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IN THE DISTRICT COURT OF APPEAL
STATE OF FLORIDA
THIRD DISTRICT

SAM GERSHENBAUM,

CASE NO: 3D23-970

Appellant,

v.

WIND CONDOMINIUM
ASSOCIATION, INC.

Appellee.
_____/

NOTICE OF FILING TRANSCRIPTS

In accordance with the Court's order of August 21, 2023, Appellant hereby files the full-page transcript of the July 29, 2020 deposition of Dr. Sam Gershenbaum.

Respectfully Submitted,

/s/ Gray Proctor
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this notice of appearance has been furnished via through the Florida courts eportal to:

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This 21st day of September, 2023.

/s/ Gray Proctor

In the Matter Of:

GERSHENBAUM vs WIND CONDOMINIUM

2018-040672-CA-01

SAM GERSHENBAUM

July 29, 2020

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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2018-040672-CA-01

SAM GERSHENBAUM,

Plaintiff,

vs.

WIND CONDOMINIUM ASSOCIATION, INC.,

Defendant,
_____/

July 29, 2020
10:00 a.m. - 12:14 p.m.
Via videoconference
provided by Esquire Solutions

VIDEOCONFERENCE DEPOSITION OF SAM GERSHENBAUM

Taken by Ruth Archbold, Court Reporter, Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above case.

APPEARANCES

ON BEHALF OF THE PLAINTIFF:
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Coral Gables, Florida 33134
BY: Daniel D. Castro, Esquire (Via Zoom)

ON BEHALF OF THE DEFENDANT:
EISINGER, BROWN, LEWIS, FRANKEL, & CHAIET, P.A.
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Suite 265-South
Hollywood, Florida 33021
BY: David Chaiet, Esquire (Via Zoom)

I N D E X

E X A M I N A T I O N S

SAM GERSHENBAUM

	DIRECT	CROSS	REDIRECT	RECROSS
BY MR. CHAIET	3		88	
BY MR. CASTRO		86		

EXHIBITS FOR IDENTIFICATION

PLAINTIFF'S PAGE

****N O N E****

DEFENDANT'S PAGE

****N O N E****

THE REPORTER: Pursuant to No. AOSC20-23 issued by the Florida Supreme Court on April 6th, 2020, all parties stipulate and agree that by videoconference technology, the witness was identified as Sam Gershenbaum and the witness will be placed under oath. This deposition shall be used for all purposes like other depositions.

Counsel, can you please identify yourselves for the record, state whom you represent, name any other parties in attendance in your location, and state on the record that you agree to the stipulation.

MR. CASTRO: Danny Castro on behalf of Sam Gershenbaum, and we stipulate.

MR. CHAIET: David Chaiet. I so stipulate too.

Thereupon:

SAM GERSHENBAUM

was called as a witness and, having been first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. CHAIET:

Q. Sir, can you hear me?
A. I can hear you.
Q. Hi Doctor. My name is David Chaiet. How are you doing today?
A. Doing well. Thank you.
Q. Have you ever had your deposition taken before?
A. I have.
Q. Approximately how many times?
A. Two or three.
Q. Under just generally what circumstances?
A. Had a suit regarding a boat incident. Had a suit regarding a build out construction incident. I believe once a long time ago regarding a medical incident.
Q. Okay. So it's been a while, so if I can, I'm just going to briefly discuss the rules of the deposition with you.
Basically, I have some questions to ask you. I'm generally going to ask you a little bit about your background, obviously about your ownership of the unit, the incident that brings us here today, and the damages you're claiming in this lawsuit. I'm going to try to get everyone out of

here as quickly and as efficiently as possible. Okay?

A. Will do.

Q. The court reporter has the most difficult job of all of us. She needs to take down everything that we are saying. To help her do her job easier, you and I need to follow a few basic ground rules.

Number one, please let me finish asking my question before you respond. Likewise, I need to let you finish answering before I ask my next question as the court reporter can only take down one person speaking at a time. Okay?

A. (Witness nodding.)

Q. Number two, you need to answer all the questions out loud. You just gave a head nod there. So was that a "yes"?

A. That's a yes.

Q. All right. And avoid the proverbial "uh-huhs" and "uh-uhs" and answer all the questions, obviously, verbally because the court reporter can only take down verbal responses. And due to these times, we are not all in the same room together anyway.

If you do not understand what I'm

asking you, feel free to say so and I'm happy to rephrase the question. If you don't know the answer, "I do not know" is a perfectly acceptable response.

If you cannot be exact about a date, time, or place, feel free to give an approximation.

If you answer a question and you're unhappy with your answer, we can go back and change it, correct it, or supplement it at any time you want. Okay?

A. Okay.

Q. If you or anyone in this room needs to take a break for any reason, let me know. We'll take as many breaks as anyone requires.

MR. CHAIET: Danny, I'm just giving you a heads up. I have someone covering a mediation for me and they may call me for questions. I may need to go off the record for a second, mute my phone, and answer those questions. Okay?

MR. CASTRO: And I've had a lot of coffee this morning, so.

MR. CHAIET: No problem. I'll try to keep you awake.

BY MR. CHAIET:

Q. Other than that, you're able to listen to questions in English, understand them in English, and answer them honestly in English, sir, correct?
A. Yes, sir.
Q. And you're not under the influence of any drugs, alcohol, or medication, correct?
A. A little coffee, that's it.
Q. Any questions about how this deposition is going to proceed before we begin?
A. I'm ready to go.
Q. What is your full legal name?
A. Sam Gershenbaum.
Q. What is your date of birth?
A. May 26, 1960.
Q. Where were you born?
A. Newark, New Jersey.
Q. How long have you been living in Florida, approximately?
A. Permanently, as an adult, since 1994.
Q. Did you grow up in New Jersey?
A. Grew up in New Jersey.
Q. Are you married or single?
A. Married.
Q. What is your spouse's name?

A. Andrea Mejtova, M-e-j-t-o-v-a.
Q. Approximately how long have the two of you been married?
A. Six years.
Q. Any kids?
A. Two children.
Q. What are their names and ages?
A. Noah Gershenbaum is just about 5 years old next month, and Gia is 14 months.
Q. Congratulations.
A. Thank you.
Q. Where did you go to college?
A. University of Miami.
Q. Where'd you go to med school?
A. Philadelphia College of Medicine.
Q. Do you have an MD or OD?
A. DO.
Q. Doctor of Osteopath, correct?
A. Correct.
Q. And what sort of -- what type of medical practice do you have? What's your specialty?
A. Plastic surgery.
Q. Generally what types of plastic surgery?

A. Cosmetic and reconstructive surgery.
Q. Do you perform the surgeries in your office or do you perform them at a hospital or -- what do you call them -- operating center?
A. We have a surgery center built here.
Q. What is your business address?
A. 350 South Miami Avenue, commercial unit C. Officially it's commercial unit C, D, and E, Miami 33130.
Q. Is that the address at the Wind Condominium?
A. Correct.
Q. Are you familiar with a company called Wind Enterprises, LLC?
A. Yes.
Q. What is Wind Enterprises, LLC?
A. I believe that is the, if I'm remembering correctly, that was the legal entity that purchased these three units.
Q. Is that still the legal entity that owns those units, as far as you're aware?
A. Correct.
Q. I'm going to give you an address: 206 West San Marino Drive, Miami Beach, Florida. What address is that?

A. My home address.
Q. Let me show you something. Let me see if I can do this. Bear with me for a second.
Can you all see this?
MR. CASTRO: Yes.
MR. CHAIET: No surprise here, Danny, it's a warranty deed.
BY MR. CHAIET:
Q. All right, sir. If you take a look at it, did Wind Enterprises acquire this unit on October 31st, 2013, or thereabouts?
A. I believe so.
Q. Let me see if I see your signature on there anywhere.
Has -- what's the name of your medical group?
A. Myself. My name, Sam Gershenbaum.
Q. Has Sam -- I'm sorry.
Has your medical group used the space at the Wind as its offices from October 2013 until the present time?
A. A couple of those years were building out. When we purchased, this was dirt floor, empty space, so it took us until probably the end of 2015 to maybe '16 to build out.

Q. When did you start using the space for your medical practice, approximately?

A. Approximately, probably towards the end of '15 to early 2016.

Q. To make it easier, I'll just say the beginning of 2016.

From 2016 until the present, has your office at the Wind been your professional address and where you see your patients?

A. That is correct.

Q. Any other location you use?

A. On occasion I'll do surgery at Jackson North for patients that are Class III that have, you know, we're not comfortable to do here in this office.

Q. You don't have, like, a satellite office or another office? I'm not concerned about the surgery centers.

A. No.

Q. Do you pay rent to Wind Enterprises?

A. I'm not exactly sure how that's arranged.

Q. The owner -- I'm sorry.

The owner of the units is Wind Enterprises, not yourself individually, correct?

A. Officially, correct. I believe so.
Q. Did you maintain insurance for the unit?
A. I did not at the time.
Q. So back in June of 2018, you did not maintain insurance for your unit?
A. June of 2018?
Q. When did the loss occur? That's what I have the date of loss as, as per your complaint.
A. June 13, 2018 was the loss. At that time, I did not have insurance.
Q. So you didn't have any property insurance for the unit, correct?
A. Correct.
Q. And you or Wind Enterprises did not carry any business interruption insurance for the unit, correct?
A. That's correct.
Q. Do you have such insurance now?
A. I do have insurance now.
Q. When did you obtain such insurance?
A. I'm not exactly sure the exact date.
Q. Why was there no insurance back in 2018 at the time of the loss?
A. No specific reason.

Q. So you haven't been paid from any insurance companies then, I'm assuming, for the loss you're claiming in this lawsuit, correct?
A. That's correct.
Q. Did you read any of the condominium documents to determine whose responsibility it was to insure your unit or units?
A. Well, I know there's a certain amount of liability insurance that comes with owning a condominium.
Q. How about the first part of your property insurance or business interruption coverage; did you review your condominium documents to see who's responsible for that?
A. I don't recall that.
Q. So from the time you acquired the unit up until the date of loss, the unit was never insured, correct?
A. That's correct.
Q. Do you know how long after the loss occurred that you obtained insurance?
A. I would say some place between 2019, maybe up until early 2020.
Q. Before June 13, 2018, from the time you built out the unit until -- I'm going to call

the date of loss the June 13, 2018 so I don't have to keep saying it. So if I talk about the date of loss, I'm talking about the loss that brings us here together on June 13, 2018. Is that okay with you, Doctor?

A. Yes, sir.

Q. From the time you acquired the unit until June 13, 2018, did you have any problems with the unit?

A. No.

Q. Did you have any other losses?

A. No, sir.

Q. Make any claims against the association?

A. No legal or formal claims.

Q. Did you have any complaints about the unit to the association from the time you acquired it until June 13, 2018?

A. Of the complaints I remember, there was an ongoing complaint about the parking garage third floor expansion joint.

Q. Anything else aside from that?

A. Not that I recall at this moment.

Q. What problems did you have with the parking garage expansion joint?

A. From what I remember, we complained

about excessive noise from the expansion joints or from the expansion joint, and they had informed me that there was issues with the expansion joints on multiple floors and, you know, that they were working on trying to get that corrected, that that seemed to be something that went on for a long period of time.

Q. That was just a noise-related complaint?

A. Initially it was a noise-related complaint.

Q. Did it become anything more than a noise-related complaint?

A. Eventually it became a water leak complaint, but I don't recall the exact time that we realized that the expansion joint allowed water intrusion.

Q. Was this before or after June 13, 2018?

A. I know for sure at -- I'm sorry -- at 6-13-2018 and even after there was a water leak. I don't recall if there was one before or not, or if it was initially just noise.

Q. How about before June 13, 2018, did you ever have any problems with water leaks into

your units?

A. Again, I don't recall this without reviewing records. I don't recall if there was water leaks from the expansion joint before the 6-13-2018.

Q. So with the exception of possibly the expansion joints, you're not aware of any other leak complaints or leak problems before June 13, 2018; is that correct?

A. That's correct.

Q. How about from June 13, 2018 until the present? Aside from the leak that brings us here as part of this lawsuit and the expansion joint leak, any other leaks you've had in your unit?

A. Well, when they were doing work in the garage, I'm not sure at what point in the repairs of the expansion joint or before or afterwards, but when they were using a hose in the garage on more than one occasion, the water would leak into my unit from the expansion joint.

Q. Aside from the expansion joint and the incident that occurred in June of 2018, any other water leaks that you've experienced from the time you bought the unit until today?

A. Are you -- are you -- can you say that

again? I don't know if you're talking about the 6-13-2018 or not.

Q. Sure. Aside from the water leak on June 13, 2018 and the leak from the expansion joint, which I'll discuss with you later, any other leaks that you've had in your unit?

A. No.

Q. Did you make a claim to any insurance companies for the damages for the expansion joint leak?

A. No.

Q. How many square feet are your units?

A. Roughly 3,800, give or take.

Q. And describe to me the physical layout of the units. Is there, like, a waiting area, consulting rooms, operating rooms, et cetera?

A. Yes. We have waiting areas, we have multiple offices, we have multiple exam rooms and esthetician rooms, office staff offices, doctor's office, waiting area, an office for the surgical area, as well as a surgical operating room itself, recovery areas, clean and dirty areas, restroom facilities, and I guess mezzanine for HVAC.

Q. How many doctors, aside from yourself, work at the office?

A. Myself, and I lease or rent the surgical area to surgeons on occasion for, you know, use of the operating room facilities.

Q. Aside from leasing it for operating, are you the only doctor that uses the offices on a regular basis?

A. That's correct.

Q. And how many estheticians do you have that work with you?

A. Two.

Q. How many people work at your office in total?

A. On a regular basis?

Q. Approximately?

A. Six, not including the estheticians, not including my anesthesiologist.

Q. Is the anesthesiologist one that just comes in for the surgeries or is it a full-time employee?

A. Independent contractor.

Q. From the time you redid the unit in 2016, or constructed it, up until June 13, 2018, did you have any losses of any type to the property, whether it be a fire, hurricane, et cetera?

A. No.
Q. So the June 13, 2018 is the first loss that you had?
A. Hopefully the only loss, yes.
Q. I agree with you there.
What sort of work did you do, generally, when you constructed the unit from the time of purchase until you opened it in late 2015, early 2016?
A. What kind of work did I do?
Q. Yeah. You said you bought it with just, I guess, four walls, right?
A. I don't know what -- if you're referencing what kind of work I do as a professional --
Q. No, no, no, you're right. It's a poorly worded question. Let me rephrase it. Thank you.
I'm trying -- the construction work. Basically, you bought the place with, I guess, four walls and then you built -- did a build out, correct?
A. Correct.
Q. Generally, I don't need graphic details, but in general, what did you do as part of

your build out?

A. We constructed -- designed and constructed and built out an office and surgery center.

Q. Got it. Do you own the units free and clear or is there a mortgage?

A. Mortgage.

Q. How much is the mortgage per month?

A. Mortgage per month is probably, roughly, about 13,000, give or take.

Q. Do you know how much the build out cost, approximately.

A. About one and a half million.

Q. I take it you don't have any background in plumbing, air conditioning, reconstruction of property, correct?

A. Not specifically.

Q. You don't hold any general contracting licenses or adjusting licenses, correct?

A. Correct.

Q. Aside from a medical license, do you hold any other professional licenses in the State of Florida or any other state?

A. No.

Q. And I take it your medical license is

in good standing?

A. That's correct.

Q. As a result of the coronavirus, did you have to close your practice or anything like that?

A. We were unable to operate for about six weeks.

Q. Have you resumed operations?

A. Yes.

Q. Let me -- that's a poorly worded question.

Have you resumed your business, not just operations?

A. Correct.

Q. I meant professional operations, not operating on people?

A. That's correct.

Q. Did you have to make any COVID upgrades to your office; put any plastic, et cetera?

A. No. Just following the recommendations from the city for all the requirements, but no physical changes.

Q. Are you in your office right now as we speak?

A. Yes.
Q. Office at home or office at the Wind?
A. At the Wind.
Q. And have you performed surgeries in your office since some of the restrictions have been lifted for COVID?
A. Yes.
Q. How many days a week do you do surgery?
A. Typically three days a week.
Q. All right. Let's talk about the loss that brings us here together today.
According to the complaint, the date of loss was June 13, 2018; is that correct?
A. I believe so.
Q. Were you present on the property when the loss occurred?
A. I was.
Q. Do you remember what day of the week it occurred?
A. I don't recall specifically which day.
Q. You recall if it occurred in the morning, afternoon, or evening?
A. It was towards the end of the workday.
Q. When does your workday typically end?

A. It can range from five to seven o'clock, but it probably happened closer to, you know, five o'clock, maybe somewhat earlier or maybe a little bit later, some place in there.

Q. Did you have any warning or indication that a problem was about to occur?

A. No.

Q. There wasn't, like, a noise or explosion or a boom or anything like that?

A. No.

Q. Who was present when the loss occurred in your office? There's a mention there of an Ida, I-d-a, Lang, L-a-n-g. Who is Ida Lang?

A. My bookkeeper office manager.

Q. Is she still with you?

A. Yes.

Q. Tell me, in the interest of time, in as much detail as possible, what happened that day, how you guys found out that there was a loss?

A. Well, I believe it was Ida that first noticed water dripping in the front lobby. It started to quickly turn into a stream, then a couple different streams after about, you know -- and she started screaming that water's leaking in, and I came out to look. Water was running from

several different points in my waiting area. After any place from 30 seconds to a minute, I started hearing water rushing, sort of like a bathtub, and ran back to where I heard it. It was running down from the ceiling in my office and in the bathroom that's connected to my office. Water started pouring out of the ceiling and the sockets and just like a bathtub was open, the floodgates had opened.

Shortly thereafter, water was pouring -- actually pouring through the walls and filling up the office. It was just scary and insane.

I ran to the Wind security desk and told them what's happening. I said, you know, "Where's security? Where's engineering? Turn off the main water. Water's pouring into our office." I had been back and forth several times to the front desk and I kept getting the same answer, "I don't know. I don't know." Call security. Are they answering? Nobody's answering. Call engineering. Nobody's answering.

I ran next door to the restaurant to see what's going on there. He had water running into his place.

Shortly thereafter, water was running into the lobby of the building. And we just kept

on getting the same answer; we don't know, nobody's answering.

After a period of time, I called the fire department who showed up. The restaurant manager, since nobody was able to offer us any information or tell us anything from the Wind, the restaurant manager started running around the building and going from floor to floor and he found that it was a locked closet in the hallway. Water was spewing out. I have video, like a fire hydrant from behind the door --

Q. Let me cut you off for a second.

MR. CHAIET: Danny, did you provide the video? I don't see where video was provided. I was going to ask him that.

MR. CASTRO: I believe the video was provided.

MR. CHAIET: I'm looking through my file. If you could just double-check on that and --

THE WITNESS: I have two videos.

MR. CHAIET: One second. I might be wrong. Hold on a second.

I don't see a video. If you would be kind enough to send it to us, Danny, I'd

appreciate it.

MR. CASTRO: I'm pretty sure that the video was provided.

THE WITNESS: Just to be clear, there's two videos. One of the water coming into the office and there's another video of water spewing out from behind the locked door.

MR. CHAIET: One second. I got it. My apologies. It's there.

THE WITNESS: Which one do you have?

MR. CHAIET: Let me see if I can do this. Bear with me.

Can you see what I'm looking at?

THE WITNESS: I just see your page, your list of files.

MR. CASTRO: We see that you're sharing the screen.

MR. CHAIET: Can you see a video?

MR. CASTRO: Not yet.

THE WITNESS: No.

MR. CHAIET: It's not working because I'm seeing a video. I got the video. Okay.

THE WITNESS: Okay. You keep on

referencing one video. Just to clarify --

MR. CHAIET: I have two videos.

THE WITNESS: There's one from the office and one from the water coming out from behind the locked doorway.

BY MR. CHAIET:

Q. How long did the water come down for before it was ultimately shut off?

A. Some place probably between -- likely, probably, from what I remember, between 45 minutes, maybe an hour. The fire department showed up. Once the restaurant -- nobody from the building was helping or could help. Nobody was answering and the front desk security guy, he kept telling us he didn't know and nobody was answering.

The fire department and restaurant manager from next door that found the leaks, the water spewing out from the third floor, they found a locked door. The fire department said they can't break through, they needed a key. Went back down to the front desk and said we need a key and we got the same answer, "I don't know, I don't know." It was, you know, a good period of time before somebody from the building finally showed up with a key and opened the door.

There was the high pressure a/c hose had ruptured and water had filled the hallway, had run into the garage, and was actually running into the lobby of the Wind. And from that point, nothing was happening. The fire department didn't do anything. I started calling water mitigation companies, and then we go from there.

Q. All right. Let me go back for a second.

Did you ultimately -- did anyone ultimately determine where the source of the leak was, source of the water?

A. Well, it was the restaurant manager from the commercial unit who ended up running around to find the source of the leak from a locked a/c closet on the third floor.

Q. And what floor is your unit on?

A. Well, we sort of have the space of the first and second. The floor above us is the third floor.

Q. Was the a/c closet, where was that in relation to your unit?

A. From what I understand, I believe it's, roughly, some place in the neighborhood of the middle of the unit above.

Q. Do you know the a/c closet, what a/c that services on the third floor?
A. Services one of the apartments.
Q. You know what apartment that a/c closet services?
A. I don't know the specific apartment number.
Q. Do you know if it was -- what failed in the a/c closet that caused the leak?
A. It was the high pressure hose. High pressure water hose had burst.
Q. Do you know what caused it to burst?
A. I can only surmise; inferior manufacture and material.
Q. Do you know if there was any prior problems or issues with that high pressure water hose beforehand?
A. I thought you'd never ask. Yes. From what I've come to learn that some place between three or four years prior, they had the same leak from the same hose, different unit, not that same unit, but the same high pressure hose had burst, caused a mess, floods. And from their infinite wisdom, they changed some of the hoses, from what I was told from the management office.

Q. What was the unit that had the loss three to four years prior?
A. I'm not aware of that.
Q. And how did you find out there was a loss three to four years prior?
A. I first found out from one of the unit owners while I was in the gym in the building when I was discussing with him what was going on. He informed me that there had been a same leak from a high pressure hose and the same exact type of flood. And once I heard that, I had discussed it with the office and they confirmed that that was the case and they had replaced some of the hoses, not all of them.
Q. What was the name of the person that told you about these prior problems?
A. At that time, she's not here any longer, there was the manager, Jessica, and I had discussed it with Jessica and --
Q. Jessica Ruiz?
A. I don't recall her last name without looking it up.
Q. Who was the unit owner that you discussed it with?
A. I don't have his name right now. I

can get it.

Q. Did the association provide you with any documents supporting that there was a prior claim or loss?

A. Did they supply me with documents? No. You didn't let me finish the answer of your question before.

Q. Go ahead.

A. I was discussing it -- I had discussed it with Jessica and Victor in the management office, and they had confirmed a prior leak from this same high pressure hose.

Q. Do you know whether these high pressure hoses are unit-owner responsibility or condominium responsibility?

A. From what I understand, I'm not, you know, I can't tell you 100 percent. From what I understand, they were changed out by the building.

And since we're discussing it, I happened to go into the management office, as I frequently do for different reasons, on the date of 3-27-2019. When I went into the office to discuss something, I happened to notice two of the same high pressure hoses on the floor of the office. I took a photo. I said, you know, that's strange,

what are they doing there? And I was informed that they were changing some additional high pressure hoses in the building because they're in bad shape, and I made the comment that I just can't understand with two serious disastrous floods from the rupture of high pressure hoses, why are you doing this in a piecemeal fashion, and why don't you just change all of them? Which I didn't get a specific answer.

Q. Did any of them tell you whose responsibility or who's responsible for those high pressure hoses is?

A. Well, the fact that the building installed them and is taking the responsibility to change them and is, up until that point, currently doing so, I would imagine it's their responsibility.

Q. Do you know if they're charging the unit owners to swap out these high pressure hoses because the air conditioners only service the unit and not the condominium property in general?

MR. CASTRO: Objection to form. You can answer.

THE WITNESS: I don't have knowledge of that.

BY MR. CHAIET:

Q. The air conditioning line closet that

failed on the third floor, do you know if it only serves a condominium unit or if it serves the general building itself?

A. I believe it serves the apartment unit.

Q. So just one unit, correct? Do you know what apartment number that is?

A. I do not.

Q. Have you spoken to that unit owner about why his high pressure line failed?

A. I did not.

Q. And you said you don't know the name of that unit owner, correct?

A. Correct.

Q. Have you made a claim against that unit owner for any of your damages?

A. I have not.

Q. Why not?

A. No specific reason.

Q. And did anyone tell you what caused the high pressure line to rupture on June 13, 2018?

A. I don't have a specific answer other than that they failed before and they're continuing to replace them.

Q. So you don't know why it failed on

that day, correct?

A. Why it failed? I can only surmise that it's poor quality and deficient construction.

Q. But you did not inspect the line yourself to make those determinations? You're just, as you phrased it, "surmising," correct?

A. Correct.

Q. So has anyone from the association told you why that line failed on June 13, 2018?

A. Because it broke.

Q. Did anyone from the association tell you why it broke?

A. I did not have that specific discussion.

Q. Have any experts, contractors, air conditioning people, or anyone that came out there to fix the situation tell you why the line broke that day?

A. No.

Q. So getting back to the date of loss, do you know who eventually determined where the source of the leak was coming from?

A. I told you a couple times --

MR. CASTRO: David, he answered that.

MR. CHAIET: I'm not doing it to be

redundant or harassing. I'm doing it to get context facts. So just answer the question and I'll move on.

THE WITNESS: The source of the leak was found by the, I believe he's the restaurant manager. I'm not sure if that's his official title, but maybe it was one of the owners, but it was from the -- a gentleman from the restaurant next door is the one who located the leak or the water extrusion from behind the locked closet on the third floor.

BY MR. CHAIET:

Q. Do you know his name?

A. I do not.

Q. Do you know the name of the restaurant?

A. I can -- I don't recall offhand. It just actually closed down. A sushi place. I don't recall offhand.

Q. Do you know if the gentleman that determined the source of the leak is still there or was there?

A. I do not. I'm not sure.

Q. And do you know what he did that he was able to determine the source of the leak on the

date of loss?

A. He just started running around and inspecting the different floors.

Q. Obviously, water usually flows up, so when you have a -- it flows down, so when you have a leak, you just start working your way up, so I guess he just found it a floor above, correct?

A. I would imagine.

Q. Do you know who eventually shut off the water?

A. I don't know specifically which person shut the valve off.

Q. And you said it was shut off about 45 minutes to an hour after you noticed the loss, correct?

A. That's what I recall.

Q. And even though the water might have been shut off -- strike that.

When the water was shut off, did that slow down the water that was coming into your unit?

A. No.

Q. How long did water continue to pour into your unit after the water was shut off?

A. Hours.

Q. Did it eventually stop?

A. Eventually it stopped.
Q. Was that because of something that someone did or just there was no more water left or you don't know?
A. Like I said, the water had filled the hallway and the parking garage, so eventually the water all leaked down into my -- predominantly into my space.
Q. Do you know if the restaurant had any damage?
A. I know they had water intrusion. I don't know the extent of their damage. I know the lobby in the building had some reasonable damage that they spent time fixing and repairing.
Q. So you were kind enough to provide to your attorney some videotape from the date of loss. I think you also provided some photographs too, correct?
A. Correct.
Q. Do you know who took the photographs and videotapes?
A. It was myself and Ida.
Q. Were you seeing patients at the time it occurred?
A. Actually, I have another -- Eyra, Eyra

Little in my office. I believe she took some videotape, if I'm correct.

Q. Would you be kind enough to spell Eyra's name for the court reporter?

A. E-y-r-a.

Q. Do you recall, aside from yourself, Ida, and Eyra, who from your staff was present when this occurred?

A. I believe that was all.

Q. And I apologize if I asked this. Were you seeing a patient at the time or did you have any patients on the property?

A. No, I was getting ready to leave for the day.

Q. And how long did you have to stay there afterwards that day before you were able to leave and go home?

A. Well after midnight. It could have been two, three, four in the morning.

Q. So you were there for a while?

A. Yes, sir.

Q. And did Ida and the other woman stay with you?

A. No, they didn't stay for that amount of time. I was staying with the water mitigation

company.

Q. Now after the water was shut off, was there anyone on behalf of the association that was present that you spoke to or dealt with the problem that day?

A. No.

Q. Did anyone from the association show up -- when I say "that day," I'm talking about June 13th, and I know it led into the following day, the 14th, so I'm just going to group that all together. I know after midnight it becomes the 14th, so I'm just -- and you were there until two or three o'clock in the morning.

So did you speak to anyone from the association about the loss that day?

A. Not that I recall. I'm not sure whether the engineer or security had walked through the office, but if they did, it was a quick walk-through and that was the extent of it. I don't recall whether or not I spoke with anyone in the management office or not.

Q. When was the first time that you spoke to anyone at the management office at the association about the June 13th loss?

A. Well, I might have -- I don't recall.

I might have spoken to somebody that night. I would imagine I spoke with somebody the next day. I don't have the exact details.

Q. After the incident occurred that evening, from the time you noticed it until the time you went home, what did you do in regards to cleaning up, for lack of a better term, sort of mitigating the damages to your business?

A. For the most part, trying to get off the floor whatever was on the floor, everything from personal belongings and files, computers and whatever I could get off the floor, essentially what I was doing between the office and the surgical area.

Q. Did any water mitigation companies come that day?

A. Yes.

Q. Do you remember the name of the company that came? Was it Service Max?

A. I believe it was Service Max.

Q. Take your time and confirm that.

A. I believe so.

Q. Who hired Service Max?

A. Well, since nothing was happening and I wasn't getting any cooperation, help, any

specific help from the Wind, I called them myself.

Q. Did the Wind offer to send a company called Super Restoration out?

A. Not that I'm aware of.

Q. How long did it take for Service Max to come out?

A. A couple hours.

Q. And do you recall what they did?

A. They started vacuuming water and putting fans and started cutting out and removing baseboards and removing drywall and putting suction hoses and fans all over the place.

Q. The water that was in your unit, was it clear water or dirty water?

A. For the most -- from what I remember, it was mostly clear water.

Q. Did it smell?

A. Not that I recall.

Q. How long was Service Max at your property that day?

A. That day or how long were they out all together?

Q. That day?

A. I had left before but I know they were working through the night into the next day.

Q. You said they brought fans, correct?
A. Yeah. There was dozens of fans. There was water extractors and, again, there were a couple, I don't remember how many people exactly, but they were removing baseboards and drywall and pulling out wet insulation and doing that kind of thing.
Q. How long were the fans on your property for, if you recall?
A. I don't recall exactly, but I don't know if it was a couple of weeks. They were there for many, many days.
Q. The fans were there for many days?
A. They had HEPA filters, they had dehumidifiers, and they had fans that were there for many, many days.
Q. Do you know how much you had to pay Service Max?
A. I don't recall the exact amount of the bill.
Q. Ballpark approximation?
A. I think their bill that they sent was in the neighborhood of $80,000.
Q. Did you pay that bill?
A. I did not.

Q. Do you know who did pay them?
A. I do not.
Q. Do you know if they have been paid?
A. I do not.
Q. Do you know if the association received some money from their insurance company and used that money to pay off Service Max?
A. I'm not aware of any of that.
Q. Have you received any letters or correspondence from Service Max telling you that, hey, you owe us money, this account's overdue, et cetera, sending you to collections, or anything like that?
A. They had made a couple of contacts and I informed my insurance company and basically letting them handle everything.
Q. But you said you didn't have insurance at the time.
A. I'm sorry. I didn't mean my insurance company, I meant my attorney. That was a mistake. I meant I contacted my attorney and let them know what was going on and just let them deal with it.
MR. CHAIET: Danny, do you know if that's been taken care of?
MR. CASTRO: I don't.

BY MR. CHAIET:

Q. Aside from Service Max, did anyone do any cleaning, restoration work, or mitigation work, obviously aside from yourself?

A. I have -- besides -- which I'm thinking about it now, I don't even have it listed in here, but maid services. I had Cutter, Inc., you know, somebody to come and do the restoration, I've had -- Cutter, Inc. was the company that did much of the restoration or repairs. We had Channin Mechanical do some work on some of the rusted out HVAC components and fire dampers.

Q. And how much did that cost?

A. I would have to look through this. I think we sent it to you. I would have to look through the details.

Q. Was your office closed for any period of time?

A. Yes, for sure.

Q. How long was your office closed for, approximately?

A. We were sort of, pretty much, out of business for three weeks.

Q. So you didn't see any patients for three weeks?

A. That's correct.
Q. Did you send your patients elsewhere?
A. We had -- I mean, I can't say that we saw nobody in the office. There was, you know, some post-op patients and people that we had them come in, please excuse our appearance, because we needed to see them, but we were doing what we needed to do, but not specifically open for business.
Q. Do you know an estimate of how much business income you lost?
MR. CHAIET: Danny, that has not been provided, despite numerous motions.
THE WITNESS: Well, like we had said, we typically do between 40- and $50,000 a week in surgery at three weeks.
BY MR. CHAIET:
Q. Did you eventually do the surgeries that you had to cancel?
A. Perhaps some yes, perhaps some no.
Q. Okay. Did you keep -- do you have any specific records that will help us see which surgeries were cancelled, which ones were rescheduled and performed?
A. I don't have specific details on that.

I don't have specific details in front of me. I don't.

Q. Well, you said you lost about $40,000 a week in surgeries; is that correct?

A. That's correct.

Q. Where there expenses that you saved by not having to perform the surgeries?

A. I don't know. That's sort of a strange question. That's like if you go shopping and something's on sale, the more you buy, the more you save. I don't know.

Q. That's the whole thing my wife went to the mall and said, hey, I just spent $500 but I saved 100 bucks.

A. Exactly.

Q. But you still cost me 500 bucks, so.

A. I mean, we're still paying the mortgage. We're still paying all the costs of keeping my doors open. We're still paying our staff. We didn't not pay our staff, so there was really not anything in the way of savings.

MR. CHAIET: Can you hold on one second. Give me one second. I'm sorry.

(Thereupon, a short recess was taken.)

BY MR. CHAIET:

Q. Did you have to do any repair work to your office itself?

A. We had to do repair work of every part of this office and surgery center. The entire space needed extensive repairs.

Q. I'm not talking about the personal property. I'm talking about the physical office itself. What repairs needed to be done?

A. What repairs?

Q. To the structure itself. I'm not talking about computers and --

A. Woodworking, drywall, insulation, electrical, painting, trying to repair and reglue some of the furnishings. I mean, there's still things that -- you know, when wood and different items get wet, sometimes the damages don't show themselves for a period of time. I still have areas that are splintering and cracking from damages to -- you know, it was extensive repairs throughout. They had to rip out ceilings. They had to rip out walls. They had to rip out insulation, chip off pouring paint, repair it, remove drywall, woodworking, baseboards. It was quite extensive.

Q. Do you know how much you had to spend to repair the physical office?
A. I don't have that in front of me.
Q. Ballpark figure amount?
A. I'd rather not ballpark.
Q. Well, the thing is, we've asked for certain documents from you and your attorney and we still haven't been provided with certain documents; i.e., any documents supporting any business interruption claim, any documents supporting any health issues that you're claiming in this lawsuit.
MR. CASTRO: Are you asking a specific question?
MR. CHAIET: I'm talking somewhat off the record. It's really not a question.
MR. CASTRO: Are we on the record?
MR. CHAIET: We can go off the record.
(Thereupon, a discussion was held off the record.)
BY MR. CHAIET:
Q. I don't think -- I'm looking here -- I don't see where we've even gotten records showing what he spent to rebuild. Maybe I'm wrong, but I don't see that in there.
Do you know the name of the company,

Doctor, that did the repair work for your unit?

A. From what I'm seeing here, I had sent the attorney paid invoices from Cutter for $31,604. I mean, there's a whole list of costs of different items. I don't know exactly, you know. I see Channin Mechanical for 2,375. You know, I don't know if you're asking me for that or for --

MR. CHAIET: The reason I'm asking -- sorry to interrupt you -- Danny, I'm looking at what you produced and I don't see any of those documents there. I don't see anything from Cutter, Incorporated. I don't see anything from Channin Mechanical. I don't see any business interruption records. I don't see any medical records. I'll go on.

BY MR. CHAIET:

Q. Sir, with regard to your loss of business claim, what documents do you have that would support your business interruption claim?

A. I would have to review that with -- I mean, I'm not involved in that day-to-day, so I would have to review that with my accountant and office manager.

Q. Okay. What sort of documents would

you have that you can produce?

A. I would have to talk to them about it. I don't know specifically.

MR. CHAIET: I'm going to reserve my right to come back, if need be, to ask questions about the business interruption claims because we haven't gotten any records in those regards, and without those records, I really can't sufficiently ask him questions.

BY MR. CHAIET:

Q. With regards to -- you're also making a claim for adverse health consequences from cement dust inhalation and the long-term effects of silicosis, correct?

A. Yes. Silicon that's in cement -- silicon that's in cement is well documented to have a lot of adverse, long-term effects ranging from lung disease, cancer, many other related health effects.

When they did come and repair the expansion joint, when the building had the company come and do that, they basically came with jackhammers and chipped out the whole expansion joint without taking into consideration that

directly below that expansion joint is my surgery center. And they blanketed -- I had a deluge of cement, from large pieces and chunks to small chips to cement dust that blanketed the top of my build out. And, you know, build outs are not designed to be airtight, so every little fitting and light fixture and place that comes through the ceiling, I had cement dust coming into my light fixtures, into my space, on to surfaces and floors, and it continues to do so in a slow manner.

Ever since that period of time, people have -- people, especially workers, have noticed, you know, they come in feeling fine and they walk out and they need to take -- or as they're working, they need to take antihistamines or decongestants. It's been a big problem as physicians. I mean, we did not specifically go to get x-rays or medical treatment. We know what's going on and it's something that needs to be mitigated.

And it's a difficult -- nobody -- you know, we've had people come to look. The building itself, they had an estimate and they essentially informed me that it was too expensive to clean up and to take care of, so they decided they refused to do it, they're not going to do it. I've had

discussions multiple, multiple times personally and in e-mails explaining the effects that it has on us as well as the center and the potential dangers it poses. And they simply came and said we're just not going to do anything and, you know, I had a couple people come in to give quotes. They didn't even want to deal with it because just the fact of getting up and trying to clean all that mess on top of the ceilings with scaffolds and the danger to their employees. You know, I finally found one company that gave us a quote to do it and, you know, that's where we stand.

Q. So you didn't answer my question, sir. Tell me one doctor you've seen for any health problems from the building?

A. I've seen myself and I've seen Dr. Aguero, who's my anesthesiologist.

Q. Dr. Aguero. What's his first name?

A. Dr. Adela Aguero. She's my anesthesiologist.

Q. Spell Aguero.

A. A-g-u-e-r-o.

Q. What's her address? Where is she located?

A. She is my independent contractor that

is my anesthesiologist here.

Q. So she works for you, correct? That's the one that does the anesthesia?

Aside from yourself and her, have you seen any other doctors?

A. I have not.

Q. And what treatment did you receive from Ms. Aguero?

A. We take decongestants and antihistamines.

Q. Did she prescribe that to you?

A. She recommended it. I can get it on my own, or if she has some, she'll give it to me.

Q. Is it over-the-counter stuff?

A. It can be. Some of the decongestants and antihistamines are over-the-counter, some are by prescription.

Q. What prescription medication have you taken?

A. I'm trying to recall the name. Give me a minute. I know I've taken Sudafed; that's not a prescription. I'm going to have to get you the name of the other one that is by prescription.

Q. Has she done any tests on you?

A. No.

Q. She's an anesthesiologist, correct?
A. Correct.
Q. How many times have you treated with her for alleged health consequences from the building?
A. Well, you know, myself, my staff, my surgical tech have had continuing complaints when we get here of being congested, runny nose, allergic-type symptoms that seem to occur when we get into the surgical area. And for this extended period of time since this loss date, we've intermittently had to keep on taking decongestants and antihistamines.
Q. So my question to you is this: Has any medical diagnosis been done on you or any of your staff to determine what the source of these issues are?
A. Not specifically.
Q. Has any of your staff seen any doctors for their complaints?
A. Not that I'm aware.
Q. So at the present time, no one, no medical doctor has done any diagnosis on you or any of your staff to see what the source of the problem is, correct?

A. Well, myself and my anesthesiologist are medical doctors.

Q. Okay. But you're a plastic surgeon and she's an anesthesiologist, correct?

A. Yes, and we're still medical doctors.

Q. Okay. Myself, I'm a lawyer, but you wouldn't want me drafting your will for you.

MR. CASTRO: Objection to form.

BY MR. CHAIET:

Q. So my question to you is this: How many times have you and Dr. Aguero discussed your health problems?

A. I don't have a specific answer for you.

Q. And she hasn't done any diagnostic tests on you or anything, correct? No lab work, no blood work, no urine work, correct?

A. No, that wouldn't show the problem. If you're a physician, you would know that.

Q. So my question is: None of that lab work has been done, correct?

A. No, sir. That's correct.

Q. Aside from chatting with her about it, that's been basically the extent of your medical treatment from 2018 to the present for this,

correct?

MR. CASTRO: Objection to form. You can answer.

THE WITNESS: That's not correct.

BY MR. CHAIET:

Q. Okay. What other medical treatment have you received from 2018 until the present for any reason?

A. Well, I'm talking about having to consistently take medications to try to deal with the ongoing sinus and respiratory issues.

Q. When was the last time you took any medication for the sinus and respiratory issues?

A. Perhaps a week ago or two weeks ago.

Q. And before that?

A. You know, I don't have specific dates of every time we've had to take some. It's myself, it's Dr. Aguero, it's my surgical tech. Intermittently, you know, we need to do these things.

Have you seen pictures of what's above my surgical center as far as the cement deluge?

Q. Sir, you're a medical doctor but you can't tell me the prescription medication you're taking, correct?

A. Right in the middle of our -- you can call it a senior moment -- right in the middle of our discussion here, I might have it in my restroom right here. I'm not sure if it's there. If you want me to go take a look?

Q. Go take a look.

MR. CASTRO: Let's take a break.

MR. CHAIET: Fine. No problem.

MR. CASTRO: Let's take ten minutes.

MR. CHAIET: No problem.

(Thereupon, a short recess was taken.)

BY MR. CHAIET:

Q. So going back on the record. Your attorney was kind enough during the break to send me an invoice from Cutter, Incorporated, for $31,604. What work did they do on the property?

A. The majority of the repairs that we talked about.

Q. Okay. So they're the ones that basically did the physical repairs to the property, correct?

A. Correct.

Q. It also appears by the way that they, according to the invoice, looks like they did some work regarding the cement problem that you're

talking about?

A. No, they gave me an invoice -- I mean, a quote. He gave me a quote to do mitigation on that issue.

Q. Did they do it?

A. No.

Q. Why not?

A. Because it's $34,695.

Q. One second. Let me pull something up.

Do you know how much you've already paid Cutter?

A. The other invoice.

Q. Because I only have one invoice.

A. The $31,604 of paid invoices. And there'll be other invoices because, as I said, damage continues to show its latent effects of -- from water damage.

Q. Give me one second. I'm pulling up the invoice that you just sent me.

Can you see the invoice there? Can everyone see it?

MR. CHAIET: Am I doing it right, Danny?

MR. CASTRO: That looks like the proposal.

THE WITNESS: That's the proposal.
BY MR. CHAIET:
Q. All right. There's a proposal there for $34,695?
A. Correct.
Q. And in the interrogatory answers, it says: "Other repair costs to date: Cutter, Inc., $31,604." Where's that invoice?
A. That was a series of invoices over an extended period of time.
MR. CHAIET: Danny, can you send them to me?
MR. CASTRO: I haven't, which I don't think I do.
MR. CHAIET: Can you send them to -- that's what I'm saying. Can you send them to me in the next week or so?
BY MR. CHAIET:
Q. Doctor, can you provide them to your attorney, please, since no one seems to have them?
A. Let me just write it down. Okay.
Q. All right. So you've already paid them about $31,000. And this invoice that I'm looking at dated February 10, 2020 for another $34,695 is to do some additional work, correct?

A. Correct.
Q. You haven't done this work yet, correct?
A. Correct.
Q. Aside from Cutter, who else did any repair work in the property?
A. We had Channin Mechanical.
Q. Let me just spell it for the court reporter. That's C-h-a-n-n-i-n.
And what did they do? They did the fire dampers, rewiring them into place?
A. Yeah. They were all rusted out and not functioning.
Q. That was about 2,300 bucks?
A. Right.
Q. Let me see if I have that. I don't see that one either, so add that to the list.
So aside from Cutter and Channin, who else did repair work to the property?
A. Repair work -- I mean, what I actually don't even have listed in here or what I don't see listed is cleaning services.
Q. They're up top.
A. Is it --
Q. I'm looking at number four. It's got

Service Max Cleaning and Restoration.

A. Oh, that's the water mitigation. I'm just talking about for the ongoing mess of ongoing repairs, having cleaning.

Q. Who does that?

A. Our cleaning personnel.

Q. You had cleaning personnel before the loss occurred, though, correct?

A. Well, we had cleaning services. It was just during the work, you know, obviously with all the dust and dirt and doing drywall, you know, it makes an issue. I have to check with my office managers to see that.

Q. My question to you is: Before the loss occurred, how often did you have a cleaning person come to your office?

A. I don't know. Two or three times a week.

Q. And after the loss occurred, how often have they been coming?

A. Likely the same amount but for -- that's what I need to check with her to see what we have for additional above and beyond cleaning service costs.

Q. Do you know the name of the cleaning

company you had?

A. I have to see. We've had a couple. I have to see at the time which one was here.

Q. Okay. Can you get me that information too?

A. I certainly can.

Q. Hold on one second.

All right. I'm going down your damages with you now. Okay?

A. Okay.

Q. Some of the stuff we've already talked about.

With regards to the repair costs, you'll send me the records you have from Cutter and Channin. You gave me the invoice for work that wasn't done for Cutter.

A. Right.

Q. I've got a spreadsheet for Service Max, but I didn't get any bills or estimates, so if you have those, send those. And you'll provide me with the information from the maid service.

So from a --

A. You don't have the bill from Service Max?

Q. I have a spreadsheet.

A. No specific bill?

Q. Whether it's a bill or not, that's it. That's what it is. It has a breakdown on it.

A. Okay.

Q. So with regards to the stuff from Service Max, the cleaning service, Cutter, and Channin Mechanical, is there anyone else that did any repair or mitigation work to the property itself? I'm not talking about the contents and personal property. I'm just talking about the actual structure itself.

A. No. There's a couple small items that are still just -- have not been repaired, such as the rusted out mechanics of the door. There's a couple smaller items. But other than that, you have the repair people.

Q. Okay. I just want to make sure I have everything.

And then we talked about loss of business revenue. You'll provide me with the supporting documents for that, and I'll reserve my right, if need be, to come back and ask some questions about that. Basically I would need from that your business income tax returns for the past few years, any appointment books, anything to show

that anything was rescheduled, anything that supports your position that you lost income.

And with regard to the health claim, you said that there are no specific medical records, correct?

A. That's correct.

Q. Okay. So we've covered the loss of business claim and the health claim.

So now let's talk about the personal property claim. I'm assuming you're looking at your interrogatory answers. Do you have them in front of you?

A. Yes.

Q. Are you looking at question number four?

A. Yes.

Q. Four and five appear to be pretty similar, correct?

A. Yes.

Q. Okay. So now we're talking about the personal property claim here.

The first item is muscle relaxers, $10,000. First of all, what is "Stratice, S-t-r-a-t-i-c-e, meds, and muscle relaxers, $10,000"?

A. Well, having a surgical center, we have medications and items that need to be kept in a refrigerator and refrigerated, and when they stay warm for any period of time, they get ruined.

Q. And why were these ruined?

A. Well, they were in a refrigerator and, you know, the same with the Botox --

Q. Let's stick with this. If they were in a refrigerator, how did they get ruined?

A. The refrigerator gets unplugged during the whole process.

Q. How long was the refrigerator unplugged for?

A. I don't know whether it was a day or two.

Q. How large are these meds that they couldn't be transferred to another refrigerator?

A. How large are they? I mean, they're not large. But it's, you know, if you don't know that they're sitting in a warm refrigerator.

Q. This cost of $10,000, how many pills does that represent?

A. Well, it represents the Stratice material, it represents several different medications, as well as muscle relaxers.

Q. The $10,000 figure, what is that based upon?
A. What I just told you.
Q. Is that what you paid for them?
A. Yes. The cost of replacing them, yes.
Q. Did you replace them?
A. Yes.
Q. And do you have the receipts for that?
A. Yeah. I mean, it's an ongoing, you know, we don't have a specific receipt to replace that specific number, but we have an ongoing need to purchase these medications to do surgery.
Q. And is the cost of these meds billed as part of the surgery?
A. Not -- well, things like Stratice can be billed as part of the surgery. The medications are not specifically outlined for each surgical procedure. It's just an overall general cost of doing the procedure. It's included in the procedure.
Q. So, then, wouldn't you have recouped your money for this stuff when you did the surgery?
A. No. We have to order -- we -- no, we don't recoup it because we purchased it and we had to throw it out.

Q. What is -- who told you that you have to throw it out?

A. Well, if the medications and things like Rocuronium, it gets warm, it doesn't work. So if you give it to put a person to sleep and keep them paralyzed and asleep and it doesn't work, it's just, you know, not something you want to give them to perform the procedure. The medications say "keep refrigerated," and they've been sitting warm for two days, it's not something you want to give a patient.

Q. All right. So what sort of documentation can you provide me justifying this $10,000 of damages?

A. Well, we did send some pictures as well as -- I know we sent some pictures. I'd have to go through and itemize them. Basically, this was when we went through the refrigerator, at that time, that was the cost of what was in there.

Q. Do you have receipts that show the purchase of these items or the replacement of these items?

A. I can get them.

Q. Okay. Add that to your list.

The next item on the list is 71 boxes

of Botox, 50 units and 2 boxes of 100 units equals 37.5 100 unit vials at $601, $22,537.50.

Same question: Why did you have to dispose of these items?

A. Because they need to be kept cool, otherwise they don't work. When you have somebody come in and spend $500 or $750 for injections that don't work, they get pretty pissed off.

Q. And is the $601 what you pay for these units?

A. That's what each one of those -- each 100-unit vial costs to replace it, $601.

Q. When you have 100-unit vial, how many patient does that treat?

A. A 50-unit vial will do about three areas. It's really not so much patients; it depends on how many areas of Botox they choose. One area typically is $275, two areas is $500, and three areas is $750. So this number represents the cost of what we have to pay for the product, not what we would charge to the patient.

Q. So you obviously would charge more, correct?

A. Correct.

Q. And how much do you charge per

injections?

A. That's what I just explained to you. One 50-unit vial would typically give about three areas of treatment. A 100-unit vial would typically give about six areas of treatment.

Q. And not to be redundant, you already -- the breakdown of numbers you gave previously was the cost per injection, not per vial, correct, what you charge for these injections?

A. Right. Each 100-unit vial costs $601 the last I checked.

Q. And when you give an injection, what do you charge the patient for injection?

A. One area is 275, two areas is 500, three areas is 750.

Q. Got it.

All right. So aside from the muscle relaxers and the Botox, any other medications and supplies that were lost that you're claiming in this lawsuit?

A. What I have listed. It was various different medications, muscle relaxers and the Stratice, and then the Botox.

Q. That was my question. I just want to make sure that -- I'm going through your list. In

the interest of time, item by item, I just want to make sure it's complete. Just to let you know, I want to have an understanding of what these items are, why they were damaged, and make sure that that's it.

A. Well, they have to be kept refrigerated --

Q. No, no, I understand that. In the interest of time, I'm telling you why I'm asking these questions.

A. I understand.

Q. So in the interest of being thorough on my end, just like we talked about all the repair work you did, have we now discussed all the medications and supplies that you're claiming as damages in this lawsuit?

A. Yes.

Q. Now let's go to Item C, which is your "Office Interior Components," to use your terminology. All right?

A. Okay.

Q. It lists seven, if my math is correct, items here. Okay?

The first item is two computers, Dell XPS Tower, $1,300 times two.

A. Yes.

Q. Give me one second. I'm going to see if I can pull it up and share the screen so that way the court reporter can see what I'm talking about and make it easy for her and not have to spell everything. Just give me one second.

All right. Did I do it right?

A. Yes.

Q. I'm on Item C, "Office Interior Components." We're all on the same page, no pun intended?

A. Yes.

Q. The first item is two computers, Dell XPS Tower, $1,300. It's $1,300 per computer times two. Where did that $1,300 figure come from? Is that what you paid for them or is that the replacement cost or what they were worth?

A. I believe it was the replacement cost.

Q. How old were the computers that were damaged?

A. From what I can recall, we moved into the office, started doing business sometime in 2015. I don't know if they're from '15 or '16.

Q. So they were around two years old?

A. I would imagine.

Q. And the $1,300 is what you paid to get a new one to replace the ones that were damaged?
A. I believe so.
Q. And I'm guessing they were damaged by water. Would that be a correct assumption on my end?
A. That would be a good assumption.
Q. Were you able to pull out any data from those computers? Did you have a backup or Cloud or anything?
A. I believe so.
Q. So the data wasn't lost, just the computers, correct?
A. Correct.
Q. Item (b) is "Build in cabinets." There's no price there for that.
A. Yeah. I mean, a lot of the cabinets that are by the floor, you know, it's a lot of delaminations and cracking, opening of corners. I repaired as much as I could by gluing it. There's a certain amount that just remains in, you know, disrepair.
Q. Is there a price estimate for those repairs?
A. I don't have one offhand.

Q. Are they still there? Meaning, if I was to send someone in to come inspect it, they can look at it, correct?

A. Yes.

Q. Next is your personal office desk, $2,028. Did you have to get a new desk?

A. I did not get a new desk. It just remains the way the water damage left it.

Q. So the desk you're sitting at now is the personal office desk referenced in C(c)?

A. Correct.

Q. You still have that desk, correct?

A. I do.

Q. And you still use it, correct?

A. I still use it.

Q. Item (d) is a stereo Yamaha receiver RX-V470 and Sony 7 channel amp.

Was that damaged by water?

A. Damaged by water.

Q. What is that? Is this music for your office or what is it?

A. Those were just components that were sitting on the ground in the closet.

Q. What were the components used for?

A. I don't believe we were using them at

the time.

Q. Have you ever used them?

A. I've used them in the past. I don't specifically recall if they were used for my -- I think they were used in my previous office and we brought them along and they were just in the bottom of the closet.

Q. So they were never used in your office, correct?

A. I don't believe so.

Q. And I take it they're for music? They play music?

A. Yes.

Q. It's not a medical equipment, correct?

A. Correct.

Q. Do you know how old they are?

A. I don't offhand, no.

Q. Because there's no price here for them. Did you dispose of them or you still have them?

A. Disposed of them.

Q. All right. The next item is office sliding file cabinets, $3,370.

Do you still have the sliding file cabinets?

A. I do.
Q. Have you replaced any of them?
A. No.
Q. You're still using them even though they're damaged, just like the desk?
A. Correct.
Q. The next is a Brewer Power Exam Chair and they are $8,700 each. Is that what you paid for them, the replacement cost, or the actual cash value?
A. I'm not sure if that's the replacement cost now or if that's what I paid. I think that's the replacement cost, what they cost now. And they still, to this date, we have them, we're using them, and sometimes we have to change rooms. They work intermittently since the flood. And when we have people come out, either they happen to start working again or they were not able to diagnose the problem.
Q. How old are these chairs?
A. I don't have an exact date for you.
Q. Did you have them before you opened in 2016?
A. Yes, I did.
Q. Did you have your practice at a former

location before you moved to the Wind?

A. I did.

Q. How long have you had your own practice?

A. I've had my own practice since 1994.

Q. So these power chairs, you still use them, but they just have some occasional problems, correct?

A. Yeah. They intermittently function.

Q. But they're still in your office, correct?

A. Correct.

Q. Meaning, if I was to come to your office, hypothetically today -- which I'm not, I'm just giving a hypothetical -- I'd be able to see the chair, the cabinets -- I'm sorry -- the built-in cabinets, the sliding file cabinets, and the two Brewer chairs are still there, correct?

A. Correct.

Q. Last time is (g), storefront door BRSC. What does that stand for?

A. Brickell Riverfront Surgery Center.

Q. Is that the name of your surgery center?

A. Yes.

Q. It says, "Opening/closing hardware all rusted out. Not yet replaced." So that's another item I can come look at, correct?

A. You certainly can.

Q. So it's been damaged but it's still there. You're using it, correct?

A. Correct.

Q. Next item is D, Cost of construction necessary to repair office. We talked about that already. That was the $31,604 you paid to Cutter and Channin, correct?

A. I don't know if D represents that.

Q. Okay. So, then, help me out. What's the difference between D and E?

A. I think you would have to ask the attorney.

Q. I don't get to cross-examine Danny. I don't get to set him for depo. I get to ask you. If you guys want to take a moment to confer?

MR. CASTRO: No. There was another estimate that we provided.

MR. CHAIET: From who?

MR. CASTRO: I believe there was another estimate.

THE WITNESS: I believe so too.

MR. CHAIET: Was it an estimate for work that was actually done or just another --

MR. CASTRO: I think that it is an estimate that needs to be done.

BY MR. CHAIET:

Q. That was the bill from Cutter, right?

A. No.

Q. You provided me -- just for housekeeping purposes -- you provide me with the bill from Cutter that I pulled up as an exhibit for about $34,000 for future repair costs. Is there another company, aside from Cutter, that provided you an estimate for additional work that needs to be done?

A. I believe, if I'm recalling correctly, D was an estimate from -- an estimate that was produced from another entity.

Q. Who's Ron Farrell?

A. He's the gentleman from Cutter, Inc.

Q. Here's the documents that were produced. I got -- can you see my screen, what I'm looking at?

A. No.

Q. I'll put it back.

All right. It's got the Allergan, A-l-l-e-r-g-a-n, pricing for the Botox, which we discussed, right?

A. Okay. I can't really see your --

Q. Can you see -- I'm just going down.

We've got a binder of photos. We've got "Dr. G's desk," which I'm assuming is you. We've got some videotapes and photographs of the flood. Then it says "Ron Farrell, F-a-r-r-e-l-l, total"; that's the guy from Cutter, correct?

A. Right. Correct.

Q. And it says American Express Strattice, S-t-r-a-t-t-i-c-e. That is the muscle relaxers we talked about earlier, correct?

A. No, no. Strattice is an implant-type material.

Q. We talked about that earlier. That's part of B(a), correct?

A. Right. Correct.

Q. Scan for the intermed chairs. Are those the power chairs that we just discussed?

A. I believe so. I believe so.

Q. Then there's the Service Max water damage and the computers. So what I'm trying to see is the other estimates here. This is the

Service Max; can you see what I'm looking at?

A. I'm seeing it.

Q. So that's the Service Max. You asked me before what the Service Max thing looked like, so this is the bill from Service Max on a spreadsheet, correct?

A. Are you asking me a question?

Q. Yes. Remember before you said, didn't I get a breakdown from Service Max? I just want to make sure we're on the same page.

A. All I'm looking at is a line that says Service Max. I don't see the breakdown.

Q. Okay. There's a breakdown.

So my question is, have -- you're going to get me the 31,604 supports for Cutter and Channin. I got the estimate for Cutter for $34,000.

What other items am I missing that's part of D, cost of construction necessary to repair office, aside from the Cutter thing that Danny was kind enough to send me?

A. Well, D, again, it was an estimate for repair of the office.

Q. Was it the same repairs that Cutter did where you got two estimates and you chose one

over the other?

A. I don't -- I don't know if -- I'd have to look at that one. I'd have to see what D is. I don't see that on here.

Q. All right. Add that to your list and send it to your attorney.

Have we now discussed all of the damages that you're seeking in this lawsuit?

A. You know, again, if you were to physically come here and look around, I could show you additional damage and cracked -- cracked wood and peeling paint and items still in need of repair; but for the most part, as far as I can recall, it seems that we have covered what's on this list.

Q. Okay. Perfect.

From the date of loss until the present, what discussion, if any, have you had with the association, the property manager, about your damages and losses and repairs?

A. Well, most of my discussion with them was to come deal with the deluge of cement. And like I said before, initially they got a quote and sort of let me know it was too much for repairing. And after multiple e-mails and conversations, they

sent me an e-mail saying they're not going to do anything, which was pretty amazing.

Q. Has the association made any promises to you that they would pay for some or any portion of the damages you're claiming?

A. I don't have any promises from them about doing anything.

Q. And after the three weeks, has it been pretty much business as usual, COVID aside?

A. After that three weeks?

Q. Yes, the initial three weeks after the date of loss?

A. Well, I mean, there were certainly ongoing interruptions. Just, you know, what you would normally have to deal with when there's continued construction and work and painting and things like that. It's an interference, but...

Q. You still had your doors open? It's just like having work done at your home, there might be inconveniences, but you can still live there?

A. Yes.

Q. All right. With regard to the expansion joint, we talked about that earlier. I promised you I would get back to it. I know you're

excited.

Have there been any -- aside from the damage that we discussed, has the expansion joint leak caused any additional damages that we haven't already gone over, or is it all the same damages?

A. Well, I mean, the expansion joint -- I don't know if you can call it monetary damages, but the thing is certainly a continued nuisance.

Q. I'm not so much concerned about the noise aspects of it. I'm more concerned about the water leak aspect of it.

A. There was a small amount of leak after they repaired it. From the hose when they were doing some work up in the garage, it continued to leak from as far as I know. I informed them and, according to them, they repaired it. I'm not 100 percent certain, but we have to wait and see.

Q. What damages did you sustain from the expansion joint leak?

A. From the flood? From the 6-13 or afterwards.

Q. Afterwards. I'm qualifying the expansion joint as another incident. Is there any different damages you sustained from that or is it all similar damages that we discussed?

A. It was -- again, not talking about the cement issue. The water leak was self-contained. We cleaned it up and no specific damage from that.

Q. All right. So the expansion joint didn't cause any additional damages aside from having to do some cleaning, correct?

A. Well, aside from this whole deluge of cement that remains an issue.

Q. Well, the cement is from the June 13, 2018 loss, correct, or from --

A. No, that's not correct.

Q. The cement is from the expansion joint?

A. We had the leak that went through that expansion joint on June 13, 2018. And, subsequently, a period of time afterwards, they had -- I don't recall the exact dates, but they had multiple expansion joints being worked on and repaired. And when they got to the expansion joint over my unit, this is months later, they used, you know, their jackhammer chipping hammer to cut away, to reline and, you know, do whatever work they needed to do on the expansion joint. And during that repair work, they blanketed my center in the cement chips, particles, dust, and that's

infiltrated, it's just blanketed, it's covering the wires, it's filled the insulation, just everything above my unit in the surgical area is covered with cement or cement dust.

Q. Was the cement dust caused by the expansion joint or water leak in June of 2018?

A. Say that again.

Q. I'm trying -- I might be misunderstanding you, but it appears that the problem with the cement dust appears to be more related to the expansion joint problem than the June 13th loss; is that correct?

A. Well, it's -- the cement dust and issues comes from the Wind making attempts or working to repair that faulty expansion joint.

Q. So that's what I'm looking at. That's what I just said, that the concrete dust problem you're talking about appears to be more related to the expansion joint issue than your June 13, 2018 leak; is that correct?

MR. CASTRO: Objection to form.

THE WITNESS: Well, it's -- the cement and the cement dust are from repairs of the faulty expansion joint that occurred after 6-13-2018.

BY MR. CHAIET:

Q. Thank you. That's what I was looking for. I appreciate the clarification.

Anything else that you want to share about your damages that we have not already discussed?

A. Not that I can think of at this particular time.

Q. Okay. I'll reserve my right, if need be, to question you after I receive some additional damage documents. But at this point, I don't have any further questions for you.

Is there any answers you've given that you'd like to change, correct, or supplement?

A. Not at this time.

MR. CHAIET: All right. I don't have any further questions at this time.

CROSS-EXAMINATION

BY MR. CASTRO:

Q. Dr. Gershenbaum, we were talking about the expansion joint. The June 13, 2018 water loss that you had, did some of that water come into your unit through the faulty expansion joint?

A. Yes, for sure.

Q. Okay. So the condominium association,

their efforts to repair the expansion joint were directly related to that June 13, 2018 loss?

A. Yes.

Q. Okay. And in trying to make those repairs to the expansion joint, is it true that they made further damage to your unit?

A. Correct.

Q. And was that in the form of the deluge of cement that you were discussing?

A. Yes.

Q. Okay. Has that cement been completely cleaned up at this point?

A. No.

Q. Okay. And is that what the other proposal from Cutter, Inc. is relating to?

A. Yes.

Q. Okay.

MR. CHAIET: By the way, isn't part of this lawsuit.

THE WITNESS: That's a matter of debate, I guess.

MR. CHAIET: Anything else, Danny?

MR. CASTRO: I'm just going through my notes. Give me one second.

BY MR. CASTRO:

Q. Mr. Gershenbaum, you had mentioned that there was a prior failure of the hoses, of the high pressure hoses, right?

A. That's correct.

Q. Do you know whether those hoses that had failed before were the same as the one that failed this time?

A. That's what I was told.

Q. And who were you told that by?

A. By the management office.

Q. Okay.

MR. CASTRO: I have nothing further.

REDIRECT EXAMINATION

BY MR. CHAIET:

Q. Sir, the water loss on June 13, 2018, how much of the water came in through the expansion joint?

A. Enough to cause severe damage to my surgical and recovery areas to put me out of business for a time being.

Q. How do you know the water sufficiently that came in came in specifically through the expansion joint rather than through some other point of entry?

A. Because that expansion joint, I --

that expansion joint is directly above where my surgical area is, and if you open the light fixture in the ceiling, you can see the expansion joint and the water that was coming in.

MR. CHAIET: No further questions.

MR. CASTRO: Nothing further.

MR. CHAIET: Read or waive?

MR. CASTRO: Dr. Gershenbaum, if we go to trial -- actually, if they order the transcript, you have the right to read it to make sure that it's accurate --

MR. CHAIET: Danny, I'll make it easy for you. I'm going to order it and why don't you just put him down as a waive -- I'm sorry, as a read, that way he can do what he wants. It's his option.

MR. CASTRO: We're going to read.

MR. CHAIET: Put him down as a read and I'm going to order it, normal delivery time is fine. Thank you.

(The deposition was concluded at 12:14 p.m.)

CERTIFICATE OF OATH

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

I, the undersigned authority, certify that SAM GERSHENBAUM was duly sworn.

WITNESS my hand and official seal this August 10, 2020.

Ruth Archbold
Notary Public-State of Florida

My Commission Expires: 12/21/2021
My Commission #: GG170149

CERTIFICATE OF SHORTHAND REPORTER

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI-DADE)

I, Ruth Archbold, Court Reporter, do hereby certify that I was authorized to and did stenographically report the videoconference deposition of SAM GERSHENBAUM to the best of my ability; and that the foregoing transcript, pages 1 through 105, is a true record of my stenographic notes.

I further certify that the said witness was duly sworn according to law.

I further certify that I am not of counsel to either of the parties to set cause or otherwise interested in the action.

In witness whereof, I here unto set my hand and affix my official seal this August 10, 2020.

Ruth Archbold

My Commission Expires: 12/21/2021
My Commission #: GG170149

JURAT PAGE

STATE OF FLORIDA)
)SS.
COUNTY OF MIAMI-DADE)

I, SAM GERSHENBAUM, hereby certify that I have read the foregoing transcript pages 1 to and including 92 and find the same to be true and accurate. Any corrections made by me are set forth on the errata page attached hereto.

SAM GERSHENBAUM

Sworn to and subscribed before me on this,
the day of , 2020.

Notary Public

My Commission expires:
My Commission #:

ERRATA SHEET

I, SAM GERSHENBAUM, do hereby acknowledge that I have read this transcript and find it to be accurate except for the corrections noted below.

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SAM GERSHENBAUM

Signed and dated this day of 2020.

Esquire Solutions
Aventura Corporate Center I
20801 Biscayne Boulevard, Suite 202
Aventura, Florida 33180
305-371-2713

TO: SAM GERSHENBAUM
Daniel D. Castro, Esquire
55 Merrick Way
Suite 404
Coral Gables, Florida 33134

August 10, 2020

IN RE: SAM GERSHENBAUM v. WIND CONDOMINIUM ASSOCIATION, INC.
CASE NO: 2018-040672-CA-01

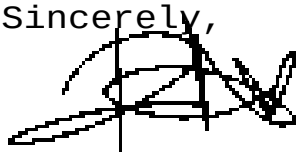
Dear SAM GERSHENBAUM,

With reference to the examination of YOURSELF, deponent in the above-styled cause, taken on 07/29/2020 under oath, please be advised that the transcript of the Deposition has been transcribed and is awaiting your signature.

Please arrange to conclude this matter at your earliest convenience. We would suggest that you telephone this office and arrange an appointment suitable for all concerned.

However, if this has not been taken care of by September 10, 2020, we shall conclude the reading and signing of said deposition has been waived, and shall then proceed to file the original of the said transcript with the party who took the deposition, without further notice to any parties.

Sincerely,



RUTH ARCHBOLD

cc: All Counsel of Record.

Reference No.: 4823531

Case: GERSHENBAUM vs WIND CONDOMINIUM

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

_____

Sam Gershenbaum

NOTARIZATION OF CHANGES
(If Required)

Subscribed and sworn to on the _____ day of

_____, 20____ before me,

(Notary Sign)_____

(Print Name) Notary Public,

in and for the State of _____

Reference No.: 4823531

Case: GERSHENBAUM vs WIND CONDOMINIUM

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Sam Gershenbaum

Reference No.: 4823531

Case: GERSHENBAUM vs WIND CONDOMINIUM

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Sam Gershenbaum

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