

Newly Admitted, Now What?

**THE SKILLS YOU DIDN'T LEARN
IN LAW SCHOOL PART 2**

MATERIALS BY

Andrew Smiley, Esq.

Michael Solomon, Esq.

==New York State==
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CURRICULUM VITAE

Education:

· Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)
Moot Court Honor Society - Competitor - National Appellate Trademark Competition
Moot Court Honor Society – Coach, National Trial Team – Regional Champions
CALI Excellence for the Future Award - Advanced Legal Research
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

· Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

Professional:

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation

Andrew J. Smiley, Esq. Curriculum Vitae, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *The Mentor Esq. Podcast – A Podcast for Lawyers*

- Founder & Host (2019 – Present)

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025

Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United States District Court of Vermont

Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)
- Master CLE Instructor (2020 – present)
- CLE Instructor (2013 – present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
- Brooklyn Bar Association
 - Medical Malpractice Committee
 - Supreme Courts Committee
- American Bar Association
- The American Association for Justice

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- Brooklyn Law School Alumni Association
- National Order of Barristers
- Lime Rock Drivers Club
- Porsche Club of America (Connecticut Valley Region)
- Porsche Sim Racing League
- Sports Car Driving Association (SCDA)
- Just Hands Racing Foundation – Board of Directors & Legal Counsel

Authored Books

Smiley, Andrew J. *How to Successfully Litigate a Personal Injury Case – A Practical Guide*, 2022, The Mentor Esq. Handbook Series – Amazon Best Seller in Personal Injury Law

Smiley, Andrew J. *Successful Trial Skills – A Practical Guide to Jury Selection, Opening Statements, Direct & Cross Examinations and Closing Arguments*, 2024, The Mentor Esq. Handbook Series – Amazon #1 New Release in Trial Practice

Continuing Legal Education (CLE) Presentations:

(83) *Working with Vocational Experts in Personal Injury Litigation*, Lawline, July 24, 2025

(82) *Federal Court Confidence: Successfully Litigating Personal Injury Cases – Part 3: Motion Practice in Federal Court*, New York State Academy of Trial Lawyers, June 5, 2025

(81) *Federal Court Confidence: Successfully Litigating Personal Injury Cases – Part 2: Depositions in Federal Court*, New York State Academy of Trial Lawyers, May 1, 2025

(80) *Federal Court Confidence: Successfully Litigating Personal Injury Cases – Part 1: Overview of the Federal Court Process*, New York State Academy of Trial Lawyers, April 3, 2025

(79) *Who's on the Hook?- Part 4: Litigation and Insurance Issues in SUM Cases*, New York State Academy of Trial Lawyers, January 8, 2025

(78) *Who's on the Hook?- Part 3: Litigation and Insurance Issues in Premise Liability Cases*, New York State Academy of Trial Lawyers, December 4, 2024

(77) *Who's on the Hook?- Part 2: Litigation and Insurance Issues in Construction Accident Cases*, New York State Academy of Trial Lawyers, November 6, 2024

(76) *Who's on the Hook?- Part 1: Litigation and Insurance Issues in Ride-Share and Rental Car Accident Cases*, New York State Academy of Trial Lawyers, October 2, 2024

(75) *Introducing Evidence and Impeaching Witnesses*, Office of The New York State Attorney General – Legal Education and Professional Development, September 26, 2024

(74) *Walking the Line: Settlement Negotiation Skills & Ethics*, New York State Academy of Trial Lawyers, July 9, 2024

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Continuing Legal Education (CLE) Presentations Continued:

(73) *Novel Negligence Cases – Part 2: How to Successfully Litigate Dram Shop Cases*, New York State Academy of Trial Lawyers, June 5, 2024

(72) *Working with Experts*, Office of The New York State Attorney General – Legal Education and Professional Development, April 2, 2024

(71) *Novel Negligence Cases – Part 3: How to Successfully Litigate Ski Accident Cases*, New York State Academy of Trial Lawyers, March 6, 2024

(70) *Novel Negligence Cases – Part 1: How to Successfully Litigate Personal Trainer and Gym Negligence Cases*, New York State Academy of Trial Lawyers, January 3, 2024

(69) *Litigation Back to Basics – Part 3: Introducing Evidence and Impeaching Witnesses*, New York State Academy of Trial Lawyers, December 6, 2023

(68) *Litigation Back to Basics – Part 2: Working With Experts*, New York State Academy of Trial Lawyers, November 1, 2023

(67) *Construction Site Injury Litigation: Pursuing or Defending Claims Against Site Owners, Contractors, and Other Third Parties*, Strafford CLE/BarBri, October 17, 2023

(66) *Litigation Back to Basics – Part 1: Preparing and Conducting Depositions*, New York State Academy of Trial Lawyers, October 4, 2023

(65) *Depositions*, Office of The New York State Attorney General – Legal Education and Professional Development, September 28, 2023

(64) *How to Litigate a Medical Malpractice Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, June 7, 2023

(63) *How to Litigate a Medical Malpractice Case – Part 5: Pre-Trial Preparation*, New York State Academy of Trial Lawyers, May 3, 2023

(62) *How to Litigate a Medical Malpractice Case – Part 4: Discovery & Depositions*, New York State Academy of Trial Lawyers, April 4, 2023

(61) *How to Litigate a Medical Malpractice Case – Part 3: Commencing the Action*, New York State Academy of Trial Lawyers, February 28, 2023

(60) *How to Litigate a Medical Malpractice Case – Part 2: Expert Selection*, New York State Academy of Trial Lawyers, February 1, 2023

(59) *How to Litigate a Medical Malpractice Case – Part 1: The Initial Screening*, New York State Academy of Trial Lawyers, January 4, 2023

(58) *How to Litigate a Construction Accident Case – Part 4: Motion Practice*, New York State Academy of Trial Lawyers, December 7, 2022

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Continuing Legal Education (CLE) Presentations Continued:

(57) *Preparing for Depositions: Best Practices for Asking and Answering Questions*, Office of The New York State Attorney General, 2022 Legislature Program, December 6, 2022

(56) *How to Litigate a Construction Accident Case – Part 3: Depositions*, New York State Academy of Trial Lawyers, November 2, 2022

(55) *How to Litigate a Construction Accident Case – Part 2: Commencing The Action*, New York State Academy of Trial Lawyers, October 3, 2022

(54) *Trial Series: Part 2 - Opening Statement Webinar*, Queens County Bar Association, September 22, 2022

(53) *How to Litigate a Construction Accident Case – Part 1: An Overview of New York Labor Law*, New York State Academy of Trial Lawyers, September 7, 2022

(52) *How to Litigate a Catastrophic Automobile Accident Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, July 6, 2022

(51) *How to Litigate a Catastrophic Automobile Accident Case – Part 5: Mediation and Settlement*, New York State Academy of Trial Lawyers, June 2, 2022

(50) *How to Litigate a Catastrophic Automobile Accident Case – Part 4: Expert Depositions*, New York State Academy of Trial Lawyers, May 4, 2022

(49) *How to Litigate a Catastrophic Automobile Accident Case – Part 3: Liability and Damages Experts*, New York State Academy of Trial Lawyers, April 6, 2022

(48) *How to Litigate a Catastrophic Automobile Accident Case – Part 2: Commencing the Action*, New York State Academy of Trial Lawyers, March 2, 2022

(47) *How to Litigate a Catastrophic Automobile Accident Case – Part 1: The Investigation*, New York State Academy of Trial Lawyers, February 4, 2022

(46) *Anatomy of a Trial, a Trial Skills Series – Part 5: Summations*, New York State Academy of Trial Lawyers, January 5, 2022

(45) *Anatomy of a Trial, a Trial Skills Series – Part 4: Cross-Examination*, New York State Academy of Trial Lawyers, December 1, 2021

(44) *Anatomy of a Trial, a Trial Skills Series – Part 3: Direct Examination*, New York State Academy of Trial Lawyers, November 3, 2021

(43) *Anatomy of a Trial, a Trial Skills Series – Part 2: Opening Statements*, New York State Academy of Trial Lawyers, October 6, 2021

(42) *Anatomy of a Trial, a Trial Skills Series – Part 1: Jury Selection*, New York State Academy of Trial Lawyers, September 10, 2021

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Continuing Legal Education (CLE) Presentations Continued:

(41) *How to Successfully Litigate a Personal Injury Case Series - Part 7: It's a Wrap!*, New York State Academy of Trial Lawyers, July 7, 2021

(40) *How to Successfully Litigate a Personal Injury Case Series - Part 6: The Trial*, New York State Academy of Trial Lawyers, June 2, 2021

(39) *How to Successfully Litigate a Personal Injury Case Series - Part 5: Pre-Trial Disclosures and Gearing up for Trial*, New York State Academy of Trial Lawyers, May 5, 2021

(38) *How to Successfully Litigate a Personal Injury Case Series - Part 4: Depositions*, New York State Academy of Trial Lawyers, April 7, 2021

(37) *How to Successfully Litigate a Personal Injury Case Series - Part 3: Your Adversary, the Preliminary Conference and Initial Discovery*, New York State Academy of Trial Lawyers, March 3, 2021

(36) *How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021

(35) *How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021

(34) *Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020

(33) *Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

(32) *Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020

(31) *Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020

(30) *Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020

(29) *Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019

(28) *Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019

(27) *Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019

(26) *Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019

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Continuing Legal Education (CLE) Presentations Continued:

- (25) *Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018
- (24) *Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017
- (23) Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016
- (22) *Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015
- (21) *Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015
- (20) *Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015
- (19) *Powerful Opening Statements*, Clear Law Institute, January 13, 2015
- (18) *The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014
- (17) *Killer Cross Examination Strategies*, Lawline.com, November 20, 2014
- (16) *Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014
- (15) *Personal Trainer Negligence Update*, Lawline.com, October 14, 2014
- (14) *Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014
- (13) *Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014
- (12) *Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013
- (11) *Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013
- (10) *Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012
- (9) *“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012
- (8) *Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012
- (7) *The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011

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Continuing Legal Education (CLE) Presentations Continued:

- (6) *Personal Trainer Negligence*, Lawline.com, March 22, 2011
- (5) *Trial Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011
Techniques: The Tricks of the Trade, Lawline.com, February 16, 2011
- (4) *Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011
- (3) *Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010
- (2) *Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010
- (1) *Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

Television Appearances

Fox News Channel

- The O'Reilly Factor
- What's Happening Now with Martha McCallum
 - America's News Room
 - Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

CNN -Anderson Cooper 360

ET – Entertainment Tonight

Bloomberg TV

Headline News

Tru TV

Court TV

The Morning Show with Mike and Juliet

Interests, Hobbies:

High-Performance Driving Events, Lime Rock Drivers Club, Porsche Enthusiast, Sim Racing, Tennis, Lego, Cooking, Yoga





A PRACTICAL GUIDE

Trial Advocacy Case Litigation

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STIPULATIONS

IT IS HEREBY STIPULATED AND
AGREED by and between (among) counsel for
the respective parties hereto, that:

All rights provided by the
C.P.L.R., including the right to object to
any question, except as to form, or to move
to strike any testimony at this (these)
examination(s), are reserved, and, in
addition, the failure to object to any
question or to move to strike any testimony
at this (these) examination(s) shall not be
a bar or waiver to make such motion at, and
is reserved for the trial of this action;

IT IS FURTHER STIPULATED AND
AGREED by and between (among) counsel for
the respective parties hereto, that this
(these) examination(s) may be sworn to by
the witness(es) being examined, before a
Notary Public other than the Notary Public
before whom this (these) examination(s) was

1
2 (were) begun; but the failure to do so, or
3 to return the original of this (these)
4 examination(s) to counsel, shall not be
5 deemed a waiver of the rights provided by
6 Rules 3116 and 3117 of the C.P.L.R., and
7 shall be controlled thereby;

8
9 IT IS FURTHER STIPULATED AND
10 AGREED by and between (among) counsel for
11 the respective parties hereto, that this
12 (these) examination(s) may be utilized for
13 all purposes as provided by the C.P.L.R.;

14
15 IT IS FURTHER STIPULATED AND
16 AGREED by and between (among) counsel for
17 the respective parties hereto, that the
18 filing and certification of the original of
19 this (these) examination(s) shall be and
20 the same hereby are waived;

21
22 IT IS FURTHER STIPULATED AND
23 AGREED by and between (among) counsel for
24 the respective parties hereto, that a copy
25 of the within examination(s) shall be

1
2 furnished to counsel representing the
3 witness(es) testifying, without charge.
4

5 IT IS FURTHER STIPULATED AND
6 AGREED by and between(among) counsel for
7 the respective parties hereto, that all
8 rights provided by the C.P.L.R., and Part
9 221 of the Uniform Rules for the Conduct of
10 Depositions, including the right to object
11 to any question, except as to form, or to
12 move to strike any testimony at this
13 examination is reserved; and in addition,
14 the failure to object to any question or to
15 move to strike any testimony at this
16 examination shall not be a bar or waiver to
17 make such motion at, and is reserved to,
18 the trial of this action.
19
20

21 * * *

Rules for Judge Silver's Part regarding objections during depositions

Objections:

- * ALL questions asked at any deposition must be answered UNLESS they (a) infringe upon privilege, (b) bear SOLELY on the negligence of a co-defendant and NOT in any way on the potential negligence of the deponent, or (c) are palpably irrelevant.
- * If a party makes an objection as to *form*, the objector shall immediately and succinctly indicate the nature of the defect so as to permit correction. In any event, the witness shall answer the question.
- * Depositions shall not be interrupted for an attorney-deponent conference.
- * Counsel for the deponent shall NOT engage in coaching during the deposition and shall not suggest answers to questions (e.g. "If you know."; "If you remember.")

Rule 30. Depositions by Oral Examination

(a) WHEN A DEPOSITION MAY BE TAKEN.

(1) *Without Leave.* A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under [Rule 45](#).

(2) *With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with [Rule 26\(b\)\(1\) and \(2\)](#):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or [Rule 31](#) by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take the deposition before the time specified in [Rule 26\(d\)](#), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or

(B) if the deponent is confined in prison.

(b) NOTICE OF THE DEPOSITION; OTHER FORMAL REQUIREMENTS.

(1) *Notice in General.* A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Documents.* If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under [Rule 34](#) to produce documents and tangible things at the deposition.

(3) *Method of Recording.*

(A) *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless

the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) *Additional Method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) *By Remote Means.* The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules [28\(a\)](#), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

(5) *Officer's Duties.*

(A) *Before the Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under [Rule 28](#). The officer must begin the deposition with an on-the-record statement that includes:

- (i) the officer's name and business address;
- (ii) the date, time, and place of the deposition;
- (iii) the deponent's name;
- (iv) the officer's administration of the oath or affirmation to the deponent; and
- (v) the identity of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more

officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) EXAMINATION AND CROSS-EXAMINATION; RECORD OF THE EXAMINATION; OBJECTIONS; WRITTEN QUESTIONS.

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under the [Federal Rules of Evidence](#), except Rules [103](#) and [615](#). After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections.* An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) DURATION; SANCTION; MOTION TO TERMINATE OR LIMIT.

(1) *Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction.* The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to Terminate or Limit.*

(A) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses.* Rule 37(a)(5) applies to the award of expenses.

(e) REVIEW BY THE WITNESS; CHANGES.

(1) *Review; Statement of Changes.* On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes Indicated in the Officer's Certificate.* The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) CERTIFICATION AND DELIVERY; EXHIBITS; COPIES OF THE TRANSCRIPT OR RECORDING; FILING.

(1) *Certification and Delivery.* The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the

attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) Documents and Tangible Things.

(A) Originals and Copies. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(B) Order Regarding the Originals. Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) Copies of the Transcript or Recording. Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) Notice of Filing. A party who files the deposition must promptly notify all other parties of the filing.

(g) **FAILURE TO ATTEND A DEPOSITION OR SERVE A SUBPOENA; EXPENSES.** A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

PART 202. Uniform Civil Rules For The Supreme Court & The County Court

Section 202.20-d Depositions of Entities; Identification of Matters.

(a) A notice or subpoena may name as a deponent a corporation, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(b) Notices and subpoenas directed to an entity may enumerate the matters upon which the person is to be examined, and if so enumerated, the matters must be described with reasonable particularity.

(c) If the notice or subpoena to an entity does not identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then no later than ten days prior to the scheduled deposition:

(1) the named entity must designate one or more officers, directors, members or employees, or other individual(s) who consent to testify on its behalf;

(2) such designation must include the identity, description or title of such individual(s); and

(3) if the named entity designates more than one individual, it must set out the matters on which each individual will testify.

(d) If the notice or subpoena to an entity does identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then: (1) pursuant to CPLR 3106(d), the named entity shall produce the individual so designated unless it shall have, no later than ten days prior to the scheduled deposition, notified the requesting party that another individual would instead be produced and the identity, description or title of such individual is specified. If timely notification has been so given, such other individual shall instead be produced;

(2) pursuant to CPLR 3106(d), a notice or subpoena that names a particular officer, director, member, or employee of the entity shall include in the notice or subpoena served upon such entity the identity, description or title of such individual; and

(3) if the named entity, pursuant to subsection (d)(1) of this Rule, cross-designates more than one individual, it must set out the matters on which each individual will testify.

(e) A subpoena must advise a nonparty entity of its duty to make the designations discussed in this Rule.

(f) The individual(s) designated must testify about information known or reasonably available to the entity.

(g) Deposition testimony given pursuant to this Rule shall be usable against the entity on whose behalf the testimony is given to the same extent provided in CPLR 3117(2) and the applicable rules of evidence.

(h) This Rule does not preclude a deposition by any other procedure allowed by the CPLR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SARAH WILLIAMS, As Guardian of the Person and
Property of STANLEY WILLIAMS,

Plaintiff,

17-CV-4397 (LAK)

-against-

RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT and DOUGLAS
ELLIMAN REALTY, LLC,

Defendants.

RULE 30(b)(6) NOTICE
TO TAKE DEPOSITIONS
OF DEFENDANTS/THIRD
PARTY PLAINTIFFS BY
THEIR DESIGNEE(S)

-----X
RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT and DOUGLAS
ELLIMAN REALTY, LLC,

Third-Party Plaintiff,

-against-

JERMAINE B. WILLIAMS, as Administrator of the Estate
of RENNA WILLIAMS,

Third-Party Defendant.

-----X
RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT AND DOUGLAS
ELLIMAN REALTY, LLC,

Second Third-Party Plaintiffs,

-against-

WALTER KIDDE & COMPANY, INC., WALTER KIDDE
FIRE SUPPRESSION, INC., KIDDE FIRE PROTECTION, INC.,
UNITED TECHNOLOGIES CORPORATION, UTC FIRE &
SECURITY CORPORATION, UTC FIRE & SECURITY AMERICAS
CORPORATION, INC., THE HOME DEPOT, INC.,
AND HOME DEPOT, U.S.A., INC., AND
WALTER KIDDE PORTABLE EQUIPMENT INC.

Second Third-Party Defendants

-----X

RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT AND DOUGLAS ELLIMAN
REALTY, LLC.,

Third Third-Party Plaintiffs,

-against-

MARION SCOTT REAL ESTATE INC.,

Third Third-Party Defendant.

-----X

MARION SCOTT REAL ESTATE INC.,

Fourth Third-Party Plaintiffs,

-against-

SOUTHSIDE ELECTRIC INC. OF NY,

Fourth Third-Party Defendant.

-----X

TO:

Via Mail and Email

[REDACTED]

Attorneys for Defendants/Third-Party Plaintiffs/Second Third-Party Plaintiffs and Third
Third-Party Plaintiffs Riverbay Corporation, Douglas Elliman Property Management and
Douglas Elliman Realty, LLC

Via Email only

[REDACTED]

Attorneys for Third-Party Defendant
Jermaine Williams, As Administrator of the Estate of Renna Williams

Via Email only

[REDACTED]

Attorneys for Third Third-Party Defendant
Marion Scott Real Estate, Inc.

Via Email only

[REDACTED]

Attorneys for Second Third-Party Defendants
Walter Kiddie Portable Equipment, Home Depot Inc. and Home Depot USA Inc .

Via Email only

[REDACTED]

Attorneys for Fourth-Party Defendant
Southside Electric Inc. of NY

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, the testimony, upon oral examination, of the Defendants/Third Party Plaintiffs Riverbay Corporation and Douglas Elliman Property Management (hereinafter referred to as “Defendants/Third Party Plaintiffs”) will be taken before a Notary Public, who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at the offices of Smiley & Smiley, LLP, 122 East 42nd Street, New York, NY 10168 on **January 30th, at 10:00 a.m.** of that day with respect to evidence material and necessary to the

prosecution of this action.

As prescribed in Rule 30(b)(6), Defendants/Third Party Plaintiffs must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on their behalf, with regard to each of the topics identified below and the persons so designated must testify about information known or reasonably available to Defendants/Third Party Plaintiffs.

Accordingly, Plaintiff demands that Defendants/Third Party Plaintiffs produce a witness with knowledge of the issues involved in this litigation, including but not limited to the following matters:

1. Defendants/Third Party Plaintiffs' obligation to conduct specific "Critical Repairs" in accordance with a Building Loan Agreement, dated November 28, 2012 between Wells Fargo Bank, National Association and Riverbay Corporation in the amount of \$621,500,000 with knowledge of measures taken to complete items in "Table 1 – Critical Repairs" Sections 3.1 and 7.6.;
2. Overall knowledge of the design, implementation and execution of the "program" to install Kidde smoke detectors and GFI outlets in the buildings and apartments (including Building 33 and Apartment 14J) of CO-OP City in 2013 and 2014;
3. Defendants/Third Party Plaintiffs' directive to maintenance staff to install Kidde smoke detectors in *only* the bedrooms in apartments within Building 33 including Apartment 14J in January 2014;
4. Defendants/Third Party Plaintiffs' directive to disregard Kidde installation instructions and mount Kidde smoke detectors with double sided tape throughout Building 33 including Apartment 14J in January 2014;
5. Defendants/Third Party Plaintiffs' failure to provide residents of Building 33 with the Kidde Smoke Alarm User guide for the Kidde smoke alarms placed within the apartments in January 2014;
6. Defendants/Third Party Plaintiffs' knowledge of the maintenance and installation history of the smoke detectors throughout Building 33 including apartment 14J prior to January 2017;
7. Defendants/Third Party Plaintiffs' knowledge of the date(s) and circumstances of the installation of the Kidde smoke detectors throughout Building 33 including Apartment 14J prior to January 2017;

8. Defendants/Third Party Plaintiffs' purchase from HOME DEPOT of the Kidde smoke detectors installed in CO-OP City (including Building 33 and Apartment 14J) in 2013 and 2014;
9. Defendants/Third Party Plaintiffs' knowledge of EMG Corp.'s inspection of CO-OP City in April 2012 and its findings and recommendations regarding fire codes, building codes, smoke alarms and carbon monoxide detectors;
10. Defendants/Third Party Plaintiffs' knowledge of the handling and decision not to install new Carbon Monoxide detectors throughout Building 33 including Apartment 14J from April 2012 through January 2017;
11. Defendants/Third Party Plaintiffs' knowledge of the handling and decision not to install smoke alarms outside of the bedrooms or in living areas of the apartments in Building 33 including Apartment 14J from April 2012 through January 2017;
12. The identity(ies) of all persons with relevant knowledge and information concerning the Kidde smoke detector purchase and installation throughout CO-OP City, including Building 33 including Apartment 14J from April 2012 through January 2017;
13. Communications with employees, agents or other representatives of the City of New York concerning applicable fire/building codes and rules for the installation of smoke and carbon monoxide detectors throughout the CO-OP City including Building 33 and Apartment 14J from April 2012 through January 2017;
14. Complaints, if any, made by residents of CO-OP City following the installation of Kidde smoke alarms from 2014 through January 2017;
15. All plans, specifications, drawings and other documents concerning the condition, repair, renovation, reconstruction, remediation and providing of fire safety throughout Building 33 from April 2012 through January 2017;
16. The training and/or communications with employees, agents or other representatives of Defendants/Third Party Plaintiff with respect to the installation of smoke detectors throughout Building 33 including Apartment 14J from April 2012 through January 2017;
17. Defendants/Third Party Plaintiffs' knowledge of CO-OP City apartment fires resulting in serious injuries or fatality from April 2012 through January 2017, including the October 25, 2016 fire in Apartment 13F at 4120 Hutchinson River Pkwy, and whether smoke detectors activated or failed to activate in such prior fire(s); and
18. The identity(ies) of all documents and physical evidence upon which Defendants/Third Party Plaintiff's rely in support of any of the above information.

Dated: December 10, 2019

By: /s/ Andrew J. Smiley

Andrew J. Smiley, Esq.
SMILEY & SMILEY, LLP
122 East 42nd Street – Suite 3900
New York, New York 10168
asmiley@smileylaw.com
212-986-2022

Attorneys for Plaintiff, Sarah Williams, as
Guardian of the Person and Property of
Stanley Williams

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SARAH WILLIAMS, as Guardian of the Person and
Property of STANLEY WILLIAMS,

Plaintiff, Civil Action No.
17-cv-4397

-against-

RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT, AND DOUGLAS ELLIMAN
REALTY, LLC,

Defendants.

----- x
RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT, AND DOUGLAS ELLIMAN
REALTY, LLC,

Third-Party Plaintiffs,

-against-

JERMAINE B. WILLIAMS, as Administrator of the Estate
of RENNA WILLIAMS,

Third-Party Defendant.

-----x
RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT, AND DOUGLAS ELLIMAN
REALTY, LLC,

Second Third-Party Plaintiffs,

-against-

WALTER KIDDE & COMPANY, INC., WALTER KIDDE FIRE
SUPPRESSION, INC., KIDDE FIRE PROTECTION, INC.,
UNITED TECHNOLOGIES CORPORATION, UTC FIRE & SECURITY
CORPORATION, UTC FIRE & SECURITY AMERICAS
CORPORATION, INC., THE HOME DEPOT INC., HOME DEPOT
USA, INC. and WALTER KIDDE PORTABLE EQUIPMENT, INC.,

Second Third-Party Defendants.

-----x

(Caption continued on next page)

2 -----X
RIVERBAY CORPORATION, DOUGLAS ELLIMAN
3 PROPERTY MANAGEMENT, AND DOUGLAS ELLIMAN
REALTY, LLC,

4 Third Third-Party Plaintiffs,
5 -against-

6 [REDACTED] REAL ESTATE INC.,
7 Third Third-Party Defendant.

8 -----X
[REDACTED] REAL ESTATE INC.,

9 Fourth Third-Party Plaintiffs,
10 -against-

11 SOUTHSIDE ELECTRIC INC. OF NY,
12 Fourth Third-Party Defendant.

-----X

13
14 DEPOSITION of the Defendant, RIVERBAY
15 CORPORATION, by [REDACTED] taken by the Plaintiff,
16 pursuant to Order, held at the offices of [REDACTED]
[REDACTED], New
18 York, on March 6, 2020, at 10:31 a.m., before a
19 Notary Public of the State of New York.
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A P P E A R A N C E S:

SMILEY & SMILEY, LLP

Attorneys for Plaintiff

SARAH WILLIAMS, as Guardian of the
Person and Property of

STANLEY WILLIAMS

122 East 42nd Street - Suite 3900

New York, New York 10168

BY: ANDREW SMILEY, ESQ.

Attorneys for Defendants

RIVERBAY CORPORATION, DOUGLAS

ELLIMAN PROPERTY MANAGEMENT and

DOUGLAS ELLIMAN REALTY, LLC

Attorneys for Third-Party Defendant

JERMAINE WILLIAMS as Administrator of
the Estate of Renna Williams

BY: .

-and-

BY:

Attorneys for Third Third-Party
Defendants

WALTER KIDDE PORTABLE EQUIPMENT, HOME
DEPOT INC. and HOME DEPOT USA, INC.

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A P P E A R A N C E S (Continued) :

[REDACTED]
[REDACTED]

Attorneys for Third Third-Party
Defendant

[REDACTED] REAL ESTATE, INC.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] LLC

Attorneys for Fourth-Party Defendant

SOUTHSIDE ELECTRIC INC. OF NY, INC.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

Attorneys for Walter Kidde & Home Depot

[REDACTED]

[REDACTED]

14

ALSO PRESENT:

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DAVID SHERECK, Videographer

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification, and the same are, hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to by an officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

xxxxxx

THE VIDEOGRAPHER: We are on the record. The time is approximately 10:31 a.m. Today's date is Friday, March the sixth, 2020. This is the video deposition of [REDACTED] in the matter of Williams et al versus

1
2 Riverbay et al case number is
3 17-CV-4397 in the United States
4 District Court Southern District of
5 New York.

6 My name is David Shereck
7 certified legal videographer with
8 Shereck Video in association with
9 Lexitas/Deitz, Rockville Center, New
10 York. We are located at this office
11 of Kaufman Borgeest located at 120
12 Broadway, New York, New York.

13 Would counsels please voice
14 identify yourselves and state who you
15 represent?

16 MR. SMILEY: Andrew Smiley from
17 Smiley & Smiley. I represent Sarah
18 Williams as guardian of the Person and
19 Property of Stanley Williams, the
20 plaintiff.

21 MR. [REDACTED] [REDACTED] [REDACTED] of
22 [REDACTED]
23 [REDACTED] on behalf of Walter Kidde and
24 Home Depot. I am accompanied via
25 telephonically by [REDACTED]

1
2 [REDACTED] also on
3 behalf of Walter Kidde and Home Depot.

4 MR. [REDACTED] [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED] on behalf
6 Jermaine B. Williams as administrator
7 of the estate of Renna Williams.

8 MR. [REDACTED] William
9 [REDACTED] of [REDACTED]

10 [REDACTED]
11 on behalf of defendant [REDACTED]
12 Real Estate, Inc.

13 MR. [REDACTED] [REDACTED] [REDACTED] from
14 [REDACTED] [REDACTED] on behalf of
15 I guess fourth party defendant
16 Southside Electric Inc. of New York.

17 [REDACTED] [REDACTED]
18 [REDACTED] from [REDACTED]
19 [REDACTED], [REDACTED]. Riverbay
20 Corporation and Douglas Elliman, but
21 if you are going to put an address for
22 the firm, just use my [REDACTED], if
23 you have it. If you don't, I will
24 give it to you later. Thank you.

25 THE VIDEOGRAPHER: Thank you.

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[REDACTED]

The court reporter today is Lori Carr
also with Lexitas/Deitz. Please swear
in the witness.

[REDACTED],

Having been first duly sworn before a Notary
Public of the State of New York, was Examined
and testified as follows:

THE COURT REPORTER: Can you
please state and spell your first and
last name?

THE WITNESS: My name is [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

THE COURT REPORTER: And your
address?

THE WITNESS: [REDACTED]
[REDACTED].

EXAMINATION BY

MR. SMILEY:

Q Good morning, Mr. [REDACTED]

A Good morning.

Q My name is Andrew Smiley. I am going
to be asking you a lot of questions today. I
anticipate it being a long day, so if you
need to take a break for any reason at any

1 [REDACTED]
2 time, just say the word and we will
3 accommodate you, okay?

4 A Okay, thank you.

5 Q I only ask that you wait until
6 completing an answer before you ask for a
7 break, all right?

8 A Sure.

9 Q If you don't understand my question
10 for any reason, sometimes I am not as clear
11 as I would like to be, just say so and I will
12 rephrase it, okay?

13 A Okay.

14 Q Unless you ask me to rephrase it or
15 tell me that you don't understand it, I will
16 assume that you understand my question for
17 purposes of your answer, okay?

18 A Yes.

19 Q I ask that you give a verbal response
20 to all of my questions as opposed to a nod or
21 a shake of the head so that Lori, our court
22 reporter, can make sure she gets your
23 response down into the transcript, all right?

24 A Yes.

25 Q Are you currently employed?

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[REDACTED]
A Yes, I am.

Q Who are you employed by?

A Riverbay Corporation.

Q Do you live in Co-op City?

A No, I do not.

Q I don't need your home address, but
what city and state do you live in?

MR. [REDACTED] Note my
objection. You can answer.

A [REDACTED].

Q What is your title at Riverbay
Corporation?

A * Director "Insurance" risk
management.

Q What are your duties at Riverbay as
the director --

MR. [REDACTED] Hold on one
second. If you could add asterisks to
that answer, so that it doesn't get
read to the jury with the word
"insurance" at the time of trial,
please. Thank you. Sorry, Andrew.

Q What are your duties in that position
for Riverbay?

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A I maintain and renew all "insurance"
policies relevant to the Riverbay Corporation
for property management.

Q What, if anything, else are your
duties on behalf of Riverbay Corporation?

A Daily duties include working on slip
and fall cases, property damage claims,
Workers' Compensation claims.

Q When you say working on them, what do
you mean by that?

A Oversee, investigate and work with
outside counsel that we obtain to defend
Riverbay.

Q Is it fair to say that as part of your
job duties at Riverbay, it is to defend
Riverbay Corporation from any claims or
lawsuits brought against Riverbay
Corporation?

MR.  Note my
objection. You can answer.

A Yes.

Q When did you first start working at
Riverbay Corporation?

A May, 2016.

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2 Q Has your position at Riverbay changed
3 from when you started in May of 2016 until
4 the present time?

5 A No.

6 Q Have your duties as you just described
7 them changed in any way from when you started
8 in May of 2016 at Riverbay until the present
9 time?

10 A No.

11 Q Can you tell me your educational
12 background, by that starting with any college
13 or university?

14 A I have a BA from college.

15 Q Where?

16 A Tufts University and I have a Master's
17 in Business Administration, MBA from Columbia
18 University.

19 Q Approximately what year did you get
20 your MBA?

21 A 1986.

22 Q Approximately what year did you
23 graduate from college?

24 A [REDACTED]

25 Q From [REDACTED] until you got to Riverbay in

1 [REDACTED]
2 May of 2016, can you generally tell me
3 chronologically the positions you held of
4 employment?

5 A After Columbia University in [REDACTED] I
6 was employed by Olympia New York Companies,
7 which subsequently was brought by Brookfield
8 Properties and I was employed through 2005.

9 Q What was your title?

10 A Originally it was senior financial
11 analyst and then became "insurance" as the
12 risk manager for Brook Properties.

13 Q As the risk manager for Brookfield
14 Properties, were your duties generally the
15 same as your duties currently at Riverbay?

16 A Yes.

17 MR. [REDACTED] Note my
18 objection. You can answer.

19 Q After completing your work at
20 Brookfield Properties, where, if anywhere,
21 did you go next for employment?

22 A I then went to a private equity firm
23 called DRA Advisers, LLC and I was director
24 of risk management there.

25 Q For what years did you work for DRA?

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██████████
A 2006 through 2011.

Q Were your duties at DRA similar to
your duties currently at Riverbay
Corporation?

MR. ██████████ Note my
objection. You can answer.

A Similar, yes.

Q After your completion of work at DRA
in 2011, where, if anywhere, did you go for
employment prior to Riverbay Corporation?

A I worked for Cushman and Wakefield.

Q What did you do for Cushman and
Wakefield?

A I was in an "insurance" analyst.

Q What were your general duties at
Cushman and Wakefield as an "insurance"
analyst?

A Assist the director of risk management
with all types of claims, general liability,
property and assist with the renewal of all
policies.

Q What type of business was Cushman and
Wakefield at the time that you were employed
by them?

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A They were a property management and
leasing firm.

Q Were your duties at Cushman and
Wakefield similar to your duties currently at
Riverbay Corporation in that you were to
defend Cushman and Wakefield against claims
or lawsuits brought as a result of injuries
sustained by the claimants in those matters?

MR. ██████████ Note my
objection. You can answer.

A Yes.

Q How long did you work at Cushman and
Wakefield until?

A 2013 through 2015.

Q Where, if anywhere, did you work after
Cushman Wakefield and prior to starting at
Riverbay?

A Nowhere else.

Q How much time, if there was any time,
did you not work between Cushman and
Wakefield where you completed in 2015 and
when you commenced at Riverbay in 2016?

A Five months.

Q What, if anything, did you do for

1 [REDACTED]
2 employment during those five months?

3 MR. [REDACTED] Over
4 objection, you can answer.

5 A Temporary work.

6 Q What type of temporary work did you
7 do?

8 A Chauffeuring, assist at a property --
9 at an adjuster's firm.

10 Q Anything else?

11 A No.

12 Q What do you mean by chauffeuring?

13 A Drive people to the airport during
14 evenings.

15 Q Was that with any company like an Uber
16 or Lyft or was that just independent?

17 A Independent.

18 MR. SMILEY: Can we have this
19 please marked as Plaintiff's Exhibit
20 1? It is a two-page document entitled
21 "Co-op City Times" dated Saturday,
22 May 28, 2016.

23 (Whereupon a two-page document
24 entitled "Co-op City Times"
25 dated May 28, 2016 was marked

1 [REDACTED]
2 Plaintiff's Exhibit 1 for
3 identification as of this
4 date.)

5 MR. SMILEY: (Hanging.)

6 MR. [REDACTED] Thanks.

7 Q Sir, before we get to Plaintiff's
8 Exhibit 1, were you ever terminated or fired
9 from any of the positions for which you held
10 employment that you just testified to where
11 you worked prior to Riverbay Corporation?

12 MR. [REDACTED] Just note my
13 objection.

14 A No.

15 Q Sir, I have handed you what has been
16 marked as Plaintiff's Exhibit 1 for
17 identification. It is a two-page document.
18 I will ask you to take a moment and look at
19 that document and tell me if you recognize
20 it.

21 A Yes.

22 Q What do you recognize that to be?

23 A An article from the Co-op City Times
24 introducing me to the community.

25 Q Do you know what the Co-op City Times

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is?

A It is a weekly publication at Co-op City.

Q Does Riverbay Corporation have any involvement with the publication of the Co-op City Times?

MR. [REDACTED] Just note my objection. You can answer.

A The employees that produce the paper are Riverbay employees.

Q Is there a department within Riverbay Corporation that produces the Co-op City Times?

A Yes.

Q What is the name of that department?

A Co-op City Times.

Q Back in May 28 of 2016, how many employees were there within the Co-op City Times department of Riverbay Corporation?

A I don't recall. I don't know.

Q Can you approximate?

MR. [REDACTED] You can approximate, but don't guess.

A Approximately six.

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Q I would ask you to take a moment,
please and read the article that's entitled
"██████████ brings two decades of 'insurance'
risk management experience to Riverbay" which
starts on page 1 and then continues onto page
2 and then just let me know when you are
done.

A Okay.

MR. ██████████ Just hold on a
minute. That's all right.

Q Sir, having read through this article
that's been marked as Plaintiff's Exhibit 1
for identification, is there any information
contained within that article that is
inaccurate?

MR. ██████████ Just note my
objection. Counsel, he is not here to
give you an opinion about something he
didn't write and it is far afield from
the 30(b)(6) deposition notice that
you served upon us.

Q You can answer.

MR. ██████████ No, he can't
answer.

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MR. SMILEY: You are directing him not to answer?

MR. [REDACTED] Yes, I am.

MR. SMILEY: You cannot direct him not to answer.

MR. [REDACTED] I just did.

MR. SMILEY: Under the Federal rules, you are not [REDACTED] to direct him not to answer.

MR. [REDACTED] You served us with a 30(b)(6) notice that is specific and this is a specific deposition.

Now you are asking him about an article that he didn't author and you want his opinion about whether anything in it is inaccurate when it talks about "insurance" which already is not something that could be read in front of a jury. I think it is far afield of the scope of this deposition and the way in which you have raised the question is inappropriate.

MR. SMILEY: I will rephrase

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it.

Q Sir, is there any information
contained in this article with reference to
you with regard to your background and with
regard to your duties as they will be at the
time of your hiring in May -- as per this
article dated May 28, 2016 that is
inaccurate?

MR. ██████████ Just note my
objection. Over objection, you can
answer.

A It mentions associate director, I was
originally hired as associate director, then
subsequently promoted to director.

Q Anything else that is inaccurate?

MR. ██████████ Just note my
objection.

Q You can answer.

A No.

Q Were you ever an associate director at
Riverbay of "insurance" risk management or
were you always the director of "insurance"
risk management?

MR. ██████████ Over

1 [REDACTED]
2 objection, you can answer.

3 | A I was originally hired as associate
4 | director.

5 Q For how long were you the associate
6 director of "insurance" risk management at
7 Riverbay before you became the director of
8 "insurance" risk management?

9	A	Three months.
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10 Q When you were hired as the associate
11 director of "insurance" risk management at
12 that time, did Riverbay Corporation employ a
13 director of "insurance" risk management?

14	A	No.
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15 Q What does "insurance" risk management
16 mean?

17 MR. [REDACTED] Just note my
18 objection. You can answer.

19 A Mitigate -- mitigate all claims, look
20 at property or all policies of "insurance".
21 That would be it.

22 MR. [REDACTED] Miss Court
23 Reporter, can you continue to asterisk
24 the word "insurance" throughout the
25 transcript. Can you do that as a

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general rule?

(Discussion between counsel and
the court reporter.)

MR. [REDACTED] You are not
removing "insurance," just
highlighting it?

MR. [REDACTED] No, just
highlighting it. There are certain
questions that shouldn't be read in
front of a jury, certain ones that
can. I just want us to be able to
find it easily without us having to
all agree where it is mentioned.
Thank you.

Q On the second page of Plaintiff's
Exhibit 1, if I can draw your attention to
that, on the bottom of the first paragraph,
it indicates that your experience is to help
reduce the likelihood of accidents and injury
to both residents and employees; do you see
that?

A Yes.

Q Is it your understanding that that was
part of your job duties at the time that you

1 [REDACTED]
2 were hired at Riverbay Corporation was to
3 reduce the likelihood of accidents and injury
4 to both residents and employees?

5 MR. [REDACTED] Just note my
6 objection. You can answer.

7 A Specifically, no.

8 (Someone just walked in.)

9 Q Why was that not part of the reason
10 that you were hired?

11 MR. [REDACTED] Objection.
12 You can answer.

13 A They didn't specifically require that,
14 but it was to oversee "insurance", that would
15 be part of my duties, but did they
16 specifically require that in the job
17 description, no.

18 Q Has that been part of your duties
19 since the time you started working at
20 Riverbay to present in that your duties have
21 been inclusive of the role of reducing the
22 likelihood of accidents and injury to both
23 residents and employees?

24 MR. [REDACTED] Just note my
25 objection to the extent that that

1 [REDACTED]
2 calls for an opinion and is beyond the
3 scope of this deposition notice. Over
4 objection, you may answer.

5 A It is part of my functions, yes.

6 Q Now, going towards the bottom of the
7 second paragraph on the left column here
8 where it says quote "In that position, Mr.
9 [REDACTED] specialized in handling third-party and
10 Workers' Compensation claims."

11 Do you see that?

12 A Where is the paragraph, which column?

13 Q On the left-hand side, at the bottom
14 of that paragraph, the last sentence starts
15 "In that position."

16 Do you see that?

17 A Yes.

18 Q Was that what you did at [REDACTED] and
19 [REDACTED] was that you would specialize in
20 handling third-party and Workers'
21 Compensation claims?

22 A At [REDACTED], I handled
23 third-party claims.

24 Q What is a third-party claim?

25 A A nonemployee, such as yourself on the

1 [REDACTED]
2 campus, if you were to slip or fall, you are
3 not an employee, so.

4 Q * The lawsuit that Sarah Williams as
5 guardian of the person and property of
6 Stanley Williams has brought against Riverbay
7 Corporation for which you are here today as a
8 witness to testify, is this case the type of
9 third-party claim that you have specialty in
10 handling?

11 MR. [REDACTED] Just note my
12 objection. It calls for an opinion.
13 It is beyond the scope of the 30(b)(6)
14 deposition notice, counsel. I'm not
15 going to continue to allow this today.
16 It is not going to happen.

17 So, I am directing him not to
18 answer because it is not appropriate,
19 based on your deposition notice of him
20 at all. It is calling for conclusions
21 and opinions that he is not here to
22 give about what he did at a prior job
23 and what an article is written about
24 him.

25 I don't want to continue doing

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speaking objections. I can send him
out of the room if you want, but for
now, based on that question, based on
your deposition notice, I am directing
him not to answer.

MR. SMILEY: Can you mark that
for a ruling, please?

(Whereupon the above question
was marked for a ruling.)

MR. SMILEY: Have a list so
then at the appropriate time when we
call the judge, we will have a list of
the questions that have been blocked,
okay?

Q Is part of your current duties at
Riverbay to handle on behalf of Riverbay this
lawsuit that Sarah Williams has brought
against Riverbay Corporation?

MR. ██████████ Note my
objection. You can answer over
objection.

A It is to oversee and assist counsel
with this lawsuit.

Q What, if anything, have you done prior

1 [REDACTED]
2 to today to assist counsel in defending
3 Riverbay in this third-party claim?

4 MR. [REDACTED] Just note my
5 objection. You can answer, but you
6 can't tell him about conversations
7 we've had. He is not asking you that.

8 A Obtain documents.

9 Q That's it?

10 A That's it.

11 Q What documents have you obtained to
12 assist counsel in defending Riverbay in this
13 claim?

14 MR. [REDACTED] Just note my
15 objection. You can answer.

16 A Contracts, notices, newspaper
17 articles.

18 Q Anything else?

19 A No.

20 Q In addition to providing documents to
21 assist counsel, have you taken any other
22 steps on behalf of Riverbay to defend
23 Riverbay against Sarah Williams' lawsuit?

24 A No.

25 MR. [REDACTED] Just note my

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objection. You can answer.

A No.

Q Have you spoken to any Riverbay employees in connection with defending Riverbay against this lawsuit?

A Yes.

Q What employees have you spoken with?

MR. [REDACTED] Just note my objection. You can answer.

A The legal department.

Q Riverbay has its own legal department?

A Yes, they do.

Q How many employees are there?

A Four.

Q Other than speaking with employees of Riverbay's legal department, have you spoken with any other employees of Riverbay as part of your job in defending Riverbay Corporation against this claim?

MR. [REDACTED] Over
objection, hearsay, you can answer.

A Yes.

Q Who have you spoken with?

A [REDACTED], [REDACTED]. That's

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[REDACTED]
it.

Q That's it?

A Yes. Sorry.

Q Prior to today, have you ever spoke
with [REDACTED] ?

A Yes, I have.

Q He is an employee of Riverbay,
correct?

A Yes, yes.

Q You left him out?

MR. [REDACTED] Objection.

You can answer.

A Yes.

Q Anybody else that you may have left
out that is an employee of Riverbay that you
have spoken with prior to today in connection
with this lawsuit, other than [REDACTED],
[REDACTED] and [REDACTED] ?

A And the legal department.

Q Anybody else?

A No.

Q I would like to talk a moment about --
withdrawn.

Are you familiar with the corporate

1 [REDACTED]
2 structure of Riverbay Corporation?

3 MR. [REDACTED] Objection.

4 You can answer.

5 A Somewhat.

6 Q What is the business of Riverbay
7 Corporation?

8 A We own and manage Co-op City in the
9 Bronx.

10 Q How big is Co-op City?

11 A It is 320 acres, it is 35 highrises,
12 seven townhouses, three community centers,
13 eight tiered garages and a power plant.

14 MR. [REDACTED] Andrew, before
15 you ask the next question, I just want
16 to talk to the witness outside for a
17 second. Can we go off?

18 THE VIDEOGRAPHER: Going off
19 the record at 10:58 a.m.

20 (Recess taken.)

21 THE VIDEOGRAPHER: Back on the
22 record, 11 o'clock.

23 Q Is Riverbay Corporation a private
24 corporation?

25 A Yes.

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Q Is it a for profit corporation?

MR. [REDACTED] Objection.

You can answer.

A It's -- I am not sure.

Q Are there officers in the corporation
of Riverbay Corp.?

A I'm not sure.

Q Is there a chief executive of Riverbay
Corporation?

A No.

Q Is there a chief financial officer of
Riverbay Corporation?

A Yes.

Q Who is that currently?

A [REDACTED].

Q Do you know for how long [REDACTED]
has been the chief financial officer?

A No, I do not.

MR. [REDACTED] Just let him
finish the question for her benefit,
even though you know what it is.

Q Was he the chief financial officer at
the time that you were hired?

A Yes.

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2 Q Who do you report to, if anyone?

3 A I report to the executive general
4 manager, [REDACTED].

5 Q Can you spell his last name?

6 A Yes. [REDACTED].

7 Q Is Mr. [REDACTED] a Riverbay employee,
8 to your knowledge?

9 A No.

10 Q Who, if anyone, does Mr. [REDACTED]
11 work for?

12 A He works for Douglas Elliman.

13 Q Was Mr. [REDACTED] your supervisor at
14 the time that you were hired in May of 2016
15 at Riverbay?

16 A No.

17 Q Who was your supervisor at that time?

18 A The general manager of Riverbay, [REDACTED]
19 [REDACTED], [REDACTED] [REDACTED].

20 Q Was [REDACTED] [REDACTED] a Riverbay employee?

21 A Yes.

22 Q Is [REDACTED] [REDACTED] still employed at
23 Riverbay?

24 A Yes.

25 Q What if any position at Riverbay does

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██████████ hold?

A He is the general manager.

Q Is ██████████ ██████████ in a supervisory position to you currently?

A No.

Q To your knowledge, is there a senior most official executive or officer within Riverbay Corporation?

MR. ██████████ Objection.

You can answer.

A No.

Q Who, to your knowledge, are the most senior employees as far as position, not tenure, senior employees of Riverbay Corporation currently?

MR. ██████████ Just note my objection. I am objecting based on currently. You can answer over objection.

A Can you repeat the question?

Q Currently who are the most senior executives or employees of Riverbay Corporation, and by senior, I am referring to authority and position, not to tenure or time

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and position?

A

Q To your knowledge, is Mr. [REDACTED] the most senior employee as far as authority within Riverbay Corporation?

MR. [REDACTED] Objection to form, foundation and time. It is again far afield of the 30(b)(6). You can answer.

A To my knowledge, yes.

Q Other than Mr. [REDACTED] are there other senior employees with authority similar or close to that of Mr. [REDACTED] at Riverbay Corporation?

MR. [REDACTED] Same objection. You can answer.

A The assistant general manager is

[REDACTED] [REDACTED] [REDACTED]
[REDACTED].

Q Who was the general manager in 2016 of Riverbay Corporation when you were hired?

A

Q Who is the general manager of Riverbay Corporation in January of 2014?

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[REDACTED]
A I do not know.

Q Who was the general manager of
Riverbay Corporation in 2012?

MR. [REDACTED] Objection.

You can answer.

A I believe it was [REDACTED] either
[REDACTED] or [REDACTED]

Q Was [REDACTED] or [REDACTED] an
employee of Riverbay in 2012?

A No.

Q Who was the general manager if there
was one employed by Riverbay as an employee
in 2012?

MR. [REDACTED] Just note my
objection. You can answer.

A I do not know.

Q Prior to today, did you take any steps
to determine who, if anyone, was the general
manager as an employee of Riverbay in 2012?

MR. [REDACTED] Just note my
objection. You can answer.

A No.

Q Who, if anyone, was the general
manager employed by Riverbay Corporation in

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2013?

MR. [REDACTED] Note my
objection. You can answer.

A I believe once again it was either
[REDACTED] or [REDACTED]

Q Am I correct that they would not have
been employees of Riverbay Corporation at
that time?

A I believe so, yes.

Q My question is, were there any
employees of Riverbay who were in a general
manager position in 2013?

MR. [REDACTED] Objection.

Asked and answered. You can answer it
again.

A I do not know.

Q Did you take any steps prior to today
to determine who, if anyone, was employed by
Riverbay as a general manager in 2013?

A No.

MR. [REDACTED] Objection to
form, foundation, mischaracterizing
testimony. You can answer. You did.

A No.

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MR. [REDACTED] Just give me time.

A Sorry.

MR. [REDACTED] Otherwise it
will be backwards on the record. I
should be objecting before you answer.

THE WITNESS: Okay, got it.

MR. [REDACTED] Just a second
or two.

THE WITNESS: Okay.

Q Prior to working for Riverbay Corporation, approximately how many third-party injury lawsuits did you oversee the defense of in holding a position of risk manager?

MR. [REDACTED] Just note my objection; form, foundation, relevance and beyond the scope of the 30(b)(6). Over objection, you may answer.

A Can you just repeat the question?

MR. SMILEY: Could you read
that for me?

THE WITNESS: Read that back.

(Whereupon, the record was read

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back by the reporter.)

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A Prior to Riverbay?

4

Q Yes, sir.

5

A So my other jobs, my other positions?

6

Q Yes, sir?

7

A I would say 20 to 25.

8

Q In total?

9

MR. [REDACTED] Objection.

10

Asked and answered. You can answer it

11

again.

12

A No, more than -- if it is all the way

13

back to my -- from 1986 on?

14

Q Yes, sir.

15

MR. [REDACTED] Over

16

objection, you can answer.

17

A I would say 50.

18

Q * Since starting at Riverbay

19

Corporation in May of 2016 up until the

20

present time, approximately how many

21

third-party injury claims or lawsuits have

22

you assisted in the defense of Riverbay

23

Corporation?

24

MR. [REDACTED] Just note my

25

objection. Counsel, I am not going to

1 [REDACTED]
2 let him answer anything after the date
3 of this fire. It is beyond the scope
4 of the deposition and it is
5 inappropriate.

6 MR. SMILEY: Are you directing
7 him not to answer?

8 MR. [REDACTED] Unless you
9 rephrase to go up to and include the
10 date of this fire because reading your
11 30(b)(6), it goes through 2017, it
12 doesn't go 2018, 2019, 2020.

13 So yes, if you rephrase and you
14 narrow it, I will let him answer. I
15 just want to be clear on that.

16 MR. SMILEY: I want to be clear
17 that you did not object to our
18 30(b)(6). That it is an appropriate
19 question, that you can't block him
20 from answering it.

21 I am not going to rephrase it
22 because I think it is relevant to many
23 issues in this case including chain of
24 custody including tampering
25 potentially with evidence after the

1 [REDACTED]
2 fire, including bringing in experts
3 without other counsel being present
4 and including an affidavit that we
5 will be discussing which is the
6 subject, that happened after 2017.

7 So, I believe my question is
8 appropriate. If you want to object
9 and block him from answering, then we
10 will mark it for a ruling.

11 MR. [REDACTED] Based on what
12 you just said, which is somewhat
13 surprising and shocking, you are
14 casting aspersions that are not in
15 evidence that are your opinions.

16 Your 30(b)(6), I wouldn't have
17 to object to a 30(b)(6) that doesn't
18 talk about 2018, 2019 and 2020 because
19 it doesn't.

20 Are you asking him now
21 questions that go through 2020 and yet
22 not one of your paragraphs in your
23 30(b)(6), all 18 of them talk about
24 2020, 2019, 2018.

25 So I can't be clairvoyant and

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know that you are going to ask some questions. I wouldn't have to object to something I can't figure out or is not in writing or we are not on notice of. It doesn't work that way.

I would encourage you again to rephrase your question and to limit it up to and including this fire or after with the investigation of this fire, I have no problem with that, but I think it is really unfair what you are trying to do and what you are purporting to do, and I just want the record to be clear about that.

MR. SMILEY: I will modify it to the date that Mr. ██████████ signed his affidavit, if you will agree to that up until that date, but that's the extent to which I'd modify it.

MR. ██████████ Tell me the date Mr. ██████████ signed his affidavit again, please. You can continue typing. While you are looking for that, while you are only asking about

1 [REDACTED]
2 this fire, after the date of this fire
3 and his investigation of it or his
4 knowledge of [REDACTED] affidavit or
5 any of that, I don't have a problem
6 with it because it is potentially
7 relevant, but if you are asking about
8 other cases that don't involve this,
9 after the date of the incident, then I
10 have a problem with it.

11 MR. SMILEY: So I tried to
12 resolve your concerns. I am willing
13 to limit my question up to the date of
14 January 14th, 2009 -- 2019.

15 However, I will not rephrase
16 the substance of my question with
17 regard to how many claims regarding
18 injuries he has defended on behalf of
19 Riverbay up until that time as it is
20 highly probative.

21 You can make your argument. I
22 will respect your argument, but if you
23 are going to block him, then we will
24 just mark it for a ruling and add it
25 to the list to ask the judge. We

1 [REDACTED]
2 don't need to litigate it between each
3 other.

4 MR. [REDACTED] Like I said, I
5 have no problem with you asking him
6 about the [REDACTED] affidavit or
7 anything that he investigated
8 regarding the Renna and Stanley
9 Williams fire before it, at the time
10 of it, or after it up until today.
11 But when it comes to unrelated
12 irrelevant slip and falls or anything
13 of that nature, obviously they are not
14 relevant and unless you can show me
15 that they are the subject of your
16 30(b)(6) deposition which is what we
17 are here for, unless you can show me
18 that language in it, I have no choice
19 but to direct him not to answer
20 because I didn't get a chance to make
21 a motion against something that was
22 overbroad or not relevant to this case
23 at all.

24 So, you know, I stand on my
25 objection. I am willing to work it

1 [REDACTED]
2 out with you. I am willing for him to
3 answer any questions about Vicente,
4 the Vicente affidavit to the extent
5 that he knows, et cetera, but not
6 other cases after the date of the loss
7 and nothing that strays from the
8 30(b)(6) deposition notice, counsel.

9 MR. SMILEY: Can you mark the
10 question for a ruling? I know you may
11 have to go back a little ways. Mark
12 it for a ruling, please.

13 (Whereupon the above question
14 was marked for a ruling.)

15 Q Sir, prior to January of 2017, how
16 many if any third-party lawsuits stemming
17 from an injury that were brought against
18 Riverbay Corporation were you involved in as
19 a risk manager in defending Riverbay
20 Corporation?

21 MR. [REDACTED] Over
22 objection, you may answer.

23 A Since my date of hire?

24 Q Yes, sir.

25 A May '16 through January '17?

1

2 Q Yes, sir.

3 A Possibly in that time period, four or
4 five.

5 Q Prior to January '17, were you ever
6 involved in your position at Riverbay in
7 defending Riverbay from claims stemming from
8 an injury or death caused as a result of a
9 fire?

10 MR. [REDACTED] Just note my
11 objection; form, foundation. You can
12 answer.

13 A Resulting in death?

14 Q Injury or death from a fire?

15 MR. [REDACTED] Over
16 objection, you can answer.

17 A Zero.

18 Q Other than lawsuits, were you aware of
19 any claims brought, third-party claims
20 brought against Riverbay during your tenure
21 prior to January of 2017 that involved a
22 death or injury from a fire?

23 MR. [REDACTED] Just note my
24 objection. You can answer.

25 A Zero.

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Q Are you aware of any claims or lawsuits brought against Riverbay Corporation prior to your starting in May of 2016 where there was a claim of an injury or death from a fire?

MR. ██████████ Just note my objection. You can answer.

A No.

MR. SMILEY: Can you mark this as Plaintiff's Exhibit 2?

(Whereupon the third-party notice was marked Plaintiff's Exhibit 2 for identification as of this date.)

MR. ██████████ It is the third-party notice, right?

MR. SMILEY: Yes.

MR. ██████████ You want him to see it?

MR. SMILEY: Yes.

Q Sir, I have just handed you a six-page document that we've marked as Plaintiff's Exhibit 2 for identification that's entitled "Rule 30(b)(6) Notice to take depositions of

1 [REDACTED]
2 defendants/third-party plaintiffs by their
3 designees."

4 Have you seen this document prior to
5 today?

6 A Yes.

7 Q When did you first see this document?

8 A With my attorney.

9 Q When, sir, did you first see it?

10 A I don't recall the exact time.

11 Q Was it within the calendar year 2020
12 or prior to the calendar year 2020?

13 MR. [REDACTED] Just note my
14 objection. You can answer.

15 A Within the calendar year 2020.

16 Q Was it prior to February of 2020 when
17 you first saw this notice?

18 MR. [REDACTED] Just note my
19 objection. You can answer.

20 A I don't recall.

21 Q Was it prior to the last month up
22 until today? Today is March 6th, did you
23 review this prior to February 6th?

24 A Yes.

25 MR. [REDACTED] Note my

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objection. You can answer.

A Yes.

Q Did you review the contents of this notice at some point?

MR. [REDACTED] Objection.

Asked and answered. I don't really understand the distinction. He read it. Did he review the contents of it? How does that differ?

Q Did you see that there were 18 items listed within this notice, sir?

MR. [REDACTED] Just note my
ion. You can answer.

A Yes.

Q Was it your understanding prior to coming today that you were going to be asked questions with regard to the 18 items contained within this notice?

MR. [REDACTED] Just note my
 ion. You can answer.

A Yes.

Q Was it also your understanding that you were expected to either have knowledge such that you could provide answers to these

1 [REDACTED]
2 18 items and if you did not have personal
3 knowledge, that you were expected to take
4 steps to gain knowledge with respect to these
5 18 items?

6 MR. [REDACTED] Just note my
7 objection to form and foundation. You
8 can answer over objection.

9 A To answer, to obtain information on
10 all, no, but to learn as much as I could for
11 this 30B deposition, yes.

12 Q Did you go through each of the
13 individual 18 items listed on this 30(b)(6)
14 notice prior to today in preparation for
15 today in an attempt to gain knowledge so that
16 you could testify with regard to those 18
17 items today?

18 MR. [REDACTED] Over
19 objection, you can answer.

20 A Yes.

21 Q I would like you to look at item
22 number 1 which is on page 4 of this document.

23 A Okay.

24 Q Is it fair to say that you have read
25 through item number 1 prior to today?

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[REDACTED]

MR. [REDACTED] Just note my
objection. You can answer.

A Yes.

Q Do you have personal knowledge of the
information contained within item number 1
which I will just read for the record. It
states as follows, "Defendant/third-party
plaintiffs' obligation to conduct specific
critical repairs in quotes in accordance with
a building loan agreement dated November 28,
2012 between [REDACTED] Bank, National
Association and Riverbay Corporation in the
amount of \$621,500,000 with knowledge of
measures taken to complete items in quote
table one-critical repairs closed quote
sections 3.1 and 7.6."

MR. [REDACTED] Just note my
objection to the form. You could
answer.

A Personal knowledge, detailed
knowledge, no, but I do recall seeing a
document amongst many, many, many documents
for some critical repairs.

Q Sir, what, if any steps did you take

1 [REDACTED]
2 prior to today to be prepared to answer
3 questions with regard to item number 1 which
4 I have just read to you?

5 MR. [REDACTED] Just note my
6 objection. You can answer.

7 A Peruse documents assisted by counsel
8 for today's deposition.

9 Q Other than perusing documents with the
10 assistance of counsel, did you speak with
11 anybody employed at any time with Riverbay
12 from 2012 to present to prepare yourself to
13 answer questions relating to item number 1?

14 MR. [REDACTED] Just note my
15 objection. You can answer.

16 A Yes.

17 Q Who did you speak with?

18 A Briefly [REDACTED]

19 Q Anyone else?

20 A No.

21 Q Who is [REDACTED]

22 A Chief financial officer Riverbay
23 Corporation.

24 Q Did Mr. [REDACTED] have personal knowledge
25 of any of the information identified in item

1 [REDACTED]
2 one of this 30(b)(6) notice?

3 MR. [REDACTED] Just note my
4 objection. You could answer.

5 A Personal knowledge, I don't recall.

6 Q Was Mr. [REDACTED] employed by Riverbay at
7 the time of this loan document agreement
8 dated November 28, 2012?

9 A I'm not sure.

10 Q Did Mr. [REDACTED] provide you with any
11 information that assisted you in preparing to
12 respond to questions with regard to item
13 number 1 in plaintiff's 30(b)(6)?

14 MR. [REDACTED] Just note my
15 objection. You could answer.

16 A Specific critical repairs information,
17 no.

18 Q Did he provide you with any
19 information to assist you in your testimony
20 today to respond with regard to the items
21 identified in number 1 of the 30(b)(6)
22 notice?

23 A No.

24 Q Did you independently seek to obtain
25 documents to prepare you in providing answers

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[REDACTED]
to questions with regard to item number 1?

A No.

Q Why not?

MR. [REDACTED] Just not my
objection.

Q You can answer.

MR. [REDACTED] You can
answer. Sorry.

A I attempted, but could not find -- and
could not find anything regarding these
critical repairs.

Q What attempts did you make
independently to find documents in connection
with Riverbay's loan agreement dated
November 28, 2012?

MR. [REDACTED] Just note my
objection. You can answer.

A Inquired with the legal department.

Q Did they provide you with documents?

A The overall loan, yes.

Q Did you receive loan documents from
the legal department?

MR. [REDACTED] Over my
objection, you can answer.

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2 A I did not receive. I looked at the
3 documents they had in their office.

4 Q What documents were provided to you?

5 A The 621 and a half million dollar
6 loan.

7 Q Specifically, was it a two-page
8 document, was it thousands of pages?

9 A Thousands of pages, three binders,
10 huge binders.

11 Q Did you read through all of them?

12 A No.

13 Q Why not?

14 MR. [REDACTED] Just note my
15 objection. You can answer.

16 A I did not read each and every of the
17 many, many pages.

18 Q How much of it did you read?

19 A Looking for the critical repairs,
20 that's it.

21 Q How many pages did you read of all of
22 those?

23 MR. [REDACTED] Just note my
24 objection. You can answer.

25 A A few hundred.

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Q Did you find information?

A No.

Q Not finding information, did you take any additional steps so that you could be prepared to answer questions relating to item number 1?

MR. [REDACTED] You are talking about including with counsel? Just be clear.

MR. SMILEY: Yes, I am not interested in anything that you spoke with counsel about. I am asking what you independently did.

MR. [REDACTED] I am okay with you asking though for clarification because I don't want to limit it, if I showed him anything.

A Counsel showed me.

Q Prior to having -- Mr. [REDACTED] you are referring to, by the way?

A Yes, I am sorry.

Q Prior to Mr. [REDACTED] showing you any documents, what documents did you independently, as a representative of

1 [REDACTED]
2 Riverbay, review to prepare to respond at
3 this deposition to item number 1?

4 MR. [REDACTED] Just note my
5 objection. I want it to be clear,
6 other than the three binders he is
7 talking about. I didn't show him the
8 three binders.

9 MR. SMILEY: Other than the
10 three binders?

11 MR. [REDACTED] And to be
12 clear, I showed him documents from
13 your 67,000 pages contained on your
14 disk that you supplied from EMG
15 Clempett, okay, so that you know.

16 MR. SMILEY: Thank you.
17 A Other than the binders and what my
18 counsel showed me, nothing else.

19 MR. [REDACTED] Hold on. I
20 also showed him documents that have
21 been exchanged in discovery by prior
22 defense counsels in this case. So he
23 has seen many documents. I want that
24 to be clear.

25 MR. SMILEY: Thank you for

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[REDACTED]
that.

MR. [REDACTED] I don't want
to have to go back over it or correct
the record. He has seen a lot of
documents.

Q Did you take any measures to speak
with any individuals that were involved on
behalf of Riverbay Corporation with this loan
agreement dated November 28, 2012?

MR. [REDACTED] Just note my
objection to form and foundation.
Over objection, you can answer.

A Just legal department.

Q Were the members of the legal
department involved -- withdrawn.

Were the members of the legal
department who you spoke with involved in
November, 2012 with this loan?

MR. [REDACTED] Just note my
objection. You can answer.

A I have no knowledge -- I do not
recall. I don't know.

Q Is it fair to say, sir, that you are
coming here today as a representative of

1 [REDACTED]
2 Riverbay Corporation to speak specifically in
3 response to questions with regard to item
4 number 1 referencing the loan agreement
5 November 28, 2012 without any personal
6 knowledge and without having spoken to
7 anybody at Riverbay who had personal
8 knowledge from November, 2012?

9 MR. [REDACTED] Just note my
10 objection to the form and to
11 foundation. You can answer.

12 A I'm here to testify on behalf of
13 Riverbay on these -- on the 30(b)(6). I'm
14 not specifically up to speed on all the
15 critical repairs document.

16 Q That wasn't my question, sir. I am
17 going to ask that the court reporter read
18 back and see if you could answer it.

19 MR. [REDACTED] Before you ask
20 the next question, can I talk to you
21 outside?

22 MR. SMILEY: I would like to
23 get him to answer that question first.

24 MR. [REDACTED] That's fine.

25 MR. SMILEY: Then we can stop.

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A Can you just read back the question?

(Whereupon the record was read
back by the reporter.)

A I'm here to speak on the 30(b)(6), but in regard to question number 1, I don't have the knowledge for this.

MR. SMILEY: Why don't we go
off the record, take a break?

THE VIDEOGRAPHER: Going off
the record at 11:28 a.m.

(Recess taken.)

THE VIDEOGRAPHER: Back on the
record at 11:52 a.m.

MR. SMILEY: Counsel, with your permission, I am showing the witness what we have marked as Plaintiff's Exhibit 3 for identification. It is nine pages that I have selected out and collectively stapled together from the building loan agreement dated November 28, 2012 between [REDACTED] Bank National Association and Riverbay Corporation.

Q I would ask for the witness just to

1 [REDACTED]
2 take a moment to flip through this document
3 and let me know when you are done and then I
4 am going to ask you some questions about it.

5 MR. [REDACTED] Just for the
6 record, the first four pages are in
7 chronological order and then you have
8 some exhibits or critical repair
9 attachments that you put in. So it is
10 not -- these are culled out of a
11 bigger document.

12 MR. SMILEY: Exactly. These
13 are from the loan agreement document.

14 MR. [REDACTED] That's fine.

15 MR. SMILEY: It is not the
16 entire document. These are just
17 specific pages.

18 MR. [REDACTED] Thank you.

19 MR. SMILEY: I numbered them 1
20 through 9, just for the convenience of
21 looking.

22 MR. [REDACTED] Thank you.

23 (Whereupon nine pages of
24 building loan agreement was
25 marked Plaintiff's Exhibit 3

1 [REDACTED]
2 for identification as of this
3 date.)

4 MR. [REDACTED] When you are
5 done, let him know.

6 A All set, but do you have -- you said
7 you have bigger pages for 7, 8 and 9?

8 Q Yes, I do.

9 A Can you share those?

10 Q Yes, I will get to those.

11 A All right.

12 Q For now, don't worry about having to
13 read 7, 8 and 9 from this. Just if you
14 recognize them in general, okay?

15 A Yes.

16 Q Starting with page number 1, have you
17 ever seen this page before?

18 A I believe I recall seeing this, yes.

19 Q When did you first see this page?

20 A Reviewing preparing for the 30B with
21 counsel.

22 Q Prior to reviewing this document with
23 counsel, did you review this page in any of
24 the documents contained in connection with
25 this page with anyone at Riverbay

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Corporation?

A No, I did not.

Q Do you know what this is?

A It is the loan agreement for the 621
and a half million dollar loan between Wells
Fargo and Riverbay.

Q Do you dispute in any way that this
loan agreement exists and was, in fact,
entered into between Riverbay Corporation and
██████████ Bank on November 28, 2012 for the
loan amount of \$621 million 500,000?

MR. ██████████ Just note my
objection to form, foundation. You
may answer over objection.

A It is my belief that this loan was
executed as stated.

Q Do you know who on behalf of Riverbay
Corporation signed these loan documents?

A No, I do not.

Q Did you take any steps to determine
who if anyone from Riverbay Corporation
signed these loan documents?

A No, I did not.

Q Can you turn to page 2, please. Do

1 [REDACTED]
2 you see on page 2 under recitals, the first
3 paragraph where it says "Whereas borrower is
4 the owner of fee title to the land described
5 in Exhibit A"?

6	A	Borrower, yes.
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7 Q Is it your understanding that Riverbay
8 Corporation is the owner of fee title to the
9 property generally known as Co-op City?

10 MR. [REDACTED] Just note my
11 objection. It calls for a legal
12 conclusion. Over objection, you can
13 answer.

14 | A To my knowledge, yes.

15 Q In the second paragraph, do you see
16 where it indicates the loan amount of
17 \$621,500,000?

18	A	Yes.
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19 Q Is it your understanding here as a
20 representative of Riverbay Corporation that
21 indeed in 2012, Riverbay applied for and was
22 granted a loan in the amount of \$621,500,000?

23	A	Yes.
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24 MR. [REDACTED] Just note my
25 objection. Asked and answered. You

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can answer it again.

A Yes.

Q Now, on the third paragraph that starts with "Whereas," it states that "The borrower and lender are entering into the loan subject to and on the terms and conditions set forth in a note insured by FHA."

Do you see that?

A Yes.

Q What is FHA?

A I do not know.

Q Prior to today, did you take any steps to determine what FHA is?

MR. [REDACTED] Just note my
ion. You can answer.

A No.

Q Later on in that sentence, there is a reference to HUD, do you see that?

A Yes.

Q Do you know what HUD is?

MR. [REDACTED] Just note my
ion. You can answer.

A Housing and Urban Development.

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Q What if any relation does Riverbay Corporation have with HUD?

MR. [REDACTED] Just note my objection. You can answer.

A I do not know specifically.

Q Currently, is there any connection between Co-op City, Riverbay Corporation and HUD?

MR. [REDACTED] Just note my objection as to anything current. You can answer over objection.

A Specifically, no.

Q No, there is no connection or you do not know?

A I do not know.

Q From 2012 up through 2017, what is your understanding of a relationship between HUD and Co-op City?

MR. [REDACTED] Just note my objection. You can answer.

A Specifically, I do not know.

Q Are you aware that there were specific HUD guidelines that Riverbay was required to follow in order to obtain this loan that we

1 [REDACTED]
2 are referring to?

3 MR. [REDACTED] Just note my
4 objection. Counsel, again, this is
5 not something specifically listed in
6 your 30(b)(6) deposition notice which
7 he is here for.

8 FHA, HUD, things of that nature
9 are not even mentioned in here, unless
10 I am misreading your 18 paragraph
11 notice.

12 So, over objection, he can
13 answer, but I think you are far afield
14 of where you need to be today.

15 MR. SMILEY: Let me just
16 respond to that so we are clear.
17 First of all, the first item of the 18
18 on my 30(b)(6) notice references and I
19 quote November 28, 2012 as the
20 building loan agreement that the
21 witness should have knowledge of.

22 I just handed him page 1
23 entitled "Building loan agreement
24 November 28, 2012" and we are only on
25 page 2 of that agreement. So I don't

1 [REDACTED]
2 think that my 30(b)(6) could have been
3 more crystal clear that we needed a
4 witness from Riverbay with knowledge
5 with regard to what I am asking him
6 about on page 2 of this loan
7 agreement.

8 That being said, I appreciate
9 your objection and I will ask you to
10 please have the witness answer the
11 question.

12 MR. [REDACTED] I have to
13 respond to that. I don't want to
14 spend all day doing this or on
15 definitions, but paragraph 1 talks
16 about critical repairs in accordance
17 with a loan document.

18 You are not asking him yet
19 about critical repairs in accordance
20 with the loan document. You are
21 asking him for definitions of FHA and
22 HUD.

23 I would encourage you to get to
24 the critical repairs section. He is
25 prepared to answer questions about

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that. He has been prepared on those.
He was shown the documents called
critical repairs by me from the 67,000
pages of documents you put on a disk.

Please limit it to what your
deposition notice gave us notice of
and not definitionally things that are
really far afield of it.

MR. SMILEY: Counsel, you know
speaking objections are not
appropriate. You can make your
objection. We don't need to get into
it --

MR. ██████████ I let him
answer it already. I am letting him
answer.

MR. SMILEY: Please don't make
the speaking objections. You can
object, direct him not to answer or
you can object and he can answer, and
then we will move on. If you don't
want him to answer something, we will
mark it for a ruling, okay?

MR. ██████████ I am trying to

1 [REDACTED]
2 facilitate your deposition. I don't
3 want to direct him not to answer,
4 that's not my goal today.

5 MR. SMILEY: I have questions I
6 need to ask this witness to find out
7 what his knowledge is.

8 MR. [REDACTED] Go ahead.

9 Q Sir, are you aware whether or not
10 since 2012 up to January of 2017 that
11 Riverbay Corporation was required to comply
12 with specific HUD guidelines in connection
13 with this loan?

14 A I was aware of critical repairs for
15 the loan, but I am not aware of where the
16 critical repairs came from, HUD or another
17 entity.

18 Q Am I correct that your knowledge of
19 the critical repairs comes from reviewing
20 documents provided to you by Mr. [REDACTED]

21 A Yes.

22 Q I would like you to turn to page 3 of
23 Plaintiff's Exhibit 3, the loan doc. I am
24 going to direct your attention to the bottom
25 of page 3, article 2 "Repair and improvement

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[REDACTED]
obligations."

Do you see that, sir?

A Yes.

Q Do you see article 2.1 that says
"Critical repairs"?

A Yes.

Q Do you see in subdivision A where it
says quote "Borrower has deposited loans,
loan proceeds with the lender \$2,306,300,
parens critical repairs escrow closed parens
for the improvement and repairs described in
Exhibit B closed parens critical repairs."

Do you see that?

A Yes.

Q Do you have any independent knowledge
about what this language that I just read is
referring to other than reviewing a document
shown to you by counsel?

MR. [REDACTED] Over

objection, you can answer.

A Yes.

Q Tell me what your understanding of
what this is referring to?

A The critical repairs, the money

1 [REDACTED]
2 allocated here the 2,306,300 for the
3 installation of GFCI outlets, a smoke
4 detector project for smoke detectors to be
5 installed in all units.

6 Q What is your basis of that knowledge,
7 sir; where did you get that information from?

8 A From review of documents with
9 Mr. [REDACTED]

10 Q Other than reviewing documents
11 provided to you by Mr. [REDACTED] do you
12 have any other understanding of what this
13 amount of \$2,306,300 and the critical repairs
14 it refers to means?

15 MR. [REDACTED] Just note my
16 objection. You can answer.

17 A Other than what I have stated, no.

18 Q Can you turn to the next page, please,
19 number 4, the fourth page? At the top of
20 that page, do you see subdivision B where it
21 says quote "The borrower agrees to provide
22 quarterly written updates to HUD on the
23 status of the critical repairs beginning
24 December, 2012"?

25 Do you see that?

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A Yes.

Q Is it your understanding, sir, that
this was a condition of the
621 million-dollar loan that was provided to
Riverbay, that Riverbay agreed to provide
such quarterly written updates?

A It is my belief, that's yes.

Q Did Riverbay provide HUD, the State of
New York with such quarterly written updates
beginning December, 2012?

A I do not know.

Q Prior to today, did you take any steps
to determine if such quarterly written
updates were provided by Riverbay to HUD?

A No.

Q Did you attempt to look within any of
the files maintained by Riverbay Corporation
for such quarterly written updates?

A No.

Q Paragraph C, do you see that, sir?

A Yes.

Q Do you see where it says quote "The
borrower agrees to complete the critical
repairs free of all liens within 18 months of

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closing"?

Do you see that?

A Yes.

Q Did Riverbay Corporation complete the
critical repairs within 18 months of closing?

MR. ██████████ Just note my
objection. You can answer.

A To the best of my knowledge, I believe
they did.

Q What is your basis of that knowledge?

A The loan still exists.

Q When was the loan closed?

A I do not know.

Q When were the critical repairs
completed?

A I do not know.

Q How do you know, sir, then that the
repairs were completed free of all liens
within 18 months of closing?

MR. ██████████ Just note my
objection. You can answer.

A It is my belief that had the critical
repairs not been done within 18 months. I
would, to my belief, think that the loan

1
2 would have been recalled.

3 Q Other than your belief as to that, I
4 am asking if you have any specific knowledge
5 based on personal knowledge or speaking with
6 anyone within Riverbay as to whether or not
7 the critical repairs were indeed completed
8 within 18 months of closing?

9 | A No.

10 Q Now, I would like you to look down
11 under article 3 loan disbursements and
12 inspections, article 3.1 disbursements to
13 borrower.

14 Do you see that, sir?

15	A	Yes.
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16 Q I would like to direct your attention
17 to subdivision A which references
18 "Disbursements from the critical repairs
19 escrow."

20 | Do you see that?

21 | A (Witness reading). A, yes.

22 Q Do you see where it states as follows
23 quote "On a monthly basis, borrower shall
24 deliver to lender and DHCR a request for
25 payment parents payment request on DHCR's

1 [REDACTED]
2 HM-11 form and an application and
3 certification of payment attached hereto as
4 Exhibit D together with all supporting
5 certificates and other documentation required
6 by DHCR and lender"?

7 Do you see that?

8 A Yes.

9 Q Do you know if Riverbay Corporation
10 did indeed deliver to the lender and DHCR
11 such documents?

12 A I do not know.

13 Q Did you take any steps prior to today
14 to determine if that was performed?

15 MR. [REDACTED] Just note my
16 objection. You can answer.

17 A No.

18 Q Do you know what DHCR stands for?

19 A Division of Housing and Community
20 Renewal.

21 Q Is it your understanding that that is
22 a State of New York entity?

23 A Yes.

24 Q Would you, as you sit here today, be
25 able to locate or determine if they exist

1 [REDACTED]
2 such requests for payment as specified in
3 article 3.1 subdivision A, further
4 subdivision A?

5 MR. [REDACTED] Just note my
6 objection. You can answer.

7 A I do not know.

8 MR. SMILEY: I'm going to call
9 for the production of documents
10 throughout this deposition. If you
11 may index those for me and I will
12 follow them up in writing, counsel.

13 MR. [REDACTED] We will take
14 all requests under advisement. Please
15 do follow up in writing.

16 MR. SMILEY: We request the
17 defense produce the quarterly written
18 updates to HUD on the status of the
19 critical repairs beginning 2012 as per
20 article 2.1 subdivision B of the loan
21 agreement dated February 28, 2012.

22 To the extent the items are not
23 produced, an affidavit of the search
24 that was undertaken to attempt to
25 locate such documents we request be

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provided.

MR. [REDACTED] Kidde and Home
Depot join in that request.

MR. [REDACTED] I will take
all requests under advisement.

MR. [REDACTED] I join as well.

MR. [REDACTED] As is Marion
Scott.

MR. [REDACTED] I will keep
saying the same thing, all requests
are taken under advisement. Thank
you.

MR. [REDACTED] Southside joins
in all requests.

REQUEST NOTED:

MR. SMILEY: We also request
that the defendant produce the request
for payment DHCR, HM-11 forms if any
that Riverbay submitted to DHER [sic]
to receive payment and to the extent
that no such documents are provided or
located, we would request an affidavit
attesting to the efforts taken to
locate and produce those documents?

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MR. [REDACTED] Kidde and Home
Depot join.
MR. [REDACTED] Join.
MR. [REDACTED] We will take
all requests under advisement.

REQUEST NOTED:

Q I would like you to continue looking
at that same paragraph and looking at the
last sentence, it says quote "For payment
requests for critical repairs, borrower shall
include a log identifying the units for which
the critical repairs had been completed along
with an invoice for disbursement of \$150 per
unit."

Do you see that?

A Yes.

Q Do you know if Riverbay ever submitted
payment requests for critical repairs to be
reimbursed at the rate of \$150 per unit?

A I do not know.

Q Prior to today, did you take any steps
to determine if such requests for payments
were ever made?

A No.

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MR. SMILEY: We call for the
production of payment requests for
critical repairs submitted by Riverbay
requesting reimbursement in the amount
of 150-dollars per unit along with any
logs identifying the units for which
the critical repairs have been
completed as per the last sentence of
second subdivision A of article 3.1 of
the 2012 loan agreement.

MR. [REDACTED] Kidde and Home
Depot join.

MR. [REDACTED] We join.

MR. [REDACTED] Join.

MR. [REDACTED] Take all
requests under advisement.

REQUEST NOTED:

Q Sir, do you know how that 150-dollar
per unit amount was arrived at?

A No, I do not.

MR. [REDACTED] Also let me
note that paragraph 1 of your notice
specifically requests items about
sections 3.1 and 7.6 only. Your

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request now, your deposition now
strays from that.

MR. [REDACTED] I am going to make
a statement on the record and I am not
questioning yet. I want to preserve
my right that throughout the
deposition, counsel for Riverbay has
stated certain objections having to do
with I believe outside scope of the
30(b)(6) notice.

Pursuant to both the Federal
rules as well as the case precedent, I
believe that the proper objection to
save time would be objection outside
the scope of the notice. Over
objection, he can answer.

I state this solely for the
purpose that if I don't get to
question today or I believe that the
day is wasted, based upon the
objections and we don't get the
testimony that we need, that I would
preserve my client's right to move for
costs for this deposition.

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MR. [REDACTED] Just note my
objection to your characterization. I
just want to be clear in what my
objections are so that everyone knows.
I am not going to hamper you or time
my objections or take the time away
from you based solely on that,
counsel, so you don't need to worry
about it.

MR. [REDACTED] I appreciate that.
My only point is that under the rules,
a witness shouldn't be instructed
because it is outside the scope.

The objection, as someone who
represents corporate defendants should
be, outside the scope, over objection
you can answer. That would just speed
things up, but I understand counsel's
point and I appreciate it. Thank you.

MR. [REDACTED] I join.

MR. [REDACTED] Join.

MR. [REDACTED] I join.

MR. SMILEY: I join in that
objection as well.

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██████████
Q Sir, do you understand what the procedure was with regard to the critical repairs by which Riverbay would be reimbursed escrow monies upon completion of such critical repairs?

A My understanding is the critical repairs had to be performed for the loan to close and if they were not, then it is my belief that the loan would not close.

Q That wasn't my question, sir. I will ask the court reporter to read back my question and if you could please do your best to answer the specific question?

A Okay.

MR. ██████████ I think he is trying to do his best.

MR. SMILEY: I don't doubt that.

(Whereupon the record was read back by the reporter.)

A No, I do not.

Q Prior to today, did you attempt to find out what that procedure was for Riverbay being reimbursed escrow monies upon the

1 [REDACTED]
2 completion of critical repairs in the
3 submission of the documentation required in
4 article 3.1 subdivision A?

5 A No, I did not.

6 MR. [REDACTED] Note my
7 objection.

8 Q Can you turn to page 5 of this
9 exhibit, please? Do you see where it says
10 "Exhibit B critical repairs schedule of
11 improvements"?

12 A Yes.

13 Q Have you seen this part of the loan
14 agreement prior to today?

15 A I believe I have seen it, yes.

16 Q Do you have any reason to dispute that
17 this page references the critical repairs
18 that are referred to in this loan agreement?

19 A No, I don't dispute it.

20 Q Do you see that the critical repairs
21 referred to include installation of smoke
22 detectors as well as installation of GFCI
23 outlets?

24 A Yes.

25 Q Do you see that the smoke detector and

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██████████
GFCI installation is estimated to cost
\$2,306,300?

A Yes.

Q Can you tell me as of November of 2012
how many units existed in Co-op City under
Riverbay Corporation's management?

MR. ██████████ You are
talking about -- let me just get a
clarification and then he can answer.

MR. SMILEY: Okay.

MR. ██████████ All the
buildings he has described,
townhouses, all of that?

MR. SMILEY: Yes.

MR. ██████████ Okay, go
ahead.

A 15,372.

Q Are you aware, sir, that if you divide
\$2,306,300 by the amount of units being
15,372, that comes out to exactly \$150 per
unit, are you aware of that?

A I will trust you on your math and I
will say yes.

Q Are you aware that that is indeed the

1 [REDACTED]
2 basis upon which disbursements pursuant to
3 article 3.1 on the fourth page of this
4 document would be made upon the completion of
5 critical repairs for each unit whereas 150
6 would be reimbursed at that time?

7 A Okay, yes.

8 Q Do you have any reason to dispute that
9 that was the process that the bank was
10 escrowing \$2,306,300, representing \$150 per
11 unit and that upon the submission by Riverbay
12 to the bank showing that the repairs were
13 done in each unit they would be reimbursed
14 \$150 per unit?

15 MR. [REDACTED] Just note my
16 objection as to the form, the
17 foundation and the knowledge of the
18 bank. Over objection, you can answer.

19 A To the best of my knowledge, that
20 sounds reasonable.

21 Q In your work with property management
22 firms in your career, have you seen this type
23 of process previously?

24 A No.

25 MR. [REDACTED] Just note my

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objection.

Q Do you know how the sum of \$2,306,300 was arrived at as the estimated cost for the critical repairs to install smoke detectors and GFI outlets?

A No, I do not.

Q I would like to turn your attention to the next page that says "Co-op City critical repairs" and then turn one more page where a table starts. This is the one I know that it is small, don't worry, I am going to get you a bigger one, but do you see where it says "Table 1-critical repairs"?

A Yes.

Q Prior to today, have you seen the entirety of table 1 critical repairs in connection with this loan agreement?

A Yes, through counsel.

Q Other than reviewing this table with counsel, did you review the table with anybody associated with Riverbay Corporation?

A No.

Q Do you have any independent knowledge of any of the information contained within

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[REDACTED]
this table?

A No, I do not.

Q Do you have any reason to dispute the accuracy of any of the information contained within this table?

MR. [REDACTED] Just note my objection, form, foundation. You can answer over objection.

A No, I do not.

Q Do you know who created this table?

A No, I do not.

Q Have you seen this table in connection with any other documents that you reviewed prior to today's deposition?

A Yes.

Q What other documents did you see this table in connection with?

A Several.

Q Can you identify those documents, sir?

A Contract between [REDACTED] Southside, individual page notifying tenants, shareholders of when the repairs, these critical repairs would be done.

Q Anything else?

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A No.

Q To your knowledge, as you sit here today, did Riverbay conduct all of the critical repairs at the estimated cost of \$2,306,300?

MR. [REDACTED] Just note my objection. You can answer.

A I'm not sure.

Q Do you know if Riverbay was reimbursed the \$2,306,300 from escrow upon the completion of critical repairs?

A No, I do not.

Q Have you taken any steps to determine if that, in fact, was done?

MR. [REDACTED] Just note my objection.

A No, I did not.

MR. [REDACTED] Let me talk to him for a minute outside.

MR. SMILEY: Yes.

MR. [REDACTED] Thank you.

THE VIDEOGRAPHER: Going off the record at 12:22 p.m.

(Recess taken.)

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THE VIDEOGRAPHER: Back on the
record, disk two at 12:28 p.m.

Q Let the record reflect, please, that
we have just marked as Plaintiff's Exhibit 4
selected pages from over a thousand page
report by EMG Corporation entitled "Project
capital needs."

The date of the report is indicated on
the bottom left July 16, 2012 on site date
April 23-27, 2012 and it is further titled
"HUD223 subdivision F program project capital
needs assessment/property inspection report
of Co-op City executive summary, 2049 Bartow
Avenue Bronx, New York 10475."

Let the record further reflect this is
a 12 pages culled from this document
specifically for questions for this witness,
that the entirety of this document has been
exchanged with all counsel currently involved
in this case.

This was part of a U.S.B. drive that
was produced in response to the plaintiff's
subpoena on Clampett Industries which, upon
information and belief, is also a related

1 [REDACTED]
2 entity of EMG Corporation.

3 Sir, I will ask you to take a look at
4 the cover page in front of you Plaintiff's
5 Exhibit 4 and tell me, have you ever seen
6 this before today?

7 (Whereupon a document entitled
8 "Project Capital Needs" was
9 marked Plaintiff's Exhibit 4
10 for identification as of this
11 date.)

12	A	Yes.
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13	Q	When did you first see it?
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14 | A In review with counsel.

15 Q Did Mr. [REDACTED] show this to you
16 for the first time that you saw it?

17	A	Yes.
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18 Q Did you review the entirety of the EMG
19 report specific segments in which are in
20 front of you?

21 MR. [REDACTED] Objection.

22 | You can answer.

23	A	The entirety, no.
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24 Q What if any portions of this report
25 did you review?

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[REDACTED]
A The smoke detectors.

Q Did you have any discussions with anybody at Riverbay Corporation about EMG's report in preparation for your testimony here today on behalf of Riverbay Corporation?

MR. [REDACTED] Note my objection.

A No, I did not.

Q Again I would like to draw your attention to our 30(b)(6) notice. On the second page, item number 9, page 5 rather of the 30(b)(6) notice?

A Okay.

Q Did you come prepared to talk about EMG Corp.'s inspection of Co-op City in April, 2012 and its findings and recommendations regarding five codes, building codes, smoke alarms and carbon monoxide detectors?

A Yes.

MR. [REDACTED] Note my objection.

Q What if any independent knowledge do you have about EMG Corp.'s inspection of

1 [REDACTED]
2 Co-op City in April of 2012?

3 MR. [REDACTED] Objection.

4 You can answer.

5 A None.

6 Q Who, if anyone, within the Riverbay
7 Corporation did you discuss EMG Corp.'s
8 inspection of Co-op City in 2012 with in
9 order to prepare yourself to answer questions
10 about that inspection at today's deposition?

11 A No one.

12 Q Am I correct, sir, that the only
13 knowledge that you may have in connection
14 with EMG Corp.'s inspection of Co-op City in
15 April of 2012 and any of its findings are
16 solely as a result of a review of EMG's
17 records with counsel, Mr. [REDACTED]

18 MR. [REDACTED] Just note my
19 objection. You can answer.

20 A Yes.

21 MR. SMILEY: Off the record?
22 Off the video for a minute.

23 THE VIDEOGRAPHER: Going off
24 the record at 12:32 p.m.

25 MR. [REDACTED] You can go

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back on.

THE VIDEOGRAPHER: Back on the
record at 12:33 p.m.

Q Sir, what is the HUD 223 subdivision F
program?

A To my knowledge, it is the EMG cap
project, capital needs.

Q Do you know what is involved with the
HUD 223 subdivision F program?

A No.

Q Prior to today, did you do anything
independently to educate yourself to testify
at this deposition on behalf of Riverbay
Corporation about the HUD 223 (f) program?

A No.

Q Were you aware prior to counsel
showing you any documents that a company was
retained in connection with the loan
application in 2012 to perform a property
wide assessment and inspection?

MR. [REDACTED] Just note my
objection. Retained by whom?

MR. SMILEY: Retained by any of
the parties involved with the loan.

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MR. [REDACTED] You may

answer.

A No.

Q Other than being shown this report by
Mr. [REDACTED] did you speak with anybody
within Riverbay about the fact that prior to
the installation of any smoke alarms in
January of 2014, that a company performed an
inspection of Co-op City apartments and made
recommendations of what types of smoke alarms
needed to be installed?

A No.

Q As you sit here today, are you aware
of any objections made by or on behalf of
Riverbay Corporation to any of the
recommendations contained within EMG's
assessment and inspection report?

MR. [REDACTED] Objection.

You can answer.

A Any objections?

Q Yes.

A Formal objections?

Q Yes, sir.

A No.

1 [REDACTED]
2 Q As you sit here today, are you aware
3 of anyone within Riverbay Corporation, its
4 board members, its officers or its agents
5 such as property managers, whether any such
6 people or entities made any complaints or
7 objections to any entity within the State of
8 New York about recommendations for critical
9 repairs made by EMG Corp.?

10 MR. [REDACTED] Over
11 objection, you can answer.

12 A No.

13 Q Can you turn to the fifth page, please
14 of this document. It says "Certification."
15 Do you see that, sir?

16 A Yes.

17 Q Have you seen this page of the report
18 prior to today?

19 A Yes.

20 Q Was that when you reviewed it with
21 Mr. [REDACTED]

22 A Yes.

23 Q If you can look to the first full
24 paragraph under where they list different
25 codes, the 9846 codes that starts with "This

1 [REDACTED]
2 report," do you see that?

3 A Yes.

4 Q Do you see where it says quote "This
5 report is written to meet the multi-family
6 accelerated processing in parens map, M-A-P,
7 guidelines pursuant to the U.S. Department of
8 Housing and urban development in parens HUD
9 mortgage 'insurance' program 223 subdivision
10 F"?

11 A Yes.

12 Q Prior to reviewing this document with
13 counsel, had you ever heard of the MAP
14 guidelines as referenced in what I have just
15 read you?

16 A No.

17 Q As you sit here today, do you know
18 what the MAP guidelines are?

19 A No.

20 Q Have you ever spoken with anybody
21 within Riverbay Corporation about the MAP
22 guidelines?

23 A No.

24 Q To your knowledge, does anyone exist
25 within Riverbay Corporation currently with

1 [REDACTED]
2 any knowledge as to the applicability of MAP
3 guidelines to Co-op City at the time of this
4 loan application in 2012?

5 MR. [REDACTED] Just note my
6 objection. You can answer.

7 A I do not know.

8 Q I would ask you to look at the next
9 paragraph that starts with "EMG," do you see
10 that?

11 A Yes.

12 Q Do you know in the second sentence
13 where it says quote "Department of Housing
14 and Urban Development was the MAP lender's
15 application for FHA multi-family mortgage
16 'insurance' was prepared and reviewed in
17 accordance with HUD requirements"?

18 Do you see that?

19 A Yes.

20 Q Do you know what that means?

21 A No.

22 Q Have you ever heard of HUD
23 requirements?

24 MR. [REDACTED] Just note my
25 objection. You can answer.

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[REDACTED]
A I have never heard of HUD requirements.

Q Can you turn to page 6 of the exhibit?
Do you see on there that it indicates the names of individuals who prepared this report and who it was reviewed by?

A Yes.

Q Have you taken any steps to speak with any of these people prior to today?

A No.

Q Prior to today, did you ask whether anyone within Riverbay Corporation interacted with any of these people listed on this page at the time of the inspection?

A No.

Q To your knowledge, does anybody currently within Riverbay Corporation have any personal knowledge of this report that we are referring to?

MR. [REDACTED] Just note my objection. You can answer.

A I do not know.

MR. [REDACTED] Let me talk to you outside. Take your mike off.

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THE VIDEOGRAPHER: Going off
the record at 12:40 p.m.

(Recess taken.)

THE VIDEOGRAPHER: Back on
record at 12:43 p.m.

Q Sir, do you know if this report was a
requirement under New York State law in
connection with Riverbay's application for
this loan?

MR. [REDACTED] Just note my
objection. That calls for a legal
conclusion. He is not here to answer
legal questions, whether it was a
requirement under New York State law.

MR. SMILEY: Yes.

MR. [REDACTED] He is a fact
witness, he is not a lawyer.

Q Regardless of the law, do you have any
understanding as to whether before Riverbay
would be awarded a \$621,500,000 loan that
they had to have the entire property assessed
and inspected?

MR. [REDACTED] Just note my
objection. Again, that calls for a

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legal conclusion, counsel.

I would encourage you to ask it
in a different way. You are asking
him for a legal conclusion under New
York State law.

MR. SMILEY: I am not asking
for a legal conclusion. It is for
applying for a loan. That's it. It
may not be even a legal requirement,
but if you are going to get a loan
from the State of New York --

Q Do you have an understanding, sir, as
to whether or not it is a requirement that a
company perform an assessment and inspection
of the property?

MR. ██████████ Counsel -- I
have to send you out of the room
because I have to put a statement on
the record based on that question and
clarify it. I don't want anyone to
say I am coaching you, so out of the
room, please.

THE VIDEOGRAPHER: Keep
rolling?

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MR. [REDACTED] You don't need
the video of an empty chair.

MR. [REDACTED] Keep it on.

MR. [REDACTED] If you want.
That's fine. Whatever you want
because you want the audio.

(Whereupon the witness leaves
the room.)

MR. [REDACTED] Counsel, my understanding of this loan is it is through [REDACTED] Bank. It is not anything else. It is [REDACTED] Bank.

MR. SMILEY: Okay.

MR. [REDACTED] They are not
the State of New York.

MR. SMILEY: Okay.

MR. [REDACTED] You could say whatever you want. It is a Wells Fargo Bank loan, that's who issued it.

MR. SMILEY: Okay.

MR. [REDACTED] I think the
premise of your question is incorrect.
That's the problem I am having with

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[REDACTED]
it.

MR. SMILEY: Okay. But your understanding is not his understanding and my understanding is different than yours.

My understanding is that they had to do this and [REDACTED] had to get this, make sure it was done in order to comply with HUD and the State of New York before this loan would be authorized.

MR. [REDACTED] I know it is not intentional, but it is amazing to me that you haven't yet stumbled on the importance of this, that it is a judgment call by one engineer hired by a bank.

That's what this is and there are incorrect things in it, that's what happened, and our experts will deal with it, okay. He wasn't employed at that time.

MR. SMILEY: Okay.

MR. [REDACTED] This is a bank

1 [REDACTED]
2 required item. It has nothing
3 necessarily to do with New York law.

4 MR. SMILEY: Okay.

5 MR. [REDACTED] Your questions
6 are presuming that it does. It is one
7 engineer's opinion about what they
8 read the law about, and I believe it
9 to be erroneous and there are errors
10 in it, but you know, if you want to
11 keep asking questions like this, like
12 this is the gospel or this is the New
13 York law, it is not.

14 And so, there is a whole
15 background on this that I learned in
16 preparing for this deposition and that
17 I taught him some of it, okay, based
18 on what I got from corporate counsel,
19 outside corporate counsel, not a
20 Riverbay employee because corporate
21 counsel was involved in the loan. So,
22 this was an engineer retained by the
23 bank. That's who it was.

24 MR. SMILEY: Okay.

25 MR. [REDACTED] I think that

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much is clear from my drilling down
and reviewing the 3,000 of the 67,000
pages that were relevant to this
deposition.

MR. SMILEY: All right.

MR. ██████████ If I am wrong
or you want to show me something, but
that's my understanding of it, that
this was an engineer retained by the
bank to make recommendations. Not all
of them were done because not all of
them are correct.

MR. SMILEY: Okay.

MR. ██████████ Not all of
them were done because not all of them
were based on reality.

MR. SMILEY: Okay.

MR. ██████████ So unless you
get there, you are asking a lot of
irrelevant questions, you really are.

MR. SMILEY: Okay.

MR. ██████████ More than
that, I can't tell you. And I don't
want to say it while he is here.

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MR. SMILEY: Okay, but you still have to let him answer it. You can't object and block him from answering. This Federal judge is not going to say that me asking these questions is irrelevant. It is not irrelevant.

MR. [REDACTED] I didn't say it was irrelevant. I said you asked him a legal conclusion based on New York law.

MR. SMILEY: I have not.

MR. [REDACTED] Is this a requirement of New York law?

MR. SMILEY: No, I changed it, I said forget about law. I applied to refinance my apartment and I know there is a requirement that they send out an appraiser to appraise my apartment before it.

That's not a legal conclusion at all. It is a requirement of getting a loan. I am asking him if he knows if this was a requirement.

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██████████
That's all.

MR. ██████████ But you are
couching it with New York law and HUD
and Federal agencies. You are not
coaching it did the bank want you to
do it in order for them to give you
the loan. That's what this is.

MR. SMILEY: Yeah, but HUD is
all over the place.

MR. ██████████ I know what
they are.

MR. SMILEY: They are involved.
They are involved. HUD is all over
the place. They have to submit
documents to HUD. They have to stamp
things, they have to dot their T's and
cross their I's and I am entitled to
ask him as a Riverbay employee if they
did that.

MR. ██████████ Let me help
you along here. Can you show me one,
one violation from HUD here, based on
what we did or didn't do? Can you
show me that? We are off the record

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██████████
and the witness is not here.

MR. ██████████ No, no --

MR. ██████████ I am trying
to, you know -- ██████████ this is not
your fight right now, please.

MR. ██████████ And I am not
getting involved in the fight --

MR. ██████████ I think you
are because you are speaking.

MR. ██████████ -- other than to
say because I have clients paying for
me to be here and the problem I have
is --

MR. ██████████ Okay, it is
your choice.

MR. ██████████ Well, no. You sued
my clients. If you want to
discontinue them, I am happy to pack
up and leave.

When we sit here and have these
type of conversations that are
inappropriate under the Federal rules,
that is wasting my client's money and
my time.

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So a relevance objection is not a proper objection under the rules and Mike, you are well within your right to say at the time we bring this transcript to the Federal judge, I am going to move to strike all of this testimony.

But this conversation right now on a question that we may differ on whether it is relevant or not is wasting everyone's time.

Bring the witness back in. Let him answer the questions. You note your objections, and then move to strike all questions and answers. But this has not been ten minutes.

MR. [REDACTED] Okay, I think it is easier if I explain to all of you why I am objecting.

MR. [REDACTED] It is not.

MR. SMILEY: It is not.

MR. [REDACTED] No one else agrees with you.

MR. [REDACTED] I didn't ask

1 [REDACTED]
2 for your opinions. I said I think it
3 is easier if I explained to all of
4 you. I appreciate you all disagreeing
5 with me, okay, I do. But I have a job
6 to do and a witness here and I cannot
7 let questions be asked -- I clearly
8 let him out of the room.

9 I am not taking your time up.
10 I am not counting my objection right
11 now with a speech. I am not doing it
12 against your time that you are [REDACTED]
13 to depose him. I am not.

14 MR. [REDACTED] I am not talking
15 about the time that I am [REDACTED] to
16 depose him because I don't think I
17 would lose that time.

18 I am talking about the time
19 that we are wasting doing this type of
20 conversation which is not permitted
21 under the Federal rules.

22 MR. [REDACTED] Counsel, it is
23 a conversation. It is not anything
24 else.

25 MR. [REDACTED] I understand, but

1 [REDACTED]
2 the job you are trying to do in
3 explaining your objections is not
4 accounted for under the Federal rules
5 and since everyone says we don't need
6 the explanation, I would rather just
7 object. Over objection, you can
8 answer, which is actually accounted
9 for in the Federal rules. Then we can
10 go to the judge.

11 Right now we are wasting a
12 boatload of time on this. He just
13 needs to answer the question. Mike, I
14 know you have a position. We all know
15 the position.

16 MR. [REDACTED] No, you don't.
17 No, you really don't. No, you really
18 don't.

19 MR. [REDACTED] Your position is
20 your client is not liable and other
21 people are liable.

22 MR. [REDACTED] No, that's not
23 what I am saying today. I am not
24 fighting the entire case today. I am
25 trying to make very clear that what I

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1 | ██████████  
2 | am trying to do is streamline instead  
3 | of --
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4 MR. [REDACTED] It is his
5 deposition. He can take it. He
6 doesn't need your help streamlining
7 it.

8 MR. [REDACTED] You know, it
9 is clear there is five of you or six
10 of you. You are all going to gang up
11 on me. Great. I am still going to do
12 my job, guys. I am a big boy. I have
13 been around for a long, long time.
14 This is not my first rodeo, okay.

15 These questions are based on
16 errors and erroneous assumptions and I
17 can't just sit here like a potted
18 plant and I won't allow that to
19 happen. I have a job to do which is
20 to protect my client. I am sorry you
21 see it in any other way.

22 MR. [REDACTED] No, but you will
23 make those arguments at the time of
24 trial before a judge.

25 MR. [REDACTED] I am trying to

1 [REDACTED]
2 avoid having to strike three-quarters
3 of a transcript. I am trying to avoid
4 that. If you want to continue this
5 way, that's okay.

6 MR. [REDACTED] You know as a trial
7 lawyer, you can go question by
8 question if you want to preclude
9 certain testimony. This is what the
10 rules, the Federal rules of civil
11 procedure try to negate, these types
12 of conversations and speaking. That's
13 all I am asking because --

14 MR. [REDACTED] They try, but
15 it can't always happen because --

16 MR. [REDACTED] My point is if I
17 have to move, if my client instructs
18 me to move for cost, I just don't want
19 it to be like hey, out of the blue,
20 [REDACTED] what are you doing.

21 MR. [REDACTED] [REDACTED] you can
22 stand out of the room if you want when
23 I am not dealing with your things.

24 MR. [REDACTED] I am getting
25 paid --

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MR. [REDACTED] You don't have to charge them. It is up to you how you want to bill them, okay?

MR. [REDACTED] All right.

MR. [REDACTED] But you know asking for costs on something like this is kind of ridiculous. They are big clients. Kidde and Home Depot are big clients. They hired several attorneys in this case, as you know, and they are paying both of them to be here. I am not really wasting your time or costing you costs. You are free to leave or not bill them for these conversations.

I am trying to help my adversary here on his 30(b)(6) and my knowledge of this witness and these documents, but if you don't want my help, that's fine.

What I will do is I will just direct him not to answer and I will tell the judge why I am not doing that and I will stand by whatever ruling I

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get. I have a good faith basis to say what I said, to try to explain but, you know, whatever. I'm done.

(Witness returns.)

(Whereupon the record was read back by the reporter.)

Q Sir, do you have any understanding as to whether a condition of Riverbay's getting a loan in 2012 in the amount of \$621,500,000 was that an inspection had to be conducted of the property in a report such as in front of you as Exhibit 4 had to be prepared?

MR. [REDACTED] Just note my objection. Can you be clear about a condition, what you mean by a condition? Whose condition? It is unclear to me.

MR. SMILEY: Of anyone, a condition of the state, a condition of the bank that there was not going to be a loan of \$621,500,000 awarded to Riverbay Corporation without an independent company performing an analysis and inspection of the

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property?

MR. [REDACTED] Over

objection, you can answer.

A I don't know what the specifics were.
I was not there at the time.

Q To your knowledge, is any current
Riverbay employee in existence who would have
such knowledge?

A Yes.

Q Who is that person?

A [REDACTED]

Q Who is [REDACTED]

A He is in-house counsel for Riverbay.

Q Is he an employee of Riverbay?

A Yes, he is.

Q What is your basis for the belief that
Mr. [REDACTED] would have knowledge in connection
with the conditions that had to be met in
2012 to secure the loan?

MR. [REDACTED] Note my

objection to the form of the question.
You may answer it.

A He was an employee of Riverbay and he
was -- is still in-house counsel at that

1 [REDACTED]
2 time. So I would imagine that he would be
3 involved with the loan.

4 Q I don't want you to imagine or
5 hypothesize or guess. Just what your
6 knowledge is, okay?

7 A My belief would be that he would be.

8 Q Have you ever spoken to [REDACTED]
9 about this loan?

10 MR. [REDACTED] Over
11 objection, you can answer.

12 A Loan, yes.

13 Q When did you speak with Mr. [REDACTED]
14 about this loan?

15 A Probably in -- two or three months
16 ago.

17 Q At the beginning of the deposition, I
18 asked you who, if anybody, within Riverbay
19 employed by Riverbay you spoke with in
20 connection to our 30(b)(6) notice and to
21 prepare for this deposition. You didn't
22 indicate Mr. [REDACTED] did you?

23 MR. [REDACTED] Just note my
24 objection. Asked and answered. You
25 can answer it again.

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A For the specific loan, yes, for the other items on the list, no.

Q Tell me as best as you can, as detailed as you can what, if anything, did you discuss with Mr. [REDACTED] to gain information in connection with this loan?

MR. [REDACTED] Just note my objection. We are not waiving an attorney privilege either. You can answer.

A I asked, I said when did the loan close and he gave me the date 2012 and confirmed the amount \$621.5 million and that was pretty much it.

Q Nothing else that you recall speaking with Mr. [REDACTED] about in connection with this loan?

A No.

Q Did you speak only once with him about it?

A Yes.

MR. [REDACTED] Note my objection. You can answer.

A Yes.

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Q Other than Mr. ██████████ are there any
other employees of Riverbay Corporation that
you have yet to mention at this deposition
that may have personal knowledge with regard
to the 18 items listed on the 30(b)(6)
notice?

MR. ██████████ Just note my
objection. You can answer.

A Any Riverbay employees?

Q Yes, sir.

A Well, they are not Riverbay, but
██████████ they were the managing agent at
the time.

Q Any other Riverbay employees?

A Possibly ██████████ the chief
financial officer.

Q Anyone else?

A That would be it.

Q Now, I would like to turn your
attention to section 2.3 which is on the 7th
page of this exhibit, yes, of Exhibit number
4 and that page actually has a prenumber of 5
on the bottom right that I have handwritten
the number 7 on?

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[REDACTED]
A Yes. 2.3.?

Q Yes. Have you ever seen this
paragraph prior to today?

A Yes.

Q Was that when you reviewed it with
Mr. [REDACTED]

A Yes.

Q Do you see in this first paragraph the
third sentence that says "Critical repairs
must be completed prior to endorsement"?

A Yes.

Q What is your understanding, if any, of
what that means?

MR. SMILEY: Just note my
objection. You can answer.

A What is the definition of endorsement?

Q Do you know what that means?

MR. [REDACTED] He asked you
for the definition, counsel.

Q No, I am asking you if you understand
what this means. If you don't, that's fine.

A I don't understand what endorsement
means.

MR. [REDACTED] It is asked

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and answered. He can't answer it
because he doesn't understand.

Q That's fine. That's what I am asking
you.

The next sentence, do you see where it
says quote "These repairs include conditions
that endanger the safety or wellbeing of
residents"?

A Okay.

Q Do you see that?

A Yes.

Q Is it your understanding that the
critical repairs that were referenced in the
2012 loan document, Exhibit B, table 1
include repairs to address conditions that
endanger the safety or wellbeing of
residents?

MR. ██████████ Just note my
objection. It calls for an opinion.
Over objection, you can answer.

A I am just looking back up. This is
Exhibit B.

Q Yes?

A Well, the conditions, it says here

1 [REDACTED]
2 "These repairs include conditions that
3 endanger the safety or wellbeing of
4 residents." Does that mean if we put them
5 in, they endanger?

6 Q No, my question, sir, is the reason
7 that there are critical repairs listed which
8 you have testified you are aware include
9 smoke alarms, whether the reason for the
10 recommendation to put in smoke alarms was
11 with regard to the conditions that endanger
12 safety or wellbeing of residents and that's
13 what makes them a critical repair that had to
14 be completed before other noncritical
15 repairs?

16 MR. [REDACTED] Just note my
17 objection, counsel. You are asking
18 him for an opinion about an
19 engineering report now. That's what
20 you are asking him. I just want it to
21 be clear. Is that what you are doing?

22 MR. SMILEY: No.

23 MR. [REDACTED] Explain to him
24 and me what you are asking him. You
25 are reading from an engineering report

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and asking him if that's what they
mean by a critical repair.

He is not here to give you
opinions. This is far afield of the
30(b)(6) deposition and what he is
here for as a fact witness. He is not
an expert.

I would encourage you to
rephrase that question. I cannot let
him answer it the way it is framed.

MR. SMILEY: I am not going to
rephrase it. If you want to object,
you can object and he can answer or
you can object and you can block him
and we will move for a ruling. I
don't want to get into a back and
forth.

MR. ██████████ I would rather
not do that. I just want it to be
clear. I am asking you to be clear if
you are asking him whether EMG in
their report on page 5, your number 7,
when it says "These repairs include
conditions that endanger the safety or

1 [REDACTED]
2 wellbeing of residents," that
3 that's -- you are asking him for an
4 opinion on what they meant in there.
5 Is that what you are doing? No?

6 MR. SMILEY: I don't have to
7 qualify my question. My question is
8 my question, [REDACTED]

9 MR. [REDACTED] I encourage
10 you to rephrase it. You insist on not
11 rephrasing it. So as framed, I
12 already said I can't let him answer
13 it, but I will let him answer it if
14 you are clear on what you are asking
15 him and if it is an opinion, he is not
16 here for that.

17 Q Does anyone, to your knowledge,
18 currently employed by Riverbay have any
19 knowledge as to what the definition of a
20 critical repair was as of 2012?

21 MR. [REDACTED] Just note my
22 objection.

23 A I would --

24 MR. [REDACTED] Over
25 objection, you can answer without

1 [REDACTED]

2 giving an opinion.

3 A Anyone at Riverbay aware of what a
4 critical repair means?

5 Q Yes.

6 A Yes.

7 Q Who?

8 A I would say certainly Matt -- well, an
9 employee of Riverbay, [REDACTED]

10 Q Anyone else?

11 A [REDACTED]

12 Q Anyone else?

13 A That would be the two, [REDACTED] [REDACTED]
14 those three.

15 Q Do you, sir, know what is meant by a
16 critical repair in connection with the 2012
17 loan?

18 A No.

19 MR. [REDACTED] Just note my
20 objection.

21 Q Other than just reviewing documents
22 with counsel, did you take any steps to
23 educate yourself on what a critical repair
24 meant in connection with the 2012 loan to
25 prepare yourself for answering questions here

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today?

MR. [REDACTED] Just note my
objection.

A No.

Q Can you turn please to the next page?

A Page 8?

Q Yes, page 8 which on the PDF on the
bottom right says "AD3" and at the top says
"7.6 fire protection and security systems"?

A Yes, I have it.

Q Have you ever seen this page before
today?

A Yes.

Q Did you see this page as it was
provided to you by Mr. [REDACTED]

A Yes.

Q Other than looking at it with
Mr. [REDACTED] did you review this page
within anybody at Riverbay?

A No.

Q Do you have any personal knowledge as
to the contents of this page?

A Through review with Mr. [REDACTED]

Q To your knowledge, did anybody at

1 [REDACTED]
2 Riverbay Corporation review the observations
3 and comments section of this report prior to
4 the installation of a smoke alarm in any
5 appointment in Riverbay Corp.'s buildings
6 pursuant to this loan?

7 MR. [REDACTED] Just note my
8 objection. You can answer.

9 A Prior to the installation?

10 Q Yes, sir.

11 A To my knowledge, no.

12 Q To your knowledge, is there any
13 witness -- withdrawn.

14 To your knowledge, is there any
15 current employee of Riverbay Corporation who
16 would have knowledge as to the observations
17 and comments contained on this page of this
18 report when it was generated in 2012?

19 MR. [REDACTED] Just note my
20 objection. You can answer.

21 A Specifically, I don't know which
22 people back then in Riverbay actually read
23 the report. I don't know.

24 Q Did you take any steps to determine if
25 anybody currently within Riverbay Corporation

1 [REDACTED]
2 read this report?

3 MR. [REDACTED] Just note my
4 objection. You can answer.

5 A No.

6 Q Do you know of anybody in Riverbay
7 from the time this report was generated in
8 April -- July of 2012 up until January of
9 2017 ever read this report?

10 MR. [REDACTED] Just note my
11 objection. You can answer.

12 A It is my belief that [REDACTED] the
13 managing agent, would have read this.

14 Q My specific question is whether or not
15 any employees of Riverbay Corporation read
16 this report from the time that it was dated
17 July 16, 2012 until January of 2017?

18 A I don't know.

19 MR. [REDACTED] Counsel, he
20 already said he didn't know. Asked
21 and answered.

22 Q If you can look down to the second
23 paragraph above where it says "Observation
24 and comments," I highlighted a section there
25 for you to read which starts with "Smoke

1 [REDACTED]
2 detectors," do you see that?

3 A Yes.

4 Q Can you slowly read that, please?

5 A "Per the NFPA 101 requirement --"

6 MR. [REDACTED] You want him
7 to read it out loud or to himself?

8 A Read it to myself?

9 Q Out loud, but above that. Do you see
10 a paragraph that starts "Smoke detectors"
11 that's highlighted above that?

12 A Oh, oh, oh. Do you want me to read it
13 out loud?

14 Q Yes, slowly, please?

15 MR. [REDACTED] Just note my
16 objection. You can read it.

17 A Smoke detectors were not observed in
18 every bedroom of the dwelling units. The
19 smoke detectors are battery operated and the
20 observed smoke detectors did not meet the HUD
21 requirement of 10-year tamper resistant
22 battery.

23 Q Do you know what that refers to?

24 MR. [REDACTED] Note my
25 objection. You can answer.

1 [REDACTED]
2 A The current -- at the time of this
3 report, they must have gone in and seen smoke
4 detectors that were battery operated with an
5 exposed battery and the HUD requirements want
6 the tamper resistant lithium battery where
7 the battery is not exposed.

8 MR. [REDACTED] Sorry, excuse
9 me.

10 Q To your knowledge, did anybody within
11 Riverbay Corporation from the date of this
12 report in July of 2012 up until January of
13 2017 know that this report contained this
14 information stating that they observed smoke
15 detectors in the dwelling units that did not
16 meet the HUD requirement of a 10-year tamper
17 resistant battery?

18 MR. [REDACTED] Just note my
19 objection to the form and
20 categorization by this company about
21 what the HUD requirement was. Over
22 objection, you can answer.

23 A I don't know anyone specifically who
24 took note of that condition.

25 Q Now, if you can go down to the

1 [REDACTED]
2 paragraph below observations and comments, do
3 you see the highlighted part that starts "Per
4 the NFPA 101 requirements"?

5 A Yes.

6 Q Do you know what NFPA stands for?

7 MR. [REDACTED] Just note my
8 objection.

9 A No, I don't.

10 Q Is it fair to say you don't know what
11 NFPA 101 refers to?

12 A No.

13 Q As of July of 2012, was there an
14 employee within Riverbay who had the duty to
15 know any applicable fire codes that applied
16 to the buildings within Riverbay
17 Corporation's control?

18 MR. [REDACTED] Just note my
19 objection to the question, form,
20 foundation and calls for a legal
21 conclusion. Over objection, you can
22 answer it.

23 A Anyone specifically who would know the
24 fire codes?

25 Q Yes, sir.

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██████████
A There was an employee at the time
██████████, he was the director of safety.

Q Did ██████████ in 2012 have knowledge
of applicable fire codes that related to
Riverbay Corporation's properties?

A I don't know.

MR. ██████████ Just note my
objection. It calls for the state of
mind of ██████████ ██████████

Q Prior to today, did you make any
inquiries within Riverbay Corporation to
determine if anybody currently employed by
Riverbay Corporation was charged with knowing
the applicable fire codes back in 2012?

MR. ██████████ Just note my
objection. You can answer.

A No.

Q * Currently, does Riverbay Corporation
have an employee who as part of that
employee's duties is charged with knowing the
applicable fire codes?

MR. ██████████ Just note my
objection to anything after the date
of the fire, counsel. It is beyond

1 [REDACTED]
2 the scope of your notice. I am going
3 to direct him not to answer because
4 you are asking him currently in 2020
5 and that's not the subject of these 18
6 paragraphs.

7 MR. SMILEY: Can you mark that
8 for a ruling, please?

9 (Whereupon the above question
10 was marked for a ruling.)

11 Q To your knowledge, were any employees
12 of Riverbay advised by anyone in 2012 that
13 they needed to replace older version battery
14 operated smoke detectors with 10-year sealed
15 tamper resistant smoke detectors?

16 MR. [REDACTED] Just note my
17 objection. You can answer.

18 A Prior to 2012, there was no one.

19 Q What about prior to 2014?

20 MR. [REDACTED] Just note my
21 objection. You can answer. You are
22 asking him the same question now.

23 MR. SMILEY: Yes.

24 MR. [REDACTED] Your question
25 was, were any employees of Riverbay

1 [REDACTED]
2 advised in 2014 that they needed to
3 replace older versions of the battery
4 operated smoke detectors, is that your
5 question?

6 MR. SMILEY: No, prior to 2014.

7 MR. [REDACTED] But your
8 question was, were any employees of
9 Riverbay advised in 2012. Now, if you
10 are asking him the same question, I
11 want it read back. I don't want it
12 now 2014. You have to read it back.

13 MR. SMILEY: I will rephrase my
14 question.

15 MR. [REDACTED] I think you
16 are asking him something different
17 than what I am hearing.

18 MR. SMILEY: I will rephrase my
19 question.

20 MR. [REDACTED] Please.

21 Q As of January of 2014, to your
22 knowledge, was anybody at Riverbay
23 Corporation advised that older battery
24 operated smoke detectors existing in units at
25 that time needed to be replaced with 10-year

1 [REDACTED]
2 sealed tamper resistant smoke detectors?

3 MR. [REDACTED] Note my
4 objection to form, foundation, calls
5 for an expert opinion. You can answer
6 over objection.

7 A Prior to January 2014, the project for
8 the replacement of smoke detectors was
9 underway. So I don't know if they replaced
10 the existing or they just put the new 10-year
11 lithium batteries in the appropriate
12 positions. I don't know if they were
13 instructed to take the old ones out or not.

14 Q That's not my question, sir. I am
15 going to ask the court --

16 A I don't understand. You have to
17 rephrase.

18 MR. SMILEY: Can you reread my
19 question, please?

20 MR. [REDACTED] Just for the
21 record, I think he did try his best to
22 answer your question. If you are
23 asking a different one, let's hear it.

24 (Whereupon, the record was read
25 back by the reporter.)

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A The answer would be yes, prior to January '14, the rollout program for the new smoke detectors was underway.

MR. [REDACTED] I don't know that you understood his question. He is asking you if the old ones, if the old ones needed to be replaced. Not the ones that they put in.

THE WITNESS: To my -- I don't know. To my -- I don't know.

Q Prior to today, did you undertake any efforts to learn whether or not anyone employed by Riverbay Corporation was advised prior to January of 2014 that old battery operated smoke detectors within units at Riverbay needed to be replaced with 10-year tamper resistant sealed units?

MR. [REDACTED] Over
objection. Asked and answered. You
can answer it again.

A I don't understand the question because I am going to give you the same answer as before. It was part of the rollout.

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MR. [REDACTED] If you don't understand the question, make sure you understand the question. Let him rephrase the question. Don't answer something you are unsure of.

THE WITNESS: All right.

Q We just read in this report a reference that there were smoke detectors observed that did not meet the HUD requirement of 10-year tamper resistant battery, do you see that? Yes? You have to give a verbal response.

A I am sorry, yes.

Q What I am asking you is whether this information, to your knowledge, was obtained by anybody within Riverbay Corporation from the time of this report of July of 2012 up through January of 2014?

MR. [REDACTED] Just note my objection, counsel. Over objection, you can answer.

A I don't know.

MR. [REDACTED] Let me talk to you outside off the record, please.

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THE VIDEOGRAPHER: Going off
the record at 1:16 p.m.

(Recess taken.)

THE VIDEOGRAPHER: We are back
on the record at 1:19 p.m.

Q Sir, prior to today, have you ever
testified at an examination before trial?

A Yes.

Q How many times?

A Once.

Q Was that in a state court proceeding
or Federal court, if you know?

A I don't know.

MR. [REDACTED] Just note my
objection.

Q If you can look down toward the bottom
of this page, do you see where the sentence
starts with "Additionally"?

A Yes.

Q Do you see that it says quote
"Additionally the smoke detectors must be
hardwired or the battery operated type must
have 10-year life, be tamper resistant and
are not interchangeable with appliances or

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toys"?

Do you see that?

A Yes.

Q Do you know if that information was relayed to anybody at Riverbay Corporation prior to any commencement to install smoke alarms as part of this loan?

MR. [REDACTED] Just note my objection. You can answer.

A I don't know if it was relayed to anybody at Riverbay, but had it been, it would have been through [REDACTED] the managing agent.

Q Do you have any specific knowledge as to whether that information was relayed to anybody within Riverbay Corporation?

MR. [REDACTED] Asked and answered. He just said. You can answer it again. Answer it again.

A I don't know specifically, but if it was, it was through [REDACTED] the managing agent.

Q Prior to today, did you take any steps to speak with anybody at Riverbay to ask if

1 [REDACTED]
2 anyone within Riverbay was notified about the
3 need to have the 10-year type battery
4 operated detectors prior to installing smoke
5 alarms in connection with this project?

6 MR. [REDACTED] Just note my
7 objection, counsel. When you say "the
8 need to have," I have a problem with
9 that. You are taking this report as
10 gospel. It is not. There is -- it is
11 not correct.

12 I can't let him answer
13 questions like that unless you
14 rephrase your question. If you want
15 to ask him if that paragraph was read
16 to someone. If you want to ask him if
17 it was given to them, do that, but
18 don't ask him that the need to do it,
19 assuming that it was correct is there.
20 Because I tried to do this outside the
21 witness, but you insist on doing it
22 this way. It is not correct.

23 MR. SMILEY: I will rephrase
24 the question.

25 MR. [REDACTED] Please.

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Q To your knowledge -- withdrawn.
Did you attempt to speak with anybody
within Riverbay Corporation to determine if
anyone advised, suggested, recommended that
as part of this loan, that they install
10-year sealed battery operated smoke
detectors?

MR. ██████████ Just note my
objection. You can answer.

A I don't know.

Q Then the next sentence, do you see
where it says quote "As such, smoke detector
installation is required in all bedroom and
hallway locations"?

Do you see that?

A Yes.

Q Do you know if anybody in connection
with this 2012 loan within Riverbay
Corporation was advised that smoke detector
installation was required in all bedroom and
hallway locations?

MR. ██████████ Again, same
objection. Over objection, you can
answer the question.

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A I don't know if any was advised, but
it was under the tutelage of [REDACTED]

Q As you sit here today, did you take steps to speak with anybody employed within Riverbay Corporation to determine if they were notified that in connection with this loan, smoke detector installation was required in all bedroom and hallway locations?

MR. [REDACTED] Just note my
 ion. Same objection. You may
 the question, over objection.

A I don't know specifically if anyone specifically was directed.

Q My question, sir, is whether in advance of today, you, sir, took any steps to find out if anybody in Riverbay Corporation had such knowledge?

MR. [REDACTED] Objection.

in answer.

A No.

Q The next sentence, do you see where it says quote "The smoke detectors outside of the living areas can be a combination smoke

1 [REDACTED]
2 and carbon monoxide detector to meet the
3 requirements below"?

4 Do you see that?

5 A Yes.

6 MR. [REDACTED] Note my
7 objection.

8 Q To your knowledge, was anybody within
9 Riverbay Corporation advised to install
10 carbon monoxide detectors in connection with
11 this 2012 loan?

12 MR. [REDACTED] Objection.
13 You can answer.

14 A Required? Was anyone -- say that
15 again. I am sorry, counsel.

16 MR. [REDACTED] Was anyone
17 advised at Riverbay that was the
18 question, but she will read it back.
19 I want you to be clear.

20 (Whereupon the record was read
21 back by the reporter.)

22 A No.

23 Q Are you saying nobody was advised of
24 that, sir, or are you saying you do not know
25 if anyone was advised?

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MR. [REDACTED] Note my objection. It was asked and answered, counsel. You phrased it, he answered it. You can get a clarification. Over objection, you can answer it again.

A No, nobody was advised to put in
carbon monoxide.

Q How do you know that, sir?

A Because carbon monoxides aren't installed there because I think -- my opinion is this report is wrong. Carbon monoxides were not installed because I don't believe they were needed.

Q You just gave us an opinion, sir?

MR. [REDACTED] Try not to
give an opinion. You are not here to
give an opinion.

A It is my belief. It is my belief.

MR. SMILEY: Well, I am going to get to your opinion in a moment.

MR. [REDACTED] He is not going to give opinions.

MR. SMILEY: He just gave an

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opinion.

MR. ██████████ I understand.

MR. SMILEY: I can ask him
about it now.

MR. ██████████ Okay.

Q Sir, first my question is whether you
have personal knowledge if any Riverbay
employee was advised that carbon monoxide
detectors needed to be installed in
connection with the 2012 loan?

MR. ██████████ Counsel, that
was asked and answered. Let's not do
it again.

MR. SMILEY: No, he didn't
answer that.

MR. ██████████ Let's not do
it again.

MR. SMILEY: I am going to keep
asking until he answers it.

MR. ██████████ Please read
three questions back and read this
question to compare them. It was
asked and it was answered.

(Whereupon, the record was read

1 [REDACTED]
2 back by the reporter.)

3 MR. [REDACTED] It is the same
4 question that he answered.

5 MR. SMILEY: It is not. It is
6 a completely different question.

7 MR. [REDACTED] The question is
8 how does he know. That's the question
9 that needs to be answered.

10 MR. SMILEY: How does he know
11 that nobody was advised? You are not
12 going to let him answer that question?

13 MR. [REDACTED] That's a
14 different question that what you just
15 asked.

16 MR. SMILEY: I will ask a
17 different question.

18 Q Sir, how do you know that nobody at
19 Riverbay Corporation was advised that smoke
20 detectors were to be installed in connection
21 with this loan?

22 MR. [REDACTED] Objection.

23 MR. [REDACTED] That's a
24 different question, counsel. Did you
25 hear what you just asked him?

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MR. [REDACTED] It was carbon
monoxide.

MR. [REDACTED] Can you read
it back, please?

MR. SMILEY: I said smoke? I
am sorry. I will rephrase it. If you
didn't keep interrupting me and I can
answer my question --

MR. [REDACTED] It is my fault
that you can't speak, too --

MR. SMILEY: It is.

MR. [REDACTED] Right.

MR. SMILEY: It is.

MR. [REDACTED] Okay, that's
fine. I can accept that.

MR. SMILEY: All right.

MR. [REDACTED] I am
responsible for everything going on in
the City of New York that's bad. I
am. There is a building collapsing,
it is my fault, too, Andrew. I am
sorry about that, too. Just please,
okay. Let's take a five-minute break
because I am getting too hot.

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MR. [REDACTED] Can we just
finish this question?

MR. [REDACTED] No, I need a
break. Before it is rephrased, I need
a break. There is not a question
pending now.

MR. [REDACTED] It is 1:30.
Let's take a lunch break.

MR. [REDACTED] I don't need a
lunch break unless you want one.

MR. [REDACTED] Let's get the
question, then do break.

THE VIDEOGRAPHER: We can go
off?

(Recess taken.)

MR. SMILEY: We are back on,
sir.

Q What is the basis of your testimony
that nobody was advised within Riverbay
Corporation about installing carbon monoxide
detectors in connection with this 2012 loan?

MR. [REDACTED] Just note my
objection. You can answer over
objection.

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A In my course of work at Riverbay, I go through -- I have visited many, many units at the complex. As you well know, it is 15,372 units. Every unit I visited, there is no carbon monoxide smoke detector in the hallway.

Riverbay, had they been instructed to do so, I believe they would have done so. We don't shirk our responsibility. If we don't have -- if they are not up there, it is not for a lack of due diligence. That's why I tell you that I don't believe they were instructed to do the carbon monoxides.

Q Did you speak prior to today with anybody employed at Riverbay Corporation as to whether or not they were advised that carbon monoxide detectors had to be installed in connection with the 2012 loan?

MR. ██████████ Just note my objection to the form and foundation and mischaracterizing testimony. You may answer.

A No.

Q Prior to today, did you independently

1 [REDACTED]
2 take any steps to either confirm or refute
3 whether or not any employees within Riverbay
4 Corporation prior to January of 2014 were
5 advised that carbon monoxide detectors needed
6 to be installed in connection with the 2012
7 loan?

8 MR. [REDACTED] Just note my
9 objection, counsel. Not only has that
10 been asked and answered, but I object
11 to the form and foundation. I am not
12 letting him answer the same question
13 repeatedly. You are asking him if he
14 was advised. He told you he was not
15 advised.

16 MR. SMILEY: It is a different
17 question. Are you instructing him not
18 to answer?

19 MR. [REDACTED] It is not a
20 different question. I am sitting in
21 the room. I am listening, it is my
22 job. It is not a different question.
23 You might package it differently. You
24 might use a synonym. You might use
25 the word "the" and then "a." It is not

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a different question, counsel.

MR. SMILEY: Then your
objection is asked and answered. And
then he can answer it again.

MR. ██████████ No. When I
say asked and answered and I know he
has answered it, I don't do it again,
at the risk that we get a different
answer.

When it is asked and answered,
I direct my client not to answer.
Otherwise, you could ask the same
question 20 times and we have gotten
nowhere. When I say asked and
answered, I usually don't let him
answer. Sometimes I do, but I am
getting a little frustrated now. It
is the same question. You are asking
him the same question.

MR. ██████████ Can I say one
thing? The Federal rules are crystal
clear when a defending attorney is
allow to instruct the witness not to
answer. It is Rule 30(c) sub 2, a

1 [REDACTED]
2 person may instruct the deponent not
3 to answer only when necessary to
4 preserve a privilege, to enforce
5 limitation ordered by the court, to
6 present a motion under Rule 30(b)(3).
7 30(b)(3) is about harassment.

8 Those are the only instances
9 you are [REDACTED] to instruct the
10 witness not to answer. You have other
11 avenues to protect your client's
12 interests and that would be obviously
13 further at trial or in advance, but
14 not at this proceeding.

15 I just want to inform you in
16 case we need to bring this to the
17 judge.

18 MR. [REDACTED] Thank you,
19 counsel, while I agree it is harassing
20 to ask a witness the same question
21 repeatedly. That is my opinion. I am
22 directing him not to answer a repeated
23 question which is bordering on
24 harassment to me and it is harassing
25 to me.

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MR. [REDACTED] Just for record,
counsel, you were not involved in the
prior depositions because you had not
been named yet. However, 30(c)
subsection 2 had been previously
brought up during [REDACTED]
deposition.

So I am going to note for the
record again that at that time, we did
contact the court and we did speak
with the court's clerk who advised
counsel of the rule as well.

So again, just for the record,
so everyone is on notice if this has
to be brought up, we have dealt with
this issue before.

MR. [REDACTED] I thank you
for that, [REDACTED] and I remember the
court's ruling. They said to be
guided accordingly and there was no
specific ruling one way or the other
at that time, other than that. So
thank you for that.

Q Sir, your attorney is instructing you

1 [REDACTED]
2 not to answer my question. Are you going to
3 follow your attorney's instructions not to
4 answer questions, based on that?

5 MR. [REDACTED] Counsel,
6 really?

7 MR. [REDACTED] It is actually part
8 of the precedent in case law, counsel.
9 That's a question that's appropriate.

10 MR. [REDACTED] Great. You
11 don't have to answer that question.

12 MR. SMILEY: So I suggest we
13 take a break now and then we contact
14 the court when we get back so that the
15 afternoon perhaps we can move a little
16 more smoothly.

17 MR. [REDACTED] Andrew, do me
18 a favor before we do that. Look at
19 the question you just asked him and
20 look back at the last five.

21 If it is really different, I
22 will reconsider, but I think it is
23 exactly the same, but if you show me
24 it is different. I will reconsider.
25 I don't think you can.

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THE VIDEOGRAPHER: Going off
the record at 1:37 p.m.

(Lunch recess taken.)

A F T E R N O O N S E S S I O N.

THE VIDEOGRAPHER: Back on the
record at 2:23 p.m.

MR. SMILEY: I am just going to
ask our court reporter to read you my
last question.

(Whereupon the record was read
back by the reporter.)

MR. [REDACTED] You can answer
over objection.

A No.

Q Sir, to your knowledge, was the
installation of carbon monoxide detectors a
condition of the 2012 loan to Riverbay?

MR. [REDACTED] Just note my
objection. Over objection, you may
answer.

A It was not -- it turned out, I don't
think it was a condition.

Q What is your basis of saying that it
was not a condition?

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A Because I think there is no need for
the carbon monoxides to be put in. I think
this report is erroneous because there is no
power plant in the basement of each building.
There is no boilers in the basement of each
building.

Everything, there is one power plant
for the entire complex. So under those
guidelines and there was no need to put in
carbon monoxide after the project was done,
nobody was cited. The loan wasn't pulled.
FDNY didn't complain. DOB didn't complain.
So that's, you know, I don't think there was
a need for carbon monoxide.

Q Now, I would like to draw your
attention back to the building loan agreement
itself, okay?

MR. ██████████ That's the
other document. That's Exhibit 3.

Q Plaintiff's Exhibit 3, thank you.
Now, do you see --

A What page?

Q I will direct you to the page. Under
article 2 where it says "Article 2.1 critical

1 [REDACTED]
2 repairs"? You have to verbally say yes.

3 A Yes, I am sorry.

4 Q This is from the loan document, not
5 the report, correct, yes?

6 MR. [REDACTED] You have to
7 say yes instead of mm-hmm.

8 A Yes.

9 Q Do you see in Article 2.1 paragraph A
10 where it says that "This amount represents
11 100 percent of the estimated cost of the
12 improvements and repairs described in Exhibit
13 B"?

14 A Yes.

15 Q You see where it says at the beginning
16 of that paragraph that "Borrower has
17 deposited loan proceeds with the lender
18 \$2,306,300"?

19 A Yes.

20 MR. [REDACTED] Asked and
21 answered.

22 Q Then it annexes as part of the loan
23 documents, are you aware, Exhibit B entitled
24 "Critical repairs"?

25 A Yes.

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MR. [REDACTED] Just note my
objection. Counsel, just note my
objection.

MR. SMILEY: All right.

MR. [REDACTED] Hold on. I
object to the form of the question.
He answered it already. Go ahead.

Q Then table 1 critical repairs is part
of Exhibit B in the loan document?

MR. [REDACTED] Just note my
objection.

A We are going from that to this?

Q It is the same table, sir, right, the
table that is in Exhibit 3 that you are
looking at, table 1, critical repairs and
that same table 1 is in the EMG document?

MR. [REDACTED] Counsel,
before I can let him answer -- I will
let him answer. He has to leave the
room. I have to put a statement on
the record.

MR. SMILEY: I can't let you
put a statement on until he gives an
answer.

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MR. [REDACTED] Then I have to say it as my objection. This is a document you packaged together. This is not the complete document.

MR. SMILEY: I will rephrase it then. I will rephrase it.

MR. [REDACTED] This is part of an EMG, the other thing is part of a loan agreement. It is not the same exhibit.

Q Sir, did you look in preparation for today at the loan agreement?

MR. [REDACTED] Asked and answered.

Q You did, yes?

A Yes.

Q In that loan agreement, did you see that there was an Exhibit B entitled "Critical repairs" that had table 1 critical repairs as part of the loan agreement?

MR. [REDACTED] Just note my objection, form and foundation, mischaracterizing prior testimony. You may answer the question.

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A I don't recall them being together, but I remember seeing both at different times.

Q Do you have any reason to dispute that table 1 critical repairs and the information contained within that table were, in fact, the critical repairs referenced in Article 2, section 2.1 subdivision A of the building loan agreement dated 28 of November, 2012?

MR. [REDACTED] Just note my
lon. Form, foundation,
racterizing testimony. You can
the question after you hear it
I want you to hear it again.

A Please.

(Whereupon the record was read
back by the reporter.)

A Doesn't reference the critical repairs saying from EMG report. It just says critical repairs, so I don't know if the two are -- could be the difference or not. I don't know.

Q Did you review when you reviewed the loan agreements, a table 1 that said critical

1 [REDACTED]
2 repairs as part of that loan agreement as
3 referenced in Article 2 of the loan?

4 MR. [REDACTED] Andrew, that
5 was asked and that was answered two
6 questions ago. Read it back.

7 MR. SMILEY: The witness says
8 he doesn't --

9 MR. [REDACTED] He said he had
10 seen both of them. He did this for
11 you. We are not going to do this
12 again. We are not going to do it
13 again.

14 MR. SMILEY: Your objection is?

15 MR. [REDACTED] Asked and
16 answered. He already answered that
17 very question two or three questions
18 ago.

19 Q As you sit here today, do you know
20 specifically what critical repairs, if any,
21 were required as part of the 2012 loan
22 document agreement?

23 MR. [REDACTED] Objection to
24 form, foundation. You can answer,
25 over objection.

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A Well, Exhibit B lists the critical repairs.

Q Okay. Do you have any reason to dispute what is listed in Exhibit B of the loan document?

A No.

MR. ██████████ Just note my objection.

Q Now, I would like you -- and you see the number there is \$2,306,300, right?

A Yes.

MR. ██████████ Where are we looking?

MR. SMILEY: Exhibit B of the loan?

MR. ██████████ Okay, go ahead.

Q Now, sir, I would like to direct your attention to table 1 critical repairs. You can look at the table that's either in the EMG report that's been marked or the table that's smaller type font that's connected to the loan documents.

Let me know when you have it in front

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of you, please?

A I have the larger one in front of me.

Q I would like you to turn to section --
I am sorry, to the top of the first page
where it says "Table 1 critical repairs."

MR. [REDACTED] Yes?

A Yes.

Q Do you see that?

A Yes.

Q Do you see going across the top row,
it says "Table 1-critical repairs date of
site visit April 23-27, 2012" and on the
right-hand side, it says "Number of units
15,372," do you see that, sir?

A Yes.

Q Do you have any reason to dispute that
in April of 2012, there were 15,372 units
within Riverbay Corporation's ownership?

MR. [REDACTED] Asked and
answered. You can answer it again.

A No.

Q This is an accurate number as of that
time on this tame, correct?

A My belief, yes.

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Q Has that number changed as of today?

MR. [REDACTED] Objection as
to what today is. You can answer over
objection but -- go ahead.

A My belief, no.

Q When you look across the row below
that to the right, do you see a column that
says "quantity"?

A Yes.

Q A column that says "unit"?

A Yes.

Q A column that says "unit cost"?

A Yes.

Q And a column that says "critical
repairs"?

A Yes.

Q Now, I would like you to turn to
section 7.6 which should be I believe the
last page on that document?

THE VIDEOGRAPHER: Andrew, you
have to zoom in a little bit.

Q Do you have that in front of you, sir?

A Yes, I do.

Q Are you able to read what is in that

1 [REDACTED]
2 column on the left-hand side next to 7.6?

3 A It says "Smoke and fire detection
4 system, carbon monoxide."

5 Q What does it say in the column to the
6 right of that?

7 A General.

8 Q What does it say in the column to the
9 right of that?

10 MR. [REDACTED] Note my
11 objection. Go ahead, you can read it.

12 A "Install battery smoke detectors in
13 bedrooms and outside the bedrooms to be
14 combination smoke carbon monoxide detectors
15 in living area."

16 Q To the right of that, do you see a
17 number?

18 A 46,136.

19 Q Do you know what that number
20 represents?

21 MR. [REDACTED] Just note my
22 objection. You can answer.

23 A My guess would be --

24 MR. [REDACTED] Don't guess.
25 Do you know what it represents? That

1 [REDACTED]
2 is the question.

3 A No, I don't. I don't know what it
4 represent.

5 Q At the top of the table, if you turn
6 back two pages, that would be in the column
7 under quantity, correct?

8 A It would be quantity.

9 Q Do you know what that is referring to
10 when it has quantity of 46,136 along that
11 row?

12 MR. [REDACTED] Just note my
13 objection. Form, foundation. You can
14 answer.

15 A It is -- I can't make an assumption.

16 Q Would you have any reason to dispute
17 that that's referencing that according to
18 this table, it is saying that 46,136 smoke
19 detectors are needed for purchase?

20 MR. [REDACTED] Just note my
21 objection. Form, foundation,
22 mischaracterizing the document. You
23 can answer.

24 A I don't know. I don't know.

25 Q Is there anyone at Riverbay that's

1 [REDACTED]
2 currently employed that would know what this
3 means?

4 MR. [REDACTED] Objection,
5 form, foundation. You can answer.

6 A Off the top, perhaps [REDACTED]

7 Q Did you speak with Mr. [REDACTED] about
8 this section to prepare yourself for the
9 deposition today?

10 A No.

11 Q Sir, going back to the 30(b)(6)
12 notice, the first item number 1 on that
13 notice specifically requests a witness with
14 knowledge of measures taken to complete items
15 in table 1-critical repairs, Section 3.1 and
16 this section 7.6, correct?

17 A Yes.

18 Q You knew you were going to be asked
19 about this it, correct?

20 A Not specifically about quantities.

21 Q You knew you would be asked about this
22 section 7.6, right?

23 MR. [REDACTED] Asked and
24 answered. You can answer it again.

25 A Yes.

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Q What steps did you do to prepare your
testimony for today to respond to questions
regarding section 7.6 of this table?

A To verify the smoke and fire detection
system was part of the critical repairs. I
didn't inquire about the quantity.

Q Did you inquire about the carbon
monoxide detectors that are referenced in
this section?

A No.

MR. ██████████ Asked and
answered.

Q Sir, how much time can you approximate
you spent in total preparing for your
testimony today?

MR. ██████████ Just note my
objection. You can answer.

A Two to three weeks.

Q During those two to three weeks, each
of that time was spent with Mr. ██████████

A No.

MR. ██████████ Objection.

Q Did you spend time with anybody other
than Mr. ██████████ in preparing for this

1 [REDACTED]
2 deposition?

3 MR. [REDACTED] Objection.

4 You can answer.

5 A I spent with [REDACTED]

6 Q Anyone else?

7 A Other counsel, [REDACTED]

8 Q Who is [REDACTED]?

9 A He is the associate counsel with
10 Riverbay.

11 Q What, if anything, did he do to assist
12 you in your preparation?

13 MR. [REDACTED] Just note my
14 objection. You can answer.

15 A He provided the loan documents for me
16 to read.

17 Q Did he have any information
18 specifically with regard to the loan
19 documents to share with you?

20 A No.

21 MR. [REDACTED] Just note my
22 objection.

23 Q Now continuing back to section 7.6, do
24 you see where it has the reference EA next to
25 the number 46,136?

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A Yes.

Q Do you know what that reference is?

MR. [REDACTED] Just note my
objection. You can answer.

A Based on the heading, it says "unit."

Q Does that represent to you that these
items are critical repairs for each unit of
the 15,372 units?

MR. [REDACTED] Note my
objection. Form, foundation, prior
testimony. You can answer.

THE WITNESS: Repeat the
question.

(Whereupon the record was read
back by the reporter.)

A I believe so.

Q As you sit here today, do you have any
basis to dispute that section 7.6 and the
information contained within this column was
part of the loan documents for this loan in
2012?

MR. [REDACTED] Other than all
his answers previously, counsel,
because it mischaracterizes his

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testimony. Note my objection. You
can answer.

THE WITNESS: Repeat the question.

(Whereupon the record was read
back by the reporter.)

A No.

Q There is a total number all the way to the right of \$1,153,400 in section 7.6, do you see that?

A Yes.

Q Do you have any reason to dispute that the way that number is arrived at by multiplying the cost of \$25 times 46,136 units?

MR. [REDACTED] Just note my objection.

A I haven't done the math. Can I do the
math right now?

Q You can, sure.

A The math is correct.

Q Now, I would also like you to look down at Section 8.5 of this table.

Do you see that?

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2 A Yes.

3 Q Do you know what that is referring to?

4 A The GFCI outlets.

5 Q To your knowledge, are those the GFCI
6 outlets that are referenced in Exhibit B of
7 the loan documents?

8 MR. [REDACTED] Note my
9 objection. You can answer.

10 A To my knowledge, yes.

11 Q Do you see how many units are listed
12 there?

13 A It looks like -- I can barely read
14 46,116.

15 Q If you do the math which you are free
16 to do to confirm, if you multiply 46,116
17 times \$25, does that equal \$1,000,152 -- I am
18 sorry -- \$1,152,900?

19 MR. [REDACTED] Just note my
20 objection. You can answer.

21 A Yes, the math is correct.

22 Q Can you do me a favor please and add
23 the total number of the 7.6 smoke and fire
24 detection system carbon monoxide number of
25 1,153,400, add that to the total number for

1 [REDACTED]
2 the GFI outlets of \$1,152,900.

3	A	They sum to 2,306,300.
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4 Q Again, I will ask you to look at
5 Exhibit B of the loan documents. It is a
6 critical repairs and tell me what the total
7 cost of the critical repairs is referenced on
8 that document?

9	A	2,306,300.
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10	Q	The same number, correct?
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11	A	Correct.
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12 Q Based on your reading of this, is it
13 your understanding that Riverbay, as a
14 condition of the 2012 loan, was supposed to
15 install smoke and carbon monoxide detectors
16 pursuant to section 7.6 for a total amount of
17 \$1,153,400 and GFI outlets listed in Section
18 8.5 in the total amount of \$1,152,900 for a
19 total amount of \$2,306,300?

20 MR. [REDACTED] Just note my
21 objection. Form, Foundation,
22 mischaracterizing testimony and it
23 asks for an opinion. You can answer,
24 over objection.

25 | A At the time in 2012, yes.

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Q At the time in 2012, am I correct,
sir, that as a condition of the 2012 loan,
Riverbay was required to make the critical
repair of installing 46,136 smoke detectors
with some of those being smoke/carbon
monoxide combination detectors in the living
areas?

MR. ██████████ Note my
objection. Asked and answered.
Mischaracterizing testimony. You can
answer, over objection.

A At the time of the loan, at the time
in 2012, yes.

Q What, if anything, changed from at the
time of the loan until the time that any
smoke detectors were first installed within
any of the apartments within Riverbay
Corporation's buildings?

MR. ██████████ Objection.
You can answer.

A In terms of smoke detectors, nothing
changed, they were installed.

Q Were 46,136 smoke detectors installed
in Riverbay Corporation's properties within

1 [REDACTED]
2 Co-op City pursuant to this loan?

3 A I don't know.

4 MR. [REDACTED] Note my
5 objection. Mischaracterizing his
6 testimony.

7 Q Why don't you know?

8 A I don't know the exact amount. I
9 don't know if this 46,000 number includes
10 just smoke detectors or carbon monoxide.

11 Q Do you know whether or not 46,136
12 detectors of some type, whether it be smoke
13 alarm or combination?

14 A No, I don't.

15 Q Did you take any steps prior to coming
16 today to determine whether or not Riverbay
17 complied with these critical repairs which
18 were a condition of the 2012 loan by
19 purchasing and installing 46,136 smoke
20 alarms?

21 MR. [REDACTED] Just note my
22 objection. Asked and answered. You
23 can answer it again.

24 A It is my belief they complied with
25 loan and the critical repairs. However, I am

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not sure of the actual amount that was
installed.

Q To comply with the loan and the
critical repairs based on this document, they
would have to have purchased and installed
46,136 smoke alarms, correct?

MR. [REDACTED] Objection.
Mischaracterizing testimony.
Mischaracterizing the document.
Mischaracterizing his prior answers,
counsel.

MR. SMILEY: Okay. Are you
directing him not to answer?

MR. [REDACTED] In the form
alleged, of course. You already
established something very different.
Now you changed the question. Now you
have eliminated carbon monoxide
detectors and you are only asking
about smoke, but your document does
both. It is unfair. Be fair to the
witness.

MR. SMILEY: All right. I will
rephrase it.

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MR. [REDACTED] Before you
rephrase it. Let me talk to him
outside.

THE VIDEOGRAPHER: Going off
the record at 2:46 p.m.

(Recess taken.)

THE VIDEOGRAPHER: Back on the
record at 2:49 p.m.

Q Sir, at any time after this loan
agreement was entered into in July 16 of
2012, did Riverbay Corporation object to the
condition of the loan that it purchase 46,136
battery smoke detectors to install in
bedrooms and outside the bedrooms to be
combination smoke/carbon monoxide detectors
in the living area?

MR. [REDACTED] Note my
objection. Form and foundation, asked
and answered. You can answer it
again.

A I don't know if they formally
objected, no.

Q Did they informally object?

A I do not --

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MR. [REDACTED] Objection.

A I don't know.

Q Did you review any documents or speak with anybody at Riverbay to determine one way or another whether there was any formal or informal objection to the condition of the loan of installing 46,136 battery smoke detectors in bedrooms and outside the bedrooms to be combination smoke/carbon monoxide detectors in the living area?

MR. [REDACTED] Note my objection. You can answer.

A I don't know if there was -- I did not inquire if there was any formal objection.

Q Did you inquire as if there was any informal objection?

A No.

Q Do you have any personal knowledge, one way or the other about that?

MR. [REDACTED] Objection.
You can answer.

A I believe we purchased less units because it was deemed that the carbon monoxides weren't needed because of the

1 [REDACTED]
2 structure of the building.

3 Q What is the basis of that belief,
4 sir --

5 A That there was no --

6 MR. [REDACTED] Asked and
7 answered. Asked and answered.

8 MR. SMILEY: I didn't ask my
9 question yet.

10 MR. [REDACTED] We can hear
11 where it is going, but go ahead.

12 Q What is the basis of your belief that
13 less than 46,136 detectors of any kind were
14 ordered because combination detectors were
15 not needed?

16 MR. [REDACTED] Asked and
17 answered. You can answer it again.

18 A Because there was no -- my belief was
19 there was no need for less -- as many units
20 as in the critical repairs because of the
21 structure of the building.

22 Q Now, is that your independent belief
23 looking back at these documents today that
24 your testimony is based upon?

25 MR. [REDACTED] Objection.

1 [REDACTED]
2 Mischaracterizing testimony. You can
3 answer.

4 A It's the fact of the building. It is
5 my belief that the unit is, the buildings do
6 not have a boiler. They don't have fossil
7 fuel. They don't -- it is all supplied by an
8 independent, one power plant. There is no
9 need for the combos to go in.

10 Q I understand, sir, that that is your
11 opinion now. My question is different.

12 My question is, other than that being
13 your opinion now, do you have any basis upon
14 which you can testify at this proceeding as
15 to whether or not a decision was actually
16 made prior to 2014 not to purchase the total
17 amount of 46,136 detectors?

18 MR. [REDACTED] Objection to
19 form. You can answer.

20 A I don't know that anyone -- I don't
21 know specifically who, if any, made the
22 decision to purchase less.

23 Q With regard to your current opinion,
24 do you have any background in fire safety?

25 MR. [REDACTED] Objection.

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You can answer.

A Background in fire safety, no.

Q Do you have any training in fire safety?

A No.

Q Do you have any expertise in New York City building codes?

A Expertise, no.

Q Do you have any expertise in the New York State -- the New York City administrative code?

MR. ██████████ Objection.

You can answer.

A No.

Q Isn't it fair to say from your prior testimony that you don't even know what the NFPA stands for?

MR. ██████████ Asked and answered. You don't have to answer it again.

Q Have you ever read any documents from the National Fire Protection Association?

A I might have, yes.

Q What documents did you read?

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A I don't recall.

Q Tell me what the basis is of your
belief currently to form your opinion that in
2012, at the time of signing this loan
document, that Riverbay did not have an
obligation to install, first I am going to
refer to battery operated smoke alarms in the
hallways outside of the bedrooms at that
time?

MR. ██████████ Just note my
objection, mischaracterizing
testimony. You can answer.

THE WITNESS: Repeat, please.
(Whereupon the record was read
back by the reporter.)

MR. ██████████ Let me have
the end of the question back.

Q I'm going to rephrase it.
Sir, currently what is your opinion --
withdrawn.

Currently what is the basis of your
opinion that in 2012, Riverbay Corporation
was not required to comply with the
conditions of the loan agreement in 2012 to

1 [REDACTED]
2 install combination smoke and carbon monoxide
3 detectors in the living areas in the units
4 within Co-op City?

5 MR. [REDACTED] Asked and
6 answered. You can answer it again.

7 A My belief is the EMG report was
8 incorrect. I don't think, I don't believe
9 they realized that the individual buildings
10 did not have a boiler, did not have hot and
11 cold water and that each building was
12 supplied by the Riverbay power plant.

13 Q What if any codes, references,
14 documents, materials can you reference to
15 support your opinion that because there was
16 not a boiler or hot or cold water or the
17 other items you referenced, carbon monoxide
18 detectors were not required pursuant to the
19 2012 loan?

20 MR. [REDACTED] Same
21 objections. He is not here for
22 opinions. Over objection, you can
23 answer.

24 A Reading articles, discussions with
25 other Riverbay employees such as our current

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safety director.

Q Do you independently have knowledge of
any codes at all in the City of New York that
apply to when carbon monoxide detectors are
required?

A At this time, no. I would have to
look.

Q Prior to today, did you take any steps
to determine what the applicable codes
statutes or regulations were in 2012
pertaining to carbon monoxide detectors?

A In 2012, no.

Q Prior to today, did you take any
independent --

MR. ██████████ Andrew, not to
interrupt him. You are asking himself
or anyone on behalf of Riverbay,
including the experts retained? I
need to know because I don't want it
to be unclear.

MR. SMILEY: Him.

MR. ██████████ He is here for
30(b)(6) as you know.

MR. SMILEY: Yes.

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MR. [REDACTED] Him himself?

MR. SMILEY: Yes.

MR. [REDACTED] Fine. You can answer the question. Let it be read back. I am sorry. I probably interrupted your question.

MR. SMILEY: You did.

MR. [REDACTED] I am sorry. This time, I am sorry.

(Whereupon the record was read back by the reporter.)

MR. SMILEY: What a bad question I asked. I will rephrase it.

Q Prior to today, did you personally, sir, take any independent action to determine what if any codes, regulations, statutes or ordinances were applicable to Co-op City at the time of its loan renewal in 2012?

MR. [REDACTED] Over objection, you can answer.

A Independent at the time of the loan? I don't understand the question. The timeline, you want to know at the time of the loan?

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Q Yes.

A Did we object then?

MR. [REDACTED] No, he wants
to know if you took any independent
steps, you, yourself.

THE WITNESS: No.

MR. [REDACTED] Listen to the
question. If you don't know, I don't
want to -- I can't remember the whole
thing.

(Whereupon the record was read
back by the reporter.)

A In 2012, no.

Q Sir, I would like to direct you to the
30(b)(6) notice again. If you could look
first at item number 9.

Do you see that item there, sir?

A Yes.

Q Do you see where it asks that "We are
requesting a witness from Riverbay with
knowledge of EMG Corp's inspection of Co-op
City in April, 2012 and its findings and
recommendations regarding fire codes,
building codes, smoke alarms and carbon

1 [REDACTED]
2 monoxide detectors"?

3 A Yes.

4 Q What, if anything, did you do to
5 prepare to provide responsive answers to
6 questions relating to item number 9?

7 MR. [REDACTED] Objection. It
8 was asked and answered. You can
9 answer it again.

10 A Discussion with internal Riverbay
11 employees, director of safety.

12 Q Who specifically did you speak with to
13 prepare yourself to give answers to questions
14 regarding item number 9 of this notice?

15 A In-house counsel, [REDACTED].

16 Q Anyone else?

17 A No.

18 Q What, if anything, did you learn from
19 speaking with [REDACTED] that provided you
20 with information to respond to questions
21 being asked of you with regard to item number
22 9 of this notice?

23 A The Riverbay building did not have the
24 fossil fuel, did not have the hot and cold
25 boiler and was -- the carbon monoxides

1 [REDACTED]
2 weren't applicable.

3 Q Did he provide you with any specific
4 codes, laws or statutes in support of his
5 statements to you?

6 MR. [REDACTED] Over
7 objection, you can answer.

8 A I believe he did and I just don't
9 recall at the present time.

10 MR. [REDACTED] I am sorry to
11 interrupt. I heard you say you spoke
12 to in-house counsel [REDACTED], but
13 right before that you said discussion
14 with internal director of safety. Is
15 that [REDACTED] also?

16 THE WITNESS: No, he is [REDACTED]
17 [REDACTED].

18 Q Thank you for that.
19 Who is [REDACTED]?

20 A [REDACTED].

21 Q What if any discussions did you have
22 with [REDACTED] in connection with item
23 number 9 of this 30(b)(6) notice to prepare
24 you to provide answers today?

25 MR. [REDACTED] Over

1 [REDACTED]
2 objection, you can answer.

3 A About the need for carbon monoxide
4 detectors, whether or not if it is -- if
5 there was no fossil fuel, are they required.

6 Q Currently as of this year, did you ask
7 them if they were required, as of the time of
8 this loan?

9 MR. [REDACTED] Just note my
10 objection to anything after. You can
11 answer.

12 A At the time of the loan, nothing
13 forward and through '14 -- excuse me, '16.

14 Q Did he provide you with any specific
15 statutes, laws, ordinances or documents to
16 reference?

17 A No.

18 Q You just took his word for it, is that
19 fair to say?

20 MR. [REDACTED] Just note my
21 objection. You can answer.

22 A Yes.

23 Q Looking at item number 10 of the
24 30(b)(6) notice, do you see that we requested
25 that you come prepared or that a witness from

1 [REDACTED]
2 Riverbay come prepared to talk about the
3 handling and decision not to install new
4 carbon monoxide detectors through building
5 33, including apartment 14J, from April, 2012
6 through January, 2017?

7 A Yeah, I see this.

8 Q Do you have any personal knowledge of
9 how Riverbay handled and decided not to
10 install carbon monoxide detectors throughout
11 building 33, including apartment 14J, from
12 April, 2012 through January, 2017?

13 MR. [REDACTED] Counsel, you
14 are mischaracterizing what that
15 paragraph says. I object because it
16 mischaracterizes his prior testimony.
17 Can you read the question back so he
18 can hear it again and I can hear it
19 again?

20 (Whereupon the record was read
21 back by the reporter.)

22 MR. [REDACTED] Over
23 objection, you can answer.

24 A My only personal knowledge is not only
25 was none and no unit throughout Riverbay was

1 [REDACTED]
2 carbon monoxide detectors installed, from
3 April 12th through 2017. It wasn't just
4 building 33, 14J.

5 MR. [REDACTED] Andrew, before
6 you continue. I have to talk to him.

7 THE VIDEOGRAPHER: Going off
8 the record at 3:04 p.m.

9 (Recess taken.)

10 THE VIDEOGRAPHER: Back on the
11 record, disk 3, at 3:09 p.m.

12 Q Are you ready, sir?

13 A Yes, all set. Thanks.

14 Q Sir, understanding that you weren't
15 working for Riverbay prior to 2014, did you
16 ask anybody currently at Riverbay Corporation
17 why they did not install carbon monoxide
18 detectors which was a condition of the 2012
19 loan?

20 MR. [REDACTED] Just note my
21 objection. Mischaracterizing
22 testimony, hearsay, you can answer.

23 A I might have -- I might have, I think
24 I asked [REDACTED] and [REDACTED]
25 informed me that this project was done, was

1 [REDACTED]
2 quarterbacked by [REDACTED] [REDACTED]
3 hired Southside Electric to do -- to oversee
4 the GFCI, the smoke detectors and the third
5 option was, I think the third duty was the
6 front doors being painted.

7 MR. [REDACTED] I move to strike.

8 MR. [REDACTED] Sorry, can you
9 read back the question and the answer?
10 I apologize.

11 (Whereupon the record was read
12 back by the reporter.)

13 MR. [REDACTED] I join in the
14 motion to strike.

15 Q Did Mr. [REDACTED] tell you anything as to
16 why carbon monoxide detectors, which were a
17 condition of the 2012 loan, were not
18 installed?

19 MR. [REDACTED] Asked and
20 answered. You can answer it again.

21 A No, he deferred to [REDACTED]
22 Southside Electric team.

23 MR. [REDACTED] Same motion.

24 MR. [REDACTED] Join.

25 Q Now, are you aware that Riverbay

1 [REDACTED]
2 Corporation either on its own or through any
3 agents or representatives did not install
4 smoke alarms in the hallways outside the
5 bedrooms as part of this loan in 2012?

6 MR. [REDACTED] Just note my
7 objection to form, foundation. You
8 can answer.

9 THE WITNESS: Can you repeat
10 that, please?

11 (Whereupon the record was read
12 back by the reporter.)

13 A I'm only aware that the hallways in my
14 duties going to units, there were no smoke
15 detectors in the hallways.

16 Q You saw from reviewing the loan
17 documents that a critical repair required by
18 the loan was that smoke detectors had to be
19 installed in bedrooms, as well as outside the
20 bedrooms, correct?

21 MR. [REDACTED] Just note my
22 objection. You can answer.

23 | A This is found where, sir?

24 | Q You can look at 7.6 in the middle.

25	A	Carbon monoxide, yes.
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Q Do you see also there, sir, where it says that smoke detectors needed to be installed outside the bedrooms?

MR. [REDACTED] Asked and answered. You can answer it again.

A Yes, I see outside the bedrooms.

Q Are you aware that 10-year sealed tamper resistant smoke alarms were not installed outside of the bedrooms following the loan agreement in 2012 and before January of 2017?

A I'm only aware of what I see. In all units that I have gone into, there is no smoke detector outside in the hall.

Q Do you personally have any knowledge as to why there were not 10-year tamper resistant battery operated smoke detectors installed in the hallways outside of the bedrooms of the units pursuant to this loan in 2012?

A I myself am not aware.

MR. [REDACTED] Just note my objection.

Q Prior to today --

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MR. [REDACTED] Andrew, hold
on. Outside. Sorry.

THE VIDEOGRAPHER: Going off
the record at 3:15 p.m.

(Recess Taken.)

THE VIDEOGRAPHER: Back on the
record 3:17.

THE WITNESS: Counsel, if you
don't mind, I would like to clarify
the last answer I gave.

Q Okay, go ahead.

A During my duties and when I walked
through the units, there are the old 9volt
battery in some units, but in terms of the
new 10-year lithium batteries rolling out in
the [REDACTED] Southside Electric project,
there are none.

Q Are you aware, sir, as to whether or
not any existing older 9volt battery operated
smoke detectors that were then existing in
the hallways of units outside of the bedrooms
were supposed to be replaced as part of this
project with the 10-year tamper resistant
sealed battery operated smoke detectors?

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MR. [REDACTED] Just note my
objection to form, foundation. Asks
for an opinion. Over objection, you
can answer.

A I don't -- I don't know they were
asked to be replaced. My belief is the
bedrooms were -- is where the new smoke
detectors were to go. I have seen no
current, new style smoke detectors in the
hall.

Q Did you attempt to find out in
preparing for this deposition by speaking
with anyone or looking at any documents in
the possession of Riverbay as to why there
were not new smoke alarms installed outside
of the bedrooms as required as a condition of
the loan in 2012?

MR. [REDACTED] Just note my
objection. You can answer.

A I am not aware. I don't know what
[REDACTED] Southside Electric did.

Q Do you know what the applicable codes,
statutes, regulations or ordinances required
at the time of this loan in 2012 specifically

1 [REDACTED]
2 with respect to the placement of smoke
3 detectors outside of bedrooms in a hallway?

4 MR. [REDACTED] Just note my
5 objection. You can answer, over
6 objection.

7 A I am not aware of specific, no.

8 Q In 2012, did all of the units within
9 Co-op City have stoves?

10 MR. [REDACTED] Objection.
11 You can answer.

12 A Does everyone have a stove?

13 Q Yes, sir.

14 A I'm not sure.

15 Q Did at least some of them have stoves?

16 A Yes.

17 MR. [REDACTED] Objection.
18 You can answer.

19 A Yes.

20 Q To your knowledge, how were those
21 stoves powered?

22 MR. [REDACTED] Over
23 objection, you can answer.

24 A Gas.

25 Q Gas fuel?

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A Yes.

Q * To your knowledge, does gas fuel
have the potential to emit carbon monoxide?

MR. [REDACTED] Just note my
objection. That calls for an opinion.
He is not an expert, counsel.

MR. SMILEY: He testified
earlier that in his opinion, they did
not need carbon monoxide detectors
because there was no boilers and
something about hot and cold water.

MR. [REDACTED] No fossil fuels?

THE WITNESS: Fossil fuels.

MR. SMILEY: He opened up that
door. It is very commentary.

MR. [REDACTED] I don't
believe he did.

MR. SMILEY: You can make your
objection.

MR. [REDACTED] I did.

MR. SMILEY: Are you directing
him not to answer?

MR. [REDACTED] I am.

Q Sir, may I assume that you are going

1 [REDACTED]
2 to follow your lawyer's instructions and not
3 answer my question?

4 A Yes.

5 MR. [REDACTED] He is.

6 MR. SMILEY: Please mark that
7 for a ruling.

8 (Whereupon the above question
9 was marked for a ruling.)

10 MR. [REDACTED] Leave the room
11 for a minute. Can I talk to you off
12 the record?

13 MR. SMILEY: Yes.

14 THE VIDEOGRAPHER: Going off
15 the record at 3:21 p.m.

16 (Recess taken.)

17 THE VIDEOGRAPHER: Back on the
18 record at 3:37 p.m.

19 MR. [REDACTED] Thank you.
20 The question that's pending seeks an
21 opinion. He is not an expert, but if
22 you want to ask other factual
23 questions about that topic, I will
24 consider them and let him answer them.

25 Q Sir, do you have any knowledge as to

1 [REDACTED]
2 what if any ordinances, statutes, codes,
3 regulations and the like applied to buildings
4 in Co-op City back at the time of this loan
5 in 2012 pertaining to what if any devices
6 need to be installed in units with gas
7 producing stoves?

8 MR. [REDACTED] Over
9 objection, you can answer.

10	A	No.
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11	Q	Are there any --
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12 MR. [REDACTED] Wait, I am
13 sorry. [REDACTED] is out of the room.

14 MR. [REDACTED] It is okay.

15 MR. [REDACTED] He said okay?

16 I am sorry. Go ahead.

17 Q Does Riverbay Corporation maintain
18 records that would show if they were
19 reimbursed from escrow the total amount of
20 \$2,306,300 upon completion of critical
21 repairs?

22 MR. [REDACTED] Just note my
23 objection. You can answer.

24 A Perhaps the finance department would
25 have that.

1 [REDACTED]
2 Q Would you be able to speak with
3 somebody in the finance department, if I make
4 a demand of counsel, to look and see if, in
5 fact, Riverbay Corporation was reimbursed out
6 of escrow \$2,306,300 as a result of
7 representations made that all critical
8 repairs were complete?

9 MR. [REDACTED] Just note my
10 objection. Form, foundation,
11 mischaracterizing testimony. You can
12 answer the question.

13 A I could inquire.

14 MR. SMILEY: We call for the
15 production of any documents in
16 Riverbay's possession in connection
17 with being reimbursed either \$150 per
18 unit or the total sum of \$2,306,300 or
19 any number in between in support of
20 any representations Riverbay made to
21 either [REDACTED] or any state of New
22 York agency that all critical repairs
23 were completed within 18 months of the
24 closing date.

25 MR. [REDACTED] I will take

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all requests under advisement.

MR. [REDACTED] Kidde and Home
Depot joins.

MR. [REDACTED] Join.

MR. [REDACTED] Join.

REQUEST NOTED:

Q Would you agree, sir, that if Riverbay
Corporation did not purchase a total of
46,136 smoke detecting and/or carbon monoxide
units for the total sum of \$1,153,400, that
Riverbay should not have been reimbursed from
escrow for the total sum of \$1,153,400?

MR. [REDACTED] Just note my
objection.

A I don't know if they have been
reimbursed or not. I can't answer that right
now.

Q Sir, going back to the EMG report
which is Plaintiff's Exhibit 4, if you could
please turn to page that has the number 84 on
the bottom right.

Do you see that?

A Yes.

Q Do you see where there is a reference

1 [REDACTED]
2 on the first paragraph to New York Executive
3 Law 378?

4 A Yes.

5 Q Do you see in the second to last
6 sentence of that paragraph where it says "As
7 such, carbon monoxide detector installation
8 is required in all units"?

9 A Yes.

10 Q Do you have any independent knowledge
11 of what Executive Law 378 is?

12 A No.

13 MR. [REDACTED] Just note my
14 objection.

15 Q To your knowledge, in 2012, at the
16 time of this loan, did Riverbay Corporation
17 employ anyone either in-house or as an
18 outside consultant with regard to determining
19 applicable codes, ordinances, statutes and
20 laws for this loan renewal project?

21 A I do not know.

22 MR. [REDACTED] Just note my
23 objection.

24 Q How many smoke detectors of any kind
25 did Riverbay Corporation purchase in

1 [REDACTED]
2 connection with this 2012 loan?

3 MR. [REDACTED] Objection.

4 You can answer.

5 A I do not know a specific number.

6 Q In preparation for today, did you take
7 any steps to either review documents or speak
8 with anybody to answer questions about the
9 amount of smoke detectors purchased by
10 Riverbay Corporation pursuant to this loan?

11 MR. [REDACTED] Over
12 objection, you can answer.

13 A I remember seeing some receipts or
14 purchase orders. I can't remember which.

15 Q I would like to direct you to the
16 30(b)(6) notice, number 8, please. Do you
17 see where this notice is requesting Riverbay
18 produce a witness with knowledge of
19 defendant's purchase from Home Depot of Kidde
20 smoke detectors installed in Co-op City?

21 A Yes.

22 Q What if any steps did you take to
23 prepare yourself to respond to item number 8
24 here today?

25 MR. [REDACTED] Other than

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what he just testified to?

MR. SMILEY: Yes.

MR. [REDACTED] You can
answer, over objection.

A I inquired from our procurement
department.

Q Who did you speak with in your
procurement department?

A [REDACTED], and
then [REDACTED]

Q Is she currently a Riverbay employee?

A Yes.

Q How many employees are there in the
procurement department currently at Riverbay
Corp.?

MR. [REDACTED] Note my
objection to currently. You can
answer.

A Either six or seven.

Q Was [REDACTED] personally involved
in the procurement of the Kidde smoke
detectors purchased by Riverbay in either
2012, 2013 or 2014?

A I don't know if she was personally

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involved.

Q Did you ask her if she was involved?

A No.

MR. [REDACTED] Objection.

You can answer.

Q Did you ask [REDACTED] [REDACTED] if she had any personal knowledge about the amount of any smoke detecting devices purchased pursuant to the 2012 loan?

MR. [REDACTED] Objection.

You can answer.

A No, I did not.

Q Did you speak with anybody at Riverbay Corporation who had personal knowledge about the purchasing of Kidde smoke detectors in connection with the 2012 loan?

A No.

Q To your knowledge, does anybody currently employed at Riverbay have personal knowledge about purchasing of Kidde smoke detectors in connection with the 2012 loan?

MR. [REDACTED] Just note my objection. You can answer.

A That, I do not know.

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Q What specific documents did you review
to prepare yourself to respond to item number
8 with regard to Riverbay's purchase from
Home Depot of Kidde smoke detectors?

MR. [REDACTED] Other than
what he said already?

MR. SMILEY: I think he said he
reviewed some documents.

MR. [REDACTED] He said
receipts and purchase orders or
purchase order, I am sorry.

Q Tell me about the receipts and
purchase orders that you reviewed.

A It was on Home Depot, I believe one
was a Home Depot letterhead and it had, I
think, the quantity for smoke detectors and I
can't recall. I can't recall the amount. I
want to say -- I don't want to speculate. I
can't recall exactly.

Q Who provided you with those documents?

A [REDACTED]

MR. SMILEY: Can I have this
marked as Plaintiff's Exhibit 5,
please?

1 [REDACTED]
2 (Whereupon a five-page document
3 regarding purchase of smoke
4 detectors was marked
5 Plaintiff's Exhibit 5 for
6 identification as of this
7 date.)

8 Q We have just marked as Plaintiff's
9 Exhibit 5, a five-page document that I
10 collated of various documents exchanged in
11 the discovery of this case that seem to
12 pertain to purchase of smoke detectors of
13 which I have specific questions for this
14 witness.

15 A Do you have an extra copy?

16 MR. [REDACTED] I will give it
17 to you in a second. I just want to
18 refresh my recollection about these.

19 THE WITNESS: Okay.

20 MR. SMILEY: [REDACTED] if you want
21 to turn that so you can follow along.
22 Are you able to see that?

23 Q Sir, for the moment, I am just going
24 to ask you to look at the first page of what
25 has been marked as Plaintiff's Exhibit 5 for

1 [REDACTED]
2 identification. Let me know when you are
3 ready, please.

4 Sir, I am asking you to look at the
5 first page for the moment, please.

6	A	Okay.
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7 Q Do you see this document, it is the
8 first page of Plaintiff's Exhibit 5 for
9 identification. At the top, it says
10 "Emergency reading-resolution number 13-28."

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11 |         Do you see that?
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12	A	Yes.
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13 Q Do you see where it states that it is
14 a Board of Directors meeting dated March 27,
15 2013?

16	A	Yes.
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17 Q Have you ever seen this document
18 before today?

19 | A No.

20 Q Have you ever seen any type of
21 document similar to this as part of your work
22 following a Board of Directors meeting?

23	A	Yes.
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24 Q Generally speaking, what kind of
25 document is this that we are looking at, if

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[REDACTED]
you know?

A It is a board resolution and the purpose of the resolution is to present will it be a contract, in my case, approval of "insurance" renewal. It goes before the board and then the board votes on it and then it is either, you know, voted yeah or nay.

Q Is it fair to say that decisions such as purchasing of smoke detectors following a loan agreement are decisions that are required to be made by a majority of the Board of Directors of Riverbay Corporation?

MR. [REDACTED] Just note my objection. You can answer.

A Yes.

Q Now, it indicates that it is -- at the top, I am asking you to look at now. It is submitted by [REDACTED] [REDACTED] and [REDACTED] [REDACTED] do you see that?

A Yes.

Q Do you know who those individuals are?

A The only one I recognize is [REDACTED]

[REDACTED]
Q Who is [REDACTED] [REDACTED] in relation to

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██████████
Riverbay Corporation?

A She is a board member.

Q Is she currently a board member?

A No.

MR. ██████████ Just note my
objection.

Q To your knowledge, is she currently a
resident of Riverbay Corporation?

A I do not know.

Q Was she a board member during any of
the times within which you had been employed
by Riverbay Corporation?

A Yes.

Q When was the last time to your
knowledge she was a board member? You can
approximate.

A I think through 2018.

Q Have you had any discussions with
██████████ ██████████ about any of the items identified
in plaintiff's 30(b)(6) notice?

A No.

Q To the right, it says "Seconded by ██████████
██████████ do you see that?

A Yes.

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2 Q Do you know who [REDACTED] is?

3 A No, I do not.

4 Q Now, going to the first area where it
5 says "whereas," do you see that?

6 A Yes.

7 Q Do you see where it says quote "The
8 purchasing department put bids on the E-bid
9 system for the purchase of smoke detectors in
10 GFI requirements required by the HUD loan."

11 Do you see that?

12 A Yes.

13 Q Do you know if that is referencing the
14 smoke detectors and GFI outlets that were
15 referenced in Exhibit B of the 2012 loan that
16 we previously discussed?

17 MR. [REDACTED] Just note my
18 objection. You can answer.

19 A To my knowledge, yes.

20 Q Do you see that it says that that
21 was -- that it was required by the HUD loan?

22 MR. [REDACTED] Just note my
23 objection. You can answer.

24 A Yes.

25 Q Does this refresh your recollection in

1 [REDACTED]
2 any way from earlier when you didn't know
3 what the HUD -- withdrawn.

4 | I will withdraw that.

5 Do you see, I believe in the next area
6 that I have highlighted for you where it says
7 "Whereas two contracts will be given as
8 follows"?

9	A	Yes.
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10 Q It says quote "Contract number P425
11 Kidde photo sell smoke detectors to Home
12 Depot for an initial supply," do you see
13 that?

14	A	Yes.
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15 Q Do you know what the reference is with
16 regard to the phrase initial supply?

17	A	No, I do not.
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18 Q Based on your review of any of the
19 records that you reviewed to prepare for this
20 deposition, did you become aware that there
21 was stages of approvals for the purchase of
22 smoke detectors whereas this was the initial
23 supply approval?

24 MR. [REDACTED] Just note my
25 objection. You can answer.

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██████████
A Was I aware of stages of approval?

Q Yes, sir.

A No, I was not.

Q Do you know if there was an initial supply approved and then sometime after this date of March 27, 2013, there was an approval of additional purchasing of smoke detectors?

A Based on what I read here, this amount of smoke detectors appears to be approved, based on the tally at the bottom of the page.

Q Before we get to that. I am trying to find out if based on the materials that you reviewed to prepare for today, whether you have an understanding as to whether this one-page document is referencing an initial supply of smoke detectors whereas additional smoke detectors were later ordered or approved through such a resolution?

A No.

MR. ██████████ It was asked
and answered.

A No.

Q Am I correct, sir, that this resolution to purchase where it appears it

1 [REDACTED]
2 states [REDACTED] down "28,326 smoke detectors was
3 the only resolution passed by the Board of
4 Directors of Riverbay Corporation to purchase
5 smoke detectors of any quantity in connection
6 with this loan"?

7 MR. [REDACTED] Objection.

8 Based on prior testimony, you can
9 answer.

10 A I am not aware if this was the only
11 order.

12 Q Do you have any reason to believe that
13 at any time Riverbay Corporation, through its
14 Board of Directors or its other employees or
15 agents, passed any resolutions to order smoke
16 detectors in addition to the 28,326 smoke
17 detectors identified here?

18 MR. [REDACTED] Objection.

19 Based on testimony, you may answer.

20 A I am not aware.

21 Q In other words, you haven't seen any
22 documents that would show an additional
23 resolution to purchase additional smoke
24 detectors; is that correct?

25 MR. [REDACTED] Objection.

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You can answer.

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A That's correct.

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Q Do you know, sir, how the number of
28,326 smoke detector units, how that number
specifically was arrived at as stated within
this resolution that we are looking at?

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A No, I do not.

9

Q Have you asked either Miss [REDACTED]
or anybody else at Riverbay about how they
determined how many smoke detectors to order?

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A No.

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MR. [REDACTED] What is the
number on the document? I can't read.

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THE WITNESS: 5.

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MR. SMILEY: What are you
asking for?

17

18

MR. [REDACTED] How many smoke
detectors were approved.

19

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MR. SMILEY: 28,326.

21

MR. [REDACTED] Thank you.

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Q Now, at the bottom where it says
"yes," do you see that?

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A Yes, I do.

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Q There is a bunch of names following?

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[REDACTED]

A Yes.

Q Now, I know you previously said that you recognized [REDACTED] name. Do you recognize any of the other individuals listed alongside and below where it says "yes"?

A Some I recognize, but it would be helpful if they had the first names as well.

Q Do you know if any of these individuals are current board members at Riverbay Corporation?

A Yes, I do.

Q Could you tell me who if any of these are current board members of Riverbay Corporation?

A [REDACTED] Johnson. Just [REDACTED] and Johnson.

Q Can you tell me [REDACTED] first name, please?

MR. [REDACTED] Just note my objection to any current board members, but you can answer.

A [REDACTED] first name is [REDACTED]

Q And [REDACTED] first name, please?

A [REDACTED] [REDACTED]. [REDACTED],

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first name [REDACTED]

Q Did you speak with either [REDACTED]
[REDACTED] or [REDACTED] in preparation for
your deposition today?

A No, I did not.

Q To your knowledge, would [REDACTED]
[REDACTED] or [REDACTED] as board members at
this Board of Directors meeting on March 27,
2013 have some knowledge about the decision
to purchase 28,326 smoke detectors?

MR. [REDACTED] Just note my
objection, calls for the state of mind
of others. No foundation. You can
answer.

A I can't answer for them. I don't know
if they would or not.

MR. SMILEY: We call for the
production of [REDACTED] [REDACTED] and/or
[REDACTED] as witnesses to be
produced for an examination before
trial to specifically respond to
plaintiff's 30(b)(6) notice marked as
Plaintiff's 2 for identification
responsive to item number 8 where we

1 [REDACTED]
2 are seeking representative from
3 Riverbay to testify about Riverbay's
4 purchase from Home Depot of the Kidde
5 smoke detectors or in the alternative,
6 another witness with personal
7 knowledge of this decision made at the
8 Board of Directors meeting of
9 March 27, 2013 be produced.

10 MR. [REDACTED] I join.

11 MR. [REDACTED] We will take
12 the request under advisement.

13 MR. SMILEY: To the extent
14 these witnesses are unable to be
15 produced on behalf of Riverbay, we ask
16 that we please be provided with their
17 last known address and contact
18 information.

19 MR. [REDACTED] Same notation.

20 REQUEST NOTED:

21 Q I would like you to turn now to the
22 next page, page number 2 entitled "Riverbay
23 Corporation purchase order transmittal form."
24 Take a moment please and look at that.

25 MR. SMILEY: David, I am trying

1

to zoom out a little bit.

2

3 Q Sir, let me know when you have had a
4 chance to look at that, please?

5 A Okay.

6 Q Do you recognize this document?

7 A Yes.

8 Q What do you recognize it to be?

9 A During my preparation for this, for
10 today.

11 Q Who provided this for you to review as
12 part of your preparation for today?

13 A My counsel.

14 Q Was a document such as this produced
15 to you by anyone within Riverbay?

16 MR. [REDACTED] Just note my
17 objection. You can answer.

18 A No.

19 Q Do you notice that the date of this
20 transmittal form is March 28, 2013 which is
21 the day after the Board of Directors meeting
22 that we just referenced on the first page of
23 this exhibit?

24 A Yes, I do.

25 Q Now on the left side -- withdrawn.

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██████████
Do you have any understanding of these
purchase order transmittal forms, any
experience in reviewing or working with these
forms in your employ at Riverbay Corporation?

A No.

Q Prior to being shown this document by
counsel, had you ever seen a Riverbay
Corporation purchase order transmittal form?

A No.

Q On the left side where it says "two,"
there are several names with lines next to
it. Do you see that, and checkmarks?

MR. ██████████ Up here at the
top.

A At the top, yes.

Q You see there is a check mark next to

██████████ ██████████

A Yes.

Q Who is ██████████ ██████████ if you know?

A She was a board member, either she was
the president or treasurer at the time of
this purchase order.

Q To your knowledge, did Miss ██████████
sign off on any loan documents in 2012 in her

1 [REDACTED]
2 capacity as an officer for Riverbay
3 Corporation?

4 MR. [REDACTED] Just note my
5 objection. You can answer.

6 A To my knowledge, yes.

7 Q What is that based upon? What if any
8 documents in connection with the 2012 loan
9 did you see that [REDACTED] [REDACTED] signed off on
10 as an officer of Riverbay Corporation?

11 A The loan binders that were in the
12 legal department.

13 Q Is it your understanding based upon
14 your review of the loan binders that [REDACTED]
15 [REDACTED] signed the loan agreement on behalf of
16 Riverbay Corporation?

17 MR. [REDACTED] Just note my
18 objection. You can answer.

19 A I believe so.

20 Q Under that, is the name [REDACTED]
21 [REDACTED] Am I correct, sir, that you do not
22 know who that is?

23 A That is correct.

24 Q Under that, it says "[REDACTED] rep," do
25 you see that?

1

2 A Yes.

3 Q Do you know what that references?

4 A I have no idea.

5 Q There appears to be either a big stamp
6 or big caps in bold that says on the right
7 for HUD loan critical repairs; do you see
8 that?

9 A Yes.

10 MR. [REDACTED] Note my
11 objection to the characterization of
12 what it is, but it does read that way.

13 Q Do you know for what if any reason
14 that language appears on the Riverbay
15 Corporation purchase order transmittal form?

16 A No, I do not.

17 Q Back in March of 2013, was Riverbay
18 required to place identifying information on
19 purchase orders that were made in connection
20 with the loan with this information saying
21 that, in fact, it is for an HUD loan critical
22 repair?

23 MR. [REDACTED] Just note my
24 objection to the extent that it calls
25 for a legal conclusion required. Over

1 [REDACTED]
2 objection, you can answer.

3 A No, I do not.

4 Q Have you seen other documents in your
5 review in preparing for today that had the
6 same marking or a similar marking on it where
7 it said in large clear letters "For HUD loan
8 critical repairs"?

9 MR. [REDACTED] Over
10 objection. You can answer.

11 A No.

12 Q This is the only document that you
13 reviewed that had that marking on it; is that
14 correct?

15 A To my recollection, yes.

16 MR. SMILEY: We call for the
17 production of any and all Riverbay
18 Corporation documents generated from
19 the date of the loan agreement in
20 November of 2012 up to January of 2014
21 that bear the designation quote "For
22 HUD loan critical repairs" closed
23 quote?

24 MR. [REDACTED] I will take
25 your request under advisement.

1

2

MR. [REDACTED] Join.

3

MR. [REDACTED] Join.

4

MR. [REDACTED] Join.

5

MR. [REDACTED] Join.

6

REQUEST NOTED:

7

Q Do you see, sir, where it says next to

8

material or service, "28,000 units-Kidde

9

10-year sealed lithium battery smoke alarm"

10

with a number after it?

11

A Yes.

12

Q Do you know what this reference is?

13

A No, I do not.

14

Q Do you know if this is a purchase

15

order --

16

Are you okay?

17

A Yes.

18

Q -- on behalf of Riverbay Corporation

19

where they are intending to purchase from

20

Home Depot 28,000 units of a Kidde 10-year

21

sealed smoke alarm?

22

MR. [REDACTED] Note my

23

objection. You can answer.

24

A Yes.

25

Q Do you have any understanding as to

1 [REDACTED]
2 why this purchase order says 28,000 units
3 when the resolution from the Board of
4 Directors the day before says that purchasing
5 will be ordering 28,326 smoke detector units?

6 MR. [REDACTED] Over
7 objection, you can answer.

8 | A No.

9 Q Have you seen any documents that would
10 explain in any way why the amount of 28,000
11 units were purchased pursuant to a purchase
12 order from Riverbay to Home Depot?

13 MR. [REDACTED] Objection.
14 You can answer.

15	A	No.
----	---	-----

16 Q Now, going down the page, do you see
17 where there is an asterisk and the word
18 "resolution" attached written in, it is on
19 the right-hand side above the date?

20	A	Yes.
----	---	------

21 Q Do you have an understanding as to
22 whether or not that's referring to the
23 resolution we just reviewed on the first page
24 of this exhibit?

25 | A My guess would be yes.

1

2

MR. [REDACTED] Don't guess.

3

Q Don't guess. Do you know?

4

A I don't know.

5

Q Are you aware of any custom and

6

practice that was in existence in 2012 and/or

7

2013 whereby a purchase order had to be

8

submitted with a resolution attached?

9

A I don't know.

10

Q Now, below that, it states "Approved

11

by [REDACTED] rep period" with a signature; do

12

you see that?

13

A Yes.

14

Q Do you know whose signature that is?

15

A No, I do not.

16

Q On the bottom left, do you see where

17

it says "Approved by general manager"?

18

A Yes.

19

Q Do you know whose name is written

20

there?

21

A [REDACTED]

22

Q Who is [REDACTED]

23

A He was a senior executive at Marion

24

Scott.

25

Q Have you ever, prior to today, spoken

1 [REDACTED]
2 with [REDACTED] for any reason?

3 A No.

4 Q Have you ever met [REDACTED]

5 A No.

6 Q To the right, there is a signature; do
7 you see that on the bottom right?

8 A Yes.

9 Q Do you know whose signature that is?

10 A I believe it is [REDACTED] [REDACTED]

11 Q Do you know if she was signing that as
12 a president or as the treasurer for Riverbay
13 Corporation?

14 MR. [REDACTED] Just note my
15 objection. You can answer.

16 A I don't know in which capacity she
17 signed as.

18 Q Now, below her signature, there
19 appears to be the word "paid" upside down, do
20 you see that?

21 A Yes.

22 Q Does this indicate to you as a
23 representative of Riverbay Corporation that
24 Home Depot was paid 456,360.45 total for the
25 purchase of 28,000 Kidde 10-year sealed

1 [REDACTED]
2 lithium battery smoke alarms?

3 MR. [REDACTED] Over
4 objection, you can answer.

5 A I don't know the procedure for
6 whether -- for marking whether something has
7 been paid or not. I am not familiar with
8 their procedures.

9 Q Who within Riverbay Corporation, if
10 anyone, are you aware of that would be
11 familiar with what the procedure was on
12 March 28, 2013 for submitting these types of
13 purchase orders?

14 A I do not know.

15 Q Could you take efforts to determine if
16 any such person exists?

17 MR. [REDACTED] Just note my
18 objection. You can answer.

19 A Yes, I could.

20 Q Is [REDACTED] [REDACTED] still on the board of
21 Riverbay?

22 A No.

23 Q To your knowledge, was this purchase
24 order transmittal form generated in the
25 ordinary course of business for Riverbay

1 [REDACTED]
2 Corporation on March 28, 2013?

3 MR. [REDACTED] Note my
4 objection. You can answer.

5 A I do not know.

6 Q Do you know if any of these 20,000
7 units were combination smoke detector carbon
8 monoxide alarms?

9 MR. [REDACTED] Just note my
10 objection. You can answer.

11 A I do not know.

12 Q Can you turn to the next page of this
13 exhibit, please, entitled "Price quotation
14 only"? Do you recognize this document, sir?

15 A Yes.

16 Q What do you recognize this to be?

17 A In review for preparation for today
18 with counsel.

19 Q Who provided this document for you to
20 review in preparation with counsel?

21 MR. [REDACTED] Just note my
22 objection. You can answer.

23 A It must -- I would --

24 MR. [REDACTED] Don't guess,
25 if you know.

1

2 A I don't know specifically.

3 Q Sir, I am asking who provided you with
4 this document to review?

5 A I am sorry, counsel.

6 Q When did you first see this document?

7 A A few weeks ago.

8 Q What do you recognize this to be?

9 A Another purchase requisition, but only
10 a price quote.

11 Q Again, do you see under quantity it
12 references 28,000?

13 A Yes.

14 Q Sir, do you know how, if at all, it
15 could be determined why 28,000 Kidde smoke
16 detectors smoke alarms were ordered when the
17 loan documents indicated the need to purchase
18 46,136 smoke detecting devices?

19 MR. [REDACTED] Note my
20 objection. Asked and answered.
21 Mischaracterizing testimony. You can
22 answer it again.

23 A No, I do not.

24 Q Who if anyone within Riverbay
25 Corporation would be able to answer questions

1 [REDACTED]
2 as to why it appears that only 28,000 smoke
3 alarms were ordered and the loan documents
4 called for the purchasing of 46,136
5 detectors?

6 MR. [REDACTED] Note my
7 objection. Mischaracterizing
8 testimony. You can answer over
9 objection, form and foundation. You
10 can answer over objection.

11 A I don't know of anyone at Riverbay,
12 but once again, [REDACTED] the member of
13 [REDACTED] and he headed up the project
14 along with Southside. He approved this
15 document.

16 Q To your knowledge, sir, if a conscious
17 decision was made on the part of Riverbay
18 Corporation to not order the total amount of
19 46,136 smoke detectors as indicated in the
20 loan documents, would that decision be
21 documented either by way of a board of
22 director resolution, correspondence, e-mails
23 or something else?

24 MR. [REDACTED] Just note my
25 objection to form, foundation,

1 [REDACTED]
2 mischaracterizing testimony and
3 speculation. You can answer, over
4 objection.

5 A I do not --

6 MR. [REDACTED] Just answer
7 factually.

8 A I do not know.

9 Q Do you see on the left side towards
10 the bottom of this page, it is handwritten in
11 "Four deliveries"?

12 MR. [REDACTED] I am sorry.
13 What page are you on?

14 A What page are you on?

15 Q This is on the third page of the
16 exhibit.

17 A Okay. Page 3?

18 Q Yes, sir.

19 A You said four deliveries, okay.

20 Q Do you know if, in fact, Riverbay
21 received four separate deliveries of smoke
22 detectors?

23 MR. [REDACTED] Over
24 objection, you can answer.

25 A I do not know.

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Q Do you recognize or know whose
handwriting is on this page?

A No, I do not.

Q Towards the top right under the area
where it says "For HUD loan critical
repairs," do you see where it says "Requested
by" and then what appears to be [REDACTED]?

A Yes.

Q Do you know who [REDACTED] is?

A Yes.

Q Who is that?

A His name is [REDACTED] [REDACTED], and then
last name [REDACTED]

Q Spell it.

A [REDACTED].

Q Who is Mr. [REDACTED]

A He is the assistant director of
Riverbay's maintenance department.

Q Is he still employed by Riverbay?

A Yes.

Q Other than seeing his name on this
document, what if any knowledge do you have
as to Mr. [REDACTED] involvement in
requesting 28,000 Kidde smoke alarms?

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MR. [REDACTED] Just note my

objection. You can answer.

A I do not know.

Q Have you spoken with [REDACTED] [REDACTED] about the purchase of the 28,000 smoke alarms prior to today?

A No.

Q Having seen this document a few weeks ago, is there a reason that you did not speak with [REDACTED] [REDACTED] to prepare to give answers today?

MR. [REDACTED] Just note my

objection. You can answer.

A No, no reason.

MR. SMILEY: We call for a production of a witness with knowledge as to the purchasing of 28,000 Kidde smoke alarms from Home Depot since this witness does not have any independent knowledge and to the extent that that individual is Toma Kastrati, we call for his production at a deposition or be provided with his last known address.

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[REDACTED]

MR. [REDACTED] I will take
your request under advisement.

MR. [REDACTED] Home Depot and
Kidde join.

MR. [REDACTED] Join.

REQUEST NOTED:

Q Do you see where it says "Approved by
[REDACTED]

A Yes.

Q Do you know who M. Sanders is?

A Yes.

Q Who is that?

A [REDACTED] [REDACTED] [REDACTED].

Q Who, if you know, is Mr. [REDACTED]

A He is the director of the Riverbay's
maintenance department.

Q Is he currently the director of
Riverbay's maintenance department?

A Yes.

Q Was he the director of Riverbay's
maintenance department on March 28, 2013?

A I'm not sure.

Q Have you spoken with Mr. [REDACTED] in
preparation to answer questions pursuant to

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.: 12345/2021

-----X
JENNIE DOE,

Plaintiff,

-against-

STREB, INC.,

Defendant.
-----X

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by and between the attorneys for the respective parties that the **SIXTH AFFIRMATIVE DEFENSE** contained in the Answer of the defendant, STREB, INC., alleging that the Court lacks personal jurisdiction in this action, is hereby withdrawn with prejudice.

Dated: New York, New York
January 7, 2019

SMILEY & SMILEY, LLP

LAW FIRM, LLP

By: _____

ANDREW J. SMILEY

Attorneys for Plaintiff
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

By: _____

Attorneys for Defendant
1 Broadway, Suite 1234
New York, New York 10038
Tel.: (212) 000-0000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 12345/2021

-----X
JAMES DOE,

Plaintiff,

STIPULATION

-against-

THE CITY OF NEW YORK, CITY OF NEW YORK
DEPARTMENT OF PARKS AND RECREATION and
RIVERSIDE PARK CONSERVANCY, INC.,

Defendants.
-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties that the **TENTH** AFFIRMATIVE DEFENSE contained in the Answer of the defendants, THE CITY OF NEW YORK, CITY OF NEW YORK DEPARTMENT OF PARKS AND RECREATION and RIVERSIDE PARK CONSERVANCY, INC., alleging that the plaintiff, JAMES DOE, did not appear for an oral examination pursuant to Section 50h of the General Municipal Law, before the commencement of this action, is hereby withdrawn with prejudice.

Dated: New York, New York
February 26, 2021

SMILEY & SMILEY, LLP

JAMES E. JOHNSON



By: _____

ANDREW J. SMILEY

Attorneys for Plaintiff,
JAMES DOE
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

By: _____

Corporation Counsel
Attorneys for Defendants,
THE CITY OF NEW YORK, CITY OF NEW
YORK DEPARTMENT OF PARKS AND
RECREATION and RIVERSIDE PARK
CONSERVANCY, INC.
100 Church Street
New York, New York 10007
Tel.: (212) 356-2725

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

X

Plaintiff(s),

- vs -

Defendant(s).

X

**REQUEST FOR
PRELIMINARY CONFERENCE**

Index No.: _____

The undersigned hereby requests a preliminary conference.

The names, address and telephone numbers of all attorneys/pro se litigants appearing in the action are as follows:

☐ Attorney for Plaintiff(s)

☐ Plaintiff(s), Pro se

() - _____

() - _____

☐ Attorney for Defendant(s)

☐ Defendant(s), Pro se

() - _____

() - _____

Dated: _____, 20__

Signature

Print Name



REQUEST FOR JUDICIAL INTERVENTION

UCS-840
(rev. 07/29/2019)

_____ COURT, COUNTY OF _____

Index No: _____ Date Index Issued: _____

For Court Use Only:

CAPTION

Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

-against-

Plaintiff(s)/Petitioner(s)

Defendant(s)/Respondent(s)

IAS Entry Date

Judge Assigned

RJI Filed Date

NATURE OF ACTION OR PROCEEDING

 Check only one box and specify where indicated.

COMMERCIAL

- ☐ Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
☐ Contract
☐ Insurance (where insurance company is a party, except arbitration)
☐ UCC (includes sales and negotiable instruments)
☐ Other Commercial (specify): _____

NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the **COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C)**.

REAL PROPERTY

Specify how many properties the application includes: _____

- ☐ Condemnation
☐ Mortgage Foreclosure (specify): ☐ Residential ☐ Commercial
Property Address: _____

NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the **FORECLOSURE RJI ADDENDUM (UCS-840F)**.

- ☐ Tax Certiorari
☐ Tax Foreclosure
☐ Other Real Property (specify): _____

OTHER MATTERS

- ☐ Certificate of Incorporation/Dissolution [see **NOTE** in **COMMERCIAL** section]
☐ Emergency Medical Treatment
☐ Habeas Corpus
☐ Local Court Appeal
☐ Mechanic's Lien
☐ Name Change
☐ Pistol Permit Revocation Hearing
☐ Sale or Finance of Religious/Not-for-Profit Property
☐ Other (specify): _____

MATRIMONIAL

- ☐ Contested
NOTE: If there are children under the age of 18, complete and attach the **MATRIMONIAL RJI ADDENDUM (UCS-840M)**.
For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (**UD-13**).

TORTS

- ☐ Asbestos
☐ Child Victims Act
☐ Environmental (specify): _____
☐ Medical, Dental or Podiatric Malpractice
☐ Motor Vehicle
☐ Products Liability (specify): _____
☐ Other Negligence (specify): _____
☐ Other Professional Malpractice (specify): _____
☐ Other Tort (specify): _____

SPECIAL PROCEEDINGS

- ☐ CPLR Article 75 (Arbitration) [see **NOTE** in **COMMERCIAL** section]
☐ CPLR Article 78 (Body or Officer)
☐ Election Law
☐ Extreme Risk Protection Order
☐ MHL Article 9.60 (Kendra's Law)
☐ MHL Article 10 (Sex Offender Confinement-Initial)
☐ MHL Article 10 (Sex Offender Confinement-Review)
☐ MHL Article 81 (Guardianship)
☐ Other Mental Hygiene (specify): _____
☐ Other Special Proceeding (specify): _____

STATUS OF ACTION OR PROCEEDING

 Answer YES or NO for every question and enter additional information where indicated.

	YES	NO	
Has a summons and complaint or summons with notice been filed?	☐	☐	If yes, date filed: ____/____/____
Has a summons and complaint or summons with notice been served?	☐	☐	If yes, date served: ____/____/____
Is this action/proceeding being filed post-judgment?	☐	☐	If yes, judgment date: ____/____/____

NATURE OF JUDICIAL INTERVENTION

 Check one box only and enter additional information where indicated.

- ☐ Infant's Compromise
☐ Extreme Risk Protection Order Application
☐ Note of Issue/Certificate of Readiness
☐ Notice of Medical, Dental or Podiatric Malpractice Date Issue Joined: ____/____/____
☐ Notice of Motion Relief Requested: _____ Return Date: ____/____/____
☐ Notice of Petition Relief Requested: _____ Return Date: ____/____/____
☐ Order to Show Cause Relief Requested: _____ Return Date: ____/____/____
☐ Other Ex Parte Application Relief Requested: _____
☐ Poor Person Application
☐ Request for Preliminary Conference
☐ Residential Mortgage Foreclosure Settlement Conference
☐ Writ of Habeas Corpus
☐ Other (specify): _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 1 [REDACTED] 1

-----X
[REDACTED], individually and as parent
and natural guardian of L.E., an infant,

Plaintiff,

-against-

**NOTICE OF
DISCOVERY
AND INSPECTION**

[REDACTED]
[REDACTED]
Defendants.

-----X
PLEASE TAKE NOTICE, that pursuant to C.P.L.R. 3120(a) and the Rules of the Appellate Division, the plaintiff, by her attorneys, SMILEY & SMILEY, LLP, herein demands production of the following for inspection and copying:

1. Produce and provide copies of any and all photographs, slides, videotapes, or motion pictures in defendant's custody and control depicting:

(a) The scene of the accident and of the infant plaintiff. If no such photographs are in the possession, custody of any parties you represent in this action, state so in the sworn reply to this demand.

(b) The infant plaintiff taken prior to and during the trial of the above-captioned litigation. This is a continuous demand.

(c) Any damage to the defendant's vehicle caused by the accident.

2. Surveillance tapes and photographs of the infant plaintiff. This is a continuing demand.

3. The names and current address of all persons that witnessed the occurrence alleged in the complaint.

4. Statements of the infant plaintiff whether oral, written, taped, stenographic, signed or photographic, in the custody or possession of the defendants.

5. Accident reports of the defendants made in the regular course of business.

6. Invoices and/or bills for any repairs that were made to the defendant's vehicle following the accident.

7. Copy of defendant, [REDACTED], drivers license.

PLEASE TAKE FURTHER NOTICE, that these items are to be produced within twenty (20) days of receipt of the Notice at the offices of SMILEY & SMILEY, LLP, attorneys for the plaintiff, 122 East 42nd Street, Suite 3900, New York, New York 10168.

PLEASE TAKE FURTHER NOTICE, that the party served may submit copies of all documents requested, on or before the return date of this Notice in lieu of personal appearance.

PLEASE TAKE FURTHER NOTICE, that upon failure to comply with this demand, a motion will be made pursuant to C.P.L.R. 3126.

PLEASE TAKE FURTHER NOTICE, that this is a continuing demand and should any of the information requested become available or known in the future, then you are required to furnish same at such time.

Dated: New York, New York
February 11, 2021

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: 

ANDREW J. SMILEY
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

TO: BAKER, MCEVOY & MOSKOVITS, P.C.
Attorney(s) for the Defendants

██
One Metrotech Center, 8th Fl
Brooklyn, NY, 11201
(212) 857-8230

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 1 [REDACTED]

-----X
[REDACTED], individually and as parent
and natural guardian of L.E., an infant,

Plaintiff,

**DEMAND
FOR EXPERTS**

-against-

[REDACTED]
[REDACTED]

Defendants.

-----X
PLEASE TAKE NOTICE, that the plaintiff, by her attorneys, SMILEY & SMILEY, LLP, pursuant to C.P.L.R. 3101(d), demands that the defendants provide the following information:

1. Identify each person with whom the defendants expect to call as an expert witness at trial;
2. Disclose in reasonable detail the subject matter on which expert is expected to testify;
3. State the substance of the facts and opinions on which expert is expected to testify;
4. State the qualifications of each expert; and
5. A summary of the grounds upon which expert's opinion is based.

Defendants are required to produce the demanded information at the offices of SMILEY & SMILEY, LLP, 122 East 42nd Street, Suite 3900, New York, New York 10168 within twenty (20) days of this Demand.

PLEASE TAKE FURTHER NOTICE, that the party served may submit copies of all documents requested, on or before the return date of this Notice in lieu of personal appearance.

PLEASE TAKE FURTHER NOTICE, that this is a continuing demand and should any of the information requested become available or known in the future, then you are required to furnish same at such time.

Dated: New York, New York
February 11, 2021

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: 
ANDREW J. SMILEY
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

TO: BAKER, MCEVOY & MOSKOVITS, P.C.
Attorney(s) for the Defendants


One Metrotech Center, 8th Fl
Brooklyn, NY, 11201
(212) 857-8230

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 1 [REDACTED]

-----X
[REDACTED], individually and as parent
and natural guardian of L.E., an infant,

Plaintiff,

-against-

**DEMAND FOR
PRODUCTION OF
INSURANCE
AGREEMENTS**

[REDACTED]
[REDACTED],

Defendants.

-----X

PLEASE TAKE NOTICE, that demand is hereby made upon you, pursuant to C.P.L.R. 3101(d) to produce and permit plaintiff or the undersigned attorneys of the plaintiff, to inspect and copy the contents of (a) each and every primary, contributing and excess insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment, and (b) each and every insurance agreement in which the insurer is obligated to defend this action.

PLEASE TAKE FURTHER NOTICE, that said insurance agreements are to be produced at the offices of SMILEY & SMILEY, LLP, 122 East 42nd Street, Suite 3900, New York, New York 10168 within twenty (20) days of receipt of this demand at which time they will be physically inspected, copied, or mechanically reproduced and returned.

Dated: New York, New York
February 11, 2021

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: _____



ANDREW SMILEY

122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

TO: BAKER, MCEVOY & MOSKOVITS, P.C.
Attorney(s) for the Defendants

One Metrotech Center, 8th Fl
Brooklyn, NY, 11201
(212) 857-8230

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 1 [REDACTED]

-----X
[REDACTED], individually and as
parent and natural guardian of L.E., an infant,

Plaintiff,

-against-

[REDACTED]
[REDACTED]

Defendants.

**DEMAND A BILL OF
PARTICULARS TO
DEFENDANT'S
AFFIRMATIVE
DEFENSE OF
CULPABLE
CONDUCT OF
PLAINTIFF**

-----X
The plaintiff, by her attorneys, SMILEY & SMILEY, LLP, hereby demands that the
defendants serve a response to the plaintiff's Demand for a Bill of Particulars within twenty (20)
days of the service of this demand.

1. The time and date of infant plaintiff's alleged culpable conduct.
2. The location of infant plaintiff's alleged culpable conduct.
3. A general statement of each and every act and omission constituting infant
plaintiff's alleged culpable conduct.

Dated: New York, New York
February 11, 2021

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: 

ANDREW J. SMILEY
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

TO: BAKER, MCEVOY & MOSKOVITS, P.C.
Attorney(s) for the Defendants

One Metrotech Center, 8th Fl
Brooklyn, NY, 11201
(212) 857-8230

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK
INDIVIDUAL ASSIGNMENT PART [OR JUSTICE] _____

Index No. _____

DCM Track _____

Plaintiff(s),

- against -

Defendant(s).

**PRELIMINARY CONFERENCE
ORDER**

(202.8, 202.12 and 202.19
of the Uniform Rules)

APPEARANCES

Plaintiff(s): _____

Defendant(s): _____

It is hereby ORDERED that disclosure shall proceed as follows:

- (1) **Insurance Coverage:** If not already provided, shall be furnished by _____ on or before _____.
- (2) **Bill of Particulars:**
(a) Demand for a bill of particulars shall be served by _____ on or before _____.
(b) Bill of particulars shall be served by _____ on or before _____.
(c) A supplemental bill of particulars shall be served by _____ as to Items _____ on or before _____.
- (3) **Medical Reports and Authorizations:**
Shall be served as follows: _____

- (4) **Physical Examination:**
(a) Examination of _____ shall be held _____

(b) A copy of the physician's report shall be furnished to plaintiff within _____ days of the examination.
- (5) **Depositions:** Depositions of ☐ Plaintiff(s) ☐ Defendant(s) ☐ All Parties shall be held _____

- (6) **Other Disclosure:**
(a) All parties, on or before _____, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect.
(b) Authorization for plaintiff(s)' employment records for the period _____ shall be furnished on or before _____.
(c) Demand for discovery and inspection shall be served by _____ on or before _____. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before _____.
(d) Other [interrogatories, etc.] _____

(7) End Date for All Disclosure:

(8) **Impleader:** Shall be completed on or before _____.

(9) **Compliance Conference:** Shall be held on _____.

(10) **Motions:** Any dispositive motion(s) shall be made on or before _____.

(11) **Note of Issue:** _____ shall file a note of issue/certificate of readiness on or before _____. A copy of this order, an affirmation stating that the terms of the order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

FAILURE TO COMPLY WITH ANY OF THESE DIRECTIVES MAY RESULT IN THE IMPOSITION OF COSTS OR SANCTIONS OR OTHER ACTION AUTHORIZED BY LAW.

SO ORDERED:

Dated:

J.S.C.

ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

Dated:

SO ORDERED:

TS-13a (REV 4/15/02)

J.S.C.

PRELIMINARY CONFERENCE ORDER

X. ADDITIONAL DIRECTIVES:

X. ADDITIONAL DIRECTIVES

***SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK***

-----X

Plaintiff(s)

-against-

- (1) _____
(2) _____
(3) _____
(4) _____
(5) _____

Defendant(s)

-----X

BREIF CASE DESCRIPTION

APPEARANCES:

Plaintiff:	
Firm:	
By:	
Phone/Fax:*	
Email:*	

Hon. _____

IAS Part _____

Index No.: _____

DCM Track: _____

**Preliminary Conference
Stipulation and Order
For Medical, Dental and
Podiatric Malpractice
Actions**

Appearance No: _____

RJI Date: _____

*not for service purposes

NAME OF CASE: _____ INDEX NO. _____ PAGE 2

Defendant 1:	
Firm:	
By:	
Phone/Fax:*	
Email:*	

*not for service purposes

Defendant 2:	
Firm:	
By:	
Phone/Fax:*	
Email:*	

*not for service purposes

Defendant 3:	
Firm:	
By:	
Phone/Fax:*	
Email:*	

*not for service purposes

If there are Defendants #4 or #5 or others in this case, please insert pages for additional parties.

THIS ACTION having come on for a Preliminary Conference pursuant to Section 202.56 of the Uniform Rules of the New York State Trial Courts in order to establish a schedule for the completion of disclosure and other related matters. The parties stipulate and it is hereby:

ORDERED that the action is entitles to a preference pursuant to CPLR 3403(A)(5), and it is further

ORDERED *that there is to be timely compliance with each of the items below within the time set forth unless the time is extended by a “so-ordered” OR court-approved written stipulation.*

I. INSURANCE INFORMATION

Insurance coverage information shall be provided in writing with respect to each defendant for all applicable periods within 30 (thirty) days as follows [check applicable spaces]

- ☐ Primary Coverage, including insurance carrier, policy number(s) and policy coverage periods;
- ☐ Excess coverage, including insurance carrier, policy number(s) and policy coverage periods; and
- ☐ Declaration sheets.

II. BILL OF PARTICULARS

(a) A further Verified Bill of Particulars shall be served upon each defendant within 2 (twenty) days as to the following items: _____

(b) Defendant(s) shall serve upon plaintiff a Verified Bill of Particulars as to the affirmative defenses and/or counterclaims in the Answer (when demanded) within 20 (twenty) days.

III. MEDICAL RECORDS AND AUTHORIZATIONS

(a) HIPAA-compliant medical authorizations, *if not already provided with the Bill of Particulars*, shall be furnished to defendant(s) within 20 (twenty) days as to the following healthcare providers; _____

(b) Following plaintiff's deposition, plaintiff shall provide HIPAA-compliant authorizations for appropriate records within 10 (ten) days of receipt of a written request from the defendant(s).

(c) Medical records shall be furnished by the defendant(s) within 30 (thirty) days as follows [check where applicable, and identify specifically]:

1. ☐ Office records, including reports and correspondence _____
2. ☐ Hospital chart. _____
3. ☐ Billing records. _____
4. ☐ Autopsy Report. _____
5. ☐ Radiology film/report. _____
6. ☐ Curriculum vitae of defendant(s) _____
7. ☐ Hospital rules and regulations. _____
8. ☐ Other. _____

- (d) If a medical record to be supplied by a defendant is not available, within 30 (thirty) days, an affidavit shall be supplied by defendant, or by a records custodian with personal knowledge, which shall set forth a statement concerning the customary record-keeping practices of the physician/hospital, and the date, nature and location of the search conducted, including all efforts undertaken to locate such records.
- (e) If the records described in paragraph (d) above are subsequently located, they shall be promptly supplied to all parties. Any party who fails to produce such items more than 30 (thirty) days after they are located but, in any event, no later than 30 (thirty) days prior shall be precluded from introducing the items into evidence unless good cause is demonstrated.

IV. DEPOSITIONS

- * All dates listed below are dates certain and may ***NOT*** be adjourned unless the
- ***OR*** court-approved written stipulation.
- * Inability to obtain medical records prior to the deposition dates shall ***NOT*** be cause for adjournment of the deposition. If the records obtained reveal the need for additional information, a further limited deposition may be held by agreement of the parties or by Order of the Court.

(a) Dates:

Plaintiff(s) on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

THE DEPOSITION OF EACH DEFENDANT SHALL BE CONDUCTED ON THE DATE SET FORTH ABOVE EVEN THOUGH AN EARLIER SCHEDULED DEPOSITION OR ANOTHER DEFENDANT WAS NOT CONDUCTED.

(b) Deposition of Institutional Defendant(s)

institutional defendant(s) a demand for the identification of no more than 5 (five) health care providers who are referred to, or made entries, in the medical records. Within 20 (twenty) days of service of the demand, the institutional defendant(s) shall provide the full name and employment status of each of these individuals, and, if not under the institution(s) control, the last known address of each individual. Within 5 (five) business days thereafter, plaintiff shall designate the

produce said witness. Plaintiff shall then designate additional witnesses under the defendant(s) control for the deposition within 5 (five) business days after said EBT. If the institutional defendant(s) do not voluntarily produce the additional requested witnesses within 20 (twenty) days of to statue.

All of these individuals shall be deposed on or before _____.

(c) Non-Party Witness Depositions:

Plaintiff is to advise defendant(s) within 30 (thirty) days of this Preliminary Conference Order whether the following non-party witnesses will be produced for deposition voluntarily, or whether last known addresses within 30 (thirty) days of this Stipulation and Order.

Name of Non- Party Witness: _____

Name of Non- Party Witness: _____

(d) Time and Place:

_____ s) shall be held at _____,
commencing at _____ (a.m.) (p.m.)

deposition]:

(e) Objections:

- * ALL questions asked at any deposition must be answered UNLESS they (a) infringe upon privilege, (b) bear SOLELY on the negligence of a co-defendant and NOT in any way on the potential negligence of the deponent, or (c) are palpably irrelevant.
- * If a party makes an objection as to *form*, the objector shall immediately and succinctly indicate the nature of the defect so as to permit correction. In any event, the witness shall answer the question.
- * Depositions shall not be interrupted for an attorney-deponent conference.

* Counsel for the deponent shall NOT engage in coaching during the deposition and shall

V. PHYSICAL EXAMINATIONS

Defendant(s) who wishes to conduct a physical or mental examination pursuant to CPLR 3121 shall designate in writing an examining physician or other specialist within 30 (thirty) days of

before the filing of the Note of Issue.

Specialty: _____

Defendant(s) shall serve upon all parties written reports of any examining physician within 60 (sixty) days after the examination, and at least 30 (thirty) days before trial. Pursuant to CPLR 3121, plaintiff shall provide defendant(s) with a written report by any non-treating examining physician within 60 (sixty) days after an examination, and at least 60 (sixty) days before trial.

VI. OTHER DISCLOSURE *

(a) Witnesses: Parties shall exchange names and addresses of all FACT WITNESSES concerning liability and/or damages (other than expert witnesses) no later than 60 (sixty) days before trial. Parties shall also exchange adverse party statements within that same period.

(b) Photographs and Videotapes: Parties shall exchange all photographs and/or videotapes within 60 (sixty) days after their creation and/or availability but not less than 30 (thirty) days before trial absent a showing of good cause.

(c) Employment:

(including W-malpractice and continuing to date, shall be provided within 30 (thirty) days.

(d) Collateral Sources: Plaintiff shall provide authorizations for the following collateral source providers within 30 (thirty) days: _____

(e) Discovery Notices: Responses to the following outstanding Discovery and Inspection Notices shall be furnished within 30 (thirty) days: _____

*This disclosure demand shall be considered ongoing and continuous. If requested items subsequently become available, they are to be supplied immediately upon receipt of the same to all parties to the action.

XII. FURTHER DIRECTIVES: It is

ORDERED that failure to comply with the terms of this STIPULATION AND ORDER may result in sanctions as authorized by CPLR 3126, and it is further

ORDERED that a compliance conference shall be held on _____ at _____ (AM)(PM), and it is further

ORDERED that **ALL *prior* discovery** orders of this court be brought to any and all subsequent conference.

SO STIPULATED

Plaintiff: _____

Defendant #1 _____

Printed Name: _____

Printed Name: _____

Firm Name: _____

Firm Name: _____

Defendant #2: _____

Defendant #3 _____

Printed Name: _____

Printed Name: _____

Firm Name: _____

Firm Name: _____

Defendant #4: _____

Defendant #5 _____

Printed Name: _____

Printed Name: _____

Firm Name: _____

Firm Name: _____

SO ORDERED:

Dated: _____

JUSTICE OF THE SUPREME COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----		:
		:
		:
_____	Plaintiff(s),	:
-against-		:
_____	Defendant(s).	:
-----		:

____ CIV. NO. _____

**[Proposed] Civil Case
Management Plan and
Scheduling Order**

The parties submit this [Proposed] Civil Case Management Plan and Order pursuant to Federal Rule of Civil Procedure 26(f):

1. **Meet and Confer:** The parties met and conferred pursuant to Fed. R. Civ. P. 16(c) and 26(f) on _____.
2. **Alternative Dispute Resolution / Settlement:**
 - a. Settlement discussions have ____ / have not ____ taken place.
 - b. The parties have discussed an informal exchange of information in aid of early settlement and have agreed to exchange the following:
 - c. The parties have discussed use of alternative dispute resolution mechanisms for use in this case, such as (i) a settlement conference before the Magistrate Judge, (ii) participation in the District’s Mediation Program, and (ii) retention of a private mediator. The parties propose the following alternative dispute mechanism for this case:

d. The parties recommend that the alternative dispute resolution mechanism designated above be employed at the following point in the case (e.g., within the next 30 days; after exchange of specific information; after deposition of plaintiff; etc.):

e. The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.

3. The Parties' Summary of Their Claims, Defenses, and Relevant Issues:

Plaintiff(s):

Defendant(s):

4. The Parties' Asserted Basis of Subject Matter Jurisdiction:

5. Subjects on Which Discovery May Be Needed:

Plaintiff(s):

Defendant(s):

6. **Initial Disclosures** pursuant to Fed. R. Civ. P. 26(a)(1) will be exchanged no later than _____.

7. **Amended Pleadings:**

a. No additional parties may be joined after _____, without consent or leave of Court.

b. No amended pleadings may be filed after _____, without consent or leave of Court.

8. **Fact Discovery:**

a. All fact discovery shall be completed by _____.

b. Initial requests for production were/will be served by _____. Any subsequent requests for production must be served no later than 45 days prior to the discovery completion deadline.

c. Initial interrogatories shall be served by _____. Any subsequent interrogatories must be served no later than 45 days prior to the discovery completion deadline.

d. Depositions shall be completed by _____.

e. Requests to admit shall be served by _____.

f. The parties propose the following limits on discovery:

g. Except as otherwise modified in 8(f) above, the parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The interim fact discovery deadlines may be altered by the parties on consent without application to

the Court, provided that the parties meet the deadline for completing fact discovery.

- h.** The parties would like to address at the conference with the Court the following disputes, if any, concerning fact discovery:

9. Expert Discovery (if applicable):

- a.** The parties do ____ / do not ____ anticipate using testifying experts.
- b.** Anticipated areas of expertise:
- c.** Expert discovery shall be completed by _____.
- d.** By _____, the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents, and depositions, provided that (i) expert report(s) of the party with the burden of proof shall be due before those of the opposing party's expert(s); and (ii) all expert discovery shall be completed by the date set forth above.
- e.** The parties would like to address at the conference with the Court the following disputes, if any, concerning expert discovery:

10. Electronic Discovery and Preservation of Documents and Information:

(If appropriate for the case, use the Court's Joint Electronic Discovery Submission and Proposed Order available at:

<https://nysd.uscourts.gov/hon-robert-w-lehrburger>.

- a.** The parties have ____ / have not ____ discussed electronic discovery.
- b.** If applicable, the parties shall have a protocol for electronic discovery in place by _____.

- c. The parties would like to address at the conference with the Court the following disputes, if any, concerning electronic discovery:

11. Anticipated Motions (other than summary judgment, if any):

- 12. Summary Judgment Motions:** No less than 30 days before a party intends to file a summary judgment motion, and in no event later than the close of discovery, the party shall notify this Court, and the District Judge, that it intends to move for summary judgment and, if required by the District Judge's Individual Practices, request a pre-motion conference.

If pre-motion clearance has been obtained from the District Judge where required, summary judgment motions must be filed no later than 30 days following the close of all discovery if no date was set by the District Judge or, if a date was set by the District Judge, in accordance with the schedule set by the District Judge. If no pre-motion conference is required, summary judgment motions must be filed no later than 30 days following the close of discovery.

Any summary judgment motion must comply with the Federal Rules of Civil Procedure, the Local Rules of this District, and the Individual Practices of the District Judge to whom the case is assigned.

- 13. Pretrial Submissions:** The parties shall submit a joint proposed pretrial order and any required accompanying submissions 30 days after decision on the summary judgment motion(s), or, if no summary judgment motion is made, 30 days after the close of all discovery.

14. Trial:

- a. All parties do ____ / do not ____ consent to a trial before a Magistrate Judge at this time.
- b. The case is ____ / is not ____ to be tried to a jury.

c. The parties anticipate that the trial of this case will require _____ days.

15. Other Matters the Parties Wish to Address (if any):

16. The Court will fill in the following:

A status conference will be held before the undersigned on _____
at _____m. in Courtroom 18D, 500 Pearl Street.

The parties shall submit a joint status letter every _____ days and shall also
inform the Court at the time the parties believe a settlement conference would
be fruitful.

Dated: _____

SO ORDERED.

ROBERT W. LEHRBURGER
United States Magistrate Judge

PLAINTIFF(S):

DEFENDANT(S):

ATTORNEY NAME(s):

ATTORNEY NAME(s)

ADDRESS

ADDRESS

TEL: _____

TEL: _____

EMAIL: _____

EMAIL: _____

D ID/cj
[REDACTED]

-----X

SSA [REDACTED] RS,

Plaintiff,

Index No. [REDACTED] 2020

-against-

██████████ CAN ██████████ NE ██████████ ENT ██████████ P. ██████████
██████████ MPSON LLC,

Defendants.

-----X

PLEASE TAKE NOTICE, that in accordance with Section 3041, Rules 3042 and 3043

and Section 3044 of the CPLR, you are hereby required to serve upon the Law Office of

██████████aret ██████████ein ██████████ntes, located at 200 Madison Avenue, New York, NY 10016 on

SEPTEMBER 4, 2020 at 10:00 a.m., a Verified Bill of Particulars pursuant to the following

1. State the date and time of day of the occurrence.
2. State the location of the occurrence, giving its address (by number, street, city or town or if the place of the occurrence had no address, describing its location from fixed geographical sites):
 - (a) if within a building, give the floor number and the location thereon; street floor or ground floor to be considered as the first floor;
 - (b) if upon a stairway, set forth the location of the stairway in the premises, stating between what floors it is situated; also the particular step on said stairway, counting from the bottom;

- (c) if on the sidewalk, the distance from the nearest intersection and from the curb and building lines;
 - (d) if within an elevator, describe the elevator sufficiently to differentiate it from other elevators in the building.
- 3. If the plaintiff claims a dangerous, unsafe, or defective condition was the cause of the occurrence:
 - (a) describe that condition;
 - (b) set forth in what manner the condition described was dangerous, defective and/or unsafe;
 - (c) specify the date and time when the condition was caused or created;
 - (d) set forth the identity of the person or entity who caused or created the condition.
- 4. State the manner in which it is claimed the alleged accident occurred.
- 5. State the acts or omissions constituting the negligence claimed, specifying the exact date or dates when the alleged acts were committed and, if there is more than one defendant, the acts or omissions of each defendant constituting the alleged negligence.
- 6. If actual notice is claimed, set forth:
 - (a) the name(s) of the person(s) who is/are claimed to have given such notice;
 - (b) the name(s) of the person(s) to whom notice is claimed to have been given;
 - (c) whether the notice was written or oral;
 - (d) the date the notice was given; and
 - (e) if in writing, provide a true copy thereof.
- 7. If constructive notice is claimed, set forth the length of time it will be claimed the alleged condition existed.
- 8. State the injuries claimed, giving the location, duration and extent of each and specifying those claimed to be permanent.

9. State the length of time plaintiff was confined:
 - (a) to hospital;
 - (b) to bed;
 - (c) to house.
10. The names and addresses of doctors, hospitals and any other medical providers and dates treatment was rendered.
11. State the length of time plaintiff(s) will claim incapacity from employment.
12. State the following:
 - (a) vocation of plaintiff(s) at time of alleged occurrence;
 - (b) name and address of employer;
 - (c) average weekly earnings;
 - (d) if self-employed, a detailed statement of how alleged loss of earnings or income is calculated.
13. If the plaintiff attended school at the time of this incident, provide:
 - (a) the name of the school;
 - (b) the plaintiff's grade;
 - (c) the amount of time missed from school due to the occurrence.
14. Set forth a detailed statement of amounts claimed as special damages, if any, for:
 - (a) physician's services;
 - (b) hospital expenses;
 - (c) nurses' services;
 - (d) medical supplies;
 - (e) loss of earnings;
 - (f) any additional or other special damages.

15. Set forth a true copy of any contract, lease or express warranty referred to in the complaint; if an oral contract, express warranty or lease is claimed, state the names of the persons who allegedly entered into the same, the date and place the same was allegedly entered and the substance thereof.
16. If violation of any rule, regulation, code, ordinance, law or statute is claimed, specify the Chapter, Article, Section and Paragraph of same allegedly violated by each defendant.
17. With respect to each plaintiff, separately, state:
 - (a) residence address at time of the alleged occurrence;
 - (b) residence address at present time;
 - (c) date of birth;
 - (d) social security number.
18. If loss or diminution of services, society and/or consortium is claimed, specify precisely the services, society and/or consortium claimed to have been lost or diminished, the dates between which loss or diminution is claimed and the manner in which the damages claimed have been computed.

**IN THE EVENT THAT THE WITHIN CLAIM INCLUDES A CLAIM FOR
VICARIOUS LIABILITY**

19. State the basis upon which it is claimed that defendant is vicariously liable.
20. Specify the acts or omissions of the individual(s) or entity(ies) upon which you base your claim of vicarious liability.
21. Specify whether or not it is claimed that defendant(s) and said individual(s) or entity(ies) had:
 - a) an employer-employee relationship;
 - b) a principal-agent relationship;
 - c) an employer-independent contractor relationship;
 - d) If none of the above, state the nature of the relationship between defendant and the said individual(s) or entity(ies) allegedly giving rise to vicarious liability on the part of defendant(s).
22. Specify all acts or omissions of the said individual(s) or entity(ies) which allegedly caused or contributed to the injury complained of herein.

23. Do you claim that the defendant(s) had notice, either actual or constructive, of any facts indicating that the defendant(s) knew or should have known that the said individual(s) or entity(ies) had engaged in acts or omissions of the same type as alleged herein prior to the date of the subject occurrence? If so, state whether such notice is actual and/or constructive. If actual notice is claimed, identify the person(s) by name, title and/or job description, who possessed such actual notice. If constructive notice is alleged, state the facts upon which such claim is predicated.
24. Specify any policies and/or provisions allegedly violated which caused and/or contributed to the injury complained of in connection with the claim of vicarious liability.
25. Specify any statutes, rules, regulations and/or ordinances allegedly violated in connection with the claim of vicarious liability.

PLEASE TAKE FURTHER NOTICE, that unless the above demand is complied with within thirty (30) days, an application will be made to preclude the plaintiff(s) from giving any evidence in accordance with the aforementioned rules.

Dated: New York, New York
July 22, 2020

Yours, etc.

LAW OFFICE OF

[REDACTED] ET AL. [REDACTED] IN [REDACTED] [REDACTED] TES

[REDACTED]

[REDACTED] RT [REDACTED] AN

[REDACTED] ure [REDACTED] nt [REDACTED] L [REDACTED] (2)

Attorney for Defendants

[REDACTED] [REDACTED] AN [REDACTED] NE [REDACTED] ENT CORP.,

and [REDACTED] MPSON LLC

200 Madison Avenue, 2nd Floor

New York, New York 10016

Phone: (646) [REDACTED] 250

TO: SMILEY & SMILEY, LLP
Attorney For: [REDACTED] SA [REDACTED] RS
122 East 42nd Street, Suite 3900
New York, NY 10168
Phone: (212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 1

-----X
[REDACTED],

Plaintiffs,

-against-

**BILL OF
PARTICULARS**

[REDACTED]
[REDACTED]

Defendants.

-----X

Plaintiff, [REDACTED], by her attorneys, SMILEY & SMILEY, LLP, hereby submit the following as and for their Verified Bill of Particulars in response to the demand of the defendants, [REDACTED]. and [REDACTED] LLC, as follows:

1. The date and time of the accident was January 21, 2020 at approximately 8:25 A.M.
2.
 - (a) Not applicable
 - (b) Not applicable
 - (c) The accident occurred on the sidewalk directly in front of 55 Thompson Street, New York, New York 10012.
 - (d) Not applicable.
3.
 - (a) On January 21, 2020 at approximately 8:25 A.M., the weather in New York City was around 30 degrees Fahrenheit. The sidewalk directly outside 55 Thompson Street was hosed down with water creating an icy and slippery condition.
 - (b) The sidewalk was hosed down with water and the temperature outside was below freezing, creating the icy and slippery condition.
 - (c) The dangerous and defective condition of the sidewalk occurred sometime prior to plaintiff traversing on the above-mentioned sidewalk.

(d) The dangerous and defective condition was created by an agent, servant or employee of [REDACTED], and B [REDACTED] LLC.

4. Defendants, [REDACTED], [REDACTED], by a servant, agent, and/or employee, in below freezing weather conditions, hosed down the sidewalk with water creating an icy and slippery condition.

5. The defendants, [REDACTED] [REDACTED] their agents, servants and/or employees, were negligent in failing to properly operate, control, manage, inspect, repair, maintain and supervise the aforesaid premises; in causing and permitting an unsafe and hazardous condition to exist at the aforesaid premises; in hosing down the sidewalk in front of the aforesaid premises with water in 20 degree weather, causing the sidewalk to become icy and slippery; in failing to sand and salt and otherwise remove the ice which had accumulated on the aforesaid sidewalk after having hosed down the sidewalk; in failing to provide the plaintiff with a safe means of traversing the aforesaid area at the aforesaid premises; in failing to provide caution signs thereat; in failing to provide warning signs thereat; in failing to provide barricades; in causing and permitting the plaintiff to enter into a position of danger; in subjecting said plaintiff to unusual and unnecessary hazards and dangers; in failing to employ adequate and sufficient help to properly maintain the aforesaid defective sidewalk at the aforesaid location; in causing and permitting the condition that brought about the fall of the plaintiff at the aforesaid location; in creating a trap-like condition; in creating a nuisance, and in failing to maintain said area in a reasonable, safe and suitable condition.

6. (a)-(e) Plaintiff is unable to further respond to this demand until completion of further discovery proceedings and depositions. However, at this time, plaintiff is not aware that

actual notice of the alleged condition was given to either defendants, its servants, agents, and/or employees.

7. Plaintiff is unable to respond to this demand until completion of further discovery proceedings and depositions. However, without in any way conceding that constructive notice is a necessary prerequisite to suit herein, plaintiff claims that the defendants, its servants, agents and/or employees had constructive notice of the said dangerous and defective conditions and caused, allowed and permitted same to exist and remain for an unreasonably long period of time prior to this accident, when they knew or could and should have known of the existence of said dangerous and defective conditions which existed for an unreasonably long period of time prior to this accident, the exact nature and/or duration of which is not presently known or available to the plaintiff, and subject to further discovery proceedings, and a reasonable inspection would have revealed the existence of said dangerous and defective conditions.

8. The plaintiff, [REDACTED], sustained the following injuries:

DISPLACED INTRAARTICULAR RIGHT DISTAL RADIUS FRACTURE NECESSITATING SURGERY IN THE NATURE OF OPEN REDUCTION AND INTERNAL FIXATION OF RIGHT DISTAL RADIUS INTRAARTICULAR FRACTURE WITH FIXATION OF 2 OR MORE FRAGMENTS ON JANUARY 31, 2020 AT NEW YORK PRESBYTERIAN, LOWER MANHATTAN HOSPITAL;

PLAINTIFF WAS CAUSED AND WILL CONTINUE TO BE CAUSED TO UNDERGO AN EXTENSIVE REGIMEN OF PHYSICAL THERAPY WHICH WILL CONTINUE FOR AN UNSPECIFIED PERIOD OF TIME;

TRAUMATIC ANXIETY;

PSYCHOLOGICAL ANGUISH;

EMOTIONAL DISTRESS AND DEPRESSION;

TRAUMATICALLY INDUCED ARTHRITIS IS EXPECTED TO DEVELOP IN THE FUTURE AT THE AFFECTED SITES AND JOINTS;

LOST AND DECREASED ENJOYMENT OF LIFE;

LOST ENJOYMENT OF PRE-ACCIDENT SOCIAL ENDEAVORS;

SEVERE PAIN, SWELLING, TENDERNESS, LIMITATION OF MOTION, DECREASED RANGE OF MOTION, IMPAIRMENT OF FUNCTION OF SKIN, BONE, MUSCLE, CARTILAGE, LIGAMENTS, TENDONS, JOINTS, BLOOD VESSELS, AND NERVES.

9. (a)-(c) To be provided.
10. New York Presbyterian – Lower Manhattan Hospital
170 William Street,
New York, New York 10038
Admission: January 21, 2020 – Emergency Room
January 31, 2020-Surgery

██████████, M.D., F.A.A.O.S.
New York Downtown Orthopedic Associates
170 William Street, 8th Floor
New York, New York 10038

The dates of treatment are contained within the medical records.

11. To be provided.
12. (a)-(d) To be provided.
13. (a)-(c) Not applicable. The plaintiff was not a student at the time of the accident.
14. (a)-(f) To be provided.
15. Not applicable.
16. At the time of trial, plaintiffs' attorneys will ask the Court to take judicial notice of all statutes, rules, regulations, ordinances, codes, and industry standards. Plaintiffs and their attorneys reserve their right to supplement this response after completion of their discovery.

17. (a) At time of the occurrence, plaintiff resided at [REDACTED] New York, New York 10003.

(b) Plaintiff currently resides at [REDACTED], New York, New York 10003.

(c) Plaintiff's date of birth is [REDACTED]

(d) Pursuant to General Business Law 399-dd(6) "No person may file any document available for public inspection with any state agency, political subdivision, or in any court of this state that contains a social security account number of any other person, unless such other person is a dependent child, or has consented to such filing, except as required by federal or state law or regulation, or by court rule." The plaintiff expressly declines to consent to such filing due to valid concerns regarding possible identity theft. The last 4 digits of the plaintiff's Social Security number are XXX-XX-1686.

18. Not applicable.

19. The defendants, [REDACTED]
[REDACTED] are vicariously liable for the actions of their agents, servants, and/or employees.

20. See response, paragraph 5.

21. (a)-(d) Plaintiff is unable to respond to this demand until completion of further discovery proceedings and depositions.

22. Plaintiff is unable to respond to this demand until completion of further discovery proceedings and depositions.

23. Plaintiff is unable to further respond to this demand until completion of further discovery proceedings and depositions. However, at this time, plaintiff is not aware that actual

notice and or constructive notice of the alleged condition was given to either defendants and its servants, agents, and/or employees.

24. Plaintiff is unable to respond to this demand until completion of further discovery proceedings and depositions.

25. At the time of trial, plaintiffs' attorneys will ask the Court to take judicial notice of all statutes, rules, regulations, ordinances, codes, and industry standards. Plaintiffs and their attorneys reserve their right to supplement this response after completion of their discovery.

Dated: New York, New York
August 27, 2020

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

Michael S. Solomon

By: _____
MICHAEL S. SOLOMON
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

TO:

Attorneys for Defendant,

200 Madison Avenue, 2nd Floor
New York, New York 10016
(_____) _____

Section 202.33 Conduct of the Voir Dire.

- (a) Trial Judge. All references to the trial judge in this section shall include any judge designated by the administrative judge in those instances where the case processing system or other logistical considerations do not permit the trial judge to perform the acts set forth in this section.
- (b) Pre-Voir Dire Settlement Conference. Where the court has directed that jury selection begin, the trial judge shall meet prior to the actual commencement of jury selection with counsel who will be conducting the voir dire and shall attempt to bring about a disposition of the action.
- (c) Method of Jury Selection. The trial judge shall direct the method of jury selection that shall be used for the voir dire from among the methods specified in subdivision (f) of this section.
- (d) Time Limitations. The trial judge shall establish time limitations for the questioning of prospective jurors during the voir dire. At the discretion of the judge, the limits established may consist of a general period for the completion of the questioning, a period after which attorneys shall report back to the judge on the progress of the voir dire, and/or specific time periods for the questioning of Panels of jurors or individual jurors.
- (e) Presence of Judge at the Voir Dire. In order to ensure an efficient and dignified selection process, the trial judge shall preside at the commencement of the voir dire and open the voir dire proceeding. The trial judge shall determine whether supervision of the voir dire should continue after the voir dire has commenced and, in his or her discretion, preside over part of or all of the remainder of the voir dire.
- (f) Methods of Jury Selection. Counsel shall select prospective jurors in accordance with the general principles applicable to jury selection set forth in subdivision (g) of this section and using the method designated by the judge pursuant to subdivision (c) of this section. The methods that may be selected are:
- (1) "White's method," as set forth in subdivision (g) of this section;
 - (2) "struck method," as set forth in subdivision (g) of this section;
 - (3) "strike and replace method," in districts where the specifics of that method have been submitted to the Chief Administrator by the Administrative Judge and approved by the Chief Administrator for that district. The strike and replace method shall be approved only in those districts where the Chief Administrator, in his or her discretion, has determined that experience with the method in the district has resulted in an efficient and orderly selection process; or
 - (4) other methods that may be submitted to the Chief Administrator for use on an experimental basis by the appropriate Administrative Judge and approved by the Chief Administrator.
- (g) Procedures for questioning, challenging and selecting jurors authorized by section 202.33 of the Rules of the Chief Administrator of the Courts.

APPENDIX E

Procedures for questioning, challenging and selecting jurors authorized by section 202.33 of the Rules of the Chief Administrator of the Courts.

A. General principles applicable to jury selection. Selection of jurors pursuant to any of the methods authorized by section 202.33(e) of the Rules of the Chief Administrator shall be governed by the following:

- (1) If for any reason jury selection cannot proceed immediately, counsel shall return promptly to the courtroom of the assigned trial judge or the Trial Assignment Part or any other designated location for further instructions.

(2) Generally, a total of eight jurors, including two alternates, shall be selected. The court may permit a greater number of alternates if a lengthy trial is expected or for any appropriate reason. Counsel may consent to the use of "nondesignated" alternate jurors, in which event no distinction shall be made during jury selection between jurors and alternates, but the number of peremptory challenges in such cases shall consist of the sum of the peremptory challenges that would have been available to challenge both jurors and designated alternates.

(3) All prospective jurors shall complete a background questionnaire supplied by the court in a form approved by the Chief Administrator. Prior to the commencement of jury selection, completed questionnaires shall be made available to counsel. Upon completion of jury selection, or upon removal of a prospective juror, the questionnaires shall be either returned to the respective jurors or collected and discarded by court staff in a manner that ensures juror privacy. With Court approval, which shall take into consideration concern for juror privacy, the parties may supplement the questionnaire to address concerns unique to a specific case.

(4) During the voir dire each attorney may state generally the contentions of his or her client, and identify the parties, attorneys and the witnesses likely to be called. However, counsel may not read from any of the pleadings in the action or inform potential jurors of the amount of money at issue.

(5) Counsel shall exercise peremptory challenges outside of the presence of the Panel of prospective jurors.

(6) Counsel shall avoid discussing legal concepts such as burden of proof, which are the province of the court.

(7) If an unusual delay or a lengthy trial is anticipated, counsel may so advise prospective jurors.

(8) If counsel objects to anything said or done by any other counsel during the selection process, the objecting counsel shall unobtrusively request that all counsel step outside of the juror's presence, and counsel shall make a determined effort to resolve the problem. Should that effort fail, counsel shall immediately bring the problem to the attention of the assigned trial judge, the Trial Assignment Part judge or any other designated judge.

(9) After jury selection is completed, counsel shall advise the clerk of the assigned Trial Part or of the Trial Assignment Part or other designated part. If counsel anticipates the need during trial of special equipment (if available) or special assistance, such as an interpreter, counsel shall so inform the clerk at that time.

B. "White's Method"

(1) Prior to the identification of the prospective jurors to be seated in the jury box, counsel shall ask questions generally to all of the jurors in the room to determine whether any prospective juror in the room has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(2) After general questions have been asked to the group of prospective jurors, jury selection shall continue in rounds, with each round to consist of the following: (1) seating prospective jurors in the jury box; (2) questioning of seated prospective jurors; and (3) removal of seated prospective jurors upon exercise of challenges. Jurors removed for cause shall immediately be replaced during each round. The first round shall begin initially with the seating of six prospective jurors (where undesignated alternates are used, additional prospective jurors equal to the number of alternate jurors shall be seated as well).

(3) In each round, the questioning of the seated prospective jurors shall be conducted first by counsel for the plaintiff, followed by counsel for the remaining parties in the order in which their names appear in the caption. Counsel may be permitted to ask follow-up questions. Within each round, challenges for cause shall be exercised by any party prior to the exercise of peremptory challenges and as soon as the reason therefor

becomes apparent. Upon replacement of a prospective juror removed for cause, questioning shall revert to the plaintiff.

(4) Following questioning and the exercise of challenges for cause, peremptory challenges shall be exercised one at a time and alternately as follows: In the first round, in caption order, each attorney shall exercise one peremptory challenge by removing a prospective juror's name from a "board" passed back and forth between or among counsel. An attorney alternatively may waive the making of a peremptory challenge. An attorney may exercise a second, single peremptory challenge within the round only after all other attorneys have either exercised or waived their first peremptory challenges. The board shall continue to circulate among the attorneys until no other peremptory challenges are exercised. An attorney who waives a challenge may not thereafter exercise a peremptory challenge within the round, but may exercise remaining peremptory challenges in subsequent rounds. The counsel last able to exercise a peremptory challenge in a round is not confined to the exercise of a single challenge but may then exercise one or more peremptory challenges.

(5) In subsequent rounds, the first exercise of peremptory challenges shall alternate from side to side. Where a side consists of multiple parties, commencement of the exercise of peremptory challenges in subsequent rounds shall rotate among the parties within the side. In each such round, before the board is to be passed to the other side, the board must be passed to all remaining parties within the side, in caption order, starting from the first party in the rotation for that round.

(6) At the end of each round, those seated jurors who remain unchallenged shall be sworn and removed from the room. The challenged jurors shall be replaced, and a new round shall commence.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Designated alternate jurors shall be selected in the same manner as described above, with the order of exercise of peremptory challenges continuing as the next round following the last completed round of challenges to regular jurors. The total number of peremptory challenges to alternates may be exercised against any alternate, regardless of seat.

C. "Struck Method"

(1) Unless otherwise ordered by the Court, selection of jurors shall be made from an initial Panel of 25 prospective jurors, who shall be seated randomly and who shall maintain the order of seating throughout the voir dire. If fewer prospective jurors are needed due to the use of designated alternate jurors or for any other reason, the size of the Panel may be decreased.

(2) Counsel first shall ask questions generally to the prospective jurors as a group to determine whether any prospective juror has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires further elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(3) After the general questioning has been completed, in an action with one plaintiff and one defendant, counsel for the plaintiff initially shall question the prospective jurors, followed by questioning by defendant's counsel. Counsel may be permitted to ask follow-up questions. In cases with multiple parties, questioning shall be undertaken by counsel in the order in which the parties' names appear in the caption. A challenge for cause may be made by counsel to any party as soon as the reason therefor becomes apparent. At the end of the period, all challenges for cause to any prospective juror on the Panel must have been exercised by respective counsel.

(4) After challenges for cause are exercised, the number of prospective jurors remaining shall be counted. If that number is less than the total number of jurors to be selected (including alternates, where non-designated alternates are being used) plus the maximum number of peremptory challenges allowed by the court or by statute that may be exercised by the parties (such sum shall be referred to as the "jury Panel

number"), additional prospective jurors shall be added until the number of prospective jurors not subject to challenge for cause equals or exceeds the jury Panel number. Counsel for each party then shall question each replacement juror pursuant to the procedure set forth in paragraph (3).

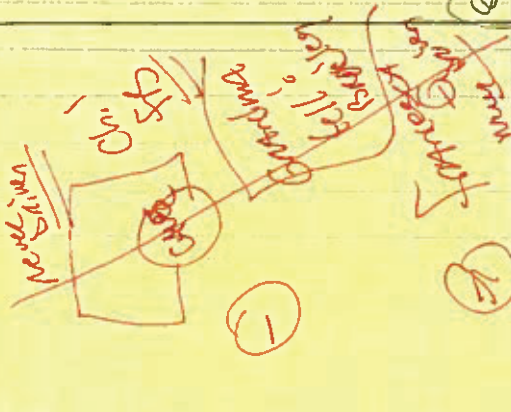
(5) After all prospective jurors in the Panel have been questioned, and all challenges for cause have been made, counsel for each party, one at a time beginning with counsel for the plaintiff, shall then exercise allowable peremptory challenges by alternately striking a single juror's name from a list or ballot passed back and forth between or among counsel until all challenges are exhausted or waived. In cases with multiple plaintiffs and/or defendants, peremptory challenges shall be exercised by counsel in the order in which the parties' names appear in the caption, unless following that order would, in the opinion of the court, unduly favor a side. In that event, the court, after consulting with the parties, shall specify the order in which the peremptory challenges shall be exercised in a manner that shall balance the interests of the parties. An attorney who waives a challenge may not thereafter exercise a peremptory challenge. Any Batson or other objections shall be resolved by the court before any of the struck jurors are dismissed.

(6) After all peremptory challenges have been made, the trial jurors (including alternates when non-designated alternates are used) then shall be selected in the order in which they have been seated from those prospective jurors remaining on the Panel.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Counsel shall select designated alternates in the same manner set forth in these rules, but with an initial Panel of not more than 10 prospective alternates unless otherwise directed by the court. The jury Panel number for designated alternate jurors shall be equal to the number of alternates plus the maximum number of peremptory challenges allowed by the court or by statute that may be exercised by the parties. The total number of peremptory challenges to alternates may be exercised against any alternate, regardless of seat.

Historical Note

Sec. filed Dec. 7, 1995 eff. Jan. 1, 1996.



Just #1
OK but needs to end early to L but subject
Please try to be wise

IT for:
STUART SHULMAN
needs to leave by 3pm Friday

CRONIN
SAR AND JURY
LUCIANA VERDARA
57
SING
NOT SURE CAN BE PAID
PAUSE

Δ preamp
COSTA
LUA
48
DOUGLAS
KIDS
MOTORCYCLE

JUL #4
JIMME
RESISTANCE
STOCK MARKET
27

Angel rights
pander
Gibson, Dunn
1115
MOTORCYCLE
LUA
AZ
GABRIELA
COLONIA

KARLASSIT LIM

YUQUIN SLACK

Week 6

ALT #1

(1)

Kathleen

Collins

530

(6) Dance teacher
special ed

33

Maria

Lopes

- cousin
Mrs. sample

- used to
dive

(7)

~~Doesn't drive~~

~~Typical of kids
Hawkeye~~

(1)

Jennifer

Putfield

Reminds me
of Polly

(8)

(9)

MBA
Blaine

Clayton

Smith

44

Remains

7.0
f

(10)

ALT #2

Week 5

vacant

(2)

Nikolas

Koukalitis

Rides motorcycle

WTS 2 shoe

Benny

14 classic

some

chairs

(5)

OPEN

May it please the Court ...

I am

I represent π , OSCAR A.

This is a case where the Δ , Carol Lynch failed to use reasonable care and failed to pay attention while driving her car on a September Saturday in 2017

- As a result of her failure to use reasonable care and pay attention that day, she struck ~~the plaintiff~~, OSCAR while he was riding on his motorcycle

- knocking him to the ground and ~~causing~~ ^{motorcycle landed on off his leg} him to be seriously injured and skidded

propelling him into A. foramed

skid while his leg trapped beneath the motorcycle

The 1st witness you will hear from is OSCAR A.

Birthday Yesterday!

- You will learn that OSCAR is a 62 y.o. man who is originally from Chile - South America he moved to the U.S. many years ago ~~and~~ for the last 20 years he has lived and worked here in Queens as a handyman for a large apt. complex. Hyde Park Queens

U.S. Citizen

2001 Harley Dyna Super-Glide

- 19 years ago he purchased his ^{prized possession} Harley Davidson motorcycle. A motorcycle he has taken great pride in. Only takes out on special occasions when the weather is good

- Takes motorcycle to charity events and fundraisers to help raise money for cancer and children.

Open
(2)

D/A

~~Beautiful day~~

Learn that on Saturday, September 23, 2017

Oscar was on his way to one of these benefits - to raise money to help Autistic children

to get to benefit he had to ~~get~~ ride from his home ~~at~~ 138m St in Queens to the GCP Westbound

The route brought him to the intersection of LNP & the GCP Service Road

Learned that while travelling on LNP as he approached Int, he brought his Harley to a ^{brief} stop then, when not seeing any oncoming traffic towards him, he turned left on GCP Service Road

- He wasn't speeding - taking it easy

going about 20 mph

Looking ahead while going straight ~~on~~ GCP Service Rd towards entrance to GCP

- Felt a hit on the back right side of his Harley then another hit which knocked him and his Harley over where he crashed to the ground under his Harley and skidded until he came to a stop with entire left of Harley on top of his leg

- Looked back from position on ground

and saw a Black Audi ^{that hit and knocked him to}

Open
(3)

The Defendant

The Black Audi, you will know
was ~~being~~ being driven by
owned by a man Name Phillip Lynch
but on this day it was being
driven by his wife, Carol Lynch

Evidence will show that A, Carol Lynch
was ^{100%} responsible for this accident
b/c she failed to pay attention
USE reasonable care
while driving Audi

evidence will show that she was
(1) driving too fast
(2) not paying attention and failed
to seeing what was there to
be seen ahead here while
while driving
~~OSAC~~

OSAC did nothing wrong

Closing

Open
(4)

I am confident that if you pay
close attention to the evidence
presented at this trial

you will ~~agree~~ conclude that
the A was not using
reasonable care and
failed to pay attention

Cause of the Accident
on 9/23/17

Thank you!

We will present evidence for you
to evaluate in this case about
the accident and the A's failure
to use REAS. CARE & failure to
pay attention.

OSCAR → Photos of Accident, Scene
Hardy & Audi
COCO → pay attention to her description of
events and whether they changed
since the day of accident
until today

A Defense
not correct

~~OSCAR~~ I think the evidence
will show that she has
changed her story

Good's husband → here what she told him
Accident Reconstructionist → Diagram and Scientific
explain how accident
occure
inspected Hardy
Confirmed damage from A's front bumper

ANATOMY OF A TRIAL

PART 2

OPENING STATEMENTS

There are two keys to delivering a powerful opening statement. The first, and most important, is *preparation*. The second is *presentation*.

You should certainly spend the majority of your time on the preparation aspect of your opening statement. In the world of trial practice, my motto is “preparation, preparation, preparation!” If you spend the time necessary to prepare your opening, the presentation will naturally follow.

So, where to begin? I start preparing my opening statement from the outset of the case. Each case has its own strengths and weaknesses, and it is important to recognize the strengths and weaknesses and think about how you can best convey them to a judge or jury. Many cases have unique aspects that can set a tone or theme for your opening statement. As your case progresses through discovery, with every bit of evidence that is uncovered, it is important to make a mental note and, preferably, a written note, of what you plan to say in your opening to frame the case on *your terms*. One of the most important reasons for delivering a powerful opening statement is to truly make a statement about your case. To set the tone and frame the issues as you want the jury to see them. If you want the jury to believe that your case looks like the color pink, then you need to give them a pink lens to view the evidence through.

Once you have all of the ideas in your head and the notes written down, you should find a quiet place and time to sit down at a table with your entire case file. Do not do this at your desk during normal business hours where you are likely to be interrupted by others in the office, phone calls and emails. I usually lock myself in my conference room and

advise everyone not to interrupt me or I work at home at a time when nobody is around to interrupt me.

Next, take out paper and a pen/pencil or sit down at your computer/laptop if you prefer to type rather than write. My personal preference is to use a legal pad, a black pen and a red pen. Then start free writing whatever comes to mind about your case. In a few paragraphs, write out an overview of your case (how would you explain your case to some family members at the dinner table?). Then write out sections on liability and damages. Feel free to cross things out, circle or otherwise highlight important words, phrases and points. I am a big fan of writing phrases in caps and underlining them with a red pen (i.e. THIS NEVER SHOULD HAVE HAPPENED BUT FOR THE NEGLIGENCE OF THE DEFENDANT!).

After your first round of free writing, you will feel better about knowing what you want to say in your opening. Then you just need to organize your notes into an outline that you can use at the time of your opening. In the outline included with these materials, I provide a format (see Outline II f.) for your opening. You should write or type out your outline in big letters or big font and be generous with the spacing so that you can easily refer to the outline without having to spend time reading it. The outline will serve as your crutch or safety net during your opening to help you stay on track with your presentation.

Once you have completed your free writing and outline you can begin to prepare the actual presentation and delivery of your opening. This is the time to start talking out loud, in the shower, in front of a mirror, walking down the street, or wherever you desire. It is important to actually speak your opening statement before you do it for real in court. The way that I guarantee a good start to my opening, without any stumbles or drawing any blanks, is to always start the same way with “May it please the court, Judge Jones, counsel, members of the jury, good afternoon, my name is Andrew Smiley, and I represent the plaintiff, Jane Smith.”

Make sure you look good. Wear your nicest outfit for your opening. Button up. Remove all items from your pockets. Turn off and put away your cell phone. Make sure nothing is in your hands – no pen, no pad. Leave your outline on counsel table, the podium or the ledge in front of the jury box. Speak slowly and clearly. Change your inflection when needed to highlight a point. I like to be demonstrative, but that is my style. If you usually use your hands when talking then feel free to do the same in your opening. Be yourself. We all have our own style and you won't do well if you try to use someone else's style. Make eye contact with the jurors. Don't get too close and invade their space. If you lose your train of thought or just want to take a moment to regroup, go and have a sip of water and look at your outline. This will only take a few seconds. Then get back to it. When you are finished, after the conclusion of your opening say "Thank You" – and sit down.

If you have properly prepared and presented your opening statement, you will be off to a powerful start. The trial will begin and be framed on *your terms*. Good luck!

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HOW TO INTRODUCE AN ITEM INTO EVIDENCE

By Andrew Smiley, Esq.

1. Ask judge for permission to approach to have an item marked for identification;
2. Show it to you adversary before approaching;
3. Hand to court officer and ask “may I please have this marked as plaintiff’s exhibit __ for identification.”
4. Ask judge “may I please show it to the witness?”;
 - a. Note* If using pre-marked exhibits you will join #3 and #4 and state to the judge: “ may I please approach the witness with what has been pre-marked as exhibit_?”*
5. Show it to your witness **without the jury being able to see it** and state the following series of questions:

- a. “Dustin, I am handing you what has been marked as plaintiff’s exhibit _ for identification, do you recognize it?”
 - b. “What do you recognize it to be?”
 - c. “Does plaintiff’s exhibit _ fairly and accurately depict _____(the scene of the accident/the letter you signed, etc.)?”
 - d. For a business record (CPLR insert: “was this document/record prepared by you/your company in the ordinary course of business?”
 - e. “Will this document/photo/etc. aid and assist you in your testimony today?”
- 6. Then turned to the judge and state “ Your Honor we offer what has been marked as Exhibit _ for identification into evidence.”
 - 7. The judge will ask your adversary if there are any objections. Then the item will be “received it into” evidence and assigned the appropriate number/letter (i.e. Plaintiff’s Exhibit 1 or Defendants Exhibit A).

2016 New York Laws

CVP - Civil Practice Law & Rules

Article 45 - (Civil Practice Law & Rules) EVIDENCE

R4518 - Business records.

Universal Citation: NY CPLR § R4518 (2016)

Rule 4518. Business records. (a) Generally. Any writing or record, whether in the form of an entry in a book or otherwise, made in the regular course of any business, memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or at a reasonable time thereafter. An electronic record, as defined in section three hundred two of the state technology law, used or stored in such a memorandum or record, shall be admissible in a tangible form if that is a true and accurate representation of such electronic record. The court may consider the method or manner by which the electronic record was stored, maintained or retrieved in determining whether the exhibit is a true and accurate representation of such electronic record. All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but they shall not affect its admissibility. The term business includes a business, profession, occupation and calling of every kind.

(b) Hospital bills. A hospital bill is admissible in evidence under this rule and is prima facie evidence of the facts contained, provided it bears a certification by the head of the hospital or by a responsible employee in the controller's or accounting office that the bill is correct, that each of the items was necessarily supplied and that the amount charged is reasonable. This subdivision shall not apply to

proceeding in a surrogate's court nor in any action instituted by behalf of a hospital to recover payment for accommodations or supplies furnished or for services rendered by or in such hospital, except in a proceeding pursuant to section one hundred eighty-nine of the law to determine the validity and extent of the lien of a hospital certified hospital bills are prima facie evidence of the facts of the services and of the reasonableness of any charges which do not exceed the comparable charges made by the hospital in the care of workmen's compensation patients.

(c) Other records. All records, writings and other things referred to in sections 2306 and 2307 are admissible in evidence under this rule and are prima facie evidence of the facts contained, provided they are accompanied by certification or authentication by the head of the hospital, labor department or bureau of a municipal corporation or of the state, or by an employee delegated for that purpose or by a qualified physician. Where a hospital record is in the custody of a warehouseman, as that term is defined by paragraph (h) of subdivision one of section 7-102 of the uniform commercial code, pursuant to a written order approved in writing by the state commissioner of health, admissibility under this subdivision may be established by a certification made by the manager of the warehouse that sets forth (i) the authority by which the record is held, including but not limited to a court order, order of the state commissioner, or order or resolution of the governing body or officer of the hospital, and (ii) that the record has been in the exclusive custody of such warehouse or warehousemen since its receipt from the hospital or, if another has had access to it, the name and address of such person and the date on which and the circumstances under which such access was had. Any warehouseman providing a certification as required by this subdivision shall have no liability for acts or omissions relating thereto, except for intentional misconduct, and no warehouseman is authorized to assess and collect a reasonable charge for such services providing the certification described by this subdivision....

TEMPLATE FOR DIRECT EXAMINATION OF INJURED PLAINTIFF OUTLINE

By Andrew Smiley, Esq.

1. Ask witness to look at jury and introduce herself
2. Give background information (extent will vary by witness/case)
 - a. Residence
 - b. Education
 - c. Employment
 - d. Age
 - e. Married/single/kids/grandkids
 - f. Relevant background for specific case facts
3. Turn attention to date of accident
 - a. Start with the morning
 - b. Chronologically lead up to the accident
4. The accident
 - a. Open questions asking witness to describe – in sections – events of accident
 - i. Where were you coming from/going to?
 - ii. How was the weather?

- iii. What route did you take?
- iv. Did something out of the ordinary happen?
- v. What happened?
- vi. Then what?
- vii. Then what?
- b. INTRO EXHIBITS (photos, docs, etc.)
- c. Witnesses?
- d. Statements made at scene
- e. Who responded
- f. How leave the scene (ambulance?)
- 5. Damages
 - a. Medical Treatment
 - i. Chronologically go through medical treatment to present time
 - ii. Touch on hospitalizations, surgeries, rehab
 - iii. Address pain and suffering
 - iv. Did it hurt?
 - v. How did you feel during rehabilitation?
 - b. Current Pain and Suffering and Loss of Enjoyment questions
 - i. Are you in pain now? Describe?
 - ii. Have the injuries you sustained in this accident had an impact on your social life? Your employment? Your marriage? Your hobbies?
 - c. Concerns for the future
 - i. Future surgery
 - ii. Future expenses
 - iii. Future earnings
 - iv. Future physical deterioration

v. Playing with grandkids

vi. Enjoying hobbies

6. End with “ What, for you, has been the worst part about the injuries you have sustained from this accident?”

Cross of John Smith

I. EXPERIENCED OPERATOR - KNEW PEOPLE ON TRACK

- 5 years train operator 2:5
- TRAINED to look for people on track 3:10
- You knew and, in fact, were trained to be on lookout for people on tracks 3:18-25

II. Going Fast

- entered station going 30 MPH 12:9
- Didn't know speed limit
- Slower you travel the faster you can stop

III. DIDN'T STOP WHEN HE FIRST SAW IT

- You saw something
- You were 3 car lengths away 15:2
- The cars on your train were 60ft cars
- 180 feet away
- DIDN'T PUT BRAKES in emergency first
- First you honked horn 15:10
- DIDN'T PUT BRAKES into emergency until 1 car length away from it 20:12
- only 60ft away,,
- going 30 MPH o.
- By then too late
- Your train struck and killed the plaintiff

Deposition of Defendant

John Smith - Train Operator

11/20/14

page

2:5 Employed as train operator for 5 years

3:10 Trained to look for people on tracks

2:18 Aware people can fall on tracks or for
-25 other reasons be on tracks

12:9 Entered the station travelling 30 mph

14:11 Saw plaintiff on tracks but thought garbage
14:15 middle of platform

15:2 I WAS 3 CAR LENGTHS AWAY

15:10 I honked horn then put
BRAKES in emergency

20:12 WAS 1 CAR LENGTH AWAY when
put BRAKES in emergency

SUPREME COURT OF THE STATE OF NEW YORK.
COUNTY OF QUEENS: CIVIL PART 31

-----X
OSCAR E. AMADOR,

PLAINTIFF,

-against-

Index No.
717192/17

CAROL R. LYNCH and PHILIP J. LYNCH,

DEFENDANTS.

-----X

Supreme Court
25-10 Court Square
Long Island City, New York 11101
March 3, 2020

* * * E X C E R P T O F A J U R Y T R I A L * * *

B E F O R E :

HON. FREDERICK D.R. SAMPSON, JUSTICE

A P P E A R A N C E S :

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BY: PAUL DUER, ESQ.

CAROL B DRUCKER
Senior Court Reporter

1 (Whereupon proceedings were conducted but not
2 transcribed at this time.)

3 (Whereupon, the following is an
4 * * * E X C E R P T * * * of a Jury Trial:)

5 MR. DUER: Your Honor, at his point I would like
6 to take a witness out of turn.

7 THE COURT: Based upon stipulation between
8 counsel you agree to --

9 MR. DUER: To call Robert Genna before plaintiff
10 has rested.

11 THE COURT: There is no objection?

12 MR. SMILEY: No objection, judge.

13 THE COURT: Now, I had mentioned to you sometimes
14 witnesses are taken out of turn. Sometimes we do this
15 because of scheduling and them being professionals, so at
16 this point we are going to suspend the case of the
17 plaintiff, and we are going to allow defense to call their
18 witness. It will be out of turn, and we are going to take
19 that witness right now.

20 You may call your witness.

21 MR. DUER: Thank you, your Honor.

22 I call Robert Genna.

23 THE COURT: Counsel, if you would be so kind as
24 to have a seat while the oath is being administered.

25 R O B E R T G E N N A, having been first duly sworn by the

1 Clerk of the Court, testified as followed:

2 THE CLERK: Please state and spell your name for
3 the record.

4 THE WITNESS: It is Robert Genna, G-E-N-N-A.

5 THE CLERK: Now, spell your name -- first name
6 and then the last name slowly.

7 THE WITNESS: Robert, R-O-B-E-R-T; Genna,
8 G-E-N-N-A.

9 THE CLERK: In what county do you reside?

10 THE WITNESS: Suffolk County.

11 (Whereupon, proceedings were conducted but not
12 transcribed at this time.)

13 (Whereupon, the following is an

14 * * * E X C E R P T * * * of a Jury Trial.)

15 THE COURT: You may cross examine.

16 MR. SMILEY: Thank you, your Honor.

17 CROSS EXAMINATION

18 BY MR. SMILEY:

19 Q. Good afternoon, Mr. Genna.

20 A. Good afternoon.

21 Q. Fair to say you are a man of science?

22 A. I hope so.

23 Q. When you come to a court of law like this, you come to
24 talk about science, right?

25 A. I come to talk about --

1 THE COURT: Sir, I am going to ask now if the
2 question requires a yes or no answer, simply answer yes or
3 no without any editorializing. If there is an explanation
4 required, they will present that, or you can give that
5 afterwards based on a question, so just answer the questions
6 yes or no if they are asked in that form.

7 You may restate your question.

8 BY MR. SMILEY:

9 Q. When you come to a court of law like in a case like
10 this, you come to bring your scientific expertise correct, sir?

11 A. Correct.

12 Q. And your opinion is only good upon the facts upon
13 which your opinion is based?

14 A. Correct.

15 Q. Is it fair to say you do a fair amount of homework
16 before you give an opinion to a jury?

17 A. Yes.

18 Q. And that involves taking measurements, right?

19 A. Yes.

20 Q. Taking photographs?

21 A. Yes.

22 Q. Doing your due diligence as far as inspections?

23 A. Yes.

24 Q. Let's talk about what you did and what you didn't do
25 in this case.

1 I saw Defendant's Exhibit G, H and I which you purport
2 are lines of sight, correct?

3 A. Yes.

4 Q. Those are only lines of sight that you purport that
5 Oscar Amador had as he looked up the roadway, correct?

6 A. Could you rephrase that please?

7 Q. Yes.

8 You only brought to this jury photographs that you
9 created to purport to be a line of sight of Oscar Amador's view
10 looking up in the direction of Carol Lynch, correct?

11 A. Yes.

12 Q. You didn't also create line of sight diagrams for this
13 jury to consider showing what Carol Lynch's line of sight would
14 be as she approached the intersection, did you?

15 A. It is the same thing.

16 Q. Well, you didn't show that line of sight going past
17 the intersection to see how far she could see, did you?

18 THE COURT: It is a yes or no.

19 THE WITNESS: I would have to qualify my answer.

20 THE COURT: Okay.

21 Q. Sir, is it fair to say you did not create any diagram
22 that shows the line of sight that Carol Lynch would have looking
23 southbound beyond the intersection to see how far down Little
24 Neck Parkway she could see for vehicles such as Oscar Amador
25 approaching that intersection, did you?

1 A. If you are looking for a yes or no, I have to qualify
2 my answer.

3 Q. I am asking: If you created a diagram --

4 A. Same thing as the motorcycle can see.

5 THE COURT: Let me ask you this, sir: If you did
6 it only from Carol Lynch, you would have to do it from the
7 point certain from Carol Lynch to observe moving forward;
8 would that be accurate?

9 THE WITNESS: I would have to qualify my answer,
10 your Honor.

11 THE COURT: You can qualify your answer.

12 THE WITNESS: May I have that exhibit, please?

13 THE COURT: I am asking a question without the
14 exhibit.

15 If you were asked to determine the sight line
16 from a particular person, you would have to do that from a
17 set position?

18 THE WITNESS: Yes.

19 THE COURT: And what position would you set it
20 for Carol Lynch.

21 THE WITNESS: The same position that I set it for
22 the motorcycle in the opposite direction.

23 THE COURT: Okay.

24 BY MR. SMILEY:

25 Q. Did you take measurements of the Audi?

1 A. Yes.

2 Q. You --

3 A. I'm sorry.

4 No, I did not take specific measurements of the Audi.
5 I have that --

6 THE COURT: That's enough; yes or no.

7 A. No.

8 Q. When you went to go see the Audi, you didn't take any
9 measurement, correct?

10 A. No.

11 THE COURT: No, you didn't.

12 THE WITNESS: I put my ruler in and took some
13 photographs.

14 THE COURT: Did you take measurements of the
15 Audi, yes or no?

16 THE WITNESS: I would have to qualify my answer,
17 your Honor.

18 THE COURT: What measurements did you take?

19 THE WITNESS: I put a ruler and took photographs,
20 so that's the measurements.

21 THE COURT: What measurements did you take?

22 THE WITNESS: They are in the photographs, your
23 Honor.

24 THE COURT: Sir, tell me a measurement. I am not
25 trying to be tricky. You took a measurement. Tell me what

1 the measurement was.

2 THE WITNESS: I put a ruler in the photograph and
3 showed --

4 THE COURT: And measured what?

5 THE WITNESS: The front of the Audi.

6 THE COURT: What were your measurements?

7 THE WITNESS: I would have to look at the
8 photograph, your Honor.

9 THE COURT: Your witness.

10 BY MR. SMILEY:

11 Q. You measured the front of the Audi?

12 A. The height.

13 Q. And you have a photograph of that?

14 A. I don't think I have them in front of me here. I
15 would have to see --

16 (Whereupon, there was a pause in the
17 proceedings.)

18 A. I have a few pictures of the measurement that I took
19 in front of the Audi.

20 Q. You didn't discuss the measurements in your direct,
21 correct?

22 A. Excuse me?

23 Q. You didn't discuss any of those measurements in your
24 direct examination?

25 A. I did not.

1 Q. Do you take any measurement at the location of the
2 accident to determine how far the Audi was from the left side of
3 Grand Central Parkway when it came to a complete stop?

4 A. No, I didn't.

5 Q. You didn't?

6 A. No.

7 Q. You didn't think that would be important?

8 A. I used the photograph.

9 Q. You didn't measure it though, did you?

10 A. No, I didn't know exactly where it was, so I used the
11 photographs.

12 Q. For a scientific purpose to try to determine the width
13 of room between the Audi and the side of the road, you don't
14 have that measurement to use as part of forming your opinion, do
15 you?

16 A. I don't have the specific measurement, but it is in
17 the photograph.

18 Q. You don't have any measurement.

19 A. It is in the photograph.

20 THE COURT: Sir, you have to just answer the
21 question. Either you took a measure or you didn't.

22 THE WITNESS: No, I did not.

23 THE COURT: Then that's the answer.

24 You did not take a measurement?

25 THE WITNESS: No.

1 BY MR. SMILEY:

2 Q. In fact, did you take any measurements regarding the
3 position of the Audi at the location of the scene of the
4 accident?

5 A. No.

6 Q. And when you testified earlier that where the Audi was
7 stopped was one hundred feet from the entrance to the Grand
8 Central Parkway, did you actually measure the front of that Audi
9 to the front of the Grand Central Parkway to get one hundred
10 feet?

11 A. I didn't --

12 THE COURT: Yes or no?

13 A. No, I did not.

14 Q. But you told the Court that you did, right?

15 A. No, I told the Court that I estimated the distance
16 based on car lengths from where the Audi was stopped to the
17 entrance to the parkway.

18 Q. So you just stood there, sir. You took some
19 photographs, and you figured in your mind and your expertise how
20 long cars are and how many lanes and what that distance would
21 be? You eyeballed it?

22 A. I didn't eyeball it. I took a ruler out, and I
23 measured it and came up with approximately a hundred feet.

24 Q. Well, that's not science. Science is an actual
25 measurement, right? You take out a ruler and you measure the

1 length?

2 A. I just said I measured it with a ruler, and it is
3 approximately one hundred feet.

4 Q. Where is that measurement? Do you have a picture of
5 the ruler showing one hundred feet?

6 A. No, sir, I don't.

7 Q. That is just your recollection?

8 A. Yes.

9 Q. And you know coming into this case that there is a
10 claim that the Audi struck the back of the motorcycle. You are
11 aware that that is a claim in this case, right?

12 A. Yes.

13 Q. And, in fact, in the police report Oscar Amador gives
14 a statement to the police that is contained in Exhibit Ten that
15 says he was struck by the Audi, right?

16 A. Correct.

17 Q. And Carol Lynch has a statement in that police report
18 that says the vehicles collided, correct?

19 A. Correct.

20 Q. And as a scientist, it is important for you to
21 consider that in coming to this Court in front of this jury and
22 giving your opinion, correct?

23 A. I would have to qualify my answer.

24 THE COURT: Yes or no.

25 THE WITNESS: I can't answer it yes or no.

1 Q. Well, you have to consider that?

2 A. I would have to qualify my answer.

3 Q. Did you consider the statements within the police
4 report that her vehicle either struck Oscar Amador or their
5 vehicles collided? Did you consider that, yes or no?

6 A. I did.

7 Q. All right.

8 Now knowing that there was a claim that they either
9 collided or that the Audi struck the motorcycle, sir, didn't you
10 think it would be important to take a look at that motorcycle?

11 A. I did.

12 Q. And did you take any steps to go and actually look at
13 that motorcycle?

14 A. I requested to examine the motorcycle.

15 Q. And what happened to that request?

16 A. I was told I wasn't allowed.

17 Q. Who told you you weren't allowed?

18 A. I don't recall specifically who told me.

19 Q. Okay.

20 MR. SMILEY: Let the record reflect, for the
21 record, as an officer of the Court there was no request by
22 anyone to have Mr. Amador's motorcycle inspected by this
23 witness.

24 Q. Now, it is important in a case like this if you are
25 going to come and testify to this jury to have that kind of

1 inspection, isn't it?

2 A. Yes -- excuse me.

3 Q. It is important in a case like this if you are going
4 to come in as an expert for the defense to have inspected the
5 motorcycle personally, isn't it?

6 A. I think it would. I can't answer it yes or no. I
7 would have to qualify my answer.

8 Q. I don't want you to qualify your answers, sir.

9 A. I would have to qualify my answer in this question.

10 Q. Did you think it would be important for you to
11 physically look at the motorcycle before coming today to testify
12 in front of this jury?

13 A. It would have been helpful.

14 Q. Because if you looked at it, you could have taken
15 measurements, correct?

16 A. I could have.

17 Q. You could have measured the height of the right rear
18 saddle bags, correct?

19 A. I could have.

20 Q. You could have compared that to the height of the
21 front fender. You said you measured the front fender?

22 A. I did.

23 Q. And you have no reason to dispute that the front
24 fender of the Audi lines up perfectly with the right saddle bag?

25 A. That's a very difficult question to answer. I am not

1 sure where on the Audi the saddle back would line up to.

2 Q. You don't know that because you didn't measure.

3 A. There are differences of height along the front of the
4 Audi.

5 Q. Do you have --

6 A. When I looked at the Audi, I didn't see any marks on
7 the Audi to correspond to where the area of the motorcycle is
8 alleged to have had contact.

9 Q. That's what the -- what I am asking. I am asking if
10 you had measurements -- had taken measurements of the Audi and
11 the saddle bag, you could compare the height of the saddle bag
12 to the front of the Audi; couldn't you have done that?

13 A. I did that.

14 Q. Tell us what the measurements were of the saddle bag
15 of the motorcycle.

16 A. I would have to look at the picture of the motorcycle
17 to tell you what the height of the saddle bags are.

18 Q. Go ahead.

19 A. Give me an exhibit.

20 Q. How can you measure a motor vehicle's sight?

21 A. Where is the ruler there?

22 Q. I haven't seen any ruler in the back of the
23 motorcycle, sir. I am not asking what is in your binder. I am
24 asking what is in evidence.

25 A. Well, are you asking me to show you this picture with

1 the ruler?

2 THE COURT: Take the picture down, sir.

3 See, this trial is about what is in evidence in
4 this trial. I don't know what you looked at, sir. I am
5 just telling you how I conduct a trial.

6 Next question.

7 BY MR. SMILEY:

8 Q. Now isn't it true, sir, you are not really coming in
9 here as an objective expert in this case? Isn't that true?

10 A. You are looking for a yes or a no, or do you want to
11 me to answer the question?

12 Q. Looking for a yes or no.

13 A. I am completely objective in the work that I do.

14 Q. All right.

15 Now, if you were objective, you wouldn't have anything
16 to do with the work you have done previously for Mr. Duer's law
17 firm, would it?

18 A. I am not sure I understand.

19 Q. You have testified for his law firm before today,
20 haven't you?

21 A. I have.

22 Q. On many occasions, haven't you?

23 A. Yes.

24 Q. How many occasions?

25 A. I don't know that number specifically.

1 THE COURT: How about approximately?

2 Q. Ballpark it.

3 A. Fifteen maybe.

4 Q. Fifteen times?

5 Mr. Duer called you to testify in a courtroom like
6 this on behalf of his defendant client, correct?

7 MR. DUER: Objection.

8 THE COURT: Basis.

9 MR. DUER: It never happened.

10 THE COURT: He never testified --

11 MR. DUER: Not me -- not me.

12 THE COURT: -- fifteen times for your firm?

13 MR. DUER: That I can't say. I can't represent
14 that. He said, "Mr. Duer."

15 MR. SMILEY: I will rephrase.

16 THE COURT: Let's not play with this.

17 Have you testified on behalf of the plaintiff's
18 firm --

19 MR. SMILEY: Defendant.

20 THE COURT: -- defendant's firm approximately
21 fifteen times?

22 THE WITNESS: Previously, yes, your Honor; not
23 for Mr. Duer.

24 THE COURT: Understood.

25 BY MR. SMILEY:

1 Q. Do you know the name of his law firm?

2 A. Yes.

3 Q. What is that?

4 A. Picciano and Scahill.

5 Q. When did you first start testifying in a courtroom on

6 behalf of Picciano and Scahill?

7 A. I don't recall the year.

8 Q. Because it was that long ago?

9 A. No, I just don't recall the year.

10 Q. Fair to say at least ten years ago is when you first

11 started testifying for the firm?

12 A. It is possible.

13 Q. Isn't it likely?

14 A. I said, "It is possible."

15 Q. Each of those times they pay you, sir, to come

16 testify, right?

17 A. That's correct.

18 Q. They pay you before trial to do your analysis,

19 correct?

20 A. Yes, sir.

21 Q. And how much have they paid you in this case before

22 trial?

23 A. Probably six to seven thousand dollars.

24 Q. And how much have they paid you to come to testify

25 here in court?

1 A. About three thousand dollars.

2 Q. About ten thousand dollars?

3 A. Correct.

4 Q. For that they don't even get a diagram from you to
5 show this jury, correct?

6 MR. DUER: Objection.

7 A. I don't understand.

8 THE COURT: You have to stand for your objection,
9 and your objection is overruled.

10 Q. You didn't bring a diagram showing the analysis
11 that -- that you prepared to explain to this jury what happened
12 in this case objectively, did you?

13 A. I did not make a diagram, correct.

14 Q. That's something that is normally done by accident
15 reconstructionists?

16 A. Not necessarily.

17 Q. It would be helpful?

18 A. In this case I didn't think it was necessary.

19 Q. And on the fifteen times prior that you testified for
20 Picciano and Scahill, the fees were about the same in those
21 cases?

22 A. It varies.

23 Q. Approximately ten thousand dollars a pop?

24 A. Not necessarily.

25 Q. And there are cases that they have retained you on to

1 analyze and review and they paid you that don't go to trial?

2 A. That's correct.

3 Q. About how many of those cases have you done for

4 Mr. Duer's law firm?

5 A. I don't know that number.

6 Q. More than twenty?

7 A. Yes.

8 Q. More than fifty?

9 A. Probably between fifty to one hundred.

10 Q. So between fifty to one hundred cases that they paid
11 you to review that didn't go to trial, correct?

12 A. Correct.

13 Q. And about fifteen or so that they paid you to come and
14 testify at trial?

15 A. That's probably accurate.

16 Q. Would it be a reasonable statement for me to make that
17 as of today you have received consulting job work that you have
18 done for the law firm of Picciano & Scahill you have made over
19 one hundred thousand dollars easily?

20 A. Over the last ten years I would say that's probably
21 accurate.

22 Q. Maybe two hundred thousand dollars?

23 A. I don't know what that number is.

24 Q. You have done quite well working for them.

25 MR. DUER: Objection.

1 THE COURT: Sustained.

2 Question answer stricken from the record.

3 Direct the jury to disregard.

4 BY MR. SMILEY:

5 Q. Now, let's see what else you did to give an objective
6 opinion to this Court.

7 Did you hear any evidence or were you provided any
8 evidence today at this trial to support any opinion that Oscar
9 Amador just fell without any impact?

10 THE COURT: That's a yes or a no.

11 A. Did I hear any evidence that he just fall without an
12 impact?

13 Q. Yes.

14 A. From testimony? Previous testimony?

15 Q. No.

16 I am asking about any evidence in this courtroom that
17 you could point us to or any hypothetical that Mr. Duer gave you
18 as part of your opinion today that supports any opinion based on
19 the fact that he just fell?

20 A. I am not understanding your question. You want me to
21 give my opinion as to what I think happened?

22 Q. No, sir.

23 I am asking: What, if any, evidence is there
24 scientifically that his motorcycle just fell without any
25 contact?

1 A. The evidence that I pointed out on my previous
2 testimony which I will be happy to explain again.

3 Q. Specifically, what evidence that it just fell without
4 any contact?

5 A. There's a couple of photographs that show the mark on
6 the ground and where the position of where the Audi is that, in
7 my opinion, clearly indicates that it fell as it was moving
8 ahead of the Audi.

9 Q. That's your objective opinion?

10 A. That's my opinion, your Honor -- counsel.

11 Q. Now, you say that the motorcycle is thirty-six inches
12 wide from handlebar to handlebar?

13 A. That's the width of the handlebars, the estimated
14 width of the handlebars.

15 Q. There is no evidence that the handlebars of his car
16 had any contact with the Audi, is there?

17 A. I didn't see any evidence of contact, no.

18 Q. How wide are his motorcycle tires?

19 A. Typically motorcycle tires are approximately four
20 inches.

21 Q. How wide was the space at the time that you think that
22 Mr. Amador passed Mrs. Lynch? How wide a space was there
23 between her car and the left side of the roadway?

24 A. My estimate would be about five feet.

25 Q. Plenty of room to go by on a motorcycle, right?

1 A. I think it's a little bit narrow because that only
2 leaves you with about twelve inches on either side of the
3 vehicle. So my opinion, that's narrow.

4 Q. Why would he fall if he had four to five feet of room?
5 The tires are only four inches. Why wasn't there enough room?

6 A. I think it is a very narrow distance between the
7 driver's side of the Audi, and this is an estimate. It could
8 have been less; and if it was less, again, it would explain why
9 he fell to the ground.

10 Q. You are still not explaining why there is not enough
11 room, scientifically, for him to get by.

12 A. I don't feel comfortable driving my vehicle with less
13 than a foot on either side of it. When you are going through
14 something -- if you are moving between a truck and a curb, and
15 you have only twelve inches on either side, you gotta take
16 precautions. You can't move fast, and in my opinion the vehicle
17 was going faster than the Audi in a very narrow circumstance and
18 that's what caused him to fall.

19 Q. Do you claim to be an expert in the operation of
20 motorcycles?

21 A. No.

22 I claim be an expert in --

23 Q. That's a yes or no.

24 A. I would have to qualify that answer.

25 Q. Do you claim to be an expert in the operation of

1 motorcycles?

2 A. I would have to qualify.

3 Q. Can you answer yes or no?

4 A. I will repeat myself. I would have to qualify my
5 answer.

6 Q. Do you have a motorcycle license?

7 A. No.

8 Q. Can't be an expert in driving a motorcycle when you
9 don't have a motorcycle license, correct?

10 A. I would have to qualify that answer.

11 Q. Okay.

12 Now, you -- you were talking about the speed that you
13 claim that Mr. Amador passed Mrs. Lynch's vehicle. You say he
14 was going faster than her?

15 A. Yes.

16 Q. You how fast was he going?

17 A. I don't know.

18 Q. You have no idea?

19 A. I have no idea of how fast he was going at the time he
20 lost control of his vehicle.

21 Q. No idea?

22 A. No.

23 I would be estimating it.

24 Q. Well, isn't that part of why you are here, sir, to
25 reconstruct the accident? If you are going to give an opinion

1 to this jury in this very serious matter that he was going
2 faster than her, and he was going so fast that he lost control
3 of his motorcycle, don't you think, scientifically, you should
4 tell this jury how fast he was going with a reasonable degree of
5 scientific certainty?

6 A. Are you looking for a yes or no, or do you want me
7 qualify my answer?

8 Q. Yes or no.

9 Don't you think you should be able to tell the jury
10 that?

11 A. Let me qualify my answer.

12 Q. Yes or no.

13 A. Let me qualify my answer.

14 Q. Did you take steps to determine the speed of
15 Mr. Amador's vehicle at the time that you believe he was passing
16 Mrs. Lynch's car?

17 A. I didn't have enough physical evidence for me to give
18 a precise speed of the motorcycle. I can give an estimate
19 because I know how he accelerated. And I know roughly how fast
20 the Audi was going. I don't think he was going in an excessive
21 rate of speed, but given the conditions he was traveling in, it
22 is very difficult.

23 Q. That's a lot of information to opine on based on just
24 looking at the photographs, isn't it?

25 A. It is not just the photographs. You have to look at

1 evidence when you look at the photographs, and you go to the
2 scene and evaluate it.

3 Q. So, do you know where the motorcycle came to rest?

4 A. Specifically no. There are no pictures that indicate
5 that, but you see where the tire -- the scrap mark ends, so you
6 can get an estimate as to where the motorcycle came to rest.

7 Q. I am not talking about estimates.

8 Scientifically, weren't there steps, sir, that you
9 could have taken, had you chosen to do so, to come to this jury
10 and scientifically show them where you believe the motorcycle
11 came to a rest in the roadway? Couldn't you have done that?

12 A. I would be happy to show you where the motorcycle came
13 to rest.

14 Q. Well, you didn't show us, did you?

15 A. Sure, I did.

16 Give me one of those exhibits, and I will show you
17 where the scrap mark ends, and that's where the motorcycle came
18 to rest.

19 Q. How far was it in feet was that from the front of the
20 Audi vehicle when it came to stop?

21 A. If I have to estimate, it would be fifteen feet or so.

22 Q. That's not very scientific, is it?

23 A. This is not a scientific field, counsel. This is an
24 estimate of science. It's an approximation. It is not like DNA
25 or fingerprints. You make estimations. It is not a precise

1 scientific field, not like DNA or fingerprints. An analyst in
2 this field makes estimations.

3 Q. So you are saying you couldn't create a scale diagram,
4 place the vehicles where you believe the evidence showed they
5 were, show the distances, show where the Audi came to rest and
6 where the motorcycle came to the rest? You couldn't do that for
7 this jury?

8 A. I have perfect pictures to show you.

9 Q. That's not my question.

10 A. Then I have to qualify my answer.

11 THE COURT: The question is: Could you have done
12 that, sir?

13 That's a yes or no.

14 A. I could have done that.

15 THE COURT: If you just answer the question --
16 everything can't be qualified.

17 You could have done it was the answer.

18 Next question.

19 Q. Now, you said you looked at the photographs of the
20 motorcycle and the only damage you saw was a scrap mark on the
21 bar of the motor vehicle?

22 A. Well, you want this as a yes or a no?

23 Q. Yes.

24 MR. DUER: Objection, your Honor.

25 THE COURT: Come up.

1 (Whereupon, there was an off-the-record
2 discussion held in the robing room.)

3 THE COURT: I am going to ask you to rephrase
4 your question.

5 BY MR. SMILEY:

6 Q. Sir, did you see damage to Oscar Amador's motorcycle
7 when you reviewed the photographs in evidence?

8 A. I did.

9 Q. Where did you see damage to his motorcycle?

10 A. Predominantly the scrap marks on the left side.

11 Q. Where else?

12 A. That was the most significant damage that I noted.

13 THE COURT: The question is not "significant."
14 You said "predominantly." Where else did you see damage?

15 The jury and the Court are trying to get answers
16 to the question, so when you say "predominantly," where else
17 did you see damage?

18 A. I saw damage on the left side of the motorcycle.

19 Q. And the damage you saw -- the only damage you saw was
20 to the bar on the left side of the motorcycle?

21 A. Yes.

22 Q. Do you see damage anywhere else to his motorcycle as a
23 result of this accident?

24 A. No.

25 Q. Did you look closely?

1 A. Yes.

2 Q. Now, when you went to the scene -- the location to do
3 a site inspection and you take some photographs, did you mark
4 the pavement at all to try to line up the actual locations of
5 where the scratch mark was?

6 A. No.

7 Q. Did you take any measurements that were photographed
8 so the jury can see specific measurements you took?

9 A. No.

10 Q. Did you create a scale diagram of the accident
11 location?

12 A. No.

13 Q. These are all things you could have done, correct?

14 A. Correct.

15 Q. Before going to look at the Audi, you were aware that
16 there was no claim of damage to the Audi, correct?

17 A. Possibly; I don't recall specifically.

18 Q. And it is no surprise to you that a collision like
19 this could occur where the front of an Audi hits the right rear
20 saddle bag of a motorcycle and there be no scratch on the Audi?
21 That could happen, right?

22 A. I suppose that's a possibility.

23 Q. I am sure in the thousands of accident reconstructions
24 you have done over the last forty years there have been
25 instances where vehicles have collided and one of the vehicles

1 shows no damage, correct?

2 A. That's possible.

3 Q. Well, it's likely, isn't it?

4 A. I said it is "possible."

5 Q. And the Audi involved in this case -- you know the
6 model number, right?

7 A. Yes.

8 Q. And you know what year it was, right?

9 A. Yes.

10 Q. What year was it?

11 THE WITNESS: May I look at my notes, your Honor?

12 THE COURT: Absolutely.

13 (Whereupon, there was a pause in the
14 proceedings.)

15 A. 2013.

16 Q. Now, you use something called, um, Expert Auto Stats
17 to determine specifications for the car -- did you do that?

18 A. Yes.

19 Q. And what year did you get the expert auto stats for
20 the Audi?

21 A. A 2012 on the Audi stats.

22 Q. You didn't do the 2013, right?

23 A. I did it on another program.

24 Q. You didn't do it on the auto stats, right?

25 A. No.

1 Q. The one on the other program that's also showing 2012
2 statistics on this Audi, right?

3 A. Well, it comes up model year 2013.

4 Q. Do you know if that one that you are just referring to
5 now that says 2012 and also talks about 2013, that's referring
6 to the defendant's car? Are you sure about that?

7 A. Yeah, the VIN number matches, so that's what it came
8 up with.

9 Q. Why would you use a report of a 2012 instead of a 2013
10 vehicles?

11 A. That's what I printed out.

12 Q. How long was the scrap mark on the concrete?

13 A. I don't know specifically. I said, looking at the
14 photographs, I estimate it possibly about fifteen feet.

15 Q. You didn't measure it, right?

16 A. No.

17 Q. You could have measured it, right?

18 A. It wasn't there when I went there.

19 Q. You could have used methods -- scientific methods to
20 determine the length of the -- that mark, couldn't you have?

21 A. Yes, I could have.

22 Q. But you didn't, did you?

23 A. No.

24 MR. SMILEY: Can we please show the witness
25 Exhibit Three?

1 (Whereupon, there was a pause in the
2 proceedings.)

3 BY MR. SMILEY:

4 Q. Okay.

5 Now, sir, you know what this shows on Exhibit Three --
6 what view this is?

7 A. Yes.

8 Q. Are you aware at some point this would have been the
9 approximate view of Carol Lynch as she was approaching Grand
10 Central Parkway Service Road to turn right, right?

11 A. Yes.

12 Q. How far of a line did she have looking down Little
13 Neck Parkway from this perspective? How far could she see if
14 there were no cars in this photograph?

15 A. Several hundred feet.

16 Q. Two hundred?

17 A. At least, minimum.

18 Q. Four hundred?

19 A. Perhaps.

20 Q. Five hundred?

21 A. I would say probably about five hundred. That's an
22 estimate.

23 Q. Did you take the measurement?

24 A. No.

25 Q. Did you do your Google map thing where you took that

1 photograph, and you put a line here, and you shot the line down
2 Little Neck Parkway so you could come to tell this jury what
3 Carol Lynch's line of sight would have been looking down to see
4 if she could have seen any vehicles before entering that
5 intersection?

6 A. From this point here, counsel?

7 Q. Yes.

8 A. No, not at all.

9 Q. That would have been helpful, wouldn't it have?

10 A. Not at all.

11 Q. Well, how far down should Carol Lynch have been able
12 to see Oscar Amador if he was up in the roadway?

13 A. At this point here?

14 Q. Yeah.

15 A. Without any cars?

16 Q. Yeah.

17 A. So no cars on the road except the Audi and the motor
18 vehicle?

19 Q. Yeah.

20 A. How far down she could see?

21 Q. Yeah.

22 A. Whatever estimate I said, five hundred feet.

23 Q. There is no reason she shouldn't have seen him before
24 the accident, right?

25 A. You want me to assume how far down she could see a

1 motorcycle approach?

2 Q. Yeah.

3 A. Maybe five hundred feet.

4 Q. My question is, sir: There is no reason why she,
5 Carol Lynch, should not have been able to see Oscar Amador
6 before she made that right-hand turn assuming -- assuming what
7 you have been assuming, that he came up and passed her?

8 A. I am not sure I understand your question.

9 Q. Let's assume for the moment what you have been
10 testifying that you believe that she made the turn and Oscar
11 came and passed her, okay?

12 A. Correct.

13 Q. How far back on the Little Neck Parkway would he have
14 had to have been at the point where she is about to make this
15 right-hand turn?

16 A. I have no idea.

17 Q. No idea?

18 A. How am I going to know what his speed is if he is
19 stopping for a light? If he is accelerating? Decelerating? No
20 possible way to scientifically analyze that.

21 Q. Is it fair to say because she had several hundred feet
22 in your explanation -- wherever it was -- she should have seen
23 him?

24 A. I don't know where he is. I don't know if there are
25 cars, so I don't know what your question is.

1 Q. All right.

2 I want you to assume that Carol Lynch testified as she
3 approaching to make the right-hand turn, she looked down Little
4 Neck Parkway, this view, sees no northbound traffic, okay?

5 A. Okay.

6 Q. I want you to further assume Carol Lynch's version
7 that he came out of nowhere and passed her on the left, and this
8 accident occurred, okay?

9 A. Okay.

10 Q. Based on those two assumptions, shouldn't she have
11 seen him coming northbound on Little Neck Parkway before the
12 turn?

13 A. I think it is a possibility.

14 Q. Shouldn't she have, not a possibility? We are talking
15 science here.

16 A. No, we are not talking science, counsel.

17 I said I think it is possible.

18 Q. Within a reasonable degree of scientific certainty
19 wouldn't she have seen him?

20 A. I said it is possible.

21 Q. Well --

22 A. That's my answer.

23 Q. Well, if he is --

24 THE COURT: Let me ask you the question

25 differently: If she was positioned there, based upon all of

1 your calculations and speed and whatever, would the
2 motorcycle be in her sight line?

3 That's a yes or a no.

4 THE WITNESS: It's possible.

5 THE COURT: It is not -- sight line is not a
6 possibility.

7 As an accident reconstructionist, would not any
8 position down that road be in her sight line?

9 That's a yes or a no.

10 THE WITNESS: Yes; it could be, yes.

11 BY MR. SMILEY:

12 Q. It is not that hard to just say "yes."

13 MR. DUER: Objection.

14 THE COURT: Sustained.

15 Q. Just to be clear for this jury, if there is(sic) no
16 other cars coming northbound, based on your analysis of this
17 accident, before she made that right turn, Carol Lynch should
18 have seen Oscar Amador on his motorcycle; isn't that true, sir?

19 A. I would say could have.

20 Q. You won't acknowledge it?

21 THE COURT: Let's move on.

22 Q. How fast would Oscar Amador have to have been
23 traveling on his motorcycle for Carol Lynch not to see him
24 before the turn because he is not far away, made the turn and
25 Oscar come up, catch up on her, and, as you claim, pass her on

1 the left? How fast did he have to be driving?

2 A. I can't answer that question. I don't know where he
3 is on the road. I don't know how fast he is going as he is
4 coming up. I can't answer that question.

5 Q. Do you even know what the difference in speed was at
6 the time of this incident between the two vehicles?

7 MR. DUER: Objection.

8 THE COURT: Overruled.

9 It is a yes or no.

10 A. No.

11 Q. Do you know how it was, based on your analysis, that
12 Oscar Amador fell -- how his motorcycle actually fell? How did
13 it go from being upright and straight to down on the ground?

14 A. Do I know how it happened or why?

15 Q. How.

16 A. I don't know how -- I know how it happened, yes. He
17 went down on the ground on the left side of the vehicle.

18 Q. Okay.

19 How did that happen? How did he go from riding on his
20 motorcycle to all of a sudden being on his left side down on the
21 ground?

22 A. Because he is traveling too fast for a narrow
23 condition.

24 Q. Well, if it is as narrow as you claim, you don't know
25 the measurement, and he fell to the left, wouldn't he have

1 fallen off the roadway onto the grass to the left there?

2 A. I don't know -- he fell. Obviously, he fell in front
3 of Audi because of the mark.

4 Q. Sir, did you run any analysis based upon the potential
5 for evidence in this trial to show that there was a collision
6 between the Audi and the motorcycle?

7 A. Define analysis.

8 Q. Do you calculate where the vehicles would end up?
9 Where the sight lines would be? What speeds they would have
10 been at? Where they started at? Where they ended at based on
11 the actual collision?

12 A. I can testify as to how I thought this accident
13 occurred which is what I thought I did.

14 Q. That's not what I am asking.

15 The only analysis that you performed was based upon
16 your claim that there was no contact between the vehicles,
17 correct?

18 A. There is no evidence -- no physical forensic evidence
19 in my opinion to indicate that the front of the Audi contacted
20 the back of the motorcycle.

21 Q. And that's based on your --

22 A. That's my analysis, counsel.

23 Q. Your analysis of looking at the back of the
24 motorcycle, right?

25 A. That's my analysis looking at all the evidence I have

1 discussed, examining the Audi and looking at the pictures of the
2 motorcycle.

3 Q. My question, sir, is different.

4 My question: Did you perform any reconstruction based
5 upon the potential for evidence in this trial coming out that
6 there was a collision between the two vehicles? Did you attempt
7 to reconstruct this evidence based upon a collision of the two
8 vehicles?

9 A. Yes.

10 There is a nine page report in my report that
11 indicates my reconstruction. It is a nine page report of my
12 analysis.

13 MR. SMILEY: Objection.

14 Move to strike.

15 THE COURT: Overruled.

16 Q. Do you present this jury with any analysis based upon
17 a collision?

18 A. Absolutely.

19 It is a nine page report that I turned over to
20 counsel.

21 Q. I am not asking what you gave to your lawyer. I am
22 asking what you gave to this jury.

23 Did you give them any analysis based on a collision of
24 the two vehicles?

25 THE COURT: Today?

1 MR. SMILEY: Today.

2 A. No; I didn't, no.

3 Q. Are you aware, sir, that there was testimony at this
4 trial that there was a collision between these two vehicles?

5 A. I'm aware.

6 Q. Even though you are aware that there is evidence in
7 this case that the two vehicles collided, you were unable to
8 come and testify to this jury about a reconstruction of this
9 accident based upon a collision, weren't you?

10 A. You would have to define the word "evidence," please.

11 Q. I don't have to define that for you.

12 THE COURT: Okay, this is not -- both gentlemen,
13 this not a debate, so next question.

14 Q. Knowing that there is information of a collision
15 between these two vehicles -- and you knew that from the police
16 report, right?

17 A. Yes.

18 Q. Did you come objectively prepared to discuss how this
19 accident could have occurred based upon a collision of these
20 vehicles?

21 A. I did, yes.

22 Q. And what is your opinion if there was a collision of
23 the speed of the vehicles at the time of the collision?

24 A. You want -- I am not sure I understand that. Rephrase
25 that.

1 MR. DUER: Objection, your Honor.

2 THE COURT: Overruled.

3 MR. DUER: Two questions.

4 A. What is the question?

5 Q. So you did an analysis based on a collision?

6 A. No, I did an analysis based on the evidence that I
7 examined.

8 Q. My question is: I want you to assume there is
9 evidence in this case the defendant -- she testified, I may have
10 hit him, okay? Our vehicles may have collided. You know from
11 the police report it talks about a collision, being struck,
12 right?

13 A. Yes.

14 Q. Did you take that information and do an accident
15 reconstruction, based on a collision between the two vehicles to
16 then be able to explain to this jury what you believe occurred
17 leading up to those events to cause a collision? Did you do
18 that analysis?

19 A. I am -- you would have to please rephrase the question
20 because I am confused as to --

21 THE COURT: Let me try this.

22 MR. SMILEY: Thank you.

23 THE COURT: Did you exclude any possibility of
24 the contact between the vehicle and the motorcycle?

25 THE WITNESS: Your Honor --

1 THE COURT: That's a yes or no.

2 THE WITNESS: Where on the vehicle, your Honor?

3 THE COURT: You are saying there was no contact.

4 THE WITNESS: I am saying in my opinion --

5 THE COURT: No, sir. I am asking a specific
6 question: Did you take in consideration at all that there
7 was contact?

8 THE WITNESS: I can't rule out incidental contact
9 between the right side of the motorcycle and the driver's
10 side of the Audi as the motorcycle is moving up alongside
11 the Audi. I can't rule that out. Maybe there was
12 incidental contact. I didn't see any evidence of that but
13 maybe there was.

14 BY MR. SMILEY:

15 Q. Where was that incidental contact?

16 A. I just said it.

17 Q. Where?

18 A. Where what? I just testified to that.

19 Q. Between the vehicles; where would that incidental
20 contact have been?

21 A. I said if -- if there was any incidental contact, it
22 occurred with the right side of the motorcycle and the driver's
23 side of the Audi when the motorcycle was moving up into that
24 narrow space -- if.

25 THE COURT: Okay.

1 That's move on.

2 We are not -- let's proceed with a different line
3 of questioning at this point.

4 BY MR. SMILEY:

5 Q. Where was the motorcycle when Carol Lynch made her
6 right turn onto Grand Central Parkway?

7 A. I don't believe, in my opinion, that it was on the
8 service road yet.

9 Q. Where was it?

10 A. Making its turn after the Audi was already on the
11 service road.

12 Q. Did it start to make its turn?

13 A. What? The motorcycle or the Audi?

14 Q. The motorcycle.

15 Did it start to make its turn when she made her turn?

16 A. I think the motorcycle made its turn after the Audi
17 was on the service road.

18 Q. Okay.

19 Now, can you tell this jury specifically where that
20 motorcycle was when the Audi made its turn?

21 A. No.

22 Q. What was the position of the motorcycle prior to it
23 going down to the ground into a skid? What was the orientation
24 of the motorcycle?

25 A. Obviously, it had to be upright.

1 Q. Was it straight? Was it angled one way or the other?

2 A. I have no idea.

3 Q. You have no idea?

4 A. There is no way for me to determine that.

5 Q. Wouldn't the position of the motorcycle result in a
6 different position that it would end up after the incident
7 occurred when it went down?

8 A. I don't understand your question.

9 Q. If the motorcycle is angled to the right in front of
10 her car and an impact occurred, would you expect it to end up
11 coming to rest in the same position as if the motorcycle was
12 straight when it was hit?

13 A. There are many factors there that I can't answer that
14 question.

15 MR. SMILEY: Now can we please show Exhibit Six
16 to the witness?

17 THE COURT: Yes.

18 Come up.

19 (Whereupon, there was an off-the-record
20 discussion held in the robing room.)

21 BY MR. SMILEY:

22 Q. I would like to wrap it up because we are at the end
23 of the court date, sir.

24 Finally, was there any consideration in your mind of
25 how to present your accident reconstruction to this jury based

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Summer Break

I. Intro

II. Δ_5

Doesn't make sense

Look at
MIT
Room

Why
it
PASS on
left

III. | Geneva

150000 = \$150,000

50-100 Δ cost = ~~100~~ 7K

350,000 - 700,000

Couldn't support her

Claims
w/ Science!

IV. Duccio

Supports

It's claims

w/ Science

500K - 850K!

Low end Half Million!!

It said $\Rightarrow$

Duccio $\Rightarrow$ explained how makes
sense

V. Verdict Sheet

A $\rightarrow$ Failure to see there to be seen - foreseeable
not slowing, hanging wide left without looking
it right in front of her - even Genie couldn't explain
why she didn't see him $\rightarrow$

Hit from behind - foreseeable knock down

Didn't even see impact! right in front $\rightarrow$ recover him!

Summary

Intro

Intro may play in court ...

"I hit a motorcycle"

- Ted, Carol L. - ~~she~~ admitted it
- She admitted it to her husband on SLA right when she called him from the scene of the accident

"I hit a motorcycle"

- She didn't say, I was cut off by a motorcycle
- She didn't say a motorcycle tried to pass me and lost control and fell
- ~~she didn't say that~~
- She didn't say I "may have hit" a motorcycle or I "possibly" hit a motorcycle

"I hit a motorcycle is what she confided to her husband on the phone"

After
time
to
reflect

~~Re A~~ Re A didn't just say this from scene but she re-iterated to husband the next day, because she was so upset about it.

Re A ~~answer~~ answer:

Wouldn't Admit It
To You
members of the jury

She took Stand
Placed Hand on the Holy Bible
Swore an OATH in COURT of LAW to
tell the TRUTH

And when I asked her if she would
acknowledge that she hit Oscar
Amador this day =>
She ~~didn't~~ didn't tell you
until she told her husband
She didn't tell you the
TRUTH

I'm not saying A is a bad person -
And, indeed she may be perfectly nice

BUT what I am saying is that she hasn't
been STRAIGHT with you.

When she testified that she possibly
hit Oscar, she possibly collided, or
he possibly just fell on his own
when he came speeding by and cut her
off - she wasn't being STRAIGHT
with you. She wasn't telling the
TRUTH.

The evidence presented to you
AT THIS TRIAL, establishes that she was
which I  the sole cause
IT Review with you failed to persevere
are

Carol Lynch

~~Id break contrast to QSOA's testimony~~

Mrs. Lynch's ~~present testimony~~ ~~testimony~~

testimony shows that she clearly
was not paying attention
was not acting reasonably
and was not consistent

① Doesn't pay attention to what is around her
30 years Doesn't look at street sign

② Impugn her and remind her of her
deposition testimony

said no faster than 30
precisely 40 mph
knowing she faced
20 mph & 25 mph limits

③ Said stopped at this light

113 → right lane - NO CARS
in sight
not next or in front

light turns green and she goes

- told you ~~not~~ faster than 25

- prior ~~testimony~~ ~~opposed~~ of
~~30 mph~~

- 25 coming down, 25 turning, 25 ~~impact~~
accident

She didn't slow down

unreasonable

Doesn't see it or any
eyes
wide turn → O/wide
view
scott down
LWP

She came in too fast

And hung a wide turn that
pulled her out to the left

116 ⇒ look how far left
she is

Reasonable operation of her car
would be to stay to
right when turning

not hang wide left

plenty of room

Look at car to her right

that's where she
should have
been

119

And if you gonna drift wide
left, you better take reasonable
care to look left, look over
shoulder, she didn't do
that

so what happened

→

She swings her turn
right into the
back right side
of OSCAR's motorcycle

too fast -
too wide -
NOT paying attention -

LOOK @ SHADE

evidence shows that it was
already there, perhaps shade
perhaps inattention, by time
she saw him it
was too late



she hit him - just like
she told her husband

even though she tells her husband,
"I hit a motorcycle" she doesn't tell police?
Why is that - ^{it's not} doesn't want to admit fault?

Tells police

10 PMC $\Rightarrow$ Rear OSCAR tries to pass and
the vehicles "collided"

First of all - Look @ It $\Rightarrow$ why would it try to
pass me on left
mi - x comm

IT was ~~the~~ right
in front as
evidence
Diagram shows

A

Why NOT See
him before turn?
even if you ~~can~~ consider her phantom
ready that it came from behind why not see him
on LNP - ~~Soft~~!

She didn't see him go down.

Impact

fall?

hit ground?

Slide
to feet
in

Didn't know where he went.

Front

Does this make sense if she
was paying attention - driving in a
reasonable manner?

Why
to
see
what's
there to
be
seen

Why Didn't she see him go
down on slide along
ground

He was right in front of her

- ~~she probably knew~~

Look @ IT 9 Follow

Scribble mark = look @
her view.

I'll tell you ^{why} she didn't see him go
down and slide right in front of
her eyes - Because she ^{!!}
wasn't looking.

maybe she looked
down @ phone / radio
daydreaming
I don't know

wasn't paying
attention

But And reasonable driver
isn't to see!

CALLS Husband first
then "tells police" pet's paw!
- Collided

why

TT
my to
pass her

- DOESN'T SAY motorcycle cut me off
motorcycle lost control
motorcycle just fell
w/out contact.

TTIO

we know she tells Husband - hit
Police Collided

← What she tell you?

← What is defense telling you?
Gemma

Then we learn from A that she speaks
to OSORE @ scene

only SAYS one thing

"I hope you feel better"

Doesn't say - why'd you my to pass me

"you cut me off"

"Are you crazy driving
like that?"

It was your fault
you lost control

NO - just "I hope you feel better"

Testified TT said why didn't you stop...

→ no response

Carol Lynch's version of
Events Simple doesn't
add up - ~~not her off~~

- The Science doesn't support her
version
- ~~People~~ ~~Refuses to accept~~
~~responsibility~~ And
~~attempts to bolster~~
~~her testimony~~

SO,

The Defense comes up with a phantom
Theory - only way defend case

- It Speeding by her, loses
Control And ends without
my consent

Who do they bring so caret to promote
This fantasy:

Robert Genna

7-3k = 10
15K = 150K
50-100 @ 7K
300k-700k

500-850K!!

10 years
50K-85K
per
year!

- Testimony was disrespectful to you
- Don't say that lightly
- he thought he could pull a fast one
- came in here with his 40 years of experience
and reconstruct the accident to support
- Clearly evident (1) knew less about how this
accident happened than anyone in this courtroom
- (2) opinions were not based on a shred of
science or facts
- (3) Far from objective

Summation review

Genna

Genna →

NOT objective

wouldn't give a straight answer

- ask him if earth is

round - he'd say

"On I quality"

"It's possible"

couldn't concede

~~Gina~~ ~~we~~ we know why

Because he's basically an employee of

Δ's law firm

15 times

50-100 cases

Going back 10 years

~~50 figures of~~

Hundreds of thousands of dollars

That's why he wouldn't concede

give straight answer

even so → more telling

Lack of science

of proof for you to consider

let's look @ what he didn't do

he didn't provide for you

- all things he could have

Should have done

(1) no measurements

Summation notes (C)

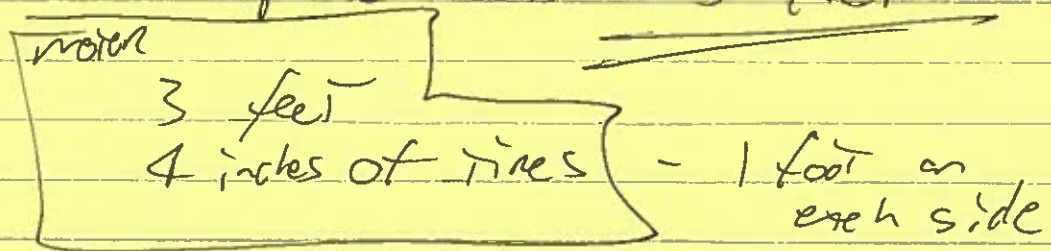
Genna can't

(1) NO measurements

- DIDN'T TAKE ONE measurement
- DIDN'T offer one measurement for you to consider
- OR upon which he could base any opinions w/ resp^o credibility

How dare he attempt to provide his opinion that too narrow

- DIDN'T measure distance
- no evidence to conclude too narrow in fact $\Rightarrow$ even his eyeball of photo was ≈ 5 feet



DIDN'T take measurements of Audi motorcycle
Scrape mark
of resting positions of vehicles

How can he claim to have reconstructed w/out measurements

~~He~~ ^{He} NO, FACT that he didn't take measurements which is AS important for you to understand that he could have but didn't? Why! B/C Any accurate Diagram based on science & evidence ^{proves} it's misleading

NO Inspection of motorcycle

- Didn't look @ it
- Didn't photo it
- Didn't measure it
- Didn't inspect it

Only looked @ photos - only saw scrape marks

What about Dent in saddle bag EX
What about Push in of frame on RT rear

What about other damage case pointed
out in it, it?? headlights
etc...

Didn't see it - Didn't want to see it

Why didn't he inspect?
Why didn't he closely examine photos?

Wouldn't help a theory!!

Couldn't Acknowledge Contract - PMT

Wouldn't be good for law firm of
P & S ⇒ big lucrative client

Had to stick to his guns, knowing
- Claim of collision
Knowing P & S "Struck", "Collide"

→ Can't just give opinion without science to back it up

(3) Judges charge is that you need not give weight

Accident Reconstructionist → ^{where's his reconstruction?} he didn't reconstruct the accident

(4) What else didn't he offer for you to consider

- ~~In ~~the~~ ~~reconstruction~~~~ his phantom theory

- Conjured out of thin air,
NOT based on 1 piece of objective science or fact or evidence in trial

TI speeding by her on left, NO ROOM!
loses control!

Can't tell you how fast (cite)

SAYS him
what evidence

(cite)

Orientation of motorcycle

why not fall on grass

Can't give you measurement

Approximates
Plenty of
(cite) room
minimum 1 ft each side

Experienced rider w/ bike for 16 years never fell

⑤ Side lines of Δ / speed of Π

Google ~~maps~~ Π only

Didn't measure Δ 's view

Couldn't tell you her distance

Didn't measure

- 500 ft??

Couldn't tell you where Π was when Δ turned

How fast Π travelling on CNP

Couldn't refuse Π stopped / 54 turning

Speed Π had to travel to overtake Δ

Concedes she possibly should have seen Π

Couldn't say how far away Π was when Δ turned

Why?? with all his experience

* Because if he actually reconstructed accident it would support Π 's version *

⑥ No reconstruction based on a collision.

known evidence of collision

why not reconstruct based on impact

He and his brother

transcript
he knew she
admitted
hitting motorcycle.

And use science working from point of impact and rest positions of car/bike to show what happened

S/C that wouldn't be helpful to law firm of P's - A

⑦ No diagram

He could have made a diagram

- Scale
- vehicle positions
- percept/rect
- Braking distance
- speeds

He didn't - know why

① Science doesn't support
A phantom theory - passing,
lost control

Crit came up w/ diagram

Summ notes

GENNA

- b/c

Diagram

A diagram that is based on facts, evidence, measurement, scale vehicle positions, speeds only shows

one thing $\Rightarrow$ And you've seen what it shows

Intro Diagram

Decileo - unchallenged!

- expertise not challenged
- measurements
- methods
- diagram
- sequence of events

- Supports consistent version of IT!

This Diagram is uncontradicted, unchallenged scientific evidence proves how this accident occurred

Only evidence proves Scientifically

Decieco

Completely supports

It's version

let's look @ How Decieco went
about his Reconstruction-

very different

than Genet

Actually based on science
methods.

① Went to scene

→ cones

scattered

printed road

marked w/ scene photos

measured and

measured police

measure scrape marks

10 Scale Diagram

Speeds of 25
20

Place vehicles working backwards

Uncharged / by B!!

- backing distances
- slide / friction values
- 1.2 ~~perception~~ perception / Reaction

△ Agreed accurate and asked Mike to
use 20 stop distances

explained how happened!

Deccido

Gave opinions w/ Rens Deq

(1) This is how happened

(2) A should have seen him

(3) Plenty of time distance
to safely turn

(4) Completed turn straight
ahead

(5) It struck in back right
REAR

(6) Intention was cause of accident

It makes Common
Sense

Here's what happened....

You all told me could size people up

I. Testimony of OSCAR AMADOR

60 yrs. old Handyman from Chile

→ Based on
his testimony
reasonable

Consistent

~~3 things he loves~~

~~(1) Animals~~

~~(2) Supporting causes to raise money~~

on his way on 9/23/17 to participate
in a Benefit to raise money
for autistic children @
Atty Pond

w/ other
motorcycle
riders

Riding a 2001 Harley Davidson
Dyna Super Glide

Exhibits
1 & 2

Owned for 16 years

Bought new

Newer in accident

never hit ground

never suffered damage

only brought out in nice weather for
good causes like this one he planned to
attend

coming from visiting animals at a farm
heading to GCP → LNP Northbound

Approached LNP & GCP he stopped b/c
turning left

Explained why he stopped for a brief
moment - left turn signal

Approach
first
coming
down

Didn't see anyone in vicinity turned
left → looking ahead → coming straight

Felt and impact from
behind

Then a second impact

Then knocked to ground

~~Still~~ Std along the pavement
~~for approx 20 feet~~

Stayed under left side of bike
until it came to rest

Looked back and saw

A Audi - for first
time

Saw the mark on pavement running from
where he came to rest and that
mark led right to front ~~left~~
driverside of Audi.

Show
scratch
mark

Straight line

EX. 9

NO Horn

NO brakes

NO warning before being struck

Nothing he did was unreasonable

unsafe

cause of accident

PNC

Spoke to Police → told him same exact
thing he told you from the witness stand
under oath:

PNC: "When VZ struck him on the side near"

EX. 10

Damage

Showed me Damage to you

- Evidence, not just his words

EX. 11 Left Rear protects motor
[And Ex 23]

- Scratches cause scrape
mark on pavement

EX. 12 Showing saddle bag on right rear

EX. 14 Bent into frame

- His testimony of Impact
- physical evidence on site of
Impact

AC - 2 circles

No evidence refuting Damage $\Rightarrow$ not one
person testified in this trial that
they inspected motorcycle and
that there was no Damage

Review of his direct & cross shows he acted
Reasonably that day $\rightarrow$ NO INCONSISTENCIES
in his
testimony!

Let's look @
[Signature]

Verdict Sheet

① Δ negligent → "I hit a motorcycle and he didn't hit me!"

- Diagram
- It's already turned
- looking ahead
- right in her sights

Even if just for sake of arguments
you consider person from
behind - just as come
she had obstructed self
view - way not him!!

Time she sees him it's too late → she's hit him

Didn't slow, didn't see what's there
to be sure, thing with and hit
him - what credible evidence
shows

- Diagram
- Contact damage
- Scrape marks
- It's consistent version

She admitted it ⇒

Prax cause

Inevitable
Consequences

She admitted
He didn't hit
me!

① Didn't see face to
be seen

② Didn't slow

③ Wide turn

④ Didn't look over
left making
wide turn

⑤ Hit it and didn't
see impact

⑥ Didn't see him
get knocked down!
slide straight line
20 ft in front

Needlet Sheet

② NO negligence on IT

~~only~~ ~~only~~ ~~only~~
Δ has burden - judge will instruct you

Virtually failed to meet this Burden

- Nothing IT said was proven to be inconsistent

- Fact that he didn't see Δ when she was, at best 220 ft away - and if going faster than 25-30 mph or more greater than a football field

how is it unreasonable to turn left when closest car is at least 220 feet away

plus what does IT have to do with this accident -

Δ makes
— NO claim he unreasonably turned in front of her - it would be ~~one thing if Δ actually admitted she hit him~~

Δ didn't testify that IT turned in front of her → she says he came from behind

Δ requiring 2 phantom theories?

NO negligence on TT

How did A prove it did
Anything unreasonable

1. Did they prove he sped passed
me? NO
A had NO idea his
Speed?
2. Prove he had NO room?
Of course not?
3. Prove OSCAR, Rider with
decades of experience and
never in an accident
just loses control

Please, if any of you fellow jurors
~~can~~ have my doubts about answering
NO to this question

- Challenge them to identify
Any credible evidence presented @ this
trial ~~that~~ it acted unreasonably - there
just isn't any.

Prox cause $\Rightarrow$ and what evidence
shows he acted
unreasonably and cause accident

- Even if you think he should have seen
A football field away - 220 ft away
that has nothing to do w/ accident

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS- CIVIL TERM-PART 45

-----X
NELL MELLON, :
Plaintiff,: INDEX NO.
-against- :
CRUNCH, AGT CRUNCH ACQUISITION LLC, :
Defendant.:
-----X

S U M M A T I O N S
360 Adams Street
Brooklyn, N.Y. 11201
February 21, 2012

B E F O R E:

HONORABLE ANN PFAU,
Judge, And A Jury.

A P P E A R A N C E S:

SMILEY & SMILEY, LLP.
60 East 42nd Street
New York, New York 10165
BY: ANDREW J. SMILEY, ESQ.
For the Plaintiff

MALPERO & PRISCO LLP
295 Madison Avenue
New York, New York 10017
BY: ANDREW L. KLAUBER, ESQ.

For the Defendant

LISA L. DIMINO, RPR
SENIOR COURT REPORTER

24

25

26

1

Proceedings

2

2

(The following is a trial excerpt.)

3

MR. SMILEY: Thank you, your Honor. May it

4

please the Court, Judge Pfau, counsel, members of the

5

jury, hello. This case is brought against Crunch,

6

the company Crunch, as a result of the negligence of

7

its employee, Gavin Umeh. The judge will instruct

8

you that he is not responsible for his acts. Crunch,

9

big gym chain. We have heard, at least during this

10

trial, that they have twelve franchises or gyms on

11

the east coast alone, over 200 trainers, all that are

12

employed in the industry.

13

We bring this case against Crunch, and isn't

14

it so interesting that Crunch didn't bring one person

15

in here to sit on that stand before you, members of

16

the jury, to vouch for their trainer? You didn't

17

hear from one person from Crunch come in here and

18

say, yeah, if he was our trainer, we stand behind

19

him, he was trained properly, he followed proper

20 procedures, he picked proper exercises, he spotted
21 properly. Not one to vouch. Interesting.

22 Now, we had Mr. Coker, you may recall William
23 Coker, we called him to the stand to testify. I
24 tried to ask him as much as I could about Crunch, the
25 practices and policies. We learned a little bit
26 about forms that have to be documented. When I got

1 Proceedings 3

2 into the area of spotting and toe-tapping, and all of
3 that, objection--

4 MR. KLAUBER: Objection.

5 MR. SMILEY: Objection. Objection, when I
6 went to ask him all that, objection, objection.

7 MR. KLAUBER: Objection. May we approach?

8 THE COURT: No. Overruled.

9 MR. SMILEY: And then after I was done asking
10 the best I could, so you jurors can decide this case
11 on the issues and the facts and have the proper
12 information, it was then Mr. Klauber's opportunity.
13 He had William Coker on the stand. Mr. Coker, who we
14 learned was the head of personal training for the
15 entire east coast of Crunch gym, he personally

16 oversaw personal training of all twelve gyms, all the
17 ones in New York City, the one involved in Nell's
18 accident in Brooklyn. He was in charge of over 200
19 personal trainers, the training program, the personal
20 training managers. He was sitting right here for
21 you, members of the jury.

22 And when it was time for the defense to ask
23 him a question to vouch for his trainer --

24 MR. KLAUBER: Objection.

25 MR. SMILEY: --did you hear one question
26 being asked?

1 Proceedings 4

2 MR. KLAUBER: Your Honor, may we approach?

3 THE COURT: Overruled. No.

4 MR. SMILEY: No, you didn't. Ask yourselves
5 why. Why not? Not only did they not ask Mr. Coker a
6 question to vouch for their employee to say what the
7 standards were or anything like that, but they could
8 have brought an expert witness in here to testify
9 before you, members of the jury.

10 MR. KLAUBER: Objection, your Honor.

11 THE COURT: Overruled.

12 MR. SMILEY: They could have brought an expert
13 the same way we did. They didn't have to. But, they
14 could have. Certainly, they could find an expert
15 either within their own ranks, one of their 200 plus
16 trainers or someone within the industry. It's
17 Crunch. Certainly, they could reach out to someone
18 in the sports and fitness industry with credentials
19 like Mr. Nelson to come sit in this chair, take an
20 oath to tell you folks the truth and tell you about
21 proper standards and to vouch for the actions of
22 Gavin Umeh, to tell you, yeah, it's okay that he had
23 Nell do that toe-tap exercise, even though it was
24 over twelve inches high with a bench and she'd never
25 done it before, yeah, that was fine, yeah, he
26 followed all the rules, it was okay, he didn't have

1 Proceedings 5

2 to break her fall or prevent her fall or be her
3 safety net.

4 Not one person. Ask yourselves why not. You
5 know why not. You know exactly why not. As you sit
6 here, come on, you're from Brooklyn, you know why
7 because if somebody could come in here and say that

8 under oath on the witness stand to lay their
9 credentials on the line for you to say, yes, I'm an
10 expert, I have been in this industry, I know the
11 standards, I know how it works, he did everything
12 right. If there was one person who could do that,
13 maybe we would have heard that, but we didn't.
14 That's because nobody could come to vouch for what he
15 did, that's why, because he was negligent. That's
16 why, members of the jury.

17 The only person we heard from from the
18 defense case was Gavin, the trainer, himself who was
19 responsible for this occurrence and accident. I'll
20 submit to you he's probably not the most objective
21 person to hear from about the standards and we didn't
22 even hear that from him. He wasn't asked what the
23 standards were at Crunch, how he was trained, what he
24 was taught to do. We didn't hear any of that. His
25 lawyer could have asked him. His lawyer could have
26 brought out his credentials, his experience, his

1 Proceedings 6

2 training.

3 Was he even asked what certifications, where

4 he went to school, what kind of training they give
5 him at Crunch, what experience or expertise, what
6 qualifications he had to make sure Nell was trained
7 properly? Nell didn't pick him out of a website or
8 go to him in his own gym. She went to Crunch.

9 You heard from her she had an expectation
10 that Crunch's trainers were qualified and knew what
11 they were doing and she could be safe. We didn't
12 hear any-- we don't know anything about that man.
13 Certainly, we know he wasn't an expert. Could have
14 gone through the same thing we did with Mr. Nelson,
15 laid out his credentials here and asked Judge Pfau to
16 recognize him in the field of personal training.
17 That wasn't done.

18 So, what did we learn from Gavin? What
19 pieces of information that are important for you
20 folks to know in your deliberations in this case?
21 Well, a few standard rules we did know about. We
22 know he didn't follow -- he didn't fill out the PARKU
23 (ph.) or the fitness assessment or the goal
24 assessment forms. These things are important.

25 The defense may try to minimize it and say it
26 didn't matter, it's part of the process of trying to

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get to know the client and part of the process of getting to train the clients. He didn't do any of that. He put her right to it, got right to work. And we know that on just the second day of training, the day that Nell told him she was sore, it was a different experience for her.

We know that he decided for whatever reason to pick this exercise out of a hat, this toe-tap exercise. And he told us, oh, she could do it, she did jumping-jacks, might as well have her do this. Didn't give you any explanation, any actual logic or reasoning for his training or experience to explain why he would choose an exercise like that for a woman like Nell. She wasn't there to train as a professional athlete. She wasn't training for a marathon or anything like that. She just want to get fit.

So, he picks this exercise out of thin air. He claims to have done a program progress and laid it all out. You think he did it? That's up to you. We didn't hear about it. We didn't see it. We didn't know it existed and he picks this exercise for her to do, knowing she's never done it before. That's

25 important, ladies and gentlemen, it's an exercise she
26 hadn't done before. It doesn't matter what her

1 Proceedings 8

2 ability was, it doesn't matter if she could do it
3 like a shining star athlete, doesn't matter if I
4 could do it, if Mr. Klauber could do it, none of that
5 matters.

6 Matters what her background was. Nell had
7 trained with Telly Gethers, we heard, forty-eight
8 times. Defense wants you to believe because she
9 trained with her, that makes her an expert athlete.
10 What we know is she went with a trainer. She put her
11 trust in great experience, working safely, did her
12 exercises that she felt confident in doing and that
13 her trainer was there for her to establish that
14 trust. That's all we know.

15 And what we do know is that she had never
16 done a toe-tap before. For whatever reason, Telly
17 didn't have her do it, not at an elevation, not even
18 on the ground, she had never done it before. Gavin
19 knew that. Knowing she had never done it, she didn't
20 even do it just on the floor, just to get the

21 movement down or holding a ball or anything like
22 this, he brought her over to a high bench to do it.
23 He demonstrates it and he tells her to do it, knowing
24 she had never done it before, okay?

25 It's not bad enough that he picks it in the
26 first place, but then, knowing she's never done it

1 Proceedings 9

2 before, he's supposed to be there for her at the very
3 least, let her know, Nell, listen, you may stumble,
4 you may fall, this could happen, I'm here for you,
5 I'm going to catch you, I'm right here, you get here,
6 do the exercise, I'm right here for you, I'll grab
7 you, I'll step in, I'll be there for you.

8 He purposefully didn't tell her any risks, he
9 didn't tell her she could fall, he didn't tell her
10 how to fall, he didn't tell her, I'll be there, I
11 gotcha, knowing she never done it. He stands there,
12 says, go for it, give me twenty. He could have held
13 her hand, said, let's try the movement, let's do it
14 on a floor, let's do it at a lower progress, all
15 these things he didn't do.

16 And then, members of the jury, when it's time

17 for her to do it, proper standard of care, according
18 to Delon Nelson, is to be there, be on it, have a
19 hand, be ready 'cause you don't know what's going to
20 happen, you don't know if she's going to be able to
21 do it or not. You just don't know. And knowing what
22 Gavin admitted on the stand, that she could fall
23 backwards, he's there, he's watching her feet, he's
24 ready, and sure enough, that's what happened. She
25 couldn't do it right. Okay.

26 She never done the exercise before. I don't

1 Proceedings 10

2 know if anybody in this room could have done it.
3 Right? If we all could have, some could, some
4 couldn't. She couldn't. She tried and she failed.
5 He set her up for failure. He gave her something
6 difficult and challenging she had never done, wasn't
7 there to aid her, hold her hand, make sure she could
8 do it right, learn the moves right.

9 And then, even though he claims to have been
10 here, he's standing there, sure enough, she falls and
11 she falls backwards. She doesn't fall that way. She
12 doesn't fall in some unusual way. His testimony was,

13 oh, it was unexpected. It wasn't unexpected. This
14 is exactly what he knew could happen, that she could
15 fall. I still don't get his explanation. I don't
16 think anybody could, that she stepped up and she
17 jumped up and jumped back like a Jackie Chan move or
18 some catwoman thing where she does a somersault. You
19 can't even get a hand on it.

20 It just doesn't make sense. It defies logic,
21 defies common sense, if he's doing his job, he's
22 right here for her. You heard him say, he's fit,
23 works out regularly, he's a trainer, he's got fast
24 reflexes. Actually, what you'd expect a trainer to
25 be. He isn't some guy off the street who's never
26 been in a gym before. He's supposed to be in shape

1 Proceedings 11

2 and know what to do. It's his job. He's right here.

3 And the very first move, she stumbles back,
4 he doesn't step in, he doesn't grab her, he reach for
5 her. Does that make any sense? Not only does he not
6 catch her, which by the way, he said, oh, it's not my
7 job to catch my client if she falls during an
8 exercise, it's not my job. You think if he told Nell

9 that before she started working out with him, she'd
10 still want to train with this man? Not my job and
11 she falls back, and he didn't get a hand on her,
12 okay, think about that. Just think about that.

13 He's standing here. She falls backwards. He
14 doesn't say, well, listen, I grabbed her, we both
15 tumbled to the ground, I got my hand on her wrist,
16 she fell, it was kind of awkward, I tried to break
17 her fall, she went this way, I went that way.
18 Nothing. Nothing. He didn't get any part of her
19 body. He didn't touch her arm, didn't touch her leg,
20 her hip. Nothing. Use your common sense. Come on.

21 And if you use your common sense, it will
22 tell you that anybody standing there doing their job
23 would have gotten a hand on her. He wasn't there,
24 okay? He wasn't there. He was standing off to the
25 side. He said, go, give it, give me twenty and she
26 took a header straight back. And the only thing that

1 Proceedings 12

2 broke Nell's fall was her wrists. That's it.

3 You heard the ground broke her fall. Not
4 Gavin. That was his job. That's what the evidence

5 showed. There's no dispute about that, members of
6 the jury. And we heard about that from Delon Nelson,
7 an expert who took the stand here and testified he
8 laid his credentials on the line. He took an oath to
9 tell you the truth.

10 And what he said just makes sense. I mean,
11 he's been in this industry, look at his credentials.
12 He has a bachelor's degree in Physical Education and
13 health science. He taught at City College, then he
14 went out as a trainer at Crunch, of all places, for
15 six years. He was promoted to personal training
16 manager, position higher than Gavin has, someone who
17 oversees the trainers. He told you for a while he's
18 at a popular Crunch in Manhattan.

19 He was the liaison with publications with the
20 media to talk about fitness. He was the head trainer
21 selected to work with Ms. USA pageant. He worked
22 there. He knew his stuff. He had certification
23 after certification. He trained kick-boxers. He
24 kick-boxed. He went to Thailand. He's been around
25 for seventeen years, training thousands of people.
26 Okay. I think that's some good experience.

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Certainly, a lot more than anything else you heard.

What he said makes sense. Let's listen to what Delon Nelson said. First of all, he said that people come to a gym and they hire a trainer for their safety. That's the-- number one, of course, you hire a trainer to get you fit and get in shape, you want to be safe, you don't want to hurt yourself, you don't want to be one of those people who shows up to a gym and starts piling weights on a rack and does something and gets injured. You want to be safe.

That's the trainer's job, to pick proper exercises and to make sure your client doesn't get injured while doing them. That makes sense. When I asked him about the toe-tap exercise, he demonstrated, came down here and he showed you how to do it on the floor first and how a client can get exercise out of that.

And then he said if that's not enough just on the floor, give the client a physio ball, that makes it harder. And if that's too easy, let her raise it above her head. There's no risk of training or fall or getting injured on an apparatus. He doesn't consider any of that. Then you can increase the ball, you can increase the rate. And then if all

26 that fails, then you can start with a low elevation.

1	Proceedings	14
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2 I went over to the step over here by the witness
3 stand. He said, you can do six inches, you can do
4 the exercise on six inches. No reason to go all the
5 way up over a foot high on the bench for the very
6 first time.

7 Not only did he say it as an expert with his
8 education and experience in the field, but it also
9 just makes sense. It just makes sense. He said that
10 beginner level, this exercise would be at no
11 elevation or up to six inches. Intermediate level of
12 this exercise would be six inches to twelve inches.
13 And over twelve inches would be advanced. Mr. Nelson
14 said the only reason he picked that exercise to have
15 one of his clients do would be one of his Muay Tai
16 kickboxing clients because those are athletes that
17 need to be in crazy condition shape to go into a ring
18 and fight for their job. It wasn't Nell.

19 There's no need to do it. No need to have
20 her go right to that. You've got to crawl before you
21 can walk, before you can run, before you can jump.

22 He didn't get in an explanation for it. Gavin didn't
23 give a proper explanation and nobody from Crunch came
24 in to say it was appropriate to advance her right to
25 that.

26 Delon explained-- Delon Nelson said, our job

1 Proceedings 15
2 as trainer is to give a safety net. He gave a great
3 analogy. I want you to consider the trapeze analogy,
4 if a client is going to go and swing from a trapeze
5 and a client sees there's a net under there and sees
6 somebody go first and swings and goes flying off,
7 they don't catch-- they don't do the proper move, the
8 net catches them, they bounce down, the client knows
9 the net is there, says, okay, I'm going to give this
10 a shot, looks kind of hard, kind of difficult, I know
11 if I don't do it right, the net will catch me.
12 That's the trainer's job, to be that safety net.

13 Then imagine going up on that trapeze,
14 thinking the net's there, swinging and stumbling and
15 falling off, falling down, and there's no net. You
16 go crashing to the ground. That's what happened in
17 this case, members of the jury, Gavin Umeh was

18 supposed to be Nell's safety net and wasn't there for
19 her. That's what happened. That was his job.
20 That's what the evidence showed. And there's been no
21 dispute about it, frankly, no dispute, whatsoever.

22 Gavin failed. Now he set her up for failure.
23 He picked an exercise that was too advanced. And
24 knowing she had never done it before, he should have
25 been there and ready for her. He should have helped
26 her. He should have progressed her. He should have

1 Proceedings 16

2 caught her, prevented her from falling, gotten his
3 hands on her.

4 Members of the jury, we heard from Nell.
5 Now, it's interesting that the defense wants you to
6 think that Nell is negligent, Nell did something
7 negligent. She did the exercise wrong. That's
8 negligence? Haven't we all been in situations where
9 we've been asked to try something and you try and you
10 just don't do it right? Does that make her
11 negligent? If anything, if you look at what Nell had
12 to say about her experience and her background in
13 selecting a trainer, everything was quite reasonable,

14 to say the least.

15 At the time, she was thirty-seven, bartender,
16 she just wanted to get in shape. She wanted to lose
17 a little bit of weight, feel good about herself and
18 get a little bit fit. And she decided to do it by
19 hiring a trainer. She paid for that safety net. She
20 didn't go off half-cocked into the gym and say, let
21 me mess around and try to get myself in shape.

22 When you hear about waivers and you know the
23 risks and when you sign that form to join the gym
24 with all the fine print in it, saying you don't know
25 the risks of injury in the gym. That's not this
26 case. We're not here saying if someone gets injured

1 Proceedings 17

2 while working out, they have a lawsuit, there's
3 negligence. People get injured all sorts of ways,
4 but not like this. Nell wasn't there messing around.
5 She wasn't trying to do something.

6 She didn't say, oh, I'm going to try this
7 exercise, I saw somebody do it on You Tube or TV, I'm
8 going to see if I can do it. She didn't do it.
9 She's not negligent. If anything, she was

10 reasonable. On a bartender's salary, she budgeted to
11 have a trainer and she told you she went to the gym,
12 if it wasn't for yoga, to work with a trainer to
13 guide her through and work great with. That's what
14 she had Gavin for when he asked her to do this
15 exercise.

16 Oh, she's negligent. The defense will have
17 you believe she should have said, oh, by the way, I'm
18 not going to do that exercise, oh, you better get
19 here close to me. She's negligent for not doing
20 that. She put her trust in him. She was reasonable.
21 Given her experience with Telly, it's her
22 understanding you trust your trainer. Trainer says
23 you can do it, say okay, it looks a little scarier,
24 but I'll try it, knowing that the trainer's the
25 safety net and there if you mess up.

26 That's reasonableness. That's not

1 Proceedings 18

2 negligence. Nell explained her reasoning. She said,
3 I was tired, my legs were sore, he demonstrated,
4 looked hard, I said, really? He said, yeah. I said,
5 okay, I'll give it a try. She was trying her best.

6 It wasn't negligent. Think about that, members of
7 the jury. He was a safety net. He failed her.

8 She didn't do anything wrong in this case.
9 The fact that she had been to a gym before or was
10 there during the month of January, she explained she
11 went for yoga, the month of January, she went to meet
12 with the advisor to find out about switching her
13 trainers. What did she do wrong here? She didn't
14 do anything wrong.

15 Now, the verdict sheet that you're going to
16 get, I'm going to go through it, each question. The
17 first question that you'll have is, were the
18 defendants negligent? Yes or no. That's a decision
19 that five out of six of you will have to make, yes or
20 no. The answer to this-- there's really only one
21 answer when you look at the real evidence that you
22 heard is yes.

23 We heard from Delon Nelson, the only expert
24 testimony, you heard in this case that it is a
25 departure from good and accepted training practice to
26 have a client with any level ability do an exercise

2 like this, toe-tap like 12.4 inches high without
3 first making sure she can do the movement at a lower
4 level first and properly do the exercise, that's
5 negligence. That's what you heard from the evidence.
6 That means you check off yes.

7 The other negligence is the failure to be
8 there to spot her, so that if she did fail in trying,
9 that you can catch her, prevent the fall. That was
10 negligence. And we don't have to prove both. We
11 only have to prove one. But, I feel we have clearly
12 proven both. And you can pick one or both, either or
13 all the above, any way or shape, he was negligent and
14 there was no evidence to the contrary.

15 After you check yes to the negligence part,
16 the next one is: Was the defendant's negligence a
17 substantial factor in causing the incident. The
18 judge is going to instruct you on what that means,
19 but basically, did it cause it, did his negligence
20 cause her accident? The answer's yes. Again, check
21 it. He shouldn't have had her doing the exercise.
22 That was a substantial factor. He should have
23 prevented her fall. That was a substantial factor.
24 The answer's yes.

25 The question after that is: Was the
26 plaintiff negligent? Now, the judge will instruct

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you when you get to this part, the burden shifts just the same way. We have the burden to prove that the defendant, through Gavin, was negligent. The burden shifts to the defense.

MR. KLAUBER: Objection.

THE COURT: Sustained.

MR. SMILEY: And it's up to them to prove to you --

MR. KLAUBER: Objection, your Honor. He's continuing with the same --

THE COURT: No.

MR. KLAUBER: It's up to them.

MR. SMILEY: It's up to them to prove to you that she was negligent, just like some evidence for you to think there was some credible evidence here that she did something that wasn't reasonable. There is none. If you collectively, amongst yourself, think about this trial, there's nothing that says she's negligent. The answer's no, not even a piece of evidence to consider about.

And then you don't even get to the remainder,

23 which would be if her negligence was a substantial
24 factor, you don't even get to that question, which
25 would be no 'cause there was no negligence.

26 Last question that's here that if you did

1 Proceedings 21

2 find that the defendant was negligent and Nell was
3 negligent, then you're asked to divide up the pie to
4 100 percent, okay? That's how the verdict works.
5 And you all have this when you go to the jury room.

6 Members of the jury, the evidence was clear
7 here. Okay. And again, you've got to remember that
8 it's not about who can and who can't do this
9 exercise. Mr. Klauber wants you to think he can do
10 the exercise and it's simple. That wasn't the case.
11 He wasn't even sure. Even assuming he's the best
12 athlete in the world, he's in great shape, he can do
13 this exercise, that doesn't mean it's right for Nell.
14 Doesn't mean a thing.

15 You heard the example Delon Nelson gave to
16 you, if he asked everybody in this room to do
17 push-ups, some would be able to do it great, some
18 would be on their knees, some, one arm, everybody

19 different levels. You have to know and you have to
20 progress. Okay.

21 There's no doubt about the negligence. And
22 if there is, this is what I ask of you, members of
23 the jury, when you go into that jury room after her
24 Honor instructs you and you're deliberating, if
25 there's any doubt in any of your minds as to whether
26 or not the answer's yes, consider two questions.

1 Proceedings 22

2 And I'm not going to tell you the answer, I'm
3 going to ask among yourselves, question number one:
4 If Gavin Umeh was really following the proper
5 standards of care in his profession in the industry
6 of personal training, in selecting Nell, given
7 everything he knew and didn't know about her, given
8 these accidents, if it was proper, how come not one
9 person took an oath to vouch for him? That's
10 question number one.

11 Question number two, if he was really there,
12 if he was really where he claims to be, if he was
13 really where he was supposed to be, spotting her on
14 this exercise, how come he didn't get a hand on her?

15 Forget about catching her, ready to fall, how come he
16 didn't get a hand on her?

17 On behalf of myself and on behalf of Nell,
18 you've been extremely patient. I appreciate that.
19 So does she. Very important matters to everybody
20 involved in this action. And I thank you for your
21 patience. I thank you for your attention that you've
22 given to this case and continue to give. Thank you.

 (Summation concluded.)

23 C E R T I F I C A T I O N

24 I hereby certify that the foregoing is a true
25 and accurate copy of the stenographic proceedings of
26 the hearing held in the above matter.

LISA L. DIMINO, R.P.R.
OFFICIAL COURT REPORTER

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