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NO. 2007-54438

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DAVID AND KATHLEEN ) IN THE DISTRICT COURT  
4 PLUCHINSKY, INDIVIDUALLY)  
AND AS REPRESENTATIVES )  
5 OF THE JOHN ALBERT )  
PLUCHINSKY ESTATE )

6 Plaintiffs )

)

7 VS. ) HARRIS COUNTY, TEXAS

)

8 HOUSTON RACQUET CLUB, )

STEPHEN GRIFFIN, DAVID )

9 LAMKIN, GUILLERMO )

PALMER, AND )

10 LG Supv , )

)

11 Defendants ) 281st JUDICIAL DISTRICT

12

\*\*\*\*\*

13 VIDEOTAPED ORAL DEPOSITION OF

TED ERCK

14 MAY 28, 2008

Volume 1

15 \*\*\*\*\*

16

ORAL AND VIDEOTAPED DEPOSITION OF TED ERCK,  
17 produced as a witness at the instance of the  
Plaintiffs, and duly sworn, was taken in the  
18 above-styled and numbered cause on MAY 28, 2008, from  
10:15 a.m. to 6:18 p.m., before Sherry Hale, CSR in  
19 and for the State of Texas, reported by machine  
shorthand, at the offices of Tucker, Taunton,  
20 Snyder & Slade, 10370 Richmond Avenue, Suite 1400,  
Houston, Texas, pursuant to the Texas Rules of Civil  
21 Procedure.

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1 A P P E A R A N C E S

2 FOR THE PLAINTIFFS:

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3 Mr. Matthew G. Pletcher  
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6

7 FOR THE DEFENDANTS:

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10

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14

15 ALSO PRESENT:

David Pluchinsky

16 Kathleen Pluchinsky

David Lamkin

17 Guillermo Palmer

Ted Erck

18 Derek Martin, Videographer

19

20

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1 VIDEOGRAPHER: Today's date is  
2 May 28th, 2008. The time is 10:15 a.m. We are on  
3 the record.

4 THE REPORTER: Would you raise your  
5 right hand please so I can place you under oath?

6 THE WITNESS: (Witness complies.)

7 THE REPORTER: Do you solemnly swear  
8 that the testimony you are about to give in this  
9 cause shall be the truth, the whole truth, and  
10 nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 TED ERCK,  
13 having been first duly sworn, testified as follows:

14 EXAMINATION

15 BY MR. MARRS:

16 Q. Mr. Erck, could you give us your full name?

17 A. Brian Theodore Erck.

18 Q. What's your address?

19 A. Priv, Houston, Texas 77042.

20 Q. How long have you lived there?

21 A. Approximately nine years.

22 Q. And what is your Texas Driver's License  
23 Number?

24 A. Priv

25 (Plaintiff's Exhibit Number 56 marked.)

□00007

1 Q. (BY MR. MARRS) Let me show you what's been  
2 marked Exhibit 56, notice for your deposition. Have  
3 you seen that notice before?

4 A. Yes, sir.

5 Q. Can you turn to the last page for me? Do  
6 you see those categories of documents that were  
7 requested of you?

8 A. Yes.

9 Q. What's the first one read?

10 A. "Any and all relevant photographs and/or  
11 diagrams, including without limitation photographs  
12 and/or diagrams of the scene of the incident in  
13 question."

14 Q. And as of the time you received that

15 deposition notice, did you have any such documents  
16 that's listed in Number 1 in your possession?

17 A. No.

18 Q. Let me borrow that back. And when did you  
19 first see this notice?

20 A. Several weeks ago. I don't know

21 approximately -- I don't know the exact date.

22 Q. Have you seen photographs of the scene after  
23 the drowning of John Pluchinsky?

24 A. No.

25 Q. Have you seen diagrams that were drafted by

□00008

1 anyone depicting the scene?

2 A. I've seen diagrams of the resort pool, yes,  
3 sir.

4 Q. Depicting what?

5 A. The layout of the pool.

6 Q. And what else?

7 A. That's it.

8 Q. And was this a diagram -- How many diagrams  
9 did you see?

10 A. One.

11 Q. And when did you see it?

12 A. I saw it sometime after the incident. I saw  
13 parts of it during the deposition of Steve Griffin  
14 and that's it.

15 Q. And other than the diagram that you saw in  
16 the deposition of Stephen Griffin, have you seen any  
17 other diagrams?

18 A. No.

19 Q. Number 2 is, "Any documents reviewed in  
20 preparation for your deposition." What documents did  
21 you review in preparation for this deposition?

22 A. Generally reviewed the deposition of Steve  
23 Griffin and some of the exhibits.

24 Q. Exhibits to Mr. Griffin's deposition?

25 A. Some, I guess. They were some e-mails to

□00009

1 refresh my memory. My letter to the members in the  
2 Raconteur.

3 Q. And what else?

4 A. I believe that's it.

5 Q. And when did you review those documents?

6 A. In the last several weeks.

7 Q. Have you read the entire deposition of  
8 Stephen Griffin?

9 A. I don't believe I have yet, no.  
10 Q. Only certain parts?  
11 A. I did the best I could. It was quite a long  
12 lengthy, some 400-some-odd pages. I read as much as  
13 I could.  
14 Q. Well, were parts selected or highlighted for  
15 you to read by someone else?  
16 A. No.  
17 Q. And what else other than the Stephen Griffin  
18 deposition and exhibits attached to it have you  
19 reviewed --  
20 A. That's it.  
21 Q. -- to prepare for your deposition?  
22 A. That's it.  
23 Q. Or to refresh your recollection?  
24 A. That's it.  
25 Q. And do you have a resume?

□00010

1 A. I do.  
2 MR. MARRS: Thank you, Wade.  
3 MR. REESE: You bet.  
4 MR. MARRS: Is there anything else that  
5 you need to produce to me?  
6 MR. REESE: No. He's -- I think I  
7 identified anything that's with your subpoena  
8 request. If you want to look at Steve Griffin's  
9 deposition, he has not commented or highlighted on  
10 it.  
11 MR. PLETCHER: No notes?  
12 MR. REESE: No notes.  
13 (Plaintiff's Exhibit Number 67 marked.)  
14 Q. (BY MR. MARRS) So I've marked your resume  
15 as Exhibit 67. Is that your current resume?  
16 A. Yes.  
17 Q. When did you last update it?  
18 A. Prior -- Several weeks ago with your  
19 request.  
20 Q. Did you update it for any purpose other than  
21 because we requested it?  
22 A. No.  
23 Q. And is it, to your knowledge, fully accurate  
24 and current?  
25 A. Yes.

□00011

1 MR. MARRS: Do you have one more copy?  
2 MR. REESE: Yeah. I just gave one to

3 Matt if you want to put one in front of him.

4 MR. MARRS: That's okay. Just one.

5 David, do you have a copy of that?

6 Q. (BY MR. MARRS) Okay. Did you look at your  
7 home or office for any documents that may be relevant  
8 to this case?

9 A. No. Not in this last two weeks, no.

10 Q. Have you ever?

11 A. Yes.

12 Q. When?

13 A. When request for production, sometime back  
14 in the fall when you asked for production I looked at  
15 any e-mails and any other documents I might have and  
16 gave them to you or gave them to my attorney.

17 Q. Are there any e-mails, correspondence,  
18 documents or anything on your computer at your home  
19 or at your office that you did not pass on to your  
20 lawyers that in some way were relevant to this case?

21 A. No.

22 Q. You turned over all such documents to your  
23 lawyer?

24 A. Yes.

25 Q. And who was that?

□00012

1 A. Norman Snyder.

2 Q. Let me show you what's been marked as  
3 Exhibit 58.

4 (Plaintiff's Exhibit Number 58 marked.)

5 MR. MARRS: Can you put this on the  
6 overhead for us?

7 MR. PLETCHER: Sure.

8 Q. (BY MR. MARRS) This is a letter to  
9 Mr. Snyder by Mr. Pletcher that was sent on the 22nd  
10 of this month. I just want to show you what's been  
11 highlighted and boxed in red there. Documents that  
12 Mr. Snyder was asked to provide.

13 MR. MARRS: Can you just blow up what's  
14 boxed in red --

15 MR. PLETCHER: Yeah.

16 MR. MARRS: -- so we can all see it?

17 Q. (BY MR. MARRS) And what was requested is  
18 that you search and find, and I'm going to quote from  
19 this red box, (Reading) Documents related to  
20 John Pluchinsky's drowning, pool safety, pool  
21 management, complaints related to the Club's pools,  
22 lifeguards, managers or supervisors (including



23 Mr. Palmer, Mr. Lamkin, Mr. Griffin, Ms. CD ,  
24 and any of the head, slash, supervising lifeguards or  
25 camp counselors), comma, incidents involving the

□00013

1 pools, lifeguards, camp counselors, summer campers,  
2 reprimands of HRC employees, comma, officers, or  
3 directors, and the Club's compliance with local or  
4 state regulations or laws related to the Club's  
5 pools, 2007 Summer Camp, and John Pluchinsky's  
6 drowning.

7 Have you been asked to go back and  
8 search for the documents I just described and that  
9 are depicted in the red box of Exhibit 58 sent on or  
10 since May 22nd?

11 A. I have not been asked to go back and look  
12 again, but I've -- I did that initially when you  
13 asked -- I was asked.

14 Q. Okay. So when is the last time that any  
15 lawyer has asked you or anyone from this law office,  
16 that Mr. Snyder is a member of, asked you to go back  
17 and search for documents relating to this case? When  
18 is the last time?

19 A. Back on the initial request.

20 Q. Which was in what month?

21 A. I'm not sure.

22 Q. But it was months ago, correct?

23 A. Correct.

24 Q. Was that --

25 A. I stand corrected. I was asked to provide a

□00014

1 calendar and did so at or about the time of  
2 Steve Griffin's deposition.

3 Q. Okay.

4 A. Okay.

5 Q. And that would have been the sole and only  
6 exception to your previous testimony of not being  
7 asked to search for documents since the initial  
8 document request?

9 A. Correct.

10 Q. And where did you find that calendar or  
11 calendars?

12 A. On my computer at the office.

13 Q. Which office?

14 A. My office.

15 Q. At the Racquet Club?

16 A. No. I don't have an office there.

17 Q. Okay. So your office at your current place  
18 of employment?

19 A. Yes.

20 Q. At Secure Messaging Systems, Inc. where you  
21 are president?

22 A. That's one in the same with -- of Medical  
23 Profiles, yes.

24 Q. Okay. Is it still called Medical Profiles?

25 A. Yes.

□00015

1 Q. What is Exam One?

2 A. It's a d/b/a. It's how the people in my  
3 industry know who we are. We pay our taxes on  
4 Medical Profiles, Inc., but in marketing to other --  
5 to insurance agents, they know us as Exam One.

6 Q. It is a d/b/a for Medical Profiles?

7 A. Yeah. Yes. Sorry.

8 Q. Now, look again at Exhibit 58 at the  
9 description that I read out loud in the red box. Are  
10 you 100 percent sure you do not have any documents on  
11 your computer or in any files, pencil files, personal  
12 files or otherwise at your office at Medical Profiles  
13 or at your home?

14 A. Yes.

15 Q. And as you said, your last search for  
16 records other than your calendar was back in the  
17 initial request, right?

18 A. Yes.

19 Q. And was that in approximately October of --

20 A. It could --

21 Q. -- 2007? Does that sound about right?

22 A. Sounds about right.

23 Q. And at that time did you print off any  
24 e-mails from your computer at your office or at home  
25 to provide back in October?

□00016

1 A. I believe I copied on disk and delivered  
2 them to Norman Snyder.

3 Q. And when you copied them on disk, you did  
4 that from where, your office?

5 A. I did it from my office, but I also reviewed  
6 anything that may have been on my laptop at home.

7 Q. And you did that from your office computer  
8 at Medical Profiles?

9 A. Yes. It's the same computer I use for  
10 Secure Messaging Systems.

11 Q. What kind of computer is that?  
12 A. It's a -- It's a desktop.  
13 Q. And what kind of computer is that?  
14 A. It's a -- I believe it's some generic.  
15 Q. And did you have someone do it for you or  
16 did you do it yourself?  
17 A. I did it myself.  
18 Q. And did you burn it straight to the -- a CD?  
19 A. Yes, sir.  
20 Q. You have a CD burner on your desktop at  
21 Secure Messaging Systems?  
22 A. Yes.  
23 Q. And any other computers that you use at that  
24 office other than your laptop?  
25 A. No. I don't use a laptop at the office. I

□00017

1 use a desktop at the office. But no, there's no  
2 other computer other than that.  
3 Q. And what did you remove from your laptop for  
4 purposes of giving to Mr. Snyder?  
5 A. I believe nothing that I did not have on my  
6 desktop.  
7 Q. Did you take anything from your laptop, burn  
8 it down or otherwise transmit it off your laptop for  
9 purposes of this case?  
10 A. I do not believe so.  
11 Q. What kind of laptop?  
12 A. Mac.  
13 Q. What kind of Mac?  
14 A. I'm not sure. It's a Mac --  
15 Q. Is it a Power Book or a Mac Book or --  
16 A. It's silver and about 17 inches around. I'm  
17 sorry.  
18 Q. Okay. Power Book sound about right?  
19 A. It could be, yes, sir.  
20 Q. How old is it?  
21 A. A year-and-a half.  
22 Q. And do you still have the original documents  
23 relating to this case that you say you burned on a CD  
24 on your desktop or did you delete them?  
25 A. I still have them.

□00018

1 Q. And how about on your laptop?  
2 A. Yes. I still have them.  
3 Q. You haven't deleted any information  
4 whatsoever regarding the Houston Racquet Club from

5 your desktop since the drowning of John Pluchinsky?

6 A. No.

7 Q. And same question for your laptop?

8 A. No.

9 Q. You have not?

10 A. No, I have not.

11 Q. How many terms did you serve as President of  
12 the Houston Racquet Club, one?

13 A. One.

14 Q. And tell the jury what term that was.

15 A. It was the 2006/2007 term. It goes from  
16 October of '06 through the October of '07.

17 Q. You were elected in October 2006?

18 A. Yes.

19 Q. How long have you been a member of the  
20 Racquet Club?

21 A. Personally, approximately eight years --  
22 not -- no. 10 years. I was a member several years  
23 prior to that, but on this length I've been 10 years.

24 Q. Okay. And did you just let it lapse or what  
25 previously?

□00019

1 A. No. Previously I was a member, a junior  
2 member and then I chose not to become a voting  
3 member. Then upon the marriage of my wife, who was a  
4 member, I became a member again.

5 Q. And why did you decide as junior member not  
6 to become a voting member?

7 A. Financial.

8 Q. What is your wife's name?

9 A. DS #2, DS #2, DS #2, DS #2.

10 Q. How long has she been a member, to your  
11 knowledge?

12 A. She's been a member most all her life, but  
13 as a voting member 12 or 15 years.

14 Q. Have you ever served as any other -- any  
15 position at the Racquet Club other than president?

16 A. The previous year I was vice president.

17 Q. For the 2005/2006 term?

18 A. Yes.

19 Q. Any others?

20 A. No. I was a -- I was a member of the Board  
21 the year before, but did not serve in any official  
22 position.

23 Q. Member of the Board from '04 to '05 term?

24 A. Yeah. I think that's right now.

25 Q. Any other positions other than vice  
 □00020  
 1 president or president at the Houston Racquet Club?  
 2 A. No.  
 3 Q. And other than that one-year period,  
 4 2004/2005, had you ever been a Board member of the  
 5 Houston Racquet Club?  
 6 A. No.  
 7 Q. How about your wife?  
 8 A. No.  
 9 Q. What capacity do you currently serve, if  
 10 any, for the Houston Racquet Club?  
 11 A. Past president.  
 12 Q. What are the perks of being a past president  
 13 at the Houston Racquet Club?  
 14 A. No perks as I know it.  
 15 Q. Do you still have to pay dues?  
 16 A. Yes.  
 17 Q. Any financial or non-financial perks of  
 18 being a former president of the Houston Racquet Club?  
 19 A. No.  
 20 Q. And of course, you were president of the  
 21 Racquet Club during the time that John Pluchinsky  
 22 died at the Racquet Club, correct?  
 23 A. Yes.  
 24 Q. Any other family members of yours, current  
 25 or former, that have been a member at the Houston  
 □00021  
 1 Racquet Club?  
 2 A. My family-in-law.  
 3 Q. And who with your wife's family?  
 4 A. Yes. Yes.  
 5 Q. And who was a member?  
 6 A. HRCBM-M was a member, but he has not been  
 7 a member for several years. My brother-in-law,  
 8 HRCBM-N, HRCBM-N, is a current member.  
 9 Q. And has HRCBM-N served as any -- in any  
 10 position other than member with the Racquet Club, to  
 11 your knowledge?  
 12 A. No.  
 13 Q. And who do you report to or did you report  
 14 to as president of the Houston Racquet Club?  
 15 A. I don't believe I report to any individual.  
 16 Q. You were the top executive or position at  
 17 the Houston Racquet Club during your term as  
 18 president?

19 A. I was the President of the Houston Racquet  
20 Club and served with a Board.

21 Q. Did anyone have more authority than you did?

22 A. I believe the president's responsibility is  
23 to be in charge of the general activities and affairs  
24 of the Club, to generally be in charge of the affairs  
25 of the Club.

□00022

1 Q. What was your wife's maiden name?

2 A. DS #2, DS #2.

3 Q. Does she go by any other last names?

4 A. No.

5 Q. And during your, let's say membership at the  
6 Houston Racquet Club during the last 10 years and  
7 even during the previous times you've been a member,  
8 what committees have you served on?

9 A. I served on the tennis committee, fitness  
10 committee. I was in charge of one committee my first  
11 year, which concerned any affiliations with other  
12 clubs. I was on the finance committee my second  
13 year.

14 Q. What year was that?

15 A. '05/'06. I can't remember any other ones.  
16 I think that's it.

17 Q. You mentioned the fitness committee. Is  
18 that the fitness pool committee or just the fitness  
19 committee?

20 A. Pool falls underneath the -- underneath the  
21 fitness committee.

22 Q. Since when?

23 A. I don't know the beginning of when that --  
24 when that was.

25 Q. Well, what's your recollection of when the

□00023

1 fitness committee was formed?

2 A. It was before my time. I have no idea.

3 Q. So we know then that it was formed before  
4 what year?

5 A. Before '04.

6 Q. Has it ever been called the fitness pool  
7 committee?

8 A. Not to my knowledge.

9 Q. Have you ever had a pool committee?

10 A. Not to my knowledge.

11 Q. Have you ever had a safety committee?

12 A. Not to my knowledge.

13 Q. Why is it that the Houston Racquet Club did  
14 not have a pool committee during the time that you  
15 were president?

16 A. Because it fell underneath the group  
17 where -- the fitness.

18 Q. Because it fell under the fitness committee?

19 A. Yes.

20 Q. Tell me what the fitness committee, what  
21 their area of review or responsibility is.

22 A. They -- Issues pertaining and activities  
23 pertaining to fitness, fitness classes, training,  
24 participation, pool activities issues and youth  
25 activities.

□00024

1 Q. And aerobics and weight training and all  
2 that kind of thing, correct?

3 A. Yes. To whatever degree that would be.

4 Q. And during your term as president, who was  
5 head of the fitness committee?

6 A. FC.

7 Q. Is she still, to your knowledge?

8 A. Yes.

9 Q. And how many members are there of the  
10 fitness committee, to your knowledge, during your  
11 term as president? Go ahead and tell us the names of  
12 the ones you remember.

13 A. Okay. There was HRCBM-P,  
14 HRCBM-K, HRCBM-I , HRCBM-T , HRCBM-D .  
15 That's all I can remember.

16 Q. Is there a Mr. HRCBM-Q ?

17 A. Yes. HRCBM-Q . Thank you.

18 Q. Anyone else that you can recall?

19 A. None that I can recall.

20 Q. What area of your -- of the Houston Racquet  
21 Club has the most water?

22 A. I'm sorry. Which area of the Racquet Club  
23 has the most water?

24 Q. Yes, sir.

25 A. We have two pools that carry the most --

□00025

1 water, I'm not sure which one carries more water than  
2 the other.

3 Q. And which pool with water would have the  
4 most young children in it?

5 A. It can be equal at times, but the resort  
6 pool.

7 Q. The family pool?

8 A. Yeah. Whichever you call it, yeah. I've  
9 always called it the resort pool. I'm sorry.

10 Q. I mean, it's designed for children more so  
11 than the lap pool; wouldn't you agree? It's got all  
12 the water features and all that?

13 A. More so than the lap pool, but teaching does  
14 go on in the lap pool.

15 Q. Okay. And as far as young children, what do  
16 you think the most dangerous part of the Club  
17 premises is, where the most risk is?

18 A. The pool does have risk to it, so the pool.

19 Q. That would be --

20 A. There's a playground, but...

21 Q. The pool would be -- one or both of the  
22 pools at the Houston Racquet Club would be the area  
23 of the Club that would be the riskiest for young  
24 children. Would you agree with that?

25 A. Yes.

□00026

1 Q. And of course, if you have an area of the  
2 Houston Racquet Club that's -- has safety risks for  
3 young children, you certainly want to make sure that  
4 you have a committee that's devoted to focusing on  
5 those risks, wouldn't you?

6 A. I don't know.

7 Q. Isn't that a good practice?

8 A. I don't know.

9 Q. Don't you think as president of the Houston  
10 Racquet Club during that time frame that that  
11 probably is a good idea?

12 A. It's an area that needs to be addressed.

13 Q. Well, has the Houston Racquet Club, to your  
14 knowledge, established a pool committee since the  
15 drowning of John Pluchinsky?

16 A. Not specifically.

17 Q. Well, how have they done so nonspecifically?

18 A. It falls underneath the fitness committee.

19 Q. It's the same as it was before?

20 A. Which is -- in that specific area, yes.

21 Q. Well, in what specific area does it not  
22 exist the same way it did before Mr. --

23 A. The --

24 Q. -- John Pluchinsky's death?

25 A. As far as the structure of where pool issues

□00027



1 and discussions are held, they are held within the  
2 fitness committee and has not changed --

3 Q. Okay.

4 A. -- since.

5 Q. So with respect to committees and pool  
6 safety issues, those are addressed the same way today  
7 as they did before John Pluchinsky's death, correct?

8 A. They are within the same structure of the  
9 committees, yes.

10 Q. In what way have they changed?

11 A. As far as the structure of where it falls  
12 within the committee, that has not changed.

13 Q. How has it changed, if at all?

14 A. To my knowledge, it has not changed but I'm  
15 not the president currently.

16 Q. Okay. Certainly, as president of the  
17 Houston Racquet Club, you had the authority to  
18 establish any committees you felt were appropriate  
19 for the Club, correct?

20 A. Correct.

21 Q. You certainly had the authority on the first  
22 day you became president, if you wanted, to establish  
23 a committee, whether you want to call it a pool  
24 committee or a safety committee, to make sure that  
25 your pools are safe for young children, correct?

□00028

1 MR. REESE: Objection, form.

2 Q. (BY MR. MARRS) If you had wanted to?

3 A. I'm sorry. Could you -- I apologize. Could  
4 you repeat the --

5 Q. No problem. I'll be happy to.

6 You could have -- The first day you  
7 walked in as president of the Houston Racquet Club,  
8 you had the authority to establish a pool committee  
9 or safety committee to focus on safety of the pools  
10 for young children, if you had chosen?

11 A. If I would have had the authority or chosen,  
12 yes.

13 Q. Okay. And you had the authority to do that,  
14 didn't you?

15 A. Yes.

16 Q. Okay. Any other committees at the Houston  
17 Racquet Club that you were a member of other than the  
18 tennis, fitness, club affiliations and finance  
19 committees?

20 A. I believe I may have been on the hospitality

21 committee, but I'm not certain if that was my last  
22 year or the year before, but I was -- I may have been  
23 on the hospitality committee.

24 Q. Any others?

25 A. Not that I can remember.

□00029

1 Q. And the fitness committee, when were you a  
2 member of that specifically?

3 A. It was my second year, so that's '05, '06.

4 Q. Did you during the time that you were a  
5 member of the fitness committee ever raise any safety  
6 concerns regarding pool safety for children in either  
7 of your two pools?

8 A. I can't remember.

9 Q. Not that you can remember?

10 A. No.

11 Q. Is that correct?

12 A. That's correct.

13 Q. And did you ever raise, during the time you  
14 were a fitness committee member, concerns or issues  
15 relating to lifeguards not doing their jobs in some  
16 way?

17 A. Not that I can remember.

18 Q. Did you ever raise any such issues as  
19 president of the Houston Racquet Club?

20 A. Not that I can remember.

21 Q. What did you spend most of your time doing  
22 as president of the Houston Racquet Club?

23 A. I attended most of the committee meetings  
24 throughout the month. I conducted the once-a-month  
25 Board meeting. Make myself generally available to

□00030

1 the membership. There are other activities, such as  
2 anything specific to -- like we -- working on  
3 refinancing the Club, long-range planning generally  
4 is what I spent my time doing.

5 Q. And of those things, what was, during the  
6 time you were president, the thing that took the most  
7 of your time, was the largest percentage of your  
8 time?

9 A. Attending different committee's meetings  
10 when I could. The Board meeting was two hours once a  
11 month. But attending the six or seven different  
12 committee's meetings throughout the month was  
13 probably what I spent all of my time doing. I can't  
14 remember -- I can't think of anything else

15 specifically.

16 Q. And let's explain to the jury -- I mean,  
17 being President of the Houston Racquet Club is not a  
18 full-time job, is it?

19 A. No, it's not.

20 Q. I mean, you have another full-time job,  
21 right?

22 A. That's correct.

23 Q. And you run a business; is that right?

24 A. That's correct.

25 Q. Is that a software-related business?

□00031

1 A. The Secure Messaging System is an automated  
2 telecommunications business. My main line of  
3 business is the Medical Profiles.

4 Q. Safe to say that's a full-time business?

5 A. Yes.

6 Q. Full-time job for you?

7 A. Yes.

8 Q. Okay. So how much -- how many hours during  
9 the week would you typically devote to Houston  
10 Racquet Club activities, issues?

11 A. I can estimate five hours a week. Sometimes  
12 it's more; sometimes it's less.

13 Q. Who really ran the Houston Racquet Club on a  
14 day-to-day basis during the time you were president?

15 A. Rely on the general manager and the staff to  
16 run the day-to-day activities.

17 Q. Okay. And who really made most day-to-day  
18 operational decisions at the Houston Racquet Club  
19 during the time you were president?

20 A. The general managers in charge and charged  
21 with running the day-to-day activities of the Club  
22 and his staff.

23 Q. And who is that?

24 A. Steve Griffin is the general manager.

25 Q. Who is here today, correct?

□00032

1 A. Correct.

2 Q. And whether it was on a committee or  
3 otherwise, did anyone complain to you when you were  
4 president of the Houston Racquet Club prior to  
5 John Pluchinsky's death that there were safety issues  
6 relating to the pool at the Racquet Club?

7 A. I have not had any specific complaints about  
8 safety issues at the Racquet Club while I was

9 president.

10 Q. How about nonspecifically?

11 A. I can't remember any nonspecific complaints.

12 Q. Okay. Or specific or nonspecific complaints

13 that you became aware of? In other words, that

14 weren't made directly to you since you don't recall

15 any, but that were made known to you?

16 MR. REESE: Is that still prior to his

17 death?

18 MR. MARRS: Correct.

19 A. I'm sorry. About -- I hate to do this to

20 you. Could you repeat --

21 Q. (BY MR. MARRS) Well, I'm now asking you --

22 A. Okay.

23 Q. Other than -- You already testified you

24 don't recall any complaints made to you during the

25 time you were president of the Houston Racquet Club

□00033

1 prior to John Pluchinsky's death, safety complaints

2 or safety concerns. I'm asking you --

3 A. Okay.

4 Q. -- other than those made directly to you,

5 were any safety concerns made known to you while you

6 were president of the Houston Racquet Club --

7 A. Okay.

8 Q. -- prior to John Pluchinsky's death?

9 A. I understand. I understand. I'm sorry.

10 Q. That's where I'm going.

11 A. Yes.

12 Q. Such as what?

13 A. There were concerns about elementary and

14 junior high kids going back to the woods to play.

15 There were concerns about skateboarders, bicycle

16 riders, roller-bladers at the Club.

17 Q. Any complaints made known to you or concerns

18 relating to pool safety or lifeguards not doing their

19 jobs prior to John Pluchinsky's death?

20 A. Repeat the question again. I'm sorry.

21 Q. Any complaints or concerns regarding pool

22 safety or lifeguards not doing their jobs made known

23 to you prior to John Pluchinsky's death?

24 A. No.

25 Q. So, who is the president of the Houston

□00034

1 Racquet Club ultimately responsible to?

2 A. I would assume that's the members.

3 Q. And what about the Board? Do you answer to  
4 the Board or not when you're president?

5 A. I don't understand the answer, but yeah. I  
6 work with the Board. We work together.

7 Q. Okay. Other than working with the Board or  
8 working together, do you have to answer to the Board  
9 of Directors of the Houston Racquet Club?

10 A. Yes. I communicate with the Board. I would  
11 need to -- I would need to talk to them.

12 Q. To your knowledge, did they have the  
13 authority to remove you as president?

14 A. I don't know.

15 Q. To your knowledge, did they have the  
16 authority to direct you to do certain things?

17 A. They could vote to do -- a majority vote  
18 could do, yes.

19 Q. Could do what?

20 A. Could do certain -- could do things.

21 Q. Okay. And who reported to you as  
22 president? I'll tell you what, let's do this: Why  
23 don't we explain to the jury what the management  
24 structure of the Racquet Club during the time you  
25 were president was, who reported to, what the chain  
□00035

1 was from the top to the bottom, management wise.

2 A. The management of the Board or the Club?

3 The -- There's a president of the Board, there's a  
4 vice president of the Board. There's a secretary of  
5 the Board. There are committee members -- chairs and  
6 committee members. There's a general manager who  
7 reports to the Board and to the president. The  
8 general manager has heads of departments and then the  
9 heads of departments have employees.

10 Q. Right. So let's take the first one. Let's  
11 take the Board and tell us who the various like  
12 president, vice president, secretary of the Board  
13 were during the time you were president of the  
14 Racquet Club.

15 A. Okay. I was the president. HRCBM-H  
16 was the vice president. HRCBM-B was the  
17 secretary. The chairs, do you want -- did you want  
18 to know the chairs of the various committees?

19 Q. Yes, sir.

20 A. Okay. You have FC as your  
21 fitness, the head of the fitness. HRCBM-D was  
22 head of the food and beverage. HT was head

23 of tennis. HRCBM-B was in charge of the  
24 facilities. Membership was HRCBM-U .

25 Q. Uh-huh.

□00036

1 A. Finance was HRCBM-H. I can't think of  
2 any other ones.

3 Q. And were there any other say officers or  
4 those that were -- had some degree of management  
5 responsibility other than the positions that you just  
6 mentioned?

7 A. Well, I guess I don't understand the word  
8 "management."

9 Q. Well, those that have -- that could make  
10 decisions on behalf of the Club or make  
11 recommendations.

12 A. That's all I can think of at this particular  
13 time.

14 Q. I know you had an HRC Women's Association  
15 Executive Board as well, correct?

16 A. Yes. The head of the women's association  
17 attended Board meetings, but did not have a vote.

18 Q. Okay.

19 A. And that could have been HRCBM-L, the  
20 head of -- the head of that.

21 Q. And what other clubs in the Houston area  
22 have you been a member of?

23 A. I grew up at the Forest Club. I was a  
24 member of West Side Tennis Club. I was a member at  
25 the Metropolitan Racquet Club. I believe that's it.

□00037

1 Q. No others that come to mind?

2 A. No.

3 Q. And what -- are you currently a member of  
4 any of those clubs?

5 A. No.

6 Q. What years were you a member of Forest?

7 A. My parent -- my parents -- I'm sorry, my  
8 parents were members; I was a child. So until I left  
9 for college.

10 Q. Okay.

11 A. I went to college in 1979.

12 Q. And West Side?

13 A. Approximately 1989 or '90 to 1992,  
14 approximately that time frame. I'm not sure.

15 Q. How about Metropolitan Racquet?

16 A. That would have maybe been in the late '90s,

17 mid to late '90s.  
18 Q. Did you hold any positions at Metropolitan?  
19 A. No.  
20 Q. West Side?  
21 A. No.  
22 Q. Forest?  
23 A. No.  
24 Q. Have you ever been an employee of a club?  
25 A. Yes.

□00038

1 Q. Which ones?  
2 A. West Side Tennis Club, prior to my  
3 membership.  
4 Q. As what?  
5 A. Tennis professional. I have taught lessons  
6 to a -- two or three hours a week up until about  
7 three years ago at the Houston City Club, so I did  
8 that for about eight years, so, do my math.  
9 Q. Are you considered the tennis pro there?  
10 A. Assistant tennis pro.  
11 Q. Okay. Where else? Any other clubs you've  
12 been an employee of?  
13 A. No. I was considered an independent  
14 contractor at those particular clubs.  
15 Q. Okay. Independent contractor at any other  
16 clubs, to your knowledge?  
17 A. I believe I taught tennis lessons at the  
18 Metropolitan Racquet Club for a few months sometime  
19 in the early '90s.  
20 Q. What entities other than those listed in  
21 your resume have you worked for since college, if  
22 any?  
23 A. None.  
24 Q. And as a -- You're still a member of the  
25 Racquet Club, correct?

□00039

1 A. Yes.  
2 Q. Former -- Immediate former past president,  
3 you still keep up with what's going on at the Racquet  
4 Club?  
5 A. I'm not as involved as I was, but I am. But  
6 I do go to the meeting -- the Board meeting and I  
7 still am involved.  
8 Q. What was your -- And your term ended October  
9 2007; is that correct?  
10 A. Correct.

11 Q. Was that the last day of October?

12 A. I believe it was the -- officially it was  
13 the 2nd Tuesday of October, whatever. I'm not sure  
14 of the day.

15 Q. And HRCBM-H was elected president?

16 A. Correct.

17 Q. And that was on or about September 26, 2007;  
18 is that about right?

19 A. The Board elects the next president on the  
20 last Thursday of September.

21 Q. Okay.

22 A. And he takes official duties on the second  
23 Tuesday of October.

24 Q. Have you ever held any position at any Club  
25 other than the Houston Racquet Club?

□00040

1 A. No.

2 Q. How would you describe your relationship  
3 with Mr. Griffin during the time you were president  
4 of the Racquet Club?

5 A. Good.

6 Q. And were you social acquaintances as well or  
7 was it strictly Racquet Club-related?

8 A. Racquet Club-related and friendly.

9 Q. Well, did you socialize with Mr. Griffin  
10 during that time?

11 A. No. No.

12 Q. Go to dinner with Mr. Griffin during that  
13 time?

14 A. No.

15 Q. And Mr. Griffin during that time reported  
16 directly to who, you?

17 A. To me and the Board. I guess specifically  
18 if there's a specific it would be me.

19 Q. On a day-to-day basis, who does he report  
20 to?

21 A. I guess I don't understand that question. I  
22 guess he would report to me during my term. If  
23 that's day-to-day, then yes.

24 Q. Well, as president of the Houston Racquet  
25 Club, what was your understanding as to the avenues

□00041

1 of reporting that Mr. Griffin had during that time,  
2 who he had to report to, who he had to get answers  
3 from for certain issues?

4 A. Depending on the issues, he would -- he



5 would take care of the day-to-day decisions. If it  
6 was something larger or long-term, he would come to  
7 the Board. He would probably either report to the  
8 specific committee that a large issue would relate to  
9 and they would make a recommendation to the Board.

10 Q. Were you always available to Mr. Griffin  
11 during the time you were president to address or talk  
12 to him about any issues that he wanted to speak to  
13 you about?

14 A. I believe so, yes.

15 Q. I mean, were you just a phone call away if  
16 he needed to speak with you?

17 A. Yes.

18 Q. And who were the department heads during the  
19 time that you were president of the Racquet Club?

20 A. I apologize. I probably won't be able to  
21 name them all, but I'll try. We had -- David Lamkin  
22 was in charge of the fitness. TD was the  
23 director of tennis. Granville Wood is the chef. I  
24 can't remember the name of the lady that was in  
25 charge of the banquet business. A gentleman by the  
□00042

1 name of Mario was -- has a, I believe, a department  
2 head role.

3 Q. What department?

4 A. He would be under the food and beverage area  
5 that pertained to service. Guillermo Palmer was head  
6 of aquatics, but reported to David. Joyce Healy was  
7 with the comptroller.

8 That's all I can remember at this  
9 particular time.

10 Q. Is Joyce still at the Houston Racquet Club,  
11 to your knowledge?

12 A. Yes.

13 Q. Is Mario?

14 A. Yes.

15 Q. And what is Mario's last name?

16 A. I don't know. I'm sorry.

17 Q. Any other Mario's at the Houston Racquet  
18 Club, to your knowledge?

19 A. I would have to imagine there's another  
20 employee with a Mario name, but I don't know. I'm  
21 sorry.

22 Q. Now, other than the Racquet Club, what other  
23 entities have you been on the Board?

24 A. Association of Life and Health

25 Administrators. It's one of my industry

□00043

1 organizations. I'm currently on the Board of the  
2 Houston Association of Insurance and Financial  
3 Advisors. That's all I can think of at this moment.

4 Q. Well, you specifically named two. Were  
5 there others other than the two you mentioned that  
6 you -- entities that you served as a Board member  
7 other than the Racquet Club?

8 A. I was on a small -- at the University of  
9 Texas in the Hall of Honor Committee. It's not  
10 really a Board, it's more of a committee. It's  
11 sports-related.

12 Q. Okay. Any other entity --

13 A. No.

14 Q. -- where you served as a Board member?

15 A. No.

16 Q. Have you ever served as an employee or a  
17 Board member or an officer of any entity that held a  
18 summer camp other than the Racquet Club?

19 A. No.

20 Q. Ever been involved in summer camps to any  
21 degree other than the Houston Racquet Club?

22 A. I personally as a child went to one.

23 Q. Personally as a what?

24 A. As a child, I went to one.

25 Q. Which one did you go to?

□00044

1 A. It was Camp Anderson in Colorado.

2 Q. And you were how old?

3 A. I believe I was in the eighth grade.

4 Q. Okay.

5 A. I've attended tennis camps during the  
6 summertime as a child. And that's all I can think  
7 of.

8 Q. Did you ever -- Did you ever act as a  
9 counselor or lifeguard relating to any pool  
10 activities for any entities at any time?

11 A. At West Side I was a tennis instructor at  
12 our summer camp.

13 Q. Tennis instructor?

14 A. Yes.

15 Q. And did you have any responsibilities  
16 relating to children and pools?

17 A. No.

18 Q. Have you ever served as a pool counselor or

19 a lifeguard at a pool at any time during your life?

20 A. No.

21 Q. Is there a -- yeah, a management or  
22 structure chart like an organizational chart for the  
23 Houston Racquet Club?

24 A. None that I've seen.

25 Q. Never?

□00045

1 A. I don't believe I've ever seen one, no.

2 Q. And have you ever been an employee, Board  
3 member, officer, counselor or lifeguard for any camp  
4 involving children other than the tennis camp that  
5 you referenced?

6 A. No.

7 Q. Whether it's a day camp, summer camp or  
8 otherwise?

9 A. No.

10 Q. To your knowledge, is Guillermo Palmer still  
11 employed by the Houston Racquet Club?

12 A. No.

13 Q. Why not?

14 A. He took an opportunity to go in, I believe,  
15 sales in another business.

16 Q. What kind of business?

17 A. Paving.

18 Q. And when was his last day, to your  
19 knowledge?

20 A. I don't know. It -- I don't know.

21 Q. Well, was it before or after you finished  
22 your term as president of the Racquet Club?

23 A. After.

24 Q. How soon after?

25 A. Six to -- I'm not sure, several months.

□00046

1 Q. What's your understanding of why he left the  
2 Houston Racquet Club to do paving instead of staying  
3 at the Racquet Club?

4 A. I don't -- the only understanding, it was a  
5 nice -- it was an opportunity provided to him that he  
6 felt was going to benefit him in the long -- in the  
7 future.

8 Q. By who, to your knowledge?

9 A. It was a member of the Racquet Club. I  
10 don't know his name.

11 Q. Is he currently still in that same position  
12 in sales with that paving company, to your knowledge?

13 A. That's my understanding.  
14 Q. What was Mr. Palmer's compensation agreement  
15 at the Racquet Club during the time he was there?  
16 A. I've not seen it. I don't know.  
17 Q. Do you know what his general salary was as  
18 of the time he left?  
19 A. I do not.  
20 Q. Do you know what his title was during the  
21 time you were president of the Racquet Club?  
22 A. I believe it was director of aquatics.  
23 Q. Do you know what his compensation was as  
24 aquatics director of the Houston Racquet Club?  
25 A. I do not.

□00047

1 Q. And who made that decision as to what his  
2 salary would be?  
3 A. Mr. Griffin.  
4 Q. Was Mr. Palmer given a favorable  
5 recommendation to his prospective new employer, the  
6 paving company, to your knowledge?  
7 A. I don't know if any recommendation was  
8 asked.  
9 Q. Have you seen any recommendation letter  
10 regarding Mr. Palmer?  
11 A. No.  
12 Q. Has Mr. Griffin or anyone else told you  
13 whether or not Mr. Palmer got a recommendation or was  
14 recommended by the Houston Racquet Club?  
15 A. No one has mentioned anything to me.  
16 Q. Did you ask?  
17 A. I did not.  
18 Q. You knew prior to the end of your term as  
19 president that Mr. Palmer was going to work for this  
20 paving company, didn't you?  
21 A. No.  
22 Q. Did you at any time after John Pluchinsky's  
23 death have any discussions with Mr. Griffin or  
24 Mr. Lamkin about whether or not the Racquet Club  
25 should give a favorable recommendation to Mr. Palmer

□00048

1 or to any prospective employer relating to  
2 Mr. Palmer?  
3 A. I know nothing of any type of recommendation  
4 request and there was no discussion because there was  
5 no discussion of a request.  
6 Q. Did you at any time want to make sure as

7 president of the Racquet Club that your Club did not  
8 give a favorable recommendation to the aquatics  
9 director when a child died under his watch?

10 MR. REESE: Objection, form.

11 A. I don't understand that question. I'm  
12 sorry.

13 Q. (BY MR. MARRS) Was it any concern of yours  
14 after John Pluchinsky's death that the Racquet Club  
15 review whether or not it should give a favorable  
16 recommendation to the aquatics director, who held  
17 that position during the time John Pluchinsky died?

18 A. I don't believe there was a recommendation  
19 asked.

20 Q. Okay. Well, I'm not asking if one was or  
21 not. What I'm asking you is: Did you consider after  
22 John Pluchinsky's death the issue of whether or not  
23 if a recommendation was asked for, the Racquet Club  
24 should or should not make a favorable recommendation  
25 to a prospective employee of Mr. Palmer one way or

□00049

1 the other? Did you look at that issue?

2 A. I didn't look at that issue.

3 Q. Did you as president think that it was  
4 important to look at that important issue after John  
5 Pluchinsky's death?

6 MR. REESE: Objection, form.

7 Q. (BY MR. MARRS) For Mr. Palmer or for  
8 Mr. Lamkin or for Mr. Griffin?

9 MR. REESE: Same objection.

10 A. I did not -- I did not -- I did not think  
11 about any recommendations one way or the other at any  
12 time -- at --

13 Q. (BY MR. MARRS) Okay. And how about  
14 evaluating the performance of Mr. Palmer, what did  
15 the Racquet Club do to evaluate Mr. Palmer's  
16 performance after John Pluchinsky's death, if  
17 anything, to your knowledge?

18 A. There was no evaluation taken from me. I  
19 don't know if there was an evaluation taken from the  
20 general manager or who Guillermo reported to. I  
21 don't know.

22 Q. Okay. Well, as we sit here today then you  
23 just don't know what was done, if anything, to  
24 evaluate Guillermo Palmer's performance as aquatics  
25 director after John Pluchinsky's death, correct?

□00050

1 A. Correct.

2 Q. And certainly, you did not ask anyone to  
3 make any such evaluation, correct?

4 A. Correct.

5 Q. And would the same responses hold true from  
6 you with respect to Mr. Griffin?

7 A. The same responses, I don't know. I can't  
8 speak for Mr. Griffin.

9 Q. Let me ask you then: With respect to  
10 Mr. Griffin, did you undertake any kind of review of  
11 Mr. Griffin's performance as general manager after  
12 John Pluchinsky's death?

13 A. Yes.

14 Q. Okay. What did you do?

15 A. We met. We have an annual review and we met  
16 concerning Mr. Griffin on his anniversary date,  
17 some -- which is sometime in September, met with the  
18 vice president HRCBM-H and I believe  
19 HRCBM-U .

20 Q. And what did that evaluation consist of?

21 A. It consisted of performance throughout the  
22 year, response to membership, general feeling on  
23 membership experience throughout the year. Meeting  
24 budgets were some of the areas that we consider.

25 Q. And this annual review, was this basically a

□00051

1 meeting?

2 A. It was a meeting.

3 Q. Among who?

4 A. The small group and then --

5 Q. Being who?

6 A. HRCBM-H.

7 Q. Okay.

8 A. Myself and I believe it was HRCBM-U , but  
9 I'm not 100 percent certain.

10 Q. Occurring where?

11 A. At the Houston Racquet Club.

12 Q. Okay. For how long?

13 A. It's taken -- I don't know.

14 Q. Approximately?

15 A. I mean, it could be an hour; it could be two  
16 hours. I'm sorry. I don't know.

17 Q. You think about one to two hours?

18 A. It's taken to the Board for discussion.

19 That's it.

20 Q. When you say "taken to the Board," would

21 that be a general Board meeting, regular Board  
22 meeting or special?  
23 A. It was held during our regular Board meeting  
24 time; however separately from Mr. Griffin and any  
25 other employees were not a part of that particular

□00052

1 session.

2 Q. And was that the session where the new  
3 president was elected?

4 A. Yeah -- I can't remember. I don't know if  
5 it was the August 1 or it was -- or the one that the  
6 new president was elected. I can't remember which  
7 one.

8 Q. Well, if Mr. Griffin's anniversary date, did  
9 you say it was in September?

10 A. Correct. Correct.

11 Q. Does that jog your memory?

12 A. Well, it could have. The year before it --  
13 we didn't make that decision until October, November.

14 Q. Okay.

15 A. So...

16 Q. All right. So basically you had this, as  
17 you call it, a small meeting?

18 A. Uh-huh.

19 Q. With yourself, Mr. HRCBM-H and Mr. HRCBM-U ,  
20 perhaps, for one to two hours. And then would it be  
21 the same day that it would be presented to the Board  
22 or not?

23 A. No.

24 Q. Okay. But you know that it was taken to the  
25 Board then. And what decision was to be made by the

□00053

1 Board relating to your evaluation of the general  
2 manager?

3 A. Well, they were all -- each member was to  
4 also evaluate by the same criteria that the small  
5 group used.

6 Q. Each Board member?

7 A. Yes.

8 Q. Was to evaluate after having received what,  
9 recommendations --

10 A. No.

11 Q. -- by your group or --

12 A. No. No. On their own.

13 Q. Verbally as in a discussion setting during  
14 the Board or how?

15 A. It was a discussion setting.

16 Q. Okay. And then to decide what, as it  
17 related to the general manager?

18 A. Performance and compensation for the  
19 following year, performance of the previous year,  
20 compensation for the future.

21 Q. And when you say performance, would that  
22 relate to a bonus or not?

23 A. Yes, it could.

24 Q. Okay. Did Mr. Griffin receive a bonus in  
25 September or October of 2007 for his performance

□00054

1 during the 2006/2007 term as general manager?

2 A. He received a bonus at that -- in that  
3 particular time frame for perform -- meeting  
4 performance issues and equaling what he made the  
5 previous year.

6 Q. Equaling the bonus he made or equaling the  
7 salary he made?

8 A. The total compensation he made the previous  
9 year.

10 Q. And what was the amount of his bonus?

11 A. I don't know the exact amount. It may have  
12 been in the **Priv** number.

13 Q. Okay. So after the performance evaluation  
14 that you and the Board conducted, Mr. Griffin  
15 received a bonus for the 2006/2007 term, correct?

16 A. For the 2006/ **Priv** -- he received, he  
17 did. He received a salary, plus he received his  
18 bonus to equal, yes.

19 Q. Okay. And am I wrong in describing it  
20 2006/2007?

21 A. No. I get confused. I'm sorry.

22 Q. Well, I do, too. That's fine.

23 A. I'm simple-minded. I'm sorry.

24 Q. Okay. But we know that in -- was it  
25 September or October, do you recall?

□00055

1 A. I really don't recall. I'm sorry.

2 Q. Okay. So we know that after you and the  
3 Board reviewed Mr. Griffin's performance, that after  
4 John Pluchinsky's death, but sometime around  
5 September, October of 2007 he nonetheless received a  
6 bonus of some -- something in the range of **Priv**  
7 correct?

8 A. Correct.



9 Q. And how would you describe his performance  
10 for that time frame, since I don't have the document,  
11 poor, fair, good, very good or excellent?

12 A. Good.

13 Q. Did he receive a raise as well?

14 A. I don't remember. I know a CPI type of  
15 raise was discussed, but I don't remember if it was  
16 given. I'm sorry.

17 Q. You've got to understand, I'm just a  
18 lawyer. And CPI, what's that mean?

19 A. I guess it's a standard by which it tries to  
20 meet inflation. I don't know what the exact --  
21 Consumer Price Index. It could mean that, it could  
22 mean something else. I'm not 100 percent certain  
23 either.

24 Q. Okay. And what was the -- what was the  
25 amount of the raise he received?

□00056

1 A. I'm not certain he got it. It was  
2 discussed.

3 Q. Excuse me?

4 A. I don't know if he actually got it. I can't  
5 remember. I know it was discussed. He may have.

6 Q. Did you recommend that he get a raise?

7 A. I recommended that -- I would have  
8 recommended -- I did recommend that he would have  
9 received a raise to meet that type of index formula.

10 Q. Did you recommend that he get a bonus?

11 A. I did.

12 Q. Did anyone, whether it be someone in your  
13 small group or the Board, recommend that Mr. Griffin  
14 not get a bonus, to your knowledge?

15 A. To my knowledge, no.

16 Q. Anyone recommend that he not get a raise, to  
17 your knowledge?

18 A. There was discussion, but no.

19 MR. REESE: Are you at a good breaking  
20 point?

21 MR. MARRS: In about five minutes.

22 Almost there.

23 Q. (BY MR. MARRS) And was that small meeting  
24 between yourself, Mr. HRCBM-H and Mr. HRCBM-U, did  
25 the discussion of John Pluchinsky's death come up?

□00057

1 A. Yes. I believe it did.

2 Q. How so?

3 A. It was a -- in a discussion did -- how we  
4 felt -- how did we feel that he handled the  
5 situation.

6 Q. And what was the substance of the discussion  
7 about how he handled the situation?

8 A. We felt that he acted appropriately,  
9 quickly, and the best that anybody could.

10 Q. Any criticisms whatsoever with respect to  
11 Mr. Griffin's performance or actions as they related  
12 to John Pluchinsky's death?

13 A. Not to my knowledge.

14 Q. Any discussion with respect to whether or  
15 not Mr. Griffin adequately managed those underneath  
16 him, such as Mr. Lamkin or how he addressed any  
17 lifeguard issues relating to the pools during your  
18 discussion with Mr. HRCBM-U and Mr. HRCBM-H ?

19 A. Not specifically.

20 Q. How about nonspecifically?

21 A. He generally had the -- he generally met  
22 with his staff regularly. He addressed things  
23 quickly and that's essentially how it was.

24 Q. So, then I take it there were no criticisms  
25 whatsoever with respect to Mr. Griffin and his

□00058

1 performance as they relate to safety issues at the  
2 pool or as they relate to John Pluchinsky's death,  
3 correct?

4 A. I can't remember any such.

5 Q. And how about at the Board meeting when you  
6 took recommendations and evaluation to the Board,  
7 during that Board meeting, was there any discussion  
8 of John Pluchinsky's death?

9 A. No.

10 Q. Any mention of whether or not Mr. Griffin  
11 performed adequately with respect to issues relating  
12 to John Pluchinsky's death?

13 A. I honestly can't remember the specifics to  
14 the discussions. I'm sorry.

15 Q. Not that you can recall?

16 A. Not that I can recall.

17 MR. MARRS: Wade, this is fine.

18 MR. REESE: All right.

19 MR. MARRS: If you want to take a  
20 break.

21 MR. REESE: Good enough.

22 VIDEOGRAPHER: We are going off the

23 record. The time is 11:32 a.m.

24 (Brief recess.)

25 VIDEOGRAPHER: Going on the record.

□00059

1 The time is 11:53 a.m.

2 Q. (BY MR. MARRS) With respect to the small  
3 meeting that you had with Mr. HRCBM-H and Mr. HRCBM-U  
4 with respect to the evaluation of Mr. Griffin, what  
5 documents were there that related to that meeting or  
6 that evaluation of Mr. Griffin?

7 A. I don't believe there were any.

8 Q. Are you sure about that?

9 A. Not 100 percent sure, but none that I can  
10 remember.

11 Q. So as president of the Racquet Club, you  
12 didn't ensure that there was some kind of  
13 documentation in Mr. Griffin's employee file that  
14 backed up or documented somehow the recommendations,  
15 evaluation, raises or bonus that were to be given  
16 Mr. Griffin?

17 A. I can't remember. I believe it was just a  
18 verbal meeting.

19 Q. Well, certainly there's some document that  
20 was given to accounting to cut a check for  
21 Mr. Griffin relating to his bonus, wasn't there?

22 A. I don't believe so, no.

23 Q. So everything was handled verbally? No  
24 documentation whatsoever relating to the evaluation  
25 of Mr. Griffin or your meeting with Mr. HRCBM-H and

□00060

1 Mr. HRCBM-U regarding the evaluation of Mr. Griffin?

2 A. I don't believe so, no. In the year before  
3 there was a document that was given out to the Board  
4 members to just go -- as a tool of understanding that  
5 was created the year before, but I'm not -- I don't  
6 believe we used that this time around.

7 Q. And that's what I was going to ask you. I  
8 mean, what forms existed at the Racquet Club for  
9 evaluation of individuals, like Mr. Griffin so it  
10 could be in writing?

11 A. There was nothing given in writing to the  
12 comptroller or anything to provide for that  
13 documentation that you're asking for, I believe.

14 Q. Any standard evaluation forms that the  
15 Racquet Club uses to evaluate its employees to your  
16 knowledge at any time while you were president?

17 A. We -- I don't know if we used -- we -- I  
18 don't think we used -- we may -- I'm not sure. We  
19 don't -- we may have used the form that was created  
20 the year before to give people an idea of categories  
21 and thoughts to their -- to the recommendation or to  
22 their decision, but there's no standard form.  
23 Q. Did you or Mr. HRCBM-H or Mr. HRCBM-U use  
24 any such document relating to the evaluation of  
25 Mr. Griffin, to your knowledge?

□00061

1 A. I don't remember any such, but I would have  
2 to ask Mr. HRCBM-H to see if we did.  
3 MR. MARRS: We'll send you a written  
4 request, Wade, for those docs to see if they exist.  
5 MR. REESE: Okay.  
6 Q. (BY MR. MARRS) Any e-mails or  
7 correspondence or other communications between  
8 yourself, Mr. HRCBM-H or Mr. HRCBM-U or anyone else  
9 relating to the evaluation of Mr. Griffin?  
10 A. None to my knowledge.  
11 Q. And when you showed up or were at the  
12 meeting with these two gentlemen regarding the  
13 evaluation of Mr. Griffin, did anyone take notes, to  
14 your knowledge?  
15 A. Not to my knowledge.  
16 Q. And with respect to the subsequent Board  
17 meeting relating to the evaluation of Mr. Griffin,  
18 were there any -- and the Board members' own  
19 evaluation as you say of Mr. Griffin, were there any  
20 documents relating to that, to your knowledge?  
21 A. As it pertains -- specific like forms,  
22 standardized forms that you're talking about?  
23 Q. No, sir.  
24 A. Okay. I'm sorry.  
25 Q. I'm talking about any documents.

□00062

1 A. Okay. None to my knowledge. I'm not sure  
2 if any were given from the previous years. I'd have  
3 to -- I would have to look into that.  
4 Q. Where would you look?  
5 A. I would look -- I would ask Mr. HRCBM-H. I  
6 would look to see if I have any in my computer at  
7 work. Those are the two places I would go first.  
8 Q. Have you looked?  
9 A. No.  
10 Q. Will you look --

11 A. I will look.

12 Q. -- in all places where such documents may  
13 reside and inform your counsel and provide such  
14 documents, if any, to Norman Snyder so that he can  
15 provide those to us?

16 A. Yes.

17 Q. Are there any guidelines at the Houston  
18 Racquet Club with respect to how evaluations are to  
19 be performed of employees or officers?

20 A. No.

21 Q. And who evaluates you as president of the  
22 Racquet Club?

23 A. There is no evaluation, to my knowledge.

24 Q. Did you receive any compensation as  
25 president or relating to your role as president of

□00063

1 the Houston Racquet Club?

2 A. No.

3 Q. Do you receive any perks as president of the  
4 Houston Racquet Club?

5 A. No.

6 Q. What was the advantage of being president of  
7 the Houston Racquet Club other than the status?

8 A. Opportunity to give back.

9 Q. Anything else?

10 A. No.

11 Q. Why was the evaluation of Mr. Griffin --  
12 strike that.

13 How long did the discussion occur in  
14 the subsequent Board meeting relating to the  
15 evaluation of Mr. Griffin, issues relating to raise,  
16 issues relating to bonus and performance of  
17 Mr. Griffin?

18 A. I have no remembrance of that. It could be  
19 15 minutes. It could be 30 minutes. I have no  
20 knowledge. I don't remember.

21 Q. Why is there no mention of that in that  
22 particular Board minute relating to that particular  
23 Board meeting of any evaluation of Mr. Griffin?

24 A. Because that's done outside the proper Board  
25 meeting. It's done within just the Board outside of

□00064

1 any employees or...

2 Q. Explain that.

3 A. In that particular circumstance, they can  
4 call what's -- it's called Executive Committee, which

5 is just the Board members only. All staff or anybody  
6 with the staff have to -- they leave. And then a  
7 discussion to -- pertaining to the general manager  
8 would be discussed outside of him being there.

9 Q. And what kind of meeting would that be  
10 called? Would it be called Executive Committee  
11 Meeting?

12 A. Yes, yes.

13 Q. Would that be before, during or after a  
14 regular Board meeting?

15 A. Anytime that the president chooses.

16 Q. And when did you choose to have this  
17 Executive Committee Meeting relating to the  
18 evaluation of Stephen Griffin?

19 A. I believe it was after one of the Board  
20 meetings, either in August or September.

21 Q. Were there minutes of the executive  
22 committee meeting relating to the evaluation of  
23 Mr. Griffin?

24 A. No.

25 Q. Why not?

□00065

1 A. There are not minutes. There's no one there  
2 to keep minutes.

3 Q. As a rule?

4 A. I don't know if that's a rule or not.

5 Q. Were minutes ever kept of Executive  
6 Committee Meetings, to your knowledge, at the Racquet  
7 Club?

8 A. I can't speak prior to me, but I don't  
9 know. They may have. They may not. I'm not sure.

10 Q. And how does the Executive Committee Meeting  
11 differ from a special Board meeting?

12 A. That nobody from the staff of the Club  
13 attends.

14 Q. Was any Executive Committee Meeting called  
15 by you as president of the Racquet Club relating to  
16 the death of John Pluchinsky?

17 A. We had a meeting a week or so after the  
18 accident.

19 Q. An Executive Committee Meeting?

20 A. Yes.

21 Q. And who attended?

22 A. I would -- I'm not sure. Most of the Board  
23 did. I'm not sure. Made -- counsel, and that's all  
24 I can remember.

25 Q. And this would have been in July of 2007?

□00066

1 A. I believe that's correct.

2 Q. Were minutes kept of that meeting?

3 A. No.

4 Q. How long did it last?

5 A. I'm not sure, an hour. It could be an  
6 hour-and-a half.

7 Q. Were any decisions made at that meeting?

8 A. No.

9 Q. And what was it called about?

10 MR. REESE: That's enough there. You  
11 had counsel present. You had the privilege. You  
12 don't have to answer that question.

13 MR. MARRS: You're asserting the  
14 attorney/client privilege?

15 MR. REESE: That's exactly what we're  
16 doing.

17 Q. (BY MR. MARRS) You're refusing to answer on  
18 the basis of the -- your lawyer's advice?

19 A. Yes.

20 Q. Are there any documents that depict or state  
21 or describe any decisions made or discussions had  
22 during that meeting?

23 A. None that I'm aware of.

24 Q. How -- Who called that meeting?

25 MR. REESE: You don't have to answer

□00067

1 that.

2 MR. MARRS: He doesn't have to answer  
3 who called the meeting?

4 MR. REESE: No. I've allowed you  
5 pretty good leeway as far as the privilege and he's  
6 not going to answer anything more about decisions.

7 MR. MARRS: Okay.

8 MR. REESE: Who called it. Those are  
9 all going to be privileged.

10 MR. MARRS: On the basis of  
11 attorney/client privilege?

12 MR. REESE: Absolutely.

13 Q. (BY MR. MARRS) And you're refusing to  
14 answer on the basis of your client's -- or your  
15 counsel's advice; is that correct?

16 A. Yes, sir.

17 Q. Any other meetings, executive committee  
18 meetings or special committee meetings relating to

19 the death of John Pluchinsky?

20 A. We had a small committee meeting the day  
21 following to hire professionals to investigate and  
22 in -- with any potential litigation.

23 Q. And who was present at that meeting?

24 A. HRCBM-B , HRCBM-H, HRCBM-X by  
25 phone, HRCBM-Z, Steve Griffin, HRCBM-W,

□00068

1 HRCBM-G .

2 Q. HRCBM-G who?

3 A. HRCBM-G .

4 Q. Is he with the Club?

5 A. He is the insurance person for the Club.

6 Q. And you say "small committee meeting," what  
7 committee was that or was it a committee meeting?

8 A. Officers, essentially.

9 Q. Was that an Executive Committee or a Special  
10 Committee Meeting or just a specially called meeting  
11 or what?

12 A. I don't know. I don't have a name for it.

13 Q. Okay. Who called that meeting?

14 A. I may have. I -- that was Thursday  
15 evening. I may have called it.

16 Q. Was a professional hired to investigate it?

17 A. Yes.

18 Q. Who?

19 A. Mike Wall with Gardere Wynne.

20 Q. Who else?

21 A. That's it.

22 Q. When did the investigation begin?

23 MR. REESE: You don't have to answer  
24 that. That's privileged. Mike Wall was present at  
25 that meeting. Anything else about that would be

□00069

1 privileged as well.

2 Q. (BY MR. MARRS) Do you refuse to answer on  
3 the basis of your counsel's advice?

4 A. Yes, sir.

5 Q. Any meetings regarding John Pluchinsky's  
6 death or issues surrounding it other than those  
7 you've described or those that you've had with  
8 counsel?

9 A. No.

10 Q. Did you call any meetings as president of  
11 the Houston Racquet Club to discuss how to help the  
12 Pluchinsky family during their time of need?



13 A. No specific meeting.

14 Q. Any nonspecific meeting where that was  
15 discussed?

16 A. I've discussed it with individuals.

17 Q. How about in Board meetings?

18 A. I led the first Board meeting with a silent  
19 prayer to help them spiritually. I don't believe any  
20 other conversation at Board meetings or any topics  
21 were raised on specific issues towards that. We did  
22 make a decision at a Board meeting, I believe, to  
23 donate to Bo's Place. We statused the Board on  
24 things that we've done, and that's about all I can  
25 remember.

□00070

1 Q. Things that you had done such as what?

2 MR. REESE: To the extent that it  
3 includes anything done with counsel, that would be  
4 privileged.

5 A. We talked about the Friends and Family book,  
6 that we were going to have that out. We talked about  
7 my attempts to make contact through permission of  
8 others, through my one call to Mr. Pluchinsky,  
9 through -- to let them know that the Club did deliver  
10 flowers, a card, recommending they go to the funeral  
11 if they chose to. That's all I can remember at this  
12 particular moment.

13 Q. (BY MR. MARRS) And other than your one call  
14 to Mr. Pluchinsky, have you subsequently attempted to  
15 contact Mr. Pluchinsky or Mrs. Pluchinsky?

16 A. No. I have been advised not to.

17 Q. And other than the Friends and Family book,  
18 donation -- How much was the donation to Bo's?

19 A. From the Club it was \$1,000. From  
20 individuals, I don't know what they did.

21 Q. So other than the book and the donation and  
22 the one phone call to Mr. Pluchinsky, what else did  
23 you or the Club do to reach out to the Pluchinsky  
24 family as a result of the death of their son in your  
25 pool, if anything?

□00071

1 A. I called, a conversation with Mr. Maynard, I  
2 asked for permission to make contact to a mutual  
3 friend of Ms. Pluchinsky's, I asked for permission.  
4 We flew the flag at half mast for a week. That's all  
5 I can think of.

6 Q. And who was responsible for sending flowers

7 or cards to the Pluchinskys?

8 A. Steve Griffin and myself.

9 Q. Was that done?

10 A. Yes. It was sent to the church.

11 Q. Let me back up. Did you or are you  
12 currently serving in any capacity other than member  
13 of the Houston Racquet Club?

14 A. I am the past president. I believe I'm the  
15 assistant secretary. I have no voting right, but I'm  
16 on the Board.

17 Q. You're on the Board?

18 A. I'm on the Board as the past president and  
19 assistant secretary and -- but I don't have voting  
20 rights on Board issues.

21 Q. And why were you made assistant secretary?  
22 Was it so that you could keep your privileges at the  
23 Houston Racquet Club?

24 A. Yes.

25 Q. And what privileges are those?

□00072

1 A. None other than I was -- I am -- I was the  
2 president during the time of this accident and will  
3 remain involved until the conclusion of this process.

4 Q. And because the Club wanted you to remain  
5 involved, they did what?

6 A. I don't understand what -- I'm sorry.

7 Q. I'm trying to understand what you just  
8 said. That's why I asked.

9 A. Right. To remain on a -- I guess in a  
10 privileged capacity to this process.

11 Q. And when you say "privileged capacity," do  
12 you mean like the attorney/client privilege or do you  
13 mean some other type of privilege?

14 A. Attorney/client privilege.

15 Q. Okay. So it's your understanding that you  
16 remain or were made assistant secretary so that you,  
17 your discussions and communications with those within  
18 the Club or their lawyers would remain privileged?

19 A. Yes.

20 (Plaintiff's Exhibit Number 68 marked.)

21 Q. (BY MR. MARRS) And if we look at Exhibit 68  
22 from September 2007 Board meeting minute where it  
23 says that, "It was agreed on by the Board that Ted  
24 Erck would be the Assistant Secretary so he can keep  
25 his privileges," are those -- his privilege that is

□00073

1 being referred to attorney/client privilege?

2 A. I assume so, yes.

3 Q. And does the Houston Racquet Club have a  
4 wading pool?

5 A. I've never heard it called as such. We have  
6 a beach area.

7 Q. Right. Do you have a wading pool? Does the  
8 Racquet Club currently have a wading pool?

9 A. Again, I've never heard anything called as  
10 such. We have a beach area.

11 Q. Okay. Did the Racquet Club have a wading  
12 pool prior to the family pool being constructed?

13 A. There was a separate pool, a small round  
14 pool to the southwest of the initial pool.

15 Q. And is that what you would consider a wading  
16 pool, a separate pool for wading?

17 A. I guess it could be defined as anything, but  
18 something like that.

19 Q. Okay.

20 A. It could be defined as that, I assume.

21 Q. Sure. And that's why when I asked you if  
22 the Racquet Club currently has a wading pool, you  
23 said, well, they have a beach entry because, you  
24 know, the wading pool to you means a separate pool  
25 for wading; is that right?

□00074

1 A. It can mean that. It can mean a shallower  
2 part of a pool. It can mean, I think, either of  
3 those.

4 Q. Okay. Well, based on your understanding, a  
5 guy who's been a president of a club, does the  
6 Houston Racquet Club currently have a wading pool?

7 A. You could consider the beach area a wading  
8 area, but not a separate pool.

9 Q. Okay. You would not consider that a wading  
10 pool; is that correct?

11 A. I would not consider it a wading pool if you  
12 defined it as a separate entity that's shallow to  
13 wade in.

14 Q. Okay. But you yourself would not define the  
15 beach area of the family pool as a wading pool, would  
16 you?

17 A. Not based on those definitions, correct.

18 Q. Isn't that the definition you use?

19 A. Okay. If a pool -- if a wading pool is  
20 separate and is shallow enough to walk in, then

21 that's -- if that's my definition, then yes, I agree.

22 Q. Is that your definition, as we just sit here  
23 today and you hear the term wading pool?

24 A. I --

25 Q. Would you consider it a separate pool?

□00075

1 A. Okay. Yeah.

2 Q. Would you?

3 A. I might, yes.

4 Q. Okay. And does the Racquet Club, are they  
5 going to have summer camp this year?

6 A. Not as it -- not as it existed last year.

7 Q. And how will it exist this year for summer  
8 2008?

9 A. We have several two-hour programs that --  
10 and I'm not as familiar with all the different  
11 programs and I'm sorry. They can be anything from  
12 building a rocket ship to painting, to cheerleading,  
13 activities such as those.

14 Q. And is the Racquet Club calling it summer  
15 camp or something else?

16 A. I'm not sure how we've defined it. Someone  
17 might define it as camp. Someone might define it as  
18 activities. It can be -- I'm not sure how the Club  
19 has actually marketed it to promote it --

20 Q. Okay.

21 A. -- and define it.

22 Q. Is it promoted to only members or  
23 non-members also?

24 A. It's promoted -- it's my understanding that  
25 mainly to members. I'm not sure if a non-member can

□00076

1 come in under the premise of a member. I would have  
2 to confirm that.

3 Q. As we sit here today, you don't know whether  
4 or not non-members can partake in the summer  
5 activities for summer 2008?

6 A. We also have -- I don't know. I can't  
7 confirm that 100 percent.

8 Q. And who within the Racquet Club, to your  
9 knowledge, made the decision to move forward and at  
10 least have summer activities for summer 2008 at the  
11 Racquet Club?

12 A. HRCBM-H would have approved it with  
13 Steve Griffin.

14 Q. And the Board as well?

15 A. Uh-huh.

16 Q. And is swimming for children part of the  
17 summer activities for summer 2008 at the Racquet  
18 Club?

19 A. Not to my knowledge.

20 Q. Do you specifically know they aren't or you  
21 don't know?

22 A. I'm pretty sure that they are not. I would  
23 have to review the list, but I'm pretty -- I'm very  
24 sure -- I'm pretty sure they are not.

25 Q. Based on what?

□00077

1 A. Based on the fact that we've changed the  
2 camp to not include that. We've outsourced it.

3 Q. To who?

4 A. I believe her name is Kyle Robertson and --

5 Q. With who?

6 A. I believe she has her own company. I'm not  
7 sure of the name. If there's a specific name to it,  
8 I'm not certain.

9 Q. And what is she, to your knowledge? Is she  
10 a --

11 A. She's a teacher, I believe in Austin, and  
12 has done these types of little camps and activities  
13 for people in Austin. And through some relationships  
14 that she has with -- for children and for families at  
15 the Racquet Club.

16 Q. And have you been present during any  
17 discussions relating to whether or not swimming  
18 should be a part of summer activities for 2008 at the  
19 Racquet Club?

20 MR. REESE: And that excludes any  
21 discussions that would include counsel.

22 A. All right. Yes.

23 Q. (BY MR. MARRS) What discussions?

24 A. We discussed whether we were going to do  
25 camp or not.

□00078

1 Q. Who is "we"?

2 A. I believe it was HRCBM-H,  
3 HRCBM-a1, Steve Griffin and myself and --

4 Q. And tell us what the substance of those  
5 communications were after you tell me whether there  
6 was anyone else present.

7 A. I don't believe there was anybody else  
8 present. The issue was brought up at a Board meeting

9 whether we -- and I don't know which month, but  
10 whether he would have camp or not. We would discuss  
11 it thoroughly or -- and see if it was something that  
12 their members wanted.

13 Q. Well, did you ask members as to whether they  
14 wanted that or not?

15 A. I did not lead that group. I was just part  
16 of the discussion. I didn't do any work towards  
17 that, so I don't know exactly how they came up with  
18 the information that -- to move forward with doing  
19 these activities.

20 Q. Was there a group that would canvass or ask  
21 questions of members with respect to that?

22 A. Not specifically that I know of, no.

23 Q. And who is HRCBM-a1 ?

24 A. He's a current Board member.

25 Q. And were these discussions had in

□00079

1 conjunction with any insurance carrier for the  
2 Racquet Club?

3 A. No.

4 Q. Did any insurance company or representative  
5 recommend that you not have water activities as part  
6 of summer activity 2008?

7 A. No, none that I'm aware of.

8 Q. You're still having Mad Science, though, for  
9 summer activities 2008?

10 A. I don't know.

11 Q. Is the offering of summer activities for  
12 summer 2008 advertised by the Houston Racquet Club?

13 A. I believe it is on the web site.

14 Q. Available to the public or the members only  
15 portion of the web site?

16 A. I don't know. I'm sorry.

17 Q. How else is it advertised?

18 A. I believe a general e-mail went out to the  
19 membership. Outside of that, I believe that's it.

20 Q. Okay. How is enrollment thus far, to your  
21 knowledge?

22 A. I have no knowledge.

23 Q. And with respect to Kyle Robertson, why is  
24 the Racquet Club outsourcing its summer activities  
25 for this summer?

□00080

1 A. Because of pending litigation is one reason  
2 we chose not to do the camp as it existed last year.

3 And too, highly recommend by members, that her  
4 activities would fit well with the membership.

5 Q. What members highly recommended outsourcing?

6 A. I don't know if it was -- the recommendation  
7 of outsourcing was an issue. It was more of how can  
8 we provide activities for our membership. We weren't  
9 going to do summer camp, so what could we do to  
10 provide summer activities for our members.

11 Q. And was there a Board meeting with respect  
12 to that issue?

13 A. A decision was not made by the Board to move  
14 forward with that, just by some Board members and the  
15 president. But that's -- it was -- the president was  
16 in that committee along with a Board member and  
17 Steve Griffin and they moved -- we moved forward with  
18 those activities.

19 Q. Were there minutes of those meetings?

20 A. No.

21 Q. Are there generally minutes of the committee  
22 meetings?

23 A. No.

24 Q. Do you have an understanding as to whether  
25 or not Houston Racquet Club plans to have summer camp

□00081

1 2009?

2 A. I have no idea.

3 Q. Haven't -- They haven't made a decision one  
4 way or the other, to your knowledge?

5 A. I don't think it's even been discussed.

6 Q. And when is the first time that you became  
7 aware that Guillermo Palmer was interested in leaving  
8 Houston Racquet Club and seeking employment  
9 elsewhere?

10 A. I can't remember it exactly, but he had  
11 taken the job sometime, I believe, in 2008.

12 Q. When did you become aware of the fact that  
13 he was going to be leaving the Racquet Club?

14 A. At the -- sometime early to mid 2008.

15 Q. How did you find out?

16 A. He told me.

17 Q. Under what circumstances did he tell you?

18 A. I believe it was -- I believe I ran into him  
19 at the Club. I don't know if there was any  
20 particular circumstance that I can remember, but he  
21 told me at the Club.

22 Q. What did he tell you?

23 A. That he was going to leave the Club. He was  
24 going to take an opportunity -- he had an opportunity  
25 to work in sales for a paving company and I

□00082

1 congratulated him and that was it.

2 Q. What fraternities do you belong to?

3 A. I was a member of the Silver Spurs at the  
4 University of Texas.

5 MR. REESE: That's it, Matt.

6 MR. MARRS: Uh-huh.

7 A. That's it.

8 MR. REESE: We were Spurs together.

9 THE WITNESS: Oh. Oh, me? You?

10 MR. REESE: Matt asked whether or not  
11 we had run into each other.

12 THE WITNESS: Oh, sorry.

13 MR. REESE: We all look the same under  
14 the white hat.

15 THE WITNESS: Well, sorry I didn't  
16 participate as much as I should have.

17 Q. (BY MR. MARRS) So what's your understanding  
18 of what your responsibilities were as president of  
19 the Houston Racquet Club?

20 A. To generally be in charge of the Club's  
21 affairs.

22 Q. That's it?

23 A. Be accessible to the membership, run Board  
24 meetings -- monthly Board meetings. Run the -- run  
25 the annual membership meeting in October.

□00083

1 Q. Were you responsible for fund-raising?

2 A. No.

3 Q. Who was?

4 A. No one was in charge of fund-raising. We  
5 don't have that vehicle.

6 Q. Meaning what? What do you mean you don't  
7 have --

8 A. I'm not sure about fund-raising. The  
9 Racquet Club doesn't have a fund-raising.

10 Q. But there's no prohibition in the bylaws or  
11 elsewhere for the Houston Racquet Club to raise  
12 funds, is there?

13 A. Not to my knowledge.

14 Q. Do you generally raise funds through dues?

15 A. We have operating budgets and the -- which  
16 is -- which is the dues, surplus of that operating



17 budget.  
18 Q. Did you receive any compensation or anything  
19 of value for being president of the Racquet Club?  
20 A. No.  
21 Q. Did Mr. Lamkin receive a raise during his  
22 annual review after the death of John Pluchinsky?  
23 A. I don't know.  
24 Q. Or bonus?  
25 A. I don't know.

□00084

1 Q. What about Guillermo Palmer?  
2 A. I don't know.  
3 Q. How about 15 y/o LG #1 ?  
4 A. I know -- I do know -- I know that she  
5 received additional money per hour based on the  
6 deposition that you took with Steve Griffin.  
7 Q. Okay. So, you know that 15 y/o LG #1 , after  
8 John Pluchinsky's death, did receive an increase in  
9 her hourly salary, correct, for her hourly rate?  
10 A. That's information I gathered through the  
11 other deposition, yes, sir.  
12 Q. And that she also received an excellent  
13 review, correct?  
14 A. That I don't know.  
15 Q. Do you not remember that part of the  
16 deposition?  
17 A. I don't remember that part, no.  
18 Q. And since John Pluchinsky's death, has the  
19 responsibilities of Mr. Griffin or Mr. Lamkin changed  
20 at all, to your knowledge?  
21 A. Mr. Griffin's, no. Mr. Lamkin does not have  
22 the summer camp in his world. I don't know how  
23 Mr. Lamkin's responsibilities are with the  
24 third-party lifeguard group that's come -- I don't --  
25 I don't have any knowledge of that, if there is any.

□00085

1 Q. Repeat that.  
2 A. I don't have any knowledge if Mr. Lamkin's  
3 responsibilities flow over to the pool area anymore.  
4 They may. I don't know.  
5 Q. You just don't know?  
6 A. I just don't know.  
7 MR. REESE: It's 12:30. Do you guys  
8 want to take an hour for lunch?  
9 MR. MARRS: Yeah. Although I'm okay  
10 with doing something less than that. Sure.

11 30 minutes, 45 minutes, something like that?

12 MR. REESE: Is everybody fine with just  
13 going downstairs?

14 MR. MARRS: Why don't we plan on around  
15 45, yeah. Okay. Let's do that now.

16 VIDEOGRAPHER: It's 12:34. We're off  
17 the record.

18 (Lunch recess was taken.)

19 VIDEOGRAPHER: The time is 1:27 p.m.  
20 We are back on the record.

21 Q. (BY MR. MARRS) And, Mr. Erck, you mentioned  
22 that a call was placed to Bill Maynard; is that  
23 correct?

24 A. He actually called the Club, I believe.

25 Q. Okay. When?

□00086

1 A. I think it was Thursday afternoon.

2 Q. To who?

3 A. To Steve Griffin.

4 Q. And what was discussed, to your knowledge?

5 A. He asked what happened and we told him we  
6 did not know. I asked him for permission to go to  
7 the family and send our condolences. He said he was  
8 going to be -- he was going to go to their house that  
9 evening and he would call us and let us know.

10 Q. And did he?

11 A. He was -- I think he had to go pick up his  
12 child at camp somewhere on that Friday. He said he  
13 would call. I don't believe -- he didn't call while  
14 I was around.

15 Q. Okay. And then what other subsequent  
16 conversations occurred with Mr. Maynard with anybody  
17 from the Club, to your knowledge?

18 A. None, to my knowledge.

19 Q. Okay. I thought you mentioned previously  
20 today that someone called Bill Maynard to get  
21 permission to contact a friend of the Pluchinskys?

22 A. No. I made a call to a friend of  
23 Ms. Pluchinsky to get -- to also seek permission.

24 Q. Okay. And who was that?

25 A. Cherie Hoepfl.

□00087

1 Q. Hoepfl?

2 A. Yes.

3 Q. And when was that that you made that call?

4 A. I believe it was Thursday evening, but it

5 could have been Friday.

6 Q. And why?

7 A. To seek permission to meet with the  
8 Pluchinskys.

9 Q. And why -- How did you know that she was a  
10 friend of the Pluchinsky's?

11 A. I believe she was a sponsor of the  
12 Pluchinskys for membership at the Racquet Club.

13 Q. And the time when you called and talked to  
14 Mr. Pluchinsky briefly, was that before the funeral  
15 of John Pluchinsky?

16 A. I believe it was, yes.

17 Q. Did you ever reach out to try to contact the  
18 Pluchinskys yourself after the funeral?

19 A. I did not.

20 Q. Did Mr. Griffin, to your knowledge?

21 A. Not to my knowledge.

22 Q. Did Mr. Lamkin, to your knowledge?

23 A. Not to my knowledge

24 (Plaintiff's Exhibit Number 1 referenced.)

25 Q. (BY MR. MARRS) Let me show you what's been

□00088

1 marked as Plaintiff's Exhibit Number 1, which I  
2 believe you've seen before, the July 20th, 2007  
3 message to members that is from yourself, correct,  
4 sir?

5 A. It looks accurate, yes.

6 Q. Now, did you write this yourself or did  
7 someone write it for you?

8 A. I wrote it and it was looked over by  
9 counsel, professional counsel.

10 Q. You mean legal counsel?

11 A. Legal counsel.

12 Q. And did anyone assist you in drafting it or  
13 finishing it or revising it?

14 A. I wrote it. It was edited by legal counsel,  
15 approved and sent.

16 Q. And when you say "sent," was it posted on  
17 your web site?

18 A. I don't know if it was posted on the web  
19 site or not. I believe we sent an e-mail out to -- a  
20 blast e-mail out to the membership.

21 Q. Who's responsible for placing things on the  
22 Houston Racquet Club web site?

23 A. It's my understanding that Jean Northey does  
24 much that as the assistant to Steve Griffin.

25 Q. Jean Northey?

□00089

1 A. Yes.

2 Q. And male or female? Male?

3 A. Female.

4 Q. Female. And she's an assistant of

5 Mr. Griffin?

6 A. Yes.

7 Q. Okay. Anybody else responsible for placing  
8 things on the Houston Racquet Club web site, to your  
9 knowledge?

10 A. I don't know exactly how that process works,  
11 but to my knowledge, she does much of that.

12 Q. And before, let's say, fliers about summer  
13 camp or a section of your web site about summer camp  
14 is actually posted for the public or members to see,  
15 is it run through a committee or the Board for  
16 approval?

17 A. Not typically.

18 Q. Well, someone in management at the Racquet  
19 Club would approve content that goes on your web site  
20 before it goes on, wouldn't they?

21 A. I would believe so.

22 Q. Who do you believe that would be?

23 A. Ultimately, I would believe that would be  
24 the general manager.

25 Q. Mr. Griffin?

□00090

1 A. Yes.

2 Q. And do you know for a fact whether or not  
3 Mr. Griffin approved subject matter regarding the  
4 pools and summer camps before placed on the Racquet  
5 Club web site?

6 A. I don't know if that process actually took  
7 place or not.

8 Q. You would expect it to?

9 A. I would expect it to.

10 Q. Was that part of Mr. Griffin's job  
11 responsibilities?

12 A. I think it falls underneath there somewhere.

13 Q. Okay. And on Exhibit 1 it says that, on the  
14 third or fourth line, "We have initiated an internal  
15 investigation to understand what may have led to this  
16 tragedy," referring to John Pluchinsky's death,  
17 correct, sir?

18 A. Yes.

19 Q. And it's been, I guess, almost a year since  
20 that day on July 18, 2007. Based on your or the  
21 Racquet Club's knowledge of the facts, what did lead  
22 to this tragedy?

23 MR. REESE: To the extent that requires  
24 you to comment on anything you may have learned from  
25 counsel, I'm instructing you not to answer.

□00091

1 A. As I understand it -- I wasn't here the day  
2 of the tragedy, but I understand that John was in  
3 a -- in a group of four-year-old boys. They had gone  
4 and had lunch or a snack prior to the swimming part  
5 of the -- of the day, arrived at the pool at or  
6 around 10:45. It's my understanding that John and  
7 one of his little campers were friends and played,  
8 the little boy, 4 y/o-C #7 boy and the mother was  
9 there, played together. At around 11:00 o'clock I  
10 understand that Ms. M #1 and her son went to the  
11 lap pool and that the counselors took John to play.  
12 And from that point till the time that 15 y/o LG #1  
13 got out of her chair and went over to the -- and  
14 yelled at the counselor, 4 y/o B-CC #3, to check on the  
15 boy. That's how I understand what happened -- the  
16 events that happened that day.

17 Q. (BY MR. MARRS) And when you say that around  
18 o'clock Ms. M #1 left to go to the lap  
19 pool and the counselors took John to play, what  
20 counselors are you referring to?

21 A. I do not know.

22 Q. As the president of the Racquet Club at the  
23 time this happened, you were very concerned about  
24 what happened, correct?

25 A. Correct.

□00092

1 Q. And you certainly wanted to understand for  
2 yourself as president exactly what happened, right,  
3 sir?

4 A. To the best I could, yes.

5 Q. And the best you could do is to find out for  
6 yourself what the facts were and who was involved and  
7 what counselors and lifeguards were involved and what  
8 happened, correct?

9 A. I'm not a -- I'm not a professional  
10 investigator, so I asked a few of the people that  
11 were around.

12 Q. Yes, sir.

13 A. And then left a lot of that up to the  
14 professionals that were doing the investigation.  
15 Q. Well, I'm not talking about professionals.  
16 I'm talking about your employees. The counselors and  
17 the lifeguards that were there that day on July 18th  
18 with John Pluchinsky in the pool were your employees  
19 at the Racquet Club, weren't they?  
20 MR. REESE: Objection, form.  
21 A. They were employees of the Racquet Club.  
22 Q. (BY MR. MARRS) Sure. And so, if you as the  
23 president wanted to know specifically what happened,  
24 nothing kept you from specifically asking, well, what  
25 counselors took John Pluchinsky to play, correct?

□00093

1 A. I could -- I could have gone to speak with  
2 each of them, I guess -- I guess I could.  
3 Q. And you did not?  
4 A. I did not.  
5 Q. Well, did you ever ask -- to this day have  
6 you ever asked what counselors took John Pluchinsky  
7 to play after Ms. M #1 left to go to the lap  
8 pool?  
9 A. I have not personally done that.  
10 Q. Do you know who they were, the counselors?  
11 A. I do not.  
12 Q. And you have not asked, correct?  
13 A. I have not asked those counselors.  
14 Q. You have not asked anyone who those  
15 counselors were, have you?  
16 A. I have not.  
17 Q. Correct?  
18 A. Correct.  
19 Q. Who did?  
20 A. I'm sorry. Who did?  
21 Q. Well, did you delegate that task to somebody  
22 else?  
23 A. The investigation was left up to the -- to  
24 the professionals that we hired.  
25 Q. Such as who?

□00094

1 A. Gardere Wynne.  
2 Q. A law firm?  
3 A. Yes.  
4 Q. Well, did you hire a pool safety expert to  
5 come in and investigate the facts and figure out what  
6 went wrong?

7 A. What went wrong? I don't understand that  
8 question.

9 Q. Did you hire a pool safety expert to come in  
10 immediately and find out what went wrong so it won't  
11 happen again?

12 A. We hired a -- we did not hire, the firm of  
13 Brown Sims hired someone to come look at the pool.

14 Q. And who was that?

15 A. I don't know.

16 Q. You don't know?

17 A. No.

18 Q. And was it for the purpose of defending what  
19 might be a lawsuit or was it for the purpose of  
20 making the pools safe or do you know?

21 MR. REESE: Objection, form.

22 A. I don't know. I don't know.

23 Q. (BY MR. MARRS) Well, when you refer to, "We  
24 have initiated an internal investigation," what  
25 investigation are you referring to specifically?

□00095

1 A. We hired the firm of Gardere Wynne to  
2 investigate the process of what happened.

3 Q. Okay. Separate and apart from lawyers that  
4 you've hired, what specific company, aquatics experts  
5 have you hired to come in to make sure your pools are  
6 safe for young children?

7 A. The Club has hired a company called NASCO, I  
8 believe.

9 Q. Uh-huh.

10 A. I believe they oversee -- they do mock  
11 trainings and they do oversee, I believe, pools,  
12 policies and procedures.

13 Q. Uh-huh.

14 A. That's who we hired.

15 Q. And did your insurance company recommend  
16 that you hire them?

17 A. They did recommend that we do.

18 Q. And aside from hiring lawyers and hiring a  
19 company that your insurance company required you to  
20 hire, did you hire any other safety consultants or  
21 experts to come in and make sure your pools were safe  
22 for young children?

23 MR. REESE: Objection, form.

24 A. We hired a company to staff our pools,  
25 lifeguards.

□00096

1 Q. (BY MR. MARRS) A Beautiful?

2 A. Yes.

3 Q. And again, that was at the request of your  
4 insurance company as a requirement for renewing your  
5 insurance policy, wasn't it?

6 MR. REESE: Objection, form.

7 A. No.

8 Q. (BY MR. MARRS) No?

9 A. No.

10 Q. Then why is that before John Pluchinsky died  
11 in your pool, you did not hire NASCO nor did you hire  
12 A Beautiful Pool Company or any other independent  
13 safety company to come in and make sure your pools  
14 were safe?

15 MR. REESE: Objection, form.

16 A. After John drowned, Steve Griffin went to  
17 a -- recommended that we go to a swim with only  
18 lifeguard. The pool is not open unless you have a  
19 lifeguard to swim. In the past after Labor Day or  
20 some point in time that the pool can be opened, swim  
21 at your own risk like many clubs do, but Steve made  
22 the recommendation that the pool will not be open for  
23 swim unless there's a lifeguard on duty. We did not  
24 have -- we could not -- we're not able, as I  
25 understand it, to provide staffing for the -- for the

□00097

1 pools as they needed to be open for our members, so  
2 we made -- Steve made the recommendation to the Board  
3 that we hire a third group -- party group to help us  
4 staff the pool.

5 Q. (BY MR. MARRS) And all the recommendations  
6 you just testified about happened after John  
7 Pluchinsky's death?

8 A. Correct.

9 Q. So my question is: Why is it before John  
10 Pluchinsky's death did you not hire a safety, pool  
11 safety or aquatics expert to come in and make sure  
12 your pools were safe for young children?

13 A. I personally didn't know that such entities  
14 existed.

15 Q. Did Mr. Griffin know that such entities  
16 existed, to your knowledge, prior to John's death?

17 MR. REESE: Objection, form.

18 A. I don't know.

19 Q. (BY MR. MARRS) Did your aquatics expert --  
20 strike that.



21 Did your aquatics director, Mr. Palmer,  
22 know that such entities that could come in and make  
23 sure your pools were safe even existed?

24 MR. REESE: Objection, form.

25 A. I don't know.

□00098

1 Q. (BY MR. MARRS) Have you ever been on the  
2 American Red Cross web site prior to John's death?

3 A. No.

4 Q. Did anyone, whether they be a Board member  
5 or a manager, recommend to you or the Club, to your  
6 knowledge, prior to John's death that you retain a  
7 company to come in and make sure your pools were safe  
8 for young children?

9 A. I know of no recommendation from anyone.

10 Q. Were you concerned about pool safety as it  
11 relates to young children prior to John's death?

12 A. Yes.

13 Q. If your pool -- your family pool was not  
14 safe on July 18th, 2007 but instead was dangerous  
15 whether because of the way it was designed or because  
16 the lifeguards weren't certified or there wasn't  
17 enough training, whose failing would that be at the  
18 Racquet Club?

19 MR. REESE: Objection, form.

20 A. I guess I don't understand the question.

21 Whose response -- who's the -- who the lifeguards --  
22 who's responsible for the lifeguards? Is that your  
23 question?

24 Q. (BY MR. MARRS) Who's responsible for the  
25 lifeguards?

□00099

1 A. Guillermo Palmer would be responsible for  
2 the lifeguards at that time.

3 Q. Responsible to make sure that they were  
4 certified in CPR, in life-saving techniques?

5 A. Before they were hired, they would need to  
6 have that, yes.

7 Q. Well, not just before they were hired, but  
8 any time they are on the deck or in your pool as a  
9 lifeguard it's his responsibility to make sure that  
10 they are certified every single day they're out there  
11 working as a lifeguard, isn't it?

12 MR. REESE: Objection, form.

13 A. It's preferable.

14 Q. (BY MR. MARRS) Go ahead. I'm sorry?

15 A. I'm sorry. It's preferable that they should  
16 have those current.

17 Q. Well, don't you know that it's more than  
18 preferable, it's Texas law? Aren't you aware of  
19 that?

20 A. No, I wasn't.

21 Q. Are you aware of it now?

22 A. Based on your dialog. And yes, now, I am.  
23 I haven't read it, but...

24 Q. Have you ever taken the time to go on any of  
25 the web sites that have been mentioned in all these

□00100

1 depositions to look at the Texas Administrative Code  
2 requirements on pools such as the pool at the very  
3 club you were president of and currently a Board  
4 member of?

5 MR. REESE: Objection, form.

6 Q. (BY MR. MARRS) Have you ever done that?

7 A. I've looked at the Texas Administrative  
8 Code, yes.

9 Q. During this lawsuit, correct, sir?

10 A. Correct.

11 Q. But other than during this lawsuit, you have  
12 not, correct?

13 A. I personally did not.

14 Q. And what conversations did you have with  
15 Ms. M #1 to find out what occurred relating to  
16 John Pluchinsky's death, if any?

17 A. I spoke to her briefly. I understood that  
18 she was there in the beach area during that day --  
19 that morning. And she essentially told me what I  
20 told you.

21 Q. Well, did you talk to her personally or on  
22 the phone?

23 A. On the phone.

24 Q. When?

25 A. I don't remember the exact day. It could

□00101

1 be -- it was sometime after John's death, obviously.

2 Q. Same month?

3 A. Same month. It could have been a few days  
4 into August. I'm not 100 percent certain.

5 Q. And who else was on the phone or in the room  
6 that could hear the conversation, if anyone?

7 A. No one.

8 Q. So, of course, as a president and talking to

9 Ms. M #1 , you asked her exactly who the  
10 counselors were that were there as she left to go to  
11 the lap pool that took John Pluchinsky to play,  
12 didn't you?  
13 A. No.  
14 Q. Why not?  
15 A. I don't know.  
16 Q. Well, you certainly wanted to know, didn't  
17 you?  
18 A. I wanted to know what she saw and to the  
19 best of her knowledge what happened. I didn't ask  
20 who -- I did not ask that question.  
21 Q. Did you ask her why it is that she felt  
22 compelled to be present with her child during the  
23 summer camp instead of simply leaving  
24 4 y/o-C #7, her son, in the care of the counselors and  
25 lifeguards?

□00102

1 MR. REESE: Objection, form.  
2 A. No. She said that she did that each day.  
3 Q. (BY MR. MARRS) Yes. And are you aware of  
4 exactly why she felt it wasn't safe to leave her  
5 child in the pool being supervised by your employees?  
6 MR. REESE: Objection, form.  
7 A. No, I did not.  
8 Q. (BY MR. MARRS) But she was a member of the  
9 Houston Racquet Club. She was not a non-member, like  
10 the Pluchinskys, right, sir?  
11 A. Correct.  
12 Q. So unlike the Pluchinskys, she would have  
13 heard all the talk around the Club about the pool  
14 being unsafe and the lifeguards not watching the  
15 children, but non-members like the Pluchinskys would  
16 not have had that opportunity if they didn't go to  
17 the Club everyday like the M #1 s, correct?  
18 MR. REESE: Objection, form.  
19 A. I have no idea what Ms. M #1 has heard,  
20 if she heard anything. I don't know.  
21 Q. (BY MR. MARRS) But you know that your own  
22 managers at the Racquet Club heard similar things  
23 about lifeguards not paying attention to young  
24 children in their pool because you've seen some of  
25 the e-mails, haven't you?

□00103

1 MR. REESE: Objection, form.  
2 A. I saw some of the e-mails after the

3 incident.

4 Q. (BY MR. MARRS) And when you state in  
5 Exhibit Number 1 that, "John was in the water of our  
6 resort pool with fellow campers, six counselors and  
7 two lifeguards on duty," where did you learn those  
8 facts?

9 MR. REESE: To the extent it requires  
10 you to comment on anything you learned through the  
11 investigation of counsel, I instruct you not to  
12 answer.

13 THE WITNESS: Okay.

14 MR. REESE: Other means, then you can  
15 tell him.

16 A. Through Guillermo Palmer, David Lamkin and  
17 Steve Griffin.

18 Q. (BY MR. MARRS) And you stated that with  
19 respect to "what may have led to this tragedy," some  
20 of the things Ms. M #1 told you, but you didn't  
21 answer the question of, okay, now that the  
22 investigation has been done, what did you determine?  
23 What did the Club determine what may have led to this  
24 tragedy?

25 MR. REESE: To the extent --

□00104

1 Q. (BY MR. MARRS) What may have led to it?

2 MR. REESE: To the extent that calls  
3 upon you to comment about discussions that you've had  
4 with counsel or anything learned through counsel  
5 during the investigation, I instruct you not to  
6 answer.

7 Q. (BY MR. MARRS) And I'm talking about  
8 facts. I'm not talking about advice. I'm talking  
9 about facts. What facts have you learned through  
10 this investigation about what may have led to this  
11 tragedy?

12 MR. REESE: You don't have to answer  
13 that question. I instruct you not to.

14 MR. MARRS: On what basis?

15 MR. REESE: Attorney/client privilege.

16 MR. MARRS: Well, that's contrary to  
17 what you just instructed on the question before to go  
18 ahead and answer it as long as --

19 MR. REESE: No. I qualified --

20 MR. MARRS: Well, let me just finish.

21 -- as long as it doesn't reveal what he learned  
22 through attorney/client. And he didn't answer the

23 question.

24 MR. REESE: You asked him what was  
25 learned from the investigation.

□00105

1 MR. MARRS: Right.

2 MR. REESE: The investigation was  
3 conducted through counsel. That is privileged.

4 MR. MARRS: Thanks.

5 Q. (BY MR. MARRS) What facts have you learned  
6 other than what you've learned from your lawyers  
7 about what may have led to this tragedy?

8 A. Nothing.

9 Q. Okay. So what you're saying is, as we sit  
10 here today, even though you were the president of the  
11 Racquet Club, even though you were on the fitness  
12 committee that has overview of the pools and although  
13 you're currently a Board member, you don't know  
14 anything about what may have led to this tragedy  
15 other than what your lawyers may have told you; is  
16 that right?

17 A. I don't know what may have led to John's  
18 death. I don't know.

19 Q. And the only facts you have about what may  
20 have led to this tragedy that you're referring to on  
21 Exhibit 1 are facts you learned through your lawyers;  
22 is that right?

23 A. I've learned through Ms. M #1 , I've  
24 learned through Steve, David and Guillermo. There  
25 was another mother there that was in the beach area.

□00106

1 But no additional facts that may have -- anything  
2 that led to John's drowning.

3 Q. Do you have any idea what might have --

4 A. I don't.

5 Q. -- caused John Pluchinsky to drown other  
6 than facts you learned from your lawyers?

7 MR. REESE: Objection, form.

8 Q. (BY MR. MARRS) Do you have any idea? Go  
9 ahead.

10 A. I'm sorry. I --

11 Q. It's okay.

12 A. Their question -- I apologize.

13 Q. Okay. Well, let me back up just a second.

14 A. Okay.

15 Q. You know for a fact that four out of seven  
16 of the lifeguards on duty that day were not certified

17 in CPR, don't you?

18 MR. REESE: To the extent that that's  
19 information you learned through counsel during this  
20 investigation, I instruct you not to answer.

21 Q. (BY MR. MARRS) You learned that through the  
22 depositions and testimony of your own guys in this  
23 case under oath, didn't you?

24 A. I saw, I believe through Steve Griffin's  
25 deposition -- I didn't see the others -- that several

□00107

1 of their -- the lifeguards' CPR certification had  
2 expired in the last month or so.

3 Q. Before John Pluchinsky's death, right?

4 A. Correct. Correct.

5 Q. And you also learned that two out of the  
6 three people that performed CPR on John Pluchinsky  
7 were not certified in CPR at the time. You know that  
8 too, don't you?

9 A. I believe that's accurate.

10 Q. And you know for a fact that none of the  
11 kids, none of the lifeguards, none of the counselors,  
12 none of the managers got an available AED device and  
13 brought it over to where John was? You know that for  
14 a fact, don't you?

15 A. That's my understanding.

16 Q. As a matter of fact, it's also your  
17 understanding that the Houston Racquet Club didn't  
18 even tell its lifeguards and counselors exactly where  
19 the AED devices were located on the premises of the  
20 Houston Racquet Club. You know that, too, right?

21 MR. REESE: Objection, form.

22 A. No. I don't know that.

23 Q. (BY MR. MARRS) You don't know that?

24 A. No.

25 Q. You don't know one way or the other?

□00108

1 A. No. I don't know one way or the other.

2 Q. Okay. Well, regardless of that, you know  
3 that no AED device was obtained or gotten by any of  
4 the lifeguards or managers or counselors because  
5 you've just said that, right?

6 A. That's how I understand it.

7 Q. Okay. So, you also know that there was no  
8 in-service drills with respect to CPR or AED  
9 whatsoever by Mr. Guillermo Palmer or anyone at the  
10 Racquet Club prior to John's death, don't you?

11 A. I don't know if that was done or not. I  
12 don't know if that was done or not.

13 Q. Okay. You know for a fact, from sitting in  
14 these depositions, that no specific counselor in that pool  
15 that day was responsible to watch John Pluchinsky,  
16 don't you? Not one of them?

17 A. I guess -- let me -- I'm trying to  
18 understand your question. I guess it -- Could you  
19 help me understand your question?

20 Q. Let me restate it. Sure.

21 A. Okay.

22 Q. The counselors as an entire group were  
23 responsible for all of the four-year olds and campers  
24 that day, but none of them were specifically assigned  
25 any particular camper. You know that, don't you?

□00109

1 A. That's how I understand it.

2 Q. Okay. And you know that on that day there  
3 were two lifeguards at the family pool, right?

4 A. Correct.

5 Q. They were both first time 15-year-old  
6 lifeguards, correct?

7 A. First time, I don't know, but there -- I  
8 understand they were both 15.

9 Q. And only one of them was responsible for  
10 scanning the entire pool because the other was  
11 responsible for the slide and just the deep area and  
12 you know that, don't you?

13 A. That's not how I understand how they do it.  
14 But I'm not a lifeguard, so I'm not certain how all  
15 that works.

16 Q. Okay. Well, with respect to the things that  
17 you do understand, the facts that you just now  
18 testified to during the last five minutes, do you  
19 think that any of those things might have led to this  
20 tragedy, the death of John Pluchinsky?

21 MR. REESE: Objection, form.

22 A. I don't know.

23 Q. (BY MR. MARRS) Is that the kind of  
24 situation you expect to exist at the family pool at  
25 the Racquet Club, those things you just testified

□00110

1 about?

2 MR. REESE: Objection, form.

3 A. I would rather the CPR certifications to be  
4 not expired, but I don't believe that -- if I -- my

5 license, driver's license expires tomorrow that I  
6 would forget how to drive the next day. I would  
7 rather them be up-to-date, though. Other  
8 circumstances do -- what other issues that -- do I  
9 need to --

10 Q. (BY MR. MARRS) How about all of them  
11 combined together?

12 MR. REESE: Objection, form.

13 Q. (BY MR. MARRS) Do you think that all of  
14 those factors combined together that existed on  
15 July 18th, 2007 may have played a part in John's  
16 drowning or do you not have an opinion? Do you think  
17 that, well, I just don't know?

18 A. I don't know. In the 40-plus-years history  
19 of the Club we haven't had anything close to  
20 something like this.

21 Q. But it caught up to the Club, that they  
22 didn't have the training, the certifications and all  
23 the things we just discussed that existed on  
24 July 18th, 2007, did they?

25 MR. REESE: Objection, form.

□00111

1 You don't have to answer that.

2 Q. (BY MR. MARRS) And you have a young boy,  
3 don't you?

4 A. I do.

5 Q. And if he's at the pool and someone needs to  
6 save his life, perform CPR, a lifeguard, you would  
7 expect them at the Racquet Club to be certified in  
8 CPR, wouldn't you?

9 A. I would expect them to know how to do it,  
10 yes.

11 Q. You would expect them to be trained on how  
12 to save lives, correct?

13 A. Yes.

14 Q. You would expect more than just one  
15 15-year-old first-time lifeguard to be scanning the  
16 entire pool to watch the safety of your child if you  
17 leave it -- that child in the custody of the Racquet  
18 Club for summer camp, wouldn't you?

19 MR. REESE: Objection, form.

20 Q. (BY MR. MARRS) Or would that be okay for  
21 you as a father?

22 A. I would hope that -- I disagree with the  
23 premise that there was only one lifeguard guarding  
24 the whole pool. I also disagree that there was



25 other -- the counselors were there to help. So I

□00112

1 I guess I don't understand your question. I'm sorry.

2 Q. What's your understanding of how many of the  
3 lifeguards on duty that day were actually at lunch  
4 during the busiest part of summer camp that day?

5 A. I think what was testified were four. I'm  
6 not certain.

7 Q. I forgot to mention that factor. You had  
8 four lifeguards at lunch during the busiest part of  
9 summer camp that day, correct?

10 MR. REESE: Objection, form.

11 A. I'm not sure what the busiest time of day is  
12 at summer camp. I haven't been out there during that  
13 time.

14 Q. (BY MR. MARRS) Well, you know it was a time  
15 when the youngest of children, two groups of  
16 four-year olds were in the pool, don't you?

17 A. Yes.

18 Q. What adult did the Racquet Club have  
19 providing adult supervision at the family pool at the  
20 time that John Pluchinsky drowned?

21 MR. REESE: Objection, form.

22 A. Can you define "adult" for me, please?

23 Q. (BY MR. MARRS) Well, let's start with 18 or  
24 over.

25 A. I don't know how many, but I believe there

□00113

1 were five or six 18-year olds in the pool.

2 Q. Providing adult supervision?

3 A. Supervising.

4 Q. Five or six?

5 A. I'm not sure. I mean, that's something that  
6 four -- it could be four.

7 Q. Well, how many that were 21 or over, if any?

8 A. That were in the pool?

9 Q. No. That were there at the pool providing  
10 adult supervision for summer camp?

11 A. I'm not aware of any -- there were adults  
12 around the pool, but there -- I don't know if there  
13 were any adult employees on duty directly supervising  
14 the pool at that particular time. I'm not aware of  
15 any.

16 Q. And how many Houston Racquet Club employees  
17 were providing adult supervision to the counselors  
18 that were in the pool on July 18, 2007 with John

19 Pluchinsky?

20 A. How many adult employees were at the pool  
21 supervising the counselors?

22 Q. Yes, sir.

23 A. I'm not aware of any.

24 Q. How about who provided adult supervision for  
25 the lifeguards at the time that John Pluchinsky

□00114

1 drowned?

2 A. I believe the head lifeguard was in the  
3 pavilion area.

4 Q. He was not at the pool, was he?

5 A. He was not in the pool.

6 Q. He was not at the pool. He was not at the  
7 family pool, looking at the people in the family  
8 pool. He was off on the pavilion, wasn't he?

9 A. Yes. He was not looking at those  
10 lifeguards, you're right.

11 Q. Okay. So would you consider that adult  
12 supervision when they are not even there to  
13 supervise?

14 A. Based on your definition of that  
15 supervision, there was not adult supervision of the  
16 lifeguards at that particular time.

17 Q. And my definition is that you're there  
18 supervising at the time.

19 A. Okay.

20 Q. Not just available at a whistle or at a  
21 holler, but there supervising actively. There was  
22 not one to your knowledge, correct?

23 A. Not to my knowledge. Okay.

24 Q. Now, Guillermo Palmer, it was kind of his  
25 full-time responsibility as aquatics director to make

□00115

1 sure that the pools were safe. That was one of his  
2 responsibilities, right?

3 A. Correct.

4 Q. And he was there on the premises at the time  
5 John Pluchinsky drowned, correct?

6 A. He was at the Racquet Club, yes.

7 Q. Yet he -- as a matter of fact, he was  
8 standing at the gate and saw all those kids in the  
9 pool and saw these two 15-year olds and he turned his  
10 back and walked to get lunch. That's your  
11 understanding from the testimony, isn't it?

12 A. I don't know. I wasn't here for Guillermo's

13 testimony. I'm sorry.

14 Q. Is that your understanding?

15 A. To those specific facts, I have no  
16 understanding of that.

17 Q. Would that concern you if that was his  
18 testimony?

19 A. Not necessarily. He takes a lunch break at  
20 some point in time during the day.

21 Q. So even if it's the time of day when all  
22 those four-year old kids are in the pool, all the  
23 children are in the pool that you've heard about,  
24 maybe up to 50 people in the pool and those two  
25 15-year old lifeguards, no adult supervising the

□00116

1 lifeguards or the counselors, it's okay for Guillermo  
2 Palmer to turn his back and walk away when he knows  
3 that four other lifeguards are also at lunch, too?

4 MR. REESE: Objection, form.

5 Q. (BY MR. MARRS) Does that not concern you?

6 A. Possibly, but I don't know. I'm not -- I  
7 don't -- I don't -- possibly.

8 Q. When did you first learn those facts?

9 A. The ones you're stating right now about  
10 Guillermo standing at the gate and walking away right  
11 now.

12 Q. None of the other people in this room,  
13 Mr. Griffin, Mr. Lamkin didn't tell you that?

14 A. Not to that detail.

15 Q. Did you bother to read Mr. Palmer's  
16 deposition transcript?

17 A. No.

18 Q. Why not?

19 A. I don't know.

20 Q. Were you told to read Mr. Griffin's  
21 transcript?

22 A. I wasn't told.

23 Q. Well, was it your idea?

24 A. I thought it would be a good idea.

25 Q. Did the Houston Racquet Club have an

□00117

1 emergency action plan at the time that John  
2 Pluchinsky drowned, to your knowledge?

3 A. I'm aware -- I'm not aware of any. I assume  
4 that the lifeguards had a plan about how to react to  
5 an emergency.

6 Q. But you don't know for sure?

7 A. I do not know for sure.

8 Q. Are you aware of the fact that Texas law  
9 requires that an EAP, an emergency action plan be in  
10 place?

11 A. I'm not aware of that.

12 Q. Are you aware of the fact that the Club did  
13 not have one?

14 A. I'm not aware of that.

15 Q. Did you contact a mutual friend of the  
16 Pluchinskys at some point with respect to  
17 John Pluchinsky's death?

18 A. Yes. I believe I stated that.

19 Q. Other than Mr. Maynard and the individual  
20 you discussed before, anyone else?

21 A. Not that I'm aware of.

22 Q. When did the Houston Racquet Club's  
23 investigation that you're referring to in Exhibit 1  
24 conclude?

25 A. It's still ongoing.

□00118

1 Q. It is?

2 A. Yes.

3 Q. Has the Club, to your knowledge, revealed  
4 the substance of that investigation to the Board?

5 A. No.

6 Q. To the membership?

7 A. No.

8 Q. Isn't that something that you think that  
9 Houston Racquet Club membership would want to know?

10 A. Once it's finished.

11 Q. Well, it's not going to be finished, is it?  
12 It won't be finished as long as this lawsuit is still  
13 in place, will it?

14 MR. REESE: You don't need to answer  
15 that.

16 THE WITNESS: Okay.

17 Q. (BY MR. MARRS) What else needs to be done  
18 for the investigation to be completed?

19 MR. REESE: You don't have to answer  
20 that either. That's privileged.

21 THE WITNESS: Okay.

22 Q. (BY MR. MARRS) You don't know as the  
23 president -- former president of the Racquet Club,  
24 have any idea of when the investigation would be  
25 concluded?

□00119

1 MR. REESE: You don't have to answer  
2 that either.

3 THE WITNESS: Okay.

4 MR. MARRS: On what basis?

5 MR. REESE: Argumentative.

6 Q. (BY MR. MARRS) The investigation into John  
7 Pluchinsky's death, the internal investigation that's  
8 mentioned on Exhibit 1 is ongoing, to your knowledge?

9 A. Yes.

10 Q. Did you have any idea before your term as  
11 president ended when that investigation was to be  
12 over?

13 A. No.

14 Q. Do you now?

15 A. No.

16 Q. Do you know what is left to be done of that  
17 internal investigation for it to be concluded?

18 MR. REESE: You don't have to answer  
19 that. That's privileged.

20 Q. (BY MR. MARRS) Are you refusing to answer  
21 that question on the basis of your lawyer's advice?

22 A. Yes.

23 Q. Otherwise, you could answer it?

24 A. No.

25 Q. Have you discussed with anyone other than

□00120

1 your lawyers the substance of the investigation  
2 regarding John Pluchinsky's death?

3 A. No.

4 Q. To friends?

5 A. No.

6 Q. Other Board members?

7 A. No.

8 Q. Is there anything that's in Exhibit 1 that  
9 you testified you drafted and then was revised before  
10 it was being sent out to the membership, that to your  
11 knowledge has turned out to be untrue?

12 A. That's inaccurate -- that's accurate.

13 Q. Did you know as of the time that this  
14 newsletter went out that four of seven lifeguards on  
15 duty that day were not certified?

16 A. No. I did not know.

17 Q. If you had known that, would you have still  
18 sent the same newsletter out that's Exhibit Number 1?

19 MR. REESE: Objection, form.

20 A. I would have sent the same newsletter, I

21 believe.

22 Q. (BY MR. MARRS) You would have?

23 A. Yeah.

24 Q. And have you ever advised your membership  
25 that four of seven lifeguards weren't certified in

□00121

1 CPR and AED at the time?

2 A. No.

3 Q. Or that two of the three that performed CPR  
4 on John weren't certified?

5 A. No.

6 Q. Other than the investigation initiated by  
7 your lawyers that you testified about and that I  
8 think you're referring to on Exhibit 1, was there any  
9 other internal investigation that the Racquet Club  
10 did?

11 A. No.

12 Q. Do you think that the counselors and  
13 lifeguards should have been -- done a better job of  
14 supervising the children in the pool when John  
15 drowned?

16 MR. REESE: Objection, form.

17 A. I don't know.

18 Q. (BY MR. MARRS) Maybe, maybe not?

19 A. Possibly, possibly not.

20 Q. Do you think they should have done a better  
21 job of watching John so that he would not have  
22 drowned in the pool?

23 MR. REESE: Objection, form.

24 A. Possibly.

25 Q. (BY MR. MARRS) What do you think could have

□00122

1 been done differently that might have made some  
2 difference?

3 MR. REESE: Objection, form.

4 A. I don't know.

5 Q. (BY MR. MARRS) Do you think it might have  
6 made a difference if a specific counselor was  
7 responsible specifically to watch that specific  
8 child, John Pluchinsky?

9 MR. REESE: Objection, form.

10 A. I don't know. Possibly.

11 Q. (BY MR. MARRS) Possibly it could have made  
12 a difference, correct?

13 A. It possibly could have made a difference.

14 Q. Do you review the member feedback that is

15 given on the Racquet Club web site?

16 A. I do not unless it gets forwarded to me.

17 Q. And on occasion that occurs?

18 A. On occasion that occurs.

19 Q. And who usually forwards it to you?

20 A. Steve Griffin would.

21 Q. And were you here for Mr. Lamkin's  
22 deposition?

23 A. I was not.

24 Q. Whose depositions were you sitting in on? I  
25 know you were sitting in a couple of them, I thought.

□00123

1 A. No. Just one.

2 Q. Just one?

3 A. Mr. Griffin's.

4 Q. Okay. Do you think it would be -- if there  
5 was a rule in place on July 18th that the campers had  
6 to be within arms-length at all times of the  
7 counselors, that might have made a difference?

8 MR. REESE: Objection, form.

9 A. I don't know. Possibly.

10 Q. (BY MR. MARRS) Have you heard of that rule,  
11 the arms-length rule before?

12 A. I have not.

13 Q. If your son was to be in camp at the Racquet  
14 Club, you certainly would expect as a parent that the  
15 pool be as safe as it possibly could be, correct?

16 A. My son did tennis camp, which includes  
17 swimming. I would expect it to be safe.

18 Q. You would expect the lifeguards to be  
19 certified in CPR as well as the counselors, wouldn't  
20 you? Current certifications, right, sir?

21 A. I would expect them to have had  
22 certification, yes, and know how to perform.

23 Q. And know where the AEDs were in case your  
24 son needed to get his heart going again to get his  
25 fibrillation back into kilter, correct?

□00124

1 A. Correct.

2 Q. And certainly, you would expect someone, if  
3 there were counselors in the pool with your boy, to  
4 specifically be responsible to watch your boy, not  
5 just some whole group as a whole to be responsible,  
6 but a specific counselor to be responsible for  
7 watching your boy while he's in that pool, wouldn't  
8 you?

9 MR. REESE: Objection, form.

10 A. Not necessarily.

11 Q. (BY MR. MARRS) But you would expect them to  
12 watch him carefully the entire time he's in that pool  
13 so that something tragic couldn't happen to him,  
14 wouldn't you?

15 A. I would expect them to look after him.

16 Q. Carefully and continuously, wouldn't you?

17 A. Yes.

18 Q. And one thing you would expect is that at  
19 the end of the day that he still be alive and  
20 breathing?

21 A. Yes.

22 Q. And when the investigation is completed,  
23 does the Club, to your knowledge, intend to share the  
24 results with the membership?

25 A. I have no idea.

□00125

1 Q. Well, who's making those decisions?

2 A. I don't -- I have not been in a process like  
3 this. I don't know who makes those decisions.

4 Q. Well, have you as the president before your  
5 term expired made it clear that you expect the  
6 investigation results to be shared by membership --  
7 shared with membership or not? Or have you let  
8 others take care of that?

9 A. I don't know what's appropriate in that  
10 manner.

11 Q. Well, what do you feel is appropriate as a  
12 man who held the top post at the Racquet Club and  
13 currently is holding the assistant secretary post as  
14 well as being a Board member? Do you think it's  
15 appropriate and proper in that the Racquet Club has  
16 an obligation to its membership to reveal what  
17 happened to John Pluchinsky to the membership or not?

18 MR. REESE: Objection, form.

19 A. I don't know. If there is -- if there is an  
20 answer to what happened, possibly.

21 Q. (BY MR. MARRS) I mean, these are the very  
22 members, many of whom have young children that are  
23 playing in your pools, correct, sir?

24 A. Correct.

25 MR. REESE: Objection, form.

□00126

1 Q. (BY MR. MARRS) So if there was something or  
2 is something unsafe about those pools, you would



3 certainly expect that the membership be told about  
4 that, wouldn't you?

5 A. I would first expect anything to be  
6 corrected if there was anything to be found unsafe.  
7 If there was something found that was unsafe, we  
8 would correct it first, I hope.

9 Q. Is the family pool opened yet?

10 A. Yes.

11 Q. When did it open?

12 A. I believe it was opened on weekends in May  
13 and I believe it's open each day now after Memorial  
14 Day.

15 Q. Beginning Memorial Day?

16 A. It might have been before or right around  
17 Memorial Day weekend.

18 Q. Okay.

19 A. You had asked a question earlier and I  
20 wanted to add to my answer -- and I'm sorry -- about  
21 the marketing of the summer camp. And there is a  
22 banner or poster in front of the check-in place that  
23 asks that -- that allows for people to sign up for  
24 the summer camp, so I wanted to add that.

25 Q. Okay.

□00127

1 A. You asked for other marketing materials. I  
2 wanted to clarify that. I'm sorry.

3 Q. I appreciate that. And that's for the  
4 summer camp 2008?

5 A. Yes.

6 Q. Okay. And is that available to the guests  
7 and non-members?

8 A. That I don't know. I know it's for  
9 members. I'm not sure if it's for their guests or  
10 not.

11 Q. Is it available and open to the public, to  
12 your knowledge?

13 A. Not to my knowledge.

14 MR. REESE: We've been going for about  
15 an hour.

16 MR. MARRS: That's fine. Five  
17 minutes? Five minutes? Okay.

18 VIDEOGRAPHER: Going off the record.  
19 The time is 2:20 p.m.

20 (Brief recess.)

21 VIDEOGRAPHER: The time is 2:37 p.m.  
22 We are back on the record.

23 Q. (BY MR. MARRS) We talked about some of  
24 those things, about expired CPR cards, etcetera.  
25 Some of those factors you and I visited with

□00128

1 earlier. Do you blame the Pluchinskys for the death  
2 of their son while he was in the custody of your  
3 employees at the Racquet Club?

4 A. I don't blame anybody.

5 Q. But certainly not the parents?

6 A. No. I don't blame anybody

7 (Plaintiff's Exhibit Number 20  
8 referenced.)

9 Q. (BY MR. MARRS) Let's look at Exhibit 20.

10 Now, have you seen this document before, this e-mail  
11 from HRCBM-B to Mr. Griffin?

12 A. I have seen it before.

13 Q. Yes?

14 A. Yes.

15 Q. Okay. And it says, "Subject: Guillermo and  
16 Lifeguard Safety Practices" and was sent on or about  
17 Monday, June 11th, 2007. That was the month before  
18 John's death, correct?

19 A. Correct.

20 Q. When is the first time you became aware of  
21 the existence of this e-mail?

22 A. After the -- after the death of John  
23 Pluchinsky.

24 Q. Not before?

25 A. Not before.

□00129

1 Q. No one mentioned it to you?

2 A. No.

3 Q. Mr. Griffin didn't share it with you?

4 A. No.

5 Q. He didn't tell you about it?

6 A. No.

7 Q. Did Mr. HRCBM-B, a -- who was the secretary  
8 and Board member of the Houston Racquet Club mention  
9 these safety concerns he's talking about in this  
10 e-mail to you?

11 A. No.

12 Q. Did Mr. HRCBM-B or anyone else mention to you  
13 the existence of this e-mail --

14 A. No.

15 Q. -- from Mr. HRCBM-B to Mr. Griffin?

16 A. No.

17 Q. Okay. When is the last time you read this  
18 e-mail?

19 A. I read it this past week. I don't know  
20 which day. Actually, this is Wednesday so maybe last  
21 week.

22 Q. Do the contents with respect to what  
23 Mr. HRCBM-B witnessed out there at the Racquet Club  
24 pool concern you?

25 MR. REESE: Objection, form.

□00130

1 A. I'm sorry. I'm having a tough time. Is  
2 there a way to look at the document outside that?  
3 Any specific comments?

4 Q. (BY MR. MARRS) Excuse me?

5 A. I'm not sure what specific comments you're  
6 referring to.

7 Q. Okay. Well, when he's saying there's an  
8 extremely loose situation around the pool, it's the  
9 last place where we would want an accident to occur,  
10 that he's witnessed the lifeguards not watching  
11 people in the pool, but instead playing with each  
12 other, is that the kind of thing that would concern  
13 you?

14 A. Yes. I would want it looked into.

15 Q. Excuse me?

16 A. Yes. I would like it looked into.

17 Q. Okay. Was it looked into, to your  
18 knowledge?

19 A. To my knowledge, once I received this letter  
20 and/or was told about this letter, I was under -- I  
21 understood that was looked into immediately.

22 Q. But it was not shared with you immediately.  
23 You didn't find out about the existence of this until  
24 after John's death, correct?

25 A. Correct.

□00131

1 Q. And Mr. HRCBM-B, is he a conscientious  
2 individual, to your knowledge?

3 A. Seems to be.

4 Q. Honest, to your knowledge?

5 A. Seems to be.

6 Q. Currently in -- a Board member?

7 A. Yes.

8 Q. Along with you?

9 A. Yes.

10 Q. An e-mail from a Board member to the general

11 manager who reported to you, do you think that this  
12 should have been shared with you immediately as the  
13 president of the Racquet Club?

14 A. I don't know what HRCBM-B, his thoughts were or  
15 intentions were when he wrote this. He has my e-mail  
16 address. He has my cell phone number and his cell  
17 phone number and I have his in mine. I don't know  
18 why he didn't address it to me or copy me on it.

19 Q. But regardless of that, it was sent to and  
20 addressed specifically to the very general manager  
21 that reports to you, Mr. Stephen Griffin, right?

22 A. Correct.

23 Q. Is that the kind of thing, this e-mail from  
24 a Board member with serious safety concerns something  
25 that you believe Mr. Griffin should have shared with

□00132

1 you immediately?

2 MR. REESE: Objection, form.

3 Q. (BY MR. MARRS) Simply forward it to you so  
4 you would be aware of what this other Board member  
5 was saying?

6 A. I don't know why it wasn't forwarded to me.

7 Q. Would you expect it to be?

8 A. I don't know if there were -- I don't know  
9 if HRCBM-B believed this was an ongoing situation. I  
10 don't know if it was addressed. I know it was  
11 addressed immediately and I don't know if HRCBM-B didn't  
12 bring it to my attention, why he didn't bring it to  
13 my attention or why Steve didn't bring it to my  
14 attention.

15 Q. But my question is: Serious safety concerns  
16 raised by a Board member to your general manager who  
17 reports to you, would you expect that to immediately  
18 be reported to you?

19 A. If there was ongoing --

20 Q. By Mr. Griffin?

21 A. If there was ongoing and -- I would expect  
22 him to bring it to my attention.

23 Q. Well, Mr. HRCBM-B in his first sentence  
24 says, "I know it probably seems like I am on a  
25 bitching spree." Does that sound to you like

□00133

1 something has been ongoing and that Mr. HRCBM-B has  
2 been bitching previous to this e-mail?

3 MR. REESE: Objection to form.

4 A. It could be about any number of things. I

5 know that he's complained about a waiter not bringing  
6 his food on a timely basis.

7 Q. (BY MR. MARRS) Okay.

8 A. I don't know what the "bitching spree"  
9 consisted of.

10 Q. Okay. Well, even if something is not  
11 ongoing, if it is a serious safety concern it should  
12 be addressed immediately, correct?

13 A. I agree.

14 Q. And if it is a serious safety concern  
15 raised, especially by a Board member, you want to  
16 know about it immediately, don't you?

17 A. I would like to.

18 Q. But you weren't?

19 A. I was not.

20 Q. Was this e-mail forwarded to anybody, to  
21 your knowledge, by Mr. Griffin?

22 A. Not to my knowledge.

23 Q. Was it copied to anyone by Mr. HRCBM-B , to  
24 your knowledge?

25 A. Not to my knowledge.

□00134

1 Q. And who first made you aware of the  
2 existence of this E-mail?

3 A. I believe Mr. Griffin.

4 Q. After John's death, correct?

5 A. Correct.

6 Q. And in this e-mail, Mr. HRCBM-B 's complaining  
7 that Guillermo Palmer is not doing his job, correct?

8 A. I would have to read it. I'm sorry.

9 Q. Let me hand it to you, Exhibit 20. Take  
10 your time. Read the whole thing.

11 A. Thank you.

12 MR. MARRS: Let's go off the record.

13 VIDEOGRAPHER: 2:45 p.m. We are off  
14 the record.

15 (Brief recess.)

16 VIDEOGRAPHER: The time is 2:50 p.m.  
17 We're back on the record.

18 Q. (BY MR. MARRS) So now, have you had a  
19 chance to look at Exhibit 20, the HRCBM-B e-mail?

20 A. Right. Yes, sir. Yes.

21 Q. What was your reaction when you first read  
22 that e-mail for the first time?

23 A. HRCBM-B saw a lot of things he didn't like.

24 Q. Are they a lot of things that you as the

25 president of the Club didn't like?

□00135

1 A. I would like to see it not quite as active  
2 as he's representing here.

3 Q. You would like to see that the pools at the  
4 Racquet Club are safe for young children, wouldn't  
5 you?

6 A. I would like to see that the pools are safe  
7 for young children at the Racquet Club, yes.

8 Q. And the situation being described by  
9 Mr. HRCBM-B --

10 A. HRCBM-B .

11 Q. -- are --

12 A. Sorry.

13 Q. Thank you. Mr. HRCBM-B -- are serious safety  
14 concerns, aren't they?

15 MR. REESE: Objection, form.

16 A. They were safety concerns. We -- It looks  
17 like we had a lifeguard that wasn't being the right  
18 kind of lifeguard we want at the Houston Racquet  
19 Club.

20 Q. (BY MR. MARRS) The kind of lifeguards that  
21 you want at the Houston Racquet Club are the type  
22 that continuously watch the children while they are  
23 in the pool, correct?

24 MR. REESE: Objection, form.

25 A. Correct.

□00136

1 Q. (BY MR. MARRS) So that the children cannot  
2 go unnoticed for minutes at a time and slip under the  
3 water and drown, correct? You expect that, don't  
4 you?

5 A. I expect our lifeguards to be attentive.

6 Q. And wouldn't you agree that it could be  
7 unsafe to have children being watched by counselors  
8 or lifeguards that don't even have current  
9 certifications for AED or CPR?

10 MR. REESE: Objection, form.

11 Q. (BY MR. MARRS) Do you agree with that?

12 A. I would rather them have the current AED and  
13 CPR certifications. I would rather them be current.

14 Q. And if they're not, that could be unsafe for  
15 children in the water being watched and supervised --

16 MR. REESE: Objection, form.

17 Q. (BY MR. MARRS) -- by those that aren't  
18 currently certified, couldn't it? You know that,

19 don't you?

20 A. Not necessarily.

21 Q. Then I take it, you vehemently disagree with  
22 your general manager when he testified to that; is  
23 that correct?

24 MR. REESE: Objection, form.

25 A. Vehemently disagree? What did he -- I don't

□00137

1 know his statement.

2 Q. (BY MR. MARRS) Obviously, if your general  
3 manager testified under oath that, yes, that could be  
4 unsafe, you disagree with that, don't you?

5 A. I don't disagree with that.

6 Q. Do you agree with that?

7 A. It would be better that they were currently  
8 certified.

9 Q. When Mr. Griffith was asked -- Griffin was  
10 asked, "Question: As a matter of fact, that could be  
11 unsafe to have children being watched by counselors  
12 or lifeguards that don't even have current  
13 certifications for AED or CPR, couldn't it?"

14 And his answer was: "Yes."

15 Do you agree with his testimony?

16 A. I don't know -- I don't know what premise  
17 you're asking. I don't know if you're asking if  
18 they've never been certified and that would -- I  
19 would agree that that would be unsafe.

20 Q. My question was: Don't even have current  
21 certifications. Do you want me to ask you the  
22 question again?

23 A. Sure.

24 Q. Mr. Griffin was asked: "Question: As a  
25 matter of fact, that could be unsafe to have children

□00138

1 being watched by counselors or lifeguards that don't  
2 even have current certifications for AED or CPR,  
3 couldn't it?"

4 And he responded, "Yes."

5 Do you agree with that testimony?

6 A. If that testimony meant that they did not  
7 have current certifications that you're stating --

8 Q. Could that be unsafe?

9 A. -- for a large -- yes. For a long -- large  
10 period of time, yes.

11 Q. What's "a large period of time" that you  
12 think it's acceptable for one of your lifeguards not

13 to be certified in CPR or AED? What's acceptable to  
14 you?

15 A. I don't know.

16 Q. As a matter of fact, it's not acceptable  
17 whatsoever to have a lifeguard on the stand at one of  
18 your pools at the Racquet Club unless they have a  
19 current CPR and AED certification, correct, sir?

20 MR. REESE: Objection, form.

21 A. I don't know.

22 Q. (BY MR. MARRS) You don't know if the  
23 Racquet Club requires its lifeguards to have current  
24 certifications for CPR or AED?

25 A. I leave that up to my staff to -- the staff

□00139

1 to know the rules about that.

2 Q. Wouldn't that be a good safety practice?

3 Isn't that common sense?

4 A. I would like that.

5 Q. Yes, sir. Because if you don't have that,  
6 you're violating Texas law, aren't you?

7 A. I don't know if you're violating Texas law  
8 or not, but I would like that.

9 Q. That would be the safest thing, wouldn't it?

10 A. Yes. It would be safer.

11 Q. And the safest thing is to make sure that  
12 your lifeguards have ongoing training on the job to  
13 handle emergency situations, right, sir?

14 A. I believe that's a safer practice.

15 Q. A good safety practice?

16 A. It's a good safety practice.

17 Q. That you would expect your lifeguards to  
18 be -- to go through on an ongoing basis at your Club?

19 MR. REESE: Objection, form.

20 A. I don't have an expectation because I don't  
21 know the laws as it pertains to that.

22 Q. (BY MR. MARRS) Do you think your members  
23 expect that?

24 MR. REESE: Objection, form.

25 A. I expect our members -- I guess our members

□00140

1 would expect to have the safest scenario possible.

2 Q. (BY MR. MARRS) And your members would  
3 expect, of course, that your lifeguards be certified  
4 in CPR?

5 MR. REESE: Objection, form.

6 A. If that's part of the law, they would expect



7 that.

8 Q. (BY MR. MARRS) And -- I'm sorry, could I  
9 borrow that?

10 A. Sure. Sorry.

11 Q. Thank you.

12 Mr. HRCBM-B , after discussing the, what  
13 he calls an "extremely loose situation around the  
14 pool regarding" the lifeguards, states that, "I  
15 believe it is an accident waiting to happen," didn't  
16 he?

17 A. That's what he writes.

18 Q. And he was a Board member and the secretary  
19 of the Houston Racquet Club at that time, right?

20 A. That is correct.

21 Q. And Mr. Griffin, who it is addressed to, was  
22 a top manager at the Racquet Club, right?

23 A. That's correct.

24 Q. And was this situation discussed at the  
25 Board meeting that occurred subsequent to this e-mail

□00141

1 arriving or the date of this e-mail, to your

2 knowledge?

3 A. No.

4 Q. Why not?

5 A. I don't know.

6 Q. Had you been aware prior to June 11th, 2007  
7 of complaints about Guillermo Palmer --

8 A. No.

9 Q. -- and whether he was doing his job?

10 A. No.

11 Q. You didn't become aware of any such  
12 complaints about Guillermo Palmer prior to  
13 John Pluchinsky's death?

14 A. No.

15 Q. Mr. Griffin did not pass on any of those  
16 complaints to you before John Pluchinsky's death?

17 A. I believe this was the only one that I was  
18 aware of.

19 Q. That you're aware of as of today?

20 A. That came prior to John Pluchinsky's death

21 (Plaintiff's Exhibit Number 21  
22 referenced.)

23 Q. (BY MR. MARRS) Let me show you Exhibit  
24 Number 21, another e-mail prior to John Pluchinsky's  
25 death, that was sent on July 5th by your general

□00142

1 manager himself to Guillermo Palmer and to David  
2 Lamkin and to Joyce Healy. And have you -- when is  
3 the last time you saw this e-mail?

4 A. I believe I saw that last week.

5 Q. Well, this is at least e-mail Number 2  
6 complaining about Guillermo Palmer's performance  
7 prior to John Pluchinsky's death, isn't it? He's  
8 saying he's frustrated by the guarding staff  
9 procedures, guards don't seem to know where to be,  
10 they are not in their chairs, they are clustered.

11 MR. REESE: Objection, form.

12 Q. (BY MR. MARRS) And that the teenagers who  
13 don't perform well except under close supervision,  
14 need clearly defined expectations and guidance and  
15 he's complaining that he, Mr. Griffin, is having to  
16 do this more than he should have to, which is not at  
17 all.

18 MR. REESE: Objection, form.

19 Q. (BY MR. MARRS) Correct?

20 A. It is -- looking at it -- it's hard to see.

21 I'm sorry. I'll get there.

22 Q. I'll help you out.

23 A. Okay. Thanks. It looks like this is  
24 talking about the guards and then their activities  
25 outside of their guarding the pools; is that

□00143

1 correct? And what they are to be doing.

2 Q. He's complaining -- he's saying he's  
3 confused about the guard staffing procedures. And he  
4 went out there and witnessed himself that the guards  
5 weren't on the stands when they needed to be, that  
6 they were clustered. They didn't -- when he asked,  
7 they couldn't even tell him who was in charge. Now,  
8 this is another e-mail complaining about Guillermo  
9 Palmer not doing his job, isn't it?

10 A. I believe he's communicating with Guillermo  
11 about the -- what the guards are to be doing in and  
12 around the pool. Not in the pool, but around the  
13 pool.

14 Q. Sure. Around the pool. He's describing  
15 things that the guards should not be doing around the  
16 pool, isn't he? He's telling Guillermo Palmer he's  
17 not very happy about it and that he shouldn't have to  
18 do this at all, that it's Guillermo Palmer's job to  
19 do this, isn't he?

20 MR. REESE: Objection, form.

21 A. It is Guillermo's responsibility for the  
22 guards, yes.  
23 Q. (BY MR. MARRS) Yes, sir. And this is an  
24 e-mail where Mr. Griffin is complaining to Guillermo  
25 Palmer about Palmer needing to do his job better;

□00144

1 isn't that right?

2 MR. REESE: Objection, form.

3 A. It looks like an e-mail from Steve to  
4 Guillermo concerning managing the guards when they  
5 are off -- when they are off out of the chair, yes.

6 Q. (BY MR. MARRS) And he's expressing his  
7 dissatisfaction with what he sees out there with  
8 respect to the guarding staff, isn't he?

9 A. He did on that particular day.

10 Q. Okay. So again, this is the second time,  
11 the second e-mail that you have now seen prior to  
12 John Pluchinsky's death where displeasure,  
13 dissatisfaction with what the lifeguards are doing  
14 around the pools is being expressed, correct, sir?

15 A. This is with Mr. HRCBM-B 's and with  
16 Mr. Griffin's here, they both look like they are  
17 displeased to Guillermo about what the guards  
18 are -- the off-duty guards are doing around the  
19 pool.

20 Q. Where does it say, "I'm complaining about  
21 the guards that are not on duty"?

22 A. The four or five in the office, that's --  
23 they are not in the chair.

24 Q. He's saying they should be in the chair.  
25 They shouldn't be clustered around in your office,

□00145

1 Guillermo, isn't he? And he's telling him what the  
2 schedule should be, who should be on duty, when, one  
3 at each pool -- well, he's saying here exactly what  
4 he found, but here he's saying how it should be,  
5 isn't he?

6 A. Right.

7 Q. Okay.

8 A. Right.

9 Q. So where does it say, "I'm complaining about  
10 guards that aren't on duty at the Racquet Club"? He  
11 doesn't say that, does he?

12 A. Four or five guards "clustered together  
13 doing nothing at all."

14 Q. Right. That's what he's seeing, isn't it?

15 A. That's not talking about the guards that are  
16 in the chair.

17 Q. Well, the bottom line is: He's complaining  
18 about what he's seeing, isn't he?

19 A. He is complaining about what he saw, yes.

20 Q. Sure. And during the time of this e-mail,  
21 July, 2007, and the time of Exhibit 20, the e-mail  
22 from Mr. HRCBM-B, both of those times it was  
23 Guillermo Palmer who was responsible for the  
24 lifeguards, correct?

25 A. He's responsible for the lifeguards.

□00146

1 Q. For making sure they are trained, that their  
2 certifications are current and that they are doing  
3 their job, right?

4 A. That's correct.

5 Q. And when is the first time that you became  
6 aware of the existence of Exhibit 21, the July 5th,  
7 2007 e-mail from Mr. Griffin to Mr. Palmer, Lamkin  
8 and Ms. Healy?

9 A. I don't believe I've seen that until the  
10 time of Mr. Griffin's deposition.

11 Q. Were you surprised?

12 A. As to --

13 Q. The content of what's -- your own general  
14 manager was witnessing about lifeguard performance at  
15 your pool where young children are?

16 A. This particular e-mail didn't concern me  
17 about how the lifeguards were acting while they were  
18 in the -- while they were on duty in the pool. This  
19 one would concern me about the lifeguards' activities  
20 if there are other members around and how they work  
21 outside of the time they are on the stand.

22 Q. Well, what about lifeguards who are supposed  
23 to be on the stand, but aren't; does that concern  
24 you?

25 A. If that were the case.

□00147

1 Q. Well, it says right here: "I believe what  
2 we discussed and agreed upon is: 3 around the pools,  
3 2 of them in the high guard chairs." And here he  
4 said he saw "1 at each pool, neither ... in the high  
5 guard chairs," correct? Does that concern you?

6 MR. REESE: Objection, form.

7 Q. (BY MR. MARRS) That your lifeguards are  
8 supposed to be on the high guard chairs so they could

9 see down into the pool weren't even in the chairs?

10 MR. REESE: Objection, form.

11 A. I don't have a frame of reference of what

12 was going on that day and --

13 Q. (BY MR. MARRS) Okay.

14 A. -- I don't know even if anybody was even in

15 the pool.

16 Q. Did you ask?

17 A. I did ask. I believe it was after a rainy

18 day and I believe that there were no -- there was no

19 one in the pool.

20 Q. Well, okay. So whether or not someone was

21 in the pool, if the guards are supposed to be on the

22 stands, if the guards are supposed to know who's in

23 charge and if the guards aren't even following

24 correct procedure when they are on duty, that would

25 be a concern of yours, wouldn't it?

□00148

1 MR. REESE: Objection, form.

2 A. I would rather them -- I would rather have

3 them follow the procedure that was agreed upon by

4 Steve.

5 Q. (BY MR. MARRS) The procedures to insure

6 safety at your pools, right?

7 MR. REESE: Objection, form.

8 Q. (BY MR. MARRS) You want them to follow

9 those procedures?

10 A. I would like them to follow the safe

11 procedures of the pool.

12 Q. And when you saw the HRCBM-B e-mail and then

13 you saw the Griffin e-mail, Exhibit 21, together did

14 that concern you, all the content of those two

15 e-mails? Did it concern you that there appears to be

16 a problem with the lifeguards at our pools --

17 MR. REESE: Objection, form.

18 Q. (BY MR. MARRS) -- that people are

19 expressing? Did that concern you?

20 A. Safety issues concern me.

21 Q. Why?

22 A. Why do they concern me?

23 Q. Yes, sir. Why does safety at your pools

24 where young children are concern you?

25 A. Safety around the whole Club concerns me.

□00149

1 Q. And safety regarding pools where young

2 children are going to be at, at your Club concerns

3 you also, doesn't it?

4 A. Yes.

5 Q. Because you also already said that was an  
6 area of risk. Why does it concern you that the  
7 waters at your club be safe for young children?

8 A. Why does it concern me?

9 Q. Yeah. Why does it matter?

10 A. Because I want all my members and their  
11 guests to be safe.

12 Q. And your members expect to be safe when they  
13 are in your pools, don't they?

14 A. I would -- I would expect that, yes.

15 Q. And when it's summer camp, those parents are  
16 dropping their kids off in the complete care and  
17 control of your employees, aren't they?

18 A. That's correct.

19 Q. So, you would expect the Club to do  
20 everything within its power to keep those children  
21 safe when the parents entrust that safety to you as  
22 the Club, don't you?

23 A. Yes.

24 Q. And who else other than Ms. Healy and  
25 Mr. Lamkin and Mr. Griffin and Guillermo got this

□00150

1 e-mail on or about the 5th of July 2007, to your  
2 knowledge?

3 A. No one, to my knowledge.

4 Q. Was it shared with the Board, to your  
5 knowledge?

6 A. Not to my knowledge.

7 Q. Was it shared with the fitness committee, to  
8 your knowledge?

9 A. Not to my knowledge.

10 Q. Was the HRCBM-B e-mail shared with the fitness  
11 committee, to your knowledge?

12 A. Not to my knowledge.

13 Q. Why not? Should it have been, to your  
14 knowledge? If it involves the pools, which you  
15 already said the fitness committee is tasked to  
16 review, shouldn't these e-mails have been shared with  
17 the fitness committee?

18 A. I don't know if -- I don't know if it was an  
19 ongoing situation that HRCBM-B was talking about or just  
20 the one evening that he experienced.

21 Q. Is that the standard that if -- it has to be  
22 an ongoing safety concern for it to be shared with

23 the Board and the fitness committee?

24 A. I don't know what HRCBM-B was -- I don't know

25 what was in HRCBM-B's mind.

□00151

1 Q. As a matter of fact, you know for a fact  
2 that because it's in the bylaws -- you're familiar  
3 with the bylaws for the club you were president of,  
4 correct?

5 A. Okay.

6 Q. Correct, sir?

7 A. Correct.

8 Q. And complaints that are in writing and  
9 signed by the complaining member and submitted to the  
10 secretary or manager "who shall transmit such  
11 complaint to the Board of Directors for final  
12 decision and disposition." That is on Page Roman  
13 Numeral III-46 of your bylaws. You're familiar with  
14 that provision, aren't you?

15 A. No. I don't know what you're looking at.  
16 I'm sure you're looking at the bylaws, but I can't --  
17 I haven't memorized the bylaws.

18 Q. Well, let me show it to you. It is  
19 Exhibit 57.

20 (Plaintiff's Exhibit Number 57 marked.)

21 Q. (BY MR. MARRS) Your own bylaws of the Club  
22 that you've been with for over a decade and that you  
23 were president of and that you were a Board member of  
24 and that you're assistant secretary of and let's turn  
25 to that page. I'll try to blow it up for you. I'm

□00152

1 not as good as Matt Pletcher. I'll try.

2 And it says here, Paragraph 8,  
3 "Complaints."

4 "No complaint concerning Club  
5 operations will be investigated unless it is in  
6 writing and signed by the complaining member and  
7 submitted to the Secretary of the Club or Manager,  
8 who shall" -- I'm going to flip to the page to Roman  
9 Numeral III-47 -- "who shall transmit such complaint  
10 to the Board of Directors for final decision and  
11 disposition."

12 Now, this would mean that the complaint  
13 in writing by HRCBM-B, that is marked as  
14 Exhibit 20 that was submitted by a member, who HRCBM-B  
15 HRCBM-B was, even to the secretary who HRCBM-B was,  
16 should have been transmitted to the Board of

17 Directors, correct?

18 MR. REESE: Objection, form.

19 A. I don't know why HRCBM-B didn't bring it up to  
20 anybody else.

21 Q. (BY MR. MARRS) And it should have been  
22 under this provision; shouldn't it have been?

23 MR. REESE: Objection, form.

24 A. If he so chose so, I would assume.

25 Q. (BY MR. MARRS) Well, if he had complied --

□00153

1 if the Club had complied with this provision, then it  
2 would have been submitted to the Board, correct?

3 MR. REESE: Objection, form.

4 A. I don't know HRCBM-B 's intent behind the  
5 letter.

6 Q. (BY MR. MARRS) Well, regardless of his  
7 intent, it is in writing, the secretary had it, a  
8 manager had it. Correct?

9 A. Yes.

10 Q. Was it investigated, to your knowledge, the  
11 HRCBM-B incident?

12 A. It was -- It was addressed by the general  
13 manager, to my knowledge.

14 Q. Well, was it transmitted to the Board of  
15 Directors so that they can make a determination about  
16 that complaint?

17 A. It was not transmitted to the Board of  
18 Directors.

19 Q. And was the e-mail by Stephen Griffin of  
20 July 5th, 2007 transmitted to the Board of Directors,  
21 to your knowledge?

22 A. No.

23 Q. It was not?

24 A. Not to my knowledge.

25 Q. Now, the job of lifeguards is to guard

□00154

1 lives, correct?

2 A. The lifeguard's job is to guard the lives in  
3 the pool, yes.

4 Q. And if they're not doing their job, then  
5 that could put lives at risk, couldn't it? Isn't  
6 that common sense?

7 A. It could.

8 Q. To your knowledge, did anyone speak to  
9 Mr. HRCBM-B regarding his e-mail of June 11th, 2007?

10 A. Not to my knowledge except for the general



11 manager.

12 Q. Have you talked to HRCBM-B since you  
13 became aware of his serious safety concerns in  
14 Exhibit 20, a page-and-a-half of them, since you  
15 became aware of that document?

16 A. I've spoken to HRCBM-B , but not about the  
17 document.

18 Q. When was this?

19 A. He told me he had written it shortly after  
20 the accident and not discussed it in detail.

21 Q. You did not discuss it in detail; is that  
22 what you said?

23 A. That's correct.

24 Q. Sorry. I've got...

25 A. That's my fault.

□00155

1 Q. And what were circumstances under which  
2 Mr. HRCBM-B told you that? Did he call you? Did he  
3 e-mail you? How did he tell you that?

4 A. No. I think we were -- we were together  
5 face-to-face, but he did not call or e-mail me that.

6 Q. Where?

7 A. I don't know. I assume at the Racquet Club.

8 Q. Was he upset?

9 A. Pertaining to?

10 Q. When he was telling you that he had sent you  
11 this -- or sent this e-mail?

12 A. He was upset by the circumstances of the  
13 past week, of that past week, but nothing in  
14 particular about the letter.

15 Q. Okay. Well, what specifically did he say?

16 A. I can't remember.

17 Q. About the letter?

18 A. I can't remember. He didn't get into the  
19 details of it. He said he wrote a letter. He said  
20 he wrote a tough letter to Steve Griffin.

21 Q. And at the time he said that, were you  
22 discussing the death of John Pluchinsky?

23 A. We could have. I'm not sure.

24 Q. And do you have any idea why Mr. HRCBM-B was  
25 raising the fact, after John Pluchinsky's death

□00156

1 particularly, that he had sent this letter?

2 A. I don't know why he brought it up.

3 Q. Did he mention who else he had sent that  
4 letter to other than Mr. Griffin?

5 A. He made no mention.

6 Q. Now, so on July 18, 2007 when John drowned  
7 and shortly thereafter, you become aware of these two  
8 e-mails. Did you tell Mr. Griffin, Stephen, I want  
9 you to fire the individual that's being discussed in  
10 both of these e-mails, Guillermo Palmer. I want you  
11 to get rid of him. He's a liability to this Club and  
12 the safety of the children of my Club or not?

13 A. I did not discuss anything with Steve about  
14 firing Guillermo.

15 Q. Why not?

16 A. I don't know.

17 Q. Did you ask him what's being done about the  
18 individual who's being discussed in both of these  
19 serious complaints?

20 A. I asked about the -- I asked if these two  
21 issues -- I asked if this issue was addressed. He  
22 said yes. And what came of it and is it any better.

23 Q. And even at that time Mr. Palmer was still  
24 allowed to be the aquatics director of your Club,  
25 correct?

□00157

1 A. At that time, yes.

2 Q. And he was not reprimanded in any way  
3 relating to John Pluchinsky's death, to your  
4 knowledge, correct?

5 A. Not to my knowledge.

6 Q. And it was -- John's death was pretty much  
7 just business as usual at the Club; is that right?

8 MR. REESE: Objection, form.

9 You don't have to answer that.

10 Q. (BY MR. MARRS) Cost of doing business?

11 MR. REESE: You don't have to answer  
12 that. We're going to take a break.

13 Q. (BY MR. MARRS) Who is HRCBM-D ?

14 MR. REESE: We're taking a break.

15 VIDEOGRAPHER: 3:21 p.m. We are off  
16 the record.

17 (Brief recess.)

18 VIDEOGRAPHER: The time is 3:33 p.m.  
19 We are back on the record.

20 (Plaintiff's Exhibit Number 22  
21 referenced.)

22 Q. (BY MR. MARRS) Now, let me show you,  
23 Mr. Erck, Exhibit Number 22, an e-mail from  
24 Ms. CM #1 to Steven Griffin, the general

25 manager, cc'ing Stu. Have you recently seen that

□00158

1 exhibit?

2 A. I saw that last week.

3 Q. In preparing for your deposition?

4 A. Yes. I read it.

5 Q. And do you know who CM #1 is?

6 A. I don't know Ms. CM #1 .

7 Q. You know that she's a member of your Club?

8 A. I do.

9 Q. And who is HRCBM-D ?

10 A. He was a Board member at the time.

11 Q. And when is the first time you learned of

12 this, what I'll call the CM #1 e-mail?

13 A. I think several days following the 18th.

14 I'm not sure exactly which day.

15 Q. And who made you aware of it?

16 A. Mr. Griffin.

17 Q. At the same time he made you aware of the

18 HRCBM-B e-mail or thereabout?

19 A. Approximately, thereabouts.

20 Q. Okay. Was this e-mail transmitted to the

21 Board?

22 A. I don't know. I don't believe so, but I

23 don't know.

24 Q. Okay. And she cc's a Board member,

25 HRCBM-D, as you said?

□00159

1 A. That's correct.

2 Q. And in that e-mail she also says that she's

3 asking -- let me go down to that line -- that, "I'm

4 also sending this email to HRCBM-D and asking him

5 to please forward to the other Board members." When

6 she says HRCBM-D , is that the same as HRCBM-D that's

7 referenced in the cc: line?

8 A. I would have to imagine so, but I'm not

9 certain.

10 Q. Well, is HRCBM-D with Marcora

11 Associates, to your knowledge?

12 A. I believe that's his company. Well,

13 HRCBM-D is. I'm -- like I said, I'm assuming that she

14 meant HRCBM-D instead of Steve.

15 Q. Okay. Now was that done, to your

16 knowledge? Was this e-mail forwarded to the other

17 Board members?

18 A. I don't know if HRCBM-D forwarded it or not.

19 I do not know.

20 Q. Were you a Board member at that time?

21 A. Yes.

22 Q. Was it forwarded it to you?

23 A. I don't believe it was. I believe I got a  
24 hard copy of it.

25 Q. Okay. Did you or Mr. Griffin transmit this

□00160

1 e-mail when received to the Board at any time,  
2 whether it's when it was received or subsequent to  
3 that?

4 A. I did not.

5 Q. Did Mr. Griffith -- Mr. Griffin, to your  
6 knowledge?

7 A. I don't think so, to my knowledge. I don't  
8 know, though.

9 Q. And Ms. CM #1 describes the scene as she  
10 saw it at the family pool within minutes of John  
11 Pluchinsky drowning. Is that your understanding?

12 A. Per this e-mail, she -- It looks like it's  
13 about right.

14 Q. And does the content of this e-mail concern  
15 you what she says she saw at that pool on that day  
16 minutes before John drowned?

17 A. It concerns me. I would like to know more.

18 Q. Did you ask more?

19 A. I did not ask Ms. CM #1 what she saw  
20 because I have not spoken to her, but I asked  
21 Guillermo and David if they knew anything about this.

22 Q. What did they tell you?

23 A. They couldn't -- they couldn't tell me.  
24 However the counselors that she may be referencing  
25 here could have been the counselors for -- I'm not

□00161

1 sure what age group. I apologize -- but one of the  
2 other -- one of the other groups.

3 Q. And she's describing complaints that she  
4 made to both Guillermo and to David Palmer some five  
5 weeks before this e-mail, correct? Isn't that what  
6 she states?

7 A. I would have to read that thing again.

8 Q. Sure.

9 A. I'm sorry.

10 Q. That's okay. She states here that,  
11 (Reading) I have complained to both Guillermo and  
12 David about the problems with the lifeguards. I

13 actually had a conversation with them approximately  
14 five weeks ago one evening as one of the girl  
15 lifeguards sitting in the chair by the slide was  
16 staring into space, not even paying attention to the  
17 kids on the slide, and David asked me, "I wonder what  
18 she is looking at?" I apologized to them for being  
19 such a pain of a mom and David said, and I quote,  
20 Quote, No, Mrs. CM #1 , it's okay. Because if  
21 something were to happen, Guillermo would lose his  
22 job, and I might, and so would the lifeguards, and  
23 who knows what would happen to the Club.

24 Did I read that correctly?

25 A. It looks like you did, yes, sir.

□00162

1 Q. So she's saying she made these complaints to  
2 Guillermo Palmer and David Lambert [sic] --

3 A. Lamkin.

4 Q. -- Lamkin some five weeks before this  
5 e-mail, which would have been approximately five  
6 weeks before John's death, correct?

7 A. Some five weeks ago, yes.

8 Q. So that's correct?

9 A. This is --

10 Q. Because this e-mail was sent on the very day  
11 that John Pluchinsky drowned, July 18th, 2007?

12 A. Yes.

13 Q. So that's correct, right, sir?

14 A. Yes.

15 Q. Okay. Now, we know for a fact that although  
16 something did happen, that a child, John Pluchinsky,  
17 lost his life on July 18th, 2007, that Guillermo  
18 Palmer did not lose his job and Mr. Lamkin did not  
19 lose his job and the two lifeguards, 15 y/o LG #2  
20 and 15 y/o LG #1 did not lose their jobs as a result,  
21 correct?

22 A. I believe that's correct.

23 Q. And we know because I think you already  
24 stated that with respect to Guillermo Palmer that on  
25 the day in question, July 18, 2007, there were

□00163

1 lifeguards that didn't have current certifications,  
2 four lifeguards took lunch together during one of the  
3 busiest times of the day when a group -- a couple of  
4 groups of four-year old children were in the pool,  
5 that there was not an emergency action plan, that  
6 you've seen complaints prior to that time about

7 Guillermo Palmer, and yet he still had his job on  
8 July 18, 2007, correct?

9 A. That was a lot there. I'm sorry.

10 Q. Well, despite all of those things Guillermo  
11 Palmer still had his job at the end of the day on  
12 July 18th, 2007, correct?

13 A. Guillermo Palmer did, yes.

14 Q. Well, what does it take for your aquatics  
15 director to be fired at the Houston Racquet Club?  
16 What level of performance does it take for the  
17 aquatics director to be relieved of his duties?

18 A. I'm not sure I agree with the premise of all  
19 these statements that have been said in these e-mails  
20 from my understanding. I don't know what level. I  
21 don't know what level it takes.

22 Q. Well, if your aquatics director allows  
23 lifeguards to be on duty without current CPR  
24 certifications, allows half of the lifeguards that  
25 are on duty to go to lunch together while two groups

□00164

1 of four-year olds are in the pool being watched by  
2 two 15-year-old lifeguards, isn't that unacceptable  
3 performance of the aquatics director who is  
4 responsible for the lifeguards?

5 MR. REESE: Objection, form.

6 A. Again, there's a lot there. The four  
7 lifeguards going to lunch, they have shifts, as I  
8 understand it and breaks, so I wouldn't consider them  
9 on duty. I'm trying to recall some of the other  
10 things you said there and I apologize for not  
11 remembering them all, but...

12 Q. (BY MR. MARRS) Is that acceptable to you as  
13 the president of the Houston Racquet Club at the time  
14 for the aquatics director to allow those things to  
15 happen?

16 MR. REESE: Objection, form.

17 A. I don't understand the premise from which  
18 you're referring to as far as -- there are -- there  
19 are shifts as I understand it that lifeguards go  
20 through when they are on and off duty.

21 Q. (BY MR. MARRS) And who's responsible for  
22 making sure that those shifts are appropriate and  
23 safe?

24 A. It would be Guillermo Palmer.

25 Q. Yes, sir. And if he allows half of the

□00165

1 lifeguards on duty during summer camp to go to lunch  
2 together leaving only two 15-year-old lifeguards  
3 manning the entire pool full of children, including  
4 two groups of four-year olds, is that acceptable to  
5 you as president of your Club?

6 MR. REESE: Objection, form.

7 A. I'm not a lifeguard. I haven't taken any  
8 Red Cross and I don't understand the Red Cross. I  
9 would want a safe pool. I don't know -- I'm not -- I  
10 don't understand the number of lifeguards needed;  
11 however, it sounds like from what I understand we had  
12 the appropriate number of lifeguards per bather load.

13 Q. (BY MR. MARRS) Really? Well, were you here  
14 during the deposition of Guillermo Palmer?

15 A. I was not.

16 Q. Were you here during the deposition of  
17 Mr. Lamkin?

18 A. I was not.

19 Q. Were you here during the deposition of  
20 LG Supv ?

21 A. I was not.

22 Q. And what's the bather load?

23 A. The definition of it?

24 Q. No. What's the appropriate ratio according  
25 to the bather load at the Houston Racquet Club that

□00166

1 was in place as of July 18, 2007?

2 A. I don't remember the exact ratios.

3 Q. But you remember they were complied with?

4 A. I don't know if they were -- I don't know.

5 I would leave that up to the people that were in  
6 charge of that to confirm or deny that.

7 Q. Which was who?

8 A. It would have been LG Supv or  
9 Guillermo Palmer.

10 Q. And if they did not ensure that the  
11 appropriate ratio of supervisors or lifeguards were  
12 in the pool on the day in question, then that would  
13 have been a lapse on their part, wouldn't it?

14 MR. REESE: Objection, form.

15 A. I would like to have been on top of that to  
16 staff the appropriate number of lifeguards per bather  
17 load, yes.

18 Q. (BY MR. MARRS) Okay. Since there was a lot  
19 in my questions, as you stated, I wrote them out for  
20 you so I can ask you the questions and we'll all be

21 on the same page. So let me show you Exhibit  
22 Number 69. And it says -- and I'm sure there will be  
23 additions -- that... Okay.

24 (Plaintiff's Exhibit Number 69 marked.)

25 Q. (BY MR. MARRS) Okay. So Exhibit 69 says,  
□00167

1 "Mr. Palmer" and it says Number 1, "Lifeguards not  
2 certified..." You already testified you knew that  
3 some weren't, correct?

4 A. At that particular time of the incident.

5 Q. That's what I'm talking about. Let's put  
6 that on there. I appreciate that. "4 lifeguards at  
7 lunch during a busy part of summer camp," right? You  
8 heard that testimony, didn't you?

9 A. I -- that's correct. I believe so, yes.

10 Q. And no in-service drills for lifeguards?

11 A. Okay.

12 Q. "Prior complaints," we just saw those about  
13 Guillermo Palmer. No emergency action plan. "2  
14 15-year old lifeguards left at the pool to guard  
15 lives" and children in the pool, plus 16 four-year  
16 olds, because you know there were other groups of  
17 children in the pool, correct? I'm sorry. I've been  
18 corrected. 26 four-year olds because there were two  
19 groups.

20 MR. MARRS: Thank you.

21 Q. (BY MR. MARRS) Correct, sir?

22 MR. REESE: Objection, form.

23 A. I can't -- if you could go back up. I'm  
24 sorry. I don't know how many of the girls there  
25 were. There were 12 four-year-old boys and then I

□00168

1 don't know how many four-year-old girls there were.

2 Q. (BY MR. MARRS) Okay. Well, let's just say  
3 there were, plus two groups of four-year olds, okay,  
4 so we can be accurate.

5 A. Okay.

6 Q. Okay? Now, you've learned that those facts  
7 existed from being involved in this case, correct,  
8 sir?

9 MR. REESE: Objection, form.

10 A. I've learned about lifeguards not certified,  
11 they were -- they were certified upon hiring but  
12 not -- but several of them have their certifications  
13 lapsed. Okay.

14 Q. (BY MR. MARRS) Uh-huh.



15 A. The four lifeguards at lunch were on their  
16 break on the rotation. During the -- that 10:45 to  
17 the time you're talking about.

18 Q. How about if we say at time John died,  
19 right?

20 A. Okay.

21 Q. That will... Okay.

22 A. No in-service drills for lifeguards. Is  
23 that pertaining to the drills, the safety drills?  
24 It's my understanding that we did not have that in  
25 place.

□00169

1 Q. Yes, sir. That's required by Texas law.

2 MR. REESE: Objection, form.

3 A. Prior complaints about Guillermo Palmer.  
4 The two --

5 Q. (BY MR. MARRS) Why don't we put --

6 A. -- the two that you talked about.

7 Q. Why don't we put HRCBM-B , Griffin and  
8 Ms. CM #1 said that she complained previously?

9 A. Okay. Okay. There are complaints. I've  
10 seen that.

11 Q. Okay.

12 A. Emergency action plan. I don't know if that  
13 was -- if we had one or not.

14 Q. Okay. Well, if Guillermo Palmer  
15 testified --

16 A. I would have to rely on his testimony.

17 Q. Okay. Just take my word for that.

18 MR. REESE: Objection, form.

19 Q. (BY MR. MARRS) Okay. You know there are  
20 two 15-year old left -- lifeguards left at the pool?

21 A. There were two 15-year-old lifeguards at the  
22 pool.

23 Q. And you know that there -- well, we already  
24 corrected number 7. So, the things on Exhibit 69  
25 you've learned from this case other than whether or

□00170

1 not Number 5 is correct or not existed as of July 18,  
2 2007, correct?

3 A. As I've stated, that -- those -- I agree --  
4 I agree with your -- those issues.

5 Q. Okay. And even with all of these things in  
6 Exhibit 69 existing on July 18, 2007, still Guillermo  
7 Palmer still had his job and was not relieved of his  
8 duties after the death of John Pluchinsky, correct?

9 A. That is correct.

10 Q. As a matter of fact, he was never fired at  
11 all. He left on his own volition, correct?

12 A. That is correct.

13 Q. And Mr. Griffin still had his job and still  
14 does today as well as Mr. Lamkin, correct?

15 A. That's correct.

16 Q. And the things on Exhibit 69 are things that  
17 Mr. Palmer as aquatics director is responsible for  
18 making sure doesn't happen or that there's a safe  
19 situation at the pool, right?

20 MR. REESE: Objection, form.

21 A. Those are issues that look like that would  
22 be under his control.

23 Q. (BY MR. MARRS) And you would expect your  
24 aquatics director to perform much better than what is  
25 shown on Exhibit 69, wouldn't you?

□00171

1 MR. REESE: Objection, form.

2 A. I don't know if Guillermo asked those --  
3 asked the people that weren't certified to go get  
4 their certifications. I don't know that. That would  
5 be under the testimony of Mr. Palmer.

6 Q. (BY MR. MARRS) It was his job to make sure  
7 they were currently certified, wasn't it?

8 MR. REESE: Objection, form.

9 A. Those duties would fall under his employment  
10 domain. The four lifeguards at lunch, I don't see a  
11 problem with that. They are on their rotation.

12 Q. (BY MR. MARRS) Well, whether or not they  
13 are on their rotation, I mean, there can be a  
14 rotation that's unsafe, can't there?

15 MR. REESE: Objection, form.

16 Q. (BY MR. MARRS) Just because it's a rotation  
17 doesn't mean it's automatically safe, does it?

18 MR. REESE: Objection, form.

19 A. I don't know.

20 Q. (BY MR. MARRS) I just -- I'm just asking  
21 you because you keep saying, well, if it was on the  
22 rotation. My point is and my question is: If you  
23 have a rotation where you're leaving a pool full of  
24 children and charged and supervised by two  
25 15-year olds, is that a situation that you normally

□00172

1 would condone as president of the Club?

2 A. I don't see that as unsafe.

3 Q. Okay. So that is acceptable to you?

4 A. Yes.

5 Q. Okay. So the -- if the matters on  
6 Exhibit 69 are indeed fact, facts that existed as of  
7 the time that John Pluchinsky drowned, still to you  
8 those facts don't justify Mr. Palmer losing his job;  
9 is that correct?

10 A. I don't know. The premise behind the  
11 complaints, I would defer to the testimony that you  
12 took with Mr. Palmer and Mr. Lamkin for a complete  
13 understanding of those complaints and the resolution  
14 thereof. So I don't know if these are all items that  
15 would require termination.

16 Q. How about if all of those items existed at  
17 the same time, in your opinion, would they require  
18 termination?

19 MR. REESE: Objection, form.

20 A. I can't -- I don't -- I don't know again.

21 Q. (BY MR. MARRS) Okay. How about if a child  
22 lost his life as a result of all these facts on  
23 Exhibit 69 existing, would that be a basis for  
24 termination?

25 MR. REESE: Objection, form.

□00173

1 A. I don't know that's why -- I don't know that  
2 this is how John lost his life.

3 Q. (BY MR. MARRS) Well, if it is do you think  
4 that that would have been a reason to terminate the  
5 aquatics director?

6 MR. REESE: Objection, form.

7 A. I can't speculate.

8 Q. (BY MR. MARRS) Well, you're currently --  
9 You're still a member of the Racquet Club yourself,  
10 right?

11 A. Yes.

12 Q. And do you believe your members expect  
13 better performance of their aquatics director than  
14 what is shown on Exhibit 69 if indeed those facts are  
15 true?

16 MR. REESE: Objection, form.

17 You don't have to answer. That is so  
18 speculative in nature, I'm going to instruct him not  
19 to --

20 MR. MARRS: He's a member.

21 MR. REESE: -- answer.

22 He is a member.

23 MR. MARRS: Yeah.  
24 MR. REESE: He doesn't speak to other  
25 members.

□00174

1 MR. MARRS: He said --  
2 MR. REESE: I've allowed you to ask  
3 that three or four times in the past. He can't  
4 speculate about what other members' expectations are.  
5 MR. MARRS: Thanks.  
6 MR. REESE: You don't have to answer.  
7 THE WITNESS: Okay.  
8 MR. MARRS: Is --  
9 MR. REESE: And it's been asked and  
10 answered as well.  
11 MR. MARRS: That's the first time I've  
12 drawn up Exhibit 69. So, what about --  
13 MR. REESE: Is that the first time  
14 you've asked that question?  
15 MR. MARRS: Yeah, sure. Okay.  
16 Q. (BY MR. MARRS) So you, as a member, do you  
17 expect better than the performance shown on  
18 Exhibit 69 by your aquatics director if indeed those  
19 facts are true?  
20 A. I don't necessarily believe that all those  
21 facts are dangerous situations.  
22 Q. So they are acceptable to you?  
23 A. Some of them I would expect to be -- to have  
24 and to have in place. And some I don't see a safety  
25 issue around them.

□00175

1 Q. Which ones do you?  
2 A. The lifeguards not certified at time --  
3 Q. Yes, sir.  
4 A. -- is one that I would not be concerned with  
5 knowing that -- and I don't know the exact dates of  
6 when that -- when their certifications lapsed.  
7 Q. Okay.  
8 A. It's not my belief that they would have  
9 forgotten.  
10 Q. Okay. What else?  
11 A. Four lifeguards at lunch. I believe the  
12 lifeguards on the rotation and lifeguards were in  
13 their stands.  
14 Q. Okay. What else?  
15 A. I would like to have had in-service drills  
16 for the lifeguards, but I don't think it had anything

17 to do with this particular circumstance.

18 Q. You think it's unrelated, correct?

19 A. I think it's better for the other -- I would  
20 rather -- I would rather have those, the in-service  
21 drills for our lifeguards, though.

22 Q. Why?

23 A. I think training is good for people.

24 Q. Why? So they'll know what to do when it  
25 really happens?

□00176

1 A. It keeps -- it keeps you in the know what to  
2 do when -- if something happens.

3 Q. And that's important from a safety  
4 perspective when an emergency does happen, isn't it?

5 A. I agree.

6 Q. So go ahead. Are you concerned about  
7 Number 4?

8 A. I'm concerned about Number 4, but I would  
9 refer to the testimony from Guillermo Palmer, David  
10 Lamkin and Steve Griffin about those issues.

11 Q. Number 5?

12 A. I would like to have an emergency action  
13 plan.

14 Q. Number 6?

15 A. I am not uncomfortable with two -- those two  
16 15-year-old lifeguards at the -- at the stand.

17 Q. Which of those two 15-year-old lifeguards  
18 performed CPR on John?

19 A. I don't -- I don't think either of them did.

20 Q. Neither of them, correct?

21 A. Correct.

22 Q. And how about Number 7?

23 A. I would expect that the proper ratio of  
24 lifeguards to bathers to be -- to be good.

25 (Plaintiff's Exhibit Number 25

□00177

1 referenced.)

2 Q. (BY MR. MARRS) Okay. Let me show you  
3 Exhibit Number 25. Have you seen this document  
4 recently?

5 A. I believe I have, yes.

6 Q. When?

7 A. Last week.

8 Q. And this e-mail was sent after John's death,  
9 right, on July 25th, 2007, right, sir?

10 A. Yes.

11 Q. And it was sent by CM #5 . Who is  
12 she?  
13 A. She's a member of the Club.  
14 Q. And she sent it not only through the  
15 feedback on the web site, but also directly to you,  
16 didn't she?  
17 A. Actually, that is not my e-mail. That was  
18 an old e-mail, so I got it later at a later date.  
19 Q. When did you get it?  
20 A. Sometime after that. I think --  
21 Q. Okay.  
22 A. -- Mr. Griffin had printed it out for me.  
23 Q. And she's talking about that she is not  
24 confident in the lifeguards, and that she's "observed  
25 them talking, eating, drinking, flirting,

□00178

1 day-dreaming," texting and that she believes that  
2 there's "a lack of leadership," correct?

3 A. That's what she says.

4 Q. Do you have any reason to believe that she  
5 did not observe those things?

6 MR. REESE: Objection, form.

7 A. I don't know what she's observed and when  
8 she observed it.

9 Q. (BY MR. MARRS) Well, you --

10 A. I don't have any reason that she didn't  
11 either.

12 Q. And do you consider those to be safety  
13 concerns that she is voicing about the lifeguards?

14 MR. REESE: Objection, form.

15 A. If they were on the stand doing that, I  
16 would have concerns, yes.

17 Q. (BY MR. MARRS) And she says that the  
18 lifeguards have "a tough job of constantly scanning  
19 every inch of the pool for anything out of the  
20 ordinary."

21 Do you agree that that's what  
22 lifeguards at your pool should do?

23 A. Yes.

24 Q. Did you talk to CM #5 about this  
25 e-mail that she tried to send to you and that you

□00179

1 learned of later?

2 A. I did not talk to Mindy.

3 Q. Who did, to your knowledge?

4 A. I'm not -- I don't know who did.

5 Q. Obviously, she was concerned enough to  
6 actually write the president of the Club, correct?

7 MR. REESE: Objection, form.

8 A. She made the attempt to write me, yes.

9 (Plaintiff's Exhibit Number 60 marked.)

10 Q. (BY MR. MARRS) And let me show you  
11 Exhibit 60. This is an e-mail from Mr. Griffin on  
12 July 25th, 2007 to you and also to -- who is this  
13 individual that's referenced here, AktoHo@aol.com?

14 A. HRCBM-Z.

15 Q. Okay. And who is she?

16 A. She was the past president last year.

17 Q. Okay. And the subject is HRCBM-R. Who  
18 is he?

19 A. He's a member.

20 Q. Is he a -- Has he ever been a Board member?

21 A. No.

22 Q. And it says, (Reading) HRCBM-Z, the member who  
23 wanted to attend the board meeting is HRCBM-Y.  
24 HRCBM-R is a concerned, involved member with  
25 whom I am well acquainted. He called me two times

□00180

1 last week, once about putting the flag at half-mast  
2 (done), and once to call for a membership meeting as  
3 an open forum to discuss the drowning. I did not  
4 call him back about this suggestion; did not want to  
5 get dragged into a pointless discussion.

6 What did you take that to mean with  
7 respect to why Mr. Griffin did not want to have that  
8 open forum that Mr. HRCBM-R suggested?

9 MR. REESE: Objection, form.

10 A. There was an investigation ongoing and we  
11 didn't -- we don't have -- we didn't have any  
12 answers.

13 Q. (BY MR. MARRS) And now, almost a year  
14 later, has the Racquet Club had an open forum meeting  
15 with its membership to discuss the drowning?

16 A. We have an annual membership meeting the  
17 second Tuesday of October where members are invited  
18 to come to discuss anything they so choose.

19 Q. Did you have that in October of 2007?

20 A. Yes, we did.

21 Q. Did you or anyone else discuss the death of  
22 John Pluchinsky at that meeting?

23 A. We brought it to the people that were  
24 there. We acknowledged and we sent our prayers and

25 wishes to the Pluchinsky family concerning that

□00181

1 issue. And there was conversation about -- not --  
2 there was no conversation about the incident. And  
3 specifically I think there was conversation about the  
4 pool, but I don't know specifically. And I don't  
5 remember specifically exactly what was discussed.

6 Q. Well, many other things and topics were  
7 discussed at that meeting, correct?

8 A. Several topics were.

9 Q. I mean, that was not a meeting to  
10 specifically discuss the incident on July 18th,  
11 right?

12 A. No, it was not.

13 Q. Did the Houston Racquet Club at any time  
14 have an open forum specifically discuss -- to discuss  
15 the incident on July 18th?

16 A. No, we did not.

17 Q. Have you had any discussions with Mr. HRCBM-R  
18 about this issue?

19 A. Nothing specifically about this issue, no.

20 Q. Or about John's death?

21 A. No.

22 Q. Has Mr. Griffin, to your knowledge?

23 A. I don't know.

24 Q. Not to your knowledge?

25 A. Not to my knowledge.

□00182

1 Q. Has HRCBM-Z, to your knowledge?

2 A. Not to my knowledge.

3 (Plaintiff's Exhibit Number 26  
4 referenced.)

5 Q. (BY MR. MARRS) And Exhibit Number 26 is an  
6 e-mail from CM #2. Do you know who she is?

7 A. I don't know her.

8 Q. Okay. This is an e-mail from CM #2  
9 to Mr. Erck sent to the memberfeedback web link on  
10 July 25th. She addresses it to you, Mr. Erck. Did  
11 you receive this e-mail on or about July 25th?

12 A. I assume I did, yes.

13 Q. When have you last reviewed this e-mail?

14 A. Oh, I think it's probably back in the fall  
15 sometime.

16 Q. Which would have been what month  
17 approximately?

18 A. It would have been August.



19 Q. Of 2007?

20 A. Yes.

21 Q. And she states here that, "On two occasions

22 I have advised the head guard that his lifeguards

23 were not watching the children in the pool," correct?

24 A. That's what it says.

25 Q. Okay. And again, this is someone that is

□00183

1 complaining about lifeguards not doing their job,

2 right?

3 A. I apologize. I'm going to have to reread

4 it.

5 Q. That's okay. Children in the pool when

6 they're being lifeguarded, it's the lifeguard's job

7 to watch the children in the pool, right?

8 A. I agree with that statement.

9 Q. And here again, this is a complaint by

10 someone that lifeguards aren't doing their job,

11 right?

12 A. She is going to -- she is complaining about

13 the lifeguards.

14 Q. She's saying that she has complained on two

15 occasions, right?

16 A. That's that she says.

17 Q. And she also says that, (Reading) I was not

18 the least bit surprised that this one occurred. Let

19 me read it from the top on that sentence. (Reading)

20 Accidents do happen, however I was not the least bit

21 surprised that this one occurred.

22 Did it concern you that you had a

23 member saying that based on what she knows about the

24 lifeguarding at the pool, she was not surprised that

25 the accident on July 18th, 2007 occurred?

□00184

1 A. It concerns me that's what she was feeling

2 at that time. It was a very emotional time.

3 Q. But she was not the only member that told

4 the Racquet Club that they weren't surprised that

5 John Pluchinsky drowned at your pool, is she?

6 MR. REESE: Objection, form.

7 Q. (BY MR. MARRS) Are you aware of others?

8 A. No. I'm not aware of others, I don't

9 believe.

10 Q. Okay. Were you out at the family pool on

11 July 18 --

12 A. I was not.

13 Q. -- before this incident?

14 A. I was not.

15 Q. Were you in town?

16 A. I was not.

17 Q. Where were you?

18 A. I'd driven my family to Colorado for  
19 vacation.

20 Q. Certainly, you had been out to the family  
21 pool prior to July 18th before, hadn't you?

22 A. I have.

23 Q. And had you ever, prior to July 18, 2007,  
24 seen anything with respect to safety or lifeguards at  
25 the family pool that concerned you?

□00185

1 A. No.

2 Q. Had you ever mentioned to any of the  
3 managers or lifeguards or aquatics director prior to  
4 July 18th that you had concerns with respect to  
5 lifeguards or safety at the family pool or lap pool?

6 A. No.

7 Q. How many times had you been out to the  
8 family pool prior to July 18, 2007?

9 A. I can't recall. Maybe we'll come out a few  
10 times a week, I would assume.

11 Q. I mean, a handful of times or more?  
12 Approximately?

13 A. A couple dozen times.

14 Q. Okay. Did you say that one of your children  
15 had been in summer camp at the Racquet Club?

16 A. Tennis camp.

17 Q. Tennis camp? How about summer camp?

18 A. No.

19 (Plaintiff's Exhibit Number 27  
20 referenced.)

21 Q. (BY MR. MARRS) Let me show you Exhibit  
22 Number 27. This is an e-mail sent from M #5  
23 to Mr. Griffin and yourself where she is saying that  
24 as a member she's "beyond disappointment" and she's  
25 complaining and saying that, "It is reprehensible

□00186

1 that members endure the constant blast e-mails  
2 promoting the revenue generating events at the Club  
3 yet have to find out about the tragic death of a  
4 child on our premises on the 10:00" -- o'clock --  
5 "news."

6 Did you receive that on or about the

7 time in July 2007, the 20th?

8 A. I believe I did.

9 Q. Did you communicate with Ms. M #5 about  
10 this?

11 A. I did not. I believe that was the same day  
12 we sent out a -- the notice to the membership.

13 Q. And in that notice did you tell the  
14 membership that the Racquet Club was operating an  
15 illegal day camp as the CPS had found?

16 MR. REESE: Objection, form.

17 A. They had not found us -- they were still --  
18 they were doing their investigation.

19 Q. (BY MR. MARRS) Have you at any time  
20 informed the membership of a Club that the CPS had  
21 found you were operating an illegal day camp?

22 A. No.

23 Q. Or that the CPS had cited the Club for  
24 causing John Pluchinsky's death?

25 A. No.

□00187

1 Q. Why not?

2 A. It was already in the news and in the paper.

3 Q. And because of that you saw no reason to  
4 send a blast e-mail to the membership to let them  
5 know?

6 A. No. But the investigation on that issue is  
7 still pending.

8 Q. But you still have members that are putting  
9 their young children in your pools on a weekly basis,  
10 correct?

11 A. We do.

12 Q. And you have that going on on a weekly  
13 basis, whether or not the investigation is still  
14 going on, right?

15 A. We do.

16 (Plaintiff's Exhibit Number 28  
17 referenced.)

18 Q. (BY MR. MARRS) And on Exhibit 28 when  
19 Mr. -- tell the jury who HRCBM-E-- am I saying it right,  
20 HRCBM-E, is?

21 A. HRCBM-E.

22 Q. HRCBM-E. Who is he?

23 A. I'm sorry. You want me to tell you? He was  
24 a --

25 Q. Sure.

□00188

1 A. -- a -- he's a member. He was a Board  
2 member several years ago.

3 Q. Okay. Until when approximately?

4 A. Three years ago.

5 Q. And has he ever held any positions at the  
6 Racquet Club?

7 A. He was, I believe, secretary three years  
8 ago.

9 Q. Okay. He's a man who still stays involved  
10 in the goings on at the Racquet Club. Is that safe  
11 to say?

12 A. He plays tennis at the Club. He was writing  
13 a article that would talk about a specific employee.

14 Q. Okay. Being who?

15 A. It could be anybody.

16 Q. Well, was it CD that he's  
17 referring to in this e-mail?

18 A. I don't believe it was.

19 Q. Okay. Well, let's look at the e-mail that  
20 HRCBM-E sent on July 22nd. And he addressed it to you  
21 and he says, "We talked about targeting CD and the  
22 pool activity. In light of current events, do you  
23 think this is a good idea?" And he goes on to say,  
24 "I do. By September things will have" -- all --  
25 excuse me, "By September things will have died down/

□00189

1 back to normal. And she had nothing to do with the  
2 tragedy. But it's your call. Sage advise, please.  
3 HRCBM-E."

4 In your view, have things died down and  
5 gotten back to normal at the Houston Racquet Club?

6 A. No.

7 Q. Do you think things are back to normal with  
8 the Pluchinskys?

9 A. No.

10 Q. Has this piece on CD been done?

11 A. No.

12 Q. Or on any other employee been done as  
13 drafted by Mr. HRCBM-E ?

14 A. Not to my knowledge.

15 Q. Do you think things ever will be back to  
16 normal for the Pluchinsky family?

17 A. I don't know.

18 Q. And --

19 MR. REESE: Let's take a break if we're  
20 going on to another exhibit.

21 MR. MARRS: Okay. Let's take a  
22 five-minute break.  
23 VIDEOGRAPHER: The time is 4:26 p.m.  
24 We are off the record.  
25 (Brief recess.)

□00190

1 VIDEOGRAPHER: The time is 4:46 p.m.  
2 We are back on the record.  
3 (Plaintiff's Exhibit Number 29  
4 referenced.)  
5 Q. (BY MR. MARRS) Mr. Erck, let me show you  
6 what's been marked as Exhibit 29. This is the Around  
7 the Club August newsletter, the column that I believe  
8 you write; is that correct?  
9 A. That's correct.  
10 Q. And on Exhibit 29 you mention "the loss of  
11 John Pluchinsky" and the "Friends and Family Book"  
12 that I think you referred to before. You say, "This  
13 will be delivered to the family in mid-August."  
14 You're telling your membership that, correct?  
15 A. Yes. That's what I state in there.  
16 Q. Why was it not delivered in August or  
17 September or October or November?  
18 A. We had -- in around mid-August we decided to  
19 take some pages to the fitness center. Not everybody  
20 enters the Club via the lobby area, which was where  
21 it was located. We gave the membership past the  
22 Labor Day week at some point in time, I'm not exactly  
23 sure, it might have been mid-September sometime, to  
24 give them a full opportunity to say something. And  
25 it was not delivered based on counsel. Brown Sims

□00191

1 was the counsel at that time.  
2 Q. And it was not delivered to the Pluchinskys  
3 until I specifically requested it in a deposition.  
4 Is that your understanding?  
5 A. That is my understanding.  
6 Q. And you go onto say here that, "I would  
7 still feel today the same as I expressed in my very  
8 first article. I could not imagine a better and  
9 safer place to raise my 5-year-old boy than with you  
10 at the Houston Racquet Club," correct, sir?  
11 A. That's what I say.  
12 Q. Do you think that was an appropriate  
13 statement to make with respect to another family  
14 whose four-year-old boy just died in your pool?

15 A. My intent was not to be inappropriate to the  
16 Pluchinskys. My intent was to express my gratitude  
17 to our membership.

18 Q. As of that time when you wrote this  
19 newsletter, did you know about the situation that  
20 existed on July 18, 2007 as depicted on Exhibit 69?  
21 Were you aware of those facts?

22 A. I think the complaints -- I think I had seen  
23 the two e-mails by that point in time. If you could,  
24 scroll down. I'm sorry. The two 15-year-old  
25 lifeguards. I knew they were 15-years old. And I

□00192

1 knew that there were two groups of -- two four-year  
2 old groups in the pool.

3 Q. And did you still believe that, even knowing  
4 all that, that at least as conveyed to your entire  
5 membership you believe the Racquet Club was one of  
6 the safest places to raise young children?

7 A. I believe it is a safe place.

8 Q. And knowing everything you know today, you  
9 would still write the same message to your  
10 membership; is that correct?

11 A. I have no way to compare the safe -- the  
12 "safest," as you've put it. I have no way to  
13 compare it to any other club, but I would say the  
14 same statement, that I couldn't imagine a better  
15 place to raise my son.

16 Q. And you would still say that even though the  
17 CPS cited the Club for causing John Pluchinsky's  
18 death, correct?

19 A. CPS didn't cite the lifeguards.

20 Q. No. They cited your Club for causing  
21 John Pluchinsky's death, didn't they?

22 MR. REESE: Objection, form.

23 A. It's still under investigation.

24 Q. (BY MR. MARRS) The CPS cited your Club for  
25 causing John Pluchinsky's death, didn't they?

□00193

1 A. Yes, they did.

2 Q. And even knowing that, you still would write  
3 the same message to your membership today, correct?

4 A. I would.

5 Q. And this quote here, "My son, my precious  
6 child" quote, were you at the funeral of  
7 John Pluchinsky?

8 A. I did go.

9 Q. And did you hear the pastor quote -- state  
10 the same quote that you put in this newsletter?

11 A. I don't remember what he said.

12 Q. Is that where you got that quote from or is  
13 that where you came up with the idea of putting that  
14 quote in that newsletter from John Pluchinsky's  
15 funeral?

16 A. No.

17 Q. Where did you come up with it from?

18 A. My heart.

19 Q. The quote?

20 A. No. From "Footprints."

21 Q. Which is what?

22 A. A prayer.

23 Q. Where did you look to find it?

24 A. I have it.

25 Q. Did you know or would you still, still

□00194

1 knowing today that the CPS also cited the Club for  
2 running an illegal day care facility, you would still  
3 make the same statement, correct?

4 A. Yes.

5 (Plaintiff's Exhibit Number 30  
6 referenced.)

7 Q. (BY MR. MARRS) And on Exhibit 30, this is  
8 also a newsletter that you wrote to the membership,  
9 correct?

10 A. Yes. It looks like it, so, yes. Is there a  
11 date on that or a month?

12 Q. No.

13 A. Okay. Sorry.

14 Q. There's not. I don't see one.

15 And it mentions here in this newsletter  
16 that, "our children's programs are safe and properly  
17 administered" and you go on to say, "We have hired an  
18 Aquatics expert to evaluate and make recommendations  
19 on our pool policies and procedures." And that the  
20 Racquet Club has also "hired a pool safety  
21 consultant," correct?

22 A. That's what I write.

23 Q. Did the Houston Racquet Club hire an  
24 aquatics expert to do that as of the time you wrote  
25 that sentence?

□00195

1 A. The firm of Brown Sims was going to hire  
2 someone to come look at the pool.

3 Q. Kim Tyson?

4 A. I don't know the name.

5 Q. Well, do you know who Kim Tyson of Tyson &  
6 Associates is?

7 A. I do not.

8 Q. Ever heard of them?

9 A. No.

10 Q. And -- go on, I think I interrupted you. I  
11 apologize.

12 A. No. I was answering your question.

13 Q. Okay. And did they?

14 A. I assume so. I'm --

15 Q. Well, I mean as president of the Club, did  
16 an aquatics expert come in and evaluate and make  
17 recommendations on your pool policies and procedures?

18 A. I was not there if they did.

19 Q. Okay. Well, then let me ask you: Did the  
20 Racquet Club hire an aquatics expert to evaluate and  
21 make recommendations on your pool policies and  
22 procedures as you state in this newsletter?

23 A. As told by me by Brown Sims, counsel at the  
24 time, that they were going to hire somebody to do  
25 that.

□00196

1 Q. Did they tell you that they had hired  
2 somebody?

3 A. No. I --

4 Q. Okay. Then this is really not accurate that  
5 you "have hired an Aquatics expert" to do the things  
6 stated in this newsletter, is it?

7 A. We may have -- I may have misspoken there.

8 Q. To this day, do you know one way or the  
9 other whether or not the Racquet Club has hired an  
10 aquatics expert to come in and evaluate your policies  
11 and procedures?

12 A. Yes, we have.

13 Q. Who?

14 A. NASCO.

15 Q. Okay. But not as of the time of this  
16 newsletter, correct?

17 A. Correct.

18 Q. To your knowledge?

19 A. To my knowledge.

20 Q. And you say, "We have hired a pool safety  
21 consultant that is in the process of evaluating our  
22 facilities." Had the Racquet Club hired a pool



23 safety consultant as of the time you wrote this to  
24 your membership?

25 A. I thought we had had with -- an agreement

□00197

1 with Ellis, but it did not come through, so NASCO was  
2 then hired.

3 Q. Okay. You never really hired Ellis,  
4 correct?

5 A. Correct.

6 Q. Did you want to hire Ellis, but they refused  
7 to contract with you?

8 A. No, not to my knowledge.

9 Q. Okay. So as of the time of this newsletter  
10 the Racquet Club had not hired a pool safety  
11 consultant, correct?

12 A. I believe that's correct.

13 Q. And you said we are in the process of  
14 getting licensing exemptions for all our programs.  
15 Has the Racquet Club gotten license exemptions for  
16 all your programs?

17 A. Yes, I believe we have.

18 Q. And did Michael Wall, was he tasked to do  
19 that?

20 MR. REESE: Objection.

21 You don't need to answer that. He was  
22 with Gardere Wynne, within the investigative  
23 privilege, attorney/client privilege.

24 Q. (BY MR. MARRS) But that has been done. Is  
25 that your understanding?

□00198

1 A. I know Steve Griffin worked on it and  
2 received the exemptions.

3 Q. Okay. "We have hired a certified adult  
4 lifeguard." Who is the certified adult lifeguard  
5 that the Houston Racquet Club had hired as of the  
6 time you wrote this to your membership?

7 A. I don't remember the name of the person, but  
8 I believe it was a gentleman or a young man that  
9 would come in the mornings to allow the morning  
10 swimmers to swim.

11 Q. And was a contract signed with the Racquet  
12 Club by that adult lifeguard?

13 A. I guess so. I don't know.

14 Q. How old was he?

15 A. I don't know.

16 Q. What's his name?

17 A. I don't know.  
18 Q. Does he still work there?  
19 A. I don't believe he does, no.  
20 Q. How long did he lifeguard at the Houston  
21 Racquet Club in the morning?  
22 A. I don't know how long he did that.  
23 Q. Did he ever actually -- had he ever been on  
24 duty at the Houston Racquet Club, to your knowledge?  
25 A. I believe I've seen him.

□00199

1 Q. And who would know his name and whether  
2 there's a contract with him and his age?  
3 A. I would believe Steve Griffin or Guillermo  
4 Palmer or maybe David Lamkin.  
5 Q. And why does he no longer lifeguard at the  
6 Houston Racquet Club?  
7 A. I don't know.  
8 Q. Do you know that he does not still lifeguard  
9 at the Houston Racquet Club?  
10 A. I don't know for a fact, but I do know we  
11 have a lifeguard company that now lifeguards at the  
12 pool.  
13 Q. Okay. And why, to your knowledge, did the  
14 Houston Racquet Club not retain an aquatics expert or  
15 a pool safety consultant or an adult lifeguard to  
16 work in the mornings prior to John Pluchinsky's  
17 death?  
18 A. I don't know. I believe we swam -- when  
19 the -- when the pool wasn't open for regular use, we  
20 had a swim at your own risk with the appropriate  
21 signages.  
22 Q. Well, whether you did or not, my question  
23 was whether -- why you did not have an aquatics  
24 expert or safety consultant prior to John  
25 Pluchinsky's death?

□00200

1 A. I don't know.  
2 Q. And do you know of any reason why Guillermo  
3 Palmer would not be rehired if he was interested in  
4 coming back to the Houston Racquet Club?  
5 A. I don't know.  
6 Q. Would you have any objection to that?  
7 A. I would have no say in that.  
8 Q. Well, you could voice your opinion as a  
9 Board member though, couldn't you?  
10 A. I could voice my opinion as a member.

11 Q. Sure.

12 A. I can't speculate on the future of what --  
13 how that process would go and if he would be rehired.  
14 I can't speculate that. That would be left up to  
15 Mr. Griffin.

16 Q. Okay. But as we sit here today, you would  
17 have no objection to Mr. Guillermo Palmer being  
18 rehired by the Houston Racquet Club yourself; is that  
19 true?

20 MR. REESE: Objection, form.

21 A. I don't know. I don't think so. I don't  
22 know.

23 (Plaintiff's Exhibit Number 63 marked.)

24 Q. (BY MR. MARRS) And let me show you  
25 Exhibit 63. This is a -- an e-mail from Mr. Griffin

□00201

1 to you. And let's just take it from bottom, the  
2 first e-mail here. And this is from Steve to you and  
3 it says, "Ted, I picked up a message from Melissa at  
4 Ellis." I think that's who you just referred to,  
5 Ellis & Associates, right?

6 A. That's the group that we were speaking to, I  
7 think.

8 Q. Okay. The pool people? And it says, "It  
9 seems that they are moving ALL of their clients to a  
10 fully guarded requirement, no exceptions."

11 A. Okay.

12 Q. Then he talks about he has an appointment  
13 with another pool company and he says, "Long story  
14 short, no quick solution to this."

15 Now, to your knowledge, what "quick  
16 solution" was he looking at obtaining?

17 A. Looking for a fully guarded full -- staffing  
18 a fully guarded pool --

19 Q. Uh-huh.

20 A. -- during hours of operation.

21 Q. Yes, sir.

22 A. That we have had in the past was, I believe,  
23 our goal with --

24 Q. With -- uh-huh. Go ahead.

25 A. With -- I believe -- I believe we were

□00202

1 trying to hire a company like Ellis or NASCO in  
2 conjunction with that. That was our -- I think that  
3 was the intent. That was the purpose --

4 Q. Okay.

5 A. -- of what was trying to be done here.  
6 Q. And you respond though that, "I" -- one of  
7 the things you say -- "I do not see a fully guarded  
8 pool 365 days a year as an option." And why didn't  
9 you?

10 A. One, I don't think we don't -- we don't need  
11 a fully guarded -- we don't need to have the pool  
12 open 365 days a year.

13 Q. Why not?

14 A. The membership request, I haven't -- I don't  
15 know if the membership needed to have that pool open  
16 all year long.

17 Q. But certainly when it is open, it should be  
18 fully guarded, correct?

19 A. That's the policy we've taken now, yes. Not  
20 every pool in -- is like that.

21 Q. And Stephen responds that, "A fully-guarded  
22 and... managed pool would be very expensive, and my  
23 gut tells me that they may not be able to provide a  
24 full complement of guards year-round in any case,"  
25 correct?

□00203

1 A. It's what it reads.

2 Q. Did you at any time ask for a special  
3 assessment of the membership or for funds to be  
4 raised or allocated towards the hiring of more  
5 lifeguards for your pools?

6 MR. REESE: Objection, form.

7 A. During my remaining days as the president, I  
8 did not ask the membership for an assessment.

9 Q. (BY MR. MARRS) Or to allocate funds for the  
10 hiring of lifeguards?

11 A. Well, that can be done within the operating  
12 budget.

13 Q. Did you ever specifically request that funds  
14 be used to hire more lifeguards than existed on  
15 July 18th, 2007?

16 A. We were working on that decision, whether we  
17 were going to go 365 days a year with a fully-guarded  
18 pool or not.

19 Q. Okay.

20 A. I did not demand funds to do that  
21 immediately.

22 Q. Did you at any time demand that more guards  
23 be hired than you had on July 18, 2007 for your  
24 pools?

25 A. Did I demand back -- I'm sorry. Did I

□00204

1 demand to hire more lifeguards?

2 Q. Yes, sir.

3 A. I personally did not.

4 Q. Did you as president?

5 A. I did not as president.

6 Q. Okay. As president you had the authority to  
7 do that, correct?

8 A. I assume I would have with consultation with  
9 the rest -- with some of the other Board members, I  
10 would assume I would have.

11 Q. Well, you don't have to assume it. You can  
12 look at your bylaws, which say that the president has  
13 the authority for all affairs of the Club as well as  
14 to enter into obligations and contracts for the  
15 Racquet Club, doesn't it?

16 A. It says that the -- I don't know exactly  
17 what it says, but to generally be in charge of the  
18 affairs of the Club.

19 Q. Sure. So you could do that if you so chose,  
20 correct?

21 A. If I so chose, I guess I could.

22 Q. But at no time as president did you,  
23 correct?

24 A. I did not.

25 Q. And on Exhibit 66 --

□00205

1 (Plaintiff's Exhibit Number 66 marked.)

2 Q. (BY MR. MARRS) I'm going to blow that up  
3 for you.

4 This is an E-mail from Stephen Griffin  
5 to you along with HRCBM-A, Mr. HRCBM-H and  
6 Ms. HRCBM-Z. And he's saying in the second  
7 paragraph, "I'm not a big fan of outsourced services  
8 either, especially one that involves direct member  
9 contact such as lifeguarding. But, I'm between a  
10 rock and a hard place; the requirements of our  
11 insurance company and the expectations of the  
12 membership."

13 He goes on later to say, (Reading) The  
14 other problem is the need to guard it to the level  
15 expected by Jeff Ellis & Associates, the risk  
16 management company identified and requested by our  
17 insurance carrier.

18 Now, is it your understanding that

19 Ellis refused to be your lifeguarding company because  
20 the Racquet Club refused to put in place the measures  
21 that Jeff Ellis required in order for it to sign a  
22 contract with you?

23 MR. REESE: Objection, form.

24 Q. (BY MR. MARRS) Or do you not know?

25 A. I don't know, but that does not sound

□00206

1 accurate.

2 Q. Okay. Were you in talks with Jeff Ellis or  
3 did someone else handle that?

4 A. Steve Griffin handled that.

5 Q. And it says here, "Their inspectors show up  
6 unannounced several times per year (per our contract  
7 with them) and videotape the guards without their  
8 knowledge. This can either" be "a very favorable,  
9 permanent record of performance (handy in a lawsuit),  
10 or it could have the opposite effect."

11 What did you understand that to mean  
12 when he made that statement?

13 MR. REESE: Objection, form.

14 A. I don't know what was meant by that.

15 Q. (BY MR. MARRS) I'm not asking you what  
16 Mr. Griffin meant. I'm asking you: When you read  
17 that statement, what did you take it to mean?

18 A. I can't remember exactly what I was feeling  
19 on September 29th.

20 Q. How do you read it now?

21 A. I read -- I read that as if there's a  
22 company that could come out and do these types of  
23 videotapes or whatever, that a company can look at it  
24 either favorably or they may not like somebody  
25 looking over their shoulder of a third-party company

□00207

1 like that.

2 Q. Or?

3 A. And they may not want to work with the  
4 Racquet Club in that capacity.

5 Q. Well, what he says is, "This can either"  
6 be "a very favorable, permanent record of performance  
7 (handy in a lawsuit) or it" -- he's referring to  
8 videotapes -- "could have the opposite effect." He's  
9 saying, isn't he, that well, if you have a video  
10 record of how your lifeguards are performing, that  
11 could be good or it could be bad, right?

12 MR. REESE: Objection, form.

13 A. That's not how I read it.  
14 Q. (BY MR. MARRS) Okay. That's not how you  
15 read it? How did you read it?  
16 A. As I mentioned, I believe that some  
17 companies would not -- would not work in a situation  
18 where they had a third-party group evaluating their  
19 performances and some might be okay with it.  
20 Q. Would the Racquet Club be okay with it?  
21 A. Yes.  
22 Q. Well, then why did Mr. Griffin express some  
23 concerns about having videotapes and -- of his  
24 lifeguards performing their duties unannounced --  
25 MR. REESE: Objection, form.

□00208

1 Q. (BY MR. MARRS) -- if he wasn't concerned  
2 about it and it was just fine with the Racquet Club?  
3 MR. REESE: Same objection.  
4 Q. (BY MR. MARRS) Do you know?  
5 A. I don't see any concern in there. I see  
6 looking at two sides.  
7 Q. This could be very favorable or have the  
8 opposite effect? It could be favorable or  
9 unfavorable; isn't that how you read that or not?  
10 A. No. That's not how I read it.  
11 Q. Okay. So I think you testified that the  
12 HRCBM-B e-mail, to your knowledge, was not  
13 transmitted to the Board, right?  
14 A. Correct.  
15 Q. Nor the Steven Griffin e-mail, correct?  
16 A. Correct.  
17 Q. Nor the CM #1 e-mail, correct?  
18 A. Not to the entire Board, no, correct.  
19 (Plaintiff's Exhibit Number 22b  
20 referenced.)  
21 Q. (BY MR. MARRS) So on Exhibit 22b where we  
22 had these warnings listed out, I'll put-- where it  
23 says, "Transmitted to Board? No. No. No." Okay?  
24 MR. REESE: Objection, form.  
25 Q. (BY MR. MARRS) Now, are there any other

□00209

1 complaints about lifeguards not doing their jobs or  
2 Mr. Palmer not doing his job that are listed on  
3 Exhibit 22b, to your knowledge, that we haven't  
4 already talked about today?  
5 A. None that I'm aware of. I think you've said  
6 a couple of other e-mails earlier today.

7 Q. Other than what we discussed today, anything  
8 else?

9 A. Not that I can remember.

10 Q. And correct me if I'm wrong. I think you  
11 said that a special Board meeting was not called with  
12 respect to John Pluchinsky's death; is that correct?

13 A. We had a -- We had a meeting with any member  
14 of the Board that could come to meet with counsel to  
15 understand the process of what was going on and get a  
16 status.

17 Q. And when was that?

18 A. Sometime late July, early August.

19 Q. Okay. And was that with Mr. Wall?

20 A. That was with the firm Brown Sims and  
21 Gardere Wynne.

22 Q. And various families of the Racquet Club,  
23 family members?

24 A. No. There -- it was Board members who could  
25 come.

□00210

1 Q. Okay.

2 A. It was not an official Board meeting of any  
3 type.

4 Q. Okay. So other than that, my question is:  
5 Was a special Board meeting called with respect to  
6 the death of John Pluchinsky?

7 A. Not outside of what I've discussed.

8 Q. And -- Now, a special Board meeting was  
9 called in 2006 with respect to, among other things, a  
10 \$30 due increase, wasn't it? Do you recall that?  
11 That would be Exhibit 58, minutes for the Special  
12 Board Meeting of May 9th, 2006. You were present at  
13 that meeting, correct?

14 A. May 9, 2006.

15 Q. It says --

16 A. I was present, yes. Let's see...

17 Q. Okay. And one of the things that was  
18 discussed and discussed first in the minutes is a  
19 proposal to increase the dues by \$30, correct?

20 A. It stated "the purpose of this meeting was  
21 to revisit the \$30 dues increase passed by the  
22 Board." Okay.

23 Q. Is that correct?

24 A. That's what she says, what's stated there,  
25 yes.

□00211



1 Q. Okay. And --

2 MR. REESE: Just a second. That would  
3 have been when Mr. Erck was vice president. You  
4 incorrectly --

5 MR. MARRS: Okay. That's fine.

6 MR. REESE: I just -- well --

7 Q. (BY MR. MARRS) And you were vice president  
8 at that time; is that right?

9 A. That's correct.

10 Q. Okay. Now as president, I just want to  
11 close the loop on this, although the Board thought it  
12 was important to discuss a \$30 dues increase in the  
13 year before, when you're president and a child dies  
14 in your pool, that did not incite you to call as  
15 president a Special Board Meeting to discuss  
16 John Pluchinsky's death, correct?

17 A. We did not have a -- We did not have a  
18 Special Board Meeting. We had -- We did have an  
19 opportunity for the Board to gather to speak about  
20 this accident.

21 Q. It took -- It takes how many days' notice  
22 for you to call a special committee meeting, Special  
23 Board Meeting?

24 A. I assume there's certain rules under -- in  
25 the bylaws that require that, but I don't -- I don't

□00212

1 know.

2 Q. Would it surprise you that it takes only two  
3 days' notice?

4 A. It wouldn't surprise me.

5 Q. And you did not call an Executive Committee  
6 Meeting with respect to John Pluchinsky's death  
7 either, correct?

8 A. It would be -- you could consider it an  
9 executive meeting, I guess, with -- that we had.

10 Q. In August?

11 A. It could have been in late July. I don't  
12 remember the exact day

13 (Plaintiff's Exhibit Number 45a marked.)

14 Q. (BY MR. MARRS) Now, let me show you  
15 Exhibit 45a, Board minutes for April 29th, 2004. And  
16 on Page 2 it mentions that she,  
17 Jean-Calloway-Stinson -- oh, excuse me, second line  
18 there. "Sondra Maxfield, has been retained for the  
19 start up of the childcare. She will aid with the  
20 hiring of the staff, to include background checks and

21 CPR training, and all aspects of implementing the  
22 childcare facility."

23 Do you see that?

24 A. I see that.

25 Q. Why did the Houston Racquet Club not perform

□00213

1 background checks on those that were responsible for  
2 supervising the children in your summer camp for  
3 2007?

4 MR. REESE: Objection, form.

5 A. I do not know.

6 Q. (BY MR. MARRS) Do you now know that that is  
7 a requirement or not?

8 A. I do not know.

9 Q. Have you asked that question, why that was  
10 not performed?

11 A. I have not.

12 (Plaintiff's Exhibit Number 45b marked.)

13 Q. (BY MR. MARRS) And in Exhibit 45b the  
14 minutes for October 11, 2005, it mentions  
15 "construction of the Ballroom, Grill and Pool  
16 Complex." And "with the increase of membership these  
17 accomplishments were made possible."

18 Now, when was the family pool  
19 construction complete?

20 A. I can't remember. I think it was August,  
21 September -- maybe two and a half years ago. I don't  
22 know.

23 Q. Okay. And it says, "The newly elected Board  
24 members are: HRCBM-A," right?

25 A. HRCBM-A.

□00214

1 Q. "HT, HRCBM-U, HRCBM-H,  
2 HRCBM-B and FC." And who is HRCBM-A?  
3 Is that 4 y/o B-CC #3's mother?

4 A. Yes, it is.

5 (Plaintiff's Exhibit Number 45c marked.)

6 Q. (BY MR. MARRS) And on Exhibit 45c, minutes  
7 for the December 15, 2005 Board meeting, you were  
8 present during that Board meeting, weren't you?

9 A. I was --

10 Q. "Ted Erck-Vice President"?

11 A. I was there. It looks like it, yes.

12 Q. And on Page 4, it says, "Grounds Committee.  
13 HRCBM-S" -- now, he's a lawyer, right?

14 A. I believe so.

15 Q. "... announced that the Club was in full  
16 compliance with the pool enclosures according to the  
17 Texas Administrative Codes. David Lamkin has a copy  
18 of the pool safety provisions," right, sir?

19 A. That's what it says.

20 Q. So we know that David Lamkin had a copy of  
21 the pool safety provisions of that Texas Code at  
22 least as of December, 2005, correct, sir?

23 MR. REESE: Objection, form.

24 A. I'm not sure what David had, but -- I'm not  
25 sure what HRCBM-S gave him, but it had to do something

□00215

1 with the Texas Administrative Code.

2 Q. (BY MR. MARRS) And isn't that what this  
3 exhibit shows? Isn't that what it states?  
4 David Lamkin has a copy of the pool safety  
5 provisions?

6 MR. REESE: Objection, form.

7 A. Yes.

8 Q. (BY MR. MARRS) And was HRCBM-S acting  
9 as counsel for -- legal counsel for the Club at that  
10 time?

11 A. He was not.

12 Q. But as discussed in the Board meeting, the  
13 Board as of December 2005 knew that the Texas  
14 Administrative Code, some of its provisions apply to  
15 the pools at the Racquet Club, didn't it?

16 A. I reviewed the construction of the pool area  
17 and felt like -- felt that -- it looks like it  
18 felt -- that he felt that it met the Texas  
19 Administrative Code provisions.

20 Q. And that was discussed in the Board meeting  
21 as reflected in the minutes, right?

22 A. To some degree. I'm not sure to what  
23 degree. I don't know if he just announced that or if  
24 he discussed any specifics. I have no recollection.

25 Q. Well, we know for a fact that at least to

□00216

1 the degree of saying that "the Club was in full  
2 compliance," mentioning the Texas Administrative Code  
3 and the pool safety provisions, doesn't that indicate  
4 to you that the Board knew at least as of this time  
5 that there were pool safety provisions in the Texas  
6 Administrative Code?

7 MR. REESE: Objection, form.

8 A. He states that the "full compliance with the

9 pool enclosures..."

10 Q. (BY MR. MARRS) Sure.

11 A. "... according to the Texas Administrative  
12 Codes." He announced that.

13 Q. Okay. Okay. So was it your understanding  
14 at this time that there were, as the minutes reflect,  
15 pool safety provisions in the Texas Administrative  
16 Code that apply to the Houston Racquet Club pool?

17 MR. REESE: Objection, form.

18 A. Was it my understanding at that particular  
19 time? I can't -- I can't -- I have no --

20 Q. (BY MR. MARRS) Okay. Well, you don't  
21 have --

22 A. -- understanding.

23 Q. I'm sorry. Are you finished?

24 A. I'm all right.

25 Q. You don't have any reason to believe that

□00217

1 what is reflected in the minutes occurred?

2 A. I have no reason to believe that it did not  
3 occur.

4 Q. Okay. And it says here that -- under "Youth  
5 Services. HRCBM-J reported" to "the Youth  
6 Services Committee went to the Houstonian and got  
7 some good insights on their Teen Room."

8 Did any employee of the Houston Racquet  
9 Club, to your knowledge, during the time you were  
10 president go to any other clubs to get some good  
11 insights about how the lifeguards were trained or how  
12 they ran their summer camps?

13 A. I don't know. I don't know -- I do not know  
14 if any employee went to another club to talk about  
15 their lifeguards.

16 Q. You certainly never asked anyone to do that,  
17 right?

18 A. No, I did not.

19 (Plaintiff's Exhibit Number 45d marked.)

20 Q. (BY MR. MARRS) And we know that on  
21 Exhibit 45d, another minutes -- and I'll tell you  
22 this came from August 2006 -- it mentions that  
23 "wristbands are being utilized for all guests at the  
24 pool area."

25 Did you witness that also, that that

□00218

1 occurred, wristbands being used?

2 A. Yes. I've seen the wristbands.

3 Q. Do they still use them at the Racquet Club?

4 A. I don't believe they do right now.

5 Q. Well, at this time they were using it to  
6 differentiate guests from members; is that right?

7 A. That's correct.

8 Q. And would they be a certain color?

9 A. I don't know. I don't think there's  
10 anything special about them.

11 Q. Well, they were all the same color, though,  
12 weren't they?

13 A. Yes, I believe so.

14 Q. And why didn't the Racquet Club use  
15 wristbands to differentiate children with different  
16 swimming abilities in the pool for summer camp 2007,  
17 to your knowledge?

18 A. I don't know.

19 Q. Well, we know that the Racquet Club knew  
20 where to get wristbands, at least as of August 2006,  
21 right?

22 A. Correct.

23 Q. Have you asked why color coding or  
24 wristbands were not used to differentiate kids with  
25 different swimming abilities during the summer camp

□00219

1 2007?

2 A. I have not. I haven't heard that being  
3 done. It may be done some places, but I have not  
4 seen or -- that or heard of that, but I did not ask  
5 the question.

6 Q. Would you expect your aquatics director to  
7 be aware of that practice if indeed it existed?

8 A. Possibly.

9 (Plaintiff's Exhibit Number 45e  
10 marked.)

11 Q. (BY MR. MARRS) And then subsequent to this,  
12 August 31st, 2006, this is another minutes for that  
13 Board meeting and it also says, "Ted Erck - Vice  
14 President." You were present, correct?

15 A. Yes. It looks like it.

16 Q. And on Page 2 we see where -- can you see  
17 that okay? Where under "Fitness - HRCBM-Q " it  
18 states that, "The Fitness Committee met, and there  
19 are two things that need to be brought to the Board's  
20 attention. With the amount of water area that we  
21 have at" the "Club, there is concern about not having  
22 adequate coverage with Lifeguards." Do you see that?

23 A. I see that.  
24 Q. Now, "not having adequate coverage with  
25 Lifeguards" at your pools could be a safety risk,  
□00220  
1 correct?  
2 A. It could be.  
3 Q. And this was an expressed concern voiced  
4 during this Board meeting, right?  
5 A. May I see the date of this meeting, please?  
6 Q. Of course.  
7 A. I'm sorry.  
8 Q. That's okay. It was August 31st, 2006.  
9 A. Okay.  
10 Q. All right.  
11 MR. REESE: And if you need to look at  
12 the entire paragraph, not just what's highlighted.  
13 THE WITNESS: Okay.  
14 MR. REESE: Your --  
15 MR. MARRS: Do you want to go off the  
16 record and --  
17 MR. REESE: No. We can stay on the  
18 record if you're going to ask him questions about it,  
19 but he should have the opportunity to read the entire  
20 text of what was going on.  
21 THE WITNESS: I -- okay. I'm sorry.  
22 That helps me.  
23 MR. MARRS: That's okay.  
24 THE WITNESS: Thank you.  
25 MR. MARRS: Sure. Happy to do it.

□00221  
1 A. It's my understanding historically though,  
2 as the time approaches Labor Day it becomes more  
3 difficult to staff lifeguards adequately.  
4 Q. (BY MR. MARRS) Okay.  
5 A. Certain things -- certain things, it's my  
6 understanding that they do what they can to try to  
7 make sure that we have adequate coverage. Also, it  
8 says we're "very careful about our signage when it is  
9 left unguarded."  
10 Q. Sure. But what was done about this specific  
11 complaint, about a possible lack of coverage,  
12 lifeguard coverage at the pools, if anything, to your  
13 knowledge?  
14 A. I don't know if it was a complaint. I think  
15 it was an observation that as the time gets closer to  
16 this time period when people go to school, high

17 school or colleges, that it becomes more difficult  
18 for coverage.

19 Q. And what was done about it?

20 A. I don't -- I can't -- I can't remember.

21 Q. Were additional monies put into the budget  
22 in order to hire more lifeguards at this time, to  
23 your knowledge?

24 A. I believe that lifeguards do get raises to  
25 try to stay on to keep them on longer throughout

□00222

1 September.

2 Q. That's not my question. Was additional  
3 budgeting put in place to hire more lifeguards as a  
4 result of this observation by the fitness committee,  
5 to your knowledge?

6 A. I cannot recall what happened at this  
7 particular day and time.

8 (Plaintiff's Exhibit Number 45f  
9 marked.)

10 Q. (BY MR. MARRS) Well, let's look at the  
11 next -- or the Board meeting the following month,  
12 September 28, 2006, Exhibit 45f. And it also  
13 indicates that you were present at that meeting,  
14 correct?

15 A. Yes.

16 Q. And HRCBM-E indicates here, "HRCBM-E  
17 observation - should we be selling our memberships  
18 for more money? He feels that we have been very  
19 conservative and we should be thinking in larger  
20 terms."

21 Do you see that?

22 A. Yes.

23 Q. Did you agree or disagree or were  
24 indifferent about that opinion by HRCBM-E that we  
25 need to be thinking in larger terms and sell our

□00223

1 memberships for more money?

2 A. I don't remember what I thought at that  
3 particular time.

4 Q. Do you know why, although a month before an  
5 observation was made that there might not be enough  
6 lifeguard coverage, do you know why in the very next  
7 meeting of the Board there was no mention whatsoever  
8 made about that observation?

9 A. I didn't -- I need to read the --

10 HRCBM-Q 's position there to see, to talk about

11 whether there's any other mention or not.

12 Q. Well, assume with me there's not since  
13 there's not. Do you know why there was no mention  
14 during the Board meeting of that previous month's --

15 A. I don't know why.

16 Q. Do you know whether or not within one  
17 month's time that concern was remedied?

18 A. I don't know.

19 MR. REESE: Objection, form.

20 Q. (BY MR. MARRS) You can't say one way or the  
21 other?

22 A. I can't say one way or the other

23 (Plaintiff's Exhibit Number 45g

24 marked.)

25 Q. (BY MR. MARRS) But what we can say is that

□00224

1 May 2007, as shown in the minutes for 45g, minutes of  
2 that Board meeting, that you were present, correct?

3 A. Yes.

4 Q. Only this time you were the president,  
5 right?

6 A. Yes.

7 Q. And under -- on Page 2, "Fitness -

8 FC," there's a statement in here that -- they are  
9 talking about, "One advantage of moving the Kids'

10 Club is that Kids' Club employees can help watch the

11 kids in the Youth Room. We are not licensed as a day  
12 care facility."

13 Do you see that?

14 A. I see that.

15 Q. Do you know which Board members were aware  
16 prior to this Board meeting that there were Texas

17 licensing requirements to run a child care facility?

18 A. I do not believe that the way we structure  
19 our Kids' Club we are required to have a license.

20 Q. Is that your belief as we sit here today?

21 A. Yes.

22 Q. And regardless of your belief, it was known

23 by the Board as of May 30, 2007 that the Racquet Club

24 was not licensed as a day care facility, correct?

25 A. The Kids' Club portion, yes.

□00225

1 Q. Okay.

2 A. The Kids' Club.

3 Q. Well, the Board was aware that no part of

4 the Racquet Club was licensed as a day care facility,



5 didn't it, as of the date of this document?

6 A. No. This pertains directly to the Kids'  
7 Club.

8 Q. Okay. Well, tell me what part of the  
9 Racquet Club was licensed as a day care facility as  
10 of the time of this Board meeting on May 30th, 2007.

11 A. It was my understanding that none of the  
12 Club was licensed.

13 Q. Okay. And if there was mention in the Board  
14 meeting that they're not licensed as a day care  
15 facility, then certainly the Board knew that in order  
16 to run a day care facility you had to be licensed,  
17 right?

18 A. There are certain requirements for certain  
19 types of day care facilities that need licenses, yes.

20 Q. And the Board knew that as of May 30, 2007,  
21 didn't it?

22 A. They are in reference to this. Again, this  
23 is dealing with the Kids' Club at our Club. That's  
24 the perspective with which the Board was  
25 understanding this statement.

□00226

1 Q. And we also know that HRCBM-S was at  
2 that Board meeting, too, correct?

3 A. Yes. It looks as though he was.

4 Q. Any other lawyers that you can spot on  
5 Page 1 of Exhibit 45g that were at that Board  
6 meeting?

7 A. HRCBM-X is one.

8 Q. Okay.

9 A. I believe HRCBM-P is.

10 Q. Okay.

11 A. And that's it.

12 Q. Did any of those lawyers or anybody on  
13 behalf of the Racquet Club before July 18, 2007 look  
14 into whether or not the summer camp 2007 constituted  
15 a day care facility, to your knowledge?

16 A. Not to my knowledge.

17 Q. Or that looked into whether or not the  
18 summer camp 2007 had to be licensed, to your  
19 knowledge?

20 A. Not to my knowledge.

21 Q. And on Page 3 we see a reference to the fact  
22 that the Harris County Appraisal District sent our  
23 valuation and it increased from \$6 million to  
24 \$26 million. Do you remember that issue?

25 A. I do.

□00227

1 Q. And was it your understanding that Harris  
2 County Appraisal District had appraised the Racquet  
3 Club property at \$26 million?

4 A. That was their initial appraisal.

5 Q. Did the Racquet Club hire counsel in order  
6 to get that appraisal down?

7 A. We hired assistance. I don't know if it was  
8 counsel, but we hired assistance to fight HCAD.

9 Q. Okay. And it says here, "We are contacting  
10 Vinson & Elkins to develop a strategy to file the  
11 necessary exemptions or get the recreational status  
12 or restriction that is needed," correct?

13 A. We did.

14 Q. Did they assist you in doing that?

15 A. I don't believe -- I'm not -- I don't know  
16 if the person came from V&E or where he -- where he  
17 came from. I don't remember.

18 Q. Okay. But you were successful in getting  
19 the valuation reduced, correct?

20 A. Yes, we were successful in correcting the  
21 valuation.

22 (Plaintiff's Exhibit Number 45h marked.)

23 Q. (BY MR. MARRS) And Exhibit 45h, this is  
24 June 28, 2007 minutes, and it reflects that you were  
25 present, correct?

□00228

1 A. Yes.

2 Q. And it says here at the bottom under  
3 "General Manager - Steve Griffin," that "Attendance  
4 at both the Summer Camp and Tennis Camp has been  
5 strong this year. Members have complained about the  
6 parking shortage and long lines to drop off and pick  
7 up as well as delivery trucks blocking the road.  
8 Steve is meeting with TD and David" -- who is  
9 TD?

10 A. TD is the director of tennis.

11 Q. And would that be David Lamkin?

12 A. Yes.

13 Q. "... to determine if we have allowed  
14 enrollment to get too high and to try and come up  
15 with a better traffic flow plan," correct?

16 A. That's what it says.

17 Q. This was -- let me look at the date again  
18 for this exhibit. This was a month before John's

19 death, right?

20 A. That's correct.

21 Q. Did the Racquet Club, as a result of a  
22 concern that maybe enrollment at summer camp 2007 had  
23 gotten too high, ensure that more than two lifeguards  
24 were watching the family pool during summer camp  
25 2007?

□00229

1 MR. REESE: Objection, form.

2 A. I don't understand the question. That had  
3 nothing to do with the issue that you've underlined  
4 and highlighted.

5 Q. (BY MR. MARRS) Well, increased enrollment  
6 of summer camp has a number of effects, but we know  
7 two of them is, Number 1, it means you're going to  
8 have more parents dropping off more kids, right?

9 A. Possibly, yes.

10 Q. And it means that more kids are going to be  
11 in summer camp, right? Right, sir?

12 A. Yes. Yes. Sorry.

13 Q. And if more kids are in summer camp, it  
14 probably is going to mean that more kids are going to  
15 be in the family pool, right?

16 MR. REESE: Objection, form.

17 Q. (BY MR. MARRS) It could?

18 A. Depending on the structure and timing of  
19 when the children are allowed to go into the pool, it  
20 could or could not.

21 Q. Okay. So my question is: If it could, then  
22 did you as president or the Board when this concern  
23 was raised about whether or not the Racquet Club had  
24 allowed enrollment to get too high in the summer camp  
25 address the question of well, maybe we then need to

□00230

1 increase the number of lifeguards or at least look at  
2 the issue? Did that come up or not?

3 MR. REESE: Objection, form.

4 A. I don't understand the question. I allowed  
5 the enrollment to be too high. I -- again, it has  
6 nothing to do with what you've underlined or  
7 highlighted here.

8 Q. (BY MR. MARRS) Okay. Well, let's forget  
9 about what I underlined.

10 A. Okay.

11 Q. If there was concern about enrollment  
12 getting high -- I mean, you know for a fact that from

13 2004, 2006, 2007 enrollment in summer camp was going  
14 up, up and up, right?

15 A. I believe it increased, yes.

16 Q. And you know for a fact that as of 2004 on a  
17 normal day during summer camp you had two lifeguards  
18 manning the family pool, correct?

19 A. I don't remember. I don't know that for a  
20 fact.

21 Q. Okay.

22 A. In 2004, I'm not sure the pool --

23 Q. Whether or not you know that --

24 A. -- existed or not.

25 Q. Okay. But knowing that enrollment in summer

□00231

1 camp was going up from one year to the other, did you  
2 address any issue with respect to, well, maybe we  
3 should look into increasing the number of lifeguards  
4 we usually have at the family pool during summer  
5 camp? Was it addressed or not?

6 MR. REESE: Objection, form.

7 Q. (BY MR. MARRS) Was that issue raised or  
8 not?

9 A. The issue was not raised -- was not raised  
10 at the Board.

11 Q. Was it raised outside the Board?

12 A. I do not know.

13 Q. Okay. But we do know for a fact that as of  
14 June 28, 2007 the Board was well aware of the fact  
15 that enrollment at the summer camp was increasing,  
16 correct?

17 A. I believe so, yes.

18 Q. And that a meeting was going to happen to  
19 determine if the Racquet Club had allowed enrollment  
20 to get too high, correct?

21 A. It states that, "Steve is meeting with  
22 TD and David to determine if we have allowed  
23 enrollment to get too high..." TD ' program has  
24 little to do with the pool.

25 Q. Enrollment at summer camp has a lot to do

□00232

1 with the family pool, doesn't it?

2 A. It has something to do with the pool, yes.

3 Q. And we know -- Do you know whether or not  
4 the number of lifeguards that are supposed to be on  
5 the lifeguard stands at the family pool during summer  
6 camp was increased from 2006 to 2007?

7 A. I don't know.

8 Q. In tennis camp the kids get in the family  
9 pool, don't they?

10 A. I believe for a short period of time. I  
11 don't know when they do that.

12 (Plaintiff's Exhibit Number 45i marked.)

13 Q. (BY MR. MARRS) And let's look on  
14 Exhibit 45i.

15 MR. REESE: Let's take a break if we're  
16 going to go to another exhibit. It's a little --

17 MR. MARRS: Are you tired?

18 MR. REESE: Yeah. And I bet he is,  
19 too.

20 MR. MARRS: Let's take a break.

21 MR. REESE: I mean, there's only so  
22 much runaround you can handle in one stretch. So  
23 we're going to take a break.

24 VIDEOGRAPHER: 5:40 p.m. We're off the  
25 record.

□00233

1 (Brief recess.)

2 VIDEOGRAPHER: The time is 5:53 p.m.

3 We are back on the record.

4 Q. (BY MR. MARRS) Now, we just looked at  
5 Exhibit 45h, the Board meeting minutes for June 28th,  
6 2007. And I see HRCBM-B was there. He was the  
7 secretary, correct, at this time?

8 A. Yes. That's correct.

9 Q. And it's the secretary's obligation to make  
10 minutes of any important things that are discussed at  
11 the Board meetings, correct?

12 A. He reviews and signs the minutes that were  
13 put together by -- I believe Jean Northey does that.

14 Q. Okay. But it's his responsibility to make  
15 sure that the minutes reflect the important matters  
16 that are discussed at the Board meeting minutes --  
17 Board meetings, correct?

18 A. As it states in the bylaws I believe that's  
19 accurate.

20 Q. Okay. And well -- and he did that and has  
21 done that since he's been secretary, to your  
22 knowledge, right?

23 A. To my knowledge.

24 Q. Have you ever known of a time when he didn't  
25 adequately perform that duty?

□00234

1 A. No.

2 Q. So this is June 28th and then we know that  
3 the incident occurred July 18th, correct?

4 A. Correct.

5 Q. And then here June 26, 2007 [sic], as  
6 depicted on Exhibit 45i, was that the very next Board  
7 meeting after John Pluchinsky's death, to your  
8 knowledge?

9 A. It was the -- it was the next scheduled  
10 Board meeting, yes.

11 Q. Next regular Board meeting?

12 A. Yes.

13 Q. And actually, this would have been  
14 approximately eight days after John drowned, correct?

15 A. Correct.

16 Q. And I see on here that there's discussions  
17 about property tax protest, Chick Flick, tennis  
18 events, ball machine, tennis court lights, plumbing,  
19 "Women's Association has offered to make a  
20 substantial donation to the Club," but nowhere in  
21 here do I see any mention of John Pluchinsky or his  
22 death. Do you know why?

23 A. I believe that particular meeting we had a  
24 moment of silence for John and his family. And I  
25 don't know why we -- there was no specifics talked as

□00235

1 you've stated there, I guess.

2 Q. Other than the -- I think you said silent  
3 prayer, were there any substantive discussions about  
4 the incident surrounding John's death?

5 A. I don't believe so.

6 (Plaintiff's Exhibit Number 45j marked.)

7 Q. (BY MR. MARRS) And in the next regularly  
8 called, excuse me -- yeah. In August, the next  
9 month as depicted on Exhibit 45j, August 30th, 2007,  
10 again, as I reviewed this entire minutes, I did not  
11 see one reference to John Pluchinsky's death. Do you  
12 know why?

13 A. I don't know why. I believe there was  
14 nothing to discuss with the Board concerning the  
15 issues from that accident.

16 Q. And it was not discussed during this  
17 August 30th Board meeting, to your knowledge; is that  
18 correct?

19 A. I can't remember it being so.

20 Q. If it had been, it would probably be in the

21 minutes, wouldn't it?

22 A. I would assume so.

23 (Plaintiff's Exhibit Number 45k marked.)

24 Q. (BY MR. MARRS) And then we know that as  
25 depicted on Exhibit 45k, the next regularly called

□00236

1 Board meeting on September 26, 2007, do you know why  
2 still there is no mention of John Pluchinsky's death  
3 or the circumstances surrounding it?

4 A. I don't know why we did not discuss it.

5 Q. One thing that is discussed is that, "Trees  
6 will be the next step and one will be dedicated to  
7 Bill Marshall. A plaque in his memory will be added  
8 as well."

9 How old was Mr. Marshall at the time he  
10 passed; do you know?

11 A. I don't know his exact age.

12 Q. Was he old? Was he in his 70s?

13 A. No.

14 Q. Younger?

15 A. I believe so.

16 Q. And there is, for instance, a reference to  
17 that Woman's Association that was going to make the  
18 big donation. It says, "HRCBM-O and the Women's  
19 Association are deciding how to best spend donation  
20 from the Women's Association to the Club. It was  
21 suggested that improvements such as adding new  
22 flooring and the purchase of new video games would be  
23 beneficial."

24 Did anyone, to your knowledge, during  
25 these Board meetings or even outside the Board

□00237

1 meetings suggest that, well, you know what, maybe we  
2 should use that money to hire more lifeguards or more  
3 experienced lifeguards? Any discussion like that?

4 A. That exact discussion did not take place.

5 Q. Or maybe we should have a plaque or tree  
6 planted in honor of the young boy who died at our  
7 Club. Any discussion like that?

8 A. I've had conversations with people about  
9 that.

10 Q. Did you, during this Board meeting, to your  
11 knowledge?

12 A. I did not -- I do not -- I do not believe we  
13 did that discussion during this Board meeting.

14 (Plaintiff's Exhibit Number 45l marked.)

15 Q. (BY MR. MARRS) And in October, 2007, at  
16 that Board meeting as shown on the minutes marked as  
17 Exhibit 45I, that is the first time some three months  
18 later that I see a reference to John Pluchinsky's  
19 death. Do you see that?

20 A. I'm reading.

21 Q. Right here where it's highlighted and  
22 underlined.

23 A. I see that.

24 Q. Do you know why the first mention of John  
25 Pluchinsky's death occurred after the lawsuit was

□00238

1 filed against the Racquet Club?

2 A. I do not know why.

3 Q. And it's mentioned on Page 2 of these  
4 minutes that, "A member asks if we have enough  
5 insurance to cover the lawsuit and Ted Erck said we  
6 do."

7 What was your understanding of the  
8 amount of insurance that the Club had or has?

9 A. The exact amounts?

10 Q. Yes, sir, when you made this statement  
11 that --

12 A. I believe -- I'm sorry. Could you go back  
13 to the first page? I don't understand --

14 Q. Sure.

15 A. -- which meeting this is.

16 Q. You bet. It's October 9 --

17 A. Okay. This --

18 Q. -- 2007.

19 A. Okay. It's the annual meeting of the voting  
20 members. So this is the meeting I spoke about --

21 Q. Okay.

22 A. -- with the membership the second Tuesday of  
23 October.

24 Q. And that's why a member is asking questions,  
25 right?

□00239

1 A. Right.

2 Q. Okay.

3 A. Okay. I'm sorry. That member asked -- what  
4 is my knowledge of the insurance?

5 Q. Sure, sure. What was it when you made that  
6 statement?

7 A. I believe it was a million -- **Priv**

8 Q. Is that still your understanding?



9 A. That is still my understanding.

10 Q. And it says here, (Reading) Member asked if  
11 there were going to be any changes in management.  
12 Ted replied not at this time. Was that your  
13 response?

14 A. I assume it was.

15 Q. And what did you mean by that?

16 A. That there was not going to be any  
17 management changes at this -- at this particular  
18 time.

19 Q. But there might pending something or what?  
20 What do you mean, "at this time"?

21 A. We have an ongoing investigation. I have no  
22 ability to know about the future.

23 Q. Okay. Well, no management changes have  
24 occurred since the death of John Pluchinsky; is that  
25 correct?

□00240

1 A. I think Guillermo Palmer has left the Club.

2 Q. On his own volition, right? Any management  
3 changes that you or the Board made as a result of  
4 John Pluchinsky's death?

5 A. As a result of?

6 Q. Yes, sir.

7 A. None.

8 (Plaintiff's Exhibit Number 49 marked.)

9 Q. (BY MR. MARRS) And as we see on Exhibit 49,  
10 as I referred to earlier where the TDFPS had cited  
11 the Club for "Illegal Operation - Not Licensed."  
12 "Neglectful supervision. The caregivers failed to  
13 properly supervise the children in the pool, as a  
14 result a child, age 4 drowned."

15 When is the first time that you saw  
16 this document citing the Club? This one is dated  
17 August 16, 2007.

18 A. I believe it was sometime in mid, late  
19 August.

20 Q. Did it concern you?

21 A. Yes.

22 Q. Did it concern you that the -- that they  
23 specifically found that the Club as a result of its  
24 acts caused the death?

25 A. I was concerned of their finding -- of

□00241

1 their -- what is the right word, of their  
2 statement. I was concerned over their statement,

3 yes.

4 Q. And what is the current status of the CPS  
5 proceedings against the Club?

6 A. I don't know the status. I think that the  
7 people in the Club that have been cited with this  
8 have made their presentation to the Department of  
9 Family Protective Services and I'm not aware of  
10 any -- anything beyond that.

11 Q. You're not aware of any rulings or findings  
12 that were changed or anything as a result of those  
13 appeals or those positions that you just stated?

14 A. I'm not aware of any.

15 Q. As of July 18, 2007 the Racquet Club did not  
16 provide flotation devices or life jackets to children  
17 participating in its summer camp, correct?

18 A. Not to my knowledge.

19 Q. It did not, to your knowledge, test the  
20 swimming abilities of children that were going to  
21 participate in the summer camp, correct?

22 A. I don't know. I have heard that they tested  
23 some at the beginning of the camps.

24 Q. Well, you have learned that they did not  
25 test John Pluchinsky's swimming ability?

□00242

1 A. That's how I understand it.

2 Q. Okay. And I think you testified that the  
3 Club did not color code the children according to  
4 swimming ability, correct?

5 A. That's how I understand it.

6 Q. What's your understanding of how many people  
7 were in the family pool on July 18, 2007 at the time  
8 of the incident?

9 A. I don't know. I believe that there were  
10 12 four-year-old boys, six counselors, there were two  
11 supervising counselors, there were some four-year-old  
12 girls. I don't know how many. And there were some  
13 counselors in charge of the four-year-old girls.  
14 Again, I don't know how many. I believe there were  
15 some mothers sitting on the edge of the beach area,  
16 which I described earlier.

17 Q. Do you know any specific numbers of people  
18 that were in the pool?

19 A. I don't know.

20 Q. And you do know that as of September -- as  
21 of July 18, 2007 that the Racquet Club did not  
22 conduct performance audits of its lifeguards, don't

23 you?

24 A. That's my understanding.

25 Q. Did not provide a continuing training

□00243

1 program, in-service training for its lifeguards,

2 correct?

3 A. That's my understanding.

4 Q. Did not provide emergency training and

5 response drills for its lifeguards or counselors,

6 correct?

7 A. Drills, that's my understanding they did not

8 do that.

9 Q. Did not maintain a file of current CPR

10 certifications for all of its lifeguards; are you

11 aware of that?

12 A. I'm aware that some of the counselor's CPR

13 certification did expire.

14 Q. And lifeguards, correct?

15 A. I believe you mentioned that, yes.

16 Q. And are you aware that as of July 18th, 2007

17 that only 15 y/o LG #1 was assigned the task of

18 surveilling the entire family pool?

19 A. That's not how I understand it.

20 Q. What's your understanding?

21 A. That she was surveying the west side of the

22 pool, however -- and I'm not a lifeguard and an

23 expert in this in any form or fashion, but I

24 understand her duties were to go 180 degrees from

25 where she was.

□00244

1 Q. Who else other than 15 y/o LG #1 was

2 scanning the west side of the pool where

3 John Pluchinsky was?

4 A. I don't -- I believe the other lifeguard --

5 I believe his name is 15 y/o LG #2, he is to scan the same

6 180 degrees so he would take up a portion, probably

7 the north side portion, the northwest portion would

8 be a secondary responsibility for him.

9 Q. Was 15 y/o LG #2 scanning the west side of

10 the pool where John Pluchinsky was at the time of

11 John's death, to your knowledge?

12 A. I do not know.

13 Q. Have you ever met with 15 y/o LG #1 with

14 respect to the incident?

15 A. Not with respect to the incident, no.

16 Q. Have you met with her since the incident?

17 A. No.  
18 Q. Have you met with her parents since the  
19 incident?  
20 A. My wife knows her -- his -- her mother.  
21 Q. And have you met with the parents since the  
22 incident?  
23 A. I have seen them, but we have not talked  
24 about the incident.  
25 Q. How about 4 y/o B-CC #1 's parents?

□00245

1 A. I believe I've met them.  
2 Q. Have you met them with respect to the  
3 incident or discussed the incident at all?  
4 A. No.  
5 Q. How about with 4 y/o B-CC #1 ?  
6 A. No.  
7 Q. 4 y/o B-CC #3 ?  
8 A. No.  
9 Q. Or his parents?  
10 A. I've talked with his mother, HRCBM-A . His  
11 mother, you know, HRCBM-A .  
12 Q. About the incident?  
13 A. A little bit.  
14 Q. And what have you discussed?  
15 A. How 4 y/o B-CC #3 was doing.  
16 Q. And what was discussed? What did she tell  
17 you 4 y/o B-CC #3 was doing?  
18 A. He was having a tough time, but he was  
19 doing -- he was trying to work through it.  
20 Q. Did she discuss with you the incident, not  
21 post incident, but what happened?  
22 A. No.  
23 Q. Or what 4 y/o B-CC #3 was doing at the time of  
24 the incident?  
25 A. No. It just -- I believe that she did tell

□00246

1 me that 4 y/o B-CC #3 was the one who got John out of the  
2 water.  
3 Q. Anything else?  
4 A. That's it.  
5 Q. Have you had a discussion with any of the  
6 counselors or lifeguards with respect to what  
7 happened that day?  
8 A. I have not.  
9 Q. Or any of the counselor or lifeguards'  
10 parents with respect to what happened that day other

11 than what you just testified to?

12 A. No.

13 Q. Has 15 y/o LG #1 had any meetings, to your  
14 knowledge, with anyone at the Racquet Club with  
15 respect to the incident?

16 A. I don't know if she met with David or  
17 Guillermo after the incident. I'm not sure.

18 Q. Did you retain a public relations entity to  
19 assist the Club with respect to this incident?

20 A. I did not.

21 Q. Did anyone at the Club?

22 A. No one at the Club.

23 Q. Did someone else outside the Club, and if  
24 so, who?

25 A. The professional organization that we hired,

□00247

1 Gardere Wynne, may have hired a PR firm.

2 Q. Who was hired?

3 A. I'm not 100 percent certain I know the name,  
4 but it might be Vollmer's -- is Vollmer.

5 (Plaintiff's Exhibit Number 51  
6 referenced.)

7 Q. (BY MR. MARRS) Okay. And is that what is  
8 shown on Exhibit 51, this e-mail here that is from  
9 Allen Caudle. It says "Allen@vollmerpr.com," is that  
10 who you're referring to?

11 A. I believe so. The name sounds familiar.

12 Q. And what did they assist the Club with? A  
13 press release?

14 A. They may have reviewed my press release that  
15 I sent out.

16 Q. They did or they may have?

17 A. They may have. I sent it to our attorneys.  
18 They may have looked at it.

19 Q. Are they still being -- Are they still  
20 retained right now?

21 A. Not to my knowledge.

22 Q. Did they assist with respect to proposed  
23 responses to questions the Club might get about the  
24 incident?

25 A. Did they assist in -- I'm sorry, did they

□00248

1 assist --

2 Q. Propose responses to questions that you  
3 might get from the public or members about the  
4 incident?

5 A. They asked questions, I believe, about the  
6 incident.

7 Q. Okay. Well, this is an e-mail to you,  
8 Ted Erck, correct?

9 A. Correct.

10 Q. And it says, "See the attached draft  
11 questions and answers."

12 A. Okay.

13 Q. Right? "This document explores questions  
14 you may receive from the media, board members,  
15 members or the family." That refers to the  
16 Pluchinskys, correct?

17 A. Okay.

18 Q. Right?

19 A. That's what it says.

20 Q. Okay. And turning to those questions and  
21 answers, one of the questions and answers is  
22 question 7, "Is a four year old too young to  
23 participate in your Summer Camp program?"

24 And the proposed answer was, "No, our  
25 program is designed for the safe enjoyment of

□00249

1 children... "4-" to "12." Do you see that?

2 A. I see that.

3 Q. Was the summer camp program 2007 at the  
4 Racquet Club designed for the safe enjoyment of  
5 children from ages four to 12?

6 A. That's my understanding, yes.

7 Q. Well, but it's your understanding that it  
8 wasn't licensed for children that young and that you  
9 did not comply with a number of Texas regulations  
10 regarding summer camps for children, correct?

11 MR. REESE: Objection, form.

12 Q. (BY MR. MARRS) You know that now as we sit  
13 here today, right?

14 MR. REESE: Objection, form.

15 A. I know that the Department of Family  
16 Protective Services cited the Club for not having a  
17 license for running summer camp for four-year olds.

18 Q. (BY MR. MARRS) And you know that Texas  
19 Administrative Code provisions were violated with  
20 respect to the summer camp, too, don't you?

21 MR. REESE: Objection, form.

22 A. That I don't understand very well. No, I  
23 don't.

24 Q. (BY MR. MARRS) Well, did -- Were you in

25 Mr. Griffin's deposition where he testified to some  
□00250

1 of those things?

2 A. I was there. I can't remember.

3 Q. Okay. Well, if indeed you're in violation  
4 of Texas law and CPS requirements, then it may not  
5 have been designed for the safe enjoyment of children  
6 as young as four. Do you agree with that?

7 MR. REESE: Objection, form.

8 Q. (BY MR. MARRS) Or not?

9 A. I believe a lot of our design of how we  
10 staffed our -- and staffed our counselors met or  
11 exceeded any of the requirements that were required  
12 by the Department of Family Protective Services.

13 Q. The Racquet Club does not allow four-year  
14 olds to participate in its summer camp anymore,  
15 correct?

16 A. I believe that's correct.

17 Q. Why not?

18 A. Because we have -- we filed for -- we  
19 contacted -- Steve Griffin, I believe, contacted the  
20 Department of Family and Protective Services to make  
21 the programs fit with their age requirements.

22 MR. MARRS: Well, objection,  
23 nonresponsive.

24 Q. (BY MR. MARRS) We've seen the warnings that  
25 are shown on Exhibit 22b --

□00251

1 MR. REESE: Objection, form.

2 Q. (BY MR. MARRS) -- as testified to by your  
3 own general manager, Mr. Griffin. And we earlier saw  
4 Exhibit 69 with respect to alleged facts that existed  
5 on July 18, 2007. Is it still your testimony that  
6 your summer camp for 2007 was safe for four-year  
7 olds, even though these things have come to light,  
8 you were cited for running an illegal day care  
9 facility and for causing a four-year old's death? Is  
10 it still your testimony that your summer camp was a  
11 safely designed summer camp for four-year olds?

12 MR. REESE: Objection, form.

13 A. I believe our camp was designed in a  
14 reasonable manner to be safe for four-year olds. I  
15 do.

16 Q. (BY MR. MARRS) So your response is yes,  
17 correct?

18 A. Based on my response, yes.

19 MR. MARRS: Pass the witness.  
20 MR. REESE: We'll reserve until the  
21 time of trial.  
22 VIDEOGRAPHER: The time is 6:18 p.m.  
23 We are off the record.  
24 (Deposition concluded at 6:18 p.m.)  
25 (Signature required.)

□00252

1 CHANGES AND SIGNATURE

2

3 WITNESS NAME: TED ERCK

4 DATE OF DEPOSITION: MAY 28, 2008

5 PAGE/LINE CHANGE FROM/CHANGE TO REASON

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□00253

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I, TED ERCK, have read the foregoing deposition and  
2 hereby affix my signature that same is true and  
correct, except as noted above.

3

4

\_\_\_\_\_  
TED ERCK

5

6

THE STATE OF TEXAS )

7

COUNTY OF HARRIS )



8  
9

Before me, \_\_\_\_\_, on this day  
10 personally appeared \_\_\_\_\_, known to me (or  
proved to me on the oath of \_\_\_\_\_ or  
11 through \_\_\_\_\_) to be the person whose  
name is subscribed to the foregoing instrument and  
12 executed the same for the purposes and consideration  
therein expressed.

13  
14

Given under my hand and seal of office this  
15 \_\_\_\_\_ day of \_\_\_\_\_, 2008.

16  
17  
18  
19

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

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□00254

1 NO. 2007-54438  
2 DAVID AND KATHLEEN ) IN THE DISTRICT COURT  
PLUCHINSKY, INDIVIDUALLY)  
3 AND AS REPRESENTATIVES )  
OF THE JOHN ALBERT )  
4 PLUCHINSKY ESTATE )  
Plaintiffs )  
5 )  
VS. ) HARRIS COUNTY, TEXAS  
6 )  
HOUSTON RACQUET CLUB, )  
7 STEPHEN GRIFFIN, DAVID )  
LAMKIN, GUILLERMO )  
8 PALMER, AND )  
LG Supv , )  
9 )  
Defendants ) 281st JUDICIAL DISTRICT

10  
11  
12

REPORTER'S CERTIFICATION  
TO THE ORAL VIDEO DEPOSITION OF TED ERCK  
MAY 28, 2008

13

I, Sherry Hale, Certified Shorthand Reporter in and  
14 for the State of Texas, hereby certify to the  
following:

15

That the witness, TED ERCK, was duly sworn by the  
16 officer and that the transcript of the oral  
deposition is a true record of the testimony given by  
17 the witness;

18 That the deposition transcript was submitted on  
\_\_\_\_\_, 2008, to the witness or to the attorney  
19 for the witness for examination, signature, and  
return to Sherry Hale Reporting & Associates, by  
20 \_\_\_\_\_, 2008.

21 That the amount of time used by each party at the  
deposition is as follows:

22 Mr. Scott D. Marrs - 5 Hours: 37 Minutes

23

That pursuant to information given to the deposition  
24 officer at the time said testimony was taken, the  
following includes all parties of record:

25

□00255

1 FOR THE PLAINTIFFS:

Mr. Scott D. Marrs

2 Mr. Matthew G. Pletcher

Beirne, Maynard & Parsons, L.L.P.

3 1300 Post Oak Blvd., 25th Floor

Houston, Texas 77056

4 (713) 623-0887

(713) 960-1527 Fax Number

5

6 FOR THE DEFENDANTS:

Mr. Wade Reese

7 Tucker, Taunton, Snyder & Slade

10370 Richmond Avenue, Suite 1400

8 Houston, Texas 77042

(713) 961-5800

9

10 Mr. Michael Branisa

Branisa & Zomcik, RC

11 3900 Essex Lane, Suite 730

Houston, Texas 77027

12 (713) 622-1199

(713) 622-1299 Fax Number

13

14 I further certify that I am neither counsel for,  
related to, nor employed by any of the parties in the  
15 action in which this proceeding was taken, and  
further that I am not financially or otherwise  
16 interested in the outcome of the action.  
17 Further certification requirements pursuant to Rule  
203 of TRCP will be certified to after they have  
18 occurred.  
19 Subscribed and sworn to by me on this \_\_\_\_\_ day of  
\_\_\_\_\_, 2008.

20  
21

22 \_\_\_\_\_  
Sherry Hale  
Texas CSR No. 6215  
23 Expiration Date: 12/31/2008  
Firm Registration No. 510  
24 4545 Post Oak Place, Suite 350  
Houston, Texas 77027  
25 (713) 626-2629

☐ 00256

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not \_\_\_\_\_ returned  
to the deposition officer on \_\_\_\_\_ ;

3

If returned, the attached Corrections and Signature  
4 page contains any changes and the reasons therefor;

5 If returned, the original deposition was delivered to  
\_\_\_\_\_, Custodial Attorney;

6

That \$ \_\_\_\_\_ is the deposition officer's charges to  
7 the Plaintiff for preparing the original deposition  
transcript and any copies of exhibits;

8

That the deposition was delivered in accordance with  
9 Rule 203.3, and that a copy of this certificate was  
served on all parties shown herein and filed with the  
10 Clerk.

11

12

Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
13 2008.

14

15

16

17

Sherry Hale

18

Texas CSR No. 6215

Expiration Date: 12/31/2008

19

Firm Registration No. 510

4545 Post Oak Place, Suite 350

20

Houston, Texas 77027

(713) 626-2629

21

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