

==New York State==  
**ACADEMY**  
**OF TRIAL LAWYERS**

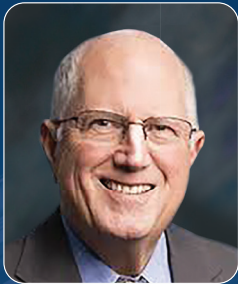
**HOW TO LITIGATE A PERSONAL**  
**INJURY CASE - PART 4:**  
**DEPOSITIONS**

Live Streamed – April 7, 2021

**Materials By**  
**Andrew Smiley, Esq.**

# WELCOME 2021

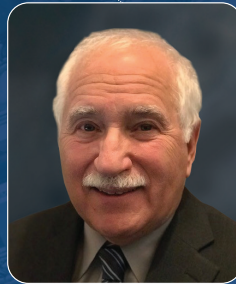
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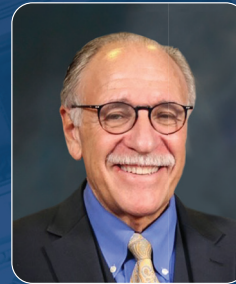
**Hon. Richard T. Andrias (Ret.)**  
*Associate Justice,  
Appellate Division,  
1st Judicial Department*



**Hon. Ben R. Barbato (Ret.)**  
*Justice of the Supreme  
Court, Bronx County*



**Hon. Jeffrey S. Brown (Ret.)**  
*Justice of the Supreme  
Court, Nassau County*



**Hon. Jeffrey A. Cohen (Ret.)**  
*Associate Justice,  
Appellate Division,  
2nd Judicial Department*



**Hon. Rudolph E. Greco, Jr. (Ret.)**  
*Justice of the Supreme  
Court, Queens County*



**Hon. John M. Leventhal (Ret.)**  
*Associate Justice,  
Appellate Division,  
2nd Judicial Department*



**Hon. Joseph J. Maltese (Ret.)**  
*Associate Justice,  
Appellate Division,  
2nd Judicial Department*



**Hon. David B. Saxe (Ret.)**  
*Associate Justice,  
Appellate Division,  
1st Judicial Department*



**Hon. Alan D. Scheinkman (Ret.)**  
*Presiding Justice of  
the Appellate Division,  
2nd Judicial Department*



**Hon. Marsha L. Steinhardt (Ret.)**  
*Justice of the Supreme Court,  
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### **WHAT WE DO**

The firm offers professional investigative services for civil and criminal cases before both state and federal courts. We provide quality personalized services along with unparalleled attention to detail. Our 40 plus years of investigative experience provides our clients with an unmatched level of confidence and reliability.

The firm holds private investigative licenses in New York:  
New York State Department of State: 11000045080

Based in the Capital District Area of New York, we provide service to clients across upstate NY, including Albany, Schenectady, Rensselaer, Columbia, Saratoga, Greene, Washington, Schoharie, Warren, Essex, Montgomery, Fulton counties, and beyond.

### **AREAS OF FOCUS**

- Personal Injury
- Insurance Defense
- Criminal Defense
- DWI Defense
- Surveillance Services
- Service of Legal Process

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Our firm members are well experienced in serving legal process with over thirty years of handling simple and complex assignments. We can be counted on to get your documents served on time and quickly return your notarized affidavit of service for timely filing.

As an investigative firm, we have the experience and resources to locate and serve nearly anyone. Based in Albany NY, we offer service upon the NYS Secretary of State, Corporation Service Company and all State Agencies in the Albany Area.

We are members of the National Association of Professional Process Servers and offer a national reach for service of documents through vetted companies across the country and, in some cases, overseas.

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**Andrew J. Smiley, Esq.**  
**Smiley & Smiley, LLP**  
**122 East 42<sup>nd</sup> Street, NYC 10168**  
**212.986.2022**  
**asmiley@smileylaw.com**  
**www.smileylaw.com**  
**www.thementoresq.com**

### ***CURRICULUM VITAE***

#### **Education:**

· Brooklyn Law School - Juris Doctorate 1996

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

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

#### **Professional:**

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

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

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

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

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020

### Bar Admissions:

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

### Organizations/Affiliations:

- New York State Academy of Trial Lawyers
  - Immediate Past President (May 2018- May 2019)
  - President (May 2017 – May 2018)
  - President-Elect – (April 2016- May 2017)
  - Vice President – 1st Dept. (July 2013-May 2016)
  - Executive Committee ( May 2019 – present)
  - Board of Directors (2013- present)
  - Judicial Screening Committee (2013- present)
- New York City Trial Lawyers Alliance
  - Chairman of Board of Governors (July 2017 – July 2019)
  - President (July 2015 – July 2017)
  - Vice President (June 2013 – July 2015)
  - Treasurer (June 2011 – June 2013)
  - Secretary (June 2009- June 2011)
  - Board of Directors (2000-present)
- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
  - Brooklyn Bar Association
    - Medical Malpractice Committee
    - Supreme Courts Committee
- The American Association for Justice
- American Bar Association
- Brooklyn Law School Alumni Association
- National Order of Barristers
- Friars Club - member

**Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 3**

Continuing Legal Education (CLE) Presentations:

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

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

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

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

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

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

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

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

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

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

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

*Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018

*Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017

Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016

**Andrew J. Smiley, Esq. Curriculum Vitae, Page 4**

Continuing Legal Education (CLE) Presentations Continued:

*Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015

*Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015

*Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015

*Powerful Opening Statements*, Clear Law Institute, January 13, 2015

*The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014

*Killer Cross Examination Strategies*, Lawline.com, November 20, 2014

*Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014

*Personal Trainer Negligence Update*, Lawline.com, October 14, 2014

*Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014

*Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014

*Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013

*Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013

*Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012

*“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012

*Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012

*The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011

*Personal Trainer Negligence*, Lawline.com, March 22, 2011

*Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011



**Andrew J. Smiley, Esq. Curriculum Vitae, Page 5**

Continuing Legal Education (CLE) Presentations Continued:

*Trial Techniques: The Tricks of the Trade*, Lawline.com, February 16, 2011

*Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011

*Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010

*Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010

*Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

Television Appearances – Legal Commentary:

*Fox News Channel*

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

*CNN -Anderson Cooper 360*

*ET – Entertainment Tonight*

*Bloomberg TV*

*Headline News*

*Tru TV*

*Court TV*

*The Morning Show with Mike and Juliet*

Interests, Hobbies:

Tennis, Porsche Club, Sim Racing, Yoga, Cooking

STIPULATIONS

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

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

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

oOo

VIDEOCONFERENCE STIPULATION

IT IS HEREBY STIPULATED AND AGREED by  
and between counsel for all parties present that  
pursuant to the CPLR section 3113(d) this  
deposition is to be conducted by video  
conference, that the court reporter, all counsel,  
and the witness are all in separate remote  
locations and participating via videoconference  
(LegalView/Zoom) meeting under the control of  
Lexitas Court Reporting Service, that the officer  
administering the oath to the witness need not be  
in the place of the deposition and the witness  
shall be sworn in remotely by the court reporter  
after confirming the witnesses identity, that  
this videoconference will not be recorded in any  
manner and that any recording without the express  
written consent of all parties shall be  
considered unauthorized, in violation of law, and  
shall not be used for any purpose in this  
litigation or otherwise.

IT IS FURTHER STIPULATED that exhibits  
may be marked by the attorney presenting the  
exhibit to the witness, and that a copy of any

1  
2 exhibit presented to a witness shall be e-mailed  
3 to or otherwise in possession of all counsel  
4 prior to any questioning of a witness regarding  
5 the exhibit in question. All parties shall bear  
6 their own costs in the conduct of this deposition  
7 by videoconference, notwithstanding the  
8 obligation by CPLR to supply a copy of the  
9 transcript to the deposed party by the taking  
10 party in civil litigation matters.  
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STIPULATIONS

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

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

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

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

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

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

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



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furnished to counsel representing the  
witness(es) testifying, without charge.

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

\* \* \*

## **Rules for Judge Silver's Part regarding objections during depositions**

### **Objections:**

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

# Rule 30. Depositions by Oral Examination

## (a) WHEN A DEPOSITION MAY BE TAKEN.

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

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

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

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

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

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

(B) if the deponent is confined in prison.

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

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

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

(3) *Method of Recording.*

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

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

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

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

(5) *Officer's Duties.*

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) *Motion to Terminate or Limit.*

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

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

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

(e) REVIEW BY THE WITNESS; CHANGES.

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

(A) to review the transcript or recording; and

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

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

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

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



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

*(2) Documents and Tangible Things.*

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

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

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

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

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

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

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

(1) attend and proceed with the deposition; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

17-CV-4397 (LAK)

-against-

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

Defendants.

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

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

Third-Party Plaintiff,

-against-

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

Third-Party Defendant.

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

Second Third-Party Plaintiffs,

-against-

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

Second Third-Party Defendants

-----X

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

Third Third-Party Plaintiffs,

-against-

MARION SCOTT REAL ESTATE INC.,

Third Third-Party Defendant.

-----X

MARION SCOTT REAL ESTATE INC.,

Fourth Third-Party Plaintiffs,

-against-

SOUTHSIDE ELECTRIC INC. OF NY,

Fourth Third-Party Defendant.

-----X

TO:

*Via Mail and Email*

[REDACTED]

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

*Via Email only*

[REDACTED]

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

*Via Email only*

[REDACTED]

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

*Via Email only*

[REDACTED]

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

*Via Email only*

[REDACTED]

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

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

prosecution of this action.

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

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

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



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

Dated: December 10, 2019

By: /s/ Andrew J. Smiley

Andrew J. Smiley, Esq.  
SMILEY & SMILEY, LLP  
122 East 42<sup>nd</sup> Street – Suite 3900  
New York, New York 10168  
[asmiley@smileylaw.com](mailto:asmiley@smileylaw.com)  
212-986-2022

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

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff, Civil Action No.  
17-cv-4397

-against-

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

Defendants.

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

Third-Party Plaintiffs,

-against-

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

Third-Party Defendant.

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

Second Third-Party Plaintiffs,

-against-

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

Second Third-Party Defendants.

-----x  
(Caption continued on next page)

2 -----x

3 RIVERBAY CORPORATION, DOUGLAS ELLIMAN  
4 PROPERTY MANAGEMENT, AND DOUGLAS ELLIMAN  
5 REALTY, LLC,

6 Third Third-Party Plaintiffs,  
7 -against-

8 [REDACTED] REAL ESTATE INC.,  
9 Third Third-Party Defendant.

10 -----x

11 [REDACTED] REAL ESTATE INC.,  
12 Fourth Third-Party Plaintiffs,

13 -against-

14 SOUTHSIDE ELECTRIC INC. OF NY,  
15 Fourth Third-Party Defendant.

16 -----x

17  
18 DEPOSITION of the Defendant, RIVERBAY  
19 CORPORATION, by [REDACTED] taken by the Plaintiff,  
20 pursuant to Order, held at the offices of [REDACTED]  
21 [REDACTED], New  
22 York, on March 6, 2020, at 10:31 a.m., before a  
23 Notary Public of the State of New York.  
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A P P E A R A N C E S:

SMILEY & SMILEY, LLP

Attorneys for Plaintiff

SARAH WILLIAMS, as Guardian of the  
Person and Property of

STANLEY WILLIAMS

122 East 42nd Street - Suite 3900

New York, New York 10168

BY: ANDREW SMILEY, ESQ.

Attorneys for Defendants

RIVERBAY CORPORATION, DOUGLAS

ELLIMAN PROPERTY MANAGEMENT and

DOUGLAS ELLIMAN REALTY, LLC

Attorneys for Third-Party Defendant

JERMAINE WILLIAMS as Administrator of  
the Estate of Renna Williams

BY: .

-and-

BY:

Attorneys for Third Third-Party  
Defendants

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

BY:

1

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

3

4

Attorneys for Third Third-Party  
Defendant

5

REAL ESTATE, INC.

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LLC

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Attorneys for Fourth-Party Defendant  
SOUTHSIDE ELECTRIC INC. OF NY, INC.

13

Attorneys for Walter Kidde & Home Depot

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ALSO PRESENT:

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DAVID SHERECK, Videographer

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

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

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

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

xxxxxx

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

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

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

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

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

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

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

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

MR. [REDACTED] William  
[REDACTED] of [REDACTED]  
[REDACTED]  
on behalf of defendant [REDACTED]  
Real Estate, Inc.

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

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

THE VIDEOGRAPHER: Thank you.

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[REDACTED]

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

[REDACTED],

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

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

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

THE COURT REPORTER: And your  
address?

THE WITNESS: [REDACTED]  
[REDACTED].

EXAMINATION BY


MR. SMILEY:

Q Good morning, Mr. [REDACTED]

A Good morning.

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

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time, just say the word and we will  
accommodate you, okay?

A Okay, thank you.

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

A Sure.

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

A Okay.

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

A Yes.

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

A Yes.

Q Are you currently employed?

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2 A Yes, I am.

3 Q Who are you employed by?

4 A Riverbay Corporation.

5 Q Do you live in Co-op City?

6 A No, I do not.

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

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

11 A [REDACTED].

12 Q What is your title at Riverbay  
13 Corporation?

14 A \* Director "Insurance" risk  
15 management.

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

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

24 Q What are your duties in that position  
25 for Riverbay?

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

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

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

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

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

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

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

A Yes.

Q When did you first start working at  
Riverbay Corporation?

A May, 2016.



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

5 A No.

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

10 A No.

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

14 A I have a BA from college.

15 Q Where?

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

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

21 A 1986.

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

24 A [REDACTED]

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

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

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

9 Q What was your title?

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

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

16 A Yes.

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

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

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

25 Q For what years did you work for DRA?

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A 2006 through 2011.

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

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

A Similar, yes.

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

A I worked for Cushman and Wakefield.

Q What did you do for Cushman and  
Wakefield?

A I was in an "insurance" analyst.

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

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

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

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A They were a property management and  
leasing firm.

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

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

A Yes.

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

A 2013 through 2015.

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

A Nowhere else.

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

A Five months.

Q What, if anything, did you do for

1 [REDACTED]  
2 employment during those five months?

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

5 A Temporary work.

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

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

10 Q Anything else?

11 A No.

12 Q What do you mean by chauffeuring?

13 A Drive people to the airport during  
14 evenings.

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

17 A Independent.

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

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

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

5 MR. SMILEY: (Hanging.)

6 MR. [REDACTED] Thanks.

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

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

14 A No.

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

21 A Yes.

22 Q What do you recognize that to be?

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

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

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is?

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

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

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

A The employees that produce the paper are Riverbay employees.

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

A Yes.

Q What is the name of that department?

A Co-op City Times.

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

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

Q Can you approximate?

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

A Approximately six.

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

A Okay.

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

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

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

Q You can answer.

MR. ██████████ No, he can't  
answer.



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

MR. [REDACTED] Yes, I am.

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

MR. [REDACTED] I just did.

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

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

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

MR. SMILEY: I will rephrase

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[REDACTED]  
it.

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

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

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

Q Anything else that is inaccurate?

MR. [REDACTED] Just note my  
objection.

Q You can answer.

A No.

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

MR. [REDACTED] Over

1 [REDACTED]  
2 objection, you can answer.

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

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

|   |   |               |
|---|---|---------------|
| 9 | A | Three months. |
|---|---|---------------|

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

|    |   |     |
|----|---|-----|
| 14 | A | No. |
|----|---|-----|

15 Q What does "insurance" risk management  
16 mean?

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

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

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

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general rule?

(Discussion between counsel and  
the court reporter.)

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

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

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

A Yes.

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

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

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

7 A Specifically, no.

8 (Someone just walked in.)

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

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

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

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

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

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

5 A It is part of my functions, yes.

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

11 Do you see that?

12 A Where is the paragraph, which column?

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

16 Do you see that?

17 A Yes.

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

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

24 Q What is a third-party claim?

25 A A nonemployee, such as yourself on the

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

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

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

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

25 I don't want to continue doing

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

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

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

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

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

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

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

Q What, if anything, have you done prior



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

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

8 A Obtain documents.

9 Q That's it?

10 A That's it.

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

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

16 A Contracts, notices, newspaper  
17 articles.

18 Q Anything else?

19 A No.

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

24 A No.

25 MR. [REDACTED] Just note my

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objection. You can answer.

| A | No . |
|---|------|
|---|------|

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

A Yes.

Q What employees have you spoken with?

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

A           The legal department.

Q Riverbay has its own legal department?

A Yes, they do.

Q How many employees are there?

A Four.

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

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

A            Yes.

Q Who have you spoken with?

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

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it.

Q That's it?

A Yes. Sorry.

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

A Yes, I have.

Q He is an employee of Riverbay,  
correct?

A Yes, yes.

Q You left him out?

MR. [REDACTED] Objection.

You can answer.

A Yes.

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

A And the legal department.

Q Anybody else?

A No.

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

Are you familiar with the corporate

1 [REDACTED]  
2 structure of Riverbay Corporation?

3 MR. [REDACTED] Objection.

4 You can answer.

5 A Somewhat.

6 Q What is the business of Riverbay  
7 Corporation?

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

10 Q How big is Co-op City?

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

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

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

20 (Recess taken.)

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

23 Q Is Riverbay Corporation a private  
24 corporation?

25 A Yes.

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Q Is it a for profit corporation?

MR. [REDACTED] Objection.

You can answer.

A It's -- I am not sure.

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

A I'm not sure.

Q Is there a chief executive of Riverbay  
Corporation?

A No.

Q Is there a chief financial officer of  
Riverbay Corporation?

A Yes.

Q Who is that currently?

A [REDACTED].

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

A No, I do not.

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

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

A Yes.

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2 Q Who do you report to, if anyone?

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

5 Q Can you spell his last name?

6 A Yes. [REDACTED].

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

9 A No.

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

12 A He works for Douglas Elliman.

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

16 A No.

17 Q Who was your supervisor at that time?

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

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

21 A Yes.

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

24 A Yes.

25 Q What if any position at Riverbay does

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██████████ hold?

A He is the general manager.

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

A No.

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

MR. ██████████ Objection.

You can answer.

A No.

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

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

A Can you repeat the question?

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

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and position?

A

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

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

A To my knowledge, yes.

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

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

A      The assistant general manager is

\_\_\_\_\_

\_\_\_\_\_.

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

A

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



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A I do not know.

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

MR. [REDACTED] Objection.

You can answer.

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

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

A No.

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

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

A I do not know.

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

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

A No.

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

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2013?

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

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

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

A I believe so, yes.

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

MR. [REDACTED] Objection.  
Asked and answered. You can answer it  
again.

A I do not know.

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

A No.

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

A No.

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MR. [REDACTED] Just give me

A        Sorry.

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

THE WITNESS: Okay, got it.

MR. [REDACTED] Just a second.

THE WITNESS: Okay.

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

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

A Can you just repeat the question?

MR. SMILEY: Could you read  
or me?

THE WITNESS: Read that back.

(Whereupon, the record was read

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back by the reporter.)

3

A Prior to Riverbay?

4

Q Yes, sir.

5

A So my other jobs, my other positions?

6

Q Yes, sir?

7

A I would say 20 to 25.

8

Q In total?

9

MR. [REDACTED] Objection.

10

Asked and answered. You can answer it

11

again.

12

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

13

back to my -- from 1986 on?

14

Q Yes, sir.

15

MR. [REDACTED] Over

16

objection, you can answer.

17

A I would say 50.

18

Q \* Since starting at Riverbay

19

Corporation in May of 2016 up until the

20

present time, approximately how many

21

third-party injury claims or lawsuits have

22

you assisted in the defense of Riverbay

23

Corporation?

24

MR. [REDACTED] Just note my

25

objection. Counsel, I am not going to

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let him answer anything after the date  
of this fire. It is beyond the scope  
of the deposition and it is  
inappropriate.

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

MR. ██████████ Unless you  
rephrase to go up to and include the  
date of this fire because reading your  
30(b)(6), it goes through 2017, it  
doesn't go 2018, 2019, 2020.

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

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

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

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

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

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

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

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

25 So I can't be clairvoyant and

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

23 A Since my date of hire?

24 Q Yes, sir.

25 A May '16 through January '17?

1

2 Q Yes, sir.

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

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

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

13 A Resulting in death?

14 Q Injury or death from a fire?

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

17 A Zero.

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

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

25 A Zero.

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

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

A No.

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

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

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

MR. SMILEY: Yes.

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

MR. SMILEY: Yes.

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

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

4 Have you seen this document prior to  
5 today?

6 A Yes.

7 Q When did you first see this document?

8 A With my attorney.

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

10 A I don't recall the exact time.

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

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

15 A Within the calendar year 2020.

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

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

20 A I don't recall.

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

24 A Yes.

25 MR. [REDACTED] Note my

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objection. You can answer.

A            Yes.

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

MR. [REDACTED] Objection.

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

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

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

A Yes.

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

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

A Yes.

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

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

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

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

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

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

20 A Yes.

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

23 A Okay.

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

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[REDACTED]

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

A Yes.

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

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

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

Q Sir, what, if any steps did you take



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

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

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

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

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

16 A Yes.

17 Q Who did you speak with?

18 A Briefly [REDACTED]

19 Q Anyone else?

20 A No.

21 Q Who is [REDACTED]

22 A Chief financial officer Riverbay  
23 Corporation.

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

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

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

5 A Personal knowledge, I don't recall.

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

9 A I'm not sure.

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

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

16 A Specific critical repairs information,  
17 no.

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

23 A No.

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

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to questions with regard to item number 1?

A No.

Q Why not?

MR. ██████████ Just not my  
objection.

Q You can answer.

MR. ██████████ You can  
answer. Sorry.

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

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

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

A Inquired with the legal department.

Q Did they provide you with documents?

A The overall loan, yes.

Q Did you receive loan documents from  
the legal department?

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

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

4 Q What documents were provided to you?

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

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

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

11 Q Did you read through all of them?

12 A No.

13 Q Why not?

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

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

18 Q How much of it did you read?

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

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

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

25 A A few hundred.

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Q Did you find information?

A No.

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

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

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

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

A Counsel showed me.

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

A Yes, I am sorry.

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

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

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

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

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

16 MR. SMILEY: Thank you.

17 A Other than the binders and what my  
18 counsel showed me, nothing else.

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

25 MR. SMILEY: Thank you for

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[REDACTED]  
that.

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

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

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

A Just legal department.

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

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

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

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

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

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

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

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

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

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

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

24 MR. [REDACTED] That's fine.

25 MR. SMILEY: Then we can stop.



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A Can you just read back the question?

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

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

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

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

(Recess taken.)

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

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

Q I would ask for the witness just to

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

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

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

14 MR. [REDACTED] That's fine.

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

18 MR. [REDACTED] Thank you.

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

22 MR. [REDACTED] Thank you.

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

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

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

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

8 Q Yes, I do.

9 A Can you share those?

10 Q Yes, I will get to those.

11 A All right.

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

15 A Yes.

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

18 A I believe I recall seeing this, yes.

19 Q When did you first see this page?

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

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

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Corporation?

A No, I did not.

Q Do you know what this is?

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

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

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

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

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

A No, I do not.

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

A No, I did not.

Q Can you turn to page 2, please. Do

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

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|---|---|----------------|
| 6 | A | Borrower, yes. |
|---|---|----------------|

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

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

14 | A To my knowledge, yes.

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

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|----|---|------|
| 18 | A | Yes. |
|----|---|------|

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

|    |   |      |
|----|---|------|
| 23 | A | Yes. |
|----|---|------|

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

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can answer it again.

A Yes.

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

Do you see that?

A Yes.

Q What is FHA?

A I do not know.

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

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

A No.

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

A Yes.

Q Do you know what HUD is?

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

A Housing and Urban Development.

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

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

A I do not know specifically.

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

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

A Specifically, no.

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

A I do not know.

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

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

A Specifically, I do not know.

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

1 [REDACTED]  
2 are referring to?

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

MR. ██████████ I am trying to

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

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

8 MR. [REDACTED] Go ahead.

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

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

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

21 A Yes.

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

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[REDACTED]  
obligations."

Do you see that, sir?

A Yes.

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

A Yes.

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

Do you see that?

A Yes.

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

MR. [REDACTED] Over

objection, you can answer.

A Yes.

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

A The critical repairs, the money

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

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

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

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

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

17 A Other than what I have stated, no.

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

25 Do you see that?

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A Yes.

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

A It is my belief, that's yes.

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

A I do not know.

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

A No.

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

A No.

Q Paragraph C, do you see that, sir?

A Yes.

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

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closing"?

Do you see that?

A Yes.

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

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

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

Q What is your basis of that knowledge?

A The loan still exists.

Q When was the loan closed?

A I do not know.

Q When were the critical repairs  
completed?

A I do not know.

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

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

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

1 [REDACTED]  
2 would have been recalled.

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

9 A No.

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

14 Do you see that, sir?

15 A Yes.

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

20 Do you see that?

21 A (Witness reading). A, yes.

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



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

7 Do you see that?

8 A Yes.

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

12 A I do not know.

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

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

17 A No.

18 Q Do you know what DHCR stands for?

19 A Division of Housing and Community  
20 Renewal.

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

23 A Yes.

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

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

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

7 A I do not know.

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

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

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

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

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provided.

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

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

MR. [REDACTED] I join as well.

MR. [REDACTED] As is Marion Scott.

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

MR. [REDACTED] Southside joins in all requests.

REQUEST NOTED:

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

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MR. [REDACTED] Kidde and Home  
Depot join.

MR. [REDACTED] Join.

MR. [REDACTED] We will take  
requests under advisement.

REQUEST NOTED:

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

Do you see that?

A            Yes.

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

A            I do not know.

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

A No.

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

MR. [REDACTED] Kidde and Home  
Depot join.

MR. [REDACTED] We join.

MR. [REDACTED] Join.

MR. [REDACTED] Take all  
requests under advisement.

REQUEST NOTED:

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

A No, I do not.

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

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request now, your deposition now  
strays from that.

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

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

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

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

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

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

MR. [REDACTED] I join.

MR. [REDACTED] Join.

MR. [REDACTED] I join.

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

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

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

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

A Okay.

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

MR. SMILEY: I don't doubt that.

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

A No, I do not.

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



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

5 A No, I did not.

6 MR. [REDACTED] Note my  
7 objection.

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

12 A Yes.

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

15 A I believe I have seen it, yes.

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

19 A No, I don't dispute it.

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

24 A Yes.

25 Q Do you see that the smoke detector and

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

A Yes.

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

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

MR. SMILEY: Okay.

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

MR. SMILEY: Yes.

MR. ██████████ Okay, go  
ahead.

A 15,372.

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

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

Q Are you aware that that is indeed the

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

7 A Okay, yes.

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

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

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

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

24 A No.

25 MR. [REDACTED] Just note my

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objection.

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

A No, I do not.

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

A Yes.

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

A Yes, through counsel.

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

A No.

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

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[REDACTED]  
this table?

A No, I do not.

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

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

A No, I do not.

Q Do you know who created this table?

A No, I do not.

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

A Yes.

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

A Several.

Q Can you identify those documents, sir?

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

Q Anything else?

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A No.

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

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

A I'm not sure.

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

A No, I do not.

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

MR. [REDACTED] Just note my objection.

A No, I did not.

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

MR. SMILEY: Yes.

MR. [REDACTED] Thank you.

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

(Recess taken.)

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

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

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

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

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

1 [REDACTED]  
2 entity of EMG Corporation.

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

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

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| 12 | A | Yes. |
|----|---|------|

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|----|---|----------------------------|
| 13 | Q | When did you first see it? |
|----|---|----------------------------|

14 | A In review with counsel.

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

|    |   |      |
|----|---|------|
| 17 | A | Yes. |
|----|---|------|

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

21 MR. [REDACTED] Objection.

22 | You can answer.

|    |   |                   |
|----|---|-------------------|
| 23 | A | The entirety, no. |
|----|---|-------------------|

24 Q What if any portions of this report  
25 did you review?



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[REDACTED]  
A The smoke detectors.

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

MR. [REDACTED] Note my objection.

A No, I did not.

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

A Okay.

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

A Yes.

MR. [REDACTED] Note my objection.

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

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

3 MR. [REDACTED] Objection.

4 You can answer.

5 A None.

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

11 A No one.

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

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

20 A Yes.

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

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

25 MR. [REDACTED] You can go

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back on.

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

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

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

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

A No.

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

A No.

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

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

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

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MR. [REDACTED] You may

answer.

A No.

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

A No.

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

MR. [REDACTED] Objection.

You can answer.

A Any objections?

Q Yes.

A Formal objections?

Q Yes, sir.

A No.

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

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

12 A No.

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

16 A Yes.

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

19 A Yes.

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

22 A Yes.

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

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

3 A Yes.

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

11 A Yes.

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

16 A No.

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

19 A No.

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

23 A No.

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

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

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

|   |   |                |
|---|---|----------------|
| 7 | A | I do not know. |
|---|---|----------------|

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

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|----|---|------|
| 11 | A | Yes. |
|----|---|------|

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

18 | Do you see that?

|    |   |      |
|----|---|------|
| 19 | A | Yes. |
|----|---|------|

20 | Q Do you know what that means?

21 | A No .

22 Q Have you ever heard of HUD  
23 requirements?

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

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██████████  
A I have never heard of HUD requirements.

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

A Yes.

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

A No.

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

A No.

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

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

A I do not know.

MR. ██████████ Let me talk to you outside. Take your mike off.



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

(Recess taken.)

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

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

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

MR. SMILEY: Yes.

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

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

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

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legal conclusion, counsel.

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

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

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

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

THE VIDEOGRAPHER: Keep  
rolling?

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

MR. [REDACTED] Keep it on.

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

(Whereupon the witness leaves  
the room.)

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

MR. SMILEY: Okay.

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

MR. SMILEY: Okay.

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

MR. SMILEY: Okay.

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

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[REDACTED]  
it.

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

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

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

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

MR. SMILEY: Okay.

MR. [REDACTED] This is a bank

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

4 MR. SMILEY: Okay.

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

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

24 MR. SMILEY: Okay.

25 MR. [REDACTED] I think that

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

MR. SMILEY: All right.

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

MR. SMILEY: Okay.

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

MR. SMILEY: Okay.

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

MR. SMILEY: Okay.

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

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

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

MR. SMILEY: I have not.

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

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

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

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That's all.

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

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

MR. ██████████ I know what  
they are.

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

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



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

MR. ██████████ No, no --

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

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

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

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

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

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

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

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

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

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

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

MR. [REDACTED] It is not.

MR. SMILEY: It is not.

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

MR. [REDACTED] I didn't ask

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

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

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

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

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

25 MR. [REDACTED] I understand, but

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

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

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

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

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

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

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

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

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

25 MR. [REDACTED] I am trying to

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

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

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

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

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

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

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

MR. [REDACTED] All right.

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

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

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

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

(Witness returns.)

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

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

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

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



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property?

MR. [REDACTED] Over

objection, you can answer.

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

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

A Yes.

Q Who is that person?

A [REDACTED]

Q Who is [REDACTED]

A He is in-house counsel for Riverbay.

Q Is he an employee of Riverbay?

A Yes, he is.

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

MR. [REDACTED] Note my  
objection to the form of the question.  
You may answer it.

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

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

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

7 A My belief would be that he would be.

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

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

12 A Loan, yes.

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

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

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

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

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

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

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

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

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

A No.

Q Did you speak only once with him about it?

A Yes.

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

A Yes.

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

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

A Any Riverbay employees?

Q Yes, sir.

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

Q Any other Riverbay employees?

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

Q Anyone else?

A That would be it.

Q Now, I would like to turn your  
attention to section 2.3 which is on the 7th  
page of this exhibit, yes, of Exhibit number  
4 and that page actually has a prenumber of 5  
on the bottom right that I have handwritten  
the number 7 on?

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[REDACTED]  
A Yes. 2.3.?

Q Yes. Have you ever seen this  
paragraph prior to today?

A Yes.

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

A Yes.

Q Do you see in this first paragraph the  
third sentence that says "Critical repairs  
must be completed prior to endorsement"?

A Yes.

Q What is your understanding, if any, of  
what that means?

MR. SMILEY: Just note my  
objection. You can answer.

A What is the definition of endorsement?

Q Do you know what that means?

MR. [REDACTED] He asked you  
for the definition, counsel.

Q No, I am asking you if you understand  
what this means. If you don't, that's fine.

A I don't understand what endorsement  
means.

MR. [REDACTED] It is asked

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and answered. He can't answer it  
because he doesn't understand.

Q That's fine. That's what I am asking  
you.

The next sentence, do you see where it  
says quote "These repairs include conditions  
that endanger the safety or wellbeing of  
residents"?

A Okay.

Q Do you see that?

A Yes.

Q Is it your understanding that the  
critical repairs that were referenced in the  
2012 loan document, Exhibit B, table 1  
include repairs to address conditions that  
endanger the safety or wellbeing of  
residents?

MR. ██████████ Just note my  
objection. It calls for an opinion.  
Over objection, you can answer.

A I am just looking back up. This is  
Exhibit B.

Q Yes?

A Well, the conditions, it says here

1 [REDACTED]  
2 "These repairs include conditions that  
3 endanger the safety or wellbeing of  
4 residents." Does that mean if we put them  
5 in, they endanger?

6 Q No, my question, sir, is the reason  
7 that there are critical repairs listed which  
8 you have testified you are aware include  
9 smoke alarms, whether the reason for the  
10 recommendation to put in smoke alarms was  
11 with regard to the conditions that endanger  
12 safety or wellbeing of residents and that's  
13 what makes them a critical repair that had to  
14 be completed before other noncritical  
15 repairs?

16 MR. [REDACTED] Just note my  
17 objection, counsel. You are asking  
18 him for an opinion about an  
19 engineering report now. That's what  
20 you are asking him. I just want it to  
21 be clear. Is that what you are doing?

22 MR. SMILEY: No.

23 MR. [REDACTED] Explain to him  
24 and me what you are asking him. You  
25 are reading from an engineering report

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██████████  
and asking him if that's what they  
mean by a critical repair.

He is not here to give you  
opinions. This is far afield of the  
30(b)(6) deposition and what he is  
here for as a fact witness. He is not  
an expert.

I would encourage you to  
rephrase that question. I cannot let  
him answer it the way it is framed.

MR. SMILEY: I am not going to  
rephrase it. If you want to object,  
you can object and he can answer or  
you can object and you can block him  
and we will move for a ruling. I  
don't want to get into a back and  
forth.

MR. ██████████ I would rather  
not do that. I just want it to be  
clear. I am asking you to be clear if  
you are asking him whether EMG in  
their report on page 5, your number 7,  
when it says "These repairs include  
conditions that endanger the safety or



1 [REDACTED]  
2 wellbeing of residents," that  
3 that's -- you are asking him for an  
4 opinion on what they meant in there.  
5 Is that what you are doing? No?

6 MR. SMILEY: I don't have to  
7 qualify my question. My question is  
8 my question, [REDACTED]

9 MR. [REDACTED] I encourage  
10 you to rephrase it. You insist on not  
11 rephrasing it. So as framed, I  
12 already said I can't let him answer  
13 it, but I will let him answer it if  
14 you are clear on what you are asking  
15 him and if it is an opinion, he is not  
16 here for that.

17 Q Does anyone, to your knowledge,  
18 currently employed by Riverbay have any  
19 knowledge as to what the definition of a  
20 critical repair was as of 2012?

21 MR. [REDACTED] Just note my  
22 objection.

23 A I would --

24 MR. [REDACTED] Over  
25 objection, you can answer without

1 [REDACTED]

2 giving an opinion.

3 A Anyone at Riverbay aware of what a  
4 critical repair means?

5 Q Yes.

6 A Yes.

7 Q Who?

8 A I would say certainly Matt -- well, an  
9 employee of Riverbay, [REDACTED]

10 Q Anyone else?

11 A [REDACTED]

12 Q Anyone else?

13 A That would be the two, [REDACTED] [REDACTED]  
14 those three.

15 Q Do you, sir, know what is meant by a  
16 critical repair in connection with the 2012  
17 loan?

18 A No.

19 MR. [REDACTED] Just note my  
20 objection.

21 Q Other than just reviewing documents  
22 with counsel, did you take any steps to  
23 educate yourself on what a critical repair  
24 meant in connection with the 2012 loan to  
25 prepare yourself for answering questions here

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today?

MR. [REDACTED] Just note my  
objection.

A No.

Q Can you turn please to the next page?

A Page 8?

Q Yes, page 8 which on the PDF on the  
bottom right says "AD3" and at the top says  
"7.6 fire protection and security systems"?

A Yes, I have it.

Q Have you ever seen this page before  
today?

A Yes.

Q Did you see this page as it was  
provided to you by Mr. [REDACTED]

A Yes.

Q Other than looking at it with  
Mr. [REDACTED] did you review this page  
within anybody at Riverbay?

A No.

Q Do you have any personal knowledge as  
to the contents of this page?

A Through review with Mr. [REDACTED]

Q To your knowledge, did anybody at

1 [REDACTED]  
2 Riverbay Corporation review the observations  
3 and comments section of this report prior to  
4 the installation of a smoke alarm in any  
5 appointment in Riverbay Corp.'s buildings  
6 pursuant to this loan?

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

9 A Prior to the installation?

10 Q Yes, sir.

11 A To my knowledge, no.

12 Q To your knowledge, is there any  
13 witness -- withdrawn.

14 To your knowledge, is there any  
15 current employee of Riverbay Corporation who  
16 would have knowledge as to the observations  
17 and comments contained on this page of this  
18 report when it was generated in 2012?

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

21 A Specifically, I don't know which  
22 people back then in Riverbay actually read  
23 the report. I don't know.

24 Q Did you take any steps to determine if  
25 anybody currently within Riverbay Corporation

1 [REDACTED]  
2 read this report?

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

5 A No.

6 Q Do you know of anybody in Riverbay  
7 from the time this report was generated in  
8 April -- July of 2012 up until January of  
9 2017 ever read this report?

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

12 A It is my belief that [REDACTED] the  
13 managing agent, would have read this.

14 Q My specific question is whether or not  
15 any employees of Riverbay Corporation read  
16 this report from the time that it was dated  
17 July 16, 2012 until January of 2017?

18 A I don't know.

19 MR. [REDACTED] Counsel, he  
20 already said he didn't know. Asked  
21 and answered.

22 Q If you can look down to the second  
23 paragraph above where it says "Observation  
24 and comments," I highlighted a section there  
25 for you to read which starts with "Smoke

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

3 A Yes.

4 Q Can you slowly read that, please?

5 A "Per the NFPA 101 requirement --"

6 MR. [REDACTED] You want him  
7 to read it out loud or to himself?

8 A Read it to myself?

9 Q Out loud, but above that. Do you see  
10 a paragraph that starts "Smoke detectors"  
11 that's highlighted above that?

12 A Oh, oh, oh. Do you want me to read it  
13 out loud?

14 Q Yes, slowly, please?

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

17 A Smoke detectors were not observed in  
18 every bedroom of the dwelling units. The  
19 smoke detectors are battery operated and the  
20 observed smoke detectors did not meet the HUD  
21 requirement of 10-year tamper resistant  
22 battery.

23 Q Do you know what that refers to?

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

1 [REDACTED]  
2 A The current -- at the time of this  
3 report, they must have gone in and seen smoke  
4 detectors that were battery operated with an  
5 exposed battery and the HUD requirements want  
6 the tamper resistant lithium battery where  
7 the battery is not exposed.

8 MR. [REDACTED] Sorry, excuse  
9 me.

10 Q To your knowledge, did anybody within  
11 Riverbay Corporation from the date of this  
12 report in July of 2012 up until January of  
13 2017 know that this report contained this  
14 information stating that they observed smoke  
15 detectors in the dwelling units that did not  
16 meet the HUD requirement of a 10-year tamper  
17 resistant battery?

18 MR. [REDACTED] Just note my  
19 objection to the form and  
20 categorization by this company about  
21 what the HUD requirement was. Over  
22 objection, you can answer.

23 A I don't know anyone specifically who  
24 took note of that condition.

25 | Q Now, if you can go down to the

1 [REDACTED]  
2 paragraph below observations and comments, do  
3 you see the highlighted part that starts "Per  
4 the NFPA 101 requirements"?

5 A Yes.

6 Q Do you know what NFPA stands for?

7 MR. [REDACTED] Just note my  
8 objection.

9 A No, I don't.

10 Q Is it fair to say you don't know what  
11 NFPA 101 refers to?

12 A No.

13 Q As of July of 2012, was there an  
14 employee within Riverbay who had the duty to  
15 know any applicable fire codes that applied  
16 to the buildings within Riverbay  
17 Corporation's control?

18 MR. [REDACTED] Just note my  
19 objection to the question, form,  
20 foundation and calls for a legal  
21 conclusion. Over objection, you can  
22 answer it.

23 A Anyone specifically who would know the  
24 fire codes?

25 Q Yes, sir.



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A There was an employee at the time  
██████████, he was the director of safety.

Q Did ██████████ in 2012 have knowledge  
of applicable fire codes that related to  
Riverbay Corporation's properties?

A I don't know.

MR. ██████████ Just note my  
objection. It calls for the state of  
mind of ██████████

Q Prior to today, did you make any  
inquiries within Riverbay Corporation to  
determine if anybody currently employed by  
Riverbay Corporation was charged with knowing  
the applicable fire codes back in 2012?

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

A No.

Q \* Currently, does Riverbay Corporation  
have an employee who as part of that  
employee's duties is charged with knowing the  
applicable fire codes?

MR. ██████████ Just note my  
objection to anything after the date  
of the fire, counsel. It is beyond

1 [REDACTED]  
2 the scope of your notice. I am going  
3 to direct him not to answer because  
4 you are asking him currently in 2020  
5 and that's not the subject of these 18  
6 paragraphs.

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

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

11 Q To your knowledge, were any employees  
12 of Riverbay advised by anyone in 2012 that  
13 they needed to replace older version battery  
14 operated smoke detectors with 10-year sealed  
15 tamper resistant smoke detectors?

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

18 A Prior to 2012, there was no one.

19 Q What about prior to 2014?

20 MR. [REDACTED] Just note my  
21 objection. You can answer. You are  
22 asking him the same question now.

23 MR. SMILEY: Yes.

24 MR. [REDACTED] Your question  
25 was, were any employees of Riverbay

1 [REDACTED]  
2 advised in 2014 that they needed to  
3 replace older versions of the battery  
4 operated smoke detectors, is that your  
5 question?

6 MR. SMILEY: No, prior to 2014.

7 MR. [REDACTED] But your  
8 question was, were any employees of  
9 Riverbay advised in 2012. Now, if you  
10 are asking him the same question, I  
11 want it read back. I don't want it  
12 now 2014. You have to read it back.

13 MR. SMILEY: I will rephrase my  
14 question.

15 MR. [REDACTED] I think you  
16 are asking him something different  
17 than what I am hearing.

18 MR. SMILEY: I will rephrase my  
19 question.

20 MR. [REDACTED] Please.

21 Q As of January of 2014, to your  
22 knowledge, was anybody at Riverbay  
23 Corporation advised that older battery  
24 operated smoke detectors existing in units at  
25 that time needed to be replaced with 10-year

1 [REDACTED]  
2 sealed tamper resistant smoke detectors?

3 MR. [REDACTED] Note my  
4 objection to form, foundation, calls  
5 for an expert opinion. You can answer  
6 over objection.

7 A Prior to January 2014, the project for  
8 the replacement of smoke detectors was  
9 underway. So I don't know if they replaced  
10 the existing or they just put the new 10-year  
11 lithium batteries in the appropriate  
12 positions. I don't know if they were  
13 instructed to take the old ones out or not.

14 Q That's not my question, sir. I am  
15 going to ask the court --

16 A I don't understand. You have to  
17 rephrase.

18 MR. SMILEY: Can you reread my  
19 question, please?

20 MR. [REDACTED] Just for the  
21 record, I think he did try his best to  
22 answer your question. If you are  
23 asking a different one, let's hear it.

24 (Whereupon, the record was read  
25 back by the reporter.)

1 [REDACTED]  
2 A The answer would be yes, prior to  
3 January '14, the rollout program for the new  
4 smoke detectors was underway.

5 MR. [REDACTED] I don't know  
6 that you understood his question. He  
7 is asking you if the old ones, if the  
8 old ones needed to be replaced. Not  
9 the ones that they put in.

10 THE WITNESS: To my -- I don't  
11 know. To my -- I don't know.

12 Q Prior to today, did you undertake any  
13 efforts to learn whether or not anyone  
14 employed by Riverbay Corporation was advised  
15 prior to January of 2014 that old battery  
16 operated smoke detectors within units at  
17 Riverbay needed to be replaced with 10-year  
18 tamper resistant sealed units?

19 MR. [REDACTED] Over  
20 objection. Asked and answered. You  
21 can answer it again.

22 A I don't understand the question  
23 because I am going to give you the same  
24 answer as before. It was part of the  
25 rollout.

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MR. [REDACTED] If you don't understand the question, make sure you understand the question. Let him rephrase the question. Don't answer something you are unsure of.

THE WITNESS: All right.

Q We just read in this report a reference that there were smoke detectors observed that did not meet the HUD requirement of 10-year tamper resistant battery, do you see that? Yes? You have to give a verbal response.

A I am sorry, yes.

Q What I am asking you is whether this information, to your knowledge, was obtained by anybody within Riverbay Corporation from the time of this report of July of 2012 up through January of 2014?

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

A I don't know.

MR. [REDACTED] Let me talk to you outside off the record, please.

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THE VIDEOGRAPHER: Going off  
the record at 1:16 p.m.

(Recess taken.)

THE VIDEOGRAPHER: We are back  
on the record at 1:19 p.m.

Q Sir, prior to today, have you ever  
testified at an examination before trial?

A Yes.

Q How many times?

A Once.

Q Was that in a state court proceeding  
or Federal court, if you know?

A I don't know.

MR. [REDACTED] Just note my  
objection.

Q If you can look down toward the bottom  
of this page, do you see where the sentence  
starts with "Additionally"?

A Yes.

Q Do you see that it says quote  
"Additionally the smoke detectors must be  
hardwired or the battery operated type must  
have 10-year life, be tamper resistant and  
are not interchangeable with appliances or

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toys"?

Do you see that?

A Yes.

Q Do you know if that information was relayed to anybody at Riverbay Corporation prior to any commencement to install smoke alarms as part of this loan?

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

A I don't know if it was relayed to anybody at Riverbay, but had it been, it would have been through [REDACTED] the managing agent.

Q Do you have any specific knowledge as to whether that information was relayed to anybody within Riverbay Corporation?

MR. [REDACTED] Asked and answered. He just said. You can answer it again. Answer it again.

A I don't know specifically, but if it was, it was through [REDACTED] the managing agent.

Q Prior to today, did you take any steps to speak with anybody at Riverbay to ask if



1 [REDACTED]  
2 anyone within Riverbay was notified about the  
3 need to have the 10-year type battery  
4 operated detectors prior to installing smoke  
5 alarms in connection with this project?

6 MR. [REDACTED] Just note my  
7 objection, counsel. When you say "the  
8 need to have," I have a problem with  
9 that. You are taking this report as  
10 gospel. It is not. There is -- it is  
11 not correct.

12 I can't let him answer  
13 questions like that unless you  
14 rephrase your question. If you want  
15 to ask him if that paragraph was read  
16 to someone. If you want to ask him if  
17 it was given to them, do that, but  
18 don't ask him that the need to do it,  
19 assuming that it was correct is there.  
20 Because I tried to do this outside the  
21 witness, but you insist on doing it  
22 this way. It is not correct.

23 MR. SMILEY: I will rephrase  
24 the question.

25 MR. [REDACTED] Please.

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██████████  
Q To your knowledge -- withdrawn.  
Did you attempt to speak with anybody  
within Riverbay Corporation to determine if  
anyone advised, suggested, recommended that  
as part of this loan, that they install  
10-year sealed battery operated smoke  
detectors?

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

A I don't know.

Q Then the next sentence, do you see  
where it says quote "As such, smoke detector  
installation is required in all bedroom and  
hallway locations"?

Do you see that?

A Yes.

Q Do you know if anybody in connection  
with this 2012 loan within Riverbay  
Corporation was advised that smoke detector  
installation was required in all bedroom and  
hallway locations?

MR. ██████████ Again, same  
objection. Over objection, you can  
answer the question.

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A I don't know if any was advised, but  
it was under the tutelage of [REDACTED]

Q As you sit here today, did you take steps to speak with anybody employed within Riverbay Corporation to determine if they were notified that in connection with this loan, smoke detector installation was required in all bedroom and hallway locations?

MR. [REDACTED] Just note my  
ion. Same objection. You may  
the question, over objection.

A I don't know specifically if anyone specifically was directed.

Q My question, sir, is whether in advance of today, you, sir, took any steps to find out if anybody in Riverbay Corporation had such knowledge?

MR. [REDACTED] Objection.

in answer.

A No.

Q The next sentence, do you see where it says quote "The smoke detectors outside of the living areas can be a combination smoke

1 [REDACTED]  
2 and carbon monoxide detector to meet the  
3 requirements below"?

4 Do you see that?

5 A Yes.

6 MR. [REDACTED] Note my  
7 objection.

8 Q To your knowledge, was anybody within  
9 Riverbay Corporation advised to install  
10 carbon monoxide detectors in connection with  
11 this 2012 loan?

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

14 A Required? Was anyone -- say that  
15 again. I am sorry, counsel.

16 MR. [REDACTED] Was anyone  
17 advised at Riverbay that was the  
18 question, but she will read it back.  
19 I want you to be clear.

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

22 A No.

23 Q Are you saying nobody was advised of  
24 that, sir, or are you saying you do not know  
25 if anyone was advised?

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MR. [REDACTED] Note my

objection. It was asked and answered,  
counsel. You phrased it, he answered  
it. You can get a clarification.  
Over objection, you can answer it  
again.

A        No, nobody was advised to put in  
carbon monoxide.

Q How do you know that, sir?

A        Because carbon monoxides aren't installed there because I think -- my opinion is this report is wrong. Carbon monoxides were not installed because I don't believe they were needed.

Q You just gave us an opinion, sir?

MR. [REDACTED] Try not to  
n opinion. You are not here to  
n opinion.

A      It is my belief. It is my belief.

MR. SMILEY: Well, I am going to get to your opinion in a moment.

MR. [REDACTED] He is not going to give opinions.

MR. SMILEY: He just gave an

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opinion.

MR. ██████████ I understand.

MR. SMILEY: I can ask him  
about it now.

MR. ██████████ Okay.

Q Sir, first my question is whether you  
have personal knowledge if any Riverbay  
employee was advised that carbon monoxide  
detectors needed to be installed in  
connection with the 2012 loan?

MR. ██████████ Counsel, that  
was asked and answered. Let's not do  
it again.

MR. SMILEY: No, he didn't  
answer that.

MR. ██████████ Let's not do  
it again.

MR. SMILEY: I am going to keep  
asking until he answers it.

MR. ██████████ Please read  
three questions back and read this  
question to compare them. It was  
asked and it was answered.

(Whereupon, the record was read

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back by the reporter.)

MR. [REDACTED] It is the same question that he answered.

MR. SMILEY: It is not. It is a completely different question.

MR. [REDACTED] The question is how does he know. That's the question that needs to be answered.

MR. SMILEY: How does he know that nobody was advised? You are not going to let him answer that question?

MR. [REDACTED] That's a different question than what you just asked.

MR. SMILEY: I will ask a different question.

Q Sir, how do you know that nobody at Riverbay Corporation was advised that smoke detectors were to be installed in connection with this loan?

MR. [REDACTED] Objection.

MR. [REDACTED] That's a different question, counsel. Did you hear what you just asked him?

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MR. [REDACTED] It was carbon  
monoxide.

MR. [REDACTED] Can you read  
it back, please?

MR. SMILEY: I said smoke? I  
am sorry. I will rephrase it. If you  
didn't keep interrupting me and I can  
answer my question --

MR. [REDACTED] It is my fault  
that you can't speak, too --

MR. SMILEY: It is.

MR. [REDACTED] Right.

MR. SMILEY: It is.

MR. [REDACTED] Okay, that's  
fine. I can accept that.

MR. SMILEY: All right.

MR. [REDACTED] I am  
responsible for everything going on in  
the City of New York that's bad. I  
am. There is a building collapsing,  
it is my fault, too, Andrew. I am  
sorry about that, too. Just please,  
okay. Let's take a five-minute break  
because I am getting too hot.



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MR. [REDACTED] Can we just  
finish this question?

MR. [REDACTED] No, I need a  
break. Before it is rephrased, I need  
a break. There is not a question  
pending now.

MR. [REDACTED] It is 1:30.  
Let's take a lunch break.

MR. [REDACTED] I don't need a  
lunch break unless you want one.

MR. [REDACTED] Let's get the  
question, then do break.

THE VIDEOGRAPHER: We can go  
off?

(Recess taken.)

MR. SMILEY: We are back on,  
sir.

Q What is the basis of your testimony  
that nobody was advised within Riverbay  
Corporation about installing carbon monoxide  
detectors in connection with this 2012 loan?

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

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A In my course of work at Riverbay, I go through -- I have visited many, many units at the complex. As you well know, it is 15,372 units. Every unit I visited, there is no carbon monoxide smoke detector in the hallway.

Riverbay, had they been instructed to do so, I believe they would have done so. We don't shirk our responsibility. If we don't have -- if they are not up there, it is not for a lack of due diligence. That's why I tell you that I don't believe they were instructed to do the carbon monoxides.

Q Did you speak prior to today with anybody employed at Riverbay Corporation as to whether or not they were advised that carbon monoxide detectors had to be installed in connection with the 2012 loan?

MR. [REDACTED] Just note my objection to the form and foundation and mischaracterizing testimony. You may answer.

A No.

Q Prior to today, did you independently

1 [REDACTED]  
2 take any steps to either confirm or refute  
3 whether or not any employees within Riverbay  
4 Corporation prior to January of 2014 were  
5 advised that carbon monoxide detectors needed  
6 to be installed in connection with the 2012  
7 loan?

8 MR. [REDACTED] Just note my  
9 objection, counsel. Not only has that  
10 been asked and answered, but I object  
11 to the form and foundation. I am not  
12 letting him answer the same question  
13 repeatedly. You are asking him if he  
14 was advised. He told you he was not  
15 advised.

16 MR. SMILEY: It is a different  
17 question. Are you instructing him not  
18 to answer?

19 MR. [REDACTED] It is not a  
20 different question. I am sitting in  
21 the room. I am listening, it is my  
22 job. It is not a different question.  
23 You might package it differently. You  
24 might use a synonym. You might use  
25 the word "the" and then "a." It is not

1 [REDACTED]  
2 a different question, counsel.

3 MR. SMILEY: Then your  
4 objection is asked and answered. And  
5 then he can answer it again.

6 MR. [REDACTED] No. When I  
7 say asked and answered and I know he  
8 has answered it, I don't do it again,  
9 at the risk that we get a different  
10 answer.

11 When it is asked and answered,  
12 I direct my client not to answer.  
13 Otherwise, you could ask the same  
14 question 20 times and we have gotten  
15 nowhere. When I say asked and  
16 answered, I usually don't let him  
17 answer. Sometimes I do, but I am  
18 getting a little frustrated now. It  
19 is the same question. You are asking  
20 him the same question.

21 MR. [REDACTED] Can I say one  
22 thing? The Federal rules are crystal  
23 clear when a defending attorney is  
24 allow to instruct the witness not to  
25 answer. It is Rule 30(c) sub 2, a

1 [REDACTED]  
2 person may instruct the deponent not  
3 to answer only when necessary to  
4 preserve a privilege, to enforce  
5 limitation ordered by the court, to  
6 present a motion under Rule 30(b)(3).  
7 30(b)(3) is about harassment.

8 Those are the only instances  
9 you are [REDACTED] to instruct the  
10 witness not to answer. You have other  
11 avenues to protect your client's  
12 interests and that would be obviously  
13 further at trial or in advance, but  
14 not at this proceeding.

15 I just want to inform you in  
16 case we need to bring this to the  
17 judge.

18 MR. [REDACTED] Thank you,  
19 counsel, while I agree it is harassing  
20 to ask a witness the same question  
21 repeatedly. That is my opinion. I am  
22 directing him not to answer a repeated  
23 question which is bordering on  
24 harassment to me and it is harassing  
25 to me.

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MR. [REDACTED] Just for record,  
counsel, you were not involved in the  
prior depositions because you had not  
been named yet. However, 30(c)  
subsection 2 had been previously  
brought up during [REDACTED]  
deposition.

So I am going to note for the  
record again that at that time, we did  
contact the court and we did speak  
with the court's clerk who advised  
counsel of the rule as well.

So again, just for the record,  
so everyone is on notice if this has  
to be brought up, we have dealt with  
this issue before.

MR. [REDACTED] I thank you  
for that, [REDACTED] and I remember the  
court's ruling. They said to be  
guided accordingly and there was no  
specific ruling one way or the other  
at that time, other than that. So  
thank you for that.

Q Sir, your attorney is instructing you

1 [REDACTED]  
2 not to answer my question. Are you going to  
3 follow your attorney's instructions not to  
4 answer questions, based on that?

5 MR. [REDACTED] Counsel,  
6 really?

7 MR. [REDACTED] It is actually part  
8 of the precedent in case law, counsel.  
9 That's a question that's appropriate.

10 MR. [REDACTED] Great. You  
11 don't have to answer that question.

12 MR. SMILEY: So I suggest we  
13 take a break now and then we contact  
14 the court when we get back so that the  
15 afternoon perhaps we can move a little  
16 more smoothly.

17 MR. [REDACTED] Andrew, do me  
18 a favor before we do that. Look at  
19 the question you just asked him and  
20 look back at the last five.

21 If it is really different, I  
22 will reconsider, but I think it is  
23 exactly the same, but if you show me  
24 it is different. I will reconsider.  
25 I don't think you can.

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THE VIDEOGRAPHER: Going off  
the record at 1:37 p.m.

(Lunch recess taken.)

A F T E R N O O N      S E S S I O N.

THE VIDEOGRAPHER: Back on the  
record at 2:23 p.m.

MR. SMILEY: I am just going to  
ask our court reporter to read you my  
last question.

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

MR. [REDACTED] You can answer  
over objection.

A No.

Q Sir, to your knowledge, was the  
installation of carbon monoxide detectors a  
condition of the 2012 loan to Riverbay?

MR. [REDACTED] Just note my  
objection. Over objection, you may  
answer.

A It was not -- it turned out, I don't  
think it was a condition.

Q What is your basis of saying that it  
was not a condition?



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A Because I think there is no need for  
the carbon monoxides to be put in. I think  
this report is erroneous because there is no  
power plant in the basement of each building.  
There is no boilers in the basement of each  
building.

Everything, there is one power plant  
for the entire complex. So under those  
guidelines and there was no need to put in  
carbon monoxide after the project was done,  
nobody was cited. The loan wasn't pulled.  
FDNY didn't complain. DOB didn't complain.  
So that's, you know, I don't think there was  
a need for carbon monoxide.

Q Now, I would like to draw your  
attention back to the building loan agreement  
itself, okay?

MR. ██████████ That's the  
other document. That's Exhibit 3.

Q Plaintiff's Exhibit 3, thank you.  
Now, do you see --

A What page?

Q I will direct you to the page. Under  
article 2 where it says "Article 2.1 critical

1 [REDACTED]  
2 repairs"? You have to verbally say yes.

|   |   |                  |
|---|---|------------------|
| 3 | A | Yes, I am sorry. |
|---|---|------------------|

4 Q This is from the loan document, not  
5 the report, correct, yes?

6 MR. [REDACTED] You have to  
7 say yes instead of mm-hmm.

|   |   |      |
|---|---|------|
| 8 | A | Yes. |
|---|---|------|

9 Q Do you see in Article 2.1 paragraph A  
10 where it says that "This amount represents  
11 100 percent of the estimated cost of the  
12 improvements and repairs described in Exhibit  
13 B"?

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| 14 | A | Yes. |
|----|---|------|

15 Q You see where it says at the beginning  
16 of that paragraph that "Borrower has  
17 deposited loan proceeds with the lender  
18 \$2,306,300"?

|    |   |      |
|----|---|------|
| 19 | A | Yes. |
|----|---|------|

20 MR. [REDACTED] Asked and  
21 answered.

22 Q Then it annexes as part of the loan  
23 documents, are you aware, Exhibit B entitled  
24 "Critical repairs"?

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| 25 | A | Yes. |
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MR. [REDACTED] Just note my  
objection. Counsel, just note my  
objection.

MR. SMILEY: All right.

MR. [REDACTED] Hold on. I  
object to the form of the question.  
He answered it already. Go ahead.

Q Then table 1 critical repairs is part  
of Exhibit B in the loan document?

MR. [REDACTED] Just note my  
objection.

A We are going from that to this?

Q It is the same table, sir, right, the  
table that is in Exhibit 3 that you are  
looking at, table 1, critical repairs and  
that same table 1 is in the EMG document?

MR. [REDACTED] Counsel,  
before I can let him answer -- I will  
let him answer. He has to leave the  
room. I have to put a statement on  
the record.

MR. SMILEY: I can't let you  
put a statement on until he gives an  
answer.

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MR. [REDACTED] Then I have to say it as my objection. This is a document you packaged together. This is not the complete document.

MR. SMILEY: I will rephrase it then. I will rephrase it.

MR. [REDACTED] This is part of an EMG, the other thing is part of a loan agreement. It is not the same exhibit.

Q Sir, did you look in preparation for today at the loan agreement?

MR. [REDACTED] Asked and answered.

Q You did, yes?

A Yes.

Q In that loan agreement, did you see that there was an Exhibit B entitled "Critical repairs" that had table 1 critical repairs as part of the loan agreement?

MR. [REDACTED] Just note my objection, form and foundation, mischaracterizing prior testimony. You may answer the question.

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A I don't recall them being together, but I remember seeing both at different times.

Q Do you have any reason to dispute that table 1 critical repairs and the information contained within that table were, in fact, the critical repairs referenced in Article 2, section 2.1 subdivision A of the building loan agreement dated 28 of November, 2012?

MR. [REDACTED] Just note my objection. Form, foundation, mischaracterizing testimony. You can answer the question after you hear it again. I want you to hear it again.

Please.

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

A        Doesn't reference the critical repairs saying from EMG report.  It just says critical repairs, so I don't know if the two are -- could be the difference or not.  I don't know.

Q Did you review when you reviewed the loan agreements, a table 1 that said critical

1 [REDACTED]  
2 repairs as part of that loan agreement as  
3 referenced in Article 2 of the loan?

4 MR. [REDACTED] Andrew, that  
5 was asked and that was answered two  
6 questions ago. Read it back.

7 MR. SMILEY: The witness says  
8 he doesn't --

9 MR. [REDACTED] He said he had  
10 seen both of them. He did this for  
11 you. We are not going to do this  
12 again. We are not going to do it  
13 again.

14 MR. SMILEY: Your objection is?

15 MR. [REDACTED] Asked and  
16 answered. He already answered that  
17 very question two or three questions  
18 ago.

19 Q As you sit here today, do you know  
20 specifically what critical repairs, if any,  
21 were required as part of the 2012 loan  
22 document agreement?

23 MR. [REDACTED] Objection to  
24 form, foundation. You can answer,  
25 over objection.

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A Well, Exhibit B lists the critical repairs.

Q Okay. Do you have any reason to dispute what is listed in Exhibit B of the loan document?

A No.

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

Q Now, I would like you -- and you see the number there is \$2,306,300, right?

A Yes.

MR. ██████████ Where are we looking?

MR. SMILEY: Exhibit B of the loan?

MR. ██████████ Okay, go ahead.

Q Now, sir, I would like to direct your attention to table 1 critical repairs. You can look at the table that's either in the EMG report that's been marked or the table that's smaller type font that's connected to the loan documents.

Let me know when you have it in front

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of you, please?

A I have the larger one in front of me.

Q I would like you to turn to section --  
I am sorry, to the top of the first page  
where it says "Table 1 critical repairs."

MR. [REDACTED] Yes?

A Yes.

Q Do you see that?

A Yes.

Q Do you see going across the top row,  
it says "Table 1-critical repairs date of  
site visit April 23-27, 2012" and on the  
right-hand side, it says "Number of units  
15,372," do you see that, sir?

A Yes.

Q Do you have any reason to dispute that  
in April of 2012, there were 15,372 units  
within Riverbay Corporation's ownership?

MR. [REDACTED] Asked and  
answered. You can answer it again.

A No.

Q This is an accurate number as of that  
time on this date, correct?

A My belief, yes.



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Q Has that number changed as of today?

MR. [REDACTED] Objection as  
to what today is. You can answer over  
objection but -- go ahead.

A My belief, no.

Q When you look across the row below  
that to the right, do you see a column that  
says "quantity"?

A Yes.

Q A column that says "unit"?

A Yes.

Q A column that says "unit cost"?

A Yes.

Q And a column that says "critical  
repairs"?

A Yes.

Q Now, I would like you to turn to  
section 7.6 which should be I believe the  
last page on that document?

THE VIDEOGRAPHER: Andrew, you  
have to zoom in a little bit.

Q Do you have that in front of you, sir?

A Yes, I do.

Q Are you able to read what is in that

1 [REDACTED]  
2 column on the left-hand side next to 7.6?

3 A It says "Smoke and fire detection  
4 system, carbon monoxide."

5 Q What does it say in the column to the  
6 right of that?

7 A General.

8 Q What does it say in the column to the  
9 right of that?

10 MR. [REDACTED] Note my  
11 objection. Go ahead, you can read it.

12 A "Install battery smoke detectors in  
13 bedrooms and outside the bedrooms to be  
14 combination smoke carbon monoxide detectors  
15 in living area."

16 Q To the right of that, do you see a  
17 number?

18 A 46,136.

19 Q Do you know what that number  
20 represents?

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

23 A My guess would be --

24 MR. [REDACTED] Don't guess.  
25 Do you know what it represents? That

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is the question.

A No, I don't. I don't know what it  
represent.

Q At the top of the table, if you turn  
back two pages, that would be in the column  
under quantity, correct?

A It would be quantity.

Q Do you know what that is referring to  
when it has quantity of 46,136 along that  
row?

MR. ██████████ Just note my  
objection. Form, foundation. You can  
answer.

A It is -- I can't make an assumption.

Q Would you have any reason to dispute  
that that's referencing that according to  
this table, it is saying that 46,136 smoke  
detectors are needed for purchase?

MR. ██████████ Just note my  
objection. Form, foundation,  
mischaracterizing the document. You  
can answer.

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

Q Is there anyone at Riverbay that's

1 [REDACTED]  
2 currently employed that would know what this  
3 means?

4 MR. [REDACTED] Objection,  
5 form, foundation. You can answer.

6 | A Off the top, perhaps [REDACTED]

7 Q Did you speak with Mr. [REDACTED] about  
8 this section to prepare yourself for the  
9 deposition today?

10 | A No.

11 Q Sir, going back to the 30(b)(6)  
12 notice, the first item number 1 on that  
13 notice specifically requests a witness with  
14 knowledge of measures taken to complete items  
15 in table 1-critical repairs, Section 3.1 and  
16 this section 7.6, correct?

17 | A Yes.

18 Q You knew you were going to be asked  
19 about this it, correct?

20 | A Not specifically about quantities.

21 Q You knew you would be asked about this  
22 section 7.6, right?

23 MR. [REDACTED] Asked and  
24 answered. You can answer it again.

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| 25 | A | Yes. |
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Q       What steps did you do to prepare your  
testimony for today to respond to questions  
regarding section 7.6 of this table?

A       To verify the smoke and fire detection  
system was part of the critical repairs. I  
didn't inquire about the quantity.

Q       Did you inquire about the carbon  
monoxide detectors that are referenced in  
this section?

A       No.

MR. ██████████ Asked and  
answered.

Q       Sir, how much time can you approximate  
you spent in total preparing for your  
testimony today?

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

A       Two to three weeks.

Q       During those two to three weeks, each  
of that time was spent with Mr. ██████████

A       No.

MR. ██████████ Objection.

Q       Did you spend time with anybody other  
than Mr. ██████████ in preparing for this

1 [REDACTED]  
2 deposition?

3 MR. [REDACTED] Objection.

4 You can answer.

5 A I spent with [REDACTED]

6 Q Anyone else?

7 A Other counsel, [REDACTED]

8 Q Who is [REDACTED]?

9 A He is the associate counsel with  
10 Riverbay.

11 Q What, if anything, did he do to assist  
12 you in your preparation?

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

15 A He provided the loan documents for me  
16 to read.

17 Q Did he have any information  
18 specifically with regard to the loan  
19 documents to share with you?

20 A No.

21 MR. [REDACTED] Just note my  
22 objection.

23 Q Now continuing back to section 7.6, do  
24 you see where it has the reference EA next to  
25 the number 46,136?

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A Yes.

Q Do you know what that reference is?

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

A Based on the heading, it says "unit."

Q Does that represent to you that these  
items are critical repairs for each unit of  
the 15,372 units?

MR. [REDACTED] Note my  
objection. Form, foundation, prior  
testimony. You can answer.

THE WITNESS: Repeat the  
question.

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

A I believe so.

Q As you sit here today, do you have any  
basis to dispute that section 7.6 and the  
information contained within this column was  
part of the loan documents for this loan in  
2012?

MR. [REDACTED] Other than all  
his answers previously, counsel,  
because it mischaracterizes his

1 [REDACTED]  
2 testimony. Note my objection. You  
3 can answer.

4 THE WITNESS: Repeat the  
5 question.

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

8 A No.

9 Q There is a total number all the way to  
10 the right of \$1,153,400 in section 7.6, do  
11 you see that?

12 A Yes.

13 Q Do you have any reason to dispute that  
14 the way that number is arrived at by  
15 multiplying the cost of \$25 times 46,136  
16 units?

17 MR. [REDACTED] Just note my  
18 objection.

19 A I haven't done the math. Can I do the  
20 math right now?

21 Q You can, sure.

22 A The math is correct.

23 Q Now, I would also like you to look  
24 down at Section 8.5 of this table.

25 Do you see that?



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2 A Yes.

3 Q Do you know what that is referring to?

4 A The GFCI outlets.

5 Q To your knowledge, are those the GFCI  
6 outlets that are referenced in Exhibit B of  
7 the loan documents?

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

10 A To my knowledge, yes.

11 Q Do you see how many units are listed  
12 there?

13 A It looks like -- I can barely read  
14 46,116.

15 Q If you do the math which you are free  
16 to do to confirm, if you multiply 46,116  
17 times \$25, does that equal \$1,000,152 -- I am  
18 sorry -- \$1,152,900?

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

21 A Yes, the math is correct.

22 Q Can you do me a favor please and add  
23 the total number of the 7.6 smoke and fire  
24 detection system carbon monoxide number of  
25 1,153,400, add that to the total number for

1 [REDACTED]  
2 the GFI outlets of \$1,152,900.

3 A They sum to 2,306,300.

4 Q Again, I will ask you to look at  
5 Exhibit B of the loan documents. It is a  
6 critical repairs and tell me what the total  
7 cost of the critical repairs is referenced on  
8 that document?

9 A 2,306,300.

10 Q The same number, correct?

11 A Correct.

12 Q Based on your reading of this, is it  
13 your understanding that Riverbay, as a  
14 condition of the 2012 loan, was supposed to  
15 install smoke and carbon monoxide detectors  
16 pursuant to section 7.6 for a total amount of  
17 \$1,153,400 and GFI outlets listed in Section  
18 8.5 in the total amount of \$1,152,900 for a  
19 total amount of \$2,306,300?

20 MR. [REDACTED] Just note my  
21 objection. Form, Foundation,  
22 mischaracterizing testimony and it  
23 asks for an opinion. You can answer,  
24 over objection.

25 A At the time in 2012, yes.

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Q At the time in 2012, am I correct,  
sir, that as a condition of the 2012 loan,  
Riverbay was required to make the critical  
repair of installing 46,136 smoke detectors  
with some of those being smoke/carbon  
monoxide combination detectors in the living  
areas?

MR. ██████████ Note my  
objection. Asked and answered.  
Mischaracterizing testimony. You can  
answer, over objection.

A At the time of the loan, at the time  
in 2012, yes.

Q What, if anything, changed from at the  
time of the loan until the time that any  
smoke detectors were first installed within  
any of the apartments within Riverbay  
Corporation's buildings?

MR. ██████████ Objection.  
You can answer.

A In terms of smoke detectors, nothing  
changed, they were installed.

Q Were 46,136 smoke detectors installed  
in Riverbay Corporation's properties within

1 [REDACTED]  
2 Co-op City pursuant to this loan?

3 A I don't know.

4 MR. [REDACTED] Note my  
5 objection. Mischaracterizing his  
6 testimony.

7 Q Why don't you know?

8 A I don't know the exact amount. I  
9 don't know if this 46,000 number includes  
10 just smoke detectors or carbon monoxide.

11 Q Do you know whether or not 46,136  
12 detectors of some type, whether it be smoke  
13 alarm or combination?

14 A No, I don't.

15 Q Did you take any steps prior to coming  
16 today to determine whether or not Riverbay  
17 complied with these critical repairs which  
18 were a condition of the 2012 loan by  
19 purchasing and installing 46,136 smoke  
20 alarms?

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

24 A It is my belief they complied with  
25 loan and the critical repairs. However, I am

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not sure of the actual amount that was  
installed.

Q To comply with the loan and the  
critical repairs based on this document, they  
would have to have purchased and installed  
46,136 smoke alarms, correct?

MR. [REDACTED] Objection.  
Mischaracterizing testimony.  
Mischaracterizing the document.  
Mischaracterizing his prior answers,  
counsel.

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

MR. [REDACTED] In the form  
alleged, of course. You already  
established something very different.  
Now you changed the question. Now you  
have eliminated carbon monoxide  
detectors and you are only asking  
about smoke, but your document does  
both. It is unfair. Be fair to the  
witness.

MR. SMILEY: All right. I will  
rephrase it.

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MR. [REDACTED] Before you  
rephrase it. Let me talk to him  
outside.

THE VIDEOGRAPHER: Going off  
the record at 2:46 p.m.

(Recess taken.)

THE VIDEOGRAPHER: Back on the  
record at 2:49 p.m.

Q Sir, at any time after this loan  
agreement was entered into in July 16 of  
2012, did Riverbay Corporation object to the  
condition of the loan that it purchase 46,136  
battery smoke detectors to install in  
bedrooms and outside the bedrooms to be  
combination smoke/carbon monoxide detectors  
in the living area?

MR. [REDACTED] Note my  
objection. Form and foundation, asked  
and answered. You can answer it  
again.

A I don't know if they formally  
objected, no.

Q Did they informally object?

A I do not --

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MR. [REDACTED] Objection.

A I don't know.

Q Did you review any documents or speak with anybody at Riverbay to determine one way or another whether there was any formal or informal objection to the condition of the loan of installing 46,136 battery smoke detectors in bedrooms and outside the bedrooms to be combination smoke/carbon monoxide detectors in the living area?

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

A I don't know if there was -- I did not inquire if there was any formal objection.

Q Did you inquire as if there was any informal objection?

A No.

Q Do you have any personal knowledge, one way or the other about that?

MR. [REDACTED] Objection.  
You can answer.

A I believe we purchased less units because it was deemed that the carbon monoxides weren't needed because of the

1 [REDACTED]  
2 structure of the building.

3 Q What is the basis of that belief,  
4 sir --

5 A That there was no --

6 MR. [REDACTED] Asked and  
7 answered. Asked and answered.

8 MR. SMILEY: I didn't ask my  
9 question yet.

10 MR. [REDACTED] We can hear  
11 where it is going, but go ahead.

12 Q What is the basis of your belief that  
13 less than 46,136 detectors of any kind were  
14 ordered because combination detectors were  
15 not needed?

16 MR. [REDACTED] Asked and  
17 answered. You can answer it again.

18 A Because there was no -- my belief was  
19 there was no need for less -- as many units  
20 as in the critical repairs because of the  
21 structure of the building.

22 Q Now, is that your independent belief  
23 looking back at these documents today that  
24 your testimony is based upon?

25 MR. [REDACTED] Objection.



1 [REDACTED]  
2 Mischaracterizing testimony. You can  
3 answer.

4 A It's the fact of the building. It is  
5 my belief that the unit is, the buildings do  
6 not have a boiler. They don't have fossil  
7 fuel. They don't -- it is all supplied by an  
8 independent, one power plant. There is no  
9 need for the combos to go in.

10 Q I understand, sir, that that is your  
11 opinion now. My question is different.

12 My question is, other than that being  
13 your opinion now, do you have any basis upon  
14 which you can testify at this proceeding as  
15 to whether or not a decision was actually  
16 made prior to 2014 not to purchase the total  
17 amount of 46,136 detectors?

18 MR. [REDACTED] Objection to  
19 form. You can answer.

20 A I don't know that anyone -- I don't  
21 know specifically who, if any, made the  
22 decision to purchase less.

23 Q With regard to your current opinion,  
24 do you have any background in fire safety?

25 MR. [REDACTED] Objection.

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You can answer.

A Background in fire safety, no.

Q Do you have any training in fire safety?

A No.

Q Do you have any expertise in New York City building codes?

A Expertise, no.

Q Do you have any expertise in the New York State -- the New York City administrative code?

MR. ██████████ Objection.

You can answer.

A No.

Q Isn't it fair to say from your prior testimony that you don't even know what the NFPA stands for?

MR. ██████████ Asked and answered. You don't have to answer it again.

Q Have you ever read any documents from the National Fire Protection Association?

A I might have, yes.

Q What documents did you read?

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A I don't recall.

Q Tell me what the basis is of your  
belief currently to form your opinion that in  
2012, at the time of signing this loan  
document, that Riverbay did not have an  
obligation to install, first I am going to  
refer to battery operated smoke alarms in the  
hallways outside of the bedrooms at that  
time?

MR. ██████████ Just note my  
objection, mischaracterizing  
testimony. You can answer.

THE WITNESS: Repeat, please.  
(Whereupon the record was read  
back by the reporter.)

MR. ██████████ Let me have  
the end of the question back.

Q I'm going to rephrase it.  
Sir, currently what is your opinion --  
withdrawn.

Currently what is the basis of your  
opinion that in 2012, Riverbay Corporation  
was not required to comply with the  
conditions of the loan agreement in 2012 to

1 [REDACTED]  
2 install combination smoke and carbon monoxide  
3 detectors in the living areas in the units  
4 within Co-op City?

5 MR. [REDACTED] Asked and  
6 answered. You can answer it again.

7 A My belief is the EMG report was  
8 incorrect. I don't think, I don't believe  
9 they realized that the individual buildings  
10 did not have a boiler, did not have hot and  
11 cold water and that each building was  
12 supplied by the Riverbay power plant.

13 Q What if any codes, references,  
14 documents, materials can you reference to  
15 support your opinion that because there was  
16 not a boiler or hot or cold water or the  
17 other items you referenced, carbon monoxide  
18 detectors were not required pursuant to the  
19 2012 loan?

20 MR. [REDACTED] Same  
21 objections. He is not here for  
22 opinions. Over objection, you can  
23 answer.

24 A Reading articles, discussions with  
25 other Riverbay employees such as our current

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safety director.

Q Do you independently have knowledge of  
any codes at all in the City of New York that  
apply to when carbon monoxide detectors are  
required?

A At this time, no. I would have to  
look.

Q Prior to today, did you take any steps  
to determine what the applicable codes  
statutes or regulations were in 2012  
pertaining to carbon monoxide detectors?

A In 2012, no.

Q Prior to today, did you take any  
independent --

MR. ██████████ Andrew, not to  
interrupt him. You are asking himself  
or anyone on behalf of Riverbay,  
including the experts retained? I  
need to know because I don't want it  
to be unclear.

MR. SMILEY: Him.

MR. ██████████ He is here for  
30(b)(6) as you know.

MR. SMILEY: Yes.

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MR. [REDACTED] Him himself?

MR. SMILEY: Yes.

MR. [REDACTED] Fine. You can answer the question. Let it be read back. I am sorry. I probably interrupted your question.

MR. SMILEY: You did.

MR. [REDACTED] I am sorry. This time, I am sorry.

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

MR. SMILEY: What a bad question I asked. I will rephrase it.

Q Prior to today, did you personally, sir, take any independent action to determine what if any codes, regulations, statutes or ordinances were applicable to Co-op City at the time of its loan renewal in 2012?

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

A Independent at the time of the loan? I don't understand the question. The timeline, you want to know at the time of the loan?

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Q Yes.

A Did we object then?

MR. [REDACTED] No, he wants  
to know if you took any independent  
steps, you, yourself.

THE WITNESS: No.

MR. [REDACTED] Listen to the  
question. If you don't know, I don't  
want to -- I can't remember the whole  
thing.

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

A In 2012, no.

Q Sir, I would like to direct you to the  
30(b)(6) notice again. If you could look  
first at item number 9.

Do you see that item there, sir?

A Yes.

Q Do you see where it asks that "We are  
requesting a witness from Riverbay with  
knowledge of EMG Corp's inspection of Co-op  
City in April, 2012 and its findings and  
recommendations regarding fire codes,  
building codes, smoke alarms and carbon

1 [REDACTED]  
2 monoxide detectors"?

3 A Yes.

4 Q What, if anything, did you do to  
5 prepare to provide responsive answers to  
6 questions relating to item number 9?

7 MR. [REDACTED] Objection. It  
8 was asked and answered. You can  
9 answer it again.

10 A Discussion with internal Riverbay  
11 employees, director of safety.

12 Q Who specifically did you speak with to  
13 prepare yourself to give answers to questions  
14 regarding item number 9 of this notice?

15 A In-house counsel, [REDACTED].

16 Q Anyone else?

17 A No.

18 Q What, if anything, did you learn from  
19 speaking with [REDACTED] that provided you  
20 with information to respond to questions  
21 being asked of you with regard to item number  
22 9 of this notice?

23 A The Riverbay building did not have the  
24 fossil fuel, did not have the hot and cold  
25 boiler and was -- the carbon monoxides



1 [REDACTED]  
2 weren't applicable.

3 Q Did he provide you with any specific  
4 codes, laws or statutes in support of his  
5 statements to you?

6 MR. [REDACTED] Over  
7 objection, you can answer.

8 A I believe he did and I just don't  
9 recall at the present time.

10 MR. [REDACTED] I am sorry to  
11 interrupt. I heard you say you spoke  
12 to in-house counsel [REDACTED], but  
13 right before that you said discussion  
14 with internal director of safety. Is  
15 that [REDACTED] [REDACTED] also?

16 THE WITNESS: No, he is [REDACTED]  
17 [REDACTED].

18 Q Thank you for that.  
19 Who is [REDACTED]?

20 A [REDACTED].

21 Q What if any discussions did you have  
22 with [REDACTED] in connection with item  
23 number 9 of this 30(b)(6) notice to prepare  
24 you to provide answers today?

25 MR. [REDACTED] Over

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objection, you can answer.

A About the need for carbon monoxide detectors, whether or not if it is -- if there was no fossil fuel, are they required.

Q Currently as of this year, did you ask them if they were required, as of the time of this loan?

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

A At the time of the loan, nothing forward and through '14 -- excuse me, '16.

Q Did he provide you with any specific statutes, laws, ordinances or documents to reference?

A No.

Q You just took his word for it, is that fair to say?

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

A Yes.

Q Looking at item number 10 of the 30(b)(6) notice, do you see that we requested that you come prepared or that a witness from

1 [REDACTED]  
2 Riverbay come prepared to talk about the  
3 handling and decision not to install new  
4 carbon monoxide detectors through building  
5 33, including apartment 14J, from April, 2012  
6 through January, 2017?

7 A Yeah, I see this.

8 Q Do you have any personal knowledge of  
9 how Riverbay handled and decided not to  
10 install carbon monoxide detectors throughout  
11 building 33, including apartment 14J, from  
12 April, 2012 through January, 2017?

13 MR. [REDACTED] Counsel, you  
14 are mischaracterizing what that  
15 paragraph says. I object because it  
16 mischaracterizes his prior testimony.  
17 Can you read the question back so he  
18 can hear it again and I can hear it  
19 again?

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

22 MR. [REDACTED] Over  
23 objection, you can answer.

24 A My only personal knowledge is not only  
25 was none and no unit throughout Riverbay was

1 [REDACTED]  
2 carbon monoxide detectors installed, from  
3 April 12th through 2017. It wasn't just  
4 building 33, 14J.

5 MR. [REDACTED] Andrew, before  
6 you continue. I have to talk to him.

7 THE VIDEOGRAPHER: Going off  
8 the record at 3:04 p.m.

9 (Recess taken.)

10 THE VIDEOGRAPHER: Back on the  
11 record, disk 3, at 3:09 p.m.

12 Q Are you ready, sir?

13 A Yes, all set. Thanks.

14 Q Sir, understanding that you weren't  
15 working for Riverbay prior to 2014, did you  
16 ask anybody currently at Riverbay Corporation  
17 why they did not install carbon monoxide  
18 detectors which was a condition of the 2012  
19 loan?

20 MR. [REDACTED] Just note my  
21 objection. Mischaracterizing  
22 testimony, hearsay, you can answer.

23 A I might have -- I might have, I think  
24 I asked [REDACTED] and [REDACTED]  
25 informed me that this project was done, was

1 [REDACTED]  
2 quarterbacked by [REDACTED] [REDACTED]  
3 hired Southside Electric to do -- to oversee  
4 the GFCI, the smoke detectors and the third  
5 option was, I think the third duty was the  
6 front doors being painted.

7 MR. [REDACTED] I move to strike.

8 MR. [REDACTED] Sorry, can you  
9 read back the question and the answer?  
10 I apologize.

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

13 MR. [REDACTED] I join in the  
14 motion to strike.

15 Q Did Mr. [REDACTED] tell you anything as to  
16 why carbon monoxide detectors, which were a  
17 condition of the 2012 loan, were not  
18 installed?

19 MR. [REDACTED] Asked and  
20 answered. You can answer it again.

21 A No, he deferred to [REDACTED]  
22 Southside Electric team.

23 MR. [REDACTED] Same motion.

24 MR. [REDACTED] Join.

25 Q Now, are you aware that Riverbay

1 [REDACTED]  
2 Corporation either on its own or through any  
3 agents or representatives did not install  
4 smoke alarms in the hallways outside the  
5 bedrooms as part of this loan in 2012?

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

9 THE WITNESS: Can you repeat  
10 that, please?

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

13 A I'm only aware that the hallways in my  
14 duties going to units, there were no smoke  
15 detectors in the hallways.

16 Q You saw from reviewing the loan  
17 documents that a critical repair required by  
18 the loan was that smoke detectors had to be  
19 installed in bedrooms, as well as outside the  
20 bedrooms, correct?

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

23 A This is found where, sir?

24 Q You can look at 7.6 in the middle.

25 A Carbon monoxide, yes.

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Q Do you see also there, sir, where it says that smoke detectors needed to be installed outside the bedrooms?

MR. [REDACTED] Asked and answered. You can answer it again.

A        Yes, I see outside the bedrooms.

Q Are you aware that 10-year sealed tamper resistant smoke alarms were not installed outside of the bedrooms following the loan agreement in 2012 and before January of 2017?

A        I'm only aware of what I see.  In all  
units that I have gone into, there is no  
smoke detector outside in the hall.

Q Do you personally have any knowledge as to why there were not 10-year tamper resistant battery operated smoke detectors installed in the hallways outside of the bedrooms of the units pursuant to this loan in 2012?

A        I myself am not aware.

MR. [REDACTED] Just note my objection.

Q Prior to today --

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MR. [REDACTED] Andrew, hold  
on. Outside. Sorry.

THE VIDEOGRAPHER: Going off  
the record at 3:15 p.m.

(Recess Taken.)

THE VIDEOGRAPHER: Back on the  
record 3:17.

THE WITNESS: Counsel, if you  
don't mind, I would like to clarify  
the last answer I gave.

Q Okay, go ahead.

A During my duties and when I walked  
through the units, there are the old 9volt  
battery in some units, but in terms of the  
new 10-year lithium batteries rolling out in  
the [REDACTED] Southside Electric project,  
there are none.

Q Are you aware, sir, as to whether or  
not any existing older 9volt battery operated  
smoke detectors that were then existing in  
the hallways of units outside of the bedrooms  
were supposed to be replaced as part of this  
project with the 10-year tamper resistant  
sealed battery operated smoke detectors?



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MR. [REDACTED] Just note my  
objection to form, foundation. Asks  
for an opinion. Over objection, you  
can answer.

A I don't -- I don't know they were  
asked to be replaced. My belief is the  
bedrooms were -- is where the new smoke  
detectors were to go. I have seen no  
current, new style smoke detectors in the  
hall.

Q Did you attempt to find out in  
preparing for this deposition by speaking  
with anyone or looking at any documents in  
the possession of Riverbay as to why there  
were not new smoke alarms installed outside  
of the bedrooms as required as a condition of  
the loan in 2012?

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

A I am not aware. I don't know what  
[REDACTED] Southside Electric did.

Q Do you know what the applicable codes,  
statutes, regulations or ordinances required  
at the time of this loan in 2012 specifically

1 [REDACTED]  
2 with respect to the placement of smoke  
3 detectors outside of bedrooms in a hallway?

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

7 A I am not aware of specific, no.

8 Q In 2012, did all of the units within  
9 Co-op City have stoves?

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

12 A Does everyone have a stove?

13 Q Yes, sir.

14 A I'm not sure.

15 Q Did at least some of them have stoves?

16 A Yes.

17 MR. [REDACTED] Objection.  
18 You can answer.

19 A Yes.

20 Q To your knowledge, how were those  
21 stoves powered?

22 MR. [REDACTED] Over  
23 objection, you can answer.

24 A Gas.

25 Q Gas fuel?

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A Yes.

Q \* To your knowledge, does gas fuel  
have the potential to emit carbon monoxide?

MR. [REDACTED] Just note my  
objection. That calls for an opinion.  
He is not an expert, counsel.

MR. SMILEY: He testified  
earlier that in his opinion, they did  
not need carbon monoxide detectors  
because there was no boilers and  
something about hot and cold water.

MR. [REDACTED] No fossil fuels?

THE WITNESS: Fossil fuels.

MR. SMILEY: He opened up that  
door. It is very commentary.

MR. [REDACTED] I don't  
believe he did.

MR. SMILEY: You can make your  
objection.

MR. [REDACTED] I did.

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

MR. [REDACTED] I am.

Q Sir, may I assume that you are going

1 [REDACTED]  
2 to follow your lawyer's instructions and not  
3 answer my question?

4 A Yes.

5 MR. [REDACTED] He is.

6 MR. SMILEY: Please mark that  
7 for a ruling.

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

10 MR. [REDACTED] Leave the room  
11 for a minute. Can I talk to you off  
12 the record?

13 MR. SMILEY: Yes.

14 THE VIDEOGRAPHER: Going off  
15 the record at 3:21 p.m.

16 (Recess taken.)

17 THE VIDEOGRAPHER: Back on the  
18 record at 3:37 p.m.

19 MR. [REDACTED] Thank you.  
20 The question that's pending seeks an  
21 opinion. He is not an expert, but if  
22 you want to ask other factual  
23 questions about that topic, I will  
24 consider them and let him answer them.

25 Q Sir, do you have any knowledge as to

1 [REDACTED]  
2 what if any ordinances, statutes, codes,  
3 regulations and the like applied to buildings  
4 in Co-op City back at the time of this loan  
5 in 2012 pertaining to what if any devices  
6 need to be installed in units with gas  
7 producing stoves?

8 MR. [REDACTED] Over  
9 objection, you can answer.

10 A No.

11 Q Are there any --

12 MR. [REDACTED] Wait, I am  
13 sorry. [REDACTED] is out of the room.

14 MR. [REDACTED] It is okay.

15 MR. [REDACTED] He said okay?  
16 I am sorry. Go ahead.

17 Q Does Riverbay Corporation maintain  
18 records that would show if they were  
19 reimbursed from escrow the total amount of  
20 \$2,306,300 upon completion of critical  
21 repairs?

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

24 A Perhaps the finance department would  
25 have that.

1 [REDACTED]  
2 Q Would you be able to speak with  
3 somebody in the finance department, if I make  
4 a demand of counsel, to look and see if, in  
5 fact, Riverbay Corporation was reimbursed out  
6 of escrow \$2,306,300 as a result of  
7 representations made that all critical  
8 repairs were complete?

9 MR. [REDACTED] Just note my  
10 objection. Form, foundation,  
11 mischaracterizing testimony. You can  
12 answer the question.

13 A I could inquire.

14 MR. SMILEY: We call for the  
15 production of any documents in  
16 Riverbay's possession in connection  
17 with being reimbursed either \$150 per  
18 unit or the total sum of \$2,306,300 or  
19 any number in between in support of  
20 any representations Riverbay made to  
21 either [REDACTED] or any state of New  
22 York agency that all critical repairs  
23 were completed within 18 months of the  
24 closing date.

25 MR. [REDACTED] I will take

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all requests under advisement.

MR. [REDACTED] Kidde and Home  
Depot joins.

MR. [REDACTED] Join.

MR. [REDACTED] Join.

REQUEST NOTED:

Q Would you agree, sir, that if Riverbay  
Corporation did not purchase a total of  
46,136 smoke detecting and/or carbon monoxide  
units for the total sum of \$1,153,400, that  
Riverbay should not have been reimbursed from  
escrow for the total sum of \$1,153,400?

MR. [REDACTED] Just note my  
objection.

A I don't know if they have been  
reimbursed or not. I can't answer that right  
now.

Q Sir, going back to the EMG report  
which is Plaintiff's Exhibit 4, if you could  
please turn to page that has the number 84 on  
the bottom right.

Do you see that?

A Yes.

Q Do you see where there is a reference

1 [REDACTED]  
2 on the first paragraph to New York Executive  
3 Law 378?

4 A Yes.

5 Q Do you see in the second to last  
6 sentence of that paragraph where it says "As  
7 such, carbon monoxide detector installation  
8 is required in all units"?

9 A Yes.

10 Q Do you have any independent knowledge  
11 of what Executive Law 378 is?

12 A No.

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

15 Q To your knowledge, in 2012, at the  
16 time of this loan, did Riverbay Corporation  
17 employ anyone either in-house or as an  
18 outside consultant with regard to determining  
19 applicable codes, ordinances, statutes and  
20 laws for this loan renewal project?

21 A I do not know.

22 MR. [REDACTED] Just note my  
23 objection.

24 Q How many smoke detectors of any kind  
25 did Riverbay Corporation purchase in



1 [REDACTED]  
2 connection with this 2012 loan?

3 MR. [REDACTED] Objection.

4 You can answer.

5 A I do not know a specific number.

6 Q In preparation for today, did you take  
7 any steps to either review documents or speak  
8 with anybody to answer questions about the  
9 amount of smoke detectors purchased by  
10 Riverbay Corporation pursuant to this loan?

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

13 A I remember seeing some receipts or  
14 purchase orders. I can't remember which.

15 Q I would like to direct you to the  
16 30(b)(6) notice, number 8, please. Do you  
17 see where this notice is requesting Riverbay  
18 produce a witness with knowledge of  
19 defendant's purchase from Home Depot of Kidde  
20 smoke detectors installed in Co-op City?

21 A Yes.

22 Q What if any steps did you take to  
23 prepare yourself to respond to item number 8  
24 here today?

25 MR. [REDACTED] Other than

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what he just testified to?

MR. SMILEY: Yes.

MR. [REDACTED] You can  
answer, over objection.

A I inquired from our procurement  
department.

Q Who did you speak with in your  
procurement department?

A [REDACTED], and  
then [REDACTED]

Q Is she currently a Riverbay employee?

A Yes.

Q How many employees are there in the  
procurement department currently at Riverbay  
Corp.?

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

A Either six or seven.

Q Was [REDACTED] personally involved  
in the procurement of the Kidde smoke  
detectors purchased by Riverbay in either  
2012, 2013 or 2014?

A I don't know if she was personally

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involved.

Q Did you ask her if she was involved?

A No.

MR. [REDACTED] Objection.

You can answer.

Q Did you ask [REDACTED] [REDACTED] if she had  
any personal knowledge about the amount of  
any smoke detecting devices purchased  
pursuant to the 2012 loan?

MR. [REDACTED] Objection.

You can answer.

A No, I did not.

Q Did you speak with anybody at Riverbay  
Corporation who had personal knowledge about  
the purchasing of Kidde smoke detectors in  
connection with the 2012 loan?

A No.

Q To your knowledge, does anybody  
currently employed at Riverbay have personal  
knowledge about purchasing of Kidde smoke  
detectors in connection with the 2012 loan?

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

A That, I do not know.

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██████████  
Q       What specific documents did you review  
to prepare yourself to respond to item number  
8 with regard to Riverbay's purchase from  
Home Depot of Kidde smoke detectors?

MR. ██████████ Other than  
what he said already?

MR. SMILEY: I think he said he  
reviewed some documents.

MR. ██████████ He said  
receipts and purchase orders or  
purchase order, I am sorry.

Q       Tell me about the receipts and  
purchase orders that you reviewed.

A       It was on Home Depot, I believe one  
was a Home Depot letterhead and it had, I  
think, the quantity for smoke detectors and I  
can't recall. I can't recall the amount. I  
want to say -- I don't want to speculate. I  
can't recall exactly.

Q       Who provided you with those documents?

A       ██████████

MR. SMILEY: Can I have this  
marked as Plaintiff's Exhibit 5,  
please?

1 [REDACTED]  
2 (Whereupon a five-page document  
3 regarding purchase of smoke  
4 detectors was marked  
5 Plaintiff's Exhibit 5 for  
6 identification as of this  
7 date.)

8 Q We have just marked as Plaintiff's  
9 Exhibit 5, a five-page document that I  
10 collated of various documents exchanged in  
11 the discovery of this case that seem to  
12 pertain to purchase of smoke detectors of  
13 which I have specific questions for this  
14 witness.

15 A Do you have an extra copy?

16 MR. [REDACTED] I will give it  
17 to you in a second. I just want to  
18 refresh my recollection about these.

19 THE WITNESS: Okay.

20 MR. SMILEY: [REDACTED] if you want  
21 to turn that so you can follow along.  
22 Are you able to see that?

23 Q Sir, for the moment, I am just going  
24 to ask you to look at the first page of what  
25 has been marked as Plaintiff's Exhibit 5 for

1 [REDACTED]  
2 identification. Let me know when you are  
3 ready, please.

4                    Sir, I am asking you to look at the  
5   first page for the moment, please.

|   |   |       |
|---|---|-------|
| 6 | A | Okay. |
|---|---|-------|

7 Q Do you see this document, it is the  
8 first page of Plaintiff's Exhibit 5 for  
9 identification. At the top, it says  
10 "Emergency reading-resolution number 13-28."

11 | Do you see that?

|    |   |      |
|----|---|------|
| 12 | A | Yes. |
|----|---|------|

13 Q Do you see where it states that it is  
14 a Board of Directors meeting dated March 27,  
15 2013?

|    |   |      |
|----|---|------|
| 16 | A | Yes. |
|----|---|------|

17 Q Have you ever seen this document  
18 before today?

19 | A No.

20 Q Have you ever seen any type of  
21 document similar to this as part of your work  
22 following a Board of Directors meeting?

|    |   |      |
|----|---|------|
| 23 | A | Yes. |
|----|---|------|

24 Q Generally speaking, what kind of  
25 document is this that we are looking at, if

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[REDACTED]  
you know?

A It is a board resolution and the purpose of the resolution is to present will it be a contract, in my case, approval of "insurance" renewal. It goes before the board and then the board votes on it and then it is either, you know, voted yeah or nay.

Q Is it fair to say that decisions such as purchasing of smoke detectors following a loan agreement are decisions that are required to be made by a majority of the Board of Directors of Riverbay Corporation?

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

A Yes.

Q Now, it indicates that it is -- at the top, I am asking you to look at now. It is submitted by [REDACTED] [REDACTED] and [REDACTED] [REDACTED] do you see that?

A Yes.

Q Do you know who those individuals are?

A The only one I recognize is [REDACTED]

[REDACTED]  
Q Who is [REDACTED] [REDACTED] in relation to

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██████████  
Riverbay Corporation?

A She is a board member.

Q Is she currently a board member?

A No.

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

Q To your knowledge, is she currently a  
resident of Riverbay Corporation?

A I do not know.

Q Was she a board member during any of  
the times within which you had been employed  
by Riverbay Corporation?

A Yes.

Q When was the last time to your  
knowledge she was a board member? You can  
approximate.

A I think through 2018.

Q Have you had any discussions with  
██████████ ██████████ about any of the items identified  
in plaintiff's 30(b)(6) notice?

A No.

Q To the right, it says "Seconded by ██████████  
██████████ do you see that?

A Yes.



1

2 Q Do you know who [REDACTED] is?

3 A No, I do not.

4 Q Now, going to the first area where it  
5 says "whereas," do you see that?

6 A Yes.

7 Q Do you see where it says quote "The  
8 purchasing department put bids on the E-bid  
9 system for the purchase of smoke detectors in  
10 GFI requirements required by the HUD loan."

11 Do you see that?

12 A Yes.

13 Q Do you know if that is referencing the  
14 smoke detectors and GFI outlets that were  
15 referenced in Exhibit B of the 2012 loan that  
16 we previously discussed?

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

19 A To my knowledge, yes.

20 Q Do you see that it says that that  
21 was -- that it was required by the HUD loan?

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

24 A Yes.

25 Q Does this refresh your recollection in

1 [REDACTED]  
2 any way from earlier when you didn't know  
3 what the HUD -- withdrawn.

4 | I will withdraw that.

5 Do you see, I believe in the next area  
6 that I have highlighted for you where it says  
7 "Whereas two contracts will be given as  
8 follows"?

|   |   |      |
|---|---|------|
| 9 | A | Yes. |
|---|---|------|

10 Q It says quote "Contract number P425  
11 Kidde photo sell smoke detectors to Home  
12 Depot for an initial supply," do you see  
13 that?

|    |   |      |
|----|---|------|
| 14 | A | Yes. |
|----|---|------|

15 Q Do you know what the reference is with  
16 regard to the phrase initial supply?

|    |   |               |
|----|---|---------------|
| 17 | A | No, I do not. |
|----|---|---------------|

18 Q Based on your review of any of the  
19 records that you reviewed to prepare for this  
20 deposition, did you become aware that there  
21 was stages of approvals for the purchase of  
22 smoke detectors whereas this was the initial  
23 supply approval?

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

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██████████  
A Was I aware of stages of approval?

Q Yes, sir.

A No, I was not.

Q Do you know if there was an initial supply approved and then sometime after this date of March 27, 2013, there was an approval of additional purchasing of smoke detectors?

A Based on what I read here, this amount of smoke detectors appears to be approved, based on the tally at the bottom of the page.

Q Before we get to that. I am trying to find out if based on the materials that you reviewed to prepare for today, whether you have an understanding as to whether this one-page document is referencing an initial supply of smoke detectors whereas additional smoke detectors were later ordered or approved through such a resolution?

A No.

MR. ██████████ It was asked  
and answered.

A No.

Q Am I correct, sir, that this resolution to purchase where it appears it

1 [REDACTED]  
2 states [REDACTED] down "28,326 smoke detectors was  
3 the only resolution passed by the Board of  
4 Directors of Riverbay Corporation to purchase  
5 smoke detectors of any quantity in connection  
6 with this loan"?

7 | MR. [REDACTED] Objection.

8                   Based on prior testimony, you can  
9                   answer.

10 A I am not aware if this was the only  
11 order.

12 Q Do you have any reason to believe that  
13 at any time Riverbay Corporation, through its  
14 Board of Directors or its other employees or  
15 agents, passed any resolutions to order smoke  
16 detectors in addition to the 28,326 smoke  
17 detectors identified here?

18 MR. [REDACTED] Objection.

19 Based on testimony, you may answer.

20 | A I am not aware.

21 Q In other words, you haven't seen any  
22 documents that would show an additional  
23 resolution to purchase additional smoke  
24 detectors; is that correct?

25 MR. [REDACTED] Objection.

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██████████  
You can answer.

A That's correct.

Q Do you know, sir, how the number of  
28,326 smoke detector units, how that number  
specifically was arrived at as stated within  
this resolution that we are looking at?

A No, I do not.

Q Have you asked either Miss ██████████  
or anybody else at Riverbay about how they  
determined how many smoke detectors to order?

A No.

MR. ██████████ What is the  
number on the document? I can't read.

THE WITNESS: 5.

MR. SMILEY: What are you  
asking for?

MR. ██████████ How many smoke  
detectors were approved.

MR. SMILEY: 28,326.

MR. ██████████ Thank you.

Q Now, at the bottom where it says  
"yes," do you see that?

A Yes, I do.

Q There is a bunch of names following?

1

2 A Yes.

3 Q Now, I know you previously said that  
4 you recognized [REDACTED] name. Do you  
5 recognize any of the other individuals listed  
6 alongside and below where it says "yes"?

7 A Some I recognize, but it would be  
8 helpful if they had the first names as well.

9 Q Do you know if any of these  
10 individuals are current board members at  
11 Riverbay Corporation?

12 A Yes, I do.

13 Q Could you tell me who if any of these  
14 are current board members of Riverbay  
15 Corporation?

16 A [REDACTED] Johnson. Just [REDACTED] and  
17 Johnson.

18 Q Can you tell me [REDACTED] first name,  
19 please?

20 MR. [REDACTED] Just note my  
21 objection to any current board  
22 members, but you can answer.

23 A [REDACTED] first name is [REDACTED]

24 Q And [REDACTED] first name, please?

25 A [REDACTED] [REDACTED]. [REDACTED],

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first name [REDACTED]

Q Did you speak with either [REDACTED]  
[REDACTED] or [REDACTED] in preparation for  
your deposition today?

A No, I did not.

Q To your knowledge, would [REDACTED]  
[REDACTED] or [REDACTED] as board members at  
this Board of Directors meeting on March 27,  
2013 have some knowledge about the decision  
to purchase 28,326 smoke detectors?

MR. [REDACTED] Just note my  
objection, calls for the state of mind  
of others. No foundation. You can  
answer.

A I can't answer for them. I don't know  
if they would or not.

MR. SMILEY: We call for the  
production of [REDACTED] [REDACTED] and/or  
[REDACTED] as witnesses to be  
produced for an examination before  
trial to specifically respond to  
plaintiff's 30(b)(6) notice marked as  
Plaintiff's 2 for identification  
responsive to item number 8 where we

1 [REDACTED]  
2 are seeking representative from  
3 Riverbay to testify about Riverbay's  
4 purchase from Home Depot of the Kidde  
5 smoke detectors or in the alternative,  
6 another witness with personal  
7 knowledge of this decision made at the  
8 Board of Directors meeting of  
9 March 27, 2013 be produced.

10 MR. [REDACTED] I join.

11 MR. [REDACTED] We will take  
12 the request under advisement.

13 MR. SMILEY: To the extent  
14 these witnesses are unable to be  
15 produced on behalf of Riverbay, we ask  
16 that we please be provided with their  
17 last known address and contact  
18 information.

19 MR. [REDACTED] Same notation.

20 REQUEST NOTED:

21 Q I would like you to turn now to the  
22 next page, page number 2 entitled "Riverbay  
23 Corporation purchase order transmittal form."  
24 Take a moment please and look at that.

25 MR. SMILEY: David, I am trying



1

to zoom out a little bit.

2

3 Q Sir, let me know when you have had a  
4 chance to look at that, please?

5 A Okay.

6 Q Do you recognize this document?

7 A Yes.

8 Q What do you recognize it to be?

9 A During my preparation for this, for  
10 today.

11 Q Who provided this for you to review as  
12 part of your preparation for today?

13 A My counsel.

14 Q Was a document such as this produced  
15 to you by anyone within Riverbay?

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

18 A No.

19 Q Do you notice that the date of this  
20 transmittal form is March 28, 2013 which is  
21 the day after the Board of Directors meeting  
22 that we just referenced on the first page of  
23 this exhibit?

24 A Yes, I do.

25 Q Now on the left side -- withdrawn.

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[REDACTED]  
Do you have any understanding of these purchase order transmittal forms, any experience in reviewing or working with these forms in your employ at Riverbay Corporation?

A No.

Q Prior to being shown this document by counsel, had you ever seen a Riverbay Corporation purchase order transmittal form?

A No.

Q On the left side where it says "two," there are several names with lines next to it. Do you see that, and checkmarks?

MR. [REDACTED] Up here at the top.

A At the top, yes.

Q You see there is a check mark next to [REDACTED] [REDACTED]

A Yes.

Q Who is [REDACTED] [REDACTED] if you know?

A She was a board member, either she was the president or treasurer at the time of this purchase order.

Q To your knowledge, did Miss [REDACTED] sign off on any loan documents in 2012 in her

1 [REDACTED]  
2 capacity as an officer for Riverbay  
3 Corporation?

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

6 A To my knowledge, yes.

7 Q What is that based upon? What if any  
8 documents in connection with the 2012 loan  
9 did you see that [REDACTED] [REDACTED] signed off on  
10 as an officer of Riverbay Corporation?

11 A The loan binders that were in the  
12 legal department.

13 Q Is it your understanding based upon  
14 your review of the loan binders that [REDACTED]  
15 [REDACTED] signed the loan agreement on behalf of  
16 Riverbay Corporation?

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

19 A I believe so.

20 Q Under that, is the name [REDACTED]  
21 [REDACTED] Am I correct, sir, that you do not  
22 know who that is?

23 A That is correct.

24 Q Under that, it says "[REDACTED] rep," do  
25 you see that?

1

2 A Yes.

3 Q Do you know what that references?

4 A I have no idea.

5 Q There appears to be either a big stamp  
6 or big caps in bold that says on the right  
7 for HUD loan critical repairs; do you see  
8 that?

9 A Yes.

10 MR. [REDACTED] Note my  
11 objection to the characterization of  
12 what it is, but it does read that way.

13 Q Do you know for what if any reason  
14 that language appears on the Riverbay  
15 Corporation purchase order transmittal form?

16 A No, I do not.

17 Q Back in March of 2013, was Riverbay  
18 required to place identifying information on  
19 purchase orders that were made in connection  
20 with the loan with this information saying  
21 that, in fact, it is for an HUD loan critical  
22 repair?

23 MR. [REDACTED] Just note my  
24 objection to the extent that it calls  
25 for a legal conclusion required. Over

1 [REDACTED]  
2 objection, you can answer.

|   |   |               |
|---|---|---------------|
| 3 | A | No, I do not. |
|---|---|---------------|

4 Q Have you seen other documents in your  
5 review in preparing for today that had the  
6 same marking or a similar marking on it where  
7 it said in large clear letters "For HUD loan  
8 critical repairs"?

9 MR. [REDACTED] Over

10 objection. You can answer.

|    |   |     |
|----|---|-----|
| 11 | A | No. |
|----|---|-----|

12 Q This is the only document that you  
13 reviewed that had that marking on it; is that  
14 correct?

15 | A To my recollection, yes.

16 MR. SMILEY: We call for the  
17 production of any and all Riverbay  
18 Corporation documents generated from  
19 the date of the loan agreement in  
20 November of 2012 up to January of 2014  
21 that bear the designation quote "For  
22 HUD loan critical repairs" closed  
23 quote?

24 MR. [REDACTED] I will take  
25 your request under advisement.

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MR. [REDACTED] Join.

3

MR. [REDACTED] Join.

4

MR. [REDACTED] Join.

5

MR. [REDACTED] Join.

6

REQUEST NOTED:

7

Q Do you see, sir, where it says next to

8

material or service, "28,000 units-Kidde

9

10-year sealed lithium battery smoke alarm"

10

with a number after it?

11

A Yes.

12

Q Do you know what this reference is?

13

A No, I do not.

14

Q Do you know if this is a purchase

15

order --

16

Are you okay?

17

A Yes.

18

Q -- on behalf of Riverbay Corporation

19

where they are intending to purchase from

20

Home Depot 28,000 units of a Kidde 10-year

21

sealed smoke alarm?

22

MR. [REDACTED] Note my

23

objection. You can answer.

24

A Yes.

25

Q Do you have any understanding as to

1 [REDACTED]  
2 why this purchase order says 28,000 units  
3 when the resolution from the Board of  
4 Directors the day before says that purchasing  
5 will be ordering 28,326 smoke detector units?

6 MR. [REDACTED] Over  
7 objection, you can answer.

|   |   |     |
|---|---|-----|
| 8 | A | No. |
|---|---|-----|

9 Q Have you seen any documents that would  
10 explain in any way why the amount of 28,000  
11 units were purchased pursuant to a purchase  
12 order from Riverbay to Home Depot?

13 MR. [REDACTED] Objection.

14 You can answer.

|    |   |     |
|----|---|-----|
| 15 | A | No. |
|----|---|-----|

16 Q Now, going down the page, do you see  
17 where there is an asterisk and the word  
18 "resolution" attached written in, it is on  
19 the right-hand side above the date?

|    |   |      |
|----|---|------|
| 20 | A | Yes. |
|----|---|------|

21 Q Do you have an understanding as to  
22 whether or not that's referring to the  
23 resolution we just reviewed on the first page  
24 of this exhibit?

25 | A      My guess would be yes.

1

2

MR. [REDACTED] Don't guess.

3

Q Don't guess. Do you know?

4

A I don't know.

5

Q Are you aware of any custom and

6

practice that was in existence in 2012 and/or

7

2013 whereby a purchase order had to be

8

submitted with a resolution attached?

9

A I don't know.

10

Q Now, below that, it states "Approved

11

by [REDACTED] rep period" with a signature; do

12

you see that?

13

A Yes.

14

Q Do you know whose signature that is?

15

A No, I do not.

16

Q On the bottom left, do you see where

17

it says "Approved by general manager"?

18

A Yes.

19

Q Do you know whose name is written

20

there?

21

A [REDACTED]

22

Q Who is [REDACTED]

23

A He was a senior executive at Marion

24

Scott.

25

Q Have you ever, prior to today, spoken



1 [REDACTED]  
2 with [REDACTED] for any reason?

3 A No.

4 Q Have you ever met [REDACTED]

5 A No.

6 Q To the right, there is a signature; do  
7 you see that on the bottom right?

8 A Yes.

9 Q Do you know whose signature that is?

10 A I believe it is [REDACTED] [REDACTED]

11 Q Do you know if she was signing that as  
12 a president or as the treasurer for Riverbay  
13 Corporation?

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

16 A I don't know in which capacity she  
17 signed as.

18 Q Now, below her signature, there  
19 appears to be the word "paid" upside down, do  
20 you see that?

21 A Yes.

22 Q Does this indicate to you as a  
23 representative of Riverbay Corporation that  
24 Home Depot was paid 456,360.45 total for the  
25 purchase of 28,000 Kidde 10-year sealed

1 [REDACTED]  
2 lithium battery smoke alarms?

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

5 A I don't know the procedure for  
6 whether -- for marking whether something has  
7 been paid or not. I am not familiar with  
8 their procedures.

9 Q Who within Riverbay Corporation, if  
10 anyone, are you aware of that would be  
11 familiar with what the procedure was on  
12 March 28, 2013 for submitting these types of  
13 purchase orders?

14 A I do not know.

15 Q Could you take efforts to determine if  
16 any such person exists?

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

19 A Yes, I could.

20 Q Is [REDACTED] [REDACTED] still on the board of  
21 Riverbay?

22 A No.

23 Q To your knowledge, was this purchase  
24 order transmittal form generated in the  
25 ordinary course of business for Riverbay

1 [REDACTED]  
2 Corporation on March 28, 2013?

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

5 A I do not know.

6 Q Do you know if any of these 20,000  
7 units were combination smoke detector carbon  
8 monoxide alarms?

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

11 A I do not know.

12 Q Can you turn to the next page of this  
13 exhibit, please, entitled "Price quotation  
14 only"? Do you recognize this document, sir?

15 A Yes.

16 Q What do you recognize this to be?

17 A In review for preparation for today  
18 with counsel.

19 Q Who provided this document for you to  
20 review in preparation with counsel?

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

23 A It must -- I would --

24 MR. [REDACTED] Don't guess,  
25 if you know.

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[REDACTED]  
A I don't know specifically.

Q Sir, I am asking who provided you with  
this document to review?

A I am sorry, counsel.

Q When did you first see this document?

A A few weeks ago.

Q What do you recognize this to be?

A Another purchase requisition, but only  
a price quote.

Q Again, do you see under quantity it  
references 28,000?

A Yes.

Q Sir, do you know how, if at all, it  
could be determined why 28,000 Kidde smoke  
detectors smoke alarms were ordered when the  
loan documents indicated the need to purchase  
46,136 smoke detecting devices?

MR. [REDACTED] Note my  
objection. Asked and answered.  
Mischaracterizing testimony. You can  
answer it again.

A No, I do not.

Q Who if anyone within Riverbay  
Corporation would be able to answer questions

1 [REDACTED]  
2 as to why it appears that only 28,000 smoke  
3 alarms were ordered and the loan documents  
4 called for the purchasing of 46,136  
5 detectors?

6 MR. [REDACTED] Note my  
7 objection. Mischaracterizing  
8 testimony. You can answer over  
9 objection, form and foundation. You  
10 can answer over objection.

11 A I don't know of anyone at Riverbay,  
12 but once again, [REDACTED] the member of  
13 [REDACTED] and he headed up the project  
14 along with Southside. He approved this  
15 document.

16 Q To your knowledge, sir, if a conscious  
17 decision was made on the part of Riverbay  
18 Corporation to not order the total amount of  
19 46,136 smoke detectors as indicated in the  
20 loan documents, would that decision be  
21 documented either by way of a board of  
22 director resolution, correspondence, e-mails  
23 or something else?

24 MR. [REDACTED] Just note my  
25 objection to form, foundation,

1 [REDACTED]  
2 mischaracterizing testimony and  
3 speculation. You can answer, over  
4 objection.

5 A I do not --

6 MR. [REDACTED] Just answer  
7 factually.

8 A I do not know.

9 Q Do you see on the left side towards  
10 the bottom of this page, it is handwritten in  
11 "Four deliveries"?

12 MR. [REDACTED] I am sorry.  
13 What page are you on?

14 A What page are you on?

15 Q This is on the third page of the  
16 exhibit.

17 A Okay. Page 3?

18 Q Yes, sir.

19 A You said four deliveries, okay.

20 Q Do you know if, in fact, Riverbay  
21 received four separate deliveries of smoke  
22 detectors?

23 MR. [REDACTED] Over  
24 objection, you can answer.

25 A I do not know.

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Q Do you recognize or know whose  
handwriting is on this page?

A No, I do not.

Q Towards the top right under the area  
where it says "For HUD loan critical  
repairs," do you see where it says "Requested  
by" and then what appears to be [REDACTED]?

A Yes.

Q Do you know who [REDACTED] is?

A Yes.

Q Who is that?

A His name is [REDACTED] [REDACTED], and then  
last name [REDACTED]

Q Spell it.

A [REDACTED].

Q Who is Mr. [REDACTED]

A He is the assistant director of  
Riverbay's maintenance department.

Q Is he still employed by Riverbay?

A Yes.

Q Other than seeing his name on this  
document, what if any knowledge do you have  
as to Mr. [REDACTED] involvement in  
requesting 28,000 Kidde smoke alarms?

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MR. [REDACTED] Just note my

objection. You can answer.

A I do not know.

Q Have you spoken with [REDACTED] [REDACTED] about the purchase of the 28,000 smoke alarms prior to today?

A No.

Q Having seen this document a few weeks ago, is there a reason that you did not speak with [REDACTED] [REDACTED] to prepare to give answers today?

MR. [REDACTED] Just note my

objection. You can answer.

A            No, no reason.

MR. SMILEY: We call for a production of a witness with knowledge as to the purchasing of 28,000 Kidde smoke alarms from Home Depot since this witness does not have any independent knowledge and to the extent that that individual is Toma Kastrati, we call for his production at a deposition or be provided with his last known address.



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[REDACTED]

MR. [REDACTED] I will take  
your request under advisement.

MR. [REDACTED] Home Depot and  
Kidde join.

MR. [REDACTED] Join.

REQUEST NOTED:

Q Do you see where it says "Approved by  
[REDACTED]

A Yes.

Q Do you know who M. Sanders is?

A Yes.

Q Who is that?

A [REDACTED] [REDACTED] [REDACTED].

Q Who, if you know, is Mr. [REDACTED]

A He is the director of the Riverbay's  
maintenance department.

Q Is he currently the director of  
Riverbay's maintenance department?

A Yes.

Q Was he the director of Riverbay's  
maintenance department on March 28, 2013?

A I'm not sure.

Q Have you spoken with Mr. [REDACTED] in  
preparation to answer questions pursuant to

1 [REDACTED]  
2 plaintiff's 30(b)(6) notice relating to the  
3 purchase of Kidde smoke detectors from Home  
4 Depot?

5 A No.

6 Q Is there a reason you did not speak  
7 with him to prepare for this deposition?

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

10 A I just did not.

11 MR. SMILEY: We call for the  
12 production of [REDACTED] [REDACTED] as a  
13 witness on behalf of Riverbay  
14 Corporation as the director of  
15 maintenance who approved the purchase  
16 of 28,000 Kidde smoke alarms.

17 MR. [REDACTED] I will take  
18 the request under advisement.

19 MR. [REDACTED] Home Depot and  
20 Kidde join.

21 MR. [REDACTED] I join.

22 REQUEST NOTED:

23 Q Can you turn to the next page, please,  
24 page 4 of this exhibit. Sir, I am asking you  
25 to look at the fourth page of this exhibit

1 [REDACTED]  
2 entitled "Packing list" with the word "Kidde"  
3 towards the left.

4 | Do you recognize this?

|   |   |      |
|---|---|------|
| 5 | A | Yes. |
|---|---|------|

6 | Q      What do you recognize this to be?

7 | A In review with my counsel.

8 Q Did your counsel provide this document  
9 for your review?

|    |   |      |
|----|---|------|
| 10 | A | Yes. |
|----|---|------|

11 Q Did you review any such documents in  
12 connection with the purchase from Kidde --  
13 withdrawn.

14 Did you review any Kidde documents  
15 such as this relating to smoke detectors with  
16 anyone, other than counsel?

|    |   |     |
|----|---|-----|
| 17 | A | No. |
|----|---|-----|

18 | Q        What do you recognize this to be, sir?

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

21 | A I don't recognize what this would be.

22 Q Do you see there appears to be a stamp  
23 on the bottom right that is a bit shaded out?  
24 It may be received with what appears to be a  
25 date of September 30, 2013?

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[REDACTED]  
A Yes.

Q Below that, it says "Central stores inventory"?

A Correct.

Q Is that a Riverbay designation, to your knowledge?

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

A Yes.

Q What is central stores inventory?

A Riverbay has on site on the campus, for lack of a better word, a warehouse in goods and supplies that are ordered are -- come to the central stores to be, you know, unloaded and discharged.

Q To your knowledge, were 31 pallets, 9 boxes totaling 7,002 Kidde smoke alarms received by Riverbay at the central store's inventory on or about September 30, 2013?

MR. [REDACTED] Objection. You can answer.

A I'm not -- I'm not aware of the specific time and date, no.

Q Is that [REDACTED] signature?

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MR. [REDACTED] Objection.

You can answer.

A I don't know her signature.

Q Did you speak with [REDACTED]  
about this document?

A No.

Q On the left, there is the name  
[REDACTED] do you see that, it looks like it  
might be [REDACTED]

A Yes, [REDACTED] yes.

Q Do you know who that is?

A I'm not sure.

Q Do you know if more packing lists such  
as this one exist?

A I do not know.

Q Do you know how many shipments  
Riverbay received of Kidde smoke alarms?

A I do not know.

Q Can you turn to the last page of this  
Exhibit, page 5, please?

A Okay.

Q Do you recognize this document, sir?

A No.

Q Have you ever seen it prior to today?

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[REDACTED]  
A No.

Q Sir, do you see that on the top of  
this document, it says "To director bureau of  
housing management NYS homes and community  
renewal DHCR"?

A Yes.

Q Do you know what DHCR stands for?

MR. [REDACTED] Asked and  
answered. You can answer it again.

A Department of Housing and Community  
Renewal.

Q Do you see where this document is from  
Riverbay Corporation?

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

A Yes, in the memo form, yes.

Q The date is April 1st, 2013?

A Yes.

Q Do you know for what purpose Riverbay  
Corporation would be sending this document to  
the director of the Bureau of Housing  
Management of the DHCR in the State of New  
York?

A No, I do not.

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Q Do you know if back in 2013, in connection with this 2012 loan, whether or not Riverbay was required to submit purchase orders such as this one for approval by the State of New York?

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

A            No, I do not.

Q Is there anybody within Riverbay Corporation currently who would have any knowledge as to why, if at all, Riverbay was submitting documents like this for approval from DHCR for the purchase of smoke detectors?

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

A Specifically, no.

Q Not specifically, do you have any other understanding?

MR. [REDACTED] Over  
tion, you can answer.

A No.

Q To your knowledge, did DHCR need to be contacted every time that Riverbay purchased

1 [REDACTED]  
2 items pursuant to the critical repairs  
3 required in this loan?

4 A No.

5 MR. [REDACTED] Note my  
6 objection. Form, foundation,  
7 mischaracterizing testimony. You can  
8 answer.

9 A No, I do not.

10 Q Did Riverbay purchase ever any  
11 additional Kidde smoke detectors other than  
12 the 28,000 that we have seen and prior to  
13 January, 2014?

14 MR. [REDACTED] Asked and  
15 answered. You can answer it again.

16 A I do not know.

17 MR. SMILEY: Why don't we go  
18 off the record?

19 THE VIDEOGRAPHER: Going off  
20 the record at 4:27 p.m.

21 (Recess taken.)

22 THE VIDEOGRAPHER: Back on the  
23 record at 4:31 p.m. This concludes  
24 the video deposition for today of John

25 [REDACTED] The time is 4:32 p.m. Going



1 [REDACTED]  
2 off the record.

3 MR. SMILEY: By counsel, we  
4 have all agreed in this room to  
5 adjourn for today, but that this  
6 deposition is still ongoing and more  
7 needs to be asked and that we will  
8 work amongst all of our schedules to  
9 coordinate a continuation date of this  
10 witness as soon as possible.

11 MR. [REDACTED] Do me a favor,  
12 Mr. Videographer, give us a running  
13 time, an approximation of how long we  
14 spent today.

15 THE VIDEOGRAPHER: 4:06.

16 MR. [REDACTED] Four hours six  
17 minutes?

18 THE VIDEOGRAPHER: Yes.

19 MR. [REDACTED] Thank you.

20 (Time noted: 4:32 p.m.)  
21 -----  
22 [REDACTED]

23 Subscribed and sworn to before me

24 this day of , 2020.  
25 -----

Notary Public

|    |   |   |      |
|----|---|---|------|
| 1  |   |   |      |
| 2  |   | EXHIBITS  |      |
| 3  | Plaintiff's   | Description   | Page |
| 4  | 1   | Two-page document entitled "Co-op<br>City Times" dated May 18, 2016 | 16   |
| 5  | 2   | Third-party notice  | 47   |
| 6  | 3   | Nine pages of building loan<br>agreement                            | 61   |
| 7  |   |   |      |
| 8  | 4   | Document entitled "Project Capital<br>Needs"                        | 91   |
| 9  | 5   | Five-page document regarding<br>purchase of smoke detectors         | 207  |
| 10 |   |   |      |
| 11 |   | INFORMATION/REQUESTS  |      |
| 12 | DESCRIPTION   |   | PAGE |
| 13 | Produce quarterly written updates to HUD<br>on status of critical repairs               |   | 78   |
| 14 | Provide HM-11 forms or affidavit regarding<br>search for such forms                     |   | 79   |
| 15 | Produce payment requests for critical repairs<br>submitted to Riverbay                  |   | 80   |
| 16 |   |   |      |
| 17 | Provide information regarding reimbursement<br>of sums of completing critical repairs   |   | 202  |
| 18 | Produce [REDACTED] [REDACTED] and/or [REDACTED]<br>as witnesses or last known addresses |   | 219  |
| 19 |   |   |      |
| 20 | Provide all Riverbay documents that bear<br>designation "For HUD loan critical repairs" |   | 225  |
| 21 | Produce Toma Kastrati or last known address   |   | 236  |
| 22 | Produce [REDACTED] Sanders as a witness   |   | 237  |
| 23 |   |   |      |
| 24 |   | RULINGS   |      |
| 25 |   | 26, 39, 132, 198  |      |

1 [REDACTED]  
2 C E R T I F I C A T E

3 I, LORI CARR, hereby certify that the  
4 Examination of said witness named in the foregoing  
5 transcript was held before me at the time and place  
6 herein named; that said witness was duly sworn  
7 before the commencement of the testimony; that the  
8 testimony was taken stenographically by myself and  
9 then transcribed under my direction; that the party  
10 was represented by counsel as appears herein;

11 That the within transcript is a true record  
12 of the Examination of said witness;

13 That I am not connected by blood or marriage  
14 with any of the parties; that I am not interested  
15 directly or indirectly in the outcome of this  
16 matter; that I am not in the employ of any of the  
17 counsel.

18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand this 6th day of March, 2020.  
20

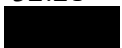
21 *Lori Carr*  
22 \_\_\_\_\_

23 LORI CARR  
24  
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|                         |                         |                       |                       |                        |
|-------------------------|-------------------------|-----------------------|-----------------------|------------------------|
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| <b>a.m (5)</b>          | <b>address (8)</b>      | 41:4 42:18,22         | 161:22                | 151:24                 |
| 2:18 5:22               | 7:19,21 8:15            | 43:4 44:6             | 177:11                | <b>(4)</b>             |
| 31:19 60:11             | 10:7 121:16             | 45:4 77:23            | 182:25                | 20:9 110:12,15         |
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| <b>Aaronson (2)</b>     | 235:25                  | <b>afield (6)</b>     | 210:11                | <b>alongside (1)</b>   |
| 3:21 6:22               | 245:22                  | 19:20 20:22           | 222:15                | 217:6                  |
| <b>able (6)</b>         | <b>addresses (1)</b>    | 35:9 67:13            | 224:19 245:6          | <b>alternative (1)</b> |
| 23:12 76:25             | 245:19                  | 69:9 123:5            | <b>agreements (1)</b> | 219:5                  |
| 164:25 201:2            | <b>adjourn (1)</b>      | <b>afternoon (1)</b>  | 160:25                | <b>amazing (1)</b>     |
| 208:22                  | 244:5                   | 154:15                | <b>agrees (3)</b>     | 103:14                 |
| 231:25                  | <b>adjuster's (1)</b>   | <b>against- (5)</b>   | 72:21 73:24           | <b>AMERICAS...</b>     |
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| 97:6                    | <b>administer (1)</b>   | 2:10                  | <b>ahead (9)</b>      | <b>amount (24)</b>     |
| <b>accept (1)</b>       | 5:15                    | <b>agencies (1)</b>   | 70:8 85:17            | 51:14 63:12            |
| 147:16                  | <b>Administrati...</b>  | 107:5                 | 158:8 162:18          | 64:16,22               |
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| 6:24                    | <b>advance (2)</b>      | <b>agents (3)</b>     | 16:13                 | 175:8 176:2            |
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| 163:23                  | 134:23                  | 235:10                | <b>alarms (24)</b>    | <b>analysis (1)</b>    |
| <b>acres (1)</b>        | 136:14 141:5            | <b>agree (4)</b>      | 92:19 95:8,11         | 115:25                 |
| 31:11                   | 141:20 142:2            | 23:14 42:18           | 122:9,10              | <b>analyst (3)</b>     |
| <b>action (2)</b>       | 143:9,17,23             | 152:19 202:8          | 139:8 140:5           | 13:11 14:15,18         |
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| 215:22,23               | 237:18                  | 87:18 156:17          | <b>allocated (1)</b>  | 195:2                  |
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| <b>Additionally ...</b> | 13:23                   | 159:21                | <b>allow (3)</b>      | 157:22                 |

|                     |               |              |                      |                       |
|---------------------|---------------|--------------|----------------------|-----------------------|
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| 21:12,19 22:2       | 116:23        | 175:23       | 238:20 239:9         | 29:25 30:6,18         |
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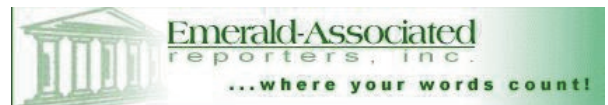
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