

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
J. Ernest Kinard, Jr., Circuit Court Judge

Court of Appeals Opinion No. 2019-UP-393
Originally Filed as 2018-UP-178, 2018-UP-179 and 2018-UP-180
Withdrawn, Substituted and Refiled December 18, 2019

Appellate Case No. 2020-000667

The Callawassie Island Members Club, Inc., Respondent,

v.

Gregory L. Martin and Rebecca L. Martin, Defendants,

and

The Callawassie Island Members Club, Inc., Respondent,

v.

Michael J. Frey and Grace I. Frey, Defendants,

Of Whom Gregory L. Martin and Michael J. Frey are the Petitioners.

APPENDIX

Volume 3

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** In accordance with this Court's Order on the Appendix of April 16, 2021, the Petitioners have removed from the *Frey* Record on Appeal those documents that were merely duplicates of identical documents appearing elsewhere in the Appendix. With the exception of the documents that remain, the *Frey* Record was identical to that of Martin.

222411

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
BEAUFORT COUNTY
FOURTEENTH JUDICIAL CIRCUIT

J. Ernest Kinard, Jr., Judge

Appellate Case No. 2015-000001

The Callawassie Island Members Club, Inc.,

Respondent,

v.

Gregory L. Martin and Rebecca L. Martin,

Defendants,

Of Whom Gregory L. Martin is the Appellant.

RECORD ON APPEAL
Volume 3 of 4

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 CALLAWASSIE ISLAND

MEMBERS CLUB, INC.,

4 Plaintiff,

5 vs.

CASE NO. 2009-CP-07-5410

2009-CP-07-4648

6 A. APPLGATE, M. AULTON,

2009-CP-07-3055

7 T. BAYLESS, R. DENNIS,

2009-CP-07-3322

and R. MERCIER,

2009-CP-07-3323

8 Defendants.

9 DEPOSITION OF: ELLEN DAVIS PADGETT

10 DATE: August 31, 2012

11 TIME: 10:13 a.m.

12 LOCATION: One Beaufort Town Center

2015 Boundary Street, Third Floor

14 Beaufort, SC

15 TAKEN BY: Counsel for the Defendants

16 REPORTED BY: TRISHA M. THOMAS

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(INDEX AT REAR OF TRANSCRIPT)

1 ELLEN DAVIS PADGETT

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. MCDANIEL:

5 Q. Good morning --

6 A. Good morning.

7 Q. -- Ms. Padgett. My name is Brian
8 McDaniel. As I said, I'm representing a number of
9 defendants, people that have been sued by
10 Callawassie Island Members Club.

11 A. Okay.

12 Q. And I'm here to take your deposition
13 this morning. Have you ever given a deposition
14 before?

15 A. No, sir.

16 Q. Okay. The process is pretty
17 straightforward. I will ask you questions, and you
18 can answer to the best of your ability to answer
19 those questions.

20 A. Okay.

21 Q. You do have two attorneys here, and
22 they may object to those questions. If it's for
23 legal reasons, they can object, and those are
24 typically made for the record and you would still
25 go ahead and answer the question.

1 A. Okay.

2 Q. If they want you not to answer, they
3 will tell you don't answer the question, and that
4 will be your instruction not to answer. Otherwise,
5 you do your best just -- even if there's an
6 objection to answer the question.

7 A. Okay.

8 Q. If you don't understand what I'm asking
9 or there's a question about it, you can certainly
10 tell me that. If you find the questions to be
11 confusing, you don't understand what I'm asking
12 you, just ask me for help.

13 A. Okay.

14 Q. You know, tell me to clarify or repeat
15 it or whatever you need to do, but don't direct
16 those questions to your attorney. Your attorneys
17 can't direct you as to what I meant by the question
18 or that type of thing.

19 A. They're not my attorneys though, right?

20 Q. Well, that's -- they have represented
21 they are your attorneys. They're representing you
22 in -- as far as this action goes because of your
23 previous employment.

24 A. Oh, okay.

25 Q. They may not be your personal attorney

1 but as far as you represent -- your representations
2 of the company. And I'll let them correct that how
3 they want to correct it.

4 A. I understand.

5 MR. HAIGHT: It's my understanding she
6 has never worked for the club directly.

7 MR. YOUNG: Yeah. After talking to her
8 that was what we determined.

9 BY MR. MCDANIEL:

10 Q. Okay. Well, then they're not your
11 attorneys and then they won't be directing you not
12 to answer, so don't worry about that.

13 If you want to take a break, if you
14 want to get some water, you can do that. Like I
15 said, it's not a marathon. It shouldn't take that
16 long anyway --

17 A. Okay.

18 Q. -- but if you're uncomfortable for some
19 reason, let us know, and we can work to fix
20 whatever the -- whatever that is.

21 A. Okay.

22 Q. As I said, I'm -- my name is Brian
23 McDaniel. Let me get, first, your full name.

24 A. Ellen Davis Padgett.

25 Q. Okay. And where do you currently live?

1 A. I live at 52 Echotango Road in Okatie,
2 South Carolina, 29909. It's out there by Lemon
3 Island Marina.

4 Q. Okay. And how long have you lived
5 there?

6 A. Since 1980.

7 Q. Okay. And are you from the Beaufort
8 County area?

9 A. I am, Beaufort, yeah.

10 Q. Okay. And tell me a little bit about
11 your background as far as where did you go to high
12 school and then what were your jobs. Just
13 summarize. I'm not looking for every --

14 A. Okay. Got you.

15 Q. -- every summer job or everything --
16 you know, everything you've done but kind of your
17 career path.

18 A. I grew up on Lady's Island. I went to
19 all the Beaufort schools: Beaufort Elementary,
20 Beaufort Junior High, Beaufort High School. Then I
21 went my first year of college at USC in Beaufort,
22 and I went the next year to college at Clemson, and
23 then I finished my last two years of college at the
24 College of Charleston, got a bachelor of science
25 degree in biology.

1 After a couple of meaningless jobs, I
2 got a job with wild -- the Wildlife and Marine
3 Resources Department of South Carolina, which I had
4 for eight years. Then Reagan cut the funds that
5 were funding my job and I didn't want to move to
6 Charleston, so had another job for a little bit,
7 and then I -- in April 1 of 1985 I started working
8 at Callawassie Island.

9 Q. And when you started to work in April
10 of 1985, what was your profession there?

11 A. I started off as working weekends, and
12 then it go to be a full-time job about probably --
13 I don't know -- a year after I started.

14 Q. And what were you doing? What was your
15 job?

16 A. It was the beginning of the sales
17 office.

18 Q. Okay. Who was your employer out there?

19 A. At that time it was -- my employer, I
20 guess you could say, was George Oetterli, who was
21 the manager of Callawassie for the owner, who was
22 Wilhelm Stein in Germany. He bought the island and
23 started the development of it. George Oetterli was
24 an Austrian he brought over, and Wolfgang Saenger
25 was a broker in charge who was also German, and

1 that was the beginning of Callawassie Island
2 development.

3 Q. Okay. And after that what -- did your
4 position -- you stay in that same position, or did
5 it change?

6 A. I stayed in the -- really I stayed in
7 the same position as running the sales office. We
8 established the sales office and ran it, and it was
9 wonderful when computers came in because we had to
10 do everything by hand until then, but, yeah, I
11 always -- pretty much always stayed the sales
12 office manager.

13 But there were times when I did other
14 things as well. Like at one point I was assistant
15 to the general manager. I did that for a year and
16 a half or two years, and that was -- helped out in
17 the architectural review committee. I was the
18 assistant to the chairman of the architectural
19 review committee for a long time.

20 And there were lots of things. The
21 membership secretary. I wasn't an official
22 membership secretary, but they called me the
23 membership secretary, and I handled the memberships
24 for a long time.

25 Q. Okay.

1 A. And at one point during this time I
2 went from being the sales office person to trying
3 to be a real estate agent, and that was in 1990,
4 and I didn't do so good at that, so I came back to
5 work for them after they asked me to, back in the
6 sales office.

7 Q. Okay. So you actually quit -- kind of
8 quit your job with Callawassie and went into a kind
9 of a private or your --

10 A. I still kept my same office in the same
11 building working with the same people.

12 Q. Okay. But your position changed --

13 A. Right.

14 Q. -- to a real estate agent?

15 A. Right.

16 Q. Okay. And who at that time was your
17 employer? Did it stay the same as you're --

18 A. Yeah. Well, at that time -- the real
19 estate agents are considered --

20 Q. Independent contractors?

21 A. -- independent contractors.

22 Q. And when you were hired back --

23 A. Uh-huh.

24 Q. -- who was it that was hiring you back?
25 Did they have a company name at that point?

1 A. CIC, Callawassie Island Company, but
2 they had a lot of different -- like they had
3 Callawassie Island Company, LLP, and then they had
4 Callawassie DEV Corporation, so the checks didn't
5 always say the same thing.

6 Q. Okay.

7 A. But -- but it was CIC most of the time.

8 Q. Okay. I guess go ahead and tell me
9 kind of the rest. When you came back, what was
10 your -- did you have an official position when you
11 came back, title?

12 A. Back as office manager, sales
13 assistant.

14 Q. Okay.

15 A. Sales administrative assistant.

16 Q. And is that the position you stayed in,
17 or did that change?

18 A. No. That was always -- that was my
19 basic thing practically the whole time I was there.

20 Q. Okay.

21 A. And then these other things were kind
22 of like part of the job, you know, like the
23 membership.

24 Q. Things got --

25 A. You know how it is.

1 Q. Right.

2 A. You get like this but your title stays
3 and your paycheck stays the same.

4 Q. Right. Sure. If you're good at what
5 you do, people tend to give you more and more work
6 to do.

7 A. That's right. That's right.

8 Q. So how long were you in that position,
9 or how long did you stay with CIC?

10 A. Till they quit, till they left the
11 building.

12 Q. When was that? Do you know?

13 A. That was -- I tried to look it up in my
14 checks last night, but my records didn't go back
15 that far in my house, but I've been where I am at
16 Spring Island Realty for four, a little over four
17 years.

18 And then before that Dan Liese, in
19 RE/MAX Island, had taken over the Callawassie
20 welcome center. When the developer pulled out and
21 the property owners took it over, they let Dan
22 Liese come in there, and I was with him for three
23 years.

24 Q. Okay.

25 A. So everything before that, so it's

1 been --

2 Q. About seven years?

3 A. Yeah. Rough -- yeah. Pretty close.

4 Q. Okay. So maybe 2005 or so?

5 A. Yeah. You'd be real close with 2005.

6 Q. And tell me what happened with the
7 developer leaving. Why did the developer leave?

8 A. It was my understanding that the
9 property -- see, the property owners had taken over
10 the running of the island and so forth. It was
11 turn -- everything was turned over to the property
12 owners, and there was a period after that where
13 they were -- the developer was assisting them with
14 the takeover.

15 They were sitting in on meetings, and
16 they took -- they started doing their own
17 committees and so forth, and it was a gradual kind
18 of takeover.

19 Q. Okay. Was this the property owners
20 association or the club or both?

21 A. Well, really both.

22 Q. Okay. When was the club started?

23 A. The club -- well, you know, that's a
24 really good question. They already had the club
25 when I went to work for them.

1 Q. Okay.

2 A. But that too evolved into the
3 Callawassie Island Members Club.

4 Q. Okay.

5 A. But I could give you --

6 Q. So in '85 there was already some
7 club --

8 A. Yeah.

9 Q. It was already --

10 A. Uh-huh.

11 Q. Was it a golf club at that point?

12 A. It was -- it was an everything club:

13 Tennis -- tennis, swimming, all that. But we
14 didn't have any tennis courts or anything yet.

15 Q. Okay. When were the facilities built?
16 Do you know? The tennis courts, the golf course,
17 do you know when these were actually constructed?

18 A. Well --

19 Q. Were they there when you --

20 A. In '85 roughed in -- they had roughed
21 in the golf course, and they had just finished
22 making the first nine. The pro shop was a villa
23 that had been built.

24 Q. Okay. Have a swimming pool at that
25 point, do you think?

1 A. I can't remember the swimming pool. I
2 think they had built the River Club by '85, and
3 there was a swimming -- there was a swimming pool
4 down there.

5 Q. Okay. Can you tell me the progression
6 of what else was added during the time you were
7 there or --

8 A. The -- the clubhouse -- oh, jeez.

9 Q. It's kind of a long time to go back.

10 A. Yeah. It's like, you know, you -- I
11 really kept my head down so to speak most of the
12 time. I didn't leave the sales office much, so
13 it's hard for me to remember --

14 Q. That's fine.

15 A. -- what was built when.

16 Q. I'm just trying to get a picture of
17 what they had when you got there versus --

18 A. When I had got there, there was about
19 50 lots been sold. There were four houses built on
20 the island. There were two duplex villas that had
21 been built, and the golf pro shop was in one of the
22 villas, and the sales office we moved to the other
23 villa, and we were like that for a couple years.

24 Q. Okay. What year did the members take
25 over the club? The Callawassie Island Members

1 Club, when did that start?

2 A. In 1999 the -- I don't know why I think
3 it was both of them. The members -- no. The
4 property owners took over first. The POA took over
5 first. I think it was in 1999. And the
6 Callawassie Island Members Club wasn't long after
7 that. I think three -- maybe three years after
8 that.

9 Q. Okay.

10 A. I'm not sure about those dates.

11 Q. Sure. And that's fine.

12 A. It's all a blur.

13 Q. Right. And I've got some things that
14 might help --

15 A. Good.

16 Q. -- might help you remember a little bit
17 and see if you agree.

18 A. Okay.

19 Q. I just want to see if this -- when you
20 got there, were there members of the club already
21 -- were there already persons that were members of
22 the club?

23 A. Yes.

24 Q. And who was in charge of member records
25 when you --

1 A. Melva Hickey.

2 Q. Okay. And is that a function that you
3 took over at some point, the club records and the
4 club member director?

5 A. It was a long time after that.

6 Q. Okay. When do you think you --

7 A. It was --

8 Q. -- became in charge of that or if you
9 did?

10 A. Well, when they left and we moved our
11 office from -- we went into a private home for our
12 sales office. We started out in the trailer, then
13 we went to the villa. We were there for -- in the
14 villa for a short time, couple years at most, and
15 from there we went into Mr. Montague's house.

16 And from there they built the welcome
17 center where it is now before you get on the
18 island, and we moved -- that I think was when all
19 the records were combined, when the records I had
20 from the real estate portion of it, but the records
21 that they had never made it into my office. I
22 think they may have gone into the accounting
23 office, in the garage is where I think all of those
24 went. I don't have any of those or never saw or
25 worked with any of those membership files.

1 Q. Okay. What point did you become -- or
2 did you ever become sort of the keeper of the
3 membership records?

4 A. I really wasn't a keep -- the
5 professional keeper of the membership records.
6 What we did was we kept -- when we sold
7 memberships, we kept copies of whatever people
8 signed in the same file that their properties were
9 purchased.

10 Q. Okay.

11 A. If the club kept any records where
12 their building was, I never saw them and never know
13 -- know any -- I don't know anything about those,
14 so the -- really the only records I kept was when
15 they purchased it or if some -- or if a seller was
16 selling, anything would go in their files.

17 Q. Related to the property?

18 A. Related to the property and the first
19 sale of the member -- and the sales of the
20 membership.

21 Q. Okay. What if you had a member who
22 didn't buy property, just somebody who wasn't a
23 property owner but wanted to buy a membership?
24 Would that --

25 A. I think --

1 Q. Is that something you would have --

2 A. Yeah. We would have kept that file,
3 but there was only one person, I think, that did
4 that during the time I was at Callawassie.

5 Q. Do you remember who that was?

6 A. David Carroll.

7 Q. Okay. Are you familiar with any of the
8 auctions that they had --

9 A. Uh-huh.

10 Q. -- related to the property?

11 A. I was there.

12 Q. Okay. How many houses was that done?

13 A. Once.

14 Q. One auction?

15 A. Uh-huh.

16 Q. What was the setup of that auction as
17 far as what -- were there any incentives? What was
18 the deal to get buyers at that auction? Were there
19 any special incentives?

20 A. The purchase of the property had to
21 include the purchase of a membership, and they
22 would get two years free dues. After the two years
23 they had to pay whatever dues they were supposed to
24 pay, resident or nonresident.

25 Q. Okay. Who had the authority, I guess,

1 or who made that deal available?

2 A. Jim Chaffin.

3 Q. Okay. And what's your understanding of
4 how he could -- how he could do that? Were they
5 his lots?

6 A. Yeah. They were owned by the company.

7 Q. Okay. Is he the owner of the company?

8 A. Jim Chaffin and Jim Light, and at that
9 time I think Dr. LaMotte was still with them.

10 Q. Okay.

11 A. Yes. He was with them.

12 Q. Okay. Are you aware of any other
13 arrangements that Jim Chaffin or any of the
14 directors made with --

15 MR. HAIGHT: Object to the form.

16 BY MR. MCDANIEL:

17 Q. -- any members as far as incentives
18 like that to buy -- to buy memberships?

19 A. That is the only -- that's the only
20 thing I know of, is the two years free dues.

21 Q. Okay. Are you aware of any members who
22 had more than one club membership at the time you
23 were there?

24 A. Oh, yeah.

25 Q. Okay. How many would you say -- how

1 many entities or persons had more than one
2 membership? Was that a common thing?

3 A. It was not an uncommon thing.

4 Q. Okay. Can you estimate? I mean, I
5 know you don't -- probably can't have an exact
6 figure where there's -- if it was that common, it
7 probably wasn't just two or three but, I mean, was
8 this --

9 A. It was more than that.

10 MR. HAIGHT: Object to the form.

11 BY MR. MCDANIEL:

12 Q. Can you put a percentage on it, like
13 how many of the members probably had more than one
14 membership?

15 A. I don't think I could be fair in
16 stating a percentage, but it was at least ten, as I
17 recall.

18 Q. Okay. Do you recall the circumstances
19 why somebody might have purchased more than one
20 membership?

21 MR. YOUNG: Object to the form.

22 THE WITNESS: Well, sometimes they had
23 a member -- some people -- there was a lot of
24 investments going on back then, and I think if
25 people had a lot and a membership and another lot

1 came up that they really liked but it had a
2 membership, they would go ahead and buy that and
3 then put their other lot and membership up for
4 sale.

5 BY MR. MCDANIEL:

6 Q. Okay.

7 A. There was -- there was a good bit of
8 that that went on, but I don't know of any people
9 who bought memberships for -- as an investment kind
10 of thing --

11 Q. I thought --

12 A. -- until the auction.

13 Q. Okay. I thought that's what you were
14 saying, why they bought multiple memberships was
15 for investment?

16 A. But -- for the lots. If the lot they
17 wanted had -- somebody was selling it that had a
18 membership --

19 Q. Right.

20 A. -- and wanted to sell the membership
21 with it..

22 Q. Okay. Do you know whether the
23 memberships were sold, whether -- well, let me ask
24 you. Who was in charge of marketing memberships
25 when you were there?

1 A. That happened, I think, after the
2 members took over, and they had a committee, but I
3 wasn't a part of that committee.

4 Q. Before the members took over, was there
5 any marking arm?

6 A. We didn't have marketing of
7 memberships.

8 Q. Okay. Once the members took over, what
9 was your interaction with the memberships? Did you
10 still have a function with regard to --

11 A. I had -- I kept files. When somebody
12 purchased the membership, I made the certificate
13 for them, and I got the chairman or president to
14 sign the certificates, and I made copies of all the
15 certificates and kept them in a notebook in a --
16 and a list of who the members were, where they
17 lived, kept up with all that.

18 Q. How did you maintain that list? Was
19 that a computerized list?

20 A. Yeah. Excel.

21 Q. Okay.

22 A. And through Jonas.

23 Q. When did Jonas come into play? When
24 did you guys start using Jonas? Do you remember?

25 A. I think I only used Jonas a couple of

1 years.

2 Q. Okay. So it would have been 2000s,
3 sometime in the --

4 A. Yeah.

5 Q. -- early 2000s?

6 A. Yeah.

7 Q. The resale list --

8 A. Uh-huh.

9 Q. -- was something that you developed, or
10 how did the resale list come about?

11 A. I didn't develop it. The resale list
12 was part of the club plan, and as we got to a point
13 where there were people who had memberships and
14 sold their property without selling the membership
15 with them, then we started keeping a list of them,
16 and as the list got more than a few people, then we
17 started putting it on the spreadsheets where
18 everybody could follow them.

19 So it was -- everything about the sales
20 office was started on a -- on what I could think of
21 to do because we didn't have the computers when
22 everybody else first got computers, and so a lot of
23 it was done by --

24 Q. Right.

25 A. -- just copying and copy machines, that

1 sort of thing. So as the resale list started
2 coming up, instead of keeping it in a notebook like
3 we did in the very beginning when we got the first
4 few, and then computers came in, then we started
5 putting it on the Excel spreadsheets.

6 Q. Do you know when --

7 A. And that's how it evolved.

8 Q. Do you know when that change occurred
9 from the notebook to the Excel?

10 A. Yeah. That was when we were still in
11 the house, so that had to have been between -- real
12 close to '90.

13 Q. Okay. And when you kept that resale
14 list --

15 A. Uh-huh.

16 Q. -- was that published in some way to
17 the members?

18 A. Not for years. I think when the
19 members took over, we put the -- published the list
20 in their minutes. I would give them a list every
21 month.

22 Q. And you think, when they had monthly
23 meetings, they would put them in the minutes?

24 A. Uh-huh.

25 Q. Did you see the minutes with them in

1 it?

2 A. No, I never saw the minutes. I was
3 just asked for them so that they could put them in
4 the minutes.

5 Q. Okay. So you were told they were
6 planning to use them for the minutes --

7 A. Uh-huh.

8 Q. -- and that's why you would give it to
9 them monthly?

10 A. Uh-huh, uh-huh. Yeah.

11 Q. Okay. Did the resale list get stored
12 in any sort of -- I know you said you made a
13 monthly print-off or --

14 A. Uh-huh.

15 Q. -- some sort of monthly report. Did
16 the minutes get stored sequentially or
17 chronologically some way -- not the minutes, the
18 resale list -- sorry -- as far as is it possible to
19 go back to 1991 and say here's the resale list from
20 January of 1991?

21 A. If they still had the files.

22 Q. Okay. As far as the Excel document
23 though, did the -- did it get saved like that on
24 the computer?

25 A. No.

1 Q. How was it saved --

2 A. No.

3 Q. -- on the computer, I guess is what I'm
4 wondering?

5 MR. HAIGHT: Object to the form.

6 THE WITNESS: When -- whenever I did a
7 new list on the computer, what I probably -- and I
8 don't remember. I may have saved -- occasionally
9 saved it in a different file, but I think back then
10 I was naïve with the computer world and I just
11 saved over the same thing, but I didn't worry about
12 it because I had a file right here that I would
13 keep the old copies of the list.

14 BY MR. MCDANIEL:

15 Q. Okay. So you were printing them off?

16 A. Oh, yeah.

17 Q. Okay. And you would put the -- the
18 printed resale list in a hard-copy file --

19 A. Uh-huh.

20 Q. -- then just save over it on the
21 computer?

22 A. Right, right.

23 Q. Okay. How were you storing the
24 hard-copy file? You say you printed it off. What
25 file was it going into?

1 A. I had a file in my desk, a pullout
2 drawer, and there was a file in there. And I kept
3 that because people would call -- off the resale
4 list would call and want to know where they were on
5 the resale list and who had sold, and they -- I had
6 to keep an accounting to a whole bunch of people
7 who would call every single month, and it was
8 simple to pull out and go back to where -- well,
9 they sold back in so and so and at that time you
10 were at such and -- such and such, so I could
11 account for them.

12 Q. Got you.

13 A. So I had it all right there.

14 Q. And people would call pretty frequently
15 wanting to know where they were?

16 A. Very frequently, and I hated the first
17 week of the month because I felt like every time
18 somebody flipped their calendar over the first
19 thing on the list was call Ellen.

20 Q. All right.

21 A. And the developer should have had
22 copies of those too.

23 Q. When you left, what was done with that
24 file as far -- I mean, where -- do you know where
25 it was -- well, let me back up.

1 Did you maintain that file the whole
2 time until you left?

3 A. Uh-huh.

4 Q. That's a yes?

5 A. Until Tom -- until Tom -- until Dan
6 Liese came. When Dan Liese came, all the files --
7 all my files were taken.

8 Q. And who took them?

9 A. All I had left was the real estate and
10 membership stuff.

11 Q. And who was Dan Liese? He's the
12 RE/MAX?

13 A. He was the RE/MAX -- he worked for
14 Island RE/MAX on Hilton Head, and he made an
15 arrangement with the -- I guess it was CIPOA -- to
16 come in and run the business as Callawassie Island
17 -- it was RE/MAX. Dan Liese was the team leader.

18 Q. Did he come in after the members had
19 taken over the club?

20 A. Uh-huh, uh-huh.

21 Q. I ask for the record --

22 A. Uh-huh.

23 Q. Say yes or no.

24 A. Yes, yes. I'm sorry.

25 Q. I know you're saying yes.

1 A. Yeah, right.

2 Q. I just want to make sure it's clear.

3 A. That's my understanding.

4 Q. Okay. So did the membership -- do you
5 know who hired or who made the decision for Dan
6 Liese to come in?

7 A. No. I would have to say I just assumed
8 that it was the property owners association.

9 Q. But at that point the property owners
10 association and the club were two separate
11 entities, right?

12 A. Uh-huh, uh-huh.

13 Q. Yes?

14 A. Yes.

15 Q. Okay. Sorry. I'm not --

16 A. Sorry. That's okay.

17 Q. Again, not trying to give you the
18 answer. I just want to make sure that it's clear.

19 So was the property owners association
20 making decisions that -- for the club at that time?

21 MR. HAIGHT: Object to the form.

22 THE WITNESS: What I was doing in my
23 office, I never sat in on any of the meetings where
24 I would be clear as to who is doing this: Is this
25 coming from the property owners association. Is

1 this coming from the club.

2 It's two distinct -- I understand that
3 it's two distinct, let's say, companies, but to me,
4 it was about the same people.

5 I didn't sit in on anything that the
6 POA did. I went -- there was -- I don't know of
7 anything that I sat in on the POA. On the
8 membership side I know that they established a
9 marketing team to try to sell Callawassie, and I
10 sat in on that monthly for a few months, and I just
11 assumed that that was the members club that was
12 doing that.

13 BY MR. MCDANIEL:

14 Q. Okay.

15 A. But I was -- it was my understanding
16 that the POA owned the welcome center or leased it
17 from Jim Chaffin's development company, and then
18 that was turned over, I believe, to CIPOA, the
19 property owners association, and it was my
20 understanding that -- or else I just assumed --
21 that the property owners association moved in
22 RE/MAX to handle the sales.

23 Q. Because RE/MAX was primarily a real
24 estate --

25 A. Uh-huh.

1 Q. -- office?

2 A. Uh-huh, yes.

3 Q. Thank you.

4 A. Yes.

5 Q. Was there some tension with RE/MAX? I
6 mean, it sounds like maybe that was a contentious
7 thing just from the -- I'm just wondering. Was
8 there any issue with when RE/MAX came in that that
9 was not something that your boss or your employer
10 wanted to see happen?

11 MR. YOUNG: Object to the form.

12 THE WITNESS: I think they helped. The
13 tension is from me because I think that really Dan
14 Liese and RE/MAX did a lot of good for Callawassie.
15 The problem I had with them was, when Dan Liese
16 came in, I was no longer head of the real estate
17 office.

18 Dan Liese, I say, pigeon-holed me into
19 my desk, and the only thing I could do was to
20 handle the listings because I knew most of the
21 people that lived on that island, knew them well.
22 I liked -- I'm very fond of them. They're fond of
23 me.

24 So he used me in getting the lease --
25 getting the listings for their property because at

1 that time there was probably eight other firms,
2 real estate firms, represented by people living on
3 the island. I think Weichert was one, and they
4 were getting listings from some of the property
5 owners there.

6 BY MR. MCDANIEL:

7 Q. Do you know how they chose Dan Liese?

8 A. They -- they did a search. They looked
9 at a lot of real estate companies --

10 Q. Okay.

11 A. -- Weichert including, since they were
12 on the island.

13 Q. When Dan Liese took over --

14 A. Uh-huh.

15 Q. -- did -- you said that they took the
16 files. They actually moved the files?

17 A. Everything in my desk, all the files I
18 had kept all over the years, over all these years,
19 all the sales reports, all of the memberships --
20 reports like the property owner -- I mean the
21 resale list, all of that was boxed up and taken.

22 The files that still held the sales
23 contracts that people signed for their properties
24 and the membership applications that people signed
25 for their memberships, all of that was left there,

1 so that part was still there.

2 Q. Okay.

3 A. But everything I kept, like the
4 membership resale list, all that disappeared, and
5 it was my assumption it just -- it was taken to
6 storage somewhere, like in the garage over at the
7 accounting office maybe.

8 Q. Okay. Is it fair to say you don't know
9 where it went?

10 A. I don't know where it went.

11 Q. Okay. Did you ever ask anybody, your
12 boss or anybody, what are they doing with all the
13 records?

14 A. I did not ask about my desk. My desk
15 was even taken. They took everything except the
16 files.

17 Q. Did they tell you they were going to
18 take your desk?

19 A. Well, when he came in, he said -- when
20 Dan Liese walked in the office, he said I want to
21 present an office with brand new. I want everybody
22 to look at this as brand new, and they replaced
23 every single desk and chair in that office.

24 Q. And they gave you a new desk?

25 A. Brand-new desk, brand-new chair.

1 Q. They didn't make you stand up. You're
2 not saying they took it out from under you, right?

3 A. No. But I felt like that.

4 Q. Right. And because you had been there
5 at that point almost 15 years?

6 A. Yeah, yeah. Closer to 20.

7 Q. Closer to 20 years.

8 A. Yeah.

9 Q. Because this was, what, 2003 or '4, you
10 think? Is that --

11 A. Yeah. It was early, yeah.

12 Q. Okay. You had mentioned a minute ago
13 that you sat in on some meetings of --

14 A. Uh-huh.

15 Q. -- I believe marketing meetings?

16 A. Marketing meetings.

17 Q. Who was involved with those meetings,
18 and when did they start?

19 A. They developed when Dan Liese was
20 there. Dan Liese said he wanted -- he was -- he
21 would pay the money and so forth to market the
22 properties, but he thought that Callawassie Island
23 -- CIPOA or members club -- in my mind they're the
24 same. I know they're not -- that they should pay
25 for the marketing of the island and they should run

1 the ads, the general ads we call them, about
2 Callawassie Island, a world apart or whatever --
3 with whatever tagline was running at that time with
4 a general ad, whereas we -- Dan Liese would run ads
5 like the MLS, doing all of that type of thing,
6 Internet and all that.

7 Q. So he was doing the individual
8 properties?

9 A. Right, right. And so they established
10 a marketing committee, the -- I get -- club or
11 CIPOA, I don't know which -- established the
12 marketing committee, and they chose some of the
13 real estate firms. The agents that lived on
14 Callawassie wanted a part of it, so they had seats
15 on this marketing committee for input into the
16 general marketing of Callawassie Island and the
17 open houses.

18 Q. Who from Callawassie was on this
19 committee?

20 MR. YOUNG: Object to the form.

21 MR. HAIGHT: Object to the form.

22 BY MR. MCDANIEL:

23 Q. Do you understand?

24 A. I'm thinking. I think Karen Norwood
25 was there. Eddie -- they hired Eddie Sanders, and

1 she was there. She was supposed to contribute to
2 the marketing. She was supposed to go and visit
3 other places and so forth so -- that at the moment
4 is -- they're the only two people I can remember.

5 Q. And do you know who Karen Norwood was
6 there on behalf of?

7 A. I just assume she was on the committee.

8 Q. But again, you don't know if it was the
9 -- she was a board member or -- do you know?

10 A. Well, I know -- I think at one point
11 she was a board member, but whether or not CIPOA or
12 the club, one or both.

13 Q. Okay. What was the -- well, while you
14 were there, was there anybody else during your term
15 of employment there that you would say was directly
16 involved with or the director of membership at the
17 club?

18 I'm just trying to figure out is there
19 -- are there other people who have similar
20 knowledge or maybe better knowledge than even you
21 have as far as the club membership from, say, '85
22 through 2000, whenever you left, '5 or so?

23 A. They had a membership -- they had a
24 membership committee.

25 Q. Okay. So the membership committee that

1 -- once the members took it over themselves?

2 A. Uh-huh. Sure did.

3 Q. Are there other -- I guess was there a
4 membership director other than yourself at any
5 point that you know of?

6 A. I'm sure there was, but I couldn't tell
7 you who it was.

8 Q. Okay. Would that have been after the
9 members took it -- took the club over, or do you
10 think --

11 A. Yes.

12 Q. Okay. Before that, let's say before
13 2000, from '85 to 2000, were you the person
14 primarily in charge of handling memberships, new
15 members, and resale lists and all those things?
16 Was that you, or was anybody else helping you do
17 that?

18 A. No. There was a membership committee,
19 but I never was invited to the membership
20 committee, so I don't have any clue what they did,
21 but nobody -- it's like you -- you're sitting in
22 this room and you know everything that's going on
23 in this room, but you don't know what's going on in
24 the other buildings.

25 Q. Okay.

1 A. So to you, what -- it's the building.
2 You would refer to the other building. Well, the
3 other building is responsible for that. The other
4 building did that or -- but you don't know the
5 names of, you know, who exactly the players are for
6 every single person --

7 Q. Right.

8 A. -- in the other room. So this room I
9 knew, but -- and I knew there was a marketing --
10 membership committee, but I don't know -- really
11 know what they did because I wasn't a part of them.

12 I know that some would call, like maybe
13 Harman Switzer would call and ask questions about
14 -- maybe about some people or about what
15 memberships people had or so forth or -- but as to
16 reporting to them, no, I didn't do any of that.

17 And as for anybody helping with the
18 membership resale list, I would have loved to have
19 had somebody else that I could say, well,
20 Mr. Jones, you need to call so and so; they'll tell
21 you.

22 But, no, I didn't get any help with any
23 of the things I did with selling the memberships to
24 get -- all I did was get their signatures and so
25 forth and set it up in the file and make the

1 certificate.

2 Q. With regard to the governing documents
3 of the club --

4 A. Uh-huh.

5 Q. -- can you tell me -- tell me what you
6 know about from the time you were there, what
7 documents were created or in existence to govern
8 the club, specifically, the membership or the --

9 A. Uh-huh.

10 Q. -- creation of memberships or that type
11 of thing.

12 A. Hillier & Wanless were the people that
13 -- the attorneys in Florida, I believe it was,
14 that --

15 Q. Do you know to spell that? Hillier?

16 A. H -- let's see. It's H-I-L-L-I-E-R.
17 Dennis Hillier is his name.

18 Q. Okay.

19 A. He's still in business.

20 There was a membership plan when I
21 first got there, but I'm very vague on remembering
22 that. It was -- the membership plan was already
23 established then, such as who -- such as what
24 memberships there were and what -- who could get
25 these memberships and what their responsibilities

1 were and how it would pass to your children or if
2 you wanted to sell them.

3 So that was already there in place, and
4 then Hillier & Wanless did -- redid the membership
5 plan, but it was essentially the same thing. It
6 was just more lawyer talk -- excuse me -- to it.

7 Q. Do you know when they did that, what
8 year, about? Was that before the --

9 A. No. I believe it was like '95 or '96,
10 maybe '97.

11 Q. Okay. And when you got the -- when
12 that was completed --

13 A. Uh-huh.

14 Q. -- do you know how that was transmitted
15 to the members, how that was --

16 A. Everyone received a copy of that plan
17 because I mailed it out to them.

18 Q. Okay. So you did that. You mailed
19 out --

20 A. I did that. I mailed them all out.

21 Q. Okay. And was there some vote taken
22 about that? Was there any kind of -- any kind of
23 meeting or thing that said we're going to pass
24 this, or was this something that was done by the
25 developer?

1 A. The developer did that.

2 Q. Okay. And you're not aware of the
3 members voting on that or not?

4 A. The members voted a good bit on a lot
5 of different things.

6 Q. I didn't mean to -- I'm not trying to
7 put word -- you know, answers in you.

8 A. Yeah, yeah.

9 Q. I don't know the sequence of when they
10 started voting --

11 A. Uh-huh.

12 Q. -- and when they started -- at what
13 point they would approve changes or not, so I guess
14 that's what I'm asking you. Do you know how this
15 new plan came into being ratified or being input in
16 place?

17 A. It seems to me that there was a vote of
18 some nature at that time and that it had passed,
19 but I could not tell you what exactly it was even
20 about.

21 Q. Okay. Do you know how those votes were
22 conducted at that time, who was in charge of
23 calling the meeting, keeping the votes, all that
24 kind of recordkeeping of that?

25 A. The recordkeeping was done by someone

1 else. Typically when we had a vote, I was given
2 the paperwork to make the vote, and I would make
3 the copies of all of them and stuff them in the
4 envelopes and -- for all of the people who had more
5 than one membership, I made sure that they had two
6 responses or however many memberships they had. So
7 I would mail them out, and then they would come in.
8 Somebody else would tally them up.

9 Q. Okay. So you would mail out the vote.

10 A. Uh-huh.

11 Q. It would come back in. Do you know
12 what the -- where those returned votes would be
13 kept?

14 A. I have no idea where they were kept.

15 Q. Okay. Do you know the department? I
16 mean, was it -- if it wasn't your office, did it go
17 to a different office or --

18 A. Yes. It went to a different office.

19 Q. Do you have any idea what office that
20 would be?

21 A. My idea was it went to the accounting
22 office.

23 Q. Okay. And that could -- that could be.
24 I don't know. Who was doing the accounting at that
25 time?

1 A. Mont Blaisdell was doing all of that.

2 He was chief financial officer and --

3 Q. Was he --

4 A. I'm trying to think if he was there at
5 that particular time or not. I believe he was.

6 Q. Was he an independent --

7 A. Yeah. He was there.

8 Q. -- accountant, or was this a --

9 A. Not at that time. He worked for
10 Chaffin/Light.

11 Q. Okay. After the '97 one, are you aware
12 of the rules, governing documents, being amended or
13 changed again after that?

14 A. I believe they were.

15 Q. Okay. Can you tell me what -- when
16 that was and what the -- what the circumstances of
17 that change were?

18 A. Not right now. I don't -- I can't
19 remember when any of them were. I know there were
20 several occasions when the votes were sent out, but
21 I can't recall any specifics right this minute.

22 Q. Okay. Do you recall, when the members
23 took over the club, whether there was a vote to
24 change any of the governing documents at that time?

25 A. There usually was a vote to change

1 documents whenever they did votes.

2 Q. Okay. And I would think so too. I'm
3 just wondering if that's --

4 A. Yeah.

5 Q. -- if you recall that taking place?

6 A. Yes. I recall some of those taking
7 place, but as to what particular subject was under
8 discussion, I can't remember specifically.

9 Q. Okay. That's fine. And that's fine.
10 I'm trying to get kind of a chronology of when some
11 of these things --

12 A. I don't think I'll helping you too much
13 on this chronology.

14 Q. No. You're okay. I'll ask you a
15 couple -- who was your immediate supervisor when
16 you worked there?

17 A. Well, sometimes it was the -- the
18 president, I guess you'd say. Sometimes it was
19 Mont Blaisdell. At first it was Lee Allen, our
20 broker in charge. They put him in charge, and I
21 worked for him, but really Mont Blaisdell or
22 whoever.

23 Q. Okay. You said the president. The
24 president of Chaffin/Light?

25 A. Whoever they determined as president at

1 the time, like Jim Anthony. Jim Anthony was
2 general manager of the club -- I mean, of the
3 development office there, and they called him
4 president.

5 Q. Okay.

6 A. I know.

7 Q. Okay. If somebody wanted to get on the
8 resale list, how would they go about doing that?
9 Well, during the time you were there.

10 A. They were supposed to write a letter
11 that said they wanted to go on the resale list:
12 Please put my membership on the resale list.

13 Q. Could they call you up and say please
14 put my name on the resale list?

15 A. They could do it, but they had to send
16 me a letter that said they wanted to go on the
17 resale list. It had to have a date.

18 Q. What about in the 1990s? Was that
19 always the case, that you had to have a written --

20 A. Uh-huh.

21 Q. -- form of some sort?

22 A. They should have.

23 Q. Okay. Was there a fee associated with
24 coming on or -- getting on or coming off the resale
25 list?

1 A. No. At that time they could put their
2 membership on the resale list any time they wanted
3 to.

4 Q. Okay. Are you aware of the purchase
5 price of the memberships while you were there?

6 A. Yeah. It was -- started out as, when
7 they first made them equities, it started out at
8 \$10,000 for the golf membership, 5,000 for the
9 social membership, and that was when Chaffin and
10 Light took over in 1986, '87.

11 Q. And do you remember the changes that --
12 the price changes?

13 A. From there it went to 15,000 and 12,000
14 for the social.

15 Q. Okay.

16 A. And then from there it went to, I
17 think, 29,000. Might have been a step in between
18 there. Maybe 25,000, then it went to 29,000 and
19 then it went to 36,000 and then finally 45,000.

20 Q. Okay. Are you aware of any situations
21 where, say, the price was 45,000, and the
22 membership was offered to somebody for less than
23 the price, less than that listed price?

24 A. Not like you're saying. A lot of times
25 somebody would be wanting to buy a lot or a house

1 and they would start the negotiations when the
2 price was one thing, say -- let's just say 15,000,
3 so by the time he went -- he may have gone to
4 contract or we -- or the documents had sent off or
5 something, anyway, we could contract him on the old
6 price even if the new price came in.

7 It was used as a tool to say you need
8 to buy your property now, and if you buy it now,
9 you'll save X amount of money because the
10 membership is going up. It's going up to 25,000,
11 so we need to go ahead and get this under contract.

12 And the guy might say, yeah, I want to
13 do it, but it might be a period of time in between
14 that, yeah, I want to do it to when he actually
15 went to contract.

16 Q. When you say went to contract, closed
17 on it? Is that what you're talking about, closing?

18 A. No. I'm talking about when he went to
19 contract.

20 Q. When he signed a contract?

21 A. Right, right.

22 Q. So he could lock in --

23 A. Yeah.

24 Q. -- the current price?

25 A. Yeah.

1 Q. For how long could he do that?

2 A. Until after the price change went in.

3 He had to have the contract signed by the date that
4 price --

5 Q. Changed?

6 A. -- changed.

7 Q. Okay. So if you signed a contract to
8 buy a piece of property --

9 A. Uh-huh.

10 Q. -- the developer said I'll lock you in
11 at whatever the price -- the membership is at the
12 point you sign the contract for the property?

13 A. Uh-huh, uh-huh. But they would lock it
14 in -- the date that the membership goes into
15 effect, the contract had to be signed, not closed.
16 The closing could take place some after that.

17 Q. I've got you. But they had to have a
18 signed contract to purchase property before the
19 price changed, the membership occurred, in order to
20 lock in the old price?

21 A. Yes.

22 Q. Okay. Are you aware of other
23 circumstances where the price was just lowered?
24 Not in that situation where it was held on a
25 contract but where it was just said, well -- the

1 developer for what -- for any reason decided --

2 A. Uh-huh.

3 Q. -- okay, I'll give you -- you know, if
4 you're going to buy three, maybe, or whatever
5 reason he had, I'll give you it at a lower price,
6 something -- any reason he might have? Are you
7 aware of that ever -- anything of that nature ever
8 happening?

9 A. There -- there may have been. It's --
10 it seems like to me there may have been maybe two
11 -- maybe two that I questioned, but I -- I don't
12 know who they were or what the circumstances were,
13 but I think it had to do with 29,000, but there
14 were -- there were two that I questioned, but I was
15 never -- I questioned them, but I can't remember
16 what the answer was, but I didn't feel like it was
17 cheated -- it was cheating.

18 Q. Okay. You were satisfied with whatever
19 answer you received?

20 A. I was satisfied with the answer, but I
21 can't remember what it was, but I remember -- but
22 the 29,000 just flies out at me, so...

23 Q. Are you aware of any club members,
24 particularly multiple member clubs, who didn't pay
25 the yearly or the monthly dues on some of their

1 second or third or additional memberships?

2 A. Well, there were times when they had
3 deals. When they bought, the developer allowed
4 them maybe two years free dues if you buy a
5 membership.

6 Q. Okay. Well, you said at the auction.
7 There would be other deals like that sometimes?

8 A. The only deals that I was aware of at
9 the auction was they got two years free dues.

10 Q. Okay. Other than that auction deal,
11 were you aware of some other deals that were made
12 as well?

13 A. Not -- not to individuals. It would be
14 -- any deal that was made would be a company deal
15 to get the salesmen the sale membership, so it
16 wasn't like you pick and choose which -- which one.

17 Q. Okay. Well, tell me you what you mean
18 by individual salesmen. So he would maybe tell the
19 salespeople right now we're offering this deal?

20 A. Yeah. Be in a sales meeting and they
21 would say -- like when the two years free dues
22 thing came up, something like that would be
23 discussed in the sales agent -- with the sales
24 agents in the sales meeting.

25 Q. Okay.

1 A. But it wasn't an advertised promotion.

2 It was just within the building, the sales office.

3 Q. Okay. But other than the auction,
4 you're saying they sometimes would make some offers
5 like that --

6 MR. HAIGHT: Object to the form.

7 BY MR. MCDANIEL:

8 Q. -- known to the agents?

9 I guess I'm just making sure. It
10 sounded like you were saying to me that that would
11 be -- occasionally they would make certain offers,
12 and I'm just making sure -- you're not talking
13 about just the auction, the one-time auction deal;
14 that this was something that from time to time they
15 might make some deal known to their sales agents as
16 an incentive to try to get new members?

17 A. No. It really wasn't like what you're
18 saying. It was -- it was -- it wasn't, you know,
19 these people get this deal and -- but these people
20 over here get another deal and these people won't
21 get any deals and -- it wasn't anything like that
22 that I'm aware of.

23 It was -- the kind of deals I'm talking
24 about was like for years we had it where if a
25 property owner referred somebody who bought or a

1 club member referred somebody who bought, he would
2 get a year's free dues.

3 Q. Okay.

4 A. And we'd send a letter out to all of
5 the property owners, the members, saying if you
6 refer somebody, you get a year's free dues. Those
7 are the kinds of things I'm talking about.

8 And we'd send out notices to people in
9 our database, if they bought between now and the
10 first of the year, they might get six months free
11 dues, but all of that was with the developer.

12 Q. The developer being --

13 A. Jim Chaffin, Light, and LaMotte.

14 Q. Okay.

15 A. The club members, when they took over,
16 and I could see control go -- leaving from our
17 office to the other offices, I wasn't aware of
18 anything. Like they -- they didn't seem to want to
19 do anything to spur somebody buying.

20 Q. Yeah.

21 A. It was very hard.

22 Q. Were there meetings where they were --
23 they were encouraged to do those things?

24 A. Rephrase.

25 Q. You're saying it was hard. I guess so

1 I'm asking you to expand on what you mean by that.

2 Is it there were discussions where they were --
3 were there discussions where those types of
4 incentives were discussed with the club members --

5 MR. HAIGHT: Object to the form.

6 BY MR. MCDANIEL:

7 Q. -- or the -- whoever's leading the club
8 members?

9 A. No, no. Not with the club members, no.
10 This --

11 Q. With who?

12 A. We would -- with the salespeople in the
13 sales office. Mont Blaisdell generally was there.
14 We would sit around trying to think how in the
15 world we could get sales, and there would be, well,
16 let's do a year's free dues, and that would either
17 be a yes or a no, but they were always trying to
18 come up with an idea that would help people
19 purchase properties and memberships.

20 Q. Right.

21 A. A lot of talk was, well, maybe the
22 salesmen should be paid commission on selling
23 sales, but they -- no, they didn't think you needed
24 to do that.

25 Q. Who is they, though, I guess is what

1 I'm wondering? It sounds like there was some
2 discussion there. I'm wondering who is on the
3 other side of this that's resisting these
4 discussions?

5 A. It was -- I don't know that it went --
6 ever went any further than our sales office. I
7 don't know of any CIPOA, board member, committeeman
8 or anybody like that involved in any of the
9 discussions I'm talking about.

10 Q. Okay.

11 A. I think most of -- I think this was
12 just when the developer was there, when we would
13 all sit around. Chaffin was never there. Mont was
14 there and our sales agents, and I can't remember
15 anybody else being from anywhere else in those
16 meetings where we were talking about how we could
17 get sales.

18 Q. Okay. And so you -- there would be
19 kind of a brainstorming session --

20 A. Exactly.

21 Q. -- then somebody would say they have an
22 idea, and then they would have to go through, who,
23 Mont, to get approved or --

24 A. Yeah, yeah. It was just whether Mont
25 wanted to carry wherever he carried it, whether it

1 was to Chaffin or whoever.

2 Q. Okay. And did you find that those
3 incentives were successful in bringing in new
4 members?

5 A. No. It was all -- mostly all -- it all
6 died just about where we discussed it.

7 Q. What do you mean, it mostly died? Do
8 you mean the --

9 A. The ideas we would put out.

10 Q. Okay. So these weren't incentives that
11 actually got carried out?

12 A. Most of the time, no.

13 Q. Some of the time they did?

14 A. Some of the time they did and -- like
15 for instance the commission on sales, they didn't
16 pay commissions. Well, they paid commissions on
17 sales part of the time. It was like \$200 or
18 something or \$150, whatever, and then they didn't
19 pay commissions.

20 And then when it got hard to sell
21 memberships, that was when the property owner --
22 when the membership had taken over and they had
23 made the rule -- I guess they voted -- that you had
24 to buy a membership when you bought a property at
25 Callawassie Island.

1 And then they wanted to get a
2 commission on selling the memberships because you
3 had -- it was harder to sell the membership than it
4 was to sell the property.

5 Q. Okay.

6 A. So then they --

7 Q. When did that occur, that change --
8 your understanding of when that -- you said they
9 had to buy membership --

10 A. Uh-huh.

11 Q. -- when they purchased property. When
12 did that happen?

13 A. That had to happen somewhere around
14 2003, '4. It was just before Dan Liese got there
15 or just after.

16 Q. Okay. Right around the same time, I
17 guess, as Dan Liese?

18 A. Uh-huh.

19 MR. HAIGHT: Can we ask how Dan Liese
20 is spelled? I've been spelling it one way
21 throughout here, and I'm sure it's wrong.

22 THE WITNESS: L-I -- it's spelled lies,
23 E. L-I-E-S-E.

24 MR. HAIGHT: Okay.

25 BY MR. MCDANIEL:

1 Q. What's your understanding of the
2 members' ability to resign their membership?

3 A. To resign their membership simply meant
4 that they placed their membership on the resale
5 list where they stayed on the resale list -- while
6 they stayed on the resale list they had to pay all
7 the dues, fees, assessments, whatever. They had to
8 pay all of that until the membership was sold to
9 somebody else.

10 Q. What happened to members who didn't --
11 who got behind on dues? Say it's January 1 and
12 they don't pay their dues or fees for -- in
13 January? What --

14 A. The developer allowed them to accrue
15 their dues, fees, and charges -- or dues and fees,
16 assessments, against the membership so that when
17 the membership sold, the developer would then
18 collect everything that was back-owed.

19 Q. So if they just quit paying and the
20 dues accumulated, when it was -- when the
21 membership sold, it would be taken out of the
22 amount that should go to --

23 A. Correct.

24 Q. -- would normally have gone to the
25 member?

1 A. Right.

2 Q. And what was the division of the sale
3 price from member to club when you were there? Do
4 you understand what I'm asking? If the membership
5 sold, how much of that was supposed to go back to
6 the member if they were current?

7 A. When the developer was running it, the
8 person got 80 percent of the selling price or what
9 he paid for it, whichever is greater. When the
10 club took over, they wanted the dues. They wanted
11 the money. They stopped the accruing.

12 Q. Well, let me ask you: Did they change
13 the division of the split of the money when the
14 club took over?

15 A. Yeah. They did that -- yeah. They did
16 that too.

17 Q. All right. Are you familiar with was
18 there a provision for people who had bought before
19 the change, or was there any difference for
20 somebody who was a member in 1988 versus somebody
21 who became a member in --

22 A. You mean grandfathered.

23 Q. Okay. And what would that mean?

24 A. Grandfathered is when if you bought
25 property at a certain time or whatever at a certain

1 time and you believed these set of circumstances
2 and then somewhere down the line they changed that
3 and made a new rule and your circumstances you
4 thought were great went away, grandfathered would
5 be that you were still protected because you had
6 bought under those circumstances.

7 And in this case it's my understanding
8 that the 80 percent thing changed, the -- instead
9 of it being the 80 percent -- oh, gosh, what was
10 it? Where I work at Spring Island their -- they
11 just changed their club plan and now 60 percent is
12 what they get, and I can't -- and I'm trying to
13 think back what Callawassie's was.

14 Q. That's fine. But it changed?

15 A. It changed.

16 Q. It made some change.

17 A. It changed.

18 MR. HAIGHT: Object to the form.

19 BY MR. MCDANIEL:

20 Q. And it was a lesser amount, do you
21 recall, or was it -- can you recall?

22 A. Yeah. They would get a lesser amount.

23 Q. Okay. You were talking about
24 grandfathering.

25 A. Uh-huh.

1 Q. Were the people that purchased before
2 that grandfathered to their -- the previous
3 regulations and situation they had?

4 A. Seems to me they lost that, that they
5 were not allowed to be grandfathered in there. It
6 seems to me.

7 Q. How do you --

8 A. But the club was doing that, and at
9 that time I think I was with Dan Liese.

10 Q. Okay.

11 A. Because I just remember hearing about
12 it and being incensed.

13 Q. That they hadn't grandfathered them?

14 A. That -- yeah. That they hadn't
15 grandfathered them.

16 Q. Do you have any recollection of how
17 that process might have occurred, of whether they
18 were or were not grandfathered?

19 A. No, I don't.

20 Q. Okay. Do you recall any correspondence
21 or statements with any members that they would be
22 grandfathered?

23 A. No, I don't.

24 Q. When you said that the membership
25 accrued, the dues would accrue --

1 A. . Uh-huh.

2 Q. -- explain what that would mean if
3 somebody stopped paying dues. For instance, if you
4 -- let's say you purchased your membership for
5 \$15,000 and you stopped paying dues and the dues
6 amount to \$20,000, what -- what would the club's --
7 from your understanding, what would be the club's
8 remedy to recover their money? This is prior to
9 the changeover.

10 A. I don't know. I was not in on the
11 money situation. I -- their membership would
12 probably have been put on the resale list if they
13 quit paying their dues and they were -- no. That
14 -- I don't think that's -- what I'm saying I don't
15 think is right.

16 I think the only thing -- the ones I
17 know about are the ones that went on the resale
18 list who had quit paying their dues, but they
19 didn't do anything about it. They just stayed on
20 the list that I know of.

21 Q. During the time you were there, are you
22 aware of any lawsuits being filed against any
23 members?

24 A. I don't remember the developer filing
25 any suits against any of them.

1 Q. And I'll represent to you that -- is it
2 correct to say that -- well, let me just ask this
3 question. Is it correct to say that it was your
4 understanding that if a member didn't pay dues,
5 that the most that they could lose would be the
6 value of their membership?

7 MR. HAIGHT: Object to the form.

8 BY MR. MCDANIEL:

9 Q. This was prior to the club making over.

10 A. I don't know because I was not involved
11 on the accounting side of it. Someone got way
12 behind on their dues and the club wanted to do --
13 or the developer wanted to do something about it, I
14 don't know that I would even be told about that, so
15 I don't remember any suits to try to make somebody
16 pay.

17 Q. Okay.

18 A. I don't remember them.

19 Q. Okay. And I guess what I'm -- I'm
20 representing some people who I'll represent will
21 say that their understanding was the most they
22 would have at stake would be the value of their
23 membership, that if their club -- if their
24 membership's on the resale list, it wouldn't -- and
25 it didn't sell, they wouldn't have to worry about

1 paying dues for years and years and years where you
2 could get tens of thousands of dollars of dues. At
3 most they would be at stake would be the value of
4 their membership. I guess I'm asking is that --
5 was that your understanding or --

6 MR. HAIGHT: I'll object to the form.

7 BY MR. MCDANIEL:

8 Q. -- can you say?

9 A. I never thought about that. The only
10 thing I thought about was poor whoever that was on
11 the list and had been there years, and I know it
12 was a ton of money that they now owed, was how --
13 how bad I felt for them, that they were stuck on
14 this list until they died, some of them.

15 Someone would call me and say they're
16 going to leave their membership to their children
17 and such and such. It's very -- it's very
18 heartrending when you hear this month after month
19 after month. So they may have owed a lot of money,
20 but I never knew what would happen or what the club
21 was going to do -- not the club -- what the
22 developer was going to do about it.

23 Now, I knew that the membership, they
24 were going to do something about it, and they did.
25 They sent them all kinds of letters, and I'd see

1 the letters come back to be put in their file up in
2 my office demanding payment and if they didn't pay
3 they were going to take action against them and so
4 forth.

5 I saw some of those letters that came
6 back from the club to be put in their files, but I
7 don't recall -- to get back to your question, I
8 don't recall what the club would do or the
9 developer would do if the amount they owed got so
10 high that -- they just assumed or the property
11 owner -- or the member may have assumed that he'd
12 lose a membership and that's it, and that's
13 probably how I felt or assumed, that they'd just
14 lose the membership because whenever we sold a
15 property and not the membership, we -- they
16 couldn't attach what was owed on the membership to
17 the sale of the property because it's two different
18 things. So it was my understanding that they just
19 lost it.

20 Q. Do you know who Bill Hawkins is?

21 A. Uh-huh.

22 Q. Who is he? Tell me what you know about
23 him.

24 A. Bill and Susan Hawkins had a very nice
25 house that they lived at the end of Sugar Mill

1 Drive on the right-hand side by the pond in the
2 golf course. I think I've said that a few times.
3 He was a real outgoing guy. He was well liked by
4 everybody. I believe he was president of the golf
5 club.

6 Q. Do you remember when he left?

7 A. He left -- he left early, in the early
8 2000s, 2001, seemed like to me. Seemed like he
9 left before Dan Liese got there.

10 Q. Okay. When a member with a golf
11 membership were to sell their property --

12 A. Uh-huh.

13 Q. -- and the buyer was to purchase a
14 social membership --

15 A. Uh-huh.

16 Q. -- what would happen to the seller's
17 golf membership?

18 A. He keeps it and pays dues on it until
19 he dies or he puts it on the membership's -- member
20 resale list and hopes he sells it before he dies.

21 Q. Okay. Do you know what happened to
22 Bill Hawkins' membership when he left?

23 A. No. I don't know what happened to it.

24 Q. If the person who purchased his
25 membership -- I mean purchased his property

1 purchased his social membership, is there any way
2 other than the resale list that he could --

3 MR. HAIGHT: Object to the form.

4 BY MR. MCDANIEL:

5 Q. -- have sold that membership?

6 A. Not according to the rules as I
7 understood them.

8 Q. Okay. And you're not aware of any
9 special deal that was worked out with Bill?

10 A. No.

11 Q. Okay. I guess that's a good question.
12 Are you aware of anybody that was able to bypass
13 the normal procedure of going through the resale
14 list to transfer their membership to somebody else?

15 A. The only -- the only thing I can
16 remember that came up was someone had a membership
17 on the resale list and they wanted to sell it, and
18 someone had a property that didn't have a
19 membership attached to it, then this membership guy
20 wants to put his membership with this other guy's
21 property and sell it, but he had to somehow become
22 part owner of that lot that didn't have a
23 membership in order for that to work, and that guy
24 that owned the lot had to have part of that
25 membership in order for that to work.

1 Q. Okay. Are you aware of that happening,
2 something like that happening? Seems like a tricky
3 situation.

4 MR. YOUNG: Object to the form.

5 THE WITNESS: It -- it was -- the thing
6 was they did that. Now, I can't remember who it
7 was. But you can do that if you have -- if you
8 join forces with another guy and y'all own these
9 things together, that's fine, but I never saw any
10 paperwork to back up that they were -- really were
11 part owners of the membership and the property.

12 BY MR. MCDANIEL:

13 Q. Okay. But you think that happened,
14 what, one time?

15 A. Once, once.

16 Q. When did it become that -- when was it
17 that you had to purchase a membership if you bought
18 property? Do you remember when that started? I
19 think you testified about it earlier. I just can't
20 remember what you said.

21 A. I think that was right around the time
22 when Dan Liese came in there, so it was -- no. It
23 was before then. It was closer to 2000, I believe.

24 Q. Okay. Prior to that did you have
25 people purchase property who didn't buy

1 memberships?

2 A. Uh-huh.

3 Q. That's a yes?

4 A. Yes, sir.

5 Q. Okay. And after that were you aware of
6 people who bought property who didn't buy
7 memberships?

8 A. Not after that, no. When that -- when
9 that came out, that was the end of selling property
10 without memberships.

11 Q. Okay. What if -- about the situation
12 where property gets transferred to another family
13 member's name? Would that -- let me --

14 A. That's allowed.

15 Q. Okay. Would the membership also have
16 to transfer into that other person's name?

17 A. It could.

18 Q. Would it have to, though, for the --
19 would the property owner also have to be listed as
20 a club member? For instance, a husband and wife
21 purchase a piece of property and the husband is on
22 the golf membership. Would you have to have the
23 wife's name on the golf membership as well?

24 A. No. Back then, no.

25 Q. Okay. What about if the property then

1 just gets transferred completely into the name of
2 the wife? Would that trigger something that would
3 -- say the club could -- the property would then
4 need to be -- a membership would then need to be
5 held in the name of the wife?

6 A. It didn't affect how the membership was
7 treated. It was still -- even if it moved from
8 both their names to one name, it's -- it was the
9 same for that household, the same -- it was treated
10 the same way.

11 Q. What if they got divorced?

12 A. Then we had to have a copy of the
13 divorce decree where it said who got the membership
14 or who got the property.

15 Q. What if the husband got the membership
16 and he left and the wife got the property and she
17 stayed?

18 A. Then she would have to get a membership
19 if she wanted to use the club facilities.

20 Q. What if she didn't want to use the club
21 facilities?

22 A. She could live there.

23 Q. That's a situation where you could own
24 property there and not have to have a membership?

25 MR. HAIGHT: Object to the form.

1 THE WITNESS: I don't know how that was
2 treated when the rule came that you had to buy
3 property, you had to buy a membership.

4 BY MR. MCDANIEL:

5 Q. Okay.

6 A. That's interesting.

7 Q. During your time there who was in
8 charge of -- well, was there anyone in charge of
9 sending the club governing documents to prospective
10 purchasers of property?

11 A. We had membership plans and
12 subscription agreements, membership applications
13 that they had to fill out. All of that was given
14 to everyone who -- when they were sent the contract
15 or they got the contract or just before they got
16 the contract, we'd sent them all the documents.

17 They had to have covenants and all the
18 membership things, so all of that as a package was
19 given to them in person when they were there or
20 mailed to them if it came about by telephone.

21 Q. Okay. And were you the one who would
22 put that together?

23 A. Oh, yeah.

24 Q. Okay. And what would be in there as
25 far as the club? Not CIPOA and not the property

1 owners association but as far as the club governing
2 documents.

3 A. Uh-huh.

4 Q. And it might have been changed over the
5 years, so you can kind of tell me that if there's
6 been some difference, but what were the documents
7 you would send to them with the contract?

8 A. I would send the membership plan. It's
9 called the offering of -- the offering -- plan for
10 the offering of membership is the name of it.
11 Okay. I would send them that. And then we'd send
12 them a subscription agreement where they're
13 agreeing to purchase the membership and the price
14 they're purchasing it for. The membership
15 application, and a schedule of dues. And I'm
16 missing one.

17 Q. Club rules?

18 A. Subscription agreement.

19 MR. HAIGHT: Object to the form.

20 THE WITNESS: The club -- the club
21 rules at that time were part of the plan for the
22 offering of membership. That -- plan for the
23 offering of membership included the general
24 description, the club rules, the bylaws of the
25 club, and the property owners association. All

1 that was in the plan for the offering.

2 But there was one more besides the
3 subscription agreement and the membership
4 application. There was -- I can't think what it
5 was. Their agreement -- there was one that --
6 where they agree to buy the -- to pay the dues, and
7 that's the one I can't think of the name. We had a
8 name for it.

9 BY MR. MCDANIEL:

10 Q. Some document that talks about the --

11 A. The dues.

12 Q. -- the dues and that they would agree
13 to pay them?

14 A. Uh-huh, yes.

15 Q. Okay. When the club took over, did you
16 continue to do this function of sending out --

17 A. Uh-huh. I did, yes, sir.

18 Q. Until when? Until you left, or did
19 they end at some point?

20 A. I think I did that until Dan Liese took
21 over.

22 Q. Okay. Do you know who did it after Dan
23 Liese took over?

24 A. No.

25 Q. All right. When the club took over, we

1 discussed earlier that they -- they made some
2 changes to the --

3 A. Uh-huh.

4 Q. -- to the governing documents.

5 A. Yes, they did.

6 Q. Did you get a copy of those documents
7 to send from that point forward?

8 MR. YOUNG: Object to the form.

9 THE WITNESS: You know, I don't think I
10 did those after -- after that period where the --
11 when they -- when the developer and the members
12 club worked together for a while until the members
13 completely took over.

14 Seems to me as we speak that once the
15 developer was pretty much out of that, then they
16 did move the operation like we're talking about
17 here to the club, and I'm -- the woman who was
18 there at the time took over the -- she did the
19 mailings out and the votes and so forth.

20 BY MR. MCDANIEL:

21 Q. Was it Jan?

22 A. No. It was before. I remember when
23 Jan took over that.

24 Q. So were you there at that time?

25 A. Yeah. I was up at the sales office,

1 yeah.

2 Q. So it was somebody before her?

3 A. Yeah.

4 Q. I believe it was Jan -- is it Johnson?

5 A. Yeah. That's Jan Johnson, who is a
6 property owner there. But this what I'm talking
7 about was the membership -- they called her the
8 membership secretary at the -- and that was down at
9 the clubhouse, an office set up down there.

10 Q. It wasn't Joy Smith, was it?

11 A. No, no.

12 Q. Okay. Do you have any idea who -- I
13 guess any way we could figure out who that was?

14 A. It was before Lindsey.

15 Q. Do you know Lindsey Cooler?

16 A. Uh-huh. Yes, I do.

17 Q. How do you know Lindsey?

18 A. From her getting the job there at the
19 club. She was --

20 Q. Was there any overlap in your
21 employment with hers?

22 A. Yeah. She was at the club while I was
23 at the welcome center.

24 Q. Okay. Did you work --

25 A. Yeah.

1 Q. Did you coordinate any of your job
2 functions with her?

3 A. Not really the job functions. I don't
4 remember her taking over anything that I kept up at
5 the sales office.

6 Q. Okay. What was the function of this
7 membership secretary as best you can remember?
8 What was the purpose of having a membership
9 secretary?

10 A. I think they were taking over the --
11 this was that time period I believe when they were
12 taking over the running of the club, and they got
13 the membership secretary there. They called her a
14 membership secretary, but it was more like -- at
15 least from my opinion -- was assisting the general
16 manager of the club, and the membership was part of
17 her job down there.

18 Q. Okay.

19 A. But what exactly she did, I don't know.

20 Q. Okay. Change gears a little bit. If a
21 member wants to exchange their membership, two
22 members wanted to exchange, was there any fee, or
23 what was the process with regard to exchanging
24 memberships between two membership holders?

25 A. There wasn't but about a couple of

1 those that did that while I was there, and what it
2 was -- say you have a social membership and he has
3 a golf membership but you play golf and he's old
4 and he can't swing a club anymore. Sorry.

5 MR. HAIGHT: Looking at me.

6 THE WITNESS: But you want to play
7 golf, so you -- you want to swap your membership
8 with him so you can play golf, and he's proud for
9 it because now you're going to pay his dues, and
10 you're going to pay any fees associated with that;
11 however, you will still keep your social membership
12 and you will still have social membership voting
13 privileges, and he will still own his golf
14 membership and he will still vote his golf
15 membership privileges, but you are using the
16 privileges associated with being a golf member like
17 no greens fees, that sort of thing.

18 BY MR. MCDANIEL:

19 Q. So you don't actually switch
20 memberships?

21 A. You do not switch ownership of
22 membership, no. You only switch privileges.

23 Q. Okay. And is there a fee associated
24 with doing that? Does the social member pay some
25 kind of fee for getting the golf membership

1 privileges?

2 A. I don't remember getting a fee for it
3 when I was doing them.

4 Q. Okay.

5 A. But we only had two.

6 Q. Two that did that? Do you remember who
7 they were?

8 A. One of them lived on -- oh, for
9 goodness sakes. They did this for years. You'd
10 think I'd remember it. Lived out on Tabby Lane. I
11 can't remember who it was.

12 Q. That's fine. When the membership
13 switched over to the members owning it --

14 A. Uh-huh.

15 Q. -- are you aware of any change in that
16 policy of how that was conducted?

17 A. No. I am aware of no change in that.

18 Q. Okay. Are you aware of any provision
19 that said there should be some fee paid to do that
20 exchange?

21 A. I don't remember. There may have been
22 a fee paid, but I don't remember it.

23 Q. Okay. Are you aware of what the
24 significant or -- earlier you testified about a
25 member resigning.

1 A. Uh-huh.

2 Q. I was asking you about that.

3 A. Uh-huh.

4 Q. Tell me again, what -- before the
5 members took over, what was the effect of a
6 membership submitting a resignation -- or a member
7 submitting a resignation of their membership? What
8 would happen to that membership?

9 A. It would ride the resale list.

10 Q. Okay. After it was changed over to the
11 governing by the members --

12 A. Uh-huh.

13 Q. -- did that process change in any way
14 that you're aware of?

15 A. I'm not aware of that process changing,
16 no.

17 Q. Was it your understanding that a member
18 could still resign after the members took over?

19 A. Oh, yes. That's in the club plan.

20 Q. Okay.

21 A. Unless they voted it out and I didn't
22 know it.

23 Q. Okay. How would the -- or who was
24 responsible for stopping the billing of dues and
25 fees once a membership is sold or off the resale

1 list or otherwise moved out of somebody's name?
2 How would the billing department know to stop
3 sending them bills?

4 MR. YOUNG: Object to the form.

5 THE WITNESS: Well -- would you say
6 your question again?

7 BY MR. MCDANIEL:

8 Q. Sure. I'm wondering, when a member was
9 -- either sold their membership or transferred it
10 in some way, who was notifying the billing
11 department, or was the billing department part of
12 that, perhaps, to stop sending them bills?

13 A. I notified --

14 MR. YOUNG: Same objection.

15 THE WITNESS: -- accounting whenever we
16 got a contract to purchase those, and when they
17 were closed, I notified them. I notified them when
18 we got the closing of the deal. Whenever the
19 property closed, they were notified which
20 membership was sold, who went with it.

21 BY MR. MCDANIEL:

22 Q. And how did you notify them?

23 A. How did I know what?

24 Q. How did you notify them? Was that done
25 on the computer, a computer entry, or was that a

1 letter?

2 A. We had to notify them. I sent them
3 copies of the -- the closing documents, and I don't
4 know about -- besides the weekly reports, it was --
5 it was verbal as far as I can remember other than
6 giving them the settlement statement from the
7 properties that sold and telling them this was a
8 resale membership because in all the reports we did
9 we'd have the name of the purchaser and where -- if
10 he's buying a membership, where that membership
11 came from.

12 I had a -- well, I had a list prepared
13 of every sale because -- and it's a sheet of paper
14 that's in that report, the weekly report. For
15 every sale I had, like, the person's name and then
16 it would be the -- like Callawassie Island Company
17 membership and then the person's name, Callawassie
18 Island Company membership, person's name,
19 Callawassie Island membership, purchaser's name,
20 Mr. So and So from the resale list, because we had
21 to sell three developer memberships. The fourth
22 one came off of that property list.

23 Q. Okay.

24 A. I mean that resale list. So that was
25 kept so you could tell right away whenever so and

1 so bought that this man's membership was sold, and
2 it was verbally other than the reports.

3 Q. Okay. And during the time you were
4 there, if some -- are you aware of anybody walking
5 away from their membership so to speak, just
6 leaving town and saying they -- you know, they're
7 leaving and saying they can't pay dues anymore and
8 they're leaving town, anything like that?

9 A. I don't know of anybody that said that
10 to me or --

11 Q. Well, anything like that --

12 A. -- anything like that.

13 Q. -- where they basically just had, I
14 guess, attempted to resign their membership and
15 then just left, weren't continuing to -- anybody
16 that ended their membership without going on the
17 resale list?

18 MR. YOUNG: Object to the form.

19 THE WITNESS: There was -- there was
20 one man or one family or owner who sold their
21 property, and they had a golf membership, and they
22 left, but I don't know what happened to his golf
23 membership.

24 BY MR. MCDANIEL:

25 Q. Okay.

1 A. I -- it didn't go on the resale list,
2 and I have no clue what happened to it.

3 Q. And who was that person?

4 A. I'm not a hundred percent sure who that
5 person is. I can see -- I can see his smile when
6 he went out of the office, and I said something
7 about the membership, and he told me to read the
8 documents.

9 I was questioning where -- what about
10 his membership because he was moving, I think to
11 Florida. They were moving to Florida. And he said
12 something -- which I knew the person who bought his
13 house did not buy a -- buy his membership, but he
14 -- what did he say?

15 I was curious as to where his
16 membership went. I wish I could say it was him,
17 but I can't say it was him.

18 Q. Do you remember who purchased it, the
19 property?

20 A. No. But it wouldn't be hard to find
21 out.

22 Q. How?

23 A. They should have the records of who
24 bought the house --

25 Q. What house was it?

1 A. -- and then you can look back on the --
2 it's the last house on Sugar Mill Drive on the
3 right, on the pond in the golf course.

4 Q. Okay.

5 A. You can go down his -- on the BC.gov
6 records in there and --

7 Q. Last house on Sugar Mill Drive on the
8 right?

9 A. I want to say he's like 30 -- let's
10 see. The even numbers are on one side. The odd
11 numbers on the right side, and it was on the right
12 side. It was like 35 or 36 Sugar Mill Drive,
13 somewhere along in there.

14 Q. Okay. Do you remember when, about,
15 that was, the year?

16 A. That was the -- like 2000 -- 2001,
17 2002, somewhere along in there. Just before the
18 Dan Liese takeover.

19 Q. Okay. Did you ever get any answer
20 about that? Did you ever --

21 A. The answer I got was -- I remember
22 asking something about the membership. I remember
23 asking something about the membership, and he --
24 somebody said somebody -- or he said some flip
25 answer.

1 I can't -- I can't remember him saying
2 he sold his membership but -- or he got rid of his
3 membership or something along those lines, and he
4 -- and he gave me a funny smile, and I said
5 something about how he got rid of his membership or
6 how -- something along -- I cannot remember word
7 for word, but I remember the answer he gave me was
8 to read the documents, it's in there. And that's
9 the answer I got.

10 Q. Do you remember reading the documents?

11 A. I read -- I read through the documents
12 again, and I couldn't figure out how he found a
13 loophole in there.

14 Q. Did you --

15 A. And I asked.

16 Q. You asked your --

17 A. And I was never given an answer because
18 they knew if they gave me the answer I might tell.

19 Q. Who did you ask?

20 A. Mont Blaisdell.

21 Q. Okay. And he didn't want to -- he
22 didn't want to tell you?

23 MR. YOUNG: Object to the form.

24 THE WITNESS: He -- it's not that he
25 didn't want to tell me because Mont was very --

1 I'll say closed mouth. He didn't gossip. He
2 didn't tell things he knew, and he didn't tell
3 things he didn't know. If he didn't say anything,
4 that wasn't an indication whether it was true or
5 false. He just didn't say things.

6 And if you asked him about something,
7 he'd listen to you, but he wouldn't commit to, you
8 know, we cut him a deal on the side. Never,
9 huh-uh, no. It was that or it was appreciate you
10 telling me. It was always appreciate you telling
11 me or appreciate you talking to me or whatever. So
12 I got no satisfaction on that answer.

13 BY MR. MCDANIEL:

14 Q. Okay. Did you ever take it to anybody
15 else after --

16 A. No.

17 Q. -- Mont? Okay.

18 A. No. Because he had the ear of
19 everybody, so -- and I certainly wasn't going to go
20 around him. As long as Mont knew about it, that
21 was okay with me, whatever they --

22 Q. Right. Are you familiar with the
23 procedure, the club procedure, with regard to
24 expelling members?

25 A. No.

1 Q. Are you familiar with anyone ever being
2 expelled from the club?

3 A. Do you mean by not paying dues or
4 something like that or what?

5 Q. I mean, generally. Any expulsion, any
6 time you would indicate somebody was expelled?

7 A. I remember somebody got expelled from
8 the club, but I don't remember what it was for or
9 anything.

10 Q. Okay. The question you ask -- or the
11 question you suggest is fine too. Any indication
12 of expulsion with regard to not paying dues?

13 A. Yeah. We were told of whoever it was,
14 that certain people, that their dues were so bad
15 they weren't allowed on the golf course and they
16 couldn't play and they couldn't eat at the club,
17 and we'd get lists of people who were in arrears
18 like that, is what they called them.

19 But expelled from the club, I don't
20 remember ever being said -- told that this person
21 has been forced out because he can't pay or
22 whatever.

23 Q. And are you familiar with the term
24 being suspended, a suspended member?

25 A. Yeah. They'd get on suspension.

1 Q. What would suspended member mean?

2 A. That they were late paying their dues
3 generally is what it meant.

4 Q. But the penalty was what? Or was there
5 a penalty?

6 A. There was -- the only thing was they
7 couldn't use the club until they started paying, so
8 that was their penalty that I know of.

9 Q. And that would be the suspension part
10 of it?

11 A. Yeah. They would be suspended from
12 using the club until they brought their accounts up
13 to date.

14 Q. So their privileges were suspended?

15 A. Privileges. You're correct.

16 Q. Okay. And when they're expelled, what
17 would be your understanding of what that would
18 mean?

19 A. That the club had had an action -- had
20 made an action against the club member, taken him
21 to court or sued him for the money that they were
22 owed, and somehow it being settled or whatever and
23 they were -- they were expelled. They didn't
24 voluntarily sign a paper and say, okay, here.

25 Q. Would it be that they would no longer

1 be members if they were expelled?

2 A. Correct.

3 Q. Are you aware of the club ever owning
4 any of its own memberships?

5 A. Yes.

6 Q. How did the club come about to own
7 memberships?

8 A. The club -- there's conceded and
9 expelled written on that resale list. The
10 conceded, for -- for a time the people who were way
11 behind on their accounts were sent a letter saying
12 that if they would bring their accounts up to date,
13 they could concede their membership back to the
14 club.

15 Q. And what would that mean, to concede
16 it?

17 A. That would mean that they would give up
18 any ownership in that membership and that the club
19 would take it over.

20 Q. Okay.

21 A. They may -- besides bringing their --
22 what they owed up to date, I think some were --
23 some had to pay an extra year's dues on it. I
24 don't remember if everybody had to do that or just
25 some of them.

1 Q. Okay. Do you know who designed that
2 policy?

3 A. That was -- no. That was done out of
4 my -- it wasn't in my office. That was done from
5 the club, and I didn't have any part of that -- any
6 of those discussions.

7 Q. Do you know who was -- who would that
8 have been that was making that -- those
9 determinations?

10 A. It seemed like to me the attorney was
11 -- was his name Weston --

12 Q. Weston Newton?

13 A. Yeah.

14 Q. Okay.

15 A. And it seemed like to me John Adams was
16 the general manager down there at that time, but I
17 may be wrong. It seemed like they had a general
18 manager down there who did all of these letters and
19 went through all these hard times, and as soon as
20 he went through these hard times they replaced him.

21 Q. So you're saying the ones that are on
22 there that -- they can say conceded or what's the
23 other?

24 A. Expelled.

25 Q. So do you know how they would have been

1 expelled? I mean --

2 A. The club told me -- would tell me that
3 this person is no longer a member of the club; he
4 has been expelled because he -- I believe they had
5 an action, had taken action against him to take the
6 membership back because he hadn't paid; you know,
7 owed them a bunch of money.

8 Q. Okay.

9 A. And that was done -- see, my perception
10 is that it was done through court and legal action
11 that that membership was taken back from that
12 owner.

13 Q. Okay.

14 A. And so the club took possession of the
15 ownership because of the dues that were so high
16 that the equity in the membership were gone, and
17 that's my understanding of that.

18 Q. Okay.

19 MR. YOUNG: Could we take a break?

20 MR. MCDANIEL: Sure.

21 (A recess transpired.)

22 BY MR. MCDANIEL:

23 Q. So you were trying to -- you were
24 saying you were trying to recall whether maybe
25 Susan Livingston --

1 A. Yeah. I can't --

2 Q. -- sounds familiar to you?

3 A. Yeah. I can't -- for some reason
4 that's sticking in me, but I was trying to remember
5 the name of the secretary who I -- who was working
6 there as the membership secretary when -- I believe
7 his name was -- I want to say John Adams was the
8 general manager of the club, and she was the one
9 that was working with conceded and expelled stuff.

10 Q. Okay. I'd asked you earlier about Bill
11 Hawkins.

12 A. Yeah.

13 Q. So you know who that is?

14 A. Yeah.

15 Q. Okay. Was Bill the one that had --
16 that you were talking about a minute ago that sold
17 that property that said look in the documents?

18 A. Yeah, yeah. I believe -- I believe he
19 is the one. I'm not a hundred percent sure.

20 Q. Okay. What was his position at that
21 time? Do you know? Did he have a position with
22 the club?

23 A. He was president of the club, but I
24 think he was not president of the club when this
25 event occurred.

1 Q. Okay. He had been the past president?

2 A. Yes.

3 Q. And are you familiar with Ron and
4 Patricia Terwilliger?

5 A. Yes. They're divorced.

6 Q. All right. Do you recall what happened
7 with their memberships from the divorce or their
8 membership?

9 A. Did he keep it or she kept it? I know
10 she got a lot out on Tabby Point, and I want to say
11 she got the membership, but I can't be positive.

12 Q. Okay. All right. If you had a
13 question about something like that, like would she
14 get a membership, would she have to buy a
15 membership, who would you have asked? Who would
16 you go to for those kind of answers about --

17 A. Mont.

18 Q. Was that Blaze?

19 A. Mont Blaisdell.

20 Q. Mont Blaisdell. Okay.

21 A. Uh-huh.

22 Q. When the club took over, was there a
23 contact with the club that you would go to?

24 A. Huh-uh.

25 Q. No?

1 A. No. No, sir. Just Mont.

2 Q. Okay. Do you know -- is it Brian
3 Lasota? Do you know who that is?

4 A. Yeah. I know that name. Why do I know
5 that name?

6 Q. I'll represent he might have been a
7 club manager at some point, one of the general
8 managers?

9 A. I know the name, but I can't put him
10 anywhere. If he was club manager, I didn't have
11 any contact with him.

12 Q. Okay. Are you aware of any
13 confidential settlements being made with any
14 members?

15 A. No.

16 Q. Are you aware of any offers being made
17 that included confidentiality as part of the terms?

18 A. No.

19 Q. Okay. Do you know whether or not -- I
20 just want to ask you about a few people, whether or
21 not you know they got any sort of unusual or
22 special deal with regard to their membership.

23 Karen Norwood?

24 MR. YOUNG: Object to the form.

25 THE WITNESS: I don't know of her

1 getting any deals.

2 BY MR. MCDANIEL:

3 Q. Okay. What about the Oelkers, Jeffrey
4 and Jane Oelker?

5 A. I recall the names, but I don't recall
6 any deals.

7 Q. Okay. Wurtzbacher, Terry and Patti
8 Wurtzbacher?

9 A. I don't recall any deals with them. I
10 remember them, but no deals.

11 Q. What about Harman Switzer?

12 A. Of course I know him because he was one
13 that would sign their certificates when I got their
14 certificates done, but I don't know of any deals
15 with him.

16 Q. What was his position to sign the
17 certificates?

18 A. He was either the secretary or -- let's
19 see -- secretary or -- I don't think he was
20 president. He might have been.

21 Q. Of what?

22 A. The club. And that was when the club
23 had taken over because he took over -- whenever
24 there was a membership document and so forth, he
25 would take care of that, like the signing of the

1 certificates.

2 Q. Okay. Was he the first -- who was your
3 first contact with the club when they took over?

4 Did they appointment somebody or nominate some -- a
5 president or somebody to represent the club?

6 A. I don't know -- I don't know that.

7 Q. Okay.

8 A. I don't know that.

9 Q. That's fine. If you can, the best you
10 can, tell me what's the -- who were the -- the
11 contacts other than Harman Switzer that you dealt
12 with during your time there?

13 MR. HAIGHT: Object to the form.

14 THE WITNESS: Karen Norwood,
15 Mr. Switzer. There was somebody with Mr. Switzer
16 when he would come up to sign the documents, and I
17 can't think of his name. Occasionally Jan Johnson,
18 but that wasn't very much.

19 BY MR. MCDANIEL:

20 Q. What was Karen Norwood's position? Do
21 you know?

22 A. I think she was either a committee
23 chairman or part of the board.

24 Q. What was Jan Johnson's position?

25 A. I don't know what her position was. It

1 seems like either I handed her the reports or --
2 that were needed for committee meetings. It wasn't
3 working with -- you know, doing anything with them.
4 She was would come to the office to get -- get
5 paperwork or something.

6 Q. Are you aware of any dispute between
7 the Callawassie Island Company, Chaffin/Light, and
8 the club that developed any ongoing contention or
9 dispute?

10 MR. YOUNG: Object to the form.

11 THE WITNESS: I wasn't aware of any.

12 BY MR. MCDANIEL:

13 Q. Are you aware of any -- of the
14 settlement between the two of them, any sort of
15 settlement agreement?

16 A. No, no.

17 Q. And I guess there was no formal or
18 informal litigation begun as far as you're aware
19 between those parties?

20 A. No, no. I didn't know anything about
21 it if it was.

22 Q. Okay. Are you aware of whether or not
23 the club submitted -- well, strike that.

24 How was the club's accounting taken
25 care of after the members took over, after the

1 membership?

2 A. What kind of accounting?

3 Q. Their daily, their business accounting.

4 I mean their basic business operations.

5 A. I had no -- no knowing -- no knowledge
6 of any of that. None of that as was in my purview.

7 Q. Okay. Do you know whose area that
8 would be that would have known that?

9 A. Joy Smith would certainly have known
10 that. Mont Blaisdell.

11 Q. Okay. All right. What's the policy
12 while you were there with regard to resident or
13 nonresident dues being charged to members?

14 A. They were charged resident dues if they
15 lived on the island for 90 days, 90 consecutive
16 days, they were charged resident dues, and that was
17 watched very closely. We had one resident who was
18 there 89 days and then he'd leave, every year.

19 Q. Okay. Were some members charged
20 resident dues on some of their memberships and
21 nonresident on --

22 A. Yes, they were.

23 Q. How did that come about? What was the
24 policy with that?

25 A. The developer did that. The property

1 owners, when they took over -- or the members, when
2 they took over, they wanted -- if they -- if the
3 man was a resident, they wanted both membership --
4 both memberships to be resident even if he only had
5 a -- if he had a lot and not even a house to be
6 charged a resident on it.

7 If you lived in a three-county area, 90
8 consecutive days, if you had five memberships, they
9 wanted the -- the members wanted five resident
10 dues, but the developer would charge nonresident
11 dues for the second membership.

12 Q. And what about the third membership?

13 Same?

14 A. Yeah.

15 Q. Okay. Was that a point of contention
16 with the members?

17 MR. YOUNG: Object to the form.

18 BY MR. MCDANIEL:

19 Q. Let me rephrase it. Did any members
20 voice any concerns to you about that change?

21 A. There was -- seemed to be a big -- I
22 remember that there was a big brouhaha over that
23 when the members wanted to make it full resident
24 dues, of course, because people said, oh, you
25 promised me that I would be a -- get nonresident

1 dues. But after the turnover and the members took
2 over, of course the developer lost control of that.

3 You asked me about a deal that was cut.

4 There was one where Jackie Leffers and her husband,
5 Colonel Leffers, they had a golf membership. They
6 were one of the early purchasers on Callawassie.
7 And Mr. -- or Colonel Leffers got cancer or
8 whatever and couldn't play golf anymore and they
9 really couldn't afford the golf dues, so they came
10 and talked with Mont Blaisdell.

11 This was when the developer owned it.
12 And they wanted to stop paying golf dues and pay
13 social dues because they still wanted to eat at the
14 club but they didn't want to play golf.

15 And they told him because they had
16 supported Callawassie from almost the very
17 beginning, could they work with them on that, and
18 the developer agreed to it, so they paid social
19 dues even though they owned a golf membership.

20 Q. Okay. Were they allowed to turn in the
21 social membership eventually, or was that the full
22 extent as far as you know?

23 A. As far as I know, that stayed like that
24 was until turnover, when the members club got it,
25 and they wrote Ms. Leffers a letter and said you

1 need -- you have to start paying golf dues, and
2 their names -- as you see, they should be up there
3 on the -- that resale list, but it never was turned
4 into a social membership. It was still a golf
5 membership, and they sent her all those letters and
6 threatening, quote, letters.

7 Q. Do you know if she was paying golf
8 dues?

9 A. She was not. She was paying social
10 dues. You're talking about when the members club
11 took over? I don't know that she was paying
12 anything then. I don't know. Probably so, knowing
13 her, but I don't know.

14 Q. Probably so what? Probably she was
15 paying something or probably she wasn't?

16 A. She was probably paying the social
17 dues, and then when the members took over, I don't
18 know what -- you know, whether they were charging
19 her social or golf dues and she only paid the
20 social part or did she stop paying altogether. I
21 don't know.

22 Q. Okay. Are you aware of any lawsuit
23 being filed against her?

24 A. I heard that they were -- they were
25 going to, and the reason I heard that is because

1 there's a man named Jack Cassells who is a
2 litigating attorney -- I believe he's from New
3 York -- and as a friend to Mrs. Leffers, he would
4 present her case to the members club about not
5 charging her the golf dues.

6 But I don't know what ever came of
7 that, but that happened about every year when she
8 would get a letter from the members club, and then
9 Jack Cassells would call me and ask me questions
10 about when -- we'd have to go over everything every
11 single time from the very beginning, and so that's
12 why I remember her case like that.

13 Q. But you don't know whether or not he
14 was -- Jack Leffers was -- resolved the matter or
15 not?

16 A. I don't -- I thought and we all thought
17 that it had been resolved. When the members first
18 took over -- Karen Norwood would know all about
19 this --

20 Q. Okay.

21 A. -- because I talked to Karen Norwood
22 about it, and I believe Karen Norwood agreed that
23 she should continue with the social dues, if
24 anything but morally should, but I -- it was my
25 opinion that they were going to allow her to

1 continue with the social dues, and then the next
2 thing I know, they're sending her another letter.

3 Q. Okay.

4 A. It would seem like it was take -- to me
5 it would seem like it was taken care of for a while
6 and then either a new committee got put together or
7 a new president was elected or whatever, and then
8 the letters would start back up again.

9 Q. Did you see that a lot where the
10 individual members would be treated -- the issues
11 would change based on who the leadership was?

12 MR. YOUNG: Object to the form.

13 MR. HAIGHT: Object to the form.

14 THE WITNESS: No. I can't say that I
15 saw any changes other than -- other than there
16 would -- there would be a new idea that would come
17 out of it, like the 20 percent-80 percent rule on
18 the sale of memberships where the -- like a new
19 governing body would take over and then the next
20 thing we heard was they're going to do away with
21 the 20 percent being returned to the owner; the
22 club would keep 20 percent of the selling price.
23 That 20-80 rule where when you sold your membership
24 you got back what you paid for it or 80 percent of
25 then-selling price.

1 BY MR. MCDANIEL:

2 Q. What's your understanding of it --
3 meaning as an equity membership? Do you know what
4 that means, what --

5 A. As far as I understand it, the equity
6 membership was -- was actual ownership. Like when
7 you bought your property, you actually owned your
8 property. When you bought the membership, you
9 actually owned the membership and you could will
10 it.

11 You could sell it with your property or
12 you could keep it, that it was independent of the
13 property. It was not tied to the property and
14 that, when you sold that membership, you would
15 receive money back from the sale of that
16 membership.

17 Q. Okay. I do want to show you a couple
18 of these resale lists and get you just to -- do you
19 recognize this document I just gave you,
20 two-page --

21 A. Unfortunately. I hate this document.
22 Yes, I recognize it.

23 Q. Why do you hate this document?

24 A. Because I felt so bad for the people on
25 here.

1 Q. Why? I mean what's that -- what's
2 the --

3 A. Because it took so long, long, long to
4 sell the membership, and as my father would say, it
5 was like feeding a dead horse, like alimony.
6 You're feeding a dead horse when it was like this.

7 MR. MCDANIEL: I'd like to mark that as
8 Exhibit 1.

9 (DFT. EXH. 1, Golf Membership Resale
10 List and Social Membership Resale List, dated
11 April 6, 2005, was marked for identification.)
12 BY MR. MCDANIEL:

13 Q. Let me switch with you so you can look
14 at the one that's been marked.

15 A. Okay.

16 Q. It should be the --

17 A. Okay.

18 Q. -- same thing. It's a two-page
19 document. Can you tell me what's the difference
20 between the first and the second page?

21 A. The second page, these are the social
22 memberships that were placed on the resale list.

23 Q. All right.

24 A. It was never very long. It was only a
25 few.

1 Q. And the date on the right corner says
2 4/6/2005 on both of them; is that right?

3 A. Yes, sir.

4 Q. And does that mean that's -- what does
5 that date tell you? That's when it was created?

6 A. The date I printed it.

7 Q. Okay. If you look at the first page,
8 which we have as the golf membership resale page or
9 identifying it, the columns at the top have name
10 and then status and some things going across there.
11 Let me ask you, with the -- under the name column,
12 when it says CI Club and then a parenthesis and
13 name, what does it mean that the owner is CI Club?

14 A. That meant that the club now owned that
15 membership and the person's name that's in
16 parentheses, I kept that there as whose membership
17 the club got.

18 Q. Okay. Would that mean that that person
19 was no longer a member?

20 A. Correct, correct. The club had his
21 membership and the person was out of here.

22 Q. Can you tell from this resale list how
23 that person -- how the club ended up with that
24 membership and the person got out of here?

25 A. It was my understanding -- and let me

1 tell you that I didn't -- I didn't have any work or
2 direct knowledge or I didn't prepare any of the
3 letters or sit in on any committees or anything.

4 This is my understanding; that conceded
5 meant the owner of the membership -- like number
6 14, Mr. Knearl, he owned the membership. He was
7 probably way in arrears with his dues, and the club
8 sent him out a letter saying -- all the arrears
9 people, they supposedly sent out this letter that
10 said if you will bring your club dues current --
11 and I'm not sure if they had to pay an extra year's
12 dues. I'm not sure on that. They may have or
13 maybe they didn't, but if they would bring their
14 account up to date and agree to sign over any
15 ownership, that membership to the club, then they
16 would not pursue them in court.

17 Q. Okay.

18 A. They would not put up anything against
19 their name in the credit bureaus or anything.

20 Q. Okay. And you think they sent them a
21 letter out with that offer?

22 A. Yeah, yeah. Sure do.

23 Q. Okay. And if you skip over a few -- a
24 couple columns, it says date placed.

25 A. Uh-huh.

1 Q. That means the date they were placed on
2 the resale list?

3 A. Correct.

4 Q. Okay. And would that be the same date,
5 for these people that says conceded, that they had
6 -- that concession had occurred, that conceded
7 membership had occurred?

8 MR. HAIGHT: Object to the form.

9 THE WITNESS: The date placed is the
10 date that that membership, no matter who owned it
11 then or on this list -- that's the date that that
12 membership, not person, but the membership was
13 placed on that list.

14 BY MR. MCDANIEL:

15 Q. Okay. How were you informed -- or let
16 me ask you this: Did you place anybody on the
17 membership list with the instructions that their
18 membership had been conceded and put them on the
19 membership -- on the resale list? Excuse me.

20 A. No. The only memberships I know -- I
21 know of that got conceded were these people that
22 were already on the membership list.

23 Q. Okay. So this membership list of 93
24 people --

25 A. Uh-huh.

1 Q. -- at what point were you the one
2 putting people on this resale list?

3 A. When they first placed it on there?

4 Q. Yes.

5 A. I'm the one who did this list, started
6 this list and kept it.

7 Q. Okay. So from person one back in 19 --
8 what does it say -- 98 --

9 A. Yeah.

10 Q. -- you are the one who would have been
11 putting them in -- entered their name into this
12 resale list?

13 A. That's correct.

14 Q. Okay. And some of these go down to --
15 let's just pick one in the middle down here, number
16 31.

17 A. Okay.

18 Q. Gleberman.

19 A. Gleberman.

20 Q. Okay. And it says 12/29/99, and then
21 it has --

22 A. Yeah.

23 Q. That's one of the ones that say
24 conceded.

25 A. Yeah.

1 Q. How did you know that -- how were you
2 instructed to put that on the resale list?

3 A. I was -- now, Gleberman was already on
4 the resale list.

5 Q. Okay.

6 A. When he conceded his membership to the
7 club, I was told that he had conceded his
8 membership to the club, so that is when I would put
9 CI Club.

10 Q. Okay.

11 A. And see -- it would first be in
12 position 31 that you're looking at under
13 Gleberman's name.

14 Q. Right.

15 A. Then he concedes his membership to the
16 club, so then I changed the ownership or the --
17 well, it's --

18 Q. Owner.

19 A. That's what I was doing them by, the
20 owner, would then be CI Club, and I left Gleberman
21 in parentheses to indicate whose -- who the
22 membership belonged to because that was where
23 Gleberman was on the list when this concession
24 occurred.

25 Q. And did he first get on the list

1 12/29/1999?

2 A. He did.

3 Q. Okay. Can you tell from this list when
4 you made that change to CI Club and conceded?

5 A. The last column is typed in conceded
6 12/14/01.

7 Q. Okay.

8 A. Is that right? You've got a ruler?

9 Q. That seems to follow across, yes.

10 A. Okay.

11 Q. And so that would have been the date.

12 You would have kept the note there --

13 A. I put the note there when they conceded
14 if I had the date.

15 Q. Okay. So he was on the resale list,
16 was behind, was offered this deal, most likely. I
17 mean, I know you don't know --

18 A. Yeah.

19 Q. -- particularly with him, maybe, but --

20 A. Yeah.

21 Q. And then the club took him back and
22 said he conceded it 12/14/01.

23 MR. YOUNG: Object to the form.

24 BY MR. MCDANIEL:

25 Q. Does that sound correct, from what

1 you're seeing on the resale list?

2 MR. YOUNG: Object to the form.

3 THE WITNESS: He conceded, yeah,

4 December 14, '01.

5 BY MR. MCDANIEL:

6 Q. Okay. And so if we skip down to like

7 -- let's look at number 72, Stines.

8 A. Meredith Stines. Okay.

9 Q. And so she would have conceded hers by
10 September of '03?

11 A. Conceded, yes.

12 Q. Okay. What about -- well, what about

13 A. J. Glenn, 81?

14 A. A. J. Glenn, 81.

15 Q. It's the only one that doesn't have a
16 date placed on it. I'm just wondering if you know
17 what was --

18 A. A. J. Glenn.

19 Q. Eighty-one.

20 A. Conceded date. Why didn't I put a date
21 there?

22 Q. And do you know -- can you interpret
23 for me what that -- under the property column where
24 you had earlier been saying conceded and a date,
25 there it seems to say -- I can't really read it:

1 SL member concede?

2 A. Spring Island. He was a Spring Island
3 -- a lot of these people on this list, when they
4 purchased property at Spring Island, which is a
5 sister development to Callawassie -- Jim Chaffin
6 and his group did Spring Island, and their offering
7 to their new members was a founder membership in
8 the Callawassie Island Club, so they got a free
9 membership in the Callawassie Island Club. There
10 were 36 of them, and A. J. Glenn was one of them.

11 Q. Okay.

12 A. I don't have a clue unless that was --
13 unless this is a copy of a photo -- copy of one
14 that might have had the date written in a different
15 color --

16 Q. Right. Okay.

17 A. -- and it didn't come through because I
18 see February '90.

19 Q. And that's written in a different --
20 well, no, there's some others like that.

21 A. Well, we didn't know for the original
22 date purchased because that was done with the
23 Spring Island deal, and I didn't have copies of
24 contracts or anything from them.

25 Q. Okay. And --

1 A. And that SI is just Spring Island
2 member conceded so I would know who A. J. Glenn
3 was.

4 Q. Let's go down to 87 there. It says:
5 CI Club, Oelkers?

6 A. Uh-huh.

7 Q. And it says conceded, and then in the
8 notes it says -- I believe it says sold home.

9 A. Yeah. When he went on, he had his home
10 all -- he still had his home.

11 Q. Okay.

12 A. And then when -- if he was on this list
13 and his home sold, that's what I did, put sold
14 home, because they were trying to kind of keep up
15 with who had only a membership and who had a home
16 or a lot and a membership on this list.

17 Q. Okay.

18 A. So he put his name on the list and then
19 sold his home.

20 Q. And can you tell from this when his
21 membership was considered conceded?

22 A. No.

23 Q. Okay. But it would be your
24 understanding that Oelkers would no longer be
25 paying, would be no longer --

1 A. Right.

2 Q. -- owning that membership?

3 A. He was no longer a -- that's correct.

4 Q. Okay. Even though he's on the resale
5 list?

6 A. Uh-huh.

7 MR. YOUNG: Object to the form.

8 BY MR. MCDANIEL:

9 Q. And then there's a one, two, three,
10 four, five, six, seven, eight, nine, ten, eleven --
11 I see 14, that I'm counting up, say expelled, and
12 then of course that's the number you have at the
13 top too.

14 A. Oh, good.

15 Q. Thirty-one -- yeah. You've got it
16 totaled there for us. Thirty-one conceded.

17 A. Uh-huh.

18 Q. The ones that are expelled, is it -- I
19 was a little confused. I thought earlier you said
20 you don't recall any litigation with the members.

21 A. Yeah. I don't.

22 Q. Okay.

23 A. I wasn't part of that. I was just
24 informed when they were expelled, and it was my
25 understanding that they had taken this membership

1 rather than being given this membership.

2 Q. Okay. And you understand they've done
3 that 14 times --

4 A. Uh-huh.

5 MR. HAIGHT: Object to the form.

6 BY MR. MCDANIEL:

7 Q. -- at least according to your resale
8 list. Were you instructed about the expelled
9 members as to -- how were you informed as far as
10 put this person on the resale list, their
11 membership, and indicate that they're expelled?

12 A. I believe sometimes I got a note.
13 Sometimes I was called.

14 Q. Okay.

15 A. Sometimes something would come in to be
16 put in a file that I would see it, but I was
17 usually told about it.

18 Q. But you weren't part of the process --

19 A. No.

20 Q. -- of informing them or --

21 A. No, sir.

22 Q. -- having any member expelled?

23 A. No, sir. I was not part of any of
24 that.

25 Q. Okay. And you don't know the grounds

1 under which any of these people were expelled?

2 A. I do not. Never saw any legal
3 documents at all.

4 Q. Okay. And according to this resale
5 list, that that occurred up through -- well, do you
6 know, from this -- let me ask you about, let's say,
7 92, Shaw, William Shaw. Why does it have CIC,
8 beside that name? Do you know?

9 A. Number 92?

10 Q. Yes.

11 A. Oh, because it's CIC. Oh. I don't
12 remember. I don't remember. I don't know why I
13 put CIC instead of CI Club. That's a good
14 question. I don't know.

15 Q. Okay.

16 A. Sitting here now, I would say that it
17 was CI Club and for some reason I didn't put it
18 that way.

19 Q. Well, that was in -- it looks like it
20 was -- date placed was 2005.

21 A. Uh-huh.

22 Q. Were you still there -- you were still
23 there in 2005, I think?

24 A. 2005, February. Let me -- oh, I'd have
25 to count back again. What was it? 2008, February.

1 April 2008, that was when I went to work for Spring
2 Island, so 2005, that -- trying to think if I was
3 doing that list -- this list in 2005 even. Because
4 I had to have done this list. So if that was it --
5 I remember Jan Singer coming on the list.

6 Q. Why do you remember her?

7 A. Because she was a friend of Jan
8 Johnson.

9 Q. So was there any special issue with
10 her?

11 A. No. The issue I'm trying to think of
12 is -- I'm trying to think of --

13 Q. Trying to get your dates?

14 A. -- when I put the -- yeah. When I --
15 exactly. When I put Shaw on this list. See --
16 see, there's no agent listed there. There's no
17 agent's initials listed there, and I always put the
18 agent, who the agent would be.

19 Q. Do you know who took this over, who --
20 did you train anybody, or do you have any idea who
21 might have taken this over once you left?

22 A. I didn't train anybody. What I
23 probably did was gave them the disk, gave them a
24 disk of this, of this list, and then they could
25 print it out.

1 Q. Do you know who that would have been?

2 Do you have an idea?

3 A. Yeah. The girl I'm trying to remember
4 the name of. Like Susan Livingston, was that it?
5 Something like that. She was -- was it her? I
6 e-mailed -- no, not e-mailed. I believe I copied
7 the disk. I copied -- I copied onto a disk all the
8 documents that I had for these files, like a list
9 of who all the members were and what their
10 certificate number was and when they bought.

11 Q. Okay. And gave it to --

12 A. Yeah.

13 Q. Who did you give it to? That's who
14 you're trying to remember?

15 A. Yeah. That's who I've been trying to
16 remember.

17 Q. Well, think about it, and maybe if we
18 go on to something else --

19 A. Okay.

20 Q. -- it might come to you.

21 A. Okay.

22 Q. Do you remember a club member being in
23 England, a club member that lived in --

24 A. George H-A-L --

25 Q. Hal?

1 A. There was, I think, a Hal --
2 H-A-L-L-A-S. He was in England, and then there was
3 Harrold Bowen. He was in England.

4 Q. Do you know whether or not these --
5 either of those folks had any arrangement so that
6 they didn't pay -- so they paid something other
7 than full --

8 A. Yeah. There was -- these were Spring
9 Island people, Hallas and Harrold Bowen, and the
10 other Spring Island people on here, they didn't
11 have to pay dues, and then -- but, see, that was
12 part of their founder membership, was that they got
13 their certificate and they didn't have to pay dues
14 for --

15 Q. And so when the club changed over to
16 the --

17 MR. HAIGHT: Brian, I will object to
18 you cutting her off when she's still trying to
19 answer the question.

20 MR. MCDANIEL: I didn't mean to cut her
21 off.

22 BY MR. MCDANIEL:

23 Q. Go ahead.

24 A. He -- the plan allowed for them to get
25 this certificate, and then they didn't have to pay

1 dues on it until there came such a time as the club
2 would determine that they had to pay dues or they
3 could resign and just resign and that would be it.

4 Q. Who made that arrangement with them?

5 A. That arrangement was done by Jim,
6 Chaffin/Light, and Dr. LaMotte when they did Spring
7 Island.

8 Q. Did either of these two continue to be
9 members after the members took over?

10 A. They were members until the club wanted
11 them to pay dues.

12 Q. And then what happened?

13 A. I'm not specifically sure about either
14 one of those two particular guys, but a lot of them
15 -- most of them resigned, went to -- were done with
16 the club.

17 Q. Okay. When did that occur? Do you
18 know when the -- was that all about the same period
19 of time, or was that --

20 A. That was when Mr. Anthony was there,
21 towards the end of his -- he was there from '95 to
22 2000, '95 to 2000, 2001. He was there six years,
23 so it was -- it could have been around 2002.

24 Q. So I am correct in understanding --

25 A. About then.

1 Q. Sorry -- that it was the -- that
2 occurred when the members took over, or was that a
3 -- was that the --

4 A. I believe the members had -- had taken
5 over when this occurred.

6 Q. And they were requesting that these
7 Spring Island folks start paying dues?

8 A. Right, correct.

9 Q. And there was some correspondence with
10 them saying you either have to pay dues or resign?

11 A. I don't know about or resign part, but
12 they did -- they were told they had to start paying
13 dues.

14 Q. Okay.

15 A. Some of them put their membership on
16 this list, but there were some of them who read the
17 documents and found that they could resign without
18 having to sit on this list and pay dues; that they
19 could just resign their membership and go on their
20 merry way.

21 Q. Okay.

22 A. That was their documents that allowed
23 them to do that. That was part of the 36 founder
24 memberships that was given to these Spring Island
25 purchasers.

1 Q. Okay.

2 A. Spring Island property. They did not
3 have a restaurant over there on Spring Island, so
4 -- or the golf course wasn't done or anything, so
5 that's why they -- these 36 founders were given the
6 membership for Callawassie, so that they could play
7 golf and eat and all that over here, over at
8 Callawassie.

9 Q. Are you aware of any of the discussion
10 about whether or not they could resign?

11 A. Yes. There was discussion about it. I
12 heard discussion about it.

13 Q. What did you hear? I mean, what was
14 the --

15 A. Some of them just sent a letter and
16 said I'm done. I'm resigning my membership, I'm
17 done. There were others who were on the list. I
18 don't think they knew they could do that.

19 Q. Okay. What was the club's position as
20 far as you knew with regard to whether or not they
21 would allow these people to resign?

22 A. I am not sure what the club's --
23 Callawassie club's thoughts were on that. The
24 Spring Island documents were clear that they could
25 resign without paying dues. Whenever they were

1 told they had to pay dues, they could send back a
2 letter that says strike me off your membership
3 rolls.

4 Q. Okay.

5 A. I'm not sure that there was a letter
6 sent to the Spring Island members that said you
7 have the option of saying good-bye or bring up what
8 you owe us. I don't remember that.

9 Q. Do you recall a letter going to them
10 saying you need to start paying dues, something of
11 that --

12 A. Something of that nature, yes.

13 Q. Okay. And some of them did start
14 paying dues?

15 A. I think some did.

16 Q. Okay. And some didn't; some said
17 they're out?

18 A. Yeah. That's correct.

19 Q. Okay.

20 MR. YOUNG: Can we go off the record
21 for a second?

22 (Off-the-record conference.)

23 BY MR. MCDANIEL:

24 Q. All right. On the resale list,
25 Exhibit 1, is there a way to identify those persons

1 that were Spring Island people? I know you had
2 that S -- I think you identified one there because
3 it had an SI.

4 A. Uh-huh.

5 Q. Other than that do you know, from that
6 document, that you could say these are Spring
7 Island people?

8 A. There's an SI on number 5, Neal Harris.

9 Q. Okay. That's under the agent column?

10 A. No. That's on the property. If you go
11 -- well, too, yeah, it is under agent.

12 Q. Okay. I see. And then --

13 A. And property.

14 Q. And 22? Is that?

15 A. Let's see.

16 Q. Bowen?

17 A. Yeah. That's Harrold Bowen with two Rs
18 in Harrold. Yeah. He was Spring Island, yeah.

19 Q. Okay. So under the --

20 A. Gleberman.

21 Q. Let me ask you, in the agent column --

22 A. Uh-huh.

23 Q. -- sometimes it has that S -- might be
24 SI. Is that going to be Spring Island?

25 A. Yes, it is. SI is Spring Island.

1 Q. Does that mean everywhere the agent
2 says Spring Island, that that would be a Spring
3 Island property?

4 A. That was -- no. That was a Spring
5 Island founder member.

6 Q. Okay. A Spring Island founder member.
7 Why is that listed under agent? I guess what's
8 agent represent?

9 A. Because agent was the member's sales
10 agent that sold them their property or was handling
11 the sale of his property. That was -- it was like
12 every -- every owner or member in Callawassie was
13 assigned an agent, and it was that agent's
14 responsibility keep the owner or member -- whenever
15 he had any questions or needed any help or so
16 forth, that that was who would help that person.

17 Q. Okay. So you could identify that agent
18 by these two initials?

19 A. Yes.

20 Q. So who is GA?

21 A. Geoffrey Applegate.

22 Q. And EP?

23 A. That's me.

24 Q. Oh, okay. So you were acting as an
25 agent for some of these folks?

1 A. Only because their other agents had
2 left and the present agents didn't know them or
3 didn't have anything to do with them or they didn't
4 want to deal with anybody.

5 Q. Okay. And what about where it says, in
6 number 71, CIMC as the agent?

7 A. Callawassie Island Club, Jones. If I
8 could remember, Jones -- Jones -- was that --
9 Jones. Was that Paul Jones? Either -- the only
10 thing I could think of why I would have done that
11 is because they didn't have an agent or their agent
12 had gone or they didn't want any part of the sales
13 guys and the membership was conceded, so -- and I
14 liked to have the agent in that list so I probably
15 put club because I don't know Mr. Jones. I can't
16 think of him. I want to say Paul Jones, but that
17 could be only because he was John Paul Jones.

18 Q. Okay.

19 A. I can't remember his name, but that --
20 Callawassie Island Members Club was who I thought
21 CIMC is, so I can't give you a real hard, stand-up
22 reason why I put CIMC instead of SI or LA or
23 whatever.

24 Q. Okay. I think I have another copy of
25 this, but let me hand you a different document.

1 A. Okay.

2 Q. You can look at that for a second. I
3 think I've got another one.

4 MR. HAIGHT: That's fine. We've seen
5 this.

6 MR. MCDANIEL: I want to mark this as
7 Defendant's Exhibit 2.

8 (DFT. EXH. 2, Letter from J. Richard
9 Carling to Mr. and Mrs. Bernard F. Carpenter dated
10 February 19, 2007, was marked for identification.)
11 BY MR. MCDANIEL:

12 Q. I believe this was sent at a time after
13 you were not there, but I'm not sure. Do you
14 recognize that document?

15 A. No. I was not in February of 2007. I
16 never had any dealings with the Carpenters with any
17 of this amounts owed or anything. Of course when
18 they bought -- purchased their property, I took
19 care of all their paperwork for them. Lee Allen
20 was their agent. I don't recall -- if they stopped
21 paying dues, I was never aware of it.

22 Q. Okay. Are you familiar -- is this a
23 form letter? Have you seen this type of letter
24 before, or is -- you recognize the format of that
25 letter?

1 A. I don't recognize this as being a chain
2 letter.

3 Q. Okay. Did you send out letters similar
4 to this to members?

5 A. No. No, sir. I did not. I was not
6 any part of this money -- I was not a part of the
7 money.

8 Q. Okay. So if members were late with
9 dues, you wouldn't have been -- at any point in
10 time while you were there, you wouldn't have been
11 sending out letters like this?

12 A. No, no.

13 Q. Who did that while you were there?

14 A. I would be guessing that Craig Simonson
15 probably was doing that.

16 Q. Okay. But you don't know for sure?

17 A. In conjunction with the members club.

18 Q. Okay.

19 A. Because at this time they were -- they
20 had taken over all of that sort of thing.

21 Q. Okay. And just to clarify for the
22 record, this -- we've marked as Exhibit 2, it also
23 has a Defendant's Exhibit 3 from a previous
24 deposition in the left corner, but the Exhibit 2 is
25 in the right corner.

1 And take a second, if you would, and
2 read the letter.

3 A. Uh-huh.

4 Q. I want to ask you if your understanding
5 is this was the -- an accurate description of club
6 policy at the time you left.

7 A. I know during this time that they --
8 that the club was tightening up on members whose
9 accounts were lagging behind.

10 Q. The question I have about it is more is
11 it -- particularly the -- just looking at the first
12 two paragraphs where he is -- where it appears to
13 lay out the rule that states: Any member whose
14 account is not settled within the four-month period
15 following suspension shall be expelled from the
16 club.

17 And it goes on and there's additional
18 to that, but is that paragraph -- was that your
19 understanding of the policy, the club policy, at
20 that time?

21 MR. YOUNG: Object to the form.

22 BY MR. MCDANIEL:

23 Q. And I say at the time you were there, I
24 mean?

25 A. I don't remember the -- when the

1 developer was there, I don't remember the developer
2 doing anything like this. He may have, but I don't
3 remember it, but I do know that there came a period
4 of time when the club, when they took over this
5 club membership dues accounting, that that's when
6 all of these letters started going out to members
7 that owed them money.

8 They made a very hard -- a very hard
9 stab at trying to get either people to pay or get
10 these memberships, but they really wanted people to
11 pay. They didn't want to take the memberships if
12 they could help it because they needed that money
13 to come into the club.

14 Q. Let me hand you a few documents here
15 and see if you -- I'm going to hand you three
16 documents and represent to you it's the -- one says
17 the August '01 general club rules --

18 A. Okay.

19 Q. -- the June 2001 bylaws, and the August
20 '01 plan for offering of memberships.

21 A. I remember these documents.

22 Q. Okay. And do those represent the
23 governing documents of the club at the time you
24 were there?

25 MR. HAIGHT: Object to the form. She

1 just testified she was there for 20-some-odd years.

2 You're giving her the documents from 2001.

3 THE WITNESS: Yeah. I was -- I was

4 there. I will admit it. I was there.

5 Yes. These documents look familiar.

6 BY MR. MCDANIEL:

7 Q. Okay. And so let me, if I can, get you

8 to go to the -- in the club rules --

9 A. Right.

10 Q. -- which is I think is the -- yeah.

11 This one --

12 A. Okay.

13 Q. -- where it says 13.1.1 or -- yeah,

14 13.3.1, club rules.

15 A. 13.3.1, delinquencies. There were a

16 few people, when the developer was there, that were

17 suspended from using the club facilities because

18 they were in arrears.

19 Q. Okay. The end of that, the last

20 sentence of that first 13.3.1 --

21 A. Uh-huh.

22 Q. -- says: A member whose account is not

23 settled within the four-months period following

24 suspension shall be expelled from the club.

25 And that seems to be the same.

1 A. Yes. That letter is stating pretty
2 close.

3 Q. Seems like he's quoting that section.

4 A. Yes.

5 Q. That's the part I was going to ask you
6 about, is are you aware, is that the policy at
7 least at the time of these rules -- of these rules
8 that was in effect for club membership?

9 MR. YOUNG: Object to the form.

10 THE WITNESS: I do not remember any --
11 any expelling of memberships. The developer did
12 not want back a membership. No, he did not want to
13 get back a membership because he had a lot of
14 memberships already that he hadn't sold, so they
15 did, I want to say, anything they could do to keep
16 from getting these memberships back into his
17 pocket, but I don't mean that -- that he would go
18 and do illegal things by saying that. That was
19 just his motivation. He didn't want to get back
20 the membership.

21 And I remember that there were some
22 people whose -- who owed a lot of money, but I
23 never saw any membership that came back through me
24 that was taken back.

25 BY MR. MCDANIEL:

1 Q. Well, what about all the ones on the
2 resale list? I mean, we've got --

3 A. When the -- yeah.

4 Q. -- 14 different ones on the resale list
5 that say expelled.

6 A. Until this time when the members took
7 over. I'm talking when the developer was there. I
8 don't remember that.

9 Q. But you maintained that --

10 A. All of these -- yes, I did. I
11 maintained this list, but these expelled -- to the
12 best of my memory, these expellings and conceded
13 happened on this -- were put here on this list
14 after the members took over. The owner was on
15 here, and when the members took owner -- took over,
16 then they sent them these letters that you're --

17 Q. Okay.

18 A. And at that time -- see, it might have
19 been to -- this guy was on here, Butcher, say
20 Butcher was on here since 1999 or -- no. Bankson,
21 where it says expelled, may have been on here in
22 1999, but his membership -- he wasn't expelled
23 until '03, so '03 was when I typed in expelled and
24 put '03 over here.

25 Q. Okay. So who would have told you --

1 who would have directed you to type in expelled?

2 A. The members club -- oh, thank you.

3 The members club would have told me.

4 The members club would have told me.

5 Q. And I'm pretty sure you said you don't
6 know the basis for that, but is that right? Do you
7 know the basis for how they determined to expel
8 those folks?

9 A. How -- yes. They expelled those folks
10 -- yeah -- because they owed so much money and they
11 couldn't get any satisfaction from the -- from the
12 members, so they -- that was where they had to go
13 through attorneys to get the membership back.

14 Q. Okay. But can you say for certain as
15 to these people that they used an attorney for each
16 one of those folks?

17 A. No. I can't say that because I never
18 saw any -- any kind of documentation that was sent.
19 I wouldn't know it if you show -- if you had it in
20 a stack in front of me.

21 Q. That was your assumption of what had
22 happened; is that right?

23 A. Exactly.

24 Q. Okay. Are you aware of -- and I'll
25 give you a chance to look through these documents

1 -- any other provisions that deal specifically with
2 delinquency?

3 Let me back up. Are you familiar with
4 the documents that I've given you?

5 A. I used to be very familiar with them.

6 MR. MCDANIEL: Okay. And let me mark
7 them separately. I want them as 3, 4, and 5, if I
8 can, so we can document them.

9 (DFT. EXH. 3, The Callawassie Island
10 Club Members, Inc. Plan for the Offering of
11 Memberships, was marked for identification.)

12 (DFT. EXH. 4, The Callawassie Island
13 Club Members, Inc. General Club Rules, was marked
14 for identification.)

15 (DFT. EXH. 5, Callawassie Island
16 Members Club By-Laws, was marked for
17 identification.)

18 BY MR. MCDANIEL:

19 Q. All right. And we've marked the plan
20 for the offering as 3, the general club rules as 4,
21 and the bylaws as 5.

22 A. Uh-huh. Okay.

23 Q. In this case I'm trying to figure out
24 what governing documents control delinquent
25 members. That's one of the issues in this case,

1 that members gets delinquent, and we're trying to
2 determine what should happen to them. Can you tell
3 me, as best you can, and you can look through the
4 documents, where in the governing documents -- what
5 provisions would you point somebody to to determine
6 that?

7 MR. YOUNG: Object to the form.

8 THE WITNESS: Well, I would -- if I was
9 having that discussion with someone, I would do
10 exactly what you said just a second ago, go look on
11 paragraph -- was it 13 point -- whatever point
12 whatever.

13 BY MR. MCDANIEL:

14 Q. 3.1?

15 A. Yeah. I would send them a copy of it
16 if they were not in my office or I'd make them a
17 copy of it, wherever it is. I don't think it's in
18 the rules, is it?

19 Q. It's in the -- yeah. It's in the
20 general club rules, is where you were looking at.
21 It's right here.

22 A. That would be one. Is it not in the --
23 in the offering?

24 Q. If you would look, just take a look and
25 see if you see somewhere that deals with

1 delinquency, I'd appreciate it.

2 A. How about, under the plan for the
3 offering, there's 5.5 on page 7, talks about liens.

4 Q. Okay. All right. That 5.5 where it
5 talks about the right to lien the membership?

6 A. Uh-huh. Right.

7 Q. Okay.

8 A. And all such liens may be foreclosed by
9 the club.

10 Q. Okay. Is there anywhere else in that
11 -- in the plan for offering that you see that deals
12 with that?

13 MR. YOUNG: Object to the form.

14 BY MR. MCDANIEL:

15 Q. That deals with the delinquency issue?

16 MR. YOUNG: Object to the form.

17 THE WITNESS: I don't believe it's in
18 the bylaws -- in the bylaws. Well, might check the
19 bylaws.

20 BY MR. MCDANIEL:

21 Q. Okay.

22 A. They always have just one little
23 paragraph usually in there about something, but
24 it'll be in several documents.

25 Q. And I would suggest to you, the bylaws

1 I found one, one section, that I'd just point out
2 to you in the bylaws where --

3 A. Yeah.

4 Q. It's Article 11, it says delinquencies,
5 and it indicates the same issue about liens.

6 A. That's correct.

7 Q. Okay. Is there anywhere else? Can you
8 flip through those bylaws and see is there anywhere
9 else that you're aware of that deals with the issue
10 of delinquencies of membership dues?

11 MR. YOUNG: Object to the form.

12 THE WITNESS: Without reading every
13 single word in each of these, I don't know that
14 there was many more mentions of it.

15 BY MR. MCDANIEL:

16 Q. Okay. And --

17 A. There may be. But I think that's as
18 far as I probably went whenever I was talking with
19 someone about it.

20 Q. Okay.

21 A. Or if --

22 Q. And I think we found the one provision
23 about the delinquencies in the plan for offering
24 and one at -- and that was in the plan for offering
25 at 5.5 where it talks about liens and then in the

1 bylaws we found one at Article 11, delinquencies,
2 and then in the -- in the club -- general club
3 rules 13.3 seems to discuss that issue.

4 A. That's correct.

5 Q. Do you know of anywhere else? I know
6 you said you didn't read every word in it, but do
7 you know anywhere else where that's the -- topic
8 comes up?

9 MR. YOUNG: Object to the form.

10 THE WITNESS: Not -- not specifically
11 without looking through each page.

12 BY MR. MCDANIEL:

13 Q. Okay. Well, do that for me with the
14 club rules.

15 A. Okay.

16 Q. Just flip through the pages. You don't
17 have to read the words --

18 A. Okay.

19 Q. -- but at least look at the headings.
20 Maybe you can direct me to where --

21 A. Okay.

22 Q. -- else I might want to look. It's
23 kind of become an important issue for the case as
24 to --

25 MR. HAIGHT: Object to the form.

1 BY MR. MCDANIEL:

2 Q. -- what the issues of the -- what the
3 governing documents say for the members.

4 A. Oh, okay.

5 MR. YOUNG: Objection.

6 THE WITNESS: Did they not have any --
7 there wasn't anything in the covenants about this?

8 BY MR. MCDANIEL:

9 Q. Well, that's a different issue than
10 what I'm asking you about. If you know something
11 about that you want to bring up, that's fine. You
12 can't ask me --

13 MR. HAIGHT: I'll object to the form of
14 that statement. It's not a different issue.
15 They're much the same issue.

16 MR. MCDANIEL: It's a different issue
17 than what I'm asking her about. If you want to
18 bring in things about the property owners
19 association, you know --

20 MR. HAIGHT: Again, beg to differ.

21 MR. MCDANIEL: -- I'm not disputing you
22 can do that.

23 BY MR. MCDANIEL:

24 Q. But what I'm asking you about is these
25 -- the three documents you have, what's the --

1 what's in there that you can find where the
2 headings -- where would I look?

3 A. Right.

4 Q. We've pointed out the two places, the
5 bylaws and the plan for offering --

6 A. Right.

7 Q. -- and then the 13.3, and I wondered if
8 you see anywhere else.

9 A. Well, they talk about suspension and
10 expulsion under 14.2 of the club rules.

11 Q. Okay. Reprimand, suspension,
12 expulsion, and termination of membership, that
13 heading?

14 A. Correct.

15 Q. Okay.

16 A. That's about all I know out of that
17 one.

18 Q. Okay. And that's good. You mentioned
19 or it came up about the covenants. Who do the
20 covenants apply to?

21 MR. YOUNG: Object to the form.

22 THE WITNESS: That goes with the land.

23 BY MR. MCDANIEL:

24 Q. Okay. Are all members land holders?

25 A. No. Bunch of these members sold their

1 property and have no land.

2 Q. Okay. So if a member is not a land
3 holder, do they then, do you believe -- is it your
4 belief that they are then subject to the covenants?

5 MR. YOUNG: Object to the form.

6 THE WITNESS: The covenants -- I can't
7 remember if the covenants have anything in there
8 about the membership or not.

9 BY MR. MCDANIEL:

10 Q. Okay. When --

11 A. So if it does -- so the covenants went
12 with the land, but we gave covenants to people with
13 memberships, made sure everybody had covenants.

14 Q. Let's say somebody was just coming in
15 to buy a membership and they weren't buying a piece
16 of property. Do you know of any document where
17 they would agree to the covenants? I mean --

18 A. I don't know what you're saying there.

19 Q. You don't have to be a property owner
20 to be a member of the club, right?

21 A. Correct.

22 Q. You can --

23 A. Because of this.

24 Q. Well, not just because of that. I can
25 go in and ask to buy a membership in the club

1 today, right?

2 A. Oh, yeah.

3 Q. And I don't have to buy a piece of
4 property, right?

5 A. Oh, I don't know. I don't know what
6 the rule is now.

7 Q. Okay. Well, when you were there?

8 A. When I was there, yeah, we'd love to
9 have you come buy a membership.

10 Q. Right. I mean, you were marketing to
11 outside to try to get members --

12 A. Right.

13 Q. -- who weren't property owners,
14 correct?

15 A. That's correct.

16 Q. Okay. And so for those people, they
17 wouldn't be bound by the covenants, would they?

18 MR. YOUNG: Object to the form.

19 THE WITNESS: The marketing -- for the
20 memberships I don't remember specifically marketing
21 for memberships. Everything that I remember on
22 marketing was for the whole island as a whole and
23 not for a specific membership. It was a -- like a
24 package.

25 BY MR. MCDANIEL:

1 Q. Okay.

2 A. Okay. The covenants went with the
3 land, but if someone came to buy just the
4 membership, we gave them the covenants and we asked
5 them to sign a paper that said they got the
6 covenants.

7 Q. Okay. And did that -- I'm sorry. You
8 weren't finished?

9 A. And I was just going to say that I
10 can't remember anything in the covenants about
11 membership, but I just have this mantra or whatever
12 is the word going in my head covenants, rules, so
13 that's why I say or ask if there's membership in
14 the covenants. If there's not, then...

15 Q. Okay. You know of specific covenants
16 that deal with delinquency issues for the club?

17 A. No, I do not.

18 Q. Okay. And do you know whether or not
19 club members strictly as club members, not whether
20 they buy property -- okay? If I go in today and
21 buy without buying a property, do I have to agree
22 to the covenants?

23 A. No.

24 Q. Okay. What about when you were there?
25 I meant to phrase it when you were in charge or

1 when you were in position.

2 A. They wouldn't have to agree with it or
3 disagree with it or anything. It was simply given
4 to them so that they would understand how the
5 island worked, not the membership.

6 Q. Right. It was information?

7 A. Correct.

8 Q. Okay. And it wasn't a condition of
9 membership?

10 A. No, it was not. This was simply to get
11 them to be aware that if they saw a lot they would
12 like to buy and wanted to build a house, all that
13 information is in the covenants about what you can
14 build, et cetera.

15 Q. Okay. Other than these three documents
16 that you looked at, at that time, in 2002 let's
17 say, after these seemed to be dated, do you know of
18 any other documents that a club member would have
19 looked to to -- for governance of their membership?

20 A. No, sir.

21 Q. Okay. Do you know of any changes to
22 these documents while you were there?

23 A. I think I saw it in here, maybe on the
24 last page, where they said that if you bought
25 property you had to buy a membership. It was --

1 it's an amendment, but I don't know which one it's
2 to.

3 Q. Okay. But it's attached to there. It
4 might be amended at a later date?

5 A. It would have been attached to here.
6 Any amendments -- this is an addendum to the plan
7 here.

8 Q. I see. Okay. And the last thing I
9 want to ask you about is if we go back to this
10 13.3.1, would you agree that it's a fair reading of
11 this, that last sentence particularly of that first
12 paragraph, that a member would expect that they
13 would be expelled from membership after being
14 delinquent for four months?

15 MR. HAIGHT: Object to the form.

16 THE WITNESS: And what's your question
17 again?

18 MR. MCDANIEL: I'll give you -- sorry.

19 MR. YOUNG: I'll go ahead and object to
20 it before there's a question.

21 MR. MCDANIEL: I understand you guys
22 have an objection to the question that I'm about to
23 ask. That's fine with regard to these paragraphs.

24 BY MR. MCDANIEL:

25 Q. As to that last sentence, would it be a

1 fair understanding of that sentence, and I'll let
2 you read that -- I mean that whole section, that
3 whole paragraph, if you'll like a minute to read it
4 -- that the member would expected that they would
5 be expelled from membership after being delinquent
6 for four months?

7 MR. YOUNG: Objection.

8 THE WITNESS: I don't know what the
9 member would think because most -- in most cases
10 that I know about, I don't think they had a clue
11 that they would be expelled after four months.

12 BY MR. MCDANIEL:

13 Q. Okay. Well, let me ask you just from
14 your reading of that. What do you think that means
15 when you read that?

16 MR. YOUNG: Object to the form.

17 THE WITNESS: The way I understand this
18 is that if they don't settle their accounts in four
19 months, they're going to lose their membership.

20 MR. MCDANIEL: Okay. Thank you.

21 That's all I have.

22 MR. HAIGHT: We do have some.

23 MR. MCDANIEL: So they do have some.

24 MR. HAIGHT: Let's take a break.

25 (A recess transpired.)

EXAMINATION

BY MR. HAIGHT:

Q. I'm Rick Haight. Bill Young and I here represent Callawassie Island Members Club, and Mr. McDaniel's had a chance to ask you a few questions. We just have a few kind of follow-up questions that we wanted to ask about.

The first is Mont Blaisdell; how do you spell his name?

A. B-L-A-I-S-D-E-L-L.

Q. And Mont, is that a nickname for something else?

A. Montgomery.

Q. But he went by Mont?

A. Yes.

Q. And who did he work for?

A. He worked for Jim Light, Chaffin, and Dr. LaMotte.

Q. So he worked for the developer?

A. He did.

Q. Did he at any time work for the Callawassie Island Members Club?

A. If he did, I'm not aware of it.

Q. To your knowledge was he even a member of the club?

1 A. I don't think he was a member of the
2 club. He had an opportunity to be a member of the
3 club, but I don't think he elected to.

4 Q. Okay. During the course of your
5 deposition when you've mentioned him, who would he
6 have been acting for: The developer or the club?

7 A. Well, certainly the developer until
8 after turnover, but I know he was involved somehow
9 because he had lots of meetings with the club
10 members.

11 After the turnover he did have -- he
12 was in some meetings with them, but I don't know if
13 he had any part of the Callawassie Island Members
14 Club committees or any of that sort of thing. I
15 don't know which function he served in with them.

16 Q. Okay. But when accommodations were
17 made for people like the Spring Island founders
18 members, those were accommodations made by the
19 developer, correct?

20 A. Yes.

21 Q. Those were not made by the club?

22 A. The exact -- what exactly are you
23 referring to when you say accommodations?

24 Q. Well, you said that the Spring Island
25 founders members were allowed to basically decide

1 they didn't want to pay anything, could give up
2 their memberships.

3 A. Yes. That was part of the deal.

4 Q. And I believe you testified that they
5 had that right under the Spring Island documents,
6 correct?

7 A. Yes. That they were given in the
8 Spring Island documents.

9 Q. And those were documents prepared by
10 Chaffin/Light, correct?

11 A. Correct.

12 Q. And Chaffin/Light was the kind of
13 parent entity of both developments, correct?

14 A. Correct.

15 Q. And that's not anything that the club
16 had anything to do with?

17 MR. MCDANIEL: I'm going object, if I
18 can, just -- you said the club --

19 BY MR. HAIGHT:

20 Q. The Callawassie Island Members Club.
21 I'll be more specific.

22 A. Say your question again.

23 Q. The Callawassie Island Members Club,
24 did they have any hand in offering the Spring
25 Island members, founders members, the opportunity

1 to resign their memberships?

2 A. No, they didn't have a hand in that. A
3 document that the Spring Island founders had -- and
4 I'm not sure if it's in one of those documents
5 there -- saying that they -- it's in a document
6 that they could give up their membership or pay
7 dues. I'm trying to --

8 Q. And again, that was a Chaffin/Light
9 document?

10 A. Yes. That's what I'm trying to think,
11 was where was that document, and I think that the
12 members club had to accept that. They -- the
13 members club couldn't arbitrarily go to those guys
14 and say, okay, you're going to have to pay to be a
15 member of this club until your membership sells.

16 My understanding, and I read it in a
17 document that the members received -- and I'm not
18 sure it is in the club rules there, but when those
19 36 people became founder members, it was in their
20 contract, I think it was, that when the club
21 turnover occurred they could pay dues or resign
22 their membership and no longer be a member.

23 Q. Okay.

24 A. I believe it's in their -- their
25 documents.

1 Q. By their documents, you mean what?

2 A. Spring Island documents.

3 Q. And earlier you talked about the
4 Leffers?

5 A. Yes.

6 Q. And you talked about a deal that they
7 had to pay at a social membership rate even though
8 they held a golf membership?

9 A. Right. That was done under the
10 developer.

11 Q. Okay. That was done by Mont?

12 A. Correct.

13 Q. Now, throughout your testimony when
14 we've heard you refer to Mont, is that pretty much
15 synonymous with developer?

16 A. Yes. I looked to -- yes. But also
17 after the turnover of the club and CIPOA to the
18 property owners, he was still the one that I went
19 to with any club questions I might have after the
20 turnover.

21 Q. And I believe you testified earlier
22 that when you received paychecks they were always
23 from the developer or a developer-related entity?

24 A. Right. I can't remember what the check
25 said after the turnover and when the members really

1 did physically start taking over all of the
2 different committees and so forth. I can't
3 remember who signed that paycheck.

4 I think it still came from accounting,
5 from the developer's -- who the developer used to
6 pay us, Craig Simonson and the accounting office,
7 that's where my check came from even after
8 turnover, came from there, so I didn't pay that
9 much attention to it as to what account it was
10 drawn on.

11 Q. Okay. Now, are you at all familiar
12 with the amended and restated covenants for
13 Callawassie?

14 A. Somewhat.

15 Q. Let me just show you this, and I
16 realize --

17 A. Uh-huh.

18 Q. -- it's a thick document.

19 A. Uh-huh.

20 Q. And I'm not going to make it an
21 exhibit. Just wanted to see --

22 A. Uh-huh. Yeah. I remember this.

23 Q. -- if you were familiar with it.

24 A. Uh-huh.

25 Q. Okay. Is that something that you would

1 have read at some point or you would have had to --

2 A. Oh, yes.

3 Q. -- refer to it at various points?

4 A. Yes to both of those questions, yes.

5 Q. Is this what you would give copies to
6 owners or prospective owners? When you said you
7 were putting that packet together, is this --

8 A. Absolutely.

9 Q. -- one of the things you gave them?

10 A. Absolutely. Because it was some --
11 it's made very clear to me, when you buy property,
12 you're not buying the property; you're buying this.

13 Q. And by this you're talking about the
14 covenants that are --

15 A. Correct.

16 Q. -- recorded --

17 A. Right.

18 Q. -- over across the street at the
19 courthouse?

20 A. That's right.

21 Q. Okay. Now, you probably had it in a
22 fancier folder or something.

23 A. No. It was just like that.

24 Q. Do you ever recall reading this
25 language --

1 A. It is in here.

2 Q. -- on page 74 of the covenants? This
3 would be Article 7, Roman numeral VII, Section 2.
4 If you could, take a minute to refer to that, and
5 let me know if that refreshes your recollection.

6 A. Yeah. I remember that. I remember
7 that.

8 Q. Now, when you would hand this to
9 somebody who was buying -- from what I understand
10 from your earlier testimony what was typical, which
11 would be somebody would buy a house or a lot and a
12 membership; is that correct?

13 A. Correct.

14 Q. When you were handing them the package
15 of materials including the covenants, would you
16 ever have discussions with those people about that
17 section, this Section 2 on page 74?

18 A. Well, we -- we would tell them that
19 they had to buy a membership when they bought a
20 property.

21 Q. Would you tell them that they had to
22 remain a member in good standing once they had done
23 that?

24 A. No, we didn't tell them that.

25 Q. But you would give them a copy of this

1 and it's there for them to read, is it not?

2 A. Yes, we would. That's correct.

3 Q. Just a minute.

4 And you're familiar with Arthur
5 Applegate?

6 A. Yes.

7 Q. And you recalled that he purchased lots
8 at the auction?

9 A. He did. Eight of them.

10 Q. And do you recall -- one, do you recall
11 if he signed any kind of contract?

12 A. He did.

13 Q. Do you recall any of the provisions of
14 that contract sitting here today?

15 A. They had to buy -- whatever lots he
16 bought, he had to buy a membership for each lot.
17 He bought a golf membership for each lot, and he
18 would get two years free dues, and at the end of
19 the two years he would have to pay dues on all
20 those memberships.

21 Q. And who did he contract with? Was his
22 contract with my client, the Callawassie Island
23 Members Club, or was it with the Callawassie Island
24 Company or some Chaffin/Light entity or -- to the
25 extent you recall?

1 A. I filled in the contracts for him on
2 those lots, as I recall. I don't remember anything
3 stating Callawassie Island Members Club. It seems
4 to me that it was all the developer, Callawassie
5 Island Company or Callawassie Island Development
6 Corporation.

7 Q. And who conducted the auction? Was
8 that something held by Callawassie Island Members
9 Club, or was that held by the developer?

10 A. That was the developer's idea.

11 Q. And the contract for --

12 A. It was Callawassie.

13 Q. -- Mr. Applegate where he didn't have
14 to pay the dues for two years, that was a contract
15 made by the developer?

16 A. I believe it was.

17 Q. Okay. And you indicated earlier that
18 that was for two years. And what would happen
19 after the two years?

20 A. He would have to pay dues on each of
21 those memberships.

22 Q. And did you tell him that?

23 A. I'm sure I did.

24 Q. The offering that was made by the club
25 -- by the club I mean the Callawassie Island

1 Members Club -- to some members to concede their
2 memberships, did you have any real involvement in
3 that?

4 A. None.

5 Q. So you were kind of on the outside of
6 that?

7 A. Oh, yes, on the outside.

8 Q. Okay. So if somebody took that offer
9 and conceded their membership, you were told about
10 it, but you weren't really aware of the inner
11 workings of what was going on?

12 A. Correct.

13 Q. You may have filed some letters, that
14 kind of thing, correct?

15 A. Occasionally, correct.

16 Q. And you made some notations on the
17 resale list?

18 A. Correct. When I was told to.

19 MR. HAIGHT: That's all I have at this
20 time. Thank you.

21 THE WITNESS: Okay.

22 EXAMINATION

23 BY MR. MCDANIEL:

24 Q. I just have one quick follow-up --

25 A. Uh-huh.

1 Q. -- question about -- when was that
2 auction with Arthur Applegate that you were talking
3 about, that Mr. Haight was asking you about?

4 A. Yeah. Mr. Aulton purchased in
5 December 16 of 2003 and purchases -- so it would
6 have been like the fall of 2003 because I have on
7 here the purchase date --

8 Q. Okay.

9 A. -- original date purchased, and I think
10 Aulton got like three lots with 12/16.

11 Q. I think we're asking about Applegate,
12 right?

13 A. Yeah. But that was all the same time
14 period.

15 Q. Okay.

16 A. Is Applegate on here? I can't
17 remember.

18 Q. I don't know at that point.

19 A. I saw it --

20 Q. I think he might on a later version.

21 A. Oh.

22 Q. But for this one -- so it would have
23 been about the same time the Aultons purchased?

24 A. Yeah. The Aultons did.

25 Q. And that was 2002 or 2003? Is that --

1 A. Two thousand -- looks like the fall of
2 2003 because they had to close within a certain
3 number of days.

4 Q. That was after the club control had
5 been turned over to the CIMC, wasn't it?

6 A. I could not be sure about that.

7 Q. Okay. Do you know whether or not
8 the --

9 A. I don't know -- I don't remember when
10 the club, CIMC, took over, what period.

11 Q. Okay. Was the developer still allowed
12 to make deals after the club took over? Are you
13 aware of whether or not he was still allowed to do
14 things like the auction?

15 A. That's a good question. I don't think
16 he did too much. He sort of just left.

17 Q. If he wanted to do this auction, do you
18 know of any mechanism, any procedure he would go
19 through? Assuming that it was after the club took
20 over, would there be --

21 MR. HAIGHT: Object to the form.

22 BY MR. MCDANIEL:

23 Q. Would there be some mechanism or some
24 person he would have to get -- that you're aware of
25 that he could consent to do that sort of auction?

1 A. I don't know the answer to that
2 question. I don't know whether he did or -- or
3 what -- I think he had to, whatever he did.

4 MR. MCDANIEL: Okay. That's good
5 enough. Nothing else.

6 EXAMINATION

7 BY MR. YOUNG:

8 Q. Ms. Padgett, if any property owner
9 member at Callawassie wants to sell their property,
10 do they have to get permission from the club to
11 place their property for sale?

12 A. Not when I was there.

13 Q. Okay. Thank you.

14 A. Ever.

15 MR. YOUNG: That's all I have.

16 (The witness, after having been advised
17 of her right to read and sign this transcript, does
18 not waive that right.)

19 (The deposition was concluded at
20 2:05 p.m.)

SIGNATURE OF DEPONENT

DEPONENT: ELLEN DAVIS PADGETT

DEPOSITION DATE: August 31, 2012

REPORTER: TRISHA M. THOMAS

CASE CAPTION: CALLAWASSIE ISLAND MEMBERS CLUB,
 INC. vs. A. APPLGATE, M. AULTON, T. BAYLESS,
 R. DENNIS, and R. MERCIER

(Please return both Signature of Deponent pages)

I, the undersigned, ELLEN DAVIS PADGETT, do
 hereby certify that I have read the foregoing
 deposition and find it to be a true and accurate
 transcription of my testimony, with the following
 corrections, if any:

PAGE	LINE	CHANGE	REASON
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SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: August 31, 2012

REPORTER: TRISHA M. THOMAS

CASE CAPTION: CALLAWASSIE ISLAND MEMBERS CLUB,
 INC. vs. A. APPLGATE, M. AULTON, T. BAYLESS,
 R. DENNIS, and R. MERCIER

PAGE	LINE	CHANGE	REASON

 ELLEN DAVIS PADGETT, Date

I, Trisha M. Thomas, Notary Public for the
 State of South Carolina at Large, do hereby certify
 that the deponent was advised of his or her right
 to read and sign said deposition both verbally and
 in writing. If the deponent fails to execute and
 return foregoing Signature of Deponent pages within
 the thirty (30) days allowed pursuant to the Rules
 of Civil Procedure, the original transcript may be
 filed with the court.

Trisha M. Thomas
 My Commission expires
 February 2018

1 CERTIFICATE OF REPORTER

2
3 I, Trisha M. Thomas, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript, pages 3 through 161, is a true,
7 accurate, and complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 21st day of
13 September, 2012, at Hardeeville, Jasper County,
14 South Carolina.

15
16
17
18
19
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23 _____
24 Trisha M. Thomas,
Court Reporter
My Commission expires
25 February 2018

I N D E X

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(No Information Requested)

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1 STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT
3
4

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.,

5
6 Plaintiff,

7 vs. CASE NO.2009-CP-07-4648

MICHAEL A. AULTON, and SANDRA D. AULTON,

8 Defendants.
9
10

11 DEPOSITION OF: GEORGE HARMAN SWITZER, III
12 DATE: February 7, 2013
13 TIME: 10:17 AM
14 LOCATION: Law Office of
Brian D. McDaniel
15 2015 Boundary Street, Suite 216
Beaufort, SC 29902

16 TAKEN BY: Counsel for the Defendant

17 REPORTED BY: LORA L. McDANIEL,
18 Registered Professional Reporter

19
20 A. WILLIAM ROBERTS, JR. & ASSOCIATES

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17
18 (INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION

2 It is stipulated by and between Counsel that
3 this deposition is being taken in accordance with the
4 South Carolina Rules of Civil Procedure, Rule 30;
5 that all objections as to Notice of this deposition
6 are hereby waived; that all objections except as to
7 form are reserved until the time of trial.

8 * * * * *

9 GEORGE HARMAN SWITZER, III

10 being first duly sworn, testified as follows:

11 EXAMINATION

12 BY MR. McDANIEL:

13 Q. Could you please give us your name for the
14 record.

15 A. George Harman Switzer, III.

16 Q. How do you spell Harman?

17 A. H-A-R-M-A-N.

18 Q. We've met before the deposition
19 previously. My name is Brian McDaniel. I'm
20 representing Michael and Sandra Aulton, Arthur
21 Applegate, Dick Mercier, Tom Bayless, and the
22 Dennises, Ron and Janette Dennis, among some other
23 people who have been sued by Callawassie Island
24 Members Club for dues and fees, who have asserted
25 some counterclaims. And I was going to take your

1 deposition today and wanted to see if you have ever
2 given a deposition before.

3 A. I testified in an arbitration case years
4 ago right before I retired. That's it, to my
5 knowledge.

6 Q. Basic Rules of procedure with the
7 deposition: I ask the questions. If you don't
8 understand the question, you direct your
9 clarification back to me. You're not to consult with
10 your attorneys about the question.

11 They will direct you specifically not to
12 answer if they don't want you to answer the question
13 for some reason, privilege or something of that
14 nature. Otherwise, they may object from time to time
15 to the question. Even if they object, you would
16 still go ahead and answer the question.

17 If you need to take a break, if you need
18 to for whatever reason, that's fine. During that
19 time, you're not to discuss the ongoing deposition
20 with your attorney. If you do, I can ask you about
21 it and get to those conversations. It would not be
22 protected conversations.

23 I just want to get some brief background
24 about who you are. Tell me, what's your current
25 address.

1 A. 23 South Oak Forest Drive, Okatee, South
2 Carolina.

3 Q. How long have you lived there?

4 A. Since 1996.

5 Q. Where did you move from?

6 A. Princeton Junction, New Jersey.

7 Q. Tell me what your basic educational
8 background is.

9 A. B.S. in industrial engineering. I've gone
10 to a couple executive programs, Northwestern and
11 Harvard.

12 Q. Where did you get your B.S. from?

13 A. Johns Hopkins University.

14 Q. What was your occupation? How were you
15 employed?

16 A. I spent 31 years with what is now Alcatel
17 Lucent in various positions, starting in engineering.
18 The last 16 years, for the most part, was spent
19 international business development.

20 Q. Tell me about what family you have in
21 Beaufort County.

22 A. Just my wife Susan. Our son lives in
23 Jasper County; in Ridgeland.

24 Q. What's your son's name?

25 A. Michael. Michael Rogan.

1 Q. When did you move to, I think you said you
2 moved --

3 A. We bought property in 1991. We proceeded
4 to build a house in 1995. And I retired and became a
5 full-time resident in 1996.

6 Q. Since then, have you been employed at all?

7 A. No.

8 Q. You are retired?

9 A. I did a little consulting on the side.
10 That was it.

11 Q. Tell me any civic or community groups that
12 you're part of in Beaufort county.

13 A. None in Beaufort County other than the
14 amount of time that I served on the Callawassie
15 committees and boards.

16 Q. You don't serve on any boards -- or do you
17 serve on any boards outside of Callawassie?

18 A. No.

19 Q. Tell me about that. Start, if you can,
20 with '95, when you got there and what your
21 participation was with the Callawassie Island Club or
22 Members Club.

23 A. I was elected to -- I was elected in, I
24 think it was, October of 1998 to the Advisory Board
25 of Governors, which was, I'll call it, a

1 nonmanagement council that worked with the developer
2 but had no real power; at the same time, became a
3 member of the first board of the Callawassie Island
4 Members Club.

5 Q. When was that?

6 A. Same time, '98, my recollection. Prior to
7 that, in '96 through '98, I served on the board of
8 the POA, the property owners association.

9 Q. Just as to the club, you're saying you
10 were on the board in '98?

11 A. Uh-huh.

12 Q. What was the name of the club at that
13 time?

14 A. Callawassie Island Members Club. It was
15 formed, I think, in '98 or '99. And it was formed to
16 be the negotiating body and ultimate owner of the
17 Callawassie Island Club as it was called.

18 Q. Give me the chronology of how that came
19 about. As I understand it, there were some purchase
20 agreement and some acquiring of assets and/or
21 liabilities. I don't know if you can tell me.
22 What's the progression there of events of the members
23 club?

24 A. I think in 1994, the Chaffin Light
25 Associates or Callawassie Island Company -- I'll just

1 say developer -- they had taken over the assets of
2 the old country club at Callawassie in maybe the late
3 1980s; '88, '89, I can't recollect. They signed and
4 developed new rules, new bylaws, et cetera for the
5 Callawassie Island Club.

6 And they also signed a purchase agreement
7 for both the developer and the members that we felt,
8 we being a transition committee that had been formed
9 to think about the transfer of assets was a little
10 onerous. And so my recollection is we created, with
11 approval of the members, the Callawassie Island
12 Members Club such that it was a separate and distinct
13 named entity, corporation from anything that might be
14 transferred from the developer.

15 Q. Was that a group that the members
16 spontaneously sort of decided to develop? How did
17 that come about may be a better question.

18 A. My recollection is that there was a
19 group -- there were a group of members who were
20 trying to evaluate the transfer of assets from the
21 developer to themselves because there existed a
22 purchase agreement. With some people on the island,
23 it was felt best to create an entity -- to create a
24 corporation through which those directors would then
25 conduct the formal evaluation, be the corporation

1 that would receive the assets, and we were authorized
2 to negotiate a new development -- excuse me -- a new
3 purchase agreement with the developer.

4 That purchase agreement was approved by
5 the membership in 1999, as I recollect. And it laid
6 out, well, things like the purchase price, assets,
7 the transfer, the conditions of turnover at which
8 time it would take place. There were rules in there
9 for arbitration, mediation, that kind of stuff.

10 And that new purchase agreement, the
11 purchase agreement of 1999 was then taken to the
12 membership. The actual transfer of the assets did
13 not take place until mid-year 2001. That was
14 approved by vote.

15 At the same time, we approved a capital
16 expansion of the club facilities, and so there were
17 two simultaneous votes. It may have been one vote,
18 which was approval of the capital and approval for
19 the transfer of the assets.

20 Q. Were you part of the -- let me backup up.
21 You said the view was there was an onerous agreement,
22 the original went from the '80s between the members
23 and the developer. How so?

24 A. The trigger for the assumption of the
25 assets, as I recall, was -- one of the triggers was

1 based on the number of properties sold. And back
2 then, membership was not mandatory with the purchase
3 of property. So the most onerous situation was that,
4 if the developer sold dirt, 700 lots or something
5 like that, but we only had 300 members, we would
6 suddenly assume the assets and the cost of operation
7 to be supported by a significantly less number of
8 people than it was made to be financially viable,
9 one.

10 And two, the due structure at the time
11 would not have been compensatory to cover the cost.
12 And so we would've been faced with a situation of
13 probably less than the number of members we'd like to
14 have to support the facilities and a due structure
15 that was significantly less. Every one of us
16 would've had to written a very big bill.

17 Q. What was the significance with the due
18 structure?

19 I understand it could be less amount. Was
20 there something in the structure the way the dues
21 were set up?

22 A. No, the dollar value. It's always been a
23 golf and social membership structure. What we did,
24 just to finish, was to jointly, with the developer,
25 work out an arrangement which we all agreed upon an

1 increase of dues over a two, three-year period; I
2 can't recall.

3 And instead of the developer subsidizing
4 the loss of the club, which of course we as members
5 didn't see, if he tried to sell membership and
6 property at discounted values, he was absorbing the
7 loss in his balance.

8 What we tried to do was make something
9 that was an arrangement such that all of us
10 participated in covering the cost of operation and
11 ultimately an arrangement quantifying the subsidiary
12 of the developer to the number of unsold or unissued
13 memberships, the golf memberships.

14 The motivation, if you sell your
15 membership, you reduce your amount of subsidiary you
16 provide to the club. The entire club was supported
17 by, roughly, a full membership, either subsidiary or
18 members paying.

19 Q. The developer agreed to that?

20 A. Yes, he did.

21 Q. Do you know, at that time, how many
22 memberships, approximately, how many memberships were
23 owned and how many were owned by the developer?

24 A. No, I don't. Well, I can take a very
25 rough stab. On the golf side, he may have had about

1 140 memberships unissued out of 595.

2 Q. This was in 2001 or '98?

3 A. This would've been '98, '99 when we made
4 the agreement. Maybe even in 2001.

5 Q. So I'm clear, so I understand, after 2001,
6 what was the developer's obligation with regard to
7 those memberships in paying dues and fees?

8 A. The developer's responsibility to the club
9 was to pay a subsidy based on the number of unissued
10 golf memberships. And that subsidy was defined for
11 calculation purposes as nonresident dues on the
12 unissued memberships.

13 Q. After 2001, when did that kick in?

14 A. It began -- the subsidy began in -- the
15 quantification of the subsidiary based on unissued
16 memberships began in 1999.

17 Q. After that point, is it correct --

18 MR. HAIGHT: Object to the form.

19 BY MR. McDANIEL:

20 Q. -- the developer was paying a set amount
21 of dues every year depending on how many --

22 A. Unissued memberships he had.

23 Q. Was it tied at all to the profitability or
24 loss incurred by the club during a given year?

25 A. Let me answer that in a slightly different

1 fashion. Within the purchase agreement, there was a
2 very important clause that said the club members and
3 the developer would arrive upon an agreed-upon
4 budget. That agreed-upon budget would drive the
5 amount of dues quantity, dollars of dues and subsidy
6 required from the developer.

7 Each year, beginning in '99, we sat down
8 with the developer and said: Here's what we believe
9 we need to operate the business. He had been running
10 it for several years, so it was a mutual discussion.
11 And you added up the expenses, you added up the
12 revenue that would come from, say, outside and the
13 rest had to be covered in dues. The answer is: I
14 think yes, but we did it on an annual basis.

15 Q. So the amount he paid for the memberships
16 was limited in some fashion; is that what you're
17 saying?

18 MR. HAIGHT: Object to the form.

19 BY MR. McDANIEL:

20 Q. I guess I'm not quite understanding. I
21 understood your earlier answer to be he had a set
22 amount he paid for unissued memberships which he
23 held, the developer.

24 A. And that amount per membership was
25 developed each year at the annual budget.

1 Q. When you said earlier it was nonresident
2 dues, it wasn't the standard nonresident dues rate?

3 A. Yes, it was. We used that as the, I'll
4 call it, the calculation formula.

5 Q. Would all members pay that same
6 nonresident dues resident rate?

7 A. If you were a nonresident, whether you
8 were an individual member or the developer's
9 obligation as defined by unissued membership and
10 nonresident dues, that number of nonresident dues
11 would've been the same.

12 Q. That amount that they paid?

13 A. That amount per member would've been the
14 same. It was just the calculation eased out. Having
15 said that, since the developer in the past observed,
16 I'll call it the additional loss or reaped the
17 additional benefit, if the operation of the club for
18 the year yielded a surplus, that went back to the
19 developer.

20 Q. Did you know what amount that would be?
21 Was there a set amount that he would get?

22 A. No, it's whatever the results of the
23 operation for that year were. Sometimes it would be
24 a good year because real estate transfer fees were
25 included in the revenue stream. Sometimes it would

1 be a bad year.

2 Q. Real estate revenue fees were included in
3 the club's revenue stream?

4 A. Yes. Within the purchase agreement, which
5 you probably have --

6 Q. Right.

7 A. -- there's a paragraph that defines the
8 elements of a mutually agreed-upon budget, the
9 revenue stream and expenses inclusive of capital.
10 That's what I'm trying to articulate.

11 Q. I think I'm understanding better. I just
12 want to make sure the aspect of it is his -- the
13 developer's dues and fees were calculated in a
14 nonresident rate. Up to the point where there's any
15 surplus in the budget or in the actual intake of the
16 club, he would get that back?

17 A. Yes, sir.

18 Q. That would go back to him. Was there a
19 check written back to him for that?

20 A. It was done from an accounting standpoint.
21 We had a common accounting service.

22 Q. Who was that?

23 A. That was actually the developer's
24 accounting organization at the time.

25 Q. Was that Phoenix? Do you know what that

1 is?

2 A. It ultimately became Phoenix. It was the
3 financial arm of the developer, whether it was the
4 Callawassie Island Company or whatever. Basically,
5 if there was a surplus, a check would go back and
6 less dues paid the next year or something like that.
7 The cash would be equalized out.

8 Q. Did the club, in fact, make that return,
9 that surplus?

10 A. On occasion.

11 Q. Were there occasions where there was a
12 surplus that didn't go back to the developer?

13 A. I think the developer might argue that
14 happened. I left the board in 2001 -- excuse me --
15 2002. Whatever happened after that, I'm not really
16 up on.

17 Q. That's a good place to go. Tell me the
18 dates you were on the board for the Callawassie
19 Island Club or Callawassie Island Members Club.

20 A. October of 1998 through March of 2002.

21 Q. You were on the board of directors of the
22 club?

23 A. That's correct.

24 Q. What was your position during that period?

25 A. The last year of what was a

1 three-and-a-half year tenure, I was vice president.
2 Prior to that, I was the green committee chair. I
3 think those are probably the only two titles.

4 Q. You've never been president of the board?

5 A. No, not until this year.

6 Q. Tell me, after 2002, when the next time
7 you served on the board.

8 A. I was asked by the nominating committee in
9 early 2009 if I would consider coming back on to the
10 board. I did that. In March of 2009, I came back to
11 the board, served a three-year term in which I was
12 treasurer for all three years.

13 I was reelected in March of 2012. And
14 this March ends my one year term as president.

15 Q. You have two more years on the board?

16 A. I have two more years on the board and a
17 potential of another year as president.

18 Q. Is there any required time off the board
19 after you serve in consecutive terms?

20 A. I don't think so.

21 Q. In between those periods of 2002 to 2009,
22 did you serve on any committees for the club?

23 A. Yes.

24 Q. What was that?

25 A. Let me go backwards. In the beginning of

1 2008, I was asked by the board through the president
2 at the time, who was Karen Norwood, if I would
3 dedicate myself with she and the current treasurer at
4 the time in discussing and/or negotiating an exit
5 strategy for the developer.

6 Going backwards, I think it was 2007, I
7 can't recall exactly, I was asked by both the POA,
8 the property owners association board, and the club
9 board to lead an ad hoc committee to study the merits
10 of merging the two organizations.

11 Q. Did you do that?

12 A. Yes, I did.

13 Q. What was the --

14 A. The outcome was they decided to defer it.

15 Q. Give a date?

16 A. No, it's one of those things that's
17 studied every year for the last ten or 12 years,
18 always winds up to be more legal work than is
19 necessary.

20 Somewhere in there, in 2007 or '8, I
21 served on the green committee again. I can't
22 remember, I don't think there was any other
23 involvement.

24 Q. As I understand it from the documents that
25 we've received in the case, there was negotiations

1 with the developer in the 2008 to 2010 that
2 ultimately ended up with an agreement with the
3 developer; is that right, regarding their exit
4 strategy you were talking about?

5 A. Yeah, there was a continuum of discussion.

6 Q. Describe that to me, if you would. What
7 happened there?

8 A. The developer certainly thought he was
9 going to be free and clear of his obligations to the
10 purchase agreement sooner than he ultimately was.
11 And there were some club members that felt we should
12 look ahead to life without the developer. There were
13 probably two, three, four efforts to sit and discuss
14 that.

15 Q. Between who?

16 A. The developer and the club, most of which
17 just ended in: Let's think about it manana, next
18 year. The relationship between the two, in my
19 opinion, had always been pretty good. There were
20 some nagging issues.

21 And then in February 19, 2010 -- if I'm
22 off on the 19th -- the president and I were called to
23 a meeting with the developer and told that he was
24 unable to fulfill his obligations up to the purchase
25 agreement.

1 Q. Who was the president at that time?

2 A. Bob Deluca.

3 Q. Who were you called to the meeting with?

4 A. Jim Chaffin, Mont Blaisdell and Craig
5 Simons and possibly Bill Bethea. I'm pretty sure
6 Bill was there.

7 Q. How do you spell Bethea?

8 A. B-E-T-H-E-A. Actually, I think the first
9 meeting Bill was not. It was in Jim's office, as I
10 recall. Doesn't matter.

11 Q. That was February of 2010?

12 A. Yes, sir.

13 Q. That had been after discussions had been
14 already ongoing about the developer exiting?

15 A. Yeah. Yeah. My best recollection is, in
16 2008, we got to a point in August of 2008 where the
17 history of the relationship was such that everybody
18 would've like to have come to an agreement. When we
19 got to the point of putting some of the issues on the
20 table, there were a history of disputes, sore points
21 that always seemed to come up. And the club's
22 position was we've honored the agreement.

23 The developer tried to raise the issues.
24 Generally Mont Blaisdell was the one that raised
25 them. And we would come to a point where, you

1 know --

2 Q. Disagreed?

3 A. We continued to disagree. Jim Chaffin is
4 an extremely, you know, honorable guy. He just would
5 finally say: Listen, let's step back. We'll come
6 back together again.

7 Q. What was the main sticking point that
8 you're saying Mont Blaisdell raising?

9 A. A couple. You mentioned surplus and lack
10 thereof. There were several instances that the
11 developer felt that a surplus should've been passed
12 back to them. And that surplus was diminished or
13 used up by, one, either I'll call it excessive
14 spending over and above the budget level or the use
15 of that surplus to write off bad debt.

16 There was also a major disagreement with
17 one of the paragraphs or sections -- I can't remember
18 if it was the first or second LOU. And it had to do
19 with the credit that the developer should receive
20 associated with the sale of social memberships sold
21 because, as I told you earlier, the developer's
22 subsidy obligation was reduced by the sale of
23 unissued golf memberships. There wasn't anything in
24 the calculation that said: You ought to be relieved
25 for the sale of social memberships. I just did that

1 as a background.

2 Q. Were the unissued memberships at that
3 point all owned by the developer?

4 A. Absolutely. I guess, in perspective, when
5 we signed the purchase agreement in 1999, the
6 developer owned the club assets, the remaining
7 property still unsold, and I'll call it the
8 membership certificates. They were his to begin
9 with. The only thing that he had given up was either
10 the property sold, the membership sold because they
11 were in individual hands.

12 And in 1996, he transferred the common
13 infrastructure to the property owners. So the roads,
14 the right-of-ways, everything were already in the
15 hands of the POA.

16 Q. I thought it wasn't even formed in '98,
17 '99?

18 A. We're talking two different organizations.
19 The property owners association as defined by the
20 covenants or the bylaws or amended declaration,
21 that's a separate organization from the club.

22 Q. I guess you said a minute ago in '96 he
23 transferred the common property to, I thought it was,
24 the members.

25 A. The POA.

1 Q. I'm sorry. I misunderstood.

2 A. That's okay.

3 Q. The common property that he owned, what
4 did that include? Did that include the clubhouse?

5 A. No, it did not include any of the club
6 facilities. It included all the roads, causeway,
7 security building at the head of the causeway.
8 There's a community dock, and there were a couple
9 other facilities, and common property. There were
10 areas set aside as green space and that kind of
11 stuff. That all went to the POA. It's a structure
12 very similar to Dataw. Both clubs were formed at
13 about the same time and the legal mottle.

14 Q. Who did the legal work for the club when
15 you were there, particularly in '98-2001 when the
16 club documents were drawn up? Who did that work for
17 the club?

18 A. The advice and counsel for the POA and the
19 Callawassie Island Members Club through 2001 and then
20 I'll have to stop there, was Jim Scheider of what was
21 then I think Jones, Scheider & Patterson. All of the
22 asset transfer documents, membership plan, bylaws, et
23 cetera, he would've had a hand in.

24 Q. Do you know if the Dataw documents were
25 specifically used as a model for the Callawassie

1 Island?

2 A. No connection to Jim Scheider. It has
3 always been my understanding there was a community
4 association legal expert out of Florida who drafted
5 or created the base documents for both Callawassie
6 and Dataw. Had nothing to do with local
7 representation. The gentleman that I heard mentioned
8 was a guy name Dennis Hillier. I don't know if
9 that's H-I-L-L-I-E-R or Y-E-R. He was kind of the
10 guru at the time, as I hear.

11 Q. You understood he had some hand in the
12 early drafting of the documents?

13 A. From the developer standpoint. And then
14 local counsel for the developer was always, at that
15 time, it was Bethea, Jordan & Griffin or Griffith.

16 MR. HAIGHT: Griffin.

17 BY MR. McDANIEL:

18 Q. Did the developer have a hand in drafting,
19 if you're familiar, with the 2001 club documents?.

20 A. I would think that a lot of those
21 documents were just a transfer over. When you say
22 had a hand, I don't know. I mean whether he was
23 directly involved, I think we relied on Jim
24 Scheider's counsel.

25 Q. I'll get you to look at that. I'll come

1 back to it. Do you recognize that?

2 A. Yeah, I do.

3 Q. I think that's titled Callawassie Island
4 Club Members, Inc. Plan for the Offering of
5 Membership dated 8/8/01?

6 A. Uh-huh.

7 Q. Were you on the board at the time that was
8 adopted?

9 A. Uh-huh.

10 Q. Do you know who was hired or retained to
11 draft this?

12 A. It would've possibly been Jim Scheider.

13 Q. Did the developer have that drafted, or
14 was that something the club members directed?

15 A. This is my speculation. I was doing some
16 stuff off over on the deed side. I would assume that
17 the existing documents from the developer used this
18 as the basis for that. That's an assumption. There
19 was certainly a set of bylaws up to 2001.

20 Q. I guess I'm just wondering if you recall.
21 I believe you were on the board at that time.

22 A. Yeah.

23 Q. Whether you recall the board retaining an
24 attorney to draft this?

25 A. Yeah.

1 Q. The board did hire the attorney that
2 drafted the documents?

3 A. Yeah.

4 Q. That's what I was wondering. I didn't
5 know if it was the developer that had gotten this
6 done or the board.

7 A. To my memory, Jim Scheider represented the
8 club and either Bethea, Jordan & Griffin or McNair,
9 which they ultimately became, were on the other side.

10 Q. What were the contentions as far as
11 excessive spending that you said the developer
12 basically had?

13 A. I think there was some concern over
14 repairs that were done at year-end. This was, if you
15 will, after my time on the board. In the discussions
16 that we had in 2008 and in the documents that had
17 preceded my involvement in talking with him, there
18 was a series of letters that went back and forth and
19 most of them referred to that. They were just
20 resolutions -- problems or disputes that never came
21 to resolution.

22 Q. And I saw some of that in the documents
23 that there's some discussion of, like you said,
24 excessive spending. I didn't know if you knew there
25 were particular projects, particular years that had

1 come up that were the primary source of that.

2 A. From what I remember from the discussions
3 with Chaffin and Blaisdell, there was some concern of
4 overspending in the reign of John Adams as general
5 manager. Again, that's just what I hear.

6 Q. During the years through the time -- well
7 from 2000 to 2008, are you aware of whether or not
8 the developer -- whether there was ongoing dues and
9 fees paid each year by the developer?

10 A. Yes, sir.

11 Q. And there was?

12 A. Uh-huh, based on the same formula.

13 Q. Do you know in 2008-2009 the amount during
14 that period that he was paying yearly?

15 A. I'd have to back up. In 2010 when he
16 basically defaulted on the payment of the subsidy,
17 they equated to a little more than \$300,000 that
18 would've appeared as operational dues or operational
19 subsidy and probably another \$35,000 in his
20 obligation to debt service.

21 Q. Was that basically the yearly obligation
22 for that year?

23 A. Yes.

24 Q. Do you know if it was approximately close
25 to that in the years prior to that?

1 A. It would've probably been little bit less
2 on the dues side by whatever we raised dues by. The
3 debt service was the same except for the number of
4 memberships that he may be paying on. Except for the
5 number of unissued memberships.

6 Q. Are you aware of whether or not there was
7 any deduction to the amount he was paying in for
8 actual surpluses for any of the years from '98 to
9 2010?

10 A. I'm sorry. Ask me that again.

11 Q. Obviously it appears the developer is
12 saying there were some years there was surplus or
13 should've been a surplus that they should've paid
14 less or not had to pay in as much as they did. Was
15 the amount they had to pay reduced in any years as
16 far as you know --

17 A. Yeah.

18 Q. -- or did the developer pay the full
19 amount?

20 A. The last time I understood the surplus to
21 have been paid back to the developer was 2006. Prior
22 to that, I think there were. I think the arguments
23 were that number should've either been greater or
24 have been a surplus -- or the disputes. There was
25 never really an argument.

1 Q. I didn't understand if the club was saying
2 they operated at a loss every year and they got the
3 full amount or some years when they did, in fact,
4 say: The maximum you could pay would be this, but
5 you're going to pay something less than that?

6 A. It would be based on the results for that
7 year.

8 Q. Tell me about the agreement that was
9 reached with the developer. How was that resolved?

10 MR. HUGHES: Are you referring to the 2010
11 agreement?

12 BY MR. McDANIEL:

13 Q. 2010. Are you familiar with the terms of
14 how that was resolved?

15 A. Yeah, we began from two separate sides;
16 you're in default and that was the club's position.
17 And the developer's position, yeah, but we had a lot
18 of unsettled disputes which we will take to
19 arbitration. The arbitration
20 inference/threat/negotiating tactic had come on the
21 table several times over the preceding years. So you
22 had this and that.

23 Both parties felt that the negative impact
24 of any kind of a drawn out, certainly for the good of
25 Callawassie, would have a negative impact in

1 marketing. And it would leave the club in an
2 uncertain financial position for as long as
3 arbitration would take.

4 We sat down and tried to understand the
5 differences. I can remember at the first negotiating
6 session, having been through this in 2008, there was
7 a piece of paper that kind of was passed across the
8 table which, you know, alleged overpayments, what
9 have you. It could've been anywhere from half
10 million to 800 to a million dollars.

11 The other thing was that, over and above
12 those disputes, because of the agreements reached, we
13 had a significant amount of money on our balance
14 sheet that was accrued as a liability paid to the
15 developer. And that accrual had to do with the fact
16 that, until the Callawassie Island Members Club took
17 over the club assets, when a member wanted to place
18 his membership on the resale list, the developer
19 allowed him the opportunity to accrue the dues owed
20 against the equity in his membership.

21 Q. Tell me what that means.

22 A. Well, when I declare I want to sell my
23 membership or resign my membership as it is in the
24 plan, you put your membership on a resale list.
25 Until that membership is reissued, you're responsible

1 for all the dues and obligations. Since many, if not
2 all, of those people in that position who were
3 accruing had left the island as a property owner, but
4 during the period when the incoming purchaser of the
5 property did not have to own a membership, that
6 membership got in a queue. And the developer said:
7 If you will subsidize that at basically 18 percent
8 interest, I think, and allowed the members to accrue.

9 When the membership was ultimately sold,
10 the selling member would receive the 20 percent back
11 on his equity less -- all the owing plus the 20
12 percent would be calculated, and he would get the net
13 is the best way to say it.

14 Q. If the amount owed was greater than that,
15 what would happen?

16 A. Then it was up to the developer to figure
17 out whether or not they wanted to pursue judgment or
18 whether that was sufficient. When we took over, that
19 amount that was accruing, we said, well, you were
20 owed that by previous arrangement with these members.
21 If, in fact, that membership is sold, new certificate
22 Callawassie Island Members Club, we would honor that
23 agreement that you had made with the previous member.
24 The number sticks in my head of about \$200,000 that
25 was an additional liability.

1 The ultimate agreement boiled down to each
2 one of us wanted a separation and a resolution of all
3 past disputes because the negative impact on the
4 Callawassie Island Members Club, it was the view of
5 the board that the probability of arbitration
6 would've split the amount of dispute; would've put in
7 jeopardy some of the surpluses and reserves that had
8 been built, although not necessarily in agreement
9 with the developer, on social dues.

10 And we felt the overall change was a
11 positive impact for the club and eliminated some
12 significant risk.

13 Q. What was the agreement? What was the
14 terms, the basic terms?

15 A. The basic terms were that the purchase
16 agreement of 1999 and all amendments were, if you
17 will, voided and all disputes were ended. The
18 proceeds from the sale of any unissued membership
19 would be shared 50/50 up through I guess the -- for
20 ten years, which I think ends in 2020.

21 Q. Then what happens to the proceeds?

22 A. It all goes to the Callawassie Island
23 Members Club unless we mutually agree otherwise.

24 Q. That was 2010 that agreement was reached?

25 A. Yeah, I don't know exact. Late summer,

1 early fall.

2 Q. What about the claim for dues and fees
3 against the developer?

4 A. It was voided.

5 Q. Was there any discussion on the board as
6 to the impact of giving up those dues and fees on the
7 club?

8 A. Yes, along with the risk of trying to
9 pursue payment against the developer that may well be
10 in a bankrupt situation, no great idea or no real
11 idea as to the structure of the corporations and what
12 might be protected, and the fact that there was
13 considerable concern that, to pursue arbitration,
14 given the complicated history of the development, you
15 know, you kind of could see somebody saying: Well,
16 I'm not too sure. I've got all this. Why don't we
17 do a little bit for you, a little bit for us. And
18 the negative impact on that would've been far
19 greater.

20 Q. Was it the board's, as far as you know the
21 discussion, was the board's belief that the developer
22 was correct, that he was owed some money? He
23 overpaid?

24 A. I believe we felt as a board that his
25 arguments could've found a sympathetic ear and,

1 therefore, we had greater risk of losing our
2 financial position we were in than not. I mean, I
3 think it was a positive settlement for the
4 Callawassie Island Members Club given the amount of
5 money that could've been taken from our balance sheet
6 and, at the same time, we released ourselves some
7 obligations to him in the future such as the accruing
8 memberships.

9 Q. Such as what?

10 A. The accruing membership liability that was
11 owed.

12 Q. Is there a calculation that was done as to
13 how much in future dues and fees from the developer
14 the club was giving up by reaching the agreement?
15 Anybody make that calculation?

16 A. Number of unissued golf memberships times
17 the dues, which at that time was 300,000, in addition
18 to the debt service.

19 Q. I want to make sure. The calculation of
20 the board -- to me it seems that's a very large
21 amount of money in dues and fees.

22 MR. HAIGHT: Object to the form.

23 BY MR. McDANIEL:

24 Q. I'm wondering if that was discussed with
25 the board as to say the projection of \$300,000,

1 approximately, income into the club each year, the
2 liability that's outstanding that's against us --

3 A. Is over 300,000 significant? Like I said,
4 it could've been argued it was 800,000 the liability
5 against the club. I understand it's a big nut. But
6 the membership understood for a very long period of
7 time that the contribution from the developer
8 would've had an impact of, roughly, 60 bucks a month
9 if, in fact, he did not honor his agreement, which
10 was by the way, an issue highlighted in the 2006
11 strategic plan.

12 Q. This came out of his obligation all
13 together; right?

14 A. Got us out of the risk of losing an
15 arbitration case, too.

16 Q. Which you say could've been 800,000 or
17 more?

18 A. Yeah.

19 Q. He could have paid nearly a million
20 dollars in dues in three years?

21 A. He has to get it from somewhere.

22 Q. What do you mean?

23 A. If he doesn't have cash.

24 Q. He has to have the money to be able to do
25 it?

1 A. Yeah.

2 Q. The concern was, even though he may owe
3 the club this large amount of money, he may not be
4 able to pay it?

5 A. That's correct. I mean, they also had a
6 major development in North Carolina which, basically,
7 went belly up.

8 Q. Do you know the name of it?

9 A. Yeah, Balsam Mountain.

10 Q. That was Chaffin Light's group?

11 A. Uh-huh. I have no idea how their internal
12 books work. It's kind of Chaffin Light East, Chaffin
13 Light West.

14 Q. What was done as far as discussing this
15 agreement and the dispute with the general membership
16 of the club?

17 A. I can remember on at least two town
18 meeting agreements, or two town meetings bringing the
19 membership up-to-date with the status of the
20 discussion with the developer. And there was
21 probably a letter of correspondence that described
22 settlement.

23 Q. Was there any discussion on the board to
24 keep the negotiations confidential?

25 A. In what way?

1 Q. From the membership. That you would keep
2 it just within the board.

3 A. The negotiations, yes. We're not going to
4 get into public status of day-to-day negotiations.
5 The agreement was discussed.

6 Q. Do you think it was discussed with the
7 board the contentions that were made by the
8 developer?

9 A. Fully. Fully.

10 Q. Those would've been at the town meetings?

11 A. No, you said with the board.

12 Q. I'm sorry. With the members.

13 A. Yes, in broad detail, yes.

14 Q. Broad detail. I like that oxymoron.

15 A. I can remember saying in December town
16 meetings, which were kind of a wrap-up, that there
17 were outstanding issues between the club and
18 developer that had arisen over the years and that,
19 you know, there could be, if you will, perceived
20 fault on both sides.

21 Q. Do you recall any members asking for more
22 details about that?

23 A. No.

24 Q. If they had asked, do you know what the
25 board's position would've been about discussing that

1 with them?

2 MR. HAIGHT: Object to the form.

3 THE WITNESS: I think we would've probably
4 been as open as we felt was necessary, but I'm not
5 too sure we'd gotten into the nitty gritty of every
6 dispute.

7 BY MR. McDANIEL:

8 Q. Why not? What's the policy basis for why
9 you wouldn't discuss it with the members?

10 MR. HAIGHT: Object to the form.

11 THE WITNESS: I guess we don't get
12 involved in open negotiation on every item with the
13 members. That's what they asked us to do. I mean, I
14 don't know how else to answer it.

15 BY MR. McDANIEL:

16 Q. I understand that.

17 A. It's the same -- similar to the policy
18 that we have on financials. We give summary
19 judgment. We do not get into line item details,
20 salaries, stuff like that.

21 Q. I certainly understand there's certain
22 privacy issues with the members, and they wouldn't be
23 asking you for the details of administration. It
24 seems like this a pretty important --

25 MR. HAIGHT: Object to the form.

1 BY MR. McDANIEL:

2 Q. -- issue for the club. Would you agree it
3 was a fairly significant deal for the club?

4 A. I will agree it was a significant
5 decision. I don't think you -- let me put it another
6 way. As you asked me earlier, I think: Did people
7 understand it? Half the people in that room or more
8 than half would not have understood the issues if we
9 explained it.

10 Q. Why is that?

11 A. Because the idea, as long as they're not
12 paying, the individual issues of bad debt or, you
13 know, overspending, wouldn't have understood.

14 Q. Why do you think they wouldn't have
15 understood?

16 A. I think the level of detail was beyond the
17 average member.

18 Q. Let me ask you about some individual
19 people. Are you familiar with Richard Mercier?

20 A. Yeah.

21 Q. How do you know Richard Mercier?

22 A. As a long time member. Played a lot of
23 golf with him. Known him for a long, long time.

24 Q. Have you ever discussed his resignation or
25 his leaving the club with him?

1 A. Personally I have not, but I know other
2 members who have.

3 Q. Who do you know?

4 A. Bob Deluca, who's a long-time friend from
5 upstate New York.

6 Q. Long time friend of yours?

7 A. No, Mr. Mercier's.

8 Q. What did you understand that conversation
9 entailed?

10 A. Mr. Mercier basically said: I can't
11 afford to live here anymore, so I quit.

12 And the president advised him on more than
13 several occasions, not as the president but as a
14 friend, there were certain options that would help
15 you reduce your cost of being here such as senior
16 discount or what have you and take a look at it. But
17 Mr. Mercier felt in some fashion he had some right to
18 resign without paying.

19 Q. You mentioned senior discount. What other
20 discounts are there with the memberships that you're
21 aware of?

22 A. Senior and surviving spouse.

23 Q. Is there a military discount?

24 A. Not to my knowledge.

25 Q. What kind of discount do you get for

1 senior or surviving spouse?

2 A. It's in the membership plan. It's 20
3 percent. That discount is an accrual against the
4 equity, so it's not a total forgiveness.

5 Q. In the accrual situation, does the amount
6 of the membership, is that the limit of their
7 liability?

8 A. Not necessarily, no.

9 Q. When is it, when is it not?

10 A. Let me try it a different way. When our
11 golf equity membership cost \$45,000, the general
12 probability that somebody exceeded that was not very
13 great. When we reduced the membership fee for golf
14 to 15,000, there would be certain situations where
15 the accrual would exceed that.

16 I believe in the amended membership plan
17 that reduced the equity to \$15,000, we added language
18 that essentially a mortgage would be signed between
19 the accruing member and the club so that the full
20 resolution, the full payment would be made.

21 Q. When was that done, that change you're
22 talking about, the amendment?

23 A. 2010.

24 Q. Prior to that, it would not have been --
25 that would not have been the case?

1 A. I'm not too sure we've ever had a
2 situation that the 45 was exceeded. We would have to
3 make a judgment as to whether or not we wanted to
4 pursue it.

5 Q. Do you believe that the membership
6 documents prior to that, before the amendment, was
7 such that, that right existed to pursue beyond the
8 value of the membership?

9 A. That I couldn't tell you, because I don't
10 know if there was a specific reference to that.

11 Q. In 2010, you put the reference in the
12 documents?

13 A. Yes.

14 Q. If it was already there, if it was there
15 before, why would you amend in 2010 to include it?

16 A. Yeah, you dropped from \$45,000 worth of
17 collectability to 15. The probability that the
18 amount owed or accrued would be greater with 15 is a
19 lot more than -- a lot higher than the probability
20 that 45 wouldn't cover it.

21 Q. I just want to be clear. You don't know
22 of any provision prior to the 2010 amendment that
23 would have accrued that -- let me use a different
24 word -- would have made the members' liability
25 greater than the equity?

1 A. I'm sorry. I don't understand your
2 question.

3 Q. Prior to 2010, you said there was amended
4 membership plan. As I understand it, the point of
5 the amendment was to put into the governing documents
6 that the club's ability to collect was greater than
7 the value of the membership. Is that wrong?

8 MR. HAIGHT: Object to the form.

9 THE WITNESS: Let's back up.

10 BY MR. MCDANIEL:

11 Q. Tell me what this amendment was. Maybe
12 that's the best way to do it.

13 A. It's in the plan. I do not know of any
14 specific language in the prior plan that said you are
15 precluded or I need an additional amendment to pursue
16 payment over the 45. I think that's the way I want
17 to say it. Because the 45 was of such sufficient
18 reach, I don't think anybody thought about it. When
19 we reduced the membership fee to \$45,000 --

20 Q. To 15.

21 A. Excuse me, to 15. Thank you. We
22 understood that it was possible that accrual limit
23 could be passed. And so we made clear that, to assure
24 that we were still protected and people understood
25 their obligation, there was the additional clause

1 added that said, in essence, instead of having a
2 piece of paper worth \$45,000 as your amount that
3 could be accrued against, you would sign, in essence,
4 a mortgage.

5 Q. Was there an actual document that they
6 signed to that effect?

7 A. I believe there were documents drafted. I
8 don't know if there were any signed.

9 Q. Would that be for people now buying
10 memberships? Did you send that out to all the
11 membership to sign?

12 A. It would've only been to those that had
13 selected the senior status and surviving spouse
14 status to begin with, which I think are six or eight
15 members.

16 Q. This 2010 amendment about the accrual only
17 applied to those two discounted issues?

18 A. That's correct.

19 Q. It didn't apply to accrual, or did it
20 apply to accrual of debts, fees, and obligations
21 generally?

22 MR. HUGHES: Object to the form.

23 THE WITNESS: Try me again.

24 BY MR. McDANIEL:

25 Q. You said it was limited to the discounted

1 rates. It was specific to the discounted rates for
2 senior and surviving spouse. I guess I was under the
3 impression, I want to see if I'm correct, it was
4 something that applied to any accrual --

5 MR. HAIGHT: Object to the form.

6 THE WITNESS: I'm not too sure of any
7 accrual.

8 BY MR. MCDANIEL:

9 Q. Anybody who's late on dues, fees
10 assessments.

11 A. That's not accrual. That people clearly
12 understand that they owe something that will be paid
13 at some later date. I don't quite understand your
14 question as it relates to people who are in arrears,
15 period, who just don't pay.

16 Q. You're saying the difference between the
17 accrual is this is a discounted amount because of the
18 way it's allowed to accumulate?

19 A. That's correct. It's like a reverse
20 mortgage.

21 Q. Are resigned members allowed to accrue
22 dues and fees?

23 A. No, sir, that accrual privilege stopped
24 when the Callawassie Island Members Club assumed the
25 assets of the club in 2001. Prior to that, that

1 accrual option was offered by the developer.

2 Q. Would you agree members who joined prior
3 to 2001 would have that accrual option?

4 MR. HAIGHT: Object to the form.

5 MR. HUGHES: Object to the form.

6 THE WITNESS: If they were on the resale
7 list, yes. Let's try this again. If a member
8 resigned, which means he put his name on the resale
9 list prior to the middle of 2001, the developer
10 offered that option.

11 BY MR. McDANIEL:

12 Q. Let me stop you there. He offered it in
13 the governing documents, or you think made specific
14 offers to people?

15 A. My recollection is the accrual option was
16 included in the membership plan or bylaws that
17 existed prior to 2001.

18 Q. The governing documents under which those
19 people purchased included the accrual option?

20 MR. HAIGHT: Object to the form.

21 THE WITNESS: If you're trying to say that
22 right continues --

23 BY MR. McDANIEL:

24 Q. No, I'm just asking at the time.

25 MR. HAIGHT: I will object to you not

1 allowing the witness to answer the question. He is
2 allowed to answer the question. He was trying to
3 answer the question. You interrupted him.

4 BY MR. McDANIEL:

5 Q. I'm just saying the amount of -- I'm just
6 trying to figure out, from the time that the accrual
7 language was there when they purchased it. I
8 understand you're going to contend probably that
9 changed at some point. I'm just saying, the
10 governing documents when people purchased prior to
11 2001 contained this accrual language with regard to
12 resignation?

13 MR. HUGHES: Object to the form.

14 THE WITNESS: The answer to that is yes.
15 And the continuing answer to that. And that option
16 was removed by full approval of the membership in the
17 2001 documents and, in fact, to be even clearer, it
18 was approved with the approval of the purchase
19 agreement in 1999.

20 BY MR. McDANIEL:

21 Q. So the purchase agreement contains
22 reference to that provision?

23 A. Yes, purchase agreement says, at the time
24 of asset transfer, the option to accrue dues against
25 equity ceases. And that was approved by all the

1 members.

2 Q. When you say all the members, you mean
3 what?

4 A. Of the Callawassie Island Members Club
5 when they approved the purchase agreement in 1999.

6 Q. All means 100 percent?

7 A. No, I think it was 80/20.

8 Q. 80 percent?

9 A. Yeah.

10 Q. How was that vote taken? Was it secret
11 ballot, was it hand raised?

12 A. It was a written ballot.

13 Q. Do you know if those ballots still exist?

14 A. No, I don't.

15 Q. Do you know who at the time maintained
16 those records?

17 A. The secretary of the club during that
18 period might've been Howard Keys. Of the club
19 meaning the Callawassie Island Members Club.

20 Q. Generally, the secretary would keep voting
21 records, to your knowledge?

22 A. I don't know if they keep the individual
23 ballots. They keep the certification.

24 Q. Was any outside company at that point
25 verifying the vote?

1 A. I can't recall.

2 Q. Do you know if at any point the club has
3 retained an outside company to verify or to audit the
4 vote?

5 A. The only time to my knowledge we have done
6 it in the recent past is capital assessment. It has
7 traditionally been a vote-counting committee of a
8 couple board members and a couple members at large.

9 Q. How was the change in that membership plan
10 or that part of the governing documents published to
11 the members? How were they notified of the changes
12 in the plan?

13 A. My recollection of the purchase agreement
14 approval was the purchase agreement was sent to the
15 individual members along with the ballot. And that
16 there was a cover letter which highlighted all the
17 significant changes and reasons for the
18 recommendation to approve.

19 Q. Do you think that in that cover letter,
20 one of the highlighted parts would've been that issue
21 of accrual?

22 A. Yes, sir.

23 Q. And then --

24 A. I remember that specifically because it's
25 been raised by a few people; members who felt that

1 was done sub rosa, which is not the case.

2 Q. What about the 2001 governing documents?

3 A. 2001 governing documents, I again recall
4 included copies of the amended documents in addition
5 to -- well, the ballot. In addition to the ballot
6 itself.

7 Q. Do you recall any letter highlighting the
8 changes in that situation?

9 A. I'm sure, yeah. It would've also been a
10 letter -- I can't remember if it was two separate
11 votes or one vote to do two things; one of which was
12 to transfer the assets and the second was to approve
13 a \$3 million capital improvement program. And that
14 was done at the same time. And the reason it was
15 done at the same time is, for the Callawassie Island
16 Members Club to have borrowed the money to do the
17 capital improvement, it needed the assets as
18 collateral. So the transfer of the assets and the
19 capital improvement program were approved
20 fundamentally as one.

21 Q. You left the board in 2002?

22 A. 2002. March of 2002.

23 Q. The time you left the board, who would be
24 responsible for issuing membership certificates?

25 A. Issuing? You mean actually sent, mailing?

1 Q. Right. You get a new member. Who was it
2 that was sending out memberships?

3 A. Possibly someone, I'll call it the
4 sales-real estate office. Probably Ellen Padgett or
5 someone working in the office.

6 Q. I think you know where I'm going with it.
7 What was the nature of the club's management at that
8 point, 2001 and 2002? Describe for me how the club
9 administration particularly was being run.

10 A. It was utilizing the same people -- let's
11 see. It was utilizing the same, I'll call it
12 company, administrative staff that had been used in
13 prior years.

14 The accounting services, HR services, real
15 estate and marketing, regardless of funding, were
16 pretty much provided by the developer.

17 Q. There wasn't a lot of hiring of new people
18 once the members took over?

19 A. No. And the transaction, of course --
20 when somebody came in to look to buy property, there
21 was the real estate agent. He didn't pass him over,
22 to my remembrance, the membership person who then
23 passed it over. They basically said: Here's the
24 package.

25 Q. Was that by design? Was that the way the

1 club wanted to present? Have one person to be able
2 to answer the questions for all those issues?

3 A. Prior to 2001, the club wasn't part of
4 that transaction other than just existing as the
5 Callawassie Island Club. The developer's real estate
6 effort presented the opportunity to buy property and
7 the opportunity to buy membership in one sitting.

8 Q. That was prior to 2001?

9 A. Uh-huh, and probably continued thereafter.
10 The physical contact of somebody coming is the same.
11 It's not like buying used car where you go around,
12 after you decided to buy, and see everybody that's
13 going to sell you the warranty program.

14 Q. When a person came in, they wouldn't be
15 directed -- in 2002 let's say. They wouldn't be
16 directed over to the club to negotiate or figure out
17 their purchase into the club?

18 A. No, they would've met probably at the
19 sales office with someone that showed them the total
20 package of property ownership and membership.

21 Q. You said the memberships were issued out
22 of that same office basically to the members?

23 A. Yeah, the administrative services came on.

24 Q. Do you ever recall any instance after 2002
25 referring anybody to that office, Ellen Padgett

1 particularly, with regard to a membership question?

2 A. I mean, over the years there have probably
3 been people that we -- there are people that were
4 responsible to answer questions about membership and
5 that changed with the administration. But I can't
6 remember if they said go down the hall. I can tell
7 you, in my day, when I first joined, if you needed to
8 get an answer, you called Ellen Padgett.

9 Q. When did that change? Do you know when
10 Ellen left or no longer the person to go to?

11 A. No, I don't. Somewhere in the mid-2000.
12 We had other people, though, I'm sure that had that
13 role. I just don't remember.

14 Q. Do you know now who has that role that
15 Ellen had in mid-2000?

16 A. Specific questions would be Lindsay
17 Cooler, who is the membership director.

18 Going back to what I said earlier, every
19 one of those real estate agents that greet people at
20 the door should be well aware of the membership
21 option and package. It would only be on specifics.
22 I do think Lindsay now meets with every prospect just
23 to make sure they understand.

24 Q. Do you know who it was? I know you don't
25 remember all of them. Between Ellen and Lindsay, do

1 know any of the others.

2 A. No, I remember a lady named Lynnette.

3 Q. Let me ask you about a couple more people.

4 Tom Bayless. Do you know Tom Bayless.

5 A. I do know Tom Bayless.

6 Q. Tell me your interaction with him with

7 regard to his -- specifically with regard to his

8 membership and any issues with his membership.

9 A. Tom and Betty Bayless, his late wife, were
10 long-term members of Callawassie. They were
11 significantly active in the POA board; both served on
12 that board. And Tom and Betty were extremely active
13 in the covenant change in 2001 in assuring and being
14 the telephone chain to get votes. Unfortunately,
15 Betty passed away, and Tom is remarried and has opted
16 to discontinue paying.

17 Q. Have you ever discussed that with him?

18 A. Personally, no.

19 Q. Are you familiar with any -- have you been
20 relayed any discussions with other board members with
21 him?

22 A. No.

23 Q. Any members that have talked about that
24 decision?

25 A. Other than the normal rumor mill, but

1 that's hearsay.

2 Q. What about Ron and Ann or Janette Dennis?

3 A. No. I know the name. That's it. I

4 wouldn't recognize either one of them.

5 Q. What about the Aultons, either Mike or

6 Sandra?

7 A. Met Mike in 2001 and '2 or '1. He was the

8 construction supervisor for O'Connor & Taylor when we

9 redid the clubhouse. I know him by face. And he

10 later decided to invest in Callawassie. I think

11 that's probably how he met or was introduced to

12 Callawassie.

13 Q. Was through that job. Have you discussed

14 with him any issues of the litigation?

15 A. No, sir.

16 Q. What about Sandra Aulton?

17 A. No, sir.

18 Q. What about Arthur Applegate? Are you

19 familiar with Arthur Applegate?

20 A. First time I heard Mr. Applegate's name

21 was March of 2009.

22 Q. How did that come up?

23 A. I was attending, as a guest the very first

24 month I was in office, the POA finance committee

25 meeting, the treasurers of each organization, ex

1 officio members. And there was great discussion
2 about accounts receivable and people who were in
3 arrears to the POA. Mr. Applegate was at the top of
4 that list. I was surprised because I do know a Jeff
5 Applegate. That didn't make sense. And I realized
6 this was a different Applegate. I've never seen the
7 gentleman.

8 Q. Never spoke to him?

9 A. Wouldn't know him from Adam's house cat.

10 Q. What about Bill Hobson?

11 A. Yes, sir.

12 Q. Tell me about your dealings with Bill
13 Hobson generally.

14 A. Personal dealings, I've had only e-mail
15 exchanges. I know who Mr. Hobson is. Know him by
16 face. We were never personal friends as I was with,
17 still am I think, with Dick Mercier. He, like
18 Mercier, and I have been around for quite a while.

19 Q. Have you discussed with him any of the
20 issues that are part of this litigation of the clubs?

21 A. By e-mail.

22 Q. Tell me the nature of those discussions,
23 if you can remember them.

24 A. The club made an offer to him and several
25 other members back, probably late 2009, early 2010,

1 an offer that was authorized by the board. And
2 Mr. Hobson took exception to that and sent me some
3 e-mails.

4 Prior to that, I know -- not with me --
5 there was discussion as to whether or not he needed
6 to pay dues on two memberships or one membership.

7 And prior to that, there was a whole
8 flurry of e-mails that I would receive and other
9 members would receive, not only about dues but an
10 irrigation system replacement, which he and several
11 of his friends were not very happy about doing on the
12 golf course.

13 Q. Do you recall what his concern about the
14 irrigation work was?

15 A. Yeah, in his opinion there were issues
16 with DHEC, and he didn't think we needed to do it.

17 Q. When did that occur, do you remember?

18 A. Whenever the golf course renovation was
19 passed, he proceeded to try to -- he proceeded the
20 dialogue with DHEC to try to get it stopped.

21 Q. Was it ever represented to the members
22 that DHEC required that those alterations be made?

23 A. I can't remember all of it. There was
24 inference that it wasn't required. The project was
25 approved 80 percent to 20.

1 Q. Do you know whether or not the board
2 represented to the members that DHEC was requiring
3 that change, that irrigation work be done?

4 A. I can't remember the exact language. I
5 know the concern expressed by the board for sure was
6 that our well permits would not be renewed if there
7 was not a positive plan for the reduction of water
8 usage.

9 Q. Do you know who was hired to do the work
10 on the course?

11 A. No, I don't specifically. There was a
12 primary contractor and a series of subs.

13 Q. Let me ask you about the club rules
14 regarding pursuit or actions against delinquent
15 members of dues and fees. Are you aware of any
16 changes made in the governing documents with regard
17 to how club members, the accrual of dues and fees
18 of -- the amount of dues and fees -- let me it hand
19 you something. It will be easier this way.

20 Are you familiar with the 2001 club
21 general rules with regard to the pursuit of the dues
22 and fees that are unpaid, delinquent?

23 A. Yes, from all the correspondence that I've
24 seen.

25 Q. Is it your understanding that those rules

1 have changed since 2001 with regard to how dues and
2 fees that are delinquent are pursued?

3 MR. HAIGHT: Object to the form.

4 THE WITNESS: Say that again, or ask me
5 that again, please.

6 BY MR. McDANIEL:

7 Q. In the general club rules of August 2001,
8 there's some provisions with regard to delinquencies
9 and the actions taken or would be taken with regard
10 to members who have delinquent accounts or
11 statements. I'm wondering if you're aware, just off
12 the top, just from your memory, of changes to those
13 provisions with regard to delinquencies and how
14 they're handled?

15 A. Well, whatever is changed from there and
16 the latest, which is what? 2009. I think there's
17 one word change only because of what I've heard from
18 discussions about delinquencies. That was the shall
19 to may. The words themselves, and the actions are
20 two very different things.

21 I know of no -- I was never part of nor
22 aware of any expulsion period and certainly none
23 associated with any period of time. I don't know if
24 that's ever happened.

25 Q. To your knowledge, no member has ever been

1 expelled?

2 A. Not to my knowledge. That I'm aware of
3 the circumstances.

4 Q. To your knowledge. You're a board member
5 for four years, '98 to 2002, and now you're a board
6 member.

7 What is your understanding of that
8 provision that you're talking about; the way that it
9 was and with the changes? What's your understanding
10 of the suspension and expulsion of members with
11 regard to unpaid or delinquent accounts?

12 A. We have a process -- I can't speak for
13 prior to 2009 -- that follows a 30-60-90-day routine,
14 at which time -- I think it's at the 90th day we
15 refer people to counsel. And a demand letter is
16 sent.

17 The member is given notice, please respond
18 to how you're going to fix this in 30 days or we will
19 proceed with legal collection efforts; I guess the
20 best way to say it.

21 Prior to that, I can't give you the
22 specifics. And then we pursue that until the
23 collections are made.

24 MR. McDANIEL: Mark this as exhibit 1.

25 (DFT. EXH. 1, General Club Rules dated

1 8-8-01, was marked for identification.)

2 BY MR. McDANIEL:

3 Q. Look at that, see if you can recognize
4 that document.

5 MR. McDANIEL: Let's take a quick break.

6 (A recess transpired from 11:51 a.m. until
7 11:57 a.m.)

8 BY MR. McDANIEL:

9 Q. Mr. Switzer, have you had a chance to look
10 at that document?

11 A. Yes, sir.

12 Q. Can you tell us what that is.

13 A. It's the general rules of August 8, 2001.

14 Q. Of the Callawassie Island Members Club,
15 Inc.?

16 A. Yes.

17 Q. Are you familiar with when any amendments
18 to these general rules might've been made since 2001?

19 A. I'm aware there have been some, but I
20 don't really recall the dates of them. The latest
21 version should be up on the website. Whatever has
22 transpired between then and now.

23 Q. Tell me your understanding of the process
24 that's required to amend the club rules.

25 A. To my understanding, the amendment of the

1 club rules can be -- 1.3: The board of directors
2 reserves the right to amend these rules when
3 necessary and will notify membership of any changes
4 and any amendments or modifications should be subject
5 to or controlled by the provisions of the bylaws and
6 plan offering.

7 Pretty much, unless it violates something
8 in the bylaw, it's at the discretion of the board.
9 That's my understanding.

10 Q. Do you know whether or not there's any
11 vote that's required by the membership for changes to
12 the rules?

13 A. Not that I'm aware of unless it creates
14 some change in the membership plan or bylaws that
15 would require it.

16 Q. Are you aware of whether or not the bylaws
17 or the plan of offering membership requires a vote by
18 membership to make any change in those documents?

19 A. I think there's language similar to it.
20 I'm not a lawyer. Anything that has an adverse,
21 material effect on membership must be approved by,
22 basically, that segment of the membership.

23 Q. Let me get you to look at section 13.3 of
24 this document, which is page eight.

25 A. 13.33 or 13.3?

1 Q. 13.3. Under 13, dues, fees, assessments,
2 and charges. Do you see that section?

3 A. Yes, sir.

4 Q. 13.3.1, get you to read over that and give
5 you a chance to read it. And I'll ask you a question
6 or two about it.

7 A. Okay.

8 Q. Is it your understanding of that provision
9 that a member who is delinquent for more than 60 days
10 would be suspended from membership?

11 A. Yeah, it goes to the 30-60-90-day process.

12 Q. I don't see 30-day. Do you see anything
13 with 30 days in that?

14 A. I think --

15 Q. Or is it somewhere else?

16 A. I think there's somewhere else in there
17 delinquency, 30-days hence is beginning.

18 Q. I do see it.

19 A. It says a member who is before 60 days. I
20 think you're delinquent at 30. That's why we've got
21 the process.

22 MR. HAIGHT: Brian, it might help if you
23 look at 13.1.2.

24 BY MR. McDANIEL:

25 Q. It looks to me like the member can be

1 suspended for up to four months?

2 A. Uh-huh.

3 Q. At the four-month mark, it says: A member
4 whose account is not settled within the four-month
5 period following suspension shall be expelled from
6 the club?

7 A. Uh-huh.

8 Q. Is it your understanding that was the
9 policy, I guess, until at least the current changes
10 of the club? That was the policy to expel members
11 after four months --

12 MR. HUGHES: Object to form.

13 BY MR. McDANIEL:

14 Q. -- because of delinquency?

15 A. Let me try it another way. It has never
16 been the practice and, therefore, I've never known it
17 to be the policy that any members have been expelled
18 in a period of whether it be four months or six
19 months. I understand what the words say, but I've
20 never known that to happen.

21 Q. Would you agree that the words say the
22 member shall be expelled with four months of
23 delinquency?

24 A. I agree that's what it reads, yeah.

25 Q. 13.3.3. Would you take the time you need

1 to look over it. I'm going to ask you a question
2 about it. If you need more time to read it.

3 A. Yes, sir.

4 Q. Does that indicate that the unpaid dues or
5 charges --

6 A. It says to me, when a member sells his
7 membership, that the club has a lien for all
8 arrearages against that membership. And that's
9 written right on the membership certificate also.

10 Q. As a lien, they can deduct from the sale
11 price to collect back unpaid dues, fees, the accrual
12 of reasonable attorney's fees; is that what you
13 understand it to be?

14 A. Yes.

15 Q. Does that discuss, in your understanding
16 of it, what happens if the amount of those dues, fees
17 and whatever are greater than the value of the
18 membership when it's sold?

19 A. No. No, it doesn't, but it doesn't limit
20 the club to pursue that amount through other means.

21 Q. Do you believe that's indicated somewhere
22 else in the general club rules? The further
23 expansion of that or the additional efforts to
24 recover are indicated somewhere?

25 A. I think that is covered -- I don't know

1 this for a fact -- whether it would be covered in the
2 bylaw or plan of record. That point -- there are two
3 things that have changed practically since 2001.

4 Q. What is that?

5 A. One of which we're in a real estate
6 recession. And so in the early period of 2001 to
7 2005, given that our equity price was \$45,000, and
8 properties were moving, it was sometimes cheaper to
9 wait for a membership sale to go through than hire a
10 lawyer.

11 The second thing that has changed, because
12 of that recession, the number of receivables, the
13 number of members going delinquent spiked beginning
14 in 2008 from those that had been chronic from 2003
15 on. Coupled with the reduction of \$45,000 to 15, the
16 possibility that some of these long-term delinquents
17 we felt, to assure and to recover all that's owed, we
18 would go with legal action.

19 Q. When did the reduction from 45,000 to 15
20 occur?

21 A. 2010, I think.

22 Q. Tell me what's your understanding of what
23 it means to be an equity member versus regular
24 private club member.

25 MR. HAIGHT: Object to the form.

1 THE WITNESS: To me, it means two things.
2 Partial ownership or ownership in the assets of the
3 club. And, two, the opportunity to vote, have a
4 voice in the operation of the club.

5 BY MR. McDANIEL:

6 Q. How much is your ownership interest?

7 Not percentage-wise, dollar figure or the
8 amount for which you purchased that membership.

9 A. I was looking at it in a different
10 fashion, and that is, if we ever sold the club to
11 Trump, I would think each one of us would get some
12 kind of compensation for that, even if it was zero.
13 At least there would be a consideration. We would
14 have a vote in that or a say in that vote.

15 Q. Would you agree that the person has an
16 ownership interest in their membership?

17 A. Yeah, I think when you purchase at
18 Callawassie, although as much as we would like to
19 change it to more of a common model, you have two
20 pieces of paper. You have a deed and you have a
21 membership certificate. The sum of those two are
22 your investment in the island.

23 Q. You don't have to have the deed. You can
24 just buy into the club; right?

25 A. The answer to that is yes, but practically

1 it would never be an equity relationship for two
2 reasons, one of which is it potentially would affect
3 the tax status of the club.

4 Q. How so?

5 A. Property tax status, excuse me, in
6 Beaufort County. And the other is that the practical
7 market for an equity certificate off island, if you
8 wanted to sell it, you would go to the bottom of the
9 list and probably never get to the top.

10 The best thing, if I wanted to purchase a
11 membership in Callawassie, would be to purchase an
12 associate or nonequity membership. Then you are not
13 bound in obligation until that membership is reissued
14 as you are today and have been in the past.

15 Q. What's your understanding of the tax
16 implications? I don't quite follow that.

17 A. Back in 2001 there was some cases where
18 the golf courses and club amenities in our particular
19 case were taxed at \$90,000 when they're owned by the
20 developer. There was a decision made, and I don't
21 know that Dataw was the lead in this where, if the
22 club was for the benefit of the property owners, then
23 the club property itself was perceived more as a
24 common property. Since we as members and residents
25 were paying, if you will, property tax, it was -- I

1 don't want to say double counting. There was relief
2 granted.

3 To minimize property tax implications,
4 you're better off not selling equity memberships out
5 of the POA domain.

6 Q. You're saying every equity membership
7 should also own property on Callawassie? I'm a
8 little cloudy on that.

9 A. I really maybe just brought up a
10 consideration. If you're perceived as selling equity
11 off island, it does have a property tax evaluation
12 impact, so it's better for both parties to consider
13 nonequity off-island sales.

14 Q. Are you aware of equity members who don't
15 have property on Callawassie Island?

16 A. Yes, those people who are on the resale
17 list may have sold their property and not sell their
18 membership at the same time. They would go on a
19 resale list. They would still be equity members.
20 They would still be liable for the dues and other
21 obligations until reissued. There are a few of those
22 left.

23 Q. Are you aware of anybody who never owned
24 property in Callawassie that said, I want to a buy
25 membership in the club, and got an equity membership?

1 A. Yes; personally no. But the original
2 concept of the Spring Island Founder memberships
3 would fit that category. They were, in essence, made
4 equity members of both Spring Island and Callawassie
5 at a time when the amenities on Spring weren't built
6 out. There might've been a couple of those.

7 Q. Back to the rules for just a second that
8 we were looking at before we move on. Are you aware
9 of any discussions about changing in that 13.3.1 from
10 shall to may?

11 A. No.

12 Q. Do you know who was behind making that
13 change?

14 A. No, I would be speculating. When I came
15 on the board in 2009, it said shall.

16 Q. It said shall?

17 A. Yeah, the rules of 2009, at least the ones
18 that I saw published say shall. And it's never made
19 personally sense to me when you go to 14 and you talk
20 about discipline which includes failure to pay
21 membership contribution dues, that one says may and
22 the other says shall.

23 Q. Going to what you're just talking about,
24 14.1 section, the expulsion category 14.1.5, is that
25 the policy -- do you know if that policy has been

1 changed with regard to how expelled members or the
2 rights and the eligibility for membership is handled
3 currently?

4 A. No, as I've told you, I've never known of
5 anyone that was expelled personally.

6 Q. Has anybody's conduct ever had them
7 expelled? Are you familiar with anybody?

8 A. Not to my knowledge. If it got to that
9 level, I doubt if it would be publicly announced
10 other than they're no longer a member.

11 Q. You're not aware of that ever happening?

12 A. I'm aware of suspensions for behavior, not
13 expulsion.

14 Q. 14.1.4 talks about termination. If I'm
15 reading this right, the board of directors made by
16 two-third vote, the directors present request the
17 resignation of any member of the club for cause
18 deemed sufficient to the board. If the member does
19 not resign at the request of the board, the member
20 may be expelled by the board.

21 Are you familiar with anybody being
22 requested to resign?

23 A. No. Resigned to me would be you're no
24 longer -- if you will, your membership for the plan
25 resignation means you go on the resale list. The

1 fact that the member doesn't respond leads to
2 expulsion. To me, expulsion is an extension of
3 termination, but I'm not a lawyer.

4 Q. They're defined differently; termination,
5 expulsion --

6 MR. HAIGHT: Object to the form.

7 BY MR. McDANIEL:

8 Q. -- in this document; correct?

9 MR. HUGHES: Object to the form.

10 THE WITNESS: They're split out.

11 MR. McDANIEL: Probably a good place to
12 stop.

13 (A luncheon recess transpired from 12:17
14 p.m. until 1:16 p.m.)

15 BY MR. McDANIEL:

16 Q. I want to ask you about how memberships
17 can be transferred or sold during the time when you
18 were on the board and any changes that has occurred
19 that you know of, whether you're on the board or not.

20 From the earliest time of your membership
21 on the board what, if any, restrictions are you aware
22 of with regard to members selling their membership?
23 How would that occur if they found a buyer for their
24 membership and want to sell it?

25 A. The process, as I understand it now -- I'm

1 not too sure the restrictions or the rules have
2 changed -- is if you are selling your membership,
3 there are two vehicles; one of which is in concert
4 with your land.

5 Since December 2001, a new buying property
6 owner would have to become a member per covenant
7 change. You basically make it a condition of the
8 sale. I want to sell my house with my membership.
9 And the total package price for both is determined
10 and the check -- the club gets a check for the equity
11 contribution, let's say, golf is \$15,000. And
12 assuming no dues or anything in arrears, since the
13 equity change of two years ago I guess, the selling
14 member gets \$5,000 back. And the club retains
15 \$10,000.

16 Q. Prior to that, what was the amount they
17 would get back?

18 A. Prior to that, they would get back 20
19 percent of the market value of the equity or whatever
20 they paid for, whichever was greater. That's my
21 recollection.

22 Q. If they paid \$45,000 for it, and prior to
23 the change, they would get at least that much back
24 when it's sold?

25 A. Yeah, one of the reasons we went through

1 that process, the extended process of neighborhood
2 meetings, et cetera, et cetera, we all realized we
3 needed to change our perception in the marketplace.
4 There was a considerable number of members who had
5 paid \$45,000 for their membership and would've gotten
6 all \$45,000 back. We had to make sure they were
7 supportive of the equity change.

8 If they had paid -- my case, I paid in
9 1991 significantly less than that. Under the old
10 rules I would've gotten back 20 percent of 45,000
11 back -- excuse me -- 80 percent of 45,000.

12 Q. Those members that paid \$45,000 equity
13 membership at the time, now under the new system they
14 get how much back?

15 A. 15.

16 Q. 15,000 back?

17 A. Excuse me. They get back five. 5,000.
18 15 is the contribution from the transaction. And
19 then five goes back to the selling member. Once that
20 transaction is complete in the future, the 15,000 is
21 a nonrefundable contribution. We're staging our way.

22 Q. Do you have an idea how many members paid
23 \$45,000 for their membership?

24 A. I do not. I could venture a guess.
25 Somebody has those numbers.

1 Q. Did you require that those members or did
2 the board require that the members that paid \$45,000
3 specifically approve that, or was it done by
4 majority? What type of vote was it that approved?

5 A. I think it was done by majority. I only
6 remember one ballot.

7 Q. Do you know of any members that paid
8 \$45,000 who voted against the reduction of their
9 equity?

10 A. I'm sure there must've been some. I don't
11 know them personally. That entire process was
12 followed per opinion from our counsel; the education,
13 the ballot, everything. Because of the complexity of
14 the situation.

15 Q. How much was the total that the club
16 benefited by making that change? And what would be
17 owed to the members, do you know?

18 A. I don't know, but it's not a significantly
19 different change because the benefit really was,
20 hopefully, increased real estate sales.

21 Q. As to each member they now --

22 A. The net to the club -- I think you're
23 asking me, the selling member, obviously, with the
24 production may feel he lost some equity.

25 Q. He has lost some equity; right?

1 A. Perceived.

2 Q. He was owed 40,000 and now gets 5,000.

3 How is that perceived?

4 A. If I can sell my house and my membership
5 for \$325,000, it doesn't really matter whether the
6 internal arithmetic is 45 or not. I understand some
7 people perceive it differently.

8 One of the problems that we were having,
9 the total package was going to have to be discounted
10 for people to sell just because of market conditions.

11 Q. To benefit the landowners who also own
12 memberships?

13 MR. HAIGHT: Object to the form.

14 THE WITNESS: They're one and the same.

15 BY MR. McDANIEL:

16 Q. No, they're not one and the same. There
17 are people who don't own land, but own memberships,
18 are there not?

19 A. Minimal.

20 Q. There are people who own membership who
21 don't own land.

22 A. Try that again.

23 Q. I'm trying to make clear. You have
24 members in the club who don't own property on
25 Callawassie Island; correct?

1 A. To my knowledge, handful.

2 Q. The answer is: Yes, there are some; is
3 that right?

4 A. Some. Some are not equity owners.

5 Q. Some are equity owners?

6 A. Yes, sir.

7 Q. The connection you're making with the
8 property doesn't apply to all the members; correct?
9 The analysis you're making.

10 A. Well, 98 percent of them or 99.

11 Q. It's not a requirement at this point that
12 you have to purchase property to purchase a
13 membership in the club?

14 A. No, as I said earlier, you know, a
15 nonresident could purchase a membership in the club
16 if that nonresident was -- if I were that
17 nonresident, I would purchase a nonequity
18 participation. I would still be a member, but I
19 wouldn't be liable for capital. I could leave after
20 a year.

21 Q. If a member of the club who also owned
22 property sold their home and they owned a golf equity
23 membership and the purchaser purchases a social
24 membership, how would that work?

25 A. The golf member would have to put their

1 membership on the resale list at the very bottom.

2 And he would be liable, he or she would be liable for
3 dues and fees until that membership was sold, if they
4 wanted to put themselves at risk for that kind of
5 transaction.

6 Q. Are you aware of that happening or that
7 transaction actually happened?

8 A. I'm not aware of it, no.

9 Q. If they did, they wouldn't be, in your
10 opinion, relieved of their obligations under the golf
11 membership?

12 A. No.

13 Q. Until it was resolved?

14 A. Until it was reissued to a new member.

15 Q. If two members want to swap membership,
16 one has a golf, one has a social, are there any
17 restrictions or penalties associated with that?

18 A. No, I believe there are two methods by
19 which you can do that. One is temporary. I'll have
20 to refer to it in the membership plan.

21 The other is a permanent exchange. The
22 permanent exchange has an administrative fee, maybe
23 it's 250 bucks. I'm not sure. It's nominal. The
24 membership director keeps a list of those people who
25 have expressed to her interest in exchanging their

1 membership, social for golf, or golf for social.

2 Q. Are you aware of any requirement that
3 either of the swapping members have held the
4 membership or been residents of Callawassie for any
5 period of time?

6 A. There was a change made by the board that,
7 one, changed the process of swap to one not requiring
8 a transfer fee, which would have been \$9,000 or
9 something like that, and waive the period of time
10 that you had been a member to allow an exchange.

11 And then we also at the same time changed
12 the procedure by which you could upgrade from social
13 to golf, one of which that you had to pay the full
14 value of the golf -- the old procedure was to pay the
15 full value of the golf and then put the social on the
16 resale list. That was just too complicated, and it
17 would've meant for a while the new golf member would
18 be out the combination of both memberships. Now
19 you're allowed to upgrade from social to golf for
20 just the differential in the equity.

21 Q. Do you know when the change you're talking
22 about, particularly with regard to the waived period
23 of time --

24 A. They were all done at the same time. My
25 guess would be that was in late 2009.

1 Q. Is that while you were on the board?

2 A. Yes, sir.

3 Q. What was the impetus to make that
4 particular change with the swaps regarding the
5 transfer of fee?

6 A. It had become just too cumbersome an
7 operation one; to require somebody to upgrade by two
8 members, basic buy two and a way to get back their
9 money.

10 Two, one of the things that many of the
11 members have asked for is this ability to at least
12 have some opportunity to adjust their lifestyle as
13 they get older; maybe they can't play golf. And are
14 certainly willing to exchange memberships for lesser
15 fees. And the fact it's kind of a waste to play golf
16 if you can't. It was to try to make that easier.

17 Q. Do you know the time frame or period of
18 time that members had to be members before it was
19 changed?

20 A. I don't recall at all; if it was three
21 years or five years. I don't recall.

22 Q. Do you remember what changes -- you said
23 at one point the transfer fee was \$9,000?

24 A. Whatever the exchange was. I think there
25 was a transfer fee involved.

1 Q. That was done away with?

2 A. Yes.

3 Q. In 2009?

4 A. Yeah, my recollection, it was replaced by
5 the administrative fee.

6 Q. How much is that?

7 A. I think it's \$250.

8 Q. Let me go back to the early days of the
9 club, when the club itself was formed as far as not
10 the developer's side of it but the members club. You
11 said that occurred in '98?

12 A. No, sir, let's take it in pieces. The
13 corporation was formed in '99.

14 Q. What's the name of the corporation?

15 A. Callawassie Island Members Club.

16 Q. Who headed that up, do you know? Who
17 decided to form that corporation?

18 A. There was a group of members who formed a
19 transition committee to look at the transfer of
20 assets and to try to lay out a plan to effect that
21 transfer. We already had a purchase agreement in
22 place.

23 Q. And the transition committee you were
24 talking about is a committee under what? Just a
25 group of?

1 A. Group of members who tried to get together
2 and lay out all the issues, the time lines.

3 Q. These weren't elected to that position by
4 the community?

5 A. I can't remember whether it was before or
6 after the '98 election. I'm sure -- I know there was
7 discussion before that on an informal basis.

8 Q. I'm just trying to go back to the
9 beginning. When did the members become -- what was
10 the transition for the actual governing persons from
11 the developer to the members? Was this something the
12 developer had started, or was this something that
13 members created on their own and came to the
14 developer?

15 A. Under the original purchase agreement,
16 there was a group of elected members called the
17 advisory board of governors. That group, I think,
18 set up a transition planning committee. And the
19 recommendations of that transition planning committee
20 led to the incorporation of the Callawassie Island
21 Members Club. I don't remember exactly when that was
22 voted upon by the members, but it had to be in the
23 '98 time frame, somewhere in there.

24 Q. Is it possible the members didn't vote on
25 it?

1 A. My recollection is they did. It wasn't a
2 vigilante group that said: Let's take over the
3 developer.

4 Q. I didn't know if it was maybe the
5 developer himself setting this up.

6 A. No, the developer was willing to support
7 it and recommended it. And at one point in time, the
8 developer actually put into our bill a billable line
9 item that allowed us to build some cash to seek legal
10 advice, be able to pay our own independent counsel if
11 we needed to. He offered the capability to collect
12 the money for us. That's a long time ago.

13 Q. Been a while.

14 So the Callawassie Island Members Club, to
15 the best of your recollection, came to own the assets
16 of the Callawassie Island Club when?

17 A. In June of 2001. And that transaction
18 took place based on the renegotiated purchase
19 agreement of 1999. Callawassie Island Members Club
20 existed from about 1998 or '99, but it didn't have
21 the assets of the club until 2001.

22 Q. And did the assets include the membership?

23 A. No.

24 Q. So the members were no longer part --
25 which club were they part of in 1999?

1 A. They were still part of the Callawassie
2 Island Club as owned by the developer. In 2001 or
3 thereabouts, when the asset transfer took place, each
4 member was reissued a new certificate in the name of
5 the Callawassie Island Members Club. The unissued
6 memberships, the proceeds from their sale was still
7 due to -- the proceeds due to the developer because
8 that was part of the purchase agreement.

9 The purchase price of the Callawassie
10 Island Members Club was the sum of all initially
11 issued memberships plus the payment of the \$2 million
12 mortgage was approved by members in 1991 or so or '90
13 and the value of inventory at the time of the
14 transfer.

15 Q. The transfer of memberships didn't include
16 the unsold memberships; those stayed with the
17 developer in 2001?

18 A. The developer's right to the proceeds of
19 those stayed. The certificates, if you will, were
20 treasury stock of the newly formed Callawassie
21 Members Club. If they were sold, the proceeds were
22 due to the developer as part of the purchase price.

23 Q. Was there any agreement by the members
24 once they agreed to be part of the Callawassie
25 Members Club?

1 A. I'm sorry.

2 Q. Is there any agreement by the Callawassie
3 Island Club Members by which they were required to
4 sign saying they agreed to be members of the
5 Callawassie Island Members Club?

6 A. They received a membership. They voted
7 for the transfer and the creation. And they would
8 have paid the assessment that went along with the
9 purchase of the club.

10 Q. They voted for the transfer of the assets
11 to the Callawassie Island Members Club when they were
12 members of the Callawassie Island Club; is that what
13 you're referring to?

14 A. I think the way the Callawassie Island
15 Members Club was formed, all individuals owning
16 membership, currently owning membership became
17 members of the Callawassie Island Club. We had to
18 have some constituency. You'd have to go all the way
19 back in the corporation. I don't remember that.

20 Q. I'm just wondering how the members agreed
21 that they were no longer members of the Callawassie
22 Island Club, but they were now members of the
23 Callawassie Island Members Club?

24 A. They voted for the asset transfer as part
25 of the purchase agreement. It was effected in 2001.

1 At that point in time, the membership certificate was
2 reissued in the name of the Callawassie Island
3 Members Club. They accepted that somewhere in 2003.

4 Q. When you say they accepted it, what do you
5 mean?

6 A. They got it as a piece of paper like a
7 piece of stock.

8 Q. There was no formal acceptance?

9 MR. HAIGHT: Object to the form.

10 THE WITNESS: I really don't understand
11 the question.

12 BY MR. McDANIEL:

13 Q. You say it was accepted. You mean it was
14 mailed to them.

15 MR. HAIGHT: Object, again, to the form.
16 You're not testifying here.

17 MR. McDANIEL: No, I'm asking him the
18 question.

19 THE WITNESS: I really don't recall
20 whether I signed a form or not. We all initially
21 signed an application. I don't know if we had to
22 re-sign a new one in the Callawassie Island Members
23 Club.

24 BY MR. McDANIEL:

25 Q. Again, when you use the term they accepted

1 this membership, you're not saying -- let me ask you.

2 What do you mean by accepted?

3 A. Well, I didn't throw it back.

4 Q. You accepted it?

5 A. Well, they didn't throw it back. And they
6 paid for the final purchase. I think -- I don't
7 quite understand what you're asking for. If you go
8 back to the lawyers at the time, maybe they'll
9 remember the process better than I do.

10 Q. I understand if you don't recall what it
11 is. When you used the term they accepted, that sort
12 of implies --

13 A. I was trying to respond to your question.
14 If I misspoke --

15 Q. Is that what you did, you misspoke?

16 A. No, my memory is pretty vague as far as
17 what you're asking.

18 Q. That's a perfectly legitimate answer. I
19 just want to make sure I understand when you say they
20 accepted this.

21 You don't have any memory of actual
22 acceptance other than they would have been sent,
23 mailed a certificate?

24 MR. HAIGHT: Object to the form.

25 THE WITNESS: This seems to be going in

1 circles. Let me say, if you want me to say, I don't
2 remember all of that.

3 BY MR. McDANIEL:

4 Q. That's fine. At the time of the transfer,
5 2001 period what, if anything, was done with regard
6 to -- do you recall any discussions with the
7 developer about arrangements he had made with any
8 particular memberships that were outside the regular
9 plan of governance, maybe, as written?

10 A. No, I do not personally, no.

11 Q. Do you recall any discussions on the board
12 about those issues?

13 A. I don't recall.

14 Q. Were you aware of members paying dues or
15 having arrangements with their dues that would've
16 been different than what's laid out in the governing
17 documents?

18 A. I wasn't aware of any of them.

19 Q. Since this litigation, have you become
20 aware of that?

21 A. I have seen some correspondence that
22 recognized that there may have been some treatment of
23 nonresident or waiver of dues of second memberships,
24 but I wasn't aware of them at the time, that I
25 recall.

1 Q. Let me ask you about the payment of
2 resident versus nonresident dues that you mentioned.
3 What's your understanding of -- let me just say from
4 2001, in that time period 2001-2002, what was the
5 obligation for members owning more than one
6 membership, who lived on Callawassie or who were
7 considered residents, as to payment of resident or
8 nonresident dues on the multiple memberships?

9 A. I would assume they followed the
10 membership plan definition at the time which is, if
11 you had a roof on Callawassie, you were a resident,
12 or if you lived in the tri-county area for 90 days or
13 more, I think it's 90 days or more, you were a
14 resident.

15 If they had a second piece of property in
16 membership, I don't think there was any
17 differentiation unless it was done by the company
18 beforehand.

19 Q. Are you aware of members making that
20 contention? They were told they would not have to
21 pay resident dues on second, third, additional
22 memberships?

23 A. I'm aware of, at least, that argument from
24 the Aultons.

25 Q. Are you aware from anybody else making

1 that claim?

2 A. No, not that I recall.

3 Q. Are you aware of anybody not paying dues
4 on additional memberships, second, third, additional
5 memberships where, if they paid dues on the first
6 membership or prior membership, they didn't pay dues
7 on the other ones?

8 A. No.

9 Q. Are you aware of any transfers of
10 membership -- excuse me -- any sale of property -- I
11 believe I asked you this; I want to make sure I
12 have -- where the person sold their property, had a
13 golf membership, the buyer of their property bought a
14 social membership, and they did not have to continue
15 to pay dues and fees on their membership?

16 A. No, not that I can recall.

17 Q. Are you aware of anybody purchasing a golf
18 membership prior to this year when the membership
19 price changed for amounts other than --

20 MR. HAIGHT: Object to the form.

21 BY MR. McDANIEL:

22 Q. -- \$45,000, the recent change?

23 A. No.

24 Q. How much did you purchase yours for, your
25 golf membership, or do you have a golf membership?

1 A. I have a golf membership that was
2 purchased for \$12,500 in 1991.

3 Q. Do you know when the purchase price
4 changed from 12,500?

5 A. I think at the time the purchase -- the
6 advertised purchase price in '91 was 19,000. The
7 developer either discounted lots or discounted
8 memberships to incentivize sales. It changed over
9 the years until it got to, I think it went from 31 to
10 45 at one point in time. It progressed over the
11 years.

12 Q. After 2001, are you aware of anybody
13 paying a price different, as you had; a discounted
14 price for their membership?

15 A. No, I mean, the advertised price was
16 45,000. That became the basis of the transfer fees
17 that would be given to the club.

18 Q. After 2001, was the developer allowed to
19 make discounted offers of the membership price?

20 A. No, I mean, the transaction as far as the
21 membership was at 45. Nor was he allowed to, you
22 know, waive dues or any other fees on behalf of the
23 members club.

24 Q. When would that have been?

25 A. June of 2001.

1 Q. Was the developer still active in the
2 governance of the club after June 2001?

3 A. How do you mean?

4 Q. Other than voting, did he have any part in
5 the governance of the club?

6 MR. HAIGHT: Object to the form.

7 THE WITNESS: He had rights under the
8 purchase agreement, but I don't remember that he was
9 part of the governance process. And under that
10 purchase agreement, he would have rights in the
11 mutual approval of the budget, and he would have
12 rights relative to the mutual approval of equity
13 fees. There were a few other things outlined.

14 BY MR. McDANIEL:

15 Q. Would he have been involved in the
16 decision to change the price of the equity
17 membership?

18 A. Yes.

19 Q. Who is the owner of the club? Who's the
20 current owner of the club?

21 A. The Callawassie Island Members Club, and
22 their shareholders are the members.

23 Q. I just want to make sure. I think you
24 testified you don't know who changed the language in
25 the rule that we looked at from shall to may?

1 A. (Witness nods head from side to side).

2 Q. That's a no?

3 A. No, I'm sorry.

4 Q. I just want to make sure on the record we
5 know what your answer was.

6 Who would've been on the board during that
7 period? Do you know that? Do you know who might
8 know the answer to that question?

9 A. I mean -- well, first off, I think it
10 would've been a board decision because the board
11 amends the general rules. I don't know when it was
12 amended.

13 Q. Do you know who was the board president in
14 the two or three years before you?

15 A. Bob Deluca was board president from 2006
16 to 2009. Did I get that right? I'm sorry, 2009 to
17 2012. Karen Norwood was the board president the
18 previous two years.

19 I came on the board 2009. And Bob had
20 been reelected when I got on the board. He was the
21 president for three years.

22 Q. Are you aware of anyone who sold their
23 property, a member of the club who sold their
24 property to someone who didn't purchase their
25 membership -- let me ask you. Are you aware of that

1 situation ever happening?

2 A. Say that again.

3 Q. The person sells their property, and the
4 buyer of the property doesn't purchase their
5 membership.

6 A. The only one I might think of is
7 Applegate. Somehow he managed to sell property with
8 a social membership. I think the last name on the
9 list is membership. I don't understand how it
10 happened. I wasn't personally aware of it.

11 Q. Are you aware of Bill Hobson having that
12 situation where he sold a property and the buyer
13 didn't buy the membership?

14 A. Yes, prior to 2001, memberships weren't
15 required.

16 Q. Do you know of others than Bill that were,
17 prior to 2001, of that situation?

18 A. Yeah, there were several on the resale
19 list when I came on the board in 2009. Some old,
20 some very new.

21 Q. Can you name any of those several that
22 you're talking about?

23 A. I'd have to look at the resale list.
24 There was a Beauregard. Williams. Hobson. Marshal
25 Field. I could look at the resale list.

1 Q. I'll show you that in just a second. Are
2 you aware whether or not all those people were
3 continued to be billed for those memberships after
4 their names were placed on the resale list?

5 A. Yes, to my knowledge they all were. Some
6 were paying, some were current, some were not.

7 Q. Do you know if those people are still on
8 the resale list?

9 A. Some have conceded their membership based
10 on an offer that was made by the board in late 2009,
11 early 2010.

12 Q. Tell me about that offer. What was the
13 offer that was made to those members?

14 A. The offer was made for all memberships on
15 the resale list that were unassociated with property.
16 And the components of it were it was a one time
17 offer. It was for payment of one year -- the basics
18 of one year's annual dues. The fact that it was an
19 individual confidential arrangement between those two
20 parties and that was offered to every unassociated
21 membership that we had at the time. When I say
22 unassociated membership, to which there wasn't an
23 associated piece of property. Hobson was one of
24 those also, as a second membership as I recall.

25 Q. When you say associated property, it's not

1 a particular piece of property. It's the fact they
2 own property; correct?

3 A. Associated property in the sense the
4 individual owned the membership and does not have a
5 connectable or associated piece of property with it.
6 They had sold their property, the case you asked me
7 earlier, and the individual did not want to buy their
8 membership. They went on the resale list and, you
9 know, progressed up as you do in the three-to-one
10 relationship.

11 Q. Was that different for persons who bought
12 before the covenant change, the 2001 covenant change
13 versus they bought property after?

14 A. I think practically, no. And I say that
15 because the covenant change basically required you --
16 after the covenant change, you were required to
17 purchase a membership with the property and retained
18 and were liable for that membership until the
19 property was sold.

20 Q. Your understanding, the covenants
21 required, even if someone bought before the covenant
22 in '99, they bought the property --

23 MR. HAIGHT: Object to the form.

24 THE WITNESS: You asked me after 2001, I
25 thought.

1 BY MR. McDANIEL:

2 Q. I think I was trying to -- let me finish
3 the question.

4 Is it your understanding that someone who
5 bought before the covenant change would be obligated
6 by the covenants to maintain a membership with their
7 property?

8 A. No, they're obligated by the membership
9 plan, I believe.

10 Q. You would agree that the covenants did not
11 require members who purchased before --

12 A. It wasn't applicable to them.

13 Q. The covenants are not?

14 A. The covenants are applicable to everybody.
15 The requirement to purchase property and a membership
16 at the same time was 12/1/2001.

17 Prior to that, there was not a requirement
18 to purchase a membership. There was a requirement to
19 remain current with that membership as long as that
20 membership remained either in their possession or was
21 placed on the resale list until reissued.

22 Q. Was it connected to the property prior to
23 2001?

24 A. No.

25 Q. I just want to make sure we're clear.

1 That's my question. If someone such as Hobson bought
2 property in '96, '97 -- I'm not saying he did --
3 prior to 2001, I'm wondering about the offer that was
4 made to these folks that you talked about it being
5 associated with the property. I'm wondering, if they
6 purchased property before the covenants, wouldn't
7 that be not associated with their membership?

8 MR. HAIGHT: Object to the form.

9 THE WITNESS: I'm getting confused. The
10 association the board was concerned about was that
11 there may have been, for the most part, people prior
12 to 12/1/2001 who, because there was not a requirement
13 were in a queue to sell their membership. The
14 probability for that person to sell that membership
15 just based on their position and the resale list
16 varied by their position.

17 And we thought it would be appropriate to
18 offer once more -- not once more -- to offer an
19 opportunity to relieve themselves of the dues
20 obligation, given the fact that it could be a long
21 term situation. Some might've been more probable to
22 sell it than others. But the discussion was, if we
23 do it for one, we should do it for all and pay the
24 list or claim the list.

25 Q. Why? Why is that offer being made to

1 those members?

2 A. The concern on some of the members down
3 the list, the people that were paying in good faith
4 that, based on the turnover of the island, the
5 probability that membership would ever get to the top
6 was very minimal. And the discussion was that we
7 felt it was the right and proper thing to do to let
8 everyone know of their position and give them an
9 opportunity to accept that offer.

10 Q. How many offers like that were sent out,
11 to your knowledge?

12 A. Maybe six or seven.

13 Q. What was the discussion as to why that
14 would be confidential?

15 A. Because we may arrive at slightly
16 different solutions based on position in the list.

17 Q. I don't understand.

18 A. We may arrive at slightly different
19 resolutions relative to the amount of dues paid.
20 Some were long. It was the advice of at least one
21 member on the board that, that would be confidential.

22 Q. Was releasing those members, in your
23 opinion, to the benefit of the club?

24 A. In my opinion, yes.

25 Q. How so?

1 A. It eliminated the risk that there were
2 some people down the line that may have felt that
3 they were paying dues with no probability or no
4 possibility to get back. That would only create bad
5 debt in the future in an unknown situation.

6 It would also fundamentally get us to a
7 point that, for every piece of property, there was at
8 least a membership attached to it rather than go
9 through, you know, kind of a confusing situation.
10 Since we made the covenant change in 2001, it
11 basically achieved almost a one-to-one relationship
12 with membership and property.

13 Q. Was that offer made to people whose
14 membership were not on the resale list at the time
15 but in a similar situation?

16 A. I'm not aware of it.

17 Q. Was there any discussion about informing
18 those members of that option?

19 A. I think we informed everyone that had a
20 membership without property.

21 Q. You think the offer was made to folks
22 whether they were on the resale list or not?

23 A. Yeah, I think so.

24 Q. Are you familiar with Jackie Leffers?

25 A. I know the name.

1 Q. Do you know if any agreement was made with
2 her with regard to her membership in the club?

3 A. No. I know -- well, I know her husband
4 died years ago. She's long gone. I think in
5 Florida. We continued, to my knowledge -- she
6 continued to be billed. And she was a name that I
7 believe was offered that offer.

8 Q. The offer that we just discussed?

9 A. Yes.

10 Q. She was one of the folks that was made
11 that?

12 A. Yeah.

13 Q. Are you familiar with her attorney coming
14 and making an argument on her behalf, or do you think
15 the offer was just mailed to her like all the other
16 offers?

17 A. I'm aware of her neighbor, Jack Castle,
18 trying to, if you will, be an intermediary in her
19 behalf with her general manager.

20 Q. Who was the general manager?

21 A. Brian Lasota.

22 Q. Was it as a result of his interactions of
23 Brian Lasota that an agreement was reached with
24 Ms. Leffers?

25 A. No, let me say I think it was part of his

1 involvement that consummated the agreement in the
2 sense -- I don't know the health condition of
3 Ms. Leffers -- when we asked Jack to please make sure
4 she understood.

5 Q. Understood what? I don't understand.

6 A. Understood the offer.

7 Q. Was the offer that you're discussing, was
8 that relayed to all the members at relatively the
9 same time period?

10 A. My understanding, yes.

11 Q. How was it sent to them or relayed to
12 them?

13 A. General manager, I believe, contacted them
14 or sent them a follow-up note that was supposed to.

15 Q. That was Brian Lasota?

16 A. Yes, sir.

17 Q. He was instructed by the board to make
18 that offer?

19 A. He was authorized by the board to make the
20 offer to members connected to unassociated property.

21 Q. Was he ever instructed, to your knowledge,
22 to make any other offers to resolve membership with
23 either conceding or resigning members?

24 A. No, the authorization was for unassociated
25 property. He may have had discussions with

1 delinquent members as part of the receivables
2 management.

3 Q. I believe it was not, you tell me. From
4 your testimony earlier, it was a confidential deal.
5 Was it publicized to the general membership in any
6 way, that offer?

7 A. I don't recall. If it would be, it
8 might've been in the minutes.

9 Q. You don't recall?

10 A. No, I don't.

11 Q. Are you aware of anybody recently
12 purchasing a golf membership for something other than
13 \$15,000?

14 A. No.

15 Q. Would there be any basis for someone in
16 the last two years --

17 MR. HAIGHT: Object to the form.

18 BY MR. McDANIEL:

19 Q. -- to purchase a membership for \$9,000?

20 A. No. Let's make sure we understand. The
21 negotiations between buyer and seller may have words
22 like, I'll pay you your dues, I'll throw in my
23 membership as though it's zero. The receipt of all
24 monies associated with that transaction are based on
25 the 45 or the 15. And so, I think sometimes there's

1 confusion that somebody said, well, I only paid
2 \$9,000.

3 Let me say, the buyer may have only paid
4 9,000 but the seller then also had to pay six.

5 Q. The club would never receive -- would not
6 in that case receive less than the full price?

7 A. That's correct.

8 Q. Whether it came from the buyer or the
9 seller?

10 A. Yeah.

11 Q. Is it correct the buyer is actually buying
12 his membership from the club?

13 A. It's reissued through the club.

14 Q. Is the buyer purchasing it from the club,
15 or is he purchasing it from the other member?

16 A. I'm not a lawyer. Here's the way I
17 understand it. The buyer is purchasing a club
18 membership from the club. He sends in -- we get a
19 check for \$15,000. That is the reissued membership
20 from the individual that's selling it. If there's
21 any proceeds that are due back to the seller, that
22 comes from the club, too. It happens simultaneously,
23 that closing.

24 Q. The way that the governing documents are
25 set up, technically, the transfer is with the club?

1 A. That's correct. I turn my membership back
2 in, it's resold from the club or reissued from the
3 club.

4 Q. Anytime there's a transfer of a
5 membership, it has to go through the club first?

6 A. Yes.

7 Q. Are you familiar with Bill Hawkins?

8 A. Yeah.

9 Q. Who is Bill Hawkins?

10 A. Bill Hawkins was a member from probably
11 the late '90s through whenever he left Callawassie.
12 He was part of the transition committee. He was a
13 board member, and I'll call it the class of 1998,
14 with me and several others and later became president
15 of the club.

16 And after the resignation of our first
17 general manager, was actually acting general manager
18 for a period of time before we hired a replacement.

19 Q. Were you on the board when he was hired as
20 the acting general manager?

21 A. No. No, I was not. The original general
22 manager resigned after I left the board.

23 Q. Who was responsible for hiring Bill
24 Hawkins as the acting general manager?

25 A. It would've been the board at the time.

1 Q. Do you know who that was? Who the
2 president was?

3 A. I would have to take a guess. It might've
4 been Terry Wortsparker.

5 Q. Do you know how much Bill Hawkins was paid
6 as acting general manager?

7 A. No, I don't.

8 Q. What happened to Bill Hawkins after that?

9 A. He lives in Palm Beach, Florida. He went
10 back to be close to his children or his wife's
11 children.

12 Q. Did he sell his property?

13 A. I believe he sold all of his properties
14 that he owned in Callawassie.

15 Q. Are you aware of whether or not his
16 memberships were sold at the time he sold his
17 property?

18 A. I'm aware he had multiple properties,
19 including a house. I do not know if he had multiple
20 memberships. He could have purchased the memberships
21 at a time when you did not have to buy a membership,
22 whatever. You would have to talk to Hawks, Bill
23 Hawkins about that.

24 Q. I wanted to see if you knew. In one of
25 the earlier depositions with Ellen Padgett, there was

1 some discussion about she had raised concerns that he
2 would walk away from the membership and asked
3 Blaisdell about it and didn't get an answer. I
4 didn't know if you had.

5 A. Bill and I became very good friends. I
6 know Bill had multiple properties that he invested in
7 on Callawassie and one home. Given that you could
8 transfer memberships, he only had, to my knowledge,
9 one. Somewhere in the ultimate transaction, that
10 golf membership was kept current and paid. You would
11 have to confirm that with Hawk.

12 Q. Do you know what time that he sold?

13 A. I really don't. It was maybe 2004, '5,
14 '6. I don't remember.

15 Q. Anywhere in that period, was there any
16 provision that you know of in the club where, if he
17 sold his property and the purchaser bought a
18 membership different than the type he had, I believe
19 he had a golf membership and the purchaser bought a
20 social membership, do you know of any provisions in
21 the rules that would allow him putting his golf
22 membership on the resale list?

23 A. He would've probably -- no, I don't.
24 Since he may have been still living here or wanting
25 to use the club, he could have transferred it to

1 another piece of property.

2 Q. He could still be a member in that case?

3 A. Uh-huh.

4 Q. Do you know if he's still a member?

5 A. I don't believe so. The last time I saw
6 him, I thought he told me he was free and clear of
7 all connection to Callawassie.

8 Q. Did he discuss with you how he got free
9 and clear of his membership?

10 A. No.

11 Q. Do you have any information that he
12 transferred it to one of his other properties?

13 A. No.

14 Q. Any knowledge that actually happened?

15 A. No, I mean, I could only presume.

16 Q. I just want to make sure.

17 A. That's correct.

18 Q. You were speculating that might be the
19 case?

20 A. Yeah, I don't know for sure.

21 Q. Are you aware of any board members, former
22 board members getting any deals that were not offered
23 to other club members?

24 A. No.

25 Q. At that point when he left -- strike that.

1 What's the club policy with regard to
2 filing suit against delinquent members? How do they
3 choose which delinquent members to sue?

4 A. It's an option that we have based on the
5 knowledge of the case.

6 Q. Is there any criteria by which the club
7 makes that decision?

8 A. Nothing more than a decent business
9 judgement. We try to be as consistent as we can.

10 Q. Are you aware of other delinquent members
11 who have not been sued?

12 A. There may be some. They should be in the
13 process to be.

14 Q. Is the board's current position that
15 they're going to file suit against all delinquents
16 members?

17 A. That's certainly the approach we're taking
18 to be consistent with everything. Whether or not all
19 of that happens, there's other resolutions, I don't
20 know.

21 Q. Is there any discussion at this point
22 amongst the board as to coming up with the
23 resolutions that might allow members to resolve
24 delinquencies?

25 A. I'm sorry. Come up with resolutions?

1 Q. Is there discussions amongst the board
2 that might help resolve delinquencies, lawsuits, that
3 type of thing that are going on?

4 A. I don't believe -- we're certainly open to
5 discussion of settlement. Given the current
6 environment with all the countersuits and everything
7 else, to try to show any kind of differentiation of
8 treatment which is what I think you're getting at,
9 we've tried to be as consistent as we can with the
10 process of 60-90, and then follow suit.

11 And we've also discussed taking other
12 avenues maybe sooner like magistrate maybe rather
13 than let some of these things go on. To my
14 knowledge, I haven't. Rick may know better. We
15 authorized the general manager to work with
16 Mr. Haight and the CFO to entertain discussion.

17 Q. Do you know at this point the amount of
18 the attorney's fees that have been spent in the
19 collection and defense of the suit action?

20 A. I think the number over two years is --
21 I'm guessing. I don't think I'm too far off -- about
22 \$70,000; \$40,000 of which is the DNO cost to handle
23 countersuits. We had \$20,000 deductible.

24 Q. I guess the question I asked: Are you
25 aware of any proposals on the board at this point to

1 offer members ways to resolve these delinquencies or
2 resign their memberships in a way that would change
3 the current rules?

4 A. We have always said and continue to work
5 with people on potential payment plans. If you're
6 talking about a resolution, the rules of that are
7 fairly simple. The general manager's discretion on
8 two points; one, the delinquent member must remain
9 current going forward and, two, that the pay-down of
10 past delinquent amounts is in a reasonable period of
11 time, not necessarily to exceed a year or two based
12 but generally.

13 Q. Are there any more discussions about
14 allowing owners to resign with sort of the agreement
15 that was made --

16 A. No.

17 Q. -- in 2010?

18 A. No, because I think the position of the
19 resale list with membership associated with property
20 and all those members who have purchased since
21 12/1/2001, we have positioned ourselves such that
22 mismatch won't really happen again.

23 Q. You do have club members who purchased
24 their property prior to 2001, don't you?

25 A. With membership.

1 Q. They have a membership. They purchased
2 their property prior to 2001?

3 A. That's correct.

4 Q. Are you aware of members who have
5 memberships not associated with property such as the
6 Aultons?

7 MR. HAIGHT: Object to the form.

8 THE WITNESS: I think the Aultons have
9 three memberships and three pieces of property.
10 BY MR. McDANIEL:

11 Q. If two of those properties had been sold
12 and retitled in a tax sale, they no longer own them,
13 would they be able, under your understanding of the
14 rules, to receive an offer to try to resolve those
15 memberships?

16 A. Let me see if I've got you. The Aultons
17 or similar people who go to tax sale or whatever, two
18 things; they still are liable, responsible for the
19 amount owed to the club and will continue to pursue
20 payment of that. The purchaser of the property at
21 the tax sale should have been informed or aware that
22 they're buying that property subject to conditions in
23 the covenants of the property. We inform them of
24 their obligation to purchase membership.

25 Q. Are you aware of the club ever taking any

1 legal action to require somebody to purchase a
2 membership?

3 A. I don't know if we've taken legal action.
4 I do believe we have informed the purchaser of their
5 obligations.

6 Q. You're not aware of the club ever
7 enforcing that by a lawsuit?

8 A. I'm not aware of that.

9 Q. Are you aware of the property owner
10 association ever suing any property owner, trying to
11 require them to purchase membership?

12 A. No, I think the transaction wouldn't go
13 through.

14 Q. I understand your position, I guess, that
15 the rules require the Aultons to continue to be
16 liable for those dues, fees and assessments.

17 In the situation hypothetically -- they
18 have allege that they don't own two of the properties
19 anymore. If that is true, would it be the board --
20 would it be within the board's course to allow them
21 to resign those memberships and/or make an offer like
22 was made to the previous nonproperty owners?

23 MR. HAIGHT: Object to the form.

24 MR. HUGHES: Object to the form.

25 THE WITNESS: I don't think that policy

1 extends to that level. I haven't thought of that. I
2 actually have to take that to the board. What, in
3 essence, you're saying, a delinquent allows his
4 property to be dismissed through tax sale and then
5 that somehow relieves him of the obligation to pay
6 his past arrearages.

7 BY MR. McDANIEL:

8 Q. That's not what I'm saying at all. What
9 I'm saying, in a situation where a person can no
10 longer make their payments, they lose it at a tax
11 sale, the property gets turned over to somebody else,
12 is there a difference with how the board, how the
13 governing documents would treat them versus when they
14 previously owned the property?

15 MR. HUGHES: Object to the form.

16 THE WITNESS: I think we're saying the
17 same thing. You just want to say it in a different
18 way. I think the responsibility -- they still have
19 the debt to the club. And I think you're saying:
20 Well, the fact that they no longer have the property,
21 does that make us look at them any differently? I
22 don't know. We would have to work it out.

23 BY MR. McDANIEL:

24 Q. The answer is: You don't know. You would
25 have to talk to the board about it?

1 A. Yeah, I point out that certainly
2 consideration would be, if that happened to create
3 the situation, that somehow there would be some new
4 relief, I'd have to, again, have to talk to the
5 board.

6 Q. Are you aware of many properties on
7 Callawassie Island going to tax sale?

8 A. I've heard about it. I couldn't give you
9 a number, yeah.

10 Q. Are you aware of foreclosures on the
11 properties?

12 A. Yes.

13 Q. How many properties are you aware of have
14 been foreclosed on?

15 A. Handful.

16 Q. Are you aware of banks subsequently owning
17 those properties?

18 A. Yes.

19 Q. Did the banks become dues-paying members?

20 A. Yes, they're obligated, yeah, and purchase
21 the membership.

22 Q. Are they, in fact, the banks in those
23 situations, are they, in fact, paying the dues and
24 fees?

25 A. Some have and some haven't. Some will

1 argue not. We have discussions with them.

2 Q. Have you sued those banks?

3 A. I don't know if we have sued. I'm not
4 directly involved in the suit process. I know we've
5 had contact with them and expressed our opinion.

6 Q. Would those banks be treated differently
7 than the other members with regard to whether or not
8 they would be sued?

9 A. Again, it goes back to the business
10 judgment.

11 Q. When there is an issue that materially
12 adversely affects a member or a class of members,
13 what is your understanding that is required, the
14 percentage voting requirement, to make a change of
15 that type?

16 A. I don't know. I'd have to look at the
17 files or the membership plan.

18 Q. Specifically with regard to special
19 assessments, are you aware of whether or not they
20 require a majority approval?

21 A. I think so.

22 Q. What constitutes a majority approval?

23 A. I'd have to look at the language.

24 Q. Fair enough.

25 Are you familiar with the auction that

1 happened in, approximately, 2003 of club property?

2 A. I'm aware of it and some of the details,
3 yeah.

4 Q. Did you attend that auction?

5 A. No, I did not.

6 Q. How did you become aware of the auction,
7 first become aware of it?

8 A. I just heard it in the community that the
9 developer was holding an auction to sell property.

10 Q. Do you know at that auction was there
11 any -- was that done while you were still on the
12 board?

13 A. No, if I remember right, it was December
14 2003.

15 Q. Are you aware of whether or not the club
16 had a representative at the auction?

17 A. No, I'm not aware. I mean, the auction
18 was conducted by the developer that sold property
19 that he owned.

20 Q. He was also selling memberships, wasn't
21 he?

22 A. Absolutely. Well, let's try it another
23 way. He was selling property, and it was a
24 requirement to buy a membership with the property.
25 In terms of the purchase of membership, that would've

1 been in the three-to-one resale list.

2 Q. That occurred on Callawassie Island, the
3 auction did; is that right?

4 A. I don't know. It could've been on Spring
5 or at the sales office. I really don't know.

6 Q. And the sales office isn't on the island?

7 A. No.

8 Q. This is before you cross over to the
9 island?

10 A. Before the gatehouse, which was property
11 he owned at the time.

12 Q. The developer?

13 A. Yeah, the developer.

14 Q. Who is responsible for billing members
15 when you were on the board in '98 to 2001?

16 A. Well, it was a contracted service. We got
17 financial services and HR services either through the
18 Callawassie Island Company, which has now evolved
19 into Phoenix Financial. Craig Simonson was an
20 employee of Callawassie Island Company. His staff
21 served the developer connected or previously
22 connected.

23 Q. Did you sever that connection in 2001 when
24 the members took over?

25 A. No, we continued it under a service

1 agreement. I don't know where the service agreement
2 is. We re-instituted that service agreement or a
3 similar one with Phoenix Financial after the
4 developer defaulted.

5 Q. In 2009?

6 A. '10.

7 Q. Was Phoenix Financial -- was that the name
8 of it in 2001?

9 A. No, I think the Callawassie Island
10 Company.

11 Q. The developer was basically handling the
12 accounting?

13 A. He handled the accounting, the real estate
14 operation, the HR, the membership.

15 Q. Up to when?

16 A. Probably past 2001, to some degree. It's
17 kind of an integrated approach up there.

18 Q. Do you have an idea how long that went on?
19 You say through 2001. It wasn't through 2010, was
20 it?

21 A. No, there was a transition where the
22 developer no longer was asked to be the real estate
23 operator. From that point on, there was a transition
24 to Remax. Some of the representatives of Remax
25 would've been involved in this multi-interface where

1 membership and property purchase was discussed, and
2 then it's evolved since then.

3 Q. At the time when Remax is brought in,
4 that's when the accounting, HR, membership was
5 shifted?

6 A. That remained as a section of CIC.

7 Q. Just the sales aspect of the property
8 changed to Remax from the developer?

9 A. Yeah.

10 Q. I'll represent to you, I believe that was
11 about 2006. Does that sound about right?

12 A. I don't know. There have been several
13 transitions up there.

14 Q. Prior to the agreement with the developer
15 in 2010, I believe you said it's 2010, did the club
16 own any of its own memberships at that point?

17 A. Yes, there were a series of concessions
18 that occurred back in 2003 or '4 that was offered to,
19 as I understand it, accruing members; basically those
20 people who had sold property and not their
21 memberships that were on the resale list.

22 Q. It was a different offer?

23 A. To my knowledge, yeah. It was different
24 timing. I think it was offered in similar
25 circumstances.

1 Q. You weren't on the board when that was
2 offered?

3 A. No.

4 Q. Do you know who was? Was it Wortsparker?

5 A. Wortsparker. Hawkins. The late Jim
6 Upton. Those are names that come to mind.

7 Q. How did you come to know of that offer?

8 A. Primarily by picking up the resale list in
9 2009 when I got back on the board.

10 Q. Did you ask any questions about how these
11 conceded members got on the resale list?

12 A. Yeah.

13 Q. Who did you ask?

14 A. Well, I tried to understand the situation.
15 Might've been other board members. Most of them long
16 gone.

17 Q. Do you remember who informed you about:
18 Here's what happened?

19 A. Not specifically. It was pretty much --
20 many of those names I recognized.

21 Q. The member names on the resale list?

22 A. On the resale list.

23 Q. Is Terry Wortsparker still on the board?

24 A. No.

25 Q. Do you know him?

1 A. Yes.

2 Q. Is that somebody that you've talked to
3 about that?

4 A. Not in great detail. I mean, Warts and I
5 are good friends. I'm not too sure.

6 Q. Warts, Hawk. You call these guy by their
7 abbreviated last names.

8 A. We spend a lot of time together.

9 Q. I understand.

10 A. They call me Switz.

11 Q. I'm trying to figure out what happened
12 with these different offers, the one you discussed
13 with me and apparently the one in 2003-4 time frame.
14 I'm trying to figure out who would be the best person
15 to talk to about that, would be able to explain to me
16 the criteria they offered to concede some of the
17 memberships.

18 You don't know who the best person would
19 be?

20 A. No, not unless it was -- the only other
21 person I might think of is Jim Scheider, who is
22 looking at the details.

23 Q. Is he on the board now?

24 A. No, he's a lawyer.

25 Q. He's the one that originally helped with

1 some of the drafting that you mentioned?

2 A. Yeah, both the POA, and I'll call it the
3 Callawassie Island Members Club lawyer.

4 Q. Do you know where he lives now?

5 A. No.

6 Q. He was in Florida?

7 A. No, that's Hawkins. I know there was
8 concern at the time because the list was large. It
9 included many people who were accruing their dues.
10 And the fundamental issue was they were now required
11 to pay and that would create an allowance for bad
12 debt issue.

13 Q. Look at this. See if you can identify
14 what this is.

15 A. Resale list 2002.

16 Q. I'm not certain there's a second page to
17 it. It seems to fill up the whole page.

18 A. There is a second page, if you will. But
19 it would be associated with social.

20 Q. This pertains to the golf memberships; is
21 that correct?

22 A. Yeah, it doesn't say page 1 or 2.

23 Q. And do you recall having seen this before?

24 A. I've seen the format before.

25 Q. You can't say whether this is the same

1 document?

2 A. It would've been in the last months that I
3 was on the board, not that there wasn't one before
4 that. Because I think the resale list was kept from
5 the very beginning. It was part of the membership
6 plan.

7 Q. Is this a document that's available to the
8 members?

9 A. Yeah, I think any member can go up and
10 look at it. I think that's the annotation on the
11 right, those that are on it, is the number of times
12 they called and looked. Those people that aren't on
13 the resale list don't generally say: Let me see it.

14 MR. McDANIEL: Mark that as exhibit 2.

15 (DFT. EXH. 2, Golf Membership Resale List,
16 Bates stamped CIMC 977, was marked for
17 identification.)

18 (DFT. EXH. 3, Golf Membership Resale List,
19 dated 5-22-12, was marked for identification.)

20 BY MR. McDANIEL:

21 Q. Just for clarity and the record, exhibit 1
22 was the general club rules. It's not stapled
23 together but it has a cover page and it goes through
24 page 10.

25 Exhibit 2 is one page.

1 I'm going to ask you about what I've
2 marked as exhibit 3.

3 MR. HAIGHT: We haven't seen that.

4 MR. McDANIEL: I haven't handed it to you.

5 BY MR. McDANIEL:

6 Q. Look at that one. I'll keep this one.

7 MR. HAIGHT: You want to make a copy? Do
8 you have a copier?

9 MR. McDANIEL: Let me do that.

10 (A recess transpired from 2:38 p.m. until
11 2:42 p.m.)

12 BY MR. McDANIEL:

13 Q. I marked as exhibit 3, can you identify
14 that document.

15 A. It's a resale list from May 22, 2012.

16 Q. Have you seen that resale list before?

17 A. If it's not this one, certainly something
18 like it.

19 Q. On the list, if you'll look at it, it
20 appears to have different columns in which it says
21 name, status, price when listed, date placed, number
22 when placed, original date purchased, purchase price,
23 owed to seller and comments. Do you see those
24 columns?

25 A. Yes, sir.

1 Q. Under the status, it indicates expelled or
2 conceded in, by my count, 51 or so of the memberships
3 of the 74 on the list.

4 Let me ask you generally. Are you
5 familiar with any of those -- look down the list --
6 that say expelled or concede for which you are
7 familiar how they came to be on this list as a
8 conceded or expelled member?

9 A. I know the names and some of whom moved
10 and left. I know there was a concession and offer.
11 I don't know the difference as to what happened
12 individually, whether there was a concession or an
13 expulsion.

14 Q. Do you have any knowledge as to who
15 maintains this list?

16 A. It would be the membership director over
17 the years. It would've gone all the way back to the
18 inception of at least 1990.

19 Q. What decides the priority as in who
20 decides who's number one on the list and who's number
21 74 on the list?

22 A. My understanding is it's the date at which
23 the member requests to be added to the resale list.

24 Q. That's kind of what I thought, too, until
25 you see number 66. If you look down there. Do you

1 have any idea why it seems to indicate they were
2 placed on the list in 1998.

3 A. I have no idea. They're number 13 on the
4 other list you showed me.

5 Q. Number 65 is kind of similar thing. Do
6 you have any idea why they would be in that position?
7 It seems like --

8 A. I'm sorry, number 65?

9 Q. Both of those, 65 and 66. From what I
10 understand of this list, appears to be out of date
11 sequence among others.

12 A. I have no way of knowing.

13 Q. What about 44, Neil Harris?

14 A. I have no way. That's different from -- I
15 see what you're saying. I don't know.

16 Q. I'm just saying.

17 A. I understand.

18 Q. Date placed. For the majority, the oldest
19 date placed is priority. There's a handful of them.
20 You don't know why they would be moved around?

21 A. No.

22 Q. You're not aware of any arrangement offer
23 to --

24 A. No, sir.

25 Q. As to the expelled persons, I know you

1 were on the board in 2000, '99, '98; is that correct?

2 A. Yes.

3 Q. It appears from this list, as of the
4 status, there's 12 of the expelled members were
5 expelled during that period from '98 to 2001. I want
6 to know if you are familiar with the circumstances of
7 their expulsion?

8 A. I don't.

9 I'm sorry. The expulsion date that you're
10 referring to is when?

11 Q. I'm assuming that the date they were
12 placed on the list was the date they were expelled.
13 I don't know that.

14 A. I don't believe that's the case. That's
15 the date they were placed on the resale list.

16 Q. Is there any way from this you would know?

17 A. Not unless you can match up a couple here.
18 No, I don't. Unless there's some concession or
19 expulsion agreement in file.

20 Q. Are you aware of any expulsion agreements?

21 A. No.

22 Q. I think you testified earlier you're not
23 aware of any specific instances of anybody being
24 expelled?

25 A. That I'm aware of other than what I see

1 here.

2 Q. You know that they're on the list as being
3 expelled. You don't have any knowledge of the
4 circumstances of their expulsion?

5 A. No.

6 Q. For somebody placed on this list after
7 2001, they would've had to have been expelled after
8 2001?

9 A. Yes.

10 Q. So it appears, at least from the list,
11 that there are maybe seven or so that have been
12 expelled from 2001?

13 A. Since they were placed on the list?

14 Q. Yes.

15 MR. HAIGHT: Object to the form.

16 BY MR. McDANIEL:

17 Q. If you look at number 45, Roy, it's
18 interesting. It indicates there, comment section
19 conceded 9/23/03.

20 MR. HAIGHT: Object to the form.

21 BY MR. McDANIEL:

22 Q. Do you see that?

23 A. Yes, sir.

24 MR. McDANIEL: What was the basis for the
25 objection.

1 MR. HAIGHT: It's not number 45.

2 MR. McDANIEL: Number 46, thank you.

3 BY MR. McDANIEL:

4 Q. You see that, referring to the number 46?

5 A. Yeah.

6 Q. And are you familiar with Roy, who that
7 might be?

8 A. John Roy.

9 Q. What's the nature of his, if you know, his
10 conceding his membership in September?

11 A. I don't know the details of it. I know he
12 sold his house without the membership, and he moved
13 to Aiken. That's the extent of it.

14 Q. Do you know of any provisions in the
15 governing documents that would allow him to concede
16 his membership at that time?

17 A. Not unless it was a special offer made by
18 the board.

19 Q. Let me take you up to 24. If you can look
20 there. I think it's Gleberman.

21 A. Okay.

22 Q. Are you familiar with the situation in
23 which Gleberman had conceded membership?

24 A. I'm not. In fact, I'm not aware of any of
25 the details behind three, four, five, seven -- no, I

1 am aware of seven, Burke.

2 Q. Do you know Burke?

3 A. I know who he is.

4 Q. Are you familiar with his concession of
5 his ownership?

6 A. No, sir.

7 Q. You can go ahead, if you want to look
8 through them and just see if you're familiar with any
9 of them. Let me about the Aziz?

10 A. No, sir.

11 Q. I think it's a doctor.

12 A. No, sir, that says it was conceded while I
13 would've been on the board. I'm not aware of it.

14 Q. At that time, 9/20/01, would it have to be
15 approved by the board or the developer could have
16 done that without board approval?

17 A. It was after asset transfer. I have no
18 idea when the offers were made.

19 Q. So you seem to be saying that the offer
20 was made before the asset transfer? The developer
21 could've done it?

22 A. It could've been a joint effort.

23 Q. If the developer did that at the date that
24 it indicates there, 9/20/01, right about that same
25 date, attempted to, would that be something the

1 developer would have the authority to do, in your
2 opinion?

3 A. Probably not. I'm just speculating. It
4 must have been an offer that both parties were aware
5 of.

6 Q. Both parties being the club?

7 A. The club and the developer.

8 Q. You don't recall that offer?

9 A. No, I recall there was discussion. There
10 were some forms of either letters -- I recall couple
11 things going on; one of which I do recall, we were
12 trying to let people know who were accruing. That
13 effective with the asset transfer, they would be
14 getting a bill and, therefore, would have to keep
15 their accounts current. That was in advance.

16 Q. They would be getting a bill for their
17 current dues, but you're saying getting a bill to
18 include all the amount accrued?

19 A. The bill would certainly include the total
20 amount. Let me say I would assume. Their
21 responsibility to pay and not accrue would be from
22 whatever the turnover date was, 6/29 or 6/30 forward.
23 In anticipation that suddenly they would say -- we
24 just want to let them know: You're going to have to
25 pay.

1 Q. Are you aware of anytime when any of these
2 rules changed or any of the governing documents, the
3 club took over, anytime since you have been at
4 Callawassie where an offer was made to club members
5 to turn in their membership with no -- basically,
6 turn in and walk away if they didn't like whatever
7 change was about to occur?

8 A. No.

9 Q. In 2001 --

10 A. If you didn't go for it, you could buy
11 your way out?

12 Q. Not buy your way out. If you don't
13 approve of this, you have the option to resign your
14 membership now with no continuing obligation.

15 A. No, I'm not aware of any.

16 Q. I think that's come up somewhere in the
17 past. I just wanted to clarify. You don't recall
18 that?

19 A. I think if something is properly approved,
20 it applies.

21 Q. You don't recall ever receiving or seeing
22 an offer that say, if you don't like the way the
23 rules or members are taking over, you can turn in
24 your membership and have no obligation?

25 A. No.

1 Q. If you would, just look down through the
2 names. I just want to make sure if any of these look
3 familiar, whether through your board activities or
4 discussions as a member with other members that you
5 have any information about them or definitely
6 interested in it.

7 It appears, like I said, 51 is my count of
8 those listed here, either conceded or expelled
9 members. Are you familiar with Butcher, number 18?

10 A. Uh-huh.

11 Q. What's your understanding how that
12 happened, how that concession -- if that's what it
13 was.

14 A. The concessions that I'm aware of, based
15 on the board's offer in 2009-2010, offers were made
16 to Beauregard, Leffers, Dick Williams, Hobson,
17 Butcher. I don't know about Brice. Field, number
18 37; Gallup, number 48; Elias, and Cameron. Off the
19 top of my head those are names.

20 Q. Are you familiar with Oelkers, number 61?

21 A. No, sir.

22 Q. What about Reid, John W, number 70?

23 A. No, sir. There may have also been
24 discussions with number 55, Thomas.

25 Q. These members that are indicated as

1 conceded or in the situation where you're familiar
2 with the ones who --

3 A. Were conceded.

4 Q. -- were conceded, who then owns that
5 membership?

6 A. The Callawassie Island Members Club. It
7 was turned back in consistent with the four-prong
8 offer that the board authorized.

9 Q. Are you aware of the board or of the club
10 owning any memberships in 2001 when you were on the
11 board?

12 A. In 2001?

13 Q. When you first got on the board -- let me
14 back up.

15 When you first got on the board, how many
16 memberships, if any, did the club own of its own
17 memberships.

18 A. How many may have been conceded?

19 Q. Just owned.

20 A. What do you mean by owned? I'm not being
21 smart. Obviously, we own all the treasury stock.
22 You mean of ones that have been issued and in some
23 fashion passed back to the board?

24 Q. I'm guess I'm understanding there's a
25 difference between equity members who own their

1 membership versus conceded memberships that have been
2 passed back to the club. The club then owns it
3 versus those still owned by the developer.

4 Up to 2010 or thereabouts, my
5 understanding is the developer owned a large number
6 of the unissued to members.

7 A. He was entitled to the proceeds from the
8 sale of the unissued memberships.

9 Q. Did he own them?

10 A. No, he owned the proceeds. I mean, I'm
11 not too sure what the distinction is. They're issued
12 as stock from the Callawassie Island Members Club.

13 Q. I'm not trying to get -- I'm trying to
14 figure out who had the obligation for the
15 memberships.

16 A. Obligations to do what?

17 Q. Whatever obligations accrue to membership,
18 any of the obligations they had. Who would that have
19 been assigned to or assessed to?

20 I understand the developer may have
21 different arrangements as to what those obligations
22 were. Members have their obligations. And I'm
23 wondering as to these memberships that are conceded
24 or however they came back to the club, how many of
25 them were there? How many memberships?

1 A. It would be whatever is on this list at
2 the time, to my knowledge.

3 Q. When you first got on the board, do you
4 have a sense of how many memberships the club had
5 taken back?

6 A. No.

7 Q. For those memberships that are conceded,
8 how did they interact with the resale list? How are
9 they placed on the resale list?

10 A. They remain in the same spot they were
11 when they were conceded.

12 Q. When they are conceded, are the members of
13 those conceded still obligated to pay dues, fees and
14 assessments?

15 A. Not on the ones that I know.

16 Q. Are you aware of whether the other
17 conceded memberships would be continue to be
18 responsible?

19 A. Not specifically, no. I can speculate.

20 Q. What would you speculate?

21 MR. HAIGHT: Object to the form.

22 THE WITNESS: I would speculate this was
23 taken back in relief of ongoing or further duty.

24 BY MR. McDANIEL:

25 Q. Would you assume that to be the case with

1 expelled membership as well?

2 A. I'd have to assume it. I don't know.

3 Q. You don't know the accounting, is what
4 you're saying. Your understanding of the way this
5 stuff functions, a conceded or expelled membership is
6 no longer being pursued for dues, fees, obligations?

7 A. Please say that again.

8 MR. HUGHES: Object to the form.

9 BY MR. McDANIEL:

10 Q. Your understanding is that a conceded or
11 expelled membership --

12 A. My assumption would be.

13 Q. Your assumption would be those members,
14 conceded and expelled are no longer obligated for
15 dues, fees, and assessments.

16 MR. HUGHES: Object to form.

17 BY MR. McDANIEL:

18 Q. Yes or no?

19 A. Yes, my assumption would be.

20 Q. Let me make sure I ask about some of these
21 at the bottom that looks like they were placed on
22 here after 2001, particularly after June or August of
23 2001. I don't recall exactly. What about Tempest,
24 number 56? Are you familiar with that?

25 A. I'm familiar with the individual.

1 Q. What's the name? Do you know the first
2 name? Is that the last name?

3 A. Yeah, it's Al Tempest.

4 Q. Were you aware that he was expelled for
5 membership?

6 A. I was not aware that he was expelled. I
7 was aware that he was having financial problems. May
8 or may not still live in the area.

9 Q. Do you know if he lives in Callawassie?

10 A. I know he definitely does not live in
11 Callawassie. I haven't seen Al Tempest in maybe ten
12 years.

13 Q. What about 63, William Shaw?

14 A. No, no knowledge.

15 Q. I think I asked you already. What about
16 Oakley, 65?

17 A. No.

18 Q. Long, 69?

19 A. No, sir.

20 Q. How do you know Al? You still keep in
21 touch with Al?

22 A. No, we haven't seen him in a long time.
23 We used to play golf together. His son and my son
24 play golf together.

25 Q. All these memberships that indicate under

1 the name membership pool, what does that reference?

2 A. In the agreement with the developer, as
3 part of the settlement, we pooled the unissued and
4 the memberships on the resale list into a membership
5 pool. The sale of any of those, we would share the
6 proceeds 50/50.

7 Q. I'm sorry. Make sure I get it. Which
8 memberships went under that membership pool?

9 A. Unissued.

10 Q. And those would include owned by the
11 developer?

12 A. They weren't owned by the developer; the
13 ones that the developer were entitled to full
14 proceeds for. We pulled those, agreed to pull those
15 and the resale list, concessions, expulsions, however
16 they were defined in the past previously to CIC and
17 the sale of any of the -- CIC meaning Callawassie,
18 CIMC. And the sale of any of those, the proceeds
19 would be shared 50/50. That's in the omnibus
20 agreement.

21 Q. That's part of the agreement with the
22 developer?

23 A. Yes, sir.

24 Q. And I just want to make clear, when you
25 say those are on the membership pool from the resale

1 list, that was only those that had been conceded or
2 expelled or is it all the memberships on the resale
3 list at the time?

4 A. Only those that had been conceded or
5 expelled, if you want to say, to CIMC. The resale
6 list previously had, if you saw -- there should be a
7 resale list that says pre-settlement. And the
8 pre-settlement would show that, for instance, Perry,
9 it would probably say CIMC, parentheses, Perry.
10 Post-settlement, those were changed to membership
11 pool.

12 Q. Did the agreement change the position of
13 anyone on the resale list?

14 A. No, we were very careful. We had talked
15 about that as maybe making an exchange pool. In the
16 end, we thought it was in the best interest of
17 everybody to keep the list as is.

18 Q. What's the purpose of indicating its
19 membership pool?

20 A. The omnibus agreement pooled those
21 memberships.

22 Q. To identify them for 50/50 division with
23 the developer?

24 A. Yes, sir.

25 Q. Are there any other effects on that

1 conceded membership from being in the membership
2 pool? Is that the sole basis for it, we just wanted
3 to identify?

4 A. Simplified the sale of the certificates.
5 And even though we would maintain three-to-one
6 relationship, we would share the proceeds.

7 Q. The three-to-one relationship, explain
8 that. Three-to-one being?

9 A. Three unissued memberships are sold first.
10 Then the fourth membership sale is off the resale
11 list. That protocol has been in effect since as long
12 as I can remember; early '90s.

13 Q. I just handed you two documents, which are
14 two different pages; one dated 2/14/2010 from
15 Callawassie Island; one May 5, 2010. See if you
16 recognize these two documents.

17 A. I don't recognize the documents, but I
18 recognize the name. I don't remember seeing the
19 letter.

20 Q. Let me direct you to the April 14th first.
21 It appears to be a letter to McBee Butcher. I'm
22 wondering, is this the offer that you were describing
23 earlier that was made to members with membership not
24 related to ownership of any real estate on
25 Callawassie Island?

1 A. Yes, sir.

2 Q. Did you direct or participate in the
3 drafting of that letter or that offer?

4 A. This letter?

5 Q. Yes.

6 A. No. I don't know who did or advised
7 Brian. The terms of it, the essence of it are
8 consistent with the offer the board approved.

9 Q. Do you recall ever seeing the May 5, 2010
10 document?

11 A. No, sir, I was aware, as I pointed out,
12 that Butcher was offered that.

13 Q. So you're aware of the existence of this
14 offer. Do you have any reason to think this isn't
15 the agreement to those terms?

16 A. It's consistent with the guidelines that
17 we authorized Brian Lasota to discuss.

18 MR. McDANIEL: Mark those together as
19 exhibit 4.

20 (DFT. EXH. 4, Letters dated 4-14-10 and
21 5-5-10 from Brian Lasota to Mr. Butcher, was marked
22 for identification.)

23 BY MR. McDANIEL:

24 Q. Let me hand you another document, see if
25 you can identify that. Seems to be a similar type

1 letter to Damian Ellias.

2 A. I think Elias.

3 Q. The previous one was sent out April 2010.

4 This one seems to be sent out October 2010. Is this
5 also representative? Do you recall this document?

6 A. I haven't seen this letter, but I'm aware
7 of the situation.

8 Q. You're aware of that particular member
9 being made an offer of this sort?

10 A. Yes.

11 Q. Do you know whether or not he accepted it?

12 A. I believe he did. I don't believe -- I
13 think it's a conceded thing.

14 Q. Are you aware of whether or not Mr. Elias
15 made any payment with regard to his concession of his
16 membership?

17 A. I don't know. The background of this was
18 a unique situation. Mr. Elias bought two
19 memberships -- excuse me -- two lots and two
20 memberships. And unbeknownst to the POA, had gone to
21 the county and consolidated those lots.

22 It was -- I got called -- I don't know if
23 I got called. We were informed by the POA that, I'll
24 call it their checkpoint process, which would've
25 required approval. It was unclear as to whether it

1 was missed or what. The lot was consolidated.

2 Mr. Elias, in good faith, then put his membership on
3 the resale list for which he continued to pay dues up
4 until this offer.

5 I think there was discussion as to this
6 was kind of should've been caught, should've been
7 mentioned. It was a belated offer that said payment
8 had been made in the past. That's the background to
9 it.

10 Q. Is there some reason in your thinking that
11 he would be no longer obligated under a second
12 membership?

13 A. Based on the agreement. We probably
14 should've stopped him. The point was, as I
15 understood it from the POA, the consolidation
16 should've been stopped.

17 Q. As far as the membership goes, that
18 wouldn't affect his membership, would it?

19 A. He bought two memberships at the time he
20 bought the lots. And once he consolidated, as I
21 remember it, then he put it on the resale list. His
22 position on it was so far down that the probability
23 of it being sold and so -- I remember the discussion
24 with the POA.

25 Q. It doesn't appear that he made any sort of

1 payment with conceding his membership?

2 A. That's correct.

3 Q. He did not?

4 A. It doesn't look like it from this.

5 Q. Do you recall him making a payment?

6 A. No, I don't.

7 Q. Didn't the other offered members have to
8 pay one year's dues and fees?

9 A. They were offered. That was the original
10 offer, yes.

11 Q. Was that offer made to Mr. Elias?

12 A. I don't know. I don't have the original.
13 I guess this is the offer.

14 Q. I was wondering why he was given a
15 different offer than what we saw with exhibit 4 with
16 payment of one year's dues. If you can tell me why
17 that would've been.

18 A. The background, as I recall it, was this
19 was discovered after the original offer went out. He
20 originally was assumed to have property associated
21 with that membership. And this particular situation
22 was, it was something that should've been caught in
23 the administrative process of the POA.

24 Q. The club determined, because there wasn't
25 a property associated with the membership, that the

1 offer would be to take his membership back?

2 A. Yeah, my recollection of the discussion
3 between the POA and the club.

4 Q. Wasn't that the same situation Bill Hobson
5 was in; unassociated membership?

6 A. Ultimately, yes.

7 Q. I guess I'm trying to figure out the
8 distinction. Why is he apparently offered just to
9 get it back?

10 A. There must have been some discussion.

11 Q. With who?

12 A. I would assume with Mr. Elias.

13 Q. You think that he came to the board -- do
14 you recall him ever coming to the board?

15 A. I don't recall him ever coming to the
16 board.

17 Q. Do you have any knowledge of any reason
18 that there is a distinction between the two offers?

19 A. Yeah, one was a correction of an error
20 that probably should've never happened was my
21 understanding.

22 Q. You're saying this one, the last one.

23 MR. McDANIEL: Let's mark this one.

24 (DFT. EXH. 5, Letter dated 10-20-10 from
25 Brian Lasota to Mr. Elias, was marked for

1 identification.)

2 BY MR. McDANIEL:

3 Q. I'm just not clear what you mean a
4 correction of an error that should've never happened.
5 He was required to buy two memberships. He had
6 purchased two memberships; correct?

7 A. Uh-huh.

8 Q. It wasn't an error of him incorrectly
9 buying two memberships, was it?

10 A. The error was in not informing the POA or
11 the POA not catching the fact that he had gone to the
12 county and consolidated the lots because the
13 consolidation, as I understand the covenants,
14 requires approval by the Property Owners Association.

15 Q. What does that have to do with his
16 obligation? How does that make him any different
17 than Bill Hobson? He now has one lot associated with
18 one and an unassociated membership. How is that
19 different than other members in his same situation?

20 A. I think the fact it was an error in
21 process.

22 Q. You're not claiming the membership made
23 any error, are you?

24 A. No.

25 Q. The club didn't make any error; correct?

1 A. No.

2 Q. This error you're referring to, POA
3 shouldn't have let him subdivide or join these two
4 lots?

5 A. He should've asked or they shouldn't have
6 given permission. He should've asked or the
7 process should've been caught. I'm not sure if he
8 has to physically go up and ask. I remember that's
9 what happened with the situation. Also, it's the
10 reason it's October 20th as opposed to the earlier
11 dates in 2010.

12 Q. I'm not understanding how that mistake of
13 the Property Owners Association would play into the
14 club's decision to make him this offer. I'm
15 wondering if you could help me bridge that gap.

16 The PROPERTY owners association, he
17 doesn't get permission. Sounds like maybe he did it
18 the correct way, got missed by the property owners
19 association.

20 A. I don't know quite honestly who the fault
21 was. The process broke down somewhere.

22 Q. Somewhere in the process he was able to
23 join two lots, still owning two memberships. The
24 mistake, as I'm understanding it, would be the
25 property owners association should've either

1 consented to that or maybe they wouldn't have
2 consented to it. There should have been some process
3 by which they had to approve it; is that correct?

4 A. Yeah, I don't have the details of it. I
5 say the process broke down.

6 Q. In the discussions with the board for
7 making Mr. Elias an offer -- that's fine. I think I
8 understand what you're saying. I don't understand
9 how it's connected to the memberships. If you can
10 clarify it any more, I'd ask you to do it. If you
11 can explain to me how the failure of the property
12 owners association to either give or withhold his
13 ability to join the properties would result in this
14 offer.

15 A. I think I tried to explain it. I think
16 the fact Mr. Elias had put his membership on the
17 resale list and had continued to pay dues, my
18 understanding, there was kind of a mutual agreement
19 that, well, this should've been caught. The
20 probability of this membership being sold and there
21 probably was one other factor in the timing. I don't
22 know when he ultimately conceded. He would've paid
23 by then 11 months. In that sense, it was already
24 into almost a year's worth of dues paid.

25 Q. Is it your belief that, had it been

1 caught, to use your words, he would've not been
2 obligated for those dues for those 11 months?

3 A. Had it been caught, we'd probably
4 understood that the unassociated membership would've
5 been caught years before. Were we aware that
6 membership was unassociated with property, it
7 would've been part of the earlier year offer.

8 Q. The one from April?

9 A. Yes.

10 Q. You're saying he didn't have to pay the
11 year's dues?

12 A. He, in effect, did. This wasn't offered
13 until --

14 Q. Until November.

15 A. Yeah. And you pay forward on dues.

16 Q. I'm understanding it now. Because the
17 offer came to him later than other members?

18 A. Yeah.

19 Q. Did Mr. Elias ever serve on the board?

20 A. No, not that I'm aware of.

21 Q. Was he ever a committee member?

22 A. Not that I'm aware of.

23 Q. Are you familiar with Mr. Charles Gallup?

24 A. I'm familiar with the name, anecdotally
25 the conversation.

1 Q. You recall authorizing Brian Lasota or the
2 manager to make some offer to him with regard to his
3 concession of the membership?

4 A. It was consistent with offers to
5 membership, yeah.

6 Q. I just want to make sure you said yes.

7 A. Yes.

8 Q. And do you recognize this letter?

9 A. No, I don't. I mean -- go ahead. No, I
10 do not.

11 Q. Is this consistent with what you
12 understood to be the offer to be made to Mr. Gallup?

13 A. Yes, well, let me put it this way. It's
14 consistent with what we authorized back in late 2009,
15 early 2010. It's provided at about the same time
16 that we found the Elias situation.

17 Q. Do you know any reason this one wasn't
18 offered until October of 2010?

19 A. Yeah, we didn't know this was an
20 unassociated membership.

21 Q. Why would you not know that?

22 A. There was an error in the resale list. I
23 mean the terms -- I think it had lot next to it. And
24 this could well have been a Spring Island founder
25 membership. For some reason, we did not discover the

1 Elias and the Gallup situation until later in the
2 year. We wanted to make an offer consistent to all
3 those people consistently with the unassociated.

4 Q. Do you know whether he accepted that
5 offer?

6 A. I think he did. We should be able to
7 understand all those. Elias did. And Gallup did.
8 He's number 48.

9 Q. Did concede?

10 A. Yes.

11 MR. McDANIEL: Mark that as exhibit 6.

12 (DFT. EXH. 6, Letter dated 10-21-10 from
13 Brian Lasota to Charles Gallup, was marked for
14 identification.)

15 MR. McDANIEL: That number 6 is the
16 October 21, 2010 letter to Charles Gallup.

17 BY MR. McDANIEL:

18 Q. Let me show you one more letter. Do you
19 recognize this letter?

20 A. No, sir.

21 Q. Were you on the board in November 13,
22 2002?

23 A. No, sir.

24 Q. Do you know who William F. Hawkins is?
25 Bill Hawkins, is that the one you know?

1 A. Yes, sir.

2 Q. Are you familiar with how the Callawassie
3 Members Club, Inc., what the application to concede
4 the membership was as referenced there?

5 A. No, because it's the same reason I didn't
6 know what the other concessions were on the resale
7 list.

8 Q. When you were on the board after the
9 transfer to the Callawassie Members Club, this is in
10 2001, were you aware of an application that could be
11 filled out to concede your membership to Callawassie
12 Island Members Club?

13 A. I had seen a form. I was aware of the
14 fact -- as I told you earlier, we were informing
15 people that were accruing that they would have to
16 pay. And I was aware of discussion vis-a-vis the
17 issues of bad debt and what might be the most
18 efficient way to proceed to clean up the -- when I
19 say clean up, to understand the resale list.

20 I was not aware of any of the specific
21 offers, but I have seen a form of either offer of
22 concession or acceptance thereof. Actually, I saw
23 the form only by going through some of the
24 documentation associated with this proceeding.

25 MR. McDANIEL: Mark that as exhibit 7.

1 (DFT. EXH. 7, Letter dated 11-13-02 from
2 Mr. Hawkins to Mr. Knearl, was marked for
3 identification.)

4 BY MR. McDANIEL:

5 Q. Do you recognize the name of Bruce McMinn?

6 A. Yes.

7 Q. Who is that?

8 A. He was the general manager at the time.

9 Ellen Padgett I think you already know.

10 Q. Has her as membership administrator CIMC;
11 is that correct?

12 A. Yes.

13 Q. Is that a position she held?

14 A. For as long as I can remember, Ellen
15 Padgett was at the sales office from 1991 on.

16 Q. Who was the general manager after Bruce
17 McMinn?

18 A. Hawkins served as the interim. Following
19 that was an individual named John Adams. Then Mark
20 West. Then came Brian Lasota.

21 Q. Just to go back to this November 13, 2002,
22 exhibit 7, are you familiar with Homer Knearl?

23 A. I know who he is.

24 Q. Do you know any of the circumstances by
25 which he conceded his membership?

1 A. No, sir.

2 Q. Let me give you this document, see if you
3 can identify it.

4 A. Okay.

5 Q. Do you recall this letter?

6 A. No, sir.

7 Q. Do you recall the offer made to Jacqueline
8 Leffers, that this correctly represents the offer
9 made to her?

10 A. I'm sorry. Say that again.

11 This is consistent with the guidelines
12 that we gave as a board to Brian Lasota to discuss
13 concession.

14 Q. What was the bounds of his discretion with
15 regard to settling these types of memberships?

16 A. That it would be a negotiated settlement
17 beginning with that offer that was dictated.

18 Q. Was Brian Lasota authorized to settle, for
19 instance, receiving no payment from the member if --

20 A. Depending upon the situation, yes.

21 Q. Those discussions, those settlement offers
22 didn't go back to the board?

23 A. No, sir.

24 Q. They were handled by Brian Lasota?

25 A. Yes, sir.

1 Q. In this situation, are you aware whether
2 or not Jackie Leffers, which I understand is
3 Jacqueline Leffers, made any sort of payment along
4 with her concession of her membership?

5 A. Based on this, I don't believe so.

6 Q. It appears from this that the equity
7 amount was exhausted; if your membership were to sell
8 before the equity amount was exhausted, the club
9 would split the nonaccrued proceeds with you?

10 A. The sale of the membership would satisfy
11 the arrearage, is the way I read this. And since I
12 believe she was very close to the top of the list,
13 that if there was a remaining net amount, it would be
14 split between us.

15 Q. Is it your understanding that her
16 obligations to dues, fees, and assessments ended at
17 the point when she agreed to these terms?

18 A. Yes, as the others did.

19 Q. The amount accrued was known. It was a
20 known quantity at that point?

21 A. An aged receivable report. This was also
22 the individual that was assisted by Jack Castle so
23 that we could bring this to conclusion. We were not
24 too sure how to continually get in touch with her.

25 Q. Why was that?

1 A. I'm not too sure if she was in assisted
2 living or anything else. It was a way to resolve it.
3 We asked Jack to assist us, as we have with two
4 others on there. They're unreachable.

5 Q. That Jack has helped you with?

6 A. We've asked him to.

7 Q. Has he done that?

8 A. Tried to.

9 Q. I'll just point back to exhibit 3. This
10 seems to be May 2012 golf membership resale list.
11 Jackie Leffers is still on that as number seven; is
12 that correct?

13 A. That's correct.

14 Q. Do you know whether she's still on the
15 resale list today?

16 A. No, it's conceded, and part of the
17 membership pool.

18 Q. The membership number seven, do you know
19 whether that's unsold; still on the resale list?

20 A. It is, yes, as a membership pool.

21 Q. We've got the document that shows in May
22 of 2012.

23 A. As we said earlier, we've not changed the
24 order. There have not been seven since that point in
25 time.

1 Q. That's what I'm asking. Who are the other
2 three that you mentioned Mr. Castle being involved
3 with?

4 A. Beauregard and Williams. Jack is either
5 from New Hampshire or Maine or Vermont and was aware
6 of those two individuals. We asked him to try and
7 see if he could contact them. They were receiving
8 such an offer. He was unable to find them.

9 We have left them on that list. To my
10 knowledge, I really don't know whether they're alive
11 or competent. And rather than accept concession with
12 us --

13 Q. As far as you know, they have not conceded
14 their membership?

15 A. We have not received anything back,
16 although we've tried to follow up.

17 The Beauregard situation, I know she
18 wasn't even the original member; her parents were.
19 They're both deceased.

20 Q. Do you know whether or not -- what was the
21 process that the Board and the club used after 2001
22 when the members club, from your testimony, gained
23 the assets of the club? What was the process at that
24 point for board orientation?

25 A. I don't know after I left. I can tell you

1 that, prior to my leaving, we would, one, conduct a
2 seminar of board responsibilities with candidates for
3 the board and actually inform them of time
4 requirements, documents and so on. And by then, if
5 they were elected, they had at least been
6 familiarized with the governing documents, the
7 covenants, the bylaws, membership plan. We certainly
8 gave them access to all the previous financials.

9 Q. Did Chaffin Light or Callawassie Island
10 Club participate at all in the training or
11 orientation of any of the board members early on?

12 A. Not that I recall. Again, the group that
13 started in 1998 had a great deal of interaction with
14 Chaffin and, particularly, we had developed our own
15 set of proformas. We were aware of most of the
16 documents. In fact, Bill Hawkins and Jim Upton were
17 some of the drafters of the original, the revised
18 purchase agreement and looking forward.

19 Q. This is something that had been provided
20 to us in discovery. I wanted to see if you can
21 identify this document for me.

22 A. I've seen it. I found it in one of the
23 files, and I can't remember where. It's a fax from
24 Jim Upton, who is now deceased. He was a board
25 member; I think membership chair. And that's the

1 form I said I had seen earlier in the process of kind
2 of finding files.

3 Q. In the process of this litigation?

4 A. Yes.

5 Q. Are you aware of whether or not this was a
6 form that was available to members?

7 A. No, I'm not aware whether it was or
8 wasn't. I was on the board at the time this was
9 sent. I can't remember the scope of it, of the
10 distribution.

11 MR. McDANIEL: Mark that as an exhibit.

12 (DFT. EXH. 8, Letter dated 4-5-10 from
13 Brian Lasota to Mrs. Leffers, was marked for
14 identification.)

15 (DFT. EXH. 9, Membership offer, Bates
16 stamped CIMC 982, was marked for identification.)

17 BY MR. McDANIEL:

18 Q. We've marked the April 5, 2010 letter to
19 Jackie Leffers as exhibit 8. And the document we
20 were just talking about as exhibit 9, which was
21 identified, I believe, as a fax from Jim Upton?

22 A. To someone.

23 Q. Jim Upton to someone?

24 A. Yeah.

25 Q. Let me get you the one that's marked.

1 I'll take this copy from you.

2 You have indicated as to this document --

3 I just want to clarify. It seems to be dated July
4 '04, 2001 as maybe the fax date. It's kind of hard
5 to tell when this was created. Do you see any
6 indication?

7 A. No.

8 Q. Do you have any idea when it was created
9 outside of the document itself?

10 A. No.

11 Q. For instance, when was Upton, perhaps,
12 drafting documents?

13 A. It's strange. It says as of 6/29. It was
14 faxed on July 4th. I have no idea when he prepared
15 it. The body of the letter refers to something as of
16 6/29, which you would think he might've drafted it
17 well in advance of 6/29.

18 Q. It says to the Callawassie Island Members
19 Club, Inc., membership administrator above that. It
20 appears to me to be a form that a member might have
21 that they would send back to the club. I'm just
22 speculating on that.

23 A. I could speculate the same way. It would
24 appear that an offer was made, and this is the return
25 document, much like what we saw earlier with Mac

1 Butcher's signature or Jacqueline Leffers.

2 Q. There's no names on it. To me, it appears
3 almost a form document that could be used.

4 A. I agree. The membership administrator
5 would've probably been Ellen Padgett at the time.

6 Q. She was identified earlier in one of the
7 letters as a membership administrator.

8 Is a membership administrator, membership
9 coordinator, membership director the same thing or
10 all different positions?

11 A. I would imagine not. I don't think the
12 titles have been consistent and certainly with the
13 change of sales office, management and
14 administration.

15 Q. Those all refer to her at that time that
16 you know of?

17 A. At that point in time, in 2001, Ellen was
18 probably the membership administrator. She could
19 verify what she was called.

20 Q. I'll ask you a general question. What
21 governing documents do you believe that, under the
22 current litigation with the Aultons, Michael and
23 Sandra Aulton, what governing documents, what
24 documents of the club do you believe govern their
25 situation? Govern their membership rights and

1 obligations.

2 A. The Aultons purchased in 2003?

3 Q. I'll represent to you they did. Assume
4 that they did.

5 A. First and foremost would be the amended
6 declaration because that is, in my nonlegal opinion,
7 the overriding document for the island, whether it
8 defines membership or architectural review status.

9 Following that, you know, the membership
10 plan as may or may not be amended to, I guess, the
11 plan of record at the time litigation started.
12 That's where I'll yield to lawyers.

13 Obviously, the bylaws as amended.

14 And then as far as I'm concerned, the
15 general rules as applicable, not necessarily
16 overridden by the overriding issue, the requirement
17 to own, to purchase and to maintain in good standing
18 membership, which was crucial to the -- well,
19 critical to all the decisions made from 2001.

20 Q. This litigation, I believe, was begun in
21 2009. Do you know the documents -- does it depend on
22 when in 2009 it was begun or do you know which
23 documents, as you said, were in effect at that point
24 of litigation, if I give you the date?

25 A. I just think -- just take my case. If I

1 was -- whatever the plan of record is at the time I
2 would think litigation starts. I don't see any,
3 unless specifically noted, grandfathering based on
4 prior issues. I think the one constant has been the
5 covenants.

6 Q. The change in the rules that appears to be
7 there, would you agree -- there appears to be a
8 change of language of 13.3.1 to take the shall and
9 make it a may with regard to expulsion of members.
10 We've talked about that already.

11 In the document where that changes -- you
12 may have already answered this already -- were you on
13 the board at the time that change was made?

14 A. No, sir.

15 Q. That was 2009?

16 A. I don't know. I only can go by the latest
17 copy that I have. I don't have that series.

18 Q. I just want to make sure I understand that
19 particular change. I know they've amended it again
20 since you've been on the board; correct?

21 A. No, I don't think -- I can't recall
22 general rules being amended. What's the date of the
23 last one?

24 Q. The one I'm looking at is dated February
25 23, 2009.

1 A. I would not have been on the board in
2 February 23, 2009. I would've taken office March
3 1st.

4 Q. Of 2009?

5 A. Uh-huh. Again, I know everybody keeps
6 focusing on the general rules; shall or may. The
7 thing that just doesn't make sense to me, since we're
8 talking about parity in treatment, when you have the
9 passage of a covenant change in 2001 that is
10 overwhelmingly supported as necessary to maintain the
11 island that requires membership and maintenance of
12 that membership forward, the idea with that as the
13 overriding factor, that a general rule which was
14 totally the opposite of that objective says, as I
15 hear it argued, oh, by the way, if I stiff you for
16 four months, you should stop sending me a bill.

17 Those two things -- I may understand
18 reading words specifically, but it just doesn't make
19 sense.

20 Q. It doesn't to you --

21 A. That's it. That was my opinion.

22 Q. It's interesting. You believe the intent
23 of the covenants doesn't support --

24 A. There's an inconsistency between the two,
25 clearly.

1 Q. Do you believe there's any inconsistencies
2 between the two?

3 A. I'm sorry, I think I just said that. I
4 think that general rule is inconsistent with the
5 issue of purchasing and maintaining membership,
6 particularly for those after 2001. And certainly the
7 obligation to pay forward as defined prior to that as
8 resignation is to me similarly inconsistent.

9 Could we take a break?

10 MR. McDANIEL: We can. I probably only
11 have about 15 minutes.

12 (A recess transpired from 3:53 p.m. until
13 4:05 p.m.)

14 BY MR. McDANIEL:

15 Q. Mr. Switzer, are you aware of any change
16 in the Callawassie Island Member Club policy with
17 regard to putting people on the suspended members
18 list?

19 A. Any change?

20 Q. Any change since you've been on the board
21 this most recent time.

22 A. No, not that I can think of.

23 Q. Have there been any discussions on the
24 board or any direction to take people off the
25 suspended members list where they had previously been

1 kept on there?

2 Let me explain that. There's been some
3 representation to me that the suspended members list,
4 the people that show up on it be removed from the
5 suspended members list but not because they had
6 possibly paid up or no longer were suspended. Are
7 you aware of any discussion on the board about that
8 issue?

9 A. No, I've never heard -- I mean, basically,
10 somebody is representing to you that there's some
11 flimsy process?

12 Q. Let me say hypothetically speaking is
13 probably a better way to do it. Well, not
14 hypothetically; it's just a question.

15 Are you aware of any discussion on the
16 board with regard to changing the policy for listing
17 or delisting people from the suspended members list
18 since you've been on the board?

19 A. No, if anything, the discussion has been
20 to be as consistently -- I don't know if rigorous is
21 the word -- as to the process. And most of it has to
22 do with the fact why we're sitting here.

23 Q. Who maintains that list?

24 A. That list is maintained by Craig Simonson
25 as our accountant. And since I've been treasurer, we

1 have refined the accounts receivable aging by member
2 in anticipation of three things; one of which was the
3 escalation of people who are over 30 and over 60 to
4 make sure we understand what may be a coming wave of
5 delinquency. We've cleaned that up. That has
6 nothing to do with policy; has to do with reporting.

7 We have, I think, more clearly documented
8 what was the implicit policy, with Rick's help, and
9 go through a fairly orderly 30-60-90-day or 120-day
10 process every month. Our general manager gets a list
11 of over 30 and over 60 days. He, based on what he
12 knows from previous conversations and dialogue with
13 members, sends or doesn't send those out.

14 If he knows someone he talked to last
15 week, has told you: I know I'm late, my check is
16 coming. Don't ding me. If we see a name on the list
17 that says this person hasn't been late in 102 years,
18 we're not going to embarrass ourselves and send it.

19 The finance committee reviews that list
20 every month. There's a sit-down with our collections
21 counsel every month, with the general manager. And
22 we try to be as consistent in the application as we
23 can. If there are names and given, again, current
24 litigation, there are probably some names that -- we
25 fully reserve allowance for bad debt, dollar for

1 dollar. We run off a cash flow basis.

2 And if there is a name that suddenly
3 appears as suspended that disappears, it's because
4 of, in my mind, one of two things, three things.
5 They have become totally current. They have a
6 negotiated payment plan with our general manager,
7 generally documented and the principals are that you
8 remain current from this part forward so that you can
9 use the club. And here's the arrearage. Pick up the
10 additional money that you would pay monthly to become
11 clear, or the house is sold and collections are made.

12 If an individual is foreclosed upon, that
13 name stays on the list because they are still in
14 arrears. If the bank picks it up and they're in
15 arrears, they're on the list, which is why, if you go
16 to our Website, you'll see a bank or two.

17 Q. Is there a set date of arrears in which,
18 amount of time at which the club has determined it
19 will file litigation against past due members?

20 A. The process I talked about was the 90-day
21 demand letter. And then after the 120 with that
22 response, then we'll make a determination as to
23 whether we move forward with paperwork. And that's
24 really worked out with the CFO, the general manager
25 and Rick.

1 On occasion we do have assistance of a
2 group of lawyers we call the law committee, you know,
3 have helped us. I'd say the one thing that we
4 learned from 2009 on, we needed an advance warning
5 system. We needed to gather and better our
6 documentation because it changes and we needed to
7 understand our legal options.

8 The thing that has changed most
9 dramatically, and I said this to you earlier, prior
10 to 2006 and probably into 2007, the need for legal
11 action was mitigated by real estate turnover. Those
12 people that may have gotten on the outer edge but had
13 their homes for sale, because home sales were turning
14 over, the recovery of arrearages minimized the need
15 for legal action. Once that real estate
16 merry-go-round stopped, that's when the negative
17 impact or diminishing impact on cash flow occurred.

18 Then you get into a situation of trying to
19 get the biggest bang for your buck and be as
20 consistent as you can.

21 Q. You mentioned, before given the current
22 litigation, there's a push to be consistent. And
23 would you agree that the debt collection process was
24 not consistent prior to the litigation process?

25 A. No, I think I mean that the concern over

1 flexibility, which is what you just laid out here in
2 terms of Mrs. Leffers, did she make a payment versus
3 someone who was offered full. We're always willing
4 to work with people who have concerns and trouble
5 with payment plans and so on. We're not trying to
6 post everybody in the clubhouse wall. We think we
7 become a little more concerned that you can have a
8 consistent policy but maybe different individual
9 results. We're careful of it, that's all. Concerned
10 is the word.

11 Q. You said the board has been open to, I
12 guess, you said flexibility; open to dealing with
13 individual members, delinquencies currently. Are you
14 aware of members asking for some kind of settlement,
15 being told the club does not negotiate and will not
16 negotiate.

17 A. I'm not aware of that. I am aware of
18 certain individuals that have been pursued who tend
19 to not come back with a counteroffer, but come back
20 with a counter attack.

21 Q. You're not familiar with members who,
22 prior to any delinquency, have come to say, I have a
23 problem, I'm going to have a problem with this, and
24 being just flatly rejected by the club saying: We
25 will not negotiate this?

1 A. I'm not personally aware of it.

2 Q. That wouldn't be the policy of the board,
3 in your opinion?

4 A. The policy of the board certainly is to
5 try to work with members who have issues financially.
6 And failing that, failing an acceptable payment plan,
7 if you will -- let's forget settlement, an acceptable
8 payment plan, then it will continue.

9 We have also found there are certain
10 chronic individuals that no matter how well-meaning
11 you are, even though you may set one or two plans,
12 they tend to get violated over time.

13 Q. Is that any of the people in this
14 litigation that you're referring to?

15 A. Referring to relative to?

16 Q. To the statement you just made about
17 chronic violators of the plan. Does that include the
18 Aultons, Applegate, Mercier, Hobson, Dennis, Bayless?
19 Any of those folks among that group that you're
20 talking about?

21 A. From my personal perspective, I think
22 offers were made -- try it this way. Certainly in
23 the case of Mr. Hobson, the offer to concede either
24 of his memberships, I'm not too sure, was fairly
25 considered.

1 And the case of the Aulton situation, I'm
2 not too sure why some of the concerns have dragged on
3 so long. In all cases, there's got to be a point
4 where, with the exception of Applegate, the decision
5 or the statement or the action that says, I quit, is
6 certainly something we have to defend. The whole
7 essence of the 2001 covenant change was to stabilize
8 the financial condition of the community. And that
9 meant that everybody needed to be, in some fashion,
10 supportive of the amenities that make us who we are.

11 Q. You realize a lot of the litigation
12 doesn't include people subject to the 2001 covenants
13 as far as their membership; that is, they purchased
14 property prior to 2001.

15 A. I'm aware of that. The obligation, once
16 you have a membership, is to continue with it until
17 reissue.

18 Q. That doesn't have anything to do with the
19 covenants; correct? The covenants does not create
20 that obligation?

21 A. It was not the requirement of membership
22 prior to 2001. Once assuming it, I believe -- I
23 think it fits me too; my obligation continues to the
24 club until it's reissued.

25 The practical reality of that is, in

1 today's environment and the condition of the resale
2 list and everything that basically says, as long as
3 you own that property, you maintain your membership.

4 Q. Are you contending that the covenants for
5 you obligate you to create that obligation?

6 A. No, I'm saying pre-2001. Once I've owned
7 a membership and membership plan and the whole
8 resignation process inclusive of resale list means
9 effectively it works out to be the same. Membership
10 is connected to -- the idea that I would put my name
11 on the bottom of a list of 75 and see it rise to the
12 point of, in my lifetime, of sale, you know,
13 practically works out the same.

14 Q. Meaning you don't have any expectation
15 that you could get off the resale list in your
16 lifetime?

17 A. Yeah, I think so. That's a fair
18 statement. And that's why --

19 Q. What age are you?

20 MR. HAIGHT: Allow him to finish, please.

21 THE WITNESS: That's why the resale list,
22 per se, is populated by, with the exception of the
23 concession or pool membership, is populated only by
24 people who are associated with property.

25 BY MR. McDANIEL:

1 Q. The question I asked, what age are you at
2 this point?

3 A. Sixty-nine.

4 Q. Do you know who Don Barrett is?

5 A. I know Don and Trish, yeah.

6 Q. I'll represent to you and tell me if this
7 is correct, when Don sold his house to Jane Cameron
8 or Jan, she only got a social membership where Don
9 had a golf membership. Do you know that to be the
10 case?

11 A. I've seen it in your depositions that you
12 asked about.

13 Q. Do you know anything about that
14 transaction? How that would've happened?

15 A. Only after the fact. I don't know how it
16 would've happened. Her brother is my next door
17 neighbor now. From what I understand, Mr. Cameron
18 purchased the golf membership, and Ms. Cameron
19 purchased a social. Mr. Cameron --

20 Q. Purchased Don Barrett's golf membership?

21 A. The reissue, I would assume. I don't know
22 the background to it or the details of it. I've only
23 pieced that together.

24 Q. Do you know of any procedure under the
25 governing documents that would allow that to happen?

1 A. I think it's possible. It has to do
2 with -- within the last two weeks, I'm aware of the
3 situation where an individual lived in a house that
4 is owned by a family member, but he's the member of
5 record. There could be a mismatch. You're into
6 detail that I'm not aware of.

7 Q. You don't know how that occurred?

8 A. No, anymore for the same reason that I
9 know how Mr. Applegate could've sold a piece of
10 property that also had a golf membership associated
11 with it. Suddenly, that property is associated with
12 a social.

13 Q. It happens?

14 A. Yeah, similar to the Elias thing. It
15 happens.

16 Q. Who would be responsible to make sure
17 that, when those transactions occurred, who would be
18 the -- who would be overseeing that? For instance,
19 the Barrett case, within the membership, who approves
20 that?

21 A. The closing document, I guess, is in
22 combination approved between real estate agent and
23 our membership director so that they make sure the
24 total package is there.

25 Q. Mr. Barrett's membership never went on the

1 resale list, did it?

2 A. Yes, sir.

3 Q. It did?

4 A. Yes.

5 Q. His golf membership?

6 A. Yeah.

7 Q. Was it reissued later on?

8 A. No, it was -- I think it's Mr. Cameron's,
9 which is down at the bottom.

10 Q. It's listed as Cameron, not Barrett;
11 right?

12 A. That's correct.

13 Q. It never went on the resale list under
14 Mr. Barrett's obligation?

15 A. Not to my knowledge.

16 Q. It wasn't until at some later point
17 Mr. Cameron has conceded or put his on the resale
18 list?

19 A. Yeah.

20 Q. I didn't realize he had done that.

21 A. Actually, I don't know when Mr. Cameron
22 put it on here.

23 Q. Here's the recent one. Number 71. It
24 indicates it's in the membership pool?

25 A. Yes, sir.

1 Q. How would it have gone into the membership
2 pool? It doesn't say conceded or expelled.

3 A. I think it was conceded.

4 Q. It's just not indicated on here?

5 A. The fact that it's part of the membership
6 pool, the fact that this column isn't filled in.

7 Q. Safe to say, all those in the membership
8 pool are conceded memberships; that is, the person is
9 no longer obligated to pay dues, fees on those?

10 A. They were conceded, their membership. The
11 combination of the two offers; the ones back in 2003
12 and 2010.

13 Q. If you look up at this resale list, you
14 can pick out the ones who are aren't in the
15 membership pool, 19 or so those that are not in the
16 membership pool; the only ones that still,
17 approximately 19 or so, that are still being required
18 or sought for dues, fees and assessments?

19 A. Please say that again or ask me that
20 again.

21 Q. Those listed there under the name
22 category, where it either doesn't say membership
23 pool, nor does it say conceded or expelled in the
24 status, are the only ones of that list -- and we're
25 looking at exhibit 3 -- that the club's position --

1 let me start over.

2 It's the club's position that those
3 persons on that list not identified either as
4 membership pool or conceded, expelled, those
5 remaining, which I count to be about 19, it might be
6 20, those are the only ones that the club contends
7 have ongoing dues, fees and assessments obligations?

8 A. Not only contends, with the exception of
9 Beauregard, Williams and Hobson, they are all paying
10 members who own property, and Applegate and Dennis.

11 Q. They continue to be accruing, being
12 assessed?

13 A. Billed.

14 Q. Billed, exactly, despite the fact that the
15 50-plus and those that are ahead of them are not
16 billed for the dues, fees, and assessments; correct?

17 A. They have accepted the concessions of
18 either the early 2000 or the '6 or '8 and 2010.
19 Three of them were offered that concession,
20 Beauregard, Williams and Hobson.

21 Q. Specifically for Cameron that we're
22 looking at, number 71 on the list, it looks like he
23 was placed on the list in 2007. He purchased in
24 2006, at least by this document.

25 I'm wondering if you know of the terms of

1 the reason that he was placed -- that he was allowed
2 to concede his membership.

3 A. Based on the same overall program that we
4 offered the other six.

5 Q. You believe that he made a payment --

6 A. Yes.

7 Q. -- or some kind of negotiated settlement?

8 A. Uh-huh.

9 Q. Is that true for John Reid?

10 A. I have no knowledge of Reid.

11 Q. When was Cameron offered that deal, do you
12 know?

13 A. It would've been the latter part of 2009
14 because, as I remember it, Mr. Cameron was his real
15 estate agent, wanted to meet with Brian Lasota. And
16 Mr. Cameron was about to buy the house next to me on
17 Callawassie. And he was concerned that he would be
18 carrying two memberships.

19 And I informed him that Brian and I did,
20 that this was following the board decision to extend
21 such a program to disassociate lots of memberships.
22 If his offer was, I'd like to turn one back to effect
23 this, it was, you know, it was timely, as he was
24 trying to buy the house next door, that we had
25 already begun the program. So we included it.

1 I'm sure Brian documented that one. I
2 don't know. Like I said, there are some that I can't
3 explain; Oakley going from here to there. Applegate,
4 whatever happened at the time.

5 Q. With regard to how Cameron received that
6 membership to start with, from Barrett; right?

7 A. I have no knowledge of that.

8 Q. With regard to the omnibus agreement, was
9 there any discussion about getting the members to
10 vote on that agreement amongst the board?

11 A. There was discussion amongst the board
12 whether a vote was required. My recollection is we
13 received an opinion from Weston Newton regarding the
14 fact that, given the resolution of the disputes and
15 the positive nature of the resolution, that the board
16 was authorized to approve the settlement.

17 Q. Without member approval?

18 A. Yeah.

19 Q. I asked you earlier what about the recent
20 assessments. I understand there's been a recent
21 assessment to members. How much was that assessment?

22 A. It's a two-year program, \$2,700, three
23 installments for golfers; \$1,700 for social members
24 over three installments.

25 Q. Is it your understanding that the approval

1 needed for that -- do you have an understanding of
2 what the approval vote required is for that?

3 A. I know we have an opinion required for
4 that.

5 Q. Legal opinion?

6 A. The legal opinion included not only the
7 approval but the entire process, how we would discuss
8 it with the membership, et cetera, et cetera.

9 Q. Do you know who gave you that legal
10 opinion?

11 A. McNair Law Firm. Sarah Robertson.

12 Q. With regard to the change of the club
13 rules language, which I know you weren't on the board
14 at that time, would you agree that was a material
15 change to the rules?

16 MR. HAIGHT: Object to the form.

17 THE WITNESS: No, sir.

18 BY MR. McDANIEL:

19 Q. Would you agree that was adverse to
20 certain members?

21 MR. HAIGHT: Object to the form.

22 THE WITNESS: No, sir.

23 BY MR. McDANIEL:

24 Q. Would you agree that the effect of that or
25 the intent of that was to remove the requirement of

1 members being expelled after four months?

2 A. No, sir.

3 Q. What do you believe the intent of that
4 was?

5 A. I believe to make the total documents
6 consistent with the intent of the membership plan and
7 consistent -- and membership plan and covenants and
8 consistent with practice.

9 As I said earlier, the idea that
10 membership is required, had to be maintained in good
11 standing. And to have a sentence taken out of
12 context inconsistent with even past practices, I
13 don't know where the four months came from. It
14 doesn't make sense to me.

15 I don't see it as being materially adverse
16 or affecting anybody unless their sole purpose in
17 life was to purchase a piece of property and
18 membership and say, if I don't have to write a check
19 for four months, I don't have to write any more.

20 Q. They could've believed that, based on that
21 document?

22 MR. HAIGHT: Object to the form.

23 THE WITNESS: It's a stretch.

24 BY MR. McDANIEL:

25 Q. What if they were told that by club

1 members?

2 MR. HAIGHT: Object to the form.

3 MR. HUGHES: Object to the form.

4 THE WITNESS: Is there any evidence of
5 that?

6 BY MR. McDANIEL:

7 Q. I'm just saying hypothetical.

8 MR. HAIGHT: Object to the form.

9 MR. HUGHES: Object to the form.

10 BY MR. McDANIEL:

11 Q. Your answer, say again. I'm sorry.

12 A. What's the question again, please?

13 MR. McDANIEL: Wait for the objection so
14 that you're not talking over each other, if you
15 would. They're going to object to the form.
16 Standing objections to that. I want to make sure the
17 record reflects your answer.

18 BY MR. McDANIEL:

19 Q. Hypothetically, if you have an agent of
20 the club also telling a joining member or past member
21 of this four months and you'll be expelled, and this
22 term in the rules stating that, would you agree that
23 a member might be reasonable to believe that?

24 A. No.

25 MR. HAIGHT: Object to the form.

1 MR. HUGHES: Object to the form.

2 BY MR. McDANIEL:

3 Q. If it's not reasonable, and you don't
4 believe -- strike that. Let me ask it this way.

5 Do you believe that a change were to have
6 said a member would be expelled after four months --
7 if that had been how it was written consistently --
8 changed to say may be expelled, in that instance,
9 that change would be materially adverse to the
10 member?

11 MR. HUGHES: Object to the form.

12 THE WITNESS: I don't understand.

13 BY MR. McDANIEL:

14 Q. Let me see if I can clarify it. Were the
15 documents previously, in your opinion, consistent and
16 all of them consistently said that a member would be
17 expelled after four months of delinquency, you found
18 that referenced throughout the documents, the club
19 documents --

20 MR. HAIGHT: Object to the form.

21 MR. HUGHES: Object to the form.

22 MR. McDANIEL: You're objecting to a
23 hypothetical? What's the objection?

24 MR. HUGHES: Identify the documents you're
25 referencing and identify the provision you're

1 referencing of the documents, if you're going to hold
2 the witness to a standard that incorporates all the
3 provisions of those agreements.

4 BY MR. McDANIEL:

5 Q. It's easy enough. I thought that was kind
6 of obvious.

7 A. I'm slow.

8 Q. You're not slow. That's not true.

9 Hypothetically, if the plan of offering,
10 the club rules and the bylaws were all consistently
11 indicating that a member would be expelled after four
12 months --

13 MR. HAIGHT: Object to the form. That's
14 not what they say.

15 BY MR. McDANIEL:

16 Q. It's a hypothetical. You understood
17 that's a hypothetical?

18 A. I understand hypothetical, I mean.

19 Q. Let me finish the question then you can
20 answer how you would like to answer, see if we can
21 get an answer.

22 Assuming that those documents were
23 consistent in 2001 to say that a member had to be
24 expelled and, upon the delinquency of four months,
25 that they shall be expelled, would you agree that a

1 change at some later point to change those to say may
2 be expelled would be merely adverse to the member?

3 MR. HAIGHT: Objection.

4 MR. HUGHES: Your hypothetical is
5 incorrect hypothetical. You are assuming facts that
6 are nowhere in evidence.

7 MR. McDANIEL: That's what a hypothetical
8 is.

9 MR. HUGHES: You are mischaracterizing
10 documents in your hypothetical that do not say what
11 you say they are.

12 MR. McDANIEL: That's because it is
13 hypothetical. Do you understand that term?

14 MR. HUGHES: You can't make up documents
15 and say they have consequences.

16 MR. HAIGHT: This is law, not science
17 fiction.

18 MR. McDANIEL: You can ask hypothetical
19 questions.

20 MR. HUGHES: You are entitled to engage in
21 fantasy in the form of a hypothetical question.

22 MR. McDANIEL: Yes, I am.

23 MR. HUGHES: No, you're not.

24 BY MR. McDANIEL:

25 Q. Go ahead and answer.

1 A. Your hypothetical only makes sense to me
2 if the fundamental documents, bylaws and covenants
3 say, which they do not, that you do not have to
4 maintain a membership in good standing. If that was
5 said, which they do not, then whatever discipline is
6 carried out later in those documents or whether it's
7 later or consistent with, in my opinion, I understand
8 your question, were disagreed with, the hypothetical
9 is we don't start from the top, which is the
10 overriding, in my opinion, governing situations,
11 which is the maintenance and/or the resale obligation
12 and continuation of dues.

13 If they were all consistent from the
14 get-go, yeah, I'd have to agree. But one little
15 cherry pick nit down here inconsistent with the rest
16 doesn't make sense to a dumb engineer.

17 Q. I understand you believe there's an
18 inconsistency. I'm not arguing that point.

19 Hypothetically, if they weren't
20 inconsistent -- we can even remove the covenants.
21 Say the covenants weren't in place.

22 A. Within the general rules you have an
23 inconsistency.

24 Q. Were that not the case, were the rules not
25 inconsistent --

1 MR. HAIGHT: Object to the form.

2 BY MR. McDANIEL:

3 Q. The rules, the bylaws and the plan of
4 offering, you would agree that changing that would
5 be --

6 A. No, I would not.

7 Q. -- materially adverse?

8 A. No, sir, I don't know how many times I can
9 say no.

10 Q. I just want to make sure I understand.

11 A. You want to make sure you get an answer
12 that you want.

13 Q. If you say you understand the hypothetical
14 and you don't believe --

15 A. I think I just responded to it.

16 Q. I'm just not clear as to what that
17 response is. If you're saying that you understand
18 the hypothetical -- do you?

19 A. Quite honestly, no.

20 Q. That's where I want to make sure we're
21 clear. If you take away the inconsistency, if you
22 believed that the original documents, the 2001
23 documents clearly indicated in all the governing
24 documents of the club that it is required that a
25 member shall be expired, if that were the case -- I

1 understand you don't believe that's the case; your
2 counsel certainly doesn't -- if that were the case,
3 if the bylaws, plan offering, the general club rules,
4 you believe they were consistently saying that and it
5 was later changed to indicate that a member may be
6 expelled after four months, would you agree that
7 change would be a materially adverse change to the
8 member?

9 A. No.

10 MR. HAIGHT: Object.

11 MR. HUGHES: Object; improper.

12 THE WITNESS: If you want me to say, as a
13 logical person, if all the documents in the beginning
14 were consistent, then any change, yes, may or may not
15 be materially adverse.

16 BY MR. MCDANIEL:

17 Q. Right, I agree you have to weigh each
18 change.

19 A. The fact of the matter is, at least as I
20 think of this, they weren't.

21 Q. They weren't what? Inconsistent or
22 adverse?

23 A. They weren't consistent. And the only
24 thing that's adverse is to argue the other side of
25 the coin; that it is adverse to an individual. I

1 would argue, anybody uses that argument, it's kind of
2 adverse to the club. We have people who are honoring
3 the totality of the agreement and suddenly people
4 decide just to leave.

5 Q. You mean 51 people who are not paying
6 dues.

7 MR. HAIGHT: Allow him to finish.

8 THE WITNESS: Is there a question?

9 BY MR. McDANIEL:

10 Q. Yeah, you're talking about the -- you're
11 saying people that are required. You're talking
12 about just the few that are required, not the big
13 group let-out.

14 A. I think we are dealing with a consistent
15 application. And those that were let out, for the
16 most part, were those that were unassociated with
17 property, which is the fundamental leaving the
18 accrual. Accruing memberships back in 2000 whatever.

19 Q. What kind of changes would you agree or do
20 you believe are adverse to the members? Changes to
21 the governing documents specifically. What type of
22 changes could be made to fit into that category of
23 adverse?

24 A. I really don't understand your question,
25 I'm sorry.

1 Q. If changes are made to the governing
2 documents.

3 A. If they're adverse and material, that
4 describes it.

5 Q. I'm just wondering, can you think of any
6 rule changes that would fit into that category in
7 your thinking?

8 A. Take away the right to certain people's
9 votes or whatever.

10 Q. Do you believe that taking away the
11 obligation, the taking away or changing the
12 provisions so that someone can be obligated beyond
13 four months is not adverse to them?

14 MR. HAIGHT: Object to the form.

15 BY MR. McDANIEL:

16 Q. Whether you have or haven't, do you think
17 that would be adverse? You wouldn't concede that's
18 an adverse to somebody that they no longer have to --

19 A. We're just kind of circling around here.

20 Q. You won't answer. You won't answer the
21 question.

22 A. Huh?

23 Q. You won't answer that question. You're
24 contending that is not --

25 A. I'm contending that shall or may, the

1 inconsistent is not adverse. You're asking me: Is
2 it adverse not to throw somebody out and stop sending
3 them a check after four months? Is that an adverse
4 effect? And I would say it's an adverse effect on
5 the magnitude and the totality of the membership.

6 Q. Anytime somebody stops paying, the
7 membership going to be affected by that; right?

8 A. That's correct. |

9 Q. I think --

10 A. We agree on that.

11 Q. That's clear.

12 When Callawassie Island Club, when the
13 developer stopped paying on all those, that was
14 adverse.

15 MR. HAIGHT: Object to the form.

16 BY MR. McDANIEL:

17 Q. You just said it was. That's the same
18 situation.

19 MR. HAIGHT: Object to the form.

20 MR. HUGHES: Stop mischaracterizing the
21 man's testimony.

22 MR. HAIGHT: This is approaching
23 harassment; very close.

24 MR. HUGHES: You are consistently
25 mischaracterizing testimony to serve your own need.

1 You are not entitled to do that. Stop it.

2 BY MR. McDANIEL:

3 Q. You can answer.

4 MR. HUGHES: Or else we'll instruct him
5 not to answer.

6 THE WITNESS: What's the question?

7 BY MR. McDANIEL:

8 Q. You earlier testified it's adverse to the
9 entire membership when members stop paying.
10 Likewise, it's adverse when the developer doesn't
11 pay.

12 MR. HUGHES: Object to the form.

13 THE WITNESS: The loss of revenue from the
14 developer was an adverse effect. The settlement was
15 a positive effect on the overall because it
16 eliminated it.

17 BY MR. McDANIEL:

18 Q. It's both?

19 A. No, no, it's --

20 Q. The situation --

21 A. Don't give me both.

22 MR. HAIGHT: Object to the
23 mischaracterization again. He answered the question.
24 You're attempting to ask it again. You're trying
25 very hard to get a different answer but you won't.

1 MR. McDANIEL: You need to stop yelling.

2 Calm down.

3 MR. HAIGHT: I'm not yelling, Brian. I'm
4 just trying to be heard over you a little bit. This
5 is getting ridiculous. It is approaching harassment.

6 MR. McDANIEL: It's not approaching
7 harassment. I'm asking him questions. He said it
8 was this and this. I said: Is it both? That's not
9 a mischaracterization. I'm asking him to clarify.

10 THE WITNESS: The net effect was positive
11 for the club because it's a settlement.

12 BY MR. McDANIEL:

13 Q. Do you believe that it is adverse to a
14 member's rights for them to be obligated to dues --
15 let me ask you this.

16 What do you believe a member's rights to
17 resign are at this point in the club?

18 A. Per the club documents, which says you
19 either do one of two things. You put it on the
20 resale list or your obligation exists until your
21 property is sold.

22 Q. On the resale list, to sell on the resale
23 list, is there an obligation they continue to pay
24 dues, fees, and assessments?

25 A. That's the rules of the game.

1 Q. Until such time as it's sold?

2 A. Reissued.

3 Q. Is their membership resigned at that
4 point? At what point is it resigned? Is there a
5 time?

6 A. The definition of resigned, as I
7 understand it, to declare your intention to resign,
8 placed on the resale list. And resignation is final
9 when that membership is reissued.

10 Q. What, if any, benefit is there to
11 resignation to a member?

12 A. I would say in 2001, when membership
13 wasn't required, you could, in fact, try to sell your
14 membership. The practical nature of pre-2001 is that
15 you sell your membership with the land.

16 Q. We're talking about resignation. I don't
17 understand the transition you made from selling to
18 resigning. Help me bridge that gap.

19 A. Prior to 2001, resignation meant you could
20 put your name on the resale list because there was no
21 requirement to continue to own.

22 Q. So your obligations would end --

23 A. Practically now, the ability to sell your
24 membership really is a matter of selling it with your
25 property just as the post-2001 membership. That's

1 the practical reality of the way the island has
2 evolved.

3 Q. I'm not sure I understand. You're saying
4 prior to 2001, when you resign a membership, does the
5 person have ongoing dues and fees and assessments?

6 A. Until it's reissued.

7 Q. The pre-2001 difference you're talking
8 about is --

9 A. The ability to put it on the resale list.
10 After 2001, unless I've misread the membership plan
11 that basically says: Members purchasing after 2001
12 cannot resign their membership.

13 Q. You're saying, if they're not current on
14 their dues, fees and assessments?

15 A. I'm sorry. That doesn't have a thing to
16 do with it.

17 Q. Even if they're current, they can't go on
18 the resale list after 2001?

19 A. That's correct. That's on the membership
20 plan.

21 Q. Obviously, that's not a benefit to them,
22 to the members, of resigning. Do you know of any
23 benefits to the membership, unless I'm not
24 understanding.

25 MR. HAIGHT: Object to the form.

1 BY MR. McDANIEL:

2 Q. A benefit of resigning. What benefit
3 might accrue or be to a member for resigning their
4 membership?

5 MR. HAIGHT: Again, object to the form.

6 THE WITNESS: That's the process. Does
7 there need to be a benefit?

8 BY MR. McDANIEL:

9 Q. I guess I'm just asking the question.

10 A. I understand.

11 Q. I thought it was a yes or no question as
12 far is there a benefit to the membership. Do you
13 know of a benefit that goes to the member from
14 resigning their membership?

15 MR. HAIGHT: Object to the form.

16 THE WITNESS: Not right now. It just
17 declares your intention to sell.

18 BY MR. McDANIEL:

19 Q. You don't have to resign to do that;
20 right?

21 A. No, just a reason some of the resale is
22 deleted with the sale of property.

23 Q. Can you think of any reason someone would
24 resign their membership?

25 A. Prior to 2001, I believe people -- I

1 believe people felt that the length of time it would
2 take their membership, if they threw their name on
3 early but continued to pay, they might be able to
4 turn their membership over quicker. That's all. And
5 some people would like to, prior to 2001, have
6 relinquished the membership and still stay on the
7 island and, practically, that's not the case.

8 Q. They could have done that just with the
9 resale list; right? They didn't have to resign?

10 A. Excuse me. You get on the resale list by
11 resigning. The declaration of your intention to
12 resign, that's what it says in membership.

13 Q. After 2001, can you get on the resale list
14 absent resigning?

15 A. No, you can't get on the resale list.
16 That's what the membership plan says, if you want to
17 pull it out.

18 Q. The benefit would be -- I don't want to
19 put words in your mouth.

20 A. I think we've already said right now what
21 you're looking for.

22 Q. Let me ask the question. I haven't asked
23 the question yet.

24 A. I think you've asked it several times. Go
25 ahead.

1 Q. I was just going to say, after 2001, to
2 get on the resale list, you would have to resign;
3 correct? I think you said that.

4 A. Have you read the membership plan?

5 Q. I have.

6 A. After 2001, there is a paragraph in there
7 that says members purchasing after 2001 can not
8 resign their membership. They sell their membership
9 with their property.

10 Further, the covenants say you own the
11 membership as long -- you own and maintain in good
12 standing the membership as long as you hold the
13 property after 2001.

14 Q. It's your understanding that a member
15 cannot resign until they have sold their property?

16 A. That I believe is what the intent of the
17 covenant change was and what the membership plan says
18 consistently.

19 Q. What is the current process by which
20 someone resigns their membership?

21 A. They declare their intention to resign, if
22 they're a pre-2001, and name goes on the list to the
23 bottom.

24 Q. It is actually resigned at the point when
25 it sells from the resale list?

1 A. Before it gets all the way to the top, I
2 sold my property and I make a condition of sale of
3 membership, my name drops off the resale list, and
4 I've ended my obligation.

5 Q. I think I understand.
6 What's the current debt held by the club?

7 A. Last time I looked, it's about \$5.3
8 million, which has been totally approved by
9 membership vote, 80/20 in both cases. And members of
10 record, whether they're on the resale list or not,
11 are obligated to also pay the debt service.

12 Q. If the club defaults, you believe that the
13 members have personal liability?

14 A. I don't know about that. What I'm saying,
15 if you're a member, you're being billed both dues and
16 debt service.

17 Q. How is that figured? Is that part of your
18 dues?

19 A. Separate line item.

20 Q. Give me one minute. Let me look through
21 my notes for a second to make sure.

22 One final area I'm going to ask you about.
23 I think I may have asked you this already. Are you
24 aware of any other litigation before 2009 by
25 Callawassie Island Members Club against its members,

1 against any member?

2 A. Not that I'm aware of specifically. As I
3 told you, the collection process was really driven by
4 the real estate turnover. The number of times that
5 might've been attempted, generally payment came in,
6 closing on the property.

7 MR. McDANIEL: That's all I have. Your
8 attorneys may have a couple questions for you.

9 (A recess transpired from 4:56 p.m. until
10 5:02 p.m.)

11 MR. HUGHES: No questions.

12 (The witness, after having been advised of
13 his right to read and sign this transcript, does not
14 waive that right.)

15 (The deposition was concluded at 5:02
16 p.m.)

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1 SIGNATURE OF DEPONENT

2 DEPONENT: GEORGE H. SWITZER, III

DEPOSITION DATE: February 7, 2013

3 REPORTER: LORA L. McDANIEL

CASE CAPTION: Callawassie Island v. Aulton

4

5 (Please return both Signature of Deponent pages.)

6 I, the undersigned, GEORGE H. SWITZER,
7 III, do hereby certify that I have read the foregoing
8 deposition and find it to be a true and accurate
9 transcription of my testimony, with the following
10 corrections, if any:

11	PAGE	LINE	CHANGE	REASON

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1 SIGNATURE OF DEPONENT (CONTINUED)

2 DEPOSITION DATE: GEORGE H. SWITZER, III

REPORTER: LORA McDANIEL

3 CASE CAPTION: Callawassie Island v. Aulton

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5 PAGE LINE CHANGE REASON

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WITNESS

Date

12

13 I, Lora L. McDaniel, Notary Public for the
State of South Carolina at Large, do hereby certify
14 that the deponent was advised of his or her right
to read and sign said deposition both verbally and
15 in writing. If the deponent fails to execute and
return foregoing Signature of Deponent pages within
16 the thirty (30) days allowed pursuant to the Rules
of Civil Procedure, the original transcript may be
17 filed with the court.

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Lora L. McDaniel

My Commission expires

25

September 18, 2016

1
2 CERTIFICATE OF REPORTER
3

4 I, Lora McDaniel, Registered Professional
5 Reporter and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 foregoing transcript is a true, accurate, and
8 complete record.

9 I further certify that I am neither related
10 to, nor counsel for, any party to the cause pending
11 or interested in the events thereof.

12 Witness my hand, I have hereunto affixed my
13 official seal this 19th day of February, 2013 at
14 Charleston, Charleston County, South Carolina.
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Lora L. McDaniel,
My Commission expires:
September 18, 2016
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I N D E X

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STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO.: 2012-CP-07-03209

CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD

GRACE I. FREY AND MICHAEL J.)
FREY,)

DEFENDANTS.)

CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

CASE NO.: 2012-CP-07-03216

PLAINTIFF,)

vs.)

SHERRY B. QUINN AND)
MARK K. QUINN,)

DEFENDANTS.)

CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

CASE NO.: 2012-CP-07-03218

PLAINTIFF,)

vs.)

REBECCA L. MARTIN AND)
GREGORY L. MARTIN,)

DEFENDANTS.)

May 19, 2014

Beaufort, South Carolina

B E F O R E:

HONORABLE J. ERNEST KINARD, JR., JUDGE.

A P P E A R A N C E S:

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EXHIBITS

None.

1 **THE COURT:** All right. Callawassie versus Frey, I
2 guess.

3 **MR. HAIGHT:** Yes, Your Honor. We're here on behalf
4 of the plaintiff.

5 **THE COURT:** Good for you.

6 **MR. MCDANIEL:** We're here on behalf of the defendant,
7 Your Honor.

8 **THE COURT:** All right.

9 All right. These are three cases just alike; right?

10 **MR. HAIGHT:** Yes, Your Honor.

11 **MR. MCDANIEL:** They are similar, Your Honor. They
12 just have a little bit of different facts based on the
13 dates that the members joined.

14 **MR. HAIGHT:** Your Honor, may it please the Court?
15 Yeah, as far as the facts go, we don't think that there
16 are any facts that are different that really make any
17 difference, so we would prefer to argue this as one, ---

18 **THE COURT:** All right.

19 **MR. HAIGHT:** --- for purposes of judicial economy and
20 otherwise.

21 Your Honor, we submitted a notebook to you. I don't
22 know if you've had a chance to review that.

23 **THE COURT:** Oh, yeah, I've read it six times.

24 **MR. HAIGHT:** Once would have probably been
25 sufficient, Your Honor.

1 **THE COURT:** Once is all I read it, and I only read
2 one of them. I didn't read all three. They looked like
3 the same thing.

4 **MR. HAIGHT:** And, essentially, they are. That's our
5 position.

6 I'll try to make my introduction brief, since you
7 have had the opportunity to review our notebook. Suffice
8 it to say that our client, Callawassie Island Members Club
9 ---

10 **THE COURT:** Hold it.

11 My law clerk, you read all three of them; didn't you?

12 **LAW CLERK:** I did.

13 **THE COURT:** See? He didn't know any better. All
14 right.

15 **MR. HAIGHT:** We're ahead of the game, then.

16 Our client is a 501(c)(7) Mutual Benefit Non-profit
17 Corporation. It owns the golf club and other amenities at
18 Callawassie Island for the benefit of its members and has
19 since 2001.

20 It actually was formed in 1999, but it really did not
21 truly come into being until it acquired the assets of the
22 club in 2001. It acquired the assets from the Callawassie
23 Island Company, L.P., which was the developer and also
24 controlled the club at that time, which was called the
25 Callawassie Island Club. It had always been contemplated

1 that at some point, you know, the members would vote and
2 acquire the assets, and that's essentially what happened
3 in 2001.

4 All of the people -- well, let me say this. The
5 Callawassie Island Company, its club, has governing
6 documents that go back from 1994. They have a plan for
7 offering memberships, bylaws, general club rules.

8 These were the documents that were in place when all
9 three of the defendant couples purchased their
10 memberships. So, we really do think that these are
11 substantially similar in any material respect.

12 The Freys acquired their membership in 1995. At the
13 time they acquired their membership, they signed an
14 application and agreement, which are attached to the
15 Verified Complaint.

16 And in that application, in Paragraph One, they
17 agreed to be bound by the membership plan, as the same may
18 be amended from time-to-time. Similarly, they signed an
19 agreement, in which they agreed to be bound by the
20 membership plan and exhibits to the membership plan.
21 Those exhibits included the bylaws and the general club
22 rules, and that was the version in effect as of July of
23 1994.

24 And Page Seventeen of that document provides that it
25 can be amended and how it can be amended. So, at the time

1 they acquired, there were governing documents in effect
2 that indicated they could be amended, and they agreed to
3 that.

4 Similarly, the Martins acquired their membership in
5 February of 2001, which was before the turn-over to our
6 client, which was later in the year. And they signed an
7 application similar to the one signed by the Freys, where
8 they agreed to be bound by the membership plan, as it may
9 be amended.

10 The Quinns purchased in 1997. Like the Freys, they
11 signed an agreement where they agreed to the plan. These
12 are all attached to the Verified Complaint.

13 I don't think there's any dispute they signed these.
14 We think these agreements are unambiguous. We think the
15 plan and the other governing documents are unambiguous.

16 The couples involved, the Freys, the Martins, and the
17 Quinns remained members for many years. They remained
18 members after the turn-over to the membership club, our
19 client.

20 They took advantage of the benefits of the club for
21 many years. They dutifully paid their dues and other fees
22 for many years. It's more recently that they have not.

23 And what's important to note about the governing
24 documents, in the 1994 documents at the time they
25 purchased, it was clear that a member's obligation to pay

1 dues and other charges, and I'll just call them dues,
2 continues until the memberships are reissued to a new
3 member. So, even if they've resigned, as long as they
4 still hold that membership, they hold the responsibilities
5 for it. That was the case in 1994. That is the case
6 today, and it has been the case at every point between
7 1994 and today.

8 Now, Your Honor is well aware of the standard of
9 review on summary judgment. I think what's particularly
10 important to note for purposes of our case is for the
11 construction of a written contract, the question is one of
12 law if the language employed by the agreement is plain and
13 unambiguous. And, again, we assert plain and unambiguous,
14 and it has been since 1994, if not earlier. But for
15 purposes of this case, that's what matters.

16 Again, our Memorandum, which has been submitted, sets
17 forth excerpts from the plan and other governing documents
18 that show what those requirements were during the time
19 they acquired and today. And, again, we don't believe
20 there's any ambiguity.

21 Now, the defendants are going to claim that their
22 purported resignations, or in their reviewed allegedly
23 required expulsions, terminate any further obligation on
24 their part. Well, there are a number of problems with
25 that.

1 First, there is no provision in the governing
2 documents for that proposition. In fact, it's quite the
3 opposite. The obligation to continue to pay is what's in
4 those documents, not what they assert is in those
5 documents. And similarly, if a contract must be read as a
6 whole, if all these documents are read as a whole, it's
7 clear that what they say is in there, isn't in there.

8 Now, what they will probably argue is that they
9 should have been expelled under some language in the
10 general club rules. These are the general club rules from
11 2001. In the version that was in effect until 2007 in
12 Paragraph 13.3.1, it uses language that says: Shall be
13 expelled.

14 Again, they make a leap of logic saying that means
15 that they're excused from paying any further dues and
16 fees, which it doesn't say. There's absolutely nothing in
17 there that says that they have no further obligation.

18 But what's important to note, too, is since 2007 when
19 the rules were amended, it just said: May.

20 It hasn't said: Shall.

21 And for these defendants, the Freys, their oldest
22 unpaid balance is from October of 2009. Their last
23 payment was in November of 2011. This was years after
24 that "shall" language that they point to was gone from the
25 governing documents.

1 The Martins, their oldest unpaid balance is from
2 November of 2011. Their last made payment was February of
3 2012.

4 The Quinns' oldest balance, unpaid balance, is from
5 December of 2009. And their last payment was in May of
6 2010.

7 Clearly, in all instances, long after the rules were
8 changed from "shall" to "may" in that particular -- and
9 clearly, they were in good standing well past that. So,
10 that argument, one, is just flat wrong on account of what
11 the documents say, and even in 2001. But for purposes of
12 these folks, you know, there was no possible trigger of
13 that obligation, if it is an obligation, until long after
14 that "shall" language was removed.

15 Now, they will also argue that the Non-profit
16 Corporation Act, 33-31-620, in particular, prohibits
17 continuing obligations after resignation. In our view,
18 they are simply ignoring the statute when they make that
19 claim.

20 They don't read Subparagraph B, which says: The
21 resignation of a member does not relieve a member from any
22 obligations the member may have to the corporation as a
23 result of obligations incurred or commitments made before
24 resignation.

25 And that's exactly what we're talking about here.

1 And there's similar language in 33-31-621(e) and the
2 comments to both statutes, which, you know, has been
3 mentioned in our Memorandum.

4 Now, the defendants will also claim: Well, they
5 can't resign.

6 Well, they can resign. And what they need to do to
7 effectively resign is sell their property, with their
8 membership.

9 Now, the Freys just have a lot. The Martins and
10 Quinns have houses, developed lots, and they have
11 memberships. Since 2001, it's not really before the Court
12 in this case, but since 2001, CIPOA, which is the
13 Callawassie Island Property Owners Association, has had a
14 mandatory provision in their declaration, which requires
15 that any new purchaser of a lot in Callawassie also has to
16 obtain a club membership.

17 So, under those circumstances, these folks, they can
18 get out at any time. They just simply need to sell their
19 property, their real property, with their membership. For
20 whatever reason, they've chosen not to do so.

21 They might say: Oh, well, we don't like the price.

22 But that really isn't an option. Price shouldn't be
23 an option, even if they have to come to the table with
24 money, that shouldn't be an option.

25 What's important is they can effectively end their

1 involvement with Callawassie by selling the real property
2 and their membership simultaneously. They have chosen not
3 to do so.

4 Now, if Your Honor will permit, Mr. Young from
5 Howell, Gibson, and Hughes would like to address the
6 remaining counterclaims that the defendants have.

7 **THE COURT:** All right.

8 **MR. HAIGHT:** There have been various other ones that
9 have been dismissed by earlier orders, and we have copies
10 of those if you need them, but Mr. Young would like to
11 address the counterclaims.

12 **THE COURT:** Okay.

13 **MR. YOUNG:** Thank you, Your Honor. May it please the
14 Court?

15 Bill Young here, again, for the Plaintiff, the
16 Callawassie Island Members Club. By way of background,
17 the only counterclaims that remain are those of negligent
18 misrepresentation and for breach of contract, whereby the
19 defendants are seeking an accounting. The remaining
20 claims have previously been dismissed by Judge Mullen.

21 I'll very briefly explain why these claims are
22 subject to summary judgment. As far as the negligent
23 misrepresentation claim goes, as you are no doubt aware,
24 the elements are a false representation by the defendant
25 to the plaintiff, a pecuniary interest by the defendant in

1 making that statement, a duty of care owed by the
2 defendant to see that the truthful information is
3 communicated to a plaintiff, a breach of that duty by the
4 defendant, the plaintiff's justifiable reliance on that
5 representation, and finally, that the plaintiff suffered a
6 pecuniary loss as a result of that justifiable reliance.

7 As Mr. Haight previously stated, the defendants here
8 joined the Callawassie Island Club prior to the
9 Callawassie Island Members Club coming into effect or
10 taking control of the club assets. So, it's very simple.
11 These -- these three defendants, or these three couples of
12 defendants, incurred their obligations prior to CIMC being
13 in existence; therefore, there is no way, it's an
14 impossibility, for anyone on behalf of CIMC to have made a
15 representation to them for CIMC to have a pecuniary
16 interest. If CIMC doesn't exist, they don't owe a duty to
17 anyone, and so for those reasons, the claim for negligent
18 misrepresentation is fatal.

19 However, it doesn't end there. Another necessary
20 element is the justifiable reliance on certain statements.
21 And our courts, our appellate courts, have consistently
22 held that in an arms length transaction among
23 sophisticated entities, there can be no justifiable
24 reliance.

25 In our case, these members, they signed multiple

1 documents. The 1994 plans, which they originally became
2 obligated, stated to review the documents carefully, to
3 consult legal counsel, if necessary, not to rely upon any
4 representations made by anyone about anything contained in
5 the documents, and to solely rely upon the information
6 contained in the plan and its exhibits. So, it -- it's
7 strange credulity to believe that there could be any
8 justifiable reliance there, when they are told in black
9 and white, short and simple, look at these documents,
10 don't rely upon anything else. And that's what our courts
11 have held with regard to reliance upon that.

12 The members -- defendants have also alleged as part
13 of their complaint a number of issues that they have with
14 Callawassie Island Members Club. To the extent those
15 matters are related to conduct after they became members,
16 a negligent misrepresentation claim is not the appropriate
17 avenue to remedy those issues.

18 First of all, a negligent misrepresentation claim
19 would have to come about as far as when they entered into
20 the contract, not thereafter where they were already
21 obligated. Secondly, our statutory authority and our case
22 law provides that (a), if you have a problem with what a
23 non-profit corporation is doing, you must assert it
24 through a derivative action, which they have not done
25 here. Secondly, if the actions they are complaining of

1 are related to the inner workings of the non-profit
2 corporation, those intervenous actions are not subject to
3 judicial review absent a showing of bad faith, fraud,
4 self-dealing, what have you.

5 And that burden is on the party challenging the
6 action to demonstrate self-dealing, fraud, bad faith. The
7 corollary to that is also that any inner workings of the
8 club are subject to the Business Judgment Rule. And the
9 actions are deemed to be in the best interest of the club,
10 absent some showing otherwise.

11 Again, that burden is on the defendants, the
12 counterclaiming plaintiffs in this case, to make that
13 showing. They have not done so here.

14 Although they have submitted affidavits in opposition
15 to these motions, those affidavits really only go to the
16 -- to the Callawassie Island motions to collect. They
17 don't relate to the defendants' counterclaims. So, they
18 have offered no evidence to support their counterclaims,
19 despite the fact that we have moved for summary judgment.

20 Very quickly on the breach of contract and asking for
21 an accounting. They haven't offered any evidence, any
22 support for the notion that they are entitled to an
23 accounting. They haven't offered any -- any argument as
24 to what they believe has wrongfully been done with their
25 funds. There's nothing beyond the mere allegations in

1 their complaint to support this claim, and as you are well
2 aware, that's insufficient to survive a motion for summary
3 judgment.

4 And I'm happy to answer any questions you have.

5 **THE COURT:** No. No questions.

6 **MR. HAIGHT:** Your Honor, if I could just kind of wrap
7 up the plaintiff's side of this motion? Mr. Young
8 mentioned the affidavits. If the Court reviews the
9 affidavits submitted by the defendants, it's clear that
10 they are just a recitation of misreadings of clear and
11 unambiguous contract documents, and they really have no
12 affect on the analysis of this case.

13 What is important to note is that plaintiff has
14 submitted affidavits, additionally, a Verified Complaint
15 sets forth what's owed. More recently, at the time of
16 filing motion affidavits setting forth what was owed at
17 that time, and we actually do have supplemental affidavits
18 that bring it up here to obviously closer to the hearing
19 date. We're happy to submit those. They've just been
20 filed.

21 If Mr. McDaniel has any major objection, Your Honor,
22 you can simply look at the affidavits filed at the time of
23 the filing of the motion, but really all they do is update
24 the numbers. And certainly, it's our position that we're
25 entitled to judgment against these folks, summary judgment

1 against these folks, for the full amount owed, because
2 they've submitted nothing to contest the numbers where
3 they've said: Wait, I made a payment on this date and
4 it's not reflected.

5 There is none of that in this case. Their sole claim
6 with regard to the numbers owed is: Well, we think we
7 should have been expelled, and thus, had no further
8 obligation.

9 That's their argument as to why they don't owe the
10 amount set forth in these affidavits. And that -- that's
11 simply the extent of it.

12 So, we would ask Your Honor for summary judgment.
13 We're dealing, in our view, with clear and unambiguous
14 documents, and we believe our client is entitled to the
15 relief sought. Thank you.

16 **THE COURT:** All right.

17 **MR. MCDANIEL:** And we would object to any late filed
18 affidavits that we haven't received. As the rules
19 require, we receive them prior to the hearing.

20 I passed up the Memos I have for the -- for each of
21 the three cases and just a bundle of exhibits. I believe
22 you're familiar with this. You've looked at these before.
23 This would be the copy for counsel.

24 **MR. HAIGHT:** Which I'm receiving for the first time.

25 **MR. MCDANIEL:** Your Honor, the three Memos are on top

1 with the exhibits, sideways it has an index there.
2 Essentially, it's the exhibits with the governing rules,
3 the depositions, and is the Interrogatories that we have
4 put in and Request for Production.

5 Your Honor, as to these three motions, they are
6 different. The documents that were signed by the three
7 defendants are different. I think if the Court looks at
8 that, it will be seen that there is actually a difference
9 in what they signed.

10 There are a number of allegations that the plaintiff
11 has made that we would contest, and I think a review of
12 the documents will show they are not supported. Attached
13 exhibit, the purchase agreement or the application
14 suggests or says that they will be bound by the covenants,
15 rules, and obligations, as they have said in their motion,
16 as those may be amended from time to time.

17 It's not in that document. It's nowhere. That's not
18 true. That's not an accurate statement of what is
19 reflected in that application. It refers in one of the
20 three, I believe, they can amend the 1994 Plan for
21 Offering, but that's the only thing that's indicated, and
22 it must be done pursuant to the terms of that plan.

23 They've never, my clients, none of them, have ever
24 entered into an agreement directly with the plaintiff.
25 Obviously, these were all with the Callawassie Island

1 Company, and -- to join the Callawassie Island Club, which
2 is not the same club, obviously, as they had discussed
3 that.

4 And I want to point out additionally that we have
5 made motions -- or made a motion for summary judgment to
6 have the spouses removed, because the fact is, for all
7 three of these, it was the husband in each case, Mr. Frey,
8 Mr. Martin, and Mr. Quinn, signed the application. The
9 spouse, the wives, only signed it as applicant spouse.

10 The documents reflect not only that in the
11 application itself, but the governing documents discuss,
12 as it's laid out in the Memo, that the member -- member's
13 immediate family has access, including the member's
14 spouse, but it doesn't indicate the spouse is a member.
15 The billing records for the spouse, I mean the billing
16 records for this membership always go to the husband in
17 all three of these cases, never to the spouse, never to
18 the wife.

19 And the delinquent member list, the suspended member
20 list, all those only show the husband. They don't show
21 the three spouses in this case. So, at least as to those,
22 we would say it's a patently -- a big issue for the Court
23 to decide, the jurors to decide with regard to that.

24 The -- I've also included in what I gave to you the
25 1994 Plan for Offering with all three exhibits that that

1 came with, because I think it's important to see how those
2 documents discussed changes. It doesn't say that they can
3 just make changes as they see fit to any -- any idea of
4 it.

5 It only refers to the bylaws and the duties and
6 powers allowed to the Board under the bylaws. Those don't
7 include, we would argue, to enforce expulsions, to deduct
8 amounts owed for membership equity only in the case of a
9 resignation or an expulsion. They go to such things as
10 how to use the facilities, managing employees, the amounts
11 of dues and fees charged, but it doesn't specifically
12 allow them to change that -- those type of terms of the
13 member's rights.

14 In fact, where that is addressed, it says that
15 anything that materially and adversely affects the
16 members, they have to vote on it. It is un --
17 uncontradicted that nobody ever voted in the membership on
18 the change from the shall be expelled to the may be
19 expelled.

20 In fact, the deposition of the Board members suggest
21 they don't even know how it happened. Some of the Board
22 members that I took depositions, specifically Karen
23 Norwood, couldn't explain it, only that well, it was
24 because it was unclear what that -- what the intent was
25 there, which is exactly our point. Our clients had a

1 reasonable basis to believe they would be expelled after
2 four months.

3 The -- the plaintiff also asserts that the defendant
4 agreed to continue to pay dues and fees until the
5 membership was reissued, but they don't cite a provision
6 for that. In fact, the document that they signed doesn't
7 say that. There's no indication in that document that
8 they would agree to continue to pay dues and fees until
9 it's reissued. Regardless, the plaintiff hasn't met its
10 burden.

11 The other key point I'd like to point out, they keep
12 bringing up the land covenants, the CIPOA, which is the
13 Callawassie Island Property Owners Association. It has
14 nothing to do with any of these three cases, and I
15 reference that in the Memo and provide the section from
16 the declarations where these three defendants, because
17 they bought before 2001, don't -- do not have that
18 obligation. So, their reliance in their Memo and the
19 Complaint is misapplied as to the covenants and their
20 continual reference to the covenants.

21 And, further, you know, just in response to what was
22 said, the idea that they can only get rid of this by
23 selling property, there's no connection between their
24 property and their membership for these particular members
25 because of when they bought. So, they certainly shouldn't

1 be obligated to go out and have to sell a piece of
2 property to deal with, resign from, or terminate a
3 membership in this club.

4 **THE COURT:** Well, that's the way it normally is in
5 about every club I've dealt with, which is every club ---

6 **MR. MCDANIEL:** Well, ---

7 **THE COURT:** --- in this county. I'm not ruling
8 against you. I'm only saying that's not a correct
9 proposition. Normally, you do have to sell.

10 I mean, I listened to the Dataw cases: I bought
11 here. I don't play golf. I don't have to pay the dues.

12 I'm sorry. I ruled you've got to pay the dues. They
13 may have appealed it. I don't know. That's just one of
14 them.

15 I'm president of the country club in Camden, the swim
16 club. I quit swimming. I don't have to pay swim club
17 dues.

18 I'm sorry. You own stock. Until you sell it, you've
19 got to keep paying the dues.

20 This is the best I'll do for you. It sounds like
21 they should win, but I haven't studied your Memo, right?

22 **MR. MCDANIEL:** Right.

23 **THE COURT:** So, prepare an order ---

24 **MR. MCDANIEL:** I -- I ---

25 **THE COURT:** Hold it. Hold it. I'm not cutting you

1 off.

2 **MR. MCDANIEL:** Okay. Your Honor, I'm sorry.

3 **THE COURT:** I'll let you go on and on. Remember, I'm
4 not an appellate court. I don't have six law clerks and
5 nine months.

6 Twenty-six years, I've never had anything under
7 advisement more than thirty days. All right, but I'll
8 give you full attention to it and what have you, but when
9 you argue, it's not like I have read all of this and have
10 two staff attorneys and three law clerks and prepare memos
11 and study, but I will read it.

12 But, to simplify it, prepare an order, you throwing
13 them out, you giving them judgment against the husbands
14 only, unless you come up with some reason why the wives
15 should be in there.

16 **MR. HAIGHT:** A very good one, Your Honor.

17 **THE COURT:** Well, then, send me two orders, one with
18 and one without, because I don't know that. I'll have to
19 study that. That's the first I heard that is when he
20 mentioned that.

21 And then you prepare an order saying tough luck, you
22 can't get summary judgment because they entered into this
23 predating that and this applicable section didn't apply to
24 them, and so forth. And then we'll study it and rule
25 correctly.

1 **MR. MCDANIEL:** Can I -- will you allow me to
2 continue?

3 **THE COURT:** I will allow you to continue, ---

4 **MR. MCDANIEL:** Thank you, Your Honor.

5 **THE COURT:** --- but just for your ego, because I
6 haven't studied these propositions, so it's not going to
7 help you to go over them when I haven't read what you're
8 talking about yet.

9 **MR. MCDANIEL:** I understand. I guess I just want to
10 make sure it's in the record.

11 **THE COURT:** If you're an appellate lawyer, you could
12 go on and on as of which section you're talking about and
13 everything.

14 **MR. MCDANIEL:** I understand, Your Honor. I would
15 like to just make a few more ---

16 **THE COURT:** Sure.

17 **MR. MCDANIEL:** --- I can summarize what it is,
18 because we do believe, given the standard summary judgment
19 of being a mere scintilla of evidence and reading these
20 contracts in the light most favorable to my clients, that
21 there is a great deal of evidence that they would not be
22 granted summary judgment, and I would just like to touch
23 on a few of those of what we think are the key points
24 here.

25 As stated, the -- the 1994 Plan of Offer also

1 requires that the club reissue the memberships, every
2 fourth membership that is on the resale list. We've
3 provided you the resale list. Three would come from the
4 developer and then one from the resale list.

5 One of the issues we have in this case is, despite
6 their denial that this can't happen, based on the resale
7 list, over the years, they have expelled members. We've
8 got dozens of expelled members on the resale list, as well
9 as conceded members, which are members who they just said
10 you can leave and didn't make them do anything. And that
11 is, you know, the evidence of that is front of you there,
12 Your Honor, in the exhibits, I believe Exhibit D or E,
13 where they had the resale list showing that's the reason
14 those were all taken back, concession or expulsion.

15 So, at some point, they were following the rules and
16 they were doing this the way they're supposed to be --
17 supposed to have done it. But what that leaves now is a
18 resale list in which the plan suggests every fourth one
19 coming off the resale list would be one of the resigned
20 members, but now it's overloaded with conceded and
21 expelled members.

22 And so my clients are -- are nowhere to be seen and
23 any idea that they might be able to get off that resale
24 list. So, we obviously have a problem with that.

25 The -- again, the Board officers, the President,

1 Karen Norwood, that I deposed, said that my clients of
2 this type were grandfathered and that they weren't -- this
3 wasn't applicable to them. And that's the distinction I
4 would make with the Dataw cases.

5 My clients live in New Jersey, Michigan, and Atlanta.
6 They don't live around here. They don't use the
7 facilities, but I won't even make that argument. That's
8 not even -- I agree, Your Honor, that doesn't matter if
9 they're -- even though it's untrue that they're getting
10 use and enjoyment out of them, it's not the reason that
11 they shouldn't be held to the covenants and the
12 requirements about owning a membership with a piece of
13 property. It's because they bought before that and the
14 covenants specifically say they're not -- they are exempt
15 from that obligation.

16 Again, I would just like to say the 2001 club rules
17 do say at 13.3.1 that a member shall be expelled. And the
18 definition of expelled and how that's defined is different
19 than resigned and terminated in that -- in that document,
20 that it doesn't include expulsion in the terminology where
21 there's a discussion about resigned members having to
22 continue to pay until it's reissued.

23 It doesn't say that about expelled members. And the
24 fact is, expelled members have never been held to do that.
25 In fact, it says that they will never be again -- shall

1 not again be eligible for membership if you're expelled.

2 And that was the -- as well as the 30(b)(6) testimony
3 of Mr. Switzer that that is automatic. There's a
4 suspension period after three months, and then the rule
5 would kick in after that.

6 The Plan of Offering, the club rules, again, as I
7 cite specifically in the Memo, also indicate that the most
8 a member would ever be liable for would be the amount that
9 they had purchased into the club, that the club could have
10 a lien against the membership for unpaid dues and fees at
11 the time they resign.

12 Again, that unpaid, they defined as being a
13 continuing obligation, but that's not I think a proper
14 reading of the word unpaid. It would be unpaid at the
15 time of the resignation. The club could have a lien.

16 If you resign and get on the resale list and you want
17 to continue to use the club, you can do that by making
18 your payments. At most, the documents if you look at
19 them, indicate that all the documents, the bylaws, the
20 Plan of Offering, all speak to the member getting money
21 back at the time his membership is sold.

22 It never says and you would be required to pay any
23 delinquency not covered by the cost of your membership.
24 It least implies throughout that the most a member would
25 ever have, because it is an equity membership, is the

1 amount that they purchased in, the thirty-one thousand
2 dollars, an amount that they haven't even deducted out of
3 what they're claiming in this case.

4 My client has, and it's attached there, offered the
5 affidavit to the effect that this was not the agreement
6 that he made. And furthermore, the club director, the
7 membership director, Ellen Padgett, has testified that she
8 understood that it was four months, and then you're
9 expelled. She testified to that.

10 Again, perhaps a jury wouldn't believe it, Your
11 Honor, but I believe it creates an issue for the jury as
12 to whether that's a proper interpretation, given this was
13 the, not just my client's interpretation, but the
14 membership director for the plaintiff and for the
15 predecessor club who stayed on, testified to that as well.
16 And like I said, we have included in the record on appeal
17 a number of the concessions and expulsions that did occur.

18 I spent a good bit of time or several pages in the
19 Memo just making sure that it was clear who Ellen Padgett
20 was, as far as her ability to make that representation and
21 her knowledge.

22 I would just reference back to the 1994 Plan of
23 Offering, the 1994 Bylaws, and the Club Rules from 1994,
24 which I've included, and you know, ask the Court to review
25 that Memo, as you said you will do, because we cite

1 specific language there about how that is -- how that is
2 supposed to occur upon the resignation of the member. And
3 it indicates that those charges will accrue against --
4 deducted from the amount to be paid to the resigned member
5 upon the reissuance of his resigned membership. It
6 doesn't say there will be any delinquency or could be.

7 The bylaws go into a little more detail. And it
8 indicates in 8(b) in the bylaws that whenever any person
9 shall cease to be an equity member, whether by death,
10 resignation, recall, expulsion, or other provision; it's
11 clear that the indication from that is that there are -- a
12 member can be resigned or be expelled, or should be. And
13 there's no personal liability.

14 It accrues against the membership, if you read the
15 terminology. It continues to reference the membership,
16 not the member, as having the debt and the obligation.

17 And, finally, I would also just indicate, as I have,
18 that the spouses only signed as applicants. And as to the
19 damages portion, I did have a few things. You know, we --
20 I have -- there's been a submission of attorney's fees.
21 And in the attorney's fees, about nine thousand dollars of
22 all of them, a little more, a little less, more than half
23 of that in some cases is projected future attorney's fees.

24 And I've asked for invoices. I've sent discovery
25 requests for that, an itemization of what those attorney's

1 fees are, the past attorney's fees. I haven't received
2 that.

3 The affidavit for attorney's fees simply says general
4 statements, such as gathering documents, meetings, those
5 types of things. That's insufficient under the rules and
6 under the cases I cite in the Brief for us to be able to
7 review it to see if it's adequate.

8 These cases, there has been virtually no discovery
9 done in them so far, except for some exchanging of some
10 paper discovery and the pleadings. So, we would have an
11 issue with regard to the submission of the affidavits. We
12 weren't able to properly review them. And the federal
13 case that I cite there, ---

14 **THE COURT:** All right. How much longer do you need?
15 I've got all of these other people out here, and I
16 explained to you, I haven't read your Brief. So, you're
17 just reading from it to me, like I'm going to be able to
18 take it in until I have read the Bylaws and all that and
19 all that.

20 **MR. MCDANIEL:** I understand. The final thing I will
21 say is, we do have discovery that needs to be done in the
22 case.

23 **THE COURT:** Well, then, you just should have said
24 it's premature to even argue this, because we need more
25 discovery, and I would have said: Come back next time,

1 because I'm down here all the time.

2 **MR. MCDANIEL:** Well, that's what I'm saying is, I
3 want to take the deposition of the accountant, Mr.
4 Spencer, and we haven't done that. These cases are really
5 just premature and discovery is still needed to be done.
6 I'll otherwise rest on the Briefs that we have submitted.

7 **MR. YOUNG:** Your Honor, if I may respond very briefly
8 to that, and then I'll confirm how you want your proposed
9 orders. Our case law is replete. I believe Dawkins
10 versus Fields and Gaul versus O'Shaunasey Realty confirmed
11 the notion that if -- if a party -- if a party cannot meet
12 one of -- one of the elements of its claim, then there is
13 no need for further discovery and summary judgment is
14 appropriate.

15 In this case, it's a case not only for the
16 counterclaims, but also for the Callawassie claim for
17 dues, where the claim is for one, in contract, where if
18 there is not an ambiguity, you determine it based upon the
19 language of the contracts and no extrinsic evidence is
20 allowed.

21 **THE COURT:** All right. Well, y'all just do what I
22 said. Send me two proposed orders with a self-addressed,
23 stamped envelope.

24 And you send me an order as to why it shouldn't be
25 signed, and I'll read everything.

1 **MR. HAIGHT:** And, Your Honor, just one more thing, if
2 I could? Mr. McDaniel asked for that billing. I am
3 handing that to him now.

4 Also, I am handing him the supplemental affidavits.
5 He said he objects to the supplemental affidavits. I
6 still would like to submit them.

7 **THE COURT:** You can do that.

8 **MR. HAIGHT:** Also I have from Mr. Young ---

9 **THE COURT:** And he can submit them also.

10 **MR. HAIGHT:** --- a copy of the Articles of
11 Incorporation for our client, and also the letter from the
12 IRS designating -- designating them as a 501(c)(7), in
13 case the Court needs those, I'll pass those up.

14 **MR. MCDANIEL:** And, Your Honor, we do object to
15 submission of the records.

16 **THE COURT:** You can submit contrary ones. I'll give
17 y'all thirty days to send it in, and then I'll rule
18 fifteen days after I get them, assuming I'm in the
19 country.

20 **MR. HAIGHT:** You have a trip planned, Your Honor?

21 **THE COURT:** Always.

22 **(END OF REQUESTED TRANSCRIPT OF RECORD.)**
23
24
25

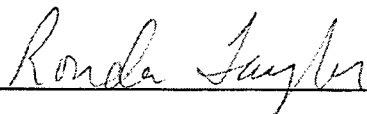
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

I, Ronda A. Taylor, Official Court Reporter for the
Judicial Department of the State of South Carolina, 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 Common Pleas for
Beaufort County, South Carolina, on the 19th day of May,
2014.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

August 20, 2014



Ronda A. Taylor, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
The Callawassie Island Members	)	
Club, Inc.,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF RECORD
vs.	)	
	)	
Defendants:	)	
	)	
Michael J. Frey and Grace I. Frey,	)	CASE NO. 2012-CP-07-3209
	)	
	)	
Mark K. Quinn and Sherry B. Quinn,	)	CASE NO. 2012-CP-07-3216
	)	
	)	
Gregory L. Martin and Rebecca L. Martin.	)	CASE NO. 2012-CP-07-3218
	)	

November 3, 2014

Beaufort, South Carolina

B E F O R E:

The Honorable J. Ernest Kinard, Jr.

A P P E A R A N C E S:

Stephen P. Hughes, Esquire
For The Callawassie Island Members Club, Inc.

And Stacy S. Collins, Esquire

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Martin ROA 1216

1 THE COURT: Okay. Fire away.

2 MR. FORD: Good morning, Your Honor. My name is Ian
3 Ford. I'm, I think, the new lawyer in the case. My
4 predecessor, Brian McDaniel, filed the motions at issue
5 today. And we have substituted counsel for him. So ---

6 THE COURT: With whom do you practice, Mr. Ford?

7 MR. FORD: The law firm is Ford, Wallace, Thomson. And
8 my law partner, Neil Thomson, is here with me today.

9 THE COURT: Where do y'all practice?

10 MR. FORD: Charleston.

11 THE COURT: Okay. Fire away.

12 MR. FORD: All right. We are here on the motions to
13 reconsider. And I believe we are in agreement that at least
14 for initial purposes where there are three cases with
15 motions to consider: the Frey case, 3209; Quinn case, 3216;
16 and Martin case, 3218. And we are going to argue them
17 altogether because -- if that is all right with Your Honor.

18 THE COURT: Well, that certainly suites me.

19 MR. FORD: We are trying to be efficient. And I will
20 endeavor to be efficient, Your Honor.

21 THE COURT: All right.

22 MR. FORD: I have got four points I would like to make.
23 And at the outset I will incorporate the briefs that Brian
24 has filed by reference. And I won't repeat all of those.

25 THE COURT: I read the briefs, but what -- it has been

1 a month.

2 MR. FORD: Great. Four points, Your Honor; and I will
3 try to make them efficiently.

4 Our understanding of Your Honor's order is that it's
5 based in large part on the conclusion that the document are
6 contracts and so on the issue are unambiguous and should be
7 construed in favor of summary judgment at least as to the
8 husband defendants in the case.

9 Our first point is that even in such a situation where
10 the documents are construed as unambiguous the client, our
11 clients, would still be entitled to a jury trial as to the
12 applicability of the documents of the fact at issue. That
13 is our first point.

14 The second point, Your Honor, is under the summary
15 judgment standard the scintilla of evidence standard which
16 Your Honor is very familiar with.

17 THE COURT: Oh, on the Hancock case.

18 MR. FORD: Yes, Your Honor.

19 THE COURT: I granted 52 summary judgments in one day
20 in Richland. Didn't get a one of them reversed. Now 30 of
21 them would be reversed.

22 MR. FORD: And that is our next argument. And Your
23 Honor can see it coming. We argue given the tremendous
24 amount of evidence that has been submitted in this case
25 there is at least a scintilla of evidence that should allow

1 it to go to trial.

2 And as just one example of the issues that it should be
3 allowed to go to trial is our client takes the position that
4 he had the right to be expelled according to the documents.
5 There is resignation and expulsion. And his understanding
6 and representations were that after four months he would be
7 entitled to be expelled from the club and his obligations
8 would end.

9 Our argument is at the very least that, among the other
10 things that are in the briefs, raise a scintilla of evidence
11 that he should be permitted to be expelled and to have his
12 obligations cease.

13 Another example is under the items cited in the
14 plaintiff's brief. And they submitted one most recently.
15 The date, I've got October 27th. So last week. And they
16 submitted and they cite a bunch of sections that essentially
17 they argue means these are unambiguous, these are super
18 clear, it doesn't -- you know, summary judgment is clear.

19 And we disagree with that, Your Honor. And here is an
20 example of why: When they cite for example the club rules
21 and the bylaws, they are not as clear as we would -- as they
22 submit.

23 For example, the 1994 rule says that the Club will be
24 obligated to continue pay dues and food and beverage
25 minimums. And they cite that to say, well, obligations

1 continue after resignation.

2 The next one, the 2008, says that obligation will
3 continue to pay the club all charges. And the word is
4 charges. The next one, 2013, obligation to continue paying
5 charges.

6 And here is our argument on that point, Your Honor --
7 and they don't cite the 2001 which we believe is applicable.
8 And I can hand up if -- there are three types of financial
9 obligations under the documents. There's dues; there's
10 assessments; and there's charges.

11 And dues are annual fees. Assessments are if they want
12 to upgrade the golf course they take a vote. And third is
13 charges; and that is food and beverage, if you buy something
14 from the shops and so forth. And that is what it says, and
15 they are citing the charges continue if they have got
16 charges.

17 So we believe that that should be read or at least it
18 is ambiguous in the scintilla of evidence that charges mean
19 that dues don't continue, assessments don't continue that
20 have already occurred but if they have -- if they haven't
21 paid their bar tab that is what they are referring to there.
22 And we think there is significant evidence for that, at
23 least to give us a trial.

24 The next point, attorney's fees. I'm on my third
25 point. Your Honor ordered attorney's fees. And there's --

1 Mr. McDaniel made some arguments about the affidavits were
2 untimely submitted and so on. I won't recite all of that.
3 I will just refer to it generally. And it's in the briefs.

4 And there is this point as well: We think that it is
5 very questionable under the law and under the documents and
6 we should get a trial, there is a scintilla of evidence,
7 that attorney's fees are not allowed in this situation under
8 the documents.

9 And this is why: Under the documents they are allowed
10 two courses of action. They can file a lien and foreclose
11 on the lien. And in that situation the bylaws and so on
12 allow attorney's fees. Okay. That is not what they have
13 done.

14 They have done the second course - so it is an action
15 at law - to collect on the debt, pay us the debt. And in
16 that situation there is no provision for attorney's fees
17 under the documents.

18 And it is a dichotomy. Some of the banks they are
19 foreclosing on are making this argument. So we believe at
20 least we should get a trial as to whether we are obligated
21 for attorney's fees.

22 And I am wrapping it up, Your Honor. The fourth point,
23 the nonprofit statute. And this reiterates a point made by
24 Mr. McDaniel. We believe that under the nonprofit statute
25 it should be read and it says that people should be able to

1 resign from a social club. And if they had accrued debts
2 beforehand they are responsible for those, but they don't
3 get to continue being charged from especially after they
4 have been expelled and so on.

5 It is a little bit like being expelled from school but
6 still having to pay tuition. We think that that is a
7 misreading of the statute. We also respectfully assert we
8 should be at least be allowed a trial on those issues.
9 Thank you, Judge.

10 THE COURT: Okay. And of course y'all concede?

11 MS. COLLINS: No, Your Honor.

12 MR. HUGHES: Absolutely not, Your Honor.

13 MS. COLLINS: Your Honor, before we took up the hearing
14 I had a few items to share with opposing counsel. And with
15 no objection I would like to hand them up to you in case you
16 need some of these for easier reference as we proceed
17 through our arguments.

18 THE COURT: All right.

19 MR. FORD: No objection, Your Honor.

20 MS. COLLINS: I am handing up the plan for offering of
21 memberships from 1994. These are all previously in the
22 record, Your Honor. It is just a ---

23 THE COURT: I have already seen ---

24 MS. COLLINS: I just thought it would be easier than
25 rummaging through the file.

1 THE COURT: That's all right.

2 MS. COLLINS: Bylaws from '94, general club rules from
3 1994. And, Your Honor, from our --

4 THE COURT: You know the judge is a speed reader and
5 that he has got a pretty good memory. So I don't need to
6 look at those again. You passed them up before.

7 MS. COLLINS: Okay. A couple of new items we have ---

8 THE COURT: New items I will look at.

9 MS. COLLINS: In our memo we had referenced the order
10 in the Dennis case in which Judge Mullin granted summary
11 judgment against both the husbands and the wives, which we
12 have asked that the judge take another look at that issue as
13 we proceed.

14 And then I also have a copy of the complaint from the
15 Downey versus Callawassie Island Members Club case
16 indicating that Rebecca Martin who is one of the wives that
17 we are seeking summary judgment against that she was a
18 plaintiff advocating that she had a membership in the club
19 and suing the club in that capacity.

20 And then lastly, Your Honor, we did order a transcript
21 of the previous hearing; and as a courtesy I would hand that
22 to the court as well.

23 THE COURT: All right.

24 MR. HUGHES: Your Honor, Steve Hughes on behalf of
25 Callawassie Island Members Club. We obviously would take

1 issue with every single point articulated by the opposition
2 in support of this motion. With regard to the contention
3 that there is a scintilla of evidence which might give rise
4 to a right to a jury trial the fact is we have argued
5 consistently before this court and before numerous other
6 courts that the documents when read as a whole leave no room
7 for any contention that they are ambiguous.

8 The plan of offering in place since 1994, the bylaws in
9 place since 1994, the general club rules in place since
10 1994, clearly impose the ongoing obligations for payment of
11 dues, fees, and assessments notwithstanding an attempt of
12 resignation or termination.

13 They contend that those obligations are not clearly set
14 forth. And they on any number of filings have contended
15 that there is a distinction between and/or among
16 resignation, expulsion and suspension and termination.

17 The fact is that those terms, termination, encompasses
18 all of the above: resignation, expulsion, suspension. That
19 is clearly in the documents in place since 2001.

20 More importantly here, each of these plaintiffs -- or
21 these defendants, joined the club between 1994 and the early
22 part of 2001. The documents in place and the documents to
23 which each of them agreed were the 1994 documents, the plan
24 of offering, the bylaws, and the general rules, and/or 1997
25 amendments which contained exactly the same provisions.

1 The bottom line here is in response to that argument,
2 there is not credible distinction among the terms which they
3 argue here today; and I would direct the court's specific
4 attention to the 1994 plan of offering for 19 -- 1994 plan
5 of offering dated April 1st of 1994. The plan of offering
6 at Paragraph 2 defines equity memberships in the club and
7 refers to a transfer of membership.

8 Paragraph 9 of that says: An equity member who has
9 resigned from the club will be obligated to continue to pay
10 dues and food and beverage minimums to the club until his or
11 her equity membership is reissued by the club. Shall
12 continue to pay food and beverage minimum, dues, fees. Not
13 just charges, as urged by the opposition, but food and
14 beverage minimums, dues and fees, until his or her club
15 membership is reissued.

16 Similarly the bylaws in place in 1994 at the time these
17 defendants joined at Article 9 dealt with discipline --
18 excuse me, Article 14. Article 14 dealt with discipline.
19 Article 14, Subparagraph 4, specifically impressed upon the
20 board, the board may request a resignation. If the member
21 does not resign the board may request the member -- if the
22 board -- if the member does not resign at the request of the
23 board, the member may be expelled.

24 Paragraph 5 of that same Article 14 says that
25 Expulsion -- upon expulsion an expelled member shall be so

1 notified and shall have the right and the obligation, the
2 right and the obligation, to surrender his membership in for
3 reissuance, for reissuance in accordance with the provisions
4 of Article 10, Section 9.

5 That is important because Article 10, Section 9, says
6 as follows: Any equity member may resign from the club by
7 giving written notice to the secretary. Dues, fees, and
8 charges shall accrue against a resigned equity member until
9 the resigned equity member is -- membership is reissued by
10 the club.

11 The specific terms of the 1994 plan and the specific
12 terms of the general rules and the specific terms of the
13 bylaws specifically contemplate that in the absence of a
14 voluntary resignation for misconduct at the request of the
15 board, the board could expel the membership.

16 The expelled member is then treated exactly the same as
17 a voluntarily resigning member; and those members continue
18 to have the ongoing obligation, the payment of dues, fees
19 and charges, until such time as that membership is reissued.

20 There is no question under the 1994 documents that
21 those obligations continue notwithstanding an attempted
22 resignation.

23 Whether it is resignation, whether it is expulsion,
24 whether it is suspension, all of those are terminations
25 nonetheless requiring an ongoing obligation.

1 Equally importantly, the 2001 documents, and as enacted
2 by the Callawassie Island Members Club, my client, continued
3 to contain the same effective provisions.

4 The general club rules as enacted by the club at
5 Article 14 again deal with discipline. Article 14.1.1, a
6 member may be reprimanded, fined, suspended or expelled.

7 14.1.1 deals specifically with termination. Under the
8 rubric of termination, termination, the language of the
9 rules is the board may request the resignation of any member
10 for cause. Under the rubric of termination it encompasses
11 the word resignation. And it also says under the same
12 rubric of termination if the member does not resign at the
13 request of the board the member may be expelled.

14 Section 14.5 of the general rules also says -- deals
15 with expulsion. An expelled member shall have the
16 obligation to surrender his or her certificate of membership
17 to the club for reissuance to a new member. Exactly the
18 same provisions that were set forth in the 1994 documents in
19 place at the time these members joined.

20 Section 14.2 deals with reprimand, suspension and
21 expulsion and termination. And 14.2.1 says in two separate
22 places: Notwithstanding termination the member shall remain
23 liable for any unpaid club account, membership dues, and
24 charges.

25 It reiterates this at 14.2.3: Notwithstanding

1 termination or suspension of membership the member shall
2 remain liable for payment of membership dues, fees, and
3 charges.

4 There is no effective distinction between the
5 obligations imposed upon a member whether he voluntarily
6 resigns or is forced to resign by expulsion. That argument
7 is simply speechless. It has no place for consideration by
8 this court.

9 With regard to a scintilla of evidence, I would urge
10 the court that exactly the same thing -- the same
11 considerations apply. As the court is well aware, the
12 contract is to be construed as a whole. One does not pluck
13 a provision from a contract and maintain that it dictates
14 the determination of the intention of the parties.

15 The intention of the parties as set within that
16 contract is determined by a construction of the contract as
17 a whole.

18 And I would just say -- I would urge upon this court
19 that the plans of offering from 1994 and thereafter, the
20 general rules from 1994 and thereafter, and the bylaws from
21 1994 and thereafter when properly construed give no -- give
22 no reason, give no authorization to find any ambiguity which
23 would give rise to a jury trial in this matter.

24 This is squarely within our previous court rulings
25 which require that unambiguous contracts be determined by

1 the court and do not give rise to right to a jury trial.

2 And under those circumstances the previous rulings of
3 this court granting summary judgment to my clients on all
4 three matters is appropriate.

5 Mrs. Collins will address the attorney's fee issues. I
6 would like to address briefly the arguments concerning the
7 nonprofit corporation.

8 This court has heard arguments from me and other
9 counsel on those matters previously, but the fact is under
10 the South Carolina Nonprofit Corporations Act nonprofit
11 corporate boards are endowed with expansive authority. They
12 have authority under Section 12 -- 33-31-302 in a number of
13 actions.

14 They have in fact the same powers as an individual to
15 do all things necessary or convenient to carry out the
16 affairs including without limitation, including without
17 limitation, the power to sue, to make and amend bylaws, to
18 elect and appoint directors, to impose dues, assessments,
19 etc., to establish conditions for admission, to do all
20 things necessary or convenient to further the activities and
21 affairs of the corporation.

22 Consistent with those provisions -- and our actions
23 have been completely consistent with the authorizations not
24 only of Section 33-31-302 but also 31-31 -- 33-31-620.

25 As the court is aware, Section 30 -- 33-31-620 deals

1 with resignation. And that section provides specifically
2 that the resignation does not relieve the member from
3 obligation the member may have with the corporation as a
4 result of obligations incurred or commitments made prior to
5 resignation. Exactly the same condition we have here.

6 The comments to 33-31-620 note specifically that
7 commitments may extend beyond the time the member resigns,
8 resignation will not allow a member to avoid ongoing
9 obligations to which that member has agreed prior to
10 resignation.

11 Arguments to the contrary which contend that we cannot
12 impose those sorts of obligations are simply not factually
13 or legally based.

14 Section 33-31-621 relates to expulsion and suspension.
15 Again, reiterates exactly the same authorization to
16 corporate boards to impose ongoing obligations for payment,
17 for dues and fees. Member may be expelled. May be
18 expelled. The expelled member may be liable to the
19 corporation for dues, assessments or fees as a result of
20 obligations incurred or commitments made prior to expulsion
21 or suspension.

22 Again, the reporter's comments: If the contract or
23 agreement to make payments notwithstanding his status if a
24 member enters into a contract or agreement to make those
25 payments notwithstanding his status, whether it is resigned,

1 suspended, expelled or otherwise terminated, those
2 obligations are ongoing. The mere fact of expulsion does
3 not relieve the member of those ongoing payments.

4 Moreover, I would contend, and I believe appropriately
5 so, that the actions of the board here with regard to
6 collection of delinquent dues and fees are not subject to
7 judicial review.

8 As this court is aware, our appellate opinions have
9 demonstrated the consistent reluctance of our courts to
10 question the actions taken intra vires by corporate boards.

11 Our boards have acted to collect dues and fees in order
12 to serve the financial interests of the corporation and its
13 members.

14 The reluctance of our courts to question the actions
15 taken intra vires is specifically applicable in instances
16 where the board action is one in agreement requiring the
17 exercise of business judgment.

18 And as the court is aware, under those circumstances
19 the court will not question intra vires action where that
20 action is taken within the authority of the board, without
21 corrupt motives, and in good faith and absent a showing of
22 fraud, self dealing or unconscionable conduct, the judgment
23 of the directors will not be questioned by the courts.

24 That is exactly what we have here. And I would note
25 that the cases at issue clearly place the responsibility and

1 the burden of showing such an absence of fraud -- or
2 fraud -- the presence of fraud or self-dealing or
3 unconscionable conduct upon the party challenging the
4 corporate action.

5 These cases have been pending, as I recall, for two or
6 three years and have been subject to extensive discovery by
7 both sides.

8 Counsel for the defendants has had more than adequate
9 opportunity to demonstrate anything remotely close to fraud,
10 self-dealing or unconscionable conduct; and there has not
11 been one scintilla to demonstrate that sort of conduct.

12 And I would set forth that under the circumstances that
13 there is no room for a contrary finding here. Generally
14 speaking, Your Honor, that is the argument that I was
15 prepared to make. And I believe other considerations will
16 be argued by Ms. Collins. I appreciate the attention of the
17 court.

18 THE COURT: Okay.

19 MS. COLLINS: Thank you, Your Honor. First, I would
20 like to object to the argument that the documents -- that
21 the applicability of the documents presents a question for a
22 jury. That is something new that has not been argued
23 previously.

24 And I think it is really disposed of in the answer
25 where our verified complaint stated that the documents, the

1 application, the purchase agreement, were signed by the
2 defendants in these cases. And their answer indicates that
3 yes they did sign them. There is no question that the
4 documents apply in this case. So irrespective of the fact
5 that it is a new argument I think that is specious.

6 The next argument having to do with attorney's fees, we
7 argue that they are applicable. We do object to an argument
8 being introduced at this point in time that the documents
9 don't provide for attorney's fees. I believe that is also a
10 new argument.

11 Nevertheless, we feel that the documents do support
12 attorney's fees. They provide for reasonable fees to be
13 applied in a lien situation. But it also says whether or
14 not legal proceedings are initiated I think clearly the club
15 intended and it's provided for in the documents that whether
16 you are enforcing it as a lien you should get attorney's
17 fees regardless of the collection method applied.

18 Because there would have to necessarily be a suit to
19 establish the fees before the lien could be perfected and
20 foreclosed upon.

21 So if they are available in the instance where you are
22 taking the remedy of applying the lien they should apply in
23 an instance where you are taking some other course of action
24 short of foreclosing on that lien.

25 And, Your Honor, the motion that was filed also

1 contested the attorney's fees on the ground -- or only
2 contested the attorney's fees on the ground that they were
3 not supported by proper affidavits.

4 I would submit that I reviewed the records of our -- of
5 our firm, that our hours did in fact exceed 15 hours as the
6 estimate that Your Honor was gracious enough to award us
7 previously, and that if the court feels it is necessary we
8 would be happy to submit an amended affidavit bringing it up
9 to speed with where we are today which is considerably in
10 excess of 15 hours.

11 THE COURT: Okay.

12 MS. COLLINS: And if I may confer with co-counsel just
13 briefly.

14 THE COURT: Sure.

15 (Whereupon, counselors conferred.)

16 MS. COLLINS: And just briefly, Your Honor, with
17 respect to 33-31-620, to read that statutory provision as
18 defendants would have this court read, would render any
19 association which basically is under the same rubric of
20 Nonprofit Corporation Act would render any association
21 incapable of charging dues, fees and assessments until the
22 property transfers to a new buyer. And obviously we think
23 that would be a gross miscarriage of the statute and an
24 abuse of its intent.

25 Clearly, homeowners association can mandate that as

1 long as you own in their neighborhood you have to pay those
2 dues, fees and assessments; when you sell, you get out from
3 under the obligation.

4 That is similar to our situation here where the mandate
5 is that you maintain your membership until it reissues
6 either through coming off the resale list through an arm's
7 length transaction negotiated by the parties or through the
8 sale of the real estate.

9 And that's all I have, Your Honor.

10 THE COURT: Okay.

11 MR. FORD: Very briefly, Your Honor.

12 THE COURT: Sure.

13 MR. FORD: On the termination versus resignation point
14 that Mr. Hughes so eloquently made, two points on that.
15 There is evidence in the record that the club and its
16 representatives told the defendants that they could -- that
17 they could be terminated or resign after four months. So
18 there is at least an estoppel issue, at least a scintilla of
19 evidence. And I will reference just one is the deposition
20 of Ellen Padgett which is cited in the briefs.

21 Second, as to the citation we heard of termination here
22 and resignation here in the documents, I will concede that
23 the documents are inartfully drafted and they confuse the
24 point and they're ambiguous. And that is what I take from
25 the argument that was just made on that point. And we would

1 argue that based on that ambiguity there -- a jury should be
2 allowed to hear whether or not this was resignation or
3 termination under those terms.

4 Under the Nonprofit Organization Act you heard again
5 Mr. Hughes on that. We believe that it is a significant
6 question as to whether if someone resigns but they still
7 have to pay dues, fees, all obligations, whether that is
8 indeed a resignation or not. And we believe there is a
9 scintilla of evidence to get -- let that issue go to the
10 jury. Did they resign; under the terms of the documents
11 even if they are unambiguous was this a resignation or a
12 termination. We believe there is a scintilla there.

13 My last point, Your Honor, on the attorney's fees. It
14 was mentioned that this wasn't raised before. This issue is
15 inherent in the documents which have been discussed at
16 length. They are in the record. There is really no
17 issue -- the issue of attorney's fees hasn't been fully
18 briefed. And their rights under that are inherent in the
19 record on this case, so the issue has been preserved. Thank
20 you, Judge.

21 THE COURT: All right.

22 MR. HUGHES: May I respond, Your Honor?

23 THE COURT: All right.

24 MR. HUGHES: Your Honor, with regard to the
25 representations, each of these defendants purchased

1 memberships either in 1995, 1997 or very, very early in
2 2001. My client did not even undertake -- they did not
3 receive transfer of the assets until the latter part of
4 2001, six years, four years and ten months respectively
5 following the acquisition of these memberships, by these
6 members. My client could not possibly have made any
7 representations.

8 Beyond that, there is no basis upon which these
9 defendants can credibly claim that they relied upon any
10 representations.

11 As we argued I think earlier before this court, at the
12 time of their acquisition to memberships they were given
13 copies of the relevant plan of memberships. Those plans
14 incorporated the relevant bylaws and the relevant general
15 rules.

16 The plan of membership in 1994 contained several
17 admonitions to the various purchasers of memberships. At
18 Page 2 of the plan of operation it advised the purchasers to
19 carefully read all documents and to consider seeking
20 professional advice. It also admonished specifically that
21 no person was authorized to give any information or make any
22 representation not contained within the membership plan. No
23 person was authorized to make any representation or give any
24 information not specifically contained within the membership
25 plan.

1 And as I said earlier, the membership plan specifically
2 notified purchasers that their obligations to pay dues, fees
3 and charges would continue until those memberships were
4 validly transferred to another member.

5 Thirdly, those -- the membership plan said that if
6 given, if alternative representations were given, those
7 representations should not be relied upon by the purchaser
8 defendants.

9 Moreover, the plan specifically noted that the
10 memberships were offered only for recreational purposes,
11 they should not be acquired for investment, and that they
12 should not expect to get any economic benefit there from.

13 More importantly, again, the table of contents
14 specifically set forth that certain exhibits were part of
15 the plan. Those included the club purchase agreement, the
16 bylaws and the general rules to which I've been referring in
17 my arguments today.

18 Page 9 specifically referenced the payment of dues by a
19 resigned member and specifically advised the purchasers,
20 these defendants, that they would have continuing
21 obligations to pay dues, fees and assessments
22 notwithstanding resignation until transfer of the
23 memberships to alternative transferees.

24 Similar provisions were set forth in the bylaws.
25 Similar provisions were set forth within the club rules.

1 And as I have said, notwithstanding the continuing
2 attempts by the defendants to draw distinctions along
3 resignation, suspension or expulsion, the fact is each of
4 those terms is encompassed under the rubric termination and
5 the documents state at multiple places that notwithstanding
6 termination members, whether that termination be expulsion,
7 resignation or suspension, the members would have the
8 ongoing obligation to pay dues, fees and assessments until
9 those members validly trans- -- memberships were validly
10 transferred to new members.

11 I would submit that that is absolutely dispositive in
12 this case. Those sorts of provisions were clearly set
13 forth. Those provisions were authorized by the relevant
14 Nonprofit Corporations Act. Those provisions were
15 voluntarily undertaken by these defendants. And those
16 provisions should be imposed by this Court.

17 Thank you, Your Honor.

18 MS. COLLINS: Your Honor, for the record I would like
19 to renew the motion for summary judgment as to the spouses
20 in this case in light of the Dennis opinion, the order that
21 was granted in the Dennis case to avoid conflicting outcomes
22 in this jurisdiction, as well as taking judicial notice of
23 the complaint in the Downey case, which copy was provided to
24 Your Honor, indicating that Rebecca Martin sued in her
25 capacity as a member and should therefore be considered a

1 member having availed herself of the court. Thank you.

2 THE COURT: All right.

3 MR. FORD: If they are making a motion for summary
4 judgment we would ask for 10 days notice on that and the
5 opportunity to respond, Your Honor, under the rule.

6 THE COURT: All right. Okay. Well, this year, I
7 finished my 50th year having been admitted to the Bar. What
8 about that. I have been a judge 26 years. You know, take
9 the judge with his background and everything.

10 When I practiced in Camden for 24 years I got lucky
11 when I got to Camden. DuPont, the company opened another
12 plant. That required opening a bunch of subdivisions. All
13 those subdivisions I drafted restricted covenants that tied
14 everybody up that, you know, bought something. So they had
15 to pay for pond maintenance. They had to pay for park
16 maintenance. They had to pay for assessments whether they
17 sold property or not.

18 I don't think any of them were ever reversed. I
19 established some expertise in it. I actually drafted lots
20 of documents for lawyers in contiguous counties; because it
21 was a new thing back there 50 years ago tying everybody up,
22 you know.

23 And when we closed things out I explained to people,
24 you know, you are going to get assessed whether you want to
25 or not if you buy this property if the park needs a new

1 swing, you know, you get your -- you just have to pay that
2 and so forth.

3 And so what might be ambiguous to a naïve layperson
4 with a fourth-grade education is absolutely clear to me.
5 And it looks like you can't possibly win under the
6 circumstances.

7 So I mean I listened to everything. I know about the
8 legal arguments about scintilla and about dues, assessments
9 and charges. Well, that is why we draft them so they can't
10 get out of paying dues, assessments and charges.

11 And the difference between expulsion and all of that I
12 think it is pretty clear, tough luck. So the only issue
13 that causes me some concern is on the attorney's fee after
14 listening to it.

15 Obviously if they were foreclosing on the lien they
16 would be entitled to attorney's fees. So I don't know about
17 that. So just draft me an order confirming what I ruled
18 before and address the attorney's fees. If there is some
19 provision providing for attorney's fees, they win. If
20 there's not, I think they lose on that. But so you draft
21 one denying attorney's fees. Everything else is there.

22 And I am not ruling on that because I haven't studied
23 that issue. I haven't studied that issue. Again, obviously
24 if they were foreclosing on the lien they would get it; but
25 historically unless it provides, you know a document

1 provides for attorney's fees for a lawsuit, you just don't
2 get them; you know. So I don't know the answer to that. So
3 there you go.

4 And on the summary judgment on spouses they need the 10
5 days. I will be back, Ellie, in December?
6 (Court confers with law clerk).

7 THE COURT: We are back the week of December the 1st.
8 Do y'all want to set it up for like Tuesday morning,
9 Wednesday morning, for that week, 9:30?

10 MR. FORD: Can I check real quick, Judge?

11 THE COURT: Yeah.

12 MR. FORD: We are coming in from Charleston.

13 THE COURT: Right.

14 MR. HUGHES: Your Honor, the -- we had anticipated
15 taking the motion -- the depositions of each of the parties
16 in these matters ---

17 THE COURT: Well, I don't have to hear it --

18 MR. HUGHES: No ---

19 THE COURT: I will be back in January. I just --
20 that's fine. That's my next available time.

21 MR. HUGHES: It's not an issue other than they -- well,
22 they have made motions that appear to obstruct the taking of
23 those deposition and I worry that they may not be completed
24 prior to that time. Because if we have gotten them done
25 absolutely, Your Honor, we want you to hear it as quickly as

1 possible.

2 THE COURT: Bottom line, I am willing to hear it that
3 week.

4 MR. HUGHES: Thank you.

5 THE COURT: Or in January or whenever y'all get ready.

6 MR. HUGHES: Thank you.

7 MR. FORD: That's fine. Which day were y'all ...?

8 THE COURT: Just ---

9 MR. FORD: That's fine.

10 THE COURT: --- leave it up to y'all. Monday is not a
11 good day. It worked out this week. But, you know, Monday
12 you have got to qualify juries, pick juries and all that
13 kind of stuff. Because I am just in Common Pleas.

14 But, you know, even if I have got a trial going it
15 won't take but 30 minutes to argue this motion.

16 MR. HUGHES: Sure. December 3rd, 4th, or 5th would be
17 fine.

18 THE COURT: Tuesday or Wednesday -- Tuesday or
19 Wednesday for that week. You can just let us know.

20 MR. FORD: Okay.

21 THE COURT: We are not pushing for it. We just need to
22 know before we come down so we can tell them we will be
23 hearing that motion on Tuesday or Wednesday. All right.

24 (Whereupon the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in General Sessions for Beaufort County, South Carolina, on November 3, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.


PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: 1/9/2015

Certified Transcript Provided For: Ian Ford

Certification Reference # 1/9/2015 Ford