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NO. 2007-54438

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

5

VS.) HARRIS COUNTY, TEXAS

6

HOUSTON RACQUET CLUB,)
STEPHEN GRIFFIN, DAVID)
LAMKIN, GUILLERMO)
PALMER, AND)

8

LG Supv,)

Defendants) 281st JUDICIAL DISTRICT

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VIDEOTAPED ORAL DEPOSITION OF
STEPHEN GRIFFIN
FEBRUARY 28, 2008
Volume 2

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ORAL AND VIDEOTAPED DEPOSITION OF STEPHEN GRIFFIN
produced as a witness at the instance of the
Plaintiffs, and duly sworn, was taken in the
above-styled and numbered cause on FEBRUARY 28, 2008,
from 10:18 a.m. to 5:48 p.m., before Sherry Hale, CSR
in and for the State of Texas, reported by machine
shorthand, at the offices of Tucker, Taunton,
Snyder & Slade, 10370 Richmond Avenue, Suite 1400,
Houston, Texas, pursuant to the Texas Rules of Civil
Procedure.

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A P P E A R A N C E S

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FOR THE PLAINTIFFS:

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ALSO PRESENT:

David Pluchinsky
Kathleen Pluchinsky
David Lamkin
Guillermo Palmer
Ted Erck
Ray Draper, Videographer

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2 VIDEOGRAPHER: On the record. Today's
3 date is Thursday, February the 28th, the year 2008.
4 The time is 10:18 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 CONTINUED EXAMINATION
16 BY MR. MARRS:
17 Q. Good morning, Mr. Griffin.
18 A. Good morning, Mr. Marrs.
19 Q. The Racquet Club, at least to its members,
20 expressed its kind of condolences with respect to
21 what happened to John Pluchinsky on July 18th, 2007,
22 right?
23 A. Correct.
24 Q. And it mentioned that, I think, in a couple
25 of newsletters; you're familiar with that?

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- 1 A. Yes, I recall that.
2 Q. And it also, as I understand it, put out a
3 condolences book so that members, maybe even guests
4 that were at the club could express their condolences
5 to the Pluchinsky family directly by placing their
6 condolences in a book; is that right?
7 A. That's correct.
8 Q. And whose idea was it to do the condolence
9 book?
10 A. I believe it was Mr. Erck's idea.
11 Q. Okay. And did you sign the condolences
12 book?
13 A. I don't believe I did.
14 Q. Have you ever seen the condolences book?
15 A. I have.
16 Q. And were there quite a few personal
17 notations of condolence in that book?
18 A. Yes, there were.
19 Q. By various members?
20 A. Yes, I think so. I didn't look at it in
21 detail, but yes.
22 Q. When is the last time you saw it?
23 A. It's been months, three or four months, I
24 believe at least.
25 Q. And how long was it out for members to sign?

0217

- 1 A. Approximately two to three months.
2 Q. And in that two or three month time frame,
3 how many people do you think expressed their
4 heartfelt condolences for the Pluchinskys to see?
5 A. I don't know.
6 Q. More than a handful?
7 A. Certainly.
8 Q. Where is the book?
9 A. I don't know where it is right now.
10 Q. Well, why is it that if the club is really
11 concerned about the Pluchinskys that it has not even
12 taken one step to make sure that the Pluchinskys got
13 that condolences book?
14 MR. SNYDER: Objection, form.
15 A. I don't know, other than there was -- there
16 was a thought that the time was not yet appropriate.
17 Q. (BY MR. MARRS) To express condolences to
18 the family by members, that it's not the appropriate
19 time? Was that your opinion?

20 A. I didn't have an opinion one way or the
21 other, sir. It was something from the members.

22 Q. So, someone at the Racquet Club determined
23 at some point in time that they would not give the
24 condolences book to the Pluchinskys?

25 MR. SNYDER: Objection, form.

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1 A. I think the determination was made that it
2 would be given to them at an appropriate time.

3 Q. (BY MR. MARRS) Do your members know that
4 their condolences have not been given to the
5 Pluchinskys even though they wrote those condolences
6 so that Kathleen and David and Alec would be able to
7 read those months ago? Have you told the members you
8 have not forwarded their condolences to the
9 Pluchinskys?

10 MR. SNYDER: Objection, form.

11 A. I don't know.

12 Q. (BY MR. MARRS) Has anyone, Ted Erck, the
13 gentleman sitting right here, has he told his
14 membership that, "Oh, by the way, all the
15 condolences, all your heartfelt thoughts to these --
16 this family that's grieving because their kid lost
17 his life in our pool have not been communicated to
18 the Pluchinskys like you think they have"?

19 MR. SNYDER: Objection, form.

20 Q. (BY MR. MARRS) Has he told his membership
21 that?

22 A. I don't know.

23 Q. And when the Pluchinskys hear about the fact
24 that a lady comes to them and says, "I hope you
25 understand what I wrote to you in the condolences

0219

1 book" and they realize that there's a book full of
2 condolences that have never been even given to them
3 in any way, how do you think that makes them feel?

4 MR. SNYDER: Objection, form.

5 Q. (BY MR. MARRS) Don't you think that's bad?
6 That's just -- that's just not appropriate to keep
7 condolences, it's not appropriate to your membership
8 and it's not appropriate to the family; do you think
9 that's appropriate?

10 MR. SNYDER: Objection, form.

11 A. My understanding was that we did not present
12 the book to the Pluchinskys because it seemed
13 inappropriate at the time in consideration of the

14 feelings that may exist. We didn't want to offend
15 them. Again, it wasn't my decision.

16 Q. (BY MR. MARRS) Whose decision was it?

17 A. I believe it was Mr. Erck's decision.

18 Q. Okay. Where is the condolences book, to
19 your knowledge, currently today?

20 A. I believe my assistant put it someplace in
21 our offices, but I don't know specifically.

22 Q. My request is simply that the condolences
23 book that your club has withheld from this family for
24 months and months and months be given to the
25 Pluchinsky family so that they will know what their

0220

1 friends, who are also members of the club and members
2 and guests, conveyed to them months ago. If you
3 would please just simply make sure that that gets to
4 your lawyer so that he can give it to me so I can
5 finally give it to them, I would really appreciate
6 it.

7 MR. SNYDER: Objection.

8 Q. (BY MR. MARRS) Is that okay?

9 MR. SNYDER: Objection, form.

10 MR. MARRS: Is that okay, Norman?

11 MR. SNYDER: Sure.

12 MR. MARRS: Okay.

13 A. I'll discuss that with --

14 Q. (BY MR. MARRS) Will you please do that?

15 A. I'll discuss that with our attorneys, yes,
16 sir.

17 Q. Let's look at Exhibit 29A. Now, this is a
18 page from the HRC newsletter, correct, sir?

19 A. Yes, sir. I need a little help seeing it,
20 please.

21 MR. MARRS: Yeah. Blow it up a little
22 more.

23 Q. (BY MR. MARRS) Your sight is probably
24 better than mine. And now, who writes these
25 newsletters? Who wrote this particular one that I

0221

1 believe was in -- it says August, Raconteur. Tell
2 the jury what the newsletter is called.

3 A. The Raconteur. And that's -- and that's my
4 column.

5 Q. Okay. And here you make it very clear
6 because you state that "Safety is of paramount
7 importance in all aspects of our daily business,"

8 correct?

9 A. Yes, sir.

10 Q. And the reason why you put that in your
11 newsletter is because, of course, you want your
12 members to know, our facility is here for you and
13 your children and it is safe, correct?

14 A. That's correct.

15 Q. And safety to us as managers and employees
16 of the Racquet Club is of paramount importance,
17 right?

18 A. Yes, sir.

19 Q. In other words, I guess you're saying safety
20 is Number 1, right?

21 A. Yes.

22 Q. And certainly, you require that any
23 counselor or lifeguard that you hire to watch
24 children in your pools be certified, have current
25 certifications in CPR and AED before you hire them,
0222

1 correct?

2 MR. SNYDER: Objection, form.

3 A. That's our policy, yes, sir.

4 Q. (BY MR. MARRS) And as a matter -- well,
5 that's the safe thing to do, isn't it?

6 A. Yes, sir.

7 Q. And certainly, the club would not hire
8 counselors or lifeguards whose certifications, if
9 they had one, were expired before they were hired;
10 you wouldn't do that, would you?

11 MR. SNYDER: Objection, form.

12 A. No, we would not.

13 Q. (BY MR. MARRS) And that would not be in
14 keeping with the standard of safety, would it?

15 A. No, sir.

16 Q. As a matter of fact, that could be unsafe to
17 have children being watched by counselors or
18 lifeguards that don't even have current
19 certifications for AED or CPR, couldn't it?

20 MR. SNYDER: Objection, form.

21 A. Yes.

22 Q. (BY MR. MARRS) And whose primary
23 responsibility was it to make sure that when
24 lifeguards or counselors were hired, that they had
25 current and valid CPR certifications? Whose job was
0223

1 that?

2 A. Can you split that into two questions,
3 please.

4 Q. Can you just ask -- answer the first part
5 first?

6 A. Okay. The responsibility for counselors
7 would have fallen to David, and the responsibility
8 for the lifeguard hires would have been Guillermo's.

9 Q. So it was David Lamkin's responsibility to
10 make sure when a counselor is hired that they have a
11 current and valid CPR and AED certification before
12 they're hired, correct?

13 A. Yes.

14 Q. And it would be Guillermo Palmer's
15 responsibility to make sure that any lifeguard that
16 was hired already had current and valid CPR and AED
17 certifications before they were hired, correct?

18 A. Yes.

19 Q. Okay. And looking back at Exhibit 29A, it
20 also says that -- can you read the rest?

21 A. Not very clearly -- no, it's a little bit
22 blurred.

23 Q. And there's a hole punch in there, but
24 basically, it says that -- something about, "to this
25 promise it must always remain the" higher -- "highest
0224

1 priority." And what you're saying is that we promise
2 you that when you come to our club it will be safe,
3 correct?

4 A. Yes, sir.

5 Q. And you say that, "We're confident that our
6 programs and practices - from dining, to swimming,
7 tennis, fitness and elsewhere - are well-structured,
8 safe and professionally administered, there is always
9 room for learning and for change," right, sir?

10 A. Yes, sir.

11 Q. And so was that a true representation as of
12 July 2007 that your club was run professionally, that
13 your club was safe in all aspects and that your club
14 held safety as the Number 1 priority?

15 A. The programs that we had in place were
16 professionally run, administered and yes, I feel very
17 confident of that.

18 Q. Despite the numerous failings that we
19 discussed yesterday, the numerous statutes that were
20 being violated, the CPS rules that were being
21 violated as of earlier than July 18, 2007, it's still

22 your opinion as a general manager of the Racquet Club
23 that on the day that John Pluchinsky died that your
24 club was safe in all respects and professionally run;
25 is that correct?

0225

1 MR. SNYDER: Objection, form.

2 A. Can you bring that into focus for me,
3 please?

4 MR. PLETCHER: I'll hand it to him.

5 I'm going to try to zoom in a little
6 more, just a second.

7 A. I think that the programs that we had in
8 place and the steps that we -- that we took to ensure
9 safety were prudent and satisfactory.

10 Q. (BY MR. MARRS) Is it your opinion that
11 although, as we already discussed yesterday, that
12 even before July 18th, but certainly on that day that
13 John Pluchinsky died that you were in violation of
14 numerous Texas statutes, CPS codes and other failings
15 as we discussed yesterday, it's still your opinion
16 that on the day John Pluchinsky died that your club
17 was safe for children to be in the pool, the family
18 pool?

19 MR. SNYDER: Objection.

20 Q. (BY MR. MARRS) Is that your opinion?

21 MR. SNYDER: Objection, form.

22 A. Yes, that is my opinion.

23 Q. (BY MR. MARRS) And a four-year-old boy dies
24 in your pool and you're here in front of the family
25 saying that, "Oh, but our pool was safe", right?

0226

1 That's your opinion?

2 MR. SNYDER: Objection, form.

3 You don't need to answer that, Steve.

4 THE WITNESS: Okay.

5 MR. SNYDER: You've already answered
6 it.

7 Q. (BY MR. MARRS) So would it surprise you
8 that five of your lifeguards were hired even though
9 they already had expired CPR and AED certifications?
10 Would that surprise you?

11 A. I would want to review that document. I
12 believe in most cases except for perhaps one, when
13 they were hired their certifications were still
14 current.

15 Q. But the documents will speak for themselves

16 on that, won't they? The document -- your files will
17 show whether that's true or not, won't they?

18 A. Yes.

19 Q. So back to my question. Would that surprise
20 you if the Racquet Club hired five lifeguards even
21 though they did not have current AED and CPR
22 certifications at the time they were hired?

23 MR. SNYDER: Objection, form.

24 A. Yes, that would surprise me.

25 Q. (BY MR. MARRS) If that were the case, that
0227

1 certainly would not be in keeping with a standard of
2 safety being first, would it, if that were the case?

3 A. I would agree with that.

4 Q. And when you say safety is Number 1 and is
5 paramount, you mean that for anyone that's at your
6 club, whether they are a member or a non-member,
7 don't you?

8 A. Yes, sir.

9 Q. Do you have different standards for making
10 your pool safe for children depending on whether they
11 are members or non-members?

12 A. No, sir.

13 Q. And this Exhibit 29A in your newsletter
14 where you are telling your members how safe your club
15 is was put out how many weeks after John Pluchinsky
16 died?

17 A. I believe that was the August newsletter.

18 Can you confirm that, please?

19 Q. It is.

20 A. That is published the last few days of the
21 month of July.

22 Q. So that would have been within a week and a
23 half or so of John's death?

24 A. Yes, sir.

25 Q. So in that week and a half had you hired
0228

1 more lifeguards for the family pool?

2 A. I don't know for sure.

3 Q. Had you determined how John Pluchinsky was
4 able to drown in that pool as of the time you put
5 this newsletter out?

6 A. No, sir. That was under investigation.

7 Q. Is it still under investigation?

8 A. It's still a question in our minds, yes,
9 sir.

10 Q. Is it still actively being investigated by
11 the Racquet Club or on its behalf?
12 A. Our attorneys continue to look into it, yes,
13 sir.
14 Q. What attorneys?
15 A. Norman Snyder's firm.
16 Q. Is the Gardere Wynne firm still looking into
17 it, investigating what happened to John Pluchinsky?
18 A. No, sir.
19 Q. And when you say that Norman Snyder and his
20 firm is looking into it, frankly they are
21 representing you, the club and the individuals in
22 this lawsuit, but they are not separately
23 investigating what happened to John other than
24 defending this lawsuit, are they?

25 MR. SNYDER: You don't need to answer
0229

1 that, Steve.

2 THE WITNESS: Okay.

3 Q. (BY MR. MARRS) But you --

4 MR. SNYDER: What we're --

5 MR. MARRS: Well, let me --

6 MR. SNYDER: What we're doing with
7 regard to our representation, it's...

8 Q. (BY MR. MARRS) Well, let me ask you this.

9 MR. SNYDER: Don't answer that, Steve.

10 Q. (BY MR. MARRS) Other than the -- Norman
11 Snyder's firm representing you in this lawsuit, has
12 the club retained that same firm to independently
13 investigate what happened to John?

14 A. I can't discuss our relationship with our
15 legal counsel.

16 Q. You can't?

17 A. No, sir, I cannot.

18 Q. Well, I think I'm entitled to know if you
19 have independently retained a law firm to investigate
20 what happened to John.

21 MR. SNYDER: You don't need to answer
22 that.

23 MR. MARRS: Are you instructing him
24 to --

25 MR. SNYDER: Sure. I am. The terms

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1 and conditions of our firm's retention are
2 off-limits, Scott.

3 MR. MARRS: Okay. And you're asking

4 him to not answer the question, instructing him?

5 MR. SNYDER: I'm instructing you not to
6 answer.

7 Q. (BY MR. MARRS) Okay. And you are not
8 answering that question because your lawyer is
9 instructing you not to, correct, sir?

10 A. Yes, sir.

11 Q. Otherwise, you would be able to tell me,
12 correct?

13 A. I don't choose to discuss it.

14 Q. You would be able to tell me if your lawyer
15 had not instructed you not to? That's my only
16 question.

17 A. I would be able to answer either yes or no.

18 Q. Great. And further details, if I wanted,
19 but you're not going to discuss it because your
20 lawyer has instructed you not to, correct?

21 A. That's correct.

22 VIDEOGRAPHER: Excuse me, Scott. Is
23 your microphone on?

24 MR. MARRS: No. It keeps falling off.
25 You need to tell me these things.

0231

1 Q. (BY MR. MARRS) Let me show you Exhibit
2 Number 14. Have you seen this diagram of the family
3 pool before?

4 A. I've seen a diagram like that. I can't
5 confirm that I've actually seen that one. Can you
6 confirm where it's from?

7 Q. Sure. It's from the --

8 MR. PLETCHER: Architects.

9 Q. (BY MR. MARRS) -- Watts Pool Company, the
10 pool company that the Racquet Club or Brookstone,
11 another company that the Racquet Club hired retained
12 to design and/or build and install your family pool,
13 correct?

14 A. I recognize it now from the blueprints, yes.

15 Q. Okay. And tell the -- tell the ladies and
16 gentlemen of the jury what this diagram marked as
17 Exhibit 14 is.

18 A. It's a layout of the resort pool showing the
19 location of the various components around the pool.
20 I can't read the text. I'm not quite sure what
21 else -- what other information is contained there.

22 Q. And when you say resort pool, you mean the
23 family pool, correct?

24 A. Yes, sir.

25 Q. And if you would, let me hand you Exhibit 14

0232

1 and mark for me where you understand John Pluchinsky
2 was found on July 18th, 2007. You can use this pen
3 if you want.

4 A. Sir, I don't have a clear understanding of
5 the exact location.

6 Q. Well, where is the approximate location
7 where John Pluchinsky was found?

8 A. I don't know for certain.

9 Q. Well --

10 A. When I arrived, John was already on the pool
11 deck.

12 Q. I understand that. But as the corporate
13 representative who has been designated to testify
14 about the incident, I'm asking you what is the
15 Racquet Club as a whole, what is its understanding of
16 the area in the Racquet Club pool where the Racquet
17 Club allowed John to be and where the Racquet Club
18 knows or thinks or had heard where John Pluchinsky
19 was found --

20 MR. SNYDER: Objection, form.

21 Q. (BY MR. MARRS) -- discovered floating
22 facedown in the water?

23 MR. SNYDER: Objection, form.

24 Q. (BY MR. MARRS) That's what I want you to
25 mark on diagram Exhibit Number 14.

0233

1 MR. SNYDER: And recall my instruction
2 from yesterday about divulging information learned
3 from the Gardere Wynne investigation.

4 Q. (BY MR. MARRS) Based on your -- the club,
5 what it learned from its employees who were in that
6 pool, its employees who discovered John, 15 y/o LG #1
7 who saw him floating facedown, 4 y/o B-CC #3 who was
8 standing nearby that turned around and flipped him
9 over, they know exactly, your employees know exactly
10 where he was found and certainly those employees have
11 told the Racquet Club exactly where he was discovered
12 in that pool. And that's what I'm asking you to mark
13 on Exhibit 14.

14 A. Well, I apologize. I do not know that exact
15 location. I'll have to return this to you.

16 Q. The Racquet Club does not know -- you're
17 telling me that the Racquet Club does not know where

18 John Pluchinsky was found in the Racquet Club's pool?

19 A. I apologize. I do not know. I could

20 draw --

21 Q. I'm not asking you --

22 A. -- a 20-foot circle there that would be an

23 approximate location, but it wouldn't help clarify

24 things at all.

25 MR. MARRS: Put this back up there.

0234

1 MR. PLETCHER: Okay.

2 Q. (BY MR. MARRS) I am asking the Racquet Club

3 collectively. Are you saying that no one in the

4 Racquet Club knows where John Pluchinsky was

5 discovered in your pool?

6 MR. SNYDER: Objection, form.

7 A. I'm quite sure someone does.

8 Q. (BY MR. MARRS) Who?

9 A. Likely, the counselors and lifeguards that

10 removed him from the water.

11 Q. Correct. And they were your employees,

12 weren't they?

13 A. Yes.

14 Q. Do you know or have you heard from any of

15 your employees where John Pluchinsky was found --

16 A. I know --

17 Q. -- at any time?

18 A. -- approximately -- I know approximately

19 where he was --

20 Q. Okay. Just tell me then.

21 A. He was found in the -- in the -- in

22 somewhere in the 3-and-a-half foot deep area.

23 Q. Okay. Well --

24 A. To the west of the fountain area.

25 Q. All right. And that's what -- just mark

0235

1 your understanding of where he was found.

2 A. (Witness complies.)

3 Q. And do me a favor just so that I'll know

4 what that means. Can you put "John discovered" and

5 put your initial next to it?

6 A. (Witness complies.)

7 Q. Thank you.

8 A. Certainly.

9 MR. MARRS: Now, I'll tell you right

10 now, I want to depose each and every counselor, kid,

11 lifeguard, every single one of them. I want to take

12 their deposition so I want to get dates today,
13 tomorrow. I'm not going to wait. I'm not going to
14 wait for them to get out of school. I want each and
15 every one of their depositions since your people are
16 in here and they won't tell us where John was found.
17 They won't give us any fact because they're hiding
18 behind their lawyers. Even though they know, they
19 won't tell this family. And I want dates for every
20 single one of those kids. And I want them in the
21 next three weeks. I'm telling you that right now.
22 Because this is what the Racquet Club is doing to
23 these kids. The Racquet Club is forcing us to depose
24 every single person that was there that day and we --
25 by golly, we are going to do it.

0236

1 MR. SNYDER: Object to the sidebar.

2 MR. MARRS: Can you just focus on that
3 some more?

4 MR. PLETCHER: (Complies.)

5 Q. (BY MR. MARRS) Now, who told you that John
6 Pluchinsky was found in this area that you have
7 circled on Exhibit 14?

8 A. Either David Lamkin or Guillermo Palmer in
9 subsequent discussion.

10 Q. When you say "subsequent discussion", when
11 would that have been?

12 A. Following the accident.

13 Q. Were you out at the family pool at any time
14 when someone pointed to you where he was found?

15 A. I don't recall the specifics. There was a
16 general indication of the area where John was found.
17 I know where he was -- he was brought up onto the
18 pool deck, which was in the most immediate proximity
19 to where he was found.

20 Q. And he was brought up on the pool deck
21 approximately where? Was it approximately right
22 under where the umbrella is that I'm pointing to on
23 Exhibit 14?

24 A. Yes, sir. Approximate -- maybe perhaps a
25 little bit to the left of that.

0237

1 Q. Okay.

2 A. Yes.

3 Q. About here (indicating)?

4 A. Uh-huh.

5 Q. And that would have been -- he would have

6 been brought up on the deck right under the umbrella
7 that is to the far west end of the family pool,
8 correct?

9 A. Yes, sir.

10 Q. And he was there partially or wholly
11 underneath the umbrella at the time they pulled him
12 up, do you know?

13 A. I can't confirm exactly, but yes, right
14 on -- near the edge of the umbrella.

15 Q. How did -- now, is it your understanding
16 that prior to that time when 4 y/o B-CC #2 said she
17 was playing with him, that the last time he was seen
18 he was somewhere in this beach area on Exhibit 14
19 near the toys?

20 A. I don't recall 4 y/o B-CC #2 's -- 4 y/o B-CC #2 's words
21 exactly.

22 Q. Okay. Regardless of 4 y/o B-CC #2 , what's your
23 understanding where John was last seen before he was
24 discovered on diagram Exhibit Number 14?

25 A. I have no understanding of where he was last
0238

1 seen other than what the -- what the counselors put
2 down in their -- in their statements to David Lamkin.

3 Q. Okay. And based on those statements to
4 David Lamkin, show us in red your understanding of
5 where John was last seen before being discovered.

6 MR. SNYDER: Objection, form.

7 A. I would want to review the testimony. I
8 would want to review the statement of 4 y/o B-CC #2 .

9 Q. (BY MR. MARRS) So as we sit here today, you
10 just don't know; is that correct? You had no
11 understanding?

12 A. I have no understanding from having spoken
13 or read anything that 4 y/o B-CC #2 may have
14 provided to David Lamkin.

15 Q. You have no understanding based on anything
16 of where he was last seen before he was discovered?
17 Do you have an understanding in your mind based on
18 everything you've seen so far of exactly the area
19 where he was last seen alive?

20 A. There are opinions that were expressed --

21 Q. Yes, sir.

22 A. -- that I'm not at liberty to discuss today.

23 Q. Okay. And I'm not talking about opinions.
24 I'm talking about fact witnesses, your employees that
25 were with him in the pool. Where do your employees

0239

1 say that John was last seen alive?

2 A. I'm not at liberty to discuss that today.

3 Q. So there again, you won't tell us where John

4 was in your pool when he was last seen alive,

5 correct, sir?

6 MR. SNYDER: Objection, form.

7 A. That information is protected by the

8 client/attorney relationship.

9 Q. (BY MR. MARRS) So just so we'll be clear on

10 the diagram approximately right here on Exhibit 14 is

11 where you believe he was pulled out and put on the

12 deck; is that correct?

13 A. Yes, sir.

14 Q. And I'll mark that with a black "X" on

15 Exhibit 14 right under the far west umbrella.

16 So tell the jury what this is on

17 Exhibit 14 that is directly overlooking the spot

18 where John Pluchinsky was discovered floating

19 facedown. What is this thing that's labeled "movable

20 guard chair"? What is that?

21 A. It's a movable guard chair.

22 Q. Okay. So the company that you hired to

23 design your family pool had suggested that a movable

24 guard chair be placed right there?

25 A. No. I don't -- I don't see that as a

0240

1 designation of the pool designers. In fact, the

2 actual location where they placed it when they

3 delivered the pool completed to us was in a different

4 location. I think that's merely a suggestion on the

5 blueprint of two chairs that are provided for that

6 pool.

7 Q. And what professional came out and gave you

8 advice as to where you should place your lifeguard

9 chairs?

10 A. We had no -- no independent professional.

11 Q. Why not?

12 A. We didn't require one.

13 Q. You did not require one? Why not?

14 A. We have -- we have expertise in running

15 pools and we determined ourselves the best locations

16 for the guard chairs and that's not one of them.

17 Q. And do you have one at that location now on

18 the west end of your family pool?

19 A. No, sir.

20 Q. Have you at any time on any day had a
21 lifeguard chair at this location on the west end of
22 your pool -- family pool ever?

23 A. Yes, sir. Certainly, sometime during the
24 time since the pool has been opened on particularly
25 busy days, we might have had a guard chair there. We
0241

1 might have had one in another half a dozen locations
2 around the pool. It was not considered an optimal
3 viewing location, so we didn't put a permanent
4 station there.

5 Q. And what is the optimal viewing location if
6 you allow a four-year-old child to venture into water
7 where he couldn't stand and breathe right here?

8 A. A much --

9 MR. SNYDER: Objection, form.

10 A. -- better viewing location is the location
11 of the chair where it was.

12 Q. (BY MR. MARRS) Way over here (indicating)?
13 Way here over here (indicating)?

14 A. Under -- no, sir.

15 Q. Okay.

16 A. Underneath the umbrella on the far point
17 that you see right there (indicating).

18 Q. Right here (indicating)?

19 A. Yes.

20 Q. Okay. So your opinion is that this is a
21 better location to spot a child way over here or here
22 (indicating) than this location on the west end; is
23 that your opinion?

24 MR. SNYDER: Objection, form.

25 A. Overall, it's a better location for viewing
0242

1 the pool as a whole.

2 Q. (BY MR. MARRS) Well, overall the better
3 thing to do is to have a lifeguard here, here and
4 here (indicating), isn't it?

5 MR. SNYDER: Objection, form.

6 Q. (BY MR. MARRS) Wouldn't that be safer?

7 A. No, I wouldn't agree with that necessarily.

8 Q. Okay. Well --

9 A. We could pick a half a dozen locations where
10 we put lifeguard chairs around the pool based upon
11 information that may develop.

12 Q. So tell me, on what days have you had a
13 lifeguard chair right here on the west end as shown

14 on Exhibit 14, that you recall?

15 A. That exact location, never specifically.

16 Q. Well, you just testified five minutes ago
17 that you do know that the Racquet Club on
18 particularly busy days has had a lifeguard chair
19 exactly at this spot that's depicted on Exhibit 14,
20 didn't you?

21 A. Yes. And I think you asked me specifically
22 when that was and I can't answer specifically when
23 that was --

24 Q. Okay.

25 A. -- from time to time.

0243

1 Q. Okay. From time to time when what?

2 A. When the bather load was indicated we needed
3 to have a chair there.

4 Q. And who would make that determination?

5 A. Generally Guillermo Palmer.

6 Q. Did you at any time prior to July 18, 2007
7 have a lifeguard chair at this exact spot overlooking
8 the area where John Pluchinsky was discovered?

9 A. I don't know whether we had a chair at that
10 exact location or not, sir.

11 Q. Well, over here on the west end?

12 A. Yes, sir. As I indicated earlier, from time
13 to time we would put a -- put a guard there, not in a
14 lifeguard station, but just perhaps in one of our --
15 one of our white plastic chairs.

16 Q. Well --

17 A. Or standing.

18 Q. And the reason why you would do that is
19 because -- why particularly would it be on the west
20 end here?

21 A. It wouldn't in particular. We might just as
22 easily choose the location to the far north. I'm
23 just confident that from time to time we put a
24 lifeguard there.

25 Q. I'm confident you're correct. And so,

0244

1 July 18, 2007 we had, as we discussed, some -- it
2 appears up to maybe 44 people in that family pool and
3 as you testified yesterday, that was busy, that's
4 busy for that family pool. Why, sir, on July 18 did
5 not Guillermo Palmer or anyone at your club put a
6 lifeguard exactly where they should be on the west
7 end during particularly busy days?

8 MR. SNYDER: Objection, form.

9 Q. (BY MR. MARRS) Do you know why?

10 MR. SNYDER: Objection, form.

11 A. I don't think it was indicated by the bather
12 load. And that wouldn't have been my first -- my
13 first selection of choice anyway. But those choices
14 are made by Guillermo Palmer, not me.

15 Q. (BY MR. MARRS) And was it his
16 responsibility on July 18, 2007 to place a chair on
17 the west end if the bather load indicated it should
18 be there or if it was a particularly busy day with
19 almost 44 or more people in that family pool at the
20 time?

21 MR. SNYDER: Objection, form.

22 A. Guillermo would have made determination of
23 where the guard location should be.

24 Q. (BY MR. MARRS) And obviously, he did not
25 put a third guard right here on the west end on
0245

1 July 18th, correct?

2 A. No, sir, he did not.

3 Q. Would it have cost the Racquet Club any
4 additional monies to have someone stay and guard the
5 west end of the pool on July 18, 2007 instead of
6 being on break during the 11:00 to 11:30 time frame?

7 MR. SNYDER: Objection, form.

8 A. The guards were already on staff.

9 Q. (BY MR. MARRS) So it would have not cost
10 any -- not even one penny more for the Racquet Club
11 to have had one of those four lifeguards that were on
12 break during this busy time to simply guard the west
13 end of the pool overlooking where John was found on
14 July 18th, correct?

15 A. That's correct.

16 Q. And if you simply wanted to pull over a
17 chair for the lifeguard to sit in on the west end, I
18 mean you've done that from time to time, the Racquet
19 Club has, correct?

20 A. Yes, sir.

21 Q. Where would someone grab the chair? Where
22 would it be?

23 A. We have white plastic chairs that we use for
24 guard gate control that are -- that are located
25 within the pool enclosure.

0246

1 Q. And they are right there near the family

2 pool, aren't they?

3 A. Within 50 feet or so, yes.

4 Q. So the lifeguard could have either stood
5 there during this busy time from 11:00 to 11:30 on
6 July 18, 2007 or could have grabbed a chair from
7 50 feet away and pulled it over to make sure that all
8 these 26 some odd kids that are all congregating in
9 these areas where all the toys and sprayers and
10 across the pool and all the eight counselors and the
11 other moms and everyone else in this pool area so he
12 could watch them if the Racquet Club had instructed a
13 lifeguard to do so, correct?

14 MR. SNYDER: Objection, form.

15 A. If that had happened, yes, we could have.

16 Q. (BY MR. MARRS) Did the Racquet Club place a
17 chair on the west end of the family pool after
18 John Pluchinsky's death?

19 A. Yes, sir.

20 Q. What kind of chair?

21 A. I believe it was a white plastic chair.

22 Q. Okay. Why?

23 A. Guillermo Palmer took it upon himself to
24 position himself in that area of the pool. The
25 guards who continued to work for us and some were
0247

1 upset to the point where they did not want to, the
2 guards that were remaining he felt needed support and
3 confidence and so that he was -- he was there, not as
4 an additional guard, but to supply -- to provide
5 support to them during that time. He picked the
6 location because -- I'll let him -- I'll let him
7 speak to the exact reason, but I think it was because
8 it was the area where John was actually placed and it
9 was a particularly upsetting location.

10 Q. Well, who was there on July 18th, 2007 to
11 give 15 y/o LG #1 support to scan this entire pool
12 area, not just here (indicating), but all the way
13 from this buoy line to scan this entire area of
14 four-year olds all throughout this area, counselors
15 throughout the pool? Who was there to support
16 15 y/o LG #1 in her lifeguard duties on July 18, 2007
17 to scan those areas?

18 A. 15 y/o LG #2 would also scan those areas as
19 part of his responsibilities.

20 Q. That is not what 15 y/o LG #2 told the
21 Racquet Club, is it?

22 A. I would want to review what 15 y/o LG #2
23 told the Racquet Club.

24 Q. Have you reviewed 15 y/o LG #2 's statement?

25 A. I have.

0248

1 Q. You know for a fact 15 y/o LG #2 , his
2 primary responsibility was that slide; you know that?

3 A. I do know that.

4 Q. Because you testified to that yesterday,
5 correct?

6 A. Yes.

7 Q. As a matter --

8 A. And his secondary responsibilities are to
9 scan the entire pool as well.

10 Q. Well, that --

11 A. He's responsible for viewing everything
12 within 180 degrees of his -- of his position,
13 although his primary responsibility is to make sure
14 that the children come out of the flume and make it
15 to the side.

16 Q. And that's substantially different testimony
17 than you gave yesterday, isn't it?

18 A. I'm offering clarification today. I
19 apologize. I didn't properly describe his
20 responsibilities yesterday.

21 Q. That's substantially different than what you
22 testified to yesterday, isn't it?

23 A. I'm changing my answer. I wanted to offer
24 clarification.

25 Q. Yes, you are. You know for a fact that

0249

1 15 y/o LG #2 at the time that John Pluchinsky went
2 missing for 10 to 15 minutes, you know for a fact
3 15 y/o LG #2 was looking at that slide, kids going
4 up and down the slide. He had to stop a kid from
5 going down the slide at the time. You know that for
6 a fact, don't you?

7 A. I don't accept the premise that John was
8 missing for 10 to 15 minutes.

9 Q. You know for a fact that when John
10 Pluchinsky was discovered, 15 y/o LG #2 was focused
11 on that slide and the kids going up and down that
12 slide, don't you?

13 A. I know that was his primary area of
14 responsibility.

15 Q. So getting back to my question, who -- if

16 15 y/o LG #2 's primary responsibility, as he says,
17 as others have said is that slide and not scanning
18 way over here (indicating) -- you said 180 what?

19 A. 180 degrees.

20 Q. Which would be -- from here, 180 degrees
21 would go how far out? Stop me (drawing).

22 A. It goes in a straight line from
23 perpendicular to his location.

24 Q. Okay. So if he's here (indicating), then
25 this area?

0250

1 A. Keep going around, sir.

2 Q. Okay.

3 A. Keep going around.

4 Q. Uh-huh.

5 A. All the way around. Keep going. Okay.

6 Q. Okay. So you've got this 15-year-old boy
7 whose primary responsibility is to watch kids going
8 up and down the slide, around the slide, out into the
9 pool. He's focused on the slide because that's his
10 primary responsibility. And you're trying to tell
11 the jury and this family that, oh, but he was
12 scanning this entire area of the pool as well,
13 helping 15 y/o LG #1 do that; is that your testimony?

14 A. Yes, sir, it is.

15 Q. Okay. Now, and is this the area you
16 testified yesterday was the limit of 15 y/o LG #2 's
17 scanning responsibilities?

18 A. Yes, I didn't realize the exact placement of
19 that rope and upon further reflection I realized it
20 was very -- way too far east to describe his area of
21 responsibility.

22 Q. I see. Did you have a chance to talk to
23 Guillermo Palmer after your testimony yesterday?

24 A. Not about that.

25 Q. Did you have a chance to talk to Ted Erck?

0251

1 A. We spoke of things, but not about that.

2 Q. Well, who did you speak to about that?

3 A. I spoke to myself.

4 Q. Okay. Well, let me give Exhibit 14 again.
5 Why don't you mark on here for the jury to see
6 exactly where the lifeguard chair is that was placed
7 the day after John Pluchinsky's death. If you'll
8 mark that in red and if you'll put a circle.

9 A. (Witness complies.) Approximate location.

10 Q. And if you'll put whatever you're putting,
11 but "Day after."

12 A. (Witness complies.)

13 Q. Thank you. And the -- go ahead. Just so
14 that we can be complete, if you would mark where --
15 you can mark where 15 y/o LG #2 was. And if you can
16 just mark "15 y/o LG #2 ."

17 A. These are approximate locations, please.

18 Q. Sure. And where 15 y/o LG #1 was.

19 A. (Witness complies.)

20 Q. And then if you would, you have circled in
21 red where the -- a lifeguard chair was placed the day
22 after John Pluchinsky's death. Is that the
23 approximate area where you had seen it in the past
24 before John Pluchinsky's death?

25 A. I don't recall specifically, but that would
0252

1 have been the general location, yes.

2 Q. Where you've marked and circled in red?

3 A. Yes.

4 Q. Okay.

5 MR. MARRS: Put that back in so we can
6 see it, if you would.

7 Q. (BY MR. MARRS) So certainly, you'll agree
8 with me that the exact place where Guillermo Palmer
9 placed the lifeguard chair the day after John
10 Pluchinsky's death on the west end is directly
11 overlooking the spot where John Pluchinsky was found
12 floating?

13 A. Yes, sir.

14 Q. And the chairs approximate location, the
15 lifeguard chair -- strike that.

16 And even before John Pluchinsky's
17 death, the area where the third lifeguard chair was
18 placed on certain particularly busy days was also in
19 that spot that's marked "X" that you have a red
20 circle around directly overlooking the spot where
21 John Pluchinsky was discovered, correct?

22 A. Yes.

23 Q. And could you also please mark your
24 understanding of where 4 y/o B-CC #3 was at the time that
25 John Pluchinsky was discovered?

0253

1 A. I don't know that.

2 Q. Do you know approximately where he was?

3 A. No, sir.

4 Q. You do know that he supposedly was somewhere
5 near where John was discovered?

6 A. I would imagine that he was somewhere within
7 the circle that I drew, but that would be speculation
8 and I don't want to do that.

9 Q. Do you have an understanding of where the
10 four-year-old boys group that John belonged to was in
11 this family pool immediately preceding the finding of
12 John Pluchinsky?

13 A. Only in the most general sense.

14 Q. What's your understanding? Show me on the
15 map, if you would. If you'll use the black, I
16 appreciate it.

17 A. Sure.

18 Q. You can put "four-year-old boys group" or
19 something to that effect.

20 A. Okay.

21 Q. If you can sign the bottom of that diagram
22 so we'll remember who did it, I appreciate it.

23 A. Sure.

24 Q. And then in blue, if you could, put the
25 approximate location of the four-year-old girls group
0254

1 that was also in the pool at the time.

2 A. That I really don't know at all.

3 Q. And how about the seven-year olds that were
4 in or on the edge of the pool, do you know where they
5 were?

6 A. It was reported to me that they were
7 primarily in the deep end going down the slide, but
8 again that's -- that's all secondhand. I have no
9 firsthand knowledge of it.

10 Q. Okay. So we see on Exhibit 14 the -- this
11 black circle that you've drawn, you believe is the
12 general area where the four-year-old boys group was
13 in the family pool, at least at some point prior to
14 John being discovered, correct?

15 A. Approximately, yes, sir.

16 Q. So is it your understanding that these
17 four-year-old boys were allowed as part of the summer
18 camp to swim in water as deep as 3.6 and 4 feet deep?

19 A. I would say 3.6, yes, sir.

20 Q. And that was something that those that ran
21 the summer camp at the Racquet Club had planned in
22 terms of where they would allow the four-year-old
23 boys to go; is that right?

24 MR. SNYDER: Objection, form.

25 A. I would say the design of the pool dictated

0255

1 that they would be in that area.

2 Q. (BY MR. MARRS) And how many occasions have

3 you been out there where -- during the summer camp

4 where there were four-year olds in the pool?

5 A. I would have to say on many occasions, but I

6 had no particular awareness of it.

7 Q. Okay.

8 A. I tour the property regularly.

9 Q. Okay. And of the 26 boys and girls that

10 were four-year-old -- four-years old, the two

11 four-year-old kid groups that were there in the

12 family pool on the day, July 18th, how many of them

13 had life vests or life jackets on?

14 A. I don't know that.

15 Q. Do you know if any did?

16 A. I can't say one way or the other.

17 Q. And how many four-year-old kids on those

18 dozens of occasions that you've seen them out there

19 during summer camp out in the pool, how many of

20 those -- you've probably seen hundreds of

21 four-year-old kids in that pool, haven't you?

22 A. I suppose so.

23 Q. And out of those hundreds, how many have you

24 seen ever wearing a life jacket?

25 A. I can't say. I don't recall.

0256

1 Q. Do you ever recall seeing a four-year-old

2 kid in that pool wearing a life jacket?

3 A. I wouldn't necessarily know who a

4 four-year-old child was.

5 Q. And -- because they're not color coded in

6 any way, you wouldn't know what their age or swimming

7 ability was, correct?

8 A. That's correct.

9 Q. And so, certainly your club didn't require

10 life jackets for any child "irregardless" of their

11 swimming ability or their age in summer camp, did

12 you?

13 A. No, that's correct.

14 Q. And to your knowledge, even though you do

15 the column as you stated in your newsletter, to your

16 knowledge, neither you or Mr. Erck or anyone at the

17 Racquet Club has told the membership or those that

18 might sign up for summer camp that life jackets or
19 any flotation device is advisable or required,
20 correct?

21 A. At which time are you referring to?

22 Q. At any time prior to John Pluchinsky's
23 death.

24 A. No, sir.

25 Q. Is that correct?

0257

1 A. That's correct.

2 Q. And to your knowledge, were any of the
3 26-some-odd four-year olds in the pool on July 18th
4 tested for swimming ability prior to getting in the
5 family pool?

6 MR. SNYDER: Objection, form.

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

8 Q. (BY MR. MARRS) How about for five-year-old
9 children, did the Racquet Club for the 2007 summer
10 camp test the swimming ability of any five-year old,
11 to your knowledge?

12 A. I would have to allow David Lamkin to speak
13 to that.

14 Q. You don't have -- you don't know as a
15 general manager?

16 A. I know that David conducted swimming tests
17 the first two weeks in order to instruct the
18 counselors as to what to observe when the younger
19 children were in the water. I don't know whether
20 five-year olds were specifically part of that test or
21 not.

22 Q. You don't know if any five-year old,
23 six-year old, seven-year old or eight-year-old kid
24 actually had a swimming test by the Racquet Club to
25 see whether or not they could swim or their abilities

0258

1 or their level prior to them participating in the
2 pool activities as part of the 2007 summer camp
3 yourself, do you?

4 A. No, I don't know that, sir.

5 Q. Were the four-year olds allowed to use the
6 slide that 15 y/o LG #2 was primarily responsible
7 for on the east end of the pool?

8 A. Not to my knowledge, sir.

9 Q. Well, do you know?

10 A. I'm fairly certain, but I would want to
11 confirm that with David.

12 Q. Okay. And why do you think that four-year
13 olds would not be allowed to use the slide?

14 A. It's potentially an unsafe piece of
15 equipment if -- for younger children because they
16 tend to end up in -- you know, in the water and
17 caught up underneath it unless they are very closely
18 supervised.

19 Q. Because it's dangerous for young
20 four-year-old children to be in water too deep for
21 them to stand and breathe unless they are closely and
22 constantly supervised. You'll agree with that, won't
23 you?

24 A. I don't --

25 MR. SNYDER: Objection, form.

0259

1 A. I don't think that's the issue with the
2 slide that we're discussing, sir.

3 Q. (BY MR. MARRS) I'm not talking about the
4 slide.

5 A. Oh, I'm sorry, I thought we were.

6 Q. No.

7 MR. MARRS: Can you read back the
8 question?

9 THE REPORTER: Yes.

10 MR. MARRS: Thanks.

11 (The requested portion of testimony was
12 read back by the court reporter.)

13 MR. SNYDER: Objection, form.

14 A. I agree that children require close
15 supervision in water over their head, yes, sir.

16 Q. In water over their chest as well, correct?

17 MR. SNYDER: Objection, form.

18 A. I would not necessarily agree with that,
19 sir, no.

20 Q. (BY MR. MARRS) Well, you'll agree with the
21 general statement that you should constantly and
22 closely supervise four-year-old children that are
23 allowed in your pools?

24 MR. SNYDER: Objection, form.

25 A. Yes, sir.

0260

1 Q. (BY MR. MARRS) Were there any board
2 discussions with respect to whether or not a
3 lifeguard chair should be on the west end of your
4 family pool at any time?

5 A. Not to my recollection.

6 Q. Were there any discussions between you and
7 anyone at any time as to whether or not a lifeguard
8 chair should be placed on the west end of your pool?

9 A. No, sir.

10 Q. Or as to whether or not there should be
11 three lifeguards assigned to the family pool instead
12 of two?

13 A. No specific discussions about that, sir.

14 Q. Or whether or not there should be three
15 lifeguard stations assigned at the family pool during
16 particularly busy days?

17 A. There weren't discussions. Those
18 determinations were made by Guillermo Palmer as
19 needed.

20 VIDEOGRAPHER: Excuse me, Scott.

21 MR. MARRS: Yes.

22 VIDEOGRAPHER: Your microphone, it's
23 caught up underneath your chair maybe.

24 MR. MARRS: Give me the one that works
25 next time. Give this one to Norman.

0261

1 Q. (BY MR. MARRS) And is the third lifeguard
2 chair that was placed the day after John Pluchinsky
3 died on the west end still on the west end of the
4 family pool during particularly busy days?

5 MR. SNYDER: Objection, form.

6 A. I can't answer that, sir. I don't believe
7 so.

8 Q. (BY MR. MARRS) And if you have a summer
9 camp for 2008, will you have a lifeguard chair on the
10 west end of your family pool to protect the children?

11 MR. SNYDER: Objection, form.

12 A. I can't answer that. The plans are not
13 complete for any summer camp 2008.

14 Q. (BY MR. MARRS) So you haven't even made the
15 decision that to protect the children in your pool
16 after this drowning you're going to have a third
17 lifeguard chair at your family pool during summer
18 camps?

19 MR. SNYDER: Objection, form.

20 Q. (BY MR. MARRS) You haven't made that
21 decision?

22 MR. SNYDER: Objection, form.

23 A. I think I indicated that it's under
24 discussion.

25 Q. (BY MR. MARRS) Well, how much more

0262

1 discussion needs to happen to prevent deaths of
2 children in your pool and simply have a plastic chair
3 on the west end so that additional children won't be
4 drowning in your pool?

5 MR. SNYDER: Objection, form.

6 Q. (BY MR. MARRS) How much -- what do you --
7 do you have to have a board -- you don't have to have
8 a board meeting to place a plastic chair on the west
9 end. Guillermo Palmer can say, hey, put a guard on
10 the west end and it's done, right?

11 MR. SNYDER: Objection, form.

12 A. We may very well do that. I would leave
13 that decision to Guillermo Palmer or whoever is in
14 his position.

15 Q. (BY MR. MARRS) Why? Why would you leave
16 that decision to Guillermo Palmer when you have the
17 authority to make that decision like that (snaps
18 fingers)? With a split second movement of your mouth
19 and your hand, you could have a guard chair there in
20 five minutes if you as general manager chose to,
21 couldn't you?

22 MR. SNYDER: Objection, form.

23 A. Yes, I could.

24 Q. (BY MR. MARRS) And you have not directed
25 anyone at your club to do that, have you?

0263

1 MR. SNYDER: Objection, form.

2 A. The time is not here where we have to make
3 that decision yet, sir.

4 Q. (BY MR. MARRS) Is your membership aware of
5 the fact that your club did not even have an AED
6 device at your club appropriate for use for the very
7 age children of young age, such as four-year olds
8 that have been using your pools? Does your
9 membership know that?

10 MR. SNYDER: Objection, form.

11 A. I don't know that, sir.

12 Q. (BY MR. MARRS) Do they know that you
13 haven't even made a decision to put a lifeguard chair
14 at the very spot closest to where you know all the
15 four-year olds generally congregate, cluster and play
16 and swim in your family pool?

17 MR. SNYDER: Objection, form.

18 A. Those plans have not yet been finalized,
19 sir.

20 Q. (BY MR. MARRS) So they don't know that, do
21 they?

22 MR. SNYDER: Objection, form.

23 A. No, sir, they do not.

24 Q. (BY MR. MARRS) So even though -- even
25 though on July 18th, a busy day for the summer camp
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1 at the Racquet Club, the man that you delegated the
2 responsibility to make sure there were appropriate
3 number, capability of lifeguards, lifeguard chairs
4 and placement, Guillermo Palmer, who obviously --
5 obviously did not put a lifeguard chair or lifeguard
6 on the west end and let four lifeguards go to break,
7 the very man that you are now entrusting to make
8 decisions at your club to protect children, you still
9 are placing that trust in the same gentleman, aren't
10 you?

11 MR. SNYDER: Objection, form.

12 A. Yes, sir. I trust him to do his job
13 capably.

14 Q. (BY MR. MARRS) And you believe that on that
15 day when this boy drowned in your pool, the very man
16 that could have made the decisions, that could have
17 affected the outcome on July 18th to either place a
18 chair on the west end, put a lifeguard on the west
19 end, not allow four lifeguards to go to lunch, not
20 allow the club to go unprotected because it didn't
21 have an appropriate AED device; nonetheless, he did
22 his job correctly and you still trust him, correct?

23 MR. SNYDER: Objection, form. Asked
24 and answered.

25 You don't need to answer.

0265

1 MR. MARRS: No, I didn't -- no, he
2 hasn't answered all three of those things.

3 MR. SNYDER: Was it just three?

4 MR. MARRS: Yes.

5 MR. SNYDER: It could have been five or
6 six.

7 MR. MARRS: I'm trying to save time.

8 MR. SNYDER: Okay. But you still don't
9 need to answer it.

10 THE WITNESS: Okay.

11 Q. (BY MR. MARRS) Okay. I'll ask a different
12 question.

13 A four-year-old boy dies on Guillermo

14 Palmer's watch, the very man who made decisions about
15 lifeguard rotation and other lifeguard decisions is
16 the very man that you still trust to do those same
17 things at your club, correct?

18 MR. SNYDER: Objection, form. Asked
19 and answered.

20 You don't need to answer it.

21 Q. (BY MR. MARRS) Do you still trust Guillermo
22 Palmer to make decisions about lifeguards at your
23 pool today?

24 A. I would if that were still in his scope of
25 responsibility, yes, sir.

0266

1 Q. And if it were your decision, it would still
2 be within his scope of responsibility, correct?

3 A. I would -- I would have continued to have
4 him in the current position, yes.

5 Q. If it were not for the what?

6 A. We hired a professional lifeguard service.
7 Our own decision, by the way.

8 Q. Well, what about the findings of the Family
9 Protective Services, CPS? Did that have a bearing on
10 whether or not Guillermo Palmer continued in the same
11 position he was in July 18, 2007?

12 MR. SNYDER: Objection, form.

13 A. No.

14 Q. (BY MR. MARRS) So despite the CPS or Family
15 Protective Services findings against not just the
16 club, but Guillermo Palmer personally, you still
17 would entrust the same duties to him as you did on
18 July 18th, 2007?

19 MR. SNYDER: Objection, form.

20 A. Yes, sir.

21 MR. SNYDER: It's been asked and
22 answered half a dozen times.

23 Q. (BY MR. MARRS) Who saw John Pluchinsky in
24 this blue area that you have circled before
25 15 y/o LG #1 saw him floating in that general area

0267

1 that you circled, if anyone?

2 A. I don't know.

3 Q. The club doesn't know, does it?

4 A. No, sir.

5 MR. MARRS: I'm going to take a
6 five-minute break. Is that all right? Is that okay
7 with you?

8 THE WITNESS: Sure.
9 MR. SNYDER: Sure.
10 VIDEOGRAPHER: We're off the record.
11 The time is 11:24 a.m.
12 (Brief recess.)
13 VIDEOGRAPHER: Back on the record. The
14 time is 11:47 a.m.
15 Q. (BY MR. MARRS) And could you show on
16 Exhibit 14 the ladies and gentlemen of the jury where
17 the children's wading pool is?
18 A. There isn't exactly a wading pool, per se.
19 There's a wading area.
20 Q. Okay. Could you just generally tell me
21 where that would be?
22 A. Essentially in the area that I've drawn a
23 circle around, including the entire zero depth area,
24 which is not quite included in my -- in the circle
25 that I made.
0268
1 Q. So the Racquet Club considers this entire
2 area here to be the wading -- children's wading pool
3 area?
4 A. The area closer to the west end, yes, sir,
5 generally that area.
6 Q. Well, okay.
7 A. And including that area that is not included
8 in my circle that's part of the zero depth beach
9 area.
10 Q. Do you see this line --
11 A. Yes.
12 Q. -- right here?
13 A. Yes, sir. That would be included.
14 Q. Okay. That would be included. And does it
15 go out to here, your children's wading pool area of
16 the family pool?
17 A. I'm not sure just where the depths change
18 there, sir. It would be in the -- in the generally
19 shallower areas of the pool.
20 Q. Okay. Well, okay. Let me -- let me hand to
21 you --
22 A. Okay.
23 Q. -- a diagram of your family pool, and let
24 you outline with this highlighter exactly where the
25 Racquet Club considers to be the perimeters of its
0269
1 children's wading pool area of the family pool.

2 A. Just generally something like that
3 (indicating).
4 Q. Okay. And so just generally, the Racquet
5 Club considers this area encompassed to this -- all
6 of this area to be its wading pool area; is that
7 correct?
8 A. Approximately, sir, yes.
9 Q. And what about the sun deck here?
10 A. Yes. I think that would be included as
11 well.
12 Q. So is that approximately right?
13 A. Yes, sir.
14 Q. Okay. All the area in that highlighted
15 portion on the west end of your pool is considered to
16 be your children's wading pool area, correct?
17 A. Yes, sir.
18 Q. And what is the deepest part of the
19 children's wading pool area in the family pool?
20 A. I don't think that that's specifically
21 defined anywhere, sir.
22 Q. Whether it's defined somewhere or not, what
23 is the deepest part of your children's wading pool
24 area?
25 A. Do you have a pool diagram showing the
0270
1 depths of the particular areas?
2 Q. I do.
3 A. May I see it for reference, please?
4 Q. Sure. Here's Exhibit Number 14, which
5 indicates that this is 4 feet deep.
6 A. Okay.
7 Q. And that --
8 MR. MARRS: What's that?
9 MR. PLETCHER: Three. And then
10 there's --
11 MR. MARRS: .6.
12 MR. PLETCHER: There's a 3.6 here.
13 Q. (BY MR. MARRS) And as you know, John
14 Pluchinsky was found -- the circled area in blue that
15 you say John discovered, that's approximately
16 3.6 feet or deeper, correct?
17 A. I don't know that, sir. I believe that says
18 3 feet, doesn't it? It's so small. I'm having
19 trouble with it.
20 Q. Okay. So based on your review of
21 Exhibit 14, you believe that the children's wading

22 pool area of the family pool has depths that range
23 from zero upward to some possibly 4 feet deep; is
24 that correct?

25 MR. SNYDER: Objection, form.

0271

1 Q. (BY MR. MARRS) But at least 3.6 feet deep?

2 A. I would say it could include areas 3.6. I
3 would say not 4 feet, no, sir.

4 Q. Okay.

5 A. I don't believe my sketch indicates that.

6 Q. Is it your opinion that a four-year-old
7 child that's in water 3.6 feet deep is simply wading
8 if the water is above his chest? Would that be
9 wading to you?

10 A. Not necessarily. I would want to make sure
11 that that child was well supervised by responsible
12 people.

13 Q. Closely supervised, correct?

14 A. Yes, sir.

15 Q. And if that child is not a good swimmer, you
16 would certainly want him to be wearing some kind of
17 life jacket or safety device if the person
18 supervising him was also supervising a number of
19 other children at the same time, wouldn't you?

20 MR. SNYDER: Objection, form.

21 A. Not necessarily, sir.

22 Q. (BY MR. MARRS) To your knowledge, is your
23 membership aware of the fact that when you state that
24 you have a wading pool area in your pool, that it is
25 actually not just a foot deep or 2 feet deep, but as

0272

1 deep as 3.6 feet deep? Do you think they are aware
2 of that?

3 A. I don't think it's actually defined
4 anywhere, sir.

5 Q. The Racquet Club doesn't define it anywhere,
6 does it?

7 A. No, sir, we do not.

8 Q. And if you see a brochure that says we have
9 a wading pool, in your mind as just a general manager
10 of a club with pools, what does that connote to you
11 in terms of depth?

12 A. Certainly no deeper than what we're
13 describing.

14 Q. So that, to you, means water that could be
15 as deep as almost 4 feet deep?

16 MR. SNYDER: Objection, form.
17 A. No. I would not say almost 4 feet deep.
18 Q. (BY MR. MARRS) That connotes to you if you
19 were just reading that in a brochure about what, in
20 terms of --
21 A. Approximately 3 feet deep.
22 Q. And what would tell a lifeguard, a counselor
23 or a parent where the wading area begins and ends, if
24 anything?
25 A. There's nothing clearly defined in the pool

0273

1 to indicate that.
2 Q. And what is clearly defined in the family
3 pool to let a child know that it is about to venture
4 into deeper waters?
5 MR. SNYDER: Objection, form.
6 A. I believe there's a line at the -- at the
7 base of the zero depth pool area, that curve line
8 following the --
9 Q. (BY MR. MARRS) Right here (indicating)?
10 A. Yes, sir.
11 Q. And you believe that that is a line that
12 clearly marks for small children shallow versus deep
13 water?
14 A. I don't know the intent of that line. I'm
15 just saying it could be interpreted as an indication.
16 Q. Well, is there any clearly defined marker in
17 your family pool that would allow a four-year-old to
18 know when it was venturing into deeper waters? Is
19 there any big color band or colored tiles that run
20 along showing the child that it's about to go into
21 deeper water?
22 A. I don't believe so, sir.
23 Q. Or even so that a counselor or lifeguard
24 will know whether or not the child is in the beach
25 pool area or venturing into the 3.6 depth zone?

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1 A. There are no markings on the pool, but
2 there's the indication watch -- actually watching the
3 children walking in the water, they can get an
4 estimation of the depth.
5 Q. Okay. And who was watching John Pluchinsky
6 as he walked into the water towards that 3.6 foot
7 deep area?
8 MR. SNYDER: Objection, form.
9 A. It would have been the lifeguard,

10 15 y/o LG #1 .

11 Q. (BY MR. MARRS) So it's your understanding
12 she saw him going into 3.6 feet deep water?

13 A. No, I'm sorry. I misunderstood your
14 question.

15 Q. Okay.

16 A. Potentially, she was the one who should have
17 seen him or could have seen him.

18 Q. I agree. What facts does the Racquet Club
19 have that indicates that anyone saw John Pluchinsky
20 during the 10 or 15 minutes after 4 y/o B-CC #2
21 stopped playing with him?

22 MR. SNYDER: Objection, form.

23 A. I have no direct evidence of it, sir.

24 Q. The Racquet Club has no such facts, correct?

25 MR. SNYDER: Objection, form.

0275

1 A. I can't name a particular individual that
2 saw him, if that's your question.

3 Q. (BY MR. MARRS) Okay. To the Racquet Club's
4 knowledge, no one saw John Pluchinsky at any time
5 during the 10 or 15 minutes after 4 y/o B-CC #2
6 stopped playing with him, correct?

7 MR. SNYDER: Objection.

8 A. I would not agree with that.

9 MR. SNYDER: Objection, form.

10 Q. (BY MR. MARRS) Okay. Then that's what my
11 question is. What facts does the Racquet Club have
12 to indicate that someone saw June -- John Pluchinsky
13 during the 10 or 15 minutes after 4 y/o B-CC #2
14 stopped playing with him?

15 MR. SNYDER: Objection, form.

16 A. I have no hard evidence. Common sense would
17 dictate that.

18 Q. (BY MR. MARRS) Well, I want names.

19 A. I don't have names.

20 Q. Okay. And you have no facts. It's just
21 common sense to you, correct?

22 A. I have no facts that I can discuss with you
23 today.

24 Q. Well, do you have facts at all, whether you
25 can discuss them with me or not?

0276

1 A. What I have is opinions.

2 Q. Okay. Well, I don't want opinions. I'm
3 just setting those aside, okay? Do you have any

4 facts where the Racquet Club has a fact indicating
5 that a particular person saw John Pluchinsky during
6 the 10- or 15-minute time window after 4 y/o B-CC #2
7 stopped playing with him?

8 MR. SNYDER: Objection, form.

9 A. I would say if we reviewed their statements
10 that were taken immediately after, there would be --
11 perhaps there would be some indication in there.

12 Q. (BY MR. MARRS) That what?

13 A. That somebody was -- saw him or was playing
14 with him.

15 Q. And whose statement would that be?

16 A. Just the statements of the counselors that
17 were taken. If there's any direct indication, it
18 would be there; otherwise, I have no -- I have no
19 specific knowledge of any individual.

20 Q. That's what I'm asking you. Have you seen
21 any facts in any of the statements that you're
22 referring to now indicating that a particular person
23 saw John Pluchinsky during the 10 or 15 minutes after
24 4 y/o B-CC #2 stopped playing with him?

25 MR. SNYDER: Objection, form.

0277

1 A. I would want to review those documents.

2 Q. (BY MR. MARRS) Let's do that.

3 (Sotto voice discussion between witness
4 and Mr. Snyder.)

5 Q. (BY MR. MARRS) After speaking to your
6 counsel, is there anything you need to change about
7 the testimony you just gave?

8 A. No, there's not. I believe I did mention
9 yesterday that I thought 4 y/o B-CC #2 's statement needed to
10 be reviewed. I'm not sure that it was -- it was --

11 Q. Okay. Well, let's look at it.

12 MR. PLETCHER: It's Exhibit 2.

13 A. -- read correctly.

14 Q. (BY MR. MARRS) Here is 4 y/o B-CC #2 's
15 statement that you just referred to. Please review
16 it.

17 And in her statement, she indicates,
18 (reading) I had been playing with John earlier and he
19 was perfectly okay. Then about 10 to 15 minutes
20 later was when we saw him.

21 MR. SNYDER: Objection. You're
22 misreading that. That's not 10, counsel.

23 MR. PLETCHER: What is it?

24 MR. SNYDER: That's for, F-O-R.
25 MR. PLETCHER: Well, we'll --
0278
1 MR. SNYDER: She had been playing with
2 him for --
3 MR. MARRS: Okay.
4 MR. SNYDER: -- about 15 minutes, then.
5 MR. MARRS: Okay. Now, let's just read
6 it. (Reading) I had been playing with John earlier
7 and he was perfectly okay then about for 15 minutes
8 later was when we saw him.
9 MR. SNYDER: Period after minutes.
10 MR. MARRS: Okay. Oh, there's a period
11 after "minutes."
12 MR. SNYDER: "Later was when we saw
13 him."
14 MR. MARRS: Okay. Well, I suggest you
15 talk to 4 y/o B-CC #2 and you find out what other
16 statements she's given --
17 MR. SNYDER: Okay.
18 MR. MARRS: -- to other authorities
19 about how long it was before you start telling me
20 what she's saying in her statement, lest you state on
21 the record something that's in total contradiction
22 what -- to what she's been telling everyone else.
23 MR. SNYDER: I'm just -- I'm just
24 looking at that statement.
25 MR. MARRS: Okay. Well, that's not
0279
1 what it says.
2 MR. SNYDER: And I don't -- I don't --
3 MR. MARRS: It says --
4 MR. SNYDER: I disagree.
5 MR. MARRS: -- and I'll read it word
6 for word. The jury can read this. (Reading) I had
7 been playing with John -- and it's also consistent
8 with what other witnesses said. (Reading) I had been
9 playing with John earlier and he was perfectly okay,
10 comma, then about for, dash, 15 minutes later was
11 when we saw him, period. That's what it says.
12 Q. (BY MR. MARRS) So, sir, can you answer my
13 question?
14 A. Please repeat the question.
15 Q. Does the Racquet Club have any facts that
16 anyone saw John Pluchinsky after 4 y/o B-CC #2
17 stopped playing with him?

18 A. Other than what might be contained in the
19 statements of the other counselors, no.

20 Q. Does the Racquet Club have any facts
21 regarding exactly who last saw John Pluchinsky alive?

22 A. No, sir.

23 Q. Does the Racquet Club have facts regarding
24 where exactly in the family pool John Pluchinsky was
25 discovered facedown in the water?

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1 A. Not precisely at this time, sir.

2 Q. Now, was 15 y/o LG #1 responsible for also
3 watching the slide during the time on July 18, 2007
4 when John Pluchinsky was in the pool?

5 A. Not specifically. It would have been part
6 of her general scan, but it certainly isn't where her
7 focus was.

8 Q. And where was her focus?

9 A. Her focus would have been on the -- on the
10 shallower end of the pool, from the -- say from the
11 fountain over to the west.

12 Q. You'll agree that someone should have been
13 watching John Pluchinsky during the time frame after
14 4 y/o B-CC #2 finished playing with him, won't you?

15 A. Yes.

16 Q. And is it Guillermo Palmer's responsibility
17 to instruct lifeguards on their scanning zones?

18 A. Yes, it is.

19 Q. And on their placement at the pool?

20 A. Yes, it is.

21 Q. And on their schedule in terms of when they
22 should be on duty directly at the pool?

23 A. Yes.

24 Q. And on appropriate scanning techniques?

25 A. Yes. They are taught that in their

0281

1 lifeguard training as well.

2 Q. But you don't just rely on that, do you?

3 A. Certainly not.

4 Q. Okay. Let's look at Exhibit 19. This is a
5 document -- actually a copy of an e-mail from
6 yourself to a CM #4 and it says, "Re: Summer
7 Tennis Camp." Have I described it correctly?

8 A. Yes, sir.

9 Q. And have you seen this document recently?

10 A. No, not in the last few months or so.

11 Q. Okay. You know that -- and let's look at

12 the first e-mail in this chain.

13 MR. MARRS: Can you blow that up for my
14 benefit?

15 MR. PLETCHER: (Complies.)

16 MR. MARRS: Thank you. Go ahead, more.

17 MR. PLETCHER: More?

18 MR. MARRS: Uh-huh.

19 Q. (BY MR. MARRS) And CM #4 is -- she
20 says, "Dear Mr. Griffin and Mr. Cook." And Mr. Cook,
21 was he the tennis camp director?

22 A. At that time he was the assistant tennis --
23 head tennis professional.

24 Q. Okay. And he's telling you -- CM #4 is
25 saying, "I spoke with both of you last year about the
0282

1 Children's summer tennis camp and the incident with
2 4 y/o-C #9 (who was 4 at the time) being thrown
3 in the pool and not" being -- "and not able to swim,
4 and another coach having to go in after him clothed,"
5 correct?

6 A. Yes, sir. That's what it says.

7 Q. And she also indicates, "Mr. Griffin - when
8 we spoke you indicated there needed to be some
9 changes," right?

10 A. Uh-huh, yes, sir.

11 Q. And then -- thanks.

12 You respond to her and part of what you
13 say is that -- and I think you're talking about the
14 incident the previous summer in 2006, that "At that
15 time, M #3, M #4 and I observed that the
16 tennis coaching staff was not consistently
17 supervising the children around the pool," correct,
18 sir?

19 A. That's correct.

20 Q. And of course, 4 y/o-C #9 was the same
21 age as John Pluchinsky was, correct?

22 A. Yes.

23 Q. And this was some -- this e-mail was some
24 three months before John Pluchinsky's death, correct,
25 sir?

0283

1 A. Yes.

2 Q. And then let's look at Exhibit Number 20.
3 Now, this is an e-mail from HRCBM-B -- am I saying
4 that correctly?

5 A. Yes, sir.

6 Q. Okay. HRCBM-B to yourself, right, sir?
7 A. Yes, sir.
8 Q. Well, you've seen this one recently, haven't
9 you?
10 A. Yes.
11 Q. When?
12 A. I reviewed it in the last three to four
13 days.
14 Q. To prepare for your deposition?
15 A. Yes, sir.
16 Q. Now, this e-mail was sent by Mr. HRCBM-B
17 approximately a month before John Pluchinsky died,
18 correct?
19 A. Yes.
20 Q. June 11th?
21 A. I see that, yes.
22 Q. June 11th, 2007, approximately a month
23 before his death, right, sir?
24 A. Yes.
25 Q. And tell the jury who HRCBM-B is.

0284

1 A. Mr. HRCBM-B is a member of the Racquet Club
2 and also a member of the board of directors.
3 Q. And he is also what?
4 A. Our facility's chairperson.
5 Q. And he is also what?
6 A. I'm not sure where you are going with this,
7 Mr. Marrs.
8 Q. Is he a -- is he the secretary, the officer
9 position of secretary for the Racquet Club?
10 A. He was at that time, yes.
11 Q. Okay. Mr. HRCBM-B is -- correct me if I'm
12 wrong -- as you have observed, a very conscientious
13 person, isn't he?
14 A. Certainly.
15 Q. Honest person to your knowledge, correct?
16 A. What I know of Mr. HRCBM-B, yes, sir.
17 Q. And let's look at this closely. You've had
18 a chance to visit with your lawyer about this letter,
19 haven't you?
20 MR. SNYDER: Objection.
21 Don't discuss what we've visited about
22 or discussed or anything like that.
23 Q. (BY MR. MARRS) And so that we can visit
24 about this e-mail, let me tell the jury a little bit
25 about what it says. This e-mail from an officer, a

0285

1 board member and a member, HRCBM-B to you,
2 approximately one month before John's death, in the
3 subject line it says, "Guillermo and Lifeguard Safety
4 Practices," right, sir?

5 A. Yes.

6 Q. Okay. And he says, "Steve: I know it
7 probably seems like I am on a bitching spree, but I
8 am really not. Again, I want to remind you that I
9 and everyone loves what you are doing for the club.
10 On every front, I think the entire Board thinks you
11 do an outstanding job, but you are only as good as
12 your team." Do you agree that you are only as good
13 as your team?

14 A. I do.

15 Q. Do you agree that if you have an important
16 team member that constantly fails to do their job, it
17 could put the club in jeopardy?

18 MR. SNYDER: Objection, form.

19 A. If that situation existed, but it's
20 hypothetical.

21 Q. (BY MR. MARRS) And if someone on your team
22 allowed unsafe conditions to exist at your pool, that
23 obviously could be dangerous to members and
24 non-members that use your pool, couldn't it?

25 MR. SNYDER: Objection, form.

0286

1 A. It could be a --

2 Q. (BY MR. MARRS) That's common sense, isn't
3 it?

4 A. If those -- if those conditions were allowed
5 to persist, yes.

6 Q. Okay. So let's go on to discuss the
7 conditions that did exist at your pools at the
8 Racquet Club. He says, "I need to bring up another
9 observation regarding the lifeguards on Sunday around
10 7:00 p.m. I really don't think the lifeguards are
11 the problem, but it is the manager who is not
12 managing his people." What manager do you think he's
13 referring to?

14 A. It appears that he's referring to Guillermo
15 Palmer.

16 Q. And when he says "another observation," do
17 you believe he's talking about his own observations?

18 A. I can't speak to that. I don't know.

19 Q. Okay. Well, let's keep reading it and see

20 if we figure that out. "I'm assuming that Guillermo
21 manages the lifeguards." And his assumption was
22 correct, right?

23 A. Yes.

24 Q. "I believe the lifeguards have one of the
25 most important jobs at the club, especially during
0287

1 the summer months. It would be the last place where
2 we would want an accident to occur." Would you agree
3 with him that your pool area in the summertime is the
4 last place where you would want an accident to occur?

5 A. I would have to agree with that, yes.

6 Q. And that everything should be done in your
7 abilities and the club's abilities to make sure that
8 the pool areas were safe; you agree with that?

9 A. Yes.

10 Q. And he says, "Therefore, I believe these
11 lifeguard positions are extremely important and
12 require responsible actions. They play an important
13 role in possibly saving lives and enforcing pool and
14 swimming safety. It is not to be taken lightly,"
15 correct, sir?

16 A. I would agree with Mr. HRCBM-B, yes.

17 Q. You read this entire e-mail when you
18 received it from your board member, member and
19 officer, HRCBM-B, didn't you?

20 A. Of course.

21 Q. And he goes on to say, "I truly believe that
22 we have an extremely loose situation around the pool
23 regarding our lifeguards. I have never seen such
24 activity at any club." And when you read that, did
25 that concern you?

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1 A. Yes, it did.

2 Q. "With the family pool being closed last
3 night, everyone had to swim in the lap pool." And he
4 says, "I entered the pool area" -- and now he's
5 talking about what he, the member and officer himself
6 saw at your club in the pool area, correct?

7 A. Yes.

8 THE WITNESS: Mr. Pletcher, would you
9 mind raising that for me, please?

10 MR. PLETCHER: Sure.

11 THE WITNESS: Thank you.

12 Q. (BY MR. MARRS) He says, "I entered the pool
13 area and two lifeguards were walking in and went

14 right past the sign in table where no one was
15 stationed. I saw one man come around looking behind
16 the table for some towels where there weren't any. I
17 then looked over to the lap pool and once again, my
18 favorite lifeguard was horsing around along with the
19 others." Who's he referring to when he says,
20 "favorite lifeguard"?

21 A. LG-A.

22 Q. Okay. "They were all clearly lifeguards with
23 parents and children watching. My favorite character
24 was yelling again across the pool, jumping in the
25 deep end (inside the north side pool ladders) towards
0289

1 the high dive while someone was getting ready to dive
2 in. He then got out and asked a small girl to step
3 aside from the ladder so he could go up. He then
4 proceeded to make an ass of himself and he crazily
5 jumped off the high dive. He then hopped out and
6 began to towel off as he talked at length with the
7 female lifeguard on duty. Additionally, kids were
8 diving off the high dive with others still below.
9 Kids were climbing out under the diving board while
10 others were bouncing repetitively on the board
11 above. (Typically, I have seen where no one gets on
12 the board until the area is clear and other children
13 below have swam towards and climbed out on the
14 ladders.) Meanwhile, two other guys are flirting and
15 talking with the deep end female lifeguard - one in
16 the pool and the other standing (only one being a
17 lifeguard)."

18 Have I read it correctly so far?

19 A. Yes.

20 Q. And then he says, "I then looked over at
21 Guillermo to see if he was observing any of this and
22 he was standing next to the shallow end lifeguard
23 with three other lifeguards talking and laughing."

24 Is that acceptable conduct at your
25 pools, that the guy that's the head of all of your
0290

1 lifeguards that you have the utmost trust in, is
2 sitting there laughing and talking with lifeguards
3 when this kind of conduct is occurring at your pool?
4 Is that acceptable to you as general manager?

5 A. No. I would expect him to be more diligent,
6 and we spoke about it after I received this e-mail.

7 Q. We'll get to that. "Meanwhile, one of the

8 lifeguards next to Guillermo began to chase another
9 around the pool with a wrapped up wet towel popping
10 the lifeguard while he was laughing and running
11 away. He then pursued another lifeguard while
12 Guillermo was still talking and doing nothing about
13 it."

14 Do you have any reason to believe that
15 what HRCBM-B says he saw didn't occur?

16 A. No. I have faith in Mr. HRCBM-B's
17 observations.

18 Q. Okay. And in Mr. HRCBM-B's judgment as well?

19 A. Yes, I know him well.

20 Q. And with respect to the seriousness of what
21 Mr. HRCBM-B is telling you in this e-mail, correct?

22 A. I took his words very seriously.

23 Q. "There were also two waiters just sitting
24 around talking with these same lifeguards next to
25 Guillermo and then the one with the towel began to
0291

1 chase and pop one of them as well. Parents were
2 staring at these guys while this all took place.
3 There were probably 20 to 30 kids and parents in the
4 pool at this time."

5 MR. PLETCHER: 25.

6 MR. MARRS: Excuse me.

7 Q. (BY MR. MARRS) "...25-30 kids and parents in
8 the pool at this time."

9 And really, that is not that much
10 different from what was occurring July 18, 2007 in
11 your family pool when there were some -- possibly up
12 to 44 people in or around the pool area. You've got,
13 as you know from looking at CM #1's e-mail
14 about the scene at that time, counselors congregating
15 in the same area and talking instead of focusing on
16 the children in the pool, wasn't it?

17 MR. SNYDER: Objection, form.

18 A. I can't speak to the validity of
19 Mrs. CM #1's observations.

20 Q. (BY MR. MARRS) Right. You have no facts to
21 indicate that what Ms. CM #1 said in her e-mail was
22 inaccurate, do you?

23 MR. SNYDER: Objection, form.

24 A. Nor can I say that it was accurate.

25 Q. (BY MR. MARRS) You can't say it was
0292

1 accurate or inaccurate, can you?

2 A. That's correct.
3 Q. The Racquet Club doesn't know one way or the
4 other, correct?
5 A. Not in that particular instance, no.
6 Q. Not on July 18, 2007, correct?
7 MR. SNYDER: Objection, form.
8 A. That's correct.
9 Q. (BY MR. MARRS) Okay. But what she does
10 describe on July 18th is very similar to what
11 HRCBM-B described in June of 2006 -- 2007 as reflected
12 on Exhibit 20, isn't it?
13 MR. SNYDER: Objection, form.
14 A. No, I don't necessarily agree with that at
15 all.
16 Q. (BY MR. MARRS) Well, it was a busy day at
17 the pool on July 18th, 2007. We've already discussed
18 that, correct?
19 A. Reasonably busy, yes.
20 Q. And it was reasonably be -- reasonably busy
21 in the pool that Mr. HRCBM-B is talking about on
22 June -- in June 11th, 2007 in his e-mail, isn't it?
23 A. Yes.
24 Q. "Most" -- and I'm continuing with what he
25 said here.

0293

1 MR. PLETCHER: Let me -- Let me raise
2 it up a little bit here.
3 MR. MARRS: I appreciate it.
4 MR. PLETCHER: I'm trying to get it all
5 the way to the bottom.
6 MR. MARRS: Okay. You might point with
7 your pen kind of where I'm starting just so that the
8 jury can see it.
9 MR. PLETCHER: Okay.
10 Q. (BY MR. MARRS) "Most of the lifeguards all
11 migrated to the lifeguard room next to the Fitness
12 Center. At this time, the one lifeguard is still
13 popping the towel on the floor and then the cabinets
14 inside the lifeguard's room while my favorite guy and
15 others were then horsing around with two waiters and
16 yelling down the hall from the Courtside Cafe. At
17 that time, someone announced over the band speakers
18 that the lifeguards were no longer on duty. I know
19 at the Briar Club the lifeguards stay until everyone
20 is out of the pool or at least the small children and
21 then the pool" -- excuse me. It says, "is out of the

22 pool or at least the small children and then the pool
23 officially closes. These are all liability related
24 rules and issues."

25 Do you agree that lifeguards or
0294

1 counselors horsing around in the pool, flirting,
2 laughing, doing nothing when other things are going
3 on is a liability issue for your club?

4 A. I would agree that they aren't practices
5 that we want to take place, yes.

6 Q. And you have a zero tolerance rule in
7 effect, such that if that does happen they are going
8 to be terminated immediately?

9 A. Not necessarily.

10 Q. Okay. Even though that's stated in your
11 rules for the counselors, that's not a rule that the
12 Racquet Club follows; is that correct?

13 MR. SNYDER: Objection, form.

14 A. Zero tolerance doesn't necessarily mean that
15 we are going to terminate them at that moment.

16 Q. (BY MR. MARRS) Well, according to what
17 you --

18 A. We won't -- we won't tolerate it.

19 Q. Okay. And according to what you said
20 yesterday, even though a child drowned in your family
21 pool and what Ms. CM #1 described was going on ten
22 minutes before John died, zero tolerance in your mind
23 and the Racquet Club's mind also means that no one is
24 going to be reprimanded or receive a pay decrease
25 also, doesn't it?

0295

1 MR. SNYDER: Objection, form.

2 A. I can't speak to the validity of what
3 Mrs. CM #1 claims that she saw.

4 Q. (BY MR. MARRS) No one received a pay
5 decrease or lost their job as a result of John
6 Pluchinsky drowning, correct?

7 A. No, sir.

8 Q. As a matter of -- is that correct?

9 A. That's correct.

10 Q. And as a matter of fact, some received pay
11 raises, correct?

12 A. At least one, yes.

13 Q. And continuing here, Mr. HRCBM-B states,
14 "Whatever our policy is, it did not seem to be well
15 orchestrated. Do these lifeguards have whistles?

16 They need to play the role of authority - they are
17 the pool police."

18 A. They do have whistles and they do use them.

19 Q. Have you been to Briar Club?

20 A. I've been there on occasion, yes.

21 Q. Have you seen color coding of children at
22 the Briar Club?

23 A. I'm not familiar at all with their -- with
24 their pool practices.

25 Q. Have you seen the color coding of children
0296

1 at the Briar Club?

2 A. No, sir.

3 Q. Do you know what their policies are with
4 respect to dead man float?

5 A. No, I do not.

6 Q. Are you aware of the fact the Briar Club
7 does not allow children to float facedown in the pool
8 motionless?

9 MR. SNYDER: Objection, form.

10 A. I'll repeat, I am not aware of any of the
11 Briar Club's pool policies.

12 Q. (BY MR. MARRS) So you're not aware of the
13 fact that you will be ejected immediately if you do
14 that at the Briar Club?

15 MR. SNYDER: Objection, form.

16 You've answered it twice. You don't
17 need to answer it a third time.

18 THE WITNESS: Okay. Thank you.

19 MR. MARRS: That's a -- that's a
20 different question.

21 MR. SNYDER: No, it's not.

22 Q. (BY MR. MARRS) You have not had any of your
23 individuals, Guillermo Palmer or David Lamkin, go to
24 any other club locally in Houston to review or
25 observe how they color code children or protect
0297

1 children in their pools?

2 A. They have relationships with other -- with
3 the similar managers at other clubs and I know they
4 talk to them on a regular basis, but I'm not familiar
5 with the particulars of it, no.

6 Q. Can you just answer my question?

7 MR. SNYDER: Objection, form.

8 Q. (BY MR. MARRS) My question was whether you
9 have directed Guillermo Palmer or David Lamkin to go

10 to any other local pools or clubs to determine how
11 they safeguard their children or color code their
12 children in their pools?

13 A. No.

14 MR. SNYDER: Objection, form.

15 Q. (BY MR. MARRS) Getting back to HRCBM-B,
16 he also says, "Pool safety and the enforcement of
17 strict rules should be the highest priority for these
18 lifeguards and especially their manager." And their
19 manager is Mr. Palmer, right?

20 A. Correct.

21 Q. "They need to be trained like any other
22 employee and be held accountable for their actions.
23 They play a very important role in the safety of our
24 children and set the example for all others to follow
25 when it comes to safety. They are employees, not

0298

1 members of this club and need to respect professional
2 courtesies like any other employee. Guillermo
3 obviously has no understanding of this. I would love
4 to hear what rules and training on pool safety he has
5 implemented. I bet he has no knowledge of what rules
6 even apply or what the standards are at other clubs."

7 Well obviously, you know for a fact as
8 we sit here today that as of July 18, 2007, Guillermo
9 Palmer did not know about the Texas Administrative
10 Code regulations that were being violated at your
11 family pool, did he?

12 A. He wasn't aware of some of them at least,
13 that's correct.

14 Q. And he wasn't aware of some of the CPS rules
15 that were being violated at your family pool.

16 A. That's correct.

17 Q. So Mr. HRCBM-B is correct when he says he bets
18 that Guillermo Palmer doesn't have knowledge of all
19 the rules that may affect the pool, wasn't he?

20 A. I don't believe Mr. HRCBM-B said "all the
21 rules," clarification.

22 Q. And Mr. HRCBM-B goes on. "I would encourage
23 someone else to observe these actions around the pool
24 because I believe it is an accident waiting to
25 happen." Mr. HRCBM-B was a very prophetic gentleman,

0299

1 wasn't he?

2 MR. SNYDER: Objection, form.

3 A. It could be interpreted that way.

4 Q. (BY MR. MARRS) Mr. HRCBM-B predicted one
5 month before John died that there is an "accident
6 waiting to happen" at our pools, didn't he?

7 MR. SNYDER: Objection, form.

8 A. That was his statement.

9 Q. (BY MR. MARRS) And he was right, wasn't he?

10 MR. SNYDER: Objection, form.

11 A. I am not convinced that they're -- that
12 they're related at all. I don't deny the accident,
13 but I don't -- I don't tie it to what Mr. HRCBM-B is
14 saying here.

15 Q. (BY MR. MARRS) Mr. HRCBM-B in Exhibit 20,
16 this e-mail to you personally, this one-page long
17 e-mail is ringing the bells, the alarm bells to you.
18 That raised a real red flag to you, didn't it?

19 MR. SNYDER: Objection, form.

20 A. I took it seriously, yes.

21 Q. (BY MR. MARRS) And tell me about the
22 reprimand that you gave Guillermo Palmer as a result
23 of his conduct as Mr. HRCBM-B observed in this e-mail?

24 A. It was a verbal counseling that he
25 received.

0300

1 Q. Well --

2 A. There was no written reprimand.

3 Q. Yeah. I don't want to know about
4 counseling. I want to know about reprimand. What
5 reprimand did he receive as a result of the conduct
6 that's described in Exhibit 20, HRCBM-B's e-mail
7 of June 11, 2007?

8 A. He received a verbal reprimand.

9 Q. Okay. Tell me what it was.

10 A. We met, we covered the details of the -- of
11 the e-mail. And we agreed that this, that the
12 behavior that was described here was not tolerable in
13 any way and that we would -- we would be much more
14 diligent in the future. I increased my scrutiny,
15 I -- David also increased his. There was one
16 particular player here that was a -- that was sort of
17 a catalyst. He was not -- he was discharged about
18 three weeks later.

19 Q. Did he work during those three weeks?

20 A. Yes.

21 Q. So LG-A continued to work for
22 you for three weeks after the conduct described in
23 the e-mail marked Exhibit 20; is that correct?

24 A. Well, approximately. I don't know his exact
25 termination date sitting here.

0301

1 Q. And that's part of your zero tolerance rule,
2 correct?

3 A. He was reprimanded and ultimately
4 discharged.

5 Q. Three weeks later, although he worked during
6 those three weeks, correct?

7 A. Yes.

8 Q. He was terminated on the day that John
9 Pluchinsky drowned, wasn't he?

10 A. I don't believe so, sir.

11 Q. Why was he terminated, LG-A?

12 A. He was a behavior problem. He engaged in
13 the types of behaviors that you read right there. He
14 was at the pool, often times as a guest of other
15 members when he was not on lifeguard duty and he --
16 we found him to be disruptive. He did tend to engage
17 the guards at inappropriate times. He clowning around
18 as described here and we felt that he was not
19 suitably to be part of our team.

20 Q. Unacceptable conduct that your lifeguard
21 manager, Guillermo Palmer, allowed to happen, as
22 HRCBM-B is saying in his e-mail on June 11, correct,
23 sir?

24 A. I know that Guillermo met with John on more
25 than one occasion and admonished him for his

0302

1 behavior.

2 Q. On the day that HRCBM-B is describing,
3 he's describing a fact that Guillermo Palmer was
4 still talking and doing nothing about it. He's
5 complaining about Guillermo Palmer allowing this kind
6 of conduct to happen at your pools, isn't he?

7 A. He is.

8 Q. So you know for a fact that Guillermo
9 Palmer, who is supposed to supervise your lifeguards,
10 was allowing this conduct to occur at least as of the
11 day that HRCBM-B is talking about, June 11, 2007
12 e-mail, correct?

13 A. In this particular instance, yes.

14 Q. And Guillermo Palmer, after that day is
15 still employed in the same position with the same
16 responsibilities even after you received this e-mail,
17 correct, sir?

18 A. Yes, that's correct.
19 Q. And he had received no decrease in pay, no
20 lessening of responsibilities and no outside training
21 after that, correct?
22 A. Who are we referring to, please?
23 Q. Guillermo Palmer.
24 A. No, sir.
25 Q. Is that correct?

0303

1 A. That's correct. The one thing that this
2 e-mail doesn't make clear is whether or not John was
3 on duty at that time as a lifeguard or a guest of a
4 member. It's not determined.
5 Q. You knew as a general manager of this club
6 that accepted small children into its pools that you
7 had a serious safety problem, extremely loose
8 situation around your pools at the Racquet Club, at
9 least as of the time you received this e-mail,
10 correct, sir?
11 MR. SNYDER: Objection, form.
12 A. That's how Mr. HRCBM-B describes it on that
13 particular day, yes.
14 Q. (BY MR. MARRS) And if what Mr. HRCBM-B says
15 is true in this e-mail, you knew that indeed there
16 existed a serious safety problem at your pools,
17 didn't you?
18 MR. SNYDER: Objection, form.
19 A. I was concerned that that situation existed
20 at that time, yes.
21 Q. (BY MR. MARRS) And that situation that you
22 say might have existed was a safety risk for those in
23 your pools as described by Mr. HRCBM-B, if indeed it's
24 correct?
25 A. Yes.

0304

1 Q. And when you received this e-mail on or
2 about June 11, 2007, who else did you share it with?
3 A. I don't recall specifically. I would have
4 certainly sent it to David. I believe I forwarded it
5 to Guillermo, of course, and met with him separately
6 on it. I don't recall anybody else specifically that
7 had -- that received that e-mail.
8 Q. Well, did you share it with Ted Erck, the
9 President of the Houston Racquet Club?
10 A. I don't recall. I don't think so.
11 Q. Did you discuss or share this e-mail, to

12 your memory, with anyone other than Guillermo Palmer?

13 A. David Lamkin.

14 Q. And what did you -- did you show the e-mail
15 to David Lamkin?

16 A. I'm certain that I did.

17 Q. Did you discuss it with him?

18 A. Absolutely.

19 Q. What did you discuss?

20 A. We discussed the issues that Mr. HRCBM-B was
21 raising and the concerns that we had for the fact
22 that the lifeguards were behaving as they were, and
23 LG-A's role in that day.

24 Q. Okay. So not only the general manager of
25 the Houston Racquet Club and its board member,
0305

1 Mr. HRCBM-B, but also your fitness director, another
2 manager, David Lamkin, were fully aware of all of the
3 things that are in Exhibit Number 20, HRCBM-B's
4 e-mail on or about June 11, 2007, a month before John
5 died, correct?

6 A. That's correct.

7 Q. Who else, anyone else aware of the
8 situations that are complained about in HRCBM-B's
9 e-mail?

10 A. I don't recall sending it to anybody else.

11 Q. Did you share this e-mail with your board of
12 directors?

13 A. Not to my recollection, sir.

14 Q. Why not?

15 A. Operations are my concern.

16 Q. The buck stops with you?

17 A. Yes, sir.

18 Q. And other than your verbal counseling that
19 you gave to Mr. Palmer, were there any other
20 repercussions or consequences to anyone as a result
21 of the complaints and situation described in
22 HRCBM-B's e-mail?

23 A. I am not sure if Guillermo took any
24 subsequent action with the lifeguards or not. He
25 could speak to that.

0306

1 Q. Well, were any other consequences or
2 repercussions brought upon Guillermo Palmer himself,
3 other than the verbal counseling you've told me
4 about?

5 A. No, sir.

6 Q. Okay. So after you received not just the
7 e-mail from CM #4 , Exhibit 19, three months
8 before John died, but one month before he died
9 HRCBM-B's e-mail, did you order a full and
10 comprehensive review of the safety practices at your
11 pools?

12 A. Mrs. CM #4's e-mail was referencing an
13 incident that took there the -- that took place the
14 year before, as I recall. We dealt with that at the
15 time that that happened. I see that as a completely
16 separate and unrelated incident. It was regarding
17 the tennis camp.

18 Q. Okay. So after knowing that -- knowing the
19 e-mail that you shared with CM #4 , not a year
20 ago, but in April of 2007, three months before John
21 died about what you say is a different situation, but
22 indeed a young four-year-old thrown in one of your
23 pools, and then receiving HRCBM-B's e-mail a
24 couple of months later in June 2007, did you at that
25 time in June of 2007 order a complete and
0307

1 comprehensive review of your safety practices at the
2 Racquet Club?

3 A. No, not a complete and comprehensive review,
4 but we -- David and I took a much more active role in
5 personally reviewing the behavior of the guards in
6 any particular -- any particular time. We increased
7 our scrutiny. And I think that the performance of
8 the guards was considerably better, particularly
9 after John was let go.

10 Q. And did part of this review and increased
11 participation of yourself and Mr. Lamkin include
12 increased involvement of yourself and Mr. Lamkin at
13 the family pool on June 18, 2007 to ensure that on
14 busy days, like June 18th, the children were being
15 protected?

16 A. I can't speak to Mr. Lamkin's whereabouts
17 the other -- the other times of that day.

18 Q. Well, you know for a fact he wasn't at the
19 family pool that day?

20 A. At that instant he wasn't there.

21 Q. And neither were you?

22 A. I was engaged in my duties in the club
23 house. I'm always available.

24 Q. And neither was Guillermo Palmer?

25 A. I can't speak to Guillermo's whereabouts

0308

- 1 earlier in the day either.
2 Q. And neither was LG Supv , correct?
3 A. LG Supv had been on duty moments
4 before and he was back at the pavilion.
5 Q. So the answer to all of those four questions
6 is correct, none of those individuals were at the
7 family pool at the time John drowned, correct?
8 A. At that instant in time, no, sir.
9 Q. And you're -- not comprehensive, but your
10 review of safety practices that you did after
11 receiving HRCBM-B's e-mail also did not include
12 just taking a look at your AED to see if it was
13 appropriate for use for the children you had in your
14 pools, was it?
15 A. We had no indication that such an AED was
16 needed. We had no information about an infant AED.
17 Q. Well, I guess if you had bothered to look in
18 the Red Cross manuals that your lifeguards and
19 lifeguard manager are required by law to have, you
20 might have seen where it discussed AED devices,
21 right?
22 A. I would need to review specifically what it
23 says in there about AED devices.
24 Q. Okay.
25 A. We've had AEDs at the club for 10 years.

0309

- 1 Q. So for some 10 years when you were allowing
2 four-year olds in your pools for a decade, you were
3 going without appropriate AED devices for four-year
4 olds in your pools for a decade?
5 MR. SNYDER: Objection, form.
6 Q. (BY MR. MARRS) Is that what you're
7 testifying?
8 A. I would need to research to see when those
9 infant AEDs and young child AEDs were even made
10 available to us.
11 Q. But you didn't have one, you know for a
12 fact, for at least a full decade, correct, sir?
13 MR. SNYDER: Objection, form.
14 A. No, we did not.
15 Q. (BY MR. MARRS) Yet you allowed four-year
16 olds in your pools for at least a decade, correct?
17 A. Yes, we did.
18 Q. So back to what my question was. I asked
19 you: So this review you say you did with Mr. Lamkin

20 after receiving HRCBM-B's e-mail did not include
21 looking at your AED devices to see if they were
22 appropriate for small children, correct?

23 MR. SNYDER: Objection, form.

24 A. That's correct.

25 Q. (BY MR. MARRS) It also did not include
0310

1 reviewing whether or not you needed an additional
2 lifeguard, at least three lifeguards at your family
3 pool during the summer camp, correct, sir?

4 A. Those decisions are made moment to moment
5 upon bather load.

6 Q. By?

7 A. By Guillermo Palmer or the lifeguard -- the
8 head lifeguard on duty.

9 Q. Did you respond to HRCBM-B's June 11th,
10 2007 e-mail?

11 A. I'm certain that I did.

12 Q. Did you send him an e-mail in response?

13 A. I'm certain that I did.

14 Q. Where is it?

15 A. I don't know. Perhaps it wasn't produced.

16 Q. I can tell you for a fact it was not
17 produced. I'm just asking you where it would be.

18 A. It may still be on my computer.

19 Q. Have you reviewed the e-mails and
20 information and documents on your computer for
21 purposes of providing that in this lawsuit?

22 A. Extensively.

23 Q. Okay. So where is that e-mail you're
24 referring to?

25 A. I may have overlooked a single e-mail. A
0311

1 great deal was produced to you from my computer.

2 Q. And what's your recollection of what your
3 response to HRCBM-B was?

4 A. I have no specific recollection of what I
5 responded.

6 Q. We would need --

7 A. I'm certain I thanked him for his
8 observations and my -- and that I would take
9 appropriate action.

10 Q. But of course, we would need that e-mail to
11 know for sure, wouldn't we?

12 A. I can look for it and produce it to you at
13 your -- without delay.

14 Q. And where would that computer be?
15 A. In my office.
16 Q. At the Racquet Club?
17 A. Yes.
18 Q. What other e-mails or documents might we
19 find on your computer that would be relevant to this
20 case that has not been produced?
21 A. Hopefully, they've all --
22 MR. SNYDER: Objection, form.
23 A. Hopefully, they have all been produced. I
24 took great care to find everything that was
25 requested.

0312

1 Q. (BY MR. MARRS) Great care?
2 A. Great care.
3 Q. The same great care that the Houston Racquet
4 Club under your direction spent in making sure that
5 four-year olds were safe in its family pool?
6 MR. SNYDER: Objection, form.
7 Q. (BY MR. MARRS) The same level of care?
8 MR. SNYDER: Objection, form.
9 You don't need to answer that.
10 Q. (BY MR. MARRS) The same level of care that
11 Guillermo Palmer, even after knowing about unsafe
12 conditions in its pool, took to safeguard four-year
13 olds during the summer camp?
14 MR. SNYDER: Objection, form.
15 You don't need to answer that.
16 (Sotto voice discussion between
17 Mr. Marrs and Mr. Pletcher.)
18 MR. MARRS: Out of professional
19 courtesy, could I expect that sometime in the next
20 day I might get that e-mail and a further search of
21 his computer so that I don't have to go to the judge
22 and impound the computers at the Racquet Club, which
23 I may have to do anyway?
24 MR. SNYDER: Well, I appreciate your
25 threat, but certainly we'll look for that e-mail and

0313

1 we'll produce it.
2 MR. MARRS: I appreciate it.
3 MR. SNYDER: And we'll confirm that --
4 whether or not there are any other e-mails on there
5 that you've requested that have not been produced.
6 Q. (BY MR. MARRS) Okay. And what other --
7 what other computers, personal or otherwise, do you

8 use in order to conduct company business or send
9 e-mails relating to Houston Racquet Club business or,
10 you know, members?

11 A. Pretty much exclusively the computer in my
12 office, but occasionally I'll work from home.

13 Q. And what computer would you use at home?

14 A. The computer in my home office.

15 Q. Sure. And what kind of computer is that?

16 A. I don't know.

17 Q. Laptop, desktop?

18 A. No. It's a -- it's a PC -- it's a -- it's a
19 desk --

20 Q. Desk top?

21 A. Regular computer, yes.

22 Q. Okay.

23 A. All of my e-mails are contained not in my
24 computer specifically, but on sbcglobal.

25 Q. Is your sbcglobal account still

0314

1 smgriff@sbcglobal.net?

2 A. Smgriff@sbcglobal.net, yes.

3 Q. And again, what kind of desktop computer do
4 you have at home? What's the brand? Is it, you
5 know, Gateway or --

6 A. I think it's an HP. I bought it years ago.

7 Q. Okay. Do you have any other computers at
8 your house?

9 A. My wife has a laptop that crashed. Other
10 than that, no.

11 Q. Was that laptop that crashed of your wife's
12 ever used for Racquet Club business or Racquet Club
13 related e-mails?

14 A. Not to my recollection.

15 Q. And so you've had this HP -- you think HP
16 desktop for a number of years and still have it,
17 correct?

18 A. Yes.

19 Q. And what kind of computer do you have -- are
20 provided employees at the Racquet Club for use?

21 A. I think they're mostly Dells. I have a man
22 that handles that for me. I know very little about
23 computers myself.

24 Q. Okay. And who would that be?

25 A. Larry Cook.

0315

1 Q. Is he an employee?

2 A. Yes.
3 Q. What's his title?
4 A. He is human resources/IT manager -- slash IT
5 manager.
6 Q. How long has he been there?
7 A. He's been with us about a year.
8 Q. Any other IT professionals?
9 A. No.
10 Q. Have you deleted any e-mails from your
11 office computer since the day -- since July 17th,
12 2007?
13 A. Yes.
14 Q. What e-mails have you deleted?
15 A. Any e-mails that were not associated with
16 this case that I no longer needed to keep.
17 Q. And when did you do that?
18 A. Daily.
19 Q. Were you ever instructed to make sure not to
20 destroy or otherwise delete e-mails, any e-mails from
21 your computer after this lawsuit was filed?
22 A. I understood those instructions to be any
23 e-mails related to the case in any way, and I've
24 taken great care to preserve all of those.
25 Q. And, of course, that was your subjective
0316
1 determination as to whether or not an e-mail did or
2 did not relate to this case, correct?
3 A. It was easy for me to test whether or not it
4 related to this case. If there was ever a question,
5 I saved it.
6 Q. And of course, produced each and every one
7 of those to your counsel on this case, correct?
8 A. Yes, that I could -- that I could locate.
9 Some of the older ones that were prior to the
10 accident, I may have not found every single one of
11 those.
12 Q. Well frankly, we know that there's at least
13 one that you didn't produce that's related to this
14 case, correct?
15 A. That's the one that I'm referring to, sir.
16 Q. And have you given that response e-mail that
17 you did to HRCBM-B to anyone else since this
18 lawsuit was filed?
19 A. No, I have to think not. If it wasn't
20 produced to you, I didn't give it to anyone.
21 Q. And what method was used to determine

22 whether or not an e-mail or document was relevant to
23 this case when you were reviewing such e-mails and
24 documents?

25 A. Whether it -- whether it related to the case
0317

1 in any way from a -- from a legal standpoint or any
2 other factors associated with this case.

3 Q. And because you took this case seriously and
4 the discovery requests seriously, you of course,
5 instructed Larry Cook to assist you with preserving
6 and pulling out relevant e-mails and documents from
7 your computer system at the Racquet Club, didn't you?

8 A. Not to assist me with my own computer, sir,
9 no.

10 Q. But to do what, if anything?

11 A. Larry doesn't assist me with my computer at
12 all unless I have a specific need.

13 Q. So your answer is no, I did not instruct
14 Larry Cook to assist me with preserving, identifying
15 or pulling any electronic evidence or data relating
16 to this case, correct?

17 A. From my computer is how I understood your
18 question.

19 Q. From your computer? Okay.

20 A. Larry Cook was instructed the same day as
21 everybody else in writing of the need to preserve
22 everything related to this case, to take great care
23 not to -- not to destroy any electronic or hard
24 copies that might have any bearing on this case
25 whatsoever. We were advised of that in the earliest
0318

1 days.

2 MR. SNYDER: It's been about an hour.
3 Is this a good stopping point?

4 MR. MARRS: Yes.

5 VIDEOGRAPHER: Off the record. The
6 time is 12:48 p.m.

7 (Lunch recess.)

8 VIDEOGRAPHER: Back on the record. The
9 time is 2:05 p.m.

10 Q. (BY MR. MARRS) And, Mr. Griffin, as shown
11 on Exhibit 20, HRCBM-B's e-mail, there were more
12 lifeguards he refers to other than simply
13 LG-A and Guillermo Palmer, correct?

14 A. Yes, sir.

15 Q. He mentions a deep-end female lifeguard that

16 one of the guys was flirting with. Who is that?

17 A. I don't know who was on duty that day, sir.

18 Q. Well, did you ask?

19 A. No, I didn't. I don't recall.

20 Q. What other lifeguards are being referred to
21 in this e-mail?

22 A. Perhaps Mr. Palmer can address that. I
23 don't know. I don't specifically recall.

24 Q. Well, did you ask when you were -- did your
25 review of what was going on, the safety practices at
0319

1 your pools to see what other lifeguards were involved
2 in this serious e-mail that Mr. HRCBM-B sent you other
3 than Guillermo Palmer and LG-A ?

4 A. I know we discussed the incident, but I
5 don't recall whether we specifically talked about the
6 guards.

7 Q. Okay. You left that to Guillermo Palmer to
8 deal with?

9 A. Yes.

10 Q. The very person that was involved with the
11 very conduct that's being complained of in this
12 e-mail?

13 A. Yes.

14 Q. And if you'll look on the bottom of
15 Exhibit 20, it's got a web domain -- web address
16 information, marthaturner.com/exchange/
17 Marthaturner.eHRCBM-B/Personal/HRC/Board/Guillermo and
18 a date of July 18, 2007. What's that represent?

19 A. Mr. HRCBM-B is a broker with the Martha Turner
20 firm.

21 Q. Yes, sir.

22 A. So I assume that that references the -- a
23 location on his computer.

24 Q. Do you know why it says
25 Personal/HRC/Board/Guillermo?

0320

1 A. No. I have no idea. I didn't note that
2 when the e-mail was sent.

3 Q. And why is there a date of July 18, 2007 on
4 the bottom of this e-mail, to your knowledge?

5 A. I may have gone in and started producing
6 those documents that day, knowing that I needed to.
7 I don't recall specifically why. I think that came
8 from my computer, though.

9 Q. Actually, are you sure that this e-mail that

10 says HRCBM-B on the top left, when you print an
11 e-mail from your computer, if you -- strike that.

12 If you had printed this e-mail from
13 your computer, would it have HRCBM-B's name on the
14 top left?

15 A. It would if I had done a cut and paste, but
16 I don't know. I can go back and look at the
17 original.

18 Q. Did you print out this e-mail on July 18,
19 2007, the same day that John Pluchinsky died?

20 A. I don't recall.

21 Q. Had -- Did you make any notations on this
22 e-mail after you printed it off?

23 A. Not to my knowledge.

24 Q. And who was responsible at the Racquet Club
25 for gathering documents to produce in this case?

0321

1 A. A number of people: Myself, Guillermo,
2 David.

3 Q. How about Ted Erck?

4 A. I don't believe Mr. Erck had a role in
5 producing documents unless there were any that were
6 specifically sent to him.

7 Q. Do you know if he's made any effort?

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

9 Q. Other than yourself, Mr. Palmer and
10 Mr. Lamkin, who else was responsible for gathering
11 documents in this case, if anyone?

12 A. Joyce Healy, my controller. I instructed
13 all of my department heads if they had an exchange of
14 any type, via e-mail that involved this case, the
15 first thing I did was just told them not to do that,
16 but if they did or had, to send those on to me,
17 forward them to me and I would produce them.

18 Q. And you instructed them to do so in writing?

19 A. I instructed them to do so at a staff
20 meeting. And I may have -- I may have a written
21 document as well. I sent them a memo regarding the
22 need to preserve evidence.

23 Q. And can you get that to your lawyer so that
24 he can produce it to me?

25 A. I believe I already have, but I'll double

0322

1 check it.

2 MR. MARRS: I would request that as
3 well, Mr. Snyder.

4 MR. SNYDER: Okay.
5 Q. (BY MR. MARRS) And did you receive any such
6 letter from anyone else, your lawyers or anyone
7 saying, hold, don't destroy e-mails or computer
8 whatever documentation or data might be relevant to
9 the case?
10 A. Yes, I did.
11 Q. When?
12 A. Perhaps as early as Thursday, July 19th from
13 Mike Wall.
14 Q. When you say "perhaps," is that -- are you
15 pretty sure that that's the approximate date?
16 A. I believe he gave us that instruction
17 verbally that day, which was the date of our first
18 meeting. And there is a follow-up memo from him to
19 that effect.
20 Q. That was addressed to who?
21 A. I would have to check. I believe it was
22 addressed to me or it may have been addressed to the
23 board of directors. I'm not sure.
24 Q. Okay. And that was my next question. What
25 was done by the Racquet Club to ensure that any
0323
1 documents in the possession of board members or
2 officers were also preserved?
3 A. I believe the directive was forwarded and
4 communicated to all board members as well.
5 Q. And so, was there a discussion in the
6 board -- in any board meeting with respect to the
7 preservation and/or production of documents in this
8 case?
9 A. I don't recall specifically.
10 Q. And the staff meeting that you say occurred
11 where you verbally told staff members, I presume, to
12 preserve evidence, when did that occur?
13 A. Probably the Wednesday following the
14 accident. We had a staff meeting the day of the
15 accident. I believe we met that day, but I didn't
16 have the directive, I don't believe, at that point to
17 preserve documents.
18 Q. So when is the first directive that you gave
19 to your staff members or employees of the Racquet
20 Club to preserve any documents or data that might be
21 related to this incident?
22 A. Most likely the following Wednesday. We
23 don't keep minutes of our staff meetings, so I can't

24 confirm that.

25 Q. I would appreciate it if you would confirm

0324

1 that and let your lawyer know.

2 And your staff meeting, would your

3 calendar reflect when it was?

4 A. Yes.

5 Q. And would that also be reflected on -- who's

6 your secretary?

7 A. Jean Northey.

8 Q. Does she schedule things for you?

9 A. No, not typically.

10 Q. Does she keep a calendar for you?

11 A. No, sir.

12 Q. Who keeps your calendar?

13 A. I keep my own calendar.

14 Q. What kind of calendar?

15 A. Paper calendar.

16 Q. Do you have an electronic calendar, such as

17 Outlook or some other version calendar?

18 A. No, I don't.

19 Q. Do you have Outlook on your computer at

20 home?

21 A. No, I don't.

22 Q. Do you have it on your computer at the

23 office?

24 A. The software is there, but I don't use it.

25 Q. Okay. So, you have a paper -- I guess you

0325

1 used a paper 2000 calendar -- 2007 calendar?

2 A. Yes, sir.

3 Q. And you still do for 2008?

4 A. Yes.

5 Q. And what kind of paper calendar is it?

6 A. It's just a -- it's a -- just a thin

7 calendar that has a full month on the two pages. It

8 shows all 30 or 31 days.

9 Q. Is that something you leave at the office or

10 that you generally carry with you?

11 A. Generally, I leave it at the office.

12 Q. Have you provided your 2007 calendar to your

13 counsel in this case?

14 A. No, I have not.

15 Q. Have you been asked for it?

16 A. No, sir --

17 MR. SNYDER: Whoa, whoa, whoa. Let's

18 don't talk about attorney/client communications.

19 THE WITNESS: Okay.

20 MR. MARRS: I would also request, as we
21 have already requested, that calendar. 2007 calendar
22 for Mr. Griffin, Mr. Palmer, Mr. Erck, Mr. Lamkin.

23 Q. (BY MR. MARRS) Does Mr. Lamkin also have a
24 calendar?

25 A. I don't know.

0326

1 Q. You've worked with Mr. Lamkin how many
2 years?

3 A. Two and a half.

4 Q. Have you ever seen Mr. Lamkin using a
5 calendar in the two and a half years that you've been
6 with him there at the Houston Racquet Club premises?

7 A. Not specifically, no.

8 Q. How about Mr. Palmer?

9 A. I don't know how Mr. Palmer keeps his
10 appointments.

11 Q. How about Mr. Erck?

12 A. I don't know about Mr. Erck either.

13 Q. How about CD ?

14 A. I don't know.

15 Q. Excuse me?

16 A. I don't know.

17 Q. Were the other lifeguards mentioned by
18 HRCBM-B, not by name, but just mentioned in his e-mail
19 reprimanded?

20 A. I don't know. We would have to speak with
21 Mr. Palmer about that.

22 Q. You didn't ask that?

23 A. I don't recall any discussion follow-up
24 after our initial meeting.

25 Q. You had no discussion follow-up with

0327

1 Mr. Palmer after your initial verbal meeting,
2 correct?

3 A. I don't specifically recall one, no.

4 Q. And the verbal reprimand, as you termed it,
5 of Mr. Palmer relating to the incident described by
6 HRCBM-B in his e-mail of June 11, 2007 marked as
7 Exhibit Number 20 is not a reprimand that you put in
8 writing, correct?

9 A. That's correct.

10 Q. Nonetheless, even though you did not
11 reprimand him in writing, certainly because, as you

12 say you took this very seriously, this safety
13 concern, you certainly made sure that there was
14 something in writing placed in his employee file,
15 correct?

16 A. No, sir, I did not.

17 Q. Had Mr. Palmer ever been verbally
18 reprimanded prior to the time you verbally
19 reprimanded him as a result of HRCBM-B's e-mail?

20 A. Not by me.

21 Q. By anyone, to your knowledge?

22 A. I don't know. I can't speak for Mr. Lamkin
23 or the previous general manager.

24 Q. And we would not know by looking at his
25 personnel file, of course, since the Racquet Club did
0328

1 not make a habit or a practice of putting reprimands
2 in Mr. Palmer's file, correct?

3 MR. SNYDER: Objection, form.

4 A. I can't speak to the practice of the Houston
5 Racquet Club prior to my arrival.

6 Q. (BY MR. MARRS) Well, I'm talking about
7 after your arrival.

8 A. I didn't put anything personally in
9 Mr. Palmer's file.

10 Q. And no one else did, to your knowledge; is
11 that right?

12 A. Not to my knowledge.

13 Q. Have you seen his personnel file in the last
14 couple months?

15 A. No, sir.

16 Q. Do -- Does your club have a policy since you
17 have arrived at the Racquet Club of documenting
18 reprimands of employees in writing to go in their
19 files?

20 A. If the situation warrants it, yes, sir.

21 Q. And this very serious safety -- even
22 yourself you called this a very serious situation
23 that you took very seriously that HRCBM-B is
24 discussing in Exhibit 20, did that not rise to the
25 level of seriousness that it needed to be in writing
0329

1 in his personnel file?

2 A. I didn't feel so at the time, sir.

3 Q. Does somebody have to die for you to think
4 it's serious enough to put in their file?

5 MR. SNYDER: Objection, form.

6 You don't need to answer that.

7 Q. (BY MR. MARRS) Was there anything placed in
8 Mr. Guillermo Palmer's personnel file relating to
9 John Pluchinsky's death?

10 A. No, sir.

11 MR. MARRS: Could you --

12 MR. PLETCHER: Yes.

13 MR. MARRS: -- put that up there for
14 me?

15 Q. (BY MR. MARRS) Let's look back, if we
16 could, to Exhibit 14, the diagram we were discussing
17 of the family pool. Certainly, you'll agree with me
18 that if there had been a third lifeguard chair on the
19 west end of the pool, the very area you'd circled in
20 red where there have been lifeguard chairs in the
21 past, that could have certainly made a difference as
22 to whether John Pluchinsky was spotted on July 18,
23 2007 before he drowned, couldn't it?

24 MR. SNYDER: Objection, form.

25 A. I can't conclude that.

0330

1 Q. (BY MR. MARRS) Certainly, if there had been
2 a chair where you circled in red where a chair had
3 previously been on the west end overlooking directly
4 where John Pluchinsky was found, as you already
5 testified, certainly it's common sense to you that if
6 a lifeguard had been sitting in that chair in that
7 location on July 18th, then John Pluchinsky might not
8 have drowned?

9 MR. SNYDER: Objection, form.

10 Q. (BY MR. MARRS) Could that have made a
11 difference?

12 MR. SNYDER: Objection.

13 Q. (BY MR. MARRS) In your opinion?

14 MR. SNYDER: Objection, form.

15 A. I can't conclude that.

16 Q. (BY MR. MARRS) Okay. It might have; it
17 might not have. You just can't say, correct?

18 A. It might have; it might not have.

19 Q. And as you said before, every second counts
20 when it comes to a child in distress in the water,
21 correct?

22 A. That was your statement, sir.

23 Q. And you agree with it, don't you?

24 A. Yes.

25 Q. Prior to July 18, 2007, had anyone suggested

0331

1 to the Racquet Club that it should have a permanent
2 lifeguard chair on the west end of the family pool
3 where you circled red on Exhibit 14?

4 A. That was never expressed to me.

5 Q. Had it ever been expressed to anyone at the
6 Racquet Club?

7 A. Not to my knowledge.

8 Q. And in your comprehensive investigation and
9 review of what happened to John Pluchinsky on
10 July 18, 2007, certainly you inquired of your
11 employees about lifeguard chair placement and whether
12 or not that had been suggested that a lifeguard chair
13 be placed on the west end, didn't you?

14 A. David Guillermo and I discussed the
15 placement of the lifeguard stands, the original
16 placement, the subsequent locations. That was
17 never -- that was never disclosed as something that
18 had been discussed.

19 Q. Did you ask?

20 A. No, I didn't. But I think you'll note that
21 there are no permanent lifeguard stands recommended
22 by Watts in the design of the resort pool.

23 Q. No, sir. But what I will observe and what
24 you observe and what the jury observes as we are
25 speaking is that Watts did draw a diagram that shows

0332

1 that there is a lifeguard chair right exactly
2 overlooking the spot where John Pluchinsky died.
3 That's what this diagram shows, isn't it?

4 A. The diagram shows that. I don't think that
5 that's a suggested placement.

6 Q. Oh, really? You don't think that when a
7 plan for your pool is actually drafted by a
8 professional with all the features of the pool, that
9 specifically places a lifeguard chair exactly here on
10 the west end and labels it as "movable guard chair,"
11 that that's not just -- that that's not a suggestion
12 that the movable guard chair should be exactly where
13 it's drawn in to be? You don't think that's even a
14 suggestion?

15 A. It's a possibility, but I don't accept it as
16 such. It's not an ideal location.

17 Q. And you know that because you are an aquatic
18 expert?

19 A. No. I defer to my aquatic experts that I

20 have on staff.

21 Q. Let me show you what's been marked as

22 Exhibit 21. Can you tell the --

23 MR. MARRS: Can you blow it up?

24 MR. PLETCHER: Yeah.

25 Q. (BY MR. MARRS) Now, you've seen that e-mail

0333

1 recently, haven't you?

2 A. Yes.

3 Q. When? Last --

4 A. Within the last couple months.

5 Q. You reviewed it to prepare for your

6 deposition?

7 A. No, not specifically. I recall the e-mail.

8 Q. Now, previously we looked at an e-mail from

9 CM #4 three months before John died, we looked

10 at an email from HRCBM-B to you personally one

11 month before he died and now this e-mail was sent by

12 you to Guillermo Palmer, July 5th, 2007, some 13 days

13 before John's death, correct?

14 A. I would like to, one, ask what the

15 significance of Mrs. CM #4's e-mail is. It was

16 related to counselors, not lifeguards.

17 Q. This e-mail from yourself to Guillermo

18 Palmer occurred some 13 days before John's death,

19 correct?

20 A. Yes.

21 Q. And you cc: Mr. Lamkin and also your

22 controller, Joyce Healy; is that right?

23 A. That's correct.

24 Q. And the subject line is, "Guard Staff

25 Observations around 2:45 p.m. Thursday." And you

0334

1 were referring to your observations, right?

2 A. Yes, sir.

3 Q. And you say, "Guillermo, I'm confused and a

4 little frustrated by guard staffing procedures this

5 summer." And you're talking about summer 2007, the

6 very summer and summer camp that John Pluchinsky was

7 participating in, correct?

8 A. Yes. The summer, not specific to the camp,

9 no.

10 Q. Of course. "It seems that there are always

11 plenty of guards around, but at any given time 4 - 5

12 are clustered together doing nothing at all."

13 And as you'll recall, right after the

14 incident, the day of the incident, Ms. CM #1
15 was telling you in an e-mail that ten minutes before
16 John drowned she saw lifeguards and counselors
17 clustered together paying more attention to
18 themselves than to the children, didn't you?

19 A. I think she was referring to counselors, but
20 I need to refer her -- review her e-mail.

21 Q. Those responsible for safety in the pool
22 include counselors and lifeguards, right?

23 A. Yes.

24 Q. And so, she was also describing ten minutes
25 before the incident the clustering of lifeguards or
0335

1 counselors in the very family pool where John was,
2 wasn't she?

3 A. Yes.

4 Q. Okay. And you -- you're observing this
5 yourself 13 days before John dies, that there are
6 four to five clustered together doing nothing at
7 all. "I think that your normal staffing load is 6,
8 plus one supervisor in your absence. I believe what
9 we have discussed and agreed upon is" and you go on
10 to explain, "3 around the pools, 2 of them in the
11 high guard chairs, 1 on the gate, 1 in the Game Room,
12 1 or 2 doing other tasks, such as towels, pool
13 cleaning, etc." And you say, "What I found just now
14 and this is fairly typical," and you go on to
15 describe what you saw on 2:45 p.m., Thursday,
16 July 5th, 2007, correct?

17 A. Yes.

18 Q. And what you found was that there was only
19 one lifeguard at each pool, neither of them in the
20 high guard chairs, correct, sir?

21 A. Yes.

22 Q. And that's a violation of Racquet Club
23 policy, isn't it?

24 A. No, not specifically.

25 Q. That's unacceptable and you were telling
0336

1 Guillermo Palmer and Mr. Lamkin that that's
2 unacceptable, correct? Correct, sir?

3 A. Yes.

4 Q. "No one at the gate, no one in the Game
5 Room, 4 or maybe 5 in your office." Tell us about
6 that.

7 A. The situation that I'm referring to was

8 typical of the days that we experienced in June and
9 July where it would rain so much. You may recall we
10 had perhaps 20-plus days of rain in July. What we
11 would find is that we would get our normal staffing
12 load together, it would rain, the pool would clear
13 out, the guards would all go under the arcade to get
14 out of the rain. Then the sun would come out again,
15 the crowd would be gone, yet the guards wouldn't
16 necessarily return to their posts immediately. I was
17 reacting to that.

18 Q. Okay. And I'm sorry, I didn't see in here
19 where you're talking about rain.

20 A. I didn't refer to it in the e-mail.

21 Q. Well, when you said "fairly typical," you
22 didn't say fairly typical on rainy days. You said
23 "it's fairly typical," correct?

24 A. That was my intent --

25 Q. Okay.

0337

1 A. -- what we had been observing with all the
2 rain.

3 Q. And --

4 A. I'm sorry I wasn't more specific.

5 Q. Oh, that's fine. But when CM #1
6 observed the same kind of thing at the pool where
7 John died, on the day he died, it wasn't raining
8 July 18th, 2007 while John was in the pool, was it?

9 A. No, I don't believe it was.

10 Q. No, it wasn't. So you saw four or maybe
11 five lifeguards clustered in Mr. Palmer's office,
12 correct?

13 A. Yes.

14 Q. And as a matter of fact, Mr. HRCBM-B, as
15 you'll recall, he was stating at the end of his
16 e-mail, and we can look at it if you -- if you need
17 to, that really Guillermo wants to be their buddy and
18 not their boss, didn't he; do you remember that?

19 A. That was Mr. HRCBM-B's statement, yes.

20 Q. Sure. And was it pretty typical that
21 lifeguards would be just hanging out with Mr. Palmer
22 in his office?

23 A. No, not typical.

24 Q. Have you asked other lifeguards about that?

25 A. No, I haven't.

0338

1 Q. And so what you observed, you're telling

2 Mr. Palmer it's unacceptable, yet it was even after
3 this HRCBM-B incident, this is a totally separate
4 incident that you're observing yourself the next
5 month, right?

6 A. Yes.

7 Q. And you go on to say, "When I asked who was
8 in charge they could not answer." So you knew
9 yourself that there were lifeguards who didn't even
10 know who was in charge, correct, sir?

11 A. It's on their written schedule right inside
12 the lifeguard office. All they would have had to do
13 was take a look.

14 Q. Should they have to go and look at a piece
15 of paper to know who in the world is in charge that
16 day? They should know, shouldn't they?

17 A. They should, but it's one of two or three
18 people. There are only so many lifeguard
19 supervisors. I can't explain their response.

20 Q. Okay. But you know it was unacceptable,
21 correct?

22 A. Yes.

23 Q. "I asked that they take two broken umbrellas
24 to Maintenance and staff the gate. I looked a few
25 minutes later and they were all at the gate." And
0339

1 you go on to state, "Most teenagers do not perform
2 well except under close supervision." It only takes
3 having one teenager as a son or daughter to know
4 that, correct?

5 A. Typically, yes.

6 Q. "With clearly defined expectations and
7 guidance; not unusual for people their age." And
8 this kind of gets back to that team thing that
9 HRCBM-B was talking about, right? If you've got
10 teenagers as part of your team protecting children in
11 the pools, you've got to make sure even they have
12 close supervision and that they understand exactly
13 what they are supposed to be doing, correct?

14 A. Yes.

15 Q. And if they don't and they are supposed to
16 be protecting children in the pool, bad things can
17 happen, right?

18 A. Potentially, yes.

19 Q. And you go on to say, "Their job is a very
20 important one." You're talking about the lifeguards,
21 right?

22 A. Yes.

23 Q. "And I look to you," Guillermo Palmer,
24 right?

25 A. Yes.

0340

1 Q. "...to make sure that they are where they
2 are supposed to be, when they are supposed to be
3 there. I find myself directing them much more often
4 than I should have to, which is really not at all."

5 And you're saying that because you delegated that
6 responsibility to Guillermo Palmer. He should be
7 doing his job without you having to do it for him.

8 Is that what you mean?

9 A. Yes.

10 Q. So once again, even after this observation
11 that you had about lifeguards clustering, not doing
12 anything at all, not being where they are supposed to
13 be, not knowing who their supervisor is, even though
14 that was Guillermo Palmer's job, even after this
15 July 5th, 2007 incident that you witnessed, Guillermo
16 Palmer remained an employee, correct?

17 A. Yes.

18 Q. Remained as head of lifeguards, right?

19 A. Yes.

20 Q. Remained as aquatics director?

21 A. Yes.

22 Q. Remained in the same position with the same
23 responsibilities, correct?

24 A. Yes.

25 Q. And you trusted him just as much now and

0341

1 then and after HRCBM-B's e-mail and after CM #1
2 e-mail, correct?

3 A. Yes. In fairness to Guillermo, the day that
4 I wrote that memo he was not there.

5 Q. And in fairness to the Pluchinskys, he
6 remained there time and time and time again when you
7 had warnings that there was serious safety problems
8 with Mr. Palmer's performance at your Racquet Club
9 that put children at risk, didn't you?

10 MR. SNYDER: Objection, form.

11 A. There were complaints about Guillermo.
12 There were also many many days and many weeks of very
13 satisfactory performance.

14 Q. (BY MR. MARRS) Mixed in along with the very
15 unsatisfactory performance?

16 MR. SNYDER: Objection, form.
17 A. I would -- I would say that the
18 unsatisfactory performance is the exception. We are
19 looking at a limited number of incidents here.
20 Q. (BY MR. MARRS) It only takes one incident
21 for a child to die, doesn't it?
22 A. That's correct.
23 Q. Now, this July 5th e-mail that you're
24 sending to Guillermo Palmer was after you had already
25 verbally reprimanded Guillermo Palmer relating to the
0342
1 HRCBM-B incident, correct?
2 A. Yes.
3 Q. And so, you're reprimanding him again as a
4 result of what you observed on July 5th, correct?
5 A. Correct.
6 Q. And did this e-mail that you sent to him
7 make it in Mr. Palmer's employee file?
8 A. The cc: was to Joyce Healy, who has the
9 personnel files. Separately, I gave a note to Joyce
10 Healy to put that in Guillermo's personnel file.
11 Q. Then why is it not in Guillermo Palmer's
12 personnel file?
13 A. I don't think Mrs. Healy put it in there.
14 Q. Did you ask her?
15 A. Yes.
16 Q. And she told you what?
17 A. That she didn't put it in there. I
18 subsequently put another copy in.
19 Q. And who recommended or gave a good
20 recommendation for Guillermo Palmer when he was
21 looking for another job recently?
22 A. I wasn't asked for a recommendation. I'm
23 not sure who did, if anyone.
24 Q. And one reason why you were sending this
25 July 5th e-mail is because even you, in walking
0343
1 around and observing what you did on July 5th,
2 recognized that this was a serious safety situation
3 at your pools on July 5th?
4 A. Yes.
5 MR. SNYDER: Objection, form.
6 Q. (BY MR. MARRS) And at the end of your
7 e-mail you say, "I think we should discuss this
8 further. Please contact me to set up a meeting
9 time."

10 Did you meet?
11 A. Yes, we did.
12 Q. And what was discussed?
13 A. The incident of the day.
14 Q. And? Were you given assurances by
15 Mr. Palmer?
16 A. I certainly was.
17 Q. Were you given assurances by Mr. Palmer
18 after the HRCBM-B incident?
19 A. I don't recall the specific conversation,
20 but I'm certain I was.
21 Q. And did you discuss it with David Lamkin?
22 A. I believe so, yes.
23 Q. Is it true that LG Supv was the
24 supervising lifeguard on the day, July 5th, 2007
25 during the incident that you observed?
0344
1 A. I don't know. I don't recall.
2 Q. Well, let's look at -- well, LG Supv
3 was utilized quite a bit by the Racquet Club as a
4 supervising lifeguard, wasn't he?
5 A. Yes.
6 Q. And is he good as a supervising lifeguard?
7 A. He's reported to be so. My personal
8 observations have been that he is very good. And
9 David and Guillermo were very complimentary of him
10 also.
11 Q. And because of that, almost every time he
12 worked at the Houston Racquet Club as a lifeguard, he
13 was a supervising lifeguard, right?
14 A. I can't conclude that.
15 Q. And --
16 A. I would need to see his schedule.
17 Q. Sure. Let me show you Exhibit 21B. Does
18 that show that LG Supv was working on the very
19 day in question, on July 5th, 2007?
20 A. Yes, it does.
21 Q. During what hours?
22 A. 9:33 a.m. to 8:00 p.m.
23 Q. So at 2:45 when you witnessed this, does
24 that lead you to believe that LG Supv was one
25 of the lifeguards you're referring to?
0345
1 A. Most likely, yes.
2 Q. Did LG Supv receive a reprimand for
3 the conduct that you observed on that day, to your

4 knowledge?

5 A. Not to my knowledge.

6 Q. If a lifeguard on that day deserved a
7 reprimand, then you left it up to Guillermo Palmer to
8 do that?

9 A. Yes.

10 Q. Did he report back to you with respect to
11 whether or not he did reprimand any lifeguards as a
12 result of what you observed on July 5th?

13 A. I don't recall that he did, no.

14 Q. So one of the main gists of your -- of your
15 July 5th, 2007 e-mail, Plaintiff's Exhibit Number 21
16 is that Guillermo Palmer was not ensuring that there
17 were an adequate number of lifeguards at the pools,
18 correct, sir?

19 A. Guillermo Palmer had done so by scheduling
20 an adequate number of lifeguards who were, in fact,
21 there that day. They were not performing according
22 to our expectations.

23 Q. In other words, Guillermo Palmer was not
24 ensuring that whether -- that the lifeguards that
25 were scheduled to work that day were in the

0346

1 appropriate place?

2 A. He couldn't take care of it personally, no.
3 He was off that day.

4 Q. Okay. Well, who was in charge that day?

5 A. If LG Supv was the head lifeguard,
6 then he was in charge that day. I can't confirm that
7 he was the head lifeguard without seeing the rest of
8 the names.

9 Q. Well, but he works for Guillermo Palmer,
10 doesn't he?

11 A. Yes.

12 Q. I mean, the responsibility is Guillermo
13 Palmer's to make sure that if he is gone, that his
14 supervising lifeguard is doing their job, correct?

15 A. That's correct.

16 Q. In his absence, correct?

17 A. Yes, sir.

18 Q. So if there was a failing on that day,
19 July 5th, it would be a failing of Guillermo Palmer
20 ultimately, correct?

21 A. Yes, sir.

22 Q. And that's the purpose why you addressed
23 this e-mail to Guillermo Palmer, right?

24 A. Yes.

25 Q. And on July 18, 2007 when Guillermo Palmer
0347

1 was not at the family pool when John Pluchinsky
2 drowned and the supervising lifeguard, LG Supv ,
3 was on duty, it was ultimately Guillermo Palmer's
4 responsibility to make sure that LG Supv is at
5 that pool if he's needed to be at that pool, correct?

6 A. Yes.

7 Q. And did Guillermo Palmer, David Lamkin
8 respond in any way in -- via e-mail to your e-mail to
9 both of them on July 5th?

10 A. To this e-mail that we're looking at now?

11 Q. Yes, sir.

12 A. I don't believe so. Guillermo contacted me
13 in person as I recall and we scheduled a meeting, I
14 believe, the following Tuesday.

15 Q. Are you sure that he didn't respond to you
16 via e-mail?

17 A. No, I'm not sure. If it shows an e-mail
18 trail, then perhaps he did.

19 Q. You would have to, of course, check your
20 computer to make sure, wouldn't you?

21 A. I certainly can do that.

22 THE WITNESS: Can you make a note?

23 Q. (BY MR. MARRS) Do you need a five-minute
24 break?

25 A. No, sir.

0348

1 MR. SNYDER: No, no.

2 Q. (BY MR. MARRS) Okay. Obviously, if
3 lifeguards do not do their jobs to adequately
4 supervise young children in the pool, then young
5 children in your pool could be at substantial risk of
6 serious bodily injury, correct?

7 A. If that were the case, yes.

8 Q. Not having enough lifeguards at a pool at
9 the Racquet Club where children are could certainly
10 cause an unjustified level of risk to children in
11 your pool, couldn't it?

12 MR. SNYDER: Objection, form.

13 Q. (BY MR. MARRS) If that were the case?

14 A. If that were the case.

15 Q. So, July 5th, 2007 when you observed these
16 things, what action was taken against Guillermo
17 Palmer at this time two weeks before John's death at

18 a time when things could have changed that could have
19 saved John's life?

20 MR. SNYDER: Objection, form.

21 A. A written reprimand was put in his file. We
22 had a subsequent meeting and I know that Guillermo
23 followed up with his lifeguards as well.

24 Q. (BY MR. MARRS) A written reprimand was not
25 put in his file, was it?

0349

1 A. The intent was to put it in his file. My
2 controller failed to do so.

3 Q. So the answer to my question is correct, a
4 written reprimand was not put in his file, correct?

5 A. That's correct.

6 Q. Okay. Let's look at Exhibit Number 22.

7 Now, that is an e-mail from CM #1 that you
8 and I have visited a little bit about which was sent
9 to you personally on July the 18th, 2007, correct,
10 sir?

11 A. That's correct.

12 Q. And you have reviewed this recently as well,
13 haven't you?

14 A. Yes, I have.

15 Q. What time was it sent to you?

16 A. I can't read it from here. It was sometime
17 in afternoon.

18 Q. It says 18:48?

19 A. Okay.

20 Q. So that would have been about 6:48 --

21 A. Yes.

22 Q. -- p.m., you believe?

23 A. Yes.

24 Q. And that was on the day of John's death,
25 correct?

0350

1 A. That's correct.

2 Q. Now the subject field says "In light of what
3 happened you and I need to talk," correct?

4 A. Yes.

5 Q. And let's go to the bottom, which would be
6 actually the beginning of that e-mail. And she says,
7 "Steve, please give me a call as soon as possible.
8 I believe we need to talk regarding the lifeguard
9 complaints in the past," correct?

10 A. Yes.

11 Q. And had there been complaints to you orally

12 by parents before John's death about lifeguards not
13 paying attention to children in the pool?

14 A. I've thought a lot about that. There may
15 have been, but I don't specifically recall any
16 conversations.

17 Q. Might there have been at least five
18 occasions in the past when moms have come directly to
19 you to complain that lifeguards were not supervising
20 children in the family pool?

21 MR. SNYDER: Objection, form.

22 A. Not to my recollection.

23 Q. (BY MR. MARRS) Have there been verbal
24 complaints by parents to David Lamkin, to your
25 knowledge, that lifeguards were not supervising
0351

1 children in the people?

2 A. I believe there were. David can elaborate.

3 Q. And how about with respect to Mr. Palmer,
4 have there been complaints to him by moms that
5 lifeguards were not closely watching the children in
6 the family pool?

7 A. There may have been. You'll have to ask
8 Mr. Palmer.

9 Q. Have you heard that there have been?

10 A. I believe there may have been, but I can't
11 recall specifically.

12 Q. Have you heard that they were to Mr. Lamkin?

13 A. I believe so. I just can't provide
14 specifics.

15 Q. And you responded to Mrs. CM #1,
16 "Mrs. CM #1, let's talk soon, but not yet. I'm not
17 at liberty to discuss anything at this time. I hope
18 that you understand. Steve."

19 Why could you not talk to her?

20 A. The situation had just happened. It was
21 very, very fresh. In light of what might transpire
22 in the future it was not prudent to discuss the
23 circumstances openly. Besides, that very evening I
24 was still very busy with the -- with the events
25 immediately following the accident.

0352

1 Q. Doing what?

2 A. I believe -- I can't recall if Mr. Erck and
3 I had met yet that evening or not. There were just a
4 lot of things going on.

5 Q. And then, Ms. CM #1 responds to you at the

6 top of this e-mail and she cc's HRCBM-D; is that
7 correct?

8 A. HRCBM-D -- HRCBM-D.

9 Q. HRCBM-D , excuse me. And is he still a
10 board member --

11 A. No, he is not.

12 Q. -- of the Racquet Club? Okay. But he was
13 at that time, July 18, 2007, correct?

14 A. Yes.

15 Q. Okay. And so she sends this e-mail to you
16 and to a board member of the Racquet Club, and she
17 says, "I of course understand your situation and I am
18 so sad for you and all the Club. I am not saying I
19 need information from you, I am saying I HAVE
20 information FOR you," correct?

21 A. Correct.

22 Q. Okay. And because you're the general
23 manager and you're very concerned about what happened
24 to this little boy and that this lady may have very
25 valuable information, you picked up the phone and you
0353

1 called her, right?

2 A. No, not at that time.

3 Q. Well, didn't Mr. Lamkin? Did he pick up the
4 phone and call her at this time because a child died
5 under his watch and you discussed with Mr. Lamkin the
6 fact that you received this e-mail?

7 MR. SNYDER: Objection, form.

8 A. State the question again, please.

9 Q. (BY MR. MARRS) Did you share this e-mail
10 with Mr. Lamkin?

11 A. I believe I did, but I don't know at what
12 point.

13 Q. Did you share it to Ted Erck?

14 A. Yes, I did.

15 Q. And she goes on, "I have complained to both
16 Guillermo and David about the problems with the
17 lifeguards." I mean, here is a mother telling you
18 she's complained to Guillermo and David. You've
19 already had a board member complain about the
20 lifeguards. You yourself have complained about the
21 lifeguards. Did that upset you that here on the day
22 of this death, a mom is saying to you, I've
23 complained, you already you knew you complained, you
24 already knew a board member complained. Did that
25 raise some red flags for you that you had already had

0354

1 plenty of warning about a serious safety problem in
2 your pools and now something bad has happened?

3 MR. SNYDER: Objection, form.

4 A. Yes. I was concerned, yes.

5 Q. (BY MR. MARRS) And she goes on, "I actually
6 had a conversation with them approximately 5 weeks
7 ago one evening as one of the girl lifeguards sitting
8 in the chair by the slide was staring into space, not
9 even paying attention to the kids on the slide."

10 MR. MARRS: Bless you.

11 MR. SNYDER: Thank you.

12 Q. (BY MR. MARRS) "And David asked me, 'I
13 wonder what she is looking at?'" Who is the David
14 she's referring to?

15 A. I assume David Lamkin.

16 Q. "I apologized to them for being such a pain
17 of a mom and David said, and I quote, 'No
18 Mrs. CM #1, it's okay. Because if something were
19 to happen, Guillermo would lose his job, and I might,
20 and so would the lifeguards, and who knows what would
21 happen to the Club.' That night, I was with several
22 members around the pool and we noticed that STILL" --
23 And she put "still" in all caps, doesn't she?

24 A. Yes.

25 Q. "...Guillermo and David did nothing!!!!"

0355

1 And she puts like four exclamation marks there,
2 doesn't she?

3 A. Yes.

4 Q. Here is a mom that, at least according to
5 this e-mail and the way it's written, appears to you
6 as though is very, very frustrated about her previous
7 warnings about the lifeguards, correct?

8 A. Yes.

9 Q. And she goes on, and she says, "I went back
10 to Guillermo and he said that he told the head
11 lifeguard to say something to her. Finally, I
12 followed the head lifeguard, (not Guillermo) to the
13 girl who told her to get down and was replaced. I
14 understand that John, the head lifeguard, is gone,
15 thank goodness. I had it out with him on more than
16 one occasion - one for watching him fun from one pool
17 to the other and diving in, right in front of the
18 kids. I have had several conversations with" each --
19 excuse me -- "with other lifeguards about the

20 flirting, the drinking of frozen lemonades on the
21 stands, the picking of toes on the stands, the
22 checking out of the split ends in her hair, the
23 talking with friends, and the just not paying
24 attention."

25 Does this indicate to you her e-mail,
0356

1 your e-mail previous to that, HRCBM-B's e-mail previous
2 to that, that there was a pervasive problem at the
3 Racquet Club of lifeguards not paying attention
4 because they were not properly supervised?

5 MR. SNYDER: Objection, form.

6 A. I would not characterize it as pervasive.

7 Q. (BY MR. MARRS) What would you --

8 A. There were certainly problems.

9 Q. Well, those are serious problems, aren't
10 they?

11 A. They are concerns, yes.

12 Q. And then she goes on and she says, "I left
13 the Club today at 11:05 a.m. this morning and I
14 walked by the pool and noticed about 10 counselors
15 playing on the fountain pool deck area and was really
16 surprised how they were just 'playing' with each
17 other and NOT," all caps, N-O-T, "NOT watching the
18 kids." And that is pretty reminiscent of HRCBM-B
19 when he said that he saw those in the pool area,
20 lifeguards not watching people in the pool, correct?

21 MR. SNYDER: Objection, form.

22 A. Similar.

23 Q. (BY MR. MARRS) "I walked right by the pool
24 and thought about saying something, but didn't." Now
25 you know that 11:05 was approximately 10 minutes
0357

1 before John died, correct?

2 A. Approximately, yes.

3 Q. And she's saying that about this time she
4 walked right by, she saw this happening where
5 10 counselors are clustered, not watching the
6 children and she was about to say something, but
7 didn't, correct?

8 A. That's what she says.

9 Q. "I figured I was just being an
10 overprotective mother and everything would be fine.
11 I figured I would just keep my big mouth out of it
12 today. How do you think I feel now? It was probably
13 15 minutes before this happened."

14 How did you feel after reading her
15 e-mail?

16 A. It was upsetting.

17 Q. Did you feel like those responsible for the
18 lifeguards and the counselors could have done a
19 better job?

20 A. I can't confirm the validity of
21 Mrs. CM #1's observations. I understand she was
22 very upset by what she thinks she saw.

23 Q. What she thinks she saw?

24 A. Yes, sir. I don't know what she personally
25 observed.

0358

1 Q. And you don't know what HRCBM-B
2 personally observed, do you?

3 A. No, I don't.

4 Q. But you don't question his voracity when we
5 show you his e-mail, but the person that's a
6 concerned mom who is not a board member, you question
7 her voracity, don't you?

8 A. Well, had she voiced her concern before the
9 incident, I would -- I would consider it a much more
10 valid observation than one after the fact.

11 Q. Well, that's a good point because concerns
12 were voiced directly to you by a board member, sir,
13 and yet, a month later a child lie dead in your pool
14 and you still didn't take that serious enough to make
15 sure there were sufficient lifeguards who were
16 sufficiently supervised at the family pool, did you?

17 MR. SNYDER: Objection, form.

18 A. There were sufficiently -- sufficient number
19 of lifeguards at the pool and on staff that day.

20 Q. (BY MR. MARRS) And the CPS disagrees with
21 you, don't they?

22 MR. SNYDER: Objection, form.

23 A. Objects with which portion, sir?

24 Q. (BY MR. MARRS) The Family Protective
25 Services specifically disagrees that you had a

0359

1 sufficient number of lifeguards and counselors at
2 your pool, don't they?

3 MR. SNYDER: Objection, form.

4 A. No, I don't believe that's correct, sir.
5 The lifeguard, 15 y/o LG #1, was not cited by CPS.

6 Q. (BY MR. MARRS) The Racquet Club was cited,
7 weren't they?

8 A. Yes, they were.
9 Q. Guillermo Palmer was cited, wasn't he?
10 A. Yes.
11 Q. Was David Lamkin cited?
12 A. Yes.
13 Q. As a matter of fact, some what, eight
14 counselors were cited?
15 A. Yes.
16 Q. They obviously, Family Protective Services,
17 disagree with your opinions that you've given for two
18 days now about whether or not the Racquet Club was
19 safe, don't they?
20 MR. SNYDER: Objection, form.
21 A. I guess they do.
22 Q. (BY MR. MARRS) And they -- unlike you, they
23 specifically went and talked to each and every
24 lifeguard, full interviews and each and every
25 counselor; you know that, don't you?
0360
1 A. Yes.
2 Q. They did their own investigation and they
3 cited your club for running an illegal child care
4 facility, correct?
5 A. Yes.
6 Q. And for causing the death of John
7 Pluchinsky, correct?
8 A. Yes.
9 Q. And so she goes on in her e-mail that's
10 Exhibit 22. "I am just kicking myself for not coming
11 to you with my complaints about the lifeguards
12 before. There is a large group of us who have
13 complained to each other and being the big mouth that
14 I am, was 'voted' to go to Guillermo and David."
15 I mean, she's telling you that she did
16 voice her complaints to Guillermo and to David about
17 these very things at least five weeks ago before this
18 July 18 -- July, 2007 e-mail, correct?
19 A. Yes.
20 Q. "I have PERSONALLY gone into the pool twice
21 after kids. The first, my own, who went under by the
22 slide." Do you know who was manning the slide on the
23 day that her son went under by the slide?
24 A. No.
25 Q. Did you ask?
0361
1 A. No. It was not reported to me at the time.

2 Q. Did you ask after you got this e-mail?
3 A. I have not communicated with Mrs. CM #1
4 since.
5 Q. Did you call her after this e-mail?
6 A. No, I did not.
7 Q. So when you say you have not talked to her
8 since, what you mean is, you haven't talked to her at
9 all --
10 A. That's correct.
11 Q. -- after receiving this e-mail, correct,
12 sir?
13 A. That's correct.
14 Q. "And the other, another little boy - about
15 3 weeks ago - a 5-year-old boy was by the rope on the
16 other side of the slide and went under."
17 Do you know who the lifeguard was on
18 duty by the slide during that instance?
19 A. No, sir.
20 Q. "The lifeguard by the slide did not even
21 notice (I sat right by the slide and watched as he
22 talked to a girl lifeguard while 12 kids came down
23 the slide without a single glance from the lifeguard
24 not 5 minutes before I went in!) and the lifeguard by
25 the beach entrance to the pool came over to me to see
0362
1 how he was after I pulled him out. Both instances
2 were immediate and non emergencies, but yet, they
3 happened and shouldn't have. Kathleen Pluchinsky is
4 a friend of mine and will be hearing all of this
5 information eventually. I thought you should know...
6 I am sending this e-mail to HRCBM-D and asking
7 him to please forward to the other board members."
8 Those are very serious safety problems
9 that she is pointing to in this e-mail; would you
10 agree with that?
11 MR. SNYDER: Objection, form.
12 A. Yes, I would agree.
13 Q. (BY MR. MARRS) And the situation she
14 describes, 10 minutes before John's death
15 approximately is a pretty serious safety problem if
16 indeed what she says is true, correct?
17 A. If it is true, it certainly is.
18 MR. SNYDER: If you're finished with
19 that e-mail, let's take a break.
20 MR. MARRS: One minute.
21 VIDEOGRAPHER: Off the record. The

22 time is 3:05 p.m.

23 (Brief recess.)

24 VIDEOGRAPHER: Back on the record. The

25 time is 3:23 p.m.

0363

1 Q. (BY MR. MARRS) Okay. Now, as shown on
2 Exhibit 22B, I've got three dates on there under the
3 label "Warnings for 2007," June 11th, HRCBM-B
4 e-mail from the board member one month before John's
5 death; July 5th, 2007, the e-mail from yourself,
6 Stephen Griffin, the general manager to Guillermo
7 Palmer and David Lamkin 13 days before John's death;
8 and the e-mail on the day of John's death from CM #1
9 describing the situation at the family pool
10 ten minutes before John Pluchinsky's death. Okay?

11 Now, every single one of these, what I
12 call warnings, involved directly or indirectly
13 Guillermo Palmer, didn't they?

14 MR. SNYDER: Objection, form.

15 A. No. CM #1 -- CM #1's e-mail
16 about the counselors where she claims to have seen
17 them playing, that doesn't involve Guillermo Palmer.

18 Q. (BY MR. MARRS) Okay. Excuse me. Let me
19 rephrase the question. Every single one of these
20 warnings on Exhibit 22B involved, as I believe you've
21 already testified, serious safety problems at the
22 Racquet Club pools, correct?

23 MR. SNYDER: Objection, form.

24 A. Yes, that's correct.

25 Q. (BY MR. MARRS) And even after the

0364

1 June 11th, July 5th and July 18 e-mails, these safety
2 problems, Guillermo Palmer remained in the same
3 position as aquatics director, correct?

4 A. That's correct.

5 Q. And never received an involuntary leave of
6 absence, correct?

7 A. Correct.

8 Q. Never was told to go to third-party training
9 as a result, correct?

10 A. That's correct.

11 Q. And did not receive a decrease in pay, nor a
12 change in his responsibilities as a result, correct?

13 A. That's correct.

14 Q. And you even, on July 18th after receiving
15 CM #1's e-mail, had -- I think as you said

16 before, the utmost confidence in Guillermo Palmer as
17 the aquatics director of the Racquet Club, correct?

18 A. I feel Guillermo was a very capable manager
19 and does a good job in his position.

20 Q. And you still feel that way today, don't
21 you?

22 A. Guillermo no longer holds that position for
23 unrelated reasons.

24 Q. Unrelated reasons, and that's why I asked
25 you. You still hold that opinion of Guillermo

0365

1 Palmer, correct?

2 A. Yes. If he were still in the same position,
3 yes.

4 Q. And he would be in the same position if it
5 had not been taken over by the pool company, correct?

6 A. Had he chose to stay in the position, yes.

7 Q. And had he chosen to stay in that position
8 and the pool company hadn't taken it over, you would
9 be happy for him to remain even for next summer, if
10 he so choose -- chose as aquatics director, correct?

11 A. I can't speak to the future.

12 Q. But you, sitting here today, would still
13 recommend him for that position?

14 A. As of today, yes.

15 Q. So despite the June 11, July 5th and July 18
16 warnings, even on July 18, the day of John's
17 drowning, despite the previous two warnings,
18 June 11th and July 5th, on July 18th there were still
19 Racquet Club employees that, at least according to
20 CM #1, were not supervising adequately
21 children in the pool, correct?

22 MR. SNYDER: Objection, form.

23 A. That's CM #1's opinion. I can't
24 speak to that.

25 Q. (BY MR. MARRS) That's what you were advised
0366

1 by CM #1, correct?

2 A. After the fact, yes, sir.

3 Q. And according to her, still on July 18th you
4 had employees congregating together and playing with
5 each other, at least according to her, correct?

6 A. That's her account, yes, sir.

7 Q. And still, you had counselors not watching
8 the kids, but instead playing with each other, at
9 least according to her, correct?

10 A. That's her account, sir.

11 Q. Except unlike the HRCBM-B incident, this
12 time instead of an accident waiting to happen, it was
13 an accident that did happen, correct, on July 18th?

14 MR. SNYDER: Objection, form.

15 A. An accident did happen that day, yes.

16 Q. (BY MR. MARRS) And still to this day, you
17 would recommend Guillermo Palmer as aquatics director
18 without reservation?

19 MR. SNYDER: Objection, form.

20 A. I would recommend that Guillermo do some
21 things differently and we've discussed that in
22 subsequent follow-ups, yes.

23 Q. (BY MR. MARRS) Things differently like
24 what?

25 A. Just supervise more carefully.

0367

1 Q. The lifeguards?

2 A. Yes. Make sure that he has all of his --
3 all of his standards in place.

4 Q. And did you tell him that on or after
5 July 18th?

6 A. Most recently after July 18th.

7 Q. Okay. That he needed to supervise the
8 lifeguards better and do what else?

9 A. Make sure that the standards were in place
10 and enforced.

11 Q. Because obviously, the standards were not in
12 place and enforced prior to John Pluchinsky drowning?

13 MR. SNYDER: Objection --

14 Q. (BY MR. MARRS) You know that for a fact,
15 don't you?

16 MR. SNYDER: -- form.

17 A. No, I do not know that for a fact.

18 Q. (BY MR. MARRS) Okay. Well, didn't the CPS
19 tell you that in their letter?

20 A. That was their judgment.

21 Q. Well, they are the governing authority to
22 enforce the CPS rules that govern child care
23 facilities, aren't they?

24 MR. SNYDER: Objection, form.

25 A. Their judgments are still under review.

0368

1 Q. (BY MR. MARRS) Okay. And that's a good
2 point. The Racquet Club and the individuals cited
3 are challenging or appealing the findings and

4 citations of the Family Protective Services; is that
5 correct?

6 A. That's correct.

7 Q. And what's the status of that?

8 A. I don't know currently.

9 Q. Well, what's happened since the citations,
10 to your knowledge?

11 A. I know that some of the -- some of the
12 counselors and their attorneys have met for their
13 preliminary hearings. I feel that others have not.

14 Q. Okay. When you -- You mean the
15 administrative hearings?

16 A. Yes, sir.

17 Q. And have some of those occurred?

18 A. I believe they have, yes.

19 Q. And have any decisions been made by the
20 Family Protective Services as a result of those
21 hearings, to your knowledge?

22 A. That was not revealed to me.

23 Q. Do you know if the Family Protective
24 Services has in any way changed any of its findings
25 as a result of John Pluchinsky's death as of today?

0369

1 A. I have no information.

2 Q. Is Gardere Wynne representing Racquet Club
3 in those matters?

4 A. Yes, they are.

5 Q. Are they representing the managers who are
6 also cited in the CPS matters?

7 A. Yes, they are.

8 Q. And are they also representing the
9 counselors that were cited?

10 A. No, they are not.

11 Q. Who is, to your knowledge?

12 A. Individual attorneys.

13 Q. Is the Racquet Club paying for those
14 individual attorneys for the counselors that were
15 cited by the CPS Family Protective Services?

16 MR. SNYDER: Don't answer that.

17 MR. MARRS: I'm not entitled to know
18 who's representing the -- whether the Racquet Club is
19 footing the bill for those attorneys?

20 MR. SNYDER: I wouldn't think so.

21 Q. (BY MR. MARRS) I take it then that your
22 attorney's objection means that you are paying for
23 the counselors' legal fees?

24 MR. SNYDER: No. You shouldn't infer
25 anything from it. I'm just instructing him not to
0370

1 answer the question.

2 Q. (BY MR. MARRS) Do you refuse not to answer
3 the question?

4 A. I'm taking my attorney's counsel and not
5 answering the question.

6 Q. But you could tell me otherwise? Do you
7 know the answer?

8 A. No. Not conclusively, no, I don't.

9 Q. Well inconclusively, do you --

10 A. No, sir.

11 Q. -- have an understanding?

12 A. No, I have no understanding.

13 Q. Who does? Who would know?

14 A. I don't know who would know.

15 Q. Okay. Well, the counselors would know,
16 wouldn't they, so I can depose him and find out,
17 right?

18 A. Who, I'm sorry?

19 Q. The counselors.

20 A. The individual counselors?

21 Q. Yes, sir.

22 A. I suppose you could.

23 Q. And with respect to CM #1's July 18
24 e-mail to you, was that discussed during any board
25 meeting, to your knowledge?
0371

1 A. No, I don't believe so.

2 Q. To your knowledge, did -- is it
3 HRCBM-D?

4 A. Yes.

5 Q. Did he forward this e-mail to the other
6 board members?

7 A. I may have actually forwarded it to the
8 other board members and I believe HRCBM-D may have as
9 well.

10 Q. All of them or just some of them?

11 A. I don't recall if I did or not. If I did, I
12 imagine they went to all of them.

13 Q. Okay. And did you do that on the day that
14 you received this July 18 or some subsequent day?

15 A. I don't recall.

16 Q. Okay.

17 A. I can go back in my e-mail files and see if,

18 in fact, I did or if HRCBM-D himself did.

19 Q. I would appreciate it if you would look.

20 A. Certainly.

21 Q. Have you looked?

22 THE WITNESS: Would you make a note for
23 me, Norman?

24 Q. (BY MR. MARRS) Have you looked?

25 A. Have I looked?

0372

1 Q. Yes, sir.

2 A. I looked for all related e-mails. I don't
3 recall seeing one that I forwarded on to board
4 members.

5 Q. I would appreciate if you would look and
6 confirm with your lawyer, if you would, sir.

7 A. I will do that.

8 MR. PLETCHER: And for any reply.

9 Q. (BY MR. MARRS) Now, do you recall receiving
10 any reply from any board member or any direct e-mail
11 from any board member or anyone relating to CM #1
12 e-mail?

13 A. No, I don't. But again, I'll take another
14 look around that date.

15 Q. And how many other e-mails have you received
16 other than the e-mails we discussed today about
17 safety problems in your pool regarding young
18 children?

19 A. Everything that was sent to me that I found,
20 I produced to my attorneys.

21 Q. Which is exactly why I'm asking you how many
22 others you've received that we have not discussed
23 today?

24 A. As far as I know, none.

25 Q. Let's look at Exhibit 23. I believe we

0373

1 looked at part of this, if I'm not mistaken,
2 yesterday. This is a July 21st e-mail from
3 M #2, the one where she says, "I cannot understand
4 why a counselor was not watching this poor child.
5 That was our job. I do not blame the counselor. I
6 blame the Managers."

7 My question is: Do you or the Racquet
8 Club blame the counselors for what happened to
9 John Pluchinsky on July 18th?

10 A. No, I don't.

11 Q. Do you or the Racquet Club blame the

12 lifeguards for what happened to John on July 18th?

13 A. No.

14 Q. Do you or the Racquet Club blame the
15 Pluchinskys for what happened to John Pluchinsky on
16 July 18th?

17 MR. SNYDER: Objection, form. Asked
18 and answered yesterday.

19 MR. MARRS: It wasn't answered.

20 MR. SNYDER: Yes, it was.

21 MR. MARRS: Please give me a little
22 courtesy in asking that one question.

23 MR. SNYDER: It was asked several times
24 yesterday and --

25 MR. MARRS: He did not answer the
0374

1 question. I would simply like to know if he has an
2 answer today.

3 MR. SNYDER: I think the -- I think the
4 record will reflect that he did, but one more time.
5 Do you know if the club blames the Pluchinskys for
6 what happened?

7 A. I don't know.

8 Q. (BY MR. MARRS) Do you?

9 A. Do I?

10 Q. Do you blame the Pluchinskys, you
11 personally, for what happened to John Pluchinsky on
12 July 18th?

13 A. My opinion is of no consequence here.

14 Q. Regardless of whether you think it is or
15 not, my question is whether you personally blame the
16 Pluchinskys for what happened to John --

17 MR. SNYDER: Objection.

18 Q. (BY MR. MARRS) -- Pluchinsky on July 18th?

19 MR. SNYDER: Objection, form.

20 A. I don't blame anyone at this point. I'm
21 waiting for all the evidence to come in.

22 Q. (BY MR. MARRS) Well, what other evidence
23 are you seeking?

24 A. That remains to be determined.

25 Q. You -- the Racquet Club's investigation is
0375

1 complete at this time, isn't it?

2 A. I think we can agree that this whole matter
3 is ongoing.

4 Q. So, you reserve -- you and the Racquet Club
5 reserve the right to blame the victim in this case,

6 right? Is that what you're saying?

7 A. Those are your words.

8 MR. SNYDER: Objection, form.

9 Q. (BY MR. MARRS) Since you won't answer the
10 question?

11 MR. SNYDER: He's answered the
12 question. You don't need to answer it.

13 Q. (BY MR. MARRS) So when it comes to the
14 lifeguards, you can easily say don't blame them,
15 although they were the ones there watching that day.
16 When it comes to counselors, you can say, oh, no,
17 don't blame them, although they were responsible that
18 day to watch this young child. But when it comes to
19 the parents who lost their child in your pool, oh, I
20 just don't know. I reserve judgment on that, right?
21 You're going to blame the parents for what happened
22 to their little boy when they turned him over to your
23 club?

24 MR. SNYDER: Objection, form.

25 Q. (BY MR. MARRS) Right?

0376

1 MR. SNYDER: You don't need to answer
2 that.

3 Q. (BY MR. MARRS) I mean, what is this? That
4 is the most outrageous thing I've heard and I
5 guarantee you that your callousness during this
6 deposition as shown --

7 MR. SNYDER: Scott, don't give --

8 Q. (BY MR. MARRS) -- by the video will speak
9 for itself.

10 MR. SNYDER: Don't give him a lecture,
11 okay? That's going to end the deposition real
12 quick. Don't lecture my client.

13 MR. MARRS: I hear you.

14 Q. (BY MR. MARRS) And on the second page of
15 Exhibit 23 --

16 MR. MARRS: Can we see that? Would you
17 do me a favor and just highlight --

18 MR. PLETCHER: Sure.

19 MR. MARRS: -- that first sentence
20 there? Actually, just highlight the whole paragraph.

21 MR. PLETCHER: "I have"?

22 MR. MARRS: No. The whole paragraph.
23 Just "I have," correct.

24 Q. (BY MR. MARRS) And at the end of her
25 e-mail, Ms. M #2 says, "I have always felt there

0377

1 needed to be 3 lifeguards at all times. We are
2 missing one on the west side of the resort pool
3 across from the other two. There is an area being
4 missed because one guard can really only watch the
5 slide. This is probably where John drowned." And
6 she was right. The west side she's talking about is
7 where John drowned, correct?

8 A. Somewhere in that area, yes.

9 Q. "If we are all talking now it is because we
10 wish we would have sooner. I am not surprised
11 someone drowned. I am devastated."

12 Does it concern you that a member is
13 telling you that she's not surprised that someone
14 drowned, yet the lifeguards and counselors and
15 managers were surprised that someone drowned?

16 MR. SNYDER: Objection, form.

17 Q. (BY MR. MARRS) Does that lead you to
18 believe there's a disconnect somewhere?

19 A. I don't know the basis for Mrs. M #2's
20 comments.

21 Q. (BY MR. MARRS) Okay. After you received
22 her e-mail, did you call her --

23 A. No, I did not.

24 Q. -- to find out the basis of her comments --

25 A. No, I did not.

0378

1 Q. -- so that you could readily make sure that
2 from that day forward nothing ever happened to a
3 child in your pools again?

4 A. We take -- we take the appropriate
5 safeguards and precautions.

6 Q. Okay. Who did call Mrs. M #2 to talk to
7 her about this after receiving her e-mail?

8 A. I don't know that anyone did.

9 Q. Well, did you direct anybody to?

10 A. No, I didn't.

11 Q. Okay. What did you do with the e-mail once
12 you received it?

13 A. I saved it for future use.

14 Q. And did you e-mail --

15 A. Again, it was received after the fact.

16 Q. And did you e-mail her back?

17 A. No, I didn't.

18 Q. And let's look at Exhibit Number 24. This
19 is an e-mail sent to you on July 23rd, which was a

20 couple days after Ms. M #2's e-mail. And let's look
21 at the -- and who -- Do you know who CM #3 is?

22 A. I may have met her along the way. I'm not
23 sure. She's a Racquet Club member.

24 Q. Okay. But on July 23rd, 2007, she sends you
25 an e-mail, "To Whom it May Concern," and on the
0379

1 second page -- I won't go through the whole thing,
2 she's talking about tennis balls that almost hit her
3 daughter in the face. And but one comment is, she
4 says, "I feel that the lifeguards on duty need to pay
5 more attention and actually do something if it will
6 be harmful to the other members," correct?

7 A. That's what she says.

8 Q. Okay. And did you respond back to CM #3
9 when you got this e-mail?

10 A. I believe I did. Is it in that e-mail
11 stream?

12 Q. No, sir. That is a forwarding of e-mail to
13 Mr. Lamkin and Mr. Palmer.

14 A. Okay. I'm not sure. I can check to see if
15 there was a response to that.

16 Q. Okay. I'd appreciate that.

17 A. Sure.

18 Q. And then, a couple of days after that on
19 July 25th, there is an e-mail from CM #5 to
20 your member feedback site, which you say you monitor
21 daily as well as Mr. Ted Erck, correct?

22 A. Mr. Erck, I don't believe monitors the site,
23 but I can't say for sure.

24 Q. No. It's cc'd to Ted Erck, correct?

25 A. Yes.

0380

1 Q. Okay. And so --

2 A. But I believe I forwarded that on to him.

3 Q. Okay. Well, this says, from CM #5 to
4 member feedback and also cc'ing Ted Erck directly,
5 doesn't it?

6 A. Yes.

7 Q. Okay. And it says, in the subject line,
8 "Safety Concerns at the Pool," right?

9 A. Yes.

10 Q. Okay. And she says, (Reading) I would like
11 to know what is being done at our pools to prevent
12 such a tragedy from happening again. As a member, I
13 can say that I never let my children swim without me

14 being present because I was, slash, am not confident
15 in the guards. Several times I have observed them
16 talking, eating, drinking, flirting, daydreaming off
17 into the sky and even once texting. There seems to
18 be a lack of leadership.

19 A. Again, you have a member expressing a
20 serious safety concern to you regarding lifeguards in
21 your pool, correct?

22 A. And again, I would note that this
23 observation was made after the fact.

24 Q. And even after the fact, you still only have
25 two lifeguards manning the family pool, correct?

0381

1 A. We have the number of lifeguards there
2 appropriate to the bather load, as I've explained to
3 you.

4 Q. Sure. And you still don't have a permanent
5 lifeguard stand on the west end of your family pool,
6 correct?

7 A. That's correct.

8 Q. And you would still have Guillermo Palmer as
9 your aquatics director if it was your decision and
10 his decision to do so. So really, nothing has really
11 changed at the family pool since John's death. His
12 death is in vain, correct?

13 MR. SNYDER: Objection, form.

14 Don't answer that.

15 Q. (BY MR. MARRS) "There seems to be a lack of
16 leadership... rarely (if ever) have I seen an adult
17 supervisor roaming around the pool deck checking on
18 the guards. Is there any sort of on-going training?
19 Mock rescues?"

20 By the way, has the Racquet Club, to
21 your knowledge, ever had a mock rescue drill for
22 safety, pool safety at your family pool or your lap
23 pool?

24 A. I believe A Beautiful conducted one within
25 the last 60 days.

0382

1 Q. Prior to John Pluchinsky's death, had there
2 ever been one?

3 A. Not to my knowledge, but David and Guillermo
4 can speak to that better than I can.

5 Q. "Being a lifeguard is" -- she continues.
6 "Being a lifeguard is not an easy summer job of
7 lounging in a chair. If it is done correctly, it is

8 a tough job of constantly scanning every inch of the
9 pool for anything out of the ordinary." You agree
10 with that, don't you?

11 A. Yes. And I think that Guillermo and the
12 lifeguards would agree with that also.

13 Q. "I hope that out of the horrible tragedy
14 that we can pull together to make our club even
15 better. CM #5."

16 Did you respond to CM #5 when
17 she expressed what appears to be heartfelt concerns
18 about the pool safety?

19 A. No, I did not.

20 Q. Did Ted Erck, to your knowledge?

21 A. I can't speak for Mr. Erck.

22 Q. And why didn't you?

23 A. Why didn't I?

24 Q. Yes, sir.

25 A. I didn't respond to anyone directly who had
0383

1 e-mailed after the fact. I was sensitive to the
2 potential for this very action right here.

3 Q. Okay. Now, let's look at Exhibit
4 Number 26. This is an e-mail from CM #2.
5 Do you know who she is?

6 A. I'm not sure I've met her, no.

7 Q. Okay. You assume she's a member of your
8 club?

9 A. I believe Mrs. CM #2 is, yes.

10 Q. Okay. And this was on the same day you
11 received CM #5 ' e-mail. This is July 25th,
12 2007. And I won't read the whole thing, but she says
13 that -- and frankly, she's -- she sends it to member
14 feedback. That's the site you monitor daily, but she
15 addresses it to Mr. Erck, correct?

16 A. Yes.

17 Q. And she's referring to where the club in a
18 letter states, "We have initiated an internal
19 investigation," right?

20 A. Yes.

21 Q. And she says, "On two occasions I have
22 advised the head guard that his lifeguards were not
23 watching the children in the pool." Who do you think
24 she's referring to there?

25 A. Whoever the head lifeguard was that was on
0384

1 duty at the time, perhaps.

2 Q. And she describes a situation she believes
3 is a safety concern to her. And she goes on and
4 says, "I am not a neurotic individual but I do have a
5 deep respect for children and water." But in the end
6 of this e-mail she says, "I was not the least bit
7 surprised that this one occurred."

8 Let me read the whole thing.
9 "Accidents do happen, however I was not the least
10 bit surprised." She's saying she's not surprised
11 that John -- that this child drowned, correct?

12 A. That's what she's saying.

13 Q. And she's the second member to tell you as
14 of this date they weren't surprised that there was a
15 drowning in your pool, correct?

16 A. That's what they are saying.

17 Q. And she even describes for you that, "I
18 pulled a 14 year old Jr. Olympic competitive swimmer
19 from the pool one time because they got in trouble,"
20 correct?

21 A. That's what she says.

22 Q. And did you respond to Ms. CM #2 when you
23 received this e-mail?

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

25 Q. Did Mr. Erck, to your knowledge?

0385

1 A. I can't speak for Mr. Erck.

2 Q. Did you forward it to Mr. Erck since it was
3 addressed to him?

4 A. I believe that I did.

5 Q. Were you surprised that a child drowned on
6 July 18th in your pool?

7 A. Yes, I was.

8 Q. And then Exhibit Number 27 reflects an
9 e-mail you received on or about July 20th, 2007 from
10 a M #5 to yourself and Mr. Erck and she's
11 expressing her disappointment, isn't she?

12 A. Yes.

13 Q. She states, "It is reprehensible that
14 members endure the constant blast e-mails promoting
15 the revenue-generating events at the Club yet have to
16 find out about the tragic death of a child on our
17 premises on the 10:00 news," correct?

18 A. That's what she says.

19 Q. And did you send a blast e-mail to your
20 membership to let them know that the Houston Racquet
21 Club was cited for running an illegal day care

22 facility?

23 A. No.

24 Q. Or any communication to your membership to
25 let them know that?

0386

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

2 Q. Or any communication to your membership to
3 let them know that the Racquet Club was cited along
4 with individual managers and counselors for directly
5 causing John Pluchinsky's death by neglecting him?

6 A. No, we did not.

7 Q. Have you informed membership that the
8 Racquet Club had been warned on two or more occasions
9 prior to July 18th that you had a serious safety
10 problem with lifeguards not properly supervising
11 children in your pools?

12 A. No.

13 Q. And then, as shown on Exhibit Number 28 --
14 And who's HRCBM-E?

15 A. HRCBM-E is a former board member.

16 Q. Was he a board member on July 18th, 2007?

17 A. No.

18 Q. Even though he wasn't a board member, he was
19 still influential in the club?

20 A. In his own way, as many members are, yes.

21 Q. And here on July 22nd --

22 MR. MARRS: Thank you.

23 Q. (BY MR. MARRS) -- as shown on Exhibit 28,
24 HRCBM-E is writing to Ted Erck, who was your
25 president at the time, correct?

0387

1 A. Yes.

2 Q. And he's writing within about four days of
3 John's death, right, July 22nd?

4 A. Uh-huh.

5 Q. And he's saying, "We'd talked about
6 targeting SC and the pool activity. In light of
7 current events, do you think this is a good idea?"
8 And he goes on and he says, "I do. By September
9 things will have died down / back to normal."
10 Doesn't he?

11 A. He says that.

12 Q. In your opinion, do you think that things
13 are back to normal for the Pluchinskys?

14 MR. SNYDER: Objection, form.

15 A. Certainly not.

16 Q. (BY MR. MARRS) And what interview with
17 SC is he referring to?

18 MR. SNYDER: Objection, form.

19 A. We do human interest type interviews for the
20 employees to publish in the Raconteur.

21 Q. (BY MR. MARRS) And had that --

22 A. HRCBM-E does those interviews.

23 Q. Okay. And which SC is being referred to?

24 A. SC .

25 Q. Okay. Swimming coach?

0388

1 A. She's a lesson instructor, a swim lesson
2 instructor.

3 Q. Okay. And had the interview with SC
4 already occurred as of the time of this July 22nd,
5 2007 e-mail?

6 A. I don't recall. I don't think SC was
7 interviewed. I am not directly involved when HRCBM-E
8 does those interviews.

9 Q. Because in the following e-mail, that's
10 above that, Ted Erck says, "I do not think that we
11 need to make a decision immediately but probably
12 within a couple of weeks. If we choose not to
13 publish this interview with SC," and that's why I
14 asked you. It sounds like it had already occurred,
15 but I couldn't tell. Does that refresh your
16 recollection either way?

17 A. No. If an interview was done, I don't
18 believe I ever saw it.

19 Q. Okay. Mr. Erck could tell us that, correct?

20 A. Yes, he could.

21 Q. And then Ted's response to HRCBM-E and you, he
22 says, "Thank you for being thoughtful enough to think
23 about this," correct?

24 A. Yes.

25 Q. Do you think it's appropriate for someone

0389

1 associated with the club to say, well, I know a child
2 just drowned in our pool, but it will blow over in
3 another month or so, things will be back to normal?

4 MR. SNYDER: Objection, form.

5 Don't answer that.

6 Q. (BY MR. MARRS) Do you refuse to answer?

7 A. I can't speak for Mr. HRCBM-E.

8 Q. You can speak for yourself, though. I'm
9 asking if you think it's appropriate.

10 A. I choose not to express an opinion.
11 Q. Okay. And of course, Mr. Erck in his
12 responsive e-mail says, "I think that some time will
13 have passed and that it could be OK, but Steve what
14 do you think?" So Mr. Erck is telling you, well, it
15 might be okay. What do you think, Steve, right?
16 A. That's what he says.
17 Q. "I also want to keep establishing confidence
18 in how safe the club is." So here he is, Mr. Ted
19 Erck, who's the president as of this time expressing
20 to you that even though it's only been a few days
21 after John's death, he wants to keep telling the
22 club, the membership how confident he is in the
23 safety of the club, correct?
24 A. Yes.
25 Q. Do you think that's appropriate?

0390

1 MR. SNYDER: Objection, form.
2 Don't answer that.
3 Q. (BY MR. MARRS) Well, let's move on to what
4 else Ted Erck had to say to the membership in Exhibit
5 Number 29. This is the August newsletter. Now, this
6 is the section that Ted Erck writes, not yourself; is
7 that right?
8 A. That's correct.
9 Q. Okay. And he mentions the loss of John
10 Pluchinsky, but below he says, "I could not imagine a
11 better and safer place to raise my 5-year-old boy
12 than with you at the Houston Racquet Club," doesn't
13 he?
14 A. Yes, he does.
15 Q. And he's got the picture with his smile on,
16 on the top just like he's smiling right now, right?
17 A. That's the picture of Mr. Erck at the top,
18 yes.
19 Q. Okay. In your view, as general manager, was
20 it satisfactory to you that the president is telling
21 the membership as a whole that although I know that
22 the Pluchinsky's four-year-old boy just drowned in
23 our pool, I can't imagine a better and safer place to
24 raise my living five-year-old boy than here at the
25 Racquet Club pools?

0391

1 MR. SNYDER: Objection, form.
2 You don't need to answer that.
3 Q. (BY MR. MARRS) Was it, do you think,

4 appropriate to you as general manager of the Racquet
5 Club to have this in your newsletter going out to all
6 your members after John Pluchinsky -- shortly after
7 John Pluchinsky's death?

8 MR. SNYDER: Objection, form.

9 You don't need to answer that.

10 Q. (BY MR. MARRS) Did you see this before it
11 went out to the membership?

12 A. Yes, I did.

13 Q. Did you object in any way?

14 A. No, I didn't.

15 Q. Did you approve it?

16 A. Yes, I did.

17 Q. And then on another page in the same
18 August --

19 MR. PLETCHER: You can read off the
20 screen, if you like.

21 Q. (BY MR. MARRS) -- the same August
22 newsletter, there is a statement by you that
23 (reading) Safety is of paramount importance in all
24 respects of our daily business, correct?

25 A. Yes. I believe we reviewed this paragraph
0392

1 yesterday.

2 Q. Sure. And you wrote that, right?

3 A. Yes, I did.

4 Q. And that was in keeping with, of course,
5 Mr. Erck's expressed desire to express to the club
6 membership how safe the club was, correct?

7 A. That's correct.

8 Q. That was PR to the membership about the
9 safety of the club after John's death, right?

10 MR. SNYDER: Objection, form.

11 A. It was a message that we sent to the
12 membership to express our confidence in the operation
13 of the Racquet Club.

14 Q. (BY MR. MARRS) Did on Exhibit 29, as of the
15 time Ted Erck wrote and published this to the
16 membership of the Houston Racquet Club, was to your
17 knowledge, Mr. Erck aware of the fact that the CPS
18 Family Protective Services had found that the Racquet
19 Club was the cause of John Pluchinsky's death?

20 MR. SNYDER: Objection, form.

21 A. I don't recall the timing of the publishing
22 of this versus when we received the notice from the
23 CPS office.

24 Q. (BY MR. MARRS) At that time did he know
25 that the CPS was investigating his club?

0393

1 A. Yes.

2 Q. Did he know that the club was running a
3 child care facility without being licensed, to your
4 knowledge?

5 A. He knew that that situation was under
6 investigation by CPS.

7 Q. And was he aware at that time, to your
8 knowledge, that there was only two 15-year-old
9 lifeguards left at the family pool in terms of
10 lifeguards to watch the children in that pool on that
11 day?

12 A. I believe we reviewed the staffing load that
13 day in our discussions.

14 Q. So he was aware of that?

15 A. I believe he was.

16 Q. Was he aware of the fact, to your knowledge,
17 that the police were investigating the Racquet Club
18 relating to John Pluchinsky's death?

19 MR. SNYDER: Objection, form.

20 A. We weren't under investigation by the
21 police.

22 Q. (BY MR. MARRS) And in looking at Exhibit
23 Number 30, do you know which club newsletter this
24 was?

25 A. No, sir, I don't.

0394

1 Q. But you know there's a message from the
2 president, being Ted Erck, correct?

3 A. Yes.

4 Q. And he's saying -- his picture is on there
5 again and he's saying, "As strongly as we feel that
6 our children's programs are safe and properly
7 administered, we also feel that we need to scrutinize
8 every aspect of all our children's programs," right?

9 A. Yes.

10 Q. And he goes on to say, "We have hired an
11 Aquatics expert to evaluate and make recommendations
12 on our pool policies and procedures," correct?

13 A. That's correct.

14 Q. And that was so that the membership would be
15 informed about this aquatics expert, correct?

16 A. Yes.

17 Q. So, tell us who the aquatics expert was.

18 MR. SNYDER: No, no. I instruct you
19 not to answer that.

20 Q. (BY MR. MARRS) Well, I thought the purpose
21 was to inform the membership about this aquatics
22 expert and you won't tell us who the aquatics expert
23 is?

24 MR. SNYDER: He's not going to tell you
25 who the aquatics expert is.

0395

1 MR. MARRS: Well, they published to the
2 world that they hired an aquatics expert to evaluate
3 and make recommendations. I'm entitled to know who
4 that is.

5 MR. SNYDER: No, you're not.

6 Q. (BY MR. MARRS) You won't tell us who the
7 aquatics expert is that you -- did you hire one?

8 A. Our attorneys hired one.

9 Q. Okay. And Ted Erck, though, doesn't say
10 that. He says, "We," the Racquet Club, "have hired
11 an Aquatics expert." So, but you won't tell me who
12 that is?

13 MR. MARRS: Are you instructing him not
14 to answer?

15 MR. SNYDER: I already instructed him
16 not to answer.

17 MR. MARRS: Okay. I didn't hear you.

18 Q. (BY MR. MARRS) And you will not answer that
19 on the advice of your counsel, correct?

20 A. That's correct.

21 Q. Otherwise, you could tell me the name of the
22 aquatics expert, couldn't you?

23 A. I don't know.

24 Q. Well, either you know his name or not and
25 I'm -- or her name. I'm just asking: Do you know

0396

1 the name?

2 A. I may know it or I may not. I'm not going
3 to speak of it.

4 Q. My question isn't whether you'll speak of it
5 or not. I'm trying to be respectful to you and I'm
6 simply asking you without revealing anything --

7 MR. SNYDER: I don't think he does. I
8 really don't, but you can ask him --

9 MR. MARRS: Well, do you want to --

10 MR. SNYDER: -- if he does or doesn't.

11 MR. MARRS: Well, why don't you tell

12 him that he doesn't.

13 MR. SNYDER: It's okay.

14 MR. MARRS: Just go ahead and tell him,
15 you don't know.

16 Q. (BY MR. MARRS) No. Seriously, do you know
17 the name of the aquatics expert? I don't want you to
18 tell me who it is.

19 A. I think I recall the name of the aquatics
20 expert.

21 Q. So if I asked you right now, you could tell
22 me but for the fact that your lawyer is telling you
23 not to answer the question, right?

24 A. Yes.

25 Q. Okay. And Mr. Erck goes on to say, "We have
0397

1 hired a pool safety consultant that is in the process
2 of evaluating our facilities." Did the Racquet Club
3 do that?

4 A. We have since retained NASCO to act as our
5 risk -- our risk assessment. At that point when this
6 letter went out, we thought we had a deal struck with
7 Ellis & Associates, but it fell through.

8 Q. Right. Okay. And it says, "We have worked
9 openly and cooperated fully with Family Protective
10 Services." Is that true?

11 A. That is absolutely true.

12 Q. And who at the Racquet Club was tasked with
13 the responsibility of communicating with Child
14 Protective Services and Family Protective Services?

15 A. There were a number of us that had
16 communication with them. Guillermo and David
17 communicated directly with them. I had some
18 communications with them as well.

19 Q. Who was primarily responsible for insuring
20 that Child Protective Services received all of the
21 information that they asked for?

22 A. I don't think there was any one person.

23 Q. Okay.

24 A. They received everything they were -- that
25 they asked for.

0398

1 Q. So all three of you were responsible,
2 Guillermo Palmer, David Lamkin and yourself for
3 making sure that the Child Protective Services,
4 Family Protective Services received all the
5 information they asked for, correct?

6 A. Yes. I think Joyce Healy was involved in
7 the earliest days in that as well.

8 Q. You go on and say, or Ted Erck does, "And
9 have filed our licensing exemptions for all our
10 programs." Have you received exemptions for all of
11 your programs?

12 A. We either received exemptions or we received
13 notice that the Department of Family and Protective
14 Services didn't have oversight of that program.

15 Q. Okay. You certainly are not accepting
16 four-year olds in your family pool during summer camp
17 anymore, correct?

18 A. We don't know at this point whether we're
19 having summer camp. It's not currently in session.

20 Q. If you do, will you accept four-year olds?

21 A. I know we will not.

22 Q. Why not?

23 A. In order to accept four-year olds, we would
24 have to be a licensed facility. By being granted the
25 exemptions, we are not permitted to accept four-year

0399

1 olds.

2 Q. But you will be accepting five-year olds if
3 you have summer camp?

4 MR. SNYDER: Objection, form.

5 A. That's still under consideration.

6 Q. (BY MR. MARRS) Okay. And Ted Erck goes on
7 to say, we have hired a certified adult lifeguard.

8 Had you done that as of the time that this went out?

9 A. I believe we had.

10 Q. Who was that?

11 A. He was a -- he was a -- he was training to
12 be a fire fighter and his mornings were open. I
13 honestly don't recall his name. We ended up actually
14 using a number of people in that -- in that position.

15 Q. So what was his name, the one training to be
16 a fire fighter?

17 A. I don't know personally. David and
18 Guillermo can tell you certainly who it was.

19 Q. Well, what are the names of any of the
20 certified adult lifeguards that you have used since
21 John Pluchinsky's death that would have been --

22 A. I don't know.

23 Q. -- that would have been hired separate and
24 apart from the ones that may have been hired before
25 John Pluchinsky's death?

0400

1 A. I don't know them. I don't personally hire
2 the lifeguard staff.

3 Q. Do you know any of their names?

4 A. Not at this point.

5 Q. Do you currently have a certified adult
6 lifeguard working at the Houston Racquet Club that
7 was hired after John Pluchinsky's death?

8 A. We no longer hire lifeguards.

9 Q. And has A Beautiful Company, A Beautiful
10 Pool Company, hired a certified lifeguard that is
11 still working at the Houston Racquet Club?

12 A. Yes. They do all the staffing of our -- of
13 our pools at this point.

14 Q. Do you currently have on a permanent basis a
15 certified adult lifeguard watching the family pool?

16 A. The family pool is not open this time of
17 year.

18 Q. Watching the lap pool?

19 A. A Beautiful Pool handles the staffing. I
20 believe that they -- they keep 18-year old --
21 18-plus-year olds on staff whenever possible.

22 Q. Who at the Racquet Club is tasked with the
23 responsibility of interfacing with that pool company?

24 A. I do, and also David and Guillermo. But I'm
25 the primary contact person.

0401

1 Q. Is HRCBM-A currently on the board?

2 A. Yes.

3 Q. Is she 4 y/o B-CC #3 's mom?

4 A. Yes.

5 Q. Also on Exhibit 30, Ted goes on to say
6 that, "The new Kids Club should be operational in
7 September. This will be a beautiful area that will
8 take a portion of the Teen room and the 'old'
9 aerobics room. Security will be enhanced in both
10 areas as a video system will be installed." Now,
11 aside from the beautiful Kids Club that is now going
12 to be operational, the money placed in it for
13 security like the video system, has additional monies
14 been allocated for a third lifeguard at the family
15 pool during summer camps and any time that there are
16 kids in the family pool?

17 MR. SNYDER: Objection, form.

18 A. There are always sufficient lifeguards for
19 the bather load, as I've expressed to you earlier.

20 Q. (BY MR. MARRS) So the answer to my question
21 is -- would you like me to rephrase it?

22 A. Please do.

23 Q. I'll be happy to.

24 Have you insured that additional monies
25 have gone directly towards hiring, whether it's a
0402

1 pool company or yourself, a third lifeguard at all
2 times for the family pool when there are children in
3 the family pool?

4 A. I have insured that monies were made
5 available for us to have appropriate guard staff at
6 both pools at all times.

7 MR. MARRS: Can you read back the
8 question? I'm sorry. I'm tired of asking the same
9 one.

10 THE REPORTER: "Have you insured that
11 additional monies have gone directly towards hiring,
12 whether it's a pool company or yourself, a third
13 lifeguard at all times for the family pool when there
14 are children in the family pool?"

15 A. There will not necessarily always be three
16 lifeguards at the family pool. We'll do that based
17 upon need, but the lifeguards will always be
18 available.

19 MR. PLETCHER: Based on what? Based on
20 what?

21 MR. SNYDER: Based on need, Matt.

22 Q. (BY MR. MARRS) Did the Houston Racquet Club
23 look at more than one proposal for a pool company?

24 A. Yes, we did.

25 Q. Was that -- the first one Ellis &
0403

1 Associate's and then the second one was A Beautiful
2 Pool Company?

3 A. No. Ellis & Associates is a risk management
4 company.

5 Q. Okay.

6 A. It's a separate -- that's a separate
7 service.

8 Q. So when Ted refers to pool safety
9 consultant, he's referring to the risk management
10 company?

11 A. I believe that was the context of that
12 statement, yes.

13 Q. And did you look at a proposal from Ellis &

14 Company?

15 A. We did.

16 MR. MARRS: Has that been produced, to
17 your knowledge?

18 MR. SNYDER: You're asking the wrong
19 Indian.

20 MR. MARRS: Okay. All right.

21 MR. SNYDER: I'll ask Stacy.

22 MR. MARRS: I don't believe I've seen
23 it. I've seen NALCO.

24 THE WITNESS: NASCO.

25 MR. MARRS: NASCO, thank you.

0404

1 THE WITNESS: Certainly.

2 MR. MARRS: Okay. But I haven't seen
3 Ellis & Company. Can you just confirm you produced
4 that? If you could make a note --

5 MR. SNYDER: I'll ask --

6 MR. MARRS: -- I appreciate it.

7 MR. SNYDER: I'll ask Stacy during a
8 break if she's here.

9 MR. MARRS: All right.

10 Q. (BY MR. MARRS) Did the Houston Racquet Club
11 look at two proposals from a pool company? I think
12 you said yes.

13 A. Yes, we did.

14 Q. And who were they?

15 A. We looked at -- actually, we looked at
16 three. We looked at Miller -- don't know their
17 complete name. We looked at Guardian Pools.

18 Q. Yes, sir.

19 A. And we looked at A Beautiful Pools.

20 Q. Okay.

21 MR. MARRS: I would also like to obtain
22 the -- as requested previously, the proposals from
23 Miller and Guardian as well.

24 MR. SNYDER: Okay. And if we have
25 them --

0405

1 MR. MARRS: I have the one --

2 MR. SNYDER: And if they are -- and if
3 they are written and they haven't been produced, they
4 will be produced. Something is making me recall that
5 we did check or Stacy checked and found out that they
6 were verbal proposals, but I'll check with her and
7 confirm whether or not that that's the case.

8 A. The Miller, I believe, was a verbal
9 proposal. We never got beyond that. They declined
10 to bid.

11 Q. (BY MR. MARRS) And how about Guardian?

12 A. Guardian prepared a proposal, yes, they
13 did. They prepared a proposal.

14 Q. If you could check, I would appreciate it --

15 A. Sure.

16 Q. -- so that we'll be able to get proposals
17 from all three.

18 MR. SNYDER: Sure.

19 Q. (BY MR. MARRS) And the purpose, I believe
20 you said before, in retaining A Beautiful Pool
21 Company to train and provide lifeguards is to, I
22 guess, make sure that your pools are safe on an
23 ongoing basis; is that correct?

24 A. No. It's to provide adequate lifeguard
25 staff year-round since we have a year-round pool
0406

1 operation.

2 Q. I guess that's what I meant. It's to ensure
3 that on an ongoing basis you have adequate lifeguard
4 coverage at your pools, correct?

5 A. Yes.

6 Q. And that they be adequately trained, right?

7 A. Yes.

8 Q. On an ongoing basis?

9 A. Year-round, yes, sir.

10 Q. Okay. And the purpose in the pool safety
11 consultant or risk management company was to make an
12 evaluation of your facilities; is that correct? Tell
13 the jury about that.

14 A. They provide inspection and oversight of the
15 pool operation as a whole, all aspects of it, whether
16 we would provide the guards ourselves or if an
17 independent company would provide the guard service.

18 Q. Okay.

19 MR. MARRS: Bless you.

20 MR. SNYDER: It's a cough, not a
21 sneeze.

22 MR. MARRS: Bless you, anyway.

23 MR. SNYDER: Thank you.

24 Q. (BY MR. MARRS) Let me show you Exhibit
25 Number 33 with respect to NASCO, the company that you
0407

1 say is a risk management company retained by the

2 Racquet Club; is that right?
3 A. Yes.
4 Q. Okay. And obviously, you received a
5 proposal from them?
6 A. Yes, I did.
7 Q. And do you still have that?
8 A. I do.
9 MR. MARRS: I would also like to
10 receive that, Norman, because we don't have that.
11 Are you making a list, Norman?
12 THE WITNESS: It may have been executed
13 after we produced most of the things.
14 MR. SNYDER: Is this recent?
15 THE WITNESS: It's fairly recent,
16 November-ish.
17 Q. (BY MR. MARRS) And just to be clear, you
18 received a proposal from another risk management
19 company other than NASCO?
20 A. Yes, I did.
21 Q. And which -- who was that?
22 A. Ellis & Associates.
23 Q. Okay. And that's the one that -- was that
24 in writing?
25 A. Yes.
0408
1 MR. MARRS: And we request that one as
2 well. I think I already did.
3 Q. (BY MR. MARRS) Okay. And do you have a
4 contract with the certified adult lifeguard or is
5 that subsumed within the contract with A Beautiful
6 Company?
7 A. We no longer employ lifeguards at all.
8 Q. Right.
9 A. They are -- they are employees of A
10 Beautiful Pools.
11 Q. But when Ted Erck says, "We have hired a
12 certified adult lifeguard," had A Beautiful Company
13 been doing it at that time or was that hired directly
14 by the Houston Racquet Club?
15 A. This was during the time that we were
16 staffing it ourselves.
17 Q. Okay.
18 A. I believe this was perhaps a September --
19 Q. And that's why I'm asking.
20 A. -- newsletter.
21 Q. Would there have been a written contract

22 with whatever certified adult lifeguard that you
23 hired?

24 A. No. Simply an employment arrangement.

25 Q. No writing indicating how much they would be
0409

1 paid or their areas of responsibility or anything?

2 A. Oh, certainly. They would have filled out
3 an application and we would have established a rate
4 of pay.

5 MR. MARRS: I would also request that
6 that document be produced as already requested in our
7 request for production, that we cover that as well
8 without making a big stink over it.

9 MR. PLETCHER: What was the document?

10 MR. MARRS: The document was
11 applications and other documents that relate to the
12 hiring of certified adult lifeguards prior to the
13 time that A Beautiful Company took over that
14 responsibility.

15 Q. (BY MR. MARRS) Do you understand that, sir?

16 A. Yes.

17 Q. Okay. And why, to your knowledge, did
18 Ellis & Associates not become the risk management
19 company for the Racquet Club?

20 A. We found out that Ellis & Associates didn't
21 associate themselves with any of the local pool
22 management companies, that is, they were not aligned
23 with them. They didn't have a business relationship
24 so that they weren't -- they weren't willing to
25 provide risk assessment services.

0410

1 Q. Is that the only reason?

2 A. Yes.

3 Q. To your knowledge?

4 A. Yes. We were -- We were ready to sign.

5 Q. Okay. And how about Miller, why is it that
6 they did not become your pool company?

7 A. In discussion, they determined that they
8 couldn't -- they couldn't adequately provide
9 year-round lifeguards for us -- their determination.

10 Q. So they declined?

11 A. They declined.

12 Q. How about Guardian?

13 A. Guardian wasn't comfortable working with an
14 outside risk assessment company. They preferred to
15 do internal risk assessments within their own

16 company. We preferred to have that done by an
17 independent agent.

18 Q. Did Miller or Guardian express any concern
19 about being retained as your pool company after a
20 death had already occurred?

21 A. No. I don't recall any conversation about
22 that.

23 Q. Did NASCO or Ellis Risk Management companies
24 express that concern?

25 A. No, they did not.

0411

1 MR. SNYDER: Let's take a break.

2 MR. MARRS: Do you want to take a
3 break?

4 MR. SNYDER: Sure.

5 VIDEOGRAPHER: Off the record. The
6 time is 4:22 p.m.

7 (Brief recess.)

8 VIDEOGRAPHER: Back on the record. The
9 time is 4:44 p.m.

10 MR. MARRS: Ray, are you getting the
11 cups here or should I --

12 VIDEOGRAPHER: No, sir.

13 MR. MARRS: Okay. Magic.

14 Q. (BY MR. MARRS) Is -- Was the Houston
15 Racquet Club's 2007 summer camp licensed as a youth
16 camp?

17 A. No, sir.

18 Q. Have you ever reviewed the Texas statutes
19 governing the youth camp as found in the Texas
20 Administrative Code, otherwise known as the TAC, a
21 copy of which you had in your office when you arrived
22 at the Houston Racquet Club?

23 A. The youth camp code, I don't believe, was in
24 my office. It was only the code related to pool
25 operations; however, I have had -- reviewed the youth

0412

1 camp code as well.

2 Q. Well, did you prior to the 2007 summer camp?

3 A. No, sir.

4 Q. Certainly, you were aware that there was
5 youth camp code prior to 2007 summer camp, weren't
6 you?

7 A. No, sir.

8 Q. And what's your understanding with respect
9 to whether or not the youth camp code applies to the

10 summer camp at the Racquet Club?

11 MR. SNYDER: Objection, form.

12 A. I don't think it applies specifically to our
13 type of an operation. I think it's focused more on
14 camps that tend to be overnight, off premise, that
15 type of thing.

16 Q. (BY MR. MARRS) Have you confirmed that with
17 anyone?

18 A. I have a legal opinion on it.

19 Q. From not just yourself, but from a lawyer?

20 A. From a lawyer.

21 Q. And was that obtained before or after John
22 Pluchinsky's death?

23 A. After.

24 Q. And let me clarify, the condolences book
25 that many of your members signed for the Pluchinsky

0413

1 family was not given to the Pluchinskys as a result
2 of a decision by -- was it Ted Erck?

3 MR. SNYDER: Objection, form.

4 A. I don't know whether Ted Erck made the
5 decision or not.

6 Q. (BY MR. MARRS) Do you know any specific
7 individuals who did make that decision?

8 A. No. Ted Erck gave me the instructions to
9 hold onto it. I don't know who made the decision.

10 Q. What specifically did he tell you?

11 A. Well, I'm not sure where the -- where the
12 directive came from to hold onto it until a more
13 appropriate time.

14 Q. Well, what did Ted Erck tell you when he
15 told you to hold onto it? That's my question. What
16 specifically did he tell you?

17 A. I don't recall his exact words. We do -- We
18 were certainly planning to give it to the
19 Pluchinskys. We were anxious to do so, but we were
20 advised that it was perhaps not the correct time.

21 Q. And did you, since you were anxious to do
22 so, ever ask that a communication be made to the
23 Pluchinsky's lawyer to ask if you could give the
24 Pluchinskys that book?

25 A. It's my understanding that that

0414

1 communication did take place.

2 Q. You would be wrong.

3 A. I stand corrected.

4 MR. SNYDER: Object to the sidebar.
5 Q. (BY MR. MARRS) But you know that Ted Erck
6 in Exhibit 29, that newsletter that we visited on
7 earlier, the August-November 2007 newsletter, Ted
8 Erck himself is stating that, "As I mentioned in a
9 recent Club-wide e-mail, we have placed a Friends and
10 Family Book in the lobby of the Club so each of you
11 may express your personal condolences to the family.
12 This will be delivered to the family in mid-August."

13 But that wasn't true because here we
14 are in February, 2008 and still that condolence book
15 with all those heartfelt condolences by members and
16 friends of the Pluchinskys have still not been
17 delivered to them, correct?

18 A. That's correct.

19 MR. SNYDER: Objection, form, asked and
20 answered.

21 Q. (BY MR. MARRS) I'm sorry. I couldn't hear
22 the answer.

23 A. That's correct.

24 Q. And the reason you're holding it -- is it in
25 your office?

0415

1 A. I don't know exactly where it is.

2 Q. Well, when you were told by Ted Erck, the
3 then president of the Houston Racquet Club, to hold
4 onto it, where did you put it?

5 A. I believe my assistant, Jean Northey, put it
6 away for safekeeping.

7 Q. Okay. Do you know where?

8 A. No, sir, I don't.

9 Q. Do you think that would be important for the
10 Pluchinsky family to have?

11 MR. SNYDER: Objection, form.

12 A. We are very anxious to deliver that to the
13 Pluchinsky family at a time that's deemed
14 appropriate.

15 Q. (BY MR. MARRS) Six months after the fact?

16 MR. SNYDER: Objection, form.

17 Q. (BY MR. MARRS) Do you think it's an
18 appropriate time now, six month after the fact, seven
19 months and nine -- seven months and 10 days after his
20 death to deliver it to the Pluchinsky family?

21 MR. SNYDER: Objection, form.

22 A. I think we would communicate with their
23 attorneys to determine if it's, in fact, a correct

24 time.

25 Q. (BY MR. MARRS) And in Exhibit 50 there's a
0416

1 letter to Brown Sims, the then counsel for Houston
2 Racquet Club with respect to whether or not certain
3 individuals were employed still by the Houston
4 Racquet Club. Now, can you tell me if 15 y/o LG #1
5 is still an employee of the Houston Racquet Club?

6 A. No, she's not. May I see the date of that
7 for reference, please?

8 Q. It's September 14, 2007.

9 A. Okay. Thank you.

10 Q. And I'm asking you currently --

11 A. Okay.

12 Q. -- the accuracy of this letter, as we sit
13 here today. You say 15 y/o LG #1 is not an employee
14 of the Houston Racquet Club. How about
15 Sr LG #1?

16 A. No.

17 Q. How about Supv CC #1 ?

18 A. Yes.

19 Q. And does his father, HRCBM-C, still work
20 for the Houston Racquet Club?

21 A. Yes.

22 Q. How about 8 y/o G-CC, is she still an
23 employee?

24 A. I don't know her.

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

0417

1 A. No, I don't.

2 Q. PE-B?

3 A. I don't --

4 Q. I'll just name some names for you.

5 A. Yeah.

6 Q. Still an employee or not?

7 A. I'm going to say no.

8 Q. LG-D?

9 A. No.

10 Q. PE-H?

11 A. No.

12 Q. PE-E?

13 A. No.

14 Q. PE-D?

15 A. No.

16 Q. PE-C?

17 A. No.

18 Q. Erica Lamkin?
19 A. Yes.
20 Q. And her father still works for the Houston
21 Racquet Club, right?
22 A. Yes, sir.
23 Q. How about PE-F?
24 A. No.
25 Q. PE-G?

0418

1 A. That one I'm not sure of. Perhaps on an
2 occasional basis.
3 Q. Okay. And how about PE-A?
4 A. No.
5 Q. Did you tell me earlier that the Houston
6 Racquet Club membership had been told that their
7 heartfelt condolences had been given to the
8 Pluchinskys or had not yet been told that?
9 A. I think what Ted Erck expressed is that we
10 were planning to deliver it -- Are you talking about
11 the book, I'm so sorry?
12 Q. Yeah, I am. Have the -- Has the membership
13 of your club been told that although they gave
14 condolences to the Pluchinsky family shortly after
15 their son died, that even as of today those have not
16 been communicated to the Pluchinskys?
17 A. No, they don't know that.
18 Q. Let me show you what's been marked as
19 Exhibit Number 35.

20 Let me show you what's been marked as
21 Exhibit Number 22B, the warnings chart we discussed
22 earlier. I believe you testified that after the
23 June 11 HRCBM-B e-mail and after the July 5th
24 e-mail from yourself to David Lamkin and Guillermo
25 Palmer and after the July 18th incident involving

0419

1 John Pluchinsky and the subsequent e-mail from CM #1
2 on all three occasions you met with
3 Guillermo Palmer; is that correct?
4 A. That's correct.
5 Q. And on all three occasions you gave him a
6 verbal reprimand; is that right?
7 A. Or counseling, yes.
8 Q. And are -- is there any -- well, which is
9 it? Did you give him verbal counseling or a
10 reprimand?
11 A. I gave him a written reprimand for the

12 July 5th memo from me.

13 Q. Uh-huh.

14 A. That was intended to go in his file and as I
15 expressed to you, I found out subsequently that my
16 controller did not put it in there.

17 Q. That was at a -- that's the July 5th e-mail?

18 A. That's the July 5th, yes.

19 Q. Okay.

20 A. Yes. Following July 18th, there was --
21 there was no verbal reprimand.

22 Q. Okay. My question is: After your e-mail on
23 July 5th and after the e-mail on June 11th and
24 June -- July 18th, after all three of those
25 communications you say you subsequently had meetings
0420

1 with Guillermo Palmer. Is there anything in writing
2 that you know of that exists that proves that you had
3 a meeting with Guillermo Palmer about these serious
4 safety concerns that are represented in Exhibit 22B
5 other --

6 A. My e-mail references the meeting that we had
7 the following Tuesday, the e-mail that was supposed
8 to be placed in his file. There is no -- There is no
9 written record of that meeting. The e-mail itself
10 was intended to stand as the warning.

11 Q. But in that e-mail of July 5th, which is
12 Exhibit 21 from yourself to Guillermo Palmer, you're
13 mentioning the problem you saw at 2:45 on that day
14 and you're saying, "We need to meet about this,"
15 correct?

16 A. Correct.

17 Q. So you had not yet met on that, correct?

18 A. We met after I sent him the e-mail.

19 Q. That's my point.

20 A. Okay.

21 Q. Is there any writing after that e-mail that
22 proves that you met with Guillermo Palmer
23 subsequently?

24 A. No, sir.

25 Q. Is there any e-mail or other writing after
0421

1 any of these dates, June 11, July 5th or July 18th
2 indicating that you met with Guillermo Palmer about
3 these serious safety concerns?

4 A. Nothing in writing, no.

5 Q. Let me show you Exhibit Number 35.

6 MR. MARRS: Can you put these in order?

7 MR. PLETCHER: Yeah, I will.

8 Q. (BY MR. MARRS) Could you -- Now, you've
9 seen this recently, haven't you?

10 A. No, I didn't review that, but I recall
11 sending it.

12 Q. Okay. This is a memo from yourself to
13 Guillermo Palmer, September 7, 2007. It says
14 regarding "Follow-up memo," right?

15 A. Yes.

16 Q. And tell the ladies and gentlemen of the
17 jury what this document is.

18 A. It's a section of the Texas Administrative
19 Code related to lifeguard personnel and practices.

20 Q. Okay. And why were you sending this to
21 Guillermo Palmer?

22 A. I wanted to make sure that he had a complete
23 and current list of their requirements, to make sure
24 that he was in compliance with the code.

25 Q. Because I think as you said before, you knew
0422

1 as of this time you were not in compliance with the
2 code, correct?

3 MR. SNYDER: Objection, form.

4 A. I recognized that there were a couple of
5 areas at least where we were not in full compliance.

6 Q. (BY MR. MARRS) Okay. Well, it's important
7 for you to be in full compliance, isn't it?

8 A. Yes, sir.

9 Q. And you say, "Guillermo, to follow up on our
10 conversation." What conversation had you had prior
11 to the time of this memo with Guillermo Palmer about
12 those requirements?

13 A. I don't recall the substance. Guillermo and
14 I see each other daily and talk about business.

15 Q. Okay. Well you say, "I have copied the
16 section of the Texas Administrative Code that
17 references lifeguard procedures, safety equipment and
18 lifeguard chair placement. Please confirm that these
19 practices are being followed to the letter." And
20 then you go on and you list out a number of the Texas
21 Administrative Code requirements that apply to your
22 pools, correct?

23 A. Yes.

24 Q. And did you copy and paste those from a web
25 site?

0423

1 A. I did. I started to paraphrase them and
2 decided it would be easier just to do a cut and
3 paste, make sure I didn't miss anything.

4 Q. And we can go through each one of these, but
5 maybe I can handle it just by a global question. The
6 specific standards that you copied and pasted into
7 your memo, are those the specific standards that you
8 believed were not yet being followed?

9 A. No. It's just a comprehensive list of all
10 the standards that were required.

11 Q. Then let's go through them. Which ones were
12 not being followed, to your knowledge, as of July 18,
13 2007?

14 A. Would you like to read them and I'll
15 respond?

16 Q. More than happy to.

17 MR. MARRS: Why don't you circle in
18 that --

19 MR. PLETCHER: I'll do it. I'll star
20 them.

21 MR. MARRS: Or frankly, why don't you
22 with green highlight.

23 Q. (BY MR. MARRS) The first one is "(g)
24 Lifeguard personnel standards at post-10/01/99",
25 et cetera, pools. Number 1 is, lifeguards shall hold

0424

1 a current ARC "Lifeguard Training" certificate or the
2 equivalent" -- and I won't continue reading it.

3 But was the Racquet Club in compliance
4 with that as of July 18, 2007?

5 A. No.

6 Q. How about Number 2? (Reading) Each
7 lifeguard shall be given an assigned surveillance
8 area "consummerate" with ability?

9 A. Yes.

10 Q. How about Number 3, "Guards conducting
11 surveillance of pool users shall not be assigned
12 duties that would distract their attention from
13 proper observation of the users, or that would
14 prevent immediate assistance to persons in the
15 water"?

16 A. Yes.

17 Q. Yet, 15 y/o LG #2 and 15 y/o LG #1 --
18 strike that.

19 Yet 15 y/o LG #2 was primarily

20 assigned the duty to watch the slide at the east end
21 of the pool, correct? That was his primary
22 responsibility, right?

23 A. Yes.

24 Q. And certainly, if you have a lifeguard whose
25 primary responsibility is to watch kids going up the
0425

1 steps, down the slide into the water, that is some
2 distraction from scanning the rest of the pool, isn't
3 it?

4 A. "Primary" implies a secondary responsibility
5 as well. Scanning the pool was what he did when
6 somebody was in the flume coming down the slide.

7 Q. Well, Number 3 does not say anything about
8 primary, secondary, recency, primacy. It talks
9 about -- Number 3 talks about "lifeguards conducting
10 surveillance of pool users shall not be assigned
11 duties that will distract their attention from proper
12 observation of the users."

13 So when 15 y/o LG #2 was primarily
14 responsible for the slide, that would distract him
15 from looking at the exact same time at pool users,
16 wouldn't it?

17 MR. SNYDER: Objection, form.

18 A. No, it would not.

19 Q. (BY MR. MARRS) Okay.

20 A. Because there's time to do both.

21 Q. Okay.

22 A. There's appropriate times to look away from
23 the slide. That time is when the child is actually
24 in the slide and that's two to three seconds at
25 least.

0426

1 Q. And so --

2 A. Time for them to glance to the left to view
3 the rest of the pool and that's the routine.

4 Q. So 15 y/o LG #2 being primarily responsible
5 for the slide on the east end in no way distracts
6 him, in your opinion, from surveilling kids that are
7 way over there on the far west side of the pool; is
8 that correct?

9 A. That is -- that area of responsibility was
10 15 y/o LG #1's. He was also responsible for
11 surveilling that area. That's an overlap area, which
12 is common in lifeguard --

13 Q. Okay.

14 A. -- staffing.
15 Q. And would it surprise you if he disagrees
16 with you?
17 MR. SNYDER: Objection, form.
18 A. I don't know.
19 Q. (BY MR. MARRS) Okay. Number 4, "When a
20 lifeguard is provided at a pool, the following shall
21 apply: (A) number of lifeguards shall be adequate to
22 provide supervision, continuous surveillance, and
23 close observation of pool users in all areas of the
24 pools at all times when the pool is in use." Was
25 that being complied with --

0427

1 A. Yes.
2 Q. -- on July 18, 2007?
3 A. Yes.
4 Q. And was B under Number 4 being complied
5 with? "An additional lifeguard, or a second
6 responder who is monitoring and readily available at
7 the pool, and who has a minimum training in (ARC)
8 'Adult, Infant, and Child CPR' shall also be in the
9 pool area when the pool is in use." You weren't in
10 compliance with that on July 18th, were you?

11 MR. SNYDER: Objection, form.
12 A. Yes, we were. Every single counselor in the
13 water met those standards.
14 Q. (BY MR. MARRS) Number 5, "All lifeguards
15 and second responders shall receive training in the
16 application of effective pool emergency procedures
17 for events such as submersions, suspected spinal
18 injury, medical emergencies, missing persons, bad
19 weather, etc. Such training will be reviewed as
20 necessary and kept current." Were you in compliance
21 with that on July 18th?

22 A. I would let Guillermo Palmer respond to
23 that. It's a training question.

24 Q. Well, do you know as general manager and as
25 the person designated to testify on behalf of the

0428

1 corporation?
2 A. No.
3 Q. Number 6, "Pool facilities shall provide
4 alertness/response drills and other training
5 including documentation of the following." Did the
6 Racquet Club have alertness response drills for its
7 lifeguards as of July 18th?

8 A. I don't know. Guillermo Palmer can respond
9 to that.

10 Q. You don't know as general manager of the
11 Racquet Club whether or not your lifeguards had
12 alertness and response drills?

13 A. Specifically, no.

14 Q. How about nonspecifically?

15 A. No.

16 Q. And then it goes on, A, "A pre-season
17 training program." Did that exist as of July 18th?

18 A. Yes.

19 Q. "A continual 'in-service' training program."
20 Did that exist?

21 A. Guillermo met with the guards on a continual
22 basis; however, we didn't document the meetings. He
23 can speak to the frequency of programming.

24 Q. So of course, if this requires documentation
25 you know you weren't in compliance with that on
0429

1 July 18th, correct?

2 A. Yes.

3 Q. Is that correct?

4 A. That's correct.

5 Q. Okay. How about C beginning on the next
6 page? "Performance 'audits' as recommended by the
7 ARC or YMCA." I think we talked about that
8 yesterday. Were you in compliance with that?

9 A. Not -- no, not about with the outside audit
10 firm, no.

11 Q. Not with anyone, correct?

12 MR. SNYDER: Objection, form.

13 A. Other than our internal performance audits.

14 Q. (BY MR. MARRS) How about D, "An emergency
15 action plan similar to the one outlined by ARC or
16 YMCA or equivalent." Were you in compliance with
17 that?

18 A. I would defer to Guillermo Palmer on that as
19 well.

20 Q. How about 7, "Maintain a current file with
21 each staff person's current certification including
22 expiration dates"?

23 A. Yes.

24 Q. Even though we know that a number of those
25 individuals did not have current certifications?

0430

1 A. They were current at the time that they were

2 hired in the spring. Some of them did subsequently
3 expire.

4 Q. And we talked about whether or not some were
5 current when they were hired or not, didn't we? I
6 think we had a disagreement on it, didn't we?

7 A. Yes. I would need to go back and look at
8 the actual hire dates.

9 Q. As we sit here today, you're not sure
10 whether or not the Houston Racquet Club hired
11 lifeguards or counselors that already had expired or
12 nonexistent CPR or AED cards, correct?

13 A. I think there's a distinction that I would
14 like to elaborate on right now, if I may.

15 Q. Go ahead.

16 A. Some of these guards were hired back in the
17 spring, early in the spring as contract employees. I
18 made the determination as the summer approached that
19 we really wanted to treat them as full employees,
20 rather than just people that we paid on a weekly
21 contract basis. I wasn't comfortable with that
22 relationship. So I wanted to go ahead and fully
23 employ them. There's a date around the end of May,
24 beginning of June when they were all technically made
25 employees of the club. Prior to that, they were
0431

1 contract employees, although they were working for us
2 already.

3 Q. Well, it's important that before the summer
4 starts for summer camp that you check and make sure
5 that your lifeguards and counselors have current and
6 effective and valid CPR and AED certifications at the
7 beginning of each summer, correct?

8 A. Yes.

9 Q. So how about Number 8, were you in
10 compliance with that?

11 A. Yes.

12 Q. How about Number 9?

13 A. Yes.

14 Q. How about 10?

15 A. Yes. We had -- we had some -- some of the
16 signs were not correctly placed or in place I found
17 when I looked closely at this code and they were
18 added.

19 Q. Okay. So as of July 18th, you were not in
20 compliance with Number 10, correct?

21 A. We were during the time that the pool was

22 open. When the pool was closed in a nonguarded
23 status, there were some "No diving" signs that we --
24 that I found out that we really should have had and
25 that -- and I found out that the "No lifeguard on
0432

1 duty" signs were supposed to actually face into the
2 pool area, rather than face out.

3 Q. Okay. So as of July 19th you were not in
4 compliance with 10?

5 A. No.

6 Q. Correct?

7 A. Correct.

8 Q. Okay. How about H?

9 A. Yes.

10 MR. SNYDER: I can't see H. Where is
11 H?

12 THE WITNESS: I think I need to see H
13 in its entirety.

14 Q. (BY MR. MARRS) Okay. Well, with respect to
15 the portion that you cut and paste in this e-mail --

16 A. Well, I mean, I can't see past the bottom of
17 the screen.

18 Q. Oh, I apologize.

19 MR. PLETCHER: I'm sorry.

20 MR. MARRS: You're not doing your job.

21 A. Why don't -- Why don't we go through one
22 point at a time, if we could.

23 Q. (BY MR. MARRS) Happy to. H. Under H,
24 Number 1, A, B or C, were you in violation of any of
25 those, to your knowledge?

0433

1 A. No.

2 Q. You were not in compliance?

3 A. We were -- we were in compliance. I
4 apologize.

5 Q. With -- under H, Number 1 A, B and C?

6 A. Yes.

7 Q. Okay. How about Number 2 requiring a
8 sufficient number of -- did you have standard rescue
9 tubes or buoys with attached ropes and straps?

10 A. Yes.

11 Q. Where?

12 A. Each lifeguard held them in their hands
13 during their -- during the time that they were in the
14 chair.

15 Q. And how about I, under I, Number 1, A,

16 regarding a reaching pole?

17 A. Yes.

18 Q. B, regarding the throwing rope?

19 A. Yes.

20 Q. And C, regarding additional pole and
21 throwing rope with green buoy?

22 A. Yes.

23 Q. How about on the third page, referencing
24 back boards, were you in compliance with that
25 requirement?

0434

1 A. Yes.

2 Q. And three first aid kits?

3 A. Yes.

4 Q. And you go on and you state, "Guillermo,
5 please note especially need to document in-service
6 meetings." Was that being done?

7 A. I think we've determined that we did not
8 document. This is why I highlighted it.

9 Q. "And to make copies of current
10 certifications and to develop a comprehensive
11 emergency action plan," both of which were not yet
12 being done as of July 18th, correct?

13 A. That's correct.

14 Q. And you cc'd David Lamkin to make sure he
15 was aware of your desires in that regard, right?

16 A. Yes.

17 Q. And did Guillermo Palmer respond to you in
18 writing after he received this memo at any time?

19 A. I'm not sure. I don't think he did.

20 Q. He never documented to you that indeed he
21 was following all the rules and regulations that you
22 took the time to cut and paste for him into this
23 e-mail or into this memo?

24 A. I confirmed that he had received them and
25 we -- and we went over -- went over the areas that

0435

1 were -- that were lacking.

2 Q. And so again, you met with Guillermo Palmer
3 like you did after the warnings in Exhibit 22B,
4 right? Met with him again?

5 A. Yes.

6 Q. And there is no writing indicating that you
7 meet with him and that he assures you that he's
8 complying with those, correct?

9 A. No. It was just a casual meeting.

10 Q. Did you forward your letter to -- your memo
11 to anyone else that was on the board at the Houston
12 Racquet Club?

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

14 Q. Or to Mr. Ted Erck, the president?

15 A. I don't recall doing so, no.

16 MR. PLETCHER: Oh, I know what it
17 means. Never mind.

18 MR. MARRS: I apologize for eating in
19 front of you.

20 THE WITNESS: Not at all.

21 Q. (BY MR. MARRS) Did the Houston Racquet Club
22 retain a public relations company?

23 A. Yes.

24 Q. Why?

25 A. I believe it was first advised that we look
0436

1 into it by the public relations person at Memorial
2 Hermann Hospital as a -- as a way to communicate
3 about the accident. We discussed it with our
4 attorneys and determined that it was a good path
5 forward.

6 Q. And let me show you Exhibit 51. Tell the
7 jury what that is.

8 MR. MARRS: Could you --

9 MR. PLETCHER: Hang on one second.

10 MR. SNYDER: Your colleague is getting
11 a little snippy over there.

12 Q. (BY MR. MARRS) Could you tell the jury what
13 that document is?

14 A. It's a document from Allen Caudle with
15 the -- with the public relations firm that we hired,
16 Vollmer is the name. They are requesting certain
17 information from us.

18 Q. Yes, sir.

19 A. So that they can assist us in drafting a
20 communication to a number of places, be it, our
21 membership or the community at large.

22 Q. And did you follow their advice?

23 A. Yes, we did.

24 Q. Did they assist you in drafting any portions
25 of any newsletters or anything on your web site to
0437

1 the membership?

2 A. If I can recall correctly, Vollmer was
3 ultimately retained by Wall & Associates and I can't

4 speak to any specifics of anything that they
5 generated for us.

6 Q. And one of the proposed responses by Vollmer
7 to a -- to a proposed question, which is Question 7
8 on Exhibit 51, "Is a four year old too young to
9 participate in your Summer Camp Program?"

10 And the proposed answer is, "No, our
11 program is designed for the safe enjoyment of
12 children age 4-12."

13 Did the Racquet Club tell anyone that
14 indeed your program was designed for the safe
15 enjoyment of children 4 to 12 after John Pluchinsky
16 died?

17 MR. SNYDER: Objection, form.

18 A. May I see the date on that --

19 Q. (BY MR. MARRS) Of course.

20 A. -- communication?

21 Q. Draft July 19, 2007.

22 A. No, I don't believe we did. I'm trying to
23 recall the exact sequence. At the point that those
24 responses were prepared, I'm not sure that we were
25 aware of the situation with the department of Family
0438

1 and Protective Services and that we were not in
2 compliance with the regulations. Otherwise, we
3 wouldn't have been talking about four-year olds.

4 Q. Did that statement, to your knowledge, ever
5 end up being communicated to the membership or anyone
6 else at the Houston Racquet Club after John
7 Pluchinsky died?

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

9 Q. Did the Houston Racquet Club fly its flag at
10 half mast in honor of John Pluchinsky?

11 A. Yes, we did.

12 Q. When?

13 A. I believe we put the flag at half mast
14 sometime over the weekend.

15 Q. Which would have been three or -- three or
16 four days after he passed away?

17 A. Yes.

18 Q. Why wasn't it done the very next day?

19 A. I don't know. I think -- I don't remember
20 who first suggested it.

21 Q. It was a member, wasn't it?

22 A. I don't recall.

23 Q. It was not Ted Erck, was it?

24 A. It may have been.
25 Q. Let me show you Exhibit Number 52, your
0439
1 notice of deposition on Page 4 of Exhibit 52.
2 MR. MARRS: 52?
3 MR. PLETCHER: 52B.
4 MR. MARRS: You don't have 52?
5 MR. PLETCHER: You have it marked
6 wrong, I think. This is it.
7 Q. (BY MR. MARRS) Did you see the notice of
8 deposition that asked that you be presented for
9 deposition or at least a corporate representative?
10 A. Yes.
11 Q. Okay. Did you see the one that was also
12 presented to yourself, Stephen Griffin?
13 A. Yes.
14 Q. Okay. And on page -- on the backside of
15 those two deposition notices are four items or four
16 categories of documents that you were being asked to
17 produce at your deposition, correct?
18 A. Yes.
19 Q. And Number 1, "Any and all relevant
20 photographs and/or diagrams." Are there any
21 photographs that you're aware of, of or relating to
22 the incident on July 18th or the surrounding pool
23 areas or the pool after July 18th that are relevant
24 to this case?
25 A. Before or after?
0440
1 MR. SNYDER: Objection, form.
2 A. Or just after?
3 Q. (BY MR. MARRS) After.
4 A. No.
5 Q. Or on July 18th?
6 A. No.
7 Q. Has anyone, to your knowledge, taken
8 photographs of the Houston Racquet Club family pool
9 after John Pluchinsky passed away?
10 A. I take that back. I did take photographs of
11 the existing signage at some point following John's
12 death --
13 Q. And --
14 A. -- as a matter of record.
15 Q. -- did you take some photographs of the
16 family pool as well?
17 A. I don't believe at that point, no.

18 Q. And aside from the signage, what else did
19 you take pictures of out there on that day?

20 A. That was what I went out there to get
21 pictures of.

22 Q. And when was that?

23 A. The phone, existing signage.

24 Q. The phone?

25 A. The emergency phone.

0441

1 Q. Okay.

2 A. The location of the emergency phone.

3 Q. Okay. And was that -- the emergency phone,
4 where it was supposed to be?

5 A. Yes.

6 Q. And could you supply those photographs to
7 your counsel to produce to us since they have not
8 been produced?

9 A. I thought I did prepare those for production
10 to counsel. I'm not sure. I'll have to look.

11 Q. Please do. Any other photographs that
12 you're aware of that anyone took of the family pool
13 area on or after this incident?

14 A. No, not specifically.

15 Q. How about nonspecifically?

16 A. No. Other than casual photographs that
17 somebody might have taken of the area, there was
18 nothing, nothing that we took.

19 Q. And are you aware of anyone taking casual
20 photographs of the family pool area after the
21 incident?

22 A. No. I think perhaps photographs were taken
23 by the ME the day of the incident, the police very
24 well may have.

25 Q. Well, have you seen any of those?

0442

1 A. No.

2 Q. Is the Racquet Club in possession of any of
3 those, to your knowledge?

4 A. No.

5 Q. Or copies of any of those?

6 A. No.

7 Q. And how about written -- excuse me. How
8 about any witness statements by any witness to the
9 incident or the surrounding circumstances, have all
10 of those been given to your counsel to your
11 knowledge?

12 A. Yes.

13 Q. And how about any other documents that
14 you're aware of that were being asked by the
15 Plaintiffs in this case to be produced, are you aware
16 of any that have not yet been provided by you or
17 someone at the Racquet Club to your lawyer?

18 A. Other than the ones that we identified
19 today, no.

20 Q. And how about documents -- What documents
21 did you review to prepare you for the deposition over
22 the last two days?

23 A. I reviewed the Texas Administrative Code,
24 looked at the e-mail complaints that have been
25 received.

0443

1 Q. Yes, sir.

2 A. Not much -- not much else, just basically to
3 prepare for some of the questions that I might
4 receive.

5 Q. Any other documents?

6 A. No, other than just to review some of my
7 notes.

8 Q. Let me show you what's been marked as
9 Exhibit 53. That is a document relating to insurance
10 coverage for the Houston Racquet Club, correct, sir?

11 A. Could it be enlarged, please?

12 Q. Of course. And it indicates coverage for
13 Each Occurrence Limit of **Privilege** is that
14 correct?

15 A. Yes. That's the excess coverage.

16 Q. Sure. And it -- Are there any other excess
17 policies that could potentially cover this matter
18 other than the one shown on Exhibit 53?

19 A. I don't believe so. We have **Privilege HRC Designation as Confidential**
20 as well.

21 Q. Through who?

22 A. This year, I think, it's **Privilege**. Last
23 year was through **Privilege**. I don't know the
24 complete name of the firm.

25 Q. Well, you would have a copy of that,

0444

1 correct?

2 A. Certainly.

3 Q. And could you also provide that to your
4 counsel so they can provide it to us?

5 A. Certainly.

6 Q. And how about your primary policy? Who is
7 it with?

8 A. I think that's with **Privilege HRC Designation as Confidential**

9 Q. And that would be a **Privilege**
10 policy or do you know?

11 A. Yes.

12 Q. And could you also provide that to your
13 counsel since we have not been provided with that?

14 A. Yes.

15 Q. And you believe it's through **Privilege HRC Designation as Confidential**

16 A. I would have to confirm that.

17 Q. Okay. I would appreciate it if we could
18 finally receive those.

19 Let me show you what's been marked as
20 Exhibit 55. This relates to the Harris County tax
21 appraisal district's valuation of the Houston Racquet
22 Club property; is that correct?

23 A. Yes.

24 Q. And what, to your knowledge, is the current
25 valuation placed on the Houston Racquet Club property

0445

1 as of tax year 2006?

2 A. I can -- I'm having a little trouble seeing
3 it, but I believe it's a **Privilege**

4 the land. Total value is **Privilege HRC Designation as Confidential**

5 Q. Now, there was a point in time when the

6 appraisal was actually in the range of **Privilege HRC Designation as Confidential**
7 correct?

8 A. That's correct.

9 Q. And that was when, 2004, 2005?

10 A. No. It was just this past year.

11 Q. Okay. Now, of course, we all know that
12 valuation placed by the appraisal district oftentimes
13 is much lower than fair market value, correct?

14 A. I can't speak to that. It's not my area.

15 Q. Well, did you have an MAE or a professional
16 appraiser appraise the Racquet Club property at any
17 time in the last four years?

18 A. Yes.

19 Q. And who was the appraisal that was hired?

20 A. I don't know. It was before I arrived. It
21 was, I think, in anticipation of the most recent
22 project. We also had an appraisal done for the
23 permanent financing that we -- that we received last
24 year.

25 Q. Right. And who performed that appraisal?

0446

1 A. I don't know the name of the firm.

2 Q. We would request that those -- any
3 appraisals of the Houston Racquet Club property in
4 the last five years be produced to us. And the --
5 any formal appraisals of the Houston Racquet Club
6 property in the last five years would certainly be
7 readily available for you to obtain a copy of,
8 correct?

9 A. I should be able to produce those, yes.

10 Q. I would appreciate if you do so and give
11 those to your lawyer as well. Thank you.

12 A. Certainly.

13 MR. MARRS: Could we take five
14 minutes?

15 VIDEOGRAPHER: Off the record. The
16 time is 5:29 p.m.

17 (Brief recess.)

18 VIDEOGRAPHER: Back on the record. The
19 time is 5:46 p.m.

20 MR. MARRS: Thank you, Ray.

21 Q. (BY MR. MARRS) Mr. Griffin, who is
22 responsible at the Houston Racquet Club for
23 maintaining the employee files, including Guillermo
24 Palmer's file?

25 A. The files are located in Joyce Healy's

0447

1 office, so she, I guess, is responsible for
2 maintaining them.

3 Q. Has Joyce Healy been responsible for
4 maintaining them for the past year?

5 A. Yes. She actually has a subordinate in her
6 office, who would handle the day-to-day.

7 Q. Which is who?

8 A. It was previously SUPV. Now
9 that's handled by Larry Cook.

10 MR. MARRS: I'm going to want to take
11 Ted Erck's deposition, too, just to let you know.

12 Q. (BY MR. MARRS) And in the Racquet Club's
13 full cooperation and participation in the
14 investigation launch by CPS and Family Protective
15 Services, did the Racquet Club provide them with the
16 June 11th HRCBM-B e-mail, the July 5th e-mail from
17 yourself to Guillermo Palmer, and the July 18th
18 e-mail from CM #1, Exhibits Number 20, 21 and
19 22?

20 A. I don't know. I don't think they were
21 specifically requested. I can't confirm it one way
22 or the other.

23 Q. Whether specifically requested or not, you
24 know that that was not provided to the CPS so that
25 they could fully investigate the knowledge of the

0448

1 club or the warnings that the club had as of the time
2 of John's death, correct?

3 MR. SNYDER: Objection, form.

4 A. They were not requested by CPS, and they
5 were not provided to them.

6 MR. MARRS: I adjourn the deposition
7 subject to obtaining the documents that I've
8 requested to determine whether or not we need to
9 continue the deposition of Mr. Griffin.

10 MR. SNYDER: Okay. And with the
11 understanding I'm not saying I agree or disagree, but
12 that's fine.

13 VIDEOGRAPHER: We're off the record.

14 Time is 5:48 p.m.

15 (Deposition recessed at 5:48 p.m.)

16 (Signature required.)

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0449

1 CHANGES AND SIGNATURE

2

3 WITNESS NAME: STEPHEN GRIFFIN

4 DATE OF DEPOSITION: FEBRUARY 28, 2008

5 PAGE/LINE CHANGE FROM/CHANGE TO REASON

6

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14 _____
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1
2 I, STEPHEN GRIFFIN, have read the foregoing
3 deposition and hereby affix my signature that same is
4 true and correct, except as noted above.

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STEPHEN GRIFFIN

THE STATE OF TEXAS)
COUNTY OF HARRIS)

Before me, _____, on this day
personally appeared _____, known to me (or
proved to me on the oath of _____ or
through _____) to be the person whose
name is subscribed to the foregoing instrument and
executed the same for the purposes and consideration
therein expressed.

Given under my hand and seal of office this
_____ day of _____, 2008.

Notary Public in and for
The State of Texas

23
24
25
0451

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 28, 2008
12 VOLUME 2

13 I, Sherry Hale, Certified Shorthand Reporter in and
for the State of Texas, hereby certify to the
14 following:
15 That the witness, STEPHEN GRIFFIN, was duly sworn by
the officer and that the transcript of the oral
16 deposition is a true record of the testimony given by
the witness;

17
That the deposition transcript was submitted on
18 _____, 2008, to the witness or to the attorney
for the witness for examination, signature, and
19 return to Sherry Hale Reporting & Associates, by
_____, 2008.

20
That the amount of time used by each party at the
21 deposition is as follows:

Mr. Scott D. Marrs - 4 Hours: 55 Minutes

22
23 That pursuant to information given to the deposition
officer at the time said testimony was taken, the

24 following includes all parties of record:

25

0452

1

FOR THE PLAINTIFFS:

2

Mr. Scott D. Marrs

Mr. Matthew G. Pletcher

3

Beirne, Maynard & Parsons, L.L.P.

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5

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6

FOR THE DEFENDANTS:

7

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10

Mr. Michael Branisa

Branisa & Zomcik, RC

11

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12

(713) 622-1199

(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 _____ day of

19

_____, 2008.

20

21

22

Sherry Hale

Texas CSR No. 6215

23

Expiration Date: 12/31/2008

Firm Registration No. 510

24

4545 Post Oak Place, Suite 350

Houston, Texas 77027
(713) 626-2629

25
0453

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

Sherry Hale
Texas CSR No. 6215
Expiration Date: 12/31/2008
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