

EXHIBIT 47

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN DIEGO
3

Certified Copy

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

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 DONALD R. SHORT,
21 taken at 12531 High Bluff Drive, Suite 100,
22 San Diego, California, at 9:02 a.m.,
23 Monday, October 8, 2007, before
24 Shuri Gray, CSR No. 3786.
25 PAGES 1 - 215

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21

22 ALSO PRESENT:

23 COLLETTE STARK, VIDEOGRAPHER

24 MARILYN SHORT

25 JAMES GLEASON

1 spent at the facility? 09:39

2 A. No, sir, I do not.

3 Q. Approximately?

4 A. I don't really remember that.

5 Q. Okay. Tell me everything you do recall about 09:39
6 the first visit to La Jolla Village Towers in November
7 or December of 2000.

8 A. I recall being favorably impressed with the
9 entrance, with the -- with the landscaping, with the
10 appearance of the facility when one entered the front 09:39
11 door. I remember meeting Ms. McGrath in the area, the
12 concierges. Ms. McGrath came out to meet us and to
13 identify herself and escort us back to the marketing
14 department, and the marketing department -- we -- she --
15 I believe she gave us some brochures and we discussed 09:40
16 the facility.
[REDACTED]

17 Q. Anything else you recall about the first visit?

18 A. Not specifically, no.

19 Q. So the brochures, do you recall specifically
20 what brochures Ms. McGrath gave to you? 09:40

21 A. No, sir, I do not recall specifically which
22 brochures.

23 Q. Do you remember anything specifically that
24 Ms. McGrath said to during that first visit?

25 A. Not specifically that first visit. Of course, 09:41

39

1 answer again.

09:45

2 THE WITNESS: Repeat the question.

3 BY MR. ACKER:

4 Q. Sure. Do you have any specific recollection of
5 anything that was given to you? You mentioned some
6 brochures. Do you have any recollection of anything
7 being given to you during this first visit to the Towers
8 in October of 2000?

09:45

9 A. No, I do not.

10 Q. Now, you mentioned that you visited the Towers
11 several times. Have you now told me everything that you
12 can recall about your first visit to La Jolla Village
13 Towers in October of 2000?

09:45

14 A. Yes, I believe so.

15 Q. Do you recall, did you go back again before --
16 in 2000?

09:45

17 A. Yes, I think -- I'm sure we did.

18 Q. Okay. And when you say "you," I assume you and
19 your wife?

20 A. That's true.

09:46

21 Q. Tell me about the next visit to La Jolla
22 Village Towers.

23 A. I don't recall specifically any individual
24 visit. Obviously I was in error when I indicated that I
25 thought our first visit was in November or December. I

09:46

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1 was wrong about that, and I can certainly be wrong about 09:46
2 other things if I try to remember specific dates and
3 specific conversations.

4 Q. And that's because this occurred quite a while
5 ago, correct? 09:46

6 A. That is true.

7 Q. And it's difficult to remember events that
8 occurred four or five, six years ago, correct?

9 A. That's true. It's difficult to recall the
10 specifics. It's difficult to recall the specifics of 09:47
11 something that happened four or five or six years ago.
12

13 Q. And I am just asking for your best
14 recollection, and I just want to focus on the 2000 time
15 period. From October of 2000 after the first visit 09:47
16 through the end of that year, until January 1, 2001, do
17 you have a specific recollection of any subsequent visit
18 to La Jolla Village Towers during that time period,
19 between October 24th of 2000 and January 1, 2001?

20 A. I have no specific recollection of any specific
21 individual visit. 09:47

22 Q. To the Towers during that period?

23 A. To the Towers during that period.

24 Q. And I know I ask these questions with lot --
25 just to make sure the record is clear. Do you think
that you and your wife went back to the Towers between 09:47

1 Repayment Plan." Do you see that? 10:26

2 A. Yes, I do.

3 Q. And there is a zero there. Do you see that?

4 A. That's correct.

5 Q. Do you understand what that means? 10:26

6 A. I'm not sure that I have a total understanding

7 of all of the details of what that means, but in general

8 I think it means that we would not expect to get any

9 repayment of our entrance fee.

10 Q. And that was your understanding on August 5, 10:26

11 2001, when you executed this?

12 A. I think so.

13 Q. And do you recall selecting between a number of

14 different continuing care plans when you came into the

15 community? 10:27

16 A. Yes, I do.

17 Q. And do you recall that you selected, you and

18 your wife selected the extensive plan?

19 A. Yes, I do.

20 Q. And did you understand when you executed your 10:27

21 continuing care retirement agreement or residency

22 agreement that you were selecting the extensive plan?

23 A. Yes, I do.

24 Q. And you understood that after 50 months in the

25 community you would not be entitled to any refund of 10:27

1 your entrance fee? Do you understand that when you 10:27
2 signed the agreement in 2001?

3 A. I don't know that I did. I don't believe I
4 did.

5 Q. What did you understand as to whether or not 10:27
6 you would be entitled to any refund?

7 A. Well, we selected this extensive plan, whatever
8 it's called, because the definition of that plan
9 provided for unlimited long-term health care, period,
10 and that is what we thought we were buying. 10:28

11 Q. Okay. And my question was really related to
12 whether or not you were entitled to any refund of your
13 entrance fee, whether you left the community for any
14 reason. Do you have any understanding when you signed
15 the contract in August of 2001 whether or not you were 10:28
16 entitled to any refund?

17 MR. CONGER: The question assumes facts not in
18 evidence. You can answer.

19 THE WITNESS: Will you repeat the question?

20 BY MR. ACKER: 10:28

21 Q. Sure. What was your understanding of whether
22 or not you would be entitled to any refund of your
23 entrance fee when you signed the contract?

24 A. I did not expect any -- any return of any
25 entrance fee. 10:29

1 Q. When you signed the contract in August of 2001, 10:29
2 correct?

3 A. That's true.

4 MR. ACKER: Mr. Short, the court reporter is
5 going to mark Exhibit 51 for you. 10:29

6 (Exhibit 51 was marked for
7 identification.)

8 BY MR. ACKER:

9 Q. If you could take a minute and look at that,
10 please. 10:30

11 A. I recognize the document.

12 Q. And you recognize this as your Continuing Care
13 Residency Agreement?

14 A. It so states on -- on the front page.

15 Q. And you see that your signature and your wife's 10:30
16 signature is there on the first page of the document,
17 dated August -- and there is a date also handwritten
18 August 5, 2001?

19 A. Yes, sir.

20 Q. And if you could turn to the Bates number there 10:30
21 that's Short 1458 in the document.

22 A. Okay.

23 Q. Are you there at the signature page?

24 A. Yes.

25 Q. And you see that you and your wife signed your 10:30

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1 continuing care residency agreement on August 5, 2001. 10:30

2 Do you see that?

3 A. That is correct.

4 Q. Did you read the document, Exhibit 51, your
5 continuing care residency agreement before you executed 10:31
6 it?

7 A. I doubt that we read it word for word.

8 Q. Did you read it at all?

9 A. Yes, I believe we -- as I recall, there were
10 several documents put before us on that date, and I 10:31
11 looked at them generally before we signed.

12 Q. Did you have any questions about your
13 continuing care residency agreement before you executed
14 it on August 5, 2001?

15 A. No, we did not. 10:31

16 Q. Well, when you looked at it and read it, did
17 you have any questions about any portion of the
18 continuing care residency agreement?

19 MR. CONGER: Asked and answered. You can
20 answer it again. 10:31

21 THE WITNESS: I -- I did not have any specific
22 questions at that time. As I say, we had a -- a whole
23 series of documents put before us, and I looked at them
24 generally. They all seemed to be in order and we
25 signed. 10:32

1 BY MR. ACKER:

10:32

2 Q. Did you have any general questions?

3 A. No.

4 Q. About the continuing care residency agreement

5 before you signed it on August 5, 2001?

10:32

6 A. No, I did not.

7 Q. Were you rushed or hurried or prevented from

8 reading the continuing care residency agreement in any

9 greater detail than you did?

10 MR. CONGER: Compound. You can answer.

10:32

11 THE WITNESS: At that time we had a very

12 favorable feeling about La Jolla Village Towers, and we

13 felt that we would be treated fairly, and we trusted La

14 Jolla Village Towers to treat us fairly. And I had no

15 reason to believe otherwise at that time, and so I had

10:33

16 no questions.

17 BY MR. ACKER:

18 Q. And my question was, were you rushed or hurried

19 or prevented from reading your continuing care residency

20 agreement in any greater detail before you executed it

10:33

21 on August 5, 2001?

22 MR. CONGER: Same objection. You can answer.

23 THE WITNESS: As I say, we had a whole number

24 of documents, and we were with some anxiety, as people

25 normally do, we wanted to get this thing over with, and

10:33

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1 Q. Sir, if you could take a look at Page 30 or 10:49
2 Short 1455.

3 A. Okay.

4 Q. Do you see the letter 'I' there, the "Entire
5 Agreement"? 10:49

6 A. Yes, I do.

7 Q. And that clause, that integration clause reads:
8 "This agreement, including all attached appendices,
9 constitutes the entire agreement between you and Classic
10 Residence by Hyatt and may not be amended unless 10:50
11 executed in writing by Classic Residence by Hyatt." Do
12 you see that?

13 A. Yes, I see that.

14 Q. And did you understand that when you signed
15 this agreement in August of 2001, that this continuing 10:50
16 care residency agreement and the attached appendices
17 constituted the entire agreement between you and CCW La
18 Jolla and CC-La Jolla?

19 A. Repeat the question, please.

20 Q. Did you understand when you signed this 10:50
21 agreement in August of 2001, that the written document
22 and the attached appendices constituted the entire
23 agreement between you and Classic Residence by Hyatt?

24 A. I understood that Classic Residence by Hyatt
25 intended for this to be the entire agreement, but the 10:51

1 word agreement goes beyond written documents, such as 10:51
2 this, and involves something called trust, and I trusted
3 La Jolla Village Towers to do the things and to live up
4 to the statements that they had made to me with respect
5 to my security and my long-term health care. And I 10:51
6 believed them at that time and I -- and I believed that
7 they would do that. And that trust, as far as I am
8 concerned, is a part of the total agreement.

9 This is a written document prepared by Hyatt,
10 and I saw no reason at the time to question the motives 10:52
11 of Hyatt or the fact that I put my trust in them, and I
12 did that, and I signed this.

13 Q. Okay. And my question was about this clause.
14 I appreciate your answer, but my question was about this
15 clause. 10:52

16 When you signed this in August of 2001, did you
17 understand that this written agreement, and the
18 appendices attached, constituted the entire agreement
19 between you and Classic Residence by Hyatt as defined by
20 CCW La Jolla and CC-La Jolla? 10:52

21 A. I refer to my answer before.

22 MR. CONGER: Asked and answered.

23 THE WITNESS: I believe I have answered it.

24 MR. CONGER: I'm sorry. Asked and answered,
25 and the phrase "that time" calls for a legal conclusion. 10:52

1 including Classic Residence by Hyatt? 11:09

2 A. Yes, I did.

3 Q. Now, sir, if you could take a look at
4 appendices -- well, let's go with the Bates number Short
5 Bates No. 1468. 11:10

6 A. Okay.

7 Q. Do you see that's the closing worksheet that we
8 looked at earlier? Do you see that?

9 A. Yes, I do.

10 Q. And it was your understanding in August of 2001 11:10
11 that when you signed the continuing care residency
12 agreement, that you and your wife were selecting the
13 extensive plan, and there would be -- if you lived in
14 the community for more than 50 months, there would no be
15 refund of your entrance fee, correct? 11:10

16 MR. CONGER: Well, that's compound and
17 misstates the document. But you can answer.

18 THE WITNESS: Repeat the question.

19 BY MR. ACKER:

20 Q. Sure. Let me break it up. 11:10

21 Do you see on the left side there it says
22 "entrance fee repayment plan"?

23 A. Yes, I do.

24 Q. And you understood that you and your wife, in
25 executing the continuing care residency agreement, chose 11:11

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1 the extensive continuing care plan, correct? 11:11

2 A. That's true.

3 Q. And that provided you with unlimited number of
4 days in the care center at the then going monthly fee,
5 correct? 11:11

6 A. Correct.

7 Q. And because you selected that plan, you were
8 not entitled to any repayment of your entrance fee if
9 you remained in the community for more than 50 months,
10 correct? 11:11

11 A. Well, I don't -- I don't believe that the term
12 of 50 months had any meaning to me at that time, but I
13 did not expect any return of my entrance fee.

14 Q. Let me ask it a different way. Did you
15 understand that 2 percent of your entrance fee would be 11:11
16 earned by CCW La Jolla and CC-La Jolla each month?

17 A. No, I did not.

18 Q. Because you didn't have an expectation of any
19 repayment of your entrance fee?

20 A. That's true. 11:11

21 Q. If you could turn to the next page, sir, marked
22 Short 1469 with the heading "Promissory Note." Do you
23 see this two-page promissory note again bears Short
24 Bates Nos. 1469 and 1470? Do you see that?

25 A. That's true, yes. 11:12

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1 Q. And this promissory note you found attached to 11:12
2 your continuing care residency agreement when you looked
3 for documents in connection with this case, correct?

4 A. That's true.

5 Q. And do you see the second page of this 11:12
6 promissory note is executed by both yourself and your
7 wife, correct?

8 A. Undated, yes.

9 Q. Okay. And if you take at the first page, on
10 the top it reads: "This promissory note" -- excuse 11:12
11 me -- "(the 'note') is made as of 8/10/2001 (the
12 'effective date') by CC-La Jolla, Inc. and CCW La Jolla,
13 L.L.C.) (collectively, 'maker') in favor of Mr. Don
14 Short and Mrs. Marilyn Short (collectively,
15 'resident')." Do you see that? 11:13

16 A. Yes, I do.

17 Q. And you understood that this -- you understand
18 this is the promissory note that you received in
19 exchange for your entrance fee, correct?

20 A. Yes. 11:13

21 Q. And then if you take at the look at the
22 first -- second full paragraph there begins with the
23 words "on the effective date," do you see that?

24 A. Yes, I do.

25 Q. And it reads: "On the effective date, resident 11:13

1 paid to make an entrance fee in the amount of \$500,346 11:13
2 which is intended to be a loan (the 'entrance fee
3 loan')." Do you see that?

4 A. Yes, I do.

5 Q. And you understand when you executed this 11:13
6 promissory note in 2001, August of 2001, that your
7 entrance fee was intended to be a loan, correct?

8 MR. CONGER: Objection. Calls for speculation
9 as phrased. But you can answer.

10 THE WITNESS: Well, the thing that troubles me 11:14
11 is that the effective date of the promissory note is
12 August 10, 2001.

13 BY MR. ACKER:

14 Q. And that troubles you why, sir?

15 A. I'm sorry? 11:14

16 Q. Why does that trouble you?

17 A. It troubles me because we signed the -- the
18 worksheet and the -- for Apartment No. 2003 on
19 August 5 --

20 Q. So if I -- 11:14

21 A. -- so --

22 Q. I'm sorry.

23 A. -- so we -- we signed the financial agreement
24 here on August 5th, and I have said before that I didn't
25 recall seeing the note at that time. This note says 11:14

1 effective date August 10th, five days later, and so I 11:14
2 have a problem believing that I saw this note before I
3 signed this agreement.

4 MR. CONGER: And he's referring when he says
5 "this" to Exhibit 50, just for the record. 11:15

6 BY MR. ACKER:

7 Q. Okay. Let me ask you this. Do you have any
8 doubt that that's your signature on the promissory note
9 on the second page?

10 A. No. 11:15

11 Q. And do you believe that you read the promissory
12 note when you signed it in August of 2001?

13 A. After I signed and paid the money.

14 Q. And do you have any recollection of when you
15 paid the money? 11:15

16 A. I paid it on the 5th of August.

17 Q. Are you certain?

18 A. I'm -- I believe I did. You asked if I am
19 certain. There are very few things that I can be
20 positive of at this stage in my life. 11:15

21 Q. Do you have any recollection of when your check
22 cleared?

23 A. No.

24 Q. Did you understand that when you signed the
25 continuing care residency agreement on August 5th, that 11:15

1 you would be receiving a promissory note in exchange for 11:15
2 your entrance fee?

3 A. Yes, I did.

4 Q. And you did receive that promissory note,
5 correct? 11:16

6 A. Yes, I did.

7 Q. And you signed it, correct?

8 A. At that time, yes.

9 Q. And you read it before you signed it?

10 A. I don't think I did. It didn't make any 11:16
11 difference.

12 Q. Do you have a recollection one way or another
13 whether you signed it or not?

14 A. I have no recollection, no.

15 Q. Do you recall having any questions about the 11:16
16 promissory note before you executed it?

17 A. No.

18 Q. When you and your wife signed the agreement in
19 August of 2001, were you aware that a second tower would
20 be built? 11:16

21 A. Yes, we were.

22 Q. What was your understanding of that second
23 tower?

24 A. Well, at that time on the P1 level of our
25 building, there was a diorama, there was a model of the 11:16

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1 handbook had language that promised you 24-hour care or 11:32
2 response from a nurse?

3 A. I believe that somewhere there was such an
4 assurance.

5 Q. Okay. And I am just going to ask you, in 11:32
6 writing or oral?

7 A. I believe it was in writing, but I'm not
8 positive of that.

9 Q. Okay. Given that you believe that it was in
10 writing, do you have any recollection about where in 11:33
11 writing it was?

12 A. No, I do not.

13 Q. And in looking through -- in collecting
14 documents for this case and in looking through all of
15 them, did you see it anywhere, any document? 11:33

16 A. I don't recall.

17 Q. You don't recall seeing it?

18 A. That's right.

19 Q. Let me ask you to take a look at Exhibit 52.
20 And just before I do that, sir, let me just ask you 11:33
21 another question before we go to that one.

22 Do you have any specific recollection of anyone
23 from any of the defendants, representative of any of the
24 defendants telling you orally that there would also be
25 24-hour -- a nurse available 24 hours a day to respond 11:33

1 to emergencies?

11:33

2 A. Without specifically recollecting, I do believe
3 that I was told that by Linda McGrath, because it was an
4 extremely important part of this total deal to us. It
5 was important to me to know that we did have 24-hour
6 emergency response by a qualified medical person, and it
7 did happen to me twice where in the middle of the night
8 where I pulled the cord or whatever and a nurse did
9 respond.

11:34

10 Q. And do you have any recollection of when you
11 believe you had this conversation with Ms. McGrath?

11:34

12 A. During the period of time when we were
13 discussing and considering moving in.

14 Q. And can you recall specifically what it is
15 Ms. McGrath said?

11:34

16 A. Not specifically, but in general one of the
17 advantages of living at La Jolla Village Towers was that
18 we would have 24-hour emergency response by medical
19 personnel.

20 Q. And did she say that that would always
21 continue?

11:35

22 A. No, she -- not to my recollection she did not
23 guarantee that it would always continue, but it's hard
24 for me to believe that that would be a -- an amenity
25 that a facility like La Jolla Village Towers properly

11:35

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1 A. Yes, I do. 01:45

2 Q. And you also see that as of the year
3 December 31, 2005, the end of that fiscal year there was
4 zero left as a refundable portion of that portion of
5 your entrance fee, correct? 01:45

6 A. Correct.

7 Q. So as of the end of the fiscal year
8 December 31, 2005, there was no portion of your entrance
9 fee that was any -- refundable any longer, correct?

10 A. That's true. 01:45

11 Q. If you could take a look at what the reporter
12 will mark as Exhibit 63.

13 A. Thank you.

14 (Exhibit 63 was marked for
15 identification.) 01:46

16 BY MR. ACKER:

17 Q. Have you had a chance to look at that, sir?

18 A. Yes.

19 Q. Now, earlier today when we were talking about
20 your initial visits to the Towers, La Jolla Village 01:47
21 Towers, you said that you saw some brochures and other
22 written materials. Do you recall that testimony?

23 A. I do.

24 Q. So I am going to ask you about a series of
25 documents now, and my first question will be, have you 01:47

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1 ever seen what we have marked, the brochure that we have 01:47
2 marked as Exhibit 63 before?

3 A. I do not have a specific recollection, but I
4 believe that I did.

5 Q. Do you believe that you saw Exhibit 63 prior to 01:47
6 entering into your continuing care residency agreement?

7 A. Again I don't specifically recall that, but I
8 believe I did.

9 Q. Okay. Is there any portion of Exhibit 63 that
10 you relied on in deciding to enter into your continuing 01:47
11 care residency agreement?

12 MR. CONGER: Calls for speculation, given his
13 testimony, but you can answer.

14 THE WITNESS: Could you repeat that?

15 BY MR. ACKER: 01:48

16 Q. Sure. Let me follow up on that objection.

17 As you sit here today, do you have any memory
18 of seeing Exhibit 63 before you signed your continuing
19 care residency agreement?

20 A. I don't have any specific recollection -- 01:48

21 Q. Okay.

22 A. -- but it is consistent with my overall
23 recollection.

24 Q. All right. And given that you don't have a
25 specific recollection of seeing Exhibit 63 before you 01:48

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1 signed your continuing care residency agreement, I 01:48
2 assume that you are not able to point to any portion of
3 this brochure and say this is the portion that I relied
4 on in order to agree to sign the residency agreement,
5 correct? 01:48

6 A. Well, I believe that I relied pretty much on it
7 in its totality, not just page by page.
8 ~~_____~~

9 Q. Well, is there anything specific that you
10 relied on in this Exhibit 63?

11 MR. CONGER: It's over broad, and it requires 01:48
12 the witness on the spot to go through a lengthy
13 document. You can answer if -- I mean if -- well, if
14 you are able to do that.

15 THE WITNESS: Well, as I say, I don't -- I 01:49
16 don't recall any specific paragraph, specific page, but
17 the document in its entirety is the sort of
18 representation that I relied on when I moved in, when I
19 agreed to move in.

20 BY MR. ACKER:

21 Q. When you say "the document in its entirety is 01:49
22 the sort of representation you relied on," what
23 specifically about the document?

24 A. Well, let's see. Let's start with -- let's
25 start with the very first page, the reference Short 01:50
26 1166, and it says "experience luxury senior living at

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1 its finest." That's in general the kind of statement 01:50
2 that I relied on.

3 Q. Anything else in the -- in Exhibit 63?

4 MR. CONGER: It's over broad. You go answer if
5 you can. 01:50

6 THE WITNESS: Well, go to 1172, and it says
7 "savor every moment." 1174 says "rely on the peace of
8 mind that comes with continuing care." And 1176 says
9 "enhance your future at Classic Residence by Hyatt."

10 I thought I was -- I thought all of those 01:51
11 things were representative of the kinds of information
12 that I was given, that I believed and that I trusted and
13 that I -- the reason for me to commit a half a million
14 dollars of my assets. I simply believed, in general,
15 that all of the things that are said in here. 01:51

16 BY MR. ACKER:

17 Q. Okay. And I'm not trying to trick you here,
18 but do you know whether or not this document,
19 Exhibit 63, was even in existence before August of 2001?

20 A. No, I do not know that this particular document 01:51
21 was in existence. I do know that I saw similar
22 documents. Whether it was this one particular document,
23 I don't know, but I did see similar documents expressing
24 similar thoughts.

25 Q. Okay. So just so we are clear and close this 01:52

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1 out, as I understand your testimony, you can't say 01:52
2 whether or not Exhibit 63 was something that you saw
3 before signing your continuing care residency agreement?

4 A. That's correct.

5 MR. ACKER: I am going to mark this as 01:52
6 Exhibit 64.

7 (Exhibit 64 was marked for
8 identification.)

9 THE WITNESS: Thank you.

10 BY MR. ACKER: 01:53

11 Q. If you could take a look at Exhibit 64, please.

12 A. Okay.

13 Q. Have you had a chance to look at that, sir?

14 A. Yes, I have.

15 Q. Have you ever seen this document before? 01:53

16 A. I have no specific recollection of having seen
17 this specific document, but it is consistent with the --
18 the documents that I believe that I have seen.

19 Q. Okay. And so because you have no specific
20 recollection of seeing Exhibit 64, you can't testify 01:53
21 that Exhibit 64 is something you saw before entering
22 into your continuing care residency agreement, correct?

23 A. That's correct.

24 MR. ACKER: Mark this as Exhibit 65, please.

25

1 (Exhibit 65 was marked for 01:54
2 identification.)
3 BY MR. ACKER:
4 Q. Mr. Short, the reporter has handed you what is
5 marked as Exhibit 65. If you could take a look at that 01:54
6 document, please.
7 A. Yes, I have it.
8 Q. Do you recognize it?
9 A. Yes, I do.
10 Q. Have you ever seen it before? 01:54
11 A. Yes, I have.
12 Q. When was it that you saw it?
13 A. You know, I can't -- I can't recall the exact
14 date, but I do know that I did see this document, and --
15 and I believe that I saw it before making the agreement 01:55
16 to move into La Jolla Village Towers.
17 Q. Okay. So you -- it's your testimony that you
18 believe you saw Exhibit 65 before August of 2001?
19 A. Yes.
20 Q. And did you rely on some portion of this 01:55
21 document in order to sign a continuing care residency
22 agreement?
23 A. I think I probably did because it relates to
24 continuing care, and that was very important to me, that
25 I provide for the continuing care for myself and my wife 01:55

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1 for the rest of our lives. 01:55

2 Q. And what portion of Exhibit 65 do you believe
3 you relied on to sign the continuing care residency
4 agreement?

5 A. I think I relied on it -- 01:56

6 MR. CONGER: I'm sorry. The question is over
7 broad. You can answer.

8 THE WITNESS: I think I relied on it pretty
9 much in its entirety.

10 BY MR. ACKER: 01:56

11 Q. Okay. Let's take a look at it. Do you see
12 that under the continuing of care there is a first
13 section here that has the highlighting "Rental Agreement
14 Coverage." Do you see that?

15 A. Yes, I do. 01:56

16 Q. And below that it says: "Until residents are
17 covered by continuing care agreement, their need for
18 increased care is addressed in the following ways." Do
19 you see that?

20 A. Yes, I do. 01:56

21 Q. And you never entered into a rental agreement
22 with any of the defendants, correct?

23 MR. CONGER: Calls for speculation. You can
24 answer.

25 THE WITNESS: Restate the question, please. 01:56

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1 recollection of seeing Exhibit 65 before entering into 02:03
2 your continuing care residency agreement; is that right?

3 A. Yes, I believe I did.

4 Q. Okay. Are you certain of that, or you have
5 some doubt about that? 02:03

6 A. I have some small possibility of -- of doubt.
7 In other words, I am not a hundred percent positive that
8 I saw it, but I believe I did.

9 Q. Okay. Given that belief, I think you also
10 testified that you believe that you relied -- before you 02:04
11 signed your agreement in August of 2001, you relied on
12 this document?

13 A. If I said I relied on this specific document, I
14 was in error. I have relied upon the representations
15 that are made in this document. They are consistent 02:04
16 with the representations that were made to me prior to
17 signing and that were important to me.

18 Q. Okay. And what I am trying to understand is
19 exactly what representations those are.

20 A. The representation of continuing care. 02:04

21 Q. Okay. And when you say "the representation of
22 continuing care," is that the representation that you
23 and your wife will receive continuing care in the care
24 center for the rest of your lives, and that when you
25 move from the Tower to the care center, you will 02:05

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1 out, you testified a second ago that your testimony was 02:06
2 in error that you relied on this document. Is that
3 true?

4 A. That's true.

5 Q. So -- 02:06

6 A. This specific document.

7 Q. Okay. And I am just focusing on this specific
8 document. It's your testimony that you can't say that
9 you relied on Exhibit 65, this continuing care document,
10 in order to decide to sign your continuing care 02:06
11 residency agreement in August of 2001, correct?

12 A. I relied on the same kind of representations
13 that are contained in this document. Whether I relied
14 on this specific document or not, I can't say.

15 Q. When you say "the representations contained in 02:06
16 this document," when I asked you what those were a
17 minute ago, you said the continuum of care, correct?

18 A. I -- I said continuing care, not necessarily
19 continuum, but continuing care.

20 Q. And it's true, isn't it, that -- are you all 02:07
21 right, sir?

22 A. Uh-huh.

23 Q. Is it true, sir, that neither you or your wife
24 have been denied continuing care at any point?

25 A. That's true. 02:07

1 Q. I am going to hand you what we previously 02:14
2 marked as Exhibit 22. If you can take look at that,
3 please.

4 A. Okay.

5 Q. Exhibit 22 is a letter dated December 26, 2001, 02:15
6 from James Hayes, Executive Director of the Towers, to
7 Residents, correct?

8 A. Correct.

9 Q. Have you ever seen this letter before?

10 A. Yes. 02:15

11 Q. Did you ever see it before December 26, 2001?

12 A. Before December 26, 2001?

13 Q. Yes, sir.

14 A. No.

15 Q. Because you didn't see it before entering into 02:15
16 your continuing care residency agreement, you didn't
17 rely on this document to enter into your continuing care
18 residency agreement, correct?

19 A. That's true.

20 Q. Let me show you what we have previously marked 02:15
21 as Exhibit 37. Sorry.

22 A. That's all right. Okay.

23 Q. Have you ever seen Exhibit 37 before, the
24 March 2003 letter, to Residents of the Towers from Jeff
25 Tipton? 02:17

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1 A. I'm sorry. Are you asking me if I -- 02:17
2 Q. Have you ever seen it before?
3 A. I believe I have.
4 Q. And had you ever seen it before March 2003?
5 A. No. 02:17
6 Q. Do you have a recollection of seeing it in
7 March 2003?
8 A. I believe I did.
9 Q. Do you remember when you saw it, first saw it?
10 A. I think approximately March or April of 2003. 02:17
11 Q. So just about two years after you entered the
12 La Jolla Village Towers, correct?
13 A. That's true.
14 Q. In about 18 months or so after you signed your
15 continuing care residency agreement, correct? 02:17
16 A. That's true.
17 Q. So this exhibit, Exhibit 37, March 2003 letter,
18 didn't cause you to enter the community, correct?
19 A. No. It simply reiterates the kinds of
20 representations that were made to me prior to moving in. 02:17
21 Q. Okay. What specific representation are you
22 referring to?
23 A. "La Jolla Village Towers offers a vibrant
24 active lifestyle with the peace of mind that comes from
25 knowing your potential long-term care needs will be 02:18

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1 expertly met at our on-site care center at virtually no 02:18
2 extra cost."

3 Q. And did someone say that to you orally before
4 you entered the community?

5 A. I think so. 02:18

6 Q. Who?

7 A. Words to that effect.

8 Q. Who?

9 A. People in the marketing department.

10 Q. Can you name anyone? 02:18

11 A. Linda McGrath.

12 Q. As you sit here under oath today, you are
13 certain that Linda McGrath said those things to you?

14 A. I'm not positive that she said those things to
15 me, but she was a marketing representative that we dealt 02:18
16 with, and we got most of our information from her.

17 Q. Okay. But in any event, this Exhibit 37 had
18 absolutely no influence on you entering the community or
19 signing your continuing care residency agreement,
20 correct? 02:19

21 A. This particular document, that's true.

22 Q. Okay. Have you ever looked at the Web site for
23 Classic Residence by Hyatt at La Jolla Village Towers?

24 A. No, I have not.

25 Q. At any point? 02:19

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1 Q. Do you see Exhibit 71 is a memorandum from 02:37
2 Carolyn Zuehl dated December 6, 2001, to All Residents
3 with the subject line reading "income tax deductions."
4 Do you see that?

5 A. Yes, I do. 02:37

6 Q. Do you see some writing on the documents both
7 in the margins and between the paragraphs and numbers
8 and letters written there?

9 A. Yes, I do.

10 Q. Do you recognize that writing? 02:37

11 A. No, I do not.

12 Q. It's not yours, I assume?

13 A. That's true.

14 Q. If that had been your wife's writing, would you
15 recognize it? 02:37

16 A. Probably.

17 Q. And you don't recognize it, correct?

18 A. That's correct.

19 Q. Did you receive this document in December of
20 2001? 02:37

21 A. I believe I did.

22 Q. That was some seven or eight months after you
23 entered the community, correct?

24 A. That's correct.

25 Q. So you obviously didn't rely on this document, 02:38
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1 If we could get this marked, please. 02:45

2 A. Thank you.

3 (Exhibit 73 was marked for
4 identification.)

5 BY MR. ACKER: 02:45

6 Q. The court reporter has handed you what we have
7 marked as Exhibit 72.

8 MR. CONGER: Seventy-three?

9 THE WITNESS: Seventy-three.

10 BY MR. ACKER: 02:45

11 Q. Oh, yeah, right.

12 Exhibit 73. If you could take a look at that.

13 A. Okay.

14 Q. Do you see this is a letter from -- again from
15 Carolyn Zuehl, Director of Accounting at the Towers 02:46
16 dated January 15, 2002, to All Residents. Do you see
17 that?

18 A. Yes.

19 Q. Do you believe that you received a copy of this
20 letter? 02:46

21 A. Yes, I do.

22 Q. And do you see the writing down at the bottom
23 where there appear to be some calculations of income tax
24 deduction and months listed. Do you see that?

25 A. Yes, I do. 02:46

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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,)
5 MARILYN SHORT, PATTY)
6 WESTERVELT, and DOTTIE YELLE,)
7 individually, and on behalf of)
8 all other similarly situated,)
9 Plaintiffs,)

vs.) No. GIC877707

10 CC-LA JOLLA, INC., a Delaware) VOLUME II
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 Continued Videotaped deposition of DONALD R.
21 SHORT, at 12531 High Bluff Drive, Suite 100,
22 San Diego, California, commencing at 9:02 a.m.,
23 Friday, October 12, 2007, before Shuri Gray,
24 CSR No. 3786.

25 PAGES 216 - 349

Certified Copy

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19 ALSO PRESENT:

20 COLLETTE STARK, VIDEOGRAPHER

21 MARILYN SHORT

22 JAMES GLEASON

23 PATTY WESTERFELT

24 STEPHANIE FIELDS, GENERAL COUNSEL OF CLASSIC

25 RESIDENCE BY HYATT

1 Q. Do you have any understanding of why it is that 9:51AM
2 Ms. Jacobs came to you with that question?

3 A. No, I really have no -- I didn't ask her why
4 she came to me.

5 Q. I understand. When you wrote the letter, did 9:51AM
6 you believe everything in it that you wrote in January
7 of 2005?

8 MR. CONGER: It's over broad. You can answer.
9 He's asking you whether every single statement in here
10 you believed when you wrote. 9:52AM

11 THE WITNESS: Well, I think to give a proper
12 answer, I probably need to -- to provide a little
13 background. When I -- when I first moved into the
14 Towers, I personally felt very good about that. I -- I
15 felt that Hyatt had made a lot of statements about what 9:52AM
16 life would be like in the Towers, and while they had
17 made statements about the use of our entrance fees for
18 long-term health care, and that was the primary reason
19 why I moved into the Towers, as I say, I was trying to
20 set her mind at ease, and it had become apparent that 9:53AM
21 Hyatt had used our entrance fees for things which I did
22 not understand at the time I moved in.

23 I was, nevertheless, motivated to try to keep
24 everything moving on an even keel. And as a matter of
25 fact, when I wrote this letter to Louise, I gave the 9:54AM

1 receive long-term care in the care center for the rest 11:30AM
2 of your life, if necessary?

3 A. I believed at that time that my entrance fee,
4 or some substantial portion of my entrance fee, would be
5 set aside to fund my long-term health care when that 11:31AM
6 became necessary.

7 Q. And then at some point in time, after August of
8 2001, you began to have concerns about whether or not
9 you would be able to move to the care center and receive
10 long-term care at your regular monthly fees? 11:31AM

11 A. I became concerned that at the time that I
12 needed long-term health care, that the money would not
13 there to pay for that.

14 Q. And what caused that concern?

15 A. The fact that I found out that the money had 11:32AM
16 not been set aside for that purpose.

17 Q. And when you say "not set aside," you mean not
18 set aside in a separate account just for you and your
19 wife?

20 A. No. 11:32AM

21 Q. What do you mean?

22 A. I mean that the entrance fees of the residents,
23 taken together, had not been set aside in a separate
24 fund for that purpose, as required by the actuarial
25 study. 11:32AM

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1 A. Well, I became concerned about the -- about the 11:33AM
2 defendants fulfilling their promises made to us at the
3 time we made the decision to join the community. For
4 example, and specifically, I became concerned about the
5 abrogation of Hyatt's responsibility to provide 24-hour 11:34AM
6 emergency medical response, which was promised to us at
7 the time that we entered, but which was abrogated
8 sometime in 2004, 2005. And we are now told that if we
9 have a medical -- medical emergency in the middle of the
10 night to call 911, which is what anybody can do. 11:34AM
11 Nothing -- nothing special about that at all. And yet
12 that was a very important consideration at the time that
13 we moved into the Towers and was abrogated by --
14 unilaterally by Hyatt.

15 And so I began to wonder about all of the other 11:35AM
16 promises made by Hyatt, such as providing long-term
17 health care, that my entrance fee was paying for my
18 long-term health care.

19 Q. Okay. Anything other than the 24 -- the change
20 in emergency response that has caused you to question 11:35AM
21 whether or not the defendants will provide long-term
22 health care to you and your wife in the care center if
23 necessary at the regular monthly fee?

24 A. The 24-hour emergency response was the most
25 important. There have been other things that Hyatt has 11:36AM

1 not provided that were promised to us. I am -- as I sit 11:36AM
2 here right now, I can't remember specifically what they
3 were, but I know there were others.

4 And so I have the feeling that when I -- when I
5 came into the community, I trusted Hyatt to do the 11:36AM
6 things they said they would do, and that is proving not
7 to be the case, as I say, specifically in 24-hour
8 emergency response, and that gives me great concern, and
9 I am concerned about what Hyatt's attitude will be about
10 whether they are going to provide me with long-term 11:37AM
11 health care or not when I need it. It's a matter of
12 trust.

13 Q. Okay. And let me focus now on your last
14 answer. Are you aware of any instance with any resident
15 in the Tower that they have been told, or it has been 11:37AM
16 implied to them in any fashion, that if they -- if
17 necessary and they need to move to the care center, that
18 they will not be able to move to the care center at the
19 regular monthly fee that they are paying at the Tower?

20 MR. CONGER: It's over broad. You can answer. 11:37AM

21 THE WITNESS: I am aware of residents in the
22 Towers that have been told to call 911 when they
23 called -- what we are told now to call the concierges if
24 we have an emergency medical situation in the middle of
25 the night. As a matter of fact, I have been told that 11:38AM

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1 myself. 11:38AM

2 BY MR. ACKER:

3 Q. I understand that, but I want to focus on the

4 ability to move from the Tower to the care center and

5 create the regular monthly fee. Are you aware of any 11:38AM

6 resident that has been told implicitly or explicitly

7 that we will not be able to move to the care center and

8 receive care in the care center at the regular monthly

9 fee?

10 MR. CONGER: It's over broad. Vague an 11:38AM

11 ambiguous. You can answer.

12 THE WITNESS: If we trust Hyatt to provide one

13 service, and they don't provide it, later they

14 subsequently unilaterally abrogate that obligation, then

15 there is reason to believe that they could do the same 11:39AM

16 thing in some other matter in the future.

17 They have not yet abrogated the matter of

18 providing services in the care center, except that the

19 standard of service in the care center is much lower

20 than we were led to believe initially. I know of at 11:39AM

21 least two residents who have been told that -- whose

22 spouses are in the memory support unit, who have been

23 told that Hyatt is unable to provide the level of

24 service that their spouses require. And they have been

25 suggested that those individuals hire private duty 11:40AM

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1 nurses to provide the level of required -- of care 11:40AM
2 that's is required.

3 It seems to me that that by itself, an
4 extension of that situation, which currently exists,
5 would lead one logically to believe that sooner or later 11:40AM
6 Hyatt is going to say, well, down the road with you
7 fellow. You are not getting your long-term health care.

8 BY MR. ACKER:

9 Q. But, as we sit here today, it has not happened,
10 correct? 11:41AM

11 MR. CONGER: That question is vague and
12 ambiguous and misstates his testimony. You can answer.

13 BY MR. ACKER:

14 Q. Let me be more precise.

15 A. No, I think I have given the answer. 11:41AM

16 MR. CONGER: Ask him to go spend a day in the
17 skilled nursing facility and see what happens, if he
18 doesn't think it's happening.

19 BY MR. ACKER:

20 Q. So I just want to close out this, and then I am 11:41AM
21 going to move on into another area, but --

22 A. I would think you would, yeah.

23 Q. No, actually this has been -- it's been
24 extremely helpful.

25 A. I hope so. I hope so. 11:42AM

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1 Q. As we sit here today, neither you nor your wife 11:42AM
2 or, to your knowledge, has any resident not been allowed
3 to move from the Tower to the care center and pay the
4 regular monthly fee they were paying in the Tower?

5 MR. CONGER: Misstates testimony. Asked and 11:42AM
6 answered. You can answer it again. It also calls for
7 speculation. You can answer.

8 THE WITNESS: Well, my answer is, as I sit here
9 today, I am aware that at least two, and I believe many
10 more, but at least two, to my personal knowledge, have 11:42AM
11 not received and are not receiving today the level of
12 care which was represented to us to be available by the
13 payment of our entrance fees at the time we moved in.
14 That condition exists today.

15 The fact that my wife and I have been fortunate 11:43AM
16 enough to be healthy so far and not required the service
17 of the care center, does little to allay our fears that
18 our trust in Hyatt was misplaced when we believed that
19 Hyatt would pay -- would set aside money from our
20 entrance fees to pay for our long-term health care when 11:44AM
21 we needed it. And there is also -- well, we won't get
22 into that. That's my answer.

23 BY MR. ACKER:

24 Q. Okay. So you are aware of two residents who
25 you believe are not receiving the level of care that you 11:44AM

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