

1 IN THE UNITED STATE DISTRICT COURT
 2 FOR THE DISTRICT OF SOUTH DAKOTA
 3 NORTHERN DIVISION
 4 =====
 5 SDIF LIMITED PARTNERSHIP 2, a 1:17-CV-01002-CBK
 6 South Dakota Limited Partnership,
 7 Plaintiff,
 8 vs.
 9 TENTEKKOTA, L.L.C., a South Dakota
 10 Limited Liability Company,
 11 W. KENNETH ALPHIN, TIMOTHY J.
 12 CONRAD, MICHAEL R. GUSTAFSON,
 13 GEORGE D. MITCHELL, DALE MORRIS,
 14 MARC W. OSWALD, RONALD W. WHEELER,
 15 and DWIGHT P. WILES,
 16 Defendants and
 17 Third-Party Plaintiffs,
 18 vs.
 19 JOOP BOLLEN, SDRC, INC., a South
 20 Dakota Corporation, SDIF LIMITED
 21 PARTNERSHIP 2, a South Dakota
 22 Limited Partnership, SD INVESTMENT
 23 FUND LLC2, a South Dakota Limited
 24 Liability Company, John Doe 1-75,
 25 Third-Party Defendants.
 =====
 Video Deposition of Joop Bollen
 March 20, 2018
 10:38 a.m.
 =====
 A P P E A R A N C E S
 ERIC R. KERKLEIT and STEVEN J. OBERG,
 LYNN, JACKSON, SHULTZ & LEBRUN, P.C.,
 Attorneys at Law, 110 South Minnesota Avenue,
 Sioux Falls, South Dakota 57104,
 appearing on behalf of the Plaintiff;
 Reported by Cheri McComsey Wittler, RPR, CRR
 Precision Reporting, 213 South Main, Onida, South Dakota

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1 APPEARANCES (Continued)

2 HAVEN L. STUCK,
 3 LYNN, JACKSON, SHULTZ & LEBRUN, P.C.,
 4 Attorneys at Law, P.O. Box 82501,
 5 Rapid City, South Dakota 57709,
 6 appearing on behalf of the Plaintiff;

7 SCOTT N. HEIDPRIEM and KASEY L. OLIVIER,
 8 HEIDPRIEM, PURTELL, SIEGEL & OLIVIER, L.L.P.,
 9 Attorneys at Law, 101 West 69th Street, Suite 105,
 10 Sioux Falls, South Dakota 57108,
 11 appearing on behalf of the Defendants and
 12 Third-Party Plaintiffs;

13 JULIE DVORAK,
 14 SIEGEL, BARNETT & SCHUTZ, L.L.P.,
 15 Attorneys at Law, P.O. Box 490,
 16 Aberdeen, South Dakota 57402-0490,
 17 appearing on behalf of the Third-Party Defendants.

1 The deposition of Joop Bollen was taken at the
 2 office of Siegel, Barnett & Schutz, L.L.P., 415 South
 3 Main Street, Aberdeen, South Dakota, on the 20th day of
 4 March, 2018, commencing at 10:38 a.m.; before
 5 Cheri McComsey Wittler, a Registered Professional
 6 Reporter, Certified Realtime Reporter, and Notary Public
 7 within and for the State of South Dakota.
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 24 (Exhibits 1 and 2 are marked for identification.)
 25

1 MS. OLIVIER: This is the time and the place for
 2 the individual deposition of Joop Bollen. Could the
 3 court reporter please swear in the witness.
 4 JOOP BOLLEN,
 5 called as a witness, being first duly sworn in the above
 6 cause, testified under oath as follows:
 7 EXAMINATION
 8 BY MS. OLIVIER:
 9 Q. Would you please state your name for the record.
 10 A. **Joop Bollen.**
 11 Q. Joop, what is your address here in Aberdeen?
 12 A. **1201 North Main Street.**
 13 Q. Okay. Have you ever had your deposition taken
 14 before?
 15 A. **Yes.**
 16 Q. How many times?
 17 A. **I do not recall exactly, but my guess is about**
 18 **three. Two, three.**
 19 Q. Could you tell me in what instances you had your
 20 deposition taken?
 21 A. **There was a case while I was still at Northern State**
 22 **University, Darley vs. the State of South Dakota.**
 23 Q. When was the next time?
 24 A. **I think it was all related to that particular case.**
 25 Q. Okay. So you were deposed three times in that case?

1 A. **That's a guess at three.**
 2 Q. Okay. Any other times that you've had your
 3 deposition taken?
 4 A. **No.**
 5 Q. Have you ever given sworn testimony outside of a
 6 deposition?
 7 A. **Not that I know.**
 8 Q. Okay. I'm going to go over the rules of this
 9 deposition. I know that you were here when Mary was
 10 being deposed, but I'm just going to cover them again so
 11 it goes as smooth as possible. Okay?
 12 A. **Okay.**
 13 Q. First of all, all your answers have to be oral.
 14 You're doing a really good job of that. Our court
 15 reporter can't take down uh-huh, huh-uh, the shaking of
 16 the head. If you forget, it's common. I'll just remind
 17 you and follow up with is that a yes or is that a no.
 18 Do you understand?
 19 A. **Yes.**
 20 Q. Okay. I will respect you and when you're talking I
 21 will make sure that I'm not talking over you, and I would
 22 ask that you do the same thing for me. Our court
 23 reporter here has to be able to take down a clean record.
 24 Does that make sense?
 25 A. **Yes.**

1 Q. Your answers -- we also have a tendency to talk very
 2 quickly, so for the benefit of our court reporter, we try
 3 to make our answers as clear as possible.
 4 If you don't understand something that I'm asking
 5 you, will you ask me to clarify?
 6 A. **Yes.**
 7 Q. Okay. Did you talk to anyone other than your
 8 lawyers before you came here today about this deposition?
 9 A. **No.**
 10 Q. Did you review any documents before your deposition?
 11 A. **Yes.**
 12 Q. What did you review?
 13 A. **Yesterday I reviewed the State documents.**
 14 Q. When you say "the State documents" are you talking
 15 about the --
 16 A. **900 pages.**
 17 Q. Okay. Did you review anything else?
 18 A. **A couple other documents you forwarded to me**
 19 **(indicating).**
 20 Q. And what were those documents?
 21 A. **It's been a little while. It were I think my -- the**
 22 **main thing were my answers to prior deposition.**
 23 Q. Okay. So your prior deposition?
 24 A. **With the Darley case.**
 25 Q. Okay. What else?

1 A. **That's all I recall.**
 2 Q. Did you review any of your written discovery
 3 answers?
 4 A. **Yes, I did.**
 5 Q. Okay. Anything else in connection with those that
 6 you reviewed?
 7 A. **Not that I recall.**
 8 Q. Okay. Is there anything else that you did to
 9 prepare for your deposition here today?
 10 A. **No.**
 11 Q. Okay. Joop, I know a little bit about your
 12 background. You were born in the Netherlands; right?
 13 A. **Correct.**
 14 Q. Where?
 15 A. **Eindhoven.**
 16 Q. Eindhoven.
 17 How old were you when you decided you wanted to come
 18 to the United States?
 19 A. **17.**
 20 Q. Why did you want to come here?
 21 A. **Something new. Excitement.**
 22 Q. Okay. Talk to me about or explain schooling in the
 23 Netherlands.
 24 A. **It's a multi-tier system. After you complete**
 25 **several grades until about the age of 12 you have to**

1 **decide what track you want to go into, whether you want**
2 **to go the university track, more technical track. You**
3 **can split up in different -- at least when I was there.**
4 Q. What did you choose when it came to that point?
5 A. **It was more professional track.**
6 Q. Okay. What does that mean?
7 A. **It's not academic, but it can lead to either**
8 **university track or some skill set that would prepare you**
9 **for the workforce right away.**
10 Q. Okay. And when did -- how old were you when you had
11 to make that decision?
12 A. **About 12.**
13 Q. And what did you do after you made that decision?
14 Did you go into work?
15 A. **No. I just went to school.**
16 Q. Okay.
17 A. **To high school in the Netherlands.**
18 Q. Okay. And when did you graduate?
19 A. **I actually graduated from an American high school.**
20 Q. Okay. And where was that?
21 A. **In California.**
22 Q. Did you come to the United States with your parents?
23 A. **No. I came alone as an exchange student.**
24 Q. As an exchange student. What high school did you
25 come to?

10

1 A. **El Camino Real.**
2 Q. Did you stay in the United States after high school?
3 A. **Yes. Pretty much, yes. I went to school in the**
4 **United States.**
5 Q. Where did you go to school?
6 A. **After El Camino Real, I received my high school**
7 **diploma from a school called Calabasas High and went to a**
8 **community college, and from there I transferred to UCLA.**
9 Q. When did you graduate from UCLA?
10 A. **'86.**
11 Q. Then what did you do?
12 A. **I went to a graduate school in Arizona.**
13 Q. And what degree were you pursuing?
14 A. **At that time it was called a master degree in**
15 **international management.**
16 Q. Okay.
17 A. **It turned into an MBA.**
18 Q. When did you get your MBA?
19 A. **'87.**
20 Q. In what year?
21 A. **1987.**
22 Q. Okay. Then what did you do?
23 A. **My first job assignment was with Continental Grain**
24 **in Chicago.**
25 Q. Were you here on -- so I'm guessing up until you got

1 your master's degree you were here on a student visa?
2 A. **Correct.**
3 Q. And then was it a work visa?
4 A. **H-1 visa.**
5 Q. Who helped you apply for the different visas?
6 A. **Continental Grain.**
7 Q. How long were you with Continental Grain?
8 A. **Approximately two years. Year and a half, two**
9 **years.**
10 Q. What did you do then?
11 A. **I first -- Pyush Patel had more capital and**
12 **requested me to go into business with him.**
13 Q. How did you meet him?
14 A. **We went to the same community college and graduate**
15 **school.**
16 Q. Okay. And he came to you, and he said what?
17 A. **He requested -- I didn't have capital. He had the**
18 **capital, but he felt that I had more business acumen than**
19 **he did so he wanted me to come to work with him.**
20 Q. And where did he work?
21 A. **In Atlanta, Georgia.**
22 Q. Atlanta, Georgia?
23 A. **Well, he didn't work at Atlanta, but we started --**
24 **he first worked in L.A. at a company, and then together**
25 **our intent was to work in Atlanta, Georgia.**

12

1 Q. What were you going to do in Atlanta?
2 A. **Anything that made money. But there was some kind**
3 **of separation so I went to work for a bank in New York.**
4 Q. Okay. Talk to me about that. So did you actually
5 move to Atlanta? Did you start a business?
6 A. **I started in Atlanta, but then I went back to the**
7 **Netherlands and was hired by a bank called J.P. Morgan.**
8 Q. In the Netherlands?
9 A. **Right. Right.**
10 Q. How long were you in the Netherlands?
11 A. **A couple months. And then I went back to New York**
12 **for training at J.P. Morgan.**
13 Q. What year or time period is this?
14 A. **1990.**
15 Q. 1990. When you came back to the United States to do
16 training with J.P. Morgan were you on a work visa?
17 A. **No. It was really an intense training program.**
18 Q. Okay.
19 A. **To get ready to work in either -- the intent was**
20 **either New York or Switzerland or London.**
21 Q. How long was the training program?
22 A. **From what I recall, approximately three, four**
23 **months.**
24 Q. Okay. And what type of intense training did you
25 receive in this program over those four months?

1 **A. Financial securities.**
2 **Q.** Okay. What did you do after those four months?
3 **A. Mr. Patel wanted me to come back to work with him so**
4 **I decided at that point that I thought it might be more**
5 **interesting to work as my own boss and not have a boss.**
6 **Q.** Okay. So what happened?
7 **A. I went to Atlanta, and I started searching for**
8 **businesses that made financial sense.**
9 **Q.** And what kind of visa were you here on at that time?
10 **A. Let's see. What was that?**
11 **I think it was just at that time still a tourist**
12 **visa because I wasn't earning any money. Part of the**
13 **visa waiver program.**
14 **Q.** So did you ever actually -- beyond the intense
15 training program, did you actually ever work for
16 J.P. Morgan?
17 **A. No. Not actively work.**
18 **Q.** So you end this training program, and you go to
19 Atlanta, Georgia.
20 **A. Uh-huh.**
21 **Q.** And what happens there?
22 **A. Pyush and I looked for a liquor store, found a**
23 **liquor store, and he purchased a liquor store.**
24 **Q.** Why a liquor store?
25 **A. Just made -- the bottom line made sense.**

1 **A. 1990. December, 1990. December 31, 1990. New**
2 **Year's Eve.**
3 **Q.** Did you apply for U.S. citizenship?
4 **A. Yes.**
5 **Q.** When did you apply for U.S. citizenship?
6 **A. Immediately.**
7 **Q.** Immediately?
8 **A. Uh-huh. From what I recall, yes.**
9 **Q.** Do you remember when you were granted citizenship?
10 **A. Citizenship was in '95.**
11 **Q.** Okay. So you moved back to Aberdeen. What year did
12 you move back to Aberdeen?
13 **A. I think it was very early 1990. Had to be somewhere**
14 **in 1990.**
15 **Q.** Okay. What did you do when you got back to
16 Aberdeen?
17 **A. At that time I looked for a job, and there was a**
18 **brokerage firm called Kenards [phonetic] that was looking**
19 **for somebody.**
20 **Q.** And did they hire you?
21 **A. Yes. Yes. The dates are a little bit confusing,**
22 **but yes.**
23 **Q.** That's okay.
24 So what did you do for this brokerage firm?
25 **A. Pretty much sell financial instruments.**

1 **Q.** Okay. Was it a big liquor store? Small liquor
2 store?
3 **A. Maybe about a million, revenues at that time.**
4 **Q.** Okay. And did you work for the liquor store?
5 **A. No. It was pretty much he and I had a fallout, and**
6 **that is when -- because while I was here my ex-wife was**
7 **from here so that's how I ended up coming back here.**
8 **Q.** Okay. And when you say "coming back here" are you
9 talking about South Dakota?
10 **A. Aberdeen.**
11 **Q.** Aberdeen. Okay.
12 So how long were you in Atlanta?
13 **A. I think it was probably less than a -- it wasn't**
14 **that long. My guess is anywhere from three to six**
15 **months.**
16 **Q.** Okay.
17 **A. Yeah.**
18 **Q.** What did the falling out between you and Mr. Patel
19 involve?
20 **A. I don't even recall, to be honest.**
21 **Q.** Okay. How did you meet your ex-wife?
22 **A. While I was with Continental Grain here is when I**
23 **met her. Continental Grain sent me from Chicago to**
24 **Minneapolis to here to get a feel of the country.**
25 **Q.** Okay. When did you get married?

1 **Q.** Okay. How long were you with the brokerage firm?
2 **A. You know, my guess is about two years, but I really**
3 **do not recall the details on that.**
4 **Q.** What did you do after the brokerage firm?
5 **A. Northern State University was looking for somebody**
6 **to set up an international department.**
7 **Q.** Okay. Tell me about that.
8 **A. Northern State had an academic program and also**
9 **wanted to develop an outreach program that would help --**
10 **that would anchor a closer relationship with the U.S.**
11 **Department of Commerce and GOED to assist companies in**
12 **South Dakota with their exports.**
13 **Q.** Were they working with the Governor's Office at that
14 point in time?
15 **A. No.**
16 **Q.** Okay. So they want to create an international
17 program. How do they get connected with you?
18 **A. The mayor of Aberdeen suggested that I go talk to**
19 **Northern State University.**
20 **Q.** Were you friends with the mayor at that time?
21 **A. I did one transaction with him. I bought one piece**
22 **of real estate from him.**
23 **Q.** Okay. So he suggested you apply for the position?
24 **A. Right.**
25 **Q.** And what was the name of the position that you were

1 applying for?
 2 **A. There was no name. It was just an idea to develop**
 3 **an international outreach program, but there was no**
 4 **structure. It was pretty much come do it, see if you can**
 5 **put something together.**
 6 Q. Okay. So when did you start at the college?
 7 **A. I think I already was kind of watching or went over**
 8 **the end of '93, but I think officially was in '94, very,**
 9 **very early in '94 that I started my employment there.**
 10 Q. Did you have an office on campus?
 11 **A. Yes.**
 12 Q. Where was your office?
 13 **A. Graham Hall.**
 14 Q. Did you work with students?
 15 **A. Yes. We used student labor.**
 16 Q. Okay. Explain what that means.
 17 **A. Student labor is a way for students to earn extra**
 18 **money while they are students at Northern.**
 19 Q. Okay. So kind of like a work study program?
 20 **A. Right. Uh-huh.**
 21 Q. Okay. How many students would work for you at one
 22 time?
 23 **A. Not many. Work, about three, but we had -- we**
 24 **developed a lot of programs where a lot of students did**
 25 **get certification in international business.**

1 Q. Tell me what programs -- well, let's go back.
 2 So you take this position. They give you an office
 3 at Graham Hall. What is the first thing you do?
 4 **A. Analyze the market, see what -- what I think of --**
 5 **what the demand is and what is not covered.**
 6 Q. And what did you find out of that analyzing?
 7 **A. I found that South Dakota was virgin territory.**
 8 **There was a lot I could do here.**
 9 Q. Okay. And what were you looking to do at that
 10 point?
 11 **A. Well, my main goal was to increase exports from**
 12 **South Dakota. So I felt that I had to provide the tools**
 13 **of the trade to the companies here.**
 14 Q. And when you mean "increase exports," what type of
 15 exports did you want to --
 16 **A. Manufactured goods. Not agricultural goods.**
 17 Q. Were there any companies in particular that you were
 18 focused on?
 19 **A. There's just a lot of companies. There were quite a**
 20 **few companies. Over 100.**
 21 Q. Okay. So you figure out that you need to increase
 22 exports and that you want to help do this through
 23 manufacturing. What do you do next?
 24 **A. I developed a series of workshops to teach companies**
 25 **how to -- how you do export, how you obtain foreign trade**

1 **leads, and how you develop distribution channels.**
 2 **We provided opportunities for them to advertise**
 3 **their products internationally. We also provided them**
 4 **with -- and I'm just quickly trying to recall because**
 5 **this was a long time ago, but access to credit reports**
 6 **and foreign buyers and develop relationship with**
 7 **consultants nationwide who really know the field that I**
 8 **would invite them to speak about in our series of**
 9 **workshops.**
 10 Q. Where were your workshops held?
 11 **A. RDTN it was called.**
 12 Q. Okay.
 13 **A. So we would have one main site where we would have**
 14 **the speakers, and there would be several satellite sites**
 15 **where interested company representatives could come --**
 16 Q. You called that RDT --
 17 **A. RDTN it was called at that time.**
 18 Q. Where is RDTN located?
 19 **A. RDTN is a statewide system for communication. You**
 20 **could really communicate from any of the different**
 21 **satellite sites.**
 22 Q. Okay. Would it be something that would be similar
 23 to like an ITV now?
 24 **A. Yeah. I think so.**
 25 Q. Okay. And would you just do these seminars from

1 your office?
 2 **A. No. We would go to the RDTN center at Northern**
 3 **State University.**
 4 Q. Okay. So they actually had a center --
 5 **A. Right.**
 6 Q. -- where they would film you --
 7 **A. Right.**
 8 Q. Okay.
 9 **A. It's not film. It's live. Interactive.**
 10 Q. Okay. And where were the other satellite sites?
 11 **A. Sioux Falls, Rapid City, Spearfish, Mitchell,**
 12 **Watertown.**
 13 Q. Who would assist you in putting on the seminars?
 14 **A. I would hire people who were the experts in the**
 15 **field.**
 16 Q. So give me an example of a seminar that you remember
 17 holding and who you would have hired.
 18 **A. Payment terms I would go through, for example,**
 19 **Wells Fargo, talk to their international division,**
 20 **explain to them that it's in their financial interest to**
 21 **send their lead expert here and communicate to letters --**
 22 **payment terms, and through that they could develop new**
 23 **relationships with South Dakota companies and hopefully**
 24 **develop a business relationship with the companies in**
 25 **South Dakota.**

1 Q. Okay. Was this successful?
 2 A. **Yes.**
 3 Q. How long were you doing these workshops?
 4 A. **Even when we started foreign investment they were**
 5 **still ongoing. I just oversaw it. My guess, 15 years or**
 6 **something like that.**
 7 Q. 15 years?
 8 A. **Let's say 10 to 15 years.**
 9 Q. Okay. You had mentioned that you also wanted to
 10 develop relationships with international consultants.
 11 A. **Uh-huh.**
 12 Q. Is that correct?
 13 A. **Uh-huh.**
 14 Q. How did you meet these international consultants?
 15 A. **Just call. Phone call.**
 16 Q. How would you know who to call?
 17 A. **Well, it makes sense if you, for example, want a**
 18 **bank expert, you go to those banks that have an**
 19 **international department, and you just do your research**
 20 **and make communicating.**
 21 Q. Okay. Did you develop any long-term, lasting
 22 relationships with these consultants?
 23 A. **Yes. I did have a relationship, but just in a**
 24 **professional standpoint.**
 25 Q. Okay.

1 A. **And then I started going towards foreign investment,**
 2 **and at that point that relationship watered away a little**
 3 **bit.**
 4 Q. Okay. So explain why you choose to go to foreign
 5 investments instead of exports.
 6 A. **Under the Janklow administration it was very clear**
 7 **that they wanted export promotion first. It**
 8 **eventually -- the effect was that Janklow transferred the**
 9 **international department to Northern for export**
 10 **promotion.**
 11 **The relationship for Northern State was looked upon**
 12 **as very favorable. I remember Hilpert coming to me, the**
 13 **president, saying we want a closer relationship with**
 14 **GOED. What else can we do? Because this was a good**
 15 **revenue stream for Northern State University.**
 16 Q. Okay. When you say it was "a good revenue stream"
 17 what do you mean?
 18 A. **Well, we set up a corporation called Northern Plains**
 19 **International, Incorporated, which the purpose was to**
 20 **generate funds for Northern to spend on different**
 21 **academic international programs.**
 22 Q. Okay.
 23 A. **And these workshops and credit reports and whatever**
 24 **else I did generated funds for NPII and thus Northern**
 25 **State University.**

1 **In addition Janklow -- under the Janklow**
 2 **administration there was a contract, an annual renewable**
 3 **contract, where they would pay Northern State University**
 4 **for me to do the work for the State.**
 5 Q. Okay.
 6 A. **And because Hilpert wanted to anchor the**
 7 **relationship even wider with GOED, they asked me what can**
 8 **I do? And I said, Well, I know that the State has been**
 9 **trying to attract foreign investment, but they never had**
 10 **any success. So that is something that I think I could**
 11 **contribute.**
 12 Q. Okay. Let me just ask a question. Why put this
 13 into the University or have this at the University? Why
 14 doesn't GOED just do it themselves? They could hire you,
 15 and you could work directly for them.
 16 A. **I think that's a question you can ask GOED. You**
 17 **know, I would just be speculating.**
 18 Q. Okay. Did you know the Governor?
 19 A. **I had -- he asked me to come to Pierre and talk to**
 20 **him. So I didn't really know him personally on a social**
 21 **basis, but we just had a conversation with the Governor.**
 22 Q. Sure. When did you go up there to talk to him?
 23 A. **I do not know the exact date, but it was President**
 24 **Hutchinson, myself, and the dean of the business school,**
 25 **Clyde Arnold.**

1 Q. And what did you and Governor Janklow and the rest
 2 of the group discuss?
 3 A. **Janklow just wanted to have a picture of what -- I**
 4 **think he heard about what we were doing at Northern and**
 5 **probably liked what he heard. So he just wanted to have**
 6 **a picture of how to efficiently manage the international**
 7 **business for South Dakota.**
 8 Q. And what did you tell him was the most efficient way
 9 to manage that?
 10 A. **I just laid out what I believed the facts were. And**
 11 **I think he appreciated what I said so --**
 12 Q. What were the facts?
 13 A. **That from an agricultural standpoint I didn't think**
 14 **he had the distribution channels, that he had an accurate**
 15 **picture. So I told him what I believed the accurate**
 16 **picture was.**
 17 Q. What was the accurate picture?
 18 A. **That that is not something -- they were really**
 19 **controlled by the Continental Grains, the Cargills.**
 20 **There's not much you can do. But on the manufacturing**
 21 **side there is a lot you can do.**
 22 Q. So it's really the Continental Grain, the --
 23 A. **Cargills, the Bunges, all these large companies.**
 24 **They control the entire distribution of the grain. And**
 25 **for you to add value to that is very, very difficult.**

1 Q. So since it's so difficult to add value to that
 2 industry, you wanted to switch more to manufacturing
 3 exports. Was there any way that you thought that you
 4 could even break in and compete there with the grain
 5 imports, exports?
 6 A. **No. I didn't think I had a chance.**
 7 Q. Okay. So what did he feel about the manufacturing
 8 import and --
 9 A. **He liked it. He liked my plans, I think. So he**
 10 **sent me an e-mail if I had an interest to come to Pierre.**
 11 **But I told him, no, I didn't want to go to Pierre.**
 12 Q. To go live in Pierre?
 13 A. **To work. Yeah.**
 14 Q. Okay. What type of plans did you have for
 15 manufacturing exports?
 16 A. **To develop the skill set. I was convinced that**
 17 **South Dakota had marketable products, but I felt that the**
 18 **companies didn't have the tools of the trade, a good**
 19 **grasp of the tools of the trade, and, therefore, they**
 20 **weren't able to take advantage of it.**
 21 Q. And is this when you started the seminars?
 22 A. **Yeah.**
 23 Q. Okay. Did you see a lot of success with the
 24 seminars?
 25 A. **Yes.**

1 A. **That was on a -- at that time the only way to do it**
 2 **was on a nonimmigrant E-2 visa.**
 3 Q. E-2.
 4 A. **Treaty visa.**
 5 Q. And what year was that about?
 6 A. **Had to be somewhere around 2000 to 2003.**
 7 Q. So you fly to the Netherlands?
 8 A. **Go to the Netherlands. And then I would invite**
 9 **Department of Agriculture to come along to enhance the**
 10 **credibility.**
 11 Q. Okay.
 12 A. **Because the State involvement helps. And I would**
 13 **set up a booth and promote South Dakota.**
 14 Q. Where would you set up your booth?
 15 A. **In a town called Zwolle.**
 16 Q. Okay. And was it in a -- like a shopping center
 17 or --
 18 A. **Dutch dairy farmers, they were leaving the country.**
 19 **So they -- it was in such numbers that they even had a**
 20 **show specifically targeted towards immigration.**
 21 Q. Okay. And what was the name of the show? Do you
 22 remember?
 23 A. **I don't remember.**
 24 Q. Okay. How many shows did you go to?
 25 A. **You know, four or five. I don't know exactly.**

1 Q. Was there an increase in exports from South Dakota?
 2 A. **Yes.**
 3 Q. Okay. What time period did you decide that you were
 4 going to switch to foreign investments?
 5 A. **When Hilpert came to me and said we want a closer**
 6 **relationship with GOED. We like the relationship. At**
 7 **that time I said, look, foreign investment, they haven't**
 8 **done anything. Tim Oviatt at that point was still doing**
 9 **that job, but there was just nothing happening.**
 10 Q. Okay.
 11 A. **So at that point I put together the plan for the**
 12 **Governor to review, and they accepted it.**
 13 Q. So what was the plan that you prepared?
 14 A. **I don't remember the industry sectors that I focused**
 15 **on, but the first one was dairy. I knew that the**
 16 **Netherlands, the government was pretty much telling these**
 17 **dairies, look, we don't want you here. I knew the milk**
 18 **quota system was tough, and these Dutch dairy farmers**
 19 **were looking all over the world for alternatives.**
 20 **I knew that we had a very good market for dairy so**
 21 **it was just a matter of going to Holland and saying,**
 22 **look, why don't you consider South Dakota.**
 23 Q. And is that when you -- so what was the plan to be
 24 able to get them here? Was it just going to -- you come
 25 in on a work visa, or is that when you found --

1 Q. Several times?
 2 A. **Yeah.**
 3 Q. Was it in multiple trips, or did you do it --
 4 A. **Multiple trips.**
 5 Q. Did you just stay over there?
 6 A. **And then after the show we would bring those Dutch**
 7 **farmers who had an interest to South Dakota, and I would**
 8 **tour them all over South Dakota and look for sites that**
 9 **made sense.**
 10 Q. And what sites made the most sense for the dairy --
 11 A. **The I-29 corridor close to where the milk market is.**
 12 **Good transportation.**
 13 Q. Did you have quite a bit of interest?
 14 A. **Yeah. I think so.**
 15 Q. Okay. So what happened then? So you toured them
 16 over. What was the next step?
 17 A. **I toured them over, and they would come. Come on an**
 18 **E-2 visa. What the name of an E-2 visa implies is**
 19 **nonimmigrants.**
 20 **So these people come here with all their belongings**
 21 **and their entire life savings to set up shop, but the**
 22 **intent is that once you quit your business you have to go**
 23 **back to the Netherlands, which is not really what they**
 24 **wanted. And that is why I started searching for**
 25 **something that would give South Dakota comparative**

1 **advantage over other states, such as Michigan, Ohio,**
 2 **that also were trying to recruit these Dutch dairy**
 3 **farmers.**
 4 Q. So it could be a situation where someone could come
 5 here, live their whole life, have kids here, and then
 6 retire and --
 7 **A. Have to go back.**
 8 Q. -- have to go back. Okay.
 9 So what was the solution to the immigrants that were
 10 coming in on the E-2? Did -- were they still just --
 11 **A. There wasn't really a solution. So that's why I**
 12 **started searching for something, and I found EB-5.**
 13 Q. Okay. And what training or how did you learn about
 14 EB-5? It's a pretty big program.
 15 **A. You just start -- from what I recall, immigration,**
 16 **visa, started to look at all the different visas.**
 17 Q. Uh-huh.
 18 **A. And that is how I -- you know, you had EB-1, EB-2,**
 19 **EB-3, EB-4, EB-5. You just kind of go through the**
 20 **employment base visas.**
 21 **And then you had the family-based petitions. The**
 22 **family-based petitions pretty much didn't work, so that**
 23 **is how I landed with EB-5.**
 24 Q. Did you have an advisor, an immigration advisor --
 25 **A. Huh-uh.**

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1 Q. -- that helped you figure this all out?
 2 **A. No.**
 3 Q. Okay. So you start looking into EB-5, and then what
 4 do you do?
 5 **A. I contact the USCIS.**
 6 Q. Okay. Did you meet with them?
 7 **A. Yes. I met Morrie Berez.**
 8 Q. How do you spell his name?
 9 **A. It's Maurice properly, M-A-U-R-I-C-E. Last name**
 10 **B-E-R-E-Z.**
 11 Q. B-E-R-E-Z.
 12 **A. And he was the head of the EB-5 program for the**
 13 **USCIS.**
 14 Q. And where did you meet with him?
 15 **A. In Washington.**
 16 Q. Is that where he lives?
 17 **A. That's where he was employed. I think he lives in**
 18 **Maryland.**
 19 Q. Okay. Okay. When did you fly out there?
 20 **A. Would have to be about 2000 -- late 2002, early**
 21 **2003, I guess.**
 22 Q. Did you take anybody with the State department --
 23 **A. Huh-uh.**
 24 Q. -- at that time? So you just went --
 25 **A. Just me.**

1 Q. Just you.
 2 And what did you discuss with Morrie?
 3 **A. What my interest was and gathered information on how**
 4 **this program could be valuable to South Dakota. And at**
 5 **the same time Morrie was hired to revitalize the EB-5**
 6 **program. So he saw -- looked at me and saw that I would**
 7 **be the tool to also enhance his program.**
 8 Q. So tell me about the revitalization of EB-5. Had it
 9 been around for a long time?
 10 **A. Yes. It was around I believe since 1990, but it**
 11 **kind of died very quickly.**
 12 Q. Why was that?
 13 **A. I don't know the specifics, but the program -- I**
 14 **think that the USCIS didn't really have the expertise at**
 15 **that point to be effective in a very entrepreneurial**
 16 **setting.**
 17 Q. Okay.
 18 **A. Because they're more bureaucratic minded. They**
 19 **wanted to enter the entrepreneurial side, but I think the**
 20 **program was wide open for fraudulent --**
 21 Q. Sure.
 22 **A. -- abuse.**
 23 Q. So when you came to meet with Morrie were you kind
 24 of one of the first forefront frontier --
 25 **A. California just applied, I understand.**

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1 Q. Okay.
 2 **A. And at the same time Pennsylvania just applied. So**
 3 **Morrie -- I advised that I was working on behalf of the**
 4 **Governor's Office so the political clout from**
 5 **South Dakota could probably be effective for Maury's**
 6 **goals as well.**
 7 **So I kind of cut a deal with the other regional**
 8 **centers from say, look, you guys are private. Here you**
 9 **apply for the region center on behalf of the State of**
 10 **South Dakota. We have some Congressional delegates that**
 11 **can probably be beneficial. So why don't you give me a**
 12 **copy of your application, and then I can help you.**
 13 **So it was really a mutual beneficial relationship**
 14 **that I anchored with Pennsylvania, with Morrie, and**
 15 **California. So I was able to apply very quickly.**
 16 Q. Okay. And so when you say you cut a deal did you
 17 want their filing documents to help you --
 18 **A. Yes. The application.**
 19 Q. -- figure out --
 20 **A. How to -- because the Federal Register, you can read**
 21 **it, but you don't know how in depth you need to be to**
 22 **address each thing.**
 23 Q. Okay.
 24 **A. So the communication with the other regional centers**
 25 **and Morrie was crucial to South Dakota to get a quick**

1 **acceptance.**
 2 Q. Okay. And South Dakota would have been the first
 3 state regional center?
 4 A. **Uh-huh. First public, yes. That's correct.**
 5 Q. So really at that time it was California,
 6 Pennsylvania, and the State of South Dakota?
 7 A. **Uh-huh.**
 8 Q. And the one in California was private.
 9 A. **Yep.**
 10 Q. Tell me about that. What did that mean?
 11 A. **Anybody can really set up a regional center. You**
 12 **know, you just follow the process through the USCIS.**
 13 **Those were people that entered into the regional center**
 14 **program to generate profit for themselves. Whereas in my**
 15 **case that was not the intent. I was working as a state**
 16 **employee, Northern State employee on behalf of the**
 17 **Governor's Office.**
 18 Q. Okay.
 19 A. **So I thought that gave us more sway.**
 20 Q. Was -- and maybe this is just thinking back. When
 21 the EB-5 program had not done so well before, was it
 22 because so many regional centers were private that it
 23 was -- there was -- you mentioned fraud.
 24 A. **No. I didn't really go into the details of why the**
 25 **past failed. I was just looking forward.**

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1 Q. Looking forward. Okay.
 2 Are the private California and Pennsylvania regional
 3 centers still operating?
 4 A. **You know, I've been out of the game since about 2013**
 5 **so I don't --**
 6 Q. You don't --
 7 A. **I know there's about -- probably about 1,000**
 8 **regional centers now.**
 9 Q. Okay. So California, Pennsylvania, Morrie worked to
 10 push South Dakota's regional center through quickly.
 11 A. **Uh-huh. Yep.**
 12 Q. What year was the South Dakota Regional Center
 13 approved?
 14 A. **I think it was -- it was 2004, early 2004.**
 15 Q. Okay. And what was the physical location of the
 16 regional center?
 17 A. **You know, when you -- there's -- the regional, the**
 18 **entire -- it's -- well, initially were certain counties**
 19 **that I designated, but then it kind of expanded with**
 20 **different amendments.**
 21 Q. Okay. So it wasn't a business.
 22 A. **No.**
 23 Q. It was an area.
 24 A. **Yes.**
 25 Q. Okay. Did it have an office, like a pinpoint

1 office?
 2 A. **No. No. The South Dakota Regional Center is just a**
 3 **name that I came up with.**
 4 Q. Okay.
 5 A. **It's not a legal entity.**
 6 Q. It's just a geographic area.
 7 A. **Yes.**
 8 Q. Okay. And where were you operating at this point in
 9 time? Because I'm guessing you were managing the
 10 regional center; correct?
 11 A. **Graham Hall.**
 12 Q. At Graham Hall in your office.
 13 So what happened after you got the official okay,
 14 this is the South Dakota Regional Center? What did you
 15 do next?
 16 A. **I would go to Europe.**
 17 Q. Okay.
 18 A. **And tell them here, look, you can go to Michigan,**
 19 **you can go to Ohio, but you have an E-2 visa. If you**
 20 **come to South Dakota, you get a green card. So pretty**
 21 **much checkmate the other states.**
 22 Q. Okay. Did you start in the Netherlands, or when you
 23 say Europe --
 24 A. **Yeah. I started in the Netherlands, but while I was**
 25 **in the Netherlands I ran across Dutch Canadians who had**

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1 **immigrated to Canada but now also were running in**
 2 **problems with the Canadian milk order system. So then I**
 3 **branched out to Canada, and while I was in Canada I found**
 4 **British people. So then I went to England, Ireland, and**
 5 **started bringing in --**
 6 Q. People from all over the world.
 7 A. **Tried to, yeah.**
 8 Q. And were you holding seminars in each of these --
 9 A. **Yeah.**
 10 Q. Okay. And -- okay.
 11 Started off with the dairies; correct?
 12 A. **Uh-huh.**
 13 THE COURT REPORTER: Is that yes?
 14 A. **Yes.**
 15 Q. Sorry. I should have followed up there.
 16 Talk to me about SDIBI. What does that stand for?
 17 A. **Again, it's not a legal entity. It's just some name**
 18 **I came up with.**
 19 Q. Okay.
 20 A. **South Dakota International Business Institute.**
 21 Q. Okay.
 22 A. **And it's part of the School of Business at Northern.**
 23 Q. Okay.
 24 A. **That's how I would look at it. But it's just a**
 25 **name. It's not a legal entity.**

1 Q. Okay. So there was no office that said --
 2 **A. No. It would say SDIBI with my name.**
 3 Q. Okay. So there was a physical office --
 4 **A. Yeah.**
 5 Q. -- on campus for this?
 6 **A. Yeah.**
 7 Q. And can you explain the relationship between SDIBI
 8 and the regional center? How did those interplay?
 9 **A. I would say that SDIBI was the export site.**
 10 Q. Okay.
 11 **A. So we had SDIBI from an export site, and the**
 12 **regional center became the foreign direct investment**
 13 **site.**
 14 Q. Okay. So they had two separate functions?
 15 **A. Yes.**
 16 Q. Okay.
 17 **A. Although initially that was not the intent. It just**
 18 **developed that way.**
 19 Q. What was the intent initially?
 20 **A. South Dakota International Business Institute**
 21 **included, in my mind, the regional center.**
 22 Q. Okay. And how did it evolve?
 23 **A. Again, it's not a legal entity.**
 24 Q. Sure.
 25 **A. But if I had to summarize it, in my mind, SDIBI**

1 **A. Well, you know, when I submitted the proposal and**
 2 **was accepted to the Governor's Office for me there was a**
 3 **new challenge. Export promotion became a little bit**
 4 **boring. Then there was a new challenge where I tried to**
 5 **spend as much time as I could, without putting SDIBI at**
 6 **risk.**
 7 Q. Explain South Dakota's EB-5 program when it first
 8 started. Because I know it's changed over time. So
 9 let's start from the beginning, and explain what it was
 10 like when it first started.
 11 **A. The problem with the whole EB-5 is USCIS didn't have**
 12 **the right personnel to manage EB-5. You have to be very**
 13 **entrepreneurial, and the USCIS, in my mind, were**
 14 **ex-military people, government bureaucrats who have**
 15 **suddenly started reviewing business plans, which didn't**
 16 **make any sense to me. But that was the reality.**
 17 **Initially we started with dairy in a 12-county -- I**
 18 **believe it was 12 counties along the I-29. And once we**
 19 **started booking some successes, Department of Agriculture**
 20 **became extremely interested because something for them to**
 21 **help their agenda, and we started expanding slowly on to**
 22 **what the regional center was when I left.**
 23 Q. Okay.
 24 **A. When I was -- when the State terminated the**
 25 **contract, I should say.**

1 **became more involved with the export promotion, and the**
 2 **South Dakota Regional Center was more on the track of**
 3 **foreign investment.**
 4 Q. Would you say in terms of your job you had different
 5 time allocations for each one?
 6 **A. Yes.**
 7 Q. How much time in the beginning were you devoting to
 8 SDIBI versus the regional center?
 9 **A. Well, the regional center didn't exist so**
 10 **100 percent I was doing SDIBI.**
 11 Q. Okay.
 12 **A. And then eventually I would become more and more**
 13 **involved with foreign investment.**
 14 Q. Okay.
 15 **A. And had my secretary, Cheri Brick, take care of the**
 16 **export-related SDIBI activities, and I would just**
 17 **supervise to make sure that things went okay.**
 18 **And, again, we would submit a contract to GOED on**
 19 **an annual basis who would then approve my time**
 20 **allocation.**
 21 Q. Okay. And did eventually your time allocation
 22 switch more to the foreign investment EB-5?
 23 **A. Yes.**
 24 Q. When was -- when did it switch almost primarily to
 25 that?

1 Q. When you talk about USCIS and -- U-S-C-I-S. When
 2 you talk about it in the beginning, ex-military and
 3 bureaucrats, was it a small group that --
 4 **A. Yes. Yes. It was very small.**
 5 Q. How many would you say?
 6 **A. I don't want to speculate, but it was very small.**
 7 **From my perspective it was mainly Morrie. Morrie was the**
 8 **head.**
 9 Q. Okay.
 10 **A. That's what I was focused on.**
 11 Q. Okay. Would you say more than 10?
 12 **A. You know, when it comes to adjudicating the**
 13 **petitions itself, I would say more than 10.**
 14 Q. Okay. More than 20?
 15 **A. You know, I'm just purely speculating. I don't want**
 16 **to --**
 17 Q. Yeah. And that's okay. I'm just asking you.
 18 **A. I don't want to guess. I don't know how many people**
 19 **they had working on the program initially.**
 20 Q. Okay.
 21 **A. And it grew, obviously, as the program grew.**
 22 Q. It grew as the program grew. But, for the most
 23 part, you and Morrie were working closely together?
 24 **A. Yep.**
 25 Q. So it started with the dairies. What was the

1 investment model for the very first dairy project?
 2 **A. The analogy I've used before is we built a soccer**
 3 **stadium.**
 4 Q. Okay.
 5 **A. The regional center. And the South Dakota -- the**
 6 **South Dakota investors, if there were any -- initially**
 7 **there weren't any. But the Dutch dairy farmers, if they**
 8 **came here, they could just take advantage of the tool,**
 9 **but we would have them sign all kinds of waivers.**
 10 Q. Okay.
 11 **A. And that's it. We just provided the access to the**
 12 **regional center for them to hire their own attorneys, for**
 13 **them to set up their own partnership. We wouldn't get**
 14 **involved in any of that. For them to get their own bank**
 15 **financing and get the business going.**
 16 Q. So they would come here and look for a farm?
 17 **A. We would try to help them find sites.**
 18 Q. Okay.
 19 **A. And then once they found a site, we step back.**
 20 Q. Okay.
 21 **A. And all I would do is when they apply for the visa I**
 22 **would submit a letter stating from, according to the best**
 23 **of my knowledge, this project fits the model and fits the**
 24 **requirement under EB-5, and then they would be on their**
 25 **own. They would hire their attorneys and do what they**

1 **A. Six people in the family.**
 2 Q. Okay. I believe we have looked at a document with
 3 Mary earlier this morning. It's right there. It's
 4 Bachand 35, Haar 1. I can see it there at the bottom.
 5 Is that a listing -- please take a second and look
 6 through that document. I just want to talk to you about
 7 the first dairies and what they did and how the program
 8 grew.
 9 (Witness examines document.)
 10 Q. Have you had a chance to review that?
 11 **A. This first page is not dairies.**
 12 Q. Okay. Yeah. Review the entire document, please.
 13 (Witness examines document.)
 14 **A. You want me to go through the entire -- through all**
 15 **the details or --**
 16 Q. Well, we're under the understanding -- is this a
 17 document that you prepared?
 18 **A. I think so.**
 19 Q. Okay. So if you can turn back, it looks like this
 20 document is divided into current model and past model.
 21 **A. Okay.**
 22 Q. Is that correct?
 23 **A. I see the current model. Yes.**
 24 Q. Okay. So in the past model what one of these
 25 dairies was the first dairy to come to South Dakota?

1 **need to do.**
 2 Q. They would do everything on their own.
 3 Were these sites already developed, or was this pure
 4 land, they had to build --
 5 **A. Both.**
 6 Q. Both. Okay. So they could buy out an existing
 7 dairy?
 8 **A. They -- no. They could buy an existing dairy, but**
 9 **then there's a certain expansion requirement.**
 10 Q. Okay.
 11 **A. So you couldn't just buy --**
 12 Q. A dairy.
 13 **A. Yeah. So you had some people maybe buy an older**
 14 **dairy and then put new barns in or something to that**
 15 **effect.**
 16 Q. Okay. Were they coming with like large groups like
 17 a family, or was it just -- in the beginning just one
 18 dairy --
 19 **A. Family.**
 20 Q. Family?
 21 **A. Well, one dairy family would come and set up their**
 22 **own shop.**
 23 Q. Were they big families? Little families?
 24 **A. Just standard. Standard families. Maybe four, two.**
 25 Q. Okay.

1 **A. Global Dairy was the first one, I think. They were**
 2 **already here.**
 3 Q. What do you mean they were --
 4 **A. They were here even before without my -- there was a**
 5 **Dutch dairy farmer --**
 6 Q. Okay.
 7 **A. -- in White, South Dakota, I believe.**
 8 Q. So was he here probably on an E-2?
 9 **A. Yes.**
 10 Q. And you -- so did you find him? Did he find you?
 11 How did that -- how did you meet?
 12 **A. I think it was through the Department of Agriculture**
 13 **that I found out that there was a Dutch dairy somewhere.**
 14 Q. Okay.
 15 **A. And that's -- and then I contacted them.**
 16 Q. And what happened when you contacted him?
 17 **A. I recruited him to come with me to Europe because**
 18 **they already bought the South Dakota product, so they**
 19 **would be good salespeople to help me in my sales.**
 20 Q. Okay. So they actually went with you.
 21 **A. Uh-huh.**
 22 Q. And you went --
 23 **A. To the trade shows.**
 24 Q. Trade shows. Okay.
 25 Had they already become part of the EB-5 program?

1 **A. No. They were just E-2. The EB-5 program didn't**
 2 **exist.**
 3 **Q.** Okay. Did they ever become part of the EB-5
 4 program?
 5 **A. Yes.**
 6 **Q.** When? Do you remember?
 7 **A. I don't remember.**
 8 **Q.** Okay. Who was next?
 9 **A. You know, I think Winter Dairy was very early on.**
 10 **Oh, no. Van Winkle Dairy was very early on.**
 11 **Q.** Okay.
 12 **A. Oh, I guess the dates are right on here.**
 13 **Q.** Sure. So would this say that it may have been
 14 Van Winkle?
 15 **A. 2005 --**
 16 **Q.** So probably Van Winkle --
 17 **A. K&K Dairy seems to be in 2005. Swier's, 2005. And**
 18 **then Moody, 2006. Veblen, 2006. Roughly in that area.**
 19 **Q.** Okay. So 2005, 2006 is when the dairies really took
 20 off in South Dakota?
 21 **A. Yes. It appears that way.**
 22 **Q.** Explain the model of investment through the EB-5
 23 program at that time.
 24 **A. As I mentioned, the very first one was where a**
 25 **European dairy farmer would come here and would set up**

1 **regional center, yes, it was 500,000, plus they had to**
 2 **create 10 jobs.**
 3 **Q.** For outside of a regional center what would be the
 4 requirements of the dairies?
 5 **A. As I mentioned, job creation is the real reason for**
 6 **EB-5. The benefit of a regional center is that it allows**
 7 **you to calculate indirect jobs based on an econometric**
 8 **model that we have submitted and received approval from**
 9 **from the Federal Government.**
 10 **Q.** Okay. Let's walk through that.
 11 **A. Uh-huh.**
 12 **Q.** So regional center allows you to create indirect
 13 jobs. And we're going to walk through that economic
 14 model here in a moment.
 15 **A. Uh-huh.**
 16 **Q.** Outside of the regional center, so outside of the
 17 counties where you were approved, they would have to
 18 invest a million dollars.
 19 **A. Not necessarily. In high unemployment areas and**
 20 **rural areas it still would be 500.**
 21 **Q.** Okay.
 22 **A. But they would have to create 10 physical jobs.**
 23 **Q.** They had to hire 10 people.
 24 **A. Direct jobs.**
 25 **Q.** Okay. How do you calculate then indirect jobs?

1 **their own shop, hire their own employment -- own**
 2 **employees, and would qualify or not qualify for the right**
 3 **visa.**
 4 **Q.** Was there a monetary amount they had to meet?
 5 **A. Under the E-2 visa it's not really black and white.**
 6 **Q.** Okay.
 7 **A. It's on a case-by-case basis. But I've seen them as**
 8 **low as \$50,000.**
 9 **Q.** Okay. So were any of the dairies through EB-5?
 10 **A. Yes. There were some on the EB-5. And then, you**
 11 **know, you can use EB-5 without a regional center as well**
 12 **when you have to invest a million dollars. But if you**
 13 **wanted to use -- that's not -- that's not quite true.**
 14 **You can use -- the benefit of using the regional**
 15 **center really had to do with the job creation where you**
 16 **needed -- you needed to create 10 jobs.**
 17 **Initially in the purest form were when these Dutch**
 18 **farmers would come here, set up their own shop, if they**
 19 **wanted the EB-5 program, then they would have to make**
 20 **sure that they hired 10 people for they would qualify for**
 21 **the EB-5 program. If they wouldn't qualify, then they**
 22 **would remain on the E-2 visa.**
 23 **Q.** And so they would have to invest \$500,000 into their
 24 business too then; correct?
 25 **A. That depends on the location. The area of the**

1 **A. You know, there's different multipliers. And this**
 2 **is -- this program is in flux. So initially we never**
 3 **anticipated how the program developed the way it did.**
 4 **So initially there was a direct and indirect. We**
 5 **used RIMS II job creation where for each job you created**
 6 **on the farm you would get so many indirect jobs.**
 7 **So let's say you've created four jobs and your**
 8 **multiplier for agriculture I believe was in the 2.4 some**
 9 **region, 4 times 2.4, and a little bit past that threshold**
 10 **of 10, and you would, therefore, be able to qualify with**
 11 **less direct jobs. And that's the real benefit of the**
 12 **regional center is the indirect job creation.**
 13 **Q.** What is the purpose of that?
 14 **A. The purpose of that is that I believe the -- and I'm**
 15 **speculating, but it wasn't very effective based on 10 job**
 16 **creation.**
 17 **Other governments have similar programs, Canada,**
 18 **New Zealand, et cetera, and they were just much more**
 19 **competitive than the U.S. system. So the U.S. had to**
 20 **adjust in order to become competitive with other**
 21 **countries.**
 22 **Q.** So under RIMS II -- how did you choose RIMS II?
 23 **A. Morrie.**
 24 **Q.** Morrie chose RIMS II?
 25 **A. Uh-huh.**

1 Q. Did Morrie come up with the entire formula?
 2 **A. No. It's the U.S. Department of Commerce publishes**
 3 **those numbers.**
 4 Q. Okay. So they published those numbers?
 5 **A. Right. They develop them.**
 6 Q. They develop them.
 7 **A. The RIMS II.**
 8 Q. Okay. And there are different multipliers per
 9 industry?
 10 **A. Correct.**
 11 Q. What -- so and you believe it's 2.4 for agriculture?
 12 **A. I don't --**
 13 Q. A guess but --
 14 **A. Somewhere in that range. Anywhere from 2 to 4,**
 15 **shall I say.**
 16 Q. Okay. How do you know what industry goes with what
 17 multiplier? Where do you go to get that information?
 18 **A. That's RIMS II. They go by industry setting.**
 19 Q. Is it a publication that comes out?
 20 **A. Yes. The U.S. Department of Commerce publishes**
 21 **that.**
 22 Q. Okay. Yearly?
 23 **A. That, I don't know.**
 24 Q. Okay. Is it updated, do you know, over time or --
 25 **A. Yes. It has to be updated.**

1 Q. Okay.
 2 **A. I know it's updated.**
 3 Q. And an indirect job, I'm assuming, and correct me if
 4 I'm wrong, would say if somebody has to have a trucking
 5 company haul milk out of the dairy --
 6 **A. Exactly.**
 7 Q. -- they may have to hire a secretary --
 8 **A. Exactly.**
 9 Q. -- to handle the calls, and that would be an
 10 indirect job?
 11 **A. That's correct.**
 12 Q. Okay. Is there anything else about this indirect
 13 job creation that we haven't covered?
 14 **A. I don't think so.**
 15 Q. Okay.
 16 **A. I think what's important to realize, that the first**
 17 **projects are partnerships that were set up all on their**
 18 **own merit, and they created the jobs themselves. There**
 19 **were no outside investors.**
 20 Q. Okay. When did that change?
 21 **A. When I obtained the regional center status for**
 22 **South Dakota I started getting inundated with calls from**
 23 **abroad.**
 24 Q. Okay.
 25 **A. People who wanted to come to the United States and**

1 **wanted to find a way in.**
 2 Q. Where were you getting these calls from? What
 3 countries?
 4 **A. Mainly Korea. Korea, initially.**
 5 Q. How did Korea find out about our regional center?
 6 **A. It's U.S. Department of Commerce publishes which**
 7 **are -- or who is approved as a regional center. So a**
 8 **foreign immigration attorney is not hard to find out.**
 9 Q. Okay. Are there immigration attorneys that have
 10 been hired that are just searching all over the U.S. --
 11 **A. Yes.**
 12 Q. -- for opportunities? Okay.
 13 You said yes; correct?
 14 **A. Yes.**
 15 Q. Okay.
 16 (Discussion off the record.)
 17 Q. So you're starting to get calls from Korea.
 18 **A. Uh-huh.**
 19 Q. Who was calling? Were they investors? Immigrants?
 20 **A. Mainly attorneys.**
 21 Q. Mainly attorneys.
 22 **A. Uh-huh.**
 23 Q. Do you remember the names of those attorneys?
 24 **A. No. But Mr. James Park was one of the attorneys.**
 25 Q. Okay. Talk to me about how you got to know

1 James Park?
 2 **A. Okay. First when I got inundated -- I should**
 3 **backtrack a little.**
 4 **When these European dairy farmers were coming along**
 5 **the I -- sorry, I-90 corridor, initially they were**
 6 **received with open arms. But when there were some more**
 7 **coming there started to become resentment; local farmers**
 8 **thinking these rich foreigners are buying up the land.**
 9 **So we had several -- and especially in the Brookings**
 10 **area there was friction started to develop. So I saw**
 11 **that demand for foreign money that wanted to come here,**
 12 **and I saw these local dairy farmers bitching about what**
 13 **we were doing.**
 14 **So I thought, okay, here it is. Here you have**
 15 **money. Why don't you start a new dairy farm, and I will**
 16 **bring you a foreign investor that you can partner up**
 17 **with.**
 18 **So that was a good way to hopefully quiet down the**
 19 **turmoil in South Dakota because you can say if you want**
 20 **to build a large farm and you want to get away from the**
 21 **small family farm, here's your opportunity for funding**
 22 **it.**
 23 Q. Did you receive positive feedback from that?
 24 **A. I think -- I think it quieted down the turmoil, yes.**
 25 Q. Okay. So you were still in dairies at that point.

1 **A. Yes.**
 2 **Q.** Okay. Where -- where were the investors coming from
 3 for the dairies?
 4 **A. Initially it was mainly I went to Korea because**
 5 **that's where I received most of the calls, and that is**
 6 **where I mentioned Mr. Park. We did a seminar at -- I**
 7 **believe it was the -- the foreign FSA's office for the**
 8 **U.S. Government. And that is where I met Mr. Park, and I**
 9 **introduced the opportunity of maybe investing with**
 10 **South Dakota dairy farmers.**
 11 **Q.** Okay. And James is licensed in California; correct?
 12 **A. Yes. I believe so.**
 13 **Q.** So there's -- I know that I'm a little -- there's a
 14 Hanul Law Firm.
 15 **A. That's a Korean law firm, yes.**
 16 **Q.** And there's Hanul Korea. Is there also -- was at
 17 that time there also a Hanul U.S.A.?
 18 **A. At that time I don't think so, but I'm not sure.**
 19 **Q.** Okay.
 20 **A. From what I recollect, it was pretty much Seoul.**
 21 **Q.** Was Mr. Park in Seoul?
 22 **A. Yes.**
 23 **Q.** Okay. And you flew over to visit him?
 24 **A. Uh-huh.**
 25 **Q.** Tell me about that.

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1 **A. I didn't flew over to visit him. There was just**
 2 **tremendous interest for -- from Korean investment. So I**
 3 **thought it would be good to go to Korea, and during my**
 4 **seminar Mr. Park came up to me.**
 5 **Q.** Okay. And how -- what happened?
 6 **A. Well, he just latched on to the regional center**
 7 **concept and believed that this would be a good**
 8 **opportunity for his firm to build a business. And from**
 9 **my perspective it makes sense to align yourself with an**
 10 **immigration attorney that you feel comfortable with.**
 11 **Q.** Was Mr. Park -- had he been involved with EB-5
 12 before that?
 13 **A. I don't think so.**
 14 **Q.** So this was new to him, and he --
 15 **A. Actually, no. His firm was involved --**
 16 **Q.** Okay.
 17 **A. -- with somebody that was promoting -- I don't know**
 18 **if it was -- I think it was Pennsylvania.**
 19 **Q.** Okay.
 20 **A. But that gentleman, the attorney, left the firm and**
 21 **went on his own and left Hanul. So they were looking to**
 22 **fill that void. That's how it --**
 23 **Q.** Okay. So at this point in time what year point was
 24 this?
 25 **A. It had to be 2004 sometime.**

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1 **Q.** 2004. Was it still Pennsylvania, California, and
 2 South Dakota?
 3 **A. At that time, yes.**
 4 **Q.** Okay.
 5 **A. That I recall, yes.**
 6 **Q.** Why the interest in South Dakota? Do you know? Did
 7 he ever tell you why he was just interested in
 8 South Dakota?
 9 **A. There wasn't -- there was no alternative. We were**
 10 **the only -- pretty much the only game in town.**
 11 **Q.** Okay. So how did your relationship with him
 12 develop?
 13 **A. You know, I met with a lot of immigration attorneys,**
 14 **but I didn't feel very comfortable with most. And with**
 15 **James he nurtured it in a way, understanding the**
 16 **predicament that I was in at Northern. Everybody wants**
 17 **licenses signing.**
 18 **And I advised to him that as a State employee it's**
 19 **very difficult for me to get certain approvals, so I can**
 20 **never enter into an official working relationship with**
 21 **you. And if you're willing to work under those**
 22 **circumstances, that we just go on a good-faith basis,**
 23 **then I think there's an opportunity where we can benefit**
 24 **each other. That's how it --**
 25 **And then most other attorneys, they want some kind**

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1 **of an agreement signed. That would be difficult for me**
 2 **to get accomplished in a bureaucratic setting.**
 3 **What I was doing, I was really doing entrepreneurial**
 4 **stuff --**
 5 **Q.** Sure.
 6 **A. -- in a very bureaucratic setting.**
 7 **Q.** Uh-huh.
 8 **A. And that's -- that's kind of already a cultural**
 9 **conflict. But I had to manipulate the system in such a**
 10 **way that it would benefit South Dakota.**
 11 **Q.** Sure.
 12 **MS. OLIVIER:** Okay. I see our court reporter's
 13 hands are cramping a little bit, so let's take a break
 14 and give her a second to put her fingers to rest.
 15 **It is 11:40.**
 16 **(A lunch recess is taken.)**
 17 **MS. OLIVIER:** We are restarting our afternoon
 18 session after our lunch break. It is now 1:02 p.m.
 19 **Could the court reporter read back just the last**
 20 **question so we can see where we were at.**
 21 **(Discussion off the record.)**
 22 **Q.** So, Joop, we were talking about your relationship
 23 with James Park and how that developed, and you were
 24 discussing how it was a bureaucratic situation that you
 25 were in.

1 Do you remember that's where we left off?

2 **A. Uh-huh.**

3 **Q.** I kind of want to go back a bit and clarify a point.

4 So up until about 2007 with the dairy farms, they were

5 direct investments. They weren't done through the

6 typical -- the newer form of model that you were looking

7 for where investors would invest in an established

8 business. Is that correct?

9 **A. Not completely.**

10 **Q.** Okay.

11 **A. The initial dairy farms were a situation where a**

12 **foreign family would come here, start up their own**

13 **business, run their own business, and would hire direct**

14 **employees. That's mainly the start-up with the E-2 visa.**

15 **Q.** Yep.

16 **A. Then we have the EB-5 program where they could do**

17 **some of the same thing, and if they had enough job**

18 **creation, they would be able to get an immigrant visa.**

19 **Then once we had that opportunity with EB-5, that's**

20 **where we got inundated with inquiries from abroad.**

21 **That's why we started funneling that money and coupling**

22 **with local dairy farms with the hope of building larger**

23 **dairy farms.**

24 **Q.** When you say that that's when you started funneling

25 the money to couple it with local dairy farms, would that

1 **were trying to fill that void. James Park's mission was**

2 **to fill that void, and he believed it was beneficial to**

3 **align himself with us.**

4 **Q.** And at that time it was still California,

5 Pennsylvania, and South Dakota.

6 **A. Correct.**

7 **Q.** Okay. So what did he believe he could help do?

8 **A. At that time he could fulfill more than just the**

9 **legal aspect of functioning as immigration attorney. He**

10 **also felt he could find the Korean investors for the**

11 **dairy farms in South Dakota. So it was a dual function.**

12 **Promotion as well as being the attorney.**

13 **Q.** Was there ever any contract with him?

14 **A. No.**

15 **Q.** Why not?

16 **A. There was not direct -- because the situation -- the**

17 **only thing -- and I think you will get to that, there was**

18 **an MOU signed by him at some point.**

19 **Q.** Okay.

20 **A. But there was never a contract with Hanul or**

21 **James Park because of the situation that I was**

22 **functioning under. It would be -- it would take a**

23 **tremendous amount of delay, and that is one of the**

24 **reasons why I was willing to work with park; because he**

25 **was under the understanding what I could do and what I**

1 be post-2007?

2 **A. Can I look back?**

3 **Q.** Yeah.

4 **A. I think it was 2006. So that sounds about right.**

5 **Q.** Okay.

6 **A. 2007 there's still Valley View, February 2007. So**

7 **it's a little bit after that even.**

8 **Q.** Okay.

9 **A. When did -- I have to look at the NBP one because**

10 **some of them there's a little bit of an overlap to.**

11 **Q.** Okay. But it was about that --

12 **A. About that time frame, yeah.**

13 **Q.** About that time frame.

14 So you're getting inundated with phone calls, and

15 one of them is James Park?

16 **A. No. No.**

17 **I got inundated with calls from Korea of people that**

18 **wanted to obtain the green card through investment in our**

19 **regional center, and that led me to go to Korea, hold one**

20 **of our seminars, and that's where I met James Park.**

21 **Q.** Okay. And what did James tell you that he could do

22 for you? Because he was -- it's my understanding he was

23 new to the EB-5 program.

24 **A. He was. His firm had an employee who was working on**

25 **the EB-5 with Pennsylvania, but he left the firm so they**

1 **could not do. And he, therefore, was willing to accept a**

2 **relationship that was really based on faith without any**

3 **contracts.**

4 **Q.** Okay. And what was it that you could do? What was

5 your role in that relationship?

6 **A. My role was that I was managing the regional center,**

7 **and that was the tool his clients would like to take**

8 **advantage of.**

9 **Q.** Would you find projects?

10 **A. Yes. I would.**

11 **Q.** Okay. So it was your responsibility to find the

12 South Dakota project; correct?

13 **A. Pretty much, yes, and qualify them.**

14 **Q.** How would you do that? And qualify them?

15 **A. Yeah.**

16 **Q.** Okay. So, first of all, how would you find the

17 project?

18 **A. Well, with the dairy farms, as I mentioned, we**

19 **worked with the Department of Ag. We worked with GOED.**

20 **So they would be able to give me feedback too on who was**

21 **interested in maybe coupling up with foreign investors**

22 **and who was not.**

23 **Q.** And then how would you qualify them?

24 **A. Well, the USCIS has certain requirements: Minimum**

25 **capital investment, being in a certain geographical area,**

1 being in the right industry sector for which we are
 2 approved.
 3 Q. Would that -- making sure the business was viable?
 4 A. **No. Not at all.**
 5 Q. Who was in charge of making sure the business was
 6 viable?
 7 A. **With those projects that was -- the beauty of those**
 8 **projects, it wasn't really my business at all, but these**
 9 **projects would require bank financing. And a bank will**
 10 **not lend money unless the project was viable. So all**
 11 **that due diligence was done by banks pretty much that**
 12 **were going to lend to these commercial enterprises.**
 13 Q. Okay. So these commercial enterprises needed
 14 funding so banks were vetting them?
 15 A. **Yes.**
 16 Q. How did you choose which bank was going to vet them?
 17 A. **Was it First -- First National -- FNB. First**
 18 **National Bank & Trust in Brookings had a keen interest,**
 19 **and they did most of the -- financed most of the**
 20 **projects.**
 21 Q. Why not -- why weren't they just using the
 22 investments from the foreign investors to finance the
 23 projects? Why bank financing them?
 24 A. **Because the job creation is a limiting factor that**
 25 **there wouldn't be enough job creation on the farm to**

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1 **raise sufficient funds to have a project that can be**
 2 **fully financed with EB-5 monies.**
 3 Q. How much money are you talking about that they would
 4 need?
 5 A. **For a dairy farm?**
 6 Q. Yeah.
 7 A. **There's a wide range. The total amount we did was**
 8 **about \$90 million worth of dairy farms up along the I-29**
 9 **corridor.**
 10 Q. When did you switch out of dairy farms?
 11 A. **I switched out -- well, what happened with the**
 12 **market -- it's not so much that I wanted to switch out,**
 13 **but South Dakota was successful with the regional center.**
 14 **It opened eyes in other states.**
 15 **So when you had states like New York, Hawaii coming**
 16 **in, South Dakota's dairy farms suddenly weren't as**
 17 **attractive anymore to the foreign investors. They had**
 18 **alternatives now which they didn't have before.**
 19 **You know, when we put the project out that was**
 20 **pretty much it besides Pennsylvania and California. But**
 21 **when the EB-5 program started developing and other states**
 22 **started to take advantage of it, private entities in**
 23 **other states such as New York and Hawaii, we found**
 24 **ourselves no longer competitive.**
 25 Q. Okay. So what did you decide to do?

1 A. **I needed bigger projects. And dairy farms were no**
 2 **longer cutting it. I knew Mike Rounds was very**
 3 **interested in the certified beef program. And I also**
 4 **knew that they are very keen in having a certified**
 5 **slaughterhouse built, and that is how I approached Dennis**
 6 **Hellwig, through the state contact.**
 7 Q. Who is Dennis Hellwig?
 8 A. **Dennis Hellwig is the person who started the beef**
 9 **plant initially.**
 10 Q. Was the beef plant the first EB-5 project that was
 11 not a dairy?
 12 A. **Yes.**
 13 Q. Okay. So explain how that project got going. You
 14 approached Dennis Hellwig, and what happened from there?
 15 A. **Had a meeting with Benda who was -- just became**
 16 **commissioner. So I met in Pierre, like I would normally**
 17 **do when there was a new commissioner, explaining what**
 18 **SDIBI had been doing for the State.**
 19 **And during that conversation it was very clear that**
 20 **the State wanted this beef project, and at the same time**
 21 **it made sense because the way it was presented, the**
 22 **FDA -- USDA would be financing part of the project. The**
 23 **State would have their own money in it. So I saw an**
 24 **opportunity from, hey, this is a chance for us to become**
 25 **competitive again.**

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1 Q. So what happened next?
 2 A. **Normally what happens in a situation like that is**
 3 **that I discuss it with the agents. At that time it was**
 4 **James Park mainly in Korea from, hey, what do you think?**
 5 **Would this project work? And at that time I might have**
 6 **communicated with some other agents too who were**
 7 **interested. And they at that point were interested in**
 8 **doing this project, promoting this project.**
 9 Q. Where was this project promoted?
 10 A. **Initially in Korea, but it also went into China**
 11 **pretty quickly.**
 12 Q. Was there a Confidential Offering Memorandum that
 13 was done for the beef plant?
 14 A. **Yes.**
 15 Q. Okay. Explain when the investors actually saw the
 16 Offering Memorandum in the beef plant.
 17 A. **The way the Offering Memorandum was prepared, it was**
 18 **just, again, we saw ourselves as we created this soccer**
 19 **field that people are allowed to play soccer, the**
 20 **investors and the local people are allowed to take**
 21 **advantage of that economic development tool, and my job**
 22 **was to introduce the project to Hanul in this case and**
 23 **just in every case.**
 24 **Hanul then would communicate directly with the**
 25 **company and ask for whatever material they needed to**

1 put that project together, the Offering Memorandum
 2 together.
 3 Q. How much was invested into the beef plant?
 4 A. In the end, or in the beginning? Because it went
 5 through different stages.
 6 Q. Walk me through the stages.
 7 A. The initial was for about 70 investor, and I think
 8 69 actually became part of it.
 9 Q. And so first stage of investment was how much?
 10 A. About 69 investors, each 500,000, so that is
 11 34.5 million.
 12 Q. What was the next set of investors?
 13 A. For that project or -- because --
 14 Q. For the beef plant.
 15 A. We just focusing on the beef plant.
 16 Q. Just the beef plant.
 17 A. That was SDIF LP6, and that was for about
 18 35 million as well. I don't know for sure if there -- if
 19 there was 68. I think only 68 actually ended up doing
 20 the project.
 21 Q. Okay. Of the first 69 investors who invested
 22 500 million about -- oh, was it 500,000? I wrote million
 23 down.
 24 Each investing 500,000. Did they have personal
 25 guarantees signed?

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1 A. They were equity investors so --
 2 Q. So no personal guarantees --
 3 A. No.
 4 Q. -- in that?
 5 A. No.
 6 Q. So when did things change between being an equity
 7 investor to I'm guessing what you would call the loan
 8 model?
 9 A. Again, as the EB-5 program was developing, I felt
 10 that the intent of Congress was a direct investment in
 11 the business. But the USCIS loosened that -- tightened
 12 it up, and Morrie Berez came to South Dakota, had a
 13 meeting with me, and he said, look, we are going more
 14 towards a loan model.
 15 And the reasons for the loan model were pretty
 16 persuasive, and it had to do with exit strategy. If
 17 you're an equity investor and after five years having a
 18 permanent green card, it's a little harder to get out of
 19 a business than it would be with a loan that is coming
 20 due.
 21 Q. Okay.
 22 A. And because the writing was on the wall, Morrie
 23 persuaded me to -- to go that route.
 24 Q. When was this meeting with Morrie?
 25 A. It had to be around 2008 or so. 2008, 2009. It was

1 at an academic conference from Northern University in
 2 Rapid City. They have the annual international
 3 conferences. It was at one of these conferences where he
 4 also was a keynote speaker.
 5 Q. Did he offer a document of some sort at this
 6 conference that explained how to structure the loan
 7 model?
 8 A. No. Not at the conference. We discussed it,
 9 though.
 10 Q. When did you discuss it?
 11 A. At the conference.
 12 Q. Okay. So how did you figure out how to structure a
 13 loan model transaction to comply with EB-5?
 14 A. Based on the information Morrie provided me. I just
 15 followed his directions.
 16 Q. How often would you talk to him about it?
 17 A. You know, regularly. I had regular contact with
 18 him.
 19 Q. Okay. When did you form SDRC, Inc.?
 20 A. SDRC, Inc. was formed in January of 2008.
 21 Q. So about that time you formed SDRC, Inc.
 22 A. Right. Yes.
 23 Q. Was that before or after --
 24 A. No. That -- and, therefore, the model was just
 25 before 2008. Because SDRC -- the development of SDRC,

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1 Inc. was in response to Morrie.
 2 Q. Okay. So SDRC, Inc. was in response to Morrie
 3 saying --
 4 A. Loan model, yes.
 5 Q. -- we can do a loan model.
 6 Okay. Why did you need SDRC, Inc.?
 7 A. As I mentioned, these projects early on had bank
 8 financing, so there was somebody that vetted these
 9 projects. We had a situation with a project, the tilapia
 10 project, where we were just switching to the loan model.
 11 And I always relied on the -- all the parties to do the
 12 due diligence.
 13 But once we started working on the tilapia project
 14 and brought it -- I believe it was to Korea, I was
 15 listening to the presentation of these -- of the program,
 16 and I realized that since there was no more bank
 17 financing needed in that particular -- that project, that
 18 the vetting was not done. And I pulled the plug on that
 19 project because I was very worried that we were going to
 20 guide limited partners in a project that wasn't going to
 21 succeed.
 22 Q. If it wasn't up to you to vet and that was supposed
 23 to be done between everybody else, why did you pull the
 24 plug on the tilapia plant?
 25 A. Because it still -- if the project -- before with

1 the other projects you had banks; right? So when the
2 banks were vetting these projects it instilled a comfort
3 level with me that the projects were economically
4 feasible.

5 When we switched over to the debt project, because
6 of the job creation there was sufficient -- there was no
7 longer a bank needed. And I realized suddenly from, wow,
8 we are losing this bank that is doing the vetting for us,
9 and we are entering very dangerous territory. And
10 tilapia kind of confirmed that.

11 So SDRC needed to be set up for several reasons.
12 One was, for example, to hire people to vet the project,
13 which First National Bank in Brookings did for us in the
14 initial project.

15 Also because we were becoming more involved, there
16 had to be contracts signed. We already did a corporation
17 for SDIBI called Northern Plains International. That was
18 set up to do things that were difficult to do in a
19 bureaucratic setting and generated funds for Northern.

20 So the whole purpose of SDRC, Inc. was exactly the
21 same thing, except generating funds for Northern from a
22 foreign direct investment perspective.

23 Q. Why not go through Northern Plains International?

24 A. Because a complete separation of -- you know, I told
25 you before there's normally two aspects. One is really

1 A. Okay. Uh-huh.

2 Q. These are incorporation documents, and I want to
3 walk through these with you.

4 A. Okay.

5 Q. If you turn to Tab 1 --

6 A. Uh-huh.

7 Q. -- and you take a look, this is the Certificate of
8 Incorporation for SDRC, Inc. filed on January 10, 2008;
9 is that correct?

10 A. Yes.

11 MR. HEIDEPRIEM: Would you identify the document
12 by Bates stamp.

13 MS. OLIVIER: Yep. This would be Joop Depo 2014
14 to -- 2014-019.

15 A. Are we talking about Exhibit 6?

16 Q. It is. These are the documents that were previously
17 marked from your deposition in the Darley --

18 A. Okay.

19 Q. -- litigation. So it would be Exhibit 6 under
20 Tab 1.

21 A. The letter. Okay.

22 Q. Yeah. So why then -- if you flip to the very last
23 page in these documents, the Articles of Incorporation --

24 A. Uh-huh.

25 Q. Explain then how on the same day that you did -- you

1 export. The other one is foreign investment.

2 Q. So after the beef plant came tilapia?

3 A. After the equity portion of the beef plant came
4 tilapia, and that project bombed.

5 Q. Were there personal guarantees in the tilapia plant?

6 A. I believe there were. But it didn't matter. The
7 project was just too dangerous.

8 Q. So they were never signed.

9 Would they have been contained in a Confidential
10 Offering Memorandum?

11 A. If there was a personal guarantee required, it would
12 have been in that particular Offering Memorandum. But,
13 again, we just didn't recruit any funds for that. We
14 just -- I pulled the plug when I came back from Asia.

15 Q. Was the Offering Memorandum drafted for the tilapia
16 plant?

17 A. It had to be drafted. I'm not sure, but, yeah. I
18 would think there might have been a rough draft.

19 Q. Who would have a copy of that?

20 A. Hanul. They prepared all of our offering
21 memorandums.

22 Q. So Hanul prepared all of the --

23 A. All. Yeah.

24 Q. I want to walk through -- you've got an exhibit
25 right here in front of you marked Bollen 2.

1 incorporated SDRC, Inc. you also created SD Investment
2 Fund, LLC 1.

3 A. Because that's the turkey plant. We started the
4 turkey plant. The talk of the turkey plant must have
5 been somewhere in 2007, and we knew there was a project
6 that was coming up that would be done under the new loan
7 model.

8 Q. Was that before or after the tilapia plant?

9 A. The turkey plant -- you know, a lot of these
10 projects has overlap in the negotiating stage. But
11 the -- what I remember, the tilapia plant bombed before
12 we went on with the turkey plant.

13 Q. Okay. Turn to the next tab. That's Tab 2. This
14 would be marked as Exhibit 7 to your prior deposition.
15 This is an authorization between the South Dakota
16 International Business Institute --

17 A. Uh-huh.

18 Q. And Jing Hong.

19 A. Uh-huh.

20 Q. Why was this document created?

21 A. It is the agent overseas that wants to show to their
22 clients that they have credibility, so they just
23 requested that I put something like this together so they
24 can display it on their -- in their office.

25 MS. OLIVIER: Jing Hong is J-I-N-G H-O-N-G.

1 Q. So they created -- they wanted this -- isn't this --
 2 an authorization a contract? I thought that you didn't
 3 have the authority to create contracts through SDIBI.
 4 **A. I did not consider this a contract. There's no**
 5 **exchange of value or any of that stuff.**
 6 **So from my -- it was just, look. In China they want**
 7 **something to show there is a relationship in order to**
 8 **enhance their credibility. And this to me was not**
 9 **something that I needed to get permission for from**
 10 **Northern.**
 11 Q. Okay.
 12 **A. They knew that I was working with these agents, and**
 13 **they never questioned any of these things. So they were**
 14 **fully aware what I was doing.**
 15 Q. Okay. So you didn't get permission to enter into
 16 this, but it says it's an agreement with Jing Hong.
 17 **A. Again, the purpose was just to give credibility to**
 18 **the agent. We under NPII we had a board that consisted**
 19 **of all the higher ups at Northern, including John Meyer,**
 20 **the legal counsel of Northern.**
 21 **They knew -- we discussed some of these issues, so**
 22 **they knew -- I never considered this to be out of my**
 23 **realm, that I could not do it.**
 24 Q. Okay.
 25 **A. It was to enhance the credibility of the Chinese**

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1 **agent in China. It was not something here in the**
 2 **United States. It was in China, and I thought it was**
 3 **okay.**
 4 Q. Okay. So irregardless, though, it's an agreement
 5 between you and -- between SDIBI and Jing Hong to market
 6 South Dakota's EB-5 program in Shanghai; correct?
 7 **A. It does say that, yes.**
 8 Q. Okay. And was that all South Dakota EB-5 projects
 9 that they had the right to market?
 10 **A. It doesn't limit it to one project.**
 11 Q. Okay. So --
 12 **A. And they did do all the projects too. They**
 13 **recruited for all --**
 14 Q. Jing Hong recruited for all of them.
 15 **A. It's actually Jing Hong and Wailian are owned by**
 16 **Linda He. So it's kind of unclear which entity she**
 17 **sometimes would recruit her investors through.**
 18 Q. Okay.
 19 MS. OLIVIER: Wailian is W-A-I-L-I-A-N. And
 20 Linda is normal. And then He is H-E.
 21 Q. So Linda He owned both Wailian and Jing Hong?
 22 **A. Amongst many other agencies.**
 23 Q. Okay. So she owns lots of agencies?
 24 **A. More than two.**
 25 Q. Okay. Would she own the next document, which would

1 be -- I cannot pronounce it. Can you pronounce --
 2 **A. No. Zehjiang Foreign.**
 3 MS. OLIVIER: Okay. It's Z-E-H-J-I-A-N-G
 4 Foreign Service Co.
 5 Q. So this -- how did you find out about this
 6 recruiting company?
 7 **A. Whenever I went abroad you -- I was being contacted**
 8 **by agents all the time who wanted to represent us.**
 9 Q. Okay. Was this one of Linda He's companies?
 10 **A. Not that I recall.**
 11 Q. Okay. Is there a reason that you had signed the
 12 Jing Hong authorization and did not actually physically
 13 sign this --
 14 **A. No. I would have signed the others too.**
 15 Q. Okay. The next one looks like it is with Suz Houca?
 16 Suz Houca?
 17 **A. Yeah.**
 18 Q. S-U-Z H-O-U-C-A, Visa Migration Consultant Co.
 19 **A. Uh-huh.**
 20 Q. Is this one of Linda He's companies?
 21 **A. Not -- no. I don't think so.**
 22 Q. Did they market South Dakota EB-5 projects?
 23 **A. There were quite a few cases, quite a few companies**
 24 **that we signed up that never produced anything so I would**
 25 **have to go to my records. But I do not recall this as**

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1 **Linda's company, and I don't know how much productivity**
 2 **they generated.**
 3 Q. Did you recall them marketing any of the
 4 South Dakota EB-5 programs?
 5 **A. I wouldn't have -- I wouldn't have provided this**
 6 **document if they wouldn't have --**
 7 Q. Okay.
 8 **A. -- attempted to promote us.**
 9 Q. Okay. So the next one we have Shanghai.
 10 **A. Uh-huh.**
 11 Q. Q-I-A-N-J-I-N Exit Entry Service Company. Is that
 12 one of Linda He's companies?
 13 **A. I would suspect so. Because it's Shanghai.**
 14 Q. The next document is Beijing Dragon Horse China and
 15 Foreign Enterprise Service Company. Is that one of
 16 Linda He's companies?
 17 **A. I would suspect so.**
 18 Q. Why does she have so many companies?
 19 **A. You have to ask her.**
 20 Q. What is your understanding of why she has so many
 21 companies?
 22 **A. Probably to try to promote different regional**
 23 **centers under different projects. It's hard to get an**
 24 **exclusive with one and then simultaneously create a**
 25 **different business entity and enter into an agreement**

1 with a different regional center.
 2 Q. Okay. So she would have different entity -- but why
 3 not just use Wailian -- or Wailian or Jing Hong? Why not
 4 use one --
 5 A. **Because maybe I would have complained from, look, if**
 6 **you want to do something with us, you should promote us**
 7 **and not Pennsylvania. So for her it might make sense to**
 8 **set up something else and work with Pennsylvania, work**
 9 **with Washington, work with whoever.**
 10 Q. Okay. If you could turn to tab 4, this is a
 11 Memorandum of Understanding between SDIBI and SDIF, LLC.
 12 What is SDIF, LLC?
 13 MR. KERKVEIT: What's the Bates No. on that?
 14 MS. OLIVIER: This is Exhibit 10 from Joop
 15 Bollen's Deposition 2014-074.
 16 A. **You know, I don't recall ever having a business**
 17 **entity formed as the LLC.**
 18 **But it might have been.**
 19 Q. Well, if you scroll to the last page --
 20 A. **Yeah.**
 21 Q. -- page 5 of 5, your signature is on there.
 22 A. **Right. But, you know, SDIF, LLC is not a functional**
 23 **entity.**
 24 Q. Then why would you have a Memorandum of
 25 Understanding where --

1 or seen this document.
 2 THE WITNESS: Yeah. Me too.
 3 MS. OLIVIER: Right. But he can tell me that,
 4 Julie, please. That's not a valid objection.
 5 A. **Yeah. For me this is new too. I don't recall that**
 6 **this is an entity that we never did anything with. I**
 7 **definitely don't recall ever doing any business with this**
 8 **entity.**
 9 Q. Well, it can't be new to you because you signed it.
 10 A. **Yeah. But it's also how long ago? 10 years ago?**
 11 Q. And James Park was the director.
 12 A. **What happens a lot of times with projects, you know,**
 13 **it's not you hit the bull's-eye. It's you kind of**
 14 **stumble into the right direction of how you want to end**
 15 **up. I never recall doing anything from a activity**
 16 **standpoint under SDIF, LLC.**
 17 **If you would have asked me before showing the**
 18 **document, I would have said it doesn't exist.**
 19 Q. So it says SDIF. On page 2 it says, "SDIF, LLC is
 20 organized for the purpose of creating an EB-5 alien
 21 entrepreneur investment project with SDIBI/DEDR and
 22 managing and operating it in connection with the
 23 Immigrant Investor Pilot Program Law."
 24 A. **Okay. So that's what I said. It was probably just**
 25 **to advise the USCIS there is a new player that is**

1 A. **Right. I know why I think this was done. SDIF,**
 2 **LLC. I thought it was one on SDRC.**
 3 **But the regulation with the EB-5 program was that**
 4 **whenever there's a new entity coming into play you have**
 5 **to advise the USCIS.**
 6 Q. Okay.
 7 A. **And that was why we put together an MOU is just**
 8 **merely to advise the USCIS.**
 9 Q. Advise them of what?
 10 A. **That a new entity is participating in management of**
 11 **the regional center.**
 12 Q. Okay. So SDIF, LLC --
 13 A. **Uh-huh.**
 14 Q. -- was participating in the management of
 15 South Dakota's regional center?
 16 A. **Not in practicality. Not that -- I don't think so.**
 17 Q. Well, then why -- why have this formed and why send
 18 it to USCIS?
 19 A. **Because it probably was the intent at that point,**
 20 **but it never became active.**
 21 Q. Why not?
 22 A. **I think that there's a similar agreement with SDRC,**
 23 **Inc. I don't remember seeing this document, to be**
 24 **honest.**
 25 MS. DVORAK: This is the first time I've heard

1 **involved with the management, but we never did anything**
 2 **with this SDIF, LLC.**
 3 Q. And this is a contract that you're signing on behalf
 4 of the business institute.
 5 MS. DVORAK: Objection. Calls for a legal
 6 conclusion.
 7 Q. It states there, "In consideration of the mutual
 8 agreements, representations, and covenants contained
 9 herein, the parties agree as follows:" On page 2 of 5.
 10 Right in the middle. It says, "Now, therefore, in
 11 consideration of the mutual agreements, representation,
 12 and covenants contained herein, the parties agree as
 13 follows:"
 14 A. **I think what this SDI -- based on what I'm seeing,**
 15 **it's SDRC, Inc. really replaced this thing. Instead of**
 16 **SDIF, LLC.**
 17 **This thing, from what I know, never came into being**
 18 **and never was active at all.**
 19 Q. Who drafted this document?
 20 A. **Hanul. Hanul would have drafted that.**
 21 Q. Why is Hanul's name not on here?
 22 A. **South Dakota International Business Institute.**
 23 **Well, he would have still drafted it. Hanul --**
 24 **James Park was an employee of Hanul.**
 25 Q. It says that this was entered into by James Park for

1 SDIF, LLC. So this was drafted after that.
 2 **A. Say that again. Say that again, please.**
 3 **Q.** So it says, James Park is entering into this as the
 4 director of SDIF, LLC. And you are entering into this as
 5 SDIBI.
 6 **A. You know, again, what -- what I suspect -- what**
 7 **makes more sense to me now is that instead of SDI, LLC,**
 8 **this is the prelude to the SDIF LP1, SDIF LP2,**
 9 **SDIF LP3. But this thing was never used.**
 10 **Q.** What do you mean it was the prelude to it?
 11 **A. Well, as I mentioned, we never did anything with**
 12 **this entity. And, again, if you wouldn't have shown it**
 13 **to me today, I wouldn't think it ever existed.**
 14 **So what I can only speculate in this case is that we**
 15 **were looking for an outside entity to manage -- to vet**
 16 **the projects and then have the different partnerships for**
 17 **the investors to invest in.**
 18 **Q.** I want you to flip to the next tab.
 19 **A. Okay.**
 20 **Q.** This is the Memorandum of Understanding between
 21 SDIBI and SDRC, Inc. Why were they signed on the same
 22 day?
 23 **A. As I just mentioned to you, we needed SD -- and it**
 24 **becomes clearer to me too now, but we had SDRC, Inc. that**
 25 **needed to vet the project and perform certain functions**

1 **aside and never became active.**
 2 **Q.** Why are the Memorandums of Understanding for SDIF,
 3 LLC and SDRC, Inc. identical?
 4 **A. Say that again.**
 5 **Q.** Why are the Memorandums of Understanding identical
 6 between them?
 7 **A. I think the whole -- the exact purpose for --**
 8 **whenever you develop -- set up a new --**
 9 **The whole purpose of this was whenever you set up a**
 10 **new business entity that was involved in the management**
 11 **of the regional center, you had the advice to use USCIS.**
 12 **So we knew that there would be some partnerships, SDRC,**
 13 **Inc., and I suspect we just copied the same thing, but we**
 14 **fulfilled our requirement from we reported to the USCIS.**
 15 **Q.** I want to talk about the formation of SDRC, Inc.
 16 **A. Okay.**
 17 **Q.** It was formed while you were at the University.
 18 **A. Northern State, yes.**
 19 **Q.** And I believe you've represented that you formed it
 20 so that you could enter into contracts --
 21 **A. Initially it was, yes.**
 22 **Q.** If you turn to Tab 15, we have the incorporation
 23 documents for SDRC, Inc.
 24 Why if this was -- if you're still an employee of
 25 the University, does the University not start SDRC, Inc.?

1 **that would be very difficult to perform without them,**
 2 **such as paying -- in a State environment, such as paying**
 3 **banks for vetting, hiring attorneys, and signing agents.**
 4 **So you needed that SDRC. And that's why I said this**
 5 **was probably a prelude to the partnerships, SDIF LP1,**
 6 **because you still need something for the investors to put**
 7 **their money into and borrow that money to a project.**
 8 **Q.** But that's not what it says it's doing. In this
 9 prior one, SDIF, LLC, it says that it is to manage SDIBI.
 10 **A. Where does it -- can you repeat that?**
 11 **Q.** Go to the second one. "SDIF, LLC is organized for
 12 the purpose of creating an EB-5 alien entrepreneur
 13 investment project."
 14 **A. Right. So that makes sense.**
 15 **Q.** "And managing and operating it in connection with
 16 the investor pilot program."
 17 **A. That's exactly what the SDIF LP do. Right?**
 18 **Q.** They manage it?
 19 **A. Yes. The partnership gets the investors -- the**
 20 **investment in. Then the GP, which is an LLC, manages it**
 21 **on behalf of the partnership.**
 22 **But, again, I think just that based on what I see**
 23 **now, that we started with this and then refined it,**
 24 **saying this does not work. We need SDRC, Inc., and we**
 25 **need an SDI LP1, LP2, LP3, LP4 and this was just thrown**

1 **A. It could have been done through the University.**
 2 **Again, what I tried to do is just mirror NPII with SDRC.**
 3 **It already was done under NPII, so for the export**
 4 **promotion-related services.**
 5 **SDRC, Inc., the purpose was, as I mentioned, for the**
 6 **foreign direct investment-related purposes. Before**
 7 **James Park was able, through Hanul, to put this together**
 8 **for me -- it makes sense that we needed the entities to**
 9 **come into being -- he volunteered to do it through Hanul.**
 10 **So I said, you know, it's free legal counsel. It speeds**
 11 **the process up. Let's do it.**
 12 **Q.** Couldn't the University's legal counsel have drafted
 13 it?
 14 **A. Could have, but it would have slowed down everything**
 15 **tremendously.**
 16 **Q.** Why?
 17 **A. And the whole intent for SDRC was to be owned by the**
 18 **University. It was only until about 2009 that the**
 19 **University said we don't want the SDRC.**
 20 **Q.** If they -- if it was supposed to be owned by the
 21 University then, I mean, wasn't it -- wasn't James Park
 22 the authorized person signing the incorporation
 23 documents?
 24 **A. For -- he was. And he was also part of SDRC for a**
 25 **very short time period.**

1 What happened, everything was going very smoothly at
 2 Northern. Export promotion was grandiose. Foreign
 3 investment was grandiose. Everybody was just clapping
 4 their hands and felt really comfortable. Until there was
 5 a lawsuit from Darley. And when Darley started that
 6 lawsuit all the bureaucrats just came to a shrieking halt
 7 and became scared.

8 That's why -- that's why the Board of Regents became
 9 involved. An attorney by the name of Shekleton became
 10 involved. And we already recruited the money for the
 11 turkey plant. That was coming in.

12 I was -- there's a lot of e-mails that you can find
 13 at Northern State where I was asking for direction from
 14 Northern. What are we going to do with SDRC, Inc.? What
 15 are you going to do with it? Give me directions. And it
 16 all stopped because of that lawsuit.

17 That was where things went haywire. And John Meyer
 18 came into the office and said you need to distance
 19 yourself from SDRC, Inc. And that's why James Park for a
 20 very short time period was involved in SDRC. He just
 21 took over while there was no activity for a couple of
 22 months or so until the turmoil was settled and the Board
 23 of Regents decided whether they were going to maintain
 24 SDRC or they were going to spin it off.

25 Q. So SDRC, Inc. is a corporation?

1 A. It was -- from the beginning the intent was for
 2 Pyush Patel and myself to own the corporation. As you
 3 know, I have a long background with Patel so there's kind
 4 of this relationship that we do everything -- pretty much
 5 more than 70, 80 percent of our stuff 50/50. It's an
 6 automatic.

7 Q. Okay. Well, let's go back to that because you said
 8 you had had a falling-out with him, but you don't
 9 remember what it was.

10 A. The initial, no. I don't remember the initial
 11 falling out. You know, we are -- he's kind of -- he's
 12 very close friend with me. He also partially funded my
 13 graduate studies, so there's a loyalty that is probably
 14 unusual.

15 Q. Okay. So he helped pay for your schooling?

16 A. The graduate study, yeah.

17 Q. Have you paid him back for that?

18 A. I didn't have to.

19 Q. Why not?

20 A. Because he just gave it to me.

21 Q. Okay. And so then you were supposed to go work with
 22 him.

23 A. Uh-huh.

24 Q. Why would that fall apart? I mean, you're business
 25 partners now. You have to know what happened.

1 A. Yes.

2 Q. What type of corporation?

3 A. Are you talking about an S corp or not?

4 Q. Yep.

5 A. I would -- I don't know if it ever was registered as
 6 an S corp or not, if there were filings done with the
 7 Federal Government or not. I don't remember.

8 Q. Okay. Are there shareholders in SDRC, Inc.?

9 A. Initially there were none. It was just set up.

10 Q. How does that work?

11 A. Just file the papers. Nobody -- there were no
 12 shareholders. Just left blank because it was just a
 13 shell. It wasn't active.

14 Q. Who are the shareholders now?

15 A. Patel. Pyush Patel and myself.

16 Q. When did you become a shareholder?

17 A. I think sometime in 2009. The law firm of Siegel,
 18 Barnett & Schutz took care of that portion of it.

19 Q. Who did you buy the shares from?

20 A. Who did I buy the shares? I didn't buy any shares.

21 Q. Just issued shares?

22 A. Yes.

23 Q. How did you have the authority on behalf of SDRC,
 24 Inc. to just issue yourself shares? Was this your
 25 corporation?

1 A. You know, it's kind of like --

2 MS. DVORAK: Objection. Asked and answered.

3 MS. OLIVIER: It hasn't been answered, but go
 4 ahead.

5 MS. DVORAK: He said I don't know. That's an
 6 answer.

7 Q. Go ahead and answer.

8 A. She said it. I don't know exactly what the dilemma
 9 was. I get fights with my wife too at times. You know,
 10 you forget, and you move on.

11 Q. Here's the -- here's the thing. One of the rules,
 12 she can object. Unless she tells you --

13 A. But I answered you, though.

14 Q. I know. Then just wait. Unless she says you can't
 15 answer, you need to answer the question.

16 A. Okay. Okay.

17 Q. So you have a falling-out.

18 A. Uh-huh.

19 Q. And then now you're friends again.

20 A. Yep.

21 Q. And you say you do 50 percent of all your business
 22 together.

23 A. Not all, but a vast majority.

24 Q. What other businesses do you have together?

25 MS. DVORAK: Objection. Relevance.

1 Q. Go ahead and answer.
 2 MS. DVORAK: Nor is it likely to lead to the
 3 discovery of admissible evidence. I don't know what his
 4 business -- other businesses he has outside of anything
 5 related to EB-5 has to do with this lawsuit.
 6 MS. OLIVIER: The scope is discovery is very
 7 broad.
 8 MS. DVORAK: It's not more than what is
 9 reasonably going to lead to admissible evidence.
 10 MS. OLIVIER: Are you instructing him not to
 11 answer?
 12 MS. DVORAK: Yes.
 13 MS. OLIVIER: Okay. Would you certify that
 14 question so we can move to compel.
 15 Q. Okay. So you and Pyush Patel have this falling-out.
 16 He is now the part owner of SDRC, Inc.
 17 A. **Uh-huh.**
 18 Q. When did you -- when did you sell him shares in
 19 SDRC, Inc.?
 20 A. **Never sold shares. We just started it.**
 21 Q. You just gave it to him?
 22 A. **From -- yeah. Automatically.**
 23 Q. When?
 24 A. **Around 2009. It's Siegel, Barnett & Schutz who**
 25 **formalized that for us. I don't know exactly the date**

1 **but -- when it was formalized, but it was from --**
 2 **automatic from the inception of the time that it was**
 3 **clear that Northern did not want SDRC, Inc. and that it**
 4 **was clear that they wanted the whole -- shed the whole**
 5 **entity. And it was clear that GOED didn't want it. And**
 6 **they pretty much told me that I had to go private.**
 7 **That's how it played out.**
 8 Q. Okay. You said that SDRC, Inc. was a shell
 9 corporation.
 10 A. **It was. Nothing really happened in terms of**
 11 **financial activity.**
 12 Q. Then why not just start a different corporation when
 13 you were distancing yourself? Why take SDRC, Inc.?
 14 A. **I don't understand your question, the logic behind**
 15 **your question.**
 16 Q. Well, if SDRC, Inc. was just a shell corporation --
 17 A. **Eventually going into business. Right? It just**
 18 **took a long time for these cases to materialize before**
 19 **money was coming in. But that money was intended for**
 20 **Northern State University.**
 21 Q. So this business was intended for Northern State
 22 University?
 23 A. **Absolutely.**
 24 Q. So they were the ones that owned it?
 25 A. **They were the ones -- even though no stocks were**

1 **issued, it was clear that SDRC was going to be an entity**
 2 **of the University, and there's a lot of communication**
 3 **between the Board of Regents and Northern discussing**
 4 **this.**
 5 **John Meyer was very closely involved in what to do**
 6 **with SDRC, Incorporated. And he's also the one who told**
 7 **me to distance myself and put it in somebody else's name.**
 8 **And I suggested Park, and he said, well, go ahead. Just**
 9 **not you.**
 10 Q. Okay. So he said you can't have this business?
 11 A. **He told me to distance myself. Not can't have this**
 12 **business. Just distance myself. Because it was**
 13 **everybody's idea it was going to be Northern's**
 14 **corporation, just like NPII was.**
 15 Q. Okay. So everybody's understanding was this was
 16 Northern's business, and he said distance yourself from
 17 it --
 18 A. **John Meyer and the NPII board. John Meyer. You**
 19 **know, everybody's a broad word.**
 20 Q. Okay. So John Meyer and the board, NPII board, said
 21 you need to distance yourself from SDRC, Inc.?
 22 A. **John Meyer gave me the specific -- he came to my**
 23 **office and said, look, there's this turmoil. Let's**
 24 **figure out what we're going to do, how the Board of**
 25 **Regents is going to respond. And based on their**

1 **situation, the turmoil we're in, there was an audit by I**
 2 **believe it was GOAC, you know, who also came to look at**
 3 **it and went through this whole situation, John Meyer said**
 4 **it's best for you to take a step back.**
 5 **And that's why I said, James, why don't you take it**
 6 **over, and let's see how this all falls into place.**
 7 Q. So when did you just issue yourself shares of it
 8 then?
 9 A. **The issue of shares were after it was very clear**
 10 **that an agreement was going to be signed with GOED for me**
 11 **to take the entity private.**
 12 Q. Was the agreement signed?
 13 A. **Eventually with GOED it was signed.**
 14 Q. Do you have a copy of that agreement?
 15 A. **I think you must have it too. I've seen it all in**
 16 **the State stuff when I went through it yesterday.**
 17 Q. Okay. So you assigned -- they assigned the rights
 18 to SDRC, Inc. to you?
 19 A. **GOED signed the contract with SDRC, Inc. and I was a**
 20 **signator and nobody objected. GOED knew what was**
 21 **happening. Northern knew what was happening. Board of**
 22 **Regents knew what was happening. That was their**
 23 **decision.**
 24 **They felt it became too risky. The Board of Regents**
 25 **attorneys don't do a cost benefit analysis and say what**

1 are the benefits, what are the costs. They're
2 bureaucrats. They're there to eliminate risk, without
3 regards to the benefits.

4 **And that's why I told you earlier we were working in**
5 **this very bureaucratic setting doing very entrepreneurial**
6 **thing, and that culture clash came to a point where Board**
7 **of Regents said we are no longer on a mission of**
8 **educating students. We need to get this out of our**
9 **system.**

10 Q. So they saw SDRC, Inc. as a threat to South Dakota
11 Regional Center?

12 A. **It was too much money. The project that was going**
13 **in, they didn't expect how it was going to explode.**
14 **Because before, like NPII, they had, when I left, about**
15 **\$250,000 that I had in an account for Northern.**

16 **Here they were also thinking it was a fabulous**
17 **thing, until they saw there was like \$50 million coming**
18 **and there was a lawsuit. And when there's a lawsuit in a**
19 **bureaucratic environment everybody starts pointing**
20 **fingers at each other, and they stop like deer in the**
21 **headlines of a car. That's what occurred.**

22 **And there's tons -- if you ask for the e-mails at**
23 **Northern, there's tons of e-mail clearly showing that**
24 **everybody higher up knew what was going on. And if you**
25 **check with the Board of Regents, I'm also very confident**

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1 **you'll see that there's discussions what to do with SDRC**
2 **and NPII both.**

3 Q. Why name SDRC, Inc. the name it has? You'll agree
4 it's very confusing that the regional center is called
5 SDRC.

6 A. **Yeah. It's maybe confusing, but it also makes it**
7 **easier, I think, South Dakota Regional Center, South**
8 **Dakota Regional Center, Incorporated. It seems like --**

9 **Yeah. I can see how it's confusing. We could have**
10 **named it something else.**

11 Q. So South Dakota Regional Center, Incorporated
12 actually was not the regional center.

13 A. **Say that again. No. No. No. No. The regional**
14 **center is -- there is no legal entity that owns -- the**
15 **regional center is a certification given to the**
16 **Governor's Office of Economic Development.**

17 Q. Right. So you can see why it would seem like it's
18 misleading to name it South Dakota Regional Center,
19 Incorporated.

20 MS. DVORAK: Objection. Misstates the evidence.
21 That's not the name.

22 MS. OLIVIER: Well, you just said it was.

23 A. **No. It's South Dakota Regional Center,**
24 **Incorporated.**

25 Q. Okay.

1 A. **And then you have a regional center, which are**
2 **complete separate things. They're not the same thing.**

3 Q. Right. They're not the same thing, but you call it
4 South Dakota Regional Center, Incorporated?

5 MS. DVORAK: Objection.

6 A. **Which one? The business?**

7 Q. Yes.

8 MS. DVORAK: It's just continuing to misstate
9 the evidence. We -- there is no South Dakota Regional
10 Center, Incorporated. There's SDRC, Inc.

11 A. **Oh, okay. Okay. I get it.**

12 **Yeah. There's only SDRC, Incorporated. There is no**
13 **such thing as a South Dakota Regional Center. It doesn't**
14 **exist.**

15 Q. Right.

16 A. **It's just a name, I guess.**

17 Q. It's just a name. But you chose the name because in
18 your mind it represented South Dakota Regional Center,
19 Incorporated?

20 A. **No. No. They're complete different things in my**
21 **mind. SDRC, Inc. is a legal entity. South Dakota**
22 **Regional Center is just a name. Just like SDIBI. It's**
23 **not a legal -- it's just something I came up with.**

24 Q. Right. And they're very similar in their names.

25 A. **One is South Dakota Regional Center, which is a long**

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1 **word, and the other are four acronyms.**

2 Q. You call it SDRC, don't you, for short?

3 A. **SDRC, Incorporated.**

4 Q. But you call the regional center for short --

5 A. **I would call it the regional center. South Dakota**
6 **Regional Center. I would say it in a long version. And,**
7 **again, the South Dakota Regional Center belongs to GOED.**

8 Q. Why was James Park the successor registered agent of
9 SDRC, Inc.?

10 A. **Didn't I just explain that? Because of the turmoil**
11 **at the Northern State University.**

12 Q. But why James Park?

13 A. **Because I felt comfortable with him. And I -- and**
14 **we -- he really, until that point, never gave me a reason**
15 **to doubt his integrity.**

16 Q. Okay. You said until that time. Has he ever given
17 you a reason to doubt his integrity?

18 A. **Not James directly, but some of Hanul's actions have**
19 **surprised me.**

20 Q. Explain that.

21 A. **The lawsuit with Darley --**

22 Q. Okay.

23 A. **-- was a surprise, where I was not aware there was a**
24 **lawsuit. And Hanul kind of told me, oh, this is nothing.**

25 **We can take care of this issue. And I said, well, if you**

1 can take care of this issue, it's better than ringing the
2 alarm bell at Northern because all these bureaucrats are
3 going to get scared crapless if there is a lawsuit. So
4 if you think it is easy to get take care -- taken care
5 of, just take care of it.

6 And then I found out that it wasn't, and that is
7 what brought the whole Darley suit in the open.

8 Q. What else --

9 A. So at some point I realized that there was a
10 lawsuit. But before, you know, you can say I'm naive.
11 Whatever it was, I never realized there was a lawsuit. I
12 thought it was all taken care of.

13 And it was -- had to do with a contract that I was
14 not even a signator to, so I didn't see how I could be
15 tied to a contract that I never read and never signed.

16 Q. What else has Hanul done that might make you
17 question their --

18 A. That's -- that's -- that's the big one. The Darley
19 lawsuit.

20 Q. Is there anything else?

21 A. No. Not really.

22 Q. Okay. Not really.

23 A. None. No.

24 Q. Okay. Was there a point -- tell me how SDRC, Inc.
25 was assigned the right to manage the regional center.

1 Economic Development.

2 A. But then you have the same problems with signing
3 contracts and all of that other stuff. It would be such
4 a bureaucratic mess you would never get through it.

5 Q. But wasn't the whole point of the regional center
6 just to be the soccer field, as you described earlier?

7 A. Initially it was. But at a later point it
8 transitioned to a loan model where, as I mentioned to
9 you, the vetting no longer was done properly, and an
10 entity had to be created to fill the new model that now
11 was required to operate the regional center.

12 Q. And SDRC, Inc. is a for-profit entity?

13 A. Now it is, yeah.

14 Q. And when you say "now it is," when did it become
15 profitable?

16 A. At the time when Northern State -- pretty much at
17 the time where GOED signed the contract with SDRC for me
18 to take it over privately.

19 Q. Okay. And then you made it into a for-profit
20 entity?

21 A. Yes.

22 Q. Explain -- let me see.

23 So once SDRC, Inc. became a for-profit entity, was
24 it at the same time SDRC was formed that you started
25 forming SDI -- the limited partnerships and the LLCs?

1 A. At the end of this GOED signed the contract with
2 SDRC, Incorporated. So it's the Governor's Office,
3 Secretary Benda, signing, giving the right to SDRC, Inc.

4 Q. How did that come up? Why was the regional center's
5 management authority given to SDRC, Inc.?

6 A. What happened is, as I mentioned, there was so much
7 turmoil at Northern after the Darley lawsuit that
8 everybody froze. You know, you had a GOAC audit. Nobody
9 dared making decisions anymore. The Board of Regents
10 became involved.

11 But the money for the turkey plant was supposed to
12 be coming. So there is tons of correspondence with
13 Northern's upper level. Give me directions. What are we
14 going to do? This money's coming. We need to start
15 taking action. What are you going to do?

16 And eventually Northern decided -- or the Board of
17 Regents, huh-uh. Then Benda, he, in my estimation,
18 wanted to take it but also realized that GOED couldn't
19 effectively manage. They were scared of it too.

20 So it was a meeting between the president of
21 Northern and Richard Benda. They decided that I should
22 go private and do it under contract with the Governor's
23 Office.

24 Q. Why do you have to be private to do it? You could
25 have gone and worked for the Governor's Office of

1 A. Well, this one that you showed me before, that's why
2 I think that's a prelude, but it never was activated.

3 Q. Okay.

4 A. At some point -- and I don't know the exact dates,
5 but SDI LP1, LP2, all of them were -- came into being
6 with the State.

7 Q. Okay. So they came into existence.

8 A. I don't know the dates exactly.

9 Q. Explain the business model. What is the point of
10 the investment fund LLC, 1, 2, 3, 4, 5, 6?

11 A. It's LP1, 2, 3, 4. The LLC is the GP of the LP.
12 It's a different structure.

13 Q. Okay. So the LLC is the general partner --

14 A. Yes.

15 Q. -- of the limited partnership?

16 A. Yes. That's correct.

17 Q. And who is in charge of the general -- the LLC that
18 is the general partner?

19 A. SDRC, Inc.

20 Q. SDRC, Inc.

21 A. Uh-huh.

22 Q. Which is owned by you and Pyush Patel?

23 A. Yes.

24 Q. Okay. How are profits by SDRC, Inc. split and paid
25 out to you and Mr. Patel?

1 **A. Distribution to the stockholders.**
 2 **Q.** You do distributions. Yearly?
 3 **A. It depends. We decide together, as the**
 4 **shareholders, when the time is appropriate to take a**
 5 **draw.**
 6 **Q.** Okay. So SDRC, Inc., this for-profit entity,
 7 becomes the general partner of the limited partnerships.
 8 **A. What? No. Say that again. You didn't say that**
 9 **right.**
 10 **Q.** SDRC, Inc. --
 11 **A. Uh-huh.**
 12 **Q.** -- becomes the general partner of the LLC, which
 13 is --
 14 **A. No.**
 15 **Q.** Okay. Go ahead. Of --
 16 **A. No. The LLC is the general partner. The only**
 17 **member of the LLC is SDRC, Inc.**
 18 **Q.** Okay. There we go.
 19 Why not just have SDRC, Inc. be the general partner
 20 of the limited partnership?
 21 **A. Well, I think you have a lot of different projects,**
 22 **and we always knew that the money was very risky, had to**
 23 **be at risk. So you just -- and you had different**
 24 **projects so you don't want to couple them all together.**
 25 **It just makes sense to have different projects and keep**

1 sorry. I can get that for you on the next break. Yeah.
 2 I'll get them for you on the next break.
 3 (Discussion off the record.)
 4 **Q.** So what is -- what are these marketing agreements,
 5 and when were they done?
 6 **A. Well, this one looks like it's done in 2008. These**
 7 **are agents overseas that want to promote the project --**
 8 **or a project, such as SD -- the project for SDIF LP1,**
 9 **LP2, LP3, LP4, et cetera.**
 10 **I don't know if this is Linda He or not. I cannot**
 11 **recognize the signature.**
 12 **Q.** Okay. Was there an agreement similar to this signed
 13 with Linda He's companies?
 14 **A. Yes. With many companies. And a lot of them didn't**
 15 **ever turn into productivity.**
 16 **Q.** If you go to Tab 24, this is the overseas marketing
 17 agreement with Hanul.
 18 **A. Okay.**
 19 MR. OBERG: What's the Bates, Kasey?
 20 MS. OLIVIER: This one is 298.
 21 **A. Okay.**
 22 **Q.** Why -- was this document before or after the Darley
 23 lawsuit?
 24 **A. What's the date on it? 2008-7-9. I don't -- I**
 25 **would think -- I think the Darley still was going on**

1 **them separated.**
 2 **Q.** So of all the states that do regional centers, are
 3 they structured the same way?
 4 **A. I would suspect so.**
 5 **Q.** But you don't know?
 6 **A. No. I don't know.**
 7 **Q.** Have you ever looked into it?
 8 **A. No.**
 9 **Q.** I'd like to go back and have you turn to Tab 22.
 10 These are the marketing agreements with -- I believe this
 11 would be -- I'm guessing Linda He's company?
 12 Is that what these are?
 13 **A. I have to look at who signed it. Who signed it?**
 14 **Beijing I don't think is Linda.**
 15 MS. OLIVIER: It's Exhibit 50. It would be the
 16 Joop Bollen Depo 2014-277.
 17 MR. KERKVLUIT: Are those documents that you
 18 guys produced?
 19 MS. OLIVIER: No. We found them online. So I
 20 can -- I'll get you a copy as soon as we're done.
 21 They're just -- they're the exhibits to his prior
 22 deposition so I'll get it for you.
 23 **A. I don't recall if this is Linda or not. Oh, here's**
 24 **his signature.**
 25 MS. OLIVIER: If we haven't produced them, I'm

1 **during this time frame, but I'm not sure.**
 2 **Q.** If you turn to the next page, this looks like this
 3 is Linda He's company; correct? Or the next tab of --
 4 **A. 25?**
 5 **Q.** Yeah. 322.
 6 **A. Sorry?**
 7 **Q.** Bates 322.
 8 **A. What tab?**
 9 **Q.** Oh, it's just the very next one?
 10 **A. Which tab?**
 11 **Q.** 26.
 12 **A. Okay. Overseas marketing agreement. Yeah. This**
 13 **would be one of Linda's companies.**
 14 **There's been some revisions too over time. So this**
 15 **is one of them. We signed multiple ones with her.**
 16 MS. OLIVIER: Julie, have you provided those
 17 consulting agreements with Linda's company?
 18 MS. DVORAK: I don't know if I have or not.
 19 They're public information.
 20 MS. OLIVIER: Okay. I'm asking if he has copies
 21 and if you've produced them.
 22 MS. DVORAK: I don't know.
 23 MS. OLIVIER: Okay. Would you check? I mean,
 24 it's responsive to our discovery requests, and we
 25 haven't -- I mean, we found these online. These didn't

1 come from your production.
 2 So if he has copies of these, he needs to turn
 3 them over.
 4 MS. DVORAK: Sure.
 5 Q. Okay. What recruiter marketed the Tentexkota EB-5
 6 project?
 7 A. **Wailian wanted to do the project wholly themselves,**
 8 **but -- and that was the initial intent. But it turned**
 9 **out that they really slowed down. They weren't able to**
 10 **fill the project and, therefore, some other recruiters**
 11 **jumped into -- and finished the project off.**
 12 Q. Who were the other recruiters?
 13 A. **I do not recall offhand. I would have to -- I don't**
 14 **know offhand which other recruiters has some partners**
 15 **into LP2.**
 16 Q. Do you still have contact with those recruiters?
 17 A. **They are limited partners, but I don't offhand know**
 18 **how many were recruited by agents other than Linda.**
 19 Q. Does Linda represent a majority?
 20 A. **Yes.**
 21 Q. How many does she represent?
 22 A. **I don't know the exact number, but the majority.**
 23 Q. What is your best guess of majority?
 24 A. **I would -- my guess would be about 90 percent.**
 25 Q. About 90 percent?

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1 A. **80, 90 percent.**
 2 MR. HEIDEPRIEM: Kasey, can we stop?
 3 MS. OLIVIER: Yeah.
 4 (Discussion off the record.)
 5 (Exhibit 3 is marked for identification.)
 6 MS. OLIVIER: We're back on the record, after a
 7 short commercial break, at 2:16.
 8 A. **Can I mention one thing? That if you want to know**
 9 **my other business entities with Patel, I don't have a**
 10 **problem.**
 11 Q. Sure.
 12 A. **We have a variety of apartment rentals, gas**
 13 **convenience stores in Atlanta. There's a series of**
 14 **convenience stores in Atlanta, apartment entities.**
 15 **There's some dollar loan -- title loan outfits, and we**
 16 **have some commercial property that we rent out.**
 17 MS. OLIVIER: Should we wait until Julie comes
 18 back? Yeah.
 19 THE VIDEOGRAPHER: Do you want me to stop?
 20 MS. OLIVIER: Sure. At 2:16.
 21 (Discussion off the record.)
 22 THE VIDEOGRAPHER: We're back on the record.
 23 MS. OLIVIER: Back on at 2:17.
 24 Q. (BY MS. OLIVIER) Okay. So, Joop, how did you hear
 25 about the Deadwood Mountain Grand?

1 A. **From what I recall is Ron Wheeler contacted me. He**
 2 **has connections in Pierre, and he found out that this**
 3 **problem -- this program was available, and he contacted**
 4 **me.**
 5 Q. Were -- was SDIC -- or SDRC, Inc. still part of the
 6 University at that point in time?
 7 A. **I believe so, yes. Because the negotiation was done**
 8 **while -- all of it was done while I was a State employee.**
 9 Q. All the negotiations were while you were --
 10 A. **Right.**
 11 Q. -- working for the University?
 12 A. **Right.**
 13 Q. When you say all the negotiations what do you mean?
 14 A. **That the project was already being promoted, and the**
 15 **details of the negotiations were already hammered out,**
 16 **that everybody was on the same page with how to move**
 17 **forward with the project.**
 18 Q. And were you doing some of the negotiations through
 19 SDRC, Inc. at that point in time?
 20 A. **I think you can say that.**
 21 Q. And at that point in time SDRC, Inc. was part of the
 22 University?
 23 A. **Yes. Well, actually I don't think you can say that.**
 24 **It should be as part of SDI LP2 when the negotiation was**
 25 **done. Not SDRC, Inc.**

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1 Q. Explain that.
 2 A. **SDI LP2 is the entity that -- to which the money**
 3 **came into and the entity that lent money to Tentexkota.**
 4 Q. Correct. And --
 5 A. **So the negotiation was really the GP -- the LLC**
 6 **doing it on behalf of SDI, LP2. Not SDRC.**
 7 Q. But at that point in time SDRC, Inc. was --
 8 A. **In existence, yes.**
 9 Q. In existence. Was it the general partner?
 10 A. **No. The LLC was, from what I recall.**
 11 Q. Okay. But it was the sole member of the LLC?
 12 A. **Yes.**
 13 Q. So the State of South Dakota at that time was a sole
 14 member of the LLC?
 15 A. **Yeah. Until they spun it off and decided they**
 16 **didn't want it. I don't know if you can say the State.**
 17 **It's still SDRC, Inc.**
 18 Q. Correct.
 19 A. **Yeah.**
 20 Q. An entity that at that point in time --
 21 A. **Was destined to be owned by the State of**
 22 **South Dakota, Northern State University.**
 23 Q. And now it's a for-profit company?
 24 A. **Correct.**
 25 Q. Had -- and it pays out distributions.

1 A. **If the shareholders decide to do so, yes.**
 2 Q. So it's profitable.
 3 A. **Not anymore.**
 4 Q. It has been profitable?
 5 A. **It was profitable, but it's very unprofitable now.**
 6 Q. So if the State had retained SDRC, Inc., those
 7 profits would have gone to the State?
 8 A. **That is -- yes. That's correct.**
 9 Q. Okay. So Ron Wheeler contacts you.
 10 A. **From what I recall, yes.**
 11 Q. And you're still at the University.
 12 A. **Yes.**
 13 Q. And what happens next?
 14 A. **Ron Wheeler indicates that they're looking for**
 15 **funding for a project. I like what I hear. I like**
 16 **Ron Wheeler's past connection within Pierre. He is a man**
 17 **with a solid reputation. He advised that he has a group**
 18 **of investors that are very strong business people.**
 19 **I forward the information to Hanul. Not -- I**
 20 **don't -- the basic information to Hanul. Hanul also**
 21 **thought together with agents, after discussions with**
 22 **agents, that this could be a marketable project if there**
 23 **were personal guarantees.**
 24 **And at that point I connected Ron Wheeler with**
 25 **Hanul to provide the information needed to put the**

1 **OM together.**
 2 Q. I want to go back to what you said. You said this
 3 could be profitable as long as there were personal
 4 guarantees.
 5 A. **Right.**
 6 Q. Explain that.
 7 MR. OBERG: Marketable, I think.
 8 A. **Marketable. Not profitable.**
 9 Q. Okay. I thought you said --
 10 A. **No, no. Marketable. Well, everything -- by that**
 11 **time there's more and more regional centers coming**
 12 **online. And these Chinese people look for whatever**
 13 **project they feel most comfortable with.**
 14 **This particular project was a brand new project. It**
 15 **had no history and, therefore, the perceived risk was**
 16 **very high. So when I talked to the agents overseas**
 17 **they're not going to touch it until I tell them but you**
 18 **have a Ron Wheeler who used to be the commissioner of**
 19 **GOED. You have this Big and Rich outfit with Morris who**
 20 **is -- represents Alabama, and these guys are behind this.**
 21 **And then I don't know exactly how it evolved, but**
 22 **then the response would be, well, if they are so**
 23 **powerful, why don't you have them give guarantee? And I**
 24 **say, okay. If you can get the guarantees, we will**
 25 **promote it. If you don't get the guarantees, we won't**

1 promote it.
 2 **Then I go back to Ron Wheeler. I said, Ron, the**
 3 **only way you're going to get this project off the ground**
 4 **is if you're willing to provide guarantees. And even if**
 5 **you're going to get conventional financing, do you think**
 6 **you're going to get this kind of financing from any bank**
 7 **without guarantees? No bank will ever do it.**
 8 **So he understood that and agreed with that**
 9 **philosophy and was willing to provide the guarantees.**
 10 Q. So the guarantees were your idea?
 11 A. **You know, I wouldn't say -- it's kind of like a ping**
 12 **pong negotiation. It goes back and forward until we find**
 13 **a formula that works for everybody.**
 14 Q. Okay.
 15 A. **This worked for Tentexkota. It worked for the**
 16 **Chinese agent. And, therefore, if it works for the**
 17 **Chinese agent, it works for Tentexkota, then I'm okay**
 18 **with it.**
 19 Q. So this would have been the first project you had
 20 ever done with EB-5 with personal guarantees?
 21 A. **Well, I tried to do it with tilapia, but the tilapia**
 22 **project bombed. That is how I recall it.**
 23 Q. So this was the first project that --
 24 A. **That actually -- yes. That is correct.**
 25 Q. Northern Beef had -- was done in different sections.

1 The first was the past model that we talked about.
 2 A. **Right.**
 3 Q. And then they moved into the new loan model.
 4 A. **Right.**
 5 Q. Are there personal guarantees for the beef --
 6 A. **No.**
 7 Q. Why not?
 8 A. **Well, I think, first of all, when we started**
 9 **promoting Northern, Northern Beef, we were still somewhat**
 10 **the only game in town. Not quite anymore, but it was**
 11 **attractive enough to be marketed. When we went to the**
 12 **second stage everybody already knew Northern Beef, so the**
 13 **comfort level was a lot higher.**
 14 **In addition to that, the State of South Dakota was**
 15 **willing to provide financing, as was the USDA. So the**
 16 **perceived -- the perception of this Chinese audience was**
 17 **that this was a relatively solid project for them to**
 18 **engage in.**
 19 Q. Do any of the other projects that you have started
 20 under the loan model beyond Tentexkota have personal
 21 guarantees?
 22 A. **No.**
 23 Q. Why not?
 24 A. **Well, if you look at Basin, you know, the way I**
 25 **promoted that, or FPL, I would go to China, tell them --**

1 said, look, you guys are putting your money in the bank
 2 of China every day, and their credit rating is A minus.
 3 If you look at Basin and if you look at FPL, they have
 4 the same credit rating. So if you feel comfortable
 5 putting your money with the bank of China, you should
 6 feel as comfortable putting it in these two entities.
 7 Plus you have an independent credit rating agency
 8 that is looking at this. So this is not biased. This is
 9 a very unbiased analysis.
 10 And my sales pitch sold. People felt comfortable
 11 with the Basin. They felt comfortable with the FPL
 12 without a guarantee. They felt comfortable with NBP.
 13 But because this was a brand new small project that has
 14 no history, the guarantees were required in order to have
 15 a marketable project.
 16 Q. But isn't that kind of the point of the program is
 17 to create business and to grow business that can be
 18 risky?
 19 A. You know, that is -- that is what the USCIS likes,
 20 but that's not what the investors want. The investors
 21 want to place their money in the investment that has the
 22 highest probability of returning that money.
 23 Q. They want to be able to get their full investment
 24 back?
 25 A. They want to, yes. It's not guaranteed, but they

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1 want to. And the FPL and Basin gives them that comfort
 2 level. If you do that with a brand new casino project
 3 with no history, you cannot. You just couldn't promote
 4 it without the guarantees. That's it.
 5 You know -- and I don't care. If the Chinese agents
 6 would have said we take this project without a guarantee,
 7 I would have worried about, well, how solid do I believe
 8 this project is? And I felt comfortable with these
 9 business people. And I would have been fine with no
 10 guarantees, but that is not what the market demanded.
 11 So I would have been wasting my time promoting a
 12 project if there were no guarantees. We would never have
 13 filled it. Even with the guarantees, we had a tough time
 14 filling it at the end because there are more attractive
 15 alternatives in the marketplace.
 16 Q. I want to turn to -- in the binder right there in
 17 front of you marked Exhibit 3, Bates stamp SDRC 1455.
 18 A. Exhibit 3. Which one? Are you --
 19 Q. Yep. You've got it in your hand.
 20 A. Okay.
 21 Q. Turn to Bates stamp 1455.
 22 A. 1455? How does this work? I don't see a 1455.
 23 MS. OLIVIER: Do we have the wrong binder?
 24 That's okay. I must have just the wrong binder. Let me
 25 unmic and get the right one for you.

1 (Exhibit 4 is marked for identification.)
 2 A. What's the number? 14 --
 3 Q. Actually turn to 1427 to begin with, if you will.
 4 And just stay at 1427 for now.
 5 A. Okay.
 6 Q. This is the Confidential Offering Memorandum
 7 provided by you in regard to this project.
 8 A. Uh-huh.
 9 Q. Who drafted this document?
 10 A. Hanul.
 11 Q. Hanul?
 12 A. Uh-huh.
 13 Q. If you turn to 1455, it talks about the security
 14 requirements.
 15 A. But I can tell you this is not the right Offering
 16 Memorandum because the issuance expenses are not right.
 17 So this is a draft of something to that effect.
 18 Q. Okay. So this is a draft?
 19 A. This is not the correct -- this is not the final
 20 Offering Memorandum.
 21 Q. Sure. But this is a draft of it at some point in
 22 time?
 23 A. Must have been. But I can see right away the
 24 issuance expenses are wrong. So this is not what was
 25 used for the promotion.

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1 Q. Okay. Turn to SDRC 1455, please.
 2 A. Okay. This is also wrong. 11.5 million. I think
 3 that's wrong too. It should be 32.5.
 4 Q. I'm going to read what the security interest in this
 5 Offering Memorandum version says. It states, "Security.
 6 The subscription proceeds will be secured by the
 7 following:"
 8 A. Uh-huh.
 9 Q. "On the initial 11.5 million the subscription
 10 proceeds will be secured by a security interest in the
 11 equipment purchased, as well as a corporate guarantee of
 12 the funded business. The remaining subscription proceeds
 13 will be secured by a first mortgage on the building and a
 14 first security interest in the equipment."
 15 Did I read that correctly?
 16 A. Correct.
 17 Q. When -- who drafted that language, and when was that
 18 language -- what version is this?
 19 A. Hanul would have corrected this. But, again, I
 20 don't think this OM was ever used because it doesn't
 21 speak about guarantees, and it doesn't -- it also has the
 22 wrong subscription agreement -- description fees.
 23 Q. So it doesn't talk about guarantees in this version?
 24 A. You know, I don't recall this version, but I just
 25 note mistakes in this version.

1 Q. Okay. So in the beginning at least we can say
 2 before the final version there were no guarantees?
 3 **A. This document does not mention guarantees based on
 4 this one page I'm looking at.**
 5 Q. I'm going to hand you what is marked as Bates stamp
 6 COM30.
 7 (Exhibit 5 is marked for identification.)
 8 Q. It's now been marked as Exhibit 5. If you look at
 9 the top of COM30, there is a different security
 10 agreement.
 11 **A. Okay.**
 12 Q. Could you read that slowly for the court reporter
 13 since it's in front of you?
 14 **A. "The subscription proceeds will be secured by the
 15 following: The maximum of 32.5 million of the
 16 subscription proceeds will be secured by a first mortgage
 17 on Deadwood Mountain Grand property, as well as a
 18 personal guarantee issued by the partners of the funded
 19 business, a company with a net worth" -- that should
 20 say individuals with a net worth -- "of more than
 21 100 million."**
 22 Q. Is that the version that you were referring to
 23 earlier?
 24 **A. I cannot conclude that from this. This is closer,
 25 but I see a mistake here too. It should say with**

1 **probably will find something small too.**
 2 Q. Did USCIS -- were they provided with the
 3 Confidential Offering Memorandum?
 4 **A. Should -- you know, again, all that -- that
 5 immigration stuff is not something I get involved with at
 6 all. That is all done by Hanul. So they submit the
 7 I-526, the I-829. I don't get to see the final
 8 submission at all.**
 9 Q. Do you know what was submitted? Do you have any
 10 input in that?
 11 **A. I would suspect it's the OM that Hanul -- the latest
 12 version, but I cannot -- again, I do not submit anything
 13 to the USCIS. That is all done straight by Hanul to the
 14 California processing center.**
 15 Q. When you say OM you mean Offering Memorandum?
 16 **A. Yes.**
 17 Q. I just want to make sure we're clear on the record.
 18 Did you have a chance to review the limited
 19 partnership agreement before it was given out to promote
 20 the project?
 21 **A. Also that is produced by Hanul. But, yes, I've read
 22 through it.**
 23 Q. Okay. Did you have any part in helping draft it?
 24 **A. I didn't draft anything.**
 25 Q. Okay.

1 **individuals' combined or members' combined net worth of
 2 over 100 million.**
 3 Q. So you think that there is another Offering
 4 Memorandum?
 5 **A. Or there's a mistake. Because it's not the company
 6 with the net worth. This is a brand new company. It
 7 didn't have any net worth. So this doesn't make logical
 8 sense to me.**
 9 Q. Okay. So if this was the agreement that went to
 10 potential investors, it wouldn't have been the correct
 11 one?
 12 **A. I think the wording should have been "a company
 13 whose members have a combined net worth of over 100
 14 million." Then it would be the right way.**
 15 Q. Okay. But if every offering letter we've seen has
 16 that language --
 17 **A. Then I would consider it a mistake.**
 18 Q. Okay. Why wouldn't it have been a mistake, and why
 19 didn't you catch it back then?
 20 **A. You know, the Offering Memorandum I did not prepare;
 21 right? They were prepared by Hanul. Now I might have
 22 read -- I read through them, but I don't catch everything
 23 either.**
 24 **You know, I'm sure there's other contracts, if I go
 25 through the loan agreement that was drafted here, I**

1 **A. The drafting was all done by Hanul.**
 2 Q. Did you have any say in the content?
 3 **A. If I would see something that is not correct, I
 4 would alert them.**
 5 Q. How did -- because you're going to be the general
 6 partner --
 7 **A. Right.**
 8 Q. -- in essence, of the limited partnership.
 9 **A. Uh-huh.**
 10 Q. I know that there's other entities.
 11 **A. Uh-huh.**
 12 Q. But wouldn't you be interested in helping create
 13 what the agreement is going to be between you and some
 14 foreign investors?
 15 **A. You know, yes, I would. But also there's credit
 16 agreements and everything else, and you hire attorneys to
 17 do that. I review it all, but I cannot guarantee that
 18 there's no mistakes in any of that stuff.**
 19 Q. Sure.
 20 **A. That's why I hire attorneys to do it for me. Can I
 21 vouch for that everything is done perfectly? No, I
 22 cannot. I just hope so.**
 23 Q. Do you have any say then or did you have any say in
 24 the amount SDRC, Inc. was paid as the general partner?
 25 **A. SDRC's revenue doesn't come from issuing expenses.**

1 Q. Okay.

2 **A. The issuing expenses are paid to the agents overseas**

3 **for the vast majority. Initially we tried to take a**

4 **little bit, withhold a little bit of that money, but I**

5 **would guess 95 percent plus that entire fee went back to**

6 **the agents overseas.**

7 **The money that was -- typically speaking, the money**

8 **that SDRC intends to earn revenue from comes from the**

9 **American project site, typically speaking. There are**

10 **some exceptions, but they're very minor.**

11 Q. Well, let's talk about those. Hold on one second.

12 Let me pull it up here.

13 **A. So the loan origination fee would be something that**

14 **would come to SDRC. And once the partnership earns**

15 **interest, then there's a management fee and a consulting**

16 **fee.**

17 Q. You're talking about SDRC, Inc.; correct? Not the

18 regional center.

19 **A. I'm only speaking SDRC, Incorporated.**

20 Q. Okay. So let's see. So pursuant to the consulting

21 agreement, SDRC, Inc. was supposed to receive 1 percent

22 of the total amount of the investment from the borrower

23 receiving the loan.

24 **A. You're talking about the origination fee?**

25 Q. Yes.

1 **A. That's correct.**

2 Q. Okay. And is that for -- SDRC, Inc. got that for

3 every single --

4 **A. Just the one-time fee.**

5 Q. But for the Basin project?

6 **A. Yes.**

7 Q. For the --

8 **A. Yes. Yes. And then we pay the State of**

9 **South Dakota a certain percentage and whatever else.**

10 Q. How much do you pay the State of South Dakota?

11 **A. I don't recall the percentages. I think it's a**

12 **quarter percent.**

13 Q. A quarter? SDRC, Inc. --

14 **A. Yeah. It's a little bit different on projects.**

15 **It's not consistent.**

16 Q. Why is it not consistent?

17 **A. What was the logic why it was not consistent?**

18 **Initially -- I don't recall exactly why it wasn't**

19 **consistent, but, generally speaking, a quarter percent**

20 **would go to the State.**

21 Q. Okay. So the \$45,000 that was paid for the

22 partnership unit --

23 **A. The issuance fee is what you're talking about.**

24 Q. Yeah.

25 **A. Yeah.**

1 Q. Where did that go?

2 **A. Typically -- very early on we tried to keep 5 and**

3 **send 40 on. But that changed and I don't know exactly**

4 **with the project when but it was pretty clear soon that**

5 **we would just dish out all that money right back to China**

6 **or Korea, to whoever recruited the investment --**

7 **investor.**

8 Q. So Linda He, for the most part?

9 **A. The company. Wailian.**

10 Q. Wailian.

11 **A. Yes.**

12 Q. So it would go to Linda He's company?

13 **A. Yes.**

14 Q. So how much then in that -- you called it -- what

15 kind of fee did you just call that?

16 **A. I think, subscription fee. I don't know what the**

17 **right --**

18 Q. Okay. So the subscription fee. The \$45,000 --

19 we'll call it a subscription fee --

20 **A. Yeah. 45,000. Yeah. Issuance fee, I think.**

21 THE COURT REPORTER: Excuse me.

22 MS. OLIVIER: Sorry. Sorry about that.

23 Q. How much money did SDRC make in total in the

24 Tentexkota transaction --

25 **A. From --**

1 Q. -- from the subscription fees?

2 **A. It has to be very minor. I don't know. But it's**

3 **not much. It cannot be much.**

4 Q. Where would that be recorded?

5 **A. It would be recorded as income to -- but it is**

6 **really -- really, really small.**

7 **I know that there were a couple of instances where**

8 **we tried to withhold 500 -- \$5,000 -- no. Out of the**

9 **5,000 -- no. Out of the 45,000 we tried to keep, and**

10 **that we were successful.**

11 **But then the market changed so quickly that other**

12 **regional centers were paying even higher amounts, and we**

13 **just said forget it. Just give it all to them. Let's do**

14 **it very cleanly. Our revenue will come from**

15 **South Dakota. Anything that comes from China pretty much**

16 **goes back. Or any of these countries.**

17 Q. Why? Because if you've --

18 **A. Because these agents have multiple options. And**

19 **whoever pays the best, that's who they're going to go**

20 **with. And if I tried to clip them 5,000 out of the**

21 **45,000, then they might go to somebody else.**

22 **So the competitive forces made it very clear to me**

23 **that it was not wise for me to try to nickel-and-dime**

24 **stuff and just give them the whole amount.**

25 Q. But isn't that the point of Linda He having so many

1 different companies is that each one of her companies
 2 works with a different regional center? So if you're
 3 working with Wailian, why would it matter if --
 4 **A. Well, if Pennsylvania pays 60,000, why would she**
 5 **send any investments my way? She has complete ability to**
 6 **steer those limited partners any which way she wants.**
 7 **The reality is those limited partners, in my estimation,**
 8 **don't really know exactly what goes on.**

9 **For them to analyze all these projects that are**
 10 **being offered, it's an impossible task. Imagine you**
 11 **doing that in China with Chinese companies. So they rely**
 12 **heavily, heavily on the local agent that can steer them**
 13 **any which way they want to steer them. And, therefore,**
 14 **it made to me no sense to start nickel-and-diming them**
 15 **and just give them the whole 45,000.**

16 Q. An investment was secondary to citizenship.

17 **A. I don't -- I think that's a fair observation, but**
 18 **they want both. They want the investment and the**
 19 **citizenship. It's not that they just want the**
 20 **citizenship, you know.**

21 **And that is why Iberdrola -- or sorry. Basin or FPL**
 22 **was so beautiful. Because it's not just a citizenship;**
 23 **there's very high likelihood of being rebate. And that's**
 24 **why that those projects were very successful.**

25 Q. Were you paid management fees under the limited

1 partnership agreement?

2 **A. I personally wasn't paid anything.**

3 Q. Was SDRC, Inc. paid management fees?

4 **A. No. The GP was paid a management fee.**

5 Q. Who is the GP then?

6 **A. That is owned -- the sole member of the GP is SDRC,**
 7 **Inc., so it does go back to SDRC --**

8 Q. So it flows through to --

9 **A. There's two things pretty much: The consulting fee**
 10 **directly to SDRC and a management fee through the --**
 11 **through the GP into SDRC.**

12 Q. SD Investment Fund, LLC2 is the GP; correct?

13 **A. Yes.**

14 Q. And they were paid management fees?

15 **A. Yes.**

16 Q. Of \$5,000 --

17 **A. 1 percent, I think. I don't -- yeah. That is also**
 18 **now consistency. In some OMs it says \$5,000. On other**
 19 **ones it says 1 percent. I don't recall offhand which**
 20 **this one says, but it is either -- it equates to roughly**
 21 **the same thing anyway.**

22 Q. Okay. So let's just say this one is \$5,000 because
 23 I've looked through it. And that's per investor?

24 **A. Per year.**

25 Q. Per year?

1 **A. Yes.**

2 **Q. And that money gets paid to SD Investment Fund,**
 3 **LLC2?**

4 **A. The management fee, yes.**

5 **Q. And then what does SD Investment Fund, LLC2 do with**
 6 **that money?**

7 **A. It will flow through into SDRC.**

8 **Q. So then it goes into SDRC, Inc.?**

9 **A. Uh-huh.**

10 **Q. And then it can be distributed out?**

11 **A. Well, you have expenses. You know, there's**
 12 **different expenses, but then if there's a profit and the**
 13 **shareholders decide to distribute, they can.**

14 **Q. Who received the escrow fees?**

15 **A. That's the Chinese bank. They received the escrow**
 16 **fees.**

17 **Q. At -- the limited partnership is also to receive**
 18 **2 percent of any interest that's been paid?**

19 **A. No. That's the same fees. That's what we just**
 20 **discussed. 1 percent, 1 percent; that is 2 percent.**

21 **Q. Okay. So if it's in two different areas that there**
 22 **is a management fee --**

23 **A. Oh, you mean the limited partners get 2 percent?**

24 **Q. It says the limited partnership itself was to**
 25 **receive 2 percent of any interest paid.**

1 **A. Okay. Yeah. The distribution -- there were**
 2 **distributions paid out to the limited partners, which**
 3 **roughly equated to 2 percent.**

4 **Q. How much interest has Tentexkota paid?**

5 **A. You know, I think it was about 4 and a half percent.**
 6 **So 32.5 million. 4 and a half percent. And then, you**
 7 **know, you do that for five years. I think plus there was**
 8 **a forbearance agreement too.**

9 **Q. Did the forbearance agreement include interest paid,**
 10 **or was that on top of interest paid?**

11 **A. I think from what I recall year fifth came due, and**
 12 **a new interest rate was determined that was supposed to**
 13 **have been paid for 2016 but never was paid.**

14 **Q. But the forbearance agreement was done in 2015.**

15 **A. Right. But the interest takes a year later; right?**
 16 **So, you know, if you sign the forbearance, the interest**
 17 **would be -- if you negotiate an interest rate at the time**
 18 **of the forbearance agreement, the interest doesn't get**
 19 **paid until roughly a year later.**

20 **Q. Yeah. But there was the \$1.5 million that was paid**
 21 **in a fee?**

22 **A. But that was interest pretty much, from what I**
 23 **recall. It's not just --**

24 **Q. So past interest --**

25 **A. To cover the past interest.**

1 Q. Okay. How much of the interest that has been paid
 2 by Tentexkota has gone back to the limited partners?
 3 A. **Roughly 2 percent per year.**
 4 Q. Roughly 2 percent?
 5 A. **Uh-huh.**
 6 Q. Per year?
 7 A. **Uh-huh.**
 8 Q. When we were in California the limited partners said
 9 they were each getting about \$10,000 per year?
 10 A. **Well, that's 2 percent per year.**
 11 Q. Does that sound accurate?
 12 A. **Yeah. That sounds about right.**
 13 Q. Was SD Investment Fund, LLC2 paid any money beyond
 14 its management fees out of --
 15 A. **No.**
 16 Q. -- the interest paid?
 17 A. **No.**
 18 Q. Who primarily did the promotion of the Tentexkota
 19 project?
 20 A. **Wailian.**
 21 Q. Did Jing Hong also do promotion?
 22 A. **Not that I recall, but they might have.**
 23 **No. Actually I do remember Jing Hong trying to**
 24 **plead some cases too.**
 25 Q. Were they both owned by Linda He?

1 **would then do the execution of the promotion.**
 2 Q. And when you say we would work together, it was you,
 3 Linda, and who else?
 4 A. **It was their promotional campaign so we would just**
 5 **be -- what do you say -- a peon in her show. They would**
 6 **set up the show. We would show up and just discuss**
 7 **whatever they wanted us to discuss.**
 8 Q. When you say "we would show up," who is we?
 9 A. **Myself typically. Morrie Berez went with me for**
 10 **some projects. Richard Benda went a lot of times.**
 11 Q. Did Morrie Berez promote this project?
 12 A. **I don't recall exactly how that -- I'm sure he did.**
 13 **I'm sure he did. But I don't know for 100 percent**
 14 **person.**
 15 Q. Did James Park?
 16 A. **James Park never promoted the project. He discussed**
 17 **the immigration aspect of how to get your visa.**
 18 Q. How many times did you go to China for promotional?
 19 A. **Oh, my guess is 10 times a year for four years.**
 20 Q. Okay. So you promoted it for four years?
 21 A. **That's my guess.**
 22 Q. Okay.
 23 MS. DVORAK: Kasey, just so the record's clear,
 24 do you mean specifically the Tentexkota project or all
 25 projects?

1 A. **As far as I know. I never asked for evidence who**
 2 **the owners were so I'm just getting -- based on what I**
 3 **think, she owns both.**
 4 Q. Who did you primarily work with in the promotion of
 5 the project?
 6 A. **The negotiations were done with Linda. The actual**
 7 **execution of the promotion was mainly done by Cindy.**
 8 Q. When you say the promotion was done by Linda, what
 9 does that mean?
 10 A. **The negotiations.**
 11 Q. Oh, the negotiations. Okay. So what does that
 12 mean?
 13 A. **To come to the terms of how we can make this project**
 14 **attractive for her to promote in China.**
 15 Q. Okay.
 16 A. **And then once that was set in place and the**
 17 **promotion started, then Cindy would typically take over**
 18 **with her crew. There were quite a few people.**
 19 Q. So it was Linda that decided how to make this
 20 attractive?
 21 A. **To -- she would -- we would discuss how to make this**
 22 **project marketable in China. And then once she bought**
 23 **into it, then we started doing the promotional campaign.**
 24 **Then you had a Cindy for Wailian. You had a Cindy**
 25 **equivalent for Jing Hong and whatever else you had. They**

1 THE WITNESS: That's all projects.
 2 Q. The Tentexkota projects.
 3 A. **Oh, I'm sorry. That's all projects.**
 4 Q. Okay. How many times for the Tentexkota project?
 5 A. **Oh, my guess would be four or five times. Four**
 6 **times, five times.**
 7 Q. Okay.
 8 A. **Tentexkota was a little harder project to fill and**
 9 **required more hand holding than a Basin would or --**
 10 Q. Why?
 11 A. **Because, again, the perceived risk of Basin and FPL**
 12 **was very low in China. Whereas, Tentexkota was a much**
 13 **more difficult project to promote.**
 14 MS. OLIVIER: Can we take a short break?
 15 MS. DVORAK: Yep.
 16 (A short recess is taken.)
 17 MS. OLIVIER: Back on the record at 2:56.
 18 Q. (BY MS. OLIVIER) So, Joop, project -- you work with
 19 Linda He and Hanul, and you're putting together the
 20 promotional projects and trying to figure out how the
 21 project should come together in the very beginning
 22 stages; is that correct?
 23 A. **Yeah. The negotiations, yes.**
 24 Q. Okay.
 25 A. **To determine whether or not the project will be**

1 marketed.

2 Q. When did the marketing actually start?

3 A. **Once everyone was in agreement then -- with the**

4 **terms, then the project would be kind of spun off, for**

5 **example, to Wailian, and Cindy would start the campaigns**

6 **and schedule seminars, typically speaking.**

7 Q. So I've read some e-mails that came from you that

8 were written by Cindy, and it seems like the relationship

9 with Cindy was kind of rocky at times?

10 A. **That's not unusual with agents. You know, they try**

11 **to push you as far as they can, you know, and they want**

12 **you to only come to their projects and not -- you know,**

13 **because some of these projects are promoted**

14 **simultaneously.**

15 Q. Sure.

16 A. **So you get a lot of quivering where we are doing**

17 **Tentexkota. But Basin is competing with our time, and**

18 **Basin was so much easier to sell that everybody wants to**

19 **promote Basin and not as much Tentexkota.**

20 Q. Why was Cindy frustrated then with the promotion of

21 this project?

22 A. **I think that's just Cindy. Even if it's perfect,**

23 **she still will be frustrated because never enough. Is**

24 **always trying to squeeze more.**

25 Q. What does that mean?

1 A. **They want to -- it's her job to make sure that we**

2 **spend all our time with her and not with other agents.**

3 **And, therefore, the squeaking wheel gets the oil, I**

4 **guess, so the more squeaking you do, the more likely**

5 **you're going to get oiled.**

6 Q. Who was promoting Basin?

7 A. **Basin was Vivian through a company -- what was the**

8 **name of it? QDNG or something like that. I don't**

9 **remember the exact spelling.**

10 Q. Okay.

11 A. **It was a different agent.**

12 Q. Different agent.

13 A. **Competitor of Linda.**

14 Q. So were they going to the same seminars?

15 A. **Well, we would -- we would only have so much travel**

16 **time. So then we would try to divide up in teams from**

17 **who is going to do the beef plant and who is going to do**

18 **Basin.**

19 Q. Okay.

20 A. **You know, another thing -- well, forget it. Sorry.**

21 Q. No. Go ahead. What were you going to say?

22 A. **No. I mean, Basin was easier to promote, and,**

23 **therefore -- because if you look at Tentexkota, it had a**

24 **very high issuance fee compared to any other projects.**

25 **And that was, again, because it was a difficult project**

1 to promote.

2 **And Linda demanded more issuing fees of 45,000 where**

3 **at Basin she was willing to settle for say 27 or 30,000.**

4 Q. Why was it so hard to promote? Just because it was

5 smaller?

6 A. **Because it had no track record. And, again, the**

7 **comfort level with a company that has an A rated credit**

8 **rating versus a project that has no history. That's much**

9 **more -- perceived as much more safe for the foreign**

10 **investor.**

11 Q. Did most of -- in your opinion, did most of these

12 investors want to actually make money on this investment,

13 or did they really just want citizenship?

14 A. **Both.**

15 Q. Okay.

16 A. **Both.**

17 Q. Was citizenship kind of secondary? I know we kind

18 of covered this but --

19 A. **Well, it changed -- initially they had no choice;**

20 **right? But when there was more and more projects, the**

21 **investors suddenly get to choose. And why would you risk**

22 **your investment in one project if you can get the**

23 **citizenship anyway.**

24 Q. And get paid back in full --

25 A. **You know, you can get citizenship either one, and**

1 **one you get your money back and the other one it's risky.**

2 **It just makes logical sense to go with the safest company**

3 **that would provide you the same outcome in terms of**

4 **immigration.**

5 Q. So you'd want to go with a project that you were

6 guaranteed to get that money back?

7 A. **Oh, there's no such thing as guarantee in EB-5.**

8 **Nothing is guaranteed. You know, we -- you know, you**

9 **want to be as safe as the law allows you to be.**

10 Q. But isn't there guarantees in this case?

11 A. **That's not -- you know, just the fact that we're**

12 **sitting here shows that a guarantee is still risky, you**

13 **know, because if there were no risk, we wouldn't be**

14 **sitting here today. They would have had their money**

15 **back.**

16 Q. But it's still -- the investment is still gaining

17 interest.

18 A. **Are they? Time will tell.**

19 Q. Under the agreements it's still gaining interest.

20 A. **Yeah. But under the agreement and in reality is**

21 **very different; right? In reality we should have been**

22 **paid back a long time ago, and we haven't gotten the**

23 **money so that is evidence that this was a very risky**

24 **project.**

25 Q. So is your idea of risk in this project simply

1 because they have not yet been paid back and it's in
 2 litigation?
 3 **A. At this -- initially I didn't think the risk was**
 4 **there.**
 5 **Q. Sure.**
 6 **A. You know, I felt relatively comfortable with the**
 7 **guarantees that the project would repay. I did not see**
 8 **this outcome, or else we would never have promoted this**
 9 **project.**
 10 **Q. Okay. The I-526 agreements were put together by**
 11 **Hanul?**
 12 **A. The I-526 is an application that gets submitted to**
 13 **the USCIS. So it's not an agreement.**
 14 **Q. Okay. Sure.**
 15 **A. It's an application. Yeah. I have nothing to do**
 16 **with the application.**
 17 **Q. Sure. Thank you for that clarification.**
 18 **So Hanul prepared all of that?**
 19 **A. Yes.**
 20 **Q. Austin Kim would have been part of that?**
 21 **A. Hanul.**
 22 **Q. Okay. And they put together all of the exhibits or**
 23 **documents that would go with that application.**
 24 **A. Correct.**
 25 **Q. And you don't know if the Offering Memorandum was**

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1 submitted to USCIS?
 2 **A. I cannot imagine it wasn't, but I guess the Freedom**
 3 **of Information Act you can find out if it was or not. I**
 4 **would assume it was submitted. How can it not?**
 5 **Q. Okay. So you'd assume it was submitted.**
 6 **A. I assume, yeah.**
 7 **Q. But you don't know what version of the Offering**
 8 **Memorandum was submitted?**
 9 **A. I did not -- I did not file any of the applications**
 10 **so I cannot -- I would hope they did the latest version,**
 11 **but I cannot guarantee that.**
 12 **Q. So actually seeing those applications in the**
 13 **exhibits would help us clarify which was actually**
 14 **submitted?**
 15 **A. I think so.**
 16 **Q. What happened -- as this project progressed there**
 17 **came a time when USCIS stopped processing the 829 --**
 18 **A. Uh-huh.**
 19 **Q. -- applications. Can you tell me what happened --**
 20 **A. The 82 -- even the I-526s. Are you talking about**
 21 **the I-526s with Iberdrola, or what are you referring to?**
 22 **Q. I was referring to the 829 application.**
 23 **A. For this particular project?**
 24 **Q. Yes.**
 25 **A. You know, that -- again, that's an immigration**

1 **issue.**
 2 **Q. Okay.**
 3 **A. That is something Hanul would have dealt with and**
 4 **obtained the necessary information from the casino to**
 5 **respond to that RFE.**
 6 **Q. Well, but you were involved with that.**
 7 **A. I would want to know what went on. I don't -- I**
 8 **don't recall at this moment what the RFE is. I'm really**
 9 **on the peripheral when it comes to what the reason is for**
 10 **the RFE.**
 11 **This was typically something that Morrie would get**
 12 **very closely involved with and work together with Hanul**
 13 **to put a response together to the RFE for the USCIS.**
 14 **Q. Did you review the RFE?**
 15 **A. No.**
 16 **Q. You did not?**
 17 **A. No. Not that I recall.**
 18 **Q. Why not?**
 19 **A. I might have glanced through it, but, again, this**
 20 **was not part of my duties the way I envisioned it. You**
 21 **know, that's up to the immigration attorney because that**
 22 **is an immigration matter.**
 23 **Q. Could you turn to SDRC 2133. It would be in**
 24 **Exhibit 3.**
 25 **A. SDRC what was it?**

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1 **Q. 2133.**
 2 **A. Okay.**
 3 **Q. This is an e-mail from Morrie to you, Austin, and**
 4 **Peter; correct?**
 5 **A. Right.**
 6 **Q. Take a second to review that e-mail.**
 7 **(Witness examines document.)**
 8 **A. Okay. Okay. Okay.**
 9 **Q. If you had nothing to do with the RFE, why were you**
 10 **on this e-mail?**
 11 **A. Because it still affects EB-5 in general.**
 12 **Q. So it still affects you?**
 13 **A. It affects -- if the project doesn't work out right,**
 14 **it affects the reputation of SDRC, Inc.**
 15 **But the response to any immigration-related issue**
 16 **was done by Hanul, and Morrie would function as a**
 17 **consultant to Hanul to how to apply.**
 18 **Q. Would you turn to 2136. This is the actual RFE.**
 19 **A. Okay.**
 20 **Q. And let's -- you've reviewed this; correct?**
 21 **A. No, I have not.**
 22 **Q. Why would you not review the RFE?**
 23 **A. Because I did not see that that was my**
 24 **responsibility. You know, that's in capable hands of**
 25 **Hanul and Morrie. Those guys know a heck of a lot more**

1 **about this stuff than I ever will, so why should I get**
2 **involved in the nitty-gritty.**

3 Q. I'd like you to turn to 2145. This is an e-mail
4 from you to Mary Haar --

5 A. **Uh-huh.**

6 Q. -- to be sent to the limited partners.

7 A. **Okay.**

8 Q. "This is a joint e-mail update from SDRC and Hanul
9 Law Firm to report on the progress of your I-829
10 condition removal process."

11 A. **Uh-huh.**

12 Q. "It has been a long wait for you, and we appreciate
13 and share the frustration and anxiety you feel."

14 A. **Yep.**

15 Q. "As you are aware, USCIS adjudications of I-829
16 petitions came to a standstill last year. Wailian
17 decided to hire a law firm of Ira Kurtzban" -- Ira,
18 I-R-A. Kurtzban, K-U-R-T-Z-B-A-N -- "a very prominent
19 immigration litigation attorney, to file what is called a
20 mandamus action against USCIS for their lack of
21 adjudication. We initially felt uncomfortable with this
22 action as we hoped for a less confrontational political
23 solution."

24 So I can go on reading, but you seem very involved
25 with this process.

1 **they find out new information and they have some egg on**
2 **their face, they try to come up with new rules and apply**
3 **them retroactively. That is also why you see we had to**
4 **hire a new economist that was never required before.**

5 Q. What do you mean a new economist?

6 A. **Well, the -- what happened is remember I told you**
7 **earlier that the USCIS initially was pretty much**
8 **ex-military people who started reviewing business plans.**
9 **They were not really qualified to do this. And**
10 **government is a little bit slow and lethargic, and at**
11 **some point they realized that they don't have the**
12 **expertise. So now they suddenly hire an economist.**

13 **And now this economist starts looking back at what**
14 **was done today and said, hey, this multiplier is not**
15 **really applied right. So as opposed to the USCIS saying,**
16 **oh, God, we didn't know, they said who is responsible for**
17 **defrauding us? That's kind of the -- the knee-jerk**
18 **reaction of a bureaucrat.**

19 **And then, you know, we -- we can go and tell the**
20 **USCIS you already approved our econometric model. Why**
21 **are you now wanting an updated one? But then you have a**
22 **choice. Do you want to fight with the government, or do**
23 **you just say let's hire a new economist and let's see if**
24 **we can just qualify under the new rules.**

25 **And that is a less obstructive way. It creates less**

1 A. **This is very, very macro. Whereas, preparing an RFE**
2 **is very, very micro. So I don't see how you can conclude**
3 **for a very general one-page letter where an RFE response**
4 **is probably what, an inch thick? So you cannot compare**
5 **these two. This is the peripheral. This is a macro**
6 **picture.**

7 Q. But you just said you hadn't even read the RFE.

8 A. **I didn't. I don't have to read the RFE.**

9 Q. Then how are you talking about it? And you say,
10 "The RFE" --

11 A. **Because I know it came to a standstill.**

12 Q. Hold on. Let me finish my question.

13 A. **Sorry.**

14 Q. "The RFE was not particularly mean-spirited or nasty
15 but requested more evidence of job creation based on
16 recent USCIS standards of calculating job creation."

17 So it seems here that you are a part of deciding how
18 to proceed with the I-829s. You're a part -- it appears
19 you've read it.

20 A. **Well, as I've told you, I don't go into the details.**
21 **I listen to Morrie Berez, who is the expert. He knows**
22 **this better than everybody. And he in a phone**
23 **conversation tells me this is not a mean-spirited -- a**
24 **mean-spirited RFE. We just need to comply.**

25 **In addition to that, the USCIS has this habit when**

1 **enemies. So even though we don't agree with the USCIS,**
2 **we might still go ahead and take the road of least**
3 **obstruction.**

4 Q. You'll agree with me that you were integral in
5 making those decisions on behalf of the partnership?

6 A. **I agree with you that I would listen to Morrie**
7 **Berez, and I would pretty close to take what Morrie Berez**
8 **tells me as that's what we need to do. He is the true**
9 **expert. That's how I look at Morrie Berez when it comes**
10 **to EB-5.**

11 **And then the RFE would be executed, would be put**
12 **together by Hanul and typically would be reviewed by**
13 **Morrie before it's submitted to the USCIS. And that was**
14 **good enough for me.**

15 Q. Why would Morrie review it before it was submitted?

16 A. **To make sure that there's the highest probability of**
17 **getting the RFE successfully eliminated and have the**
18 **petitions adjudicated favorably.**

19 Q. Was Morrie -- wasn't he the head of --

20 A. **Yes.**

21 Q. -- the department?

22 A. **Uh-huh.**

23 Q. And he was allowed to come in and help you --

24 A. **As he retired so --**

25 Q. Oh.

1 A. So he came in working with us after he retired from
 2 the USCIS.
 3 Q. When did he retire?
 4 A. I cannot tell exactly, but he's worked with us
 5 already at this particular point so I don't know
 6 100 percent what the date is. My guess is around 2007 or
 7 so.
 8 Q. Okay. And then --
 9 A. Actually -- yeah. 2007. Because the loan model, he
 10 recommended that while he was still at the USCIS. So it
 11 had to be 2007. And this one's quite later. But my
 12 guess is 2007, around that, 2008.
 13 Q. So he would have left not too long after he
 14 suggested the loan model.
 15 A. I think that's fair.
 16 Q. Was he working with -- what entity as a consultant?
 17 A. Initially I am the one who -- nobody -- well, there
 18 was a political change in Washington, and Morrie was kind
 19 of forced out, to some extent. Nobody wanted to touch
 20 him. Pennsylvania, actually Tom Rosenfeld, recommended
 21 to stay away from him.
 22 But I felt very comfortable with Morrie, especially
 23 his knowledge, so I contacted him as soon as I could for,
 24 Morrie, help us. Make sure that we do everything right
 25 and we dot the Is and cross the Ts.

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1 Q. Why were people worried about Morrie?
 2 A. Because it's a new -- somebody new. A new captain
 3 came into town at the USCIS. And sometimes the new
 4 administration doesn't like the prior administration, and
 5 whatever mess they receive is always the fault of the
 6 prior administration.
 7 So I think it is just a new guard in town, and that
 8 transition wasn't completely without animosity. But the
 9 details I do not know.
 10 Q. Do you know what the mess was and why he was forced
 11 out?
 12 A. I do not know.
 13 Q. He's never told you that?
 14 A. I never dug into it.
 15 Q. Did you ask? When someone called you and said stay
 16 away from him, did you say why?
 17 A. Just Pennsylvania. But, you know, when you --
 18 Pennsylvania's also a competitor of mine so when they
 19 tell me that stuff I listen to it, but I still make my
 20 own decision of what I believe is in the best interests
 21 for South Dakota. And my estimation was I should grab
 22 Morrie before somebody else would.
 23 Q. So was Morrie retained as a consultant?
 24 A. Yes.
 25 Q. By what entity?

1 A. SDRC, Incorporated.
 2 Q. SDRC, Inc. hired him. Is there a formal contract?
 3 A. I think there has to be something in the files. I
 4 don't remember. But it would be -- I would think that
 5 Morrie would have something.
 6 Q. Who filed the mandamus action?
 7 A. Hanul.
 8 Q. Where did they file it?
 9 A. Don't know.
 10 Q. Do you know what state it was filed in?
 11 A. You know, I can guess the California Service Center,
 12 but even that transitioned to Washington. There was some
 13 political fallout there too where they moved the entire
 14 operation back to Washington. So it went from Washington
 15 to California and then back to Washington. But the dates
 16 I do not know.
 17 Q. So when were the investors' I-829s approved?
 18 A. I don't have the records here exactly, but I
 19 believe --
 20 Q. Okay. Approximately when would you assume that they
 21 were?
 22 A. It was after the forbearance action because I know
 23 that Hanul needed information from Tentexkota that wasn't
 24 forthcoming. So at a forbearance -- you mentioned to me
 25 it was 2015?

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1 Q. Yes.
 2 A. So it had to be after that date that the I-829s were
 3 approved.
 4 Q. Tell me about the forbearance negotiations. What
 5 happened? Walk me through what happened there.
 6 A. I remember Mark Oswald coming to me and trying to
 7 convince me that the history was such and they were
 8 performing well enough, if the partnership would consider
 9 taking off the guarantees, and that Tentexkota could
 10 stand on its own with just a corporate guarantee.
 11 I remember that as a first scenario. And what I
 12 recall is that the reply was is that it's not my decision
 13 but I'm willing to send it to the LPs and see how they
 14 decide, if they're willing.
 15 But it's illogical. Why would they let people's
 16 personal guarantees go off a project? It seems very
 17 illogical to me.
 18 And then at some point we were advised that they
 19 could not pay back the interest. And there was a lady by
 20 the name of Ann Hanbly [phonetic], I believe, and some
 21 other guy, Tom, who started negotiating on behalf of
 22 Tentexkota to get a forbearance agreement.
 23 Q. And then what happened?
 24 A. With a situation like that I don't have the power to
 25 make decisions. So a partnership meeting was probably

1 called. I don't know the exact date. And it was
2 discussed and we were probably advised that based on the
3 final terms that it might be a good thing for the limited
4 partnership to make sure they get the I-829s approved and
5 hoping that Tentexkota would pay back the principal as
6 promised within the forbearance agreement. And they must
7 have -- well, they voted for that, to accept it.

8 Q. So they voted to wait because they were worried
9 about their 829 applications?

10 A. I'm sure they were worried about both, the visa and
11 getting the principal back.

12 Q. What were their fears about the visa?

13 A. Well, until you have a visa, you know, you depend on
14 the government, which is never comfortable. So the
15 government -- the USCIS, I've seen it myself on many
16 occasions where something new pops up, and instead of
17 acknowledging that we've got to go through a learning
18 curve, they don't respond that manner.

19 They respond from who can we put the blame on and
20 try to retroactively apply new rules. I think they're --
21 in my experience that's what you can expect from them.

22 Q. What do you mean learning curve? Like if mistakes
23 are made?

24 A. Well, as I mentioned, initially you have pretty much
25 ex-military people. Then they hire some economists.

1 Q. Yeah.

2 A. What page?

3 Q. 2174.

4 A. That's not the right one. 204. Okay.

5 Q. It will be in that one. 2174.

6 A. 2174. Mine -- it skips. Mine skips from 2146 to
7 2379.

8 Q. Oh, it shouldn't. Well, you know what? I'll just
9 hand you my copy, and we'll mark this as a separate
10 exhibit.

11 (Exhibit 6 is marked for identification.)

12 Q. So this is a letter that you sent, and it's saying
13 that now the -- that the 829 applications have been
14 approved, you wanted to be more forceful in collecting
15 the debt, especially the guarantees.

16 A. Okay.

17 (Witness examines document.)

18 A. Yeah. I -- I kind of agree with that logic because
19 I still -- yes. Okay. Go ahead.

20 Q. Why wait -- and I know we just covered this a little
21 bit, but why not just go after it while they're pending?

22 A. Because there's still data needed from Tentexkota to
23 get the I-829s approved.

24 Q. Okay. And you don't think you could get that if
25 you --

1 Then they hire some accountants along the way because
2 they realize that they don't have skill set necessary to
3 effectively manage this EB-5 program.

4 And when you have this new expertise come in, then
5 suddenly by reviewing the past, they point out
6 deficiencies. And the normal reaction is not from, oh,
7 yes. Let's grandfather in what's happened in the past
8 and let's move forward. The typical reaction is who did
9 this to us, and who can we blame for this?

10 So they retroactively are willing to apply new
11 rules. And that's why we decided to hire a new
12 economist. Because really why would we? They already
13 approved our econometric model. But it was the least --
14 the road of least obstruction, and our goal was to the
15 limited partners to make sure they get their capital back
16 and get their green card. That was the goal.

17 Q. The goal was to make sure they get paid back in full
18 and get their green card?

19 A. That's what we want. Yeah. We want win-win for --
20 win for the investors, win for South Dakota, win for
21 everybody involved in the project. That was the goal.

22 Q. Will you turn to SDRC 2174.

23 A. Is that the same book? Binder 3?

24 Q. It's probably binder 4.

25 A. Binder 4, you said?

1 A. In the hostile environment I would think it's
2 harder. What incentive does Tentexkota have to give us
3 that information if there's a hostile environment?

4 Q. What is a hostile environment?

5 A. Well, you sue them and -- for the capital. I don't
6 think they would give them the required documentation
7 that is needed for the I-829, such as job creation
8 numbers.

9 Q. So you decide to go -- so after you -- okay.

10 So after you get the information you need and you
11 decide that you're going to be more forceful with the
12 guarantees, what happened?

13 A. Well, it's not for me to decide to be more forceful.
14 That's the decision of the limited partners to do that on
15 that.

16 Q. But it was your suggestion.

17 A. Yeah. I agree with that logic, that you don't want
18 to fight with Tentexkota when your visa is still in
19 limbo. Yeah. I agree with that logic.

20 Q. Right. And it was your suggestion; correct?

21 A. I would advise a more forceful approach, as our
22 guarantees are strong, but we have a predicament of the
23 USCIS, which is adamant in their attempt to apply new
24 rules retroactively -- that's what I just explained to
25 you -- which is especially frustrating, as a mandamus

1 **action was needed to get a response from them in the**
 2 **first place.**
 3 **Yes. I agree with what I wrote in your highlighted**
 4 **section.**
 5 Q. Okay. So what happened next? What happened after
 6 that?
 7 A. **Well, the mandamus -- the forbearance agreement --**
 8 Q. You can keep that. That's an exhibit.
 9 A. **The forbearance agreement was signed so I was just**
 10 **hoping and praying that that agreement was going to be**
 11 **honored and that we would be done with the project.**
 12 Q. So then 2016 rolls around.
 13 A. **Uh-huh.**
 14 Q. And what happened then?
 15 A. **They defaulted and did not pay back the loan.**
 16 Q. I have an SDRC 2177, which we'll mark.
 17 (Exhibit 7 is marked for identification.)
 18 Q. This is a letter -- I believe it's from Cindy Shi.
 19 A. **Uh-huh.**
 20 Q. Asking for an in-person meeting with Tentexkota.
 21 A. **When was this? This was after -- is this after the**
 22 **forbearance agreement? When was the -- when was the**
 23 **default declared from the forbearance agreement? I don't**
 24 **remember.**
 25 Q. Just I'll ask the questions, and you answer.

1 **issues at that time. So I would have forwarded it to**
 2 **Jeff Sveen when the attorneys got involved.**
 3 Q. Okay. Did he tell you that he was a lawyer hired by
 4 the foreign investors?
 5 A. **As I mentioned, if I would have gotten**
 6 **correspondence from a lawyer, I would just pretty much**
 7 **hand it over to Jeff Sveen.**
 8 Q. And Jeff Sveen would have handled all of that?
 9 A. **Yes.**
 10 Q. Would it surprise you if you found out that
 11 Eric Ashenberg was not licensed to practice law in
 12 California?
 13 A. **I would have no clue. If somebody identifies**
 14 **themselves as an attorney, I don't ask, Are you licensed**
 15 **properly or not.**
 16 Q. You just believed --
 17 A. **I just hand it over to legal counsel.**
 18 MS. OLIVIER: I'm going to take a short break
 19 and rearrange our binders, if that's okay. I'm getting
 20 too much paper here. If that's all right with everybody.
 21 (A short recess is taken.)
 22 (Exhibit 9 is marked for identification.)
 23 MS. OLIVIER: Back on the record at 3:42.
 24 Q. (BY MS. OLIVIER) Joop, I'm going to have you turn
 25 to SDRC 2786. It's not in that bottom one. It should be

1 A. **Okay. Okay.**
 2 Q. So this was in May of 2016, and it's Cindy Shi
 3 asking for a meeting with Tentexkota; correct?
 4 A. **Uh-huh. Uh-huh.**
 5 Q. Did that meeting ever happen?
 6 A. **Not that I recall.**
 7 Q. Why not?
 8 A. **I don't know if they decided to hire attorneys in**
 9 **California or not, but at some point they hired**
 10 **California -- attorneys in California, which pretty much**
 11 **took me somewhat out of the loop of things.**
 12 Q. I'm going to mark 2179.
 13 (Exhibit 8 is marked for identification.)
 14 Q. Did you reach out to check Tentexkota's schedule for
 15 the meeting like you said you would in that e-mail?
 16 A. **I don't recall. And I do not know at what time**
 17 **Jenny had her limited partners hire the legal counsel in**
 18 **California.**
 19 Q. Who's the legal counsel in California?
 20 A. **The only name that comes to my mind is Ashenberger**
 21 **[sic].**
 22 Q. Eric Ashenberg.
 23 Did there come a time when Eric Ashenberg reached
 24 out to you?
 25 A. **I think Jeff Sveen was handling most of my legal**

1 right there in front of you. And this is what we were
 2 just talking about.
 3 A. **It's not this one. 27 --**
 4 Q. 86. And if you don't have it, I'm happy to hand it
 5 to you.
 6 A. **Okay. That's not in this binder.**
 7 Q. Okay. Here you go. I've got copies.
 8 (Exhibit 10 is marked for identification.)
 9 Q. Looking at Exhibit 10, which is SDRC 2789 for
 10 everyone that has it electronically, this is the e-mail
 11 that I was talking about that you would have received; is
 12 that correct?
 13 A. **Yes.**
 14 Q. And this is from Eric Ashenberg?
 15 A. **Right.**
 16 Q. Saying that he had been retained as an attorney?
 17 A. **Uh-huh.**
 18 Q. Is that a yes? Sorry.
 19 A. **Yes.**
 20 Q. Okay. So if you turn the page, here is the letter
 21 that he mailed you; correct?
 22 A. **Yes.**
 23 Q. Okay.
 24 A. **It's the wrong address, though. It says 1200 South**
 25 **Jay Street. I wasn't there, so I'm not sure if I**

1 received it.

2 Q. Okay. You don't remember receiving this letter?

3 A. **I don't. But I just noticed its my Northern address**

4 **at Northern State University.**

5 Q. Okay. Would you have known that you had it if you

6 knew this came from your discovery?

7 A. **Say that again, please.**

8 Q. This came from your discovery responses?

9 A. **I don't know where this come from.**

10 MS. DVORAK: What we provided to them in

11 response to our Interrogatory Answers.

12 A. **I just don't know offhand where this came from.**

13 Q. Okay. Now I am going to have you turn to that

14 massive binder on the floor.

15 A. **Okay.**

16 Q. And I have it tabbed for you at SDRC 157.

17 A. **I turned this off now, huh?**

18 **Okay.**

19 Q. These are the meeting minutes that you turned over

20 as the general partner of the limited partnership.

21 A. **Okay.**

22 Q. And 157 is the June 16, 2016, Minutes of the

23 partnership; correct?

24 A. **Yes.**

25 Q. And you were discussing options on what to do in

1 A. **Sorry?**

2 Q. Is that what you would like to do as the general

3 partner?

4 MS. DVORAK: Can -- can I -- I just -- I want to

5 object and to the extent that anything here is covered by

6 attorney-client privilege or settlement negotiations,

7 just object on that basis.

8 Go ahead.

9 A. **I felt it is my job to make sure that the limited**

10 **partners were informed so that they can make an educated**

11 **decision what's in their best interest.**

12 **And, you know, I didn't read the entire letter, but**

13 **that paragraph seems to -- that's what I probably meant**

14 **when I said they underestimate the complexity of a legal**

15 **battle.**

16 Q. And if you look on page 159, there was a meeting on

17 October 20, 2016.

18 A. **Uh-huh.**

19 Q. Where if you look in the paragraph that starts

20 "rollcall was taken," it's kind of in the middle of the

21 page.

22 A. **Uh-huh.**

23 MR. KERKLEIT: What's the Bates stamp number?

24 I'm sorry.

25 MS. OLIVIER: SDRC 159.

1 this case.

2 A. **Yes.**

3 Q. The second paragraph says, "The general partner has

4 concerns that the limited partners are underestimating

5 the complexity and repercussions of each option."

6 What were you meaning at that point?

7 A. **I need to read this to get up to speed.**

8 Q. Go ahead. Take your time.

9 (Witness examines document.)

10 A. **I think what it means is I -- my inclination was**

11 **that it was in the partnership's best interest to work**

12 **out a solution with Tentexkota. That's the -- because my**

13 **feeling was that the limited partners don't understand**

14 **necessarily how long legal struggles will take in the**

15 **United States and how expensive it is to feed all the**

16 **attorneys in the process. And even if they were to get a**

17 **judgment, you're dealing with very sophisticated**

18 **investors, and I'm sure they have all kind of asset**

19 **protection mechanisms in play.**

20 **So I felt that if I were an investor, I would try to**

21 **negotiate a settlement and not go to legal suit and work**

22 **something out with Tentexkota. That's what I would do if**

23 **I were a limited partner.**

24 Q. Is that what you would like to do as the general

25 partner?

1 Q. 34 people were present via proxy from Ashenberg Law

2 Group.

3 A. **Uh-huh.**

4 Q. So is Eric Ashenberg voting on behalf of 34 of the

5 limited investors?

6 MR. KERKLEIT: I'm going to object. To the

7 extent we're talking about attorney-client privileged

8 communications, this document is listed on the

9 Third-Party Defendants' privileged log. But if we limit

10 it to what's on the actual Minutes because they are

11 documents that we clawed back -- if we limit it to what's

12 on the actual document, I'm okay with him answering some

13 questions regarding it.

14 MS. OLIVIER: Do you object to the current

15 standing question?

16 MR. KERKLEIT: Yeah. But he can go ahead and

17 answer.

18 MS. OLIVIER: Okay.

19 A. **What was the question?**

20 Q. Was Eric Ashenberg voting on behalf of 34 of the

21 limited partners --

22 A. **This seems to indicate so.**

23 Q. How many of the limited partners does

24 Eric Ashenberg hold proxies with?

25 A. **It says here 35, doesn't it? 34 were present via**

1 **proxies in this particular time.**
2 **Q.** Does he have more? Has that gone up over time?
3 **A. I'm sure it has. But the problem was nobody else**
4 **was present. It was pretty much a very small group.**
5 MS. OLIVIER: Okay, Joop. I'm going to lighten
6 up on you because I'm going to say that I'm done for the
7 day. So --
8 THE WITNESS: Okay.
9 MS. OLIVIER: -- that's all I have.
10 Any other attorneys have any questions?
11 MS. DVORAK: When you say -- I guess just
12 for --
13 You're done for the day in terms of Joop
14 individually?
15 MS. OLIVIER: Yep. I have no further questions
16 for his individual deposition. So this concludes his
17 individual deposition.
18 MS. DVORAK: Okay. I have no further questions.
19 MR. KERKVLIT: I have no questions.
20 MR. HEIDPRIEM: I want to propose that we start
21 again in the morning at 9:00. I can tell you we will not
22 be here past noon. I think that what I will have for his
23 SDR, Inc. is going to be short so --
24 MS. DVORAK: Sounds good.
25 MR. HEIDPRIEM: Is that okay with everybody?

1 STATE OF SOUTH DAKOTA)
2 :SS CERTIFICATE
3 COUNTY OF SULLY)
4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:
8 DO HEREBY CERTIFY that the witness was first
9 duly sworn by me to testify to the truth, the whole
10 truth, and nothing but the truth relative to said cause
11 and that the foregoing pages 1-163, inclusive, are a true
12 and correct transcript of my stenotype notes made during
13 the time of the taking of the deposition of this witness.
14 I FURTHER CERTIFY that I am not an attorney
15 for, nor related to the parties to this action and that I
16 am in no way interested in the outcome of this action.
17 In testimony whereof, I have hereto set my
18 hand and official seal this 18th day of April, 2018.
19
20
21 Cheri McComsey Wittler,
22 Registered Professional Reporter,
23 Certified Realtime Reporter,
24 and Notary Public
25

1 MS. DVORAK: Joop, you have the right to read
2 your deposition transcript for accuracy.
3 THE WITNESS: No. That's okay.
4 MS. DVORAK: Okay. You waive that right.
5 MR. HEIDPRIEM: Can we leave stuff here
6 tonight?
7 MS. DVORAK: Yep. Absolutely. We'll get it
8 locked up.
9 MS. OLIVIER: Thank you.
10 THE VIDEOGRAPHER: It's 3:51 p.m. We're going
11 off the record.
12 (The deposition is concluded at 3:51 p.m.)
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