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Formerly the Association of Trial Lawyers of America - New Jersey (ATLA-NJ)

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August 16, 2021

The Honorable Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Comments on the Future of Court Operations
Richard J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625

Re: Comments on the Future of Court Operations

Dear Judge Grant:

I write to you on behalf of on behalf of the more than 2,700 members of the New Jersey Association for Justice. We greatly appreciate the opportunity to be heard in response to the Administrative Office of the Court's request for public comment on the July 16, 2021 Notice to the Bar titled *Future of Court Operations – Remote and In-person Proceedings*. We likewise appreciate the continued efforts of the Court to work with members of the bar as we chart the path forward for the New Jersey Court System.

We offer the following suggestions to further the administration of justice, something for which all of us in the legal profession strive. We support, in general, Section 6a, which calls for motion arguments and case management conferences to continue to be held remotely. Our members report however, that oftentimes, these kinds of proceedings are held via telephone, rather than videoconference, thereby increasing the risk of distraction and outside interference. Accordingly, NJAJ respectfully proposes that Section 6a be amended to clarify that motion arguments, including those involving non-dispositive motions, and case management conferences be conducted by videoconference so all parties and the judge can see each other, and appropriate presentations can be made. We further support the ability of the Court in its discretion to require in-person appearances where necessary.

Our members also report that because of the COVID-19 pandemic, civil arbitration proceedings too often are held by telephone, thereby diminishing the ability of the arbitrator to assess credibility and potentially limiting the ability of litigants to fully explicate their side of the story. Accordingly, NJAJ respectfully requests that Section 6c be amended to ensure that when arbitration proceedings are held remotely, they are conducted via videoconference rather than by telephone.

Although not addressed directly, we further believe that expert witnesses should be permitted to testify live via Zoom in lieu of requiring the parties to videotape experts who are not available to testify in-person at trial. This would save the parties significant time and resources in preparing cases for trial.

While we generally support Section 6a our members who regularly appear in family court have serious concerns with Section 6d as written, which calls for certain Family Law matters to be handled remotely. Our members who practice in the family courts note that the Family Division has a multitude of hearings where the parties are sworn in, testimony taken and evidence offered, even before a full plenary hearing or trial. Therefore, our members believe that all such proceedings should be in person with few exceptions. In addition, many proceedings involving litigants before the family court requires the assistance and involvement of probation officers, care managers (CMO), domestic violence counselors, interpreters, and others in order to properly proceed in a case. Appearing remotely does not allow the litigant and the attorney to speak before or during the court proceeding.

Protecting People's Rights.

EXECUTIVE DIRECTOR

Cornelius J. Larkin, CAE, CMP, CEM, CMM, DES

DIRECTOR OF GOVERNMENTAL RELATIONS

Deborah R. Bozarth

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As currently proposed, the remote proceeding does not provide the opportunity for litigants and their attorneys to confer with and discuss the case with the probation officer, the CMO or the domestic violence counselor, in order to resolve a matter and provide the necessary services to the litigant.

We also note that Domestic Violence and Sexual Assault Survivor Protection Act (SASPA) proceedings for applications for temporary restraining orders require the alleged victim to have the benefit of the domestic violence court staff prior to proceeding before the hearing officer and/or judge to give testimony for a TRO. The services the court provides should be provided to the alleged victim prior to testifying remotely. The remote application for those victims who are in hiding or other compelling circumstances can be utilized as long as there are due process safeguards in place and the victim services and counselors are available. In addition, if the TRO is before a hearing officer, the applicant for the TRO has an immediate right to appeal and appear before a Superior Court Judge.

While not addressed in the proposal, we respectfully call Your Honor's attention to a related issue of importance. In this regard, we would also like to open a dialogue with the Court concerning how the available technology can make creating an official record of virtual and in-person proceedings more efficient and far less costly to the litigants.

To the extent that virtual proceedings continue to be utilized for civil motions, criminal hearings and other proceedings, artificial intelligence programs exist that can instantly transcribe those proceedings with a high degree of accuracy at a fraction of the cost. In this regard, we attach hereto a certified transcript from a deposition taken in *Northpark Place Investment Condominium Association, et. al. v. Metro Development, LLC, et. al.* that was produced by converting the digital signal created remotely directly into text that was ultimately verified and certified by a licensed stenographer.

We further request that the Court explore the utilization of the same technology to convert the digital signals generated in the Courtroom during in-person proceedings. If successful, implementation of this technology would dramatically expedite the administration of justice in our Courts.

We draw the Court's attention to two cases recently tried in the Asbestos Multi-County Litigation before the Honorable Ana C. Viscomi, J.S.C. in Middlesex County Superior Court to demonstrate the need to reassess how official records are currently prepared. In this context, we also address issues litigants are encountering in the appellate process with the hope of opening a discussion concerning how the process of creating the official appellate record may be streamlined and improved.

The two cases are *Deborah Marino on behalf of the Estate of Anita Creutzberger v. Ford Motor Company* (verdict June 2019) and the four-plaintiff consolidated trial of *Barden, et al v. Johnson and Johnson, Inc.* (compensatory damages verdict October 2019; punitive damages verdict February 2020). Defendants in both cases appealed. See *Marino*, No. A-001523-19; *Barden*, No. A-000047-20. At this time, neither case has received an oral argument date before the Appellate Division. Exclusive of jury selection and pre-trial motions, *Marino* involved 13 days of trial while *Barden* required 48 trial days (33 days of compensatory trial; 15 days of punitive damages trial). In the time since the jury rendered its verdict in each case, Deborah Marino, Executrix of the Estate of Anita Creutzberger, as well as three of the four plaintiffs in the *Barden* matter have passed away.

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The delay in receiving court-certified transcripts of the trial often exacerbate the delay in scheduling oral argument and moving the case forward at the Appellate level, especially in complex litigation cases that usually entail lengthy trials. For example, in *Barden*, the defendants filed their notice of appeal on September 4, 2020, and ordered the certified transcripts at that time. However, the court certified transcript was not delivered until February 25, 2021, a delay of nearly six months before the parties could even receive a briefing schedule.

In both *Barden* and *Marino*, as is often done in complex litigation cases, the parties also paid a certified court reporting agency to be present in the courtroom at trial and transcribe the proceedings as they occurred. This enabled the parties to receive “daily” transcripts to be better prepared going forward in trial. This also created a reliable and accessible record of the Court’s rulings to guide the conduct of the remainder of the trial. As a result, the trials proceed smoothly and efficiently and eliminating the potential for unnecessary appellate error.

At present, the Rules of Court do not permit that the certified transcript agreed to by the parties to be considered as the official transcript for purposes of appeal. In *Marino* for example, the defendant moved the Court to use the daily trial transcripts for the purposes of appeal with plaintiff’s consent. *See Marino*, No. A-001523-19, M-002846-19. The following month, however, that motion was denied as the daily transcripts did “not comply with the standards fixed by the Administrative Director of the Courts. Counsel shall order the thirteen transcripts for appeal purposes” *Id.* (order entered Jan. 22, 2020) (attached).

Under the current system, the cost to create a record for litigants in complex cases can be overwhelming. In *Marino*, the litigants spent approximately \$50,000.00 for the daily transcripts from the certified court reporter privately retained by the parties. In *Barden*, the parties spent more than \$200,000.00 for daily transcript costs. In both cases, the Appellant was still required to incur additional costs to transcribe the Court Smart audio to create the exact same certified record that already been created, resulting in an unnecessary six-month delay in the appeal process in *Barden*.

When implemented, the Court Smart system was innovative and dramatically decreased the costs of administration imposed upon our Court system. One of the unintended consequences, however, was shifting to litigants - many of whom do not have the resources-the cost to order transcriptions of the audio record when deciding whether appeal a trial court ruling. As a result of the unfortunate circumstances created by the COVID-19 pandemic and resulting public health emergency, artificial intelligence technology has advanced to the point where systems exist that could dramatically lower costs to litigants and significantly increase the efficiency of administration of justice. Accordingly, we respectfully propose that the Court create a subcommittee to explore whether the use of artificial intelligence would a viable improvement to facilitate the creation of an official Court record. It may very well be that the digital signal created by Court Smart is capable of being reliably transcribed and certified. As many of our members are “tech savvy”, we are available to assist in any way that the Court believes would be helpful.

In the meantime, we ask that the Court re-examine whether a certified transcript created by agreement of the parties could be used as the official transcript for purposes of an appeal. In many instances, the certified court reporter hired by the parties has both specialized knowledge regarding the technical terms common in complex litigation as well as the advantage of having been in the courtroom to view the speaker and the opportunity to seek clarifications or spelling corrections during breaks as needed. Conversely, a certified court reporter retained by the Appellate Division may not be



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versed in the technical jargon of the specialized litigation, can only listen and transcribe the audio recording of the proceeding and has no access to the litigants to seek clarifications when needed. As such, the daily transcripts created by the privately retained certified court reporter present at trial are likely to be more accurate.

We thank the Court for its consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "K. Reilly".

Kathleen M. Reilly, Esq.
President

RSG III NP, LLC 30(B)(5) by Roland Giller
March 19, 2021

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

NORTHPARK PLACE INVESTMENT)	CASE NO.: 18 CV H 07 0394
CONDOMINIUM ASSOCIATION, et al.,)	
)	JUDGE: DAVID M. GORMLEY
Plaintiffs,)	
)	
vs.)	
)	
METRO DEVELOPMENT LLC, et al.,)	
Defendants		

METRO DEVELOPMENT, LLC)	CASE NO.: 19 CV H 09 0505
)	
Plaintiffs,)	JUDGE: DAVID M. GORMLEY
)	
vs.)	
)	
ZURICH AMERICAN)	
INSURANCE COMPANY, et al.,)	
)	
Defendants)	

- - - - -
THE VIDEOTAPED DEPOSITION OF ROLAND GILLER
RSG III NP, LLC 30(B)(5)
Friday, March 19, 2021
- - - - -

The videotaped deposition of ROLAND GILLER, RSG III NP, LLC, 30(B)(5), called by the defendants for examination pursuant to the Ohio Rules of Civil Procedure, taken before me, the undersigned, Anneleisse Rivera, a Certified Reporter, taken at the offices of McDonald Hopkins LLC, 250 West Street, Suite 550, Columbus, Ohio 43215, commencing at 8:15 a.m., the day and date above set forth.

RSG III NP, LLC 30(B)(5) by Roland Giller
March 19, 2021

1 APPEARANCES:

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18 On behalf of CDF Stucco & Stone, LLC and Third-Party
19 Defendant, Armando Montoya:

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RSG III NP, LLC 30(B)(5) by Roland Giller
March 19, 2021

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15 On behalf of Michael P. Bernardo Stucco & Stone, Inc.:

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22 On behalf of Third-Party Defendant Tremco Barrier Solutions,
23 Inc.:

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RSG III NP, LLC 30(B)(5) by Roland Giller
March 19, 2021

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ALSO PRESENT:
Juniko Moody, Prevail Session Manager
Jason Kairalla, Prevail Session Manager
Anneliesse Rivera, Prevail Session Manager
Michelle Bennett, Ohio Notary

RSG III NP, LLC 30(B)(5) by Roland Giller
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1 SESSION MANAGER: We are on the record at
2 8:15 a.m. Eastern Standard Time.

3 Good morning. My name is Juniko Moody. I am
4 the session manager assigned by of Prevail to take
5 the record of this proceeding. Also present with me
6 observing and/or assisting are Mr. Jason Kairalla and
7 Ms. Anneliesse Rivera, both of Prevail.

8 Today's notary is Michelle Bennett, who has
9 verified the identity of the witness, is Ms. Michelle
10 Bennett, and she will swear in the witness.

11 This is the deposition of Mr. Roland Giller
12 taken in the matter of Northpark Place Investment
13 Condominium Association, et al vs.
14 Metro Development, LLC, et al, Case No. 18CVH070394.
15 And Metro Development, LLC vs. Zurich American
16 Insurance Company, et al, Case No. 19CVH090505 at
17 8:16 a.m. on March 19th, 2021, at Columbus, Ohio,
18 Franklin County.

19 Additionally, all parties and the witness
20 understand and agree that this proceeding is being
21 recorded audio visually using the Prevail testimony
22 management platform. The platform is also producing
23 in real time a rough virtual transcription utilizing
24 artificial intelligence technology. This virtual
25 transcription is not the official record of the

RSG III NP, LLC 30(B)(5) by Roland Giller
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1 proceeding unless and until it becomes a certified
2 transcript. It is provided for the purpose of
3 augmenting Counsels' notes and assisting with the
4 location of testimony in the audiovisual recording of
5 this deposition proceeding. Until there's a final
6 transcript, citations to testimony from the session
7 should be to the video timestamp in Eastern Standard
8 Time.

9 At this time, I would ask counsel for each side
10 to introduce themselves, state who they represent,
11 and announce any individuals joining them in this
12 session, beginning with Mr. Holthus.

13 MR. HOLTHUS: Doug Holthus on behalf of the
14 Metro defendant. I'm in my office alone in Columbus,
15 Ohio.

16 And as with any of these other depositions, I
17 pose a stipulation that all objections be preserved.

18 MR. GAMBILL: This is attorney John Gambill on
19 behalf of the plaintiffs in this matter, including
20 RSG III NP, LLC, appearing from my Columbus, Ohio
21 office in the conference room with the witness.

22 And I agree to the stipulation. Thanks, Doug.

23 MR. DAILIDE: This is Alan Dailide on behalf of
24 third-party defendant Tremco Barrier Solutions, Inc.
25 I'm in my home office in Cleveland, Ohio.

RSG III NP, LLC 30(B)(5) by Roland Giller
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1 And I join in the stipulation proposed by
2 counsel.

3 MR. BOBB: Nicholas Bobb on behalf of Michael P.
4 Bernardo Stucco and Stone in my office in Dublin,
5 Ohio. And I join in the stipulation.

6 MR. GORDON: This is Scott Gordon on behalf of
7 defendant Associated Materials, LLC, in my office
8 alone in Delaware, Ohio. I'll join in the
9 stipulation.

10 MR. SMITH: This is Andy Smith, counsel for
11 third-party defendant Armando Montoya. I'm in my
12 home office in Cincinnati, Ohio alone. And I also
13 agree to the stipulation.

14 MR. ANDERSON: Scyld Anderson for Ross Seese
15 Construction and Development, alone in my office. I
16 agree to the stipulation.

17 MR. BAKER: Luke Baker on behalf of defendant
18 Westfield Insurance Company. I'm alone in my office
19 in Dublin, Ohio. And I also agree to the
20 stipulation.

21 MS. CHIDIAC: This is Danielle Chidiac on behalf
22 of Greenwich Insurance Company. I am alone in my
23 home office in Macolm, Michigan, and I join in the
24 stipulation.

25 SESSION MANAGER: All right. If that is all the

RSG III NP, LLC 30(B)(5) by Roland Giller
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1 introductions, then thank you. At this time the
2 notary will now swear in the deponent.

3 Ms. Bennett, will you please swear in the
4 witness.

5 MS. BENNETT: Yes. Will you state your name for
6 the record, please, sir.

7 THE WITNESS: Roland S. Giller, III.

8 MS. BENNETT: Thank you. And do ou solemnly
9 swear to tell the truth in today's proceeding?

10 THE WITNESS: I do.

11 SESSION MANAGER: Thank you, Ms. Bennett.
12 Counsels, you may proceed.

13 DIRECT EXAMINATION

14 BY MR. HOLTHUS:

15 Q. Thank you. Good morning, Tre.

16 A. Morning.

17 Q. You are a member of the plaintiff RSG III NP,
18 LLC, correct?

19 A. Yes.

20 Q. That is an Ohio limited liability entity?

21 A. Yes.

22 Q. Are you the sole member?

23 A. Yeah. Yes.

24 Q. Okay. When, if you know, was RSG -- and I'm
25 just going to refer to it as your LLC or the LLC. When was

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1 the LLC filed with the secretary of state, if you know?

2 A. I believe 2010.

3 Q. Okay. And that would have coincided with the
4 first occupancy of any of the units at Northpark?

5 A. It would have coincided when I purchased the
6 units at Northpark. The units more than likely were
7 occupied prior to my purchasing the units.

8 Q. Okay. How many units does the LLC currently
9 own?

10 A. 16.

11 Q. Since 2010, has the LLC sold or acquired any
12 units? Let me -- that's a poorly-asked question. Let me
13 try again.

14 Currently there are 16 titles to the LLC,
15 correct?

16 A. Yes.

17 Q. All right. Did the LLC initially acquire 16
18 units or has that number changed from 2010 going forward?

19 A. No, that LLC only acquired and owns -- that
20 particular LLC only owns those particular 16 units.

21 Q. Okay. So that's been true from the beginning
22 from 2010 forward?

23 A. Yes.

24 Q. How many of those units, Tre, are first floor
25 units?

RSG III NP, LLC 30(B)(5) by Roland Giller
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1 A. Four.

2 Q. Are you able to tell us for the remainder the
3 other 12 how many might be second floor units and how many
4 might be third floor units?

5 A. There would be -- there would be four second
6 floor units and, I guess, eight third floor units.

7 Q. Are all of the first floor units in the same
8 building?

9 A. Yes.

10 Q. Does that building have a particular address?

11 A. Yes. It's Gauge Street.

12 Q. Okay. So as one enters into the property, that
13 is one of the buildings that is, essentially, affixed or
14 adjacent to the clubhouse feature?

15 A. That is correct.

16 Q. Okay. And then the second floor units, are they
17 all in the same building?

18 A. Yes. I guess it's a little confusing to say,
19 but 12 of the units are in one building with a breezeway
20 separating. Four of the units are over the top of the
21 clubhouse. Second or third floor, just depending on your
22 perspective.

23 Q. So, again, as someone enters to complex, are all
24 the units owned by that LLC in that first group of
25 buildings? In other words, Buildings 1 and 3, plus the

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1 clubhouse?

2 A. Yes.

3 Q. All right. In this suit is the LLC claiming
4 damage only to the first floor units that it owns?

5 A. The first floor units are the units that are
6 experiencing the water infiltration issue.

7 Q. Have any of the LLC's second or third floor
8 units, as of today's date, experienced any water
9 infiltration issues?

10 A. Not to my knowledge.

11 Q. Okay. Is the LLC a member of the Northpark
12 condominium association?

13 A. It is.

14 Q. And the condo association is managed by Ardent,
15 correct?

16 A. It is.

17 Q. In your capacity as the sole member of this LLC,
18 do you have access to any contractor agreement that was
19 entered between the condo association and Ardent for
20 management of the properties?

21 A. Can you repeat that.

22 Q. Sure. Again, so as we understand and know, I
23 believe at this point, any owner of the unit is -- whether
24 they own a single unit or multiple units, they are
25 necessarily a member of the condo association, correct?

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1 A. That's correct.

2 Q. And a member of the condo association can either
3 self-manage its -- his or her unit or can have Ardent manage
4 the units, correct?

5 A. That's correct.

6 Q. Does each condominium unit owner have a separate
7 agreement with Ardent for the management of the properties?

8 A. There's a management agreement for the
9 individuals like myself who retain Ardent to specifically
10 manage the interior and the exterior operations for my
11 specific 16 units. We're talking about this particular LLC;
12 this 16 units in this complex. And then if an owner chooses
13 to manage the internal parts of the units themselves,
14 there's another agreement that would have the exterior
15 portion, as a member of the association, managed by Ardent
16 pursuant to an agreement between the declarants and the
17 association and Ardent Property Management.

18 Q. So regarding RSG III NP, LLC, are all of those
19 units which it owns of the interior and the common elements,
20 are those managed by Ardent Communities?

21 A. They are.

22 Q. I'm sorry?

23 A. They are.

24 Q. And has that been true since 2010 forward?

25 A. Yes.

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1 Q. All right. Does -- again, I'm just using the
2 vernacular here, does your LLC ever contract with any other
3 vendor -- third-party vendor for management of the interior
4 space of any of the 16 units? And just by way of example, I
5 need a carpet cleaned I'm going to call Serve Pro or Stanley
6 Steamer? Or do you rely, instead, on Ardent to take care of
7 those issues?

8 A. I rely on Ardent to take care of these issues.
9 I view these investments and any other investments in
10 multifamily real estate as a passive investments in my LLCs.
11 So I have a property management company to take care of all
12 aspects of the management of the properties.

13 Q. Okay. Does the LLC maintain its own rent rolls
14 with respect to these 16 units?

15 A. The only rent rolls the LLC maintains are the
16 monthly property reports that I would receive from Ardent
17 Property Management.

18 Q. So as a passive investment, would you, as a
19 member of the LLC, even know at a particular time who a
20 tenant might be in one of the 16 units?

21 A. No. I have no idea.

22 Q. With respect to the lease agreements for these
23 16 units, is it the same pro forma lease agreement for every
24 unit?

25 A. To my understanding. I've not looked at the

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1 lease agreements since I purchased these particular units.
2 So I'm going to -- I can't answer that definitively. I've
3 not looked at them. I would assume so.

4 Q. Okay. Did you, as the member of the LLC, create
5 the lease or was that instead a document that was created by
6 Ardent Communities? Or do you know?

7 A. I signed a management agreement with Ardent
8 Communities and who created the lease from Ardent
9 Community's perspective I do not know.

10 Q. Okay. Currently, again as of this date, March
11 19th of '21, are any of the first floor -- any of the four
12 first floor units occupied?

13 A. I believe three of the first floor units are
14 occupied, and one of them has been down for several years --
15 unoccupied for several years.

16 Q. Have any of the three that you mentioned -- I'm
17 sorry. Have the three that you mentioned been subject to
18 any water, mold, or moisture issues in the last 11 years?

19 A. Specifically, I know -- I know specifically that
20 the one has experienced tremendous issues with water and
21 mold. I don't know whether the others have had intermittent
22 issues over the last number of years.

23 Q. And I don't mean this to be a memory test, but
24 are you -- would you happen to know the addresses of these
25 four first four units on Gauge Street?

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1 A. No. I mean, I'm sure it's in the records
2 somewhere.

3 Q. Okay. But you mentioned one in particular that
4 is currently not leased, correct?

5 A. Correct.

6 Q. Is that correct?

7 A. That's correct.

8 Q. And is that the same one that -- I'm just
9 paraphrasing -- is that the same one that you have told us
10 has experienced significant mold, moisture, and water issues
11 in the past?

12 A. Yes.

13 Q. Okay. So of the remaining three, have
14 remediation efforts been undertaken to address any mold,
15 moisture, or water and issues in those three units?

16 A. My understanding is there has been some
17 remediation efforts over the years; however, specifically I
18 don't have that detailed information.

19 Q. Okay. But again, these three have been
20 experiencing issues, but they've also experienced and
21 benefited from some remediation effort, right?

22 A. I believe that to be correct.

23 Q. And the remediation efforts, whatever those
24 might've been, were sufficient to permit those three
25 properties to be re-leased and occupied, right?

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1 A. Yes.

2 Q. Okay. Who would know what remediation efforts
3 were undertaken at those three properties to the extent
4 they're now able to be re-leased and occupied?

5 A. Ardent Property Management.

6 Q. Okay. Since 2010, has the LLC attempted to sell
7 any of its units?

8 A. No.

9 Q. Since 2010, has the LLC attempted to sell any
10 interest at all in any of the units?

11 A. No.

12 Q. Since 2010, has the LLC attempted to purchase
13 any additional units within Northpark Phase 1?

14 A. Not in Northpark Phase 1, but I do own units --
15 12 additional units in Northpark Phase 2 under a different
16 LLC.

17 Q. Okay. Regarding these 16 units, tell us how a
18 monthly lease rate is determined.

19 A. Ardent Property Management, I guess -- well,
20 Ardent Property Management survey's the market, survey's the
21 region, determines what the going rental rate is for a unit
22 of that same quality and caliber and that location, and then
23 determines the rental rates based on current market
24 conditions.

25 Q. As the sole member of this LLC, do you have any

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1 ability to suggest or even establish a rental rate for any
2 of these units?

3 A. No, I don't get into that level of detail with
4 this LLC.

5 Q. Well, I'm not suggesting you do. I'm just
6 asking if you believe you could -- in other words, Ardent
7 says, as an example, for one of these 16 units we're going
8 to set the lease rate at \$1,000. Would you, as a member of
9 the LLC, be able to say to Ardent, no, I believe that's too
10 high or I don't believe that's sufficient, it should be
11 higher?

12 A. I don't -- I don't mean to be difficult, I don't
13 get into that level of detail. They can call, they could
14 ask, I wouldn't answer. That's not what I do with my
15 investments.

16 Q. Okay. What is the total dollar amount -- as of
17 today's date, what is the total dollar amount that the LLC
18 is seeking to recover in this suit by way of a loss-rents
19 claim?

20 A. I believe it's somewhere in excess of \$30,000.

21 Q. We understand that -- from your earlier
22 testimony that at least one of these units has been
23 sufficiently remediated; that it's now under lease and
24 reoccupied, right?

25 A. I believe out of the four, three of them had

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1 some remediation efforts which allowed tenants back in;
2 however, the one cannot be -- based on my understanding, the
3 issues are so significant from exterior water entering the
4 unit that the efforts that have been -- any efforts that
5 have been made have been futile, therefore cannot stop the
6 situation until an entire remediation on the exterior of the
7 building would be undertaken.

8 Q. So if we're looking at this building on Gauge
9 Street, just trying to create a visual picture through
10 words -- if we're standing at the driveway the center
11 feature of that building would be essentially the clubhouse
12 area, correct?

13 A. That's right.

14 Q. And there would be a few units on the second and
15 third floors above the clubhouse, correct?

16 A. There's four units on top of the clubhouse.

17 Q. I'm sorry. Four. And then to the left and
18 right would be conjoined buildings, but I think they are
19 Buildings 1 and 3 if we look at the plat. Would you agree
20 with me?

21 A. Yes. There are two 12-unit buildings flanking
22 the clubhouse, with four units above the clubhouse.

23 Q. That's much more eloquently said. So, again, if
24 you and I are standing at the ground looking at the front of
25 the clubhouse, are all four of these units on the first

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1 floor in either the northern -- the building that had the
2 end wall to the north or the end wall to the south?

3 A. To the north.

4 Q. To the north. All right. And in that building,
5 if it's three floors and four units per floor, your LLC owns
6 all four of the first floor units in that building; is that
7 right?

8 A. That's correct.

9 Q. Okay. As the member of this LLC, when were you
10 first notified of any moisture, mold, or mildew issues in
11 any of those four units?

12 A. I think -- back in several years ago I was
13 notified that there was some remediation efforts happening,
14 but I don't think I really knew the extent of the problem
15 until I was made aware of the Mays report.

16 MR. HOLTHUS: Juniko, if you could, from the
17 deposition -- I guess it was in the Sydney Noblett
18 deposition, if you can turn to Exhibit 112.

19 SESSION MANAGER: Yes, Counsel. It was not
20 previously loaded, Counsel.

21 MR. HOLTHUS: I'm just looking at my notes. I
22 didn't resubmit it for purposes of today's
23 deposition.

24 SESSION MANAGER: All right. In that case, I
25 will go off the record.

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1 We're going off the record at 8:42 a.m.

2 (An off-the-record discussion was had.)

3 SESSION MANAGER: We are on the record at

4 8:44 a.m. and marking Exhibit 112R.

5 (Deposition Exhibit No. 112R was marked for
6 identification.)

7 BY MR. HOLTHUS:

8 Q. So, Tre, now that we're back on the record, I
9 will represent to you that this was an exhibit introduced
10 during Sydney Noblett's deposition earlier this week and it
11 is a document produced by Ardent Communities. You can see
12 the Bates stamp in the lower corner as Associated -- I
13 believe it's 1091, but I can't really see it on my screen.
14 Just take a minute to review the first page of this exhibit
15 and then let me know when you're done.

16 MR. GAMBILL: Just for the record, it is
17 Association 1691.

18 MR. HOLTHUS: All right. Thank you.

19 A. Okay. I'm ready.

20 BY MR. HOLTHUS:

21 Q. All right. Thank you. I believe the address
22 identified is 1349 Halo. Do you see that?

23 A. Yes.

24 Q. All right. Where is that in relation to the
25 clubhouse and the two adjacent buildings? Which building is

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1 that, if you know?

2 A. I have -- I have no idea exactly which building.
3 The reason I know Gauge Street is because it's my son's
4 name. Past that I don't know any of the street names in
5 that complex.

6 Q. Okay. You read the problem description there?

7 A. Yes.

8 Q. Master bedroom leaking in the wall, right?

9 A. Yeah. Master bedroom window leaking into wall?

10 Q. Yes?

11 A. Okay.

12 Q. And the date of the complaint is -- it appears
13 to be January 19th of 2012, right?

14 A. Yes.

15 Q. As a member of this LLC, were you ever made
16 aware of this work order as it was occurring or anytime
17 after January of 2012?

18 A. No.

19 Q. Okay. Did any of your units, the four that are
20 at issue, experience a similar condition?

21 A. I have no idea. I don't know that I've ever
22 seen a work order of any of the hundreds of units I own.
23 That's not the kind of detail I get into.

24 Q. Let's just talk about these four units and the
25 management of those units by Ardent. If a tenant in one of

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1 those units has a complaint about mold, moisture, dirty
2 carpet, inoperable HVAC, what is your understanding of what
3 that tenant might or is otherwise supposed to do with that
4 kind of complaint?

5 A. Talk to the property management company.

6 Q. Okay. And do you have an understanding, as a
7 member of the LLC, what the property management company
8 would then do?

9 A. Yes.

10 Q. What would that be?

11 A. Take care of the issue.

12 Q. Okay. As a member of this LLC, have tenants in
13 any of your units ever contacted you as the member directly
14 to address any issues they might have been having in any of
15 their units?

16 A. Not -- not to my knowledge ever.

17 Q. Okay. If a tenant in any of these units,
18 meaning the four that are -- we're talking about, if a
19 tenant in any of these units at any time had an issue with
20 mold, moisture, or water, is it your expectation that they
21 would call the property management company?

22 A. Yes.

23 Q. Okay. If the property management company
24 addressed a mold, moisture, or water issue in any of your
25 units, would you, as the member of the LLC, be advised of

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1 that work that was undertaken?

2 A. It was probably on an owner -- there's probably
3 some notation of maintenance an a monthly owner's report,
4 but I don't review those. I simply shred them.

5 Q. So I think we understand from Mr. Noblett's
6 testimony that the -- if a particular unit owner makes a
7 request of Ardent to address an issue in an interior space
8 of a unit and if Ardent addresses that issue, they're going
9 to separately charge the particular unit owner, correct?

10 A. For the interior maintenance of a unit that they
11 manage, I believe that to be correct.

12 Q. All right. Because the charges for maintenance
13 and upkeep of the common areas are going to be assessed on a
14 pro rata basis to each of the condominium association
15 member, right?

16 A. That is correct.

17 Q. But if it is Ardent communities addressing an
18 issue on the interior of a unit, those charges are going to
19 be separately billed to the unit owner, right?

20 A. That's correct.

21 Q. Okay. And if Ardent takes the next step and
22 says, gosh, this is an issue our technicians aren't
23 qualified to address; we need to contract with a third
24 party. Those third party services are going to be charged
25 directly to the owner of the unit, correct?

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1 A. Correct.

2 Q. All right. As the member of this LLC -- strike
3 that.

4 As a member of the LLC, and in respect of the
5 three units on the first floor that are now reoccupied, has
6 Ardent undertaken to make repairs to the interior of the
7 units?

8 A. Over the life of my ownership?

9 Q. Yes.

10 A. I'm sure units have turned over the ten years
11 and they've done whatever repairs are required on a turn or
12 normal wear and tear maintenance or any damage by tenants.
13 Yes, absolutely.

14 Q. So using the phrase turn, are turn costs
15 separately assessed to a unit owner?

16 A. Yes. Yeah. It would be an expense to that
17 individual unit owner, minus the security deposit or
18 extraordinary damage that was done to the unit by the
19 tenant.

20 Q. So just take a fictitious unit, we'll call it
21 Unit No. 1, any turn costs at the end of a lease are going
22 to be separately billed to the unit owner, correct?

23 A. Yes.

24 Q. After application of a security deposit and any
25 extraordinary costs, right?

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1 A. All costs would be associated to the unit owner.
2 Then you would have a deduction of security deposit. And
3 then any additional damage that was done would come in as
4 income.

5 Q. Okay. Second silo, if during a tenancy there is
6 a service or work order and some maintenance or repair needs
7 to be undertaken in the unit, those charges are going to be
8 separately billed to the unit owner, correct?

9 A. Yes. It would have a similar process if it was
10 normal wear and tear, complete owner responsibility
11 dollar-wise; if it's a combination of wear and tear and
12 tenant abuse, then there would be some revenue off the
13 tenant abuse side and then the owner cost; or if it's all
14 tenant abuse, it would come in as expense to the owner,
15 revenue to the owner to offset the cost.

16 Q. In the event a work order is generated, strike
17 that.

18 In the event a work order was ever generated for
19 any of these first floor units owned by your LLC, would you,
20 as the member of the LLC, be provided a copy of that work
21 order as the work is actually taking place or at any time
22 after the work has been completed?

23 A. I'm very -- yes, I'm sure I got on a monthly
24 basis a statement that identified income and expense for the
25 16 units in this LLC. And if I would have taken the time

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1 and cared to look, I'm sure there was information in there,
2 but I do not and have not taken the time or cared to look at
3 any of those statements over the years.

4 Q. So did I hear you say -- and I apologize -- that
5 on a monthly basis you receive a statement from Ardent
6 regarding the performance of your investment in these 16
7 units?

8 A. Yes.

9 Q. And you believe that if you ever wanted to or
10 cared to, you could've reached out to Ardent and said, hey,
11 I see there's an expense item on this monthly statement.
12 Was there some service performed and can you give me a copy
13 of the work order? Do I understand your testimony
14 correctly?

15 A. If I would have cared to, yes.

16 Q. Okay. If we can turn to the second page of this
17 exhibit -- and, again, as with the other questions, Tre, if
18 you would take a minute to review this.

19 A. Okay.

20 Q. And this is a work order now dated 1/26 of 2012.
21 Do you see that?

22 A. Yes.

23 Q. And someone with better eyesight or a larger
24 version of this exhibit will have to help me. The address
25 is -- is that 1349 Halo?

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1 A. Yes.

2 Q. Okay. And if you want to scroll back to the
3 first page of this exhibit, that was also 1349 Halo?

4 A. Yes.

5 Q. All right. So this work order, now related to
6 the same property as -- dated April 5th of 2012, right?

7 A. Yes.

8 Q. And the problem description for the same
9 property, can you could read that, please.

10 A. Inspect for possible water leaks causing mold.

11 Q. Okay. If you would turn to the next page of
12 this exhibit.

13 A. Okay.

14 Q. This is dated November 21st of 2013. Do you see
15 that, sir?

16 A. Yes.

17 Q. And, again, because -- only because this copy on
18 my screen is very small, could you -- are you able to make
19 out the address?

20 A. 1351 Halo.

21 Q. So that would be a separate property, correct?

22 A. Yes.

23 Q. Separate University. And could you read the
24 problem description.

25 A. Put dehumidifier in the unit; put foam seals

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1 around outlets in master bedroom.

2 Q. Okay. If you could turn to the next page of
3 this exhibit.

4 A. Okay.

5 Q. The date of this work order is February 2nd of
6 2012. Am I reading that correctly?

7 A. Yes.

8 Q. And the property address, if you could read that
9 for me, please.

10 A. 1353 Halo.

11 Q. And so this is yet a third address?

12 A. Yes.

13 Q. And if you could read the problem description.

14 A. Mold one master bedroom, middle of wall. May
15 have to be pulled bed back -- have to pull bed back to see
16 to living room corner toward second bedroom coming through
17 walls.

18 Q. Now, having gone through the first four pages of
19 this exhibit, are those issues that are being addressed in
20 these work orders similar to the water issues that were
21 being experienced in the four units which your LLC owns at
22 the property?

23 A. These are all -- I -- I have no idea. These
24 are -- all could be separate issues based on the
25 description. I'm not sure what, put dehumidifier in unit

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1 means. Does that mean they cook a lot and there's water or
2 moisture in the air? So that one I don't know. The other
3 two seem to be consistent -- or the other three, I guess,
4 seem to be consistent with some issue of water.

5 Q. Okay. If you could turn to the fifth page of
6 this exhibit.

7 A. Okay.

8 Q. And this appears, again, from the small copy I
9 have on my screen, to be dated June 5th of 2012.

10 A. Yes.

11 Q. And the address is 1353 Halo. Am I seeing that
12 correctly?

13 A. Yes.

14 Q. And if you could read the problem description.

15 A. Mold, mildew issues again in master bedroom
16 along baseboard and carpet and the middle of wall where the
17 windows are. Also small mildew on master bathroom door and
18 closets.

19 Q. Again, as with my last question, are the issues
20 that your LLC experienced in your four units similar to
21 those that are identified in this description?

22 A. I -- I don't know that I've -- I've never seen
23 work orders for my specific units to know whether these are
24 consistent of not. I know one of the units I own has had
25 tremendous water infiltration issues. Past that I couldn't

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1 tell you if these are consistent or inconsistent with the
2 other units that I have.

3 Q. Okay.

4 MR. HOLTHUS: You can pull this exhibit down,
5 Juniko.

6 SESSION MANAGER: Yes, Counsel.

7 BY MR. HOLTHUS:

8 Q. If a tenant in one of your 16 units was to
9 vacate early before the lease termination date, are you, as
10 the member of the LLC, going to be advised as to the reason
11 the tenant has elected to leave?

12 A. Well, it very likely could have had some
13 notation on the monthly statements that I received. But as
14 I said before, I don't care to review them; therefore, I
15 would have no actual knowledge, unless someone called and
16 told me, and they did not.

17 Q. Okay. Regarding the four units on the first
18 floor that are owned by your LLC, do you know if tenants --
19 any of the tenants terminated their leases early because of
20 water, moisture or mold issues in those units?

21 A. I -- I don't have that specific knowledge. I
22 know at some point in time the property management
23 determined that the unit -- one of the units was no longer
24 leasable and it stayed down for multiple years.

25 Q. And I guess that's a -- kind of answers my

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1 question. If a determination is made -- well, strike that.

2 Would you agree with me that if a tenant can
3 elect to terminate the lease early due to mold, moisture, or
4 water issues in the unit?

5 A. Based on my knowledge of -- of the industry, a
6 tenant can choose to terminate early if there's some
7 condition that is not in line with the bargain they met
8 between the property management/owner and the tenant or
9 multiple reasons.

10 Q. Yeah. And I don't want to get too far into the
11 weeds. But I guess what I'm asking is: Whether it's
12 legitimate or not, a tenant can attempt or elect to
13 terminate a lease early because of alleged water, moisture,
14 or mold issues in the unit, right?

15 A. I guess the way you put it, tenant can choose to
16 terminate their lease early for those reasons or a number of
17 others loud dog upstairs, neighbor inconsistencies, things
18 of that nature. So they can choose to terminate whether
19 it's a legally permissibly or not, then generally that comes
20 down to the courts to decide.

21 Q. And then on another side of the equation, in
22 this instance the property manage could elect to vacate a
23 tenant from a unit, terminate the lease, and maybe give a
24 lease credit or find them another place to live within the
25 complex, right?

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1 A. I believe from a customer service basis if the
2 tenant was -- a tenant that wanted to move and there's a way
3 to move them, I would suspect that the property management
4 company would do everything they could to accommodate that
5 tenant.

6 Q. So of the four units you own and the one which
7 is still down, do you know if the tenant who last leased the
8 space elected to terminate or instead was a decision made by
9 the property manager to vacate the tenant from the space?

10 A. I have no idea what the termination or the
11 situation on that last tenant was.

12 Q. And then as to the other three, those that have
13 been down, as you say for a while but are now reoccupied,
14 were those leases for each of those terminated early because
15 of the tenant's decision or because of the property
16 manager's decision to get them out of that space?

17 A. Again, I don't get into that level of detail.
18 Ardent Property Management would have that specific level of
19 detail.

20 Q. And if a -- if any of those four tenants who
21 were occupying the space when it was vacated, if they were
22 to be given a lease credit, is that a decision made by you,
23 as the member of the LLC, or is that a decision that the
24 property management company has the unilateral authority to
25 make?

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1 A. In my particular situation, I treat these
2 investments as a passive investment. I do not pay attention
3 to the day-to-day operations. I have other things that are
4 more important in my life, from a business perspective, so I
5 use these as truly passive investments.

6 MR. HOLTHUS: Okay. Because I understand that
7 you have an eleven o'clock hard stop -- I'm not
8 suggesting I'm through with my question -- but I'm
9 going to allow others -- I've been at it for about an
10 hour, so I'm going to allow any others to step up at
11 this point. Thanks.

12 CROSS-EXAMINATION

13 BY MR. GORDON:

14 Q. Mr. Giller, my name is Scott Gordon. Can you
15 see and hear me okay?

16 A. You're in a lower -- I can barely see you, but
17 it's fine.

18 Q. Well, if you want to see me, John can show you
19 how to move my video up higher. Just so long as you can
20 hear me at the very least.

21 Sir, we spoke a month or so ago for your first
22 deposition, but I'll remind you that I am counsel for
23 defendant Associated Materials or otherwise known as Alside.
24 Okay?

25 A. Sure.

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1 Q. Just for the clarity, I'm going to show you a
2 couple of things so at least in my mind and maybe help you
3 as well, sir, I'm going present to you what's previously
4 been marked -- I think it was in your deposition --
5 Exhibit 1B. Do you see what looks to be an assignment of
6 apartment addresses on your screen?

7 A. Yes.

8 Q. I don't know if you're able to -- I'll try to
9 zoom in, but I don't know if that affects your view.

10 MR. GAMBILL: Don't worry. I've got it on our
11 screen in the conference room.

12 A. You don't have to go through a lot of details.
13 I'm very familiar with the plat. I can see it.

14 BY MR. GORDON:

15 Q. Sir, your units primarily in -- as you come in
16 the front entrance off of Polaris Lakes Drive and you turn
17 left, your -- you lease the twelve units in Building 1? You
18 own the 12 units in Building 1; is that correct?

19 A. I own the 12 units in Building 1 and the four
20 units in Building 2.

21 Q. Okay. All right. And that totals 16 units. So
22 that's all the units you own in Phase 1, right?

23 A. In Phase 1 -- I own 12 units in Phase 2.

24 Q. Okay. I'm sorry. But you own -- you own 12
25 units in Building 1 and four units, that's 16. My math is

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1 wrong. I spoke wrong, correct? You own 16 in Phase 1,
2 right?

3 A. Sixteen in Phase 1; 12 in Phase 2.

4 Q. Thank you. I'll stop presenting that.

5 Sir, I'm going to show you -- I'm going present
6 to you a document, a nine-page document that's got a title
7 of defendant's civil rule 30(B)(5) notice of deposition to
8 plaintiff RSG III NP, LLC. Do you see that document?

9 A. I do.

10 MR. GORDON: I'm going to ask that, Juniko,
11 could you please mark this, and correct me if I'm
12 wrong, but should it be Exhibit 124?

13 SESSION MANAGER: Okay. I will mark it when
14 you're done.

15 (Deposition Exhibit No. 124 was marked for
16 identification.)

17 Q. All right. Mr. Giller, one, have you seen this
18 document before?

19 A. Yes.

20 Q. Okay. And if you flip to the sixth and seventh
21 pages, there's a heading that says Rule 30(B)(5) topics.
22 Are you there?

23 A. I am.

24 Q. Have you reviewed the list of topics that are on
25 these two pages before today?

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1 A. Yes.

2 Q. Okay. And did you do that in preparation to
3 come here and sit for your deposition on behalf of RSG III?

4 A. Yes.

5 Q. Okay. What -- could you tell me what you did in
6 preparation for your deposition on behalf of your LLC today.

7 A. I reviewed the Rule 30(B)(5) topics 1 through
8 21. And spoke with my attorney.

9 Q. Okay. Did you look at any documents?

10 A. I looked at miscellaneous documents through this
11 case, but specifically as it relates to this, no.

12 Q. Okay. So that would include you didn't look
13 specifically and review any work orders that might relate to
14 any of the units that RSG owns?

15 A. Not specifically, no.

16 Q. Okay. Any e-mails that reference any units that
17 RSG owns?

18 A. I didn't have any e-mails that RSG owns as it
19 relates to this.

20 Q. Okay. Did you -- have you reviewed any
21 deposition transcripts that have -- of depositions that have
22 already taken place in this case?

23 A. Just my deposition.

24 Q. Okay. Why did you not go back and look at any
25 work orders that might relate to any of your units owned in

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1 Phase 1 by RSG?

2 A. Why did I not?

3 Q. Yeah.

4 A. I didn't find it necessary to answer the
5 questions as I look -- treat this as a passive investments.
6 I didn't look at it then, I wouldn't look at it now.

7 Q. You didn't believe that looking at any of the
8 work orders would educate you about what, if any,
9 maintenance or remediation or upkeep has been had in any of
10 your units at Northpark?

11 A. No. I didn't think going back ten years and
12 looking at work orders for people who had different issues
13 in the probably hundreds of people that lived in there was a
14 good use of my time.

15 MR. GORDON: Juniko if you would mark Exhibit
16 124.

17 SESSION MANAGER: Yes, Counsel. For the record,
18 mark Exhibit BR and Exhibit 124.

19 MR. GORDON: Thank you.

20 BY MR. GORDON"

21 Q. Now, sir, do you recall -- did you, on behalf of
22 RSG, enter into a property management agreement with Ardent
23 for the management of your units?

24 A. I do not have an active property management -- I
25 do not have an active property management agreement with

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1 Ardent.

2 Q. Okay. Has RSG ever had a property management
3 agreement with Ardent with respect to your Phase 1 units?

4 A. Nothing -- nothing that I've seen or recall from
5 the past ten years.

6 Q. Okay. So how did Ardent begin managing your
7 units in Phase 1?

8 A. As you are well aware, I work for Metro
9 Development and I just -- it just didn't -- I guess we just
10 didn't seem like it was important at the time and they were
11 going to manage my units pursuant to the way that they
12 manage all the other units.

13 Q. Okay. So when you entered into that -- well,
14 was it an oral agreement, I guess, because you didn't have a
15 written agreement; that they would manage your units?

16 A. Quite frankly I'm not even sure it was an oral
17 agreement. It was probably just assumed between us.
18 Probably just assumed.

19 Q. Okay. When you begin permitting Ardent, whether
20 it was expressly agreed upon or implicitly agreed upon, but
21 at some point from the beginning of your ownership Ardent
22 has always managed these units on your behalf, right?

23 A. That's correct.

24 Q. Okay. And when you began permitting them or
25 they began managing your units, did you intend to have them

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1 manage your units in the same manner that they're managing
2 all of the other Phase 1 units?

3 A. Yes, I did.

4 Q. Okay. And that would be with respect to the
5 interior of the units, as well as how they manage any
6 exterior of the units pursuant to an agreement with the
7 condo association; is that right?

8 A. That --

9 Q. I'm sorry. Your microphone cut out. What did
10 you say?

11 A. That's correct.

12 Q. Thank you. Now, in response it to some of
13 Mr. Holthus' questions I just wanted to clarify. You stated
14 you don't have -- 'cause of the how you look at these units,
15 you don't really have any involvement in setting monthly
16 rental rates for your units, right?

17 A. No.

18 Q. Ardent does all of that and you're okay with
19 that because you intend for them to figure out what a fair
20 market value rate is for your units, right?

21 A. Yes. They're the expert in the field. I rely
22 on them to do that.

23 Q. And then when they offer your units, you intend
24 to permit them to enter into lease agreements on your --
25 RSG's behalf and bind your company to lease each apartment

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1 to whichever tenant Ardent decides to rent to, correct?

2 A. Based on the credit qualifications and whatever
3 else they've put in place to determine the tenant's ability
4 to rent and pay, yes, they do that.

5 Q. Okay. But they enter into a lease agreement
6 on -- effectively on RSG's behalf with a suitable tenant,
7 right?

8 A. Yes.

9 Q. And then you, as part of your agreement and
10 their management of units, you have given them the authority
11 to make the decision in their discretion as to what, if any,
12 interior upkeep or repairs need to be made to any of your
13 units; is that right?

14 A. That correct.

15 Q. Okay. And if Ardent decides, in their
16 discretion, that some type of assessment or charge needs to
17 be passed on to the tenant, you, as part of your agreement,
18 that is what you intend Ardent to have the authority to do
19 an behalf of RSG, correct?

20 A. Yes. I don't have a written agreement, as I
21 said, but the understanding is they're going to manage and
22 operate as they do with the other units in the complex.

23 Q. Okay. Yeah, I understand you don't have a
24 written agreement. I'm trying to understand what your
25 understanding is of how you're looking at the relationship

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1 between RSG and Ardent, even though you don't have a written
2 agreement.

3 If Ardent decides, in their discretion, that
4 some type of rent credit or rent reduction should be given
5 to a tenant for any number of reasons, including water or
6 moisture intrusion, you intend to give Ardent the authority
7 on behalf of RSG to do that, right?

8 A. Yeah, they have the authority -- they have the
9 authority to make the decisions on the internal/external
10 management of the units. They have that authority.

11 Q. Okay. And included in that authority they have
12 the ability to essentially act on behalf of RSG as the unit
13 owner, correct?

14 A. Yes.

15 Q. Okay. I mean, to cut to the chase, Ardent acts
16 as the agent of RSG when -- with respect to any of your
17 units in Phase 1, right?

18 MR. GAMBILL: Objection as to the legal
19 conclusion. You can answer.

20 A. I don't know how you defined agent or not define
21 agent. They act -- in my mind they act as the manager which
22 takes care of the responsibility of the unit.

23 Q. And acting as the manager, that includes RSG
24 giving them the authority to enter into agreements with
25 tenants, and make decision with respect to tenants and the

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1 unit, correct?

2 A. Yes.

3 Q. And you stated earlier that you do receive
4 monthly statements about all of your Phase 1 units, correct?

5 A. Yes.

6 Q. Okay. And when I'm saying you, just to be
7 clear, I'm saying that you're personally receiving them, but
8 you're receiving them in the capacity as the sole owner of
9 RSG. Do you understand that?

10 A. I am receiving -- I as a person and I as the
11 owner of RSG, receive the statements on a monthly basis.
12 And as I said before, I don't look at them. I just --

13 Q. Okay.

14 A. -- shred them and move on.

15 Q. Okay. Do you get them by e-mail?

16 A. I -- not for the -- I think just in a more
17 recent basis I would get them by e-mail. But in the
18 ten-plus -- over ten years of -- 12 years of ownership I'm
19 sure they came in a paper form at some point in time, so
20 therefore shred. Otherwise, I glance at the income and then
21 delete the e-mail or it sits in my e-mail or whatever, but I
22 think Ardent has all that information that they've provided
23 or should provide to you.

24 Q. Okay. Included -- you're familiar enough with
25 probably the hundreds if not more monthly statements that

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1 you've received about your Phase 1 units, that they include
2 rent received for a particular month as well as any
3 maintenance or upkeep charges that would have been assessed
4 to any particular unit; is that right?

5 A. As you know, I'm in the business. I know what
6 an income and expense statement is constructed of.

7 Q. Okay. Well, I'm just asking about these
8 specific monthly statements, does it show \$30 was charged to
9 this unit because we had to go in and change out an oven
10 burner or something like that or fix drywall or touch up
11 paint or anything related to those units and work was done
12 on those?

13 A. Yes.

14 Q. Okay. And you said -- your testimony I think
15 earlier was if you cared or if you treated these units -- or
16 thought of them differently than you do, you could have
17 looked at these statements. And if you had questions, you
18 could have called Ardent to ask more question about these
19 charges, right?

20 A. Absolutely could've, but I -- I did not and do
21 not.

22 Q. Okay. And you never have done that with respect
23 to your Phase 1 units because, as you stated, you look at
24 these completely as a passive investment; is that right?

25 A. My Phase 1 units and the other hundreds of units

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1 that I own I do the same thing.

2 Q. Okay. And have you always received monthly
3 statements since the beginning of your ownership of those
4 Phase 1 units?

5 A. Yeah. Yes.

6 Q. I mean, your receiving of the monthly
7 statements, did that start as soon as you became the owner
8 of the units and as soon as they started to become leased?

9 A. Well, they were more than likely leased before I
10 purchased them. But, yes, as soon as I became an owner of
11 those units, I received statements from the second month of
12 ownership probably forward.

13 Q. Now, you also said when Mr. Holthus asked
14 previously how Ardent determines the monthly rent and
15 whether they consulted with you, Ardent does not consult
16 with you about those types of decisions, does it?

17 A. On a monthly rent on a specific unit that I own?
18 No.

19 Q. Okay. And I think you said that if they asked
20 you, you wouldn't answered. If they would have called you
21 about that you wouldn't have answered because that's not how
22 you treat these investments, right?

23 A. No, I would not get into that level of detail.

24 Q. Has anyone from Ardent ever called you about --
25 Well, I guess, has Ardent ever called you where

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1 you haven't picked up the phone and returned a call with
2 respect to your Phase 1 units?

3 A. I work in the same building with them, so
4 unlikely that they would call me.

5 Q. Okay. Because if somebody from Ardent wants to
6 talk to you they just walk down to your office and talk to
7 you about it?

8 A. Yes.

9 Q. Okay. RSG does not have any written agreements
10 with Associated Materials or Alside, right?

11 A. No.

12 Q. And RSG III NP, LLC, has never had any written
13 or even oral agreement with Associated Materials or Alside,
14 right?

15 A. No.

16 Q. I'm sorry. Your microphone cut out. Was that
17 right or wrong?

18 A. I do not have, as RSG, any written agreements
19 where if I've signed anything as RSG III with Alside.

20 Q. Okay. Sir, I'm going to present another group
21 of documents. Let me know when a new set of documents
22 appears on your screen, if you would.

23 A. They're here.

24 Q. I'm going to submit to you that these are
25 approximately 31 pages of documents that were produced by

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1 your company through the discovery process in this case.
2 Would you scroll through these and familiarize yourself with
3 these documents.

4 A. They're not presented by my company.

5 MR. GAMBILL: If I may clear this up make sure
6 this is clear, that are documents that would have
7 been produced in response to RSG's discovery
8 responses that have the RSG Bates stamp that would
9 have been obtained through Ardent as apart of the
10 document collection process. So just trying to
11 explain what maybe he means. What he means by they
12 wouldn't have been produced by RSG is that it's not
13 part of RSG's records, but yet instead they are part
14 of Ardent's records, which were gathered as apart of
15 the discovery process. Just to make the clear.

16 MR. GORDON: Juniko, I intend to have this
17 marked as Exhibit 125.

18 BY MR. GORDON:

19 Q. Mr. Giller, did you participate or gather any
20 documents with respect to requests for discovery that were
21 submitted to your company, RSG III, in this case?

22 A. Anything that I had -- but as I said, I did not
23 retain any of the property management monthly statements.
24 The limited amount of documents that I have as it relates to
25 this would be loan documents, contract to purchase, and tax

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1 returns. That's all I have as it relates to this. So
2 anything documentation-wise would have been provided by the
3 property management company.

4 Q. Did you review any of the documents that Ardent
5 gathered in response to RSG's -- or the discovery request
6 that were submitted to RSG in this case?

7 A. I reviewed the Rule 30(B)(5) topics, 1 through
8 21, but I did not specifically review all these -- any a
9 number of maintenance requests you're going to show me.

10 Q. All right, sir. On page 1 of Exhibit 125 that's
11 on your screen or should be on your screen now, do you see
12 the address that's identified on page 1 as 1353 Halo Street?

13 A. Yes.

14 Q. Okay. And -- and if you'll scroll through all
15 of these where I'll submit to you that on this is 31 pages
16 of what appears to be work orders as they relate to 1353
17 Halo Street. Is it your testimony that you've never
18 reviewed any of these work orders as it relates to 1353 Halo
19 Street?

20 A. I've not.

21 Q. Okay. Now, previously in your initial
22 deposition when you were here last I believe you testified
23 that you first became aware of moisture or water intrusion
24 possible issues as early as back in 2011. Do you recall
25 that testimony?

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1 MR. GAMBILL: Objection.

2 A. 2011, I was specifically aware of a systemic
3 problem with the project when the Mays report came out.

4 BY MR. GORDON:

5 Q. Right. But you recall in your testimony stating
6 that you were aware that there might be moisture or water
7 intrusion issues back in 2011, but that you didn't -- as you
8 just stated, you didn't realize maybe the severity or
9 specific nature of those issues until the Mays report came
10 out; is that right?

11 MR. GAMBILL: Objection. Scott, you're asking
12 him to recall previously provided testimony that's
13 already been transcribed and put into a transcript.

14 MR. GORDON: Yeah.

15 MR. GAMBILL: The transcript says what it says.
16 Ask a question, but don't ask him to recall what his
17 testimony --

18 MR. GORDON: I can ask him if he recalls.

19 BY MR. GORDON:

20 Q. Sir, do you recall giving your prior deposition
21 in this case?

22 A. I recall sitting here for eight hours, yes.

23 Q. Okay. And do you recall previously testifying
24 that you first learned of water and moisture intrusion
25 issues as early as 2011?

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1 A. I believe I recall anecdotally knowing that
2 there were some isolated issues; however, specifically to
3 know the extent of the issues, I was not aware until the
4 Mays report.

5 Q. So anecdotally, how would you have become aware
6 that there were moisture or water-related issues to any of
7 the units at Northpark back in 2011?

8 A. Earlier conversation.

9 Q. With whom?

10 A. Property management, perhaps.

11 Q. Okay. And by property management, are you
12 referring to Sydney Noblett at Ardent or someone else?

13 A. Yeah, it could very likely have been Sydney
14 Noblett.

15 Q. I'm sorry. It is pronounced Noblett. I'm
16 sorry.

17 In those discussions with Sydney Noblett, were
18 those centered around units that you actually owned or were
19 those conversation centered around other units?

20 A. I don't recall.

21 Q. Following those general conversations with
22 Mr. Noblett, did you have any follow-up conversations with
23 him wherein you inquired about the status of those possible
24 issues?

25 A. No. We manage 7 -- thousands of units. And

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1 over the last 22 years of my career I have had anecdotal
2 conversations about anything and everything as it relates to
3 properties across the board, from potential water issues on
4 isolated units to roofs blowing off. So I can't
5 specifically tell you what exact conversation I've had 10
6 years, 9 years, 8 years, 7 years, 6 years, 5 years, 4 years,
7 3 years, 2 years or one year ago regarding a specific
8 incident.

9 Q. Okay. Do you agree with me on page 1 of this
10 document that's in front of you, the date appears to be
11 January 26th, 2012? Do you see that at the upper right hand
12 corner?

13 A. Hold on. Yes.

14 Q. The date of the call. I should have been more
15 specific.

16 I think according to your testimony -- if you
17 scroll down on to page 1 -- there's a total amount -- it's
18 kind of blurry, but it appears to be 31.66, the total charge
19 for this work order. Do you see that?

20 A. Yeah.

21 Q. Okay. And would you have expected that charge
22 to appear on the monthly statement with respect to 1353 Halo
23 Street?

24 A. Yeah. I based on what I see it's a work order
25 for a specific unit, I assume whoever owns that unit would

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1 have that show up as an expense to their unit.

2 Q. Okay. And any charge that is made with respect
3 to a unit, just given your vast experience with how this
4 kind of arrangement works, you would expect those charges,
5 then, to show up on that unit's monthly statement, either
6 that month or the following month, correct?

7 A. Yeah. Any expense charged I would expect would
8 eventually show up on an individual unit's statement for
9 that individual unit or I would expect an expense for the
10 overall maintenance of the common areas to show up on the
11 statement on a prorated basis.

12 Q. Okay. And 1353 Halo, this is one of your first
13 floor units in Phase 1, right?

14 A. Yeah. I guess so. I guess you're right.

15 Q. Okay. Now, sir, do you see on page 1 still at
16 the very bottom of the page it says, technicians notes. Do
17 you see where it says: Clean wall in living/master? And
18 then it reads: Call Alside and Select Services. Do you see
19 that?

20 A. Yeah.

21 Q. Okay. And is it fair to assume that you didn't
22 call Alside or Selective Services about this work order or
23 anything to do with this work order, right?

24 A. I think that's fair to assume.

25 Q. Okay. And you don't have any personal knowledge

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1 as to what, if anything, was discussed regarding this work
2 order with Alside or Selected Services, correct?

3 A. Correct.

4 Q. I'll stop presenting that exhibit.

5 MR. GAMBILL: Scott, is that the same exhibit or
6 the same set of documents that Doug had earlier or is
7 it a separate batch.

8 MR. GORDON: It's a separate batch. Those only
9 relate to 1353 Halo Street.

10 MR. GAMBILL: I just wanted to make sure I was
11 clear.

12 SESSION MANAGER: Marking Exhibit 125.

13 (Deposition Exhibit No. 125 was marked for
14 identification.)

15 BY MR. GORDON:

16 Q. Sir, I am going to now present -- sir, I'm going
17 present a two-page document that I would ask Juniko to mark
18 as Exhibit 126. In the lower right-hand corner on the first
19 page it's marked Bates stamp RSG 000386 and then the second
20 page is RSG 000387. Do you see that document on your
21 screen, sir?

22 A. Hold on. Yes, I see the e-mail correspondence
23 on my screen.

24 Q. Who's Valerie Geiser? Do you know who that is?

25 A. She's the person who runs the maintenance for

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1 Ardent Property Management.

2 Q. And that would include maintenance at Northpark
3 Place, at least at some point since you've owned the units
4 there?

5 A. Yes. At some point. I have no idea when she
6 started. I have no idea when she took that responsibility
7 over. But I know she is the current maintenance coordinator
8 for Ardent Property Management.

9 Q. Okay. If you'll look at the bottom of the first
10 page where it begins, Hi, Darrin. Do you see that?

11 A. Yeah.

12 Q. And would you agree with me this appears to be
13 some e-mail correspondence, at least this portion of it,
14 that's dated June 22nd, 2015?

15 A. Yes. As I reviewed it, I was not copied, nor
16 have any knowledge of this until now.

17 Q. Okay. If you follow along, do you see where it
18 says under, Hi, Darrin, it reads: We have been having
19 continuous issues inside 1353 Halo -- and then --
20 (discoloration). This have been going on for at least four
21 years and happens with every resident that moves into the
22 unit.

23 Do you see that?

24 A. Yeah.

25 Q. Okay. And the 1353 Halo, would you take that to

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1 mean 1353 Halo Street, your unit at Northpark?

2 A. Yes. Now, I own 1353 Halo. Yes.

3 Q. Okay. Is it your testimony that although
4 Ms. Geiser writes here to Darrin that this unit has been
5 having issues for at least four years, it's your testimony
6 as of June 2017 you were not aware that your unit had been
7 having issues for four years before that?

8 A. No, I was not aware until and -- I was not aware
9 that there was any systemic problems with my unit or any
10 units in Phase 1 until the Mays report came out.

11 Q. It's not surprising to you that Ardent, as the
12 day-to-day property manager of your units, has more intimate
13 and extensive knowledge about the condition of your units,
14 right?

15 A. Absolutely not.

16 Q. I mean, that's the way you would expect it to
17 be, right?

18 A. Based on my testimony I think that is accurate.

19 MR. HOLTHUS: I'm going to stop presenting that
20 and that was Exhibit 126. And like Mr. Holthus did,
21 I imagine I have some other questions, but for the
22 sake of allowing other parties the opportunity to
23 question, I'll stop my questioning at this point and
24 give everyone else the opportunity. So I thank you,
25 Mr. Giller.

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1 SESSION MANAGER: Marking Exhibit 126.

2 (Deposition Exhibit No. 126 was marked for
3 identification.)

4 MR. ANDERSON: I have just a little bit. It's
5 pretty minor, but if no on minds I could ask a couple
6 of questions.

7 MR. GAMBILL: Sounds like you're up, Scyld.

8 CROSS-EXAMINATION

9 BY MR. ANDERSON:

10 Q. All right. Mr. Giller, my name is Scyld
11 Anderson. I'm here on behalf of Ross Seese Construction and
12 Development.

13 MR. ANDERSON: Juniko, would you present and
14 mark a document that I just uploaded. It's titled
15 RSG Responses to Ross Seese Interrogatories.

16 SESSION MANAGER: Presenting.

17 A. I don't see you. Is that --

18 Q. I'm sorry. I had my camera off.

19 SESSION MANAGER: Marking Exhibit 127.

20 (Deposition Exhibit No. 127 was marked for
21 identification.)

22 BY MR. ANDERSON:

23 Q. I think I found just a small mistake in your
24 answers to interrogatories here and I just wanted to clarify
25 it for the record. Would you go to Interrogatory No. 6 of

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1 what's been marked as Exhibit 127. First of all, let's go
2 to the last page. Does the last page bear your signature?

3 A. Yes.

4 Q. And by signing you intend to verify your belief
5 to the truth of the answers contained in the foregoing
6 interrogatories above your signature, right?

7 A. Yes.

8 Q. Could you go to No. 6, please, Interrogatory
9 No. 6, please. You see the list of units there?

10 A. Yes.

11 Q. It all lines up with your description of owning
12 the units in Buildings 1 and 2 except for 1468 Gauge Street.
13 There is no 1488 Gauge Street at Northpark, is there?

14 A. If you go back to the plat map that was on as
15 one of the other exhibits, that seems --

16 Q. I think you're right. I think that is a mistake
17 right there.

18 MR. ANDERSON: Juniko, could you bring up the
19 plat map, please. I think it was previously marked
20 today as 1BR.

21 SESSION MANAGER: Yes.

22 MR. GAMBILL: Scyld, I think I ought to clean
23 this up, too, just to help out. I went through and
24 identified owners for each unit at Northpark and
25 Attleigh. As I was looking at the discovery

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1 responses I believe I found the same error that you
2 are speaking of with regard to that unit number.

3 MR. ANDERSON: Can we just stipulate that he
4 owns 1346 Gauge in Building 2 and that there is no
5 1468 Gauge in Northpark?

6 MR. GAMBILL: Yeah, we can stipulate to that if
7 you'd look. I mean, I can read what I have as being
8 his unit numbers.

9 MR. ANDERSON: I think I got it. Just as long
10 as we got that stipulation. It's minor, but --

11 MR. GAMBILL: I plan -- I'm just going to send
12 out an updated discovery responses if that makes it
13 cleaner for the record.

14 MR. ANDERSON: That's all I noticed. Everybody
15 else is doing a great job. Thank you, sir. I'll
16 pass on the baton.

17 MR. GAMBILL: All right. Who's taking the
18 torch? Either Alan, Andy or Nick it seems like?

19 MR. DAILIDE: I can go next.
20
21

22 CROSS-EXAMINATION

23 BY MR. DAILIDE:

24 Q. Hello, Mr. Giller. Nice to speak with you
25 again. My name is Alan Dailide. I'm counsel for Barrier

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1 Solutions, Inc..

2 Sir, did you personally or as behalf -- on
3 behalf of RSG ever speak to anyone from Tremco?

4 A. On behalf of RSG? No.

5 Q. What about on a personal level, have you ever
6 spoken to anyone from Tremco?

7 A. On a personal level, as a business personal
8 level or as my own personal level?

9 Q. As yourself, Tre Giller.

10 A. Perhaps on site at one point in time during
11 construction, but no more than that.

12 Q. Do you remember who you spoke to?

13 A. No. It would've just been a passing
14 conversation while they were spraying on the emulsive
15 material, I believe.

16 Q. And just to clarify, what you testified earlier
17 with Mr. Holthus about, you know, the four units -- your,
18 you know, four units exhibiting water issues. What units in
19 this lawsuit are you claiming damage in relation -- in
20 relation to?

21 A. I'm claiming damage to all 16 of my units and
22 also claiming damage for all 16 of the units as they've
23 been -- that investment and RSG Northpark III has been
24 damaged. So they would be all 16 units. Specifically I've
25 had water infiltration on the first floor of the four units

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1 on the Building No. 1, I think, which is the 12 units to the
2 north side of the clubhouse.

3 Q. Okay. Can you tell me what it is your total sum
4 of alleged damages?

5 A. I believe in rent loss alone it's over \$30,000.

6 Q. What about -- is that the extent of what you're
7 damages are comprised off, lost rent?

8 A. No. I think ultimately the damages would be --
9 now that I know there's a -- now that I know that there's
10 systemic problem with the exterior of the buildings that's
11 caused these maintenance issues over the years, I would
12 suspect that there would be damages associated to those as
13 well on a reverse accounting to find out what we would
14 attribute to the incorrect installation of the exterior
15 materials on the building.

16 MR. DAILIDE: Juniko, can you pull back up
17 Exhibit 125.

18 SESSION MANAGER: Yes, Counsel. Presenting.
19 BY MR. DAILIDE:

20 Q. Okay. Sir, I know -- you just were taking about
21 this Exhibit 125 in relation to -- which are comprised of
22 work orders that -- from Ardent Property Management. And
23 just to clarify, are you -- was your testimony you didn't
24 have anything to do with the collection of the documents
25 produced on behalf of your entity today?

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1 A. The documents I would have provided would have
2 been the deed or the purchase contract information, the --
3 the only documents I have would be the loan documents and
4 then all other information Ardent would have provided on my
5 behalf as I do not store any of that information.

6 Q. Okay. So I'll represent to you that in your
7 document production, what's set forth in these 31 pages of
8 Exhibit 125, were the only maintenance work orders I saw.
9 And you -- feel free to look through the 31 pages to the
10 extent you need necessary -- but all of them only relate to
11 the address 1353 Halo Street. Would you believe that there
12 would be -- Ardent would have produced these similar records
13 related to mold, water, or mildew as to the other units if
14 those records existed?

15 A. Yes. I'm not going to quibble with your -- the
16 fact that these are maintenance records. I have not seen
17 them until now and I won't quibble with the fact that you're
18 telling me they're all 1353 Halo Street. I can scroll
19 through every single one of them, but for the sake of time
20 I'll agree they are what they are.

21 Q. Okay. So, I mean, you don't -- you're not aware
22 of any maintenance or other fees that aren't reflected in
23 these work orders done to your units, are you, related to
24 this lawsuit?

25 A. I am specifically not aware of the -- not

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1 reviewed, nor have I reviewed over the time of my ownership
2 the individual monthly statements which would have had
3 likely anything from water infiltration issues to bed bugs,
4 let's say, in my units over my time of ownership.

5 Q. Sir, who is Chris Libel?

6 A. He was the director of construction for Metro
7 Development several years back.

8 Q. Do you know him personally?

9 A. He worked for me.

10 Q. Was he -- go ahead, sir.

11 A. He worked for Metro Development, which as you
12 know, I'm the president of Metro Development. He had no
13 relationship to RSG III, LLC. I did not know him as RSG
14 III. I knew him as he was an employee of Metro Development,
15 which I'm the president of.

16 Q. Was he a good employee?

17 A. He no longer works for the company. He left on
18 his own volition.

19 Q. Well, my question was: Was he good at what he
20 did while he was there?

21 A. Yeah, he did -- Chris, nice guy. Did a fine
22 job.

23 Q. Did you communicate with him regularly?

24 A. Chris Libel worked for me as the director of
25 construction as my role as Metro Development.

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1 Q. Well, if something was going on would you expect
2 Chris to tell you about it?

3 MR. GAMBILL: Objection, Alan, as to the -- I
4 guess outside of the scope of the 30(B)(5) deposition
5 today. You can answer it. If you keep going pretty
6 far into that route I'm going to continue to object.

7 MR. DAILIDE: I mean, you can object. That's
8 fine. I'm just asking him as person sitting there
9 today if he knew Chris Libel and if they talked about
10 stuff.

11 MR. GAMBILL: You're actually going into his
12 role as president of Metro Development. And you can
13 agree with me on that.

14 But noting my objection, Tre, you can answer the
15 question.

16 THE WITNESS: Ask your question again.

17 BY MR. DAILIDE:

18 Q. If -- you know, would Chris regularly
19 communicate to you -- with you about issues going on at
20 Northpark?

21 A. I'm here for Northpark, my LLC. Didn't we do
22 this last time and you said you're going to come back to me
23 as Metro?

24 Q. We can argue about this. All I'm asking you as
25 you sit here today, as an individual, if Chris Libel,

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1 another individual, ever talked to you about any issues
2 going on with Northpark? I don't care if it was while
3 sitting there having a beer after work or in an office as
4 Metro Development. I'm not asking about Metro Development.
5 I'm asking about you personally sitting there today.

6 A. Chris Libel and I -- Chris Libel worked for me
7 for multiple years as a construction superintendent and then
8 director of construction. Chris Libel and I probably talked
9 over the years multiple times a day about any issue that may
10 or may not be going on with our current construction
11 projects. Do I recall him specifically sitting me down and
12 having a conversation with me about some potential, one off
13 water issue at Northpark, if it was or wasn't happening?
14 No, I don't recall that specific conversation.

15 Q. Okay. Do you know -- I mean, you've testified a
16 number of times in regards to when you were aware of the
17 water intrusion and your testimony, and correct me if I'm
18 wrong, has been that you weren't aware of the systemic
19 problem with, you know, exterior water intrusion in the Mays
20 report came out, correct?

21 A. That is accurate.

22 Q. So what date -- I mean, I can tell you, I
23 believe the Mays -- the initial Mays report came out -- or
24 was dated sometime in 2019. Is your testimony you weren't
25 aware of that until 2019?

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1 A. Clearly we -- we -- off -- we, I guess,
2 requested the Mays report, so there was some inkling that
3 there was a problem at least 60, 90 days before the report
4 came out or however long it took him to do the physical
5 inspection and then come out, so we had some inkling that
6 there was a bigger issue. But specifically my knowledge of
7 the systemic issue was driven from the results of the Mays
8 report.

9 Q. Okay.

10 MR. GAMBILL: For purposes of the record -- I
11 don't believe I'm speaking out of turn here. I just
12 want to make sure we're talking about the correct
13 Mays report. My understanding is, and somebody
14 correct me if I'm wrong, there are three total Mays
15 reports, one beginning in January of 2018; one in
16 December of 2019; and then one in August of 2020.
17 And so I just want to make sure we're talking about
18 the same report.

19 MR. DAILIDE: Fair enough, John. I remember --
20 and I may have misspoken whether it was December of
21 '18 or January of '19. But, yeah, I'm referring to
22 the initial report, because obviously there's been a
23 number -- a lot of testimony today about I knew when
24 the Mays report came out and I would like to just
25 put --

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1 MR. GAMBILL: So there is, at least in my
2 understanding, there's the January 2018 report; a
3 December 2019 report; and an August 2020 report is
4 what my understanding is, based upon the records of
5 the documents that have been produced in this case.
6 I just want to make sure we're talking about the
7 correct one.

8 BY MR. DAILIDE:

9 Q. For purposes of clarification, I'm referring
10 to -- the first Mays report is what I'm assuming you're
11 referencing, sir. And you can feel free to clarify your
12 testimony however you want.

13 A. The first -- whatever date is on -- I don't have
14 that in front of me, but whatever the date of the first Mays
15 report, which I believe I testified to before, is the first
16 time I was aware that there's a systemic problem with the
17 exterior installation of materials on the building. That
18 was to the first time I knew specifically that there was
19 issues. I've heard of anecdotal issues in communities
20 across our portfolio where water -- there could or could not
21 been water infiltration from tenant-related driven issues to
22 leaks in door to all kind s of things over my career.

23 Q. Well, just specifically as to Northpark and your
24 RSG units on Northpark, when did you first know of exterior
25 water intrusion related to RSG's units?

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1 A. When the original Mays report was issued is when
2 I was completely aware that there was a systemic problem
3 with the installation of the exterior materials. Prior to
4 that I had anecdotal conversations with people, but it
5 didn't raise to the level of the problems that the Mays
6 report identified.

7 MR. DAILIDE: Okay. Juniko, can you pull up
8 what I've identified as Tab 6.

9 SESSION MANAGER: Yes, Counsel.

10 MR. DAILIDE: And you can mark that as -- I
11 think it's Exhibit 128.

12 SESSION MANAGER: Searching. Presenting and
13 marking Exhibit 128.

14 (Deposition Exhibit No. 128 was marked for
15 identification.)

16 BY MR. DAILIDE:

17 Q. And, Mr. Giller, go ahead and take a look at
18 that and just let me know when you're ready to talk about
19 that e-mail.

20 A. Okay.

21 Q. I just want to note for purposes of the record
22 this was a document produced by RSG Bates label 0410. This
23 is an e-mail from -- and tell me if you agree with me --
24 Chris Libel. It appears to be Greg Hoffman. Dated
25 April 6th, 2016. Is that correct?

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1 A. Yes. I was not on this e-mail.

2 Q. Yes, I understand that, sir.

3 Do you agree with me that -- I mean, this
4 appears to be related to your unit, based off the content at
5 1353 Halo?

6 A. Yes.

7 Q. And do you agree with me that the e-mail is
8 requesting a time to pull off the siding and check the seat
9 flashing over the stone. It indicates that we're getting
10 water behind the stone, which is making its way into the
11 wall cavity via the nails from the chicken wire, correct?

12 A. Yes. I don't disagree that that's what that
13 says.

14 Q. So did Chris Libel ever talk to you about this
15 in April of 2016?

16 A. No, I don't remember this specific conversation.

17 Q. I mean, would you have expected Chris Libel to
18 say something about -- to you in your personal conversations
19 if they were ripping off or wanted to rip off the exterior
20 of your unit?

21 A. No. I -- the building was constructed in 2010.
22 A potential maintenance issue or question that would have
23 come to construction from Ardent, from a building that was
24 built in 2010 on one specific set of circumstances, would
25 not have come to me in my role as RSG III or any role.

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1 Q. I mean, even as the owner they wouldn't tell you
2 if they were going to rip off -- you know, or contemplating
3 removing the exterior of your building or of your unit?

4 A. As I've testified in the past, I view all of my
5 real estate investments as a passive investment, and I do
6 not take an active role, nor do I have an interest in taking
7 an active role in an individual unit out of 100 to 200 units
8 that I own.

9 Q. Okay. I understand that, sir. But even if the
10 unit is going to be facing a material expense?

11 A. That's the way I view my investment. It's a
12 passive investment. I would not expect someone to bring to
13 me, as the owner, the fact that they're doing some
14 maintenance on my particular unit. That is not the way I
15 view these investments for myself or my family.

16 Q. Okay.

17 MR. DAILIDE: Juniko, you can stop presenting
18 that e-mail.

19 BY MR. DAILIDE:

20 Q. Mr. Giller, you testified a couple times about
21 you're in excess of 30,000 in lost rent alleged as damages
22 in this lawsuit. Did you have any role in coming up with
23 the calculation of that lost rent?

24 A. I did not.

25 Q. Who does that for you?

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1 A. I believe Ardent Property Management provided
2 that information.

3 Q. So Ardent did those calculations?

4 A. I believe that to be correct.

5 Q. So Ardent would be able to answer questions
6 about what your claim is considering that?

7 A. They would be the ones I would ask that
8 question. If I was asking or you were asking.

9 Q. Do you carry insurance for your units, sir?

10 A. Yes.

11 Q. Who is your insurance broker?

12 A. Bob Smith.

13 Q. And where is Bob Smith? What his agency's name?

14 A. It's now -- I believe he's with Levit now. He
15 was with Smith and something else before, but I believe he's
16 with Levit now.

17 Q. That's Levit Insurance?

18 A. Yes.

19 Q. And who's your carrier for your units?

20 A. I believe Nationwide is the carrier for these
21 units.

22 Q. And have you made an insurance claim in relation
23 to any of the units you're alleging damage?

24 A. I did.

25 Q. And what was included in your claim?

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1 A. Loss of rents claim.

2 Q. And what was Nationwide's response to that
3 claim?

4 A. I believe they -- not believe, I know. They
5 denied the claim based on some exception that they have that
6 says that the claim was caused by the construction defect
7 versus a, I guess, a natural disaster. However you want --
8 I'm not an insurance expert. But as insurance companies
9 usually do they have declined the claim.

10 Q. So they haven't paid anything to regards to that
11 claim?

12 A. No.

13 Q. And just to clarify, when your insurance
14 coverage -- and I'm just trying to -- I'm referencing back
15 to Mr. Noblett's testimony. But your insurance coverage is
16 as to the interior of your units, correct?

17 A. Yes. I have interior liability and loss of
18 rents coverage. And then the association has insurance
19 covering the exterior. And then I have, you know, umbrellas
20 and other things that you would imagine I would have.

21 Q. Do you have records of your communications with
22 your insurance carrier as to that claim?

23 A. Yeah, I'm sure I must. I don't specifically
24 recall. I know I spoke with a person on the phone, but I
25 had to make a claim, so I made a claim in writing somewhere.

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1 I don't recall exactly where, but I'm sure I made a claim.

2 Q. Would you please send -- I'm assuming there's a
3 written claim and they send a written letter. Would you
4 give those to your attorney for us, please.

5 A. Yeah, that's no problem.

6 Q. And just to clarify on -- in regards to -- you
7 know, you've testified multiple times that you're not
8 involved in regards to daily management, but I just want to
9 cover all my bases. As for -- you don't have any specific
10 knowledge in regards that your Northpark units in -- as to
11 unit turnover or costs on the unit turnover, do you?

12 A. I do not.

13 Q. Okay. Well, I'm assuming that those costs are
14 showing up on your monthly statements, but per your previous
15 testimony you're not really looking at those, right?

16 A. No. I would probably only pay attention if the
17 building burned to the ground.

18 Q. And was -- was 1353 the -- a unit -- was that
19 unit remediated on the exterior?

20 A. I don't specifically know what the remediation
21 efforts were on that particular unit.

22 Q. Okay. You don't know if any work was done on
23 that particular unit, you know, per that previous e-mail, to
24 the outside?

25 A. Again, I read the e-mail for the first time. I

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1 would assume something was done. I have no specific
2 knowledge of what was done.

3 Q. Fair enough. I'm just trying to figure out -- I
4 know that there was exterior remediation done to one unit in
5 the Northpark Phase 1. And I -- based off that e-mail and
6 some other documents in your production, I was guessing it
7 was that one, but I still don't know. So I was wondering if
8 you did.

9 A. No. I don't have the specific -- as I've
10 testified, I don't have specific knowledge of what happens
11 on one of my units that I own. I don't pay that specific
12 attention to it.

13 MR. DAILIDE: Okay. I don't have anything
14 further at the moment for you, sir. Thank you.

15 MR. GAMBILL: Nick?

16 MR. SMITH: No questions from me, John.

17 MR. BOBB: All right. I guess the baton is
18 passed to me.

19 CROSS-EXAMINATION

20 BY MR. BOBB:

21 Q. Mr. Giller, my name is Nicholas Bobb. I
22 represent Bernardo Stucco and Stone. Are you familiar with
23 Bernardo?

24 A. The individual and the company? Yes.

25 Q. Okay. Now, in your role as the president of RSG

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1 NP III, have you had any dealings with Michael P. Bernardo,
2 either as an individual or as a company?

3 A. Again, as a -- as -- my owner -- my units at
4 Northpark in Phase 1, no. As the owner of those units, I've
5 had no dealings, no contracts, nothing with Mr. Bernardo.
6 As the fact that I've known Mr. Bernardo through my other
7 role which you're aware of, I've known him for years and
8 conversations at job sites across many job sites across many
9 years and definitely at this site just like any other.

10 Q. And I appreciate that. I'm going to try to be
11 respectful. You've been designated solely as a
12 representative of RSG III NP, LLC today, so I'm going to try
13 to limit my questions to simply your role therein. And I
14 think that will help us keep things moving here this
15 morning. We can ask other questions related to your other
16 roles and your existence as a human being at another time.

17 I have presented what I think was marked as
18 Exhibit 124 earlier today. Do you see that?

19 A. Yes, I see it.

20 Q. And you saw that before your deposition today?

21 A. Yes.

22 Q. Mr. Giller, if you'd scroll -- and maybe it's
23 done this already, but pages 6 and 7 of Exhibit 124, there's
24 a section called rule 30(B)(5) topics. Do you see that
25 section?

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1 A. Yes.

2 Q. Okay. Have you been designated by the LLC as
3 the person with the most knowledge or person who is
4 designated to give testimony on any of the 21 topics listed
5 on that notice?

6 A. I am -- yes, I'm the only person in Northpark
7 LLC that knows anything about the ownership of these units.
8 And I've reviewed the topics and I will answer them to the
9 best of my ability.

10 Q. Okay. So any knowledge that the corporation has
11 about any of those topics, you are the designated
12 representative?

13 A. Yes.

14 Q. Okay. And the reason that -- well, strike that.
15 You testified that one of your units is not
16 occupied and has been unoccupied and not producing rent for
17 a number of years. Who made the decision not to rent that
18 unit?

19 A. Ardent Property Management.

20 Q. Why did Ardent make that decision?

21 A. The unit -- Shawn continued to see mold growth
22 and water intrusion into the unit and they played the
23 determination that it was uninhabitable.

24 Q. Did they also make any determination as to what
25 would be necessary to make the unit habitable?

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1 A. To my knowledge, they -- I think they tried
2 things, based on the maintenance stuff that you have been --
3 somebody's been showing me today. It seems like -- just as
4 a quick cursory glance -- they tried to do some things, but
5 I think no one really, including myself, no one really knew
6 what the true depth of the problem was until the original
7 Mays report came out.

8 Q. So my question was: Did they determine, though,
9 based on that report or anything, what would be necessary to
10 make the unit habitable again?

11 A. You'd have to ask Ardent specifically that
12 question.

13 Q. Okay. Have you asked Ardent that question?

14 A. I -- yes, I've asked Ardent and I've asked the
15 association that question and I have a general understanding
16 of the review of the Mays' reports, multiple. So not just
17 the first, but the subsequent tests. And it seems to me
18 that in order to make that -- those buildings, my units, the
19 rest of the Phase 1 units habitable, major deconstruction
20 and reconstruction of components from the windows, to the
21 flashing, to the stone detail, to a number of the components
22 that make up the exterior cladding, sheathing of the
23 buildings.

24 Q. Why did you have to ask the association to weigh
25 in on that?

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1 A. They're my representative -- the association
2 represents me as an association member and that's who
3 controls, through Ardent Property Management's designated
4 role, of the exterior of the units. Which the exterior of
5 the units are the responsibility of the association and I'm
6 a member of that association.

7 Q. Well, there was a lot in that answer that we're
8 going have to unpack. I think you said the that the
9 association controls exterior of the units?

10 A. The association is responsible for and has
11 assigned their roles and responsibilities pursuant to the
12 condominium declaration as the declarant as the declarant's
13 wishes for Ardent Property Management to take care of the
14 day-to-day operations of the maintenance of the exterior of
15 the units.

16 Q. When you say the declarant. Who's the
17 declarant?

18 A. I believe it's -- it's in the condo
19 documentation, which we spent an inordinate amount of time
20 in my last deposition on. I don't recall. I believe it's
21 Don Kenney or the individual unit owner of one unit in that
22 complex.

23 Q. So there's an agreement, then, between the
24 association and Ardent Property Management?

25 A. As the manager for the association.

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1 Q. Well, help me understand. The association owes
2 certain duties to the unit owners; is that right?

3 A. The association does owe certain duties to the
4 individual unit owners.

5 Q. Okay. And I think you said in part, at least
6 some of those duties include the maintenance and repair of
7 the exterior of the building?

8 A. That's correct.

9 Q. Okay. But then you've also testified that the
10 association has delegated some of those duties to someone
11 else?

12 A. Pursuant to the condo documents, the association
13 has identified and signed a management contract with Ardent
14 Property Management to take care of the day-to-day
15 responsibilities of managing the exterior of the units for
16 the individual -- or exterior of the units for the condo
17 association.

18 Q. Okay. What do those day-to-day responsibilities
19 entail that the association owes to the you, the unit owner?

20 A. Walking around picking up trash, snow blow,
21 fixing the streets, trash pick up through dumpster
22 perspective, maintaining the exterior of the buildings,
23 painting, picking up dog waste, opening and closing the pool
24 mowing the yard, fixing the flowers, putting mulch in.
25 There's -- obviously, there's a full slate of management

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1 obligations that the association has hired Ardent Property
2 Management to handle those roles.

3 Q. Because one of those roles is maintenance and
4 repairs, you felt it necessary to consult with the
5 association regarding the exterior of your building and the
6 issues that it's having, correct?

7 A. I'm the association president, so it would be
8 hard for me to not speak to the association and Ardent
9 Property Management when I'm the association president.

10 Q. Well, help me understand. As a unit owner, who
11 owes you the duty to repair the building? Is it Ardent or
12 is it the association?

13 A. It would ultimately be the association. That's
14 why the association is suing Metro Development for
15 construction defects which were caused by the subcontractors
16 apparently.

17 Q. So have you, as a unit owner, asked the
18 association to perform repairs necessary to make your unit
19 habitable?

20 A. Until we found the Mays report, and due to the
21 systemic problem with the overall complex, we chose, as the
22 association and the unit owner, to file a lawsuit to seek
23 damages through the general contractor relationship because
24 that is who the association has the contract with or has any
25 standing on.

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1 Q. My question, though, was whether you as the unit
2 owner asked the association to make the repairs necessary to
3 make your unit habitable again?

4 A. Did I ask myself to -- me as the unit owner -- I
5 don't know how to answer your question.

6 Q. Well, if you didn't ask the association, then
7 the answer would be no. If you did ask the association, the
8 answer would be yes.

9 A. I'm the association president. Did I ask
10 myself? No. We chose to file a lawsuit against Metro
11 Development for construction defect.

12 Q. Okay. Do you know who at the association was
13 responsible for making decisions concerning repairs to the
14 exterior of your units?

15 A. As the -- as the -- I am the president of the
16 association. We have abdicated our management
17 responsibilities to Ardent Property Management for
18 day-to-day management. When it was determined that it was a
19 systemic issue with the exterior of the building, we filed a
20 lawsuit against Metro Development for construction-related
21 defects.

22 Q. So then -- well, strike that. I think I got --
23 I think I can parse out there an answer to my question.

24 Do you know why Ardent sends unit owners like
25 yourself monthly reports about the units?

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1 A. Well, as -- as a normal course of business for
2 -- that's -- why? I think it's normal course of business if
3 you have a property management company that manages your
4 units, they're going to send you monthly updates, as far as
5 the income and expense and the happenings of your units. I
6 guess maybe there's -- someone doesn't do it that way, but
7 in the industry that I'm in that's the way it's done.

8 Q. So as a unit owner, why is that information
9 important to you?

10 A. It's not important to me. I don't like at it.

11 Q. Well, then why would Ardent, if you know, send
12 you reports that are not important?

13 A. It's their normal course of business to send me
14 reports. Whether I choose to look at them or not, I believe
15 that's my responsibility or obligation if I choose to do so.
16 It's not their decision not to send them. I guess I can
17 tell them to stop sending them, but it didn't come to my
18 mind to do that.

19 Q. Does it come to your mind now? Do you think
20 after this you'll ask them to stop sending you reports?

21 A. No. I'm not going to ask them to change their
22 overall business practice for me. I will just continue not
23 to look at them.

24 Q. Do you think that there's an expectation on
25 Ardent's part that you do look at those reports?

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1 A. I have no idea. You'd have to ask Ardent.

2 Q. You talked about when third parties are engaged
3 to make repairs on your unit and that's apparently happened
4 in the past. If Ardent contracts with a third party to make
5 repairs on a unit, who makes that call? Is that something
6 that is solely within Ardent's discretion?

7 A. Yes.

8 Q. Okay. How does Ardent know the extent to which
9 it has discretion to make changes or repairs to your units?

10 A. How do they -- they manage my units.

11 Q. Yeah, I understand that. But I think you
12 testified that there's no agreement between RSG and Ardent;
13 is that right?

14 A. That's correct.

15 Q. So how does Ardent know the extent to which it
16 can make decisions on behalf of RSG?

17 A. I guess they just -- you'd have to ask them. I
18 think the relationship is such that they know how I want the
19 units to be managed and operated and they take it upon
20 themselves to do that.

21 Q. Is there any limit to RSG's authority with
22 respect to repairing and maintaining your units?

23 A. Ask that one more time. I missed the first
24 part.

25 Q. Is there any limit to Ardent's authority with

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1 respect to repairing and maintaining your units?

2 A. No, I don't -- I wouldn't -- I wouldn't get
3 involved in that. If they had to make a repair, they'd make
4 the repair.

5 Q. Ardent has produced a number of documents on
6 RSG's behalf. You've seen those before today?

7 MR. GAMBILL: We lost your video.

8 MR. BOBB: I've lost yours as well, John.

9 THE WITNESS: I have his. I can see.

10 MR. BOBB: I don't know if that helps.

11 MR. GAMBILL: Sorry. I didn't mean to
12 interrupt.

13 BY MR. BOBB:

14 Q. Did you see the documents that Ardent produced
15 on your behalf before today?

16 A. No. As I testified earlier, the first time I've
17 seen those maintenance records was today.

18 Q. How do you know what steps Ardent took to
19 produce documents on your behalf?

20 A. I don't.

21 Q. How could you swear under oath, then, that the
22 documents that exist that were in either your possession or
23 Ardent's possession have all been found and produced?

24 A. All of the documents that were in my possession,
25 to the best of my knowledge, I produced. And I believe

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1 Ardent produced them as well, so I'm going to -- I believe
2 that those are all the documents.

3 Q. Yeah, but what's your belief based on if you
4 don't know what they did to search for the documents?

5 A. Again, I've worked at this company for 22 and a
6 half years. I know the people who run Ardent. And,
7 therefore, I have confidence that they have produced what
8 they've been asked to produce in this particular situation,
9 as they have in any other situation that I've -- we've come
10 across in the last 22 years of my working there.

11 Q. But do you know what search terms they used, for
12 example, to find electronic-stored documents?

13 A. I do not.

14 Q. Do you know what places they looked -- files
15 they looked in to find physical paper documents?

16 A. I do not.

17 Q. Is it possible that are documents related to
18 your claim that haven't been produced?

19 A. I -- to my knowledge, everything that was asked
20 for has been produced.

21 Q. You testified when you were asked about damages
22 that you're seeking about \$30,000 in lost rent alone. And
23 then you made some statement about a systemic problem with
24 exterior issues that require reverse accounting to attribute
25 to incorrect installation. Do you recall that testimony?

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1 A. Yes. And I think what I was trying to allude to
2 is -- the question was do I know specific damages? Specific
3 damages are a loss of rents for down units for multiple
4 years. Fairly easy to calculate. If, as it is, there are
5 systemic damages, I have not, nor do I believe Ardent has,
6 gone back through and pulled through all of their
7 maintenance records to pull out each and individual expense
8 that could be attributed to this particular case. I don't
9 know that they've done that, but that would be my suggestion
10 or I ask.

11 Q. So that the record's clear, then, would those
12 two categories of damages be the sum total of damages you
13 are seeking in this action?

14 A. Yes. And I may throw mental duress in at this
15 juncture.

16 Q. When did you acquire these units?

17 A. 2010.

18 Q. And you bought all 16 of them at the same time?

19 A. Yes.

20 Q. Did you pay for them individually or did you buy
21 them just as a package?

22 A. Yeah, they were under one note and mortgage.

23 Q. Okay. Do you recall what the purchase price of
24 all the units was when you bought it back in 2011?

25 A. No, I don't recall.

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1 Q. As a unit owner, is the safety of your tenants
2 important to you?

3 A. As a unit owner and as a person safety of other
4 individuals is important to me.

5 Q. What steps have you taken to make sure the
6 remaining units that you own are safe and habitable for the
7 tenants that are currently in there?

8 A. I hired Ardent Property -- Ardent Property
9 Management manages my units, and I know from my past
10 experience dealing with them over the past 22 years that
11 safety and tenant comfort is very important, not only to
12 them individually and as a company. So that's how I --
13 that's the only steps I've taken, is higher a quality
14 management company that has that belief as a company.

15 Q. And that's because this is a passive investment
16 for you. You're pretty hands off?

17 A. I think you -- based on my testimony today, I
18 think that's an accurate statement.

19 Q. When was the last time you were you physically
20 at the Northpark apartments complex?

21 A. I -- maybe a year ago. I think I drove through
22 because I was looking at a bridge that we did between the
23 two complexes, because I'm contemplating doing a bridge
24 between another two complexes so I went and looked at the
25 bridge.

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1 Q. Now, as a unit owner, do you think that the
2 president of the condo association should only visit the
3 association on an annual basis?

4 A. As a unit owner and -- I believe that the
5 president of the association and the documents and what I
6 signed up for when I purchased the units, I have the
7 knowledge that they were hiring a reputable third party
8 management company to take care of the day-to-day operations
9 of my internal units as well as the exterior of the
10 community and I have faith in that. I wouldn't suspect the
11 president of the association that doesn't live in a passive
12 investment would drive through on a daily or weekly basis
13 when it's a non-paid position.

14 Q. So what is your expectation, as a unit owner,
15 that the president of the association should be involved in?

16 A. Hiring a quality property management company to
17 manage the investment. And then when it was determined that
18 there was a systemic problem with the exterior cladding of
19 Phase 1 of the building to take actions, i.e. file a
20 lawsuit against the general contractor, and pursue the
21 association's rights and remedies as much as they possibly
22 could through the courts.

23 Q. And do you think the association has any duty to
24 you, as a unit owner, to repair the exterior to make those
25 units rentable?

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1 A. As a unit owner? No. I think as a unit owner
2 the path that the association's taken is a path that I've
3 seen over my career in many associations from passive
4 investments to condominium associations that are owner
5 occupied. So I've seen it done multiple ways. And I think
6 this is the most effective and efficient way for the
7 association to handle a problem that is systemic and very
8 likely extraordinarily costly to the association and then
9 ultimately to the -- Metro Development or to the
10 subcontractors that installed the building materials in an
11 incorrect manner.

12 Q. When have you seen this tactic employed
13 previously? In what situations?

14 A. I've seen it employed in condo associations
15 throughout the years.

16 Q. With what?

17 A. Olentangy Crossing; with High Bluffs; I
18 believe -- I'm trying to think. It was several others. If
19 a list is what you need, I can come up with a list.

20 Q. Okay. So what was the systemic issue at
21 Olentangy Crossing?

22 A. I believe it was a water infiltration issue for
23 the roof and I believe there was some flashing concerns.

24 Q. What is your connection with Olentangy Crossing?

25 A. We constructed Olentangy Crossing and we -- I

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1 was the president of the association for a small amount of
2 time and then I was on the board for a small amount of time
3 and then I phased out as we -- the complex.

4 Also at Austin -- Attleigh -- actually, you know
5 what, this exact same process has been taken at the Attleigh
6 which I believe they sued Metro Development and are seeking
7 damages that have not gone through and repaired all of the
8 issues at this point.

9 Q. Has that issue resolved, the Attleigh issue?

10 A. No. I can't recall if Bernardo is involved in
11 that or not.

12 Q. What about Olentangy Crossing, did that roof
13 issue ultimately resolve?

14 A. Yes.

15 Q. How did it resolve?

16 A. Through some settlement agreement, I believe.

17 Q. How long had the roof been allowing moisture in
18 the buildings before the litigation was filed?

19 A. I have no idea.

20 Q. As the president of the association, did you
21 undertake to find that out?

22 A. I don't believe I was the president of the
23 association at that time.

24 Q. I understand. How long were you president of
25 that association?

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1 A. As I said, for a short amount of time before we
2 started turning over the units to the unit owners pursuant
3 to the Ohio condominium law.

4 Q. Okay. I think I may have misunderstood your
5 testimony. Were you functioning as Metro's representative
6 in the Olentangy Crossing case?

7 A. I was functioning, I believe, Village
8 Communities. I don't believe Metro built that particular
9 project, I think it was Village Communities.

10 Q. But it was the general contractor who was being
11 sued?

12 A. Yes.

13 Q. Okay. So you weren't the one that was bringing
14 the suit, you were defending that suit?

15 A. That's correct.

16 Q. Okay. Okay. Do you know how long after the
17 project had been completed Metro was sued or Village or
18 whoever you were representing at the time?

19 A. I have no idea.

20 Q. And talk to me about High Bluffs. What was the
21 systemic issue at High Bluffs?

22 A. It was failure in the masonry steps.

23 Q. And how long after the project was completed was
24 that failure identified?

25 A. This is -- I have -- you're talking about

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1 something that happened ten years ago. I couldn't tell you
2 off the top of my head.

3 I have 15 more minutes by the way.

4 Q. And what was your role in the High Bluffs
5 resolution?

6 A. Again, at some point -- at some point in time I
7 was the president of the association, and as the association
8 turned over, pursuant to the condo rules and laws, I was not
9 president and then I was on the board. Same process as with
10 every association -- condo association we ever built.

11 Q. Except for this one.

12 A. This is a nonowner occupied commercial
13 condominium, which falls under a different set -- as I'm
14 sure you know, falls under a different subset of the
15 condominium laws. So commercial condominiums function in a
16 slightly different way than residential -- owner occupied
17 condominium associations do.

18 Q. And so in the High Bluffs litigation, you were,
19 again, the general contractor's representative who was being
20 sued; is that right?

21 A. Yes.

22 Q. And do you recall how that resolved?

23 A. As they all do, a settlement agreement,
24 generally speaking.

25 Q. And you don't recall how long after the project

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1 was completed that issue was identified?

2 A. No.

3 Q. Or how long after the association learned of the
4 issue it went before it repaired the issue?

5 A. No.

6 Q. Okay. And I think you testified that Attleigh
7 is still pending; it has not reached resolution?

8 A. That is correct. And those particular facts at
9 the Attleigh are identical -- somewhat identical to the
10 facts of this particular case where there's water
11 infiltration through the improper installation of the
12 flashing and stone work and installation of the OSB and
13 siding.

14 Q. And are you the president of the condo
15 association at Attleigh?

16 A. I'm not.

17 Q. Are you -- okay. What's your involvement in
18 that litigation?

19 A. Metro Development.

20 Q. As a defendant being sued again for the
21 construction?

22 A. I'm being sued by the current owner and
23 therefore I'm seeking sued through to the individual
24 subcontractors as similar to this case.

25 Q. Okay. Okay. But you, as Metro, are being sued

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1 for your construction practices in the Attleigh case; is
2 that right?

3 A. Yes.

4 Q. Did anyone from Ardent approach you, as the
5 owner of these 16 units, and tell you what was wrong with
6 your units?

7 A. I only specifically knew what was wrong with
8 these units after the original Mays report was filed and I
9 reviewed it.

10 Q. Okay. So prior to that, though, did anyone from
11 Ardent reach out to you and explain that there were issues
12 with your units?

13 A. Not that I recall of.

14 MR. BOBB: All right. I will probably have some
15 more questions after going through my notes, but I
16 don't want to hold everyone up. So if someone else
17 has questions they can take the baton.

18 MR. GAMBILL: We are coming up on a hard stop,
19 so if you have questions, please jump right in.

20 MR. GORDON: This is Scott Gordon again. I
21 guess I'll pick back up.

22 RECROSS-EXAMINATION

23 BY MR. GORDON:

24 Q. Mr. Giller, I think when asked about your claims
25 for damages in this case you noted that you're claiming lost

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1 rent, right?

2 A. Correct.

3 Q. Okay. You're claiming possibly a number to be
4 determined if somebody Ardent or someone else did some
5 reverse accounting for maintenance of your units that may
6 relate to the claims in this case, right?

7 A. Right.

8 Q. Okay. I thought I heard, please correct me if
9 I'm wrong, are you also making a claim for some type of
10 diminution of value of the asset as a result of this, too?

11 A. I certainly have not thought of that until you
12 just said it, but, yeah, I think -- now that you bring it
13 up, I think if I went to the open market and tried to sell
14 these units today there would be a discount to the market
15 based on the fact that one down unit -- and I also have
16 potential water infiltration issues and a systemic problem
17 in my 16 units. So I actually -- I didn't think about that,
18 but, yeah, I think that's possibly something that I would
19 claim as well because there is a tremendous value hit to me,
20 based on an interline perspective and then a physical
21 perspective. But I hadn't thought about that, but that's a
22 potential claim that I may make.

23 Q. But to be clear, you've not made any effort or
24 shown any -- made any attempt to market and sell your
25 properties since you've owned them, have you?

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1 A. No, but I may now that you brought that up.
2 That's a good idea.

3 Q. Okay.

4 A. Thanks.

5 Q. To be clear, you, as an owner of RSG -- I mean,
6 the association never wrote you, as a unit owner, any
7 letters, prior to the initiation of this lawsuit -- or the
8 association --

9 Well, let me just ask that first: Prior to the
10 initiation of the lawsuit, the association never contacted
11 RSG through writing or otherwise to discuss the
12 association's decision to file a lawsuit, did it?

13 A. As I testified, as the association president
14 there was documents that are in the record. I don't
15 remember them right off the top of my head. But I believe
16 there's documents and records where there was correspondence
17 from Ardent to the association members of the issues and how
18 we were going to go about dealing with the issues. And,
19 again, those are in the record somewhere.

20 Q. And you would agree with me if the dates of
21 those correspondence between Ardent and other property
22 owners came after the filing of this lawsuit, you're not
23 aware of any other communication between the association and
24 property owners about the contemplation of this lawsuit
25 prior to it being filed, are you?

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1 A. To my knowledge, I, as the association
2 president, did not write a letter to other individual owners
3 in the association. I cannot speak to what correspondence
4 Ardent may or may not have with each individual owner. I
5 don't -- I'm not -- I don't have visibility of their
6 communications, nor do I choose to.

7 Q. Okay. So, again, to be clear, you don't have
8 any knowledge that the association itself notified any unit
9 owners that -- of its intent to file a lawsuit prior to the
10 lawsuit being filed?

11 A. Again, I don't know what the time frame of the
12 letter went out, so I don't know if the suit was filed prior
13 to the suit -- the letter went out prior to or after. I
14 don't recall the exact timing.

15 Q. In your previous testimony you noted that you
16 were aware of one unit at Northpark that has been
17 remediated, and your testimony was that you had not been
18 made aware of any other problems after that remediation. Do
19 you recall that testimony?

20 A. As it relates to my four units?

21 Q. No, as it relates to your knowledge of a unit
22 that had been -- the exterior of the unit had been entirely
23 remediated.

24 A. As to my four units, I know -- well, based on
25 some of the stuff that you showed me today, I know there was

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1 activity that happened on one or multiple of my four units.
2 And one of my unit is still down, so it must not be
3 something they can remediate and get people back into.

4 Q. But are you aware of a unit which its exterior
5 has or had been remediated that is no longer having water or
6 moisture intrusion issues?

7 A. I believe -- I'm aware that the -- from the Mays
8 report they identified that some of the stuff that they
9 removed were remediation efforts in those areas. I don't
10 specifically know every other circumstance of every other
11 unit out there, whether something has been remediated and it
12 works and the remediation worked or not. I don't know that
13 specifically sitting here.

14 Q. Are you aware -- is anything being actively done
15 at your unit at 1353 Halo to try to remediate the issues of
16 water and moisture intrusion?

17 A. That's the -- that's the one -- my one down unit
18 from multiple years?

19 Q. Yes.

20 A. Yeah, I don't think -- I think that every
21 remediation effort they've tried has failed, and I believe
22 it has come to the point where, based on the Mays report,
23 the entire skin of the building needs to be put back and --
24 the installation needs to be done correctly of the water
25 barrier, the scratch coat, you know, the masonry product,

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1 the flashing, the trim. All of those items need to be taken
2 off and redone appropriately in order to effectively and
3 finally remediate the issue.

4 Q. And those ideas or those thoughts of how to fix
5 this problem, that comes out of the first Mays report that
6 was issued?

7 A. I think I'm drawing my conclusion from the
8 first, second, and third Mays report. One of the Mays
9 report was more detailed, physical removal of products,
10 spray water testing, identifying the true issues in a more
11 scientific and specific way to come up with a result.

12 Q. Is it fair to say that you're not aware of any
13 other remediation efforts at your downed unit since the
14 initial -- or the first Mays report came out that you became
15 aware of?

16 A. It's fair to say that unit has been sitting
17 vacant for multiple years. I believe it's the same time
18 frame as the Mays report.

19 Q. Okay. Sir, as an RSG unit owner, you don't
20 think Metro Development actually breached any of its duties
21 when constructing this project, do you?

22 MR. GAMBILL: Objection. You can answer.

23 A. Breached it to whom?

24 BY MR. GORDON:

25 Q. To you as a unit owner, RSG.

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1 MR. GAMBILL: Objection. You can answer, if you
2 know.

3 A. No, I don't know that I understand or can draw
4 any conclusions on the question. I don't understand the
5 question really.

6 BY MR. GORDON:

7 Q. Okay. Sir, RSG III NP, LLC is the plaintiff in
8 this action, right?

9 A. Right.

10 Q. And RSG has sued Metro Development in this
11 action, right?

12 A. That's correct.

13 Q. And I'll submit to you that RSG, by its
14 complaint, has sued Metro Development for negligence and
15 breach of duty to perform in a good and workmanlike manner.
16 Okay?

17 A. Okay.

18 Q. Does RSG believe that Metro Development actually
19 was negligent in its role as a general contractor in this
20 case?

21 A. RSG believes that as a general contractor Metro
22 Development hired subcontractors to do their work, and RSG's
23 direct method to push their claims has to go through the
24 general contractor because I have no way to sue -- plausibly
25 sue the other individuals that are in this case.

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1 Q. Okay. Does RSG believe that Metro Development
2 was negligent in its role as the general contractor of the
3 Northpark Place?

4 MR. GAMBILL: Objection. You can answer.

5 A. Yeah, RSG believes that there was negligence in
6 the construction and it will be through this process to find
7 out who was negligent.

8 BY MR. GORDON:

9 Q. Sir, it's a simple yes-or-no question. Does RSG
10 believe that Metro Development was negligent in its role as
11 the general contractor of the Northpark Place?

12 A. Clearly RSG believes that there's negligence --

13 Q. Sir, it's a yes-or-no question. I'm just asking
14 yes or no, does RSG believe Metro Development was negligent?

15 MR. GAMBILL: He's answered the question, Scott.

16 MR. GORDON: No, he hasn't. It's just a yes or
17 no. That's all.

18 MR. GAMBILL: It's in the complaint.

19 MR. GORDON: I'm asking him as the 30(B)(5) for
20 RSG, John.

21 BY MR. GORDON:

22 Q. It's not that complicated. Does RSG believe
23 that Metro Development was negligent as its role as a
24 general contractor in the Northpark Place construction?

25 MR. GAMBILL: Objection. You can answer.

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1 A. Clearly I sued -- clearly. We filed a lawsuit
2 against Metro. So clearly I believe there's something that
3 went wrong.

4 BY MR. GORDON:

5 Q. Okay. So is that a yes that RSG believes Metro
6 Development was negligent?

7 MR. GAMBILL: Objection. Asked and answered.

8 MR. GORDON: He hasn't answered it, John.

9 MR. GAMBILL: You can answer it again, Tre.

10 BY MR. GORDON:

11 Q. Are you not understanding my question, sir?

12 A. No, I think your question -- I think I've
13 answered your question.

14 Q. Okay. Well, I haven't heard you say yes or no.
15 So, sir -- do you need me to repeat it?

16 A. I don't believe it's a yes-or-no question. I
17 believe it's a nuance question that I've answered several
18 times. And I'm not going to answer yes or no because I
19 don't believe that's the way I'm going to answer the
20 question.

21 Q. Does RSG believe that Metro Development breached
22 any implied warranties as the general contractor for the
23 Northpark Place project?

24 A. I think that's yet to be determined through this
25 process who breached what warranty; who did what wrong. I'm

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1 trying to find that out. And I don't understand how you
2 don't understand that.

3 Q. I understand that you believe it's yet to be
4 determined because, of course, a jury or a judge will make
5 those determinations. I'm asking you as the 30(B)(5)
6 witness for RSG, does RSG believe that Metro Development
7 breached any implied warranties owed to it as the general
8 contractor for the Northpark Place project?

9 MR. GAMBILL: Objection. You can answer.

10 A. RSG does not know who breached what until we go
11 through this process.

12 BY MR. GORDON:

13 Q. I understand you don't know, but is it RSG's
14 position that Metro Development breached implied warranties
15 owed to RSG as the general contractor for the Northpark
16 Place project?

17 MR. GAMBILL: Objection. Scott, again, it's --

18 MR. GORDON: He said I don't know. He's not
19 answering my question.

20 THE WITNESS: I believe whatever I've alleged in
21 the complaint.

22 BY MR. GORDON:

23 Q. You believe whatever you've alleged in the
24 complaint is true, correct?

25 A. I guess I wouldn't have made the complaint

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1 unless I believed it was true.

2 MR. GORDON: Okay. Now, trying to be respectful
3 of your time, sir, since it's 10:59. John, I've got
4 more questions, so I guess I would ask that we leave
5 this open. Obviously, I don't know if other people
6 will have questions, but I want to be respectful for
7 his time.

8 MR. GAMBILL: Yeah, you guys are wanting to
9 bring him in on behalf of Metro. I don't represent
10 Metro --

11 MR. GORDON: No, I'm talking about more
12 questions in his 30(B)(5) capacity.

13 MR. GAMBILL: Yeah, I understand that. We can
14 discuss that at some point. We're straddling the bar
15 today.

16 MR. GORDON: Well, John, I'm not even asking him
17 about Metro. I was specifically asking about RSG, I
18 hope you're not insinuating that those questions were
19 out of bounds?

20 MR. GAMBILL: No, I'm not insinuating that.
21 We're going stop now. Get Tre out of here.

22 MR. BOBB: Hey, John, before Tre leaves, can we
23 get the amended complaint marked as an exhibit in
24 this deposition?

25 MR. GAMBILL: Yeah. Sure.

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1 MR. GORDON: So, Juniko, I think the amended
2 complaint would be Exhibit 129.

3 SESSION MANAGER: All right, Counsel.

4 MR. GORDON: I'll upload it right now.

5 SESSION MANAGER: We are going off the record at
6 11:02 a.m.

7 (Deposition Exhibit No. 129 was marked for
8 identification.)

9 (This deposition concluded at 11:02 a.m.)

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1 STATE OF FLORIDA

2 COUNTY OF OSCEOLA

3
4 I, ANNELIESSE RIVERA, Shorthand Reporter and Notary
5 Public, State of Florida, certify that ROLAND GILLER was
6 first duly sworn to testify the truth in the cause
7 aforesaid; that the testimony then given by him was by me
8 transcribed on a computer/printer, and that the foregoing is
9 a true and correct transcript of the testimony so given by
10 her, as aforesaid.

11 I do further certify that this deposition was taken
12 at the time and place in the foregoing caption specified. I
13 do further certify that I am not a relative, counsel or
14 attorney of either party, or otherwise interested in the
15 event of this action.

16 WITNESS my hand and official seal this 14th day of
17 April, 2021.

18
19
20 _____
21 ANNELIESSE RIVERA
22
23
24
25

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1		ERRATA SHEET		
2		DO NOT WRITE ON THE TRANSCRIPT - ENTER CHANGES HERE		
3	IN RE:	NORTHPARK PLACE INVESTMENT CONDOMINIUM		
4		ASSOCIATION, et al. vs. METRO DEVELOPMENT LLC		
5	CASE NO:	18 CV H 07 0394		
6	DATE:	Friday, March 19, 2021		
7	DEPONENT:	ROLANDO GILLER		
8		PAGE #	LINE #	CORRECTION
9				REASON
10		-----		
11		_____		
12		_____		
13		_____		
14		_____		
15		_____		
16		_____		
17		_____		
18		_____		
19		_____		
20		_____		
21		_____		
22	Under penalties of perjury, I have read my deposition in			
23	this matter and that it is true and correct, subject to any			
24	changes in form or substance as reflected above.			
25	Dated: _____ Deponent Name: _____			

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ORDER ON MOTION

DEBORAH MARINO, EXECUTRIX FOR
THE ESTATE OF ANITA
CREUTZBERGER AND INDIVIDUAL
HEIRS OF THE ESTATE OF ANITA
CREUTZBERGER

V.

ABEX CORPORATION; BORG WARNER
CORPORATION; DANA COMPANIES,
LLC; FORD MOTOR COMPANY;
HONEYWELL INTERNATIONAL, INC.;
KELSEY-HAYES COMPANY; MAREMONT
CORPORATION; MOTION CONTROL
INDUSTRIES, INC.; AND JOHN DOE
CORPORATIONS 1-75

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-001523-19T4

MOTION NO. M-002846-19

BEFORE PART E

JUDGE(S): CARMEN MESSANO

MOTION FILED: 12/16/2019

BY: FORD MOTOR COMPANY

ANSWER(S)

FILED:

SUBMITTED TO COURT: January 16, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
21st day of January, 2020, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION TO USE DAILY TRIAL GRANTED IN PART / DENIED IN
TRANSCRIPTS FOR PURPOSES OF APPEAL PART

SUPPLEMENTAL:

The Clerk's Office accepts the transcripts prepared by the certified transcript reporters. The "June 3, 2019" transcript, which contains thirteen separate trial dates from June 2019, is rejected as it does not comply with the standards fixed by the Administrative Director of the Courts. Counsel shall order the thirteen transcripts for appeal purposes

no later than January 27, 2020.

FOR THE COURT:



CARMEN MESSANO, P.J.A.D.

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MID-L-836-10 MIDDLESEX

ORDER - REGULAR MOTION

CLD