

EXHIBIT 46

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN DIEGO

3 DONALD R. SHORT, JAMES F.)
4 GLEASON, CASEY MEEHAN,)
5 MARILYN SHORT, PATTY)
6 WESTERVELT, and DOTTIE YELLE,)
7 individually, and on behalf of)
8 all other similarly situated,)
9 Plaintiffs,)

Certified Copy

vs.) No. GIC877707

10 CC-LA JOLLA, INC., a Delaware) VOLUME I
11 Corporation, CC-LA JOLLA,)
12 L.L.C., a Delaware limited)
13 liability company,)
14 CC-DEVELOPMENT GROUP, INC.,)
15 CLASSIC RESIDENCE MANAGEMENT)
16 LIMITED PARTNERSHIP, an)
17 Illinois Limited Partnership,)
18 and DOES 1 to 110, inclusive,)
19 Defendants.)

20 Videotaped deposition of JAMES F. GLEASON,
21 taken at 12531 High Bluff Drive, Suite 100,
22 San Diego, California, commencing at 2:33 p.m.,
23 Friday, October 12, 2007, before Shuri Gray,
24 CSR No. 3786.
25 PAGES 1 - 95

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20 ALSO PRESENT:

21 COLLETTE STARK, VIDEOGRAPHER

22 MARILYN SHORT

23 DONALD SHORT

24 PATTY WESTERFELT

STEPHANIE FIELDS, GENERAL COUNSEL OF CLASSIC

25 RESIDENCE BY HYATT

1 into investigating whether to move to one of those
2 facilities?

3:57PM

3 A. At the same time we had also been investigating
4 about that time the La Jolla Towers.

5 Q. And do you remember when it was that you first
6 became aware of the La Jolla Towers?

3:57PM

7 A. I don't, but we continued to have interest in
8 La Jolla Towers in between looking at these other
9 facilities.

10 Q. So when was the -- what was the first effort
11 you made to investigate La Jolla Village Towers?

3:57PM

12 A. I don't recall the date.

13 Q. Do you recall what you did?

14 A. We responded to some sort of a -- of an
15 advertisement, which advertised that it was a continuing
16 care retirement community that a -- that was going to
17 be -- it was luxury, and it sounded -- it was all in one
18 building. And about that time we -- we thought we would
19 come see it and we did. And after we -- and we compared
20 it to some of the other places, and the people we saw
21 there seemed to be very genuinely warm. They know each
22 other. They -- we saw friendliness, and there was
23 action in the activities room, and we saw just a lot
24 more vibrance there than we did in the other
25 communities. It was more alive. People were -- even

3:57PM

3:58PM

3:58PM

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1 the billiards table had some action on it in those days. 3:58PM
2 And people in the -- in the crafts room were doing
3 things, the art room was doing things. People had their
4 paintings on easels. Just a lot was going on.

5 The other places we found, like La Costa Glen, 3:58PM
6 it was a horizontal campus, and the community things
7 were kind of the hub, and people lived out from that,
8 and they just didn't seem to have the camaraderie. They
9 didn't seem to have what it -- the kind of a feel.

10 The same thing in Fogue River had that. As a 3:58PM
11 matter of fact, it's kind of interesting. The people
12 there said that they preferred the high-rise living
13 there because every -- because the amenities, the
14 community facilities, and it was the community
15 facilities that brought them together, and the people 3:59PM
16 that were out in the villas were detached.

17 And that was -- and that we came back and kept
18 continued looking at the Towers, and it looked darn
19 good. It was very beautiful, and what they offered was
20 I thought superior to some of the others that seemed to 3:59PM
21 be that -- it was -- it was the place to investigate
22 more seriously, and we did start giving it more serious
23 investigation.

24 The same thing was true of La Costa Glen, or I
25 mean of Las Comanas. It was more of a spread-out 3:59PM

1 community. Wesley Palms had a high-rise and people were 3:59PM
2 moving from the villas to the high-rise which would
3 surprise me because there was more camaraderie.

4 Q. Why is it that you chose to move forward with
5 La Jolla Village Towers as opposed to Wesley Palms if 3:59PM
6 both had the similar sort of configuration?

7 A. Primarily because of this feeling of the people
8 there were genuinely happy. They worked together. They
9 seemed -- they knew each other. There was a lot of
10 sociability. Much more so than we saw at the other 4:00PM
11 places. And that prevailed more than anything. There
12 must be a reason for that. There must be some reason
13 that that existed. So we started asking more questions
14 and finding out more about it.

15 Q. So do you have any recollection of when the 4:00PM
16 first time it is that you visited La Jolla Village
17 Towers?

18 A. No, I don't.

19 Q. Do you remember the year?

20 A. No. 4:00PM

21 MR. ACKER: If I could get this marked, please.
22 I am going to give you two.

23 (Exhibit 97 and Exhibit 98 were marked for
24 identification.)

25

35

1 MR. CONGER: And, Eric, let's on Exhibit 97, 4:01PM
2 let's -- if we are ever going to lodge this one in
3 court, let's make sure we get those Social Security
4 redacted. Okay? I guess confidentiality or whatever
5 under our protective order. Although I am needing a new 4:01PM
6 Visa.

7 THE WITNESS: Pardon me?

8 BY MR. ACKER:

9 Q. Have you had a chance to look, Mr. Gleason, at
10 Exhibits 96 and 97? 4:01PM

11 A. Yes.

12 Q. And you see that there -- 96 appears to be an
13 Ambassador Club application that you and your wife
14 filled out and executed on January 30th of 2001; is that
15 right? 4:02PM

16 A. Yes.

17 Q. You recognize your signature and your wife's
18 signature there at the bottom?

19 A. Yes, I do.

20 Q. And then 97 is a check that -- from your 4:02PM
21 account to Union Bank of California for a thousand
22 dollars to --

23 MR. CONGER: I think that's 98.

24 BY MR. ACKER:

25 Q. So 97 is the Ambassador Club application, and 4:02PM

1 98 is your check; is that right?

4:02PM

2 A. Yes.

3 Q. Do you have any recollection of going to La
4 Jolla Village Towers and putting down a thousand-dollar
5 deposit to reserve or fill out an Ambassador Club
6 application?

4:02PM

7 A. Yes.

8 Q. Had you visited La Jolla Village Towers before
9 going that, that is before visiting and filling out the
10 application on January 30, 2001?

4:03PM

11 A. Yes.

12 Q. How many times?

13 A. Two or three, anyway.

14 Q. Do you have any recollection of anyone that you
15 spoke with, employed by any of the defendants when you
16 went to the residents before January 30th of 2001? And
17 again I am giving you these documents for context. So
18 what I am asking you is before January 30th of '01, when
19 you filled out this check application and wrote this
20 check, you said you went two or three times, and I am
21 asking if you have any recollection of anyone you spoke
22 with employed there?

4:03PM

4:03PM

23 A. I spoke with different people, my wife and I
24 both did, but Kelli Parkins is the one we spoke with the
25 most.

4:03PM

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1 Q. Did you speak with Ms. Parkins before the visit 4:03PM
2 on January 30th of 2001?

3 A. I'm quite sure we did.

4 Q. Do you have any recollection of how far in
5 advance of that? 4:04PM

6 A. No, I don't.

7 Q. Do you have any recollection of any of the
8 conversations you had with Ms. Parkins and those visits
9 prior to January 30th of 2001?

10 A. Yes. 4:04PM

11 Q. What recollection do you have?

12 A. Well, she extolled the virtues of the Towers,
13 said what a wonderful place it was, and talked about the
14 continuing care retirement community, talked about the
15 24-hour emergency medical care, which I -- which was 4:04PM
16 ~~very dear to me. She talked about the -- how nice it~~
17 ~~was to be in a group like this and with other people,~~
18 and she showed us the apartments of two other people,
19 that very graciously opened their apartments and let us
20 see them, to see how they lived in them. 4:04PM

21 And she showed us all the facilities and the
22 amenities, the arts and crafts room, the galleries, art
23 gallery, the exercise room, the beautiful swimming pool.
24 She talked about the programs that existed there.

25 And this enticed us a great deal because the 4:05PM

1 programs were -- some of the other places we went to, 4:05PM
2 they were bingo and things like this. There at the
3 Towers you had kind of seminars and lectures on subjects
4 of current interest, and you also had a lot of
5 entertainment. And it just looked like there was more 4:05PM
6 going on, a great deal going on, and it all revolved
7 around the people and the amenities within the facility.
8 And this was the thing that she portrayed and
9 the thing that I saw that existed there, and it looked
10 very good to us. 4:05PM
11 Q. You mentioned that you had conversations with
12 Ms. Parkins regarding continuing care before
13 January 30th of '01; is that right?
14 A. Yes.
15 Q. What specific recollection, if any, do you have 4:05PM
16 about conversations with Ms. Parkins about continuing
17 care prior to January 30th of 2001?
18 A. She emphasized that coming in -- into the --
19 after you made -- making your entrance fee, that that
20 took care of all of your long-term health care needs. 4:06PM
21 That with your entrance fee the only you would ever be
22 given any more -- billed for anything more concerning
23 long-term care would be if you are in the long-term --
24 in the health care center, and that would be \$7.50 a day
25 for a lunch. 4:06PM

1 Q. For an extra meal?

4:06PM

2 A. Yeah.

3 Q. Do you recall anything that Ms. Parkins said
4 about continuing care prior to January 30th of 2001?

5 A. We had a lot of questions. I had questions of
6 her that she suggested that I discuss with the executive
7 director. And I specifically had questions regarding
8 the care center, and she asked that I would go to the
9 executive director to get those questions answered.

4:06PM

10 Q. Do you recall -- that's -- anything else that
11 Ms. Parkins said about continuing care prior to
12 January 30th, '01?

4:06PM

13 A. No, I -- not specifically. Oh, that the money
14 was going into a trust that we put up; that the entrance
15 funds would go into a trust. And I asked her about
16 that, and she said I'd have to get more information from
17 the executive director pertaining to my questions.

4:07PM

18 Q. Okay. And did you speak with the executive
19 director regarding continuing care and the trust?

20 A. Yes, I did.

4:07PM

21 Q. Who was the executive director at that time?

22 A. Jim Hayes.

23 Q. Did you speak with Mr. Hayes on that visit
24 prior to -- one of these visits prior to January 30th of
25 '01?

4:08PM

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1 A. I don't -- I don't know if it was then or when 4:08PM
2 we came back with our -- with the -- with the rest of
3 the money. I don't recall the time. But before we made
4 our entrance, we committed to our entrance fee, I talked
5 to Jim Hayes. 4:08PM

6 Q. Okay. Did you talk to Mr. Hayes on more than
7 one occasion or just once?

8 A. On more than one occasion.

9 Q. Okay. How many different occasions did you
10 talk to him? 4:08PM

11 A. I think just two.

12 Q. When was the first conversation?

13 A. I don't recall the date.

14 Q. Do you recall whether it was before or after
15 you put down the deposit in the Ambassador Club 4:08PM
16 application?

17 A. I'm sure it was -- well, I don't know -- I
18 don't know whether -- it was before we put in our
19 entrance fee, I know that.

20 Q. Where did that first conversation with 4:08PM
21 Mr. Hayes take place?

22 A. In his office.

23 Q. Tell me everything that you can recall about
24 your conversation, your first conversation with
25 Mr. Hayes. 4:08PM

1 A. It started with a conversation with my -- Kelli 4:09PM
2 asked us to visit the care center, and they are having
3 an open house, and we did visit it, and it was -- it was
4 brand new. And at that time residents from -- from the
5 independent living tower were there as -- as hosts, and 4:09PM
6 golly, it was great. It was brand new and it sparkled,
7 and it was a very fine-looking care center.

8 And we -- I asked one of the members there, one
9 of the residents about the relationship. They were
10 describing this. Kelli described it as being a 4:09PM
11 situation where outsiders could come in there and that
12 we would have access, that even preferred access. And I
13 tried to ask this resident more about that. It seemed
14 like an unusual relationship. And he said yes, it is
15 unusual. It's a privately owned facility that's -- 4:09PM
16 that's open to the public and to which residents of the
17 care center have priority access.

18 And -- and that was kind of strange. I was
19 kind of worried about this. And how does this fit into
20 our entrance fee and our commitment for long-term care 4:10PM
21 and all of that. And I talked to Jim, and that was --
22 Kelli asked that I talk to Jim Hayes about it. And Jim
23 Hayes responded.

24 One of my concerns was that because this is so
25 unusual, and it's separate from the independent living 4:10PM

1 care, would we ever have any financial liability for any 4:10PM
2 problems associated with the care center? He said
3 that's a very good question. He said it's been asked
4 before and we have an answer here from one of -- the
5 chief operating officer of -- of the parent 4:10PM
6 organization. The answer is no.

7 And he had a piece of paper in front of me that
8 he showed me. I don't -- I didn't read it in its
9 entirety, but he said that that paper said that we would
10 never have any responsibility for long-term care; that 4:11PM
11 it's separately budgeted; that it would be funded by the
12 parent organization. And that gave me a great deal of
13 ease.

14 And I asked about the entrance fee, and I said,
15 "With this, where does our entrance fee go?" And he 4:11PM
16 said, "It goes into the trust fund." And I was
17 concerned about how much of it went for either reserve
18 or -- or he -- he used the word set aside. This money
19 is set aside for a long-term care.

20 And I had asked how that was really set aside. 4:11PM
21 He said, "That's determined by Chicago. We don't make
22 that determination." And I -- and I said, "Is there --
23 is there an actuarial study or anything like that done
24 to determine what the liability is?" And he said,
25 "There is either actuarial study that is either under 4:11PM

1 way or is going to be undertaken to answer that very 4:11PM
2 question." And he said, "I think you'll be -- you'll
3 feel better when that -- when that comes out." And I
4 said, "That's great."

5 And I was assured. They gave me a great deal 4:11PM
6 of assurance to know that there was a study coming out
7 to really indicate what -- where the money was going to
8 be and what -- what the liability was going to be to
9 determine how the money would be spent to -- to meet the
10 promise of everybody's long-term health care needs. 4:12PM

11 Q. Have you now told me everything you recall
12 about the first conversation you had with Jim Hayes?

13 A. The first conversation with Jim Hayes? The
14 very first conversation he asked about some of our
15 finances. 4:12PM

16 Q. Whoa, let me back up. Was what you just
17 described the first conversation that you had with Jim
18 Hayes?

19 A. I don't know whether it was -- whether it was
20 the first or the second, but it was one that I was 4:12PM
21 referred to him by Kelli Parkins.

22 Q. Okay. Now, whether it was the first
23 conversation or the second conversation, have you now
24 told me everything about one of your two conversations
25 with Mr. Hayes? 4:12PM

1 A. Repeat that. I didn't understand. 4:12PM

2 Q. Well, I'm trying to understand. Was what you
3 just described, of what Mr. Hayes allegedly told you,
4 was that in your first conversation or your second
5 conversation? 4:13PM

6 A. I don't know whether -- whether it was the
7 first or second. It was the time that Kelly referred me
8 to him.

9 Q. Okay. Have you now told me everything that you
10 can recall about that conversation with Mr. Hayes in 4:13PM
11 which Ms. Parkins referred you to Mr. Hayes?

12 A. I think so. He -- he satisfied my questions,
13 and I trusted that the money was going into the trust.
14 That made us feel very secure. That was a question of
15 mine: What is happening to the money? And he also 4:13PM
16 satisfied my -- my concern and gave -- that we would not
17 have any liability for if anything went wrong with the
18 separately run care center.

19 Q. You referenced a document that he showed you.
20 Can you describe that document? 4:13PM

21 A. It was a multi-page document. It was a
22 question-and-answer document. And he said these are --
23 these are -- he had told me that the questions I was
24 asking had been asked by other residents, and here's how
25 corporate responded to those -- your questions and their 4:14PM

1 questions, the very same questions.

4:14PM

2 Q. Okay. You have said a couple of things. You
3 have said that Mr. Hayes allegedly told you money would
4 be set aside for long-term care, and you also said that
5 Mr. Hayes said the money would go into a master trust;
6 is that right?

4:14PM

7 MR. CONGER: The question presents an argument
8 as phrased. You can answer.

9 BY MR. ACKER:

10 Q. Is that right? He said both of those things?

4:14PM

11 A. It was going into a master trust. As part of
12 the master trust, I assumed was part -- that set aside
13 for long-term care, the liability for long-term care.

14 Q. So what Mr. Hayes told you is that the entrance
15 fees would go into a master trust; is that right?

4:14PM

16 A. Yes.

17 Q. And then you assumed that that money would be
18 set aside for long-term care?

19 A. Part of it.

20 MR. CONGER: Misstates testimony. You can
21 answer.

4:15PM

22 BY MR. ACKER:

23 Q. I'm sorry. I didn't hear your answer.

24 A. I thought that part of the money that went into
25 the master trust out of our entrance fee was that amount

4:15PM

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1 of money that was going to prepay our long-term health 4:15PM
2 care --

3 Q. But what was --

4 A. -- and he led us to believe that was the -- the
5 situation. 4:15PM

6 Q. What Mr. Hayes said to you was the entrance fee
7 was going into a master trust; is that right?

8 A. He said -- yes.

9 Q. Did he say anything else about the entrance
10 fees? 4:15PM

11 MR. CONGER: Asked and answered. You can
12 answer again.

13 THE WITNESS: Well, I think I indicated that --
14 he indicated -- that I said, well, is -- is there a
15 reserve in the master trust? He said, "That's 4:15PM
16 determined by Chicago, and whether there is a reserve, I
17 don't know, but he said that's -- those calculations are
18 made by Chicago and that they" -- and I said, "Is there
19 an actuarial report on it?" And he said, "Well, there
20 is an actuarial report that is either underway or going 4:15PM
21 to be undertaken in the very near future."

22 BY MR. ACKER:

23 Q. Anything else you recall Mr. Hayes saying
24 about --

25 A. And that gave me some assurance. 4:16PM

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4 GLEASON, CASEY MEEHAN,)
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20 Continued Videotaped deposition of JAMES F.
21 GLEASON, at 12531 High Bluff Drive, Suite 100,
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24 STEPHANIE FIELDS, GENERAL COUNSEL OF CLASSIC

25 RESIDENCE BY HYATT

1 JAMES F. GLEASON, 11:07AM
2 having been administered an oath, testified as follows:
3
4 EXAMINATION (CONTINUING)
5 BY MR. ACKER: 11:07AM
6 Q. Good morning, Mr. Gleason.
7 A. Good morning.
8 Q. Yesterday you testified about two conversations
9 that you claimed to have had with Mr. Jim Hayes,
10 correct? 11:07AM
11 A. Yes.
12 MR. CONGER: The question presents an argument
13 as phrased. You can answer. And it was Friday. Today
14 is Monday, so it was three days ago.
15 BY MR. ACKER: 11:07AM
16 Q. One of those conversations related to you and
17 your wife's eligibility to come to the Towers; is that
18 right?
19 A. Correct.
20 Q. And the other conversation, the one that you 11:07AM
21 explained in some -- in greater depth, revolved around
22 other issues including continuing care, correct?
23 A. Correct.
24 Q. Do you have any notes of -- and I want to focus
25 on that second conversation, the one with respect to the 11:07AM

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1 continuing care with Mr. Hayes. Okay? You have to 11:08AM
2 answer yes or no.

3 A. Yes.

4 Q. Do you have any notes of that conversation?

5 A. No. 11:08AM

6 Q. Did you at the time in any fashion record that
7 conversation, whether it be through notes, through an
8 e-mail, through a document, in any fashion?

9 A. My only follow up at -- at that time was with
10 the resident that I talked to with in the care center 11:08AM
11 when they had the open house in the care center. And he
12 was the one that said -- that told me that there was no
13 relationship financially between the independent living
14 and the care center. That they were independent. And
15 he said, "But don't take my word for it," so to speak. 11:08AM
16 "Talk to management about it." And that was the reason
17 I talked to Jim Hayes.

18 Subsequently I talked to Jim Hayes, and he
19 confirmed what the resident said, "No, they are
20 separately funded. You would never be financially 11:09AM
21 liable for any losses in the care center."

22 Q. And do you know the name of the resident that
23 you spoke with?

24 A. Art Fitterer, F-I-T-T-E-R-E-R.

25 Q. Is he still in the Towers? 11:09AM

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1 A. Yes, he is. 11:09AM

2 Q. The conversation that you had with Mr. Hayes, I
3 want to focus on that. Did you record that conversation
4 after the conversation in any fashion?

5 A. Only my conversation substantiating with 11:09AM
6 Mr. Fitzner what Hayes told me.

7 Q. But your conversation with Mr. Fitzner preceded
8 your conversation with Mr. Hayes?

9 A. A subsequent conversation.

10 Q. When was the subsequent conversation with 11:09AM
11 Mr. Fitzner?

12 A. I don't know.

13 Q. Well, was it days after? Was it weeks after?
14 Was it months after?

15 A. It was shortly after my conversation with 11:09AM
16 Hayes.

17 Q. And can you be any more precise, when you say
18 shortly after your conversation with Mr. Hayes?

19 A. I cannot.

20 Q. I want to go back to the conversation with 11:09AM
21 Mr. Hayes. You didn't take any notes during the
22 conversation, correct?

23 A. No.

24 Q. You didn't take any notes about the
25 conversation after the conversation, correct? 11:10AM

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1 A. Correct. 11:10AM
2 Q. You didn't document the conversation in any
3 e-mail or correspondence with anyone, correct?
4 A. Correct.
5 Q. In fact, you didn't document that conversation 11:10AM
6 in any manner whatsoever, correct?
7 A. You mean by memorializing it?
8 Q. Yes.
9 A. No.
10 Q. It's true that you don't know what day of the 11:10AM
11 week, you can't remember what day of the week that
12 conversation occurred; is that right?
13 A. Correct.
14 Q. You don't know what time of day the
15 conversation occurred, correct? 11:10AM
16 A. No, I don't.
17 Q. Do you have any recollection of what Mr. Hayes
18 was wearing that day?
19 A. He was dressed in light colors. I remember
20 that, but that's all. 11:10AM
21 Q. Was there anyone else present for the
22 conversation besides you and Mr. Hayes?
23 A. My wife.
24 Q. Do you have the calendar of any -- of any type
25 that would document your meeting with Mr. Hayes? 11:11AM

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1 A. If I can find the calendar. I -- it was 11:11AM
2 certainly recorded. I'd have to take a look. I don't
3 have it right now. That was, what, 2002 or thereabouts.

4 Q. Do you think you have a calendar from 2002
5 still? 11:11AM

6 A. I don't believe so.

7 Q. So your best testimony, as you sit here today,
8 is that you don't have a calendar for any that record --
9 reflects any meeting with Mr. Hayes, correct?

10 A. I can't say, because I don't know whether we 11:11AM
11 still have that calendar or not. I doubt it.

12 Q. Would you have documented in your calendar the
13 meeting with Mr. Hayes?

14 A. Yes, probably.

15 Q. So if you have a calendar from 2002, it's your 11:11AM
16 belief that you would have documented that meeting,
17 correct?

18 A. I think so.

19 Q. Would you have documented the substance of the
20 meeting or simply that was there a meeting with 11:11AM
21 Mr. Hayes?

22 A. Just that there was a meeting.

23 Q. And was this an electronic calendar, or was it
24 a hard copy calendar?

25 A. Hard copy. 11:12AM

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1 MR. ACKER: So, Mr. Conger, we would just 11:12AM
2 request production of any such document if it exists,
3 and we would ask the witness to make a diligent search
4 to determine whether he can find such a document.
5 MR. CONGER: Then make a formal request. 11:11AM
6 That's not been requested to date.
7 MR. ACKER: Well, actually it is covered in his
8 documents we requested for his deposition.
9 MR. CONGER: Well --
10 THE WITNESS: It's very unlikely that I will 11:10AM
11 find it.
12 MR. CONGER: Okay.
13 BY MR. ACKER:
14 Q. And why is that?
15 MR. CONGER: And -- 11:11AM
16 THE WITNESS: Because --
17 MR. CONGER: Hang on, Jim, just a minute.
18 No, it hasn't. And if you want it, ask for it
19 specifically, and we'll get it for you if it exists, but
20 that has not been requested. 11:12AM
21 MR. ACKER: We'll go through the document
22 request after lunch today so that we can be clear that
23 it's within that document request.
24 BY MR. ACKER:
25 Q. But suffice it to say, as you sit here today, 11:12AM

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1 you don't think you have any writing anywhere that 11:12AM
2 documents your conversation with Mr. Hayes, right?

3 A. I don't think so.

4 Q. And this conversation took place over five
5 years ago, correct? 11:12AM

6 A. Yes.

7 Q. And so the only evidence that we have of what
8 occurred during that conversation is your testimony
9 based on your memory, correct?

10 MR. CONGER: That misstates the record and 11:12AM
11 calls for speculation from this witness. But you can
12 answer.

13 THE WITNESS: I don't think that's correct.

14 BY MR. ACKER:

15 Q. What other evidence do you think there is? 11:13AM

16 A. I think --

17 MR. CONGER: Hold on. Hang on.

18 That's an incomplete question. That violates
19 Rikind potentially as phrased. But you can answer.

20 What other evidence of the conversation -- 11:13AM

21 MR. ACKER: Yes.

22 MR. CONGER: -- or the statements in the
23 conversation?

24 BY MR. ACKER:

25 Q. What other evidence do you believe exists of 11:13AM

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1 the substance of your conversation with Mr. Hayes in 11:13AM
2 your conversation with respect to the care center do you
3 believe exists?

4 A. Oh, the substance. Only my wife was there.
5 Other than that, it would be hearsay. It would be me 11:13AM
6 and -- and Art Fitzner subsequent to the conversation.

7 Q. And Mr. -- now, I want to turn to your
8 conversation with Mr. Fitzner. You have no recollection
9 of when that occurred, correct?

10 A. None at all. 11:13AM

11 Q. You have no recollection how long after your
12 conversation with Mr. Hayes the conversation with
13 Mr. Fitzner occurred, correct?

14 A. No, I don't.

15 Q. And you didn't document your conversation with 11:14AM
16 Mr. Fitzner in any way, correct?

17 A. No.

18 Q. You have no idea what day of the week that
19 occurred, correct?

20 A. Correct. 11:14AM

21 Q. You have no idea where that conversation
22 occurred, correct?

23 A. It was at the Towers.

24 Q. You have no conversations specifically where in
25 the Towers that conversation occurred? 11:14AM

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1 A. No, I don't.

2 Q. Have you spoken with Mr. Fitzner about that
3 conversation, your follow-up conversation, after the
4 conversation with Mr. Hayes, since you had that
5 conversation with Mr. Fitzner?

6 A. About my follow-up conversation with him?

7 Q. Yes.

8 A. No.

9 Q. You never talked to him about it since that
10 day?

11 A. About what?

12 Q. You had a follow-up conversation with
13 Mr. Pitzner, correct?

14 A. Yes.

15 Q. Since that day, whatever day it was that you 11:14AM
16 had the follow-up conversation with Mr. Fitzner about
17 your conversation with Mr. Hayes, have you spoken with
18 Mr. Fitzner about that conversation?

19 A. I didn't talk to him about my conversation with
20 Mr. Fitzner, no.

21 Q. Have you spoken with, since that conversation
22 with Mr. Fitzner, after your conversation with
23 Mr. Hayes, have you talked with Mr. Fitzner again about
24 your conversation with Mr. Hayes?

25 A. Yes, I have.

1 Q. When? 11:15AM
2 A. Several months ago.
3 Q. Describe that conversation.
4 A. The conversation was that his recollection was
5 the recollection of more and more people at the Towers, 11:15AM
6 that they felt that they have been assured by Classic
7 Residence by Hyatt that they would have no financial
8 liability for losses in the care center, and it became a
9 live substance that talked by residents throughout the
10 Towers. 11:15AM
11 Q. And did you have a specific conversation with
12 Mr. Fitchner about it?
13 A. Yes.
14 Q. And describe that conversation.
15 A. Just about like I said, that more and more 11:16AM
16 residents are concerned about that thing that we talked
17 about, that some five years ago, and that was financial
18 liability for the care center.
19 Q. So is it fair to say that a number of residents
20 in the Towers were talking about this concept of whether 11:16AM
21 or not the residents in the Towers, any of their monthly
22 fees would be used to offset losses in the care center?
23 A. It was talked about a great deal.
24 Q. And it was talked about a great deal before
25 your subsequent conversation with Mr. Fitchner, correct? 11:16AM

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1 A. I told him that several people had talked -- 11:16AM
2 had spoken to me about it, and it remains a live concern
3 with them, and that they were of the opinion that they
4 would have no responsibility, and now they are hearing
5 that they may have responsibility for financial losses 11:16AM
6 in the care center.

7 Q. Is it true, isn't it, that you stood up at a
8 Resident Council meeting in January of 2007 and told the
9 residents about this issue with respect to monthly fees
10 being used to offset losses in the care center, correct? 11:17AM

11 A. I don't recall. I have spoken about this, yes,
12 but I don't know about whether it was January.

13 Q. You have spoken about this at Resident Council
14 meetings on repeated occasions, correct?

15 A. That would be incorrect. 11:17AM

16 MR. CONGER: I'm sorry. Vague as to "this."
17 But you can answer.

18 BY MR. ACKER:

19 Q. You have spoken about the issue of the use of
20 the Tower residents' monthly fees to offset losses in 11:17AM
21 the care center on more than one occasion at resident
22 meetings, correct?

23 A. I think that would be true.

24 Q. Now, in this conversation that you had with
25 Mr. Fitzner two or three months ago, did you -- did you 11:17AM

(11)

1 discuss with him this earlier conversation that you 11:17AM
2 claimed to have had with him back in 2002?

3 A. Yes.

4 Q. Specifically what was discussed?

5 A. Mr. Fitzner was an econ instructor at Grossmont 11:18AM
6 College, and he had a recollection of my son having been
7 a quarterback at the college, and he talked about
8 that -- where we started, he wanted to talk about
9 athletics at Grossmont, and he got -- he varied from
10 that and went into this -- this issue. And he said 11:18AM
11 again that it was a very live issue, and that he
12 would -- and it was unfortunate that it did exist.

13 Q. Well, did you discuss with Mr. Fitzner two or
14 three months ago the conversation that you claimed to
15 have had with him in 2002? 11:18AM

16 MR. CONGER: Well, that misstates testimony.
17 It presents an argument. But you can answer.

18 THE WITNESS: Yes, I did.

19 BY MR. ACKER:

20 Q. And what was discussed about your conversation 11:18AM
21 in 2002 with Mr. Fitzner when you spoke with him in
22 2007?

23 A. He indicate -- indicated at the time that he
24 wanted to be assured -- he said he wanted me to be
25 assured by -- by management, not by him, that they would 11:18AM

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1 not -- that residents would not have the financial 11:19AM
2 liability for any losses at the care center. And so I
3 did reassure him that I found out from management
4 that -- that -- that we would not have that liability
5 subsequent to -- to our conversation along time ago, and 11:19AM
6 talked again about how this now has become a very real
7 issue, and apparently we are.

8 Q. And I don't think we are understanding each
9 other, but you claimed to have had a conversation with
10 Mr. Fitzer after speaking with Mr. Hayes back in 2002, 11:19AM
11 correct?

12 A. Correct.

13 Q. Did you ever speak with Mr. Fitzer again about
14 that conversation that you claimed to have had in 2002?

15 A. No; just the first conversation. 11:19AM

16 Q. Why don't you take a look at what we have
17 previously marked as Exhibits 98 and 97.

18 A. Okay.

19 Q. Now, yesterday or Friday we were focusing on
20 trying to put things in context in terms of timing. And 11:20AM
21 we looked at Exhibit 97 and 98 around a January 30,
22 2001, date, correct?

23 A. Correct.

24 Q. Do you recall having any other conversations
25 with Mr. Hayes, other than what you have testified to 11:21AM

1 last Friday and today, prior to signing your continuing 11:21AM
2 care residency agreement?

3 A. I don't recall any others.

4 Q. Do you have any recollection of visiting the
5 Towers after this January 30, 2001, date prior to 11:21AM
6 signing your continuing care residency agreement?

7 A. Yes, I do.

8 Q. What recollection do you have?

9 A. We visited on -- just we dropped in a few
10 times. We were invited to take a look at apartments. 11:21AM
11 We were invited to come to some activities there, and I
12 can't tell you what they were. We were at some activity
13 outside in the -- in the front area where there is a
14 picnic of some sort, and we -- and we just -- we just
15 were very interested in -- in the place, and we dropped 11:21AM
16 in on -- on more than one occasion. I'd say four or
17 five, six occasions.

18 Q. And during those four to six occasions when you
19 were at the Towers between January 30th of 2001 and when
20 you signed your continuing care residency agreement, did 11:22AM
21 you have any conversations with any employees of any of
22 the defendants?

23 A. Oh, yes. Marketing.

24 Q. Who did you speak with?

25 A. I spoke with Kelli Parkins. 11:22AM

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1 Q. Anyone besides Ms. Perkins? 11:22AM
2 A. Yes, I did, but I don't know the name.
3 Q. And can you describe the other person whose
4 name you don't know?
5 A. It was a female, tall. 11:22AM
6 Q. I assume she's no longer employed there?
7 A. No, she is.
8 Q. You just don't know her name?
9 A. It's either Stacie or Stephanie.
10 Q. On how many occasions did you speak with Stacie 11:23AM
11 or Stephanie?
12 A. I believe just once.
13 Q. Do you have any recollection of that
14 conversation?
15 A. No, I don't. 11:23AM
16 Q. And how many times do you believe that you
17 spoke with Ms. Perkins?
18 MR. CONGER: Vague as to time. You can answer.
19 BY MR. ACKER:
20 Q. Let me be more specific. Between January 30th 11:23AM
21 of 2001 -- well, let me ask this. How many times do you
22 believe you spoke with Ms. Perkins at any point prior to
23 signing your continuing care residency agreement?
24 A. Four or five, probably.
25 Q. And do you have -- do you have a recollection 11:23AM

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1 of any of those four or five conversations? 11:23AM

2 A. One conversation had to do --

3 Q. I am not asking you what your recollection is.

4 I am just asking if you have a recollection of any of

5 those four or five conversations? 11:24AM

6 A. Some.

7 Q. And how many conversations do you recall?

8 A. I can recall two specifically.

9 Q. And do you recall when the first of those two

10 conversations was? 11:24AM

11 A. No.

12 Q. Any idea?

13 A. No.

14 Q. Do you recall where the first conversation that

15 you can recall took place? 11:24AM

16 A. I remember we were talking in -- in the
17 wellness center. She was showing us the wellness center
18 and talking about that and its operations.

19 Q. Who was present?

20 A. My wife and I and Kelli Parkins. 11:25AM

21 Q. And your recollection of a second conversation
22 with Ms. Parkins?

23 A. The second conversation she wanted to show us
24 some apartments, and we did see a few apartments in the
25 building. Some -- one was vacant and one was -- and two 11:25AM

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1 were occupied. 11:18AM

2 Q. Who was present for the second conversation?

3 A. My wife.

4 Q. And Ms. Parkins?

5 A. The apartment? The apartment -- 11:25AM

6 Q. No, no, no.

7 MR. CONGER: No, he said Ms. Parkins.

8 THE WITNESS: Oh, Ms. Parkins, yes. I thought
9 you said apartment.

10 BY MR. ACKER: 11:26AM

11 Q. Do you recall when the second conversation took
12 place?

13 A. No, I don't.

14 Q. Do you recall how long the first conversation
15 lasted in the wellness center? 11:25AM

16 A. No, I don't.

17 Q. Rough idea?

18 A. Minutes.

19 Q. I assume you have no notes or any other
20 recording of any manner of the first conversation in the 11:26AM
21 wellness center with Ms. Parkins, correct?

22 A. Correct.

23 Q. And I assume you have no notes or any other
24 recording or memorialization of the second conversation
25 with Ms. Parkins where she would have showed you an 11:26AM

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1 apartment; is that right? 11:26AM

2 A. Correct.

3 Q. Can you estimate how long the second
4 conversation took place, how long it occurred?

5 A. That took quite a while, because we went 11:26AM
6 through several apartments.

7 Q. What's your best estimate?

8 A. Pardon?

9 Q. What is your best estimate of how long you
10 spoke with Ms. Parkins? 11:26AM

11 A. At least a half hour.

12 Q. Do you have any recollection, specific
13 recollection of conversations with Ms. Parkins other
14 than the conversation in the wellness center and the
15 conversation where she showed you apartments? 11:26AM

16 A. I had conversations in her office.

17 Q. Do you have a specific recollection of those?

18 A. Not with any specificity.

19 Q. So I want to focus on conversations with
20 Ms. Parkins before you signed your continuing care 11:27AM

21 residency agreement that you had a specific
22 recollection -- that you have a specific recollection
23 of, and you have told me about one in the wellness
24 center and one when she showed you apartments, correct?

25 A. Correct. 11:27AM

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1 Q. Do you have any other specific recollection of 11:27AM
2 any other conversation with Ms. Parkins prior to signing
3 your continuing care residency agreement?

4 A. I do have a recollection of speaking with her
5 and on the first floor and the marketing office, but I 11:27AM
6 don't know what we talked about.

7 Q. So just so I am clear, the answer is yes, in
8 that you have specific recollection of just two
9 conversations with Ms. Parkins up until the signing of
10 your continuing care residency agreement, correct? 11:27AM

11 A. I think there had to be a third when she showed
12 us the apartment we eventually signed up for.

13 Q. And do you have a specific recollection about
14 the meeting where Ms. Parkins showed you the apartment
15 that you signed up for? 11:28AM

16 A. Yes, I do.

17 Q. Okay. How long did that conversation last?

18 A. I'm sure it was about a half hour.

19 Q. Was it your wife and you were present?

20 A. Correct. 11:28AM

21 Q. Other than the conversation in the wellness
22 center, the conversation when Ms. Parkins showed you
23 apartments that you didn't move into, and Ms. Parkins
24 showing you the apartment you did move into, do you have
25 a specific recollection of any other conversation with 11:28AM

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1 Ms. Parkins prior to signing your continuing care 11:26AM
2 residency agreement?

3 A. Either by writing or -- or in person she gave
4 us the invitation to attend the open house in the care
5 center. 11:29AM

6 Q. And I am asking about oral conversation. Do
7 you have any other specific recollection of any other
8 oral conversation?

9 A. No.

10 MR. CONGER: Hang on a second before you ask 11:29AM
11 another question. Let me talk to Jim for a second. We
12 don't want to have a repeat of that.

13 MR. ACKER: Yeah; go ahead and go off.

14 THE VIDEOGRAPHER: The time is 11:29 a.m. We
15 are off the record. 11:29AM

16 (Recess)

17 THE VIDEOGRAPHER: The time is 11:30 a.m. We
18 are back on the record.

19 MR. ACKER: I'll mark next in order, please.

20 (Exhibit 105 was marked for 11:30AM
21 identification.)

22 MR. CONGER: You know, I should probably just
23 have a disclosure, point one thing out, and I think the
24 witness recalls another conversation, Eric, that he had
25 with Ms. Parkins, but you can ask him or not. 11:31AM

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1 BY MR. ACKER:

11:31AM

2 Q. Mr. Gleason, now having stepped out of the room
3 and spoken with your lawyer, do you want to change your
4 sworn testimony?

5 MR. CONGER: The question presents an argument
6 as phrased. But you can your answer.

11:31AM

7 THE WITNESS: No.

8 BY MR. ACKER:

9 Q. Why don't you take a look at Exhibit 105. Do
10 you recognize that document?

11:31AM

11 A. Yes.

12 Q. This is a document entitled "Move-in
13 Incentive," correct?

14 A. Yes.

15 Q. And you were provided with the move-in
16 incentive; is that right?

11:31AM

17 A. Yes.

18 Q. You were given a \$20,000 break on your entrance
19 fee, correct?

20 A. Uh-huh.

11:31AM

21 Q. You have to answer yes or no.

22 A. Yes.

23 Q. Did you compare pricing at La Jolla Village
24 Towers with any of the other communities that you
25 mentioned on Friday that you were considering?

11:32AM

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1 A. Yes, I did. 11:32AM
2 Q. And what was the result of that comparison?
3 A. This seemed to be middle of the road as far as
4 what it offered.
5 Q. As far as what cost or what it offered? 11:32AM
6 A. Cost.
7 Q. When you say "middle of the road," what do you
8 mean?
9 A. About in the middle of what the fees would be
10 at Las Companas, La Costa, White Sands. 11:32AM
11 Q. And when you say "middle of the road," you mean
12 some were higher and some were lower?
13 A. Correct.
14 Q. And do you have a recollection of which
15 facilities were more expensive than the Towers? 11:32AM
16 A. For what I was looking for, La Costa Glen was
17 more expensive.
18 Q. Any others that were more expensive?
19 A. You had a range that would be more expensive.
20 Q. Any other than La Costa Glen that were more 11:33AM
21 expensive than the Towers?
22 A. Las Companas at that time.
23 Q. Any others?
24 A. I don't recall any right now.
25 Q. And what other facilities that you looked at 11:33AM

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1 were less expensive? 11:33AM

2 A. Less expensive was Reguo Manor, Wesley Palms.

3 Q. Any others?

4 A. That's all I can think of now.

5 Q. And was price a consideration for you when you 11:33AM
6 decided to move into La Jolla Village Towers?

7 A. Price was a consideration.

8 Q. Was it the primary consideration?

9 A. No.

10 MR. CONGER: The question is vague and 11:33AM
11 ambiguous. You can answer.

12 BY MR. ACKER:

13 Q. What was the primary consideration?

14 A. Continuing care, the promise of continuing
15 care, continuing health care. 11:34AM

16 Q. And of those other facilities that you looked
17 at, did they also provide a continuing care option?

18 A. In varying degrees.

19 Q. Which ones did?

20 A. I can't recall with specificity again. 11:34AM

21 MR. ACKER: If I can get this marked, please.

22 (Exhibit 106 was marked for
23 identification.)

24 BY MR. ACKER:

25 Q. Take a look at Exhibit 106. 11:34AM

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1 A. Yes. 11:35AM

2 Q. Exhibit 106 is a copy of a deposit subscription
3 worksheet for you and your wife, correct?

4 A. Correct.

5 Q. And you and your wife selected the unlimited or 11:35AM
6 extensive long-term care plan, correct?

7 A. Yes.

8 Q. And you understood that under the extensive or
9 long-term care plan that you would not, if you stayed in
10 the community for more than 50 months, you would not be 11:35AM
11 entitled to any refund of your entrance fee, correct?

12 A. Yes.

13 Q. And do you recall what the entrance fee was
14 that you paid when you entered the Towers?

15 A. On the sheet it's 215,788. 11:35AM

16 Q. That was the total entrance fee, correct?

17 A. Yes.

18 Q. Were there any off the communities that you
19 looked at where you would be able to enter the community
20 and receive a package with a care plan similar to the 11:36AM
21 extensive long-term care plan with an entrance fee of
22 \$215,000?

23 A. Yes.

24 Q. Which were those?

25 A. Las Companas and La Costa Glen. 11:36AM

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1 A. I had that specific recollection, and I talked 11:53AM
2 with Kelli Parkins about it, and I talked with Jim Hayes
3 about it.

4 Q. Okay. And tell me, as clearly as you can
5 recall, exactly what you recall Mr. Hayes saying. 11:53AM

6 A. Mr. Hayes, as clearly as I can recall, said
7 that that question, regarding whether we would have any
8 financial liability for losses at the care center, had
9 been asked by other residents in the past, and it is a
10 continuing thing, and he referred to some document, 11:53AM
11 showing me that the chief executive officer of -- of the
12 corporation answered this question to other residents
13 some time ago, and the answer was no. It's entirely
14 funded separately, and any losses would be absorbed by
15 the parent company. 11:54AM

16 Q. Now, that conversation occurred earlier, not on
17 the day you signed the contract?

18 A. Before this.

19 Q. Okay. Do you recall any recollection of any
20 conversations with Mr. Hayes on April 15th, 2002? 11:54AM

21 A. No, I don't.

22 Q. Do you recall any conversations with
23 Ms. Parkins on April 15th, 2002?

24 A. On that specific issue?

25 Q. Let's start with that specific issue. Do you 11:54AM

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1 A. At or prior to. 1:43PM

2 Q. Well, I'll ask you about prior to, but do you
3 recall having that specific conversation on April 15,
4 2002?

5 A. No, I don't. 1:43PM

6 MR. ACKER: You just referenced another
7 document that hasn't been marked in this case, and we
8 are going to mark that document now if we could.

9 MR. CONGER: Well, this is an original of a
10 document that has been produced to you previously, 1:43PM
11 Gleason 0104 and Gleason 0105. I don't -- I don't mind
12 if you make another copy of the original, but I don't
13 want to lose possession of the original.

14 MR. ACKER: So we'll mark it and then we'll
15 make a copy. 1:44PM

16 MR. CONGER: I am going to mark this 109 which
17 will be the copy. This is in a sheet protector.

18 (Exhibit 109 was marked for
19 identification.)

20 BY MR. ACKER: 1:44PM

21 Q. You wanted to say something about this
22 document, Mr. Gleason?

23 A. Yes. I think that in response to my wife and
24 my concern about what our liability was going to be and
25 whether we would have any future cost associated with 1:44PM

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1 long-term care, I got this as assurance from Kelli. 1:44PM

2 Would you like me to read it?

3 Q. Well, is that your writing or someone else's
4 writing?

5 A. Kelli's writing. 1:44PM

6 Q. And you watched her write that?

7 A. No. She presented it to me.

8 Q. Okay. And when was that?

9 A. I don't know exactly.

10 Q. Where was that? 1:45PM

11 A. I don't know exactly.

12 Q. Well, what prompted -- what occurred prior to
13 Ms. Parkins giving you what we have marked as
14 Exhibit 109?

15 A. Apprehension that I had that she assured me 1:45PM
16 was -- was misplaced regarding payment for long-term
17 care and liability for the care center.

18 Q. Okay. And go ahead and read Ms. Parkins', what
19 you claim to be Ms. Parkins' writing?

20 MR. CONGER: Presents an argument as phrased. 1:45PM
21 You can answer. He wants you to read it.

22 THE WITNESS: Okay. "There is only one
23 additional charge that either one of you would have upon
24 a move to the care center under the extensive plan.

25 There is a \$7.50 per pay charge for the extra meal. The 1:45PM

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1 monthly fee covers breakfast and one -- and breakfast 1:45PM

2 and one." It doesn't say and one what. "And we are
3 required by state regulations to provide three," meaning

4 three over there in the care center. "So, dot, dot dot,

5 20 days a month at \$7.50 a day equals \$225 a month." 1:46PM

6 would be the limit of our liability should we go to the
7 care center.

8 BY MR. ACKER:

9 Q. Okay. And has your wife ever had occasion to
10 go to the care center? 1:46PM

11 A. No.

12 Q. So neither you nor your wife has ever sought
13 entrance to the care center and been denied entrance to
14 the care center, correct?

15 A. Correct. 1:46PM

16 Q. And neither you nor your wife has sought
17 entrance to the care center and have been told that you
18 will have to pay more than your current monthly fee in
19 the Towers plus the extra \$7.50 a day for the extra
20 meal, correct? 1:46PM

21 A. Would you repeat that question?

22 Q. Sure. To this point neither you nor your wife
23 has sought entrance to the care center and been told
24 that, in order to go to the care center, you would need
25 to pay more than your current monthly fee in the Towers 1:46PM

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN DIEGO

3 DONALD R. SHORT, JAMES F.)
4 GLEASON, CASEY MEEHAN, MARILYN)
5 SHORT, PATTY WESTERVELT, and)
6 DOTTIE YELLE, individually,)
7 and on behalf of all other)
8 similarly situated,)
9 Plaintiffs,)

Certified Copy

vs.

) NO. GIC877707

10 CC-LA JOLLA, INC., a Delaware)
11 Corporation, CC-LA JOLLA,)
12 L.L.C., a Delaware limited)
13 liability company,)
14 CC-DEVELOPMENT GROUP, INC.,)
15 CLASSIC RESIDENCE MANAGEMENT)
16 LIMITED PARTNERSHIP, an)
17 Illinois Limited Partnership,)
18 and DOES 1 to 110, inclusive,)
19 Defendants.)

) VOLUME III

20 Continued Videotaped deposition of JAMES F.
21 GLEASON, at 12531 High Bluff Drive, Suite 100,
22 San Diego, California, commencing at 9:00 a.m.,
23 Wednesday, October 17, 2007, before
24 Shuri Gray, CSR No. 3786.

25 PAGES 288 - 487

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19

20 ALSO PRESENT:

21 COLLETTE STARK, VIDEOGRAPHER

22 MARILYN SHORT

23 DONALD SHORT

24 PATTY WESTERVELT

25

I (Exhibit 121 was marked for

9:10AM

2 identification.1

3 BY MR. ACKER:

4 Q. Okay. I am going to hand you what we marked

5 Exhibit 121, if you take a look at that.

9:10AM

6 MR. CONGER: And again if I could have the

7 reporter please return that original copy to me.

8 BY MR. ACKER:

9 Q. Exhibit 121 was also given to you by the same

10 resident; is that right, Mr. Gleason?

9:11AM

11 A. Yes.

12 Q. Was that the first time that you saw

12 Exhibit 121 when it was handed to you by another

14 resident a few weeks ago?

15 A. Yes.

9:11AM

16 Q. Is there a date on that memorandum?

17 A. March 24th, 2000.

18 Q. Yesterday, or over the last two sessions of

19 your deposition, you spoke about communications that you

20 had had with residents -- employees of the defendants.

9:11AM

21 Do you recall that testimony?

22 A. Resident employees of the defendant?

23 Q. Employees of the defendants. Conversations

24 with employees of the defendants.

25 A. Yes.

S: 11EM

302

1 Q. And you testified about your recollection 9:11AM
2 regarding conversations with Ms. Kelli Parkins. Do you
3 recall that?

4 A. Yes.

5 Q. You indicated that you could recall three 9:11AM
6 instances in which you had a memory of speaking with
7 Ms. Parkins prior to signing your continuing care
8 residency agreement on April 15th, 2002, correct?

9 A. I think I indicated three specific occasions.

10 Q. And one of those was when Ms. Parkins spoke 9:12AM
11 with you in the wellness center or took you to the
12 wellness center, correct?

13 A. Correct.

14 Q. And what recollection, if any, do you have
15 about any conversations with Ms. Parkins when she showed 9:12AM
16 you the wellness center?

17 MR. CONGER: Asked and answered. You can
18 answer it again.

19 THE WITNESS: Well, she had pointed out that
20 this was staffed 24 hours a days; that we could get 9:12AM
21 nursing assistance from this facility. If we wanted to
22 call, we could get assistance. The nurse would assist
23 us if we came back from the hospital or anything and
24 getting any follow-up care. And that -- and just anyway
25 that the facility was there, and she kept records of 9:12AM

303

1 all -- health records of everyone, and it was a 9:12AM
2 significant resource for our continuing health.

3 BY MR. ACKER:

4 Q. Do you have any other recollection of your
5 conversations with Ms. Parkins on that occasion? 9:13AM

6 A. That's all I can recall. There were other
7 things, but that's all I can recall.

8 Q. You also indicated that you spoke with
9 Ms. Parkins when you showed you not the apartment that
10 you ended up living in, but other apartments; is that 9:13AM
11 right?

12 A. Yes.

13 Q. Do you recall any conversations with
14 Ms. Parkins when she showed you apartments other than
15 the apartment that you ended up residing in? 9:13AM

16 MR. CONGER: Asked and answered. You can
17 answer again.

18 THE WITNESS: Her comments had to do generally
19 with the variety of -- of apartments in the facility,
20 the -- we also talked about the amenities with her. She 9:13AM
21 extolled the amenities that were available to all
22 residents, and she showed us apartments on several
23 different floors, at least three, and as a matter of
24 fact, one of the apartments was Casey's apartment.

25 BY MR. ACKER: 9:14AM

304

1

9:14AM

2 Q. Ms. Meehan?

3 A. Yes. And she showed us the amenities, the
4 facilities, the crafts room, the exercise room, the
5 computer center, the art gallery, the art room, the card
6 rooms, the living room, and all -- and she walked us out
7 even to the front of the place. There was a park-like
8 setting. That's on one occasion. There was some
9 activity, some event going on out there in the front,
10 and I don't know which occasion that was.

9:14AM

11 Q. Have you now told me about all your
12 conversations with Ms. Parkins on the day that she
13 showed you other residents' apartments?

14 A. That's all I can recall right now.

15 Q. You also indicated that there was a third
16 occasion which you could recall speaking with
17 Ms. Parkins when she showed you the apartment that you
18 ended up residing in; is that right?

9:14AM

19 A. Yes.

20 Q. And what, if anything, do you recall about
21 conversations with Ms. Parkins on that day?

9:15AM

22 A. She indicated that this could be made available
23 to us at a special discount. It had been -- although
24 the apartment hadn't been occupied by anybody else, it
25 had been used by employees as a dining room. There were

9:15AM

305

1 some stains in the carpeting, that sort of thing. And 9:15AM
2 also she talked again about our -- my wife and my
3 continuing concern about the care center and any
4 liability we might have for its operation, and also
5 whether that facility is going to be there to meet our 9:15AM
6 needs when and if the day came. And that's when she
7 responded that our needs were taken care of out of the
8 entrance fees, and she said to get more information on
9 that I should talk to Jim Hayes.

10 Q. Do you recall anything else about your 9:15AM
11 conversations with Ms. Parkins on that third occasion
12 when she showed you the apartment that you ultimately
13 ended up residing in?

14 A. I can't say that it was on this third
15 conversation. It was a conversation that I had with 9:16AM
16 Kelli Parkins. The conversation I just indicated to you
17 may have happened before she actually showed us that
18 apartment, but it was getting down to the point where we
19 were quite interested.

20 Q. Okay. Going back to the -- let me finish that 9:16AM
21 off. Do you recall any other conversation with
22 Ms. Parkins on the day where she showed you the
23 apartment that you ended up residing in?

24 A. I can't recall specifically the conversation of
25 that date. 9:16AM

306

1 Q. Of these conversations that you have testified 9:16AM
2 about with Ms. Parkins, did you take any notes, did you
3 take any notes of any of those conversations?

4 A. Yes, we did.

5 Q. Have you produced those notes? 9:17AM

6 A. They are long gone.

7 Q. So it's your testimony at some point you wrote
8 down the substance of your conversations with
9 Ms. Parkins?

10 A. I wrote down some factors concerning our 9:17AM
11 conversation. I wrote down the price, the amount that
12 was going in, the alternatives for getting into the
13 unit, the fact that the price of the unit was determined
14 by its square footage, its location, and the type of
15 health -- long-term health care plan we selected, and I 9:17AM
16 went over that with my wife. We did take notes on this.

17 Q. And what did you do with those notes?

18 A. I have no idea.

19 Q. Have you looked for those notes?

20 A. I looked at it when we went home then. I don't 9:17AM
21 recall after having moved into the apartment whether I
22 looked at the notes.

23 Q. In conjunction with gathering documents for
24 production in this case, have you looked to find those
25 notes? 9:18AM

307

1 the budget process shows only the revenue and expense 11:49AM
2 information that is pertinent to setting monthly fees,
3 care center fees, and charges for optimal goods and
4 services for the next year in accordance with the
5 continuing care residency contract." Do you see that? 11:49AM

6 A. Yes.

7 Q. And after you came into the Towers in 2002,
8 it's true, isn't it, that every year, towards the end of
9 the year you would receive notice of a meeting regarding
10 monthly fees for the following year, correct? 11:49AM

11 A. Correct.

12 MR. CONGER: Over broad. You can answer.

13 BY MR. ACKER:

14 Q. And there would be a meeting with the executive
15 director, correct? 11:49AM

16 A. Correct.

17 Q. And in advance of that meeting with the
18 executive director, you would and every resident would
19 be provided with operating expenses of the community,
20 correct? 11:49AM

21 MR. CONGER: Calls for speculation. You can
22 answer.

23 THE WITNESS: The information given was minimal
24 and not enough to make any judgment on.

25

1 BY MR. ACKER:

11:49AM

2 Q. But you did receive information regarding
3 operating expenses of the community each year in advance
4 of this meeting with the executive director, correct?

5 A. We received some financial information, yes.

11:50AM

6 MR. ACKER: If I could get this marked, please.

7 (Exhibit 131 was marked for
8 identification.)

9 THE WITNESS: Yes.

10 BY MR. ACKER:

11:51AM

11 Q. Exhibit 131 is a memorandum from Jim Hayes, who
12 was the executive director at the Towers in
13 January 2003, to All Residents, correct?

14 A. Correct.

15 Q. And this was your first time through this
16 process, after coming into the community in 2002, that
17 the -- the end of that year and the beginning of 2003,
18 was your first time through the process of -- this
19 budget process at the end of each year?

11:51AM

20 A. Yes.

11:51AM

21 Q. And Mr. Hayes provided to you and all residents
22 copies of information, financial information regarding
23 the operation of the community up through December 31,
24 2002, correct?

25 MR. CONGER: The question assumes facts not in

11:52AM

405

1 the exception of those who came aboard just very 2:02PM
2 recently, of having suffered a serious degradation of
3 their environment because of the construction.

4 Q. Do you believe that you are an adequate class
5 representative? 2:02PM

6 A. Yes, I do.

7 Q. Why?

8 A. I think that --

9 MR. CONGER: Calls for speculation. You can
10 answer. 2:02PM

11 THE WITNESS: No, I really believe that I
12 was -- I am elected to the Resident Council. I am the
13 president of the Resident Council, and I am communicated
14 with a great deal by residents.

15 BY MR. ACKER: 2:02PM

16 Q. Before you signed your continuing care
17 residency agreement in April of 2002, did you receive
18 written documents given to you by any of the defendants?

19 MR. CONGER: Over broad. You can answer.

20 THE WITNESS: I received letters. I received 2:03PM
21 brochures, advertisements, things of that nature, yes.

22 BY MR. ACKER:

23 Q. And did you rely on any written document given
24 to you by any of the defendants in making your decision
25 to enter into your continuing care residency agreement? 2:03PM

432

1 A. They gave me a great deal of the reliance 2:03PM
2 that -- along with the words of the -- of the staff.

3 Q. And we have talked about oral conversations,
4 and I want to just focus on written documents. What
5 specific documents did you rely on in deciding to sign 2:03PM
6 your continuing care residency agreement?

7 A. I received many different written documents,
8 and I relied on the totality of all of the -- what they
9 implied.
10

11 Q. Can you describe any of those written 2:04PM
12 documents?

13 A. One was a very glossy brochure that showed the
14 building and opened up, talked about luxury living and
15 talked about 24-hour care and talked about continuing --
16 continuing care, take all the worries out of -- out of 2:04PM
17 retirement, to sit back. We are going to take care of
18 it for you. Those kind of statements were made.

19 Q. Okay. Other than the brochure that you
20 referred to, did you rely on -- can you identify any 2:04PM
21 other written document that you relied on in order to
22 execute or sign or enter into your continuing care
23 residency agreement?

24 A. Other advertisements of that type.

25 Q. Can you identify any of the other 2:04PM
advertisements besides the brochure?

433

1 A. There was more than one brochure. 2:04PM

2 Q. Okay. Other than brochures, can you identify
3 any other documents you relied on into entering your
4 continuing care residency agreement?

5 A. Communication from staff. 2:05PM

6 Q. Okay. When you say -- I am just asking about
7 written documents.

8 A. Written communication from staff.

9 Q. What written communication?

10 A. One, of course, was the handwritten statement 2:05PM
11 given to me by Kelli Parkins, that Pat and I would never
12 have any expenses for long-term care other than one meal
13 a day if and when we went to the care center.

14 Q. And that's the handwritten note that we looked
15 at earlier in your deposition, right? 2:05PM

16 A. Yes.

17 Q. Any other written communications from staff of
18 the defendants that you relied on to enter into your
19 continuing care residency agreement?

20 A. I don't recall at this moment. 2:05PM

21 Q. Okay. So you have mentioned brochures. Was
22 there more than one brochure or just one brochure?

23 A. More than one.

24 Q. Okay. I am going to show you what we have
25 previously marked as Exhibit 63. If you could take a 2:06PM

434

1 look at that. 2:06PM

2 MR. CONGER: Do you have those Bates stamped?

3 Eric, I have got the original of that, if that

4 might help the witness. It starts with Bates stamp

5 Short 1166, because it's easier to see. It's in color. 2:07PM

6 MR. ACKER: That's fine.

7 MR. CONGER: And for the record, it goes from

8 Short 1166 to Short 1179.

9 THE WITNESS: I have seen this.

10 BY MR. ACKER: 2:07PM

11 Q. Do you remember when you saw it?

12 A. No.

13 Q. Did you see it before you signed your

14 continuing care residency agreement?

15 A. I don't recall. 2:08PM

16 Q. And I assume that because you don't recall

17 whether you signed -- you saw this brochure, Exhibit 63,

18 before signing your continuing care residency agreement,

19 you can't -- you don't know whether or not you relied on

20 this document, Exhibit 63, in order to enter into your 2:08PM

21 continuing care residency agreement?

22 A. I can't say that I relied on that specific

23 document.

24 Q. Let me show you Exhibit 64.

25 MR. CONGER: And I have got this original too. 2:08PM

435

1 It's Short 1275 to 1282. It should be.

2:08PM

2 THE WITNESS: Yes.

3 BY MR. ACKER:

4 Q. Did you rely on -- have you ever seen

5 Exhibit 64 before?

2:09PM

6 A. Yes, I have.

7 Q. When?

8 A. I can't attest when I saw it.

9 Q. Did you see it before you signed your

10 continuing care residency agreement?

2:09PM

11 A. I can't say with certainty that I saw this
12 specific document before, but I have seen this document.

13 Q. Okay. And since you can't recall whether or

14 not you saw Exhibit 64 before entering into your

15 continuing care residency agreement, it's true, isn't

2:09PM

16 it, that you cannot say that you relied on Exhibit 64 in
17 order to enter into your continuing care residency
18 agreement, correct?

19 A. No, I can't say -- I may have seen it and I may
20 have relied on it, but I don't know for sure.

2:10PM

21 Q. Did you look at the web site of Classic
22 Residence by Hyatt or any of the defendants before
23 signing your continuing care residency agreement?

24 A. I don't recall.

25 Q. Let me hand you what we have marked as

2:10PM

436

1 Exhibit 65. 2:10PM

2 A. Yes.

3 Q. Have you ever seen Exhibit 65 before?

4 A. I can't say that I saw this particular
5 document, but I have seen something very similar to it, 2:11PM
6 starting off with continuum of care.

7 Q. And can you say whether or not you have ever
8 seen this document, Exhibit 65, before?

9 A. No.

10 Q. Let me show you what we have marked as 2:11PM
11 Exhibit 66.

12 A. Yes.

13 Q. Have you ever seen Exhibit 66 before?

14 A. I can't say for certain I have, but I have seen
15 documents similar to it. 2:12PM
[REDACTED]

16 Q. But you can't say that you have ever seen what
17 Exhibit 66 is a copy of, correct?

18 A. I can't say this specific document.

19 Q. Exhibit 66?

20 A. Correct. 2:12PM

21 Q. Let me show you what we have marked as exhibit
22 69.

23 MR. CONGER: And I happen to have that original
24 too. That's E Short 1177 and 78, Jim, if that helps
25 you. Here's the original of that. 2:13PM

437

1 THE WITNESS: Yes.

2:13PM

2 BY MR. ACKER:

3 Q. Have you ever seen Exhibit 69 before?

4 A. Yes, I have.
~~XXXXXXXXXXXXXXXXXXXX~~

5 Q. When?

2:13PM

6 A. I don't know.

7 Q. Did you see Exhibit 69 before entering into
8 your continuing care residency agreement?

9 A. I don't recall.

10 Q. And because you can't recall whether or not you 2:13PM
11 saw Exhibit 69 before you entered into your continuing
12 care residency, I assume it's true that you cannot say
13 that you relied on Exhibit 69 in entering into your
14 continuing care residency agreement?

15 A. I cannot say that I did not rely on it because 2:14PM
16 I don't know when I saw the document.

17 Q. You can't say whether you relied on it or
18 whether you didn't rely on it?

19 A. No.

20 Q. Just -- you have to be audible. Yes or no? 2:14PM

21 A. I did not rely on that document, I don't think.

22 Q. Exhibit 69. You have to answer audibly, sir.

23 MR. CONGER: Yeah, if you know, Jim.

24 THE WITNESS: Yeah, I --

25 MR. CONGER: If you recall, tell him. If you 2:14PM

438

1 don't recall, say you don't recall.

2:14PM

2 THE WITNESS: Well, I think I said I don't
3 recall.

4 BY MR. ACKER:

5 Q. And just you nodded your head and you didn't
6 speak audibly, so I'm going to ask again.

2:14PM

7 Do you have any recollection of relying on
8 Exhibit 69 in order to enter into your continuing care
9 residency agreement?

10 A. I relied on information that's contained in
11 this document, but I -- I don't know that it was this
12 document, but the information is covered in several
13 different documents.

2:14PM

14 Q. And what information in Exhibit 69 did you rely
15 on in order to enter into your continuing care residency
16 agreement?

2:14PM

17 MR. CONGER: It's over broad. But you can
18 answer.

19 THE WITNESS: In documents like this I relied
20 on: "Why do you people usually move to CCRC's?"

2:15PM

21 BY MR. ACKER:

22 Q. I'm sorry. Why or when?

23 A. When do people usually move to a CCRC?

24 Q. You relied on that question?

25 A. Yes. I was wondering about age and how -- how

2:16PM

439

1 informed should you be before you go in there.

2:16PM

2 I relied on the part about the amenities.

3 Q. And I'm sorry. Where are you there?

4 A. In the middle of -- the third paragraph down in
5 the middle column.

6 Q. Okay. "What kind of amenities do CRECs offer?"
7 You relied on the information below that; is that right?

8 A. Yes.

9 Q. And that information being "many CCRs feature
10 amenities such as swimming pools, fitness centers, spas, 2:16PM
11 computer centers, library, card and game rooms, art
12 studios, meeting rooms, nature or walking trails and
13 more"?

14 A. Correct. And then "What type of lifestyle do
15 CCRC residents enjoy?" And this was very important. 2:17PM
16 "Most CCRCs promote an active lifestyle. Typically a
17 full-time program director works closely with residents
18 to understand" --

19 THE REPORTER: Excuse me.

20 MR. CONGER: Slow down a little bit there, fast 2:17PM
21 talker, or you are going to get a Fed Ex commercial in
22 your feature.

23 THE WITNESS: Okay. "Most CCRCs promote an
24 active lifestyle. Typically a full-time programs
25 director works closely with residents to understand 2:17PM

1 their interests and needs and is responsible for 2:17PM
2 planning social, cultural and educational activities --
3 events, held both at the community and off-site. A
4 typical calendar may include continuing education
5 courses, resident investment clubs, excursions, art 2:17PM
6 classes, bridge groups, volunteer opportunities, fitness
7 and wellness programs and social gatherings."

8 And this was the kind of thing that I read
9 about and talked about with Kelli Parkins in particular
10 that was very enticing to me and my wife to come to La 2:18PM
11 Jolla Village Towers.

12 BY MR. ACKER:

13 Q. And now, while you don't recall Exhibit 69, is
14 there anything else in Exhibit 69, any other information
15 in Exhibit 69 that you contend you saw in other 2:18PM
16 publications or other documents that you relied on?

17 MR. CONGER: Over broad, and that question as
18 phrased calls for a mixed application of law and fact,
19 but you can answer.

20 THE WITNESS: I think that's about all I can 2:18PM
21 say I specifically relied on.

22 BY MR. ACKER:

23 Q. And again, just so we are clear, you don't have
24 a recollection of seeing this document, Exhibit 69,
25 before you signed your CCRA? 2:19PM

441

1 MR. CONGER: Asked and answered. You can 2:19PM
2 answer it again.

3 BY MR. ACKER:

4 Q. Is that right, sir?

5 A. I don't recall when I saw that document. 2:19PM

6 Q. Other than the -- the brochures and
7 advertisements and the written communication from Kelli
8 Parkins, is there any other written document that you
9 claimed to have relied on in order to enter into your
10 CCRA? 2:20PM

11 MR. CONGER: Presents an argument as phrased.
12 You can answer.

13 THE WITNESS: No written document.

14 MR. ACKER: Okay. If I could get this marked,
15 please. 2:20PM

16 (Exhibit 137 was marked for
17 identification.)

18 BY MR. ACKER:

19 Q. Sir, if you could take a look at what we have
20 marked as Exhibit 137? 2:21PM

21 A. Yes.

22 Q. Do you recognize it?

23 A. Yes.

24 Q. What is it?

25 A. It's a document that was submitted by me on 2:21PM
442

1 THE VIDEOGRAPHER: The time is 2:59 p.m. We 3:00PM
2 are back on the record.
3 BY MR. ACKER:
4 Q. Mr. Gleason, before the break you alluded to
5 documents sent out by Classic Residence by Hyatt 3:00PM
6 regarding tax deductions. Do you recall that testimony?
7 A. Regarding what deduction?
8 Q. Tax deductions.
9 A. Yes, yes.
10 Q. You didn't see any such document regarding tax 3:00PM
11 deduction before signing your CCRA in April of 2002, did
12 you?
13 A. I was told there was such a tax deduction.
14 Q. Okay. A tax deduction, but did you actually
15 see a document regarding a tax deduction? 3:00PM
16 A. I don't recall.
17 Q. You don't recall seeing one before April of
18 2002 when you signed your CCRA?
19 A. No, but I was told that there was such a
20 deduction. 3:00PM
21 Q. Who told you that?
22 A. Marketing told me that, and so did Jim Hayes.
23 Q. What exactly were you told -- first by in
24 marketing who did you talk with?
25 A. I'm not sure whether it was Kelli or either 3:01PM

466

1 Q. Did you take a deduction in 2000 -- well, for 3:02PM
2 tax year 2002 for your 200 plus thousand dollars
3 entrance fee?
4 A. Yes, I did.
5 Q. Have you taken deductions in years since 2002, 3:02PM
6 since you have lived in the Tower, for a portion of your
7 monthly fees?
8 A. Not for long-term care, but for medical
9 expense, yes.
10 Q. From your monthly fees, correct? 3:02PM
11 A. Out of the monthly fees, yes.
12 MR. ACKER: If I could get this marked, please.
13 (Exhibit 140 was marked for
14 identification.)
15 THE WITNESS: Yes. 3:03PM
16 BY MR. ACKER:
17 Q. Exhibit 140 is a power point presentation that
18 was given at a semi-annual provider meeting conducted by
19 Mr. Popejoy and Mike Krieger on November 28, 2006; is
20 that right? 3:03PM
21 A. Yes.
22 Q. You attended that meeting?
23 A. Yes.
24 Q. If you take a look at Gleason 0057, three pages
25 in, do you see the heading there "Operating Expense 3:04PM
468