

Ref: 12-3-IV

WITNESS STATEMENT

DATE: August 28, 2013

TIME: 2:15 p.m.

INTERVIEW OF: Mr. Shivan Subramaniam

INTERVIEW BY: Detective James Brown
and
Investigator Lori Tellier
Rhode Island State Police Financial Crimes Unit

PRESENT: Attorney Stephen J. Carlotti
Hinckley Allen & Snyder LLP

LOCATION: F M Global Headquarters

SUBJECT:

1. **Q.** Sir, if you could just state your last name and spell it for the record for us?

A. Sure. My name is Shivan Subramaniam. The last name is Subramaniam,
S-u-b-r-a-m-a-n-i-a-m.

2. **Q.** And your current employment at FM Global, what is your title at FM Global?

A. My ti- title is Chairman and C- and Chief Executive Officer.

3. **Q.** And how long have you been in that role?

A. In this role, I - as Chief Executive Officer, since 1999.

4. **Q.** Since 1999.

A. Yes. Yes.

5. **Q.** Were you with FM Global prior to that as well?

A. Yes. FM Global's legacy company is Allendale.

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6. Q. Okay.

A. **And I've been an employee of FM Global and Allendale for the last 38 years.**

7. Q. Thirty-eight years in 19- Since '99 as CEO.

A. **Right.**

8. Q. At some point, if you can go back, did you have the opportunity to serve on the EDC Board of Directors for the State of Rhode Island?

A. **Yes, I did.**

9. Q. I know it's been a while, a while, a couple of years ago, if you can to your ... best of your recollection, what was your timeframe on that Board, when were you appointed?

A. **It was less than a year, as Governor Carcieri and Al Verrecchia were - were reconstituting the EDC, so they called me some time in ... I believe around February of two thousand -- the year of the election. I think it was '10, I think --**

10. Q. Two thousand ten.

A. **...thousand ten, and asking if I would - if, you know, asking - that they were reconstituting the Board, the economy needed a lot of help, and - and would I be willing to serve on the Board. At that time I had expressed concern of time, and my time, so I said - So what we did end up doing was doing what the Governor requested, but - but settling for just a one-year term.**

11. Q. So when you signed on, it was only going to be for a one-year term.

A. **A one-year term. That was--**

12. Q. Now if I --

A. **-- about February my term would end.**

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13. Q. February to February. Yeah, if - if I can - Speaking of the Board members, that wasn't the case with everybody: some were staggered; some were three-year terms; --

A. (Indiscernible)

14. Q. -- some were two-year terms.

A. (Indiscernible)

15. Q. But it was an agreement that you had that you were going to sign on for one year.

A. Yeah. Yeah, and I - and I was appointed to a one-year term.

16. Q. Okay. And did you serve out that full one-year?

A. I'm not quite sure I know how to describe that. Because in November, I wrote Governor Chafee a letter after, you know, having, you know, sat through a couple of meetings with Chafee - not as - not in the EDC, but just after once he was made Governor, suggesting that, you know, since he felt as strongly as he did about the economy, that he should feel free to replace me.

17. Q. Okay.

A. And that - and I would have no --

18. Q. No problem. No objection.

A. No problem, no objection.

19. Q. And at some point did you get correspondence from his office that --

A. That --

20. Q. -- your --

A. I - I got - I got an indication that I was - that that's - he would accept that --

21. Q. Okay.

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A. But I did formally resign.

22. Q. Okay.

A. So I got a - I got a call from Jim Rogers; at that time he was - Was it Jim?

ATTORNEY CARLOTTI: It was Pat Rogers.

A. Pat - Pat Rogers.

23. Q. Okay.

A. There's a lot of "Rogers."

24. Q. (Laughing)

A. All of them lawyers. And Pat called me after when I tried to reach him a couple of times, Pat called me and said ... I said, Pat, I wrote the Governor a quick, you know, m- several months ago and haven't heard about it and I want - I just wanted to know where I stand. And then Pat called me back and he said yes, the Governor is not going to be appointing (phonetic) you.

25. Q. Okay.

A. And then I got a letter from the Governor, handwritten letter from the Governor saying thank you very much for your service, thank you very much for what you do for Rhode Island, but I'm going to move on.

26. Q. Okay.

A. Which was fine.

27. Q. So it was a year term.

A. That's fine.

28. Q. Um --

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A. But then I was told, this is Rhode Island politics --

29. Q. Yea--

A. -- or the way Rhode Island laws work, they - I was told that technically I was supposed to attend each EDC meeting until they had a formal --

30. Q. Yeah.

A. -- replacement for me specifically.

31. Q. Right. But you were never told that.

A. No.

32. Q. Yeah, that --

A. Yeah, just -

33. Q. If - if you care to, just for us before you get into it, just kind of, what was the overall spectrum of your - of the - the Board in general, what was your kind of, role, in the Board, what was the Board's role to - to the EDC?

A. The way the Board - The way I saw the Board's role was really more as purely from the Governor's point of view. The EDC had - had roles and - and functions to do; there were certain - certain things from a Governor's point of view they had to bring to the Board, and that's what we were going to do. But for the most part, that first, you know, we were all in it for the - it was like, it was just starting. Most of us knew for the - a lot of it was - is just trying to get used to what - what it is--

34. Q. Sure.

A. -- that the EDC was supposed to be doing.

35. Q. Okay.

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A. So we were just starting to look at a lot of those things about how EDC are structured, and what was the decision making, what was the - what were some of the new things you'd need to be working on. So those - that's where - The bulk of the discussions were on those. Which I believe I attended about six meetings or seven meetings.

36. Q. Were they monthly meetings, if you remember?

A. Month-

37. Q. Monthly meetings. Okay. And at some point in those meetings, and you said you were appointed in February 2010, did the topic--

A. I believe my first one --

38. Q. Was ...

A. -- first meeting was actually in - that I actually attended was April, I think.

39. Q. Was April. Okay.

A. Yeah.

40. Q. At some point after your appointment to the Board, did the - did the topic of 38 Studios come up to the Board?

A. Yes.

41. Q. And do you know - if you can remember again, I know it was a long time ago - who initially brought up the topic of 38 Studios to the attention of the Board? Do you know--

A. I --

42. Q. -- how the topic was first brought up?

A. Yeah, it was Keith Stokes, essentially. You know. I - I believe it was first a - a m- a, a, a topic that that's something that we're looking at; there was - there was a potential interest of a company called 38 Studios, and that, you know, the potential of several hundred

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employees, you know, high-end, you know, s- ... from what I remember of 60,000 or \$65,000 --

43. Q. Base salary.

A. -- base salaries with full benefits, opportunity to come to Rhode Island, and that the Governor, you know, was ... at that - that - and that - that was - that was the initial putting us on notice that there was some interest by a company that wanted to --

44. Q. Was that at a Board meeting, was it brought up at a Board meeting by Stokes?

A. I was only at Board meetings, so, --

45. Q. Okay.

A. -- of course.

46. Q. So it was all - the Board meeting - 38 Studios was only discussed at the open Board meetings.

A. Yeah, I --

47. Q. Okay.

A. Yeah.

48. Q. Keith Stokes is--

A. We - we were - we were not in a - in a practice of meeting outside of the Board meetings...

49. Q. Okay. So 38 Studios was brought up by Stokes. Who - was is Keith Stokes?

A. Keith Stokes was the Executive Director at that time.

50. Q. Of the EDC. Okay. And how was -- At some point was a full presentation made to the Board? I understand that maybe there was a Powerpoint presentation?

A. Yes, there were several Powerpoint presentations of what I remember. One was --

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one was on - on the - the product itself. That is, in other words, what is this, what, you know, what is this gaming--

51. Q. Okay.

A. -- product, and - and - and the fact that there were several kinds of gaming products: some of them was an actual CD that you played; --

52. Q. Sure.

A. -- some of them was --

53. Q. On-line games?

A. -- some on lines (phonetic), and - and there's different variations and there are different -- So there was one set of presentations on the concept of the product itself and what the future of that industry looked like.

54. Q. Did they - Did the EDC bring in an out -- was that presentation by outside people?

A. I believe it was outside.

55. Q. It wasn't done - Okay.

A. Yup.

56. Q. And --

A. Almost every one of these things was - was like a joint presentation: they would introduce the subject, and --

57. Q. Okay.

A. -- then they would introduce the presenter.

58. Q. Yup.

A. Yeah. Yeah.

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59. Q. Did ... Stokes - How about Mike Saul, do you know the name, "Mike Saul?"

A. **Yes, Mike Sauls (phonetic) was like the primary lieutenant to Stokes on - on all of the --**

60. Q. And he was a full time EDC employee?

A. **Yes.**

61. Q. Did they do - Did Saul and / or Stokes, and them combined, did they do a presentation --

A. **Yes.**

62. Q. -- of - of their own of the EDC -- about 38 Studios, I'm sorry, or was it all kind of these joint presentations, did they ever do one just to the Board, just Stokes and Saul to the Board, or were they all kind of?

A. **I - I don't fully --**

63. Q. Okay.

A. **I don't fully remember if it was one, it was solely them.**

64. Q. Okay.

A. **There was generally some consulting of the other with them ...**

65. Q. How about employees of 38 Studios itself, did they ever do --

A. **There was one --**

66. Q. -- a presentation?

A. **There was only one meeting that I remember where all of them were there, including the - including the Chief Executive, the principal owner, and all - and, and I believe four or five of the senior directors.**

67. Q. Okay.

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A. And the - and the point of that was to show that they had a set of directors who were very well qualified. And we were given resumes of their directors, and they all had very good track records in this business.

68. Q. Mm hmm.

A. But I guess the - the point was to show the - the EDC Board, you know, these are the people. But I - Beyond that I'm not quite sure there was any separate presentations as such.

69. Q. Okay.

A. And then the CEO made a small presentation in terms of, you know, what she was working on --

70. Q. Mm hmm.

A. -- while she was running the company.

71. Q. Okay. And what was your understanding with the 38 Studios, they - if, if again, if I - if I'm reading this ..., there was a company in Baltimore and a company in Maryland that were both going to --

A. Mm hmm.

72. Q. -- join, for lack of a better term, and - and - and both moved to - to Providence, that was--

A. Right.

73. Q. Okay.

A. From the EDC's - But from the Board's point of view, the principal issue was that that would -- I, I believe it was close to 175 jobs I think or 300, I don't quite remember. But it's - it's - it's a whole phased committment that EDC -- I, I mean that - that 38 Studios made to how

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many employees that they would bring into Rhode Island.

74. Q. Okay.

A. And in fact, from what I remember, the - the 75 million was tied to that in a big way; that is, they had the first - they got the first 75 they got a certain tranche; the next they got a next tranche, and the tranche - tranche just followed that.

75. Q. You brought up the 75 million dollars, and I - and I'm sure you know after reading everything, that's kind of the big question.

A. Mm.

76. Q. If you remember, was that specific dollar amount presented to the EDC, did somebody at some point bring to the Board, listen, we - 75 million dollars is the actual number that we need or that they're requesting? Do we --?

A. Absolutely. That was the amount that was determined to - that would allow them to develop the, the products that they were working on.

77. Q. Okay. Did that come from EDC, meaning Stokes and Saul, or did that come from 38 Studios directors --

A. I think it came from --

78. Q. -- directly?

A. It came all - from all three of them.

79. Q. It came from--

A. It came from the consultants, --

80. Q. Okay.

A. -- it came from - it came from the Director, it came from EDC. That was the number that was talked about as the number that was required to deliver the project, you know, get

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the thing done. And --

81. Q. And that was the one specific game that they were working on, it was the Board's understanding to finish--

A. Well they had to finish one, and then --

82. Q. To finish one and start the other one...

A. -- and start the other one.

83. Q. But that was - it was the Board's understanding that that would be enough --

A. Right.

84. Q. -- for them to move their operations, complete the one game that was almost at completion, --

A. Right.

85. Q. -- and follow up that massive multi-player--

A. Right.

86. Q. -- on-line game. Okay.

A. Right.

87. Q. Was it the Board's understanding that that at any time or was it not the Board's understanding at any time that they weren't actually getting the entire 75 million dollars? I mean, we seem to learn now that in fact they did - they only got about 50 or 51 million dollars. Was, was that known to the Board, did anyone present that to the Board, or was it the Board's understanding that when we were presented with 75 million dollars, we thought that that's what they would be getting?

A. That's all -- I, I don't remember any convers- ... I would have phrased it slightly differently in that, yes, it was 75 million, but they had to do certain things to get the certain 75.

88. Q. Absolutely.

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A. They...

89. Q. They were - they were - they weren't given the lump sum of 75 million dollars--

A. Right. But there is --

90. Q. -- if they -- Some - some threshold they were getting.

A. There - But there was something, if I remember this, once they - they signed the lease --

91. Q. Signed a lease.

A. -- uh --

92. Q. A certain amount of completion.

A. -- certain people - and then that's when they would get the different tranche and so forth.

93. Q. Correct. But it - But you thought, or the Board thought--

A. It was 75 million.

94. Q. -- was - it was 75 million dollars. It was never a question of, you know, we requested 75 million dollars, but --

A. No.

95. Q. -- the EDC is only going to give us 50. It was never - I was your--

A. Yes.

96. Q. -- understanding that they were. Okay.

A. But I don't know if that - those discussions happened after in 2011, --

97. Q. Sure.

A. -- because by the end of 2010, I was done, so I'm not--

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98. Q. Sure.

A. -- quite sure.

99. Q. No. And there was some, maybe --

A. Yeah.

100. Q. -- some - some discussions with other Board members that there was some possibly money left that was going to be left in reserve? Was that ever discussed or did - Again, was it your - And I don't keep -- keep meaning to --

A. No, some notion of --

101. Q. -- ask you the same question, but...

A. No. You know, every one of these large transactions we know well enough that there's some kind of sinking fund or something that's involved that's - that's ... that, that they generally call some kind of sinking fund, as I said, --

102. Q. Sure.

A. -- for - in any kind of bond issues, yeah. So we fully expected that there would be some kind of hold back--

103. Q. Sure.

A. -- you know, from ...

104. Q. But that didn't - it never came up that because of that hold back they may not actually --

A. Never.

105. Q. -- get enough money to --

A. No, that was--

106. Q. -- con- continue the job.

A. -- never a dialogue. There was no dialogues on that.

107. Q. There was never like - and I know - and I don't mean to keep asking you the same question, but no one ever presented to the Board, Stokes, Saul, or members of 38 Studios never came back to the Board and said listen, I know you voted on 75 million, but we're in fact only going to get 50 million, that was never actually presented to the Board.

A. No. Never.

108. Q. Is it safe to say the Board relied a lot on EDC employees Stokes and Saul to do the due diligence on - on kind of - and I know "crunching the numbers" is a bad word, but did E- Safe to say you relied a lot on the EDC to get the numbers that 38 Studios came up with, the 75 million.

A. Because -- No, we're not in that business,--

109. Q. Sure.

A. -- but we just - we were there for Governor's point of view to ask the questions, you know, we're not --

110. Q. Yeah.

A. -- we're not there, you know, eight hours a day, you know, that - so that was never our -- I, I don't think there was any expectation for us to do the analysis on on--

111. Q. Yes.

A. -- (indiscernible)

112. Q. And there was, again, there was -- And how about Mike Corsa (phonetic), do you know the name "Mike Corsa?"

A. I have no idea.

113. Q. You never heard the name Mike Corsa in regards to 38 Studios? How about the tax credits, did the - did the - did the --

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A. Tax -

114. **Q.** -- the tax credits 38 Studios could have gotten, was that ever brought up at?

A. During ... in 2010?

115. **Q.** Sure. No? Nothing about tax credits? Okay. In looking back --

A. I read about it in the newspapers, but --

116. **Q.** Right. But that wasn't - or you didn't realize that --

A. No.

117. **Q.** ... And you read about that once you -

A. Yeah.

118. **Q.** I guess looking back in hindsight, is there anything you think the Board should have been told that they weren't? And again, I'm sure you've read the newspapers after - kind of after the fact - is there anything you --

A. (Inaudible)

119. **Q.** -- you guys felt that --

A. Heh, yeah.

120. **Q.** -- you know, you should have - you should have been told and you weren't told? Do - do you feel kind of - looking back, hindsight, do you feel kind of duped knowing now that, you know, the deal was done when, you know, you voted for 75 million dollars, but they ... actually only got 50, and there - there may be some, you know, stuff out there that the 50 million dollars was not going to be enough for them to - to complete the job?

A. Yeah.

121. **Q.** But you -

A. (Indiscernible)

122. Q. -- you with the Board voted for 75 million, I mean, do you feel looking back that you were kind of --

A. I think if it --

123. Q. -- left in the dark?

A. -- if it was phrased - if it was phrased that way, we'd all of us would have said, well what are - how are they going to raise the next 25, you know, how - you know, what are they going to do? Because a lot of it had to do with the product being completed.

124. Q. Right.

A. And the - if you - if you don't have the additional 25 to complete the pro- that would - those would have been obvious questions--

125. Q. Right.

A. -- if we had known about it, there's no question.

126. Q. But I mean, nothing for the - there were no reason for the Board to know at that time that they would be --

A. Right.

127. Q. -- actually getting 75 million - or weren't getting 75 million. And again, looking back, is there any - is there any person or any reason you could think of that someone would have purposely withheld that money from the Board? I mean, do you think anybody could have profited from kind of pushing this through, you know, s- assume to say that there may be have been some information withheld from the Board?

A. Yeah.

128. Q. Any reason or anyone you can think of why they would have?

A. I - I can't speculate on that --

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129. Q. W- wou--

A. -- like that.

130. Q. Stokes and - and Saul, were they appointed by Carcieri, were they appointed by the Governor as well?

A. I - I - I think Stokes was appointed by Carcieri.

131. Q. And how - In regards to their - their -- this may sound like a - a stupid question -- but with regard to Stokes' employment with the EDC, he didn't get any sort of benefit with this - this getting - this getting pushed through, --

A. Not to my knowledge.

132. Q. -- and he was going to get his--

A. Not to my knowledge.

133. Q. -- his salary, for lack of a better term, whether this - this was voted on or not, is ...?

A. I ... not.

134. Q. Yeah, nothing you can think of that would - why any reason anybody would want to kind of push this through.

A. Right. Not to my knowledge ... the Board.

135. Q. Do you - Just going back to the - to the - to the actual Board meetings, do you know off the top of your head how many separate Board meetings 38 Studios was actually discussed at? Was it two, three, four? I know it was a while ago...

A. I would s- I would say, three.

136. Q. Three or four.

A. Yeah.

137. Q. And then it was voted? Was it three c-

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A. (Inaudible)

138. Q. -- kind of three consecutive months, and then voted --

A. No, it was the third - third --

139. Q. On the third one.

A. -- the third meeting. I - I think somewhere in late July I think was one of the last.

140. Q. July 2010? I think I --

A. I think so. I - I think--

141. Q. -- think that's right.

A. I - I'm trying to - I got to go look at --

142. Q. I think that's right. I think that's about right. Let me just make sure I'm not missing anything here. (Pause) How about the - the issue of the third-party monitoring,... said maybe IBM was going to do some of the third-party monitoring. Is that - was that something the Board agreed upon, or the Board brought up on their own, or was that presented by 38 Studios as well?

A. No, that was a clear discussion of the Board because this was a - You know, in a lot of ways this, you know, this is a very, very risky transaction, you know, everybody knew this was a very risky transaction where - where, you know, it was predicated on a product being built.

143. Q. Sure.

A. So all of us have been in business long enough to know that when those kinds of things occur, you need monitoring systems or you need some kind of bond, some kind of guaranty that you want to be able to purchase in the marketplace. So I sort of recall at the Board us directing Keith Stokes and, and his management to see if first some kind of guaranty about bond guaranty or financing guaranty could be found. And because, you know, we had

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heard that, you know, when you have these kind of projects, there is a product you can buy for a fee --

144. Q. Sure.

A. -- which will assure completion, or at least will raise flags if that - if that, you know, that think so. We told - I sort of recall we asked Stokes to look into that. And then I - and then I recall then Stokes came back and said they looked into that and found they couldn't find something like that; however, they could find somebody who could - who could do the same process --

145. Q. Okay.

A. -- of - of monitoring and reporting and making sure that they followed the budget and making sure they're making their milestones, so this way EDC would be appraised on a first-hand basis as exactly where the - and how the money is being spent ... And - and that - that was part of the agreement that was supposed to be in place.

146. Q. Okay. Just a couple more questions. That 75 million we talked about it - it getting broken up, do you recall or do you remember how the timeframe that they were going to get that entire 75 million? Was it a timeframe or just as long as they made this threshold of - of moving in? Was there a timeframe associated with that as well, did they have to do it within six months?

A. Yes, every one--

147. Q. Hire somebody ...

A. -- of the -- Every - everything had a timeframe: they had to get a lease done at a certain point in time. And then they had to hire, I believe 75 was the--

148. Q. Okay.

A. -- first number, within 12 months; --

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149. Q. Yup.

A. --then within 24 months; --

150. Q. Okay.

A. -- and then within 36 months. That is, there was a series of--

151. Q. Series of --

A. And then there was a penalty if I recall, if they didn't make those things, --

152. Q. Okay.

A. --they had to pay a penalty, you know, to - I believe the - the EDC if they didn't
make those, you know--

153. Q. Right.

A. -- those uh --

154. Q. Right.

A. -- those targets. And there was also a conditional thing with those things, every
one of them had to have a certain average salary.

155. Q. Ok- Of - of the--

A. I think sixty ...

156. Q. -- employees, 67,000,--

A. -- thousand.

157. Q. -- yeah. That sounds about right.

A. Mm.

INVESTIGATOR TELLIER:

158. Q. Getting back to the presentations that were made --

A. Right.

159. Q. -- to the Board, do you recall any presentations that identified the risk involved based upon the - the industry that 38 Studios was in, you know, the high-tech multi-player on-line games?

A. Yes, there was - I th- I believe there were risks. Those risks were laid out that these - that this was a - a risky venture. Because, you know, you could see this. And, and they said that - I'm - I don't quite remember exactly, the - if they don't - they didn't qualify the risk, it was just identified as one of the risks that you could spend it and come up with a great product and nobody wanted to buy it, you know. Just you were essentially spent a whole - a whole lot of money. And the other risk was that by the time you came out with the product, kids wanted to do other things.

DETECTIVE BROWN: Mm hmm.

A. You know, they were already into other --

160. Q. That's true.

A. -- ... so you - you might be too late. You know. So, yeah, those were all the kind of risks that were - that were laid out.

161. Q. And do you recall if you --

A. And I believe that it was a - there's a consultant who made those - who made the presentation what that market --

DETECTIVE BROWN: Was --

A. -- was like.

161. Q. Okay. And do you recall if any of those presentations, specifically dealing with the risk involved in - in the 38 Studios loans, advising that it was too risky, and that the loan should not be given?

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came to the Board and said, hey, we're not getting 75 million, this isn't going to work, we're going to fail.

A. Absolutely nothing.

DETECTIVE BROWN:

168. Q. You know, we can probably raise the other 25 million, but we need --

A. No.

169. Q. -- we need 75 million, it was --

A. No mention.

170. Q. -- the Board was 100 percent sure that this money that they were getting, 75 million dollars --

A. (Indiscernible)

171. Q. It - it may not - The game may not succeed, --

A. Yeah.

172. Q. -- but they were going to be able to complete the move and complete this game with the 75 million dollars.

A. Exactly.

173. Q. Anything else you can think of? I mean I think we've touched pretty much everything I wanted to.

A. That's all.

174. Q. -- anything you can think you think of?

DETECTIVE BROWN: All right. That will conclude the interview. It is 2:37 p.m.

Again, August 28th at FM Global's Headquarters.