

OFFICE OF THE ATTORNEY GENERAL  
ANTITRUST DIVISION

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:  
IN RE: K.B. HOME INVESTIGATION :  
:  
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PLACE: Sarasota County School Board  
1960 Landings Boulevard  
Sarasota, Florida

DATE: October 22, 2013

TIME: 10:28 a.m. - 3:09 p.m.

REPORTED BY: Robbie E. Darling  
Court Reporter

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SWORN STATEMENT OF MATTHEW BROWN  
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ORIGINAL

APPEARANCES

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WILLIAM T. BIVENS, II, CIA, CFE, CGAP

Financial Investigator

Antitrust Division

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PROCEEDINGS

Thereupon,

MATTHEW BROWN

was duly sworn and gave the following statement:

EXAMINATION

BY MR. SLEMP:

Q. Please state your name for the record.

A. Matthew Brown.

Q. Mr. Brown, you're here pursuant to subpoena today from our office. My name is Greg Slemp, I'm with the Office of the Florida Attorney General, and I'll be asking you a few questions in connection with an investigation that we have.

I'm going to ask you a few questions. If at any time you don't understand the question please let me know and I'll be happy to rephrase the question. If at any time you need a break let me know and I'll be happy for us to take a break.

Is there any reason today why you cannot give full and complete testimony?

A. No.

Q. Are you currently married?

A. Yes.

Q. What is the name of your spouse?

A. Megan Brown.

1 Q. What is your address?

2 A. 2276 McTague Street, North Port, Florida  
3 34291.

4 Q. Are you represented by counsel here today?

5 A. No.

6 Q. Have you ever given a deposition before?

7 A. Yes.

8 Q. How many times?

9 A. I don't know, six or eight times probably.

10 Q. Can you describe the occasions upon which  
11 you gave depositions?

12 A. I was deposed regarding the suit I filed  
13 against K.B. Home. I was also deposed in some legal  
14 matters for K.B. Home on a separate issue.

15 Q. And those two circumstances cover all the  
16 depositions you've given?

17 A. To my recollection, yes.

18 Q. What types of cases did you give  
19 depositions in in which you were a K.B. Home  
20 employee?

21 A. There was a matter with the Pembroke  
22 Homeowner's Association. It's a community that we  
23 took some land down in Lake Suzy. I was involved  
24 with dealing with that, so I was deposed for that a  
25 few times.

1 Q. Any other cases in which you were deposed  
2 as a K.B. Home employee?

3 A. No.

4 Q. Where was that case pending, do you know?

5 A. I believe the case was filed in Arcadia.  
6 It never went to litigation, it was settled prior  
7 to. An agreement was made with the Homeowner's  
8 Association.

9 Q. Have you ever testified at a trial before?

10 A. No.

11 Q. Are you currently a defendant or a  
12 plaintiff in any pending lawsuit?

13 A. No.

14 Q. Now, you said you had sued K.B. Home  
15 before; is that correct?

16 A. Correct.

17 Q. Did that case settle?

18 A. Yes.

19 Q. Please state your educational background.

20 A. Graduated high school, some college and  
21 the Marine Corp.

22 Q. Where did you attend college?

23 A. Broward Community College. And also I've  
24 taken, you know, certification courses that pertain  
25 to my field, such as the General Contractor's

1 Course, General Contractor's License, the DEP  
2 Inspector's License and course, OSHA courses; things  
3 of that nature.

4 Q. That leads into my next question. Do you  
5 currently hold any licenses?

6 A. No. My general contractor's license I --  
7 it had lapsed, and I have -- you know, when the  
8 market contracted I just really didn't have the  
9 funds to keep it up. And I'm not using it, and  
10 after my last experience with using a license for a  
11 builder I don't think I'll be exploring that avenue  
12 in the future.

13 Q. So, you were a general contractor and then  
14 that license lapsed?

15 A. Yes. Do you want the license number?

16 Q. Sure.

17 A. It's 1513363.

18 Q. How long did you hold the General  
19 Contractor's License?

20 A. Approximately two years.

21 Q. Who did you work for when you used your  
22 General Contractor's License?

23 A. Exclusively K.B. Home.

24 Q. Where do you currently work?

25 A. Maronda Homes.

1 Q. Where is your office located?

2 A. Our division office is located in  
3 Gibsington. My office, I have one in North Port and  
4 a few in Port Charlotte.

5 Q. What is your title with Maronda Homes?

6 A. Project manager.

7 Q. How long have you held that title?

8 A. I've been with them five or six months.

9 Q. What are your duties with Maronda Homes as  
10 a project manager?

11 A. Oversee the construction, warranty and  
12 service-related issues for multiple communities.

13 Q. Where did you work before you worked for  
14 Maronda Homes?

15 A. There was a few months where I worked for  
16 Medallion Homes. Maronda just made me a really good  
17 offer so I, you know, resigned from Medallion, I  
18 hadn't been there long. And prior to that I was off  
19 for about a year. I had a spinal fusion. It was  
20 kind of a long recovery.

21 Q. And before you had the -- you were off for  
22 a year with the spinal fusion who did you work for?

23 A. I worked for D.R. Horton, which is the  
24 company I worked for after being let go from  
25 K.B. Home.

1 Q. What was your title with D.R. Horton?

2 A. Superintendent.

3 Q. How long were you with D.R. Horton?

4 A. Roughly two and a half years.

5 Q. Why did you leave D.R. Horton?

6 A. I was let go.

7 Q. Did they give you any reason why they let  
8 you go?

9 A. No. There was a change in management, and  
10 then there were several people who were let go.

11 Q. What was your title with Medallion Homes?

12 A. I didn't really have a title. I got hired  
13 on to assist with some office work and permitting,  
14 basically to oversee the Permitting Department and  
15 the Plans Department. I was there for about two  
16 weeks and they realized that I could be an asset in  
17 the field, so they sent me out into the field and I  
18 started building homes.

19 Q. Was there a time that you worked for  
20 K.B. Home?

21 A. I'm sorry, I don't --

22 Q. Did you ever work for K.B. Home?

23 A. Yes.

24 Q. For how long did you work for K.B. Home?

25 A. From mid 2004 to late 2009.



1 Q. Where did you work before you worked for  
2 K.B. Home?

3 A. Lee Wetherington. It's a custom hold  
4 builder in Lakewood Ranch.

5 Q. How long did you work for Lee  
6 Wetherington?

7 A. A little over two years, maybe two and a  
8 half years. That's when I'd just moved to the west  
9 coast.

10 Q. Where did you work before Lee  
11 Wetherington?

12 A. Lennar Homes in Broward County.

13 Q. What was your title with Lennar Homes?

14 A. Lead superintendent.

15 Q. What were your duties with Lennar Homes?

16 A. Overseeing the construction in my  
17 specified communities, overseeing the warranty and  
18 service of those communities. Just the general  
19 operation of construction in those communities.

20 Q. What were your duties with Lee  
21 Wetherington?

22 A. Pretty much the same. You know, I had --  
23 I had two communities I was responsible for and some  
24 off-site custom work that I was doing. Same thing,  
25 warranty, construction operations. They're all

1 pretty much similar. I mean, at each one I had a  
2 punch out guy that reported to me, and a warranty  
3 guy, assistant super at times.

4 Q. Where did you work before Lennar Homes?

5 A. I had done some odd and end construction  
6 work. Prior to that I was in the Marine Corp.

7 Q. When did you first enter the construction  
8 industry?

9 A. I believe '97, maybe '96.

10 Q. So, from 1997 to the present you've been  
11 in the construction industry except for the one year  
12 you were off?

13 A. All I've ever done, all I've ever known.

14 Q. Let's talk about your employment with  
15 K.B. Home. What was your title with K.B. Home?

16 A. Regional construction manager. And then  
17 towards the end it -- my title remained the same,  
18 but my duties grew. You know, I was like the acting  
19 studio manager, the acting permitting manager, I  
20 took over the warranty. As there were more and more  
21 reductions in force, which is something that  
22 happened a lot as the market contracted, I took over  
23 more responsibilities.

24 And Fort Myers was eventually -- Fort Myers  
25 absorbed Sarasota and then Tampa absorbed Fort Myers.

1 So, when that happened I kind of operated with a  
2 certain degree of autonomy, because Tampa was, you  
3 know, very far away. They knew I was capable, so I  
4 kind of handled the stuff down south.

5 Q. So, you started with the Fort Myers  
6 Division?

7 A. Yes.

8 Q. How long were you with the Fort Myers  
9 Division before it was absorbed?

10 A. I believe it was absorbed in 2008. So,  
11 roughly four years.

12 Q. And then you said it was absorbed by the  
13 Tampa Division?

14 A. The Tampa Division. And then shortly  
15 thereafter the Orlando Division.

16 Q. How long were you with the Tampa Division?

17 A. It was a brief period of time. I'd say  
18 six months.

19 Q. And then the Tampa Division was absorbed  
20 by the Orlando Division?

21 A. Yes. And then that was, you know, the  
22 duration, an additional six months roughly.

23 Q. Did anyone at K.B. Home ever explain to  
24 you why the Fort Myers Division was folded into the  
25 Tampa Division?

1 A. Yes.

2 Q. What did they say?

3 A. It was just a matter of business sense. I  
4 mean, not a lot of positive cash flow coming in, a  
5 lot of overhead, and it just made better business  
6 sense to roll the divisions into one.

7 Q. Was that the same rationale that was used  
8 when the Tampa Division was folded into the Orlando  
9 Division?

10 A. Yes.

11 Q. Did you hold the regional construction  
12 manager title with all three divisions?

13 A. Briefly when Tampa took over, but I was  
14 demoted to project manager shortly after the  
15 structural repair issue took place.

16 Q. When were you demoted to project manager?

17 A. Honestly, I don't recall with specificity  
18 the exact time. I do know it was -- it was as we  
19 were on the tail end of the WillowBrook -- not deck  
20 repairs, but the structural repairs with the  
21 southern yellow pine column. In fact, that was part  
22 of the reason for the suit.

23 Q. Was the demotion?

24 A. Well, I received a lot of flack from  
25 raising that up the flag pole.

1 Q. All right. We'll get into that in just a  
2 minute.

3 When you started at K.B. Home were there  
4 certain developments that you were responsible for?

5 A. I was responsible for a region, and within  
6 that region, yes, there were specific communities.

7 Q. What region were you assigned to?

8 A. The north region of the Fort Myers  
9 Division. Eventually I ended up taking over the  
10 south region as well. But, when I started it was  
11 the north region.

12 Q. What developments were encompassed by the  
13 north region of the Fort Myers Division?

14 A. Burnt Store Lakes, Burnt Store Village,  
15 Creek Side, Oak Harbor.

16 Q. Is that Oak Harbor?

17 A. Oak, yes.

18 Q. Any others?

19 A. Tuscany Isles, Deep Creek, Pembroke, North  
20 Port. I believe that's it.

21 Q. So, your job was to manage the  
22 developments that you just named?

23 A. No. It was more -- my primary function  
24 was -- I guess in a way it was to -- it was not to  
25 directly manage the communities, it was more to

1 manage the operational aspects of the communities  
2 from a construction standpoint.

3 And I had superintendents and project manager  
4 that reported to me. They were the ones who actually  
5 really handled the day-to-day operations of those  
6 communities. And my role was to ensure that they were  
7 doing what they needed to be doing, you know, that  
8 everything was operating smoothly, that we made the  
9 closings.

10 Q. And you said at some point you became --  
11 that you began to oversee the southern part of  
12 the --

13 A. Yes.

14 Q. -- Fort Myers Division?

15 A. Yes. When there was a reduction in force  
16 and Sean Skinner, my counterpart down south, was let  
17 go I was informed that I would be taking over both  
18 regions. And there was a brief period before Sean  
19 got hired where we were backfilling a position where  
20 someone had left where I ran both regions.

21 Q. What developments were encompassed by the  
22 southern part of the Fort Myers Division?

23 A. Town Lakes, Vistana, Cape Coral, Bayshore  
24 Commons, Lee High Acres; I believe that's it.

25 Q. Who did you report to when you worked for

1 the Fort Myers Division?

2 A. That changed over time. Initially when I  
3 was hired I reported to Chris Stevens who was the  
4 license holder and the DP of operations.

5 Chris was let go, and at that point I  
6 reported to Sean McMelis, who was the director of  
7 construction. And then Sean was let go and I reported  
8 to Bill Fugleberg who was the Director of Operations.

9 Q. And all of this was while you were with  
10 the Fort Myers Division?

11 A. Correct.

12 Q. Did your duties change at all when you  
13 took over the south region of the Fort Myers  
14 Division?

15 A. No. Actually, I stand corrected. It did  
16 somewhat. We lost a lot of our warranty staff, so I  
17 helped oversee, you know, warranty matters as well.

18 Q. And then you had testified earlier that at  
19 some point you began working for the Tampa Division;  
20 do you recall that?

21 A. Yes.

22 Q. I think you already told me when, but what  
23 were your duties with the Tampa Division?

24 A. When the Tampa Division first took over I  
25 was in the same position that I was as a regional

1 construction manager, you know, responsible for the  
2 same thing I was before, from WillowBrook south.  
3 And also I -- when I took over the southern region  
4 that we were speaking of before, at that time I also  
5 took over the WillowBrook area.

6 Q. Approximately when did you take over the  
7 WillowBrook area?

8 A. The latter part of 2007, if my memory  
9 serves me correctly.

10 Q. How did it come about that you took over  
11 the WillowBrook area?

12 A. Mark Parsons was the regional construction  
13 manager for that area. And unlike -- in the  
14 southern areas, I mean, Mark had one community,  
15 which was WillowBrook, so he was on site daily.

16 Q. And what happened?

17 A. He was part of one of the reductions in  
18 force, and I was told to go up to WillowBrook and  
19 figure it out.

20 Q. So, Mr. Parsons was let go and you were  
21 put in his place; is that correct?

22 A. I guess I absorbed additional  
23 responsibilities. I mean, I didn't replace Mark. I  
24 kept doing what I was doing, they just added that  
25 territory to, you know, what my duties were.



1 Q. Okay. So, at the time you took over  
2 WillowBrook you were still working for the Fort  
3 Myers Division, you still had responsibility for all  
4 the other developments, but then WillowBrook was  
5 added to you?

6 A. Correct.

7 Q. Who did you report to? In other words,  
8 who was your supervisor when you took over  
9 WillowBrook?

10 A. Bill Fugleberg.

11 Q. And what was Mr. Fugleberg's title?

12 A. Director of Operations.

13 Q. Do you know who Mr. Fugleberg reported to?

14 A. Steve George, Division President.

15 Q. Do you know who Mr. George reported to?

16 A. Rick Carruthers. He was the RGM, the  
17 Regional General Manager. He was tasked with  
18 running the State, basically. And he also was  
19 George Glance's predecessor. He was the division  
20 president before he was made an RGM.

21 Q. So, Mr. Carruthers was the predecessor to  
22 George Glance?

23 A. Yes. And I had dealings with  
24 Mr. Carruthers regarding the structural repairs. He  
25 was involved in those as well.

1 Q. So, let's talk about WillowBrook for a  
2 minute. You were given responsibility over  
3 WillowBrook you said sometime in the latter part of  
4 2007; is that correct?

5 A. Yes.

6 Q. What happened after you were given  
7 responsibility for WillowBrook?

8 A. Well, went up there, you know, and made  
9 sure the homes looked good for closings and, you  
10 know, to kind of catch up on some of the warranty  
11 and some of the things that were lagging behind. It  
12 was in that initial transition period where I  
13 noticed the structural repair issue, the concerns  
14 there.

15 Q. What structural repair issue did you  
16 notice?

17 A. On the second and third floor of the  
18 buildings I was doing a framing -- you know, I was  
19 walking some of the buildings that were in the  
20 framing stage so -- obviously I could see the raw  
21 wood. I noticed that there was a species of wood,  
22 spruce, which is uncommon to be used in a structural  
23 load-bearing application, which caught my attention.  
24 I verified on the blueprint that the structural  
25 engineer of record specifically called for southern

1 yellow pine.

2 Q. Did it cause you concern that you noticed  
3 that spruce was used instead of southern yellow  
4 pine?

5 A. Yes.

6 Q. Why did it cause you concern?

7 A. Well, typically spruce is a material that  
8 is used in nonstructural elements of the home. So  
9 for instance, if you were framing the inside walls  
10 of these rooms you would use spruce, but the outside  
11 walls or any interior load-bearing walls that have a  
12 structural value to them you would typically see  
13 southern yellow pine.

14 Q. And you specifically observed spruce used  
15 in the outer load-bearing wall at WillowBrook?

16 A. Yes. There is a three-ply column, so  
17 three two by fours are nailed together, and those  
18 three two by fours formed a column that was intended  
19 to bear the load of the wooden beam that was above  
20 it, which was basically supporting the floor and the  
21 wall above that.

22 Q. Did you notice the spruce on every outer  
23 wall or just certain outer walls?

24 A. Well, we inspected -- noticed it in one, I  
25 mean, just the one that we were in, and just thought

1 it was odd. And I asked Sean, you know, to run down  
2 and check the units that were in that building. And  
3 when he checked some and I checked some and we both  
4 got back together and we both found the same thing,  
5 that spruce was used as opposed to southern yellow  
6 pine.

7 We then walked through the community and  
8 looked at other homes where it was readily visible.  
9 And at that point I also instructed Sean to go to some  
10 of the homes where it was covered up, you know, the  
11 homes that were further along in the stage that were  
12 dry walled and just asked him to cut a hole at the  
13 location of the column and just verify what species was  
14 used. Sean did that, and much to our dismay every  
15 single one that we checked was spruce.

16 Q. When you say Sean, are you referring to  
17 Sean McMelis?

18 A. No. Sean Taylor was one of the  
19 superintendents that reported to me in the  
20 WillowBrook community.

21 Q. So, it was Sean Taylor who was looking at  
22 the materials used, as well as you, to determine  
23 whether it was spruce or southern yellow pine?

24 A. Correct.

25 Q. How do you tell the difference between

1 spruce and southern yellow pine?

2 A. It's just a totally different species of  
3 wood. I mean, the grain is different, the color is  
4 different, the feel of it is different.

5 Q. So, for you it was readily apparent if it  
6 was one or the other?

7 A. Absolutely.

8 Q. Mr. Brown, I'm handing you what has been  
9 marked as Exhibit 1. Please take a look at  
10 Exhibit 1. Does Exhibit 1 appear to be a map of the  
11 WillowBrook community?

12 A. Yes, it does.

13 Q. Can you identify which buildings you  
14 observed that had the spruce instead of the southern  
15 yellow pine, if you recall?

16 A. The first building that we looked at --  
17 and I don't recall if it was 50 or 51, it was one of  
18 those two. So, from that point we looked at -- we  
19 verified 49, 50, 51. And our big concern was the  
20 homes on Majestic Elm Drive, buildings 1 thru 4 and  
21 5 thru 7. It was a big month and those were all  
22 slated to close in the weeks to come. And they were  
23 covered, so it was a little bit more involved, you  
24 know, identifying, you know, what species was used.

25 Q. Did you go in and see whether those had

1 the spruce or the southern yellow pine?

2 A. Yes.

3 Q. What did you find?

4 A. Spruce.

5 Q. For buildings one thru seven they had  
6 spruce?

7 A. Yes. From that point, you know, we  
8 elevated it and we simultaneously looked at the  
9 other buildings where we could. I mean, some of  
10 them there were homeowners living in, we weren't  
11 going to knock on the door and ask them if we could  
12 cut a hole in the wall just yet. But, wherever  
13 there was a spec home or -- you know, we checked the  
14 model, they were all spruce.

15 Q. So you checked other buildings as well,  
16 and the ones that you checked had spruce?

17 A. Yes.

18 Q. Did you see any that did not have the  
19 spruce?

20 A. No.

21 Q. So, every building that you checked had  
22 the spruce?

23 A. Yes.

24 Q. You may have mentioned this earlier, but I  
25 just want to clarify for the record: What problems

1       could be caused by having spruce instead of southern  
2       yellow pine?

3           A.    The spruce is not as strong as the  
4       southern yellow pine. I mean, for starters if the  
5       engineer is calling for you to use a specific  
6       material and you don't use the specific material, if  
7       anything, God forbid, goes wrong it's not a bad  
8       design it's bad construction, which we're tasked  
9       with ensuring the construction is up to par.

10           As far as what would happen if you used  
11       incorrect material, the spruce being weaker than  
12       southern yellow pine, in certain wind conditions, you  
13       know, in a storm event, could create torsion, which is  
14       one of the kind of wind loads that you would  
15       experience. And during that torsion, as I understand  
16       it from speaking to the engineers, the column could  
17       implode causing structural failure, you know, in the  
18       entire building.

19           Q.    And when you say the column could implode,  
20       you're talking about the column made out of the  
21       spruce?

22           A.    Yes. The column made out of spruce would  
23       implode to the building. And because of the way  
24       that they're stacked, you know, if the second floor  
25       implodes obviously it's not going to hold up the

1 third floor. So, you would have some serious  
2 issues. Those are three-story buildings, and the  
3 second and third floor is framed; so, it's wood.

4 Q. Do you know whether the plans called for  
5 the use of spruce or southern yellow pine?

6 A. They explicitly called for southern yellow  
7 pine. There was a detail for the column, and the  
8 detail specifically called out to use southern  
9 yellow pine.

10 I've seen in cases where they will say either  
11 or, you know, on certain things; never seen that in a  
12 situation like that. And after looking into it  
13 further, I mean, it clearly says southern yellow pine.

14 Q. Do you have any knowledge as to who made  
15 the decision to use spruce instead of southern  
16 yellow pine?

17 A. It wasn't a conscience decision. It was  
18 something that was an error on the part of BFS. It  
19 was unfortunate that none of the construction  
20 managers had noticed it prior, but these things do  
21 happen. No one caught it. It was a panelized  
22 product coming from BFS.

23 Q. Who is BFS?

24 A. Builder's First Source.

25 Q. And what was their role in the



1 construction at WillowBrook?

2 A. They had -- they were a supply company.  
3 They supplied us at different times depending on,  
4 you know, lumber costs -- they supplied us with  
5 lumber, strapping, other miscellaneous materials.  
6 And primarily they supplied us with the wall panels  
7 and the trusses, you know, trusses being what your  
8 roof is comprised of. And the wall panels, you  
9 know, the interior and exterior walls were  
10 prefabricated at the plant, so they came off the  
11 truck and the crane set them in place, you know, the  
12 framer added the strapping and all the things that  
13 he needed to do. But, the actual construction of  
14 the wall itself was made by them.

15 Q. So, when you discovered that spruce had  
16 been used instead of southern yellow pine had some  
17 of the units at WillowBrook already been sold to  
18 homeowners?

19 A. The majority of the homes on Majestic Elm,  
20 buildings one thru four and five thru seven were  
21 sold but unoccupied, they had not reached the close  
22 of escrow yet.

23 There were some other buildings in the  
24 WillowBrook community that were sold, and obviously  
25 they were occupied.

1 Q. Were you able to check any of those?

2 A. It was not part of the initial  
3 investigation. It was assumed that if that was the  
4 case in these other buildings that it was more than  
5 likely the case in the homeowner occupied buildings.  
6 Kara Kane(Phonetic) spoke with John Deekal(Phonetic)  
7 in the Legal Department and Travis Cope in the Legal  
8 Department. There was, you know, several meetings  
9 between them via phone with Steve George the  
10 Division President, Bill Fugleberg and even Kevin  
11 Bond who was internal counsel, but when the Sarasota  
12 Division opened up Kevin became the land acquisition  
13 and senior manager for the Sarasota Division. When  
14 Sarasota got absorbed by Fort Myers Kevin was  
15 transferred to Tampa and he worked there doing  
16 different, you know, managerial executive  
17 responsibilities. He was involved in some of those  
18 calls.

19 They came up with -- and I met with them  
20 also. I mean, there was a public relations aspect that  
21 they wanted to get figured out before they did anything  
22 further. At that point myself and Kathy Burford who  
23 was the warranty coordinator at the time, we were  
24 instructed by Bill Fugleberg to come up with a game  
25 plan, come up with a tracking mechanism, what the

1 repairs would be.

2 At that point once we did devise that plan  
3 and consult with Bill we were then given authorization  
4 to contact some of the homeowners. We made  
5 appointments with them to go in, cut a small piece of  
6 dry wall, examine the column to see what species was  
7 used.

8 Q. So, at that point did you go in and cut a  
9 hole in some of the homeowner's walls and examine --

10 A. I didn't personally go in and cut holes,  
11 but we had a team of people up there who did. I was  
12 on ground when it happened and, you know, did verify  
13 some of it and, you know, did go talk to some of the  
14 homeowners. But, really Sean and some of the other  
15 guys who did the cutting of the holes and --

16 Q. Sean Taylor?

17 A. Yes.

18 Q. What did they find when they cut the holes  
19 in the homeowner's walls?

20 A. That they were comprised of spruce.

21 Q. Did K.B. Home fix that issue? Did they go  
22 in and replace the spruce --

23 A. Yes.

24 Q. -- with southern yellow pine?

25 A. Yes.

1 Q. Did K.B. Home fix that issue for all of  
2 the units that -- where it was discovered that  
3 spruce had been used?

4 A. Yes. We scrubbed every home under  
5 construction, every finished home, every occupied  
6 home in the community. And then we doubled back and  
7 we spoke to the Building Department, we completed  
8 the repairs that were necessary.

9 We had Peico, which is an independent  
10 engineering firm that primarily deals with inspections.  
11 And we had -- we paid one of the Peico engineers to  
12 come out there by the hour. And, you know, he was able  
13 to inspect the work as we were doing it, which allowed  
14 us to finish it and get the -- you know, get the  
15 homeowners back in their homes in a timely fashion.

16 First we went in and did the homes on  
17 Majestic Elm Drive, which were scheduled to close.  
18 After I wrote the letter to Steve I strongly urged him  
19 as the license holder and qualifying agent that we not  
20 close these homes and that we fix the repairs  
21 immediately. Originally they -- initially they weren't  
22 going to, they were going to proceed with the closings.  
23 But the decision was made to halt the closings, fix the  
24 repairs. So, we concentrated on those first because  
25 they were -- we had access to them when we needed, we

1 didn't have to worry about putting anything back  
2 together. So we were able to go get all of these  
3 wrapped up, move the homeowners in. And at the same  
4 time we doubled back to the occupied homes and took  
5 care of those. I mean, that took a little bit longer  
6 because we were working on a homeowner's schedule.

7 Q. So, were some of the closings delayed  
8 because of the repairs?

9 A. Most of the closings were -- actually --  
10 well, all of the closings were delayed because of  
11 the repairs.

12 Q. Were the homeowners told why the closings  
13 were delayed?

14 A. They were. I mean, I don't think there  
15 was a great deal of specificity involved. They were  
16 informed that something was done erroneously in the  
17 construction of the home, it wasn't a big deal, it  
18 was something we caught and something that we were  
19 going to fix. And indeed, I mean, we fixed it, we  
20 got it certified by the engineer, we put it all back  
21 together, the people moved in.

22 Their closing was delayed, but most of the  
23 people I spoke to, you know, the general consensus was,  
24 you know, this is a good thing, a stand-up thing to do,  
25 it was the right thing to do. In fact, I had a few

1 people say they'd much rather stay in a hotel and move  
2 in, you know, a week or two later and know their home  
3 was safe.

4 Q. Were they told that spruce had been used  
5 instead of southern yellow pine?

6 A. No.

7 Q. When you first discovered this problem who  
8 did you report it to?

9 A. Bill Fugleberg in person at the division  
10 office, and immediately thereafter Steve George.

11 Q. And what was their reaction?

12 A. I would say a little bit of denial, a  
13 little bit of shock. There was a lot riding on  
14 those closings, that was basically what was going to  
15 make the business plan. The initial reaction is  
16 they were inclined to press on. I did push the  
17 issue, especially with the letter to Steve. And the  
18 decision was made after a few days to halt the  
19 closings.

20 Q. Do you recall whether there was ever a  
21 time when K.B. wanted to stop constructing  
22 WillowBrook and give the project over to someone  
23 else; do you recall anything like that?

24 A. There was really not serious talk about  
25 that. I mean, at the time there was a lot of barter

1 and trading between builders, you know, I'll give  
2 you ten lots over here, you give me the rest of the  
3 community over here. So, it was not uncommon. To  
4 my knowledge there was no, you know, serious offers  
5 or serious negotiations or serious consideration to  
6 get rid of the WillowBrook community. It was one of  
7 the communities that was actually selling really  
8 well. It allowed us to gain market share in an  
9 up-and-coming area where we did not have any other  
10 product.

11 Q. I guess I'm referring to 2007 when you  
12 first got there. Do you recall any discussions  
13 about K.B. possibly turning WillowBrook over to  
14 someone else?

15 A. No.

16 Q. Did you ever speak to any of the engineers  
17 about the issue with the spruce?

18 A. Absolutely.

19 Q. Who did you speak to?

20 A. I don't recall -- I spoke to several  
21 people at Slicox and Kidwell, they were the engineer  
22 of record. And I don't recall exactly who I spoke  
23 to, but I did speak to several of the engineers  
24 there, you know, to find out how serious it was,  
25 come up with a resolution to it.

1 I also spoke to Bob Case from Land Investment  
2 Services. He was our engineer of record for all of our  
3 stuff south of WillowBrook.

4 Q. Who is Mr. Case with?

5 A. Land Investment Services in Fort Myers,  
6 Palm Beach Boulevard.

7 Q. And you said he was an engineer of record?

8 A. Yes. And you had asked me about, you  
9 know, the intention -- what their reaction was  
10 and -- that's actually when Reuben was sent down.

11 Q. Who is Reuben?

12 A. Reuben O'Neal.

13 Q. He was sent down when?

14 A. When this was first discovered.

15 Q. The problem with the spruce?

16 A. The problem with the spruce.

17 Q. Sent down to WillowBrook?

18 A. Yes. Reuben was the -- he was the human  
19 resources individual who handled multiple divisions.  
20 He had a very big region. In fact, I think at one  
21 time it was the whole east coast. And Reuben was  
22 sent down to kind of figure everything out. There  
23 was a lot of discussion back and forth as far as  
24 closing the homes or not closing the homes.

25 Q. You mean whether to close them with the



1 spruce or whether --

2 A. And fix it afterwards or to fix it prior  
3 to and then close them.

4 I was adamant as the license holder that it  
5 needed to be done prior to closing, because otherwise  
6 you're, number one, putting people's lives at risk and  
7 you're also covering up a known latent defect. Broc  
8 Flint was the sales manager for the Fort Myers Division  
9 at that time. Broc and I had extensive conversations  
10 about it. He felt the same way. However, the rest of  
11 the management team did not feel that way.

12 Reuben was sent down to further investigate  
13 the situation. After the conversation I had with  
14 Reuben and the conversation that Broc had with Reuben  
15 we were then informed that we would not be closing  
16 the -- we would be fixing the repairs -- doing the  
17 repairs and then closing the homes.

18 Q. To the best of your knowledge were all of  
19 the homes repaired before they were sold -- or  
20 before the closings?

21 A. Yes. It was a very uncomfortable time  
22 there. There was a lot of blow back from bringing  
23 that up. So much so that Broc resigned. He just  
24 said I can't deal with it and I don't want to deal  
25 with it after seeing what is going on, and he

1       resigned.

2           Q.    You said blow back, what do you mean by  
3       that?

4           A.    Well, Broc and I got a lot of heat. The  
5       management team was not happy with the way we  
6       handled the situation.

7           Q.    What specifically were they not happy  
8       about?

9           A.    They weren't happy that we were vocal and  
10      adamant about not closing the homes. They weren't  
11      happy with the fact that I put it in writing. And  
12      at this point this is when Rick Carruthers was  
13      involved as well, the regional general manager.  
14      Steve had called him and explained to him what was  
15      going on.

16          Q.    And what was Mr. Carruthers' role in this  
17      process?

18          A.    Well, when you're dealing with a situation  
19      of this magnitude it's only appropriate to notify --  
20      I mean, he's pretty much the top of the chain of  
21      command; it's his region. And this was something --  
22      I mean, it was a serious issue. There was -- you  
23      know, there was PR releases generated by Kara Kane  
24      on, you know -- people were instructed that no one  
25      was to discuss the matter with the media, with the

1 public, with homeowners, with potential homeowners,  
2 you know, really with anyone.

3 And it also lead to Reuben's demise. Reuben  
4 came down on a Thursday. He met with pretty much all  
5 the players that were involved privately.

6 Q. Like the management of K.B.?

7 A. He met with Steve, he met with Bill, he  
8 met with --

9 Q. Who is Steve?

10 A. Steve George.

11 Q. Okay. And Bill?

12 A. Fugleberg.

13 Q. Oh, Fugleberg.

14 A. Yes.

15 Q. And Steve?

16 A. George.

17 Q. Okay.

18 A. And Bill Fugleberg. He met with all the  
19 superintendents, you know, Sean Taylor, Scott  
20 Sesik(Phonetic).

21 Q. Did he meet with you?

22 A. Absolutely. I was -- he met with Broc. I  
23 was the last person that he met with. We met in  
24 WillowBrook right here in Building 10 on Spruce  
25 Hills Drive. It was a lengthy conversation. We

1       were there for probably two hours.

2               I expressed -- Reuben was the human resources  
3       guy, but he was also like the fixer, like they sent him  
4       to go handle stuff. Whenever there was a sticky  
5       situation they sent Reuben in, take care of it. I  
6       expressed to Reuben the deep concern that I had with  
7       the inferior product, with having homeowners living in  
8       this product and homeowners that will be living in this  
9       product, especially -- I mean, at this time we were  
10      coming up into a hurricane season too. So, I mean,  
11      time was something that was important.

12             I also expressed to Reuben, which the other  
13      guys did as well, the tension that we felt coming from  
14      upper management regarding the matter. I expressed to  
15      Reuben that I was concerned that I was going to lose my  
16      job. I was very upset about it and, you know, I said,  
17      Reuben I don't understand, I'm supposed to be doing the  
18      right thing -- I mean, I'm supposed to be doing the  
19      right thing for the homeowner, but quite honestly it's  
20      the right thing for the company. We have a brand, you  
21      know, we're under the FTC guidelines for having, you  
22      know, unsavory warranty practices many years before.  
23      But, the consent decree was something that governed us,  
24      and the way we conducted ourselves from a warranty  
25      perspective regarding how things were documented,

1 timelines in which things were handled after they were  
2 documented.

3 So, I felt it was an important matter to me,  
4 and I was feeling the heat, you know, that Chicken  
5 Little thing was thrown around.

6 Q. What do you mean by Chicken Little thing?

7 A. I was referred to as Chicken Little, like  
8 the sky is falling, like -- basically that I'm  
9 making a mountain out of a mole hill. That --

10 Q. Who -- go ahead.

11 A. That was just scuttlebutt that was coming  
12 down from the rumor mill that, you know, from  
13 discussions that were had in the office. I mean,  
14 there was girls in the office who overheard a lot of  
15 stuff, like Denise, the young lady who helped me  
16 with the letter I sent to Steve George expressing my  
17 initial concerns.

18 Q. Okay. So, who called you Chicken Little?

19 A. It's my understanding, Steve, Bill, Rick.  
20 And there was some consultation with Jeff  
21 Logsden(Phonetic), who was the acting division  
22 president for Tampa who later became, you know, my  
23 division president when we were absorbed by Tampa,  
24 in the mist of this. And, you know, I think they  
25 knew that Jeff was going to be doing some of this

1 stuff, so he was kind of involved. Plus, Jeff had  
2 the same product up in Tampa, you know, the Moss  
3 project was the same extract product, the same exact  
4 engineer as WillowBrook.

5 Q. So, to the best of your knowledge who  
6 called you Chicken Little?

7 A. To the best of my knowledge it was a term  
8 that was used by all of the folks I just mentioned.

9 Q. And what was your understanding of why  
10 they were calling you Chicken Little?

11 A. Because they felt that I wasn't taking the  
12 company line and I was making, you know, a mountain  
13 out of a mole hill. They didn't feel it was such  
14 grave importance as I did.

15 And, you know, funny enough, Reuben was here  
16 Thursday and he was here Friday. And Reuben gave me  
17 his word that we were not going to close these homes.  
18 Reuben gave me his word that there would be no  
19 retaliation taken against me for the role I played in  
20 bringing this to everyone's attention.

21 Much to my dismay I tried calling -- Reuben  
22 told me, he would call me Monday, I didn't hear from  
23 Reuben, I tried calling Reuben and I got the famous  
24 corporate he's no longer here. I tried e-mailing him,  
25 the e-mails bounced back, you try calling his cell

1 phone and it's disconnected.

2 So when Reuben got back, you know, to his  
3 home base he was -- it's my understanding he was  
4 terminated.

5 Q. So, it's your understanding that after  
6 Reuben had come down and assessed the situation at  
7 WillowBrook that he was terminated?

8 A. Correct. Reuben made recommendations that  
9 were in line with my recommendations, and that's it.  
10 He was -- by Monday morning he was no longer  
11 reachable.

12 Q. And again, we're talking -- when we talk  
13 about the situation with WillowBrook we're still  
14 talking about the use of spruce versus southern  
15 yellow pine?

16 A. Yes.

17 MR. SLEMP: Okay. Why don't we take a  
18 break.

19 (THEREUPON, a break in the Sworn Statement  
20 occurred from 11:24 a.m. until 11:40 a.m.)

21 BY MR. SLEMP:

22 Q. Mr. Brown, earlier you talked about BFS  
23 had constructed the walls that were used that had  
24 the spruce instead of the southern yellow pine; do  
25 you recall that?

1 A. Yes.

2 Q. The walls that BFS built, were those the  
3 load-bearing walls?

4 A. The load-bearing walls and the interior  
5 walls. Anything that was framed in those units was  
6 built at the BFS plant and shipped to the job site  
7 already fabricated.

8 Q. And is that the procedure by which the  
9 WillowBrook units were built throughout the time you  
10 were there, that BFS would pre-make the walls and  
11 then ship them out?

12 A. Yes.

13 Q. Is that a cheaper process than framing the  
14 walls on the site?

15 A. Yes.

16 Q. Do you know whether anyone instructed BFS  
17 to use spruce instead of southern yellow pine?

18 A. Not to my knowledge, no.

19 Q. Do you know if BFS built the walls for any  
20 other developments that K.B. was constructing?

21 A. Yes. There were other wall panels that  
22 BFS supplied that were not the WillowBrook product,  
23 just regular single-family product.

24 There was -- the same three-story townhome  
25 product that was built in WillowBrook was also built in



1 the Tampa/Clearwater area in Moss Landing.

2 Q. And do you know whether Moss Landing had  
3 walls that had the spruce board instead of the  
4 southern yellow pine?

5 A. I can't say with certainty. I didn't look  
6 at them myself. I did raise that concern to Jeff  
7 Logsden who was the acting division president for  
8 the Tampa Division. And upon Fort Myers being  
9 absorbed by Tampa I began reporting to Jeff, and I  
10 did express my concerns to Jeff regarding that.

11 Q. And what did Jeff say?

12 A. He was not very receptive. He basically  
13 kind of shrugged me off and shooed me away, and that  
14 was really that. In fact, there was one particular  
15 occasion where we had a divisional meeting in Tampa,  
16 it was something that we did weekly, and it just  
17 struck me as odd, Jeff was meeting with Mike Leonis,  
18 who was the regional service manager, so he handled  
19 all the warranty stuff up in that area. And Dave --  
20 and I don't recall -- Dave Page, who was a  
21 superintendent slash warranty guy. And there was  
22 a -- you know, after the meeting they had a little  
23 sidebar if you want to call it, and they were  
24 discussing Moss Landing. I just thought it was odd  
25 that they didn't ask me for any insight being as we

1       were -- I was involved with the same product in  
2       WillowBrook dealing with the deck repairs. And I  
3       kind of wanted to, you know, give my opinion on  
4       that. And I was told it was under control, and same  
5       thing, kind of shooed away.

6           Q.    Do you know whether K.B. ever took any  
7       steps to determine whether the Moss Landing walls  
8       had spruce instead of pine?

9           A.    To my knowledge, no.

10          Q.    Do you know whether K.B. undertook any  
11       repairs in Moss Landing to replace spruce with  
12       southern yellow pine?

13          A.    Not to my knowledge.

14          Q.    Do you know who at K.B. would have that  
15       knowledge, based upon your work there?

16          A.    Tom Schramski. Tom Schramski was the  
17       regional construction manager in the Tampa -- in one  
18       of the Tampa areas, I believe it was the north  
19       region. And through the reductions in force he took  
20       over -- same situation as I had down in Fort Myers,  
21       he took over more and more ground. He's still with  
22       the division. He's running the construction end of  
23       it now for the Tampa Division, which is now  
24       reopened.

25          Q.    The Tampa Division is now reopened?

1 A. Yes.

2 Q. But for a while it was folded into the  
3 Orlando Division?

4 A. Correct. And they are doing business  
5 again, you know, in the Fort Myers area. There is  
6 no Fort Myers Division at this time, it's still  
7 being run out of Tampa.

8 Q. Do you know whether the plans for Moss  
9 Landing were the same as the plans for WillowBrook?

10 A. Yes.

11 Q. They were the same?

12 A. They weren't a hundred percent the same.  
13 The structural elements and the floor plan were  
14 exactly the same, the exterior facade was a little  
15 bit different.

16 And Moss Landing was a problematic community.  
17 It had, you know, pretty much the same issues as  
18 WillowBrook regarding the decks and the homeowners  
19 filing suit. In fact, there were homeowners who spray  
20 painted their garage doors in front of their houses,  
21 "Buy this home back".

22 Q. At Moss Landing?

23 A. Yeah. And it was on the news, and it was  
24 a -- I mean, there was literally people who spray  
25 painted their garage door, "Please buy this home

1 back". So, it was definitely a sensitive issue up  
2 there.

3 Q. Do you know what, if any, repairs K.B.  
4 made at Moss Landing?

5 A. I am aware of deck repairs made caused by  
6 the water intrusion, the same situation that was at  
7 WillowBrook. And pretty much the same repair and  
8 the same process upon which the repairs were  
9 commenced was the same in both communities.

10 Q. You may be aware, WillowBrook's undergoing  
11 a pretty comprehensive rebuild of the exterior  
12 walls; I don't know if you're aware of that. But,  
13 do you know if Moss Landing has had a similar type  
14 of repair?

15 A. I don't know what the repairs entail that  
16 they were most recently doing. The repairs that  
17 were done prior during my tenure were the same in  
18 both communities.

19 Q. Okay. So the time you were there, the  
20 types of repairs K.B. was doing at WillowBrook were  
21 the same as the types of repairs K.B. was doing at  
22 Moss Landing?

23 A. Yes. Yes. And, I mean, I'm familiar with  
24 what those repairs are.

25 Q. Do you know if K.B. had a sales staff that

1 was based at Moss Landing?

2 A. Oh, absolutely. Every community has a  
3 sales staff that is usually two to three sales  
4 counselors depending on, you know, the run rate in  
5 the community. I mean, WillowBrook had three, I  
6 think Moss had two, it might have had three at one  
7 point when it was running pretty hot.

8 Q. Do you know who would have overseen the  
9 sales staff at Moss Landing?

10 A. There was several people throughout that  
11 time. There was a lot of turn over. I know at one  
12 time during that period -- I don't recall Donya's  
13 last name, but Donya was in charge of sales. She's  
14 since moved back to Michigan. But, no, I don't  
15 recall who was overseeing it at that time.

16 There was also a gentleman named Jack who  
17 was -- I don't recall his last name either. Some of  
18 those people were out of Orlando or out of Tampa, so I  
19 really didn't have much interaction with them.

20 Q. Did you know a Jack Lazinsk?

21 A. That's the Jack I was referring to.

22 Q. To the best of your knowledge he had some  
23 dealings with the sales staff at Moss Landing?

24 A. Yes. Absolutely. As well as WillowBrook.

25 Q. Do you know the approximate time frame

1 that Moss Landing was being sold to unit owners,  
2 like the years? Was it '07 to '11? Do you know the  
3 time frame?

4 A. I believe, to the best of my recollection,  
5 '06 to '09.

6 Q. Do you know when complaints first came to  
7 K.B. about problems at Moss Landing?

8 A. I'd be speculating if I said I knew  
9 exactly when that first transpired. I do know that  
10 they had issues in Moss Landing at the same time  
11 that there was issues in WillowBrook regarding the  
12 deck repairs.

13 Q. But, you don't know if one came before the  
14 other?

15 A. I believe WillowBrook came first. I'm  
16 rather certain that WillowBrook came first.

17 Q. Do you know whether spruce is more  
18 expensive than southern yellow pine or vice versa?

19 A. It varies depending on commodity pricing.  
20 Sometimes one is more expensive than the other.  
21 They're relatively close in price though.

22 Q. Do you have any knowledge as to why spruce  
23 was used instead of southern yellow pine?

24 A. After dealing with the whole repair  
25 situation from when it started to its completion, I

1 believe that it wasn't done intentionally. It was  
2 an error at the BFS plant. And BFS owned up to that  
3 and, you know, they took it on the chin and said,  
4 yeah, this was our fault, we built it wrong.

5 BFS was very involved in the repair of that.  
6 They supplied us with some labor, we had back-charged  
7 them for, you know, all of the repairs, they supplied  
8 us with any material that we needed to fix everything.

9 Q. After this issue happened and after the  
10 repairs did K.B. continue to use BFS for the  
11 remainder of the WillowBrook units; do you know?

12 A. They did use them for certain things. You  
13 know, BFS was a big company, they did -- they did  
14 trim -- you know, molding work and doors. They were  
15 a big supply company. They supplied us with --  
16 anything that had to do with wood they do supply.  
17 So, we kind of switched on and off with what they  
18 supplied at the time. And that was primarily  
19 driven, you know, by pricing.

20 They do that often, they will bid back and  
21 forth between lumber supply companies. I don't believe  
22 that they supplied wall panels. They did supply roof  
23 trusses and then some other -- trim work and things  
24 like that; loose lumber, strapping; things like that.

25 Q. Earlier you made a comment that you had

1 put your concerns in writing.

2 A. Yes.

3 Q. Can you just elaborate on that a little  
4 bit? What exactly did you do?

5 A. Well, obviously I was very concerned for  
6 the homeowners living there. I was concerned about  
7 my license. I was really even genuinely concerned  
8 about K.B.'s brand, you know, what would the right  
9 thing be to do.

10 When the division president Steve George  
11 specifically asked me not to send this to him via  
12 e-mail it gave me pause. I was concerned that, you  
13 know, they're looking for -- quite honestly that  
14 they're looking for a fall guy.

15 So, at that point through the advice of  
16 Denise Ruiz, who was Steve George's executive  
17 assistant, she was someone who had worked there a long  
18 time with me and I trusted her. She advised me that it  
19 would be in my best interest if I were to generate a  
20 document expressing my concern, you know, make sure you  
21 date everything, make sure you carbon copy yourself.  
22 She said give one copy to Steve, she said give one copy  
23 to me, I'll mail it to your house, don't open it, just  
24 keep it sealed in that company envelope in case this  
25 comes up later, you know, there is your proof that you



1 did raise this up the chain of command and was trying  
2 to get it fixed. So, that's what I did.

3 The content of the letter was basically that.  
4 In the letter I informed Steve about the nature of what  
5 my findings were. I had mentioned that I spoke to the  
6 engineer and that -- my exact words were I felt that  
7 this was a life safety issue. And I strongly urged  
8 Steve to not close any of the homes that were scheduled  
9 to close, complete the repairs and then close the  
10 homes.

11 Q. What response, if any, did you receive to  
12 the letter?

13 A. He was not thrilled with the way I wrote  
14 the letter and that I had CC'd myself and other  
15 people. I mean, he -- the same way that I felt on  
16 edge when he asked me not to e-mail it to him, I  
17 think the perception that I had was that he felt on  
18 edge that I did go ahead and handle it the way that  
19 I did.

20 Q. Go back and explain, if you will, what you  
21 mean by that he had told you not to send an e-mail.

22 A. That's explicitly what he told me. He  
23 said -- explain to me the nature of this, he said,  
24 but don't send me an e-mail. He said just write  
25 something up and give it to me.

1 I've been around Fortune 500 companies long  
2 enough to know that when someone is telling you that in  
3 a situation like that it's, you know, time to be  
4 cautious, because something doesn't smell right.

5 Q. Did you receive any type of letter  
6 response?

7 A. No. At that point -- in fact, after the  
8 letter was given to Steve, myself and several other  
9 people who were involved in this, such as Bill  
10 Fugleberg and Kathy Burford and Denise and a few  
11 others, we were specifically instructed to cease all  
12 correspondence regarding the matter, and anything  
13 that we were -- anything we were to do was to be  
14 discussed in person or over the phone, but  
15 nothing -- they were very clear that nothing was to  
16 be in writing regarding this.

17 I mean, at some point, you know, after the  
18 public relations folks and the legal team came up with  
19 their game plan and we had a plan of what we needed to  
20 do, at that point there were some correspondence. But  
21 it was basically about, you know, we have an  
22 appointment with Mrs. Smith at Building 3 at 10:00. It  
23 was very limited.

24 Q. Who was Kathy Burford?

25 A. Kathy Burford was hired on shortly after I

1 was to be the -- my counterpart on the warranty  
2 side. She was the regional service manager. And  
3 Kathy -- I mean, at the end of the day it was  
4 basically Kathy and I that were left in the  
5 division. In fact, she worked for K.B. Home -- she  
6 was laid off the same day that I was; we were let go  
7 at the same time. She was then rehired basically as  
8 a subcontractor, not as a direct employee, but as a  
9 subcontractor, afterwards as she handled the Chinese  
10 drywall repairs, which were numerous.

11 That was also part of the conflict that I had  
12 with the management team was about the Chinese drywall  
13 repairs. That was really the big thing.

14 Q. Can you explain what happened with the  
15 Chinese drywall?

16 A. There was rumblings about how there was  
17 some Chinese drywall. And, you know, at the time it  
18 was all preliminary findings. No one really knew,  
19 hey, Chinese drywall is bad, Chinese drywall causes  
20 this.

21 We had some curious warranty calls that came  
22 in where we had air conditioners just go. That's not  
23 typical for a brand new air conditioner to go, and to  
24 have multiple units to go from the same thing just was  
25 odd. But, at the time no one really knew about Chinese

1 drywall. So, everyone is scratching their head trying  
2 to figure out, you know, maybe it's faulty product.

3 We also had a couple of, you know, one-off  
4 calls here and there. I recall one of them we had a  
5 call in Burnt Store Lakes where we had a homeowner who  
6 complained about a terrible smell in his house. And,  
7 you know, I tried to do everything that I could. I  
8 payed thousands of dollars to an outside air quality  
9 specialist to come in. And at the time he didn't even  
10 know about the Chinese drywall. Their findings were  
11 that the formaldehyde used in the adhesive to  
12 manufacture the cabinets was what was creating the  
13 smell, or the formaldehyde that was used in the backing  
14 of the carpet was causing the smell. We repainted his  
15 house and did a bunch of things.

16 Later on as a little bit more started coming  
17 out about the Chinese drywall I raised the concern to  
18 Tom Schramski, to Mike Leonis. I also -- and I don't  
19 have a copy of the electronic correspondence that I  
20 sent, but I did send electronic correspondence to Lisa  
21 Jackson who is the executive assistant to John Deekal  
22 who was the regional in-house counsel. And I sent an  
23 e-mail over to Ms. Jackson explaining to her that there  
24 was some rumblings down here about Chinese drywall, we  
25 don't really know anything about it yet, it's very

1 preliminary, just kind of coming out with the findings.  
2 But, I felt it was something that they needed to get  
3 ahead of the curve on, that homeowners were going to be  
4 contacting us about it and that it possibly, from what  
5 I've seen, that we probably had hundreds of homes,  
6 potentially, that could have been afflicted by this  
7 faulty drywall that was put in.

8           There was a few subsequent correspondence  
9 between Lisa and I regarding the matter, and then I was  
10 told, you know, we're working on it, we'll let you  
11 know; don't do anything.

12           You know, I pushed the issue because -- for  
13 the same reasons I pushed the last issue, I mean, a lot  
14 of those homes were under my license, there are  
15 homeowners that are involved and, I mean, that's  
16 somebody's mom, somebody's sister, somebody's daughter  
17 that is living in these houses and you need to do the  
18 right thing.

19           And again, I mean, they felt I was wasn't  
20 taking the company line. I thought I was. I mean,  
21 this is -- it always comes out when you do the wrong  
22 thing, so you're better off doing it right, doing it  
23 right the first time and, you know, I made a mistake,  
24 judge me on how I correct my mistakes not on the  
25 mistake; I used to say that all of the time. And I

1 thought it would be good for the brand. I mean, this  
2 wasn't something that, you know -- we didn't even  
3 supply the drywall to these houses, we subcontracted a  
4 drywall company that was turn key. This company  
5 provided material and labor. They didn't even know  
6 they were doing something faulty.

7           However, there was an instance up in Tampa,  
8 the Tampa Division, while the divisions were still  
9 separate, where one of the purchasing agents in Tampa  
10 leveraged shipping -- shipping containers of Chinese  
11 drywall, of course not -- I mean, neither he nor anyone  
12 else knew that Chinese drywall was bad at the time, it  
13 was strictly a dollars and cents thing; I mean, he's a  
14 purchasing agency, that's his job is to, you know,  
15 shave down to the bottom line. And he was able to  
16 leverage, you know, literally a boatload of Chinese  
17 drywall. And that's where -- they didn't do it turn  
18 key, they bought the material and paid someone to do  
19 the labor. And I wasn't really concerned with that.  
20 In fact, at the time I didn't even have knowledge of  
21 that, that came out later as we started discussing  
22 Chinese drywall more and more.

23           But, it was something that I was very  
24 concerned about. And I brought it up repeatedly to  
25 Jeff Logsdon, I brought it up in construction meetings.

1 And that's really where I really started to feel a lot  
2 of heat was at that point. I can just tell the  
3 demeanor of everyone kind of changed, and I kind of got  
4 cut out. And where I used to be like the point man on  
5 a lot of conversations, suddenly I was persona  
6 nongrada. And it was just odd. I was an exemplary  
7 employee. I had the highest reviews you can get, you  
8 know, consistently exceeds expectations, across the  
9 board, you know, for several years, every time we were  
10 evaluated. So, it was just odd that all of a sudden I  
11 was cut out of the loop. Like I wasn't being included  
12 on the Chinese -- I was the one who engaged the Chinese  
13 drywall e-mails, and then shortly thereafter I was no  
14 longer on the carbon copy list.

15 Q. Do you know whether Chinese drywall was  
16 used at WillowBrook?

17 A. I don't believe so.

18 Q. Other than the spruce issue that you've  
19 already identified, did you discover any other  
20 problems with the construction at WillowBrook?

21 A. Yes. In fact, prior to discovering the  
22 southern yellow pine spruce issue my counterpart  
23 from the southern region, Sean Skinner and I were on  
24 our way back from a business trip in Orlando, and  
25 our supervisor Sean McMelis, who was the director of

1 construction at the time, asked us to stop by and  
2 take a look and give him our opinion on what we  
3 thought was causing it, if it was really, you know,  
4 a big problem, what we thought we could do to fix  
5 it. I mean, there was some talk about the leaky  
6 decks, that there was potentially some leaky decks  
7 up there, they didn't know if it was built wrong or  
8 what the case was prior to us going up there. And  
9 we had talked about it in operations meetings.

10 Q. When did you first hear about the leaky  
11 decks at WillowBrook?

12 A. The latter part of 2006, the early part of  
13 2007.

14 Q. And how did that issue come to your  
15 attention?

16 A. It was something that was being discussed  
17 between Jeff Kelly, who was the Vice President of  
18 Purchasing, Sean McMelis, who was the Director of  
19 Construction, Bill Fugleberg at the time -- this was  
20 prior to him becoming the Director of Operations, he  
21 was the customer service manager. And, I mean, you  
22 know, we were all in small offices. We were kind of  
23 shouting to each other from, you know, office to  
24 office. And I just heard everyone talking about it.  
25 I was kind of brought into the conversation. We



1       talked about it in a few operations meetings.

2               And then at that point we just happened to be  
3       passing by that way on 75 going to Orlando -- it was a  
4       K.B. meeting we were going to, and Sean McMelis asked  
5       Sean Skinner and I to go take a look at it.

6               Q.     Approximately when did this take place?

7               A.     Early 2007.

8               Q.     What did you observe when you went to take  
9       a look at the issue?

10              A.     Well, it was clear as day that there was  
11       obviously a problem. I mean, there was mushrooms  
12       growing on the under side of the decks, the OSB was  
13       swollen from water damage. I mean, you could just  
14       smell -- there was a musty mildewy smell.

15              Q.     Was there discussion about how to fix the  
16       problem?

17              A.     Of course Sean and I discussed it while we  
18       were on our -- Sean Skinner and I discussed it while  
19       we were on our way back, you know, we still had an  
20       hour or so drive, so we were -- we were just shocked  
21       at how it had gone that far without it being brought  
22       to anyone's attention, without a remedy, you know,  
23       being established.

24              You know, we got down to the division office  
25       the following day and we discussed it with Sean McMelis

1 and with Jeff Kelly.

2 Q. This deck that you observed that had  
3 mushrooms growing on it, was this a unit that was  
4 owner occupied?

5 A. No. It was a unit under construction.

6 Q. So, this was a unit under construction?

7 A. Correct. Sean and I did not visit any  
8 homeowner occupied homes during that visit, but we  
9 did look at several buildings that were under  
10 construction.

11 Q. Did you notice other problems with other  
12 decks other than just the one that you just  
13 mentioned that had the mushrooms?

14 A. Well we looked at Building 15, we looked  
15 at Building 16. And I don't recall which building  
16 on Spruce Hills Drive, but either 10, 11 or 12. And  
17 we noticed that the condition that we saw was  
18 consistent with all of the buildings.

19 Q. So, you're seeing the same problems  
20 repeatedly?

21 A. Yes.

22 Q. And you believe this was in early 2007?

23 A. Yes.

24 Q. What happened after that?

25 A. Well, we gave our recommendations to Sean

1 and to Jeff as to why that condition was present,  
2 and we gave some input on, you know, what we could  
3 do to fix it. And then pretty much from that point,  
4 I mean, we were kind of removed from the situation,  
5 it was something that was handled, you know, at  
6 upper management level.

7 Q. So, you weren't in the loop as to how it  
8 was going to be fixed?

9 A. Not initially when they were determining  
10 what they were going to do to -- I mean, they did  
11 ask us here and there, you know, hey, what do you  
12 think about this or -- and we gave our opinion. But  
13 really, they were handling that amongst themselves.  
14 And, you know, I was aware when the repairs started,  
15 I mean, that's when, you know, Mark Parsons was  
16 still up there as the regional manager, and that's  
17 when they began doing the deck repairs.

18 I was familiar with what was going on because  
19 some of the subcontractors that were doing the work up  
20 there were subcontractors that worked for me so, you  
21 know, daily conversations we were talking about what  
22 was going on up there. And there was some, you know,  
23 conversation amongst everyone in the office about what  
24 was going on up there. And, I mean, it was the general  
25 consensus from the management team, you know, how did

1 this get so far, how did nobody catch that up there. I  
2 mean, it was one thing if it was one building, but  
3 when, you know, you have multiple buildings with the  
4 same problem, clearly, you know, it's either a  
5 craftsmanship issue or a material issue, but there is  
6 definitely a problem.

7 I mean, we only saw unoccupied homes, but  
8 that condition existed -- the leaky decks really was  
9 brought front and center by people who had lived there  
10 who had leaky decks and, you know, that's how it all  
11 came about.

12 Q. You said there was a discussion about how  
13 did this get so far and how did no one catch it;  
14 what was discussed about that?

15 A. It was more of everyone was just kind of  
16 shocked. I mean, it was more of like, hey, how did  
17 that -- I can't believe that no one noticed that, I  
18 can't believe that no one did anything about that  
19 and, you know, how did we end up with all of these  
20 at once. That was really the extent of the  
21 conversation.

22 Q. Who supervised the construction of  
23 buildings 15, 16, 10, 11 and 12; do you know?

24 A. There were multiple superintendents up  
25 there. Some of those guys got rotated in and out,

1 there was some changes in staff. I mean, I would  
2 say that the guy who ran the community was Mark  
3 Parsons. He was the regional manager, he was on the  
4 ground, he was the senior guy.

5 Q. Was he the person that was actually  
6 physically present at WillowBrook?

7 A. He was physically present at WillowBrook,  
8 yes. And he was the senior person who was there on  
9 site.

10 Q. Do you know where Mr. Parsons is now?

11 A. Mr. Parsons works for a company that  
12 installs seawalls in the Manatee/Hillsborough County  
13 area.

14 Q. Do you know the name of the company?

15 A. I don't recall off hand.

16 Q. Do you know when Mr. Parsons left K.B.?

17 A. He was part of the reduction in force,  
18 which would have taken place in either November or  
19 December, because we had one and then shortly  
20 thereafter another. I believe in '07.

21 Q. Who took Mr. Parsons' place at  
22 WillowBrook?

23 A. The position was really eliminated, it  
24 wasn't necessarily backfilled. They didn't hire an  
25 additional regional construction manager, but I

1 assumed the responsibilities of regional  
2 construction manager in that area in addition to the  
3 areas that I was working in.

4 Q. Did you hear any other discussions at K.B.  
5 about how they were going to fix the leaking decks?

6 A. No. It was primarily from the management  
7 team, as we discussed, you know, in the office in,  
8 you know, a couple of meetings.

9 Q. And these decks were both on the second  
10 floor and third floor?

11 A. Yes. There was more problems with the  
12 decks on the third floor than there was on the  
13 second floor, but they were both problematic. There  
14 was issues on both. You know, some buildings -- you  
15 know, maybe one unit on this side had the top, one  
16 unit had both. But, the top was the -- the top  
17 floor had more problems, because it wasn't covered.  
18 Really, it's a bad design to have that kind of deck  
19 with no roof overhang.

20 Q. That's what the plans called for?

21 A. That is what the plans called for. In  
22 fact, there was talk at one time about putting a  
23 roof overhead, but it was cost prohibitive and they  
24 opted not to do it. There was a time -- I mean,  
25 there was several ideas that were bounced around.

1     There were several ideas that were tried. They  
2     tried different -- the repair was basically the  
3     same, it's rip off the back wall, replace any  
4     damaged lumber, re-tyvek it, re-wire lath it,  
5     re-stucco it, fix the stuff on the inside. But, the  
6     manner in which they took care in sealing the deck  
7     itself evolved over the time. And it was really --  
8     it was more of a trial and error thing.

9             And the plans -- the plans give you the meat  
10     and potatoes, if you will, of how it's built, but they  
11     don't tell you what side dishes and deserts you're  
12     having, that's up to the builder. So, the plans didn't  
13     specify how the decks were to be sealed or finished,  
14     that's up to the discretion of the builder. Their  
15     plans are more there for the size and how it's  
16     structurally to be configured. But, the problem wasn't  
17     with the structural configuration, the problem was with  
18     the way the decks were being sealed. And on some of  
19     them, on the initial repairs was the manner in which  
20     they were built. I mean, it doesn't take an engineer  
21     or a general contractor to tell you that if you've got  
22     a deck and it's back pitched towards the house, when it  
23     rains it's going to leak. I mean, it's not rocket  
24     science.

25            Q.     Did you observe some decks that were

1 pitched towards the house?

2 A. Yes.

3 Q. Do you recall approximately how many that  
4 you noticed were pitched towards the house?

5 A. More than half a dozen.

6 Q. So, what was the first round of repairs on  
7 the decks? What did K.B. do to try to fix those?

8 A. On the first round of repairs, you know,  
9 they were all the same as far as ripping it off and  
10 putting it back together, it was really the way in  
11 which they sealed it. And the first go around they  
12 used like a fiberglass product. And I guess the  
13 thought was that was going to seal everything up,  
14 which it did not. It was a horrible idea and a  
15 terrible failure.

16 There was a few different products they used.  
17 At one point they tried a different type of under  
18 lament and they -- you know, they completed all the  
19 repairs, but they leaked again. So, they went back  
20 and, like, on an individual case-by-case basis through  
21 the warranty department -- in fact, Danny Vinson who  
22 now works for a painter and lives in Lakeland, he was  
23 actually one of the regional managers. And that's kind  
24 of -- I mean, you have the regional managers and as  
25 they started having the reductions in force, you know,



1 they kept the regional managers and we kind of went out  
2 into the field and started, you know, doing project  
3 manager, superintendent work. Well, Danny was sent to  
4 WillowBrook. And while he was in WillowBrook he was  
5 tasked with handling those deck repairs as they came in  
6 on a case-by-case basis. They tried installing gutters  
7 hoping to divert, you know, excessive run off from the  
8 roofs thinking that that might stop it. You know, they  
9 tried tiling them again with a different under lament.

10 When I got -- when I had come up to  
11 WillowBrook -- I mentioned that I was demoted, when I  
12 was demoted they pulled me out of WillowBrook and said  
13 you're going to handle all the stuff down south,  
14 meaning Fort Myers, Port Charlotte, North Port. So,  
15 basically, I was tasked with those construction  
16 operations. But, when those started to dwindle down --  
17 and WillowBrook was very, very busy, I mean, there was  
18 a lot of sales up there, a lot of closings -- they  
19 brought me back up to WillowBrook to work, Danny and I  
20 ran the community together. And when I got back up  
21 there, you know, there was still some deck issues. And  
22 I recommended that they use either a hot mop process or  
23 a modified Bitchumen roofing product, which is what you  
24 would actually use, you know, on a roof. It's, you  
25 know, not a flimsy deck under lament. It's made for a

1 roof. You would use it on a commercial roof. It's a  
2 very sturdy product. Of course it's a more expensive  
3 product.

4 But, I had a similar problem at Lennar back  
5 in Broward where we had some second-story balconies,  
6 and it wasn't the same thing, but it was water  
7 intrusion coming from the balcony, and one of the ways  
8 that we remedied that was by using modified. So, I  
9 knew it was a good idea. I made the suggestion to use  
10 the modified and switch from either the flow crete in  
11 the tile to a thin -- like a remodeling paver that  
12 would allow water to permeate, it would allow water to  
13 run off. And we actually did do a bunch of the decks  
14 with the pavers.

15 However, we were told not -- Chad  
16 Burlingame(Phonetic) was, at the time -- you know, he  
17 was the purchasing guy for the Tampa area, he later was  
18 brought over to Orlando when that got wrapped into  
19 Orlando, took over Orlando. And he then actually got a  
20 big promotion. He was supposed to go out to the  
21 corporate office in Los Angeles to work on national  
22 purchasing, and at the same time that's when all of  
23 this WillowBrook stuff really exploded as far as the  
24 media and the suits went, and he was let go.

25 But, I had a bunch of conversations with Chad

1 and Danny. And Chad dealt directly -- you know, we had  
2 no control over what product we were using, that was  
3 done at a higher level than us, that was done at the  
4 Purchasing Department at the corporate office. And for  
5 cost reasons they opted not to go with the modified  
6 paper. In fact, at much protest from the roofing  
7 company, because the roofing company was the -- when  
8 they came to do the roof they also did the balconies,  
9 the decks. What they ended up going with was a peel  
10 and stick product, which is something you would use on  
11 a roof, but it's not -- the product specifications tell  
12 you clearly you're not supposed to use it in that --  
13 it's just not a sturdy product, it's not meant to be --  
14 have people standing on it and people walking on it on  
15 a day-to-day basis.

16 Q. So, to the best of your knowledge and  
17 experience the peel and stick product that was used  
18 was not designed for balconies?

19 A. Correct. And --

20 Q. One more follow up to that. I just want  
21 to confirm my understanding of what you said. Is it  
22 your testimony that the Purchasing Department at  
23 K.B. Homes corporate office in California made the  
24 decision to use the peel and stick product?

25 A. No. I'm sorry, the corporate -- the

1 division office out of Tampa. I mean, specifically  
2 Chad Burlingame was in charge of -- that was his  
3 department, he handled all of that. And so much so  
4 that the young lady who handled the purchasing end,  
5 the scheduling end for the roofing company that we  
6 were using at the time told Danny and I that it  
7 wasn't going to work. And I said, well, I know it's  
8 not going to work, I'm jumping up and down telling  
9 them it's not going to work. She actually e-mailed  
10 Chad, Danny and myself stating that, hey, we'll put  
11 in -- basically, we'll put in whatever you want to  
12 put in, but I'm telling you this is not the product  
13 you want to use, it's not made for that application,  
14 you're going to have problems down the road. Chad  
15 told her that's what we're going to use, proceed; if  
16 you want the work that's what you've got to use.

17 Q. Who is it that told you this?

18 A. There was e-mails back and forth that were  
19 to me, Danny Vinson and Chad Burlingame where the  
20 roofing company e-mailed Chad, copied us and said,  
21 you know, hey listen, this is not the product you  
22 want to use, it's not going to work. Chad did not  
23 copy us on the e-mail telling her to proceed with  
24 it, but he e-mailed her directly and told her to  
25 proceed with it. Because we all had -- I mean, it

1 was something that we were discussing, obviously we  
2 were trying to figure out what we were going to use  
3 to finish these homes. And we were told, well, Chad  
4 said if you guys want the work that's what we're  
5 putting in, that's what we're going to use. And  
6 that's indeed what they used.

7 Q. So, was it Chad's decision to use the peel  
8 and stick product, or someone else in the Tampa  
9 office?

10 A. I believe it was Chad's decision. That  
11 was the type of decision that Chad made on a  
12 day-to-day basis. I mean, is it possible that --  
13 yeah, it's possible that he went and spoke to  
14 someone else about it, but it would be out of  
15 character. I mean, these are decisions that he made  
16 on a day-to-day basis.

17 Q. Do you know where Chad is now?

18 A. I do not.

19 Q. Do you know the name of the roofing  
20 company that supplied the peel and stick material  
21 for the balconies?

22 A. We used several different roofing  
23 companies over this course of time. I don't recall  
24 off hand -- I don't want to give you the wrong  
25 information. However, that's something I could

1 easily find out for you. In fact, Danny Vinson  
2 would remember exactly who the company was, and he  
3 would remember the name of the young lady who sent  
4 the e-mail. And she specifically sent the e-mail  
5 and she told us, she's like, I'm sending the e-mail  
6 to CYA. She's like, this is not going to work.  
7 She's like, I tried telling Chad, he didn't want to  
8 listen.

9 Q. Do you recall when this was that the  
10 decision was made to use the peel and stick and then  
11 these e-mails came to you, Danny and Chad?

12 A. Late 2008, early 2009. And there was  
13 other recommendation says we made in sealing up the  
14 deck that they didn't follow as well.

15 Q. What other recommendations were made that  
16 they did not follow?

17 A. When I made the recommendation to use the  
18 modified Bitchumen on the deck itself, you know, I  
19 also made the recommendation to have custom pans  
20 fabricated. A pan is basically where they weld  
21 together a one-piece unit that you would sit in and  
22 then sit the door on top of, so if water were to get  
23 under the door it would be in a pan, the pan has a  
24 lip, it's not going to come into the house, it would  
25 roll out and on to the deck.

1 I also made the recommendation to use that  
2 same modified paper, or a peel and stick or flashing;  
3 something of the sort. On that third floor balcony  
4 there are some columns that the railing is fastened to.  
5 And there is the roof, so they don't go all the way up,  
6 they're probably 42 inches I want to say. And I felt  
7 that from my experience in dealing with this with  
8 Lennar that the stucco will crack, and when the stucco  
9 cracks you will have water seep in through that crack.  
10 Water takes the path of least resistance. It's going  
11 to trickle down and you're going to have a water  
12 intrusion issue.

13 If you can go underneath where you're putting  
14 the stucco and put this modified paper, like  
15 essentially making a cap, you're diverting the water,  
16 and the water will run down the back of the stucco,  
17 which is not great, but you're not going to have a  
18 water intrusion. I mean, they're actually now  
19 designing stuff to do that. And it would have come out  
20 from the bottom of the column and you wouldn't have the  
21 water going into the actual framing members. I mean,  
22 once it gets in the framing members it's going to run  
23 down two by fours and then it's going to go down the  
24 vertical members, the horizontal members, and it will  
25 get back in the house.

1 Q. Were there any other recommendations you  
2 made about the balconies that K.B. did not follow?

3 A. Not that I recall.

4 Q. Do you know approximately how many  
5 balconies were repaired using the peel and stick  
6 material?

7 A. I don't know exactly how many were  
8 repaired using the peel and stick. Danny would be a  
9 great resource in gathering that information. He  
10 personally handled the repair end of it, the  
11 warranty end of it. At the time he was focused more  
12 on the warranty end, I was focused more on the  
13 production end. I can tell you that Building 38,  
14 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, those were  
15 all done with the peel and stick.

16 Q. And those were new buildings --

17 A. New buildings, correct.

18 Q. -- that were to be sold to consumers?

19 A. Correct.

20 Q. Do you know whether those balconies failed  
21 in the sense of water intrusion?

22 A. I believe that some of them did. I  
23 remember going through there and there was  
24 scaffolding, you know, set up -- that's what it was  
25 for, you know.



1 MR. SLEMP: Let's go off the record.

2 (THEREUPON, a break in the Sworn Statement  
3 occurred from 12:34 p.m. until 1:44 p.m.)

4 BY MR. SLEMP:

5 Q. Mr. Brown, do you know whether the plans  
6 at WillowBrook called for the use of Oriented Strand  
7 Board, or OSB?

8 A. To the best of my recollection the prints  
9 called for either or, as long as they were  
10 equivalent. So, you couldn't -- you know, if the  
11 plan called for a 3/4 subfloor decking which is what  
12 we used between the second floor and third floor,  
13 you know, you couldn't substitute 3/4 OSB for 1/2  
14 inch plywood, it needs to be the same strength and  
15 still have the same structural integrity. But, I  
16 believe it did specify that you can use either OSB  
17 or plywood.

18 Q. Do you have any knowledge as to why K.B.  
19 used OSB at WillowBrook?

20 A. It was more cost effective.

21 Q. Do you have any knowledge as to whether  
22 the air conditioning units that were used at  
23 WillowBrook were undersized?

24 A. To my knowledge they were not undersized.

25 Q. Did you ever come across any issues at

1 WillowBrook with missing hurricane straps?

2 A. Not on completed homes. I mean, obviously  
3 under construction -- when the homes are under  
4 construction, sure there are always things that are  
5 missing or not installed right, and that's what the  
6 superintendents are there for, to ensure that that  
7 stuff if it is missing does get installed. And  
8 the -- the inspectors are there also as kind of a  
9 safety net on that as well, they inspect the  
10 hurricane straps and the nails used in them.

11 Q. Were there any issues with the stucco that  
12 was used at WillowBrook?

13 A. No. There was no failure per se or  
14 anything out of the ordinary with the stucco. There  
15 was some instances where you had some settlement or  
16 shrinkage cracks, which is common for stucco. The  
17 problem in WillowBrook was underneath the stucco how  
18 the homes were made water tight, particularly by the  
19 decks. So, if you do have a stucco crack and water  
20 gets behind it, if it's not properly sealed behind  
21 that you will get water intrusion.

22 Q. And do you know whether there was a  
23 problem with how the homes were sealed under the  
24 stucco?

25 A. The homes that were built when I was

1 acting as a project manager in WillowBrook, and even  
2 when I was there in the regional manager capacity,  
3 that was something we paid close attention to. But,  
4 when I came up to WillowBrook, I mean, there was  
5 many buildings that were already completed, so I  
6 never got to see what was under them. And there  
7 were buildings that were done after, obviously I  
8 don't know what was done on those.

9 Q. Did you experience any issues with the  
10 flashing around the windows?

11 A. Not necessarily around the windows. I'm  
12 not going to say that there was none. You know,  
13 when I was there there might have been one or maybe  
14 two. And I'm sure that after that there was  
15 probably one or two. But again, that's not uncommon  
16 for any builder, you know, on any product.

17 Where there was a problem with the flashing  
18 was at the decks, the balconies. And that's also where  
19 there was a problem with, you know, more so with the  
20 stucco cracking regarding water intrusion.

21 Q. Other than the things we've already  
22 covered today were there any other issues that you  
23 noticed with materials that were used in the  
24 construction at WillowBrook?

25 A. No. I mean, I think it's pretty on par

1 with, you know, with what industry standards would  
2 be, with the exception of the decks, obviously.

3 Q. In your opinion, who was responsible for  
4 supervising the work of the subcontractors at  
5 WillowBrook?

6 A. That changed over time. Number one, I  
7 mean, the subcontractors that are there doing the  
8 work were required to have quality control folks  
9 that work directly for them that were supposed to  
10 oversee their guys. In addition to them, there were  
11 superintendents there who were responsible for  
12 making sure things were installed properly. And,  
13 you know, I mean really it goes all the way up the  
14 chain of command.

15 There was meetings -- they have a community  
16 team meeting once a week, one member of management  
17 participates in that meeting with the sales staff and  
18 construction staff in each community. So, in  
19 WillowBrook, you know, like Chad Burlingame, we  
20 mentioned before, he came down for some of those  
21 meetings. And trade issues or quality issues or things  
22 like that were discussed and elevated at that time.

23 Q. And the superintendents that you just  
24 mentioned, those worked for K.B. Home?

25 A. Yes.

1 Q. Were superintendents on site at  
2 WillowBrook or did they often leave their post?

3 A. No. There was -- the guys that worked up  
4 there pretty much stayed up there all day. I mean,  
5 most of the time they didn't even take a lunch  
6 break.

7 Q. Did you personally receive any complaints  
8 about the construction at WillowBrook?

9 A. Yes.

10 Q. Who did you receive complaints from?

11 A. Numerous homeowners. You know, when I got  
12 up there, there was a lot of frustration expressed  
13 to me from various homeowners, you know, regarding  
14 the troubles that they had with the decks and, you  
15 know, homes not being ready when they were promised,  
16 and quality issues with homes. So, I mean, I got  
17 those complaints.

18 You have the run of the mill warranty claims;  
19 whenever somebody has got something wrong with their  
20 house they're looking for someone who works for the  
21 builder who they can, you know, complain to. I mean,  
22 there was some homeowners that were upset with the  
23 structural repairs, you know, as far as not being able  
24 to move in. There was -- they were conflicted. I  
25 mean, they were happy that it was fixed before they

1 moved in and it was fixed period and it was noticed,  
2 but of course they were upset that it wasn't noticed  
3 sooner on in the game.

4 Q. Approximately how many complaints did you  
5 receive from homeowners at WillowBrook?

6 A. I would say that they're numerous. I  
7 don't know that I could recall an exact amount. I  
8 would say several dozen.

9 Q. Did K.B. Home have any type of formal  
10 procedure that you followed for handling homeowner  
11 complaints at WillowBrook?

12 A. Well, K.B. Home on a national level as a  
13 corporation is governed under the Federal Trade  
14 Commission Consent Decree for some warranty related  
15 matters the way in which they handled things, the  
16 way they marketed things. And this was years ago.  
17 But, you know, it was very serious and everyone knew  
18 that there was certain ways -- there was a  
19 procedure, the procedure has to be followed, things  
20 have to be documented.

21 The complaints that I received weren't like  
22 complaints necessarily directed to me, they were more  
23 people who were upset, they saw me down there, they  
24 knew that, you know, I worked for K.B. Home and I was  
25 in the management capacity. So, you know, of course --

1 it's not so much they were wanting me to address an  
2 issue, it was more of just like they wanted somebody to  
3 listen to their grievance.

4 As far as the warranty issues go, there was a  
5 procedure. Warranty is supposed to be phoned in, faxed  
6 in or e-mailed in to the division office. The division  
7 office is supposed to immediately document that. It  
8 goes on a report -- it's a warranty matrix that is  
9 tracked, it tells you the nature of the problems, when  
10 the issue was reported, how many days the issue has  
11 been outstanding. And I don't recall if it's more than  
12 21 days, I believe, give or take a few days, it needed  
13 to get reported into the corporate office. And, you  
14 know, they tracked all of that. And there was certain  
15 guidelines that needed to be followed. You couldn't  
16 just stop a superintendent in the street and so oh by  
17 the way and he would take care of it. That was very  
18 explicit in the consent decree on how those things were  
19 to be documented and tracked. It was for the  
20 homeowner's protection that we did that.

21 Q. Are you familiar with the Palm River  
22 Development by K.B. Home?

23 A. It's in Hillsborough or Clearwater, one of  
24 the two. Yes.

25 Q. Do you know whether there were problems

1 with the construction at Palm River?

2 A. They had water intrusion issues there as  
3 well.

4 Q. How did you hear about that?

5 A. Well, when those issues transpired was at  
6 the time that Tampa had absorbed Fort Myers. So, at  
7 that time -- you know, the management team up there  
8 was the management team down by where I was, and we  
9 had meetings at the division office pretty much on a  
10 weekly basis. So, we would drive up there and, you  
11 know, we talked old business, new business and that  
12 came up. And it came up in the meeting and just  
13 came up in conversation with the guys, you know,  
14 hey, what's going on with you, I've got this mess  
15 I'm dealing with; stuff like that.

16 Q. Do you know who at K.B. Home was  
17 overseeing the work at Palm River?

18 A. The construction work or the warranty  
19 work?

20 Q. Construction work.

21 A. That switched over time. I know that Dave  
22 Page was involved in that. I know that Mike Leonis  
23 and Tom Schramski were involved in that. And there  
24 were other folks that were involved in that too,  
25 those are just the three that come to mind.



1 Q. Do you know who at K.B. Home was  
2 overseeing the warranty work at Palm River?

3 A. Again, that would have been Dave Page and  
4 ultimately Mike Leonis. I mean, Mike Leonis was in  
5 charge of warranty for all of those communities.  
6 So, he was involved in all of that.

7 Q. Do you know if Mike Leonis is still at  
8 K.B. Home?

9 A. Now, he is not.

10 Q. Do you know where he is now?

11 A. I do not. Danny Vinson would know.

12 Q. Are you familiar with the Wedge Wood  
13 Development by K.B. Home?

14 A. I've never been there, but I am familiar  
15 with the community.

16 Q. Have you heard whether there were any  
17 issues with the construction at Wedge Wood?

18 A. Nothing that stands out. I think that  
19 those problems came up after I was gone already.

20 Q. Did you ever deal with Marshall Gray?

21 A. On a limited basis. I didn't deal with  
22 him on a day-to-day basis. He was the division  
23 president for Tampa and I was down in Fort Myers.  
24 So, I didn't really deal with Marshall very much. I  
25 mean, we did have, you know, regional execution team

1 meetings and we had certain business gatherings at  
2 the Orlando office where I did, you know, have  
3 interactions with Marshall briefly.

4 I had some dealings with Marshall as we were  
5 transferring license stuff over. He was the license  
6 holder for a lot of those homes in WillowBrook. So,  
7 you know, there were times I had to get him to sign a  
8 permit or something of the sort.

9 I've actually spoken to Marshall since both  
10 of us -- leaving K.B. Home. He's actually the division  
11 president for M.I. Homes.

12 Q. Where is M.I. Homes located?

13 A. They're a national company. He's out of  
14 the Tampa office. And they're building, I think,  
15 from like Polk County to Manatee County.

16 Q. When you say that Marshall Gray was the  
17 license holder, what do you mean by that?

18 A. In the same respect that I was the license  
19 holder for the Fort Myers Division, his license is  
20 the license that qualified the Tampa Division. And  
21 also the Fort Myers Division for a period of time  
22 when Chris Stevens, when you spoke about before, was  
23 the VP of Operations for Fort Myers, when Chris was  
24 let go there was no license holder, and you have to  
25 have a license holder. So, Marshall's license was

1 used for the Fort Myers Division. And it was also  
2 the license that was initially used in the Sarasota  
3 Division. Marshall is very friendly with George  
4 Glance.

5 Q. Do you know who was in charge of approving  
6 materials used in the construction of WillowBrook?

7 A. That also changed because of the turnover.  
8 Initially when Sarasota first opened as a division  
9 it was a satellite office of Tampa. I don't recall  
10 who the purchasing manager was at that time for  
11 Tampa. Then when Fort Myers got involved with the  
12 Sarasota Division Jeff Kelly took over.

13 Q. Who was it before Jeff Kelly?

14 A. I don't remember who the gentleman from  
15 Tampa was. There was a -- I know there was a few  
16 different purchasing agents, Aaron Sachau,  
17 S-A-C-H-A-U. And Chad I don't think was running the  
18 department, but he was in the department.

19 Q. Chad Burlingame?

20 A. Yes.

21 Q. And this was while you were there,  
22 correct?

23 A. Well this was while I was there, but not  
24 in WillowBrook. This was while WillowBrook was its  
25 own division.

1 Q. While you were at K.B. Home?

2 A. Yes.

3 Q. So, you don't know necessarily who took  
4 over after you left K.B. Home?

5 A. Well no one took over, it was still under  
6 Chad Burlingame. When I was at K.B. Home and Fort  
7 Myers took over Sarasota it was Jeff Kelly for a  
8 brief period of time. Jeff was laid off and Tampa  
9 had taken -- it's like a shell game. But Tampa took  
10 over again. And at that point Chad was now the  
11 manager of the Purchasing Department. So, he was  
12 the one that was directly in charge of what  
13 materials were to be used.

14 And after I left Chad remained the purchasing  
15 manager. In fact, when Tampa was absorbed by Orlando  
16 they took Chad, relocated him to Orlando and made him  
17 in charge of all the divisions: Orlando, Tampa,  
18 remanence of Fort Myers.

19 Q. Did K.B. directly purchase the materials  
20 for construction at WillowBrook, or did the  
21 subcontractors purchase the materials?

22 A. Both. It depends on what product you're  
23 referring to. Some of the product was turn key.  
24 Like the wall panels for instance, you know, we got  
25 those from somebody else, we supplied the labor.

1       There were certain things that we supplied directly.  
2       And it switched back and forth.

3               Before the market contraction most everything  
4       was turn key, after the market contraction people were  
5       looking for ways to save costs, you know, and one of  
6       the ways they could do that was buying your own  
7       material there is no mark up. So, K.B. did a lot of  
8       that.

9               I know that, you know, different divisions  
10       handled it differently. Fort Meyer was mostly turn  
11       key. Up in Tampa they did supply a lot of their own  
12       material, for instance, drywall. For a time that was  
13       something that K.B. purchased, you know, on their own,  
14       and we had a company that supplied labor.

15       Q.     Do you know whether any materials were  
16       used that were not called for in the plans at  
17       WillowBrook?

18       A.     The plans don't really specify all the  
19       material. They don't specify finished material,  
20       they don't necessarily spec out the grade of  
21       material in a lot of cases or the manufacturer. The  
22       plan is more so for the exterior finish, you know,  
23       the stucco, and for the structural components of the  
24       home.

25       Q.     Now, you said the grade of the material

1 was not specified in the plans. Do you have any  
2 opinion as to the grade of material that was used at  
3 WillowBrook?

4 A. Well, I think it evolved over time. I  
5 think over time the quality of materials that were  
6 used, you know, degraded. I mean, there were some  
7 material that was absolutely inferior, I mean, on  
8 the decks, you know, that fiberglass coating, that  
9 was an inferior product, the peel and stick that  
10 they put down was an inferior product. So, I mean,  
11 I guess it kind of varied according to the time line  
12 and what specifically -- you know, what material  
13 you're referring to. But, yes, there was  
14 substandard materials used at times.

15 Q. Are there any other substandard materials  
16 that you can think of that were used?

17 A. By K.B. or specifically WillowBrook?

18 Q. At WillowBrook.

19 A. The deck material was really what comes to  
20 mind, because that was something that was very  
21 obvious, and it was expressed to Chad and members of  
22 management that it was substandard. And I think,  
23 you know, using that substandard material sticks to  
24 my mind because it had the most impact, I mean,  
25 that's what created a lot of problems for the

1 homeowners there was the decks, which I feel could  
2 have been avoided had they been constructed properly  
3 using the proper material.

4 Q. And the same question for K.B. in general.  
5 Are there any instances that you can think of of the  
6 use of inferior materials?

7 A. You know, in all honesty I think all  
8 builders try to get the most value. But, I think  
9 there is a balance in what you do. And towards the  
10 latter part of my tenure with K.B. when everything  
11 was under Chad's watch as far as material goes, it  
12 was noticeable that materials were getting more  
13 inexpensive, cheaper. And I think -- I don't think  
14 that was something that was noticed by me alone, I  
15 mean, that was something I remember talking about  
16 with some of the other guys; you know, are you  
17 kidding me is this what we're putting in now, how  
18 much are we really saving.

19 So I think there was, and I think it was  
20 probably across the board, and it was something noticed  
21 by the guys in the field, and I would say sales  
22 associates too. I mean, they're not building but they  
23 have to sell that product. So, they see what -- we're  
24 switching -- when you go from a Cadillac to a Toyota  
25 there is a noticeable difference.

1 Q. Any specific examples that you can think  
2 of of where the materials changed over time?

3 A. There were some, you know, at one time we  
4 used metal framing, which I'm a proponent of metal  
5 framing for several reasons. But, they switched to  
6 wood because it ended up being cheaper. They  
7 switched to siding on the sides of the houses, which  
8 is, you know, inferior to stucco, at least for this  
9 region. That's probably a better product like in  
10 Ohio, but in south Florida with the heat and the  
11 rain it's not a better product, it's an inferior  
12 product. In fact, you will notice in WillowBrook  
13 there is a change in the way the exterior facades  
14 look, and that was because they put in a more  
15 inexpensive product.

16 Q. So, you mean over time as they were  
17 building WillowBrook the product became more  
18 inexpensive to K.B. Home?

19 A. Yes. And, I mean, that was deliberate.  
20 They were looking at what the direct costs are to  
21 the home versus, you know, the percentage of return  
22 on investment. And, you know, that was stuff that  
23 was really in Chad's area.

24 Q. Are you familiar with how K.B. Homes  
25 selects its subcontractors?



1           A.   Well, I don't think there is any specific  
2 corporate guideline on how contractors are selected.  
3 It's more something that is handled on a division  
4 basis. And it's ultimately the decision of the  
5 purchasing manager. Sometimes you have better  
6 purchasing managers than others. Jeff Kelly was  
7 one -- for example, Jeff didn't hire on new vendors  
8 without getting the blessing from construction. So,  
9 we would bring a new vendor in, we would sit them  
10 down in the conference room and myself, Sean McMelis  
11 at the time, Sean Skinner and Jeff and even like  
12 Lisa Covell (Phonetic) was a purchasing agent. And we  
13 would sit down with them inside the conference room  
14 and ask them, you know, why they want the work and  
15 get a little bit of history on their company and how  
16 they operate and what their quality control  
17 procedures are. But that was something unique to  
18 the way Jeff handled things and the way we handled  
19 it down there.

20           Chad did not take the same tact. With Chad  
21 it was basically who has got the lower bid. In fact,  
22 there was often a lot of complaints from the  
23 construction staff about the subs that we were having  
24 to use and, you know, they're cheaper but they end up  
25 costing you more money because it costs you time, and

1 time is money.

2 So, yeah, that was something that was  
3 discussed often.

4 Q. Do you know when Chad Burlingame became  
5 the purchasing manager?

6 A. I don't know exactly when he became the  
7 purchasing manager, but I do know that he was the  
8 purchasing manager when Tampa absorbed Fort Myers.

9 Q. Do you know how K.B. Home selected its  
10 subcontractors to work at WillowBrook?

11 A. Originally when WillowBrook first started  
12 that was done by Mark Parsons. And when it was  
13 under Fort Myers, you know, Jeff kind of reevaluated  
14 the situation and kept some people, let some people  
15 go. And then when it was back under Tampa, you  
16 know, Chad was more of a bottom line kind of guy.  
17 It was more of a numbers thing with him.

18 Q. Did you say Jeff Myers or Jeff Kelly?

19 A. Jeff Kelly.

20 Q. Okay. I'm sorry. I was confused. So, it  
21 was Mark Parsons originally, then Jeff Kelly and  
22 then Chad Burlingame?

23 A. Yes.

24 Q. Do you know whether there was any sort of  
25 formal interview of the subs before they took on the

1 work?

2 A. I wouldn't say that, that was the rule.  
3 Some of the subs were known to -- whomever the  
4 purchasing -- I mean, that's the purchasing guy's  
5 job is to know those trades. So, some of them are  
6 past associates from a previous builder, you know --  
7 I mean, if you have a long-term relationship with  
8 someone and they've worked for you for ten years  
9 you're not going to do a formal interview. But I  
10 would say, yeah, sure, there were some formal  
11 interviews conducted with new people who were  
12 bidding.

13 When it was Chad running it it was more of --  
14 less of a formal meeting, more of, you know, let's  
15 compare what we've got on the bid and what is the  
16 bottom line as far as the numbers go.

17 Q. I may have asked you this, but just for my  
18 own clarification, who at K.B. Home monitored the  
19 work of the subcontractors at WillowBrook?

20 A. Directly for K.B. Home?

21 Q. Yes.

22 A. Okay. That would have been the site  
23 superintendent, which that changed over time. There  
24 were a lot of guys that were out there over the  
25 course of WillowBrook being built. Mark Parsons was

1 up there, you know, Mark was a regional manager, he  
2 was really the senior guy. There was a gentleman up  
3 there named Todd. A couple of other people who kind  
4 of came and went; none that I remember. But, they  
5 all reported to Mark.

6 And, you know, down the road when it was  
7 under Tampa you had John Turner and Sean Taylor, maybe  
8 one or two other guys, and they reported to Danny. And  
9 then when we took it over we had some of the same guys  
10 out there, you know, Sean Taylor, John Turner, Scott  
11 Sesik, J.R. Greenwell, you know, they were -- they were  
12 the guys on the ground directly responsible for the  
13 day-to-day operations.

14 And initially when Sean Skinner and I went  
15 there to look, I mean, there was some substandard  
16 construction practices and some subpar work that we  
17 observed. After that, when it was briefly under Tampa  
18 and then Fort Myers, I don't think -- I think it was  
19 more of a material issue and a plan issue rather than a  
20 defective workmanship issue. But after I left I don't  
21 know -- you know, I really don't know what happened  
22 after that point. At that point I know they did par  
23 the product back, you know, and it was definitely more  
24 of an inexpensive product.

25 Q. Mr. Brown, you testified that you have

1 experience as a general contractor, correct?

2 A. Yes.

3 Q. What is your understanding of the  
4 relationship between a general contractor and a  
5 subcontractor?

6 A. Well, the general contractor is ultimately  
7 responsible for all of the subcontractors. Some of  
8 the subcontractors -- some of the work that the  
9 subcontractor are doing the general contractor can  
10 do, but the general contractor can't do plumbing,  
11 can't do electric; that needs to be done by someone  
12 who has a speciality license in that area. So, the  
13 general contractor hires qualified licensed  
14 individuals to do those particular things.

15 And the general contractor is in less of a  
16 hands-on role and more of a management role as far as  
17 ensuring, you know, the scheduling, the overall  
18 product, ensuring that everything is built according to  
19 print, make sure that everything is built according to  
20 Florida Building Code, you know, that you're -- the  
21 general contractor is really the person who is calling  
22 the shots on the job site, subcontractors are reporting  
23 to him.

24 Q. Do you know which subcontractors installed  
25 the flashing around the sliding glass doors and the

1 balconies?

2 A. Well, I don't know that there always was  
3 flashing on the sliding glass doors. There wasn't  
4 always flashing on the balconies. I had urged them  
5 to flash the balconies. A moment ago you brought up  
6 the stucco failing, and part of that was flashing.  
7 If those caps that we talked about earlier would  
8 have been properly flashed that would have  
9 eliminated or greatly minimized any water intrusion  
10 issues that you would have had from the cracking  
11 stucco.

12 But in general, any flashing practices were  
13 done by the roofing contractor, which did change over  
14 time throughout the community.

15 Q. So, the roofing contractor would handle  
16 the flashing?

17 A. Yes. According to what K.B. Home  
18 specified for him to do and what product we told him  
19 to use.

20 Q. Which subcontractor would handle the  
21 construction of the balconies?

22 A. Well, the construction of the balconies  
23 would have been initially assembled by the framer.  
24 That's the person who really puts everything  
25 together.

1           From that point you would have the tyvek  
2 contractor, and that changed over time who did the  
3 tyvek. At one time we had a guy that did nothing but  
4 tyvek, at one time the framer put up the tyvek. And  
5 then after it was tyveked you would have -- the roofer  
6 played a part in sealing it up when it was done with a  
7 peel and stick product. You know, then you had the  
8 window guy comes in behind him and, you know, he's  
9 responsible for sealing up the sliding glass door when  
10 he puts it in. Then, you know, you have the stucco  
11 guy, he comes in and puts a wire lath -- it's a  
12 paperbacked lath that does help with water intrusion  
13 also. So, he would wire lath that and the same -- he  
14 comes back and stuccos it.

15           I mean, there is a lot of hands that go in  
16 there. The painter -- the paint is actually what seals  
17 up your house down here. So, the paint is really  
18 critical. Which is another thing too, I mean, would  
19 the community have been better served had K.B. Home  
20 upgraded to a higher grade paint? Absolutely. This is  
21 Florida, this isn't Ohio or Indiana, and the stucco is  
22 not waterproof. The paint and the caulk is what is  
23 sealing your house up, and if you don't maintain it  
24 you're going to have leaks. And I tell people that  
25 every time I turn over a home, it's something they need

1 to maintain. And they were not using an expensive  
2 product, they were using a builder grade, base grade  
3 paint and caulk. And I did make the recommendation to  
4 them to upgrade at urethane caulk as opposed to a water  
5 based latex caulk. I mean, latex verses urethane,  
6 you're getting like three times the life expectancy  
7 therefore reducing the maintenance, because the reality  
8 of it is the homeowners aren't always going to maintain  
9 it the way they should, especially you're not going to  
10 notice a crack on the stucco on the third floor on the  
11 side; you're just not. So, that was a recommendation  
12 that kind of fell on deaf ears. And I do genuinely  
13 feel if they would have upgraded the paint product and  
14 the caulking product that would have helped. So, yeah,  
15 the painter does actually play a big role in sealing  
16 that up. I mean, if the painter misses some areas that  
17 are caulked, you know, yeah the flashing technically  
18 should deflect the water from getting into the home,  
19 but the whole point is to not get the water to get to  
20 the flashing.

21 So, there was a lot of people who touched on  
22 that. I mean, there was a railing contractor who came  
23 in afterwards to put the aluminum guard railings up and  
24 put the screen enclosures for the people who opted for  
25 screen enclosures on the second floor. There were ways



1 they could have improved on that. Again, that's  
2 something that you bring up and it falls on deaf ears.  
3 And I brought it up and I made the guy do it when I was  
4 there. But like I said, I wasn't there for the ones in  
5 the beginning nor was I there for the ones in the end.  
6 I mean, when you drill a hole through an exterior wall  
7 common sense would dictate that you fill the hole with  
8 caulk and then you run the screw in. If not -- I mean,  
9 water doesn't take but a tiny crevice. So, if you do  
10 have a little bit of a gap, it rains all the time here,  
11 you will get water that goes in there, it will get past  
12 the stucco, it will get into the framing. Is it going  
13 to rot out your deck in three years? No. But, when  
14 you get water in the water will spread the stucco crack  
15 open, the crack will get bigger, you will get more  
16 water, the problem gets worse.

17 You know, like with the screen enclosures,  
18 there weren't proper measures taken to have some sort  
19 of drainage mechanisms like weep holes or something on  
20 the bottom of these tracks to allow for it to drain.  
21 So, if you have one of those Florida rainy seasons  
22 rains and it comes down quick and hard you will end up  
23 with water on the balcony. And now you have it sealed  
24 in because you have this screen enclosure that has no  
25 way to drain. No, it's not a flood and no it's not a

1 ton of water, but that's an area where you want to keep  
2 all the way away from at least as best you can. You  
3 don't want the water trapped there. And the way they  
4 had done some of the decks -- like when they first  
5 started them they did tile. Well, the water is just  
6 going to sit there, there is no place for it to -- I  
7 mean, tile is not permeable except for the grout, which  
8 then you get the water going through the grout now up  
9 under the tile and that's why you had people who had  
10 tiles pop off. Now the tile has popped off, now the  
11 water is getting under the tile.

12 So, it's all connected. I mean, every little  
13 piece of that puzzle goes together, and if one of them  
14 is not right you're going to have problems.

15 Q. Now, you said that you had recommended  
16 that K.B. use a higher level of caulking?

17 A. Yes.

18 Q. Who did you make that recommendation to?

19 A. It was brought up in community team  
20 meetings, which was really the venue for such a  
21 thing to be brought up. You know, I mean, Danny and  
22 I talked about it amongst ourselves, I think I did  
23 mention it to Jeff Logsdon and to Chad Burlingame.

24 Q. At what stages of construction are  
25 inspections performed?

1 A. County or internal?

2 Q. Both.

3 A. Well internal inspections, really that's  
4 kind of a daily thing. You're really supposed to  
5 inspect every room in every home every day,  
6 otherwise you don't really know what is going on and  
7 you can't prepare for the next day. You know,  
8 that's what good practice is anywhere where you're  
9 at. So, the superintendent is really responsible  
10 for inspecting the work that was done that day to  
11 ensure it was completed, it was done correctly and  
12 to make sure it's ready for the guy coming in the  
13 next day.

14 The county has several points in which they  
15 do inspections. I mean, they do, you know, an  
16 underground -- they look at what is going under the  
17 slab, they look at the slab, they look at after you  
18 construct the block, you know, before you pour that tie  
19 beam or lentil. They inspect -- a very thorough  
20 inspection at framing. You know, at that point that's  
21 when they're inspecting all the -- and they literally  
22 do inspect all the straps. I mean, I've failed an  
23 inspection before because you're missing two nails on a  
24 strap that gets eight, you've got six and you're  
25 missing two. That's what it is there for. The supers

1 don't catch everything, they miss stuff, and the county  
2 helps with that.

3 So, you know, after framing there is a wire  
4 lath inspection, which is the sub-material that goes on  
5 before they run the stucco plaster. They check the  
6 nailing pattern and, you know, the lapse of the joints.  
7 There is roofing inspections. You know, then there is  
8 final inspections when everything is said and done.

9 There also is inspections that were done -- I  
10 don't know if they were done afterwards, but by a  
11 company WCPC; it's West Coast Property Consultants.  
12 It's basically a third-party inspection company that  
13 comes in -- they used to do risk assessments for K.B.  
14 quarterly to look at, you know, safety and how the job  
15 site was running in general.

16 They also did inspections on every home or  
17 every building throughout the process. There was a  
18 time when they would come out before you stuccoed and  
19 before you drywalled to ensure that all the  
20 penetrations were properly sealed and the tyvek was put  
21 on right and things of that nature, and then they would  
22 come back again at the end when the final was done.

23 Now, they do document all of that and make  
24 recommendations. Whether the recommendations are  
25 properly executed by the guys in the field, that's on a

1 case-by-case basis. I wouldn't speculate on it. Would  
2 I tell you that every single thing that they put on  
3 those papers gets done, probably not.

4 Q. Did WCPC inspect at WillowBrook?

5 A. Yes.

6 Q. How often did they come out?

7 A. They came out as they were scheduled,  
8 according to where the homes were under  
9 construction. And Ray Oaks was the gentleman that  
10 did 98 percent of those inspections. WCPC is  
11 actually out of California. They did have a local  
12 office in Orlando.

13 Q. And WCPC was hired by K.B. Home; is that  
14 correct?

15 A. Yes. That's something that is not done on  
16 a division level, that is something that is done on  
17 a corporate level. It's mandated that they're used.  
18 They have a national contract with K.B. Corporation.  
19 That's why they're out of California and their  
20 corporate office is in LA. And they have inspectors  
21 that inspect throughout the nation.

22 Q. Are you familiar with any of the reports  
23 that may have been done by WCPC when they were at  
24 WillowBrook?

25 A. Sure.

1 Q. What types of observations did WCPC make?

2 A. Various observations depending on the  
3 building. They generally shied away from putting  
4 stuff on the report that was more of a stemic  
5 concern and generally focused more on the lot  
6 specific concerns. So, say like Building 10, you  
7 know, you need to seal up around the AC vent where  
8 it protrudes through the home, through the block,  
9 well, if the tyvek isn't properly lapped to  
10 create -- like the shingles on your roof so where  
11 the water would run off and not come back under the  
12 lap and into the home. That's the kind of stuff  
13 that they looked for that they made observations  
14 about. Their primary focus was water intrusion and  
15 air leakage for energy efficiency.

16 Q. Let's go back to the county inspections.  
17 What are the consequences of a failed inspection?

18 A. A failed inspection means you're stopped,  
19 I mean, you can't proceed with the next phase of  
20 construction unless you've passed the inspections  
21 that are required. So, if you don't pass those  
22 prerequisite inspections you don't get to move  
23 forward. If you don't get to move forward you're  
24 losing -- time is money.

25 Q. Are you aware of any failed inspections at

1 WillowBrook?

2 A. Sure. There are failed inspections  
3 everywhere. There were times where inspections  
4 failed -- nothing that was particularly egregious,  
5 nothing that was reoccurring, you know, just your  
6 normal -- I mean those buildings got inspected  
7 together. So, you have a three-story building with  
8 multiple units in it, the likelihood of the framer  
9 missing two nails on the strap in this unit and  
10 missing a piece of bracing in that unit is not  
11 uncommon. But, when something like that is  
12 caught -- depending on the inspector, some  
13 inspectors sometimes fail the inspection, sometimes  
14 they failed it and feed it.

15 Q. What does that mean?

16 A. That means that you're basically charged a  
17 reinspection fee. When you permit a house they're  
18 saying, okay, you're going to need 20 inspections so  
19 this is what we're going to charge you. So, if  
20 you're failing -- I mean, they don't have -- the  
21 county doesn't have the money to pay an inspector to  
22 work for K.B. Home that they're going to come out  
23 ten times on the same inspection, they would have to  
24 charge more for the permits. So, what they do is  
25 they penalize the guys who fail the inspections.

1 It's different in every county. I don't remember  
2 exactly what it was up there, it's like 45 or 50  
3 bucks for the first time you fail. If you fail the  
4 second time it's like a hundred bucks and then it  
5 goes up and up. It's to discourage you from failing  
6 inspections so that you get it right when the  
7 inspectors get out there. And that's really how it  
8 is in all of the counties.

9 Q. Were there any specific items that you can  
10 recall at WillowBrook that failed inspection?

11 A. No. Nothing that was like a reoccurring  
12 problem on every home. Nothing that was out of the  
13 ordinary.

14 Q. Did you deal -- go ahead.

15 A. I was going to say, I mean, a lot of that  
16 stuff -- inspectors aren't inspecting for a lot of  
17 that stuff. I mean, the inspector isn't going to  
18 come ensure that your deck isn't leaking, he's going  
19 to make sure your deck doesn't blow away in a  
20 hurricane, but he's not looking at the things that  
21 would cause the deck to leak. There is just not an  
22 inspection for that, not in Manatee or in any  
23 county.

24 Q. Did you deal with any particular  
25 inspectors at Manatee County at the WillowBrook



1 project?

2 A. They kind of rotated who was out there. I  
3 would say that the inspector who was out there more  
4 than most was Gary Brelish(Phonetic). He's since  
5 retired from the county. Rick Pickerel was an  
6 inspector in WillowBrook, he's also retired from the  
7 county. Those are the two guys that I would say  
8 were out there -- you know, you always had someone  
9 took a day off, this guy comes in or that guy comes  
10 in, but those are really the two guys that did the  
11 structural inspection. They have structural guys  
12 and plumbing and electric, but as far as structural  
13 goes those were the two guys.

14 Q. Do you know whether Mr. Brelish or  
15 Mr. Pickerel ever failed any inspections at  
16 WillowBrook?

17 A. Both of them numerous times.

18 Q. Are you aware of any building code  
19 violations at WillowBrook?

20 A. No.

21 Q. Do you know whether permits were pulled  
22 when the balconies were rebuilt at WillowBrook?

23 A. The balconies or the columns?

24 Q. Either one.

25 A. The columns, I spoke to the building

1 official, and what he instructed me to do was --  
2 it's technically warranty. He said any -- you know,  
3 if there is a home that is under construction and  
4 you see something that was missed and its wrong it's  
5 your obligation to fix it. You don't need a permit  
6 to make something correct.

7 And as far as the ones that were warrantied,  
8 you know, where there was homeowners living in them, he  
9 wanted to handle that on a warranty basis. So, we  
10 didn't need to pull a permit on that. However, we did  
11 a permit by affidavit. We had a permit through the  
12 third party inspection company Peico, they inspected  
13 the work and gave a report saying that everything was  
14 fine.

15 As far as the balconies go, there were  
16 permits on the balconies, at least to my knowledge. I  
17 wasn't there for that last round of balcony repairs. I  
18 know things got hairy up there, they condemned  
19 buildings, and --

20 Q. I'm just asking about the time you were  
21 there.

22 A. No. The time that I was there there were  
23 permits pulled on balcony repairs.

24 Q. Who is generally responsible to pull the  
25 permits when there is a repair item, is it the

1 general contractor or the subcontractor?

2 A. Any permitting is done through the general  
3 contractor. Even on any permit the general  
4 contractor is who would -- unless it was something  
5 that was specific to plumbing or specific to  
6 electric or specific on HVAC, then you don't need  
7 the general contractor, that specific contractor  
8 would pull the permit on the work. But something  
9 like on a balcony repair that is a structural thing,  
10 that would be the general contractor who is  
11 responsible to pull the work.

12 MR. SLEMP: Okay. Why don't we take a  
13 short break and I think we'll finish up after  
14 that.

15 (THEREUPON, a break in the Sworn Statement  
16 occurred from 2:41 p.m. until 2:53 p.m.)

17 BY MR. SLEMP:

18 Q. Mr. Brown, were there any structural  
19 changes to the way K.B. Home was building the  
20 WillowBrook units during the time you were there?

21 A. Yes.

22 Q. Can you please describe the changes that  
23 were made?

24 A. There was two different methods of  
25 hurricane strapping used to tie the buildings down.

1 At one point they used a Hurri-bolt system, and at  
2 one point they were using straps. So I mean, that  
3 would be the structural change, you know, the  
4 greatest change that they made.

5 Q. Any other structural changes?

6 A. Cosmetic changes. Nothing really  
7 structural other than that.

8 Q. Were there any changes to the way that the  
9 balconies were constructed, other than what you've  
10 already covered today?

11 A. No. Other than they were built correctly,  
12 they weren't back pitched. But, that was something  
13 that was done incorrectly to begin with.

14 Q. Now, the original engineer of record was  
15 Silcox, Kidwell; is that correct?

16 A. Yes.

17 Q. At some point did K.B. Home switch to  
18 S.E.I.?

19 A. Yes.

20 Q. Do you know why that change was made?

21 A. I believe it was just a pricing thing, a  
22 relationship thing. You know, S.E.I. was doing a  
23 lot of other work, you know, up in the -- for the  
24 Tampa Division and Orlando Division for other  
25 communities, and that was at least my understanding

1       why the switch was made.

2           Q.    Did you have any dealings with Tom Miller?

3           A.    The name rings a bell, but I don't recall  
4       specific dealings with him.

5           Q.    Did you ever deal with Paul Kidwell?

6           A.    Yes.

7           Q.    Do you know where he is now?

8           A.    No, I don't.

9           Q.    What dealings did you have with Paul  
10       Kidwell?

11          A.    Him and I spoke regarding the structural  
12       column repairs.

13          Q.    And what did you discuss with him about  
14       the column repairs?

15          A.    Well, I brought it to his attention. I  
16       felt that as the engineer of record he has a right  
17       to know what, you know -- since something was done  
18       incorrectly. Also just to, you know, see how  
19       serious is it. Sometimes they spec things out on  
20       the print and -- they just spec'd it out on the  
21       print; it's not a critical thing. I expected that  
22       it was, and he confirmed that it most definitely  
23       was. And he's actually the one, you know, who  
24       explained a lot of the different reactions to me and  
25       what would happen, you know, under the right storm

1 conditions what would happen to the building.

2 Q. What did he say about that?

3 A. Just that under the right -- you know,  
4 under the right wind conditions if the wind hits the  
5 building a certain way and it creates torsion in the  
6 building that those columns would implode, or had  
7 the potential to implode.

8 Q. You're talking about the spruce columns?

9 A. Yes.

10 Q. Were there any other engineers on site  
11 during the construction at WillowBrook other than  
12 the ones you've identified already today?

13 A. Not to my knowledge.

14 Q. Earlier you mentioned Reuben O'Neal. Did  
15 you provide Mr. O'Neal with any documents?

16 A. Yes, I did.

17 Q. What documents did you give Mr. O'Neal?

18 A. I had given him copies of, you know, a  
19 list of homes that we found and identified the  
20 problems in. He had a list of what homes were  
21 scheduled to close during that time period, copies  
22 of some blueprint stuff regarding the column. You  
23 know, basically I gave him any pertinent information  
24 I had regarding the columns or who was affected by  
25 them.

1           When Reuben came down it was really in the  
2 preliminary stages. That was before they made the  
3 decision to not close the homes. At that point they  
4 were ready to proceed with closing the homes. After  
5 all of us talking to Reuben and after my extensive  
6 conversation with Reuben, Reuben made the  
7 recommendation to not close the homes.

8           Q. I think I may have asked you this earlier,  
9 but just for my own clarification, approximately  
10 when did you discover that spruce was in the  
11 building instead of the southern yellow pine?

12          A. It was the first week of taking over, you  
13 know, WillowBrook, the end of '06, beginning of '07.

14          Q. What types of communications have you had  
15 with Tom Schramski?

16          A. Since leaving K.B. or at K.B.?

17          Q. At K.B.

18          A. At K.B. I had extensive conversations with  
19 Tom. At one time we were -- at one time he was the  
20 regional manager in Port St. Lucie, and I was a  
21 region manager in Fort Myers, so whenever we did  
22 conference calls we were both on the call, I mean,  
23 we used to talk then. When we had, you know,  
24 construction gatherings of, you know, management  
25 team I met with Tom. When Tom was, you know, up in

1 Tampa and we were up there, you know, I talked to  
2 Tom, you know, whenever we had meetings, you know, I  
3 would talk to him. Sometimes he would call  
4 inquiring about a closing or, you know, what was  
5 going on, might have to brief the status of where  
6 homes were at.

7 Tom and I did have -- I expressed my concern  
8 about the Chinese drywall situation to Tom. Tom was  
9 someone out of everyone there who I felt more  
10 comfortable approaching about that. And, you know, I  
11 did approach Tom on more than one occasion and  
12 expressed to him the concern I had regarding the  
13 Chinese drywall and the urgency I felt it needed to be  
14 handled with.

15 Q. You said Mr. Schramski was out at Port St.  
16 Lucie for a while?

17 A. Yes.

18 Q. Were there certain developments he was  
19 overseeing in Port St. Lucie?

20 A. He was the regional construction  
21 manager of -- it was called the Treasure Coast  
22 Division, which was primarily that Port St. Lucie  
23 area. I'm not very familiar with what the names of  
24 those communities are, but I know it was the same  
25 thing as over here. He had a region with, you know,



1 multiple communities that he was responsible for.  
2 Treasure Coast was the first division to get where  
3 they pulled the plug, and from there he came over to  
4 Tampa.

5 Q. So, they folded Treasure Coast -- the  
6 Treasure Coast Division and then moved them over to  
7 the Tampa Division?

8 A. They didn't move them, they moved a very,  
9 very small few, Tom being one.

10 Q. Okay. And then you mentioned dealings  
11 with Mike Leonis. Can you briefly describe the  
12 types of interactions you've had with Mike Leonis?

13 A. You know, Mike is the same as Tom, we were  
14 generally around the same age. You know, I talked  
15 to -- you know, we went to meetings, I mean, Mike  
16 was one of the guys that I would, you know, shoot  
17 the breeze with and how is things going or whatever.  
18 Mike was also in charge of customer service, so if  
19 there was a sensitive service call or, you know, an  
20 upset homeowner him and I would discuss that. I did  
21 express also to Mike my -- the same concerns I had  
22 expressed to Tom regarding the Chinese drywall.

23 Q. Is Tom Schramski still with K.B. Home?

24 A. Yes.

25 Q. Is Mike Leonis still with K.B. Home?

1 A. Not to my knowledge.

2 Q. Do you know where Mr. Leonis is?

3 A. I don't. Danny Vinson would be better  
4 able to answer that.

5 Q. And then I believe you said you had some  
6 dealings with Dave Page. What types of dealings did  
7 you have with Dave Page?

8 A. You know, the same. Dave was at the  
9 meetings. I mean, he was another, you know, younger  
10 guy, him and I kind of got along and we talked  
11 about -- you know, complain about stuff, talk about  
12 stuff. Dave also came down to help out with some  
13 warranty things that we had. I mean, there were  
14 some times when we had, you know, 20 closings in a  
15 two-week period, you know, and when we did have  
16 those Kathy came up to help and Dave came down to  
17 help and they helped Danny and I out.

18 Also, earlier I had mentioned awkward  
19 dealings I had with Jeff Logsdon and Dave Page when  
20 they were discussing some of the water intrusion issues  
21 that they had in some of the northern communities which  
22 Dave was pretty much the point man on, he was tasked  
23 with handling that and wrapping it up. And Dave came  
24 to me for some advice because I had been doing this  
25 longer than Dave has and I also was familiar with it

1 because of WillowBrook. I mean, I did it. And him and  
2 I talked. And that's why I was also really surprised  
3 when Jeff went to talk to Dave that I wasn't included  
4 in that. That was typically a conversation where they  
5 would have sought me out and said come in and have this  
6 conversation. I just happened by and they were like --  
7 Jeff was like, we don't need you in here. So, Dave and  
8 I did discuss that. And I even mentioned something to  
9 Dave afterwards about that. But, I mean, you know,  
10 just normal pretty much dealings with him on a regular  
11 basis.

12 Q. Do you know where Mr. Page is now?

13 A. I do not. Again, Danny Vinson is probably  
14 a guy that can help you out with that. He does stay  
15 in touch with a lot of those people.

16 MR. SLEMP: All right. Let's go off the  
17 record.

18 (THEREUPON, a break in the Sworn Statement from  
19 3:02 p.m. until 3:03 p.m.)

20 BY MR. SLEMP:

21 Q. Have you had any dealings with George  
22 Glance?

23 A. Not since I left K.B. Home. When I was at  
24 K.B. Home I had brief dealings with George. I  
25 didn't really see George much. I mean, he was in

1 Orlando and, you know, I was down south. The only  
2 times I really saw him was when we had meetings, and  
3 the meetings became less and less because obviously  
4 everyone was coming all the way to Orlando, they  
5 didn't want to waste half the day driving. So, we  
6 had a meeting once every couple of months; shook  
7 hands with George, casual conversation for a few  
8 minutes.

9 Q. While you were at the WillowBrook project  
10 what was George Glance's role?

11 A. It varied. When Fort Myers first took  
12 over WillowBrook the only role George had is he was  
13 qualifying some of the permits up there. And any  
14 dealings that I really needed to do with George I  
15 dealt with his executive assistant, handling any of  
16 that.

17 After that, I mean, we went through a period  
18 where we had no dealings -- George had no involvement  
19 in WillowBrook, because it was back out of Tampa.  
20 Although I do think -- I had pulled my license from  
21 those permits when things got hairy over there, I got  
22 demoted and they sent me down south. And I'm like, I'm  
23 not going to let you use my license on this kind of  
24 stuff going on up here when I'm all the way down here  
25 and I can't oversee what is going on. So, I pulled my

1 license. And I believe they put George's license back  
2 on the permits.

3 Then when Orlando absorbed Tampa, at that  
4 point George became my division president, because we  
5 were under the Orlando Division. So, I had a little  
6 bit more dealings with him. But, you know, just kind  
7 of casual conversation with the boss that, you know, at  
8 a quarterly meeting or something. Nothing really more  
9 than that.

10 MR. SLEMP: No further questions. Thank  
11 you for your time today.

12 THE WITNESS: I waive.

13 (THEREUPON, the Sworn Statement ended at  
14 3:09 p.m.)  
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## CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF PINELLAS )

I, ROBBIE E. DARLING, Court Reporter, Notary  
Public at Large,

DO HEREBY CERTIFY that I was authorized to and  
did stenographically report the foregoing Sworn  
Statement of MATTHEW BROWN taken before me at  
the time and place set forth in the caption  
thereof; that a review of the transcript was  
not requested; that the proceedings of said  
Deposition were stenographically reported by me  
in shorthand, and that the foregoing pages,  
numbered 1 through 119, inclusive, constitute a  
true and correct transcript of my said  
stenographic report.

I FURTHER CERTIFY that I am not a relative or  
employee or attorney or counsel of any of the  
parties hereto, nor a relative or employee of  
such attorney or counsel, nor do I have any  
interest in the outcome or events of this  
action.



ROBBIE E. DARLING

Court Reporter

CERTIFICATE OF OATH

STATE OF FLORIDA )

COUNTY OF PINELLAS )

I, the undersigned authority, certify that  
MATTHEW BROWN personally appeared before me and  
was duly sworn.

WITNESS my hand and official seal this 27th day  
of October, 2013.



ROBBIE E. DARLING

Notary Public, State of Florida



**ROBBIE DARLING**  
MY COMMISSION # EE 833197  
EXPIRES: September 6, 2016  
Bonded Thru Budget Notary Services