

UNITED STATES BANKRUPTCY COURT@@  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

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IN RE: GORDON PROPERTIES, LLC, : Case Number 09-18086  
Debtor. : (Chapter 11)

----- x  
GORDON PROPERTIES, LLC, :  
Plaintiff, : APN 11-01020-RGM

v. :  
FIRST OWNERS ASSOCIATION OF FORTY-SIX :  
HUNDRED, ET AL, :  
Defendant. :

----- x

Monday, February 27, 2012  
U.S. Bankruptcy Court  
Alexandria, Virginia

The above-entitled matter came on to be heard before THE HONORABLE ROBERT G. MAYER, Judge in and for the United States Bankruptcy Court, for the Eastern District of Virginia, Alexandria Division, beginning at approximately 11:20 a.m.

Diversified Reporting Services, Inc.  
(202) 467-9200

APPEARANCES:

On Behalf of the Defendant:

JENNIFER SARVADI, ATTORNEY AT LAW

On Behalf of Plaintiff:

DONALD F. KING, ESQUIRE

C O N T E N T S

				FURTHER	VOIR
WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	REDIRECT DIRE
Kenneth Schrantz	29	37	38		
Jesse Binnall	41	79	130	138	89
Jonathan Bronley	139	148	155	156	
Joe Riviere	158				
Dewanda Cuadros	161				
Christopher Dempsey	163	167	169		
Kendrick Liu	170	174			
Conchetta King	176	179			
Jesse Binnall	182	186			
(Recalled)					

E X H I B I T S

	MARKED FOR IDENTIFICATION	IN EVIDENCE
Plaintiff's Nos. 1-8, 10, 12 and 14		19
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1 P R O C E E D I N G S

2 THE CLERK: The next matter on the docket is  
3 Gordon Properties v. First Owners Association of Forty Six  
4 Hundred, Adversary Proceeding Number 11-1020.

5 MR. KING: Donald F. King for the plaintiff.

6 MS. SARVADI: Jennifer Sarvadi on behalf of the  
7 defendant, Your Honor.

8 MR. BINNALL: Good morning, Your Honor. Jesse  
9 Binnall, the election administrator and parliamentarian.

10 THE COURT: Thank you.

11 You had an issue, Miss Sarvadi?

12 MS. SARVADI: Yes, Your Honor. We filed a motion  
13 on Friday seeking requests for an extension of the hearing  
14 date, Your Honor, on the basis that we served some discovery  
15 on Gordon Properties which was not responded to timely and  
16 was not provided under verification. It wasn't sworn under  
17 oath and it identified within it two experts. We received  
18 the answers to the discovery Thursday night of last week from  
19 counsel for Gordon Properties and specifically with respect  
20 to the witnesses they didn't identify any person by name but  
21 they did say that they intended to call an expert witness at  
22 the hearing today. This expert witness is supposedly going  
23 to render some opinion which was undisclosed as to whether  
24 certain procedures followed were consistent with Robert's  
25 Rules of Order. As the court may recall, the meeting

1 procedures order requires conformity with Robert's Rules.

2 Within that answer to interrogatory, they failed to  
3 identify the name of the expert, the opinion the expert was  
4 expected to give, the basis for that opinion or any other  
5 information.

6 The experts that I now understand to be the  
7 individuals Mr. King may call are listed on the plaintiff's  
8 witness list and apparently one of them is here today and  
9 they do intend to rely upon the expert's opinion.

10 I do have a copy for the court of the objections  
11 which were provided to me Thursday night from Mr. King, if I  
12 may present that to the court.

13 (Document handed to the court.)

14 MS. SARVADI: I will note while the certificate of  
15 service says that it was in fact timely served earlier in  
16 February, Mr. King I think would admit and he says so in an  
17 email to me on Thursday that they in fact were not duly  
18 served on February 13th but sent to me last Thursday evening.

19 While we all agree, Your Honor, with respect to  
20 the election a lot of the information is going to come from  
21 the election administrator and his staff and factually we  
22 understood that, with specific specificity the issues are  
23 we didn't know who they were going to rely upon or the facts  
24 they were going to rely upon or the experts.

25 THE COURT: Is there going to be a request for a

1 rule on witnesses?

2 MS. SARVADI: Yes, Your Honor.

3 THE COURT: All right. Who in the courtroom are  
4 potential witnesses?

5 MR. KING: Nobody, Your Honor. Well, we are not --  
6 I think we're in agreement we are not imposing the rule as  
7 to the parliamentarian and the election administrator. My  
8 expert is going to sit here, as well, but he's not physically  
9 right in the building right now but when he gets here,  
10 depending on how you rule on the --

11 MS. SARVADI: And Your Honor, you'll see that the  
12 answers that were provided timely were not even verified  
13 by anyone from Gordon Properties.

14 THE COURT: Which interrogatory were you referring  
15 to?

16 MS. SARVADI: Yes, sir. Request number three  
17 requested the identification of witnesses and then request  
18 number four asked for experts to be identified. That is at  
19 the bottom of page three.

20 THE COURT: Do you intend to call any experts?

21 MS. SARVADI: Do I intend to call? No, sir.

22 MR. KING: Does that mean that FOA is not going to  
23 use the parliamentarian as an expert?

24 MS. SARVADI: I don't intend to ask the  
25 parliamentarian if his own procedures were in conformity

1 with Robert's Rules. I think it's his opinion that he is in  
2 conformity and therefore he's going to testify for himself.  
3 He's not rendering an opinion about somebody else's conduct.  
4 He's explaining the basis for his determinations.

5 MR. KING: Your Honor, there's only one issue in  
6 this case which relates to an expert opinion with respect to  
7 parliamentary procedures. It's the issue that Your Honor  
8 identified that you wanted to hear about and that was what  
9 happened at the annual meeting with respect to policy  
10 resolution 2009 and the decision of the parliamentarian in  
11 the context of that meeting and then the decision of the  
12 election administrator thereafter based upon its ruling  
13 thereafter based upon the objection of --

14 THE COURT: That issue was a motion or -- a motion  
15 I believe it was, if I'm correct, that the policy resolution  
16 was not valid or something to that effect and was put to the  
17 assembly. The assembly declared it invalid or whatever. I'm  
18 not quite sure what the motion was or the ruling. Does the  
19 outcome of that have any impact on the election?

20 MS. SARVADI: I don't believe it does given the  
21 remands of this court over the Gordon Properties removal and  
22 the fact that the Gordon Residential Holdings matter is going  
23 forward. We just don't want to have not raised the objection  
24 to that procedural motion and then have it later be used as  
25 an argument that it in fact did invalidate a policy for some

1 subsequent election. We understand it's not necessarily  
2 going to change the outcome here given the Circuit Court  
3 arbitration matter.

4 THE COURT: Is it going to change the outcome of  
5 the election?

6 MR. KING: This election, no, Your Honor. That's  
7 the discussion I had with Miss Sarvadi in a way to try to  
8 avoid this. I don't believe that decision has any impact on  
9 this. The reason it doesn't is because FOA has already  
10 agreed that they are not enforcing the affiliated entity  
11 provision in that policy resolution.

12 The issue about whether entities can put more than  
13 one candidate on the board is not governed by the policy  
14 resolution. That's governed by separate law and is the  
15 issue that is subject, is being determined by the arbitrator  
16 appointed in the state court.

17 So, with respect to this election, no, but there's  
18 no doubt that the body took action and that action is the  
19 existing situation.

20 Now, whether FOA or any unit owner in the future at  
21 any other election tries to suggest that what happened at  
22 that meeting might or might not have been affected, it could  
23 raise its head again then but as long as everybody agrees  
24 that there was action taken at the annual meeting that's not  
25 relevant for purposes of the issues we need to determine

1 today, then we don't need to address it.

2 THE COURT: Is it reflected in the minutes of the  
3 meeting?

4 MS. SARVADI: Your Honor, because the meeting  
5 hasn't been adjourned, I don't believe formal minutes have  
6 been prepared but it certainly was videotaped as part of the  
7 process undertaken by the election administrator.

8 THE COURT: It seems to me that if it does not have  
9 any bearing on the outcome of the issues presented here that  
10 it's not something that I should hear evidence on.

11 I think it sounds like there's a request for a  
12 declaratory judgment as to whether that action was  
13 appropriate or more generally the effect of that action to  
14 the extent there was. I don't know that that relates to the  
15 362 issue that was presented out of which this arises.

16 So, we certainly envisioned that there would be  
17 an annual meeting, that there might be other business that  
18 could properly come before the membership at that time but  
19 the only one we were interested in was the election and  
20 that's what the bylaw provision seems to affect.

21 The rest of it I think probably would be matters  
22 for the state court to adjudicate if it comes up or a  
23 declaratory judgment issue if in fact it's under the Virginia  
24 declaratory judgment.

25 So, that being the case, I'm not going to hear with

1 respect to the policy resolution if the affiliated member  
2 agreed that it's not to be applied in this case or to this  
3 election; and with that, I don't know there's any reason to  
4 call the witness or address the issue. So, if that's the  
5 only one then I don't see that there needs to be a  
6 postponement of this hearing.

7 MS. SARVADI: I would just like the record to  
8 reflect that the answer didn't provide any individuals by  
9 name in response to request number one for persons with  
10 knowledge. We do agree that some of the players were known  
11 to both sides but not all of them and the discovery simply  
12 wasn't answered at all as it should have been.

13 MR. KING: Your Honor, I had with Miss Sarvadi  
14 Thursday night fallen on my sword on this. It was clearly  
15 my error. When I got back from court Thursday night, I had  
16 an email from Miss Sarvadi saying, hey, I haven't gotten  
17 your responses to discovery yet. My initial thought was:  
18 Miss Sarvadi, what are you smoking? The discovery had been  
19 prepared. The responses had been prepared. As you can see,  
20 they were dated the 13th. They were ready to go, and I  
21 searched my emails and could not find evidence that I had  
22 ever sent it and it was out of sight, out of mind.

23 So, it was clearly my error but I will suggest  
24 that I don't think there's any prejudice as a result of the  
25 lateness. There's nothing new in there. We made it clear

1 that there is no evidence, there are no facts supporting  
2 what Your Honor is going to hear today that have not already  
3 been set forth in the objections themselves and what the  
4 election administrator is going to testify to.

5 THE COURT: Are you ready to go forward then?

6 MS. SARVADI: Yes, Your Honor, subject to that.  
7 Yes.

8 THE COURT: Subject to?

9 MS. SARVADI: To our prior statement on the record  
10 with the expert issue.

11 THE COURT: All right. You're ready to forward as  
12 long as we don't consider the validity or the effect of the  
13 action taken with respect to the policy resolution?

14 MS. SARVADI: And assuming the parliamentary  
15 expert wouldn't be testifying as to any other matter, yes,  
16 sir.

17 MR. KING: We've already instructed our people to  
18 call him and tell him he doesn't have to come.

19 THE COURT: All right. Let me hand back to you the  
20 discovery and I think that the objection is moot and then we  
21 can go forward.

22 MS. SARVADI: I did have one administrative matter,  
23 Your Honor. I've spoken with Mr. King. In defendant's  
24 exhibit letter "H" there is a spreadsheet the EA will  
25 authenticate that reflects certain votes and quorum numbers

1 from the election. It's his final tally. When we printed  
2 that, Your Honor, it printed out multiple pages so you would  
3 have to lay one next to each other to read it. All I have  
4 done and provided Mr. King a copy is shrunk it to fit a legal  
5 size. I'd like to replace the Exhibit H and I don't believe  
6 there's an objection. I have a copy both for the court and  
7 for the witness binder.

8 THE COURT: I've got Exhibit H. Show me what  
9 you're doing.

10 MS. SARVADI: Yes, sir. In order to read the  
11 spreadsheet in its entirety you would have to lay multiple  
12 pages next to one another to read all the way across row  
13 number one by way of example. This size page spreadsheet  
14 simply condensed all of that material into one page so the  
15 entire set of columns is viewable at one time.

16 THE COURT: It looks like each page would be two  
17 pages across. I'm looking at pages one and two which starts  
18 with unit one and then page three starts with unit 40.

19 MS. SARVADI: Yes, there are two pages. This  
20 simply brought it into one page that was easier to follow.

21 THE COURT: All right. If it's okay with both  
22 parties, I'll take the new one; but I'm going to retain the  
23 old one because it's bigger. To the extent that I need that  
24 assistance I will use it but I understand it's for the ease  
25 of the court.

1 MS. SARVADI: And I also have one for the witness  
2 for ease of reference, as well.

3 THE COURT: All right.

4 MS. SARVADI: I will put it with the binder.

5 THE COURT: That will be fine.

6 MR. KING: I don't know how Miss Sarvadi did it but  
7 she was able to get it in larger type on a single page than  
8 I was able to.

9 THE COURT: It is legible and we will use that.

10 All right. That being done, how are we going to  
11 proceed? You both have objections.

12 MR. KING: Right. I think where we are and  
13 hopefully we are in agreement with this: Your Honor entered  
14 an order on January 24th which determined that it was the  
15 election that occurred on October 5th that is what we'll  
16 talking about here and not all the stuff that might have  
17 occurred at the adjourned meeting thereafter.

18 In response to that which was the order directing  
19 the election administrator to report the election results,  
20 the election administrator -- and pursuant to a prior order  
21 the parties were directed to provide to the election  
22 administrator their objections with respect to the rulings  
23 that he made, their objections with respect to various  
24 properties and he made the rulings.

25 And so, what we have based upon the supplemental

1 report is the results of the election that are set forth in  
2 the supplemental report and I think where we are today is  
3 that that is the reported results of the election subject  
4 only to whatever objections we raise today with respect to  
5 the ballots that were counted for purposes of arriving at  
6 that tally.

7 MS. SARVADI: I think that's right. I think we  
8 would like the election administrator just to explain how  
9 the numbers are reflected but I believe that is accurate.

10 MR. KING: That would be the election  
11 administrator's supplemental report which is docket number  
12 151.

13 THE COURT: All right. Now, I have docket entry  
14 137, second interim report of election administrator which  
15 seems to be the document in which he is addressing the  
16 objections that were raised.

17 MR. KING: Right. Those are the objections that I  
18 think both parties are asking the court to decide whether  
19 correct or not.

20 THE COURT: So, if I were to say what are the  
21 objections, I look to the second interim report?

22 MS. SARVADI: Summarize both. Yes, Your Honor.

23 THE COURT: And I could go down, start at number  
24 one, and review them to the extent you're still arguing?

25 MS. SARVADI: Correct.

1 THE COURT: Now, are there additional objections  
2 other than those reflected?

3 MS. SARVADI: No, Your Honor, with the exception of  
4 dealing with what the EA termed ratified proxies in this  
5 report. We will have some argument that deals with whether  
6 they should be accepted and whether they're valid because the  
7 meeting remains open and ongoing. So, that is something  
8 referred to in the report but we had not filed it as an  
9 initial objection because it didn't come up until the report  
10 was presented.

11 MR. KING: Well, I guess FOA can argue that those  
12 attempted post-meeting ratifications had some effect but I  
13 think under Your Honor's order it's entirely irrelevant.  
14 Your Honor had said nothing that happened after the October  
15 5th meeting has any bearing on the --

16 THE COURT: Are you asking that they be ratified or  
17 are you objecting to them being ratified?

18 MS. SARVADI: We are asking that they be  
19 ratified. It wasn't something that had come up when we  
20 had our argument before you last.

21 THE COURT: All right. Where are they in his  
22 second amended report?

23 MS. SARVADI: On page seven, under Subsection F,  
24 and now that is just for Your Honor's reference, a summary of  
25 the proxies that he deems to have been ratified.

1 THE COURT: So, I'm looking at page seven, Section  
2 1F, ratified proxies, and you're asking that those be  
3 counted?

4 MS. SARVADI: Yes, Your Honor.

5 THE COURT: All right. You can address those at  
6 the time. We can figure out what the prior order of the  
7 court means as to those particular issue.

8 All right. So, everything is contained in that  
9 with that one supplement?

10 MS. SARVADI: That's correct.

11 THE COURT: I have a supplemental report and that  
12 carries the numbers under various scenarios?

13 MS. SARVADI: Correct. The second report simply  
14 explains the decision-making on the objection and then the  
15 second interim report then went on, separate document, to  
16 report the effect of each ruling upon the numbers and then a  
17 net at the conclusion.

18 MR. KING: So, the operative tally that we're  
19 using, Your Honor, is on page two of that supplemental  
20 report, entitled, "Tally of October 5th Ballots Under  
21 Election Administrator's Ruling."

22 The first tally was the tally that was reported  
23 initially after the October 5th meeting. That's the raw  
24 numbers. Then the objections were made; the election  
25 administrator made his ruling, and so that was the final

1 tally, the one that is set forth on page two. So, that's  
2 the tally that we're dealing with here today.

3 THE COURT: All right. What about the next  
4 heading, "Special Effect, Each Ruling."

5 MR. KING: What he did is: There were four  
6 objections and four rulings. So, what he did is, he went  
7 through the raw-number tally and then adjusted the raw number  
8 based upon the effect of each separate ruling. I'm not sure  
9 that it really does anything or helps us in any way. I think  
10 the election administrator, candidly, probably misunderstood  
11 what it was that we were looking for in that regard.

12 THE COURT: All right. So, what we're looking for  
13 is on page two, tally of October 5th ballots under election  
14 administrator's ruling, paragraph one. There's only one  
15 paragraph. Those are his results. There are other  
16 objections that we have to resolve and based on how they're  
17 resolved it will detract or possibly add to what he has  
18 otherwise done, and what he tried to do on that was  
19 anticipate how it would be if some were admitted and not  
20 some.

21 MS. SARVADI: As a result of whatever Your Honor  
22 does with certain objections each side has, there may be  
23 another round of submissions once we figure out what is  
24 finally in or out.

25 THE COURT: All right. Now, with respect to the

1 exhibits that have been submitted, are there objections to  
2 any of them?

3 MR. KING: There are, Your Honor.

4 MS. SARVADI: There are only objections to certain  
5 exhibits from Gordon Properties. I did not see objections to  
6 our exhibits. Did you file any?

7 MR. KING: Uh-huh.

8 MS. SARVADI: You did?

9 MR. KING: Yes.

10 THE COURT: Why don't we start with the  
11 plaintiff's exhibits which are those of Gordon Properties. I  
12 see 14 exhibits. Are there objections to those?

13 MS. SARVADI: There are objections, Your Honor. We  
14 objected to, for the same basis, 9, 11 and 13, and those  
15 were authenticity, hearsay, relevance; and this will dive  
16 into a little bit of the substance. I can explain why we've  
17 objected now or we can wait until we deal with the  
18 objections.

19 THE COURT: Well, let me do it this way. Do you  
20 object to anything else other than 9, 11 and 13?

21 MS. SARVADI: No, Your Honor.

22 THE COURT: All right. Then I will admit all  
23 except 9, 11 and 13 of the plaintiff's exhibits, and we can  
24 address those if and when they are presented since there are  
25 only three of those left.

1 (Plaintiff's Exhibit Nos. 1  
2 through 8, 10, 12 and 14 were  
3 received in evidence.)

4 THE COURT: Then if I turn to the defendant's  
5 exhibits, they run from A through I. Are there objections  
6 to those, Mr. King?

7 MR. KING: Yes, Your Honor. With respect to "A,"  
8 we are going to need some testimony. We've objected based  
9 on relevance and hearsay.

10 THE COURT: Are there any that you accept and have  
11 no objection?

12 MR. KING: Actually, there are objections with  
13 respect to every one. All of them are objected to for  
14 hearsay and then all but "B" and "H" are objected to as far  
15 as relevance.

16 THE COURT: Well, we'll take those as they come up.

17 With that, you both have objections. I suppose the  
18 easiest thing is just to let the plaintiff go forward first,  
19 make his objections and proceed then to the defendant.

20 MS. SARVADI: Do we want to go through the  
21 objections individually? Since the EA will be testifying as  
22 to multiple, would it be more efficient to have him --

23 THE COURT: First of all, I'll let you give me an  
24 overview, opening statement.

25 MR. KING: That's what I was going to do, Your

1 Honor.

2 THE COURT: It sounds to me that you probably want  
3 to proceed on all of them but let's do the opening and see if  
4 there are any changes in it.

5 MR. KING: There are a number of different  
6 categories of proxies, Your Honor, as to which we are  
7 objecting and they fall into four categories, Your Honor, and  
8 I'll go through and identify the four categories and then  
9 we'll present the evidence.

10 There were eight proxies that Gordon Properties  
11 does not believe were signed by all of the unit owners as  
12 required by Virginia law. That's one objection, and those  
13 proxies are 410, 423 --

14 THE COURT: Let me do this --

15 MR. KING: Okay. You wanted just a description of  
16 the objections?

17 THE COURT: Let's do that and at the time we  
18 address --

19 MR. KING: That's fine. Category one, proxies not  
20 signed by all unit owners. That's objection one.

21 THE COURT: And there are eight of those?

22 MR. KING: One, two, three, four, five, six, seven,  
23 eight. Yes, Your Honor.

24 Secondly, there are three proxies signed by a  
25 person whose name does not match the unit owners as required

1 by Virginia law. There seems to be a mistake and that  
2 relates to three proxies.

3 Then there are two proxies that are not signed at  
4 all, according to Gordon Properties. It's actually the same,  
5 I believe, supposed to be the same unit owner but two  
6 different units, two different proxies -- sorry. I'll get  
7 to those later.

8 Then the last category which was the category we  
9 talked about before and was identified in Your Honor's order.  
10 There were instructed proxies. These are not the instructed  
11 proxies where the name of the proxy was blank.

12 Remember we had an order entered and everyone  
13 agreed that if there was an instructed proxy where they  
14 failed to name the unit owner, the proxy holder, that the  
15 EA would be deemed the proxy holder and would vote in  
16 accordance with the instructed proxy. That's not what we're  
17 talking about.

18 What we're talking about are all of the instructed  
19 proxies that the election administrator received that were  
20 otherwise valid on their face.

21 The election administrator for some reason chose  
22 not to require the proxy holder to submit ballots. He  
23 simply treated the proxy as a ballot and we don't think  
24 that was proper and we think those have to be excluded, as  
25 well.

1 THE COURT: Let me understand. The proxy was  
2 submitted and in all other cases the proxy holder completed  
3 a ballot?

4 MR. KING: Correct. Mr. Sells designates me as the  
5 proxy holder. I show up at the meeting with the proxy and  
6 I'm not given a ballot by the election administrator. The  
7 election administrator simply takes the proxy holder, the  
8 proxy, and treats that as the ballot.

9 THE COURT: How many were there?

10 MR. KING: I think the election administrator is  
11 going to have to tell us that, Your Honor.

12 THE COURT: Some number. All right. But the  
13 rest of the people who showed up?

14 MR. KING: Were given ballots.

15 THE COURT: Were given ballots. There's just a  
16 few, I assume a few who did not receive ballots?

17 MR. KING: Right.

18 THE COURT: And the proxy was counted?

19 MR. KING: There may be an issue on the ones where  
20 Your Honor said that the election administrator would be  
21 deemed the proxy holder. I don't know that the election  
22 administrator filled out ballots either. So, they may fall  
23 in the same class of the proxies that I'm talking about but  
24 I just don't know the answer to that question.

25 THE COURT: On items one, two and three, are these

1 proxies that are not signed by all unit owners?

2 MR. KING: Yes, Your Honor. Yes.

3 THE COURT: Now, what happens if the objections are  
4 sustained? Is there a quorum?

5 MR. KING: Fair question. I don't know what the  
6 result is. What the election administrator hasn't done is  
7 prepare a tally that -- well, if the proxy holder was there  
8 for quorum purposes -- the point is, the election  
9 administrator hasn't prepared a tally that tells us the  
10 result depending on how Your Honor rules on these objections,  
11 and we don't know.

12 THE COURT: All right. We'll worry about that but  
13 it seems to me that if someone is absent but sends a proxy  
14 and the proxy isn't valid then the proxy should not be  
15 counted for any purpose, quorum or otherwise.

16 The first question would be once we've gone  
17 through all of these, do you retain a quorum? Then once  
18 we've decided that issue, if there is a quorum then we have  
19 to determine how those proxies were cast and the live voters  
20 were cast and come up with a solution.

21 MR. KING: Right.

22 THE COURT: I understand that Judge Ellis'  
23 injunction, stay pending appeal is still in effect as to  
24 certification.

25 MR. KING: It is, Your Honor.

1 THE COURT: So, we will go as far as we can on  
2 that but not to the certification issue.

3 MR. KING: There's one other category of proxies  
4 that we are objecting to today. It wasn't part of our  
5 objection but apparently there was -- the election  
6 administrator apparently included -- apparently excluded  
7 some proxies sua sponte, in other words, without any  
8 objection by any party, just made the decision himself  
9 after the fact. After having accepted the proxy at the  
10 meeting and including it, when he did his tally in response  
11 to our objections later he identified some proxies that he  
12 chose not to count, and we don't know how he did that or why  
13 he did it but we don't think that's proper. That involves  
14 one, two, three, four, five, six proxies, Your Honor.

15 THE COURT: So, a sua sponte --

16 MR. KING: Exclusion.

17 THE COURT: All right. And they came after?

18 MR. KING: After the meeting. Yes, Your Honor.

19 THE COURT: After the meeting. After. Originally  
20 you thought they were in. You both made your  
21 objections and then when you got the final report they  
22 were excluded. All right.

23 MR. KING: For the first time, they were excluded  
24 in the second interim report, document 137.

25 THE COURT: All right. So, you've got five

1 categories that you're addressing?

2 MR. KING: Yes, Your Honor.

3 THE COURT: And it looks like somewhere in the  
4 order of about 19-plus ballots or proxies.

5 MR. KING: I think that's exactly how many we  
6 counted, actually.

7 THE COURT: All right. I think those are pretty  
8 well self-explanatory. Let's see what the association says.

9 MS. SARVADI: Yes, Your Honor. There are certain  
10 of those objections to which we will be opposing their  
11 objections of the ruling of the EA or we in other words  
12 support the decision of the EA for various reasons. For  
13 some we do not.

14 For those that the EA -- those proxies the EA  
15 accepted at October 5th and again affirmed later that they  
16 would and then later the EA determined they would not be  
17 accepting those, we disagree with that and we're trying to  
18 let everybody vote if we can get as many people to vote --

19 THE COURT: Of the five categories Mr. King  
20 described, do you agree to any of those or is issue joint  
21 on each of those?

22 MS. SARVADI: They're joint on each. We don't  
23 agree.

24 THE COURT: Now, did you have other additional  
25 objections?

1 MS. SARVADI: We did, Your Honor, and one category  
2 of proxies deals with proxies submitted by two members, Miss  
3 Brungart and Mr. Quelch -- excuse me. Three. And Ms.  
4 Hernandez. Which is why they are separately noted in our  
5 exhibits.

6 The EA in his second interim report provided an  
7 opinion that he had concerns about the validity of their  
8 proxies given what he believes to have been forged or  
9 fraudulent proxies submitted after the date which he believes  
10 calls into question the validity of others, and he also did  
11 an investigation which caused him to further call into  
12 question certain proxies, and for that reason we support his  
13 concern in that regard as to whether the proxies submitted in  
14 October are in fact valid.

15 THE COURT: Let me get the names. You have Miss  
16 Brungart.

17 MS. SARVADI: Stella Quelch.

18 THE COURT: Where is this? What paragraph?

19 MS. SARVADI: On page ten, under objection one  
20 by FOA.

21 THE COURT: I see all three of those. Item one?

22 MS. SARVADI: Yes, Your Honor.

23 THE COURT: All right. And you have questions as  
24 to where they are named as?

25 MS. SARVADI: The proxy holder.

1 THE COURT: And your position is to invalidate all  
2 of those or just some of those?

3 MS. SARVADI: We actually defer to some extent to  
4 the EA's recommendation which he will explain to this court,  
5 that further investigation needs to be undertaken because no  
6 one wants to invalidate what would otherwise be a valid  
7 proxy but there is such a suspicion of misconduct that  
8 further review is required; and since we're not doing it, we  
9 defer to his recommendation on that.

10 THE COURT: So, as to those, I'll classify them all  
11 as one question as to potential misconduct that would  
12 invalidate the proxies.

13 MS. SARVADI: Correct.

14 THE COURT: All right. And is there another class?

15 MS. SARVADI: There are also proxies by Joe  
16 Riviere. Those are also flagged by EA as having cause for  
17 suspicion because there was one unit owner who advised the  
18 EA that she had submitted a proxy that was not notarized  
19 and it turned up in the cast proxies as notarized, and the  
20 EA did its own investigation with respect to those claims  
21 and determined that there was sufficient basis to have  
22 concern as to those proxies; and again, it is the EA's  
23 recommendation that further investigation be done into that,  
24 and we support his recommendation on that.

25 THE COURT: So, Mr. Riviere's?

1 MS. SARVADI: His own separate category.

2 THE COURT: The category where he is the notary?

3 MS. SARVADI: Yes, Your Honor.

4 THE COURT: All right.

5 MS. SARVADI: We also maintain that under Section  
6 47.1-30 of the Virginia Code, he has a beneficial interest  
7 and therefore should not be allowed to notarize the proxies.  
8 That also applies to another individual who was hired by CSI  
9 whose name I need to confirm through witness testimony but I  
10 believe his last name is Waldu, W-a-l-d-u.

11 Because this court has said what it has with  
12 regard to the motion to overrule policy resolution, we won't  
13 get into that but we just preserve our objection as to that  
14 having occurred.

15 We understand from the EA that Miss Brungart did  
16 not notarize any of her own proxies and so we are withdrawing  
17 that objection.

18 Those are our objections with respect to the  
19 election results.

20 THE COURT: All right. I have basically then  
21 seven objection categories, the sixth one being the three  
22 individuals where there's a question and then the seventh  
23 one being the notary objections to those two individuals.

24 MS. SARVADI: Correct. I believe what Mr. King  
25 was talking about was that those proxies added back in or

1 changed with the report are proxies that we think should  
2 be validated. So, they will actually overlap in that regard.

3 THE COURT: All right. Very good.

4 Mr. King, do you want to proceed?

5 MR. KING: Yes, Your Honor. This is probably a  
6 little out of order but I'm going to call him anyway because  
7 I want to get him out of here because of the objection with  
8 respect to authenticity. I would call Kenneth Schrantz.  
9 He's in the witness room.

10 (Pause.)

11 THE COURT: Do you have an estimate of how much  
12 time today?

13 MR. KING: After the last week, I hate to say this  
14 but I doubt if we have to go all day, Your Honor. We will  
15 have to go after lunch, I believe.

16 THE COURT: Come on up, please, and be sworn.  
17 Whereupon,

18 KENNETH SCHRANTZ  
19 was called as a witness and, having been first duly sworn,  
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KING:

23 Q I can say good morning. It is still morning.

24 Good morning, Mr. Schrantz.

25 A Good morning.

1 Q Could you state your name for the record, please?

2 A Kenneth Schrantz.

3 Q And can you tell us how you're employed?

4 A I'm a real estate title examiner.

5 Q And how long have you been a real estate title  
6 examiner?

7 A Over 40 years.

8 Q And what training do you have to be a real estate  
9 title examiner?

10 A I've trained -- on-the-job training with  
11 attorneys that I've worked for and by the examiners in the  
12 records room.

13 Q And are you specifically familiar with the land  
14 records in the City of Alexandria?

15 A I am.

16 Q And how often would you have occasion to examine  
17 land records in the City of Alexandria?

18 A Weekly.

19 MR. KING: Your Honor, I'd ask that Mr. Schrantz  
20 be accepted as an expert in title examination.

21 MS. SARVADI: No objection.

22 THE COURT: You are received as an expert, title  
23 examiner.

24 BY MR. KING:

25 Q Mr. Schrantz, you should have two exhibit books

1 in front of you, the smaller of the two labeled "Plaintiff's  
2 Exhibits."

3 A Yes.

4 Q If you could turn to Exhibit -- let me ask you this  
5 first. Did there come a time that you were engaged by  
6 Gordon Properties to examine certain land records?

7 A Rick Mendelson from the law firm of Land, Clark,  
8 Mendelson & Blair asked me to examine the records.

9 Q And did you go to the land records to do the  
10 examination that Mr. Mendelson had asked you to do?

11 A Yes, I did.

12 Q Okay. And in the course of doing your examination  
13 did you pull copies of records from the land records?

14 A I did.

15 Q And I'll ask you the next question with respect to  
16 each category. Now, if you would turn to tab nine of that  
17 book.

18 A I have that.

19 Q Do I understand, Mr. Schrantz, that you have in  
20 your possession a separate record of the documents that you  
21 pulled when you went to the land records?

22 MS. SARVADI: Objection. If it is, it wasn't  
23 produced in discovery or wasn't even identified as a  
24 document --

25 MR. KING: It may or may not be necessary to

1 refresh his recollection.

2 BY MR. KING:

3 Q So, let me ask you. If you look at Exhibit No. 9,  
4 can you confirm for me whether those are deeds that you  
5 pulled from the Alexandria City land records with respect to  
6 those particular properties?

7 MS. SARVADI: Your Honor, I'm going to object with  
8 respect to the introduction of evidence on 9, 11 and 13.  
9 The bases for each are the same. We can take it up at the  
10 court's indulgence but we would object to the introduction of  
11 this.

12 THE COURT: What's the objection?

13 MS. SARVADI: The objection is -- if he  
14 authenticates them, if we go through that, that would be  
15 overcome but the relevance is the biggest one, Your Honor.

16 The purpose for which this will be offered by  
17 Gordon Properties will be to attempt to invalidate certain  
18 proxies that members submitted to the EA which were accepted  
19 by the EA. The EA accepted them because they were  
20 consistent with the records of the association with respect  
21 to its ownership registration. We contend that that is the  
22 proper list to be used in connection with determining votes  
23 and we believe it's consistent with our bylaws.

24 THE COURT: So, what's coming out is: The  
25 condominium keeps a record of its membership. These are

1 the land records and there may be an inconsistency between  
2 the two. First owners Association says that, well, we used  
3 our membership records even though they're incorrect and  
4 Gordon Properties says, no, that you must rely upon the true  
5 ownership and that is what is reflected in the land records.

6 MR. KING: And it comes down to the legal  
7 determination that Your Honor is going to have to make that  
8 really goes to --

9 THE COURT: All right. Well, then the first  
10 question is, let's find out if there is a discrepancy.

11 MS. SARVADI: Yes, Your Honor; and just for point  
12 of reference, we believe it's reflected in our bylaws  
13 that --

14 THE COURT: We'll come to that but at this point  
15 we have to first of all establish an inconsistency.

16 BY MR. KING:

17 **Q Mr. Schrantz, I'll ask the question again. Can**  
18 **you look at the deeds that are attached under tab nine and**  
19 **tell me whether those are the deeds that you pulled from**  
20 **the land records?**

21 A I'm using a reference here that I took directly  
22 from my communication with Mr. Mendelson because I don't  
23 think I could remember all the book and page numbers.

24 MR. KING: Your Honor, will the court allow Mr.  
25 Schrantz to look at his list to confirm that they match

1 the deed in the exhibit?

2 MS. SARVADI: I have not seen the list, Your Honor.

3 THE COURT: Well, you can show it to Miss Sarvadi.

4 MR. KING: I haven't seen it either. I've just  
5 been told that he has it.

6 THE COURT: Well, if it's there to refresh his  
7 recollection, that's an issue. Show that to counsel, please.  
8 Typically when a witness testifies from a document counsel  
9 is entitled to see it.

10 (Document shown to Ms. Sarvadi.)

11 THE COURT: All right. Counsel has seen it. It's  
12 being handed back to the witness. Go ahead, please, Mr.  
13 Schrantz.

14 BY MR. KING:

15 **Q Mr. Schrantz, does that refresh your recollection**  
16 **with respect to whether the deeds under tab nine are deeds**  
17 **that you pulled pursuant to your engagement?**

18 A I'll just need a moment to page through these.

19 (Pause to review document.)

20 BY MR. KING:

21 **Q If it helps, Mr. Schrantz, if you turn to the**  
22 **cover sheet for the exhibits, it actually identifies the**  
23 **unit number, if that helps, on the first page.**

24 A Numbers are on the deeds, too.

25 **Q Okay.**

1 (Pause to review document.)

2 THE WITNESS: All of the deeds here under tab nine  
3 are copies of the documents from the land records that I  
4 provided to Mr. Mendelson.

5 Q And can you look at tab eleven and do the same  
6 review and confirm the same?

7 MS. SARVADI: It's the same objection I had with  
8 respect to No. 9, Your Honor, with respect to relevance.

9 THE COURT: All right. Very well. Thank you.  
10 (Pause to review document.)

11 THE WITNESS: And again, these are -- under tab  
12 eleven, all these deeds are copies of deeds that I provided  
13 to Mr. Mendelson from the land records.

14 BY MR. KING:

15 Q Okay. I'm going to ask you to turn to Exhibit 13.

16 A Okay.

17 Q I'm going to ask you to first look at the deed  
18 that is set forth there as pages one and two.

19 MS. SARVADI: Same objection, Your Honor.  
20 Relevance.

21 THE COURT: All right.

22 (Pause to review document.)

23 THE WITNESS: Okay.

24 BY MR. KING:

25 Q And then the deed that's set forth on pages ten

1 and eleven.

2 MS. SARVADI: Same objection.

3 BY MR. KING:

4 Q And can you confirm for me that those two deeds  
5 are deeds that you pulled from the City of Alexandria land  
6 records?

7 A Yes, they are.

8 Q Now, with respect to the remainder of that  
9 exhibit, specifically pages three through nine and then 12  
10 through 20, can you tell me what those are?

11 A These are portions of documents which Mr.  
12 Mendelson requested from the land records.

13 Q You can confirm that each of those pages are  
14 pages that are found in the land records of the City of  
15 Alexandria?

16 A I'll just take moment to confirm that.

17 (Pause to review document.)

18 THE WITNESS: That's correct.

19 BY MR. KING:

20 Q Now, with respect to each of those documents under  
21 tabs nine, eleven and 13, can you confirm that your  
22 examination satisfied you that those documents were the  
23 relevant documents on October 5, 2011?

24 A Yes, I can.

25 MR. KING: Thank you. No further questions.

1 THE COURT: Now, when you say "relevant documents,"  
2 what are you asking?

3 MR. KING: Okay.

4 BY MR. KING:

5 Q Can you tell me whether you confirmed that the  
6 deeds in those exhibits that identify the owner identify  
7 who the owners of those units were on October 5, 2011?

8 A According to the land records, yes, that's true.

9 MR. KING: Okay.

10 CROSS EXAMINATION

11 BY MS. SARVADI:

12 Q So, the list that you showed me a few minutes ago  
13 to which you previously referred had 28 unit numbers listed  
14 on that list. Does that sound about right?

15 A That's about correct; yes.

16 Q So, those were specific units that you were asked  
17 by Mr. Mendelson to go and examine?

18 A That's correct.

19 Q You were not asked to pull the records with  
20 respect to other unit owners?

21 A No.

22 Q How much does it cost to pull a title such as  
23 this, to do an examination and search as you have done in  
24 this case?

25 A You want to know what I charge for this, the

1 service I provided?

2 Q Sure.

3 A I bill \$150 for provided the copies.

4 Q Is that a typical charge that you would ordinarily  
5 provide to pull 28 deeds from searching land records for the  
6 City of Alexandria?

7 A Well, I did more than just pull the deeds. I had  
8 book and page numbers. But I did run the indexes. I base  
9 my charge based on the time it took me to complete the  
10 request and I think that's fairly typical of what I charge.

11 Q Would you agree, sir, that given the foreclosures  
12 that have occurred specifically in the City of Alexandria  
13 region that sometimes records and land records to which you  
14 have access may not be updated expeditiously?

15 MR. KING: Objection to the relevancy, Your Honor.

16 THE COURT: Answer it if you can.

17 THE WITNESS: There's some time lapse between the  
18 delivery and recording of any document and it can vary from  
19 a couple of hours to weeks or months.

20 MS. SARVADI: No further questions, Your Honor.

21 THE COURT: Thank you.

22 REDIRECT EXAMINATION

23 BY MR. KING:

24 Q When did you conduct this examination?

25 A I think my examination was in December; late

1 November or December of 2011.

2 **Q So, at least a month after October 5th?**

3 A Yes. In fact, I re-examined the records yesterday  
4 and I don't think any of the ownerships on any of these units  
5 have changed since that time according to the records.

6 THE COURT: You did a bring-down from these deeds  
7 to current?

8 THE WITNESS: That's correct.

9 THE COURT: And these deeds accurately reflect  
10 today's ownership?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: And the ownership as of the date of the  
13 meeting, October 5, 2011?

14 THE WITNESS: That's correct.

15 THE COURT: Anything else of the witness?

16 (No response.)

17 THE COURT: All right. Can the witness be  
18 excused?

19 MR. KING: Yes.

20 THE COURT: All right. Thank you for coming.  
21 You're free to leave.

22 MR. SCHRANTZ: Thank you, Your Honor.

23 THE COURT: Do you object on authenticity at  
24 this point?

25 MS. SARVADI: Not at this point.

1 THE COURT: All right. You then want an objection  
2 on relevance? You're offering them?

3 MR. KING: I am, Your Honor. I can certainly tie  
4 the relevance. I can proffer why they're relevant. They're  
5 relevant because the deeds are going to be in conflict with  
6 the proxies identifying the unit owner. It could be a legal  
7 determination what the effect of that is but that's the  
8 relevance, Your Honor.

9 THE COURT: The proxies, your position is, confirm  
10 with the records of the association?

11 MS. SARVADI: That's correct, Your Honor.

12 THE COURT: I think they're relevant to establish  
13 the basis for the objection to the proxies. That's not a  
14 ruling on the effect of the -- let's call it anomaly between  
15 the two. So, I will admit all the exhibits, 9, 11 and 13.

16 (Plaintiff's Exhibit Nos. 9, 11  
17 and 13 were received in  
18 evidence.)

19 MR. KING: Thank you, Your Honor. I call Jesse  
20 Binnall.

21 Whereupon,

22 JESSE BINNALL  
23 was called as a witness and, having been first duly sworn,  
24 was examined and testified as follows:

25 //

1 DIRECT EXAMINATION

2 BY MR. KING:

3 Q Good afternoon, Mr. Binnall.

4 A Good afternoon.

5 Q Could you state your name for the record, please?

6 A Jesse Binnall.

7 Q And how are you employed?

8 A I am a professional parliamentarian. I'm self-  
9 employed. The name of my entity is Schilansky & Binnall.  
10 I'm also in a separate capacity an attorney.

11 Q And in that capacity you were appointed under the  
12 court's order -- when I say "you," I mean your firm,  
13 Schilansky & Binnall, were appointed as both the election  
14 administrator and parliamentarian?

15 A Yes, sir.

16 Q Those are separate roles in my mind. Are those  
17 separate roles in your mind, as well?

18 A Parliamentarian and election administrator? I  
19 think the roles were defined in the order. Yes. I would  
20 say they are separate in the order.

21 Q And you'll agree that your job as the election  
22 administrator was defined by what was set forth in Judge  
23 Mayer's order?

24 A Correct.

25 Q Now, I'm going to ask you, if you would, to look

1 at our plaintiff exhibits book. And can you look at  
2 Exhibit No. 1 and identify that, please?

3 A Exhibit No. 1 is a letter written by Connie King,  
4 the chair of the election committee and attached to it is  
5 a proxy, one proxy.

6 Q And you'll agree won't you, Mr. Binnall, that one  
7 of the jobs that you were tasked to do under Judge Mayer's  
8 order was to coordinate with the election committee with  
9 respect to the noticing and the conduct of the annual  
10 meeting?

11 A I was.

12 Q Okay. And did you coordinate with the election  
13 committee the preparation of the cover letter signed by  
14 Connie King?

15 A I did. I oversaw a staff in this capacity and I  
16 was less directly involved with the separation of the  
17 election administrator's responsibilities than my colleague,  
18 Mr. Bronley. Yes, I did oversee it and I did participate  
19 with Miss King and developments.

20 Q I don't want to get hearsay in. Either you or  
21 Mr. Bronley coordinated with the committee with respect to  
22 sending out the notices?

23 A That's correct. Plus we mailed it. Yes.

24 Q And the third page of that of that exhibit, the  
25 proxy, that is the form proxy that was distributed to all

1 the unit owners for purposes of the 2011 annual meeting?

2 A That appears to be so.

3 Q Can you look at Exhibit No. 2?

4 A Yes, sir.

5 Q Actually, let me take it a little bit out of order.

6 Turn to Exhibit No. 4.

7 A Yes, sir.

8 Q Can you identify that document?

9 A This document appears to be a list of condominium  
10 owners.

11 Q And can you tell me whether that is the unit owner  
12 list that was used by the election administrator to determine  
13 validity of proxies and to rule upon the objections that  
14 were filed?

15 A Yes, I believe it was.

16 Q And if you could turn to Exhibit No. 5.

17 A Yes, sir.

18 Q Does this document look familiar to you, as well?

19 A This is not a document that I am familiar with  
20 myself although I believe it was used by my staff.

21 Q And do you know what that is?

22 A That appears --

23 MS. SARVADI: Objection. He just said he's not  
24 familiar with it.

25 MR. KING: Okay.

1 BY MR. KING:

2 Q Would Mr. Bronley be familiar with that  
3 document?

4 A You'd have to ask him.

5 Q Okay. Thank you. Now go back to Exhibit No. 2.  
6 Can you review Exhibit No. 2 and identify that for the court?

7 A Yes, sir. This is a forwarded email with the  
8 preliminary vote count that was done at the October 5, 2011  
9 annual meeting.

10 Q Who is Jennifer Anklewich?

11 A Jennifer Anklewich is a member of my staff during  
12 the process.

13 Q And she the one that prepared the attached  
14 document?

15 A Yes. She took the preliminary election results  
16 from that evening and she put it into this table.

17 Q And sent it to you?

18 A Correct.

19 Q And you then forwarded that to me at my request?

20 A Yes.

21 Q While we're on this -- actually, let me ask, too.  
22 Do you have a copy of your first interim report that you  
23 filed with the court?

24 A I do. What I'm looking at is a report I filed with  
25 this court. The date on the certificate of service is

1 October 26, 2011.

2 MR. KING: Your Honor, I have a hard copy of that  
3 if the court wants to look at it from --

4 THE COURT: I've got a copy of it. It's docket  
5 entry 120.

6 MR. KING: One-twenty. Yes, Your Honor. Thank  
7 you.

8 BY MR. KING:

9 Q ECF document number 120, the interim report,  
10 that's the report that was filed with the court?

11 A Yes, sir.

12 Q If my recollection is correct, since you're not  
13 an ECF filer, FOA's attorney filed this for you?

14 A That's correct.

15 Q Now, what I'd like to know, Mr. Binnall, is why  
16 the tally on the report that was sent to you by your staff  
17 Wednesday evening is different than the tally that you filed  
18 with the court on the interim report.

19 A Because I made an error in releasing preliminary  
20 numbers at the request of the parties and counsel and I  
21 shouldn't have done that and we hadn't had the opportunity  
22 at that point to ensure accuracy and to ensure that the  
23 vote-counting went exactly as planned.

24 Those are preliminary numbers that I sent out.  
25 I did make it clear when I gave those to everyone that these

1 are preliminary numbers and they were likely to change.

2 Subsequent to sending out that email, late on the  
3 evening of the 5th, I believe, of October there was a  
4 verification process that occurred at our offices in  
5 Fairfax, Virginia where both parties were represented and  
6 went through and vote by vote actually verified what the  
7 correct numbers were, and I do believe that there were  
8 several votes throughout the night that were properly cast  
9 that were not counted, for instance in the preliminary vote  
10 total but they were cast at the proper time.

11 And so, rather than just withhold any preliminary  
12 number as I now know would have been the prudent thing to do  
13 on October 5th I did release preliminary numbers.

14 **Q Now, your tally was inserted into your computer**  
15 **database contemporaneous with the election; is that right?**

16 A What we did is, as members cast their votes, the  
17 votes were then taken back to an area of the condominium  
18 building where my staff was set up and then they actually  
19 counted the votes there; and by counting them, they put  
20 them into a spreadsheet, and the results of that spreadsheet  
21 is what we produced to both parties.

22 **Q I want to make sure I understand. Are you telling**  
23 **me that when you went back to do the recount that you**  
24 **discovered ballots or proxies that had not been inserted**  
25 **into the database the night of the meeting?**

1           A       Correct. That's correct. And some of them, I  
2 believe -- and you actually may want to ask Mr. Bronley  
3 about this. He may have more first-hand knowledge than I  
4 do because I was -- during the election, I was presiding  
5 over the meeting. Mr. Bronley was overseeing the vote-  
6 counting process. I certainly couldn't be at two places at  
7 one time.

8                   It is my understanding that some of the votes  
9 entered were actually entered that night after we had done  
10 these preliminary numbers and we noticed that there were a  
11 couple of ballots properly cast that had not been included  
12 in that tabulation and that's why it was very clear that it  
13 was preliminary only.

14           **Q       Well, how is it if it was inserted into your**  
15 **computer program and ostensibly your computer program**  
16 **automatically does the tally -- how is it that if they were**  
17 **inputted that they weren't in the final tally reported by**  
18 **your computer?**

19           A       They were counted in the final tally.

20           **Q       So, is the tally that is set forth in Exhibit**  
21 **No. 2 just a typo?**

22           A       The tally in Exhibit No. 2 is not final. It is  
23 preliminary. It was very clearly preliminary when I  
24 disseminated the information. I said it's preliminary then  
25 and the final tally is the tally that is in my report of

1 October 26th.

2 Q I appreciate that and I respect that and I'm not  
3 trying to be difficult with you, Mr. Binnall. I'm really  
4 just trying to understand factually what happened and as a  
5 layperson -- and I don't do your type of work and I'm not a  
6 computer expert but when you tell me that your staff sat at  
7 their desk and inputted the ballots and the proxies, the  
8 vote into the computer and then at the end of the night it  
9 tallied, kicked out of the computer, and if you confirmed  
10 for me that what's in Exhibit 2 is the tally that the  
11 computer kicked out, I'm trying to figure out how it could  
12 change after that. That's all.

13 A And the answer to the question, to that question  
14 is, it was incomplete and it was a mistake on my part to  
15 send that out being that it was preliminary and incomplete.

16 All the votes that were properly cast at that  
17 meeting were not fully accounted for and as a result what  
18 we did -- and I knew that at the time and I knew that when I  
19 made clear that they were preliminary numbers and they were  
20 likely to change that evening, that very evening at the  
21 October 5th meeting.

22 And so, the direction that we went after that is  
23 to have a verification process where everyone was present.  
24 We tracked any changes that were made but there were  
25 -- during a very busy meeting when there were a lot of votes

1 counted, when there are proxies that are taken to -- voting  
2 weights of tens of thousands. There was an opportunity for  
3 human error that I was aware of and then I wanted to verify  
4 that all the numbers put in were accurate. I also wanted to  
5 make sure that we counted votes that were properly cast and  
6 that votes that were not properly cast were not counted.

7 And so, we went through using due diligence and  
8 did just that and the result of doing just that is the, uh,  
9 uh -- is what was reported in the October 26th report.

10 Q Okay. Okay. Is it your testimony, Mr. Binnall,  
11 that every ballot and every proxy was inserted into the  
12 computer database at the meeting when the election occurred?

13 MS, SARVADI: Objection. Asked and answered.

14 THE COURT I'm going to let you answer it. I think  
15 it has been but the answer has been sort of --

16 MR. KING: Okay. Well, let me ask it a different  
17 way.

18 THE COURT: Go ahead and answer it. That's a very  
19 specific question. Did you input everything at the meeting,  
20 at the condominium association meeting at Forty Six Hundred?  
21 That's where it was held; is that right?

22 MS. SARVADI: That's right.

23 THE WITNESS: I believe the answer to that is no.  
24 I believe that there were properly cast votes that were  
25 tabulated for the first time. We didn't do anything without

1 poll watchers present. So, I think there were several votes  
2 properly cast that were not put into the system until the  
3 verification process.

4 BY MR. KING:

5 Q So, let me make sure I understand the verification  
6 process. So, you sit down to do the verification process.  
7 You have in front of you all of the proxies and all of the  
8 ballots that you used and you then - if I understand  
9 correctly, you were cross-referencing those proxies and those  
10 ballots to what was in your database and you discovered that  
11 maybe a ballot or a proxy that you had was not in there?

12 A We discovered that, I believe, earlier. My  
13 understanding is, we believed -- there were several votes  
14 that in the confusion of that evening -- I believe we  
15 actually discovered it that night -- were not included in our  
16 preliminary tally. We just didn't count them until we went  
17 through the tabulation process because it was my belief that  
18 both sides had the right to have their representative there  
19 when we were doing any counting with regard to ballots.

20 Q Do you know? Do you have a record of which votes  
21 where not inputted and that you had to input later?

22 A I don't know the answer to that question because  
23 I am not as familiar with -- I believe the answer is yes  
24 but I don't know firsthand if the answer is yes.

25 Q Let me be specific because I don't know all of

1 the universe of what might not have been inserted. But my  
2 understanding is that there were a number of proxies from a  
3 fellow by the name of Alex Zoghiv that you did not record  
4 the night of the election but recorded later. Does that  
5 help refresh your recollection?

6 A It's possible. Like I said, that is not something  
7 that I -- that I remember specifically, whose votes we  
8 counted at the tabulation process.

9 Q But in any event, your testimony is that  
10 whatever proxies and ballots were not specifically recorded  
11 the night of the election were in fact cast and properly  
12 cast the night of the election? You simply failed to input  
13 them? That's all?

14 A That's correct.

15 Q Okay. If you'll look at Exhibit No. 3, please.

16 A Yes, sir.

17 Q And that has two columns. The first column  
18 tracks that interim report that we were previously  
19 discussing?

20 A That's correct.

21 Q And then the second column is the recount that  
22 was done as you testified to?

23 A That's correct.

24 Q Now, if my understanding is correct, that recount  
25 itself does not match what you reported in the interim

1 **report; is that correct?**

2 A This document is a working document that was  
3 produced during discovery and it, too, as just a working  
4 document, not something that we distributed to anyone, is  
5 also not accurate. I believe that at the request of  
6 counsel over the weekend we looked at this and it is -- it  
7 includes one vote that should not have been tabulated in  
8 this working document which is why this working document was  
9 never released to anyone. It's not accurate.

10 **Q That one vote was what?**

11 A There was a delinquency and I don't remember off  
12 the top of my head who the delinquency was that was counted  
13 that should not have been counted.

14 **Q So, what you're saying is that the only difference**  
15 **between the numbers reflected in the second column here under**  
16 **recount and the tally that you have in your interim report**  
17 **is based upon that one ballot?**

18 A To my knowledge that is the case. Like I said, I  
19 didn't make this working document here. I can't testify as  
20 to why it's inaccurate fully. My understanding of what you  
21 just said is correct. However, I did not make this  
22 document and I can only testify as to the accuracy for the  
23 document I did make and sign and filed with this court.

24 **Q When you say you didn't make this document, it**  
25 **was made by your --**

1           A       It was made by my office; not me personally. I  
2 think we narrowed down what the inconsistency was this  
3 weekend. I'm fairly sure of that but I'm not 100-percent  
4 positive.

5           **Q       Now, if you would like at Exhibits 6 and 7 and**  
6 **tell me whether you've seen those before.**

7           A       For Exhibit 6, I have seen this. This is Gordon  
8 Properties' objections to interim report of parliamentarian  
9 and election administrator. And --

10          **Q       No. 7.**

11          A       "Seven" is objections to the election. Yes. And  
12 this is the pleading that I reviewed in my -- I believe my  
13 second interim report.

14          **Q       That's what I was just going to ask you, whether**  
15 **the objections that you dealt with in your second interim**  
16 **report, docket number 137, are the objections that are set**  
17 **forth in -- in addition to the objections from FOA, what**  
18 **you were responding to in the second interim report were**  
19 **the objections that were made by Gordon Properties,**  
20 **pursuant to those objections?**

21          A       Yes, I was.

22          **Q       And you do in fact have a copy of your second**  
23 **interim report, court docket number 137, with you?**

24          A       I don't have a copy from the docket but I do  
25 have my copy which reads, "Second Interim Report of the

1 Election Administrator," which is a copy I had asked  
2 counsel to file for me.

3 **Q You're confident that that's the correct document?**

4 **I have the one with the filing information --**

5 A I have no problem taking a look at yours or  
6 using mine.

7 THE COURT: Show it to the witness, if you would,  
8 please.

9 BY MR. KING;

10 **Q And can you tell me whether that is your second**  
11 **interim report?**

12 A It is. This appears to be an identical document  
13 to the one I just mentioned.

14 **Q I'm going to ask you to turn to your rulings which**  
15 **start on page six. Actually they start on page five but I**  
16 **take you specifically to page six.**

17 A I'm there.

18 **Q And specifically, Ruling 1(d) findings. Can you**  
19 **explain that ruling for me?**

20 A Yes. The bylaws of FOA, specifically Article 4,  
21 Section 4, state that there is a roster of members and  
22 that that roster of members determines who can vote; and it  
23 was my ruling that looking to anything extrinsic from that  
24 roster of members is not the proper way, according to the  
25 FOA bylaws, to determine who has the right to vote and

1 who does not have the right to vote, that the right to vote  
2 at FOA is solely determined by that roster alone.

3 Q Your position is that the sufficiency of whether  
4 the proxy was signed is dependent solely upon Article 4,  
5 Section 4?

6 A That's correct.

7 Q You'll agree that the proxy itself says it has to  
8 be signed by all unit owners? Doesn't it?

9 A The proxy itself --

10 Q Exhibit 1, page three, and right smack in the  
11 middle of it in bold.

12 A That's correct.

13 Q You'll agree, won't you, Mr. Binnall, as well,  
14 that in preparing for the annual meeting you, Miss Sarvadi  
15 and I had extensive discussions over the exact language to  
16 be placed in the proxy?

17 A That's correct.

18 Q In "(d)" you specifically overruled Gordon  
19 Properties' objection as to eight units, as to eight  
20 proxies. Is it my understanding that the overruling of  
21 that objection with respect to those proxies is because the  
22 name identified on the proxy matched FOA's owner list?

23 MS. SARVADI: Objection. I think he's testifying.

24 THE COURT: It's just a leading question.

25 BY MR. KING:

1 Q What was the basis for which you overruled  
2 Gordon Properties' objection with respect to those eight  
3 proxies, 410, 423, 601, 1002, 1108, 1309, 1402 and 1507?

4 A Because I found the name on the proxy was  
5 consistent with the membership roster.

6 Q I'm going to ask you to look at Exhibit No. 8.  
7 Can you identify and confirm for us that those are the  
8 specific eight proxies that you overruled?

9 A I'm sorry, Mr. King. I may have gone to the --  
10 where do you want me to look, again?

11 Q Exhibit 8.

12 A Exhibit 8. Okay. Give me a moment, please.

13 (Pause to review document.)

14 THE WITNESS: Those do appear to be the proxies.

15 BY MR. KING:

16 Q And Mr. Binnall, when Gordon Properties filed its  
17 objection and sent those to you, did Gordon Properties  
18 provide to you copies of the deeds for each of those units?

19 A I believe they did; yes.

20 Q And did you determine whether the names of the  
21 owners on those deeds matched the names that were identified  
22 in FOA's records that you relied on?

23 A I'm sorry, Mr. King. Can I ask you to rephrase  
24 that or to say that again?

25 Q Certainly. Did you compare the deeds to the list

1 of unit owners of FOA?

2 A I did not.

3 Q You did not? You just simply --

4 A I found that it was not necessary or proper to  
5 review any extrinsic to membership list in deciding who  
6 could vote because the bylaws refer specifically to the  
7 membership list and I was enforcing the bylaws and I  
8 believe that that was the proper way to tell who could vote,  
9 who could give a proxy, and so I did not look at anything  
10 extrinsic, including property records.

11 Q Do you know as you sit here today whether the  
12 names of the unit owners on the list that you look at  
13 match the names of the unit owners as reflected in the  
14 land records?

15 A I do not.

16 Q Now, if you'll look at your Ruling 1(e) at the  
17 top of page seven.

18 A Okay.

19 Q Those are proxies, if I read this correctly, that  
20 you voided without having been challenged. Is that right?

21 A Correct. Once we went ahead and made our  
22 decision regarding which one were to be -- once I made the  
23 ruling regarding objection number one, I went ahead and  
24 applied that to all proxies.

25 Q No one, neither Gordon Properties nor FOA,

1 objected to those proxies?

2 A Correct.

3 Q And was there something in the land records,  
4 something in the court's orders that led you to believe  
5 that you were supposed to go back and look at other proxies  
6 that were not the subject of an objection?

7 A Yes.

8 Q What was that?

9 A It was the court's order that I administer a fair  
10 election and I didn't think I'd be administering a fair  
11 election if my rulings were not based broadly -- based on  
12 the entire election rather than only piecemeal. So, I went  
13 ahead to make sure that the ruling that I gave was fairly  
14 applied to everyone and not only to selected.

15 Q You reviewed those proxies the night of the  
16 election and accepted them on their face; is that correct?

17 A That's correct.

18 Q And again, the evidence you were relying on to  
19 reject them? Was it simply that they didn't match FOA's  
20 ownership list?

21 A Correct. The official roster that we were using  
22 and that we had all agreed to use for the election.

23 Q Now, when you say we all agreed, you're saying  
24 that Gordon Properties agreed to use that list?

25 A I believe that there were many emails and

1 conference calls leading up to the election to make sure  
2 that we were using -- there were many phone calls and  
3 emails. I think one of the things that we all discussed  
4 was the roster of voters; and so, my -- my decision with  
5 regards to Gordon Properties' objection number one was  
6 making sure that was enforced to allow what we all agreed  
7 was the correct roster.

8 **Q Do you remember the meeting in your office where**  
9 **representatives of FOA and Gordon Properties showed up to**  
10 **look at the ballots and the proxies?**

11 A Which time?

12 **Q The time you did the recount.**

13 A Are we talking about on October 11th?

14 **Q I believe that's the date.**

15 A I'm sorry. October 12th. Yeah, I remember that  
16 meeting.

17 **Q Do you remember the representative from Gordon**  
18 **Properties giving you the records from the land records to**  
19 **show who the owners of those units were?**

20 A I don't remember that happening. I don't deny  
21 that it did happen.

22 **Q Do you remember a disagreement that arose between**  
23 **the representative of Gordon Properties and the**  
24 **representative of FOA as to whether it's the land records**  
25 **or the unit owner list that controlled?**

1 MS. SARVADI: Objection. Hearsay.

2 MR. KING: Based on his own knowledge, Your Honor.

3 MS. SARVADI: But it would be members of two  
4 different groups having a disagreement and at present, it  
5 would be hearsay.

6 THE COURT: Well, I think the question is, was  
7 there an objection or disagreement at that point?

8 THE WITNESS: Mr. King, there have been so many  
9 discussions over this issue. I simply don't remember if that  
10 happened at that meeting.

11 BY MR. KING:

12 **Q But you recall it happening?**

13 A I do remember that there have been discussions  
14 especially since October 5th over whether land records should  
15 be used or just the membership roster.

16 **Q Now, if you'll look to page -- I think we're still**  
17 **on page seven.**

18 A Yes.

19 **Q And if you'll look at ruling number two and if**  
20 **you could explain to us the reason for your ruling in that**  
21 **regard. Is that the same?**

22 A I believe that is the same and I believe the --  
23 my same logic applied to ruling number two.

24 **Q Again, relying solely on the unit owner list and**  
25 **Article 4, Section 4?**

1 A Correct.

2 Q Can you look at Exhibit No. 10, please?

3 A Exhibit No. 10. Yes, sir.

4 Q And can you confirm that those are the proxies  
5 that you reviewed in response to that objection and your  
6 ruling?

7 A They do appear to be the proxies I reviewed.

8 Q And again, with respect to these specific  
9 proxies, you do not know whether the evidence of ownership  
10 in the land records matches the unit owner list?

11 A Correct. I do not.

12 Q Okay. Now, if you look at your ruling number  
13 three.

14 A Yes, sir.

15 Q Gordon Properties challenged those units, those  
16 proxies because they had no signature of the unit owner; is  
17 that correct?

18 A Yes.

19 Q And if you would look at Exhibit No. 12 and if you  
20 could confirm for us whether those are the proxies that are  
21 the subject of that objection and your ruling set forth in  
22 number three?

23 A Yes, they are.

24 Q Do you believe that a mark is the same as a  
25 signature?

1           A     I believe that having -- having something  
2     notarized means that the identification of the person making  
3     a signature or mark has been verified.

4           **Q     Do you know the identity of the notary on those**  
5     **two proxies?**

6           A     Only from the four corners of the proxy.

7           **Q     You don't know who that is?**

8           A     No.

9           **Q     If you would look at Defendant's Exhibit B.**  
10    **Exhibit B; and I apologize, Mr. Binnall. This is going to be**  
11    **difficult. They're not paginated. So, I'm going to have to**  
12    **ask you to go through. It does appear the proxies are in**  
13    **numerical order. So, if you could go to proxy for Unit**  
14    **808 -- I'm sorry -- 809.**

15          A     Okay.

16          **Q     This proxy is dated December 3rd. Why is that?**

17          A     For 809?

18          **Q     Yes.**

19                 MS. SARVADI: There are two, Your Honor. I'll  
20    represent there are two proxies for Unit Number 809.

21                 THE WITNESS: I understand that.

22                 MR. KING: I'm sorry. You're right.

23                 BY MR. KING:

24          **Q     Look at the second 809.**

25          A     Yes.

1 Q Just to make it easy, was this one of the  
2 ratified?

3 A I believe it was one of the ratified properties.  
4 Oh, and specifically it also changed the proxy from being an  
5 instructed proxy to an uninstructed proxy.

6 Q Just to close the loop on that, you'll confirm for  
7 everyone here that none of the ratified proxies were  
8 included in the final tally?

9 A That's correct.

10 Q And that's because of Judge Mayer's order that  
11 nothing that happened after October 5th would be relevant?

12 A That is correct.

13 Q To the vote count. But if you look at the two  
14 proxies here for 809, the one dated September 17th and the  
15 one dated December 3rd --

16 THE WITNESS: Your Honor -- and I'm sorry to stop  
17 you, Don, but just looking out, I know that there's a rule  
18 and I don't know if you want to look at it, if there's a  
19 rule on witnesses.

20 THE COURT: Who are you --

21 MR. KING: Oh, a rule on witnesses?

22 THE WITNESS: If there's no concern there for the  
23 parties, that's fine. I thought there was somebody that I  
24 was told was going to be a witness who was in the courtroom.  
25 That's fine.

1 MR. KING: I don't know the witness --

2 THE WITNESS: That's fine. That's fine. My  
3 apologies. Go ahead.

4 MR. KING: No problem.

5 MS. SARVADI: Except for Mr. Bronley --

6 THE WITNESS: Yes. Right. Yeah, and that's not --

7 BY MR. KING:

8 Q Proxy for 809, dated December 3rd, that has a  
9 signature on it; doesn't it?

10 A Yes, it does.

11 Q And again, with respect to Unit Number 1111, if  
12 you'll turn back to those.

13 A I'm sorry. Eleven-eleven?

14 Q Yes.

15 A Yes. Here again, there are two proxies.

16 Q And the second one, dated December, is signed?

17 A Correct.

18 Q And the reason why you did not rely on the  
19 evidence that was submitted by Gordon Properties with its  
20 objection?

21 A Is that they were both -- they were both  
22 notarized. I don't know and no evidence was -- no argument  
23 was made to me that there's some kind of law or certainly  
24 there's no requirement in authority that someone sign their  
25 name the same way every time; and so, because they were

1 notarized and there was no reason to doubt the validity of  
2 the notary, I believed that the proxy was valid.

3 Q And again, I'm referring to Exhibit No. 12, the  
4 two proxies for 809 and 1111 where the signature line just  
5 has initials, "FF."

6 A Correct.

7 Q If nothing had been on that line but it had still  
8 been notarized, would you have accepted it?

9 A No.

10 Q Now, if I could ask you to look at your final  
11 report filed with the court. I think it's titled,  
12 "Supplemental Report."

13 A Yes, sir.

14 Q Do you have a copy of that?

15 A I do.

16 Q It's docket number 151? Do you have a docket  
17 number 151?

18 A I do not have a docketed copy of the report.

19 Q If I could hand you the one with the docket  
20 information on it.

21 THE COURT: What is the title of this one?

22 MR. KING: "Supplemental Report of Election  
23 Administrator."

24 THE COURT: All right.

25 THE WITNESS: Yes. I have a copy of the report

1 docketed as 151.

2 BY MR. KING:

3 Q Before I get to that, let me ask you, Mr. Binnall,  
4 there was a number of proxies that were submitted the  
5 night of the election that were instructed proxies; is  
6 that correct?

7 A That's correct. There was a great number.

8 Q Did you require any of the proxy holders with  
9 respect to instructed proxies to complete ballots?

10 A I believe the answer to that -- and again, I was  
11 presiding over the meeting. I wasn't actually standing at  
12 the table but I believe the answer to that is, no.

13 What we decided to do is treat them as instruction  
14 pursuant to Robert's Rules of Order in the way Robert's  
15 Rules of order talk about instruction of convention delegates  
16 because Robert's Rules of Order very much discourages any  
17 proxy voting at all.

18 So, the closest thing that I could go to is the  
19 way it treats instruction of convention delegates; and not  
20 trying to quote, when there's a delegation that goes to a  
21 convention and the group sending the delegation sends the  
22 instructions to the convention leaders themselves then the  
23 convention leaders themselves have to enforce the  
24 instructions, and we did not count any proxies where the  
25 proxy holder, the person that the proxy was given to, that

1 was named on the proxy, did not show up. But if the proxy  
2 holder showed up then we enforced the instruction and the  
3 way we enforced the instruction is that the ballot was pre-  
4 completed. It also was a very busy night. But primarily  
5 it was -- it was to enforce the instructions that were given  
6 by the proxy to the proxy holder.

7 **Q The provision of the Robert's Rules of Order that**  
8 **you're referring to, first of all, is that ten provision?**

9 A Yes. That's in the tenth.

10 **Q So, that provision that you're relying on does**  
11 **not speak to electing candidates for members of the board;**  
12 **does it?**

13 A It has to do with any kind of voting that would  
14 happen at a meeting where there are instructed delegates.  
15 It could be elections. It could be -- you know, I think the  
16 one that's about to get the most popular attention right now  
17 is candidates elected to go to a political convention that  
18 on the first ballot are going to be instructed; and so, if  
19 a political convention -- even though there may not be  
20 enough people to elect someone on the first ballot, elect  
21 a nominee, say, for President of the United States, it  
22 would be up to the convention itself to enforce the  
23 instructions of those delegates. Likewise, I think that's  
24 pretty much the same exact thing in this case as instructions  
25 given to proxy holders.

1 Q And that provision in Robert's Rules of Order says  
2 if the rules of a convention provide for that, that that's  
3 the way you treat it; doesn't it?

4 A I would have to actually look at --

5 (Pause.)

6 THE COURT: Do you have much more for Mr. Binnall?

7 MR. KING: No. No, Your Honor. I think I'll be  
8 finished very shortly.

9 THE COURT: We'll probably break for lunch when  
10 you're finished and then you can come back for cross  
11 examination. I'm not sure what you want to call yours, your  
12 own direct and cross examination.

13 MS. SARVADI: I was pretty sure we wouldn't get  
14 through everyone by lunch which I'm glad to say I was  
15 correct about something today.

16 (Pause.)

17 BY MR. KING:

18 Q Specifically what section are you referring to,  
19 Mr. Binnall?

20 A I believe it's in section 58 of the 10th edition.

21 Q And that deals specifically with conventions of  
22 delegates?

23 A That is absolutely correct.

24 Q To the extent the provision you're relying on,  
25 once we identified it, you were analogizing from section 58

1 **specifically?**

2 A I believe and it's page 587, starting on line 19,  
3 and that says: "As in the case of any committee in the  
4 absence of a superior rule to the contrary a constituent  
5 society or unit can instruct its delegation although this is  
6 not always a good practice in ordinary societies. Such  
7 instructions are binding upon the delegation to the extent  
8 that the convention's presiding officer and other officials  
9 should enforce instructions of which they have been properly  
10 and officially notified."

11 **Q Okay. It doesn't say anything about accepting**  
12 **those instructions in lieu of the ballot; does it?**

13 A Like I said, that would be a proxy and Robert's  
14 Rules of Order specifically prohibits proxies and doesn't  
15 give rules for how you'd go about handling proxies because,  
16 quite honestly, it's looked upon so unfavorably.

17 **Q And similarly the proxies that were in blank, the**  
18 **instructed proxies that were in blank which pursuant to Judge**  
19 **Mayer's order you were deem to be the proxy holder, you did**  
20 **not submit ballots for those proxies either?**

21 A No. A -- well, okay. I'm sorry. For ones where  
22 the court names me as the proxy for uninstructed proxies and  
23 didn't actually name someone --

24 **Q Instructed proxy.**

25 A I'm sorry. I'm sorry. Instructed proxy. Correct.

1 I did. I did do that through that same process.

2 **Q I'm sorry.**

3 A I mean, at that point there were the ballots  
4 that were filled out based on the proxies, not that the  
5 proxies were just voted themselves. For instructed  
6 proxies, the ballots were completed and those were  
7 completed at my direction if not by my actual hand by --

8 **Q One of your staff filled them out --**

9 A So, Schilansky and Agent Schilansky and Binnall  
10 filled them out.

11 **Q So, your proxies, the ones where you were**  
12 **designated, there were ballots filled out for those?**

13 A There were ballots filled out for every vote that  
14 was cast.

15 **Q I'm sorry. I thought you said you didn't require**  
16 **the proxy holder for instructed proxies other than yours to**  
17 **fill out a ballot?**

18 A No. What I said and I'm sorry if I wasn't clear  
19 is that a ballot was filled out. It was filled out pursuant  
20 to the instructions on the proxy in advance of the meeting  
21 and then it was voted when the proxy holder was confirmed to  
22 be in attendance at the meeting.

23 **Q Okay. So, your staff filled out the ballots for**  
24 **every instructed proxy if the unit owner was not present?**

25 A Correct.

1 THE COURT: Just a minute. You got the proxies in  
2 advance of the meeting?

3 THE WITNESS: Correct -- well, we got some proxies  
4 in advance of the meeting. This happened. What I'm talking  
5 about is for cases when we got proxies in advance of the  
6 meeting. There were also proxies that were turned in at  
7 the meeting itself.

8 THE COURT: For the ones that you obtained prior  
9 to the meeting and they were instructed, you completed a  
10 preliminary ballot?

11 THE WITNESS: We -- that's exactly right.

12 THE COURT: And when those people showed up?

13 THE WITNESS: When the proxy holder showed up  
14 then that -- that ballot was voted.

15 Now, there were situations where the person who  
16 actually signed the proxies showed up at the meeting, the  
17 person who gave the proxy. In that case, that ballot was  
18 not voted. They were given a ballot to fill out and then  
19 they voted it themselves.

20 THE COURT: Now, to the extent there was an  
21 instructed proxy that arrived at the time of the meeting,  
22 a proxy holder showed up with an instructed proxy, did you  
23 fill out a ballot for that?

24 THE WITNESS: Because I was presiding over the  
25 meeting, I'm not positive about the answer to that question

1 but I believe Mr. Bronley knows the answer to that question.

2 THE COURT: And as to the ones that came in that  
3 were blank, did not name a proxy holder, by order of the  
4 court, you or your company were the deemed proxy holder.  
5 In each of those instances you filled out a ballot?

6 THE WITNESS: Correct; and those were voted unless  
7 the person giving the proxy showed up at the meeting.

8 THE COURT: The question that is left unanswered  
9 is, as to proxies that were instructed that showed up, did  
10 they get a ballot at all?

11 THE WITNESS: I believe they -- they received a  
12 ballot if they were a proxy holder. They were definitely  
13 given a ballot if the proxy was uninstructed.

14 THE COURT: We are dealing with instructed proxies.

15 THE WITNESS: Right.

16 THE COURT: Did the proxy holder get a ballot?

17 THE WITNESS: For instructed proxies, I believe the  
18 answer -- uh, I don't know of any point it ever went through  
19 their hands or not. I believe the answer may be no to that,  
20 that we enforced the instruction and that I believe they were  
21 notified that they were a proxy holder and it was an  
22 instructed proxy and that we were voting the proxy pursuant  
23 to the instructions given on that proxy, and I don't believe  
24 that there's anyone who asked that they -- although, again,  
25 I wasn't at the table. To my knowledge, there's nobody that

1 asked that the proxy, the instructed proxy not be voted in  
2 that capacity, in that way.

3 THE COURT: And then you physically took the  
4 proxy and inputted it into your computer?

5 THE WITNESS: We took the ballot and put it into  
6 our computer.

7 BY MR. KING:

8 **Q The ballot after your staff filled it out pursuant**  
9 **to the instructed proxy?**

10 A Correct.

11 THE COURT: So, everyone who had a proxy got a  
12 ballot at some point in the process?

13 THE WITNESS: Like I said, if --

14 THE COURT: Did you count any proxy as opposed to a  
15 ballot?

16 THE WITNESS: No. We did not count -- the only  
17 things we ever counted were ballots.

18 THE COURT: Okay.

19 BY MR. KING:

20 **Q But again, ballots that were not filled out by**  
21 **the proxy holder?**

22 A Correct.

23 **Q Okay. Now, I just want to take you through your**  
24 **supplemental report specifically the tally of the ballots**  
25 **after your October 5th ruling which is on page two.**

1 THE COURT: Let me interrupt for one thing. What  
2 you're saying is, every proxy -- everyone got a ballot? If  
3 there was a proxy holder with an instructed one, if it came  
4 in before the meeting you filled it out? If they came in,  
5 the ballot was cast essentially? If they showed up at the  
6 time of the meeting with a proxy that was instructed, someone  
7 along the line someone filled in a ballot?

8 THE WITNESS: Correct, and we did verify that all  
9 instructed proxies matched the individual ballots. For  
10 every instructed proxy whether given in advance of or at the  
11 meeting we did enforce the instructions.

12 THE COURT: All right. And that was the mechanism  
13 to make sure the instructions were followed?

14 THE WITNESS: Correct.

15 THE COURT: All right. Okay. Go ahead, Mr. King.

16 BY MR. KING:

17 **Q Your tally on page two which reflects --**

18 A I'm sorry. Which document are we on now?

19 **Q Your final report. Your supplemental report,**  
20 **docket number 151.**

21 A Yep.

22 **Q And I'm on page two. And this is the tally of**  
23 **the election results after applying the rulings that are**  
24 **set forth in your second report?**

25 A Correct.

1 Q And that tally includes the eight proxies as to  
2 which you overruled Gordon Properties' objections in 1(d)?

3 A Yes.

4 Q And it includes -- it excludes the -- it excludes  
5 proxies that were excluded on your own motion essentially?

6 A That's correct.

7 Q And you've already confirmed that they did not  
8 include any of the post-October 5th ratified proxies?

9 A That's correct.

10 Q And does it include the three proxies that you  
11 overruled Gordon Properties' objections in ruling two, 704,  
12 1024 and 1507?

13 A I'm sorry. Say that again.

14 Q Does it include the proxies that you overruled  
15 Gordon Properties' objection under your ruling number two?

16 THE COURT: These are the ones where the land  
17 records were --

18 THE WITNESS: Oh. Right. Yeah. I overruled that  
19 objection; and so, the tally on page two of my most recent  
20 report takes into account that I overruled that objection.

21 BY MR. KING:

22 Q And finally, it takes into account that you  
23 overruled the objection as to 809 and 1111 with respect to  
24 the mark versus the signature?

25 A Correct.

1 MR. KING: That's all I have, Your Honor.

2 THE COURT: All right. If that be the case, it's  
3 1:00 o'clock. We'll go ahead and break for lunch.

4 How many more witnesses do you have?

5 MR. KING: The only reason I would call Mr. Bronley  
6 is to either confirm or disagree with the assumptions that  
7 Mr. Binnall said that he thought --

8 THE COURT: That's your partner?

9 THE WITNESS: Yes.

10 THE COURT: And that's the only other witness you  
11 have?

12 MR. KING: No, that's not the only other witness I  
13 have.

14 THE COURT: That's what I wanted to know. How many  
15 witnesses do you have?

16 MR. KING: I have -- no, I have no other witnesses.  
17 Just him, Your Honor. I may have witnesses -- no. Actually,  
18 yeah. I do have one more witness, Your Honor.

19 MS. SARVADI: And I think setting aside Mr.  
20 Bronley, we would have four although I don't expect any of  
21 them to take much time.

22 THE COURT: What's the purpose of their testimony?

23 MS. SARVADI: With respect to one of the unit  
24 owners, there's a discrepancy about how to read the  
25 handwriting. One date looks like it could be 10/5 or 10/15.

1 It was notarized on 10/5. It was accepted on 10/5. We  
2 wanted him to testify what his handwriting says.

3 With respect to another unit owner, he had a power  
4 of attorney for his wife and we're going to have him testify  
5 that he had conferred with her. She told him that she could  
6 fill out the proxy and that's why they're here.

7 And then, of course, with one of the owners, she  
8 has been married since the time of the land records filing.  
9 In fact, the deed says she's an unmarried woman. So, to the  
10 extent that's relevant, she's been married. We'll have the  
11 witness testify that she's been married and her name has  
12 changed.

13 THE COURT: Is there an objection to that ballot?

14 MR. KING: I think maybe we can talk about it.

15 MS. SARVADI: We can talk about it at the break.

16 THE COURT: I don't think names -- married names  
17 don't change anything on that.

18 All right. With that then I think we can complete  
19 today. Come back at 2:15. I don't want you to talk about  
20 the testimony with anyone. I'd rather you go to lunch not  
21 with either of the counsel or the party. Mr. Bronley is not  
22 to talk about his testimony either or be told about yours.

23 THE WITNESS: Correct. Is it okay if Mr. Bronley  
24 and I go to lunch together?

25 THE COURT: I'm satisfied if the two of you are.

1 MR. KING: I'm satisfied.

2 MS. SARVADI: Yes, Your Honor.

3 THE COURT: All right. Just don't talk about the  
4 case. Find something else to do. All right. We will recess  
5 then until 2:15.

6 (Whereupon, a luncheon recess was taken from  
7 1:08 p.m. until 2:16 p.m.)

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1 A F T E R N O O N S E S S I O N

2 THE COURT: All right. Where's the witness? Come  
3 on up. Is Mr. King out in the hall?

4 COURT SECURITY OFFICER: He's in the restroom.

5 (Pause.)

6 THE COURT: Go ahead, please.

7 COURT SECURITY OFFICER: He's running down the  
8 hall.

9 MR. KING: I apologize, Your Honor.

10 CROSS EXAMINATION

11 BY MS. SARVADI:

12 Q Good afternoon, Mr. Binnall.

13 A Good afternoon.

14 Q Jennifer Sarvadi of First Owners Association.

15 Would you please turn to defendant's exhibit  
16 binder and go to Exhibit letter H, please? There should be  
17 two versions. One is loose and one is in the binder. Can  
18 you take a look at the two and just confirm for me that they  
19 are - that the information contained within the two forms is  
20 consistent?

21 A They do appear to be consistent.

22 Q And do you recognize this document?

23 A I do recognize this document.

24 Q What is this document?

25 A This document is a spreadsheet prepared by my

1 office that is the official result of the election. It's a  
2 line-by-line tally of the votes that were cast with the  
3 actual unit number redacted and replaced by a random number.

4 Q And is this document a document that Schilansky &  
5 Binnall is keeping in its ordinary course of business on  
6 behalf of FOA, serving as the election administrator?

7 A Yes, it is.

8 Q And is this a document you produced in response  
9 to discovery from Gordon Properties?

10 A It is.

11 Q And was it created at or about the time of the  
12 election?

13 A It was.

14 Q Did you subsequently modify your master spread-  
15 sheet to assign a random number to units in order to  
16 maintain the secrecy of ballots?

17 A I did.

18 Q And so, does this document that's labeled  
19 Defendant's Exhibit H reflect the randomly assigned  
20 numbers?

21 A It does.

22 Q So, it does not correspond to particular unit  
23 numbers of the association?

24 A That's correct.

25 MS. SARVADI: Your Honor, we would move the

1 admission of Exhibit H.

2 MR. KING: No objection, Your Honor.

3 THE COURT: "H" is admitted.

4 (Defendant's Exhibit H was  
5 received in evidence.)

6 BY MS. SARVADI:

7 Q Would you please turn to the last page of  
8 Defendant's Exhibit H?

9 A Yes, ma'am.

10 Q Mr. King asked you some questions earlier about  
11 which objections or rulings that your firm made as election  
12 administrator were captured on this spreadsheet; is that  
13 correct?

14 A Correct.

15 Q Therefore, there's a number at the bottom of the  
16 last page that says, "Present for quorum, 54.103880 percent."  
17 Is that correct?

18 A That is correct.

19 Q And that takes into account all of your rulings?

20 A That is correct.

21 MR. KING: I'm sorry. You said that this is on the  
22 last page?

23 (Counsel confer.)

24 MR. KING: Thank you. Sorry.

25 BY MS. SARVADI:

1 Q The column immediately to the right says,  
2 "Delinquent" -- misspelled -- "Owners Only." Is that  
3 correct?

4 A I apologize for the mistake, and yes.

5 Q What does this number represent of the units  
6 reflected above?

7 A The delinquent owners only column represents the  
8 unit owners who were present at the meeting, who were  
9 delinquent in their dues and so they could not vote pursuant  
10 to the court's order. However, they were counted for  
11 quorum purposes.

12 Q And then the column to that right that says  
13 "Bankrupt," that relates to the Gordon Properties units?

14 A That is correct.

15 Q And they were counted both for quorum and their  
16 votes were counted?

17 A That is correct.

18 Q If you subtract the delinquent owners from the  
19 percentage present for quorum, if those persons had not been  
20 counted, would there have been a quorum achieved at the  
21 annual meeting?

22 A There would not have been.

23 Q This spreadsheet has colored rows upon it. So, do  
24 you know the yellow highlights, what that refers to?

25 A Yes. The yellow highlighting is something that we

1 did as a notation of the fact that we verified that the  
2 actual vote was properly tabulated in the spreadsheet and  
3 that was done at the, I think, October 11th or October 12th  
4 meeting with representatives from Gordon Properties and  
5 representatives from First Owners Association present.

6 **Q You're talking about the recount date of October**  
7 **12th?**

8 A Correct.

9 **Q And so, present for FOA was Connie King; is that**  
10 **correct?**

11 A Yes.

12 **Q And then present for Gordon Properties was one of**  
13 **its counsel, Michael Supan?**

14 A That's correct.

15 **Q And the green line, sir, what do those reflect on**  
16 **this spreadsheet?**

17 A The green line meant that there was a change at  
18 some point that was made to that vote after the original  
19 entry either because there was a typo when originally  
20 entering it, entering the number on the night of the 5th or  
21 there was -- like I originally testified for Mr. King, I  
22 believe there were some votes that were not originally  
23 counted. So, when those were put in, they were put in with  
24 that highlighted green line just so we could be able to tell  
25 exactly which ones we changed. So, a highlighting means

1 there was a correction.

2 Q Would you turn to letter "A" as defendant's  
3 exhibit?

4 A Defendant's exhibit.

5 (Pause.)

6 THE WITNESS: All right.

7 BY MS. SARVADI:

8 Q The title of this exhibit is, "Proxy Deemed  
9 Invalid by the Election Administrator." Would you scan  
10 through the pages behind Exhibit A and review them and  
11 ensure if it's correct that they in fact are the proxies  
12 deemed invalid under your ruling?

13 (Pause to review document.)

14 THE WITNESS: I believe that is correct but I'm  
15 not a hundred percent positive only because, uh, without --  
16 without the context, remembering what the particular  
17 challenge was on each one of these, I just don't remember  
18 specific proxies.

19 BY MS. SARVADI:

20 Q Would you flip through and confirm for me that  
21 these are in fact copies of proxies maintained by you as  
22 the election administrator for FOA's 2011 annual meeting  
23 election?

24 A And that I can verify and that is correct.

25 Q And you have and maintain the original of these

1 proxies?

2 A That is correct.

3 Q These appear to be true and accurate?

4 A Yes.

5 Q Are you maintaining them in the ordinary course  
6 of business as the EA for FOA's election?

7 A I am.

8 Q And did you produce these to Mr. King in response  
9 to Gordon Properties' discovery?

10 A I did.

11 MS. SARVADI: We'd move the admission of letter  
12 "A" as proxies of the association that were cast.

13 MR. KING: I still don't know what the relevance  
14 is, Your Honor.

15 MS. SARVADI: Your Honor, we are going to be  
16 agreeing or disagreeing with some of the rulings by the  
17 election administrator. These are all the proxies he's  
18 throwing out for one or more reasons. We are going to go  
19 through in our legal argument section and discuss the  
20 reasons why some of them might be valid.

21 MR. KING: If there is evidence as to why they were  
22 deemed invalid -- maybe it's me. I apologize but we have a  
23 whole bunch of exhibits here that are deemed invalid by  
24 the election administrator but without any indication as  
25 to why what the testimony is with respect to the invalid

1 I don't -- I'm trying to hook up the relevance.

2 MS. SARVADI: Our purpose was to simply designate  
3 the difference between those proxies accepted which is  
4 Section A and those that were -- excuse me -- and not  
5 accepted in your Exhibit A and accepted under Exhibit B;  
6 and the reason for that is, I think, since you're going to  
7 have find the results of the election, having the proxies  
8 in evidence before the court is the prudent thing to do.

9 MR. KING: If the representation is that "A" and  
10 "B" together include all of the proxies that the election  
11 administrator made a ruling on, "A" is all the ones he  
12 deemed invalid; "B" is all the ones he deemed -- he accepted  
13 the objection.

14 MS. SARVADI: And that's separate from the C, D  
15 and E which are separate categories.

16 MR. KING: Okay. No objection, Your Honor.

17 THE COURT: "A" will be admitted.

18 (Defendant's Exhibit A was  
19 received in evidence.)

20 BY MS. SARVADI:

21 **Q Mr. Binnall, can you look at Exhibit B and flip**  
22 **through them just to ensure that those are also proxies that**  
23 **you maintained on behalf of FOA related to the 2011 annual**  
24 **meeting of the association?**

25 (Pause to review document.)

1 THE WITNESS: Yes, they are.

2 MS. SARVADI: We would also move the admission of  
3 the proxies attached as Exhibit B for the same reason, Your  
4 Honor.

5 MR. KING: No objection, Your Honor.

6 THE COURT: "B" will be admitted.

7 (Defendant's Exhibit B was  
8 received in evidence.)

9 BY MS. SARVADI:

10 Q Mr. Binnall, you were explaining to Mr. King the  
11 process by which Schilansky & Binnall undertook to create  
12 the ballots for those proxies that were submitted in  
13 advance of the meeting?

14 A Correct.

15 Q As you sit here today do you know how many those  
16 were?

17 A No; not off the top of my head.

18 Q Do you recall if there is any listing of those  
19 documents that were provided in advance of the meeting?

20 A I believe there was.

21 MS. SARVADI: May I show this to the witness?

22 THE COURT: Yes.

23 MS. SARVADI: And this is for the court.

24 BY MS. SARVADI:

25 Q Do you recognize this document, sir?

1 A I do recognize this document.

2 Q What is this document?

3 A This document is a list of the proxies that were  
4 submitted in advance of the election.

5 Q And so, for each of these units that submitted  
6 these advanced proxies, your firm compiled or prepared --  
7 excuse me -- a ballot for each unit?

8 A Correct.

9 Q And the ones that say "default," does that relate  
10 to those that were blank and failed to name a proxy holder  
11 but for whom you were the court-appointed proxy?

12 A I believe so; yes.

13 Q And did you supervise the preparation of those  
14 ballots to ensure their accuracy?

15 A I did.

16 Q Before they were actually cast in the election?

17 A Correct; and for that matter we also, I think,  
18 had a verification process when we counted them. We --  
19 we -- we tried to both check and double-check everything  
20 to make sure there's no room for human error.

21 MS. SARVADI: Your Honor, we would ask that this  
22 be marked as Defendant's Exhibit J and move its admission.

23 MR. KING: I don't mind it being marked. I would  
24 like to cross examine before it's admitted, Your Honor, to  
25 voir dire the witness.

1 THE COURT: Mark it as "J," please.

2 (Defendant's Exhibit J was  
3 marked for identification.)

4 THE COURT: All right. Did you want to do that  
5 now?

6 MR. KING: That's fine, Your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. KING:

9 Q Mr. Binnall, who prepared this list?

10 A I believe this was prepared -- I'm trying to  
11 remember exactly who prepared it but I believe it was  
12 prepared by our office in advance of the election by a  
13 member of my team.

14 Q Now, first of all, I want to understand what's on  
15 here. This says, "Advance Proxy List?"

16 A Correct.

17 Q It doesn't identify instructed or uninstructed?

18 A I believe the way that we prepared this is that  
19 the default is that it was instructed. So, if it doesn't  
20 say anything to the contrary, I believe it was instructed;  
21 and if there's a parenthetical after the number that says  
22 "Uninstructed," then obviously it was uninstructed. I  
23 believe that was our method here. Again, this was prepared  
24 by a member of my team. I believe that's the way --

25 Q I see the word "Uninstructed" in the typewritten

1 portion three times.

2 A Correct.

3 Q So, do I assume that the uninstructed is referring  
4 to the unit prior to that?

5 A Correct.

6 Q And down under Lucia Hadley where it says  
7 uninstructed, I assume that it is referring to 1505 and not  
8 605?

9 A That is correct.

10 Q And then the same thing with the handwritten ones  
11 out to the side?

12 A Correct.

13 Q Now, what is the difference between the typed  
14 unit numbers and the handwritten numbers?

15 A It is, I believe, the handwritten ones are the  
16 ones that came in in advance, the very last-minute advance.  
17 I believe that is the case although I can't testify to that  
18 to a hundred percent accuracy but I believe that's the way  
19 we did that.

20 MR. KING: Okay. No further questions, Your Honor.  
21 I guess my objection is, I don't know what the relevance of  
22 the document is, Your Honor. I don't think we've established  
23 that.

24 THE COURT: What's the purpose?

25 MS. SARVADI: The purpose is, it appears that

1 Gordon Properties is arguing that the ballots and the votes  
2 that were created pursuant to their pre-filling-out process  
3 should not be counted and that would obviously take us below  
4 quorum because this gives us a number of the proxies that  
5 would be affected by that ruling.

6 THE COURT: I don't think that they're asserting  
7 that the filling out of these that came before the meeting  
8 was --

9 MR. KING: I think Miss Sarvadi misunderstands our  
10 objection. Our objection had to do with the fact that the  
11 election administrator did not require the proxy holders to  
12 fill out a ballot. We don't deny --

13 THE COURT: If the proxy holder appeared?

14 MR. KING: Well, the proxy holders appeared. These  
15 are all appeared. So, they all count for quorum purposes.

16 THE COURT: We don't know that these people  
17 -- well,

18 they would have had to have appeared to have a ballot --

19 MR. KING: Right. Exactly. All these units are  
20 present for quorum purposes because a proxy was submitted,  
21 Your Honor.

22 The objection that we had was that notwithstanding  
23 the proxy that the proxy holder did not fill out a ballot.  
24 This is not relevant to that objection, Your Honor.

25 MS. SARVADI: I think it --

1 THE COURT: I'm going to admit it.

2 MS. SARVADI: Thank you.

3 (Defendant's Exhibit J was  
4 received in evidence.)

5 BY MS. SARVADI:

6 Q The election administrator or one of your agents  
7 was opening the ballot box at FOA on a weekly basis prior to  
8 the election; correct?

9 A Correct.

10 Q And at that time your staff or Mr. Bronley  
11 directly pulled out each of the proxies and reviewed them?

12 A I believe Mr. Bronley did that himself directly.

13 Q And to your knowledge were there deficiencies with  
14 some of those proxies that were submitted prior to October  
15 5th?

16 A There were.

17 Q And in fact, we had a telephone conference call  
18 between myself, Mr. King and you where you and Mr. Bronley  
19 advised us that there were deficiencies with certain  
20 proxies?

21 A Indeed we did.

22 Q And wasn't the collective decision made that Mr.  
23 Bronley or someone from your staff could contact those  
24 unit owners and advise them that there was a deficiency?

25 A Absolutely.

1 Q And also, they were provided with an opportunity  
2 to cure?

3 A Absolutely.

4 Q And that was because we wanted to count as many  
5 people and as many votes as we could?

6 A Absolutely.

7 Q At the time that you were reviewing these proxies  
8 did you at any time make the determination that only one  
9 signature of a unit owned by more than one person would be  
10 invalid?

11 A No.

12 Q And in fact, on October 5, 2011 did you not in  
13 fact accept a number of proxies that were signed by only  
14 one person whereas even FOA's documents might have reflected  
15 more than one?

16 A Yes, we did.

17 Q And did you in fact tell people on the night of  
18 the election that you were accepting proxies with only one  
19 signature?

20 A Yes, we did.

21 Q So, no one was provided an opportunity to remedy  
22 the problem that night?

23 A That's correct. Our reading of the bylaws that  
24 night said that that was perfectly acceptable.

25 Q When people were advised that they had errors with

1 some of those other proxies, do you have a sense of whether  
2 people came forward and in fact provided corrected or cured  
3 proxies?

4 MR. KING: Objection to hearsay and relevance,  
5 Your Honor.

6 THE COURT: Well, a sense isn't really good enough.

7 MS. SARVADI: I'll rephrase the question.

8 BY MR. SARVADI:

9 Q To your knowledge did individual unit owners at  
10 FOA who had been advised that their proxies were invalid  
11 present proxies that remedied the deficiencies?

12 A I believe the answer to that is yes although Mr.  
13 Bronley will have more direct knowledge on that than I will  
14 but I am fairly certain the answer to that is yes.

15 Q And you accepted those cured or ratified proxies?

16 A Yes, we did.

17 MR. KING: I'm going to object. Can we get a time  
18 frame here because I thought the testimony was that  
19 ratified proxies were not accepted. You are talking about  
20 before the meeting?

21 MS. SARVADI: I'll rephrase the question.

22 BY MS. SARVADI:

23 Q Those proxy holders who were notified prior to  
24 October 5, 2011, who provided a proxy that cured or  
25 remedied the deficiency on or before October 5th, those were

1     **accepted?**

2           A     That's correct.

3           **Q     Prior to the October 5, 2011 meeting did you**  
4     **discuss with Gordon Properties or with FOA this process of**  
5     **completing the ballots in advance of the meeting?**

6           A     Not to my recollection.

7           **Q     And that wasn't something directed for you to do**  
8     **by FOA?**

9           A     Absolutely not.

10          **Q     Are you aware, do you have personal knowledge of**  
11     **the manner in which the persons receiving and registering**  
12     **units and proxies verified individuals or ownership of the**  
13     **unit?**

14          A     People who are in attendance?

15          **Q     Yes.**

16          A     Yeah. We had a process in place where everyone  
17     who was there that was either voting on their behalf or who  
18     was a proxy holder had to verify their identity through a  
19     photo identification.

20          **Q     Under Robert's Rules of Order is the FOA meeting**  
21     **still ongoing?**

22          A     Yes.

23          **Q     Under Robert's Rules of Order, 10th Edition, until**  
24     **the meeting is concluded is it correct that proxies may be**  
25     **accepted?**

1 MR. KING: Objection, Your Honor. It's irrelevant  
2 what his testimony here is. We have an order that says that  
3 no proxies can be accepted after October 5th.

4 THE COURT: I'll allow it just to create the  
5 record. Go ahead.

6 THE WITNESS: Robert's Rules of Order does not  
7 speak clearly as to proxies because they're disfavored.  
8 However, while a meeting is in session, any member has the  
9 right to come in or leave the meeting any time while the  
10 session is ongoing; and in the case of FOA, because they  
11 allow for proxies therefore the -- yeah. Yeah. I would  
12 say that proxies under Robert's would still be allowed  
13 to --

14 BY MS. SARVADI:

15 Q And in fact, didn't you accept some additional  
16 proxies after the October 5, 2011 meeting, construing  
17 Robert's Rules of Order and in your role as the EA?

18 A My role both as the election administrator and as  
19 the parliamentarian.

20 Q And those are those proxies that you have referred  
21 to as, quote, ratified proxies which are found on page seven  
22 of your second interim report; is that correct?

23 A That includes, yes, the ratified proxies that we  
24 received, and I think there's other proxies that were also  
25 given, for instance where the person giving the proxy just

1 wanted to change their proxy from an instructed proxy to an  
2 uninstructed proxy, and those were accepted, as well, even  
3 though they are originally valid.

4 Q And so, for the sake of clarity, those relate to  
5 proxies for units 610, 615, 726, 1130, 1201, 1409 and 1508.  
6 If you could review your report on page seven and just  
7 confirm that's accurate.

8 (Pause to review document.)

9 THE WITNESS: The proxies for units 610, 615, 726,  
10 1130, 1201, 1409 and 1508 were ratified.

11 BY MS. SARVADI:

12 Q And so, they corrected whatever deficiency  
13 existed pre-meeting?

14 A Correct.

15 Q And just so we're clear, what was the first point  
16 in time in which you advised FOA that the proxies signed by  
17 only one unit would no longer be deemed accepted for the  
18 purpose of this election?

19 A In the second interim report of election  
20 administrator because that ruling was not based on the  
21 bylaws of Robert's Rules of Order. It was based on legal  
22 argument made by Gordon Properties that I wasn't aware of  
23 before the meeting.

24 As far as FOA's governing documents themselves,  
25 I believe there's no problem with having one owner. As a

1 matter of fact, I think the bylaws specifically allow for it.

2 Q The final election results that we have marked as  
3 Defendant's Exhibit H, can you testify today that you believe  
4 with a hundred percent surety that these final numbers are  
5 accurate?

6 A I do believe that.

7 Q And that's the result of your repeated reviews of  
8 the process?

9 A Yes.

10 Q Would you agree that if Judge Mayer disagrees with  
11 any of your conclusions or rulings as those were set forth in  
12 the second interim report that you would have to provide  
13 follow-up or a supplemental report with respect to the final  
14 results of any of the election?

15 A I would. Yes.

16 Q And as you sit here today, because the election --  
17 excuse me. Strike that. Because your document "H" reflects  
18 the secretly assigned numbers, you would not be able to  
19 calculate it as you sit here today, what the difference would  
20 be from any ruling?

21 A And the fact that I don't trust my math nearly  
22 good enough to do it without being at my computer just to  
23 make sure it was done absolutely right.

24 THE COURT: Well, on that just to make sure I  
25 understand what the spreadsheet shows, your spreadsheet

1 shows the weighted votes in each column; does it not?

2 THE WITNESS: It does. It absolutely does and I  
3 could get my hands on the key rather easily; but again, in  
4 order to ensure absolute accuracy, I'd want to have access  
5 to a computer and make the changes to make sure that every-  
6 thing is proper.

7 THE COURT: All right.

8 BY MS. SARVADI:

9 Q I would like to turn to looking at your second  
10 interim report of election administrator. I would like to  
11 turn your attention to Gordon Properties' objection to unit  
12 628 which you have as your numbered four paragraph in your  
13 report.

14 A I'm sorry. What page are we on?

15 Q It's page seven, number four. Gordon Properties  
16 objected to unit 628?

17 A Yes.

18 Q And that would be -- if you would look behind  
19 letter "A" of defendant's exhibits. They are in numerical  
20 order. Would you turn to unit 628's proxy, please.

21 A Yes.

22 Q There are two places, is it correct, for the unit  
23 owner to indicate a date?

24 A That is correct.

25 Q And on the top of the form there's a blank for

1 date and that says 10/5/2011, does it not?

2 A That is correct.

3 Q Next to the unit owner's printed name about midway  
4 down is where it has the "10" and then a "5" or a "1-5,"  
5 depending on your interpretation. Is that correct?

6 A Correct.

7 Q This proxy was, however, accepted by the election  
8 administrator on October 5, 2011; was it not?

9 A It absolutely was.

10 Q Therefore, isn't it reasonable to believe that  
11 the unit owner actually signed it on October 5, 2011?

12 A It is reasonable to believe that.

13 Q However, you sustained Gordon Properties'  
14 objection in the report?

15 A I did.

16 Q And why was that?

17 A The reason that I did that is because I  
18 believed, again, that, uh -- for the most part, I didn't  
19 want to work outside the four corners of the proxy itself  
20 and you can't have an owner sign the document after it  
21 has been notarized and the four corners show that it was  
22 on October 5, 2011. And so, even though we accepted it  
23 beforehand, to stay consistent, if I stay within the four  
24 corners of the proxy, it shows that it was on the 15th and  
25 not the 5th.

1           **Q     But it also shows across the top that it was**  
2 **actually on the 5th?**

3           A     That's correct. It was -- I mean, honestly,  
4 this was -- this was a tough decision and I tried to look  
5 in any authority to find the right answer and because the  
6 actual date next to the signature is in my position when  
7 the document was actually signed I thought that was the  
8 one that controlled and there was enough of an inconsistency  
9 there that I felt that there was a problem with the proxy.

10          **Q     I'm going to turn your attention to another issue**  
11 **that you raised in your election administrator's report and**  
12 **that specifically has to do with your stated concerns about**  
13 **potential fraud involving certain proxies submitted in**  
14 **connection with this meeting.**

15          A     Yes.

16          **Q     Are you familiar with what I'm referring to?**

17          A     I am familiar with it.

18          **Q     Can you tell the court what happened in November**  
19 **2011 with respect to the November 16th meeting?**

20          A     Absolutely.

21               MR. KING: Your Honor, again I'm going to object.  
22 The court has already ruled that nothing that happened after  
23 October 5th is relevant. I don't know why we're getting into  
24 what happened at the November meeting.

25               THE COURT: Where are you going with that?

1 MS. SARVADI: The problem, Your Honor, was there  
2 were concerns before the meeting about some proxy issues  
3 that they investigated. On November 16, 2011, at least two  
4 if not three individuals presented proxies and Mr. Binnall  
5 brought them with him that he said on their face were clearly  
6 forged. It caused them to go back and further conduct an  
7 investigation into the validity of the proxies and it forms  
8 the basis for his opinion that these proxies cannot be  
9 trusted.

10 THE COURT: Go ahead.

11 BY MS. SARVADI:

12 **Q Would you explain to the court what happened on**  
13 **November 16 with regard to the proxies we're discussing?**

14 A Yes. There's an adjourned meeting on November 16th  
15 and there were three members of FOA that brought new proxies  
16 to the election administrator and they were given to Mr.  
17 Bronley. He immediately got my attention and talked to me  
18 about them. The proxies on their face had clearly been  
19 altered and I immediately convened a meeting with myself,  
20 Mr. Bronley, yourself and Mr. King and discussed the issue,  
21 that we definitely weren't going to count these ballots --  
22 I'm sorry -- these proxies and that we believed that this  
23 was a serious issue where there were proxies being submitted  
24 that had been altered and that needed to be investigated.

25 We then had a conference call and the question I

1 think a couple of days later on November 18th where I said  
2 it was my intention to have an investigation into the issue  
3 of the doctored proxies and to see if the legitimacy of the  
4 election might have been tainted somewhat by members who  
5 were altering proxies.

6 **Q And you wanted to retain those original we'll call**  
7 **them the altered proxies; is that correct?**

8 A Correct.

9 **Q And we asked you to bring them with you today. Did**  
10 **you remember to bring them today?**

11 A I do have them. I actually don't have them up  
12 here with me but they are downstairs in my car.

13 MS. SARVADI: Perhaps if we take a break, we can  
14 revisit that issue, Your Honor.

15 BY MS. SARVADI:

16 **Q In your view what caused them to appear to have**  
17 **been tampered with or altered on their face, if you recall?**

18 A And Mr. Bronley may be better to answer this  
19 question than I am. I'm trying to remember the exact issue  
20 but I believe it was that they were essentially photocopied  
21 proxies with names changed and what-not.

22 **Q Photographed proxies that had which name changed,**  
23 **the proxy holder name?**

24 A I don't remember -- the person giving the proxy  
25 or the proxy holder. It was one of those two.

1 Q And how did it appear, if you can recall, that it  
2 was obviously changed?

3 A I think Mr. Bronley is better to answer that  
4 question than I am.

5 Q If you stated this earlier, I apologize. But the  
6 three individuals who presented those proxies to the EA  
7 were Jane Brungart, Martin Hernandez and Stella Quelch?

8 A That's correct.

9 Q Prior to the date the election occurred did FOA  
10 relay to you a concern about proxies not being notarized in  
11 the presence of a notary?

12 A Yes.

13 Q And did you or your staff undertake an  
14 investigation into that issue?

15 A We did.

16 Q What was the conclusion of your investigation or  
17 the results?

18 MR. KING: Your Honor, I'm going to object. First  
19 of all, I don't think the EA was ever authorized to conduct  
20 any such investigation. I don't know how he goes about  
21 doing this. I think this testimony is entirely irrelevant.

22 MS. SARVADI: The election administrator was  
23 charged with ensuring a fair election.

24 THE COURT: What is this issue?

25 MS. SARVADI: This again goes to the validity of

1 certain proxies. I believe his testimony is going to be  
2 that he interviewed an individual who will say that their  
3 proxy was given to an FOA member and they gave it to that  
4 person when it was not notarized and then appeared as a  
5 notarized proxy and he has also interviewed the --

6 THE COURT: How are you going to get around your  
7 hearsay?

8 MS. SARVADI: It's not offered for its truth on  
9 that limited point but it goes to his recommendation that  
10 further steps need to be taken to ensure the fairness and  
11 accuracy of this election. It's part of his opinion, Your  
12 Honor, on his second interim report. So, it goes to his  
13 state of mind and forms the basis of his conclusion.

14 THE COURT: What relief are you asking for?

15 MS. SARVADI: The same relief that Mr. Binnall has  
16 suggested in his interim report which is that there needs  
17 to be further investigation. I think he will explain to  
18 the court. In order to ensure the accuracy and validity  
19 of these proxies, he needs to meet with the unit owners to  
20 ensure that theirs were not tampered with.

21 I will represent to the court, Mr. King and I  
22 looked at the ones that were the most egregious in November  
23 2011 and it looked as though the names had been whited out  
24 and a new name was across it and you can see it for yourself  
25 when we have an opportunity to retrieve them. But it does

1 call into question the validity of those proxies that those  
2 individuals have.

3 THE COURT: The proxies that these individuals  
4 hold?

5 MS. SARVADI: Correct, Your Honor.

6 THE COURT: Were any of these three proxies allowed  
7 to vote?

8 THE WITNESS: No, not these three proxies but the  
9 proxy holders that had submitted each of them had submitted  
10 other proxies which was our concern.

11 THE COURT: Was there a problem on their face?

12 THE WITNESS: The other proxies? The other  
13 proxies -- there was not necessarily a problem on their  
14 face until we conducted an investigation.

15 THE COURT: So, what you're saying is, the other  
16 ones were accepted? They looked valid on their face?

17 THE WITNESS: And then once we conducted an  
18 investigation, we found at least one. One other one was  
19 improper.

20 BY MS. SARVADI:

21 **Q And just for clarification, that was one that had**  
22 **been submitted in connection with the original 10/5/2011**  
23 **date?**

24 MR. KING: Objection.

25 THE WITNESS: Correct.

1 MR. KING: This is getting into hearsay. I'm  
2 objecting, Your Honor. Miss Sarvadi has taken us from one  
3 subject to the other. I wasn't talking about these proxies  
4 submitted in November. I mean, I understand Mr. Binnall's  
5 testimony as to that. There was a line of questions about a  
6 unit owner who came up to him in advance of the meeting and  
7 told him that her proxy was not notarized. That's hearsay  
8 and I think we need to keep that out. If the unit owner is  
9 here and wants to testify, that's fine. I can't cross  
10 examine someone who's not here, Your Honor.

11 THE COURT: What are the provisions of Robert's  
12 Rules of Order relating to such matters?

13 THE WITNESS: There's not, again because it comes  
14 back to issues of proxies which are not dealt with to my  
15 knowledge in any parliamentary authority as they're  
16 disfavored.

17 However, if you go to simply page 244 of the 10th  
18 Edition of Robert's Rules of Order, it goes into detail on  
19 things called a breach of a continuing nature where you  
20 have the opportunity to undo something that was previously  
21 done when there wasn't a timely appeal taken, and one of  
22 the things it talks about is individual rights of members  
23 and fundamental principles of parliamentary procedure,  
24 and I would say it would be a violation of a fundamental  
25 principle of parliamentary procedure to allow people to

1 have votes counted based on a fraudulent proxy.

2 THE COURT: You said page 244?

3 THE WITNESS: Correct. 244, I believe. Let me  
4 clarify that. Yes, Your Honor, starting on line -- really  
5 starting on line four.

6 THE COURT: And your position is, the ballot  
7 facially is to be accepted?

8 THE WITNESS: Yes, Your Honor.

9 MR. KING: We never had to get into these ballots  
10 that -- that they appear on their face to have problems.

11 THE COURT: These three?

12 MR. KING: By these three individuals that were  
13 submitted in November. But in light of Your Honor's ruling,  
14 they became entirely irrelevant because it occurred after  
15 the meeting. There was an attempt, I think, at other unit  
16 owners. It wasn't just these three. Other unit owners  
17 were trying to ratify proxies that were invalid on October  
18 5th and that's how these proxies were submitted, in an  
19 attempt to ratify. This is my understanding that that was  
20 the purpose of them. I don't know that for certain but  
21 they became irrelevant in light of Your Honor's order.

22 THE COURT: I'm not sure I'm understanding what  
23 we're talking about here.

24 You had three ballots that came in after the  
25 election?

1 THE WITNESS: Three proxies, Your Honor.

2 THE COURT: On November 16th -- excuse me. Three  
3 proxies. They appeared to be facially invalid?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: As a result of that, you're saying that  
6 you have some questions about proxies through these same  
7 individuals that were submitted at the meeting and accepted?

8 THE WITNESS: Exactly, Your Honor; and the problem  
9 was not that they were just facially invalid. You know,  
10 mistakes happen. The problem was that they appeared to be  
11 facially fraudulent.

12 THE COURT: These three?

13 THE WITNESS: These three.

14 THE COURT: What about the ones that you accepted  
15 at the meeting?

16 THE WITNESS: The ones that we accepted on  
17 October 5th were not. There was nothing wrong with them on  
18 their face. However, because we had people trying to pass  
19 to us false proxies, we believe it prudent to make sure that  
20 their other proxies that they passed up to us didn't also  
21 have similar problems, that they were just better, you know,  
22 essentially better at tampering with, and that is basically  
23 what our investigation turned up, is that there was at  
24 least one case where that did happen.

25 THE COURT: Is there a provision of the Condominium

1 Act that addresses this?

2 MS. SARVADI: I have some provisions. If I can  
3 pull them, Your Honor, I can try to answer your question.

4 (Pause.)

5 MS. SARVADI: There's a provision of the Non-Stock  
6 Act, Your Honor, that talks about a corporation's acceptance  
7 of votes. That protects the corporation in the event that  
8 they accept something that turns out to not be --

9 THE COURT: What is that? It protects the  
10 corporation if they accept a ballot that turns out to have  
11 been improper?

12 MS. SARVADI: Right. It's 13.1-848, Section A.  
13 It simply says if you -- if a name signed on a vote, consent,  
14 waiver, or proxy corresponds to the name they're entitled to  
15 accept it on its face in good faith. There's nothing that  
16 says what if anything a non-stock corporation and nothing  
17 I'm aware of in the Condo Act that says what you should do  
18 in the event that you suspect there is fraud with respect  
19 to a proxy.

20 THE COURT: It's 13.1?

21 MS. SARVADI: 13.1-848 deals with the corporation's  
22 acceptance of votes. 13.1-847 -- and that one I do have a  
23 copy of for the court if you'd like it -- deals with proxies.  
24 If you would like to see that --

25 THE COURT: I've got it up here. Thank you.

1 (Pause to review document.)

2 MS. SARVADI: The only provision I see, Your Honor,  
3 that relates to rejecting a proxy would be E and F which says  
4 they're not liable in damages if they act in good faith and  
5 the corporate action is valid taken in reliance upon the  
6 determination.

7 (Pause to review document.)

8 THE COURT: This association is incorporated and is  
9 covered by this Non-Stock Corporate Act; is that correct?

10 MS. SARVADI: Yes, Your Honor.

11 THE COURT: All right. And you found no provision  
12 addressing these issues in the Condominium Act?

13 MS. SARVADI: That's correct, Your Honor.

14 THE COURT: Are there any provisions in the  
15 declaration or bylaws?

16 MS. SARVADI: There are provisions that deal with  
17 proxies, Your Honor. I don't believe there's anything that  
18 addresses suspect proxies but I'll take a quick look to  
19 answer the court's question.

20 Article IV, Section A of the bylaws addresses  
21 proxies, Your Honor, but it does not address the specific  
22 kind of circumstance we find here. I will tell you for  
23 your reference it's under Defendant's Exhibit G. In the  
24 upper left corner, it would be book 811, page 426.

25 THE COURT: You're talking about Section 8?

1 MS. SARVADI: Yes, Your Honor. It's the only  
2 provision that directly addresses proxies.

3 THE COURT: Let me understand what happened at the  
4 meeting. In your report --

5 (Pause.)

6 THE COURT: The meeting was held on October 15th --  
7 excuse me -- October 5th?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: And the balloting was held; is that  
10 right?

11 THE WITNESS: Yes.

12 THE COURT: While you had a preliminary count, you  
13 did not stay that evening to do a final count?

14 THE WITNESS: That is correct. We didn't get the  
15 final count reported until 26 October.

16 THE COURT: And at the meeting -- I thought I saw  
17 somewhere that there was an announcement that the balloting  
18 had been held.

19 THE WITNESS: Yes.

20 THE COURT: What happened at the October 5th  
21 meeting after the balloting? There were nominations, I  
22 assume, at least open to the board or to the floor?

23 THE WITNESS: I believe so. I'm trying to remember  
24 exactly the way we did it because FOA has a nominating  
25 process that is a little bit different. So, I'm trying -- I

1 don't remember exactly if we actually had formal nominations  
2 before the balloting was open. I believe it was the  
3 practice of FOA actually that -- the balloting occurred  
4 throughout the evening and until the polls were closed.

5 THE COURT: When were the polls closed?

6 THE WITNESS: I don't remember the exact time but  
7 the polls were closed before the meeting adjourned and --

8 THE COURT: How was it announced that the polls  
9 were closed?

10 THE WITNESS: What I did is, I asked if there's  
11 any members who which to vote who had not yet voted and  
12 after there were no further members that wished to vote  
13 I announced the polls were closed.

14 THE COURT: And then you went -- and I mean "you,"  
15 you and your team and any observers went to make a  
16 preliminary count?

17 THE WITNESS: Actually -- well, mostly, yes. My  
18 team actually did the count and was updating the count  
19 throughout the evening while the meeting continued. After  
20 the polls were closed we still continued in the meeting  
21 with the other business that was to be transacted at the  
22 annual meeting, and I continued to preside over the meeting  
23 at that point.

24 THE COURT: All right. And then at some point  
25 that business was completed?

1 THE WITNESS: Correct -- well, at some point there  
2 was a meeting to set an adjourned meeting for October 26th.

3 THE COURT: There was a motion to adjourn?

4 THE WITNESS: Correct.

5 THE COURT: And so, you were counting the ballots  
6 on an ongoing basis. Did you have a preliminary count  
7 before the meeting was adjourned?

8 THE WITNESS: We did.

9 THE COURT: You did. Did you announce it?

10 THE WITNESS: Foolishly, yes.

11 THE COURT: All right. Was that before or after  
12 the motion to adjourn?

13 THE WITNESS: I cannot recall for certain, Your  
14 Honor. Normally it would have been before; so, I think it  
15 likely that it was before but it possibly could have been  
16 afterwards, and since I made it clear that it was not a  
17 final count, it was a preliminary count, I don't think I  
18 would necessarily have had a problem doing it after the  
19 meeting had formally adjourned, formally adjourned until  
20 October 26.

21 THE COURT: You don't have a recollection at this  
22 point. In any event, the tally was announced and it was  
23 announced as a preliminary tally. The meeting was adjourned.  
24 Was it announced adjourned prior to the announcement of the  
25 preliminary tally without regard to when the vote was taken

1 on the adjournment?

2 THE WITNESS: I announced that the meeting was  
3 adjourned until October 26th at some point that evening and  
4 then we were adjourned. When I actually gave the preliminary  
5 results, whether it was before that or after that, I can't  
6 say for certain.

7 THE COURT: All right. And then we've heard some  
8 testimony that there were meetings, further meetings with  
9 counsel where the votes were reviewed and verified.

10 THE WITNESS: Correct.

11 THE COURT: The changes were made and the meeting  
12 was reconvened on the 26th?

13 THE WITNESS: Correct.

14 THE COURT: And what happened there?

15 THE WITNESS: There was more business transacted  
16 at the meeting on the 26th and ultimately that meeting was  
17 adjourned until November 16th.

18 THE COURT: November 16th?

19 THE WITNESS: Correct.

20 THE COURT: All right. Thank you. Is there an  
21 issue as to --

22 THE WITNESS: Your Honor, I just remembered one  
23 thing that did happen that's important on October 26th, at  
24 the meeting. When I gave the meeting to order on  
25 October 26th, at that meeting, is when I gave the formal

1 results of the election except for announcing who the  
2 winners were subject to Judge Ellis' order.

3 THE COURT: So, you announced the tally?

4 THE WITNESS: Yes; official tally, official and  
5 final tally. It's the first thing I did. I do remember it  
6 was the first thing I did when I gaveled the meeting to  
7 order.

8 THE COURT: And then the meeting was adjourned  
9 after business was conducted? The meeting was adjourned to  
10 another date?

11 THE WITNESS: November 16th. Yes, Your Honor.

12 THE COURT: Now, so I understand where you're  
13 going, is there a question to whether it is appropriate to  
14 accept ballots, changes or anything like that after the  
15 closing of the polls on October 26th?

16 MS. SARVADI: There are two different arguments.  
17 The first, Your Honor, is: Setting aside about which there  
18 might be a suspicion of fraud, we do intend to argue that  
19 those persons who ratified only having one signature where  
20 two would have been required, that those should be counted  
21 because it demonstrates that the prior proxy was authorized  
22 by the unit. We'll get into the language on the legal  
23 argument, Your Honor, but the statute says signed or  
24 authorized, and we believe that those ratified proxies  
25 demonstrate the authority, and we understand that's for you

1 to decide.

2 With respect to those proxy holders who the  
3 election administrator suspects engaged in this inappropriate  
4 conduct and the forged proxies, it was his statement that  
5 there was credible evidence to support allegations of fraud  
6 and he said rather than disenfranchise voters and throw all  
7 of them out he wanted to conduct further investigation or  
8 undertake some review of those proxies and communicate with  
9 the owners.

10 FOA is not maintaining, Your Honor, that they  
11 should simply be tossed out because we, too, don't want to  
12 disenfranchise members' votes but we do understand the  
13 concern of the EA, that there is evidence of fraud, and we  
14 don't want a fraudulent election.

15 BY MS. SARVADI:

16 **Q Unless I've misstated it, Mr. Binnall, was that**  
17 **going to be your recommendation to the court?**

18 A That is my recommendation, I think what I'd ask  
19 the court for direction on pursuant to the August court  
20 order. My concern as the election administrator in trying  
21 to make sure there's a fair election is that there's an  
22 important balance that occurs, is that -- I want to make sure  
23 that every member who gave a legitimate vote has their vote  
24 counted and they're not disenfranchised.

25 At the same time, I want to make sure that voters

1 aren't disenfranchised by having fraudulent votes counted,  
2 as well.

3 THE COURT: And has anyone requested or objected to  
4 these other ballots?

5 THE WITNESS: Prior to our election, no; but that's  
6 again one prong of the proxy. They would have had no reason  
7 to know their proxy had been altered.

8 THE COURT: Was there any objection prior to your  
9 announcement of the tally on October 26th?

10 THE WITNESS: There was not, Your Honor, and that's  
11 where page 244 of Robert's comes into play, is that normally  
12 that would be a deal breaker, the fact that there wasn't  
13 something contemporaneously objected to or appealed from.  
14 But when it goes to something as fundamental as fraudulent  
15 votes being counted then the objection can be made at any  
16 time. It doesn't have to be made timely.

17 BY MS. SARVADI:

18 Q Mr. Binnall, I know you said that there was no  
19 objection to individual proxies in answering Judge Mayer's  
20 question. But isn't it correct that a member of FOA had  
21 complained to me and I communicated that complaint to you,  
22 that they thought Mr. Riviere had notarized proxies outside  
23 the presence of an owner?

24 MR. KING: Your Honor, I object to this.

25 THE COURT: Sustained. We'll come back to that.

1 That's another issue.

2 (Pause.)

3 THE COURT: What is the argument on Section  
4 13.1-847.1, Section D?

5 MS. SARVADI: Your Honor, I apologize. I have  
6 847 but I don't have 847.1 with me.

7 THE COURT: Do you have a copy, Mr. King?

8 (Pause.)

9 MS. SARVADI: Reading it on the fly, Your Honor, I  
10 would state that Subsection D provides that they may consider  
11 other reliable information for the purposes of determining  
12 the validity.

13 THE COURT: Any information in accordance with  
14 Subsection B of 13.1-847? Isn't it limited to that?

15 (Pause.)

16 THE COURT: That deals with representational  
17 capacities of individuals, power of attorney, fiduciaries  
18 and the like.

19 MS. SARVADI: Right. But then it goes on to say,  
20 if the inspectors consider other reliability information,  
21 and based upon the word "other," it seems to me that it is  
22 expressly providing that information may come to the  
23 inspector's attention other than that provided in 13.1-847  
24 if they deem it to be reliable, that they can --

25 THE COURT: I understand you haven't had a chance

1 to think about it and it is an interesting section but here's  
2 what I see in it. Subsection D says: "In determining the  
3 validity of proxies and ballots and in counting the votes  
4 the inspector shall be limited to an examination of the  
5 proxies, any envelopes submitted with those proxies and the  
6 books and records of a corporation." That's pretty clear.

7 MS. SARVADI: Yes, Your Honor.

8 THE COURT: The fourth one which I omitted briefly  
9 was: "Any information provided in accordance with Subsection  
10 B of 13.1-847." Then that deals with situations where a  
11 ballot or a proxy or other document is signed by someone,  
12 either an officer or director that may not correspond with  
13 the books and records of the corporation, an executor, power  
14 of attorney, something like that, and that provision or 847  
15 says that the -- actually it protects, as I see it, the  
16 corporation in accepting it as they wish or they may ask for  
17 some sort of evidence of appointment and authority to act in  
18 that relational position.

19 Then one continues on in this section. It says,  
20 "If the inspector considered other reliable information for  
21 the limited purposes permitted herein they shall specify at  
22 that time they make their certification pursuant to clause  
23 five of Subsection B" -- which is a determination of the  
24 vote -- the precise information that they considered  
25 including the person or persons where they got it. I'm not

1 quite sure it does anything other than Subsection B, 847  
2 that allows it but it also has to be announced at the time.

3 MS. SARVADI: I think the reason it says "other  
4 reliable information" and the precise information that  
5 supports the idea that they can consider something else.  
6 They just have to make clear why they have chosen to do so.  
7 What we're talking about is potentially forged proxies and  
8 it seems prudent to ensure that that did not occur, if at all  
9 possible.

10 Further, there was an announcement on November 16  
11 by the EA that there were concerns about proxies and that as  
12 a result they were taking the appropriate steps.

13 We then had a meeting three days later of just  
14 counsel, Mr. King, myself, the EA by telephone, to talk about  
15 what the scope of that investigation would be, and I would  
16 submit my recollection is Mr. King didn't agree that the EA  
17 should undertake the investigation but it was discussed on  
18 that telephone call in November.

19 THE COURT: Well, I don't need to know that right  
20 now.

21 MS. SARVADI: And just so the court is aware, it  
22 was one of FOA's objections submitted in accordance with the  
23 scheduling order that we had concerns about these proxies  
24 that were submitted on October 5th as a result of the  
25 discovery by the EA. So it is, just so you know, in

1 response to one of FOA's stated objections.

2 MR. KING: Your Honor, if I could put it into  
3 context, the evidence that is before Your Honor, first of  
4 all --

5 THE COURT: If you will give me a moment to read  
6 before we have further argument. My sense is that I'm  
7 leading you astray if I let you go down that road. For a  
8 moment I'm trying to see if we accept these ballots on the  
9 face or whether we will go behind them.

10 MR. KING: That is what I was going to but I'll  
11 wait until Your Honor finishes.

12 (Pause to review document.)

13 THE COURT: There was a motion made later to reopen  
14 the polls?

15 THE WITNESS: Yes, there was.

16 THE COURT: And what was the result of that motion?

17 THE WITNESS: The motion was defeated.

18 (Pause.)

19 THE COURT: All right. I'm not aware of any  
20 provision in the Virginia Condominium Act that addresses the  
21 issue of how you count votes. I don't know of any provision  
22 in the document that is the declaration or the bylaws.

23 This is a non-stock corporation and I think that  
24 we have to read consistently as we can the provisions of  
25 the Virginia Non-Stock Corporation Act and the Virginia

1 Condominium Act and where one is silent and the other is  
2 specific I think it is appropriate to resolve any conflicts  
3 particularly where it's by silence on the part of one and  
4 expressed provision on the part of the other to accept the  
5 expressed provisions on the part of the other.

6 So, what we have here is in the Virginia Non-Stock  
7 Act provisions under 13.1-847, 847.1 and 848 dealing with  
8 voting.

9 The question is whether or not you look behind a  
10 facially valid ballot or as they state proxy or other  
11 document. As I read the corporation Code the answer is, if  
12 the association or the corporation is acting in good faith,  
13 has the ability to accept the ballot on its face and has no  
14 obligation to look further. That is in fact what happened in  
15 this case through the time the polls were closed and until  
16 the announcement was made at the October 26, 2011 meeting.

17 There is a slight change because of Judge Ellis'  
18 stay order that there cannot be a certification of an  
19 election but everything can be done up to that point, and for  
20 purposes of this case I think -- and Robert's Rules of  
21 Order -- I will accept that but for the -- everything that  
22 could have been done up to the point of the certification  
23 which would have the legal effect of authorizing the new  
24 board to sit is completion. That's all that the association  
25 can do and for purposes of Robert's Rules of Order up to that

1 point is the equivalent of having a fully adopted, certified  
2 and announced result.

3 Robert's Rules of Order. Those documents -- the  
4 Stock Act permits the reliance as we've seen and does not --  
5 and in fact limits except in certain circumstances using  
6 extraneous evidence.

7 We're dealing in Robert's Rules of Order, Section  
8 4, page 46. In voting by any of these methods including a  
9 counted rising vote a member has a right to change his vote  
10 up to the time the result is finally announced. After that,  
11 he can make the change only by unanimous permission of the  
12 assembly.

13 When we deal with Section 31 -- actually 30.  
14 Excuse me. It deals on page 274, closing or reopening the  
15 polls. It is usually better to leave it to the chair to  
16 close the polls. When the vote is taken by ballot as it  
17 was here, as soon as the chair thinks all have voted who  
18 wish to he inquires if all have voted. If there is no  
19 response, he declares the polls closed and tellers proceed  
20 to count the vote.

21 If a motion is made to close the polls when the  
22 voting has closed naturally, the chair can treat the motion  
23 as a unanimous consent request and declare the polls closed.  
24 In any case, a formal motion to close the polls should not  
25 be recognized until all have presumably voted.

1           It goes on. "If members enter afterwards" -- enter  
2 meaning they come into the assembly -- "and it is desired to  
3 reopen the polls, this can be done by a majority vote."

4           "The time at which the polls shall be closed or  
5 reopened can be specified in a motion or added by an  
6 amendment."

7           I think what we have here then from the testimony  
8 presented and I don't know that it's going to be contradicted  
9 but at this point we have the announcement of the chair that  
10 the polls are closed after having inquired as to whether  
11 further ballots are to be received and anyone else could  
12 vote. At that point no further ballots will be received,  
13 and that is the point at which ballots -- that is the set  
14 of ballots that will be counted.

15           There was a later motion to reopen the polls. It  
16 was defeated; and so, there was no opportunity for anyone  
17 who was not present to come in late either by an hour, a day  
18 or a month, to come in and do that. Nor may they change their  
19 vote except by unanimous consent of the assembly which I  
20 don't think has been occasioned there. I don't even know if  
21 there was a motion made of that nature but I think it would  
22 be futile because I think one side or the other will say no  
23 to that.

24           Then putting that together, I accept the ballots  
25 that were presented if they are facially valid and no

1 objection was made to them at the time; and the ballots that  
2 were submitted afterwards, the three that were facially  
3 invalid, were properly rejected as invalid but also rejected  
4 because the polls had been closed.

5           So, I don't think that there's any purpose served  
6 by going in and asking for further investigation of the  
7 circumstances of any ballot. I think that it offends in  
8 the ordinary course the secrecy of the ballot that we've  
9 tried to preserve and puts individuals on the spot to  
10 identify their proxy and the manner in which they voted, and  
11 I think that's contrary to what was intended by everyone  
12 here.

13           So, absent evidence to the contrary that is  
14 developed, that will be my ruling on this.

15           Now, I can say and I say this without knowing, I  
16 think that you can probably impeach an election but that's  
17 going to take an action, a separate action to come in and  
18 show that there was some fraud in the election process.  
19 What is being asked of me is to go ahead and open this up  
20 to that investigation at this point. I'm not willing to do  
21 that. I think that motion should be made by separate action.

22           I'm concerned on a number of reasons. The  
23 election is really a state law provision. The only reason  
24 it is here is because of the conduct of the association  
25 previously and the impact of Section 362 and the purpose is

1 to correct that. I would prefer election matters generally  
2 to be in the circuit court where they ought to be. So, I  
3 think that's an aspect.

4 They passed without objection initially. I think  
5 that that's good enough and for the purposes we've got we  
6 want to bring this to a conclusion. The election was in  
7 October and it needs to be resolved, and that's without  
8 prejudice to seeking any right you may have in circuit court  
9 if there's a reason to believe that the election should be  
10 reopened or redone or anything of that nature.

11 So, the objection to going into this line of  
12 questioning is sustained because it won't lead anywhere.

13 MS. SARVADI: If Your Honor would just note my  
14 objection.

15 THE COURT: Thank you.

16 MS. SARVADI: I'll move on from that point.

17 (Pause.)

18 THE COURT: You're welcomed to go back to that if  
19 you come up with evidence that impeaches Mr. Binnall but  
20 it's my understanding from the colloquy that we've had  
21 previously it's unlikely that that evidence that he has  
22 already testified to is in dispute.

23 MS. SARVADI: There are a few things that sound  
24 like I just need to ask Mr. Bronley. So, to just wrap up,  
25 Your Honor.

1 BY MS. SARVADI:

2 Q I guess for the purpose of the record, you had  
3 also recommended, did you not, that an investigation be done  
4 into proxies notarized by Mr. Riviere?

5 A I did.

6 Q And that would be Mr. Joe Riviere who is a manager  
7 of CSI?

8 A It is.

9 Q And that is because subsequent to October -- strike  
10 that. What is the basis for your recommendation on that  
11 issue?

12 A My basis for that recommendation is that Mr.  
13 Riviere notarized the proxy in question that we believe was  
14 fraudulent.

15 MR. KING: I'm going to object now, Your Honor.  
16 I think there are two issues here. FOA has asked to strike  
17 all proxies notarized by Mr. Riviere on the basis that  
18 he's an employee of CSI. That's a legal issue. If we're  
19 getting into that issue now again with respect to this one  
20 unit owner that says that she gave a proxy that wasn't  
21 notarized and turned up notarized by Joe Riviere, that's  
22 hearsay. I think we need evidence from the unit owner with  
23 respect to that.

24 MS. SARVADI: I know that is a portion of the  
25 basis for his belief. I asked him the full question because

1 we have not explored every avenue with him. I understand  
2 what your ruling is likely to be and I'd like to just have  
3 an answer to the question fully and make the record.

4 THE COURT: Well, you can make your proffer. Make  
5 a proffer on it.

6 MS. SARVADI: It is my understanding that he  
7 interviewed a witness, a unit owner who testified that she  
8 had submitted a proxy that was not notarized and that the  
9 proxy was later presented to the EA that was notarized.  
10 That is one basis upon which the determination was initially  
11 made.

12 The second is, there was an observation of some  
13 alleged conduct and the person observing it is here today  
14 who can testify, if need be, that he saw Miss Brungart  
15 present a proxy to an individual hired by CSI to notarize  
16 for the purpose of this election certain proxies. When it  
17 was drawn to that notary's attention that the unit owner  
18 wasn't present and that he could not notarize a proxy  
19 outside of her presence the unit owner said, I'll go talk  
20 to Mr. Riviere. Allegedly Miss Brungart said, don't worry,  
21 Joe, or something to the effect of: Don't worry, Joe. We  
22 will notarize it later. And then that notary advised the  
23 EA that he refused to notarize that proxy on the basis that  
24 the owner wasn't present. And that is the information that  
25 I have that forms the basis for his recommendation that the

1 proxies be investigated with respect to Joe Riviere.

2 THE COURT: All right.

3 MR. KING: Your Honor, it's Peyton Place. We have  
4 a bunch of people running around saying, I did this; I did  
5 that. That's not a basis to reject a proxy.

6 THE COURT: I think the request is there be a  
7 further investigation of proxies that appear facially  
8 correct or valid. I asked her to make her proffer to move  
9 the matter forward.

10 I think that if you were going to proceed on that,  
11 you'd need non-hearsay evidence to do that. I'm just  
12 allowing to make the record on these issues.

13 MR. KING: Understood, Your Honor.

14 THE COURT: And second, it falls within the prior  
15 ruling that I just made. So, the proffer having been made,  
16 we can move on to another issue.

17 MS. SARVADI: Your Honor, I think my remaining few  
18 questions would be for Mr. Bronley, to follow up, since he  
19 has firsthand knowledge.

20 THE COURT: Very good. Thank you.

21 MS. SARVADI: Thank you.

22 REDIRECT EXAMINATION

23 BY MR. KING:

24 **Q Mr. Binnall, can you confirm for me that the**  
25 **final-line tallies on Exhibit H that Miss Sarvadi asked you**

1 to identify are the tallies that are reflected in your  
2 supplemental report after having applied your ruling.

3 (Pause.)

4 BY MR. KING:

5 Q In other words, the question is simple. Is this  
6 your gross tally or is it the tally after applying your  
7 rulings?

8 A This is -- oh, oh. I understand what you're  
9 asking. Exhibit H is the tally applying my rulings from  
10 the second interim report. Exhibit H is consistent with  
11 the tally of the October 5th ballots under election  
12 administrator's rulings that is found on page two of the  
13 supplemental report of election administrator.

14 Q Okay. Thank you. And for purposes of  
15 determining -- the question was asked if Judge Mayer had  
16 made rulings with respect to some of these proxies you  
17 would need your key to determine that and that that --  
18 the point is, you don't need the key. The proxy numbers  
19 have the unit numbers on them; right? They're not  
20 confidential. We're not talking about ballots. We're  
21 talking about proxies.

22 A Well, it's correct that proxy numbers are not  
23 secret. I'm sorry. Proxies are not secret. They're part  
24 of the record of the association. There's no secrecy  
25 there and they do have unit numbers on there.

1           What I believe the proxies do not have on the  
2 proxy itself is the random number unless we produced the  
3 proxy with the random number.

4           **Q    I don't believe so.**

5           A    Yeah. I think we just produced the --

6           **Q    The random number was to keep the ballot itself**  
7 **secret.**

8           A    That's exactly right. Yes.

9           THE COURT: Just to follow up on that, if there  
10 were an instructed proxy the ballot would be the same as  
11 the instructed proxy?

12           THE WITNESS: That's absolutely right. To a  
13 certain extent you give up your secrecy of your ballot when  
14 you give an instructed proxy.

15           BY MR. KING:

16           **Q    Now, there were some questions about the effort**  
17 **to contact unit owners prior to the meeting so that we**  
18 **could try to have as many of the proxies in proper form**  
19 **and the ballots in proper form for the election. Do you**  
20 **remember that discussion?**

21           A    Yes.

22           **Q    There was no instruction with respect to**  
23 **contacting unit owners after the election and after those**  
24 **proxies had already been submitted and accepted; is that**  
25 **right?**

1 A Correct.

2 Q Do you remember Judge Mayer's order regarding the  
3 election procedures that talked about the election  
4 administrator being responsible for maintaining an  
5 attendance list of all who were in attendance?

6 MS. SARVADI: Objection. I think it goes beyond  
7 the scope of my cross.

8 THE COURT: What is the purpose?

9 MR. KING: It goes to the cross with respect to  
10 quorum, Your Honor. What Miss Sarvadi asked the witness  
11 about and was suggesting to the court was that if you  
12 subtract the numbers reflected here on -- I'm sorry -- with  
13 respect to delinquent owners that you would be below the  
14 quorum requirement and what I'm trying to get at is: No  
15 because Your Honor ruled way back in the 2009 litigation.  
16 A quorum is if you're in attendance; and so, it's possible  
17 that there were people in attendance that are not reflected  
18 on here because they didn't submit a proxy or a ballot.  
19 That's the point and that's the relevance of the attendance  
20 list, Your Honor.

21 That's why we expressly asked in those meeting  
22 procedures for that attendance list because there was a  
23 history in the past of unit owners showing up and not  
24 registering. This is only the people who registered. We  
25 have --

1 THE COURT: Let me make sure. Exhibit H is a  
2 spreadsheet and does this encompass only people who voted?

3 THE WITNESS: Your Honor, this encompasses everyone  
4 who voted or registered. Other people were at the meeting  
5 and actually I believe that we did, especially at the first  
6 meeting, make an effort to have one of my team members  
7 there make sure that anyone who entered the meeting area,  
8 an area that was kind of -- had walls set up around it  
9 to kind of signify a meeting area in the lobby of the  
10 condominium. Anyone who was in there was counted for  
11 proxy purposes. We had one person assigned to that at the  
12 October 5th meeting, at meetings after that which would not  
13 of course affect the proxy numbers in regard to the election  
14 itself.

15 What I did is, I instructed people that if they  
16 had not been to a previous meeting they needed to register  
17 or note their attendance with the tellers in the back of  
18 the room.

19 So, we made every effort that we could to make  
20 sure that we got everybody in the room.

21 THE COURT: I'm looking at Exhibit H and I'm  
22 trying to find -- I thought you said the yellow were the  
23 votes.

24 THE WITNESS: Correct.

25 THE COURT: I'm looking at --

1 THE WITNESS: It may very well be that every  
2 single voter in attendance unless they were delinquent  
3 cast a vote.

4 THE COURT: If you'll look down to number 296.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: That line is yellow but I don't see  
7 any numbers in it.

8 MS. SARVADI: You said 206, Your Honor?

9 THE WITNESS: 296.

10 THE COURT: 296.

11 MS. SARVADI: All right. Thank you.

12 THE WITNESS: Yes, Your Honor. That's true in  
13 there. If that person was indeed in attendance it should  
14 at least show "quorum." For everything that's in this,  
15 in this spreadsheet we have documents to verify this, I  
16 believe. And so, why unit 296 is highlighted without any  
17 votes being shown there, I don't know off the top of my  
18 head. I'd have to look at our records to find out exactly  
19 why that --

20 THE COURT: On number 230, you have some green.  
21 I understand those are the highlights for the ones that  
22 were changed in some fashion?

23 THE WITNESS: 230. Correct.

24 THE COURT: There's no green and no --

25 THE WITNESS: There's no numbers there at all. I

1 can find out exactly why that is. I don't know off the top  
2 of my head why that is.

3 THE COURT: But as you sit there right now, I  
4 think Mr. King is saying, do you have a list of the people  
5 who registered?

6 THE WITNESS: We do have a list of the people --  
7 well, the list of the people that registered I believe is  
8 in the spreadsheet. I'm trying to --

9 BY MR. KING:

10 Q Mr. Binnall, when you say the list of people  
11 registered, when you say registered, you mean people who  
12 physically came up to your check-in table and either  
13 registered a proxy or registered their attendance?

14 A Correct.

15 Q That would not include people who were there at  
16 the meeting that didn't come up to your desk to register?

17 A For registration, that is correct; and again,  
18 because I -- I was presiding at, well, all the meetings.  
19 The exact method of the team member that we did have -- we  
20 did assign someone to try to find people who were in the  
21 meeting that didn't go up to the registration table itself.

22 Q Right. And I know it was difficult. I was there.  
23 There were a lot of people. But I think you acknowledged  
24 to me afterwards that it became so overwhelming that that  
25 process was no longer working.

1 A It worked in the first meeting. I believe we did  
2 it the entire meeting.

3 Q No. I'm talking about the first meeting.

4 A At the first meeting I believe we did it the entire  
5 meeting. For people coming in and out, I can't promise we  
6 got every single person. It's just impossible, and I did  
7 everything that I could to encourage people to note their  
8 attendance so that we could count them for quorum purposes  
9 because I -- it wasn't until some time into the meeting  
10 that we actually had a quorum and we wanted to take every  
11 effort that we could to get a quorum.

12 So, as a result of that, you know, like I said,  
13 one of my team members was assigned to try to find people  
14 and make sure we had people register and have people  
15 essentially sign in.

16 Q And again, just to confirm my understanding  
17 between the yellow and the green, the green reflects the  
18 changes that you made to the tally after you went back and  
19 did your recount? Is that what the green stands for?

20 A Correct.

21 Q So, every green entry evidences a change that  
22 was made after the original tally was prepared at the  
23 meeting on the 5th of October?

24 A Correct and that could have been -- that could  
25 have been something where there was, you know, a number that

1 was miskeyed. It could have been something where there was  
2 a vote that was incorrectly not counted in front of everybody  
3 on October 5th that we counted on October 12th or 13th or  
4 whatever the day it was.

5 MR. KING: Nothing further, Your Honor.

6 THE COURT: All right. Anything further?

7 MS. SARVADI: One follow-up.

8 RE CROSS EXAMINATION

9 BY MS. SARVADI:

10 Q For clarity sake, for those that have no  
11 coloring and no numbers, those units did not appear and  
12 they did not vote; correct?

13 A That's correct.

14 MS. SARVADI: That's the only question, Your Honor.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. KING:

17 Q Well, again, they did not register?

18 A And like I said, using our best efforts, they  
19 weren't at the meeting to find them and I am reasonably  
20 certain that there are a few people that we missed. I mean,  
21 it's using best efforts.

22 MR. KING: That's it.

23 THE COURT: All right. Thank you very much.

24 MR. KING: Would this be a good time for a very  
25 short break, Your Honor?

1 THE COURT: All right. We'll take a short recess.

2 (Whereupon, a recess was taken.)

3 MR. KING: I call Jonathan Bronley, Your Honor.

4 THE COURT: All right.

5 Whereupon,

6 JONATHAN BRONLEY

7 was called as a witness and, having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. KING:

11 Q Good afternoon, Mr. Bronley.

12 A Good afternoon.

13 Q Could you state your name for the record, please?

14 A Jonathan Bronley.

15 Q And you're an attorney with Schilansky & Binnall?

16 A No. I'm an attorney with Bronley & Binnall.

17 I'm an independent contractor of Schilansky & Binnall.

18 Q Sorry. I misstated it. Thank you. I appreciate

19 the correction there.

20 And you were appointed as the election

21 administrator in this case; is that right?

22 A Schilansky & Binnall was appointed election

23 administrator. I was hired as an independent contractor to

24 assist in the election, to help Schilansky & Binnall.

25 Q You sat here through all of Mr. Binnall's

1 testimony and there were occasions where Mr. Binnall  
2 attempted to answer the question and said that Mr. Bronley  
3 would know better. Without going through it all, is there  
4 anything specific off of the top of your head as you sat  
5 here and listened that you feel like you need to correct or  
6 clarify with the court?

7 A I don't think. You're going to have to hone me  
8 though on specifics.

9 Q Okay. I only have two. Number one, the  
10 instructed proxies that we were alluding to and their  
11 relation to ballots.

12 Now, I understand from Mr. Binnall's testimony  
13 that with respect to the instructed proxies that were picked  
14 up and delivered prior to the meeting, you had already  
15 filled out the ballots for those. Is that right?

16 A That is correct.

17 Q So, you didn't ask those unit owners -- you  
18 didn't ask those proxy holders to fill out the ballots?  
19 They simply were deemed present and you took --

20 A When those proxy holders would register at the  
21 actual election on October 5th, they would register. They  
22 would show identification and then they were told that the  
23 ballot would be submitted on their behalf. Nobody to my  
24 recollection had any objection to that.

25 Q Now, with respect to instructed proxies that were

1 submitted when the person first showed up at the October 5th  
2 meeting and registered, when were those ballots prepared?

3 A The same mechanism was used. The proxy would be  
4 submitted. I would be asked to facially review those  
5 proxies to make sure they were in conformance and properly  
6 filled out, and then one of our staff would physically fill  
7 out the ballot and send that down to the vote-counter room  
8 for submission.

9 Q But again, the proxy holder did not fill out the  
10 ballot?

11 A Any directed proxy; that is correct.

12 Q And then with respect to all the instructed  
13 proxies that were in blank with respect to the name of the  
14 proxy holder where Schilansky & Binnall were deemed to be  
15 the proxy holder under Judge Mayer's order, were ballots  
16 actually filled out for those, as well?

17 A A ballot was filled out for every single proxy  
18 and was counted.

19 Q Those included?

20 A No proxy was counted without a corresponding  
21 ballot.

22 Q Now, I'm going to ask you, with respect to  
23 Exhibit H --

24 A Plaintiff's or defendant's?

25 Q There's only one Exhibit H. That's defendant's

1 exhibit book. But actually, I think you have a separate  
2 sheet. Is a separate sheet up there? It may be in the  
3 exhibit book itself then.

4 A I think it's over here. This document?

5 Q That document there; yes.

6 Now, I'm trying to figure out, again, how this  
7 tally was done and so let me ask you specifically to look  
8 down on the first page to number 72. Now, that's  
9 highlighted in yellow. So that means whoever is unit 72  
10 registered; is that right?

11 A No. The highlights were for internal purposes,  
12 for ensuring that we had double-checked or verified that  
13 unit's vote.

14 I understand that there was some confusion  
15 because this one looks as if it had been highlighted but  
16 there was no corresponding vote. It could be as simple as  
17 the person who highlighted columns clicked two columns when  
18 they were verifying the votes. Why that column is  
19 highlighted I couldn't tell you without going through all  
20 the proxies and ballots.

21 Q Okay. That is contrary. Mr. Binnall specifically  
22 testified that the highlighted lines reflect unit owners who  
23 registered.

24 A No. The highlights on here are there for purposes  
25 of knowing that we have verified the vote in that column.

1 (Pause.)

2 THE WITNESS: And we know that they appear because  
3 they counted for quorum purposes.

4 BY MR. KING:

5 **Q Well, are you sure?**

6 A I'm pretty sure.

7 **Q Well, look at number 72. Under the column for**  
8 **vote for unit that's filled out but under the other column**  
9 **for quorum there's nothing there.**

10 A That is correct.

11 **Q And in fact, there are, I'll represent to you, a**  
12 **number. Next page. I think this was the one that Judge**  
13 **Mayer identified, number 137. Again, it's highlighted but**  
14 **it's completely blank.**

15 A That is correct. But again, the highlights -- the  
16 highlights were there for internal purposes. They do not  
17 bear a significance as to whether or not there was a person  
18 from that unit present. Whether they were counted for  
19 quorum purposes would indicate that.

20 **Q Well, what was the internal purpose for which it**  
21 **was highlighted?**

22 A That we would know we verified the vote as to  
23 that unit. We had reviewed the ballot a second time and/or  
24 the proxy and ensured that we had the correct numbers in  
25 that column and that the vote was accurate.

1           **Q     Okay. What is it that you reviewed as to number**  
2           **72 to confirm that there's no numbers in there and 137?**

3           A     Again, as I said earlier, that could be as simple  
4           as two columns were clicked on the left and both were  
5           highlighted.

6                     Again, this was a review that encompassed hundreds  
7           of units and rather quickly with observers present, with  
8           counsel from both sides.

9           **Q     You have your random-number key with you?**

10          A     I do.

11          **Q     You do. Great.**

12          A     Although I think we have to be careful because --

13          **Q     We're only talking about proxies. We're not**  
14          **talking about ballots.**

15                     Can you tell me the key for the proxy you  
16          **received for unit 1010?**

17          A     I'm sorry. Unit 1010? What number is that on  
18          this, on the yellow sheet?

19          **Q     That's what I need you to tell me.**

20          A     Oh, yeah. Okay. That might take a little longer  
21          because it's by that number.

22          **Q     If you see 1410, you can tell me that one, too.**

23          A     1010 or 1410?

24                     MS. SARVADI: 1410 was the other one.

25                     THE WITNESS: It appears that 1010 corresponds with

1 random number 392.

2 BY MR. KING:

3 Q 392. Okay. Look at 392. Now, 392, again, has  
4 no numbers anywhere across the line; right?

5 A That is correct.

6 Q And in fact, 392 was not counted for quorum  
7 purposes, was it?

8 (Pause to review document.)

9 THE WITNESS: On this spreadsheet it appears no.

10 BY MR. KING:

11 Q Now, if you'll look to Defendant's Exhibit A and  
12 find the proxy for 1010.

13 (Pause to review document.)

14 BY MR. KING:

15 Q Did you find that?

16 A I see one dated 12/7.

17 Q Yeah. Actually that's not the relevant one. If  
18 you'll turn back. There are three of them in here. The  
19 first one is dated, September 10th. Actually, I think  
20 they're in here twice. That may have been changed on the  
21 day of the meeting. There's a second one with a write-in on  
22 it.

23 Anyway, my point is, this is one of the proxies  
24 according to Mr. Binnall's testimony earlier where the  
25 election administrator elected to determine the proxy

1     **invalid.**

2           A     That's correct. I see a notation on it.

3           **Q     Okay. So, this proxy was deemed invalid. So,**  
4     **that reason I understand why there are no votes. The person**  
5     **couldn't vote. But if the unit owner was present at the**  
6     **meeting, he should have been counted for quorum purposes;**  
7     **shouldn't he?**

8           A     If he was present at the meeting, he should have.

9           **Q     Okay. Do you have your list of unit owners**  
10    **present to determine whether he was there?**

11          A     I do not have it sitting here right now, no; but  
12    I do believe it would be with the materials that would be  
13    in Mr. Binnall's car.

14          **Q     Okay. Could you check the key for 1410, please?**  
15                   **(Pause to review document.)**

16                   THE WITNESS: 1410 corresponds with random number  
17    399.

18                   MR. KING: I have trouble reading these even with  
19    my glasses on.

20                   BY MR. KING:

21          **Q     Okay. 399. That appears to be one that was**  
22    **corrected afterwards. I don't know why but that's not**  
23    **relevant. But you'll agree 399 also has no numbers anywhere,**  
24    **including a number for quorum?**

25          A     It appears that it was corrected; and making an

1 assumption, it was probably to remove votes but that's only  
2 because there are no votes there.

3 Q Okay. And again, if you'll look at Exhibit A, the  
4 proxies that were deemed invalid by the election  
5 administrator, and find 1410.

6 (Pause to review document.)

7 BY MR. KING:

8 Q Did you find it?

9 A Dated 10/5?

10 Q Yes. And that's Mr. Chris Dempsey; right?

11 A It appears so.

12 Q And again, the question earlier was: If the  
13 proxy was deemed invalid for the reason given by the EA --  
14 and again, the reason was because the EA checked FOA's  
15 records and it turns out that there were two owners and so  
16 there was only one owner that had signed it and so they  
17 deemed it invalid. But if the proxy could not be voted  
18 because it was deemed invalid but the unit owner nonetheless  
19 was present, he still should have been counted for quorum  
20 purposes; right?

21 A If that is what the procedure order stated, yes,  
22 it should have. I believe that was the direction from the  
23 court's order.

24 Q Well, you would agree, wouldn't you, that any  
25 unit owner who's physically present is deemed present for

1 quorum purposes?

2 A I think that is correct. Yes.

3 Q Do you know who Chris Dempsey is?

4 A I do.

5 Q He's the building engineer; isn't he?

6 A I mean, I know him. Don't know him well.

7 Q I know you don't know him well.

8 A I know who he is though.

9 Q Can you confirm to us tonight that he was there?

10 A He was there.

11 MR. KING: No further questions, Your Honor.

12 CROSS EXAMINATION

13 BY MS. SARVADI:

14 Q Staying with those two proxies that you were just  
15 addressing with Mr. King, it looks like there are multiple  
16 proxy forms for unit 1010. Is that correct? There are in  
17 fact three?

18 (Pause to review document.)

19 THE WITNESS: Yes, there are three.

20 BY MS. SARVADI:

21 Q So, which one was accepted preliminarily by  
22 the election administrator?

23 A Honestly, just looking at these three copies, I  
24 couldn't tell you. Those would be in my personal notes  
25 among the actual proxies.

1 Q And these have Stella Quelch appointed as the  
2 proxy holder; correct?

3 A The first two do.

4 Q Yes. And on the first two the votes in fact are  
5 different for the directors; are they not? For example, on  
6 the first one, Betty Gilliam is checked but on the next one  
7 she is not. Is that correct?

8 A Also the second one is an uninstruced proxy.  
9 Well, it indicates uninstruced while the first indicates  
10 instruced.

11 Q And then there is also a write-in on the right-  
12 hand side of the second, I'll call it, in the series, also  
13 naming Stella Quelch; isn't that correct?

14 A Repeat that again.

15 Q Do you see on the next to the three columns of  
16 names of candidates, on the second proxy appointing Stella  
17 Quelch, there's language that says, "write-in Dennis Holland"  
18 on the --

19 A Holland. Yes.

20 Q Okay. And that doesn't appear on the first one?

21 A That is correct.

22 Q And yet these proxies appear to both be dated  
23 September 10, 2011; do they not?

24 A That is correct.

25 Q In fact, if I look at them carefully, does it not

1 **look like the date next to the unit owner's printed name**  
2 **looks mighty similar between the two?**

3 MR. KING: Your Honor --

4 MS. SARVADI: Bad question.

5 MR. KING: I object. I'm trying to figure out the  
6 relevance of this. The only relevance of this proxy was that  
7 it was disqualified by the EA and the question was whether  
8 the unit owner was present or not and would have counted for  
9 quorum purposes. So, I'm trying to figure out what the  
10 relevance of all this stuff about the votes is.

11 THE COURT: What's the purpose?

12 MS. SARVADI: If ultimately Your Honor decides  
13 that this proxy should be valid, we need to know which one  
14 was accepted by the election administrator. They have  
15 produced three, two purporting to be from the same day.

16 BY MS. SARVADI:

17 **Q We simply need to know what's the right proxy**  
18 **form, if you're able to answer that question.**

19 A I don't think I can say which one we relied upon  
20 that day. Again, I would have to look at the proxies as  
21 they're kept in our system. We actually have the physical  
22 proxies and I'm sure I have a notation as to which one  
23 was used that day.

24 Typically what we did is, we accepted the latter  
25 proxy. In other words, the proxy submitted second would be

1 counted or we rely upon that one.

2 Q Did you reject any proxies on October 5, 2011?

3 A I believe that we did.

4 Q Did you keep a record of the ones you rejected?

5 A We kept every proxy that we rejected.

6 Q Did you keep a record of which ones? That would  
7 be an easy point of reference rather than going through a  
8 stack of proxies.

9 A I don't have a list in front of me now; no.

10 Q But there is a list that reflects which ones  
11 were rejected?

12 A I don't know if we have an actual list. If we  
13 did we would have turned it over during discovery; but  
14 again, we have every proxy that was rejected. It has been  
15 kept together.

16 Q Do you know as you sit here today whether you  
17 rejected one of Mr. Figueroa's proxies on the date of the  
18 election, October 5, 2011?

19 A I cannot recall right now; no.

20 Q I'm going to jump around a little bit and follow  
21 up on some of the questions asked of Mr. Binnall to which  
22 he I think deferred to you. So, I apologize. If I confuse  
23 you, just stop me. But briefly, can you take a look at  
24 what's been marked Defendant's Exhibit J which should be a  
25 separate document? Do you have that, sir?

1 A Yes.

2 Q Are you familiar with this document?

3 A Yes.

4 Q Did you prepare this list?

5 A I did not personally prepare this list. This list  
6 was prepared by one of our staff. I'm trying to recall. I  
7 believe this list -- well, it was prepared by one of our  
8 staff. It was used as an aid at the registration table so  
9 that we could group together the various proxies naming the  
10 same proxy holder. In other words, we'd be able to register  
11 a proxy holder once and submit all of the ballots related to  
12 that proxy holder without, you know, creating too many  
13 complexities essentially.

14 Q Were the proxies of Alex Zoyhiv accepted by the  
15 election administrator -- excuse me -- the proxies naming  
16 Alex Zoyhiv as the proxy?

17 A Alex Zoyhiv. What happened is, Alex Zoyhiv did  
18 not register formally and we -- because we had several  
19 groups. We had an Elizabeth Moore pile, an F. J. Pepper  
20 pile and Zoyhiv pile. So, Alex Zoyhiv did not formally  
21 register. As a result, the ballots under his name, the  
22 ballots we had filled out under his name had not been  
23 transmitted to the vote-counting station.

24 I spoke to him there myself that night; so, I  
25 knew he was present, and when we realized what had

1 happened we transmitted those ballots into our spreadsheet.

2 Q So, just to be clear, the ballots had been  
3 prepared as you had prepared others that were submitted in  
4 advance; correct?

5 A That's right.

6 Q And they were physically present with the  
7 election administrator on the night of the meeting, correct,  
8 and he was there and you cast them for him as a result of  
9 his presence and your process that night?

10 A That is correct.

11 Q Is that part of the reason why the numbers  
12 changed between the initial preliminary numbers and the  
13 later disclosed numbers?

14 A That would be one of the reasons as to why some  
15 of the numbers changed. There were a variety of reasons as  
16 to why changes were made.

17 Q But there were no Alex Zoyhiv proxies submitted  
18 to you after October 5, 2011; correct?

19 A Not from to recollection. There may have been  
20 others but I think it has been determined that those would  
21 not count in this election.

22 Q I asked some questions of Mr. Binnall about those  
23 proxies that were submitted in advance, some of which were  
24 deficient for one or more reasons. Do you recall that?

25 A I do.

1 Q I asked him and he said he couldn't recall if  
2 any of those proxies failed to list both unit owners on  
3 the proxy.

4 A I believe that was an issue though I don't think  
5 that was -- there were a lot of deficiencies with the first  
6 batches of proxies we received. In fact, if I recall, more  
7 than 50 percent of the first few dozen proxies were  
8 deficient in one way or the other. I don't recall if only  
9 a single owner signing was a concern at that time or whether  
10 it was the other deficiencies that we were focused on.

11 Q Would you agree that you didn't address with  
12 counsel for Gordon Properties or myself that you were  
13 concerned about proxies that only had one unit owner  
14 signature, correct, prior to the meeting?

15 A At that time, we -- and when I say "we,"  
16 Schilansky & Binnall was of the opinion that we would  
17 count those proxies.

18 Q And so, just to close the gap, there was no  
19 unit owner who failed to have both unit owners sign a  
20 proxy who submitted in advance that you gave an opportunity  
21 to cure prior to the meeting?

22 A I don't believe we did; no.

23 MS. SARVADI: I don't have any other questions for  
24 this witness, Your Honor.

25 THE COURT: All right. Thank you.

1 REDIRECT EXAMINATION

2 BY MR. KING:

3 Q Did you say Mr. Zoyhiv never registered?

4 A I believe that was the problem. Yes. We did our  
5 best to ensure that people would register. We had a -- one  
6 of our staff. Her only job was to stand by the entrance and  
7 direct people to the registration tables. If they did not  
8 wish to go to the registration tables, she was instructed to  
9 keep a handwritten list the best that she can of members.  
10 Not everybody was very cooperative.

11 Q Now, again with respect to those ballots that you  
12 filled out for the people who registered, the instructed  
13 proxy holders that registered at the meeting, those ballots  
14 were prepared by your staff after the person registered?

15 A Repeat that question again.

16 Q The instructed proxy holders who registered  
17 their proxies the night of the meeting where you did not  
18 require them to fill out the ballots, your staff filled out  
19 the ballots after the people registered their proxies?

20 A Yes but typically right as they were registering.  
21 So, typically it was all done at the same time.

22 Q So, you mean during that registration process,  
23 when all those people were standing in line, your staff  
24 was actually filling out the ballots right there while  
25 they were registering?

1 A It took a lot of organization but yes.

2 **Q Well, you only had two people there registering?**

3 A We had two people at that table, yes. One of  
4 them was -- that's how we did it. It was a slow process,  
5 if you recall.

6 **Q So, your testimony is that no ballots were**  
7 **completed by your staff after registration when they went**  
8 **back down to the library to do their tally?**

9 A No. All ballots I believe were filled out at  
10 the registration table. I see where you're going though.  
11 Whether we transmitted the proxy to be filled -- you know,  
12 now that I think about it, some of the transmissions may  
13 have taken place in the vote-counting room. Some of the  
14 proxies may have been sent down there to be transferred to  
15 ballots. I can't recall exactly whether it happened  
16 upstairs at the registration table or downstairs at the  
17 vote-counting table.

18 **Q And if it happened downstairs at the voting**  
19 **table, the proxy holder would not have been present?**

20 A That would be correct.

21 MR. KING: Nothing further, Your Honor.

22 RE CROSS EXAMINATION

23 BY MS. SARVADI:

24 **Q And I assume there's no record that you have of**  
25 **that, of what point in time at which a ballot would have**

1 **been completed pursuant to the proxy?**

2 A No.

3 MS. SARVADI: No other questions, Your Honor.

4 THE COURT: So, what you're saying is, every proxy  
5 was transferred to a ballot; is that right?

6 THE WITNESS: Yes.

7 THE COURT: And those ballots were prepared either  
8 before the meeting --

9 THE WITNESS: Yes.

10 THE COURT: -- or at the registration desk?

11 THE WITNESS: Yes.

12 THE COURT: Or in the tally room?

13 THE WITNESS: Yes.

14 THE COURT: All right. Any other questions?

15 MR. KING: Nothing for Mr. Bronley, Your Honor.

16 THE COURT: All right. Can he be excused?

17 MR. KING: Yes.

18 THE COURT: All right. Thank you very much.

19 MR. BRONLEY: Thank you, Your Honor.

20 MR. KING: We have a stipulation, Your Honor, that  
21 Armondo Figueroa was physically present at the October 5th  
22 meeting.

23 THE COURT: All right.

24 MR. KING: That's the 1010 proxy.

25 THE COURT: Well, he's -- okay. That's correct.

1 MR. KING: Right. We did get Mr. Bronley to  
2 testify that Mr. Dempsey was there but he didn't know  
3 Armondo Figueroa.

4 I will call Joe Riviere, Your Honor.

5 THE COURT: Would you get Mr. Riviere, please?

6 (Pause.)

7 Whereupon,

8 JOE RIVIERE  
9 was called as a witness and, having been first duly sworn,  
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. KING:

13 Q Mr. Riviere, would you state your name for the  
14 record, please?

15 A Joe Riviere.

16 Q By whom are you employed?

17 A Condominium Services.

18 Q And how long have you been employed by CSI?

19 A A little over two years.

20 Q And were you employed by CSI during the October 5,  
21 2011 annual meeting of FOA?

22 A Yes.

23 Q Now, how is it that FOA delivers the meeting  
24 packages to the unit owners?

25 A The annual meeting packages?

1 Q Yes.

2 A These ones were actually hand-delivered to me.  
3 I was called down to the office to pick them up and sign  
4 for them.

5 Q For the October 5, 2011 annual meeting?

6 A Yes.

7 Q And was that with respect to the meeting packages  
8 for all units that were owned by Gordon Properties?

9 A I actually signed each one for each of the units  
10 for Gordon Properties. Yes.

11 Q Now, at that time was anything else delivered to  
12 you by FOA?

13 A There were packages for the individual candidates  
14 who were also members of Gordon Properties.

15 Q Okay. And tell me what was included in that  
16 package.

17 A Each of the packages were somewhat identical.  
18 There were address -- well, the original package had blank  
19 proxies, lists of on-site owners, off-site owners and had --  
20 was supposed to have had mailing labels for all of them.

21 Q Now, when you reviewed that package was there  
22 anything unusual that you detected in the package?

23 A It was missing all of the labels, was the first  
24 thing, and the list of owners did not match the list of  
25 owners that I knew to be the owners of Forty Six Hundred.

1           **Q     And what was the list that you had with respect to**  
2 **the unit owners?**

3           A     A couple of days prior to the proxies being made  
4 available, I had gotten the list from the City of Alexandria  
5 Land Records and the list that I received in those packages  
6 did not match.

7           **Q     Did you do anything about that?**

8           A     I cross-referenced the list that FOA had given me  
9 with the list that I got from land records and presented  
10 them, the compared list, to the FOA office, to the election  
11 administrator -- excuse me -- to the head of the election  
12 committee and to the general manager.

13          **Q     And who is the head of the election committee?**

14          A     Connie King.

15          **Q     And who is the general manager you delivered it to?**

16          A     Jim Claggett.

17          **Q     So, what you provided to Connie King and James**  
18 **Claggett was essentially a collection of the unit owner**  
19 **lists to reflect the unit owners that you had determined by**  
20 **reviewing the land records?**

21          A     I gave them a full list from land records of all  
22 the unit owners in the building. I gave them their list back  
23 with my handwritten corrections to make their list concurrent  
24 with land records.

25                   MR. KING: Thank you.

1 MS. SARVADI: No questions, Your Honor.

2 THE COURT: All right. Thank you very much. He  
3 can be excused?

4 MR. KING: Yes, he can, Your Honor.

5 THE COURT: All right. Thank you for coming.  
6 You're free to go.

7 MR. KING: That's all I have, Your Honor.

8 THE COURT: Thank you.

9 MS. SARVADI: Your Honor, I call D. Cuadros to the  
10 stand, please.

11 THE COURT: Miss Cuadros, would you come up and be  
12 sworn, please.

13 Whereupon,

14 DEWANDA CUADROS

15 was called as a witness and, having been first duly sworn,  
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SARVADI:

19 Q Hello, Miss Cuadros.

20 A Hello.

21 Q Do you know a woman by the name of Donna Wolf?

22 A I do.

23 Q And who is Donna Wolf?

24 A She owns a unit on the 15th floor.

25 Q Would that be 1507?

1 A Yes.

2 Q Does Miss Wolf go by any other name?

3 A Yes. Donna was married a few years ago. Her  
4 name is Donna Dillard.

5 Q Do you know her husband?

6 A I do.

7 Q Does he reside in the building?

8 A No, he does not reside in the building and  
9 actually neither does Donna. They have a home in Richmond.

10 Q Do you know that her name changed as a result of  
11 becoming married to her new husband?

12 A Yes.

13 MS. SARVADI: No further questions, Your Honor.

14 MR. KING: I have nothing, Your Honor.

15 THE COURT: Thank you very much.

16 MS. SARVADI: Your Honor, FOA would call Mr.  
17 Christopher Dempsey.

18 THE COURT: Christopher Dempsey, please.

19 Will you come forward, please, Mr. Dempsey, and be  
20 sworn. Come on up to the stand.

21 Whereupon,

22 CHRISTOPHER DEMPSEY

23 was called as a witness and, having been first duly sworn,

24 was examined and testified as follows:

25 //

1 DIRECT EXAMINATION

2 BY MS. SARVADI:

3 Q Hello, Mr. Dempsey. Would you please state your  
4 full name for the court?

5 A Christopher Wayne Dempsey.

6 Q And where do you reside?

7 A 4600 Duke Street, Apartment 1410.

8 Q Are you an owner of that unit?

9 A Yes, ma'am.

10 Q And did you submit a proxy in connection with the  
11 2011 annual meeting of FOA?

12 A Yes, ma'am, I did.

13 Q Would you please turn to the large binder in front  
14 of you, labeled "Defendant's Exhibits" and look under tab A?  
15 Those are in numerical order. So, would you find the proxy  
16 with your unit number?

17 A Yes, ma'am.

18 Q Is that your signature on the proxy for unit  
19 number 1410?

20 A Yes, ma'am.

21 Q And Mr. Dempsey, in fact you own this unit  
22 jointly with your wife?

23 A Yes.

24 Q Did you discuss with her prior to completing the  
25 proxy form that you intended to submit a proxy on behalf of

1 **the unit?**

2 A Yes, ma'am.

3 **Q And were you authorized by your wife to endorse**  
4 **this proxy?**

5 A Yes, ma'am.

6 MR. KING: Objection, Your Honor. First of all,  
7 it's hearsay. Second of all, it's irrelevant. It's  
8 determined that all unit owners have to sign. It doesn't  
9 matter whether he was authorized by his wife or not.

10 MS. SARVADI: The statute actually says signed or  
11 authorized by. I'm trying to establish a simple factual  
12 predicate that he was executing this proxy with the under-  
13 standing that his wife had consented. I understand there  
14 will be a legal argument as to whether you think that's  
15 sufficient but I would like to at least lay that brief  
16 factual foundation.

17 THE COURT: What about the hearsay?

18 MS. SARVADI: Well, I asked him if she authorized  
19 it. I wasn't asking him to say specifically what she said.  
20 I can rephrase the question.

21 THE COURT: Go ahead. Rephrase it. There's got to  
22 be some communication that affects the authorization.

23 BY MS. SARVADI:

24 **Q Mr. Dempsey, was your wife able to come here**  
25 **today?**

1 A No. She had a doctor's appointment.

2 Q Was it your intention to be executing this proxy  
3 on behalf of the unit?

4 A Yes.

5 Q Can you turn to the next page, please?

6 A The one that we both signed?

7 Q You jumped me to it. Do you recognize this  
8 document here, sir?

9 A Yes, ma'am.

10 Q Is that your signature on it?

11 A Yes, ma'am.

12 Q And do you recognize the signature above as that  
13 of your wife?

14 A Yes, ma'am.

15 Q Did there come a point in time where she and you  
16 submitted this?

17 A Yes. We went down to the office.

18 Q And what was the purpose for which you submitted  
19 this additional proxy?

20 MR. KING: Your Honor, I'm going to object. This  
21 is a December proxy. It was amongst the proxies where unit  
22 owners attempted about two months later to try to ratify  
23 proxies that were improper to begin with. They were not  
24 considered by the EA. They were not included. They are  
25 totally ineffective legally. The meeting was over. The

1 balloting was closed. I just don't know what relevance it  
2 has.

3 THE COURT: I'm going to let you make your record.

4 MS. SARVADI: Thank you, Your Honor.

5 BY MS. SARVADI:

6 **Q And what was the purpose for which you submitted**  
7 **this additional proxy document?**

8 A Because we were misinformed that only one  
9 signature was needed. When we knew two signatures were  
10 needed, we corrected it since the meeting was still open.

11 **Q Mr. Dempsey, do you in fact hold a power of**  
12 **attorney for your wife?**

13 A Yes, ma'am.

14 **Q Did you bring a copy of it with you today?**

15 A Ma'am, I did not.

16 **Q So, you would have had the ability to sign on her**  
17 **behalf?**

18 A Yes. She had surgery and we weren't sure what was  
19 going to happen in it; so, she gave me power of attorney.

20 **Q I'm asking because I genuinely don't know the**  
21 **answer to this question which everyone knows breaks the**  
22 **covenant of not asking. But were you physically present at**  
23 **the annual meeting on October 5, 2011?**

24 A Yes, ma'am.

25 **Q But you also submitted a proxy for that evening.**

1 **Did you however vote since you were present in person?**

2 A I voted on all the things that they were trying  
3 to vote against us. I mean, when they brought up -- I don't  
4 know how to say it but when they brought up things we had to  
5 vote about that night, yes, I did vote.

6 **Q So, for matters that were submitted to the**  
7 **assembly, you voted in person?**

8 A Mm-hum.

9 **Q But otherwise, you relied upon the proxy to vote**  
10 **for you. Your first proxy did not name a proxy holder. Is**  
11 **that correct?**

12 A Yes, ma'am.

13 **Q And so, that would have been one of the default**  
14 **proxies that would have been cast by the election**  
15 **administrator?**

16 A (No response.)

17 MS. SARVADI: I have no further questions for this  
18 witness.

19 CROSS EXAMINATION

20 BY MR. KING:

21 **Q Mr. Dempsey, if you would look at that proxy and**  
22 **look right in the middle of it.**

23 A Which one?

24 **Q Either one.**

25 A Okay.

1 Q Right in the middle of it in bold letters, would  
2 you read that?

3 A "To validate this proxy it must be signed by all  
4 owners in presence of the notary. Candidates and proxy  
5 holders may not authorize this proxy."

6 Q Is that statement confusing to you?

7 A No, sir, but when you're told by somebody that you  
8 only need one owner then you're under the assumption you only  
9 need one owner.

10 Q So, you figured that you could rely upon something  
11 that someone would tell you irrespective of what the document  
12 says on its face?

13 A Yes.

14 Q Who was it that told you that?

15 A The manager.

16 Q When you say "the manager," that's Mr. Claggett?

17 A Yes.

18 MR. KING: Thank you.

19 THE COURT: Do you recall registering for the  
20 meeting?

21 THE WITNESS: No, I do not. You mean turn in my  
22 proxy on that night?

23 THE COURT: Right.

24 THE WITNESS: No. I don't remember because  
25 somebody had -- we turned all our proxies in. Somebody had

1 my proxy and I don't recall going and registering but --

2 THE COURT: Did you stand in line?

3 THE WITNESS: I did but I don't know if it was for  
4 that or for all the other things that we had to vote on that  
5 night because there's -- like a circus. It just kept one  
6 thing after another to vote on.

7 THE COURT: Any other questions?

8 REDIRECT EXAMINATION

9 BY MS. SARVADI:

10 Q You believe you turned in your proxy to the  
11 election administrator in advance of the meeting?

12 A I --

13 Q To the box?

14 A Yes.

15 MS. SARVADI: Okay. Your Honor, I'll just note  
16 his unit is reflected on Exhibit J of the advance proxies.

17 THE COURT: Where is that?

18 MS. SARVADI: On the bottom corner, Your Honor,  
19 bottom right column in the handwritten section. "1410" is  
20 listed under "default."

21 THE COURT: All right.

22 MR. KING: I agree it's listed there but I think  
23 the testimony was the default were the instructed proxies  
24 that didn't have a proxy holder name in it.

25 (Counsel confer.)

1 MR. KING: Understood. Thank you.

2 MS. SARVADI: I have no other questions.

3 THE COURT: Any other questions?

4 MR. KING: No, Your Honor.

5 THE COURT: Is he free to leave?

6 MS. SARVADI: Yes, Your Honor.

7 THE COURT: Thank you for coming. You're free to  
8 leave.

9 MS. SARVADI: If I can have the court's indulgence  
10 for one minutes, Your Honor.

11 (Pause.)

12 MS. SARVADI: Kendrick Liu, Your Honor. Mr.  
13 Kendrick Liu. He should be across the hall.

14 THE COURT: How do you spell "Liu?"

15 MS. SARVADI: L-I-u.

16 THE COURT: Thank you.

17 THE COURT: Mr. Liu, will you come on up, please,  
18 and stand before the desk to be sworn.

19 Whereupon,

20 KENDRICK LIU  
21 was called as a witness and, having been first duly sworn,  
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SARVADI:

25 Q Mr. Liu, thank you for coming today. Could you

1 state your full name for the record, please?

2 A Kendrick Chin Liu.

3 Q And where do you reside, sir?

4 A Currently, 4600 Duke Street, Unit 1223.

5 Q Are you an owner of any or more than one unit at  
6 First Owners Association?

7 A I'm an owner of Unit 709. My brother is a unit  
8 of 1223 in which I have power of attorney.

9 Q And did you submit to the election administrator  
10 a proxy for Unit 709 in advance of the October 5, 2011  
11 meeting?

12 A Yes, I did.

13 Q There's a large binder in front of you labeled  
14 "Defendant's Exhibits." Could you open that and look behind  
15 tab letter A. There are proxies in numerical order. If you  
16 could find your proxy for Unit 709.

17 A Okay.

18 Q Sir, is that your signature on this proxy page?

19 A Yes, it is.

20 Q And sir, it appears to have been notarized by  
21 someone with the last name Best. Do you know who that is?

22 A That's Archie.

23 Q Archie from the staff office at FOA?

24 A Yes.

25 Q Mr. Liu, if you look at the date next to your

1 name and the date on the top of the proxy, do you see the  
2 date that's listed there?

3 A Yes.

4 Q Could you state that for the court, please?

5 A 12/21/11.

6 Q Is that the date that you signed the proxy?

7 MR. KING: I'm going to object, Your Honor. The  
8 document speaks for itself.

9 THE COURT: Overruled. Go ahead.

10 THE WITNESS: I believe so; yes.

11 BY MS. SARVADI:

12 Q You believe you signed it on December 21, 2011?

13 A I mean --

14 MR. KING: Asked and answered, Your Honor.

15 THE COURT: You can look at it and tell me what you  
16 think.

17 THE WITNESS: I don't remember when I sign it. The  
18 date says 12/21/11.

19 BY MS. SARVADI:

20 Q Did you turn it in to the box in advance of the  
21 October 5th meeting?

22 A I remember I was in the office and Archie did  
23 the notary in front of me and I may have dropped in the  
24 box after that.

25 Q So, as you sit here today do you have a belief

1 that you signed this document in December of last year or  
2 do you think you actually signed it in September of 2011?

3 A I know I sign it in front of Archie; and yeah, I  
4 don't have a recollection of when I sign.

5 Q Do you remember if it was before the big meeting  
6 in October?

7 A Yeah. I'm pretty sure it was before the big  
8 meeting or else I wouldn't have --

9 (Pause.)

10 BY MS. SARVADI:

11 Q Would you please turn to the proxy for Unit 1223?

12 A Okay.

13 Q Do you see that, sir?

14 A Yes.

15 Q Is that also your signature?

16 A Yes.

17 Q Do you believe that you signed this on or about  
18 the same day you signed the proxy for Unit 709?

19 A Yes. I did both proxies at the same time.

20 Q And do you believe that you dropped this one in  
21 the box, as well?

22 A At the same time. Yes.

23 Q This is the unit that's owned by your brother;  
24 correct?

25 A Yes.

1 Q But you have his power of attorney?

2 A Yes.

3 Q And is that why you signed your name on the unit  
4 owner name?

5 A Yes.

6 Q Sir, there's been a question about whether you  
7 were current or delinquent at the time of the meeting. Do  
8 you remember if you had cured any past-due delinquency as  
9 of the date of the meeting?

10 A I remember going down there with my checkbook and  
11 if there was any delinquency I would have cleared.

12 Q And you believe you satisfied the delinquency?

13 A To the best of my knowledge, yes.

14 Q Did anyone tell you your proxy was rejected or  
15 your votes would not count because you were delinquent?

16 A No.

17 MS. SARVADI: No further questions, Your Honor.

18 CROSS EXAMINATION

19 BY MR. KING:

20 Q Mr. Liu, with respect to the proxy that you  
21 submitted for Unit 1223, you said you had a power of  
22 attorney?

23 A Yes.

24 Q You did not sign that document as an attorney in  
25 fact; did you?

1 A I'm not sure what that means.

2 Q **You didn't put your brother's name on there?**

3 A On this?

4 Q **Yes.**

5 A No.

6 Q **You put your name on it?**

7 A Right.

8 Q **Do you have the power of attorney with you?**

9 A Not with me. It's on file.

10 THE COURT: Where is it on file?

11 THE WITNESS: It is in the management's office.

12 BY MR. KING:

13 Q **It's not recorded in the land records?**

14 A I don't believe so.

15 MR. KING: No further questions, Your Honor.

16 MS. SARVADI: No further questions, Your Honor.

17 THE COURT: Can he be excused?

18 MS. SARVADI: Yes.

19 THE COURT: All right. Thank you for coming.

20 You're free to leave.

21 MS. SARVADI: Your Honor, the FOA calls Connie  
22 King.

23 THE COURT: Connie King, please.

24 (Pause.)

25 THE COURT: Miss King, if you'll come up to the

1 front, please. All the way up. The clerk will swear you in.  
2 Whereupon,

3 CONCHETTA F. KING

4 was called as a witness and, having been first duly sworn,  
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SARVADI:

8 Q Hello, Miss King. Could you please state your full  
9 name for the court?

10 A Conchetta Felesh King.

11 Q And are you an owner at 4600 Duke Street?

12 A Yes, I am.

13 Q Were you also serving as the chair of the  
14 election committee for FOA for the 2011 meeting?

15 A Yes, ma'am.

16 Q Did you assist FOA and its staff in compiling the  
17 documents and information necessary to send out the notices  
18 for the annual meeting?

19 A Yes. With my committee. We worked together. I'm  
20 putting it all together.

21 Q I'm sorry. I'm having a little trouble hearing.

22 A With the committee. We worked to get it all put  
23 together, in order and out to the owners.

24 Q As part of the meeting notice process did you  
25 print out or did FOA print out labels that would be sent to

1 unit owners for those candidates who were campaigning for  
2 election?

3 A Yes, ma'am.

4 Q And did you provide a copy to each of the  
5 candidates who were running for the board of directors?

6 A Yes.

7 Q Did you provide a set to those persons running  
8 who are affiliated with Gordon Properties and Gordon  
9 Residential Holdings?

10 A Yes, ma'am.

11 Q Were they provided in the initial package to  
12 those persons or did they come later?

13 A For the candidates we announced to the owners and  
14 then we gave the candidates -- we advised the candidates  
15 that we had their packages. We gave them a set of labels,  
16 an owners list and several blank proxies.

17 Q And were other proxies available at FOA, in the  
18 management office for candidates who needed more proxies?

19 A Yes, ma'am.

20 Q Did there come a time when you and Mr. Riviere  
21 discussed the owners list for FOA?

22 A Yes.

23 Q Did CSI express a concern about the information  
24 contained on the labels and/or the mailing list to you?

25 A Yes. That's when he came in and picked up the

1 candidates packages for Gordon Properties and their  
2 candidates. He said, this list is not right. And I said,  
3 it's as right as we have. And he -- if I remember correctly  
4 and I'm sorry but if I remember correctly, he had gone back  
5 to his office and then came back up to the FOA office and  
6 said, I have a good list right here. And I said, where did  
7 you get that list. He said, from the city records. And I  
8 said, we have to use what our bylaws tell us which is we  
9 use the records, official records of management.

10 **Q In fact, wasn't that also the determination of**  
11 **the election administrator as we were preparing for the**  
12 **annual meeting process?**

13 A Yes, ma'am. This was brought to his attention.

14 **Q And he directed you to use the owners list?**

15 A Yes, ma'am.

16 **Q To the extent that FOA or you as the chair of**  
17 **the committee were aware of discrepancies on the list, did**  
18 **you make efforts to correct and update the list before the**  
19 **notices went out?**

20 A Yes. There were several owners that I knew either  
21 had moved or were not on the list or should have been on  
22 the off-site-owner list, whatever. I did make notations of  
23 those and I did make them known to management.

24 **Q And so, you believe that everyone who was a unit**  
25 **owner of FOA according to its records for the pertinent**

1 **dates received the proper notice packages?**

2 A Yes, ma'am.

3 MS. SARVADI: No further questions, Your Honor.

4 CROSS EXAMINATION

5 BY MR. KING:

6 **Q Good afternoon, Miss King. Good to see you again.**

7 A How are you?

8 **Q Good. Thank you. No flirting with the marshals**  
9 **now.**

10 **Miss King, if you undertook to change the owners**  
11 **list yourself based on what you knew, why didn't you under-**  
12 **take to change it based on what you were informed about**  
13 **what the land records showed?**

14 A Okay. I knew that I could mention it to  
15 management and what we did was: Mr. Claggett then called  
16 Mr. Darryl Payne at Cardinal, had him on speakerphone while  
17 I was in the office. We discussed this, the fact that city  
18 records were different from Cardinal's records, and the way  
19 it was explained was that city records aren't as current  
20 as the management records were, that city records would lag  
21 a month or two or so behind. And that's basically where we  
22 went with it.

23 **Q That's what Cardinal told you, was that the land**  
24 **records were lagging a month or two behind their records or**  
25 **was it the other way around?**

1           A     No. The city records weren't as current as  
2 Cardinal's would be because Cardinal does the resale  
3 packages and would get that information; and so, they would  
4 have it. They said it would take a while for the city  
5 records to be the same.

6           Q     So, it was your understanding based on what  
7 Cardinal was telling you that the owners list that you had  
8 was the updated list of who the actual owners were versus  
9 what was on the land records?

10          A     Yes, sir.

11          Q     Now, you never had any discussions with the  
12 election administrator with respect to whether the election  
13 administrator was required to look at the owners list for  
14 determining the validity of the proxies, did you?

15                 In other words, the discussions that you had with  
16 the election administrator were whether you could rely on  
17 the FOA owners list for purposes of sending out the notice  
18 package?

19          A     The election administrator received a list of  
20 owners, the same one the committee had received, prior to  
21 us even mailing out any of the packages. We still had to  
22 make copies and get the translations and stuff. So, the  
23 election administrator had this information prior to the  
24 mailing.

25          Q     Right. My point was: I believe what you testified

1 to in response to the questions from Miss Sarvadi was that  
2 you spoke with the election administrator about whether you  
3 should use the owners list for sending out the notice  
4 packages.

5 A Oh. Then I misunderstood her.

6 Q Okay. So, you didn't have a discussion with the  
7 EA, the election administrator, about whether you should use  
8 the owners list to send out the notice packages?

9 A That was -- yeah. Yeah. I'm sorry. Yes. The  
10 election administrator knew exactly what we were doing as  
11 we were doing it.

12 Q But the question was did you seek advice from the  
13 election administrator as to whether you should use the  
14 owners list or whether you should check to confirm whether  
15 it was accurate based on the land records? That's my  
16 question.

17 A I'm sorry. I don't recall whether I actually  
18 asked him. I know that I had mentioned it to him, that  
19 this issue had come up and what our bylaws stated and that's  
20 the way we were going to go. Now, whether he gave me any  
21 opinion or advice, I don't recall.

22 Q But he knew that there was a potential discrepancy  
23 between the owners list and what was on the land records  
24 based on what you told him?

25 A I would have to say, yes.

1 MR. KING: Okay. Thank you.

2 MS. SARVADI: No further questions for this  
3 witness.

4 THE COURT: Can she be excused?

5 MR. KING: She can go, Your Honor.

6 THE COURT: All right. Thank you, Miss King.  
7 You're free to leave.

8 MS. SARVADI: Your Honor, if I may recall Jesse  
9 Binnall for a few follow-up questions.

10 THE COURT: Mr. Binnall, will you come forward,  
11 please.

12 Whereupon,

13 JESSE BINNALL

14 was recalled as a witness and, having previously been duly  
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. SARVADI:

18 Q Hello, Mr. Binnall.

19 A Hello.

20 Q You testified earlier today that you had come to  
21 a conclusion that the owners list of FOA was the proper list  
22 to use to verify ownership; is that correct?

23 A That is correct.

24 Q And you mentioned earlier today that there was a  
25 conference involving counsel about that, that there was some

1 **discussion surrounding that issue?**

2 A Yes.

3 MS. SARVADI: I'd like to hand the witness -- I  
4 would like this document to be marked as Exhibit K of FOA, if  
5 I may, and I have one for the court, as well.

6 THE COURT: All right. Will you have that marked,  
7 please. Let's have it marked as "K," first and then we'll  
8 give it to the witness.

9 (Defendant's Exhibit K was  
10 marked for identification.)

11 BY MS. SARVADI:

12 **Q If you would take a moment and review Exhibit K**  
13 **and let me know if you recognize that document.**

14 **(Pause to review document.)**

15 THE WITNESS: I do recognize this document.

16 BY MS. SARVADI:

17 **Q And what is that document?**

18 A This document is an email chain between myself  
19 here and Mr. King and Connie, as well.

20 **Q If you look at the last page of this document,**  
21 **do you see an email from Mr. King? There should be an**  
22 **objection number five. Maybe on the second page.**

23 THE COURT: I don't have a number five either.

24 THE WITNESS: Yeah. I only have --

25 MS. SARVADI: Four. Number four.

1 THE WITNESS: Number four. Yes.

2 MR. KING: Your Honor, I'm having trouble with  
3 testimony from this document. I'm trying to figure out why  
4 he has to testify from an email, what it is that he can't  
5 testify to from his own recollection. I just don't under-  
6 stand why we're testifying from a document.

7 MS. SARVADI: There's simply a suggestion by  
8 counsel that there wasn't an agreement about it and this  
9 simply establishes that the issue was raised.

10 THE COURT: What is the agreement that you think  
11 there was?

12 MS. SARVADI: I actually don't but I want to make  
13 sure that -- what is important is that the EA was provided  
14 this information, that there were discrepancies between land  
15 records and FOA's records. He considered the positions of  
16 both sides and ultimately concluded that the list that he  
17 would use for the meeting in advance of the meeting was the  
18 FOA registration list or members list and that's simply what  
19 I was trying to establish.

20 MR. KING: No relevance, Your Honor. I think Miss  
21 Sarvadi is totally missing the point with respect to the  
22 owners list. It has nothing to do with sending out notices  
23 to the unit owners. I agree that the bylaws say that you  
24 send out the notices.

25 We're talking about whether a proxy is valid, Your

1 Honor, and the bylaw provision that Miss Sarvadi is relying  
2 on doesn't address proxies. That's a totally different  
3 thing.

4 So, the fact that we were talking leading up to the  
5 meeting about the inaccuracy of the FOA unit owner list --  
6 it's relevant in the sense that they were put on notice that  
7 their list is inaccurate but whether counsel agreed that  
8 there wasn't much we could do about it for purposes of  
9 sending out the notice packages has nothing to do with the  
10 validity of a proxy.

11 THE COURT: I'll allow the --

12 BY MS. SARVADI:

13 **Q Is my representation correct that the issue was**  
14 **brought to your attention, both sides stated their opinions**  
15 **and you determined that that list was the proper list for**  
16 **notices?**

17 A I did.

18 **Q And is that the same list you determined was proper**  
19 **for use with respect to the determination of ownership?**

20 A Absolutely.

21 **Q And did you use in fact an updated version of**  
22 **this same list that FOA provided both for the notices and**  
23 **for the determination of ownership?**

24 A Yes, I did.

25 MS. SARVADI: No further questions.

1 CROSS EXAMINATION

2 BY MR. KING:

3 Q You had specific knowledge at the time you were  
4 taking the proxies, didn't you Mr. Binnall, that there was  
5 a discrepancy between the owners list and the land records?  
6 Didn't you?

7 A I knew that there was an argument that there was  
8 a discrepancy. Yeah, I did.

9 Q And you took no action yourself to determine who  
10 the owners of the units were for determining whether the  
11 proxies were valid?

12 A After reviewing the documents and using the  
13 process that we use in parliamentary procedure, I  
14 determined that the appropriate list to use was the  
15 registration list and that is the direction that we went.

16 Q You'll agree though that Robert's Rules of Order  
17 would not take precedence over any specific statutory  
18 provisions or the provisions of the condominium instruments,  
19 don't you?

20 A And no such statutes were brought to my attention  
21 that I was doing something wrong at that point.

22 Q Did you research it?

23 A I did not.

24 MR. KING: No further questions, Your Honor.

25 THE COURT: Anything else?

1 MS. SARVADI: No further questions.

2 THE COURT: All right. Thank you very much.

3 Did you have any other witnesses you wanted to  
4 call?

5 MS. SARVADI: No, Your Honor. I think that's it.  
6 That concludes the evidence.

7 THE COURT: Let's go through your exhibits for a  
8 moment just to make sure what's in and not. I have as  
9 admitted A and B, H and J.

10 MS. SARVADI: There was no objection to "G," Your  
11 Honor.

12 THE COURT: Okay. "G" is admitted without  
13 objection.

14 MR. KING: Well, actually I did but I'll withdraw  
15 the objection, Your Honor. I'm sorry. You said A, B, J  
16 and --

17 THE COURT: A, B, G, H and J.

18 MR. KING: And "H." "J" is?

19 THE COURT: The advance proxy list.

20 MR. KING: Correct. I have no objection, Your  
21 Honor.

22 (Defendant's Exhibit G was  
23 received in evidence.)

24 THE COURT: Did you want to move any of the others  
25 in?

1 MS. SARVADI: Your Honor, we would move into  
2 evidence -- I believe "I" is cumulative of Plaintiff's 4.

3 MR. KING: I think that's correct, Your Honor.

4 THE COURT: They're identical?

5 MS. SARVADI: Yes. So, I don't need to move those.

6 Your Honor, with respect to C, D and E, those  
7 exhibits would have gone to the objections that you have  
8 already determined we're not going to get into here today.  
9 So, I would have tendered those in connection with that  
10 evidence.

11 THE COURT: That's C, D, E and F?

12 MS. SARVADI: Yes, Your Honor.

13 THE COURT: All right.

14 MS. SARVADI: But I understand the court's ruling  
15 on that.

16 THE COURT: All right. Thank you.

17 MR. KING: I think there was a -- were you  
18 introducing the emails? No? Okay. I'm sorry. I was just  
19 wondering whether --

20 THE COURT: "K" is the last one and it's not  
21 offered?

22 MS. SARVADI: It can come in but he'd have to fuss  
23 about it. So, we're --

24 MR. KING: I would object to it coming in, Your  
25 Honor. I think the testimony speaks --

1 MS. SARVADI: I pass on that, Your Honor.

2 THE COURT: All right. It's withdrawn then. All  
3 right. Then that accounts for the exhibits. There are no  
4 other witnesses to be considered?

5 MS. SARVADI: That's correct, Your Honor.

6 THE COURT: Did you want to add anything further,  
7 Mr. King, in rebuttal?

8 MR. KING: No, Your Honor.

9 THE COURT: Did you all want to make closing  
10 arguments or do you want to -- one thing that would be  
11 helpful to me. Let me make sure I understand the exhibits.

12 Your Exhibit H I understand is the final tally  
13 that has been used and then you each have some objections  
14 to it. Is that basically right?

15 MS. SARVADI: Correct.

16 THE COURT: You would either add to it or take from  
17 it?

18 MS. SARVADI: With the understanding that we don't  
19 have the key that corresponds to the row on Exhibit H to  
20 proxies. So, if we're coming back or submitting something  
21 in writing to the court, we should refer to the units  
22 specifically, I think, because they're not going to be shown  
23 here.

24 THE COURT: You only need that to come up with the  
25 numbers in the end; is that right?

1 MS. SARVADI: That's correct.

2 MR. KING: And in that regard and Mr. Binnall is  
3 correct, we had a little bit of a misunderstanding when we  
4 were -- when we were drafting the order compelling the  
5 election administrator to file the supplemental report, I  
6 had put a provision in there. I'm sorry. This was with  
7 respect to the protective order where the ballots were kept  
8 confidential and what I had suggested to Mr. Binnall that  
9 ballots that were filled out pursuant to instructed proxies  
10 should not have the same expectation of privacy since the  
11 proxy itself is not confidential. But we didn't address  
12 that with Your Honor. So, we left it out of the order.

13 I think we don't have to worry about violating any  
14 ballot confidentiality on the issues we're talking about  
15 because we're only talking about proxies.

16 So, if you could authorize Mr. Binnall to give us  
17 the key for the proxies that are at issue then we can  
18 specifically identify the unit and we know what it is that  
19 we're talking about.

20 MS. SARVADI: I think that would be helpful, Your  
21 Honor. Nobody is challenging any ballots separate from the  
22 proxies.

23 MR. KING: Then the second thing. I realize Mr.  
24 Binnall can't change Exhibit H until after Your Honor rules  
25 on the objections but he can change Exhibit H with respect

1 to the quorum. It's pretty obvious that the quorum numbers  
2 are not accurate because they don't reflect -- at least we  
3 know of at least two unit owners who were there. Mr. Binnall  
4 testified that he kept as well as he could a fairly accurate  
5 list of those who were present. I think he needs to go back  
6 and compare that list to the proxies that he invalidated to  
7 determine whether the unit owner was in fact present and they  
8 need to be added to the list for quorum purposes.

9 MS. SARVADI: I think that goes to a bigger issue  
10 because I'm no longer comfortable that this document has  
11 reliable information; and so, if we're going back to double-  
12 check things, I'm not sure we want to limit it only to issues  
13 surrounding a quorum. It was one of the things that I was  
14 going to try to address with Your Honor, that while they have  
15 every good-faith intention of providing an accurate set of  
16 information, Mr. King has demonstrated that it is in fact  
17 not, and that has an impact on what happens as a result of --

18 THE COURT: What is wrong with Exhibit H at this  
19 point?

20 MR. KING: Well, the only thing we know for  
21 certain is wrong -- I mean, there was some question about  
22 they didn't know if they did this; they didn't know if they  
23 did this.

24 The only thing that is known is that there are unit  
25 owners who were present for quorum purposes that are not

1 reflected, and that's the only thing we know for sure.

2 THE COURT: That doesn't affect at this point the  
3 outcome of the vote?

4 MR. KING: It doesn't affect the outcome of the  
5 vote but it may be an issue later on after Your Honor rules  
6 on the objections whether there was a quorum present or not.

7 MS. SARVADI: And I have to say with all due  
8 respect, if we have identified clear errors with respect to  
9 including things in the quorum without double, double  
10 checking, there could very well be errors that do apply to  
11 the votes. We don't know now if somebody's entire row was  
12 canceled out in error.

13 Mr. King spoke to Jesse more than once in advance  
14 to try to get an understanding of this and I think he would  
15 agree that what we understood these highlights reflect is  
16 completely different than what Mr. Binnall is now telling us  
17 they mean.

18 MR. KING: Well, there was clearly a conflict  
19 between what Mr. Binnall testified to and what Mr. Bronley  
20 testified to. So, that is a question.

21 THE COURT: Well, tell me what you would like.  
22 What do you both want to do on that?

23 MR. KING: I just want --

24 THE COURT: You just want the quorum but it may or  
25 may not be relevant? I don't know. It depends on a number

1 of things. So, it could end up being unimportant.

2 MR. KING: We think so, Your Honor. We tried to do  
3 a quick tally of all of the units that are subject to the  
4 objections and we don't think it changes the quorum but --

5 THE COURT: Understood. I understand. The thought  
6 there is, we can address which votes count and don't and if  
7 there's a quorum issue we can come back and revisit that  
8 issue.

9 Then the question is, is there something else  
10 that's important.

11 MS. SARVADI: And there's either one or two things  
12 we could do. There's at least been a question raised about  
13 the accuracy of data and whether we have them double-check  
14 it in advance of presenting something further to the court  
15 or we have them double-check it after you make whatever  
16 rulings you're going to make and then they just come back one  
17 more time with the "not only we know this is accurate but  
18 now here's how the ruling being applied affects the numbers  
19 if they do at all" but I have serious concerns now that's  
20 it's clear the document is not accurate whether we can  
21 certify any election at the appropriate time.

22 THE COURT: Well, the problem is, this was supposed  
23 to be a trial and there's supposed to be an end to things.

24 MR. KING: Your Honor, I think what I would suggest  
25 to Your Honor is that Mr. Binnall doesn't need to do anything

1 until Your Honor rules on the objections and then simply go  
2 back and modify the tally based on Your Honor's objections.

3 This document I think we're stuck with. The  
4 election is closed. He says he's done the recount. He's  
5 tested it. He says he's confident the numbers are correct.  
6 The only mistake that we're aware of is the quorum issue and  
7 I think he can deal with that after the fact, at the same  
8 time he deals with any adjustments necessary by Your Honor's  
9 rulings.

10 MS. SARVADI: If there are inaccurate results then  
11 they shouldn't certify a board.

12 THE COURT: My understanding of his testimony is  
13 that the chart was accurate. It's not as accurate as far as  
14 a quorum -- potentially as to quorum matters.

15 Clearly there were changes made between the  
16 preliminary announcement on the 5th of October and there were  
17 subsequent changes, one, two or three, before he came to the  
18 final. But the final one which is in his report he said he  
19 went over. He double-checked it. He did the numbers. He  
20 added them up, and this is the result.

21 Now, there is some question as to what the  
22 highlights mean. It is clear there are some lines without  
23 numbers on them but there's no indication that some vote has  
24 not been counted other than the ones that are in controversy  
25 or that something has been counted that should not have been

1 except for those that are in controversy.

2 So, I don't see the contest over the accuracy of  
3 this except for the quorum and there while there are some  
4 lines that are totally blank and highlighted there are many  
5 lines that are just totally blank and not highlighted.

6 I was trying to find one that showed a presence  
7 for purposes of a quorum but no vote being counted for --

8 MR. BINNALL: I think I figured out the  
9 discrepancy.

10 THE COURT: Why don't you talk to the two counsel.  
11 I'll take a short recess and let the three of you chat for a  
12 few moments.

13 I don't know that I want to keep you here. There  
14 are actually some very -- it's not technical but it's  
15 carefully prepared calculations I'm contemplating, and you  
16 can discuss this among yourselves while we're on recess.  
17 Taking this Exhibit H as the result that the election  
18 administrator came to, you both have objections that might  
19 add or subtract one way or the other.

20 I need you to go through unit number, why it  
21 should be added; unit number, why it should be subtracted,  
22 and with that I'll go through each of the objections, and  
23 then obviously we have to do a tally unless all of the  
24 objections are overruled in which case there wouldn't be --  
25 but we would have to redo the tally.

1 Now, the second question that rolls into that is,  
2 if we disqualify some of the proxies for some reason do we  
3 get down to a number that is less than the quorum for a  
4 meeting and that has an impact and at that point we would  
5 need to go back and look at the registration to see who was  
6 there that did not make -- the three of you can talk about  
7 it. I think this was made to count votes, not necessarily  
8 count quorum but it does pick up quorum from those who voted  
9 and of course there may be a few who didn't vote.

10 It wasn't particularly clear to me what Mr.  
11 Dumbrusky -- was that his name?

12 MS. SARVADI: Dempsey.

13 THE COURT: Dempsey. It didn't sound like he  
14 registered but he was clearly there.

15 MS. SARVADI: And he voted on other matters.

16 THE COURT: And he voted on other matters. So,  
17 there's an instance. There's at least one other that we  
18 know.

19 So, I have a feeling that that's what it is and  
20 I think we can reopen for that limited period if it becomes  
21 relevant. If the ballots are objected to or the objections  
22 are sustained or overruled and there's still a quorum, as  
23 long as there's a quorum of 50.1. It can be 50.1 or 60 or  
24 70 or 80. It doesn't matter. You've got your quorum and  
25 that's what is the critical number.

1           So, why don't I give you a few minutes to talk it  
2 through. Talk to Mr. Binnall; make sure you understand, and  
3 then let's reconvene in a few minutes and see where we go on  
4 that.

5           MR. KING: Thank you, Your Honor.

6           (Whereupon, a recess was taken.)

7           MR. KING: I don't think we've advanced the ball  
8 any further. I think all we need from the election  
9 administrator is to clarify the quorum issues and I think  
10 he knows what he needs to do in that regard.

11          THE COURT: And Miss Sarvadi.

12          MS. SARVADI: All I said to Mr. King was -- when we  
13 get the key that he's going to be providing to us, if we  
14 observe something that also appears to be incorrect, we're  
15 going to let both of them know and then perhaps be back in  
16 front of you about what to do about it.

17          THE COURT: Well, we can address that if that case  
18 should arise.

19          All right. How much time do you want? Mr. King,  
20 you've got some other written work to do.

21          MR. KING: I'm happy to leave it on the same  
22 schedule, Your Honor.

23          THE COURT: All right.

24          MR. KING: Fourteen days.

25          THE COURT: Fourteen days. Well, in this instance

1 you both have it. They should be cross-briefs. Fourteen  
2 days to get your first brief in and seven to reply?

3 MR. KING: That's fine, Your Honor.

4 MS. SARVADI: So, 14 and then seven?

5 THE COURT: Right. They'll be simultaneous briefing  
6 rather than sequential.

7 MR. KING: Right.

8 MS. SARVADI: Yes. That's fine.

9 THE COURT: All right. Very good. With that, we  
10 will then go ahead and recess.

11 MR. KING: Your Honor, we do have -- it's  
12 currently,  
13 I think, set as a status conference but at some point we're  
14 going to need to schedule the remaining issues in the  
15 adversary proceeding which are, number one, damages for the  
16 stay violation and, two, the certification of compliance  
17 with the election procedures by FOA. I think we sort of  
18 agree that they're together.

19 THE COURT: Now, we put down a status hearing for  
20 the case, did we not?

21 MR. KING: We did.

22 MS. SARVADI: I think it's for the entire case.

23 MR. KING: That's for the main case, Your Honor.

24 THE COURT: And when is that coming up?

25 MR. KING: The 13th of March, I think.

1 THE COURT: Okay. Is there a status in the  
2 adversary, as well?

3 MS. SARVADI: I don't think so.

4 MR. KING: No. I --

5 THE COURT: We'll go ahead and set this adversary  
6 on the same date.

7 MS. SARVADI: For the 13th?

8 THE COURT: And we'll hold a status at that point.  
9 March 13th.

10 MS. SARVADI: I believe it's the 12th, Your Honor.

11 THE COURT: The 12th. It would be a Monday. All  
12 right.

13 MS. SARVADI: Do you know what time that will be?

14 THE COURT: Nine-thirty. Well --

15 THE CLERK: Ten-thirty.

16 THE COURT: Ten-thirty. That's a status rather  
17 than a pretrial.

18 MS. SARVADI: I'll get coverage for my other  
19 matter. I'll be fine.

20 MR. KING: Thank you, Your Honor.

21 THE COURT: These briefs won't get in by then but  
22 we'll just take a status at that point. All right. Very  
23 good. Thank you very much.

24 MR. KING: I'm sorry. I do have one thing, Your  
25 Honor, and I want Your Honor to understand the importance of

1 this quorum issue. It has to do with the appeal that is  
2 pending because one of the issues on appeal that Miss Sarvadi  
3 identified was Your Honor's ruling that delinquent owners  
4 count for quorum purposes.

5 If we go through this quorum issue and get through  
6 all of the objections and we still achieve quorum without  
7 affecting -- ignoring the delinquent owners then that moots  
8 that appeal. So, this issue with respect to quorum that we  
9 need Your Honor to address, that's the reason for the  
10 importance of it.

11 THE COURT: Then we might have to address it. I  
12 had forgotten that that was an issue. But you would count  
13 anyone in bankruptcy for purposes of a quorum in any event.

14 MS. SARVADI: Well, Gordon Properties for sure. I  
15 don't think there was anyone else in bankruptcy.

16 MR. KING: I thought there was one but be that as  
17 it may. Yes. They have appealed also Your Honor's ruling  
18 that the automatic stay requires them to allow everybody to  
19 vote. So, if there is anybody else that potentially is  
20 affected by that separate issue but is not affected by the  
21 issue with respect to delinquent owners for quorum purposes.

22 THE COURT: I understand.

23 MS. SARVADI: Which is why I had asked the question  
24 on the exhibit if he took the one out from the other total,  
25 if it was an impact.

1 THE COURT: All right. The past practices allowed  
2 them all to participate but in any event it's not my issue  
3 at this point. Someone else will address that.

4 Thank you very much. We will recess for the  
5 evening.

6 (Whereupon, at approximately 5:50 p.m.,  
7 the proceedings were recessed, sine die.)

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1           T R A N S C R I B E R ' S       C E R T I F I C A T E  
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7       GORDON PROPERTIES, LLC v. FIRST OWNERS ASSOCIATION OF FORTY  
8       SIX HUNDRED, ET AL, and (B), these pages constitute the  
9       original transcript of the proceedings.

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