

The Timeline of the Implementation and Failure of the Loan Guaranty to 38 Studios

Prepared for the House Oversight Committee
October 27, 2015



Document One: Nondisclosure Agreements

Who: Gordon Fox, William Murphy


What: List

When: October 8, 2009

Summary: An accounting of
nondisclosure agreements

Importance: Shows that Gordon Fox and
William Murphy had contact with
38 Studios as early as 10/08/2009

Notable: Michael Corso also signed a
nondisclosure agreement on the
same day.



Document Two: Meeting at the State House

Who: William Murphy, Gordon Fox,
Curt Schilling, Tom Zaccagnino,
Michael Corso

What: Deposition

When: Fall 2009

Summary: Fox, Schilling, Zaccagnino,
and Corso meet in the State House,
Murphy stops in.

Importance: Early meeting involving
Fox, Corso and 38 Studios and Fox
leadership.

Notable: Murphy, unaware of the
meeting, stopped in Fox's office to
say good night and Murphy was
asked to arrange a meeting with
Schilling and the Massachusetts
House Speaker.



Document Three: Fundraiser at Curt Schilling Home

Who: Gordon Fox, Donald Carcieri, Curt Schilling

What: Emails

When: March 2, 2010

Summary: Curt Schilling held a fundraiser for a documentary and invited Carcieri and Fox.

Importance: This the first meeting of Carcieri and Schilling. Schilling told Carcieri about his company and the potential to move it to Providence.

Notable: EDC board members Karl Wadenstein, Shivan Subramanian and Paul Choquette were also on the list. There was no evidence in the depositions or exhibits that any of the board members attended.



Document Four: Schilling and EDC Meet

Who: Michael Corso, Tom Zaccagnino,
Schilling, Stokes, Fox

What: Email

When: March 17, 2010

Summary: Stokes sets up second meeting with Schilling, includes Rob Stolzman and Michael Saul.

Importance: This is a record of the early meetings with the EDC and 38 Studios. It is also important to note that Stokes cc'ed Gordon Fox on his email.

Notable: Schilling appreciates “the time and effort already provided by the state of Rhode Island, from the speaker on down.”



Document Five: Stolzman pitches real estate

Who: Rob Stolzman, Michael Corso

What: Email

When: March 26, 2010

Summary: Stolzman pitches building owned by his inlaws to Corso for 38 Studios offices.

Importance: Early edits to term sheet.

Notable: “I’d love to show you and whomever from 38 Studios the building. If I can be helpful with this it would be great to help a company and my in-laws.”



Document Six: Early Term Sheet

Who: Zaccagnino, Corso, Stolzman,
Stokes

What: Email

When: March 26, 2010

Summary: Stolzman thanks Corso for
the comments on the draft term
sheet.

Importance: Marked up edits to early
term sheet.

Notable: “Job Training Grants and
Credits of up to \$5,000 per year per
employee will be made available”
This was not in the final term sheet.



Document Seven: Visit to 38 Studios

Who: Rob Stolzman, Mike Corso

What: email

When: March 28, 2010

Summary: Early discussions of term sheet. Stolzman is checking with Corso to see if Gordon Fox is visiting Maynard the next day.

Importance: Early term sheet, working to include legislative leadership.

Notable: Also confirming EDC staff will be visiting Maynard. “I think Mike Saul and I are the only two attending from the RIEDC.”

Document Eight

Early discussion of legislation

Who: Rob Stolzman, Stokes, Hashway, Saul

What: Email

When: March 31, 2010

Summary: The Jobs Grown Guaranty Program will be included in the FY 10 supplemental budget.

Importance: Decision to include program in the FY 10 supplemental budget.

Notable: “Gordon and Steve C want to put the “moral ob program” in the FY’10 supplemental budget, which currently might be heard as early as next week.”

“Gordon and Steve see this as a ‘digital media’ industry program with \$75 of \$125 ‘committed’ to 38 Studios and the rest to be worked out on...”



Document Nine: Early due diligence planning

Who: Michael Saul, Michael Corso

What: Email

When: March 31, 2010

Summary: Planning early due diligence meeting.

Importance: Saul wants a walk-through of the company projections.

Notable: Also looking to discuss “feasibility on Big Huge/EA projections.”



Document Ten

Memo updating governor

Who: Rob Stolzman, Keith Stokes,
Michael Saul, Fred Hashway


What: Email

When: March 31, 2010

Summary: Email with memo to governor
and draft Kushner and term sheet
attached.

Importance: In his memo to the
governor, Stokes acknowledges that
the company need \$75 million in
addition to the equity already
committed to complete both the
RPG and MMOG.

Notable: Stolzman notes that he will be
under pressure to circulate drafts
from Chairman Costantino and
Michael Corso.



Document Eleven

Stolzman email to governor's office

Who: Robert Stolzman, Andrew Hodgkin

What: Email

When: April 1, 2010

Summary: Stolzman sends memo to Hodgkin with an update on legislative process

Importance: Updating governor's office on legislation and term sheet

Notable: “at the suggestion of House Finance Chairman Costantino, the Kushner draft reflects a larger authorization for this as a Job Creation Guaranty Program”



Document Twelve

Scheduling hearing on JCGP

Who: Stolzman, Costantino, Stokes

What: Email

When: April 2, 2010

Summary: Chairman schedules hearing on EDC issues to include JCGP

Importance: April 6 hearing is scheduled and tied to 38 Studios request.

Notable: “Assuming the due diligence checks out as we hope it will, the entry fee for this opportunity for RI is relatively low since it is based on credit enhancement rather than direct loans, grants, tax credits or tax reductions.”



Document Thirteen

JCGP will be in Supplemental Budget

Who: Keith Stokes, Michael Saul,
Robert Stolzman, Fred Hashway

What: Email

When: April 2, 2010

Summary: Costantino let Stokes know that JCGP will be in the supplemental budget. Stokes is concerned it is too soon.

Importance: Stokes believes the speaker directed the chairman to include the JCGP in the budget.

Notable: “I will speak with Gordon and Mike Corso tonight with a request that we may not go the supplemental budget route.... The question is, will a month + delay lose the interest 38?”



Document Fourteen

Stokes Memo to Board

Who: Keith Stokes, EDC Board

What: Email

When: April 5, 2010

Summary: Stokes sent memo on JCGP
to the EDC Board

Importance: Stokes informs the Board about the JCGP program, does not include any information about 38 Studios.

Notable: “The General Assembly has asked us to propose a program that would respond to the need for credit enhancement in these growth areas and at these levels.”



Document Fifteen

Stolzman Handwritten notes

Who: Robert Stolzman, Fred Hashway, Michael Corso, Tom Zaccagnino and two others

What: Handwritten notes from meeting with EDC and 38 Studios

When: April 6, 2010

Summary: Meeting planning due diligence.

Importance: Notes that Wells will = validation for due diligence.

Notable: “We need to talk to Steve Costantino ... let 38 studios use other available tax incentives for building”



Document Sixteen

Supplemental budget

Who: Keith Stokes, Michael Corso

What: Email

When: April 7, 2010

Summary: Email about supplemental budget.

Importance: Stokes asks Corso, not EDC staff, to contact the speaker to be sure the JCGP is in the supplemental budget.

Notable: “You may want to contact Gordon to make sure our article is placed in the supplemental budget”

Document Seventeen

Term Sheet Draft

Who: Michael Saul, Maureen
Gurghigian

What: Email

When: April 8, 2010

Summary: Early draft of term sheet

Importance: In this early draft forwarded to Gurghigian, an independent financial review is a condition to closing the loan.

Notable: “ b) An independent financial review and analysis of the company’s financial projections; current contracts and obligations with gaming industry partners such as EA; and any other related or requested documents or information of the company.”

Document Eighteen

Recommendation of Wells for underwriting

Who: Saul, Corso, Stolzman, Hashway, Stokes

What: Email

When: April 9, 2010

Summary: States need to get Wells on state underwriter list.

Importance: Saul discusses Wells presentation.

Notable: “Wells understands that they will need to convince the EDC board that 38 Studios business model and projections are what will sell the bond vs. credit enhancement.”

“One issue that will remain a challenge is the amount of the bond moral obligation as a % of the total program. The amount is around \$85 million as a result of the gross up for the deferred P & I period, plus a reserve plus fees”



Document Nineteen

Meeting at 38 Studios

Who: Robert Stolzman, Steve Lane, Michael Corso, Tom Zaccagnino, Curt Schilling, Jen Maclean, Fred Hashway

What: Meeting notes, deposition

When: April 9, 2010

Summary: Notes of meeting at 38 Studios and Lane's deposition.

Importance: Lane states that he and Verrechia were the only board members invited to meeting. At the meeting Stolzman notes the company needs between \$75 million and \$100 million.

Notable: Stolzman notes \$85 million (gross up) for 450 jobs equals \$170,000 per job.

Document Twenty

Strategy Analytics

Who: Mark Lamarre, Rick Wester and Tom Zaccagnino

What: Email

When: April 15, 2010

Summary: Suggested engagement terms for Wells Fargo.

Importance: Special structuring fee of \$300,000 upon completion of RI backed bonds. This is in addition to the normal underwriter's fee.

Notable: “Conceptually I have endeavored to

- recognize the fact that 38 Studios is not cash-rich at the current time
- aligning our interests with yours, meaning strive to close financing at the most expeditious pace and at the lowest cost.”

Document Twenty One

To-do list

Who: Thomas Zaccagnino, Rob Stolzman, Fred Hashway

What: Email

When: April 20, 2010

Summary: Extensive to-do list to complete before the Board meeting.

Importance: Wells has been working for weeks on its due diligence. It has made great progress. There are two bullet points asking about Wells being the underwriter.

Notable: “Wells as an approved Bond underwriter/issuer – has this been completed yet...we are moving full steam with them and really need this to be taken care of.

-Wells as the lead underwriter/issuer – per our concall with Wells I want to confirm that Wells will be the lead underwriter and seller and that they will no be sharing the role with anyone else.. Please confirm.”



Document Twenty Two

Strategy Analytics proposal

Who: Micheal Saul, Tom Zaccagnino,
Michael Corso, Rob Stolzman, Fred
Hashway, Tim Cole

What: Email

When: April 22, 2010

Summary: Saul is forwarding initial
proposal from Strategy Analytics.

Importance: Initial proposal from
Strategy Analytics included a due
diligence exercise.

Notable: “Conduct a due diligence
exercise on 38 Studios, including
where they are at in the completion
stage of their MMOG initiative, an
understanding of their capital
requirements and uses, and a multi-
year pro forma exercise on capital
requirements.”



Document Twenty Three

38 Studios financial projections

Who: Michael Saul, Rob Stolzman, Fred Hashway, Tim Cole, Sean Esten

What: Email

When: April 27, 2010

Summary: 38 Studios six-year financial projections.

Importance: Accounts for \$75 million in outside debt as cash. These financial projections were not updated throughout the time of the loan transaction.

Notable: Title of document is “in-state loan view” Page 4 shows the \$75 million as cash.



Document Twenty Four

Strategy Analytics statement of work

Who: Michael Saul, Tom Zaccagnino,
Robert Stolzman

What: email

When: April 28, 2010

Summary: Forwarding revised proposal for Strategy Analytics, does not contain due diligence on 38 Studios.

Importance: Changes include “provide due diligence support on a possible investment in 38 studios as an initial anchor studio in RI” is no longer included. Now “Provide economic impact due diligence on a possible investment on 38 Studios...”

Notable: Saul comments “it addresses overlapping scope issues and gets 38 a significantly fee reduction.”

Document Twenty Five

Preparing for Board meeting

Who: Tom Zaccagnino, Robert Stolzman, Mike Saul, Keith Stokes, Mike Corso

What: Email

When: May 5, 2010

Summary: Zaccagnino's notes on Stolzman's to-do list.

Importance: Finalizing the steps to reach Board approval. Zaccagnino is still pushing for Wells to be approved for the bond offering and for no minority underwriter to be required.

Notable: "In addition, we need to finalize the term sheet and define the "gross up" amount." Mike Saul's handwritten notes include "not a lot" and a mention of the film tax credits.

Document Twenty Six

Corso engagement letter

Who: Mike Corso, Jen MacLean

What: Email

When: May 11, 2010

Summary: Corso sends MacLean a draft of the engagement letter.

Importance: Describes generally the consulting services provided by Corso. He will advise customer on a potential relocation or the possibility to remain in Massachusetts and available financial assistance. Contract describes the fees in warrants (equity).

Notable: “The above do not replace customary investment banking, Broker/dealer, attorney, accountant, lobbyist of bank advisors.



Document Twenty Seven

JCGP bill introduced

Who: Robert Stolzman, Daniel Waugh,
Keith Stokes, Mike Saul, Fred
Hashway, Sean Esten

What: Email

When: May 20, 2010

Summary: Stolzman updates the group
on the legislative process.

Importance: The chairman introduced
the bill and will try to have the
House pass it on Tuesday.

Notable: “After much scuffling last
evening, the House Finance Chair
introduced a bill... for the
Kushner.....”

Document Twenty Eight

Wells Fargo Engagement letter

Who: Rick Wester, Mark Lamarre

What: Email and deposition

When: May 24, 2010

Summary: Wells Fargo engagement letter, contains language for alternative financing fee of \$300,000.

Importance: Wells Fargo was paid \$300,000 at closing in addition to the fees included in the bond documents.

Notable: Wester stated “We structured it that way to avoid paying a typical exit fee, which you pay no matter what. We don’t want to raise equity, okay, well, fine, you know, we put time into this, we owe it.”

Document Twenty Nine

Strategy Analytics report

Who: Jason Della Rocca, Barry Gilbert

What: Email

When: June 1, 2010

Summary: Della Rocca and Gilbert discuss EDC presentation.

Importance: Della Rocca expresses reservations on 38 Studios as an anchor tenant to start a gaming cluster.

Notable: “Hmm, I suppose it is too bold to say that if all they ever do is hand over \$60M to 38, their cluster will go nowhere ;)”

Document Thirty

Strategy Analytics report

Who: Jason Della Rocca, Sean Esten,
Robert Stolzman

What: Deposition and Affidavit

When: June 1, 2010

Summary: Notes from a conference call
with Strategy Analytics, Perimeter
Partners and EDC.

Importance: Sean Esten testified in a
affidavit and Jason Della Rocca
stated in his deposition that Della
Rocca told EDC he would not
support a moral obligation bond of
\$75 million to 38 Studios.

Notable: “Something to the effect
said... ‘Would you do this deal?’ To
which ... I said , ‘No.’”

Document Thirty One

Corso contract

Who: Michael Corso, Jen MacLean

What: Email

When: June 9, 2010

Summary: Negotiating Mike Corso's contract.

Importance: 38 Studios and Corso are still negotiating payment for his services.

Notable: "I am more than flexible on the cash/warrant structure instead of all warrants, but with the cash fee being no less than 5%."

Document Thirty Two

EDC Presentation

Who Tim Cole, Mike Saul

What: Email

When: June 12, 2010

Summary: Tim Cole forwarded some “down side” projection slides to Mike Saul.

Importance: This down side projection was not included in the final presentation.

Notable: Risk of Investment Scenarios

1. Inability to generate cluster growth in RI
2. Company underperformance
3. Inability to meet all bond covenants
4. Bankruptcy



Document Thirty Three

EDC Board Presentation

Who: Mike Saul, EDC Board

What: Email

When: July 15, 2010

Summary: The PowerPoint presented by Mike Saul at the July 15, 2010, meeting.

Importance: This was delivered in executive session to the board.

Notable: The down side graphic proposed by Tim Cole is not included.



Document Thirty Four

38 Studios reacts to Board meeting

Who: Tom Zaccagnino, Mike Saul

What: Email

When: June 15, 2010

Summary: Zaccagnino informs Saul of 38 Studios Board reaction to the EDC proposal.

Importance: The 38 Studios board finds the change of the terms of the moral obligation bond concerning.

Notable: “We have been open book about our risks and requirements from the beginning. Specifically, we were upfront about the requirement to be fully capitalized with the 75 MM at closing.”



Document Thirty Five

Discussion of Bond Fees

Who: Maureen Gurghigian

What: Notes

When: June 17, 2010

Summary: Notes of phone call with 38 Studios.

Importance: Shows company was still hoping for \$75 million gross from the loan guaranty.

Notable: Tom Z – Reserve fund is new to the company, Also need some clarity re: closing costs to be grossed up to net out to the \$75 mm.”



Document Thirty Six

Outlining process for bond approval

Who: Antonio Afonso, Mike Saul,
Robert Stolzman, Fred Hashway

What: Email

When: June 19, 2010

Summary: Afonso outlines the approval process for the bond. Further discussion 38 Studios concerns down the email chain.

Importance: The inducement resolution is simply a statement of official intent to proceed to negotiate the terms for final approval.

Notable: Saul comments in the chain “EDC will do its best to maximize 38’s net, however we made it clear that \$75 million is the maximum credit enhancement.”

Document Thirty Seven

Term sheet

Who: Jen MacLean, Tom Zaccagnino

What: Email

When: July 1, 2010

Summary: Jen MacLean expresses concerns with stating the net proceeds are enough to fund development of the MMOG.

Importance: During the negotiations of the final inducement resolution, MacLean expresses discomfort with stating the proceeds of the bond will be enough to fund the MMOG.

Notable: Tom Z. responds “This is an estimate and what we have been saying from day one, doesn’t mean things can’t change...” MacLean responded “as long as we don’t legally represent otherwise, that’s fine.”



Document Thirty Eight

Term sheet

Who: Tom Zaccagnino, Rick Wester, Jen MacLean, Mike Corso

What: Email

When: July 1, 2010

Summary: Rick Wester also expressed concerns about stating the net proceeds are enough to fund development completion of Copernicus.

Importance: Staff leadership showing concerns with signing term sheet. Tom Zaccagnino dismisses them saying that it is understood that estimates change.

Notable: Also notes that the state guaranty fee would be 1.12M a year as the document is written.



Document Thirty Nine

Gallogly Concerns

Who: Maureen Gurghigian, Rosemary Booth Gallogly, Jamia McDonald, Keith Stokes, Mike Saul

What: Email

When: July 12, 2010

Summary: Gallogly has serious concerns after reviewing the term sheet and asks for more information.

Importance: Gallogly requests information, including business plan and history of capital provided by principals and others.

Notable: Asks for a report from an independent advisor indicating that this \$75 million investment is worthy of our consideration.

Document Forty

38 Studios finances

Who: Rick Wester, Tom Zaccagnino

What: Email

When: July 7, 2010

Summary: Zaccagnino asking how far they can stretch the bridge loan to cover payroll.

Importance: 38 Studios was very low on cash while negotiating the terms of the bond. Wester doubted they could get through the September 15 payroll.

Notable: “Baltimore will still have about \$900K that we could leverage. So this would get us through the end of August. I don’t think we can get through Sept. 15th...”

Document Forty One

Michael Corso's payment

Who: Jen MacLean, Alex Aber, Rick Wester, Earl Mellot

What: Email

When: July 8, 2010

Summary: Discussing Corso's payment at the bond closing

Importance: Corso's compensation is based on the percentage of proceeds from the debt financing sponsored by the RIEDC.

Notable: When Aber comments that "even if 38 Studios can only draw, say, \$10M on October 1, 2010...., Mr. Corso would be entitled to receive all \$3,750,00? MacLean responded "I suspect we'll have to just bite the bullet on it, but it doesn't hurt to ask."

Document Forty Two

Gallogly memo to governor

Who: Rosemary Booth Gallogly,
Michael Saul

What: Email

When: July 12, 2010

Summary: Saul responds to Gallogly's
requests

Importance: Sends PowerPoint
presentations from Board meeting
and 38 Studios financials.

Notable: “EDC has not as yet drafted
policies related to the recently
approved Job Creation Guaranty
Program.”



Document Forty Three

Gallogly memo to governor

Who: Rosemary Booth Gallogly,
Andrew Hodgkin, Jamia McDonald

What: Email

When: July 14, 2010

Summary: Gallogly outlines her concerns with the 38 Studios moral obligation.

Importance: Gallogly tries to inform governor of her concerns.

Notable: “EDC has not adopted rules and regulations, or general policies on the criteria upon which decisions would be made.”

“One could question if our share of the financing is appropriate for such a hit driven business venture (\$40 million equity/\$75 million State of RI taxpayers)

Document Forty Four

Barclays call

Who: Maureen Gurghigian

What: Notes on phone call

When: July 14, 2010

Summary: Notes on a call with Scott Levy in Barclays Media Group.

Importance: Notes that the state credit enhancement is very important to bond.

Notable: “Moral Obligations tend to be an enhancement of ... credit with revenue streams. In this case the moral obligation is the whole thing.”

Document Forty Five

Raimondo warning

Who: Gina Raimondo, Keith Stokes,
Robert Stolzman, Mike Saul, Fred
Hashway

What: Email

When: July 16, 2010

Summary: Raimondo warns against
moral obligation bond for 38
Studios.

Importance: Raimondo warns that it is a high-risk investment and is unsure if debt is the right instrument. If it were a compelling investment, it would have been well-funded already.

Notable: Stolzman to Stokes: “This is a red flag... It may be they simply confirm the level of risk you have already presented to the board, in which event you’ve already educated them on the deal. But if they present new... Risk element, you my wish to revisit some of the terms.”



Document Forty Six

Completion bond not an option

Who: Keith Stokes, EDC Board

What: Email

When: July 22, 2010

Summary: Keith Stokes sent out a memo to the board explaining why a completion bond was not an option but project monitoring would offer appropriate safeguards.

Importance: Board wanted a completion bond requirement in term sheet, but Stokes discovered that a completion bond is not available because of the time and investment required to develop an MMOG game.

Notable: “We have modified the Term Letter reflecting that the deal would not close unless and until we have reached a satisfactory agreement with 38 Studios and a third-party monitoring entity...”

Document Forty Seven

Stokes Reacts to Caprio

Who: Stokes, Stolzman

What: Email

When: August 31, 2010

Summary: When Caprio urged bond rating agencies to withhold their rating on the 38 Studios bond, Keith Stokes responded by stating “RIEDC has a legal, business and moral obligation to move forward...”

Importance: Stokes forwarded the statement to the board, but Stolzman disagrees.

Notable: “FYI, I don’t think that we have a legal obligation to close, and admitting to such may not be sound from a legal standpoint.”



Document Forty Eight

Project monitoring agreement

Who: Rob Stolzman, Jen MacLean,
Gavian Whishow, Tom Zaccagnino

What: Email

When: September 14, 2010

Summary: Suggesting language in the project monitoring statement of work.

Importance: Stolzman is trying to be sure that IBM will share its information on 38 Studios with EDC

Notable: “may” must be replaced with “shall”



Document Forty Nine Project Monitoring Agreement

Who: Sam Hudson, Christina Alejandre

What: email

When: September 10, 2010

Summary: Comments on project monitoring statement of work.

Importance: 38 Studios discussing statement of work.

Notable: “..bottom line, you need to get the bond issue in place so I think most of what EDC would want will be fine with you. IBM is actually cutting its nose to spite its face – its liability to EDC is much higher under this arrangement”

Document Fifty

Project monitoring

Who: Christina Alejandre, Jacob Wood

What: Email

When: 9/15/2010

Summary: Discussion of language for Project monitoring agreement.

Importance: Jacob Wood expresses concerns with EDC wanting “shall” vs. “may.”

Notable: “If we change “may” to “shall” we are on the hook to make sure that we don’t start any meeting or deliver any goods or services without them in the room or in the loop.”