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2  
3 NO. 2007-54438  
4 DAVID AND KATHLEEN ) IN THE DISTRICT COURT  
PLUCHINSKY, INDIVIDUALLY)  
5 AND AS REPRESENTATIVES )  
OF THE JOHN ALBERT )  
6 PLUCHINSKY ESTATE )  
Plaintiffs )  
7 )  
VS. ) HARRIS COUNTY, TEXAS  
8 )  
HOUSTON RACQUET CLUB, )  
9 STEPHEN GRIFFIN, DAVID )  
LAMKIN, GUILLERMO )  
10 PALMER, AND )  
LG Supv, )  
11 )  
Defendants ) 281st JUDICIAL DISTRICT

12

13 \*\*\*\*\*

14 VIDEOTAPED ORAL DEPOSITION OF  
STEPHEN GRIFFIN  
FEBRUARY 27, 2008  
15 Volume 1

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16

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ORAL AND VIDEOTAPED DEPOSITION OF STEPHEN GRIFFIN  
18 produced as a witness at the instance of the  
Plaintiffs, and duly sworn, was taken in the  
19 above-styled and numbered cause on FEBRUARY 27, 2008,  
from 10:35 a.m. to 4:49 p.m., before Sherry Hale, CSR  
20 in and for the State of Texas, reported by machine  
shorthand, at the offices of Tucker, Taunton,  
21 Snyder & Slade, 10370 Richmond Avenue, Suite 1400,  
Houston, Texas, pursuant to the Texas Rules of Civil  
22 Procedure.

23

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0002

1 A P P E A R A N C E S  
2 FOR THE PLAINTIFFS:  
Mr. Scott D. Marrs

3 Mr. Matthew G. Pletcher  
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14  
15 ALSO PRESENT:  
David Pluchinsky  
16 Kathleen Pluchinsky  
David Lamkin  
17 Guillermo Palmer  
Ted Erck  
18 Ray Draper, Videographer

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0004

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2 VIDEOGRAPHER: On the record. Today's  
3 date is Wednesday, February the 27th, the year 2008.  
4 The time is 10:35 a.m.  
5 THE REPORTER: Would you raise your  
6 right hand please so I can place you under oath?  
7 THE WITNESS: (Witness complies.)  
8 THE REPORTER: Do you solemnly swear  
9 that the testimony you are about to give in this  
10 cause shall be the truth, the whole truth, and  
11 nothing but the truth, so help you God?  
12 THE WITNESS: I do.  
13 STEPHEN GRIFFIN,  
14 having been first duly sworn, testified as follows:  
15 EXAMINATION  
16 BY MR. MARRS:  
17 Q. Mr. Griffin, my name is Scott Marrs and  
18 together with Matt Pletcher and the law firm of  
19 Beirne, Maynard and Parsons we are honored to  
20 represent the Pluchinsky family in this case against  
21 the Racquet Club and various individuals. You are  
22 the general manager of the Houston Racquet Club; is  
23 that correct?  
24 A. That's correct.  
25 Q. And you've been the general manager since  
0005

1 approximately July of 2005?  
2 A. September 2005.  
3 Q. And you were the general manager of the  
4 Houston Racquet Club on July 18th, 2007 when John  
5 Pluchinsky lost his life at your club?  
6 A. Yes, sir.  
7 Q. Who do you report directly to?  
8 A. The president of the club and the board of  
9 directors.  
10 Q. As of the date of John Pluchinsky's death  
11 the president of the Racquet Club was Ted Erck; is  
12 that correct?  
13 A. That's correct.  
14 Q. And he's in the room with us today, isn't  
15 he?  
16 A. Yes, he is.  
17 Q. Currently Bob Landauer is the President of  
18 the Racquet Club; is that right?  
19 A. That's correct.  
20 Q. You understand that all the testimony you're  
21 giving here today will be both as corporate  
22 representative and individually, correct?  
23 A. Yes, sir.  
24 Q. Let me show you what's been marked as  
25 Exhibit Number 1. Do you recognize this  
0006  
1 July 20th, 2007 Houston Racquet Club document?  
2 A. Yes, I do.  
3 Q. Tell the jury what that is.  
4 A. I believe that's a letter that was -- that  
5 was written by Ted Erck to the members of the Racquet  
6 Club.  
7 Q. And that was with respect to the death of  
8 John Pluchinsky, right?  
9 A. Yes, sir.  
10 Q. Two days after his death, right?  
11 A. Yes, sir.  
12 Q. And in this letter it states, "We have  
13 initiated an internal investigation to understand  
14 what may have led to this tragedy," correct?  
15 A. That's correct.  
16 Q. And this tragedy occurred some seven months  
17 and nine days ago, right, sir?  
18 A. Approximately, yes.  
19 Q. Since that time, the club has investigated  
20 this event, taken statements and talked to

21 individuals that were there at the club on the day of  
22 this event and investigated in other ways as well,  
23 correct, sir?

24 A. Yes, sir.

25 Q. And as you can imagine, the Pluchinsky  
0007

1 family, Mr. and Mrs. Pluchinsky who are here today  
2 with us would also like to know what led to this  
3 tragedy; you can imagine that, right, sir?

4 A. Certainly.

5 Q. So they are here today, they want to know,  
6 they are willing to listen, so tell the jury and the  
7 Pluchinskys what led to John Pluchinsky's death.

8 MR. SNYDER: And I'll remind you and  
9 instruct you, Mr. Griffin, not to divulge any  
10 information that has been learned or acquired through  
11 the Gardere Wynne investigation. If you have  
12 knowledge that you and/or the club acquired  
13 independent of that, that's not privileged, you can  
14 certainly disclose that and respond to the question.

15 Q. (BY MR. MARRS) Go ahead.

16 A. Would you repeat the question, please?

17 Q. Sure. The family is here today. They want  
18 to know what led to this tragedy at your club. You  
19 investigated this tragedy. You -- and talked to your  
20 employees about this tragedy. We have some of those  
21 statements from those employees that the Racquet Club  
22 has produced to this family, but they want to know  
23 what happened. So go ahead and tell the jury and the  
24 Pluchinskys what happened to their little boy on  
25 July 18, 2007 at your club.

0008

1 MR. SNYDER: And I'll give you --

2 Q. (BY MR. MARRS) What's your understanding of  
3 what happened?

4 MR. SNYDER: And I'll give you the same  
5 instruction, Mr. Griffin: Not to divulge any  
6 information learned as a result of the Gardere Wynne  
7 investigation.

8 A. We don't know. We don't know. There was  
9 evidence that has been uncovered, but it's of a  
10 privileged nature by the attorneys that we retained.

11 Q. (BY MR. MARRS) Do you have anything further  
12 you want to add to that?

13 A. No, sir.

14 Q. Okay. So the family is here seven months

15 after their little boy died in your pool and all you  
16 have to say about what happened to their boy to give  
17 them answers that they need is I can't tell you  
18 because the lawyers did it? Is that essentially your  
19 answer?

20 MR. SNYDER: Objection, form.

21 A. I can only say that I don't know.

22 Q. (BY MR. MARRS) What did you do as the  
23 general manager of the Houston Racquet Club to learn  
24 for yourself what happened to this little boy?

25 A. Of course, I immediately spoke with

0009

1 Guillermo and David. In fact, I was present -- I was  
2 present at the time that John was -- that John was  
3 pool side.

4 Q. Yes, sir.

5 A. We talked about it extensively and quite  
6 honestly could come up with no conclusion as to what  
7 happened.

8 Q. And that was before the Gardere Wynne firm  
9 was hired, correct? You said immediately?

10 A. Yes.

11 Q. So after you talked to Guillermo Palmer and  
12 David Lamkin and others that day before you hired  
13 Gardere Wynne, what was your understanding of what  
14 happened to this little boy in your pool?

15 A. Only that he drowned.

16 Q. Did you investigate as general manager of  
17 this club exactly where this little boy was when he  
18 was found in the pool?

19 A. No, I did not.

20 Q. Was that not important for you as general  
21 manager to know?

22 MR. SNYDER: Objection, form.

23 A. It's important to know and I would have  
24 liked to have known, but the facts weren't available  
25 to me at that time.

0010

1 Q. (BY MR. MARRS) What was John -- and when I  
2 say "John," I'm referring to John Pluchinsky, the  
3 four-year-old son of the Pluchinskys. What was he  
4 doing prior to getting into the pool on July 18th?

5 A. I don't know specifically.

6 Q. Was he jumping prior to getting in the pool,  
7 to your knowledge?

8 A. I have no knowledge.

9 Q. Was he eating before he got into the pool?

10 A. It was reported to me later that John had  
11 had lunch, yes. I didn't personally observe it.

12 Q. Was he tired prior to getting into the pool?

13 A. I don't know.

14 Q. Did he fall into the pool?

15 A. I don't know.

16 Q. Did he get a cramp before he got into the  
17 pool?

18 A. I don't know.

19 Q. Did he step off the ledge on the northwest  
20 side of the pool?

21 A. I don't know.

22 Q. Did he walk down the steps on the west side  
23 of the pool to get in the water at any time on that  
24 day?

25 A. I don't know.

0011

1 Q. Did he walk down the steps on the southside  
2 of the pool to get into the pool that day?

3 A. I don't know.

4 Q. Did he walk down through the beach area, the  
5 zero depth area right there to get in the family  
6 pool?

7 A. I don't know.

8 Q. Did he play dead man's float game while he  
9 was in the pool that morning?

10 A. I don't know.

11 Q. Do you know what that game is?

12 A. Yes, I do.

13 Q. Tell the jury what that is.

14 A. The way I understand it, it's a game where  
15 children float facedown in the water and just stare  
16 at the bottom or listen to the sounds of the water,  
17 what have you. I have observed children doing that  
18 in the pool.

19 Q. How many times?

20 A. I don't know.

21 Q. A number of times?

22 A. Any number of times, yes.

23 Q. Okay. And do they do it often in the family  
24 pool?

25 A. I can't say what often is.

0012

1 Q. Well, how many times have you seen that  
2 occur, numerous occasions, more than five, more than

3 20, more than 30? Give me just a guesstimate.

4 A. I can't estimate.

5 Q. Okay. Numerous times?

6 A. I suppose.

7 Q. Okay. And when you would see that  
8 happening, what would you do?

9 A. I wouldn't do anything. I just -- I would  
10 be a casual observer at the pool.

11 Q. Okay.

12 A. It didn't -- it didn't cause me any  
13 particular attention.

14 Q. What does it mean to you when you see a  
15 child floating facedown in a pool motionless?

16 MR. SNYDER: Objection, form.

17 A. It could potentially be a cause to take a  
18 second look.

19 Q. (BY MR. MARRS) It could be the cause to  
20 take just one look, right, sir, because it could mean  
21 that the kid is losing consciousness or is  
22 unconscious or is dying? It could mean that,  
23 couldn't it?

24 A. Yes.

25 Q. I mean, that's common sense, isn't it?

0013

1 A. It could.

2 Q. Okay. And on July 18th, 2007, what rules  
3 did the Racquet Club have against children playing  
4 dead's man float or otherwise floating facedown in  
5 the water motionless --

6 A. I would --

7 Q. -- if any?

8 A. I would defer to David or Guillermo to  
9 comment on that.

10 Q. You don't know of any prohibition or rule  
11 against that at your club, do you?

12 A. No, I don't.

13 Q. Do you have any such rule prohibiting that  
14 kind of conduct, the dead's man float floating  
15 motionless facedown in the water at the club as we  
16 sit here today?

17 A. Not to my knowledge.

18 Q. Did another child hold John down while he  
19 was in the pool that morning?

20 A. I have no knowledge of that.

21 Q. Was he playing with an older child that was  
22 not in the camp that morning at the family pool?



23 A. I don't know. I wasn't present.  
 24 Q. Was there any -- sir, I know you weren't  
 25 present. But you're sitting here as a corporate  
 0014  
 1 representative to testify about the incident,  
 2 correct, sir?  
 3 A. That's correct.  
 4 Q. And that's what I'm asking about. Was there  
 5 a non-camper close to John when he was found?  
 6 A. Non-camper being a counselor, yes. Other  
 7 than that, I don't know.  
 8 Q. Okay. And I mean a non-camper child, an  
 9 older child. Was there one close to John when he was  
 10 found, to your knowledge, that was not a counselor or  
 11 a lifeguard?  
 12 A. Not to my knowledge.  
 13 Q. But you don't know either way, do you?  
 14 A. No, I do not.  
 15 Q. How long was John unattended before he was  
 16 found unconscious floating facedown in the water?  
 17 MR. SNYDER: Objection, form.  
 18 A. I have no way to determine that.  
 19 Q. (BY MR. MARRS) Have you tried to determine  
 20 that?  
 21 A. I've thought about it a great deal, but I  
 22 have no way to determine it.  
 23 Q. And in thinking of that a great deal, did  
 24 you conclude that it was at least "X" number of  
 25 minutes?  
 0015  
 1 A. Define "X".  
 2 Q. Well, that's what I'm asking you to define.  
 3 Did you make a conclusion that he was at least  
 4 unattended for a certain amount of time?  
 5 MR. SNYDER: Objection, form.  
 6 Q. (BY MR. MARRS) Whether it was five minutes,  
 7 15 minutes, 20 minutes?  
 8 MR. SNYDER: Objection, form.  
 9 A. That would be speculation and guessing on my  
 10 part. I can't do that.  
 11 Q. (BY MR. MARRS) Well, how did John even get  
 12 to where he was found?  
 13 A. Be more specific, please.  
 14 Q. Sure. At some point John Pluchinsky was  
 15 placed down in the pool by a counselor; is that your  
 16 understanding?

17 A. My understanding, he was part of the  
18 four-year-old group who was in the pool at that  
19 time. I have no knowledge as to how he actually  
20 entered the pool or who he was in contact with.  
21 Q. And from the last time and last place that  
22 he was seen by a counselor or a lifeguard alive in  
23 the pool, it is your understanding that he was not in  
24 that same place when he was found floating; isn't  
25 that true?

0016

1 A. I have no idea.  
2 Q. You haven't investigated that to learn for  
3 yourself as a concerned general manager of the  
4 Racquet Club exactly how long he was unattended,  
5 exactly where he was found, exactly where he was last  
6 seen before he was found, any of those things you  
7 just don't know?

8 MR. SNYDER: Objection, form.

9 A. I didn't personally conduct interviews with  
10 any of the counselors.

11 Q. (BY MR. MARRS) You immediately spoke to  
12 Guillermo Palmer, David Lamkin. Didn't you ask some  
13 of those questions when you did that?

14 A. Yes.

15 Q. What did you learn?

16 A. I didn't learn anything from them.

17 Q. They didn't know either, did they?

18 A. I'll let them answer for themselves.

19 Q. When you talked to them on that day  
20 immediately, did they tell you any of those things?

21 A. No.

22 Q. Did you ask them any of those things?

23 A. We were simply talking and speculating, but  
24 we had no -- we had no firm knowledge of anything.

25 Q. Did you ask Mr. Palmer how did this happen?

0017

1 A. In so many words, yes.

2 Q. And what was his response?

3 A. He didn't know.

4 Q. Did you ask Mr. Lamkin how did this happen  
5 in so many words as well?

6 A. Yes.

7 Q. What was his response?

8 A. He didn't know either.

9 Q. Did you ask anybody else on that day  
10 immediately after the incident, "What happened?"

11 A. No.  
12 Q. Why not?  
13 MR. SNYDER: Objection, form.  
14 A. I don't know. I just didn't.  
15 Q. (BY MR. MARRS) Well, who -- certainly you  
16 asked who was responsible for watching John at the  
17 time he drowned, didn't you?  
18 A. We discussed the -- some of the people that  
19 were part of the group and part of the lifeguard  
20 group.  
21 Q. Okay. Well, tell me, who is the one  
22 specific person that John was assigned to that was  
23 supposed to be watching him at the time he drowned.  
24 Give me their name.  
25 MR. SNYDER: Objection, form.  
0018  
1 A. My understanding was that John was part of a  
2 counselor group and that the counselors as a group  
3 were responsible for watching the children.  
4 Q. (BY MR. MARRS) So are you saying that there  
5 was no specific person that was given the specific  
6 responsibility to watch this one four-year-old child;  
7 is that correct?  
8 A. That's my understanding.  
9 Q. So, the entire group of counselors,  
10 four-year-old boy counselors were supposed to watch  
11 the entire group of four-year-old boys; is that  
12 correct?  
13 A. Yes, that's correct.  
14 Q. Then how do you know that a child hasn't  
15 been left through the cracks if no particular person  
16 is supposed to watch a particular child? How would  
17 you know?  
18 A. I would have no way of knowing.  
19 Q. Was John found in water deeper than he could  
20 stand in and breathe?  
21 A. I believe so.  
22 Q. How deep was the water where he was found?  
23 A. Approximately 3 feet, 6 inches.  
24 Q. Could it have been more, deeper?  
25 MR. SNYDER: Objection, form.  
0019  
1 A. I have no way of knowing.  
2 Q. (BY MR. MARRS) Have you gone out there to  
3 find out?  
4 A. I've spent a great deal of time at the

5 pool. It's nothing that I can determine after the  
6 fact.

7 Q. Was he found in water that was above his  
8 nostrils if he was standing, to your knowledge?

9 A. I can't confirm that.

10 Q. You certainly know he was in water above his  
11 chest, don't you?

12 A. Yes, I think I can conclude that.

13 Q. Would it be inappropriate to allow a  
14 four-year-old child to venture unattended into water  
15 where he could not stand and breathe?

16 MR. SNYDER: Objection, form.

17 A. I don't think necessarily, no, sir.

18 Q. (BY MR. MARRS) Is it perfectly fine to you  
19 as general manager of the club that your counselors  
20 or lifeguards allow a four-year-old unattended,  
21 unsupervised to venture into water where they could  
22 not stand and even breathe?

23 MR. SNYDER: Objection, form.

24 A. I disagree with the premise. I don't agree  
25 that he was unsupervised.

0020

1 Q. (BY MR. MARRS) I'm not asking you if he  
2 wasn't or wasn't. What I'm asking you is: Would it  
3 be appropriate to allow a four-year-old who was not  
4 supervised to venture into water too deep for him to  
5 stand and breathe?

6 MR. SNYDER: Objection, form.

7 Q. (BY MR. MARRS) If they were unsupervised in  
8 that circumstance, would that be appropriate?

9 MR. SNYDER: Objection, form.

10 A. I can't speculate.

11 Q. (BY MR. MARRS) You don't have to  
12 speculate. I'm asking you whether or not you  
13 believe -- I'm not talking about John Pluchinsky.  
14 I'm talking about a four-year-old boy, if he is  
15 unsupervised and allowed to venture into water too  
16 deep for him to even stand and breathe, do you  
17 believe as a general manager of the club that it  
18 would be appropriate for one of your employees to  
19 allow that to happen, yes or no?

20 MR. SNYDER: Objection, form.

21 A. Under those circumstances, I would -- I  
22 would say that would be inappropriate, yes.

23 Q. (BY MR. MARRS) Why?

24 A. I think it would be irresponsible. However,

25 we had ample, adequate supervision that day.

0021

1 Q. Well, we'll talk a lot more about that in a  
2 few minutes.

3 Who allowed John to venture into water  
4 too deep for him to stand and breathe?

5 A. I have no knowledge.

6 Q. Well, someone did, didn't they?

7 A. I don't know that for a fact.

8 Q. Well, is it your belief that one of the  
9 counselors took him over and left him in water too  
10 deep for him to stand and breathe?

11 A. I can't answer that.

12 Q. So who among the group of counselors that  
13 were responsible to watch John that day allowed him  
14 to venture into water too deep for him to stand and  
15 breathe? Which one of the counselors allowed him to  
16 do that?

17 MR. SNYDER: Objection, form.

18 A. I have no way of knowing that.

19 Q. (BY MR. MARRS) Each and every one of those  
20 counselors, sir, were employees of your club, weren't  
21 they?

22 A. Yes, sir, they were.

23 Q. And who does the buck stop with at your  
24 club? Is it yourself in terms of if something  
25 happens on your watch, where does the buck stop at

0022

1 your club? Does it stop with you? Does it stop with  
2 the president, Ted Erck? Who does it stop with if  
3 something goes wrong?

4 A. I'm ultimately responsible.

5 Q. You are?

6 A. Yes, sir.

7 Q. So you could find out yourself if you really  
8 wanted to by simply talking to your employees to find  
9 out who John was with the time he drowned, couldn't  
10 you?

11 A. We had a professional investigation done.  
12 It wasn't necessary for me to conduct one  
13 independently.

14 Q. But you know exactly who the counselors were  
15 that were assigned to watch John Pluchinsky, don't  
16 you?

17 A. I know their names, yes.

18 Q. So if I ask you, which counselors allowed

19 him to venture into water unsupervised where he could  
20 not stand and breathe, you would know exactly which  
21 counselors those were, wouldn't you?

22 MR. SNYDER: Objection, form.

23 A. I could name the people in the pool.

24 Q. (BY MR. MARRS) Okay. Tell me which ones  
25 they were. Which counselors?

0023

1 A. Okay. 4 y/o B-CC #2 .

2 Q. Yes, sir.

3 A. 4 y/o B-CC #6, 4 y/o B-CC #5, Supv CC #2,  
4 4 y/o B-CC #3, 4 y/o B-CC #4.

5 Q. Yes, sir.

6 A. Those are the only names I can recall at the  
7 moment.

8 Q. Supv CC #1 ?

9 A. Supv CC #1 , yes.

10 Q. 4 y/o B-CC #1 ?

11 A. Yes.

12 Q. Another one?

13 A. 4 y/o B-CC #1 , yes.

14 Q. Now, I count eight that you have named so  
15 far. Is that all of them?

16 A. Yes, that's correct.

17 Q. Okay. So all of the counselors you just  
18 mentioned were responsible to closely -- closely  
19 supervise John Pluchinsky the morning he died,  
20 correct?

21 A. Supv CC #2 and 4 y/o B-CC #3 were super -- were  
22 counselor supervisors in charge of all the counselors  
23 in the pool and in the area that day. The other six  
24 were counselors directly assigned to the  
25 four-year-old boys.

0024

1 Q. Supv CC #2 and who else?

2 A. 4 y/o B-CC #3.

3 Q. Okay. And so how would their  
4 responsibilities differ, the counselor supervisors,  
5 Supv CC #2 and 4 y/o B-CC #3, from the rest of the other six  
6 counselors in that group?

7 A. I would defer to David Lamkin to describe  
8 their specific responsibilities.

9 Q. Do you know personally?

10 A. Not the particulars of their  
11 moment-to-moment responsibilities, no.

12 Q. But you do know that whether you are a

13 counselor in that group of eight or a counselor  
14 supervisor, you're still responsible for closely  
15 supervising the children that are left in your  
16 custody to protect, correct?

17 A. Yes, that's correct.

18 Q. And that would include little John  
19 Pluchinsky, right, sir?

20 A. Yes, sir.

21 Q. Okay. Now, are there some counselors in  
22 this group of eight that had more of a responsibility  
23 than the others in that group of eight to closely  
24 supervise John Pluchinsky in particular?

25 A. I don't have knowledge of that.

0025

1 Q. So we named the counselors responsible to  
2 protect John. Which one of those eight -- or how  
3 many of those eight allowed him to venture into that  
4 3.6-foot deep water area?

5 MR. SNYDER: Objection, form.

6 A. I don't know.

7 Q. (BY MR. MARRS) Who does know?

8 MR. SNYDER: Objection, form.

9 A. I'm not sure anybody knows.

10 Q. (BY MR. MARRS) No one knows because no one  
11 was watching John Pluchinsky at the time he drowned,  
12 correct, sir?

13 MR. SNYDER: Objection, form.

14 A. I can't agree with that.

15 Q. (BY MR. MARRS) Can you disagree with that?

16 A. I have no knowledge.

17 Q. You don't know one way or the other, do you?

18 A. No, I do not.

19 Q. As a corporate representative of the Houston  
20 Racquet Club, you can't say one way or the other  
21 whether anyone was watching John Pluchinsky at the  
22 time he drowned, correct?

23 A. No, I can't say that.

24 Q. You can't say one way or the other, can you?

25 A. No.

0026

1 Q. Correct?

2 A. That's correct.

3 Q. Did the Racquet Club have flotation devices  
4 available for children to use that were in this 2007  
5 summer camp?

6 A. Not to my knowledge.

7 Q. No life jackets, noodles, life vests, any  
8 flotation devices at all for children that are in the  
9 2007 summer camp, to your knowledge?

10 A. To my knowledge, we relied upon parents to  
11 supply those if they were needed by the children.

12 Q. Is that right?

13 A. To my knowledge.

14 Q. To your knowledge. How many parents have  
15 you told to bring a life jacket, a noodle, a life  
16 vest, any flotation device if they dare sign up for  
17 your summer camp, how many?

18 MR. SNYDER: Objection, form.

19 A. I would defer to David Lamkin to address  
20 that.

21 Q. Have you ever told someone that?

22 A. I have not personally.

23 Q. What forms have you seen that say, hey, you  
24 know, we can't be responsible for your children if  
25 they can't swim or they can't swim well. Have you  
0027

1 ever seen such a form?

2 A. No, I have not.

3 Q. Or a notice?

4 A. No, I have not.

5 Q. Was Mr. or Mrs. Pluchinsky told by the club  
6 to supply any kind of flotation device for their  
7 child by your club at any time?

8 A. I don't know that for a fact one way or the  
9 other.

10 Q. You've seen no evidence of that, have you?

11 A. No, sir.

12 Q. Did the Racquet Club have money in its  
13 budget to buy a handful of life jackets for small  
14 children that were participating in your summer camp?

15 A. I'm certain that they did.

16 Q. As of July 18, 2007 did the Racquet Club  
17 have any kind of rules or regulations on the maximum  
18 depth that children of certain ages, like four-year  
19 olds, could venture into unattended?

20 A. Not to my knowledge.

21 Q. Now, the summer camp was structured such  
22 that as far as the four-year-old group, most of them  
23 would essentially be in that beach area of the family  
24 pool; is that your understanding?

25 A. Essentially and in associated areas, yes.

0028



1 Q. And is that basically what you've seen when  
2 you've been out there, that most of the four-year  
3 olds because of their age and their size, most of  
4 them are in there playing in that beach area where  
5 the buckets and sprinklers are?

6 A. I didn't observe that personally one way or  
7 the other.

8 Q. Is that your understanding, however?

9 A. Yes. In the -- in the beach area and in the  
10 associated areas.

11 Q. Okay. Well, in terms of the associated  
12 areas, what's to keep a four-year-old child from  
13 walking from that zero depth area through the beach  
14 area straight into the 3.6 foot deep area? What's to  
15 keep a child from doing that?

16 A. We had counselors in the water with them,  
17 plus lifeguards to keep them from venturing out of  
18 the area where they were supposed to be. We had six  
19 counselors in the water that day for 13 children.

20 Q. So the counselors and the lifeguards are  
21 really your essential protection systems to keep a  
22 child from doing that, right?

23 A. Yes.

24 Q. How did John Pluchinsky venture into  
25 3.6-foot deep water unless the counselors and  
0029

1 lifeguards weren't watching them? Can you answer  
2 that question?

3 MR. SNYDER: Objection, form.

4 A. No. I have no way of knowing that.

5 Q. (BY MR. MARRS) Well, you have a way of  
6 knowing that, but you're just not willing to tell us  
7 what that is, correct, sir?

8 MR. SNYDER: Objection, form.

9 A. I'm not free to discuss anything that comes  
10 as a result of -- came as a result of the attorney's  
11 investigation to date.

12 Q. (BY MR. MARRS) Exactly. And that's my  
13 point. My point is that the club is hiding behind  
14 the lawyers here. The family is sitting here. They  
15 want answers and you're not willing to give them,  
16 even though you know them because you learned them  
17 from your lawyers who investigated, you're not  
18 willing to tell this family today what you learned  
19 happened so they can try to cope somehow in their  
20 lives after losing the most important precious thing

21 in their lives because you won't tell them.  
22 MR. SNYDER: Objection, form.  
23 Q. (BY MR. MARRS) You're not willing to tell  
24 us, are you?

25 MR. SNYDER: Objection, form.

0030

1 Scott, you know the Court has ruled  
2 that they don't have to tell you.

3 MR. MARRS: No. I don't think we've  
4 gotten there yet, but we will.

5 Q. (BY MR. MARRS) Go ahead. You're not  
6 willing to testify because your lawyers were involved  
7 about what you've learned from your lawyers about  
8 this tragic accident, right, sir?

9 A. That's correct.

10 Q. What counselor saw John struggling in the  
11 water, in that 3.6-foot deep water area?

12 MR. SNYDER: Objection, form.

13 A. I have never heard that anyone saw John  
14 struggling.

15 Q. (BY MR. MARRS) What lifeguard saw him  
16 struggling?

17 MR. SNYDER: Objection, form.

18 A. I have no knowledge.

19 Q. (BY MR. MARRS) What counselor saw John  
20 floating facedown in the water motionless before  
21 15 y/o LG #1 saw him?

22 A. I believe it was 4 y/o B-CC #3.

23 Q. It's your belief that 4 y/o B-CC #3 saw him  
24 floating facedown in the water before 15 y/o LG #1  
25 blew her whistle?

0031

1 A. I need to correct a previous answer.

2 Q. Go ahead.

3 A. Okay. I believe 4 y/o B-CC #3 saw John floating  
4 facedown after he was alerted by 15 y/o LG #1 .

5 Q. Okay. So back to my question. What  
6 lifeguard saw John floating facedown in the water  
7 before 15 y/o LG #1 noticed him floating facedown in  
8 the water, if any?

9 A. It wasn't reported to me that any lifeguard  
10 did.

11 Q. What person saw John floating facedown in  
12 the water before 15 y/o LG #1 did, to your knowledge?

13 A. I have no knowledge.

14 Q. So, have you personally made a conclusion

15 about how John was allowed to venture into that  
16 3.6-foot deep water and about whether he was being  
17 watched by any counselor at the time? Have you  
18 personally concluded anything from everything you've  
19 learned?

20 MR. SNYDER: Objection, form.

21 A. Would you rephrase that as separate  
22 questions, please?

23 Q. (BY MR. MARRS) Sure. Have you personally  
24 concluded how John Pluchinsky got into that 3.6-foot  
25 deep water and ended up floating facedown without any  
0032

1 counselor seeing him? Have you concluded how that  
2 happened in your own mind?

3 A. No, I have not.

4 Q. Well, what does common sense tell you?

5 MR. SNYDER: Objection, form.

6 A. Speculating on my part would be of no value.

7 Q. (BY MR. MARRS) I'm not asking you to  
8 speculate. You've talked to Guillermo Palmer; you  
9 talked to David Lamkin; you've seen the counselors'  
10 statements, haven't you?

11 A. Yes.

12 Q. You know no one saw him before 15 y/o LG #1 ,  
13 at least to your knowledge. So what does common  
14 sense tell you happened?

15 MR. SNYDER: Objection, form.

16 A. I don't know.

17 Q. (BY MR. MARRS) Do you have children?

18 A. Yes.

19 Q. How old are they?

20 A. 25, 27 and 19.

21 Q. Are you aware that John was found some  
22 25 feet away from where he was last put down by a  
23 counselor in the pool?

24 MR. SNYDER: Objection, form.

25 A. No, I am not aware of that.

0033

1 Q. (BY MR. MARRS) Well, what is your awareness  
2 about how many feet from where he was placed in the  
3 pool by a counselor he was found floating facedown?

4 A. I wasn't able --

5 MR. SNYDER: Objection, form.

6 A. I wasn't able to determine that.

7 Q. (BY MR. MARRS) How many minutes between the  
8 time someone at the pool last saw John alive and the

9 time he was discovered floating facedown?  
10 A. I don't know.  
11 Q. How many minutes was he struggling in the  
12 water?  
13 MR. SNYDER: Objection, form.  
14 Q. (BY MR. MARRS) Do you know?  
15 MR. SNYDER: Objection, form.  
16 A. No, I don't know.  
17 Q. (BY MR. MARRS) How many minutes had he been  
18 swallowing water, to your knowledge?  
19 A. I have no -- I have no idea.  
20 Q. How many minutes before he lost  
21 consciousness?  
22 A. I don't know.  
23 Q. How many minutes before he stopped  
24 breathing?  
25 A. I don't know.  
0034  
1 Q. Before he turned blue?  
2 A. I don't know.  
3 Q. Do you know how long it takes for your lips  
4 to turn blue?  
5 A. No.  
6 Q. Do you know how many minutes it was before  
7 he ceased having a pulse?  
8 MR. SNYDER: Objection, form.  
9 A. No.  
10 Q. (BY MR. MARRS) Or that he suffered brain  
11 damage?  
12 MR. SNYDER: Objection, form.  
13 A. No.  
14 Q. (BY MR. MARRS) Or how many minutes it was  
15 before he reached the point to where CPR would not  
16 revive him?  
17 MR. SNYDER: Objection, form.  
18 Q. (BY MR. MARRS) Do you know?  
19 A. No.  
20 THE WITNESS: Mr. Snyder, perhaps a  
21 brief break.  
22 MR. SNYDER: Sure.  
23 VIDEOGRAPHER: We are off the record.  
24 The time is 11:14 a.m.  
25 (Brief recess.)  
0035  
1 VIDEOGRAPHER: Back on the record. The  
2 time is 11:26 a.m.

3 Q. (BY MR. MARRS) Mr. Griffin, other than what  
4 you don't know about what occurred that day to  
5 John Pluchinsky, tell me about facts that you have  
6 learned about regarding what happened to John  
7 Pluchinsky that day, even if you learned them from  
8 your lawyers, facts. I'm not talking about your  
9 lawyers' opinions or strategies or their thoughts.  
10 What I want to know is facts that you have learned,  
11 regardless of where you learned them, about what  
12 happened that day to John Pluchinsky.

13 MR. SNYDER: I'll instruct you not to  
14 disclose anything that your lawyers have discussed  
15 with you. If you have knowledge independent of that,  
16 you can certainly provide information that may be  
17 responsive to the question.

18 MR. MARRS: On the basis of the  
19 attorney/client privilege?

20 MR. SNYDER: Attorney/client  
21 privilege.

22 A. I don't believe I know anything that hasn't  
23 been disclosed to you also. I know the number of  
24 counselors that were -- that were present that day.  
25 I know their names. I know the lifeguards that were

0036

1 present. I know the number of children that were in  
2 the four-year-old boys' group.

3 Q. (BY MR. MARRS) How many?

4 A. 13. I know the approximate time that they  
5 were in the pools.

6 Q. When?

7 A. Approximately 10:45 to 11:15 or so.

8 Q. Go ahead.

9 A. I don't know a great deal more than that,  
10 quite honestly.

11 Q. What facts have you learned about regarding  
12 what counselor saw John alive last?

13 MR. SNYDER: Same instruction.

14 A. I can't discuss that.

15 Q. (BY MR. MARRS) So, when you read the  
16 statements of the counselors that were in your employ  
17 at the Racquet Club about what happened, you didn't  
18 learn which counselor saw John alive last?

19 A. I don't recall definitively knowing from  
20 reading their statements, no, sir.

21 Q. Do you know as we sit here today whether or  
22 not you're willing to tell me which counselor saw

23 John alive last?

24 MR. SNYDER: Objection, form.

25 A. I can't discuss that.

0037

1 Q. (BY MR. MARRS) Let me ask you again. I'm  
2 not asking whether you can discuss it or not, I'm not  
3 asking you right now who it is. I'm asking you: Do  
4 you know the name of the counselor that saw John  
5 Pluchinsky alive last?

6 MR. SNYDER: Objection, form.

7 A. I have no firsthand knowledge.

8 Q. (BY MR. MARRS) Do you have third-party  
9 knowledge about the name of the counselor that saw  
10 John alive last?

11 A. I have the opinion of the investigating  
12 attorneys.

13 Q. Do your attorneys know -- I'm not talking  
14 about opinions. Do they know the name of the  
15 counselor that saw John alive last?

16 MR. SNYDER: Objection, form.

17 A. I can't speak for my attorneys.

18 Q. (BY MR. MARRS) Have your attorneys told you  
19 the name of the counselor who saw John alive last?

20 MR. SNYDER: Objection, form.

21 A. I can't divulge that.

22 Q. (BY MR. MARRS) Is there some reason why you  
23 won't even tell us the name of the counselor that saw  
24 this little boy alive last?

25 A. Mr. Marrs, you know this is protected by the

0038

1 attorney/client privilege.

2 Q. Is that an answer? Because I don't hear an  
3 answer. I just hear an objection by a non-lawyer.  
4 What's the answer?

5 MR. SNYDER: I'll instruct you not to  
6 answer the question.

7 Q. (BY MR. MARRS) Again, I'm not asking you  
8 about attorney/client privileged information because  
9 frankly, factual information -- I think this Court  
10 has already touched upon factual information in this  
11 case. If it's factual, it's not privileged and  
12 that's why I'm asking you these questions. I need to  
13 know and if you're unsure if it was one versus the  
14 other counselor, if you know it was one of two  
15 counselors, that's fine, just tell me who it is. Was  
16 it 4 y/o B-CC #2, to your knowledge?

17 MR. SNYDER: Objection, form.  
18 I instruct you not to discuss or  
19 divulge things that you've been told by your  
20 counselor.  
21 Q. (BY MR. MARRS) Go ahead subject to his  
22 objection.  
23 A. I can't discuss that.  
24 Q. Was it 4 y/o B-CC #1 ?  
25 A. I can't discuss that.

0039

1 Q. Who is willing to come here on behalf of the  
2 Racquet Club and tell this family what counselor saw  
3 their son alive last so that perhaps they can talk to  
4 this counselor to find out what happened to their  
5 boy?

6 MR. SNYDER: Objection, form.

7 A. I can't respond to that.

8 Q. (BY MR. MARRS) You won't respond to that  
9 because your lawyer has objected; is that right?

10 A. It's part of the protected attorney/client  
11 privilege.

12 Q. And if your lawyer did not object to that,  
13 then you could tell me, couldn't you?

14 MR. SNYDER: Objection, form.

15 A. I can't say.

16 Q. (BY MR. MARRS) Well, do you know? That's  
17 what I'm trying to find out. Do you know the names  
18 of the one or two counselors that saw John Pluchinsky  
19 alive last? Do you know them in your head?

20 A. I don't know them. I had no firsthand  
21 knowledge of who it was.

22 Q. Based on whether it's investigation, whether  
23 it's done by a lawyer or not, I'm not asking you what  
24 you were told. I'm simply asking you: Do you know  
25 in your mind the names of the one or two counselors

0040

1 that saw John alive last?

2 MR. SNYDER: Objection, form. Same  
3 instruction.

4 MR. MARRS: Are you instructing him not  
5 to answer whether he knows in his mind without  
6 disclosing who they are or where it came from?

7 MR. SNYDER: I didn't instruct him not  
8 to --

9 MR. MARRS: Look, I'm just --

10 MR. SNYDER: -- answer the question.

11 MR. MARRS: Okay. Go ahead.  
12 MR. SNYDER: What I -- What I  
13 instructed him to do is not to divulge information  
14 that was communicated to him by his attorneys.  
15 Q. (BY MR. MARRS) Go ahead.  
16 A. I can't answer.  
17 Q. You can't answer whether or not you know the  
18 names in your head?  
19 A. I won't discuss it.  
20 Q. You won't answer my question?  
21 MR. MARRS: Are you instructing him not  
22 to answer the question as to whether or not he knows  
23 in his own mind, regardless of who told him, the  
24 names of the one or two counselors that saw John  
25 alive last? I'm just asking. If you need to talk to  
0041

1 your client, you can talk to him. Otherwise, we need  
2 to talk to the judge because I'm entitled to know  
3 that. That is not privileged.  
4 MR. SNYDER: Well, that may or may not  
5 be factual.  
6 MR. MARRS: Whether or not he knows in  
7 his own mind without disclosing who it is, where it  
8 came from, without disclosing any attorney  
9 communication whatsoever, I simply want to know so --  
10 I can't test the privilege unless I know if he has  
11 the knowledge or not. I'm not asking him to disclose  
12 anything. Either he knows or he doesn't.

13 MR. SNYDER: And again, I'm going to  
14 instruct you not to divulge information that has been  
15 communicated to you by your attorneys. If you -- if  
16 you -- if you know independent of that and you have  
17 information that is responsive to the question, you  
18 can -- you can disclose that.

19 THE WITNESS: Okay.

20 MR. SNYDER: If you have information  
21 that's responsive from having read the handwritten  
22 statements that we've produced to them that we've  
23 been responsive, then you can answer the question.

24 MR. PLETCHER: Off the record. Aren't  
25 we entitled --

0042

1 THE REPORTER: Matt, if we're off the  
2 record, the Videographer needs to go off.

3 MR. PLETCHER: You can keep it on.  
4 Aren't we entitled to know if he's been told without



5 him divulging the identity of the people he's been  
6 told, so that we know whether or not we need to call  
7 the judge?

8 MR. SNYDER: My problem is, is that  
9 what he may or may not have been told is something  
10 that has been processed through and filtered through  
11 somebody's mind. And whether that person who may  
12 have told him that knows that as a matter of fact or  
13 not, I don't know and I don't know that he knows  
14 that. We do know who the names of the six counselors  
15 were and there is a way to find out who that person  
16 or those two persons are independent of asking this  
17 man.

18 MR. MARRS: Regardless, whether or not  
19 he knows the names, regardless of the origin of  
20 knowing those names is not privileged. That's how  
21 you test the privilege. You ask him, Well, do you  
22 know the info? You're just not telling me because  
23 it's privileged, I understand. I respect that, but  
24 do you know the info, yes or no, one way or the  
25 other.

0043

1 MR. SNYDER: The problem is that -- is  
2 what I'm saying is that whatever he may have been  
3 told, that may have or may not be factually true.

4 MR. MARRS: Okay.

5 MR. PLETCHER: We need to bring that up  
6 to the judge. We need to know whether or not he  
7 knows. He either does know or he doesn't know.

8 MR. MARRS: We hit the objection after  
9 that. If he knows, then you've got your objection.

10 THE WITNESS: Norman, two minutes  
11 outside, please.

12 MR. SNYDER: Sure.

13 MR. MARRS: That's fine.

14 VIDEOGRAPHER: Off the record. The  
15 time is 11:37 a.m.

16 (Brief recess.)

17 VIDEOGRAPHER: Back on the record. The  
18 time is 11:39 a.m.

19 Q. (BY MR. MARRS) So, Mr. Griffin, can you  
20 tell us the counselor who last saw John Pluchinsky  
21 alive?

22 A. No, I cannot.

23 Q. Okay. Do you know in your mind the name of  
24 the one or two counselors that last saw John

25 Pluchinsky alive?

0044

1 A. No, I do not.

2 Q. Have you been told by anyone who the last  
3 counselor was that saw John Pluchinsky alive?

4 A. No.

5 Q. You haven't asked that question?

6 MR. SNYDER: Objection, form.

7 A. I have an opinion. I've heard him say the  
8 opinion, but I'm not going to repeat an opinion here.

9 Q. (BY MR. MARRS) Okay. What's your opinion?

10 A. I have no opinion. I wasn't present.

11 Q. Well, is the counselor or are the one or two  
12 counselors that last saw John Pluchinsky alive still  
13 employees of the Racquet Club?

14 A. No, they are not.

15 Q. Well, who are they then if you know that  
16 they are not employed by the Racquet Club?

17 MR. SNYDER: Objection, form.

18 A. I can't say.

19 Q. (BY MR. MARRS) Well, you have to know who  
20 they are before you know whether or not they are  
21 still employed, don't you?

22 A. I know the group of counselors in question.

23 Q. Yes, sir.

24 A. And I know that none of them are currently  
25 employed by the Racquet Club with the exception of

0045

1 Supv CC #1 .

2 Q. And how long did the one or two counselors  
3 that last saw John Pluchinsky alive continue to work  
4 at the Racquet Club after July 18th, 2007?

5 MR. SNYDER: Objection, form.

6 A. Would you repeat the question, please?

7 Q. (BY MR. MARRS) Be happy to. How long did  
8 the one or two counselors that last saw John  
9 Pluchinsky alive remain employed by the Houston  
10 Racquet Club after July 18th, 2007?

11 MR. SNYDER: Objection, form.

12 A. I can't answer the question.

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

14 A. I don't know the counselors that you're  
15 referring to.

16 Q. Well, as the man at the Houston Racquet Club  
17 with the ultimate responsibility for what happens at  
18 the Racquet Club, wouldn't you want to know who the

19 counselors were that last saw this boy alive so you  
20 could make sure that you evaluate whether or not they  
21 should continue to work at your club? Isn't that  
22 important for you to know?

23 MR. SNYDER: Objection, form.

24 A. Yes, I guess it would be.

25 Q. (BY MR. MARRS) And it's important for you  
0046

1 to know whether Guillermo Palmer, who is sitting here  
2 today, did his job adequately and whether or not he  
3 had a role to play in John Pluchinsky's death. That  
4 would be very important for you to know as general  
5 manager, wouldn't it?

6 A. Yes. But I'm confident that Guillermo  
7 Palmer did everything that he was supposed to do that  
8 day.

9 Q. Is that right?

10 A. Yes, it is.

11 Q. And what analysis did you do to make that  
12 determination?

13 A. I'm familiar with Guillermo's work. I'm  
14 familiar with his -- with the role he's played at the  
15 club. I'm familiar with the scheduling of the  
16 lifeguards and the rotation of the lifeguards. And I  
17 think it's very satisfactory.

18 Q. You're -- since you're so familiar with him,  
19 I'm sure you're familiar about complaints regarding  
20 Guillermo Palmer specifically relating to him not  
21 doing his job at the Houston Racquet Club, aren't  
22 you?

23 A. Yes.

24 Q. More than one, right, sir?

25 A. A few.

0047

1 Q. A few. How many complaints about Guillermo  
2 Palmer not doing his job did you receive prior to  
3 July 18th, 2007?

4 A. I don't know definitively, perhaps three.

5 Q. That you were personally involved in,  
6 correct, sir? That you personally were made aware  
7 of, right, sir?

8 A. It may not have even been three. I take  
9 that back. I would need to -- I would need to review  
10 the file.

11 Q. And so, I guess what you're saying is that  
12 on July 18, 2007 you think that Guillermo Palmer did

13 an exemplary job in his role at the Houston Racquet  
14 Club; is that correct?

15 A. I think he was performing his job  
16 satisfactorily.

17 Q. And you would say the same about David  
18 Lamkin?

19 A. Yes, I would.

20 Q. And you would say the same about  
21 4 y/o B-CC #2 ?

22 A. I have no knowledge of 4 y/o B-CC #2 's  
23 performance.

24 Q. You have no criticisms of Guillermo Palmer  
25 in his job performance before or leading up to or  
0048

1 through July 18th, 2007, correct?

2 A. There are incidents where each of my  
3 department heads don't perform according to my  
4 expectations or the expectations of members. That's  
5 not true just of Guillermo. That's true of everyone.

6 Q. But relating to safety and John Pluchinsky's  
7 death, it's your opinion that David Lamkin and  
8 Guillermo Palmer performed their job satisfactory up  
9 to and including July 18th, 2007, correct?

10 A. Yes, that's correct.

11 Q. Same for 15 y/o LG #1 ?

12 A. I have no knowledge of 15 y/o LG #1 's  
13 performance.

14 Q. Did you ask?

15 A. No.

16 Q. How about 15 y/o LG #2?

17 A. I don't know anything about 15 y/o LG #2's  
18 performance.

19 Q. Did you ask?

20 A. Guillermo stated that both of those  
21 lifeguards were very good and very capable in their  
22 positions. I have no firsthand knowledge, though.

23 Q. Let's look at Exhibit Number 2. And the  
24 name 4 y/o B-CC #2 is a little bit cut off at the  
25 top.

0049

1 A. Okay.

2 Q. But have you seen this document before?

3 A. I read it once a couple months ago.

4 MR. MARRS: Can you go down to the  
5 lower part of the document? Thank you.

6 Q. (BY MR. MARRS) Now, 4 y/o B-CC #2 was one

7 of the counselors that was responsible for watching  
8 John Pluchinsky, correct?

9 A. Yes.

10 Q. And she states in her statement that, "I had  
11 been playing with John earlier and he was perfectly  
12 okay. Then, about" I think she says "10 to  
13 15 minutes later was when we saw him." And my  
14 question is: Who saw John during that 10 or  
15 15 minutes after 4 y/o B-CC #2 finished playing with  
16 John?

17 A. I don't know.

18 Q. Was 4 y/o B-CC #2 the last person to see  
19 John alive?

20 A. I have no knowledge of that.

21 Q. Did 4 y/o B-CC #2 place John down somewhere  
22 in the pool after she finished playing with him?

23 A. I have no knowledge of that.

24 Q. Well, who does? Who knows that?

25 A. Perhaps the counselors that were in the

0050

1 water with the children.

2 Q. 4 y/o B-CC #2 would know that, wouldn't  
3 she?

4 MR. SNYDER: Objection, form.

5 A. I can't conclude that.

6 Q. (BY MR. MARRS) 4 y/o B-CC #2 would know  
7 whether or not she placed John down in the pool after  
8 playing with him, right?

9 A. Yes, she would.

10 Q. Did she turn her back on John and walk away  
11 and not look back at John for some 10 or 15 minutes?

12 A. I have no way of knowing that.

13 Q. You do have a way because you could ask  
14 4 y/o B-CC #2 if you cared to, correct, sir?

15 A. She was interviewed.

16 Q. Yes. Were you there?

17 A. No, I was not.

18 Q. If you cared to ask her yourself, you could,  
19 couldn't you, sir?

20 A. Yes, I could have.

21 Q. But you didn't, did you?

22 A. No. I left it to others.

23 Q. To who?

24 A. Gardere Wynne interviewed 4 y/o B-CC #2 .

25 Q. Who with --

0051

1 A. The Family Protective Services interviewed  
2 4 y/o B-CC #2 .  
3 Q. Who with Gardere Wynne?  
4 A. Mike Wall, Audrey Momanee.  
5 Q. When?  
6 A. I don't know for sure which day. Within the  
7 days following the drowning.  
8 Q. Were you at the club when these kids were  
9 interviewed?  
10 A. I was at -- in the club, yes.  
11 Q. Okay. And did all the interviews of the  
12 kids, the counselors and lifeguards, occur at the  
13 club?  
14 A. To the best of my knowledge, yes.  
15 Q. Where at the club?  
16 A. In a private room.  
17 Q. Which private room?  
18 A. I believe those were conducted in the garden  
19 room, but I can't say for sure.  
20 Q. Where is that?  
21 A. The lower floors of the club.  
22 Q. In what building?  
23 A. The main clubhouse.  
24 Q. And were they -- was more than one counselor  
25 or lifeguard interviewed at the same time or were  
0052  
1 they interviewed separately?  
2 A. I believe they were interviewed separately.  
3 Q. How long did these interviews last  
4 typically?  
5 A. I don't know that.  
6 Q. Were you present during any of the  
7 interviews of the counselors or lifeguards?  
8 A. No, I was not.  
9 Q. Who else was, other than the two Gardere  
10 Wynne lawyers?  
11 A. Perhaps a claims adjuster, if I'm not  
12 mistaken.  
13 Q. From?  
14 A. York, York Claims Services.  
15 Q. And who else, to your knowledge?  
16 A. As far as I know, no one else was present.  
17 Q. Was 4 y/o B-CC #2 piggybacking John  
18 Pluchinsky before she placed him down in the pool?  
19 A. May I read her statement again, please?  
20 Q. Of course.

21 MR. MARRS: Why don't you show him the  
22 top half so he can read it.

23 MR. PLETCHER: Sure. What do we need?

24 MR. MARRS: He just wants to read the  
25 whole statement. Keep going up so he can read the

0053

1 rest.

2 THE WITNESS: Move it up, please. Is  
3 there anything on the back? That's it?

4 MR. MARRS: That's it.

5 THE WITNESS: Okay.

6 A. Your question again, please.

7 Q. (BY MR. MARRS) Have you seen any document  
8 where 4 y/o B-CC #2 indicates that she piggybacked  
9 John Pluchinsky before she set him down in the pool?

10 A. No, I have not.

11 Q. And the interviews you just testified about  
12 that you believe occurred at the Racquet Club of the  
13 counselors and lifeguards, is that the same place  
14 where the statements were taken by the counselors and  
15 lifeguards?

16 A. Which statements are those, please?

17 Q. Statements such as the one you're looking  
18 at, Exhibit 2, statements of the counselors and  
19 lifeguards that are handwritten.

20 A. No. David would have to speak to where  
21 those were actually taken.

22 Q. Okay. So what are you referring to that  
23 occurred in the garden room?

24 A. That's the interviews by the attorneys.

25 Q. Okay. Did those lawyers at Gardere Wynne

0054

1 take any statements of the counselors or lifeguards  
2 during those meetings in the garden room, to your  
3 knowledge?

4 A. I have no knowledge.

5 Q. Are you aware of where the kids, counselors  
6 and lifeguards, were when they gave their handwritten  
7 statements, such as Exhibit 2?

8 A. David Lamkin can respond to that.

9 Q. Do you know?

10 A. No, I do not know.

11 Q. Have you seen any statement of any counselor  
12 or lifeguard indicating that they saw John during the  
13 10 or 15 minutes after 4 y/o B-CC #2 put him down in  
14 the pool?

15 A. Repeat the question, please.  
16 Q. Have you -- You see right here, Exhibit 2,  
17 4 y/o B-CC #2 saying she was playing with John, he  
18 was okay, then about 10 or 15 minutes later is when  
19 we saw him. Is there any statement from any  
20 counselor or lifeguard that you've seen indicating  
21 that such counselor or lifeguard saw John during the  
22 10 or 15 minutes referred to in 4 y/o B-CC #2 's  
23 statement, which is Exhibit 2?

24 A. No.

25 Q. Let's go to Exhibit 3. Now, this is a  
0055

1 Supervisor's Investigation of Accident signed off on  
2 by 15 y/o LG #1 on the bottom. Have you seen this  
3 document before?

4 A. No, I don't believe I have.

5 Q. Let's go to the second page, which is a  
6 handwritten statement by 15 y/o LG #1 .

7 A. What is the source of this handwritten  
8 statement, please?

9 Q. It's from the Racquet Club as being  
10 15 y/o LG #1 handwritten statement attached to her  
11 investigation report.

12 A. Okay.

13 Q. 15 y/o LG #1 states, "I got on the stand at  
14 11:00 o'clock and was efficiently scanning the pool.  
15 All of the kids were playing happily. At around  
16 11:15 I noticed the victim facedown in the pool. At  
17 first glance, he seemed to be playing, but when I  
18 looked back a few seconds later, he still hadn't  
19 moved."

20 Now, is it your understanding that  
21 15 y/o LG #1 saw John Pluchinsky facedown in the  
22 water, turned away to continue scanning the pool and  
23 then at some point turned back to him and noticed  
24 that he was still motionless; is that your  
25 understanding?

0056

1 A. It seems to me that that's what she's  
2 saying, yes.

3 Q. Okay. So she saw him not once, but twice  
4 floating facedown in the pool, at least according to  
5 her statement, correct?

6 A. My understanding is that when she saw him  
7 the second time, she reacted immediately.

8 Q. And that's my question. She saw him not



9 once, but twice floating facedown in the pool. The  
10 second time is when you say she did something, right?

11 A. According to her statement, that's how I  
12 interpret it, yes.

13 Q. And how many seconds did it take for 15 y/o LG #1  
14 to see him floating facedown the first time and for  
15 15 y/o LG #1 to then scan the pool again and then for her to  
16 look back to see John floating again?

17 A. I have no --

18 MR. SNYDER: Objection, form.

19 A. -- knowledge of that.

20 Q. (BY MR. MARRS) Well, how many seconds  
21 between the time she first saw him facedown, she  
22 turned away, scanned the entire rest of the pool,  
23 turned back, looked at him again, ran over to 4 y/o B-CC #3  
24 who was standing near him, asked 4 y/o B-CC #3 if he  
25 was -- if the kid floating was okay and for 4 y/o B-CC #3 to  
0057

1 then turn John Pluchinsky around? How many seconds?

2 MR. SNYDER: Objection, form.

3 Q. (BY MR. MARRS) Do you know?

4 A. No, I don't know.

5 Q. And does the Racquet Club believe it's  
6 appropriate to not immediately check a child who is  
7 floating facedown in the water motionless? Do you  
8 think that's an appropriate course of conduct for a  
9 lifeguard?

10 MR. SNYDER: Objection, form.

11 A. I can't comment.

12 Q. (BY MR. MARRS) Well, do you just out of  
13 common sense believe that if you see a child,  
14 especially a small child, facedown in the water not  
15 moving, you should take immediate action to get him  
16 out of the water?

17 MR. SNYDER: Objection, form.

18 Q. (BY MR. MARRS) Do you agree with that  
19 statement?

20 A. I would hope that the lifeguard would use --  
21 would use appropriate judgment in that case.

22 Q. (BY MR. MARRS) In that case do you believe  
23 that the lifeguard should immediately -- immediately  
24 get that child out of the water instead of continuing  
25 to scan the pool?

0058

1 MR. SNYDER: Objection, form.

2 A. Not necessarily.

3 Q. (BY MR. MARRS) Why?  
4 A. Children play in that way as we have  
5 discussed earlier.  
6 Q. Dead's man float?  
7 A. Whatever you choose to call it.  
8 Q. Okay. Do you know why they call it dead's  
9 man float? Do you think it's because they are  
10 floating like they are dead?  
11 A. Perhaps.  
12 Q. Do you think that's something that you and  
13 your club should not allow children to do so that  
14 lifeguards can tell whether they are playing or  
15 whether they are really in distress? Do you think  
16 that would be a good idea to have a prohibition  
17 against that?  
18 MR. SNYDER: Objection, form.  
19 A. Yes.  
20 Q. (BY MR. MARRS) And to immediately eject the  
21 kid from the pool if you see him doing that?  
22 MR. SNYDER: Objection, form.  
23 A. I don't want to comment on consequences.  
24 Q. (BY MR. MARRS) Well, there have been some  
25 pretty serious consequences that occurred as a result  
0059  
1 of a lack of supervision of a four-year-old boy that  
2 died in your pool. That's a pretty serious  
3 consequence, isn't it?  
4 MR. SNYDER: Objection, form.  
5 A. I don't accept the premise that there was a  
6 lack of supervision.  
7 Q. (BY MR. MARRS) It's the Racquet Club's  
8 position then that there was no lack of supervision  
9 of John Pluchinsky on July 18, 2007; is that correct?  
10 A. I believe that there was satisfactory  
11 supervision in all areas of the resort pool that day,  
12 in fact, over and above the needed supervision.  
13 Q. Anything else you want to add to that?  
14 A. No, sir.  
15 Q. And you disagree then with one of the other  
16 counselors who in their report thought that there  
17 should be more supervision, someone that was actually  
18 there that day when you were not, don't you?  
19 MR. SNYDER: Objection, form.  
20 A. I can't comment on the opinion of one of the  
21 counselors.  
22 Q. (BY MR. MARRS) Well, you do know that

23 seconds count when it comes to a child who may be  
24 drowning; you agree with that, won't you?

25 A. I would agree with that.

0060

1 Q. So then, based on your comments, I take it  
2 you believe that the lifeguards and counselors did  
3 their jobs adequately on July 18th?

4 A. I do.

5 Q. Nothing in your mind that they could have  
6 done better that would have made a difference to John  
7 Pluchinsky; is that right?

8 A. Nothing that I can identify, no, sir.

9 Q. So, you know personally then that kids  
10 floating facedown in the water motionless was a  
11 pervasive thing that was going on at the family pool  
12 because you've seen it yourself, right, sir?

13 MR. SNYDER: Objection, form.

14 A. I don't think I described it as pervasive.

15 Q. (BY MR. MARRS) What would you describe it  
16 as, something that just happens at your family pool  
17 that you don't do anything about?

18 MR. SNYDER: Objection, form.

19 A. No.

20 Q. (BY MR. MARRS) What would you describe it  
21 as?

22 A. Children playing.

23 Q. Children playing a deadly game?

24 MR. SNYDER: Objection, form.

25 A. I don't choose to describe it that way.

0061

1 Q. (BY MR. MARRS) Okay. Have you personally  
2 spoken to 15 y/o LG #1 about this event?

3 A. No, I have not.

4 Q. Why not? As a general manager of the  
5 Houston Racquet Club, have you not spoken to the  
6 lifeguard that was primarily in charge of that pool  
7 that day?

8 MR. SNYDER: Objection, form.

9 A. The lifeguards and the counselors were  
10 professionally interviewed by Gardere Wynne. I felt  
11 that to be sufficient.

12 Q. Let's go to Exhibit 3A. This is a  
13 handwritten statement by 4 y/o B-CC #3, one of the  
14 counselors you indicate that was responsible for  
15 watching John on that day. As a matter of fact, he  
16 was a counselor supervisor I think you said, correct?

17 A. Yeah. I misspoke earlier about which --  
18 about the two supervisors.  
19 Q. Okay. Go ahead.  
20 A. Supv CC #1 was a supervisor and 4 y/o B-CC #3  
21 was a supervisor -- no, Supv CC #2 was a  
22 supervisor. I apologize.  
23 Q. Okay. So back to my question.  
24 A. So 4 y/o B-CC #3 was a counselor.  
25 Q. Okay. So 4 y/o B-CC #3 was one of the counselors

0062

1 responsible for watching John on that day, July 18th,  
2 correct?

3 A. Yes.

4 Q. And he indicates in part that, "I was at the  
5 pool talking/playing to/with a group of kids nearby.  
6 I turned around and saw a kid floating in the water  
7 facedown. At the moment I noticed this, a  
8 lifeguard" -- I think it reads -- it's hard to make  
9 out that word -- "was running over to see if he was  
10 okay. She said, 'Is he okay?' I responded, 'I think  
11 he's all right. He's probably just playing around.'  
12 Then I proceeded to flip him over and his face was  
13 blank."

14 Okay. Now, here again is a counselor  
15 seeing a young child floating facedown in the water  
16 and believing that he was just playing around, right,  
17 sir?

18 A. Yes. That's 4 y/o B-CC #3's statement.

19 Q. Okay. What training did 4 y/o B-CC #3 have to  
20 spot a child in distress and possibly drowning in  
21 your family pool?

22 MR. SNYDER: Objection, form.

23 A. I would defer to Guillermo and David to  
24 respond to that.

25 Q. (BY MR. MARRS) Well, as general manager of  
0063

1 the Racquet Club, do you know whether or not your  
2 counselors or lifeguards receive training to spot a  
3 child in distress in your swimming pool? Do you know  
4 one way or the other?

5 A. No, not definitively.

6 Q. Well, what about nondefinitively?

7 A. No. I know they receive -- they receive  
8 training about water safety and supervision of  
9 children, but I don't know the specifics of that  
10 training.

11 Q. Okay. Training from who?  
12 A. Counselors receive it from David Lamkin and  
13 CD and Guillermo Palmer and -- and his  
14 head lifeguards would conduct the training and  
15 supervision of the lifeguards themselves.  
16 Q. And you know from the statements that you  
17 have seen of counselors and lifeguards that 4 y/o B-CC #3  
18 was not the only person, not the only counselor who  
19 when seeing John floating facedown in the water  
20 motionless did not believe that that meant he was  
21 doing anything other than playing, correct, sir?  
22 A. I would need to see those statements again,  
23 sir.  
24 Q. I mean, you know for a fact the reason why  
25 he was floating facedown in the water is because he  
0064  
1 was dying, don't you?  
2 MR. SNYDER: Objection, form.  
3 Q. (BY MR. MARRS) Isn't that the conclusion  
4 that you've reached? Isn't that common sense?  
5 A. We know after the fact that he was in  
6 distress.  
7 Q. But 4 y/o B-CC #3 didn't recognize that, did he?  
8 A. Not until that moment, no.  
9 Q. Not until he turned him over, right, sir? I  
10 mean, he says it himself in his statement, right,  
11 sir?  
12 A. As his statement reads, yes.  
13 Q. Do you believe that a counselor seeing a kid  
14 floating facedown in the water motionless and  
15 reacting that, nah, he's probably just playing is an  
16 appropriate response?  
17 MR. SNYDER: Objection, form.  
18 Q. (BY MR. MARRS) For someone that is tasked  
19 with protecting the lives of children in the pool?  
20 MR. SNYDER: Objection, form.  
21 Q. (BY MR. MARRS) Is that appropriate, do you  
22 think?  
23 MR. SNYDER: Objection, form.  
24 A. I can't comment on the state of mind of the  
25 counselor.  
0065  
1 Q. (BY MR. MARRS) I'm talking about your state  
2 of mind. Do you think that's appropriate?  
3 MR. SNYDER: Objection, form.  
4 A. I don't know. It depends on the

5 circumstances.

6 Q. (BY MR. MARRS) Well, if you turn him over  
7 and he turns out to be alive and playing, then in  
8 that circumstance I guess it's okay. If he turns out  
9 to be dead, I guess it's not okay. But you really  
10 don't know that until after the fact, so don't you  
11 think it's appropriate in every circumstance that you  
12 immediately, Number 1, not allow a child to float  
13 facedown in the water motionless as a rule; and  
14 Number 2, if you see one, to check on him immediately  
15 without one second delay?

16 MR. SNYDER: Objection, form.

17 Q. (BY MR. MARRS) Isn't that reasonable to  
18 you?

19 A. Yes.

20 Q. Is that a "yes"?

21 A. That's a yes.

22 Q. And let's look at Exhibit 3B. Now, this is  
23 a statement by 15 y/o LG #2. And you know that he  
24 was the second lifeguard, second 15-year-old  
25 lifeguard that was manning the slide at the family  
0066

1 pool at the time of John Pluchinsky's drowning,  
2 correct, sir?

3 A. Yes.

4 Q. And this is Exhibit 3B. And likewise, 15 y/o LG #2  
5 the other lifeguard, states that, "I was  
6 sitting at the guard stand at the slide and I looked  
7 over at 15 y/o LG #1." He's referring to 15 y/o LG #1 ,  
8 correct?

9 A. Yes.

10 Q. "I looked over at 15 y/o LG #1 as she was walking  
11 over to the little kid that was just floating there  
12 on his stomach not moving. I stopped the kid on the  
13 slide for a minute to see if the drowning kid wasn't  
14 just faking it like most kids."

15 So here we have another lifeguard or  
16 counselor thinking when he sees a kid motionless  
17 facedown in the water, a little kid, thinking that  
18 he's just playing around just like 4 y/o B-CC #3 thought,  
19 right, sir?

20 A. Yes.

21 Q. So as we're sitting here looking at these  
22 statements, as a general manager, the guy where the  
23 buck stops at the Houston Racquet Club, doesn't that  
24 concern you that these counselors or lifeguards

25 didn't recognize what this really was, a kid that was  
0067

1 drowning?

2 MR. SNYDER: Objection --

3 Q. (BY MR. MARRS) Does that concern you?

4 MR. SNYDER: Objection, form.

5 A. Yes, it concerns me.

6 Q. (BY MR. MARRS) Do you think that these  
7 kids, 15 y/o LG #2 and 4 y/o B-CC #3, those that thought  
8 he was just playing around, do you think that they  
9 maybe weren't trained well enough to spot a kid in  
10 distress or drowning in your pool?

11 MR. SNYDER: Objection, form.

12 A. No, I don't agree with that.

13 Q. (BY MR. MARRS) Okay. They were adequately  
14 trained, in your opinion, correct, sir?

15 A. Yes.

16 Q. All was well at the Houston Racquet Club and  
17 this was just some unavoidable accident; is that your  
18 opinion?

19 MR. SNYDER: Objection, form.

20 A. I don't know whether it was avoidable or  
21 not.

22 Q. (BY MR. MARRS) Is it your opinion it was an  
23 unavoidable accident?

24 MR. SNYDER: Objection, form.

25 Q. (BY MR. MARRS) Could not have been avoided?  
0068

1 MR. SNYDER: Objection, form.

2 A. I don't know that.

3 Q. (BY MR. MARRS) Was 15 y/o LG #2 doing his  
4 job in watching the children on the slide at the time  
5 that John Pluchinsky was floating facedown in the  
6 water?

7 A. To the best of my knowledge, he was.

8 Q. And you know that the lifeguard who is  
9 assigned to the slide, that that is his primary  
10 responsibility to watch that slide rather than to  
11 scan the entire family pool; are you aware of that?

12 A. Yes, sir, that's correct.

13 Q. So you're aware that the only lifeguard that  
14 was responsible for scanning the entire family pool  
15 on a continuous basis was a 15-year-old lifeguard,  
16 15 y/o LG #1, correct?

17 MR. SNYDER: Objection, form.

18 A. No, that's not correct. 15 y/o LG #1 was

19 responsible for scanning everything from the ropes to  
20 the west. She wasn't responsible for the slide area.

21 Q. (BY MR. MARRS) Which ropes were those?

22 A. The ropes that divide the shallow end from  
23 the deep end.

24 Q. And was it in place on the day of the  
25 accident?

0069

1 A. To the best of my recollection, yes.

2 Q. And did it have buoys?

3 A. Yes, sir, to the best of my recollection it  
4 did.

5 Q. So, you know then that the only person  
6 responsible for scanning the area from the slide over  
7 to the west was 15 y/o LG #1 ?

8 MR. SNYDER: Objection, form.

9 A. She was the only lifeguard responsible for  
10 scanning, yes, sir.

11 Q. (BY MR. MARRS) And she was 15-years old; is  
12 that right?

13 A. That's correct.

14 Q. And she was a certified lifeguard for how  
15 long before July 18th?

16 A. I'm not sure, several weeks.

17 Q. Several weeks?

18 A. Perhaps more. I don't remember exactly what  
19 her certification date was.

20 Q. And who was responsible for scanning east of  
21 the ropes or the rope that divided the shallow and  
22 deep, as you say?

23 A. 15 y/o LG #2.

24 Q. And his responsibility was to solely focus  
25 on the area east of the buoy rope that was in the

0070

1 immediate vicinity of the slide; is that correct?

2 MR. SNYDER: Objection, form.

3 A. That was his primary area of responsibility.

4 Q. (BY MR. MARRS) And to watch the kids as  
5 they go up the slide or -- as they step up on the  
6 ladder up to the slide?

7 A. His most important responsibility was to  
8 watch the kids as they came out of the flume.

9 Q. Okay. But wasn't it his responsibility to  
10 make sure that no more than one went down at the same  
11 time?

12 A. Yes.



13 Q. And he wouldn't know that unless he had to  
14 also watch up there at the top of the stair to make  
15 sure that he told them to wait so that more than one  
16 wouldn't go down at the same time, right?

17 A. Yes, that was another responsibility.

18 Q. Sure. Okay. And his responsibility was to  
19 watch them climb -- the kids climb up the stairs to  
20 go up to the slide, right, to make sure they did it  
21 safely?

22 A. He would observe that as well, yes.

23 Q. Okay. And that's exactly what he was  
24 focused on on July 18th at the specific time that he  
25 looked over and saw John Pluchinsky; is that correct?

0071

1 MR. SNYDER: Objection, form.

2 A. I have no way of knowing that.

3 Q. (BY MR. MARRS) Well he said that, in  
4 looking at Exhibit 3B, that, "I stopped the kid on  
5 the slide for a moment." So he was watching the kids  
6 on the slide and actually stopped one at the time  
7 that 15 y/o LG #1 discovered John Pluchinsky in the  
8 pool floating facedown, correct? Is that your  
9 understanding from his statement?

10 A. From his statement, yes.

11 Q. Now, let's look at Exhibit 4, a handwritten  
12 statement by 4 y/o B-CC #1 .

13 MR. SNYDER: Can you see that?

14 THE WITNESS: No, not --

15 MR. PLETCHER: I'm going to scan it.

16 THE WITNESS: Okay.

17 MR. PLETCHER: Do you see her name  
18 there, sir?

19 THE WITNESS: Yes, I do.

20 MR. PLETCHER: Okay. I'm going to  
21 scoot it up.

22 Q. (BY MR. MARRS) And on the top she says, "I  
23 was in the shallow end of the pool around the  
24 toys..." What do you understand that to mean?

25 A. The water features.

0072

1 Q. In the beach area?

2 A. Yes, sir.

3 Q. "...with three little boys, one on my back."  
4 What's your understanding of who the three boys were  
5 that she was with?

6 A. I have no knowledge of that.

7 Q. Well, you've read this statement before,  
8 haven't you?

9 A. Yes, but it's been sometime.

10 Q. Well, even if it's been sometime, did you  
11 ask at that time who the three boys were that she was  
12 with?

13 A. I didn't interview 4 y/o B-CC #1 .

14 Q. Have you asked anybody who the three boys  
15 were that she's referring to in Exhibit 4?

16 A. No, I did not.

17 Q. Okay. Is it your understanding that one of  
18 the boys that she was with was John Pluchinsky?

19 A. No. I don't have that understanding.

20 Q. What is your understanding, that John  
21 Pluchinsky was not one of the three boys she's  
22 referring to?

23 A. I have no knowledge one way or the other.

24 Q. Okay. Well, she says that, "I heard the  
25 lifeguard running and asking if that boy was okay.

0073

1 My back was to him." Right?

2 A. Okay.

3 Q. So 4 y/o B-CC #1 is saying that her back was  
4 turned away from John Pluchinsky, correct?

5 A. Okay.

6 Q. Right?

7 A. I under -- that's how I understand her  
8 statement, yes.

9 Q. And we saw 4 y/o B-CC #2 's statement  
10 earlier where she said she turned and walked back to  
11 where she was. Did you see that?

12 A. I don't recall from 4 y/o B-CC #2 's statement where  
13 she said she turned and walked back to where she  
14 was.

15 Q. Is it your --

16 A. Perhaps we need to review the statement  
17 again.

18 Q. Is it your understanding that 4 y/o B-CC #2  
19 was not looking at John Pluchinsky during the 10 or  
20 15 minutes that she refers to in her statement? Is  
21 that your understanding?

22 A. I would -- I would -- yeah, I would  
23 interpret that as that.

24 Q. Okay. So neither 4 y/o B-CC #2 nor 4 y/o B-CC #1  
25 were watching John Pluchinsky at the time he

0074

1 was discovered floating. Is that your conclusion  
2 from those two statements?

3 A. Yes.

4 Q. Let's go to the second page, if we could.

5 MR. PLETCHER: Sure.

6 Q. (BY MR. MARRS) At the end of her statement,  
7 she says, "I am so sorry for letting this happen and  
8 not being more responsible", right, sir?

9 A. That's what I'm reading, yes.

10 Q. Was she one of the counselors that at that  
11 particular moment in time was responsible for  
12 protecting John Pluchinsky?

13 A. Yes, she was.

14 Q. And as we sit here today, you can't think of  
15 anything that she could have done better on that day;  
16 is that correct?

17 MR. SNYDER: Objection, form.

18 A. No.

19 Q. (BY MR. MARRS) Is that correct?

20 A. That's correct, yes.

21 Q. Let's go to Exhibit 5. Exhibit 5 is a  
22 Supervisor's Investigation of Accident, signed off on  
23 by Sr LG #1. And you know who she is, don't  
24 you?

25 A. Yes.

0075

1 Q. Tell the jury who she is.

2 A. She's one of the head lifeguards.

3 Q. One of the head lifeguards. Now, as a head  
4 lifeguard, what does that mean?

5 A. A lifeguard that's in charge of a particular  
6 area on a particular shift.

7 Q. And do they then have to have a certain  
8 amount of maturity in order to have that position?

9 MR. SNYDER: Objection, form.

10 A. I would let David or let Guillermo Palmer  
11 respond to how he appoints people to head lifeguard  
12 position.

13 Q. (BY MR. MARRS) Okay. Well, as general  
14 manager of the Houston Racquet Club, what's your  
15 understanding of why someone becomes a head lifeguard  
16 versus just a regular lifeguard?

17 A. If I were appointed with that position I  
18 would look for somebody with experience and maturity.

19 Q. With good judgment?

20 A. Yes.

21 Q. Okay. And here where she says, "Camp  
22 counselors" -- and she's responding to an inquiry on  
23 this form. The inquiry says, "What action has been  
24 or should be taken to prevent a similar accident?"  
25 And what does she write, this girl with good  
0076

1 judgment? What does she write?

2 A. "Camp counselors need to pay more attention  
3 to the campers as well as the guards."

4 Q. Okay. So do you disagree with head  
5 lifeguard Sr LG #1, who was there on that day  
6 when she makes that statement?

7 MR. SNYDER: Objection, form.

8 A. I can't speak to Sr LG #1 's proximity to any  
9 of the incidents that day. I don't know whether  
10 she's capable of making a judgment or not.

11 Q. (BY MR. MARRS) Well, you know for a fact  
12 that Sr LG #1 was working there on that day,  
13 don't you?

14 A. I believe she was, yes.

15 Q. Uh-huh. And is it your understanding that  
16 after the whistle blew, that Sr LG #1 went  
17 right to the pool where John Pluchinsky was?

18 A. I don't recall.

19 Q. Okay. From everything you've learned about  
20 what happened on July 18, 2007, do you have any  
21 reason to agree or disagree that -- Sr LG #1  
22 when she says that camp counselors need to pay more  
23 attention to their campers?

24 A. I don't know why she would make that  
25 statement.

0077

1 Q. My question is: Based on everything that  
2 you know seven months, nine days after this horrible  
3 event, do you have any reason to agree or disagree  
4 with what she says when she says, "Camp counselors  
5 need to pay more attention to their campers"?

6 A. I can neither agree nor disagree with that.

7 Q. Okay.

8 A. I don't know her point of perspective.

9 Q. Okay. And did the eight counselors that you  
10 identified earlier who were responsible for watching  
11 John pay attention, constant attention to John  
12 Pluchinsky while he was in the pool?

13 A. I don't know that.

14 Q. You don't know one way or the other,

15 correct?

16 A. No, I don't.

17 Q. Do you have any reason to believe that  
18 Sr LG #1 was not being honest when she filled  
19 out this Supervisor's Investigation of Accident?

20 A. No. I have no reason to think that she  
21 wasn't stating her opinion.

22 Q. And you have no reason to know whether or  
23 not it's more than opinion whether or not it's based  
24 on facts that she was aware of about how your summer  
25 camp was being run, do you? You don't know one or  
0078

1 the other, do you?

2 A. No, I don't. She had never brought it to  
3 anyone's attention previous.

4 Q. But plenty of other people did, didn't they?

5 A. Not with regard to the counselors, sir.

6 Q. We'll get to that. Let's go to --

7 MR. SNYDER: Are you at a transition  
8 point?

9 MR. MARRS: Yes, I am.

10 MR. SNYDER: Do you-all want to break  
11 for lunch? We would like to break for lunch.

12 MR. MARRS: Well, I guess that takes  
13 care of it then. When would you like to be back?

14 MR. SNYDER: Well, I'm not -- I'm not--  
15 I'm not insisting we break --

16 MR. MARRS: I thought it was like 9:30.  
17 Are we off the record?

18 THE VIDEOGRAPHER: No.

19 MR. MARRS: Let's go off the record.

20 VIDEOGRAPHER: Off the record. The  
21 time is 12:26 p.m.

22 (Lunch recess was taken.)

23 VIDEOGRAPHER: Back on the record. The  
24 time is 1:38 p.m.

25 Q. (BY MR. MARRS) Mr. Griffin, we are back  
0079

1 from lunch. And you understand that you're still  
2 under oath to tell the truth and nothing but the  
3 truth, correct, sir?

4 A. Yes, sir.

5 Q. Let's look at Exhibit 5B, which is a  
6 Supervisor's Investigation of Accident Report that  
7 has LG Supv name on it. Let's go to the  
8 bottom of that first page so we can see that

9 Exhibit 5B.

10 MR. MARRS: Can you flip to the second  
11 page?

12 MR. PLETCHER: (Complies.)

13 Q. (BY MR. MARRS) Now, who is LG Supv?

14 A. He's a lifeguard supervisor.

15 Q. And was he acting as a lifeguard supervisor  
16 on the day of John Pluchinsky's death?

17 A. Yes, he was.

18 Q. Was he "the" lifeguard supervisor on that  
19 day or were there more than one for the family pool?

20 A. I believe LG Supv was the sole lifeguard  
21 supervisor.

22 Q. Okay. And as a matter of fact, he states,  
23 "I was supervisor for the shift. I was eating lunch  
24 at the pavilion when some people ran up asking  
25 frantically for help."

0080

1 Do you know why the people were running  
2 around frantically asking for help at your club when  
3 this drowning occurred?

4 A. No. I can't speak to that.

5 Q. Do you know whether or not your counselors  
6 and lifeguards had regular drills for emergencies  
7 such as this?

8 A. No. I don't know that for a fact.

9 Q. Well, do you know for a fact that they did  
10 not or you just don't know one way or the other?

11 A. I don't know one way or the other.

12 Q. Is that something that is very important as  
13 a general manager of a club that accepts hundreds of  
14 children into its waters during even one summer?

15 MR. SNYDER: Objection, form.

16 Q. (BY MR. MARRS) Is that important for you to  
17 know?

18 A. I would -- I would want to be confident that  
19 my supervisory staff was addressing that, my  
20 department heads.

21 Q. And was preparing its lifeguards and  
22 counselors for emergencies, correct?

23 A. Yes.

24 Q. And having emergency drills so that they  
25 would not be frantic, but instead would know how to

0081

1 handle emergencies, right, sir?

2 MR. SNYDER: Objection, form.

3 A. I guess that's correct, yes.  
4 Q. (BY MR. MARRS) And at the bottom here of  
5 Exhibit 5B, he writes some times here and he says  
6 that, "11:00 to 11:05, went with three guards to get  
7 lunch." Do you see that?  
8 A. Yes, I do.  
9 Q. Now, so this indicates that the lifeguard  
10 supervisor that was supposed to be supervising the  
11 lifeguards at this time was off to lunch with three  
12 other lifeguards. Is that what that indicates to  
13 you?  
14 MR. SNYDER: Objection, form.  
15 A. The way I read it, they went from 11:00 to  
16 11:05 and it appears that they were back before the  
17 time of the accident.  
18 Q. (BY MR. MARRS) Back where?  
19 A. To the pavilion, which is the area adjacent  
20 to the resort pool.  
21 Q. Were they back watching children in the  
22 family pool?  
23 A. No. They were on -- they were on break.  
24 Q. Okay. So still, even as of the time of John  
25 Pluchinsky's death, Number 1, there were at least  
0082  
1 four lifeguards, including a supervising lifeguard,  
2 LG Supv, on break, correct?  
3 A. That's correct and three on duty.  
4 Q. Well, you don't mean to suggest there were  
5 three on duty at the family pool, do you?  
6 A. No. I suggest that there were three on duty  
7 at the --  
8 Q. Okay.  
9 A. -- altogether two at the resort pool.  
10 Q. Two at the resort pool. But not a  
11 supervising lifeguard, correct?  
12 A. That's correct.  
13 Q. And not any adult lifeguard, correct?  
14 A. Not in the immediate proximity of the resort  
15 pool, no.  
16 Q. Well, if someone is dying in your resort  
17 pool, you want to make sure they are in the immediate  
18 proximity of the pool, don't you?  
19 MR. SNYDER: Objection, form.  
20 A. I don't choose to answer that.  
21 Q. (BY MR. MARRS) It's important for your club  
22 to have sufficient number of lifeguards to adequately

23 scan the pool, protect the number of children that  
24 are in it and of course, to be in very close  
25 proximity to the children that are in the pool. You  
0083

1 agree with that, don't you?

2 A. I do.

3 Q. But of course, on this instance there were  
4 two 15-year-old lifeguards watching the entire family  
5 pool of campers, counselors and others that were in  
6 that family pool at approximately 11:10, 11:15, July  
7 18th when this incident occurred, correct?

8 A. That's correct.

9 Q. Do you think that's enough?

10 A. Yes, I do.

11 Q. Why?

12 A. Two lifeguards are adequate to scan -- to  
13 fully scan the pool and the bather load was not that  
14 great. It was less than one per 25, which is a --  
15 which is a perfectly reasonable level for each  
16 lifeguard.

17 Q. If the lifeguard is doing their job properly  
18 and adequately, correct?

19 A. Yes.

20 Q. And you say two lifeguards is enough to  
21 adequately scan the family pool, but you know that  
22 two lifeguards were not scanning the entire family  
23 pool, correct, at the time of this incident?

24 MR. SNYDER: Objection, form.

25 A. No, I don't agree with that.

0084

1 Q. (BY MR. MARRS) Okay. So now your testimony  
2 is that 15 y/o LG #2 was scanning the entire family  
3 pool at the time that John Pluchinsky drowned?

4 A. Between the two of them, they were scanning  
5 the entire family pool, which is the way the zones  
6 are set up.

7 Q. Okay. So back to my question. You're not  
8 testifying that two lifeguards were scanning the  
9 entire pool, that both of them were scanning the  
10 entire pool, are you?

11 A. No, I'm not saying that.

12 Q. Okay. That's what I was asking.

13 A. Okay. I apologize.

14 Q. So really, you had one 15-year-old girl,  
15 15 y/o LG #1, that was responsible for scanning the  
16 pool from the rope floated line that was over by



17 the -- adjacent to the slide, all the way from that  
18 to the left to the west, all the way passed the beach  
19 area where all the toys, the sprinklers, the portion  
20 even across from that pool that had the fountains,  
21 all the way to the west side, she was responsible for  
22 scanning all of that, correct?

23 A. Yes, that's correct.

24 Q. And only 15 y/o LG #1 was responsible for  
25 scanning that entire area, correct, sir?

0085

1 A. That was her primary area of responsibility,  
2 yes.

3 Q. How many other clubs had 15 y/o LG #1 been a  
4 certified lifeguard at?

5 A. I have no knowledge, but I believe she was  
6 just recently certified.

7 Q. Was she the best lifeguard you had at that  
8 time?

9 A. I couldn't say that one way or the other.

10 Q. But what you can say is that when John  
11 Pluchinsky died, at least according to what the  
12 supervising lifeguard says, four guards were off, two  
13 on break away from the family pool not scanning the  
14 family pool, correct?

15 A. That's correct.

16 Q. And where was Guillermo Palmer at this point  
17 in time?

18 A. I'm not sure exactly where Guillermo was. I  
19 think you should ask him.

20 Q. Well you know for a fact, though, without me  
21 asking him, that he was not at the pool, don't you?

22 A. No, that's correct.

23 Q. You weren't at the family pool, were you?

24 A. No, sir, I was not.

25 Q. David Erck wasn't at the family pool, was

0086

1 he?

2 A. I don't know that for a fact.

3 Q. David Lamkin wasn't at the family pool, was  
4 he?

5 A. No, I don't believe he was.

6 Q. No one but two 15-year olds and counselors?

7 MR. SNYDER: Objection, form.

8 Q. (BY MR. MARRS) Two 15-year-old lifeguards  
9 and counselors, correct --

10 MR. SNYDER: Objection, form.

11 Q. (BY MR. MARRS) -- that worked for the  
12 club? Those were the only people at the family pool  
13 at the time John drowned, correct?

14 MR. SNYDER: Objection, form.

15 A. I can't confirm that those were the only  
16 people.

17 Q. Well, let's look at Exhibit 6. And I think  
18 you said before that the -- you believe that John's  
19 four-year-old boy group arrived at the family pool at  
20 approximately 10:45.

21 A. That's what was reported to me, yes.

22 Q. Okay. And as we look at Exhibit 6, this is  
23 a Houston Racquet Club Kids Camp News four-year-old  
24 Boy Week Number 5 Schedule, right, sir?

25 A. Yes, that's correct.

0087

1 Q. And the -- You had previous weeks that were  
2 really focused more on swimming, right?

3 A. The way David Lamkin explained it to me, the  
4 first two weeks they gave the kids swim tests on the  
5 first two days, primarily to teach the counselors how  
6 to properly observe the swimming proficiency of the  
7 children. That was the --

8 Q. Okay.

9 A. That was the primary reason for doing  
10 those -- doing those swim tests the first two weeks.

11 Q. And it's your understanding that they gave a  
12 swim test to John Pluchinsky or do you know?

13 A. I don't know, but I don't think so.

14 Q. Okay. Do you know why?

15 A. They didn't routinely give swim tests to  
16 the -- to the children.

17 Q. Do you know why they didn't routinely give  
18 swim tests to young children that were as young as  
19 four-years old that they were going to let in their  
20 family pool that had areas that were easily  
21 accessible to four-year olds, even 3.6 feet,  
22 4 feet deep?

23 A. No. I just don't think it was our practice  
24 to do so. We looked to the parents to provide  
25 information and floaties if necessary, life jackets,

0088

1 that type of thing.

2 Q. Okay. Well, who talked to the Pluchinskys  
3 to find out what John Pluchinsky's swimming ability  
4 was?

5 A. I don't know.  
6 Q. What form -- because I haven't seen it --  
7 exists that asked the Pluchinsky's what his swimming  
8 ability was?  
9 A. I don't believe we asked that on our form.  
10 Q. Isn't it true that if you're going to accept  
11 responsibility for the safety of four-year-old kids  
12 that regardless of what guardians or parents say, if  
13 you're going to let them in your waters you should  
14 test their swimming ability?  
15 MR. SNYDER: Objection, form.  
16 A. I don't necessarily think so.  
17 Q. (BY MR. MARRS) Well, would you -- would it  
18 be a surprise to you if the American Red Cross  
19 disagrees with you?  
20 A. I would be interested to read that.  
21 Q. Would it surprise you if every swimming  
22 expert that's worth his weight in salt disagrees with  
23 you?  
24 MR. SNYDER: Objection, form.  
25 A. I don't necessarily --  
0089  
1 Q. (BY MR. MARRS) Would that surprise you?  
2 A. -- accept the premise of that.  
3 Q. Well, we'll see about that.  
4 Do you have grandchildren?  
5 A. Yes, I do.  
6 Q. How old are they?  
7 A. I have an 18-month -- I'm sorry, a  
8 nine-month, two five-year olds and an eight-year old.  
9 Q. Have your two five-year-old grandchildren  
10 swam in the family pool?  
11 A. No. They don't live around here.  
12 Q. How many different groups of campers were at  
13 your family pool at the time John Pluchinsky drowned?  
14 A. The way I understand it, is that the two  
15 13-year-old groups were there, the boys and the  
16 girls, and that the seven-year olds had left as  
17 the -- as the four-year olds came in.  
18 Q. When you said the seven-year olds had left,  
19 were they in the process of leaving or had they  
20 already left the pool area?  
21 A. I can't confirm that.  
22 Q. Who else? Who else was in the pool at the  
23 time of John's death?  
24 A. I don't know. It was some members. I don't

25 know who else.

0090

1 Q. Okay. Member children?

2 A. Perhaps.

3 Q. Do you know how many?

4 A. No.

5 Q. Do you know a minimum of how many?

6 A. No.

7 Q. Were there seven-year-old boys that were  
8 still there drying off right there at the family pool  
9 at the time?

10 A. I don't know. I wasn't present.

11 Q. Yeah. But you've read the statements of all  
12 the counselors, haven't you?

13 A. I don't recall the details. If you would  
14 like to produce them, I'll review them right now.

15 Q. M #1, was she one of the  
16 parents with a child in the pool immediately before  
17 or at the time of John's death?

18 A. If I remember correctly, M #1 took  
19 her -- took her four-year-old over to play with  
20 another -- with her other child at the lap pool, if I  
21 recall that mom.

22 Q. Immediately before?

23 A. At sometime prior to John's death.

24 Q. And how many seven-year-old girls were in  
25 the pool?

0091

1 A. I don't know.

2 Q. How many counselors?

3 A. At least six with the boys group and the two  
4 supervisors. I don't know how many girls -- girl  
5 counselors were in pool.

6 Q. So you think there might have been around  
7 eight counselors?

8 A. Total?

9 Q. Six to eight?

10 A. There were -- there were six to eight --  
11 there were eight including the two supervisors, so  
12 there were probably at least another four with the  
13 girls.

14 Q. Okay. So if we have -- according to what  
15 you do know, if we had two groups of 13, that's at  
16 least 26 four-year-old children, we know  
17 Ms. M #1 was there with one young camper, I  
18 believe, probably a four-year-old, 4 y/o-C #7 ,

19 but he's already counted probably within the camper  
20 number, but also with her daughter who was in the  
21 pool with her, so we know that that's an additional  
22 two. So that's 26 plus two, that's 28. And then we  
23 know there were -- let's say if there were eight  
24 counselors, that would be 36. And you say you think  
25 there were also perhaps another member or two in the  
0092

1 pool?

2 A. I don't know.

3 Q. Do you know how many guests were in the  
4 pool?

5 A. No, I don't know.

6 Q. Does anybody at the Racquet Club know?

7 A. I don't think they do. I don't think -- I  
8 doubt if anybody took a count prior to the incident.

9 Q. How about after the incident?

10 A. No. The pool was emptied after the  
11 incident.

12 Q. So just based on the numbers that I've come  
13 up with just now, based on what you do know, we know  
14 that there was somewhere around 36 people in the  
15 pool -- not counting the two lifeguards because they  
16 weren't in the pool -- at least 36 people and there  
17 may have been more, depending on whether there were  
18 seven-year olds in the pool, whether there were  
19 seven-year-old girls in the pool, whether or not  
20 there were other members or guests that we're not  
21 aware of, but at least about 36 we know of, correct?

22 A. Possibly. I'm not quite sure how many girls  
23 were in the -- in the four-year-old group.

24 Q. Okay.

25 A. There were up to 13. That's our maximum  
0093

1 allowable.

2 Q. So obviously, if you've got these groups  
3 either in the pool or immediately leaving the pool,  
4 that's a pretty busy time of the day for the camp,  
5 around 11:00, 11:15 obviously, isn't it?

6 A. Moderately busy, yes.

7 Q. Moderately busy for the family pool?

8 A. Yes.

9 Q. Well, how many children, four-year olds  
10 would need to be in the family pool for you to say it  
11 was really busy?

12 MR. SNYDER: Objection, form.

13 A. I don't know.  
14 Q. (BY MR. MARRS) In your opinion,  
15 a 15-year-old first time certified lifeguard is more  
16 than enough to scan by herself all of the 13-year  
17 olds -- excuse me, all of the four-year olds, some  
18 26 four-year olds in that swimming pool; is that your  
19 opinion?

20 MR. SNYDER: Objection, form.

21 A. With the addition of the -- all the  
22 counselors that were also in the water with them,  
23 yes, I feel that that was adequate.

24 Q. (BY MR. MARRS) None of whom saw John  
25 Pluchinsky struggle or drown, correct?

0094

1 A. I don't know that. There's no evidence that  
2 there was a struggle. It's not been reported.

3 Q. Well, there's evidence that there was a  
4 drowning, correct?

5 A. Absolutely.

6 Q. There's evidence that he was found in  
7 3.6 feet of water because you testified to that?

8 A. Around that area, yes.

9 Q. Sure. So we know that despite what you say  
10 about the number of counselors we had in the pool,  
11 the two life -- 15-year-old lifeguards, we know that  
12 something went wrong and that he was not seen going  
13 into 3.6 feet deep water, correct, sir?

14 A. I don't know that. I can't conclude that.

15 Q. You don't know one way or the other and the  
16 Racquet Club doesn't know one way or the other,  
17 correct, sir?

18 A. I'm just speaking for myself.

19 Q. Well, I want you to speak for the Racquet  
20 Club.

21 A. The Racquet Club has the same position.

22 Q. And what's the position that you're talking  
23 about that the Racquet Club has?

24 A. We don't know precisely what happened to  
25 John.

0095

1 Q. And you don't know how John got where he was  
2 found floating, correct?

3 A. That's correct.

4 Q. Where he was found floating that -- I mean,  
5 you're familiar enough with the family pool in your  
6 own club to know that where he was floating in

7 3.6 feet deep water is at least over 20 feet from  
8 where that beach area ends. You know that, don't  
9 you?

10 A. I don't know that for a fact. I would -- I  
11 would want to see a scale drawing to determine that.

12 Q. If John Pluchinsky was in that beach area  
13 where he was supposed to be and started swimming or  
14 walking towards and within that 3.6 foot deep area,  
15 would you expect a counselor or lifeguard to prevent  
16 him from doing that?

17 MR. SNYDER: Objection, form.

18 A. I would have expected that somebody would  
19 have been -- would have seen him, yes.

20 Q. (BY MR. MARRS) Would have seen him and  
21 protected him if he was going that way, correct, sir?

22 A. Yes.

23 Q. And you know of no one in this entire case  
24 or that was employed by the Racquet Club that has  
25 said that they saw him venturing into and going that  
0096

1 distance, whether it was 20 or 25 feet, whatever it  
2 is, no one has said that to your knowledge, right,  
3 sir?

4 A. That's correct.

5 Q. So then, you know of course, as a matter of  
6 fact, that your counselors and lifeguards did not  
7 watch him as he ventured out there --

8 MR. SNYDER: Objection --

9 Q. (BY MR. MARRS) -- to that 3.6 feet deep  
10 water, correct, sir?

11 MR. SNYDER: Objection, form.

12 A. I can't -- I can't conclude that.

13 Q. (BY MR. MARRS) You don't conclude that?

14 A. No.

15 Q. Well, which one did see him venture into  
16 that deep water and didn't do anything about it?

17 MR. SNYDER: Objection, form.

18 A. I don't know.

19 Q. (BY MR. MARRS) So, let's go to the -- so we  
20 know from looking at Exhibit 6 that around 10:45  
21 John's group, they were to head to the family pool,  
22 correct?

23 A. Yes, that's correct.

24 Q. And then on the next page, we see the  
25 four-year-old girls' schedule and 11:00 o'clock they  
0097

1 were to be at the family pool, correct?  
2 A. Yes.  
3 Q. And then at the next page, we can see that  
4 the five-year-old girl group, they at 11:25 were to  
5 head to the family pool, right?  
6 A. According to the schedule, yes.  
7 Q. Then we know on the next page that a  
8 seven-year-old boy group at 10:25 were in the pool  
9 and were to get out sometime before 11:25, right,  
10 sir?  
11 A. Yes.  
12 Q. And so who's responsible for drafting these  
13 schedules that are shown on Exhibit 6?  
14 A. I would defer to David Lamkin for those  
15 specifics.  
16 Q. Do you know the answer?  
17 A. No, I do not.  
18 Q. Those that were involved in operating your  
19 summer camp at your club were who?  
20 A. David Lamkin as fitness director was  
21 primarily responsible. The camp supervisor for the  
22 summer was CD and she had-- she had a  
23 number of assistants.  
24 Q. And how about Mr. Guillermo Palmer?  
25 A. Guillermo had no -- no association with the  
0098  
1 camp.  
2 Q. Now, so we know that at least CD  
3 and David Lamkin were fully aware prior to July 18,  
4 2007 of the approximate number of four-year-old boys,  
5 four-year-old girls and other children that were  
6 scheduled to be in that family pool at the exact same  
7 time. They were fully aware of it because that's  
8 what the schedules show, correct, sir?  
9 A. Yes.  
10 Q. Who approved of some four lifeguards to take  
11 a break at the same time around the 11:00 o'clock  
12 hour when all these kids were going to be in the  
13 family pool?  
14 A. I think Mr. Palmer.  
15 Q. Guillermo Palmer?  
16 A. Yes.  
17 Q. How about Mr. Lamkin?  
18 A. I'm not sure if Mr. Lamkin was involved in  
19 that decision or not.  
20 Q. And you know that John Pluchinsky died



21 approximately 15 minutes after these lifeguards were  
22 allowed to take a break and leave the pool, don't  
23 you?

24 A. Approximately, yes.

25 Q. Can most four-year-old kids swim?

0099

1 MR. SNYDER: Objection, form.

2 A. I don't know.

3 Q. (BY MR. MARRS) Could your kids swim at  
4 four-years old?

5 A. You know, I don't recall.

6 Q. Could your grandchildren who you should  
7 recall because it wasn't that far along that they  
8 were four-years old, it was a year ago, your two  
9 five-year-old grandchildren, could they swim a year  
10 ago?

11 A. They live in North Carolina. I'm not privy  
12 to their day-to-day activities.

13 Q. You don't know?

14 A. No, I do not.

15 Q. Can most four-year-old children tread water  
16 for any meaningful amount of time, to your knowledge?

17 MR. SNYDER: Objection, form.

18 A. I have no information.

19 Q. (BY MR. MARRS) But you certainly would  
20 expect Guillermo Palmer and David Lamkin to know  
21 those facts, wouldn't you?

22 MR. SNYDER: Objection, form.

23 A. I would expect them to provide a safe and  
24 responsible number of guards and counselors at the  
25 pool to watch for the children.

0100

1 Q. (BY MR. MARRS) And what else in terms of  
2 protecting the lives of children that they allow in  
3 your family pool, what else would you expect them to  
4 do?

5 A. I think their steps were sufficient to  
6 have -- David's requirement was that the counselors  
7 remain in the pool with the counselors -- with the  
8 children at all times at a ratio of 6 to 13, almost  
9 two to one, which is much much higher than the  
10 required ratio.

11 Q. Yes. But you can have 20 lifeguards and you  
12 can have 20 counselors, but if they allow children to  
13 drown in your pool, they're not really doing their  
14 job, are they?

15 MR. SNYDER: Objection, form.  
16 A. I don't agree with your statement.  
17 Q. (BY MR. MARRS) If they're -- okay. You can  
18 have as many counselors as you want in your pool, but  
19 if they are not watching the children, they are not  
20 doing their job. As a general statement, that's  
21 true, isn't it?  
22 A. In that case that would be so, yes.  
23 Q. Ratios mean nothing if the people that are  
24 in those ratios aren't doing their jobs. Would you  
25 agree with that?

0101

1 A. In that situation, yes.  
2 Q. Is sitting on the rock ledge in the family  
3 pool considered being in the family pool?  
4 A. Yes.  
5 Q. Is sitting on the rock ledge in the family  
6 pool chatting it up, talking to each other as  
7 counselors rather than watching the children you just  
8 turned your back to, is that considered watching  
9 children closely in your pool?

10 MR. SNYDER: Objection, form.  
11 A. I'm not -- I'm not admitting that that  
12 happened.  
13 Q. (BY MR. MARRS) What are you admitting  
14 happened?

15 MR. SNYDER: Objection, form.  
16 A. With regard to what?  
17 Q. (BY MR. MARRS) The death of a four-year-old  
18 in your pool that you say in no way, shape or manner  
19 had anything to do with you or your club or the  
20 managers or the lifeguards or the counselors, all who  
21 were in your pool and did nothing to save John, did  
22 not even see John, allowed him to drown facedown in  
23 your water.

24 MR. SNYDER: Objection, form.  
25 You don't need to answer that.

0102

1 Q. (BY MR. MARRS) Was the scene at the family  
2 pool with seven-year olds getting out, 13 four-year  
3 olds at least girls in the pool, another set of  
4 13 four-year-old boys in the pool, members, other  
5 counselors in the pool, was it chaotic that day on  
6 July 18th when John Pluchinsky drowned?

7 MR. SNYDER: Objection, form.  
8 A. I wasn't there. I don't know that for sure.

9 Q. (BY MR. MARRS) Based on what you now know  
10 about all the number of people that were in that  
11 pool, those getting in and out, drying off in the  
12 pool, counselors, is it your opinion that it was  
13 chaotic?

14 MR. SNYDER: Objection, form.

15 A. I would -- I would not anticipate that it  
16 would have been chaotic, but as I said, I wasn't  
17 there.

18 Q. (BY MR. MARRS) Have you ever tried to  
19 baby-sit a group of four-year-old boys or girls  
20 before?

21 A. No, I have not.

22 Q. Do you know how chaotic that can get when  
23 you have 26 four-year-old kids swimming and jumping  
24 and playing and frolicking and talking and screaming  
25 and -- Can you imagine how chaotic that is?

0103

1 MR. SNYDER: Objection, form.

2 Q. (BY MR. MARRS) Would you think it would be  
3 pretty busy?

4 A. I think it could be busy. I'm not -- I  
5 think chaotic is too strong a word.

6 Q. (BY MR. MARRS) Okay. For a 15-year-old  
7 girl lifeguard, first time lifeguard, do you think  
8 that might have been kind of chaotic for her to keep  
9 up with or not?

10 MR. SNYDER: Objection, form.

11 A. I don't think necessarily, no.

12 Q. (BY MR. MARRS) Would you allow a  
13 15-year-old to --

14 Well, what's changed at your club as it  
15 relates to the number of lifeguards assigned to the  
16 resort pool?

17 A. Nothing.

18 Q. So things are now as they were on July 18th;  
19 is that correct?

20 A. We staff according to the particular need;  
21 however, the resort pool isn't even open this time of  
22 year.

23 Q. Sure. And I guess I wasn't clear. I'm  
24 sorry. It's my fault.

25 You're going to have a summer camp this

0104

1 coming summer, aren't you?

2 A. We don't know yet. We haven't decided.

3 Q. Okay. Well, have you decided the number of  
4 lifeguards that will be dedicated to the family pool  
5 if you have summer camp this coming summer?

6 A. No, we haven't discussed that.

7 Q. Have you discussed it with anyone?

8 A. No, I have not.

9 Q. Have you had any recommendations from any  
10 risk management company, pool company, anyone,  
11 aquatics expert, whoever, to change the number of  
12 lifeguards you have assigned to the family pool at  
13 any time?

14 A. No, I have not received that recommendation.

15 Q. So as far as you know, if you have another  
16 summer camp that in terms of the number of  
17 lifeguards, experience of lifeguards, it will all be  
18 just like it was July 18, 2007?

19 MR. SNYDER: Objection, form.

20 A. I can't conclude that one way or the other.

21 Q. (BY MR. MARRS) You don't know one way or  
22 the other, correct?

23 A. No. The lifeguards at the family pool are  
24 dictated by the number of bathers that are present.

25 MR. PLETCHER: Dictated by the number  
0105

1 of what?

2 MR. SNYDER: Bathers.

3 Is that racket bothering you-all?

4 MR. MARRS: No.

5 Q. (BY MR. MARRS) If those four lifeguards,  
6 even two of the lifeguards that had gone and taken a  
7 break during this busy part of the summer camp day on  
8 July 18, 2007 had instead been at the family pool, do  
9 you think that would have made a difference in terms  
10 of whether John was -- would be alive today?

11 MR. SNYDER: Objection, form.

12 A. I can't determine that one way or the other.

13 Q. (BY MR. MARRS) You have no opinion on that?

14 A. No.

15 Q. Let's look at Exhibit Number 7, if we  
16 could. This is a typed statement from Guillermo  
17 Palmer to Ms. Gayila Bolden. Do you know who she is?

18 A. Yes, I do.

19 Q. Who is she?

20 A. She's with the Department of Family and  
21 Protective Services. She's an investigator.

22 Q. And she investigated your club?

23 A. Yes, she did.

24 MR. PLETCHER: Can you read that?

25 THE WITNESS: A little fuzzy.

0106

1 Q. (BY MR. MARRS) And she found that the club  
2 was responsible for John Pluchinsky's death, correct?

3 A. Yes, she did.

4 Q. And Mr. Palmer just mentions on this letter  
5 that, "My personal timetable that Wednesday began at  
6 close to 11:10 a.m. when I made my way toward the  
7 camp house to meet David (Lamkin) for our usual lunch  
8 meeting, which we typically take closer to 11:00 on  
9 most days (food is usually running a bit low by  
10 11:10, so I was well aware of the time)."

11 He seems kind of concerned about eating  
12 lunch before the food ran out, doesn't he?

13 MR. SNYDER: Objection, form.

14 A. I don't necessarily agree to that. I think  
15 he was just trying to describe why he was where he  
16 was when he was.

17 Q. (BY MR. MARRS) And when he was there it was  
18 around 11:00 o'clock during that busy time at the  
19 family pool, correct, sir?

20 A. Yes.

21 Q. As a matter of fact, he says that's usually  
22 when he and Mr. Lamkin take their lunch break, right?

23 A. That's what it says.

24 Q. And he seems more concerned about eating  
25 lunch than the safety of the children that are left

0107

1 back at the family pool, doesn't he?

2 MR. SNYDER: Objection, form.

3 A. I would not agree with that.

4 Q. (BY MR. MARRS) You wouldn't?

5 A. No, I would not, sir.

6 Q. Well, where was Guillermo Palmer? What  
7 exactly was he doing when John was drowning in the  
8 family pool? Was he supervising the lifeguards?

9 A. No, he was not.

10 Q. Who's responsible for supervising the  
11 lifeguards?

12 A. Responsible lifeguards were left on staff at  
13 the family pool.

14 Q. And who was responsible for supervising all  
15 of the lifeguards at your club?

16 A. Guillermo Palmer. I don't interpret

17 supervisory as meaning that they have to be watched  
18 moment to moment.

19 Q. No. They just have to adequately train  
20 their lifeguards so that they know how to spot  
21 children in distress and know how to handle emergency  
22 situations and know how to adequately scan the pool  
23 so that children don't lose their lives in the pool,  
24 right, sir?

25 MR. SNYDER: Objection, form.

0108

1 Q. (BY MR. MARRS) Would you agree with that?

2 A. I would agree that the training is  
3 important.

4 Q. Would you agree with everything I just said?

5 A. Would you repeat it, please?

6 Q. I'd be happy to.

7 A. It was a statement.

8 Q. They are responsible for training their  
9 lifeguards, training them so that they know how to  
10 deal with emergencies and training them to adequately  
11 scan the pool so that children don't drown in the  
12 pool, aren't they?

13 A. Primary responsibility is the safety of the  
14 people in the pool.

15 Q. Right. And of course, his job is to make  
16 sure that there are an adequate number of competent  
17 lifeguards at the family pool to protect the number  
18 of children in that pool, right, sir?

19 A. Correct.

20 Q. Now, let's go to Exhibit Number 23. This is  
21 a -- this is an E-mail from a M #2,  
22 M #2. Do you know who that is?

23 A. No, I don't know her personally.

24 Q. And I think she made it to member feedback.  
25 That's a -- that's basically an E-mail that arrives

0109

1 at the Houston Racquet Club for members to give feed  
2 feedback, correct?

3 A. Correct.

4 Q. Do you usually look at the feedback that the  
5 members give on the web site?

6 A. I monitor that daily.

7 Q. Okay. So you would have seen on July 21st,  
8 that Saturday, or at least sometime after that,  
9 M #2's E-mail that's Exhibit Number 23,  
10 correct, sir?

11 A. Yes.  
12 Q. And she states, "How did John accidentally  
13 drown and die?" And later on she says, "Why do we  
14 allow 4 year olds?" And near the bottom of the first  
15 page she says, "I can not understand why a counselor  
16 was not watching this poor child. That was our job.  
17 I do not blame the counselor. I blame the Managers."

18 Now, who are the managers of the  
19 Houston Racquet Club? Yourself as general manager,  
20 you've got David Lamkin, who is the -- what's his  
21 title?

22 A. Fitness director.

23 Q. Does he have another title?

24 A. No. He has a lot of responsibilities,  
25 though, other than fitness director.

0110

1 Q. Is he aquatics?

2 A. No. David Lamkin is -- Guillermo Palmer is  
3 aquatics.

4 Q. Okay. I'm sorry. Is he -- is David Lamkin  
5 camp director?

6 A. No. The camps -- the camps are under  
7 David's supervision.

8 Q. Okay. As fitness director?

9 A. David wears a lot of hats.

10 Q. Has he ever been called the camp director?

11 A. I can't speak to whether David actually had  
12 that title in the past. He hasn't had it since I've  
13 been here.

14 Q. Who has, anyone?

15 A. CD in 2007 and DS  
16 in 2006. Prior to that, I can't say.

17 Q. And who is DS?

18 A. David's wife.

19 Q. And is she currently camp director?

20 A. No, she's not.

21 Q. Okay. But she was at some point and now  
22 CD is; is that right?

23 A. There's no camp director right now. CD  
24 was -- CD was in the most previous camp season.

25 Q. Okay.

0111

1 A. The most recent camp season. Sorry.

2 Q. And how about the gentleman sitting across  
3 from, Mr. Ted Erck, who is -- who was the president  
4 of this club, he -- you reported directly to him?

5 A. Yes, I did.

6 Q. Okay. And did he have any management  
7 responsibilities for the ongoing operations of the  
8 Racquet Club?

9 A. None at all.

10 Q. Well, what were his responsibilities as you  
11 understand them as of July 18, 2007?

12 A. The president of the board, as I -- I report  
13 to the president of the board. The board of  
14 directors set policy, discuss the club's needs,  
15 determine the best path forward, consider a number of  
16 issues. I'm charged with implementation of the  
17 policies that they create.

18 Q. So -- and of course another manager would be  
19 Guillermo Palmer?

20 A. Yes.

21 Q. Okay. Who does he report to?

22 A. David Lamkin.

23 Q. Who reports to you, correct?

24 A. Yes, through another -- through my assistant  
25 general manager, Carlos Salazar.

0112

1 Q. Okay. How long has he been assistant  
2 general manager?

3 A. He's been with the club 25, 28 years. I'm  
4 not quite sure how long he has had his current  
5 position. He was in that position when I arrived.  
6 He doesn't have much oversight of the pools. David  
7 reports essentially directly to me. He's more  
8 concerned with clubhouse operations.

9 Q. Does he have any oversight over the pools?

10 A. I would say not day-to-day.

11 Q. What is his non day-to-day responsibilities  
12 for the pool?

13 A. None.

14 Q. Okay. So getting back to M #2 when she  
15 says, I cannot -- or she says, "I do not blame the  
16 counselor. I blame the Managers."

17 Do you believe that someone at the  
18 Houston Racquet Club, whether it was a counselor,  
19 lifeguard or manager should have done a better job of  
20 supervising John Pluchinsky on the day he died?

21 A. I don't know that. I don't know the -- the  
22 full circumstances of John's death.

23 Q. Sure. But I'm asking you, do you believe  
24 someone should have done a better job on that day?



25 MR. SNYDER: Objection.

0113

1 Q. (BY MR. MARRS) Better job of supervising  
2 John Pluchinsky while he was in your pool?

3 MR. SNYDER: Objection, form.

4 A. Perhaps.

5 Q. (BY MR. MARRS) Do you think that if someone  
6 had done a better job supervising John, then someone  
7 could have stated in one of their statements that  
8 they did see him in that 10- or 15-minute time  
9 frame --

10 MR. SNYDER: Objection, form.

11 Q. (BY MR. MARRS) -- after 4 y/o B-CC #2 set  
12 him down and walked away?

13 MR. SNYDER: Objection, form.

14 Q. (BY MR. MARRS) Because obviously, if  
15 someone had been watching him during that time frame,  
16 they could say that they were watching him during  
17 that time frame 10 or 15 minutes before he was found  
18 floating, right?

19 A. I don't accept the premise that nobody saw  
20 him for 10 or 15 minutes.

21 Q. Oh, okay. Well, then how many minutes was  
22 it when he was left unwatched?

23 A. I don't know that.

24 Q. You say you don't accept the premise that he  
25 was unsupervised for at least 15 minutes. So what

0114

1 amount of time do you think he was left unsupervised?

2 A. I have no idea. I just know that 15 minutes  
3 is not possible.

4 Q. Why?

5 A. There were too many people around him. He  
6 would have -- he would have had to have been seen.

7 Q. That amount of time seems ridiculous,  
8 doesn't it?

9 A. Yes, it does.

10 Q. That's a long time, 15 minutes, even ten  
11 minutes for a four-year-old child if they were not  
12 supervised in your family pool if that were the  
13 case.

14 A. May I ask that we once -- that we review  
15 4 y/o B-CC #2 's statement, please?

16 Q. I'll let your lawyer ask you questions about  
17 4 y/o B-CC #2 's statement, if he chooses to.

18 So certainly as general manager, you

19 had authority personally to hire or make sure that  
20 more lifeguards were hired for the family pool for  
21 summer camp, don't you?

22 A. I left the hiring for the -- for the  
23 lifeguards up to Guillermo Palmer.

24 Q. Of course. You delegated that  
25 responsibility to --

0115

1 A. I did.

2 Q. -- Mr. Palmer, correct?

3 A. Yes.

4 Q. But if you so chose, you could have said,  
5 "Guillermo, I want more lifeguards at that family  
6 pool for summer camp." You could have said that if  
7 you had chosen to, right?

8 A. I could have, yes.

9 Q. And you could have made sure that more  
10 lifeguards were hired if you wanted to, right?

11 A. Yes.

12 Q. You could have hired an aquatics expert a  
13 year ago for your pool areas if you so chose,  
14 correct?

15 A. Yes.

16 Q. You could have hired a pool company to train  
17 and hire lifeguards for your pools even a year ago if  
18 you so chose to, correct?

19 A. Yes.

20 Q. Now, is the Racquet Club in any way blaming  
21 the victim here, the Pluchinsky family for something  
22 that they did or did not do on July 18th?

23 A. I can't speak to that.

24 Q. Well --

25 A. Nor would I.

0116

1 Q. You're the person that was designated to  
2 talk about the Racquet Club's defenses in this case.  
3 And I'm asking you: Are you or the Racquet Club  
4 claiming that the Pluchinskys did or did not do  
5 something that caused or in any way was related to  
6 their son's death?

7 MR. SNYDER: Our defenses are a matter  
8 of record. It's contained in our pleadings. There  
9 is no such pleading on file of record at this time.

10 MR. MARRS: I'm entitled to know  
11 whether your client is claiming that. If you're not  
12 claiming it, fine. I'm entitled to know that.

13 MR. SNYDER: It's not in the Answer.  
14 MR. MARRS: It's still a question.  
15 Q. (BY MR. MARRS) You can answer.  
16 A. I have no answer.  
17 Q. To your knowledge, did the Pluchinskys do or  
18 not do something that in any way was related to  
19 John Pluchinsky's death?  
20 MR. SNYDER: Objection, form.  
21 A. I have no information.  
22 Q. (BY MR. MARRS) One way or the other,  
23 correct?  
24 MR. SNYDER: Objection, form.  
25 A. I don't know.

0117

1 Q. (BY MR. MARRS) I'm sorry. I think he cut  
2 you off.  
3 A. I'm sorry.  
4 Q. You don't know one way or the other --  
5 you -- strike that.  
6 You have no reason to believe that the  
7 Pluchinskys did or did not do something that related  
8 in any way to their son's death, do you?  
9 MR. SNYDER: Objection, form.  
10 A. The circumstances of John's death are part  
11 of an ongoing investigation and I won't speak about  
12 it.  
13 Q. (BY MR. MARRS) I'm not talking about your  
14 investigation, sir.  
15 Is the Racquet Club claiming that the  
16 Pluchinskys are to blame in any way for their son's  
17 death?  
18 MR. SNYDER: Objection, form.  
19 Q. (BY MR. MARRS) You're the corporate  
20 representative in this lawsuit, Mr. Griffin, and I  
21 have a right to know if the club is claiming that or  
22 not. Whether it's in your answer or not, I have a  
23 right to know if that's your position or not, so...  
24 A. The --  
25 MR. SNYDER: Objection, form.

0118

1 Q. (BY MR. MARRS) That's why I'm asking you.  
2 I have a right to --  
3 A. The matter is under investigation and I will  
4 not answer it.  
5 Q. Currently, as we sit here today, is it the  
6 Racquet Club's position in any way that the

7 Pluchinskys are to blame in any way for their son's  
8 death?

9 MR. SNYDER: Objection, form.

10 A. I can't say.

11 Q. (BY MR. MARRS) Is there anything that you  
12 believe that the Pluchinskys should have done on  
13 July 18th?

14 MR. SNYDER: Objection, form.

15 A. I can't answer that.

16 THE WITNESS: Norm, may I have a moment  
17 outside?

18 MR. SNYDER: Sure.

19 VIDEOGRAPHER: Off the record. The  
20 time is 2:28 p.m.

21 (Brief recess.)

22 VIDEOGRAPHER: Back on the record. The  
23 time is 2:35 p.m.

24 Q. (BY MR. MARRS) So we've taken a break now,  
25 Mr. Griffin. Do you want to change the answer you  
0119

1 gave to my last question?

2 A. Please restate your question.

3 Q. Do you remember it?

4 A. I remember the substance of it. I would  
5 prefer to hear it verbatim.

6 Q. Well, I think my last four questions were  
7 asking you whether the Racquet Club is claiming that  
8 the Pluchinskys are to blame in any way for their  
9 son's death or did or didn't do anything relating in  
10 any way to their [sic] death?

11 MR. SNYDER: Objection, form.

12 A. I don't know.

13 Q. (BY MR. MARRS) Not to your knowledge?

14 A. Not to my knowledge.

15 Q. I mean, you're not going to blame the victim  
16 here, the Pluchinsky family for their son's death,  
17 are you?

18 MR. SNYDER: Objection, form.

19 Q. (BY MR. MARRS) The Racquet Club is not, are  
20 they?

21 MR. SNYDER: Objection, form.

22 A. I don't know.

23 Q. (BY MR. MARRS) They might?

24 A. I said, "I don't know."

25 Q. If the Racquet Club was going to accept  
0120

1 four-year-old children in its care for the day and  
2 was going to allow that four-year-old into water  
3 deeper than a child could stand and breathe, then  
4 whose responsibility is it to make sure that that  
5 child had whatever flotation device was necessary to  
6 keep that child floating? Whose responsibility was  
7 that?

8 MR. SNYDER: Objection, form.

9 A. I'm not sure whose responsibility it is. I  
10 would -- I would hope to have some input from the  
11 parents who are in the best position to know the  
12 swimming ability of their children.

13 Q. (BY MR. MARRS) So when you, the Racquet  
14 Club, accept a four-year-old child into your summer  
15 camp, you take complete responsibility to make sure  
16 that child is safe when they are at your club for the  
17 day without their parents, don't you?

18 MR. SNYDER: Objection, form.

19 A. We take responsibility, yes.

20 Q. (BY MR. MARRS) And you know for a fact that  
21 parents who drop their children off for summer camp  
22 for the day are not going to be there for the day.  
23 You know that, don't you?

24 A. Yes.

25 MR. SNYDER: Objection, form.

0121

1 Q. (BY MR. MARRS) They're relying on the  
2 Racquet Club to do what's necessary to protect the  
3 children who are swimming in their pools, correct?

4 MR. SNYDER: Objection, form.

5 A. We provide a safe environment for the  
6 children that are dropped off in our care.

7 Q. (BY MR. MARRS) And that safe environment  
8 would include giving that kid a flotation device if  
9 you're going to let him go into deep water, right?

10 MR. SNYDER: Objection, form.

11 A. Not necessarily.

12 Q. (BY MR. MARRS) Okay. So it's okay with you  
13 then if a child four-years old is allowed by a  
14 counselor to go into 3.6 or 4 feet deep water without  
15 being supervised and without any kind of life-saving  
16 device? Is that what you're saying?

17 MR. SNYDER: Objection, form.

18 A. We provide ample and immediate supervision  
19 of the children while they are in the water.

20 Q. (BY MR. MARRS) And if that child is not

21 supervised for some reason for 10, 15 minutes and  
22 allowed to go into the deep end, you darn well sure  
23 want to make sure that kid has a flotation device,  
24 don't you?

25 MR. SNYDER: Objection, form.

0122

1 Q. (BY MR. MARRS) Or does it not matter?

2 A. I don't accept the premise that a child can  
3 be unsupervised that long.

4 Q. (BY MR. MARRS) Okay. But then again,  
5 you're really not an expert in Red Cross  
6 requirements, are you?

7 A. No, I'm not.

8 Q. Or the Texas Administrative Code  
9 requirements for pools, such as your family pool, are  
10 you?

11 A. I'm not an expert, no.

12 Q. Or the CPS Family and Protective Services  
13 requirements for child care facilities, are you?

14 A. I'm not an expert, no.

15 Q. So with respect to what your club was  
16 responsible to do to protect four-year-old  
17 John Pluchinsky, you really can't speak to that, can  
18 you?

19 MR. SNYDER: Objection, form.

20 A. We provided ample and prudent supervision  
21 for the children.

22 Q. (BY MR. MARRS) Who put a life vest on  
23 John Pluchinsky before allowing him to go into that  
24 3.6 foot deep area of the family pool?

25 A. To my knowledge, John didn't have a life

0123

1 vest on.

2 Q. So that -- the answer would be no one did,  
3 correct?

4 A. Correct.

5 Q. And who gave him a noodle so he would have  
6 something to hold onto to float in the water?

7 A. No-one. We wouldn't consider noodles to be  
8 a life-saving device.

9 Q. What would be a life-saving device that  
10 would be appropriate for a four-year-old boy in  
11 3.6 feet deep water?

12 MR. SNYDER: Objection, form.

13 A. Are you asking my opinion?

14 Q. (BY MR. MARRS) Yes, sir.

15 A. A Coast Guard approved flotation vest.  
16 Q. And how much are those, do you know?  
17 A. No, I don't know.  
18 Q. How many does the Houston Racquet Club own?  
19 A. We don't own any.  
20 Q. Even to this day?  
21 A. No, sir.  
22 Q. Correct?  
23 A. No, sir, that's correct.  
24 Q. You know that Mrs. Pluchinsky when she  
25 dropped John Pluchinsky off the morning of July 18,  
0124

1 2007 trusted your club to keep him safe, don't you?

2 A. Yes.

3 MR. SNYDER: Objection, form.

4 Q. (BY MR. MARRS) Why was Mrs. Pluchinsky told  
5 that her older son, Alec Pluchinsky, had drowned in  
6 the Houston Racquet Club pool?

7 MR. SNYDER: Objection, form.

8 A. That was a miscommunication. I'm not sure  
9 how that happened. There was no confusion at pool  
10 side who that boy was.

11 Q. (BY MR. MARRS) Really?

12 A. No, sir, there was not. The message was not  
13 conveyed by the Racquet Club. It came through  
14 another party.

15 Q. Okay. So backing up to your statement that  
16 there was no pool side confusion or miscommunication  
17 about who this young boy was. What was the whole  
18 purpose of lining up the four-year-old boys and  
19 taking roll call immediately after this happened?

20 A. To be certain who the boy was that was  
21 missing from roll call.

22 Q. And who was the boy missing from roll call?

23 A. It was reported to me that it was determined  
24 to be John Pluchinsky.

25 Q. And if pool side they already knew it was  
0125

1 John Pluchinsky, why in the world would they do roll  
2 call to see where John Pluchinsky was?

3 MR. SNYDER: Objection, form.

4 A. The roll call was taken at the time John was  
5 being resuscitated.

6 Q. (BY MR. MARRS) At the time John was being  
7 resuscitated, your counselors and your lifeguards did  
8 not know his name, correct?

9 MR. SNYDER: Objection, form.

10 A. I don't know at what point we determined  
11 that it -- that it was John.

12 Q. At the time he was floating in the pool,  
13 they did not know his name, did they?

14 MR. SNYDER: Objection, form.

15 A. I don't know that for a fact.

16 Q. (BY MR. MARRS) But you do know that after  
17 this happened while he's being resuscitated or at  
18 least attempting to resuscitate him, that someone  
19 lined up the four-year-old boys and took a roll call  
20 to find out who this four-year-old boy trying to be  
21 resuscitated was.

22 MR. SNYDER: Objection, form.

23 Q. (BY MR. MARRS) Correct?

24 A. That's what was reported to me, yes.

25 Q. And how is it that the hospital or EMT was

0126

1 told that the victim was Alec Pluchinsky? Do you  
2 know?

3 MR. SNYDER: Objection, form.

4 A. We're not certain how that happened. The  
5 only thing I do know is that Alec's -- Alec's contact  
6 form was found first. It was brought back just for  
7 reference for the Pluchinsky's phone numbers and  
8 contact numbers. And I think that's where the  
9 miscommunication occurred.

10 Q. (BY MR. MARRS) Okay. Who, you said Alex?

11 A. Alec, the brother.

12 Q. And who communicated the name Alec  
13 Pluchinsky to the hospital or EMT?

14 A. I'm not sure.

15 Q. Well, who do you think it was?

16 MR. SNYDER: Objection, form.

17 A. Possibly the Village police who  
18 investigated, but I don't know for sure.

19 Q. (BY MR. MARRS) And if it was the Memorial  
20 Village Police Department that communicated that, do  
21 you know who communicated Alec Pluchinsky as the name  
22 of the victim to the Police Department? Do you know  
23 who at the club gave that information to the Police  
24 Department?

25 A. No. If I -- if I understand the sequence of

0127

1 events correctly, I think that Alec's card was the  
2 first one that we had with the Pluchinsky's contact



3 information on it. John's card was then subsequently  
4 found.

5 Q. Okay. And so, what was done with Alec  
6 Pluchinsky's card?

7 A. As of when?

8 Q. I'm trying --

9 A. I'm sorry.

10 Q. I'm trying to find out who communicated the  
11 name Alec Pluchinsky to the police department as the  
12 victim?

13 MR. SNYDER: Objection, form.

14 A. I'm not sure.

15 Q. (BY MR. MARRS) Okay. Well, you know that  
16 someone at the Houston Racquet Club communicated to  
17 either the police department or the hospital that  
18 Alec Pluchinsky was the victim, don't you?

19 A. Yes, I know that.

20 Q. Okay. How do you know that?

21 A. I heard it after the fact.

22 Q. And did you hear who it was that  
23 communicated that name?

24 A. No. I don't -- I don't know who ultimately  
25 reached Mrs. Pluchinsky. We made several attempts.

0128

1 Q. And do you know who communicated that name  
2 to the EMT that was on the scene?

3 A. No, sir, I do not.

4 Q. And was the Racquet Club's communication to  
5 an emergency professional on the scene that it was  
6 Alec Pluchinsky that was the victim, was that just a  
7 mistake?

8 A. I have to conclude so.

9 Q. At what point in time did the Racquet Club  
10 realize that the wrong name was communicated to the  
11 emergency professional?

12 A. I don't believe that we knew that there was  
13 a miscommunication until after the fact when -- after  
14 John had been taken to the hospital and had died. I  
15 don't recall the exact moment that I -- that I had  
16 heard that there was a miscommunication.

17 Q. And did the Racquet Club do anything to  
18 clear up that miscommunication immediately after it  
19 learned of it?

20 A. Clear up with whom?

21 Q. Well, I guess a good place to start would be  
22 with the parents.

23 A. By that time the parents already knew.  
24 Q. Okay. How about with the Police Department  
25 or the EMT?

0129

1 A. I didn't make any communication with them,  
2 no.

3 Q. Okay. Does it concern you as general  
4 manager of the Houston Racquet Club that a parent was  
5 told that their older son had died when in reality  
6 their younger son had died?

7 A. I think it's an extremely unfortunate  
8 miscommunication, completely accidental.

9 Q. And was the clipboard with the names of the  
10 children in the pool readily available at the pool,  
11 to your knowledge?

12 A. I believe it was. David Lamkin can provide  
13 more information on that subject.

14 Q. And why do you believe it was?

15 A. It was reported to me afterwards that it  
16 was, but I didn't actually see it.

17 Q. Well, why is it that none of the counselors  
18 could find it if it was readily available at the  
19 pool?

20 A. I don't know that to be the case.

21 Q. And does it concern you that Mrs. Pluchinsky  
22 was at the hospital and saw a body lying on the  
23 gurney under a sheet and thinking for just a minute  
24 that, Oh, my God they have the wrong child. This is  
25 not my child because this child is shorter than Alec

0130

1 and pulling the sheet back and realizing that it --  
2 not only was it not her older son, but it was her  
3 younger son?

4 A. It breaks my heart.

5 Q. Does that concern you?

6 A. Yes, it does.

7 Q. Do you think that there is any way that she  
8 will ever erase that memory out of her mind?

9 MR. SNYDER: Objection, form.

10 A. I don't know.

11 Q. (BY MR. MARRS) Are you aware of the fact  
12 that not one, but more than one counselor was running  
13 around your club sifting through Mr. Palmer's office  
14 looking for something that would tell them who this  
15 child was?

16 A. I'm not aware that that happened.

17 Q. Well, have you read the statements of the  
18 counselors where they indicate that?

19 A. I would have to read them again.

20 Q. Are you aware of the fact that it was not  
21 any of your employees that decided to take this roll  
22 call, that it was a concerned mother at the scene who  
23 was frantically trying herself to make sure that the  
24 parents knew, that said, "Let's take a roll call and  
25 find out who this kid is?" Are you aware of that?

0131

1 A. I'm not aware of that.

2 Q. Let's look at Exhibit 10.

3 MR. SNYDER: You said 10, but I don't  
4 know if that's still your plan.

5 MR. PLETCHER: 6 we just did.

6 MR. MARRS: Yeah. I just want to make  
7 sure I'm not doubling up.

8 Q. (BY MR. MARRS) Let's look at Exhibit 7B.  
9 This is a handwritten statement by a 7 y/o B-CC #3  
10 seven-year-old boys counselor. And he  
11 says that, "My kids and our counselors had just  
12 gotten out of the pool and were drying off when we  
13 heard a woman scream," et cetera. Does that lead you  
14 to believe that there were a group of seven-year-old  
15 boys that were pool side drying off at the time that  
16 John drowned?

17 A. That's what 7 y/o B-CC #3 is reporting.

18 Q. So aside from the -- I think we arrived at  
19 about 36 people in the pool including eight  
20 counselors. If indeed, we put a group of  
21 seven-year-old boys pool side at the same time, then  
22 we know that there were -- do you know how large the  
23 seven-year-old boys group was?

24 A. No, sir, I do not.

25 Q. Does eight -- about eight sound about right

0132

1 to you?

2 A. That's probably typical.

3 Q. So that would be -- 36 plus eight -- 44  
4 counselors and campers in the pool that we know of so  
5 far if indeed 7 y/o B-CC #3 is correct, right, sir?

6 MR. SNYDER: Objection, form.

7 A. Yes.

8 Q. (BY MR. MARRS) And we know that in  
9 Exhibit 7C from Supv CC #2, one of the counselors  
10 you mentioned earlier as being one of the counselors

11 responsible for watching John, correct?  
12 A. He was a supervisor, yes.  
13 Q. Okay. He was a counselor supervisor, right?  
14 A. Yes, sir.  
15 Q. And how many seven-year-old -- if there was  
16 a group of seven-year olds in the pool, say eight, or  
17 pool side, then how many counselors would have been  
18 watching those seven campers?  
19 A. I don't know that.  
20 Q. At least one, right?  
21 A. Certainly.  
22 Q. Okay. And here we have Supv CC #2 , who is  
23 stating that he was swimming in the pool when he saw  
24 the lifeguard walking over and heard her ask a  
25 counselor what's wrong with the kid. And going back  
0133

1 down a little further, he says, "I ran out of the  
2 pool with another counselor to go find David" -- he's  
3 talking about David Lamkin, right?  
4 A. Yes.  
5 Q. "...or Guillermo," that would be Guillermo  
6 Palmer, right?  
7 A. Correct.  
8 Q. "Couldn't find them, so went back to go help  
9 with the child." So here you have a counselor who  
10 is -- who does not know where Guillermo Palmer was  
11 or David Lamkin was at the time of this emergency and  
12 running around trying to find them, correct?  
13 A. Yes. They wouldn't necessarily know David  
14 and Guillermo's location at every moment.  
15 Q. Are they supposed to know who their  
16 supervisor is at any given moment?  
17 A. Yes. Their supervisor is David or CD, if  
18 she's present.  
19 Q. And you're fully aware of the fact that  
20 you've had problems at your family pool with  
21 counselors or lifeguards not even knowing who their  
22 supervisor was, correct?  
23 A. Correct.

24 MR. SNYDER: Objection, form.  
25 A. I think there was a statement to that  
0134

1 effect, but I don't -- I don't accept that as a  
2 general statement, no.  
3 Q. (BY MR. MARRS) Well, there was a statement  
4 to that effect by you at one time, wasn't there?

5 A. I don't recall making that statement.

6 Refresh my memory.

7 Q. I will.

8 A. Okay. I got you. My E-mail to Guillermo.

9 Q. Yes, sir.

10 A. Okay. I've got you.

11 Q. You yourself have complained, as a matter of

12 fact, it -- probably like a month before John

13 drowned, about lifeguards or counselors not even

14 knowing who their supervisor was when you asked them,

15 right, sir?

16 A. In that particular instance they didn't

17 know, yes.

18 Q. And aren't you aware of the fact that even

19 later after this incident, when these kids were asked

20 who their supervisor was, many of them still couldn't

21 even tell authorities who their supervisor was at the

22 Racquet Club. Were you aware of that?

23 A. No, I was not.

24 Q. Does that concern you?

25 A. Yes, it does.

0135

1 Q. Does it lead you to believe that perhaps

2 Guillermo Palmer wasn't doing his job and making sure

3 that the lifeguards under his direction knew who

4 their supervisors were that they could turn to in a

5 moment of crisis for help? Does that concern you?

6 MR. SNYDER: Objection, form.

7 A. I believe the supervisors that day knew that

8 LG Supv was their supervisor or the

9 lifeguards. I can't speak for the counselors.

10 Q. (BY MR. MARRS) If the lifeguards did not

11 know who their supervisor was, would that concern

12 you?

13 MR. SNYDER: Objection, form.

14 A. Perhaps.

15 Q. (BY MR. MARRS) I mean, that's pretty

16 important to know, isn't it?

17 A. Well, it is, but they are lifeguards in

18 their own right and they have their responsibilities

19 at every given moment -- at any given moment. They

20 don't direct supervision at all times.

21 Q. Would it concern you if even after your

22 E-mail complaining that lifeguards or counselors

23 didn't know who their supervisors were, that in July

24 of 2007 after your E-mail during the investigation of

25 this drowning that some of those lifeguards and  
0136

1 counselors still could not name who their supervisors  
2 were? Would that concern you?

3 A. It would surprise me.

4 Q. But there again, there was not a supervising  
5 lifeguard at the family pool at the time John  
6 drowned, correct?

7 A. There was a supervising lifeguard in  
8 proximity at the pavilion.

9 Q. Eating lunch?

10 A. Yes. They eat lunch in the pavilion so that  
11 they can stay in the general area of the pool while  
12 they are eating lunch.

13 Q. And he had no clue, LG Supv, that  
14 anything was going on back at the family pool until  
15 the alarm bells went off and 15 y/o LG #1 was blowing  
16 her whistle, right?

17 A. I think that was the first moment that  
18 anybody knew that anything was going on.

19 Q. So back to my question. There was no  
20 supervising lifeguard at the family pool when John  
21 drowned, correct?

22 A. That's correct.

23 Q. And there was also the manager of the  
24 lifeguards, Guillermo Palmer, wasn't there either,  
25 correct?

0137

1 A. At that moment he was not.

2 Q. Did one of the counselors or lifeguards go  
3 into the room where Alec Pluchinsky was and ask  
4 whether there was an Alec Pluchinsky in that room?

5 A. I have no information about that.

6 Q. Did to your knowledge any counselor or  
7 lifeguard run into the room where Alec Pluchinsky was  
8 and said, you know, Where -- "Is there an Alec  
9 Pluchinsky around here? His brother just drowned"?

10 A. I had not heard that.

11 Q. Let's go to Exhibit 10.

12 MR. MARRS: Now, that is a -- and this  
13 is one document that is marked "Confidential" so I  
14 want to state that on the record and we can keep that  
15 separate, this particular exhibit in a confidential  
16 binder. Is that okay, Court Reporter?

17 THE REPORTER: Yes.

18 MR. MARRS: Great.

19 MR. SNYDER: I appreciate that.

20 MR. MARRS: Of course.

21 Q. (BY MR. MARRS) Now, this is a resume of  
22 Stephen Griffin and that's yourself, correct, sir?

23 A. That's correct.

24 Q. Now, from '97 to '99 you were at the  
25 Westmoreland Country Club in Wilmette, Illinois; is  
0138

1 that correct?

2 A. That's correct.

3 Q. You were clubhouse manager and you also  
4 worked closely with the swim professional at that  
5 club, correct?

6 A. No. My responsibilities were limited to the  
7 clubhouse.

8 Q. Okay. Did you draft this resume?

9 A. It was actually prepared by a search firm.

10 Q. Based on information you provided to them?

11 A. Yes.

12 Q. Okay. When it says on Page 2 under duties  
13 at the Westmoreland Country Club that you worked  
14 closely with swim professional staff, would that be  
15 inaccurate?

16 A. No. That's accurate, but I wasn't involved  
17 in their day-to-day operation, scheduling or anything  
18 like that. It was -- it was to the extent that  
19 clubhouse activities coordinated with the swimming  
20 activities. I had very little to do with the  
21 operation of that pool.

22 Q. Well, I didn't ask you if you worked  
23 day-to-day with them. My question was: Did you work  
24 closely with the swim professional staff and you  
25 said, "No."

0139

1 So my question is, did you or didn't  
2 you work closely with the swim professional staff?

3 A. I did and I just described the context of  
4 that relationship to you.

5 Q. Did the Westmoreland Country Club have a  
6 summer camp program?

7 A. No.

8 Q. Did they have a child swim program?

9 A. I believe they did.

10 Q. How many pools did they have?

11 A. One.

12 Q. How deep was it at the deepest point?

13 A. I don't recall.  
14 Q. Did they allow four-year olds in their  
15 swimming pool accompanied by staff of the club, to  
16 your knowledge?  
17 A. I have no information.  
18 Q. Did they have any program where they took  
19 custody of children and had the children in the  
20 swimming pool without parental supervision?  
21 A. I don't know.  
22 Q. Have you been to any clubs anywhere at any  
23 time during the time that they had a summer camp  
24 program where you actually saw children in the pools  
25 other than your own?

0140

1 A. At Greenville Country Club.  
2 Q. And where was that?  
3 A. In Delaware.  
4 Q. Did you work there?  
5 A. Yes.  
6 Q. Is that on your resume?  
7 A. Yes, it is.  
8 Q. How many pools did they have?  
9 A. One.  
10 Q. And what kind of -- did they have a summer  
11 camp program?  
12 A. Yes.  
13 Q. And how long did you work for the Greenville  
14 Country Club?  
15 A. Just about six years.  
16 Q. Were you responsible in any way for the  
17 summer camp program?  
18 A. Yes.  
19 Q. In what way?  
20 A. I assisted in setting it up when I arrived  
21 in 1999, Spring of 2000. And the camp director  
22 reported to me directly.  
23 Q. Who was that?  
24 A. There were four -- no, there were three  
25 during the time that I was there. I -- sorry, I

0141

1 don't recall their names. Charles was the man that  
2 was there the last few years I was there.  
3 Q. I'm sorry, I didn't catch his name.  
4 A. Charles. If I sit here a little while, I'll  
5 come up with it.  
6 Q. Okay. Charles what?



7 A. I can't remember his last name.  
8 Q. And Charles reported directly to you?  
9 A. Yes.  
10 Q. Was he a friend?  
11 A. No. He was -- He was an acquaintance that I  
12 met through hiring him for the summer camp program.  
13 Q. In setting up your program from '99 until  
14 approximately 2000, did the Greenville Country  
15 Club -- what was the minimum age of children?  
16 A. I believe it was six.  
17 Q. Why didn't you accept four-year olds?  
18 A. I followed the guidelines of the local child  
19 protective agency. And I don't recall the specific  
20 name of the agency in Newcastle County, but they had  
21 a lower age limit and a maximum number of hours per  
22 day.  
23 Q. What was your understanding as to why the  
24 child protective services had jurisdiction over your  
25 summer camp --  
0142

1 A. They --  
2 Q. -- at Greenville Country Club?  
3 A. They had jurisdiction over operations that  
4 watched children, so -- and in order to not be  
5 required to have a license, there were certain --  
6 there were certain requirements to exempt out of  
7 that.  
8 Q. Okay. So you are aware at the Greenville  
9 Country Club when you set up their summer camp  
10 program that you had to have a license if you were  
11 going to run a program where you accepted custody of  
12 children in that program, correct?  
13 A. Children under a certain age.  
14 Q. Which was what?  
15 A. I'm not sure. It was either -- it was  
16 either four or five.  
17 Q. Okay. Nonetheless, with respect to the  
18 young children you accepted into your summer camp  
19 program, the Child Protective Services did have  
20 jurisdiction over that summer camp, right?  
21 A. They didn't -- they didn't have oversight of  
22 it since we didn't exceed more than four hours a day  
23 and not under six years of age.  
24 Q. I got you. Did you look at those CPS  
25 requirements to make sure that Greenville Country  
0143

1 Club was within its parameters?

2 A. No. I simply called the local agency and we  
3 talked on the phone and they described what I needed  
4 to do.

5 Q. Okay. And how did the Greenville Country  
6 Club test children's swimming ability in that summer  
7 camp program you set up?

8 MR. SNYDER: Objection, form.

9 A. I don't recall specifically testing the  
10 ability of the children; however, I wasn't involved  
11 in the -- directly in the swimming aspect of the  
12 program.

13 Q. (BY MR. MARRS) How would they -- During  
14 that summer camp program you set up, how would you  
15 distinguish between children that could swim and  
16 children that couldn't and their swimming ability?  
17 How would a counselor or lifeguard be able to see  
18 readily in the pool who had good swimming ability and  
19 who didn't? Did you have any kind of system set up?

20 A. I honestly don't recall the specifics of  
21 it. It was delegated to the lifeguards on staff and  
22 the counselors to oversee the children at that point.

23 Q. In 1999, 2000 was there any kind of color  
24 coding of children in the summer camp program at  
25 Greenville?

0144

1 A. To designate --

2 Q. To designate anything.

3 A. Well, they all wore -- they all wore  
4 identifying clothing as participants in the camp.

5 Q. Anything to indicate their age or swimming  
6 abilities?

7 A. No. It was a relatively small camp.

8 Q. Prior to your -- At any time prior to your  
9 2007 summer camp at the Racquet Club, did you or  
10 anybody on your behalf simply call up the local CPS  
11 office in Houston to find out whether or not you  
12 would be subject to its rules just like you did back  
13 in Greenville?

14 A. I did not.

15 Q. Did you ask anyone to?

16 A. No, I did not.

17 Q. Why not?

18 A. I arrived to a program that had already been  
19 in place for 25, 28 years. I can't even tell you  
20 when it started. I spent time with David. We

21 reviewed all the aspects of the program. It was  
22 obviously well run and very well staffed and with the  
23 other things that I was dealing with upon arrival, it  
24 didn't occur to me to check.

25 Q. How long had the -- has the summer camp  
0145

1 program at the Racquet Club been in place?

2 A. I don't know exactly; in excess of 25 years.

3 Q. Well, who's responsible at the Racquet Club  
4 for ensuring that its summer camp met all the state  
5 and local requirements? Who do you have in place to  
6 make sure that you were complying with the laws and  
7 the rules?

8 A. I don't think we were aware that the laws or  
9 rules existed.

10 Q. Well, it was no surprise to you that Child  
11 Protective Services in Greenville had authority over  
12 some aspects of the same kind of summer camps that  
13 were going on at the country club where you were  
14 general manager of, correct; you knew that?

15 A. It was told to me by a lady who ran a day  
16 care facility, yes.

17 Q. Sure.

18 A. Yes.

19 Q. So by the time you arrived at the Racquet  
20 Club, regardless of how long their camp had existed,  
21 you were aware the day you walked into the door that  
22 CPS might have jurisdiction and rules and stuff that  
23 apply to your club and your summer camp? You knew  
24 that from past experience, right?

25 A. It honestly never occurred to me.

0146

1 Q. What about the summer camp program at  
2 Racquet Club are you involved in on a day-to-day  
3 basis during the summer? Are you -- go ahead.

4 A. I have no direct involvement other than  
5 to -- I spend a great deal of time out on the  
6 grounds. I wander -- I wander around, looking at the  
7 different aspects of the operation. I've been --  
8 I've been present at -- many times during drop-off  
9 and pick-up back at the -- back at the Howe House. I  
10 observe the children walking around the property. I  
11 observe them under the -- you know, under the care of  
12 the counselors, but I have no direct interaction with  
13 them.

14 Q. And at any time during all those times

15 you've been there at drop-off, have you ever once  
16 heard any parent being asked, "Does your son, child,  
17 daughter need a flotation device?"

18 A. I did not personally hear that, no.

19 Q. You've never personally heard that at any  
20 time at the Houston Racquet Club regarding any summer  
21 camp there, whether it was 2000, 2001 all the way  
22 through to 2007, have you?

23 A. I can't speak to anything prior to 2006.

24 But no, during that time there, no, I have not.

25 Q. If you want to make sure that children of a  
0147

1 certain age are wearing life jackets or some kind of  
2 flotation device, what would you do?

3 MR. SNYDER: Objection, form.

4 A. If I wanted to make sure?

5 Q. (BY MR. MARRS) Yes, sir. If you as general  
6 manager of this club believed that kids four-years  
7 old ought to have a life jacket if they are going to  
8 be in my family pool, what would you do to make sure  
9 that that happened?

10 MR. SNYDER: Objection, form.

11 A. I would have set it as a standard.

12 Q. (BY MR. MARRS) And how would you make sure  
13 that it was a standard at your club?

14 MR. SNYDER: Objection, form.

15 A. I would have set it and made it -- made it a  
16 requirement of my supervisors.

17 Q. (BY MR. MARRS) And how would you make it a  
18 requirement? Would you put something in writing?

19 A. Yes.

20 MR. SNYDER: Objection, form.

21 Q. (BY MR. MARRS) How?

22 A. I would have done it in memo form or E-mail  
23 form.

24 Q. Would you make it a part of your  
25 registration form that if your kid is four-years old,  
0148

1 they must have a life jacket when you drop them off?

2 Would you state that so that the parents would know?

3 MR. SNYDER: Objection, form.

4 A. I would consider that as something to add to  
5 the form, yes.

6 Q. (BY MR. MARRS) Okay. Otherwise, if you  
7 don't put it in the form and they are pulling the  
8 form off your web site or getting it in the mail,

9 they wouldn't know that they were required to do that  
10 unless you told them as part of your summer camp,  
11 right?

12 MR. SNYDER: Objection, form.

13 A. That's correct.

14 Q. (BY MR. MARRS) And if you, as the general  
15 manager of Houston Racquet Club, want to make sure  
16 that you're in compliance with any CPS or family  
17 protective service type of requirements like  
18 Greenville Country Club, then what would you do to  
19 make sure?

20 MR. SNYDER: Objection, form.

21 Q. (BY MR. MARRS) What would come down from  
22 the general manager and where would it go to make  
23 sure for yourself and the club that you were in  
24 compliance. What would you do?

25 MR. SNYDER: Objection, form.

0149

1 A. I would probably take it upon myself to find  
2 out those requirements.

3 Q. (BY MR. MARRS) How would you do that?  
4 Where would you go?

5 MR. SNYDER: Objection, form.

6 A. Local resources. I don't know.

7 Q. (BY MR. MARRS) Pick up the phone and call  
8 the CPS maybe?

9 A. More likely to go on the Internet.

10 Q. Okay. That's a good point. And you could  
11 go on the Internet and search and Google and find out  
12 what the requirements are probably, correct?

13 A. Yes.

14 Q. You could even find a phone number,  
15 probably, of the local office and call them if you  
16 have further questions, right?

17 A. I'm certain.

18 Q. But not only that, you had a number of  
19 lawyers, even on your board of directors that you  
20 could turn to, didn't you?

21 A. If I had thought to ask the question, I'm  
22 sure they could have assisted me.

23 Q. Lawyers like who, HRCBM-S?

24 A. HRCBM-S is an attorney, yes.

25 Q. Who else?

0150

1 A. On the current board?

2 Q. Yes, sir.

3 A. HT, HRCBM-X.  
4 Q. Well, let's stick to the board that you had  
5 as of July 18. Who could you have called --  
6 A. Let me think.  
7 Q. -- that was a lawyer on your board?  
8 A. HRCBM-Z.  
9 Q. Uh-huh.  
10 A. I think HRCBM-S was off.  
11 Q. HRCBM-S was on at the time, wasn't he?  
12 A. HRCBM-S was on when I arrived in 2005.  
13 Q. Okay. Who else?  
14 A. There are -- HTCBM-X is new. Oh, HT  
15 was there last year. I think that's it.  
16 Q. And -- But you weren't limited to your board  
17 because you have a number of esteemed lawyers that  
18 are members of your club, don't you?  
19 A. No doubt.  
20 Q. That are -- have great reputations, Mickey  
21 Branisa -- I hope I'm saying that name right -- who  
22 is sitting in this room today is one, right?  
23 A. Yes.  
24 Q. And Craig Smyser, Nick Nichols, a number of  
25 lawyers with excellent reputations in the community,  
0151  
1 correct?  
2 A. Yes.  
3 Q. Any of whom you could have picked up the  
4 phone and called to ask to look into regs, codes,  
5 statutes or laws that might apply to your summer  
6 camp, correct, sir?  
7 A. Had it occurred to me, yes, I could have.  
8 Q. During all those times that you were at  
9 drop-off where parents drop their children off for  
10 summer camp, did you ever hear any employee of the  
11 club tell the parent, "Now, you know, your child is  
12 going to be in water above his chest", advising the  
13 parents how deep the water is that they were going to  
14 allow their children to venture into?  
15 A. No.  
16 Q. And you know that on your camp registration  
17 form, you do not indicate that, correct?  
18 A. I would have to review the form, but I don't  
19 believe so.  
20 Q. And you don't indicate anywhere on your camp  
21 registration form that you had as of July 18, 2007  
22 indicating that any child, regardless of age, would

23 need any flotation device, correct?

24 A. That's correct.

25 Q. You don't put a notice on there that if you  
0152

1 don't have a life jacket for your child when you drop  
2 them off, he might drown?

3 MR. SNYDER: Objection, form.

4 Q. (BY MR. MARRS) You don't have that warning  
5 on there, do you?

6 A. That language certainly would not have been  
7 contained on any form.

8 Q. But we do know from looking at Exhibit 6,  
9 which we looked at before, the four-year-old Boy Kids  
10 Camp News that --

11 MR. PLETCHER: Schedule.

12 Q. (BY MR. MARRS) -- on the schedule that as  
13 far as John Pluchinsky's group on that Wednesday,  
14 July 18, 2007 at 10:45, it says "Show your Counselors  
15 how you can SWIM," correct?

16 A. Yes.

17 Q. And doesn't that indicate that the  
18 counselors were going to determine whether that child  
19 can swim?

20 MR. SNYDER: Objection, form.

21 A. I don't think that's necessarily a  
22 conclusion.

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

24 A. No, sir, I do not.

25 Q. Well, do you think that a parent reading  
0153

1 that could conclude that they are going to require  
2 the child to show the counselor how they can swim?

3 MR. SNYDER: Objection, form.

4 A. I don't necessarily agree with that.

5 Q. (BY MR. MARRS) You don't?

6 A. No, I do not.

7 Q. So then what does that mean to you, "Show  
8 your Counselors" -- now, you know they are not  
9 talking about the parent, right? They are talking  
10 about the camper when they say "Show your Counselors  
11 how you can SWIM." They are talking about John  
12 Pluchinsky and the rest of the four-year-old campers,  
13 right?

14 A. I think they're -- my interpretation, they  
15 are just trying to create excitement there to make it  
16 look like a fun activity.

17 Q. Well, that's not what it says, is it? It  
18 says, "Show your Counselors how you can SWIM." Are  
19 we to take that literally or don't -- don't you admit  
20 that parents can read that and easily assume that  
21 your counselors are going to see how the camper can  
22 swim?

23 MR. SNYDER: Objection, form.

24 Q. (BY MR. MARRS) His swimming ability?

25 A. That's one interpretation.

0154

1 Q. Yes, sir. And you don't -- you're not  
2 contending that's an unreasonable interpretation of  
3 this line, are you?

4 A. No.

5 Q. Okay. You wouldn't hold it against  
6 Mrs. Pluchinsky or Mr. Pluchinsky if that's what they  
7 thought in reading this line, would you?

8 MR. SNYDER: Objection, form.

9 A. No.

10 Q. (BY MR. MARRS) At what point on that day --  
11 as a matter of fact, let's back up. Isn't it true  
12 that in times past that if your counselors or  
13 lifeguards were going to test a kid's swimming  
14 ability, that it would be done on a Wednesday? Are  
15 you aware of that?

16 A. No. The specific scheduling wasn't anything  
17 I was involved in.

18 Q. So, you don't know one way or the other,  
19 correct?

20 A. I do not.

21 Q. Okay.

22 A. It's a question for David Lamkin.

23 Q. Okay. On what day was John Pluchinsky's  
24 swimming abilities tested? On what day did the  
25 counselors ask him, okay, show me your swimming

0155

1 abilities?

2 MR. SNYDER: Objection, form.

3 A. I don't know that.

4 Q. (BY MR. MARRS) And have you been present at  
5 any pool where a group of children was color coded to  
6 determine or to be able to identify their swimming  
7 abilities? Have you ever seen that done?

8 A. I have not personally, no.

9 Q. Have you ever heard of that being done?

10 A. No, not specifically, but I imagine it



11 exists.  
12 Q. Have you ever read a lifeguard training  
13 manual?  
14 A. No, sir, I have not.  
15 Q. Ever?  
16 A. No, sir.  
17 Q. Have you ever read a Red Cross manual on  
18 safety at your country club or health club?  
19 A. No, sir.  
20 Q. Have you ever read the Texas Administrative  
21 Code requirements as they relate to pool activities  
22 at clubs such as yours?  
23 A. I've read sections of the Texas  
24 Administrative Code, yes.  
25 Q. When? When was the first time you've done  
0156  
1 that?  
2 A. Upon arrival and relative to the  
3 construction of the pool. Specifically the enclosure  
4 gates, the fences.  
5 Q. And how did you know to go to the Texas  
6 Administrative Code?  
7 A. HRCBM-S made me aware of it.  
8 Q. And how did you get a copy of all or a  
9 portion of the Texas Administrative Code at that  
10 time?  
11 A. It's already in my office. I arrived a week  
12 before the pools open, so those -- that reference was  
13 already in place.  
14 Q. Okay. In a paperback version?  
15 A. Printed from the -- from the Internet.  
16 Q. And what portions of the Texas  
17 Administrative Code did you have that was printed  
18 from the Internet that was in your office when you  
19 arrived?  
20 A. I believe it's the entirety of that  
21 particular section pertaining to all aspects of pool  
22 operation and design.  
23 Q. Okay. And so that would have been in 19 --  
24 A. I think this was printed out in early 2005,  
25 if I recall the date on the bottom of the document.  
0157  
1 MR. MARRS: Have you produced that  
2 entire document bound, that entire printed document?  
3 I ask that you produce it to us if you haven't. I  
4 don't think we have it, so...

5 MR. SNYDER: I'll certainly check into  
6 it.

7 MR. MARRS: Okay.

8 MR. SNYDER: You're talking about the  
9 portions of the administrative code that he discussed  
10 that he --

11 MR. PLETCHER: That he just described.

12 MR. MARRS: That he just testified  
13 about.

14 MR. SNYDER: Okay. Sure.

15 MR. MARRS: Thank you.

16 Q. (BY MR. MARRS) And other than the  
17 provisions with respect to enclosure requirements, as  
18 I think you just said, I mean, you knew there were  
19 provisions that govern pools, right?

20 A. Yes.

21 Q. Is the pool, the family pool, considered a  
22 Class A, B, C, D? What class pool is it considered?

23 A. Class C pool.

24 Q. Class C. Do any of the provisions of --  
25 that govern Class B pools apply to your family pool,  
0158

1 to your knowledge?

2 A. No, not to my knowledge.

3 Q. And at what point in time did you ask HRCBM-S or  
4 anyone else to make sure that your pools, as newly  
5 constructed, met the provisions of the TAC, the Texas  
6 Administrative Code?

7 A. It was just in discussion. And as I said,  
8 it was -- it was practically all done by the time I  
9 got there. The only part that was left in question  
10 was where the current pool construction was to meet  
11 the future construction of the fitness center and  
12 what that fence would look like that separated the  
13 two. We just reviewed it to make sure that that --  
14 that that fence was in compliance.

15 Q. Well, how about with respect to lifeguards  
16 or safety equipment or, you know, procedures or  
17 training or any of those things, did you review those  
18 provisions at any time?

19 A. I did not.

20 Q. Have you ever reviewed any of those  
21 provisions?

22 A. Since the drowning, yes.

23 Q. And have you found or learned that some of  
24 those provisions do apply to the family pool?

25 A. Oh, yes.

0159

1 Q. And have you found that you were not in  
2 compliance with some of those provisions?

3 A. Possibly.

4 Q. And which provisions have you found that on  
5 July 18, 2007 the family pool was not in compliance  
6 with or the program, the summer camp was not in  
7 compliance with?

8 MR. SNYDER: Objection, form.

9 Q. (BY MR. MARRS) Generally.

10 A. Perhaps the documentation of the training,  
11 there is a -- there is -- there is a reference to  
12 performance audits. While we did internal  
13 performance audits on a continual basis, we did not  
14 have an outside company retained. From a signage  
15 physical standpoint, I believe we were fully in  
16 compliance.

17 Q. What do you mean by that, signage?

18 A. Well, there's some signage that's required  
19 if you operate a pool without lifeguard staff  
20 present, which is how our pool operates about seven  
21 months -- well, April, seven months of the year.

22 Q. And what else?

23 A. I don't -- I can't recall anything else  
24 specifically where we appeared to be out of  
25 compliance with the Class C pool requirements.

0160

1 Q. And who as of July 2007 was responsible at  
2 the Racquet Club in ensuring that the 2007 summer  
3 camp and the family pool was in compliance with  
4 whatever statutes, codes or laws might govern summer  
5 camp or the family pool? Whose responsibility was  
6 that?

7 A. I would share that responsibility with David  
8 and Guillermo, I suppose.

9 Q. That was a shared responsibility between  
10 yourself, David Lamkin and Guillermo Palmer?

11 A. Yes.

12 Q. Okay. And whose failing was it with respect  
13 to violations you might have with those applicable  
14 codes and statutes, yours, Mr. Palmer's or  
15 Mr. Lamkin's?

16 MR. SNYDER: Objection, form.

17 A. I would want to know what failures you were  
18 referring to.

19 Q. (BY MR. MARRS) Well, how about the ones you  
20 just mentioned that might be violations? Whose  
21 failings would those have been to not make sure you  
22 were -- had been in compliance with those for the  
23 last couple of years?

24 MR. SNYDER: Objection, form.

25 A. I don't know.

0161

1 Q. (BY MR. MARRS) One or all of the three of  
2 you?

3 MR. SNYDER: Objection, form.

4 A. Perhaps.

5 Q. (BY MR. MARRS) And how about with respect  
6 to potential violations of the CPS and/or Family  
7 Protective Service's rules as they relate to child  
8 care facilities? Whose failings would that be if you  
9 were indeed in violation of those rules?

10 MR. SNYDER: Objection, form.

11 A. Those would have to be mine.

12 Q. (BY MR. MARRS) Okay.

13 THE WITNESS: Might I request a few  
14 moments break?

15 MR. SNYDER: Sure. Is this a good  
16 time?

17 MR. MARRS: No, but that's fine.  
18 That's fine. Go ahead.

19 THE WITNESS: Are you sure?

20 MR. MARRS: Yeah.

21 VIDEOGRAPHER: Off the record. The  
22 time is 3:33 p.m.

23 (Brief recess.)

24 VIDEOGRAPHER: Back on the record. The  
25 time is 3:51 p.m.

0162

1 MR. MARRS: We are on?

2 THE REPORTER: Yes.

3 Q. (BY MR. MARRS) Okay. And, Mr. Griffin, let  
4 me show you what's been marked as Exhibit 10B.

5 MR. MARRS: And I request the court  
6 reporter to keep this as a second document in the  
7 confidential binder.

8 Q. (BY MR. MARRS) Do you recognize this as  
9 your July 14, 2005 letter agreement or contract with  
10 the Houston Racquet Club?

11 A. Yes.

12 Q. Is this the current contract that you still

13 have with the Houston Racquet Club?

14 **Redacted-**  
15 **HRC Designation as Confidential**  
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1 **Redacted-**  
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14 Q. And would that also include educating  
15 yourself through your involvement in CMAA with  
16 respect to laws, rules or regulations that might  
17 affect the operations of your club?

18 A. That's subject matter that's often covered,  
19 yes.

20 Q. Are you a -- tell the jury what CMAA is.

21 A. Club Managers Association of America. It's  
22 a -- it's a recognized organization by which club  
23 managers can become certified and attain their CCM,  
24 their certified club manager designation through  
25 education and -- yeah, completely through education.

0166

1 It used to be through experience, but not anymore.

2 Q. And how long have you held the CMAA  
3 designation?

4 A. Since 1999.

5 Q. And have you ever been a -- more than just a  
6 member of the CMAA?

7 A. I was -- I was -- served on the board of the  
8 Delaware chapter for four years -- three or four  
9 years. I was chapter president my last year.

10 Q. Which was when?

11 A. 2005.

12 Q. Have you ever given a speech before the CMAA  
13 members?

14 A. No, sir.

15 **Redacted-**  
16 **HRC Designation as Confidential**  
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21 Q. Do you have any reason to believe he won't  
22 still be employed with you?

23 A. He is considering other opportunities.

24 Q. Why, to your knowledge?

25 A. Those are answers that Guillermo would have  
0168

1 to give you.

2 Q. Okay. But what's your understanding of why  
3 he might be?

4 MR. SNYDER: Objection, form.

5 A. That's a question for Guillermo Palmer.

6 Q. (BY MR. MARRS) What have you heard the  
7 reason might be that he is leaving, that he might be  
8 looking at other opportunities?

9 MR. SNYDER: Objection, form.

10 A. I would be speculating. Those are -- those  
11 are personal decisions that he makes for himself and  
12 his family.

13 Q. (BY MR. MARRS) Well, I'm not asking you to  
14 speculate.

15 A. All right.

16 Q. Have you heard from anyone, any source as to  
17 why Guillermo Palmer may be looking at other  
18 opportunities?

19 A. No.

20 Q. Okay. And when you say "other  
21 opportunities," do you mean going to work for another  
22 club?

23 A. I think he's going to actually work for a  
24 member. And his decision may actually be made  
25 already.

0169

1 Q. Okay.

2 A. But he's still with us currently.

3 Q. In a related field or a different field?

4 A. In a different field.

5 Q. And what's your understanding of what that  
6 field would be?

7 A. Working with a -- with an asphalt paving and  
8 construction company.

9 Q. Okay. Has Guillermo Palmer's duties changed  
10 at all at the Racquet Club since July 18, 2007?

11 A. Yes.

12 Q. How so?

13 A. We, through necessity, went with a -- with  
14 an outside agency to provide us with lifeguards



15 because we weren't able to supply sufficient  
16 lifeguards to meet the needs of our members. So I  
17 found that I had to go to the outside to get the  
18 guards necessary and so that took Guillermo out of  
19 that capacity.

20 Q. And you were doing that through a pool  
21 company?

22 A. Yes.

23 Q. And what's the name of that pool company?

24 A. A Beautiful Pools.

25 Q. And it's not your testimony that that was  
0170

1 your voluntary decision to do that, is it? You were  
2 required to do that by your insurance company,  
3 weren't you?

4 A. No, sir, I was not.

5 Q. Was it a recommendation by your insurance  
6 company to do that?

7 A. No, sir, it was not.

8 Q. Well, whose recommendation was it?

9 A. Mine.

10 Q. When?

11 A. When I found that we couldn't -- we couldn't  
12 adequately staff the pools once we -- once we went to  
13 a fully guarded status.

14 Q. And when did you find that out?

15 A. When did I find that requirement?

16 Q. Yes, sir.

17 A. I found when our insurance policy renewed in  
18 August, we found that it was a requirement of our  
19 renewal that we be fully guarded any time the pool  
20 was opened.

21 Q. And prior to that, you did not have a rule  
22 or policy that you were to be fully guarded anytime  
23 the pool was opened, correct?

24 A. I implemented that policy at my own  
25 discretion immediately following the accident.

0171

1 Q. That what? Can you just explain to the jury  
2 what you mean --

3 A. Certainly.

4 Q. -- by that?

5 A. Yes. I went -- I went to a fully guarded  
6 status, that is, the pool isn't open for swimming  
7 unless sufficient guard staff were in place, which  
8 was where my dilemma about guard staff began.

9 Q. Okay. But nonetheless, even considering  
10 that, you still do not believe you need anymore than  
11 two lifeguards at the family pool during summer camp;  
12 is that right?

13 A. Our staffing load at the summer-- at the  
14 resort pool or any pool is determined by the bather  
15 load. We keep seven guards on staff during every  
16 shift when we are in season and guarding it  
17 ourselves.

18 Q. In terms of guards, lifeguards that are  
19 currently on duty at the family pool, if you have  
20 summer camp next summer and you have the same number  
21 of people in the pool that you had on July 18th, are  
22 you still going to have two lifeguards scanning that  
23 pool?

24 MR. SNYDER: Objection, form.

25 Q. (BY MR. MARRS) Only two lifeguards at that  
0172 pool?

2 A. I don't know that at this point.

3 Q. And so it was after your renewal of your  
4 life -- excuse me, strike that.

5 It was after you had to renew your  
6 insurance policy that covered the club that you  
7 realized that you had to retain a pool company to  
8 staff your lifeguards; is that right?

9 A. It helped me in my decision, but I was  
10 already -- I was already moving in that direction  
11 because there's the expectation that the pools will  
12 be open or the pool, at least, the lap pool will be  
13 open year around. I don't have availability of  
14 lifeguards year around, so I had to go to a  
15 private -- a private pool management company to  
16 supply those guards.

17 Q. But that insurance company, I think you  
18 said, correct me if I'm wrong, required you as a  
19 condition of renewing your insurance policy covering  
20 the Racquet Club to indeed hire a pool company to  
21 oversee the hiring and training of your lifeguards,  
22 correct?

23 A. Not a -- not a company that would provide  
24 the guards.

25 Q. Okay.

0173

1 A. Yeah.

2 Q. But a company that what?

3 A. Would provide performance audits.  
4 Q. Which would include what?  
5 A. Showing up certain times of the year,  
6 according to a random schedule, to view and review  
7 the performance of the -- of the guard staff, to  
8 monitor the facilities during those times, to provide  
9 continuing education, provide supplemental written  
10 materials for training, et cetera.  
11 Q. Okay. Are they to -- is A Beautiful Pool  
12 company tasked with the responsibility through a  
13 contract with them to actually provide lifeguards to  
14 the Racquet Club or not?  
15 A. Yes.  
16 Q. Yes, okay.  
17 A. That's my sole relationship with them.  
18 Q. They are to provide lifeguards to you. Are  
19 they to provide lifeguard training to you?  
20 A. Yes. They are to provide continuing  
21 education for their guards.  
22 Q. And just to clarify, did your insurance  
23 company as a condition to renewing your policy  
24 require you to hire a professional company to do  
25 those things?  
0174  
1 A. No.  
2 Q. Okay. What was their recommendation?  
3 A. To hire a private company to provide risk  
4 assessment. It's an independent company.  
5 Q. Risk assessment and audits?  
6 A. Yes.  
7 Q. And has such risk assessment and audit  
8 occurred at the Racquet Club by the A Beautiful Pool  
9 company?  
10 A. The risk assessment and audits are performed  
11 by NASCO.  
12 Q. Okay.  
13 A. And yes, they performed their first one  
14 according to our annual schedule.  
15 Q. Okay. And did they give you a written  
16 report of that?  
17 A. No, verbal.  
18 Q. Why do you not have a written report from  
19 NASCO?  
20 MR. SNYDER: Objection, form.  
21 A. That's just not their -- it's not their  
22 practice.

23 Q. (BY MR. MARRS) And prior to the renewal of  
24 your insurance policy, when your lap pool would be  
25 opened, would it be at times when lifeguards weren't  
0175

1 there at your own risk?

2 A. Prior to the accident in the off season,  
3 yes.

4 Q. Okay. And did, to your knowledge,  
5 Mr. Lamkin or yourself or anyone at the Racquet Club  
6 suggest to Mr. Palmer he might look for other  
7 opportunities?

8 A. Certainly not.

9 Q. You would be perfectly content and happy  
10 with him staying at the Racquet Club, correct?

11 A. Yes, I would. And I would have been happy  
12 in his -- in his previous capacity; however, his  
13 responsibilities have changed.

14 Q. Okay. You would have been even after  
15 July 18, 2007 happy for him to continue serving in  
16 the same role he served in prior to July 18, 2007,  
17 correct?

18 A. Yes.

19 Q. And what exactly are David Lamkin's  
20 responsibilities as you understand them?

21 A. As I said, he wears a number of hats. His  
22 official title is fitness director. He's also --  
23 that would -- that would include oversight of all  
24 fitness activities, aerobics activities, the physical  
25 plant of the fitness center, the locker rooms. He  
0176

1 has oversight of the aquatics operation through  
2 Guillermo Palmer. He has oversight of the summer  
3 camp. He has oversight of the ladies and the men's  
4 locker rooms.

5 Q. Is the --

6 A. That's pretty much it.

7 Q. Okay. Is the same family pool considered to  
8 be under the auspices of fitness?

9 A. Only through the aquatics director.

10 Q. Okay. Indirectly?

11 A. Yes, sir.

12 Q. And what was the criteria for -- did you  
13 hire David Lamkin?

14 A. No. David was --

15 Q. He was already there?

16 A. Yes.

17 Q. And for a fitness director, what's the  
18 criteria for someone to hold that position?

19 A. Well, David has a -- has a background in --  
20 and he'll speak to that much better than I will, but  
21 he's been a personal trainer and been involved in  
22 fitness for many, many years. I believe David came  
23 on as our fitness director and then subsequently  
24 assumed additional responsibilities as people left  
25 through the previous general manager. So, you know,  
0177

1 the requirements for fitness director at the Racquet  
2 Club, I think, are much more extensive than they  
3 would be at most other places the way the position is  
4 currently defined.

5 Q. You have to have good judgment?

6 A. Absolutely.

7 Q. Be able to deal with people?

8 A. Yes.

9 Q. Hopefully, have some background in health  
10 fitness, right?

11 A. Yes.

12 Q. Be able to manage other people, such as your  
13 aquatics director, right?

14 A. Yes.

15 Q. It's his responsibility to adequately retain  
16 and train counselors, right?

17 A. Through the -- through the summer camp  
18 director, yes.

19 Q. And to make sure -- it's his responsibility  
20 to make sure that the counselors are doing their jobs  
21 on a day-to-day basis, right?

22 A. Again, through the supervision of their --  
23 of their immediate supervisor. So David's remained  
24 very involved with the camp on a day-to-day basis.

25 Q. Well, I mean, who's ultimate -- or should I  
0178

1 say, I mean, it's David that is responsible, I mean,  
2 for the counselors. He's head -- he's considered to  
3 be the head of the counselors, isn't he?

4 A. Technically, CD was the head of  
5 the summer camp this year.

6 Q. In summer camp 2007?

7 A. Yes.

8 Q. And since when? Was she in 2006?

9 A. No. In 2006 it was DS.

10 Q. Okay. And how did CD come to the club?

11 What's your understanding?

12 A. I don't have a great deal of understanding  
13 of it other than David knew her. She had coached  
14 sports, and I'm not sure which sports. She had a  
15 couple years of coaching experience with a local  
16 school and somehow David became acquainted with her  
17 and offered her the position.

18 Q. And what experience does CD have in  
19 running summer camps?

20 A. I can't speak to her previous experience.

21 Q. So was it David or was it CD that was  
22 responsible for making sure that the counselors were  
23 doing their job on a day-to-day basis at the 2007  
24 summer camp?

25 A. I would have to say CD had direct  
0179

1 oversight of the counselors. But again, David can  
2 clarify that.

3 Q. What qualifications did Mr. Lamkin have as  
4 of July 2007 to supervise the counselors?

5 A. David -- and again, David can offer the  
6 years and the specific experience, but David actually  
7 ran the camp himself, I think, for several years upon  
8 his arrival. He has had the camp under his direction  
9 for, I believe, 13 years.

10 Q. And aside from the number of years he's done  
11 it, my question is: What qualifications does he have  
12 to do it?

13 A. I can't speak to his specific  
14 qualifications.

15 Q. Do you know them?

16 A. No, sir, I do not.

17 Q. Do you know Guillermo Palmer's  
18 qualifications to be aquatics director?

19 A. Guillermo's background was lifeguarding,  
20 among other things. I know he was a tennis pro, also  
21 personal trainer. But lifeguarded for us for either  
22 two or three years prior to taking over as aquatics  
23 director in 2006.

24 Q. So certainly, if someone was going to  
25 understand the importance of scanning a pool  
0180

1 adequately and continuously supervising young  
2 children in the pool, he's the one that certainly  
3 ought to understand the importance of that as being a  
4 previous lifeguard; wouldn't you imagine?

5 A. He was very familiar with the procedure of  
6 scanning, yes, and conveyed it to his lifeguards.

7 Q. And what were Guillermo Palmer's job  
8 responsibilities as of July 18, 2007?

9 A. Hiring, firing of lifeguard staff,  
10 scheduling of the staff, direct oversight of them as  
11 well as all responsibilities for the physical  
12 operation of the pool, chemicals, pumps, et cetera.

13 Q. How about training of lifeguard staff?

14 A. Yes, that would have been his responsibility  
15 as well.

16 Q. And what experience did he have in those  
17 areas prior to coming to the Racquet Club to your  
18 knowledge, if any?

19 A. I can't speak to that.

20 Q. Is it true that after July 18, 2007 that  
21 15 y/o LG #1 received a raise from the Racquet Club?

22 A. You know, I don't think so, but I can't  
23 confirm that for certain.

24 Q. Well, let's look at Exhibit Number 11.

25 A. Okay.

0181

1 Q. Now, this is from 15 y/o LG #1 's employee  
2 history. And let's look at the third page, which is  
3 document HRC 02847. That's just a stamp on the  
4 bottom. But it indicates here that 15 y/o LG #1 , at  
5 least -- I don't really see a date on this page, but  
6 it indicates that at some point in time she had a pay  
7 rate of **Priv**an hour. Do you see that?

8 A. Oh, yes. I see that, yes.

9 Q. Okay. And let's go to the second page. And  
10 then we see on document HRC 02840, which is Page 2 of  
11 Exhibit 11 that 15 y/o LG #1 as of August 24, 2007  
12 had a change in her hourly compensation rate up to  
13 **Priv** . Do you see that?

14 A. I do.

15 Q. And who signed off on that form? Does that  
16 look like one of the signatures is Guillermo Palmer?

17 A. Guillermo's is the top one. I don't -- I  
18 don't recognize the bottom one.

19 Q. Who do you suspect it would have been?

20 A. David Lamkin.

21 Q. And --

22 A. But I don't know that for sure.

23 Q. Okay. Does this indicate to you that  
24 shortly after John Pluchinsky drowned, that the

25 lifeguard that was responsible for scanning his area  
0182

1 of the pool where he was found floating facedown  
2 actually received a pay raise from the Racquet Club?

3 A. It's not unusual at that time of the year.

4 Is that -- is that August 24th, sir?

5 Q. Yes.

6 A. Okay. We start running out of lifeguard  
7 staff at that point. And it's not unusual for us to  
8 have to offer them additional compensation to get  
9 them to work at a time when they have so many other  
10 things that they would rather be doing related to  
11 school and other activities. So I would -- I would  
12 speculate that 15 y/o LG #1 was given an increase in light  
13 of her willingness to continue to work with us.

14 Q. You told me earlier in the deposition that  
15 the last thing you wanted to do was speculate.

16 A. Okay.

17 Q. So I'm going to ask you not to speculate.

18 A. All right. Then I --

19 Q. And to --

20 A. -- retract my previous statement.

21 Q. And I just want you to answer my question.  
22 My question is: Exhibit 11 shows that shortly after  
23 John Pluchinsky drowned, the one lifeguard that was  
24 responsible for scanning the area of the pool where  
25 he was found floating facedown, 15 y/o LG #1 ,  
0183

1 actually received a pay raise from the Racquet Club,  
2 didn't she?

3 A. Yes, she did.

4 Q. Let's go to the fourth page of Exhibit 11 on  
5 the top. And this document is a termination report  
6 regarding 15 y/o LG #1 , correct?

7 A. Yes.

8 Q. And let's go down -- let's go down a little  
9 further. And who signed off on this termination  
10 report?

11 A. Guillermo Palmer.

12 Q. Right. And this was February 18, 2008,  
13 correct?

14 A. Yes, sir.

15 Q. And it indicates on the top that her last  
16 day at work was actually August 2007, doesn't it?

17 A. Yes.

18 Q. And this was the immediate month following



19 John Pluchinsky's death, correct?

20 A. Yes.

21 Q. And Guillermo Palmer gave an employee  
22 evaluation of this lifeguard that was responsible for  
23 scanning the area where John Pluchinsky was found,  
24 correct?

25 A. Yes.

0184

1 Q. And he rated her in every single category:  
2 Attendance, cooperation, initiative, job knowledge,  
3 quality of work, job productivity, dependability,  
4 work safety and management skills as not fair, not  
5 satisfactory, not good, but excellent in every single  
6 one of those categories, didn't he?

7 A. That's what it says.

8 Q. Not only that, but he says on this form that  
9 he would recommend without reservation that she be  
10 rehired, correct?

11 MR. MARRS: Go ahead and push it up --

12 A. I can't see that, sir.

13 MR. MARRS: -- so he can see the  
14 recommendation.

15 A. Yes, that's correct.

16 Q. (BY MR. MARRS) What does it mean when the  
17 Racquet Club says that it has a zero tolerance policy  
18 for counselors and lifeguards that don't follow the  
19 rules? Tell the jury what that means.

20 A. Well, the literal meaning of the word is  
21 that we don't tolerate it even once.

22 Q. Not even once? Because if you don't follow  
23 any of our rules even once, what will happen? What  
24 does zero tolerance mean to you?

25 A. Well, I think that's open to interpretation.

0185

1 Q. What's it generally mean?

2 A. Termination.

3 Q. Correct. It doesn't mean that we're going  
4 to give you a pay raise if a kid dies on your watch,  
5 does it?

6 MR. SNYDER: Objection, form. You  
7 don't need to answer that.

8 THE WITNESS: Okay. Thank you.

9 Q. (BY MR. MARRS) Well, it doesn't -- zero  
10 tolerance doesn't mean that I'm going to rate you as  
11 being excellent in safety and every other category  
12 even though on your watch a child drowned, does it?

13 MR. SNYDER: Objection, form. Same  
14 objection.

15 Q. (BY MR. MARRS) After John Pluchinsky  
16 drowned, who among all the counselors, lifeguards and  
17 managers received any kind of reprimand at all?

18 A. No one.

19 Q. Who was terminated?

20 A. Terminated for which reason?

21 Q. Terminated as a result of John Pluchinsky  
22 drowning?

23 A. As a result of John Pluchinsky drown --  
24 Pluchinsky drowning, no one was terminated.

25 Q. Okay. Well, who was terminated?

0186

1 A. All of the lifeguards subsequently, but that  
2 was simply -- they just stopped working for us.

3 Q. That happens --

4 A. Routinely.

5 Q. -- routinely?

6 But as a result of John Pluchinsky  
7 drowning and the events under which he drowned, there  
8 have been no reprimands, no terminations, no  
9 consequences negative to any employee of the Houston  
10 Racquet Club or manager or officer, correct?

11 A. That's correct.

12 Q. Pretty much business as usual even before  
13 July 18, 2007?

14 MR. SNYDER: Objection, form.

15 A. I don't understand the question.

16 Q. (BY MR. MARRS) And what about CD's  
17 daughter, CC-B, had she ever been a camp  
18 supervisor of yours?

19 A. I don't know her or of her.

20 Q. And who is SC?

21 A. SC gives swim lessons at the  
22 club. She's a contract employee.

23 Q. Have you talked to her about the incident on  
24 July 18?

25 A. We spoke briefly the day it happened, but

0187

1 not since then.

2 Q. And what did you -- What did she mention to  
3 you?

4 A. I don't recall anything specific that she  
5 mentioned. She accompanied us to the hospital. She  
6 was one of the Racquet Club employees that came

7 along.

8 Q. Did she tell you anything about the incident  
9 at the pool?

10 A. No, sir, she did not.

11 Q. Well, certainly you know as the general  
12 manager that it is extremely important that your  
13 lifeguards have current and valid CPR certifications  
14 if they are going to be lifeguards on duty at your  
15 pool, correct?

16 A. Yes.

17 Q. And it's also very important that your  
18 counselor's have current and valid CPR certifications  
19 if they are going to be counselors at your pool,  
20 correct?

21 A. That's our standard.

22 Q. Who's in charge in making sure that that  
23 standard is met?

24 A. For the counselors, David Lamkin; for the  
25 lifeguards, Guillermo Palmer.

0188

1 Q. Did either of those gentlemen fail in any  
2 way with respect to making sure that the counselors  
3 and/or lifeguards had current and valid CPR  
4 certifications on July 18, 2007?

5 A. There was at least one counselor that day  
6 whose certification had expired the month before.

7 Q. Who was that?

8 A. Supv CC #1 .

9 Q. Anymore?

10 A. There may have been one more; however,  
11 Supv CC #1 's card was issued by the American Red Cross.  
12 The American Red Cross's standard is one year. The  
13 other certifications that may have expired, I believe  
14 it's -- that's a recommended renewal date. It's not  
15 a -- it's not a hard and fast expiration date. But  
16 again, I would need to review the cards to be  
17 certain.

18 Q. Well, I'm talking about the CPR  
19 certifications.

20 A. That's what I'm talking about, too, sir.

21 Q. Okay. So any lifeguards -- well, strike  
22 that.

23 With respect to Supv CC #1 's CPR card being  
24 expired as of July 18, 2007 when Supv CC #1 was acting as  
25 a counselor, was he actually a counselor for John

0189

1 Pluchinsky?  
2 A. He was a counselor supervisor.  
3 Q. For John Pluchinsky?  
4 A. Yes. And the other group in the water as  
5 well.  
6 Q. And who failed to ensure that Supv CC #1 , as a  
7 counselor for John Pluchinsky, had a valid and  
8 current CPR certification?  
9 MR. SNYDER: Objection, form.  
10 Q. (BY MR. MARRS) Would that have been David  
11 Lamkin?  
12 A. Either David or Guillermo, I suppose.  
13 Q. And were there any lifeguards that were on  
14 duty on July 18, 2007 at the Houston Racquet Club  
15 that did not have a valid CPR certification?  
16 A. I think LG Supv certification had  
17 also passed, but I'm not -- I can't confirm whether  
18 his was recommended renewal or a hard expiration  
19 date.  
20 Q. Well --  
21 A. But it had just recently -- his anniversary  
22 had just recently passed.  
23 Q. But it is the policy of your club, at least  
24 as of July 18, 2007, that whether or not it's a hard  
25 expiration or a recommended expiration, that the card  
0190  
1 be valid and current for the time that they are  
2 there, correct?  
3 A. That's an interpretation of it. If it's a  
4 recommended expiration date, I don't see it as such a  
5 hard and fast requirement.  
6 Q. So if it's a recommended expiration date for  
7 a CPR certification from one of your lifeguards or  
8 counselors, it's okay with you if it is not timely  
9 brought current before it expires as long as it's a  
10 recommended expiration date; is that your testimony?  
11 A. Certainly --  
12 MR. SNYDER: Objection, form.  
13 A. -- I would prefer it if they would renew it  
14 ahead of time. In this case there were a couple that  
15 had not.  
16 Q. (BY MR. MARRS) Well, what's the safe route  
17 to take here? Isn't it safer to make sure that your  
18 lifeguards and counselors have current and valid CPR  
19 certifications?  
20 MR. SNYDER: Objection, form.

21 A. All I can say is when that they were hired  
22 for the season, their certifications were still in  
23 place. They subsequently expired.

24 Q. (BY MR. MARRS) And that's a violation of  
25 Texas law; you are aware of that now, aren't you?

0191

1 A. What's that, sir?

2 Q. To have a lifeguard on duty at your pool at  
3 your club that doesn't have a valid and current CPR  
4 certification. Are you not aware that that's a  
5 violation of Texas law?

6 A. No, sir, I'm not.

7 Q. You're not aware that that's a violation of  
8 the very TAC statute that's sitting in your office  
9 that's printed out?

10 A. I would have --

11 Q. You're not aware of that?

12 A. I would have to review the documents.

13 Q. You'd have -- You didn't do that after  
14 July 18 when this boy drowned in your pool with  
15 lifeguards and counselors that did not have valid CPR  
16 certifications?

17 A. Extensively, sir.

18 Q. But you didn't find that provision?

19 A. I just don't recall the specifics -- the  
20 specifics of it.

21 Q. Let's go to Exhibit 13. And this would be  
22 the Houston Racquet Club document Number 500,  
23 Plaintiff's Exhibit 13.

24 MR. MARRS: Can you blow up the first  
25 half of that for me?

0192

1 MR. PLETCHER: Sure.

2 Q. (BY MR. MARRS) Now, was Sr LG #2, one of  
3 the counselors on duty at the pool July 18, 2007, was  
4 his CPR, AED card current as of July 18, 2007  
5 according to this document?

6 MR. SNYDER: Can you see it?

7 A. I can see it. It appears to say "No Date",  
8 so I don't know. It may or may not have been.

9 Q. (BY MR. MARRS) Okay. How about LG Supv,  
10 the supervising lifeguard on duty somewhere  
11 at the club, but not at the family pool directly on  
12 July 18, 2007, was his CPR card current?

13 A. No, sir, it was not.

14 Q. It had expired, hadn't it?

15 A. Yes, it did.  
16 Q. And how about LP LG , the lifeguard  
17 that manned the lap pool at that time, was her CPR  
18 card current or expired as of the time John passed  
19 away?  
20 A. I'm sorry, I can't see that one.  
21 MR. PLETCHER: Who is that?  
22 MR. MARRS: Can we blow it up a little,  
23 LP LG ?  
24 Q. (BY MR. MARRS) It says 6-16-07.  
25 MR. PLETCHER: Can you see her name  
0193  
1 there?  
2 A. Yes, I do. Yeah. She had passed the  
3 recommended renewal date.  
4 Q. (BY MR. MARRS) Hers was expired as well,  
5 correct?  
6 A. She passed the recommended renewal date.  
7 Q. Well, it says expiration date on the top  
8 there, doesn't it?  
9 A. It does, but that's just an internal  
10 document. That's -- I think for the best evidence we  
11 should take a look at the card itself, if you happen  
12 to have it. I may be incorrect.  
13 Q. Well, let's look at Page 4 of that same  
14 document. That indicates that indeed LP LG  
15 CPR card was only valid for one year,  
16 meaning it expired June 16, 2007 correct?  
17 A. Yes, because she was certified by the  
18 American Red Cross, which only validates for one  
19 year.  
20 Q. Right. That's not a recommended expiration  
21 date. That's a hard and fast expiration date, isn't  
22 it, sir?  
23 A. Well, to clarify my previous statement, I  
24 referenced also the American Heart Association, who  
25 we also trained to their standards.  
0194  
1 Q. Regardless of that, Sr LG #2 's card, CPR  
2 card was American Red Cross; so was LG Supv,  
3 so was LP LG 's. And those have hard and  
4 fast only one year valid time frames and -- don't  
5 they, sir?  
6 A. Yes, sir.  
7 Q. So back to my question. You know that  
8 LP LG 's CPR card had also expired as of the

9 day -- before the day of John Pluchinsky's drowning,  
10 correct?

11 A. I'm sorry, whose card did you refer to?

12 Q. LP LG , the one we're looking at.

13 A. Hers expired in June.

14 Q. Yes, sir.

15 A. A month and -- a month and a day -- a month  
16 and two days.

17 Q. Before the incident, correct, sir?

18 A. Yes, sir.

19 Q. And likewise -- let's go back to the first  
20 page.

21 MR. PLETCHER: Sure.

22 Q. (BY MR. MARRS) Sr LG #1 .

23 MR. PLETCHER: Can you see that, sir?

24 THE WITNESS: Yes, sir, I can.

25 MR. PLETCHER: It has her name.

0195

1 Q. (BY MR. MARRS) And her CPR card had also  
2 expired before July 18, 2007, correct, sir?

3 A. I see that, yes.

4 Q. And the same for Supv CC #1 , correct?

5 A. Yes.

6 Q. And also Sr LG #3 -- Let's look at his  
7 actual card since the summary is wrong.

8 MR. MARRS: That's the last page of  
9 this exhibit.

10 MR. PLETCHER: All right.

11 Q. (BY MR. MARRS) Sr LG #3 's CPR  
12 certification, which was effective beginning April of  
13 2006 had also expired, correct, sir?

14 A. That's correct.

15 Q. Is it your understanding that --

16 MR. MARRS: Let's go back to the first  
17 page, if we could. LG Supv.

18 Q. (BY MR. MARRS) Is it your understanding  
19 that LG Supv performed CPR on John Pluchinsky?

20 A. Yes, he performed the breathing.

21 Q. Is it your understanding that Supv CC #1  
22 performed CPR on John Pluchinsky?

23 A. Yes. He started compressions.

24 Q. So we know that at least two of the people  
25 that performed CPR on John Pluchinsky on July 18,

0196

1 2007 did so with expired CPR cards, correct?

2 A. Yes, that's correct.

3 Q. And we know that at least three other  
4 counselors that were there that day had expired CPR  
5 cards, don't we?

6 A. Yes.

7 Q. Is that acceptable to you as a general  
8 manager of this club where young children are  
9 entrusted to you?

10 A. No. I would like to see that monitored more  
11 carefully.

12 Q. You would like to see it not just monitored,  
13 you would like to make darn sure that if they are  
14 going to be lifeguards or counselors they are going  
15 to be -- have current CPR cards, right?

16 A. Yes.

17 Q. Whose failing was this that we see in  
18 Exhibit 13, all these expiration dates of kids who  
19 even performed CPR on John Pluchinsky?

20 A. I suppose that would be shared by David and  
21 Guillermo.

22 Q. Does that concern you?

23 A. Yes.

24 Q. Is -- Was David Lamkin CPR certified on  
25 July 18, 2007?

0197

1 A. Yes.

2 Q. Are you sure?

3 A. David is a -- is a CPR certifier, so yes, he  
4 certainly was certified.

5 Q. How about Guillermo Palmer, was he CPR  
6 certified at that time?

7 A. I don't know for sure.

8 Q. Do you know if any of the individuals that  
9 are on the list on Exhibit 13 are certified in  
10 pediatric or child CPR?

11 A. David could speak to that. He's certified  
12 some of these people himself. I honestly don't know.

13 Q. Would you consider a four-year-old to be a  
14 child?

15 A. Yes.

16 Q. How many AEDs were available at the Houston  
17 Racquet Club on July 18, 2007?

18 A. Three.

19 Q. Where were they?

20 A. One in the pool office, one in the pro shop  
21 and one in the clubhouse.

22 Q. Pool office, pro shop and where?



23 A. In the clubhouse.  
24 Q. Okay. And you have a number of counselors  
25 that were certified in AED use as you can see in  
0198  
1 Exhibit 13, correct?  
2 A. Yes.  
3 Q. And at what point in time was an AED used on  
4 John Pluchinsky?  
5 A. It was not used.  
6 Q. Why not?  
7 A. I don't know.  
8 Q. Well, you knew that the Racquet Club had AED  
9 devices prior to July 2007?  
10 A. Yes.  
11 Q. So certainly, you inquired when this  
12 incident occurred as to whether or not an AED was  
13 used on this child, didn't you?  
14 A. At what point are you asking me if I  
15 inquired about that?  
16 Q. The day of the incident.  
17 A. More specifically, please.  
18 Q. When did you inquire as to whether an AED  
19 device was used on John Pluchinsky?  
20 A. I didn't inquire. I knew it had not been  
21 used on him.  
22 Q. How did you know?  
23 A. I was out there during the -- during the --  
24 Q. Okay.  
25 A. -- CPR effort.  
0199  
1 Q. And who said, "Go get the AED device", if  
2 anyone?  
3 A. I didn't hear anyone say that.  
4 Q. Who ran to get the AED device?  
5 A. I have no knowledge that anyone ran to get  
6 the AED device.  
7 Q. Why not, to your knowledge?  
8 A. I don't know.  
9 Q. To this day, do you know why?  
10 A. Yes, I think I do, but I'm not sure it's an  
11 explanation.  
12 Q. Well, tell me.  
13 A. Well, the AED that we had would not have  
14 been appropriate for a child his size. For myself,  
15 it didn't occur to me to use it.  
16 Q. Why not?

17 A. It simply didn't occur to me to use it.  
18 Q. Did you know on July 18, 2007 that the AED  
19 device that you did have was not appropriate for a  
20 child his size?  
21 A. No.  
22 Q. Did you suggest at that time that someone go  
23 grab the AED device?  
24 A. No, sir.  
25 Q. Regardless of the size of the AED device and  
0200

1 whether or not it was appropriate for a child his  
2 size, why didn't someone go grab it anyway, to your  
3 knowledge, if you know?  
4 MR. SNYDER: Objection, form.  
5 A. I don't know.  
6 Q. (BY MR. MARRS) Why if the Houston Racquet  
7 Club was going to allow -- well, strike that.  
8 The AED devices that you had were  
9 appropriate for children of what size?  
10 A. I was -- it was reported to me later  
11 children over 50 pounds.  
12 Q. Which correlates in your mind to children of  
13 what age approximately?  
14 A. Five or six -- I don't know.  
15 Q. Why if the Houston Racquet Club was allowing  
16 four-year-old children in its pool areas did the  
17 Houston Racquet Club not ensure that it had an AED  
18 device available that was appropriate for the very  
19 age children like four-year olds you were allowing to  
20 enter your pools?  
21 A. I can't answer that. I don't know.  
22 Q. You don't know why?  
23 A. I don't know why. I know that originally  
24 the AEDs were purchased with the thought that they  
25 would be used for the older members in the club.

0201  
1 Q. Have you heard of AED devices being used on  
2 potential drowning victims?  
3 A. That would seem an appropriate use of one.  
4 Q. And certainly, you knew -- you've known for  
5 years that not just old people drown, correct?  
6 A. That's correct.  
7 Q. And since that time, July 18, 2007, has the  
8 Racquet Club purchased additional AEDs than the three  
9 that it had on that day?  
10 A. We purchased an additional AED unit, yes,

11 sir.

12 Q. That was appropriate for?

13 A. Infants, small children.

14 Q. Such as four-year olds?

15 A. Yes, sir.

16 Q. And whose responsibility was it at the  
17 Racquet Club to ensure that there were appropriate  
18 number and an appropriately sized AED device for the  
19 size children that you were allowing in your pools?

20 A. I'm not sure anybody ever thought about the  
21 fact that it may or may not be appropriate for a  
22 small child.

23 Q. And whose responsibility at the Racquet Club  
24 was it to ensure that there was adequate safety  
25 equipment, including AEDs for children you allowed in  
0202

1 your pools? Whose responsibility would that fall  
2 under?

3 A. David or Guillermo.

4 Q. Who purchased the three AED devices you had  
5 as of July 18, 2007?

6 A. They were already here when I arrived, at  
7 the club when I arrived. I'm not sure.

8 Q. Well, regardless of whether or not the three  
9 AED devices on the Houston Racquet Club premises on  
10 July 18, 2007 were or were not appropriate for a  
11 four-year-old child, did you know that it was  
12 inappropriate for a four-year-old child on July 18,  
13 2007?

14 A. No, sir.

15 Q. Did the counselors or lifeguards to your  
16 knowledge know that, well, the AED devices we have  
17 are not appropriate for a four-year-old?

18 MR. SNYDER: Objection, form.

19 A. I can't speak to that.

20 Q. (BY MR. MARRS) Okay. Is there any reason  
21 why any of the lifeguards or counselors did not know  
22 to go get the AED device for John Pluchinsky when he  
23 was pulled out of the pool?

24 MR. SNYDER: Objection, form.

25 A. I can't answer that. I don't know.

0203

1 Q. (BY MR. MARRS) Do you suspect that they  
2 didn't particularly understand that the AED devices  
3 weren't appropriate for this particular age or size  
4 child? They probably did not know that, correct?

5 MR. SNYDER: Objection, form.

6 Q. (BY MR. MARRS) I mean, you didn't.

7 A. No, I didn't. But I don't know what they  
8 knew.

9 Q. Okay.

10 A. They were more recently certified than I  
11 was.

12 Q. Well, some weren't validly certified on that  
13 day, were they?

14 A. True. And many were.

15 Q. And many were, correct. But not two of them  
16 that performed CPR on John, correct? We already went  
17 over that, didn't we?

18 A. That's correct.

19 Q. So my question is: Because you don't know  
20 whether or not the counselors and lifeguards there  
21 that day knew anything about the inappropriateness of  
22 this AED device and its size, why didn't even one of  
23 the lifeguards or one of the counselors or one of the  
24 managers go get the AED device to try to use it on  
25 John Pluchinsky on that day?

0204

1 MR. SNYDER: Objection, form.

2 Q. (BY MR. MARRS) Do you know?

3 A. No, I do not know.

4 Q. You were there and you didn't see Guillermo  
5 Palmer go get the AED device, the very individual  
6 responsible to make sure that you had appropriate AED  
7 devices, did you?

8 A. No, sir.

9 Q. And you didn't see Guillermo -- you didn't  
10 see David Lamkin go get the AED device, did you?

11 A. No, sir.

12 Q. And as we sit here today, does that concern  
13 you in your mind that this child is trying to be  
14 resuscitated, yet no one thought to go get an AED  
15 device to try to use it on this child?

16 MR. SNYDER: Objection, form.

17 A. It concerned me after the fact. At the  
18 moment we were -- we were completely consumed with  
19 the process of CPR.

20 Q. (BY MR. MARRS) And does it still concern  
21 you?

22 A. No. I think at this point we have all the  
23 appropriate equipment in place.

24 Q. But does it still concern you to this day

25 that no one attempted to get an AED device on  
0205

1 July 18, 2007 for John Pluchinsky?

2 A. Yes, it does.

3 MR. SNYDER: We've been going an hour  
4 since we last took a break.

5 MR. MARRS: One more question.

6 MR. SNYDER: Okay. Sure.

7 MR. MARRS: If you don't mind.

8 MR. SNYDER: No.

9 Q. (BY MR. MARRS) How much did John Pluchinsky  
10 weigh on July 18, 2007?

11 A. I don't know exactly, sir. I believe it was  
12 under 50 pounds, but I don't know that for certain.

13 Q. Are you aware of the fact that he was just  
14 about 50 pounds, that he was some -- approximately  
15 48 pounds? Do you think that a two-pound difference  
16 would have made any difference with respect to  
17 whether the AED devices that you had on premises  
18 would have worked on him or not?

19 MR. SNYDER: Objection, form.

20 A. I don't want to speculate.

21 Q. (BY MR. MARRS) And you would have to  
22 speculate? You don't know because no one tried,  
23 correct, sir?

24 MR. SNYDER: Objection, form.

25 A. That's correct.

0206

1 Q. (BY MR. MARRS) And the AE -- the three AED  
2 devices that you did have, were they fully charged  
3 readily available for use?

4 A. Yes, they were.

5 Q. Or do you know?

6 A. Yes, they were.

7 Q. How do you know that?

8 A. We confirm it regularly. David monitors it  
9 and they make a -- they make a noise if their -- if  
10 the battery charge is low.

11 MR. MARRS: Take a break.

12 VIDEOGRAPHER: Off the record. The  
13 time is 4:49 p.m.

14 (Deposition recessed at 4:49 p.m.)

15 (Signature required.)

16

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0207

1

CHANGES AND SIGNATURE

2

3 WITNESS NAME: STEPHEN GRIFFIN

4 DATE OF DEPOSITION: FEBRUARY 27, 2008

5 PAGE/LINE      CHANGE FROM/CHANGE TO      REASON

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0208

1

I, STEPHEN GRIFFIN, have read the foregoing

2 deposition and hereby affix my signature that same is  
true and correct, except as noted above.

3

4

STEPHEN GRIFFIN

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

15 Given under my hand and seal of office this  
\_\_\_\_\_ day of \_\_\_\_\_, 2008.

16  
17  
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19  
20

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

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23  
24  
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0209

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 REPORTER'S CERTIFICATION  
TO THE VIDEO DEPOSITION OF STEPHEN GRIFFIN  
FEBRUARY 27, 2008

12

I, Sherry Hale, Certified Shorthand Reporter in and  
13 for the State of Texas, hereby certify to the  
following:

14

That the witness, STEPHEN GRIFFIN, was duly sworn by  
15 the officer and that the transcript of the oral  
deposition is a true record of the testimony given by  
16 the witness;

17 That the deposition transcript was submitted on  
\_\_\_\_\_, 2008, to the witness or to the attorney  
18 for the witness for examination, signature, and  
return to Sherry Hale Reporting & Associates, by  
19 \_\_\_\_\_, 2008.

20 That the amount of time used by each party at the  
deposition is as follows:

21 Mr. Scott D. Marrs - 4 Hours: 23 Minutes

22

That pursuant to information given to the deposition  
23 officer at the time said testimony was taken, the  
following includes all parties of record:

24

25

0210

1 FOR THE PLAINTIFFS:

Mr. Scott D. Marrs

2 Mr. Matthew G. Pletcher

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5

6 FOR THE DEFENDANTS:

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9

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12 (713) 622-1299 Fax Number



13

I further certify that I am neither counsel for,  
14 related to, nor employed by any of the parties in the  
action in which this proceeding was taken, and  
15 further that I am not financially or otherwise  
interested in the outcome of the action.

16

Further certification requirements pursuant to Rule  
17 203 of TRCP will be certified to after they have  
occurred.

18

Subscribed and sworn to by me on this 11th day of  
19 March, 2008.

20

21

22

---

Sherry Hale  
Texas CSR No. 6215  
Expiration Date: 12/31/2008  
Firm Registration No. 510  
4545 Post Oak Place, Suite 350  
Houston, Texas 77027  
(713) 626-2629

25  
0211

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  
Mr. Scott D. Marrs, Custodial Attorney;

6

That \$ \_\_\_\_\_ is the deposition officer's charges to  
7 the Plaintiffs 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

18

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Sherry Hale  
Texas CSR No. 6215  
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