

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Courtney

Clyburn Pope, Circuit Court Judge

Lexington County

Case No. 2020-CP-32-04007

Appellate Case No. 2024-001585

1221 Bower, LLC Appellant

v.

Insurance Office of America, Inc., ...Respondent

RECORD ON APPEAL

Volume 2 of 4

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1 MR. COBB: Again, Your Honor, he's not an expert in
2 plumbing. He can't testify whether or not this plumber
3 was competent or not.

4 THE COURT: All right. So I'll --- I'll sustain.
5 We'll just move on from that particular question. I'll
6 sustain that objection.

7 BY MR. JOYCE:

8 Q. So it was Arrow Plumbing that got sent out so many times
9 that didn't fix the issue?

10 A. Originally, yes.

11 Q. Correct. Did the co-owners association, or landlord ever
12 send out a --- a different plumber to try to diagnosis the
13 issue?

14 A. Hmm. I don't recall one, no.

15 Q. Okay. Do you think it's within their reasonable control
16 to send out a different plumber?

17 A. Yes, that would be within their reasonable control.

18 Q. I mean, how many --- how many plumbers do you think
19 are --- are in the Midlands area that could come out and
20 diagnosis this issue?

21 A. There's numerous plumber in the Columbia Metro Area.

22 Q. And this was established it's a toilet leak coming from
23 upstairs. I mean, how many toilets are above the unit
24 upstairs?

25 A. I can't answer the exact number.

1 Q. Okay. But ---

2 A. Shouldn't be that many.

3 Q. Okay. So when you told them you thought it was an issue
4 with a toilet leak upstairs, and you told them this on
5 August 17th. Do you have any idea why it could take until
6 November to fix that issue?

7 A. I --- I don't.

8 Q. Okay. Scott do you remember expressing to Angela in late
9 August about your concern of possible mold and air quality
10 issues?

11 A. Vaguely, yeah.

12 Q. Okay. You think it was within the landlord's and CAMS's
13 control to send out a mold remediation company when you
14 expressed concern about that?

15 A. It's certainly, yeah, within their control to have
16 somebody take a look at it.

17 Q. That's --- that's something that --- that they would be
18 able to do, correct?

19 A. Correct.

20 Q. Okay. And again, the mold remediation didn't happen
21 until the first week in November ---

22 A. Right.

23 Q. --- is that correct?

24 MR. JOYCE: All right. No further questions.

25 THE COURT: All right. Re-cross?

1 MR. COBB: Thank you, Your Honor. Just a couple
2 last questions Scott.

3 RE CROSS-EXAMINATION

4 BY MR. COBB:

5 Q. Ben had asked you about the damage outside the common
6 elements and he asked you about walls, carpet, and ceiling
7 tiles; do you remember that?

8 A. Yes.

9 Q. Okay. And the question is, why would you go --- and ---
10 and --- and isn't it true that you yourself as well as Crissy
11 Warner delayed the repairs to the walls, the sheetrock, and
12 the ceiling tiles until the leak upstairs was finally
13 finished, fixed?

14 A. I would say that we, you know, there was a delay, it
15 was because we wanted a mold remediation contractor to
16 take a look at it and make sure everything was okay
17 before we put walls back up.

18 Q. Right. And the mold remediation did get done, correct?

19 A. Yes, in November.

20 Q. Right. And that would --- and on November 9th, didn't
21 you report a new leak to Crissy Warner?

22 A. I reported additional water showing up.

23 (Simultaneous speaking)

24 Q. Behind the closet?

25 A. Yeah, I came in one day and there was moisture

1 behind the barrier that had been put up on the wall.

2 Q. Okay. And that's when you said, all right, let's not use
3 Arrow again. Calling Shuler plumber, (unintelligible)
4 correct?

5 A. Okay. Yes.

6 Q. All right. So is it not true that Angela Adleman had the
7 contractor teed up to come in on November 11th, to do the
8 ceiling tile, walls, and carpet tiles?

9 A. I --- I don't remember.

10 Q. Is it not true that --- that your --- Insurance Office of
11 America said no, tell the contractor not to come in until we
12 get this leak fixed?

13 A. I don't recall that, but ---

14 Q. Does that sound reasonable that you would do that? You
15 would wait to have the sheetrock ceiling tiles and floor done
16 until the fixed --- the leak is fixed upstairs --- until
17 you're comfortable it's fixed?

18 A. Until --- yes, that's reasonable. Yeah.

19 Q. Do you believe that Angela Adleman had a key to 101
20 through 105 while IOA Properties III owned that ---

21 A. Hmm. I don't know the answer to that.

22 Q. Do you think ---

23 A. I never provided a key.

24 Q. Okay. Do you think any --- are you aware of anybody ever
25 providing a key before November 16th of 2020 to Angela Adleman

1 or even 1221 Bower for Units 101 through 105?

2 A. I'm not aware of such, no.

3 Q. All right. Okay. And isn't it right that instead of
4 Angela Adleman just taking her key and going into your unit
5 downstairs, she would always communicate with you and Crissy
6 Warner to get access to bring the contractor in?

7 A. She would always communicate, yes.

8 Q. And she said you were almost always available, right?

9 A. Yes, I think we were available most --- most of the
10 time, yes.

11 Q. And is it reasonable to believe that the reason why she
12 needed that --- that assistance to get in the unit was because
13 she did not have a key?

14 MR. JOYCE: Objection. Calls for speculation.

15 THE WITNESS: I don't know the answer to that. No.

16 THE COURT: All right.

17 BY MR. COBB:

18 Q. Now, been asking you about the responsiveness after
19 August 17th of the plumber coming. But isn't it true that
20 Arrow Plumbing I believe, August 19th, like right away?

21 A. They did come within a couple of days, yes.

22 Q. And there was an issue with the ladder to be able to ---
23 they didn't have the proper size ladder to get up into the
24 roof?

25 A. I don't think they had a ladder. Yeah. My

1 understanding. They couldn't --- they couldn't access
2 the ceiling tiles.

3 Q. Okay. So they --- they could --- understood.

4 A. Yeah.

5 Q. Do you have an office now, Scott, that you go and you sit
6 at where you work?

7 A. IOA has an office, but I don't have an office in the
8 IOA office.

9 Q. Okay. You're just ---

10 A. I work from home.

11 Q. Okay. All right.

12 MR. COBB: No further questions, Your Honor.

13 THE COURT: All right. Thank you. This witness may
14 be excused. Watch your step, please.

15 MR. LESEMANN: Your Honor, may counsel approach?

16 (Bench conference)

17 THE COURT: All right. All right. The plaintiff
18 will call its next witness.

19 MR. LESEMANN: Thank you, Your Honor. We would call
20 Angela Adleman to the stand.

21 (Witness sworn)

22 ANGELA ADLEMAN, HAVING BEEN DULY SWORN, TESTIFIED AS
23 FOLLOWS.

24 THE WITNESS: My name is Angela Adleman, and last
25 name is spelled A-D-L-E-M-A-N.

1 DIRECT EXAMINATION

2 BY MR. LESEMANN:

3 Q. Thank you, Ms. Adleman. I think your name has been said
4 maybe three or four different ways while we've all been here.
5 But that's good. My name --- we haven't met. My name is
6 Ellis Lesemann, I'm the counsel for IOA.

7 Could you tell the jury about your --- who --- what's
8 your employer and --- and your position? What do you do for a
9 living?

10 A. Sure. I work for CAMS Management Company. And
11 essentially we help the boards oversee their communities
12 in reference to making sure they govern by their
13 governing documents. My title is the regional director
14 right now.

15 Q. Okay. And so is that a different title than what you
16 held in 2020?

17 A. Yes, sir. It is.

18 Q. Okay. What was your title in 2020?

19 A. Community association manager.

20 Q. All right. And so now, you oversee the folks that do the
21 job that you were doing in 2020?

22 A. That's correct.

23 Q. Okay. How many associations were you managing in --- in
24 the 2020 time frame personally?

25 A. 13.

1 Q. Okay. So and then are those all in the Columbia Midlands
2 area?

3 A. Uh-huh. Uh-huh.

4 Q. And so that sounds like a lot.

5 A. We take in considerations, just financials only,
6 some were a condo, some were single family. And we do
7 take into consideration the amount of work that goes into
8 each association when we put together a manager's
9 portfolio.

10 Q. Of the 13 properties you were managing at the time, were
11 there any that had more water intrusion, and toilet leaks, and
12 those types issues than Bower Commons?

13 MR. COBB: Objection. Relevance.

14 THE COURT: I'll allow. Sustained. Excuse me
15 overruled.

16 MR. JOYCE: Yeah. Yeah. Yes.

17 BY MR. LESEMANN:

18 Q. In this 2020 time frame where I've got --- yes, if you
19 could answer that?

20 A. Yes, sir.

21 Q. So Bower Commons had a higher level of water leaks,
22 toilet leaks, and water intrusion issues (inaudible)?

23 A. Correct.

24 Q. Where is your office, Ms. Adleman?

25 A. Currently it's located in Downtown Columbia. Back

1 then it was located near Hard Scrabble Road, which is
2 about 15 to 20 minutes from where we're at now.

3 Q. Actually, I went to USC for undergrad and law school.
4 But tell me again, Hard Scrabble Road.

5 A. It's --- it's close --- Clemson Road.

6 Q. So okay. So Northeast Blythewood. Okay. Sure. All
7 right. So you were about 15 to 20 minutes away from Bower
8 Commons?

9 A. From our current office where we're at --- located
10 at now from Bower Commons, I would say 25, 30 minutes ---

11 Q. Okay.

12 A. --- during 2020, we were working from home due to
13 COVID.

14 Q. All right. Thank you. So where is your --- and I don't
15 mean to --- how --- about how far away is your home from Bower
16 Commons?

17 A. 20 minutes.

18 Q. Okay. And general area where you live?

19 A. Chapin.

20 Q. Chapin. Okay so just up on the lake.

21 After Mr. Berry texted you on August 14th --- and you
22 acknowledge you received that text?

23 A. Uh-huh.

24 Q. Okay. And did you tell Mr. Leone about that --- that on
25 the 14th, or did you tell him on the 17th about the water and

1 toilet leak issue that was happening at IOA?

2 A. I --- I can't remember exactly, but knowing me, I
3 would have called him that day or the next day after ---

4 (Simultaneous speaking)

5 A. --- I would have notified him immediately.

6 Q. August 14th. Yes. All right. And so it's your
7 recollection that you would have notified AJ Leone, the
8 landlord, the man who is sitting here in the courtroom. You
9 would have notified him immediately after you received that
10 text?

11 A. Uh-huh.

12 Q. So meaning the 14th?

13 A. Or the day after. Within a few day --- like within
14 the first two, three days I would have notified him.

15 Q. So if the 14th was a Friday and the 17th was a Monday ---

16 (Simultaneous speaking)

17 Q. --- August in 2020, you think that at the --- at the
18 latest you would have notified him by Monday August 17th?

19 A. Uh-huh.

20 Q. Okay. And ---

21 THE COURT: Say yes or no.

22 THE WITNESS: I'm sorry. Yes.

23 BY MR. LESEMANN:

24 Q. So what did you tell Mr. Leone the very first time that
25 you told him that you had gotten notification from IOA --- and

1 actually, this was the second toilet leak issue of 2020 from
2 their unit; wasn't it not?

3 A. I don't recollect. But they had several leaks with
4 their roof and so there was a lot of leaks that year, but
5 I don't --- I don't know for sure if it was the second
6 toilet leak.

7 Q. Do you remember the Barbara Hanna toilet leak
8 (unintelligible) Barbara Hanna?

9 A. Yes, I do remember.

10 Q. And that was another toilet above IOA wasn't it?

11 A. Yes.

12 Q. Okay. And so if we talk about a toilet leak for a
13 second. So a toilet's designed to where it's essentially
14 holding water till it's flushed, right?

15 A. Uh-huh.

16 Q. Okay. And then when it's flushed, probably has
17 either --- I'm going to use scientific terms, feces, urine, or
18 whatever else people may flush down the toilet when it gets
19 flushed, right?

20 A. Uh-huh. Yes.

21 Q. So when a toilet is leaking onto the unit below it,
22 what's coming onto the unit below it is a mixture of water
23 feces, urine and whatever else people put in the toilet,
24 right?

25 MR. COBB: Objection, Your Honor. Calls for ---

1 calls for speculation, conclusion. I mean --- she's not
2 a plumber.

3 MR. LESEMANN: She's a property manager.

4 MR. COBB: And this is, I think, something that's
5 probably within the --- the (unintelligible) general
6 knowledge about what goes down a toilet.

7 MR. LESEMANN: Your Honor --- Your Honor, he ---
8 he's trying to get her --- he's --- he's trying to
9 mischaracterize the testimony about what's coming from
10 the leaks specifically.

11 (Simultaneous speaking)

12 MR. LESEMANN: Could --- could be resident toilet
13 water ---

14 (Simultaneous speaking)

15 THE COURT: All right. I'll make my ruling. I'm
16 going to overrule. I'm going to allow that --- that line
17 of questioning.

18 BY MR. LESEMANN:

19 Q. So Mr. Adleman, again, when there is a situation where
20 you've got a toilet that's leaking when it was flushing, the
21 water that would be coming into the ceiling, into the walls
22 would be water, feces, urine, and whatever else was in the
23 toilet, right?

24 A. Yes.

25 Q. And by August 17th, wasn't Mr. Berry informing you that

1 he thought it was a toilet leak from the unit above?
2 A. He did.
3 Q. That would stand to reason, right?
4 A. Stand to reason for?
5 Q. That --- that was (unintelligible) what it was?
6 A. Sure.
7 Q. Just, I know we have --- we haven't talked about it
8 refresh your memory. There actually had just been another
9 toilet leak at IOA just five, six months prior?
10 A. Yes. That is correct.
11 Q. And so if I'm standing here and I see that that tile is
12 brown ---
13 A. Uh-huh.
14 Q. --- and I know that there's a residential unit above it?
15 A. Uh-huh.
16 Q. And I know that there's a bathroom and a toilet right
17 above me ---
18 A. Uh-huh.
19 Q. --- the toilet have been a very early suspect?
20 A. Not necessarily. A tile could be brown from old
21 water and it would be an old stain. So we have to rule
22 out before anything that it cannot be a leak from
23 anywhere else and within those pipes connecting. They
24 all pipe --- connect, like you said, the pipes, like
25 Barbara's was connected. So all the pipes connect, so we

1 have to make sure that it's not just an old leak that
2 there is active leak currently going on because it was a
3 brown ceiling tile.

4 Q. There was a brown ceiling tile?

5 A. There was a spot on the ceiling tile, yes.

6 Q. All right. And there was one in Parker's office and
7 there one in Scott's office?

8 A. I don't remember first off seeing the one in
9 Scott's, but I definitely remember the one in Parker ---

10 (Simultaneous speaking)

11 A. --- from the pictures.

12 Q. From August 14th when you got the text ---

13 A. Huh-uh.

14 Q. --- can you describe the first time for the jury that you
15 took the 20-minute drive to go actually to look at yourself?
16 How long ago --- what time passed before you actually went to
17 IOA's office to look at those brown ceiling tiles?

18 A. I don't remember what day that I arrived to go look
19 at them, but I remember seeing the brown ceiling tiles
20 there and acknowledging we needed to call out a vendor to
21 come out and inspect and see what was going on with the
22 situation.

23 Q. (Inaudible)?

24 A. I don't remember to be honest.

25 Q. (Inaudible)?

1 A. I don't remember the day. No, sir.

2 Q. So knowing what you know now, if these ceiling tiles are
3 a drop ceiling, they can actually --- they can be popped out,
4 right? You can actually have a ladder and you go up and you
5 you'd look at it?

6 A. Correct.

7 Q. And did you hear the testimony the first plumber you sent
8 out actually didn't --- didn't bring a ladder with him?

9 A. That is correct.

10 Q. That's somewhat incompetent if you told the plumber that
11 hey, there's a leak coming, there's brown ceiling tiles, so we
12 need to figure out what's going on. If they need to figure
13 out what's going on between the floor above and the ceiling
14 tiles, wouldn't the ladder about be the first thing that you
15 bring?

16 A. Sure, but people make mistakes. And Arrow was the
17 preferred vendor at Bower Commons, so we called for all
18 water leaks, including Barbara's that they also repaired.

19 Q. Okay. But how many times did you have to call out Arrow
20 a year for plumbing leaks or water leaks (inaudible)?

21 A. For --- it just depends, there's several leaks. So
22 sometimes it could be coming from the roof, so that's
23 where CWS would come in. But for plumbing issues it was
24 a couple of times a year. I couldn't put a number on it,
25 but it was a few times a year, different ---

1 (Simultaneous speaking)

2 Q. --- I'm sorry, did you have to call Arrow out to Bower
3 Commons more than you had to call Arrow out to any of your
4 other complexes?

5 A. Yes, that's a fair statement.

6 Q. Did it take about three months for the --- the --- the
7 toilet leak issue (unintelligible) Barbara Hanna IOA and the
8 December 2019 to February 2020 time frame, did that take about
9 three months to get addressed?

10 A. Yes, but that's a different situation as she wasn't
11 living in that unit. And so there was trouble getting
12 access to her unit because of that. So that was a
13 different situation entirely and the reason why it took
14 so long.

15 Q. Okay. So the master deed says that the association will
16 have keys to the units, correct?

17 A. That is correct.

18 Q. All right. So did y'all just neglect to do that? Or did
19 you have keys? Or why did --- why couldn't you get access
20 into these units where the master deed says you'll have keys?

21 A. Up to that point keys had never been collected by
22 anyone for Bower Commons. So we didn't have them as a
23 management company to be able to gain access to a unit.

24 Q. Okay. So AJ Leone as the president of the association,
25 had he done anything to make sure that the provision in the

1 master deed saying that the association would have keys to all
2 the units, had he taken action to make sure that that would be
3 enforced and was --- keys were available to you?

4 A. Yes, that's --- when he came on, he wanted to do
5 several different things the keys being one of them in
6 addition to the water meters being looked at and those
7 being tallied towards each of the units. So we had
8 several projects we were working on to --- to change the
9 way that things were being done briefly.

10 Q. Well, the master deed goes way back, right. It's an old
11 document?

12 A. Uh-huh.

13 Q. Yeah, 2008?

14 A. Yes.

15 Q. Okay. And so by August 20th --- from --- from 2008, to
16 August 2020, had the association collected these keys so that
17 they could access units?

18 A. So August --- say that one more time?

19 Q. So by August 2020, did you have the keys collected?

20 A. I did not, because I came on as the manager in 2019
21 and they had not been collected up to that point.

22 Q. Okay.

23 A. So CAMS did not have them.

24 Q. All right. But you knew who Mr. Monroe was correct?

25 A. Yes.

1 Q. All right. And it was actually Scott Berry is the one
2 who told you specifically, I think it's the toilet in
3 Monroe's?

4 A. He did.

5 Q. Okay. And did he tell you --- when did you tell you
6 that?

7 A. Beginning of August. I think you mentioned
8 August ---

9 Q. August 17th. And is the first time that you have
10 somebody in Mr. Monroe's unit to look at his toilet,
11 September 24th?

12 A. I don't know off the top of my hand --- I --- or
13 head. I do know that, again, there was COVID and there
14 was different reasons why we couldn't gain access to the
15 unit immediately. However, Crissy and Scott were very
16 accommodating in helping us to be there when we couldn't
17 be there because of COVID, or gaining access to it at
18 different times and different days.

19 Q. So if you could explain to the jury why Mr. Berry is
20 telling you as of August 17th there is a toilet leak and I
21 know that it's coming from Mr. Monroe's unit ---

22 A. Huh-uh.

23 Q. --- why it could take you from August 14th to
24 September 24th before anybody goes and investigates the issue
25 that Scott already teed up?

1 A. I don't remember, because it's been several years
2 ago, but what I do know knowing myself is I called
3 immediately. I also would have communicated that both to
4 AJ, Scott, and Crissy. And it could have been the vendor
5 not being able to get out in time or what have you, but
6 being Arrow being the preferred vendor, that's who I
7 would have gone with because they fix all the leaks.

8 Q. Is --- is --- did COVID prevent someone from going to
9 August 17th to September 24th, which would be 41 days? Could
10 you explain why it would take 41 days after he's already told
11 you toilet, Unit 201, right above my office ---

12 A. Huh-uh.

13 Q. --- why would it take 41 days for you to first have
14 someone going look at the toilet?

15 A. Well, that 41 days wasn't till someone came out
16 there to look at it. I think that's when it was
17 repaired. But we had several leaks that came about,
18 there was Arrow thought it wasn't the toilet at first,
19 they thought it was the pipe that was leaking. And then
20 later on as Scott had mentioned earlier there was an
21 additional leak that was found. So it wasn't that we
22 weren't working towards have it fixed, it just took a
23 while before several vendors --- I had Keith as they
24 mentioned before who was a contractor come out and take a
25 look at it to see what his opinion was of the leak. So

1 we were actively trying to get the leaks repaired. It
2 was just hard located where the leak was. At one point
3 they thought it could have been the shower above. So
4 there were several different --- once they would fix one
5 other, it would start leaking somewhere else on the pipe.

6 Q. So it was a constant set of leaks?

7 A. Yes, that we were trying to repair.

8 Q. All leaking into IOA's unit?

9 A. Yes, but it was a drip, it wasn't like a stream of
10 water. It was a steady drip.

11 Q. Okay. Do you --- do you know why there'd be six inches
12 of water in a trash can in IOA's unit in September if it was a
13 slow drip?

14 A. I'm going off of what I saw. I didn't see the six
15 inches of water in the trash can. I just know that I saw
16 a --- a very slow drip coming out steadily.

17 Q. All right.

18 A. It wasn't a stream of water.

19 Q. Okay. And then again you --- you mentioned COVID.

20 Again, from what --- what days are you saying that COVID
21 delayed from when you had information on August 17th, toilet
22 right above me is leaking, here's the pictures of the brown
23 tile --- what did COVID have to do --- can you specifically
24 tell me how COVID affected you and Mr. Leone both as landlord
25 and as association president, how did COVID --- because I've

1 heard that a couple times ---

2 A. Huh-uh.

3 Q. --- how did COVID specifically cause that to back a
4 week-long delay?

5 A. No one was working in the office at that time except
6 for the few times they were coming in due do construction
7 or fixing. I think they had had some wiring they were
8 fixing in one of their closets. And --- and Scott did
9 come in a few days a week, but between when I was getting
10 the vendors out there and Scott wasn't there, or what
11 have you, but there were a few times where nobody was on
12 premise, and you had to work around days to get someone
13 out there. And --- and to which point, I venture.

14 Q. (Unintelligible) take about COVID.

15 A. Nobody was in the office. So nobody was working in
16 the office due to COVID is what I said.

17 Q. (Technical difficulty) did Mr. Berry send you a text?

18 A. Yes.

19 Q. On August 14th from within the office?

20 A. I don't know if he was in the office when he sent it
21 or not. I know he sent me a text asking that someone
22 come out and take a look at the leak. Don't know that he
23 was in the ---

24 Q. (Inaudible)?

25 A. --- yes, but doesn't mean he was in the office. He

1 could have stopped by and asked me to --- doesn't mean he
2 was working in there that day.

3 Q. Did you --- did you call --- again, I --- I wanted to ask
4 you again, when was the first time that --- or do you just not
5 remember the first time that you would have gone to look at
6 this yourself?

7 A. I don't remember the first time that I went to look
8 at it myself.

9 Q. Okay. And then he texts you again on the 17th, correct?

10 A. If that's what your records show, yeah.

11 Q. Okay. You're saying that there was nobody in the office;
12 you weren't there every day?

13 A. No.

14 Q. And during this 90-day time frame --- or so I should say
15 from much longer than 90 days --- but from August 14th to
16 December 1st, how many times did you personally visit the IOA
17 office?

18 A. I don't know how many times I visited, but I know he
19 was there several times. And I know there was also
20 communication that no one was in the office, so I had to
21 schedule when someone would be in the office.

22 Q. Okay. And who would --- you would call Scott or Crissy?

23 A. Yes.

24 Q. All right. And do you recall was there a time period
25 once it was mold that was discovered that that's when

1 employees were no longer in the office?

2 A. From my recollection, people were already not in the
3 office. It was only really Crissy and Scott that were
4 there for the most part. Maybe a few came in every now
5 and then, but for the most part nobody was really working
6 in the office steadily. And so when the mold came about,
7 they had recommended Kleen Sites that they would like to
8 use. That's who we went with.

9 Q. Okay. We'll talk about that in just a minute. You
10 remember Clean Aire, right?

11 A. Yes.

12 Q. Yeah. Now, did Scott send you a text on Monday
13 August 24th, can you come by the office Wednesday morning and
14 look at this water damage issue we have going on?

15 A. If that's what your records show.

16 Q. Okay.

17 A. (Inaudible).

18 Q. It's in Exhibit 11 if you'd like to (unintelligible)?

19 A. Okay. Okay.

20 Q. Okay. Oh, are ---

21 A. How are these numbered? Because it's --- I'm at
22 number 11. Okay. I'm here. Okay. I just wanted to
23 make sure I had the right thing because some of them were
24 upside down.

25 Q. I should have explained. So you found tab 11?

1 A. Yes.

2 Q. Okay. And then you see the first text, we've already
3 talking about that, right, from Mr. Berry to you?

4 A. Yes.

5 Q. All right. Here are the pictures of the leak we
6 discussed. So he sent you a text, and he also called you?

7 A. Yes.

8 Q. Okay. All right. And then he sends --- on the other ---
9 on the next page, marked 737, he sends you another --- another
10 picture which backs up to the other office, right?

11 A. Uh-huh.

12 Q. All right. So you've got two offices with brown ceiling
13 tiles, and you're aware of this as of the 14th of August?

14 A. Uh-huh.

15 Q. And you recollect that you told AJ Leone either on the
16 14th or on the 17th of August about this issue?

17 A. Yes (unintelligible).

18 Q. Okay. It would have been your practice to tell him ---
19 you would have called him immediately?

20 A. (Inaudible).

21 Q. All right. And then you at first thought it might be a
22 roof issue?

23 A. Yes. It wasn't uncommon for leaks to come in and
24 travel. It happened several times in one of their other
25 offices, so that's not uncommon. So we always ruled that

1 out first because that was the biggest source of the
2 leaks outside of Barbara's.

3 Q. Okay. So are both of these offices and in these
4 locations, they're somewhat interior to the space, correct?

5 A. They are interior, but Scott's office was to the
6 exterior wall of the outside. So there was maybe it
7 could have leaked in from coming down and going in,
8 because it wasn't uncommon for the roof leaks to travel.

9 Q. Okay. But why would it --- if it was a roof leak why
10 would it all of a sudden find that particular tile rather than
11 the other tiles before it?

12 A. I'm not sure. I'm not a expert in that.

13 Q. Okay. Sure. So --- so you know from Scott telling you
14 that it's a toilet leak, and on Monday August 17th, do you see
15 the text at 2:37, your subpoena response page 739?

16 A. Where it states: Arrow Plumbing may come to
17 investigate?

18 Q. Yeah, you see up from that? Up --- up from that? I
19 spoke with CMS?

20 A. Yes.

21 Q. Okay. So and that's the roofing contractor?

22 A. Yes.

23 Q. All right. And so is Scott Berry telling you on Monday
24 August 17th we need a plumber out here to figure this out, I
25 think it might be a toilet issue?

1 A. Yes, I see that.

2 Q. Okay. And --- and so did you disagree that it may have
3 been a toilet issue?

4 A. I --- no.

5 Q. Okay. When's the first time that someone looked at the
6 toilet directly above Scott Berry and Parker McMillan's
7 office?

8 A. On the 19th.

9 Q. The 19th?

10 A. Uh-huh.

11 Q. So they ---

12 (Simultaneous speaking)

13 Q. --- oh they gained --- so they gained --- they did gain
14 access by the 19th?

15 A. Yes.

16 Q. Oh. So you're notified on the 14th, you're notified
17 again on the 17th. And you've got access to the unit where
18 the toilet is by August 19th?

19 A. Well, they gained access to their unit to take a
20 look at it and that's where the toilet was. The toilet's
21 in the unit above, it just states --- they thought that
22 they could fix it underneath. They thought it was some
23 kind of (unintelligible) or something on the pipe. So
24 they gained access to IOA's unit not to the unit above.

25 Q. They thought it was mold on the pipes?

1 A. No, they didn't --- no, not mold, a bolt.

2 Q. A bolt. Okay.

3 A. Or nugget. I don't know what it was.

4 Q. Okay. Understood. I missed --- I miss --- I misheard
5 you. I misheard you. All right. And so you could know or
6 you could verify that Eric Monroe's unit was the one that was
7 directly above, correct? As being the manager of the property
8 association?

9 A. Yes.

10 Q. Okay. All right. And so when's the first time from
11 August 14th when you're seeing those texts, when's the first
12 time that you reach out to Eric Monroe; was it weeks later?

13 A. Yeah, so it looks like it was a few weeks later, but
14 during that time Eric thought that he fixed it and then
15 the leak would start up again. So that was the issue.
16 It seemed to be resolved and then it would start up
17 again, depending on if the owner above the unit was using
18 the toilet. At one point they thought it was the shower.

19 Q. Why didn't you contact Eric --- Eric Monroe on
20 August 17th when you first had evidence that there was a
21 toilet leak coming from this unit?

22 A. Because the plumbers thought that they had fixed
23 from below. They thought the issue was below and that
24 they had resolved the --- the issue from where the toilet
25 was connected.

1 Q. So what did the plumbers actually --- I mean I know
2 people can come out and they can tell you this, that ---
3 what --- what did they actually do?

4 A. They fixed some bolt, or I don't know what it's
5 called, but it's something connected to the pipes
6 with --- to the plumbing above that they thought was the
7 issue and they fixed it.

8 Q. So they fixed a bolt below?

9 A. Yeah. I don't know what it's called.

10 Q. Okay. Do you know really exactly what they did?

11 A. That's what I just --- what I told you is what I
12 know.

13 Q. Okay. All right. Did anyone look inside the wall to see
14 if water was still coming?

15 A. At that time --- no, they just looked to see where
16 the drip was coming from.

17 Q. Okay. So when is the first time that somebody actually
18 went into the ceiling?

19 A. Arrow went to the ceiling.

20 Q. Not the roof. Not to the roof, but --- but so you're
21 saying Arrow went into the ceiling above the IOA unit?

22 A. Right. When they came back with their ladder ---

23 Q. Okay.

24 A. --- for the second time, they went in and they
25 thought they had fixed it.

1 Q. And was that --- that wasn't the same day when they went
2 and got a ladder and came back, it was a whole different time,
3 right?

4 (Simultaneous speaking)

5 A. I believe so. Yes.

6 Q. Yeah.

7 A. A few days later.

8 Q. Okay. As your preferred vendor, if they came unprepared
9 to do a job, would you expect them to get a ladder and come
10 back out the same day?

11 A. If it was an emergency, yes. But at that time, I
12 wasn't sure what was going on. We were still assessing
13 the situation.

14 Q. Okay. And how much effort would have it have taken to
15 pop out the ceiling tile, look and see whether the --- did you
16 eventually see the mold that was in that cavity in that
17 ceiling area?

18 A. Yes. When they came --- when I came and saw where
19 the paint was bubbling and you could see the spots on the
20 wall, yes.

21 Q. Okay. And reasonable to believe that if someone had
22 actually gone into the ceiling and looked in August 14th, 17th
23 time frame they would have seen that condition?

24 A. I don't believe the mold was there at that time. I
25 think it formed later.

1 Q. You think the mold formed later?
2 A. Yes.
3 Q. How many mold claims have you handled as a property
4 manager?
5 A. To date?
6 Q. Yeah.
7 A. (Inaudible).
8 Q. Four? And is this the first one at Bower Commons?
9 A. Yes.
10 Q. And so you think that mold developed later?
11 A. Yes.
12 Q. And do you have any scientific background?
13 A. Do I have any? No.
14 Q. Okay. And did you study biology or get any degree in ---
15 in microbiology?
16 A. I studied biology when I went to nursing school, but
17 not to the Nth degree that you're asking.
18 Q. Sure. I'm just trying to understand, you know, did you
19 do a --- an analysis of the mold to try to determine when
20 it --- when it arose?
21 A. No.
22 Q. Okay. But by September 1st, you were recommending mold
23 (unintelligible)?
24 A. At that time, because it had started showing visible
25 signs, yes.

1 Q. And so if it's showing visible signs through a sheetrock
2 wall as of September 1st, like it went through the wall right?
3 Why would you say that if it's gone actually through a solid
4 substance, show itself on the outside, why is it that you
5 would testify that you think that there wasn't mold inside the
6 other side of the wall (inaudible).

7 A. It just didn't --- when the plumbers went out there,
8 there wasn't any sign of mold. They didn't mention mold.
9 When there is usually signs, the vendor will say hey,
10 there's signs of mold, will you get a mold remediation
11 company out there? At that time, I didn't see anything.
12 When I was looking out there I didn't get on a ladder,
13 but that's also not what I'm supposed to do is get on a
14 ladder for liability reasons.

15 And I also remember the AC unit not being on in that
16 side of the building at Parker's office, which also helps
17 mold to grow or start.

18 Q. Okay. Well, if you're coming up with more reasons why
19 you think mold was in there (inaudible) diligently from the
20 get-go ---

21 MR. COBB: Objection, Your Honor. Argumentative.

22 BY MR. LESEMANN:

23 Q. Why were you looking --- if --- if you were concerned
24 about your --- I'm sorry, Your Honor.

25 THE COURT: (Inaudible).

1 MR. LESEMANN: Thank you.

2 BY MR. LESEMANN:

3 Q. If you're concerned about the HVAC being on, that should
4 have actually made you more alert about mold not less, right?

5 A. So the leak wasn't that active. It was a very slow
6 drip. It was constant, but it wasn't anything --- and at
7 that time when they came out the few days later, Arrow,
8 they thought they had fixed the leak ---

9 Q. Well ---

10 A. --- they --- Arrow had been out there several times,
11 because once they fixed one area it started leaking
12 again, or it leaked in another portion once the homeowner
13 above started using the unit.

14 Q. 748. See that?

15 A. I do.

16 Q. You were talking about the leak being slow, or not being
17 (unintelligible) what's --- what's the basis for your personal
18 knowledge about that? (Inaudible)?

19 A. Yes. I went on site several times during this. I
20 don't remember just because there's a large trash can
21 there doesn't mean it was filled with water, but it was
22 just something to catch the water. It was drip ---
23 dripping down so the floor doesn't get wet.

24 Q. From the toilet?

25 A. From the leak.

1 Q. From a toilet?

2 A. From the leak.

3 Q. It was from a toilet, correct?

4 A. We don't --- there were several leaks ---

5 Q. Oh you ---

6 A. --- several different areas.

7 Q. Well, yes. Exactly. But you know now that that was a

8 toilet leak and that trash can is collecting water that's

9 leaking from a toilet?

10 A. We know that there was a toilet leak, a shower leak.

11 There was two leaks.

12 Q. There were actually more than two leaks weren't there?

13 A. I know of two leaks.

14 Q. Okay. And then another in November?

15 A. There was another one that came after, yes.

16 Q. Right. And you're ---

17 A. During this time frame.

18 Q. And how many times did you send out your preferred vendor

19 to try to fix this --- this --- this toilet leak?

20 A. It was a few times.

21 Q. Okay.

22 A. Because it kept reappearing after we thought it was

23 fixed.

24 Q. It kept reappearing, or they didn't fix it?

25 A. It kept reappearing, because as I said there was one

1 in the toilet and one in the shower.

2 Q. Okay. And do you know whether it was reappearing or
3 whether your preferred vendor just failed to fix the leak?

4 A. I'm going to say it was a --- you know, it was
5 reappearing, because like I said, they are the preferred
6 vendor. They have repaired several leaks out there
7 before. They have never failed me yet which is why it
8 was a preferred vendor.

9 Q. So why would you have any knowledge about whether it was
10 new leaks, whether it was (unintelligible) really have no
11 knowledge about whether (unintelligible) job or whether it was
12 just leak after leak after leak?

13 A. That is true. Yes.

14 Q. And both of those were pretty bad when you're the tenant
15 of that --- of --- of IOA's unit ---

16 MR. COBB: Objection, Your Honor. Calls for a
17 conclusion.

18 MR. LESEMANN: (Unintelligible) property manager,
19 Your Honor, allowed to say whether it happened constant
20 leaks or having constant failures by a --- by a vendor
21 (unintelligible) situation. I think that's within her
22 knowledge.

23 THE COURT: I'll --- I'll allow.

24 THE WITNESS: Yes. Leaks need to be attended to.

25 BY MR. LESEMANN:

1 Q. Quickly?

2 A. Attended to. It depends --- first you have to go
3 out there --- there's a lot of steps that go into this.
4 You do attend to it quickly which is why I was very
5 responsive to Scott's request. So being attentive to and
6 looking as quickly as possible within the first few days
7 of (unintelligible) is being attentive and trying to get
8 it repaired.

9 Q. Right. And so but again it was Scott Barry, an insurance
10 producer that had already told you that it was a toilet leak
11 from Eric Monroe's unit, right?

12 A. Right, but with all due respect ---

13 (Simultaneous speaking)

14 Q. (Inaudible)?

15 MR. COBB: Objection, Your Honor. I --- I --- can
16 we please let the witness answer a question before the
17 next question is asked?

18 THE COURT: All right.

19 MR. COBB: She wasn't allowed to her --- his first
20 question. He --- I would like to hear how she answers
21 that first question.

22 THE COURT: Okay. So I'll sustain that. I'll ---
23 I'll ask that she be allowed to complete her answer all
24 the way. All the way complete her answer.

25 THE WITNESS: With all ---

1 MR. COBB: Thank you, Your Honor.

2 THE WITNESS: With all due respect, and I have the
3 most respect for Scott and Crissy, but just as you say
4 that I'm not a plumber, he's not a plumber either. And
5 so I have to do my due diligence in getting things looked
6 at thoroughly.

7 BY MR. LESEMANN:

8 Q. Okay. So when he's telling you it's a toilet leak in
9 Eric Monroe's unit, why not (unintelligible) why go to the
10 roof rather than going to the toilet right above his unit,
11 particularly when he's already had another toilet leak into
12 the IOA's space for several months. I'm just trying to
13 understand why when you got served up that information on
14 August 14th, why that wasn't something that you would
15 immediately check out?

16 A. Right. So IOA had several leaks in a few of their
17 offices there that were exterior walls. And they were
18 all coming from the roof. So my --- and they were ---
19 could be towards the middle of the office. And my first
20 thought was to call up the roofing company, because
21 that's what we had done with the other offices within
22 IOA, and those were roof leaks.

23 Q. And you said that you thought that the mold wasn't there
24 as of August 14th, when water issues are left unattended and
25 leaks and toilet leaks, because again, that means that there

1 is --- there's bacterial matter in that water isn't there?

2 MR. COBB: Objection, Your Honor. Calls for
3 speculation, calls for a conclusion. She's already
4 testified she's not an expert to that Nth degree. She
5 can't testify to that.

6 THE COURT: (Unintelligible).

7 MR. LESEMANN: Your Honor, I believe that she can
8 say that (unintelligible) notice that types of materials
9 that we're talking about are toilets, have bacteria in
10 them. She already tried to make an opinion about when
11 she thought mold was there and not there. So we're going
12 to sort of follow up with that.

13 THE COURT: I'll allow it.

14 MR. LESEMANN: Thank you, Your Honor.

15 MR. COBB: Your Honor, are you allowing judicial
16 notice of that or are you allowing her question?

17 THE COURT: The question.

18 MR. COBB: Okay. I just want to make sure I clarify
19 that. Thank you.

20 THE COURT: Yes, sir.

21 BY MR. LESEMANN:

22 Q. If it was a toilet leak things could get bad pretty
23 quickly with bacteria and mold, couldn't they?

24 A. I would think there is bacteria in the water. It
25 depends on the conditions of the room and what could

1 create the mold. So there's a lot of things that go into
2 that other than just a leak.

3 Q. All right. It's August, right?

4 A. Yes.

5 Q. And you're --- you actually think that --- that IOA
6 doesn't even have its --- its AC on?

7 A. Correct.

8 Q. And so I remember from my years here 95 degrees,
9 100 degrees in August, maybe 95, 98 percent humidity
10 (unintelligible)?

11 A. Sure. Yeah.

12 Q. So that actually would be a very hospitable environment
13 for mold, wouldn't it?

14 A. Correct. Which is why we had Arrow come out and we
15 thought they fixed the leak.

16 Q. Several times?

17 A. Yes.

18 Q. Right?

19 A. Because there was more than just one area. You keep
20 forgetting the shower.

21 Q. Well no, I don't forget the shower. I mean, I --- I
22 think that it's important to note there were --- what ---
23 what's --- as the property manager, is --- is the plumbing
24 system in this building, is it just --- is it decrepit? I
25 mean, you already mentioned that it's got more leaks than any

1 other building that you have experience with as a manager.

2 Why is it that the plumbing in this is so awful?

3 A. I think it's just with anything with time. It's not

4 decrepit or anything. But things, you know, have to be

5 fixed over time. And it's a 20-plus year-old building.

6 And so leaks are happening every now and then. In and

7 out of the building.

8 Q. Was it built in 20'08?

9 A. In 20'08?

10 Q. 2008, excuse me.

11 A. I don't know when that building ---

12 (Simultaneous speaking)

13 A. --- but that's when the governing documents were

14 established.

15 Q. You said it was 20 years old, so I just wanted to ask you

16 did you actually know when it was built?

17 A. I said 20-plus years.

18 Q. Okay. Do you know when it was built?

19 A. I know it was at least over 20 years, but I don't

20 know the year.

21 Q. Okay. So but if the governing documents were filed in

22 2008 --- the master deed, and we're talking about 2020, that's

23 12 years, right?

24 A. True. Yes.

25 Q. So were you pretty alarmed when you saw the picture that

1 we've marked here as part of Exhibit 11, and you got this
2 picture showing that the ---

3 A. Yes.

4 Q. --- ceiling tile had fallen?

5 A. Yes, because that means the leak wasn't resolved
6 like we thought.

7 Q. (Unintelligible) it's worse. (Unintelligible) be
8 understanding that the reason why a ceiling tile would do that
9 because it became so saturated with the weight of the water
10 from the toilet with all the things that are in the toilet,
11 that it actually caused it to disintegrate and collapse?

12 A. I'm not sure. I'm not a expert in that. But that's
13 where the leak from the shower ---

14 Q. Okay. And --- and --- and --- and going back to that,
15 you said that you think that --- so by --- by this point,
16 by --- by mid-September 22nd, you think that there's mold?

17 A. I don't remember when the mold was detected.

18 Q. Okay. Three weeks --- well, it was the wall was weeks
19 earlier, correct? It had actually grown through the wall?

20 A. What date did you ask me?

21 Q. Well, September 22nd is I believe when you got these ---
22 these pictures of the ceiling having collapsed. Right? Do
23 you see on the page marked 747? Scott sends you, can you call
24 me this morning?

25 (Simultaneous speaking)

1 Q. Okay. And you said that in the next page you say that
2 you were in a meeting --- had a series of meetings?

3 A. Yes.

4 Q. Okay. And then he sends you that picture?

5 A. Yes, of the trash can. What --- what was your
6 question before that? I was ---

7 Q. Pretty alarming to see that, isn't it?

8 A. Yes.

9 Q. Okay. And this is --- and just to sort of
10 (unintelligible) you when do you first become concerned that
11 there's a mold issue?

12 A. I think it was right around that time frame.

13 Q. You think it was September 22nd when you were first
14 concerned about whether there was a mold issue?

15 A. Yes.

16 Q. Could you turn to Exhibit 44. Are you there?

17 A. Yes, sir.

18 Q. Oh, thank you. Okay. Just go to the page that's
19 marked --- and these numbers, it's --- it's different. In the
20 lower left-hand corner, do you see a number that says 1221
21 Bower RFP --- or a phrase? If you go to the last page of that
22 exhibit?

23 A. In the lower left-hand corner?

24 Q. Yeah. Do you see where it says 1221 Bower RFP 000377?

25 A. Yes, sir.

1 Q. Okay.

2 MR. LESEMANN: Your Honor, may I approach?

3 THE COURT: Yes.

4 BY MR. LESEMANN:

5 Q. Oh that's 43. I'm sorry.

6 THE COURT: It's tab 43?

7 MR. LESEMANN: No, I meant say --- did I say 43?

8 THE COURT: Said 44.

9 MR. LESEMANN: Yeah, I meant to say 44.

10 So Ms. Adelman, are we there now?

11 THE WITNESS: Yes.

12 MR. LESEMANN: Tab 44?

13 BY MR. LESEMANN:

14 Q. And so yeah, so when you go to it, it'll be the document
15 that's behind the 44 would be that just as we go forward. All
16 right.

17 What's the date of your --- and so do you recognize that
18 e-mail C141NAV@Gmail.com? All right. And that's Mr. AJ
19 Leone's e-mail, the landlord --- gentleman that's sitting
20 here?

21 A. Yes.

22 Q. Okay. And so you are e-mailing him on September 1, 2020?

23 A. That says September --- yes, sir, September 1st.

24 Yes.

25 Q. Okay. Because there's been some suggestion in the

1 courtroom that somehow maybe he wasn't on notice, or didn't
2 know, or hadn't gotten word about these issues. But again,
3 specifically AJ Leone knows about this issue either on
4 August 14th or August 17th, correct?

5 A. I don't remember when I contacted him, but knowing
6 me, I would have contacted him pretty immediately.

7 Q. One of the those two dates. And here we are two weeks
8 later correct? On September 1st, you're --- you're e-mailing
9 him?

10 A. Yes, correct.

11 Q. Okay. And so Clean Aire, is that a mold investigation
12 and remediation company?

13 A. Yes.

14 Q. All right. And so could you read your --- your e-mail
15 there?

16 A. Yes. Good morning AJ. Do you approve me moving
17 forward to getting Clean Aire to come out and assess
18 (unintelligible) and IOA tomorrow. He sent me the
19 attached proposal moments ago.

20 Q. Okay. So you had already reached out to mold remediation
21 contractor specifically relating to IOA?

22 A. Yes.

23 Q. Okay.

24 A. According to this e-mail.

25 Q. All right. And if you're reaching out to Clean Aire ---

1 so you actually reached out to them before September 1st?

2 A. Yes, according to this.

3 Q. Because you wanted to see a mold remediation --- or at
4 least a mold investigation done at the IOA space?

5 A. Yes, according to this.

6 Q. All right. Because you as a property manager, you
7 thought that would have been a reasonable step to take at that
8 time based on the presence of mold or some kind of --- some
9 kind of growth had actually come through the sheetrock wall?

10 A. I don't remember what day I got pictures of the
11 sheetrock wall, or seeing those. But from this e-mail, I
12 did see the need to call out a mold remediation.

13 Q. Okay. And that was your professional opinion as a
14 property manager that that issue should have been investigated
15 September --- by September 1st at the latest?

16 A. Yes, sir. On September 1st I was asking.

17 Q. Okay. You're specifically asking AJ, not --- not an
18 owner of another unit, not some other board of directors,
19 you're specifically asking this gentleman right here whether
20 you have authority to go forward on September 1st to do a mold
21 investigation?

22 A. Yes.

23 Q. Did he give you permission to proceed?

24 A. Knowing AJ, yes, would have. He was very insistent
25 on getting the matter, you know, taken care of

1 immediately. Several times we had that conversation.

2 Q. That's your recollection under oath that he would have
3 told you to proceed?

4 A. Yes. Him and I had several phone conversations that
5 he wanted to get the issue resolved immediately.

6 Q. I see. Could you flip to the page before that.

7 Actually, no --- no --- well, yeah, flip to the page before it
8 and you see Mr. Leone's e-mail to you two days later, correct?
9 You see at the bottom of that page?

10 A. The one dated at the bottom, it just says 1221 Bower
11 RFP, that one?

12 Q. Yeah. So it's the September 3, 2020, e-mail at 2:03?

13 A. (Unintelligible).

14 Q. Okay. But then to actually see what he says you --- you
15 actually have to go to the next page, right?

16 A. Yes.

17 Q. All right. And when you do that what does Mr. Leone say
18 to you?

19 A. Do you think we need to do this?

20 Q. Okay. So he's asking your opinion as a property manager
21 with whether you think this would be appropriate?

22 A. Yes.

23 Q. Okay. And then again, since these are in reverse
24 chronological order, let's go back to the first page. And
25 your response to Mr. Leone, again, who is not just the

1 landlord, he's also the association president, correct?

2 A. Yes.

3 Q. He has the singular authority to allow you on
4 September 1st to do the mold remediation and investigation ---
5 I'll --- I'll correct my words. At this point, you're wanting
6 to do a mold investigation, correct?

7 A. Correct.

8 Q. All right. And he's the guy that can give you permission
9 to do that as of that date?

10 A. Yes. He wanted to make sure that beforehand that we
11 had done all the other necessary steps.

12 Q. Well, if you think there's mold and you have already
13 gotten a contractor lined up to give you a quote, what are the
14 other steps before saying man, this is a mold issue. Yeah,
15 let's go. Let's proceed. What other steps would you ---
16 after you teed it all up, you've gotten the contractor, you've
17 gotten your proposal, you're just asking for him to give you
18 the go ahead, right?

19 A. Right.

20 Q. And you said knowing AJ, you think he would have told you
21 yes?

22 A. Yes.

23 Q. All right. He says do you think we --- or he asks you,
24 do you think we need to do this?

25 A. Yes.

1 Q. And what's your response?

2 A. Yes, sir. At least for IOA, Scott is wanting it
3 bad.

4 Q. So --- by September 1st, Mr. Berry; that's when you're
5 referring to Scott, you're referring to Mr. Berry, right?

6 A. Yes.

7 Q. Okay. And you're saying that he wants a mold
8 investigation bad --- badly ---

9 A. Uh-huh.

10 Q. --- as of --- so really before September 1st, he's
11 already communicated to you that he wants it badly?

12 A. According to this e-mail, yes.

13 Q. So in your polite way, I know that you work for the
14 association, right? And they can always fire you and you've
15 got to sort of mind your Ps and Qs and things like that; are
16 you urging that let's proceed IOA wants it bad, yes, sir, we
17 should go ahead?

18 A. Are you asking if I --- based off of Scott's?

19 Or ---

20 Q. You're --- you're --- you're --- you are --- you are
21 recommending to Mr. Leone to proceed with the mold
22 investigation as of September 1st?

23 A. Yes.

24 Q. Do you think it's an important idea?

25 A. Yes.

1 Q. You're concerned about the health and safety of all of
2 your tenants that are in your buildings, correct?

3 A. Well, at that point Mr. Berry and Crissy were
4 e-mailing me and letting --- and calling me and letting
5 me know that they wanted someone to come out and have
6 someone come take a look at it. And so --- yes.

7 Q. They wanted it badly?

8 A. Yes.

9 Q. You thought it was a good idea?

10 A. Yes.

11 Q. You thought it was necessary as least for IOA?

12 A. Yes.

13 Q. And you --- you didn't answer the question yet, but you
14 are concerned about the --- the welfare of your tenants in
15 your buildings, correct?

16 A. Not at that time, because we didn't know if there
17 was for sure mold taking place or not. We wanted to get
18 it assessed to see if there was an issue. So we don't
19 know until we know.

20 Q. All right. Mold issues, do they --- if you leave them
21 alone in August and in the area where you think that was the
22 air conditioning wasn't --- was --- was not on, that's ---
23 there's some urgency there, isn't there?

24 A. Well, as you stated earlier, I'm not an expert in
25 this field, so I can't tell you how fast the mold the

1 will grow, but I would think we would need to get it
2 looked at and assessed to be able to tell.

3 Q. And I only asked you about that question because you made
4 an opinion in front of the jury that you thought that the mold
5 wouldn't have been there August 14th. So that's what caused
6 me to ask you those follow-up questions. So again, do you
7 know?

8 A. At that time, I did not know if there was mold there
9 or not. But I do know that the tenants at that time want
10 it done badly and I didn't see any cause for not doing
11 it. It's better to be safe.

12 Q. It is better to be safe, particularly when you've already
13 got damage, right?

14 A. Yes.

15 Q. Particularly when you've got a tenant that's paying
16 thousands upon thousands of dollars per month in rent, right?

17 A. Well, I don't know what they pay, that's between
18 them and the landlord.

19 Q. All right. Okay. So then let's go --- we're going to
20 deal with this same document again. And where you tell him
21 yes, sir, at least for IOA, Scott wants it bad. Mr. Leone,
22 does he e-mail you back and say --- what does he e-mail you
23 back and say?

24 A. This is one of those things that where if the tests
25 come back positive then we have to do more and more.

1 Q. So he doesn't want to do a mold test?

2 A. I would have to read the context of e-mails before
3 that. But I know that there was several times where he
4 stated we needed to do everything we could to get it
5 taken care of.

6 Q. Okay. And everything you needed to do to get it taken
7 care of was going to start with doing a mold remediation as
8 soon as you could ---

9 A. Yes.

10 Q. Because there was already visible evidence of mold coming
11 through the sheetrock?

12 A. Yes.

13 Q. And so you should have gone immediately forward on
14 September 1st, shouldn't you?

15 MR. COBB: Objection, Your Honor.

16 MR. LESEMANN: For what basis?

17 MR. COBB: I mean, it's inflammatory. I mean, it's
18 leading ---

19 MR. LESEMANN: No. Well, permission to treat the
20 witness as hostile, Your Honor.

21 MR. COBB: Your Honor, she's done nothing that's
22 been hostile.

23 MR. LESEMANN: She's affiliated with Mr. Leone.
24 They work together.

25 (Simultaneous speaking)

1 MR. COBB: (Unintelligible) --- Scott Berry work
2 together.

3 MR. LESEMANN: Permission to treat the witness as
4 hostile, Your Honor.

5 THE COURT: I don't believe it's appropriate
6 right --- at this point I don't believe it's appropriate.
7 I am going to overrule --- I'll allow him to ask that
8 question.

9 BY MR. LESEMANN:

10 Q. So again, it was important to move forward as of
11 September 1st. Again, you just mentioned that it's your
12 testimony that Mr. Leone wanted to do everything he could to
13 get this problem resolved as soon as he could. This is one of
14 those things, isn't it?

15 A. Yes, to go ahead and get it tested. Uh-huh.

16 Q. So if you're saying under oath that you thought that Mr.
17 Leone wanted to do everything that he could as soon as it
18 could be done, then why is he surmising that well, if we test,
19 and there's mold, then we're going to have to do more stuff?

20 A. I think everything's in context, in the way things
21 read in e-mail versus in person. To me, and knowing him
22 and talking to him it's like one of those things we have
23 to do, it's positive. We got to do more and more. Not
24 saying to not do it. Just saying like this is one of
25 those things where if it comes back positive we're going

1 to have to do more and more work to get this remediated.

2 Q. Like we're going to have to get mold out of the tenant's
3 space?

4 A. Yes.

5 Q. Like that's a bad thing?

6 A. I don't take that as a bad thing. I think he's just
7 matter of factually saying we're going to have to do more
8 and more if it comes back positive.

9 Q. He says, do you think we need to do this? And you say
10 yes. And he responds this is one of these things if we do it
11 and they're positive, we're going to have to do more and more
12 stuff.

13 A. Uh-huh.

14 Q. So actually what happened is rather than moving forward
15 with the mold remediation, you sent out a contractor in
16 September to replace the sheetrock; isn't that true?

17 A. Well, we also wanted to go ahead and look at
18 simultaneously of getting that replaced, and getting it
19 painted, and what it was all going to cost. So we had to
20 take --- go ahead and take steps to get everything
21 remediated. Once it --- the remediation was done, we
22 wanted to have the walls and everything put back up. So
23 we took steps to go ahead and get that looked at as well.

24 Q. All right.

25 A. When we have a project ---

1 Q. All right.

2 A. --- going on, there's many moving piece to it.

3 Q. All right. So in your sworn testimony, you think that
4 this statement where he says, this is one of those things
5 where if the tests come back positive for mold, then with have
6 to do more and more. You're saying the context of that should
7 not be interpreted as a reluctance on the part of the
8 landlord, the association president to proceed with the
9 mold --- mold testing?

10 A. That's correct. I don't think that.

11 Q. And what does he say next?

12 A. Please call me.

13 Q. Do you have a recollection as to when you're already
14 writing back and forth about this, why he --- why Mr. Leone
15 wanted to go off line and discuss this outside of an e-mail?

16 A. Yes. We did that often just as well with any of my
17 board members, it's because sometimes things are not
18 taken correctly via context in an e-mail. It's easier
19 just to call and get whatever next steps we need done
20 over the phone done than just communicating via e-mail
21 back and forth an hour sometimes in a day depending on
22 what's going on.

23 Q. Are you --- are you managing any of Mr. Leone's other
24 properties?

25 A. At that time, no.

1 Q. At this time?

2 A. Correct no.

3 Q. You --- you aren't managing any of his other properties?

4 A. At that time, no.

5 Q. At this time?

6 A. At this time, yes. I have one.

7 Q. Okay. So you are currently working for Mr. Leone?

8 A. Yes.

9 Q. Which property is that?

10 A. It's called Overlook Business Park and I've only
11 been over it --- excuse me --- for a few months, as one
12 of the managers that were there previously we had to let
13 go in the middle just overseeing until the next manager
14 takes it back.

15 Q. When did Mr. Leone hire you to work for him on that
16 property?

17 A. He hired CAMS --- oh, for Overlook or ---

18 Q. For the property you're currently handling?

19 A. I don't know when his contract started with CAMS on
20 that property.

21 Q. When did you start being involved in that property on his
22 behalf?

23 A. Just a few months ago because another manager was
24 let go.

25 Q. Okay. So when you called --- all right? So he said,

1 please call me because (unintelligible) tests positive, that
2 means we're going to do --- we're going to have actually
3 remediate something, right?

4 A. Uh-huh.

5 Q. Whereas if you don't test, you could just sort of leave
6 it like it is, right?

7 A. Uh-huh.

8 Q. And what I don't --- what I don't know won't hurt me?

9 A. I don't think it's that stance on it. I just think
10 that he wanted to make sure that this was the right next
11 step that we need to take.

12 Q. But you already told him it was the right next step, that
13 it was something that your tenant was paying thousands of
14 dollars a month wants?

15 A. Right. But as any good board member or landlord,
16 they're going to make sure because it's a lot of money
17 that you are taking the right next steps. Just because
18 you hire someone doesn't mean that they're going to take
19 the next steps. So you want to make sure they've done
20 everything in their due diligence to cover the correct
21 steps and what they need to take next.

22 Q. (Inaudible) Clean Aire to come out?

23 A. I don't remember off the top of my head, but if I'm
24 going off of normal ---

25 Q. (Inaudible)?

1 A. If I'm going off of normal quotes, it's a couple ---
2 5, \$600.

3 Q. 5, \$600, in order to be able to determine in early
4 September whether there's a mold issue in the IOA unit?

5 A. Correct.

6 Q. Okay. And as it turns out, in those --- in those --- in
7 the wall, and on those timbers, and in that insulation, there
8 was a significant mold problem, wasn't there?

9 A. Yes, there was.

10 Q. And if you'd spend 5 to \$600 in late August or early
11 September, you would have known of that --- about that sooner,
12 wouldn't you?

13 A. Yes.

14 Q. So then you said he was being responsible as a board
15 member, but he also is the owner of the unit, right?

16 A. Yes.

17 Q. So if there is in the lease agreement if the landlord has
18 responsibility for repairing damage to the unit, he's kind of
19 got a couple different roles he's playing here, right? He's
20 the landlord, and he is the association president, right?

21 A. Yes.

22 Q. Would you think when you decided that mold testing would
23 be appropriate because you saw mold coming through the wall,
24 isn't irresponsible not to test?

25 A. I don't --- I can't answer to that right now because

1 I don't remember when I saw the mold coming through the
2 wall in reference to this date. I do know that as you
3 stated with the hot air in the office, and with Mr. Berry
4 wanting to get it done, it was a good idea to look into
5 getting it done.

6 Q. I just want to clarify. (Unintelligible) because there's
7 computers and other things like that in this office space.
8 The witnesses speak to that, I was just going with what you
9 said, your recollection that the air was not on, right? So
10 again, with that being something that you thought you knew, it
11 would basically be a very hospitable environment for mold?

12 A. Yes.

13 Q. And so you were saying that you believe that Mr. Leone
14 was trying to be fiscally responsible and make sure that this
15 five or \$600 was well spent. But you had just told him a few
16 minutes earlier that you thought it was?

17 A. Correct. And you have to remember context. We're
18 coming off of Barbara's leak as well, so we had to do the
19 same steps. And so we're making sure that we're doing
20 everything correct because we are coming off of that
21 other leak as well.

22 Q. So --- great point. So the fact that you just dealt with
23 this six months earlier there shouldn't be any kind of
24 Keystone Cops situation. You should kind of know what you're
25 doing because in their very unit you just had a toilet leak a

1 few months prior. You ought have your systems pretty well
2 down, right?

3 A. Well, as you stated earlier, it took three months
4 for her repair and there wasn't any mold. So there's no
5 reason to believe that that would form in that time frame
6 either.

7 Q. Well --- and I --- just keep in mind, I didn't say this
8 three months was reasonable, I just was saying that that's how
9 long that took.

10 A. Right. I just wanted to repeat what you had.

11 Q. Okay. Yeah, but it took three months, right?

12 A. For her repair.

13 Q. Yeah. So all right. Then all that what you said with
14 the testimony in mind, he is --- he is very responsible in
15 making sure that the tests that would cost 5 or 600 bucks that
16 you were recommending happening, particularly because the
17 tenant thought it was important. When you called him I guess
18 he told you to proceed or to not proceed?

19 A. Back then, September 1st, I believe --- I don't
20 remember, because I know at some point Scott --- Mr.
21 Berry had recommended Kleen Sites and he wanted to use
22 that. So instead we went with Kleen Sites, but I don't
23 remember which one on the time frame we proceeded with.

24 Q. You're asking the landlord and the association president
25 to come back in September 1st, Mr. Leone tells you not to

1 proceed, he does not give you authorization does he on
2 September 1st when you asked for it?

3 A. I don't remember, because at that same time we were
4 speaking with IOA and them wanting to look at --- at
5 Kleen Sites. I don't remember when we started the actual
6 mold remediation on that date.

7 Q. So are you testifying that you think that the reason that
8 you --- you didn't go forward is not because of Mr. Leone's
9 concern that the tests could actually come back positive for
10 mold, but because you think that maybe there was another ---
11 another contractor out there in the wings?

12 A. Yes. We were --- yes. I was communicating with
13 Crissy and Mr. Berry regularly on different occasions
14 about what was going on and staying in communication with
15 them, and so --- yes.

16 MR. LESEMANN: All right. Your Honor, I'd like to
17 admit Exhibit 44 at this time, which is the e-mail chain
18 that we've been talking about.

19 THE COURT: Any objection?

20 MR. COBB: No objections.

21 THE COURT: So moved.

22 (Plaintiff's Exhibit 44 marked and entered)

23 BY MR. LESEMANN:

24 Q. Is there an Exhibit 64 in your book, Ms. Adelman?

25 A. Yes.

1 Q. It's Adelman, right?

2 A. Adelman.

3 Q. I'm --- I'm --- I'm going to mess it up a lot ---

4 A. It's okay.

5 Q. --- but I'm going to --- I'm going to --- I'm going to
6 apologize every time I do.

7 A. It's all right.

8 Q. All right. So is there --- you --- you're at Exhibit 64?

9 A. Yes, sir.

10 Q. Okay. And after he says this is one of those things
11 where if the tests come back positive then we have to do more
12 and more, please call me. Did you reply to him three minutes
13 later?

14 A. That was at 2:06. Well, this --- going backwards,
15 says 2:06 and 2:04.

16 Q. So I see 2:06, right? And then go up the thread,
17 it's ---

18 A. Oh, I see. I see. I'm sorry.

19 (Simultaneous speaking)

20 A. I'm so sorry.

21 Q. No, you're fine.

22 A. It was --- it looks like it was couple hours in
23 between it was 6:11:28.

24 Q. Okay. So ---

25 A. Or 2 --- I don't know. I'm really confused. This

1 is right here ---

2 (Simultaneous speaking)

3 Q. --- there is the 2:06 e-mail ---

4 A. Yeah.

5 Q. --- right and here's a 2:09 e-mail?

6 A. Oh, I didn't see that one. I was going up here.

7 Sorry.

8 Q. So ---

9 A. 2:09.

10 Q. --- what do you say are --- at --- at 2:09?

11 A. I know that's why I wanted to send this to you for
12 further instruction. I do not know what to do. I do ---
13 if you do not, what do you want me to tell Scott? The
14 black mildew is seeping through the walls.

15 Q. Okay. Okay. So you didn't --- you didn't authorize ---
16 he didn't authorize you to --- to (unintelligible)?

17 A. At that time, no.

18 Q. And what did he tell you to tell Scott? You asked him to
19 tell --- again, we're referring to Scott Berry?

20 A. Right.

21 Q. We want to know as you as the property manager could tell
22 this tenant when you've been told that the landlord and
23 property association president won't allow you to proceed?

24 A. Right. So that ---

25 Q. So what did he tell you to tell Scott?

1 A. I don't remember at that time, but I have to give
2 Scott an answer on what his decision is. But I don't
3 remember what that was.

4 Q. And what's the next sentence you say after --- after what
5 do you want me to tell Scott?

6 A. The black mildew is seeping through the walls.

7 Q. Okay. Meaning this is a serious situation?

8 A. Yes.

9 Q. It should be investigated right now?

10 A. It's a serious situation, yes.

11 Q. That should be investigated as of September 1st?

12 A. It should be investigated as soon as possible, yes.

13 Q. Because the black mildew, why did you put quotes around
14 mildew, did you --- did you know whether it was mold or
15 mildew?

16 A. Not until we get it --- that's why I needed to get
17 it investigated, because I didn't know for sure what it
18 was.

19 Q. But you knew that there was black growth coming through
20 the sheetrock wall?

21 A. Yes.

22 Q. But that wasn't enough to motivate Mr. Leone to authorize
23 an expenditure of 5 or \$600 for a mold test?

24 A. I don't remember what date he gave me to go ahead to
25 get it done.

1 Q. October 22nd; does that ring a bell?

2 A. If that's what --- I don't know. I don't remember
3 the date.

4 Q. Sure. Sure.

5 (Simultaneous speaking)

6 A. --- I do know ---

7 Q. That would be 52 days later?

8 A. That's what the records show. I don't have the text
9 or e-mails in front of me to remember the exact date.

10 Q. So if the evidence shows --- okay. So that --- that
11 was --- and excuse me, that was the mold remediation proposal.
12 But again, it was --- it was --- when did --- when did ---
13 when did Kleen Sites actually come out to do the work?

14 A. End of October, beginning of November maybe.

15 Q. Okay. So 50-some days later?

16 A. Sure. Don't have the exact dates in front of me so
17 I can't say for sure.

18 Q. Even though there's already black --- black mildew
19 seeping through the walls on September 1st?

20 A. Yes, that's what the records show.

21 MR. LESEMANN: Your Honor, I would move at this time
22 to admit Exhibit 64 into evidence.

23 THE COURT: Any objection?

24 MR. COBB: No objection, Your Honor.

25 THE COURT: So moved.

1 (Plaintiff's Exhibit 64 marked and entered)

2 BY MR. LESEMANN:

3 Q. So could you go to tab 65. Do you see it?

4 A. Yes.

5 Q. Okay. And is that the Clean Aire proposal from
6 September 1st that you were asking Mr. Leone to approve?

7 A. Yes.

8 Q. And is this the Clean Aire proposal on September 1, 2020,
9 that he declined to approve?

10 A. It is the one that he was asking if we should move
11 forward with it or not. Yes.

12 Q. You --- you didn't move forward, did you?

13 A. We didn't because Mr. Berry had recommended he
14 wanted to use Kleen Sites. I remember getting a quote
15 from them as well. So you have to take that into
16 consideration, them coming out to give a quote too in
17 between those days of ---

18 (Simultaneous speaking)

19 Q. --- wasn't it weeks later when Scott raised the idea
20 of --- of Kleen Sites because no mold remediation had been
21 authorized?

22 A. I don't know the exact dates.

23 Q. Okay. Wasn't it weeks later when the name of Kleen Sites
24 even came into the picture?

25 A. I don't remember the exact dates. I just know we

1 had talked about it in that time frame.

2 Q. Why would your e-mail say that you needed know what to
3 tell Scott if you're saying he was already looking at another
4 vendor, you need to know what to tell Scott. Because Scott
5 and IOA are wanting you to do a mold remediation that Mr.
6 Leone is declining to let you do?

7 A. Right. I need to let know Scott know an answer of
8 what his reasoning is so that I can communicate that to
9 him.

10 Q. And so what was his reasoning with black --- because
11 again, there were two times where he asks you to call him
12 rather than to give his response in an e-mail, so that we
13 might all see it as we're sitting here in court?

14 MR. COBB: Objection, Your Honor.

15 (Simultaneous speaking)

16 MR. COBB: Absolute speculation. She can't testify
17 as to what's going on with my client's decision to --- to
18 I mean this --- I've --- I've already let it go once, but
19 this is ridiculous.

20 THE COURT: Sustained.

21 BY MR. LESEMANN:

22 Q. Okay. I just want to know what did Mr. Leone say as his
23 rationale seeing that black mildew was coming through the
24 walls, or mold as it actually was, what was the rational that
25 he told you for not allowing you to proceed with the \$730

1 test?

2 A. I know during that time frame, he wanted me to also
3 to contact the insurance company to see if it was
4 something that they thought was necessary --- deemed
5 necessary to get them to come out here and to take a look
6 at it and have their agent come take a look at the ---
7 and assess the situation.

8 Also we are in contact with them, they wanted to
9 look at Kleen Sites, so there's a lot of moving parts as
10 to why it took so long for it to get approved, because we
11 had a --- different people involved in getting different
12 quotes from different vendors looked at regarding the
13 insurance, Kleen Sites, and Clean Aire.

14 Q. Uh-huh.

15 A. So everybody was talking about what was the best
16 next steps.

17 Q. Okay. So that was a lot. But ultimately you're saying
18 that you wanted to know whether the insurance company would
19 pay for the \$730 before he would approve it?

20 A. No, I didn't say that. Just in regards to the
21 entire project as well, from the leak to everything that
22 was going on, he wanted to have it looked at and see if
23 it was something --- it was a major leak that we needed
24 to have to the insurance company take on or if it was
25 just something that they could do.

1 Q. Why delay a quick \$730 test that would allow you to know
2 whether there's mold in this space? To wait to see if the
3 insurance company's going to pay the \$730? You already
4 thought that it should get done yesterday?

5 A. Well, I didn't say it was delayed. There was a lot
6 of moving pieces. So we were in that time frame, we were
7 talking to Scott and Crissy about getting Kleen Sites.
8 We were talking to Clean Aire, we were talking to the
9 insurance company. And so during all of those pieces
10 that contributed, but I do know for a fact under oath,
11 that Mr. Leone wanted to get the situation remediated as
12 quickly as possible.

13 Q. Okay. And why didn't he approve the test on
14 September 1st, if as you attest, he wanted to get things done
15 as soon as possible?

16 A. Because ---

17 MR. COBB: Your Honor, objection. Asked and
18 answered.

19 MR. LESEMANN: Just following up on her testimony,
20 Your Honor, about why exactly, you know, this idea of him
21 being --- wanting to get things done and here's a
22 situation where on September 1st he's declining to allow
23 her to proceed with the test. Just wanted to understand
24 the basis.

25 MR. COBB: It's redundant, Your Honor. That's my

1 point.

2 THE COURT: All right. I'll allow it, but ---

3 MR. LESEMANN: Thank you, Your Honor.

4 THE COURT: --- move on.

5 THE WITNESS: As I stated previously, we had several
6 moving pieces moving in this --- with this as in Kleen
7 Sites wanting to come out take a look, the insurance, and
8 Clean Aire. We wanted to make sure we were taking the
9 correct proper steps and going with the correct vendor.
10 BY MR. LESEMANN:

11 Q. Well, you had ---

12 A. I already had Clean Aire's proposal, but then Kleen
13 Sites came to work so they wanted a proposal for that.
14 And then the insurance company. So we had to take a look
15 at all of the different companies to make sure that we
16 had the correct quote going forward.

17 Q. (Unintelligible) this quote?

18 A. IOA had suggested Kleen Sites, and so because ---

19 Q. (Inaudible)?

20 A. I don't ---

21 Q. (Inaudible)?

22 A. It was very early on. I don't remember the dates.

23 Q. (Inaudible)?

24 A. Not off the top of my head because it was three
25 years ago. But I do know it was within this time frame.

1 Q. And you can't say (unintelligible)?

2 A. I cannot say for sure.

3 Q. Okay. So your testimony as to whether you --- the reason
4 that you not (unintelligible) your decision, you were
5 recommending to go forward, right? You don't know anything
6 about Kleen Sites as it related to Mr. Leone's decision to not
7 allow you to sign this \$730 proposal?

8 A. I don't remember what date Kleen Sites came into
9 play.

10 Q. Okay. And you don't know --- you can't testify under
11 oath that Kleen Sites had anything to do with Mr. Leone's
12 decision to decline to allow you to proceed?

13 A. What do you mean?

14 Q. You don't know whether he had Kleen Sites in his mind as
15 you've sort of intimated, right? When he declined to allow
16 you to proceed on September 1st with this testing, you don't
17 have any knowledge that that had anything to do with Kleen
18 Sites?

19 A. Well, Kleen Sites came from IOA's suggestion.

20 Q. I get that, but I'm asking you a different question. You
21 don't have anything that you can say that the reason Mr. Leone
22 declined to allow me to go forward with the testing that I,
23 Angela, was recommending, because black mildew was coming
24 through the walls, had anything to do with there could be
25 another vendor that could also do the work?

1 A. (Inaudible) ---

2 MR. COBB: Your Honor narrative. I mean ---

3 (Simultaneous speaking)

4 MR. LESEMANN: I asked her the question.

5 MR. COBB: She's already --- she's already testified
6 that, you know, he didn't decline it. She testified that
7 she doesn't remember. She --- she's giving plausible
8 explanation as to her --- her memory. I --- I --- I
9 just ---

10 THE COURT: All right. All right. I'm going to
11 overrule and I'll allow the question.

12 THE WITNESS: At that time, I do not remember him
13 mentioning Kleen Sites ---

14 (Simultaneous speaking)

15 BY MR. LESEMANN:

16 Q. Okay. And you didn't mention Kleen Sites to Mr. Leone
17 then, did you?

18 A. I don't remember what date Kleen Sites was brought
19 into play, so I don't --- can't say to that for sure.

20 Q. Because when you're saying in another e-mail, right?
21 Because documents just say what they say. They do
22 whatever --- they're written and then they exist?

23 A. Right.

24 Q. The word Kleen Sites doesn't in --- that's never even
25 mentioned in the two e-mails, is it?

1 A. Not in those e-mails, no.

2 Q. And it's never mentioned anywhere that while IOA may have
3 another vendor that might come weeks down the road that might
4 do this, you don't mention any of that in that discussion
5 that's at least in the e-mails with Mr. Leone?

6 A. Not in that specific e-mail, no.

7 Q. Or in either of those e-mails that we just looked at?

8 A. Not the ones that we've looked at so far, no.

9 Q. Well, you recommended as of September 1st mold testing
10 because the black mildew's coming through the walls and
11 because Scott wants some mold testing bad. Was it reasonable
12 for Scott to want mold testing when there's black mildew
13 coming through the wall?

14 A. (Inaudible).

15 Q. And it should have been done right then, shouldn't it?

16 A. There should have been mold testing done, but as
17 I've stated earlier they wanted Kleen Sites as well, so
18 we were looking at multiple vendors.

19 Q. But not as of September 1st, right?

20 A. I cannot say that for sure. I don't have that in
21 front of me to remember the exact ---

22 Q. But again ---

23 A. --- but it was very close.

24 Q. --- in none of those e-mails that we just when over is
25 Kleen Sites or that IOA has another --- another vendor, and

1 that's why we're not going to go forward. None of that's
2 mentioned in those e-mails?

3 A. Not in the e-mails we've looked at, no.

4 Q. Is this a copy of the \$730 proposal that you just ---
5 from Clean Aire on September 1, 2020?

6 A. Yes.

7 MR. LESEMANN: Okay. Your Honor, we would move for
8 admission of Exhibit 65.

9 THE COURT: Any objection?

10 MR. COBB: No objection.

11 (Plaintiff's Exhibit 65 marked and entered)

12 MR. LESEMANN: Your Honor, may counsel and I
13 approach?

14 THE COURT: Yes.

15 (Bench conference)

16 THE COURT: All right, Ladies and gentlemen of the
17 jury, at this time we are going to break for lunch. So I
18 got you in before 1:00. So we are going to break at this
19 time for lunch. It is roughly 1:00 now, we'll ask that
20 you be back here at 2:15. All right?

21 Please do not discuss the case with anyone. Do not
22 use your phones to find any information. We'll give you
23 everything. All right. Thank you.

24 (Jury exits courtroom)

25 THE COURT: All right. All right. So again, we'll

1 break until 2:15. And so everyone have a good lunch. If
2 there's any issues, just e-mail us.

3 Oh, let me --- I'm sorry --- I'm sorry. On the
4 record. I --- I must caution the witness, you are not to
5 have any discussion with either attorney on either side.
6 All right? Thank you.

7 UNIDENTIFIED SPEAKER: (Unintelligible).

8 THE COURT: That's correct. So you're not to
9 discuss that with anyone.

10 MR. COBB: She's going to have to eat lunch alone.

11 (Off the record)

12 MR. LESEMANN: Yes, Your Honor. Ready for the
13 plaintiff, Your Honor.

14 THE COURT: Why don't you come on in and take a seat
15 before the jury comes in. Can we bring in the jury,
16 please. Thank you, sir.

17 (Jury enters courtroom)

18 THE COURT: All right. Thank you, ladies and
19 gentlemen. Please be seated. At this time we will now
20 resume the trial. Mr. Lesemann.

21 MR. LESEMANN: Thank you, Your Honor.

22 BY MR. LESEMANN:

23 Q. Mr. Adelman, I --- I --- I think your book should be
24 turned to Exhibit 64, the e-mail. Are you able to see it
25 there?

1 A. Yes, sir.

2 Q. Okay. And again, after you had e-mailed Mr. Leone on
3 September 1st with the Clean Aire quote for the investigation
4 of the mold, and then he asked you to call him. And then
5 again, with the e-mail response, this is one of the things
6 where if the tests come back positive, then we have to do more
7 and more. What was your reply to him on September 3rd?

8 A. I know, that's why I wanted to send this to you for
9 further instruction. If you do not, what do you want me
10 to tell Scott? The black mildew is seeping through the
11 walls.

12 Q. Well, I wanted to figure out, what did you --- what did
13 Mr. Leone tell you to tell Scott Berry?

14 A. I honestly don't remember over the top of my head
15 what he told me pertains to this particular e-mail.

16 Q. This was something that was important to Scott Berry
17 (unintelligible)?

18 A. Yes.

19 Q. Very important?

20 A. Uh-huh.

21 Q. And do you remember if you actually ---

22 A. Sorry.

23 Q. --- did you say anything to Scott Berry after the
24 conversation with Mr. Leone on September 3rd?

25 A. I don't remember. I know we spoke several times

1 throughout the entire project, but as to this specific
2 incident, I don't remember.

3 Q. As I'm, you know, going through some text messages and
4 different things, I'm looking at things --- possible that Mr.
5 Leone told you not to tell anything to Scott Berry at this
6 point?

7 A. I know --- I don't ever remember AJ telling me or
8 Mr. Leone telling me never to, like, indulge information
9 to Crissy or Scott. We spoke the whole time, all
10 parties.

11 Q. So would it be your testimony here before the jury that
12 you --- on or about September 1st, you informed anybody at
13 IOA, whether it was Scott, whether it was Crissy, or anybody
14 that you had a mold investigation vendor lined up? Are ---
15 are testifying that on September 1st you told anybody that?

16 A. Yes, we all knew we were looking at getting the mold
17 remediation companies to come out. It was whether or not
18 we were going to proceed with it which is why Kleen Sites
19 came up later in the conversations.

20 MR. LESEMANN: Ms. Melinda, have we entered
21 Exhibit 64?

22 THE COURT: Yes.

23 MR. LESEMANN: Okay. Thank you.

24 BY MR. LESEMANN:

25 Q. I'd like to go back to Exhibit 11. And we're moving on,

1 you don't recall what you did or didn't tell Scott Berry or
2 anybody in IOA about the possibility of having a mold
3 investigation done (background noise)?

4 A. No, sir. I don't remember the specifics. Sorry, it
5 was four years ago.

6 Q. No, I understand that. But it is important.

7 A. I understand.

8 Q. So again, we've looked some of these texts, but you ---
9 you recall that --- that text string?

10 A. Yes.

11 Q. All right.

12 A. Uh-huh.

13 Q. And there is again, he sends you the two different
14 photographs, right?

15 A. Yes.

16 Q. All right. Okay. And on Monday August 24th, he asked
17 you --- that's the page that's marked 740 at the bottom --- he
18 asked you --- Mr. Berry asked you to come by the --- the
19 office on August 24th to look at the water damage issue; is
20 that correct?

21 A. Yes.

22 Q. Okay. And do you remember if he actually went out to
23 the --- to the space on Wednesday, August 24th?

24 A. I couldn't do that day according to the text
25 messages here so we met the next day.

1 Q. All right. Going on a few pages forward to the page
2 marked 743. Looks like this is a text string that beginning
3 on the page before, 742. Looks like the text string is on
4 Thursday August 27th. Did you send a text to Mr. Berry asking
5 him to let you be the one to talk with Arrow from here on out?

6 A. Yes, because at that time, we both were
7 communicating with them.

8 Q. And Mr. Berry is the one who knew where the leak was
9 coming from, though, right?

10 A. Yes, he's the one that reported it.

11 Q. Okay. So was it important for the tenant who actually
12 isolated where that leak was coming from and already specified
13 that he thought it was a toilet leak? Is there a reason why
14 you wouldn't want Mr. Berry to be talking with your preferred
15 vendor so that this issue could then be fixed more quickly
16 than from August to November as it actually turned out to be?

17 A. Yes, we like to have one source --- like one person
18 talking to the vendor. That's the reason when they hire
19 a management company is to oversee the project so that we
20 make sure communication doesn't lapse, that we can make
21 sure that appointments get scheduled quickly. I know
22 there were a few times that speaking specifically about
23 Shuler, Shuler was called out before I even had a chance
24 to contact them. When I contacted them on the same day,
25 they already had an appointment set up.

1 So to avoid possible double calls and double
2 communication, it's better just for person to communicate
3 to me and then I communicate with the tenants or the
4 board.

5 Q. Right. And Arrow was your vendor, but again, IOA was
6 just trying to --- they weren't telling them what to do or
7 what to charge, they just were trying to get them to be
8 competent about finding where the leak was, right?

9 A. Yes.

10 Q. Anything wrong with that?

11 A. Yes, because then --- then again, I appreciated them
12 helping to communicate, but then again, things were
13 getting miscommunicated, or I wasn't understanding.
14 There was missed appointments that would have been
15 applied and were applied later so we just said from the
16 beginning, at this point let me just be the one that
17 communicates going forward. Not saying they can't be
18 there on site with the vendor, but I just need to be the
19 one that set it up and communicates with the vendor so I
20 can make sure that I can tell both parties what's going
21 on.

22 Q. Okay. This miscommunication, or --- or missed
23 appointment thing. Are you saying that IOA asked Arrow to
24 come out to try to please address this toilet leak and that
25 IOA wasn't there when they were supposed to be? I'm not --- I

1 don't know what you mean by ---

2 (Simultaneous speaking)

3 A. --- all right.

4 Q. --- missed appointments ---

5 A. I was ---

6 Q. --- just a generalization.

7 A. I was referring to the one appointment about Shuler
8 where I had contacted them on the same day and found out
9 they had contacted them earlier. So using that as an
10 example, I was just stating that it would be best so that
11 going forward we --- that was an example to show why we
12 would just want to use one person communicating with the
13 vendor.

14 Q. Okay. Shuler being the second ---

15 A. Plumber.

16 Q. --- plumber because everybody lost patience with Arrow?

17 A. At that point everyone was losing --- I wouldn't say
18 patience, but I was --- I guess patience is a good word.

19 Q. Confidence?

20 A. Confidence, yes.

21 Q. Yeah. Yeah. Absolutely. And Shuler was somebody that
22 actually that IOA recommended because of Arrow's failure,
23 repeatedly ---

24 A. Yes.

25 Q. --- to find the issue?

1 A. Yes. And we also had another vendor that came out
2 and also checked. And he --- he also confirmed what
3 Arrow was stating. So that's where we went with the
4 vendor that they wanted to bring out, because neither
5 vendor could find it.

6 Q. Right, but when you said that there was some concern
7 about appointments being missed, or double books, or anything
8 like that, that had nothing to do with Arrow?

9 A. There was some situations going on where the
10 communication, I wasn't getting all the information. So
11 I was using Shuler because that was the one that I could
12 think of off the top of my head. There's a reason that I
13 would have said that in that text message and it's just
14 always easier for one person to be the person that's the
15 point of contact. Anybody can be on site when the vendor
16 shows up, but it's easier for communication purposes to
17 have one person the point of contact.

18 Q. But I'm talking about August. I'm not talking about
19 November ---

20 A. Right.

21 Q. --- when you finally agreed to use somebody else ---

22 (Simultaneous speaking)

23 Q. --- than the preferred vendor. I'm talking about August.

24 A. Right. It's always ---

25 Q. Was there --- can you point to anything in August that

1 made it such that you needed to control all communications
2 with Arrow, and you needed to ask that IOA not be involved so
3 as they were trying to figure out a way to address this issue?

4 A. Sure. So we work on behalf of the board or the
5 person that hires CAMS. And CAMS is the point of contact
6 for vendors. The issue that was in --- at question for
7 the project was that common ground, which puts the board
8 or the --- the homeowners association in control. So we
9 wanted to be the one that was the point of contact and
10 have all communications funnel through one point of
11 contact.

12 Q. And then the next line you ask, please let me talk with
13 Arrow (unintelligible)?

14 A. Yes.

15 Q. So this goes on and could we go to Friday,
16 September 11th --- oh, well, from Monday, August 31st,
17 actually, let's go to that one first. This is on page 745.
18 All right. And then Mr. Berry tells you that Unit 105 just
19 came by and said that they had an active leak coming from the
20 unit upstairs?

21 A. Yes, sir. That is correct. And she had already
22 contacted me as well that there was a leak.

23 Q. So we've multiple leaks going on at the same time in
24 IOA's suites?

25 A. Yes.

1 Q. All right. And again going down there, you see the ---
2 the text on Friday, September 11th?

3 A. Yes.

4 Q. So this is now approximately three and a half weeks ---
5 almost a month, right? After you'd originally received the
6 report from Mr. Berry?

7 A. Yes.

8 Q. Okay. And is --- well, you talked about one point of
9 communication. If there's going to be one point of
10 communication, shouldn't it have been you that was on site to
11 meet Arrow every time if you were wanting control of
12 communications with vendor?

13 A. We're not required to be on site when a vendor
14 arrives.

15 Q. (Unintelligible) I just mean like if you want to control
16 the vendor and have all the communication, why is it that you
17 weren't out there on site to make sure that they did the job?

18 A. Because we're not required to be on site, and the
19 vendor calls us while they're on site to communicate with
20 us.

21 Q. I'm not talking about requirements. I mean good
22 practices. I mean trying to make sure that you as a property
23 manager association and your association with this landlord as
24 a unit owner, wouldn't it have been good if you were out there
25 maybe at the third or fourth time that Arrow was missing this?

1 Would it have been a wise idea for you to be there with them?

2 A. This was in regards to the other unit's leak, not to
3 Scott's leak. Mr. Berry's on that one. This is with the
4 new leak that they are referring to here. And we're
5 going to have to agree to disagree, because this is how I
6 handle my vendor projects.

7 Q. All right. I get it that you're not there. And we could
8 agree to disagree certainly.

9 A. Maybe on this one situation, but I was there several
10 times.

11 Q. Now, the other leak --- the one --- but this is talking
12 about toilet?

13 A. Right. Her ---

14 Q. So ---

15 A. --- toilet ---

16 Q. You're saying the 105, so there's a third toilet leak?

17 A. Hers was a toilet leak as well, or suspected to be
18 but they couldn't find it.

19 Q. We have the Barbara Hanna toilet leak, we have a toilet
20 leak that we're here talking about over Mr. Berry and Mr.
21 McMillan's office, then there's a third toilet leak into IOA's
22 unit?

23 A. Yes. And not to forget there was also a shower leak
24 over there also.

25 Q. Four leaks?

1 A. (Inaudible).

2 Q. Wow. Okay. Well, he asked you for an update on the leak
3 situation, and you're interpreting that text --- or you
4 interpreted that text to mean not the one that was right above
5 his office, you thought he was talking about the one in Unit
6 105 where Kim Chapman and the Art of Esthetics med spa was?

7 A. This is the one to the left --- not that one --- not
8 one is the homeowner on 105, I believe.

9 Q. No.

10 A. Is it the office --- is it the business office?
11 Okay. There's --- be confusing with someone else?

12 Q. Are you sure that he wasn't stating here on
13 September 11th that Arrow still didn't know where the toilet
14 was right above his office and they hadn't located it?

15 A. Well, Arrow kept stating that it wasn't the toilet
16 that was leaking. That's why they moved on to the shower
17 and other portions of it.

18 Q. Well ---

19 A. We kept calling in that it was a toilet leak.

20 Q. Okay. You keep telling your preferred vendor it's a
21 toilet leak and they keep telling you, no it's not? And Mr.
22 Berry, approximately 28 days after he originally
23 (unintelligible) says your preferred vendor still can't seem
24 to locate the toilet causing the damage?

25 A. Right.

1 Q. Is that --- is that correct?

2 A. Correct, because as I had mentioned earlier, there
3 were several leaks that were found and they would fix it
4 and then it would start leaking again.

5 Q. It was a problem, wasn't it?

6 A. It was.

7 Q. And it's a problem that has plagued Bower Commons, isn't
8 it?

9 A. I wouldn't say it's plagued Bower Commons, but ---

10 Q. Because pretty much every --- every tenant's had leaks in
11 that building, haven't they?

12 A. Sure, but that's the average for condos. Condos are
13 known for have leaks and things like that. That's an
14 average problem amongst aged condos so ---

15 Q. That we talked about actually just a moment ago before
16 the lunch break that you mentioned that Bower Commons has had
17 more leaks than any property that you were otherwise
18 (unintelligible) at the time?

19 A. Right, but what I had mentioned as well is that
20 Bower Commons was my only condo association, my other
21 ones were single family and they were not a condo. So at
22 that time yes, Bower Commons was the only one because
23 that's the only condo association I was managing
24 personally.

25 Q. So your interpretation of this text is that he's not

1 asking for an update on his office, on the mold, or on the
2 mold remediation? He's just asking you about Scott? He's
3 just the producer, again? Right? He's just an insurance
4 agent? Your testimony is that he's asking you about a leak
5 into the subtenant's that he's not even (unintelligible)?

6 A. That is how I --- yes, that is how I ---

7 (Simultaneous speaking)

8 Q. That's how you remember this?

9 A. Yes.

10 Q. Okay. All right. And then on September 22nd, do you
11 remember when the ceiling fell through?

12 A. Yes.

13 Q. And then going a page from that. If you can go to page
14 750; see that?

15 A. Yes.

16 Q. Okay. What does Mr. Berry say to you?

17 A. The mold problem is a lot worse, has a remediation
18 company been contacted?

19 Q. Okay. Based on what we talked about so far, I'm assuming
20 that your next text to him would say something along the lines
21 of: Yes, we reached out to Clean Aire and they gave us a
22 quote for \$730 to perform a mold investigation on
23 September 1st, but we didn't proceed with it because AJ was
24 concerned because this is the kind of thing if we do the tests
25 and they come back positive, that means we're going to do more

1 and more work; is that what we'll see in your next text
2 response to Mr. Berry ---

3 MR. COBB: Objection, Your Honor.

4 BY MR. LESEMANN:

5 Q. --- something along those lines?

6 MR. COBB: Objection, Your Honor. Misleading.

7 MR. LESEMANN: It's a question. It's not
8 misleading. I just read the exact e-mail.

9 MR. COBB: No, Your Honor, he ---

10 THE COURT: Your objection was misleading?

11 MR. COBB: He's misleading the witness in terms of
12 what he's saying in his question. If he wants to ask a
13 question directly, ask it, but not sit there and try to
14 testify.

15 THE COURT: All right. I'm --- I'm going to
16 overrule it, but I am going to just ask for clarification
17 for her understanding for the question.

18 BY MR. LESEMANN:

19 Q. So when --- when Mr. Berry asked you if a mediation
20 company's been contacted, did you tell him yes in the text
21 message again, that Clean Aire has been contacted?

22 A. I would assume that would be my response to him,
23 yes.

24 Q. Okay. We'll see. He's clearly following up because Mr.
25 Berry wouldn't be me, you knew Scott, right? Okay. Like

1 Scott?

2 A. Yes very much so.

3 Q. Okay. Why would he be asking you on Tuesday
4 September 22nd whether a --- if a remediation company has been
5 contacted, unless it's the case that he didn't know because
6 you had not told him. You hadn't told him by September 22,
7 three weeks later after you had been in touch with Clean Aire,
8 whether a mediation company had been contacted, did you?

9 A. Is this the same time frame that I had gone on
10 vacation as well and that could be why I didn't tell him.
11 I don't know, because it's not like me. Usually I would
12 communicate that. So unfortunately, I can't --- I have
13 nothing.

14 Q. You think normally you would have been transparent with
15 him and you would have told him that yes, we contacted them
16 three weeks ago ---

17 A. Yes.

18 Q. --- and I recommended it to AJ?

19 A. And I was just waiting on his decision.

20 Q. And I told --- I told AJ that I thought it was important?
21 Did you --- did you --- go through this again, while we're
22 here under oath, did you tell AJ that you had three weeks
23 earlier then when he's asking you whether a company's even
24 been contacted, whether you had already recommended a mold
25 investigation to Mr. AJ and it hadn't happened? Did you tell

1 Scott that?

2 A. What I would have told Scott is ---

3 Q. What --- what did you tell Scott?

4 A. What I would --- I can't remember.

5 Q. Okay. You don't remember?

6 A. Four years ago what I would have ---

7 Q. I don't want to know what you think you would have ---

8 (Simultaneous speaking)

9 A. Can I just finish my statement?

10 THE COURT: Hold on.

11 MR. LESEMANN: I want you to answer my question.

12 THE COURT: Counsel, just so that --- just so that
13 the court reporter can build our record correctly we'll
14 just move to make sure that we don't talk over each
15 other. All right.

16 BY MR. LESEMANN:

17 Q. (Inaudible) what you think you would have told Scott. I
18 want to know did you tell him that Clean Aire had been
19 contacted as of --- before --- in August to do a
20 remediation --- to do a investigation?

21 A. So then if you don't have an interest in it and I
22 can't remember for 100 percent, I don't have an answer.

23 Q. Okay. You don't remember?

24 A. No.

25 Q. Do you remember if you told Scott that three weeks prior,

1 you had proposed to the landlord and the association president
2 that a mold investigation be done?

3 A. Knowing myself, I would have told Scott ---

4 (Simultaneous speaking)

5 Q. --- I want --- I want to know whether you told him or
6 not.

7 A. May I please finish?

8 Q. Did you tell him?

9 A. I don't remember. But knowing myself ---

10 (Simultaneous speaking)

11 A. --- I would have.

12 Q. But you don't remember? And because this text chain is
13 where this communication's happening, right? So if we keep
14 going, you say to him, the good news is the mildew spot looks
15 the same --- why don't you read (unintelligible)?

16 A. First let me look at something, please.

17 It states the --- the good news, the mildew spots
18 look the same from when I came out there. I can assure
19 you I am and have been working on this since I have been
20 out there last week. The owner is contacting Eric for me
21 to last resort before forced entry. Yes, I am in contact
22 and the --- and a contractor to fix the wall after the
23 leak is fixed. I don't want to fix the wall before the
24 leak is fixed.

25 Q. So I just want to make sure (unintelligible) the name of

1 the business Clean Aire (unintelligible) anywhere in this
2 response?

3 A. No, it does not.

4 Q. Okay. Does the word yes, we have contacted a mold
5 remediation investigation firm; does that appear anywhere in
6 your response?

7 A. No.

8 Q. Does I asked AJ for permission three weeks ago to do a
9 mold investigation, I didn't get authorization; does that
10 appear anywhere in this text?

11 A. No.

12 Q. Did you address the point about mold investigation at all
13 (unintelligible) what he say, oh, well good news, it seems to
14 be just about the same as when I was out there before. Is
15 that all that you say about the mold or the mildew as you call
16 it in this text?

17 A. Yes. But the fact that Scott had asked me
18 previously what was the status on it means that him and I
19 talked about it whether it was on phone, or text, or
20 e-mail, that shows that we had been talking about.

21 Q. Well, I don't know. When my --- when my clients called
22 me about the status sometimes it's because maybe we hadn't
23 talked. What --- what makes you so sure (unintelligible) ask
24 you about the status that he's not following up with you
25 because you're not getting facts (unintelligible) on something

1 that's important to him ---

2 A. Well, as ---

3 Q. --- could that --- could that have been the case?

4 A. No, because as Scott has stated earlier, I'm always
5 open with communication and very thorough on following
6 up. So I know I would have communicated that to him.

7 Q. You think you would have?

8 A. Yes.

9 Q. Okay. And you heard --- we're going to talk about ---
10 really don't need to talk about Scott's testimony, but you
11 said you responded. And he did respond to the text, right?

12 A. Yes. And I ---

13 (Simultaneous speaking)

14 Q. --- didn't tell him whether anything about what had
15 happened between you and Mr. Leone three weeks ago; you
16 mentioned zero about that, did you?

17 A. Well, in theory with the texts and e-mails, but
18 that's not --- wouldn't be the case if it was over a
19 phone call. We don't have proof to show that.

20 Q. Okay. So are you testifying that you had a phone call
21 with Mr. Berry where you did tell him all these things about
22 Mr. Leone and that the Clean Aire investigation quote for 730
23 bucks that y'all (unintelligible) with. Are you saying that
24 you told Mr. Berry about all that?

25 A. What I know is I always openly communicated and I

1 would have told him that.

2 Q. (Inaudible)?

3 A. I remember 100 percent no.

4 (Simultaneous speaking)

5 Q. (Unintelligible) think a (unintelligible) saying that.

6 There's reference to Clean Aire here, there's no reference to
7 a quote. What does he say in response to your text when you
8 say, oh, it looks like the good news is the problem's no worse
9 than it was?

10 A. He states, no, the mildew/mold is worse. And now
11 there's a smell associated with it. We need the unit
12 fixed and remediation started now, not next week
13 sometime. Which shows that we had been talking about it.

14 Q. How does that show you've been talking about it? I don't
15 get --- I don't ---

16 A. Because he's talking about how it's worse. He was
17 asking me the status on it in the previous text messages.
18 And I know I spoke to Scott several times about these
19 issues over the phone.

20 Q. It's just interesting that here is a very robust string
21 about it, right? Y'all are texting back and forth a lot?

22 A. We were, but we also had several phone calls back
23 and forth a lot.

24 Q. You're telling him that you think the problem's good
25 news, the problem's no worse, and he's trying to tell you, no,

1 it's a lot worse.

2 A. What I was referring to was the spot on the wall if
3 you go back through my text thread, I was referring to
4 the spot on the wall had not grown since the last time I
5 was out on site.

6 Q. Right. Because no one really knew what was going on
7 inside --- inside the wall yet because you didn't get
8 authorization to go forward with the investigation?

9 A. Right. But I was confirming here that I --- here
10 that it had not gotten worse.

11 Q. But you didn't know that ---

12 (Simultaneous speaking)

13 A. --- when I was just out there.

14 Q. You didn't know. I mean you just ---

15 A. (Unintelligible).

16 (Simultaneous speaking)

17 Q. --- you're looking at a spot on the wall. You're not
18 looking inside the wall?

19 A. Right, but from what I could see --- you were asking
20 me what I was talking about here and so that's what I'm
21 clarifying.

22 Q. Well, no. I'm --- I'm --- when you --- when you're
23 saying that it's not gotten worse, you hadn't looked at
24 anything other than the mold that was growing through the
25 wall? You didn't know what was going on inside the wall?

1 A. I didn't know what was going on inside the wall ---

2 Q. Because you didn't go forward with the vendor?

3 A. I had not gone forward with the vendor, correct.

4 Q. Okay. You know you mentioned you referred back to Mr.
5 Berry's testimony. He's obviously a nice --- a nice
6 gentleman?

7 A. Uh-huh.

8 Q. And he did --- he did say that he felt like you were
9 responsive. But what does he say in your response back to him
10 when you promise him that you're working on it and all and so
11 forth; what does he say in that second paragraph back to you
12 in this text message?

13 A. No one seems to have a sense of urgency about the
14 situation and it's getting worse. We need a remediation
15 contractor in here.

16 Q. Would you agree with me that based on this communication,
17 it doesn't appear that Mr. Berry knows anything about the fact
18 that a --- the mediation contractor had been --- contacted but
19 put on hold?

20 A. No, I don't think (unintelligible) that. I think
21 he's just saying whenever him and I had talked about over
22 the phone, he's just saying we need someone in here.

23 Q. Do you agree you put the remediation contractor on hold,
24 right?

25 A. I --- at that time --- what date is this?

1 September 22nd?

2 Q. You put --- you put --- you put the remediation
3 contractor on hold, didn't you?

4 A. Yes, but we were doing other things inside that time
5 frame. It wasn't like we just weren't actively looking
6 to get the problem resolved.

7 Q. Would you turn to Exhibit 66.

8 A. Okay.

9 Q. So I just ask you to go to the back page. It has the 679
10 on the bottom left?

11 A. Okay.

12 Q. Are you there?

13 A. Yes, sir.

14 Q. Okay. All right. And again, this is when you first
15 reached out to Clean Aire, and was that --- what was the date
16 when you first did that?

17 A. August 26th of 2020.

18 Q. And so you're having contact with Clean Aire as of
19 August 26, 2020, and is it correct that in a text that we just
20 looked at Mr. Berry is saying we need a mold guy in here now,
21 approximately a month later on September 22nd; is that fair?

22 A. Yes.

23 Q. Okay. And then you get the proposal. And then that's
24 when we go through and we've reviewed part of this. This is
25 another version of an e-mail that keeps going. But this

1 is --- let's see here. Do you recall sending a series of
2 e-mails to --- to Mr. Leone on December 4th?

3 A. I don't recall, but it shows there that I did
4 something to see below.

5 Q. Did he contact you after he received the tenant's notice
6 of termination on December 1st?

7 A. I do not recall.

8 Q. Did he ask you to send him everything about this issue
9 that you had and you ended up sending him a series of e-mails
10 on December 4th?

11 A. It shows there that I did.

12 Q. And after you did that, do you see --- all right. Again.
13 Going back to the first page of the e-mail, do you see an
14 e-mail that starts from Mr. Leone down there at the bottom?
15 See that?

16 A. Yes.

17 Q. Okay. And then his actual what he wrote to you appears
18 on the --- that next page at the top?

19 A. Yes. Wait.

20 Q. Yeah. And so what did --- how did Mr. Leone respond when
21 you forwarded him this as part of the --- the e-mail doc that
22 you sent him on December 4th?

23 A. What page --- what page are you on? Sorry ---

24 (Simultaneous speaking)

25 Q. (Unintelligible).

1 A. Yes, he asked what is this for. Yes.

2 Q. So when you sent Mr. Leone the correspondence with Clean
3 Aire that had come from August, I mean, you --- you'd
4 forwarded it to him September 1st when you asked him for
5 permission to --- to hire them, right?

6 A. Right. But he's probably asking what is this for
7 because on December 4th at the very bottom of that page,
8 there's an RFP attached to it. And he probably was
9 asking him why --- why I was sending the proposal back to
10 him again.

11 Q. Yeah. RFP means ---

12 (Simultaneous speaking)

13 Q. RFP means request for production, Ms. Adelman?

14 A. No, it means request for proposal.

15 Q. Okay. So you're telling me that the 12/21 RFP with a
16 number, you're --- you're telling me that you think that
17 that --- you're testifying under oath that that is a --- means
18 request for proposal?

19 A. Yes, that's what I think it's for.

20 Q. Okay. All right.

21 A. That's Clean Aire.

22 Q. Okay. And then you see this other separate e-mail chain
23 that says RFP, request for proposal?

24 A. Yes, sir.

25 Q. Okay and then, again, each one of these says request for

1 proposal on it (background noise) this number is?

2 A. Yes.

3 Q. Okay. And so do you see that every document that's been
4 provided by Bower Commons in this case has one of those
5 numbers in the bottom of it?

6 A. I do. You could have just told me that because ---

7 (Simultaneous speaking)

8 Q. No, no ---

9 A. --- showing me like that.

10 Q. --- no, but you had mentioned that it was request for
11 proposal, when actually means RFP is request for production
12 (unintelligible). That's why I had to do that. You just made
13 something up on the fly.

14 MR. COBB: Objection, Your Honor. She was using
15 a --- a term from her --- it's just argumentative. She
16 was using a term that she's used to using ---

17 THE COURT: Uh-huh.

18 MR. COBB: --- in her professional work ---

19 (Simultaneous speaking)

20 THE COURT: I understand.

21 MR. COBB: --- she stated it. That's just
22 argumentative.

23 THE COURT: Let's move along.

24 BY MR. LESEMANN:

25 Q. So when you forward the mold remediation contractor

1 proposal after you got the request, you know, so did --- Mr.
2 Leone did call you after they received the notice of
3 termination from IOA?

4 A. I don't remember if he called me.

5 Q. All right. So do you know why you just started sending
6 him a lot of e-mails on December --- on December 4th?

7 A. I mean, he would have --- I guess he would have
8 requested them, but I don't remember a phone
9 conversation. And you asked me to say things frankly.
10 So I don't remember.

11 Q. Absolutely. Just like you did with your oath. Make ---
12 make sure I want you to be frank. And so did you have ---

13 MR. COBB: Objection. Your Honor.

14 BY MR. LESEMANN:

15 Q. You have to remind him ---

16 MR. COBB: Your Honor, objection.

17 THE COURT: All right.

18 MR. COBB: That was --- that was absolutely
19 argumentative.

20 THE COURT: I understand. All right.

21 MR. COBB: (Unintelligible).

22 THE COURT: So Mr. Lesemann, we'll just --- we'll
23 just move forward with the questioning. All right.

24 Thank you.

25 BY MR. LESEMANN:

1 Q. On Friday December 4, 2020, are you explaining to Mr.
2 Leone who Clean Aire was?

3 A. Yes.

4 Q. And what did you tell him?

5 A. This was the first mold remediation person I
6 contacted back in September for IOA's office. We put it
7 on hold until we figured out what was going on if there
8 was indeed mold.

9 Q. So I'll just ask you to confirm again, because we've had
10 some different questions about it, looking at this e-mail that
11 you wrote on December 4th, confirm that you and Mr. Leone put
12 the mold remediation on hold?

13 A. Yes, this does confirm that, and it also confirms
14 that we were working on other things to ensure that we
15 need to get the mold remediation as I stated.

16 Q. And you put it on hold on September 1st at the same time
17 when you were commenting that you were actually were
18 recommending to Mr. Leone that you proceed with it because
19 black mildew was seeping through the walls, correct?

20 A. (Inaudible).

21 Q. And you wanted to see if there was indeed mold --- were
22 y'all skeptical about whether there was even mold?

23 A. Well, that's why we wanted to look into it further
24 to make sure we need --- did need a mold remediation
25 person to come out and take a look at it.

1 Q. Just the \$730 test, that's the way you find out --- I
2 mean, if you wanted to find out if it was really mold, the way
3 to do that is on September 1st, to hire Clean Aire and have
4 them come out, isn't it?

5 A. Yes.

6 Q. And that's not what you did?

7 A. That's not what we did at that time, because we were
8 looking at other avenues to make sure that it was what
9 was needed.

10 Q. And it wasn't until the wall --- the ceiling fell in at
11 IOA that you agreed to go forward and to actually pay for a
12 mold investigation, right?

13 A. I don't remember the time frame if it was at that
14 time frame for beforehand, but at some point we agreed to
15 it. I just don't remember the time frame.

16 Q. Right. Right. So again, it did end up --- do you know
17 when Kleen Sites came out?

18 A. Kleen Sites came out the end of October, beginning
19 of November.

20 Q. Okay. So then about 60 days later from September 1st?

21 A. I don't know if that's when it was agreed to for
22 them to come out. I know that that's when the work was
23 completed.

24 Q. 60 days later?

25 A. 60 days later.

1 Q. And so this document --- Ms. Adelman, this is a --- oh,
2 excuse me --- I want to ask you one more question about it.
3 All right. And so you made that statement back to Mr. Leone,
4 and then how did he --- how did he respond back to you?

5 A. Do we still need him to come out.

6 Q. Okay. So as of December 4, 2020, Mr. Leone's not even
7 sure if you still need to have somebody to come figure out
8 whether there's mold in the IOA space?

9 A. I mean, that's what it states, but I remember coming
10 out earlier than that to do the mediation.

11 Q. Well (unintelligible) I guess I'm asking here that Mr.
12 Leone's unaware --- he's just asking you if you still need to
13 have Clean Aire come out on December 4th. It doesn't appear
14 that he's ---

15 A. Well, I think he's asking about Clean Aire because
16 we had Kleen Sites at that time.

17 Q. All right. So you didn't say that again, you know, let's
18 look at --- let's look at --- and I'll --- I'll --- I'll
19 do --- I'll do more of this e-mail here. Because again,
20 here's a situation where you don't --- you don't refer to
21 Kleen Sites.

22 A. Right, but we know that Kleen Sites already came out
23 and did the remediation, so why would we need Clean Aire
24 to come back out?

25 Q. Why would Mr. Leone be ask if you (unintelligible)

1 somebody come back out? Did he seem to be up to date on
2 anything that was happening with the IOA space?

3 A. Sure, but there was a lot going on with the IOA
4 space and other tenants within the property, so everybody
5 makes a mistake or forgets something. It's human, it
6 happens.

7 Q. Yeah. So as of October --- as --- as of December 4th,
8 Mr. Leone is not aware of whether mold --- more mold
9 remediation needs to occur in the IOA space?

10 MR. COBB: Objection, Your Honor. Misleading.
11 The --- the proposal said for more than just IOA space.
12 It also included Kudzu Staffing space Unit 106. They ---
13 she's --- she's --- she --- she can't testify as to what
14 his meaning when in an e-mail.

15 MR. LESEMANN: It says IOA office, Your Honor.
16 Again, I'm just asking her whether she understood and
17 maybe they had a phone conversation about it. But ---

18 THE COURT: All right. So I'm going to sustain that
19 and you --- you can rephrase or ask another question.

20 BY MR. LESEMANN:

21 Q. Is --- does Mr. Leone appear to be asking you whether a
22 mold contractor still needs to be brought out on December 4,
23 2020?

24 A. But as it was stated earlier, there --- this was for
25 two different sections, and there were several leaks

1 going on throughout the --- Bower Commons, so he could
2 have been referring to something else. That is what it
3 states there, but that doesn't mean necessarily he's
4 referring to just that mold remediation issue.

5 Q. Okay. So although your e-mail refers only to IOA, you're
6 thinking that maybe y'all are really talking about Kudzu?

7 A. Well, the IOA is what was listed on there with the
8 Kudzu as well.

9 Q. Did you do --- did you go forward with the mold
10 investigation for Kudzu?

11 A. Yes, and it was not needed.

12 Q. Okay.

13 A. Mold remediation did.

14 Q. But the mold remediation was need for IOA?

15 A. Yes.

16 MR. LESEMANN: All right. Your Honor, I would ask
17 that we move exhibit --- sorry, I'll just asking you real
18 quick Ms. Adelman.

19 BY MR. LESEMANN:

20 Q. Is this e-mail typical type of communication that you
21 would have with association, AJ Leone?

22 A. Yes. We do e-mails, phone call, or text messages.

23 Q. And you keep these e-mails as part of the business
24 records of CAMS, your --- your employer?

25 A. Yes. We're required to keep everything such a case

1 as this so that we can turn it over if needed.

2 MR. LESEMANN: All right. Your Honor, we would move
3 at this time for admission of Plaintiff's Exhibit 67, the
4 e-mail exchange between Ms. Adelman and Mr. Leone.

5 THE COURT: Any ---

6 MR. COBB: No objection.

7 THE COURT: All right. So moved.

8 (Plaintiff's Exhibit 67 marked and entered)

9 THE COURT: What was the number again?

10 MR. LESEMANN: 67, Your Honor.

11 THE COURT: Thank you. Thank you.

12 UNIDENTIFIED SPEAKER: You said 66 earlier.

13 MR. LESEMANN: Well, let me do this. There's two
14 different e-mails. I appreciate y'all --- I appreciate
15 y'all bringing that up. So Ms. Adelman, you just were
16 looking at 66; is that right? Or were you looking at 67?

17 THE WITNESS: Right now I'm looking at 67,
18 beforehand I was ---

19 MR. LESEMANN: Did you also look at Exhibit 66
20 (unintelligible).

21 THE COURT: The one just entered in was 67, or jury
22 trying ---

23 (Simultaneous speaking)

24 THE COURT: Okay. That's okay.

25 MR. LESEMANN: So yes, I apologize for the

1 confusion. I would ask that 67 be entered into evidence.

2 MR. COBB: We have no objection to 66 or 67.

3 THE COURT: All right. Very good.

4 MR. LESEMANN: Just a continuation of the same
5 e-mail thread.

6 THE COURT: All right. Very good. Very good. So
7 we've got Exhibit 67 right now.

8 MR. LESEMANN: Yes.

9 THE COURT: All right. Very good.

10 THE WITNESS: So I need to be on 66 or 67?

11 MR. LESEMANN: Yeah, 66 now. Thank you ---

12 THE WITNESS: Okay.

13 MR. LESEMANN: --- for following along with me.

14 BY MR. LESEMANN:

15 Q. All right. And so there's another e-mail, it's a
16 continuation of the same e-mail thread. But when he asks if
17 someone still needed to come out, how do you respond? Did you
18 still need Kleen Sites from September 1st? Did you still need
19 them to come out on December 4th? How do you respond to Mr.
20 Leone?

21 A. Well, no, because Kleen Sites got the job.

22 Q. Yeah. That's how you respond --- with just his e-mail is
23 right below yours, right?

24 A. Uh-huh.

25 Q. And so you respond when he asks do they still need to

1 come out, you say no because Kleen Sites got the job?

2 A. Right.

3 Q. And so you're not referring to the Kudzu

4 (unintelligible)?

5 A. Not on this particular thread.

6 Q. You're referring to (unintelligible) IOA?

7 A. Yes.

8 Q. Okay. Because a minute ago you testified that you
9 thought maybe y'all were talking about somebody else other
10 than IOA?

11 A. Maybe I'm looking at the time frames differently,
12 but my e-mail to AJ was at 7:27 and his response to me
13 was at 10:23. So it looks like it was two different
14 conversations.

15 Q. Okay. So this is an e-mail that we received from you. I
16 mean each e-mail would be sent at a different time ---

17 A. Right.

18 Q. --- right?

19 A. But my comment came before his when it said do we
20 still need to send him out.

21 Q. So again, you're forwarding him --- okay, an e-mail that
22 he's asking do they still need to come out, and again, people
23 can be on different time zones too, right?

24 A. (Inaudible).

25 Q. Because you see how you have a Los Angeles time

1 reference? And I appreciate you pointing out the time
2 discrepancy. It looks like the e-mail system was perhaps
3 registering that you were perhaps in Los Angeles at the time?

4 A. No.

5 Q. Do you see the words that Los Angeles that appear on the
6 e-mail?

7 A. I do but ---

8 Q. Okay.

9 (Simultaneous speaking)

10 A. --- never been ---

11 Q. And you may not have been in it --- yeah. I --- I just
12 went there for the first time myself. But if that --- if it's
13 saying that you're in Los Angeles, right? And they're ---
14 they're three hours behind, that might be why it's referred to
15 as 7:27?

16 A. Possibly, but I've never been in Los Angeles so that
17 is interesting.

18 Q. Okay. Which would be if you look at the time of his
19 e-mail, you would have (unintelligible) back four minutes,
20 again assuming that that's what the explanation is because ---

21 A. That makes sense.

22 Q. --- your computer picked up a time zone discrepancy. You
23 e-mailed him back four minutes later?

24 A. Yes.

25 Q. Okay. But clearly, you're referring to IOA because

1 that's --- that's where Kleen Sites did the work?

2 A. Yes.

3 MR. LESEMANN: All right. Your Honor, we would like
4 to move four admission of Exhibit 66 at this time.

5 THE COURT: Any objection? Oh, no objection.
6 So --- so moved.

7 (Plaintiff's Exhibit 66 marked and entered)

8 BY MR. LESEMANN:

9 Q. All right. Would you go to Exhibit 55.

10 A. Yes, sir.

11 Q. All right. And then go back to the beginning page. And
12 on October 5th, are you forwarding AJ, Mr. Leone, an e-mail at
13 11:06 relating to the quote for Kleen Sites to do the
14 remediation of the office space? So this is on the page that
15 has the 2 --- 2:30 at the bottom of it.

16 A. Yes.

17 Q. Okay. And are you indicated to him, attached is the
18 quote for --- from Kleen Sites for the remediation of the IOA
19 office space?

20 A. Yes.

21 Q. And this quote is for the proper remediation of the mold
22 in the IOA office space?

23 A. Yes.

24 Q. All right. So you believe that the scope of the quote
25 was proper?

1 A. I'm sorry?

2 Q. You believe that the --- that it was --- it was proper?

3 A. Yes.

4 Q. All right. And then testing to ensure that their space
5 is clear once the remediation work is completed; is that true?

6 A. Yes.

7 Q. Okay. All right. Just to have the jury be able to
8 follow along with us. All right. And then once the
9 remediation work is completed, you indicate that the other
10 steps included would be putting back the sheetrock,
11 insulation, ceiling tiles, carpet, and painting?

12 A. Yes.

13 Q. So that's --- that's part of the scope of the --- of
14 repairing damage, correct?

15 A. Yes.

16 Q. All right.

17 A. It also states here that on September 25th is when
18 Kleen Sites came out. So it was relatively quickly after
19 Clean Aire was as well.

20 Q. Well, Clean Aire --- well --- well, they came out and
21 asked to do the work, but ---

22 A. Right.

23 Q. --- you --- you didn't let them?

24 A. Right, but I just wanted to make sure because it had
25 made --- it seemed to me that it was made mention it was

1 like 60 days after, and this shows September 25th they
2 came out to do ---

3 Q. Right. Right ---

4 A. --- the investigation.

5 Q. --- but they didn't come out to November to actually do
6 the remediation, right?

7 A. Right. But I just want to make sure that they were
8 called on September 26th.

9 Q. Yes, understood. And that was actually a couple days
10 after Scott and IOA sent you the picture of the ceiling
11 falling through ---

12 A. Yes.

13 Q. --- and --- and asked for an increased sense of urgency
14 ---

15 A. Yes.

16 Q. --- from you?

17 A. Yes.

18 Q. And from AJ?

19 A. Yes.

20 Q. And so in response, what does Mr. Leone say? It's on the
21 same page, Ms. Adelman.

22 (Simultaneous speaking)

23 A. Have you heard from our insurance adjuster yet?

24 Q. So he doesn't say --- and approximate scope for the Kleen
25 Sites work was between 7 and \$8,000?

1 A. Yes, somewhere in there.

2 Q. And there was an active mold infestation within IOA's
3 unit in these walls?

4 A. Yes.

5 Q. Okay. And so and his response to whether you could ---
6 because you ask him, how should we proceed, right?

7 A. Yes.

8 Q. All right. And he asks about insurance?

9 A. Yes.

10 Q. Okay. And then --- but he doesn't tell you to proceed at
11 that time?

12 A. Not --- not in the e-mail, but I know that we
13 proceeded pretty quickly right afterwards, whether it was
14 a phone call or not, I know we told Kleen Sites to go
15 ahead.

16 Q. Actually it wasn't until 17 days later when the Kleen
17 Sites proposal was signed; isn't that correct?

18 A. I don't know when it --- I don't have it in front of
19 me to know when it was signed, but I know that we were in
20 contact with Kleen Sites trying to get things set up and
21 make sure that the insurance was straight
22 (unintelligible) insurance adjuster, there were several
23 steps taken in between to make sure we have everything
24 covered.

25 Q. Sure. So if you could --- if you go to Exhibit 56. You

1 see Kleen Sites proposal dated October 2nd?

2 A. Yes.

3 Q. And it was addressed to you at --- at CAMS, attention
4 Angela Adelman?

5 A. Yes. And you said my last name right.

6 Q. Yeah. Yeah. I'm --- I'm going to picture it with two
7 Ds. If I do two Ds, then I think I got it.

8 And so that's dated October 2, 2020, correct?

9 A. Yes.

10 Q. And it involves a scope of work for \$7,485?

11 A. Yes.

12 Q. All right. And if you flip to the next page, is this a
13 true and accurate Kleen Sites remediation proposal?

14 A. It had several pages with it that went into detail
15 with what needed to be remediated, but yes.

16 Q. Okay. And then when does Mr. Leone sign page 2?

17 A. It says here October 22nd.

18 Q. Okay. And so that's 17 days after the 5th when you guys
19 are e-mailing about it?

20 A. Yes.

21 Q. Okay. And that's 20 days after the date of the quote?

22 A. Yes.

23 MR. LESEMANN: All right. Your Honor, I would move
24 for admission of Exhibit 56.

25 THE COURT: Any objection to 56?

1 MR. COBB: No, Your Honor.

2 THE COURT: All right. So moved.

3 (Plaintiff's Exhibit 56 marked and entered)

4 BY MR. LESEMANN:

5 Q. Okay. And then going back to Exhibit 55. I'll just ---
6 there it is. The signature on October 22nd. Okay. And
7 then --- and Exhibit 55, on the page marked 228 --- well,
8 actually, let me go back. So on the page marked 229, does AJ
9 tell you he wants to get another quote?

10 A. Yes.

11 Q. Okay. What does he specifically say beginning with
12 "also"?

13 A. So the insurance adjuster when they come out on site
14 stated that they would get us another additional mold
15 remediation quote, and that's what I was waiting on
16 there. And I had not received it yet at that point.

17 Q. Okay. So he asks you also we were to get another quote
18 from a mold --- another mold remediation company, if so, what
19 it is the status of that?

20 A. Correct. As reflected by the insurance adjuster.

21 Q. Okay. And you say that --- that --- okay --- your ---
22 your testimony is you were already in the process of
23 requesting another quote at this time?

24 A. Right. Well, the insurance adjuster was going to
25 send us a quote from someone that they had recommended.

1 Q. Okay.

2 A. We had not received it yet and we were waiting on
3 them.

4 Q. All right. Could you flip one page before to the page
5 marked 228, and to see --- I hear what you just testified to,
6 but can you read out at the bottom of page 228, beginning with
7 "I did not get another quote." Can you read how you responded
8 to Mr. Leone?

9 A. Yes. I did not get another quote as I thought you
10 stated that we would go with the other company since they
11 had one. I can get another quote, but if we --- but it
12 may hold the process up depending on how fast they can
13 come out. Please let me know how to move forward.

14 Q. Okay. You just testified that you were already in the
15 process of getting another quote through the insurance
16 company, that's how you testified today?

17 A. Uh-huh.

18 Q. But on October 5th when you responded to Mr. Leone, did
19 you actually say that you hadn't gotten one because you
20 thought he had told you just to go with Kleen Sites because
21 they were already there; is that how you actually responded at
22 the time?

23 A. Yes, that is how this reads.

24 MR. LESEMANN: Your Honor, I would move for
25 admission of Exhibit 55.

1 THE COURT: Any objection to 55?

2 MR. COBB: No objection, Your Honor.

3 THE COURT: So moved.

4 (Plaintiff's Exhibit 55 marked and entered)

5 BY MR. LESEMANN:

6 Q. Okay. Exhibit 57, Ms. Adelman, is this a e-mail exchange
7 between you and Ms. Warner with IOA relating to another leak?

8 A. Yes, there was another leak at that same time in
9 that office. I think it was in the back. There was
10 another urinal --- there was another toilet leak that had
11 sprung up.

12 Q. Okay. And this is when you began using --- or discussing
13 using Shuler Plumbing rather than continuing to use Arrow
14 Plumbing?

15 A. Yes.

16 Q. All right. Is this a true and accurate copy of your
17 e-mail exchange with Ms. Warner on or about November the 9th
18 of 2020?

19 A. Yes.

20 Q. Okay. And if you look at the top, is this another ---
21 when you started to send all e-mails to Mr. Leone, is this
22 another e-mail that you sent to him on December the 4, 2020?

23 A. Yes.

24 Q. Nobody from IOA is copied on all the December 4th e-mails
25 being forwarded, why --- why --- they're involved in all the

1 e-mails prior, but not in all these, why --- why --- why is
2 that?

3 A. For whatever reason, whether AJ requested it, or I
4 was sending him all the information that I had on the
5 project for in purposes, but I was sending everything to
6 AJ.

7 Q. The insurance claim had already been adjusted; had it
8 not?

9 A. I'm not sure if it was through yet or not at this
10 point.

11 Q. Okay. When you're sending all these e-mails to --- to
12 Mr. Leone, are you sending them to him in his capacity as the
13 association president, as the landlord, or both?

14 A. I would say all of the above.

15 Q. Okay. And when you consider --- when you were having
16 communications with Mr. Leone about IOA's space, would you
17 also say all the above? When you were talking to him you're
18 talking to him as a landlord and as an association president?

19 A. I tried to keep things separate as the --- as the
20 president and as the landlord but, I mean, essentially
21 you're both. So I mean, you do both. But when you're
22 doing the business you try to do things that govern
23 documents with the common grounds, and getting things,
24 and project completed at the association.

25 Q. But he's the --- he's the same guy?

1 A. Right.

2 Q. Okay. So when he's not authorizing you, for example, to
3 go forward with --- with Clean Aire on September 1st, he's the
4 landlord and he's the association president; it's AJ Leone
5 who's telling you not to go forward, right?

6 A. It was AJ, but AJ has said to me several times in
7 conversations that he's going to wear different hats.
8 And he has to speak from an HOA ---

9 MR. LESEMANN: Your Honor, I just object to the
10 hearsay characterization (inaudible).

11 MR. COBB: Your Honor, he's objecting to his own
12 question? I --- I mean she's just answering ---

13 (Simultaneous speaking)

14 MR. LESEMANN: Not my question (unintelligible)
15 hearsay, hearsay is fine, but non-responsive.

16 MR. COBB: It's not hearsay if she heard it herself,
17 and she just testified she heard it herself.

18 MR. LESEMANN: (Inaudible).

19 MR. COBB: No, it's if she ---

20 THE COURT: All right. So ---

21 MR. COBB: (Unintelligible) Leone.

22 THE COURT: Well, I think it is being asserted for
23 the truth, so I am going to sustain the objection to the
24 answer.

25 MR. LESEMANN: Thank you. Move --- move to strike.

1 THE COURT: All right. We'll move to strike that.
2 We'll strike that testimony --- that last answer, excuse
3 me.

4 BY MR. LESEMANN:

5 Q. So but, you know, when --- when --- AJ's making a
6 decision you think that he'd understand it could have
7 implications for his landlord status as well as his
8 association president status?

9 A. No, because he tried to differ between the two.

10 Q. Okay. So when he --- when he refused to allow Clean
11 Aire --- against your recommendation when he declined to allow
12 Clean Aire to be hired, do you --- do you --- do you believe
13 he didn't understand that this is his tenant that has a mold
14 issue and you're recommending and he's not allowing you to
15 (unintelligible)? You just have you that as --- as Mr. Leone
16 association president and that he --- that doesn't implicate
17 IOA and IOA's interests as his tenant?

18 A. No, because he really did have several conversations
19 and he was very urgent in getting this --- this fixed.

20 So ---

21 Q. Very, very urgent right. So why didn't he authorize you
22 to do a mold investigation on the first if it was so urgent.
23 If you --- you are saying here again that he really told you
24 it was urgent, can you explain why it took IOA coming back to
25 you because their ceiling fell in and saying no, Ms. Adelman,

1 you're not correct, the problem's not static, it's getting
2 worse. We need somebody out here, we need more urgency out of
3 both of you. If he was as you say, being so urgent about it
4 then why wouldn't he go forward on September 1st? Because
5 then if he had he would have discovered this problem a lot
6 sooner?

7 A. Because when you're in this business, people call
8 everything. They want the works for the works to get
9 everything done and completed and fixed in the manner
10 that they wish it was. I'm not saying that about Crissy,
11 or Scott, or anybody, but what I am saying we have to do
12 our due diligence in taking the right steps to make sure
13 we go through all the things to make sure it gets fixed
14 correctly in the best interests of both our parties.

15 Q. You just had to make sure that they weren't a whiney
16 tenant; is that what you're saying?

17 MR. COBB: Objection, Your Honor ---

18 THE WITNESS: Didn't say that.

19 MR. COBB: --- inflammatory.

20 MR. LESEMANN: I don't think it's inflammatory, she
21 said that they have to check and make sure that people
22 aren't asking for things that they don't need, and they
23 want the best of the best. Did anybody at IOA say that
24 they wanted the best ---

25 THE COURT: All right. So ---

1 MR. LESEMANN: (Unintelligible) Your Honor.

2 THE COURT: I'm going to rule on --- I'm going to
3 rule on his objection. I'm going to sustain it. But if
4 you wish to ask in a different way, you're certainly
5 allowed to do so.

6 BY MR. LESEMANN:

7 Q. Separate and aside from people asking for things that
8 they don't --- you said that the testing should have happened
9 on the first, didn't you?

10 A. I recommended it, yes.

11 MR. LESEMANN: Your Honor, I'm trying to recall
12 before I move on whether we have moved --- I don't think
13 I moved for admission of Exhibit 57.

14 MR. COBB: No objection to it if he has it, Your
15 Honor.

16 THE COURT: Yes, you have ---

17 MR. LESEMANN: Okay. Thank you.

18 THE COURT: --- an e-mail thread.

19 MR. LESEMANN: Yes, thank you.

20 THE COURT: 57, it's in.

21 MR. LESEMANN: Very good.

22 (Plaintiff's Exhibit 57 marked and entered)

23 BY MR. LESEMANN:

24 Q. All right. Was it clear as of September 22nd, and
25 September 22nd when you're getting the text messages with the

1 pictures, that the ceiling has fallen in and there's a trash
2 can with the water coming from the toilet above. Is it clear
3 as of that date that there's going to need to be repair and
4 replacement of ceiling tiles and carpet?

5 A. Yes. And Kleen Sites had also verified that on
6 their inspection when they gave us the proposal on the
7 25th.

8 Q. But you knew it as of the 24th, as soon as you would have
9 seen that picture, you were the property manager, you'd known
10 that that would be part of the scope, correct?

11 A. Yes.

12 Q. All right. So if you had been investigating or --- or
13 recommending that there be a mold investigation as of
14 September 1st, can you explain why a contractor was sent out
15 just to cut a hole in the wall?

16 A. I do not remember.

17 Q. Do you remember being present when you had Heath there
18 and before you actually did mold ---

19 A. Yes.

20 Q. --- before --- and right ---

21 A. Yes.

22 Q. --- and so before you got authorization to mold
23 remediation, was a contractor there to start the demolition of
24 the sheetrock?

25 A. No, he came out to take a look at everything and

1 assess the situation. Also we couldn't get the leak to
2 stop. So we also had him assess the situation to see if
3 he could figure out where the leak was coming from.

4 Q. Heath is not a mold guy, right?

5 A. No, he is a contractor.

6 Q. Okay. So is cutting a --- a hole in the wall by a
7 contractor --- I guess with some kind jigsaw --- is that how
8 you do a mold investigation?

9 A. No, it is not.

10 Q. Okay. So actually what you're all --- all you're going
11 to do is if there is mold in the wall, you're going to release
12 it out into the environment, correct?

13 A. Well, it was already --- there was already openings
14 in the --- the wall and the ceiling wasn't closed so it
15 was already open.

16 Q. Oh, because --- because yeah, because right the ceiling
17 had already collapsed?

18 A. Well, and when you remove the tiles to look at it
19 and work on it.

20 Q. Right. When --- when someone finally brought a ladder,
21 you mean when they did that; is that ---

22 A. A few days later.

23 Q. Okay. All right. So the --- and so but that was your
24 contractor that cut the hole in the wall?

25 A. Yes.

1 Q. All right.

2 A. I do remember that. Thank you.

3 Q. All right. And then --- let's see here. Go to
4 Exhibit 69 --- 69, yeah. Is this a true and accurate copy of
5 an invoice for sheetrock installation ---

6 A. Uh-huh.

7 Q. --- by --- from --- from Heath (unintelligible)?

8 A. Yes.

9 Q. Okay. And is this a document that your company CAMS
10 would keep in its records relating to its management of
11 (unintelligible)?

12 A. Yes.

13 MR. LESEMANN: Your Honor, I would move for
14 admission of Exhibit 69.

15 THE COURT: Any objection?

16 MR. COBB: No --- no objection to the exhibit. I
17 don't know if the label's right because I don't have a 69
18 tab in my book.

19 MR. LESEMANN: Yeah, that --- that was added. Yeah.
20 Okay. All right. So is it moved into ---

21 MR. COBB: I --- I need a copy of it. That ---
22 that's the only thing I'm asking.

23 THE COURT: Yeah, if you'll ---

24 (Simultaneous speaking)

25 MR. LESEMANN: We can print you one.

1 THE COURT: Okay.

2 MR. COBB: No objection Your Honor.

3 (Simultaneous speaking)

4 THE COURT: All right. So no objection, if you just
5 make sure that you all have the same version of it. All
6 right.

7 MR. LESEMANN: Okay. All right.

8 THE COURT: All right.

9 (Plaintiff's Exhibit 69 marked and entered)

10 BY MR. LESEMANN:

11 Q. And then again Exhibit 46, Ms. Adelman. Is this a true
12 and accurate copy of an invoice dated January 11, 2021, from
13 Heath Petty relating to installation of carpet and --- and
14 partial installation of the ceiling to the former IOA space?
15 A. Yes.

16 MR. LESEMANN: Your Honor, I would move for
17 admission of plaintiff's 46.

18 THE COURT: Any objection?

19 MR. COBB: No, Your Honor.

20 THE COURT: So moved.

21 (Plaintiff's Exhibit 46 marked and entered)

22 MR. LESEMANN: Your Honor, if I might confer ---

23 THE COURT: Sure.

24 MR. LESEMANN: --- for one moment.

25 Your Honor, we have no further questions for the

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1 witness at this time.

2 THE COURT: All right. All right. Before we get
3 into cross, I'm going to allow the jury a brief
4 ten-minute break.

5 (Jury exits courtroom)

6 THE COURT: All right. We'll stand down for ten
7 minutes.

8 Cross.

9 MR. COBB: Yes, Your Honor. I --- for housekeeping
10 though, I will note, I think (background noise)
11 45 minutes or so, so ---

12 THE COURT: Uh-huh.

13 MR. COBB: I know we'll have --- I --- I'm just
14 thinking about timing.

15 THE COURT: Yeah.

16 MR. COBB: What --- what time is Your Honor wanting
17 to wrap up today?

18 THE COURT: I mean, we may have to go till 5:30.
19 Maybe 6:00. You've got --- you've got 45 or so on cross,
20 and you've got redirect?

21 MR. LESEMANN: Yes, Your Honor. And that might
22 be --- that plus the proffer might take us toward the ---
23 sort of the end of the day today.

24 THE COURT: Uh-huh.

25 MR. LESEMANN: Good news is, we'll be at our last

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1 witness.

2 THE COURT: Uh-huh.

3 MR. LESEMANN: But it's Ms. Warner whom you've seen
4 in the courtroom.

5 THE COURT: Uh-huh.

6 MR. LESEMANN: She's got a lot of detail ---

7 THE COURT: Huh-uh.

8 MR. LESEMANN: --- not --- and, you know, you've
9 seen her name in all ---

10 THE COURT: Right.

11 MR. LESEMANN: So that's a --- that's not a short
12 witness like --- like Mr. Berry or some of the others.

13 THE COURT: Sure.

14 MR. LESEMANN: --- and she's going to take, between
15 direct and cross, I would say two and a half hours.

16 THE COURT: Yeah.

17 MR. LESEMANN: So that may be a tomorrow morning
18 thing.

19 THE COURT: Yeah, I think so. I think that's
20 appropriate. And then tomorrow you begin your --- well,
21 we'll hear motions and then you'll start your case if,
22 you know, I deny the motions.

23 And so how many witnesses do you have?

24 MR. COBB: Well, I have one which will be AJ
25 Leone ---

1 THE COURT: Sure.

2 MR. COBB: --- possibly two depending on the ruling
3 that you held in abeyance about Rob Lathan (phonetic)
4 whether or not we need him to offset Gerry Shauer ---

5 THE COURT: That's right.

6 MR. COBB: --- I believe was --- I --- I think Gerry
7 Shauer will be a rebuttal witness to Mr. Leone's
8 testimony. And we would ask that remain proffered so the
9 jury wouldn't be in for that part, but then we would ask
10 that we be allowed to bring Mr. Lathan in after Mr.
11 Shauer's testimony. So we could have four witnesses
12 tomorrow is ---

13 THE COURT: Okay. All right. And so ---

14 MR. LESEMANN: And as far as Mr. Shauer would go and
15 I think we just would have a --- and may --- maybe his
16 expert qualification could be run through with Your
17 Honor, but I don't know that it would a be a --- a
18 proffer of once we get to our rebuttal case. He's a
19 disclosed expert witness if you're decides that he does
20 not meet the threshold to be qualified to give expert
21 testimony that would be one thing, but I would not see us
22 going through his whole testimony as a proffer. It's
23 again --- it's --- it's a qualification issue that Mr.
24 Cobb says he wants to raise.

25 THE COURT: Okay.

1 MR. COBB: Your Honor, it --- it comes back to our
2 motion in limine about the reletting and marketing
3 efforts. Because when that --- when that testimony is
4 solicited by and through Ellis, I'll object. He's saying
5 well, you know, I proffer it. And that would be my
6 thing --- and you agree with my objection based off of
7 your prior ruling for the motion in limine, then I will
8 believe the additional testimony from Mr. Leone about
9 reletting and marketing efforts will be proffered outside
10 the --- outside of the jury, Your Honor.

11 And then at that point in time, I believe that the
12 rebuttal witness --- everything would be related to the
13 reletting and marketing, I believe, or even the --- the
14 proffer for the water related to Gerry Shauer and Rob
15 Lathan.

16 Q. Your Honor, my understanding is that you did indicate
17 that you were going to be looking at Mr. Shauer's
18 qualifications to make sure that you felt as the gatekeeper
19 that it was appropriate for him to testify, but that you
20 modified your ruling about mitigation evidence. So our intent
21 and our understanding is if you qualify him as an expert, that
22 we'd be in front of the jury and we'd be moving forward with
23 him as a rebuttal witness.

24 I think that that was --- that was the end of that
25 analysis again with the idea he does have to meet your

1 approval.

2 THE COURT: Yes, sir. Yes, sir. Okay.

3 MR. LESEMANN: That was the written
4 clarification ---

5 THE COURT: That's right. That's right. I'm sorry,
6 the name, I'm trying to just distinguish my rulings with
7 the names. All right. So let --- let's just ---
8 let's --- let's finish off the two witness --- the
9 witness today and we'll proffer her and then tomorrow
10 morning we'll start with your final witness.

11 MR. LESEMANN: Yes, ma'am.

12 THE COURT: And --- and go appropriately from there.

13 MR. LESEMANN: Thank you.

14 THE COURT: We'll handle the experts. Okay. All
15 right. I need to write down the name and then the ---
16 okay. All right. Very good. All right. And so
17 we'll --- we'll --- Ms. Adelman; is that correct?

18 THE WITNESS: Adelman.

19 THE COURT: Adelman. I --- we've had it four or
20 five different ways.

21 MR. COBB: Ellis gave the secret, think two Ds.

22 THE COURT: That's right, that's right. Adelman.
23 Okay. All right. Ms. Adelman. All right. And so we'll
24 bring the jury back in, please. And we'll --- you'll
25 begin your cross once the jury comes in.

1 (Jury enters courtroom)

2 THE COURT: Please be seated. Thank you, Ladies and
3 gentlemen of the jury. At this time we will resume
4 trial.

5 Mr. Cobb.

6 MR. COBB: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. COBB:

9 Q. Ms. Adelman, how are you doing?

10 A. (Inaudible).

11 Q. Ms. Adelman ---

12 (Simultaneous speaking)

13 A. I was in Houston, Texas at a church called --- I
14 can't think of the name of it right now. It was --- I
15 was at a church.

16 Q. Were you doing property management (inaudible)?

17 A. Yes, sir.

18 Q. Did you enjoy it?

19 A. Yes, I like the challenge. It's a little more
20 challenging today, but ---

21 Q. (Inaudible)?

22 A. I would hope so. That's true.

23 Q. (Unintelligible) we talked earlier and I --- I want to
24 make --- we have a clear (unintelligible) because that was
25 important. You said at the time that you were managing 1221

1 Bower, you were managing both buildings under the condo
2 association; is that accurate?

3 A. Yes.

4 Q. And how many condos are in that --- in those two
5 buildings at 1221 Bower Condos Owners Association?

6 A. 36.

7 Q. Okay. So that's a lot. A lot of units, right?

8 A. Yes.

9 Q. And roughly how many owners out of 36 units?

10 A. 36 --- well, the business ones downstairs, so 22.

11 Q. Now --- now you ---

12 (Simultaneous speaking)

13 Q. --- testified that you worked on some 13 properties
14 prior --- during that same time, right?

15 A. Yes.

16 Q. And you said that 1221 Bower (unintelligible) nobody he
17 is (unintelligible) right?

18 A. Yes.

19 Q. All right. Now, you had clarified that earlier. Isn't
20 it true that you have anything like 1221 Bower in your
21 portfolio at the time you were managing 1221 Bower?

22 A. Correct.

23 Q. Now, we talked a lot about the leak in the wall between
24 Parker McMillan and Scott Berry's office. That would be in
25 between the Unit 103 and 102; is that accurate?

1 A. Yes.

2 Q. Okay. So that's the shared wall between those offices?

3 A. Yes.

4 Q. And so there's been talk about what the leak was. All
5 right? Was it, you know, bacteria-filed, you know urine-feces
6 water? Was it shower water was --- what --- but --- you get
7 any feedback from Arrow, Shuler, or anyone else that this was
8 raw sewage that was leaking down?

9 MR. LESEMANN: Your Honor, objection. That would be
10 hearsay in terms of feedback she would have received. If
11 she has personal observation, if she went inside the
12 wall, that would be fine, but what she heard from other
13 people and third parties, would be hearsay.

14 THE COURT: All right.

15 MR. COBB: (Unintelligible) same question, Your
16 Honor. I (unintelligible).

17 MR. LESEMANN: No.

18 THE COURT: All right. I'm going to sustain that if
19 you'll move on. Yes.

20 BY MR. COBB:

21 Q. Based off your observation of the property when you went
22 into Parker McMillan's office, did you see
23 (unintelligible) ---

24 A. Yes.

25 Q. --- easily?

1 A. Yes.

2 Q. Okay. And did you look in the trash can?

3 A. No.

4 Q. And did you have any knowledge of there being any raw
5 sewage in that building personally?

6 A. In the trash can or in the building?

7 Q. In the --- in the trash can (inaudible)?

8 A. Scott had told me that there was water dripping into
9 the trash can, yes.

10 Q. But are you aware of what that water was?

11 A. No.

12 Q. Could you smell anything?

13 A. No.

14 Q. Now, why was Arrow the preferred plumber for --- for
15 CAMS?

16 A. It's just one of the vendors that's the fastest and
17 quickest to respond, and that usually mediate the
18 problems quickly. So it's not just for CAMS, but ---
19 well, not just for Bower, but for all of our associations
20 with CAMS, we use them quite often.

21 Q. So you mean including all the property managers in that
22 group?

23 A. Yes.

24 Q. Okay. Does CAMS still use Arrow?

25 A. Yes.

1 Q. Okay. So you lost confidence in them just about
2 finalizing the leak on this one issue?

3 A. I didn't lose confidence in them, it seemed like
4 they were trying to fix the problem and another one kept
5 arising, so they were constantly chasing their tail on
6 fixing the issue because it seemed like the leak was
7 continuing in different areas.

8 Q. Just kept coming back?

9 A. Yes.

10 Q. So and you oversee the --- the --- the --- the CAMS
11 community association managers (unintelligible) the job you
12 used to have?

13 A. Yes.

14 Q. How many of those individuals (unintelligible)?

15 A. 15.

16 Q. And to do they all use Arrow as well?

17 A. Yes.

18 Q. How do you --- how do you become preferred vendor of
19 CAMS?

20 A. You have a reputation of getting things fixed
21 quickly and timely with communication of the --- of the
22 manager that you were using. And then once we have a
23 repeated history of that, then they can get a contract to
24 be a preferred vendor with CAMS that we know the managers
25 can use to get something done quickly and effectively.

1 Q. So you had a faith and confidence instilled in Arrow?

2 A. Yes.

3 Q. Okay. And so --- and then Arrow first went to the
4 property at Parker McMillan's office in Suite 103 and Scott's
5 office in 102?

6 A. (Inaudible).

7 Q. Isn't it true that Arrow told you they didn't believe it
8 was a toilet leak; is that what you testified to?

9 A. Yes.

10 Q. All right. So what exactly did they believe it was?

11 A. They believed it was like a bolt or something that
12 connected to the pipe underneath the toilet, that they
13 didn't think it was direct leak from the actual toilet.

14 Q. To access that in between the floor of the condo and the
15 ceiling tile of the unit downstairs, is --- is it easier to go
16 up or is it easier to go down to access that?

17 A. It was easier to go up, they were the --- in the
18 ceiling working.

19 Q. (Inaudible)?

20 A. Uh-huh.

21 Q. When --- why did you never send anybody over to --- to
22 the condo owner's unit in that period of time?

23 A. To the ---

24 Q. I'm --- I'm sorry. When was it that you finally decided
25 to say let's get into the condo upstairs and have them check

1 the toilet above the subfloor?

2 A. When it kept leaking. I believe it was Heath who
3 even said we might need to go up there and check to see
4 if it's something else, because it looked like it was
5 coming from a direction on the pipe. And that's when
6 they had gone up there and they found that possibly it
7 could be the shower.

8 Q. All right. Now, you testified earlier that
9 (unintelligible) binder, could you turn to number 11
10 (unintelligible). (Background noise).

11 All right. Looking over that text, whose idea was it to
12 call a roofer when you (unintelligible) that? Yours or his?

13 A. Looking at this, I would have to say it would be
14 mine just from experience of looking and going over what
15 I know from Bower Commons is usually the leaks are from
16 the roof, so ---

17 Q. (Inaudible) tell me exactly --- did --- did Scott Berry
18 want to talk to the roofer?

19 A. No.

20 Q. (Inaudible) take --- take your time. ---

21 (Simultaneous speaking)

22 A. Okay. He did want to talk to the roofer. He asked
23 them to call him.

24 Q. Because he thought there might be a roof leak, right?

25 A. Yes.

1 Q. And when you talked about --- and I know Ellis --- Mr.
2 Lesemann was saying, you know, he was talking about four
3 leaks, three toilet and one water. You had testified earlier
4 there were --- there were a lot of exterior leaks that caused
5 water leaks within these buildings, correct?

6 A. Yes.

7 Q. And throughout the whole time you were representing
8 this --- this --- this property as the condo association
9 property management, correct?

10 A. Yes.

11 Q. All right. And so if you looked at the totality from
12 2019 when CAMS was hired by the Board --- and by the way,
13 was --- was CAMS hired before AJ Leone's company bought the
14 property?

15 A. Yes. So I'm not really quite sure when Bower
16 Commons was contracted with CAMS. It was before --- I
17 came on as the manager in 2019. There was a previous
18 manager that was with Bower Commons prior to me coming on
19 through CAMS.

20 Q. (Unintelligible) so in --- in the time that you took over
21 and you addressed water intrusions in this --- this
22 (unintelligible) ---

23 A. Uh-huh.

24 Q. --- there were more than just in Units 101 through 105,
25 correct?

1 A. Yes.

2 Q. All right. And were the majority of all the water
3 intrusions in these two buildings that make up that entire
4 condo association overlap, how many were water intrusions
5 versus toilet in your rough guess?

6 A. I don't know, but I would say most of them are water
7 intrusions ---

8 Q. (Inaudible)?

9 A. --- from the roof or the outside.

10 Q. And that would be why your initial instinct was to say
11 let's call the roofer?

12 A. Yes.

13 Q. Got it. Who is Eric Monroe?

14 A. He is the tenant above the unit that had the leak.

15 Q. (Unintelligible)?

16 A. Or the owner. Sorry.

17 Q. Yeah. He's the owner of the ---

18 A. Yes.

19 Q. --- (unintelligible) above it? At one time did you think
20 he had sold his shares?

21 A. Yes. Eric was a very interesting person. And so
22 sometimes you didn't get the full story. And so at that
23 time I was led to believe that he was no longer in the
24 unit and was closing on it. Later found out that he was
25 actually renting it and had a tenant in the unit.

1 Q. (Unintelligible) lived there, and then he left and
2 instead of selling it, he leased it out to somebody?

3 A. Correct.

4 Q. Okay. When you look at --- (unintelligible) again.
5 Would you look at Plaintiff's 44. Now, this is a Clean Aire
6 e-mail on September 1st where you went to --- where you went
7 to AJ and said, hey, you know, here it is, Scott wants
8 (unintelligible)?

9 A. Uh-huh.

10 Q. Okay. All right. Are you --- are you contacting AJ
11 because he's the owner of the property downstairs, or are you
12 contacting AJ because he's on the board of the condo board ---
13 condo association?

14 A. I was contacting him because he's on the board and
15 he is also the owner. So for both reasons I was
16 contacting him essentially because he was the board.

17 Q. So who would be responsible for paying for a Clean Aire
18 report? Would it be the condo owner, or would it be the condo
19 association?

20 A. Finding out that it was the guts, it would be the
21 association.

22 MR. LESEMANN: Your Honor, I just would object to
23 the form as far as --- sorry. Object to the question as
24 far as the witness being asked to make a conclusion about
25 whose responsibility a certain fee would be. I don't

1 know that she is capable of making those --- assumes like
2 a jury or a judicial determination.

3 THE COURT: Hmm.

4 MR. COBB: Your Honor, I would simply ask
5 (unintelligible) she knows the answer to it ---

6 (Simultaneous speaking)

7 THE COURT: All right. All right. What --- I'll
8 sustain that, but why don't you rephrase the question.

9 BY MR. COBB:

10 Q. Who had to cut the check for the --- the --- the mold
11 remediation and the investigation for this (unintelligible)?

12 A. The association.

13 Q. Okay. And why was the condo association responsible for
14 cutting the check?

15 A. Because the common elements is what was broken that
16 needed to be fixed that affected the unit.

17 Q. And on that September 1st e-mail when you're recommending
18 Clean Aire, are --- are you feeling pressure from Scott Berry
19 to go ahead and do it, or are you --- is that why you're
20 recommending it, or your you just thinking, hey, this is a
21 really good idea, let's (unintelligible)?

22 A. I wanted to go ahead and get it going because of the
23 other units' leaks that we had going on, plus this leak.
24 And so I thought let's just get them both and make sure
25 that everything was okay.

1 Q. And when you talked about (unintelligible) the next
2 building (unintelligible)?

3 A. Yes.

4 Q. All right. You --- you had testified earlier that you're
5 working for --- or CAMS is the property manager for another
6 property that AJ Leone has an ownership interest in, correct?

7 A. Yes.

8 Q. Okay. And you said the only reason why you're involved
9 is because the person who was managing was let go, correct?

10 A. Correct.

11 Q. All right. And are you aware of the history of that
12 property?

13 A. Yes.

14 Q. Okay. Are you aware that the person that AJ Leone bought
15 it from was --- had used CAMS as property manager, so when AJ
16 Leone's company bought it, it inherited CAMS?

17 A. Yes.

18 Q. Okay. So AJ Leone never picked up a phone and said, hey
19 let's put the band back together, come --- come into this
20 property?

21 A. No.

22 Q. All right. And I --- I want to make sure I understand
23 this, because there's insinuation that this is not --- there
24 is insinuation (unintelligible). Did at any time from
25 August 14th to December 4th of 2020, do you remember or have

1 actual knowledge of AJ Leone saying whatever you do, do not do
2 mold remediation in this suites that Insurance Office of
3 America leases from property?

4 A. No.

5 Q. All right. Could you go to Plaintiff's 64 right quick.
6 It's the e-mail --- it's --- did you use the term black
7 mildew? At this time, are you still believing that this is
8 mildew and not mold?

9 A. I wasn't sure. And so I wanted to --- that's why I
10 wanted to have the remediation, because I wasn't sure if
11 it was mold or if it was mildew. But here I did
12 reference mildew because I wasn't 100 percent sure. And
13 when you say, "mold," that opens a whole nother can of
14 worms.

15 Q. Okay. Fair enough. (Unintelligible)?

16 A. Right. No.

17 Q. And, you know, you --- you needed to go through your due
18 diligence, correct?

19 A. Correct.

20 Q. All right. Now, on September 3rd, you have the
21 questioning in the e-mail to AJ that says what do I tell
22 Scott? And then AJ says call me. And do you remember y'all
23 talking?

24 A. I don't remember what we talked about verbatim
25 (unintelligible).

1 Q. Do you remember any time that he said, hey, just tell
2 Scott nothing? Or why tell him (unintelligible)?

3 A. No.

4 Q. Did AJ ever tell you to be shady or --- or irrational and
5 not transparent to IOA?

6 A. No.

7 Q. Did he seem like he carried and was concerned about this
8 issue?

9 A. Yes, he told me several times he wanted to get it
10 fixed.

11 Q. Okay. And were you doing everything in your power to get
12 it fixed?

13 A. Yes.

14 Q. Now, on September 3rd you had (unintelligible) tell
15 Scott. But isn't it true on September 25th the investigation
16 by Kleen Sites actually occurred?

17 A. Yes.

18 Q. And these dates matter, right?

19 A. Yes.

20 Q. And you're hearing like that took 17 days, and --- and
21 they're throwing dates out. And --- they were open to using,
22 but essentially, I --- I feel like it's the Monday morning
23 quarterback; is that what you're feeling like?

24 A. Yes.

25 Q. Okay. So you're being challenged on your business

1 judgment in terms of how you're doing your job?

2 A. Yes.

3 Q. Which clearly you're pretty good at or you wouldn't have
4 gotten promoted, correct?

5 A. Yes.

6 Q. All right. Okay. On --- in Plaintiff's 11, can go back
7 here. I'm sorry, I'm making you flip flop. Pull it out
8 (unintelligible) thanks.

9 All right. So you remember (background noise), correct?

10 A. Looks like a --- seeing it here today, yes.

11 Q. Okay. All right. So August 14th, and I want to make
12 sure (unintelligible) --- I want to make sure
13 (unintelligible). August 14th, Scott texts you a picture of
14 (unintelligible) and ceiling tile. And --- and --- and that's
15 the first time you were made aware of?

16 A. Yes.

17 Q. And then shortly thereafter at some point in time either
18 that weekend or on Monday the 17th, you made sure AJ Leone's
19 aware of it, right?

20 A. Yes.

21 Q. Do you remember how you made AJ aware of it?

22 A. I would have called him.

23 Q. And do you remember that --- that conversation?

24 A. I don't remember it, but I know I would have called
25 him, because I called him with every other leak there was

1 to make sure he knew about it.

2 Q. And when you call him and say hey, I'm going to call
3 Arrow, (unintelligible) to say, hey, can I call Arrow?

4 MR. LESEMANN: Your Honor, I object because the
5 witness has already stated she didn't remember the
6 content of the conversation, so I don't ---

7 MR. COBB: She --- she said that she (background
8 noise) --- water leaks, so I'm trying to get a pattern
9 (unintelligible) performance, so I'd like to know what
10 her normal operating procedure was in these situations.

11 MR. LESEMANN: Your Honor, that's fine to show that
12 she had a pattern of calling him if he just asked her, do
13 you remember what the conversation was about? She said
14 no, and he asked her another request about the content of
15 the conversation. So it's just trying to ---

16 THE COURT: All right.

17 MR. LESEMANN: --- the witness honestly after she's
18 already admitted (background noise).

19 (Simultaneous speaking) (background noise)

20 MR. COBB: When she calls AJ after a water intrusion
21 is it because she has to get permission ---

22 THE COURT: All right.

23 MR. COBB: --- (unintelligible).

24 THE COURT: All right. And so I'll --- I'll
25 overrule that, but I still will ask you to rephrase your

1 question for --- for her.

2 BY MR. COBB:

3 Q. So what was the purpose of calling AJ after
4 (unintelligible)?

5 A. To let him know what was going on. And that would
6 be calling a vendor out to fix the issue.

7 Q. Did he ever tell you don't?

8 A. No.

9 Q. All right. So I'm going --- I'm going to have you go
10 through this. And let me tell you what page I want you to go
11 to. Okay. You can go to the page at the bottom is 741. I
12 think it's maybe five pages in. And do you see a picture from
13 Scott to you on August 27th?

14 A. Yes.

15 Q. What's that a picture of?

16 A. The front door of the IOA office with some parking
17 spaces and the lights on the wall.

18 Q. Okay. And then would you go to the next page and --- and
19 read the (unintelligible) of the text?

20 A. What's the deal with the parking signs? I replied
21 AJ wanted them on the building instead of on a post. It
22 was replied as the largest commercial unit I would have
23 expected all of them in front of our door to be Unit 101.
24 That --- the way it's being done doesn't make sense.
25 Also if --- if this is how he does business, he can get

1 involved in this water damage issue. This shouldn't be
2 IOA's responsibility.

3 Q. Did you or --- did you or --- sorry. At any time did AJ
4 Leone either as a landlord or as the board member of the condo
5 association ever --- ever go to Scott and say, hey, you ---
6 did you ever say this is your responsibility? Did you ever
7 try to push responsibility on the Insurance Office of America?

8 A. No.

9 Q. (Background noise) correct?

10 A. Yes.

11 Q. It shouldn't (inaudible)?

12 A. Correct.

13 Q. And then --- and then when you go to the next page, the
14 bottom page is 743. And will you just read these three ---
15 this text thread here on this page?

16 A. He numbered the parking spaces, but I understand
17 what you're saying. I agree it shouldn't be IOA's
18 responsibility to take care of the water damage and I
19 want to take that on. I'll make sure it gets taken care
20 of for you and keep you in the loop. Please let me talk
21 from Arrow from here on out. I'm on vacation next week
22 through Wednesday. I will talk with Arrow Monday when
23 they go to your office or see if they can come on
24 Thursday. I will see if someone from our office can meet
25 them on Monday there.

1 Q. All right. So (inaudible) (background noise) talked
2 earlier about they have (unintelligible) first and do the
3 coordination with them, correct?

4 A. Yes.

5 Q. All right. Were you --- were you saying that you wanted
6 to be that one person in this text thread because of that
7 reason, or because Scott said this shouldn't be IOA's
8 responsibility, or both?

9 A. Both.

10 Q. Now, you also testified that you had called another
11 vendor (background noise) Arrow and they said the same thing
12 that they couldn't find the leak, correct?

13 A. Yes.

14 Q. Now, when Scott asked you later on in this text thread,
15 what's the deal with mold remediation? Had you and Scott
16 talked about the fact that you had --- get involved with
17 clean --- Clean Aire?

18 A. I don't remember that. But I know we had several
19 conversations about the mold remediation and the steps.

20 Q. (Inaudible)?

21 A. Yes.

22 Q. So if Scott doesn't want this to be Insurance Office of
23 America's responsibility, why is he calling you so much?

24 A. I think just we had a working relationship
25 foreseeing Scott and I and --- and they were just doing

1 it to help and try to get ahead of it.

2 Q. Isn't it true that you may have (unintelligible) the
3 IOA's --- the Insurance Office of America offices?

4 A. Yes.

5 Q. So you had to work with Crissy and Scott to be able to
6 get contractors inside the building, correct?

7 A. Yes.

8 Q. All right. I --- this is kind of funny. Look all the
9 way to 67, if you don't mind. And this is on December 4th you
10 were e-mailing AJ Leone all of the --- your e-mails related to
11 this (unintelligible) (background noise) manage of 1221 Bower
12 (unintelligible)?

13 A. Yes, that what it shows.

14 Q. Okay. All right. So it appears AJ was confused by
15 (unintelligible)?

16 A. Yes.

17 Q. Do you think there's any way AJ would have forgotten
18 about this Kleen Sites issue?

19 MR. LESEMANN: Object to the form. Sorry.
20 Objection, Your Honor. She's not able to testify as to
21 the witness's memory. And if there's any way that he may
22 or may not forget anything. That (background noise)
23 itself in that regard.

24 MR. COBB: I'm going to withdraw my question ---

25 THE COURT: All right.

1 MR. COBB: --- and re-ask it.

2 THE COURT: All right.

3 BY MR. COBB:

4 Q. Was --- was AJ pretty --- pretty --- was he pretty locked
5 in --- was pretty --- pretty good with this --- with this
6 stuff?

7 A. Yes.

8 Q. He was on top of his business?

9 A. Yes.

10 Q. Okay. And are you aware that December 1, 2020, Insurance
11 Office of America had their lawyer send a letter saying we're
12 terminating the lease?

13 A. No.

14 Q. Were you aware on December 2nd of 2020, Insurance Office
15 of America had their lawyer file a lawsuit against 1221 Bower?

16 A. I found that out later, but not at that date.

17 Q. So on December 4th, 2020, you were sending him these
18 e-mails so he could be prepared for this lawsuit?

19 A. Yes.

20 Q. Is that accurate? Did he tell you that?

21 A. No, I don't remember him telling me that at that
22 point.

23 Q. (Unintelligible) e-mails?

24 A. No.

25 Q. Now, I want --- I want to make sure I get some dates

1 correct. I think it's important. So if you'll flip to
2 Plaintiff's 56. That's the Kleen Sites quote. All right. So
3 on --- isn't it through that on September 22, 2020, Scott
4 Berry sent you a --- a text --- (unintelligible) urgent text,
5 the ceiling tiles has fallen (unintelligible) trash can with
6 water in it in Parker McMillan's office?

7 A. Yes.

8 Q. Okay. And you went to see that basically for
9 yourself ---

10 A. Yes.

11 Q. --- correct? How quickly did you go see after
12 (unintelligible)?

13 A. I don't remember what date, but I would have hoped
14 it would have been within two days, but I don't remember
15 what date it was.

16 Q. Okay. And then Insurance Office of America through the
17 preferred vendor Kleen Sites, on September 24th, asked ---
18 (background noise)? --- based off his testimony, did the
19 testing and do an investigation, which they did on
20 September 25th; is that correct?

21 A. Yes.

22 Q. Okay. And then Dave Dunnagan's company, Kleen Sites,
23 sent you --- to you and Scott Berry on October 2nd, this bid,
24 correct?

25 A. Yes.

1 Q. All right. And then you --- and it was after 5:00 on
2 Friday, and you forwarded this bid on October 5th to AJ Leone,
3 correct?

4 A. Yes.

5 Q. Okay. And in these e-mail threads, you know, it shows
6 that in number 56 on October 22nd, AJ Leone signed that Kleen
7 Sites report, correct?

8 A. Yes.

9 Q. All right. And then on October 24, were you e-mailing
10 Crissy Warner to try to figure out (unintelligible) Kleen
11 Sites to get them started?

12 A. I don't remember what date it was, but I know Crissy
13 and I were talking about how to get it started, yes.

14 Q. (Inaudible) on the schedule for coming in to do the mold
15 remediation?

16 A. I don't remember.

17 Q. All right. I'll show you an e-mail (unintelligible).

18 All right. And then do you believe that you scheduled
19 Kleen Sites to come in on October 25th (unintelligible)?

20 A. Yes, if that's what you're saying.

21 Q. And then they were able to start November 2nd?

22 A. Yes.

23 Q. Okay. And then finished November 5th?

24 A. I don't remember, but yes, sir.

25 Q. Okay. And then on November 6th, they generated an

1 all-clear report, correct?

2 A. Yes.

3 Q. And did you have Heath Petty set up to come in on
4 November 11th to do the sheetrock, the ceiling tile, the
5 carpet tiles?

6 A. Yes. Because we had gone before to have him come
7 out and take a look and assess the situation.

8 Q. Now, here's some other ceiling tiles from within the ---
9 the units that had some water spots (background noise).
10 (Unintelligible) or were you here when Dave Dunnagan testified
11 he had changed out all the ceiling tiles with the exception of
12 Parker's office?

13 A. No, sir. I wasn't here.

14 Q. Okay. So September --- September 3rd, we have an e-mail
15 thread with AJ about Clean Aire correct?

16 A. Uh-huh.

17 Q. Y'all talked?

18 THE COURT: You have to say yes or no.

19 THE WITNESS: Yes. Sorry.

20 BY MR. COBB:

21 Q. All right. September 22nd, the ceiling tile falls?

22 A. Uh-huh. Yes.

23 Q. September 25th, Kleen Sites is in there doing their
24 investigation?

25 A. Yes.

1 Q. So from September 3rd through 25, three weeks?

2 A. Yes.

3 Q. And then from September 25th to November 2nd, from the
4 time they did their initial investigation to the time they did
5 the mold remediation, all right? Why were --- when was ---
6 what was --- what was CAMS doing? What were you doing during
7 that time period?

8 A. We were meeting with Heath, we were contacting the
9 insurance adjuster and still trying to get the leak fixed
10 because there was found to be a leak once the plastic
11 wall --- once the wall was removed and the plastic bag
12 was up you could still see like little drops on the
13 plastic.

14 Q. (Unintelligible) after --- after (unintelligible) the
15 plastic on the wall November 9th, Scott came in and saw some
16 moisture (unintelligible)?

17 A. Yes.

18 Q. So instead of having Heath go and (unintelligible)?

19 A. Correct.

20 Q. And --- and you said let's get --- let's get another
21 plumber out here. And was it Shuler that came out there
22 again?

23 A. Yes.

24 Q. And after Shuler came, did the leak reappear?

25 A. After that time with the --- on the --- drips on the

1 bag?

2 Q. Yes.

3 A. Yes.

4 Q. So Shuler wasn't even able to fix it the first time
5 either, correct?

6 A. Correct.

7 Q. So just like Arrow, Shuler was having the same problem
8 with this --- this leaky pipe or whatever the problem with
9 this pipe or (unintelligible), right?

10 A. Yes.

11 Q. You think Shuler's competent plumber?

12 A. Yes.

13 Q. Would you use them (inaudible)?

14 A. Sure.

15 Q. You don't have anything negative to say about Shuler, I
16 guess is what I'm asking?

17 A. No. This was a tricky leak.

18 Q. All right. All right. I believe you were shown two
19 invoices which was Plaintiff's Exhibits 46 and 69 to Heath
20 Petty, you don't have to flip to them. Who is he
21 (unintelligible)?

22 A. Yes, he's a general contractor. He does work for
23 CAMS. So he does the things from repairing statutes
24 doing minor plumbing jobs to some minor electricity jobs,
25 to repairing clubhouses. He's just a carpenter. He's

1 like a jack of all trades.

2 Q. Okay. Now, because he had some minor plumbing
3 experience, is that why you asked him to look in that area?

4 A. Yes.

5 Q. And what was his conclusion?

6 A. He --- that he was the one that thought it could be
7 with the shower because it was going down and over. And
8 he's also the one that had cut the hole in the wall,
9 because we had asked him to (unintelligible) the wall.

10 Q. All right. I promise I'm not going to make you read it.
11 But are you familiar with the condo association bylaws ---
12 bylaws (unintelligible) property (unintelligible)?

13 A. Yes.

14 Q. And you had mentioned earlier when CAMS came in, a lot of
15 things in these bylaws were not being done?

16 A. Correct.

17 Q. All right. And at the time, who was on that board?

18 A. There was Jason, and Scott, and another gentleman.
19 I don't remember his name.

20 Q. Who was the president?

21 A. I don't remember.

22 Q. Do you remember who the main person you dealt with on
23 board issues was?

24 A. Scott and Jason.

25 Q. Okay. So Jason is Jason Robinson IOA down in Florida?

1 A. Yes.

2 Q. Okay. And Scott Berry is Scott here (unintelligible)?

3 A. Yes.

4 Q. Okay. So when AJ Leone --- after AJ Leone had --- and
5 his company had bought the property, did he sit down and say,
6 hey, we got projects to do?

7 A. Yes.

8 Q. Okay. And had you been working on those projects?

9 A. No.

10 Q. Okay.

11 A. Well, I had been working on one project and that was
12 the surface of the parking lot.

13 Q. Okay. Is it fair to say that --- is it --- I'm sorry ---
14 is it true that AJ Leone's company bought the property in
15 September of 2019?

16 A. Yes.

17 Q. Okay. And so did you and AJ Leone sit down and talk
18 about working on projects shortly thereafter --- after that
19 time?

20 A. Yes, we met at the Buffalo across the street ---
21 restaurant.

22 Q. Buffalo?

23 A. Yes.

24 Q. And what happened March of 2020?

25 A. March of 2020 ---

1 Q. COVID?

2 A. Yes, COVID. (Unintelligible) like another leak.

3 Q. (Inaudible)?

4 A. No.

5 Q. All right. So in March of 2020, did that stall and delay
6 your ability to work on projects to try to become in
7 compliance with the requirements under this document?

8 A. Yes. It was very, very hard to get vendors out and
9 in a timely fashion and to get them to complete projects.

10 Q. (Inaudible)?

11 A. Yes.

12 Q. Okay. From all the unit owners?

13 A. Yes.

14 Q. Okay. And that would be 36 unit owners; is that right?

15 A. Thereabout, yes.

16 Q. Okay. Did Insurance Office of America ever give you a
17 key?

18 A. Yes, towards the end they did. Yes.

19 Q. Would that be November 2020?

20 A. It was a November time frame. I don't remember the
21 exact.

22 Q. All right. And you use the term, "guts," and I kind of
23 like it. So (unintelligible) the interior of the walls and
24 between subfloor and ceiling tiles, that's --- that all
25 belongs to the condo association, right?

1 A. Yes, we refer to it as the common area.

2 Q. Okay. Now, I know --- you had said you moved to South
3 Carolina roughly what, about four, five, years ago?

4 A. Yes, from Houston, Texas.

5 Q. And (unintelligible) there, is that right?

6 A. Yes.

7 Q. Okay. How familiar are you with Harbison Boulevard?

8 A. I know that's where all the shopping and restaurants
9 are.

10 Q. (Inaudible)?

11 A. No.

12 Q. All right.

13 A. Not (inaudible).

14 Q. Would you look in that booklet; does this help remind
15 you --- refresh your memory?

16 A. Yes. They paid a bill to them annually.

17 Q. Okay. So with this property at 1221 Bower, the condo
18 association is --- the --- then the Harbison group has a
19 Harbison Association fee as well?

20 A. Yes. Yes.

21 Q. Okay. So there's really two associations to these
22 36 units (unintelligible)?

23 A. Yes, that's correct.

24 Q. And who pays the fees to Harbison?

25 A. The HOA --- the association.

1 Q. The association. (Inaudible)?

2 MR. COBB: Your Honor, permission to submit this as
3 Defendant's Exhibit 55.

4 MR. LESEMANN: Your Honor, we object on the basis of
5 relevance. The --- none of the issues presented in this
6 case are made any more or less true by the Harbison
7 declaration.

8 MR. COBB: Your Honor ---

9 THE COURT: All right. So let's --- let me --- let
10 me excuse the jury.

11 We'll --- we'll excuse the jury for just a moment.

12 (Jury exits courtroom)

13 THE COURT: Mr. Cobb.

14 MR. COBB: Your Honor, this is related directly to
15 our damages claim that we have. And it's --- that's ---
16 these fees as well as condo association fees were
17 pass-through expenses under the lease. And as such, we
18 just want to identify that there was another fee out
19 there that had to be paid by the tenant under the lease.

20 THE COURT: I'll let Mr. Lesemann ---

21 MR. LESEMANN: If that's what they would intend to
22 do, Mr. Leone can speak about this. And there's nothing
23 about fees --- you know, there's no amounts or anything
24 in this document. It's --- it's --- you know, he can
25 prove or not prove his case for damages in this case, but

1 there's no relevance at this time. The claim has been
2 presented. I don't know this document would have any
3 relevance whatsoever.

4 THE COURT: All right. And what are you asking her?
5 What are you attempting to ask her?

6 MR. COBB: Just if there's an existence --- so you
7 have --- so ---

8 THE COURT: Just that they paid the money to
9 this ---

10 MR. COBB: Yeah ---

11 (Simultaneous speaking)

12 THE COURT: --- entity.

13 MR. COBB: (Inaudible).

14 THE COURT: Sure.

15 MR. COBB: --- trying to say there's more
16 (unintelligible).

17 THE COURT: Okay. How is that relevant for her to
18 answer as opposed to client to --- Mr. Leone?

19 MR. COBB: (Inaudible).

20 THE COURT: Oh, okay. So it doesn't go directly to
21 them?

22 MR. COBB: (Inaudible) --- that's the reason why
23 we're --- (background noise) from Mr. Leone, if I don't
24 get an objection about --- with Mr. Leone on the stand if
25 I don't get an objection for bringing it in at that time.

1 MR. LESEMANN: Well, I mean, it's just --- he can
2 testify as to what he thinks his damages may be within
3 the rules of evidence, but again, it's just --- it's
4 not --- it's not relevant to what (background noise) ---
5 discussed or (unintelligible) on this case.

6 MR. COBB: The relevant has the evidence and the
7 information as unbiased from the standpoint she's aware
8 that this exists, she's aware that he gets paid. She's
9 the one who made sure he got paid when she was doing the
10 job (unintelligible).

11 MR. LESEMANN: Document --- this document doesn't
12 have anything to do with that. He elicited the testimony
13 there ---

14 THE COURT: What's the document? Just the --- the
15 agreement?

16 MR. COBB: (Inaudible) don't have a copy
17 (inaudible).

18 THE COURT: It's not like an invoice or ---

19 MR. COBB: (Inaudible).

20 THE COURT: I can't see this either.

21 MR. COBB: --- direct invoices for the association
22 when I put up the damages ---

23 THE COURT: Oh, I see.

24 MR. COBB: --- documentation. I just wanted to show
25 that, you know ---

1 THE COURT: That this was a thing?

2 MR. COBB: Yeah, that's all.

3 THE COURT: All right. I'll --- I'll allow it, but
4 your objection, Mr. Lesemann, is duly noted for the
5 record. Anything else we need to handle before I bring
6 the jury back? All right.

7 Can we bring the jury back in, please sir. I needed
8 to give them a walking break I think.

9 MR. LESEMANN: So ---

10 THE COURT: No, I'm --- I'm going to bring them back
11 in. I just saw someone I couldn't get to sort of nodding
12 and I wanted to get their blood ---

13 MR. COBB: (Inaudible).

14 THE COURT: No, I just wanted to get their --- in
15 Aiken I drop or book or something. I couldn't ---
16 wasn't --- yeah, I didn't want to do that over here.

17 (Jury enters courtroom)

18 THE COURT: All right. Mr. Cobb, you proceed.

19 MR. COBB: Thank you, Your Honor. Your Honor,
20 again, permission to put this in as Exhibit Number 55.

21 THE COURT: All right. With the objection noted, I
22 am allowing.

23 (Defendant's Exhibit 55 marked and entered)

24 BY MR. COBB:

25 Q. Now, Ms. Adelman, when you were working this property,

1 were you the one who would then call the --- the contractors,
2 or did you have somebody assist you to do that?

3 A. Yes, I do it.

4 Q. Okay. And you heard that Scott Berry said you were very
5 responsive via text, or e-mail, or phone call, correct?

6 A. Yes.

7 Q. Okay. So when you were responsive, (unintelligible)
8 contact the contractor important?

9 A. Yes, and Crissy also was helping me with that as
10 well.

11 Q. How important is it to you to coordinate the repairs at
12 this property --- at this property (unintelligible) in a
13 timely manner? Were --- were --- did you feel a sense of
14 urgency?

15 A. Yes.

16 Q. Was --- was it stressful?

17 A. Yes.

18 Q. Why?

19 A. Well, any time you have a leak, it's stressful,
20 because if you don't want to get the leak bigger, or to
21 get worse, or to cause more problems, so you want to get
22 it handled.

23 Q. Okay. And do you feel like it was handled quickly?

24 A. I felt like yes. I felt like we did the best that
25 we could considering COVID, dealing with all the vendors,

1 and with all the restraints we had, yes.

2 Q. All right. I know --- I know we've already seen this
3 text (unintelligible). I just want to --- I just want to
4 (unintelligible) your eyes to one page. Will you read this
5 text thread one more time for the jury.

6 A. Any update on the leak situation? Arrow was here
7 earlier this week and couldn't locate the toilet causing
8 the damage. I assume it's coming from Eric Monroe's
9 unit.

10 I replied, it's coming from his unit. We called him
11 and he said he is no longer the owner of that unit. So
12 I'm trying to get their information. If I cannot find
13 them we will have to force entry. Their closing
14 attorney --- or close attorney didn't send in the
15 paperwork.

16 And then he responded call me on this when you can.

17 Q. Okay. So on September 11th, you were (unintelligible)
18 that Mr. Monroe did not own that unit (unintelligible)?

19 A. Correct.

20 Q. Is that based on communication with him directly, or did
21 somebody else at CAMS have that (unintelligible)?

22 A. Yeah, somebody --- our closing department.

23 Q. Why would the closing department have that call?

24 A. Why would they? That means that somebody --- one of
25 their closing attorneys would have contacted us or the

1 hub that we have to get all the documentation for a
2 closing.

3 Q. Okay. So did a sale fall through; is that what you
4 understand or ---

5 (Simultaneous speaking)

6 A. I'm not really sure what happened.

7 Q. Did --- did you call Scott September 11th ---

8 A. Yes.

9 Q. --- on this? Do you remember what you talked about
10 (unintelligible)?

11 A. No, but I know if I told him I would have called
12 him, I would have called him.

13 Q. All right. I know it's a little redundant, Your Honor,
14 because it's in the plaintiff's, but I'm going to put this in
15 as Defendant's Exhibit Number 37.

16 THE COURT: Any objection to that?

17 MR. LESEMANN: No objection, Your Honor.

18 THE COURT: So moved.

19 (Defendant's Exhibit 37 marked and entered)

20 BY MR. COBB:

21 Q. How would you communicate with Eric Monroe?

22 A. With Eric Monroe we tried e-mail several times. I
23 tried phone calling him, but I recently --- or not
24 recently, but frequently just went to e-mails to have a
25 chain showing that I was trying to reach out to him

1 because he wasn't responsive.

2 Q. Okay. All right. Can you read what I just handed to
3 you, the --- I think it's a e-mail thread between you and AJ
4 Leone on September 24th of 2020?

5 A. Yes. Please call me at my cell phone, and it states
6 the cell phone. I paid a plumber a couple of years ago
7 to reset, reseal one of the toilets in my unit as well as
8 one in the unit on the third floor. We were never
9 reimbursed. I can get someone in any time. Do you want
10 me to read the next?

11 Q. Yeah, who (unintelligible).

12 A. That was from Eric Monroe.

13 Q. To you?

14 A. To me.

15 Q. All right. So you were able to get him finally
16 (unintelligible) right?

17 A. Yes.

18 Q. Okay. And did you find that AJ Leone (unintelligible)?

19 A. Yes.

20 Q. Okay. And what was the result of that conversation?

21 A. We were able to gain access to the unit.

22 Q. Okay. And there was some drama getting access to this
23 unit, correct?

24 A. Yes.

25 Q. What was that drama?

1 A. The tenant didn't want us to come in. The tenant's
2 unit was in really bad disrepair. And he was just giving
3 Eric a lot of flak for trying to gain access to it and
4 wanted to call the authorities. And so it became a very
5 escalated situation quickly.

6 Q. (Unintelligible) Scott Berry (unintelligible)?

7 A. Yes.

8 Q. (Unintelligible) Scott Berry always will be to be
9 involved, right?

10 A. Absolutely. Him and Crissy both.

11 MR. COBB: Your Honor, I'd like to put that e-mail
12 as Defendant's 43.

13 THE COURT: Any objection to 43?

14 MR. LESEMANN: No objection, Your Honor.

15 THE COURT: All right. So moved.

16 (Defendant's Exhibit 43 marked and entered)

17 BY MR. COBB:

18 Q. Did AJ Leone talk to you before you were in touch with
19 Mr. Monroe?

20 A. Regarding the leak or ---

21 Q. (Inaudible)?

22 A. I'm sorry, will you state that one more time so I
23 can make sure I answer it correctly?

24 Q. Will you --- will you --- will you do me a favor and will
25 you look at this e-mail further than I just gave you and kind

1 of describe (unintelligible). Starting on the last page,
2 September 14, 2020, it appears that you wrote an e-mail to
3 Eric Monroe, correct?

4 A. Yes. I had asked him if we could gain access to his
5 unit because we were having a hard time with his tenant.

6 Q. So you sent an e-mail to Mr. Monroe on September 14,
7 4:14 p.m.?

8 A. Yes.

9 Q. And then did you send him another 14:33 p.m. that same
10 day?

11 A. Yes.

12 Q. Okay. And what did you tell him in that
13 (unintelligible)?

14 A. I asked him again to give me a call.

15 Q. And did you give him your personal cell number?

16 A. Yes.

17 Q. Okay. Or your business cell phone, I guess?

18 A. Yes.

19 Q. Okay. All right. Flip the page. All right. You --- at
20 some point in time you received a response from Eric, correct?
21 On that e-mail?

22 A. Yes.

23 Q. Okay. And that's --- that's the cell number he gave you,
24 correct? On September 14th (unintelligible)?

25 A. Yes.

1 Q. Okay. All right. And on September 16th, you responded
2 to Mr. Monroe and what did you say?

3 A. I tried calling you and I left a message, Eric, what
4 is a good time to call you today? I need access to the
5 unit on September 28th in the morning so that we can have
6 the leak fixed.

7 Q. Why September 28th, when it's September 16th?

8 A. At that point we had had Arrow come in I guess at
9 this point, two to three times, because the first time
10 they forgot the ladder. So they came back to try to fix
11 the leak. They thought they fixed it. A couple days
12 later it started leaking again, so then we needed to go
13 up. They thought it might be the flange or the seal
14 around the toilet that needed to be repaired.

15 Q. Okay. And again, why --- why did you set it for as far
16 as September 28th and you're e-mailing on September 16th?

17 A. I don't remember.

18 Q. Was it just hard to get Arrow in during that time?

19 MR. LESEMANN: Your Honor, witness already testified
20 that she doesn't remember. So at that point, I think we
21 establish that she doesn't know. And so asking the
22 question a second way, I don't believe is appropriate.

23 THE COURT: All right. We'll move on. Why don't
24 you --- why don't you ask another question. Rephrase.
25 Sustained. Move on.

1 BY MR. COBB:

2 Q. During the month of September 2020, was it
3 (unintelligible) difficult to get Arrow Plumbing out to 1221
4 Bower?

5 A. There was --- we did have --- they came out a few
6 times, but Arrow was always responsive. I don't remember
7 in this situation. There are times where they are tied
8 up and they get --- can't get out there for a few days.
9 But usually they're responsive. But in this scenario, I
10 honestly can't say it's --- that's the reason why.

11 Q. Had Crissy at any time asked you to delay doing work
12 until September 28th?

13 A. Not that I remember.

14 Q. And so it looks like Mr. Monroe did e-mail you back later
15 on that afternoon; is that correct?

16 A. Yes.

17 Q. And he said what's your cell number?

18 A. Yes.

19 Q. (Background noise) same page. And then on
20 September 16th, you wrote him back and you said you don't give
21 him your personal cell number. And I apologize, so
22 (unintelligible) actually Mr. Monroe's personal cell phone?

23 A. Yes.

24 Q. All right. And you ask him to give you a time and
25 he'll --- you'll schedule the call, right?

1 A. Yes.

2 Q. All right. And then you e-mailed again on September ---
3 on September 17th, correct?

4 A. Yes.

5 Q. And he hadn't gotten back to you by that e-mail?

6 A. Yes.

7 Q. Okay. And you must have copied AJ Leone, correct?

8 A. Yes.

9 Q. Because AJ Leone responded on September 17th at
10 4:35 p.m.; what did he say to you?

11 A. If he is not responsive, you're going to have to
12 give a 24-hour notice and bring a locksmith to enter the
13 premises. Please advise him that we do so on Tuesday if
14 we can't get access on Monday.

15 Q. Okay. So is this AJ Leone giving some guidance?

16 A. Yes.

17 Q. Okay. And is he giving you the guidance as the --- do
18 you think he's wearing his landlord hat, or do you think he's
19 wearing his board association hat?

20 A. His board association hat.

21 Q. So one of the things that we've heard is that when you
22 own an office condo, you should be prepared for its
23 complexities, including dealing with other condo unit owners.
24 How is it possible that as a landlord you can deal with
25 complexities such as this to expedite this (unintelligible)

1 another unit owner's property are in the guts that are owned
2 by the association?

3 A. I believe that as a landlord you're responsible
4 because they're your lessee, and so you have to make sure
5 that things get repaired in a timely fashion.

6 Q. But how can you repair something when it's
7 (unintelligible)?

8 A. You can't. You have to continue trying to fix the
9 leak until it is repaired.

10 Q. At any point in time did you say I'm just taking a time
11 out, I'm not going to worry about this anymore? I'm not going
12 to worry about this leak. I'll get back to it
13 (unintelligible)?

14 A. Never.

15 Q. So you were working it almost daily?

16 A. Yes, and even after hours.

17 Q. And in --- and in your text earlier, you were vacation,
18 correct?

19 A. Yes.

20 Q. And in that text to Scott you (unintelligible) people
21 here while you were on vacation, right?

22 A. Yes.

23 MR. COBB: Your Honor, I'd like to put this e-mail
24 thread in as Exhibit 21 for defendant.

25 THE COURT: Any objection to 21?

1 MR. LESEMANN: No objection, Your Honor.

2 THE COURT: All right. So moved.

3 (Defendant's Exhibit 21 marked and entered)

4 BY MR. COBB:

5 Q. It appears to say --- it continues with Mr. Monroe, you
6 had given AJ Leone an update on September 24th in this e-mail
7 thread. You had --- you had actually e-mailed Eric before
8 that on September 24th. Can you read these two e-mails and
9 give me a quick summary of what they say and what the meeting
10 was about?

11 A. Yes. To Eric, I wrote: Good afternoon, Eric. My
12 contractor was on site at Bower Commons this morning to
13 investigate how to repair the damages inside and outside
14 of the wall due to the toilet leak in your unit. In
15 doing so, he examined your subflooring. Due to a leak,
16 your subflooring needs to be replaced. It is saturated
17 in water and is no longer support for your flooring. And
18 if it does not get replaced, your tenant could possibly
19 fall through the floor if it continues to --- if he
20 continues to use it.

21 In addition, leak has created mold inside the walls
22 of IOA, which means the walls need to be fixed, carpets
23 cleaned, and repair any damage that occurred due to this
24 leak. I wanted to let you know as I will notify IOA to
25 contact you in regards to getting these repairs fixed.

1 Arrow will be in --- will be at unit 204 tomorrow between
2 9:00 a.m. to 1:00 p.m. to repair the leaking toilet in
3 your unit. I will keep you updated as I get more
4 information.

5 Q. Okay. And it looks like AJ sent you an e-mail
6 afterwards. What is AJ telling you in this e-mail
7 (unintelligible)?

8 A. Angela, I spoke to Eric. He's expecting a call from
9 the plumber or from me tomorrow when the plumber is
10 heading out. I also have some other input for you.

11 Q. Okay. Do you know what that other input was?

12 A. No.

13 Q. Okay. So this is on September 24th, correct?

14 A. Yes.

15 Q. All right. And you had gotten notice from Scott Berry on
16 September 22nd that the ceiling tile had fallen, correct?

17 A. Yes.

18 Q. And are you aware on September 22nd that was the first
19 time anyone from Insurance Office of America had actually
20 contacted AJ Leone directly?

21 A. Is that the first time I knew about it?

22 Q. Are you aware that that's --- (unintelligible) first time
23 anyone had sent notice from Insurance Office of America in
24 writing to AJ Leone?

25 A. Yes.

1 Q. Okay. Do you think that anyone from Insurance Office of
2 America sent notice to AJ Leone prior to September 22nd?

3 A. I don't know.

4 Q. But you're not aware of any, correct?

5 A. No, I was the one communicating with AJ.

6 Q. Got it.

7 MR. COBB: I'd like to present --- I'd like put this
8 in as Defendant's Exhibit Number 29.

9 THE COURT: Any objection to 29?

10 MR. LESEMANN: No, Your Honor.

11 THE COURT: So moved.

12 (Defendant's Exhibit 29 marked and entered)

13 BY MR. COBB:

14 Q. I know I've asked you to read a lot (technical
15 difficulty)?

16 A. Yes. States yes. It was 9:00 am. There were ---
17 they --- they were early. They did, but I guess some
18 people have (unintelligible) and I replied they did, but
19 I guess some people have extra copies --- had an extra
20 copy this morning and got energized and ready to go, I
21 guess, LOL.

22 And then there was a reply from Crissy that --- I
23 think it's Crissy --- is Christine, and then Scott Berry.
24 So this must be from Scott that states: Eric Monroe is
25 here and apparently we have some drama going on between

1 him and his tenant upstairs. The tenant isn't allowing
2 them in the unit.

3 I replied with wow, do I need to text my locksmith
4 and see if I can come and open it?

5 Crissy replying with an emoji. Scott replies, wow,
6 can Crissy (unintelligible)? Crissy we missed being on
7 Cops this morning because we had meetings. Were --- were
8 they able to get in?

9 Scott Berry. No, the police told Eric he must give
10 the tenant 24 hours' notice. They are coming back Friday
11 morning at 9:00 a.m. to let Eric in the unit. Crissy is
12 arranging for the police. Told Eric --- wait a minute.
13 Crissy is arranging for the --- no, the police told Eric
14 he must give the tenant 24 hours' notice. They are
15 coming back Friday morning at 9:00 to let Eric in the
16 unit. Crissy is arranging for the plumbers to come back.
17 Someone from the property management side also needs to
18 be here. This should not be on IOA to coordinate.

19 Crissy. Yes, Angela, I need for you to or AJ to be
20 present. This is really escalating. I'll be present
21 that morning, but I don't want to be involved in any of
22 these disputes between management and tenant.

23 Q. (Technical difficulty) (inaudible) condo association
24 (inaudible)?

25 A. Yes.

1 Q. And did you --- why (unintelligible) AJ Leone
2 (inaudible)?

3 A. I believe this was a text thread that Crissy and
4 Scott just had in communication with the leaks from the
5 beginning, and so we were just using this thread talking
6 back and forth.

7 Q. (Inaudible)?

8 A. Yes, he got involved to get the tenant to --- to
9 work with us.

10 Q. Okay. So he was --- he was responding?

11 A. Yes.

12 Q. He was doing it?

13 A. Yes.

14 Q. He was helping?

15 A. Yes.

16 MR. COBB: Your Honor, (inaudible).

17 THE COURT: Any objection to 25?

18 MR. LESEMANN: No objection, Your Honor.

19 THE COURT: So moved.

20 (Plaintiff's Exhibit 25 marked and entered)

21 BY MR. COBB:

22 Q. Angela you --- you just said this --- we had seen this
23 earlier.

24 A. Yes.

25 Q. Who was responsible for the decision to get another mold

1 remediation quote other than just (unintelligible)?

2 A. The association. We always try to get two to three
3 quotes for any large projects to make sure we're doing
4 due diligence with the association funds.

5 Q. Okay. This is the October 5th e-mail AJ's asking
6 (unintelligible) the insurance adjuster yet?

7 A. Yes.

8 Q. Okay. And so what --- why --- so how long did it take
9 for you to get --- tell me about the process from October 5th
10 to October 22nd when you (unintelligible) letter to the condo
11 owners association to start doing the remediation? What ---
12 what happened (inaudible)?

13 A. The first time we had the Clean Aire quote and
14 thereafter, there --- AJ --- I'm sorry, not AJ --- Scott
15 and Crissy had talked about wanting to get an additional
16 quote from Kleen Sites, so we were in the works of
17 getting the Kleen Sites quote in addition to making sure
18 that the active leak was getting repaired. And then also
19 calling out an insurance adjuster during that time frame
20 for them to come out and adjust and tell us what they
21 found and what they would see helpful to help get the
22 repair done quickly. And they had suggested another
23 quote.

24 Q. When you say, "they suggested another quote," that was an
25 insurance investigator?

1 A. Yes. Sorry.

2 Q. (Unintelligible) to turn this issue over to the insurance
3 company for the condo association?

4 A. Due to the large sum of money it was going to take
5 to fix this --- to fix this leak and mold remediation.

6 Q. So was that just part of standard operating procedure
7 that you have to do when this kind of thing happens?

8 A. Yes.

9 MR. COBB: All right. Your Honor, I'd like to put
10 this in as Defendant's Exhibit Number 26.

11 THE COURT: Any objection to 26?

12 MR. LESEMANN: No objection, Your Honor.

13 THE COURT: All right. So moved.

14 (Defendant's Exhibit 26 marked and entered)

15 BY MR. COBB:

16 Q. Now, when you're coordinating problems in the building at
17 1221 Bower, you're not dealing with just these five suites,
18 the 1221 Bower Insurance Office of America, correct?

19 A. Correct.

20 Q. All right. So are you dealing with the resident unit
21 owners upstairs?

22 A. Yes.

23 Q. And the residents (unintelligible) upstairs in the same
24 building?

25 A. Yes.

1 Q. And commercial unit owners in the building next door?

2 A. Yes.

3 Q. So Crissy would you just --- would you just look at this
4 e-mail thread real quick?

5 BY MR. COBB:

6 Q. (Unintelligible). So just make sure and let's get the
7 dates right. October 2nd, Scott Berry sends you the Kleen
8 Sites report, correct --- (unintelligible) correct?

9 A. Yes.

10 Q. Okay. What's the second paragraph that Scott Berry's
11 asking you in this e-mail thread?

12 A. Please let us know when the insurance claims
13 adjuster would like to view the damaged areas and we can
14 make arrangements to get them in the building.

15 Q. Okay. And how long did that take you to get the
16 insurance claims adjusters into the damaged areas of the
17 building?

18 A. Within like a week or two they were there.

19 Q. So between October 2nd and October 22nd, when you
20 actually got --- signed the --- when AJ Leone (unintelligible)
21 signed the --- the (unintelligible) letter with Kleen Sites,
22 that's about a 20-day period, and part of it was eaten up by
23 waiting on an insurance adjuster?

24 A. Yes, that's correct.

25 Q. Okay. Let's --- let's just go forward. And it looks

1 like you were giving an update about calling AmGUARD. Can you
2 read this e-mail thread where it starts off Jack and ---
3 A. Yes. Good afternoon, I wanted to give you all an
4 update. I called the AmGuard to get an update on the
5 claim adjuster as I have not heard from anyone yet. They
6 sent the claim to a third party, Raphael & Associates. I
7 called Raphael & Associates and left a message for the
8 claim adjuster to give me a call to find out when someone
9 will be on site. If I don't hear from anyone today, I
10 will call again in the morning. I will keep you all
11 updated as I get more information.
12 Q. Okay. And that was October 5th. October 7th AJ sent you
13 an e-mail; and what is that?
14 A. Any status.
15 Q. Okay. And you sent an e-mail back on October 7th
16 (unintelligible)?
17 A. I called Raphael & Associates yesterday and left
18 another message for them to call me. They called me back
19 when I was on another call. I called them right back and
20 left another message. Hoping to talk to someone today.
21 I don't have any planned meetings today, so my phone
22 shouldn't be tied up when they call. I am talking about
23 Mike Gibson from PDRV to obtain another mold remediation
24 quote.
25 Q. Okay. So let's --- let's stop there for a second. So

1 from October 2nd, to October 22nd when Kleen Sites was
2 actually engaged (unintelligible) letter?

3 A. Uh-huh.

4 Q. All right. You had to deal with an insurance adjuster,
5 but what is PDRV?

6 A. That's who the claim adjuster was recommending us to
7 use for the additional quote.

8 Q. Okay. And so you're not only waiting on the insurance
9 adjuster to come visit the site, but you're also working to
10 get that second quote?

11 A. Correct.

12 Q. Okay. Okay. And AJ send back an --- an e-mail
13 (unintelligible) (background noise)?

14 A. Yes.

15 (Simultaneous speaking)

16 A. Yes.

17 Q. Okay. And you send one back saying (unintelligible).

18 A. Yes.

19 Q. Okay. So it seems like you all are on top of it so far?

20 A. Yes.

21 Q. Okay. All right. Going back. AJ sent you an e-mail the
22 very next day, October 8th. (Unintelligible) what does he
23 say?

24 A. Checking back in, have you heard anything more?

25 Q. Okay. And (unintelligible) respond the next morning,

1 it's clear he was working late. At 9:10 on October 9th; and
2 what do you say?

3 A. Mike is coming out next Tuesday to look at the space
4 for mold remediation. Crissy will be joining him. I
5 have not heard from the claim adjuster yet. I have
6 called every day and left a message for her. She's only
7 called me twice and left a message, but I have heard from
8 her since Wednesday. I hope she calls me today, because
9 I would really like for her to be on site when Mike is
10 this way we only need to go out there once. I will keep
11 you posted once I hear from her.

12 Q. And again, you're --- Mike was (unintelligible)?

13 A. Yes.

14 Q. Okay. So AJ responds --- and you got to go to the next
15 page --- on October 12th, and that's --- that was a Friday
16 October 9th. On Monday the 12th in the morning he sent you an
17 e-mail; what does that say?

18 A. Good morning, Angela. I hope you had a great
19 weekend. Just checking to see if you have heard back
20 from the adjuster yet. Also, did you make contact with
21 the insurance company? Please let me know when you have
22 a moment.

23 Q. Okay. So are you --- so it seems like (unintelligible)?

24 A. Uh-huh. Yes.

25 Q. He wants to get this fixed, correct?

1 A. Yes.

2 Q. All right. All right.

3 MR. COBB: Your Honor, I'd like to put this in as
4 Defendant's Exhibit Number 27.

5 THE COURT: Any objection?

6 MR. LESEMANN: No objection, Your Honor.

7 THE COURT: So moved.

8 (Defendant's Exhibit 27 marked and entered)

9 BY MR. COBB:

10 Q. Did you have a hard time initially getting Kleen Sites
11 after AJ signed the engagement letter on behalf of the condo
12 board to schedule Kleen Sites?

13 A. Not that I remember. They were very responsive.

14 Q. Did you ever have to ask Crissy or Scott for a contact at
15 Kleen Sites?

16 A. In the beginning I did, but then once I had it we
17 were able to communicate.

18 Q. So October 23rd, the day after AJ signed the --- signed
19 the commitment --- the engagement letter. This --- what are
20 you doing here in this e-mail (unintelligible)?

21 A. I'm just getting --- I'm sending an e-mail to Scott
22 and Crissy asking them for the contact for Kleen Sites as
23 I called four times and left messages and no one was
24 calling me back, so I was asking if they had a personal
25 contact that I could reach out to.

1 Q. I just want to point that out just to remind you
2 (unintelligible) you can throw that away.

3 All right. If you could just go to the last page. And I
4 think you have to actually --- we --- we didn't have that full
5 e-mail, so if you can just reread that e-mail and get started
6 on the second to last page where you ask Scott to get in
7 contact (unintelligible)?

8 A. Good afternoon, Scott. Happy Friyay. You have a
9 contact at Kleen Sites? I have called four times and
10 left messages and no one is calling me back. I am trying
11 to get the mold remediation scheduled with them.

12 Q. And if you go to the bottom page --- plaintiff 0142 on
13 the second page of that. Does Crissy Warner get back to you?

14 A. Yes.

15 Q. Okay. And she also gets back to you the same day,
16 correct?

17 A. Yes.

18 Q. Okay. And then Scott also gets back to you on that same
19 day as well, right? What's --- what is --- so Crissy gives
20 you the Kleen Sites contact for Dave Dunnagan's wife Melanie?

21 A. Yes.

22 Q. And then Scott says something as well; what does Scott
23 say?

24 A. Angela, Melanie will be calling you shortly about
25 scheduling the remediation work. Let us know if you need

1 anything else and have a good weekend, Scott.

2 Q. And then --- and then you sent an e-mail back to --- to
3 Scott and Crissy and you cc AJ, and what do you say?

4 A. Good afternoon, I spoke with Melanie and they are
5 going to start November 2nd. If anything opens next week
6 she will call me. She will call me close to start date
7 so we can be sure the building is open for them. I will
8 keep you all updated once I hear from Melanie again.
9 Have a great weekend.

10 Q. Okay so from October 22nd --- excuse me October 23rd when
11 you talked to Dunnagan at Kleen Sites, the earliest they could
12 get this project in was November 2nd, right?

13 A. Correct.

14 Q. So ---

15 A. Week and a half or so.

16 Q. Yeah. Roughly --- yeah, 13 days something like that
17 (unintelligible) nine, sorry.

18 MR. COBB: Okay. All right. Your Honor, I'd like
19 to put this in as Defendant's Exhibit Number 28.

20 THE COURT: Any objection to 28?

21 MR. LESEMANN: May I see it real quick? No
22 objection, Your Honor.

23 THE COURT: So moved.

24 (Defendant's Exhibit 28 marked and entered)

25 BY MR. COBB:

1 Q. (Technical difficulty)?

2 A. It's to Scott (unintelligible) (technical
3 difficulty).

4 Good afternoon. I hope you all had a great weekend.
5 I wanted to take some time and give a quick update.
6 Please see the post-remediation report from Kleen Sites.
7 They finished the mold remediation on Friday. Heath is
8 lined up to come out this Wednesday at 9:00 a.m. to start
9 repairing the walls. Is someone able --- is someone able
10 to meet Heath and I on site Wednesday at 9:00 a.m.

11 Q. All right. Keep going?

12 A. However, Scott reported a leak this morning.
13 Shuler's plumbing only opened --- Shuler's plumbing only
14 opening is tomorrow at 9:00 a.m. Is someone available to
15 let Shuler in tomorrow morning so that we can --- he can
16 repair the leak. I will be in the meeting at Belfair and
17 cannot meet him on site to let him in.

18 Q. So let me get this right. From August 14th, you worked
19 to get Arrow in to the property multiple times?

20 A. Uh-huh.

21 Q. All right?

22 A. Yes.

23 Q. You worked to get Kleen Sites to --- with Scott Berry
24 (unintelligible) correct?

25 A. Yes.

1 Q. You worked with the insurance company?
2 A. Yes.
3 Q. You worked with contractors?
4 A. Yes.
5 Q. You worked with the unit owner upstairs to get access?
6 A. Yes.
7 Q. All right. And now the mold remediation is finally done.
8 You have Heath Petty to set up to come in on November 11th ---
9 A. Yes.
10 Q. --- to do the repairs internally?
11 A. Yes.
12 Q. Ceiling tile, sheetrock, paint, carpet?
13 A. Yes.
14 Q. And what happens?
15 A. And there was another leak.
16 Q. So does it make sense to go forward with repairs in that
17 internal part of the unit when there's another leak?
18 A. No.
19 Q. And so what did you do at that point in time?
20 A. Called Shuler's plumbing to come back out to that
21 she could see what the source of the leak was.
22 Q. (Unintelligible) were any of those things within 1221
23 Bower's control?
24 A. No.
25 MR. COBB: Okay. I'd like to put this in as

1 Defendant's Exhibit Number 30.

2 THE COURT: Any objection to 30?

3 MR. LESEMANN: No objection, Your Honor.

4 THE COURT: So noted.

5 (Defendant's Exhibit 30 marked and entered).

6 BY MR. COBB:

7 Q. Angela, will you do me a favor, and reread through this
8 text thread and --- and give us a quick summary?

9 A. Yes. This is from Scott. It says, Angela, sorry I
10 couldn't be there this morning, but Crissy said you were
11 able to get in the unit directly above us. When do you
12 plan to get the third-floor unit so it can be examined by
13 the plumbing company? Why wasn't that done this morning?

14 I replied and stated: Good afternoon, Scott. No
15 problem, Crissy and I handled it. The leak was fixed as
16 they had to reseal the toilet per Heath and the plumbers
17 there was no signs of a leak coming from the other floor
18 unit or subflooring. It was all dry. They fixed as they
19 had to reseal the toilet --- excuse me, that was the next
20 sentence. They only --- the only time it dripped water
21 while we were on site was when unit 204 flushed their
22 toilet and we all saw it drop two drops of water. Heath
23 examined area and saw a small amount of water on the pipe
24 that led to unit 204 and toilet, which is why the
25 plumbers resealed the toilet. The water was so miniscule

1 that you couldn't see it with --- in a picture. We hope
2 this is done and we will be able to fix the walls and ---
3 next week. Just to be 100 percent sure, Crissy is going
4 to let me know that water has not collected of the ---
5 over the next few days. Thanks Angela. Hopefully that
6 was it. And I replied, I hope so too.

7 Q. That --- that text thread was from November 11th after
8 your (unintelligible) e-mail you just read, correct?

9 A. Yes.

10 Q. All right. Keep reading. What happened next?

11 A. This is from Crissy and it states: Good morning,
12 Angela and Scott. I do not see any evidence of moisture
13 this morning Hallelujah.

14 I replied, good morning, that is wonderful news. I
15 will call Heath and see when he can come on site this
16 week. I'll keep y'all updated.

17 Crissy replied. I thought he was scheduled for this
18 morning.

19 I replied, no, I said let me know this morning and I
20 will see when he can come this week. Sorry if I had
21 something --- sorry if I stated something that sounded
22 like that because we wanted to be sure the leak was fixed
23 before he came back out. I was waiting on confirmation
24 of no water.

25 Crissy replied, okay. Is there someone I could meet

1 you middle-morning to give you a key to our office.
2 Scott is pretty tied up this week and I have several
3 appointments this week as well. I want you to have
4 access to the space when he is ready in case we have a
5 schedule conflict.

6 Do I keep going?

7 Q. No. So November 16th, that's when you got the key to the
8 Insurance Office of America?

9 A. Yes.

10 Q. Now, had you --- had you sent an e-mail --- I'm sorry.

11 MR. COBB: Your Honor, I'd like to put that in as
12 Defendant's Exhibit Number 33.

13 THE COURT: Any objection to 33?

14 MR. LESEMANN: No, Your Honor.

15 THE COURT: So moved.

16 (Defendant's Exhibit 33 marked and entered)

17 BY MR. COBB:

18 Q. And on November 11th, you give an update. An e-mail as
19 well. It includes Jason Robinson and AJ Leone in the e-mail,
20 correct?

21 A. Yes.

22 Q. Okay. Can you just read this to the jury so they
23 understand what you're trying to (unintelligible) and about
24 how hard you're working to resolve the leaks so you can get
25 (unintelligible)?

1 A. Yes. Good afternoon. I wanted to send to quick
2 update. Crissy and I med a deputy Heath contractors.
3 Heath --- Eric Monroe and Shuler's plumbing on site today
4 to repair the minor leak that was still taking place from
5 unit 204. Once Shuler's plumbing was able to gain access
6 to unit 204 and after a lot of observe --- I can't say
7 the word --- observation --- sorry --- Heath was able to
8 determine the minor leak was coming from unit two or four
9 toilet. The leak was so minor and small you could only
10 the small amount of water leaking with your eye. It
11 would not show up on a sure. Shuler's plumbing resealed
12 the toilet and leak. It's hopefully fixed at this point.
13 Because the water leak was so small I want to be sure the
14 leak is fixed before making the wall repair. We are
15 going to leave the wall open until this Friday at which
16 point, Crissy will let me know if they see any additional
17 water coming from above. If not, Heath will be out next
18 week to repair both walls. Crissy will --- will you also
19 please send me the paint color? This way, Heath will
20 know what color to get to paint the two walls.
21 Additionally, we need --- we need the carpet tile
22 information so that the carpet can be replaced as well.
23 Please let me know if you have any questions and I hope
24 you have a great day.
25 Q. Okay. Did they --- did Crissy or anyone else from

1 Insurance Office of America ever give you a paint color?

2 A. Yes.

3 Q. Okay. And did they give you the carpet color?

4 A. Yes.

5 MR. COBB: I'd like to put this in as exhibit ---

6 Defendant's Exhibit Number 34.

7 THE COURT: Any objection?

8 MR. LESEMANN: No objection, Your Honor.

9 THE COURT: So moved.

10 (Defendant's Exhibit 34 marked and entered)

11 BY MR. COBB:

12 Q. Now, is it true that on November 13th, there was more
13 moisture that showed up behind the plastic after that leak was
14 allegedly fixed by Shuler Plumbing?

15 A. Yes, there was a small amount.

16 Q. All right. So what did you do once you got notice on
17 November 13th (inaudible)?

18 A. I believe I called Shuler's plumbing back out again.

19 Q. Okay. And on November 15th, Sunday, looks like AJ sent
20 you an e-mail. (Unintelligible) same page, what did AJ ask
21 you?

22 A. Angela, I hope you are well. Was there any
23 additional leak found last week? Did Heath get started
24 on the repairs? Have you heard anything back from the
25 insurance company.

1 Q. Okay. So he didn't know about the November 13th
2 (unintelligible) at this point? (Unintelligible) leak?

3 A. Not from the look of this e-mail.

4 Q. Okay. And so you respond to AJ on November 16th, what do
5 you tell him?

6 A. Hey AJ. I hope you had a great weekend. Yes, they
7 resealed the toilet again. I'm not sure if the
8 homeowners are plopping down on that toilet or what, but
9 the seal was broken again after Arrow fixed it. I
10 received a text this morning --- this morning Crissy that
11 there wasn't any water accumulated over the weekend. Woo
12 hoo. I have contacted Heath to see what day he will be
13 on site this week to repair the wall. I am waiting to
14 hear back from him. As soon as I know something, I will
15 keep you undated. I do have a question regarding their
16 carpet tiles that had to be replaced due to the mold
17 damage. Who do you want me to order --- how do you want
18 me to order those.

19 Q. Okay. So after all the delays, all the issues, you're
20 finally at a finish line, correct?

21 A. Yes.

22 MR. COBB: Your Honor, I'd like to introduce this as
23 Defendant's Exhibit Number 35.

24 THE COURT: Any objection?

25 MR. LESEMANN: No objection, Your Honor.

1 THE COURT: So moved.

2 (Defendant's Exhibit 35 marked and entered)

3 BY MR. COBB:

4 Q. Now at this point in time, when did you become aware that
5 Insurance Office of America decided to terminate the lease.

6 A. I don't remember what time frame it was, but I
7 remember having a call with AJ, Crissy, Scott and I, and
8 I believe their --- both lawyers parties were on the call
9 and they discussed it.

10 Q. Okay. And what --- and --- and about what date do you
11 think that was? Because this is around Thanksgiving, correct?

12 A. That the call took place or ---

13 Q. Yeah. Do you remember if it was before Thanksgiving or
14 after Thanksgiving in 2020?

15 A. I honestly don't reporter.

16 Q. Okay. All right. Do you remember if that toilet had to
17 be resealed several years ago? That it was fixed Eric
18 Monroe's unit?

19 A. I'm not sure. I was told that it was, but I wasn't
20 the manager at that time, so I'm not sure.

21 Q. Look at --- make sure I got the right one here. Sorry.
22 And I don't --- I don't want to put in --- well, actually,
23 I'll just give it to you. This is already a Plaintiff's
24 Exhibit. Can you explain to the Court what this is?

25 A. A sworn statement and proof of loss.

1 Q. (Unintelligible)?

2 A. This is to the AmGUARD insurance company from the
3 insurance company.

4 Q. And what's the date? What's the date of this one?

5 A. June --- date issued was June 8, 2020. And date
6 expired of June 8, 2021.

7 Q. And will you look at the third line down where it says
8 (unintelligible) could you just read that, please?

9 A. At the time of loss by the above indicated policy of
10 insurance you insured Bower Commons co-owners
11 association.

12 Q. Okay. Against loss by water?

13 A. Yes.

14 Q. Okay. All right. And if you look under number one, what
15 is the --- what is the --- what is --- why don't you read that
16 full sentence if you don't mind, and then we'll ---

17 A. Time and origin a water loss occurred about the how
18 and it has a blank o'clock on the 14th day of ---
19 August 2020. The cause of origin of the said loss where
20 water damage from a plumbing leak.

21 Q. Are you aware that AJ Leone signed this on behalf of the
22 condo association as a board member?

23 A. Yes.

24 Q. Do you believe you (unintelligible)?

25 A. No.

1 Q. (Unintelligible)?

2 A. No.

3 Q. Do you know who (unintelligible)?

4 A. The insurance agent.

5 Q. Do you think they sent it to Mr. Leone and asked him to
6 sign it (unintelligible)?

7 A. They put the information in there.

8 Q. And did the date August 14th come from you or from AJ
9 Leone?

10 A. That would have come from me from me talking with
11 Scott.

12 Q. Scott (unintelligible)?

13 A. Yes.

14 Q. Now Angela, you saw the e-mail that's been kept on on the
15 screen for like hours --- it felt like hours. It said, you
16 know, in the event that you do the Clean Aire and, you know,
17 you have to do more and more. At any point in time did AJ
18 ever tell you, hey just don't do it because you have to do
19 more and more?

20 A. No.

21 Q. Do you think he was just making sure that you were
22 educated on that (unintelligible)?

23 A. Yes. I think he was just making sure I was doing my
24 due diligence.

25 Q. And did you (unintelligible)?

1 A. I feel like I did.

2 MR. COBB: Your Honor, no further questions at this
3 time.

4 THE COURT: Okay. Any redirect?

5 MR. LESEMANN: Yes, Your Honor. Briefly. I
6 apologize to the jury personally, but I --- didn't expect
7 for us to be at this point, but yeah, briefly.

8 THE COURT: Okay.

9 MR. LESEMANN: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. LESEMANN:

12 Q. So Ms. Adelman, have you ever reviewed the lease
13 (technical difficulty) between IOA and 1221 Bower Commons?

14 A. (Technical difficulty).

15 Q. So you don't know what it says about who was supposed to
16 pay for things and who's supposed to repair damage?

17 A. (Inaudible).

18 Q. (Technical difficulty) that's not based on any knowledge
19 about the lease, correct?

20 A. Correct.

21 Q. So if the lease says that damage to the --- in its
22 premises are to be prepared or to be corrected by the
23 landlord, the landlord (unintelligible) you have no reason to
24 doubt that, would you?

25 A. That was between the landlord and the tenant.

1 Q. And on Exhibit 29 --- why this is not coming up for me?
2 Defendant's Exhibit 29 (unintelligible) that was discussed
3 between you and Mr. Cobb?

4 A. Yes, sir.

5 Q. Okay. And this is --- yeah, a --- a September of
6 2024 --- get back to the document I want to see. Is this 29?
7 Okay. So do you have that document in front of you?

8 A. Yes, sir.

9 Q. All right. And it's an e-mail September 24, 2020, at
10 1:11?

11 A. The wrong one. Sorry. It is Exhibit 29, or is it
12 20 ---

13 Q. It says --- mine says 29, but it's the e-mail that you
14 sent to Mr. Monroe?

15 A. On --- yes, sir. I got it.

16 Q. Okay. And then there's --- it begins, "Good afternoon
17 Eric?"

18 A. Yes.

19 Q. Okay. And this is while you're having all these issues
20 with Eric, correct? Where you feel like you're having trouble
21 getting in this unit, police are being called out and you
22 think he might be misleading you and all those sort of things
23 that we talked about?

24 A. Yes.

25 Q. This is all baked into the cake while this is going on?

1 A. Yes.

2 Q. Okay. And then on --- you see your paragraph that begins
3 with the words, "in addition?"

4 A. Yes.

5 Q. Okay. Could you read that out?

6 A. In addition, the leak has created mold inside the
7 walls of IOA which means the walls will need to be fixed,
8 carpets cleaned, and repair any damage that occurred due
9 to this leak.

10 Q. All right. So at this point actually though,
11 September 24th, Kleen Sites has not come out to do their
12 remediation yet, or their --- their --- their investigation
13 yet, have they?

14 A. They had come out. We go a proposal on the 25, and
15 Scott and I had talked over the phone.

16 Q. And so is the reason that you knew that there was mold
17 inside the walls because of the hole that your contractor cut?

18 A. No, sir. Because of the conversations that Scott
19 and I had over the phone.

20 Q. So you --- you did know as of the 24th --- I'm just
21 trying to figure out how you did in fact know that there was
22 already mold inside the walls of IOA as you said?

23 A. Correct.

24 Q. And then can you read the next paragraph, beginning, "I
25 wanted to let you know?"

1 A. I wanted to let you know as we will notify IOA to
2 contact you in regards to getting these repairs fixed.

3 Q. Okay. So the repairs you're discussing are walls needed
4 to be fixed, the carpets cleaned, and the repairing damage
5 that occurred during the leak?

6 A. Correct.

7 Q. And this is something you consulted with Mr. --- Mr.
8 Leone about notifying IOA to contact Mr. Monroe? That's
9 something that you and I --- that you --- you and Mr. Leone
10 discussed?

11 A. Yes.

12 Q. Okay. So just so we're sure, even in the lease says that
13 the landlord is supposed to repair damage to the premises
14 within 90 days. You and Mr. Leone decided on or about
15 September 24th that you were going to put IOA in contact with
16 this problem owner, Mr. Monroe, about coordinating having the
17 repairs done; is that what you're saying in the paragraph: I
18 wanted to let you know as we will notify IOA to contact you,
19 Mr. Monroe in regard to getting these repairs.

20 (Unintelligible); is that what you're saying?

21 A. In that sentence, yes, that's what it appears.

22 Q. So 24 plus 17, so that's about 41 days. About 41 days
23 after receiving notification from Mr. Berry there was another
24 leak into the IOA space. You and Mr. Leone's plan is to make
25 IOA go to all the drama on the second floor and Mr. Monroe to

1 try to get their unit fixed; that's what you're saying in the
2 e-mail?

3 A. Trying to get Eric's unit fixed.

4 Q. No. No. No. No. You're --- you're --- you're saying
5 that you and Mr. Leone as you just testified, you're saying
6 that you're going to tell IOA to contact Mr. Monroe about
7 getting the repairs in IOA suite fixed. That's what you said,
8 right?

9 A. Yes, that's what it says.

10 Q. So Mr. Cobb showed you the professional of loss, right?
11 Do you recall that? And it had a number of approximately
12 \$7,000 on it?

13 A. Yes.

14 Q. And then the Clean Aire investigation was about \$3,730?

15 A. Yes.

16 Q. And you talked about Mr. Leone being diligent and really
17 caring and wanted to make sure everything happened?

18 A. Yes.

19 Q. If the lease says that the landlord is responsible for
20 repairing the damage to the unit, is there anything that
21 stopped --- okay, let's switch roles for a second. Let's talk
22 about Mr. Leone as the landlord. Is there anything that would
23 have stopped him from paying \$730 as the landlord to get that
24 done?

25 A. This was regarding the common area, so that would be

1 between the landlord and the tenant. We didn't have any
2 affiliation with that. So we're handling it from the
3 association standpoint and then he would take that up
4 between --- we kept the two separate, landlord and
5 association.

6 Q. I understand. I understand. But let's just say you've
7 got the same person who is the president and the landlord ---

8 A. Uh-huh.

9 Q. --- right? And the landlord's a party to a binding
10 lease ---

11 A. Uh-huh.

12 Q. --- that says that they are responsible for repairing
13 damage ---

14 A. Uh-huh.

15 MR. COBB: Objection, Your Honor. She said she
16 never read the lease. So how could she testify about
17 something she never read?

18 MR. LESEMANN: I --- I'm just letting her know about
19 that's the basis for my question. It's a hypothetical
20 statement. If that's what the lease says then we can
21 certainly help her out with it. And I'm just asking her
22 again in her experience as a property manager whether the
23 landlord ---

24 THE COURT: All right. I'm going to --- I'm going
25 to overrule that and allow him to ask the question to

1 determine --- I'm going to allow him to ask the question.

2 MR. LESEMANN: Thank you, Your Honor.

3 BY MR. LESEMANN:

4 Q. All right. Now, by telling --- by telling IOA, or by
5 decide --- that you and Mr. Leone decide --- now, which hat
6 did Mr. Leone have on when you and he decided that you were
7 going to have them have to go to Mr. Monroe about getting
8 IOA's mold out of the walls and all those issues
9 (unintelligible) those repairs? Do you --- do you say --- do
10 you think he was wearing just his association hat as it's been
11 discussed? Or was he also wearing his landlord hat?

12 A. I can't speak on his behalf, but I ---

13 Q. But you did before. You --- you talked a lot about what
14 hats you thought he was wearing in all these things, do
15 you ---

16 A. Well, I stated that he kept them separate.

17 Q. Okay. So when he is --- you --- when you and he are
18 making the decision that you're going to cause your --- cause
19 his tenant --- all right --- IOA to have to deal with this
20 apparently untrustworthy, and unreliable, and evasive guy ---

21 A. Uh-huh.

22 Q. --- that owns the second floor unit, you feel like he was
23 just acting as the association president, or was he acting as
24 a landlord, or do you think he might have been some hybrid
25 role that he may have been playing?

1 A. That's his decision in what he's doing. I don't
2 want to speak on his behalf.

3 Q. Sure. But you do know that the decision that he made was
4 that he was going to have IOA have to go to Mr. Monroe about
5 fixing the lease premises that IOA was renting from Mr.
6 Leone's entity?

7 A. That is how that sentence reads. Yes.

8 Q. And you wouldn't have written it if it wasn't true,
9 right?

10 A. That is how is --- yes. Yes.

11 Q. So again, if you have a concerned diligent landlord that
12 really wants to make sure that things are getting fixed and
13 they could write a \$730 check to try to see if their
14 multi-year tenant who's paying them a lot of money every month
15 is breathing in mold or not; is that something that a landlord
16 would ever be --- a unit owner would ever be prevented from
17 doing?

18 A. That is between the lessee and their contract with
19 the landlord.

20 (Simultaneous speaking)

21 A. I act on behalf of the association.

22 Q. I understand. But as property manager, is there anything
23 that would have prevented the owner of units 101, 102, 103,
24 104 and 105, an entity controlled by Mr. Leone here; is there
25 anything that would have stopped him from writing the \$730

1 check to make sure that this --- that there was no mold which
2 actually (unintelligible) mold. Was there anything
3 (unintelligible) that you know that would have stopped him
4 from writing that check?

5 A. Not that I know of. But I would like to clarify,
6 I'm not a property manager, I'm community manager. And
7 there is a difference since I don't deal with the
8 tenants. I only deal with the association ---

9 Q. Okay.

10 A. --- if they have a issue.

11 Q. Understood.

12 A. Common areas.

13 Q. Understood. But you couldn't identify anything for the
14 jury that would have caused --- that would have prevented 1221
15 Bower if they are a party to a lease that says that they have
16 to repair damage, and if they've got a certain amount of time
17 to do it, are you aware --- can you identify anything that
18 would have prevented him --- Mr. Leone and his entity,
19 landlord, from writing a check for \$730 to get that mold
20 investigation done September 1st?

21 A. That is between the landlord and their lessee.

22 Q. No, I'm just trying to say if you could identify anything
23 and the answer could be yes, could be no.

24 A. Yes.

25 Q. Okay. Can't think of anything that would prevent him

1 from doing that?

2 A. No.

3 Q. And then you know what the --- so with --- with Mr. Leone
4 in 1221 Bower, you know if they're receiving about \$15,000 a
5 month of rent from IOA, with --- with CAMS, do you know if the
6 landlord in this case was incapable of paying for a scope of
7 repair that's about \$17,000, to make sure it got done right
8 and then seeking reimbursement? Is there anything that you
9 can think of that would prevent that from happening?

10 A. I don't know. I don't know his personal finances,
11 and I don't know --- I didn't even know up to this point
12 how much they were paying per month, so I had no idea.

13 Q. Sure. But you can't think of anything that would say
14 that if the --- if the landlord is responsible for repairing
15 damage, if the landlord could have incurred a \$7,000 expense
16 and then sought reimbursement from the insurance company; is
17 there anything that would have legally precluded that from
18 happening?

19 A. Not legally, but I don't know what he was facing
20 personally.

21 Q. Okay. And are there situations in fact, including at ---
22 at Bower Commons, where a unit owner has incurred an expense
23 to do a repair and then it has been reimbursed either by the
24 association or by an insurance company?

25 A. I'm not aware of such.

1 Q. Okay. Is that possible for that to happen?

2 A. If the board approved it to happen.

3 Q. No, I mean that the --- the owner could submit a claim,
4 can get reimbursed by a --- and shouldn't have to wait on the
5 insurance company, you could actually do something and get
6 reimbursed, correct?

7 A. Well, she would have to notify us first to make sure
8 it was a common area. A lot of times homeowners will
9 make repairs thinking that it is the association's
10 responsibility, and later to find out it's their
11 responsibility and try to submit a claim. And there are
12 a lot of different things can occur, but they have to
13 bring it to the association first before they just go and
14 make a repair.

15 Q. Okay. But if you're a part ---

16 (Simultaneous speaking)

17 A. --- reimbursement.

18 Q. Understood. But if you're a party to a document that
19 says the landlord at its expense shall repair a lease
20 premises, because you talked about who had a --- Mr. Cobb
21 asked you, well who had to write this check, right?

22 A. Right.

23 Q. And if you're a party to a legal document that requires
24 that you do something at your expense, is there anything that
25 prevented the land --- in this case, (unintelligible) is there

1 anything that prevented 20 --- 1221 Bower from stepping
2 forward at its expense making sure that things got paid for?

3 A. Yes, just because it was the common area of the
4 association you don't want to cross the funds.

5 Q. (Unintelligible) pay for it, because he's the director
6 and the owner. He could pay for it and then he could seek
7 reimbursement, right?

8 A. But he was trying to separate his hat. He really
9 was always trying to ---

10 Q. Trying to separate his hats?

11 (Simultaneous speaking)

12 Q. Okay. All right. And so again, when --- rather than
13 repairing it at his expense when he --- and --- and you made
14 the decision that you were going to require IOA to go to Mr.
15 Eric Monroe, what hat was the he wearing?

16 A. I can't speak for what he was wearing in that
17 moment. I can only tell you what I know. And it seemed
18 to be both but I can't tell you for sure what he was
19 wearing in that moment.

20 Q. Sure. Seemed to be both. Now, the leaks that kept
21 happening and that came back in November; is it true that it
22 wasn't until end of 2021 before that was resolved?

23 A. End of 2021?

24 Q. No, into --- into. Sorry.

25 A. Into 2021. Where the walls and everything were

1 repaired?

2 Q. Where the leak ---

3 (Simultaneous speaking)

4 Q. --- yeah, where the leaks were done, was it --- was it in
5 the year 2021?

6 A. So the leaks were repaired in 2020, the carpet, the
7 walls and things like that were repaired in 2021.

8 Q. So it wasn't until --- was it January?

9 A. Yes, that the walls and everything.

10 Q. Okay. So were the --- the lease premise that IOA leased,
11 were they restored to their original condition predamage in
12 January of 2021?

13 A. Yes.

14 MR. LESEMANN: No further questions, Your Honor.

15 THE COURT: Okay. Any re-cross?

16 MR. COBB: Very, very quick.

17 RE-CROSS-EXAMINATION

18 BY MR. COBB:

19 Q. So on that Defendant's Exhibit 29 about --- where you
20 reread that sentence that Ellis just asked you to read?

21 A. Yes.

22 Q. All right. Can you read that out loud, please?

23 A. Yes. I wanted to let you know as we notify --- this
24 is not the right.

25 Q. (Unintelligible)?

1 A. This part. Okay.

2 Q. Just read that paragraph.

3 A. In addition, the leak has created mold inside the
4 walls of IOA, which means the walls will need to be
5 fixed, carpets cleaned, and repair any damage that
6 occurred due to this leak.

7 Q. Okay. How do you interpret your sentence right now
8 reading that (inaudible)?

9 A. That I was letting them know that these things will
10 need to be fixed, and the association will get them
11 fixed, and it's going to need to be done.

12 Q. Okay. At any time did you ever actually tell IOA or
13 anybody at Insurance Office of America: Hey, we're done, go
14 deal with Mr. Monroe?

15 A. No.

16 Q. At any time did you ever tell anyone at --- did you ever
17 have AJ Leone tell you to tell anyone at Insurance Office of
18 America, hey, we're done, go work with Mr. Monroe?

19 A. No.

20 Q. Neither as the landlord nor as the board member of the
21 condo association?

22 A. No.

23 Q. All right. All right. You said you'd never seen the
24 lease, right?

25 A. Correct.

1 Q. All right. In the event that lease held a provision with
2 the self-help (unintelligible) where the tenant could actually
3 write a check and go and do mold remediation and then bill it
4 back to the landlord, is there anything that would have
5 stopped Insurance Office of America from doing their own
6 self-help remedy? Can you identify that anything that would
7 prevent Insurance Office of America from writing a check to
8 just help themselves? They were in a hurry to get done. They
9 owned the building before.

10 A. They would just have to approach the board to see if
11 they could get that before they move forward with the
12 remediation and if they want to do that as a tenant, they
13 would have to do it (unintelligible) their lessee.

14 Q. (Unintelligible) did they ever ask (unintelligible)?

15 A. No.

16 Q. All right. At any time, do you remember AJ Leone saying
17 hey, my wallet is closed. I'm not willing to do anything
18 financially to help resolve this issue?

19 A. No.

20 Q. Do you remember at any time did anybody at Insurance
21 Office of America communicate to you to tell AJ, hey open up
22 your wallet, go ahead and pay now?

23 A. No.

24 MR. COBB: That's all your questions --- that's all
25 my questions, Your Honor. Thank you.

1 THE COURT: All right. Thank you. This witness may
2 be excused. Please watch your step going down.

3 MR. LESEMANN: Your Honor, if I may --- be very
4 brief, but after the jury --- we --- remember we have the
5 item that we might want to take up outside of the
6 jury's ---

7 THE COURT: That's right. That's correct. That's
8 correct. All right. Let me address the jury.

9 Ladies and gentlemen of the jury, we are going to
10 break for the night. Let me remind you as I've reminded
11 you before, please do not try to research any topics
12 or --- or any of the people involved in this case.
13 Please do not go home and discuss anything about this
14 case or no posting on social media, anything like that
15 with regards to the facts of this case.

16 In addition, we're going to ask that you be back
17 tomorrow morning at 9:30. We'll get started at that
18 point. Do not talk with anyone even your amongst
19 yourselves. All right.

20 And so if there are any transportation issues,
21 please contact the clerk, we'll make sure that you get
22 here. Do y'all have any questions for me?

23 All right. Very good. So we will see you tomorrow
24 morning at 9:thirty. Thank you.

25 (Jury exits courtroom).

Proceedings

1 THE COURT: All right. All right. Gentleman before
2 she gets back on the stand and just as a courtesy, do you
3 all need a ten-minute bathroom break or --- okay. We'll
4 take --- okay. We'll take two or three minutes. Okay.

5 (Simultaneous speaking)

6 THE COURT: We'll stand down.

7 (Off the record)

8 THE COURT: All right. Are you ready?

9 MR. COBB: Yes, Your Honor. We're ready for the
10 (unintelligible).

11 THE COURT: All right. Very good. Ms. Adelman,
12 we'll have you come back up.

13 MR. COBB: Your Honor, for the record, I just want
14 to --- I --- I just want to note my objection to the
15 proffer based off the ruling on the motion in limine. My
16 understanding is plaintiff's counsel intends to question
17 the witness into past or --- excuse me (unintelligible)
18 water intrusions in the five suites, Unit 101 through 105
19 that we're talking about and that --- that we're debating
20 about. I would just point back about 401 and 403 refer
21 back to my motion in limine and this Court's ruling as
22 well. I just think the proffer's improper and
23 unnecessary. Thank you, Your Honor.

24 THE COURT: (Unintelligible) very good. Thank you.

25 MR. LESEMAN: Thank you, Your Honor.

1 PROFFER EXAMINATION BEGINS

2 DIRECT EXAMINATION BY MR. LESEMANN

3 BY MR. LESEMANN:

4 Q. Ms. Adelman, did you assist CAMS in responding to a
5 subpoena in this case?

6 A. In this case? What do you mean?

7 Q. So a subpoena for documents was sent to CAMS ---

8 A. Yes.

9 Q. --- yes. And then did you assist in collecting the
10 documents responsive to that subpoena?

11 A. Yes.

12 Q. Okay. I want to show you the documents. Well, actually
13 if you could look (unintelligible)?

14 (Simultaneous speaking)

15 Q. I'm going to take you to Exhibit 59. The set of
16 documents that are CAMS subpoena response 0001 versus 0013.
17 Was this document relating to the Art of Aesthetics Med Spa or
18 is this something that was one the business records of CAMS
19 relating to 1221 Bower?

20 A. Yes.

21 Q. Okay.

22 MR. COBB: Your Honor, I --- I'm --- I'm going to
23 state my objection about the introduction of this
24 evidence in terms of this report. It's directly tied to
25 (unintelligible) water intrusion and ---

1 (Simultaneous speaking)

2 THE COURT: So ---

3 UNIDENTIFIED SPEAKER: (Unintelligible).

4 THE COURT: Certainly. There will be a running
5 objection during this proffer, certainly. So you don't
6 have to do ---

7 MR. COBB: Yeah.

8 THE COURT: We'll run the objection through.

9 MR. COBB: (Unintelligible).

10 THE COURT: Just a proffer. All right.

11 BY MR. LESEMANN:

12 Q. So again and CAMS keeps business records on the various
13 community associations that it manages?

14 A. Yes.

15 Q. Like the Bower Commons?

16 A. Yes.

17 Q. All right. And so this document was included within
18 those records?

19 A. Yes.

20 Q. And it's something that you --- that CAMS keeps in their
21 regular --- regularly scheduled course of its business?

22 A. Yes.

23 MR. LESEMANN: All right. Thank you. Your Honor,
24 for identification purposes and as part of the proffer
25 relating to evidence of subsequent leaks and other issues

1 with the building, we would ask that Exhibit 59 be marked
2 for identification purposes.

3 THE COURT: And so Mr. Cobb, understanding that you
4 have a running objection, is there an additional
5 objection to this particular piece of evidence?

6 MR. COBB: It's the same. It's ---

7 (Simultaneous speaking)

8 THE COURT: All right.

9 MR. COBB: --- I can't imagine, you know, unless
10 a --- the only objection I'll bring up is if I object to
11 a way a question's asked. But other than that ---

12 THE COURT: All right.

13 MR. COBB: --- as far as my objection ---

14 THE COURT: Yes, it will continue to run.

15 MR. COBB: Thank you for asking though, Your Honor.

16 THE COURT: Yes, sir. All right. So we will admit
17 for identification purposes.

18 (Plaintiff's Exhibit 59 marked and entered)

19 BY MR. LESEMANN:

20 Q. Could you turn to the document that's behind tab 61,
21 Exhibit 61.

22 A. Where it states 1221 Bower Parkway ---

23 Q. Yes, Suite ---

24 A. --- Suite 105?

25 Q. Yes, Suite 105 damages?

1 A. Yes, sir.

2 Q. Okay. Is this document marked CAMS subpoena response
3 0071 a business record that was kept by CAMS (technical
4 difficulty) business activities with Bower Commons?

5 A. Yes.

6 MR. LESEMANN: Your Honor, I would move for
7 identification purposes Exhibit 61.

8 THE COURT: All right. So we'll admit for
9 identification purposes as 61.

10 (Plaintiff's Exhibit 61 marked and entered)

11 BY MR. LESEMANN:

12 Q. Now Ms. Adelman, I know that you mentioned that you
13 aren't the sort of person directly for Bower Commons anymore;
14 is that correct?

15 A. Yes.

16 Q. But there is someone who is under your supervision who
17 is?

18 A. Yes.

19 Q. Okay. And what is her --- or his name?

20 A. Nicole Google.

21 Q. And so is that the Nicole Google that is being referred
22 to in --- in the e-mail that's marked as --- for
23 identification purposes as Exhibit 61?

24 A. Yes.

25 Q. Okay. Are you aware seeing that you had a supervisory

1 role of a significant event with the sprinkler system in this
2 building at Bower Commons where the former IOA space is
3 located?

4 A. Yes, she made me aware of the situation.

5 Q. Okay. Was there a major flooding event due to the
6 sprinkler system bursting?

7 A. Yes.

8 Q. And how long did that take to resolve?

9 A. I'm not really sure to be honest with you. I know
10 it took some time, but I'm not sure how long it took.

11 Q. Okay. And is Ms. Chapman e-mailing CAMS relating to
12 repairs that they did in --- in following that flooding event?

13 A. Yes.

14 Q. And do you see where it says at that time --- at that
15 time he assured us?

16 A. Yes.

17 Q. Okay. And so if we go to the sentence above, do you see
18 where it says AJ Leone, owner and landlord?

19 A. Yes.

20 Q. All right. And does that to your understanding refer to
21 Mr. Leone who is sitting here in the courtroom with us?

22 A. Yes.

23 Q. Okay. And does Ms. Olas indicate that Mr. Leone assured
24 us in front of his property manager that floors and walls
25 would be put back as --- at --- as was at his cost?

1 A. Yes.

2 Q. And do you see where she then says as of January 2020,
3 2023, he tells us we are SOL ---

4 A. He ---

5 Q. --- his words?

6 A. Yes.

7 Q. And since the jury's not here, I can maybe ask you
8 without being embarrassed, what's your general understanding
9 of if someone is being told they're SOL, what does that mean?

10 A. They're shit out of luck.

11 Q. And so are you aware of Mr. Leone telling the tenant of
12 Suite 105 that they were SOL?

13 MR. COBB: Objection. Hearsay.

14 MR. LESEMANN: I just asked if she was aware. It
15 would be an admission by --- statement by party opponent.

16 MR. COBB: Same objection, Your Honor.

17 THE COURT: All right. All right. I'll overrule.
18 Go ahead.

19 THE WITNESS: No, I've never heard him talking to a
20 homeowner like that before.

21 BY MR. LESEMANN:

22 Q. Okay. Are you aware of the situation where the ---
23 the --- the tenant in 105 incurred damages (unintelligible)
24 have a dispute with Mr. Leone about who was going to pay for
25 them?

1 A. No.

2 Q. Are you aware about the dispute with Jessica Colby?

3 A. No.

4 Q. Okay. Do you --- do you know if her unit --- she was
5 renting part of 104, was Shade --- Strand and Shade, does that
6 help --- Strand and Shades, a hair salon that she was --- she
7 was operating?

8 A. No. Nikki kept me informed of what was going on,
9 but not into the details as I trusted her to (inaudible).

10 Q. Are you aware that this sprinkler event would have
11 affected the usability and marketability of some of these
12 suites, 104, 105, for months at a time after they had been
13 flooded?

14 A. No. I knew it was going to take some time to get
15 them repaired, but I didn't think it was would affect
16 their marketability.

17 Q. Okay. How many units were affected by the sprinkler
18 system failure?

19 A. I do not know. I know it was several, but I don't
20 know the number.

21 Q. You mentioned that the leak was resolved in the --- what
22 we were talking about before. Did further in 2021 --- did
23 more leaks like in February of 2021, did more leaks occur in
24 the space that was previously occupied by IOA?

25 A. I am not aware of any other leaks that occurred in

1 that unit from IOA, until --- or IOA until I went on
2 maternity leave. I don't remember any other ones.

3 Q. Okay. And so as we're sitting here today from January of
4 2021 through the present, are you aware of further water
5 intrusion issues other than the sprinkler system failure that
6 we already discussed?

7 A. No, sir. If they're minor leaks our manager takes
8 care of things. So we only know about the big intrusive
9 items that we need to help oversee.

10 Q. Okay. Could you turn to Exhibit 62. And before we talk
11 about Exhibit 62, are you aware whether Jessica Colby was
12 extremely dissatisfied with her interactions with Mr. Leone as
13 the member of 1221 park --- Bower Parkway, relating to how her
14 tenancy was handled?

15 A. No, as I was not her contact.

16 Q. All right. So Exhibit 62, do you see that text string?

17 A. Yes.

18 Q. Is this a set of documents that was assembled in response
19 to a subpoena by CAMS?

20 A. I think Nikki would have gotten this together on her
21 end.

22 Q. Okay. And so are text messages --- are those one of the
23 ways that keep in communication with association presidents
24 and --- and clients?

25 A. Yes. E-mails, text messages, or phone calls.

1 Q. Does CAMS tend to keep those text messages available so
2 that if they need to be referred at a later time?

3 A. Yes.

4 Q. And is that how these text messages came to be in the
5 possession of CAMS?

6 A. I would believe so as Nikki seems to have presented
7 it.

8 MR. LESEMANN: Your Honor, I would move for
9 admission of Exhibit 62 as a --- as a --- as a business
10 record.

11 THE COURT: All right. I'll allow.

12 (Plaintiff's Exhibit 62 marked and entered)

13 BY MR. LESEMANN:

14 Q. Could you turn to Exhibit 52.

15 MR. COBB: Sorry, Your Honor. He --- he had said he
16 put that in as a business record, correct? Can my
17 objection be standing even though he submitted it as a
18 record rather --- regular ---

19 THE COURT: Yes. I --- I'm --- I was running --- my
20 assumption was that you were objecting to everything that
21 was entered in ---

22 MR. COBB: Yes, Your Honor.

23 THE COURT: --- as well as the entire proffer? And
24 so I'm going to run it through the entire, unless you
25 have a different objection I will run that objection.

1 MR. COBB: I just know he submitted it has a
2 business record, versus a --- a exhibit. That's ---

3 (Simultaneous speaking)

4 MR. COBB: I ask that question.

5 THE COURT: Certainly. All right.

6 MR. LESEMANN: All right. Objecting to anything
7 everything?

8 BY MR. LESEMANN:

9 Q. Ms. Adelman, are we at Exhibit 52?

10 A. Yes.

11 Q. Do you see a reference to a 1221 Bower parkway Unit 101?

12 A. Yes.

13 Q. Okay. And we're looking at a leak in the ceiling of Unit
14 101?

15 A. Yes.

16 Q. All right. Are these business records relating to a leak
17 in the ceiling of Unit 101?

18 A. Yes.

19 Q. All right. And these are kept by CAMS in the regular
20 course of the its business activity relating to its activities
21 on behalf of Bower Commons?

22 A. Yes.

23 MR. LESEMANN: Your Honor, I would move for
24 admission of Exhibit 52.

25 THE COURT: All right. So moved.

1 (Plaintiff's Exhibit 52 marked and entered)

2 BY MR. LESEMANN:

3 Q. And so Ms. Adelman, this leak into Unit 101, is this ---
4 when did you first become aware --- is this the November ---
5 or what --- what --- at what --- what leak is this? Is this a
6 new one that arose in February of 2021?

7 A. I honestly don't remember this leak. But I would
8 assume it's a new one. Also at this time I was training
9 Nikki to help me alongside to take over once I left for
10 maternity leave. So she could have very well been
11 handling this for me. We split tasks to help her learn
12 how to do things. But I really don't have any memory of
13 this leak.

14 Q. Okay. And so there may have been others and at ---
15 at --- at what point would you say that Nikki took over the
16 responsibility for Bower Commons?

17 A. Fully took over without me there was the end of
18 June. Took over while I was there overseeing to make
19 sure she was doing things correctly would be May --- end
20 of May.

21 Q. And so you may not have been aware of it, but it appears
22 from the business records of Bower Commons Co-owners
23 Association that there are additional leaks into ---
24 additional toilet leaks into the former IOA space in February
25 of 2021?

1 A. Yes, I do see that. And it shows on the second page
2 where Nikki was the one that oversaw it --- I'm sorry.
3 That was September.

4 Q. Oh, I see. Per Nikki. All right. And then yeah, could
5 you --- there's a --- a second cut sheet --- and so do you
6 understand --- oh, this is Unit 102. So would this be a
7 different situation with a leaking pipe in the ceiling?

8 A. Yes.

9 Q. Okay. And in this in the same location generally as
10 where Mr. Berry's office was located to your understanding?

11 A. Yes. A lot of times what would happen is --- is we
12 would get calls about leaks because there was a stain on
13 the roof that was brown. As you can see here from the
14 notes, it states: Cut sheetrock and everything was dry,
15 no leaks found at this time. It would be found to be an
16 old leak and there wasn't one there.

17 So when we would get calls because we would see a
18 wet spot on the ceiling, doesn't necessarily mean there
19 was an active leak. We would call someone out to
20 investigate it, it do our due diligence to make sure that
21 there was not a leak there at that time. And it was an
22 old brown spot, which is why the same scenario happened
23 when this whole crazy leak happened to begin with ---

24 Q. Uh-huh.

25 A. --- with the brown spot in the ceiling.

1 Q. Yeah. A brown spot. So can you turn to Exhibit 60.

2 A. Yes, sir.

3 Q. Do you understand that Kenneth Shuler School of
4 Cosmetology became a subsequent tenant in some of the units
5 that IOA had formerly occupied?

6 A. Yes. They did right before I went on maternity
7 leave.

8 Q. And are you aware of a leak within the units that were
9 rented by Kenneth Shuler?

10 A. No, sir. But at this time, Nikki was pretty much
11 taking the reins and I was just there if she had
12 questions.

13 Q. You see at the bottom of the document where it indicates
14 this is part of the CAMS subpoena response?

15 A. Yes, I do.

16 Q. All right. So this document that's been marked for
17 identification purposes as Exhibit 60 would be within the
18 records of CAMS as it relates to its business activities
19 overseeing the association and assisting with the property
20 management activities relating to Bower Commons?

21 A. Yes.

22 MR. COBB: Your Honor, we'll --- we'll agree that
23 everything that's came from CAMS production meets that
24 qualification so it doesn't have to be asked again.

25 THE COURT: All right.

1 MR. LESEMANN: Thank you. Your Honor, we'd move
2 that Exhibit 60 be marked for identification purposes as
3 part of our proffer.

4 THE COURT: All right. So moved for identification.
5 (Plaintiff's Exhibit 60 marked)

6 MR. COBB: Your Honor, by the way. Just to be
7 clear, my --- my concession does not in any way offset my
8 recurring objection. Thank you. Running objection.
9 Thank you, Your Honor.

10 MR. LESEMANN: Okay. Your Honor, I believe that
11 that would be the --- well, hold on.

12 BY MR. LESEMANN:

13 Q. Did --- did you ever inspect the conditions within the
14 Strand and Shade unit after the sprinkler system failure?

15 A. I did not, but that would be my manager who would
16 oversee that.

17 MR. LESEMANN: Okay. Your Honor, that would
18 conclude our inten --- intended proffer of some of the
19 evidence of subsequent leak events in the lease premises.

20 THE COURT: All right. Any cross for this witness?

21 MR. COBB: Your Honor ---

22 THE COURT: This witness or proffer.

23 MR. COBB: Really just one thing.

24 PROFFER CROSS-EXAMINATION

25 BY MR. COBB:

1 Q. Angela, your experience with 1221 Bower started in 2019,
2 correct?

3 A. Yes.

4 Q. And that was when Insurance Office of America's affiliate
5 owned the property?

6 A. Yes.

7 Q. Right? And then your affiliation continued while after
8 my client, 1221 Bower, bought those five units, correct?

9 A. Yes.

10 Q. And Insurance Office of America was continuing to be a
11 tenant in that property, correct?

12 A. Yes.

13 Q. And then you continued own as condo association manager
14 for, you know, for this property after Insurance Office of
15 America left the premises 12/15 of 2020, correct?

16 A. Yes.

17 Q. So there --- there were water leaks in these units before
18 my client bought the property?

19 A. Yes.

20 Q. And there were water leaks in this unit while Insurance
21 Office of America was the tenant to my client in the property?

22 A. Yes.

23 Q. And there were water leaks in this --- this --- these
24 units after Insurance Office of America left the property?

25 A. Yes.

1 Q. And is that unusual for gravity and to have a building
2 have water intrusions that this condo set up this way?

3 A. No, condos are known for leaks.

4 Q. All right. And that's your personal experience as --- as
5 a property --- as I --- and I apologize, I've been saying
6 property manager. I want to correct it, community association
7 manager?

8 A. Yes.

9 MR. COBB: Thank you. No further questions, Your
10 Honor.

11 THE COURT: All right. Any ---

12 MR. LESEMANN: No, Your Honor. Thank you for your
13 patience and for allowing us to do that into the evening
14 and to (unintelligible).

15 THE COURT: Thank you all. Ms. --- Ms. Adelman ---
16 Adelman ---

17 THE WITNESS: It's okay. It's all right.

18 THE COURT: Ms. Adelman, you're excused from the
19 bench. Please watch your step.

20 All right gentleman. So we will adjourn for the
21 evening. I --- I will try to be up here at 9:30 on the
22 dot. I think I can do it. I made arrangements for that.

23 MR. LESEMANN: We know you're juggling, thank you,
24 Your Honor.

25 THE COURT: And so we'll start tomorrow morning at

Proffer direct exam Adelman

1 9:30 bright and early. All right.

2 (OFF THE RECORD AT 6:03 P.M.)

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CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 11 for LEXINGTON COUNTY, South Carolina, on the 24th Day of January, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 7, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a large initial 'J' and a period at the end.

Jeanne Meldrim

Transcriber

1 STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 11
2 COUNTY OF LEXINGTON) DOCKET NO. 2020-CP-32-04007
3
4

5 Insurance Office of America Inc.,)
6 Plaintiff,)
7 versus)
8)
9 221 Bower LLC,)
10 Defendant.)
11

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14 H E A R I N G
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18

19 DATE: January 25, 2024
20 TIME: 9:44 a.m. - 5:49 p.m.
21 LOCATION: South Carolina Circuit Court 11
22 JUDGE: Courtney C. Pope
23 TRANSCRIBED BY: Jeanne Meldrim

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PLAINTIFF'S EXHIBITS

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14	E-mail	35	
16	E-mails	43	

PLAINTIFF'S PROFFER EXHIBITS

Number	Description	Marked	Entered
70	Document	8	

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DEFENDANT'S EXHIBITS

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102	E-mail	126	126
103	E-mail	135	135
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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Proceedings

1 THE COURT: All right. Thank you to all parties for
2 the jury charges.

3 MR. LESEMANN: Your Honor, if I may.

4 THE COURT: Yes.

5 MR. LESEMANN: Mr. Cobb and I have conferred and
6 will have some revisions. We've come up with some
7 agreements on those. And so we'd be able to over the
8 course of the next witness be working on a computer to
9 get you an updated version. I think we're close if
10 not ---

11 MR. COBB: We're right at the one-yard line, Your
12 Honor. We --- we got one --- one issue that I need to
13 process a little bit before ---

14 THE COURT: Sure.

15 MR. COBB: --- and talk to and I'd rather do that
16 with Ellis first and not waste your time, Your Honor.

17 THE COURT: Okay.

18 MR. LESEMANN: So we'll get you a slimmed-down
19 version. And I think that we've got some agree --- yeah,
20 again, close to agreement maybe just one or two issues to
21 be looked at.

22 THE COURT: Very good. Very good. Thank you.

23 MR. LESEMANN: Thank you, Your Honor.

24 THE COURT: I appreciate the working together to
25 edit that down for the Court.

1 (Simultaneous speaking)

2 MR. LESEMANN: One other matter from the plaintiff.
3 Your Honor, as you recall, you made a ruling that the ---
4 that you felt like that the testimony of Jessica Colby
5 that would be unfairly prejudicial, and so you made the
6 decision to exclude that evidence. We would just like as
7 a matter of a proffer we've had some designations from
8 her deposition that we just would propose. And I think
9 that in the interest of time presenting those rather than
10 putting a witness on the stand to read it into the
11 record ---

12 THE COURT: Okay.

13 MR. LESEMANN: I've given Mr. Cobb a copy of that.
14 We can give it to the Court.

15 THE COURT: All right.

16 MR. LESEMANN: Again, we're not, you know, asking
17 you to at this time reconsider the ruling but again, this
18 is excerpts from her deposition testimony. It doesn't
19 include the slumlord, doesn't include the sort of things
20 that, Your Honor, I believe heard and --- and may have
21 had concern about. Again, this was a part of our
22 proposal that certain parts of her testimony that might
23 be prejudicial could be excluded, but then others would
24 be allowed. And so we just want to present that ---

25 THE COURT: --- all right ---

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1 (Simultaneous speaking)

2 THE COURT: All right. Very good. Any objection
3 from you, Mr. Cobb?

4 MR. COBB: Your Honor, I would just raise the same
5 objection. I appreciate that the procedural --- proper
6 thing to do is to proffer. I just object to the --- just
7 re --- I stand by my prior observation and my motion in
8 limine, and I embrace the Court's ruling on this matter.

9 THE COURT: All right. Very good. Thank you,
10 gentleman.

11 Mr. Lesemann, you made this a part of the Court
12 record?

13 MR. LESEMAN: Certainly. Which should be proffered
14 as an exhibit.

15 THE COURT: Okay.

16 MR. COBB: Your Honor, can I --- can I ask an
17 administrative question?

18 THE COURT: Yes.

19 MR. COBB: When an exhibit or something is
20 proffered, it --- it --- it's --- does Ms. Melinda just
21 keep it separate and so the jury --- we make sure the
22 jury doesn't get that when it goes back for
23 deliberations?

24 THE COURT: Yes, it will be separated.

25 MR. COBB: All right.

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1 THE COURT: We --- we --- and in fact, if you ---
2 we'll make a note to make sure that this exhibit, because
3 it's just proffer does not go in.

4 MR. COBB: Thank you.

5 THE COURT: I believe it's designated differently.
6 Yes, it --- it's designated differently.

7 MR. COBB: Okay. Thank you, Your Honor.

8 MR. LESEMANN: And so this will be designated to my
9 (unintelligible) for ID purposes (unintelligible) so we
10 just put (unintelligible) designated as 7 ---
11 (unintelligible) 69, correct? All right. 70
12 (unintelligible) marked for identification purposes
13 proffer. Ms. Colby's testimony.

14 THE COURT: Thank you, Mr. Lesemann.

15 MR. LESEMANN: Thank you. And again, Your Honor, we
16 just believe that this evidence would be relevant as to
17 habit and character relating to the defendant and its
18 relationships with the tenants.

19 THE COURT: All right. Very good, sir. Thank you.

20 (Simultaneous speaking)

21 THE COURT: Mr. Cobb.

22 MR. COBB: Same objection, Your Honor.

23 THE COURT: All right. Duly noted for the record.

24 (Plaintiff's Proffer Exhibit 70 marked)

25 THE COURT: Any other matters to handle prior to

1 bringing the jury in?

2 MR. COBB: Your Honor, just one. Your Honor, you
3 have yet to rule on a witness Rob Lapin --- Lapin ---
4 Lapin, excuse me. You had held that out to see what was
5 going to happen with Mr. Shauer. I did speak to Mr.
6 Lapin last night. His availability is not --- he will
7 not be available to testify until first thing tomorrow
8 morning.

9 THE COURT: Okay.

10 MR. COBB: I'm not sure how we're going. I just
11 want to make the Court aware of that ---

12 THE COURT: Thank you.

13 MR. COBB: --- in the event, you know, where we wind
14 up today.

15 THE COURT: All right. And I understand that there
16 is a --- a --- there will be a challenge to Mr. --- Mr.
17 Shauer --- Shauer as their expert; is that correct?

18 MR. COBB: That's correct, Your Honor.

19 THE COURT: Okay. All right. All right. I --- I
20 will --- what I want to do obviously is to determine
21 whether or not Mr. Shauer, you know, we'll have him up
22 and you obviously will ask him the questions that you
23 want to ask him in terms of his credibility. And then
24 I'll make a decision after hearing what he has to say.
25 And then at that point, I will make a ruling on Mr.

1 Lapin. Okay?

2 MR. COBB: Thank you, Your Honor.

3 THE COURT: Or --- or what I'll do is hear some
4 brief argument about it. And it's got to be brief
5 because we're running out of time.

6 MR. LESEMANN: Your Honor, understood.

7 MR. COBB: Your Honor, I'm --- I'm actually ---
8 I --- I --- I would also --- and I'm more than happy, you
9 know, when the Court wants to hear it, I'm happy to just,
10 follow --- you know, follow my own verbally orally motion
11 to exclude Gerry Shauer. I think I've already done that
12 in my motion in limine, but in the interests of time, I
13 think Gerry Shauer, and Rob Lapin, they're going to cross
14 each other out.

15 THE COURT: Right.

16 MR. COBB: So I think they're moot at the end of the
17 day. I don't think they really move the needle for
18 either side very much. I don't think even --- either
19 side wins or loses, I don't think the Appellate record is
20 going to matter that much either for --- for that reason,
21 Your Honor. So ---

22 MR. LESEMANN: Your Honor, the fact that their
23 testimony would be in conflict would be what happens in
24 every trial. So that would obviously not be a basis to
25 exclude, and --- and they cancel each other out and they

1 may not. That's up for the jury to determine what weight
2 they give to the evidence and who they believe.

3 MR. COBB: Your Honor, we can --- we can explain to
4 the Court what each party will testify to. And the Court
5 has the discretion to exclude these witnesses. I mean,
6 it's --- it's clearly within your purview to do it.
7 And --- and again, just because we know that they're
8 going to disagree and cross each other out, that doesn't
9 necessarily have to go to the jury if the Court deems
10 it's unnecessary based off the pleadings and testimony in
11 front of you today, Your Honor.

12 THE COURT: Well, I'll tell you that I am more
13 inclined to allow the jury to hear testimony from both
14 at --- rather than to exclude unless it is completely
15 unnecessary. I --- I'd like for the jury to hear all the
16 information that they can get if it is not prejudicial,
17 if it is more probative.

18 MR. COBB: Well, Your Honor, the problem though is
19 Mr. Shauer's testimony is about reletting and marketing
20 efforts. The jury wouldn't hear it anyway, it would have
21 to be proffered regardless if he's an expert or not.

22 MR. LESEMANN: That's not true. Now, Your Honor,
23 has not made that ruling.

24 THE COURT: (Unintelligible).

25 MR. COBB: And that the ruling was re ---

1 THE COURT: I think so too.

2 MR. COBB: --- considered and insofar as what you
3 said is that you were going to receive the potential
4 challenge to Mr. Shauer as an expert witness. And, you
5 know, that challenge could be heard outside of the
6 presence of a jury in terms of his qualifications. But,
7 again, we went through this at length on Monday.

8 (Simultaneous speaking)

9 MR. COBB: --- Your Honor ruled that you were not
10 ruling to exclude evidence of the duty to mitigate.

11 MR. LESEMANN: Your Honor, this is --- this is a
12 reargument for now, the third time, of the same
13 motion ---

14 THE COURT: I think Mr. --- I just want to make sure
15 that I'm --- I'm clear on my ruling is that I am allowing
16 Mr. --- Mr. Shauer, if his --- if the challenge to his
17 qualifications, I am allowing that testimony regarding
18 marketing and reletting, but it --- as a rebuttal
19 witness. And that's what they've decided they would use
20 him as. That was what my ruling was. That was the
21 intent of my ruling.

22 MR. COBB: I'm just trying to make sure I
23 understand, because the ruling initially said plaintiff
24 will not be allowed to discuss reletting and marketing
25 efforts after plaintiff left the lease premises. And

1 then we got a clarification e-mail on that, Your Honor.
2 It said plaintiff will be allowed to bring up reletting
3 and marketing efforts for rebuttal purposes only during
4 cross-examination or through a rebuttal witness.

5 I --- I looked at that as the rebuttal would be
6 still be under that --- would --- would still be under
7 that proffer, because you weren't going to allow the jury
8 to hear about reletting and marketing efforts. Again,
9 it's --- that --- that was my understanding.

10 MR. LESEMANN: The ruling was clarified. I think
11 the record's clear on that. Thank you, Your Honor, for
12 spending the amount of time with the issue that you have.

13 THE COURT: Yeah, and --- and Mr. Cobb, I do deeply
14 apologize if that was unclear, because I essentially
15 altered the original ruling with the clarification. And
16 so it's more of a reruling, or more of a changed ruling
17 versus a clarification of that ruling.

18 MR. COBB: All right. I just respectfully then
19 and --- and --- and totally understand, no --- and I am
20 not --- not angry at all. I would just ask for a
21 motion --- I would ask for the Court to reconsider its
22 altered ruling then and go back to its original one
23 because ---

24 (Simultaneous speaking)

25 MR. COBB: --- motion in limine, it's completely

1 outlined as to why that information's unnecessary. And
2 we also are dealing with contractual waiver that ---
3 that, you know, at this point because now we're getting
4 into ---

5 (Simultaneous speaking)

6 MR. COBB: --- contract, it's going be the first
7 time that I think plaintiff is going to now challenge
8 their own contract that they wrote years ago.

9 THE COURT: Well ---

10 (Simultaneous speaking)

11 MR. COBB: (Inaudible).

12 THE COURT: --- certainly. And those things
13 certainly do not mind your motion for reconsider ---
14 consideration, we hear them often. But I certainly did
15 take the motion in limine as you recall we --- we heard
16 several arguments on it and then we went back and did ---
17 did our research. And that was what my decision to alter
18 the ruling was based upon was all of it. And so I am
19 going to deny the --- the motion for reconsideration. I
20 did consider at length. And I've actually reconsidered
21 the --- I've already reconsidered the original ruling.
22 And so in doing that reconsideration took an --- a --- a
23 really deep dive into the issue. And --- and that was my
24 reruling on.

25 MR. COBB: Thank you, Your Honor. Can we --- can

1 we --- can we make sure that it's narrowed to the ---
2 that the ruling is narrowed in terms of --- I --- I --- I
3 don't --- I --- I know --- I know the rule in terms of,
4 you know, given that Mr. Leone will be my client. I know
5 that on cross it's open field. Can we --- can we narrow
6 the reletting and marketing effort to exclude any mention
7 of Jessica Colby, Jessica Colby relationship, or anything
8 of that matter including with Mr. Shauer testifying that
9 he had no personal knowledge or interaction with Jessica
10 Colby at all?

11 (Simultaneous speaking)

12 MR. LESEMANN: So ---

13 THE COURT: Is this testimony ---

14 MR. LESEMANN: Sorry, Your Honor.

15 THE COURT: What I was going to ask is does his
16 testimony even consist of ---

17 MR. COBB: It does. I've got his deposition ---

18 (Simultaneous speaking)

19 THE COURT: All right. Well let me --- let me hear
20 from will Lesemann.

21 MR. LESEMANN: Yeah, I get my --- I get my --- I get
22 my shot now? All right. So Your Honor, obviously Mr.
23 Shauer's testimony was taken before the Court made the
24 ruling about Ms. Colby.

25 THE COURT: Uh-huh.

1 MR. LESEMANN: And I think one of the things that we
2 have to always think about in a civil trial is what does
3 Mr. Leone testify? What does he say? Because he may
4 well open the door to some issues that --- that we feel
5 like were resolved by saying, I take care of all my ---
6 if he says, I take good care of all my tenants, for
7 example. If he tries to say that, well then we've got
8 very significant evidence that he does not take care of
9 his tenants just like he didn't take of ours.

10 So at --- at this point, I think a preliminary
11 ruling before we hear from Mr. Leone and what he's going
12 to say is --- is inappropriate and Your Honor has already
13 fully considered it.

14 And, again, the testimony of Jessica Colby, you
15 know, Mr. Shauer is entitled to rely upon hearsay
16 testimony, but we understand he should not say that ---

17 THE COURT: I'm listening.

18 MR. LESEMANN: --- he should not repeat the
19 testimony that you thought was prejudicial. Mr. Shauer
20 should not say, well, there's some evidence that Mr.
21 Leone is a slumlord and he would not do that. But if it
22 comes to where it is relevant based on the defendant's
23 claim for --- counterclaim for damages, and what they
24 say, that ruling would be premature. Because he may say
25 things that this evidence is --- he may open the door on

1 some things. I think Your Honor --- Your Honor's ruling
2 is clear, the statements by Ms. Colby that Mr. Leone's
3 from up north and has an agenda, or that he is a
4 slumlord, Your Honor's been clear, you feel like those
5 are prejudicial, those aren't coming in. But the idea
6 that you would at this point before we even know what
7 this --- what this gentleman is going to try to claim
8 would be --- would be premature because, again, he could
9 tie everyone ---

10 THE COURT: Well, I'll tell you that we did take ---
11 we --- we had some --- we had those discussions in making
12 our determination. So what I'm going to do is I'm going
13 to allow Mr. --- Mr. Leone to testify. And if I --- I
14 will allow you to then make that motion to limit ---

15 MR. COBB: Mr. Shauer.

16 THE COURT: No, I'm going to let Mr. Leone ---

17 MR. COBB: My client?

18 THE COURT: Yes. I'm going --- he's ---

19 MR. COBB: I'm going to call my client on the stand
20 when I'm doing my case-in-chief.

21 THE COURT: Right. When is Mr. Shauer testifying?

22 MR. LESEMANN: (Unintelligible) Your Honor, as he
23 indicated as a rebuttal witness.

24 THE COURT: Right.

25 MR. LESEMANN: In response to his --- they need to

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1 put up their alleged claim for damages so that we can
2 rebut it.

3 THE COURT: Yeah, okay. I just wanted to make sure
4 I was clear on --- okay.

5 MR. COBB: Mr. Shauer doesn't have any direct
6 experience or knowledge with any of the tenants ---

7 (Simultaneous speaking)

8 MR. LESEMANN: Your --- your --- Your Honor ---

9 THE COURT: Well, so I'll hear --- I'll hear ---

10 MR. COBB: --- never --- would never have that.
11 Expert witnesses never ---

12 THE COURT: Yeah.

13 (Simultaneous speaking)

14 MR. COBB: (Unintelligible).

15 THE COURT: They do and I'm going to allow him to
16 testify. Because he testifies first?

17 MR. LESEMANN: Oh, as a rebuttal witness? Mr. Leone
18 testifies first ---

19 THE COURT: Right.

20 MR. LESEMANN: --- bring in ---

21 (Simultaneous speaking)

22 THE COURT: Okay. I'm just making sure I'm clear
23 on --- okay. All right.

24 MR. COBB: Now I know where you're going ---

25 (Simultaneous speaking)

1 THE COURT: Okay. Right. And so --- so --- and so
2 we're going to allow him to testify first, and then I'm
3 going to let you make your motion. I'm not opposed to
4 you making your motions and your arguments at that point.
5 And so I'll hear from you then. But reserve that ---
6 that motion --- that argument --- that motion for --- for
7 that point. I think it's proper then if you still wish
8 to make it. Okay?

9 MR. COBB: Yes, Your Honor.

10 THE COURT: All right. All right. Any --- anything
11 else, gentleman?

12 MR. LESEMANN: Your Honor, thank you. There's ---
13 there's ---

14 THE COURT: Y'all want some candy before the jury
15 comes in? We got ---

16 (Simultaneous speaking)

17 MR. COBB: --- too well before we had to show you we
18 had ---

19 (Simultaneous speaking)

20 THE COURT: We'll sweeten it up here a little bit.

21 MR. LESEMANN: That's --- that is nice. We need ---
22 we need a --- well, thank you, Your Honor. There's
23 nothing further from ---

24 THE COURT: All right.

25 MR. LESEMANN: --- the plaintiff. We would be

1 prepared for the jury and to call our next witness.

2 THE COURT: Thank you, sir. And you, Mr. Cobb?
3 Anything further?

4 MR. COBB: I'm sorry, Your Honor?

5 THE COURT: Anything further before I bring the jury
6 in?

7 MR. COBB: No, Your Honor.

8 THE COURT: Okay. All right. And so where we are
9 now is ten after. Plaintiff direct of Crissy? All
10 right. And so we'll have Ms. Warner to --- to come ---
11 is she already (inaudible)? Oh, okay. All right. All
12 right. Very good. So we'll bring the jury in and then
13 we'll allow plaintiff to call their witness.

14 (Jury enters courtroom)

15 THE COURT: Please be seated. Good morning, ladies
16 and gentlemen. Thank you all for being here today. We
17 are going to continue with the trial. We'll allow the
18 plaintiff to call their witness. Thank you, Your Honor.
19 At this time, plaintiff would call Crissy Warner.

20 (Witness sworn)

21 CRISSY WARNER, HAVING BEEN DULY SWORN, TESTIFIED AS
22 FOLLOWS.

23 THE WITNESS: I am Crissy Warner, W-A-R-N-E-R.

24 DIRECT EXAMINATION

25 BY MR. JOYCE:

1 Q. Good morning, Crissy.

2 A. Good morning.

3 Q. Could you tell the jury a little bit about yourself?

4 A. Yes. I live in Gaston, South Carolina. I have
5 lived in the Lexington County area since 1986. At the
6 age of 18, I packed my bags and left West Virginia for
7 warmer weather, and I've been here ever since.

8 I worked in the insurance industry since 1998. I've
9 worked in all levels from service, to management, to
10 project management, you know, anything in between.

11 And at the time of this case was taking place I was
12 the branch manager for Columbia and Charleston. And I
13 now am the regional director for South Carolina.

14 Q. Okay. So what --- what did you do as the --- the branch
15 manager?

16 A. Branch manager was --- number one is taking care of
17 the staff, making sure everything's in place for what's
18 needed and that they're doing the job that they should do
19 for servicing our clients. Beyond that basically is
20 responsibilities of keeping the office up and running.

21 Q. Okay. Were you involved in coordinating building issues
22 with Angela --- Ms. Adelman?

23 A. Yeah. There --- there wasn't a lot. I just started
24 with IOA August of 2019, so I didn't --- wasn't there
25 when IOA Properties owned the building and --- and went

1 through prior issues. So the first incident that I dealt
2 with, yes, I think it was actually the lady at our front
3 desk said well, you want me to call Angela about that?
4 And I said well, who's Angela? And she said well, that's
5 our contact person when we have issues in the building.
6 I said okay. I said give me her number and --- and I'll
7 call her.

8 Q. So she was your source of communication?

9 A. Yes.

10 Q. So you mentioned you're the --- the regional director
11 now; is that right?

12 A. Correct.

13 Q. So that --- how did your position change?

14 A. In regards to my duties?

15 Q. Yeah. More responsibilities, I assume?

16 A. Yeah, you know, same responsibilities really, but
17 added on being responsible for the financials for South
18 Carolina, making sure we're staying in within budget,
19 keeping payroll at the level it's supposed to and
20 managing that, and balancing the staff that we have on
21 hand to service the clients. We're continuing to grow,
22 so it's a constant --- constant battle to keep the staff
23 in place.

24 Q. Gotcha. Okay. So you started in August of 2019?

25 A. Correct.

1 Q. And approximately how many employees were working for IOA
2 in Columbia?

3 A. In the Columbia office, we had, I think it was 23
4 people at that time.

5 Q. Okay. So we've heard from Rob, we've heard --- heard
6 from Scott, COVID came along in --- in March. We know that,
7 you know, things went remote.

8 A. Yes.

9 Q. So after things went remote, when did employees start
10 coming back into the office?

11 A. It was in June of that year. IOA carefully measured
12 what was going on with Federal regulations and State
13 regulations, and made the determination in June that we
14 could come back. And this is across the footprint, not
15 just South Carolina. But we could come back at
16 25 percent staff at that time.

17 Q. Okay. And then that increased over time?

18 A. It did. The following month we were to elevate to
19 50 percent, so at that time we added three additional
20 people.

21 Q. Okay. So starting in July, going forward, approximately
22 how many folks were working in the office?

23 A. In July, we had seven people.

24 Q. Okay. And ---

25 A. And that --- I'm sorry, then that doesn't

1 include --- I'm talking about my service team members.
2 So that does not include Scott Berry and the other
3 salespeople who --- they never had the restrictions that
4 we had. So they ---

5 Q. Oh, okay.

6 A. --- could come and go as they wanted during that
7 time ---

8 Q. So ---

9 A. --- to make use ---

10 (Simultaneous speaking)

11 Q. --- folks in the office, and then you'd have others
12 coming and going?

13 A. Correct.

14 Q. Throughout the week?

15 A. Correct.

16 Q. So were you in the office on almost a daily basis?

17 A. Yes, sir.

18 Q. From July forward? All right. So the jury's heard a lot
19 about the --- the leaks in this building. After you started
20 in 2019, do you recall some of the leaks that --- that
21 happened?

22 A. Yeah, I think the first one that I dealt with was in
23 Rob Motley's office. He testified he's now president of
24 IOA. At the time he was regional, but there was water
25 coming in through his ceiling at the --- it started with,

1 you know, just a stain. Like everything else and it
2 gradually increased and I was told at that time that it
3 had leaked before, that it was suspected to come from the
4 balcony above, which I think they had put new tiles in
5 thinking that they were (unintelligible) the tiles, but
6 it had come back.

7 Q. Okay. So this would have been some kind of exterior
8 source ---

9 A. Correct.

10 Q. --- rainwater or something like that?

11 A. Correct.

12 Q. Okay. So did you all actually have to pull a --- a trash
13 can in at one point?

14 A. We did. I remember pulling it ---

15 Q. His office ---

16 A. --- and thinking Rob's going to love this. It
17 looked really attractive in the office.

18 Q. And that was --- that was to catch the --- the leaks ---

19 A. Correct.

20 Q. --- dripping in?

21 A. Yeah, just to protect the carpeting. And so we got
22 water from outside. There's also toilet leaks, water
23 coming from inside up --- up above too. You know, that
24 happened later. It was early December. I remember that
25 incident because we --- we did a lot of fun things in the

1 Columbia office. They're like truly in however many
2 years --- I don't want to say how many years I've been
3 working, show how old I am --- but great team. I mean
4 I've never worked with people that got along better than
5 we did. So we had a lot of fun and we did a lot of
6 holiday events. So we had decided to decorate our
7 cubicles for Christmas and have a competition. So we had
8 all got that down at the end of the week and over the
9 weekend.

10 And we came in, Lynn Branham, she was one of my
11 employees in the back cubicle. And we came in and she
12 was sitting at her desk working that morning, and it
13 dripped straight down onto her head. And she was not a
14 happy person.

15 Q. So this was --- this was toilet water?

16 A. This was from above, yeah.

17 Q. Okay.

18 A. We weren't sure at the time what it was. I told
19 her, I said, let's assume it's a washing machine or
20 something. You know, it's not a toilet, you know,
21 just to kind calm her down. But it did ultimately end up
22 being determined as a toilet leak.

23 Q. And this is the toilet leak that took about three months
24 for landlord to fix?

25 A. Yes.

1 MR. COBB: Objection, Your Honor.

2 Mischaracterization.

3 MR. JOYCE: I think that's established that it took
4 about three months to fix ---

5 THE COURT: All right.

6 MR. COBB: He --- he's misleading, Your Honor. He's
7 saying the landlord (unintelligible). It was a unit
8 upstairs that wasn't the landlord's ---

9 (Simultaneous speaking)

10 THE COURT: All right. All right. We'll
11 sustain --- I'm going to sustain it and we'll just move
12 on to the next question.

13 BY MR. JOYCE:

14 Q. Did it take approximately --- I guess three months for,
15 you know, maybe Mr. President of the co-owners association
16 if --- if --- if he's not the landlord in this case, maybe
17 that hat; did it take about three months to get fixed?

18 A. It did. Yes.

19 Q. And this was --- this was Ms. Hanna. She was a --- a
20 residential tenant upstairs?

21 A. Correct.

22 Q. And it was confirmed that it was toilet water?

23 A. (Inaudible).

24 Q. So IOA occupied four units, correct?

25 A. Correct.

1 Q. Okay. So we have that there was leaks coming in 101?

2 A. Uh-huh.

3 Q. We know there's leaks coming in 102 and 103?

4 A. Uh-huh.

5 Q. Were there any leak issues with 104?

6 A. I don't remember anything being active. There were
7 some stained tiles on the ceiling in that area, but
8 honestly very seldom ever went over to 104, because it
9 was used for storage.

10 Q. Okay. So we've got three out of the four units that IOA
11 occupied had active leaks just from when you started?

12 A. Correct.

13 Q. And then the other one looked like it had leak issues
14 too?

15 A. Oh, yeah. Based on the ceiling tiles, yes.

16 Q. Okay. So jury's heard a lot about this, but when ---
17 when these issues would pop up, who would you contact?

18 A. Angela.

19 Q. Okay. And Angela worked for CAMS; is that correct?

20 A. Correct. Yeah, I was told she was --- like I
21 said --- the front desk lady I'd worked with her years
22 prior, so that was awesome to reconnect with her --- but
23 she told me, you know, who Angela was, and that she was
24 the property manager and that's who we went to.

25 So my first introduction to Angela, I think was over

1 light bulbs. I had reached out to her to say hey, who do
2 you call --- who --- you know, what do we do? And she
3 said well, that's an IOA responsibility, but I can tell
4 you who you need to contact, or who we've used in the
5 past, so she gave me the guy's name that did that. And
6 that happened on a couple of occasions as things would
7 pop up.

8 Q. Uh-huh.

9 A. I'd reach out and she would inform me whether that
10 was an IOA issue or a --- or landlord CAMS issue. And I
11 would just take care of it if it was an IOA issue.

12 Q. And that's just how it was always handled?

13 A. Correct.

14 Q. You were --- you've been sitting in the courtroom all
15 week?

16 A. Yes.

17 Q. And she talked yesterday about the --- the two different
18 hats that Mr. Leone wears, the landlord hat, but he's also the
19 president of the co-owners association?

20 A. Yes, sir.

21 Q. So when you reached out --- and --- and she was aware you
22 were a tenant, obviously --- IOA's the tenant?

23 A. (Inaudible).

24 Q. When you reached out to her, did she ever tell you to
25 contact the landlord?

1 A. No, sir. I'd --- I'd never heard AJ's name and I
2 can't tell you where we are --- were in this process.
3 Where she --- I had called her about one of the leaks or
4 whatever, and she said --- this was during this four and
5 a half months that we're discussing. She said I'll let
6 AJ know. And I said well, who's AJ?

7 Q. Okay.

8 A. I --- I had never heard his name.

9 Q. So as of August 2020, I think he had purchased the
10 building in --- in August of 2019. You --- you had never even
11 heard of his name?

12 A. Right. At that time, I wasn't --- you know, I had
13 just started as well and I wasn't even aware of the
14 change in ownership or anything at that time.

15 Q. Okay. Do you know if he ever called anyone to ask about
16 issues with the building? Or did he ever call you?

17 A. No.

18 Q. After you all dealt with the leak for three months from
19 Ms. Hanna's unit and toilet water was coming down into the
20 unit, do you know if he --- did he reach out to you at all
21 just as the branch manager?

22 A. No, sir.

23 Q. And you're --- you're aware --- familiar with how much
24 rent IOA --- IOA was paying, correct?

25 A. Yes. I wasn't at the time, but I learned through

1 the process.

2 Q. It's north of \$15,000 a month, right?

3 A. Correct.

4 Q. And after the --- or during the Barbara Hanna process,
5 did --- did landlord ever reach out and offer any kind ever
6 rent concession for dealing with that?

7 A. No, sir.

8 Q. So he charged --- charged IOA full rent during that three
9 months?

10 A. Yes, sir.

11 Q. All right. So yesterday the question was asked was Ms.
12 Adelman responsive. Was she responsive?

13 A. Angela was typically responsive. I only had a
14 couple of occasions maybe where there were delayed
15 communications. But I would say there's a difference in
16 being responsive and being productive.

17 Q. What do you mean by that?

18 A. Well, just because you say okay, I --- I'm going to
19 take care of it, that doesn't mean she's it treating with
20 urgency or giving it immediate attention. She's just
21 acknowledging to me that I reached out to her regarding
22 the issue.

23 Q. She's just responding to a text message or an e-mail?

24 A. Correct.

25 Q. Doesn't necessarily mean the job's getting done?

1 A. Correct.

2 Q. I mean we --- we had one toilet leak that took three
3 months to fix, right?

4 A. Right.

5 Q. And now we're here for the one that's taken longer than
6 three months to fix?

7 A. Correct.

8 Q. And, again, this is all just within one year?

9 A. I had a great first year. It was a real trial.

10 Q. So essentially half of --- of your first year was spent
11 dealing with these issues?

12 A. Yes, sir.

13 Q. Was IOA losing confidence in the landlord?

14 A. I can --- I don't know about IOA Properties, or
15 whatnot, but as far as I was, I definitely reached my
16 limit of feeling like there was any real concern for what
17 we were having to deal with.

18 Q. So again, during this process, August through December of
19 2020, did the landlord reach out to you and after any rent
20 concessions?

21 A. No, sir. Not that I'm aware of.

22 Q. Any rent abatement?

23 A. No, sir.

24 Q. So --- so did IOA pay full freight during this whole
25 time?

1 A. Yes, sir.

2 Q. And so we've got a --- a mold remediation crew out there
3 for four and a half days pulling all the mold out?

4 A. Yes, sir.

5 Q. And the landlord just never once reached out and --- and
6 gave IOA any rent --- rent concession?

7 A. No, sir.

8 Q. All right. So the --- the leak in August of 2021 on the
9 14th, how did you find out about that?

10 A. Scott made me aware he was in on the 14th, said it
11 was there and let me know that he had notified Angela.
12 So when I came in the following Monday, I took a look at
13 it myself and reached out to her by e-mail.

14 Q. Okay. And you said that was Monday the 17th?

15 A. Correct.

16 Q. All right. Crissy, could you flip to tab 14.

17 A. No.

18 Q. Oh, sorry.

19 A. I should have brought readers today, shouldn't I?

20 Okay. I'm there.

21 Q. So the e-mail you just discussed, or --- or referenced on
22 Monday August 17th, is this a copy of that e-mail?

23 A. Yes, sir.

24 Q. Okay. And this was sent first thing Monday morning?

25 A. Yes, sir.

1 Q. And this would have been just following the Friday after
2 Scott had texted Angela, correct?

3 A. Correct.

4 Q. All right. What were you telling Ms. Adelman?

5 A. Do you want me to read it?

6 Q. You can.

7 A. Good morning, Angela. I hope you had a good
8 weekend. We have some water/leak issues in our suite
9 again. The first two photos are from the one in the
10 offices in the area which is considered 103. The third
11 and fourth photos are from Rob Motley's office, the same
12 place where water has come in from the balcony above on
13 several occasions, but we have added an extra spot now.
14 The water leaks in 103 appear to be pretty bad. It has
15 leaked down into the wall.

16 Q. Okay. So, again, jury's heard plumbers came out multiple
17 times?

18 A. Yes, sir.

19 Q. And were you involved in --- in any of that back and
20 forth with the plumbers?

21 A. I never communicated directly with the plumbers.
22 Angela would just let me know when something had been
23 scheduled and that she was not going to be on site would
24 arrange for Scott or I to be there.

25 Q. Okay. So --- oh, Your Honor --- Crissy, is this a true

1 and accurate copy of the e-mail?

2 A. Yes.

3 MR. JOYCE: Your Honor, at this time we'd move
4 what's been marked as Exhibit 14 into evidence.

5 THE COURT: Any objection?

6 MR. COBB: No objection.

7 (Plaintiff's Exhibit 14 marked and entered)

8 BY MR. JOYCE:

9 Q. Crissy, you mentioned coordinating with Angela for you or
10 Scott to be there, has she ever denied access to the building?

11 A. No.

12 Q. Were you all --- always available ---

13 A. Yes.

14 Q. If someone wasn't there, were you always available to
15 meet ---

16 A. Absolutely, yes.

17 Q. Did --- did she have keys to the building?

18 A. Well, I found out during this process that she did
19 not. Which really, when she said, can I get a key? I
20 said, you don't have a key to the building? I was really
21 surprised by that. So she was the property manager and
22 apparently had been for a while. But yes, I provided her
23 with a key on two different occasions during this
24 process.

25 Q. And when you say, "during this process," this would have

1 been during the August ---

2 A. That four and a half months, yes.

3 Q. And twice?

4 A. Yes. Once directly, and once through her
5 contractor, Heath.

6 Q. And Heath is the general contractor that they send out?

7 A. Correct.

8 Q. All right. So let's --- let's fast forward into the
9 September. How were things progressing with the situation?

10 A. You know, early September it was still on again/off
11 again situation with plumbers coming and going. I think
12 it was September 2nd Angela had e-mailed me and said that
13 the plumber was able to connect with the homeowner and
14 would be going into their unit the following Monday to
15 fix the leak. And then she would get back to me with the
16 schedule for the contractor to come in to start making
17 the repairs.

18 Q. Okay. So there's been some reference about you all
19 scheduling another contractor in this process and perhaps
20 delaying ---

21 A. Yeah.

22 Q. --- their repair plans?

23 A. Yeah. That definitely was not a delay. That was my
24 effort to kind of push for action and get things moving.
25 The exchange I just mentioned from September 2nd, I had

1 not personally heard back from Angela at all for the
2 results of the plumber going into the unit. I think she
3 and Scott may have communicated some about what was going
4 on. So I had followed up with her on that, didn't get a
5 response.

6 So then I sent that e-mail saying, hey, I've got
7 other contractors coming in. You want to schedule your
8 guy for the same week? That would be awesome. You know,
9 I'm just kind of trying to push it along and get some
10 action and getting someone scheduled to come in.

11 Q. And was this the badge scanning security contract?

12 A. The --- he was one of them and then the other one
13 was the contractor that we had hired to build a wall in
14 the back of the space to enclose a --- an indention area
15 to make it into an office.

16 Q. So did this in any way get in the way of them trying to
17 repair the --- the leak?

18 A. I would say quite the opposite.

19 Q. Okay. By the end of September, how had the --- how had
20 the damage progressed?

21 A. Yeah. It --- it --- it definitely reached a level
22 where I felt like it was out of control. I know we
23 discovered that the cleaning person had --- we weren't
24 sure at the time who had done it, but I discovered later
25 it was our cleaning person. The ceiling tiles had

1 collapsed in Parker's office. The carpet was saturated.
2 So they were kind enough to put to plastic over
3 everything and brought the trash can in to catch the
4 water that was coming down. And that was on Sunday. I
5 don't know the exact date of that. It would have been
6 the Sunday prior to us notifying them that the situation
7 had gotten worse.

8 Q. Okay. And ---

9 A. Yes.

10 Q. --- this is a --- a picture of Parker's office?

11 A. Yes, sir.

12 Q. And that would be the ceiling tile that collapsed and
13 the --- the trash can that was catching the ---

14 A. Correct.

15 Q. --- toilet water?

16 A. Correct.

17 Q. Could you flip to tab 16 for us, Crissy. All right.

18 So --- all right. Could you flip to --- you see the label at
19 the bottom, plaintiff 0074?

20 A. I was laughing at the first page.

21 Q. We'll --- we'll --- we'll get there.

22 A. Yes, sir.

23 Q. Okay.

24 A. (Unintelligible).

25 Q. So --- so this is an --- an e-mail from you to Melissa

1 Rudolph on September 22nd, Tuesday?

2 A. Correct.

3 Q. And who --- who is Melissa Rudolph?

4 A. Melissa worked in our IOA Properties division. She
5 still does. She was my go-to person if I was having any
6 issues related to the property, like when we had the
7 issue with our badge scanner, she was my contact for
8 that.

9 Q. Okay. And --- and it came out yesterday that --- that
10 you all came in and somebody had placed a trash can there,
11 that was --- you all thought that that --- perhaps was the
12 cleaning crew?

13 A. Yes. The guy that cleaned our office confirmed that
14 for me later when I reached out and told him not to come
15 back into the space.

16 Q. And if you want to flip over to plaintiff 0075. You
17 there?

18 A. Yes, sir.

19 Q. Okay. And this would have been an --- an another e-mail,
20 it looks like earlier that morning to Ms. Rudolph?

21 A. Yes.

22 Q. What --- what are you telling her in this e-mail?

23 A. I asked her to give me a call when she had the
24 opportunity. I just received a call from Scott Berry and
25 the COL, which stands for Columbia for us --- office

1 situation with the leak from upstairs toilet has gotten
2 much worse. He is going to send me some photos and I'll
3 send those over to you. I have not heard from Angela.
4 Scott has also reached out to her as well and has not
5 heard from her. We need to see if we can put some
6 pressure on them.

7 Q. Seemed like things were moving slow?

8 A. Yes, sir.

9 Q. All right. If you could flip to plaintiff 0072. And
10 Crissy, who was Jason Robinson?

11 A. Jason Robinson was the head of IOA Properties. I
12 had --- don't think I had ever communicated with Jason
13 until probably around June, July of this year. But
14 he --- my understanding was he previously led all of the
15 leases and whatnot that IOA had in place from any
16 properties that IOA owned. Found out during this process
17 that there were some changes taking place with that and
18 there was an outside company being sourced to start
19 managing the leases for IOA.

20 Q. Okay. And this is --- this is on the same day just an
21 hour later following up to the prior e-mails that you had sent
22 to Melissa?

23 A. Yes.

24 Q. Or actually, this is two days later --- or no, sorry,
25 same day. So --- and you're copied on this e-mail, Crissy?

- 1 A. Yes.
- 2 Q. And this is an e-mail to Mr. Leone?
- 3 A. Correct.
- 4 Q. And it's attaching the photos that --- that we've all
5 seen and it's saying we have a --- now have a mold --- mildew
6 in our walls and I'm told sewer smell in our office?
- 7 A. Correct.
- 8 Q. And is --- is that what it smelled like ---
- 9 A. Yes.
- 10 Q. --- at that time?
- 11 A. Yes. Very much so. You could smell it when you
12 came in the front door.
- 13 Q. And so at that point IOA was again expressing concerns
14 about mold?
- 15 A. Yes. We --- we weren't sure at that point, is it
16 mildew? It is mold? You know, we've been trying to get
17 that answer and just haven't had any action on it to that
18 point.
- 19 Q. And you've been in the courtroom all week, but you ---
20 you heard Scott Berry testify that he was expressing concerns
21 about potential mold ---
- 22 A. Yes.
- 23 Q. --- and air quality as early as late August?
- 24 A. Correct.
- 25 Q. And you heard that the testimony yesterday that the

1 landlord refused to order a \$700 mold test?

2 A. Yes, sir.

3 MR. COBB: Objection, Your Honor. Misleading. The
4 testimony never said he refused to order that ---
5 there --- there's nothing in the record for Ms.
6 Adelman ---

7 (Simultaneous speaking)

8 THE COURT: I did not hear the question. I didn't
9 hear it. What was the question? I did not hear it.

10 MR. JOYCE: You didn't hear it?

11 THE COURT: No.

12 MR. JOYCE: You heard the testimony yesterday that
13 the landlord refused to order a \$700 mold test.

14 THE COURT: All right.

15 MR. COBB: That's my objection, Your Honor. That
16 refused to, that's not in the record and that was not her
17 testimony yesterday.

18 THE COURT: All right.

19 MR. JOYCE: One --- one was not ordered and ---

20 THE COURT: Okay. Well, I'm going to --- I'm going
21 to sustain it because I don't know. I don't --- I don't
22 recall whether that was her testimony. But I'm just
23 going to ask you to rephrase the wording of your
24 question.

25 BY MR. JOYCE:

1 Q. You heard the testimony yesterday that landlord was
2 provided with a mold test proposal at --- on September 1st?

3 A. Correct. Yes.

4 Q. And you heard the testimony that Ms. Adelman thought it
5 was necessary at that point?

6 A. Correct.

7 Q. And that Scott Berry wanted it really bad?

8 A. Correct. Yeah, that was kind of disappointing that
9 we maybe could have known sooner what we were dealing
10 with.

11 Q. Do you think that it was within the landlord's reasonable
12 control to pay \$700 and get a mold test done at that point?

13 A. Absolutely.

14 Q. So I want to talk some more about the --- the
15 September --- Crissy just to --- just to step back the --- the
16 exhibit that we've just been looking at, the string of
17 e-mails. Is that a true and accurate copies of the e-mails
18 that you sent and were ---

19 A. Yes, sir.

20 Q. --- included on September --- on ---

21 A. Yes, sir.

22 MR. JOYCE: Your Honor, at this time we'd move
23 what's been premarked as tab 16 as an exhibit into
24 evidence.

25 MR. COBB: No objection.

1 THE COURT: So moved.

2 (Plaintiff's Exhibit 16 marked and entered)

3 BY MR. JOYCE:

4 Q. I want to spend a little bit more time on September. Do
5 you remember meeting Ms. Adelman and Heath Petty the
6 landlord's contractor, on I think it was around
7 September 24th?

8 A. Yes, sir.

9 Q. Okay. What happened on that day?

10 A. Well, finally they brought a contractor in to look
11 at the situation after we raised our flags. And Heath
12 came down --- and I apologize if I use first names, I'm
13 just kind of a layman's term person. Heath came in, he
14 looked at the situation, saw the black spots on the wall.
15 I think he even climbed up on the ladder and looked up
16 into the space above at the pipes and everything because
17 that was obviously open at this point. And he ended up
18 cutting a hole in the wall to see if he could tell how
19 much damage was back behind since it was growing through
20 the sheetrock.

21 Q. Okay. And you and Angela were there?

22 A. We were, yes.

23 Q. Okay. And --- and what --- after he cut the hole in the
24 wall, what ---

25 (Simultaneous speaking)

1 A. He cut it out, he pulled it out and it was just
2 completely black and fuzzy. So Angela and I kind of
3 backed out of the room. And we were kind of like should
4 we leave here? Should we not be here? And we had our
5 little COVID masks on for what it's worth. I don't think
6 that matters for mold. But so yeah, we kind of left the
7 room at that point and let him do his thing.

8 Q. That's kind of when things got --- got real?

9 A. Yes, sir.

10 Q. And at that point, what was the landlord --- what ---
11 what was the plan to --- to fix?

12 A. Well, he went around and he looked at the ceiling
13 tiles in 104. And he --- he did a good job of looking
14 around to see what was present. But their plan of action
15 when they left that day was for him to return the
16 following Monday. I think it was to start ripping out
17 all the walls and rebuild.

18 So when --- when they left, Scott and I were still
19 at the office and we started talking about, you know, we
20 just --- we don't feel comfortable with that. We feel
21 like obviously there's a true situation here no water
22 whether it testing to be mildew or mold or whatever. We
23 don't know and they're going to come in and just start
24 ripping everything out and then put a wall back up. So
25 we both agreed that we felt like it needed to be tested

1 to confirm what we're dealing with because we didn't feel
2 safe just taking the risk of spreading through the entire
3 space.

4 So he reached out to Dave Dunnagan at Kleen
5 Sites --- who I had no knowledge of up until that
6 time --- and asked him if --- and this was late in the
7 day I believe, probably after 4:00. And Kleen Sites was
8 able to come out the next afternoon to do the testing.
9 Scott and I even said at that point that we wanted it
10 done. We didn't care at that point if IOA had to pay for
11 it, if the landlord had to pay for it, if the HOA had to
12 pay for it, we --- we had no concern for that at that
13 moment, we just wanted it done.

14 Q. So just to confirm, their response, they were going to
15 actually get a --- a GC out there to just rebuild the wall?

16 A. Yes, sir.

17 Q. Over top all the mold?

18 A. Correct.

19 Q. When you were out there did Angela ever mention we need
20 to get a mold remediation company out here?

21 A. No, she --- she had mentioned end of August probably
22 that she was going to have some air testing done, but
23 that never happened. And as we saw, Scott followed up
24 with her on that and that question was really never
25 addressed.

1 Q. Okay. So would that explain why Scott kind took it in
2 his own hands and --- and got Dave Dunnagan out ---

3 A. Absolutely.

4 Q. --- there on the 24th?

5 A. Yeah, we were in total agreement with that.

6 Q. And Dave got out there within one day?

7 A. Very next day.

8 Q. So at that point did --- did IOA shut down the office?

9 A. Yes. I don't know if it was that afternoon. At
10 some point within those couple of days I did --- I
11 checked with Rob first and said hey, I don't feel
12 comfortable with anyone coming in and out. I don't
13 really feel comfortable being here, but I'm going to shut
14 it down. I don't want anyone coming in and out of this
15 space until we know what we're dealing with here.
16 Because if it's mold, that's --- you know, obviously a
17 really bad health hazard.

18 Q. And would this decision have been made after you all
19 received the air sample tests from Kleen Sites?

20 A. I made a decision prior ---

21 Q. Okay.

22 A. --- based on the appearance of what was in that
23 space. I was not comfortable. One of my employees has
24 affectionately --- I hope --- nicknamed me mama bear. So
25 I'm very protective of my team. And so that ---

1 that's --- that was my choice to take that action that it
2 was not a safe environment for them to be in until we
3 knew what we were dealing with.

4 Q. Okay. Did you have any --- I mean, you were concerned
5 about the mold, did you have any employee staff members
6 that --- that could potentially have problematic health issues
7 if they were exposed?

8 A. Yes, sir. We had an employee Melanie, who had COPD,
9 and obviously asthma to go along with that. She had been
10 expressing concerns for quite some time all the way back
11 to the incident with the Barbara Hanna leak, the one we
12 referenced a minute ago where it dripped on one of my
13 employees. Melanie actually ended up taking some time
14 out of office during that repair work because she
15 couldn't deal with the dust and the pollutants that were
16 coming from that.

17 I also had Cynthia Lewis who sat down in the lower
18 area. We had three cubicles outside of the area where
19 Parker's office is. She sat in that area and she had
20 asthma as well. And she --- she was complaining with the
21 same issues. And I also have asthma, but ---

22 Q. So the decision was made out of --- out of concern
23 for --- for the staff, correct?

24 A. 100 percent. Yes.

25 Q. So you --- after you all received the --- the air sample

1 test, how long did it take landlord to approve Kleen Sites to
2 get out there to do the work?

3 A. Too long. About five weeks.

4 Q. Okay. What --- what was going on during the interim?

5 A. I think there was still some back and forth with
6 it's leaking, it's not leaking, trying to make that
7 determination. We had a conference call, I think it was
8 on October 1st was the first time that we were engaging
9 with AJ as a --- as a group on a conference --- it was a
10 Zoom meeting, I guess at that point.

11 I was on the call, legal counsel for IOA was on the
12 call. Property --- IOA Properties was on the call. So
13 we set that up, AJ was late to that meeting, Angela
14 talked through most of what had been going on and
15 answering questions for IOA Properties. And AJ joined
16 the call later and kind of took over the call.

17 Q. Gotcha. So after that call, did you feel like you had a
18 plan in action and things were just going to ---

19 A. I wasn't overwhelmingly confident with that. You
20 know, I don't remember everything that was said during
21 the call, but I know that he expressed that he engaged
22 with a claims adjuster to, you know, try to help them
23 with the situation. And that they also wanted to have
24 their own remediation company come in to quote what it
25 would take to do the repairs, and what their

1 recommendations were for those he remediations.

2 Q. Okay. So at --- at that point we knew there was mold,
3 correct?

4 A. Yes. Yes.

5 Q. Okay. And this is the --- the hole in the wall that ---
6 that their contractor opened up?

7 A. Yes, sir.

8 Q. Okay. So at that point we know there's mold, and they
9 want to --- to go through the insurance process and then get
10 another contractor out there?

11 A. Correct.

12 Q. Did ---

13 A. And I was present when that happened.

14 Q. You were present ---

15 A. When their contractor came out to do the quote for
16 the remediation work.

17 Q. Okay. Tell --- tell us about that.

18 A. Okay. He came, I think it was around the 13th, 14th
19 of October, in that time frame. It was a couple weeks
20 after our call. He obviously --- I love to talk if y'all
21 haven't figured it out by now --- but I engaged with him
22 and the claims adjuster. And -- and he expressed a
23 concern similar to what I had and the fact that this had
24 been sitting for so long at this point.

25 Their own contractor --- the remediation contractor

1 said to me that that was a concern because mold can morph
2 over time and can quickly turn into more hazards and
3 spread. And that it had been so long since the test was
4 completed that, you know, we really didn't know exactly
5 what we were dealing with at this point. He said he felt
6 like what Kleen Sites proposed for remediation wasn't
7 even complete enough that he would recommend cleaning the
8 HVAC system completely, and that every flat surface
9 within our space should be wiped down and not just the
10 immediate area that was impacted.

11 Q. I believe in Mr. Dunnagan's report, he also recommended
12 that the HVAC get cleaned; do you recall seeing that?

13 A. Yeah, I don't know if that was in his original --- I
14 don't recall if it was in his original quote for the
15 remediation ---

16 Q. Right.

17 A. --- but I think it was suggested after they
18 completed the work, because it was much more intensive
19 than they had realized initially ---

20 Q. Okay.

21 A. --- which might be because it was five weeks later.

22 Q. Do you know if that was ever done? The HVAC?

23 A. That was not done.

24 Q. Okay. So at least while you were there that was not
25 done?

1 A. Correct.

2 Q. So they completed the mold remediation and we've
3 established at some point they're -- they're putting the walls
4 back up. But while you were there, they never did the HVAC
5 cleaning that the mold company suggested?

6 A. No, sir.

7 Q. All right. So the mold remediation, that was completed
8 around November 5th?

9 A. Correct.

10 Q. And you all received the --- the final test results on
11 the 9th?

12 A. Yes, sir.

13 Q. After the 9th, still evidence of an active leak?

14 A. Yes.

15 Q. Okay. When did you all discover that?

16 A. It was within a day or two of the remediation work.
17 Scott had come into his office and as he described.
18 Kleen Sites had encased that wall in a heavy plastic, and
19 you could see water droplets on the inside of that
20 plastic in different spots. That was on Scott's side of
21 the wall.

22 Q. Okay. Was a --- a plumber was called out again?

23 A. Yes.

24 Q. Okay. Was --- which plumber was called out at that
25 point?

1 A. This may have been the point when I suggested maybe
2 we should involve a different plumber. Arrow had been
3 out there multiple times and had not been able to
4 complete the --- the job. They weren't able to solve the
5 leak. So I recommended to Angela we should get another
6 plumber, and she asked if I had any recommendations. I
7 am the one that recommended Shuler Plumbing. They were
8 not a client of IOA. I knew them through a friend of a
9 friend and I had called them out previously on a urinal
10 leak that we had that was one of the things Angela told
11 me was an IOA responsibility, because it was inside of
12 the unit. And she had recommended Arrow Plumbing. And
13 they had been out twice to fix the urinal and it was
14 still leaking, so I engaged Shuler Plumbing on that one
15 and they fixed in five minutes and it never leaked again.

16 Q. Okay.

17 A. So that was my recommendation to have them take a
18 look at it.

19 Q. All right. And was it on or around November 16th when
20 you all thought that the leak was --- was dry?

21 A. Yes. Sorry. Yes.

22 Q. That would be 96 days after Scott's initial text?

23 A. Yes, sir.

24 Q. So at that point had the landlord restored the lease
25 premises to the same condition as it was before all this

1 happened?

2 A. No.

3 Q. What was --- what was left to do?

4 A. At that point the only thing that had been done was
5 the remediation work. We still didn't have sheetrock, we
6 didn't have ceiling tiles, we didn't have carpet. It was
7 still a wide-open construction space.

8 Q. Okay. Do you recall Angela Adelman reaching out about
9 paint colors and carpet?

10 A. Yes, I do.

11 Q. --- information?

12 A. Yes.

13 Q. And this would be to, I guess just to use so that they
14 could build the space back?

15 A. Correct. And I reached out to Jason Robinson, IOA
16 Properties. So again, I --- I wasn't part of any of this
17 previously, so I had no clue. Jason same day provided me
18 with the Sherwin-Williams paint color, even a little chip
19 color in his e-mail and the information on the carpeting.
20 And I sent that to Angela the same day.

21 Q. And she didn't request this information until
22 November 11th?

23 A. Correct.

24 Q. She should have --- do you think that she should have
25 requested that a lot earlier in the process?

1 A. In my opinion, she or the contractors would have
2 known what was going to be required to put the space back
3 into proper condition. So yeah, I would consider when
4 they were getting the sheetrock they would consider the
5 carpet, and the ceiling tiles as well, and the paint.

6 Q. So you all --- or you responded on the 11th, same day and
7 provided all of her --- provided all that information.

8 A. Yes, sir.

9 Q. Seems like IOA was doing everything it could to push this
10 process along?

11 A. Absolutely.

12 Q. Crissy --- so when is it --- when did IOA terminate the
13 lease? Was that on December 1st?

14 A. Yes, sir.

15 Q. Looking back, do you agree with the decision to terminate
16 the lease?

17 A. 100 percent.

18 Q. Okay. Can you tell me why?

19 A. Well, I think a precedent is set at this point, you
20 know, we mentioned Barbara Hanna's leak earlier that was
21 a three-month renovation, repair work that, you know, we
22 tolerated, we worked around. But it was an excessive
23 time frame. Then we've got this one that we now are ---
24 what? Three and a half, four months into. Still no
25 resolution so it just to me it sets a precedent of what's

1 going to continue to be the standard that we can expect
2 for attention in care from the landlord to --- to have
3 our space be occupied.

4 Q. After sitting in the courtroom all week, did you learn
5 some new information?

6 A. I did.

7 Q. What's --- what's some of the new information that you
8 learned this week?

9 A. No, the --- the recommendation from Angela to have
10 the air quality test on --- well, prior to September 1st,
11 actually. September 1st is when she presented AJ with
12 the quote and just extremely disappointing to realize
13 that we had an opportunity to identify it sooner, which
14 probably could have prevented how extensive not only the
15 mold was, but most definitely the damage that was
16 created.

17 Just there's been several things, I don't know
18 if --- it --- it's --- it's been like being in a time
19 machine, or living through the movie Groundhog Day, where
20 you repeat the same day over again, but we're going back
21 four years and reliving the same nightmare.

22 Q. Did you hear the testimony about Eric Monroe, the tenant
23 upstairs?

24 A. Yes.

25 Q. Okay. And that they were thinking about having you

1 just --- that IOA deal with him?

2 A. Yeah, that it --- I had not seen that information
3 previously and it was kind of shocking. I --- I was
4 wondering in that moment if anyone at IOA had given that
5 information or if that was just an exchange between them.
6 I --- I --- it was quite surprising that they would take
7 that substance.

8 Q. Yeah.

9 A. We were already managing and heading up a lot of the
10 coordination and being on site, so to think that we were
11 responsible for all of that as the tenant was kind of
12 shocking.

13 Q. And you're also just handling your business, right? It's
14 for IOA?

15 A. Yeah, I'm trying to. Yes. Yeah. And a lot of ---
16 lot of work for us went into returning to the office in
17 June. You know, there was a equipment that had to be
18 ordered for taking temperatures of employees, signage
19 that had to be put up. You know, there was a lot that
20 went into returning to the office. We were working on
21 updating the security system. We had contractors already
22 scheduled for that. I had to put them on hold for this,
23 so it was just delaying us being able to get back
24 together.

25 Like I said, you know, we're --- IOA is all about

1 culture. That's number one. If I interview someone,
2 whatever the process he is, number one is personality.
3 Do they have the personality that's going to fit in with
4 team? Do they have ethics and, you know, that's number
5 one for me, their experience comes after.

6 So we missed that. My teammates missed. I missed
7 it. It --- it really goes a long way when you can be
8 together to continue that culture.

9 Q. This issue was preventing that?

10 A. Yes, absolutely.

11 Q. So approximately when did IOA move out of the office?

12 A. 12/1 was the date of the letter than went to the
13 landlord. I was made aware --- I did not know prior to
14 that same date that that decision had been made. We were
15 out, I think the 13th, that's a Saturday of December was
16 the last day that I was in the space. That was our
17 cleaning day.

18 Q. Okay. So tell me about that. Were you involved in
19 cleaning the office and ---

20 A. I unfortunately was involved in the whole thing. So
21 we were asked when the --- the termination letter went
22 out --- I'm in a little bit of a panic mode because
23 they've been in this space for eight years, so just like
24 in your home, you accumulate all of this stuff. There's
25 a lot of logistics to relocating equipment and --- and

1 who needs to do what.

2 But Rob advised me --- I said, well, do we need to
3 start packing? You know, what --- what's the deal? And
4 he said, well we --- we need to sit on this for two or
5 three days because we've asked them to come back, you
6 know, we're interested in resolving this with them. And
7 so we're waiting to get their feedback of what will
8 happen.

9 So it was probably a good four to five calendar days
10 after the notice went out that he said, okay, let's start
11 packing.

12 Q. Okay. So ---

13 A. I did that with two teammates the entire office
14 storage closets, supply units, employees were ordered to
15 come in to gather their personal belongings. You know,
16 it's been made to look like this was a vacant office.
17 This was far from a vacant office. All of us still had
18 our personal belongings there. All the workstations were
19 still intact, all of our supplies, our copier. I had the
20 front desk lady I mentioned earlier, Nancy, was coming in
21 every day to check the mail.

22 We had a check scanner that if checks came in the
23 mail you would scan them and it would go to home the
24 office for deposit. So there was always someone coming
25 and going, but this was not a vacant office.

1 We filled 17 storage units when we (inaudible).

2 Q. Crissy, could you ---

3 A. That was two weeks before Christmas.

4 Q. So this --- again, this --- this is some time after first
5 week of December, somewhere in there?

6 A. Yes.

7 Q. Okay. Could you --- so after you got done cleaning
8 with --- with the other folks, was the area left in broom
9 clean condition?

10 A. Yes, sir. We --- we had a corporate team that came
11 in after we had everything packed. They did some of the
12 final packing with us, but we had determined a section
13 where we would sit things that actually had to go back to
14 our home office in Florida with the crew that had come to
15 assist us.

16 And then we had a room set up --- it was actually
17 the room that we were building out for trash. Anything
18 that was to be taken to the dump, we just through in that
19 room. So they did that on that Friday. Everything was
20 out the --- everything had gone to storage. The truck
21 was loaded for home office.

22 So Brian Gross who is the head of --- of that --- I
23 guess it's the moving team. He and his crew were there
24 that Saturday morning and we cleaned that office. I
25 vacuumed, I cleaned --- what do you call it? Foot kicks,

1 whatever they are in the office. Window seals. Yeah,
2 we --- we cleaned the entire space. And Brian patched
3 holes in the wall where any --- where any artwork had
4 been hang --- hung before.

5 Q. Okay. There's been reference to personal items of IOA
6 being left, do --- do you know anything about that?

7 A. Yeah, there were no IOA personal items left over in
8 104, which had been the storage unit from the spa --- I
9 don't know even know the lady's name --- the lady that
10 was in 105 that we had subleased to.

11 We had allowed her to move everything that was
12 stored in 104 into the little office. And she held an
13 open house there for her grand opening a few months
14 prior. And she had left behind some leather office
15 chairs, a foldable table, a punch bowl, things like that.
16 So we set it all the way to the door of 104, which had to
17 go out into the corridor outside of 104 to walk over to
18 her. So we put it as close as we could to where she
19 could access that.

20 And I let Angela know that there were things there
21 that belonged to the tenant in 105.

22 Q. So Angela was aware of this?

23 A. Yes. That's the only thing that was left in the
24 space.

25 Q. All right. All right. Crissy, through the August

1 through --- through December 2020 time frame, I --- IOA was
2 paying approximately \$15,500.59 in rent?

3 A. Yes, sir.

4 Q. And that would include CAM?

5 A. Correct.

6 Q. Okay. What ---

7 A. That was rent plus the CAM.

8 Q. And what is --- what is CAM?

9 A. My understanding, again, I don't --- until my
10 current position, I didn't get into all of that stuff.
11 But it includes fees that are back charged to a tenant,
12 so it could be related to --- and I may not get it
13 exactly right --- it could be charges for certainly
14 utilities or for services that they provide, but it's
15 something that in addition to your monthly rents,
16 expenses that are incurred by the landlord that would be
17 back charged to us as a tenant.

18 Q. So that would be August through December, about
19 \$77,502.95 in total rent and CAM from August through
20 December 2020?

21 A. Sounds about right. Mentally I would have said
22 about 75, so that's probably about right.

23 Q. And --- and so IOA was paying this, the landlord while
24 all this stuff was going on?

25 A. Correct. I verified that myself.

1 Q. Okay. So IOA was paying this when you have mold
2 inspection tests ready on September 1st and weren't ordered?

3 A. Repeat that. I'm sorry, Ben.

4 Q. IOA was paying full rent when you ---

5 A. Oh, yes.

6 Q. --- has --- when a land --- a landlord has a mold
7 inspection test available as early as September 1st?

8 A. Absolutely. We never missed a payment.

9 Q. Landlord didn't offer to ever have a rent concession?
10 Reduce the rent? Abate the rent?

11 A. No, sir.

12 Q. Do you have any knowledge as to why he would not do that?

13 A. No. I --- I have no idea why that would not be
14 done.

15 Q. Okay. Crissy, do you know what rent abatement is?

16 A. A reduction in rents based on certain --- I would
17 assume circumstances of being able to occupy or not
18 occupy the space.

19 Q. Okay. And is it your understanding that the lease
20 agreement in Section 11.1 allows for rent abatement?

21 A. Yes.

22 Q. Okay. Let's --- let's pull it up.

23 A. It's not my forte.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, stand up for a little stretch break. And we'll

1 continue on.

2 All right.

3 BY MR. JOYCE:

4 Q. All right, Crissy, you're at tab one. We've got it
5 pulled here on the screen. Okay. Do you see --- we're
6 highlighting it for you to make it easy.

7 A. Thank you.

8 Q. Could you read this sentence in Section 11.1, please?

9 A. In the event that a party only of the leased
10 premises is untenable, or incapable of use for the
11 normal conduct of business therein, a just and
12 proportionate part of the fixed rent shall be abated from
13 the date of such damage until after the landlord as
14 completely repaired same and notified tenant of such.

15 Q. Okay. Okay. Had the landlord finished restoring the
16 building within 90 days?

17 A. No, sir.

18 Q. Had he finished the building within the date of
19 termination ---

20 A. No, sir.

21 Q. --- on --- on December 1st?

22 A. No, sir.

23 Q. And that would have been 110 days ---

24 A. Correct.

25 Q. --- after notice? Crissy, IOA is asking the jury to

1 award \$41,366.97; is that correct?

2 A. Sounds accurate, yes.

3 Q. And that would be the abated rent that they would get
4 back?

5 A. Correct.

6 Q. During August through December of 2020?

7 A. Which is a percentage.

8 Q. And that --- is that approximately getting two thirds of
9 its rent back?

10 A. (Inaudible).

11 Q. And do you believe that that is a fair and reasonable
12 amount under the circumstances?

13 A. Yes, I would think so.

14 MR. JOYCE: Thank you, Crissy. No further
15 questions.

16 THE WITNESS: Thank you.

17 THE COURT: All right. Cross-exam?

18 MR. COBB: Do you want to take a bathroom break?

19 THE COURT: Yes. It's --- it's yes. I think we do.

20 All right. And so we'll stand down for ten minutes
21 before cross and take a bathroom break.

22 (Jury exits courtroom)

23 (Off the record)

24 MR. COBB: Your Honor, would you just remind Ms.
25 Warner she's not supposed to talk to the (inaudible).

1 THE COURT: No, you're fine. You're fine. And so
2 during this break I just require that you do not consult
3 anything or --- or have any conversation with plaintiff's
4 attorney.

5 THE WITNESS: Okay.

6 THE COURT: All right. Very good. We'll stand down
7 for ten minutes.

8 (Off the record)

9 (Jury enters courtroom)

10 THE COURT: All right. Please be seated. Thank
11 you, Ladies and gentlemen of the jury. We'll resume the
12 trial at this time.

13 All right. Mr. Cobb.

14 CROSS-EXAMINATION

15 BY MR. COBB:

16 Q. Ms. Warner, how are you doing?

17 A. I'm doing good. How are you?

18 Q. Good. (Unintelligible)?

19 A. I did not fall for the water picture trick.

20 Q. Ms. Warner, I'm going to ask you a few questions
21 (unintelligible) ---

22 A. Yes, sir.

23 Q. --- get into it a little bit more. But I wanted to point
24 out a few things. You had mentioned that when you started at
25 Insurance Office of America, you were unaware that IOA

1 Properties III, LLC had sold that property to my client 1221
2 Bower, correct?

3 A. Correct.

4 Q. And you said you had worked (unintelligible) front desk
5 before, right?

6 A. Yes.

7 Q. I'll --- I'm assuming (unintelligible)?

8 A. She's my --- she's not really ---

9 Q. So --- so was she above --- above your position, or ---
10 or under your position?

11 A. Under my position.

12 Q. Okay. So did you ever ask --- when did you know that IOA
13 Properties (unintelligible) Jason and Melissa Rudolph?

14 A. I don't want to misstate so I let me think about it.

15 Q. Sure.

16 A. I'm not sure exactly. Probably the first time I was
17 ever referred to Jason for anything was when we were
18 going to build out the space in the back office where we
19 were --- it's kind of like the indention in the back of
20 the courtroom, we were going to build a wall on the front
21 of it.

22 Q. (Unintelligible). Now, (unintelligible) your
23 (unintelligible).

24 A. Yes.

25 Q. Do you want to --- do you want to walk (unintelligible)?

1 A. Sure.

2 THE COURT: Please watch your step.

3 BY MR. COBB:

4 Q. All right. So can you tell us where the wall was being
5 constructed in that office?

6 A. Yes. Well actually, yours already shows a wall
7 here ---

8 Q. Okay.

9 A. --- (unintelligible) built.

10 Q. All right. So that was just like a cubicle area before?

11 A. Yeah, it was --- this --- this room was in
12 existence. This is our IT room.

13 Q. Okay.

14 A. And this was just open, so we had a cubicle set back
15 into the (inaudible).

16 Q. Okay. When did you start that construction?

17 Approximately? I don't --- I don't even know the exact
18 date ---

19 A. June, July.

20 Q. Right after you had started getting people back in the
21 office?

22 A. Correct. We hired another producer (unintelligible)
23 office space.

24 Q. Got it. Understood. And so before you started that
25 work, you contacted Melissa or Jason, that's how they came

1 into your world?

2 A. Jason --- Rob --- I asked Rob if he preferred me to
3 contact Jason --- IOA Properties.

4 Q. Okay. All right. While we're --- while I have you
5 standing here I'll --- I'll jump ahead a little bit and I'll
6 come back to up (unintelligible). Will you just outline
7 105 --- Unit 105?

8 A. I think it's this.

9 Q. Okay. And that's where Kim Chapman Art of Aesthetics med
10 spa was?

11 A. Correct.

12 Q. She's getting a lot of free advertising in this trial.

13 A. She is.

14 Q. Okay.

15 A. (Inaudible).

16 Q. All right. That --- that's all. You can go ahead and
17 back up ---

18 A. Okay. Okay.

19 Q. --- in the stand if you want to. So you didn't know you
20 were going to field trip did you?

21 A. (Inaudible).

22 Q. So I'm --- I'm curious, when you asked the front --- what
23 was this young lady at the front desk (unintelligible)?

24 A. Nancy Shealy.

25 Q. (Inaudible). When you asked Ms. Shealy who to contact

1 for (unintelligible)?

2 A. Yes.

3 Q. Okay. And she said Angela is the condo association
4 manager?

5 A. Yeah. She had actually said --- I said what do we
6 do about the bulbs because we had some that were
7 flashing. And she said we would call Angela for that.
8 So I said well, who is Angela? And she said well, she's
9 our property manager. She's who we go to for
10 (inaudible).

11 Q. Okay. So then when you realized that you were going to
12 do some alterations, you know, Rob told you, hey, you need to
13 go to Jason?

14 A. Correct.

15 Q. And then Jason was (unintelligible) working down there?

16 A. Yes.

17 Q. Now, you gave me a little bit about your background
18 earlier. (Unintelligible) got in front of a jury or us, how
19 big is Insurance Office of America (unintelligible) just a
20 small mom and pop company, or is it a giant, huge, mega
21 company?

22 A. Well, we are privately held. We were formed by a
23 husband and wife roughly 35 years ago. They still work
24 for the company. Their son now runs the company.
25 Awesome people. But yeah, they've been extremely

1 successful. We've expanded to --- I'm going to estimate
2 60 branch offices across the nation. We're from here to
3 the Northeast to California.

4 Q. (Unintelligible) that's big.

5 A. It is.

6 Q. How --- how many employees would you say you all have?

7 A. Employees, oh our --- just an FYI, our salespeople
8 like Scott Berry are not technically employees of IOA.
9 They're 1099 contractors. So without counting the
10 producers, it's roughly 1500-ish, I think.

11 Q. Okay. And what if you counted (background noise)
12 (unintelligible)?

13 A. I don't even have a guess at that. I don't.

14 Q. (Inaudible)?

15 A. Oh, no. No. No. No. No. No. Yeah. We probably
16 have more service team members. I'm 99 percent sure we
17 have more service team members than salespeople.

18 Q. All right. So in June or July you're now aware of the
19 existence of Jason Robinson and Melissa Rudolph?

20 A. Correct.

21 Q. Now, you had said earlier in testimony that you never
22 heard AJ Leone's name till roughly August of 2020?

23 A. Yeah. In reference to, you know, do anything with
24 the building, you know, Angela just said I'll let AJ
25 know. And I said well, who's AJ?

1 Q. (Unintelligible) did you ever communicate with AJ Leone
2 over an e-mail before that time?

3 A. Not to my recollection.

4 Q. I'm going to try to refresh your memory a little bit
5 here.

6 A. Okay.

7 Q. Ms. Warner, would you turn to the last page of this
8 (unintelligible). And you know how you have like
9 (unintelligible) that create like a big tail of an e-mail
10 thread?

11 A. Correct.

12 Q. So you'll notice at the top of each half an e-mail.

13 A. Yes.

14 Q. If you could turn to the next page in front of it. All
15 right. And what is the date of this e-mail?

16 A. February 17th.

17 Q. Of 2020?

18 A. Correct.

19 Q. Okay. So you started in August 2019. And so, you know,
20 what --- what does this e-mail say? (Unintelligible) refresh
21 your memory.

22 A. Okay.

23 Q. Okay.

24 A. It's informing us that 1221 Bower LLC purchased from
25 Remount the rental space that we were leasing.

1 Q. Okay. All right. And it gave you information about for
2 payment instructions on the new landlord, correct?

3 A. Yes. That --- well, I don't know it says anything,
4 it just says giving us instructions on where to send the
5 payments and who (background noise) payments to.

6 Q. Okay. So we're looking at the bottom of the third page
7 and the top (unintelligible). Doesn't it give the address and
8 it gives the --- and it gives the name of the landlord, right?
9 1221 Bower?

10 A. Yes.

11 Q. Okay. And it has the managing member's name AJ Leone?

12 A. Correct.

13 Q. Okay. And it's got (unintelligible)?

14 A. Correct.

15 Q. So as early as February of --- February 17th of 2021, I
16 believe that you had this information?

17 A. Yes.

18 Q. Okay. Let's go up a little bit more. On the top of that
19 third page. Crissy are you aware --- do you remember getting
20 this e-mail on July 11th in the same thread?

21 A. No, I don't recall it.

22 Q. Okay. But are you --- are you copied on this e-mail?

23 A. Yes.

24 Q. All right. And isn't Jason Robinson and Melissa copied
25 on it as well?

1 A. Yes.

2 Q. All right. And if --- if --- and so this is July. At
3 this point in time you would know that Jason and Melissa are
4 the contacts in the company to deal with the landlords or all
5 of the offices that Insurance Office of America lease out,
6 correct?

7 A. This was about rent payments. That would be all I
8 was relating to this e-mail is regarding rent payments.

9 Q. Okay. But a couple times now, you --- you --- AJ's
10 e-mails --- and you know his phone number and you know his
11 address, you know how to get in touch with him. And you know
12 that Jason and Melissa are --- are dealing with the landlord?

13 A. Yeah.

14 (Simultaneous speaking)

15 A. --- for rents. Yes. Yes.

16 Q. Okay. Let's go up to your response, I think it's the
17 very next page. You actually responded to AJ on July 13th;
18 didn't you?

19 A. I did.

20 Q. And you copied Jason and Melissa as well, right?

21 A. Yes. I would have replied to all.

22 Q. All right. So --- so you did have communication with AJ?

23 A. Regarding the rents, yes.

24 Q. (Unintelligible) managing member of your landlord ---
25 Insurance Office of America's landlord at that time, right?

1 A. Yes.

2 Q. Okay. So when you testified earlier that you didn't know
3 who he was and (unintelligible) that's --- that wasn't correct
4 was it?

5 A. I still would not have related from this e-mail that
6 he would be a contact person for me to reach out to, that
7 was something handled by IOA Properties.

8 Q. Okay.

9 A. All I know is he's a managing member and he wants
10 his rent to go somewhere else.

11 Q. (Unintelligible) Shealy tell you (unintelligible) contact
12 (unintelligible)?

13 A. Correct.

14 Q. And why not go to Jason and Melissa and say, who
15 (unintelligible) that contact?

16 A. It was easy enough for Nancy to tell me who they had
17 dealt with.

18 Q. But did you not --- but didn't you know ---

19 A. And that was six months prior.

20 Q. But (unintelligible) prior that the building had been
21 sold to 1221 Bower at that time? Isn't that in the e-mail
22 that you received February 17 in 2020?

23 A. I don't think it says that it was purchased from IOA
24 Properties. So all it is is a communication that was
25 exchanged from one entity to another.

1 Q. Were you aware that IOA Properties III, LLC just owned
2 property before they sold it to (unintelligible)?

3 A. I'm aware now.

4 Q. Were you aware at the time you worked in this building?

5 A. I learned it during the process of --- of time.

6 Q. All right. Can you kind of tell me --- drill down ---
7 I'm not going to tell you the --- the date, the minute, hour.

8 A. Thank you.

9 Q. When --- when did you kind of learn that (unintelligible)
10 time?

11 A. I don't know at what time it would have come to
12 light unless it was perhaps during one of the leak
13 events. I --- I honestly can't estimate what that was.
14 It's just as you come new on a job, you learns things as
15 you go. And that was just one of the things that came
16 out eventually that IOA previously owned the building.

17 Q. Okay. All right. Very good. Okay. See this --- this
18 cc right there? Vendor AP invoices/expense?

19 A. Yes, sir.

20 Q. Are you familiar with that e-mail address?

21 A. Yes, sir.

22 Q. Do you know who that goes to?

23 A. It's a part of our accounting department. It's the
24 people that are in charge of keeping track of who our
25 vendors are and --- and getting the payments out to them.

1 Q. Okay. Would that --- that have been a lady named Terry
2 Oliver?

3 A. She part of that unit, yes.

4 Q. So it looks like Terry Oliver e-mailed back
5 (unintelligible) ---

6 A. Yeah, it's not my arena.

7 Q. It looks like there was further conversation
8 (unintelligible) on that thread (unintelligible)?

9 A. Yes, sir. I --- I wasn't aware what our rents were
10 or anything at that time.

11 Q. (Unintelligible) but we now proved that you were
12 incorrect in your initial statement --- your memory --- and
13 memory's tough. I mean, I get it's been three or four years.
14 I get it. But you said you didn't know who AJ was. You said
15 you never talked to him, you never heard from heard from him.
16 But we know that you did have interaction with AJ?

17 A. To say sorry your problem wasn't solved. Vendors
18 payable will help you, but I --- honestly, I don't even
19 remember that communication because it wasn't my arena
20 responsibility.

21 Q. Okay. All right. And that arena responsibility,
22 (unintelligible) Jason and Melissa's correct?

23 A. For the rents, it would probably be Terry and ---
24 and the payables team. But yes, they --- yeah, I wasn't
25 a property manager by any means.

1 Q. (Unintelligible).

2 A. Thank you.

3 MR. COBB: All right. Your Honor, I'd like to
4 produce this as Defendant's Exhibit 100.

5 THE COURT: Any objection to 100?

6 MR. JOYCE: Your Honor, I would object to this being
7 entered. It's not a continuous thread. The e-mail on
8 February 17th that he keeps referencing. It --- you
9 can't tell who it's to, I don't --- I don't think.

10 MR. COBB: Your Honor, because the e-mail threads
11 are kind weird like Microsoft Outlook (unintelligible)
12 you actually can. And the way that you do that is you go
13 up --- you --- you have to consider like the
14 responsiveness. And you have the responsiveness here
15 from Crissy Warner who replies to that entire e-mail
16 thread (unintelligible) e-mail thread.

17 MR. JOYCE: You want to approach?

18 MR. COBB: Yes.

19 (Bench conference)

20 THE COURT: What's the number of the exhibit? 100?

21 MR. COBB: Exhibit 100.

22 THE COURT: Thank you, sir. Continue.

23 (Defendant's Exhibit 100 marked)

24 BY MR. COBB:

25 Q. Ms. Warner, let me verify, you --- this --- this e-mail

1 address right here Crissy.Warner@IOAUSA.com, you absolutely
2 responded on this thread, correct?

3 A. Yes.

4 Q. Okay. And that was July 30th?

5 A. Correct.

6 Q. Is there any reason to believe that this continuation
7 thread that AJ Leone sent on July 11th, he sent that to you
8 directly correct? (Unintelligible) Jason and Melissa?

9 A. Yes. I'm cc'd.

10 Q. And so, again, you did have communication and contact
11 with Mr. Leone, or AJ?

12 A. Yes, regarding rents.

13 Q. Okay.

14 MR. COBB: (Unintelligible).

15 BY MR. COBB:

16 Q. All right. Now, you also said that --- that no rent
17 concession was ever given or a rent abatement was ever given.
18 And there was Barbara Hanna leak and there was this leak that
19 we're (unintelligible) correct?

20 A. Correct.

21 Q. At any time did anybody at Insurance Office of America
22 ever go to the landlord and say hey, we'd like a rent
23 abatement? Or hey, we believe we --- we --- we're due a rent
24 abatement here?

25 A. I wouldn't be aware. That would be IOA Properties.

1 Q. Okay. So well it would be? Because Insurance Office of
2 America was the tenant. So was IOA Properties supposed to
3 request that?

4 A. Would be my assumption that they would, yes.

5 Q. Any reason to believe that they ever did request that?

6 A. I have no reason to believe or not believe. I ---
7 I --- I do not know.

8 Q. You've been here all week so have you seen anything that
9 indicates that ---

10 A. No, sir.

11 Q. --- (unintelligible). All right. And you talked about
12 Angela and her responsiveness. Now, she was pretty
13 (unintelligible) about you and she's (unintelligible) ---

14 A. She --- she's a nice lady. Yes.

15 Q. (Inaudible)?

16 A. I didn't remember that. But ---

17 Q. (Unintelligible).

18 A. Yeah.

19 Q. So you said that Angela --- Angela was typically
20 responsive?

21 A. Uh-huh.

22 Q. And you said ---

23 A. Yes, sir.

24 Q. --- that there was a difference between responsive and
25 productive?

1 A. Yes, sir.

2 Q. Okay. Now, so would you agree that a tough leak would
3 sometimes be difficult to get repaired?

4 A. Seems to be.

5 Q. Okay. All right. So, you know, from (unintelligible)
6 standpoint isn't it true that sometimes it takes the
7 contractor many times to figure on the what's going on so they
8 ultimately fix it?

9 A. I would assume so, yes. In this situation that's
10 accurate.

11 Q. And so the reason why I'm asking is, you know, I think
12 about the word, "diligence," a lot because that's
13 (unintelligible)?

14 A. Uh-huh.

15 Q. And do you believe that Angela on behalf of the condo
16 association was being diligent in terms of responsiveness, and
17 always trying to get the contractor out there to
18 (unintelligible)?

19 A. On most occasions, yes.

20 Q. So you would say that Angela was diligent?

21 A. No, I said she was responsive.

22 Q. What's --- help me understand. I mean, (unintelligible)
23 responsive in your --- in your opinion. And (unintelligible)?

24 A. Okay. Responsive to me would be giving a --- a
25 timely response that, yes, I got your message, and I'm

1 going to take care of this. The diligence is actually
2 the action to do so. So what I --- I would compare that
3 to one of my employees. A client e-mails them and says,
4 hey, need an auto ID card. And they say, okay, I'll take
5 care of you. And it's six hours later before they get
6 their auto ID card and it's something that they could
7 have done in five minutes. So that's a difference in
8 diligence and ---

9 Q. Sure. But in that case, your employee's actually
10 (unintelligible) ID card (unintelligible)?

11 A. Sure.

12 Q. Right? But isn't it true that Angela (unintelligible)?

13 A. No, but she has contact with one.

14 Q. And she contacted him pretty much right away, correct?

15 A. At the beginning of the leak, yes.

16 Q. All right. And then they coordinated that you and/or
17 Scott could have somebody there to let the plumber in ---

18 A. Yes.

19 Q. But you again --- you again don't think that Angela was
20 diligent?

21 A. Not at all times, no.

22 Q. Part of the time?

23 A. Sometimes, yes.

24 Q. Okay. When do you think she became not diligent? What
25 are some times she wasn't diligent?

1 A. I think the longer it went on it was more
2 complicated for her to find the time to deal with it. It
3 seemed to me Angela had a lot on her plate. A lot of
4 times when a contractor needed to come out, multiple
5 occasions we were told she has a meeting at another
6 property or a problem at another property, she can't be
7 there, could we be there? So I think she had a lot on
8 her plate to distract her.

9 Q. I went through a lot of e-mails and a lot of texts, but I
10 don't see anywhere you, Scott, or anybody from Insurance
11 Office of America said hey, you're not taking this seriously.
12 You're not doing this right. Am I missing an e-mail or a
13 text?

14 MR. JOYCE: Objection. Mischaracterizes that.

15 MR. COBB: (Unintelligible).

16 THE COURT: All right. I'm just going to have ---
17 I'm just going to have you to --- to rephrase your
18 question, please.

19 MR. COBB: (Unintelligible).

20 THE COURT: Okay. All right.

21 BY MR. COBB:

22 Q. Let's go to the September 22nd e-mail with Melissa
23 Rudolph on Plaintiff's 16 in that big binder. I know it's
24 kind of hard to (unintelligible). All right. Let's go to the
25 first two e-mails on 69 and 70. Okay?

1 A. Yes, sir.

2 Q. All right. So Crissy, what --- Ms. Warner --- I'm sorry,
3 I used first name ---

4 A. Crissy's fine.

5 Q. (Unintelligible)?

6 A. I prefer.

7 Q. (Unintelligible). What --- I'm --- I'm looking at your
8 e-mail thread here. Will you --- will you please describe
9 what this e-mail thread is and then who is it from? Who
10 (unintelligible) and what's it about?

11 A. Starts off from me to Melissa. It was at 10:30.
12 Looks like --- oh, okay. That's Angela, sorry. I was
13 looking at it (unintelligible). Yes, I've gotcha. I'm
14 with you.

15 Q. Okay. All right. So those -- those e-mails --- all
16 right? Were --- that was --- was that the first time you had
17 gotten Melissa and Jason Robinson and/or Jason Robinson about
18 the issue with the water leak between Parker and Scott's
19 office?

20 A. Yes. I think so. It appears this is the same day
21 that we discovered that the ceiling had collapsed ---

22 (Simultaneous speaking)

23 Q. Right. (Unintelligible) Monday, if I'm (unintelligible)?

24 A. Sounds right. Somewhere around there.

25 (Simultaneous speaking)

1 Q. (Unintelligible) the cleaning crew cleaning on Monday, I
2 guess did the --- the garbage can, or over the weekend?

3 A. Correct.

4 Q. So ---

5 A. Typically Sunday. That was their day.

6 Q. Got it. Got it. And just nobody was in the office to
7 discover it until Tuesday the 22nd?

8 A. Correct.

9 Q. Okay. All right. So, again, why aren't you going to
10 Melissa and Jason now? Why not go to Melissa and Jason back
11 in August (unintelligible) instead of e-mailing Angela for
12 that water leak?

13 A. Because I think we were doing our due diligence in
14 trying to manage the situation and get action. And it
15 had reached the point where it was just beyond our
16 control at this point to go to get action.

17 Q. I got you. All right.

18 A. We were very frustrated that it had reached this
19 point.

20 Q. Okay. Now, are you aware that this e-mail did trigger
21 action by Insurance Office of America? Jason sent an e-mail
22 to AJ Leone, 1221 Bower?

23 A. Yes.

24 Q. Okay. And are you aware that was the first time anyone
25 had ever at Insurance Office of America directly contacted Mr.

1 Leone from 1221 Bower?

2 A. For his landlord hat, yes.

3 Q. Now, he also --- it's --- it's fine. But I mean
4 (unintelligible) right?

5 A. Uh-huh. We all do I think.

6 Q. Now, you had testified earlier that you wanted to ---
7 (unintelligible) you wanted --- in this e-mail you talked
8 about you want to put pressure on them. Who are you referring
9 to as "them?" Are you talking about CAMS on behalf of the
10 condo association?

11 A. Whoever. Whoever's responsible to take action on
12 the leak. And, you know, to me it doesn't matter whether
13 it's CAMS, the landlord, or whoever's responsible. We
14 needed to get some pressure on them to get it moving.

15 Q. And that's fair. I mean you were probably getting
16 (unintelligible)?

17 A. Yes.

18 Q. Do you wish you had gone back --- looking back, were ---
19 I think (unintelligible) playing Monday morning quarterback
20 right now. Looking back would you --- would you have got ---
21 would you have recommended going to Jason and Melissa
22 August 14th or August 17th when you sent the e-mail Angela,
23 instead of Angela (unintelligible)?

24 A. Had I known where they was going to lead, and ---
25 and I was aware of that being the requirement to action,

1 yes, absolutely.

2 Q. (Unintelligible) a lot, do you remember Dave Dunnagan's
3 testimony?

4 A. Yes.

5 Q. Okay. And did you hear how he said mold sometimes can,
6 you know, can have the same smell as sewage?

7 A. Yeah. Yes, sir.

8 Q. And he also testified at that time you weren't sure
9 whether that was mold or mildew, correct?

10 A. Right. And correct. Until they did their testing,
11 we just weren't sure what we were dealing with.

12 Q. So you talked about within reasonable control, but
13 even --- even you didn't know whether it was mold or mildew at
14 that time, right?

15 A. Correct.

16 Q. It's easy to look back and say well, he should have,
17 could have, would have, but we didn't know.

18 A. We were pushing for it from day one though.

19 Q. You mean you just didn't know?

20 A. No, we did not know.

21 Q. All right. Now, you talked about your September 24th
22 with (unintelligible) Angela Adelman, I guess Heath and Parker
23 as well?

24 A. Yes, sir.

25 Q. Do you remember who said hey, let's get a hole in there

1 and see what's behind it?

2 A. Heath.

3 Q. And he had some plumbing experience as well; is that
4 right?

5 A. I wasn't aware of that. I was told he was the
6 original contractor on the building during the
7 construction, that's really all I know about Heath.

8 Q. Okay. Fair enough. Now, you also said that at that
9 point in time after the hole was cut and the plan of action
10 was to go and tear it all out and fix it. You and Scott said,
11 whoa, wait a minute. We --- we got to get this air quality
12 report, correct?

13 A. Yes. Correct.

14 Q. And so at any point in time did anybody ever reach out to
15 AJ Leone on --- for 1221 Bower or even to Angela and say hey,
16 we don't care, you know, we'll pay for it, you pay --- did
17 anybody say hey, we want AJ to pay for this report, don't want
18 to pay for it now?

19 A. I don't think that took place. We didn't care who
20 paid for it at that point. We just wanted it done.

21 Q. Right. And do you remember in the test that saw that Mr.
22 Leone was --- was fine using Kleen Sites early on because
23 Scott that --- that Kleen Sites was his preferred vendor to do
24 this work?

25 MR. JOYCE: Objection. Mischaracterizes testimony.

1 And the --- (background noise).

2 THE COURT: All right.

3 (Simultaneous speaking)

4 THE COURT: All right. So --- so what I'll do is
5 have --- I'll sustain it, but I'll have you to rephrase
6 your question.

7 MR. COBB: All right.

8 BY MR. COBB:

9 Q. Were you --- let --- let's --- let's drill down at this
10 time on it. All right. On September 22nd, y'all --- excuse
11 me --- Scott and you are aware that ceiling tile has fallen in
12 Parker's office?

13 A. Correct.

14 Q. Right? On September 24th, you meet with Heath and
15 Angela, and they put a hole into Parker's office, right?

16 A. Correct.

17 Q. All right. And so now that that hole is cut you see that
18 there's nasty behind it?

19 A. Correct.

20 Q. Right? And so you back off and Heath comes up with the
21 plan that he's going to go ahead and remove all the walls; is
22 that right?

23 A. Correct.

24 Q. Now, was Scott with y'all during that meeting or did you
25 and Scott meet after that meeting?

1 A. Scott was present that day. I cannot speak to
2 whether he was downstairs in Parker's office when all of
3 that took place or not. Angela and I were for sure.

4 Q. Okay. All right. And you and Scott agreed that y'all
5 would go and let him move forward and --- and
6 (unintelligible)?

7 A. Yeah. That's the first time we had discussed Kleen
8 Sites. I --- I wasn't aware of them at all. But after
9 Heath --- sorry, Heath and Angela left, Scott and I were
10 like we don't feel real comfortable about this. We think
11 it should be tested before they start ripping out the
12 walls. And that's when Scott said he had a client that
13 did that type of work and he would reach out to him.
14 And, you know, he asked was I good with it and I said
15 absolutely. I don't care who pays for it. We --- we
16 we've got to get it done.

17 Q. Right and Dave awesome. He's --- he is good?

18 A. Nice guy.

19 Q. So did you hear the testimony that Dave Dunnagan
20 (unintelligible) also friends not only a client relationship,
21 friends for ten years?

22 A. Yes, sir.

23 Q. Do you think it's fair that maybe Dave just cleared his
24 calendar to come out help out his buddy to get there the next
25 day?

1 MR. JOYCE: Objection. Calls for speculation.

2 THE WITNESS: Yeah. I have no way to know.

3 (Simultaneous speaking)

4 THE COURT: Hold on. Hold on.

5 MR. COBB: (Unintelligible) testified earlier that
6 he got out there the very next day because it was
7 (unintelligible). And I'm trying to say that there was a
8 little bit more going to on than just calling up a vendor
9 and asking them to come do a inspection. This was a
10 different relationship.

11 THE COURT: All right.

12 MR. JOYCE: Objection. Calls for speculation. We
13 didn't ask this to Scott Berry. (Unintelligible).

14 (Simultaneous speaking)

15 THE COURT: All right.

16 MR. JOYCE: --- for her to speculate.

17 THE COURT: I'm going to sustain that and we'll
18 just --- we'll move on from that.

19 BY MR. COBB:

20 Q. Now, you talked about --- all right, so let's --- let's
21 stay on that timeline real quick. On September 25th, Dave
22 Dunnagan came in and did air quality, correct?

23 A. Correct.

24 Q. All right. Now, you had not seen this air quality report
25 prior to (unintelligible)? Prior --- prior to --- I'm --- I'm

1 sorry. You didn't see the air quality report until after
2 September 25th, right?

3 A. Correct.

4 Q. All right. But you made the decision, the mama bear,
5 (unintelligible). You made a decision to protect your
6 employees and send them all home because you didn't know what
7 you were dealing with and rather be safe than sorry, correct?

8 A. Absolutely.

9 Q. Okay. All right. When --- and ---

10 A. I think it was made prior to the day that he came
11 out for the testing. We made that decision once Heath
12 cut the hole in the wall and we could see that we were
13 dealing with a real mess.

14 Q. September 24th sound right? The day before the e-mail?

15 A. Yeah. Yes. Yeah.

16 Q. All right. Did you ever look at the report after it was
17 issued on September 25th?

18 A. Yes, sir.

19 Q. And did you see that in the report --- did the report
20 make sense to you, like red, yellow and green ---

21 A. Yeah.

22 Q. --- stoplight?

23 A. Yeah.

24 Q. All right. And did you see there was only really one
25 issue with this air quality report overall in general?

1 A. Yes, sir.

2 Q. And that's the hole in Parker's --- in Parker's office?
3 But did you also notice that Parker's office otherwise was
4 green with the exception of the hole? You had to go inside
5 the hole?

6 A. Yes.

7 Q. All right. So when I think about how big this property
8 is, and I know --- I know they got a sublease, Unit 105 ---

9 A. Correct.

10 Q. --- that's 7,822 --- 22 square feet, right?

11 A. Uh-huh. Yes, sir.

12 Q. Okay. All right. So we're dealing with a very small
13 part of this. We're dealing with this office here which is
14 roughly 12 by 12, right? Does that sound right?

15 A. Yes, sir.

16 Q. So 144 square feet? Okay? Okay. And this is Suite 103,
17 correct?

18 A. Yes, sir.

19 Q. All right. All right. So the build out for the --- the
20 construction is there, correct?

21 A. Correct.

22 Q. But you said you just told the contract (unintelligible)?

23 A. I advised everyone. When I told my employees not to
24 enter, I also notified our contractors and vendors not to
25 enter.

1 Q. Right. But now you that know that it's not --- it's not
2 really dangerous based off the air quality report. Why not at
3 a minimum go back to your contractors and say hey, you're good
4 to come in the space and finish up?

5 A. I still did not --- multiple reasons, but one of
6 which is it still had not been taken care of. You know,
7 we still had a leak ongoing. It was going to be a
8 construction zone ---

9 Q. Sure.

10 A. --- it was --- there's a lot of things going on with
11 that.

12 Q. Sure. And (unintelligible) agreed that the leak had to
13 be fixed before the mold remediation should be done?

14 A. Absolutely.

15 Q. And isn't true that that leak was just persistent and it
16 was either the same leak or it was a new leak, but that thing
17 kept coming back?

18 A. Seems to have. Yes.

19 Q. Just like a bad series of movie sequels, right?

20 A. Uh-huh.

21 Q. (Unintelligible)?

22 A. Yes.

23 Q. All right. So the badge scanners --- what was going on
24 with the badge scanners at this time?

25 A. The one at the front door which is Suite 101 ---

1 Q. Is that (unintelligible) place?

2 A. Yes, that looks --- yeah, right in that area. I
3 can't --- yes. So that one stopped working as far as
4 entry. It would not unlock the door. So the --- those
5 of us that were in the office were having to walk --- our
6 parking lot was out front and to the side. We were
7 having to walk all the way around the back of the
8 building and come in the courtyard for the condos and
9 come in the back door.

10 Q. Okay. Okay. And there's a --- there's a gate right here
11 for the parking lot so you can't go around that way, correct?

12 A. I think can you go that way. I mean, you can't park
13 there, but you can walk.

14 Q. Got it.

15 A. Yes.

16 Q. You could --- you could --- so you parked here, walk
17 around and enter from the side door right here?

18 A. Correct.

19 Q. Okay. But you were worried for security and you --- you
20 know ---

21 A. Yes.

22 Q. So now that you know that --- that the area with the mold
23 concentration, you got a report on September 25th, why not go
24 ahead and get the badge scanner system fixed at that point?

25 A. We had that scheduled and we had canceled it during

1 that and just did not want to interfere with the other
2 work that was going on at that time. We --- the leak was
3 still on and off so we wanted to ---

4 Q. Right.

5 A. --- make sure everything was resolved before we
6 (inaudible).

7 Q. But was --- the leak was right here in between the two
8 offices, correct?

9 A. Yes.

10 Q. Okay. So why would that preclude a contractor for
11 finishing up the construction there? Why would that --- why
12 couldn't the contractor come finish the job?

13 A. Well, there was no need to have him in there while
14 they were doing their work. It would be done afterwards.

15 Q. Okay. But didn't you try to coordinate and have
16 contractors work together?

17 A. Yes, I did.

18 Q. And (background noise) (unintelligible). Again, the
19 leaks right here?

20 A. We were replacing the entire security system at that
21 point.

22 Q. Okay. And so with the security system would be --- would
23 be badge scanners be (unintelligible)? Is that where they
24 go ---

25 A. The scanning system?

1 Q. Yes.

2 A. Honestly, I'm not sure. I would assume that's where
3 its housed. I know it was controlled from our home
4 office, Melissa Rudolph is is part of that that controls
5 the scanners.

6 Q. Got it. This is a dumb question too, but I'm --- I'm
7 actually just like a card; is that what it is? You just put a
8 card up like a ---

9 A. Correct.

10 Q. --- box on the wall and that unlocks the door for you?

11 A. Correct.

12 Q. It was so certain people have certain authorization for
13 certain scanners and areas that they could access? All right.
14 So from the date of Dave Dunnagan's report on September 25th,
15 are you aware that AJ Leone on behalf of the co-owners the
16 condo association signed the Kleen Sites report on
17 October 22nd to go ahead and engage them to come and do the
18 mold remediation?

19 A. Yes.

20 Q. Okay. When you mentioned five weeks, but isn't that
21 September 25th until the day that the condo association
22 engaged Kleen Sites to come do the mold remediation? Wasn't
23 that less than four weeks?

24 A. Five weeks when was the work was performed.

25 Q. Right. And so you --- you got an e-mail from Angela

1 saying hey, I'm --- I'm trying to get (unintelligible) Melissa
2 (unintelligible) about getting a schedule, correct?

3 A. Yes.

4 (Simultaneous speaking)

5 A. I didn't even know she was his wife till yesterday.

6 Q. You didn't?

7 A. No.

8 Q. (Unintelligible)?

9 A. Oh, really?

10 Q. So --- so with --- with that e-mail thread, you
11 immediately got back, but it looks like you and Scott
12 (unintelligible) and Scott went ahead and called the office
13 and got everything coordinated, correct?

14 A. Yes. I had never dealt with Kleen Sites before.
15 Any information I would have gave her was off of the
16 communications from that or out of our computer systems
17 since they were a client.

18 Q. Right. So from October 22nd, November 2nd --- what's
19 that? That's eight, ten days roughly?

20 A. Correct.

21 Q. All right. And so that's (unintelligible) engagement to
22 the actual starting to work on the mold remediation?

23 A. Correct.

24 Q. Right. So you know, couldn't get in there immediately,
25 could they?

1 A. Correct.

2 Q. Okay. All right. Now, after that mold remediation was
3 done, there was another leak, right?

4 A. Yes.

5 Q. (Unintelligible) the water --- (unintelligible) --- the
6 mold remediation's completed, it wasn't four and a half days,
7 I --- I think it was within three and a half days,
8 November 2nd to November 5th?

9 A. Yeah.

10 Q. Right?

11 A. I remember four days. I don't remember if there
12 were any half.

13 Q. And that --- and that last day ---

14 (Simultaneous speaking)

15 Q. --- testify? (Unintelligible) ask us to make sure we
16 don't talk over each other ---

17 A. I know ---

18 Q. (Unintelligible) ---

19 A. --- sorry.

20 Q. All right. So --- so in that --- in that time frame from
21 10/22 to November 2nd, there was a --- there was a gap right?
22 There was a delay in terms getting mold remediation done?

23 A. Correct.

24 Q. Right. And you would agree it made no sense to go there
25 and rip out the sheetrock or do anything and to try and repair

1 the ceiling tiles, the walls --- all that needed to be done
2 first. But before that needed to be done, didn't the leak
3 have to be repaired?

4 A. Not necessarily. Well, yes. Before the remediation
5 work is performed? Yeah, we would hope so. Yes.

6 Q. Isn't true that in September that leak kept coming back?

7 A. Yes. Either kept coming back or it was never fixed.
8 I'm not sure which.

9 Q. Okay. (Background noise) we don't have any evidence
10 proving ---

11 A. Correct.

12 Q. --- exactly what it was? Right. (Unintelligible) all
13 right. So with that --- with that --- with that issue, you
14 get the --- you get the remediation done on November 5th?

15 A. Correct.

16 Q. On November 6th, you get a (unintelligible) mold
17 remediation report from Dave Dunnagan at Kleen Sites, and it
18 says hey, everything's clear.

19 A. I don't remember? Was it the day after? Because
20 he --- I think he sends it to the labs, but I'm not sure.

21 Q. Yes. The day that his post-remediation report is
22 November 6th?

23 A. Okay.

24 (Simultaneous speaking)

25 Q. (Unintelligible)?

1 A. No. No. That's fine.

2 (Simultaneous speaking)

3 A. Take your word.

4 Q. --- earlier you said he did suggest (unintelligible)
5 right?

6 A. Correct.

7 Q. And you had testified that that didn't get done before
8 Insurance Office of America left on December ---

9 A. Correct.

10 Q. Right? Did Insurance Office of America ever ask for it
11 to be done by 1221 Bower or the condo association?

12 A. I mentioned to Angela that their contractor thought
13 it was a good suggestion that it be done ---

14 (Simultaneous speaking)

15 Q. You mentioned their contractor. Can you specify what you
16 mean by, "their?"

17 A. The one that Angela, AJ, whoever sent out to do the
18 second quote ---

19 Q. Okay.

20 A. --- for the remediation work.

21 Q. All right. The same quote that was required by the
22 insurance company?

23 A. (Unintelligible) the indication, yes.

24 Q. And that would have been a company called PDRC, correct?

25 A. I did not recall, but yes.

1 Q. And based off the --- based off the testimony, do you
2 remember it being stated or --- or inferred that PDRC was
3 referred to Angela by the insurance adjuster?

4 A. That's what Angela said, but I --- I have no
5 knowledge of ---

6 Q. Was it you or Scott who was with Angela and the insurance
7 adjuster on site?

8 A. I was there. I --- I think Scott was there but I
9 can't swear to that.

10 Q. Okay. You had mentioned that I think October 1st there
11 was a --- a call with Jason, Melissa, Angela, you, and AJ,
12 correct?

13 A. Yes. And maybe some others, I'm not ---

14 Q. Fair enough, and those were the main --- those were kind
15 of the main parties?

16 A. Correct.

17 Q. All right. And you said AJ was late?

18 A. Yes.

19 Q. Okay. And are you aware that AJ was the one who kept
20 e-mailing over and over again requesting this meeting?

21 A. No ---

22 (Simultaneous speaking)

23 A. --- I'm not.

24 Q. All right. And do you think that there was just never
25 confirmation of time and so somebody called him up and said,

1 hey, get on the call, it's now?

2 A. No. I --- I actually remember when that invitation
3 went out. He actually rejected the invitation.

4 Q. Okay. (Unintelligible) time or ---

5 A. No.

6 Q. All right. So he just couldn't make the time that you
7 had sent out? Is --- is that what you're saying by the
8 rejection, you think?

9 A. There was not an explanation. It --- because I
10 remember pointing it out to --- I don't know if it was
11 our legal counsel or who it was, that he rejected the
12 meeting, but didn't give an explanation as to why. So we
13 weren't sure if he was going to be there or not.

14 Q. Got it. Does that --- it makes sense he would be there
15 if he was the one requesting it, right?

16 A. Yes, but he didn't send out the calendar invitation
17 for it.

18 Q. Now, you had testified early that on December 1st
19 Insurance Office of America terminated its lease, correct?

20 A. Correct.

21 Q. All right. Now, my question --- my question to you is
22 (unintelligible) you said that you weren't aware that this
23 lease was going to be terminated until that day?

24 A. Correct.

25 Q. All right. And that is --- and that's --- that's

1 accurate?

2 A. Yes. They --- they notified me that the attorney
3 was sending out the letter.

4 Q. Okay. And you said, "they," who is they?

5 A. Probably Rob Motley is the one that told me
6 directly. There had been conversations about it, but
7 nothing was ever confirmed with me until they said hey,
8 the attorney is sending out the letter.

9 Q. Got it. And did you ever talk to Angela Adelman before
10 December 1st letting her know that this termination was going
11 to happen?

12 A. No, sir.

13 Q. Okay. So that conversation never happened?

14 A. No, sir.

15 Q. All right. You also mentioned that you believe that
16 Insurance Office of America was in their rights to terminate
17 the lease not because of the lease itself, but because of the
18 precedent of having water leaks, correct?

19 A. One of the reasons, but in --- I'm not a contract
20 expert, but in what I have read, I would say yes, we were
21 correct in exercising our right.

22 Q. We will disagree (unintelligible) ---

23 A. Okay.

24 Q. --- (unintelligible). You had also mentioned that you
25 were surprised and disappointed to hear that --- to hear

1 that --- that Clean Aire, the original air quality report
2 contractor that Angela had e-mailed Mr. Leone about, you ---
3 you didn't know about that correct?

4 A. Angela had mentioned to me that she was obtaining a
5 quote from Clean Aire and I know that Scott had
6 communicated with her about (unintelligible).

7 Q. Okay. So obviously, Angela testified yesterday that she
8 would text, e-mail, and have phone calls, correct?

9 A. Correct.

10 Q. And would you --- would you --- would you --- would you
11 always communicate with Angela via text, or e-mail, or would
12 you also call?

13 A. Yeah, all three. We would do any --- she's even
14 given me her cell phone in case it was an emergency
15 situation.

16 Q. So she wasn't trying to hide or disguise the fact that
17 she had gotten a quote from Clean Aire, correct?

18 A. No, sir.

19 Q. Okay. At any point did anyone tell you directly that
20 1221 Bower or (unintelligible) AJ Leone as a director of the
21 condo association or as the landlord, refused to do a Clean
22 Aire report back in September or early September of 2020?

23 A. No. Scott had asked the question and I think it was
24 evaded. But no, no one ever said that directly.

25 Q. Well, (technical difficulty) if you're dealing with mold,

1 or mold, or mildew, or mold at that point, right?

2 A. Correct.

3 Q. Okay. I --- I --- I kind of (unintelligible) what you
4 said about your (unintelligible) I think that --- I think
5 that's a good (technical difficulty) --- working environment
6 to have ---

7 A. Yes.

8 Q. --- compliment you on that.

9 A. Thank you.

10 Q. You know, COVID was tough wasn't it? Create that, you
11 know, esprit de corps?

12 A. Yes, I've often said I'm very thankful for the six
13 months that I had in the office before COVID hit, because
14 we did form a lot of really strong relationships during
15 that time.

16 Q. Sure. And you talked about --- you talked about
17 (unintelligible) people came back, correct?

18 A. Yes.

19 Q. All right. And so you were --- so Insurance Office of
20 America was using all five of these under their lease; it
21 subleased 105, correct? Right?

22 A. Correct.

23 Q. And then this 104, it was for storage, but can you help
24 me --- explain like what kind of storage was in there?

25 A. Gosh. Everything. There was bookcases, file

1 cabinets, bed frames, headboards, it was --- it was a
2 lot. Artwork.

3 Q. Okay. But if I walked in there that same path to walk
4 through it, I mean, was it kept nice?

5 A. There --- so if you ask my opinion it was kept nice
6 in the visible area, so where you could see in the glass
7 door into 104 ---

8 Q. Right. Would that be right here?

9 A. I'm sorry. Out of the --- out of the --- yes. Over
10 on that side.

11 Q. (Inaudible)?

12 A. So if you --- yeah, so if you looked from there
13 it --- it just looked like empty space. We eventually
14 did put a cubicle in that space to move it for the
15 construction that was in the back. Otherwise everything
16 was in where you can see. There's a room drawn off
17 there.

18 Q. (Unintelligible) was there a conference room table and
19 conference room chairs right here?

20 A. No, sir.

21 Q. There was not?

22 A. No.

23 Q. You sure?

24 A. Yes.

25 Q. I saw it. I met with them and saw ---

1 A. If it --

2 Q. --- when were they moved? Were there --- was there ever
3 a conference room?

4 A. If it was in there it was in pieces. There was
5 never a constructed conference room table in that room
6 during my time in IOA.

7 Q. Okay. Never?

8 A. Never.

9 Q. Okay.

10 A. We had a conference table in the other conference
11 room but not in 104, there was no room.

12 Q. All right. Now, you had testified earlier that Rob said
13 hold off, I'm trying to --- let's --- we're trying to resolve
14 this, correct?

15 A. Yes.

16 Q. All right. Give it a couple of days?

17 A. Yes.

18 Q. All right. Is it true that on December 2nd the lawsuit
19 was --- that we're in today was filed?

20 A. That's my understanding, yes.

21 Q. So that doesn't sound like a resolution, that sounds like
22 litigation.

23 A. Yeah, I --- I wasn't privy to any of that.

24 Q. But isn't it true that as early as November 13th you were
25 on e-mail threads with Ellis Lesemann?

1 A. I don't know the dates, but I'll say okay. Yes.

2 Q. And you clearly knew that, you know, terminating the
3 lease was --- was being discussed seriously, correct?

4 A. I know that Rob probably due to my screaming and
5 hollering had inquired with internal legal counsel as to
6 what options do we have regarding this lease at this
7 point if we can't get this resolved.

8 Q. Okay. So ---

9 A. And I was not aware of any of the clauses or
10 anything within the lease at this time. Our legal
11 counsel is the one that came back and disclosed what they
12 found within the lease.

13 Q. Okay. Fair enough. Let's talk about broom swept
14 condition.

15 A. Yeah.

16 Q. And --- and I --- and by the way, I will compliment you,
17 it's clean. I mean, I saw it. But would you --- would you
18 agree that the remaining (unintelligible) there would not be
19 considered broom swept?

20 A. Well, I vacuumed the room, and dusted baseboard, but
21 the wall had the sheetrock was down to its standing ---
22 sanding, sorry --- and a coat of paint.

23 Q. All right.

24 A. But yes, to the best of my ability, I did clean
25 (inaudible).

1 Q. Right, but that's not --- I mean, you're not leaving the
2 premises in complete disarray there, but they're not leaving
3 them actually broom swept, correct?

4 A. I would consider it broom swept.

5 Q. Okay. When you talked about Jason and Melissa about
6 (unintelligible) out back in June or July of 2020, did you ---
7 are you aware if anybody ever went to 1221 Bower and said hey,
8 you know, can we get permission to do this?

9 A. Not to my knowledge.

10 Q. Okay. All right. So would you be surprised if --- if
11 there was no permission requested?

12 A. Not --- not necessarily either way. I --- I
13 notified Jason like Rob asked me to do.

14 Q. Okay. All right. And then let's talk about ten ---
15 (background noise). Because you kind of --- you kind of left
16 her in a bind, didn't you? When y'all moved out, that's
17 (unintelligible) room, right? And she's got a operating
18 business.

19 A. Her space is beautiful.

20 Q. It is pretty.

21 A. I had --- I had never been in that space until she
22 had a leak during all of this, and I was amazed at how
23 beautiful it was. But I --- I don't know what the
24 conversations were around that. I know that that was one
25 of Scott Berry's concerns that we wanted to make sure she

1 was taken care of and all of the ---

2 Q. Right. But y'all were her landlord, I mean that's
3 sublease, correct? Insurance Office of America was her
4 landlord, right?

5 A. Yes. I wasn't aware of all those arrangements
6 (inaudible).

7 Q. And she was kind of left to fend for herself in this
8 situation (unintelligible) Insurance Office of America
9 terminated the lease, (unintelligible)?

10 A. Yeah. I assume so.

11 Q. Okay. Are you aware if she ever brought any litigation
12 against Insurance Office of America for the --- for them doing
13 that?

14 A. Not that I'm aware of.

15 Q. So you talked about the units --- the --- the personal
16 effects in 104, those were Kim Chapman's the med spa?

17 A. Correct.

18 Q. Why not just go and say hey, you have to get your stuff,
19 we're leaving?

20 A. Scott had tried to get in touch with her. Like I
21 said, we were down to the final five days when we moved
22 out and she was not present or available for us to get
23 those to her.

24 Q. All right. Now, we're --- we're going --- and I'm ---
25 I'm --- I've got kind of (unintelligible) questions.

1 (Unintelligible) done ---

2 A. Okay.

3 Q. --- (unintelligible). I know. I know. You want to
4 stand up, stretch?

5 A. I'm okay. This is much better than the bench.

6 Q. (Inaudible).

7 A. Yes, only not as pleasant.

8 Q. All right. So the --- let's talk about the space. You
9 had stated in multiple e-mails that the main concern was
10 really the lower level and in Scott's office, correct?

11 A. Correct.

12 Q. All right. So if this is a 12 by 12 and this is
13 1000-and-change square feet, if you looked at the entire five
14 units --- because again remember, you rented five units right?

15 A. Uh-huh.

16 Q. And med --- and med spa was paying rent to Insurance
17 Office of America not to 1221 Bower. So you have to --- you
18 have to add them into the equation even though Insurance
19 Office of America wasn't actually physically using it there,
20 they were responsible for it, correct?

21 A. Yes, per the lease.

22 Q. Per the lease. All right. So that is 7,822 square feet.
23 That that's like four of my homes. All right. In that space.
24 Right? So that's a lot of square footage. At least not my
25 kids this time, right. So that's --- that's a lot of square

1 footage, correct?

2 A. Yes, sir.

3 Q. Okay. All right. So in your testimony earlier, you
4 believe under --- Section 11.1, that there should be a rent
5 abatement of 66 percent of this --- of --- of this property.
6 Can you explain to me why rent should be abated for any of
7 101?

8 A. We did not feel it was a safe environment to be in.

9 Q. Okay. You didn't feel like it, correct?

10 A. Correct.

11 Q. Okay. What about 102, excluding Scott's office?

12 A. Well, it's an open space, so correct.

13 Q. Scott's got a door, right?

14 A. Yes.

15 Q. And you have a report that says Scott office is fine?

16 A. Uh-huh.

17 Q. Okay. All right. 103, let's just --- I'll give you that
18 one, that one's a mess because of Parker's office?

19 A. Right.

20 Q. Even though it says hey, inside Parker's office in this
21 area is fine, but I'll --- I'll give it. But 104 is ---
22 is --- is --- it's not part of 103, correct? It's just got a
23 glass door that closes, and you look ---

24 A. Correct.

25 Q. --- its own unit? Okay. So what about Unit 104? And

1 you're using it for storage, so you may not have people there,
2 but you're still using it, right?

3 A. For storage, yeah.

4 Q. Okay. And then you're using 105 because you're
5 subleasing it to a tenant who as paying you rent, correct?

6 A. We're --- we're using it, but yes.

7 Q. But you are because your--- your --- your use of it,
8 leasing out to a third party, and they're paying you rent for
9 the privilege of that --- that lease, right?

10 A. (Unintelligible).

11 Q. So help me understand, when I do the math, this office
12 had 144 square feet, and this office had 7,822 square feet,
13 comes out to be 15 percent, not two thirds or 66 percent. How
14 do you get to 66 percent in terms of your justification?

15 A. Can I come back up there and illustrate some of the
16 space?

17 Q. Absolutely. Please do. Just watch your step and watch
18 these wires. So you get two field trips. See Ben didn't give
19 you any.

20 (Simultaneous speaking)

21 Q. So I gave you two.

22 A. I just want to clarify a little bit ---

23 Q. Please.

24 A. So from here back, this is all --- and I don't know
25 the square footage, this is a storage closet that's here

1 that I referred to earlier where the staff was having to
2 come and go. That's a break room, men's restroom,
3 women's restroom, storage. So from there back, I don't
4 know the square footage. So this is the office we were
5 building. This is a cubicle --- there's two cubicles
6 here, mailroom, producer, an IT employee occupied that
7 space. Rob Motley's office, my office, the conference
8 room. So when you come in the front door here, these ---
9 these walls that are shown aren't here. There's like a
10 half wall behind the reception, there's like a half a
11 wall. It's all the way to the ceiling but
12 (unintelligible) to look out the view to that.

13 But my workspace for my employees is here and
14 outside of Scott's office here, and in 103. So these
15 offices are occupied by salespeople who pay rent to IOA
16 because they're 1099 contractors who occupy the space.

17 So from my --- and I can't control the producers,
18 they come and go and all I can control is my service
19 team. But we're --- we're out in the open. This is an
20 open space my work area, that work area and this work
21 area.

22 Q. Got it.

23 A. So it would not have left us with enough cubicle
24 space or office space for (unintelligible).

25 Q. So was the entire service team 23 when you started at

1 this --- at this office?

2 A. Roughly, yes.

3 Q. Where --- where were the majority of them sitting? Can
4 you kind of help us understand the numbers?

5 A. Three cubicles here.

6 Q. Okay.

7 A. And this is Scott's office here.

8 (Simultaneous speaking)

9 Q. I know you're kind of ---

10 (Simultaneous speaking)

11 Q. This is Parker's office and that's Scott's office.

12 A. Okay. This looks like a room, but it's not a room.

13 We had two cubicles here ---

14 Q. Okay.

15 A. --- that are right outside Scott's office. And then
16 this is just an open space so there's a walkway here and
17 (unintelligible).

18 Q. Got it. So 5 of 23. So three are here, two are there
19 and the other 18 are over in this area, correct?

20 A. (Inaudible).

21 Q. And again, the --- the mold report says ---

22 A. Well ---

23 Q. Go ahead of the I'm sorry.

24 A. Sorry. There's six --- six here.

25 Q. Okay. All right. So --- so you obviously

1 (unintelligible)?

2 A. The 12 count would be the producers.

3 Q. Okay. Great. All right. Glad to clear that up. All
4 right. So was --- was --- you want to go back up or you want
5 to step down? You can stretch your legs. I guarantee the
6 jury wants to stretch their legs.

7 So was --- were the producers during this time paying
8 Insurance Office of America rent for their offices?

9 A. I don't know the answer to that. That had been one
10 of my questions and --- and I don't think that was ever
11 addressed. I think Rob told me at some point that they
12 had waived their rents during that time frame.

13 Q. You don't know for sure?

14 A. Not for positive, no. That --- that would be just
15 my recollection (unintelligible).

16 Q. Okay. So are you aware that the producers were still
17 coming in and out during this time?

18 A. Yes, sir.

19 Q. Okay. And so they were --- they were using the office
20 space, right?

21 A. Yes, sir.

22 Q. All right. So again, I --- I guess I'm still trying to
23 struggle, when you consider that a lot of the space is still
24 usable. A lot of the space based on Kleen Sites' report is
25 still safe. And we're only talking about really construction,

1 you know, a problem in this office, this office, and the one
2 that y'all hadn't completed yet. That's a lot of square
3 footage still usable. So I'm just --- I --- I just don't
4 understand the 66 percent. I just can't get there. And I ---
5 I --- I --- I'm sorry to --- I'm --- I'm --- I know we can
6 agree to disagree, but wouldn't you agree that the majority of
7 the square footage was useful?

8 A. Not if you consider that it's going to be a
9 construction zone for how much longer. We have no idea
10 at this point.

11 Q. Okay. But a construction zone in here. So I'm --- I'm
12 assuming this whole spot is --- is out of commission, right?

13 A. Correct.

14 Q. All right. And then right here through the door, this
15 (unintelligible). I mean the only other construction zone is
16 what --- what y'all are doing.

17 A. Yes.

18 Q. Would you --- would you agree with me based off what I
19 just laid out that's --- that's --- that percentage of --- of
20 unusable space is a lot less than 66 percent, the total's
21 7,822 square feet?

22 A. Depends on what time frame you're questioning,
23 because ---

24 Q. August 14th, through December ---

25 A. I would not consider it usable.

1 Q. Okay. All right. And again let me just be clear why?

2 A. Because I'm not going to send my family or an
3 employee into an environment that I don't believe is
4 safe, and it's not --- it's just not feasible for me
5 to --- the office --- the open office would be the
6 equivalent of this courtroom and the next courtroom.

7 Q. Okay.

8 A. So that's like saying if at the far end there's
9 a --- behind a door a wall that's completely gutted
10 and/or full of mold that you feel comfortable sitting
11 over here in the jury box working in that condition when
12 it's completely open.

13 Q. Okay. But that ---

14 A. And the air conditioning system is running and it's
15 been sitting, and it's ---

16 Q. But the air quality report is good, right?
17 (Unintelligible) self and Parker's office, right?

18 A. Hmm.

19 Q. So that was --- so you felt like your decision was, you
20 know, over and above the expert's decision in terms of that
21 what --- what's the safest thing to do for the staff?

22 A. I feel like I'm protecting my employees and giving
23 them a work environment in which they can perform their
24 duties.

25 Q. And that's fair. I just --- I'm just going to note that

1 I don't agree ---

2 A. Okay.

3 Q. --- and I think ---

4 (Simultaneous speaking)

5 MR. JOYCE: Objection, Your Honor.

6 THE WITNESS: I didn't mean that.

7 THE COURT: All right. What's the basis?

8 (Simultaneous speaking)

9 MR. JOYCE: --- his statement, it's argumentative, I
10 mean there's ---

11 MR. COBB: That was the most polite argument
12 (unintelligible).

13 THE COURT: It was. I'm --- I'm going to --- I'm
14 going overrule and just we'll move on.

15 MR. COBB: Thank you, Your Honor. All right. Your
16 Honor, have you decided on (unintelligible) of the e-mail
17 (unintelligible)? The e-mail thread?

18 THE COURT: Yes. You want me to make the decision?

19 MR. COBB: No. No. Yeah. I just want to know
20 because I was going to talk about anything, but I can
21 just wait (unintelligible).

22 THE COURT: Yeah. Go ahead and move on.

23 MR. COBB: Okay. Thank you, Your Honor.

24 BY MR. COBB:

25 Q. All right. Okay. Angela, do you remember ---

1 A. You called her Crissy yesterday, now you just called
2 me Angela.

3 (Simultaneous speaking)

4 Q. I told you (unintelligible). You should hear what Ben
5 calls me.

6 A. I'll ask him later.

7 Q. All right. We had talked about this e-mail earlier from
8 August 5th; do you remember seeing this?

9 A. Yes.

10 Q. Okay. All right. So all right. Can you read the ---
11 the second paragraph in your e-mail?

12 A. Yes, sir. The office is closed with the exception
13 of a couple of producers that come and go because we have
14 an issue with our badge entry scanners. If you want to
15 have your maintenance guy come in and take a look, will
16 you let me know? We can schedule a time for me to meet
17 him there.

18 Q. Okay. So this kind of goes with the testimony
19 (unintelligible) right? You were --- you report --- you were
20 being --- coordinating with, getting contractors inside the
21 building?

22 A. Correct.

23 Q. Okay. And that the --- the office was now empty because
24 the badge scanner issue (unintelligible)?

25 A. Correct.

1 Q. All right. So your staff actually --- I guess when you
2 said 50 percent, that was seven people your ---

3 A. Of the service team, correct.

4 Q. (Unintelligible) 23, or (unintelligible) how big was the
5 service team? 11?

6 A. We were probably 11, 12 total.

7 Q. So ---

8 A. We had some employees who worked --- lived and
9 worked in a different state.

10 Q. (Unintelligible) all right. So it's true that Angela to
11 help get the leak fixed had to coordinate with you, let the
12 contractor get access, right?

13 A. I was offering for her to do that. Yes.

14 Q. And she said yesterday you were great at it. She said
15 you always helpful and all willing to step in.

16 A. Yes, sir.

17 Q. Thank you.

18 MR. COBB: Your Honor, just a --- I think is already
19 in, but I'm just going to put it as Defendant's
20 Exhibit 101, just to stay the course.

21 Actually, we'll just --- we'll keep it as just
22 Plaintiff's 14.

23 THE COURT: All right. Very good.

24 BY MR. COBB:

25 Q. Crissy, (unintelligible) read that please?

1 A. Yes. It looks like this is square footage numbers
2 from the space. I'm e-mailing Angela.

3 Q. Yes.

4 A. They were three different square footages, 5,653
5 total for our occupied space. Also we have 1,139 vacant
6 in 104; and 1,030 occupied by a sublease tenant, 105,
7 Melissa spa.

8 Q. Okay. Will you do me a favor and turn to the second
9 page, please. And look at the bottom. The e-mail that Angela
10 Adelman sent you on September 1, 9:12 a.m. This one right
11 here. Will you read what that says?

12 A. What is the square footage of the IOA building? The
13 Clean Aire inspector needs to know the square footage of
14 the unit before he comes out to inspect the building.

15 Q. Okay. Good. So I just want to make sure that it's clear
16 that nobody was trying to hide (unintelligible) Clean Aire
17 getting a quote out there, correct?

18 A. Correct.

19 Q. Okay. Okay. Now, what I would --- (unintelligible) real
20 quick. All right. Now going back to that front page ---

21 A. Yes.

22 Q. --- Crissy. All right. So you talked about 5,653 square
23 feet were occupied, but again, that doesn't include Unit 105,
24 that you're subleasing to the med spa, correct?

25 A. Yes, it looks like that's only three spaces, so

1 that's ---

2 (Simultaneous speaking)

3 Q. Okay.

4 A. --- one, two, and three.

5 Q. And --- and 14. Sorry. All right. So would you agree
6 that the total square footage is --- and I can give you a
7 calculator if you want it. 7,822 square feet for all five
8 units?

9 A. Sound correct. Yes.

10 Q. Awesome. All right. And you say in this e-mail the area
11 where we're having the current problems is 1,003 square feet,
12 Suite 103, plus Scott's office, Suite 102, the wall attached
13 to 103. You see that in your e-mail?

14 A. Yes.

15 Q. Okay. So, again, I want to go back to that 66
16 percentage. All right. That --- the --- the square footage
17 for 103, is 1,003 square feet, correct?

18 A. Yes.

19 Q. All right. And then Scott's office would you agree is
20 144 square feet?

21 A. Correct.

22 Q. Okay. All right. So I'm just going to --- just going to
23 do some math. All right. So if you have 1,003 square feet,
24 plus 144 square feet, that's 1,147 square feet?

25 A. Hmm.

1 Q. Divide that by 7,822 square feet, and that gives you
2 15 percent. Any reason to believe that (unintelligible)
3 (background noise)?

4 A. No.

5 Q. So again, not 66 percent, but 15 percent?

6 A. Correct.

7 Q. I actually brought a calculator like every day and I
8 can't find it.

9 All right. And Crissy, one other thing, will you do me a
10 favor, read --- read this last paragraph?

11 A. Yes, sir. Please be sure to schedule with me in
12 advance. Our office is closed and I live 45 minutes
13 away. I received a call from the plumber at 4:01 today
14 saying they were on the way. I was in a Zoom meeting at
15 home and did not get the message until after 5:00 p.m.

16 Q. Okay. So --- so at times coordinating didn't always work
17 when a plumber wanted to come?

18 A. There was no coordination on that day. They just
19 called and said they were coming.

20 Q. Got it. And you weren't there to open up?

21 A. Correct.

22 Q. And at this time, you hadn't given the key to Angela
23 Adelman for the offices, correct?

24 A. September 1st. I had not given her a key, no.

25 MR. COBB: Your Honor, I'd like to put this in as

1 102.

2 MR. JOYCE: No objection.

3 THE COURT: All right. So moved.

4 (Defendant's Exhibit 102 marked and entered)

5 BY MR. COBB:

6 Q. Did anybody at Kleen Sites ever tell you it's unsafe to
7 be inside this office?

8 A. The day that they came out to do the air quality
9 testing there was --- I don't know, two or three guys
10 there. I'm not sure. So I was in my office. And so
11 when I saw the guy come down the cubicles in front of my
12 office I went out and spoke to him. Being nosy, said,
13 hey, what does this machine do? And he said it reads the
14 air, but then we send everything off for sampling. And I
15 said, well, is anything showing up? He said yeah, we're
16 getting some readings and he said I --- I wouldn't be in
17 here. It wasn't Dave, but it was one of his crew
18 members.

19 Q. Right, but he didn't say it's dangerous?

20 A. He just said he would not be in there.

21 Q. Well, he probably didn't like the smell, right?

22 (Inaudible) all right.

23 This is Defendant's Exhibit 17, will you do me a favor
24 and just read that top paragraph, please?

25 A. (Unintelligible) the initial onsite testing was

1 completed late Friday afternoon. The preliminary
2 indications are that particles are present in Parker's
3 office, some in Renee's office, and a small indication in
4 Scott's office. They performed air quality tests through
5 the office, and the main concern appears to be limited to
6 the lower office area.

7 Q. All right. You wrote that e-mail, right?

8 A. Yes, sir.

9 Q. And what was the date of the e-mail you wrote?

10 A. That is Sunday September 27th.

11 Q. Okay. All right. And so by this time the report's out?

12 A. Correct.

13 Q. All right. And ---

14 (Simultaneous speaking)

15 Q. Well, it's September 25th, is the date of the report ---
16 no, I'm sorry ---

17 A. No, that's prior ---

18 Q. --- I'm sorry.

19 (Simultaneous speaking)

20 A. Yes.

21 Q. All right. So you hadn't gotten the actual report,
22 correct?

23 A. Correct.

24 Q. All right. But you knew at that point in time that there
25 was really just a --- it was just in that Suite 103 and

1 Scott's office only, correct?

2 A. Says that was the main concern, yes.

3 Q. But you were concerned about everything?

4 A. Yes.

5 Q. Do the producers continue to come in the office after
6 (unintelligible) at all?

7 A. The one we just looked at?

8 Q. Yes.

9 A. I don't know if any of them would have come in at
10 that point other than Scott. And that was just him
11 coordinating. We had asked everyone not to come in.

12 Q. (Inaudible). All right. So do you see this e-mail
13 September 24th to Jason and all from you?

14 A. Yes.

15 Q. Okay. I'm going to just point to sort of ease of use.
16 Would you read that paragraph for the jury please, what you
17 told Jason in your e-mail on September 24th?

18 A. For confirmation, the Columbia offers is closed
19 thanks. The producers come and go as needed, but the
20 combination of COVID and security issues forced us to
21 keep the office closed to our service team.

22 Q. Okay. Now, the paragraph above that, that's --- that ---
23 that's dated September 24th, is that --- that's the first time
24 you saw anything about terminating the lease, correct?
25 (Unintelligible) I'm sorry (unintelligible).

1 A. Yes.

2 Q. Okay. Sorry. Would you do me a favor, read that
3 paragraph for me. (Unintelligible) please.

4 A. For what it's worth, I feel like we have a lot of
5 issues with this office space regarding leaks.
6 Plumbing --- sorry, my readers aren't the best ---
7 related and rain --- rain-related. The response time and
8 being able to accomplish anything is really unacceptable.
9 I am not sure how long the current toilet leak has been
10 going on, but we reported it August 17th. Perhaps if we
11 were able to get action a little sooner, we would not
12 have had the current hazardous situation with the mold
13 and the extensive amount of repair work that will be
14 needed. As the branch ops lead, I feel like an
15 unnecessary amount of my time is spent dealing with the
16 building issues. What options do we have considering
17 these issues to potentially be able to end our lease?

18 Q. Okay. All right. So were you aware at this point when
19 you read this e-mail that a leak had occurred in that same
20 spot before 1221 Bower bought the property?

21 A. I don't know that I was aware of that.

22 Q. Okay. But were you aware that since 2012 until the
23 September 29th, when property was sold to my client that there
24 had been other water intrusions to this property?

25 A. That's what I learned over time, yes.

1 Q. And do you believe it was your --- it was --- it was you
2 that started the idea about terminating this lease based off
3 your e-mail?

4 A. Probably.

5 Q. Now ---

6 A. That was frustration.

7 Q. Sure. I appreciate (unintelligible) but a contract is a
8 contract, right?

9 A. Sure.

10 Q. We have to live by the terms of the contract, correct?

11 A. Correct.

12 Q. Did you ever take time to read the lease and look at the
13 contract and (unintelligible)?

14 A. No, sir.

15 Q. Okay. Do you see the e-mail on the screen? I think
16 Crissy from September 25th on Friday to you --- from you to
17 Angela with Jason and all e-mail cc'd?

18 A. Yes.

19 Q. All right. And so what do you tell Angela in this first
20 paragraph?

21 A. Thank you for meeting with Scott and I along with
22 your contractor yesterday. Per additional conversation
23 with our IOA corporate leadership, please advise your
24 contractor not to schedule work in our office for Monday
25 as he had previously indicated.

1 Q. Okay. So you don't want any repairs. You want to make
2 sure the leak is fixed first, right?

3 A. I don't want them to spread whatever this is
4 throughout our entire office by ripping out walls.

5 Q. Okay. And next you talk about Kleen Sites, correct?

6 A. IOA is coordinating all environmental testing for
7 potential mold situation that we have in our office. We
8 have a mold specialist coming this afternoon --- yes.

9 Q. Okay. And then --- and that actually happened, correct?

10 A. Yeah. I think he ended up coming --- I had thought
11 that he did come that same day, but in looking at
12 everyone's records this week, it looks like it was the
13 following day.

14 Q. (Unintelligible) okay. So once that's done, what's
15 supposed to happen? What's (unintelligible)?

16 A. Once testing and the tear-out work is complete,
17 tests will be conducted to confirm the space is clean.
18 At that point we will notify you to have your contractor
19 schedule the time to come in and make needed repairs.

20 Q. Okay. All right. I'm going to --- I'm going to use your
21 time --- I mean, not yours, Insurance Office of America. I'm
22 going to use Insurance Office of America timeline, right? And
23 you've heard that they said that they believe the 90-day death
24 clock, all right? Whatever you want to call it. The 90-day
25 clock started August 14th when Scott Berry texted only Angela

1 Adelman, right?

2 A. Correct.

3 Q. All right. So 90 days from August 14th would be
4 November 12th, correct?

5 A. Yes.

6 Q. All right. And so once (unintelligible) tests will be
7 conducted to confirm the space is clean. That was done,
8 correct?

9 A. The --- the testing?

10 Q. The testing and the work post --- post-remediation
11 testing, right?

12 A. Not following your question. I'm sorry.

13 Q. Sure. Wasn't --- wasn't the mold remediation and the
14 post-mold remediation tests completed on November 5th for the
15 work and November 6th for the report?

16 A. Sound about right time frame, yes.

17 Q. And the November 6th report came out clear?

18 A. Yes.

19 Q. So we're six days from this death date, right? This
20 90-day date, right? So we've got November 6th, to ---

21 (Simultaneous speaking)

22 Q. --- November 12th ---

23 A. Okay.

24 Q. --- right? Okay. So isn't it true that Heath was --- he
25 asked to come in and do the --- the repairs to the ceiling

1 tile, the wall, and the carpet on November 11th, which would
2 have been the 89th day?

3 A. Yes, what would be approximately. Yes. I don't
4 know ---

5 Q. Okay.

6 A. --- the exact date but that sounds right.

7 Q. This (unintelligible) on 11/9 you find another leak ---

8 A. Yes.

9 Q. --- the leak is back?

10 A. Yes.

11 Q. Right? And isn't it true that you say don't send Heath
12 in, let's --- let's --- let's get the leak repaired?

13 A. Yes.

14 Q. Okay. So you made that decision?

15 A. Yes.

16 Q. And that seems like a pretty reasonable decision, right?

17 A. Right.

18 Q. Okay. All right. At any point in time did 1221 Bower
19 cause this leak to happen?

20 A. Not to my knowledge.

21 Q. Okay. Okay. And Shuler Plumbing came out to fix that
22 leak on 11/9, correct?

23 A. Yes.

24 Q. And isn't it true that --- that on 11/13 --- I know. I
25 know. (Unintelligible). --- would never (unintelligible).

1 So isn't it true that on 11/13 the second leak came back
2 behind that moisture in the wall?

3 A. I know it came and went a couple of times after the
4 remediation, yes ---

5 (Simultaneous speaking)

6 Q. But Shuler Plumbing had to come back again to fix it?

7 A. Correct.

8 Q. The same as Arrow came back like four or five times?

9 A. Correct.

10 Q. This thing was a (unintelligible)?

11 A. Seems to be.

12 Q. And the leak wasn't caused by 1221 Bower?

13 A. Not to my knowledge.

14 Q. And it was very reasonable to wait to repair the internal
15 until the leak was repaired?

16 A. Correct.

17 Q. Okay. I'm sorry, the leak was fixed, I should say.

18 Okay. And this was the e-mail I was just referring to.

19 And did Angela verify that she received that --- that response
20 to --- to wait on the contractor on 9/25 from your e-mail? If
21 you look at the top ---

22 A. Yes. Yes.

23 Q. --- of your e-mail.

24 A. Yes.

25 Q. All right. And what did Angela say to you at that time?

1 A. Thank you for the update. I have updated AJ as
2 well. AJ and Jason met this afternoon and I'll wait to
3 hear his further directions.

4 Q. Great. And was Jason, Jason Monson do you think?

5 A. Yes.

6 MR. COBB: Okay. Your Honor, I'd like to put this
7 in as Exhibit 103.

8 THE COURT: Any objection?

9 MR. JOYCE: No objection.

10 THE COURT: So moved.

11 (Defendant's Exhibit 103 marked and entered)

12 BY MR. COBB:

13 Q. Mr. Warner, will you just real briefly look at these text
14 threads and tell me what it is. Summarize, please?

15 A. Basically, this looks like I was messaging --- I
16 don't know what CB is. I can't tell who it's to. Scott
17 and Crissy IOA, but I don't know what CB is. But
18 October 14th ---

19 Q. (Unintelligible) Crissy (unintelligible)?

20 A. Oh.

21 Q. Is that right, mama bear, Crissy bear (unintelligible)?

22 A. No, that employee wasn't with me at that time.

23 Have you heard anything from the plumbers yet ---

24 Q. And that's you --- that's you ---

25 A. That's my question.

1 Q. That's (unintelligible)?

2 A. Yes. And I think was probably at the office. I'm
3 not sure. Or maybe --- I don't know. I can't state that
4 for a fact.

5 Q. Okay. And Crissy responded?

6 A. I --- yes. I continue. I am starving, so I am
7 going to go into town and grab some lunch. I assume we
8 should hear from them within the next hour otherwise
9 they're outside of the estimated window.

10 Q. Actually that's you saying that correct?

11 A. Correct.

12 Q. Okay. All right. And then the next page, Angela was
13 (unintelligible) what's say?

14 A. She saying, hey girls. Sorry, I'm in a meeting. I
15 just got a text from Ashley and they will be there around
16 12:30.

17 Q. Okay. All right. And it appears that that's close but
18 you made it?

19 A. I assume I did, yes. Oh, yes. I was six minutes
20 out.

21 Q. All right. Now, we're at October 14th at that time ---
22 Eric --- and again, Eric still is believing the leak is not
23 coming from Eric Monroe's unit. They're blaming the leak is
24 coming from that pipe in that common element, right?

25 A. What's the date on this?

1 Q. Is October 14th. Eric coming back. And if you keep
2 reading down and you'll see --- you'll see in her text thread
3 she says: Are they going to get in the upstairs unit? And
4 what does Angela respond?

5 A. I'm not sure. It depends on what they find today.
6 If they fixed the toilet, that means it's another issue.
7 And then it's cut off.

8 Q. All right. Just go ahead and turn the page.

9 A. If they need to get upstairs, I'm going to text
10 Eric.

11 Q. Okay. All right. So --- all right.

12 A. Oh, I remember this guy.

13 Q. All right. And so you didn't like this guy, correct?

14 A. No.

15 Q. All right. You thought he was clueless?

16 A. Yes.

17 Q. Okay.

18 A. He was there five minutes maybe and said it's dry
19 and he left.

20 Q. All right. Okay. All right. Now keep reading
21 (unintelligible).

22 A. Okay.

23 Q. So Angela responds?

24 A. Yeah. Sorry. Hey girl, I'm in a meeting. I'm
25 sorry I can't text. Oh, no. What? Let me ask to step

1 out. Hold on. I said flushed once, flushed again.

2 Q. Okay. What do you think that meant? Do you think it was
3 an upstairs toilet?

4 A. Yeah. Someone must have been upstairs. Yes, I do.
5 I don't know the dates, but I remember someone being up
6 there flushing and we're watching to see what happens.

7 Q. If there's a drip?

8 A. Correct.

9 Q. Okay. All right. And then what happened next?

10 A. Let me know if he flushed. The tenant is not being
11 responsive. I don't know what all that was. Good deal
12 they did. Okay. Cool. If he needs access to the unit,
13 Shaun ---

14 Q. Yeah, I can't read that.

15 A. I don't know who Shaun asked the plumber to call and
16 wear a mask. Shaun's number to give to the plumber
17 is ---

18 Q. Okay. And then what's next there?

19 A. It's from me. It says he is not seeing any new
20 moisture.

21 Q. Okay. So was this a repetitive theme? Eric would come
22 out, they'd fix the leak, no new moisture, Hallelujah, it's
23 dry. I think actually maybe you said that or Angela. I think
24 somebody said it more than once.

25 A. Angela, I think. I don't know.

1 Q. Right. And so and then it would come back?

2 A. Correct.

3 Q. And again, that's --- that's not 1221 Bower's fault,
4 right?

5 A. Nor IOA's. Correct.

6 Q. No, it's not Insurance Office of America either. All
7 right. So let's keep on this little text thread. Okay. And
8 so what does --- how does Angela respond to you?

9 A. Is that the --- she said, okay, good. I said all
10 the moisture seems to be down low which would likely
11 indicate from being --- being from the prior leak. She
12 said thank goodness.

13 Q. Now, you said that. What does that mean? What are
14 you --- what are you referring to?

15 A. I don't know, unless maybe they did a moisture test
16 on the wall to see exactly where all the moisture is.

17 Q. Okay.

18 A. And they determined that most of the moisture was
19 down low.

20 Q. All right.

21 A. So I guess that would mean what was already there,
22 there wasn't new on the upper part of the wall.

23 Q. Okay. (Inaudible)?

24 A. He is back out to his truck to get a moisture meter.
25 Okay. So that's odd, he didn't have it yet. He said he

1 thinks that as soon as we get it scheduled to pull out
2 the walls and the ceiling, et cetera, it will probably
3 dry out.

4 Q. So at October 14th, (unintelligible) leak space, you get
5 mold remediation going and then we can get the repairs done,
6 right?

7 A. Yes.

8 Q. Okay. But that's --- that leak didn't get fixed on
9 October 14th, did it?

10 A. I don't recall.

11 Q. (Background noise) (unintelligible)?

12 A. Yeah.

13 Q. More than once.

14 MR. COBB: Your Honor, Defendant's Exhibit 104.

15 THE COURT: Any objection?

16 MR. JOYCE: No objections.

17 THE COURT: So moved.

18 (Defendant's Exhibit 104 marked and entered)

19 BY MR. COBB:

20 Q. Is this an example of --- of your position, Angela being
21 responsive, but not diligent?

22 A. Well, this was one day in time. So yes, we were
23 communicating on the situation at hand. She couldn't be
24 there, so I was.

25 Q. But she was being diligent, correct?

1 A. On that day, yes.

2 Q. Is it true she was diligent on a lot of days?

3 A. Sometimes, yes.

4 Q. Would you say more often than not?

5 A. Probably. Yeah, probably more often than not.

6 Q. Okay. And you sat through all this testimony?

7 A. Oh, yes.

8 Q. I know, I know. Try living with it for three years like
9 Ben and I have.

10 A. I have.

11 Q. You know, it's (unintelligible) right ---

12 A. Yes.

13 Q. --- you realize that?

14 A. No.

15 Q. Okay. So in --- in the testimony you've seen so far,
16 Crissy, have you seen anything that indicates that Angela just
17 was saying I'll just deal with that later. They're not
18 important to me. Anything that showed that she wasn't being
19 diligent that you can remember, that you can point out?

20 A. The --- the one big time I remember was around
21 September 2nd, I think I mentioned it earlier. My mind's
22 starting to cross. But she had indicated to me --- I
23 think it was September 2nd that the plumber had been in
24 touch with the homeowner --- was scheduled to come out
25 the following Monday to make the repair. And then she

1 would let me know when they were going to get the
2 contractor scheduled.

3 I didn't hear. I think she communicated some with
4 Scott on the scheduling of the plumbers and whatnot
5 coming and going during that time. But I did not have
6 any communications with her on that for almost two weeks.
7 I followed up, still didn't get a response from her. So
8 I followed up again, and that's kind of when everything
9 just fell apart.

10 Q. Is --- is --- is it possible Scott was communicating with
11 her when you weren't?

12 A. During that time, yes. I was just --- that's during
13 the time when I started to push her to get the contractor
14 scheduled to meet the schedule of ours, because I was
15 just trying to get things moving.

16 Q. Okay. All right. Do you recognize this e-mail Crissy to
17 Angela Adelman on October (unintelligible)?

18 A. Yes.

19 Q. All right. And why --- why were you giving her the floor
20 plan for those five units?

21 A. Well, I'm sure she asked and I --- I don't know why
22 she didn't have it. Let me read through it and I'll ---
23 let me see what I can remember. I think this is
24 where --- I think she asked me on two separate occasions
25 for a copy of the floor plan and the square footage. I

1 think this must have been the second occasion.

2 Q. Got it. Okay. So again, (unintelligible). All right.
3 So again, you're saying that 103 is the downstairs area where
4 the (unintelligible) mold issues were ---

5 A. Correct.

6 Q. --- correct? All right. And then you state here, while
7 we're (unintelligible) is where the damage carries over from
8 Parker's office, main (unintelligible) downstairs in Scott's
9 office area --- in the office area, right?

10 A. Correct.

11 Q. Okay. Again --- all right. (Unintelligible) but these
12 five suites, 7,822 square feet, that's (unintelligible) 144,
13 15 percent of it --- or --- or --- or am I --- are you
14 starting to see where --- maybe it's not 66 percent, maybe
15 it's lower?

16 A. I see your perspective of it, yes.

17 Q. Okay. Tell me where I'm wrong.

18 A. Because I don't think it was safe --- I did not feel
19 like it was an environment in which (unintelligible)
20 could perform their duties whether it was due to the four
21 and a half months, whether it was the leak, it was the
22 mold, it was the construction work, it was remediation, I
23 just did not feel it was an environment that is safe for
24 my (unintelligible).

25 Q. Despite Kleen Sites' report that it was?

1 A. Well, then you have construction work, and we still
2 had plumbers coming and going, so it was --- it was not
3 brought to an end with the remediation work.

4 MR. COBB: All right. Your Honor, I request for
5 Defendant's Exhibit 105.

6 (Simultaneous speaking)

7 MR. JOYCE: No objection.

8 THE COURT: Any objection? So moved.

9 (Defendant's Exhibit 105 marked and entered)

10 BY MR. COBB:

11 Q. Crissy, who was --- who was Dave DeJesus?

12 A. Dave is the person --- again, I think I mentioned it
13 earlier. My --- my brain is starting to scramble. Jason
14 Robinson was the IOA Properties manager. They had
15 decided apparently to start contracting that out to an
16 outside source to manage our leases and properties. And
17 Dave is --- he still to this day is the person that I
18 communicate with on our leases.

19 Q. Got it. So he's with a separate company altogether?

20 A. Correct.

21 Q. Okay. So on November 5th, you're letting everybody know
22 here that the remediation work is done and everything is good?

23 A. Yes.

24 Q. Okay. All right. Immediately --- read that last
25 paragraph out loud, please.

1 A. The building owner, AJ, met Scott at the office last
2 Friday and apologized that we're having to deal with the
3 leaks. There was another one over my office last week
4 that thankfully the unit owner caught in time and we did
5 not incur any damage in our unit. I allowed their
6 plumber access through my ceiling to replace the pipes,
7 et cetera. Scott met with AJ. He advised him that the
8 mold issue could have been prevented if the leak had been
9 addressed when we first reported it.

10 Q. Okay. So you're not aware that there was a leak inside
11 the wall between Scott Parker's office that predated 1221's
12 ownership, correct?

13 A. Yes.

14 Q. Okay.

15 A. I had to think through what you were saying. Sorry.

16 Q. (Unintelligible). So how --- do you have any familiarity
17 with mold?

18 A. Just common knowledge is ---

19 Q. Okay. Do --- do you have any biology ---

20 A. No, sir.

21 (Simultaneous speaking)

22 Q. --- background ---

23 A. No, sir.

24 Q. --- (unintelligible) background?

25 A. No, sir.

1 Q. Okay. All right. So no --- no experience in terms of
2 being an expert in any kind of mold or ---

3 A. No.

4 Q. --- health risk, or anything of that nature?

5 A. No, sir.

6 Q. All right. So it sounds like this is a e-mail on
7 September --- excuse me, November 5th, right?

8 A. Yes.

9 Q. So it sounds to me like, you know, the September 22nd
10 e-mail that Jason sent to AJ as the landlord got attention in
11 terms of his engagement outside of his attention a director on
12 the condo association board, correct?

13 A. Yes, I think he was on his way to the upstate, so
14 stopped by the office.

15 Q. Right. Right. Got it. All right. So let's go on to
16 stay tuned.

17 A. Stay tuned, when this work is complete, and the
18 property manager/building owner has to schedule for the
19 rebuild work. She indicated that would begin next
20 Tuesday, but I have to assume that will depend on having
21 any post remediation test results from Kleen Sites.

22 Q. Okay. Go to that PS, please.

23 A. PS. Keep in mind that the new security system badge
24 scanner/camera work was put on hold due to the mold
25 issue. Also the completion of the office build-out in

1 the back of the office was placed on hold. Both of those
2 projects still have to be rescheduled.

3 Q. Okay. All right. Now, this November 5th --- on
4 September 30th, you had a report saying everything but the
5 hole in Parker's office wall was --- was --- was okay, right?

6 A. Uh-huh.

7 Q. All right. So why did you delay from September 5th and
8 now we're --- excuse me September 30th to November 5th --- why
9 did you delay getting that extra work done?

10 A. I can't recall at the moment, but ---

11 Q. And was it within your reasonable control to get it done?

12 A. Could get it scheduled, yes.

13 Q. All right. Okay. But you were waiting for everything to
14 be fixed, correct? (Unintelligible)?

15 A. Not necessarily. The leak yes, absolutely. I did
16 not want to have anyone coming in and out while that was
17 still an issue.

18 Q. Okay. Now, regardless of all the Arrow Plumbing time
19 that they came in, regardless of all the --- all the work and
20 diligence that Angela took on behalf of the condo association,
21 regardless of all the back and forth with the insurance
22 adjuster, requirement of a second quote, regardless of the
23 delay in terms of being able to get Kleen Sites on site to do
24 the mold remediation. If you --- if you did that death clock,
25 that 90 days, it appears on November 5th, everything was set

1 to be repaired on November 11th, which would have been the
2 89th day, right?

3 A. Yes, but it wasn't repaired.

4 Q. And why?

5 A. Because it's on them, not me. I don't know why.

6 Q. You sure you don't know why?

7 A. Ongoing leaks.

8 MR. COBB: Your Honor, I'd like to put this in as
9 Defendant's Exhibit 106.

10 THE COURT: Any objection to 106?

11 MR. JOYCE: No objection.

12 THE COURT: So moved.

13 (Defendant's Exhibit 106 marked and entered)

14 BY MR. COBB:

15 Q. And you testified earlier that the leaks aren't ---
16 it --- it's not 1221 Bower's fault that the leak happened,
17 correct?

18 A. Correct.

19 Q. All right. But you do recognize that the repair would
20 have been done on the 89th day, but (technical difficulty) ---

21 MR. JOYCE: Objection. Asked and answered.

22 MR. COBB: (Unintelligible) scheduled
23 (unintelligible).

24 MR. JOYCE: Objection. Asked and answered three
25 times.

1 THE COURT: I'm sorry. I didn't hear the question,
2 I was ---

3 MR. COBB: I'll say it again. I'll --- I'll ---
4 I'll make --- I'll say it again. All right.

5 THE COURT: Are you going to say it again, or are
6 you going to rephrase?

7 MR. COBB: I'm --- I'm going to rephrase.

8 THE COURT: All right. So he's going to rephrase
9 his question.

10 BY MR. COBB:

11 Q. Crissy, isn't it --- isn't it true that had the property
12 been repaired on November 11th, the 90-day death clock would
13 have been met? The 90-day requirement that excluding anything
14 else in this lease, would have been met?

15 A. Yeah. I don't --- I didn't calculate it, but yes.

16 Q. Okay. All right.

17 A. Well, I don't know if it would have been complete,
18 because they never ordered the carpet or the ceiling
19 tiles. I don't think it would have been complete.

20 Q. I just want to make sure we're clear about the timing.

21 A. Okay.

22 Q. Okay. I'm not even going to put this up on the screen.
23 But just very briefly, on November 9th, you sent Angela an
24 e-mail. On the front page, what does that say?

25 A. It says I have not rescheduled leaving at 9:00 a.m.

1 so Scott can be there.

2 Q. Okay. And the rest, please.

3 A. And in answering for Scott, would I have to assume
4 it is the same unit. The water is dripping on the
5 plastic, and Kleen Sites --- sorry that Kleen Sites
6 placed around the framing.

7 Q. Okay. All right. All right. We go to the second to
8 last page. And on November 9th, Angela sends you, Scott, and
9 Jason copies on AJ Leone in an e-mail, correct?

10 A. Yes.

11 Q. All right. And read that e-mail real brief.

12 A. Good afternoon. I hope you all had a great weekend.

13 I wanted to take some time and give a quick update.

14 Please see the post-mold remediation report from Kleen

15 Sites. They finished the mold remediation on Friday.

16 Heath is lined up to come up this Wednesday at 9:00 a.m.

17 to start repairing the walls. Is someone able to meet

18 Heath and I on site Wednesday at 9:00 a.m.? And then it

19 says, however, Scott reported a leak this morning.

20 Schuler's Plumbing only is 9:00 a.m. Is someone

21 available to let Shuler in tomorrow so that he can repair

22 the leak? I will be in a meeting at Belfair and cannot

23 meet him on site to let him in.

24 Q. All right. So again ---

25 A. So she had a key at this point.

1 Q. Okay. But again, you have a (unintelligible)?

2 A. Yes, again.

3 MR. COBB: I'd like to present this as Defendant's
4 Exhibit 107.

5 THE COURT: Any objection? Any objection to ---
6 sorry any objection to 107?

7 MR. JOYCE: No objection.

8 THE COURT: All right. So moved.

9 (Defendant's Exhibit 107 marked and entered)

10 BY MR. COBB:

11 Q. All right. So Crissy, you went in on November 12th, and
12 what did you tell Angela?

13 A. It says Angela, I already made my trip to the office
14 today. Everything is dry, Hallelujah. I hope to go back
15 tomorrow afternoon to check again, and I'll try to see
16 which of these color options is correct.

17 Q. All right. So you're working on getting the colors from
18 the --- the carpet and the paint everything that's
19 (unintelligible)? And what happened on November 13th?

20 A. Where do I see that? I don't know.

21 Q. It's not in ---

22 (Simultaneous speaking)

23 A. Oh, okay. November 13th.

24 Q. Yes.

25 A. I'm not sure. You want to give me ---

1 Q. Isn't that a picture with a --- a yellow pointer that's
2 saying moisture on November 13th at 2:15 p.m.?

3 A. If you say so, yes.

4 Q. So a leak again ---

5 (Simultaneous speaking)

6 Q. --- even again after Shuler fixed it?

7 A. Yup.

8 MR. COBB: Your Honor, I'd like to put this in as
9 Defendant's 108.

10 THE COURT: What --- any --- any objection to 108?

11 MR. JOYCE: No objection.

12 THE COURT: So moved.

13 (Defendant's Exhibit 108 marked and entered)

14 BY MR. COBB:

15 Q. And actually, Crissy, it was you that --- that said, hey,
16 everything is dry, Hallelujah, right?

17 A. Yes.

18 Q. But it didn't stay dry for long, did it?

19 A. No.

20 Q. And again, the reason why it didn't stay was (background
21 noise) the leak happened again?

22 A. Correct.

23 Q. And this time Shuler Plumber tried to fix it and they
24 weren't able to fix it either?

25 A. Correct.

1 Q. It's frustrating when you take your car to mechanic and
2 you know it's broken, and you got to keep going back and back
3 and back. Do you believe the leak is kind of that analogy?

4 A. I --- I'm --- I had not, but ---

5 Q. Crissy, will you please look at (unintelligible).

6 A. Yes, sir.

7 Q. All right. So on November 16th, what is --- is this a
8 text thread between you and Angela?

9 A. Yes, it appears to be. Yes.

10 Q. And on November 16th on the front page, what is Angela
11 replying?

12 A. It looks like I had a questioned does he have an
13 estimate on the number of days they'll be in and she said
14 not yet. I had to talk with Kleen Sites this morning.
15 He is my next call. I'll keep you updated.

16 Q. Okay. And now we get to Monday November 16th, 4:20 p.m.?

17 A. Yes.

18 Q. All right. And what is Angela asking?

19 A. Heath and his guys can be there tomorrow at
20 9:00 a.m.

21 Q. And you respond?

22 A. Okay. I'll be there.

23 Q. Okay. And what happens next?

24 A. Angela said okay, great. I'll be there to grab a
25 key and then I have to jet because I have an appointment

1 at Governors Grant at 9:45. He did say it could take two
2 to three days.

3 Q. Okay. And you said?

4 A. Yeah, I figured it would. Do you know if Heath or
5 one of his supervisors is going to stay on site with the
6 guys? If yes, I'm happy to give him the key until they
7 finish the job. I have employees that live nearby and
8 can come in in the evening and set the alarm.

9 Q. All right. Keep going.

10 A. She said, I'm not sure, I'll ask him and find out.
11 Heath wants --- Heath just text me and he wants to know
12 if he can meet you at 8:30 now to get the key. The guys
13 want to get there earlier now. I said yeah, I can be
14 there whatever time he needs me to be. I can be there at
15 7:30 if he wants. Okay. I'll let him know. Thank you.
16 Okay. He will see you at 8:30.

17 Q. All right. So this --- this is November 16th and it
18 sound like even with the key you have to have the alarm turned
19 off before somebody goes in the offices, correct?

20 A. Yes.

21 MR. COBB: All right. Your Honor, I'd like to put
22 this as Defendant's Exhibit 109.

23 THE COURT: Any objection to 109?

24 MR. JOYCE: No objection.

25 THE COURT: So moved.

1 (Defendant's Exhibit 109 marked and entered)

2 BY MR. COBB:

3 Q. All right. So I want to go back to that big binder in
4 front of you. And if you'll look at --- if you'll look at
5 Plaintiff's Number 19. Let me know when you're there, Crissy.

6 A. I'm here.

7 Q. All right. And this is an e-mail from --- from you to
8 Angela?

9 A. Yes.

10 Q. And that's dated November 13th, correct?

11 A. Correct.

12 Q. All right. And what are you saying in this e-mail?

13 A. Angela, a bit of concerning news. Scott went by the
14 office today to see if there was any new evidence of
15 continued leak/any new moisture. He did find some
16 moisture inside of the plastic at the base of his office
17 wall. Photos attached. I hope this is residual and not
18 part of a fresh/ongoing leak. He marked it as you can
19 see in the photo. If I'm able to do so, I'll swing by
20 sometime over the weekend for an update, but don't make
21 it this weekend. I'll be there first thing Monday
22 morning.

23 Q. Okay. And in your cc on the e-mail, do you see Ellis
24 Lesemann there?

25 A. Yes.

1 Q. Okay. And this is Ellis right here, right?

2 A. Yes.

3 Q. That's him. All right.

4 A. That's him.

5 Q. Okay. So at the time you had mentioned earlier there was
6 a serious conversation about terminating the lease, correct?

7 A. Yeah, I knew they were talking about it. Yes.

8 Q. Did --- did you have any indication what --- what they
9 were leaning to do? What the decision ---

10 (Simultaneous speaking)

11 A. I --- I did not.

12 Q. Were you still complaining and saying I want out of lease
13 during this time because of this continuous leak coming back?

14 A. I don't think there were any communications about it
15 at that point.

16 Q. But Ellis wouldn't have been there unless you all were
17 serious about looking for a way to get out of the lease?

18 A. Right. I would -- at some point you see Tony Tatum
19 on here. He's in-house legal counsel. He would have
20 said to include Ellis on the e-mails.

21 Q. All right. Are you aware at any time, did anybody from
22 Insurance Office of America reach out to 1221 Bower and said
23 hey, you're on the clock, this 90 days is running. We're
24 upset.

25 A. I had no idea. Not that ---

1 (Simultaneous speaking)

2 A. Not that I'm aware of.

3 Q. Okay. You don't --- you don't it fixed we're --- we're
4 out. You don't know if anybody ever said that to 1221 Bower?

5 A. I don't know.

6 Q. What does this text thread state?

7 A. Let's see. It's again, Angela got it from him this
8 morning. I'm assuming she's talking about a --- the key.
9 That should have said Heath, I didn't check my speech.
10 The walls are up and painted. That's Angela. I said,
11 yeah, I will be in the office Monday morning, so I'll
12 check it out. She said, sounds good.

13 Q. All right. So the walls are up and painted and so
14 we're --- we're right around the corner of being done with
15 repairs, correct?

16 A. Getting close.

17 Q. Okay. Still a couple of ceiling tiles you're still
18 missing?

19 A. More than a couple, yes. Carpet's missing. There
20 were some spots covered up and electrical outlets and
21 Internet access points that were covered up with
22 sheetrock that we had pointed out.

23 Q. Okay. Pretty easy though, work ---

24 A. Yes.

25 Q. --- the hard work's done? Construction site's done?

1 A. Correct.

2 Q. At this point in time, did you say okay, people come back
3 in, we're not going to have an active construction area
4 anymore?

5 A. No.

6 Q. Okay. Why not?

7 A. I don't recall. What was this date? November 20th.

8 Q. November 20th.

9 A. Probably part of it was because it was Thanksgiving
10 was coming and we wouldn't have brought them in before
11 that was over with. I --- I don't know the exact reason
12 at this point.

13 Q. Did you start working to get the contractor in there to
14 finish up the --- the --- the construction job and the badge
15 scanner job?

16 A. I have no idea at that point what my communications
17 were with them.

18 Q. Okay. Do you remember at any point ever contacting the
19 contractor to do the badge scanner and complete the
20 construction jobs (unintelligible) by Insurance Office of
21 America, after you told them to wait?

22 A. I did not work with the security company. I know
23 that ever --- Melissa Rudolph and her time and --- an IT
24 team did that. I know that they had all the parts. We
25 paid like \$12,000 for the system and it was on hand. I

1 don't know at what point they would or wouldn't have
2 communicated with him to schedule to come back.

3 Q. Are you aware if anybody was scheduled to do any of that
4 work from Melissa, Jason, or anybody else in Insurance Office
5 of America?

6 A. Not at that I'm aware of at that time. They had
7 been scheduled back in September.

8 Q. Is it fair to say it seemed like maybe (background
9 noise)? Terminate the lease?

10 A. I wasn't involved in those conversations, so I don't
11 know.

12 Q. Right. But you kind of initiated it with your
13 September 24th e-mail, correct?

14 A. Probably. Yes.

15 Q. And Rob Motley said okay, let's find a way to out of the
16 lease (unintelligible)?

17 A. He's probably worried about ---

18 MR. JOYCE: Objection. That --- that's a
19 mischaracterization of the e-mail, Your Honor.

20 THE COURT: All right.

21 (Simultaneous speaking)

22 MR. COBB: I have the full e-mail I will
23 (unintelligible) ---

24 MR. JOYCE: Well, please do.

25 THE COURT: Well, I'm going to --- I'm going to

1 sustain it. It sounds that way to me. I'm going to
2 sustain it for now, but if you --- there you go.

3 MR. COBB: Your Honor, I'd like to put this text
4 thread in as Exhibit 110.

5 THE COURT: Any objection to 110?

6 MR. JOYCE: No.

7 THE COURT: So moved.

8 (Defendant's Exhibit 110 marked and entered)

9 THE COURT: Ladies and gentlemen of the jury, stand
10 up and --- and take a --- wiggle around. Take a little
11 break. There you go. All right.

12 BY MR. COBB:

13 Q. Now, Crissy, kind of go back a little bit. All right.
14 So if you go back, it looks like on the second-to-last page,
15 it looks like Scott Berry had sent an e-mail here through this
16 (background noise) see that?

17 A. Yes.

18 Q. So it seems like he sent this on August 31st to Rob
19 Parker, you and Lee Fox. I never --- I never really see Lee
20 Fox pop up much. Who --- who is Lee Fox?

21 A. He's another producer who frequented the office.

22 Q. Okay. All right. And what is Scott saying about the bad
23 news here on August 31st?

24 A. Good news and bad news. Good news is the urinal in
25 the mens restroom has finally been repaired. I'm not

1 sure (background noise) but the plumbers say it should be
2 good to go literally. The bad news, mostly for Parker is
3 the plumbers discovered the source of the leak.
4 Apparently a toilet in the above --- in the unit above
5 Parker's office has been slow leaking for a while. Most
6 likely every time the unit owner flushes. Yeah, I no.
7 The plumbers said they would report their findings to the
8 property manager and wait on instructions for the next
9 step. I will try to go up shortly and let the unit owner
10 know.

11 Q. Now, why would Scott go up to try to find the unit owner?

12 A. Scott's just one of the most helpful people you'll
13 ever meet. He'll do whatever he can to make something
14 happen.

15 Q. Okay. So it seems like he's a pretty good guy?

16 A. Oh, yeah. He is.

17 Q. So he was trying to coordinate resolution of the
18 (unintelligible) leak with ---

19 (Simultaneous speaking)

20 A. Yeah, trying to do what he could to just, you know,
21 get it moving.

22 Q. Okay. Okay. Now, let just go up the thread. And this
23 is an e-mail to Crissy that you sent on September 2nd to
24 Angela and Melissa?

25 A. I'm going to read on your screen.

1 Q. Okay.

2 A. Yes.

3 Q. What does that say?

4 A. Hey, Angela, when the plumber was in the office the
5 other day, they fixed the leak in the men's restroom
6 urinal. Apparently it is now leaking more than ever.
7 The fun never ends. Again, if they can come tomorrow
8 morning Lee Fox will be there. Otherwise, they need to
9 preschedule with me due to the fact that our office is
10 closed. I live 40 minutes from the office, et cetera.

11 Q. Okay. In here you've included Melissa, but you're not
12 talking about the leak in Scott Parker's correct?

13 A. No.

14 Q. And this is a urinal?

15 A. Yes.

16 Q. And let's go up a little bit. Let's look at Angela's
17 e-mail to you and to Melissa.

18 A. Okay. Thank you. I spoke with Arrow and they have
19 an appointment scheduled with the homeowner on Monday to
20 go in and fix the toilet. After that is done we will
21 work on fixing the damages and it shouldn't be leaking
22 anymore.

23 Q. Okay. And that is per Arrow?

24 A. Per Arrow, they had not fixed the leaking toilet
25 while they were on site this week in the above unit.

1 Q. And Melissa is copied on that?

2 A. Yes.

3 Q. All right. And then you send this e-mail on
4 September 16th to Angela and Melissa; what you are saying?

5 A. Angela, I'm curious if the repair work for Parker's
6 office walls and Scott's walls could be planned the week
7 of 9/28. I have another contractor scheduled to be in
8 the office that week so I will be available that week.

9 Q. Okay. Isn't it true that you're worried about mold and
10 mildew at this point in the office?

11 A. Yes.

12 Q. And it seems like you're not talking about mold
13 remediation here, you're just talking about going ahead and
14 get the sheetrock in --- the --- the repairs based off the
15 water ---

16 A. This was prior to the ceiling collapse and the ---
17 and the situation escalating. And if you go back, that's
18 where I had referenced earlier that I had e-mailed
19 Angela --- I don't --- I think it's around the second.
20 And there were no more communications so this was my
21 follow-up to her just to say can we get it moving.

22 Q. Okay. All right. But isn't --- didn't you say earlier
23 that he had had the work scheduled for earlier but you said
24 hey, push it back to the 28th?

25 A. I wasn't telling her to push back ---

1 (Simultaneous speaking)

2 A. --- to the 28th, I was asking her to please get it
3 scheduled and suggested the 28th because I had other
4 people coming in.

5 Q. Okay. But you're ---

6 A. There had been zero plans made at that time for the
7 contractor. (Inaudible).

8 Q. (Unintelligible)?

9 A. Correct.

10 Q. But not with Scott? They're dealing with Scott, correct?

11 A. No the contractor had not been mentioned with Scott,
12 only the plumbing issues.

13 MR. COBB: Your Honor, I'd like to put this thread
14 in as Defendant's Exhibit Number 111.

15 MR. JOYCE: No objection.

16 THE COURT: All right. So moved.

17 (Defendant's Exhibit 111 marked and entered)

18 BY MR. COBB:

19 Q. All right. We an objection earlier. I want to bring out
20 Exhibit 47 and this is an e-mail from Rob Motley to Gabe, you,
21 Scott. And will you just read that top line, please?

22 A. Yes. So the question becomes is there a provision
23 in the lease when a situation like this arises and the
24 fix does not meet our expectations? Is there an out?

25 Q. So you (unintelligible) as early as October 1st, right?

1 A. Correct. That would have been about a week after I
2 had my tantrum.

3 Q. So on October 1st, within that 90-day period, Insurance
4 Office of America is taking active steps to look at how to
5 terminate this lease?

6 A. Yeah. We had no idea. I had no knowledge of the
7 90-day clause at that point and neither did Rob Motley.

8 Q. All right. And at some point in time y'all found out,
9 right?

10 A. After this, yes. He's asking --- I --- I don't know
11 who that was addressed to, I'm sorry. He's asking them
12 to look into the lease.

13 Q. Okay. Well, it looked like Gabe and ---

14 A. Okay.

15 Q. It was Gabe, Scott and you. Right?

16 A. Hmm. Okay. I would have thought ---

17 (Simultaneous speaking)

18 A. --- okay.

19 Q. But --- but at this time, Gabe is the one that
20 (unintelligible) Jason?

21 A. Jason retired and I don't know at what point in this
22 process that happened. I --- I don't know.

23 Q. Okay. So --- so ---

24 A. Okay. So yeah ---

25 (Simultaneous speaking)

1 Q. --- IOA Properties ---

2 A. --- I don't know why he was asking ---

3 Q. --- was delegating (unintelligible) managing landlords on
4 behalf Insurance Office of America to (unintelligible)
5 commercial where Gabe worked at?

6 A. Yes, that --- I know it was all in process and I
7 don't know the exact timing, but I know that during that
8 time Jason retired. I don't know if it was before, or
9 after, during ---

10 Q. That makes sense. That's why Rob was e-mailing.

11 Crissy, I keep going back to (unintelligible). And will
12 you read number 17, please. That line.

13 A. As stipulated in section ---

14 Q. I'm sorry.

15 A. --- 15.6 of the lease, time is of the essence with
16 respect to all provisions of this lease. Landlord
17 through its lack of diligence and failure to repair the
18 lease premises has breached this provision of the lease.

19 Q. Okay. All right. So I don't --- I --- I --- I'll ---
20 I'll talk about the lease in minute. But that --- that
21 sentence: Landlord, 1221 Bower through its lack of diligence
22 and failure to repair the lease premises has breached this
23 provision of the lease in terms of time is of the essence,
24 right?

25 A. Correct.

1 Q. Okay. And again, you agree with me, 1221 Bower is not
2 responsible for the upstairs condo leaks that came into --- or
3 the common elements that came into 103 --- Unit 103?

4 A. That they did not cause them. Yes. Correct.

5 Q. All right. And you would agree that Angela was
6 responsive in terms every time you or Scott reached out to her
7 to get the water leak fixed she was responsive?

8 A. Not every time, but most of the time.

9 Q. Most of the time. And you would agree that even your
10 preferred plumber, Shuler, had to come out twice to fix this
11 leak?

12 A. Yes. He wasn't my preferred plumber. I was just
13 recommending because they kept sending Arrow and it
14 didn't make sense to keep doing the same thing you've
15 been doing and expect different results.

16 Q. That's true. You go to a mechanic four times and they
17 don't fix your car, you get another mechanic?

18 A. Correct.

19 Q. Makes sense. It makes sense. And Shuler was not a
20 client, are they a client of Insurance Office of America now?

21 A. No, they are not.

22 Q. Scott just dismissed them?

23 A. He did.

24 Q. All right. So with that, you believe that 1221 Bower has
25 not --- was not diligent during that time period with

1 everything that they could control?

2 A. I ---

3 MR. JOYCE: Objection. This has been asked and
4 answered five times.

5 (Simultaneous speaking)

6 MR. JOYCE: At least.

7 THE COURT: All right. I'm going to sustain. I ---
8 I do think it's been asked and answered. A few --- few
9 different ways.

10 BY MR. COBB:

11 Q. All right. All right. Let's do some math again.
12 Remember we talked about the 66 percent and how we agreed to
13 disagree about how whether or not it should have been 15 not
14 66 percent?

15 A. Yes, sir.

16 Q. Okay. So if you take forty one thousand three three six
17 twenty nine seven that is what Insurance Office of America is
18 asking for damages from my client ---

19 A. Okay.

20 Q. --- correct? In terms of rent abatement under Section
21 11.1 of the lease?

22 A. Okay.

23 Q. All right. If you divide that number by .66, that's
24 \$62,631.77. You multiply that number by .15, which I'm
25 arguing it should be, that's \$9,394.70. Would you agree that

1 15 percent of that number equals \$9,394.77?

2 A. My brain would not compute, but if that's what
3 you're calculator told you, okay.

4 Q. (Inaudible). So again, if it's --- if it's --- if it's
5 accurate that only 15 percent of the space was used, and a
6 rent abatement was due, shouldn't the rent be collected ---
7 the rent abatement should only be 15 percent instead of
8 66 percent?

9 A. Got lost in that.

10 Q. Sure. If it's --- if it's --- if it's accurate, and only
11 15 percent of the space was used, shouldn't the calculation be
12 15 percent of the rent amount during that period and not
13 66 percent?

14 MR. JOYCE: Objection. Asked and answered. She's
15 already explained.

16 THE COURT: I'm going to allow her answer this
17 question if she can do the math.

18 THE WITNESS: I didn't understand the 15 percent
19 used ---

20 MR. COBB: Right.

21 THE WITNESS: --- part of it.

22 BY MR. COBB:

23 Q. Right. Only --- if the only --- in the main concern and
24 the only part of the property that wasn't useful was 103 and
25 Scott --- Scott Berry's office. That would be 15 percent of

1 the 7,822 square feet in units 101 through 105, correct?

2 A. It is not my opinion. The entire space was not
3 usable.

4 Q. All right. All right. A few more questions. You ---
5 you had testified earlier you hadn't read the lease and
6 (unintelligible) correct?

7 A. Parts of it. I'm not --- yeah. It's not my ---
8 it's not my forte.

9 Q. And --- and you testified earlier that you agree that ---
10 that the first time AJ Leone got written notice by anybody at
11 Insurance Office of America was September 22, 2020?

12 A. No, I don't agree.

13 Q. You think that AJ Leone received written notification
14 prior to September 22nd from somebody at Insurance Office of
15 America?

16 A. I don't know when AJ received official notice, but
17 Angela is our contact and was a liaison for us between
18 him whether he was the homeowner association or the
19 landlord.

20 Q. Okay.

21 A. It's been proven through the actions and the
22 schedules of every ---

23 Q. Sure.

24 A. --- over the past week.

25 Q. Sure. But you also want to apply the 90-day rule of the

1 lease, correct? That's what you're asking this Court to do?

2 A. Yeah.

3 Q. So why not --- I don't not --- so why not apply the
4 prompt written notice rule in Section 11.1?

5 MR. JOYCE: Objection. Lack of foundation.

6 THE COURT: Yeah. I'll sustain.

7 MR. JOYCE: Lack of personal knowledge as well, Your
8 Honor.

9 THE COURT: All right. Sustained. Go ahead.

10 MR. JOYCE: Sorry, Your Honor; did you sustain that?

11 THE COURT: I did. I did.

12 BY MR. COBB:

13 Q. All right. So under Section 11.1, what does this ---
14 what does this paragraph say, please?

15 A. Tenant will give --- tenant shall give to landlord
16 prompt written notice of any damage to or destruction of
17 any portion of the lease premises resulting from fire or
18 other casualty.

19 Q. Okay. Where does it say it shall give the condo
20 association manager prompt written notice?

21 A. It doesn't.

22 Q. It says landlord, right?

23 A. Yes.

24 Q. Okay. I also want to go to 15.16. This one says it's
25 important and we need to talk about in a minute. All right.

1 Would you read that sentence again into the record, please?

2 A. The foregoing notwithstanding, whenever a period of
3 time is herein prescribed for action to be taken by
4 landlord. Landlord shall not be liable or responsible
5 for and there shall be excluded from the computation of
6 such period of time any delays due to strikes, rights,
7 acts of God, shortages of labor and materials, or
8 government laws, regulations, restrictions, or any other
9 cause at any time whatsoever which are beyond the
10 reasonable control of the landlord.

11 Q. Okay. Is this beyond the reasonable control of the
12 landlord to stop a water leak in a unit he doesn't own?

13 A. Rephrase it. I'm sorry. Or ask me again.

14 Q. Isn't it --- is it beyond the reasonable control of 1221
15 Bower to --- to stop a leak of a unit that's owned or a pipe
16 in a common element it doesn't own?

17 A. Well, I hope they have some type of control in the
18 situation.

19 Q. Okay. And their control element is using CAMS, right?
20 And (unintelligible) condo association to coordinate, right?

21 A. Correct.

22 Q. All right. Are you aware of --- are you aware when the
23 last time 1221 Bower paid rent --- excuse me, reverse that.
24 When Insurance Office of America paid rent to 1221 Bower?

25 A. Yes, it was the end of November 2020. They paid the

1 December rent.

2 Q. Okay. And did they ever pay any rent or additional rent
3 as required under this lease after that December?

4 A. I am not aware of any payments being made after the
5 December rent.

6 Q. Okay. All right. At any time, are you aware of seeking
7 permission to alter the premises in section 101 at that --- at
8 that office --- that --- that (unintelligible)?

9 A. Not that I'm aware of. I gave notice to IOA
10 Properties and I don't know where it went from there.

11 Q. Okay. At any time are you aware of anyone at Insurance
12 Office of America, or any of their agents, lawyers, or
13 whatnot, notifying 1221 Bower's bank who has a mortgage on the
14 property hey, we got a problem with this --- this --- this ---
15 this landlord. We're --- we're --- we're quitting the lease,
16 we're out?

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

18 Q. Okay. At any point in time are you aware of anybody at
19 Insurance Office of America coming to 1221 Bower and saying
20 hey, you --- you're in default, you need to cure this lease
21 before we terminate it?

22 A. Not that I'm aware of.

23 Q. Okay. All right. Because it never happened, right?

24 A. I don't know.

25 Q. All right. Are you aware that not paying rent and

1 leaving the property not broom swept --- and broom swept
2 meaning unit --- I know you vacuumed, right? But Unit 105 was
3 (unintelligible) right?

4 A. No. No. Unit 105 is beautiful and a remaining
5 tenant for landlord ---

6 (Simultaneous speaking)

7 Q. (Unintelligible) empty?

8 A. Oh my gosh. Okay.

9 Q. And it's important (unintelligible) to know.

10 A. Okay.

11 Q. It's --- I tell you, (unintelligible) matter to my
12 client.

13 A. No, it's not to us either.

14 Q. So ---

15 A. But it's a beautiful space and rent that he was able
16 to retain.

17 Q. So are --- but --- by not paying rent, and not vacating
18 the premises broom swept, not completing the construction
19 project, leaving the stuff for the neighbor in 104, and
20 leaving 105 and just bailing on her. All right? Are you
21 aware that that's a breach in this lease?

22 A. No, sir.

23 Q. Okay. Are you aware that my client is allowed to get
24 damages under this lease as a result of breach of the lease by
25 Insurance Office of America?

1 A. I --- I'm not aware of the legalities.

2 Q. Okay. Are you aware that 1221 Bower has countersued
3 Insurance Office of America in this case ---

4 A. Yes.

5 Q. --- for their breach in this lease?

6 A. I knew it was for damages, but I --- I don't know
7 the cause of them.

8 Q. All right. Are you --- are you familiar with the lease
9 showing any lack of liability (unintelligible) ---

10 MR. JOYCE: Objection.

11 MR. COBB: I'm going --- I'm going to withdraw that.

12 BY MR. COBB:

13 Q. So is it --- is it your testimony that from August 14th
14 to November 12th in that 90 days that the landlord absolutely
15 within his control should have had the repair done within the
16 Unit 103 and Scott's office and then had the water leak
17 upstairs done?

18 A. Is it my belief that it could have been done.

19 Q. Yes?

20 A. Yes.

21 Q. Okay. And that's your testimony today that everything
22 was beyond my clients' reasonable control to get done?

23 A. No, that wasn't what I was agreeing to I don't
24 believe.

25 Q.

1 MR. JOYCE: Mischaracterized.

2 (Simultaneous speaking)

3 BY MR. COBB:

4 Q. Your e-mail suggestion terminating the lease, it was
5 September 24th; is that accurate?

6 A. Yes, that's sounds right.

7 Q. Okay. So roughly about 40 days after the August 14th
8 text?

9 A. Correct.

10 Q. All right. And had it not been for the leak coming back
11 November 9th, it appears November 11th construction would have
12 been done?

13 A. No, sir.

14 (Simultaneous speaking)

15 Q. It was not?

16 A. No. Carpet and ceiling tiles had not been ordered.
17 It would not have been ---

18 Q. The other work would have been --- was --- was --- was
19 scheduled to start happening on ---

20 A. It was scheduled, yes.

21 Q. So materially it would have been done by November 11th
22 had it not been ---

23 (Simultaneous speaking)

24 MR. JOYCE: Object. All right.

25 THE WITNESS: Same question.

1 MR. COBB: All right.

2 BY MR. COBB:

3 Q. Were you happy in these premises when --- when
4 (unintelligible)?

5 (Simultaneous speaking)

6 A. I was, yes.

7 Q. Okay. Even though you were dealing with water intrusion
8 throughout the whole time?

9 A. Yeah. Things are going to happen. We --- we
10 enjoined ourselves in this space. We could walk to
11 restaurants, we would go around the corner and go
12 shopping. And like I said, we --- we had a really great
13 group, we had a lot of fun in the space for the short six
14 months that I was in there prior to COVID and on our
15 return, obviously it was limited persons there. But we
16 were even --- it was volunteer for the first people that
17 wanted to come back and they were eager to come back.

18 Q. Okay. So understanding that there's COVID restrictions,
19 it's hard to get everybody back in, you have the water leak,
20 you got --- you know, how --- how to deal with the unit owner,
21 condo association, you know, manager, all that to get water
22 leaks done. Were your frustrations since you just wanted
23 Insurance Office of America to get out of the lease because
24 you just didn't like the premises anymore because of all those
25 issues?

1 A. Wasn't that I didn't like the premises, I just --- I
2 felt like again, that there was the a precedent set on
3 the attention that things would get and how long it would
4 take. And that's a lot of time out of my schedule where
5 I could be spending on my team and the things that matter
6 to IOA versus dealing with property issue.

7 Q. Okay. I'm just confused why you didn't give the burden
8 over to Jason and Melissa?

9 A. Because I'm boots on the ground. I'm here.

10 MR. COBB: Okay. Fair enough. No further
11 questions, Your Honor.

12 THE COURT: All right. Thank you Mr. Cobb.

13 All right. At this point Ladies and gentlemen of
14 the jury, we're going to allow you a lunch break. It is
15 127. We'll have you to come back here at 3:00 p.m.

16 Please remember that while you are on break, you are
17 not to try to obtain any information about the case, or
18 you are not to give any information out about the case.

19 Please do not talk to anyone even amongst yourselves
20 regarding the facts or the information that you have
21 heard in this case.

22 If you have transportation issues, please call the
23 clerk immediately. All right? We'll see you back at
24 3:00 p.m.

25 (Jury exits courtroom)

1 THE COURT: You're fine, you're fine. And you can
2 come down off the witness stand if you want to.

3 All right. Gentleman, we're going to break for
4 lunch until 3:00. With regards to proposed Exhibit
5 Number 100, I --- I am not going to admit that in.

6 MR. COBB: Your Honor, I may have the opportunity to
7 (background noise) on the stand later? And can I have
8 the opportunity to present it to AJ Leone before you make
9 that ruling, would you allow me to give a foundation with
10 AJ Leone and have him testify in terms of ---

11 MR. JOYCE: Absolutely not, because he --- he ---
12 failed to do that with --- with the witness. And it's
13 clear that she (unintelligible) it's not on the --- it's
14 not on the e-mail that went to her in February. The
15 exhibit ---

16 THE COURT: All right. Let me think about that over
17 lunch.

18 MR. COBB: Your Honor, can I --- can I suggest we
19 amend the exhibit (unintelligible) February 7th
20 (unintelligible) down (unintelligible) come in. Because
21 it does show prior communication that she lied about.
22 (Background noise).

23 (Simultaneous speaking)

24 THE COURT: Well, let me say this. Let me say this,
25 I will allow you --- I will allow you to redact the

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1 portion of the correspondence that cannot be verified
2 with the date. Mr. --- Mr. Joyce, if you'll make --- I'm
3 sorry, I don't have it in front of me, so I don't know
4 where it is, but it's this bottom half; is that correct?

5 MR. JOYCE: (Inaudible).

6 THE COURT: And so Mr. Cobb, you wish to use the top
7 half?

8 MR. COBB: Well, I --- I --- my client actually can
9 pull it up and I'll see if I can go get it printed out.
10 He can actually try to ---

11 (Simultaneous speaking)

12 MR. JOYCE: And you just proposed he use the top
13 half.

14 MR. COBB: Well, I didn't know that that was the
15 case (unintelligible).

16 (Simultaneous speaking)

17 THE COURT: Okay. So why I think everybody's hangry
18 and so let's --- let's --- let's break for lunch.

19 And give me a moment to process what I'd like for
20 you to do with that. You print that out just in case.
21 But --- but the issue for me was that we could not see
22 how it was produced initially. But let me --- let me
23 think about that. All right?

24 All right. See you back at 3:00 y'all.

25 (Off the record)

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1 THE COURT: All right. Mr. Cobb. All right. All
2 right. And so before we left --- we are still --- we
3 were still discussing the matter of the e-mail. I
4 believe it's exhibit --- proposed Exhibit Number 100.

5 MR. COBB: Yes, Your Honor. May I approach?

6 THE COURT: Yes.

7 MR. COBB: I --- I --- I --- I've sent that copy of
8 this to Ellis and Ben. (Unintelligible) the original
9 e-mail thread forwarded so it shows the --- the from-to
10 line.

11 THE COURT: Uh-huh.

12 MR. COBB: And it --- it clearly shows that Mr.
13 Warner received this e-mail from (unintelligible) Jason
14 Rob and (unintelligible).

15 THE COURT: Okay.

16 MR. COBB: And so I --- I would just --- I love to
17 make a motion to amend the exhibit to attach this to the
18 back so it's --- it's clear and it shows that whole
19 thread.

20 THE COURT: All right. Mr. Lesemann.

21 MR. LESEMANN: Your Honor, based on the additional
22 item, we would withdraw our objection on this
23 Exhibit 100. And we'd --- we'd sort of deem it admitted
24 as of the moment that it was ---

25 THE COURT: All right. You want it admitted as ---

1 MR. LESEMANN: --- discussed.

2 THE COURT: --- as is? Or ---

3 (Simultaneous speaking)

4 MR. LESEMANN: I can't, it can be --- it can be
5 amended. Yeah, and then that's fine. We --- we're fine.
6 We can stipulate to the admission of the page. All
7 right. So they're going to stipulate to the addition of
8 the page, if you will --- I will allow it in if you'll
9 just attach that.

10 MR. COBB: Your Honor, one --- Your Honor, one other
11 thing, and --- and I --- I actually --- I'd like to
12 apologize to Ms. Warner, I --- I made the statement --- I
13 think I was hangry, I used --- I used the word, "lie." I
14 think that was an unfair word. She had just
15 misremembered. And I just want to apologize to Ms.
16 Warner.

17 THE WITNESS: Thank you.

18 MR. COBB: Because I think you've seen me enough
19 over three years, you know who I am and what I am. So
20 hopefully you don't --- yeah, I've always --- I always
21 try to be polite and ---

22 THE WITNESS: Thanks.

23 MR. COBB: --- yeah. And I think you've been very
24 nice to me and I --- I apologize for any hostility that
25 that word ---

1 THE WITNESS: Thank you.

2 MR. COBB: --- may have created. And I --- yeah.
3 And Ben and I will get a beer back on. We'll ---

4 THE COURT: All right. All right. Well, Mr. Cobb,
5 I --- I do appreciate that sentiment. It --- it ---
6 it --- Ms. Warner, if you helps you it did feel to me
7 that it was out of --- was just out of anger. But I will
8 say your --- the attorneys had your back. And so ---
9 yeah, they did.

10 (Simultaneous speaking)

11 MR. COBB: (Inaudible).

12 THE COURT: Oh, okay. All right. Well --- very
13 well. All right. Anything further, gentleman?

14 MR. LESEMANN: We have agreed upon a verdict form
15 that is before Your Honor ---

16 THE COURT: Okay.

17 MR. LESEMANN: --- two-page form. So that would be
18 submitted to Your Honor for consideration at the consent
19 of the parties. And then would you like to --- there are
20 as --- as Mr. Cobb indicated earlier, we've narrowed down
21 our issues on the jury charges. There may be a couple of
22 items for discussion, would this be an appropriate time
23 to go ahead and get that resolved?

24 THE COURT: Let me ask my supervisor. All right.
25 We're going to --- we're --- let --- let's have Ms.

1 Warner finish so we can make some --- some appropriate
2 tweaks and then we'll get right into charge conference.

3 MR. COBB: Okay.

4 THE COURT: All right. What --- is Ms. Warner your
5 last witness; is that --- okay. All right. And so then
6 at that time we'll break. Okay?

7 MR. COBB: Your Honor, I just --- to --- to make
8 sure when you say, "charge conference," you know, I --- I
9 still have to put up my case for it as well.

10 THE COURT: Right. But I --- yeah. But I --- yeah,
11 I just mean so we can work out some of the issues before
12 we have a --- before we have our charges done. Okay?
13 All right.

14 MR. COBB: I don't suspect we're going to get to the
15 jury today anyway. So I --- we --- Ellis and I can still
16 have additional conversations to try to figure it out on
17 our own.

18 THE COURT: Okay.

19 MR. COBB: (Inaudible).

20 THE COURT: All right. Very good.

21 MR. COBB: (Inaudible).

22 THE COURT: I do want to say I do appreciate both
23 parties working with each other. We --- that is what I
24 would normally expect, but I will tell you it does not
25 happen as much as you would think that it happens. And

1 so I want to just place on the record, I'm very grateful
2 for you all even though you are on opposite side, it is
3 still very important for y'all to work together for us to
4 get through this trial together. And so I appreciate
5 that from both of you --- both of you gentleman. I hope
6 to see y'all in Aiken one day.

7 MR. COBB: Absolutely.

8 THE COURT: All right. So can we bring the jury in,
9 please?

10 (Jury enters courtroom)

11 THE COURT: All right. Well, back Ladies and
12 gentlemen of the jury, at this time we will resume
13 testimony. All right. (Unintelligible).

14 MR. LESEMANN: Your Honor, we have no further
15 questions for Ms. Warner.

16 THE COURT: All right. All right. So there ---
17 there is no redirect. This witness may now be excused.
18 All right.

19 All right. Ladies and gentlemen of the jury, it is
20 now necessary that I excuse you from the room. All
21 right. Thank you. Excuse me. Excuse me. I --- I
22 apologize. I deeply apologize, one ---

23 UNIDENTIFIED SPEAKER: (Unintelligible).

24 THE COURT: --- one moment. Yes, we need to state
25 for the record --- let me ask --- if you all have a --- a

1 seat momentarily, excuse me. Mr. Lesemann, does the
2 plaintiff rest its case?

3 MR. LESEMANN: Your Honor, yes we do. Thank you.

4 THE COURT: All right. Very good. Ladies and
5 gentlemen of the jury, it's now necessary that I excuse
6 you from the room at this time. Thank you.

7 (Jury exits courtroom)

8 THE COURT: Thank you. All right. All right. At
9 this time, and it's appropriate that I hear any motions.
10 Do we --- we have any motions from the defendant?

11 MR. COBB: Yes, Your Honor. Your Honor, defendant
12 would like to make a motion for directed verdict on the
13 first cause of action, declaratory judgment. And that
14 the lease was terminated improperly by Insurance Office
15 of America against 1221 Bower LLC.

16 We believe that the plaintiff has failed to provide
17 sufficient evidence for this Court to deem that 1221
18 Bower's lease was not continuing and in good standing at
19 the time that they breached it.

20 And for that reason and for the testimony in front
21 of this Court, we believe it's appropriate to do so. I
22 do want to make one more note. We are not making a
23 motion for directed verdict on their second cause of
24 action at this time.

25 THE COURT: All right. Thank you, sir. Any

1 response Mr. Lesemann?

2 MR. LESEMANN: Thank you, Your Honor. So of course
3 you've heard a lot of testimony in the court. Very
4 clearly there was a notification that was provided and
5 through an electronic writing on the 14th. And also on
6 the 17th. And there's testimony that's been provided
7 that the landlord was aware of this issue on August 17th,
8 no later. There's also evidence to suggest that Ms.
9 Adelman is indeed not only an agent of the property
10 association, or the owners association, but also of the
11 landlord based on the conduct of the parties.

12 There was a 90-day provision in the lease we have
13 shown unequivocally that the condition of the lease
14 premises was not restored within 90 days. While the
15 parties dispute whether it was in the landlord's control
16 or not, or whether the landlord might make its claim for
17 force majeure or other issues, those are matters that are
18 for the fact-finder to preserve. So we have absolutely
19 stated a case that the 90-day requirement in this lease
20 was breached, that the condition of the premises was not
21 returned. The landlord did not meet its duty.

22 And therefore, the termination of the lease is
23 absolutely appropriate and is valid under the lease. So
24 based on the evidence and the four days of testimony,
25 this is absolutely something where a jury can find in

1 favor of the plaintiff. And we anticipate respectfully,
2 Your Honor, that they would.

3 THE COURT: All right. Any response, Mr. --- Mr.
4 Cobb?

5 MR. COBB: Your Honor, just very briefly. This
6 is --- there's no question or no challenge in the record
7 of the testimony or the pleadings about the lease being
8 enforceable and valid. (Unintelligible) your question in
9 the pleadings they weren't sufficient to explain the
10 entirety of the lease, including section 15.16 of the
11 lease that allowed for an extension of time.

12 There were other elements of that lease that also
13 allowed for additional time that would apply in this
14 situation, this set of facts. The testimony that you
15 heard over the last four days that was a ton of testimony
16 about water leaks. Obviously, it's clear that a lot of
17 these issues were beyond the reasonable control of the
18 landlord and to hold the landlord to such a punitive
19 standing on a single line on the single section would be
20 mischaracterization, a misreading of that lease.

21 Your Honor, I believe the lease in and of itself,
22 combined with the testimony shows that Insurance Office
23 of America wrongfully terminated its lease, it didn't
24 abide by the lease, further, it has unclean hands.

25 And, you know, for all those reasons, alone, Your

1 Honor, I don't believe a directed verdict in favor of the
2 plaintiff is appropriate, nor do I believe that ---
3 that --- that the jury would think so either. My opinion
4 is we don't even need to go there because of the
5 testimony today.

6 THE COURT: All right. And so with --- with regards
7 to the first cause of action, I am denying your motion
8 for directed verdict. It is my understanding, again, for
9 the record that defendant is not asserting a directed
10 verdict motion for the second cause of action.

11 Any other --- any other issues at this time? Any
12 other motions at this time? Excuse me.

13 MR. LESEMANN: Not from the plaintiff, Your Honor.

14 THE COURT: Any from the defendant, Mr. Cobb? I'm
15 sorry.

16 MR. COBB: No, Your Honor. Not at this time.

17 THE COURT: All right. All right. And Mr. Cobb you
18 have --- your client is going to testify; is that
19 correct?

20 MR. COBB: (Inaudible).

21 THE COURT: All right. And then your---
22 potentially, your expert will have to testify tomorrow
23 morning; is that right?

24 MR. COBB: (Unintelligible) Your Honor.

25 THE COURT: All right. And you all just have one

1 rebuttal witness?

2 MR. COBB: Yes, Your Honor. Depending on how things
3 evolve, we would intend to have no more than one rebuttal
4 witness. But again, this does depend on the evidence
5 that is presented. But that would be our current
6 intention.

7 THE COURT: Understood. All right. Thank you.
8 Okay. So at this time request we stand down on the
9 record so we can briefly discuss the charges?

10 MR. LESEMANN: Yes.

11 THE COURT: All right. All right.

12 (Off the record)

13 (Jury enters courtroom)

14 THE COURT: All right. Please be seated. Thank you
15 Ladies and gentlemen of the jury.

16 All right. At this time defense will present its
17 case.

18 Mr. Cobb, will you call your first witness, sir.

19 MR. COBB: May it please the Court. Your Honor, we
20 would call Mr. AJ Leone, the managing member of 1221
21 Bower LLC.

22 THE COURT: All right.

23 (Witness sworn)

24 AJ LEONE, HAVING BEEN DULY SWORN, TESTIFIED AS
25 FOLLOWS.

1 THE WITNESS: AJ Leone, L-E-O-N-E.

2 DIRECT EXAMINATION

3 BY MR. COBB:

4 Q. Mr. Leone, how are you doing today, sir?

5 A. Doing good.

6 Q. (Unintelligible) AJ if that's all right?

7 A. Of course.

8 Q. Okay. AJ, very quickly, will you tell me what your
9 background is?

10 A. Commercial real estate development, investing the
11 last 23 years.

12 Q. And how long have you done that, sir?

13 A. The --- last 23 years.

14 Q. Okay. (Unintelligible).

15 A. Yeah. 23, maybe 24 years now.

16 Q. Okay. All right. All right. And I --- I know that ---
17 I know that we've had some delays in this case, and my
18 understanding is you're in the military; is that accurate,
19 sir?

20 A. Yes, in the reserves.

21 Q. Okay. And what is your --- can you tell me what your
22 rank --- position is in the military?

23 A. I'm a brigadier general in the United States Air
24 Force reserves.

25 Q. Thank you.

1 A. Thank you.

2 Q. AJ, do you have experiences on condo association
3 homeowner association boards?

4 A. Yeah, through my investments, and through our
5 activities --- I believe I sit on five or six boards,
6 presently. And I've --- if you added them all up, sat on
7 maybe 10 to 12 over the last 20-plus years.

8 Q. Okay. And I know that you've been called the president
9 of the Bower Commons co-owners association board of the condo
10 association. Are you the president of that board?

11 A. We don't --- I'm a director, but we haven't had
12 elections on the board.

13 Q. How many board members are there?

14 A. There are three.

15 Q. Okay. All right. And who are the other two board
16 members?

17 A. Tim Kane and Lisa Leone.

18 Q. And is Lisa your wife?

19 A. Yes.

20 Q. Okay. Can you tell me a little bit about 1221 Bower?
21 You know, when did 12 --- 12 did 1221 Bower (background
22 noise)?

23 A. 1221 Bower came into existence to be a landholding
24 for an investment holding company sometime in 2019. Its
25 purpose was to be the LLC that the partners formed to own

1 this investment.

2 Q. Okay. And so when 1221 bought these units, were you
3 buying them to get the benefit of the tenants that were in
4 there currently?

5 A. Of course.

6 Q. Tenants in there at the time?

7 A. Yeah, when you --- when you buy the investment real
8 estate, you're determining a value, determining whether
9 you want to try and buy it based on the tenants, the
10 amount of money they're paying. We need to derive a
11 purchase price from that.

12 And hopefully after you put a mortgage on it and
13 figure out what all your expenses, hopefully the amount
14 of rent you collect at the end of the days after all your
15 expenses, you have some profit left over. It doesn't
16 always work that way, but that's the intention.

17 Q. Okay. And what was --- what was the --- what was the
18 value in the purchasing of 1221 Bower Parkway properties?

19 A. Having IOA as a large corporate client tenant. They
20 were --- they had half the space that at the time 1221
21 Bower bought. Was under a different name because we did
22 a --- a tax exchange initially at the purchase. But IOA
23 was in Units 101 through 105, which I think we've heard
24 all week. And then 106 --- Units 106 through 110 were
25 also opened by --- or are owned by 1221 Bower.

1 But the fact that we had Insurance Office of America
2 as our corporate tenant there and they were an anchor
3 tenant was huge. Plus this location being in --- in
4 Harbison, largest retail district in the Midlands was ---
5 was attractive to us and that's why we came here. We
6 also looked at --- okay.

7 Q. It's all right. I'm sorry.

8 A. I was going to say we also looked up Insurance
9 Office of America, and I think at the time they had about
10 80 locations. Seemed like a --- a fine company and ---
11 and we would --- we intended to want to get into business
12 with them.

13 Q. Very good, sir. What --- when you were negotiating the
14 purchase of this property, did --- IOA Properties III, own
15 Units 101, 105, and also --- through 105, and also the --- 106
16 (unintelligible)?

17 A. Yes. IOA Properties III, LLC owned Units 101
18 through 110.

19 Q. 1221 Bower bought all ten units?

20 A. Again, there was an intermediary purchase ---

21 Q. Right.

22 A. --- initially and then it was quitclaim transferred
23 a few months after the --- the actual purchase into 1221
24 Bower LLC.

25 Q. So it was the same ownership (unintelligible)?

1 A. It was. It was the exact same ownership of that
2 1031 entity.

3 Q. Okay. And when you were negotiating the purchase of this
4 property, did you look at two different sales prices?

5 A. Well, yeah. When you're negotiating there are a
6 couple different --- a few different scenarios, but
7 somewhere in the negotiation back and forth for
8 commercial Realtors it had come up that the current
9 tenant, Insurance Office of America might not want to be
10 there on a long-term basis, meaning the Units 101 through
11 105. We --- we --- we definitely want --- you know,
12 that --- that lowered attractiveness for us and it was a
13 concern.

14 So before we even went under contract, it was one of
15 the things we negotiated with them. We said, listen,
16 we'd really need you to stay for five more years if you
17 want that purchase price. If you don't, then we're
18 prepared to offer a much lower purchase price, because we
19 wouldn't --- we would have had a large tenant leaving
20 after I believe a year or two right after we purchased
21 it.

22 We --- we looked for that longer duration because it
23 helps fortify the valuation of the property we're buying.
24 The investment we're buying.

25 Q. And --- and why is that cash flow important

1 (unintelligible)?

2 A. The cash flow is important because we have a
3 mortgage. We have to pay that. We have other expenses
4 like taxes and everything else that --- it's --- it's a
5 business. It's --- it's the revenue of --- of an
6 investment business and you have the expenses, and the
7 mortgage is part --- mortgage expense, the interest
8 expense, and a variety of others are all the expenses.
9 End of the day, you try --- try and make some money.

10 Q. And before you --- before 1221 Bower, what did Insurance
11 Office of America do with that lease?

12 A. As a condition of purchasing the property, we had
13 the lease assigned to the --- the purchaser.

14 Q. Right. So you took the lease. Was there a 5th --- 5th
15 Amendment done to the lease?

16 A. Yes. Yes. The --- the --- as part of the
17 discussion earlier to have Insurance Office of America
18 extend for five years. It was the a condition before we
19 closed that they would have signed the --- the lease
20 amendment which would have kept them there actually for
21 seven years, but they had the option to leave after five
22 years. And that was where we settled between buyer and
23 seller.

24 Q. And was that option out clause March 31st, of 2025?

25 A. Yes. That's when the date --- that was the earliest

1 date they could go.

2 Q. When you were doing the negotiations and after the
3 purchase, were you ever given keys to these units, 101 and
4 105 --- through 105?

5 A. No, we were never given keys.

6 Q. Who were you dealing with at Insurance Office of America?

7 A. At the purchase?

8 Q. And beyond.

9 A. Okay. At purchase we had gotten the names of the
10 corporate real estate folks. I think there was a Phillip
11 Faircloth. Jason Robinson was definitely a name we had
12 at purchase.

13 As part of what we do when we buy a property, we
14 also ask for the local contacts as well. Because it is
15 important, because a company like IOA, several other big
16 companies, they tend to have a corporate real estate
17 department that is our client. They're the folks who if
18 we have to notice back and forth, we're talking to
19 corporate entity. And but we want to also know who the
20 local folks are to try and --- to try and help and smooth
21 things over should things come up.

22 Q. Okay. And do you remember who the local person was you
23 provided?

24 A. I think the --- the name I got was --- was Crissy
25 Warner.

1 Q. And when was the first time you were able to get into
2 Columbia to come and meet the local (unintelligible)?

3 A. We did a walk-through at that property prepurchase.
4 So I would say that was July --- approximately July of
5 2019.

6 Q. Before Crissy Warner had started?

7 A. I --- I believe that was her testimony today. So
8 yes, that would have been probably before she started.
9 And, again, it was a --- we walked through it, let the
10 Realtors take a look at the property. And --- and then
11 afterwards --- I --- I don't recall after in 2019 when we
12 visited, but --- I don't recall the specific date when
13 we --- when we went by.

14 Q. Okay. What --- when you were --- when you were ---
15 how --- how many --- how many --- (unintelligible). Can you
16 explain to us the breakout of co-owner association, condo
17 association, based off your experience being on boards with
18 different owner associations in your career?

19 A. The break out --- meaning --- sorry, can you ---
20 I --- I'm --- what do you mean by breakout?

21 Q. What is the --- what is the owner association normally
22 responsible for? What are (unintelligible) in layman's terms?

23 A. In a --- a property like 1221 Bower, you have the
24 structure of the building, the common grounds, the
25 outside, the landscaping, and the interior

1 infrastructure, the pipes, the plumbing some air
2 conditioning systems in the hallways. The owners
3 association is there to take care of the common elements,
4 which are owned by all the owners in the property --- in
5 the association. That includes the --- in this case the
6 residential owns and the commercial owners.

7 Q. Okay. Do all unit owners pay fees for that association?

8 A. Yeah. Every month they pay --- you've heard them
9 like condo dues, you can hear them like OA dues, or ---
10 yes.

11 Q. What normally would those fees go (unintelligible) paying
12 for?

13 A. The taxes on the common elements. Believe it or
14 not, those are taxed. Maintenance costs, upkeep,
15 repairs. Some utility bills for common areas.

16 Q. Okay. So when you have a owners association or a condo
17 association, it's controlled by a board of directors normally?

18 A. Yes.

19 Q. Okay. And this board of directors normally handled the
20 work themselves, working with contractors and taking care of
21 issues, or do they hire a third party community association
22 management company?

23 A. In almost all cases, especially in --- in my
24 experience, the board of directors or the members on the
25 owners association board, in every case hire a property

1 manager and --- and other contractors to do work for
2 them.

3 Q. And so when --- when 1221 Bower purchased this property,
4 who was that third-party community association management
5 group?

6 A. It was --- it was CAMS. Yes.

7 Q. And so was that the first time you met Angela Adelman?

8 A. Yes.

9 Q. Okay. Was she the original manager that you inherited
10 when you bought the property in terms of the condo association
11 board?

12 A. I --- I believe she was the original property
13 manager, yes, when we first took it in 2019.

14 Q. Okay. And did you get on the condo association board
15 shortly after you bought the property?

16 A. Yes.

17 Q. And is that because Jason Robinson and Scott Berry
18 resigned from that board?

19 A. They resigned from that board at --- at the ---
20 the --- when we --- when we bought it at closing.

21 Q. Okay. And did you think it was unusual for you to come
22 in and buy it, and all of a sudden are on the --- on the condo
23 association board?

24 A. It's --- it's not unusual because when we purchased
25 Units 101 through 110, we were purchasing approximately

1 38 percent of the entire ownership and so it comes about
2 voting rights. And so then there was a, you know,
3 subsequent meeting and we were on the --- we took over
4 the --- the board.

5 Q. Okay. Do you remember how you gave notice to Insurance
6 Office of America that changed landlord that it's now 1221
7 Bower instead of anyone else?

8 A. Yeah. We --- we sent --- sent an e-mail that I
9 think we --- we saw earlier today. We sent it to our
10 corporate real estate contacting --- counterparts at
11 Insurance Office of America down in Orlando. We actually
12 sent that e-mail twice. Very, very similar e-mail. The
13 first one was sent from the --- the 1031 entity that
14 own --- owned the property for about three or four
15 months. And then when the property was quitclaimed, and
16 that's just, again, it was transferred into 1221 Bower,
17 we sent it again because 1221 Bower was the legal owner
18 of this property.

19 Q. All right. I've amended my Exhibit 100, which is accepted
20 in the record to show who this e-mail went to. Can you read
21 that --- or actually I can read it. Can you tell me who you
22 wrote that e-mail to on February 17th?

23 A. Okay. This e-mail was written to vendorAP@IO ---
24 IOA. It was written to Chris, Crissy Warner, and Jason
25 Robinson, and Melissa Rudolph. Those were the --- those

1 were the three points of contact I think we had at
2 closing.

3 Q. Okay. So you had one local with Crissy Warner, and
4 two --- well, Melissa and Jason, they were down in Florida?

5 A. Yes.

6 Q. Okay. All right. All right. And did Crissy e-mail you
7 back? (Unintelligible) reach out to her?

8 A. She did e-mail be back.

9 (Simultaneous speaking)

10 A. Yes.

11 Q. So is it fair to say that Crissy now (inaudible)?

12 A. She e-mailed me back, and I do have all of her
13 contract information. And I closed that e-mail with: If
14 you have any problems or questions, please feel free to
15 call me, I (unintelligible) my cell phone number and
16 my --- my e-mail address, and I also ---

17 Q. Well, do me a favor, AJ, do you see this line right here
18 where it says important (unintelligible)?

19 A. Yes.

20 Q. Can you read that out loud, please?

21 A. The individual points of contact for the landlord's
22 company have not changed. If you have any questions,
23 please call AJ, my phone number.

24 Q. And your phone number also is (unintelligible), right?

25 A. Yes.

1 Q. And it says you're the managing member of 1221 Bower,
2 LLC, right?

3 A. (Inaudible).

4 Q. All right. And that's February 17th, of 2020?

5 A. Yes.

6 Q. All right. So six months before August of 2020, correct?

7 A. Yes, sir.

8 Q. AJ, you bought the building as is, right? Or 1221 Bower
9 (unintelligible) correct?

10 A. Yes.

11 Q. All right. And so at any point in time, and --- and
12 regardless of water intrusions, you're not arguing that point,
13 whether they had it or not it's irrelevant, correct?

14 A. It's irrelevant that they --- that they told me.
15 Yes, we bought it as ---

16 (Simultaneous speaking)

17 A. --- as is.

18 Q. (Unintelligible)?

19 A. Right. Agreed. Typically when you buy real estate
20 it's bought as is.

21 Q. Okay. What does that mean?

22 A. It means it's as it is.

23 Q. Warts and all?

24 A. I --- yeah. If it has latent problems that you
25 didn't see, you're --- you're buying --- you're buying

1 them. But I --- but I --- I'd also point out that the
2 purchase of this property was not the building, but the
3 condo. And it was the inside walls. Or spaces that we
4 bought, the drop ceiling, the walls, the interior
5 fixtures. We didn't buy the structure, we didn't buy the
6 building. The building itself is owned by the
7 condominium association and all the owners
8 (unintelligible).

9 Q. All right. So were you ever aware that there was a leak
10 in between Unit 102 and 103 that happened when IOA Properties
11 III owned the property from upstairs?

12 A. Was I ever aware?

13 Q. (Unintelligible) before --- before, let's say,
14 September --- excuse me ---

15 MR. LESEMANN: Your Honor.

16 MR. COBB: Let me rephrase my question. I know
17 where you're going.

18 MR. LESEMANN: Yeah. Right. There --- there's a
19 better route. Yeah.

20 MR. COBB: Yeah. I got it.

21 THE COURT: Then rephrase.

22 BY MR. COBB:

23 Q. What was the first time you --- okay. Had you done any
24 investigation that indicated there had been a water leak that
25 happened prior in that same spot that we have the dispute over

1 now?

2 MR. LESEMANN: Your Honor, may we approach?

3 THE COURT: Yes.

4 (Bench conference)

5 THE COURT: All right. Mr. Lesemann, I'm going to
6 sustain --- I'm going to sustain your objection to
7 that --- some of that question. Mr. --- Mr. Cobb, you
8 wish to proceed with your questioning.

9 MR. COBB: (Inaudible).

10 BY MR. COBB:

11 Q. I'm not going to get into too much defense.

12 (Unintelligible) 1221's counterclaims here, but I do have a
13 few questions.

14 There's been suggestions that you have worn two hats and
15 there's way to segregate those two hats, correct?

16 A. I have worn two hats.

17 Q. How do you --- how do you --- how do you differentiate
18 between those two as the landlord and as a board member of
19 (unintelligible)?

20 A. They're --- they're actually two different
21 responsibilities. That's what I was talking about
22 earlier. As a member of the owners association, you're
23 one of several owners and representing all the owners to
24 look after the common property and to do the duties of
25 the owners association, which is to take care of the

1 common property especially if it breaks and fix it. If
2 it breaks, it needs fixing.

3 As a --- as a landlord, that --- that hat is to make
4 sure that you're doing the responsibilities inside
5 the --- the lease that you have a tenant. And then also
6 to advocate for your tenant in a case like this to the
7 owners association.

8 Q. And do you believe you were successfully wearing two
9 different hats while you were (unintelligible) the leak from
10 the upstairs unit?

11 A. No.

12 Q. Part of the common elements?

13 A. I mean I --- I wasn't wearing two hats. When I was
14 talking to Angela early on when this happened, it was one
15 of --- just there was a lot of --- there's a lot of
16 maintenance when we took this property, and --- and when
17 we were --- we were on the owners association board.

18 And honestly, when Angela talked to me about this, I
19 was more focused in that we had a leak upstairs. I was
20 focused on stopping that leak in the toilet or what
21 seemed to be the toilet upstairs. So I was functioning
22 definitely as the --- I was instructing her as owners
23 association. Didn't really realize we had a situation,
24 and I wish I did. I --- I --- I mean, I wish that it was
25 all apparent. Because this is not a good thing for

1 anybody. You don't want this --- you don't want this to
2 happen, and I'll say at the outset no one wanted this.
3 No one wants this kind of leak (unintelligible).

4 Q. All right. AJ, I just handed you a document, will you
5 please look at --- start looking at the back of it, and just
6 kind of read forward and let us know what the ---

7 A. Look at the ---

8 Q. --- what this is?

9 A. I'm sorry. You said look at the back of it? Or ---

10 Q. Yes. Start at the back. E-mail (unintelligible)?

11 A. Got it.

12 Q. I believe it starts with a e-mail on September 1, 2021,
13 from Angela to yourself?

14 A. Yeah.

15 Q. All right. And what's it say?

16 A. Says: Good morning AJ, do you approve with me
17 moving forward with Clean Aire --- with Clean Aire to
18 come out and assess Kudzu and IOA tomorrow? He sent me
19 the attached proposal moments ago.

20 Q. Okay. And --- and did you respond at that time?

21 A. Yeah.

22 Q. Okay. Did Angela actually have to respond to you maybe
23 again on Thursday, September 3rd?

24 A. Yes.

25 Q. Okay. And let me ask you a question: When you were in

1 the military duty, do you ever have any delays when you
2 (unintelligible) access to (unintelligible) respond?

3 A. Try and minimize them, but I travel back and forth
4 depending on when I'm on duty. There's --- when --- when
5 I'm on duty up at the pentagon just a couple hours ---
6 blocks of time during the day where we're kind of
7 offline. But I always try and come right back. I want
8 leave the building to come right back to the commercial
9 ventures that I'm involved in even before I go in the
10 building or after.

11 Q. Why --- why do you think you didn't respond to her
12 September 1st e-mail and she had to (unintelligible) again on
13 September 3rd?

14 A. I honestly don't know. I ---

15 Q. Okay.

16 A. I don't know.

17 Q. You --- she sent the e-mail at 1:24 and then you
18 responded at 20:03 that day. What did you respond?

19 A. I said, do you think we need to do this?

20 Q. Okay. And then back to the front page. And Angela
21 writes what? (Unintelligible)?

22 A. Yes, sir. At least IOA --- at least for IOA, Scott
23 is wanting it badly.

24 Q. Okay. And you respond on September 3rd at 2:06, sounds
25 like y'all had a pretty quick response time?

1 A. Yeah.

2 Q. What do you say?

3 A. I said, this is one of those things if the tests
4 come back positive, then we need to do more and more.

5 Q. Okay. All right. What did you mean when you said they
6 have --- we have to do more and more. I --- I know this
7 e-mails been (unintelligible) ---

8 A. Yeah.

9 Q. --- let's --- let's get to it. What is that?

10 A. I wanted Angela to give me a call because my
11 experience on owners associations that you got to be very
12 diligent about this. And we also need to make sure ---
13 we didn't know what we had right then and there. And a
14 lot of times --- sometimes when this occurs, sometimes
15 there is a let's do this. But I really wanted to make
16 sure we had the leak stopped. That --- that was under
17 control first before we went right into looking at that.

18 But as far as doing more and more, and I know that
19 was discussed earlier in the week, doing more and more
20 was me telling her the owners association from the OA's
21 perspective needed to make sure that we really are being
22 diligent about this to make sure it all does get taken
23 care of.

24 Q. Okay. And why is it important to take care of it?

25 A. Well, it's not just for the tenant and it's not just

1 for the owner of this --- it's also for the other owners.
2 Because if it's not done right it results in more money
3 being spent on an owners association that didn't have a
4 lot of money in reserves either. And so we could end up
5 just putting more liability out there from financial ---
6 from the owners association.

7 Q. So the other unit owners would have to put more money in?

8 A. Yeah. And --- and there was --- there was general
9 caution about not wanting to --- just proceed caution
10 cautiously and not spend the money if we --- if --- if it
11 wasn't really necessary. And we didn't know what we had
12 at this point in time.

13 Q. All right. At any time --- and it's been insinuated that
14 you refused to give permission, you denied Angela to order
15 this --- order this inspection report; is that true?

16 MR. LESEMANN: Your Honor, we just object to
17 characterization that he insinuated. Ms. Adelman gave
18 her testimony on it. I don't think that the testimony
19 doesn't insinuate, the testimony (inaudible).

20 THE COURT: All right. And so we'll rephrase the
21 question, please.

22 BY MR. COBB:

23 Q. Did you ever refuse or deny Angela Adelman the authority
24 to order to any type of mold investigation reports?

25 A. No. I never said not to do it, but we were still in

1 the investigation. I never refused it. We were just
2 deliberating and trying to figure out the right course of
3 action at that time.

4 Q. Now, AJ, we'll just --- we're not going to go through all
5 of the e-mails and texts. They're already there. But do you
6 remember when the first time you got notice from anybody at
7 Insurance Office of America --- a prompt written notice came
8 in?

9 A. I do.

10 Q. What was that date?

11 A. September 22, 2020.

12 Q. (Unintelligible)?

13 A. Jason Robinson.

14 Q. So in your lease, does it ask for Angela Adelman to give
15 notice too you or the property manager of the condo
16 association board?

17 A. No.

18 Q. It says ---

19 A. It says to notify the landlord.

20 Q. Now, we all know that you knew about it because Angela
21 was keeping you informed, correct?

22 A. I did.

23 Q. Now, is it fair to say that Angela was handling on behalf
24 of the owner association --- condo association, the upstairs
25 leak --- part of a leak from the pipe in the common element?

1 And so you could really do anything with this issue as the
2 landlord?

3 A. Yes. And even as the landlord we would have ---
4 even if we weren't on the board, because there things
5 that we own --- properties that we own, where we're in
6 the condo association we're not board members. We still
7 would be advocating to the owners association to get this
8 fixed. It was their responsibility.

9 Q. Okay. And did you do anything different after you
10 received this e-mail than before when you knew Angela was
11 working on the leak from upstairs?

12 A. Yeah, I --- because --- talk about the two hats, I
13 was --- I --- I just got an e-mail from our large
14 corporate tenant at this property about a problem they
15 were experiencing and it --- it appears it was serious.
16 So I immediately responded back to them. I got on the
17 horn with Angela, I got folks to go out there and we
18 definitely had a lot more energy and attention on it in
19 addition to what she was doing already.

20 MR. COBB: Your Honor, I'd like to mark this as
21 Defendant's Exhibit 115. I know it's in as a Plaintiff's
22 Exhibit, but I think it's got some more e-mails to it.

23 THE COURT: All right. Any objection?

24 MR. LESEMANN: No, Your Honor.

25 THE COURT: Okay. So moved.

1 (Defendant's Exhibit 115 marked and entered)

2 (Attorneys conferring)

3 MR. COBB: We'll --- we'll come back to that, Your
4 Honor. (Unintelligible).

5 THE COURT: Okay.

6 BY MR. COBB:

7 Q. Is it fair to say that attached to this e-mail was the
8 pictures of (unintelligible) office with the ceiling tile
9 crashed through the floor because it got too heavy from the ---
10 (unintelligible) trash can with water in it?

11 A. Yeah, that's my recollection. Those --- those
12 pictures that we saw.

13 Q. AJ, you said that you reacted quickly, correct?

14 A. Yes.

15 Q. All right. And that's just the first time the client had
16 actually --- that the tenant actually reached out to you
17 directly, right?

18 A. Yes.

19 Q. Okay. Looking back at this e-mail thread for me here.
20 And if I look down at Adelman --- Adelman subpoena response
21 110.

22 A. Yes. I see it.

23 Q. Okay. All right. So do you see that this is Scott Berry
24 receiving the air quality reports from Kleen Sites?

25 A. Yes.

1 Q. Okay. And you see where that is dated September 30th?

2 It --- it's --- it's at the bottom ---

3 A. I see it. Yes.

4 Q. All right. And do you see where --- where Crissy said on

5 September 30th at 9:09 that night that Angela the --- the

6 attached --- the attached mold air quality report

7 (unintelligible)?

8 A. Yes.

9 Q. Okay. All right. And then did Angela send that to you
10 on --- sorry. Did Angela --- did Angela send out immediately
11 to you?

12 A. Looks like I received this on Friday the 4th --- no,
13 sorry. Excuse me.

14 Q. Would you --- I --- I don't have it in e-mail, but do you
15 remember receiving this pretty quickly after she got it?

16 A. Yes.

17 Q. Okay. So you don't deny that she got the air quality
18 report?

19 A. No.

20 Q. Okay. All right. So let's go to --- let's go to Friday
21 September 25th and it's bottom right hand page 106. And this
22 is e-mail from Jason to you and cc'ing Melissa and Gabe. All
23 right?

24 A. Yeah.

25 Q. And do you see this information that Jason has given you

1 here in this e-mail thread?

2 A. Yes.

3 Q. Okay. At any point in time --- well, actually, why ---
4 why don't you go ahead and --- why don't you go ahead and read
5 that first paragraph.

6 A. Please see following excerpts from an e-mail I just
7 received from (technical difficulty) leadership's
8 initiative in our office in Columbia. At this point I'm
9 out of the loop on this. Any questions will be addressed
10 to Scott, Crissy, or Gabe DeJesus who is handling our
11 leasing at the moment. His number is 407-650-1501.

12 Q. All right. And so what did you do when you received
13 this? You can just go up the e-mail thread.

14 A. I ---

15 Q. On September 25th ---

16 A. I replied back and said I'm available to discuss
17 this afternoon, please feel free to get in touch.

18 Q. Okay. And --- and would you read the paragraph right
19 here that says may I suggest?

20 A. May I suggest we set a meeting to discuss the roles
21 and responsibilities of both the landlord and the tenant
22 during these types of situations. And it's important to
23 discuss sooner rather than later as there's several
24 intended actions that are about to be taken by defendant.

25 Q. Okay. All right. And then you say you're available to

1 discuss this afternoon, correct?

2 A. Yes.

3 Q. Okay. Did you hear from anybody?

4 A. No.

5 Q. Okay. And then keep on that same thread. On September
6 28, three days later, what did you do?

7 A. I pinged Jason and the entire leadership team at ---

8 Q. Melinda, Gabe, (unintelligible)?

9 A. Yeah, who I handed off to when I copied him, I said,
10 Jason, just checking back in on this, I haven't heard
11 back from the team. Please let me know when you have a
12 moment.

13 Q. Okay. Then what happened?

14 A. I didn't hear anything back.

15 Q. Now, did you get an e-mail back from Melissa Rudolph on
16 September 20th?

17 A. Yes.

18 Q. Okay. And what's Melissa saying?

19 A. On the 29th, she says Jason's out of the office
20 today, see (technical difficulty).

21 Q. Okay. Great. And what's this next paragraph say
22 specifically?

23 A. All the initial onsite testing was completed on
24 Friday evening. Preliminary indications are particulates
25 in Parker's office, and some in Renee's office, and just

1 a small indication in Scott's office. The air quality
2 tests (technical difficulty). The main concern appears
3 to be the lower office area.

4 MR. COBB: Okay. Your Honor, I'd like to put this
5 in as Defendant's Exhibit 120.

6 THE COURT: Any objection to 120?

7 MR. LESEMANN: No objection, Your Honor.

8 THE COURT: So moved.

9 (Defendant's Exhibit 120 marked and entered)

10 BY MR. COBB:

11 Q. All right. So AJ, you asked for a call, said hey,
12 (technical difficulty)?

13 A. No, not right away.

14 Q. Okay. What happened? And I --- I --- did you hear ---
15 did you hear the testimony (inaudible) ---

16 A. Yeah.

17 Q. --- (inaudible)?

18 A. I did. So I --- I --- as I read to you, I --- I
19 pinged them on the 25th right after I got a message from
20 them on the 28th. And then the --- I believe the 29th.

21 And then on the 30th, they just sent me an --- a
22 meeting request at about 3:00 in the afternoon for 9:30
23 the next morning. I had an engagement at 9:30 the next
24 morning that I could not break. And so I did decline
25 that, but I had pinged them for the last four or five

1 days to --- to get up on a call and talk about this. And
2 I was also trying to react because there was a leak. And
3 then this last message I got where they said it's
4 confined just to this lower area. It's one of the things
5 going into my decision's phase that it's important to get
6 to, but also they weren't getting right back to me. So
7 that was --- that was influencing where --- where I was
8 thinking about this too.

9 So then I was on a meeting the next morning and I
10 think Angela texted me and said hey, everybody's on this
11 call. I was able to leave that meeting because I did
12 still want to --- I --- I figured when I declined the
13 meeting, we would have done the thing where you suggest
14 an alternate meeting, because they were trying to get
15 like six people on a call all together by the next
16 morning at 9:30. All right. I --- I just couldn't react
17 (inaudible). So I figured we would have tried a round
18 two trying to get some folks on the call.

19 They went ahead and had the call anyway. And so
20 then when Angela pinged me, I actually stepped out of
21 that meeting and got on the call.

22 Q. Okay. So you --- it's not that you were just not taking
23 it seriously, correct?

24 A. No.

25 Q. Okay. All right. AJ, we --- we talked about so many

1 e-mails, so many activities ---

2 A. Yeah.

3 Q. --- let me ask you a question: Was the condo association
4 being diligent in terms of trying to repair the water leak?

5 A. In --- in totality, I absolutely believe they were
6 diligent. This was --- this was --- this was a tough
7 leak. There were a lot involved, a lot of moving parts,
8 a lot of things going on. Kept trying to get over the
9 target to get this leak fixed and it was elusive, but I
10 don't think it was for lack of trying. I know it wasn't.

11 Q. Okay. And again, nobody from Insurance Office of America
12 was calling you up screaming and yelling at you, correct?

13 A. No. The first time I got that message was on the
14 22nd of September 2020.

15 Q. Okay. And so on September 24th, you're aware that Scott
16 Berry contacted Dave Dunnagan at Kleen Sites?

17 A. Yes.

18 Q. Okay. And you're aware that Dave Dunnagan came out on
19 September 25th and had an inspection done, correct?

20 A. Yeah. And I was happy that I think in the prior
21 conversations IOA was quarterbacking a lot of the ---
22 Insurance Office of America's local team, specifically
23 Scott and Crissy, were pretty active in terms of working
24 things on behalf of the owners association even after we
25 bought it. And that was --- that seemed a little odd to

1 me, but we were still just, you know, moving along.

2 And then when Scott suggested this and I --- I heard
3 about it through Angela. I was like that's --- that's
4 completely fine and I'm happy that Scott has a friend
5 Kleen Sites who is a --- is an expert and is going to
6 come out. Delighted.

7 Q. And I believe the --- that Scott got a quote from Kleen
8 Sites on October 2nd that he forwarded over to ---

9 A. Yes.

10 Q. --- Angela?

11 A. Yes.

12 Q. And then Angela forwarded that to you on --- that was a
13 Friday, Angela forwarded it to you on Monday, October 5th?

14 A. Yes.

15 Q. Okay. And what happened next?

16 A. Let's see. On the 5th, we --- we had opened up an
17 insurance claim. And I say, "we," I mean the owners
18 association opened up an insurance claim on or around
19 that time. We also had to get another quote. Owners
20 associations typically get at least two quotes because
21 again, you have to be sure --- responsibility for all the
22 owner's money to make sure it's just not, you know, a
23 friend's, you know, business. It has to be very
24 objective, so we had to get another quote. So we had ---
25 looked like we were going to be having an insurance claim

1 involved. And so that's what happened.

2 Q. Okay. Did the insurance adjuster require a second quote
3 for the mold remediation?

4 A. Yeah, I believe they did. And I believe they
5 suggested a --- a provider.

6 Q. Is that PDRC?

7 A. It sounds familiar, I --- I don't know. Yes.

8 Q. Okay. And they came --- so October 5th you get the
9 quote, October 13th PDRC comes out and does their site
10 inspection; does that sound right?

11 A. Sound right.

12 Q. Okay. And then also when you get their report, that you
13 know that Scott Berry wants to use Kleen Sites. And you
14 signed the engagement letter for Kleen Sites on behalf the
15 condo association October 22nd; is that right?

16 A. Yes.

17 Q. Okay. And then it took Crissy a couple of days to get
18 them on the schedule?

19 A. Yeah. There was --- I mean, I --- I kind of thought
20 because of Scott's affiliation --- not --- excuse me ---
21 Scott's --- they knew Dave Dunnagan that would have been
22 able to get them in sooner. And so that's why I was
23 also --- me and Angela to say, do we --- do we have ---
24 and Angela did say she's tried to contact them four
25 times, and they hadn't gotten back to her. I saw Dave

1 Dunnagan's testimony earlier that they were very busy.
2 Understandable. And then eventually we got them on ---
3 on the calendar to come on in and start.

4 Q. Okay. Was there anything you could have done stopping
5 the leaks at this point?

6 A. No.

7 Q. Okay.

8 A. We were really leaning forward. We were trying to
9 get the plumber out there. We called --- later on we
10 had --- we had Heath go out there who is the --- I know
11 this was later, but we were doing inspection, trying to
12 look after it. We were trying to get access into
13 upstairs. There was quite a bit of --- quite a bit of
14 things. No, I don't think there's anything else we would
15 have done given the set of circumstances that we had.

16 Q. Okay.

17 A. We reacted at every step of the way.

18 Q. And is it accurate that Dave Dunnagan on November 5th,
19 finished the mold remediation?

20 A. Yes.

21 Q. And November 6th gave a post-mold remediation report that
22 said it's all clear?

23 A. Yeah. And I was delighted that that was really good
24 that we got such a clean report too because we were ---
25 you know, we were like okay. Because, you know, now

1 that --- once we saw that magnitude inside the wall, you
2 know, that --- (unintelligible) my point that once we saw
3 that magnitude inside the wall, it became --- my
4 experience in --- in doing remodeling, when you do take
5 away old roofs and stuff like that, you have that black
6 wood that I've seen that a handful of times. That is
7 indicative of a water leak that has been going on for a
8 long time, not like one or two months. That was ---
9 that's --- and then I was --- when I heard --- when it
10 became apparent that there was a leak in the same spot,
11 it --- it kind of made a lot more sense then.
12 Q. When you saw --- when you saw that there was --- when you
13 saw the hole that was cut out by Heath and you knew about it,
14 would --- would you have changed anything in terms of
15 September 3rd with --- with talking about Angela about go
16 ahead and (unintelligible)?

17 MR. LESEMANN: Your Honor, I just would object. I
18 don't know that the witness has said that he actually saw
19 the hole the contractor got cut. It was assumed in ---
20 in Mr. Cobb's question. And plus I believe that the
21 phrasing of the question is leading. I let it go for a
22 little bit, but I'm going to need to step in.

23 MR. COBB: I'll just rephrase it.

24 THE COURT: All right. Rephrase.

25 BY MR. COBB:

1 Q. (Inaudible) the mold inside the wall in Parker McMillan's
2 office from either picture or personal inspection?

3 A. I --- I didn't personally inspect it, but yes with
4 the hole one was able to see inside the ---

5 Q. Okay. And what did that tell you again?

6 A. It --- it's --- it --- by looking at the --- the
7 side of the two-by-four, it definitely looked like this
8 was blackened wood which would have meant that there
9 would have been a --- a longer-term ---

10 MR. LESEMANN: Your Honor, I'm going to move to
11 strike the testimony as that --- as far as Mr. Leone,
12 he's talked to about his experience, but none of it
13 relates to evaluating the length of time that mold has
14 been present. He's not qualified to testify about such
15 things. He's actually just admitted that he didn't even
16 see it, didn't actually go personally inspect it.

17 So Your Honor I would object to his attempt to opine
18 as to the length of time that the mold had been in the
19 wall.

20 THE COURT: All right. I'll --- I'll sustain. And
21 we'll continue, Mr. Cobb.

22 MR. LESEMANN: Your Honor, would you also --- would
23 like for you to please rule on whether the testimony
24 should be stricken as he does not have the appropriate
25 scientific foundation to --- to try to ---

1 THE COURT: We'll certainly strike the testimony,
2 yes. Thank you.

3 BY MR. COBB:

4 Q. (Inaudible) experience was ever going, and seeing, and
5 identifying, and understanding mold?

6 A. I don't have the scientific ---

7 Q. What is your experience with mold?

8 A. We've been owning buildings and renovating buildings
9 for over 20 years. I do have a technical background,
10 technical degree. I do understand some of the science
11 behind it. And --- and I --- I've seen it --- and I've
12 seen it, I've seen this black wood multiple times in ---
13 in several properties.

14 Q. Okay. Mr. Leone, is it --- was it your understanding
15 that Angela Adelman coordinated Heath Petty to come on
16 November 11th to do the rest of the repairs on the ---

17 A. Yes.

18 Q. --- interior of the Unit 103 and Scott's office in 102?

19 A. Yes.

20 Q. All right. And do you know what happened on November 9th
21 after the mold remediation was done?

22 A. There was another leak.

23 Q. And what happened next?

24 A. What happened next? The --- we need to stop
25 everything and try and fix the leak again.

1 Q. Okay. And was it your decision to not let Heath come in
2 and do the work on November 11th, or was that Insurance Office
3 of America's decision?

4 MR. LESEMANN: Your Honor, that was a textbook
5 leading question. Object.

6 MR. COBB: Whose decision was it --- I'll rephrase.

7 THE COURT: All right. We'll sustain and you'll
8 rephrase.

9 BY MR. COBB:

10 Q. Whose decision was it to stop Heath Petty from coming in
11 on November 11th to (inaudible)?

12 A. It --- it was --- it was not the owners association,
13 it was not my decision as landlord.

14 Q. Okay. As a landlord, do you believe that was the right
15 decision?

16 A. I --- it was a struggle between wanting to, you
17 know, acquiesce to the tenant's wishes. Again, we were a
18 little bit tentative, I'll --- I'll admit that. But it's
19 really the landlord's call and --- and the owners
20 association. Owners association from the common elements
21 perspective and the landlord's, because the landlord owns
22 the interior surfaces in there. But the lease does call
23 that out. The landlord's call.

24 Q. What --- was the leak back after November 9th? After
25 Shuler?

1 (Simultaneous speaking)

2 A. I believe so.

3 Q. All right. See that binder in front of you? We'll look
4 at (unintelligible) I believe. Plaintiff's Exhibit Number 50.

5 MR. COBB: May I approach the witness, Your Honor?

6 THE COURT: Yes.

7 BY MR. COBB:

8 Q. AJ, did Heath Petty come in --- and did the sheetrock and
9 the majority --- the ---

10 (Simultaneous speaking)

11 MR. LESEMANN: Your Honor, I again would repeat my
12 objection. It's another leading question.

13 MR. COBB: What happened on --- I'll rephrase, Your
14 Honor.

15 THE COURT: All right.

16 BY MR. COBB:

17 Q. What happened November 20th inside the Units 103 and 104?

18 A. After the remediation, Heath Petty came in to put up
19 the rock and rebuild the walls, and --- and do other
20 work.

21 Q. All right. What happened on December 1st?

22 (Simultaneous speaking)

23 A. I believe we received a termination letter.

24 Q. And do you remember why Insurance Office of America
25 (unintelligible) termination letter?

1 A. It was very --- it was very surprising, it was
2 (inaudible) all of this and it was --- it was --- it was
3 actually very --- very surprising. They said, you know,
4 they cited all the things we discussed and that's it.

5 Q. Were --- were you --- why were you surprised to get that
6 letter?

7 A. To --- to the point we'd been diligent, we had just
8 gotten the place fixed, and all the --- the mold had been
9 remediated and we were just very surprised that this ---
10 this came out of nowhere.

11 THE COURT: All right. Mr. ---

12 THE WITNESS: --- I received notice ---

13 THE COURT: I apologize. Go ahead. Finish your
14 answer.

15 THE WITNESS: And --- and we also hadn't received
16 any notice. Any sort of thing --- and I got --- I have
17 to say that that was surprising because if there is
18 something like that where the --- where the tenant is ---
19 very common --- put it in writing, there's a big ---

20 (Simultaneous speaking)

21 THE WITNESS: And that you get --- get a official
22 notice. I was --- in fact, when I got that letter
23 initially, I thought that was our 30-day clock or
24 something like that. It was ---

25 MR. COBB: Okay. I'm sorry --- I'm sorry AJ. Hold

1 on a second. Your Honor, you had something to say?

2 THE COURT: Can we --- can we excuse the jury from
3 the courtroom for just a moment.

4 I'm sorry to interrupt your testimony.

5 (Jury exits courtroom)

6 THE COURT: All right. Please be seated.

7 Gentleman, very --- very transparently, I'm just going to
8 go back in the jury room and give them some candy.

9 We --- we've lost one juror or he's --- he's in and out.

10 And so I --- I'm --- try to pump him with some sugar.

11 And so I --- I apologize for interrupting you. I

12 normally would not have done that. I tried to clear my

13 throat a couple times. Thought about throwing this book

14 down, but I --- I decided to let them all stretch. I'm

15 going to give them some --- literally, I'm just going to

16 give them this bag of candy and see if we can bring them

17 back out. Because it's important testimony and I --- I

18 want them to be alert for that. Okay? So I'll be ---

19 I'll be right ---

20 (Judge exits courtroom)

21 (Off the record)

22 (Judge enters courtroom)

23 THE COURT: All right. You all can be seated. And
24 can you get the jury for us please.

25 This will be Court's Exhibit 3, the note says are we

1 allowed to get a small thank you gift for our bailiff?
2 For example a five to ten dollars gift card to be
3 presented when we finish? I'll figure out how to answer
4 that. I'm not sure they can. But I --- I will figure
5 out to answer that.

6 (Court's Exhibit 3 marked)

7 THE COURT: What's happening? I've never been in a
8 trial like this. Thank you. Remind me to answer that,
9 because I really --- I don't want to forget.

10 All right. Please be seated. All right. We'll
11 resume with testimony.

12 MR. COBB: Thank you, Your Honor.

13 BY MR. COBB:

14 Q. So AJ, were you doing everything that you believe that
15 you could do as the landlord and as board of director for the
16 condo association be diligent about this water leak coming
17 from a third-party property?

18 MR. LESEMANN: Your Honor, that's a leading
19 question. Objection.

20 THE COURT: Rephrase, please.

21 MR. COBB: Okay.

22 BY MR. COBB:

23 Q. AJ, were you being diligent in your approach to resolving
24 this issue that Insurance Office of America was complaining
25 about?

1 MR. LESEMANN: Your Honor, objection. It's a
2 leading question.

3 THE COURT: All right. Sure. I'll sustain. If
4 you --- go ahead, rephrase.

5 BY MR. COBB:

6 Q. AJ do you believe you were diligent in handling the
7 situation?

8 A. Yes.

9 Q. Why?

10 A. There were a lot of things going on here. We --- we
11 didn't have any control over the --- the plumber when
12 they came out, whether or not they brought the right
13 ladder, you know, we still kept going back. We
14 weren't --- we tried very hard to get into the unit
15 upstairs, we were denied, you know, stepped in. I called
16 the West Columbia police chief when that happened and let
17 him know that we really need to get in. We have an
18 active leak. There was a lot of back and forth. We ---
19 (technical difficulty).

20 Q. Okay. All right. So let's --- let's --- let's get into
21 the lawsuit a little bit, AJ. All right. You were sued
22 for --- for violating Section 11.1 in the contract in terms of
23 why Insurance Office of America has a right the to terminate
24 this lease; do you see that there?

25 A. Yes.

1 Q. Is that the entirety of Section 11.1 in the lease?

2 A. No, it is not.

3 Q. All right. What does this last paragraph of 11.1 say?

4 A. Tenant shall give prompt written notice of any
5 damages to or destruction of any portion of the lease
6 premises resulting from fire or --- or other casualty.

7 Q. Not landlord's agent?

8 A. No, landlord.

9 Q. And what was the first time again, just to everybody's
10 clear on the date, when did you receive first time prompt
11 written notice from anyone at aim?

12 A. The 22nd of September 2020.

13 Q. Okay. Now, your also aware of this diagram (technical
14 difficulty)?

15 A. Yes.

16 Q. Okay. So in terms of square footage, what is the total
17 square footage of all five units?

18 A. 7822 square feet. That's --- you said it earlier,
19 that's about four houses. That there's several ---
20 several offices. That space can handle a lot of folks.
21 It's also segmented into five different units. It's a
22 big space.

23 Q. All right. What is the --- (inaudible). Do you remember
24 seeing this e-mail (background noise) testified earlier?

25 A. Yes.

1 Q. Okay. So from a square footage standpoint it appears
2 that the issue is really just Scott's individual office ---

3 A. Yes.

4 Q. Okay. And Unit 103?

5 MR. LESEMANN: Your Honor, objection, again. More
6 leading questions.

7 MR. COBB: What were the --- what --- what ---

8 THE COURT: He'll rephrase. Go ahead.

9 (Simultaneous speaking)

10 BY MR. COBB:

11 Q. What were the issue --- what were the issues within ---

12 A. Actually the --- the issue as even described here,
13 it was really when just those two offices. Each office
14 is only about 12 or 13-by-13, maybe 12-by-12. The other
15 side of that wall, which I believe was Scott's office, a
16 little bigger, maybe 15, 16 feet by 12 feet. I mean,
17 that --- those two offices were the ones that were
18 affected. No other offices were affected.

19 When --- when this happens inside of a large office
20 building, you don't --- you don't typically, you don't
21 clear the --- the office building, you focus on what you
22 have there. And if you had to, you'd cordon off that
23 area, you'd just basically close those doors and
24 (unintelligible) it. And we, you know, that's --- that's
25 how you do it, just like when they were working on their

1 putting in their --- their extension, that --- or --- or
2 building those walls, just like when they did that, you'd
3 still work in the office. They needed to work in the
4 office. So it was a smaller --- it --- I don't even
5 contend that it was --- that one --- Unit 103 was --- was
6 taken out by this. It was really these two offices.

7 Q. You were sued --- or excuse me. When 1221 Bower was
8 sued, do you see what their --- what 1221 Bower is asking this
9 Court to give them in terms of damages?

10 A. I do. They were asking for 66 percent of the higher
11 7822 square feet. That's two thirds of it. There's two
12 thirds of it were not affected by this at all. The
13 calculations you were doing earlier are more --- much
14 more appropriate.

15 And that's something that could have been discussed
16 and --- and while this was being taken care of, those
17 could have been, you know, abated if they couldn't use
18 it. But no one --- no one asked us. We were still very
19 concerned on getting the leak fixed initially. So when
20 all this came again, it was really rather surprising when
21 we got right to the end of this because we just expended
22 a lot of energy, everybody was really working together to
23 try and get this fixed. A lot of leaks, and releaks,
24 uncooperative tenant upstairs.

25 I don't --- don't agree at all with the 66 percent

1 calculation. That would be over 5,000 square feet of
2 7800 square feet that was out of use. Not at all.

3 Q. Now, when 1221 was sued for this --- declaration that
4 they terminated the lease correctly, and also that they were
5 entitled to 66 percent of the rent, what did you do in
6 response?

7 A. We countersued them because we had a --- they said
8 they were going to leave and they --- we also felt that
9 they did not go through all the necessary things to try
10 and terminate this lease. We felt it was not a proper
11 termination. And so we countersued them for the money we
12 were owed.

13 Q. So what was the --- so what --- what are you look for in
14 this countersuit?

15 A. The --- the rent, the CAM charges that were owed
16 under this lease, less any of our reletting. Because we
17 did rent some of the space out over the last couple of
18 years. So that would be netted out against what we were
19 supposed to take. But we're --- we're absolutely ---
20 they didn't --- they didn't cancel this lease correctly.
21 And --- and we're looking for the --- to the paid for
22 this.

23 Q. Why do you think that Insurance Office of America was in
24 breach of contract of this lease?

25 A. They didn't give notice, they also --- they also

1 under --- there's several --- they --- in their
2 complaint, they're wanting to focus on just that one
3 clause in I believe it's section 11.1. 11.1, we've ---
4 we've heard it a lot this week where if nothing's done
5 within 90 days then remedy is that. However, there's
6 plenty of other clauses which we also saw about
7 specifically giving notice, giving the landlord some
8 time.

9 So we were working in good faith. And there were
10 external things like COVID, like the lease --- excuse
11 me --- the --- the leak occurred in premises that the
12 landlord didn't own, had a hard time getting access to.

13 Also there's a provision in the lease that if you're
14 going to terminate the lease, they needed to let our bank
15 know and they didn't do any of that. So you got to look
16 at the whole lease. And there's a reason why this lease
17 is 30 or 40 pages, it's not just one clause, otherwise
18 that would be --- be a one-page lease. This lease ---
19 this lease has a lot to it. A lot of moving parts, it's
20 a big commercial lease. We didn't write it we inherited
21 it from IOA --- from Insurance Office of America, and its
22 affiliate. We inherited it. I didn't have --- I didn't
23 write any of this. We inherited their language. I'm
24 trying to live by the lease that they put in front. And
25 they weren't acting under their lease. Absolutely.

1 Q. Now --- okay. Thank you, AJ. Now, when Insurance Office
2 of America sued you for --- sued 1221 Bower, I keep saying,
3 "you," but when I'm saying you, I mean your --- the
4 company --- the LLC that you're a member of?

5 A. Yup.

6 Q. All right. They cited in their complaint time of
7 essence. And that's (unintelligible) in section 15.16; was
8 this second sentence in their complaint?

9 A. No. It wasn't. And that highlighted section there
10 is --- talks specifically about acts of God, which COVID
11 certainly was an act of God. And it also talks about
12 other causes, which are beyond reasonable control of the
13 landlord. Again, we stand by that it was well out of
14 reasonable control. And we worked in good faith and very
15 diligently with the tenant both as the owners association
16 and the landlord to try and get this fixed. It's was a
17 tough leak.

18 Q. Now, you mentioned earlier (unintelligible) correct?
19 What does Section 15.7 say?

20 A. Tenants note the landlord default. Should landlord
21 be in default under of the terms of this lease, tenant
22 shall give landlord prompt written notice thereof in a
23 manner specified in section 15.14, and tenant shall allow
24 landlord reasonable time --- length of time in any event
25 not less than 30 days from the day of such notice in

1 which to cure the default. That's a very standard thing
2 that I've seen in many --- many leases.

3 MR. LESEMANN: Your Honor, object to the --- to the
4 witness's testimony is irrelevant. We have one lease
5 that's here to adjudicate, not what other --- other
6 leases that Mr. Leone may have experience with.

7 MR. COBB: Your Honor, I think he's just testifying
8 about his experience based off 25 years of
9 (unintelligible) commercial leases.

10 MR. LESEMANN: It's still irrelevant.

11 THE COURT: All right. All right. I'm going to
12 overrule. I'll allow that former testimony. You can ask
13 your next question, Mr. Cobb.

14 BY MR. COBB:

15 Q. All right. So (inaudible) what's 15 (unintelligible)?

16 A. Whenever notice shall or may be given to either of
17 the parties by the other, such notice shall be registered
18 or by certified mail return receipt requested. Do you
19 want me to read the next paragraph?

20 Q. Sure. Go ahead.

21 A. Okay. Notice to landlord shall be addressed to ---
22 as specified in section 1.1.0, and notice to tenant shall
23 be addressed as specified in section 1.1(d)(d), or in
24 each case to such other address as may be from time to
25 time designated in writing to the other. Any notice

1 under this lease shall be deemed to have been given the
2 time it was placed in the mails with sufficient postage
3 prepaid.

4 Again, that's a standard clause. This is a legal
5 contract. This is why people do things in writing.
6 And --- and I've seen this in multiple leases and this is
7 the way it is done. If you're going to serve formal
8 notice, either tenant to landlord or landlord to tenant,
9 you give written notice to the entity --- to the entity
10 that owns that. In this case it was Insurance Office of
11 America was the tenant and 1221 Bower is the landlord.
12 Give notice. Be legal. That's ---

13 Q. AJ, and we --- and --- and you testified earlier when ---
14 when did you give the Insurance Office of America notice of
15 your information?

16 A. It happened twice. When that 1031 entity right
17 after closing, so that would have been late 2019, written
18 notice was provided, and then again in early 2020 when
19 1221 Bower ---

20 Q. So with those e-mails would let Insurance Office of
21 America know how to notice you in terms of where to get you?

22 A. They --- they certainly replied, and they --- and
23 they acknowledged the e-mail. The --- the rent did come
24 in and they followed the instructions. And so we did ---
25 we did have that. I even --- and I did receive a

1 response from Crissy to one of my e-mails.

2 Q. All right. So in your counterclaim, you speak of a
3 breach of lease. What are the responsibilities under Section
4 3.2 and 3.4 of the lease for Insurance Office of America to
5 take?

6 A. There's two components to a lease ---

7 MR. LESEMANN: Your Honor, again, we have a lease
8 agreement that speaks for itself. The lease has been
9 admitted into evidence. So I don't think anybody would
10 need one of the witnesses to explain to them what the
11 lease says. The lease says what it says.

12 MR. COBB: Your Honor, we ---

13 (Simultaneous speaking)

14 MR. LESEMANN: He --- he --- he can make a claim ---

15 MR. COBB: --- my case.

16 MR. LESEMANN: --- for damages, but, you know, and
17 that's --- that's --- that's his --- that's his
18 prerogative to try that. But no one needs to read the
19 lease to the jury in this way. He can claim what damages
20 he thinks he has incurred.

21 THE COURT: All right.

22 MR. LESEMANN: (Unintelligible) that claim.

23 MR. COBB: Your Honor ---

24 THE COURT: All right. Let me hear his argument.

25 MR. LESEMANN: --- conclusory testimony about what

1 the lease requires or says, or allows him to get, that's
2 for the jury to determine not Mr. Leone.

3 MR. COBB: Your Honor ---

4 THE COURT: Mr. Cobb, go ahead.

5 MR. COBB: I'm allowed to provide testimony as to
6 where, why, and when the lease was breached based off
7 this. These are building blocks in terms of the
8 breaches, the (unintelligible) and then the damages. I
9 have to --- I have to develop a foundation first to show
10 that the breach has occurred and what they were for them
11 to default so I can get to the damages.

12 MR. LESEMANN: That's --- he's already thinks that
13 he --- he already has done that part. He can just say
14 what damages do you think that you've incurred. You
15 know, the idea of --- of having the witness testify about
16 what he thinks the lease entitled him to get, or what the
17 lease says, again, that's for the jury to --- (background
18 noise).

19 THE COURT: All right. All right. I'm going to
20 overrule the objection. But Mr. Cobb we'll go ahead ---
21 we'll go ahead and allow this testimony, but just be
22 aware of the time.

23 MR. COBB: Thank you, Your Honor. Your Honor,
24 (inaudible). In terms of the lease, (unintelligible). I
25 just want to get some generalities in terms of the

1 responsibilities of Insurance Office of America under
2 some of these clauses.

3 THE COURT: All right. Go ahead.

4 BY MR. COBB:

5 Q. AJ, what is Insurance Office of America required to do
6 under this lease under Section 3.2, and 3.4?

7 A. They're supposed to pay a base rent ---

8 MR. LESEMANN: Your Honor, again, he's asking what a
9 party is required to do under the lease. A witness is
10 not entitled to talk about the legal effect of the lease.
11 That's what he keeps --- what counsel keeps trying to get
12 him to do. The lease can speak for itself. The witness
13 is not able to construct, apply, and tell the jury what
14 the lease says.

15 THE COURT: All right.

16 (Simultaneous speaking)

17 THE COURT: All right. Let's excuse the jury for
18 just one minute.

19 (Jury exits courtroom).

20 THE COURT: All right. So Mr. Lesemann, I am going
21 to sustain that --- your objection. And I'll do it on
22 the record when the jury comes out if you want me to.
23 Mr. Cobb, I thought --- I thought you were going --- that
24 you were going in a different direction. Maybe I
25 misunderstood the first one. But I --- he's right. I

1 don't want to get any legal conclusions from --- from
2 him. I thought he was going to read the lease and then
3 you were going to ask him what his damages were. That's
4 what I thought you were going to do. So I do apologize.

5 MR. COBB: (Inaudible) I just am trying to figure
6 out the best way to lay foundation for the claim for ---
7 for the --- the problem is, there's got --- there's a
8 responsibility under the lease (inaudible) triggers
9 damages.

10 THE COURT: Right.

11 MR. COBB: (Inaudible).

12 MR. LESEMANN: --- testimony (unintelligible) the
13 lease says that, you know the lease (background noise)
14 ---

15 THE COURT: I can't give him the legal conclusions.
16 (Simultaneous speaking)

17 MR. LESEMANN: --- entitles him to (unintelligible).
18 I believe it's improper testimony.

19 THE COURT: All right.

20 MR. COBB: I say that (unintelligible) a whole lot
21 of time on plaintiff's case, we're going to have very
22 limited time on my case. I think I should be afforded
23 the ability to go through this lease and show where it
24 was breached. We've be playing defense this whole time.
25 Finally on offense, and (background noise).

1 THE COURT: Well, let me ask --- let me ask you
2 this, Mr. Cobb, you're asking --- your --- your question
3 is what? Your question is?

4 MR. COBB: My question is what is Insurance Office
5 of America's responsibility under section 3.4 and 3.2 of
6 the lease? And my expectation is the witness would say
7 they have to pay rent. And then I'll move on. And I ---
8 I would say and did they after a certain ---

9 THE COURT: All right.

10 MR. COBB: --- when did they stop paying rent?
11 (Unintelligible).

12 MR. LESEMANN: Your Honor, again, I believe the
13 testimony, you know, it would be misleading for him
14 to --- to sort of be speaking from the stand about what
15 the lease says. Because of course there's
16 (unintelligible) that says if he doesn't fix it in
17 90 days, then the, you know, obligation to pay rent is
18 excused. So I think he can say, is it your allegation
19 that they owe you rent, right? Rather than this --- his
20 testimony is intended to talk about, oh, well this is
21 what's common place in the industry and this is what it
22 says, and this is what the lease means. And again, he's
23 getting into the wording's already there.

24 MR. COBB: I'll rephrase my wording to say is it
25 your allegation that Insurance Office of America failed

1 to pay you rent as of this date?

2 THE COURT: I think --- I believe that gets you
3 there. Well ---

4 MR. COBB: I --- I --- I mean I'm --- I'm being
5 trapped based off the objection ---

6 THE COURT: Yeah.

7 MR. COBB: --- (inaudible).

8 THE COURT: Are you going to object to the leading?

9 MR. LESEMANN: She --- he can't --- he can't testify
10 about what the lease means and what it --- and what it
11 entitles him to. Again, that's not his prerogative.

12 THE COURT: Well, I will say I think that --- I
13 think that line of questioning gets you there without a
14 legal conclusion here.

15 MR. COBB: I'm okay as long as I don't get a leading
16 objection. (Unintelligible) that's --- that's Mr.
17 Lesemann probably won't agree to that.

18 MR. LESEMANN: I can't promise, but --- but --- but
19 we'll work through it. Obviously nobody wants to keep
20 any of the jury's --- they --- they are --- they're ready
21 to do whatever they're going to do.

22 THE COURT: All right.

23 MR. LESEMANN: Thank you, Your Honor. I think we'll
24 work --- we'll work through it together again. I just
25 think the witness is trying to speak (unintelligible) ---

1 THE COURT: All right. So --- so we're not going
2 to --- we're not going to solicit testimony that with
3 regard --- with regards to any legal conclusions. Mr.
4 Cobb, I obviously cannot tell you what question to
5 asking, I can tell you what questions not to ask.

6 MR. COBB: I --- I think I know how I'm going to
7 handle this.

8 THE COURT: All right.

9 MR. COBB: I appreciate the ruling and I appreciate
10 the objection. I'm ready to move forward whenever you
11 are, Your Honor.

12 THE COURT: All right. We'll bring the jury back
13 in, please.

14 (Jury enters courtroom)

15 THE COURT: All right. Please be seated. Thank you
16 ladies and gentlemen of the jury.

17 All right. Mr. Cobb, you'll --- you'll go forward,
18 please.

19 BY MR. COBB:

20 Q. AJ, when was the last time you were paid rent by AJ Leone
21 under this lease?

22 A. December 2020.

23 Q. And what about --- same question, but for additional
24 (inaudible)?

25 A. Additional rent is the CAM component of it, and that

1 was same, December 2020.

2 Q. Can we --- we help just clarify what CAM means under
3 this --- will you help clarify what CAM means for
4 (unintelligible)?

5 A. CAM is common area maintenance, also known as triple
6 (inaudible). The --- the component of the rent that
7 covers --- if it's directly reimbursable. Insurance
8 owners association dues and taxes, and other association
9 dues.

10 Q. Okay. When were you asked by Insurance Office of America
11 to be able to alter the front office into a --- excuse me that
12 one closet into an office (unintelligible)?

13 A. I was never asked.

14 Q. 1221 Bower, the landlord was never contacted with regard
15 to Insurance Office of America making those changes inside the
16 space when Insurance Office of America left the space were ---
17 was the property broom swept?

18 A. No.

19 Q. Why not? Or how not I should say?

20 A. There was in space --- in Unit 101 or 102, area
21 under the stairs had several water bottles, large blue
22 water bottles left remaining in there. In Unit 104,
23 there were several tables that were folded up. There
24 were also bowls, some sort of like party wear. There
25 were other --- there was an uninstalled dishwasher in the

1 back room.

2 And Unit 105 had a completely operating tenant
3 in --- in 1,000 square feet that was left. That was the
4 tenant of Insurance Office of America. They were the
5 subtenant. So leased that space from them. They were
6 still there.

7 Q. How did you handle the subtenant? What happened when ---
8 after December 1st after you received the termination letter
9 with the subtenant?

10 A. I eventually just went and met with Kim Chapman who
11 is the owner. It was a bit awkward because we didn't ---
12 I didn't know her and we basically kind of --- we both
13 were like IOA just left, you know. Okay. You're here
14 paying rent to no one. And so we --- we started talking.
15 Obviously we wanted them to stay. It was really
16 important to them to stay.

17 So we started discussing, you know, what they needed
18 to stay, what, you know, what (unintelligible) to do.
19 And as it turns out, actually was in the middle of COVID,
20 right, so their business was booming, I think a lot of
21 people because of Zoom calls were paying attention to,
22 you know, hair and beauty and those kinds of things.
23 They were very busy, so they needed more space.

24 And so they said, well, we'd like to stay, but we
25 need to expand our area. And so we were like great.

1 Well, let's --- let's have a conversation. You take all
2 of 104. They did not need all of 104, they needed like
3 half of it. And they didn't want to relocate, you know,
4 anywhere else. So we worked out where they took half of
5 Unit 104. And --- and that dividing wall got build and,
6 you know, we were able to --- we --- I think they started
7 paying rent about May or June of 2021.

8 Q. And you signed a new lease with them?

9 A. We did. We signed a new lease with them. Yeah.

10 Q. Okay. All right. How --- how was --- how was Insurance
11 Office of America (unintelligible) of the space?

12 A. They stopped paying rent.

13 MR. LESEMANN: Your Honor, again, I would object to
14 this being a legal --- a legal conclusion. You know, the
15 witness can say, you know, he can speak to factual
16 matters, but he's not able to speak to ultimate questions
17 about the fault and --- and breach.

18 MR. COBB: Fair enough.

19 BY MR. COBB:

20 Q. What does Section 12.1 ---

21 THE COURT: Sustained. (Unintelligible).

22 BY MR. COBB:

23 Q. What does --- what does 12.1(a) of the lease say
24 (inaudible)?

25 A. This is ---

1 Q. Just read that A subsection I.

2 A. Say again, please.

3 Q. Just read 12.1 and go to A, but just read that subsection
4 I. Subsection two and three don't apply.

5 A. Okay. If tenant shall fail to pay any installment
6 of rent, or any other amount payable to landlord
7 hereunder, as (unintelligible).

8 Q. When was the next lease payment due from AJ Leone?

9 A. January 1, 2021.

10 Q. And that was not received, correct?

11 A. No.

12 Q. Okay. All right. You mentioned earlier you were seeking
13 damages correct?

14 A. Yes.

15 Q. And where in the --- where in the lease does --- does it
16 give you the right to seek damages?

17 A. You --- I think you have it up there, 12.4, but
18 basically, the landlord has --- if the tenant moves out,
19 the landlord has a right to not only get their rent back,
20 but also ---

21 MR. LESEMANN: Your Honor ---

22 THE WITNESS: --- recover ---

23 MR. LESEMANN: --- we just object to the
24 misstatement of the language of the contract. Again,
25 this is why I think it's difficult to have a witness say

1 what he thinks the contract says. So the first sentence
2 12.4, in the event that landlord elects to repossess the
3 lease premises without --- so, again, he's --- he's
4 paraphrasing the language of a document that's already in
5 evidence, that shouldn't be paraphrased.

6 THE COURT: All right. All right. Sure. Let's
7 sustain. Rephrase.

8 BY MR. COBB:

9 Q. When did 1221 Bower terminate this lease? Or did they
10 terminate it?

11 A. 1221 Bower didn't terminate the lease.

12 Q. Okay. So what --- so will you read into evidence Section
13 12.4 in its totality?

14 A. In the event that landlord elects to repossess the
15 leased premises without terminating this lease, then in
16 addition to additional costs and expenses recoverable to
17 the tenant pursuant to Section 12(f)(i) below, tenant
18 shall be liable for shall pay to landlord at the address
19 specified for notice to landlord herein all rent and
20 other amounts payable to landlord pursuant to terms of
21 the lease which have accrued to date such repossession,
22 plus total rent prior to be paid by tenant to landlord
23 during the remainder of the term until the date of
24 expiration of the lease. Term diminished by any rent ---
25 any net sums thereafter received by landlord

1 (unintelligible) the lease premises during said period
2 after deducting expenses incurred by landlord as provided
3 in Section 12(f)(i).

4 Q. All right. So what does 12.5 say? And just go ahead and
5 read into the record, please.

6 A. Additional costs --- okay. Following the occurrence
7 of any event of default, the tenant shall also be liable
8 for and shall pay to landlord in addition to any sum
9 provided to be paid above costs and expenses incurred by
10 landlord to obtain possession of the lease premises,
11 broker's fees incurred by landlord in connection with
12 reletting the whole or any part of the lease premises,
13 the cost of removing, storing and/or disposing of tenant
14 or our occupant's property in the amount all damages ---
15 of all the damages suffered by landlord as a result of
16 tenant's default prior to the termination or recovery of
17 the lease premises as the case may be.

18 The costs of making repairs and replacement required
19 to be made by tenant hereunder in the performing of all
20 covenants of tenant's relating to condition of the lease
21 premises, costs of repairing, altering, remodeling, or
22 other --- otherwise putting the lease premises into the
23 condition --- into condition acceptable to a new tenant
24 or tenants.

25 All reasonable expenses incurred by landlord in

1 enforcing or defending landlord's right and or remedies
2 at law, equity, or hereunder including reasonable
3 attorney's fees which shall not be less than 15 percent
4 of all sums then owing by tenant to landlord, litigation
5 expenses and court costs.

6 Q. Okay. So we got 12.4 and 12.5. What does 12.6 say? Can
7 you read that into the record? Actually, before you do that,
8 what is reletting? What does that mean?

9 A. It's basically releasing the premises. It's
10 advertising them, getting a new tenant into the premises.

11 Q. Okay. What does 12.6 of this lease say?

12 A. In the event of termination of this lease or
13 repossession of the lease premises after an event of
14 default, landlord shall not have any obligation to relet
15 or attempt to relet the lease premises or any portion
16 hereof or to collect rent after reletting. The landlord
17 may relet the whole or any portion of the lease premises
18 for any period to any tenant for any use and purpose upon
19 such terms as it deems appropriate. They may grant any
20 rent or other lease concessions that it has --- is
21 advisable including reduced or abated rent.

22 Q. All right. So you mentioned earlier about Section 12.7.
23 Were you ever given and notice in the 30 days to cure?

24 A. I was never given a 30-day notice to cure --- 1221
25 Bower was never given 30-day notice to cure.

1 Q. You mentioned earlier that --- was your --- at any time
2 have you not had a mortgage on Suites 101 through 105, or
3 Units 101 through 105?

4 A. There's been a mortgage on it the entire time we've
5 owned the property in --- in either of the two entities.

6 Q. When did Insurance Office of America notify your lender?

7 A. They did not notify our lender. We received no such
8 notice from our lender that they notified our lender.

9 Q. And just for --- for verification, what --- what does
10 section 15.7 say? I think you read this into the record
11 earlier, but I want to just --- read that --- read that here
12 on the top?

13 A. Should the landlord be in default under any of the
14 terms of this lease, the tenant shall give landlord
15 prompt written notice thereof in a manner specified as
16 section 15.4. The tenant shall allow landlord a
17 reasonable length of time in any event not less than
18 30 days from the date of such notice in which to cure
19 such default.

20 Q. And were you familiar with this lease when you bought the
21 property?

22 A. Yes.

23 Q. Okay. And when you testified earlier that you thought
24 that December 1st letter was the notice date, was --- was ---
25 what was that letter?

1 A. That was a termination notice. Yeah. And I do ---
2 one of the things we do before we buy these is we read
3 the lease.

4 Q. (Unintelligible)?

5 A. You --- you need to know the terms of the lease.
6 There's a significant amount of money. It's important
7 that the landlord and tenant know what their duties and
8 responsibilities under the lease are.

9 Q. Okay. Section 15.16. So one last time, will you read
10 the first line and then the highlighted portion.

11 A. Time is of the essence. Force majeure notice of
12 lender, time is of the essence with respect to all
13 provisions of this lease, forgoing notwithstanding.
14 Whenever a period of time herein prescribed for action to
15 be taken by landlord, the landlord shall not be liable or
16 responsible for and there --- and there shall be excluded
17 from the computation of any such period of time any
18 delays either strikes, riots, acts of God, shortages of
19 labor, or materials, or governmental laws, regulations,
20 or restrictions, or any other causes of any kind
21 whatsoever which beyond the reasonable control of the
22 landlord.

23 Q. All right. AJ what was the prescribed period of time for
24 action under Section 11.1 of this lease?

25 A. 90 days.

1 Q. Okay. And --- and when you received the termination
2 letter, did it refer back to any computation changes, or did
3 it only cite 90 days?

4 A. It only cited the Section 11.1, 90 days.

5 Q. Okay. And I believe you testified earlier again what was
6 beyond your reasonable control as a landlord in 1221. Let's
7 just get that list one more time so we can be clear.

8 A. The landlord didn't own the unit that was causing
9 the leak upstairs. The landlord didn't control the ---
10 the plumber the that went up there. The tenant was ---
11 had minimal folks inside the office and if there was ---
12 typically when you find out leaks they are --- in an
13 office, they're manned. And so you understand that you
14 find leaks sooner. I think that what's been testified
15 earlier, there was not --- there were not --- there ---
16 they didn't have that many folks in the office, so that
17 probably --- also when we tried to get repairs in
18 there --- there. We didn't have a key. We had to
19 coordinate and each time had to meet Crissy or Scott to
20 get out there. That Angela through working through the
21 owners association, that slowed things down. COVID in
22 general, trying to get plumbers. A lot of folks were ---
23 were at home and staying home. So the plumbing companies
24 that were reached out to, Arrow, they were not able to be
25 as prompt as --- as possible, probably because they

1 didn't have as many folks on --- on hand. There were
2 quite a few reasons that there were a lot of things that
3 were outside of the control of the landlord and the
4 responsibilities to repair the --- the infrastructure in
5 there was that of the owners association.

6 Q. When did you ever refuse to repair the two office walls
7 for Scott's office and Parker's office?

8 A. We never refused to repair it. We did want to
9 understand and try and make sure that we stopped the
10 leak --- the leaks that were happening and be sure that
11 the leaks were stopped.

12 Q. You see number 16 of the complaint there against the
13 lawsuit against --- the lawsuit against 1221 Bower; what does
14 that sentence say that I highlight?

15 A. It says however --- however landlord either cannot
16 repair or refuses to repair these ongoing issues.

17 Q. Okay. And again, what's the date --- and is that --- is
18 that an accurate --- would you agree with that statement?

19 A. No.

20 Q. All right. And I don't think we need to beat that horse
21 anymore (unintelligible).

22 What --- what does the first part of that sentence say?

23 A. Of the highlighted sentence?

24 Q. Yeah, the (unintelligible) above.

25 A. As noted above, 110 days have passed since tenant

1 provided written notice to landlord relating to damages.

2 Q. Why is that an incorrect sentence?

3 A. The tenant did not provide written notice to the
4 landlord at all.

5 Q. Until what day?

6 A. September 22nd.

7 Q. Now, AJ, you're --- you're asking this Court for damages;
8 is that accurate?

9 A. Yes.

10 Q. Okay. Let's talk about how you're calculating your
11 damages. So AJ, when you're asking this --- this --- this
12 Court to award 1221 damages for Insurance Office of America's
13 breach of lease, tell me what that number is; what is the net
14 number you're --- you're asking for?

15 A. \$497,000, 541 --- let's me start over. \$497,541.31.

16 Q. Okay. And what --- what are the --- what are the two
17 components of that number made of?

18 A. The unpaid lease --- the unpaid rent on the lease
19 from when IOA left the premises.

20 Q. How much was that?

21 A. The base rent was \$607,190.27.

22 Q. And what about the unpaid CAM?

23 A. Common area maintenance charges were \$247,362.91.

24 Q. And what about running total of expenses including
25 projected for CAM and expenses?

1 A. \$95,479.13.

2 Q. All right. And you --- and what's the total of those
3 three numbers?

4 A. \$960,032.31.

5 Q. And you're not asking for amount, correct?

6 A. No.

7 Q. And what --- what's the difference? What's the offset
8 (unintelligible)?

9 A. We --- we rented several of the units that were in
10 there in the subsequent after they vacated the space.

11 Q. Okay. How many units are currently vacated --- or excuse
12 me, vacant? I apologize.

13 A. Part of Unit 103.

14 Q. Okay. So AJ, let's take a field trip. I'd like you to
15 come down here. And on the screen, tell us who you have
16 relets to and show us what you've done to the property in
17 terms of what it looks like today.

18 MR. COBB: Is it all right, Your Honor? Can --- I'm
19 sorry, I should have asked you. I apologize.

20 THE COURT: (Inaudible).

21 THE WITNESS: Suites 101 and 102 were rented pretty
22 quickly to a --- a school of cosmetology, so there was
23 very little changes done in 101 and 102. This ---
24 this --- this was rented within a --- a couple of months
25 after Insurance Office of America vacated the space.

1 There was a --- a door leading down stairs into Unit 103
2 to segment this off (unintelligible) hallway, so changes
3 were made there.

4 103 was subdivided a bit further to make executive
5 offices. So that these are basically rented out to
6 smaller businesses that are starting to --- you know,
7 that need a smaller space. And so there's a couple of
8 other offices right here and here.

9 104 was reconfigured a lot. This wall was pretty
10 much dropped down here to here. There's a door here ---
11 and exterior door here that comes down into pretty much
12 this area. And then here. So 104 is this weird L-shaped
13 piece. That's leased to a pharmacy. This remains leased
14 to a med spa or Art of Aesthetics med spa, and all but
15 one office, I think in the back are now leased in one ---
16 in 103.

17 Q. So AJ, how many executives are in suite --- are in Unit
18 103?

19 A. Five.

20 Q. Okay. And how many in the lower part of 104 after you
21 subdivided 104 and gave half of it to Art of Aesthetics?

22 A. It --- it's two. It's --- it's really two units,
23 but it --- it actually rented at this weird L-shaped
24 piece all to one tenant. There are two executive offices
25 there.

1 Q. All right. You can go ahead and get back up on the
2 stand. Thank you, AJ.

3 So AJ, the summation of the rents you collected and the
4 rents you expect to collect under the lease provision, how
5 much credit are you offsetting your --- your subtotal of
6 damages?

7 A. \$462,491.

8 Q. So almost half?

9 A. Yeah, about half.

10 Q. So AJ, you had mentioned earlier that you had had unpaid
11 rent of \$617,190.27. When did you stop looking to accrue that
12 rent in your damages calculation? As of what date?

13 A. We have a lease that goes --- earliest the lease
14 Insurance Office of America goes through is March of
15 2025. So ---

16 Q. Well that's a option when they could have ---

17 A. That --- that is the --- the earliest that they
18 could have vacated (inaudible).

19 Q. Okay. So what was your assumption that they would have
20 vacated and that's why you stopped calculating the damages as
21 of that date?

22 A. Yes. We did do that. We just ran it to what was on
23 the lease and we basically did a --- like an Excel
24 spreadsheet and just showed the remaining payments and
25 just ran the numbers.

1 Q. Okay. And you had mentioned Ken Shuler. His lease was,
2 I believe, August 24th --- 20 --- August of 2024, correct?
3 This year?

4 A. Yes, that's --- that's when it goes, and I think
5 they have 102 options to renew. But like we did with
6 Insurance Office of America, we assumed they would have
7 left at the earliest, you know, possible moment. We're
8 also applying those the same thing, because we only
9 have --- we don't know what's going to happen. We don't
10 know if they're going to leave. We wouldn't know if
11 Insurance Office of America would have left after that.
12 So we --- when we did the calculations it --- it's trying
13 to be consistent. So with the Shuler lease, we ran it
14 until it --- they're --- till they're contractually
15 obligated to pay.

16 Q. Okay. All right. And did you do the same thing with the
17 other --- the other units in terms of adding that credit back
18 in?

19 A. We --- we did. A couple of those smaller spaces are
20 leased on a month-to-month basis. We ---

21 Q. In Unit 103 here?

22 A. Yeah.

23 Q. So what did you do? Did you give them ---

24 A. We just assume three months.

25 Q. Three months?

1 A. Yeah.

2 Q. And I know there's a Jennifer Truill in part of 103. I
3 think it's office number two?

4 A. Yup.

5 Q. Did --- have you heard from her this week?

6 A. I have. She is a massage therapist and she moved in
7 just a --- a few weeks ago. And she wasn't sure if the
8 space was going to work from month-to-month. And she's
9 been in there and she was able to find to a different
10 space. And so under --- with these smaller leases, there
11 is a 30-day out, just give 30 days' notice and you can
12 go. Again, it's not a big commercial space. These were
13 meant to be small and very flexible. So she said, hey,
14 I'm giving notice that we're going in 30 days.

15 Q. AJ let's talk about --- we talked about the unpaid rent
16 and how you stopped it. Let's talk about the unpaid IOA CAM
17 expenses. Insurance Office of America CAM that they being
18 required to pay under what --- what section --- what section
19 is --- what section does this lease require CAM to be paid in
20 that lease?

21 A. Section 3.4 and 12.1(a), and 12.4. Those all ---

22 Q. All right. That's part of your damages calculation ---

23 A. Yes.

24 Q. --- right? Okay. And so how did you compute that
25 247,000?

1 A. We had the common area maintenance charges that ---
2 we do common area maintenance charges it's basically
3 the --- since these are segmented in their own unit, so
4 the --- the tax bills are the tax bills. We have the tax
5 bills. The insurance is the insurance. We do pro ---
6 proration. So if the space is 1,000 square feet out of
7 4,003 square feet, out of 7822 square feet, we do adjust
8 the math and assign that. And then the --- the --- the
9 monthly owners association dues are prescribed on each
10 unit. And so we have data and added it all up. And we
11 know it for the last couple years because they were
12 incurred. Those --- those charges were incurred.

13 Q. Okay. And you provided a detailed list of every single
14 invoice (unintelligible) your numbers (unintelligible)
15 projection from today until March 31, 2025, correct?

16 A. Yes.

17 Q. Okay. So for example, on CAM, does that include county
18 of Lexington property taxes?

19 A. Yes.

20 Q. What about the condo association owner fees?

21 A. Yes.

22 Q. Okay. All right. What about the Harbison Community
23 Association?

24 A. Yeah. The --- the second association that applies
25 to this property. So it's not just the Bower Common

1 Owners Association, it's also the Harbison retail
2 district also has a property owners association.

3 Q. What about the Hartford? What is the Hartford?

4 A. It's an insurance company.

5 Q. Overall, would you say that those make up the majority of
6 your common area maintenance amount?

7 A. For --- yes, for common area maintenance. Yeah.
8 It's pretty much owners association, taxes, and
9 insurance.

10 Q. All right. So we're in January of 2024. So the taxes
11 are due. So did you use the actual tax bill to project what
12 the tax payment was going to be?

13 A. I used what you --- you have, but the tax bill
14 always looks a year in arrears so ---

15 Q. And then you did an average projection for the last ---
16 for the next --- next several months?

17 A. Yes. So what we did was we looked back on the last
18 36 months. We ---

19 Q. Well, not for CAMs though, right?

20 A. No, you --- for --- sorry.

21 Q. CAMs?

22 A. No for CAM is actual. And then we did --- we did
23 it --- we had to do a projection of CAM for the months of
24 the remaining ---

25 (Simultaneous speaking)