

APPEARANCES:

On behalf of the Opposer:

BRADLEY D. JONES, ESQ.

Trial Attorney

JOSEPH A. GUZINSKI, ESQ.

Assistant United States Trustee

United States Department of Justice

115 South Union Street, Suite 210

Alexandria, Virginia 22314

(703) 557-7176

On behalf of the Movant:

DONALD F. KING, ESQ.

SALLY ANN HOSTETLER, ESQ.

Odin Feldman Pittleman

1775 Wiehle Avenue, Suite 400

Reston, Virginia 20190

(703) 218-2114

APPEARANCES:

On behalf of FOA and SLC:

JOHN T. DONELAN, ESQ.
125 S. Royal Street
Alexandria, Virginia 22314
(703) 684-7555

On behalf of FOA:

PHILIP J. HARVEY, ESQ.
Fiske & Harvey
100 North Pitt Street, Suite 206
Alexandria, Virginia 22314

(703) 518-9910

ALSO PRESENT:

BRYAN SELLS

WILLIAM REICHENBACH

JANE BRUNGART

C O N T E N T S

WITNESS	EXAMINATION BY COUNSEL FOR
BRYAN SELLS	MOVANT
By Mr. King	25, 254
	OPPOSER
By Mr. Jones	65, 209
WILLIAM REICHENBACH	FOA AND SLC
By Mr. Donelan	81, 142
	MOVANT
By Mr. King	104, 108
	OPPOSER
By Mt. Jones	106
JANE BRUNGART	FOA AND SLC
By Mr. Donelan	146
	OPPOSER
By Mr. Jones	161, 199
	MOVANT
By Mr. King	162, 193
JENNIFER SARVADI	MOVANT
By Mr. King	207

E X H I B I T S

JOINT EXHIBIT NO.	PAGE NO.
1	23
2	23
3	23
4	23
5	23
6	23
7	23
8	23
9	23
10	23
11	23

OPPOSER EXHIBIT NO.	PAGE NO.
2	220
4	220
15	216
16	213
17	216
18	216
19	216
20	216
21	216

OPPOSER EXHIBIT NO.

PAGE NO.

22

216

23

216

24

216

Exhibits retained by counsel.

1 P R O C E E D I N G S

2 COURT DEPUTY: Items number 1 through 8,
3 Gordon Properties, LLC and Condominium Services,
4 Inc., Case Number 09-18086, and Adversary Number
5 11-1020 for Gordon Properties, LLC versus First
6 Owners Association of 4600, et al.

7 JUDGE MAYER: Do you want to make your
8 appearances?

9 MR. KING: Good morning, Your Honor.
10 Donald King for the debtors. Your Honor, with me is
11 my partner, Sally Hostetler. I do not expect that
12 she's going to be addressing the Court, but she is
13 admitted in the Court, in any event.

14 JUDGE MAYER: All right. Very good.
15 Thank you.

16 MR. JONES: Good morning, Your Honor.
17 Bradley Jones, Department of Justice, appearing on
18 behalf of the U.S. Trustees. And with me today is
19 Joseph Guzinski, the Assistant United States
20 Trustee.

21 MR. DONELAN: Good morning, Your Honor.
22 John Donelan appearing on behalf of FOA and SLC.

23 JUDGE MAYER: And who is next to counsel?

24 MR. KING: Sitting with me is Mr. Bryan
25 Sells, the representative of the debtor.

1 MR. DONELAN: Sitting with me is Bill
2 Reichenbach, and I also have a witness who is in the
3 courtroom, James Brungart.

4 JUDGE MAYER: You have a motion to
5 approve a settlement?

6 MR. KING: Yes, Your Honor.

7 JUDGE MAYER: Very good. Do you want to
8 go forward?

9 MR. KING: I believe there is one witness
10 who would be subject to a rule and that would be
11 Jennifer Sarvadi. I believe everybody else is a
12 party that's going to be testifying.

13 JUDGE MAYER: Is Ms. Sarvadi present?

14 MS. SARVADI: Yes, Your Honor.

15 JUDGE MAYER: Is there any objection to
16 the rule?

17 MR. JONES: No, Your Honor.

18 JUDGE MAYER: Ms. Sarvadi, you're an
19 attorney, so I'm not going to tell you what the rule
20 is all about, but don't discuss your testimony
21 before or after you testify until you're released.

22 MS. SARVADI: Very well.

23 JUDGE MAYER: If you want to sit across
24 the hall, the CSO will come and get you at the
25 appropriate time.

1 MS. SARVADI: Thank you.

2 MR. KING: Good morning again, Your
3 Honor. Donald King for the debtors. We of course
4 saw Your Honor's memorandum opinion last night.
5 Thank you. That certainly helps streamline matters
6 today. The debtors are here today jointly seeking
7 approval of the settlement agreement they negotiated
8 and that each approved.

9 Your Honor is going to hear testimony
10 about the negotiation of that settlement, both
11 inside and outside the mediation process that was
12 directed by this Court, and Your Honor is going to
13 hear evidence regarding how the settlement was
14 approved by each of the parties, in particular,
15 approval by FOA which is one of the underlying
16 currents in the case.

17 In short, Your Honor, we believe the
18 evidence will satisfy the Court's inquiry under rule
19 9019 that the settlement is in the best interest of
20 the bankruptcy estate, and we believe the evidence
21 further will establish that FOA complied with all
22 applicable corporate governance obligations under
23 Virginia law in approving the settlement agreement.

24 We are not, Your Honor, unmindful that
25 the Court appointed an examiner to report on FOA's

1 approval process in light of the overlapping
2 directorships and we are not unmindful of what the
3 examiner said in his report. The debtor and FOA
4 both filed joint objections to the examiner's
5 report. The joint objection, I submit, Your Honor,
6 raises substantive concerns about the reliability of
7 the examiner's report as to the critical
8 determinations that the Court must make in the 9019
9 approval process.

10 We believe, Your Honor, that the role of
11 the examiner was candidly to point out to the Court
12 where he might have detected smoke, but we believe
13 the determination of whether there was fire is
14 clearly the role of the Court. The examiner's
15 report encroaches upon the Court's role in that
16 regard and it does so with conclusions that are not
17 supported by the evidence.

18 We are confident when the Court hears the
19 evidence, it will conclude that there is no fire.
20 Notwithstanding the examiner's inferences and
21 conclusions, the evidence will establish that the
22 interested board members properly distanced
23 themselves from the critical vote of FOA's board
24 approving the settlement agreement. That approval
25 occurred at the board's January 15th, 2013 meeting

1 and was based upon a vote solely of the
2 disinterested board members.

3 It's unfortunate, Your Honor, that the
4 examiner overlooked this critical January 15th
5 report in his report, and it's unfortunate, Your
6 Honor, that the examiner is unable to properly
7 identify who the interested board members were with
8 respect to that vote. The examiner simply concludes
9 that Lucia Hadley was disinterested and concludes
10 that with no factual or legal analysis whatsoever.

11 Our evidence today is going to fill the
12 gaps created by the examiner's admissions. In
13 short, we believe the Court will be satisfied that
14 the parties truly were adversarial in their
15 negotiation and approval of the settlement
16 agreement.

17 Finally, Your Honor, notwithstanding that
18 a finding by the Court that the compromise was in
19 the best interest of FOA -- notwithstanding that a
20 finding that approval by FOA was fair to FOA is not
21 part of the 9019 inquiry, we are confident that the
22 Court will conclude that the settlement agreement is
23 both fair to the debtors and FOA. Thank you, Your
24 Honor.

25 MR. DONELAN: Good morning, Your Honor.

1 John Donelan appearing on behalf of the SLC and the
2 FOA. Your Honor, the FOA is here by two witness --
3 and will present the testimony of two witnesses,
4 William Reichenbach and James Brungart in support of
5 the joint motion. Mr. Reichenbach is a member of
6 the FOA board of directors and the special
7 litigation committee. Ms. Brungart is a member of
8 the special litigation committee only. The third
9 member of the committee, Martina Hernandez, is not
10 here today as she was recently employed and cannot
11 miss work.

12 The evidence will show that the members
13 of SLC worked very hard to educate themselves on FOA
14 financial issues and legal issues in an effort to
15 settle the outstanding legal problems it had, that
16 FOA had with Gordon Properties and CSI. These
17 problems were complicated and required the
18 assistance of the Court appointed mediator, Judge
19 Kevin Huennekens, to assist the parties in settling
20 the matter. The evidence will set forth the actions
21 that were taken on behalf of the members of the SLC
22 to educate themselves to be in a position to
23 adequately and competently represent the unit owners
24 of FOA in negotiating the settlement.

25 The evidence will also show in this case

1 the actions of the SLC to attempt, without the
2 assistance of Judge Huennekens, to settle the case
3 which proved to be unsuccessful. It will also --
4 these witnesses will also provide evidence of the
5 mediation process, how it took place, how it was
6 negotiated and ultimately what was decided.

7 Finally, there will be evidence, Your
8 Honor, given of the settlement and the ultimate
9 memorialization of that settlement in a typed
10 agreement dated January 9th of 2013. The testimony
11 will also include the specifics of the two town hall
12 meetings that were held on January 10th, 2013 and
13 February 27, 2013 at which time members of the SLC
14 and its counsel, myself, provided information to the
15 unit owners of the settlement so that unit owners
16 would know the specifics of the settlement and would
17 understand the rationale for entering into this
18 settlement.

19 We hope that at the end of the
20 presentation, that Your Honor will see fit to
21 approve this joint settlement. Thank you, Your
22 Honor.

23 JUDGE MAYER: Thank you.

24 MR. JONES: Good morning, Your Honor.

25 This case is about a failure of undivided loyalty.

1 Before the Court is a proposed settlement agreement
2 between Gordon Properties and FOA that will end six
3 years of litigation between the parties. However,
4 unfortunately, the evidence that you will hear today
5 will show that that settlement agreement was a
6 product of process and procedures that were deeply
7 flawed, and imbued with severe conflicts of interest
8 that were never fully cured by the settlement
9 process. And the U.S. Trustee will ask, based on
10 the evidence that you will hear today, that the
11 settlement agreement be disapproved.

12 The conflicts at issue in this case began
13 with the very first board meeting in which Mr. Sells
14 was elected president and in which he served with
15 three other members who are affiliated with Gordon
16 Properties. The evidence will show that this first
17 board meeting, they repealed a policy resolution
18 which effectively increased the ability of Gordon
19 Properties to have control over the board.

20 And at that first meeting, they also made
21 the decision to terminate long-standing counsel that
22 had represented FOA against actions -- in actions
23 and litigation against Gordon Properties. The vote
24 at this meeting required the vote of members of
25 Gordon Properties.

1 Just a few days after that initial board
2 meeting, you will learn that the nonaffiliated
3 directors, the directors that were not affiliated
4 with Gordon Properties, moved to hire counsel, their
5 former counsel, to argue matters that were set for a
6 pending appeal and pending trial, which both matters
7 had been fully briefed and fully argued and ready to
8 go that just need counsel to appear. These motions
9 were defeated by a vote of 4 to 3 with Gordon
10 Properties affiliated directors voting down the
11 nonaffiliate directors, and the evidence will show
12 that the effect of this was to deny FOA counsel of
13 its choice in litigation against Gordon Properties.

14 Five days after the initial Gordon
15 meeting on June 24th, the special litigation
16 committee was created and the conflicts of interest
17 continued. You'll learn that Mr. Sells, who is
18 president of the board of FOA and affiliated with
19 Gordon Properties, moved to create the special
20 litigation committee. You will learn that the
21 special litigation committee was tasked with
22 negotiating and handling litigation which included
23 litigation against Gordon Properties and that the --
24 essentially Gordon Properties picked the adversary
25 that it would have in the litigation with FOA and

1 who it would negotiate with. And the motion to
2 create the special litigation committee passed by a
3 4/3 vote with the four Gordon Properties affiliated
4 directors voting down the 3 nonaffiliate directors.

5 You'll further learn that after this
6 special litigation committee spent months
7 negotiating the agreement, on October 3rd, 2012,
8 there was another board meeting. And at that board
9 meeting held immediately after a prior election, at
10 11:04 at night, a motion was put forward to change
11 the membership of the special litigation committee.
12 And you will learn that no advanced notice of this
13 meeting was given, that the vote to change the
14 special litigation committee passed 4 to 1. And if
15 none of the Gordon Properties affiliated directors
16 had voted on it, the motion would have failed by a 1
17 to 1 tie.

18 You will further learn that the product
19 of that meeting was the settlement agreement or the
20 product of the work of the special litigation
21 committee was the settlement agreement before this
22 Court. You will learn that the requirements of
23 Virginia law required that the committee be composed
24 of all board members and the special litigation
25 committee was not. And the product of their

1 negotiations is the settlement agreement before the
2 Court. The agreement and the process to create the
3 agreement failed to comply with Virginia law. And
4 you'll also learn that the -- and see from the
5 evidence that the process was essentially controlled
6 by members of Gordon Properties.

7 And Mr. King argues that the January 15th
8 meeting essentially cures this. And he argues --
9 and I anticipate that he will argue that because the
10 directors that he considered to be disinterested,
11 two of them voted for the agreement, one of them
12 abstained, that in his view the settlement agreement
13 was approved under Virginia law. Though his
14 argument requires a finding that Ms. Lucia Hadley,
15 who also didn't vote at that meeting, was interested
16 rather than disinterested because if she was
17 disinterested, the motion would have failed and
18 these problems -- the corporate governance problems
19 would still be before the Court.

20 In order to find that she was interested,
21 you will learn that the debtor or that Gordon
22 Properties takes the position that she's interested
23 by virtue of the hopes that a pending appeal that
24 would be settled by the settlement agreement would
25 continue. And this view that she is disinterested

1 will require the Court to rely on a series of
2 inferences and speculate about the pending course of
3 future litigation. You'll learn that the settlement
4 agreement provided no direct pecuniary advantage to
5 Ms. Hadley and settled no lawsuits against her. And
6 the evidence will show that Ms. Hadley is
7 disinterested, was disinterested at the time of the
8 vote, and that the vote on the settlement agreement
9 of January 15th failed by a 2 to 2 vote.

10 Furthermore, even if the Court finds that
11 the vote was valid, there are still significant
12 concerns about the process underlying the creation
13 of the settlement agreement that require this Court
14 to carefully analyze and carefully scrutinize the
15 transaction. The vote was made without reliance on
16 the examiner's report which detailed the process
17 failures underlying the settlement agreement and the
18 flawed process -- and the January 15th vote is
19 essentially an attempt to cure the product of a
20 flawed process which remains unfair to FOA. And
21 this Court should, by virtue of that, choose to not
22 approve the settlement.

23 The Court has a duty to scrutinize
24 transactions to ensure that they're fair and
25 equitable. The facts will show that the

1 transaction's not fair and equitable. The U.S.
2 Trustee believes the settlement is not valid under
3 Virginia law and that the provisions of conflicts of
4 influence throughout the transaction that you will
5 learn today make it impossible for this Court to
6 determine whether the settlement was the product of
7 undivided loyalty being exercised by the directors
8 of FOA. And therefore, at the conclusion of the
9 evidence, the U.S. Trustee will ask this Court to
10 deny approval of the settlement. Thank you, thank
11 you.

12 JUDGE MAYER: All right. Thank you.
13 Before you go, Mr. Jones, you're with the Department
14 of Justice and you're assigned to the U.S. Trustee's
15 office temporarily?

16 MR. JONES: No, I'm permanently with the
17 U.S. Trustee's office. The U.S. Trustee's office,
18 as the Court, I'm sure, knows, is a component of the
19 Department of Justice designed to ensure the fair
20 administration of the bankruptcy system.

21 JUDGE MAYER: If I recall, Mr. King, Mr.
22 Sells is employed by the Department of Justice?

23 MR. KING: He is, Your Honor.

24 JUDGE MAYER: And what division is he in?

25 MR. KING: The voting rights section of

1 the Civil Rights Division.

2 JUDGE MAYER: And that's not connected
3 with Mr. Jones or the United States Trustee's
4 office, is that right?

5 MR. JONES: It is not connected with the
6 U.S. Trustee's office, Your Honor.

7 JUDGE MAYER: Very good.

8 MR. KING: That's my knowledge, other
9 than it's part of the Department of Justice.

10 JUDGE MAYER: Which is not a small
11 organization.

12 MR. JONES: I believe we have 30,000
13 employees.

14 JUDGE MAYER: I just want to make sure
15 that's clear as there are so many issues arising in
16 the case, that there is no connection simply by his
17 employment in this instance.

18 MR. JONES: I understand, Your Honor.
19 Thank you.

20 JUDGE MAYER: Mr. Guzinski, did you want
21 to ask something?

22 MR. GUZINSKI: Just for the interest of
23 disclosure, Your Honor -- and nobody knows this and
24 it will become apparent why. I had volunteered to
25 be a tester for the Civil Rights Division on fair

1 housing law. I have not gone out. I did go to
2 training. But I'm not involved as a lawyer and the
3 Department asked for volunteers. Just if there is
4 any concern, I will turn down any request, but I
5 wanted everybody to know that I had had some
6 interaction with the Civil Rights Division.

7 JUDGE MAYER: But not with Mr. Sells or
8 anyone related to him?

9 MR. GUZINSKI: No, not with Mr. Sells,
10 no. In fact, they were all attorneys who I met
11 with.

12 JUDGE MAYER: Thank you. Is there any
13 objection?

14 MR. KING: No, Your Honor. Mr. Sells
15 advises me that that's part of the housing section
16 and not the voting rights section.

17 JUDGE MAYER: All right. Very good.
18 Thank you, Mr. Jones. I would note just for the
19 record there are about 36 people here. I didn't
20 count them particularly. Most of them appear to be
21 homeowners and many of whom have been here in the
22 past and of course some of those I recognize as
23 principals of Gordon Properties. Counsel for Gordon
24 Properties is here, general counsel. And I note in
25 the back sitting there quietly is the examiner who

1 is simply observing, I assume, what is transpiring
2 here today.

3 MR. KING: I think Your Honor meant to
4 say general counsel for FOA.

5 JUDGE MAYER: FOA is what I meant. Did
6 anyone else want to make an opening statement? I
7 think everyone has spoken. If so, Mr. King, do you
8 want to proceed?

9 MR. KING: The debtors would call Bryan
10 Sells, Your Honor.

11 JUDGE MAYER: Mr. Sells, come forward,
12 please, to be sworn.

13 MR. KING: I assume the joint exhibits,
14 Your Honor, are on the witness table?

15 JUDGE MAYER: They will be.

16 MR. JONES: And just so the record is
17 clear, the exhibits have already been moved into
18 evidence. I saw the Court's memorandum opinion and
19 my reading was that was the effect of it.

20 JUDGE MAYER: Well, let's swear Mr. Sells
21 and then we'll address the exhibits.

22 Whereupon,

23 BRYAN SELLS,
24 was called as a witness by counsel, and having been
25 duly sworn by the Court Deputy, was examined and

1 testified as follows:

2 JUDGE MAYER: Have a seat on the witness
3 stand, Mr. Sells. Now, with respect to the
4 exhibits, we have the joint exhibits of Gordon
5 Properties and FOA and they're numbered 1 through --

6 MR. DONELAN: 11.

7 JUDGE MAYER: 1 through 11. Was there
8 any objection to any of those?

9 MR. JONES: None from the U.S. Trustee,
10 Your Honor.

11 MR. KING: No objections were filed, Your
12 Honor.

13 JUDGE MAYER: Then those will be
14 received.

15 (Joint Exhibit Nos. 1-11
16 were received in evidence.)

17 JUDGE MAYER: And then we have the
18 United States Trustee's Exhibits number 1 through --

19 MR. JONES: I believe 34, Your Honor.

20 JUDGE MAYER: -- 34. Is there any
21 objection to those?

22 MR. KING: Well, we did, Your Honor, but
23 I understand Your Honor's memorandum opinion
24 yesterday, and I think what Your Honor suggested is
25 that we would -- that the Court would preserve any

1 objection if and when the time arose. And so I
2 would request that we just deal with those in the
3 course of the presentation, Your Honor.

4 JUDGE MAYER: Okay. Do you have any
5 particular objections to any of them?

6 MR. KING: Relevance and hearsay, Your
7 Honor.

8 JUDGE MAYER: All right.

9 MR. KING: There may be authentication.
10 I don't think there is an authentication objection.
11 I would have to go through them but clearly
12 relevance and hearsay.

13 JUDGE MAYER: I'll address that later.
14 The order requires written objections. These were
15 filed by the 16th. Your objection was on timeliness
16 and I overruled it by saying that they were timely
17 and that was the extent of it. What I also wanted
18 to preserve was if you were unfairly surprised by
19 any of the issues that the United States Trustee may
20 raise, that you might not have been aware of before
21 and it would be unfair for them to present that
22 because of the timing of these items, that I would
23 preserve your ability to object to that. That was
24 the intention. It wasn't the intention to give you
25 a waiver on specific objections.

1 But I will go ahead and we'll go forward
2 and you'll need to look at your exhibits and we'll
3 address those individually as they come in and I'll
4 make whatever rulings I need to at that time.

5 MR. KING: The parties were never served
6 with exhibits, Your Honor. I believe that the U.S.
7 Trustee references --

8 JUDGE MAYER: I will take them up.

9 MR. KING: Thank you, Your Honor.

10 EXAMINATION BY COUNSEL FOR MOVANT

11 BY MR. KING:

12 Q. Good morning, Mr. Sells. Could you
13 identify yourself for the record, please?

14 A. My name is Bryan Sells.

15 Q. And you are the managing member of Gordon
16 Properties, LLC, the debtor in this case?

17 A. Yes, I am.

18 Q. If you would look, please, at the joint
19 exhibits, Exhibit Number 1.

20 A. Okay, I'm there.

21 Q. Can you identify that for me, Mr. Sells?

22 A. This is the signed settlement agreement
23 between FOA, Gordon Properties, Gordon Residential
24 and CSI.

25 Q. And you were the person who negotiated

1 that settlement agreement on behalf of the debtor
2 entities?

3 A. I was primarily the negotiator, yes.

4 Q. And could you confirm today that the
5 settlement agreement was in fact approved by all of
6 the members of Gordon Properties?

7 A. It was.

8 Q. Now, I would like to take you through,
9 Mr. Sells, the mediation process that led up to this
10 settlement agreement. You'll recall, going back
11 about a year before the settlement agreement was
12 entered into, that there was a mediation that was
13 directed by Judge Ellis in the District Court. Do
14 you recall that?

15 A. I do, yes.

16 Q. And that mediation occurred before Judge
17 Mayer's confirmation of the 2000 election results,
18 is that right?

19 A. Well, that's -- 2011 election results,
20 yes. The mediation took place some time between
21 October 2011, at which we had an election, and June
22 15th, which is when Judge Mayer's order came out
23 certifying the results of that election.

24 Q. And do you recall who on behalf of First
25 Owners Association participated in that mediation?

1 A. My recollection is that it was the whole
2 board, although it's entirely possible that one or
3 two members were absent, but it was the entire board
4 or it was open to the entire board and I believe at
5 least five or six people were there from the board
6 and they were represented by Jennifer Sarvadi and
7 Michael Dingman.

8 **Q. When you say the board, you're talking**
9 **about the former board that sat prior to the 2011**
10 **election, is that right?**

11 A. That's right. I would call them the
12 holdover board that had been in place essentially
13 since 2005 or '6, depending upon which members or
14 the people appointed to fill the vacancies of people
15 who were elected in 2005 or '6.

16 **Q. And that mediation session did not result**
17 **in a settlement, is that right?**

18 A. That's correct.

19 **Q. Now, I want to fast forward to just after**
20 **the date that Judge Mayer entered his order**
21 **ratifying the results of the 2011 election. Do you**
22 **recall sending a letter or directing me as your**
23 **counsel to send a letter to Judge Ellis and Judge**
24 **Brinkema requesting that they reopen the mediation**
25 **process?**

1 A. Yes, I do.

2 Q. And do you recall that Judge Brinkema
3 conducted a status conference or a hearing on our
4 request for renewing the mediation?

5 A. That's my understanding, yes.

6 Q. And do you recall what FOA's response to
7 Judge Brinkema with respect to whether they would
8 participate in the mediation was?

9 A. What I recall is that FOA would not
10 participate in the mediation.

11 Q. And do you recall that you directed me as
12 your counsel to commence a settlement dialogue with
13 FOA by sending a specific settlement proposal to
14 them?

15 A. Well, we've been in that kind of dialogue
16 for seven years. There was nothing new there. But
17 so yes, after the mediation failed or after the
18 request for mediation failed in front of Judge
19 Brinkema, we continued to work party to party
20 without a mediator to try to settle these things.

21 Q. And do you recall that those settlement
22 offers were sent to Mr. Donelan as counsel for the
23 SLC and then subsequently to both Mr. Donelan and
24 Ms. Sarvadi?

25 A. You know, honestly, I don't remember who

1 would have received those settlement proposals but
2 it was certainly after the time that -- or right
3 around the time Mr. Donelan was coming on board as
4 counsel for the SLC and Jennifer Sarvadi was still
5 around as counsel for FOA and the SLC.

6 **Q. Did the debtors ever receive a written**
7 **response to those settlement proposals?**

8 A. Not that I'm aware of, no.

9 **Q. And then shortly thereafter, from a time**
10 **line, do you recall Judge Mayer's order directing**
11 **the parties to mediation and appointing Judge**
12 **Huennekens from Richmond as the mediator?**

13 A. Yes. I don't remember the exact date of
14 the order. Obviously the Court's record would show
15 what date that occurred. But in general terms, my
16 recollection is that we sent our offer in August and
17 then the mediation order came down in September.

18 **Q. And did the debtors in fact participate**
19 **in that mediation process?**

20 A. Well, both sides did, yes. Judge
21 Huennekens was selected as the mediator and both
22 sides attended that.

23 **Q. And do you recall whether there were any**
24 **negotiations between the parties leading up to the**
25 **first mediation session?**

1 A. There most likely were. We were in
2 negotiations all the time. So I don't remember any
3 specific ones as I'm sitting here right now but
4 yeah, we had dialogues going all throughout the
5 fall.

6 **Q. And do you recall how many mediation**
7 **sessions there were between the parties and Judge**
8 **Huennekens?**

9 A. There were two.

10 **Q. And how long did those last?**

11 A. All day. They were all-day affairs.

12 **Q. And do you recall the time line between**
13 **the first mediation session and the second mediation**
14 **session?**

15 A. I remember the second mediation session
16 happened in December and I think the first mediation
17 session either happened in early December or in
18 November. There was a process, as is common in
19 mediation, of exchanging papers with the mediator
20 and confidential statements and that takes a while.
21 So there was a bit of a delay and also scheduling
22 delays between the appointment of the mediator and
23 the actual sit-down mediation process. And as I
24 recall, the mediation was also delayed slightly
25 because I had a trial in the fall.

1 Q. And do you recall that between the two
2 formal mediation sessions with the mediator, that
3 the parties actually continued the negotiation
4 process during that period?

5 A. Yes, of course.

6 Q. And can you tell the Court whether an
7 agreement was reached at the conclusion of the
8 second mediation session?

9 A. It was reached late in the day on the
10 second mediation session, as I recall.

11 Q. And that agreement was then subsequently
12 memorialized in the written agreement that you
13 identified as Exhibit 1?

14 A. Yes. There were a few weeks of back and
15 forth between counsel for both sides on hammering
16 out the fine points. And we had arrived at a term
17 sheet essentially with Judge Huennekens and that had
18 to be memorialized in this agreement which is
19 Exhibit 1.

20 Q. And do you recall that Mr. Donelan was
21 forced to have to deal with me while I was in Europe
22 those last two weeks of December?

23 A. Now that you mention it, yes. I think
24 you were visiting family.

25 Q. Correct. Now, let me focus on the

1 settlement process and the settlement agreement
2 itself, Mr. Sells. In the course of evaluating
3 whether the debtors should enter into the
4 settlement, did you consider -- and let me back up.
5 At this time, you recall that -- I believe at this
6 time most, if not all, of the actual litigation of
7 the disputes between the parties here in the
8 bankruptcy court had concluded at that time. Is
9 that your recollection?

10 A. Can you repeat that?

11 Q. The various adversary proceedings and
12 contested matters that were being litigated between
13 the parties in this Court, at the time that we
14 engaged in the mediation with Judge Huennekens, had
15 concluded; in other words, everything was at that
16 point on appeal to the district court?

17 A. Well, I think that's a matter of
18 characterization. We had a pending request for
19 attorney's fees that was still pending, there was
20 the matter of the appeal bond that we went back and
21 forth on a number of times and I think is still
22 pending. That was FOA's appeal bond of the judge
23 against FOA. So I think it's a matter of
24 characterization. But the substance of things I
25 think had -- I think it would be fair to say that

1 that those were mostly collateral matters in the
2 bankruptcy court and that most everything else was
3 in the district court.

4 **Q. And in evaluating, on behalf of the**
5 **debtor's estate, whether you would enter into this**
6 **settlement, did you consider the likelihood of**
7 **success on the various pending matters, those both**
8 **pending -- the collateral matters that you mentioned**
9 **in the bankruptcy court and those matters that were**
10 **on appeal?**

11 A. Well, absolutely. We discussed that with
12 Judge Huennekens, we discussed it with you, we
13 looked at the likelihood of success not only at the
14 district court level but at the Fourth Circuit level
15 and it's absolutely something that played into our
16 negotiations.

17 **Q. And what was your view with respect to**
18 **that?**

19 A. My view was that we were ultimately
20 likely to prevail. I thought Judge Mayer wrote an
21 excellent opinion on a claim objection and that that
22 was not likely to be disturbed. And there were some
23 other matters that I thought we would prevail on as
24 well, if not at the district court level, then at
25 the Fourth Circuit.

1 Q. Now, let me ask you about the costs that
2 were being incurred by the debtor's estate with
3 respect to the litigation. And I want to remind you
4 of the various pieces of the litigation that were
5 litigated in this Court and then at the time period
6 we were appeal, you'll recall that we had a trial on
7 the stay violation and Judge Mayer's memorandum
8 opinion in that regard and that was on appeal to the
9 district Court.

10 A. Yes.

11 Q. And we had the proof of claim that had
12 been filed by FOA on the assessment of the
13 restaurant unit that was subject to the claim
14 objection. That was the subject of the memorandum
15 opinion that you identified. That was on appeal in
16 the district Court?

17 A. Correct.

18 Q. There had been a motion to dismiss by FOA
19 that was overruled by the Court that was appealed
20 and the appeal was denied. Do you recall that?

21 A. Yes.

22 Q. There was a motion for substantive
23 consolidation by FOA. Judge Mayer entered a
24 memorandum opinion on that. That was appealed to
25 the District Court. Judge Brinkema reversed the

1 finding and remanded it to the Bankruptcy Court and
2 that was pending in the Bankruptcy Court at the time
3 of the mediation. Do you recall that?

4 A. Yes, I do.

5 Q. And there were appeals, as we said, with
6 respect to all of these. So my question for you is,
7 in evaluating whether the settlement should be
8 approved by the debtors, did you evaluate the costs
9 that had been incurred up to that date and the costs
10 that you would anticipate having to be incurred in
11 the future should the appeals be carried through to
12 at least the Fourth Circuit?

13 A. Of course. That was probably our primary
14 consideration, the cost. That's why we were at the
15 table.

16 Q. And was it the debtor's conclusion that
17 it was in their best interest to stop the litigation
18 in order to avoid those costs?

19 A. Ultimately, yes. I mean, it depends on
20 the contents of the settlement agreement, right.

21 Q. Understood.

22 A. But that was a very heavy factor weighing
23 into it, absolutely.

24 Q. Let me turn, Mr. Sells, to -- FOA at that
25 time in fact had a judgment against -- Gordon

1 **Properties had a judgment against FOA for the stay**
2 **violation, is that correct?**

3 A. That's correct.

4 **Q. Did you, on behalf of the debtors'**
5 **estate, evaluate the collectibility of that**
6 **judgment?**

7 A. Sure, yeah. And that's why the
8 settlement was ultimately structured the way it was.
9 I was well aware, because of my knowledge of FOA's
10 finances, that a large onetime payment would be
11 difficult to collect and so we spread it out over
12 time.

13 **Q. And why would it have been difficult to**
14 **collect?**

15 A. Because one can only increase condo fees
16 by so much before people stop paying them.

17 **Q. Briefly describe for the Court what the**
18 **financial condition of FOA was at that time.**

19 A. It was dire. We came close to having to
20 turn off the lights. This was in the fall of 2012.
21 I would say it was utter crisis mode from about
22 September through the end of the year while we were
23 negotiating all of this.

24 **Q. The balance sheets of FOA carry a net**
25 **unit owner's equity position in the condominium. At**

1 **that time do you recall what the net unit owner's**
2 **equity in the condominium was?**

3 A. Yes. It's called unappropriated owner's
4 equity. It was a negative -- I want to say about
5 minus 1.1 million thereabouts and what that
6 represents is the cumulative annual deficits. So if
7 the association spends a million dollars but only
8 takes in 800,000, that minus 200,000 would show up
9 ultimately in unappropriated members' equity and
10 that number should be a positive number, not a
11 negative number.

12 And you could think of that, if it's a
13 positive number, as a rainy day operating fund. But
14 as a negative number, it means that there are other
15 positive numbers in your balance sheet that aren't
16 accurate, aren't supported by actual cash.

17 **Q. Let me turn to other aspects of the**
18 **settlement agreement and your analysis with respect**
19 **to how they affected the determination of whether**
20 **the settlement made business sense to the debtors.**
21 **First of all, the theme throughout the settlement**
22 **agreement -- and it's addressed in a number of**
23 **different sections -- has to do with resolution of**
24 **the years of dispute regarding the methodology of**
25 **assessing the units at the condominium. Do you**

1 **recall that?**

2 A. Yeah. That's the heart of the
3 settlement, yes.

4 **Q. And that resolution, although it affected**
5 **all units, from the debtors' perspective, that was**
6 **primarily with respect to the assessment of the**
7 **restaurant unit, is that right?**

8 A. Right. I mean, we've been fighting now
9 for, whatever it is, five, six, seven years, about
10 how to assess the restaurant unit and while the
11 assessment methodology and amount is unknown, the
12 restaurant is not marketable. And we saw that in
13 this very case where we had an approved contract for
14 sale of the restaurant unit that fell through
15 because of the uncertainty over the amount of the
16 assessments on that unit going forward.

17 And so one of the critical elements of
18 the settlement agreement for us is getting some
19 visibility on the assessments on the restaurant unit
20 at an economically feasible level. And that's what
21 the settlement agreement does.

22 **Q. In your view, Mr. Sells, does the**
23 **assessment methodology that is set out in the**
24 **settlement agreement track the determinations of the**
25 **proper assessment methodology enunciated by Judge**

1 **Kemler in the Alexandria Circuit Court, Judge Mayer**
2 **here in the claim objection, and the condominium**
3 **instruments and condominium act itself?**

4 A. Yes, I believe it does. We worked very
5 hard on that budget with all of those documents in
6 front of us and I do think it fairly and accurately
7 reflects all of those things.

8 Q. Now, tell me, there is, in one section of
9 the settlement agreement that deals with the
10 assessment of the street front unit, there is a cap
11 that is inserted. I can't remember now if it's
12 25,000 or 30,000, one of those numbers, but there is
13 a cap with respect to the increases going forward
14 with the new budgets with respect to the assessment
15 of the street front unit. Can you tell me first
16 what the purpose of that cap was?

17 A. Right. Well, the purpose of some kind of
18 a cap is to -- from our perspective, is to prevent
19 the kind of abuses that led up to all of this
20 litigation. Every unit owner at 4600 wants their
21 condo fees to be as low as possible and one way to
22 do that is to stick somebody else with that condo
23 fee and even under the template that we came up
24 with, some future board could decide, well, let's
25 make the restaurant unit pay for some expense that

1 it shouldn't pay for.

2 Let's say electricity just to give an
3 example. And they could put that expense in the
4 bucket that the restaurant has to pay for and it
5 would cause the condo fee to exceed that cap. And
6 so the cap is designed to put some constraints on
7 future boards from, again, abusing the process and
8 sticking the restaurant with an inappropriate
9 assessment.

10 **Q. Now, let's talk about what the actual**
11 **effect of that cap is and you're aware that there**
12 **has been some chatter that while there was a**
13 **specific provision in the settlement agreement that**
14 **allows the association to exceed that cap, but it**
15 **requires Gordon Properties' consent not to be**
16 **unreasonably withheld and some question about**
17 **whether it makes the ability to increase that cap**
18 **illusory. Can you explain in actuality how that cap**
19 **works when considered in connection with the**
20 **operative provisions of assessment under paragraph**
21 **10 of the settlement agreement?**

22 A. Right. So paragraph 10 is the one I
23 think you're referring to that refers to this
24 template. And so if a budget is prepared in
25 accordance with the template in a way that has the

1 net effect of exceeding the cap -- and I think one
2 obvious reason why that might happen would be
3 inflation -- then it would, in my view, be
4 unreasonable to object to a proper budget that
5 exceeds the cap. So in essence, the cap is designed
6 to prevent improper budgeting. I think that answers
7 your question.

8 Q. I think it does. Thank you, Mr. Sells.
9 Let me now turn to what was an area that was of
10 concern to the examiner and it's the provision in
11 the settlement agreement that requires Judge Mayer
12 to vacate his order determining the rights of a
13 nonnatural unit owner with respect to the candidates
14 it can seat on the board.

15 Can you describe the thought process that
16 you went through with respect to -- you and FOA went
17 through with respect to putting that provision in
18 the settlement agreement, why it's there and how
19 it's intended to work in the context of the
20 settlement and what you found -- why you found it
21 important for purposes of the settlement?

22 A. Right. I think it's important for a
23 couple of reasons and as the voting rights attorney,
24 I'll start with the voting reason and that is, you
25 know, condominium associations are little

1 democracies. And I believe strongly that
2 condominium unit owners should be able to express
3 their will in who should govern them just as we do
4 out in the quote, unquote real world and this puts
5 constraints on that.

6 So, for example, in the 2011 election,
7 the one that we talked about earlier, candidates
8 affiliated with or candidates opposed to the current
9 board actually got the seven highest votes but
10 because of an artificial limitation which is related
11 to this provision, candidates who got much lower
12 numbers of votes were actually seated and had
13 control over certain parts of the board. And that
14 bothers me from a small D democratic perspective.

15 But there is also an economic rationale
16 for it, which is that these kinds of limitations
17 make the units themselves less marketable,
18 particularly to a large investor. So if I'm a big
19 company -- let's say, for example, that the real
20 estate market takes off again and flipping units
21 becomes in vogue again as it was in the early 2000s.
22 As an investor, I might want to come in and buy a
23 whole floor and fix them up and try to sell them but
24 if I can only have one seat on the board, I'm going
25 to be less likely to do that because I can't protect

1 my investment.

2 And so as I read Judge Mayer's ruling, it
3 would prevent a unit owner who owns, let's say, 95
4 percent of the units from having more than one seat
5 on the board. And I realize that that may be an
6 extreme reading of Judge Mayer's order but that's
7 how I read the order. And so I think that it has an
8 economic impact on all the units, not just Gordon
9 Properties units but all the units because of that.
10 It's essentially a poison pill provision.

11 And as we were going through the
12 negotiations, I took a couple of approaches to it.
13 I said, well, we could carve it out of the
14 settlement all together because I think we'll win on
15 appeal of this. And FOA said, no, no, no. We're
16 not going to carve it out. We want this to settle
17 everything. We don't want to carve it out. I said,
18 okay, let's get Judge Mayer to clarify the rule such
19 that it doesn't -- my extreme reading of it doesn't
20 apply and all it requires is for that big investor
21 to set up shell corporations.

22 So someone could own -- which happens all
23 the time. Someone could own one corporation per
24 unit and then, by virtue of those, multiple
25 corporations controlled more than one seat on the

1 board. And I said, no, no, no, we don't want to do
2 that either. And of course if we go down that
3 route, I'm going to have to create more corporations
4 and that's going to involve some transaction costs
5 and I'm going to be needed to be compensated for
6 those transaction costs. And it also impairs the
7 value because the big investor coming in would also
8 have to incur the transaction costs of those
9 multiple entities in order to protect their
10 investment on the board.

11 So they didn't want to pay for that at
12 all, so the way we got around it ultimately, in a
13 way that was the least cost to FOA and yet preserved
14 everything, was to vacate it and let future people,
15 if it arises in the future, challenge it
16 individually. And that would also keep FOA out of
17 the fight.

18 I have always questioned why FOA, as the
19 corporation, had an interest in choosing some board
20 members over others, particularly when the votes
21 lined up as they did. I mean, I could see FOA
22 coming in saying that small D democracy compels FOA
23 to say that the top vote getter should win. But in
24 this case, I've always felt that it was improper for
25 FOA to weigh in on what was essentially a dispute,

1 an election dispute between candidates about who
2 should sit on the board. People voted the highest
3 number of vote getters should get on the board
4 subject, of course, to the qualifications that are
5 set out in the documents that everyone buys into.

6 **Q. And then lastly, if you could comment on**
7 **how this settlement agreement promotes finality not**
8 **only with respect to the dispute between the debtors**
9 **and FOA, which I think you've already testified to,**
10 **but with respect to this particular Chapter 11 case**
11 **and what the effect of entering into the settlement**
12 **will be.**

13 A. Well, I think it is final. I mean,
14 that's the effect of it, that it would allow us to
15 move forward, get a plan together and get out of
16 Chapter 11, is I think the whole point. And
17 finality was also key from FOA's side. I mean, as I
18 just said, I was willing to carve out the
19 qualifications dispute. They didn't want to do it.
20 They wanted it to be over. They wanted it to be
21 clear. And so that's the way it was structured.

22 **Q. Now, let me turn -- you've been**
23 **testifying now with respect to your role as the**
24 **representative of the debtor. I would like you to**
25 **switch and talk to the Court about your role with**

1 FOA and of course it starts with -- well, we know
2 what your role with FOA has been for many years but
3 specifically from a directorship. You were elected
4 to the board, what, following -- at the 2011
5 election but actually were not seated until Judge
6 Mayer entered his order in June of 2012 ratifying
7 the election result, is that correct?

8 A. That's correct.

9 Q. And on the board, there are I think what
10 are generally accepted as three Gordon Properties
11 related board members. Can you tell me who they are
12 and in what capacity they sit on the board?

13 A. Sure. My cousin, Lindsay Wilson, she's
14 there in the front row, she is the Gordon Properties
15 representative. My sister, Elizabeth Brandy
16 Greenwell is also in the front row there. She's the
17 Gordon Residential representative. And I own a unit
18 individually that I purchased on my own with my own
19 funds several years ago, unit 703, and so I'm on
20 there as the owner of that unit.

21 Q. And each of the three representatives of
22 the Gordon Properties-related entities that you've
23 just identified, at the 2011 election, were elected
24 for a two-year term, is that right?

25 A. That's correct.

1 Q. And they were elected to a two-year term
2 under Judge Mayer's order because they were the top
3 three vote getters from the vote of the unit owners?

4 A. Right. Lindsay was the top vote getter.
5 I think I was number two and Brandy was number
6 three.

7 Q. And you conducted an organizational
8 meeting shortly after Judge Mayer's order ratifying
9 the election and you, Mr. Sells, were elected as
10 president of the board, is that right?

11 A. That's right.

12 Q. And you serve as the president today, is
13 that right?

14 A. I do.

15 Q. I would like you to look at Exhibit 2 and
16 can you confirm for me that that is in fact a true
17 copy of the FOA bylaws?

18 A. It is.

19 Q. I would like you to look at Exhibit 3.
20 And can you identify what this is for the Court?

21 A. This is Administrative Resolution
22 2012-06. It's a resolution appointing special
23 litigation committee adopted October 3rd, 2012.

24 Q. And October 3rd, 2012 was in fact the day
25 of the 2012 election?

1 A. That's correct.

2 Q. And this resolution was adopted at the
3 organizational meeting conducted that evening
4 immediately following the election?

5 A. That's correct.

6 Q. And again, just to confirm, at that
7 election, none of the Gordon Properties-related
8 seats were up for election. You had been elected
9 for a two-year term. It was only the seats held by
10 the three non-Gordon Properties-related members, is
11 that right?

12 A. I think that's right, yes.

13 Q. Now, why did you propose and the board
14 adopted this resolution to appoint a special
15 litigation committee? What was the purpose of it?

16 A. Are you asking now generally or this
17 specific one?

18 Q. Well, let's talk in general as to why you
19 felt a special litigation committee was necessary.

20 A. Because the board -- because I could
21 not -- the Gordon Properties-related board members
22 could not have any -- could not direct FOA's counsel
23 in litigation with FOA. So we wanted to distance
24 ourselves from that process so that it would be
25 truly adversarial and that FOA would have its own

1 authority and way of litigating on the other side.
2 That's sort of generally what a special litigation
3 committee is for in this instance is to create a
4 disinterested body to control litigation with Gordon
5 Properties.

6 **Q. And so now let's get specific with**
7 **respect to this resolution and how it is or why it**
8 **is that you identified the specific individuals that**
9 **were named to go on the committee.**

10 A. Okay.

11 **Q. And if you can tell us who they are.**

12 A. Right. So the board composition changed
13 as a result of the 2012 meeting. Alex Zoghaib, who
14 had previously been on the special litigation
15 committee, who is sitting there right in the front,
16 as I recall didn't run for reelection and so at that
17 time, he was no longer a board member. I believe
18 Betty Gilliam, who is also in the second row, I
19 believe she ran and did not win election. But I
20 could be wrong, Betty, whether she ran or not, but
21 my recollection is she ran for election and in the
22 2012 election she did not win.

23 And on the flip side, we had some
24 disinterested board members who were elected and so
25 I thought it was imperative that we reconstitute the

1 SLC so that Mr. Zoghaib, who was no longer anything
2 other than a unit owner, would not be in control of
3 the litigation for FOA so that Betty Gilliam, who
4 had been defeated for election, would not be in
5 control of FOA's litigation posture, and so that the
6 SLC would be constituted by the board members. We
7 now had three disinterested board members and --

8 **Q. And who were they?**

9 A. They were Jonathan Halls, at this time --

10 **Q. Right.**

11 A. They were Jonathan Halls, Bill
12 Reichenbach and Martina Hernandez.

13 **Q. So those were the three disinterested**
14 **board members at that time and so how did you -- how**
15 **is it that the SLC -- who then became members of the**
16 **SLC and how did that occur?**

17 A. Right. So I went into this meeting with
18 blanks in this resolution which I am virtually
19 certain is Jennifer Sarvadi's edits to the original
20 resolution, only with blanks because I didn't know,
21 going into the election, who would be elected on
22 that night. But at the organizational meeting, by
23 then we knew who had been elected and I made the
24 motion to appoint Jonathan Halls, Bill Reichenbach
25 and Martina Hernandez to the committee to fill those

1 three blanks.

2 And Jonathan Halls said that he didn't
3 have the time to serve and would not do so. So then
4 we had a discussion about who should fill his space
5 on the committee and we ultimately selected Jane
6 Brungart, who is there in the second row, to serve
7 alongside Bill and Martina. Jane had been on -- was
8 then on the special litigation committee and so she
9 would just continue on.

10 Q. So we have you, Lindsay Wilson, Elizabeth
11 Greenwell, Martina Hernandez, Bill Reichenbach and
12 Jonathan Halls. Who is the seventh board member?

13 A. I wasn't paying attention --

14 Q. Was it Lucia Hadley?

15 A. Oh, it was Lucia Hadley.

16 Q. Thank you. And why didn't the board
17 appoint Lucia Hadley to the special litigation
18 committee?

19 A. Lucia Hadley was not a disinterested
20 director.

21 Q. I'll get back to that in a moment. I'm
22 going to ask you to look at Exhibit 4. And can you
23 identify -- I'm sorry, before we go there, what was
24 the vote at the organizational meeting to appoint
25 the SLC, do you recall?

1 A. I think it was 4 to 1. Let's see, there
2 were five of us there. Was it 4 to 1 or -- I think
3 it was 4 to 1. It's in the minutes. I don't recall
4 exactly what that vote was.

5 Q. And at the meeting, there were two
6 disinterested board members, if my recollection is
7 correct, Martina Hernandez and Jonathan Halls, is
8 that right?

9 A. That's correct.

10 Q. And do you recall how they voted?

11 A. Jonathan voted against and Martina voted
12 in favor.

13 Q. So assuming that the Gordon
14 Properties-related board members would be considered
15 interested with respect to the appointment of the
16 SLC, then the, quote, disinterested board members
17 voted one to one?

18 A. If you make that assumption, and I don't.

19 Q. Understood. I know you don't agree with
20 it. I'm just asking you to make that assumption.

21 A. Yeah.

22 Q. So then if you could look at Exhibit 4
23 and if you could first identify that for us.

24 A. These are the revised draft minutes of
25 the October 16th, 2012 board meeting.

1 Q. I'm going to ask you to turn specifically
2 to page 9 and about a third of the way down, there
3 is a line item titled ratification of actions taken
4 at October 3rd meeting. Do you recall that? Do you
5 see that?

6 A. Yes.

7 Q. And I think it says that Ms. Wilson
8 actually moved for ratification of the actions taken
9 at the organizational meeting with respect to
10 appointing the SLC, is that correct?

11 A. That is correct.

12 Q. Can you tell me why that motion was
13 placed at the October 16th board meeting?

14 A. Yeah. FOA's counsel, Ms. Sarvadi, had
15 raised some questions about what business could be
16 transacted at an organizational meeting, so
17 ratifying that was the way to solve that.

18 Q. And if you would turn back to page 1 to
19 refresh your recollection, can you confirm that all
20 directors were present at that meeting?

21 A. Well, that vote was 5 to 2. There were
22 seven directors so we must have all been present.

23 Q. Thank you. You answered the next
24 question. And it identifies in there who voted
25 which way, is that right?

1 A. It does. It notes here that it was a
2 roll call, though. I believe I asked for the roll
3 call.

4 **Q. And it identifies who voted in favor of**
5 **the resolution and who voted against it, is that**
6 **right?**

7 A. That's correct.

8 **Q. I want to turn now to your statement that**
9 **Lucia Hadley is not disinterested. Tell me why, in**
10 **your view factually -- I understand it is a legal**
11 **conclusion but factually, why did you conclude that**
12 **Lucia Hadley was not disinterested?**

13 A. Because Lucia Hadley's conduct, along
14 with other board members, is what gave rise to
15 Gordon Properties' judgment against FOA in the
16 amount of I think \$277,000. And that was based on a
17 finding by Judge Mayer of a willful violation of the
18 law. Under our documents and I believe under
19 Virginia law, a willful violation of law makes a
20 director ineligible for indemnification and the
21 upshot of that is that Ms. Hadley could be held
22 personally liable for her conduct that gave rise to
23 that judgment, jointly with the other board members.

24 And in fact, FOA had a claim, had filed a
25 lawsuit based on Judge Mayer's findings at the time

1 of the October 3rd, 2012 meeting.

2 **Q. Can I ask you -- sorry to interrupt**
3 **you -- to real quickly look at Exhibit 11 and tell**
4 **me whether that is a copy of the complaint that was**
5 **filed by FOA against Lucia Hadley and the other**
6 **board members?**

7 A. It is.

8 **Q. While you're there -- okay. Anyway.**

9 A. Yeah.

10 **Q. Go ahead, Mr. Sells.**

11 A. And FOA may have other claims against
12 Ms. Hadley as well and the other board members but
13 just going on this particular claim, the judgment
14 that gave rise to Ms. Hadley's liability -- well, I
15 shouldn't say gave rise to. Well, maybe it did give
16 rise to her money exposure -- was at the time on
17 appeal. It may not have been on appeal at this
18 time. I don't remember exactly when the notice was
19 filed but it was not final. And as long as that
20 judgment is out there, and potentially after it's
21 gone, Ms. Hadley has potential liability to FOA
22 arising out of her own conduct.

23 So Ms. Hadley has a personal interest in
24 not settling the appeal of that judgment and,
25 rather, pressing it forward as far as it can go in

1 hopes of overturning it. And moreover, it's
2 particularly in her interest to do that because FOA
3 would be paying for it rather than Ms. Hadley.

4 **Q. Was there also -- you had mentioned that**
5 **there were claims against Ms. Hadley by FOA. Were**
6 **there claims against Ms. Hadley by Gordon Properties**
7 **itself?**

8 A. There were. Gordon Properties had, at
9 the time, filed a lawsuit, I believe at the time
10 filed a lawsuit. We certainly had damages arising
11 out of the same conduct.

12 **Q. Can I ask you to look at Exhibit 10 and**
13 **can you identify that that's the lawsuit that was**
14 **filed by Gordon Properties against Lucia Hadley?**

15 A. Yes, that's what this is. And this
16 lawsuit also brings in the 2009 election or lack
17 thereof.

18 **Q. Now, if I could ask you to look at**
19 **Exhibit 5. Can you identify Exhibit 5?**

20 A. It's a written consent signed by all
21 members of the special litigation committee.

22 **Q. And what does it do?**

23 A. It approves the attached resolution
24 approving the settlement on behalf of FOA.

25 **Q. And it specifically references the**

1 **December 11 settlement agreement that is Exhibit 1?**

2 A. Yes.

3 **Q. If I could ask you to look at Exhibit 6.**

4 **And could you tell us what Exhibit 6 is?**

5 A. Exhibit 6 is the -- looks like the
6 January board packet.

7 **Q. Can you explain to us what a board packet**
8 **is?**

9 A. Yes. A board packet is a set of
10 documents distributed to board members in advance of
11 a board meeting. It usually starts, as this one
12 does, with the agenda and it includes other
13 documents that are necessary or helpful for
14 consideration at the meeting. So it usually
15 includes financials, unless those have previously
16 been distributed, and sometimes includes reports,
17 sometimes includes draft contracts that we're going
18 to vote on, correspondence from homeowners, all that
19 kind of thing. It's meant to be sort of what we
20 look at in preparation for a board meeting.

21 **Q. Was this particular packet delivered to**
22 **all board members?**

23 A. It was. It was sent by e-mail on January
24 11th. That's my recollection. Our meetings are
25 usually on a Tuesday and I think January 15th was --

1 yeah, Tuesday, January 15th, and board packets are
2 usually sent out on the Friday before.

3 **Q. Since you mentioned that, let me sort of**
4 **take you on a bit of a diversion here. Tell me how**
5 **FOA schedules its board meetings and how board**
6 **members receive notice of those board meetings?**

7 A. They're always on the -- I believe it was
8 on the third Tuesday of the month and at the
9 beginning of the year, we post a schedule showing
10 what day that is but we're always on the third
11 Tuesday unless that changed. And we've discussed
12 changing it a couple of times over the last year but
13 we've never made any changes.

14 **Q. And that schedule was agreed to by the**
15 **board in advance of the year in which it's set?**

16 A. Yes.

17 **Q. And the January 15th was one of those**
18 **regularly scheduled meetings that had been**
19 **previously agreed upon by the board?**

20 A. Yeah, it was the third Tuesday.

21 **Q. And this board packet also has an**
22 **executive agenda. Can you tell me what the purpose**
23 **of the executive agenda is?**

24 A. Yes. So --

25 **Q. And if you're looking for it, it's page**

1 **51.**

2 A. So board meetings have regular sessions
3 and sometimes have executive sessions and Virginia
4 law specifies the kinds of things that you could
5 talk about in executive session, and one category of
6 things are legal matters, so that you can talk about
7 them and maintain the attorney-client privilege and
8 talk about draft contracts, I think, personnel
9 matters.

10 So those are all private and there is
11 usually a separate agenda for those because
12 disclosing those agendas is I believe not
13 appropriate and so we have those two different
14 agendas. And there is also stuff that is to be
15 discussed in executive session like delinquency
16 reports and letters from counsel about those
17 delinquencies that are behind the executive agenda.
18 Just like we have other stuff in the regular board
19 packet, there is an executive session board packet.

20 **Q. And can you tell me, if you look at the**
21 **executive session agenda, can you tell me whether**
22 **the -- again, that's page 51. Can you confirm that**
23 **the discussion of legal matters is on there and**
24 **specifically subsection 2E, the discussion of the**
25 **settlement agreement that had been entered into?**

1 A. That's correct. That was on the agenda.

2 Q. And in fact, a copy of the settlement
3 agreement is included in the agenda? In the packet,
4 I'm sorry?

5 A. It was, yes.

6 Q. And can you confirm, by the way, just
7 prior to this board meeting on January 10th, there
8 was a town hall meeting at the condominium conducted
9 by Mr. Donelan. Do you recall that?

10 A. I was not at the meeting but I am aware
11 that it took place.

12 Q. And is it your understanding that copies
13 of the settlement agreement were distributed to
14 whoever wanted a copy of it at that meeting as well?

15 A. It's my understanding that copies were
16 available and it's also my recollection we had
17 copies at the meeting. At the board meeting, I
18 mean.

19 Q. And then lastly, if you could look at
20 Exhibit 7 and identify Exhibit 7 for me, please.

21 A. Exhibit 7 are the approved minutes for
22 our January board meeting.

23 Q. The January 15th meeting?

24 A. That's correct.

25 Q. For which the board packet that we just

1 discussed was distributed?

2 A. That's right.

3 Q. And if you could look specifically at
4 page 8 and can you confirm that that confirms the
5 motion to approve the settlement agreement and the
6 vote taken on that?

7 A. Yes, it does.

8 Q. And again, similar to the other minutes,
9 it identifies each board member and states how they
10 voted on the motion?

11 A. It does, yes.

12 Q. If you could turn to Exhibit 9. And
13 could you identify Exhibit 9?

14 A. Exhibit 9 are the approved minutes of our
15 April 16th, 2013 meeting.

16 Q. And it states on the front that all board
17 members were present?

18 A. Yes.

19 Q. And if I could ask you to turn to page 5.

20 A. Okay, I'm there.

21 Q. What is identified on page 5 is
22 subsection E, there was a motion to ratify the
23 appointment of Jane Brungart, Martina Hernandez and
24 Bill Reichenbach to the special litigation
25 committee. Do you see that?

1 A. I see that, yes.

2 Q. And that also identifies the votes on the
3 motion to ratify and who voted, is that right?

4 A. Yes. Again, it specifies the roll call
5 vote which means that someone asked for a roll call
6 and I believe that was me.

7 Q. Mr. Sells, why did the board -- if I
8 understood your testimony, at the first board
9 meeting after the organizational meeting, there was
10 a motion to ratify the SLC. Why did the board again
11 ratify the SLC on October 16th?

12 A. Well, to be honest with you, I had
13 forgotten about the first ratification. That's the
14 first thing. But the whole reason it was an issue
15 was because the Sobol litigation that was
16 challenging the appointment of those three to the
17 special litigation committee, and so this was an
18 attempt to eliminate FOA's liability on that.

19 Q. Do you recall, shortly after you were
20 elected to the board, that there was a motion to
21 terminate Reed Smith as FOA's counsel? Do you
22 recall that?

23 A. Yes.

24 Q. Why was the motion made to terminate Reed
25 Smith?

1 A. Well, there are a few ways of answering
2 that. What I'll say is that came right after Judge
3 Mayer's order seating a new board. That was the
4 first election we had had in about seven years, six
5 years but it was six and a half till we were seated
6 and I had campaigned very, very hard on a platform
7 of changing the course of the litigation with FOA.
8 So there was in effect a regime change at that time.

9 Now, that probably would not alone have
10 prompted me to fire them at that meeting. However,
11 I was very concerned, in light of Judge Mayer's
12 order on the 2010 meeting, that Reed Smith had a
13 conflict of interest with FOA arising out of
14 potential malpractice for its advice to cancel the
15 2010 annual meeting. And that's set out in the
16 opinion that came out I believe in the fall of 2011.
17 And that was confirmed not only by Gordon
18 Properties' own lawyers but you relayed to me a
19 conversation in which Jennifer Sarvadi had confided
20 to you that she thought that Reed Smith had
21 potential liability to FOA for malpractice.

22 And if a law firm has potential liability
23 for malpractice to a client, one cannot know if
24 their advice to the client is for the betterment of
25 the client or for the betterment of the law firm.

1 In other words, Reed Smith, the firm, has a vested
2 interest in all kinds of actions that may or may not
3 be in FOA's best interest and it's inappropriate
4 for -- in my view, under those circumstances, for a
5 conflicted firm to continue to represent the
6 corporate entity. So I felt like they had to be
7 fired right away and that further delay would be
8 unwise and unfair to FOA.

9 And then there is sort of the substance
10 of what Judge Mayer found with regard to FOA --
11 excuse me, with regard to Reed Smith in their
12 dealings in this case. I felt like they had
13 personalized it and were giving bad advice and that
14 they should no longer represent FOA.

15 MR. KING: Your Honor, I would ask the
16 Court to take judicial notice of three of its
17 memorandum opinions. The first one is in adversary
18 proceeding 09-1304, docket number 35. That's the
19 first stay violation litigation. The second
20 memorandum opinion is in adversary proceeding
21 11-1020. That's docket number 83 and that's the
22 second stay violation. And the third memorandum
23 opinion is in the main case, 09-18086. It's docket
24 number 423 and it's the memorandum opinion
25 disallowing FOA's claim. I have copies of each of

1 those that I'm happy to present to the Court. I'm
2 assuming you don't need them but if you do, I have
3 copies.

4 JUDGE MAYER: Thank you. Any objection?

5 MR. JONES: No, Your Honor.

6 JUDGE MAYER: Alright. I'll take notice.

7 MR. KING: Thank you, Your Honor. No
8 further questions.

9 JUDGE MAYER: Before you start,
10 Mr. Jones, Mr. Donelan?

11 MR. DONELAN: I do not have any
12 questions, Your Honor.

13 JUDGE MAYER: How much time do you want?

14 MR. JONES: I think we can finish up
15 before lunch, Your Honor. About 15 minutes. Before
16 noon, rather than lunch.

17 JUDGE MAYER: You go to lunch early. All
18 right. Go ahead, please.

19 EXAMINATION BY COUNSEL FOR OPPOSER

20 BY MR. JONES:

21 **Q. Mr. Sells, I believe you testified that**
22 **you personally negotiated settlement agreements on**
23 **behalf of Gordon Properties in 2006 against FOA, is**
24 **that correct?**

25 A. In 2006? No.

1 Q. Did you ever direct settlement agreements
2 on behalf of Gordon Properties with FOA?

3 A. I'm sorry, your question is still unclear
4 to me. Can you rephrase?

5 Q. Why don't we just shift focus. I believe
6 you testified that settlement agreements were sent
7 by you to the SLC, is that correct?

8 A. No.

9 Q. But they were sent by Gordon Properties?

10 A. Sent by Gordon Properties' attorney.

11 Q. And you reviewed these before they were
12 sent?

13 A. To the SLC's attorneys.

14 Q. And what was your position with Gordon
15 Properties at this time?

16 A. Well, I've been managing member since
17 Gordon Properties was formed so I'll say I was
18 managing member.

19 Q. And when the SLCs were receiving these
20 settlement proposals, you were the president of FOA?

21 A. Well, now I think we have to be specific
22 in what we're talking about because FOA had SLCs
23 before I came president so to be accurate, my answer
24 to your question would be no, not always.

25 Q. But since you were -- but after you

1 became a member or a president of the FOA board,
2 there were settlement discussions between Gordon
3 Properties and the SLCs?

4 A. Yeah, I testified to that.

5 Q. Do you believe that the Gordon Properties
6 members on the FOA board are disinterested?

7 A. Well, disinterested in what?

8 Q. On the vote on the settlement agreement,
9 for instance.

10 A. I'm sorry. Which vote are you talking
11 about?

12 Q. The vote to approve the settlement
13 agreement on the --

14 A. On January 15th?

15 Q. That's right. Is it your position that
16 the Gordon Properties directors were not
17 disinterested at that meeting?

18 A. Well, you changed -- you inserted the
19 word "not" there so I want to be clear. I think
20 Gordon Properties, meaning me, Lindsay and Brandy,
21 are interested with respect to the vote of the FOA
22 board on the settlement agreement.

23 Q. Are they interested on the vote to create
24 the special litigation committees?

25 A. Well, that gets to the point that I had

1 in the colloquy with Mr. King. I don't think so.

2 **Q. Why not?**

3 A. Because I have not been able to -- I have
4 not seen any authority suggesting to me that the
5 appointment of disinterested members to an SLC is
6 itself a conflicts of interest transaction.

7 **Q. Even though you were aware that the**
8 **special litigation committee would evaluate**
9 **litigation against Gordon Properties?**

10 A. Right. And this comes up all the time in
11 shareholder derivative actions, right? So a
12 shareholder sues the corporation and the corporation
13 has to then appoint a special litigation committee.
14 That's the prototypical special litigation
15 committee. And --

16 **Q. But didn't you also choose the members of**
17 **the special litigation committee?**

18 MR. KING: I'm sorry, I object. I think
19 the witness should be allowed to answer the
20 question.

21 JUDGE MAYER: Go ahead and finish your
22 answer.

23 THE WITNESS: So that's the prototypical
24 special litigation committee. And I have not found
25 any authority that, in those instances, a board

1 member who is interested in the subject of the
2 underlying shareholder derivative litigation may not
3 participate in the selection of the special
4 litigation committee. Now, I am not a corporate
5 lawyer. I'm a civil rights lawyer. But that's my
6 view.

7 BY MR. JONES:

8 Q. So there would be no problem with the
9 Gordon Properties affiliate directors effectively
10 choosing the persons who would evaluate the
11 litigation against Gordon Properties, in your view?

12 A. I did not say that. So if Gordon
13 Properties participated and I selected me, Lindsay
14 and Brandy, there would be a problem with that,
15 right? But if Gordon Properties selected Bill
16 Reichenbach and Martina Hernandez with whom I have
17 no connection, no financial connection, then I don't
18 think that that is what we think of as a conflicted
19 interest transaction that is voidable under Virginia
20 law.

21 Q. I want to turn now to your discussion of
22 Ms. Hadley. It was my understanding -- you stated
23 very vehemently that this Court found that she had
24 willfully violated the law. By that do you mean --
25 are you referring to the Court's decision of finding

1 a breach of the automatic stay?

2 A. Yeah, that's what I was referring to.

3 Q. And in your view, the violation of the
4 automatic stay is the same as a breach of good faith
5 to FOA?

6 A. I don't know that I would take that
7 position. What I will say is that FOA hired
8 competent counsel who is sitting there in the front
9 row and he analyzed the situation and filed the
10 claim on FOA's behalf, I presume believing that it
11 had merit.

12 Q. And in your view, is there any reason to
13 think that Ms. Hadley failed to exercise good faith
14 business judgment involved with the actions that
15 resulted in the breach of the automatic stay?

16 A. Sure.

17 Q. Even though she relied on advice of
18 counsel?

19 A. Sure.

20 Q. And you're aware that the decision
21 involving the automatic stay is on appeal?

22 A. Yes.

23 Q. And the appellate court has not yet
24 ruled?

25 A. Yes. That's the whole point.

1 Q. And the decisions of this prior court,
2 whether that affects Ms. Hadley or not, will depend
3 on whether a court adopts the factual findings in
4 the decision of this Court, does it not?

5 A. I'm sorry, your question again was
6 unclear to me. Can you repeat it?

7 Q. Sure. The import of this Court's
8 decision finding the automatic stay will only be
9 relevant in a decision against Ms. Hadley if a
10 subsequent court decides to adopt the factual
11 findings that this Court had?

12 A. No. I would disagree with that as you
13 stated it.

14 Q. How so?

15 A. I think -- the way you stated it was
16 relevance. I think any court would find that Judge
17 Mayer's opinion and findings of fact are relevant.
18 That's a pretty low bar. If you're asking me do I
19 think the Alexandria Circuit Court would be bound by
20 Judge Mayer's findings, you know, I don't know. I
21 haven't analyzed the claim preclusion and issue
22 preclusion aspects of it. But again I'll say FOA
23 hired competent counsel to analyze it and he thought
24 it appropriate to file a claim.

25 Q. So your decision that Ms. Hadley was

1 disinterested relies on the assumption that the
2 automatic stay constitutes a breach of Ms. Hadley's
3 good faith business judgment and the outcome of the
4 pending appeal and whether a subsequent court finds
5 the decisions of this Court persuasive?

6 A. No, it doesn't. And again -- I'll answer
7 your question just to say no.

8 Q. Can you explain again why it's relevant
9 that the appeal is pending for Ms. Hadley to be
10 interested?

11 A. You're asking for my legal opinion on
12 this?

13 Q. No. I'm asking for your opinion as the
14 director of FOA when you made the decision at the
15 meeting to consider her not disinterested.

16 A. Well, let me say it wasn't just my
17 decision. FOA had counsel all along and I'm not
18 going to reveal attorney-client privileged
19 communications but there has never been any
20 suggestion that Ms. Hadley was disinterested with
21 respect to the Gordon Properties and FOA litigation
22 until Mr. Leach's report.

23 Q. Why, based on your evaluation of this in
24 your capacity as president of FOA, did you believe
25 that Ms. Hadley was interested?

1 A. I think Ms. Hadley and the other former
2 board members have tremendous negative liability
3 exposure to FOA and to Gordon Properties arising out
4 of their conduct in election fraud in the 2009
5 election, in the cancellation of the 2010 election
6 and failure to reschedule it and perhaps a handful
7 of other things such as spending the entirety of
8 FOA's reserve funds on litigation while hiding that
9 fact on FOA's books from its auditors and members.

10 So I think there is substantial personal
11 downward liability and I'm not just going on my
12 judgment here. I think that it's also been
13 validated by FOA's attorneys.

14 **Q. So Ms. Hadley is not disinterested**
15 **because she's engaged -- she's made decisions that**
16 **have negatively affected Gordon Properties with**
17 **regards to the voting and the conduct in not having**
18 **the automatic stay, in violating the automatic stay?**

19 A. No. You're trying to put words in my
20 mouth with these kinds of questions. Ms. Hadley is
21 on both sides of the transaction just as I am.

22 **Q. Which transaction?**

23 A. The approval of the settlement. She has
24 an interest that is adverse to FOA.

25 **Q. Does the settlement agreement provide**

1 **Ms. Hadley any money?**

2 A. No. And if the question were merely does
3 it provide a benefit, she might not be --

4 **Q. We'll get to that later. You've answered**
5 **my question. The settlement agreement doesn't**
6 **settle any lawsuits against Ms. Hadley?**

7 A. No, it locks in her liability or
8 exposure, I should say.

9 **Q. Why does it lock in her exposure?**

10 A. Because it's in Ms. Hadley's interest to
11 litigate this thing to the end.

12 **Q. By that, you mean through the appeal**
13 **court?**

14 A. Yes, I do.

15 **Q. I want to now turn to some of the**
16 **provisions in the settlement agreement that we**
17 **discussed. First, regarding the cap of the Gordon**
18 **Properties or the cap of the restaurant unit, Gordon**
19 **Properties owns the street front unit?**

20 A. There are two street front units. Gordon
21 Properties owns one of them.

22 **Q. And it receives rent from the property or**
23 **proceeds from the property?**

24 A. It is currently leased.

25 **Q. So Gordon Properties benefits if the**

1 **restaurant does well?**

2 A. No, I'm not sure if I would agree with
3 that statement.

4 **Q. Doesn't it make the lease more secure?**

5 A. I would have to think about that. What
6 do you mean by more secure?

7 **Q. If the assessments against the street**
8 **front unit are less, the property is more valuable**
9 **to Gordon Properties, is it not?**

10 A. Well, that's a different issue. I
11 thought you were talking about the restaurant.

12 **Q. Well, why don't we focus on Gordon**
13 **Properties. If the assessments are less, that**
14 **benefits Gordon Properties?**

15 A. If you're only looking at it in a silo, I
16 would agree with that.

17 **Q. It makes the unit more valuable?**

18 A. I think I would agree with that as -- I'm
19 not -- I think that's a very complex question. If
20 the assessments are \$100,000 above market value, it
21 makes it less valuable. If the assessment is
22 slightly below market value, I think the marginal
23 increase in the value of the street front unit is
24 infinitesimal.

25 **Q. But the higher the assessments are, the**

1 more difficult it is to rent?

2 A. No, I don't think that has anything to do
3 with the rental of the unit.

4 Q. I want to talk now about the provision in
5 the settlement which requires this Court to vacate
6 its order. You stated you believe very strongly
7 with that.

8 A. Is that what I stated?

9 Q. I believe you stated that you felt very
10 strongly about the voting issue.

11 A. You're mixing issues. I do feel very
12 strongly about the operation of the small D
13 democracy inside of a condominium and particularly
14 one that is as large as this because I am a voting
15 rights lawyer, I do voting for a living and I
16 wouldn't be in this business if I didn't care about
17 voting and people's voices and so forth. That's
18 different than the issue of feeling very strongly
19 about Judge Mayer's order.

20 Q. And am I correct in understanding that
21 your view is that essentially every condominium
22 owner should get the same vote so that by virtue of
23 owning one unit or owning 30 units, the one who owns
24 30 units should get 30 votes and the one who owns
25 one unit should get one?

1 A. No.

2 **Q. Can you explain what your view of the**
3 **model is or what your view of the voting should be?**

4 A. The amount of voting rights that is
5 attendant to each unit is set forth in the
6 documents. When an owner buys a condominium, they
7 buy into that voting scheme and it's not always one
8 unit, one vote. That would be the case in a --
9 oftentimes in a small condominium or homeowner's
10 association or one where I'll call it a plain
11 vanilla condominium association where all the units
12 are roughly the same size. But that's not how it
13 has to be done and that's often not how it's done
14 and it's not how it's done in this particular
15 condominium where the number of votes in the
16 condominium is tied to the square footage of the
17 unit, which, if I'm remembering now -- I'm a little
18 rusty -- is one of the prescribed methods under the
19 Virginia Condominium Act. So that larger units, a
20 three bedroom has a larger vote than a one-bedroom.

21 **Q. You mentioned at one point that there was**
22 **an election in which the seven highest vote totals**
23 **did not result in the people with those seven**
24 **highest totals getting a seat on the board.**

25 A. That's right.

1 **Q. Who had those seven highest totals? Were**
2 **they all affiliated with Gordon Properties?**

3 A. Well, no, I think Ms. Hadley was number
4 7. She may have been number 6. But 6 of the 7 were
5 affiliated with Gordon Properties in some way. As I
6 said, we campaigned very hard in that election and
7 we won a lot of votes.

8 **Q. So under your view, all six of those**
9 **slots that Gordon Properties won should have gone to**
10 **Gordon Properties on the FOA board?**

11 A. Yes.

12 **Q. And under this Court's order --**

13 A. Well, let me revise that answer. Gordon
14 Properties doesn't have a seat on the board. People
15 have seats on the board. And it's the individuals
16 who are sitting on the board.

17 **Q. But under this Court's order, the**
18 **individuals who were elected with the votes that**
19 **were held by Gordon Properties and the affiliated**
20 **entities wouldn't be able to get seats on the board.**
21 **You can't have six out of the seven.**

22 A. I'm sorry, can you repeat that?

23 **Q. Under this Court's order, you can't have**
24 **six out of seven people be affiliated with Gordon**
25 **Properties or related entities?**

1 A. Well, that gets to my issue of how you
2 read Judge Mayer's order. If the order is clarified
3 to say Gordon Properties didn't have six but it's
4 going to have to create six shell corporations so
5 that no corporation could have more than one seat,
6 then it could. But if you read the order at the
7 other extreme to say that I don't care if there are
8 shell corporations, if there is some kind of link
9 between them, they can't hold multiple seats, then I
10 guess I would agree with you.

11 **Q. But vacating the order would prevent a**
12 **result that was like the meeting where six out of**
13 **the seven were affiliated with one entity but they**
14 **didn't get the seats?**

15 A. No, it would not.

16 **Q. But it bothers you that the meeting**
17 **resulted the way it did, where the highest seven**
18 **people wound up not being the seven people who were**
19 **seated on the board?**

20 A. It should bother everybody.

21 MR. JONES: No further questions, Your
22 Honor.

23 JUDGE MAYER: Any redirect, Mr. King?

24 MR. KING: No, Your Honor.

25 JUDGE MAYER: You can have a seat with

1 counsel. You're subject to recall and you'll be
2 required to remain in the courtroom for further
3 proceedings.

4 THE WITNESS: Thank you.

5 JUDGE MAYER: Who else do you have and
6 what's your schedule?

7 MR. KING: I don't have anyone else. I
8 believe Mr. Donelan does, Your Honor.

9 JUDGE MAYER: So you're going to rest
10 your case at this point?

11 MR. KING: Subject to the judicial
12 notice, yes, Your Honor.

13 JUDGE MAYER: And Mr. Donelan, what do
14 you have?

15 MR. DONELAN: I have two witnesses, Your
16 Honor. One should take about half an hour. The
17 other one should take about 15 minutes.

18 JUDGE MAYER: All right. Well, why don't
19 we go to lunch and we'll come back and take that up
20 at that time. Why don't we return at 1:15.

21 (Whereupon, at 12:07 p.m., the hearing in
22 the above-entitled matter was recessed, to reconvene
23 at 1:30 p.m., this same day.)

24

25

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

2 (1:30 p.m.)

3 JUDGE MAYER: Mr. Donelan, did you want
4 to proceed?

5 MR. DONELAN: Yes, sir.

6 MR. JONES: Actually, before Mr. Donelan
7 calls his next witness, the U.S. Trustee will not be
8 calling Ms. Sarvadi and so at this time, I ask that
9 she be released and free to go.

10 JUDGE MAYER: I'm not going to release
11 you. You have to sit across the hall. You're
12 subject to being called as a witness.

13 MR. DONELAN: Good afternoon, Your Honor.
14 John Donelan appearing on behalf of FOA and the SLC.
15 I would like to call Bill Reichenbach as our first
16 witness.

17 JUDGE MAYER: Mr. Reichenbach, will you
18 come forward, please?
19 Whereupon,

20 WILLIAM REICHENBACH
21 was called as a witness, and having been duly sworn
22 by the Court Deputy, was examined and testified as
23 follows:

24 EXAMINATION BY COUNSEL FOR FOA AND SLC
25 BY MR. DONELAN:

1 Q. Good afternoon, Mr. Reichenbach. Could
2 you identify yourself for the Court?

3 A. William Reichenbach.

4 Q. And where do you live?

5 A. 4600 Duke Street.

6 Q. And are you a unit owner there?

7 A. Yes, I am.

8 Q. And what is the unit number?

9 A. 917.

10 Q. And what is your occupation?

11 A. I work for United Airlines.

12 Q. And at the present time, what is your
13 position with regard to the SLC?

14 A. I'm a member of the SLC.

15 Q. And what about the board of directors of
16 FOA?

17 A. I serve as a director on the board.

18 Q. Now, prior to October 3rd of 2012, were
19 you a member of the SLC or a member of the board of
20 directors?

21 A. Neither.

22 Q. Had you been involved in any position
23 with FOA?

24 A. No, I had not.

25 Q. And what caused your interest with regard

1 **to serving on the board initially?**

2 A. Well, I saw that the building was
3 collapsing and our funds, all of our reserves had
4 been depleted and without the other homeowners'
5 knowledge. Years had actually gone by before we had
6 gotten a statement from Cardinal saying that we were
7 literally in dire straits. So I felt that somebody
8 needed to get involved to stop the litigation, to
9 lower the fees.

10 **Q. I see. When you say the fees --**

11 A. The condo fees and the legal fees mostly.
12 The legal fees are what's driving our condo fees.

13 **Q. I see. The election took place on**
14 **October 3rd of 2012. Were you present at that time**
15 **or when did you first learn that you were a member**
16 **of the board of directors?**

17 A. I was on vacation and I learned. One of
18 the homeowners had called me on my cell phone and
19 let me know that.

20 **Q. And told you that you were a member of**
21 **the board of directors?**

22 A. That's correct.

23 **Q. And when did you find out that you were**
24 **on the special litigation committee?**

25 A. Later on in the evening, I received a

1 phone call.

2 Q. Now, since October 3rd of 2012, you have
3 been involved with the board and also with the
4 special litigation committee, is that right?

5 A. That's correct.

6 Q. Now, what activities have you engaged in
7 as a member of the FOA board of directors?

8 A. The normal duties of an officer as far
9 as --

10 Q. So you went to all the meetings, for
11 instance?

12 A. I've attended all the meetings.

13 Q. And do you have any special duties on the
14 board?

15 A. Obviously I'm involved with the SLC.

16 Q. Right.

17 A. No, I'm just basically an officer.

18 Q. And what are the major issues before the
19 board of directors since you've been on the board?

20 A. Obviously the budget. The budget was a
21 big issue late last year. Reducing the legal fees.

22 Q. I see. And let's discuss this special
23 litigation committee. Who are the members that were
24 appointed to the special litigation committee last
25 October 3rd?

1 A. That would be Jane Brungart and Martina
2 Hernandez and myself.

3 **Q. And do you recall the organizational**
4 **meeting of the SLC?**

5 A. Yes. We met and had an organizational
6 meeting where we discussed confidentiality and the
7 rules that we were going to be orchestrating
8 throughout the process.

9 **Q. What if any actions did the SLC take with**
10 **regard to confidentiality?**

11 A. As far as on my part, you know, I didn't
12 discuss anything outside of the meetings with --

13 **Q. Did you take any actions with regard to**
14 **agreeing to anything at that time or taking any**
15 **pledges or something of that nature?**

16 A. We were asked to sign a document that
17 would ensure confidentiality.

18 **Q. So did you sign this confidentiality**
19 **pledge?**

20 A. Yes, I did.

21 **Q. And was it signed by the other members of**
22 **the committee as well?**

23 A. Yes, it was.

24 **Q. Now, in the course of the first few**
25 **weeks, what actions did you and other members of the**

1 **SLC take with regard to educating yourselves?**

2 A. Well, we met every week basically for the
3 first month and our first meeting was an
4 introductory meeting and organizational meeting,
5 confidentiality, and then the second meeting, we
6 were basically brought up to speed and educated on
7 the details of the settlement, the issues in the
8 litigation.

9 **Q. Prior to the meeting, were you provided**
10 **with any documents to review? For instance, do you**
11 **recall obtaining a copy of the bylaws, the pertinent**
12 **bylaws, the resolution from the SLC?**

13 A. Yes, I did. I brought myself up to speed
14 in reading those documents.

15 **Q. And during that time, the matter of**
16 **mediation came up as well, is that right?**

17 A. That's correct.

18 **Q. What do you remember about that?**

19 A. As far as mediation with Judge
20 Huennekens?

21 **Q. Yes.**

22 A. We met with Judge Huennekens last --

23 **Q. Let me interrupt you for just a second.**

24 **Did that mediation occur after you became**

25 **involved -- begin after you became involved with the**

1 committee or before?

2 A. I believe it was after I was involved.

3 Q. And you're aware of the documents that
4 were provided by FOA as part of the documents
5 requested by Judge Huennekens to be prepared; for
6 instance, there was a report that was to be done by
7 FOA and it would list all the pending lawsuits and
8 then there was another joint confidential package
9 that was sent to Judge Huennekens. Do you recall --

10 A. I remember seeing that document.

11 Q. Do you recall reviewing them in the
12 committee with me and the other members of the
13 committee?

14 A. Yes, I do.

15 Q. And did that provide you with the
16 background of the issues that were to be ultimately
17 decided in the settlement agreement?

18 A. Yes, it did. It brought me up to speed.

19 Q. So what knowledge if any did you have
20 about the finances of FOA?

21 A. Well, I knew that we had depleted or
22 gotten close to depleting our reserves.

23 Q. Were you aware of any loans with banks at
24 that time?

25 A. Yes, we had a loan with Virginia

1 Commonwealth Bank and this loan is for the
2 elevators. The elevators are financed through
3 Virginia Commonwealth Bank.

4 **Q. And do you know the amount of that loan?**

5 A. I don't know the original amount. I
6 believe it was over \$2 million. I believe it's
7 around 1.1 million right now.

8 **Q. At this time. And is it your**
9 **understanding that -- what was the condition of the**
10 **payments on that loan or other problems with that**
11 **loan in the third and fourth quarter of 2012?**

12 A. When the loan was originated, as far as I
13 was told, we were required to keep a certain amount
14 of money in the reserves to secure that loan.

15 **Q. And was there a problem at that time with**
16 **that loan in the view of Virginia Commonwealth Bank?**

17 A. Yes. Virginia Commonwealth Bank
18 started -- we had -- through the management company,
19 we had had correspondence that they wanted us to
20 provide additional collateral and there was
21 different options.

22 **Q. Do you recall that Gordon Properties at**
23 **one point prepared and served a garnishment on FOA's**
24 **bank accounts?**

25 A. Yes.

1 Q. And froze the accounts?

2 A. Yes.

3 Q. Do you recall what happened with regard
4 to outstanding checks?

5 A. We had payroll checks canceled, we had
6 employees' health insurance denied and it was
7 basically a melt-down in the building.

8 Q. And do you also recall -- and this arose
9 from the same judgment that was held by Gordon
10 Properties -- that there was -- we were called upon
11 after the Bankruptcy Court stayed the garnishment,
12 we had to post -- we, being FOA, had to post an
13 amount in the registry of the Court in the amount of
14 \$300,000? Do you recall that?

15 A. That is correct, yes.

16 Q. Now, let's talk about the process wherein
17 SLC attempted to settle with Gordon Properties, CSI
18 and the other parties. And this is outside the
19 scope of the mediation. Do you recall the
20 settlement letters that came from the Gordon
21 Properties attorney which we were requested to
22 review and respond to?

23 A. Yes, I do.

24 Q. And do you recall any specific
25 requirements or initial requirements that were part

1 of that package?

2 A. The one order or the one thing that
3 sticks in my mind is it was conditional on vacating
4 the order.

5 Q. So that was a requirement for the
6 settlement to take place, is that right?

7 A. That's correct.

8 Q. So the initial determination that the
9 committee had to make was whether or not they could
10 see the way clear to allowing the -- permitting the
11 vacation of that order, is that correct?

12 A. This is correct.

13 Q. And there are two other -- I'm going to
14 call it two other items in that settlement
15 agreement. Do you recall when we discussed this, we
16 talked about the vacation of the judgment? Do you
17 recall the other two items we discussed?

18 A. We have a cap on the restaurant, the
19 street front.

20 Q. The assessment issues?

21 A. The assessment issues.

22 Q. Do you remember the last item?

23 A. And of course there was the issue of
24 voting and the power of the number of seats that,
25 yeah, any identity could hold.

1 Q. And the last issue being the money?

2 A. That's correct.

3 JUDGE MAYER: Let me interrupt. Is there
4 a difference between the vacating of the order?
5 Which order are you talking about?

6 MR. DONELAN: We're talking about the
7 nonnatural parties one vote.

8 JUDGE MAYER: That's the same thing?

9 MR. DONELAN: That's the same thing, Your
10 Honor. Yes.

11 BY MR. DONELAN:

12 Q. So we attempted -- we, being SLC --
13 attempted among ourselves to determine what our
14 position is with regard to the settlement, is that
15 right?

16 A. That's correct.

17 Q. And we had weekly meetings to discuss
18 this, is that right?

19 A. Yes, we did.

20 Q. Do you recall a meeting in November where
21 we met with CSI and Gordon Properties and their
22 representatives?

23 A. Yes, I do.

24 Q. Where did that meeting take place?

25 A. It took place in the conference room in

1 CSI.

2 Q. And what was discussed at that meeting,
3 if you remember?

4 A. We had gotten -- we were starting to get
5 down along with the negotiations and there was a few
6 sticking points on there that we were negotiating
7 back and forth.

8 Q. And this is an action we were taking
9 outside the mediation, is that right?

10 A. This is correct.

11 Q. And what was the result of the meeting?

12 A. We really didn't make any progress.

13 Q. And that occurred in early November of
14 2012, is that right?

15 A. Yes, it was.

16 Q. So what occurred next, you know, in
17 mid-November, we had -- if I can set the stage for
18 you, we had provided the documents to Judge
19 Huennekens and he had set up a first meeting of the
20 parties in the mediation. Do you recall that?

21 A. Yes, I do.

22 Q. I'm not going to ask you what date that
23 was on but you recall that meeting, is that right?

24 A. Yes, I do.

25 Q. And how long did that meeting take?

1 A. We were across the hall for I would say
2 the better part of the day until like 3 o'clock, 4
3 o'clock.

4 Q. When you say across the hall, you mean
5 across the hall here?

6 A. Yes, the conference rooms here.

7 Q. And how was that mediation handled, if
8 you recall, by Judge Huennekens?

9 A. Judge Huennekens had both parties in
10 separate rooms and we were negotiating terms and he
11 was going back and forth and --

12 Q. And do you recall the questions that he
13 asked us? You can't know what the questions are
14 that he asked Gordon Properties and CSI and their
15 representatives but do you recall the questions that
16 he asked us?

17 A. Well, he was asking us if we could -- if
18 there were room for negotiation on some of the items
19 that were sticking points.

20 Q. So is it fair to say that Judge
21 Huennekens went back and forth between shuttling
22 from one group to the next trying to foster the
23 settlement?

24 A. Yes, he did.

25 Q. And how would you categorize the day?

1 **Was it a difficult day? Was it an easy day?**

2 A. There was some action and it was a
3 difficult day.

4 **Q. So was it a full day of negotiating?**

5 A. Yes, it was.

6 **Q. And what was the result of the first day
7 of the mediation?**

8 A. We had made a lot of progress but we
9 didn't have a settlement agreement at that point.

10 **Q. Do you recall if Judge Huennekens gave up
11 on the settlement or what action he took at the end,
12 what he said to the parties who were assembled
13 together?**

14 A. Ultimately he wanted to meet at a later
15 time to continue on with what we were working on.

16 **Q. And so he did that as well?**

17 A. That's correct.

18 **Q. And that took place later on in -- well,
19 that took place in December, is that right?**

20 A. Yes, it did.

21 **Q. I believe it was December 11th. And how
22 would you characterize that particular meeting?**

23 A. That particular meeting, I actually
24 phoned in because I was away for the holidays but I
25 got the impression it was very similar to the last

1 meeting.

2 **Q. And you were there by telephone and we**
3 **would discuss the matters with you, is that right?**

4 A. That's correct.

5 **Q. And as a result of that meeting, do you**
6 **recall any of the items that were discussed at that**
7 **time? Do you recall any of the negotiations, for**
8 **instance?**

9 A. I know that the cap on the restaurant
10 unit, we were discussing what we thought was a fair
11 amount.

12 **Q. Do you recall anything about the vacation**
13 **of the order, for instance?**

14 A. Well, I know that was a big -- I realized
15 that for Gordon Properties, that was a big sticking
16 point and that we had tried to -- we had made
17 negotiations whereas we would change the monetary
18 amount for a release of the order.

19 **Q. Do you recall the amount that they wanted**
20 **us to accept at that time?**

21 A. I believe it was 500,000 --

22 MR. KING: Your Honor, at this point I'm
23 going to object. I think it's important that we
24 understand that this negotiation occurred at arm's
25 length and that the parties were acting

1 independently and adversarially, but I am concerned
2 about divulging the contents of what was actually
3 said and negotiated. That was the whole purpose of
4 the mediation. I don't know if I actually have a
5 problem with what would come out but I just don't
6 think it's appropriate to go beyond what is
7 generally accepted as the sanctity of the
8 confidentiality of those discussions.

9 MR. DONELAN: Your Honor, my position is
10 that I would like to show -- this Court is very
11 concerned that this was not an arm's-length
12 transaction. And I would like to show the Court
13 that this was a transaction in which there was
14 push-back from the special litigation committee and
15 that this was simply not a rollover. I will limit
16 my questions and perhaps not deal with the specifics
17 of the money and so forth but I would like to be
18 able to show to the Court that this was a legitimate
19 arm's-length transaction and that's why I'm trying
20 to put on this.

21 I'm filing a joint motion with Mr. King.
22 Frankly, I'm surprised that he would make this
23 objection but nevertheless, I understand his concern
24 about the sanctity and the confidentiality of the
25 settlement but it is what it is.

1 MR. KING: And I agree with Mr. Donelan
2 on almost everything that he says and that's why I
3 haven't objected to the discussion so far. In my
4 direct examination of Mr. Sells, I asked him what
5 was important to him, what it was that he was
6 prepared to negotiate, but I never asked him to
7 divulge what was said by one party to another in the
8 context. And that's the only thing that I'm asking
9 that the line not be crossed. That's all.

10 JUDGE MAYER: Do you have any comments,
11 Mr. Jones, Mr. Guzinski?

12 MR. JONES: The U.S. Trustee doesn't have
13 a position on the objection.

14 JUDGE MAYER: Well, settlement
15 negotiations are always privileged and not subject
16 to being introduced into evidence.

17 MR. DONELAN: Yes, sir.

18 BY MR. DONELAN:

19 Q. So there was negotiation back and forth
20 and there was ultimately an agreement that was
21 reached, is that right?

22 A. Yes.

23 Q. And if I can direct you in the exhibit
24 book, if you'll look at Exhibit 1, do you see it
25 there?

1 JUDGE MAYER: Which exhibit book?

2 MR. DONELAN: The exhibit book one, the
3 joint one of Gordon Properties and first owners,
4 Your Honor.

5 JUDGE MAYER: The black one?

6 MR. DONELAN: The black one. Is there a
7 white one here?

8 JUDGE MAYER: There is a black and a
9 white. Or at least I have a black and a white.

10 BY MR. DONELAN:

11 **Q. Would you identify that exhibit?**

12 A. This is the settlement agreement that we
13 had reached.

14 **Q. And you have reviewed that prior to --**

15 A. Extensively.

16 **Q. And I was authorized by the special
17 litigation committee to sign that settlement
18 agreement, is that right?**

19 A. Yes.

20 **Q. And if you'll also look at Exhibit 3 --
21 I'm sorry, not Exhibit 3. Exhibit 5. And what is
22 that?**

23 A. This is a consent that we signed.

24 **Q. Is that your signature on page 2?**

25 A. Yes, it is.

1 Q. And Jane Brungart on page 1?

2 A. Yes.

3 Q. And Martina Hernandez on page 2. And
4 you're familiar with their signatures?

5 A. Yes, that appears to be their signature.

6 Q. So after that -- so that occurred on
7 December 11th and ultimately, as part of the
8 settlement, it was suggested that as part of that,
9 as an outreach, that we would attempt to contact
10 the -- we would have a town hall meeting for the --
11 with the unit owners of FOA, is that correct?

12 A. That is correct.

13 Q. And that took place on January 10th?

14 A. That's correct.

15 Q. And that was noticed and people came,
16 unit owners came to that?

17 A. Yes.

18 Q. And do you recall the format of how that
19 was handled?

20 A. Well, we all were -- we had all gathered
21 in our, I guess you would call it a party room. We
22 set up such that we were seated in a way where we
23 could answer questions and you had went through an
24 extensive reading line by line, all the different
25 agreement --

1 Q. Are you referring to a handout?

2 A. Yes, that's true. A handout was
3 provided.

4 Q. And what did the handout include, if you
5 remember?

6 A. The handout included the settlement
7 agreement.

8 Q. And do you recall any other review that
9 may have occurred before that? If you don't
10 remember --

11 A. Any other review of --

12 Q. Review of pending lawsuits or anything of
13 that nature.

14 A. No.

15 Q. If you don't remember --

16 A. I don't remember.

17 Q. So if you'll just go on with regard to
18 the settlement agreement.

19 A. So we had gathered and you had gone
20 through line by line each item of the settlement and
21 were available to answer questions afterwards.

22 Q. And were questions asked by the unit
23 owners?

24 A. Yes, they were.

25 Q. And I reviewed them one by one, the terms

1 of the settlement agreement?

2 A. Extensively. We were there all night.

3 Q. And were the unit owners who were present
4 there given a full opportunity to ask questions
5 about that?

6 A. Yes, they were.

7 Q. The next matter I would like to bring up
8 with you is another exhibit. It's the minutes from
9 the January 15th board of directors meeting and that
10 would be Exhibit 6. Excuse me, Exhibit 7. And do
11 you recall this particular meeting?

12 A. Yes, I do.

13 Q. And do you recall any motions that you
14 made at that meeting? If you'll look at page 8 --

15 A. We made a motion to ratify the SLC.

16 Q. If you look at page 8, Roman numeral
17 number XVI, reconvene an open session.

18 A. We ratified and accepted the management
19 agreement between FOA and Condominium Services.

20 JUDGE MAYER: You're looking at the one
21 before that?

22 BY MR. DONELAN:

23 Q. Yes, the one before that.

24 A. I'm sorry.

25 Q. The settlement agreement.

1 A. We accepted the settlement agreement
2 between Gordon Properties and FOA.

3 Q. And you moved that the board of directors
4 ratify?

5 A. That is correct.

6 Q. And that was seconded by Ms. Hernandez?

7 A. Yes, it was.

8 Q. And the vote on that was two votes in
9 favor which were you and Ms. Hernandez?

10 A. That's correct.

11 Q. And four abstentions, Mr. Halls,
12 Ms. Greenwell, Mr. Sells and Ms. Wilson?

13 A. That's correct.

14 Q. Now, there was a later April 2013 -- let
15 me show you one other item because now, the next
16 item would be Exhibit 8. Let me ask you if you can
17 identify that.

18 A. This is certification of service.

19 Q. And this indicates what was sent out. I
20 don't know whether you were in Court. Were you in
21 Court in January of 2013 when the settlement
22 agreement was scheduled to be heard the first time
23 and it was continued by Judge Mayer?

24 A. No, I was not.

25 Q. But you have seen a copy of this

1 document?

2 A. Yes, I have.

3 Q. And was this the document, along with
4 Exhibit A that's attached, was this part of the
5 notice to the unit owners of the town hall meeting
6 that was to take place on February 27th?

7 A. Yes, the owners were notified.

8 Q. And a larger crowd appeared at that town
9 hall meeting, is that right?

10 A. Yes, it was.

11 Q. And that took the same format?

12 A. The same format and style.

13 Q. And did not only me but other members of
14 the special litigation committee have an opportunity
15 to respond correctly -- not correctly. Excuse me.
16 Directly and correctly to the unit owners that asked
17 questions?

18 A. Yes, they did.

19 MR. DONELAN: If I might have just a
20 moment, Your Honor.

21 JUDGE MAYER: Certainly.

22 MR. DONELAN: I have no further questions
23 with Mr. Reichenbach.

24 JUDGE MAYER: Mr. King, did you have any
25 questions?

1 MR. KING: Just a couple, Your Honor.

2 EXAMINATION BY COUNSEL FOR MOVANT

3 BY MR. KING:

4 Q. Good afternoon, Mr. Reichenbach.

5 A. Good afternoon.

6 Q. You mentioned a letter from Cardinal
7 Management when you were talking about the financial
8 position of the company?

9 A. Yes, I did.

10 Q. Could you tell us a little bit more about
11 what the purpose of that letter was and what it
12 said?

13 A. Well, first of all, the letter was posted
14 on a bulletin board. At that point it wasn't even
15 mailed to the homeowners to let them know that the
16 proceedings were in arrears, we had had a deficit
17 and we were spending more than we were bringing in
18 and it was basically a warning letter that we were
19 getting close to financial catastrophe.

20 Q. And that was a letter that was sent to
21 the association by Cardinal as part of its audit of
22 FOA?

23 A. Yes.

24 Q. And is it your impression that that was
25 really the first general notice to the unit owners

1 **of the financial position of FOA?**

2 A. I believe so, yes.

3 JUDGE MAYER: What was the date of that?

4 THE WITNESS: That was approximately -- I
5 want to say it was January of -- I couldn't tell you
6 exactly, the exact date on that. I believe it was
7 2011.

8 JUDGE MAYER: Early 2011?

9 THE WITNESS: Yes.

10 BY MR. KING:

11 **Q. Would it have actually been 2012 and not**
12 **2011?**

13 A. I honestly don't remember the exact date.
14 I believe it was -- I know it was early on in the
15 year after --

16 **Q. Just to put it in context with the**
17 **calendar, the Cardinal bank letter that you're**
18 **talking about came in after you became a board**
19 **member, is that right?**

20 A. No. It was prior to that.

21 **Q. Oh, it was prior? Okay. Then I**
22 **apologize. It might have been 2011. Okay.**
23 **Mr. Donelan was asking you some questions about the**
24 **negotiations. I objected to the specific things**
25 **that were said back and forth but what is important**

1 to me is that I want to know what you and your
2 committee members felt about whether -- whether you
3 felt that you were truly involved in a negotiation
4 where you were on one side and Gordon Properties was
5 on the other and you were banging back and forth on
6 each other. Could you elaborate on that?

7 MR. JONES: Your Honor, I have to object.
8 The witness can't speak on behalf of the other
9 committee members.

10 JUDGE MAYER: Sustained.

11 BY MR. KING:

12 Q. Give us your impression.

13 A. Yeah, we locked horns that day with
14 Gordon Properties and FOA and there was a point
15 where I remember you were screaming and very upset.
16 Yeah, we were fighting it out. It was definitely --

17 MR. KING: You answered my question.
18 Thank you.

19 EXAMINATION BY COUNSEL FOR OPPOSER

20 BY MR. JONES:

21 Q. Mr. Reichenbach, you were voted onto the
22 board of FOA by proxy vote, right? Excuse me, let
23 me rephrase. You were a write-in candidate?

24 A. Yes, I was.

25 Q. Do you know who wrote you in?

1 A. I believe Jane -- I want to say Jane
2 Brungart was involved with that.

3 Q. And Gordon Properties voted for you as
4 well?

5 A. Yes, they did.

6 Q. You didn't run for election?

7 A. No, I didn't.

8 Q. And you didn't submit a nomination?

9 A. No, I didn't.

10 Q. And yet you were elected by Gordon
11 Properties and selected to serve on the special
12 litigation committee?

13 A. That's correct.

14 Q. When if ever did you vote on any matter
15 in conflict with Bryan Sells while you were a board
16 member of the FOA?

17 A. Whenever have I ever voted against him?

18 Q. Right. When if ever did your votes
19 conflict?

20 A. We had one or two that I recall.

21 Q. What were those?

22 A. They were basically like operational type
23 conflicts of different things that were going on in
24 the building, had it be -- I don't recall the exact
25 items but they were --

1 Q. They were minor items?

2 A. They were minor items. It might have
3 been like parking or -- we didn't agree on the
4 exterminator, was one of them.

5 Q. But other than those minor items, you
6 always voted in concert?

7 A. Yes. I mean, yes.

8 MR. JONES: No further questions, Your
9 Honor.

10 MR. GUZINSKI: Your Honor, could I be
11 excused for a moment? I don't mean to delay the
12 proceedings.

13 JUDGE MAYER: Yes, that's fine.

14 EXAMINATION BY COUNSEL FOR MOVANT

15 BY MR. KING:

16 Q. Two follow-ups. Mr. Reichenbach, do you
17 have any familial relationship with Bryan Sells?

18 A. Never. No.

19 Q. Any of the other what we call Gordon
20 Properties-related directors?

21 A. No.

22 Q. Are you engaged in any business with any
23 of the Gordon Properties-related directors?

24 A. No.

25 Q. Do you have any financial interest in

1 **Gordon Properties or any of its units?**

2 A. No.

3 **Q. Other than the fact that you also are a**
4 **unit owner at the condominium and other than the**
5 **fact that you sit on the board with Mr. Sells, is**
6 **there any other relationship between you and**
7 **Mr. Sells or any other Gordon Properties-related**
8 **board member?**

9 A. No relationships. Could I comment on
10 that?

11 **Q. Sure.**

12 A. I just wanted the Court to know that
13 prior to the October 3rd election, at no time had I
14 had any conversations with Mr. Sells, certainly not
15 involving anything with the SLC or running for the
16 board.

17 **Q. Thank you. That's the question I was**
18 **trying to think of how to phrase and I'm glad you**
19 **volunteered it. Would you agree that 90 percent of**
20 **what every board meeting deals with and what every**
21 **board member votes on, that you generally are in**
22 **concert with each other?**

23 A. Yes.

24 MR. KING: Thank you.

25 JUDGE MAYER: Any other questions?

1 MR. DONELAN: No, Your Honor.

2 JUDGE MAYER: Could you tell me a little
3 bit about it? What's your educational background?

4 THE WITNESS: I have a high school
5 diploma and some community college.

6 JUDGE MAYER: And how old are you?

7 THE WITNESS: 43.

8 JUDGE MAYER: How long have you lived in
9 the building?

10 THE WITNESS: 12 years.

11 JUDGE MAYER: And you said that you've
12 had no discussions with Mr. Sells. Did that include
13 his sister, his cousin and anyone at CSI?

14 THE WITNESS: I had spoken with his
15 sister at one point and she had asked me if I would
16 consider running for the board but at that point, I
17 told her that my time was too limited and I didn't
18 think I could get involved.

19 JUDGE MAYER: Now, this is the annual
20 meeting that you were elected, was that 2011?

21 THE WITNESS: 2011. I've been on the
22 board --

23 JUDGE MAYER: About a year?

24 THE WITNESS: -- less than a year.

25 JUDGE MAYER: Less than a year. And you

1 did not attend that meeting?

2 THE WITNESS: No, I didn't. October 3rd?

3 JUDGE MAYER: Yes.

4 THE WITNESS: No, I was out of town.

5 JUDGE MAYER: And did you expect to be
6 written in?

7 THE WITNESS: It was a surprise. No, I
8 didn't.

9 JUDGE MAYER: Did anyone ask for your
10 permission to write you in?

11 THE WITNESS: No, but I was constantly
12 being asked to run for the board prior to that by
13 various people in the building.

14 JUDGE MAYER: And who contacted you to
15 tell you that you had been elected?

16 THE WITNESS: One of the other homeowners
17 that I'm friends with.

18 JUDGE MAYER: And what was the nature of
19 that conversation?

20 THE WITNESS: I was kind of surprised. I
21 was actually rather surprised.

22 JUDGE MAYER: And what about the other
23 homeowner with whom you spoke?

24 THE WITNESS: He was ecstatic that I was
25 going to get involved and tried to -- you know, I

1 made it known prior to the election that if I were
2 to ever get involved in the board, that it would be
3 solely to try to settle the lawsuits.

4 JUDGE MAYER: And why did you think that
5 was important?

6 THE WITNESS: Because our building is
7 falling apart and our finances are -- we were
8 getting close to being in the red.

9 JUDGE MAYER: And when you say your
10 sentiment which you had expressed generally, would
11 anyone who had known you be aware of that sentiment?

12 THE WITNESS: That I --

13 JUDGE MAYER: That if you were elected,
14 that you would want to end the lawsuits?

15 THE WITNESS: Yes.

16 JUDGE MAYER: And is that different than
17 anyone else's sentiment in the building?

18 THE WITNESS: No, I think everybody would
19 like to end the lawsuits.

20 JUDGE MAYER: But why is your position
21 different than anyone else's?

22 THE WITNESS: Well, people were asking me
23 to run, people that were -- Betty Gilliam, for
24 example, asked me to run for office. She had put a
25 letter on my door and I had made comments that I

1 would like to get involved and end the lawsuits.

2 You know, I'm tired of seeing my money being spent
3 on legal fees.

4 JUDGE MAYER: And how did you expect to
5 end the lawsuits? What did you think was a problem
6 that needed to be resolved that you could contribute
7 to?

8 THE WITNESS: Well, I think the biggest
9 thing I can contribute is the fact that I had no
10 personal interest in either side. I had not known
11 Mr. Sells. I had no -- there was no animosity
12 between me and his family. I was a neutral party.

13 JUDGE MAYER: Had you read any of the
14 opinions of the Court or the circuit Court involved?

15 THE WITNESS: Prior to the --

16 JUDGE MAYER: Before you were elected?

17 THE WITNESS: Yes, I had received copies
18 of that, of some of them. My neighbor, Jane
19 Brungart, kept me informed and we would often
20 discuss what was going on.

21 JUDGE MAYER: And what was your view of
22 the position of FOA in the litigation? Was it
23 justified, unjustified? Pressing too hard, not
24 pressing hard enough?

25 THE WITNESS: There was some

1 justification but the expense would exceed the
2 justification in my opinion.

3 JUDGE MAYER: And what was the
4 justification that you found reasonable, that you
5 thought was appropriate, leaving aside the cost of
6 prosecuting?

7 THE WITNESS: I would have to say a lot
8 of it was based on hearsay in the building as far as
9 I was -- prior to running, for a while I actually
10 believed that -- I was actually believing some of
11 the hearsay that was going around the building about
12 both sides and there was, you know, rock-throwing
13 going back and forth. So I was led to believe that
14 Gordon Properties was taking our money at one point.

15 JUDGE MAYER: And what did you find out
16 different after you became a board member?

17 THE WITNESS: Well, I became more
18 educated and more informed on what was going on and
19 what was really going on. The majority of the
20 homeowners in our building do not have the whole
21 picture, do not have all the information and there
22 is a lot of -- a lot of it is driven by permit
23 conflicts and not facts. There is just a lot of
24 malicious rumors going on in the building
25 constantly.

1 JUDGE MAYER: And was it your
2 understanding when you were on the special
3 litigation committee that you and your committee had
4 the final say in what the settlement agreement would
5 be?

6 THE WITNESS: Yes, we were told that by
7 our attorney.

8 JUDGE MAYER: And did not need to be
9 reviewed by anyone else?

10 THE WITNESS: We would have the final say
11 so as far as what was agreed upon, what was
12 negotiated. I mean, I obviously knew that it would
13 have to go before the Court and through the
14 procedures.

15 JUDGE MAYER: If you had the final say,
16 why did it go to the board of directors to be
17 reviewed and approved?

18 THE WITNESS: I would have to say at the
19 time we had set up the LLC and we had established
20 ourselves, I wasn't aware that it would have to go
21 before the board. I did not know of that -- that
22 that was necessary.

23 JUDGE MAYER: When did you find out that
24 it would go before the board?

25 THE WITNESS: I believe after we actually

1 negotiated the settlement, I was aware that the
2 board would vote on the settlement.

3 JUDGE MAYER: And what did you think that
4 vote meant?

5 THE WITNESS: I honestly didn't know if
6 our vote or the SLC's decision would have been the
7 final decision or the board's decision could derail
8 our decision.

9 JUDGE MAYER: Now, I heard earlier -- and
10 you were in the courtroom -- that the second
11 mediation was in December and you said you
12 participated by telephone.

13 THE WITNESS: Yes, I was on the phone.

14 JUDGE MAYER: And I'm assuming that that
15 was December 11th or thereabouts?

16 THE WITNESS: That sounds correct.

17 JUDGE MAYER: You weren't in town that
18 day?

19 THE WITNESS: No. I was actually on the
20 road and I had been on the phone all day.
21 Mr. Donelan set up a conference call and we were on
22 the phone the majority of the day.

23 JUDGE MAYER: Look at Exhibit 5 if you
24 would. That's the consent in lieu of a meeting of
25 the special litigation committee. Do you recall

1 this?

2 THE WITNESS: I recall signing this form.

3 JUDGE MAYER: And that's your signature
4 on the second page?

5 THE WITNESS: Yes, it is.

6 JUDGE MAYER: Who wrote the date in?

7 THE WITNESS: I wrote the date in. I
8 recognize my handwriting.

9 JUDGE MAYER: But you weren't in town
10 that day?

11 THE WITNESS: This is as far as the
12 consent goes?

13 JUDGE MAYER: Yes.

14 THE WITNESS: This was definitely the
15 second.

16 JUDGE MAYER: Did you sign this after
17 December 11?

18 THE WITNESS: I think it's quite
19 possible, yes.

20 JUDGE MAYER: In fact, it says see
21 attached resolution dealing with the approval and it
22 refers to a settlement agreement on the resolution?

23 THE WITNESS: I'm reading it, yes.

24 JUDGE MAYER: But there was no settlement
25 agreement in writing on the 11th of December.

1 THE WITNESS: Well, we had had the terms
2 of the settlement on that date.

3 JUDGE MAYER: When did you see the
4 written settlement agreement?

5 THE WITNESS: When did I see it for the
6 first time?

7 JUDGE MAYER: Yes.

8 THE WITNESS: When it was prepared. It
9 was probably a few days after the second mediation.

10 JUDGE MAYER: The other testimony has
11 been it wasn't until January.

12 THE WITNESS: Well, we had had drafts
13 of -- we had had different various stages. We had
14 had drafts. It obviously wasn't the final draft but
15 we had --

16 JUDGE MAYER: When did you first time see
17 the final?

18 THE WITNESS: Final draft?

19 JUDGE MAYER: The one that is Exhibit 1.

20 THE WITNESS: The final draft wasn't
21 given to me until, it had to have been several weeks
22 after the mediation.

23 JUDGE MAYER: Was it before or after you
24 signed the consent in lieu of meeting?

25 THE WITNESS: It would have been after

1 that form was dated and signed. Now, I'm not an
2 attorney. I don't --

3 JUDGE MAYER: I'm not asking you to be an
4 attorney.

5 THE WITNESS: All right.

6 JUDGE MAYER: I'm just trying to find out
7 what happened.

8 THE WITNESS: I'm just saying I don't
9 understand 100 percent all of the legal terms.

10 JUDGE MAYER: That's fine.

11 THE WITNESS: Or the order if they should
12 proceed.

13 JUDGE MAYER: When did you see the budget
14 that was used as a template?

15 THE WITNESS: The budget?

16 JUDGE MAYER: Yes, the one that's
17 attached to Exhibit Number 1.

18 THE WITNESS: The budget was worked late
19 last year. I want to say the final budget was
20 probably well into late November, I believe.

21 JUDGE MAYER: Did you work on that?

22 THE WITNESS: Yes, I did.

23 JUDGE MAYER: Who was primarily
24 responsible for drafting it?

25 THE WITNESS: Well, the board members

1 were responsible. We had had budget meetings and we
2 had a meeting. I believe we had an open, like a
3 town hall like forum also to get input on the budget
4 after we had drafted it.

5 JUDGE MAYER: Well, there are some very
6 specific numbers. The board didn't come up with
7 those. Particularly the historic ones. They came
8 from the management agent, I would assume?

9 THE WITNESS: I would assume they come
10 from, yes, historically from --

11 JUDGE MAYER: And did the manager make a
12 first cut at this or do you know how it was
13 developed?

14 THE WITNESS: The manager was working on
15 it, the spreadsheet, at the beginning.

16 JUDGE MAYER: Who was the manager at that
17 point?

18 THE WITNESS: Joe Riviere.

19 JUDGE MAYER: And what did you do to
20 satisfy yourself that this budget complies with
21 Judge Kemler's order and my order?

22 THE WITNESS: It was explained to me by
23 Mr. Riviere that he was going step by step with the
24 orders to make sure that the methodology was correct
25 and that we followed the orders.

1 JUDGE MAYER: Did you yourself make any
2 calculations?

3 THE WITNESS: I don't understand
4 accounting. I definitely reviewed the budget
5 extensively for numbers and looking for anything
6 that was out of the ordinary. I'm sure you've seen
7 the budget is very complicated with the breakdown of
8 the different --

9 JUDGE MAYER: So if I can summarize
10 that -- and correct me if I put words in your mouth
11 that aren't yours -- you looked at it to see if the
12 amounts for particular items seemed correct to you,
13 that particular services were rendered or not
14 rendered as you thought was appropriate, and that
15 was an important part of your review of the budget,
16 is that correct?

17 THE WITNESS: That's correct.

18 JUDGE MAYER: But as far as breaking them
19 down between the limited common elements, the
20 multiple units, some of the common elements, how was
21 that developed?

22 THE WITNESS: That was developed by
23 Mr. Riviere through spreadsheets and, like I said,
24 he followed or he made it clear that he was
25 following the order of Judge Kemler and that --

1 JUDGE MAYER: And did you have any
2 discussions with any accountants?

3 THE WITNESS: I didn't have any
4 discussion with any accountants.

5 JUDGE MAYER: Did you review this budget
6 among the members of the SLC?

7 THE WITNESS: Well, the entire board
8 reviewed the budget, which includes the members of
9 the SLC other than -- I don't believe Jane -- I
10 don't know if Jane was involved in that -- the
11 budget.

12 JUDGE MAYER: But when you met alone with
13 Mr. Donelan, did you all look at the budget to see
14 if it was correct?

15 THE WITNESS: Yes, at some point I'm sure
16 we had a copy of it, definitely.

17 JUDGE MAYER: And what was the discussion
18 about the budget, just among the three of you and
19 Mr. Donelan?

20 THE WITNESS: Well, we discussed what any
21 normal people would discuss, that specific items,
22 that any specific items were incorrect or inflated
23 or seem to be out of line.

24 JUDGE MAYER: The settlement agreement
25 says that this is a template for future use. What

1 does that mean?

2 THE WITNESS: That means that the
3 methodology that was used in creating the budget
4 would be drafted and would be used for future years
5 for budgeting.

6 JUDGE MAYER: How does that translate
7 into a day-to-day application, as you understand the
8 use of it as a template?

9 THE WITNESS: Well, I understand what a
10 template is for future years in budgeting. It's my
11 understanding that would be the -- that each column
12 would be -- each column would be -- each type of
13 residential or commercial, a combination, common
14 elements and stuff would be broken down and the
15 methodology would be used with the spreadsheet and
16 would determine who would pay what as far as certain
17 items in the building. Like, for example, the
18 restaurant wouldn't pay for the swimming pool or --

19 JUDGE MAYER: Who pays to cut the grass?

20 THE WITNESS: I believe that's First
21 Owners Association.

22 JUDGE MAYER: But how is that allocated
23 among the various types of units?

24 THE WITNESS: Well, I know for a fact
25 that the restaurant pays their own landscaper to do

1 the grass so I would hope that it would be in there
2 that we would be paying 100 percent of the grass.

3 JUDGE MAYER: Have you discussed that
4 with counsel?

5 THE WITNESS: The percentages?

6 JUDGE MAYER: Who pays for cutting the
7 grass.

8 THE WITNESS: Not specifically.

9 JUDGE MAYER: With an accountant?

10 THE WITNESS: No.

11 JUDGE MAYER: Look, if you would, to
12 Exhibit 7. On page 8, you discussed the settlement
13 agreement. It's about halfway down. Take a look
14 and read that if you would.

15 THE WITNESS: "Director Reichenbach" --

16 JUDGE MAYER: You can read it to
17 yourself. I understand you can read. I just want
18 you to --

19 THE WITNESS: I didn't know if you wanted
20 me to --

21 JUDGE MAYER: No. Well, actually, we've
22 got a number of people here. Why don't you go ahead
23 and read it so that they can understand what it says
24 too.

25 THE WITNESS: "Director Reichenbach moved

1 that the board of directors ratify and accept
2 settlement agreement between Gordon Properties, LLC
3 and FOA dated December 2012. Ms. Hernandez seconded
4 the motion. The motion was passed with three votes
5 in favor and no votes in opposition. The votes were
6 as follows: Bill Reichenbach voted yes. Martina
7 Hernandez voted yes. Jonathan Halls, Elizabeth
8 Greenwell, Bryan Sells and Lindsay Wilson
9 abstained."

10 JUDGE MAYER: Is there anything peculiar
11 about that, particularly the three votes in favor?

12 THE WITNESS: There is not three votes in
13 favor on there.

14 JUDGE MAYER: Is it accurate, then, that
15 there were only two votes in favor?

16 THE WITNESS: That would be correct. I
17 would believe -- I know how I voted and I know
18 how --

19 JUDGE MAYER: Now, Ms. Hadley is not --
20 is that her name, Ms. Hadley?

21 THE WITNESS: Yeah, she's not on there.
22 Was she present? Let me see if she is present on
23 that one. She was absent during that particular
24 meeting.

25 JUDGE MAYER: So you think that although

1 these minutes were approved, this particular part is
2 inaccurate when it says three votes. It's accurate
3 as to whom voted for it?

4 THE WITNESS: That's correct.

5 JUDGE MAYER: And the actual number there
6 instead of 3 should have been 2 in favor and not
7 against?

8 THE WITNESS: Most definitely.

9 JUDGE MAYER: Was there a discussion in
10 that meeting as to whether Ms. Hadley was an
11 interested or disinterested director?

12 THE WITNESS: I don't believe so. No, I
13 hadn't heard.

14 JUDGE MAYER: You hadn't heard anything
15 like that before?

16 THE WITNESS: No.

17 JUDGE MAYER: When did that issue first
18 come to vote?

19 THE WITNESS: When we were discussing the
20 settlement, it was brought to my attention because
21 there was one carve-out at the bottom that would
22 allow future litigation against the previous board
23 and at that point, I was told that Ms. Hadley was
24 involved in a lawsuit or a potential lawsuit. At
25 that time, I realized then.

1 JUDGE MAYER: But no one said anything at
2 the meeting?

3 THE WITNESS: I can't remember. I can't
4 recall hearing anything.

5 JUDGE MAYER: It rang a bell with you
6 when you read the footnote on the settlement
7 agreement?

8 THE WITNESS: Yes, at that point.

9 JUDGE MAYER: Had you discussed that
10 issue in the negotiations, that they would be
11 excluded?

12 THE WITNESS: Yes, we did.

13 JUDGE MAYER: So you knew when you
14 approved it in concept or at least with the term
15 sheet on December 11th that they would be excluded?

16 THE WITNESS: That's correct.

17 JUDGE MAYER: But at that point, no one
18 was saying that Ms. Hadley was disinterested or not
19 disinterested in her ability to act or approve or
20 disapprove or participate at the board of directors
21 level on this settlement agreement?

22 THE WITNESS: No.

23 JUDGE MAYER: At the board of directors
24 level, when did that first come to light?

25 THE WITNESS: I guess it was probably --

1 I would have to say I heard those particular terms
2 being used a while back. I wouldn't say more than
3 two months ago, about the interested and
4 disinterested.

5 JUDGE MAYER: That would take you back to
6 July something?

7 THE WITNESS: That's correct.

8 JUDGE MAYER: July of this year?

9 THE WITNESS: That's correct.

10 JUDGE MAYER: I saw a reference in one of
11 the exhibits to minutes of the special litigation
12 committee. Did you keep minutes?

13 THE WITNESS: We kept minutes.

14 JUDGE MAYER: And where are they now?

15 THE WITNESS: Ms. Brungart normally would
16 keep the minutes.

17 JUDGE MAYER: Were they reviewed by
18 anyone outside the committee?

19 THE WITNESS: No, they weren't, as far as
20 I know.

21 JUDGE MAYER: Did you expect them to be?

22 THE WITNESS: No, I would expect them to
23 be confidential and be treated as such.

24 JUDGE MAYER: Did the committee make any
25 reports to anyone, to the homeowners or to the board

1 of directors as to your progress?

2 THE WITNESS: Not that I'm aware of.

3 JUDGE MAYER: Now, you have an assessment
4 cap of \$35,000 on the restaurant unit, is that
5 right?

6 THE WITNESS: That's correct.

7 JUDGE MAYER: What is their assessment
8 this year?

9 THE WITNESS: What is the assessment this
10 year on the restaurant? I want to say it's around,
11 I believe, \$8,000.

12 JUDGE MAYER: Eight?

13 THE WITNESS: Yes. Honestly, I'm not 100
14 percent accurate but that sounds --

15 JUDGE MAYER: If you go to Exhibit 1
16 which has the template budget attached to it.

17 THE WITNESS: I'm looking at it.

18 JUDGE MAYER: Did that help you, looking
19 at page 20 towards the end of that.

20 THE WITNESS: You said page 20?

21 JUDGE MAYER: Yes.

22 THE WITNESS: The monthly fee for 2012
23 was \$8,515.

24 JUDGE MAYER: And the approved monthly
25 fee for 2013?

1 THE WITNESS: \$1,559.

2 JUDGE MAYER: So it would be more like
3 18,000 at the 2013 level?

4 THE WITNESS: The monthly approved
5 budget?

6 JUDGE MAYER: Yes.

7 THE WITNESS: \$1,559? Uh-huh.

8 JUDGE MAYER: So it would be about 18,000
9 per year, 19,000?

10 THE WITNESS: That would be correct.

11 JUDGE MAYER: Now, it dropped quite a bit
12 from the year before. Do you know why or can you
13 explain to me why that happened?

14 THE WITNESS: It was my understanding
15 that Judge Kemler's order changed the percentages
16 for the street front unit.

17 JUDGE MAYER: And what are the finances
18 today of the association?

19 THE WITNESS: The finances today?

20 JUDGE MAYER: Yes.

21 THE WITNESS: As far as --

22 JUDGE MAYER: If they were dire a year
23 ago --

24 THE WITNESS: They've improved. They've
25 improved with the increase in condo fees. Our condo

1 fees went up approximately 22 percent last year, I
2 believe.

3 JUDGE MAYER: And why did they go up?
4 What was the change in the budget?

5 THE WITNESS: The big change in the
6 budget was, number one, we weren't using the
7 reserves to fund the legal expenses, is how I
8 interpreted it. We had to budget \$300,000 in for
9 legal expenses. And then of course with the change
10 in the assessment, the way the assessment
11 methodology was set up, if it decreased the
12 restaurant, the residential would increase, I
13 believe.

14 JUDGE MAYER: And that's your
15 understanding of the principal reason for the
16 change, the 22 percent increase?

17 THE WITNESS: Primarily the legal budget
18 was not -- I don't believe legal was set at that
19 high amount prior to that.

20 JUDGE MAYER: Now, you said there was a
21 confidentiality document you had to sign?

22 THE WITNESS: That's correct.

23 JUDGE MAYER: Who presented that to you?

24 THE WITNESS: John Donelan, I believe.

25 JUDGE MAYER: How did the committee come

1 to retain Mr. Donelan?

2 THE WITNESS: When we started with the
3 SLC, Mr. Donelan and Jennifer Sarvadi were I guess
4 previously involved. That was my understanding.
5 They had already been retained at that point, was my
6 understanding.

7 JUDGE MAYER: And so when you came aboard
8 the reformulated SLC, you continued Mr. Donelan and
9 Ms. Sarvadi?

10 THE WITNESS: That's correct.

11 JUDGE MAYER: Did you consider anyone
12 else as counsel?

13 THE WITNESS: No, we didn't.

14 JUDGE MAYER: What's your understanding
15 of the merits of the lawsuit against the former
16 directors?

17 THE WITNESS: Well, apparently the former
18 directors, there were some issues with the
19 legitimate elections in the past. There had been
20 elections that were postponed. Some inappropriate,
21 some unethical things were done with prizes to get
22 people to come down and vote. Just a lot of things
23 that shouldn't have been done.

24 JUDGE MAYER: And how has that injured
25 the association?

1 THE WITNESS: By not conducting a proper
2 election and not getting the proper people
3 legitimately voted in, it could have an impact on
4 the association and what takes place.

5 JUDGE MAYER: Is your committee involved
6 in the litigation against the former directors?

7 THE WITNESS: No.

8 JUDGE MAYER: You're not involved in that
9 at all?

10 THE WITNESS: No, not at all.

11 JUDGE MAYER: What's your view on the
12 merits of some of the appeals? There is one appeal
13 on the sanction award itself.

14 THE WITNESS: My view is that we've spent
15 enough money and that the likelihood of those
16 appeals going through is -- we wouldn't get to that
17 stage with our financial -- we wouldn't have enough
18 money to litigate to get to that point. So it was
19 never a -- I never got too terribly involved other
20 than what I was told by Mr. Donelan and he explained
21 to us the different -- what was going through the
22 appellate courts and various things.

23 But we based a lot of stuff around the
24 fact that our finances wouldn't allow us to get to
25 that point. We needed to -- settling these lawsuits

1 would have been -- it would be more financially
2 beneficial. Mr. Donelan explained to us in detail
3 various scenarios that could happen if it was
4 continued to escalate amongst the courts.

5 JUDGE MAYER: If the former directors are
6 successful in their defense, you're aware that the
7 association's likely to indemnify them, that is, pay
8 their expenses?

9 THE WITNESS: I was under the assumption
10 that the insurance that we have that covers that
11 type of stuff could possibly have to pay that, yes.

12 JUDGE MAYER: Tell me about the
13 insurance. Do you know insurance -- does it cover
14 them?

15 THE WITNESS: I would think so but I
16 don't know. I haven't looked over those documents.
17 I just assumed that the directors would be covered
18 in a situation like that.

19 JUDGE MAYER: Did you read any Court
20 documents in reaching your decision to approve the
21 settlement agreement?

22 THE WITNESS: Did I read any Court
23 documents about the previous boards?

24 JUDGE MAYER: Any documents in any of the
25 litigation between the association and Gordon

1 Properties. Any complaints, any answers, any
2 opinions, any briefs or anything like that?

3 THE WITNESS: Mr. Donelan provided us
4 with -- and no, I wasn't able to attend Court on
5 several of those occasions and I would read through
6 the e-mails he would send me and I believe they were
7 included in there.

8 JUDGE MAYER: But did you see any
9 originals of the documents?

10 THE WITNESS: Prior --

11 JUDGE MAYER: From, for example, the
12 complaint now pending in the Circuit Court against
13 the former directors. Have you reviewed that.

14 THE WITNESS: I breezed through. I had
15 seen that prior to, breezed through it. I didn't
16 look at it extensively.

17 JUDGE MAYER: And do you recall reading
18 any other things from the Court other than
19 Mr. Donelan's summary document to you?

20 THE WITNESS: No.

21 JUDGE MAYER: The settlement agreement
22 says that there will not be more than a \$200 charge
23 for storage units.

24 THE WITNESS: Yes.

25 JUDGE MAYER: How did you come up with

1 that?

2 THE WITNESS: That was based on the fact
3 that the other owners had complimentary storage.

4 JUDGE MAYER: Had complimentary storage?

5 THE WITNESS: Storage is included with
6 your unit in the building. And we felt \$200 was a
7 reasonable figure being that Gordon Properties
8 storage units were separated and secured unlike the
9 ones that we have down in the basement. We didn't
10 feel that Mr. Sells should have to pay an exorbitant
11 amount of storage considering the fact that each
12 unit has its own included storage with its condo
13 fees so we felt that he should have an equal amount
14 of storage space to be included.

15 JUDGE MAYER: Did you try to come up with
16 the costs of maintaining that, the costs of the
17 association for whatever cleaning, lighting,
18 whatever might be associated with that space?

19 THE WITNESS: I think we came up with
20 what we thought was a reasonable amount. I'm not
21 sure -- I don't recall at this point how we came to
22 that.

23 JUDGE MAYER: Did you read the examiner's
24 report?

25 THE WITNESS: Yes, I did.

1 JUDGE MAYER: And what are your reactions
2 to that?

3 THE WITNESS: There were some things in
4 there that I didn't know, didn't take into
5 consideration like the SLC should have been apprised
6 of all board members. That kind of caught me off
7 guard. I was very impressed by the report. I
8 believe towards the end, Mr. Leach praised us for
9 all the hours and hard work we put in.

10 JUDGE MAYER: He certainly did. And
11 justifiably so.

12 THE WITNESS: And said that he -- I got
13 out of it he felt that we had put a lot of time and
14 energy into it.

15 JUDGE MAYER: And that's true, isn't it?

16 THE WITNESS: Yes.

17 JUDGE MAYER: In your best judgment, you
18 are in favor of the settlement agreement? You
19 negotiated it and approved -- voted for it at the
20 board of directors level?

21 THE WITNESS: (Witness nodding.)

22 JUDGE MAYER: And can you tell me in your
23 own words why you think it is a good settlement for
24 the association?

25 THE WITNESS: I think it's a good

1 settlement for the association given the fact that
2 we're typically spending between five and \$600,000 a
3 year in legal fees and it seemed that we negotiated
4 a fair settlement based on the various scenarios if
5 we were to continue litigation. We took that into
6 consideration. And just felt that us having a
7 payment plan and breaking it down with zero interest
8 over a certain period of time would allow us to
9 financially be able to start getting in financial --
10 you know, getting in good shape financially.

11 JUDGE MAYER: One of the things I think
12 you said earlier to Mr. Donelan in his questions was
13 that one of the first things you heard about or part
14 of the first communications from Gordon Properties
15 was this qualifications issue, getting my order
16 vacated.

17 THE WITNESS: Yes.

18 JUDGE MAYER: Is that a good deal for the
19 association or not a good deal?

20 THE WITNESS: I have my own opinion on
21 whether or not those seats should be filled by
22 affiliated people and as far as that. Do I think
23 it's a good deal? It could go both ways. It could
24 go either way depending upon who was involved in the
25 situation.

1 JUDGE MAYER: You're making a rule that's
2 applicable for the future. Is it a reasonable way
3 to go for the association?

4 THE WITNESS: Well, I just felt that -- I
5 just feel -- I felt strongly that if there is
6 multiple corporations that have ownership in the
7 property, that say, for example, if somebody has six
8 different corporations and each corporation owns a
9 unit, that they should be able to hold those board
10 seats. That's my personal opinion. Just like if
11 me, my mother, my sister or my brothers buy six
12 units, we should be able to have six seats if we're
13 all individual owners. Just because we live under
14 the same roof doesn't make it right that --

15 JUDGE MAYER: Well, I'm not sure if your
16 hypothetical -- each one owns their own unit? Your
17 mother owns one, your sister owns one, you own one,
18 your brother owns one?

19 THE WITNESS: That's correct.

20 JUDGE MAYER: Under the present order,
21 each of you could sit on the board if you were
22 elected, because you're each individual. As a
23 natural person, you would each have your own
24 personal right.

25 THE WITNESS: I just feel that if there

1 are individual corporations -- if these are
2 individual corporations, they should be able to
3 retain as many seats as corporations.

4 JUDGE MAYER: Well, the opinion and the
5 order addresses a situation of Gordon Properties
6 that owns 40 units. It's not that there are 40
7 corporations, each owning one unit.

8 THE WITNESS: That's correct.

9 JUDGE MAYER: So I'm not quite sure I'm
10 getting what you're telling me. I understand what
11 you're saying is there were five different
12 companies, that each company should have its own
13 seat. I think you're telling me that. And you're
14 nodding yes. But what if five units are owned by a
15 single entity, a single company.

16 THE WITNESS: I think that that should
17 constitute one seat.

18 JUDGE MAYER: And that's what the order
19 says, doesn't it?

20 THE WITNESS: I interpreted it that it
21 would limit the number of seats as far as the
22 different identities, as far as --

23 JUDGE MAYER: Mr. Sells own a unit,
24 Gordon Residential Holdings owns a unit and Gordon
25 Properties owns a unit. They have three seats.

1 THE WITNESS: That's correct.

2 JUDGE MAYER: As it stands today and that
3 doesn't violate the order.

4 THE WITNESS: That's correct.

5 JUDGE MAYER: So I'm trying to understand
6 where you're coming from to understand --

7 THE WITNESS: Well, I just felt like each
8 entity should be able to have a seat on the board.

9 JUDGE MAYER: Well, they do.

10 THE WITNESS: So that's the way I feel
11 about that.

12 JUDGE MAYER: So then why vacate it? How
13 does that help the association? Because that's not
14 what you would get if it was vacated. There would
15 be no rule. It would be left up in the air again.

16 THE WITNESS: It was my understanding if
17 it was vacated that these different entities could
18 each hold a seat on the board.

19 JUDGE MAYER: Do you have any other
20 questions you wish to ask, Mr. Donelan, Mr. King?

21 MR. DONELAN: No, Your Honor.

22 JUDGE MAYER: Mr. King?

23 MR. KING: Would it be appropriate to
24 take a short break right now, Your Honor?

25 JUDGE MAYER: Yes, just a moment.

1 Mr. Jones, do you have any questions?

2 MR. JONES: I have no questions, Your
3 Honor.

4 JUDGE MAYER: All right. Why don't we
5 take a short recess and then we'll come back. While
6 we're on recess, you're not to talk to anybody.
7 We'll take a short recess.

8 (Recess.)

9 JUDGE MAYER: Do you have any further
10 questions, Mr. King?

11 MR. DONELAN: Your Honor, if I might, I
12 know I passed earlier, but I would like to ask some
13 questions.

14 JUDGE MAYER: All right. Go ahead.

15 EXAMINATION BY COUNSEL FOR FOA AND SLC

16 BY MR. DONELAN:

17 Q. Mr. Reichenbach, the questions that I
18 have just had to deal with trying to get an
19 understanding of the date of the settlement
20 agreement and the -- and you may not recall this
21 because it was some time ago but if you'll look at
22 Exhibit 5, that's the consent of the members of the
23 special litigation committee to the action of the
24 committee. That's in the black one as well. And on
25 page 2, that's your signature?

1 A. Yes, it is.

2 Q. Do you happen to recall when you signed
3 that? What I'm trying to understand is, you've
4 testified that you were not present that day at --

5 A. We weren't present. I'm not sure if we
6 signed later on that day or it was the next day but
7 I believe --

8 Q. Do you recall whether or not it was in my
9 presence or the presence of some other member of the
10 committee that you signed that? If you don't
11 remember, you don't remember.

12 A. I want to say that you e-mailed this, I
13 printed it and went around and got it signed being
14 that I dated all three of them.

15 Q. So that is your handwriting for the date?

16 A. I dated the three of them. I believe
17 that you e-mailed it -- I'm the only one that had a
18 printer so I printed it. I came back from Richmond
19 that evening.

20 Q. Oh, you did?

21 A. Yes. I was only gone half the day.

22 Q. That's the first item on Exhibit 5. Now,
23 with regard to the settlement agreement which is
24 Exhibit 1 and again, this goes back to December.
25 And do you recall the fact that this -- what do you

1 recall if anything about authorizing me to sign the
2 settlement agreement? Do you recall when you did
3 that?

4 A. It would have to have been after the
5 11th, I believe.

6 Q. I think the testimony earlier today --

7 A. Honestly, I don't know.

8 Q. -- was that there was a back and forth
9 between Mr. King and I and he was away in Europe for
10 two weeks?

11 A. Yes.

12 Q. And he was difficult to get to. And what
13 I was wondering is whether or not you remember
14 seeing multiple drafts of this settlement agreement
15 as we worked it out and then the final agreement
16 with the attachment before it was ultimately
17 authorized.

18 A. I believe the wording was changed a
19 couple of times. There was a couple of drafts.

20 Q. Do you recall seeing the template, the
21 2013 budget attached to the settlement agreement
22 before you authorized me to sign it?

23 A. Yes, it was attached.

24 Q. You don't recall the date?

25 A. No, not necessarily, I don't know.

1 by the Court Deputy, was examined and testified as
2 follows:

3 EXAMINATION BY COUNSEL FOR FOA AND SLC

4 BY MR. DONELAN:

5 Q. Good afternoon, Ms. Brungart.

6 A. Good afternoon.

7 Q. Would you identify yourself for the
8 record?

9 A. Yes. I'm Jane Brungart.

10 Q. And where do you live now, Ms. Brungart?

11 A. I just sold my unit last Friday a week
12 ago and I'm still at 4600 Duke.

13 Q. And you are a member of the special
14 litigation committee, is that right?

15 A. Yes, sir.

16 Q. And you've heard the testimony here this
17 afternoon by Mr. Reichenbach who is on the committee
18 with you?

19 A. Yes.

20 Q. Did you hear anything that you felt was
21 inaccurate in any way?

22 A. No. No, I didn't.

23 Q. Now, with regard to -- give the Court
24 some indication of what your education is, if you
25 would, and what your employment was.

1 A. I went to Mary Washington College, got a
2 BA, then I got a master's degree from the University
3 of Virginia and I am happily retired from the
4 federal government as of January.

5 **Q. And what has your involvement been with**
6 **FOA with regard to the board of directors?**

7 A. I was on the board of directors for 11
8 years. I was not on this past year.

9 **Q. So roughly would that have been from 2000**
10 **to 2011 or '12?**

11 A. Yes, sir.

12 **Q. So you were on the board during the time**
13 **of its troubles, I'm going to call it?**

14 A. Yes, sir.

15 **Q. So you're knowledgeable about these**
16 **lawsuits?**

17 A. Yes, sir.

18 **Q. Have you read much if any of the**
19 **pleadings?**

20 A. Yes, sir.

21 **Q. And you're knowledgeable about the order**
22 **that the settlement agreement provides would be**
23 **vacated and you're knowledgeable about the**
24 **assessment issues and the election issues?**

25 A. Yes, sir.

1 Q. And the interested versus disinterested
2 parties issues?

3 A. Yes, sir.

4 Q. Now, looking back at the SLC, when did
5 you become a member of the SLC?

6 A. I believe it was June of 2012.

7 Q. So that would have been the prior SLC, is
8 that right?

9 A. Yes, it is.

10 Q. And who was on that committee?

11 A. Betty Gilliam and Alex Zoghaib, the three
12 of us.

13 Q. And that particular committee was ended
14 in October, prior to October 3rd?

15 A. Yes, sir.

16 Q. And then the present committee was
17 formed?

18 A. Right.

19 Q. Was created and composed of you, Bill
20 Reichenbach and Martina Hernandez?

21 A. Correct.

22 Q. Now, let's break it down into months,
23 shall we? In October of 2012, there were four or
24 five meetings of the special litigation committee,
25 is that right?

1 A. Correct.

2 Q. And you've heard the testimony before by
3 Bill?

4 A. Yes.

5 Q. And can you essentially adopt what he
6 said for the most part?

7 A. Yes.

8 Q. But let me hear from you as to what your
9 view of the role of the committee was. What was the
10 committee trying to accomplish?

11 A. I think there were two main issues. One
12 is to stop the bleeding of the legal fees because at
13 that point, we had roughly spent over a million and
14 a half on legal fees and also there was an issue of
15 trying to shut down the 11 existing lawsuits and we
16 were told several times that we might win some, lose
17 some but in the long run, we didn't have the money
18 to continue fighting in Court. And you know when
19 your pipes are bursting and all that, all the
20 building problems we had that needed repair, we just
21 didn't want to see money going out in legal fees.

22 Q. I see. And so Your Honor asked
23 Mr. Reichenbach about documents and so forth and
24 pleadings. Did you, in the course of your prior
25 being on the board at prior times and also in this

1 special litigation committee, did you have the
2 opportunity to read some of the pleadings that were
3 forwarded to you so that you were knowledgeable
4 about the issues?

5 A. Yes, basically. I went to most of the
6 hearings in the District Court as well as here so I
7 had a pretty good idea.

8 Q. I understand. And you were familiar, I
9 take it, with the financial situation of the FOA?

10 A. Yes, sir.

11 Q. And the defaults, the nonmonetary
12 defaults with Virginia Commerce Bank?

13 A. Yes, sir.

14 Q. And so is it fair to -- how would you
15 summarize what occurred in October of 2012? What
16 occurred during that period of time if you can
17 remember?

18 A. Are you thinking about the election
19 itself?

20 Q. No, no. I'm talking about October of
21 2012. That would be after you were on the
22 committee.

23 A. Right.

24 Q. What did the committee do during that
25 period if you recall?

1 A. For me, it was mainly an educational time
2 because we met at least once a week with you, talked
3 frequently, you sent us e-mails and we were learning
4 more about the existing legal suits and also about
5 what we could do to achieve the end of these 11
6 lawsuits and there have been so much antagonism in
7 the building between Gordon Properties and CSI. It
8 was just a constant fight over the past five years,
9 six years. And we were hoping to sort of once and
10 for all bury the hatchet and have peace in the
11 building and go ahead with getting the needs of the
12 building taken care of instead of being in court all
13 the time.

14 **Q. With regard to the settlement agreement**
15 **which is Exhibit 1 and which you reviewed -- well,**
16 **let me ask you about that. And before I ask you**
17 **about that, let me ask you to take a look -- and**
18 **this is in the black folder. That is the consent of**
19 **the members of the special litigation committee,**
20 **Exhibit 5.**

21 A. Right.

22 **Q. Do you recognize that?**

23 A. Yes, I do.

24 **Q. That's your signature on the first page?**

25 A. Yes, sir.

1 Q. And that is not your signature of the
2 date, is that right? That's -- I think Bill
3 Reichenbach just testified that was his --

4 A. His date?

5 Q. Yes.

6 A. Yes, that is correct.

7 Q. And do you recall when you signed that?

8 A. It seems to me that the day of the
9 mediation, we were --

10 Q. He's testified that it was e-mailed to
11 him and he printed it out.

12 A. Right.

13 Q. So go ahead.

14 JUDGE MAYER: Mr. Donelan?

15 MR. DONELAN: Excuse me?

16 JUDGE MAYER: We don't lead witnesses.

17 MR. DONELAN: Excuse me, Your Honor.

18 THE WITNESS: It seemed like to me the
19 day of the mediation, we were in one of the chambers
20 and Martina and I, you and Bill was on the phone and
21 it seems like to me, Martina and I signed something
22 that afternoon and then, because Bill wasn't
23 present, I believe you faxed it to him and then he
24 came over to my place and we signed it again.

25 BY MR. DONELAN:

1 Q. I see.

2 A. That's to my remembrance.

3 Q. Now, what about Exhibit 1. That's the
4 settlement agreement itself. Do you have any
5 recollection about when you authorized me to sign
6 that on behalf of the SLC and FOA?

7 A. I don't remember exactly when we
8 authorized you but I know we did. I know we did
9 authorize you.

10 Q. And do you recall, did you see -- at the
11 time that you did authorize it, was the budget from
12 fiscal year 2013 attached to it?

13 A. Yes, sir.

14 Q. Now, with regard to the settlement
15 agreement -- well, let's go back to the mediation.
16 Do you recall the mediation?

17 A. I do.

18 Q. And how many days of mediation were
19 there?

20 A. Two separate days.

21 Q. And do you recall what occurred on the
22 first day?

23 A. Yes, sir, I do. Nothing happened, I
24 don't think, substantially. Judge Huennekens, who
25 seemed to be very adequate, very prepared, he knew

1 everything or well read and he went between one
2 group and the other and we kept hearing the other
3 side wouldn't budge. So we kept giving in and
4 giving in and to my knowledge, they never gave in on
5 anything. We gave in a lot. And at the end of the
6 day, we didn't come up with a settlement.

7 **Q. And that was because -- for what reason,**
8 **do you remember?**

9 A. Well, specifically, we wanted very much
10 for this court case against the former board members
11 to be dropped and Judge Huennekens said there is
12 just no way we could get them to drop it. So that
13 was a firm issue. And we didn't want to give them
14 control, that is, Gordon Properties and CSI but
15 Judge Huennekens, bankruptcy judge, he said, they're
16 not going to budge on that. So if you want an
17 agreement, you're going to have to give in. And we
18 did. We did give in a lot but we did it hesitantly.
19 We didn't want to but --

20 **Q. So after the first day, there was no**
21 **settlement and we came back on December 11th for the**
22 **second day.**

23 A. Right.

24 **Q. And do you recall what occurred on that**
25 **day?**

1 A. Judge Huennekens sort of went back and
2 forth, back and forth from our room where Martina
3 and I were sitting and Bill was on the phone, then
4 he would go over to talk to Bryan Sells and Don King
5 and then he would come back and tell us what they
6 were not going to budge on and what we could expect
7 and he kept saying this is not a perfect agreement
8 but he said it's the best you're going to do. He
9 said, this is the best you're going to get. And he
10 said frankly you all don't have the money to
11 litigate. He said some of these cases you might
12 win, some of them you're going to lose but you don't
13 have the money.

14 **Q. Do you recall -- and you may not but do**
15 **you recall any of the issues that were -- well, let**
16 **me just ask you generally, there were some terms of**
17 **the agreement that were modified based on the**
18 **mediation, is that correct?**

19 A. Yes.

20 **Q. Specifically with regard to the money and**
21 **the assessment of money and the payment of monies in**
22 **settlement. Do you recall that?**

23 A. Yes.

24 **Q. What do you recall if anything about the**
25 **450,000 judgment that was in the name of FOA against**

1 **CSI? Do you recall anything about that and the**
2 **difficulty of getting that or collecting on that**
3 **judgment?**

4 A. Yes. It started off they would -- the
5 other side, Bryan Sells, would be willing to pay us
6 100,000 instead of the 430,000 and we said, no, that
7 was, you know, not fair. And then Judge Huennekens
8 would come back to them and he negotiated it up to
9 225,000.

10 **Q. Do you recall the reason for that and the**
11 **reason why FOA could not collect any more than that**
12 **from -- more than the \$90,000 from CSI?**

13 A. It seems to me they were just -- we were
14 told that they just didn't have the money, that they
15 didn't have it to pay us.

16 **Q. Are you familiar with the substantive**
17 **consolidation lawsuit where CSI and Gordon**
18 **Properties -- and you know what happened in the**
19 **Bankruptcy Court on that.**

20 A. Right.

21 **Q. And what did happen?**

22 A. That CSI and Gordon Properties were
23 consolidated into one so that when CSI said they
24 didn't have the money, Gordon Properties does have
25 property so they would have the money to pay us

1 back.

2 Q. Did you understand that that was approved
3 or did you understand that that had not been -- that
4 there was no substantive consolidation and that was
5 under appeal to the U.S. District Court or do you
6 remember?

7 A. I don't remember. I know it did happen
8 but I don't remember the time.

9 Q. I think the judge is going to ask you --
10 so I may as well now -- why do you want this
11 settlement agreement to be approved and why do you
12 think it ought to be approved?

13 A. Well, as I said before, it will close
14 down 11 lawsuits, would save us between five -- and
15 this is according to the bankruptcy judge in
16 Richmond, Judge Huennekens. He said it will save
17 you between 500,000 and a million dollars in legal
18 fees. He said it would bring peace to the building.
19 And he kept saying it's not the best and there are a
20 lot of flaws in it but it's the best you're going to
21 get and I believed him because he's a bankruptcy
22 judge.

23 Q. And is that your position?

24 A. Yes, sir, it is.

25 Q. And it continues to be your position?

1 A. It does.

2 **Q. Bringing your attention to the two town**
3 **hall meetings, what can you add with regard to**
4 **those? Do you recall the one in January?**

5 A. I do. We had a good crowd and very
6 interested people and everybody was very pleased
7 with your presentation. You went through it
8 carefully, slowly, line by line almost, explained
9 everything. You said, hold your questions at the
10 end and you said if we have to stay here all night,
11 we'll stay here all night until every question is
12 answered. There were handouts. Everybody had a
13 handout of the settlement agreement so they could
14 follow along. And actually, you went through it
15 twice just to make sure everybody understood. And
16 after you had gone through it very carefully, slowly
17 twice, then you asked for questions and answers and
18 there were some very good questions, a lot of
19 interest.

20 And after it was over, I heard a lot of
21 positive comments of people saying, well, now they
22 finally understood or had a better understanding of
23 what it was all about.

24 **Q. You've been to most of the Court**
25 **appearances and I'm sure you were here in January,**

1 about seven months ago, January 22nd or 3rd,
2 whenever it was on, this settlement agreement was on
3 for approval for the first time. Judge Mayer at
4 that time advised the special litigation committee
5 to conduct a second town hall meeting. Do you
6 recall that meeting?

7 A. I do, yes.

8 Q. And do you recall the handouts and the
9 notices and so forth that were sent out?

10 A. Right.

11 Q. And you were present at that meeting as
12 well?

13 A. Right.

14 Q. And did that follow the same format?

15 A. Right. The same format. There were even
16 more people there. I think we had a roomful of
17 people, very attentive and you did the same thing,
18 went through it twice bit by bit, line by line and
19 then asked at the end for questions or comments and
20 a number of people had questions and again you said,
21 we'll stay here all night until every question is
22 answered. And so no one left without having asked a
23 question.

24 Q. There is a third member of the committee?

25 A. Right.

1 Q. Martina Hernandez?

2 A. Right.

3 Q. And she's not here today?

4 A. Right.

5 Q. And her position -- what was her position
6 with regard to the settlement?

7 A. When we signed it, she was --

8 MR. JONES: Objection, Your Honor,
9 hearsay.

10 JUDGE MAYER: Sustained.

11 MR. DONELAN: Then that completes my
12 questions, Your Honor.

13 JUDGE MAYER: You're not able to tell us
14 what someone else said who is not here.

15 THE WITNESS: Right.

16 JUDGE MAYER: And none of the other
17 lawyers can ask you -- can't ask her what she said
18 or what she meant or anything. That's called
19 hearsay.

20 THE WITNESS: Okay.

21 JUDGE MAYER: Did you have any questions,
22 Mr. King?

23 MR. KING: I do not, Your Honor.

24 JUDGE MAYER: Mr. Jones?

25 MR. JONES: Yes. Very briefly, Your

1 Honor.

2 EXAMINATION BY COUNSEL FOR OPPOSER

3 BY MR. JONES:

4 **Q. Ms. Brungart, you said that they weren't**
5 **willing to compromise on the control issue. What is**
6 **the control issue?**

7 A. Well, I'm trying to think of the
8 specifics. Basically we didn't like the fact that
9 they had three seats on the board, three out of
10 seven seats, but we couldn't get any change there.
11 We felt like it wasn't really fair to the other
12 homeowners. There are over 400 units in the
13 building and we felt like it was an unfair
14 representation for one group to have three seats on
15 the board, even though they have the votes, but we
16 felt like it was a great conflict of interest and I
17 think most people in the building felt like there
18 was too much of a conflict of interest.

19 **Q. Do you recall any discussion regarding**
20 **the provision in the compromise agreement -- I**
21 **believe the compromise agreement in fact is**
22 **Conditioned on the term of vacating this Court's**
23 **order. Are you familiar with that?**

24 A. A little bit, yes.

25 **Q. And that would go to the control issue?**

1 A. Right.

2 **Q. How did you feel about the demand that**
3 **the Court's order be vacated which would potentially**
4 **give Gordon Properties more control over the board?**

5 A. I did not think that was fair to the
6 other homeowners because there are a lot of
7 people -- I mean, there were a lot of people in the
8 building who aren't equally represented on the board
9 and I feel like with Gordon Properties and CSI
10 having three seats out of seven, it gives them more
11 of a monopoly or an unfair position. I didn't think
12 that was fair.

13 **Q. And you still feel that way today?**

14 A. I still feel that way, yes.

15 MR. JONES: No further questions, Your
16 Honor.

17 JUDGE MAYER: Any other questions?

18 EXAMINATION BY COUNSEL FOR MOVANT

19 BY MR. KING:

20 **Q. Ms. Brungart, do you feel that the unit**
21 **owners ought to be able to elect who they want as**
22 **their board representatives?**

23 A. Yes, I do.

24 MR. KING: Thank you.

25 JUDGE MAYER: What is your understanding

1 of the Court's order with respect to the
2 qualifications for directors, in other words, that a
3 nonnatural person, an entity, not an individual, can
4 only hold one seat, they can't nominate their
5 president, their vice president, anyone else they
6 want to designate? They can only pick one? What's
7 your understanding of that order? How does it work
8 as a practical day-to-day method?

9 THE WITNESS: As best I understand it, an
10 entity should have one seat but I think when you
11 have entities that are all joined up together and
12 each get a separate seat, I think it's an unfair
13 advantage. Is that what you're saying?

14 JUDGE MAYER: Well, I'm asking you what
15 your understanding of my order is and your
16 understanding -- I think you're saying two things.
17 One, you're going a little bit beyond my order but
18 you're saying what you think, in fairness, if you
19 were looking at it in fairness from your perspective
20 without regard to the Court order, if there is a
21 corporation, they should have the right to have one
22 representative on the board, is that right?

23 THE WITNESS: If it's not linked up to
24 several -- if there is not a linkage between other
25 corporations and then give them three seats instead

1 of just one seat.

2 JUDGE MAYER: So if Gordon Properties
3 owns 40-some units, you would think Gordon
4 Properties should be limited to one representative?

5 THE WITNESS: I do, yes.

6 JUDGE MAYER: And if Gordon Properties
7 created 40 subsidiaries, each one a separate entity,
8 one for each unit, you think they should still be
9 limited to one seat?

10 THE WITNESS: Yes. Total. Total one
11 seat.

12 JUDGE MAYER: Total of one seat?

13 THE WITNESS: Yes, sir.

14 JUDGE MAYER: Now, Mr. King asked you if
15 you think people should -- I'm not quite sure
16 exactly but they should elect whomever they want.

17 THE WITNESS: Yes, sir.

18 JUDGE MAYER: In one of the recent
19 elections, the testimony was that 6 of the top 7
20 were Gordon Properties affiliated people. In
21 response to Mr. King's question, is that what you
22 think is fair?

23 THE WITNESS: No, I do not. I don't
24 think that's fair.

25 JUDGE MAYER: Do you understand the

1 Court's order to say that an entity, Gordon
2 Properties or anyone else, any other corporation,
3 anyone that's not a natural person like you and me,
4 not someone who is breathing, is limited to one
5 seat? Do you understand that?

6 THE WITNESS: Yes, sir.

7 JUDGE MAYER: And do you understand that
8 they're asking that that be vacated so that there is
9 no rule?

10 THE WITNESS: I think there should be a
11 rule.

12 JUDGE MAYER: Well, do you understand
13 that the settlement agreement asks that that order
14 be vacated and that there be no rule in effect?

15 THE WITNESS: Yes, sir. And that's one
16 point that we didn't agree with, we really didn't
17 agree with but we were told the other side would not
18 budge on that. And we didn't like it. You know,
19 it's sort of like you have to swallow a coddle raw
20 even though you don't like it. We didn't like that
21 but --

22 JUDGE MAYER: I heard earlier today, at
23 least that's my impression from Mr. Sells, and his
24 testimony is that if this order were vacated, the
25 owners such as you or anyone else in this courtroom

1 who owns a unit individually would have the ability
2 to sue whoever is involved, Gordon Properties, if
3 they ran more than one representative to the board,
4 if out of the election the top six vote getters were
5 Gordon Properties affiliated, an individual member
6 would have the ability to go to Court and say,
7 judge, that's not right, it would be the Alexandria
8 Circuit Court since I assume it would be out of
9 bankruptcy at that point. Did you understand that
10 an individual would still have that right to do
11 that?

12 THE WITNESS: With the settlement
13 agreement?

14 JUDGE MAYER: Yes.

15 THE WITNESS: Yes.

16 JUDGE MAYER: Do you think it's an
17 effective remedy? Effective remedy meaning do you
18 think anyone here could afford to do that?

19 THE WITNESS: No, sir. There are very
20 few people in the building that I'm aware of who
21 would have the money to go to court and sue. You
22 know, we're not rich people and there are only a few
23 people in the whole building that would have the
24 means to do that.

25 JUDGE MAYER: Is it your understanding

1 that the board of directors could initiate such a
2 suit under the settlement agreement?

3 THE WITNESS: Against Gordon Properties?

4 JUDGE MAYER: Or anyone else who rent
5 more than one -- was able to get more than one
6 representative elected. Again, I'm limiting it to
7 corporations.

8 THE WITNESS: You know, I'm not clear on
9 that. I'm not clear on that.

10 JUDGE MAYER: Now, were you appointed to
11 the first special litigation committee?

12 THE WITNESS: Yes, sir.

13 JUDGE MAYER: And did you seek counsel,
14 seek to retain an attorney?

15 THE WITNESS: Yes, sir.

16 JUDGE MAYER: And who was that? Who did
17 you want to retain? Who did you interview?

18 THE WITNESS: Well, Jennifer Sarvadi was
19 our attorney. And we sought to hire another
20 gentleman and his name is gone out of my memory. I
21 can't remember his name but we did interview him, we
22 talked to him and I think he dropped out because we
23 didn't have enough money to pay his retainer and so
24 he wasn't sure that we could keep up with his costs
25 so he dropped out. And then Mr. Donelan came to our

1 attention because I think Betty Gilliam had known
2 him previously and suggested him and so we talked to
3 him and he said he would help us.

4 JUDGE MAYER: Now, when you say that the
5 requested retainer was too much, were you told by
6 the board that it was too much, did you think it was
7 too much? How did you evaluate that?

8 THE WITNESS: I believe this gentleman
9 gave us a contract with his fees, his retainer and
10 then how much he would charge and then we knew what
11 we had in the budget and we just knew we couldn't
12 come up with that money. We couldn't guarantee it.
13 We couldn't guarantee it.

14 JUDGE MAYER: When you say in the budget,
15 what budget were you looking at?

16 THE WITNESS: I guess really more
17 accurately it would be the financial sheet. When we
18 saw how much money we had, according to Cardinal
19 Management, we felt like we couldn't meet his terms
20 in his contract.

21 JUDGE MAYER: Did you make any effort to
22 discuss continuing representation with Mr. Dingman
23 or Reed Smith?

24 THE WITNESS: Well, early on, and I'm not
25 sure of the date but we got a paper from President

1 Bryan Sells saying that we could not employ any
2 lawyer who had worked previously with FOA so that
3 cut out Mr. Dingman and -- so that was the end of
4 that.

5 JUDGE MAYER: How did you feel about that
6 restriction?

7 THE WITNESS: I didn't think it was quite
8 fair because Mr. Dingman was very familiar with the
9 court cases and the litigation and the terms and,
10 you know, to just dismiss him or cut him out of our
11 consideration I didn't think was fair because he was
12 very experienced. Now, Mr. Donelan caught on very
13 fast and got up to speed and has been a terrific
14 help but Mr. Dingman already knew every -- you know,
15 he didn't have to be brought up to speed, in other
16 words. But we couldn't consider him.

17 JUDGE MAYER: Ms. Sarvadi was counsel for
18 FOA during that same period.

19 THE WITNESS: Yes. And she helped us for
20 a while.

21 JUDGE MAYER: Why wasn't she
22 disqualified?

23 THE WITNESS: Because she had worked
24 previously with the board. I mean, she had
25 worked -- and the order said or resolution said we

1 couldn't hire anybody who had been with FOA
2 previously.

3 JUDGE MAYER: That would include
4 Ms. Sarvadi?

5 THE WITNESS: Yes.

6 JUDGE MAYER: Yet you used her?

7 THE WITNESS: Only for a short time. She
8 was only -- she wasn't with us long. I'm sorry, I
9 don't know quite the time sequence. I don't
10 remember the date on that resolution but --

11 JUDGE MAYER: Well, look at Exhibit 3.

12 THE WITNESS: Okay.

13 JUDGE MAYER: This is the second special
14 litigation committee, so there was a prior
15 resolution that said this replaces resolution
16 2012-05? Do you see that at the very top of the
17 first page?

18 THE WITNESS: I do, yes.

19 JUDGE MAYER: So you were initially
20 operating under that prior resolution 2012-05?

21 THE WITNESS: Yes, sir.

22 JUDGE MAYER: And then this superseded
23 it?

24 THE WITNESS: Yes, sir.

25 JUDGE MAYER: Which was on October 3rd,

1 2012. Now, when were you appointed to the special
2 litigation committee?

3 THE WITNESS: I think it was around June
4 of 2012 and I was with Betty Gilliam and Alex
5 Zoghaib and then the second committee was formed,
6 the second SLC, and I was on that one also.

7 JUDGE MAYER: And what did the first
8 committee do?

9 THE WITNESS: We tried to reach some kind
10 of consensus but we didn't get anywhere.

11 JUDGE MAYER: Consensus among whom?

12 THE WITNESS: Well, between our committee
13 and between Gordon Properties and CSI.

14 JUDGE MAYER: And did you have a lawyer
15 representing you at that point?

16 THE WITNESS: Yes. That's when Jennifer
17 Sarvadi was with us.

18 JUDGE MAYER: And was that resolution the
19 same as this resolution? Except for of course who
20 was on the committee?

21 THE WITNESS: It looks about the same,
22 yes, sir.

23 JUDGE MAYER: And there was a restriction
24 of who you could retain?

25 THE WITNESS: Yes, sir. To my knowledge,

1 it was a resolution or it was just a separate
2 resolution saying -- I don't remember the number but
3 it just said that we could not retain any lawyer who
4 had previously worked with FOA so we couldn't
5 continue with Jennifer Sarvadi or with Mike Dingman.

6 JUDGE MAYER: When did you find out that
7 Mr. Dingman had been discharged?

8 THE WITNESS: I think it was in a hearing
9 here. I think it was in a hearing here.

10 JUDGE MAYER: And you were given the
11 authority to control the litigation?

12 THE WITNESS: Yes, sir.

13 JUDGE MAYER: Did you discharge him or
14 was that the board of directors?

15 THE WITNESS: I know we discharged
16 Jennifer Sarvadi. I remember that. And then I
17 don't remember if we dismissed Mr. Dingman or if the
18 board did. I don't remember.

19 JUDGE MAYER: But you understood you were
20 to be in control of all litigation?

21 THE WITNESS: Yes, sir.

22 JUDGE MAYER: And you were supposed to be
23 able to retain counsel to prosecute?

24 THE WITNESS: Yes, sir.

25 JUDGE MAYER: And the only restriction

1 was that it couldn't be Mr. Dingman?

2 THE WITNESS: Or any lawyer who had been
3 with FOA previously.

4 JUDGE MAYER: That would include
5 Mr. Marino?

6 THE WITNESS: Yes, sir.

7 JUDGE MAYER: And that would include
8 Ms. Sarvadi?

9 THE WITNESS: Yes, sir.

10 JUDGE MAYER: And what was your
11 understanding as to the objection to Mr. Marino?

12 THE WITNESS: I don't know.

13 JUDGE MAYER: Was he knowledgeable and
14 experienced on the matters?

15 THE WITNESS: I think he was. I think
16 they all were knowledgeable.

17 JUDGE MAYER: While you served on the
18 special litigation committee, you were not a member
19 of the board of directors?

20 THE WITNESS: That's correct.

21 JUDGE MAYER: And on the first special
22 litigation committee, were the other two members of
23 the board?

24 THE WITNESS: Alex Zoghaib was and Betty
25 Gilliam was, I think. No? No.

1 JUDGE MAYER: All right. Let's not help
2 the witness. We don't get to call a friend.

3 THE WITNESS: I need a lifeline.

4 JUDGE MAYER: Unfortunately, I can't do
5 that.

6 THE WITNESS: I know Alex Zoghaib was on
7 the board at that time.

8 JUDGE MAYER: And what did you understand
9 your mandate, your instructions to be?

10 THE WITNESS: That we were to try as best
11 we could to work through a settlement with CSI and
12 Gordon Properties to close down these 11 lawsuits
13 hopefully and to stop the financial bleeding and to
14 try to get our building on a more financial footing.

15 JUDGE MAYER: Now, was the first
16 committee uncooperative in endeavoring to achieve
17 this result?

18 THE WITNESS: No, sir, no. We worked
19 very well. The three of us worked very well
20 together but we weren't able to accomplish much with
21 Gordon Properties and CSI.

22 JUDGE MAYER: Now, there came a time when
23 there was an election in October of 2012?

24 THE WITNESS: Yes, sir.

25 JUDGE MAYER: Were you at that meeting?

1 THE WITNESS: Yes, sir, I was.

2 JUDGE MAYER: And when did you find out
3 that the special litigation committee was reformed?

4 THE WITNESS: As best I can remember, I
5 found out in a board meeting. I don't think I found
6 out that night because after the election, they had
7 an organizational meeting of the new board. I
8 wasn't involved since I was not on the new board.
9 And it seems to me like I found out at the board
10 meeting.

11 JUDGE MAYER: The regularly scheduled
12 board meeting?

13 THE WITNESS: Yes, sir, the third Tuesday
14 of every month.

15 JUDGE MAYER: And that would be the
16 October meeting?

17 THE WITNESS: Yes, sir.

18 JUDGE MAYER: And what was your
19 understanding as to why that was done?

20 THE WITNESS: Why they reformed?

21 JUDGE MAYER: Yes.

22 THE WITNESS: I never got a good answer
23 for that except that we didn't get any results with
24 the first committee but I don't have an answer
25 because I have no idea why the first one was

1 disbanded.

2 JUDGE MAYER: It was fully functioning?

3 THE WITNESS: Yes, sir. We were meeting,
4 talking on the phone. And there was no disagreement
5 between the three of us. We worked very well
6 together. It wasn't the -- I didn't think it was
7 the fault of the committee.

8 JUDGE MAYER: Tell me about -- is it
9 Mr. Zoghaib?

10 THE WITNESS: Yes, sir.

11 JUDGE MAYER: What's his background, if
12 you know?

13 THE WITNESS: He had been on the board,
14 had a lot of experience with the board, an
15 intelligent man, easy to get along with, easy to
16 talk with.

17 JUDGE MAYER: What's his profession, if
18 you know?

19 THE WITNESS: I know he works at the
20 Pentagon but he works something secret so I don't
21 know. I can't fill that in. I don't know. I know
22 he works at the Pentagon.

23 JUDGE MAYER: Tell me about Ms. Gilliam.

24 THE WITNESS: She is a business lady and
25 she runs a travel agency in the building and she's

1 very interested in the building and spends a lot of
2 hours trying to help the building. She's very good.
3 She didn't pay me to say that.

4 JUDGE MAYER: Did you read the examiner's
5 report, Mr. Leach's report?

6 THE WITNESS: I did, yes.

7 JUDGE MAYER: And how do you react to
8 that?

9 THE WITNESS: I thought it was really
10 good. I thought he -- I know -- I was with him over
11 three hours and I understand he interviewed a lot of
12 people and got a lot of facts and I thought he
13 captured the interviews very well. I was really
14 impressed with the report.

15 JUDGE MAYER: Did you disagree with any
16 parts of it?

17 THE WITNESS: No, sir, I didn't.

18 JUDGE MAYER: You've just sold last
19 Friday?

20 THE WITNESS: Yes, sir.

21 JUDGE MAYER: And so you're moving, I
22 take it?

23 THE WITNESS: Yes. Monday hopefully.

24 JUDGE MAYER: What's the financial status
25 of the building today?

1 THE WITNESS: You know, sir, I don't
2 really know because we haven't seen bank statements
3 from Virginia Commerce since December. I'm not on
4 the board so I don't see financials but I've talked
5 to people on the board and they have not seen bank
6 accounts and we were told if we asked for invoices
7 or to see financial papers, we had to pay \$70 an
8 hour to have a staff person watch us while we looked
9 at the invoice or whatever.

10 So without knowledge of the bank
11 accounts -- I mean, previous to December, every
12 month we got a statement from Virginia Commerce and
13 we knew about the CDs and so forth. We haven't
14 gotten them. At the last board meeting, which was
15 Tuesday, I stood up and asked the president,
16 Mr. Sells, why weren't we getting to look at the
17 bank statements from Virginia Commerce and he
18 said -- his answer was you are inaccurate. I was
19 not inaccurate. That's the truth because you can
20 ask -- I mean, I've asked the board members if
21 they're seeing bank statements and they say no. So
22 I don't know why. And therefore, we don't know how
23 much money we have, how much has been spent, where
24 it's been spent. We don't know.

25 JUDGE MAYER: Now, the lawsuit that you

1 endeavored to end, one of them is a substantive
2 consolidation. What's the significance of that
3 suit? Actually, it's a motion, not a suit, separate
4 suit but there is a separate date on it.

5 Substantive consolidation is to combine CSI together
6 with Gordon Properties. How does that impact your
7 view of the settlement agreement?

8 THE WITNESS: Well, with the
9 consolidation, they would have the money to pay back
10 FOIA the money they owed us and when the settlement,
11 instead of -- I think it was 430,000, we had to go
12 down to 225,000 because CSI didn't have the money
13 but with the consolidation, it seems like they would
14 have enough money from Gordon Properties to pay us
15 the full amount they owe us.

16 JUDGE MAYER: Why give them a discount
17 then?

18 THE WITNESS: Because --

19 JUDGE MAYER: Of about 50 percent?

20 THE WITNESS: Yes. We didn't want to do
21 that but the negotiations were very, very hard and
22 difficult and we kept asking for the full amount and
23 Judge Huennkens, who was doing the legwork back and
24 forth, said they won't budge, we can't get it.

25 JUDGE MAYER: Why didn't you just say no,

1 there is no deal?

2 THE WITNESS: We considered that but his
3 advice -- and I think he's a very wise man. He
4 said, it's not a good -- it's not perfect but
5 something is better than nothing and you don't have
6 the money to litigate anymore. You just don't have
7 the money. So, I mean, we would have liked to have
8 said no deal and then we would have been back to the
9 drawing board again spending thousands of dollars in
10 legal fees and -- this has gone on for years and
11 there is no more -- our money is dried up in essence
12 and it's sort of like something is better than
13 nothing. And we didn't like the fact that we had to
14 go down to 225 but it seemed like that's the only
15 way we could get anything.

16 JUDGE MAYER: Did you get any estimates
17 as to what it would cost to argue that on remand?
18 You know I was reversed. Judge Brinkema wrote an
19 opinion and said I should reconsider the matter and
20 it was a very robust opinion, very thorough. Did
21 you get a cost estimate of what that would cost to
22 present that again here?

23 THE WITNESS: No, sir. We didn't get a
24 figure for that particular one. I don't remember a
25 figure for that. But we were told that the whole

1 thing would be very expensive to try to litigate
2 these things in court again and --

3 JUDGE MAYER: Well, they've all been
4 litigated. I'm trying to understand the thought
5 process here.

6 THE WITNESS: Okay.

7 JUDGE MAYER: The substantive
8 consolidation has been tried once. It's gone on
9 appeal. It's come back.

10 THE WITNESS: Yes, sir.

11 JUDGE MAYER: And so the second time
12 around, you're not going to reinvent the wheel, are
13 you?

14 THE WITNESS: Wouldn't seem so.

15 JUDGE MAYER: The other ones are on
16 appeal. In fact, I think -- I don't know. I would
17 have to check the record to see if they've been
18 briefed. So most of the work has been done. Now,
19 that doesn't mean that it wouldn't be appealed at
20 the Fourth Circuit.

21 THE WITNESS: Well, basically he said you
22 might win some and you might lose some.

23 JUDGE MAYER: That's true of all
24 litigation but I'm trying to understand how you
25 balanced that out because I keep hearing from both

1 you and Mr. Reichenbach that it would just cost too
2 much and we were out of money.

3 THE WITNESS: Well, that's what we were
4 told by the judge, Judge Huennekens, and we know --
5 we knew at that time that we had very little money
6 and really we just wanted it to stop.

7 JUDGE MAYER: Did the garnishment of the
8 funds impact your decision?

9 THE WITNESS: Not really, sir. I mean,
10 that was unfortunate and sad, very unfortunate but
11 it didn't -- I don't think that entered into our
12 thinking. I mean, we hated that checks were being
13 bounced and the employees' health insurance was
14 being affected and, you know, that was very, very
15 bad but that didn't enter into the negotiation. We
16 weren't thinking about that.

17 JUDGE MAYER: What about Virginia
18 Commerce. I've heard that they said you were in a
19 nonmonetary default which means you've been making
20 your monthly payments but you haven't met the other
21 covenants by having enough collateral, I assume is
22 what they meant. How did that enter into your
23 thinking?

24 THE WITNESS: I think the time line since
25 then, they've asked for collateral and we had to put

1 up the two units we own in the building as well as
2 one or two of the antennas on the roof. We get
3 income from those antennas. So we had to give them,
4 you know, I guess a lien on those things so that
5 they can be assured we would pay them the money
6 owed.

7 JUDGE MAYER: So you were able to come up
8 with the collateral?

9 THE WITNESS: Yes.

10 JUDGE MAYER: And at this point, the loan
11 is in good standing with them?

12 THE WITNESS: As far as I know, yes.

13 JUDGE MAYER: And payments being made,
14 they're satisfied with the collateral?

15 THE WITNESS: As far as I know. But
16 again, without seeing the bank accounts --

17 JUDGE MAYER: I understand you've told me
18 you haven't seen them for a while.

19 THE WITNESS: Yes.

20 JUDGE MAYER: You served on the board
21 from about 2000 to 2011?

22 THE WITNESS: Yes, sir.

23 JUDGE MAYER: And you were on the board
24 during the time when the annual meetings were not
25 held in '06, '07, '08?

1 THE WITNESS: Yes, sir.

2 JUDGE MAYER: Maybe '09. I can't
3 remember the exact years.

4 THE WITNESS: Right.

5 JUDGE MAYER: What was your involvement
6 in that?

7 THE WITNESS: In them not being held?

8 JUDGE MAYER: As far as a member of the
9 board of directors.

10 THE WITNESS: At the time there was a lot
11 going on that the board was unaware of. It was very
12 difficult because the president at the time would
13 enter into litigation that the board didn't know
14 anything about. It was never a board vote. She
15 acted independently of us and after the fact we
16 found out that we were involved in a lawsuit that we
17 knew nothing about.

18 JUDGE MAYER: This is Ms. Cuadros you're
19 talking about?

20 THE WITNESS: Yes. So there were a lot
21 of things that went on that the board was kept in
22 the dark about and it was very difficult. And
23 therefore, our reserves were being spent and the
24 board didn't have much control over what was going
25 on.

1 JUDGE MAYER: Was your involvement
2 different than the other directors' involvement?

3 THE WITNESS: No, sir, I don't think so.

4 JUDGE MAYER: The annual meeting, let's
5 see, I directed that there be one held in 2011, is
6 that right?

7 THE WITNESS: Yes, sir.

8 JUDGE MAYER: As a result of the actions
9 in 2010.

10 THE WITNESS: Yes, sir.

11 JUDGE MAYER: Were you on the board in
12 2010 before that meeting?

13 THE WITNESS: Yes, sir.

14 JUDGE MAYER: And do you recall that the
15 meeting was canceled?

16 THE WITNESS: Yes, sir.

17 JUDGE MAYER: And how did you vote on
18 that?

19 THE WITNESS: Oh, definitely not. I
20 wanted the meeting to be held. In fact, the night
21 of the meeting, there was just a notice put up on
22 the bulletin board saying the election has been
23 canceled. You know, that's how we found out. And
24 there were some of us in the lobby talking trying to
25 figure out what was going on and a security guard

1 had been hired to come -- he came over and asked us
2 to leave and we said, we're just homeowners talking.
3 He said, well, you're constituting a meeting and we
4 can't have any meeting in the lobby. So he broke
5 us -- you know, told us to leave. But it was very
6 bad.

7 JUDGE MAYER: You were not at the board
8 meeting at which that vote was taken?

9 THE WITNESS: To cancel the meeting?

10 JUDGE MAYER: Yes.

11 THE WITNESS: We didn't vote to cancel
12 the meeting, to my recollection. I don't remember a
13 vote on that.

14 JUDGE MAYER: This is the meeting at
15 which there was a flier going around promising a
16 raffle of an HDTV. Are you thinking about a
17 different meeting?

18 THE WITNESS: Maybe I am, when there was
19 just a --

20 JUDGE MAYER: A notice on the door?

21 THE WITNESS: Yes.

22 JUDGE MAYER: That was one prior to when
23 I was involved. I think Judge Dawkins ultimately
24 made a ruling on that. I don't know what year that
25 was but it was before my time.

1 THE WITNESS: I'm sorry. That was a bad
2 time.

3 JUDGE MAYER: So I'm looking to -- the
4 testimony in prior hearings was that it was
5 scheduled, there was a flier that went out, the
6 manager brought it to the attention of counsel and
7 the board, the board got advice of counsel and, on
8 advice of counsel, decided to postpone the meeting,
9 is what they said. Does that refresh your
10 recollection?

11 THE WITNESS: Yes. But I was not for
12 that. I thought that was not fair. I thought we
13 should have had the election, the election should
14 have been held.

15 JUDGE MAYER: Was anyone else in favor of
16 holding the election?

17 THE WITNESS: I think everybody was.

18 JUDGE MAYER: But the meeting got
19 canceled so everyone couldn't have been. A majority
20 had to say canceled, if you recall.

21 THE WITNESS: Well, sir, things happened
22 without a board vote and I don't think we voted on
23 that.

24 JUDGE MAYER: Do you recall a discussion
25 by counsel that you had a problem, that if you held

1 a meeting and let Gordon Properties vote, you might
2 violate the bylaws but if you held a meeting and
3 didn't let them vote, you might be in contempt of
4 court? Called it the horns of a dilemma?

5 THE WITNESS: At that meeting,
6 Mr. Dingman would not let me in the room where the
7 meeting was being held. I was out in the hall. And
8 he said you are not to come in. And he said, if you
9 come up, we'll vote to have you removed.

10 JUDGE MAYER: You were a board of
11 director?

12 THE WITNESS: I was.

13 JUDGE MAYER: And you were excluded from
14 the meeting?

15 THE WITNESS: I was excluded. He told me
16 not to come in. Mr. Diamond.

17 JUDGE MAYER: Robert Diamond?

18 THE WITNESS: Yes, Bob Diamond. So I
19 wasn't there.

20 JUDGE MAYER: So you don't know what
21 happened?

22 THE WITNESS: No, I don't.

23 JUDGE MAYER: You were earlier asked by
24 Mr. King your opinion of the settlement agreement.
25 In your own words, what do you think about it?

1 THE WITNESS: I think there are parts
2 that are good and I think there are parts that are
3 terrible.

4 JUDGE MAYER: Tell me about the good
5 parts.

6 THE WITNESS: Well, I think it's good if
7 we could close down the 11 suits and appeals because
8 it's really gone on too long now. I think it would
9 be good if we could get the money that is owed FOA
10 and pay off the money we owe, get that settled once
11 and for all. Those are two very strong things that
12 I thought were good.

13 JUDGE MAYER: And the negatives?

14 THE WITNESS: Well, the fact that we
15 couldn't shut down this lawsuit against the old
16 board, I think that's very vindictive and I think we
17 wanted very much to get that shut down. We didn't
18 want to put a cap on the assessments for the street
19 front property. I understand that the assessment
20 for Mango Mike's, the restaurant, was dropped 83
21 percent and the assessment for the service station
22 was dropped. And I don't know the figure on that
23 but it was definitely dropped. And everybody else
24 was raised 22 percent. They were dropped. I think
25 that is not good. And to have a cap on that is I

1 think not good.

2 JUDGE MAYER: Well, if they were
3 overassessed previously, there would be an
4 adjustment downward?

5 THE WITNESS: Right. But I don't
6 think -- well, I don't think the figures will show
7 that they were overcharged 83 percent. I question
8 that.

9 JUDGE MAYER: Did you look at the budget
10 that was attached to the settlement agreement?

11 THE WITNESS: I did.

12 JUDGE MAYER: I know you looked at it but
13 how did you study it? What did you do to research
14 it?

15 THE WITNESS: I didn't study that
16 probably sufficiently.

17 JUDGE MAYER: Did you get any assistance
18 from accountants, lawyers, other people on the
19 finance committee that explained to you or you
20 followed their calculations as to how they prorated
21 some of these items among the various categories,
22 limited common elements residential, limited common
23 elements commercial, limited common elements both
24 residential and commercial, general common elements?
25 Did you have assistance in that?

1 THE WITNESS: No. We did have a finance
2 committee and I went to some of those meetings but
3 to my knowledge, the manager, temporary manager, Joe
4 Riviere, did that budget and set up the figures and
5 it wasn't open for question, to my knowledge.

6 JUDGE MAYER: And Mr. Riviere works for
7 CSI?

8 THE WITNESS: Yes, sir. Yes, he does. I
9 think he's the president of CSI.

10 JUDGE MAYER: And CSI is owned by Gordon
11 Properties?

12 THE WITNESS: Yes, sir.

13 JUDGE MAYER: Presently there is a suit
14 pending filed by the condominium association against
15 the former directors but not you. Do you expect
16 that the defendants have any money to pay such a
17 judgment out of that?

18 THE WITNESS: Some may and some may not.
19 I mean, I don't know how much they might have to
20 pay. I don't know.

21 JUDGE MAYER: Could you pay half a
22 million dollars?

23 THE WITNESS: No. We're not rich people,
24 sir. We don't have a lot of money. Most people
25 just have enough to get by but not that kind of

1 money, no.

2 JUDGE MAYER: Is there anything else you
3 would like to add?

4 THE WITNESS: Well, I just thank you for
5 the opportunity to speak and we have a lot of faith
6 that justice will be done and that our building will
7 come up instead of going down. Right now buyers
8 trying to get into the building can't get an FHA
9 loan. That cuts out a lot of people who might want
10 to buy. I had my unit up for sale -- I had maybe 20
11 people look at it. They said they liked it and da,
12 da, da but they didn't have -- you know, they
13 couldn't get a loan. And finally one person came by
14 with a cash offer and I grabbed it fast because who
15 knows when -- you know, it has to be -- it almost
16 has to be a cash offer to sell.

17 So the people in the building are
18 strapped in many ways and it's very difficult to --
19 if you want to move somewhere else, it's almost
20 impossible to sell.

21 JUDGE MAYER: As a matter of curiosity,
22 is your purchaser going to live there?

23 THE WITNESS: Yes.

24 JUDGE MAYER: Does anyone have any
25 further questions?

1 MR. DONELAN: No, Your Honor.

2 MR. KING: Just a few, Your Honor.

3 EXAMINATION BY COUNSEL FOR MOVANT

4 BY MR. KING:

5 Q. Ms. Brungart, you had indicated that in
6 the back and forth with Judge Huennekens, that you
7 were told that Mr. Sells/Gordon Properties wouldn't
8 budge on the vacation of the order. Would it
9 refresh your recollection if -- do you have a
10 recollection of whether you were told that Gordon
11 Properties was prepared to take that provision out
12 of the settlement and continue the appeal of that
13 issue and go forward with the settlement otherwise?
14 Do you remember being told that?

15 A. I don't remember that.

16 Q. Let me ask you with respect to Reed
17 Smith. The very meeting that you were talking about
18 where you got locked out is the meeting at which
19 they chose to cancel the meeting, they decided to
20 cancel the meeting. And I think you've read Judge
21 Mayer's memorandum opinion with respect to his
22 conclusion as to what happened there and I assume
23 you saw the statements in there about the advice
24 that was given to the board by Reed Smith.

25 And that advice that the board then

1 **relied upon ended up creating a judgment against FOA**
2 **for almost \$300,000. Do you believe that that**
3 **liability that was created by FOA in reliance upon**
4 **Reed Smith's advice created any type of a conflict**
5 **between FOA and Reed Smith?**

6 A. I would think so, yes, sir. I mean,
7 that's a lot of money.

8 **Q. Do you believe that the advice that was**
9 **relied upon that resulted in the judgment -- and I'm**
10 **not asking you to give me a legal opinion but do you**
11 **think that that would be a basis for which FOA might**
12 **sue Reed Smith for malpractice?**

13 A. Well, you know, that's a hard question.
14 I really think they were wrong to give that kind of
15 advice. To sue them, that's a different question.
16 I don't know.

17 **Q. Fair enough. In light of the fact that**
18 **that advice was wrong and created that liability for**
19 **the association, do you think it was a reasonable**
20 **business decision by the board to elect to terminate**
21 **Reed Smith?**

22 A. Yes.

23 JUDGE MAYER: Well, you didn't put all
24 the facts in that hypothetical, Mr. King. What was
25 the date that Reed Smith was terminated?

1 MR. KING: After the judgment was entered
2 against them.

3 JUDGE MAYER: What date?

4 MR. KING: What date?

5 JUDGE MAYER: Yes.

6 MR. KING: I don't know that the date is
7 relevant. Your Honor may think it is. I don't
8 think it's relevant, Your Honor.

9 JUDGE MAYER: And what was pending in the
10 District Court at that time?

11 MR. KING: What was pending in the
12 District Court? A number of appeals.

13 JUDGE MAYER: And how many days after the
14 dismissal was one to be argued before Judge
15 Brinkema? Would that make a difference if you knew
16 that an appeal was to be argued six days after it
17 had been dismissed, it had been fully briefed and
18 they were ready to go forward and that argument had
19 nothing to do with their prior advice?

20 THE WITNESS: I think it would, Your
21 Honor. I think it would have.

22 JUDGE MAYER: Thank you.

23 BY MR. KING:

24 **Q. Were you aware that Jennifer Sarvadi and**
25 **Michael Dingman were cocounsel in the appeals**

1 pending in the District Court?

2 A. Yes, sir, I knew that.

3 Q. And in fact, Ms. Sarvadi was directed,
4 number one, to seek a continuance of all of the
5 appeals when Reed Smith was terminated? Do you
6 remember that?

7 A. No, sir, I can't remember that.

8 Q. Are you aware that Ms. Sarvadi showed up
9 at the hearing and handled the hearing and in fact
10 got a positive result for FOA?

11 A. Yes, I remember that.

12 Q. Judge Mayer asked you some questions
13 about the substantive consolidation motion and the
14 fact that it had been appealed, that it had been
15 remanded, and I think what Judge Mayer was
16 intimating to you was that there wasn't a whole lot
17 of work left for him to do because it had already
18 been tried.

19 JUDGE MAYER: That's not accurate,
20 Mr. King.

21 MR. KING: Okay. Fair enough, Your
22 Honor. Fair enough. That's certainly the way I
23 heard it and I apologize, Your Honor.

24 BY MR. KING:

25 Q. I think what Judge Mayer suggested to you

1 was that it had already been tried and so you
2 weren't reinventing the wheel and so I interpreted
3 that to mean that there wasn't a lot of work left to
4 be done on it or a lot of expense with respect to
5 completing the remand of that. Is that the way you
6 interpreted it?

7 A. I don't think I understood that fully.

8 Q. Well, let me ask you this. The relevant
9 question, what I'm trying to ask you is, when the
10 committee was discussing the effect of that pending
11 substantive consolidation matter and as one of the
12 pieces of litigation that is going to be resolved,
13 did you discuss the fact that regardless of what
14 party won, it was likely to be appealed again to the
15 District Court and likely to be appealed to the
16 Fourth Circuit and that you would have to incur the
17 expenses with respect to all of those appeals as
18 well? Did you consider that?

19 A. I don't believe we talked about that. We
20 were just trying -- it was a very stressful day, a
21 very hard day and we were just focusing in on the
22 settlement agreement. So I don't think, as I
23 remember it, we were thinking a lot about appeals
24 and going to another court. I mean, we were trying
25 to shut everything down, shut down the lawsuits, not

1 have -- we weren't thinking about more coming our
2 way.

3 Q. Were you aware in the memorandum opinion
4 that Judge Mayer entered or the judgment that Judge
5 Mayer entered for the \$277,000 that Gordon
6 Properties was given the right to come back and seek
7 additional attorney's fees for the costs of the
8 appeal? Were you aware of that?

9 A. No, sir. I can't remember that.

10 Q. Were you aware that Gordon Properties has
11 a motion pending to recover their attorney's fees
12 for the cost of the objection to the proof of claim
13 that they were entitled to recover their attorney's
14 fees under the Virginia Condominium Act? Were you
15 aware of that claim pending?

16 A. No, sir. I can't remember that.

17 Q. So were you not aware that the judgment
18 amount that Gordon Properties had against FOA, in
19 the absence of settlement, could have increased
20 significantly if the litigation pursued? Were you
21 aware of that?

22 A. No, sir.

23 MR. KING: Nothing further, Your Honor.

24 JUDGE MAYER: Any further questions,

25 Mr. Jones?

1 MR. JONES: Very briefly, Your Honor.

2 EXAMINATION BY COUNSEL FOR OPPOSER

3 BY MR. JONES:

4 Q. Mr. King asked you some questions
5 regarding Reed Smith and whether there was a basis
6 to fire them. Would you have liked, as a member of
7 the special litigation committee charged with making
8 decisions about litigation, to make that decision
9 yourself, about whether to fire them or not?

10 A. Yes, sir, because we understood that was
11 our role, that was in our purview to do that.

12 MR. JONES: Nothing further, Your Honor.

13 JUDGE MAYER: Thank you. Anything
14 further?

15 MR. KING: Thank you, Your Honor.

16 JUDGE MAYER: Thank you very much for all
17 the effort you've put into this.

18 THE WITNESS: Thank you.

19 JUDGE MAYER: Mr. Donelan, did you have
20 any further witnesses?

21 MR. DONELAN: No, Your Honor. That
22 completes our case.

23 JUDGE MAYER: Were you going to call some
24 witnesses, Mr. Jones?

25 MR. JONES: Yes, Your Honor. I would

1 like to call Bryan Sells to the stand.

2 JUDGE MAYER: That's going to take a
3 little bit of time, I assume.

4 MR. JONES: It would. I anticipate it
5 would take probably about an hour.

6 JUDGE MAYER: What other witnesses did
7 you have?

8 MR. JONES: Your Honor, I was just going
9 to call Bryan Sells.

10 JUDGE MAYER: Then ask Ms. Sarvadi to
11 come in.

12 MR. GUZINSKI: Your Honor, while we're at
13 a break, I have two things. One, I have to step out
14 to make an emergency call. And two is they're
15 putting an emergency air-conditioner motor in our
16 office and somebody needs to be there and I drew the
17 short straw, so if I can have leave to step out
18 around 4:30.

19 JUDGE MAYER: That would be fine.

20 (Ms. Sarvadi enters hearing room.)

21 JUDGE MAYER: Come this way, Ms. Sarvadi,
22 and be sworn.

23 Whereupon,

24 JENNIFER SARVADI

25 was called as a witness, and having been duly sworn

1 by the Court Deputy, was examined and testified as
2 follows:

3 JUDGE MAYER: Did anyone wish to ask
4 Ms. Sarvadi questions?

5 MR. JONES: The U.S. Trustee does not,
6 Your Honor.

7 JUDGE MAYER: Ms. Sarvadi, since no one
8 else does, an issue came up. You were referred to
9 in earlier testimony today about issues that
10 could -- proper agenda items at an organizational
11 meeting of a board of directors and that you gave
12 advice and the advice was that certain actions
13 likely should not have been taken at an
14 organizational meeting and that resulted in a
15 ratification motion that was passed at a meeting of
16 the board of directors. Would you elaborate on
17 that?

18 THE WITNESS: My recollection is that in
19 the summer of last year in the late July or early
20 August time frame, I was asked to give advice to the
21 board with regard to what matters could be addressed
22 at an organizational meeting. There were other
23 questions that were asked at the time of that advice
24 being sought, but I'm not sure if that was discussed
25 as well.

1 I did some research and consulted with
2 the folks at our firm, my former firm, who represent
3 condominium associations and while there was no case
4 law on point, in addressing the statute, there is
5 nothing explicit, our advice at the time was that at
6 the organizational meeting, there should not be
7 other business than the election of officers.

8 And that had to do with notice
9 requirements to the other board members who may or
10 may not be present, as I recall. The governing
11 documents of the association say that the first
12 meeting of the board for organizational purposes
13 might be held without notice to all members if
14 they're not present for the annual meeting or
15 something to that effect and that that was one of
16 the factors we considered in that advice.

17 JUDGE MAYER: Now, the board was seated
18 in June of 2012 as a result of the 2011 election?

19 THE WITNESS: Yes, sir.

20 JUDGE MAYER: Was this advice requested
21 in reference to that?

22 THE WITNESS: No, sir. That board met on
23 its own without consultation to me, with me to have
24 an organizational meeting the Sunday after you
25 declared the results of the election. And that was

1 before the June 19th trial on damages so whatever
2 that Sunday was, it must have been around the 17th.

3 JUDGE MAYER: Wait, tell me again. It
4 was on Sunday. What was coming up?

5 THE WITNESS: The trial on damages in the
6 adversary proceeding was scheduled for June 19th,
7 that Tuesday.

8 JUDGE MAYER: And that was your case?

9 THE WITNESS: That was my case, Your
10 Honor, yes, sir. And we had been before you on
11 matters relating to the trial on damages the week
12 before and you announced from the bench the ruling
13 on election. It's my understanding that there was a
14 meeting called by Mr. Sells to hold the
15 organizational meeting that following Sunday, which
16 I think is the 17th of June.

17 JUDGE MAYER: All right. So the advice
18 that you were referring to was for the October 2012
19 meeting?

20 THE WITNESS: No, sir. If you recall,
21 your July ruling changed the composition of the
22 board, removed Mr. Howland and placed on the board
23 Ms. Moore. The members of the board were in dispute
24 as to whether they could have a new organizational
25 meeting as a result of the change of the board

1 members. And so it was sometime in the late July or
2 early August time frame.

3 JUDGE MAYER: And so that is where the
4 question as to what can you do at an organizational
5 meeting came up?

6 THE WITNESS: Correct. And my
7 recollection is there was a dispute between the
8 board members as to how much they could or could not
9 undertake at that meeting and they asked for my
10 opinion.

11 JUDGE MAYER: All right. And your
12 opinion was elect officers and then go back to your
13 regular scheduled meetings with proper notice?

14 THE WITNESS: Correct. Whether it's a
15 special meeting of the board under 10 days notice
16 required under governing documents or whether it's
17 the next scheduled board meeting, they could
18 undertake matters of new business.

19 JUDGE MAYER: And were you still
20 representing them at the time of the 2012 election?

21 THE WITNESS: I was representing FOA with
22 respect to litigation matters but because of the
23 conflicts, I had tried not to involve myself in
24 corporate governance matters as best I could and I
25 think they were trying as well not to rely on me for

1 that type of advice.

2 JUDGE MAYER: Do you recall the appeal on
3 the substantive consolidation matter?

4 THE WITNESS: Yes, Your Honor.

5 JUDGE MAYER: And were you counsel of
6 record in that matter when the briefs went in?

7 THE WITNESS: When the briefs went in,
8 no, sir, I was not.

9 JUDGE MAYER: When did you become counsel
10 of record?

11 THE WITNESS: I became counsel of record
12 either the Tuesday night or the Wednesday morning
13 before Judge Brinkema's hearing on Friday the 29th.

14 JUDGE MAYER: And why did you become
15 counsel of record at that point?

16 THE WITNESS: There was a request made, I
17 understand, by the special litigation committee to
18 the board to allow them to rehire Mr. Dingman for
19 the limited purpose of arguing that appeal, which
20 request I was told by Ms. Gilliam had been denied by
21 the board. There had been a motion by Ms. Hadley
22 for the same purpose which had been denied.

23 I had been directed by the board to note
24 only a special appearance for the purpose of seeking
25 a continuance and I filed the motion as directed

1 which was denied by Judge Brinkema who also noted
2 that she would be allowing Gordon Properties to
3 argue the merits of the appeals ex parte if no
4 attorney showed up. So ultimately, permission was
5 granted by the board for me to do what I could to
6 get ready and to present the argument on the 29th of
7 June.

8 JUDGE MAYER: Had you participated much
9 in that appeal?

10 THE WITNESS: Only in those three days,
11 Your Honor, in preparing for the argument between
12 that Wednesday and appearing Friday morning on the
13 29th. So when Mr. Dingman was terminated, the SLC
14 immediately began to consider its options in finding
15 either new counsel or seeking a modification of
16 their decision.

17 So I had asked Mr. Dingman to forward his
18 file to me so I could get it to whomever was going
19 to be handling the appeal and ultimately I ended up
20 reviewing the matter and arguing it on Friday. I
21 think the hearing was 45 minutes long and so I was
22 asked by the Court a number of questions and I
23 answered them as I could.

24 JUDGE MAYER: And you were successful?

25 THE WITNESS: The judge said the briefs

1 were -- well presented the issues so I won't take
2 any credit there.

3 JUDGE MAYER: Any other questions for
4 Ms. Sarvadi?

5 MR. DONELAN: None, Your Honor.

6 MR. JONES: None from the U.S. Trustee.

7 EXAMINATION BY COUNSEL FOR MOVANT

8 BY MR. KING:

9 Q. Ms. Sarvadi, do you recall during the
10 relief from stay hearing -- I'm sorry, the stay
11 violation hearing, when the issue of the
12 alternatives that were presented by Reed Smith to
13 the board as to the ending 2010 election, what Judge
14 Mayer referred to just a while ago as the horns of
15 dilemma, either go forward and essentially take your
16 risk or just cancel the meeting, that the question
17 was posed by me I think in examination of
18 Mr. Diamond whether they considered -- actually, I
19 think it was a question posed by Judge Mayer,
20 whether they considered seeking relief from the stay
21 from the judge about whether they could go forward
22 or terminate or whatever the case may be.

23 And Mr. Diamond's response was, yes,
24 Mr. Dingman and I talked about that. Mr. Dingman
25 said, it's not worth doing because Judge Mayer isn't

1 **going to grant it. Do you remember that?**

2 A. I remember --

3 MR. JONES: Objection. The question
4 appears to call for hearsay.

5 MR. KING: I'm asking if she recalls --

6 JUDGE MAYER: I think you can tell us,
7 first of all, whether you recall the -- if you
8 don't, that's the end of the inquiry but if you do,
9 we'll go from there.

10 THE WITNESS: I believe I remember an
11 exchange, yes. If I remember correctly, Judge Mayer
12 asked Mr. Diamond the question --

13 BY MR. KING:

14 **Q. I think that's right.**

15 A. And Mr. Diamond's response, I thought,
16 was something to the effect of we already knew the
17 answer you would give. That's my recollection.

18 **Q. Do you recall having a discussion with me**
19 **about what the effect of that decision was?**

20 A. The effect of whose decision?

21 **Q. The effect of the decision to not to ask**
22 **Judge Mayer for relief.**

23 A. I don't recall a conversation with you.

24 **Q. Do you believe it was proper advice?**

25 MR. JONES: Objection, calls for

1 speculation.

2 JUDGE MAYER: What advice was it?

3 MR. KING: The advice that Mr. Dingman
4 gave to the board, to -- of Mr. Dingman, not to ask
5 you for relief in order to make a decision on what
6 to do about the --

7 JUDGE MAYER: Are you asking for her
8 professional opinion?

9 MR. KING: If she has one.

10 JUDGE MAYER: Have you been retained as
11 an expert?

12 THE WITNESS: No, Your Honor. I'm not
13 actually retained by anyone at this time related to
14 this matter.

15 MR. KING: I don't have anything else,
16 Your Honor.

17 JUDGE MAYER: My note that I took on your
18 testimony isn't clear to me. The advice you gave
19 the board of directors on what can happen at the
20 organizational meeting occurred as a result of the
21 one director being knocked off of the board, so to
22 speak?

23 THE WITNESS: Yes, sir.

24 JUDGE MAYER: And was that before that?

25 THE WITNESS: If I might put the time

1 line out, the hearing in July where the directors
2 were changed as a result of argument on the issue of
3 how many seats Gordon Properties could have as a
4 result of the change in the board. There was then
5 discussion among the board members about whether
6 they should have an organizational meeting because a
7 new board with new members was constituted.

8 There were some people in favor of an
9 organizational meeting for the reelection of
10 officers and there were certain people who were
11 opposed to that. And so I believe it was an e-mail
12 from Mr. Sells where he asked for me to give an
13 opinion on whether other business could be conducted
14 at an organizational meeting and whether an
15 organizational meeting should have had. And that
16 was in the end of July or early August time period.
17 So it is the board preceding the 2012 election of
18 officers but it is the second board seated by this
19 Court.

20 JUDGE MAYER: And did you respond in
21 writing?

22 THE WITNESS: Yes, sir.

23 JUDGE MAYER: Thank you very much. Can
24 the witness be excused?

25 MR. KING: Yes, Your Honor.

1 MR. JONES: Yes, Your Honor.

2 JUDGE MAYER: Thank you very much.

3 THE WITNESS: Thank you, Your Honor.

4 JUDGE MAYER: Is Mr. Sells your last
5 witness?

6 MR. JONES: Yes, Your Honor. All right.
7 Let's proceed. You're still under oath. Just take
8 a seat in the witness stand.

9 EXAMINATION BY COUNSEL FOR OPPOSER

10 BY MR. JONES:

11 Q. Mr. Sells, I'm going to be referring
12 throughout your testimony to the U.S. Trustees'
13 exhibits in the binder there. I believe it's by
14 your right foot. Do you have that now?

15 A. I do.

16 Q. Please state for the record, spelling
17 your last name for the court reporter.

18 A. It's still Bryan Sells, S-e-l-l-s.

19 Q. Thank you, Mr. Sells. I want to start by
20 talking about your first meeting as president of the
21 board of FOA. Do you recall this meeting?

22 A. It's not clear to me which one you're
23 referring to as the first.

24 Q. Do you recall a board meeting held on
25 June 19th, 2012?

1 A. Not specifically. I've attended and
2 presided over a lot of board meetings.

3 Q. **Would it refresh your recollection to see**
4 **the minutes from the board meeting?**

5 A. It might.

6 Q. **Would you please turn to page 472 of the**
7 **U.S. Trustee exhibit book? That's Exhibit Number**
8 **16.**

9 A. Okay, I'm there.

10 Q. **Do you recognize this document?**

11 A. It looks like the minutes of our June
12 19th meeting.

13 Q. **And under board members present, your**
14 **name, Bryan Sells, is there as president?**

15 A. Yes.

16 JUDGE MAYER: Which exhibit is that?

17 MR. JONES: This is Exhibit Number 16.
18 It's page 472 of the -- I believe your white
19 notebook.

20 BY MR. JONES:

21 Q. **And this is a fair and accurate copy of**
22 **the board minutes of the June 19th meeting?**

23 A. Are you telling me that?

24 Q. **No, I'm asking you.**

25 JUDGE MAYER: He's asking you that,

1 Mr. Sells.

2 THE WITNESS: It does not look like the
3 complete minutes to me but I can say that this looks
4 like some of the minutes. Perhaps it's the first
5 draft. These are definitely minutes prepared by our
6 professional recording secretary, Mr. Dave Bush.
7 This appears to be in the format that he uses.

8 BY MR. JONES:

9 **Q. And you rely on those minutes in the**
10 **course of your performance as a director of FOA?**

11 A. Not usually, no.

12 **Q. But occasionally?**

13 A. I don't think I've had occasion to refer
14 to the minutes in the course of my year and two
15 months as president.

16 **Q. But you have no reason to think that**
17 **these minutes are not genuine?**

18 A. No.

19 MR. JONES: At this time, the U.S.
20 Trustee will move Exhibit 16 into evidence.

21 MR. KING: No objection, Your Honor.

22 JUDGE MAYER: It will be received.

23 (Opposer Exhibit No. 16
24 was received in evidence.)

25 BY MR. JONES:

1 **Q. And for the sake of time, if you refer to**
2 **the U.S. Trustee's exhibits, you'll notice that**
3 **Exhibits 15 through 24 are minutes from board**
4 **meetings held by FOA. Would you please take a look**
5 **at those and if there are any of those that don't**
6 **appear to be authentic to you, would you please let**
7 **me know?**

8 A. Do you want me to let you know if they
9 appear to be incomplete like the exhibit we just
10 entered?

11 **Q. No. Just let me know if you have any**
12 **reason to believe that the documents are not what**
13 **they purport to be.**

14 A. Okay. Well, document 16 did not appear
15 to me to be what it purported to be because it
16 didn't include the minutes of the executive session
17 at that meeting. Exhibit 17 appears to be
18 incomplete to me so to the extent that you're
19 purporting that it is the complete minutes of the
20 Sunday board meeting, I'm not so sure.

21 **Q. But if we are purporting that it is a**
22 **portion of the board minutes?**

23 A. Then I would agree with you. It says
24 draft on there but I'll take that, that's what
25 you're purporting. Exhibit 18 appears to be the

1 complete and approved minutes of that meeting. I
2 believe it was a special meeting. Exhibit 19
3 appears to be the complete minutes of that meeting.
4 Exhibit 20 appears to be the complete minutes of
5 that meeting. Exhibit 21, that appears to be the
6 complete minutes of that meeting. Exhibit 22
7 appears to be an agenda of the January 15th meeting.

8 And so to the extent that you want me to
9 authenticate that this appears to be a draft agenda
10 of the regular session or the open session, I will
11 agree with you but remember that there was an
12 executive session with an executive agenda so I want
13 to be clear that this does not include the executive
14 agenda.

15 Looking at it quickly, Exhibit 23 appears
16 to be the complete minutes of the January 15th
17 meeting: And Exhibit 24 does appear to be the
18 approved minutes of the April 16th regular board
19 meeting and those do appear to be -- well, it's not
20 clear to me whether they're complete because there
21 is nothing for the executive session.

22 MR. JONES: At this time, U.S. Trustee
23 will move Exhibits 15 through 24 into evidence.

24 MR. KING: Subject to the qualifications
25 that Mr. Sells has articulated with respect to

1 whether they're complete or whether they're not
2 approved and then specifically with respect to the
3 exhibits -- actually a couple of them were already
4 introduced as the joint exhibits but most
5 importantly, Exhibit Number 21 is a draft -- it says
6 revised, whereas our exhibits are the approved
7 exhibits so I would suggest we use the final
8 approved so that there is no question --

9 JUDGE MAYER: Well, there may be no
10 reason to look at the draft if they are identical.
11 Are they identical?

12 MR. KING: I have no idea.

13 MR. JONES: And I'm not sure, Your Honor,
14 either.

15 JUDGE MAYER: Well, they've been
16 authenticated. They'll all be received, through 24.

17 (Opposer Exhibit Nos. 15 and 17-24
18 were received in evidence.)

19 BY MR. JONES:

20 **Q. Mr. Sells, if you would, could you take a**
21 **look at Exhibits 2 through 4 which are copies of or**
22 **which purport to be copies of administrative**
23 **resolutions that were passed by the board?**

24 A. Okay, I have some problems with these
25 exhibits. Exhibit 2 appears on the first page to be

1 Administrative Resolution 2012-02 which is the
2 appointing special litigation committee. And it has
3 a resolution action sheet which is also titled
4 2012-02 that is signed by Lucia Hadley in October
5 purporting that this was adopted by the board of
6 directors on the 24th of June. On October 16th,
7 2012, Lucia Hadley was not the secretary of FOA. I
8 don't know who prepared this resolution action
9 sheet. I never saw a copy of it. I am not sure
10 that I saw a copy of this resolution that has the
11 numbers on it because, of course, before you pass a
12 resolution, you don't know what number it's going to
13 be. So I don't think I can authenticate Exhibit 2
14 for you.

15 **Q. Other than the resolution action sheet,**
16 **this appears to be a fair and accurate copy, to the**
17 **best of your recollection, of the resolution that**
18 **was put forward before the board?**

19 A. Well, but the question is when and what
20 resolution and --

21 **Q. In fact, didn't you draft this**
22 **resolution?**

23 A. Well, I don't know. That's what I'm
24 saying. I can't --

25 **Q. Do you recognize the language and the**

1 **words that are used?**

2 A. The resolution went through a number of
3 iterations. I would have to compare it to some
4 other version to be sure. Yes, it has recitals,
5 yes, it has numbered paragraphs and we can do that
6 if you want. So you tell me. It's your
7 examination. What would you like me to do? I'm
8 trying to give you --

9 JUDGE MAYER: He would like you to answer
10 the questions, Mr. Sells. Do you recognize this
11 document?

12 THE WITNESS: Your Honor, I recognize the
13 form of it. I would need to look at it much more
14 closely to say whether this is what it purports to
15 be which is --

16 JUDGE MAYER: Well, look at it more
17 closely and tell me.

18 THE WITNESS: Okay. This appears to be
19 to me the first resolution appointing a special
20 litigation committee except for that last page. I
21 don't know anything about that last page. But the
22 text of the resolution, Your Honor, appears to be
23 the first one.

24 JUDGE MAYER: Thank you.

25 BY MR. JONES:

1 Q. And if you would take a look at Exhibit
2 3, does Exhibit 3 appear to be the second one?

3 A. I think the answer to that is no. I
4 think it appears to be identical to the first one.

5 Q. And then Exhibit Number 4, which is dated
6 October 3rd, 2012, does that appear to be a fair and
7 accurate copy of the resolution that was passed at
8 that meeting?

9 A. I think this is a duplicate of one I've
10 already authenticated but let me check. Yes, this
11 does appear to be the resolution that was adopted on
12 October 3rd.

13 MR. JONES: At this time, U.S. Trustee
14 would move Exhibits 2 through 4 into evidence.

15 JUDGE MAYER: I don't know about 3.

16 MR. KING: Exactly.

17 MR. JONES: Okay. At this time, the U.S.
18 Trustee will move Exhibit 2 and Exhibit 4 into
19 evidence.

20 MR. KING: Well, with respect to Exhibit
21 2, we don't have any problem with the exception of
22 the action sheet attached. He could not identify
23 that, authenticate that. And then the issue with
24 respect to the fee. Everything in number 2 except
25 for the last page we're okay with, Your Honor.

1 MR. JONES: And that's fine.

2 JUDGE MAYER: Everything in 2 except the
3 last page, and 4 will be admitted. I'm referring to
4 these in my notes as T-dash whatever so as not to
5 confuse them with the joint exhibits.

6 MR. JONES: Thank you, Your Honor.

7 (Opposer Exhibit Nos. 2 and 4
8 were received in evidence.)

9 BY MR. JONES:

10 **Q. And then the last exhibit I would like**
11 **you to look at, Mr. Sells, is Exhibit Number 31**
12 **which is entitled policy resolution number 2009-03.**
13 **And this is Exhibit T-31. It's on page 573 of your**
14 **notebook.**

15 MR. JONES: I believe the settlement
16 agreement, Your Honor, is already in evidence.

17 JUDGE MAYER: That was number 1, the
18 Joint Exhibit Number 1? Yes, it is.

19 THE WITNESS: Yes, this looks to be
20 policy resolution number 2009-03.

21 MR. JONES: At this time, Your Honor, the
22 U.S. Trustee would move Exhibit T-31 into evidence.

23 MR. DONELAN: No objection, Your Honor.

24 JUDGE MAYER: It is received.

25 MR. KING: I do object on relevance, Your

1 Honor.

2 JUDGE MAYER: What's the relevancy?

3 MR. JONES: Your Honor, this is the
4 policy resolution which was removed by Mr. Sells at
5 his first board meeting. It restricts the ability
6 of unit owners such as Gordon Properties to have
7 multiple seats on the board and the U.S. Trustee is
8 offering it into evidence in order to show a pattern
9 of control by Gordon Properties over the FOA board.

10 MR. KING: Well, that's argument. It's
11 obviously not evidence, Your Honor. The fact of the
12 matter is that this policy resolution was rescinded,
13 was voted down by the unit owners at the 2011
14 election.

15 JUDGE MAYER: Well, that is a matter of
16 controversy.

17 MR. KING: Actually, I don't think that's
18 a matter of controversy. All I'm saying is that's
19 argument but I still don't understand what the
20 relevance of it is to the settlement agreement.

21 JUDGE MAYER: I think he has explained
22 the relevance and it is accepted.

23 MR. JONES: Thank you, Your Honor.

24 BY MR. JONES:

25 **Q. Now, Mr. Sells, would you please turn to**

1 **page 472 of your exhibit book?**

2 JUDGE MAYER: What exhibit?

3 MR. JONES: That's Exhibit T-16, Your
4 Honor.

5 THE WITNESS: Okay, I'm there.

6 BY MR. JONES:

7 **Q. At this meeting, you moved to rescind**
8 **policy resolution 2009-3?**

9 A. Can you tell me where in this exhibit,
10 what page?

11 **Q. I believe page 477. And I direct your**
12 **attention to the middle of the page. There is a**
13 **paragraph that says, "To ratify the action taken on**
14 **a point of order at the October 5, 2011 annual**
15 **meeting deeming policy resolution 2009-03 to be a**
16 **nullity; or in the alternative, to repeal policy**
17 **resolution 2009-03." It's about the fifth paragraph**
18 **down on page 477.**

19 A. Yeah, I see that. And could you repeat
20 your question?

21 **Q. At the June 19th meeting, you moved to**
22 **remove this or you moved that this policy resolution**
23 **be rescinded? And I'll direct your attention to the**
24 **paragraph immediately before, "Mr. Sells made the**
25 **following motion."**

1 A. I'm sorry, I'm lost.

2 **Q. We're on page 477.**

3 A. I'm there.

4 JUDGE MAYER: I think if you look in the
5 highlighted, it says motion. Do you see that, right
6 after new business, ratification, motion?

7 THE WITNESS: Yes.

8 JUDGE MAYER: Ms. Greenwell moved and
9 Ms. Wilson seconded?

10 THE WITNESS: Yes. And that motion
11 passed unanimously.

12 JUDGE MAYER: And that's the one that we
13 were just talking about.

14 THE WITNESS: No, Your Honor, that's not
15 what I understand it to be.

16 BY MR. JONES:

17 **Q. If you look at the paragraph immediately**
18 **after unanimously, "Ratification of actions taken on**
19 **a point of order. Mr. Sells made the following**
20 **motion." Do you see that language?**

21 A. Yes.

22 JUDGE MAYER: You're going down to the
23 next motion?

24 MR. JONES: Right. I'm referring to the
25 motion that's referring to policy resolution

1 2009-03.

2 THE WITNESS: Right. Yes, it says --

3 JUDGE MAYER: I see what you're doing.

4 Excuse me.

5 THE WITNESS: I moved to ratify the
6 action taken out of point of order at an October
7 5th, 2012 annual meeting. That's what that did.

8 BY MR. JONES:

9 Q. And rescinding this resolution removed
10 the limitation on multiple owners of a single unit
11 of a condominium to hold more than one board seat?

12 A. Well, that's a matter of controversy.

13 Q. Rescinding this resolution favored Gordon
14 Properties?

15 A. I think it favored all the unit owners.

16 Q. Including Gordon Properties?

17 A. Yes. Gordon Properties is a unit owner.

18 Q. And you also moved -- as we continue to
19 go down the page, there is a provision called
20 termination of legal services. Do you see that?
21 It's the paragraph two paragraphs down from the
22 paragraph we were just talking about. Do you see
23 where I'm talking about?

24 A. Yes, I made that motion.

25 Q. And these law firms, both Reed Smith and

1 Redmon Peyton, they were involved in litigation
2 against Gordon Properties?

3 A. Yes.

4 Q. And this motion further directed counsel
5 from LeClair Ryan, Jennifer Sarvadi, to seek a
6 continuance of all filing and hearing dates pending
7 the hiring of replacement counsel.

8 A. Yes.

9 Q. The intention was for Ms. Sarvadi to be
10 replaced as well?

11 A. No, that's not the intention of that
12 motion.

13 Q. So when you sought to have her seek a
14 continuance pending the -- oh, of replacement
15 counsel for Reed Smith and Redmon Peyton is what
16 you're saying.

17 A. Right. The point of this is to --
18 because there had been a dramatic change in the
19 composition of the board that had campaigned heavily
20 on a platform of changing the direction of FOA's
21 litigation, it seemed to me to be quite appropriate
22 to seek a continuance of all of the litigation that
23 was then in process so that FOA could seek
24 replacement counsel.

25 Q. And you voted in favor of the resolution

1 to terminate Reed Smith and Redmon Peyton Braswell?

2 A. Well, I probably did but that's not
3 memorialized here.

4 Q. To the best of your knowledge, you voted
5 --

6 A. Well, yeah, I would not have -- well, I
7 think I did but it's not memorialized here and I've
8 taken so many votes, I don't remember all of them.

9 Q. And there were other directors there,
10 three others that were also affiliated with Gordon
11 Properties at that meeting? The record would show
12 that the board meetings that were present were Bryan
13 Sells, Elizabeth Greenwell, Dennis Howland, FJ
14 Pepper and Lindsay Wilson.

15 A. Yes. Of course Dennis and Lindsay were
16 participating by telephone.

17 Q. So at least in the motion, I believe,
18 regarding termination of legal services -- let me
19 rephrase the question. I want to ask you now about
20 the litigation that those firms were involved in.
21 Reed Smith was representing FOA in an arbitration
22 matter and a pending appeal?

23 A. Reed Smith was representing FOA in an
24 arbitration matter but I'm not sure what you mean by
25 in a pending appeal.

1 **Q. Reed Smith was representing FOA in**
2 **briefing and arguing an appeal of this court's order**
3 **before the U.S. District Court for the Eastern**
4 **District of Virginia?**

5 A. Yes, but that wasn't the arbitration
6 matter.

7 **Q. There were two matters?**

8 A. Yes.

9 **Q. And Reed Smith's firing occurred less**
10 **than 10 days before the evidentiary hearing in the**
11 **arbitration matter?**

12 A. I don't recall.

13 **Q. It was shortly before?**

14 A. It may have been. I don't remember the
15 scheduling of the arbitration.

16 **Q. And they had already exchanged exhibits,**
17 **witness lists, a position statement?**

18 A. I don't remember that.

19 **Q. What steps did you take to familiarize**
20 **yourself with the state of the litigation prior to**
21 **making the decision to terminate them?**

22 A. Well, I would have been familiar with the
23 state of the litigation at that time. I don't
24 remember them today a year and a half later.

25 **Q. I want to discuss the board meeting on**

1 **June 24th. Do you recall this meeting?**

2 A. No, not the specifics of it.

3 **Q. Would you please turn to page 478 of your**
4 **exhibit book? This is U.S. Trustee Exhibit Number**
5 **17.**

6 A. Okay, I'm there.

7 **Q. And you remember that Ms. Hadley at this**
8 **meeting moved to engage an attorney to represent FOA**
9 **in the pending appeal? I would direct your**
10 **attention to page 479. Ms. Hadley moved,**
11 **Mr. Zoghaib seconded a motion to have one attorney**
12 **from Reed Smith argue the bylaws issue.**

13 A. I'm sorry, which paragraph?

14 **Q. I believe it's paragraph number 5.**

15 A. I see that, yes.

16 **Q. And that's correct that Ms. Hadley moved**
17 **for that motion?**

18 A. I don't have any reason to doubt that
19 these minutes accurately reflect the meeting.

20 **Q. And the minutes also reflect that this**
21 **vote was tabled by a fourth revote with the four**
22 **Gordon Properties affiliate directors voting down**
23 **the three nonaffiliate directors, is that correct?**

24 A. Yes.

25 **Q. And the same was true with the vote**

1 regarding the arbitration action?

2 A. The same what was true?

3 Q. The motion to hire Reed Smith to argue
4 the pending arbitration action was also voted down 4
5 to 3 with the Gordon Properties affiliated directors
6 voting down the nonaffiliated directors?

7 A. Can you direct me to a paragraph? I
8 don't see reference to the arbitration action. And
9 it's my affirmative recollection that that never
10 came up at this meeting. But if you show me where
11 it is, I --

12 Q. So I'll direct you to the -- we talked
13 about the pending appeal. The first paragraph on
14 page 479 is Ms. Hadley moving to engage Mike Dingman
15 of Reed Smith regarding the recounting appeal. Then
16 paragraph 3, the motion failed with a 4 to 3 vote.
17 And then there was a motion -- this is paragraph 4
18 and I think that's what caused the confusion. On
19 paragraph 4, Ms. Hadley moved and the moving was
20 seconded to have an attorney argue the bylaws issue,
21 which was the subject of the pending arbitration
22 hearing. And then the paragraph immediately after
23 that is that motion being tabled by a 4/3 vote.

24 A. I see what you're saying now. Was the
25 arbitration the same thing as the bylaws issue?

1 That I don't recall.

2 Q. But there was a pending matter?

3 A. Well, there were a lot of matters
4 pending. There still are.

5 Q. And by tabling these matters, the Gordon
6 Properties affiliated directors blocked the efforts
7 of the non-Gordon directors to engage counsel of
8 their choice.

9 A. I think that's a characterization of it.

10 Q. Well, if three nonaffiliated directors
11 wanted to hire Reed Smith and the four directors
12 voted to table it, is that not what happened?

13 A. Sure, that's what happened.

14 Q. And also at this meeting you moved to
15 adopt the first SLC resolution, is that correct?

16 A. Can you point me to a paragraph?

17 Q. I direct your attention to Exhibit Number
18 2. I understand that you had some concerns
19 regarding the resolution action. And I don't -- is
20 your concern whether or not the date that it gives
21 for the adoption of the administrative ruling is
22 correct or is it just limited to the dating that is
23 done by Ms. Hadley?

24 A. On Exhibit 2?

25 Q. That's correct. Because I'll note the

1 administrative resolution meeting reflects -- or the
2 administrative resolution action sheet reflects that
3 it was adopted on the 24th of June. Now, I
4 understand you don't believe that this is a fair and
5 accurate representation of the action sheet but is
6 the information --

7 JUDGE MAYER: I don't think he said that.
8 He said he didn't recognize it.

9 MR. JONES: Oh.

10 JUDGE MAYER: Am I correct about that?

11 THE WITNESS: Well, I did say that I
12 don't recognize it, Your Honor, but I'm saying it's
13 also not accurate because Ms. Hadley was not the
14 secretary of FOA on the date that it is signed. So
15 it is inaccurate in that respect for sure.

16 BY MR. JONES:

17 Q. But you recognize that this resolution
18 passed?

19 A. It did.

20 Q. And what's your best recollection as to
21 the date that passed?

22 A. It's been so long. I don't know. I
23 don't have any reason -- let's cut to the chase. I
24 don't have any reason to think it wasn't June 24th.

25 Q. And by this vote --

1 A. I don't remember the vote, to be honest
2 with you.

3 Q. Would it refresh your recollection to
4 look at the resolution action sheet which reflects
5 was a 4/3 vote with the four Gordon Properties
6 directors voting in favor and the three
7 nonaffiliated directors voting no?

8 A. No, it would not refresh my recollection.

9 Q. So you don't remember what the vote was
10 or who voted?

11 A. No, I don't.

12 Q. But you remember voting in favor of it?

13 A. Yes.

14 Q. And you participated in the drafting of
15 the first SLC resolution?

16 A. Yes.

17 Q. And this resolution of course created the
18 special litigation committee?

19 A. Yes.

20 Q. I want to focus on the special litigation
21 committee now. The SLC was created to assist the
22 board with respect to the pending litigation
23 matters?

24 A. I wouldn't characterize it that way.

25 Q. What was the purpose of the SLC?

1 A. The purpose of the SLC was to create a
2 disinterested body to handle FOA -- excuse me. The
3 purpose of the special litigation committee was to
4 create a disinterested body to handle the litigation
5 between FOA and Gordon Properties and its
6 affiliates. And, I might add, to disestablish the
7 prior SLC.

8 **Q. I know this is the first SLC.**

9 A. No, it's not.

10 **Q. This was the one that was before the**
11 **October 3rd meeting?**

12 A. You're correct. But this was not the
13 first SLC. FOA had an SLC before I was on the
14 board. There was a litigation committee and if we
15 had not created one or disestablished that one, then
16 Ms. Cuadros or whoever else was on it would have
17 continued to be the special litigation attorney and
18 would have continued to direct FOA's attorneys.
19 This is the first one where there is a written
20 resolution and it was the first one that was passed
21 while I was president.

22 **Q. And it was the first one that was created**
23 **by you?**

24 A. Well, it was created by the board.

25 **Q. But you drafted the motion and you voted**

1 for it and it was voted on in favor by the other
2 Gordon Properties directors?

3 A. I don't remember who made the motion to
4 adopt this resolution. I don't think that's
5 anywhere in here and I certainly don't recall.

6 Q. And the members of the board who voted in
7 favor of the resolution -- the resolution states who
8 the special litigation committee members are. It
9 effectively chooses them?

10 A. Yes.

11 Q. And in fact, in the event that there was
12 any vacancy, you had the sole power to fill that
13 vacancy, according to paragraph 2 on page 17?

14 A. Well, I was president at the time so it
15 delegates that to the president, not to me.

16 Q. But you were president?

17 A. I was president.

18 Q. So you effectively chose the members that
19 would be deciding the litigation against Gordon
20 Properties which was an entity that you had an
21 ownership interest in?

22 A. Can you repeat the question?

23 Q. So you effectively chose the members of
24 the LLC that Gordon Properties would be negotiating
25 with?

1 A. Well, may be negotiating with.

2 **Q. Or litigating against?**

3 A. Right. And you asked me that earlier
4 and, yes, Gordon Properties participated in the
5 decision to appoint those people to the special
6 litigation committee.

7 **Q. I didn't say they participated. They**
8 **chose that.**

9 A. Well --

10 **Q. Because they passed the resolution and**
11 **you, as the president, had the sole power to decide**
12 **the replacement of vacancies.**

13 A. Then I would disagree with that
14 characterization because I didn't choose Alex
15 Zoghaib. The membership essentially chose Alex
16 Zoghaib. He was a board member, he was
17 disinterested, he had to be on that committee.
18 Would Alex Zoghaib have been my choice? Alex,
19 you're a very nice guy but if I were choosing with
20 free rein, no, Alex probably would not have been my
21 choice so I have to quibble with that
22 characterization of it.

23 **Q. You said that the purpose of the SLC was**
24 **to create a disinterested body. Why was any of this**
25 **necessary? Why didn't you just -- why didn't the**

1 **Gordon Properties directors just refuse themselves**
2 **and let the other three directors vote on litigation**
3 **decisions involving FOA and Gordon Properties?**

4 A. Well, I'm glad you asked that because it
5 goes back to what I said earlier about the
6 importance of small D democracy in a condominium.
7 We had campaigned on a very strong, very clear
8 platform of changing the direction of FOA, including
9 the litigation. And we were elected, we got --

10 **Q. You said that you campaigned on a**
11 **platform of change. I believe earlier you**
12 **characterized it as a regime change.**

13 A. Yes, I think that was an accurate
14 characterization. The old board had held on through
15 election fraud for six years. We were elected. I
16 think it's fair to characterize that as a regime
17 change. But if I could finish my answer, we
18 campaigned on a very clear, crystal clear platform
19 of changing FOA's direction in the litigation, of
20 changing FOA's direction entirely.

21 Because of further litigation by the
22 previous board, the votes of the unit owners were
23 disrespected in that my slate got six of the seven
24 top seats but were not able to take -- excuse me.
25 My slate got six of the seven highest votes but were

1 not able to take their place on the board because of
2 this litigation and so there were two people on the
3 board, Mr. Zoghaib and -- well, at this time, it was
4 just Mr. Zoghaib because Dennis Howland was still on
5 the board at the time, who did not get the support
6 of -- sufficient support from the unit owners and
7 they represented a platform that frankly did not
8 have democratic support behind it. So I've
9 forgotten your question.

10 **Q. My question was, why didn't you recuse**
11 **yourself from votes involving FOA litigating against**
12 **Gordon Properties?**

13 A. Right. And why did I create a
14 disinterested body.

15 **Q. No, why didn't you just recuse yourself?**
16 **Why create the SLC instead of just recusing**
17 **yourself?**

18 A. Because if I had recused myself, then the
19 folks who would have been controlling FOA in this
20 very important decision would have been the ones who
21 did not have the democratic support, who had -- I
22 would have been letting down all those people who
23 voted for me and my slate.

24 **Q. So you didn't recuse yourself because you**
25 **were worried that the people who disagreed with you**

1 **would make different decisions than you would make?**

2 A. Well, not -- I wouldn't say I was just
3 worried about that. I mean, Ms. Hadley had a clear
4 conflict. She was on the board. Mr. Zoghaib, of
5 course he was on the board but it would have been --
6 let's see, Hadley, Zoghaib and -- oh, Pepper was on
7 the board. He's the guy. He's the one I was --

8 **Q. FJ Pepper?**

9 A. Right, Dr. Pepper. And so he was also,
10 like Ms. Hadley, interested and it would have been
11 simply up to Mr. Zoghaib to do that. And as I said,
12 he was either 10th or 11th, 12th highest vote
13 getter. But if we had simply recused ourselves,
14 there is no guarantee that the other interested
15 board members being Pepper and Hadley at this
16 time --

17 **Q. How were they interested?**

18 A. We went over this --

19 **Q. Oh, because of the suit against them?**

20 A. Well, not just because of the suit but
21 because of the potential liability, yes. So, you
22 know, I didn't actually think it was appropriate to
23 have one person directing all of those decisions but
24 if phrased your way, why don't you just stay out, I
25 don't think Ms. Hadley and Dr. Pepper would have

1 just stayed out and given it to Mr. Zoghaib either.

2 **Q. I understand your position that they were**
3 **disinterested -- they weren't disinterested in some**
4 **way with the settlement agreement but how in**
5 **deciding the litigation posture of FOA against**
6 **Gordon Properties, for instance, on the issue of the**
7 **bylaws or the pending appeal, how are they not --**
8 **the appeal of the substantive consolidation motion,**
9 **why on that vote are they not disinterested? What**
10 **financial benefit would Dr. Pepper or Ms. Hadley**
11 **receive by deciding the litigation of FOA against**
12 **Gordon Properties in the substantive consolidation**
13 **motion?**

14 A. You know, that's a good question. And I
15 honestly haven't thought about it that way. And I
16 suppose we could have -- I would need to think about
17 it more but I suppose we could have created two
18 litigation committees, if we determined that
19 Ms. Hadley was not disinterested as to some of them
20 versus others of them.

21 **Q. Or you could have recused yourself?**

22 A. Like I said, we weren't breaking things
23 up in that regard. And I'll add, there was never
24 any suggestion from FOA's counsel that Ms. Hadley
25 and Dr. Pepper were disinterested.

1 Q. I don't want to get into legal advice
2 that you got with your counsel. I don't want to
3 step across the privilege that you have.

4 A. Well, I think it's important.

5 JUDGE MAYER: Answer the questions.

6 There is no question pending.

7 BY MR. JONES:

8 Q. The members of the special litigation
9 committee, when it was created in June, were
10 Ms. Brungart, Ms. Gilliam and Mr. -- is it Zoghaib?

11 A. I know him as Alex Zoghaib.

12 Q. Excuse me.

13 A. Thank you.

14 Q. And Ms. Brungart and Ms. Gilliam were not
15 members of the FOA board at that time?

16 A. That's right.

17 Q. And we've discussed the -- or prior
18 witnesses have discussed the restriction on counsel.
19 You don't have any disagreement with the prior
20 testimony?

21 A. What prior testimony?

22 Q. The resolution creating the special
23 litigation committee -- and I direct your attention
24 to paragraph 4 of Exhibit 2 -- prohibits the special
25 litigation committee from engaging counsel that

1 **represented FOA at any time after July 1st, 2006.**

2 **Is that correct?**

3 A. Is it correct that that's what it says?

4 Is that what you're asking me?

5 **Q. Right. That's what the resolution**
6 **provides?**

7 A. Yes. And I want to be clear that this
8 did not -- Ms. Sarvadi stayed on as FOA counsel
9 after the passage of the resolution.

10 **Q. Until she was ultimately replaced in I**
11 **believe, what, in December?**

12 A. I had nothing to do with that decision.
13 I don't know.

14 **Q. And that restriction essentially prevents**
15 **the special litigation committee from hiring any**
16 **lawyer that was working on the subject matter of the**
17 **litigation between FOA and Gordon Properties? The**
18 **special litigation committee couldn't make the**
19 **decision to go out and hire Reed Smith, for**
20 **instance?**

21 A. Not under this resolution, no.

22 **Q. They would have to retain a lawyer with**
23 **no prior knowledge of the case?**

24 A. Well, no, I wouldn't say that.

25 **Q. They just couldn't hire anyone who had**

1 worked on the case?

2 A. It says that they could not have engaged
3 any counsel that had represented any party to the
4 litigation.

5 Q. To litigate against the Gordon Properties
6 lawyers who had been working on this matter for a
7 number of years, I believe five years at this time?

8 A. Yes, although many of those earlier
9 lawsuits had been over. They were over.

10 Q. I want to ask you now about the
11 termination of the first special litigation
12 committee. The special litigation committee with
13 its original members, the members that were
14 appointed in June, they negotiated with Gordon
15 Properties from June 2012 until early October 2012?

16 A. I'm sorry, say that again?

17 Q. The special litigation committee as
18 constituted with its original members was appointed
19 in June 2012 and then terminated in August 2012?

20 A. Yes.

21 Q. And on October 3rd, 2012, a board
22 election was held?

23 A. Yes.

24 Q. Ms. Hernandez solicited a large number of
25 proxies?

1 A. It depends on what you mean by large.

2 **Q. She solicited proxies?**

3 A. She solicited proxies. I wouldn't
4 characterize the number she solicited as large.

5 JUDGE MAYER: How many?

6 THE WITNESS: I would guess between --
7 and it's really a vague guess -- between 20 and 30.

8 BY MR. JONES:

9 **Q. And you agreed with her that she would**
10 **vote for candidates that were favored by you?**

11 A. We agreed that on election night.

12 **Q. And in return, the Gordon Properties**
13 **entities would vote for her?**

14 A. Yes.

15 **Q. And you asked Ms. Hernandez to vote for**
16 **Mr. Reichenbach?**

17 A. I believe so.

18 **Q. And Mr. Reichenbach did not run for**
19 **election?**

20 A. Well, he didn't petition and he was not
21 an announced candidate.

22 **Q. In fact, he wasn't present -- and I think**
23 **we testified before or from the prior testimony, you**
24 **heard that he wasn't present at the election and he**
25 **was on vacation and you were aware of that?**

1 A. Yes, I was.

2 Q. And you were aware that he would be
3 actively working to end the or to -- that his
4 position was that the litigation against Gordon
5 Properties should end?

6 A. I don't remember what I was aware of at
7 the time, but I was aware that we thought that he
8 would be a good person to sit on the board. I don't
9 think I had had a conversation with him -- maybe one
10 conversation my entire life before that.

11 Q. Immediately following the election, the
12 board held an organizational meeting?

13 A. Yes.

14 Q. No advanced notice was provided?

15 A. Nor was any required.

16 Q. And in fact, Ms. Hadley, who had attended
17 the election, had already left?

18 A. I don't remember her being in attendance
19 at the meeting but she may have been.

20 Q. Would you please turn to Exhibit 20 which
21 is page 498 of the U.S. Trustee book? And you began
22 the meeting with an election of officers?

23 A. Began the organizational meeting?

24 Q. I'm looking at the minutes for the
25 meeting. There is a section called election of

1 officers. I understand that there is a call to
2 order and a roll call and an approval of agenda but
3 the first substantive work was the election of
4 officers.

5 A. Yes.

6 Q. And Ms. Greenwell moved that you were
7 retained as president which passed unanimously?

8 A. Yes. I was very pleased to get
9 Mr. Halls' vote.

10 Q. And Ms. Greenwell is affiliated with
11 Gordon Properties?

12 A. She's my sister.

13 Q. And in return, you moved that
14 Ms. Greenwell be retained as vice president?

15 A. I did so move.

16 Q. And then Ms. Wilson be appointed as
17 secretary and treasurer?

18 A. Yes.

19 Q. And please remind -- what's Ms. Wilson's
20 relationship to you?

21 A. She's my first cousin.

22 Q. At that time, there were four officer
23 positions that were held by -- or that the FOA board
24 and after this election, all four were held by
25 Gordon Properties affiliated members?

1 A. By unanimous votes.

2 Q. And in fact, Ms. Wilson held two
3 positions?

4 A. That's correct.

5 Q. And then you presented the board with a
6 resolution, resolution 2012-06. And for your
7 reference, that's Exhibit Number 4 which is at page
8 24 of the U.S. Trustee book. Do you see that?

9 A. Yes, I do.

10 Q. The resolution replaced the membership of
11 the special litigation committee with Ms. Brungart,
12 Ms. Hernandez and Ms. Reichenbach?

13 A. I know him as Reichenbach.

14 Q. Oh, Reichenbach, excuse me.

15 A. But yes, that's what the resolution did.

16 Q. And the board adopted the resolution by a
17 4 to 1 vote?

18 A. Yes.

19 Q. Had the three Gordon property directors
20 recused themselves, the resolution would have failed
21 by vote of 1 to 1?

22 A. Yes.

23 Q. Did the first special litigation
24 committee ever report to the board that it couldn't
25 function?

1 A. I did get complaints from Jane Brungart
2 that she was being excluded from communications with
3 counsel and that counsel was working directly with
4 Betty Gilliam and that the formalities of the
5 committee process were not being adhered to in large
6 measure because Mr. Zoghaib works a secret job and
7 is unavailable during the day for large stretches of
8 time and that Ms. Sarvadi would simply call up Betty
9 Gilliam.

10 **Q. So members of the special litigation**
11 **committee or Ms. Brungart at least who is a member**
12 **of the special litigation committee was reporting**
13 **information to you?**

14 A. No, I wouldn't characterize her as
15 reporting information to me. She complained to me
16 about that.

17 **Q. And you were aware that the special**
18 **litigation committee members had signed a**
19 **confidentiality agreement?**

20 A. No, I was not.

21 **Q. Did the special litigation committee as a**
22 **group ever tell the board that further negotiations**
23 **would be fruitless?**

24 A. No, not that I can remember.

25 **Q. In fact, the first special litigation**

1 **committee never had a chance to defend its work to**
2 **the board before it was dissolved?**

3 A. No, I wouldn't agree with that. It was
4 commonplace at that time for committees to give
5 reports at virtually every board meeting and so they
6 may have given reports. I don't know. I don't have
7 the minutes in front of me. But they would have had
8 the opportunity to do so had they wanted to.

9 **Q. But you never recall such a meeting?**

10 A. A board meeting.

11 **Q. You never recall such a presentation by**
12 **the special litigation committee that had a chance**
13 **to defend its work prior to its replacement?**

14 A. Well, I can recall Bill Reichenbach
15 giving me regular reports for a while and I think I
16 remember Betty Gilliam giving a couple of reports.

17 **Q. Mr. Reichenbach, though, was on the**
18 **second committee?**

19 A. Right, yes.

20 **Q. What was the nature of his reports? What**
21 **was the nature of his reports?**

22 A. Just to update the folks that were there
23 about what was going on.

24 **Q. By the folks, you mean the entire FOA**
25 **board?**

1 A. I mean the board and the audience
2 members, a lot of the same folks you see here.

3 **Q. But Mr. Reichenbach never told**
4 **information to you personally that wasn't shared**
5 **with the board as a whole or with the special**
6 **litigation committee as a whole?**

7 A. Well, I don't know what she's sharing
8 with the special litigation committee as a whole.

9 **Q. Did you ever have a conversation with him**
10 **one on one where he gave you information about the**
11 **progress of the special litigation committee in its**
12 **negotiations?**

13 A. You know, I would probably have to say
14 yes.

15 **Q. What was the nature of that conversation?**

16 A. Bill and I maintained good relations and
17 we're frequently in touch about board matters and so
18 to be completely candid, he would at times growl to
19 me about Martina this or Jane this or not giving
20 away any sort of the confidential information but,
21 again, to be perfectly candid and honest with the
22 Court, I would say we talked.

23 **Q. On this October 3rd meeting, I also**
24 **notice it began at 11:04 p.m. Is that a typical**
25 **time for the board to hold meetings?**

1 A. You're talking about the organizational
2 meeting?

3 **Q. Yes, the organizational meeting.**

4 A. No. The board's regular meetings do not
5 typically take place at 11 o'clock but -- and this
6 organizational meeting was a little unique in that
7 the annual meeting ended so early that we could have
8 an election -- an organizational meeting before 1:00
9 or 2:00 in the morning.

10 **Q. I also note at this meeting, FOA sought**
11 **approval to hire the chief operating officer of CSI**
12 **to temporarily manage FOA?**

13 A. Yes.

14 MR. KING: Mr. Jones, what are you
15 referring to? Which exhibit?

16 MR. JONES: This is page 499.

17 MR. KING: The exhibit, please?

18 JUDGE MAYER: 20.

19 MR. JONES: I'm sorry, Exhibit 20.

20 BY MR. JONES:

21 **Q. And that passed with a 4 to 1 vote with**
22 **the three Gordon Properties directors being**
23 **necessary in order for the vote to carry?**

24 A. Yes.

25 **Q. I want to discuss the January 15th board**

1 meeting. Do you recall this meeting? This is the
2 January 15th, 2013 meeting.

3 A. No, not specifically.

4 Q. Can you turn to Exhibits 22 and 23?
5 They're on page 510 and 511 of the exhibit book
6 respectively. And I believe you testified that the
7 agenda was a partial agenda?

8 A. Yes.

9 Q. And at this meeting, the board held a
10 vote ratifying the settlement agreement that was
11 negotiated by the special litigation committee with
12 the -- I'm going to term it the reconstituted
13 special litigation committee, the SLC with the new
14 members. Do you need me to repeat the question?

15 A. Yeah, I do. I'm sorry. I was looking at
16 the exhibit.

17 Q. At this meeting on January 15th, 2013,
18 the board held a vote to ratify and accept the
19 settlement agreement that was negotiated by the
20 second special litigation committee?

21 A. Yes.

22 Q. And this vote was taken before the filing
23 of the examiner's report?

24 A. Yes.

25 Q. None of the issues discussed in the

1 report regarding the creation of the special
2 litigation committees and the restraints regarding
3 hiring counsel of the special litigation committees,
4 none of these issues were discussed?

5 A. I honestly don't remember what we
6 discussed in executive session. But those issues in
7 general were discussed on the board.

8 Q. The board discussed a potential conflict
9 of interest in denying the special litigation
10 committee the right to hire its own counsel?

11 A. Well, those are reflected in the minutes.
12 We just went over the June 24th meeting where
13 Ms. Hadley tried to rehire Reed Smith.

14 Q. And was there discussion at that time
15 about what Gordon Properties -- what your role as a
16 director, what your fiduciary duties were to the
17 board in a transaction in which you might be
18 characterized as interested?

19 A. No, not in those terms.

20 Q. I want to refocus on the January 15th
21 meeting and the vote regarding accepting the
22 settlement agreement. Mr. Reichenbach and
23 Ms. Hernandez voted yes on the settlement agreement?

24 A. Yes.

25 Q. The three Gordon Properties affiliated

1 **directors abstained?**

2 A. That's right.

3 **Q. And Mr. Halls abstained?**

4 A. Yes.

5 **Q. And Ms. Hadley was absent so she also**
6 **abstained?**

7 A. No, she didn't vote.

8 **Q. She didn't vote in favor of the**
9 **resolution?**

10 A. She didn't vote any way on the
11 resolution.

12 **Q. So there were two votes in favor of the**
13 **settlement and then there were two non-Gordon**
14 **Properties affiliated directors that did not vote in**
15 **favor of the settlement.**

16 A. I'm sorry, can you repeat the question?

17 **Q. Sure. There were two non-Gordon**
18 **Properties affiliated directors who voted in favor**
19 **of the settlement?**

20 A. Yes.

21 **Q. And there were two non-Gordon Properties**
22 **affiliated directors who voted not in favor of the**
23 **settlement?**

24 A. If you want to characterize it that way,
25 I think the answer is yes. And there were three

1 Gordon Properties affiliated directors who did not
2 vote in favor of that settlement too.

3 **Q. They abstained because they were**
4 **interested?**

5 A. Well, but Mr. Halls abstained and
6 Ms. Hadley wasn't there.

7 **Q. But it would make a difference in its**
8 **passage if they were not disinterested -- if they**
9 **were interested because if it requires a majority of**
10 **the noninterested directors to vote in favor of, if**
11 **they were not interested, their decision to abstain**
12 **would be a no vote?**

13 A. I didn't follow that question. I'm
14 sorry.

15 **Q. Is it your position that at that meeting,**
16 **the Gordon Properties affiliated directors who**
17 **abstained were interested in the transaction?**

18 A. Oh, absolutely.

19 **Q. So of the non-Gordon directors, two voted**
20 **in favor and two did not vote in favor?**

21 A. Yes. I've already answered that
22 question.

23 MR. JONES: Nothing further, Your Honor.

24 JUDGE MAYER: Thank you.

25 EXAMINATION BY COUNSEL FOR MOVANT

1 BY MR. KING:

2 Q. Mr. Sells, in response to one question
3 that Mr. Jones asked you, he was alluding to the
4 SLCs as the first SLC and the second SLC and you
5 corrected his characterization with respect to the
6 first and second by indicating that in fact there
7 was an SLC already in existence. Can you elaborate
8 on that, please?

9 A. Yes. And I don't really know for sure
10 who was on it but Virginia condominium law allows a
11 unit owner to request sort of perpetual notice of
12 meetings and I got wind that there was a -- that the
13 board had created a litigation -- the prior board,
14 the holdover board, had created a litigation
15 committee, at some point, I think it was in 2010 or
16 2009.

17 And so I made a request for continual
18 notice of litigation committee meetings. And so I
19 would periodically, over the years, by e-mail get a
20 notice from FOA's various managers that the
21 litigation committee was meeting, the litigation
22 committee was meeting and so forth. So FOA had a
23 litigation committee.

24 It's my information and belief that it
25 was Ms. Cuadros and maybe Mr. Greenberg and

1 Ms. Hadley but I don't really know because you can't
2 attend a meeting of the litigation committee because
3 they're generally not open. They're with counsel
4 usually and so there is no point in going.

5 **Q. And there wasn't a written resolution**
6 **appointing --**

7 A. There was no written resolution such as
8 this one, the ones that we've been talking about
9 here. And I also wanted to clarify that we haven't
10 talked about any of the amendments to the SLC
11 resolution that happened between June and October
12 because there were several of those as well.

13 **Q. But the import of your answer to the**
14 **question as to why you just didn't rely upon**
15 **Mr. Zoghaib and why you had to appoint a committee**
16 **was because there already was a committee? Was that**
17 **what you were suggesting?**

18 A. Correct. I think we had to do something
19 to terminate that old committee. If we had decided,
20 for example, to leave it all up to Mr. Zoghaib, we
21 would have had to do something affirmative to do
22 that.

23 JUDGE MAYER: Mr. Donelan?

24 MR. DONELAN: No, Your Honor.

25 MR. JONES: Nothing further, Your Honor.

1 JUDGE MAYER: What was the advice you got
2 from Ms. Sarvadi with respect to the organizational
3 meetings?

4 THE WITNESS: You know, I heard
5 Ms. Sarvadi's testimony and I don't recall events in
6 the same way that she does and it may be because I
7 wasn't included on some of those e-mails. The
8 advice that I got from Ms. Sarvadi, as I recall it,
9 was that there was some question about what can
10 happen at an organizational meeting. I do remember
11 the issue she's talking about when you issued your
12 revised order taking Dennis off the board and
13 putting Elizabeth Moore on the board, there was some
14 question about whether the board needed to have
15 another organizational meeting. And Ms. Sarvadi may
16 have given advice at that time but I think if she
17 did, it was not advice to me.

18 And I think the way we ultimately
19 resolved that was that there didn't need to be
20 another organizational meeting because the board
21 could at any time change the officers that had
22 previously been elected. But the point of an
23 organizational meeting is to end the term of the
24 prior board members and begin the terms of the new
25 ones, and so there wasn't a need to do that.

1 But the advice that I was talking about
2 is there was some question about the October 3rd
3 meeting and whether or not other business could be
4 transacted at that meeting, namely, the appointment
5 of the SLC. Or whether the business was limited to
6 appointing officers. And my recollection of her
7 advice was that there was no clear answer to that
8 subject, that question.

9 JUDGE MAYER: And you asked that in
10 reference to the upcoming October 3rd meeting?

11 THE WITNESS: No, I don't recall asking
12 that in advance of the meeting but rather I seem to
13 remember it coming up afterwards. And this is all
14 now at some distance. I hope I'm remembering the
15 sequence right but as I sit here today, that's my
16 recollection of it. And Your Honor, it could have
17 happened earlier because the same issue was present
18 at the June 17th meeting and the same thing happened
19 with that. Both of them -- both boards acted to
20 ratify what happened at the organizational meetings
21 at the very first next board meeting.

22 JUDGE MAYER: Why was it critical to take
23 action at the organizational meeting other than
24 elect officers?

25 THE WITNESS: Well, arguably it wasn't

1 but, as I said --

2 JUDGE MAYER: Well, you considered it was
3 because you took action. Why was it critical?

4 THE WITNESS: Your Honor, again, I don't
5 agree with your premise. Just because we took
6 action doesn't necessarily mean it was critical.

7 JUDGE MAYER: Well, it's past 11 o'clock
8 on one occasion, you've had a long day and now
9 you're ready to start a new discussion and how long
10 did the organizational meeting last?

11 THE WITNESS: Five minutes.

12 JUDGE MAYER: It just took you five
13 minutes to fire everyone and move on?

14 THE WITNESS: You're talking about the
15 October meeting that happened after 11 o'clock?

16 JUDGE MAYER: Yes.

17 THE WITNESS: Yeah. I mean, the minutes
18 might reflect when it ended but my recollection is
19 that the meeting happened very quickly.

20 JUDGE MAYER: So it only took you about
21 five minutes to do all that stuff?

22 THE WITNESS: I think there were
23 unanimous votes on the officers, Your Honor, and
24 those don't take very long.

25 JUDGE MAYER: Had you discussed those

1 votes beforehand?

2 THE WITNESS: I don't remember having
3 discussed those beforehand, no.

4 JUDGE MAYER: So you came into the
5 meeting not knowing who was going to be nominated to
6 be president? You hadn't talked to your sister or
7 your cousin about it?

8 THE WITNESS: I don't remember talking
9 with my sister about it.

10 JUDGE MAYER: And you didn't talk to
11 either one of them about the special litigation
12 committee?

13 THE WITNESS: I don't remember talking
14 with them about it but I may have.

15 JUDGE MAYER: When was the resolution
16 typed up?

17 THE WITNESS: That afternoon.

18 JUDGE MAYER: Before the meeting?

19 THE WITNESS: Yes.

20 JUDGE MAYER: Who typed it?

21 THE WITNESS: Me.

22 JUDGE MAYER: You, yourself?

23 THE WITNESS: Yes.

24 JUDGE MAYER: And did you share it with
25 anyone?

1 THE WITNESS: No. I brought it with me
2 to the meeting.

3 JUDGE MAYER: And you didn't show it to
4 your sister, your cousin or anyone else?

5 THE WITNESS: I may have.

6 JUDGE MAYER: You may have. You don't
7 recall?

8 THE WITNESS: No, I don't. It was, as I
9 testified earlier, the same resolution we had been
10 operating under except --

11 JUDGE MAYER: Changed the names?

12 THE WITNESS: Well, there were blanks for
13 the names because I didn't know who would be
14 elected.

15 JUDGE MAYER: The resolution is Exhibit
16 4, is that right?

17 THE WITNESS: Yes, it is, Your Honor. I
18 hope that's right.

19 MR. JONES: Yes, it is, Your Honor.
20 That's Exhibit 4, page 24, and the minutes of this
21 meeting are Exhibit 20.

22 JUDGE MAYER: Now, the third recital, C,
23 says that the individual members, former members are
24 defendants in a pending lawsuit brought against them
25 by Gordon Properties. Is that right?

1 THE WITNESS: I believe it was at the
2 time. That lawsuit is no longer pending.

3 JUDGE MAYER: FOA? So you've nonsuited
4 that?

5 THE WITNESS: Yes, Your Honor.

6 JUDGE MAYER: And when did FOA file its
7 suit against them?

8 THE WITNESS: Well, I think the
9 complaint's in here somewhere that would show the
10 exact date but my recollection is the end of
11 December 2012.

12 JUDGE MAYER: Just before the annual
13 meeting?

14 THE WITNESS: I think it was a week or so
15 in advance of the annual meeting.

16 JUDGE MAYER: Why was it filed at that
17 time?

18 THE WITNESS: The statute of limitations.
19 I had asked Ms. Sarvadi for a memo on when the
20 statute of limitations would run on a possible claim
21 by FOA against its former board members arising out
22 of the willful violation of the automatic stay. She
23 came back to me with a memo advising that it would
24 be two years from the date of the decision which was
25 sometime at the end of September and so that's when

1 I would have run. And we had to file that claim at
2 that time to preserve it. And you may not be aware
3 of this but we never served the complaint. It was
4 simply filed to preserve that claim for FOA.

5 JUDGE MAYER: What's happened to the
6 lawsuit?

7 THE WITNESS: It has been nonsuited.

8 JUDGE MAYER: When was it nonsuited?

9 THE WITNESS: Sometime this spring. I'm
10 not sure I can be more specific than that.

11 JUDGE MAYER: Has the statute of
12 limitations expired?

13 THE WITNESS: Well, I think the answer to
14 that is yes, that as we just discussed, the statute
15 of limitations ran in September. I'm not an expert
16 on Virginia procedure, Your Honor. I'm not barred
17 in Virginia. But my understanding is that you have
18 six months after a nonsuit to refile if you want to
19 relate back to the initial date and the six months
20 of that have not expired.

21 JUDGE MAYER: When will the six months
22 expire?

23 THE WITNESS: I don't know, Your Honor.
24 Mr. Harvey is in the gallery and he might know or I
25 could -- well, I think the nonsuit order -- is the

1 nonsuit order one of the exhibits? I'm not sure.

2 JUDGE MAYER: You said you're not a
3 member of the Virginia bar. What bars are you a
4 member of?

5 THE WITNESS: Georgia.

6 JUDGE MAYER: Tell me a little bit about
7 you. How old are you?

8 THE WITNESS: I'm 42.

9 JUDGE MAYER: And how long have you been
10 practicing law?

11 THE WITNESS: Since 1998.

12 JUDGE MAYER: That's when you passed the
13 Georgia bar?

14 THE WITNESS: Well -- yes, it is. Yes,
15 it is.

16 JUDGE MAYER: Tell me about your
17 education. Where did you go to college and law
18 school?

19 THE WITNESS: I went to Columbia law
20 school, Harvard College.

21 JUDGE MAYER: When did you graduate from
22 law school?

23 THE WITNESS: '98.

24 JUDGE MAYER: And college. When did you
25 graduate?

1 THE WITNESS: '94.

2 JUDGE MAYER: Have you attended any other
3 school or obtained any other degrees?

4 THE WITNESS: No. Well, not after that.

5 JUDGE MAYER: What does that mean?

6 THE WITNESS: It means I went to high
7 school.

8 JUDGE MAYER: As far as college, these
9 are the only higher education you --

10 THE WITNESS: Yes, Your Honor.

11 JUDGE MAYER: And you work for the
12 Department of Justice?

13 THE WITNESS: That's correct.

14 JUDGE MAYER: How long have you been
15 there?

16 THE WITNESS: It will be three years in
17 November.

18 JUDGE MAYER: And where did you work
19 before that?

20 THE WITNESS: I worked for the Voting
21 Rights Project of the American Civil Liberties
22 Union.

23 JUDGE MAYER: And what years were you
24 there?

25 THE WITNESS: I started with the Voting

1 Rights Project in the year 2000 and I worked for
2 them right up until I started at Department of
3 Justice in 2010.

4 JUDGE MAYER: Now, when you appointed --
5 the board appointed the special litigation
6 committee, I understand from your testimony -- tell
7 me if I'm right -- that it was intended that the
8 committee would be solely responsible for the
9 litigation?

10 THE WITNESS: Yes, that was the intent.

11 JUDGE MAYER: When you say that was the
12 intent, was that intent effectuated?

13 THE WITNESS: Well, I imagine that's a
14 legal question, Your Honor. Mr. Donelan has always
15 had some concerns about that issue.

16 JUDGE MAYER: What are the concerns?

17 THE WITNESS: About whether they have
18 properly been delegated the full authority to
19 settle. And we made changes to the resolution or at
20 least Ms. Sarvadi suggested changes to the
21 resolution to deal with those concerns.

22 JUDGE MAYER: Were those suggested
23 changes that were passed by the board?

24 THE WITNESS: Well, they're incorporated
25 into the October resolution. That's my recollection

1 is I started with Jennifer's draft. And I don't
2 remember, as I sit here today, if they were adopted
3 in between. It could be that Jennifer's changes are
4 administrative resolution 2012-05 but I don't know.
5 But I have to say in all candor that there has
6 always been an unanswered question about whether it
7 was appropriate for nonboard members to have that
8 authority over the association's pocketbook.

9 And I researched that question on my own.
10 I believe Mr. Donelan has researched that question,
11 although he certainly wouldn't have shared his
12 advice with me. And I don't think there is an
13 answer to that question.

14 JUDGE MAYER: Did you ever share that
15 with the committee?

16 THE WITNESS: I believe Mr. Donelan
17 shared that with the committee.

18 JUDGE MAYER: Did you?

19 THE WITNESS: I shared it at the October
20 3rd meeting.

21 JUDGE MAYER: With whom?

22 THE WITNESS: With the members present.

23 JUDGE MAYER: And what did you say?

24 THE WITNESS: I pleaded with Mr. Halls to
25 be on the committee because I thought it should be

1 board members.

2 JUDGE MAYER: And that's it?

3 THE WITNESS: Yeah.

4 JUDGE MAYER: You didn't tell him why you
5 should be on the committee, because you had a
6 question whether the committee should be exclusively
7 board members?

8 THE WITNESS: No, I seem to recall saying
9 that I think it should be board members to eliminate
10 any question.

11 JUDGE MAYER: You treated it, though, as
12 though they did not have the final authority because
13 you reviewed these settlement agreements and
14 ratified them?

15 THE WITNESS: Well, it was
16 Mr. Reichenbach who made the motion. I don't think
17 I had anything to do with him making the motion to
18 ratify it.

19 JUDGE MAYER: Did you or anyone else say
20 it's not necessary, you have full authority to do
21 this, it's a done deal?

22 THE WITNESS: No, but if you asked me, I
23 would say a belt and suspenders are better than just
24 a belt.

25 JUDGE MAYER: Why did he make that motion

1 if he had full authority or the committee had full
2 authority or thought they had full authority to do
3 this?

4 THE WITNESS: I don't know. I think you
5 would have to ask him. I don't remember asking him
6 to make the motion but like I say, belt and
7 suspenders. In case it's not apparent from the
8 minutes we've been reviewing, I'm big in favor of
9 ratification. I learned that from Dave Mercer.

10 JUDGE MAYER: Now, you said you
11 campaigned on a platform to change the direction of
12 FOA including, in particular, the litigation
13 direction, is that right?

14 THE WITNESS: Yes.

15 JUDGE MAYER: What did you mean by that?

16 THE WITNESS: I don't recall the
17 specifics of our campaign literature and we of
18 course campaigned hard several times so that it's
19 sort of a blur in my mind but we've always talked
20 about reaching some kind of settlement agreement to
21 stop to litigation and that we shouldn't keep
22 spending our money on legal bills. I don't think
23 there was any question about that in those
24 elections.

25 JUDGE MAYER: You didn't need to be on

1 the board to change the direction. You could have
2 begun the settlement negotiations and conceded some
3 points and brought this to a close two years ago.
4 Why didn't you do that?

5 THE WITNESS: Your Honor, as a matter of
6 fact, we've been in settlement negotiations since
7 2006.

8 JUDGE MAYER: Unsuccessful.

9 THE WITNESS: That's correct.

10 JUDGE MAYER: Why were they unsuccessful?
11 What were the points that you would not give on?

12 THE WITNESS: In which negotiation, Your
13 Honor?

14 JUDGE MAYER: I don't care. Why wasn't
15 there a settlement? I'm told from the other
16 witnesses that my order on the number of seats on
17 the number of board of directors is a critical
18 issue. Everything else seems to say that was an
19 issue that was critical to you.

20 THE WITNESS: Yeah, and I disagree with
21 that testimony, Your Honor. I heard the same
22 testimony that you did but I was in a different room
23 and I know what I said to Judge Huennekens and so I
24 wouldn't agree with that testimony at all. I don't
25 know what he said to them.

1 JUDGE MAYER: So that's not a critical
2 element of the settlement?

3 THE WITNESS: I wouldn't say that either,
4 Your Honor. What FOA wanted was for me to give up
5 on that and to get nothing in return. I said
6 initially -- well, the settlement agreement itself
7 reflects our giving on that, right? Because it says
8 that notwithstanding the vacater of the order, if it
9 indeed is vacated, that the current members of the
10 board would stay on. That was the concession.

11 JUDGE MAYER: Stay on till October.

12 THE WITNESS: Back when we negotiated
13 this, it was a long time. And it's not just till
14 October, Your Honor. Mr. Halls and -- Mr. Halls was
15 the one affected by that. I'm trying to think if
16 anyone else was affected by that. I think he would
17 have been the only one affected by that.

18 JUDGE MAYER: Was he still on the board?

19 THE WITNESS: Well, he resigned after all
20 of this was negotiated. So at the time, he would
21 have been on for two Octobers.

22 JUDGE MAYER: Now, when he resigned, the
23 board appointed a new director to replace him?

24 THE WITNESS: Correct.

25 JUDGE MAYER: Who was that?

1 THE WITNESS: Dave Fochtman,
2 F-o-c-h-t-m-a-n.

3 JUDGE MAYER: And why was he selected?

4 THE WITNESS: I don't know for sure.
5 Mr. Reichenbach nominated him.

6 JUDGE MAYER: Had he run in the election
7 of 2012? No.

8 THE WITNESS: No, he had not.

9 JUDGE MAYER: Who was the next highest
10 candidate at the 2012 election?

11 THE WITNESS: Steve Greenberg.

12 JUDGE MAYER: Greenberg, did you say?

13 THE WITNESS: Yes, Your Honor.

14 JUDGE MAYER: Had he ever served on the
15 board before?

16 THE WITNESS: He had.

17 JUDGE MAYER: Have you sued him? Is he
18 one of those who is a defendant?

19 THE WITNESS: Yes, Your Honor. As I
20 said, I think he was on the special litigation
21 committee before, under the holdover board.

22 JUDGE MAYER: And you believe in small D
23 democracy, that the people's voice should be heard?

24 THE WITNESS: I do.

25 JUDGE MAYER: And he was the next highest

1 candidate with Mr. Halls to resign?

2 THE WITNESS: Yes.

3 JUDGE MAYER: And you didn't select him?

4 THE WITNESS: No, I did not. The bylaws
5 give that power to the board.

6 JUDGE MAYER: You're familiar with
7 indemnification of directors?

8 THE WITNESS: Yes, I am, Your Honor. I'm
9 not an expert on it but I'm familiar with it.

10 JUDGE MAYER: And the ones that you've
11 sued, are they -- how do you factor the
12 indemnification into it?

13 THE WITNESS: As I testified on direct, I
14 think that a finding of willful violation of the law
15 jeopardizes their potential for indemnification.

16 JUDGE MAYER: Willful misconduct, isn't
17 it?

18 THE WITNESS: I don't have the language
19 in front of me.

20 JUDGE MAYER: If they prevail, it's
21 mandatory, is that not right?

22 THE WITNESS: I don't have the statute in
23 front of me, Your Honor.

24 JUDGE MAYER: 13.1-877? Did you consider
25 that when they were carved out of the settlement?

1 Were you more knowledgeable about indemnification at
2 that time?

3 THE WITNESS: I'm not sure I would agree
4 with your characterization that they were carved out
5 of the settlement. They were never parties to the
6 settlement negotiations.

7 JUDGE MAYER: Describe it any way you
8 want. Just answer my question.

9 THE WITNESS: Did I consider the
10 possibility that they would be indemnified as a
11 result of the Gordon Properties lawsuit against
12 them?

13 JUDGE MAYER: No, did you consider the
14 issue of indemnification and the effect it would
15 have on the association?

16 THE WITNESS: I don't remember if that
17 came up. And to be clear, I'm referring now to the
18 effect of indemnification in Gordon Properties'
19 lawsuit against the former board members.

20 JUDGE MAYER: How is that different from
21 the one brought by the association?

22 THE WITNESS: It is very similar, Your
23 Honor, but we brought the Gordon Properties lawsuit
24 first.

25 JUDGE MAYER: How does indemnification

1 differ between the two lawsuits?

2 THE WITNESS: And, Your Honor, only the
3 Gordon Properties one is arguably carved out of the
4 settlement agreement.

5 JUDGE MAYER: Only the Gordon Properties?

6 THE WITNESS: Yes.

7 JUDGE MAYER: And why do you say that?

8 THE WITNESS: That's my recollection of
9 the settlement agreement.

10 JUDGE MAYER: What exhibit is the
11 settlement agreement?

12 MR. KING: 1, Your Honor.

13 JUDGE MAYER: That's your Exhibit Number
14 1. Tell me about that.

15 MR. KING: Footnote number 1, Your Honor.

16 THE WITNESS: I think my recollection is
17 accurate, Your Honor.

18 JUDGE MAYER: The intention is that the
19 association releases but that you do not, is that
20 what you're saying?

21 THE WITNESS: No, absolutely not, Your
22 Honor. The association hasn't released anything
23 against the former board members as a result of this
24 litigation.

25 JUDGE MAYER: So is what you're telling

1 me is that these former directors are outside the
2 terms of this settlement agreement?

3 THE WITNESS: They're not parties to the
4 settlement agreement.

5 JUDGE MAYER: You are. Individually
6 you're released by FOA, are you not?

7 THE WITNESS: I don't know.

8 JUDGE MAYER: Of course you know. You
9 wrote this thing. Look at it again --

10 THE WITNESS: Your Honor, I did not write
11 this thing.

12 JUDGE MAYER: Did you negotiate it?

13 THE WITNESS: My attorneys negotiated it.

14 JUDGE MAYER: You had no part in this?

15 THE WITNESS: I reviewed it.

16 JUDGE MAYER: Of course you reviewed it.
17 And you were sitting across the hall negotiating it.
18 Now look at the first paragraph and tell me if you
19 are or are not released if this is approved.

20 THE WITNESS: Which paragraph are you
21 referring to?

22 JUDGE MAYER: I'm looking at the very
23 beginning which defines who Gordon Properties is.
24 And then you can tell me about the release
25 provisions.

1 THE WITNESS: Okay. Let me be clear
2 because the release provisions were part of the
3 drafting process which occurred in the roughly three
4 weeks after we settled on the substantive terms of
5 the agreement. Now, we may have discussed them but
6 they were not a big issue in the settlement
7 discussions down the hall here.

8 Now, that said, it would surprise me if
9 there is a settlement agreement that does not
10 include releases of some kind. But does this
11 agreement include releases against me personally for
12 my actions as a board member? I don't think it
13 does. But I would need to review that.

14 JUDGE MAYER: Where are the release
15 provisions in the document?

16 THE WITNESS: I guess I'm not seeing them
17 now, unless by these provisions you're talking about
18 paragraphs 2 through 5.

19 JUDGE MAYER: Well, what's your
20 interpretation? Are you released by anything in
21 here personally?

22 THE WITNESS: Personally?

23 JUDGE MAYER: Yes.

24 THE WITNESS: I'm not personally a party
25 to the settlement agreement except the mention of me

1 in a later paragraph.

2 JUDGE MAYER: Which paragraph is that?

3 THE WITNESS: Paragraph 12.

4 JUDGE MAYER: That only deals with user
5 fees.

6 THE WITNESS: That's correct. I think
7 that's the only provision that applies to me
8 personally in the document.

9 JUDGE MAYER: So your interpretation of
10 this and your intent and Gordon Properties' intent
11 is that there be no releases except the settlement
12 of the litigations?

13 THE WITNESS: I would need to get advice
14 from counsel on that, Your Honor. As I said, the
15 release -- I negotiated the substantive terms. I
16 remember talking about releases but that's about the
17 extent of my knowledge of them.

18 JUDGE MAYER: So what you say is that the
19 release provisions were unclear?

20 THE WITNESS: Well, I would say that
21 paragraphs 2 through 5 are not unclear, that it
22 resolves all of that.

23 JUDGE MAYER: You earlier said that you
24 would expect in many contracts such as these to be
25 general -- you didn't say general but releases and I

1 interpreted that to be general releases so that
2 there is an end to litigation. And I'm trying to
3 understand, particularly in light of naming everyone
4 in the first paragraph and defining officers and
5 directors as a part of the parties in footnote 1,
6 which I would presume to be consistent with having
7 releases, what your intent was.

8 THE WITNESS: Our intent with respect to
9 footnote 1 was to make it clear that this settlement
10 agreement did not affect the then pending litigation
11 between Gordon Properties and --

12 JUDGE MAYER: Was it your intent to be
13 released by this document for your conduct on the
14 board or otherwise?

15 THE WITNESS: No, I don't think that that
16 was covered by it, no.

17 JUDGE MAYER: There is no release to your
18 sister?

19 THE WITNESS: I don't think so.

20 JUDGE MAYER: And the other directors who
21 you have not sued, there would be no release as to
22 them?

23 THE WITNESS: I don't believe so.

24 JUDGE MAYER: The special litigation
25 committee members are not released from anything?

1 THE WITNESS: I don't think this mentions
2 the special litigation committee. Oh, wait, it
3 does.

4 JUDGE MAYER: You mentioned something in
5 your testimony earlier about a developer coming in
6 and acquiring a whole floor or something of that
7 nature. Usually you turn rentals into condos, not
8 condos into something else. What were you talking
9 about? What was your thought process?

10 THE WITNESS: Well, my thinking process
11 is that the value of the units is depressed. I
12 don't think anybody disputes that. And Jane
13 probably knows it better than anybody else because
14 she's the most recent seller. And when you have
15 depressed units like that, it creates an environment
16 where investors might be tempted to come in and buy
17 a larger number of units to try to gain an economy
18 of scale, fix them up and either rent them out or
19 sell them.

20 JUDGE MAYER: And how does the
21 qualifications issue, as you call it, impact that?

22 THE WITNESS: Well, because I think that
23 any sufficiently large investor would want to have
24 some say in the management of the affairs of the
25 association. And for the scenario you just

1 mentioned, which would be the extreme of someone
2 coming in and turning the whole condominium into
3 apartments, I'm sure that they would want control of
4 the board.

5 JUDGE MAYER: Have you heard of that
6 happening?

7 THE WITNESS: I can't name you any
8 specifics but -- wait, no. I am familiar with one
9 in Arlington whose name escapes me where that is in
10 the process of being done. So yes.

11 JUDGE MAYER: Everyone has to agree to
12 sell?

13 THE WITNESS: I wouldn't say everyone.
14 And I don't know the law in that area. But I know
15 that it only takes 90 percent to terminate the
16 condominium. That's in our documents. And so I
17 view the order, if it is interpreted in the way that
18 I described, as being a bit of a poison pill for
19 that kind of scenario.

20 JUDGE MAYER: What's wrong with that?

21 THE WITNESS: Because I don't think
22 that's what the legislature intended in that
23 provision of the law. I respectfully disagree with
24 your interpretation of the law on that. But more
25 importantly, there could be value, economic value to

1 the unit owners if someone were to do that. I'm not
2 saying it's going to happen but it could.

3 JUDGE MAYER: Are your units rented?

4 THE WITNESS: Some of them are.

5 JUDGE MAYER: What's your occupancy rate?

6 THE WITNESS: I don't know as we sit here
7 today. We've rented a number of units in the past
8 couple of months so I don't have a percentage figure
9 for you.

10 JUDGE MAYER: Is it more or less than 50
11 percent?

12 THE WITNESS: I think it's more.

13 JUDGE MAYER: 75 percent?

14 THE WITNESS: I would guess it's right
15 around 75 percent. I would say between 70 and 80.

16 JUDGE MAYER: Is it increasingly becoming
17 occupied?

18 THE WITNESS: We have rented a few units
19 in the last few months.

20 JUDGE MAYER: When did Residential
21 Holdings acquire its unit?

22 THE WITNESS: I don't remember as I'm
23 sitting here today. I think 2007. But there are so
24 many dates in this litigation.

25 JUDGE MAYER: What was the occasion that

1 it purchased the unit?

2 THE WITNESS: I'm not sure.

3 JUDGE MAYER: Why did you do it? What
4 occasioned the purchase?

5 THE WITNESS: So that there would be an
6 entity that owned only residential units.

7 JUDGE MAYER: Why is that significant?

8 THE WITNESS: Because there is a
9 restriction in the documents on residential unit
10 owners and commercial unit owners and the numbers of
11 each that can serve on the board.

12 JUDGE MAYER: What is that restriction?

13 THE WITNESS: I think there has to be at
14 least one and can only be up to two commercial
15 owners. I don't remember the exact language.

16 JUDGE MAYER: And it's your understanding
17 that Gordon Properties would be a commercial
18 landlord limited to one or two seats?

19 THE WITNESS: Well, there is certainly a
20 question about that because Gordon Properties owns
21 residential and commercial so there is a question
22 about whether it would, quote, unquote, count as a
23 commercial unit owner even if the officer or agent
24 of Gordon Properties ran sort of as the
25 representative of one of Gordon Properties'

1 residential units. And Gordon Residential
2 eliminates that confusion.

3 JUDGE MAYER: So the intent on that
4 particular issue was to assure that there would be
5 at least two seats on the board and avoid the
6 limitation on the commercial unit owners sitting on
7 the board?

8 THE WITNESS: Well, I would say at least
9 three because commercial unit owners can have two.

10 JUDGE MAYER: It's not one or two. It's
11 two, to the best of your recollection?

12 THE WITNESS: I think it's no more than
13 two. And I think there has to be one. So a minimum
14 of one and a maximum of two, I believe. The gallery
15 is nodding their heads so I have that right.

16 JUDGE MAYER: So the purpose of the
17 Residential Holdings acquiring a residential unit
18 would be so that it, in its own right, could have a
19 representative on the board of directors while
20 Gordon Properties might be subject to the one or two
21 restrictions arising from the commercial positions
22 on the board?

23 THE WITNESS: Might be, yes.

24 JUDGE MAYER: And this was to eliminate
25 that confusion and to assure that that could be

1 done?

2 THE WITNESS: Yes. There may have -- I'm
3 sorry, Your Honor. There may have been other
4 reasons as well but that's the one that I recall.

5 JUDGE MAYER: And Residential Holdings is
6 owned by the four of you, your sister and your two
7 cousins?

8 THE WITNESS: Yes.

9 JUDGE MAYER: Who funded the purchase?
10 Where did the money come from?

11 THE WITNESS: It's been so long, I don't
12 recall but --

13 JUDGE MAYER: Is it mortgaged?

14 THE WITNESS: No, it is not.

15 JUDGE MAYER: Did the cash come from
16 Gordon Properties?

17 THE WITNESS: Well, no. Unit 1518 was
18 previously owned by Gordon Properties.

19 JUDGE MAYER: 1518 is the Residential
20 one?

21 THE WITNESS: Yes.

22 JUDGE MAYER: And it was owned by Gordon
23 Properties?

24 THE WITNESS: Yes.

25 JUDGE MAYER: And it was transferred in

1 2007 to Gordon Residential?

2 THE WITNESS: Correct. I think I have
3 the year on that correct.

4 JUDGE MAYER: So basically -- and the
5 1518 was unencumbered at that time so there was
6 really no cash, you didn't need to go out for
7 financing or anything like that?

8 THE WITNESS: That's my recollection,
9 Your Honor.

10 JUDGE MAYER: And you own one unit
11 yourself in your own name?

12 THE WITNESS: I do.

13 JUDGE MAYER: And when did you acquire
14 that?

15 THE WITNESS: I think that was 2009. It
16 might have been 2008.

17 JUDGE MAYER: And why did you acquire
18 that?

19 THE WITNESS: It was in part to own an
20 asset and in part to further get around the -- I
21 think it was to get around the poison pill that had
22 been adopted. Although I may actually have the
23 timing on that incorrect. The poison pill may have
24 been adopted in reaction to that. I'm not really
25 sure.

1 JUDGE MAYER: Well, there was a 2009
2 resolution you're referring to.

3 THE WITNESS: Correct.

4 JUDGE MAYER: Which restricted --
5 aggregated all three of those types, individual,
6 corporate, brother/sister companies or whatever?

7 THE WITNESS: Correct.

8 JUDGE MAYER: And that's the one that was
9 repealed on a point of order and there is some
10 question as to whether that was effective and the
11 board, after you became president, plainly repealed
12 it as the board of directors?

13 THE WITNESS: Correct. And of course
14 there was also the other reason for me buying a unit
15 and for 1518, now that I think about it -- I haven't
16 thought about this in a long time -- but it's
17 because the holdover board of FOA had this habit and
18 that habit was every election, it would find some
19 basis for finding that Gordon Properties was
20 delinquent and therefore unable to vote. And by
21 having a regular old unit, both the 1518 and the
22 703, my own personal unit, it made it more difficult
23 for them to do that.

24 JUDGE MAYER: So in addition to the other
25 issues, number of board seats, it got around the

1 delinquency provision in the bylaws that we
2 addressed in an earlier opinion?

3 THE WITNESS: Right. And I specifically
4 remember I think it was the 2009 special meeting.
5 We asked for a special meeting in 2009 and had the
6 special meeting and that's when the board composed
7 those retroactive assessments that were the subject
8 of the claim objection. And even though the demand
9 letter said they were due on I think it was the
10 first of June and the special meeting was June 25th,
11 the lawyer, FOA's lawyer at the meeting said that
12 they were 30 days delinquent.

13 JUDGE MAYER: Now, Gordon Properties
14 filed bankruptcy in court in 2009, is that right?

15 THE WITNESS: Yes, Your Honor.

16 JUDGE MAYER: What was the precipitating
17 event that caused that? Usually there is an event,
18 a foreclosure or something like that. What was the
19 precipitating event?

20 THE WITNESS: I don't remember, Your
21 Honor. I don't recall.

22 JUDGE MAYER: You were current in all of
23 your bills except for the assessment on the
24 restaurant unit, according to them, of course? You
25 have disputed that.

1 THE WITNESS: You may recall there was
2 another dispute about the -- I think it was the 2009
3 assessments that they changed in the middle of the
4 year and had increased but only on certain unit
5 owners.

6 JUDGE MAYER: Leaving aside the
7 restaurant unit, were you pressed for funds? Was
8 Gordon Properties unable to meet its normal periodic
9 bills?

10 THE WITNESS: My recollection is that it
11 was, yes.

12 JUDGE MAYER: You don't list anyone as a
13 creditor except a law firm.

14 THE WITNESS: That's the bill I'm
15 thinking about, Your Honor.

16 JUDGE MAYER: Oh, that's the only one.
17 That's \$250,000.

18 THE WITNESS: Correct.

19 JUDGE MAYER: That was Mr. Scully's law
20 firm.

21 THE WITNESS: Correct.

22 JUDGE MAYER: Who is sitting in the back
23 of the courtroom watching today.

24 THE WITNESS: Right over there.

25 JUDGE MAYER: But other than that bill,

1 which is an unusual and extraordinary bill, one
2 would assume, you're not running bills month by
3 month, single bills of \$200,000?

4 THE WITNESS: You haven't seen my bills.

5 JUDGE MAYER: Your utility bills are
6 current. Except for the restaurant unit, the condo
7 fees are current. The plumbers, if they came in,
8 are current. Things of that nature. There are no
9 other ordinary course debts that are not paid?

10 THE WITNESS: That's correct. And now
11 that you mention Mr. Scully, I know that some
12 letters had been exchanged and I don't know if that
13 was a precipitating event or not but it may have
14 been.

15 JUDGE MAYER: Have they sued you?

16 THE WITNESS: Well, that may have been
17 the subject of those letters. It's been a while
18 now, Your Honor. It's not fresh in my mind.

19 JUDGE MAYER: But that would have been
20 the only reason you filed?

21 THE WITNESS: Well, no, I don't think
22 that would have been the only reason we filed.

23 JUDGE MAYER: What were the other reasons
24 you filed?

25 THE WITNESS: Because we couldn't pay the

1 demand on FOA and wanted to dispute it.

2 JUDGE MAYER: So if the court is down the
3 street, why couldn't you do it there?

4 THE WITNESS: I didn't testify that we
5 couldn't do it there.

6 JUDGE MAYER: Why didn't you do it there?

7 THE WITNESS: We got legal advice from
8 Mr. King and our other attorneys and assessed the
9 various risks and concluded that this was the best
10 course.

11 JUDGE MAYER: And what was the objective
12 of filing?

13 THE WITNESS: To obtain the protection of
14 the bankruptcy laws so that we could work out a plan
15 and move forward.

16 JUDGE MAYER: What plan works for you?

17 THE WITNESS: Well, until the FOA matters
18 are settled, I don't know that it's possible to come
19 up with a plan. I think everyone agrees with that.

20 JUDGE MAYER: And your settlement
21 agreement says that FOA has to support any plan you
22 can bring forward?

23 THE WITNESS: It does say that.

24 JUDGE MAYER: Even though they don't know
25 what it is or the parameters of it or how it will

1 affect them?

2 THE WITNESS: Well, no, I disagree
3 particularly with that last part of what you said
4 because I think how it affects them is contained in
5 the settlement agreement. So FOA was essentially
6 being asked to go along with Gordon Properties'
7 resolution of the plan with Mr. Scully.

8 JUDGE MAYER: Well, if this is approved,
9 does FOA have an allowed claim in this case or would
10 their claim be satisfied?

11 THE WITNESS: You're talking a little bit
12 bankruptcy-ese to me and I'm not sure I understand
13 the terms you're using. I know that you disallowed
14 their claim or you granted our objection to the
15 claim. Is that what you're referring to?

16 JUDGE MAYER: Do they have a claim?
17 Assuming that it's sustained on appeal.

18 THE WITNESS: Assuming that your opinion
19 is sustained on appeal?

20 JUDGE MAYER: Yes.

21 THE WITNESS: No, they would not.

22 JUDGE MAYER: So that would pretty much
23 leave Mr. Scully's law firm.

24 MR. KING: Your Honor, just to be clear,
25 there are two law firms listed as creditors in the

1 case.

2 JUDGE MAYER: Who is the other one?

3 MR. KING: Mays Valentine.

4 JUDGE MAYER: How much is that? How much
5 do you owe Mays Valentine?

6 THE WITNESS: It's Troutman Sanders.

7 MR. KING: I'm sorry, Troutman Sanders.

8 JUDGE MAYER: How much is that owed?

9 THE WITNESS: Well, I think it's about
10 \$70,000.

11 JUDGE MAYER: Is that disputed?

12 THE WITNESS: Yes, I believe it is.

13 JUDGE MAYER: How does filing bankruptcy
14 help you resolve the issues with the First Owners
15 Association? It gives you a forum that you were
16 already asking to be litigated but you already had a
17 forum in Circuit Court. In fact, you had a
18 favorable result on the methodology, it seems to me,
19 from Judge Kemler. So you had a forum. What did
20 Bankruptcy Court do for you?

21 THE WITNESS: Well, one of the things --
22 I mean, am I supposed to talk about what Mr. King
23 told me? Is that what you're asking me?

24 JUDGE MAYER: I'm not asking you what he
25 told you. I'm just trying to find out why you filed

1 bankruptcy and how it was supposed to help you.

2 MR. KING: Your Honor, I think what
3 Mr. Sells said is that he consulted with his
4 professionals and then made the decision. I think
5 he's being careful in saying, Judge, I think you're
6 asking me to tell you what my lawyers told me at
7 this point and I think at this point it probably is
8 getting there.

9 JUDGE MAYER: Is it there? Are you
10 objecting?

11 MR. KING: Well, you know, I think if his
12 response is, well, that's based on what my lawyers
13 told me, then yes, Your Honor.

14 JUDGE MAYER: Well, I want to know what
15 your objective was. I'm not asking for your
16 lawyer's advice but your objective and how you were
17 going to achieve it.

18 THE WITNESS: Well, I think I already
19 answered that question, Your Honor.

20 JUDGE MAYER: You haven't told me how you
21 were going to achieve it in a Chapter 11 case.
22 You've told me you don't know what the plan will be
23 or could be and you still can't formulate it until
24 these appeals are done or this is approved. I
25 wanted a forum, as I understood what you said, to

1 dispute the condominium fees. I've asked you how
2 this forum is -- what it brings to that resolution
3 and how you intended to resolve your disputes and
4 what this Court does for you.

5 THE WITNESS: And I don't think I can
6 answer that question without telling you what
7 Mr. King advised us about the bankruptcy process.

8 JUDGE MAYER: How were you going to
9 change the litigation? Your objective in the
10 campaign was to change the litigation direction of
11 the association and its management. How were you
12 going to effectuate the change in litigation?

13 THE WITNESS: I'm not sure we thought
14 that far ahead, Your Honor. The peanut gallery is
15 laughing at that but you stand for principles, you
16 stand for objectives. Just like you heard
17 Mr. Reichenbach say that he stood for, you know, an
18 orientation, a feeling that we needed to change
19 direction, and that's what we stood for. I didn't
20 lay out, this is what I'm going to do on the first
21 day, what I'm going to do on the second day, what
22 I'm going to do on the third day. That would not
23 have helped me get elected, I suspect. You
24 communicate broad themes, broad messages and that's
25 what attracts folks.

1 JUDGE MAYER: Now, earlier you testified
2 that with respect to Ms. Hadley, that approval of
3 the settlement agreement would lock in her exposure.
4 What did you mean by that? I wasn't quite sure.

5 THE WITNESS: Ms. Hadley's exposure to
6 liability, to FOA and to some extent to Gordon
7 Properties is related to your findings about the
8 cancellation of the 2010 meeting and the 2009
9 meeting as well. And if those findings were
10 overturned on appeal, for example, a reviewing judge
11 found that your findings were clearly erroneous or
12 you applied the wrong legal standard or that the
13 conduct didn't amount to willful conduct, I mean,
14 any number of things that a reviewing court can do
15 to your opinion, then it could potentially reduce or
16 eliminate Ms. Hadley's exposure. Whatever that
17 level of exposure is, it would be or could be less.

18 By giving up and settling -- giving up
19 the right to appeal and settling the litigation,
20 there is not a reviewing court to say that your
21 findings are clearly erroneous and so on. So
22 whatever level of exposure Ms. Hadley has now -- and
23 it may be somewhere between zero and 100 if you want
24 to measure it on that scale -- would carry on going
25 forward. Does that answer the question?

1 JUDGE MAYER: You expressed in the
2 settlement agreement and elsewhere that one of the
3 concerns was the collectibility of any judgments
4 against FOA, that you couldn't collect it in one
5 lump sum or something like that. You garnished
6 their accounts and you could have satisfied that at
7 that point, in fact, the funds are waiting for you
8 if you prevail on appeal. That seems to me to be
9 satisfaction in one lump sum. I wonder if you could
10 explain your comment.

11 THE WITNESS: Yes, Your Honor. I don't
12 think that those are the sum total of our potential
13 claims against FOA. And I think that's reflected in
14 the settlement agreement. That's one component of
15 them. That's the judgment that is already out there
16 for 277,000. There was also the matter of further
17 fees related to the appeal of that judgment. And
18 Mr. King I think mentioned that earlier. There was
19 a pending motion for attorney's fees in this Court
20 related to FOA's attempt to collect the retroactive
21 assessments against Gordon Properties.

22 And as I explained I think the last time
23 I was here, normally when a condo association goes
24 out and tries to collect against a unit owner and
25 the unit owner wins, the unit owner gets attorneys

1 fees under the Condominium Act and vice versa. So
2 that's another potential exposure for FOA.

3 And there is also the matter of the
4 assessments that Gordon Properties have been paying
5 post-petition. As you pointed out, we paid in full
6 that one hundred thousand dollars a year on the
7 restaurant site and we believed that those
8 assessments were improper, they were done by the
9 improper methodology and that we have the potential
10 to recover for our overpayment on those funds.

11 JUDGE MAYER: How much is that worth,
12 the, quote, post-petition overpayment?

13 THE WITNESS: I think we estimated it to
14 be about \$300,000. So while you're right, there is
15 a garnishment there for the initial judgment, there
16 is a potential exposure of a lot more than that that
17 I don't think -- that I know is not in FOA's bank
18 accounts either then or now and so could not be
19 collected in one lump sum.

20 JUDGE MAYER: You used the budget as a
21 template. Who reviewed that? Who prepared it? How
22 did you come by that and why are you confident that
23 that is a proper allocation?

24 THE WITNESS: I work extensively on the
25 budget. I worked with Joe Riviere, FOA's temporary

1 manager, and the whole board worked on the budget.
2 It was the subject of numerous meetings last fall
3 where we -- I mean, I don't know how many dozens of
4 hours of meetings we put into the budget in general.
5 It was extensive. And we were working under extreme
6 time pressures but I feel reasonably good about the
7 way that it came out. It was the most difficult
8 budget I've ever worked on.

9 JUDGE MAYER: Well, was it difficult
10 because of the budgeting aspect or because of the
11 allocation aspect?

12 THE WITNESS: Well, both, Your Honor. I
13 don't know about you but I've never seen a budget
14 this complex before. Maybe you have. This is more
15 of your bailiwick to review these kinds of things.
16 But most condominium budgets are not this complex.
17 We had never done it this way before, as you know,
18 at FOA. And so constructing it was -- and
19 particularly under the short time pressure that we
20 had -- was a real task.

21 JUDGE MAYER: Did you have enough time to
22 do it thoroughly?

23 THE WITNESS: We put in the time to do it
24 thoroughly. What I would have liked, in all candor,
25 is to put more notes. You'll see on a number of the

1 pages there is a space for notes. We didn't have
2 time to annotate this as much as I would have liked.
3 And we may yet do that for 2014. We're starting the
4 budget process early. But I think it's the most
5 thorough budget FOA's ever had.

6 JUDGE MAYER: Do you know if the special
7 litigation committee kept minutes?

8 THE WITNESS: I was not aware that the
9 special litigation committee kept minutes. I'm
10 delighted to hear that but no, I was not aware of
11 that.

12 JUDGE MAYER: Did that ever come up in a
13 discussion?

14 THE WITNESS: No, I was not aware of it
15 before I think today.

16 JUDGE MAYER: On Exhibit 20, if you'll
17 turn to that, turn to page 66789.

18 THE WITNESS: Okay, I'm there. You said
19 page --

20 JUDGE MAYER: I'm sorry, Exhibit 19, page
21 6, page 489.

22 THE WITNESS: Okay, I'm there.

23 JUDGE MAYER: And the last full
24 paragraph, if you'll read that to yourself. Does
25 that refresh your recollection?

1 THE WITNESS: No, that's why I'm
2 delighted to hear that the SLC decided to kept
3 minutes, Your Honor.

4 JUDGE MAYER: This says you asked them to
5 keep them and you're saying that you're happy now to
6 hear that they followed that advice?

7 THE WITNESS: Yes. I mentioned earlier
8 that Jane complained to me once about the
9 formalities of the committee not being adhered to
10 and I think that arose out of that.

11 JUDGE MAYER: Is it Gordon Properties'
12 intention to run more than one candidate in the next
13 election if the qualifications order is vacated?

14 THE WITNESS: Well, you know, Your Honor,
15 the next election is right around the corner and
16 I've spoken with my sister and my cousin and we
17 haven't made any decisions about that. The three of
18 us are up for reelection, as you probably know, but
19 there are only two other seats available. One is
20 held by Ms. Hadley and the other is held by Dave
21 Fochtman. I can tell you I don't think we would
22 challenge Dave Fochtman if he stands for reelection
23 and I think he's going to. As for Ms. Hadley's
24 seat, I don't know. We haven't made a decision.

25 JUDGE MAYER: That's this year. What

1 about next year when other seats open?

2 THE WITNESS: I haven't made a decision
3 about that either.

4 JUDGE MAYER: You read the report of the
5 examiner?

6 THE WITNESS: Yes, I have.

7 JUDGE MAYER: Mr. Leach?

8 THE WITNESS: Yes, I have.

9 JUDGE MAYER: I read your counsel's
10 response to that. Did you want to add anything
11 further?

12 THE WITNESS: Gosh, that's an open-ended
13 question. Yeah, I think I do, Your Honor. Ever
14 since one of the hearings that you conducted in the
15 courtroom upstairs, I think it was on the stay
16 violation, I've used this metaphor that you
17 introduced me to called footprints in the snow. I
18 don't know if you remember using that metaphor but
19 it's one that stuck with me. And it was a metaphor
20 you used to talk about circumstantial evidence and
21 each piece of circumstantial evidence is a footprint
22 in the snow and you look at where those footprints
23 lead you best. That is the essential inquiry of
24 circumstantial evidence, right? And I thought that
25 was a brilliant metaphor and I've used it I don't

1 know how many times since I heard you say it.

2 The thing that disturbs me the most about
3 Mr. Leach's report is he got a lot of footprints and
4 he seemed to connect them in a way that ignored I
5 think the most obvious direction in which they were
6 leading. And to give just one example, he thinks
7 that I changed the composition of -- or I should say
8 the board changed the composition of the SLC for
9 some nefarious reason and not because we had three
10 disinterested board members and that it thought that
11 it should reflect those board members.

12 Now, I told that to Mr. Leach, right?
13 But it doesn't reconcile the fact that I wanted
14 Mr. Halls on the committee, that I wanted
15 Mr. Zoghaib to be on the committee. That was my
16 appointment. I don't think there was ever any doubt
17 about those kinds of things. And he looks at the
18 set of facts and presumes that I was trying to do
19 the wrong thing when I think the footprints in the
20 snow should have led him to conclude that however
21 imperfectly, I was trying to do the right thing. I
22 was trying to operate within the constraints that
23 the law sets out for me and based on the advice that
24 I had.

25 So, for example, I thought that the SLC

1 should have three disinterested board members when
2 we had three disinterested board members because
3 that is what would be in keeping with the law. I
4 have to say that the fact that there is an SLC
5 resolution at all is an attempt not to do the wrong
6 thing but an attempt to do the right thing and make
7 it clear. And if I have fallen short of what the
8 right thing to do, it wasn't because I was trying to
9 do the wrong thing. It's because I'm an imperfect
10 human being and sometimes imperfect human beings who
11 are trying to do the right thing end up making
12 mistakes. That happens a lot in condominium
13 associations in particular.

14 And so I guess you're asking that
15 open-ended question about Mr. Leach's report.
16 That's the thing that I dislike about it the most is
17 he doesn't account for the footprints that should
18 have, I think, led him to conclude that I was trying
19 to do the right thing given all the facts and advice
20 available to me under these very difficult
21 circumstances. Very sticky, difficult
22 circumstances.

23 JUDGE MAYER: All right. Thank you. Do
24 you have any questions you want to ask?

25 MR. DONELAN: No, Your Honor.

1 MR. KING: Do I have to ask them today if
2 I have them?

3 JUDGE MAYER: Yes. It's today or never.

4 MR. KING: Can you give me just one
5 minute? Because I know your staff wants to go and I
6 don't want to keep them any longer than necessary.
7 Just give me one minute.

8 JUDGE MAYER: All right. I would like to
9 conclude tonight since we're so close.

10 MR. KING: I support your effort, Your
11 Honor. No, I think I'll pass, Your Honor.

12 MR. JONES: The U.S. Trustee has no
13 further questions.

14 JUDGE MAYER: Thank you, Mr. Sells. You
15 may have a seat with counsel. Is there anything
16 else any of you want to present?

17 MR. KING: By way of evidence, Your
18 Honor?

19 JUDGE MAYER: Yes.

20 MR. KING: No.

21 MR. JONES: The U.S. Trustee has no
22 further evidence, Your Honor.

23 MR. DONELAN: None, Your Honor.

24 JUDGE MAYER: A lot of individuals have
25 sent letters. I've read all of those letters and

1 what I've also said is if anyone in addition to what
2 you've said in the letters want to be heard today,
3 you're welcome to come forward and speak. I know
4 it's a little late and they've turned the
5 air-conditioning off and it's Friday afternoon. I
6 did read all of them. Yes, it is warm. I'm warmer
7 than most of you.

8 So if there is anything you want to
9 supplement your letters with, I'll be glad to
10 entertain those comments now. You're welcome to
11 make them. I see no one wanting to do that. I
12 appreciate your comments. I have read them. And as
13 I said in the order that came down, unless you're
14 sitting in the witness box sworn, I can't accept
15 them as testimony but I do accept them as your
16 comments just as counsel would argue for whatever
17 weight to be given to them accordingly.

18 Now, as far as closing argument, I can do
19 one of a number of things, one of which I can do but
20 I'm not sure anyone wants to do it is to stay
21 tonight and hear them. If you think that's
22 important, I can do that.

23 Alternatively, if I can hear the closing
24 arguments on September the 12th. I have to move the
25 case along and I need to schedule the other motions

1 for hearings or dispose of them one way or the
2 other. I have only a few dates left in September.
3 If you would like closing arguments, to make them
4 orally, I can give you September 12th. I would
5 schedule everything else and we'll go through those
6 items through the 20th. May be affected by whatever
7 ruling is made on the 12th. I don't know but at
8 least they're scheduled.

9 MR. KING: Is that status, Your Honor?

10 JUDGE MAYER: No. We're going to go
11 forward with these in time to wrap the case out one
12 way or the other. It may be wrapped up on the 12th
13 one day and the 20th can always be canceled. I can
14 always cancel something. But it's a whole lot
15 easier to cancel it than to try to squeeze it in.

16 MR. KING: I think both dates are
17 available to me. I can make myself available on
18 both dates, Your Honor.

19 JUDGE MAYER: U.S. Trustee is available?

20 MR. JONES: Yes, Your Honor. I also --
21 if the Court would like oral closings, September
22 12th would be fine. I would also submit that we can
23 submit our closings in writing if that would be
24 helpful.

25 JUDGE MAYER: I'm happy to do either way

1 but if you write them, you're not going to get them
2 in much quicker than the 12th. Labor Day intervenes
3 and that only gives you about a week or so to
4 effectively get them in. I don't want to put you to
5 further work than you need to. Mr. Scully?

6 MR. SCULLY: Your Honor, am I given to
7 understand that the motion to convert would also be
8 on the 20th?

9 JUDGE MAYER: Well, I've got a whole list
10 of things and I think that was scheduled for what
11 day?

12 MR. SCULLY: I set it for the 10th and I
13 need it not to be for the 10th because I just had a
14 temporary injunction set for the 10th.

15 JUDGE MAYER: I think we put it down to
16 get everything together. I think that's why it's on
17 today's docket and no, I didn't intend to do that on
18 the 10th. I intended to keep everything together.
19 I think that that's more important than that. Why
20 don't we schedule your closings for the 12th. I
21 think I can rule on it that day after I hear your
22 closings. There is nothing else scheduled so if you
23 can keep them within a reasonable period of time, I
24 can take a recess and I think come back and just
25 resolve those. At the same time, I'm going to

1 schedule the hearings on the 20th. They're
2 evidentiary. I know that you may -- depending on
3 how things are resolved, it may be superfluous work
4 but we've just got to go forward.

5 MR. KING: Well, with respect, I am
6 concerned, Your Honor, with respect to the motion
7 for the appointment of the Chapter 11 trustee and if
8 Mr. Jones represents to me that essentially other
9 than the spreadsheets of the financial analysis of
10 the monthly reports, that there isn't any other
11 evidence that is going to be part of that hearing,
12 then I'm okay doing that on a truncated basis but we
13 certainly haven't --

14 JUDGE MAYER: I understand. Without
15 hearing, let's talk through those for a moment. I
16 would intend, so that we don't repeat everything
17 that we've heard for the last several years, we
18 don't need to do that. If there has been testimony
19 and if it's been transcribed so that we can look at
20 it and in fact remember what was done, I'm willing
21 to take judicial notice of that. You'll need to
22 bring that to my attention. It's there for anyone
23 to consult including myself.

24 The hearing today is so fresh in my mind,
25 I don't need that requirement to be done. But if

1 there is a transcript or if you want something
2 transcribed, that gives you the time. But you'll
3 have to fill out whatever you feel is missing or
4 needs to be refreshed or clarified or modified based
5 on all of that.

6 Some of that obviously isn't relevant to
7 many of the things that are done. It doesn't have
8 much to do with anything.

9 MR. KING: There is a more substantive
10 objection, I guess, that I have. I suspect Your
11 Honor is going to overrule me but I've got to state
12 it. The Trustee's motion was to appoint an examiner
13 or in the alternative appoint a Chapter 11 trustee.
14 They were granted the motion. It's done.

15 JUDGE MAYER: I'm overruling it. I took
16 it as two motions and I'm considering it pending.
17 If he wants to file a new one, he can do that, too,
18 but it would be foolish to make both of you go
19 through the same thing again. But I did continue it
20 specifically for that and left it open. As I said
21 at that point, based on the examiner's report and
22 the hearing we held today, that makes a difference
23 whether it should be an appointment or not.

24 The issues I have --

25 MR. KING: Your Honor, because I am

1 concerned about the truncated time and the evidence
2 and I'm not sure --

3 JUDGE MAYER: What is your position,
4 Mr. Jones?

5 MR. JONES: Your Honor, I am willing
6 to -- I mean, barring some major change in the
7 debtors' circumstance between now and the 20th, if
8 the situation remains as it is, I'm willing to go
9 forward on the motion for a Chapter 11 trustee with
10 the evidence submitted in the hearing and the
11 testimony that the Court has heard. Will the Court
12 need me to, at that hearing, move the same exhibits
13 into evidence or is everything that's in evidence in
14 this hearing going to be admitted at the few which
15 are --

16 MR. KING: I'm okay with that, Your
17 Honor.

18 JUDGE MAYER: What about the other ones
19 that were not offered?

20 MR. KING: From the U.S. Trustee?

21 JUDGE MAYER: There were some exhibits
22 not offered.

23 MR. KING: That's what I mentioned, the
24 spreadsheets to the financial analysis.

25 JUDGE MAYER: There were several that

1 weren't offered. Do you object to them, Mr. King?

2 MR. KING: I candidly haven't had a
3 chance to review the financials.

4 JUDGE MAYER: Why don't we do this.
5 Those are his proposed exhibits. If you want to
6 withdraw them, you can do it. You've got a week to
7 object.

8 MR. KING: My concern wasn't the ones
9 he's already identified. My concern is the ones
10 that have not been identified. I can respond to
11 these.

12 JUDGE MAYER: I don't want you to go back
13 to the first hearing that we held in 2009 and use
14 that. I don't think it's terribly relevant. But I
15 also don't want you to have to bring someone in to
16 say the same thing that we've heard once or twice
17 before, so that's why I'm making it very broad.
18 I'll take judicial notice of every transcript that's
19 filed. If there is something you want me to
20 specifically take notice of, please feel free to
21 direct my attention. I may have copies of it. I
22 may review some of those in preparation.

23 There is an awful lot of read, as
24 Mr. Donelan found out when he read into the case.
25 I'll take judicial notice of all the pleadings in

1 this Court and all the matters in this Court and the
2 United States District Court. You don't have to
3 repeat the issues there.

4 To the extent I have pleadings from the
5 state courts, I'll take judicial notice of them but
6 I don't have the old exhibits. If those cases have
7 gone on appeal, the record has gone with them. And
8 I think the very first one in 2009 has just gone so
9 I don't have those. I can't review them. And if
10 you want me to take notice of something I don't
11 have, you have to present the document, the state
12 Court record or whatever it is. I can't tell you
13 that I've got any of those things.

14 Here are the things that I think are left
15 open. The award of attorney's fees for the
16 prevailing party which is 634, item 634, docket
17 entry 634.

18 MR. KING: That's in the main case?

19 JUDGE MAYER: Excuse me, 436. That would
20 be attorney's fees of prevailing party. That would
21 be on the objection to proof of claim which would be
22 in the main case. There is the remand on the motion
23 to substantively consolidate the matters.

24 Now, I will raise one issue on that and
25 you can assist, Mr. King. In looking at the docket,

1 it appears that there was a motion to reconsider
2 filed before Judge Brinkema of which no action has
3 been taken. So I'm not sure where that particularly
4 stands. I'm not sure that it is in fact remanded or
5 presently before me.

6 MR. KING: Yes, everything at the
7 District Court was stayed pending the Court's
8 determination on mediation so --

9 JUDGE MAYER: Well, if it's still pending
10 there with a motion to reconsider, it's not really
11 back here for me to hear yet.

12 MR. KING: I think that's correct, Your
13 Honor.

14 JUDGE MAYER: Then I'm not going to hear
15 that one on the merits because I don't believe that
16 it is before me at this point. You have to dispose
17 of the motion at the District Court first. I will
18 carry that one over for status to the 20th. There
19 is the appointment of Chapter 11 trustee, which is
20 entry 592 and that will be an evidentiary hearing on
21 the 20th.

22 There is the garnishment issue in the
23 adversary proceeding. It's 279. I think that
24 that's basically on hold pending resolution of the
25 appeal. That's really an appellate bond issue but

1 I'll carry that over for status to the 20th as well
2 just so it's not lost.

3 The CSI contract also in the adversary
4 proceeding 326, we had an initial hearing on that
5 and I continued it after expressing some concern.
6 I'm going to go ahead and conclude that evidentiary
7 hearing on the 20th of September.

8 There is the motion to convert which --

9 MR. KING: Your Honor, I have to inform
10 the Court unfortunately Mr. Harvey is counsel for
11 FOA on the CSI contract.

12 MR. HARVEY: I'm back here.

13 MR. KING: I thought he left. I'm sorry.

14 MR. SCULLY: He's hard to miss.

15 MR. HARVEY: I'm sorry, Your Honor. I
16 had a logistical issue I had to take care of.

17 JUDGE MAYER: I know we've run a little
18 late and I appreciate you doing that. 20th of
19 September? It will be okay.

20 We'll hold an evidentiary hearing on that
21 on the 20th of September as well.

22 MR. SCULLY: Do we have deadlines for
23 submission of witnesses and exhibits for that
24 hearing? I just don't want to run afoul of --

25 JUDGE MAYER: I think that's fine.

1 MR. KING: This is on a motion to
2 convert?

3 JUDGE MAYER: Yes. Tell me what you all
4 want to do.

5 MR. SCULLY: Five days.

6 MR. KING: That's fine.

7 JUDGE MAYER: The 20th is a Friday.

8 MR. SCULLY: The previous Friday?

9 JUDGE MAYER: Do you want to exchange
10 exhibits by the 13th.

11 MR. KING: I'm actually okay with Monday.

12 MR. SCULLY: Monday the 16th.

13 JUDGE MAYER: All right. Exhibits to be
14 exchanged by the 16th. Objections by the 18th.
15 Anything else you need to do on that?

16 MR. SCULLY: I don't think so, Your
17 Honor.

18 MR. KING: I don't think so.

19 JUDGE MAYER: Very good. And I'm also
20 going to add one other item for consideration on
21 that date and that's to consider modifying the
22 consent order which was entered into at the
23 beginning of the case. And in particular, what I
24 will consider is the ability for the debtor to vote
25 at the annual meeting for directors and requiring

1 them to be present for quorum call and maintain the
2 quorum call.

3 If there is no quorum, effective
4 resignations, those will be matters that I will
5 consider with respect to that issue, the
6 modification of the operating order that is the
7 standard order that's entered --

8 MR. KING: The standard order between the
9 debtor and the U.S. Trustee?

10 JUDGE MAYER: Yes.

11 MR. KING: And I'm sorry, it's going to
12 be modified?

13 JUDGE MAYER: I'm not telling you it's
14 going to be modified. These are the things that I'm
15 going to consider.

16 MR. KING: Oh. You're going to consider
17 whether it should be modified to require that --

18 JUDGE MAYER: First of all --

19 MR. KING: In other words, deem the
20 debtor present at the meeting for quorum purposes?

21 JUDGE MAYER: Yes. And whether or not he
22 will have the ability to vote for directors and if
23 so, one, two or three or whatever the rule may be.
24 And this is different than the rule that I've had in
25 the past. This arises from the evidence presented

1 today as to whether or not the debtor and this
2 association, because of the interlocking
3 directorships, whether they can make any headway and
4 whether it's equitable to allow this debtor to take
5 control of or have a substantial influence on it.

6 And without regard to the qualifications
7 issues that has been indicated before, this is an
8 issue under section 105, the equitable jurisdiction
9 of the Court, to regulate the conduct of the debtor
10 and to regulate the number of seats, if any, that he
11 may sit on the board of directors. I'll put that in
12 an order that will come out more particularly on
13 that.

14 Are there any other issues that we need
15 to attend to?

16 MR. JONES: None that I'm aware of, Your
17 Honor.

18 MR. KING: No, Your Honor.

19 MR. DONELAN: No, Your Honor.

20 JUDGE MAYER: Thank you all for coming.
21 I appreciate you staying late. And I'll let you get
22 outside where it's probably cooler. We will adjourn
23 for the evening.

24 (Whereupon, at 7:13 p.m., the taking of
25 the hearing was concluded.)

United States Bankruptcy Court
Eastern District of Virginia
Alexandria Division
200 South Washington Street
Alexandria, VA 22314

Case Number 09-18086-RGM
Chapter 11
Judge Robert G. Mayer

In re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Gordon Properties, LLC
4600 Duke Street, #331
Alexandria, VA 22304

Condominium Services, Inc.
c/o Donald F. King, Esquire
1775 Wiehle Avenue
Suite 400
Reston, VA 20190

Last four digits of Social-Security or Individual Taxpayer-Identification (ITIN) No(s), (if any):

Debtor: NA

Joint Debtor: NA

Employer Tax-Identification (EIN) No(s), (if any):

Debtor: 52-2252590

Joint Debtor: 54-1012765

**NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND
REDACTION**

A transcript was filed on September 6, 2013 in the above-referenced case, event text as shown below:

Transcript filed Re: Hearing Held 8/23/2013, regarding Gordon Properties. Remote electronic access to the transcript is restricted until 12/4/2013. The transcript may be viewed at the Bankruptcy Court Clerk's Office. [For information about how to contact the transcriber, call the Clerk's Office] or [Contact the Court Reporter/Transcriber DRS, Inc, Telephone number 202-467-9200.] [Transcript Purchased by Bradley Jones.] (RE: related document(s) [678] Hearing continued; (related document(s): 498 Motion to Approve) Appearances : John T. Donelan, Joseph A. Guzinski, Bradley David Jones, Donald F. King, Stephen E. Leach Hearing scheduled for 09/12/2013 at 09:30 AM at Judge Mayer's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom II, Alexandria, VA. (chandlerkj), [679] Hearing continued; (related document(s): 436 Motion to Approve) Appearances : John T. Donelan, Joseph A. Guzinski, Bradley David Jones, Donald F. King, Stephen E. Leach Hearing scheduled for 09/20/2013 at 09:30 AM at Judge Mayer's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom II, Alexandria, VA. (chandlerkj), [680] Hearing continued; For Status (related document(s): 74 Motion to Consolidate) Appearance : John T. Donelan Hearing scheduled for 09/20/2013 at 09:30 AM at Judge Mayer's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom II, Alexandria, VA. (chandlerkj), [681] Hearing held; Evidentiary hearing set; (related document(s): 643 Motion to Convert Case to Chapter 7) Appearances : John T. Donelan, Joseph A. Guzinski, Bradley David Jones, Donald F. King, Stephen E. Leach Hearing scheduled for 09/20/2013 at 09:30 AM at Judge Mayer's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom II, Alexandria, VA. (chandlerkj), [682] Hearing held; Evidentiary hearing set; (related document(s): 600 Objection to Motion/Application) Appearances : John T. Donelan, Joseph A. Guzinski, Bradley David Jones, Donald F. King, Stephen E. Leach Hearing scheduled for 09/20/2013 at 09:30 AM at Judge Mayer's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom II, Alexandria, VA. (chandlerkj)). Notice of Intent to Request Redaction Deadline Due By 09/12/2013. Redaction Request Due By 09/26/2013. Redacted Transcript Submission Due By 10/7/2013. Transcript access will be restricted through 12/4/2013. (Yenchochic, Michelle)

The parties have [until September 13, 2013] [seven (7) calendar days from the date of filing of the transcript] to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is [September 27, 2013] [21 days from the date of filing of the transcript].

If a request for redaction is filed, the redacted transcript is due [October 7, 2013] [31 days from the date of filing of the transcript].

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is [December 5, 2013] [90 calendar days from the date of filing of the transcript] unless

extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber or you may view the document at the clerk's office public terminal.

William C. Redden
Clerk, United States Bankruptcy Court

Date: September 6, 2013

[ntctranredact.jsp 3/2009]