

24 the amount of Mr. Marsch's capital account. Is that your

09:56 25 testimony?

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1 A. I do not recall how I told him. Yes, I do not.

2 Q. What else was discussed -- what was discussed

3 about the waterfall provision -- let me back up. Strike

4 that.

09:57 5 What did you mean by waterfall provisions?

6 A. The preferred returns.

7 Q. What do you mean? What preferred returns?

8 A. On the capital accounts.

9 Q. In -- with respect to the HCC operating

09:57 10 agreement?

11 A. Correct.

12 Q. What is it that you asked Mr. Miller regarding

13 the preferred returns in the HCC operating agreement?

14 A. I don't recall whether I asked Mr. Miller

09:57 15 specifically about the waterfall in the agreement. I

16 know -- I may have asked that globally at our meeting.

17 Q. At the meeting with everybody on the 3rd?

18 A. Correct.

19 Q. What was it you asked -- whether with Mr. Miller

09:57 20 or at the global meeting, what did you ask about the

21 preferred returns?

22 A. I don't recall. I specifically don't recall.

23 Q. But you just had some question about how the

24 waterfall provisions worked?

09:58 25 A. Correct. I think what I wanted to understand is

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1 exactly what Briarwood owed the partnership.

2 Q. Owed which partnership?

3 A. The HCC partnership.

4 Q. And why -- so what questions did you ask to help

09:58 5 you understand what Briarwood owed the HCC partnership?

6 A. Again, I was trying to understand what the

7 capital accounts are, the agreement speaks for itself, but

8 the provisions that call for 20 percent return on all the

9 capital accounts, and I was never able to understand what

09:58 10 time was capital of any return, who had the capital, how

11 much capital was involved, which makes a significant

12 impact, I believe, on the amount of distributions on HCC.

13 Q. So you raised the issue of the capital accounts

14 also during the global meeting on the 3rd?

09:59 15 A. I believe I did.

16 Q. And what was told to you about how the waterfall

17 provisions or the capital account worked during the global

18 meeting on the 3rd?

19 MR. PETROCELLI: Vague and ambiguous.

09:59 20 THE WITNESS: I don't specifically recall. I

21 recall a comment to the effect of, there were no profits,

22 including that capital, that waterfall.

23 BY MS. HOLMES:

24 Q. Who said there were no profits?

09:59 25 A. I do not recall.

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1 Q. Do you recall whether the comment about no

2 profits meant that there were no profits to HCC, or no

3 profits to Lennar by virtue of the development at the

4 Bridges?

09:59 5 MR. PETROCELLI: Vague and ambiguous. Compound.

6 THE WITNESS: I don't know specifically. I'd

7 assume there was no profits to HCC.

8 BY MS. HOLMES:

9 Q. And why would you assume that?

09:59 10 A. I asked globally in the development, I believe

11 the answer at some point was that there were no profits in

12 the development.

13 Q. And no one at the April 3, 2009 meeting said

14 anything to you, though, about whether Lennar had realized

10:00 15 any profits by way of the Bridges development, correct?

16 A. I don't recall.

17 Q. You don't recall any comments about Lennar's

18 profit from the Bridges development?

19 A. I don't recall anybody saying anything about a

10:00 20 profit in the development.

21 Q. Well, my question specifically, though, is no one

22 during the April 3, 2009 meeting mentioned anything

23 specific about whether Lennar had realized any profits by

24 virtue of the Bridges development, is that true?

10:00 25 MR. PETROCELLI: Vague and ambiguous.

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1 THE WITNESS: I don't recall.  
2 BY MS. HOLMES:  
3 Q. Okay.  
4 You don't recall one way or the other?  
10:00 5 A. I don't recall one way or the other.  
6 Q. Did you mention during this discussion on April  
7 3, 2009, during this discussion about the waterfall  
8 provisions and Mr. Marsch's capital account, did you tell  
9 anyone what Mr. Mack had indicated to you about those  
10:01 10 issues?  
11 A. No.  
12 Q. Why not?  
13 A. I didn't see a need to.  
14 Q. Did you think it might help Mr. Marsch's case if  
10:01 15 you explained to them Mr. Mack's take on Mr. Marsch's  
16 capital account and the waterfall provisions?  
17 MR. PETROCELLI: Vague and ambiguous.  
18 MR. WILLIAMS: Vague and ambiguous.  
19 THE WITNESS: I don't know.  
10:01 20 BY MS. HOLMES:  
21 Q. My question, though, is in your mind on the 3rd  
22 of April, 2009, did you -- when you were hearing Lennar's  
23 position in the litigation on the capital account and the  
24 waterfall provisions, did you think it might be an  
10:01 25 opportunity for you to help them understand what Nick's

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1 position was?  
2 MR. PETROCELLI: Lacks foundation and vague and  
3 ambiguous.  
4 MR. WILLIAMS: Join.  
10:02 5 THE WITNESS: I believe I may have stated at the  
6 meeting that Nick's position was different. I did not  
7 specifically say how much different or what, but I  
8 remember saying that the position was different.  
9 BY MS. HOLMES:  
10:02 10 Q. And you do remember indicating that Nick's  
11 position with respect to the capital account was that he  
12 felt it was 37 and a half million, correct?  
13 A. Correct.  
14 Q. Did you tell anybody at the meeting whether  
10:02 15 Mr. Mack was able to verify Mr. Marsch's capital account  
16 being 37 and a half million?  
17 A. Did not mention Mr. Mack at all at the meeting.  
18 Q. Did you think as Mr. Marsch's partner during the  
19 April 3, 2009 meeting, that you could use that meeting to  
10:02 20 assist Mr. Marsch in his position in the litigation he had  
21 against Lennar?  
22 MR. PETROCELLI: Vague and ambiguous.  
23 THE WITNESS: By assist, if you mean trying to  
24 bring the parties to some sort of agreement, yes.  
10:03 25 BY MS. HOLMES:

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1 Q. What about assist in terms of trying to help  
2 Lennar understand Mr. Marsch's position in the litigation,  
3 did you think about doing that during that meeting?  
4 MR. PETROCELLI: Vague and ambiguous.  
10:03 5 THE WITNESS: I don't think I was trying to  
6 explain Mr. Marsch's position. But again, specific to  
7 your question, when the waterfall provisions came up, I do  
8 recall saying that our position at that point, KRMW, was  
9 different than Lennar's.  
10:03 10 BY MS. HOLMES:  
11 Q. But why, as his partner, and having an interest  
12 in the outcome of the Bridges litigation, wouldn't you  
13 have tried to get the Lennar people, during that meeting  
14 on Saturday in April, to understand Mr. Marsch's position?  
10:03 15 MR. WILLIAMS: Lacks foundation. Vague and  
16 ambiguous.  
17 MR. PETROCELLI: Join.  
18 THE WITNESS: It was on Friday, not Saturday.  
19 BY MS. HOLMES:  
10:04 20 Q. You're right, thank you, Friday. Why wouldn't  
21 you have wanted to help Mr. Marsch's position in the  
22 litigation since you were his partner?  
23 MR. WILLIAMS: Vague and ambiguous. Lacks  
24 foundation.  
10:04 25 MR. PETROCELLI: Join.

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1 THE WITNESS: I never said I did not want to help  
2 Mr. Marsch's position. I was never given information  
3 specific to what that was.  
4 BY MS. HOLMES:  
10:04 5 Q. Any information about Mr. Marsch's position in  
6 the litigation against Lennar, you were never given?  
7 A. Not any information, but specific -- if you're  
8 talking about the waterfall and Mr. Mack, I was never  
9 given specific information as to what the capital account  
10:04 10 number is, either from Mr. Marsch and/or Mr. Mack.  
11 Q. Okay. What did Mr. Mack tell you during your  
12 meetings with him about Nick's position in the litigation?  
13 MR. WILLIAMS: Vague and ambiguous.  
14 THE WITNESS: That he thought he had a -- he  
10:05 15 thought he had a good case based on what he had gone  
16 through, but there was significant amount of work to be  
17 done. And that he was not -- he had not been reengaged by  
18 Mr. Marsch to finish all the work.  
19 BY MS. HOLMES:  
10:05 20 Q. Did you ask any questions of Mr. Mack during any  
21 of your meetings with him?  
22 A. I did.  
23 Q. What did you ask him?  
24 A. Specific to what his assessment of Mr. Marsch's  
10:05 25 position, capital accounts.

12 (Pages 238 to 241)

<p style="text-align: right;">Page 242</p> <p>1 Q. Did he -- did Mr. Mack indicate to you anything  2 other than you've already testified to about that?  3 A. All he indicated he did not have enough  4 information to comment. He was not given all the records  10:05 5 that he needed. He had not finished his assessment. I  6 believe he had said Mr. Marsch had not paid -- had not  7 paid him and he was stopping work. And I was never able  8 to conclude one way or another what that amount was.  9 Q. The amount of the capital account?  10:06 10 A. The amount of the capital account and/or of the  11 waterfalls. But he did say that on a cursory look, that  12 it looked like Mr. Marsch had a significant position.  13 Q. Now, did Mr. Mack make that representation to you  14 in your first meeting with him or in his second meeting,  10:06 15 position, the representation that Mr. Marsch had a  16 significant position in the litigation?  17 A. I believe it was the first meeting.  18 Q. Did -- during the first meeting with Mr. Mack,  19 did he indicate to you that he was unable to reach any  10:06 20 conclusions yet as of that time?  21 A. No.  22 Q. He had reached conclusions?  23 A. He had not reached conclusions.  24 Q. Why did you feel comfortable funding on KBR  10:07 25 Opportunity Fund II before Mr. Mack had reached any of his</p>	<p style="text-align: right;">Page 244</p> <p>1 option?  2 A. Our investment in KBR and KRMW was an investment,  3 and our collateral was simply to make sure that our option  4 had some value to it.  10:08 5 Q. What else did you and Mr. Miller discuss at lunch  6 on Friday the 3rd of April?  7 A. Nothing else I can recall.  8 Q. What else do you recall telling him about  9 anything you had learned from Mr. Marsch about the  10:09 10 litigation against the Bridges?  11 MR. PETROCELLI: Objection. No foundation.  12 Vague and ambiguous.  13 THE WITNESS: Nothing more regarding the  14 litigation. I think he may have -- I think he may have  10:09 15 asked if I had been to the Palmilla property, and we may  16 have talked a little bit about Palmilla, but that's about  17 it.  18 BY MS. HOLMES:  19 Q. Did you tell Mr. Miller during lunch with him  10:09 20 that Mr. Mack had not yet reached his conclusions?  21 A. No.  22 Q. Did you tell Mr. Miller that Mr. Mack had to stop  23 work by virtue of nonpayment?  24 A. No.  10:09 25 Q. Did you tell anybody globally during the Friday</p>
<p style="text-align: right;">Page 243</p> <p>1 conclusions?  2 MR. WILLIAMS: Vague and ambiguous.  3 THE WITNESS: Twofold. One is we had additional  4 collateral for the exercise of our put option with regards  10:07 5 to the Palmilla properties.  6 Number two, I believed Mr. Marsch had a more  7 significant case with the McCrank litigation, which he had  8 represented to us at some point as Lennar having come to  9 the table to offer a settlement on that amount. And based  10:07 10 on conversations I had with Mr. Marsch, I believed that  11 that, the McCrank case, would have been settled by  12 November of 2008.  13 BY MS. HOLMES:  14 Q. Did you do anything before funding on KBR  10:08 15 Opportunity Fund II, to explore further Mr. Marsch's  16 settlement position in the McCrank litigation?  17 A. Other than conversations with Mr. Marsch, no.  18 Q. When you just mentioned the additional collateral  19 you had in the Palmilla property, that was in reference to  10:08 20 KBR Opportunity Fund II, right?  21 A. Correct. It was collateral that would enforce  22 our put option, enforce that he would timely pay a put  23 option.  24 Q. And on what basis do you understand that the  10:08 25 Palmilla property was only to collateralize the put</p>	<p style="text-align: right;">Page 245</p> <p>1 meeting that you had spoken with Mr. Mack in connection  2 with your partnership with Mr. Marsch?  3 A. No, I don't -- I did not recall -- I do not  4 recall bringing Mr. Mack's name in any way, shape or form  10:10 5 into the meeting.  6 Q. And regardless of whether you used Mr. Mack's  7 name, did you share during the Friday meeting that  8 Mr. Marsch wasn't yet finished with his -- the economic  9 analysis his side of the case was doing?  10:10 10 A. I don't recall, no.  11 Q. One way or the other, you don't recall?  12 A. I would say no.  13 Q. Okay.  14 What did you learn from Mr. Gordon during your  10:10 15 meetings with him?  16 MR. WILLIAMS: Vague and ambiguous.  17 THE WITNESS: Again, I don't understand the  18 question. Just a history of Mr. Marsch in terms of  19 litigation that had taken place prior to Mr. Marsch  10:11 20 acquiring the interest in the Bridges. And then following  21 a little bit through today.  22 BY MS. HOLMES:  23 Q. So Mr. Gordon explained to you the Williams  24 litigation?  10:11 25 A. He may have briefly walked -- our first meeting</p>

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<p style="text-align: right;">Page 246</p> <p>1 was a lunch meeting, and he walked through some of the 2 history behind Mr. Marsch's acquisition of the Bridges. 3 Q. And then he brought you up to speed on 4 Mr. Marsch's current litigation with the Bridges during 10:11 5 that lunch meeting? 6 A. At that point, yes. 7 Q. What else do you recall Mr. Gordon saying during 8 the lunch meeting? 9 A. I don't recall specifics. He was just talking 10:11 10 about the case. He was very enthusiastic about the case. 11 Q. Did you ask any questions of him? 12 A. Related to the case, I do not remember what 13 specific questions I asked. 14 Q. But you did ask questions? 10:12 15 A. I did. 16 Q. What about your second meeting with Mr. Gordon 17 during that evening after the -- after Judge Nevitt had 18 ruled on the judgment on the pleadings, what did 19 Mr. Gordon tell you during that meeting? 10:12 20 A. The specific question I had asked was whether or 21 not the case has been dismissed, and I believe he 22 answered, "Yes, it's been dismissed." 23 Q. Did he say anything more about the case, other 24 than that? 10:12 25 A. We sat around trying to figure out other avenues</p>	<p style="text-align: right;">Page 248</p> <p>1 stated in the agreement, which would have been closer to 2 4.7 million, and other additional nonmonetary, or 3 litigation and retained equity benefits. 4 Q. How many other times did Mr. Marsch offer to 10:14 5 allow you to -- or strike that. 6 Was Mr. Marsch offering to allow you to unwind 7 any of your either KBR Opportunity Fund I or II with him? 8 A. I think that's probably the true classification, 9 he was offering to unwind the \$3 million transaction. 10:14 10 Q. Which is KBR Opportunity Fund II? 11 A. Correct. 12 Q. And you declined? 13 A. Correct. 14 Q. How many other times did Mr. Marsch, after that 10:15 15 initial event, did Mr. Marsch offer to allow you to unwind 16 KBR Opportunity Fund II? 17 A. I don't recall. There may have been one or two 18 within that same week period. 19 Q. And each time you declined? 10:15 20 A. I did. 21 Q. What else did Mr. -- or strike that. 22 When Mr. Gordon indicated to you the McCrank case 23 had been dismissed, did you ask him to explain what that 24 meant? 10:15 25 A. I don't recall specifically.</p>
<p style="text-align: right;">Page 247</p> <p>1 to -- to discuss the possibilities, what happens next. 2 Q. Did you believe after your meeting with 3 Mr. Gordon that the McCrank litigation had been dismissed? 4 A. I did. 10:13 5 Q. And why is it that you did not immediately 6 exercise your put option? 7 A. I felt we wanted to give Mr. Marsch some 8 additional time to go through the Bridges litigation. 9 Q. Why? 10:13 10 A. Made a business decision. 11 Q. Based on what? 12 A. Mr. Marsch had communicated to me that because of 13 the dismissal, if we were uncomfortable with the 14 investment, he would refund our \$3 million. 10:13 15 Q. When did he make that representation to you the 16 first time? 17 A. I believe immediately after -- immediately after 18 the dismissal came down. 19 Q. Immediately after Judge Nevitt ruled on the 10:14 20 judgment on the pleadings, Mr. Marsch offered to 21 immediately pay your 3 million back? 22 A. Correct. 23 Q. And did you accept that? 24 A. No. Our interpretation was that \$3 million was 10:14 25 not due. If he was going to pay us, it would have been as</p>	<p style="text-align: right;">Page 249</p> <p>1 Q. Do you recall Mr. Gordon going through what you 2 could characterize as a dog-and-pony show as far as the 3 merits of the McCrank case going forward? 4 A. I don't understand that question, I'm sorry. 10:16 5 Q. Do you recall Mr. Gordon saying that the McCrank 6 case would be appealed and likely come back after the 7 appeal? 8 A. I believe he mentioned they were going to appeal. 9 Q. And did he talk to you about the strengths of the 10:16 10 appeal as he viewed them? 11 A. I'm trying to go back in memory. I think he may 12 have said it was a technicality under which it was 13 dismissed, or perhaps it was Mr. Marsch who said it was 14 under a technicality under which it was dismissed. 10:16 15 Q. Did you inquire any further about that 16 technicality? 17 A. I did. I don't recall specifically what that 18 was. 19 Q. And you don't recall what more you were told 10:17 20 about it? 21 A. I believe Mr. Marsch and/or -- I believe it was 22 Mr. Marsch who made mention that it was an oral agreement 23 versus a written agreement, and the judge could not 24 reconcile the two. And I'm paraphrasing, I don't recall 10:17 25 specifically.</p>

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1 Q. Sure. Do you recall Mr. Gordon telling you that  
 2 because there was going to be an appeal filed, the McCrank  
 3 litigation was not at a final dismissal stage?  
 4 A. No.  
 10:17 5 Q. Did Mr. Gordon explain to you -- do you recall  
 6 Mr. Gordon explaining to you that a dismissal of the lower  
 7 court by Judge Nevitt did not mean the case was over?  
 8 A. I do not recall having that conversation.  
 9 Q. In your mind, when you met with Mr. Gordon and  
 10:17 10 learned there would be an appeal filed, did you have an  
 11 understanding therefore that the McCrank case wasn't over?  
 12 A. No. My interpretation from our legal counsel was  
 13 that a dismissal with prejudice was flat out a dismissal  
 14 of the case.  
 10:18 15 Q. So your understanding, notwithstanding your  
 16 discussions with Mr. Gordon, were that even though the  
 17 case was going to be appealed, it was over?  
 18 A. Correct.  
 19 Q. And do you still have that understanding as you  
 10:18 20 sit here now?  
 21 A. Correct.  
 22 Q. Okay. So in your view, there is no possibility  
 23 that the McCrank case will ever go to trial?  
 24 MR. WILLIAMS: Lacks foundation. Calls for  
 10:18 25 speculation.

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1 THE WITNESS: I don't know whether it will go to  
 2 trial or not. But I do know that the document that was  
 3 presented to us, signed by Judge Nevitt, of a dismissal of  
 4 the case is a dismissal of the litigation.  
 10:18 5 BY MS. HOLMES:  
 6 Q. Did anybody --  
 7 A. The way I interpret it.  
 8 Q. Did anybody explain to you that that was a  
 9 dismissal on the trial court level, but that the case was  
 10:19 10 still alive?  
 11 A. No.  
 12 Q. What did you think was the status of the McCrank  
 13 case given that you knew it was on -- going to be  
 14 appealed?  
 10:19 15 MR. WILLIAMS: Vague as to time. Vague.  
 16 THE WITNESS: I don't understand the question. I  
 17 don't think I understand what you're trying to get to.  
 18 BY MS. HOLMES:  
 19 Q. Sure. At the point in time you had this evening  
 10:19 20 meeting with Mr. Gordon and he explained the McCrank case  
 21 would be appealed, what did you believe in your mind at  
 22 that point as far as the -- whether the McCrank case was  
 23 going to continue to -- to go on after Judge Nevitt issued  
 24 on his ruling on the judgment on the pleadings?  
 10:19 25 A. I believed that an appeal was going to take

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1 place. But for our purposes, a dismissal of the  
 2 litigation had -- that was the result. It was a dismissal  
 3 of the ongoing litigation. An appeal was eminent, and I  
 4 believe Mr. Gordon said that they were going to appeal.  
 10:20 5 Q. And --  
 6 A. And I think I asked, and he said this could be a  
 7 year or so delay.  
 8 Q. And did Mr. Gordon explain to you that after the  
 9 appeal, if Mr. Marsch is successful, that the case would  
 10:20 10 then come back and continue in the trial court where it  
 11 had left off?  
 12 A. No.  
 13 Q. Did you have any understanding in your mind as to  
 14 what would happen to Mr. Marsch's claims in the McCrank  
 10:20 15 case if he were successful on your appeal, at the time you  
 16 met with Mr. Gordon the second time?  
 17 A. If he were successful in the appeal?  
 18 Q. Yes.  
 19 A. If he were successful in the appeal, I would  
 10:20 20 benefit as well.  
 21 Q. How so?  
 22 A. Through the partnership interest that we have at  
 23 KRMW.  
 24 Q. Specifically, how would you benefit in your  
 10:21 25 partnership interest if Mr. Marsch were successful on his

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1 McCrank appeal?  
 2 A. I would have a 10 percent interest in litigation  
 3 awards.  
 4 Q. Now, your KBR Opportunity Fund I agreement is  
 10:21 5 still in effect, in your mind? Is it still a valid  
 6 agreement?  
 7 MR. WILLIAMS: Legal conclusion.  
 8 THE WITNESS: I'm not sure what you mean about  
 9 the KBR Opportunity Fund I. Are you talking about the  
 10:21 10 fund in general, is it still an operating entity?  
 11 BY MS. HOLMES:  
 12 Q. Do you still have your partnership agreement with  
 13 Mr. Marsch on the KBR Opportunity Fund I deal?  
 14 A. I do not have a partnership agreement with  
 10:21 15 Mr. Marsch on KBR Opportunity Fund I.  
 16 Q. What about KBR Opportunity Fund II, do you  
 17 consider yourself to still be in partnership with  
 18 Mr. Marsch on that deal?  
 19 MR. WILLIAMS: Calls for a legal conclusion.  
 10:22 20 THE WITNESS: KBR Opportunity Fund II is a  
 21 partner in KRMW, in which Mr. Marsch is under default.  
 22 BY MS. HOLMES:  
 23 Q. Are you still Mr. Marsch's partner?  
 24 MR. WILLIAMS: Calls for a legal conclusion.  
 10:22 25 THE WITNESS: Legally, I don't know what that

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1 would be. I know that he is under default.  
2 BY MS. HOLMES:  
3 Q. Have you ever taken the position in your mind  
4 that you are no longer Mr. Marsch's partner?  
10:22 5 A. I do not know my legal rights, but I do know  
6 Mr. Marsch is under default under that agreement. So  
7 whatever rights are given to me specific on that  
8 agreement, is what I believe my position is.  
9 Q. Well, what I'm asking for is your understanding  
10:23 10 about whether or not you're Mr. Marsch's partner though.  
11 Do you, as you sit here today, think you are his partner?  
12 Aside from any legal understanding, what is in your mind?  
13 Are you his partner?  
14 A. I believe we were partners. I do not know if him  
10:23 15 being in default changes that on a legal term. I do not  
16 know. We did start out as partners, if that's what you're  
17 asking.  
18 Q. And what point in time -- strike that.  
19 So as you sit here now, you don't know one way or  
10:23 20 the other whether you're his partner?  
21 A. I knew we were partners in the agreement. Again,  
22 I do not know my legal rights under the agreement, whether  
23 or not we are still partners or not being that he is in  
24 default.  
10:23 25 Q. Have you inquired of anybody as to whether you're

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1 still Mr. Marsch's partner?  
2 A. I have not.  
3 Q. Given that you have fiduciary obligations as a  
4 partner, is that something you want to know?  
10:24 5 MR. WILLIAMS: Calls for speculation.  
6 THE WITNESS: I don't know.  
7 BY MS. HOLMES:  
8 Q. At what point did you -- strike that.  
9 You don't know one way or the other if that's  
10:24 10 something you want to know, if you're his partner, you  
11 don't know if you want to know that?  
12 A. I never said I didn't want to know that. I said  
13 I didn't specifically ask that question.  
14 Q. Do you want to know, as you sit here now, if  
10:24 15 you're still Mr. Marsch's partner?  
16 A. Yes.  
17 Q. Why?  
18 A. Curiosity.  
19 Q. Nothing more?  
10:24 20 A. Again, our agreement speaks for itself. I have a  
21 financial investment with Mr. Marsch.  
22 Q. Collateralized by property in part, right?  
23 A. Put option which is collateralized by property,  
24 correct.  
10:25 25 Q. And how is it that an investment can be

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1 collateralized, can you explain that to me?  
2 A. Again, I don't believe the investment is  
3 collateralized, it is the put option which is  
4 collateralized.  
10:25 5 Q. And is it your testimony that the operating  
6 agreement you have with Mr. Marsch specifically says the  
7 Palmilla collateral only goes to the put option?  
8 MR. WILLIAMS: Best evidence.  
9 THE WITNESS: I don't have a copy of the  
10:25 10 agreement.  
11 BY MS. HOLMES:  
12 Q. Where are you getting that understanding?  
13 A. All along it's been my understanding.  
14 MR. PETROCELLI: Rhonda, is this a good time?  
10:25 15 MS. HOLMES: Yes. Let me just finish this line  
16 of questioning.  
17 Q. At what point in time did you have a question in  
18 your mind as to whether you were Mr. Marsch's partner?  
19 A. I considered myself a partner of Mr. Marsch until  
10:26 20 the date we put him in default.  
21 Q. Which was when?  
22 A. I believe we triggered a default yesterday.  
23 MS. HOLMES: We can take a break.  
24 THE VIDEOGRAPHER: We are off the record at 10:25  
10:26 25 a.m.

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1 (Recess taken.)  
2 THE VIDEOGRAPHER: We are back on the record at  
3 10:43 a.m.  
4 BY MS. HOLMES:  
10:43 5 Q. What else do you recall Mr. Gordon telling you  
6 about the McCrank litigation during that evening meeting  
7 right after the -- after Judge Nevitt issued his ruling on  
8 the judgment on the pleadings?  
9 A. I don't recall specific, just talking about  
10:44 10 future strategy.  
11 Q. On the case?  
12 A. On the case.  
13 Q. He explained to you what Mr. Marsch's future  
14 strategy is on the case going forward?  
10:44 15 A. It was just relating to the McCrank case, and I  
16 don't recall specific, but...  
17 Q. But generally that's what --  
18 A. Yeah.  
19 Q. Okay. At the start of the meeting on Friday, the  
10:44 20 3rd of April, who began speaking?  
21 A. Mr. Petrocelli.  
22 Q. What did he say the purpose of the meeting was?  
23 MR. PETROCELLI: No foundation.  
24 THE WITNESS: He called in talking about a --  
10:44 25 some settlement talks, but I believe the beginning it was

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1 more of a feeler for him to see if we had any involvement  
 2 with Mr. Minkow.  
 3 BY MS. HOLMES:  
 4 Q. And did you understand that for that Friday,  
 10:45 5 April 3rd meeting, that Mr. Miller had flown in from Miami  
 6 for the meeting?  
 7 A. I know he lives in Miami, I did not know if he  
 8 flew specifically for that meeting, but I -- I guess I  
 9 could assume he flew for the meeting.  
 10:45 10 Q. And Mr. Jaffe had come from where to attend the  
 11 meeting on Friday, April 3rd?  
 12 A. I believe from --  
 13 MR. PETROCELLI: No foundation.  
 14 THE WITNESS: I don't know, I believe from Laguna  
 10:45 15 Beach.  
 16 BY MS. HOLMES:  
 17 Q. And how did you gain that information?  
 18 A. Mr. Marsch had told me that he lives in Laguna  
 19 Beach.  
 10:45 20 Q. Did you know before meeting on Friday, April 3rd,  
 21 that -- did you know who you were going to be meeting  
 22 with?  
 23 A. Yes, I believe Mr. Blanchard relayed to me who  
 24 was going to be at the meeting.  
 10:46 25 Q. So you knew before you met on April 3rd that

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1 Mr. Petrocelli and Mr. Miller and Mr. Jaffe and  
 2 Mr. Beckwitt would attend the meeting?  
 3 A. Yes.  
 4 Q. Who did you understand Mr. Beckwitt to be?  
 10:46 5 A. I did not know who he was until the meeting.  
 6 Q. Who did he say he was at the meeting?  
 7 A. I don't recall specific, but I think he was at  
 8 some point working on some settlement talks with  
 9 Mr. Marsch.  
 10:46 10 Q. What did Mr. Beckwitt say his position was at  
 11 Lennar?  
 12 A. I don't recall.  
 13 Q. What do you understand it to be?  
 14 A. Top executive.  
 10:46 15 Q. What about Mr. Jaffe, what position does he hold  
 16 at Lennar?  
 17 A. I believe he's CEO but I don't recall.  
 18 Q. Did Mr. Jaffe, at the April 3rd meeting, say --  
 19 A. Excuse me, Mr. Miller you asked, correct?  
 10:46 20 Q. Mr. Jaffe.  
 21 A. Oh, Mr. Jaffe. I don't recall what his position  
 22 was, but I also understand him to be a high-up in the  
 23 Lennar Corporation.  
 24 Q. Did Mr. Jaffe represent to you what his position  
 10:47 25 was at Lennar during the April 3rd meeting?

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1 A. I don't know that he represented. I had his  
 2 card, but I did not -- I don't recall what his card said.  
 3 MR. PETROCELLI: And I have a continuing  
 4 objection as to form, Ms. Holmes, on the settlement  
 10:47 5 privileges.  
 6 BY MS. HOLMES:  
 7 Q. Mr. Jaffe gave you his card at the April 3rd  
 8 meeting?  
 9 A. He did.  
 10:47 10 Q. And did Mr. Beckwitt give you his card?  
 11 A. He did.  
 12 Q. Did Mr. Miller give you his card?  
 13 A. He did.  
 14 Q. Did you keep those cards?  
 10:47 15 A. I did.  
 16 Q. Did they all -- did Mr. Jaffe's card say that he  
 17 was -- he held some position at Lennar Corporation?  
 18 A. I don't recall.  
 19 Q. What did the other individuals from the meeting  
 10:48 20 talk about when you had lunch with Mr. Miller?  
 21 A. I don't know.  
 22 Q. Did Mr. Wamstad or Mr. Rivera relate to you what  
 23 was discussed in your absence when you were with  
 24 Mr. Miller?  
 10:48 25 MR. PETROCELLI: Assumes facts not in evidence.

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1 THE WITNESS: Neither Mr. Wamstad nor Mr. Rivera  
 2 were -- were with anybody from Lennar. We -- everybody  
 3 went in different ways after the meeting, lunch break.  
 4 BY MS. HOLMES:  
 10:48 5 Q. What did -- what did Mr. Miller -- I mean  
 6 Mr. Wamstad and Mr. Rivera do during the time you had  
 7 lunch with Mr. Miller?  
 8 A. Went back to the office.  
 9 Q. Why didn't they come with you for lunch?  
 10:48 10 A. They were busy. They had to get back to the  
 11 office.  
 12 Q. Did Mr. Miller tell you he had a personal  
 13 vendetta against Mr. Marsch?  
 14 A. No.  
 10:49 15 Q. Did you get the impression from speaking with  
 16 Mr. Miller he had a personal vendetta against Mr. Marsch?  
 17 A. No.  
 18 Q. When -- turning to the issue of when you were all  
 19 together on April 3rd, and you recall Mr. Petrocelli  
 10:49 20 holding up a document having to do with tax issues, do you  
 21 remember that?  
 22 MR. PETROCELLI: Objection. No foundation.  
 23 THE WITNESS: I don't think it was tax issues. I  
 24 believe it was a fax from an accountant.  
 10:49 25 BY MS. HOLMES:

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1 Q. And what did Mr. Petrocelli represent to you that  
 2 the subject matter of that document was?  
 3 MR. PETROCELLI: No foundation.  
 4 THE WITNESS: From memory, if I recall, it was a  
 10:49 5 document from Mr. Marsch's accountant, stating that Mr. --  
 6 I think Briarwood's capital account was zero.  
 7 BY MS. HOLMES:  
 8 Q. Did you look at that document?  
 9 A. I did not.  
 10:50 10 Q. Based on Mr. Petrocelli's representation of the  
 11 document he was holding during the April 3rd meeting, did  
 12 you draw any conclusions as to Mr. Marsch's capital  
 13 account?  
 14 MR. PETROCELLI: Objection. No foundation.  
 10:50 15 THE WITNESS: The only conclusion I drew was that  
 16 Lennar's interpretation of the capital account and  
 17 Mr. Marsch's interpretation of the capital account were  
 18 different.  
 19 BY MS. HOLMES:  
 10:50 20 Q. So did you not take -- you did not draw any  
 21 conclusions based on Mr. Petrocelli's representation of  
 22 the document he was holding during the April 3rd meeting,  
 23 as to whether or not Mr. Marsch had lied to you about the  
 24 value of his capital account?  
 10:50 25 MR. PETROCELLI: No foundation.

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1 THE WITNESS: Can you repeat the question,  
 2 please?  
 3 BY MS. HOLMES:  
 4 Q. Sure. Based on what Mr. Petrocelli said about  
 10:51 5 the document he was holding during the April 3rd meeting,  
 6 I take it you did not draw any conclusions that Mr. Marsch  
 7 was lying to you when he told you what he believed the  
 8 value of his capital account to be.  
 9 MR. PETROCELLI: No foundation. Vague and  
 10:51 10 ambiguous.  
 11 MR. WILLIAMS: Vague and ambiguous.  
 12 THE WITNESS: I'm not sure how to answer it. If  
 13 I can put in words, I think what was discussed is a  
 14 litigation award that Mr. Marsch had received the 37 and a  
 10:51 15 half million dollars, which -- of which only half of that  
 16 belonged to Mr. Marsch, the balance belonged to Lennar. I  
 17 think the treatment of whether that was capital and/or  
 18 something else, I don't remember the specific discussion  
 19 as to whether it was capital or not, but the discussions  
 10:51 20 were that, I believe Mr. Marsch's accountant specifically  
 21 put those awards not as capital.  
 22 BY MS. HOLMES:  
 23 Q. And what you just relayed to me was what you  
 24 learned from something Mr. Petrocelli said during the  
 10:52 25 April 3rd meeting?

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1 A. Which part?  
 2 Q. The explanation about -- that you just gave,  
 3 about your -- the tax -- or strike that.  
 4 The accountant's treatment of Mr. Marsch's  
 5 capital account and whether it belongs half and half to  
 6 Lennar, etcetera, that explanation you just gave.  
 7 MR. PETROCELLI: Vague and ambiguous. And lacks  
 8 foundation.  
 9 THE WITNESS: We had known before the fact that  
 10:52 10 50 percent of the litigation awards -- again, I think I  
 11 intermix the terms capital account with litigation award.  
 12 And I don't mean to do that. To me, they are almost the  
 13 same, although I know in a taxable form, they are not.  
 14 The 37 and a half million dollars that Mr. Marsch  
 15 reports all along as it being his contribution to the  
 16 partnership, I have learned before, through the agreement,  
 17 that that, in fact, was only half, that that  
 18 37-and-a-half-million-dollar litigation award was half for  
 19 Mr. Marsch and half due Lennar. How it was applied on a  
 10:53 20 taxable basis, I do not know. I simply recall  
 21 Mr. Petrocelli stating Mr. Marsch's accountant asked for  
 22 it not to be treated as capital account.  
 23 BY MS. HOLMES:  
 24 Q. What else did Mr. Petrocelli say about  
 10:53 25 Mr. Marsch's accountant?

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1 A. Nothing.  
 2 Q. What else did he say about Mr. Marsch's capital  
 3 account?  
 4 A. Nothing.  
 10:53 5 Q. Do you recall Mr. Petrocelli indicating to you  
 6 that he intended to use that document from Mr. Marsch's  
 7 accountant against Mr. Marsch in the Bridges litigation?  
 8 MR. PETROCELLI: Vague and ambiguous.  
 9 THE WITNESS: I don't recall him saying he would  
 10:54 10 use it against him, but I recall him saying that it was  
 11 evidence.  
 12 BY MS. HOLMES:  
 13 Q. What questions did you ask about that memo  
 14 Mr. Petrocelli represented to you as evidence?  
 10:54 15 MR. PETROCELLI: No foundation.  
 16 THE WITNESS: None.  
 17 BY MS. HOLMES:  
 18 Q. When Mr. Petrocelli stated to you that the  
 19 document he was holding during the April 3rd meeting from  
 20 the CPA was evidence, did he say that was evidence -- did  
 21 you understand that to be evidence that would be used in  
 22 the Bridges case?  
 23 MR. PETROCELLI: Vague and ambiguous.  
 24 THE WITNESS: Not one way or another.  
 10:54 25 BY MS. HOLMES:

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1 Q. What did you think he meant when he said  
2 evidence?  
3 A. Evidence, to me, that it was -- I think he was  
4 talking evidence to me, that it was a capital account that  
10:54 5 showed zero. That his accountant has stated for the  
6 record that his capital account was to be zero.  
7 Q. What did you understand was the purpose of  
8 Mr. Petrocelli telling you that?  
9 MR. PETROCELLI: No foundation.  
10:55 10 THE WITNESS: I don't know that I had a specific  
11 understanding.  
12 BY MS. HOLMES:  
13 Q. Now, when Mr. Marsch represented to you his view  
14 of the 37 and a half million, I believe you said he  
10:55 15 indicated to you that was his capital contribution to the  
16 Bridges development, is that right?  
17 A. Yes, Mr. Marsch called it capital contribution.  
18 Q. Did he ever call it anything else?  
19 MR. PETROCELLI: Vague and ambiguous.  
10:55 20 THE WITNESS: I don't recall.  
21 BY MS. HOLMES:  
22 Q. What was discussed during April 3rd about Lennar  
23 buying out Mr. Marsch's interest in KRMW?  
24 MR. PETROCELLI: No foundation.  
10:56 25 THE WITNESS: I don't believe there were any

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1 conversations about Mr. -- about Lennar buying out  
2 interest in KRMW.  
3 BY MS. HOLMES:  
4 Q. When did that subject first come up with Lennar?  
10:56 5 MR. PETROCELLI: No foundation.  
6 THE WITNESS: I believe at our meeting, we may  
7 have stated that we had a financial interest in KRMW, and  
8 we had exercised our put option, and wanted to get cashed  
9 out one way or another.  
10:56 10 BY MS. HOLMES:  
11 Q. So at the April 3rd meeting, you had indicated to  
12 Lennar a possibility of Lennar cashing out your put  
13 option?  
14 MR. PETROCELLI: Vague and ambiguous.  
10:56 15 THE WITNESS: I don't know if we talked about  
16 that. I may have thrown the fact that we were -- we had  
17 considered -- we had exercised our put option, and we  
18 would be open -- if Mr. Marsch were not in a position to  
19 exercise the put option, that we would be in a position to  
10:57 20 exercise remedies and try to liquidate our investment.  
21 BY MS. HOLMES:  
22 Q. And you included those -- you included in that  
23 that you would be willing to discuss with Lennar a  
24 possibility of them liquidating -- or strike that.  
10:57 25 In your representation at the April 3rd meeting,

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1 that you, if Mr. Marsch didn't exercise his put option,  
2 you would be looking to other means to liquidate his  
3 interest, you included in that exploring the possibility  
4 with Lennar, correct?  
10:57 5 A. It's not his interest, it would be our interest.  
6 Q. Okay.  
7 A. It would be KBR Opportunity Fund's II interest.  
8 Q. So in the Saturday -- the Friday, April 3rd  
9 meeting where you raised the issue of liquidating KBR's  
10:58 10 interest in Opportunity Fund II, you included in that the  
11 possibility of Lennar buying it out, correct?  
12 MR. PETROCELLI: Vague and ambiguous.  
13 THE WITNESS: I may have said that we would -- I  
14 think it was at that meeting I may have said that we would  
10:58 15 consider selling our KBR Opportunity Fund II to third  
16 parties.  
17 BY MS. HOLMES:  
18 Q. Including Lennar?  
19 A. Yes.  
10:58 20 Q. And when was the first time Lennar indicated to  
21 you a possible interest by Lennar in buying out  
22 Mr. Marsch's position in KBR Opportunity Fund II?  
23 MR. PETROCELLI: No foundation.  
24 THE WITNESS: I don't think they ever agreed, or  
10:58 25 had any discussions about Mr. Marsch being bought out. It

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1 was KBR Opportunity Fund II selling its interests.  
2 BY MS. HOLMES:  
3 Q. And when did Lennar first express to you their  
4 interest in buying your interest in KBR Opportunity Fund  
10:59 5 II?  
6 MR. PETROCELLI: No foundation.  
7 THE WITNESS: I believe several weeks after that  
8 meeting, after our repeated attempts to get some feedback  
9 from the settlement offer from Mr. Marsch, and numerous  
10:59 10 e-mails sent out to Mr. Marsch, I had asked Bob Blanchard  
11 to try to set up a meeting with Lennar to discuss the  
12 possibility of buying out the KBR Opportunity Fund II.  
13 BY MS. HOLMES:  
14 Q. Now, when you say it was -- it could have been  
10:59 15 several weeks after the April 3rd meeting, do you have any  
16 more specific estimate as to when you began to explore  
17 further with Lennar the possibility of Lennar buying out  
18 your interest in KBR Opportunity Fund II?  
19 A. Not specific.  
20 Q. Could it have been two weeks after the April 3rd  
11:00 21 meeting?  
22 A. Yeah.  
23 Q. Could it have been a week after?  
24 MR. PETROCELLI: Calls for speculation.  
11:00 25 THE WITNESS: Perhaps. I don't recall specific

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1 time. But it was after that meeting.  
 2 BY MS. HOLMES:  
 3 Q. You just don't know how long after the April 3rd  
 4 meeting it was before you began exploring with Lennar them  
 11:00 5 buying out your interest in KBR Opportunity Fund II?  
 6 A. Correct.  
 7 Q. Was it your understanding that as of April 3rd,  
 8 you had already exercised your put option?  
 9 A. Yes.  
 11:00 10 Q. How so?  
 11 A. We had sent a letter to Mr. Marsch dated March  
 12 25th.  
 13 Q. Do you remember telling Mr. Marsch on Saturday,  
 14 April 4th, that Mr. Petrocelli, quote, waved around that  
 11:01 15 document from the accountant?  
 16 A. I don't specifically know if I used the word  
 17 "waved around," but certainly showed me a document, yes, I  
 18 do.  
 19 Q. And do you recall telling Mr. Marsch on April 4th  
 11:01 20 that Mr. Petrocelli represented he would use that document  
 21 against Mr. Marsch in the Bridges litigation?  
 22 MR. PETROCELLI: Vague and ambiguous.  
 23 THE WITNESS: Don't recall. I may have.  
 24 BY MS. HOLMES:  
 11:01 25 Q. And do you recall that you may have also told

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1 Mr. Marsch on April 4th that you shared, during the April  
 2 3rd meeting, certain elements relating to the litigation  
 3 strategy you had learned from Mr. Marsch and his counsel?  
 4 MR. PETROCELLI: Vague and ambiguous and no  
 11:01 5 foundation.  
 6 THE WITNESS: Absolutely not. I did not share  
 7 any information with Lennar regarding litigation.  
 8 BY MS. HOLMES:  
 9 Q. Do you remember telling Mr. Marsch you shared  
 11:02 10 certain elements of Mr. Marsch's litigation strategy with  
 11 Lennar during the April 3rd meeting?  
 12 A. No.  
 13 Q. Did you, in fact, have this follow-up meeting yet  
 14 with anybody from Lennar to discuss them buying out your  
 11:02 15 interest in KBR Opportunity Fund II?  
 16 A. I did.  
 17 Q. When did that occur?  
 18 A. I don't have the specific date.  
 19 Q. With whom did you meet?  
 11:02 20 A. Mr. Petrocelli, Mr. Jaffe, Mr. Blanchard, and  
 21 myself.  
 22 Q. Where did that meeting take place?  
 23 A. At the Ritz-Carlton in Laguna Niguel.  
 24 Q. Did you make notes during that meeting?  
 11:02 25 A. I did not.

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1 Q. Did anybody?  
 2 A. Not to my knowledge.  
 3 Q. You don't recall seeing Mr. Jaffe make any notes  
 4 during the meeting you had in -- at the Ritz-Carlton?  
 11:03 5 A. Did not pay attention.  
 6 Q. Did you make any notes after that meeting?  
 7 A. No.  
 8 Q. How long did that meeting last?  
 9 A. Through lunchtime. Three hours. I don't recall  
 11:03 10 specifically.  
 11 Q. Approximately when did it start?  
 12 A. I believe it was 9:00 in the morning, 9:00 or  
 13 10:00. I don't recall, again, specifically.  
 14 Q. So 9:00 or 10:00 through lunchtime?  
 11:03 15 A. Um-hum.  
 16 Q. What was stated -- what was the purpose of the  
 17 meeting?  
 18 A. It was a discussion to see whether or not  
 19 Mr. Marsch had communicated back anything regarding the  
 11:03 20 settlement offer, and additionally, to see whether or not  
 21 Lennar had continued interest in exploring the possibility  
 22 of us selling KBR Opportunity Fund II.  
 23 Q. What did they tell you -- strike that.  
 24 Did Mr. Marsch, after April 3, 2009, ever  
 11:04 25 indicate to you he was interested in participating in the

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1 settlement negotiations that took place and ensued from  
 2 the April 3rd meeting?  
 3 A. No.  
 4 Q. What did Lennar people say during the  
 11:04 5 Ritz-Carlton meeting about their interest, if any, in  
 6 buying out your interest in KBR Opportunity Fund II?  
 7 MR. PETROCELLI: Same objection. This is subject  
 8 to the settlement privileges, and I'll make that  
 9 continuing one so I don't have to interrupt your  
 11:05 10 examination. And also on this one, vague, ambiguous, and  
 11 overbroad.  
 12 THE WITNESS: Repeat the question.  
 13 BY MS. HOLMES:  
 14 Q. Sure. What did either Mr. Petrocelli or  
 11:05 15 Mr. Jaffe say to you during the Ritz-Carlton meeting about  
 16 Lennar's interest in buying out your position in KBR  
 17 Opportunity Fund II?  
 18 MR. PETROCELLI: Assumes facts not in evidence  
 19 also.  
 11:05 20 THE WITNESS: I believe that they were open to  
 21 discussing the possibility.  
 22 BY MS. HOLMES:  
 23 Q. Who led that meeting?  
 24 MR. PETROCELLI: Assumes facts not in evidence.  
 11:05 25 THE WITNESS: It was almost a roundtable, I don't

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1 know that it was -- if there was a specific leader.  
2 BY MS. HOLMES:  
3 Q. Okay. What did Mr. Blanchard say during the  
4 Ritz-Carlton meeting?  
11:05 5 A. I don't recall specifically.  
6 Q. Do you recall in general anything he contributed  
7 to the meeting?  
8 A. Just stating the agreement, the KRMW agreement,  
9 and our rights under the agreement.  
11:06 10 Q. And what did Mr. Petrocelli say during the  
11 meeting?  
12 MR. PETROCELLI: Overbroad.  
13 THE WITNESS: I don't recall specifically.  
14 BY MS. HOLMES:  
11:06 15 Q. In general what were his contributions to the  
16 meeting, Mr. Petrocelli?  
17 MR. PETROCELLI: No foundation and overbroad.  
18 THE WITNESS: Yeah, I don't -- I don't recall  
19 specifically.  
11:06 20 BY MS. HOLMES:  
21 Q. Did the subject come up of the Bridges litigation  
22 during your Ritz-Carlton meeting?  
23 A. I don't believe so.  
24 Q. What did Mr. Jaffe say during the Ritz-Carlton  
11:06 25 meeting?

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1 MR. PETROCELLI: Overbroad.  
2 THE WITNESS: I don't recall specifically, other  
3 than me bringing out phases of our operating agreement and  
4 explaining what our position would be if we were to sell  
11:07 5 KBR Opportunity Fund II.  
6 BY MS. HOLMES:  
7 Q. What did you tell them about that issue?  
8 A. I had mentioned that we had exercised our put  
9 option, that Mr. Marsch had said he was not in a position  
11:07 10 to exercise the put, and then tried to determine the value  
11 of our investment.  
12 Q. What did you mean by tried to determine the value  
13 of your investment?  
14 A. Well, our investment had three components, it had  
11:07 15 a cash amount that was set -- I don't remember the  
16 specific amount, but it was around 4 million, 700 and  
17 change. And then there was an equity component, and a  
18 litigation component.  
19 Q. How did you, during April -- during the  
11:08 20 Ritz-Carlton meeting, try to understand the value of the  
21 litigation component?  
22 MR. PETROCELLI: Assumes facts not in evidence.  
23 BY MS. HOLMES:  
24 Q. Of the put option?  
11:08 25 MR. PETROCELLI: Same objection.

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1 THE WITNESS: I don't know that we put much  
2 weight on the litigation component.  
3 BY MS. HOLMES:  
4 Q. Why not?  
11:08 5 A. We didn't know whether the litigation was going  
6 to go one way or another. I have assumed and always  
7 assumed that if Mr. Marsch is not successful in  
8 litigation, that amount is zero. What I can substantiate  
9 is that we have an equity -- additional 10 percent equity  
11:08 10 in the Bridges, which has a minimum value of a million  
11 dollars to retain benefits, at least I believe that's what  
12 it's called under our operating agreement.  
13 Q. What value, at the time you entered into KBR  
14 Opportunity Fund II, did you put on the litigation  
11:09 15 component?  
16 A. I believe Mr. Marsch at some point had said that  
17 was north of, you know, \$50 million.  
18 Q. And is that the value you and your partners had  
19 in mind when you entered into KBR Opportunity Fund II?  
11:09 20 A. Sure.  
21 Q. And --  
22 A. Again, that would be as an upside.  
23 Q. Okay. And did you and your partners have in mind  
24 a realistic range in terms of what you might realize from  
11:09 25 the litigation as a result of your investment in KBR

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1 Opportunity Fund II?  
2 A. Only as related to us by Mr. Marsch.  
3 Q. And due diligence you did before lending on KBR  
4 Opportunity Fund II, correct?  
11:10 5 A. Correct. The litigation, if you're specifically  
6 talking about the litigation amount, that was purely based  
7 on a number thrown out by Mr. Marsch.  
8 Q. And has your valuation of the litigation  
9 component of KBR Opportunity Fund II ever changed in terms  
11:10 10 of it being -- the high amount being 50 million?  
11 MR. WILLIAMS: Assumes facts.  
12 THE WITNESS: Yes.  
13 BY MS. HOLMES:  
14 Q. When did it change?  
11:10 15 A. As soon as there was a dismissal in the Lakes  
16 litigation.  
17 Q. And what was the value of the litigation  
18 component at that point in time?  
19 A. I'm not sure I understand the question.  
11:10 20 Q. How did the valuation of your litigation  
21 component of KBR Opportunity Fund II change when Judge  
22 Nevitt issued his ruling on the judgment on the pleadings?  
23 A. Mr. Marsch had mentioned that, I believe, he was  
24 looking for somewhere in the neighborhood of 13 or \$15  
11:11 25 million on the McCrank litigation when that was dismissed,

<p style="text-align: right;">Page 278</p> <p>1 which would have entitled us to a million and a half 2 dollars. At that time, when that did not happen, we 3 believed the whole litigation component, both for the 4 McCrank and possibly as a result of losing the McCrank 11:11 5 litigation, the Bridges would be in jeopardy. 6 Q. And why did you view the Bridges case to be in 7 jeopardy as a result of the status of the McCrank case? 8 A. Mr. Marsch linked both of those together saying 9 that if they are successful in the McCrank litigation, 11:11 10 they would automatically come in and settle the Bridges. 11 Q. Didn't Mr. Marsch tell you immediately following 12 Judge Nevitt's ruling on the judgment on the pleadings, 13 that he viewed the extra time that would be allowed by 14 virtue of the appeal to be beneficial for the Bridges 11:11 15 case? 16 A. I don't recall specifically, but he may have. 17 Q. And didn't he also tell you that in reality, the 18 Bridges case is better to try to -- in his view, to try 19 the Bridges case before the McCrank case? 11:12 20 A. I think he made those assertions after the fact, 21 knowing that the litigation had been dismissed. I think 22 he was trying to appease the members of the LLC. 23 Q. Did you do anything to follow up on whether or 24 not it would be advantageous for the Bridges case to 11:12 25 precede the McCrank case, other than what Mr. Marsch had</p>	<p style="text-align: right;">Page 280</p> <p>1 A. If you're telling me was that a glimmer of hope 2 that the case would be retried under a different 3 situation, yes. 4 Q. Did anything anybody told you at the April 3rd 11:14 5 meeting give you any indication as to whether the McCrank 6 case would ever come back to the trial court? 7 A. No. 8 Q. Why -- why do you describe your thinking as a 9 glimmer of hope that the McCrank case will come back? 11:15 10 A. I understood that a dismissal with prejudice is 11 about as strong as a dismissal as exists. I'm not an 12 attorney, but I understand that that's as firm as a 13 dismissal of the case as there is. 14 Q. Even when there is an appeal, that's your 11:15 15 understanding? 16 A. A dismissal is a dismissal, an appeal, as my 17 understanding is, is an appeal. I don't have a dictionary 18 in front of me, but I believe there is a difference 19 between a dismissal and an appeal. 11:15 20 Q. Okay. Did anybody explain to you the difference 21 between a dismissal and a final dismissal? 22 A. No. 23 Q. As you sit here now, do you have any 24 understanding of the difference between the two? 11:15 25 MR. PETROCELLI: No foundation. Vague and</p>
<p style="text-align: right;">Page 279</p> <p>1 told you? 2 A. I don't believe so. Our expectation was that we 3 would be fully paid off on our investment after the 4 McCrank litigation. 11:12 5 Q. Do you recall learning of a case called Cistana 6 that had facts similar to the McCrank case that came back 7 to the trial court level after an appeal from a ruling by 8 Judge Nevitt to win a verdict in excess of 30 million? 9 A. I don't remember a specific case. I do remember 11:13 10 Mr. Marsch mentioning an attorney by the name of Harvey 11 Levine bringing a case, and I don't know if that's the 12 case you're referring to. 13 Q. When did you learn about this case of Harvey 14 Levine? 11:13 15 A. I don't recall. It may have been shortly after 16 the McCrank litigation. 17 Q. Shortly after learning Judge Nevitt had ruled as 18 he did on the judgment on the pleadings? 19 A. I don't recall specific times. 11:13 20 Q. Is that your best estimate, that it was shortly 21 after that? 22 A. No, I don't recall. 23 Q. And in your mind, did learning of the Harvey 24 Levine case have any impact on you in terms of what you 11:14 25 thought might happen in the future to the McCrank case?</p>	<p style="text-align: right;">Page 281</p> <p>1 ambiguous. 2 THE WITNESS: I don't know the legal terminology. 3 I know from my agreement it calls for a dismissal, and it 4 does not specify a final dismissal or anything of the sort 11:15 5 that I can recall. So dismissal, to me, layman's term is 6 a dismissal. 7 BY MS. HOLMES: 8 Q. Did you do any investigation whatsoever to 9 determine whether or not the McCrank case was finally 11:16 10 dismissed before exercising your put option? 11 A. I do not recall the word "finally dismissed." I 12 recall checking with counsel, and counsel relaying that a 13 dismissal with prejudice is a dismissal under our 14 agreement. 11:16 15 Q. Did you look at the terms of your -- strike that, 16 I'm going to get to that in a minute. 17 Returning to your Ritz-Carlton meeting, did 18 Lennar say it would be interested in pursuing further the 19 idea of it buying out your interest in KBR Opportunity 11:16 20 Fund II? 21 A. Yeah. 22 Q. Who specifically said that? 23 A. Mr. Jaffe. 24 Q. What did he say specifically about that issue, 11:17 25 Lennar buying out your interest in KBR Opportunity Fund</p>

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1 II?  
 2 A. I believe we had the discussion that Mr. Marsch  
 3 had, I believe, until May 25th to redeem his put option,  
 4 and if he was not in a position to redeem it at that  
 11:17 5 point, that Lennar would consider purchasing the  
 6 Opportunity Fund II.  
 7 Q. Did Mr. Jaffe tell you why Lennar would be  
 8 interested in purchasing Opportunity Fund II?  
 9 A. He didn't tell me, I just thought it made  
 11:17 10 economic sense for him.  
 11 Q. Why?  
 12 MR. WILLIAMS: Vague and ambiguous. Calls for  
 13 speculation.  
 14 THE WITNESS: Whether Mr. Marsch were successful  
 11:18 15 in litigation or not, the amounts would still have to be  
 16 paid. So if Lennar were to have bought out our investment  
 17 in KBR Opportunity Fund II, and Mr. Marsch were to have  
 18 successfully won litigation against Lennar, he would still  
 19 be required to pay KBR Opportunity Fund II.  
 11:18 20 BY MS. HOLMES:  
 21 Q. Have you had further discussions with any Lennar  
 22 people since you met with them at the Ritz-Carlton?  
 23 A. No.  
 24 Q. You haven't had any further discussions regarding  
 11:18 25 whether or not Mr. Marsch has exercised his put option,

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1 you didn't inform anybody at Lennar of that?  
 2 A. No.  
 3 Q. What do you intend to do next in terms of  
 4 pursuing Lennar's interest in it buying out your position  
 11:19 5 in Opportunity Fund II?  
 6 MR. WILLIAMS: Lacks foundation. Calls for  
 7 speculation.  
 8 THE WITNESS: I would expect to enforce all the  
 9 terms of our agreement.  
 11:19 10 BY MS. HOLMES:  
 11 Q. What do you mean by that?  
 12 A. I think it's specific.  
 13 Q. No, I mean with respect to Lennar.  
 14 A. Lennar would be one of many suitors who would  
 11:19 15 present the Opportunity Fund II.  
 16 Q. To who else are you presenting Opportunity Fund  
 17 II to, other than Lennar?  
 18 A. At this point we are retaining consultants to  
 19 help us determine other possible candidates.  
 11:19 20 Q. So thus far, you have not explored the  
 21 opportunity of any other candidates buying out your  
 22 interest in Opportunity Fund II other than Lennar?  
 23 A. Correct.  
 24 Q. How did you leave the meeting at the Ritz in  
 11:19 25 terms of what would happen next?

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1 MR. PETROCELLI: It's vague and ambiguous.  
 2 THE WITNESS: We were going to have Mr. Blanchard  
 3 propose some sort of agreement that would set out possible  
 4 buyout terms of KBR Opportunity Fund II, at which point I  
 11:20 5 believe it was decided by the attorneys to stop the  
 6 negotiations or discussions until after subpoenas.  
 7 BY MS. HOLMES:  
 8 Q. After what?  
 9 A. After depositions. Subpoenas, depositions.  
 11:20 10 Q. Okay. That's fine. So is it your understanding  
 11 that at the conclusion of your deposition, you will resume  
 12 discussions with Lennar about the possibility of them  
 13 buying out your interest in Opportunity Fund II?  
 14 MR. WILLIAMS: Calls for speculation. Lacks  
 11:20 15 foundation.  
 16 THE WITNESS: My goal would be, as it has been  
 17 for the better part of a month now, to get Mr. Marsch  
 18 together with Lennar and myself at a global settlement  
 19 meeting.  
 11:21 20 BY MS. HOLMES:  
 21 Q. Global settlement meaning what, to settle what?  
 22 A. To settle a global liquidation of Mr. Marsch's  
 23 interests, of our interest, basically KRMW's interest and  
 24 the dismissal of litigation against, I believe, Mr. Marsch  
 11:21 25 and/or Briarwood. I'm not sure who specifically is being

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1 sued in Florida.  
 2 Q. Now, how, in your mind, how would that benefit  
 3 Mr. Marsch to enter into a settlement under the terms you  
 4 just described?  
 11:21 5 A. Mr. Marsch has repeated to me all along that he  
 6 expects Lennar to settle at the courthouse steps. It has  
 7 never been Mr. Marsch's intention to go to trial. He has  
 8 repeatedly said that from day one. I believe his exact  
 9 quotes are, 99 percent of -- 98 percent of cases get  
 11:21 10 settled at the courthouse steps, 1 percent goes to trial,  
 11 1 percent gets settled in trial, and it was his assertion  
 12 that he would fall in the 98 percent.  
 13 Q. Is that something -- Mr. Marsch thought his case  
 14 would settle?  
 11:22 15 A. Yes.  
 16 Q. So again, how would it benefit Mr. Marsch to  
 17 enter into a settlement on the terms you understood that  
 18 were relayed to you by Lennar, and some global settlement,  
 19 how would that benefit Mr. Marsch?  
 11:22 20 MR. PETROCELLI: Vague and ambiguous.  
 21 MR. WILLIAMS: Join.  
 22 MR. PETROCELLI: No foundation.  
 23 THE WITNESS: I believe the difference here is  
 24 that Mr. Marsch is being sued in Florida. And this would  
 11:22 25 be a benefit to, in addition to settling the Bridges and

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1 McCrank -- or at least at this point the Bridges  
 2 litigation, to do away with possible litigation in Florida  
 3 for Mr. Marsch.  
 4 BY MS. HOLMES:  
 11:22 5 Q. What is the strength -- what are Mr. -- what is  
 6 the value of Lennar's case against Mr. Marsch in Florida?  
 7 MR. WILLIAMS: Lacks foundation. Calls for  
 8 speculation. Vague and ambiguous.  
 9 THE WITNESS: I don't know.  
 11:23 10 MR. PETROCELLI: Join.  
 11 BY MS. HOLMES:  
 12 Q. In fact, you don't have an understanding one way  
 13 or the other of the merits of either Mr. Marsch or  
 14 Lennar's position in the Florida litigation, right?  
 11:23 15 MR. WILLIAMS: Same objection.  
 16 THE WITNESS: Correct.  
 17 BY MS. HOLMES:  
 18 Q. Mr. Marsch never communicated to you that he  
 19 wanted you to be a negotiator to negotiate the -- a global  
 11:23 20 settlement as you've described, correct?  
 21 A. Correct.  
 22 Q. So in your mind, this global settlement would  
 23 entail what terms?  
 24 MR. PETROCELLI: Vague and ambiguous.  
 11:23 25 MR. WILLIAMS: I'm sorry, could I just have the

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1 question read back, I just missed the question, or if you  
 2 could repeat it. I'm sorry.  
 3 BY MS. HOLMES:  
 4 Q. On what terms were you thinking this global  
 11:23 5 settlement would settle?  
 6 MR. WILLIAMS: Vague and ambiguous. Calls for  
 7 speculation.  
 8 MR. PETROCELLI: Join.  
 9 THE WITNESS: It would be a financial offer,  
 11:24 10 which would relieve Mr. Marsch of certain obligations, pay  
 11 off -- at least pay off our interest in KRMW, and relieve  
 12 him from the liability of ongoing litigation in Florida.  
 13 BY MS. HOLMES:  
 14 Q. It would -- a global settlement would make you  
 11:24 15 whole on, as you understand it, on your agreement with  
 16 Mr. Marsch, right?  
 17 A. Correct.  
 18 Q. Would it make Mr. Marsch whole on his claims  
 19 against Lennar?  
 11:24 20 MR. WILLIAMS: Calls for speculation. Lacks  
 21 foundation.  
 22 THE WITNESS: I don't know.  
 23 BY MS. HOLMES:  
 24 Q. One way or the other, do you?  
 11:24 25 MR. PETROCELLI: Join in those objections.

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1 BY MS. HOLMES:  
 2 Q. Actually, I withdraw.  
 3 Do you have any understanding of what  
 4 Mr. Marsch's experts are opining to in the Bridges  
 11:24 5 litigation in terms of damages?  
 6 A. I do not.  
 7 THE VIDEOGRAPHER: Excuse me, Counsel, five  
 8 minutes.  
 9 MS. HOLMES: Thanks.  
 11:25 10 BY MS. HOLMES:  
 11 Q. What were the terms Mr. Blanchard put together  
 12 for Lennar to further explore Lennar's interest in buying  
 13 out your position in KBR Opportunity Fund II?  
 14 MR. PETROCELLI: Calls for -- no foundation.  
 11:25 15 MR. WILLIAMS: I'm just going to -- yeah, I don't  
 16 know if you're -- if you're talking about the Ritz-Carlton  
 17 meeting or conversations between Mr. Blanchard and  
 18 Mr. Kucinski in private where there would be an  
 19 attorney-client privilege.  
 11:25 20 BY MS. HOLMES:  
 21 Q. What I'm referring to is, Mr. Kucinski, you  
 22 mentioned a moment ago Mr. Blanchard came up with terms to  
 23 share with Lennar for -- to explore further Lennar's  
 24 interest in buying out your position in Opportunity Fund  
 11:25 25 II. What are those terms?

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1 MR. PETROCELLI: Objection. Misstates testimony.  
 2 Lacks foundation.  
 3 THE WITNESS: He did not come up with the terms,  
 4 I think he tried to cement some of the conversations that  
 11:25 5 we had with Mr. Jaffe.  
 6 BY MS. HOLMES:  
 7 Q. What do you mean by that, he tried to cement some  
 8 of the conversations?  
 9 A. Tried to put in writing some of the conversations  
 11:26 10 that we had regarding trying to buy the interest of KBR  
 11 Opportunity Fund II.  
 12 Q. So are these writings Mr. Blanchard sent to  
 13 people at Lennar?  
 14 MR. PETROCELLI: No foundation.  
 11:26 15 MR. WILLIAMS: Join.  
 16 THE WITNESS: I don't know.  
 17 BY MS. HOLMES:  
 18 Q. At the time you met with the Lennar people at the  
 19 Ritz-Carlton, you didn't know one way or the other whether  
 11:26 20 Mr. Marsch would ultimately exercise his put option with  
 21 you, right?  
 22 A. Other than verbally, he communicated he was not  
 23 in a position to do that.  
 24 Q. Well, aren't you under the impression, even as of  
 11:26 25 today, that Mr. Marsch is continuing open the possibility

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<p style="text-align: right;">Page 290</p> <p>1 of resolving his put option obligations with you? 2 A. No, Mr. Marsch is in default and has not 3 communicated to me either way. 4 Q. Are you aware your counsel approached Mr. Marsch 11:27 5 after the conclusion of your deposition on the 14th to see 6 if he could talk to him further? 7 A. Sure, we -- I had had discussions with one of 8 Mr. Marsch's advisor, Rick Mager, to see if there was a 9 possibility to come to a global settlement meeting which 11:27 10 would include ourselves and Lennar, and it's something 11 that I've been adamantly pursuing since April 3rd. 12 Q. Because that global settlement would benefit KBR, 13 wouldn't it? 14 A. It wouldn't benefit KBR, it would certainly 11:27 15 liquidate our investment speedier. 16 Q. It would make you whole? 17 MR. WILLIAMS: Calls for speculation. Lacks 18 foundation. 19 BY MS. HOLMES: 11:27 20 Q. Well, I -- withdraw. 21 Do you not want to be liquidated in your position 22 in Opportunity Fund II? 23 A. We exercised our option. I think that speaks for 24 itself. 11:28 25 Q. What does -- what do you mean, you do want to be</p>	<p style="text-align: right;">Page 292</p> <p>1 Q. Well, you said lie. What did he lie to you about 2 that the judges said? 3 A. I don't know specifically about what the judges 4 said. 11:29 5 Q. All right. 6 A. I don't recall specific. If you want to know 7 what he lied to me about, he lied to me about Mr. Minkow 8 having received a million or \$2 million offered to shut 9 down the site. 11:29 10 Q. What else did he lie to you about? 11 A. He lied about him having a 37-and-a-half- 12 million-dollar investment in the -- in the entity. 13 Q. What else did he lie about? 14 A. I believe he tried to deceive in terms of 11:30 15 litigations with DLA and Mr. Petrocelli and -- I don't 16 recall specific, but -- 17 Q. I need specifics. 18 A. I do not recall specifics. 19 Q. Well, when you say he lied, I need to know what 11:30 20 he lied about. So what else, other than Minkow and his 21 37-and-a-half-million-dollar investment? 22 THE VIDEOGRAPHER: Counsel. 23 MS. HOLMES: Thanks. 24 THE WITNESS: I do not have specifics. If you 11:30 25 want specifics, I could probably get in a room together</p>
<p style="text-align: right;">Page 291</p> <p>1 liquidated? 2 A. Yes, we do want to be liquidated. 3 Q. Earlier you had mentioned that -- some additional 4 lies you were under the impression Mr. Marsch told. What 11:28 5 lies did he tell you about a trial start date? 6 MR. PETROCELLI: It's vague and ambiguous. 7 THE WITNESS: I believe we have notes at our 8 office, but the Bridges start date, we had a January date, 9 then a February date, then a March date, then an April 11:28 10 date. 11 BY MS. HOLMES: 12 Q. Did those dates change possibly as a result of 13 things happening in the litigation, do you know one way or 14 the other? 11:28 15 A. I do not know. I know we repeatedly asked 16 Mr. Marsch for documentation. Some of which we rarely 17 got, and if we got some, it was very sporadic. 18 Q. Well, what proof do you have that the trial start 19 dates did not, in fact, change for the Bridges? 11:29 20 A. I do not. 21 Q. All right. What about things the judges said, 22 what misrepresentations are you alleging Mr. Marsch said 23 to you about that? 24 A. Again, I'm not sure the term is 11:29 25 "misrepresentation," it may be a global term.</p>	<p style="text-align: right;">Page 293</p> <p>1 with my partners and we can come up with specifics. I do 2 not recall any at this time. 3 MS. HOLMES: All right. We need to change the 4 tape. 11:30 5 THE VIDEOGRAPHER: Thank you. We're off the 6 record at 11:30 a.m. End of tape number 1. 7 (Recess taken.) 8 THE VIDEOGRAPHER: We are back on the record at 9 11:47 a.m., and the beginning of tape number 2. 11:47 10 MR. WILLIAMS: I just want to put on the record 11 that Mr. Kucinski, Mr. Blanchard, and I have all 12 rearranged our schedules to be here until 3:00 today. And 13 this deposition is now going to be two days long, and 14 which Mr. Kucinski has very little information about the 11:48 15 issues before the trial court, and so after 3:00 today 16 that's going to be the last time we're going to make him 17 available without an order of the court. So counsel can 18 all work together to finish up the questioning today in a 19 timely fashion. 11:48 20 BY MS. HOLMES: 21 Q. What consultants have you retained to explore any 22 additional suitors to buy out your interest in Opportunity 23 Fund II? 24 A. We have not retained any consultants yet. 11:48 25 Q. What consultants are you attempting to -- or</p>

25 (Pages 290 to 293)

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1 talking about retaining for the purpose of finding  
2 additional suitors to purchase your interest in  
3 Opportunity Fund II?  
4 A. We have put brokers, bankers, and other people on  
11:49 5 a short list, if you will.  
6 Q. What brokers and bankers?  
7 A. We've not specifically named any.  
8 Q. You're just thinking about doing that?  
9 A. Correct.  
11:49 10 Q. The theory you shared before the break that you  
11 allege came from Mr. Marsch -- or strike that.  
12 Before the break you talked about Mr. Marsch  
13 relaying to you that some high percentage of cases settle  
14 without going to trial. Was that -- is that what he  
11:49 15 shared with you, or did he share that he actually intended  
16 to settle his Bridges case on the courthouse steps?  
17 A. Both.  
18 Q. And during either of your two meetings with  
19 Lennar people, did you share with them Mr. Marsch's intent  
11:49 20 to settle the case on the courthouse steps?  
21 A. I don't believe so.  
22 Q. Well, wasn't that part of the impetus for you  
23 engaging in settlement discussions at the time you did,  
24 during the April 3rd meeting, that you thought that was  
11:50 25 the right time to settle based on what Mr. Marsch told

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1 you, right?  
2 A. Correct. But you asked me whether I had told  
3 Lennar, and I did not tell Lennar.  
4 Q. Do you know one way or the other whether you told  
11:50 5 Lennar that Mr. Marsch intended to settle his case on the  
6 courthouse steps?  
7 A. I did not tell Lennar.  
8 Q. I think we explored during the 14th, that you did  
9 not talk with Mr. Minkow, right?  
11:50 10 A. I did not.  
11 Q. Did you have in your mind when Mr. Petrocelli  
12 shared any information with you, that he, being adverse to  
13 Mr. Marsch in this litigation, might have an interest in  
14 shading the information he gave you to his favor?  
11:51 15 MR. PETROCELLI: Objection. No foundation.  
16 Vague and ambiguous.  
17 MR. WILLIAMS: Join.  
18 THE WITNESS: I certainly understood Lennar's  
19 side to be different than Nick's side.  
11:51 20 BY MS. HOLMES:  
21 Q. So yet you took Mr. Petrocelli's word for it when  
22 he said he did not relay -- or O'Melveny did not relay a  
23 settlement offer to Mr. Minkow to take down his website?  
24 MR. PETROCELLI: Objection. No foundation.  
11:51 25 THE WITNESS: Yes, and I can explain why. We had

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1 asked repeatedly of Mr. Marsch --  
2 BY MS. HOLMES:  
3 Q. Well, I haven't asked you to explain yet.  
4 A. Okay.  
11:51 5 Q. Did you make any attempts to get in touch with  
6 Mr. Minkow?  
7 A. No.  
8 Q. Have you gone to his websites?  
9 A. Yes.  
11:51 10 Q. For what purpose?  
11 A. To see what he's put up.  
12 Q. Is there anything Mr. Petrocelli shared with you  
13 during either of the two times you met with him that you  
14 did not believe?  
11:52 15 MR. PETROCELLI: Overbroad and no foundation.  
16 THE WITNESS: Not really.  
17 BY MS. HOLMES:  
18 Q. And the same is true for Mr. Miller, I take it,  
19 there is nothing he shared with you when you met with him  
11:52 20 that you don't believe?  
21 A. I don't believe, yeah. That is correct.  
22 Q. You believed everything he told you, Mr. Miller?  
23 MR. PETROCELLI: Overbroad.  
24 THE WITNESS: I don't have a doubt -- a reason to  
11:52 25 doubt what he said, whether it's true or not, I don't

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1 know.  
2 BY MS. HOLMES:  
3 Q. And it's your feeling that you don't have a  
4 doubt -- a reason to doubt anything Mr. Petrocelli shared  
11:52 5 with you, correct?  
6 A. Correct.  
7 Q. Now, why is it you don't believe Mr. Marsch when  
8 he tells you that Lennar has offered Mr. Minkow a sum of  
9 money to take down his website?  
11:52 10 A. Because he repeatedly said that there was  
11 apparently a settlement offer in writing. I think  
12 Mr. Petrocelli on prior testimony questioned me regarding  
13 some notes that were taken, and in the notes we had  
14 repeatedly requested of Mr. Marsch a copy of such letter,  
11:53 15 which was never produced.  
16 Q. Now, are you sure Mr. Marsch told you the offer  
17 was in writing, or is that something you inferred from  
18 what Mr. Marsch told you?  
19 A. Oh, no, I am pretty certain that it was in  
11:53 20 writing. If the memo, which was submitted as part of the  
21 subpoenaed evidence, was written by Taryn Germond in our  
22 office, it was something that everybody in the office  
23 would have heard based on a speakerphone conversation.  
24 Q. What memo are you talking about?  
11:53 25 A. I don't have the exhibit number. But

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1 Mr. Petrocelli had questioned me regarding memos of  
 2 meetings, minutes that we kept, after dismissal of the  
 3 McCrank litigation.  
 4 Q. But you're certain that Mr. Marsch represented to  
 11:54 5 you the offer was in writing?  
 6 A. Not looking at a document right now, if I had to  
 7 guess, I would say yes.  
 8 Q. Now, did you have in mind when you reached the  
 9 conclusion Mr. Marsch lied about the offer to Mr. Minkow,  
 11:54 10 that there could have been an offer made to Mr. Minkow  
 11 that was not by Lennar that was not in writing?  
 12 A. There could have been.  
 13 MS. HOLMES: I want to show you what we'll mark  
 14 as next in order, I'm sorry, I actually only brought two  
 11:54 15 copies. I don't know what the next order is. 678, which  
 16 has just been marked, is a copy of a declaration you  
 17 submitted in connection with a motion in the Bridges  
 18 litigation.  
 19 (Defendants' Exhibit 678 was marked  
 11:55 20 for identification.)  
 21 BY MS. HOLMES:  
 22 Q. Is that your signature on page 2 of the  
 23 declaration?  
 24 A. Yes.  
 11:55 25 Q. Who prepared that declaration?

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1 A. I believe it was Mr. Blanchard's office.  
 2 Q. How do you know?  
 3 A. It was his office who sent it to me for review  
 4 and signature.  
 11:55 5 Q. Do you know if the original draft was generated  
 6 by someone from Mr. Petrocelli's office?  
 7 A. I do not know.  
 8 Q. Did you make any changes to that declaration  
 9 before signing it?  
 11:55 10 A. I don't recall. There may have been a prior  
 11 version to this.  
 12 Q. What makes you think that?  
 13 A. I think I had a conversation with Mrs. Kope  
 14 regarding -- regarding the document. I don't quite  
 11:56 15 remember whether this was final or not.  
 16 Q. Did you recommend any changes to any draft of  
 17 that declaration?  
 18 A. I don't recall specifically.  
 19 Q. Did you read the declaration fully before signing  
 11:56 20 it?  
 21 A. I did.  
 22 Q. And you realized you were signing that under  
 23 penalty of perjury, correct?  
 24 A. Yes.  
 11:56 25 Q. Where are your notes that you took after the

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1 Fairbanks Ranch meeting, the notes you said that contained  
 2 the terms of a settlement you were going to relay to  
 3 Mr. Marsch?  
 4 A. It's a one sheet --  
 11:57 5 MR. WILLIAMS: Go ahead, I'm sorry.  
 6 THE WITNESS: One sheet of paper that's in my  
 7 office.  
 8 BY MS. HOLMES:  
 9 Q. By the end of the meeting you had with the Lennar  
 11:57 10 people in Fairbanks Ranch, you had in mind at that time  
 11 you wanted to pursue further with them your -- a  
 12 possibility of Lennar buying out your interest in  
 13 Opportunity Fund II, I think you said, correct?  
 14 A. Repeat the question, please.  
 11:57 15 Q. Sure. By the -- at least by the time the meeting  
 16 in Fairbanks ended on April 3rd, you had determined it  
 17 would be beneficial for you to explore further with Lennar  
 18 the subject of Lennar buying out your interest in  
 19 Opportunity Fund II, right?  
 11:58 20 A. Yes.  
 21 Q. And before going in to that April 3rd meeting,  
 22 did you also have in mind that you were going to explore  
 23 with Lennar the possibility of Lennar buying out your  
 24 interest in Opportunity Fund II?  
 11:58 25 A. I don't know that I was ready to explore. I was

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1 concerned that Mr. Marsch had not signed our  
 2 prenegotiation agreement, had not communicated with me,  
 3 and certainly I was looking at the possibility of feeling  
 4 Lennar out to see if they were possible suitors to  
 11:58 5 entertain a liquidation of our investment if that's the  
 6 way it went, yes.  
 7 Q. Now, at the beginning of that meeting, would  
 8 you -- how would you characterize the tone of the people  
 9 discussing things at that meeting?  
 11:59 10 A. What meeting?  
 11 Q. Thank you. The April 3rd.  
 12 A. I think it was a friendly -- started out as a  
 13 friendly, very friendly meeting, trying to -- where Lennar  
 14 had come to the table, specifically Mr. Miller, to explain  
 11:59 15 that, you know, they may have been portrayed as the bad  
 16 guys, but it would be worth our time to listen to their  
 17 side of the story.  
 18 Q. And did you, in fact, listen to their side of the  
 19 story?  
 11:59 20 A. I did.  
 21 Q. And were you satisfied or convinced by the end of  
 22 the April 3rd meeting that Lennar wasn't the bad guys?  
 23 MR. PETROCELLI: It's vague and ambiguous.  
 24 MR. WILLIAMS: Vague and ambiguous.  
 11:59 25 THE WITNESS: Again, if you want me to continue

<p style="text-align: right;">Page 302</p> <p>1 that conversation, it started out that way. Somewhere in  2 the middle of that, the first couple of hours, the  3 conversation turned negative where I believed we were  4 trying to be bridged with Mr. Minkow somehow. At which  12:00 5 point, you know, after probably a 40-minute discussion,  6 and an explanation from Mr. Petrocelli regarding the stock  7 price and the movement and the damage to Lennar, he said  8 it's time to take a break. And when we came back, I  9 believe it was my idea to try to be, again, amicable and  12:00 10 try to see if there is a common resolution to this as we  11 did not want to be party to any litigation.  12 BY MS. HOLMES:  13 Q. Did the issue during April 3rd come up as to  14 whether or not under the operating agreement for KRMW,  12:01 15 Mr. Marsch does or does not have standing to bring his  16 claims in the Bridges matter?  17 A. No.  18 Q. Has that issue ever come up in discussions with  19 KBR and Lennar people, the issue as to whether Marsch has  12:01 20 standing to sue under the operating agreement with you?  21 MR. PETROCELLI: Vague and ambiguous. Lacks  22 foundation.  23 THE WITNESS: I don't know what Lennar has  24 claimed. We have an agreement which Lennar had -- has a  12:01 25 copy of. And all I recall from our conversations are that</p>	<p style="text-align: right;">Page 304</p> <p>1 MR. PETROCELLI: I do.  2 BY MS. HOLMES:  3 Q. Do you recall writing that letter?  4 A. I do.  12:03 5 Q. And that's your signature, correct?  6 A. That is correct.  7 Q. When you met with Mr. Marsch on Saturday, April  8 4th, I think you stated that you recall observing he was  9 taking notes during your meeting, is that right?  12:04 10 A. Yes.  11 Q. And do you recall -- strike that.  12 Yeah, do you recall observing what Mr. Marsch was  13 writing when he was taking notes during your April 4th  14 meeting?  12:04 15 A. No.  16 Q. Do you recall asking him to change something that  17 was on one of his notes he was writing during your  18 Saturday, April 4th meeting?  19 A. I don't know if I recall asking him to change  12:04 20 anything, but I did specifically relay to him a number of  21 times that our -- we had an investment in KRMW and not a  22 loan.  23 Q. And you observed him writing in his notes  24 something about a loan and you wanted him to be clearer?  12:04 25 A. I did not observe him write anything, but he</p>
<p style="text-align: right;">Page 303</p> <p>1 we intend to enforce all the provisions of the agreement.  2 BY MS. HOLMES:  3 Q. Well, what I'm asking you is were there -- do you  4 recall discussions from anybody at Lennar where they  12:01 5 raised the issue of whether, under your operating  6 agreement with Mr. Marsch, Mr. Marsch has standing to  7 bring his claims against Lennar?  8 A. No.  9 MS. HOLMES: I'm not sure if this -- I think it  12:02 10 may have been marked already as Exhibit 587, but I'm going  11 to mark as next in order, an April 7, 2009 letter you  12 wrote to Mr. Marsch.  13 (Defendants' Exhibit 679 was marked  14 for identification.)  12:02 15 BY MS. HOLMES:  16 Q. Do you recall writing that letter?  17 MR. PETROCELLI: Ms. Holmes, what did you --  18 MS. HOLMES: Yeah, I should show counsel first,  19 sorry.  12:03 20 MR. PETROCELLI: I have the exhibits from last  21 week.  22 MS. HOLMES: I think you introduced to him  23 already, it was 587 and I'm remarking it as 679.  24 MR. PETROCELLI: Thanks. April 7?  12:03 25 MS. HOLMES: Yes, sir. Do you have it, Counsel?</p>	<p style="text-align: right;">Page 305</p> <p>1 repeated three or four times the fact that, "Well, you  2 guys made a loan. You guys made a loan."  3 And I said, "While you have a pen in hand and are  4 writing, please be specific about this and write for the  12:05 5 record, it is not a loan, it is an investment." Those are  6 my exact words.  7 Q. Do you recall specifically anything else you  8 shared with Mr. Marsch on April 4th other than relaying  9 the settlement offer?  12:05 10 A. I think specifically, we just -- I told him what  11 the meeting was about when we sat down, how, again,  12 Mr. Petrocelli had at some point brought us into the  13 picture as perhaps colluding with Mr. Minkow, and again,  14 the fact that I had lunch with Mr. Miller and then the  12:05 15 offer. I think that's pretty much it.  16 Q. Anything else you recall?  17 A. Not that I recall.  18 Q. Under your Opportunity Fund I agreement, you have  19 an interest reserve that is available for Mr. Marsch,  12:06 20 correct?  21 A. There is an interest reserve, yes.  22 Q. How much of that has Mr. Marsch drawn down on?  23 A. I don't have the document in front of me.  24 Q. Do you have an estimate in your mind?  12:06 25 A. I believe around \$110,000.</p>

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1 Q. And it's true that you have not allowed him  
 2 access to the balance or -- strike that.  
 3 The total interest reserve was 500,000, right?  
 4 A. I believe that's correct.  
 12:06 5 Q. And it's true you haven't allowed Mr. Marsch  
 6 access to the balance of that interest reserve?  
 7 A. I don't understand what you mean, I haven't  
 8 allowed.  
 9 Q. You won't allow him to take the approximately  
 12:06 10 \$390,000 left on it to use for purposes stated in the  
 11 loan.  
 12 A. We have specifically allowed the reserves to be  
 13 used under the terms of the agreement. I think Mr. Marsch  
 14 wanted to use those amounts different than what's stated  
 12:07 15 in the agreement. So yes, we did not allow him to change  
 16 unilaterally the agreement.  
 17 Q. So did you not allow Mr. Marsch to use the  
 18 balance of the reserves because you did not agree with the  
 19 way in which Mr. Marsch wanted to use the funds?  
 12:07 20 A. That's incorrect. We did not allow the use of  
 21 the reserves because they were not applicable in a way in  
 22 which Mr. Marsch wanted to use them.  
 23 Q. How did he want to use them?  
 24 A. He wanted to renegotiate the existing agreement  
 12:07 25 unilaterally.

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1 Q. Okay. So it's your testimony that in exchange  
 2 for drawing down the approximately \$390,000 left on the  
 3 interest reserve, Mr. Marsch wanted you to renegotiate the  
 4 Cabo loan agreement?  
 12:07 5 A. No. Mr. Marsch wanted to use the funds  
 6 unilaterally to which we said we would consider if he  
 7 wanted to enter into a prenegotiation agreement, and we  
 8 would at that point redo the agreement, which he declined.  
 9 Q. All right. So it's your testimony, then, that  
 12:08 10 you did not allow him access to the balance of the  
 11 interest reserve because he wouldn't enter into -- sign  
 12 the prenegotiation agreement?  
 13 A. No, I think you're mixing words.  
 14 MR. WILLIAMS: I'm going to object. It misstates  
 12:08 15 his testimony.  
 16 BY MS. HOLMES:  
 17 Q. Well, state for me clearly, then, the reason you  
 18 did not allow Mr. Marsch access to the balance left in the  
 19 interest reserve on the Cabo loan?  
 12:08 20 A. He was not allowed those reserves -- those  
 21 reserve amounts under the agreement.  
 22 Q. Why not? What provisions of the agreement don't  
 23 allow him to use them?  
 24 A. Do you have a copy of the agreement?  
 12:08 25 Q. I do.

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1 A. If you will show me, I will specifically show  
 2 you.  
 3 Q. I will. Do you know before we look at it?  
 4 A. I don't specifically recall.  
 12:09 5 Q. I will hand you what was already marked as  
 6 Exhibit 340, it's a document called Term Loan Agreement.  
 7 Is this the document you were referring to?  
 8 MR. PETROCELLI: What's the exhibit number?  
 9 MS. HOLMES: 340.  
 12:09 10 MR. PETROCELLI: That's at another deposition,  
 11 right?  
 12 MS. HOLMES: Yes, as a matter of fact, that was  
 13 entered in Mr. Marsch's deposition.  
 14 THE WITNESS: This agreement does not have --  
 12:10 15 BY MS. HOLMES:  
 16 Q. The agreement -- the term loan agreement I showed  
 17 you is for what?  
 18 A. It's one of the many agreements used on the  
 19 Palmilla property. I need to look at all the agreements  
 12:10 20 regarding the Palmilla note.  
 21 Q. All right. So it's your testimony, then, that  
 22 the provision you were just talking about that would not  
 23 allow access for Mr. Marsch to the balance of his interest  
 24 reserve is not in Exhibit 340?  
 12:10 25 A. Let me read, one second again.

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1 (Witness peruses document.)  
 2 MR. WILLIAMS: Take your time on that document.  
 3 If that's not it, that's not it.  
 4 THE WITNESS: Yeah, I believe this document  
 12:11 5 doesn't even refer to the \$500,000 deposit, as you call  
 6 it.  
 7 BY MS. HOLMES:  
 8 Q. All right. I'll show you what was also  
 9 previously marked as Exhibit 238, it's a secured  
 12:11 10 promissory note. Do want to see it? All right. I'm  
 11 going to hand it to you and ask you if that document is  
 12 the one you referred to that contains the provisions  
 13 regarding the reserve amount.  
 14 A. No, it is not.  
 12:11 15 Q. What is the name of the document you were  
 16 referring to?  
 17 A. I don't specifically recall. However, if you  
 18 were able to get copies from the last set of e-mails that  
 19 were delivered after the April 10th subpoenas, I think  
 12:12 20 they have those specific provisions in those documents.  
 21 So if you want me to review those, I know that they are in  
 22 there in the table in which we calculated the default.  
 23 Q. I'm going to get back to that. I'm going to  
 24 first --  
 12:12 25 MR. WILLIAMS: Let me get rid of this. You don't

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<p style="text-align: right;">Page 310</p> <p>1 want this anymore, do you? I think that's the original 2 678. I don't want to get it mixed up with something else. 3 BY MS. HOLMES: 4 Q. I'll hand you another document which is entitled 12:13 5 Security Agreement, and it has been marked previously as 6 Exhibit 193. 7 Do you recognize that document? 8 A. I do. 9 Q. What is it? 12:13 10 A. Obviously, it's a security agreement. 11 Q. For what? 12 A. KBR Opportunity Fund II. 13 Q. Did you sign that agreement? 14 A. It is. I did. 12:13 15 Q. All right. I am going to mark as exhibit -- I'm 16 sorry. 17 A. I was just going to say this copy is not signed. 18 Q. Right. You have signed it though? 19 A. I have signed, I don't know if this is the 12:13 20 specific copy, but this copy is not signed by me. 21 MS. HOLMES: I'm now going to mark and hand you 22 Exhibit 680, which is a letter dated May 20, 2009. 23 (Defendants' Exhibit 680 was marked 24 for identification.) 12:14 25 ///</p>	<p style="text-align: right;">Page 312</p> <p>1 that as of May 15th KBR has not been paid in full any 2 interest payments due and payable in the loan agreement 3 of -- 4 Q. You have to slow down. She's trying to keep up 12:16 5 with you. 6 A. Okay. 7 Q. Go ahead, you can read but just slowly. 8 A. Just references to a written notice dated May 15, 9 2009, where KBR Opportunity Fund I, LP notified Mr. Marsch 12:17 10 that CPI I and CPI II had gone under an event of default. 11 Q. Do you have an understanding as to when the trial 12 is to commence with Mr. Marsch and Lennar on the Bridges 13 matter? 14 A. The last I had heard from Mr. Marsch was it was 12:17 15 the 22nd or thereabouts of May. 16 Q. And did you learn of any other date from anyone 17 at Lennar that the trial would start at any other date? 18 A. I did not. I learned from my attorney that 19 Mr. Nevitt was going to be on vacation and had postponed 12:17 20 the trial for a couple weeks. 21 Q. When did you learn that Judge Nevitt postponed 22 the trial for a couple weeks, before or after you sent -- 23 A. No, I believe it's after you had a meeting with 24 Mr. Blanchard and Mr. Williams. 12:18 25 Q. Okay.</p>
<p style="text-align: right;">Page 311</p> <p>1 BY MS. HOLMES: 2 Q. Take a moment to review that. My first question 3 will be if that's your signature on the second page. 4 A. That is my signature. Let me review it for a 12:14 5 second. 6 (Witness peruses document.) 7 THE WITNESS: Okay. 8 BY MS. HOLMES: 9 Q. Did you draft that letter? 12:15 10 A. It was drafted in conjunction with legal counsel. 11 Q. Which portions of it did you draft? 12 A. I reviewed and made certain changes. I don't 13 recall specifically, but reviewed and made changes. 14 Q. Do you recall any of the changes you made? 12:15 15 A. I know for a fact I drafted the -- I believe the 16 dollar amounts. 17 Q. All right. You made changes to those amounts? 18 A. I did not, I think I set them. 19 Q. Any other changes or additions you made? 12:16 20 A. I don't recall specifically. 21 Q. Okay. Why did you -- or when did you decide to 22 send that letter to Mr. Marsch? 23 A. When he defaulted on the Palmilla loan. 24 Q. And on what date do you consider that to be? 12:16 25 A. I think we stated in here that, in the letter,</p>	<p style="text-align: right;">Page 313</p> <p>1 A. And the judge. 2 Q. So you learned that the trial was going to be 3 postponed for a couple of weeks after writing Exhibit 680? 4 A. I don't recall the specific dates, but I did 12:18 5 learn that the trial was going to be postponed after the 6 meeting that you had with -- with the judge, 7 Mr. Petrocelli, and Mr. Blanchard and Mr. Williams. 8 Q. Why did you feel it necessary to send that letter 9 now to Mr. Marsch on the eve of trial, in lieu of waiting 12:18 10 for some other date? 11 A. I should have sent it earlier. 12 Q. Why didn't you send it earlier? 13 A. Several reasons; one, I was out of town. I was 14 at the ICSC convention in Las Vegas. 12:19 15 Q. What other reasons? 16 A. I was hoping that we would be able to have 17 concluded depositions and entertain some global settlement 18 talks. 19 Q. Were you hoping to exert additional pressure on 12:19 20 Mr. Marsch by sending that letter to him now on the eve of 21 trial? 22 A. No. 23 Q. Back on the issue of this \$500,000 interest 24 reserve, just so I understand your testimony. In what way 12:19 25 did Mr. Marsch want to use the balance of his interest</p>

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1 reserve when he last came to you requesting it?  
2 A. He wanted to apply the reserve to months, to  
3 months not allowed to use his reserve.  
4 Q. What do you mean to months?  
12:20 5 A. To months. It's not two, the number 2, but, to  
6 months.  
7 Q. Right.  
8 A. I believe our provision calls for reserves being  
9 applied on a every-other-month basis for a certain amount  
12:20 10 of time, and what he wanted to do was change that  
11 structure.  
12 Q. What makes you think he wanted to change that  
13 structure?  
14 A. He -- both Mr. Marsch and his advisor at that  
12:20 15 point, Mr. Mager, communicated that to me, to myself and  
16 my partners.  
17 Q. Any other reason you're not lending to Mr. Marsch  
18 on the balance of the interest reserve?  
19 A. Currently, why we're not lending to him?  
12:20 20 Q. No, at the time Mr. Marsch was requesting it.  
21 A. We had no less than 10 times probably asked for a  
22 prenegotiation agreement so that we could entertain and  
23 have discussions with Mr. Marsch, all of which he refused.  
24 Q. Tell me about this prenegotiation agreement.  
12:21 25 Whose idea was that to send it to Mr. Marsch?

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1 A. It was ours. Primarily my partner who also  
2 happens to be an attorney, Shawn Wamstad.  
3 Q. What -- in general terms, what did the  
4 prenegotiation agreement purport to do?  
12:21 5 A. In general terms, just said that we can entertain  
6 discussions, and nothing discussed was binding unless it  
7 was in writing.  
8 Q. Did you ever represent to Mr. Marsch that having  
9 the prenegotiation agreement signed would allow you to  
12:21 10 speak, quote, frankly with him?  
11 A. Oh, many times, yes.  
12 Q. Was there any reason that before that you had  
13 never been able to speak frankly with Mr. Marsch without a  
14 prenegotiation agreement?  
12:22 15 A. I think after the fact Mr. Marsch tended to mince  
16 words and put words in my mouth that were not what we had  
17 discussed.  
18 Q. After what fact?  
19 A. I don't remember specific fact, but there were  
12:22 20 many times where we had discussions where he had thought  
21 that we had agreed on certain things, which we did not.  
22 So to prevent there being a misinterpretation of what was  
23 discussed, we thought that only something in writing  
24 should be -- should be set for the record.  
12:22 25 Q. Do you recall ever Mr. Marsch communicating to

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1 you in an e-mail that he had no -- that he questioned why  
2 it is that you didn't think you could speak frankly  
3 without the prenegotiation agreement?  
4 A. I do recall seeing an e-mail to that effect.  
12:23 5 Q. Why didn't you respond in an e-mail, in writing,  
6 the way you responded to me now, to his inquiry about the  
7 need for the prenegotiation agreement?  
8 A. I spoke with him -- not in person, it may have  
9 been in person, but certainly by phone.  
12:23 10 Q. For Opportunity Fund II, you have not loaned the  
11 full amount that was called for in that first -- in  
12 Opportunity Fund II, there was an amount of money  
13 available for Mr. Marsch that he has not entirely  
14 withdrawn. Is that correct?  
15 A. I think you are mischaracterizing it. Our  
16 investment was a two-part investment. And our first  
17 part -- the second part of the investment was contingent  
18 upon a successful outcome on the McCrank litigation.  
19 Q. What does KBR have to settle with Lennar in a  
12:24 20 global settlement?  
21 MR. PETROCELLI: No foundation.  
22 MR. WILLIAMS: Vague and ambiguous.  
23 THE WITNESS: KBR what?  
24 BY MS. HOLMES:  
12:24 25 Q. KBR Opportunity Fund I or II, does it have

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1 anything to settle with Lennar, any settlement agreement?  
2 MR. WILLIAMS: Same objection.  
3 THE WITNESS: We don't have any settlement direct  
4 with Lennar, no.  
12:24 5 BY MS. HOLMES:  
6 Q. Do you have anything you could settle with  
7 Lennar?  
8 A. No.  
9 Q. Do you know a gentleman named Glen Marshall?  
12:24 10 A. I do.  
11 Q. Who is he?  
12 A. He is a banker who -- I believe with First  
13 Pacific Bank.  
14 Q. Have you ever had any conversations with him?  
15 A. I have.  
16 Q. Do you bank with First Pacific Bank?  
17 A. I do not.  
18 Q. Have you ever?  
19 A. No.  
12:25 20 Q. How do you know Glen Marshall?  
21 A. Originally heard his name through Mr. Marsch and  
22 later met him in person at a golf outing.  
23 Q. Was Mr. Marsch associated with that golf outing?  
24 A. He was not.  
12:25 25 Q. And under what circumstances did Mr. Marsch

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1 introduce you to Glen Marshall?  
 2 A. Mr. Marsch was trying to obtain -- trying to  
 3 obtain either financing or partnership on a San Jacinto  
 4 property, which I believe is what -- First Pacific had a  
 12:25 5 security in, and had introduced us to Glen Marshall as a  
 6 possible partner and potential guarantor on the loan.  
 7 Q. And did First Pacific guarantee that loan?  
 8 A. First Pacific guarantee the loan?  
 9 Q. Yes.  
 12:26 10 A. I don't understand.  
 11 Q. You said that --  
 12 A. They are the lender.  
 13 Q. Okay. Do you -- how many conversations have you  
 14 had with Mr. Marshall?  
 12:26 15 A. Maybe four or five.  
 16 Q. Do you have any opinions as to whether  
 17 Mr. Marshall is someone who has integrity?  
 18 MR. WILLIAMS: Calls for speculation.  
 19 THE WITNESS: Yes.  
 12:26 20 BY MS. HOLMES:  
 21 Q. Do you have any reason to believe Mr. Marshall  
 22 would have any reason to lie about anything in this case?  
 23 MR. WILLIAMS: Calls for speculation. Lacks  
 24 foundation.  
 12:26 25 THE WITNESS: No.

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1 BY MS. HOLMES:  
 2 Q. Do you have any reason to believe Mr. Marshall  
 3 would have any reason to lie about anything you may have  
 4 told him?  
 12:26 5 A. No.  
 6 Q. Do you recall calling Mr. Marshall on April 27th?  
 7 A. I don't recall specific dates.  
 8 Q. But you called him sometime within the last --  
 9 well, let's ask it this way.  
 12:27 10 You called Mr. Marshall after you had your  
 11 Fairbanks Ranch meeting with the Lennar people, correct?  
 12 A. Yeah.  
 13 Q. For what purpose did you call him?  
 14 A. I think I was trying to get an update with  
 12:27 15 regards to Mr. Marsch.  
 16 Q. What do you mean an update, on what issue?  
 17 A. I had not heard back from Mr. Marsch, as I  
 18 understand the San Jacinto property was in bankruptcy, and  
 19 I believe either Briarwood -- and I believe it was either  
 12:27 20 Briarwood and/or Colony, I am not quite sure whom, was  
 21 additional guarantor under that loan.  
 22 Q. So what is it you wanted to know specifically  
 23 from Mr. Marshall?  
 24 A. Whether or not they had commenced foreclosure,  
 12:28 25 and exactly where they stood.

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1 Q. Why did you want to know that?  
 2 A. To see if that would affect my position with  
 3 regards to Briarwood.  
 4 Q. Why didn't you just ask Mr. Marsch that question?  
 12:28 5 A. Mr. Marsch had not communicated with me. I tried  
 6 on a number of occasions and had not heard back from him  
 7 for -- I don't believe I heard back from him -- maybe by  
 8 e-mail once -- since that April 4th meeting.  
 9 Q. Why didn't you try to gain the information  
 12:28 10 about -- for Pacific Bank through Rick Mager?  
 11 A. I did try calling Mr. Mager, who had informed me  
 12 he was also in depositions, he was not very familiar with  
 13 many different aspects of the case. I was able to touch  
 14 base with Mr. Mager sometime at the beginning of May I  
 15 think.  
 12:29 16 Q. And did you ask -- did you think about asking  
 17 Mr. Mager about Pacific Bank's -- First Pacific Bank's  
 18 status on San Jacinto?  
 19 A. No, but I do recall specifically now why I called  
 12:29 20 Mr. Marshall too. I remember reading an article in the  
 21 San Diego Daily Transcript referencing a write-off by  
 22 First Pacific, relating straight to that San Jacinto  
 23 property.  
 24 Q. What specifically about that article caused you  
 12:29 25 to want to call Mr. Marshall?

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1 A. Just wanted to confirm.  
 2 Q. And did he confirm it for you?  
 3 A. I don't recall.  
 4 Q. What did Mr. Marshall tell you about the status  
 12:29 5 of Mr. Marsch or Briarwood or Colony's guarantee of the  
 6 San Jacinto property?  
 7 A. I think I remember Mr. Marsch -- or excuse me,  
 8 Mr. Marshall, telling me that they had not yet -- I had  
 9 asked whether Mr. Marsch had signed a loan extension  
 12:30 10 already, and I believe that the answer was not yet.  
 11 Q. Do you recall anything else you asked of  
 12 Mr. Marshall during that conversation?  
 13 A. I don't recall specifically, no.  
 14 Q. In general, do you remember anything else?  
 12:30 15 A. No, I don't recall.  
 16 Q. Do you remember anything else Mr. Marshall told  
 17 you during your recent phone call with him?  
 18 A. That there was something he said that struck me,  
 19 and I don't recall exactly what that is today. It was a  
 12:30 20 conference call, and my partners were on the conference  
 21 call as well. I remember having a discussion after the  
 22 fact. I think he was -- what's the word I'm looking for,  
 23 perhaps agitated is more -- at my request.  
 24 Q. What request?  
 12:31 25 A. For information regarding Mr. Marsch.

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1 Q. You felt he was agitated with you for your asking  
2 him information about Mr. Marsch?  
3 A. I think so.  
4 Q. What gave you that impression?  
12:31 5 A. I think he said something to the extent as we  
6 intend to support Mr. Marsch -- I don't recall  
7 specifically, but I just remember the tone of the  
8 conversation at the end being different than any other  
9 time we've communicated.  
12:31 10 Q. The tone at the end was less cordial than you  
11 recall from any other time you communicated with  
12 Mr. Marshall?  
13 A. Yeah, I'd classify that.  
14 Q. Did you make notes of your phone call  
12:31 15 conversation with him?  
16 A. No.  
17 Q. Did you either of your partners?  
18 MR. WILLIAMS: Calls for speculation.  
19 THE WITNESS: I don't think so. I don't know. I  
12:31 20 don't think so.  
21 BY MS. HOLMES:  
22 Q. Did -- do you recall telling -- urging  
23 Mr. Marshall for the First Pacific Bank to file suit  
24 against Mr. Marsch?  
12:32 25 A. No.

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1 Q. Do you recall encouraging Mr. Marshall to file  
2 suit on behalf of First Pacific Bank against Mr. Marsch?  
3 A. No.  
4 Q. Did you ever raise the issue, during your recent  
12:32 5 conversation with Mr. Marshall, of First Pacific Bank  
6 filing suit against Mr. Marsch?  
7 A. No. However, I think -- I'm trying to recollect,  
8 I may have said to Mr. Marshall that we were contemplating  
9 filing suit against Mr. Marsch.  
12:32 10 Q. But it's your testimony today that you never  
11 mentioned to Mr. Marshall, or recommended to him, that he  
12 file suit on behalf of First Pacific Bank against  
13 Mr. Marsch?  
14 A. Never recommended. I may have inquired. Never  
12:32 15 recommended.  
16 Q. Do you recall inquiring of Mr. Marshall as to  
17 whether First Pacific Bank was going to sue Mr. Marsch?  
18 A. I don't recall. I may have asked.  
19 Q. But it's your testimony that you didn't tell him  
12:33 20 or suggest to him that First Pacific Bank should sue  
21 Mr. Marsch?  
22 A. Correct.  
23 Q. Do you know if Mr. Marshall took notes during  
24 your conversation?  
12:33 25 A. I don't know.

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1 Q. How long has Mr. Marsch been a client of First  
2 Pacific Bank?  
3 A. I don't know.  
4 Q. Did you or your -- or Mr. Wamstad, or Mr. Rivera  
12:33 5 inform Mr. Marshall that your two partners were also  
6 listening on the call?  
7 A. Yes.  
8 Q. You're sure?  
9 A. 100 percent.  
12:33 10 Q. So you're -- you are certain Mr. Marshall was  
11 aware that Mr. Rivera and Mr. Wamstad were both also on  
12 the call?  
13 A. I do not know if he was aware, I told him that we  
14 were on speakerphone in the conference room, yes.  
12:33 15 Q. So you told Mr. Marshall that you also had  
16 Mr. Wamstad and Mr. Rivera with you during that phone  
17 call?  
18 A. I don't specifically recall saying Mr. Wamstad  
19 and Mr. Rivera were there. I told him we're in a  
12:34 20 conference room on a speakerphone.  
21 Q. Did Mr. Wamstad or Mr. Rivera say anything during  
22 that phone conversation?  
23 A. I don't remember.  
24 Q. Do you recall any questions Mr. Marshall asked of  
12:34 25 either of them?

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1 A. I don't remember.  
2 Q. Is it true you were -- in trying to classify  
3 Opportunity Fund II as an investment versus a loan, you  
4 were concerned with the usury laws?  
12:34 5 A. No.  
6 Q. Usurious loans had nothing to do with why you  
7 wanted to characterize Opportunity Fund II as an  
8 investment versus a loan?  
9 A. Correct.  
12:35 10 MS. HOLMES: I'm going to first show to counsel  
11 and then mark as Exhibit 7 -- I'm sorry, 681, a letter  
12 dated April 12, 2008, from KBR to Mr. Marsch.  
13 If you guys want to take a look. I'm sorry I did  
14 not make copies. Show it to Mr. Petrocelli also.  
12:35 15 MR. PETROCELLI: We need to make copies of these  
16 exhibits at the end of this session so I can take them  
17 with me.  
18 MS. HOLMES: Sure.  
19 MR. PETROCELLI: Can I see that document, please?  
12:35 20 What's the exhibit number?  
21 MS. HOLMES: 681.  
22 (Defendants' Exhibit 681 was marked  
23 for identification.)  
24 BY MS. HOLMES:  
12:36 25 Q. Have you seen Exhibit 681 before today?

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1 A. No.  
 2 Q. Do you know -- Mr. Rivera -- or I mean  
 3 Mr. Wamstad never shared it with you?  
 4 A. He may have shared it with me. I don't recall.  
 12:36 5 Q. Do you know if it was sent to Mr. Marsch?  
 6 A. I don't know.  
 7 Q. Do you know if Mr. Rivera characterizes the  
 8 Opportunity Fund II deal as a loan?  
 9 MR. WILLIAMS: Vague as to time.  
 12:37 10 BY MS. HOLMES:  
 11 Q. Has Mr. -- let me ask you about Mr. Wamstad. Has  
 12 he ever characterized the Opportunity II Fund deal as a  
 13 loan versus an investment?  
 14 MR. WILLIAMS: Lacks foundation. Calls for  
 12:37 15 speculation.  
 16 THE WITNESS: In regards to the SJ Land deal?  
 17 BY MS. HOLMES:  
 18 Q. Opportunity Fund II.  
 19 A. This is nothing to do with Opportunity Fund II.  
 12:37 20 This talks about KBR Opportunity Fund I, and a possible  
 21 letter expression of interest regarding the SJ Land, LLC  
 22 transaction.  
 23 Q. What is your basis for that understanding of the  
 24 characterization of the letter?  
 12:38 25 A. I'm reading it. I'll specifically read to you.

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1 Q. You don't need to read that out loud. And today  
 2 is the first day you've seen it?  
 3 A. Yeah, I don't -- again, this is an unsigned copy.  
 4 You keep on referencing Mr. Rivera. This looks like it  
 12:38 5 was written by Mr. Wamstad. And it is probably one of  
 6 many documents that were entertained back and forth as a  
 7 possible expression of interest.  
 8 Q. In what?  
 9 A. In SJ Land, LLC.  
 12:38 10 Q. And a possible interest in --  
 11 A. This is the first time I'm reading it, so I'm not  
 12 sure if you're referring that this is a loan or  
 13 investment. So...  
 14 Q. Well, from page 1 you see that you're classified  
 12:39 15 as a lender, right? Left margin, right under the first  
 16 little paragraph there?  
 17 A. Yes.  
 18 Q. All right. On May 14th you didn't know what  
 19 percentages of KRMW were owned by whom. Have you looked  
 12:39 20 into that further and come to an understanding of who owns  
 21 what in that entity?  
 22 A. Not percentages. I think the operating agreement  
 23 speaks for itself. If you have a copy of it, I will read  
 24 through the exhibit.  
 12:39 25 Q. What I want to know is if you have an

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1 understanding as to what percentages are owned in that  
 2 entity by you and Mr. Rivera and Mr. Wamstad and  
 3 Mr. Marsch.  
 4 A. Neither myself, Mr. Rivera, or Mr. Wamstad are  
 12:40 5 partners. KBR Opportunity Fund -- or excuse me, are  
 6 members. KBR Opportunity Fund II is a limited liability  
 7 company in which -- excuse me, KRMW is a limited liability  
 8 company in which KBR Opportunity Fund II is -- has a  
 9 membership interest, and I believe Briarwood has a  
 12:40 10 membership interest.  
 11 Q. What percent interest does Mr. Rivera and Mr. --  
 12 do Mr. Rivera and Mr. Wamstad have in KBR's interest in  
 13 Opportunity Fund II?  
 14 A. Combined, probably less than -- about 40 percent.  
 12:40 15 Q. And you hold the other 60 percent ownership?  
 16 A. Correct.  
 17 Q. Do you recall submitting for Mr. Marsch, a  
 18 contract for him to sign that would allow Mr. Blanchard's  
 19 firm to offer advice on the Bridges and Lakes litigation?  
 12:41 20 A. I don't think it was advised, I think it was more  
 21 of a retained counsel.  
 22 Q. On the -- to counsel Mr. Marsch on the Lakes and  
 23 Bridges litigation?  
 24 A. Not to counsel Mr. Marsch, but to counsel KRMW on  
 12:41 25 the documents that were to be produced.

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1 Q. Documents produced for what?  
 2 A. Through trial. We are laymen in that regard and  
 3 we needed, as security in understanding the documentation,  
 4 an attorney to explain the documents that would be coming  
 12:41 5 through.  
 6 MR. WILLIAMS: Could you read back the entire  
 7 answer, please.  
 8 (Record read.)  
 9 MR. WILLIAMS: He may have misspoke on an entity.  
 12:42 10 I don't know. Could you read the answer back before.  
 11 (The record was read by the reporter  
 12 as follows:  
 13 "Question: To counsel Mr. Marsch  
 14 on the Lakes and Bridges litigation?  
 12:41 15 "Answer: Not to counsel  
 16 Mr. Marsch, but to counsel KRMW on the  
 17 documents that were to be produced.")  
 18 THE WITNESS: Yeah, I think we were really  
 19 referring to the Bridges, nothing to do with the Lakes.  
 12:42 20 BY MS. HOLMES:  
 21 Q. Okay. And for what reason would you --  
 22 MR. WILLIAMS: Can we just take one break, one  
 23 minute?  
 24 MS. HOLMES: Well, I have a question pending, you  
 12:43 25 really shouldn't, but go ahead.

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1 MR. WILLIAMS: There may be some confusion on  
2 entities.  
3 MS. HOLMES: Yeah.  
4 THE VIDEOGRAPHER: Off the record, counsel?  
12:43 5 MS. HOLMES: Yeah, we're off the record.  
6 THE VIDEOGRAPHER: We're off the record at 12:42  
7 p.m.  
8 (Recess taken.)  
9 THE VIDEOGRAPHER: We are back on the record at  
02:00 10 2:00 p.m.  
11 MR. WILLIAMS: And I'd just like to note for the  
12 record that we agreed to be back at 1:15 and it's now  
13 2:00.  
14 MS. HOLMES: I did come back in and check and  
02:01 15 nobody was in here but Mr. Petrocelli.  
16 MR. WILLIAMS: Well, we were -- Mr. Blanchard,  
17 Mr. Kucinski, and I have been sitting out in the lobby  
18 since 1:15.  
19 MS. HOLMES: Okay. Well, then, you were  
02:01 20 invisible because we didn't see you. It is what it is  
21 though.  
22 BY MS. HOLMES:  
23 Q. Going back to the ownership interest in KRMW, you  
24 had mentioned approximately 40 percent for Mr. Rivera and  
02:01 25 Mr. Wamstad, and then you hold the balance which is

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1 approximately 60 percent. Is that -- is that what you  
2 remember telling me?  
3 A. No, it's incorrect. We talked about KBR.  
4 Q. Thank you. In KBR, the interests you had  
02:01 5 testified to were Mr. Wamstad and Rivera approximately 40  
6 percent, and then you hold the balance of the 60 percent?  
7 A. Approximately.  
8 Q. Is that true for KBR Opportunity Fund I and II?  
9 A. No.  
02:02 10 Q. What are the interests held in KBR for KBR  
11 Opportunity Fund I?  
12 MR. WILLIAMS: You know, actually, I'm going to  
13 object as it's -- this is financial right to privacy for  
14 Mr. Kucinski and the other members. I mean if your  
02:02 15 clients were a member in any of those entities --  
16 MS. HOLMES: Great, thank you.  
17 Q. Go ahead.  
18 MR. WILLIAMS: Well, I'm instructing him not to  
19 answer.  
02:02 20 MS. HOLMES: On what basis?  
21 MR. WILLIAMS: On financial right to privacy. I  
22 don't know what the relevance of ownership interest in  
23 these entities have anything to do with the current  
24 litigation. So I'm going to instruct you not to answer.  
02:02 25 BY MS. HOLMES:

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1 Q. And you're going to follow that advice?  
2 MR. WILLIAMS: Well, I gave the objection, so  
3 yeah, I'm going to follow it.  
4 MS. HOLMES: Not you, I have to do this with the  
02:02 5 litigation --  
6 MR. WILLIAMS: You're looking at me.  
7 MS. HOLMES: No, I was looking at the witness.  
8 Q. You're going to follow that advice, right?  
9 A. On the advice of counsel, yes.  
02:02 10 Q. Mr. Litman you had mentioned during Volume I of  
11 your -- and it's been waived anyway, but we'll just visit  
12 that issue on the court -- with the court.  
13 Mr. Litman you had mentioned holds some interest  
14 in KBR, either Opportunity Fund I or II, is that right?  
02:03 15 A. That's correct.  
16 Q. And he's the one that introduced you to  
17 Mr. Marsch?  
18 A. Correct.  
19 Q. What interest does Mr. Litman -- what percentage  
02:03 20 interest in KBR Opportunity Fund I does Mr. Litman hold by  
21 virtue of his investment?  
22 A. I don't recall. Probably no more than 5 percent.  
23 Q. What about for Opportunity Fund II, would it be  
24 the same?  
02:03 25 A. Probably less.

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1 Q. What's your best estimate as to Mr. Litman's  
2 investment interest as a percentage ownership in  
3 Opportunity Fund II?  
4 A. In terms of dollars?  
02:04 5 Q. Percentage.  
6 A. I don't recall specifically. Must be around --  
7 I'm going to guess around \$50,000.  
8 Q. But as a percentage in terms of the balance  
9 against he and the other members, what percentage  
02:04 10 interest? Can you do better than 5 percent, or less than  
11 5 percent as an estimate?  
12 A. 2 percent.  
13 Q. Okay. All right. We'll have you back to finish  
14 that.  
02:04 15 A. May I clarify something?  
16 Q. Sure.  
17 A. I just want to clarify, before the break, I  
18 thought you were going to continue the question where you  
19 asked me about Mr. Blanchard's representation. He did not  
02:04 20 ever represent KRMW, he solely represented and continues  
21 to represent KBR Opportunity Fund I and II and KBR  
22 Opportunity Fund, LLC.  
23 Q. Do you recall telling Mr. Marshall during your  
24 phone conversation with him recently that Mr. Blanchard  
02:05 25 and Mr. Petrocelli had developed a close personal

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<p>1 relationship since your April 3, 2009 meeting?                  2 A. No.                  3 Q. Do you recall making any representations                  4 whatsoever to Mr. Marshall about the relationship between                  02:05 5 Mr. Blanchard and Mr. Petrocelli?                  6 A. No.                  7 Q. Have you ever told anyone that Mr. Blanchard and                  8 Mr. Petrocelli, since the April 3, 2009 meeting you had                  9 with the Lennar folks, that Mr. Blanchard and                  02:05 10 Mr. Petrocelli had become close personal friends?                  11 A. No.                  12 Q. Why is that funny?                  13 A. It just strikes me as funny.                  14 Q. Any particular reason? Would that be odd to you                  02:06 15 that they would become friends?                  16 MR. WILLIAMS: Calls for speculation.                  17 THE WITNESS: I think they probably met each                  18 other twice or three times with me, so to call anybody a                  19 close friend after three meetings is just funny.                  02:06 20 BY MS. HOLMES:                  21 Q. Now, do you understand Mr. Blanchard's area of                  22 practice to be in transactional work, and that he drafts                  23 and reviews documents and things of that nature?                  24 A. Yes.                  02:06 25 Q. Other than going to Mr. Blanchard, did you do any</p>	<p>1 prepared today.                  2 MR. PETROCELLI: Let me take a moment.                  3 MS. HOLMES: Sure. Sure.                  4 (Counsel peruses document.)                  02:09 5 MR. WILLIAMS: Just to clarify, looking at                  6 Exhibit 682, are you representing that's something that                  7 came from our office, Blanchard, Krasner &amp; French?                  8 MS. HOLMES: It may have. That's what I                  9 understood.                  02:09 10 MR. PETROCELLI: I don't have a copy of it.                  11 MS. HOLMES: Yeah, you'll have a copy. I did get                  12 additional --                  13 MR. PETROCELLI: No, no, no. I misspoke, I was                  14 misunderstood. I am looking at what I think are copies of                  02:09 15 the documents that were e-mailed to Gordon &amp; Holmes and to                  16 my firm, and it does not include that Exhibit 682.                  17 MS. HOLMES: All right. It may be something I                  18 got from a different source, then.                  19 MR. PETROCELLI: I just want to be clear though,                  02:09 20 that I may not have here in my folder every document that                  21 you e-mailed over, although that's what I was told I had.                  22 So it's possible it was included, but it doesn't appear to                  23 have been.                  24 (Defendants' Exhibit 682 was marked                  02:09 25 for identification.)</p>
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<p>1 additional research on the issue of what is meant by                  2 dismissal in the context of litigation?                  3 A. No.                  4 Q. Did Mr. -- did anybody make you aware there is a                  02:07 5 statute in California that defines what a dismissal is?                  6 A. No.                  7 Q. I'm going to hand you what we will mark as                  8 Exhibit 562.                  9 THE REPORTER: 682.                  02:07 10 MS. HOLMES: I was close. 682.                  11 Q. And I'll ask you -- I'll first tell you it was                  12 produced to me by your counsel, and then ask you to                  13 identify it.                  14 MR. PETROCELLI: Did you mean produced in                  02:07 15 response to the subpoena?                  16 MS. HOLMES: Not really. Mr. Blanchard just                  17 faxed over some documents that -- between the 14th and                  18 today.                  19 MR. PETROCELLI: I notice there is no Bates                  02:08 20 numbers.                  21 MS. HOLMES: Right.                  22 MR. PETROCELLI: What's the exhibit number?                  23 MS. HOLMES: 682.                  24 MR. PETROCELLI: Is this my copy?                  02:08 25 MS. HOLMES: Actually no. I'm sorry. I'm ill</p>	<p>1 BY MS. HOLMES:                  2 Q. Do you recognize Exhibit 682?                  3 A. No.                  4 Q. Did you review the contents of attachments sent                  02:10 5 to Mr. Marsch by Taryn Germond of your office ever?                  6 A. When you mean ever --                  7 Q. Yes.                  8 A. -- one of however many e-mails perhaps, yes.                  9 Q. And do you ever recall seeing as an attachment to                  02:10 10 any of Ms. Germond's e-mails to Mr. Marsch, a summary list                  11 of what she believed to be the documents produced to your                  12 office, to KBR by Mr. Marsch, in the context of your due                  13 diligence?                  14 A. No.                  02:10 15 Q. Looking at Exhibit 682, do you see on there                  16 anything that you believe that was not produced to KBR                  17 during the course of the due diligence it did when                  18 determining whether or not to do business with Mr. Marsch                  19 and Opportunity Fund I or II?                  02:11 20 MR. WILLIAMS: Objection. Vague and ambiguous.                  21 Calls for speculation.                  22 THE WITNESS: I don't know.                  23 BY MS. HOLMES:                  24 Q. You don't see anything that jumps out at you as                  02:11 25 something you did not get?</p>

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1 MR. WILLIAMS: Take your time and look at the  
2 document.  
3 THE WITNESS: That is a pretty lengthy list of  
4 due diligence. Reference HCC Investors FYE 2002, if you  
02:11 5 can tell me what that is, I can be specific. But unless  
6 you can tell me what HCC Investors FYE 2002, 2003, '04,  
7 '05, '06, 2000, '01, '99, '98, I can go on forever and  
8 there is no specifics here. There's just names.  
9 BY MS. HOLMES:  
02:11 10 Q. So anything in any -- anything there that you  
11 recognize -- that you recognize that you did not receive?  
12 MR. WILLIAMS: Well, same objection. The  
13 document is vague and ambiguous as to what each of  
14 these --  
02:12 15 MS. HOLMES: Thanks.  
16 MR. WILLIAMS: Well, it's vague and ambiguous.  
17 THE WITNESS: This just looks to me like some  
18 type of due diligence information. I don't know what it  
19 refers to.  
02:12 20 BY MS. HOLMES:  
21 Q. Right. My question is different than what it  
22 refers to. What I'm asking you is, do you recognize any  
23 document on that list that you did not receive in the  
24 course of your due diligence?  
02:12 25 A. I don't recall.

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1 MS. HOLMES: I'm going to mark as Exhibit 683, or  
2 cause to be marked the notice of your continued deposition  
3 today.  
4 (Defendants' Exhibit 683 was marked  
02:13 5 for identification.)  
6 BY MS. HOLMES:  
7 Q. Did you see a copy of that notice before today?  
8 A. Last night.  
9 Q. What did you do, if anything, to attempt to  
02:13 10 gather for today's deposition all of the categories of  
11 documents listed in Exhibit 683?  
12 A. Again, I was given this on my way out of my  
13 office, probably around 4:00 -- 3:00, 4:00 yesterday. So  
14 the answer is nothing. I didn't have a chance.  
02:14 15 Q. Earlier I had mentioned a case that you had  
16 become aware of that was similar to the Lakes and that  
17 Judge Nevitt handled it and it was reversed, Harvey Levine  
18 handled that case. Do you remember the case being called  
19 Cistara versus Irvine Company?  
02:14 20 A. I do not recall Cistara. I remember Irvine  
21 Company.  
22 Q. All right. How did -- and you learned about that  
23 case from Mr. Marsch?  
24 A. Correct.  
02:14 25 Q. Did you talk to Mr. Harvey Levine about the

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1 appeal in that case?  
2 A. No.  
3 MS. HOLMES: I will have marked as Exhibit 684,  
4 an e-mail you produced in this case, and it's from Nick  
02:15 5 Marsch to you, dated January 16, 2009. I'll have it  
6 marked before I show counsel.  
7 (Defendants' Exhibit 684 was marked  
8 for identification.)  
9 MS. HOLMES: And for the record, when we picked  
02:15 10 up the subpoenaed documents, there was a -- we also got a  
11 disk of various e-mails, that is one of the e-mails we  
12 produced from your disk, to be more clear.  
13 (Counsel peruses document.)  
14 MR. PETROCELLI: Thank you.  
02:17 15 BY MS. HOLMES:  
16 Q. Do you remember receiving that e-mail?  
17 A. Not specifically.  
18 Q. Do you generally recall receiving an e-mail with  
19 the contents of that -- of Exhibit 684?  
02:17 20 A. Very well could have. I don't specifically  
21 remember, no.  
22 Q. Well, we had talked earlier about you learning  
23 from Mr. Marsch that he viewed certain aspects of the  
24 McCrank appeal as being beneficial to the Bridges cases --  
02:17 25 case. Was the source of it potentially, in your mind,

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1 Exhibit 684?  
2 A. Sure, could have been.  
3 Q. Did you inquire about -- of Mr. Marsch  
4 anything -- of anything in Exhibit 684?  
02:18 5 A. I don't recall.  
6 MS. HOLMES: I've now marked as Exhibit 685 an  
7 e-mail from you to Stuart Miller and Jon Jaffe, carbon  
8 copied to Mistrs Rivera, Wamstad, and Blanchard. And it  
9 says, "Thank you for taking the time to meet with us  
02:18 10 today. I believe our meeting was very productive and I  
11 will be meeting with Nick tomorrow in hopes of coming to a  
12 mutually satisfactory agreement. I look forward to seeing  
13 you all soon. Best regards, Michel." Sent from your  
14 Verizon wireless BlackBerry.  
02:18 15 (Defendants' Exhibit 685 was marked  
16 for identification.)  
17 BY MS. HOLMES:  
18 Q. Do you recall sending that?  
19 A. I do.  
02:18 20 Q. All right. I read it verbatim.  
21 MR. PETROCELLI: It was 684?  
22 MS. HOLMES: It was 685.  
23 MR. PETROCELLI: I don't know if you read the  
24 cc's.  
02:19 25 MS. HOLMES: I did.

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1 BY MS. HOLMES:  
 2 Q. What did you mean by mutually agreeable?  
 3 A. I think it's mutually satisfactory.  
 4 Q. Right. What did you mean by that? To who?  
 02:19 5 A. To some sort of settlement, all parties involved.  
 6 Q. Including?  
 7 A. Mr. Marsch.  
 8 Q. How many times did you send a text or an e-mail  
 9 to either Mr. Miller or Mr. Jaffe?  
 02:19 10 A. I believe this was the only e-mail that was ever  
 11 sent out. As a matter of fact, I know that this e-mail  
 12 did not get to Mr. Jaffe. If you recall, his e-mail is  
 13 spelled incorrectly. The e-mail address I was -- I sent  
 14 to was incorrect.  
 02:20 15 Q. How did you learn that?  
 16 A. On a follow-up conversation, I may have asked to  
 17 see if he had -- I didn't hear a reply, I think Mr. Miller  
 18 may have replied, "thank you," and I didn't hear a reply  
 19 from anybody else.  
 02:20 20 Q. Go ahead.  
 21 A. Again, I just remember Mr. Jaffe saying that he  
 22 had not received a copy of that.  
 23 Q. That was during your Ritz-Carlton meeting?  
 24 A. No, I think that was before that.  
 02:20 25 Q. How many phone conversations have you had with

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1 Mr. Jaffe?  
 2 A. Probably two or three.  
 3 Q. When did -- how many of those were before you met  
 4 at the Ritz-Carlton?  
 02:20 5 A. All of them.  
 6 Q. And were they all after you met with him on April  
 7 3rd?  
 8 A. Yes.  
 9 Q. When was the first conversation you had with  
 02:21 10 Mr. Jaffe on the phone?  
 11 A. Probably the Monday or Tuesday following our  
 12 meeting.  
 13 Q. What was discussed?  
 14 A. Just simply if I had presented the offer to  
 02:21 15 Mr. Marsch.  
 16 Q. And what did you tell him about it?  
 17 A. That I did.  
 18 Q. Anything else?  
 19 A. What was his reaction.  
 02:21 20 Q. What did you tell Mr. Jaffe?  
 21 A. No reaction. Mr. Marsch indicated that he would  
 22 get back to me.  
 23 Q. When was the next conversation with Mr. Jaffe?  
 24 A. Probably a week-plus after that.  
 02:21 25 Q. And what was discussed?

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1 A. Same, follow up to see if I've had conversations  
 2 with Mr. Marsch.  
 3 Q. And who called, did Mr. Jaffe call you?  
 4 A. I think I may have called him, and then he called  
 02:22 5 me, or vice versa. I don't recall. I think we had each  
 6 called the other once.  
 7 Q. Did you have anything new to report to Mr. Jaffe  
 8 in that second phone call?  
 9 A. I think that I may have indicated that we were --  
 02:22 10 Mr. Marsch had asked to get to a mediated meeting, and  
 11 that we were trying to mediate with Mr. Marsch, and we're  
 12 going to try to get him to a tri-party mediation  
 13 agreement.  
 14 Q. Anything else that was discussed?  
 02:22 15 A. No.  
 16 Q. What did Mr. Jaffe have to say about you going to  
 17 a mediated mediation with Mr. Marsch?  
 18 A. I don't think he had any comment. I think we  
 19 just -- I told him I would let him know what happens.  
 02:22 20 Q. During the first or second phone call with  
 21 Mr. Jaffe that you relayed here, did you discuss the issue  
 22 of Lennar potentially buying out your interest in  
 23 Opportunity Fund II?  
 24 A. I think I may have had conversations to him  
 02:23 25 about, you know, if there is still an interest, I'd like

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1 to see if we could discuss the possibility of selling KBR  
 2 Opportunity Fund II.  
 3 Q. Did anybody from Lennar ever submit a written  
 4 proposal to you of the terms under which they would  
 02:23 5 potentially explore purchasing your interest in  
 6 Opportunity Fund II?  
 7 A. No.  
 8 Q. When was the third discussion, phone discussion  
 9 with Mr. Jaffe?  
 02:23 10 A. Maybe another week after that.  
 11 Q. And what was discussed?  
 12 A. Trying to set up a meeting to discuss the  
 13 possibility of a KBR Opportunity Fund II purchase.  
 14 Q. Approximately when did that phone call occur?  
 02:23 15 A. I don't recall specifically, probably the first  
 16 part of May.  
 17 Q. Was it discussed who would attend that meeting?  
 18 A. I think we simply proposed Mr. Jaffe, myself, and  
 19 the attorneys.  
 02:24 20 Q. Did you ever have any phone conversations with  
 21 Mr. Miller?  
 22 A. Immediately following the e-mail that you  
 23 referenced.  
 24 Q. And tell me about that phone conversation. What  
 02:24 25 was discussed?

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1 A. Just thank you, it was a -- nice to meet you. I  
 2 appreciate you coming down.  
 3 Q. You called him?  
 4 A. I don't recall.  
 02:25 5 MS. HOLMES: I'll show you what I will mark now  
 6 as Exhibit 686. It is another e-mail I printed from your  
 7 disk. It's from you to Misters Wamstad, Rivera, and to  
 8 Taryn at KBR Group, "subject: Bridges." The cover page  
 9 says Bridges "Deal Points." Then there are two pages  
 02:25 10 after that.  
 11 (Defendants' Exhibit 686 was marked  
 12 for identification.)  
 13 MR. PETROCELLI: Again, these are all the ones  
 14 that were e-mailed directly to counsel, Ms. Holmes?  
 02:26 15 MS. HOLMES: That was off of a disk that we took  
 16 in response to your subpoena. Made available to us.  
 17 BY MS. HOLMES:  
 18 Q. Is that your handwriting?  
 19 A. It is.  
 02:27 20 Q. What are those -- what are those notes?  
 21 A. This looks like notes of what we would consider  
 22 for the Bridges. It's simply a point of reference.  
 23 Q. What do you mean consider for the Bridges, to do  
 24 what?  
 02:27 25 A. For investment in the Bridges.

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1 Q. When did you make those notes?  
 2 A. I don't recall.  
 3 Q. What purpose did you make those notes? Was this  
 4 before you did the second Opportunity Fund?  
 02:28 5 A. Yes. This was to -- I believe this was to try  
 6 and put on paper something with my partners as to what the  
 7 potential transaction would look like.  
 8 Q. And do your written notes contain the essential  
 9 terms that ended up being Opportunity Fund II?  
 02:28 10 MR. WILLIAMS: Objection. Vague. Ambiguous.  
 11 THE WITNESS: No, not fully.  
 12 BY MS. HOLMES:  
 13 Q. What's different?  
 14 A. For starters, this was a loan and it was  
 02:28 15 structured as an investment.  
 16 Q. You mean your written notes call it a loan,  
 17 right?  
 18 A. My written notes say we would consider a 20  
 19 percent minimum preferred return, and that we would extend  
 02:28 20 a loan for up to two years after a six-month period.  
 21 Q. What else is different in those notes than what  
 22 you eventually agreed to with Mr. Marsch for Opportunity  
 23 Fund II?  
 24 A. Well, there is nothing in here about the 10  
 02:29 25 percent equity investment in the Bridges, retained

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1 benefits in the Bridges, or the 10 percent award of  
 2 litigation.  
 3 Q. Anything else?  
 4 A. It talks about Mr. Marsch's net worth of 50  
 02:29 5 million excluding the Bridges. Again, we had no  
 6 financials at that point. I think that was submitted --  
 7 was communicated to us.  
 8 Q. Who communicated that to you?  
 9 A. I don't recall.  
 02:29 10 Q. Anything else from your written notes is  
 11 different in the sense of the terms there, than what ended  
 12 up being the terms of Opportunity Fund II?  
 13 MR. WILLIAMS: I'll object as the best evidence  
 14 is the document -- the final document.  
 02:30 15 THE WITNESS: Not that I can recall.  
 16 BY MS. HOLMES:  
 17 Q. Do you have any idea what was on the second page  
 18 of what looks like more notes?  
 19 A. I do not.  
 02:30 20 Q. Who is Marco Monroy?  
 21 A. I know that was asked of me during the last  
 22 deposition. I remember inquiring in my office. My  
 23 partner, Mr. Wamstad, reminded that he was a potential  
 24 investor for KBR. I don't believe I've ever met him.  
 02:31 25 MS. HOLMES: I'm going to mark now as Exhibit 687

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1 an e-mail also printed from a disk in response to the  
 2 Lennar subpoena. And it is dated 1/29/09 from Randy  
 3 Rivera to Mr. Marsch, with carbon copies to you,  
 4 Mr. Blanchard, Mr. Wamstad, and attached to it are  
 02:31 5 excerpts from the operating agreement, as well as a letter  
 6 dated March 25, '09, from Mr. Wamstad to Mr. Marsch, and a  
 7 1/29 letter from Mr. Blanchard to David Fisher.  
 8 (Defendants' Exhibit 687 was marked  
 9 for identification.)  
 02:32 10 MS. HOLMES: We're moving right along.  
 11 BY MS. HOLMES:  
 12 Q. Do you recall being carbon copied on that letter?  
 13 A. I do.  
 14 Q. And did you review the letter when you received  
 02:33 15 it?  
 16 A. Did I read it, yes, I read the letter.  
 17 Q. Did you consider, as of the January '09 time  
 18 frame, that Mr. Marsch was your business partner and  
 19 friend?  
 02:33 20 A. I don't believe -- looking back, he's not a  
 21 partner, he was a -- we were members in the same LLC. But  
 22 I did consider him for a while a friend. Again, I want to  
 23 state on the record I misspoke, I never have considered  
 24 Mr. Marsch a partner.  
 02:33 25 Q. I understand. After the lunch break, you have

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1 had an opportunity to rethink that answer.  
 2 A. No, as a matter of fact, I had a chance to look  
 3 through some agreements, KBR Opportunity is not a  
 4 partnership, it's an operating agreement, it's an LLC.  
 02:34 5 I'm not an attorney, I think you are. And I believe that  
 6 an LLC interest is a membership interest, not a  
 7 partnership interest.  
 8 Q. Did you correct Mr. Rivera when he addressed  
 9 Mr. Marsch as his business partner, KBR's business  
 02:34 10 partner?  
 11 A. I did not.  
 12 Q. What response do you understand Mr. Fisher made  
 13 to the attached letter there, that was sent to him by  
 14 Mr. Blanchard?  
 02:34 15 MR. WILLIAMS: Lacks foundation. Calls for  
 16 speculation.  
 17 THE WITNESS: Would you repeat the question,  
 18 please?  
 19 BY MS. HOLMES:  
 02:34 20 Q. Yes. The very last attachment there is a letter  
 21 from Mr. Blanchard to Mr. Fisher. My question is, do you  
 22 understand Mr. Fisher to have responded to that letter?  
 23 A. I do not believe we ever received a response.  
 24 Q. Okay. That's your understanding?  
 02:34 25 A. Yes.

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1 Q. All right.  
 2 Have you ever asked Mr. Marsch to pay any of the  
 3 Blanchard, Krasner & French legal bills?  
 4 A. Yes.  
 02:35 5 Q. Why would you do that?  
 6 A. Our agreements, both through KBR Opportunity Fund  
 7 I and KBR Opportunity Fund II require Mr. Marsch to pay  
 8 the legal bills incurred.  
 9 Q. Before lunch we were talking about whether you  
 02:35 10 had inquired of Mr. Marsch to enter into a contract for  
 11 Mr. Blanchard's firm to review certain legal documents in  
 12 connection with the Bridges litigation. Do you remember  
 13 that?  
 14 A. I do.  
 02:36 15 Q. Why would you have been asking Mr. Marsch to do  
 16 that?  
 17 A. It was actually an agreement for Mr. Blanchard to  
 18 review documents on behalf of KBR Group, to which  
 19 Mr. Marsch had agreed to pay for those review and bills.  
 02:36 20 Q. My question is why would you have asked  
 21 Mr. Marsch to approve an agreement for Mr. Blanchard to  
 22 review documents on behalf of KBR?  
 23 A. Out of protection for our KBR entity.  
 24 Q. Have you ever asked Mr. Marsch to enter into a  
 02:36 25 contract with Mr. Blanchard's firm for that firm to

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1 represent -- or to review documents on behalf of KRMW?  
 2 A. No. But I do believe that Mr. Marsch and  
 3 Mr. Blanchard met in person several times to discuss  
 4 Mr. Marsch's payment of the fees to review the  
 02:37 5 documentation regarding to KBR.  
 6 Q. What is your understanding of the purpose for  
 7 which the funds are to be used by Mr. Marsch in connection  
 8 with Opportunity Fund II?  
 9 A. Fund litigation.  
 02:37 10 Q. Where are you getting that understanding?  
 11 A. Do you have a copy of the operating agreement?  
 12 Q. My question is where are you getting your answer?  
 13 A. From the operating agreement. Do you have a copy  
 14 of the agreement? I will specifically detail the section.  
 02:37 15 Q. That would be interesting.  
 16 Taryn Germond does what in your office?  
 17 A. She is the office manager, if you will.  
 18 MS. HOLMES: I'm going to mark now as Exhibit  
 19 688, an e-mail from Ms. Germond to you, Shawn, Randy, Nick  
 02:38 20 Marsch, Robert Blanchard, and Richard Mager. It has  
 21 minutes attached dated January 27, '09, and minutes  
 22 attached dated February 10, 2009.  
 23 (Defendants' Exhibit 688 was marked  
 24 for identification.)  
 02:40 25 THE WITNESS: Okay.

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1 BY MS. HOLMES:  
 2 Q. Anything -- do you remember attending the  
 3 meetings that are the subject of those minutes that are  
 4 attached?  
 02:40 5 A. Yes.  
 6 Q. Anything that jumps out at you that was  
 7 inaccurate in the minutes Ms. Germond took?  
 8 A. She takes pretty careful notes. I don't -- I  
 9 don't believe so.  
 02:40 10 Q. Nothing you see is inaccurate?  
 11 A. Inaccurate in terms of what was said?  
 12 Q. Yes.  
 13 A. I don't have any reason to doubt her minutes.  
 14 Q. All right.  
 02:41 15 MS. HOLMES: I'm going to mark as Exhibit 689,  
 16 and it is a September 24, 2008 e-mail from Mr. Blanchard  
 17 to Richard Mager with a cc to you, the subject is the  
 18 Bridges.  
 19 (Defendants' Exhibit 689 was marked  
 02:41 20 for identification.)  
 21 MR. PETROCELLI: Was this one of the recently  
 22 produced ones?  
 23 MS. HOLMES: No, it was off the disk. All of  
 24 these are.  
 02:41 25 MR. PETROCELLI: I thought the ones on the disk

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1 had Bates numbers.  
2 MS. HOLMES: Not the disk we got.  
3 (Witness peruses document.)  
4 BY MS. HOLMES:  
02:42 5 Q. Do you recall being cc'd on that e-mail?  
6 A. I do.  
7 Q. Did you do anything in response to reading -- or  
8 did you read it when you received it?  
9 A. I don't recall.  
02:42 10 Q. Is it your normal practice to read e-mails you're  
11 cc'd on?  
12 A. It is.  
13 Q. Do you have any reason to doubt you read that one  
14 when you were cc'd on it?  
02:43 15 A. No doubt.  
16 Q. Did you have a discussion with Mr. Blanchard  
17 about anything in that e-mail after being cc'd on it?  
18 MR. WILLIAMS: I object to attorney-client  
19 privilege.  
02:43 20 BY MS. HOLMES:  
21 Q. That's all right. You can answer.  
22 MR. WILLIAMS: No, he can't.  
23 MS. HOLMES: I can ask if he had a discussion.  
24 MR. WILLIAMS: You can ask if he had a  
02:43 25 discussion, sure.

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1 MS. HOLMES: I did.  
2 THE WITNESS: I don't remember.  
3 MS. HOLMES: I think my last exhibit is 689. And  
4 it is a March 12 e-mail from Shawn Wamstad to you, the  
02:44 5 subject -- he's responding to you in e-mail, and then  
6 attached is the prenegotiation agreement you referred to  
7 earlier.  
8 (Defendants' Exhibit 690 was marked  
9 for identification.)  
02:44 10 (Witness peruses document.)  
11 BY MS. HOLMES:  
12 Q. Did you ask Mr. Wamstad what he meant in his  
13 e-mail?  
14 A. Yes.  
02:44 15 Q. And what did he tell you?  
16 A. Mr. Marsch tends to mix words. And wanted to  
17 have an agreement in writing so that there were no  
18 misunderstandings.  
19 Q. That's "what the F" means?  
02:45 20 A. "We have the letter ready to go. Let's please  
21 get the simple agreement completed so we can all talk  
22 freely."  
23 Q. What is --  
24 A. Are you talking about up top?  
02:45 25 Q. Yeah.

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1 A. I guess, you know, when Mr. Marsch replied, "When  
2 couldn't we talk freely or without an agreement?"  
3 Shawn was baffled that he did not want to sign  
4 this agreement.  
02:45 5 Q. Did you ask Mr. Wamstad what he meant by "what  
6 the F" in response to --  
7 A. No, I didn't have to ask specifically what that  
8 meant. I could gather what he meant.  
9 Q. And where in your e-mails there in response to  
02:45 10 Mr. Marsch indicating you could always talk openly and  
11 freely, is there an indication of him always mincing  
12 words?  
13 A. Well, I can read you from the e-mail  
14 specifically. It says, this is Thursday, 12th March 2009,  
02:46 15 myself, addressed to Nick -- excuse me, addressed Shawn  
16 Wamstad, Nick, Randy Rivera --  
17 Q. Just read slowly please.  
18 A. It says, "Nick, we have always been able to talk  
19 freely and openly, however, to avoid a potential he said  
02:46 20 she said scenario as we discuss KRMW, it is best that we  
21 all agree that no representations and/or commitments are  
22 to be made by either side unless agreed to in writing,  
23 which is all that the document is saying."  
24 Q. And did you ever express anything else in writing  
02:46 25 to Mr. Marsch about the reasons for needing -- for wanting

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1 the prenegotiation agreement in writing, signed?  
2 A. Other than this, no.  
3 MS. HOLMES: Let's go off the record. I'm just  
4 going to summarize my notes, and I'm finished.  
02:47 5 THE VIDEOGRAPHER: We are off the record at 2:46  
6 p.m.  
7 (Recess taken.)  
8 THE VIDEOGRAPHER: We are back on the record at  
9 3:01 p.m.  
03:02 10 BY MS. HOLMES:  
11 Q. Wrapping up here, I just had a couple of  
12 follow-up questions.  
13 Did Mr. Jaffe invite you to come out to Florida  
14 for any purpose?  
03:02 15 A. No.  
16 Q. Did Mr. Miller?  
17 A. No.  
18 Q. Do you recall inviting Mr. Miller to a social  
19 occasion?  
03:02 20 A. No. Other than I may have said if they are in  
21 town and they want to golf, they can come golf at  
22 Fairbanks Ranch.  
23 Q. And you offered that same invitation to  
24 Mr. Jaffe?  
03:03 25 A. I think so. And Mr. Petrocelli. And

Michel Kucinski

<p style="text-align: right;">Page 358</p> <p>1 Mr. Blanchard. 2 Q. You are a member at Fairbanks Ranch? 3 A. I am. 4 Q. Did Mr. Jaffe give you any indication in anything 03:03 5 he said that Lennar is going to go forward on purchasing 6 your interest in Opportunity Fund II? 7 A. Indication, yes, they were prepared to entertain 8 a purchase. 9 Q. Lastly, on the issue, just going back to the 03:03 10 issue of Mr. Blanchard reviewing documents produced in the 11 Bridges litigation, for -- I guess I'm unclear why 12 Mr. Marsch would need to agree for Mr. Blanchard to review 13 documents on behalf of KBR. Can you explain that to me? 14 A. Sure can. We had made those discussions after 03:04 15 Mr. Marsch lost the litigation case against McCrank. We 16 wanted to make sure that we had all the proper legal 17 review to make sure that the same would not happen of the 18 Bridges. 19 Q. And why is it, though, that you needed Mr. Marsch 03:04 20 to agree for Mr. Blanchard's firm to review documents on 21 behalf of KBR? 22 A. Mr. Marsch -- we had discussions, and Mr. Marsch 23 had agreed that Mr. Blanchard was very good at reviewing 24 those type of documents. It added an extra layer of 03:04 25 advice, if you will.</p>	<p style="text-align: right;">Page 360</p> <p>1 Mr. Blanchard's review of those documents. 2 Q. He had agreed by virtue of documents you had 3 already entered into with him? 4 A. No. Verbal conversations. And I believe he may 03:06 5 have also had one-to-one meetings with Mr. Blanchard 6 directly, without me. 7 Q. So it's your testimony that Mr. Marsch agreed to 8 pay for Mr. Blanchard's review of Bridges litigation 9 documents to assist KBR in understanding what was going on 03:06 10 in the Bridges? 11 A. Yes. 12 Q. Did you ever ask Mr. Marsch why he would be 13 willing to pay for KBR to understand what was going on in 14 the Bridges litigation? 03:07 15 A. Sure. I made that as a request, again, due to 16 the fact that he had lost the litigation in the McCrank 17 case where he thought it was quote/unquote slam dunk. 18 Q. My question is did you ask Mr. Marsch, why would 19 you be willing to pay for legal fees for reviewing 03:07 20 documents for the purpose of enlightening KBR? How would 21 that make sense to Mr. Marsch? 22 A. That's a request we made, and Mr. Marsch found it 23 appropriate. 24 Q. And you have only an oral representation from 03:07 25 Mr. Marsch on that?</p>
<p style="text-align: right;">Page 359</p> <p>1 Q. Advice to whom? 2 A. In this case, it would be to KBR, which would 3 then turn reflect on KRMW. 4 Q. So your understanding was that Mr. Blanchard 03:05 5 would review legal documents to assist KBR, and then KBR 6 would share that information with KRMW? 7 A. Yes, you could make that determination. 8 Q. So Mr. Blanchard essentially, then, you wanted to 9 review documents in the Bridges litigation for purposes of 03:05 10 assisting the KRMW members in understanding what was going 11 on in the Bridges litigation? 12 A. No. 13 Q. How does KRMW -- 14 A. Again, I think you're twisting the words around. 03:05 15 Mr. Marsch was not up front in delivering documentation in 16 past Bridges litigation. By including Bob as a 17 representative of KBR, we tried to make certain that we 18 would see copies of all documentation and then make 19 appropriate decisions regarding KRMW. 03:06 20 Q. "We" meaning KBR? 21 A. "We" meaning KBR, myself, and my partners, yes. 22 Q. Why would Mr. Marsch need to agree to that? You 23 could do that without Mr. Marsch's agreement, right? 24 A. Yes. We were concerned primarily regarding the 03:06 25 payment, and Mr. Marsch had agreed to pay for</p>	<p style="text-align: right;">Page 361</p> <p>1 A. I do. I believe Mr. Mager can corroborate that 2 as well. 3 Q. So you would expect what Mr. Mager says about 4 whether Mr. Marsch orally agreed to pay for 03:08 5 Mr. Blanchard's firm to review Bridges litigation 6 documents, on behalf of KBR, to be an accurate summary of 7 what was said about that? 8 MR. WILLIAMS: Calls for speculation. Lacks 9 foundation. 03:08 10 THE WITNESS: I can't speak for Mr. Mager. I can 11 tell you that he was present during those discussions. 12 Additionally, you may want to ask your client, but he did 13 have conversations directly with Bob Blanchard regarding 14 the representation of KBR and regarding the payment of 03:08 15 fees by Mr. Marsch to represent KBR. 16 BY MS. HOLMES: 17 Q. And so you followed up then by presenting 18 Mr. Marsch with a written contract for him to agree to pay 19 for legal fees for Blanchard's firm to look at Bridges 03:08 20 litigation? 21 A. No, not that I can recall. 22 Q. So there is no written proposal for Mr. Marsch to 23 pay those fees? 24 A. Not from KBR. There may be a proposal from 03:08 25 Blanchard, Krasner &amp; French to Mr. Marsch, but nothing</p>

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1 from KBR, no.  
 2 Q. Are you aware whether Mr. Blanchard's firm did,  
 3 in fact, send a proposal to Mr. Marsch for him to pay for  
 4 the legal fees associated with review of Bridges  
 03:09 5 litigation documents on behalf of KBR?  
 6 A. I don't know that for a fact.  
 7 Q. Do you know if Mr. Marsch signed any such  
 8 document?  
 9 A. I do not know that. What I do know for a fact is  
 03:09 10 that Mr. Marsch met with Mr. Blanchard to discuss the  
 11 payment.  
 12 Q. How do you know that?  
 13 A. Both Mr. Marsch and Mr. Blanchard relayed that  
 14 verbally to me.  
 03:09 15 Q. What was relayed to you verbally about that?  
 16 A. That they met --  
 17 MR. WILLIAMS: Relayed by which one?  
 18 MS. HOLMES: By both.  
 19 MR. WILLIAMS: He can't answer it.  
 03:09 20 MS. HOLMES: Well, he's already gotten into it.  
 21 MR. WILLIAMS: Well, unless they mostly said the  
 22 exact same things, you've got to separate it out between  
 23 what Mr. Marsch said and what Mr. Blanchard said.  
 24 MS. HOLMES: Okay, but he --  
 03:09 25 MR. WILLIAMS: What Mr. Blanchard said is

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1 protected by the attorney-client privilege.  
 2 MS. HOLMES: But he holds it and he waived it.  
 3 MR. WILLIAMS: He didn't waive it.  
 4 MS. HOLMES: All right.  
 03:10 5 THE WITNESS: I don't recall exactly, regarding  
 6 payment of fees.  
 7 BY MS. HOLMES:  
 8 Q. You don't recall one way or the other what  
 9 Mr. Marsch or Mr. Blanchard said?  
 03:10 10 A. I do recall for a fact that there was a meeting  
 11 set up to discuss the payment of Mr. Blanchard's services  
 12 by Mr. Marsch on behalf of KBR, yes, 100 percent,  
 13 unequivocal.  
 14 Q. But you don't have any recollection of what was  
 03:10 15 said in that meeting as relayed to you by anyone?  
 16 A. I was not in that meeting so I do not recollect.  
 17 MS. HOLMES: Okay. What I need to do now is  
 18 reserve -- it was represented by Ms. Kope at  
 19 Mr. Blanchard's firm that additional documents were being  
 03:10 20 withheld pursuant to an objection. That was confirmed  
 21 also by Ms. Kope's assistant who said they would not be  
 22 producing additional documents because of an existence of  
 23 an objection. So pending the production of further  
 24 documents pursuant to subpoena and/or my notice, we'll go  
 03:11 25 ahead and conclude this volume of your deposition.

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1 I'm sorry. I'm sorry. Mr. Petrocelli, did you  
 2 have questions?  
 3 MR. PETROCELLI: Yeah, just a couple.  
 4 FURTHER EXAMINATION  
 03:11 5 BY MR. PETROCELLI:  
 6 Q. Mr. Kucinski, Ms. Holmes asked you to elicit  
 7 discussions that you had with Mr. Mack. Do you recall  
 8 that?  
 9 A. Yes.  
 03:11 10 Q. And you never shared those discussions with  
 11 Lennar or any of his counsel, correct?  
 12 A. No.  
 13 Q. Ms. Holmes asked you to elicit discussions with  
 14 Mr. Gordon. Do you recall that?  
 03:11 15 A. Yes.  
 16 Q. You've never shared your discussions with  
 17 Mr. Gordon with Lennar or any of its counsel?  
 18 A. Correct.  
 19 Q. Ms. Holmes asked you about a meeting with  
 03:12 20 Mr. Marsch on Saturday, April 4th. Do you recall that?  
 21 A. I do.  
 22 Q. And she asked you questions about note-taking by  
 23 Mr. Marsch.  
 24 A. Correct.  
 03:12 25 Q. Have you ever seen any notes that were

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1 represented to you to be Mr. Marsch's notes of a  
 2 discussion with you on April 4th?  
 3 A. No.  
 4 Q. And I take it, then, from your answer, you are  
 03:12 5 not able to vouch for the accuracy of any such notes if  
 6 they exist?  
 7 A. Correct.  
 8 MR. PETROCELLI: Nothing further.  
 9 So you were going to wrap up the volume?  
 03:12 10 MS. HOLMES: Yeah, I think -- I think I reserved  
 11 to wrap up this volume. We have a standing stip for  
 12 experts, that's fine, for this.  
 13 Generally speaking, what's going to happen is,  
 14 you will be -- Mr. Blanchard's office will receive an  
 03:13 15 original copy of your deposition. You will have a week to  
 16 review it, sign it, make any changes you deem appropriate.  
 17 Your counsel will let me know that it's been signed, with  
 18 or without changes, what those changes are.  
 19 And you will agree to -- you should probably then  
 03:13 20 transfer that original signed deposition to  
 21 Mr. Petrocelli's office since Lennar was the subpoenaing  
 22 party for this deposition. They will then agree to  
 23 produce that at the time of the deposition. If for some  
 24 reason it is lost, destroyed, or otherwise unavailable at  
 03:13 25 the time of trial, the parties stipulate to using a

03:13

1 certified copy in its stead.  
 2 The court reporter and videographer are hereby  
 3 relieved of their statutory duties for this volume of the  
 4 deposition.  
 5 MR. WILLIAMS: That's agreed.  
 6 MR. PETROCELLI: Yeah, that's fine.  
 7 THE VIDEOGRAPHER: This is the conclusion of  
 8 today's deposition. We are off the record at 3:13 p.m.  
 9 (The deposition was concluded at 3:13 p.m.)

1 STATE OF CALIFORNIA )  
 ) ss  
 2 COUNTY OF SAN BERNARDINO )  
 3  
 4 I, KATHY BAUERNFEIND, a Certified Shorthand  
 5 Reporter, do hereby certify:  
 6 That prior to being examined, the witness in  
 7 the foregoing proceedings was by me duly sworn to testify  
 8 to the truth, the whole truth, and nothing but the truth;  
 9 That said proceedings were taken before me at  
 10 the time and place therein set forth and were taken down  
 11 by me in shorthand and thereafter transcribed into  
 12 typewriting under my direction and supervision;  
 13 I further certify that I am neither counsel  
 14 for, nor related to, any party to said proceedings, nor in  
 15 anywise interested in the outcome thereof.  
 16 In witness whereof, I have hereunto subscribed  
 17 my name.

18  
19 Dated: \_\_\_\_\_

20  
21 \_\_\_\_\_  
 22 Kathy Bauernfeind  
 23 CSR No. 11921  
 24  
 25

1  
2 DECLARATION  
3

4  
 5 I hereby declare I am the deponent in the  
 6 within matter; that I have read the foregoing proceedings  
 7 and know the contents thereof, and I declare that the same  
 8 is true of my knowledge except as to the matters which are  
 9 therein stated upon my information or belief, and as to  
 10 those matters, I believe it to be true.

11 I declare under the penalties of perjury of the  
 12 State of California that the foregoing is true and  
 13 correct.

14  
 15 Executed on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_,  
 16 at \_\_\_\_\_, California.

17  
 18  
 19 \_\_\_\_\_  
 20 MICHEL KUCINSKI  
 21  
 22  
 23  
 24  
 25