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STATE OF NEW JERSEY  
COMMISSION OF INVESTIGATION

PUBLIC HEARING

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IN THE MATTER OF:

NEW-HOME CONSTRUCTION  
ISSUES FR#9-4

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State House Annex  
West State Street  
Trenton, New Jersey 08608  
October 12, 2004

B E F O R E:

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KATHRYN FLICKER, Commissioner  
JOSEPH R. MARINIELLO, JR., Commissioner  
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1                   COMMISSIONER SCHILLER: Good morning  
2                   and welcome to the Commission hearing. We have an  
3                   opening statement and then we'll call our first  
4                   witness.

5                   Today the State Commission of  
6                   Investigation opens a final round of public  
7                   hearings on systematic problems in virtually every  
8                   aspect of new-home construction. When we embarked  
9                   on this process last fall, I characterized the  
10                  issues before us in this investigation as among  
11                  the most troubling, complex and problematic ever  
12                  pursued by the SCI. It was not an overstatement.

13                  To date, we have compiled a detailed  
14                  and disturbing record. It is the record of a  
15                  system deeply flawed, a system openly vulnerable  
16                  to waste and abuse on many levels.

17                  We have heard from victimized  
18                  consumers from every corner of this state, people  
19                  who were led to believe that they were buying a  
20                  piece of the American dream -- new and habitable  
21                  places to live -- only to discover, too late, that  
22                  what they really had purchased was a nightmarish  
23                  extravaganza of shoddy workmanship. And then they  
24                  found little recourse to protect their legitimate  
25                  interests.

1                   We have heard sworn testimony and  
2                   seen documentary evidence of shoddy construction,  
3                   including code violations, in residential  
4                   developments, large and small. We have found  
5                   that, in many instances, government officials  
6                   charged with the responsibility and obligation to  
7                   conduct thorough inspections failed to do a proper  
8                   job.

9                   Moreover, those who try to do their  
10                  job are confronted with a system that, as  
11                  currently designed, puts a burden on inspectors to  
12                  act as quality control for builders who do not  
13                  perform to industry and code standards.

14                 We have revealed that, when it comes  
15                 to seeking effective ways to salvage and safeguard  
16                 their own interests, victimized homebuyers' pleas  
17                 have fallen on deaf ears. Take a close look at  
18                 what really matters in this system, and you will  
19                 find that terms like "consumer protection" and  
20                 "new-home warranty" often ring as hollow as  
21                 "quality control." And, just for the record,  
22                 complaints along these lines continue to reach our  
23                 offices.

24                 It has been the Commission's plan  
25                 and intention from day one to ensure that this

1 inquiry into new-home construction issues be  
2 comprehensive and impartial. Our objective is to  
3 hear from all sides, to work with everyone and  
4 every entity that has a direct stake in the  
5 important matters before us to improve the  
6 industries' products and government oversight for  
7 the future.

8 With that in mind, today and  
9 tomorrow we will call upon representatives of the  
10 residential building industry, as well as  
11 responsible officials in government, to answer a  
12 host of questions, to give their perspective on  
13 the difficult issues before us.

14 Please bear in mind as the testimony  
15 unfolds that we are here for the singular,  
16 dispassionate purpose of identifying what is wrong  
17 with the system so that we can recommend ways in  
18 which it can work better for the citizens of New  
19 Jersey. That is our goal. We are a fact-finding  
20 agency. We are not interested in casting  
21 aspersions or laying blame for blame's sake. The  
22 challenge ahead is to recommend and enact  
23 systematic reforms. That is what this exercise  
24 ultimately is all about, and it should be the  
25 paramount concern of each and every one of us as

1 we move ahead. That's because the simple truth of  
2 the matter is that people who buy new homes are  
3 entitled to have them built right the first time,  
4 period.

5 I will point out to you, and this is  
6 significant, that our investigation already has  
7 produced results. Elements of both the  
8 residential construction industry and the  
9 regulatory community in recent months have  
10 undertaken a number of salutary changes in  
11 response to our findings. It is a trend we  
12 applaud and encourage, and you will be hearing  
13 more about it as these proceedings go forward.

14 Please call the first witness.

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1 MS. GAAL: Thank you.

2 The first witnesses are Amy Campbell  
3 and James McAleer.

4 Thank you. You may be seated.  
5 Going to start first with Ms. Campbell.

6 EXAMINATION

7 BY MS. GAAL:

8 Q. May we have your name, please.

9 A. Amy Campbell.

10 Q. And how long have you been employed  
11 by the Commission?

12 A. Four years.

13 Q. What positions do you hold or have  
14 you held?

15 A. Special agent, investigative  
16 accountant.

17 Q. Have you been assigned to the  
18 new-home construction issues investigation  
19 virtually from its inception?

20 A. Yes, I have.

21 Q. And, Mr. McAleer, your name, please,  
22 for the record.

23 A. James T. McAleer.

24 Q. And how long have you been with the  
25 Commission?

1 A. Two years, ten months.

2 Q. Have you also been assigned to the  
3 new-home construction issues investigation?

4 A. Yes, since March of 2003.

5 Q. Has the Commission held prior  
6 hearings in which you've detailed various issues  
7 that have come to our attention during the course  
8 of the investigation?

9 A. Yes.

10 Q. When were the other hearings?

11 A. November 18th and 19th, 2003, and  
12 January 21st, 2004.

13 Q. Was our focus throughout this  
14 investigation on initial construction and not  
15 remediation efforts?

16 A. Yes. We believe it should be done  
17 right the first time with nothing but a cosmetic  
18 punch list to deal with -- left to deal with.

19 Q. Can you summarize some of the types  
20 of problems that the investigation has revealed?

21 A. Yes. Homes built with construction  
22 code defects, warranty issues, engineering issues,  
23 and builders with -- problems with builders  
24 defaulting on projects.

25 Q. Let's look at the governmental

1 level. What problems have occurred there?

2 A. Weaknesses with the regulatory  
3 system designed to oversee the builders and  
4 inspectors and minimum oversight over the private  
5 plan and the warranty plan.

6 Q. Minimum oversight over the builders  
7 in the private plan?

8 A. Yes.

9 Q. Now, what's the result of these  
10 various things that we've found?

11 A. Overall, a lack of consumer  
12 protection for the homeowner.

13 Q. By the way, has the Commission  
14 continued to receive complaints virtually on a  
15 daily basis?

16 A. Yes.

17 Q. Are the types of complaints we  
18 continue to receive similar to what we received in  
19 the past?

20 A. Yes, they are.

21 Q. How about the builders? Are they  
22 the same ones that have been involved in previous  
23 complaints?

24 A. Yes, but we have also identified  
25 some new ones, also.

1 Q. Since the last hearing, which was in  
2 January, has the Commission continued taking  
3 testimony regarding matters since our last  
4 hearing?

5 A. Yes. We have had 20 witnesses into  
6 the executive session since January.

7 Q. How about interviews and subpoenaing  
8 of records? Have we continued to do that?

9 A. Yes. 117 interviews since January  
10 and 35 subpoenas served.

11 Q. Can you give us an idea of how many  
12 new complaints we have actually investigated?

13 A. 215.

14 Q. And that's as a result of the  
15 hearings, probably?

16 A. Yes.

17 Q. How many field interviews have been  
18 conducted overall in this investigation?

19 A. 383.

20 Q. Investigative Accountant Campbell,  
21 did you review data and information related to the  
22 New Jersey New-Home Warranty program and have you  
23 previously testified about that program?

24 A. Yes, I have.

25 Q. And, to summarize your previous

1 testimony, did our investigation determine that,  
2 although a majority of the new-home construction  
3 builders have warranties through the state  
4 New-Home Warranty plan, which is run by the  
5 Department of Community Affairs, those builders  
6 represent only a small percentage of the total  
7 number of existing warranties?

8 A. Yes, that's correct.

9 Q. I'd like to have Exhibit NCI-249 put  
10 up.

11 If you can take a look at that  
12 exhibit, did you actually prepare it?

13 A. Yes, I did.

14 Q. And we used it earlier at a prior  
15 hearing?

16 A. Yes, we did. And, as you can see,  
17 although only a quarter of the builders are listed  
18 as being with the private plans, they are your  
19 larger and more mass producing builders, and they  
20 actually represent over three-quarters of the  
21 outstanding warranties in New Jersey.

22 Q. Turning to the question of  
23 oversight, what -- did our investigation also show  
24 that there is relatively little oversight by the  
25 State of New Jersey over that larger arena, both

1 the private plans?

2 A. Yes. Currently there is still only  
3 one individual responsible for that oversight and  
4 he has no fining capabilities over these builders  
5 for violation of DCA policy or the statute.

6 Q. That's talking about the private  
7 plans?

8 A. The private plans, yes.

9 Q. And did our follow-up information  
10 reveal that, in general, builders in the private  
11 plans are not sanctioned by the DCA?

12 A. Yes. While the Bureau of Homeowner  
13 Protection does require that the warranty  
14 providers notify the state when a builder leaves  
15 the warranty plan, there is no follow-through as  
16 to why that builder leaves that program, so, as  
17 such, they don't know whether it's a bad builder  
18 or it's a builder who just left the warranty plan.

19 Q. Is it a sort of don't-ask-don't-tell  
20 situation?

21 A. Yes, it is, and, as a result, there  
22 is no oversight or sanction that could take place  
23 there.

24 Q. Does the Bureau of Homeowner  
25 Protection penalize builders?

1           A.       Yes, but currently the statute only  
2 provides that they can penalize a builder for  
3 being unregistered, and that penalty is not to  
4 exceed \$2,000 per offense.

5           Q.       What option does the Bureau of  
6 Homeowner Protection have if they find a problem  
7 builder or a bad builder?

8           A.       They can suspend, deny or revoke  
9 their new builder registration. If they do this,  
10 then the builder can't build. And there is a  
11 couple scenarios under which that can occur. If a  
12 builder is grossly negligent in building, this can  
13 happen. If the builder willfully violates the UCC  
14 standards, this can happen, or, if there is a  
15 serious offense against the New Home Warranty  
16 Plan, that can happen.

17          Q.       And, as part of our investigation,  
18 did you take a look at builders' status, if you  
19 will, to see what had happened with respect to all  
20 the builders that have been registered over the  
21 years?

22          A.       Yes, and a large -- larger  
23 percentage of the builders in the state plan have  
24 been revoked than have been in the private plans.

25                   MS. GAAL: I'd like to have Exhibit

1 NCI-304 put up.

2 (Exhibit NCI-304 is marked for  
3 identification.)

4 BY MS. GAAL:

5 Q. Would you look, please, at that  
6 exhibit and can you tell me, first of all, did you  
7 prepare this?

8 A. Yes, I did.

9 Q. And what did you prepare it from?

10 A. I prepared it from the Department of  
11 Community Affairs, Bureau of Homeowner Protection  
12 builder database.

13 Q. What does it represent?

14 A. It represents the status of the over  
15 33,000 builders that have registered through the  
16 Bureau of Homeowner Protection.

17 Q. Is that since inception?

18 A. Yes, or since they began recording  
19 that on the computer.

20 Q. And what do you see there?

21 A. As such, you can see in the revoked  
22 column that 551 builders were revoked over this  
23 period of time, since inception, and 500 of those  
24 were with the state plan.

25 Q. So, most of the builders that have

1       been revoked were in the state plan?

2             A.       That's correct.

3             Q.       In fact, the vast majority, right?

4             A.       That's correct.

5             Q.       Have you seen a continuing pattern  
6       of problems which suggest that, under the current  
7       system, the homeowner remains greatly  
8       disadvantaged?

9             A.       Yes. The homeowner doesn't realize  
10       the intricacies or understand the intricacies of  
11       the New-Home Warranty plan until they are in the  
12       middle of filing a claim, but the builders and the  
13       warranty providers are well-versed in what  
14       constitutes a defect and what the timelines are.  
15       As such, the builders and the warranty providers  
16       seem to take advantage of having that power over  
17       the process.

18            Q.       Do some of those intricacies, to use  
19       your term, include builder lulling, the fact that  
20       notification to the builder is not considered  
21       notification to the warranty company, the burden  
22       of proof is on the homeowner and the warranty does  
23       not protect against code defects?

24            A.       Yes, they are some of the issues.

25            Q.       Just so that it's clear to everyone

1 here, and we've talked about it before, builder  
2 lulling is a term of art, is it not?

3 A. Yes, it is.

4 Q. And what does it mean?

5 A. What the builder does is he promises  
6 and promises to come back and fix that item that  
7 needs to be repaired until the day after the  
8 expiration date of that defect. Then you don't  
9 hear from your builder.

10 Q. And by then the deadline is passed?

11 A. The deadline is passed and you can  
12 no longer have the builder come -- he can always  
13 come and repair it, but he chooses not to.

14 Q. And you learned that term while you  
15 were investigating this matter, didn't you?

16 A. Yes.

17 Q. In the last hearing you discussed  
18 the role of the arbitrator and the arbitration  
19 service, is that correct?

20 A. That's correct.

21 The arbitrator meets with the  
22 builder and the homeowner, sets down the rules of  
23 the arbitration, and tells the homeowner or the  
24 builder, "Show me there is a defect or show me  
25 that there isn't a defect." And most arbitrators

1 are paid a flat fee per arbitration, so, the less  
2 time spent on an arbitration, the more beneficial  
3 it is to that arbitrator.

4 Q. Through our continued investigation  
5 have you come to learn of additional problems  
6 plaguing the New-Home Warranty program?

7 A. Yes, and they are in the areas of  
8 the arbitration process, the warranty provider  
9 area, and the insurer process.

10 Q. Now, there was testimony in our  
11 previous hearing regarding undisclosed arbitrator  
12 conflict of interest and unqualified arbitrators  
13 performing arbitrations?

14 A. Yes, and this pattern seems to be  
15 evident not only in New Jersey, but across the  
16 United States.

17 Q. Could you give us an example of  
18 that, or some examples?

19 A. In one case a homeowner learned from  
20 his neighbor that an arbitration could not take  
21 place for the neighbor because the arbitrator  
22 advised him that he had a conflict with the  
23 builder. When that same homeowner requested  
24 arbitration he received the same arbitrator, the  
25 same builder, and no conflict issue was raised.

1 Q. Is this a New Jersey homeowner?

2 A. Yes, it is.

3 Q. And did that homeowner notify the  
4 Department of Community Affairs?

5 A. Yes. As a result of him knowing of  
6 this conflict, he decided not to arbitrate and,  
7 when he notified the Department of Community  
8 Affairs of the problem, he was told that it didn't  
9 matter whether there was a conflict, because he  
10 wasn't going to arbitrate.

11 Q. How about other situations? Can you  
12 give us another example?

13 A. Yes. In another New Jersey  
14 homeowner's case the homeowner was up against  
15 actually the warranty provider, and what happened  
16 there was a warranty provider pretty much ran the  
17 arbitration and the arbitrator pretty much  
18 cow-tailed to the warranty provider.

19 Q. Since our public hearings, have you  
20 received information from homeowners in other  
21 states about the arbitration process?

22 A. Yes. In many states arbitration is  
23 mandatory, and we learned of a CAS arbitrator who  
24 actually has a business of providing materials and  
25 training sessions to builders on how to run a

1 successful arbitration. This arbitrator further  
2 recommends the use of CAS for arbitrations.

3 Q. Now, CAS, is that Construction  
4 Arbitration Services?

5 A. Yes, it is.

6 Q. During previous testimony regarding  
7 CAS, it was revealed that they weren't registered  
8 through the State -- New Jersey's Secretary of  
9 State's office or with the Division of Taxation as  
10 doing business in the state, is that correct?

11 A. That's correct.

12 Q. In addition, they were performing  
13 both informal inspections and arbitrations for at  
14 least one warranty company here, is that right?

15 A. That's right.

16 Q. Has our investigation revealed  
17 additional information regarding CAS?

18 A. Yes. We've learned that on their  
19 website false information was posted about at  
20 least one of the principals of the company.

21 Q. Can you elaborate on that a little  
22 bit more?

23 A. Yes. Marshall Lippman is an owner  
24 of CAS, or until recently was an owner of CAS, and  
25 served as general counsel for the company.

1 Lippman asserted that he had served the council  
2 staff of the American Arbitration Association and  
3 he also asserted that he was a dean of the New  
4 York University Law School.

5 Q. Did you speak with representatives  
6 from the personnel department of the American  
7 Arbitration Association?

8 A. Yes, and they advised me that they  
9 have no record of Lippman serving on the council's  
10 staff for at least the last 30 years and, in  
11 addition, the personnel department of New York  
12 University Law School says they have no record of  
13 him as a dean.

14 Q. Did you also discover that there  
15 appears to be a problem with Mr. Lippman's  
16 professional status?

17 A. Yes. Marshal Lippman was disbarred  
18 as an attorney in both New York and Washington,  
19 D.C.

20 Q. And the reasons for his disbarment?

21 A. Misappropriation of client funds,  
22 failure to cooperate with a disciplinary  
23 investigation, conduct involving fraud and deceit,  
24 knowingly made false statements to his clients and  
25 he neglected legal matters.

1           Q.       Is he located outside the State of  
2 New Jersey?

3           A.       Yes.

4           Q.       And has the Commission tried several  
5 times, including as recently as within the last  
6 two weeks, to get him in?

7           A.       Yes. Mr. Lippman declined to come  
8 in.

9           Q.       And did the Commission request  
10 documents from CAS regarding arbitration activity  
11 in New Jersey?

12          A.       Yes, we did.

13          Q.       And did we find inconsistencies,  
14 let's say -- quote, unquote, inconsistencies  
15 within the documents we received?

16          A.       Yes. CAS advised us that certain  
17 documents either did not exist or were not  
18 available to us. However, after we subpoenaed  
19 individual arbitrators, CAS contacted us and  
20 provided those documents to us.

21          Q.       The ones they previously said  
22 weren't available?

23          A.       Or didn't exist.

24          Q.       Or didn't exist?

25          A.       Um-hum.

1 Q. Was there any issue discovered  
2 related to conflict of interest? Arbitrator  
3 conflict?

4 A. Yes. At least one arbitrator  
5 conflict that we had mentioned in a prior hearing  
6 that CAS was aware of, they still have not  
7 provided paperwork on file that they are aware of  
8 that conflict.

9 Q. Now, based on what has been  
10 provided, does CAS appear to responsibly monitor  
11 the issue of conflicts?

12 A. Based on the information that they  
13 have provided, no.

14 Q. And have you learned of problems  
15 regarding the home-buyers warranty -- one of New  
16 Jersey's approved New-Home Warranty providers?

17 A. Yes. The State of Colorado is  
18 ordering -- the Commissioner of Insurance out  
19 there is ordering an inquiry into one of the  
20 providers. 210 Homebuyers Warranty.

21 Q. Was that inquiry driven by  
22 complaints received from a consumer advocate  
23 called the Public Citizen?

24 A. Yes. The Public Citizen asserts  
25 that builders are shielded from liability through

1 or by this arbitration process, and that is  
2 consistent with what our findings are.

3 Q. How many complaints have been lodged  
4 against that company with the Colorado Better  
5 Business Bureau?

6 A. In the last year, over a hundred.

7 Q. Based on what we see, does it appear  
8 that builders are trying to actually manipulate  
9 New Jersey's system so that the homeowners are  
10 even more vulnerable, much the way they are in  
11 other states?

12 A. Yes. In some states homeowners are  
13 mandated to arbitrate. In New Jersey they have a  
14 choice. They can sue or they can go to  
15 arbitration. One builder has tried to circumvent  
16 this process by instituting mandatory arbitration  
17 clauses in the homeowners' closing papers.

18 Q. And is that something we learned  
19 recently -- fairly recently?

20 A. Yes.

21 Q. Have we also seen other manipulation  
22 of the arbitration process?

23 A. Yes. Warranty providers and  
24 arbitration services have allowed homeowners to go  
25 to arbitration on defects that are beyond the

1 timeline for expiration.

2 Q. And what's the impact of that? How  
3 does it affect the homeowner?

4 A. Well, the arbitration is held and,  
5 of course, the homeowner loses all those defects  
6 because they are beyond the warranty period, and  
7 now the homeowner is precluded from suing them in  
8 court.

9 Q. Because he went to arbitration on  
10 defects that weren't covered anyway?

11 A. Yes.

12 Q. Has our investigation revealed other  
13 patterns of questionable activity as it relates to  
14 insurers, specifically Residential Warranty  
15 Company and NHIC?

16 A. Yes. There seems to be a pattern of  
17 obtaining local estimates from contractors who are  
18 not ready, willing and able to perform those  
19 repairs, and this low ball estimate is used to try  
20 and negotiate a settlement with the homeowner.

21 Q. So, are you saying that contractors  
22 are paid by Residential Warranty Corporation  
23 and/or NHIC, they come in and provide a low  
24 estimate for work that they never intend to do?

25 A. Yes, but the basis of that estimate

1 is to try to get the homeowner to settle for that  
2 lower figure.

3 Q. So that estimate is then used in the  
4 negotiations with the homeowners?

5 A. Yes.

6 Q. The homeowner has no idea about all  
7 this when they reach a settlement?

8 A. Well, some homeowners have obtained  
9 estimates, but of course they are sizably larger,  
10 but the warranty company tries to stay with their  
11 low estimate.

12 MS. GAAL: I'd like to have Exhibit  
13 NCI-305 put up.

14 (Exhibit NCI-305 is marked for  
15 identification.)

16 BY MS. GAAL:

17 Q. Have we also just recently seen a  
18 new warranty promotion by a warranty provider or  
19 warranty providers?

20 A. Yes. In this case, the exhibit  
21 that's here is Professional Warranty Service  
22 Corporation, one of our warranty providers,  
23 providing yet additional homeowner protection.  
24 Although we are not really sure what it's about  
25 because they discuss the manufacturers warranties

1 as being expired coverage and in other cases it  
2 talks about your homeowner protection or your home  
3 warranty.

4 So we are not sure what it covers at  
5 this point.

6 Q. All of this is offered to the  
7 homeowner at an additional expense to the  
8 homeowner?

9 A. Yes. The basic coverage is \$238.50  
10 and you can get the supreme coverage for \$343.44.

11 Q. Does it tell you what is covered  
12 with the supreme coverage?

13 A. Not specifically, although there are  
14 some highlights, "What will your new warranty  
15 cover?" And some of them are central heating  
16 system, air conditioning, hot water heater and so  
17 on.

18 Q. Does the exhibit tell you something  
19 about the relationship between Professional  
20 Warranty Service Corporation and the 210  
21 Homebuyers Warranty?

22 A. Yes. If you look at the notice up  
23 there, the actual coverage says it comes from  
24 Professional Warranty Service Corporation, but, in  
25 lower right-hand corner of one of the forms, it

1 actually tells you that another warranty provider,  
2 210 Homebuyers Warranty, is going to be the one  
3 providing the coverage.

4 Q. And that suggests some type of  
5 affiliation?

6 A. An affiliation that the homeowners  
7 probably weren't previously aware of.

8 Q. What do you also notice about the  
9 address listed for Professional Warranty Services  
10 Corporation?

11 A. Well, on this notice, Professional  
12 Warranty is listed as 2675 South Abilene Street in  
13 Aurora, Colorado. That happens to be the address  
14 of 210 Homebuyers Warranty, as well as the  
15 insurer, National Home Insurance Company, and  
16 National Home Insurance Company is the insurer for  
17 both 210 Homebuyers Warranty and Residential  
18 Warranty Corporation.

19 Q. What's a -- in a nutshell, what is a  
20 risk retention group?

21 A. A risk retention group is owned by  
22 its member builders and, in this case -- or owned  
23 by its members and, in this case, the builders, so  
24 what we have here is we have one big happy family  
25 of the builders, the warranty providers and the

1 insurers collecting a profit while the homeowner  
2 is left out in the cold broke.

3 Q. Just so we are clear, are 210  
4 Homebuyers Warranty and Residential Warranty  
5 Company both risk retention groups?

6 A. Yes, they are.

7 Q. Special Agent McAleer, based on what  
8 we've seen in our investigation, would you say  
9 that the problems that we've talked about in the  
10 past are continuing?

11 A. Based on our investigation, I would  
12 say, yes, but you have to keep in mind it takes  
13 both sides of the equation to root out any  
14 problems. If one side is performing their duties,  
15 it may be okay to -- but it would increase risk  
16 problems. For instance, if you have a shoddy  
17 builder and a good inspector, things may be all  
18 right. If you have a quality builder, you may not  
19 need an inspector.

20 When both sides don't perform, and  
21 we have seen this many times, that is -- usually  
22 causes many problems.

23 Q. Are you saying that, if both sides,  
24 meaning the builders and the inspectors, do not  
25 perform, you can pretty much guarantee a problem

1 for the homebuyer?

2 A. Yes.

3 Q. Investigative Accountant Campbell,  
4 one last question from me. Can you give us some  
5 idea of how many homes have come to our attention,  
6 to the Commission's attention, during the course  
7 of this investigation -- how many homes that are  
8 in the either warranty problem side or the home  
9 defect side, code side? Just give us a ballpark  
10 of how many actual homes we've become aware of.

11 A. To be conservative on that, it's  
12 well over 3,000 homes that have come to our  
13 attention, and that number is changing every day.

14 Q. And Special Agent McAleer, have we  
15 seen many good inspectors out there?

16 A. Yes.

17 MS. GAAL: That's all I have. Mr.  
18 Chair?

19 COMMISSIONER SCHILLER: Thank you.  
20 Ms. Flicker?

21 COMMISSIONER FLICKER: Agent  
22 Campbell or Agent McAleer, toss up. Since  
23 January, how many complaints have you fielded and  
24 have you gone out and actually inspected those  
25 complaints?

1                   MR. McALEER: I believe it's 117  
2                   complaints since January, and we have gone out and  
3                   interviewed -- many complainants have called in  
4                   since that time.

5                   COMMISSIONER FLICKER: Why do you  
6                   think we are hearing from homeowners in other  
7                   states?

8                   MS. CAMPBELL: Because the issues  
9                   related to the problems in the warranty program  
10                  and the insurance end of that, the payments and  
11                  settlements, go well beyond the State of new  
12                  Jersey. There is issues all across the country.

13                  COMMISSIONER FLICKER: Let me talk  
14                  for a second about the warranty issues. You  
15                  talked about builder lulling. Was that a common  
16                  thread both in New Jersey and other states?

17                  MS. CAMPBELL: Yes.

18                  COMMISSIONER FLICKER: You also  
19                  talked about one homeowner -- or, excuse me, one  
20                  company since January that you became aware of  
21                  that actually tried to write into its contract the  
22                  fact that the homeowner had to arbitrate?

23                  MS. CAMPBELL: Yes. That's here in  
24                  New Jersey.

25                  COMMISSIONER FLICKER: That's New

1 Jersey.

2 Do -- have you seen that some  
3 homeowners lose their ability to litigate under  
4 the warranty plans, but still don't get  
5 satisfaction from the Homeowner Warranty program?

6 THE WITNESS: Yes, that's one of the  
7 big deficiencies in the program, is there is no  
8 satisfaction either way.

9 COMMISSIONER FLICKER: Does that  
10 seem to be a common thread throughout all the  
11 complaints you are getting both in this state and  
12 other states?

13 MS. CAMPBELL: Yes, because, those  
14 that are required to -- in the other states where  
15 they are required to arbitrate, there is no  
16 satisfaction on that end, either, as far as the  
17 results and the follow-through.

18 COMMISSIONER FLICKER: And what have  
19 you learned about homeowner's -- generally --  
20 understanding of the Homeowner Warranty program?  
21 Would you say most homeowners understand it or  
22 don't understand it, to begin with?

23 MS. CAMPBELL: Most don't understand  
24 it, to begin with, and they are overwhelmed by it  
25 when they are in the middle of it.

1                   COMMISSIONER FLICKER:  And do you  
2                   think, from what you've learned, that the  
3                   limitations, in terms of the term of years, is  
4                   reasonable on the various defects that are covered  
5                   under the warranty program?

6                   MS. CAMPBELL:  I think that several  
7                   items have to be re-evaluated and their time  
8                   periods for expiration extended.

9                   COMMISSIONER FLICKER:  And where do  
10                  you see most of these complaints coming from the  
11                  homeowner warranty area?  In the private plan or  
12                  the state plan?

13                  MS. CAMPBELL:  Most complaints we  
14                  have received have come from that larger area of  
15                  warranties in the private plan.  However, there  
16                  have been state plan complaints that have valid  
17                  issues.

18                  COMMISSIONER FLICKER:  So, as I  
19                  understand it, the state plan has more builders,  
20                  but fewer homes?

21                  MS. CAMPBELL:  Yes.

22                  COMMISSIONER FLICKER:  So the  
23                  private plan has fewer builders, but many, many  
24                  more homes?

25                  MS. CAMPBELL:  That's correct.

1                   COMMISSIONER FLICKER: They are the  
2 bigger builders, the ones who have the large  
3 complexes?

4                   MS. CAMPBELL: Yes.

5                   COMMISSIONER FLICKER: And they are  
6 the ones that are less regulated?

7                   MS. CAMPBELL: Absolutely.

8                   COMMISSIONER FLICKER: Thank you  
9 very much.

10                  COMMISSIONER MARINIELLO: A couple  
11 follow-ups. Talking about the arbitration, Ms.  
12 Campbell, and how it works, what are the  
13 arbitrators paid? You said they were typically  
14 paid a flat fee. Do you know how much it is?

15                  MS. CAMPBELL: If I remember, I  
16 think that came out from the last hearing. I  
17 think it's something like 125 or -- it's only low  
18 hundreds per case.

19                  COMMISSIONER MARINIELLO: My  
20 recollection was that they were paid that no  
21 matter how many complaints there were on the  
22 individual home that they were looking at. Is  
23 that also your recollection?

24                  MS. CAMPBELL: Yes. Generally, the  
25 complexity of the case did not dictate the amount

1 of fee they received.

2 COMMISSIONER MARINIELLO: So, if a  
3 homeowner's got five arbitratable issues or 75,  
4 the arbitrator is basically going to be paid the  
5 same rate?

6 MS. CAMPBELL: Yes. I think they  
7 got a little additional money for mileage, but  
8 that's about it, if they had to drive there.

9 COMMISSIONER MARINIELLO: Who pays  
10 the fees of the arbitrator?

11 MS. CAMPBELL: Well, the arbitration  
12 service pays the arbitrator, but I believe the  
13 warranty provider pays the arbitration service.

14 COMMISSIONER MARINIELLO: Now, I  
15 wanted to key on one other thing that you talked  
16 about. In many states you talked about how they  
17 only had arbitration -- the homeowner only has  
18 arbitration available to it. Does the fact that  
19 in this state they have the option to sue -- it  
20 seems to me, from what I'm hearing, that that  
21 serves to confuse the homeowner even more. That  
22 they have to keep track of two sets of timelines,  
23 the timelines that the warranty provides and then  
24 also the timelines that will be set by a statute  
25 of limitations to sue a builder outside of the

1 warranty program.

2 Do you get a sense that that  
3 confusion has been the cause of some of the  
4 problems that some of the homeowners have had?

5 MS. CAMPBELL: I think the  
6 homeowners are just confused because they thought  
7 that the warranty program was a very simple, easy  
8 process to follow and the information would be  
9 laid out very simply and easily for them to follow  
10 and, in fact, that's not the case at all.

11 COMMISSIONER MARINIELLO: All right.  
12 I don't have anything further, Mr. Chair.

13 COMMISSIONER SCHILLER: Ms.  
14 Campbell, you were talking about the private plan  
15 and a number of builders that are in that and  
16 mostly that the private plan is the insurer for  
17 the larger builders in the state. Have you found  
18 any linkage between the ownership of the insurance  
19 companies and/or the risk insurers and the actual  
20 builders, such as the large builders?

21 MS. CAMPBELL: At this point we know  
22 that the builders are members of the risk  
23 retention groups. Directly -- there are other  
24 areas of linkage between the providers and maybe  
25 the insurance companies, but directly -- I have no

1 direct link between a particular builder and an  
2 insurance group, other than being a member of the  
3 risk retention group.

4 COMMISSIONER SCHILLER: When they  
5 are members of the risk retention group, do they  
6 actually control the system then? The builders?

7 MS. CAMPBELL: The risk retention  
8 group -- the builders are members of the group,  
9 the group operates the business that provides the  
10 warranty coverage and then they have -- the  
11 insurer pays out the claims in the end.

12 COMMISSIONER SCHILLER: So,  
13 basically, they are collecting insurance money and  
14 making sure -- they can very easily make sure that  
15 there are no claims that exceed the claims against  
16 them, in terms of the insurance company?

17 MS. CAMPBELL: There is certainly an  
18 opportunity to control that process to some  
19 extent.

20 COMMISSIONER SCHILLER: So, it would  
21 be a deficiency of the system that was intended  
22 really to protect the homeowners and really  
23 doesn't do that? What it really does is protect  
24 the builders from claims?

25 MS. CAMPBELL: Yes.

1                   COMMISSIONER SCHILLER: Thank you.

2                   I have no further questions.

3                   COMMISSIONER EDWARDS: If I could  
4                   sum up what you said, and see if you concur with  
5                   this, we looked at the State Homeowner Warranty  
6                   Program and it fundamentally is flawed, also. The  
7                   private program is a national program generally,  
8                   and run in multiple states, on behalf -- for  
9                   larger builders that is merely a vehicle to limit  
10                  liability on behalf of builders.

11                  My understanding of the law is that  
12                  the Uniform Commercial Code requires certain  
13                  guarantees for having the builder use quality  
14                  workmanship, and then when you buy a warranty or  
15                  someone gives you a warranty, that warranty, in  
16                  writing, limits a statutory warranty that you  
17                  already have. So, when people start selling a  
18                  warranty program to anyone, it could be for a  
19                  tire, it could be for -- or a house, that you are  
20                  modifying a guaranteed warranty that exists by  
21                  statute, and that this program is no different and  
22                  it, in fact, has gone further than most warranties  
23                  in eliminating almost the capacity for an  
24                  individual who is aggrieved in the process to wind  
25                  it's way through the private warranty program in a

1 way that does -- that has almost any satisfactory  
2 results.

3 That is not only here in New Jersey,  
4 but it exists in other jurisdictions. So it's the  
5 warranty companies who are selling the insurance,  
6 the arbitrators are making money and running a  
7 business at a profit, not delivering any  
8 guarantees to homeowners, and the builders are  
9 using that as a vehicle to limit their exposure  
10 after they have closed the transaction and have  
11 developed a system by which they can not only beat  
12 the system through the warranty program, but  
13 prevent a successful litigation by limiting the  
14 choices a builder makes -- a homeowner makes in  
15 that particular circumstance. That seems to be  
16 the pattern that I've seen laid out.

17 And that the private sector has  
18 managed to -- to protect itself at the expense of  
19 those builders who -- or those individuals who do  
20 shoddy construction or improper or -- or  
21 unprofessional work. Is that kind of an accurate  
22 setup? That just doesn't exist here in New  
23 Jersey; it exists really in other jurisdictions  
24 across this country?

25 MS. CAMPBELL: Yes. I think

1       because -- in the absence of accountability and  
2       controls over that whole process, it has become a  
3       method of builders becoming shielded from  
4       liability.

5                       COMMISSIONER EDWARDS:   Okay.  Thank  
6       you.

7                       COMMISSIONER SCHILLER:  We have no  
8       further questions.

9                       MS. GAAL:  Mr. Chair, the next  
10       witness is going to appear by previously recorded  
11       videotape, and that was done to protect the  
12       witness's identity, because the witness is active  
13       in the building community in this state.

14                      So, with that, I'll ask to have the  
15       tape begin.  Could we have the lights off.

16                      (Exhibit NCI-317 is marked for  
17       identification.)

18                      (Tape played.  10:27 a.m.)

19                      (End of tape.  10:57 a.m.)

20

21

22

23

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25

1                   MR. FLANAGAN: The next witness will  
2 be Agent Kuyl.

3 EXAMINATION

4 BY MR. FLANAGAN:

5                   Q.       Would you please state your name for  
6 the record, sir.

7                   A.       Special Agent Charles August Kuyl.

8                   Q.       By whom are you employed?

9                   A.       New Jersey State Commission of  
10 Investigation.

11                  Q.       And for how long?

12                  A.       Be coming upon my fifth anniversary  
13 beginning of November.

14                  Q.       Were you assigned to investigate  
15 complaints the Commission received about Allaire  
16 Country Club Estates and Martin Road Estates?

17                  A.       Yes, sir.

18                  Q.       Where are these developments  
19 located?

20                  A.       Both of these developments are  
21 located in Wall Township, Monmouth County, State  
22 of New Jersey.

23                  Q.       Who was responsible for constructing  
24 Allaire Country Club Estates?

25                  A.       Victor at Allaire.

1           Q.       Does this company operate under  
2 different names?

3           A.       Yes, sir, they do. Under other  
4 names, either subsidiaries or holding companies,  
5 they go under the names of Victor at Allaire,  
6 Victor Homes, Victor Building & Construction,  
7 Martin Road Developers and Victor Real Estate.

8           Q.       And what names does the company  
9 currently operate under?

10          A.       Victor Seven, Incorporated.

11          Q.       Who are the principals of Victor  
12 Seven?

13          A.       The principals of Victor Seven,  
14 Incorporated are Mosche Schuster and his wife,  
15 Chava.

16          Q.       Do these individuals, do you know,  
17 reside in the United States at this point?

18          A.       Well, they are Israeli citizens and  
19 they reside permanently in Israel.

20          Q.       Who operates the company in the  
21 Schusters absence?

22          A.       Presently it's Mr. Ran Korolik, who  
23 is the vice-president of Victor Seven,  
24 Incorporated. During the time of the construction  
25 of Victor at Allaire, he was controller.

1           Q.       Directing your attention to Allaire  
2 Country Club Estates. Who oversaw the  
3 construction of this development?

4           A.       Initially the person overseeing  
5 Allaire Country Club Estates was identified as Eli  
6 Kornberg, who was the vice-president and project  
7 manager during the duration of the whole  
8 construction.

9           Q.       And who did he report to?

10          A.       Reported directly to Mosche  
11 Schuster.

12          Q.       When did the construction of Allaire  
13 Country Club Estates begin?

14          A.       Originally, construction at Allaire  
15 Country Club Estates occurred during the 1980s by  
16 another contractor. However, he underwent  
17 financial -- had financial problems and  
18 subsequently Victor purchased the property from  
19 Resolution Trust Corporation sometime during 1995,  
20 1996, and they were responsible for completing  
21 Phase 1 and fully completing Phases 2, 3 and 4.

22          Q.       Can you describe what Allaire  
23 Country Club Estates development consists of?

24          A.       Yes, sir. Allaire Country Club  
25 Estates consists of approximately 460 condominium

1 slash townhouse units, constructed on  
2 approximately 90 acres of property. Construction  
3 began sometime in 1996 and ended during the latter  
4 part of '99, beginning of 2000.

5 Q. During your investigation, what  
6 types of problems did you find exist at Allaire  
7 Country Club Estates?

8 A. There was a number of problems which  
9 were identified which involved foundations,  
10 grading, roofs, trusses, handicap ramps,  
11 staircases, decks and firewalls.

12 Q. Did you determine whether there was  
13 a continuing problem with drainage issues?

14 A. Yes, sir. On a continuing basis, up  
15 until presently, there is a serious problem  
16 regarding drainage. On rainy days homeowners have  
17 experienced knee-deep water running through their  
18 properties, and this water would then enter into  
19 their basements through glass sliding doors.

20 Q. Was there a problem with the  
21 construction of the sliding doors?

22 A. Yes, sir. The glass siding doors  
23 were not noted on the blueprints that were  
24 submitted to the township, but they were built  
25 into the foundations below grade or grade level,

1 causing water to infiltrate easily into the  
2 basements.

3 Q. Were there also problems discovered  
4 about the construction of the foundation?

5 A. Yes, sir. When a contractor was  
6 hired to conduct repairs, digging up some of the  
7 land around the houses, he noted that a number of  
8 the foundations did not contain tar, construction  
9 tar.

10 Q. Were some of the basements also  
11 constructed below grade? Constructed -- basement  
12 windows?

13 A. Yes, sir, a number of the basement  
14 windows were constructed below grade, some even  
15 covered, causing water to infiltrate into the  
16 basements.

17 Q. Did you discover any problems with  
18 the downspouts?

19 A. Yes, sir. Downspouts leading to the  
20 drainage pipes that were sent underground were  
21 crushed. Some pipes, instead of being connected  
22 to the retention basins, were merely buried into  
23 the ground, causing the water to back up. On  
24 heavy concentrated rainy days it was reported that  
25 geysers formed, sending streams of water back up

1 into the air and flooding the homes.

2 Q. As a result, have sinkholes  
3 developed in the development?

4 A. Yes, sir. I became aware, through  
5 my investigation, that a number of pipes that were  
6 hooked up to the various catch basins were not  
7 capped. The failure to cap these pipes caused  
8 those sinkholes to begin and also to crack up  
9 various concrete slabs in that general particular  
10 vicinity.

11 Q. Did you also discover that some of  
12 the downspouts were illegally hooked up to the  
13 sanitary sewer system?

14 A. Yes. I also learned that seven of  
15 the buildings which contained downspouts were  
16 illegally hooked up to the sanitary sewerage  
17 system. This illegal hookup caused flooding at  
18 two of Wall Township's pump stations, due to the  
19 excess runoff of water coming from Allaire Country  
20 Club Estates. We have also have sworn testimony  
21 from witnesses who hooked them up.

22 Q. Can we have Exhibit NCI-267g,  
23 please?

24 A. This photograph depicts a  
25 deteriorating staircase that is common among

1 approximately 188 residences. What happened here  
2 resulted from poor workmanship. The staircases  
3 were also -- if you look up at the top corner,  
4 were partially constructed over the vinyl siding,  
5 which, on rainy days, caused water to penetrate  
6 through the crevices, work their way into cracks  
7 and crevices within the interior of the  
8 staircases, and on winter days, when water would  
9 freeze, it would expand, causing more cracks and,  
10 over a period of time, the staircases started  
11 collapsing.

12 Q. What did you learn about the  
13 concrete used on the stairs?

14 A. One of the contractors that was  
15 hired to come in by the homeowners association  
16 indicated that -- in his opinion, that there was  
17 too much sand mixed in with the concrete. This  
18 caused the concrete not to bond properly and,  
19 thus, over, you know, weather conditions, et  
20 cetera, it broke apart really, causing cracks,  
21 causing more damage.

22 Q. What did you learn about the  
23 distances between the steps, themselves?

24 A. Significant differences.

25 Q. Is this significant difference in

1 the heights between the steps an obvious code  
2 violation?

3 A. Yes, sir, it is.

4 MR. FLANAGAN: Can I have Exhibit  
5 NCI-299, please?

6 (Exhibit NCI-299 is marked for  
7 identification.)

8 BY MR. FLANAGAN:

9 Q. Can you indicate what this  
10 photograph depicts?

11 A. Yes, sir. This is a recent  
12 photograph, just recently taken, where a homeowner  
13 was exiting the front entrance of her townhouse  
14 and walked upon a collapsed staircase.

15 MR. FLANAGAN: Can I have Exhibit  
16 NCI-300, please?

17 (Exhibit NCI-300 is marked for  
18 identification.)

19 BY MR. FLANAGAN:

20 Q. Can you indicate what that  
21 photograph depicts?

22 A. Yes, sir. This is a handicap ramp  
23 which is obviously not flush with the walkway.  
24 They have problems throughout the development  
25 regarding these particular ramps. When these

1 ramps were constructed into the foundations, what  
2 had happened was all they did was they applied a  
3 piece of plywood onto the ground, put mesh on top  
4 of the plywood and then poured concrete over it  
5 and, due to the drainage situations and the  
6 plywood touching ground, caused erosions,  
7 deterioration, and a number of these handicap  
8 ramps broke apart.

9 MR. FLANAGAN: Can I have Exhibit  
10 NCI-301, please?

11 (Exhibit NCI-301 is marked for  
12 identification.)

13 BY MR. FLANAGAN:

14 Q. Can you tell us what this photograph  
15 depicts?

16 A. Yes, sir. When you look at the  
17 photograph, you look at the siding and then you  
18 look at where the ground touches the foundation,  
19 it looks like it's a proper concrete foundation  
20 wall. However, this structure -- apparently they  
21 poured the concrete walls too short, so, in order  
22 to substitute, they just slapped a piece of  
23 plywood up against the building and put a skim  
24 coating of concrete over it to make it look like a  
25 regular concrete wall.

1 MR. FLANAGAN: Can I have Exhibit  
2 NCI-302, please?

3 (Exhibit NCI-302 is marked for  
4 identification.)

5 THE WITNESS: Naturally, this  
6 photograph is of a deck. There is approximately  
7 400 plus of these decks spread out through Allaire  
8 Country Club Estates. Take a closer look at the  
9 deck, the deck supports are undersize. The  
10 blueprints require three upper supports. There is  
11 only two there, and, quite frankly, these decks  
12 weren't properly secured with bolts, creating a  
13 safety hazard.

14 BY MR. FLANAGAN:

15 Q. Were any Notice of Violations ever  
16 issued?

17 A. Yes, sir. Notices of Violations in  
18 regards to that deck was issued in November of  
19 2003, many years after Certificate of Occupancies  
20 were issued.

21 Q. Did you personally go out to the  
22 site to confirm this information?

23 A. Yes, sir, I did.

24 Q. Did you discover any problems --  
25 construction problems with regard to the roofs?

1           A.       Yes, sir. Firewalls do not extend  
2           to the other side of the roof deck. The space  
3           could allow for fire to spread from one unit to  
4           another unit. And there was no firewall  
5           insulation. A number of the roofs did not contain  
6           tarpaper, and this created a number of leaks  
7           throughout the development.

8           Q.       Again, were any violations issued  
9           with respect to the firewalls?

10          A.       Yes, sir. Notice of Violations were  
11          only issued by the construction department during  
12          October of 2002, several years after the  
13          Certificate of Occupancies were issued.

14          Q.       Were there any problems with the  
15          trusses?

16          A.       Yes, sir. The builder was hired to  
17          come in and -- was hired by the homeowners  
18          association to conduct the repairs. He indicated  
19          that he was able to put his forearm in between the  
20          plywood and the roof rafters, and they weren't  
21          properly constructed.

22          Q.       What can you attribute these  
23          problems to?

24          A.       There was apparent lack of  
25          supervision and the utilization of unskilled

1 workers.

2 Q. Were there any problems with the  
3 project manager on that development?

4 A. Yes, sir, there was a number of  
5 problems. First of all, he removed a number of  
6 materials from the construction site. The project  
7 manager took shortcuts to move the construction  
8 forward rapidly in order to save money. An  
9 undocumented alien hired to work at that  
10 construction site did the illegal hook-ups of the  
11 downspouts. This individual stated that he was  
12 directed to connect these downspouts by then  
13 project manager Eli Kornberg.

14 Q. Were there any deviations from the  
15 blueprints submitted to the township for approval?

16 A. Yes, sir. There were deviations  
17 from the original blueprints that were not noticed  
18 by the responsible inspecting engineer. As an  
19 example, blueprints on file did not provide for  
20 basement entrances. However, basement entrances  
21 were put in, which is another glaring example of  
22 what I emphasized regarding the construction of  
23 the decks.

24 Q. Was this information made known to  
25 the local construction officials?

1           A.       Yes, sir. Construction official  
2 Gregory Kirk was notified.

3           Q.       Were these developments inspected by  
4 the township building inspectors?

5           A.       Yes, sir, they were. Certificate of  
6 Occupancies were issued for all of the units in  
7 Wall Township, 460. The building subcode  
8 officials apparently never noticed the blatant  
9 changes from the blueprints, such as the sliding  
10 doors in the basements, construction of the wooden  
11 decks and the grading.

12          Q.       Were there any Notices of Violations  
13 issued?

14          A.       Yes, sir, but after the fact. Once  
15 a private engineering firm came in, they brought  
16 the construction of the firewalls to the attention  
17 of the township. A Notice of Violation and Order  
18 to Terminate was issued by Mr. Ran -- was issued  
19 to Mr. Ran Korolik on October 8th, 2002.

20                   Additionally, a Notice of Unsafe  
21 Structure and Notice of Imminent Hazard was issued  
22 by the township on February 27, 2003 regarding the  
23 railings of the wooden decks.

24          Q.       Now, turning to the Martin Road  
25 Estates, who was responsible for constructing

1 these developments?

2 A. Martin Road Developers, Victor  
3 Homes.

4 Q. Is there a relationship to Allaire?

5 A. Yes, sir. It's the same developer,  
6 but obvious different names.

7 Q. What does Martin Road Estates  
8 consist of?

9 A. Martin Road Estates consists of 27  
10 upscale single-family homes. Construction began  
11 sometime around the latter part of 1999 and ended  
12 2002.

13 Q. Who oversaw the construction at  
14 Martin Road Estates?

15 A. Eli Kornberg initially oversaw the  
16 construction of approximately four homes before he  
17 left the company. Then Mr. Ran Korolik took over  
18 and assumed the responsibility of completing that  
19 particular development and overseeing the  
20 construction.

21 Q. What types of problems did you  
22 have -- did they have at the Martin Road Estates?

23 A. There were serious drainage problems  
24 throughout the development. Basements were  
25 constantly flooding due to water infiltration from

1        underneath the basement floors. Service water  
2        also backed up to the homes because of inadequate  
3        exterior draining and draining systems, and  
4        downspouts went directly into the ground, causing  
5        water to back up, such as were at Allaire Country  
6        Club Estates.

7                Q.        Could you tell us what caused some  
8        of the problems in the basement flooding?

9                A.        Yes, sir. A number of the houses,  
10       the basements were dug too deep into the ground,  
11       causing water infiltration.

12               Q.        Were there deviations from the  
13       blueprints?

14               A.        Yes, sir, there definitely was.  
15       Uneven and poorly constructed basement floors  
16       caused excessive cracking. There were deviations  
17       from the submitted blueprints. In one case, a  
18       main house, a huge house, was constructed too high  
19       and the adjoining garage was constructed too low,  
20       causing a drainage problem situation.

21               Q.        Did a homeowner discover buried  
22       construction waste on their property?

23               A.        Yes, sir. A homeowner discovered a  
24       huge amount of solid waste buried on her  
25       particular property. Found buried were chunks of

1 concrete, cement, tiles, electrical switches,  
2 Belgian blocks, tree stumps, wood and et cetera.

3 Q. Did the buried construction waste  
4 cause any problems in the development?

5 A. Yes, sir. Just on that homeowner's  
6 property alone there was approximately nine  
7 sinkholes as deep as 15 feet, and the homeowner  
8 indicated that one of her vehicles sunk in one of  
9 these sinkholes and had to be towed out by a cable  
10 hookup and the car literally had to be dragged out  
11 of the hole.

12 Q. Was the builder ever charged for  
13 this burial of construction waste?

14 A. Yes, sir. The Department of  
15 Environmental Protection was notified, along with  
16 Monmouth County Department of Health. They  
17 conducted an investigation. They charged and  
18 fined the builder for violation of the solid waste  
19 statutes. He subsequently paid a fine of \$3,000  
20 and was ordered to clean up the site.

21 Q. How did those problems found in  
22 Martin Road Estates occur?

23 A. Again, improper supervision by the  
24 company and its project manager, poor workmanship  
25 by the selected subcontractors, and the

1 utilization of unskilled labor force.

2 Q. What caused the elevation problems  
3 that you discovered?

4 A. According to the interviews  
5 conducted regarding homeowners, the elevation  
6 problems were caused by the improper removal of  
7 the soil. A huge amount of soil was taken out of  
8 that particular development. The removed soil  
9 decreased the reported elevation of the plans and  
10 resulted in the basements being dug too deep.

11 Q. Were these homes inspected by the  
12 township building inspectors?

13 A. Yes, sir. All of these homes  
14 received Certificate of Occupancies. Later,  
15 homeowners, as they were there for a year or two,  
16 started to experience problems and code violations  
17 were subsequently discovered several years after  
18 the COs had been issued.

19 One incident, there was an obvious  
20 deviation from the blueprint which involved the  
21 foundation and support system. It was only cited  
22 by the code official after the homeowner had moved  
23 in and hired a private firm to come in and do an  
24 inspection. The code official at that time  
25 brought it to the attention of the builder and

1 advised the builder to make the corrections.

2 Q. But this occurred several years  
3 after the CO was already issued?

4 A. Yes, sir. From what I recall, the  
5 CO was issued December of 1999 and the -- Mr.  
6 Korolik was notified April 22nd, 2002.

7 Q. Was the Department of Community  
8 Affairs ever advised of the problems with these  
9 developments?

10 A. From what I have learned, speaking  
11 to different individuals, I was told that the New  
12 Jersey Department of Community Affairs, Office of  
13 Regulatory Affairs was not notified regarding the  
14 problems at Allaire Country Club Estates.

15 Q. How about in relation to the Martin  
16 Road Estates?

17 A. In regard to Martin Road Estates,  
18 the homeowner had advised me that he had called  
19 DCA regarding his primary problem. However,  
20 nobody appeared at his house.

21 In speaking to someone at DCA,  
22 Office of Regulatory Affairs, they indicated they  
23 had no complaints on file regarding either  
24 development.

25 Q. Were there any attempts to remediate

1 at either of these developments?

2 A. Yes, sir. Victor At Allaire  
3 repaired firewalls and some of the drainage  
4 problems, and I have heard he refused to even  
5 approach the illegal hookups at the downspouts to  
6 the drainage system, indicating that they were in  
7 no way involved in those hookups.

8 Q. Did the homeowners, themselves, or  
9 the association have to make repairs to the  
10 properties?

11 A. Yes, sir. They hired a private  
12 contractor to come in to make repairs. There were  
13 such repairs made regarding deteriorating lolly  
14 columns, which created a safety hazard.  
15 Staircases, handicap ramps, decks, et cetera.

16 Q. And that was at the Allaire Country  
17 Club Estates, is that correct?

18 A. Yes, sir.

19 Q. How about in relation to the Martin  
20 Road Estates?

21 A. In talking to some of the  
22 homeowners, they had to put up front their own  
23 money to conduct repairs. One homeowner who had a  
24 huge house constructed there spent approximately  
25 \$250,000 in making repairs. Another homeowner, it

1 cost him over \$10,000.

2 Q. Was there any litigation filed by  
3 the homeowners in relation to these two  
4 developments?

5 A. Yes, sir. Allaire Country Club  
6 Estates was in litigation for a number of years,  
7 and I believe they just finally came to a  
8 settlement about two months ago. As for Martin  
9 Road Estates, I'm aware of three individual  
10 homeowners that are still in litigation against  
11 the developer.

12 MR. FLANAGAN: Thank you. I have no  
13 further questions.

14 COMMISSIONER MARINIELLO: Agent  
15 Kuyl, some of the problems that were noted at this  
16 location, it seems to me, directly hit in areas  
17 that the state does not license. You mentioned  
18 problems with roofing. Does the state have any  
19 licensing for a roofing contractor?

20 MR. KUYL: From what I understand,  
21 the only licensed people are plumbers and  
22 electricians. However, there is no license  
23 procedures for masons, roofers, framers, et  
24 cetera.

25 COMMISSIONER MARINIELLO: And many

1 of the problems you just testified about deal  
2 specifically with the masonry work, the trusses,  
3 the framing. Those are the very areas that we  
4 don't license in and they tie very important  
5 pieces of the home together, with essentially no  
6 license or certification that we know of.

7 MR. KUYL: No license at all, sir.

8 COMMISSIONER MARINIELLO: Now, I'm  
9 not an inspector, but it seems to me that, if you  
10 have a basement entrance to a home, and it's not  
11 in the plans, that would be somewhat obvious.  
12 Would you agree?

13 MR. KUYL: Yes, sir, definitely.

14 COMMISSIONER MARINIELLO: And, if  
15 you have a deck, and the deck calls for three --  
16 three bracings on it or three stanchions, I  
17 guess -- I don't know what we refer to them -- and  
18 it only has two, that would be a pretty obvious  
19 thing to notice, as well.

20 MR. KUYL: Definitely, sir.

21 COMMISSIONER MARINIELLO: Have you  
22 been given any reasoning why these items were  
23 missed by inspectors?

24 MR. KUYL: They obviously missed  
25 them during their final inspection and initial

1 Certificate of Occupancies.

2 COMMISSIONER MARINIELLO: I know  
3 that Commissioner Edwards is going to ask you  
4 about this, so let me jump in front for one second  
5 on the issue of Wall Township. These are common  
6 problems, we've seen this before in Wall Township  
7 on other projects we've investigated, haven't we?

8 MR. KUYL: Yes, sir, it's a common  
9 theme.

10 COMMISSIONER MARINIELLO: Similar  
11 problems?

12 MR. KUYL: Yes, sir.

13 COMMISSIONER MARINIELLO: The  
14 Notices of Violation, were those issued before or  
15 after we began our investigation?

16 MR. KUYL: Several years after the  
17 Certificate of Occupancies were issued.

18 COMMISSIONER MARINIELLO: Do you  
19 know if they've been remediated? I noticed you  
20 mentioned some of the ones regarding the firewalls  
21 were by Victor, but have any of the others?

22 MR. KUYL: There is still a lot of  
23 work that has to be done at Allaire Country Club  
24 Estates.

25 COMMISSIONER MARINIELLO: I have

1 nothing further.

2 COMMISSIONER EDWARDS: Could you  
3 expand on the answer you just gave the  
4 Commissioner on the history of Wall Township?  
5 There was another major development that I recall  
6 us reviewing at a prior public hearing.

7 Was that Four Seasons at Wall? Do I  
8 have that right?

9 MR. KUYL: Yes, sir. It was Four  
10 Seasons at Wall.

11 COMMISSIONER EDWARDS: How large was  
12 this development, Four Seasons at Wall? That was  
13 a Hovnanian development, am I correct?

14 MR. KUYL: Yes, sir.

15 COMMISSIONER EDWARDS: Do you  
16 recall -- I know this is kind of off the cuff, but  
17 that was a very large development, also, wasn't  
18 it?

19 MR. KUYL: It was a huge  
20 development.

21 COMMISSIONER EDWARDS: I'm getting  
22 the idea that Wall Township is the poster child  
23 for bad new-home construction and bad inspection.  
24 Would that be an inaccurate statement?

25 MR. KUYL: Definitely not an

1       inaccurate statement.

2                   COMMISSIONER EDWARDS:   How many  
3       units was the -- was the Allaire complex?

4                   MR. KUYL:   Approximately 460 units.

5                   COMMISSIONER EDWARDS:   And the  
6       second, Martin, was 27 --

7                   MR. KUYL:   27 upscale houses, large  
8       houses.

9                   COMMISSIONER EDWARDS:   Plus the Four  
10       Seasons Hovnanian development at Wall, also?

11                   MR. KUYL:   There is quite a few  
12       houses there.   I don't recall the exact amount.

13                   COMMISSIONER EDWARDS:   I think it  
14       was 400 -- it was in the 400 range.   That puts us  
15       somewhere near a thousand, or a third of the  
16       actual complaints that we have already state-wide  
17       is what came out of this -- this investigation and  
18       that means that Wall Township and it's code  
19       officials don't seem -- and its construction  
20       program don't seem to be meeting minimum muster.

21                   Thank you very much.

22                   MR. KUYL:   Thank you, sir.

23                   COMMISSIONER EDWARDS:   I want to be  
24       sure we get that covered.

25                   COMMISSIONER FLICKER:   I just wanted

1 to ask, following up on that question, was the  
2 code official the same who was responsible for  
3 issuing the COs as the one who later issued the  
4 violations?

5 MR. KUYL: Yes, sir, in all three  
6 developments we discussed.

7 COMMISSIONER FLICKER: And can you  
8 explain to us and to the audience what happened  
9 that resulted in the code official issuing the  
10 violations? What events transpired that, all of a  
11 sudden, made these buildings in violation, when he  
12 originally signed the COs years earlier?

13 MR. KUYL: Well, as a result of the  
14 homeowners moving in, they came across problems,  
15 they hired certain engineers to come in to inspect  
16 their houses, and they discovered these code  
17 violations.

18 COMMISSIONER FLICKER: So it was the  
19 homeowners who had to hire their own engineers and  
20 the engineers brought these violations to the  
21 attention of the code official?

22 MR. KUYL: Yes, ma'am.

23 COMMISSIONER FLICKER: And was I --  
24 did I hear you say that the homeowners, by and  
25 large, had to finance their own repairs?

1 MR. KUYL: Definitely.

2 COMMISSIONER FLICKER: Do you know  
3 if the State Department of Community Affairs was  
4 involved in any of these -- with any of these  
5 projects?

6 MR. KUYL: From what I understand,  
7 definitely not.

8 COMMISSIONER FLICKER: I'm sorry?

9 MR. KUYL: To the best of my  
10 recollection, definitely not.

11 COMMISSIONER FLICKER: They weren't  
12 called in, they weren't asked to oversee anything,  
13 they were not notified of the problems?

14 MR. KUYL: A homeowner in Martin  
15 Road Estates had contacted the New Jersey  
16 Department of Community Affairs, Office of  
17 Regulatory Affairs, complaining about the  
18 situation at his house. Nobody at all responded  
19 to his house to conduct an inspection or whatever.

20 COMMISSIONER FLICKER: Are you aware  
21 of -- so you were not aware of any action taken by  
22 DCA regarding these myriad of complaints?

23 MR. KUYL: Not aware at all.

24 COMMISSIONER FLICKER: Thank you. I  
25 have no further questions.

1                   COMMISSIONER SCHILLER: I believe,  
2                   special agent, that you had said that DCA said  
3                   they had no notice of these, even though the  
4                   homeowner has insisted that he did notify them?

5                   MR. KUYL: They indicated to me that  
6                   there was no complaints in file regarding those  
7                   two developments.

8                   MS. GAAL: Mr. Chair, let me just  
9                   clarify for the record. We have very recently  
10                  received copies of two complaints from a homeowner  
11                  and DCA just provided them within the last few  
12                  days.

13                  I don't know if you were aware of  
14                  that.

15                  MR. KUYL: I wasn't aware of that.

16                  COMMISSIONER SCHILLER: These were  
17                  the ones that DCA said they didn't have in  
18                  beginning?

19                  MS. GAAL: That's correct.

20                  COMMISSIONER SCHILLER: And does  
21                  Victor still do business in the State of New  
22                  Jersey?

23                  MR. KUYL: Victor Seven,  
24                  Incorporated, I believe, is still in business.

25                  COMMISSIONER SCHILLER: And are the

1 same people running that corporation today as  
2 caused these problems?

3 THE WITNESS: Mr. Ran Korolik is the  
4 vice-president of that company.

5 COMMISSIONER SCHILLER: Thank you  
6 very much.

7 MS. GAAL: I'm going to pose two  
8 additional questions to Special Agent Kuyl.

9 BY MS. GAAL:

10 Q. Number one, just so we are clear,  
11 the code official doesn't do the inspections,  
12 typically, does he?

13 A. The building inspector comes in and  
14 does them.

15 Q. He does?

16 A. Yes.

17 Q. So, the individual who signs the CO  
18 is not necessarily the one who did the underlying  
19 inspection?

20 A. It's the construction official that  
21 signs off on the CO.

22 Q. Okay. And one last question.

23 Concerning one of the violations, at  
24 least, did the DKM decision have an impact on the  
25 fact that it wasn't pursued?

1           A.       Yes, sir. That was one issue which  
2           the builder focused in on and indicated that he  
3           doesn't have to do anything.

4           Q.       And after DKM they didn't pursue it?

5           A.       Definitely.

6           MS. GAAL: Okay. That's all I have.

7           MR. SCHILLER: Just one follow-up  
8           question to that. On the CO, though, the subcode  
9           official is supposed to sign before the  
10          construction official signs that CO, correct?

11          MR. KUYL: He does the final  
12          inspections and then the construction official  
13          reviews the forms and then signs off, initials the  
14          Certificate of Occupancy.

15          COMMISSIONER SCHILLER: So the  
16          subcode official, I -- in addition to the fire  
17          inspector, would have signed off on these  
18          buildings that didn't have the necessary  
19          firewalls --

20          MR. KUYL: Yes, sir.

21          COMMISSIONER SCHILLER: -- prior to  
22          his issuing the CO?

23          MR. KUYL: Yes, sir.

24          COMMISSIONER SCHILLER: Thank you.

25

1 MS. GAAL: The next witness is Eli  
2 Kornberg.

3 I'm going to ask you to remain  
4 standing for a moment and ask the reporter -- Mr.  
5 Kornberg will be testifying with the assistance of  
6 an interpreter, so I'm going to ask the reporter  
7 to place them both under oath.

8 INTERPRETER, Dr. Ray Y. Katz, Para  
9 Plus Translations, Inc., sworn.

10 ELI KORNBERG, after having been  
11 first duly sworn, was examined and testified as  
12 follows:

13 MS. GAAL: You may be seated.

14 I'm going to, through the  
15 interpreter, advise you that the microphone must  
16 be on, which means a red light, for us to hear  
17 you. You may be seated.

18 First of all, counsel, would you  
19 enter your appearance, please.

20 MR. SILVI: Thank you, ma'am. Good  
21 morning, ladies and gentlemen. Attorney Silvio  
22 Silvi, of the law firm Silvi & Fedele, on behalf  
23 of Mr. Kornberg. Thank you.

24 MS. GAAL: I want to extend our  
25 appreciation for your coming in on behalf of your

1 partner. We appreciate it.

2 MR. SILVI: Thank you.

3 MS. GAAL: Thank you.

4 (The following takes place through  
5 the interpreter.)

6 I'm going to give you questions and  
7 I'd like you to interpret to the witness.

8 EXAMINATION

9 BY MS. GAAL:

10 Q. Would you state your name, please.

11 A. Eli Kornberg.

12 Q. Are you currently self-employed in  
13 the construction business?

14 A. Yes.

15 Q. Are you familiar with the  
16 development known as Allaire Country Club Estates?

17 A. I have left the company six and a  
18 half years ago. Yes, six and a half years ago I  
19 did work there.

20 Q. It's very hard to hear you.

21 COMMISSIONER SCHILLER: Excuse me,  
22 could you pull the microphone closer to you, and  
23 also for Mr. Kornberg, and also make sure that his  
24 mic is on so we can pick up his -- even though  
25 he's being translated.

1 THE INTERPRETER: His mic is not on.

2 COMMISSIONER SCHILLER: It's not on?

3 THE INTERPRETER: There is no red  
4 light.

5 Yes, okay.

6 MS. GAAL: So the question was, are  
7 you currently employed -- or self-employed in the  
8 construction business?

9 THE INTERPRETER: The answer was  
10 yes.

11 BY MS. GAAL:

12 Q. What is the name of your company?

13 A. This is Jenny Center, LLC. That's  
14 the name of the company. E & M Building and  
15 Renovation Company, LLC, Jenny Center, LLC.

16 MS. GAAL: You are reading from a  
17 card.

18 THE INTERPRETER: Yes, I am, that  
19 Mr. Kornberg just gave me.

20 BY MS. GAAL:

21 Q. Are you familiar with a development  
22 known as Allaire Country Club Estates?

23 A. Until about six and a half years  
24 ago, yes.

25 Q. And did you have a direct role in

1 the construction or the oversight of the  
2 construction there?

3 A. I will not answer.

4 MS. GAAL: Maybe counsel -- could we  
5 have -- you are refusing to answer, is that it?

6 THE WITNESS: I refuse to answer  
7 this question.

8 MS. GAAL: I think I know where you  
9 are going, but I'm wondering if we can have some  
10 representation as to the basis for the refusal.  
11 It's my understanding it's constitutional.

12 We'll accept a representation from  
13 counsel, if he wishes to make it.

14 MR. SILVI: Thank you. Mr. Kornberg  
15 would like to plead his constitutional right  
16 against self-incrimination.

17 MS. GAAL: So, he's declining to  
18 answer based on his constitutional rights?

19 MR. SILVI: Yes, Fifth Amendment.

20 BY MS. GAAL:

21 Q. We've spoken to many people with  
22 direct involvement in this development and we have  
23 visited the development ourselves. There are  
24 obvious code violations and workmanship issues, as  
25 outlined by Special Agent Kuyl today in his

1 testimony.

2 How did this occur?

3 A. I refuse to answer.

4 MS. GAAL: Okay.

5 If his answer is the same, we will  
6 accept the response "Same answer" in the future.

7 COMMISSIONER SCHILLER: Would  
8 counsel please put on the record, though, just so  
9 we are clear that, when he says he refuses to  
10 answer, that he's refusing to answer, I believe,  
11 on the ground that it violates the Fifth  
12 Amendment.

13 MR. SILVI: That's correct, sir.

14 COMMISSIONER SCHILLER: Is that  
15 correct?

16 MR. SILVI: That's correct.

17 BY MS. GAAL:

18 Q. Was it your responsibility to direct  
19 the subcontractors working on that job?

20 A. Same answer.

21 Q. Did you direct the subs to do work  
22 that violated or deviated from the plans?

23 A. I refuse.

24 COMMISSIONER SCHILLER: Excuse me,  
25 sir. Would you please put the microphone on

1       again.

2                               THE WITNESS: I refuse.

3       BY MS. GAAL:

4               Q.       Same answer?

5               A.       Same answer, ma'am.

6               Q.       Were the decks on the homes built in  
7       violation of the approved plans?

8               A.       I refuse.

9               Q.       Did you substitute lesser strength  
10       concrete than what was called for in the plans?

11              A.       This, too, I refuse to answer.

12              Q.       Did you or your subcontractors  
13       utilize undocumented workers on the site?

14              A.       I refuse.

15              Q.       Did you direct the illegal hook-up  
16       of the downspouts at that site?

17              A.       I refuse to answer it.

18              Q.       The Commission received testimony  
19       that you took materials from the site to use in  
20       the construction of your personal home.

21                           Is that correct?

22              A.       I refuse.

23              Q.       Mr. Kornberg, if I continue to ask  
24       questions along this line, will your answer be the  
25       same?

1           A.       The same.

2                   MS. GAAL:   That's all I'm going to  
3       ask today.

4                   COMMISSIONER SCHILLER:  I would just  
5       like to propose, again, the questions -- that you  
6       have refused to answer these questions on the  
7       basis that it would violate your Fifth Amendment  
8       constitutional rights, is that correct?

9                   MR. SILVI:   That's correct, sir.  
10       Mr. Kornberg is asserting his constitutional  
11       privilege to testify in accordance with his Fifth  
12       Amendment right.

13                   COMMISSIONER SCHILLER:  Thank you.

14                   We'll take a five-minute break.

15                   (Recess called at 11:38 a.m.)

16

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1 (Resumed at 11:52 a.m.)

2 COMMISSIONER SCHILLER: Ladies and  
3 gentlemen, please take your seats.

4 Counsel, please call the next  
5 witness.

6 MS. GAAL: Thank you.

7 Ran Korolik.

8 Sir, would you please stand and be  
9 sworn by the reporter.

10 RAN KOROLIK, after having been first  
11 duly sworn, was examined and testified as follows:

12 MS. GAAL: Thank you. You may be  
13 seated.

14 Counsel, would you enter your  
15 appearance, please.

16 MR. CAGEN: Good afternoon. My name  
17 is Chad Cagen, I'm an attorney with Sonnenblick  
18 Parker & Selvers in Freehold, representing the  
19 witness, Ran Korolik.

20 MS. GAAL: I'm going to ask you if  
21 you wouldn't mind hitting the red light. It's  
22 impossible to hear. I'm going to ask everybody to  
23 please try to do that.

24 MR. CAGEN: Good morning, my name is  
25 Chad Cagen, I'm an attorney with Sonnenblick

1 Parker & Selvers in Freehold, New Jersey,  
2 representing the witness, Ran Korolik.

3 MS. GAAL: Thank you.

4 EXAMINATION

5 BY MS. GAAL:

6 Q. Sir, may we have your name, please,  
7 for the record.

8 A. Ran Korolik.

9 Q. And by whom are you employed?

10 A. Victor Seven, Inc.

11 Q. And what is your position there?

12 A. Vice-president.

13 Q. When did you become vice-president  
14 of Victor Seven?

15 A. In the course of 2000, I think.

16 Q. How long have you worked for Victor  
17 Seven or any of the Victor companies?

18 A. Since '96.

19 Q. 1996?

20 A. Correct.

21 Q. And, when you joined the company,  
22 what was your background?

23 A. Accounting and finance.

24 Q. Accounting and finance?

25 Did you have any background in -- or

1 training in construction?

2 A. No.

3 Q. Do you have any as of today?

4 A. Just experience working in the  
5 field.

6 Q. Watching?

7 A. Watching what's going on in the  
8 field.

9 Q. Okay, in the field.

10 Now, Victor Seven, what type of  
11 business are they in?

12 A. Construction of commercial property.

13 Q. In the past did the company  
14 construct residential homes in New Jersey?

15 A. Yes.

16 Q. And approximately what period of  
17 time did they do homes?

18 A. Prior to 2000.

19 Q. Prior to 2000.

20 What's your educational background?

21 A. College degree from NYU.

22 Q. And in what subject?

23 A. Bachelor's of science in accounting.

24 Q. Okay, thank you.

25 Now, were you employed by Victor at

1 Allaire?

2 A. Yes, I was.

3 Q. And was that another company that  
4 was part of the group of companies owned by  
5 Victor?

6 A. Correct.

7 Q. And how are these different  
8 companies related?

9 A. They are all subsidiaries of VRE,  
10 Victor Real Estate.

11 Q. VRE, Victor Real Estate.

12 And who owns or who owned Victor at  
13 Allaire?

14 A. At the beginning it was Victor  
15 Building and Construction and then the shares were  
16 transferred to Victor Real Estate, VRE.

17 Q. And who owns VRE?

18 A. Schuster and his wife.

19 Q. Is that Mosche Schuster?

20 A. Yes.

21 Q. And is he an Israeli citizen?

22 A. Yes.

23 Q. Does he live or reside in Israel?

24 A. Yes.

25 Q. Does he also own Victor Seven?

1 A. Through VRE.

2 Q. Through VRE, okay.

3 When a new development was being  
4 built or when a new entity was being built, is it  
5 common or was it common to form a new corporate  
6 entity or a new type of legal entity?

7 A. Not always.

8 Q. In some instances?

9 A. In some instances, yes.

10 Q. Okay.

11 And is there a reason why they did  
12 that, do you know?

13 A. You know, with us it's just a matter  
14 of what type of business it is. If it's -- Victor  
15 Seven and Victor at Allaire were initially formed  
16 when we purchased property from the RTC. Victor  
17 Seven purchased Pool Seven, so it was Victor  
18 Seven. Victor at Allaire purchased Allaire  
19 Country Club Estates, it was named Victor at  
20 Allaire.

21 Q. Were those LLCs, do you know?

22 A. They are corporations.

23 Q. Do they stay in existence for any  
24 period of time?

25 A. Yes, they are still in existence.

1 Q. They are still in existence?

2 A. Yes.

3 Q. I'd like to talk to you first about  
4 Allaire Country Club Estates, and I gather you are  
5 familiar with that development?

6 A. Yes.

7 Q. I think you mentioned that Victor or  
8 VRE purchased that development from the  
9 Residential Trust Corporation?

10 A. Resolution Trust Corporation.

11 Q. Resolution.

12 And how much construction had taken  
13 place when you purchased it?

14 A. Well, about a fourth of the  
15 development was constructed, in unit terms.

16 Q. And what was your position with the  
17 company at that time?

18 A. Controller.

19 Q. Were you essentially handling the  
20 financial aspects of the business?

21 A. Yes.

22 Q. And am I right that you were not out  
23 in the field overseeing the construction?

24 A. I wasn't overseeing the  
25 construction. I was just overseeing -- making

1       sure the construction happened, so, if I got an  
2       invoice for a hundred thousand dollars from a  
3       framer, I made sure that that framer did that job  
4       on that particular building.

5               Q.       I'm sorry, I didn't catch the end of  
6       that last sentence.  If you got a --

7               A.       If I got an invoice for a hundred  
8       thousand dollars from a framer, every once in a  
9       while I would just go out and make sure that that  
10       building existed.

11              Q.       At the time that that construction  
12       was going on, and I'm talking about the time  
13       period before the COs were issued, who would have  
14       been the person or persons that handled the  
15       construction there?

16              A.       Eli Kornberg was the project  
17       manager.  Underneath him there were several  
18       supers.

19              Q.       So, Eli Kornberg was the project  
20       manager and there were several supers under him?

21              A.       Yes.

22              Q.       Did you hire him?

23              A.       No.

24              Q.       Who did, do you know?

25              A.       Schuster.

1 Q. How often was Mr. Schuster at the  
2 site, if at all? Was he at the site much?

3 A. He would come to the office every  
4 month or so.

5 Q. Does he have a background in  
6 construction?

7 A. Yes.

8 Q. And was he involved in construction  
9 in this country personally, directly?

10 A. Indirectly.

11 Q. How indirectly?

12 A. You know, he would go -- he wouldn't  
13 go in the field and check what things were being  
14 done. That's what he hired Mr. Kornberg for.

15 Q. Do you know how long Mr. Schuster  
16 has been in the construction business in this  
17 country?

18 A. Ten years.

19 Q. Did he ever live here?

20 A. When he comes -- you know, he comes  
21 pretty often.

22 Q. Was he at one time in business with  
23 his brother?

24 A. Yes.

25 Q. And did his brother do a lot of work

1 here?

2 A. His brother did some of the work.

3 Q. To whom did Mr. Kornberg report on a  
4 daily basis? Did he have anyone that he reported  
5 to on a daily basis?

6 A. To Schuster, but it wasn't on a  
7 daily basis. Maybe weekly.

8 Q. And how would he do that? By  
9 telephone?

10 A. By telephone, faxes.

11 Q. During the construction -- now I'm  
12 talking about before the COs were issued -- were  
13 there any significant problems that came to your  
14 attention with respect to that construction?

15 A. No.

16 Q. After the COs were issued and people  
17 were moving in, did some problems come to your  
18 attention?

19 A. Yes.

20 Q. Now, when they came to your  
21 attention, were you still the controller or --

22 A. At the beginning I was still the  
23 controller, and then later on -- the beginning I  
24 was still the controller, so it would come through  
25 the office. You know, we had a small office, I

1 would hear what's going on. But later on the  
2 matters were addressed to me, after Eli was no  
3 longer in our company.

4 Q. So, Eli Kornberg was no longer with  
5 the company?

6 A. Starting January of '99.

7 Q. And you took over -- you became a  
8 vice-president in about 2000 or --

9 A. Probably some time after he left.

10 Q. Do you know -- do you have any  
11 knowledge as to why he left the company?

12 A. He and Schuster didn't see, you  
13 know, eye to eye.

14 Q. Was he let go by Mr. Schuster?

15 A. I don't know the exact details.

16 Q. He didn't leave under his own choice  
17 or -- is that --

18 A. I don't know that.

19 Q. Now, you heard testimony this  
20 morning -- I believe you were here -- and saw some  
21 photographs concerning some deficiencies related  
22 to that development.

23 When did you became aware of any of  
24 those problems?

25 A. Probably the later part of '99 and

1 2000, when the association filed their lawsuit.

2 Q. Late '99 and early 2000?

3 A. Correct.

4 Q. There was a lawsuit filed?

5 A. January 15th, 2000.

6 Q. A lawsuit filed by the homeowners  
7 association?

8 A. Correct.

9 Q. Was that when you first found out  
10 about the problems?

11 A. I -- after Eli left in '99, and the  
12 township became aware that I took his place, of  
13 sorts, they would send me the punch lists for the  
14 bonding -- for all bonded items, so I was aware  
15 that all our obligations were not fulfilled  
16 through those letters.

17 Q. When you testified before the  
18 Commission in private session, you indicated that  
19 you thought that the storm drains had been hooked  
20 up by the homeowners. We've spoken to individuals  
21 who admitted under oath to tying in -- to tying  
22 the downspouts and the storm water into the  
23 drainage system at the direction of Mr. Kornberg.

24 Does that surprise you?

25 A. I'm familiar with that testimony. I

1 understand that he was directed to connect one.  
2 In my prior testimony I said that I didn't know  
3 who connected them, you know. I said it might as  
4 well be a homeowner, because it wasn't a  
5 widespread situation up there at Allaire Country  
6 Club Estates.

7 Q. Okay.

8 A. I can't tell you if I'm surprised or  
9 not.

10 Q. Do you have any knowledge of Mr.  
11 Kornberg changing the drainage configuration from  
12 what it was on the approved plans?

13 A. No.

14 Q. Okay.

15 Are you aware or were you aware that  
16 there were deviations from the approved plans?

17 A. I'm aware today there were  
18 deviations from the approved plans.

19 Q. When did you first become aware of  
20 that?

21 A. When the association filed the  
22 lawsuit, and later on through discovery they were  
23 making allegations to that effect.

24 Q. Okay.

25 A. I have not personally reviewed plan

1 versus what's on the field to see if they are  
2 correct currently. You know, we settled the case,  
3 so....

4 Q. I understand.

5 Can you tell us your opinion of how  
6 those deviations occurred? Do you know how it  
7 happened?

8 A. No.

9 Q. Have you looked into it at all or  
10 has anyone given you any insight or information as  
11 to how those things occurred?

12 A. You know, I'm familiar with one  
13 instance in Martin Road where there are  
14 allegations that the -- the plans that were  
15 submitted did not conform to the house. I can  
16 only think of one house that this thing came up.  
17 A letter from the township to me indicated of that  
18 situation.

19 I recall going with the homeowner to  
20 the architect who designed the house and making  
21 those changes at the direction of the homeowner  
22 prior to starting construction. To my knowledge,  
23 we have filed those changed plans with the  
24 township.

25 Q. Well, if -- I was really referring

1 to the Allaire Country Club Estates, the issues  
2 such as the supporting beams for the decks and the  
3 windows and basement doors.

4 Do you know anything about how those  
5 changes occurred?

6 A. I'm not aware of that, no.

7 Q. Do you know anything about problems  
8 in some of the models or some of the homes related  
9 to the roofing material on either side of the  
10 firewalls?

11 A. You mean the sheathing?

12 Q. Yes.

13 A. Yes.

14 Q. Do you know how that occurred?

15 A. It was explained to me how it  
16 occurred, and still today what I understand is  
17 that the only violation on that is the water  
18 coming into those houses and, therefore, it had to  
19 be corrected.

20 I understand it's the methods of  
21 sheathing that was used were inappropriate. No  
22 one ever -- you know, from expert that we  
23 talked -- said that there is a particular method  
24 of sheathing that has to be used. Otherwise it's  
25 a code violation.

1 Q. Isn't there a requirement in the  
2 BOCA National Building Code that the structure be  
3 constructed watertight? Is that the violation?

4 A. That's the violation that they  
5 cited, yes.

6 Q. Was this corrected? Was that  
7 corrected?

8 A. No.

9 Q. Is there any reason why -- that you  
10 are aware of, why it wasn't corrected?

11 A. It was in litigation and we  
12 didn't -- it wasn't widespread. We felt that,  
13 if -- it was never proven to us that -- and also  
14 the question arose whether another house that was  
15 supposed to be watertight, but for how long  
16 exactly after construction.

17 Q. Were you issued any Notices of  
18 Violation?

19 A. Yes, I was issued a couple.

20 Q. Do you remember what they were for?

21 A. They were for -- if I'm not  
22 mistaken, for the deck and for the watertight.

23 Q. What happened with respect to those  
24 NOVs?

25 A. We went to the Construction Board of

1 Appeals and then we -- I think they withdrew those  
2 after some court decision came down that the  
3 violation should be issued to the owner of the  
4 property.

5 Q. I don't know if you recall the name,  
6 but was it the DKM decision? Does that sound  
7 familiar?

8 A. It may have been.

9 Q. So, they were withdrawn?

10 A. Yes.

11 Q. Did you ever hear that Mr. Kornberg  
12 was soliciting money from subcontractors in order  
13 for them to work on the job?

14 A. Yes.

15 Q. How did you hear that?

16 A. I can't recall today. I think in my  
17 prior testimony I said that I tried to check those  
18 allegations. I spoke to subcontractor. Never  
19 proved to me that it did happen.

20 Q. But you heard it?

21 A. Yes. It was subject of some  
22 friction between me and Kornberg.

23 Q. Did you ever talk to Kornberg about  
24 it?

25 A. Yes.

1 Q. What did he say?

2 A. He said -- I don't recall if he flat  
3 out denied or he just told me, you know -- I  
4 basically reported to Kornberg, to some extent,  
5 while I was working on the Allaire Country Club  
6 Estates.

7 Q. He was your superior?

8 A. Yes.

9 Q. We have spoken to some people who  
10 worked at the site, more than one, and they've  
11 indicated that they, themselves, were undocumented  
12 aliens at the time they were employed by Victor.

13 Were you aware of that?

14 A. No, I was not. Every employee that  
15 we interviewed provided us with a Social Security  
16 card and a valid license and was put on the  
17 payroll and that was it.

18 Q. Did you pay them by cash or check?

19 A. Payroll, ADP.

20 Q. Do you -- as an employer, do have  
21 any method or means at your disposal to check  
22 those Social Security numbers out or licenses or  
23 anything like that?

24 A. Not that I'm aware of.

25 Q. At Allaire Country Club Estates,

1 would you say that Mr. Kornberg was the  
2 construction manager or was he the project  
3 manager?

4 A. He was a project manager. In my  
5 mind, the construction manager is a separate  
6 entity from the company whose sole job is to  
7 supervise the construction.

8 Q. What do you think happened at  
9 Allaire Country Club Estates? What do you think  
10 happened that resulted in those problems?

11 A. Do you mind being more specific? Do  
12 you want to talk about drainage? Do you want --

13 Q. Any of them or all of them.

14 A. Well, we purchased this property,  
15 again, from the RTC. That was a development that  
16 was approved in the '80s, under '80s standard.  
17 Vis-a-vis, you are talking about 460 units in 82  
18 buildings on 90 acres.

19 Those units were approved to have  
20 their downspouts going into splash blocks. It's a  
21 lot of roof going to a very small area that is not  
22 impervious. So, drainage, from the beginning,  
23 was -- had to be a problem. And water is a very  
24 strong force, so, when you have water, you have  
25 damage.

1           Q.       Did you -- turning from the drainage  
2           to some of the issues related to the construction,  
3           whether it's the firewalls, the roofs, the  
4           windows, the issue of whether windows are below  
5           grade or issues related to the concrete, do you  
6           think it might have helped or would have helped  
7           had you had a construction manager there?

8           A.       Today all my business is run through  
9           construction managers.

10          Q.       Today?

11          A.       So -- yes, that's what we do. We  
12          hire -- we find -- we locate a piece of property  
13          and, if we want to develop it, we do it through a  
14          construction manager, who usually hires union  
15          workers.

16          Q.       Do you find union workers to be  
17          particularly knowledgeable and have a lot of  
18          training and experience?

19          A.       Yes.

20          Q.       With respect to the drainage that  
21          you just mentioned, from what you said, it's my  
22          understanding that you really didn't have any  
23          involvement in the approval process.

24          A.       No.

25          Q.       It was already approved.

1 A. Correct.

2 Q. And I understand your opinion, but  
3 do you think, looking at it now, that perhaps it  
4 shouldn't have been approved or maybe it wouldn't  
5 be approved today?

6 A. I don't think it would be approved  
7 today.

8 Q. How much money has it cost the  
9 company to remediate the problems to date?

10 A. North of \$500,000. North of a  
11 million dollars.

12 Q. North of a million dollars?

13 A. Yes.

14 Q. Does that include the recent  
15 settlement with the homeowners?

16 A. Yes.

17 Q. Martin Road Estates, that's another  
18 development in Wall, is that right?

19 A. Correct.

20 Q. And are you familiar with that one?

21 A. Yes.

22 Q. Who was responsible for constructing  
23 that?

24 A. At the beginning it was Eli, the  
25 first stage, and then it was -- I had the project

1 manager named Bob, and I was ultimately  
2 responsible.

3 Q. So, Eli was Eli Kornberg?

4 A. Correct.

5 Q. You had a project manager, Bob?

6 A. Correct.

7 Q. Do you know his last name?

8 A. Cahill.

9 Q. Cahill. And you were responsible.

10 How many homes were involved there?

11 A. Twenty-seven.

12 Q. And do you remember when the  
13 construction started?

14 A. '98.

15 Q. Were there also drainage issues or  
16 are there also drainage issues there?

17 A. Yes. This was another development  
18 that was approved in the '80s, I think, or early  
19 '90s. It was a group of doctors, lawyers,  
20 investors who bought the piece of property and  
21 subdivided it. There are some wetlands on the  
22 property and there were -- and, again, at the time  
23 it was approved that the downspouts would go into  
24 splash blocks.

25 Those are fairly big homes on -- it

1 sounds like a big property, but it's really not.  
2 About an acre and a half. People do a lot of  
3 alterations, and I would like to go back also to  
4 Allaire Country Club Estates. You know, the --  
5 the maintenance that's going on in those big  
6 developments, in any home, should something that  
7 also be monitored, especially landscapers that  
8 come in that are hired by the homeowner, they are  
9 not hired by -- the homeowner association and by  
10 private homeowners and promise the world and do  
11 not provide a plan and keep adding mulch and keep  
12 changing the grade, and on a rainy day -- you  
13 know, I think the code calls for 24 hours for the  
14 water to disappear, but, if people keep their  
15 sprinklers on or they -- the maintenance guy  
16 decides to mow the lawn that day on a 1500-pound  
17 tractor, that thing can also start creating  
18 problems, so -- I mean, it all goes hand in hand.

19 Q. So, Martin Road was built, at least  
20 part of it, on wetlands?

21 A. A lot of the properties have some  
22 kind of wetlands or conservation easement on their  
23 property.

24 Q. Is this another one where you would  
25 question whether it would be approved today?

1           A.       It would be approved today. Today  
2           in Wall Township they change. You have to --  
3           every single house will have its own plot plan or  
4           mini site plan approvals.

5                     All those homes will have their  
6           downspout connected to the storm management. They  
7           would not go to splash block. They would monitor  
8           much closely what people are going to put on their  
9           property. When you have an acre and a half, you  
10          put a 6,000 square foot home, and then, after  
11          developer leave, you put in a pool and a 3,000  
12          square foot patio and you add a tennis court  
13          without having an engineer check it out, you  
14          violate actually the town's regulations, as well.

15          Q.       Did I hear you say that Wall is now  
16          requiring that individual site plans --

17          A.       From what I understand, yes.

18          Q.       For each home?

19          A.       Yes.

20          Q.       Do you think that might have made a  
21          difference?

22          A.       Of course.

23          Q.       Do you know if that's required  
24          throughout the state?

25          A.       I know in certain places it's

1 required. Bergen County and other townships  
2 require that.

3 Q. It was discovered that there was  
4 concrete and construction debris buried at at  
5 least one of the properties in that particular  
6 development. Is that right?

7 A. Correct.

8 Q. And was the company fined, I think,  
9 \$3,000?

10 A. Correct.

11 Q. We have received testimony that you  
12 directed a worker to bury the debris. Is that  
13 accurate?

14 A. No.

15 Q. Do you know who did?

16 A. No.

17 Q. Do you know how it got there?

18 A. Well, obviously, somebody buried it,  
19 but I -- I did not direct anybody to bury it. The  
20 cost -- the amount of money that we spent on  
21 removing debris from the project was very high.  
22 The amount of money that we spent on this amount  
23 of debris was very low. It was \$150 to haul it.

24 We heard testimony before that it  
25 was a huge amount. It was about 1.7 cubic yard.

1 It didn't even fill the bottom of a dumpster.

2 Q. Well, my question to you is, if  
3 someone said that you directed them to bury it,  
4 are you saying that they are lying?

5 A. Yes.

6 Q. Are you still in residential  
7 building today?

8 A. Not in this state.

9 Q. Are you building in other states?  
10 Homes?

11 A. Yes.

12 Q. Why not in New Jersey?

13 A. Takes too long to approve. I --  
14 again, like I told you, I work with construction  
15 manager and union workers. This is an expensive  
16 venture.

17 Q. Are you using private inspection  
18 companies?

19 A. Yes.

20 Q. Even on residential in other states?

21 A. Yes.

22 Q. Do you think that, had you had  
23 something like that in place in New Jersey on  
24 these jobs, it might have made a difference?

25 A. Some of the problems probably would

1 have been alleviated. However, nobody is perfect  
2 and everybody can miss something, but for sure  
3 things would be better. Otherwise, I wouldn't be  
4 doing it today.

5 Q. Are you familiar at all with Mr.  
6 Kornberg taking materials from the site?

7 A. I heard about that. I never saw it.

8 Q. Did you look into it at all?

9 A. Yes. I asked people, but their  
10 response was "No."

11 MS. GAAL: Okay. That's all I have.

12 COMMISSIONER EDWARDS: You indicated  
13 that the project would not get approved today.  
14 Was the project re-submitted after you purchased  
15 it from the RTC back to the planning board or the  
16 town for upgrades or approvals or were there any  
17 modifications made to the plans as originally  
18 approved back in, I think it was 1984, when you  
19 bought the project?

20 THE WITNESS: When we bought the  
21 project, as far as -- I wasn't there, but, as far  
22 as I know today, we bought the project in '94, I  
23 started working in '96.

24 I don't recall submitting anything  
25 when we bought it. We did submit to the engineer

1 department upgrade plans to the development after  
2 they -- when -- when the association hired their  
3 third-party engineer and the town wanted also the  
4 maintenance -- the bonds and items to be fixed,  
5 then our engineer provided the plan to the  
6 township to add a lot of drainage equipment, and  
7 we connected a lot of the downspouts into that  
8 drainage system. We added wells, we added a lot  
9 of drainage equipment into the site.

10 COMMISSIONER EDWARDS: I'm trying to  
11 get a picture of what the project looked like when  
12 you bought it from the RTC and what was done from  
13 the time that you closed on the title from the RTC  
14 and moved forward.

15 Were some of the units already  
16 constructed? I think there was -- part of Phase 1  
17 was already started?

18 THE WITNESS: Yes, a hundred units  
19 or so.

20 COMMISSIONER EDWARDS: And it was  
21 the result of those units and their complaints  
22 that the township modified the drainage plan?

23 THE WITNESS: No. As far as I know  
24 today, when we bought it in '94 we did not submit  
25 any plans to the town to -- to change anything of

1 the property. We did hire the same engineers that  
2 worked on that site, Birdsall Engineering. We did  
3 keep the same architects that were on the site,  
4 Garrison Architects, and we continued forward.  
5 Once the development -- we sold the last home --  
6 we sold the last home in '98. In 1999 we started  
7 getting punch lists from the town to finish our  
8 bonded items. Some of those items were items that  
9 were drainage items and the only way to solve  
10 those drainage items were to upgrade the drainage  
11 system throughout the development.

12 Those plans were done by our  
13 engineer, were submitted to the town for review,  
14 approved and implemented.

15 COMMISSIONER EDWARDS: There was --  
16 you settled this -- the litigation with the  
17 homeowners association for half a million dollars  
18 and you've testified that you put about a half  
19 million dollars into repairs into the Allaire  
20 project.

21 THE WITNESS: Correct.

22 COMMISSIONER EDWARDS: One of the  
23 violations that we saw were pictures of decks, and  
24 off each deck there were only two support columns  
25 supporting that deck, which, under the code, as I

1 understand it, as it existed then, would not have  
2 been allowed and I don't think the entire deck  
3 structure would have been allowed.

4 Was that part of your settlement for  
5 damages like that, or what were the circumstances  
6 that permitted that particular condition to go on  
7 and continue? Do you have any idea?

8 That's kind of obvious. The  
9 homeowner didn't do it, there is no drainage  
10 problem, it had to do with an increase in support  
11 columns to hold up the decks, there is hundreds of  
12 decks around that -- those units with only two  
13 support columns. They weren't bolted into the  
14 house properly by anybody. What was the  
15 circumstances surrounding that? To the best of  
16 your knowledge, how did this happen and what did  
17 you do about it?

18 THE WITNESS: I don't know how it  
19 happened. I know that, when it did become -- when  
20 we became aware that there was a situation, our  
21 framer offered to go in and do it under the  
22 township inspection and remediate the situation.  
23 It was rejected.

24 COMMISSIONER EDWARDS: Okay. Thank  
25 you. That's all I have.

1                   COMMISSIONER FLICKER: Do I presume  
2                   that you were working or Allaire was working with  
3                   subcontractors on this project?

4                   THE WITNESS: Correct.

5                   COMMISSIONER FLICKER: And how were  
6                   they selected?

7                   THE WITNESS: To the best of my  
8                   knowledge, Eli selected them from a group of  
9                   subcontractors that worked with him when he was  
10                  working for developers.

11                  COMMISSIONER FLICKER: And, when the  
12                  problems came to light -- and the homeowners, I  
13                  presume, brought most of these problems to your  
14                  attention -- did the subcontractors -- the same  
15                  contractors -- were they asked to go back and  
16                  remediate?

17                  THE WITNESS: In the case of the  
18                  decks, yes.

19                  COMMISSIONER FLICKER: And that was  
20                  rejected?

21                  THE WITNESS: Yes.

22                  COMMISSIONER FLICKER: There were  
23                  other problems that we heard that were discussed  
24                  in summary. I think problems generally with  
25                  everything. With some of the masonry, some of the

1 roofs, the firewalls, virtually some of the most  
2 significant aspects of the house.

3 Were the subcontractors who were  
4 responsible for those problems asked to go back  
5 and remediate?

6 THE WITNESS: Some of them, yes.

7 With respect to the roofs, for  
8 example, we couldn't determine whose  
9 responsibility it was. The previous developer  
10 developed those houses with firewalls made out of  
11 fireproof Sheetrock. Eli decided to change it and  
12 I think they were modified on the plan, were  
13 submitted to the town. They were changed to  
14 blocks, masonry blocks, which actually cost more  
15 money than fireproof Sheetrock, but the fault was  
16 that they are not perfect and they provided -- at  
17 the edge of the roof there was a gap of somewhere  
18 between half an inch to couple of inches. I never  
19 saw couple of inches. I only saw, you know, in  
20 the range of an inch. A gap where smoke could  
21 pass through to the next unit.

22 Those things were remediated by us  
23 under the supervision of the fire inspector.

24 COMMISSIONER FLICKER: Were the very  
25 same subcontractors utilized on the Martin Road

1 Estates?

2 THE WITNESS: Some of them yes, some  
3 of them no.

4 COMMISSIONER FLICKER: Were some of  
5 the same subcontractors used to alleviate these  
6 problems with Allaire?

7 THE WITNESS: Yes.

8 COMMISSIONER FLICKER: So, even  
9 after knowing about some of their problem  
10 construction, they were still used again in a  
11 separate project?

12 THE WITNESS: There was a lapse of  
13 time before we were aware of the problems in the  
14 Martin Road Estates. Martin Road was constructed  
15 between '94 and '98. The problems came to light  
16 in the later part of '99 and 2000. I think the  
17 last one constructed at the Martin Road was around  
18 2000, 2001.

19 COMMISSIONER FLICKER: Were some of  
20 the same problems repeated in the Martin Road  
21 Estates?

22 THE WITNESS: Well, we don't have  
23 firewalls, for a start, but some of the problems  
24 with the drainage were similar.

25 COMMISSIONER FLICKER: And how about

1 some of the other construction issues with the  
2 homes? The same problems repeated by the same  
3 subcontractors?

4 THE WITNESS: You know, over there  
5 we have common walls. I don't know what you are  
6 referring to, some of the problems.

7 COMMISSIONER FLICKER: Well, we saw  
8 pictures, we heard of problems with some of the  
9 concrete, with some of the foundation, some of the  
10 steps, some of the -- I don't know if there are  
11 ramps in the Martin Road Estates, decks.

12 Were some of those issues --

13 THE WITNESS: There are no ramps.  
14 There are no -- no decks, if I'm not mistaken.

15 COMMISSIONER FLICKER: So you don't  
16 know whether some of those same problems were  
17 created once again by the very same  
18 subcontractors?

19 THE WITNESS: The only thing I'm  
20 aware of is the drainage and a couple of steps.

21 COMMISSIONER FLICKER: Did you then  
22 go back and ask the subcontractors -- when you  
23 went to settle, did you go back and ask the  
24 subcontractors for some money?

25 THE WITNESS: Some of the

1 subcontractors contributed.

2 COMMISSIONER FLICKER: Thank you  
3 very much.

4 COMMISSIONER EDWARDS: I want to go  
5 back to something that you said. You are  
6 fundamentally not a contractor or a builder or an  
7 expert in construction, or at least you weren't.  
8 You are an accountant.

9 THE WITNESS: Correct.

10 COMMISSIONER EDWARDS: A financial  
11 type person who was brought in as controller, I  
12 think, by the owner of this project originally.

13 THE WITNESS: Correct.

14 COMMISSIONER EDWARDS: You also  
15 testified that you were no longer constructing  
16 residential buildings in New Jersey, is that  
17 correct?

18 THE WITNESS: Correct.

19 COMMISSIONER EDWARDS: You are doing  
20 commercial and industrial buildings?

21 THE WITNESS: I'm doing commercial,  
22 yes.

23 COMMISSIONER EDWARDS: So the -- and  
24 you testified, I think, if I heard you correctly,  
25 which I've heard over 25 years involved in public

1 life a number of times, that the cost of  
2 construction is too expensive for you to make an  
3 adequate profit to make it worth your while to run  
4 the risk of building residential homes, as  
5 compared to other states, where you can do it for  
6 less money and maintain a profit margin, is that  
7 accurate?

8 THE WITNESS: Not accurate in our  
9 case.

10 COMMISSIONER EDWARDS: No?

11 THE WITNESS: No.

12 COMMISSIONER EDWARDS: What is,  
13 then?

14 THE WITNESS: Well, the State of New  
15 Jersey today, land is very expensive. I'm not a  
16 big developer and I cannot compete with the prices  
17 that the bigger developers build their homes.

18 The homes that we build, even today  
19 after seeing those pictures, we take pride of, and  
20 they cost much more to build than a Hovnanian or  
21 the Pulte Home or any of the bigger developments.  
22 They are selling for prices that I cannot even  
23 build. And they are buying properties and they  
24 are driving the price of land up, because there is  
25 no -- not so much land, and I just cannot afford

1 to buy this land.

2 In an area like New York City you  
3 spend much more money, but people are paying much  
4 more money, and it's much clearer, approval take  
5 much shorter, and the people -- maybe the people  
6 are much more qualified -- the people who are  
7 developing those sites.

8 COMMISSIONER EDWARDS: So, in  
9 reality, you are saying that you can't afford to  
10 build in New Jersey and make an adequate profit?

11 THE WITNESS: In reality, I would  
12 say yes. In New Jersey I cannot build and make  
13 adequate profit.

14 COMMISSIONER EDWARDS: Because, you  
15 are saying, you are not large enough, you can't do  
16 it on economy of scale sufficient enough, and you  
17 are also testifying that your quality would be  
18 higher than those who are, in fact, building at  
19 a -- or who are still building in New Jersey?

20 THE WITNESS: Correct.

21 COMMISSIONER EDWARDS: They are able  
22 to acquire the land and they are able to build it  
23 cheaper than you are?

24 THE WITNESS: Correct. I don't own  
25 a lumber company. You know, some of the bigger --

1 they own a lumber company. They run their margins  
2 down just so they can make a profit. I don't have  
3 that luxury.

4 COMMISSIONER EDWARDS: So what you  
5 are also testifying to us is that -- we make a  
6 recommendation out of -- this Commission, out of  
7 all of this investigation. We put a lot of  
8 resources, time and effort into it. We need to be  
9 cognizant of the economic impact of what we  
10 require all builders to do or we are going to wind  
11 up with a certain type of builder, so we need to  
12 be careful about the recommendations we make, that  
13 they don't drive costs up, but perhaps drive costs  
14 down. We can do that by streamlining, but making  
15 it -- but, by providing a better product for the  
16 homeowners or potential new homeowners in New  
17 Jersey, is that --

18 THE WITNESS: That's accurate, yes.

19 COMMISSIONER EDWARDS: Is that what  
20 you are recommending?

21 THE WITNESS: Yes.

22 COMMISSIONER EDWARDS: How much, as  
23 an accountant, do you think you need make on a  
24 unit in construction to cover your overhead and  
25 costs after you've paid all of your construction,

1 land costs and initial development costs?

2 THE WITNESS: I really can't answer  
3 that. Just ask an attorney how much you should  
4 make, \$150 an hour or \$500 an hour? I really  
5 can't answer that.

6 COMMISSIONER EDWARDS: Every builder  
7 I know can tell me how much per unit he needs to  
8 make, and you can't tell me that?

9 THE WITNESS: No, I can't tell you  
10 that.

11 COMMISSIONER EDWARDS: Thank you.

12 THE WITNESS: You're welcome.

13 COMMISSIONER MARINIELLO: I have a  
14 couple questions.

15 The first is, can Mr. Kornberg write  
16 and speak English?

17 THE WITNESS: I have seen him  
18 communicating in English.

19 COMMISSIONER MARINIELLO: I'm  
20 wondering -- I would imagine that most of the  
21 subcontractors that were used on Allaire did not  
22 speak Hebrew.

23 THE WITNESS: Correct.

24 COMMISSIONER MARINIELLO: So, either  
25 he speaks English or there was a communication

1       problem between him and the subcontractors?  Would  
2       you expect that one of those two has to be true?

3                       THE WITNESS:  Possible, yes.

4                       COMMISSIONER MARINIELLO:  Which one  
5       do you think it is?

6                       THE WITNESS:  I think he can speak  
7       well enough to communicate what he wants the  
8       subcontractors to do.

9                       COMMISSIONER MARINIELLO:  He  
10      testified here today with the aid of an  
11      interpreter, didn't he?

12                      THE WITNESS:  Yes.

13                      COMMISSIONER MARINIELLO:  You've had  
14      a lot of experience dealing with the Wall Township  
15      construction department, building department, have  
16      you not?

17                      THE WITNESS:  Yes.

18                      COMMISSIONER MARINIELLO:  And you  
19      were here earlier when some questions were  
20      asked -- I assume you were -- of Agent Kuyl  
21      regarding the construction department in Wall  
22      Township?

23                      THE WITNESS:  Yes.

24                      COMMISSIONER MARINIELLO:  What has  
25      been your experience in dealing with that

1 construction department over the many years that  
2 you've been developing property there?

3 THE WITNESS: Well, you know by now  
4 I wasn't involved with the inspection during '94,  
5 '98. I was more in touch with the engineering  
6 department in the years '99 and 2000 when we were  
7 doing remediation work at the Allaire Country Club  
8 Estates, and later on we started Martin Road, Bob  
9 Cahill, the super, was in charge of the building  
10 and the inspectors.

11 However, I did see that we were  
12 building commercial property, we were doing it  
13 through a construction manager, we had a separate  
14 company and, just from seeing them around, they  
15 respond to us.

16 COMMISSIONER MARINIELLO: So, you  
17 didn't have any problem, when you called in for an  
18 inspection, getting it in a timely manner?

19 THE WITNESS: It wouldn't always  
20 going to be today, and it happens that, you know,  
21 it could be tomorrow or the day after, and also we  
22 were very anxious, you know, when it came to CO,  
23 but it would take some time. Not weeks, but a  
24 couple days.

25 COMMISSIONER MARINIELLO: Did it

1 take any more time than it might have, in your  
2 experience dealing with other municipalities?

3 THE WITNESS: No.

4 COMMISSIONER MARINIELLO: So --

5 THE WITNESS: It's roughly the same  
6 amount of time that we dealt with.

7 COMMISSIONER MARINIELLO: And they  
8 responded to them within the time period they were  
9 allotted, in terms of the inspections and also in  
10 terms of the COs?

11 THE WITNESS: Yes.

12 COMMISSIONER MARINIELLO: Do you  
13 have any doubt in your mind that the inspections  
14 that were called in for were actually done on  
15 either of the two projects?

16 THE WITNESS: My experience, when we  
17 call for inspection, they showed up, we got the  
18 sticker.

19 COMMISSIONER MARINIELLO: And that  
20 really was your ultimate concern, was to make sure  
21 that the sticker was given so you could move on?

22 THE WITNESS: No. I've seen sticker  
23 that says "Failed."

24 COMMISSIONER MARINIELLO: On the  
25 ones that were passed, that ultimately was your

1 one concern, was they came and looked at it and  
2 told you if it was right or wrong?

3 THE WITNESS: Correct.

4 COMMISSIONER MARINIELLO: But you  
5 didn't have any reason to believe that they didn't  
6 actually come look at it?

7 THE WITNESS: No, I didn't have any  
8 reason to believe that.

9 COMMISSIONER MARINIELLO: That's all  
10 I have, Mr. Chair.

11 COMMISSIONER SCHILLER: Sir, you had  
12 mentioned before a distinction between a project  
13 manager and a construction manager.

14 THE WITNESS: Correct.

15 COMMISSIONER SCHILLER: Could you  
16 define who does what?

17 THE WITNESS: A construction  
18 manager, in my experience and what I believe, is a  
19 separate company that a developer or general  
20 contractors hire. We call it a key subcontractor.  
21 He leads from the beginning -- from inception  
22 until they deliver you the keys to your house,  
23 your office or whatever it is.

24 So those companies are out there,  
25 companies like Gordon Construction in New Jersey,

1 company like Bovice Land Lease in New York and  
2 other parts of the country and, in essence, they  
3 act as the developer which a lot of times don't  
4 have the experience of an actual builder to,  
5 through their expertise, act as an agent, to  
6 supervise and hire the subcontractors to perform  
7 the job.

8 A project manager -- a construction  
9 manager will have within his team a project  
10 manager to supervise the particular project that  
11 they are hired to do. Just like in Allaire  
12 Country Club Estates we had Eli Kornberg, an  
13 employee on payroll of the company, not a separate  
14 entity, supervise the construction of Allaire  
15 Country Club Estates.

16 COMMISSIONER SCHILLER: So he  
17 basically filled both jobs? He was the project  
18 manager and construction manager?

19 THE WITNESS: If you want to call it  
20 that way.

21 COMMISSIONER SCHILLER: No, I don't  
22 want to call it. I want you to tell me what you  
23 call it.

24 THE WITNESS: Yes, he -- he  
25 supervised and he was the agent who was hiring,

1       you know --

2                       COMMISSIONER SCHILLER:  And then you  
3       took over his role in 1999, you said, correct?

4                       THE WITNESS:  Yes.

5                       COMMISSIONER SCHILLER:  And yet you  
6       had no construction or project manager experience?

7                       THE WITNESS:  Correct.

8                       COMMISSIONER SCHILLER:  And yet you  
9       were hiring the subcontractors for the  
10      corporation?  Is that not your testimony before?

11                      THE WITNESS:  Well, most of the  
12      subcontractors kept on going.  It's not that I had  
13      to go and search new subcontractors.  By the time  
14      I had to do that, I did it through the  
15      construction manager, I did it through the  
16      supervisors that stayed with us from the time that  
17      Eli was in charge.

18                      COMMISSIONER SCHILLER:  And am I  
19      correct in assuming that you had no experience or  
20      training in reading plans, construction plans?

21                      THE WITNESS:  In '99 I have no  
22      experience in reading plans.

23                      COMMISSIONER SCHILLER:  So,  
24      basically this was on-the-job training for you?

25                      THE WITNESS:  Yes.

1                   COMMISSIONER SCHILLER: At the  
2                   expense of the people who were buying their homes  
3                   there?

4                   THE WITNESS: I don't think so.

5                   COMMISSIONER SCHILLER: You said  
6                   that you were building on wetlands. Do you have  
7                   any idea what the wetlands regulations are in the  
8                   State of New Jersey?

9                   THE WITNESS: I do have the idea of  
10                  the regulations. We were conforming to the plans  
11                  that were approved, keeping the buffers from those  
12                  wetlands.

13                  COMMISSIONER SCHILLER: Did you ever  
14                  have your architect or your engineer go in and  
15                  inspect the finalized homes when they were  
16                  completed to make sure they were built according  
17                  to the plans?

18                  THE WITNESS: Yes.

19                  COMMISSIONER SCHILLER: And did they  
20                  certify that to you?

21                  THE WITNESS: They were on the  
22                  site -- the architect was on the site less  
23                  frequently than the engineer, but our engineers  
24                  were on the site on a weekly basis.

25                  COMMISSIONER SCHILLER: And I asked

1       you whether they certified to you that the  
2       construction was done according to the plans?

3                   THE WITNESS: Not in writing.

4                   COMMISSIONER SCHILLER: So the only  
5       people that you relied on here were the building  
6       inspectors, then, basically, to sign off on the  
7       plans so that you could sell these properties --  
8       or to sell the homes?

9                   THE WITNESS: I relied on my  
10       subcontractors, my supervisors and the inspectors,  
11       yes.

12                  COMMISSIONER SCHILLER: I also  
13       believe you said that Mr. Schuster had some  
14       experience in construction.

15                  THE WITNESS: Yes.

16                  COMMISSIONER SCHILLER: And that his  
17       supervision consisted of maybe once a month coming  
18       to the site?

19                  THE WITNESS: Once a month for a  
20       couple of days, yes.

21                  COMMISSIONER SCHILLER: And also  
22       that he would supervise via telephone?

23                  THE WITNESS: Yes.

24                  COMMISSIONER SCHILLER: And that  
25       would be the extent of his involvement and his

1 supervision as the person in the company who knew  
2 how to build?

3 THE WITNESS: Correct.

4 COMMISSIONER SCHILLER: Have you had  
5 any experience in building commercial buildings?  
6 You, personally?

7 THE WITNESS: No.

8 COMMISSIONER SCHILLER: And yet you  
9 are going ahead in New Jersey and continuing to  
10 build commercial buildings?

11 THE WITNESS: I said I build it  
12 through a construction manager who has the years  
13 of experience, who hires those subcontractors who  
14 are union laborers, so -- and over the years,  
15 through field inspection, I think I have  
16 experience already by now.

17 COMMISSIONER SCHILLER: I have no  
18 further questions. Thank you very much.

19 THE WITNESS: You're welcome.

20 COMMISSIONER SCHILLER: Thank you  
21 very much, Mr. Korolik.

22 MR. CAGEN: Thank you.

23

24

25

1 MS. GAAL: The next witness is  
2 Gregory Kirk.

3 Would you please remain standing and  
4 I'll ask you to place the witness under oath.

5 GREGORY KIRK, after having been  
6 first duly sworn, was examined and testified as  
7 follows:

8 MS. GAAL: Thank you. You may be  
9 seated.

10 Counsel, would you enter your  
11 appearance, please.

12 MR. SHIPERS: Yes. Good afternoon.  
13 My name is William Shipers, from the law firm of  
14 Shamy, Shipers & Lonski, New Brunswick and Wall  
15 Township. It's my pleasure. Good afternoon.

16 MS. GAAL: Thank you.

17 EXAMINATION

18 BY MS. GAAL:

19 Q. Mr. Kirk, may we have your name,  
20 please, for the record.

21 A. Gregory Kirk.

22 Q. And by whom are you employed?

23 A. Township of Wall.

24 Q. And are you their construction  
25 official?

1 A. Yes, I am.

2 Q. How long have you been the  
3 construction official there?

4 A. I believe it's going on 18 years  
5 now.

6 Q. What licenses do you hold  
7 personally?

8 A. I carry the construction official,  
9 plumbing subcode, building subcode, mechanical  
10 subcode and fire subcode.

11 Q. With respect to serving as a  
12 construction official, what licenses are you  
13 required to hold?

14 A. At least one technical subcode and  
15 the construction official's license.

16 Q. What I'd like you to do is give the  
17 Commission and -- some oversight or some  
18 explanation as to what the role is of a  
19 construction official in New Jersey. What your  
20 duties are, what your responsibilities are, where  
21 you fit into the scheme of things.

22 A. The duties of the construction  
23 officials are actually administrative positions.  
24 We are responsible for the day-to-day routines,  
25 all the paperwork, all of the Certificates of

1 Occupancy, that all the paperwork is in order,  
2 that the inspections are performed on a basis that  
3 complies with the UCC.

4 Pretty much just administrative.

5 Q. Do you, as the CO, issue the  
6 Certificates of Occupancy?

7 A. Yes, my signature goes on them.

8 Q. And this is a general question, but  
9 what is that based on? When a CO issues -- when a  
10 construction official issues a CO, what does he or  
11 she look for before they do that?

12 A. Once a final inspection has been  
13 called for and the final inspections are  
14 performed, the inspectors would then submit their  
15 paperwork back to the control person. The control  
16 person, in our particular case, would make sure  
17 that all the prior approvals have been met, which  
18 with include zoning, Board of Health, this, that  
19 or the other thing.

20 Pretty much that everything is in  
21 order and the house is -- or office or structure  
22 is safe to occupy.

23 Q. Before you began working for local  
24 government, what did you do?

25 A. I worked as an inspector with the

1 Department of Community Affairs.

2 Q. In what particular position?

3 A. Actually, there were several. One  
4 was plan review, and then I was out in the field  
5 doing inspections, and then finally I was with  
6 Regulatory Affairs.

7 Q. Were you ever in the private sector?  
8 Were you ever in the construction business or --

9 A. Yes.

10 Q. What was your field?

11 A. I was a plumbing contractor in the  
12 early '70s.

13 Q. So your background is in plumbing?

14 A. Plumbing, yes.

15 Q. Now, do you, as a construction  
16 official, go out and conduct inspections?

17 A. No.

18 Q. No.

19 Is that a statement that would be  
20 applicable to most construction officials in this  
21 state or all of them?

22 A. No. Many smaller municipalities,  
23 where the construction carries another hat, such  
24 as building inspector, he may very well go out and  
25 do the inspections, as well.

1 Q. But, in a large municipality, or one  
2 in which there is a lot of building going on, the  
3 CO usually doesn't go out and do inspections?

4 A. Correct.

5 Q. Are you familiar with Allaire  
6 Country Club Estates in Wall?

7 A. Yes, I am.

8 Q. And who was the builder, as far as  
9 you know?

10 A. Victor at Allaire.

11 Q. Did any problems come to your  
12 attention during the actual construction of  
13 Allaire Country Club Estates?

14 A. No, they did not.

15 Q. You were not aware of problems  
16 during the construction?

17 A. No, I was not.

18 Q. Were those homes, to your knowledge,  
19 inspected?

20 A. All of the paperwork was in. That  
21 tells me yes.

22 Q. And the inspections would have been  
23 done by your technical team?

24 A. Yes.

25 Q. How many different inspectors would

1 have been involved or, if you know, specifically  
2 how many?

3 A. There would be four different  
4 inspectors, but some inspectors carried two hats.

5 Q. And the four inspectors, just so we  
6 are clear, would have been?

7 A. Plumbing, electric, building and  
8 fire.

9 Q. In Wall would those have overlapped  
10 or do you think they would have been four  
11 different people?

12 A. They would have overlapped.

13 Q. So, to your knowledge, the homes  
14 were inspected during the construction --

15 A. Yes.

16 Q. -- am I right?

17 Did you issue the COs?

18 A. Yes, I did.

19 Q. Everything was in order when you did  
20 that?

21 A. Everything was in order.

22 Q. Did there come a time when problems  
23 came to your attention?

24 A. Yes, there was.

25 Q. And can you tell us when that was?

1           A.       As to the date, no, I can't, but  
2           they came from the homeowners association,  
3           themselves.

4           Q.       Can you give us -- in other words,  
5           people were already living in the homes?

6           A.       Yes, people were already living in  
7           the homes, they were occupied, and problems  
8           started to show up.

9           Q.       Do you recall whether we are talking  
10          shortly after occupancy, or years, months?

11          A.       I would say it was close to a year,  
12          year and a half afterwards that the problems  
13          started.

14          Q.       And what kind of problems did they  
15          bring to your attention?

16          A.       One was the firewalls, themselves.  
17          Apparently there was leakage coming from the roof.  
18          Some of the concrete foundations were failing,  
19          actually pushing windows or bowing windows to a  
20          point where you couldn't open them anymore.

21                    Drainage problems, but then the  
22          drainage problems we don't handle. They go right  
23          to the engineering department.

24          Q.       Drainage doesn't come under the  
25          ambit of the construction official?

1 A. No, it doesn't.

2 Q. Any others come to mind?

3 A. The firewalls, the roofs, dryer  
4 vents. There was a problem with the dryer vents.

5 Q. Did you do any investigation? Did  
6 you go out and take a look or anything?

7 A. Yes, I did.

8 Q. And what did you find when you went  
9 out?

10 A. I found that a lot of these  
11 complaints were legitimate complaints.

12 Q. I don't know if you were sitting  
13 here when Special Agent Kuyl testified. Were you?

14 A. Yes, I was.

15 Q. Did you see the pictures? And we  
16 can put them up, if you want me to, but did you  
17 see the pictures?

18 A. I saw the pictures.

19 Q. Do they depict some of the problems  
20 out there?

21 A. Yes, they do.

22 Q. As you saw them?

23 A. Yes.

24 Q. Do you have -- I have a lot of  
25 questions, but do you have any explanation that

1       you can offer us at this stage as to what  
2       happened?

3               A.       As to the missed inspections or the  
4       flaws in the inspections?

5               Q.       Yes.

6               A.       I would almost think it's a  
7       combination of quite a few things.

8               Q.       What would those things be?

9               A.       At the time Victor at Allaire was  
10       going we also had K. Hovnanian going, we also had  
11       major commercial work going. I would say the  
12       overwork, the understaffed, and obviously the  
13       incompetence of one of my inspectors.

14              Q.       Can you give us an idea, even if  
15       it's a ballpark estimate, of how many homes you  
16       might have had going on at this time?

17              A.       To be honest with you, no, I  
18       couldn't, but it was quite a few. The fellows  
19       were doing at least 20 inspections a day.

20              Q.       Is that really too many?

21              A.       Yes, it is.

22              Q.       And you also had major commercial  
23       work going on?

24              A.       Yes, we did.

25              Q.       And, when you say "incompetence,"

1       what are you talking about there? Or about one of  
2       your --

3             A.       Well, unfortunately, Four Seasons --  
4       the inspector that performed the inspections on  
5       Four Seasons is also the same inspector who was  
6       inspecting in Allaire Country Club Estates.

7             Q.       And is there something that you  
8       learned or discovered or you saw that explains why  
9       these problems were missed?

10            A.       Again, it could be a combination of  
11       a lot of things. I know he has a medical problem.  
12       I don't want to blame it all on the medical  
13       problem. The medical problem and the incompetence  
14       started approximately, I'm going to say, six years  
15       ago.

16            Q.       Does that employee have tenure?

17            A.       That employee has tenure.

18            Q.       Does that limit what you can do with  
19       respect to that employee as a construction  
20       official?

21            A.       It means that I have to build a very  
22       large file to even think about terminating him.

23            Q.       Your oversight is really only on the  
24       administrative side?

25            A.       Yes, it is.

1 Q. And technical oversight comes from  
2 where, DCA?

3 A. DCA.

4 Q. Now, have you recently become aware  
5 that there were actual deviations from the  
6 approved plans?

7 A. Yes, I was.

8 Q. And what areas come to mind that you  
9 learned about?

10 A. Well, as you pointed out the last  
11 time we met, it was the basement walk-outs.

12 Q. And the decks?

13 A. And also the decks, yes.

14 Q. When you said "the last time we  
15 met," I think you are referring to how you learned  
16 about these deviations.

17 A. Yes.

18 Q. How did you learn about them?

19 A. You brought them to my attention.

20 Q. In your office?

21 A. Yes, you did.

22 Q. Took out the plans and you looked?

23 A. Well, there were deviations from the  
24 plans.

25 Q. You were not aware of that before

1 that?

2 A. I was not aware that I didn't have a  
3 copy of the plans showing the deviations.

4 Q. So, there are no plans on file  
5 showing these deviations?

6 A. I don't know whether that's true or  
7 not.

8 Q. We haven't been able to find any?

9 A. After I received the subpoena I went  
10 down to the archives, which stores years and years  
11 and years worth of plans, and I found two  
12 different sets of drawings -- revised drawings for  
13 Allaire Country Club Estates.

14 Q. So, you found two so far?

15 A. But I still haven't found the one  
16 with the basement walk-out.

17 Q. You haven't found it for the  
18 basement walk-out?

19 A. Not yet.

20 Q. What did you find?

21 A. I found foundation changes on --  
22 well, I found the firewall changes, number one.

23 Q. Okay.

24 A. I found foundation changes on  
25 Building 1, 9 -- actually, 1, 2, 3, 9 -- a couple

1 others, I believe.

2 Q. Do you have any explanation of why  
3 they are filed like that?

4 A. Well, Allaire Country Club Estates  
5 originally was under one block and lot, then it  
6 changed block and lot. There is quite a few boxes  
7 of Block 800 that I have to go -- I would say  
8 there is at least 400 more plans I have to go  
9 through.

10 Q. Is that a problem you have, by the  
11 way, down there? Filing?

12 A. The problem is that we have so many  
13 plans that we have to go through.

14 Q. Sheer volume?

15 A. Absolute volume.

16 Q. And do you have any facility that  
17 you can keep them in any kind of organized  
18 fashion?

19 A. We have cubicles right now that we  
20 have the plans in, but each cubicle is about  
21 three-by-three, so we've got quite a few plans in  
22 them.

23 Q. Now, did you ever talk to the  
24 inspectors about these particular violations?

25 A. Constantly.

1 Q. And what did you learn from them  
2 about them? Did they give any explanation as to,  
3 you know, what had occurred or why they passed  
4 inspection?

5 A. The only remark I would get back  
6 from the inspector was, "Chief, I must have missed  
7 it."

8 Q. "Chief, I must have missed it?"

9 A. Yes. He called me chief.

10 Q. I'd like you to take a look at an  
11 exhibit we are going to put up on the screen, 284.  
12 And we are going to hand you a hard copy of it.

13 Do you recognize that?

14 A. Oh, yes, I do.

15 Q. Did you give it to us or give us a  
16 copy of it?

17 A. I gave you a copy of this.

18 Q. Right, when we were down there at  
19 your office?

20 A. Yes.

21 Q. What is that?

22 A. That's an inspection that this  
23 person performed at my request, and this was his  
24 memo to me or to the file.

25 Q. Now, did you send this inspector out

1 to look at Allaire Country Club Estates?

2 A. Yes, I did.

3 Q. And was that in connection with some  
4 of the very problems we've been talking about?

5 A. That was in connection with the  
6 stair problem.

7 Q. And how recent or how long ago did  
8 you send that inspector out?

9 A. I'm going to say at least two months  
10 ago, when I -- when it was first requested. An  
11 inspection, by the association manager, I believe  
12 it was.

13 Q. So, within the last few months you  
14 sent your inspector out to look at the problems  
15 there?

16 A. Yes.

17 Q. And they are significant. Do you  
18 agree with me?

19 A. Yes.

20 Q. And this is what you got back?

21 A. That's what I got back from my  
22 inspector.

23 Q. Do you consider this to be a  
24 thorough report?

25 A. I consider it incompetent.

1 Q. As a CO, what recourse do you have  
2 against the inspector right now?

3 A. My only recourse right now is to --  
4 well, I won't allow him to do any more residential  
5 inspections. He does strictly commercial  
6 inspections. I have hired another building  
7 inspector that now performs 95 percent of the  
8 housing inspections.

9 Q. Are the inspectors that inspected  
10 Allaire Country Club Estates still working for  
11 you?

12 A. Yes, they are.

13 Q. Have you reported any of this to  
14 DCA?

15 A. No, I haven't.

16 Q. Why not?

17 A. Well, I say, "No, I haven't." Not  
18 formally, I haven't.

19 Q. Informally?

20 A. Informally there may have been  
21 discussions.

22 Q. Do you know who you would have  
23 discussed it with?

24 A. Offhand, no, I don't remember.

25 Q. As a CO, is there any requirement

1 that you report problems like this to anyone?

2 A. Under the Administrative Code -- New  
3 Jersey Administrative Code?

4 Q. Any requirement that you notify DCA?

5 A. None that I'm aware of.

6 Q. In this case many of the violations  
7 may have been obvious, but are there instances  
8 where, by the time you get to the final  
9 inspection, things can be missed by the inspectors  
10 because they are already covered up?

11 A. Absolutely.

12 Q. Does that happen?

13 A. All the time.

14 Q. Can you give us a couple of examples  
15 of areas -- kind of key areas or significant areas  
16 where, by the time you get to the final  
17 inspection, it would have covered up anything?

18 A. Well, you have one picture on the  
19 wall here where apparently, when we did the  
20 inspections, the grade was not completed.  
21 Apparently the building was, as you said, built a  
22 block too low, so they had to add eight inches, or  
23 whatever, to meet code from grade level to wood on  
24 the building, so, in place of putting concrete,  
25 they put up a piece of plywood and covered it with

1 concrete mortar.

2 Q. So that could have well occurred  
3 after the inspection?

4 A. Absolutely, sure.

5 Q. Any other examples come to mind, if  
6 not on this development, on other developments?

7 A. Oh, there is going to be a lot of  
8 things that the inspector isn't going to see. For  
9 instance, flashing. We are not going to see most  
10 flashing, where it is, where it's supposed to be.  
11 Concrete floors, they may crack or split. It's  
12 not a required inspection, yet they may not have  
13 followed the approved plans when they put it in,  
14 but then we are not going to see it.

15 Q. Are there instances when violations  
16 could be the result of actual damage done after an  
17 inspection?

18 A. Yes. The firewalls, for instance.

19 Q. Are there sometimes situations,  
20 maybe, where the plumbers or electricians do  
21 things that may affect something that had been  
22 already inspected?

23 A. Sure. Off my head, I can't think of  
24 any.

25 Q. To what degree does the local

1 inspector or construction official rely on the  
2 quality of the builder?

3 A. You have -- the way the Uniform  
4 Construction Code is set up, we are mandated to  
5 have -- to perform certain inspections. A lot of  
6 times -- you are talking about the footing, the  
7 foundation, the structure itself, the plumbing,  
8 the electric and the finish.

9 We are never going to see the  
10 flashing, because the siding has already gone up.  
11 We don't know whether the siding was nailed  
12 properly unless we go through the whole house and  
13 feel each one. We don't know whether they -- we  
14 are going to miss a lot.

15 We don't know whether they  
16 Sheetrocked it properly, we don't know whether  
17 they nailed the Sheetrock properly. There is a  
18 lot of things that are going to be covered up that  
19 we are not going to see.

20 Q. Would you agree with me that it's  
21 impossible -- virtually impossible for anybody to  
22 be out there during all that construction? There  
23 is no way that you could possibly inspect it all?

24 A. The only possible way I could see  
25 inspecting the home from soup to nuts is to be

1           there every day and every hour that the builder is  
2           on that job site.

3           Q.       So, getting back to my initial  
4           question, do you -- and I don't mean you,  
5           personally, but do you, in your position, perhaps  
6           you personally, rely on the quality of the  
7           builder, to some extent?

8           A.       Yes, we do.

9           Q.       You have to, don't you?

10          A.       Yes.

11          Q.       Now, in this case, have you learned  
12          anything about the type of construction that went  
13          on at Allaire Country Club, in terms of the  
14          quality of the workmanship, the subcontractors?

15          A.       Yes. After all the complaints came  
16          in and they were legitimized, yes, I developed an  
17          opinion as to --

18          Q.       What is it?

19          A.       I think it was very shoddy  
20          workmanship.

21          Q.       You didn't know that at the time?

22          A.       No. The finished product looked  
23          great.

24          Q.       It looked great?

25          A.       Looked wonderful.

1           Q.       You mentioned a few moments ago that  
2           you had several things going on at the same time.  
3           At an earlier hearing we discussed problems at  
4           Four Seasons at Wall, and we have seen problems in  
5           other homes and developments within Wall.

6                     Does your office have staffing  
7           problems?

8           A.       Yes, we do.

9           Q.       And what are they?

10          A.       Lack of people, too many  
11          inspections.

12          Q.       Can you flesh it out for us a little  
13          bit? When you say lack of people, what do you  
14          mean, and how many inspections are going on?

15          A.       We need more inspectors in every  
16          technical section.

17          Q.       How many do you currently have?

18          A.       I have six other inspectors, all  
19          inter-licensed, except for the electrical.

20          Q.       And how many do you think you would  
21          need to actually do a good job?

22          A.       At the present time I'm fine the way  
23          we are. When these subdivisions were going crazy,  
24          many, many more.

25          Q.       At least double what you had?

1 A. At least double what I had.

2 Q. Have you ever requested additional  
3 inspectors in the past?

4 A. On many occasions. In fact, I  
5 requested the DCA come up and do an evaluation on  
6 our department and they even recommended that we  
7 hire more inspectors. I approached the township,  
8 the township said, "Yes, go ahead," and I did hire  
9 another building inspector and another technical  
10 assistant.

11 Q. During the time when you were really  
12 swamped with the inspections, were you able to  
13 hire then?

14 A. No, I wasn't.

15 Q. How many people did DCA recommend?  
16 Just the two or did they recommend more?

17 A. They just recommended an additional  
18 building inspector and a control person.

19 Q. What would happen if, next year or  
20 next month, there was another large increase in  
21 development?

22 A. We'd be in major trouble.

23 Q. You would be.

24 How is your office funded?

25 A. It's funded by budget, dedicated

1 budget.

2 Q. Are there two ways to fund a  
3 construction office?

4 A. Yes. Dedicated by budget or  
5 dedicated by rider.

6 Q. What does it mean to be dedicated by  
7 budget?

8 A. Budget means I get a certain amount  
9 of money over and above the salaries.

10 Q. And what does it mean to be funded  
11 by rider?

12 A. Rider means that the township or the  
13 borough would more or less rent the space to you,  
14 rent your cars, your vehicles. Rent everything,  
15 telephone, desk, everything.

16 Q. And you would be funded by the  
17 permit fees?

18 A. We would be funded by the permit  
19 fees.

20 Q. Many -- or quite a number of  
21 construction officials that we have spoken with,  
22 and I think everyone we've asked this question of,  
23 have said they would prefer to be funded by rider.

24 Would you agree with that? Would  
25 you prefer to be funded by rider?

1           A.       I think it's more -- it works better  
2       for the construction department to be funded by  
3       rider.

4           Q.       Do you know whether most  
5       construction departments are funded by budget or  
6       by rider?

7           A.       I believe 90 percent are dedicated  
8       by budget.

9           Q.       Does your office bring in more money  
10      in permit fees than it receives in funding?

11          A.       I can only tell you what my office  
12      brings in and I can only tell you what my budget  
13      is.

14          Q.       Okay.  What does your office bring  
15      in?

16          A.       You mean moneywise, how much?  It's  
17      going to vary every year.

18          Q.       Well, I'm just curious as to  
19      whether, over the years, you think that you've  
20      brought in more in permit fees than you were given  
21      to operate your -- you know, to operate with?

22          A.       Yes, I always thought I brought in  
23      more than I was able to operate -- one of your  
24      inspectors pointed out that I was wrong.

25          Q.       How about the fee structure in the

1 town? Who sets the fee structure?

2 A. I do and the township does.

3 Q. Has there been any raising of the  
4 fee structure or do you think that should be  
5 considered?

6 A. We haven't raised fee structure --  
7 the fee structure, I'm going to say, in maybe  
8 12 years.

9 Q. Mr. Kirk, you've been, quite  
10 frankly, very cooperative with us and we  
11 appreciate your cooperation. We also recognize  
12 that there have been significant problems in  
13 developments in Wall which have come to the  
14 attention of this Commission. We've been -- it's  
15 been featured in a couple of hearings.

16 Looking at this whole picture, what  
17 insight can you give us or what could you have  
18 done differently? If you could turn back the  
19 hands of time and do it over, what would you do  
20 differently to try to avoid what we've seen?

21 A. Probably one thing I would have done  
22 differently or requested from the Department of  
23 Community Affairs would allow us to either retain  
24 the services of the DCA or go out and hire a third  
25 party to handle all the inspections on any kind of

1 a major subdivision that came in.

2 At the present time I can do  
3 neither.

4 Q. What about this tenure situation?  
5 Is there anything that could be changed there?

6 A. I think we would have to lower the  
7 standards of giving -- giving the township or the  
8 official a little bit more power to remove an  
9 individual when incompetence is shown.

10 Q. During the course of time when  
11 you've been the construction official in Wall,  
12 have you also held positions in other  
13 municipalities?

14 A. Yes, I have.

15 Q. Where else have you held positions?

16 A. I also work for the Borough of  
17 Belmar, the Borough of Spring Lake and Manasquan.

18 Q. What are you in Belmar?

19 A. Belmar I am the plumbing and the  
20 fire subcode official.

21 Q. And Spring Lake?

22 A. Spring Lake, just plumbing.  
23 Manasquan, just plumbing.

24 Q. We heard today that site plans are  
25 required in Wall now for each home. Is that true?

1           A.       Yes. We have two sets of plans that  
2 we work with. When we issue a zoning permit, we  
3 request a location survey prior to issuing a  
4 permit. Prior to us doing any further inspections  
5 after the foundation is in, we ask for an as-built  
6 location survey. That survey will now show us the  
7 elevations.

8           Q.       Do you think the site plans for  
9 Allaire Country Club Estates and Martin Road,  
10 knowing what we know now, should have been  
11 approved?

12          A.       That's really not my call. That's  
13 engineering department.

14          Q.       Do you find that you folks are  
15 called out to do inspections when the buildings  
16 are really not ready for inspection?

17          A.       Constantly.

18          Q.       You moved forward to the mic when  
19 you said that. Tell me what you mean by  
20 "constantly."

21          A.       We are constantly doing inspections  
22 or going out to do inspections that are not ready  
23 for us.

24          Q.       That means you have to go out more  
25 than once?

1           A.       That means you have to come back out  
2 again.

3           Q.       Do you get to charge again for  
4 having to go out?

5           A.       No, we don't.

6           Q.       Why do you think that's happening?

7           A.       I really have no answer for it,  
8 unless the -- we have a situation where the  
9 builder will probably call, knowing that the  
10 plumbing is not ready. If the plumber calls, I  
11 know the plumbing is ready.

12          Q.       Shouldn't the builder have inspected  
13 it himself to make sure it's ready for --

14          A.       Yes, he should have.

15                   MS. GAAL: That's all I have.

16                   COMMISSIONER EDWARDS: Sir, earlier  
17 I referred to Wall Township. I've listened to  
18 your explanation and also appreciate your candor  
19 and your cooperation with our Commission.

20                               However, I have to tell you that  
21 I'm -- I guess I'm appalled at the entire  
22 construction office's functioning during that  
23 period in Wall Township. I'm appalled at the fact  
24 that you can't find any plans, I'm appalled that  
25 it's not administered better, I'm appalled at the

1 inspectors, at the level of inspection on a  
2 project as big as the Allaire project and the  
3 support that I saw -- or the example of an  
4 inspection that was on the board a few minutes ago  
5 or so, in anyone's eyes is -- indicates a level of  
6 incompetence that I just can't imagine anybody  
7 putting up with.

8                   The -- and I also have to say the  
9 detail and the lack of knowledge that I have about  
10 what the issues and problems and the chronology --  
11 the factual chronology of the history here is also  
12 difficult to understand.

13                   You indicated that you had -- the  
14 DCA came in, you didn't say when they came in, but  
15 they came in and said you needed one or two more  
16 inspectors. The level of the problem that you've  
17 indicated to me indicates that your office needs a  
18 lot more than one or two inspectors to be able to  
19 handle the Four Seasons and the Allaire project  
20 simultaneously along with the Martin Road Estates  
21 and other individual developments. I count a  
22 thousand projects going. The level of inspections  
23 that are required and things you are supposed to  
24 look at obviously were not being done at anywhere  
25 near DCA's specifications as to when they are

1       supposed to be done across the board, and nothing  
2       was done about it. Nothing. If I was the  
3       township, from DCA, with your office, and we have  
4       literally hundreds and hundreds of homeowners who  
5       have come up short.

6                       The fact that you say we rely on the  
7       developer and the quality of the developers, your  
8       testimony -- I think you are accurate. I'm not  
9       disputing it -- is appalling. If we rely on the  
10      accuracy and the certifications of the builder,  
11      why do we have you there at all? Just close the  
12      office. We wouldn't be any better off.

13                      The level of inspections that were  
14      going on, the way you've described them, and a  
15      reliance on the builder -- there is no question  
16      that the Allaire project was poorly constructed,  
17      there is no question about that, but we didn't  
18      catch that. There is no question that the  
19      Hovnanian development, Four Seasons at Wall, was  
20      poorly done. We didn't catch that.

21                      The Martin development is a much  
22      smaller, one individual. I'm sure that, if we  
23      went back and looked at every development there,  
24      we would probably find more. Those developers  
25      that did it right, they are going to turn out

1       okay.  Those that did it wrong, the department has  
2       no impact on the outcome, either positively or  
3       negatively, and that just -- that's just a  
4       standard that is just not acceptable.  And how  
5       would you -- how should an office be constructed  
6       in a development -- in a municipality that has the  
7       level of development that you are talking about?  
8       Because this happens in municipalities all over  
9       the state.

10                     If I've got a good developer, very  
11       often the reason I've got a good developer is  
12       because I have a good building department on his  
13       back.

14                     Maybe Wall Township's problem is  
15       that every developer knows that the building  
16       department is not on their back, can't be on their  
17       back.  It's structured in such a way and functions  
18       in such a way that it can't deliver the product.

19                     And the summation of your testimony,  
20       from my perspective, is that your department is  
21       not capable of handling any large-scale  
22       developments at any level.  You are not  
23       administratively capable of doing it, you are not  
24       skilled internally in -- your internal inspectors  
25       aren't capable of making inspections that are

1 meaningful to deliver a product consistent to that  
2 community.

3 Did I miss something?

4 THE WITNESS: I don't think so.

5 COMMISSIONER EDWARDS: Thank you  
6 very much.

7 COMMISSIONER MARINIELLO: I just  
8 wanted to be sure I heard your testimony  
9 correctly. The same inspectors that were with  
10 Wall Township, with the exception of the two new  
11 people you hired, that were there during the  
12 Allaire and Four Seasons time, are still there  
13 today?

14 THE WITNESS: Yes, they are. One.

15 COMMISSIONER MARINIELLO: One?

16 THE WITNESS: One inspector is still  
17 there.

18 COMMISSIONER MARINIELLO: And that  
19 is the one that's tenured?

20 THE WITNESS: Yes.

21 COMMISSIONER MARINIELLO: Now, what  
22 discipline is that particular person?

23 THE WITNESS: He's the building  
24 subcode official and the fire inspector.

25 COMMISSIONER MARINIELLO: So the

1 fire inspector -- let's forget about building for  
2 a moment, but the fire inspector, as we sit here  
3 today, has the level and degree of incompetence  
4 that you believe should not be allowed, but you  
5 can't do anything about it?

6 THE WITNESS: At the present time,  
7 no.

8 COMMISSIONER MARINIELLO: Although  
9 he's not inspecting residences, he's still  
10 inspecting commercial buildings?

11 THE WITNESS: Yes, he is.

12 COMMISSIONER MARINIELLO: So, while  
13 this investigation deals with residential  
14 buildings, doesn't -- you know, we don't have our  
15 eye closed to the fact that there is commercial  
16 building, and a lot of it, being done in Wall  
17 Township, and this is the same gentleman that's  
18 going out there and inspecting today.

19 THE WITNESS: And I also have better  
20 inspectors that follow right behind him.

21 COMMISSIONER MARINIELLO: So, you  
22 are having to essentially double the expense?

23 THE WITNESS: Yes, I am.

24 COMMISSIONER MARINIELLO: Just to  
25 double-check things?

1 THE WITNESS: Yes.

2 COMMISSIONER MARINIELLO: Now, is  
3 the mayor and council of Wall Township aware of  
4 this problem?

5 THE WITNESS: Yes, they are.

6 COMMISSIONER MARINIELLO: Well, I  
7 got to believe, by the time this investigation is  
8 done, there has to be a serious file available to  
9 you to move forward with this gentleman's --

10 THE WITNESS: You are correct.

11 COMMISSIONER MARINIELLO: And I  
12 suspect that the awareness that this has brought  
13 to your community, the mayor and council, to you  
14 and everyone else there, that it would not take a  
15 genius to recommend that either this tenure system  
16 be changed or the proofs to allow a municipality  
17 to move forward, not stand in the way of  
18 incompetent officials going out on a day-to-day  
19 basis and inspecting the homes.

20 I mean, there are hundreds of  
21 homeowners here, even those who don't know about  
22 problems in their homes, who are going to hear  
23 about this investigation, who live in Wall  
24 Township, who are going to say, "Wait a minute, my  
25 home was inspected by that gentleman and I have no

1 belief right now that that was done correctly."

2 Would you agree with me?

3 THE WITNESS: I agree.

4 COMMISSIONER MARINIELLO: And that  
5 goes for the framing, goes for the trusses, am I  
6 correct?

7 THE WITNESS: Yes.

8 COMMISSIONER MARINIELLO: I have  
9 nothing further, Mr. Chair.

10 COMMISSIONER SCHILLER: Just to  
11 follow a little bit up on what the Commissioner  
12 was asking you about, especially the life safety  
13 code, or fire is the one that's most troubling, to  
14 me anyway.

15 Were any of these failures reported  
16 to DCA?

17 THE WITNESS: No.

18 COMMISSIONER SCHILLER: Why not?

19 THE WITNESS: It's not required.

20 COMMISSIONER SCHILLER: I didn't say  
21 whether it was required. I asked whether these  
22 were reported. Simply because it wasn't required,  
23 can't DCA come in and supersede him? Can't DCA  
24 send an inspector in and supersede that fire  
25 inspector?

1                   THE WITNESS: I would think, if the  
2 DCA had been notified by the association or  
3 something, the DCA would have definitely come in  
4 and done something about it.

5                   COMMISSIONER SCHILLER: But you  
6 didn't do that?

7                   THE WITNESS: No, I didn't do that.

8                   COMMISSIONER SCHILLER: Don't you  
9 think you should have? If DCA is the supervising  
10 agency here in the state, why weren't they at  
11 least notified and say, wait a minute, I got a guy  
12 out there -- like a firewall, you know, we are  
13 talking about covering up -- you know, they can  
14 cover up some stuff, you put Sheetrock up and you  
15 can't inspect every little thing, but a firewall  
16 is pretty significant to miss for a fire  
17 inspection.

18                   THE WITNESS: Yes, it is.

19                   COMMISSIONER SCHILLER: And for that  
20 to continue to happen and put people's lives in  
21 jeopardy is -- seems that somebody should be  
22 notified. Since he received his license from DCA,  
23 it seems incumbent on you, as the construction  
24 official in the city, to report that to DCA.

25                   THE WITNESS: Well, eventually I

1 will. I have to make a file against him first.

2 COMMISSIONER SCHILLER: Does DCA  
3 ever come into your town and supersede in any of  
4 your subcode officials, or you?

5 THE WITNESS: Supersede? No.

6 COMMISSIONER SCHILLER: But they  
7 have been in your town?

8 THE WITNESS: They have been in our  
9 town, yes.

10 COMMISSIONER SCHILLER: And have  
11 they done an analysis of your department?

12 THE WITNESS: They've done an  
13 analysis, they've done monitoring of our  
14 department.

15 COMMISSIONER SCHILLER: Can you give  
16 me just an idea or a summary of what their  
17 findings were or what they are going to do or  
18 what their recommendations are?

19 THE WITNESS: Well, this is not  
20 recently. This might be quite a few years ago.  
21 And we responded to their requests.

22 COMMISSIONER SCHILLER: So this was  
23 not in the last five or ten years?

24 THE WITNESS: This was -- yes, it  
25 was within the past five years.

1                   COMMISSIONER SCHILLER: The question  
2 of fees, you said -- you talked a little bit about  
3 it before. When DCA does come in, do they receive  
4 the fees that you would be receiving, if they are  
5 supplying the inspection?

6                   THE WITNESS: If the DCA came in,  
7 they would take all the fees, yes.

8                   COMMISSIONER SCHILLER: So they  
9 would be paying the fees to the state office as  
10 opposed to your office?

11                  THE WITNESS: Yes.

12                  COMMISSIONER SCHILLER: Have you  
13 ever known -- in a large project like Hovnanian,  
14 have you ever tried or have you ever requested of  
15 any of the different developers, like Hovnanian or  
16 Victor, to supply you with certifications from the  
17 licensed professionals, the architect, the  
18 engineer?

19                  THE WITNESS: Yes, we have. Sure.

20                  COMMISSIONER SCHILLER: Sorry?

21                  THE WITNESS: Yes, we have.

22                  COMMISSIONER SCHILLER: And you have  
23 received that?

24                  THE WITNESS: Yes, we have.

25                  COMMISSIONER SCHILLER: Have you

1 found those certifications to be accurate or have  
2 you found them also to be false?

3 THE WITNESS: If it comes from a  
4 licensed engineer or licensed architect, yes, we  
5 may have problems, but I'm not -- legally I don't  
6 know whether I have the right to deny their  
7 certification or -- you know, they are the  
8 licensed professional. I am not.

9 COMMISSIONER SCHILLER: Well, for  
10 instance, did you ever receive a license -- a  
11 professional certification that one of the  
12 buildings with a firewall was not built was built?

13 THE WITNESS: No, I haven't.

14 COMMISSIONER SCHILLER: And --

15 THE WITNESS: Your question was,  
16 have I received a certification --

17 COMMISSIONER SCHILLER: In other  
18 words, if you were going to use licensed  
19 professionals who we could get at, the state could  
20 get at because they have a license, and we can't  
21 rely on -- I'm looking to find out whether we can  
22 rely on their certifications as a supplement to  
23 what the building department does, or are they  
24 just as vulnerable to yielding and bending over  
25 backward to the developer, or have you found these

1       certifications to be at all false or to be not  
2       accurate?

3                   THE WITNESS: I found some to be  
4       inaccurate.

5                   COMMISSIONER SCHILLER: And when you  
6       find them to be inaccurate, what is the process?

7                   THE WITNESS: We will question the  
8       architect or the designer and either he changes it  
9       or he'll write a letter of certification for it,  
10      and then my recourse is nothing.

11                  COMMISSIONER SCHILLER: You do  
12      notify the board, the licensing board?

13                  THE WITNESS: I have done that  
14      before, yes.

15                  COMMISSIONER SCHILLER: Mr. Kirk,  
16      I've heard you to be very candid, very open, maybe  
17      a little frustrated like all of us are here, but I  
18      want to commend you on your forthrightness. If we  
19      don't have people telling us exactly what's going  
20      on out there, we can never solve the problem.

21                  So I commend you personally on your  
22      forthrightness on all the questions, some of which  
23      I'm sure you weren't happy that you had to tell us  
24      what went on, but you did tell us, and I commend  
25      you for that.

1                   COMMISSIONER FLICKER: In response  
2 to Ms. Gaal's question, you said that one of your  
3 recommendations you would make, if you were faced  
4 with that kind of volume again, you would either,  
5 I think you said, retain the services of DCA and  
6 go out -- or go out and hire third parties to do  
7 the inspection services?

8                   THE WITNESS: Yes.

9                   COMMISSIONER FLICKER: Were those  
10 options available to you --

11                   THE WITNESS: No, they are not.

12                   COMMISSIONER FLICKER: They were  
13 not?

14                   THE WITNESS: Sorry.

15                   COMMISSIONER FLICKER: Were those  
16 options available to you during the construction  
17 of the Allaire Estates project or Four Seasons at  
18 Wall?

19                   THE WITNESS: No, they were not.

20                   COMMISSIONER FLICKER: Are they  
21 available to you now? Has there been a change?

22                   THE WITNESS: No, they are not.

23                   COMMISSIONER FLICKER: So these are  
24 recommendations you would come to us and suggest  
25 would be helpful to you?

1 THE WITNESS: I have contacted the  
2 DCA within the past year, because we have a new  
3 development coming to Wall, and requested to allow  
4 us to hire or retain the services of a third-party  
5 agency, and I was told that I cannot do so.

6 COMMISSIONER FLICKER: Were you told  
7 why?

8 THE WITNESS: No, I did not  
9 understand why.

10 COMMISSIONER FLICKER: So, as you  
11 sit here, you can't tell us their logic for that?

12 THE WITNESS: No, I can't.

13 COMMISSIONER FLICKER: Did you ask  
14 of them whether, if you indeed fell into a bind,  
15 you could retain DCA's services?

16 THE WITNESS: No, I did not ask  
17 that.

18 COMMISSIONER FLICKER: And do I  
19 understand correctly that you said you now have  
20 six subcode officials, but one of the subcode  
21 officials is the gentleman you've described as  
22 incompetent?

23 THE WITNESS: Yes.

24 COMMISSIONER FLICKER: Thank you  
25 very much.

1 THE WITNESS: Thank you.

2 COMMISSIONER SCHILLER: Again, Mr.  
3 Kirk, thank you very much.

4 We'll break for lunch, and it's 20  
5 after, so we'll be resuming at 20 after 2:00.

6 Excuse me. We'll come back here at  
7 2:00.

8 (Recess called at 1:22 p.m.)

9 (Resumed at 2:07 p.m.)

10 COMMISSIONER SCHILLER: Commissioner  
11 Edwards.

12 COMMISSIONER EDWARDS: Good  
13 afternoon, ladies and gentlemen.

14 Over the past months and throughout  
15 these proceedings we have had the pleasure of  
16 hearing from a diverse and distinguished roster of  
17 witnesses, all of them experts in their own way --  
18 homeowners, inspectors, municipal code officials,  
19 engineers, subcontractors, construction personnel.

20 With their help, and the hard work  
21 of our own staff, we have framed the central  
22 issues of this investigation -- issues involving  
23 the essential quality of new-home construction,  
24 the integrity of the inspections and code  
25 enforcement, and the adequacy of government

1 oversight and the real problems of consumer  
2 protection and remediation.

3 We now need to take it to another  
4 level. In order to make this inquiry as  
5 comprehensive as possible -- indeed, to make it as  
6 credible as possible -- we need to hear from those  
7 who are directly involved in the production of new  
8 homes in this state.

9 To that end, joining us this  
10 afternoon are representatives of three companies  
11 that are and have been key players in the very  
12 important and, I might add, very influential  
13 residential development and construction industry  
14 here in New Jersey. We look forward to their  
15 testimony. More importantly, we welcome the  
16 opportunity to pursue a frank and comprehensive  
17 examination of vital issues that concern all of  
18 us.

19 As you know, the Commission's role  
20 is to identify facts and open a dialog with those  
21 who can fix the problems. Defensiveness and the  
22 tendency to bridle at constructive criticism are  
23 not helpful to that process. Our investigation  
24 has uncovered systematic flaws that can be  
25 corrected through the mutual efforts of industry

1           and government leaders.

2                           Mr. Chairman, you can call the first  
3           witness.

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1 MS. GAAL: Joseph Riggs.

2 Good afternoon, Mr. Riggs. If you  
3 would remain standing, I'll have the reporter  
4 place you under oath.

5 JOSEPH RIGGS, after having been  
6 first duly sworn, was examined and testified as  
7 follows:

8 EXAMINATION

9 BY MS. GAAL:

10 Q. Thank you, you may be seated. The  
11 way the mics work, if the red light is not on,  
12 it's not working.

13 May we have your name, please, for  
14 the record.

15 A. My name is Joseph F. Riggs, I am a  
16 group president with K. Hovnanian Companies.

17 MS. GAAL: Thank you. And, counsel,  
18 would you enter your appearance, please.

19 MR. DAHL: Yes. Stephen Dahl,  
20 with -- counsel for K. Hovnanian Companies.

21 BY MS. GAAL:

22 Q. Mr. Riggs, how long have you been  
23 with K. Hovnanian Companies?

24 A. Since June of 1993.

25 Q. Can you tell us a little bit about

1 your background prior to your current position.

2 A. In my current position I am  
3 responsible for a geography in our operation.  
4 Includes New Jersey, Pennsylvania, Southern New  
5 York, Ohio and Minnesota. I've had that position  
6 for approximately four years.

7 Prior to that I was an area  
8 president with our company, and at that time I had  
9 operating responsibility for several counties in  
10 Northern New Jersey. Prior to that I was in  
11 business for myself in the private side of the  
12 building business.

13 Q. And you've been with the K.  
14 Hovnanian Companies for 11 years?

15 A. Correct.

16 Q. Who are the principals of that  
17 company or companies?

18 A. Well, the company is a publicly-  
19 owned company and, so, there are many, many  
20 shareholders. The Hovnanian family owns  
21 approximately 50 percent of our stock.

22 Q. To whom do you report?

23 A. And, I might say, the Kevork  
24 Hovnanian family, because there are a number of  
25 Hovnanians and it's the cause for much confusion,

1 both external -- or internal and especially  
2 external.

3 Q. So, Kevork Hovnanian and his family?

4 A. Correct.

5 Q. And his son's name is?

6 A. His son's name is Ara Hovnanian and  
7 Ara is our CEO and president.

8 Q. To whom do you report?

9 A. I report to Ara Hovnanian.

10 Q. You mentioned you are a group  
11 president, is that right?

12 A. Correct.

13 Q. How many other group presidents does  
14 K. Hovnanian Companies have?

15 A. Three others.

16 Q. Are there people that report to you  
17 that actually directly handle New Jersey matters?

18 A. An individual reports to me who  
19 handles New Jersey, and then there are numerous  
20 area presidents who report to him.

21 Q. In respect -- or with respect to  
22 each development, residential development, if I  
23 can use that word, built by your company, and I'm  
24 speaking specifically about New Jersey, but are  
25 separate corporations usually formed?

1 A. Yes, there are.

2 Q. Are they usually LLCs, if you know?

3 A. I don't know for sure. I believe  
4 so.

5 Q. Do those entities remain in effect  
6 for some period of time?

7 A. They do.

8 Q. And can you give us some idea how  
9 long they may remain in effect?

10 A. Oh, you know, I'm not sure I'm the  
11 right person to answer that question specifically,  
12 but certainly several years after the conclusion  
13 of construction at an individual community.

14 Q. You have appeared before the  
15 Commission in private session at least -- I think  
16 it was approximately two days, or at least a day  
17 and a half of private testimony involving a number  
18 of issues, including questions about several  
19 developments in which your company has been  
20 involved in in New Jersey, and I'm not going to  
21 ask you all those questions today, that would be  
22 impossible, but, in a number of developments there  
23 were construction deficiencies or construction  
24 issues, and those deficiencies, if you will, go  
25 back to approximately the mid-1990s, is that

1 right?

2 A. Of the communities that we discussed  
3 during my testimony, that's correct.

4 Q. Has your company been involved in  
5 implementing various internal procedures to deal  
6 with the types of issues we've talked about?

7 A. We have been, both before those  
8 issues arose and subsequent to those issues  
9 arising, but we have instituted a number of  
10 programs for enhanced quality control that we  
11 believe will raise the bar on our level of  
12 performance.

13 As I've mentioned to you in the  
14 past, we think that we've performed with  
15 reasonable quality and we've always stood behind  
16 all of our homes, regardless of any shortcomings,  
17 but we can always do better and we certainly are  
18 committed to do exactly that, and those process  
19 changes are part of that quest.

20 Q. Is one of the programs that the  
21 company has implemented called Quarterly Assurance  
22 Review, QAR?

23 A. Quality Assurance Review.

24 Q. Quality Assurance Review, QAR?

25 A. Yes.

1           Q.       Can you tell us approximately when  
2 that was implemented?

3           A.       Approximately 2001, and then it took  
4 a year or so to gain traction and I think it's  
5 really the last two years or so that we have  
6 confidence that it's been up and running in all  
7 its colors.

8           Q.       And what is its purpose?

9           A.       Its purpose is to understand key  
10 structural components of our construction practice  
11 to make sure that we are doing all that we can to  
12 self-inspect that process. So, as you know -- or  
13 may know -- we have our own construction  
14 superintendents and construction managers that are  
15 at each individual community. Of course,  
16 municipalities do their own inspections, and then  
17 this is the third check, the third set of eyes  
18 that come from our Edison region office and  
19 inspect approximately a third of our homes. They  
20 don't get in every one, but they get in a  
21 representative sample, we believe.

22           Q.       So, the QAR folks are separate and  
23 apart from the people who are actually out in the  
24 field building homes?

25           A.       Totally separate.

1 Q. And am I right that you actually are  
2 looking behind the walls to check the integrity --  
3 the structural integrity, so to speak?

4 A. That's correct. Most of the issues  
5 that are inspected by our QAR associates are  
6 related to the core structure of the home. So, in  
7 fact, most of that inspection takes place before  
8 there are walls on the home in the first place.

9 Q. You mentioned about 30 percent of  
10 the construction is inspected this way?

11 A. 30 percent of the homes.

12 Q. Of the homes.

13 A. And I think I'm correct in that  
14 percentage. I could be a little high or I could  
15 be a little low, but we hope that we get a  
16 representative number of homes inspected. We  
17 believe that we are.

18 Q. What is a trade partner?

19 A. A trade partner is another name for  
20 a subcontractor.

21 Q. That's a term you used for -- I  
22 don't know if the industry does, but at least I've  
23 heard you use it.

24 A. Many in the industry do, but we  
25 certainly do. Not everyone does, though.

1           Q.       K. Hovnanian Companies, does the  
2           company or companies typically use subcontractors,  
3           trade partners, to do the construction or do they  
4           have their own force?

5           A.       We typically use trade partners,  
6           although, having said that, one of the things that  
7           we are in the process of looking at for the future  
8           is vertical integration where we might take on  
9           some of the construction responsibilities with our  
10          own associates.

11                    That's been done, by the way, in our  
12          industry in the past. It's not a particularly new  
13          concept, but all companies these days look at  
14          their processes and look at vertical and  
15          horizontal integration as a way to improve  
16          quality, improve profit and improve process.

17          Q.       Are there any particular trades that  
18          you are actually looking at to take on in-house?

19          A.       We've looked at a number of our key  
20          trades. I'm sure that we would focus on the  
21          larger trades. That would certainly include  
22          framing, plumbing, HVAC work, that kind of thing.  
23          It might well not include finish trades,  
24          floorings, kitchen countertops, that sort of  
25          thing.

1           Q.       With respect to problems in your  
2           construction, whether they are code problems or  
3           other issues, have you found that there can be, at  
4           least, a problem with respect to the  
5           subcontractors you use?

6                     In other words, the quality of the  
7           work. Does that link sometimes to the  
8           subcontractor you are using?

9           A.       Well, the subcontractors are the  
10          individuals that actually do the work, and we  
11          oversee the work that they do, so, if anything has  
12          been substandard, we would certainly call into  
13          question the performance of the subcontractor, but  
14          we would also call into question our own oversight  
15          of that subcontractor.

16          Q.       Have you -- and I don't mean you  
17          personally, but has the company instituted any new  
18          procedures to try to reduce the mistakes, if you  
19          will, or improve the performance of its trade  
20          partners in home construction?

21          A.       We have, but, perhaps more  
22          importantly, many of them have, and there are a  
23          number of quality initiatives, some sponsored by  
24          the National Association of Home Builders, that  
25          provide a forum for trade partner education so

1 that they can come up to speed on what good  
2 quality management is about and the different  
3 processes and systems that can be used to try to  
4 improve their own performance.

5 And that is not particularly unique  
6 to our industry. I think that's common across  
7 industry generally.

8 Q. One of the programs, if you will,  
9 you mentioned when you were in executive session,  
10 was, I think, ISO 9000?

11 A. Correct. I think I did mention  
12 that.

13 Q. Can you discuss that for the  
14 Commission?

15 A. ISO 9000 -- frankly, I'm not sure  
16 I'll be able to discuss it in a lot more  
17 specificity than I did before you previously,  
18 which wasn't very much, but it's a set of  
19 standards that are used to measure adherence to  
20 quality practices and margins of error for quality  
21 performance.

22 I think, in layman's terms, that's  
23 generally what it is. More technical terms would  
24 have to be left to those more versed than I on the  
25 subject.

1 Q. Now, is this currently a requirement  
2 for all your trade partners?

3 A. It's not a requirement, but we are  
4 strongly encouraging all of them to initiate their  
5 own quality -- total quality initiatives, and it  
6 wouldn't surprise me that it would become a  
7 requirement in the future. At the moment, it's  
8 voluntary. Many of them are taking advantage of  
9 that opportunity. We are providing -- we are  
10 paying for the trainers, and so on and so forth,  
11 for them to take advantage of that opportunity, so  
12 it doesn't cost them anything, as long as they  
13 stay with us in the future as a trade partner.

14 Q. What does the term "partners in  
15 excellence" mean?

16 A. Partners in excellence is an acronym  
17 in our company for our total quality management  
18 program.

19 Q. Have you reduced the number of trade  
20 partners that you use?

21 And I don't mean you. Again, the  
22 company. Have you reduced the total number of  
23 trade partners?

24 A. We have, over the years, tried to go  
25 with fewer and larger trade partners and, frankly,

1       that was the point in time when we began referring  
2       to these companies as our partners, because we  
3       were essentially saying to them, give us certain  
4       commitments to being able to handle volume and,  
5       you know, best cost structure and the like and, in  
6       exchange, we'll give you a particular portion of  
7       our work. So it will be a win-win situation and  
8       it will also allow us, as the opportunity arises,  
9       to train quality initiatives and that sort of  
10      thing. We will have less people that need to be  
11      trained. So, to that extent, it's a numbers game  
12      and becomes a more tenable and manageable  
13      environment for us.

14             Q.       Do you see it as a way to increase  
15      the oversight or get better oversight over the  
16      contractors -- subcontractors?

17             A.       Only to the extent that there are  
18      less people that we might feel we need to  
19      indoctrinate with any of our own training, but we  
20      hope that -- the real key is their own quality  
21      initiatives that allow them to become better at  
22      overseeing their own work, because, of course,  
23      that's the way both they and we want it to be.

24             Q.       We recognize that, as an  
25      entrepreneur, you have an interest that relates to

1 the bottom line and economic interests and so  
2 forth, but, from the side of the construction  
3 defects or construction problems, can you tell us  
4 what the company's goals are with these programs  
5 and any others you have in place?

6 Is there an interest in reducing  
7 construction-related problems?

8 A. Certainly. I mean, we've spent many  
9 millions of dollars at this point on repairs that  
10 we wish hadn't needed to be undertaken in the  
11 first place, we've spent many millions more on the  
12 process changes that I've been describing with you  
13 for the last few minutes, and we are optimistic  
14 that these initiatives are going to both provide  
15 better quality homes for our customers and save us  
16 money, which is, you know, what good quality and  
17 good quality initiatives are all about.

18 It's an ever-changing and never-  
19 ending quest, by the way, because, as I have  
20 mentioned, we are working in the open environment  
21 with a variety of subcontractors and a variety of  
22 weather and a variety of different municipal  
23 inspectors and, so, it's anything but a normal  
24 assembly line that you would have in a controlled,  
25 contained factory type of environment.

1           Q.       Can you give the Commission some  
2           examples of the types of problems that you've seen  
3           which you would try to address?  In other words,  
4           any commonalities to the problems which you see  
5           occurring?

6           A.       Well, certainly one of them has  
7           related to our trusses and lack of truss bracing.  
8           That, from time to time, we've had issues with  
9           some of our footings that needed to be analyzed  
10          and redone.

11                        So things that, you know, we believe  
12          went to the core integrity of the home and we  
13          needed to be sure that those issues were  
14          redressed, and it's a lot easier to do it before  
15          the fact than after.

16          Q.       Are those the kinds of issues that  
17          have been an impetus, if you will, for some of the  
18          programs?

19          A.       Well, those kind of issues and  
20          others, but I wouldn't suggest that those are the  
21          only ones.  We have a great variety of trade  
22          partners, building a multitude of different  
23          products and designs that our company produces,  
24          and there are many, you know, technical issues  
25          that need to be overseen in the field, and it's

1       why good systems and good processes, we believe,  
2       are -- are critical to doing the best job we can  
3       with that, and we believe that the changes that  
4       we've made over the years are making a difference.  
5       The results seem to be good, but it's a long-term  
6       investment.

7                        As you've seen, many times some of  
8       the issues that -- where mistakes are made take a  
9       period of time to metastasize, but we believe that  
10      we've made significant strides and we are very  
11      confident that it's a program that will make  
12      sense.

13                      We have rolled it out across our  
14      company generally, by the way. You asked me  
15      earlier about our organizational structure and the  
16      three other groups and the like. So the QAR  
17      process had its birth here in the New York,  
18      metropolitan Philadelphia marketplace and has been  
19      transported across our company nationwide.

20                      Q.       The kinds of problems that we've  
21      talked about, not only today but the last time you  
22      were in, are those problems evident across the  
23      country?

24                      A.       I don't know that I could, you know,  
25      speak to that specifically. I think, generally,

1       yes. You know, generally these kinds of mistakes  
2       happen in the new-home construction business and,  
3       you know, the good companies -- the better the  
4       company, the less of them you make, and you always  
5       stand behind them, to the extent that they are  
6       made, which has certainly been our practice in the  
7       past.

8               Q.       How about throughout your geographic  
9       area, the area that you cover? Do you see the  
10      same kind of problems in the neighboring states?

11             A.       Well, Minnesota is brand new, so we  
12      are not producing there yet. In Ohio, we made an  
13      acquisition there, and we believe that we have  
14      seen less of those mistakes made in Ohio. The  
15      homes that they build are simpler than the homes  
16      that are built here in New Jersey, and there is  
17      vertical integration in that particular business  
18      unit, which was one of the reasons that we were  
19      intrigued by that particular acquisition, because,  
20      as I mentioned earlier, we've been contemplating  
21      some more of that here in this marketplace, and to  
22      acquire a company that had that practice in place  
23      already had some obvious value to us.

24             Q.       Have any programs or protocols or  
25      procedures been implemented at the K. Hovnanian

1 Companies that are unique or specific just to New  
2 Jersey? Anything different happen here?

3 A. You know, I think the processes that  
4 I just mentioned had their birth here, and we have  
5 been the birthplace of ideas that have been  
6 exported across the country more than the other  
7 way around, but we are always trying to understand  
8 what our sister business units are doing that may  
9 be giving them better customer satisfaction or  
10 better quality, and understanding how they do it,  
11 whether it's a process or whether it's a level of  
12 manpower or supervision, what have you.

13 One of the advantages of a bigger  
14 company, that you get to have a more global view  
15 of what the industry's best practices may be than  
16 you would if you were a small builder operating in  
17 a particular market.

18 Q. One of the developments that  
19 historically has been of some interest in New  
20 Jersey is Country Meadows in Howell.

21 A. Um-hum.

22 Q. And we have not featured that in our  
23 hearings, but, did Country Meadows, or the  
24 problems that became evident at Country Meadows  
25 prompt any of the changes or any of the programs

1 that the company has instituted?

2 A. That was one of the communities that  
3 prompted those changes, correct.

4 Q. Can you recall or do you recall any  
5 of the particular problems in that development?

6 A. The lack of proper balloon framing,  
7 the lack of proper truss bracing. Those were two  
8 of the larger issues that needed to be addressed.  
9 And, certainly, that community was one of the ones  
10 that led us to do soul searching and try to  
11 understand how we could attack the challenge  
12 better, and I think I've been clear with some of  
13 the issues that we've taken in that regard.

14 Q. Is that a development in which or at  
15 which some of the problems or many or all of the  
16 problems resulted from the work of your trade  
17 partners or subcontractors?

18 A. Well, they did all the building,  
19 and, so, I suppose it would be fair to say that  
20 they were involved with all the -- the mistakes,  
21 but we were inspecting the work that they did and,  
22 likewise, didn't pick up the mistakes that they  
23 did and, so, we don't blame them exclusively. We  
24 were part of the problem, as well.

25 Q. Do you know if there is still

1 litigation going on?

2 A. There is litigation that is  
3 continuing. There has been a number of homeowners  
4 that filed litigation over the years. A number of  
5 cases have been settled, several are still  
6 outstanding.

7 Q. I think, when you were in private  
8 session, you indicated that you used this  
9 development as a case study almost, internally?  
10 Is that a fair characterization?

11 A. You know, I don't recall my exact  
12 testimony in that regard, but it certainly could  
13 have been one.

14 Q. Has your company also established an  
15 Even Flow program?

16 A. We have. We don't utilize it  
17 everywhere in the New Jersey/New York marketplace,  
18 but we use it in some locations, and the idea is  
19 to start the same number of homes and frame the  
20 same number of homes and Sheetrock the same number  
21 of homes and subsequently finish the same number  
22 of homes every single day so that we avoid the ups  
23 and downs of production surges that prove to be a  
24 challenge for us to oversee, prove to be a  
25 challenge for our subcontractors to cope with when

1 they are building more homes at certain weeks of  
2 the year than other weeks of the year, and it  
3 proves to be a challenge for the local inspection  
4 community to deal with.

5 So we think that the Even Flow  
6 program can -- can be a triple win, and the  
7 results that we've had in those locations where  
8 we've implemented it have been quite encouraging,  
9 as it relates to quality, customer satisfaction  
10 and the like, so we intend to continue our effort  
11 in that regard.

12 Q. As a builder, have you been advised  
13 of any situations where there were problems  
14 getting the local inspectors out there to do the  
15 work? I recognize you are at a fairly high level  
16 with the company, but I'm wondering if that's  
17 something that has come to your attention.

18 A. I think we see some towns that are  
19 far more service oriented, when it comes to doing  
20 timely inspections, than others. There are  
21 reasons for that. Sometimes we are at the root of  
22 that, where we have a large work volume suddenly,  
23 and other times towns are, you know, just not  
24 anxious to do inspections in a timely fashion.

25 You know, well-known that there is a

1       general attitude that doesn't love growth and  
2       there are some towns who are able to use a slower  
3       inspection process as a means to slow it down in  
4       every way that we can. So, I think it runs the  
5       gamut from, you know, that side of the equation,  
6       which I would lay totally at the feet of a  
7       municipality, to the other end of the gamut, which  
8       I would lay at our feet, saying that we are the  
9       root cause of that problem.

10                       I might say -- and I think I'll use  
11       this opportunity to do it -- you may or may not  
12       ask me the question, but we pay -- the industry  
13       pays and our company pays many, many, many  
14       millions of dollars per year in inspection fees.  
15       We average \$3,000 a home, plus or minus, and we  
16       build 30,000 homes, roughly, in the state per  
17       year, and that's \$90 million. Our company alone  
18       is \$6 million of it. That buys a lot of  
19       inspectors, and I think one of the things that we  
20       ask ourselves internally is, "Where is the money  
21       going," because we are paying a significant amount  
22       of money into the coffers of the municipalities  
23       and we are not sure that we are really getting a  
24       dollar-for-dollar return on, you know, that --  
25       that payment, and it is one of the things that we

1 would suggest that you deliberate on quite  
2 carefully.

3 One also might think about having  
4 the inspections happen on a county-wide as opposed  
5 to a municipal-wide basis, just to help the  
6 amplitude of the -- of the work levels. A county  
7 would typically have a smoother amount of homes  
8 per year than an individual municipality that  
9 might have two or three large communities that  
10 suddenly land on their doorstep. They are really  
11 not staffed up to deal with it specifically.

12 But, across a broader geography one  
13 would presume that those ebbs and flows would be  
14 less severe, so we think that may be something  
15 that can be considered in a positive way by your  
16 group, also.

17 Q. Have you seen that practice in other  
18 states?

19 A. Yes.

20 Q. Have you seen any -- are you aware  
21 of any other states that do it the way New Jersey  
22 does?

23 A. Yes, it's done both ways.

24 Q. Both ways.

25 A. We see counties that are the

1 inspection jurisdiction and the lead group in that  
2 regard, and we also see other states where  
3 municipalities carry the -- carry the ball, and I  
4 think our view is that the larger entity is the --  
5 is the right entity.

6 There is a case to be made the other  
7 way, and we've heard about that, in terms of more  
8 local control, better local understanding of  
9 what's going on, but, in the case of inspecting  
10 building practices, I'm not sure we buy that. You  
11 know, the technique to build is the same one town  
12 to the other, and I would expect that good quality  
13 inspectors could be, you know, trained, you know,  
14 better in that regard and it would, I think, go a  
15 way -- a long way towards evening out those, you  
16 know, work surges that are an understandable  
17 problem for a municipality.

18 Q. I don't know if you were here  
19 earlier today, but we had some testimony  
20 concerning one municipality in which there was a  
21 K. Hovnanian project as well as others going on at  
22 the same time, and there may well have been as  
23 many as a thousand homes going up at the time.

24 A. Um-hum.

25 Q. I'm wondering if you've seen that

1 sort of thing, whether you've heard of that sort  
2 of thing, and whether there is really the  
3 capability of the local inspectors to even handle  
4 the load.

5 A. Well, that really makes my point,  
6 doesn't it?

7 You know, I think -- I believe that  
8 community was in Wall Township, Monmouth County,  
9 and I think the point that I'm making is, if  
10 Monmouth County were the entity that had the  
11 inspectors working directly for them, that they  
12 would have been able to deploy some of the  
13 inspectors that might have been working in Howell  
14 or Marlboro that weren't quite as busy and deploy  
15 them over in Wall where it was busier, thereby  
16 deploying their resources in a more efficient way.

17 Not just, by the way, the home  
18 building industry where that creates a problem for  
19 home rule, and it's well-known that we have a  
20 redundancy of school boards and police departments  
21 and the like, so, if one is only thinking about  
22 efficient deployment of human resource, one thinks  
23 right away about that type of solution.

24 Certainly the private sector would,  
25 you know, go to that type of step quite quickly,

1 getting an efficiency of return on our human  
2 capital.

3 Q. Doesn't the -- or does the Even Flow  
4 process or program run into the labor force of the  
5 municipality sometimes, in terms of being able to  
6 even get the inspectors out there as regularly as  
7 you want?

8 A. It does, although, you know, we  
9 think that, generally, the Even Flow system makes  
10 the predictability of when those inspections are  
11 going to be required, you know, far -- far more  
12 predictable, so that municipalities can plan on  
13 the deployment of their inspection resources in a  
14 more effective way.

15 I will say that one of the things  
16 that we've struggled with -- we've been able to  
17 make Even Flow work very nicely for our trade  
18 partners, but oftentimes we have multiple  
19 communities that comprise an Even Flow pod, if you  
20 will, and sometimes those -- well, typically,  
21 those multiple communities are in multiple towns,  
22 so, what is even for our trade partners may not  
23 necessarily be even for a particular town, but  
24 doesn't that go right back to the point that I was  
25 making a few minutes ago, to say, gee, if the

1 county was doing it, they'd be getting the same  
2 benefits that our trade partners and others were  
3 reaping from that type of better planned  
4 production?

5 Q. Do you, as a company, offer  
6 financial incentives to employees based upon  
7 meeting some production protocol? And I think --  
8 I don't think it's unique to your company, but I'm  
9 just asking you a question about your company.

10 A. We do, and we have a variety of  
11 bonus plans. There are various types of associate  
12 employee within our company, and those benchmarks  
13 can relate to profit, it can relate to timely  
14 production, it can relate to customer  
15 satisfaction. Typically, some blend of all of  
16 those components show up in many associates' bonus  
17 plans. Certainly they do in my own, as the head  
18 of the group.

19 Q. I have some questions concerning a  
20 little more specific area. One question about  
21 whether or not the company places any restrictions  
22 on whether a homebuyer can inspect the property  
23 during construction.

24 Is there any restrictions placed on  
25 when the homebuyer can go out and look at a home

1 they are purchasing during construction?

2 A. Well, we would -- in this  
3 environment -- we've had lots of different  
4 programs in that regard over the years. What we  
5 don't like is for our homeowners and future  
6 purchasers to enter their home while construction  
7 is going on because it can be a dangerous place to  
8 be. We try to make it as safe as we can, but we  
9 are uncomfortable with homeowners going into  
10 communities unaccompanied by our personnel.

11 Secondly, we try to make ourselves  
12 available as -- to the extent that we practically  
13 can, but I think you can relate to the issue of --  
14 we would, in some instances, spend a huge amount  
15 of time with our personnel, you know, walking  
16 homes with customers at, you know, points in time  
17 where there is not that much to say or do, so we  
18 try to structure some preprogrammed visits.

19 One is after the home is framed and  
20 the electrical work is done, the plumbing and that  
21 kind of thing, so we walk the home and check on  
22 locations of TV jacks and electrical custom  
23 changes that people may have made, partly to, you  
24 know, show the customer and partly to be sure that  
25 we did what the customer expected.

1                   So, we do these type of  
2                   preprogrammed inspections. We don't like to let  
3                   homeowners into our homes at their pleasure, and  
4                   we try to makes ourselves available as much as we  
5                   possibly can on an a cappella basis.

6                   Q.       Can they bring technical experts,  
7                   such as engineers, with them?

8                   A.       I don't think that we would object.  
9                   I mean, we typically, you know, don't see much of  
10                  that and don't do much of that, but, if someone  
11                  had a particular reason to bring someone of that  
12                  sort, I don't think we would find that  
13                  objectionable.

14                  It might be the kind of thing, by  
15                  the way, that someone in our field staffs would  
16                  react negatively to, just because people don't,  
17                  you know, love to have that type of involvement  
18                  and it takes a lot of time and -- and trouble to  
19                  do, but --

20                  Q.       But, as a policy --

21                  A.       -- if there was a special request,  
22                  we'd accommodate that.

23                  Q.       You don't normally see that, though?  
24                  Homeowners wanting to come out with --

25                  A.       Not typically, no. In fact, you

1 know, not every homeowner wants to do the frame  
2 walk that I described. Some do, some don't. It  
3 depends.

4 Q. Are you familiar, at least to some  
5 degree, with the development of Four Seasons at  
6 Wayne and the Four Seasons at Wall?

7 A. Um-hum, I am.

8 Q. Now, again, and I want to make this  
9 clear. I recognize, given your position, you  
10 might not necessarily have intimate knowledge of  
11 those particular developments or the specific  
12 problems, but do you have some general knowledge  
13 relating to those developments?

14 A. I do.

15 Q. In regard to the Wayne project, we  
16 looked at engineering reports which indicated or  
17 reflected a number of problems throughout the  
18 development.

19 In your opinion, what happened  
20 there? Was there a breakdown at some level? To  
21 what would you attribute the problems?

22 A. Well, it was a new product that --  
23 that we were building. First time through. You  
24 know, that's always a place for some special care  
25 that, in retrospect, we might have provided some

1 special care or further care to. So, I suppose  
2 it's combination of first time product, you know,  
3 we didn't have the QAR process in place at -- at  
4 the time, and I suspect that, if we had -- if that  
5 had been the case, that we would have avoided a  
6 large number of issues that are now needing to be  
7 dealt with or have been dealt with at Four Seasons  
8 Wayne previously.

9 Q. So, what you are saying is, if some  
10 of the processes or the processes had been in  
11 place, you may have avoided what happened here?

12 A. We believe so.

13 Q. If a new product is difficult for  
14 you, as a builder, I'm wondering if it might not  
15 even be more difficult for the inspectors out  
16 there. They are one step removed.

17 A. I think that's fair. They suddenly  
18 have a more complex product on their -- their  
19 doorstep. Some look to the Department of  
20 Community Affairs for some technical advice and --  
21 and support in that regard, but I think that's  
22 probably a -- a fair comment.

23 And I think, again, not to be  
24 redundant on the -- the same old thought, but to  
25 circle back to having some -- some other entity

1       besides the municipality be the harbor of the --  
2       of the inspectors, you know, they then could  
3       deploy their very best or their very most  
4       knowledgeable in those new construction  
5       communities that are the most technical in nature.  
6       To me it makes just plain ordinary common sense.

7               Q.       Because the problems that showed up  
8       in Wayne were after the COs were issued.

9               A.       That may be so in -- because we did  
10       that community building by building, as we often  
11       do, so I'm reasonably certain that we had COs, but  
12       that was for the first building or two and then we  
13       found out some of the issues that needed to be  
14       dealt with and made the -- the repairs from there.

15               Other repairs we -- other issues we  
16       found out later and had to come back. There was a  
17       structural issue in the -- the steel bearing and  
18       how that was constructed in the basement area of  
19       these homes, and we found that out later and it  
20       was a very expensive repair to do after the fact,  
21       something well over a million dollars, and, so, to  
22       my earlier testimony, when we run into that type  
23       of -- of defect that needs to be redressed, you  
24       know, it's an expensive one and it pays for a lot  
25       of additional oversight along the way.

1           Q.       When we began our investigation, we  
2 began looking at the construction code officials  
3 and inspectors and construction code, but we've  
4 really found a large number of issues that relate  
5 to drainage site and engineering issues. One of  
6 the problems in Four Seasons at Wall relates or  
7 related to the storm drainage system.

8                    On your end, as a builder, who is  
9 responsible to monitor that kind of installation?

10           A.       Well, initially we have our own  
11 trade partners who do that installation. We have  
12 our own internal associates who inspect what the  
13 trade partners are doing.

14                    Typically, the township's engineer  
15 or their staff is, likewise, inspecting, so it's  
16 not an inspection process that's much dissimilar  
17 from the inspection of homes. Again, there is the  
18 trade partner, there is us and there is the  
19 municipality, all that are looking at the same  
20 installation.

21           Q.       Have you made any changes in  
22 procedures or arrangements at the company with  
23 respect to the monitoring of that kind of work?

24           A.       We have, although we ebb and flow on  
25 this, as well, but we have centralized the

1 installation of our land development, which covers  
2 the type of -- of things that you just described,  
3 and we -- we think that we are able to do it more  
4 efficiently and we think that we are able to  
5 leverage our most competent inspectors and  
6 overseers of our own across multiple communities.

7 Sometimes we'll have one that might  
8 have been at a community and, if we can deploy him  
9 in multiple locations with some type of support  
10 staff beneath that person or guy or gal, it can,  
11 you know, work, we think, to ensuring that it's  
12 more likely that the work is done well.

13 So, again, it goes right back --  
14 just as I mentioned I thought it was good practice  
15 for municipalities to deploy their best people in  
16 their trickiest locations, likewise, the same goes  
17 for -- for ourselves.

18 Q. In looking at the -- some of the  
19 reports related to that particular development,  
20 I've seen there were truss issues in all 400 of  
21 the homes. There were also problems with  
22 sinkholes showing up on the properties, issues  
23 related to the Belgian block, questions about the  
24 retaining walls and whether they would fail,  
25 issues related to driveways, mold and probably

1 other issues well beyond that.

2 Based on what you know about that  
3 development, how did that -- what happened there?  
4 How did those problems occur?

5 A. Well, I think I have mentioned the  
6 truss bracing previously. That was a second  
7 community where we had the -- the very same  
8 problem.

9 As to the -- you know, the -- the  
10 other issues, a combination of things, where we  
11 deployed better staff as the community rolled  
12 along and was -- was constructed.

13 And I might add at the -- in the  
14 final analysis, we had a -- a homeowners  
15 association that proved far more difficult than  
16 some of our other homeowner associations to deal  
17 with to get in and make repairs and we struggled  
18 to gain access to the site to -- in order to be  
19 able to find out whether their claims were right,  
20 wrong or somewhere in between right and wrong,  
21 which, frankly, is usually the case. You know,  
22 usually things aren't as bad as some associations  
23 might suggest and, in the same breath, there is  
24 almost always work that needs to be done by us.

25 So, you know, we -- that was a

1 community where communication fell apart and, when  
2 communication falls apart, it's not good for  
3 anyone. Since then there is the new homeowners  
4 association that the members of the association  
5 have put in place, and we have a far better  
6 relationship with that new association. I really  
7 don't know why that is, but I know that our people  
8 tell me about that regularly.

9 Q. One of the issues relating to some  
10 of the homes there had to do with the garages.  
11 Are you familiar with that issue concerning the  
12 garages?

13 A. Generally, yes.

14 Q. What is the issue, as you understand  
15 it?

16 A. The issue, as I understand it, is  
17 that the grade change between the garage floor and  
18 the first floor of the home necessitated putting a  
19 set of stairs into the garage in order to get from  
20 the first floor down into the garage, and that  
21 took up space that would ordinarily be there for a  
22 car.

23 So, the fact that there was this  
24 grade change between the garage level and the  
25 first floor of the home infringed upon the area

1 that ought to be there for a car to park.

2 Q. Do you know whether what was  
3 constructed met code? Is it your understanding  
4 that it met the code?

5 A. I believe that it did. I believe  
6 that it did.

7 Q. We showed -- I'm just going to show  
8 it to you again -- a photograph at an earlier  
9 hearing, it's 221. Someone will probably hand it  
10 to you. It's a photograph of one of the garages,  
11 Mr. Kelman's -- or Sander Kelman's garage. You  
12 may have seen it before. And I've got some  
13 documentation in Exhibit 297, which I'll have  
14 someone hand you, also, and what it reflects is --  
15 no, I'm sorry, not 297. It's another exhibit  
16 number. 289.

17 What it reflects is that, at least  
18 initially and for some period of time, the company  
19 didn't want to make any corrections with respect  
20 to the garage.

21 Are you aware of that?

22 A. I'm not aware of that, we didn't  
23 want to make corrections. I'm aware that there  
24 has been lots of dialog about what the corrections  
25 should be.

1 Q. Do you have Exhibit 289 in front of  
2 you?

3 A. Yes, it was just handed to me.

4 Q. There are several pages in it. It  
5 begins with a June 7, 1999 letter from Sander and  
6 Marybeth Kelman to a Kathy Gebhard, administrative  
7 assistant, warranty department, Four Seasons at  
8 Wall. I don't know if you've ever seen this  
9 before.

10 A. No, I -- I haven't. I was just  
11 glancing at the series of letters that accompany  
12 the attachment.

13 Q. He lists -- or they list, it says,  
14 "Item Number 2, the garage stair design and door  
15 framing," but then, as you go throughout the  
16 exhibit -- for example, on the third page there is  
17 a letter to Mr. Kelman from a Stan Hordych, and he  
18 references the garage stairs, "The stairs in  
19 question are built to code and the builder will  
20 take no further action." That's dated July 15,  
21 1999.

22 Then there is another letter, dated  
23 April 2nd of this year, Item Number 3 says,  
24 "Garage mentioned. Garage was built according to  
25 specifications, was inspected by the township

1 inspectors. The garage was free from defects and  
2 according to plan and will take no further action  
3 on this issue." That's from a John Lagorda to Mr.  
4 Kelman.

5 Were you aware of these letters?

6 A. No, not -- not specifically aware.

7 Q. And it's my understanding that,  
8 subsequent to this April 2nd letter, there has  
9 been some change in position on the part of the  
10 company.

11 Are you aware of that?

12 A. I believe that's correct, and I wish  
13 we'd had that change of position sooner.

14 Having said that, I can understand,  
15 from a construction manager's perspective, you  
16 know, why they said what they said, because I'm --  
17 although not personally knowledgeable, but I  
18 believe that they were correct in that it did meet  
19 code. One could argue with whether the code was  
20 fair or unfair, appropriate or inappropriate, but  
21 I'm sure that, in defense of our associates, they  
22 were doing what they thought was the correct thing  
23 to do and it didn't hit radar screens that were  
24 more meaningful to perhaps have a second thought  
25 on that issue.

1 Q. You've touched on --

2 A. And, by the way, I'm sure that, you  
3 know, this -- while this particular issue may or  
4 may not, you know, come up, I don't doubt that,  
5 you know, we have responses to our homeowners that  
6 may or may not seem fair to the homeowner or may  
7 or may not seem fair after the fact. We build a  
8 lot of homes and we have a lot of people and there  
9 are issues that come up and either need to be  
10 redressed or need to be communicated more fully.

11 I certainly believe that we should  
12 have communicated with this individual more fully  
13 than it appears that we did. I don't know if  
14 there was dialog that happened or didn't happen,  
15 but, you know, just the one paragraph letter isn't  
16 good enough.

17 Q. I've heard there are others. Do you  
18 know if there are others?

19 A. We do know that. At this point we  
20 know that.

21 Q. Like 17 others?

22 A. I don't know how many there are.

23 Q. The change in grade, I assume, was  
24 not the homeowners' problem, was it?

25 A. No, I don't think it was the

1 homeowners' problem.

2 Q. And one of the issues that our  
3 investigation has focused on, and I'm sure will  
4 continue to focus on, that there are code issues  
5 and then there are workmanship issues and there  
6 are contracting issues and so forth.

7 Is there any reliance or inclination  
8 on the part of the builder to sort of rely on, if  
9 it passes code, it's okay?

10 A. Yes. I mean, the codes -- warranty  
11 standards and codes are put in place for a  
12 purpose. They are quite often the subject of --  
13 of great debate and discussion between code  
14 officials, building inspector agencies and  
15 associations, builder associations and the like,  
16 and you try to, in the end of those discussions,  
17 strike a fair balance, as to what a code should --  
18 should say.

19 And, so, that's why it's  
20 understandable, from my perspective, that one of  
21 our construction managers might say, "Yep, it  
22 meets code. We did our job satisfactorily in  
23 building the home," despite the fact that, from a  
24 practical point of view, it really isn't providing  
25 the type of garage space that would be

1 appropriate.

2                   So, that kind of thing can happen,  
3 but that's not the typical kind of thing that --  
4 that happens. You know, more -- more typically --  
5 unfortunately, but more typically, there are  
6 errors that we make that need to be repaired. You  
7 know, this is one that, at least from our  
8 associate's point of view, you know, could have  
9 been construed to not be an error. I'm not  
10 defending it. I'm just differentiating between,  
11 you know, whether something is built to code or  
12 whether it's not.

13                 Q.       You mentioned your company has  
14 expended considerable money in remediation costs.  
15 Do you have any numbers on that or any numbers you  
16 can give us, either for some period of time or  
17 ballpark figures?

18                 A.       It hasn't been unusual for the  
19 business unit that I'm in charge of, which --  
20 which, in context, by the way, is, you know, a  
21 business unit that does, you know, just under a  
22 billion dollars worth of -- of new home sales per  
23 year, but it hasn't been uncommon for us to spend  
24 between two and five or \$8 million going back to  
25 repair things like the stairs in the garage that

1 we are observing here.

2 Q. When you give us that number, two,  
3 five or eight million, are you talking about per  
4 year, per project?

5 A. Per year. In a year where we would  
6 do the type of dollar volume that I described to  
7 you a bit earlier, those are the types of numbers  
8 that have not been a surprise. And, because it  
9 has been so expensive and so costly, from a dollar  
10 and cents point of view, we don't like it, we  
11 don't like it from the standpoint of poorer  
12 customer satisfaction, and it led to some process  
13 changes in our company.

14 Q. It sounds to me like what you are  
15 saying is, even though you are maybe a billion  
16 dollar a year economic unit, it would still be  
17 more advantageous for you to get these problems  
18 right the first time.

19 A. If I didn't make that clear, I  
20 certainly meant to make it clear. Absolutely.  
21 It's why we are -- it's why we're doing the things  
22 that the first few minutes of our conversation  
23 today focused upon.

24 Q. With respect to Four Seasons at  
25 Wall, was there a high turnover of project

1 managers on that job?

2 A. There were two or three project  
3 managers. We like there to be one project  
4 manager -- community builder we call them --  
5 throughout the term of the project. It's not  
6 unusual, though, for us to move people around our  
7 organization.

8 But we did make changes there. As I  
9 mentioned, the first 20 or 25 percent of the  
10 community we weren't nearly as organized as we  
11 knew we needed to be, and we made some personnel  
12 changes and it improved.

13 Q. We have received some information  
14 that there had been an agreement reached with the  
15 homeowner association to repair matters at Four  
16 Seasons at Wall. Is that the case?

17 A. I don't know whether an agreement  
18 has been reached. I know that there has been  
19 dialog in that regard and, as I mentioned to you a  
20 few moments ago, we weren't able to conduct such a  
21 dialog with the previous homeowners association  
22 management. You know, this one we've been able to  
23 do it with, and I'm led to understand came to a  
24 conclusion relatively quickly.

25 Q. Do you know if there are still

1 problems there or still concerns on the part of  
2 some of those homeowners?

3 A. I don't know, specifically. I don't  
4 know that we've concluded with certainty how the  
5 garage issue is going to be remedied, and, so,  
6 since we haven't come to a firm conclusion about  
7 that, I'm sure there are still some concerns.  
8 Until we've come to conclusion and until we've  
9 done the work and, you know, at that point people  
10 will be less concerned, I hope.

11 Q. We received a copy of a survey just  
12 recently, within the last few days, that was  
13 conducted by a group called the Association of  
14 Concerned Homeowners, Four Seasons at Wall.

15 It's my understanding that a  
16 substantial percentage of the homeowners indicate  
17 they are still experiencing problems.

18 Are you aware of that.

19 A. No, not particularly.

20 Q. Does your company have a policy with  
21 respect to the giving of gifts or gratuities or  
22 anything of value to public officials, local  
23 officials, local inspectors and so forth?

24 A. We discourage it. Certainly nothing  
25 more than a, you know, nominal \$25 type of gift.

1 And typically -- or many times in the past, those  
2 types of -- and often it's in the holiday  
3 season -- gifts are given to building inspectors  
4 or the staff of building inspectors in a  
5 particular town. And, you know, they've been  
6 given in the right spirit, because many of them  
7 have worked very, very hard to, you know, deal  
8 with the process of -- of inspections and  
9 oversight and we have appreciated their efforts in  
10 that regard.

11 I might say that, because of --  
12 because of appearances -- really nothing of  
13 substance, but, because of appearances, we are  
14 going to bring that practice to a halt.

15 Q. Has the practice that you currently  
16 have changed at all in the recent past? Was it  
17 more liberal at one point?

18 A. No, I don't believe it's changed --

19 Q. So, you are saying the prior --

20 A. -- although I can't say for certain.  
21 You know, within the time frame that I've had my  
22 present responsibility, it's been the same.

23 Q. So, whatever is permitted or was  
24 recently permitted will no longer be permitted?

25 A. That is our intention. We haven't

1       executed on that at the moment, or at this time,  
2       but we've talked about it internally and I believe  
3       that's a step that we are going to take.

4                   I might add that I don't believe it  
5       will make any difference whatsoever in services  
6       that we receive from a municipality or any  
7       attitudes that municipalities have towards us.  
8       You know, it's been token recognition of effort  
9       that has happened from their side of the service  
10      equation.  Nothing more.

11                Q.       Did the appearances -- or the  
12      appearance problem that it raised, or our asking  
13      questions about it, prompt you, in any way, to  
14      take that course?

15                A.       Yes.

16                Q.       What about expenditures -- just so  
17      we are clear -- expenditures for items like  
18      athletic events, golf outings, dinners, gift  
19      certificates, things like that?

20                A.       From time to time we entertained  
21      inspectors or engineers or those associated with  
22      municipalities in golf outings and venues of that  
23      sort, and I would make the same statement that I  
24      made earlier about the -- the impact that we think  
25      that had and why we did it and our intentions to

1 consider changing that practice in the future.

2 Q. During our -- not the last set of  
3 public hearings, I think, but the one before that  
4 back in November of 2003, we came across an  
5 invitation from K. Hovnanian Companies to a  
6 cocktail reception at the League of Municipalities  
7 convention which was being held that same month.  
8 I think it was November of 2003. And maybe we can  
9 just put it up on the screen for you. It's 295.

10 Have you -- or has your company  
11 changed its policy regarding hosting of  
12 governmental officials or officials at events such  
13 as this?

14 A. Yes. We are reconstituting the  
15 event. We are going to have an event in Atlantic  
16 City during the week again this year, but it will  
17 be much more limited and more of an opportunity  
18 to -- to invite key leaders of the individual  
19 counties and municipalities where we deal to learn  
20 what's new at our company as it relates to  
21 different types of architecture, different types  
22 of smart growth initiatives, those type things, in  
23 an effort to be sure that they are aware of what  
24 our company's objectives are and, hopefully,  
25 they'll think of us first.

1                   You know, this event was designed to  
2 do that, as well, but it grew over the years and  
3 turned into a very significant event with  
4 tremendous numbers of people that would attend and  
5 it really lost, you know, the -- the focus and  
6 purpose that we put the event together for in the  
7 first place.

8                   Q.       Does your company have any policy  
9 regarding making political contributions?

10                  A.       Yes. We make contributions all the  
11 time in accord with what the law allows us to do.

12                  Q.       Now, when you were in the office for  
13 the executive session, we talked to you about --  
14 and you actually brought up a specific event that  
15 you had attended which involved a basketball game.  
16 I think it was a Nets game?

17                  A.       Correct.

18                  Q.       It's not going to be on the screen,  
19 but I'll have someone hand you Exhibit NCI-297. I  
20 think we showed you this at the time.

21                            Tell us what happened here.

22                  A.       I was invited by the Commissioner of  
23 DEP to attend a -- a basketball game. The seats  
24 were in the governor's box, and it was my  
25 understanding that he was bringing together

1 numerous members of the development community, and  
2 it was further my understanding that he did the  
3 same thing with other constituent groups with whom  
4 the department interfaced.

5 I'd been active with the, you know,  
6 Commissioner, in terms of being an advocate for  
7 what I thought government policy should or should  
8 not be. But, in any event, it was an opportunity  
9 to interface on a more social level.

10 Following that evening I sent a  
11 check to the state to compensate the state for  
12 what my best guess was of the value of that  
13 entertainment, because it is definitely against  
14 the policy of our company for executives -- or for  
15 anyone, but especially executives, to be  
16 entertained. And that's what this letter was  
17 about and --

18 Q. I'm curious about the last sentence  
19 in the first paragraph. It begins -- and I  
20 apologize for the copy before you. It made its  
21 way to us from several routes, but none of them  
22 are real clear.

23 It says, "I trust you will apply  
24 these dollars to compensate the DEP staff for  
25 overtime to facilitate application reviews," and

1 two exclamation points. At least that's what it  
2 appears to say. That's, of course, what piqued  
3 our initial --

4 A. That's exactly what it says. One  
5 learns their lessons for tongue-in-cheek comments.  
6 I certainly didn't suspect, in my wildest dreams,  
7 that my check for however much it was -- a hundred  
8 dollars or so -- was going to make a significant  
9 impact upon the DEP's ability to process their  
10 applications. It was simply tongue-in-cheek  
11 applications, because those of us in the private  
12 sector debate all the time with the DEP and the  
13 public sector about how quickly they deal with our  
14 approval of applications, and, so, this was  
15 nothing more than a joke among friends. And I  
16 consider Brad Campbell a friend of mind, by the  
17 way, despite the fact that he doesn't always  
18 cooperate with me.

19 Q. I asked you this question when we  
20 last saw you -- I think you didn't know the  
21 answer -- but do you know if the check was cashed?

22 A. I don't know, and I never checked.  
23 I never checked on the check.

24 Q. Do you find that the company, either  
25 the K. Hovnanian Companies or any of the

1 individual companies that are doing business in a  
2 town or in a municipality, are solicited by local  
3 officials when they are operating in a town?  
4 Solicited for political contributions?

5 A. Oh, we're -- we are solicited by  
6 towns where we operate, we are solicited by towns  
7 where we once operated, we are solicited by towns  
8 where we may some day operate. It's a fact of  
9 political life that candidates for local, county  
10 or state office need to raise funds.

11 As it stands today, that's our  
12 system of government. It's expensive. These  
13 individuals are out there on a day-in-and-day-out  
14 basis raising those dollars and we participate in  
15 that process. We don't think that it -- that it,  
16 you know, buys us anything more than conversations  
17 and an opportunity to put forth our point of view  
18 on a whole variety of -- of subjects and we  
19 absolutely can almost -- we can never link the  
20 contributions that we've made with any type of  
21 performance that goes to a positive end, from our  
22 company's perspective.

23 So, from that point of view, perhaps  
24 one could argue that it's a poor investment. From  
25 our point of view, we participate in the political

1 process because that's our process and we think  
2 that we should and we stand four square behind  
3 that policy and that point of view.

4 MS. GAAL: Thank you. That's all I  
5 have, Mr. Chair.

6 COMMISSIONER EDWARDS: Thanks for  
7 coming, and I was kidded significantly by the  
8 other Commissioners at the last two hearings,  
9 because I've always asked questions  
10 that concentrate -- as you know, the purpose of  
11 this hearing is to see how we can make things  
12 better, and you have -- you are here for that  
13 purpose and to point out some of the things that  
14 your company and some of the other companies have  
15 done that weren't -- weren't necessarily in the  
16 best interests of either your customers or the  
17 government constituent.

18 In that regard, I have a couple  
19 questions and things I would like to talk about  
20 that go to solutions of the problem and/or  
21 problems. One involves -- in your developments,  
22 in the four that I think we focused on for your  
23 company, the -- almost in each instance we've had  
24 a very weak building inspector process in place in  
25 the local government -- in the local areas where

1 the biggest problems have developed, and, so, I  
2 see a link between weak inspections and -- and  
3 companies, whether yours or others.

4 Part of your business is incentive  
5 driven for employees. Do the incentive processes  
6 that you have in place or, in your opinion, do the  
7 incentive processes you have in place for -- and  
8 do you have this -- for construction managers,  
9 people running projects, to get things done in a  
10 timely way or meet various objectives, run  
11 directly up against the building inspectors? And  
12 could we look, maybe, in your instance, as a  
13 distinctive problem, the incentive process which  
14 you have is driving some of your employees to take  
15 advantage of a weak inspection system?

16 THE WITNESS: Well, I don't think  
17 that our employees ever consciously take advantage  
18 of a weak inspection system. We do compensate for  
19 a variety of variables, profitability and  
20 timeliness being one of them, to your point, but  
21 we similarly compensate for high levels of  
22 customer satisfaction. So, we have an array of  
23 variables that go into an individual's bonus  
24 compensation plan, and I think they are all  
25 legitimate variables, frankly.

1                   Should we have some different  
2 processes, some different ways to employ  
3 inspectors to get -- to deal with the ebbs and  
4 flows of construction volume, to deal with more  
5 complex buildings to inspect versus less complex?  
6 Yes, I think we should, and I, you know, tried to  
7 be clear about, you know, some of the advantages  
8 and some of the methods that I thought we could  
9 pursue in that regard, but I don't -- I don't  
10 think that the compensation practices that we have  
11 in our company are what drive problems within the  
12 inspection, you know, community at all.

13                   I think, if we didn't have bonuses  
14 at all, we would still have -- we would have still  
15 had some of these exact same problems. The truss  
16 bracing that we talked about in -- in Country  
17 Meadows, the support structure that I talked about  
18 in Four Seasons at Wayne, those things were big  
19 issues and they had nothing whatsoever to do with  
20 the compensation plan of our associates. You  
21 know, they were mistakes that our trade partners  
22 made and mistakes that we made in our oversight of  
23 those trade partners.

24                   COMMISSIONER EDWARDS: I'm not  
25 opposed to incentives. I don't -- and I clearly

1 understand the rationale of having them in place.  
2 I do know that they can be -- and I think we have  
3 some who say that they have been part of the  
4 problem, at least either the incentives and/or the  
5 pressure to produce within timelines, either one  
6 of the two, and they are both incentives to do  
7 that, either your job is on the line or your bonus  
8 is on the line -- have caused various inspectors  
9 and various people in some other projects to do  
10 things they shouldn't have done. I'm looking for  
11 a remedy for that. That incentive is always going  
12 to be there, one way or the other.

13 THE WITNESS: Right.

14 COMMISSIONER EDWARDS: And the  
15 balance of that -- the local inspection piece is  
16 what's missing. You've made a suggestion about  
17 county inspections as a way -- or regional  
18 inspections as a way of dealing with that,  
19 especially when it comes to new construction.  
20 That runs directly up against the incredible  
21 problem individual citizens have in dealing with  
22 alterations in their local towns, to get permits  
23 to add a room or do something that is far less  
24 complicated. To work in a very large bureaucracy  
25 is hard for them to do and, the more you

1 centralize that the more difficult you make that,  
2 unless you balance it with something.

3 THE WITNESS: And, perhaps, such a  
4 balance could be achieved. Perhaps, you know, the  
5 larger development-sponsored communities would get  
6 inspected by one type agency and municipalities  
7 would have their own inspectors that would handle  
8 the -- you know, the plainer, more vanilla type of  
9 additions or decks or patios or whatever that a  
10 homeowner is doing in the normal course of  
11 improving their properties.

12 COMMISSIONER EDWARDS: Have you  
13 considered or thought about or have you seen in  
14 those jurisdictions where there is a contract  
15 literally between you and they? As a large home  
16 contractor -- and that's where the problem comes  
17 in. It's not the individual with a two-lot  
18 subdivision, the two-lot builder that's out there,  
19 as much as it is on the -- the large contractor,  
20 whether it's you or Toll Brothers or any of the  
21 large contractors. Entering into a contract with  
22 the municipality on inspections in which you  
23 control, as part of your approval process,  
24 adequacy of inspections. Is adequate inspection  
25 good for you? And you've stated it is, it saves

1       you money, it's a good process, it's one that  
2       benefits you, if it's done properly and done by  
3       qualified people who have the right motives in  
4       place.

5                       THE WITNESS:   And, further, we think  
6       we are paying for it.

7                       COMMISSIONER EDWARDS:   Right, you  
8       are paying for it.

9                       THE WITNESS:   We think we are paying  
10      for it today.

11                      COMMISSIONER EDWARDS:   The system is  
12      designed for you to pay for it.  What's missing,  
13      to me, is the contract between the community and  
14      the -- between you, as the builder of 400 units,  
15      let's say, and the inspection agency and what they  
16      are supposed to do and what you were paying for.  
17      Not who is doing it, but what you are paying for  
18      them to do.  And, would that, as part of your  
19      subdivision and/or master development plan  
20      approval that you get, provide for that and, if we  
21      recommended that coming out of this, do you think  
22      that would be productive to deal with the problem?

23                      Either that contract is with the  
24      community, where they do it themselves and pay in  
25      dollars, they have to prove they have adequate

1 resources. The state might be a backup on that  
2 adequate resource, or the county, to provide  
3 manpower on a rotating basis, but -- that would  
4 have to be worked on --

5 THE WITNESS: Right.

6 COMMISSIONER EDWARDS: -- but it  
7 would seem to me to protect the value of the  
8 homeowner for local inspections or the little guy  
9 who wants to come in and put a deck on and doesn't  
10 want to have to go through an act of Congress to  
11 put a deck on and doesn't now how to do it and,  
12 consequently, will do it without a permit and all  
13 hell breaks loose. Do you think it would be  
14 cheaper or more efficient?

15 THE WITNESS: Well, I'm not sure why  
16 it would be cheaper or more efficient, because my  
17 sense is that we would spell out a developer's  
18 agreement. Today we have developer's agreements  
19 that are done that spell out the relationship  
20 between the builder and the municipality as it  
21 relates to a host of things.

22 I guess what I'm gathering is you  
23 are suggesting that this be added to that type  
24 document, but I guess my response is that I'm not  
25 sure what that would do to the core substance of

1 the issues that we've been talking about. If, in  
2 some fashion, it ensured that we had more  
3 inspectors, you know, that would, you know, be a  
4 good thing, but I'm not sure where they would come  
5 from and I'm not sure how they would be deployed,  
6 which I still believe goes back to, you know,  
7 having a -- you know, a broader entity from which  
8 those inspections happen, and I think I just again  
9 come back and reiterate that I'm not sure that you  
10 and I couldn't come together with one level of  
11 inspection and inspector that would do the things  
12 that we want to avoid acts of Congress to get  
13 done, and others that would be done in a more  
14 global fashion that would allow good deployment of  
15 resources. Because I do see this as a problem,  
16 with 500 and some municipalities across the state,  
17 each with their own building inspector  
18 infrastructure.

19 You know, how do you do that? How  
20 do you ever plan for the ebbs and flows? If -- if  
21 it works on a municipal level the way it works for  
22 me, if I plan for big volume, I have a lot of  
23 people and then the volume doesn't happen, and  
24 vice versa, and I suspect the exact same thing  
25 will happen in municipalities and we'll just be in

1 a position where we are again not deploying our  
2 resources as effectively as we can. And it costs  
3 someone money, either the development community or  
4 the towns themselves, and last time I checked, you  
5 know, we don't have tons of extra dollars --  
6 either side -- to throw around in that regard.

7 I think we need to do it as  
8 efficiently as we possibly can and as skillfully  
9 as we possibly can.

10 COMMISSIONER EDWARDS: I've listened  
11 over the years to -- and debated Ara,  
12 particularly, over 25 years on the cost of  
13 development in New Jersey, and its regulatory  
14 processes. I'm not trying to ask you that.

15 I think what I'm hearing you say is  
16 that having 500 communities added to the  
17 developer's agreement, that inspection  
18 requirements beyond what you already have for  
19 engineering and legal fees and other things that  
20 are jammed into those developer's agreements, an  
21 inspection component is only compounding the cost  
22 and not reducing the cost.

23 THE WITNESS: I don't see what it  
24 buys us because, in my mind, it doesn't really go  
25 to the core of the issues that I've been doing my

1 best to describe here today.

2 COMMISSIONER EDWARDS: I understand.

3 On another -- going in another  
4 direction, dealing with a couple of issues that  
5 have been suggested to us that I would like to  
6 have your opinion about. One is licensing, that  
7 somehow licensing of your trade partners as  
8 contractors, licensing yourselves as -- and not  
9 just you, but, more likely, smaller builders in  
10 that case, would be -- have some ultimate value.

11 Do you have any opinion on that?

12 THE WITNESS: We wouldn't object to  
13 that. I think it's not a bad thing. At the end  
14 of the day, I doubt it will make a significant  
15 difference toward the type of issues that, you  
16 know, your group has been deliberating, but I  
17 guess I would characterize it as one of those  
18 things that can't hurt and might help a bit, but I  
19 doubt it's -- it's going to make a meaningful  
20 long-term difference, and I guess that I would  
21 hope, if we go down that path, that -- and  
22 especially -- it wasn't all that long ago that I  
23 was a smaller builder on my own myself, and I  
24 haven't forgotten those days, and it's one thing  
25 for me to sit here running one of the larger

1 business units that operate in New Jersey to talk  
2 about, fine, you know, licensing, it's one more  
3 thing that, you know, we'll make sure that we get  
4 accomplished, but, by the same token, the person  
5 who is out there dealing with five or ten homes a  
6 year, remodelers and that kind of thing, nothing  
7 wrong with having them licensed, either. Just  
8 keep it sensible, in terms of what the process is  
9 for them to be licensed, and the financial  
10 requirements that they need to show in order to  
11 gain that license and that sort of thing.

12 So that's my industry hat for a  
13 moment, not my personal or my company hat.

14 COMMISSIONER EDWARDS: Yes. I was  
15 looking at that, because it doesn't really affect  
16 companies of your nature.

17 Let me ask you another one, which is  
18 the Consumer Fraud Act. We are dealing with a  
19 warranty program in New Jersey that was installed  
20 years ago when the Consumer Fraud Act was about to  
21 be applied to new construction, and the industry,  
22 the new-home construction industry, yourself and  
23 other large builders, objected to the -- as being  
24 inappropriate to use the Consumer Fraud Act as a  
25 vehicle to provide protection for new homebuyers.

1 The Homeowner Warranty Program was the compromise  
2 that everyone arrived at. And it had to, I might  
3 add, the New-Home Warranty program.

4 So, consequently, we are  
5 considering -- one of the issues on the table is  
6 as it applies to the alterations and additions  
7 right now to the Consumer Fraud Act, apply it to  
8 that part of the industry, it does not apply to  
9 new-home construction, to either scrap the  
10 warranty program, make major amendments to it,  
11 and/or add, as a protection for the individual  
12 consumer, all protections of the Consumer Fraud  
13 Act, including treble damages and attorney fees,  
14 if a builder in new-home construction does not  
15 deliver a product that is contracted for.

16 THE WITNESS: I don't know if I'm  
17 the right person to respond to the advantages or  
18 disadvantages of the Fraud Act. In fact, I know  
19 I'm not. I don't really harbor an opinion.

20 I do harbor, perhaps, a different  
21 opinion than you do regarding the warranty  
22 program, however. Perhaps that's a process that  
23 can be improved, but, from our standpoint, it is  
24 something that only helps the customer, something  
25 that often brings resolution to their concern and,

1       you know, the process is such that they call a  
2       phone number. We give them the phone number of  
3       our warranty company with every closing package.  
4       It's a simple phone number to call. That entity,  
5       the warranty company, then sets up a mediation  
6       between ourselves and the homeowners, if we  
7       haven't been able to solve the problem without  
8       that mediation.

9                        If we are unable to reach agreement,  
10       they then set up an arbitration and the arbitrator  
11       decides who's right and who's wrong and, after  
12       that happens, guess what? You know, the builder  
13       has to live with that arbitration; the homeowner  
14       still doesn't.

15                       So, while there may be things -- I'm  
16       not sure of the nuances that you've been looking  
17       at toward improving the program, but, in a general  
18       way, I look at that and, you know, wonder why it  
19       isn't essentially a good thing. There are  
20       standards that are, you know, set forth in the  
21       warranty program, and standards for appropriate  
22       quality construction are tough standards to write.

23                       One person's definition of a crack  
24       in a piece of concrete is totally acceptable and  
25       to the next person it's a life crisis. Someone

1 has to be the arbiter of creating those standards  
2 and it's not easy. In fact, our company, from  
3 time to time, has thought about trying to define  
4 them ourselves, to take them to a different point  
5 or a different stage than the warranty companies  
6 have done, and we haven't really been able to do  
7 it among ourselves, knowledgeable about the  
8 industry.

9 So, in my mind, there has been a set  
10 of standards that's been crafted, we think those  
11 standards are inappropriate, perhaps they should  
12 be changed, but the process that surrounds how  
13 those standards are administered, I think, works.

14 COMMISSIONER EDWARDS: We've come to  
15 a different conclusion and have enough evidence  
16 presented to us that the existing warranty program  
17 is flawed both on the arbitrator side and the  
18 insurance side, private and the state system. The  
19 state system is inadequately funded, staffed.  
20 We've had considerable testimony that the  
21 arbitration system is, itself, flawed and  
22 integrated within the home construction industry  
23 and has not proved to be a viable remedy and it's  
24 used because of the time lines and limitations  
25 that it has negatively against homeowners who have

1 very, very legitimate complaints, and the level of  
2 testimony in that regard that we have on record  
3 is -- is my model.

4 THE WITNESS: Well, I won't attempt  
5 to re-do any of that testimony.

6 COMMISSIONER EDWARDS: Yet the  
7 system does theoretically work. I was sold on it  
8 20 years ago when I helped put it in and I'm not  
9 so sure that we can tinker it and fix it and take  
10 it out -- take those problems away without some  
11 other incentives on the -- on the legal side, and  
12 that's why I brought the Consumer Fraud Act up --  
13 question first. Maybe they are both needed. Keep  
14 the system, make the alternative, but you better  
15 have an option that is a viable one to the  
16 warranty being protected by both sides and  
17 changes.

18 THE WITNESS: Well, we'll be happy  
19 to participate in that discussion when the  
20 appropriate time comes.

21 One thing I would like to mention,  
22 too, I mentioned it to Chairman Schiller in  
23 private session at the conclusion of that  
24 testimony, and it goes to, you know, in the end,  
25 what the free market is going to do in all

1 industries, including our own. Our industry is  
2 consolidating every day. The bigger builders are  
3 taking share from the smaller builders.  
4 Eight years ago the top ten builders were 10 or  
5 12 percent of the market. Five years later we are  
6 25 percent of the market. Most think that in  
7 another five years it will be 50 percent of the  
8 market nationwide.

9                   After that it will get much more  
10 difficult, by the way, and, as it gets much more  
11 difficult, guess who the success stories will be?  
12 The success stories will be the Nordstroms of the  
13 building business and it will no longer be  
14 possible, even if we wanted it to be so -- and we  
15 don't -- for builders that aren't delivering good  
16 products and aren't standing behind their product  
17 to survive, at least in a global way across the  
18 country, and that's just a core fact of what  
19 happens as business consolidates. It happens in  
20 all industries and it's happening to the home  
21 building industry as I'm giving this testimony  
22 before all of you today.

23                   And, so, I offer that not as a  
24 substitute for any of what I'm sure are going to  
25 be positive and fine recommendations that you'll

1       make, but, you know, as the -- in my view, the  
2       final safety net where the private sector is going  
3       to be forced, whether they like it or not, to  
4       build better and better products over time, if  
5       they want to be success stories in the business  
6       world.

7                       And I know, speaking for our  
8       company, we certainly hope to be around for a  
9       long, long time. We've built tens and tens of  
10      thousands of houses in New Jersey, as I know you  
11      are aware, Mr. Edwards, and we've created value  
12      time and again, over and over, and we've made lots  
13      of mistakes and we'll make lots of future  
14      mistakes, but we intend to be here for the long  
15      pull. So, working in concert with some of the  
16      things that you've been talking about today, and  
17      having you all be aware that, you know, the  
18      industry is going to force this on itself, whether  
19      they like it or not.

20                      Pulte Homes, one of our competitors,  
21      rates at the top of J.D. Power's survey of  
22      consumer satisfaction, in the top two or three of  
23      almost every market that they operate in across  
24      the country. We are looking at them very closely  
25      so that we can figure out how to out-Pulte Pulte,

1 and I can imagine headlines in the paper tomorrow  
2 that Ara will probably read and he'll probably  
3 shoot me.

4 But, kidding aside, we want to take  
5 share from those folks one of these days, and one  
6 of the ways that we'll take share from those folks  
7 one of these days is to out-do them in an area  
8 that they are doing quite well in at the moment.

9 So, not a substitution for the  
10 things that all of you are working on at the  
11 moment, but a further enhancement, and in my  
12 judgment, I always believe that the free market  
13 accomplishes things better than the public markets  
14 do. They have to work in concert with one  
15 another, but it's great when we are working  
16 generally in the same overall direction.

17 COMMISSIONER EDWARDS: I'm sure you  
18 would like to win the J.D. Power awards for  
19 quality, and that is very important, I appreciate  
20 that and understand that part of the market which  
21 is probably the most benefit to most of the  
22 consumers of your products and big builders.

23 Let me ask you the last piece in  
24 this process. When you give a prospective buyer a  
25 contract, it's a take it or leave it contract,

1 fundamentally.

2 THE WITNESS: I'm sorry?

3 COMMISSIONER EDWARDS: It's a take  
4 it or leave it contract. It doesn't have any room  
5 for negotiation of individual clause --  
6 inspections or provisions. Am I accurate about  
7 that?

8 THE WITNESS: Yes.

9 COMMISSIONER EDWARDS: Having said  
10 that, is there any value to put some consumer  
11 protection mandated language in those contracts  
12 that might help you and help us?

13 THE WITNESS: You know, again, I'm  
14 not sure I'm the right one to answer. I'm not  
15 totally certain what's in our contract in that  
16 regard today, so I'm not sure that I can tell you  
17 whether we'd be well advised to add more or  
18 whether we think it's enough, but my friend to my  
19 right here may well have an opinion about that,  
20 but I don't think it's his day to --

21 COMMISSIONER EDWARDS: Well, let me  
22 tell you where I'm coming from. Take it or leave  
23 it contract, and you are not providing fundamental  
24 consumer protection within the confines of that  
25 document, then the option is the government is

1 going to come in and impose things on you, whether  
2 it's in the contract or outside of the contract,  
3 and those are the things we are really talking  
4 about now, and I'm wondering if there aren't  
5 things that we might agree on that might go into a  
6 contract dealing with inspections, dealing with  
7 quality, dealing with those kind of issues that  
8 might help you win that J.D. Power award, because  
9 I really want you to win it.

10 THE WITNESS: So do we.

11 COMMISSIONER EDWARDS: I want you to  
12 win it because you are from New Jersey, so I admit  
13 that's my bias, but I want you to do it really for  
14 the consumers that are buying those properties,  
15 and arriving at a balanced and fair contract, when  
16 it's not negotiable and it's not arm's length,  
17 which it isn't from -- you or anybody else, it's  
18 not your -- your bailiwick. All of the large  
19 contractors do the same thing.

20 THE WITNESS: You know, although --  
21 I will say, although our contract is not  
22 negotiable, it is a document that has evolved over  
23 many, many years, a great deal of give and take  
24 between customers' attorneys and our side, which  
25 has kind of sintered down to the place of where

1 we've said, "Look, this is how far we'll go, we've  
2 tried to actually make the contract as far to the  
3 left of the spectrum as we'd go," and said, "This  
4 is it, this is what it says, it's fair, it's good  
5 enough, so don't try to get more."

6 So, in our mind, we think that we've  
7 accomplished that. Now, if there are things --  
8 certainly we'd be wide open to hearing about other  
9 things that could be injected into the contract  
10 that would be fair to our customers and fair to  
11 us, and I just don't know that I can speak  
12 specifically about what they might be, other than  
13 to say to you that the contract that we've got  
14 today wasn't just this dictated contract that came  
15 from us. It evolved through many, many years of  
16 haggling between ourselves and our buyers'  
17 attorneys and we kind of ended up with a  
18 compromised document that we thought was fair to  
19 all.

20 COMMISSIONER EDWARDS: I'm not  
21 picking on your contract.

22 THE WITNESS: I understand your  
23 point.

24 COMMISSIONER EDWARDS: They all have  
25 the same process and they've all arrived at the

1 same point --

2 THE WITNESS: Ours are fairer.

3 COMMISSIONER EDWARDS: Yes, I  
4 understand that, I'm sure you would say that, and  
5 I was thinking again, getting back to the  
6 inspection issue, seems to be the crux, people's  
7 capacity to know while the construction is going  
8 on, before they take time to go through the  
9 process, and the integration of an adequate  
10 inspection process mandated in that agreement  
11 might be a place to go, but I'll leave that for  
12 another day.

13 THE WITNESS: We would certainly be  
14 wide open to a discussion on that subject.

15 COMMISSIONER EDWARDS: Thank you  
16 very much.

17 COMMISSIONER MARINIELLO: I just  
18 want to touch on a couple of quick things. The  
19 first is, how has the decision in DKM affected the  
20 position of your company with regard to  
21 remediation of problems after a CO has been  
22 issued, if at all?

23 THE WITNESS: I don't think it's  
24 affected us at all, and we wouldn't object to  
25 legislation that moots the DKM decision.

1                   COMMISSIONER MARINIELLO: And then,  
2                   just to piggy-back on something Commissioner  
3                   Edwards spoke about at the beginning, we have had  
4                   some testimony regarding a project known as  
5                   Liberty Green. Are you familiar with that  
6                   project?

7                   THE WITNESS: I am.

8                   COMMISSIONER MARINIELLO: And my  
9                   recollection of that project is, and from hearing  
10                  the testimony both from the former K.Hov personnel  
11                  and the construction department, was that there  
12                  were falsified COs issued at that property that  
13                  were falsified by personnel from K.Hov. Do you  
14                  recall that?

15                  THE WITNESS: I do.

16                  COMMISSIONER MARINIELLO: There were  
17                  two reasons, if I remember correctly, provided why  
18                  that occurred, and maybe you can comment on either  
19                  of the two. The first is that the personnel from  
20                  your corporation specifically suggested that they  
21                  were not getting response from the municipality  
22                  quickly enough to get the COs issued in time for  
23                  the closings, as mandated by your corporate -- I  
24                  don't know whether or not you had that specific  
25                  policy at that time that demanded X amount close

1 per month, but, whatever the amount was, the  
2 pressure was on him to produce those and he was  
3 not getting the cooperation from the town to  
4 produce and, as a result, he took whatever steps  
5 he thought was necessary.

6 Now, whether that was to obtain a  
7 bonus or just to keep his job, like Commissioner  
8 Edwards put forward, either way the process was  
9 driven, in part, by the expectations or demands of  
10 that project manager to reach a certain number.  
11 So, that would be the first point I would comment  
12 upon.

13 And then the second part of that was  
14 that there was testimony at that time also that,  
15 as a bigger builder -- and I'm sure this is true  
16 of other bigger builders -- that there was a sense  
17 that there were biases within certain building  
18 departments against your company and/or others  
19 that come in and build these larger tracts and put  
20 this pressure upon these building departments, and  
21 I'm wondering whether or not you have a sense that  
22 that occurs out there, not specifically to  
23 Lawrenceville, which is where I believe Liberty  
24 Green was, but, generally, do you get a sense that  
25 that occurs out there with these building

1 departments?

2 THE WITNESS: No, I don't think it  
3 does, generally. I do -- I think I mentioned at  
4 the very early stage of my testimony today that  
5 there are some municipalities that basically are  
6 very anti-growth, and a project has been approved  
7 sometimes over their best objections, or at least  
8 the objections of some, and in some such instances  
9 they are not thrilled about the project moving  
10 along, in the first place, and some, we believe,  
11 look at it as an opportunity to, the more you can  
12 delay, the more it will cost this developer, the  
13 higher their cost structure, the less they make,  
14 that's good. You know, let's make life as  
15 miserable as we possibly can, and the longer it  
16 takes to provide housing for our citizens, in  
17 their perspective, the worse.

18 We don't share that view, by the  
19 way. We don't think that's a particularly  
20 productive view to have, when it comes to housing  
21 our citizens. We can argue about the form and  
22 shape that those communities ought to take, but we  
23 think it's a fundamental right and a fundamental  
24 obligation for all of us to figure out where  
25 people are going to live, and it's not your job

1 within this Commission's deliberations, but it  
2 ought to be a more frontal discussion within  
3 government.

4 As to your first point, the  
5 individual that falsified those COs was relieved  
6 of his position with us, you know, very quickly  
7 thereafter, because it's not conduct that's  
8 acceptable to us. He may have -- well, I don't  
9 think he should have, but I suppose -- I'm sure he  
10 gave truthful testimony. In his mind he must have  
11 believed that he was under huge pressure to get  
12 these deliveries. That type of thing is often in  
13 the eye of the beholder, has been my experience.  
14 All of us are under pressures of that sort. I am,  
15 I'm sure all of you are.

16 Despite whether we are under those  
17 pressures, you make ethical decisions. That  
18 wasn't an ethical decision, shouldn't have made it  
19 and it's not tolerated within our company.

20 COMMISSIONER MARINIELLO: And, just  
21 so the record is clear, would that particular  
22 behavior that has been identified with other  
23 builders, as well -- I don't want to single your  
24 company out -- has this type of pressure that has  
25 led to certain decisions which -- I think you

1 mentioned the word "unethical," which could -- and  
2 it's certainly breaking the law, and I think we  
3 can all agree on, it's not the correct response  
4 from any project manager, but there have been  
5 several of these instances, not just with your  
6 company, but many others, where that process, I  
7 guess, reaches a level of intensity that it  
8 creates the opportunity or the necessity, in their  
9 eyes, to make that decision.

10 THE WITNESS: Well, you know, I hope  
11 in our company that, although I hope all of our  
12 associates understand that we have a business plan  
13 and a business objective to achieve and everybody  
14 is supposed to paddle hard to achieving that  
15 objective, but, when you reach a point where you  
16 are, you know, not proceeding in an ethical  
17 fashion, it is entirely inappropriate, not  
18 condoned by -- not only is it not condoned, it's  
19 completely disapproved of by all of our  
20 management, from Kevork Hovnanian, who founded our  
21 company, on down through my management level and  
22 below. It's unacceptable and it shouldn't happen.

23 Regardless -- having said that,  
24 regardless of the fact that things in life  
25 shouldn't happen, things in life happen. You

1 know, in our industry, in any other industry, in  
2 some of your industries, perhaps, people take  
3 matters into their own hands. They shouldn't do  
4 it. I'm sure they did it with what they thought  
5 were good intentions. I'm sure they thought they  
6 had homes built correctly and here is this  
7 municipality that's stonewalling their CO and, you  
8 know, there is no good reason, so, you know,  
9 what's wrong? People rationalize lots of  
10 decisions that aren't the right decisions to make.

11 COMMISSIONER MARINIELLO: I have  
12 nothing further, Mr. Chair.

13 COMMISSIONER SCHILLER: Mr. Riggs,  
14 just a couple minor things. We spoke about a  
15 couple of projects and specifically we talked  
16 about them this afternoon. I'm just wondering, I  
17 believe the last one we had a while back involved  
18 Newark, and I'm just wondering how we fared in  
19 resolving some of the problems for the good  
20 citizens of Newark who live in the project up  
21 there.

22 THE WITNESS: Actually, I don't know  
23 any more about it today than I knew about it at  
24 the time, but I've heard that we are working  
25 through transition agreements with our last

1 association. I think there is one litigation that  
2 is happening again at Society Hill Newark that we  
3 are hoping to have arbitrated, and I believe that  
4 that -- there is a difference of opinion between  
5 that homeowners association and between ourselves  
6 about what our company's obligations are.

7 Having said all the things I've said  
8 here today, there will always come points in time  
9 where we differ.

10 In a global way, I've been, on  
11 numerous occasions, through the community that you  
12 referenced. Perhaps we've made some mistakes here  
13 and there, but, in a global context, I think it's  
14 a shining star of redevelopment in Newark, and I  
15 don't think there has been anything that's  
16 happened before or since that compare and,  
17 frankly, I wish there would be more Society Hills  
18 of Newark that would be built.

19 COMMISSIONER SCHILLER: Again, it  
20 was just that some of them were so egregious, in  
21 terms of either the buildings or the number of  
22 units that required plans and things like that,  
23 that I was just wondering how we were doing up  
24 there, in terms of remedying the problems that we  
25 have up there.

1                   THE WITNESS: As I say, I think we  
2                   are down to issues of dispute with the last  
3                   association, and it doesn't appear that those  
4                   disputes are going to be settled amicably. They  
5                   are going to be arbitrated or they are going to be  
6                   litigated. One of the two.

7                   COMMISSIONER SCHILLER: Which serves  
8                   nobody's purpose.

9                   THE WITNESS: Serves nobody's  
10                  purposes.

11                  COMMISSIONER SCHILLER: The other  
12                  thing there is, which leads me into the other  
13                  question I wanted to get into, is that the  
14                  warranties that are supplied are all through a  
15                  private plan that I believe your company supplies,  
16                  right? The homeowner warranty?

17                  THE WITNESS: I'm sorry, I misheard  
18                  you.

19                  COMMISSIONER SCHILLER: The  
20                  homeowner warranties, I believe you have a private  
21                  plan for that, you don't participate in the  
22                  state's?

23                  THE WITNESS: That's correct.

24                  COMMISSIONER SCHILLER: Would you  
25                  know how many claims you get against that per

1 year?

2 THE WITNESS: I know that -- I  
3 believe that there are about 4 percent of homes  
4 across the state that have claims in the warranty  
5 program, and I'm not certain, but I think our  
6 statistics are relatively in a line with that,  
7 maybe a little bit better, meaning less claims,  
8 not more.

9 So, call it 3 or 4 percent, to be  
10 generally on line.

11 COMMISSIONER SCHILLER: Does your  
12 company, in itself, own or invest at all in the  
13 risk management of the insurance company?

14 THE WITNESS: We are self-insured.  
15 I don't believe that we -- no, I don't believe  
16 that we have any interest in the company.

17 COMMISSIONER SCHILLER: So you are  
18 self-insured?

19 THE WITNESS: Yes.

20 COMMISSIONER SCHILLER: Which  
21 basically means the same thing as remediating,  
22 people who come to you before they put a claim in  
23 to the insurance policy?

24 THE WITNESS: That's right.

25 COMMISSIONER SCHILLER: And the one

1        thing that somebody asked me at the break, and I  
2        just would like to get your reaction to it.  When  
3        we -- you build, we bond for infrastructure and  
4        certain things that we do to save, in terms of  
5        performance bonds, yet there is -- outside of the  
6        Homeowners Warranty insurance.

7                        Would it not be something that  
8        perhaps a builder would have to put up a bond when  
9        he begins to build to make sure that he builds  
10       according to specs and also build what he said he  
11       would build?  Is that not perhaps another  
12       alternative for not only incentives for  
13       inspection, but incentive to conform?

14                      THE WITNESS:  I suppose it could be  
15       a matter of consideration.  I hadn't thought about  
16       it, prior to your mentioning it, and I think I  
17       would like to consider the ramifications of that  
18       first.  In a conceptual way, it's hard to argue  
19       with that, but it's one more cost, it's one more  
20       process to go through.  You know, you have  
21       disputes about bond releases.  Some of them get  
22       held at ransom by municipalities for who knows  
23       what, and these are things that happen.  You know,  
24       sometimes -- sometimes because of silly things  
25       that we do that we shouldn't, and sometimes

1       because towns like to be difficult about releasing  
2       bonds, so anyone on the private sector who hears  
3       about more bonds, which are already troublesome  
4       enough, might not react with a huge cheer.

5                       COMMISSIONER SCHILLER:  So much  
6       stuff has come up about the subcontractors that  
7       are, you know, just a natural -- if we held,  
8       perhaps, the subcontractors' feet to the fire a  
9       little more, it might be -- without trying to  
10      drive out minorities and other things, it would be  
11      a very tricky thing to do, but it might be an  
12      incentive to make people perform so that they can  
13      get their bond money back right away.  And it was  
14      just a thought that, maybe if you do think about  
15      it and talk about it --

16                      THE WITNESS:  I would be happy to --

17                      COMMISSIONER SCHILLER:  We can talk  
18      about that in the future, in terms of  
19      recommendations.

20                      No other questions.  Mr. Riggs, we  
21      appreciate you coming in and thank your counsel  
22      for all his good answers.

23                      THE WITNESS:  Thank you very much.

24                      COMMISSIONER SCHILLER:  We'll take a  
25      couple-minute break for the reporter to change his

1 tape.

2 (Recess called at 3:48 p.m.)

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1 (Resumed at 3:57 p.m.)

2 COMMISSIONER SCHILLER: We are going  
3 to go a little bit out of order, and we'll call  
4 the next witness.

5 MS. GAAL: I believe it's Edele  
6 Hovnanian.

7 I would ask if you wouldn't mind  
8 standing and the reporter will place you under  
9 oath.

10 EDELE HOVNANIAN, after having been  
11 first duly sworn, was examined and testified as  
12 follows:

13 MS. GAAL: Thank you. You may be  
14 seated.

15 May we have your name, please, for  
16 the record.

17 THE WITNESS: Edele Hovnanian.

18 MS. GAAL: And, counsel, would you  
19 enter your appearance, please.

20 MR. ZOUBEK: Yes. Good afternoon.  
21 Paul Zoubek with Montgomery McCracken Walker &  
22 Rhoads, representing the witness.

23 EXAMINATION

24 BY MS. GAAL:

25 Q. Ms. Hovnanian, are you employed by

1 Menk Corporation?

2 A. Yes.

3 Q. And in what position?

4 A. President.

5 Q. Who owns Menk?

6 A. Myself, my brother, primarily, and,  
7 to a lesser degree, some of my other siblings.

8 Q. When was Menk created?

9 A. Sometimes in the '90s.

10 Q. Are you also an officer of Hovsons?

11 A. Yes.

12 Q. And what is your position?

13 A. Senior vice-president.

14 Q. And do you have an ownership  
15 interest in Hovsons?

16 A. No.

17 Q. Who owns that company?

18 A. My father.

19 Q. And his name is?

20 A. Hirair Hovnanian.

21 Q. When was Hovsons created, even if  
22 it's approximate?

23 A. Approximately 1959, I believe.

24 Q. Was Hovsons in the home building  
25 business?

1 A. Yes.

2 Q. For decades?

3 A. Decades.

4 Q. And was that primarily, or even  
5 solely, handled by your father over the years?

6 A. Well, I don't mean -- solely, I  
7 don't know what that means. He had a staff of  
8 employees and --

9 Q. But primarily it was his --

10 A. He was the president of the company  
11 and still is the president of the company.

12 Q. What is your educational background?

13 A. I have a -- I went to the University  
14 of Pennsylvania. I have a Bachelor's of science  
15 in engineering and a Bachelor of finance -- I  
16 don't know -- Bachelor of Arts, I guess it is, in  
17 finance, from the Wharton School. I have a  
18 Master's in business administration from Columbia  
19 University.

20 Q. With respect to these two companies  
21 that I've talked about, is most of the work or all  
22 of the work of the companies in New Jersey?

23 A. Yes.

24 Q. Mostly in New Jersey or all?

25 A. I believe solely in New Jersey.

1 Q. Solely, okay.

2 Ms. Hovnanian, I know you were here  
3 earlier and you may have heard some of the  
4 questions we asked -- some of the statements with  
5 respect to the prior witness. I'm going to just  
6 say to you that you testified also at considerable  
7 length before the Commission in private session,  
8 and at that time we discussed a number of housing  
9 developments that had been built by Hovnanian  
10 and/or Hovsons.

11 Do you recall that?

12 A. Generally.

13 Q. Yes.

14 Do you have any direct personal  
15 experience or training in residential  
16 construction?

17 A. No.

18 Q. At some point did you become  
19 involved in new-home construction in New Jersey?

20 A. Myself, personally?

21 Q. Yes.

22 A. In, I think it was approximately  
23 late '90s, the residential division was one that I  
24 took on.

25 Q. And prior to that what work had you

1 done with respect to either your company or your  
2 father's companies? What type of work? Prior to  
3 the residential --

4 A. Both Menk and Hovsons are  
5 residential builders, so the only role that I  
6 played in those two companies was in regards to  
7 marketing.

8 Q. You also, I think, testified that  
9 you've been involved with either nursing homes or  
10 assisted living facilities?

11 A. Yes. My primary responsibilities  
12 were I oversaw the approvals, construction and  
13 operation of a number of nursing homes, senior  
14 apartment -- senior assisted living, and also the  
15 approvals and construction and management and  
16 leasing of shopping centers and office buildings.

17 Q. Were those functions handled by  
18 either Menk or Hovsons, or was it a different  
19 company?

20 A. Different company.

21 Q. Now, when you became involved in the  
22 residential home building business, did you rely  
23 on someone to do the actual construction or  
24 handle -- I should say handle the actual  
25 construction end?

1           A.       I just want to be clear, as far as  
2           time frame goes. Both of those companies, you  
3           know, were actively involved and my role was very  
4           limited to the marketing end of it. So I want to  
5           just get an understanding of what time frame you  
6           are asking in the question.

7           Q.       When you became involved yourself in  
8           overseeing the residential construction, as  
9           opposed to merely being involved in the marketing.

10          A.       Yes. And your question again?

11          Q.       Did you rely on certain folks or  
12          certain individuals to directly oversee the actual  
13          construction?

14          A.       Yes. When I took over the  
15          residential construction division, obviously there  
16          was an infrastructure as far as vice-presidents  
17          and project managers and field supervisors and, as  
18          I indicated in my private testimony, since this  
19          was an industry that was new to me, although I had  
20          no intentions of necessarily running the field,  
21          what I chose to do was to hire a top ranked  
22          executive from the outside to sort of mentor me  
23          and establish the processes that I wanted to make  
24          my mark in the division.

25          Q.       Can you tell us even approximately

1       how many homes either or both of those companies  
2       may have constructed per year when you became  
3       involved?

4             A.       Hovsons was -- had limited itself --  
5       by that time it was down to its last project,  
6       which was Holiday City at Monroe, and I believe in  
7       the late '90s it was down to about 30 or 40 houses  
8       a year, approximately.

9             Q.       Okay.

10            A.       The Menk Corporation was, I believe,  
11       averaging approximately 200 to 250 houses a year.

12            Q.       What is a production builder?

13            A.       It's a term I use and some of us  
14       use. It means that you have usually a few  
15       standardized models that you offer within a larger  
16       community. It could be a hundred homes or it  
17       could be a thousand homes. You basically offer  
18       homeowners variations of that theme, so it allows  
19       your contractors to build the same home over and  
20       over again.

21            Q.       Does a production builder typically  
22       subcontract out the actual construction work?

23            A.       Yes. That is my understanding of  
24       most --

25            Q.       And, by the way, we've heard that

1 term not only from you, but others have referred  
2 to certain types of builders as production  
3 builders.

4 When you were in the residential  
5 home construction business, either at Hovsons or  
6 Menk, did you operate -- did those companies  
7 operate by subcontracting out the actual  
8 construction work?

9 A. Yes.

10 Q. So, you didn't have your own  
11 workforce, so to speak, that went out and built  
12 the homes?

13 A. We had the field supervisors,  
14 project managers and such. We typically had few  
15 laborers to do the miscellaneous things that fell  
16 through the cracks.

17 Q. I don't know if you know the answer  
18 to this question, but, when your father was more  
19 involved, maybe a few decades back, did the  
20 company operate by subcontracting out work or did  
21 he essentially have his own workforce?

22 A. I believe it was primarily  
23 subcontracted out.

24 Q. Now, with respect to the hiring of  
25 the subcontractors, did you get involved

1 personally in doing that?

2 A. No.

3 Q. Who would handle that?

4 A. The vice-president in charge of that  
5 project.

6 Q. Would you break the construction of  
7 these homes down into specific phases?

8 A. Yes.

9 Q. And then what, sub out the phases?

10 A. Yes.

11 Q. Could you give us an idea what a  
12 phase might include? Would it be the electrical  
13 work or would it be a certain --

14 A. It starts with the -- you know, the  
15 grading of the lots to then the masonry for the  
16 foundation, basement, slab, whatever is being  
17 built. The framing, and then it moves on from  
18 there and then it gets into the roof, the  
19 electric, the plumbing and, you know, Sheetrock,  
20 painting, flooring.

21 Q. Did you have project managers that  
22 would be assigned to handle a particular project  
23 or more than one project?

24 A. It depends on the scale of the  
25 project. On the larger projects usually it was

1 one project manager per project.

2 Q. And would they have folks under them  
3 that they would supervise?

4 A. Typically.

5 Q. Is there a title for those  
6 individuals?

7 A. Usually field superintendents.

8 Q. One of the questions we've been  
9 asking, and I want to ask you this, is, did you or  
10 did your companies place any limit on whether a  
11 prospective homeowner or new homebuyer could visit  
12 the site during construction?

13 A. During the prior testimony I  
14 conveyed to you that the limitations are set under  
15 our contract, a contract that is reviewed and  
16 approved by the DCA, and our concerns primarily  
17 focus on controlling that for -- for the mandates  
18 of our insurance company, as far as liabilities  
19 and active OSHA-protected environments, so that's  
20 primarily why we have certain mandates strictly  
21 set out in the contract.

22 Q. Do you know what they are,  
23 specifically?

24 A. I don't recall them right now.

25 Q. Do you know whether the homeowners

1       could bring an engineer with them, if they wanted  
2       to, to visit the home during construction?

3               A.       During construction, you know, I do  
4       not believe that -- you know, I don't even know  
5       what rights we give the contract buyer during  
6       construction. I mean, it's not something that's  
7       familiar to me, so, if they had the rights --  
8       let's make that assumption -- at certain stages,  
9       there is no reason why you limit it.

10              Q.       One of the developments we talked  
11       about was Holiday City at Monroe. Do you recall  
12       that?

13              A.       Yes.

14              Q.       How long was that project under  
15       construction?

16              A.       Decades.

17              Q.       Decades?

18              A.       Yes.

19              Q.       So, was it one that was begun prior  
20       to your assuming the -- any oversight of the  
21       residential home construction business?

22              A.       Yes.

23              Q.       Was it something your father had  
24       started?

25              A.       Yes.

1           Q.       Do you know how many homes there  
2 were there?

3           A.       Well over 600.

4           Q.       In looking at all of the records  
5 that have been made available to us, and in  
6 talking to a large number of people, our  
7 investigation revealed that there were some  
8 construction problems there in quite a number of  
9 the homes involving water issues, problems with  
10 trusses, foundations and so forth.

11                   Are you aware or familiar with any  
12 of those problems?

13          A.       Yes.

14          Q.       And how did you first become aware  
15 of any problems in Holiday City at Monroe?

16          A.       It was in the late '90s. I  
17 received, I believe it was through a letter from  
18 the late Mayor Duffy, a request to meet with me.  
19 I had been in the residential -- I had been in  
20 charge of the residential division for, I think,  
21 less than a year and, you know, that meeting was  
22 sort of the beginning of my interface directly  
23 with that project.

24          Q.       Was there any single issue that you  
25 particularly focused on? Any construction issue?

1           A.       Well, at the meeting with Mayor  
2           Duffy, it was just an overall request that she be  
3           able to pass on to me all the numerous complaints  
4           that she has and have us investigate them, and  
5           they were a whole range of what I would consider  
6           service-oriented requests.

7           Q.       From homeowners, I assume?

8           A.       Yes.

9           Q.       Was truss bracing a significant  
10          problem, in your mind?

11          A.       Not at that point in time.

12          Q.       How about water in the crawl spaces?

13          A.       Not at that point in time, although  
14          it was an issue that was one of the issues that  
15          were discussed at that meeting.

16          Q.       And am I right that Mayor Duffy  
17          contacted you personally?

18          A.       I recall, I believe, receiving a  
19          letter. I think that that's what I recall.

20          Q.       Did you, at some point, learn that  
21          one of your employees had falsified Certificates  
22          of Occupancy?

23          A.       Sometime after -- I think it was  
24          sometime after that we actually read about it in  
25          the newspaper.

1 Q. That's how you found out?

2 A. Yes.

3 Q. Did you become more active or  
4 proactively involved, once you saw that?

5 A. At that point in time I immediately  
6 sent down the vice-president that I had hired, who  
7 was new to the company, and asked him to go down  
8 there and meet and try to assess what the  
9 situation was. Go through our records, and try to  
10 work with the township to ensure we got a handle  
11 on the scope of the issue.

12 Q. And did you find that there were, in  
13 fact, problems in that development?

14 A. Yes. As far as that issue, I  
15 believe the number is -- I vaguely recall around  
16 17 homes that had not necessarily COs, but maybe  
17 had an actual CO, but were missing a rough  
18 inspection or a final inspection. So, did not --  
19 were missing at least one of the required  
20 inspections.

21 Q. Did you also learn at some point  
22 that there were alleged or that there were, in  
23 fact, code violations in some of the homes?

24 A. Yes. Those two things, though, were  
25 pretty disconnected.

1 Q. They were disconnected. The  
2 discovery of the problems was really later?

3 A. I believe that the newspaper article  
4 about the false inspections came out in 1999, and  
5 that process -- both the township and ourselves  
6 pretty much jumped on it with two hands and feet  
7 and resolved that actually fairly quickly -- I  
8 believe it was in a matter of months -- assessing  
9 the scope of the problem and going back and  
10 actually going and making sure that all the work  
11 was done properly.

12 I'm not sure if it was a result of  
13 that or the service issues that I had met with the  
14 mayor on that brought the DCA in, which then led  
15 to code issues.

16 Q. Did the DCA start doing inspections  
17 and so forth?

18 A. Yes.

19 Q. What kind of code issues do you  
20 recall that you learned about with respect to  
21 those homes?

22 A. The DCA's initial reports dealt  
23 largely with truss bracing -- it was the attic and  
24 the crawl space. Largely in the attic was truss  
25 bracing and, you know, that was primarily it.

1       There were a number of other things, while we were  
2       in the attic, that they wanted us to look at.  
3       They found incidences of electrical wiring within  
4       six inches of the attic hatch. They found  
5       incidences of some cracked trusses that they  
6       wanted to be repaired and such things.

7               Q.       Approximately how old were the homes  
8       at that point?

9               A.       Fifteen, 20 years old.

10              Q.       We've also seen photographs and  
11       heard from homeowners and had our folks out and so  
12       forth, and we learned about water problems there.  
13       Do you know anything about the water issues in  
14       that development?

15              A.       Part of our Memorandum of Agreement  
16       with the DCA was that they had requested that, you  
17       know, notwithstanding the expiration of all our  
18       obligations, as far as under New Jersey law, that,  
19       because this was an issue, they had asked us to  
20       look into it, and we, along with the DCA,  
21       developed within that memorandum a public notice  
22       process to try to ask homeowners to let us know if  
23       they wanted their crawl space inspected and then a  
24       process by which we would have the inspections  
25       done in determining whether there was --

1 Q. Since you mentioned the Memorandum  
2 of Agreement, I'm going to ask that you be shown  
3 what has been previously marked NCI-270.

4 Is that the Memorandum of  
5 Understanding you were just talking about?

6 A. I believe so.

7 Q. Or a copy of it, I should say.

8 This is something that you entered  
9 into with the Department of Community Affairs?

10 A. Yes.

11 Q. And was this something that you  
12 entered into after some negotiations and so forth?

13 A. I mean, we discussed and negotiated  
14 what it should say and the process and procedures.

15 Q. Didn't you agree to do certain  
16 things in this Memorandum of Understanding that  
17 you were not legally required to you do, in your  
18 opinion?

19 A. Yes.

20 Q. Why did you agree to do them?

21 A. Well, because, at that point in  
22 time, I was still an active builder, I had just  
23 taken over a whole division, and in this business,  
24 as Mr. Riggs had stated, if you want to be a  
25 production builder, you have to rely on your

1 reputation, because word of mouth is primarily the  
2 way that you market your homes. And, so, for me,  
3 if there were problems, I -- and they seemed  
4 reasonable, it didn't make sense not to address  
5 them.

6 Q. Did you find at all that, as a  
7 result of the further inspection, more issues were  
8 being brought to light and perhaps different  
9 issues than what the homeowners were concerned  
10 about?

11 A. Well, I mean, I think that  
12 inherently the homeowners were probably more  
13 concerned about the issues that were more visible  
14 to the human eye. You know, cosmetically, whether  
15 it's a crack or a countertop or cabinet issues or  
16 whatever, flooring issues, and the DCA doesn't  
17 really deal so much with that beyond the first  
18 year. They deal much more with the structural  
19 issues.

20 So sometimes the issues would -- and  
21 the priorities would overlap and sometimes they  
22 would be on different ends of the spectrum.

23 Q. With respect to this particular  
24 development, did a number of elected officials  
25 become involved?

1           A.       We -- at the time that I met with  
2           Mayor Duffy, she made it clear to me that she  
3           wanted to be able to reach out to the local  
4           assemblymen and state Senators who may have gotten  
5           contact from their constituents and sort of wanted  
6           us to cross-reference the names to make sure where  
7           there was overlap and where there wasn't.

8                       Some people would turn to the  
9           township and some people would turn to their  
10          assemblymen, so we wanted to make sure we got a  
11          comprehensive list.

12          Q.       I think I saw it somewhere that  
13          there was at least one meeting where a number of  
14          those officials were present. I don't know if you  
15          were there.

16          A.       I distinctly remember meeting  
17          Assemblyman Geist. I distinctly remember that and  
18          there may have been others.

19          Q.       Did the political, if you will,  
20          aftermath or fallout have any impact on the  
21          decisions with respect to the Memorandum of  
22          Agreement or did anyone urge, you know, we've got  
23          to deal with this more globally than just what the  
24          law requires?

25          A.       I don't understand what you mean.

1           Q.       I'm just wondering, was there any  
2           pressure from either the DCA or the local  
3           officials to try to deal with this particular  
4           project, even though the homes were seven or  
5           eight years old, because there was a lot of  
6           political interest involved?

7           A.       No, absolutely not.

8           Q.       Did the DCA want you to include more  
9           than you wanted to include?

10          A.       The majority of the discussion  
11          really went outside of the purview of what we  
12          dealt with, which was the technical team, the  
13          engineers, civil engineers in the DCA and the  
14          civil engineers we had retained to review the  
15          inspections, review the repair detail, determine  
16          what were code violations, what were structural  
17          issues, and there was just thousands of pages of  
18          engineering and analysis that went back and forth  
19          so that they could sort of crystallize it into a  
20          homogeneous list of issues.

21          Q.       Do you recall any of the key issues  
22          or the general or common issues?

23          A.       No.

24          Q.       In looking at this particular  
25          project, as well as others, we find that at times

1       there are common problems in home after home.  
2       Either common code violations in one after another  
3       home or in many homes in a development, or we can  
4       find similar construction issues.

5                     Do you have any thoughts as to why  
6       the same problems or similar problems can appear  
7       in more than one home in a development?

8             A.       Yes.  I believe I said in the  
9       private testimony that that would not be --  
10       because you asked me, was it shocking, and I said  
11       it's exactly the opposite, it's very expected,  
12       because when you start a development with a  
13       certain model that's been designed and approved,  
14       and your contractors are building them, the -- and  
15       the township is putting -- and its inspectors are  
16       putting their interpretation on how they want  
17       something done so they'll pass certain stages of  
18       permitting and approvals, after a while, with a  
19       production community, you know, after a year or  
20       two, you -- they typically find their rhythm and  
21       they know how to build these houses and they know  
22       what to expect and there is some level of  
23       expected -- you know, as far as what the quality  
24       of construction is going to be and what the  
25       inspectors are going to see when they get out

1       there.

2                       So, if the houses initially weren't  
3       being braced and both the framer, ourselves and  
4       the inspectors thought it was being done properly,  
5       it's not unusual to think that the bracing not  
6       being there would continue throughout the  
7       community.

8               Q.       Do you think the builders rely on  
9       passing inspections and getting COs as at least  
10       some degree of evidence that the home is okay?

11              A.       Yes.  It's a double-check.  I think  
12       that that's how we view it and I think it's  
13       undeniable that we put some value in it -- a lot  
14       of value.

15              Q.       Do you recall saying, quote, "The  
16       best way to know there is a problem is if you  
17       failed an inspection.  If you don't fail your  
18       inspections, you get your COs, it's natural for a  
19       builder to assume that everything is being done  
20       fine," unquote?

21              A.       That sounds like a reasonable  
22       statement.

23              Q.       Do you recall saying that?

24              A.       Not specifically, but....

25              Q.       Do you agree with it?

1           A.       Yes.

2           Q.       Did you find that there was a  
3           considerable amount of retraining done of the  
4           local inspectors in Monroe after this all came to  
5           light?

6           A.       Substantial, and not just for our  
7           staff and our contractors, but also the  
8           municipality. And it was not an exact science. I  
9           mean, we -- even with the DCA training and the DCA  
10          oversight, it took us a few months to get it down  
11          right. To make sure that we understood and, you  
12          know, every house that the township passed, you  
13          know, didn't then, on DCA inspection, pass muster.

14          Q.       As a builder, is it common to pay  
15          subcontractors based upon certain milestones,  
16          which might be passing inspections?

17          A.       You try as much as possible, when  
18          writing a contract in general, to make any target  
19          as nonsubjective as possible. So, to the extent  
20          possible, for certain trades you naturally pick  
21          passing rough plumbing or final plumbing as the  
22          stage, because it's where the least subjectivity  
23          occurs.

24          Q.       So, am I right in understanding that  
25          the subcontractor might be getting payment after

1 they pass one of those inspections?

2 A. Yes.

3 Q. Is that, to your knowledge, common  
4 in the industry?

5 A. I have no idea.

6 Q. Do you find or believe that there is  
7 reliance, to some degree at least, upon local  
8 inspectors, local construction inspectors, as a  
9 form of, if you will, quality control?

10 A. Well, I mean, clearly, you believe  
11 that the township is sort of the outsider. Your  
12 subcontractor and you are working toward building  
13 this home on a certain timeline within a certain  
14 budget, and the township does not necessarily have  
15 that as its first priority, so it's a nice balance  
16 to have someone looking at the home from a totally  
17 different perspective.

18 Q. Do you think there is a certain  
19 reliance?

20 A. Absolutely.

21 Q. As a builder, do you rely on them --

22 A. Absolutely.

23 Q. -- as another control mechanism?

24 Did you find, during the course of  
25 your experience in dealing with this particular

1 development or any others, that the code doesn't  
2 appear to be as black and white as some people  
3 might think?

4 A. As I said in the private hearing,  
5 since I'm not an expert, I don't want to talk  
6 specifically in the code. All I can talk about is  
7 from the perspective of an executive who oversees  
8 vice-presidents who specialize in this and have  
9 training in this that there appears to be a lot of  
10 what we call interpretation -- what they call  
11 interpretation, which is they and their licensed  
12 professionals believe that something is actually  
13 proper and, depending on what township you build  
14 that home in, there will be interpretations of the  
15 code to modify the house that was built in  
16 accordance to another township's opinion per code,  
17 and you bring that same model to another township  
18 and they want it modified. So that would lead me  
19 to conclude that there is a degree of  
20 interpretation in -- interpretability within the  
21 code.

22 Q. Have you actually seen that in New  
23 Jersey, where you can build the same house, the  
24 same model in one town or one municipality and it  
25 may pass, or certain components of that house

1 pass, yet it doesn't pass muster in a different  
2 municipality or town?

3 A. Well, we did take a few of the  
4 models, the variations of the models that Hovsons  
5 had built at Holiday City at Berkeley and bring  
6 them down to Monroe, and there were modifications.

7 Now, in all honestly, I cannot speak  
8 to how much of that was due to time frame changes,  
9 where the code changed, and how much of it was due  
10 to the municipality.

11 Q. Did you also find extensive  
12 discussions had to take place even with DCA  
13 present as to what the code meant? I think you  
14 told us you were present at some of those  
15 meetings.

16 A. Well, it was the engineers. The  
17 science and the engineering.

18 Q. But was there a debate going on back  
19 and forth as to what the code meant?

20 A. I don't know if it was what the code  
21 meant, but what qualified as falling within and  
22 outside the code.

23 Q. Okay. What qualified?

24 A. I don't know what the difference of  
25 what you said and what I said was, but....

1           Q.       Yes, but my understanding of what  
2           you said before was there was considerable give  
3           and take. It wasn't an easy resolution between  
4           the different parties.

5           A.       I think that what it was was a  
6           simple matter of one party taking a position and  
7           the other party being challenged to provide the  
8           reasoning and justification to support their  
9           position.

10          Q.       Did you find or did you encounter  
11          any disagreements, if you will, or differences in  
12          interpretation between DCA and the local  
13          inspectors?

14          A.       I wouldn't be privy to that.

15          Q.       You wouldn't have been privy to  
16          that.

17                    How much -- if you know, how much  
18          did the company spend on remedial work at Holiday  
19          City at Monroe?

20          A.       I don't really have a handle on the  
21          numbers, the estimates.

22          Q.       I think you thought it was at least  
23          several hundred thousand dollars? Does that sound  
24          right?

25          A.       It wouldn't surprise me if it was a

1        few hundred thousand dollars.

2            Q.        I have to assume that, as a builder,  
3        you would want to get it right the first time.

4            A.        Absolutely.

5            Q.        What do you think -- looking back on  
6        that particular project, what do you think could  
7        have been done differently, or what would you do  
8        differently, if you had the ability to go back and  
9        construct that job over?

10          A.        Well, I truly believe that some of  
11        the things that today the DCA believes were code  
12        compliant that the people at the time -- I believe  
13        both our subcontractors, our field supervisors and  
14        the township inspectors believed that the houses  
15        were code compliant. So -- and I don't -- so, for  
16        me, it's a lot harder to answer that question  
17        because it's not like, in my opinion, they  
18        believed there were mistakes made and there was a  
19        system or something that the company could have  
20        done to have avoided it.

21                    Obviously, you know, if there  
22        were -- I don't know. It's just impossible for me  
23        to interpret that.

24          Q.        We've seen reports reflecting that  
25        the local inspectors there couldn't communicate

1 with masons and carpenters on the job in order to  
2 show them how to do it differently because there  
3 wasn't anyone present who spoke English on the  
4 days they were there.

5 Do you have any comment on that?  
6 Are you aware of that?

7 A. No. You mentioned that and what I  
8 had said to you was that, you know, typically a  
9 company has -- a subcontracting company has an  
10 experienced supervisor that may handle multiple  
11 jobs and trains their laborers and their field  
12 staff and, once in production building, the field  
13 staff is taught. I mean, it's not unusual that  
14 the supervisor is not micromanaging them, but --  
15 so I would assume then, in that situation, it was  
16 a situation where the subcontractor wasn't  
17 bolstering their superintendent to make sure that  
18 they could retrain their own staff.

19 Q. Is there any limitation or was there  
20 any limitation placed on whether a subcontractor  
21 could subcontract out work?

22 A. I wish there was, but there wasn't,  
23 and, in retrospect, that's probably one thing I  
24 would change.

25 Q. Why do you say "I wish there was?"

1 Do you think that's a problem?

2 A. Well, because we've actually been in  
3 one situation where the subcontractor  
4 subcontracted to an uninsured subcontractor, which  
5 is very bad business in today's environment.

6 Q. There are two trades that are  
7 licensed, and that would be plumbers and  
8 electricians. Do you think the Commission might  
9 consider recommending licensing or certification  
10 of any other trades?

11 A. I agree that there is no downside,  
12 so, if done properly, it could, especially with  
13 the whole Internet, information systems we have  
14 today, it could allow builders to have another  
15 avenue to vet any licensed professionals that  
16 maybe have some black marks on their record and,  
17 depending on what your criteria is for, A, getting  
18 a license, and, B, maintaining a license, if  
19 education is required, sort of like what lawyers  
20 and engineers and CPAs all are required to do, we  
21 could make sure that they are getting the minimum  
22 requirement to be up to date on an industry that  
23 is constantly reinventing itself, not only from a  
24 code perspective, but on building products and how  
25 you use them.

1           Q.       If you would turn to Page 10 of  
2 Exhibit 270 for me, please.

3                    Do you see at the top of the page --

4           A.       Yes.

5           Q.       -- there are Items 1 through 5  
6 listed?

7           A.       Um-hum, yes.

8           Q.       And it notes there, "Anchor straps  
9 missing or improperly installed. Pilasters,  
10 supporting girders not properly keyed into  
11 foundation walls. Main girders haphazardly  
12 shipped with various construction materials.  
13 Missing foundation vents and unprotected wiring  
14 within six feet of the attic access." There is  
15 also truss bracing listed in another part of the  
16 agreement.

17                   How did these things happen in that  
18 development?

19           A.       Oh, I can't speak to that, but I do  
20 know that they were -- that the majority of the  
21 issues and the majority of our time was focused on  
22 repairing the bracing and these were just things  
23 that the township, in their two dozen inspections,  
24 had seen at least one incident of and wanted us to  
25 look for.

1           Q.       Who, in particular, would have been  
2           the primary person responsible for overseeing the  
3           construction of those homes in your end -- from  
4           your company's end? Is there any one individual  
5           or any individuals?

6           A.       Well, clearly, the day-to-day person  
7           would be the project manager, and above him would  
8           be a vice-president.

9           Q.       Considering the listing here, as  
10          well as the truss bracing, which I think you said  
11          that was something you primarily focused on, do  
12          you think that the particular trades involving  
13          masonry or framing would be some that might be  
14          considered particularly for certification?

15          A.       Well, most of these issues, except  
16          for the unprotected wiring, is the mason -- the  
17          issues raised in this memorandum are framing and  
18          masonry issues.

19          Q.       I'm just wondering if you think that  
20          that would be something that would help a builder,  
21          because you would then be able to go to perhaps a  
22          list of people that are precertified, and it would  
23          also mean that the contractor would have his or  
24          her license or certification on the line.

25          A.       Well, because in New Jersey you are

1 required to provide a ten-year warranty on the  
2 structure, clearly, you know, hopefully, if  
3 licensing is required, you are talking about a  
4 more substantial contract. You are not one of the  
5 ones that can come and go, depending on what your  
6 requirements for licensing would be. So that way  
7 you know that, if you have a problem well beyond  
8 the initial construction, that it is a contractor  
9 that has something to lose, if he's not there to  
10 step up to the plate if something was wrong.

11 Q. When you encounter problems on this  
12 project or any others, do you attempt to get the  
13 subcontractors back in to repair the work?

14 A. Yes, we do.

15 Q. How successful are you?

16 A. Totally unsuccessful.

17 Q. Then what happens?

18 A. Then what happens?

19 We are on our own. You can attempt  
20 to try to make a claim against their insurance  
21 company, but, you know, there is nothing that  
22 precludes contractors to reinvent themselves  
23 between projects, which is apparently what some of  
24 them do.

25 Q. So then you would have to go out and

1 hire someone else to do it or use your own staff,  
2 whatever?

3 A. Yes.

4 Q. Is that a serious problem, from your  
5 perspective?

6 A. I don't think it's a serious  
7 problem.

8 Q. No. The problem -- the inability to  
9 get the subcontractors back in to do the work.

10 A. Well, it's an issue of time. I  
11 think that, if you ask a subcontractor to come  
12 back a year or two, even three years later, it's  
13 not difficult, but, clearly, our contract mirrors  
14 the contractual obligations we have to the buyers,  
15 in regards to the warranty standards and warranty  
16 time frames, so, when you are asking a contractor  
17 to come -- and we typically hold money against  
18 them for those time frames.

19 So, when you've now returned their  
20 money, so you don't hold any power over them, it  
21 is difficult, especially in a situation such as we  
22 faced at the end, which was that we were phasing  
23 out of the residential development. The larger  
24 builders obviously have the clout because, if you  
25 want to do business in the state, you can't burn

1       your bridges, so, even though they don't hold  
2       money on a specific job, you can hold their foot  
3       to the fire for the next job.

4               Q.       We are not going to ask you about  
5       every home in every project, but another one I  
6       wanted to ask you a few questions about was Four  
7       Seasons at Mirage and it may have been known by a  
8       couple of other names. Are you familiar with that  
9       project?

10              A.       The homes that we built within that  
11       community were under a different name, which was  
12       Holiday City.

13              Q.       Holiday City, and is that in  
14       Barnegat?

15              A.       Yes.

16              Q.       I'm going to ask you to take a look  
17       at what's been previously marked Exhibit 275.

18                      Have you seen that exhibit before?

19              A.       Yes.

20              Q.       The first page is a letter from Rick  
21       Brodeur at DCA, the Office of Regulatory Affairs,  
22       dated October 2nd, 2001. It enumerates certain  
23       violations that may exist in the dwellings there.

24                      How many homes did you build there,  
25       do you recall?

1           A.       Menk built 477 homes.

2           Q.       Again, if you look at the types of  
3 problems, they are similar, in some cases  
4 identical, to the problems we just talked about in  
5 Holiday City.

6           A.       Well, the thing that you need to  
7 know is that the homes that were inspected were  
8 all our initial models at the very beginning, and  
9 I also repeat what Mr. Riggs said, which is that  
10 there is a process at the beginning of a job, both  
11 from the builder and the subcontractor and the  
12 municipal end to get the houses right and, so,  
13 these were the initial -- the very first models  
14 that we built and, with the development -- the  
15 beginning of this development, we carried forward  
16 a lot of the original Holiday City subcontractors  
17 from other communities.

18                       So, again, under the belief that  
19 they weren't doing anything wrong and houses had  
20 been built a certain way, I would not -- and with  
21 the same supervision, I would not find it  
22 surprising that there were some similarities.

23           Q.       Are there -- or were there HVAC  
24 system problems there?

25           A.       There was one specific problem that

1 was brought to my attention, which was that, early  
2 on in the development there was two or three model  
3 types, when a homeowner bought a certain upgrade  
4 that, because of a change that the HVAC supplier  
5 had done in the brand, there was a mismatch of a  
6 coil and the actual unit, and, so, those homes  
7 were not producing the right energy efficiencies  
8 for homeowners to get their rebates, and a lot of  
9 them had bought the upgrade with the understanding  
10 that they would get the rebate. That's how I got  
11 involved in that issue.

12 Q. Are you or the company still dealing  
13 with the problems related to that development?

14 A. We have one or two bonds that we  
15 still have to get off of, so -- and I think that  
16 that's primarily it. Obviously, we still have  
17 homes under warranty, so, to the extent that  
18 homeowners may file any claims under the warranty  
19 program, we are involved there.

20 Q. Have you found any impact from the  
21 DKM decision on your end of the business?

22 A. Well, I think only in the way that  
23 the DCA has dealt with us.

24 Q. What's changed?

25 A. Well, I believe, only from what I'm

1 told at the DCA, there was -- initially -- well,  
2 not initially. They had made a decision that they  
3 weren't sure, in light of DKM, whether they wanted  
4 to sign or whether they were legally allowed to  
5 sign Memorandums of Agreement with builders and  
6 they really -- hadn't really thought about it, it  
7 was a very new area for them, and, so, for us it  
8 was one of the reasons that this -- that these --  
9 although all of these violations have been cured,  
10 there was no memorandum developed for this  
11 community because the DCA had sort of been  
12 ambivalent about it, until the appeal is heard.  
13 Today, I think.

14 Q. Did you seek to have some type of  
15 agreement reached?

16 A. I believe that, after this letter in  
17 late 2001, we did the standard -- we engineered  
18 it, we made a lot of the issues -- analyzed so  
19 that it was clear that they either, A, didn't  
20 exist, or, B, were not code violations. We then  
21 narrowed it to a very narrow group of issues,  
22 primarily truss bracing, and substantially only  
23 truss bracing, in our minds, and then we sat with  
24 the DCA and sort of outlined the basic parameters  
25 of which homes, what issues.

1                   We submitted a draft Memorandum of  
2 Agreement, I think, in 2002, but make it very  
3 clear that we weren't in any rush to finalize it,  
4 if they didn't care, because we were going to use  
5 the same staff that we were using at one project  
6 after they were done at Monroe, to do the exact  
7 same thing down at Mirage. So -- and by the time  
8 we finished up Monroe, which was in the earlier  
9 part of this year, later part of 2003, I reached  
10 out to the DCA after the DKM decision and told  
11 them that I was still willing to sign a memorandum  
12 under the same terms that we had sort of  
13 discussed, if he wants me to take my crew and move  
14 it over there, and that's where I got the message  
15 that they weren't sure. But then, after a lot of  
16 phone calls and follow up, I got a meeting with  
17 Mr. Lou Mraw and we again started the discussion  
18 up and he memorialized our understanding in a  
19 letter to me sometime in the spring of 2004, I  
20 believe, after which I submitted a draft --  
21 another draft of the memorandum to him.

22                   Q.       And nothing has happened?

23                   A.       And nothing has happened.

24                   Q.       Did DCA fine your company with  
25 respect to either development?

1           A.       The -- initially, when these  
2           violations came out at Mirage, I know that there  
3           were fines put -- we appealed the fines and I  
4           believe that, in light of DKM, the -- all the  
5           violations were withdrawn.

6           Q.       How about with regard to Holiday  
7           City in Monroe? Wasn't there money being  
8           escrowed, also?

9           A.       That's not really fines. That's in  
10          the context --

11          Q.       Penalties?

12          A.       No, not even that, because it came  
13          back to us.

14                    There was a concern at DCA as to,  
15                    because the Monroe community was extensive,  
16                    whether we needed to keep a certain momentum, and  
17                    so they had set a criteria of 22 houses a month or  
18                    a week or -- I don't remember what it was and,  
19                    whenever you didn't meet that target within a  
20                    quarter, you escrowed a certain amount of money  
21                    and, until you got back on schedule, you didn't  
22                    get that money back.

23          Q.       And did you get that money back?

24          A.       Undeniably, at the beginning, when  
25          we were trying to all learn the process and how it

1 works and whatever, we missed, I think, the first  
2 and second quarter targets and we had to escrow  
3 some money.

4 Q. And did you get that money back?

5 A. I've gotten it all back, except for  
6 a very small portion, because I mentioned to you  
7 at the private hearing there is one homeowner  
8 whose issue I need to resolve before they want to  
9 release the balance.

10 Q. On both of these projects did you  
11 bring in your engineer to handle the analysis?

12 A. Yes.

13 Q. That was in accordance with your  
14 agreement with DCA?

15 A. Well, we had brought the engineer  
16 well before the agreement and provided all of the  
17 engineering well before the agreement was signed.  
18 I mean, they actually had to -- required that they  
19 approve the engineering as a pre-condition of the  
20 memorandum.

21 Q. Did DCA have any engineer or did the  
22 homeowners have any engineer --

23 A. I think that the DCA had a whole  
24 crew of engineers.

25 MS. GAAL: That's all I have.

1                   COMMISSIONER MARINIELLO: It seems  
2                   that DKM had a real tangible effect here, if not  
3                   on the behavior of your company, certainly on the  
4                   behavior of the DCA, in light of their -- the  
5                   position they had taken not to sign a similar  
6                   agreement with you with regard to the issues at  
7                   Mirage. Would you agree?

8                   THE WITNESS: Specifically in that  
9                   regard, yes. I think it had much more of an  
10                  impact on municipalities than it did on the DCA.  
11                  The DCA has much broader authority than the  
12                  municipalities do, but, as far as homeowners go,  
13                  they still have the same rights against us as they  
14                  did before DKM.

15                  COMMISSIONER MARINIELLO: But what  
16                  I'm getting at, more or less, is that, if your  
17                  company was willing and, in fact, approached DCA  
18                  about signing a similar Memorandum of Agreement  
19                  for the other development, willing to make  
20                  corrections in light of the fact that the DKM  
21                  decision may not make your company responsible any  
22                  longer to make those changes legally, and yet they  
23                  have failed to move forward with that offer on  
24                  your behalf, that would seem to be a significant  
25                  change in the behavior of DCA, whereas they were

1 willing to do that beforehand.

2 THE WITNESS: There has definitely  
3 been a change in mindset since that decision.

4 COMMISSIONER MARINIELLO: Does your  
5 company have a financing arm?

6 THE WITNESS: No.

7 COMMISSIONER MARINIELLO: So there  
8 is no avenue for an individual to finance directly  
9 from Menk or Hovsons or some other company, in  
10 whole or in part?

11 THE WITNESS: We have an entity  
12 which is a mortgage company, which we've had for  
13 decades, and we use it usually during the  
14 recessions when the interest rates shoot up to  
15 18 percent and we still want to sell homes, but,  
16 in this kind of environment, it's not something  
17 that is active at all.

18 COMMISSIONER MARINIELLO: I had  
19 heard some discussion, I don't remember whether it  
20 was your property or not, but it was one of the  
21 properties where some COs were falsified by the  
22 project managers, that part of the reasons for why  
23 they were able to do it was that the financing  
24 arms of the developer were willing to accept a  
25 fax'd copy of a CO versus a real copy of the CO on

1 the day of closing, and so they knew they could  
2 manipulate an old CO and fax it over to the  
3 financing arm and they would rubber stamp it as  
4 okay. They didn't know the difference because  
5 they were receiving a fax, but, because it was  
6 coming from their own company's project manager,  
7 or a related company, they were willing to go  
8 ahead with that.

9 Do you recall any of that being an  
10 issue with the falsifying of COs in Holiday City?

11 THE WITNESS: We didn't offer  
12 financing at Monroe, but you have to also  
13 understand that, with production builders, there  
14 are certain banks that deal a lot with a certain  
15 community, so that level of informality, which we  
16 also had within ourselves, our own corporation --  
17 we accepted in the main office fax'd copies of  
18 COs -- wouldn't shock me. So it doesn't  
19 necessarily relate to having a finance company  
20 interrelated to the builder.

21 COMMISSIONER MARINIELLO: So,  
22 because you deal with somebody in the same finance  
23 company, it's not unusual for your -- for the  
24 companies that do finance your projects to accept  
25 that?

1 THE WITNESS: I know that, for a  
2 fact, in Monroe that's actually how the problem  
3 happened, was that, because both we and everyone  
4 was -- was relying on fax'd copies of the permits.

5 COMMISSIONER MARINIELLO: I don't  
6 have anything further, Mr. Chair.

7 COMMISSIONER FLICKER: Good  
8 afternoon, almost good evening.

9 Did I understand you to say that  
10 your companies are no longer doing residential  
11 developments?

12 THE WITNESS: At this point in time,  
13 yes.

14 COMMISSIONER FLICKER: When did you  
15 stop doing that kind of development?

16 THE WITNESS: I ran both the  
17 commercial, health care, and then the residential  
18 division, all three at the same time, for about  
19 three years, and then I just had a heart-to-heart  
20 talk with my father and I just couldn't -- I was  
21 working too long and it was just too much.

22 COMMISSIONER FLICKER: So, was it in  
23 the late '90s, the early 2000 --

24 THE WITNESS: I believe that I made  
25 the decision probably in 2001, started

1 implementing it in 2002, and finished it sometime  
2 in the early 2000s.

3 COMMISSIONER FLICKER: Did anything  
4 that went into that decision revolve around the  
5 problems that developed in these particular  
6 developments that we are discussing today?

7 THE WITNESS: Not really, not at  
8 all. I mean, the -- it's a very lucrative  
9 industry, but it takes a lot of TLC. I mean,  
10 24 hours a day there are issues, contractor  
11 issues, township issues, homeowner issues, so it  
12 requires a lot of attention.

13 And, as Mr. Riggs said, the industry  
14 is going through an enormous metamorphoses where,  
15 you know, 90 percent of our industry was the  
16 builders of ten or less houses, there is an  
17 accelerating trend so that, you know, a majority  
18 of the homes within -- by the end of this decade  
19 will be built by the top five builders, which is  
20 an enormous impact on all of us, so it was clear  
21 that -- well, I wouldn't consider ourselves small,  
22 but medium. It became more challenging to compete  
23 with the larger builders.

24 COMMISSIONER FLICKER: Let me just  
25 ask you some chronology. You said you first

1 became aware of the problems at Holiday City at  
2 Monroe from a letter from the Mayor in late '90 --

3 THE WITNESS: I believe it was 1999.  
4 I don't know if it was late or early 1999.

5 COMMISSIONER FLICKER: And the  
6 agreement with DCA was sometime in 2001?

7 THE WITNESS: Early 2001, I believe.

8 COMMISSIONER FLICKER: And when were  
9 the final problems rectified?

10 THE WITNESS: I believe we finished  
11 in December of 2003. There were some outstanding  
12 issues, but primarily December. There was some  
13 carryover into January that was mostly  
14 engineering, I believe.

15 COMMISSIONER FLICKER: And I think  
16 you said you agreed to do certain things in the  
17 agreement that you weren't legally required to do  
18 and that just seemed reasonable to address those  
19 issues?

20 THE WITNESS: Yes.

21 COMMISSIONER FLICKER: Is that  
22 correct?

23 THE WITNESS: Yes.

24 COMMISSIONER FLICKER: I know this  
25 is going to be a subjective question, but how

1 would you characterize the response of the  
2 homeowners at Holiday City? Are they pleased with  
3 the performance of your company?

4 THE WITNESS: In all honesty, what I  
5 sensed greatly is that, in the tenure of that  
6 community, probably -- you know, my involvement  
7 was probably the last two or three years, and what  
8 I sensed when I first got involved with Mayor  
9 Duffy was that there was a lot of pent up  
10 frustration with years of lack of responsiveness,  
11 and, so, when you are dealing with that kind of  
12 combustible situation, even in certain situations  
13 where I literally did everything the homeowner  
14 wants, there was so much anger there that they  
15 would still show up and complain, when I know for  
16 a fact that that one specific homeowner we  
17 literally did everything on the list, and I think  
18 that was part of what I faced a lot of.

19 I mean, we are in a situation -- at  
20 the private meeting I said that we would read a  
21 four-page letter from a homeowner and I would say  
22 to my assistant, "Can you call the homeowner? I  
23 can't figure out exactly what they want us to do,"  
24 and at the end of the conversation they would say,  
25 "Nothing. I mean, I'm just telling you what we've

1       been through and my frustrations with dealing with  
2       your company in the past," and, so, I think that  
3       was a large part of what I dealt with.

4                   COMMISSIONER FLICKER:   Because I  
5       seem to remember at our first hearing we had  
6       representatives from Holiday City and they were --  
7       as of November, they were still displaying a great  
8       deal of frustration and anger and stress with what  
9       they thought was the lack of responsiveness even  
10      then.

11                   THE WITNESS:   But I think that part  
12      of what you may -- you know, you have to take it  
13      under a specific homeowner, which obviously  
14      neither of us want to do right now, but --

15                   COMMISSIONER FLICKER:   Sure.

16                   THE WITNESS:   -- the DCA, for  
17      example, there were things that, in the light of  
18      one specific homeowner, may seem unfair.  The DCA  
19      memorandum very specifically states that they,  
20      since they were asking us, as a courtesy, to  
21      re-open a window, because there was such -- this  
22      pent up demand of people who felt that they were  
23      not properly treated in their first year, they set  
24      up a very specific parameter of public notice,  
25      deadlines to respond and whatever, so what

1 undeniably did happen is certain people fell  
2 outside that window, and we dealt with that often,  
3 which was, well, we want you to re-open it up for  
4 whatever reason.

5 So, unless -- I mean, we don't want  
6 to go into specifics right now, but there could be  
7 the possibility that some of it was that and some  
8 of it was situations in which the DCA and we  
9 determined that there was nothing the builder was  
10 required to do, and the homeowner was just not  
11 satisfied with that response.

12 COMMISSIONER FLICKER: When you got  
13 the letter from Mr. Brodeur in October of 2001  
14 regarding the Four Seasons at Mirage project,  
15 though I believe you used a different name, and  
16 that indicated some of the very same problems that  
17 you had been dealing with at the Monroe location,  
18 were you surprised, were you upset, were you  
19 disturbed or were you expecting it?

20 THE WITNESS: No. Again, the same  
21 sort of response that I gave previously, which was  
22 that you always have some kinks at the beginning  
23 of a development. These were literally the first  
24 dozen houses we built.

25 Secondly, we were using a lot of the

1 same contractors that our companies had used in  
2 the past, and, so, you know, specifically in  
3 regards to truss bracing, I believe that there was  
4 a -- you know, a large majority of our staff and  
5 the contractors who didn't believe that that was a  
6 code violation.

7 COMMISSIONER FLICKER: Did you have  
8 to take any type of action against the framer who  
9 did the truss bracing?

10 THE WITNESS: We didn't. We did  
11 not.

12 COMMISSIONER FLICKER: Were they --  
13 did they continue on the second project?

14 THE WITNESS: The framer who was  
15 responsible for the initial framing of these  
16 houses only did approximately a hundred houses or  
17 so in the community before he was let go and a new  
18 framer was hired.

19 COMMISSIONER FLICKER: Let go by  
20 you?

21 THE WITNESS: By my vice-president.

22 COMMISSIONER FLICKER: And was that  
23 as a result of the complaints of the inadequate  
24 job he had done?

25 THE WITNESS: It had happened years

1 before.

2 COMMISSIONER FLICKER: Thank you  
3 very much. I have no further questions.

4 COMMISSIONER EDWARDS: You were here  
5 when I was asking Mr. Riggs some of the questions.  
6 I have a few of the same ones for you and I'll try  
7 to keep it brief, if I can.

8 Consumer Fraud Act is and continues  
9 to be an option for the homeowners. In light of  
10 the contracts being one-sided, in light of the  
11 inspections being spotty from community to  
12 community, something we haven't been able to rely  
13 on to give a remedy for homeowners that has some  
14 teeth in it and some depth to it. The alteration  
15 and -- part of the home construction industry has  
16 it and should the new-home construction industry  
17 have it also, in your opinion?

18 THE WITNESS: I do absolutely agree  
19 with Mr. Riggs that, from the builders'  
20 perspective, the warranty regulations in the State  
21 of New Jersey is very one-sided, in our opinion.  
22 I know you are all going to tell me that's amazing  
23 because you also hear the other versions of the  
24 story, but there is three or four opportunities  
25 for homeowners to appeal, but yet the builder is

1       literally appeal-less. We just live with whatever  
2       decision is there, as wrong as sometimes we  
3       believe they are.

4                   And, so, I -- even though I agree  
5       with Mr. Riggs, we could look at the standards and  
6       the criteria and the process and maybe improve  
7       upon it, because I personally don't think it's  
8       perfect. To force a homeowner of a new home to  
9       give teeth into a process and correcting the  
10      process by forcing them to go through that  
11      litigious route is really not a solution.

12                   I mean, the legal option is always  
13      there and perhaps -- and, so, homeowners still  
14      have rights. Maybe they don't have rights to  
15      treble damages and legal fees and whatever, but  
16      litigation is litigation. For corporations it's  
17      very expensive. It usually -- and, you know, you  
18      don't have to put any more teeth in litigation.  
19      What lawyers cost is -- usually is tenfold what  
20      any repair would ever cost, okay? So, as a  
21      general rule, litigation is already something that  
22      most builders will do anything to avoid with an  
23      individual homeowner, so -- and I don't think that  
24      any homeowner -- that's sort of their last resort.  
25      So I don't necessarily believe that that is going

1 to solve some of the problems we are facing today.

2 COMMISSIONER EDWARDS: What about  
3 contract provisions for arbitration as opposed  
4 to -- within the confines of mandatory contract  
5 provisions for an arbitration system that is not  
6 related at all to either -- to the home  
7 construction industry?

8 One of the problems with the home  
9 warranty program today is that there are  
10 significant allegations that private companies and  
11 the arbitrators they use are married to each other  
12 and that they are more beholding to the  
13 homeowner -- home construction industry or they  
14 are materially flawed in the amount of money that  
15 they have available or are willing to spend to do  
16 proper arbitration, i.e., an arbitrator is \$125  
17 for a 50-punch list arbitration or a one-punch  
18 list arbitration, neither of which is sufficient  
19 for him to make an intelligent decision for either  
20 party. So -- and that the system is not really  
21 designed to provide an answer and it precludes  
22 litigation in certain circumstances.

23 THE WITNESS: Right. So what's  
24 the -- I mean, undeniably the private warranty  
25 companies' clients' business is generated by

1 recruiting builders and, so, if I was a warranty  
2 company that is known as -- I can't say certain  
3 words -- a toughie -- is that a PG-rated word --  
4 and that I maybe wouldn't get new builders, so I  
5 can see that from that perspective -- I can see  
6 your perspective there, but, I guess, what's the  
7 alternative?

8 COMMISSIONER EDWARDS: Well, that's  
9 my question. Consumer Fraud Act becomes one of  
10 them. Modification of the existing Homeowner  
11 Warranty program, taking it outside the sector and  
12 making arbitration at least --

13 THE WITNESS: In the public sector?

14 COMMISSIONER EDWARDS: Public sector  
15 arbitration system.

16 THE WITNESS: Well, also as Mr.  
17 Riggs said, I believe in the free market economy  
18 and I never want to condone the government getting  
19 involved in a business that the private sector is  
20 willing to do. There has got to be better ways to  
21 address it -- to properly address its concern  
22 without the government taking over what the  
23 private sector is willing to provide, the service.  
24 So I think that's sort of like an extreme, and I  
25 would probably welcome the interaction to try to

1       develop tougher standards to address that inherent  
2       conflict a little bit better -- I'm not quite sure  
3       how, but I'm sure that people can think of ways --  
4       before we take the step of having government get  
5       into the private sector business.

6                       COMMISSIONER EDWARDS:  It seems that  
7       the structure of the homeowner warranty system is  
8       very builder driven and builder lobbied and  
9       builder structured to protect the economic  
10      interests of the builder, without necessarily  
11      being as sensitive with regard to the homeowner,  
12      and I can understand why builders would object to  
13      arbitrators' decisions, but the system is very  
14      one-sided, I think, and very limiting in its  
15      warranty protection.

16                      THE WITNESS:  I respectfully  
17      disagree.  I think that, if it's one-sided, during  
18      the process itself, it's very one-sided for the  
19      homeowners, meaning that, you know, there is the  
20      arbitration provision, they have all the appeal  
21      rights, the builder pays all the costs for every  
22      additional -- except for, I think, one step the  
23      homeowner is obligated to pay, but I do agree with  
24      you that the inherent conflict happened at the  
25      very beginning, whereas, you know, we are the

1 person who decides which of the private warranties  
2 to pick, so you don't want to get too bad of a  
3 rap, so that conflict I will acknowledge to you,  
4 but, after you've chosen the warranty company, the  
5 process itself that's legislated by New Jersey  
6 statute is fairly one-sided. It's clearly --  
7 because homeowners are not happy, it needs to be  
8 re-looked at, but I would not necessarily say the  
9 process, itself, is builder friendly at all.

10 COMMISSIONER EDWARDS: Let me jump  
11 to the inspection system real quick, and I'm  
12 pretty sure it was in the Holiday project that the  
13 inspection system in that community broke down and  
14 clearly acknowledged, I think, here by testimony,  
15 and fixed by some pretty good people, I think, who  
16 tried to put the system together the right way.

17 When that happens -- and you  
18 indicated even a reliance on the inspection system  
19 as a check. If the inspection system fails, then  
20 the check on you fails, and very often your subs  
21 and/or contractors and/or other people taking  
22 advantage that you have a flawed system that may  
23 exist in one community versus another and the  
24 loser is the homeowner, regardless of the system,  
25 and the builders lose, too.

1                   Is there a way that we can -- Mr.  
2                   Riggs suggested a county system, I suggested  
3                   putting the inspection system into the contracts.  
4                   Can we agree that the inspection system needs to  
5                   be fixed?

6                   THE WITNESS: I think it needs to be  
7                   fixed. I actually don't think the process is as  
8                   flawed as need be -- I think that there is just  
9                   too much volatility in quality of inspectors. The  
10                  good ones are very good and the bad ones are bad.

11                  In all honesty, builders don't mind  
12                  the tough ones, the good ones, because I would  
13                  rather catch the problems before I hand over the  
14                  house and pay my subcontractors and walk away.  
15                  You know, I don't want, five years from now when  
16                  I'm all on my own and my subcontractors have all  
17                  their money, to be told that something was not  
18                  code compliant or a permit was missing.

19                  So, for me, it's actually easier to  
20                  deal with the intelligent, tougher contract --  
21                  inspectors, because you know what they want, they  
22                  know what they want, and you have to make them  
23                  happy.

24                  I just think that we need to re-look  
25                  at the continuing education criteria to make sure

1       that the inspectors are at their best and there is  
2       more uniformity in the quality.

3                   I also believe that that has to be  
4       done at our end, also.  As soon as this whole  
5       problem happened, one of the very first things we  
6       did was take our best project manager and put him  
7       through the course that inspectors are required to  
8       take, just to make sure that he's more educated  
9       and up to speed, exactly seeing it from the other  
10      side's point of view, and he found the process  
11      extremely enlightening and he really, really  
12      thought that he got a lot of benefit out of it.

13                   I also think that -- you have to  
14      understand that, when these large communities are  
15      developed, in certain towns it puts an immense  
16      pressure on the building department and, because  
17      all the money that we pay just goes into the  
18      general fund, you are sometimes faced with  
19      building departments that are just literally  
20      understaffed and not properly funded in light of  
21      the amount of money that's going into the township  
22      for inspections, because this money is literally  
23      for inspections, and, so, I can be sympathetic to  
24      the building departments, in that sometimes they  
25      just can't put in the time that we pay for and

1 handle the volume that they know that we need to  
2 have, so we don't have a revolution on our hands  
3 when it comes to meeting our production deadlines  
4 for homeowners. So it's a challenge.

5 COMMISSIONER EDWARDS: It is. We  
6 are wrestling with the homeowner who is buying a  
7 house and everything they own is wrapped up in  
8 that, every asset. The builder, particularly as  
9 they get to be large corporations and are  
10 multi-state, in that category, and that as time  
11 goes forward, one house is not important to any  
12 one of those companies. If I take their whole  
13 company and put it at risk, their reaction would  
14 be entirely different, but, to a homeowner buying  
15 a house, it is everything they have, and it's not  
16 just another house in the project.

17 Well, somehow we've got to find a  
18 way to balance to be sure that that part of their  
19 lives is protected because it is everything they  
20 have.

21 THE WITNESS: Right.

22 COMMISSIONER EDWARDS: And balancing  
23 that equity is -- but it's not everything that the  
24 builder has, it's only one of 10,000, 20,000,  
25 30,000.

1                   THE WITNESS: But again, as Mr.  
2 Riggs said, it's a bad reputation. Especially in  
3 light of the consolidation in the industry, a bad  
4 reputation will clearly mean that, if I was going  
5 into the community, I would rather buy a Pulte  
6 house rather than a K.Hov house. You know, that's  
7 what's going to happen, where you can literally  
8 move to any state in the Union and you are going  
9 to know probably the top ten builders.

10                   And, so, in the long run, in the  
11 State of New Jersey, I guess, consolidation can  
12 mean that the -- that tightening of the market can  
13 serve the consumer in some ways. I also believe  
14 that in many ways, by having these large builders  
15 who have a tendency to do more production  
16 building, meaning, you know, not one home here and  
17 there, that there is a commonality of the  
18 neighbors, so that, if you did something wrong on  
19 one person, you probably did it -- some variation  
20 of that wrong on the others, and that gives them a  
21 greater power than -- and I actually would be more  
22 concerned about the silent minority of the person  
23 who bought from that one builder who is on his own  
24 and maybe doesn't want to fight the fight, and,  
25 so, from our perspective, I saw some of the

1       conversations that you had with Mr. Riggs from a  
2       different perspective.

3                       COMMISSIONER EDWARDS: Thank you.

4                       COMMISSIONER SCHILLER: Thank you,  
5       Ms. Hovnanian. We appreciate your coming in and  
6       offering some advice, also, and that will conclude  
7       the testimony for today and we will resume  
8       tomorrow at 9:30 in Room 11 on the fourth floor.

9                       (5:05 p.m.)

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## 1 C E R T I F I C A T E

2 I, Sean M. Fallon, a Certified  
3 Shorthand Reporter and Notary Public of the State  
4 of New Jersey, do hereby certify that prior to the  
5 commencement of the examination, the witness  
6 and/or witnesses were sworn by me to testify to  
7 the truth and nothing but the truth.

8 I do further certify that the  
9 foregoing is a true and accurate computer-aided  
10 transcript of the testimony as taken  
11 stenographically by and before me at the time,  
12 place and on the date hereinbefore set forth.

13 I do further certify that I am  
14 neither of counsel nor attorney for any party in  
15 this action and that I am not interested in the  
16 event nor outcome of this litigation.

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\_\_\_\_\_  
Certified Shorthand Reporter  
XI00840  
Notary Public of New Jersey  
My commission expires 4-29-08

Dated: \_\_\_\_\_