

Document Fifty One

Updated 38 Studios financials

Who: Rick Wester, Tom Zaccagnino

What: Email and deposition

When: October 18, 2010

Summary: Updated financials with bond proceeds show consistent negative cash flow starting April 2012 (scenario 1) or July 2012 (scenario 2).

Importance: Both scenarios show negative cash flow in May 2012. Scenario 2 has it back to positive in June, then consistently negative after July.

Notable: Shows \$3.6 million in relocation expenses. Zaccagnino stated in his deposition that he was unsure if relocation expenses were contained in the financial projections given to the RI EDC.

Document Fifty Two

Wells Fargo fees

Who: Maureen Gurghigian, Matt Marrone

What: Email

When: October 22, 2010

Summary: Gurghigian confirms with Wells Fargo the amount of the placement agent's discount.

Importance: Lists placement agent's fees as \$658,750. This does not include the \$300,000 Wells Fargo fee.

Notable: Gurghigian is asking whether there needs to be any changes.



Document Fifty Three

Wells explanation of fees

Who: Craig Hrinkevich

What: Deposition

When: November 2, 2010

Summary: Craig Hrinkevich stated that the \$300,000 fee was a separate engagement and had nothing to do with the execution of the bonds.

Importance: Hrinkevich defends the fact that the fee was not included in the placement agent agreement.

Notable: “It had nothing to do with the Placement Agent’s role in the 2010 bonds.”



Document Fifty Four

38 Studios financials

Who: Jen MacLean, Curt Schilling, Tom Zaccagnino, Rick Wester, Bill Thomas

What: Email

When: October 27, 2010

Summary: 38 Studios has less than \$500,000 in the Maynard accounts.

Importance: Reflects 38 Studios' financial position just before the bonds closed and that they cannot afford to pay Mike Corso.

Notable: Corso requested \$500,000 for securing the Citizens line of credit.



Document Fifty Five

Project monitoring agreement

Who: Rick Wester, Rob Stolzman,
Antonio Afonso

What: Email

When: October 28, 2010

Summary: Signed project monitoring
agreement

Importance: The final agreement signed
by 38 Studios and IBM.

Notable: “38 Studios shall provide the
following items to the RIEDC (1)
copies of drafts and final copies of
all reports, memoranda, documents,
correspondence.....”



Document Fifty Six 38 Studios financials

Who: Keith Stokes, Jen MacLean

What: Document

When: November 2, 2010

Summary: Signed financial projections

Importance: Still shows \$75 million net from the bond.

Notable: Both Keith Stokes and Jen MacLean signed the document.



Document Fifty Seven

Wells compensation

Who: Rick Wester, Tom Zaccagnino

What: Email

When: November 22, 2010

Summary: Summary of Wells expenses including \$300,000.

Importance: Wells billed \$413,523.19 outside of the bond closing fees.

Notable: \$25,000 earned on June 14, 2010 (the board meeting presentation)

Document Fifty Eight

Financial statements

Who: Jen MacLean

What: Email and deposition

When: February 17, 2011

Summary: Financial statements show no income in 2012 from MMOG.

Importance: Early indication the MMOG may be delayed

Notable: MacLean stated in her deposition that this was a model from the developers to show the best-case scenario if they had all the time they wanted, but they were told that they had to deliver by September 2012.

Document Fifty Nine

38 Studios finances

Who: Zaccagnino, Wester

What: Email

When: March 14, 2011

Summary: Zaccagnino wants to show profitability by Q4.

Importance: Zaccagnino trying to make the numbers show profitability by Quarter 4 in 2012.

Notable: “If we don’t show non-gaap profitability by q412 we will likely eliminate the private debt option. And Mark has expressed grave concerns about raising any pe (private equity) despite valuation”



Document Sixty

Corso payments

Who: MacLean, Wester, Corso

What: Email

When: May 3, 2011

Summary: Payment history on Mike
Corso

Importance: Shows payments up until
May 3, 2011, to Mike Corso.

Notable: Totals \$2,032,092.00



Document Sixty One

Mike Corso payments

Who: Rick Wester, Aber Alexander

What: Email

When: May 18, 2011

Summary: Signed minutes from 38 Studios Board vote on warrants issued to Mike Corso

Importance: In addition to cash, Corso received equity in the company.

Notable: Received 1,209,677 class A units.



Document Sixty Two

Nappa Construction

Who: Mike Corso, Rick Wester, Tom Zaccagnino

What: Email

When: May 26, 2011

Summary: Nappa Construction total to date at \$11,633,000.

Importance: Build-out is over budget. Includes \$637,754 in change orders.

Notable: “The subs are slowing and in some cases not coming back until payment is made. I know we are managing cash....”



Document Sixty Three

IBM project monitoring

Who: Gavian Whishaw, Scott Abate

What: Email

When: IBM Report

Summary: IBM Initial Assessment

Importance: Very positive on quality of staff and morale. Some notes on improvement for management.

Notable: Notes that they did not have access to financial information.



Document Sixty Four

Project monitoring agreement

Who: Antonio Afonso, David Gildea

What: Email

When: June 29, 2011

Summary: Explanation of why EDC never received a signed IBM agreement

Importance: RIEDC was never a party to the IBM agreement.

Notable: EDC attempted to negotiate IBM into the agreement, but IBM refused to be a party and refused to expressly make EDC a third party beneficiary.



Document Sixty Five

Film tax credits

Who: Tom Zaccagnino, David Gilden

What: Email

When: December 2, 2011

Summary: Zaccagnino proposed accelerating the deferred fee to be due in total in 2014 for access to all the 2011 film tax credits available.

Importance: This request was made in December 2011. The company was having difficulty raising private equity.

Notable: “RIEDC would permit the company to claim 2011 tax credit on qualified expenses that were paid for with bond proceeds.”



Document Sixty Six

IBM project monitoring

Who: George Dolbier, Gavian Wishaw

What: Email

When: December 13, 2011

Summary: Wishaw makes suggestions on IBM slides.

Importance: Exchange between 38 Studios and IBM.

Notable: “let’s take out the word financials and focus on the game domain”

Document Sixty Seven

Bank RI loan to 38 Studios

Who: David Gilden

What: Late 2011 or early 2012

When: Deposition Pages 83-94

Summary: Gilden's firm represented Bank RI on a loan to Kingston Capitol to benefit 38 Studios. Gilden did some work on the case while still representing EDC.

Importance: Gilden was the EDC legal counsel at the time.

Notable: "I was involved in the initial conversation from the client and at the last day or two of the transaction they needed a document... And I was asked to step in and get the document done."



Document Sixty Eight

Nappa Construction

Who: Nappa Construction Management

What: Document

When: January 6, 2012

Summary: Application for payment.
Contract sum to date is
\$12,340,598.24.

Importance: Total amount for build-out.

Notable: \$1,344,472 in change orders.
Certificate stamped paid – wire
2/10/2012.



Document Sixty Nine

Missed payment

Who: Rick Wester, Bill Thomas

What: Email

When: April 19, 2012

Summary: Discussion of when or if the guarantee fee of \$1.12 M is due.

Importance: 38 Studios did not include the \$1.12 in its cash plan for May 2012.

Notable: “I did not have this on the cash plan. It is supposed to be renegotiated to post-MMO launch.”



Document Seventy

38 Studios missed payment

Who: Rick Wester

What: Deposition

When: May 17, 2010

Summary: Rick Wester was told by Tom Zaccagnino to bring EDC a check and wait at EDC until he had word there were funds in the bank to cover it.

Importance: West never gave EDC the check. EDC wanted it wired electronically.

Notable: “the payment was in arrears because we did not have the cash to pay.”



Document Seventy One

38 Studios new term sheet

Who: David Gilden, Jamia McDonald,
George Zainyeh, Claire Richards

What: Email

When: May 14, 2012

Summary: Gilden forwarded 38 Studios
proposal to cure 38 Studios default.

Importance: This is a proposal by 38 to
cure the default. Offers EDC a
membership interest of a value of
\$2,000,000 in 38 Studios.

Notable: Includes a total of \$8.7 million
in film tax credits in 2011.

Document Seventy Two

Special Board Meeting

Who: Gilden, MacDonald

What: Email

When: May 15, 2012

Summary: Email requesting Board meeting with supporting documents.

Importance: Gilden emails the governor's staff requesting he set an emergency board meeting to discuss 38 Studios. Financial included show the delay in the MMOG until 2013.

Notable:

EDC is requesting a waiver to claim 2011 film tax credits on expenses paid for by the bond and consent to incur additional indebtedness and grand priority liens on all or a portion of the company's properties to other lenders.



Document Seventy Three Special Board meeting

Who: EDC Board

What: Minutes

When: May 16, 2012

Summary: The Board discussed 38 Studios in executive session.

Importance: The Board was updated by 38 Studios of its current financial situation and its proposal for film tax credits.

Notable: Zaccagnino stated that the Company is seeking an extension on the payment of the guaranty fee owed to the corporation, while remaining obligated to pay the fee when it has liquidity and the ability of the Company to access tax credits.

The Board took no action at the meeting.

Document Seventy Four

MacLean Resigns

Who: MacLean, 38 Studios Board

What: Email

When: May 17, 2012

Summary: MacLean resigns.

Importance: MacLean had been on leave since March 23, 2012, but decided to resign officially. She cites a lack of communications with the directors.

Notable: “Today, I read on the Providence Journal website that the company apparently took the highly questionable step of delivering a physical check for \$1,125,00 in payment... that was not backed by sufficient funds in the company account.”



Document Seventy Five

Braver report

Who: Gilden, EDC Board

What: Email

When: Monday, May 21, 2012

Summary: Gilden forwards Braver report to board.

Importance: The report confirms the expenditure by 38 Studios of the full amount of the bond proceeds.

Notable: The purpose of confirming this expenditure of funds is to confirm that 38 Studios has satisfied a condition to being entitled to apply for state tax credits.



Document Seventy Six Gilden deposition

Who: David Gilden

What: Deposition

When: Late May or early June 2012

Summary: Learned that 38 Studios was not eligible for tax credits.

Importance: In a meeting at the governor's office, Gilden learned that 38 Studios would not qualify for tax credits because it was not a Rhode Island corporation.

Notable: "I reviewed the statute again myself. They were not qualified to receive tax credits."



Document Seventy-Seven

Jen Maclean shares her thoughts

Who: Jen MacLean

What: Email

When: August 6, 2012

Summary: Responds to reporter as to why 38 Studios failed.

Importance: MacLean cites the need to hire aggressively as a problem at 38 Studios.

Notable: “..the company continued to hire in late 2011 when we knew we hadn’t closed the funding we had planned to that summer.”

“The state’s monitoring deal with IBM was smart, ..but IBM monitored development only and left the state with zero visibility into corporate governance and Board issues.”



Document Seventy Eight Emergency procurement

Who: William Parsons, EDC

What: Document

When: May 25, 2012

Summary: Emergency procurement for
Deloitte services.

Importance: In reaction to 38 Studios laying off all or substantially all of its employees, EDC needs the immediate service of an established accounting and forensic firm.

Notable: “Because of the immediate threat to taxpayer funds and the security interest of the RIEDC. The RIEDC does not have the time to proceed with a competitive procurement.”



Document Seventy Nine

Deloitte hiring

Who: David Gilden, William Thomas

What: Email

When: May 25, 2012

Summary: Alerting Thomas to Deloitte's hiring

Importance: Gilden is seeking access to the intellectual property. Deloitte hired to do imaging.

Notable: Explains what Deloitte was hired to complete.



Document Eighty

EDC demands access to 38 Studios

Who: Gilden, 38 Studios

What: Email

When: May 26, 2012

Summary: Notice to 38 Studios to provide access to auditors.

Importance: RIEDC requires immediate access to be provided to the auditors.

Notable: “Auditors to inspect and copy all documents and instruments relating to the Security Interest granted...”



Document Eighty One

Deloitte access to 38 Studios

Who: David Gilden, William Thomas,
Thomas Zaccagnino

What: Email

When: May 26, 2012

Summary: Gilden has not heard back
from 38 Studios to provide access to
38 Studios documents.

Importance: 38 Studios still had not
responded to EDC's request.

Notable: EDC trying to preserve and
collect the electronic data at 38
Studios.