

ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY
MOBILE HOME RENT CONTROL ORDINANCE

IN RE: NOMAD VILLAGE) HEARING BEFORE
MOBILE HOME PARK)
HON. DAVID W. LONG
)

TRANSCRIPT OF PROCEEDINGS, taken in the
above-captioned matter, commencing at 9:00 a.m., Friday,
November 18, 2016, at 105 East Anapamu Street, Santa
Barbara, California, before Hon. David W. Long, by
MARK McCLURE, CRR, CSR, No. 12203, Certified Shorthand
Reporter in the County of Santa Barbara, State of
California.

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SANTA BARBARA, CALIFORNIA

FRIDAY, NOVEMBER 18, 2016

9:00 A.M.

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ARBITRATOR: Good morning to all.

This is a hearing on what has been styled in the pleadings In Re: Nomad Village Mobile Home Park.

My name is David Long. I'm the appointed hearing officer for this case. I'm a retired Superior Court judge from the County of Ventura, that little place just south of here. I'm told Santa Barbarans kind of look down on us, but I don't know that that's true.

I know that Mr. Ballantine has been in my courtroom a few times when I was on the bench.

In any event, let me meet you.

Tell me your name, sir.

MR. ALLEN: My name is Tony Allen.

ARBITRATOR: Tony Allen?

MR. ALLEN: Yes.

ARBITRATOR: And you are a representative of the mobile homeowners?

MR. ALLEN: That's correct.

ARBITRATOR: Welcome to you.

And seated to your left is?

1 MS. DAVIS: Lyndse Davis.

2 ARBITRATOR: Lyndse Davis. I remember you have
3 an interesting spelling of your last name, L-y-n-d-s-e.

4 MS. DAVIS: First name.

5 ARBITRATOR: First name. All right, Ms. Davis,
6 it's nice you have to you here.

7 It's also my understanding from Ms. Wagner that
8 Ms. Hamrick is not going to be here this morning. Is
9 that correct?

10 MR. ALLEN: To the best of my knowledge, she is
11 not.

12 ARBITRATOR: All right, very good. Just wanted
13 to make sure everybody is here.

14 And for the Respondent, please?

15 MR. BALLANTINE: Good morning, your Honor.
16 James Ballantine, attorney for park management. Park
17 management consists of Waterhouse Management Corporation,
18 which is the park manager/operator, and Lazy Landing,
19 LLC, which is the park owner.

20 ARBITRATOR: Okay, nice to have you here.

21 At the counsel table with you?

22 MR. BALLANTINE: Yes.

23 MR. WATERHOUSE: Ken Waterhouse, with
24 Waterhouse Management Corporation, and also with Lazy
25 Landing, LLC, sir.

1 ARBITRATOR: Okay, thank you. Nice to have you
2 here.

3 A couple of preliminary matters. In the, I'll
4 call them, "pleadings," the briefs that Ms. Hamrick filed
5 there was what she styled in the initial brief -- she
6 styled it as a motion for summary judgment, and restated
7 that in a second brief that was filed two days ago, three
8 days ago.

9 Our court reporter is making a record of the
10 proceedings and whatever I ultimately end up deciding in
11 this case may get reviewed by the Board of Supervisors,
12 and if past history is any indication, perhaps in a court
13 proceeding as well. I want to make a decent record for
14 us so both sides will have that.

15 The motion for summary judgment, although
16 objection was posed yesterday by the Respondent, I
17 received Mr. Ballantine's objection to the summary
18 judgment motion but, frankly, a summary judgment motion,
19 I don't think, is appropriate in a case such as this. I
20 find nothing in the rules that permit the filing of a
21 summary judgment in a proceeding like this.

22 But even if it were permitted under the rules,
23 summary judgment motions are creatures of statute. They
24 are found in the Code of Civil Procedure, Section 437c,
25 and they require a certain form and certain

1 documentation, such as memorandum of points and
2 authorities accompanying the motion, such as a statement
3 of alleged and undisputed material fact with supporting
4 documents relating to item-by-item material facts that
5 are supposedly undisputed.

6 The motion has none of that and 437c says that
7 a judge, or hearing officer in this case, can deny the
8 motion if it's not in the proper form.

9 More significantly, it is obvious to me there
10 are triable issues of material fact, which is what this
11 hearing is about, and if there are any triable issues of
12 material fact, the summary motion has to be denied.

13 That's not to say that the person who made the
14 summary judgment motion won't win at the hearing or the
15 trial; they may very well. I can't tell you the number
16 of times I've denied a summary motion on the bench with
17 the thought in my mind, "Yeah, but this is not going to
18 get very far at trial, is it?"

19 I don't have such a sense here one way or the
20 other, but I'm just saying for the benefit of nonlawyers
21 who are here representing the mobile homeowners, the fact
22 that a summary motion judgment is denied simply means
23 that are triable issues of material fact, or it's not in
24 proper form, or the rules of the rent control ordinance
25 in Santa Barbara and the hearing rules do not permit the

1 filing of those kinds of motions. I couldn't find where
2 it's permitted, but even if I reached the merits of what
3 the motion might be, it's not in proper form and there
4 are triable issues of material fact, so for all those
5 grounds the motion is denied.

6 I think that's the only prehearing issue that
7 needs to be addressed.

8 Mr. Allen, is there anything from your
9 perspective that I need to address before I begin the
10 formal part of the hearing with listening to you and any
11 witnesses you have and listening to Mr. Ballantine and
12 any witnesses he might have?

13 MR. ALLEN: I don't believe so.

14 ARBITRATOR: Okay. Very good.

15 Mr. Ballantine, anything preliminarily from
16 you?

17 MR. BALLANTINE: No, your Honor. I do have an
18 opening statement before we get into evidence, but
19 nothing preliminarily, which I think is the question.

20 ARBITRATOR: Okay. Mr. Ballantine, you're the
21 representative of the mobile homeowners, is that
22 correct -- or, I'm sorry, Mr. Allen.

23 Mr. Allen, you're the representative of the
24 homeowners?

25 MR. ALLEN: Yes.

1 ARBITRATOR: Okay. At this time, if you wish
2 to make an opening statement of some kind to tell me what
3 the case is about and what you think whatever evidence
4 you're going to present is going to show, I would be very
5 happy to hear from you. There's nothing in the rules
6 that require an opening statement, but it is an
7 opportunity for you to give me an overview of the case
8 from your side's perspective, if you wish to do that.

9 MR. ALLEN: I would just say that I don't have
10 an opening statement. I just recently found that I was
11 going to be sitting in this chair, so what I have done is
12 come up with some questions when it comes down to the
13 expert witness, and that's the total of my participation.

14 ARBITRATOR: Okay. Do the homeowners plan to
15 call any witnesses, other homeowners or expert witnesses
16 of any kind at the hearing today?

17 MR. ALLEN: I don't believe so.

18 ARBITRATOR: Okay, thank you very much.

19 Mr. Ballentine, I've read the briefs, but if
20 you wish to make an opening statement, I'm happy to hear
21 it.

22 MR. BALLANTINE: Thank you, your Honor, I do.

23 I'd like to thank, your Honor. May it please
24 the Arbitrator.

25 ARBITRATOR: You can use the podium, stay in

1 your chair, however you are comfortable.

2 MR. BALLANTINE: I'll start here, if that's
3 okay, and I may move over there because do I want to talk
4 to your Honor a little bit about this case, about what we
5 think the evidence from the park owner's standpoint will
6 show, and I will talk a little bit about the exhibits. I
7 want to tell you about those since you've heard about
8 them a little bit in the opening brief.

9 ARBITRATOR: Mr. Allen, I believe you have been
10 given the same copy of the exhibit book that I've
11 received.

12 MR. ALLEN: That's correct, yes.

13 ARBITRATOR: Thank you.

14 MR. BALLANTINE: Thank you, your Honor.

15 As your Honor pointed out, this is a proceeding
16 under the Santa Barbara County Mobile Home Rent Control
17 Ordinance. The applicable, I think, rules and ordinance
18 governing us is that ordinance, and the rules of hearing
19 that are adopted under that, and that is one of the
20 exhibits that we've submitted in this hearing book. We
21 thought it would be useful to have.

22 Essentially, what we have here today is the
23 homeowners have filed a petition disputing all aspects of
24 a March 31, 2016, rent increase notice that was noticing
25 a rent increase at Nomad Village Mobile Home Park that

1 was effective July 1, 2016.

2 So the ordinance, plus I'll talk a little bit,
3 and we mentioned some applicable case law in our hearing
4 brief, and I just want to talk about a couple of aspects
5 of the legal issues that will apply to the facts here in
6 terms of the facts that will be governing us today.

7 The ordinance restricts the amount of rent that
8 park management -- that is, the operator of the park --
9 can charge. Essentially, what it provides is that 75
10 percent of the CPI is automatically allowed in an annual
11 rent increase, and that's it. Anything beyond that --
12 the park management does have a right to essentially have
13 a rent increase beyond that; however, once it goes beyond
14 75 percent of the CPI, then the homeowners have a right
15 to file petition for arbitration to object to that, and
16 that's essentially what's happened here today.

17 It's not entirely clear to me from the petition
18 what exactly the homeowners dispute, but it appears that
19 they dispute everything, including the CPI increase, so
20 I'll go through the elements of the rent increase and
21 explain them.

22 The ordinance is very clear that the park owner
23 is entitled at a hearing to have a rent increase that
24 will essentially account for increased operating costs of
25 the park and for capital items incurred by a park. And

1 in fact, the governing law says that a park owner, since
2 it's restricted in the amount of rent that it can charge,
3 has to be allowed to recover increased operating costs,
4 capital expenses and things like that, and in an amount
5 sufficient for the park owner to earn a fair rate of
6 return.

7 So in this context we have something different
8 than you would have in a normal, say, apartment rental
9 situation where there's not rent control and so you have
10 a property owner that's unrestricted as to how much they
11 raise the rents. They can raise them anything.
12 Presumably, in a competitive market they are going to
13 have to raise it in an amount sufficient to cover their
14 costs plus some amount of profit or rate of return that
15 they want to make on the investment, and they're
16 primarily constrained by competition in the marketplace
17 and so forth.

18 Here we have rent control, so rent control
19 doesn't allow a property owner simply to increase the
20 rent to whatever they think they want to get. There's
21 this limitation that I just indicated, basically an
22 annual limitation of 75 percent of CPI, which we're going
23 to talk about in a little bit, because that's a
24 significant point.

25 75 percent of CPI -- that's a limitation. I

1 mean when you have costs going up at CPI and you can't
2 even raise them to that cost, that creates a situation
3 for a park owner. That's the evidence we'll talk about
4 here.

5 In addition to that, the park owner may either
6 want to or have to make certain improvements to their
7 property. Unlike a normal apartment building -- let's
8 say you build a new patio or deck or you put on a roof or
9 something like that, I mean you just factor that in and
10 they raise the rent.

11 In this case, that's something clearly the park
12 owner is entitled to get, but that gets reviewed in the
13 rent control hearing, and there will be a significant
14 capital item which I'm going to talk about here today.

15 So in any event, we've cited some cases. The
16 law is clear that although a mobile home park owner can
17 be restricted under a rent control ordinance, they still
18 have to be able to make a fair rate of return, and so to
19 a large degree that will be governing what's happening
20 here in the context of this rent increase, is the rent --
21 there's must be a rent increase sufficient so that the
22 park owner can earn a fair rate of return, and,
23 obviously, covering extraordinary costs it has like
24 capital expenses and litigation fees, which I'll talk
25 about, is a cost that the park owner has that it must be

1 able to recover. If it can't recover those, it's not
2 only not making a fair rate of return, it's actually
3 losing money on the operation of the park.

4 One aspect of this case I mentioned was
5 litigation and administrative costs that the park
6 incurred through some proceedings that we'll talk about.
7 We cited a California Supreme Court case, the Galland
8 versus Clovis case, and it was a case that arose in a
9 mobile home rent control context. The park owner asked
10 for a rent increase, didn't get it initially, sued the
11 County, won significant damages, and it went to the
12 Supreme Court. And the Supreme Court said what I think
13 is particularly relevant here. In addition to making a
14 fair rate of return, one of the components of that is
15 that because park management under rent control ordinance
16 must go through an administrative proceeding in order to
17 get a rent increase, that it must be able to recover the
18 costs of those proceedings. A municipality cannot enact
19 a rent-control ordinance, force a park owner to go
20 through a process such as this in order to get a rent
21 increase without recovering those costs of doing so.

22 And again that's one of the components, but
23 only one of the components of the rent increase that we
24 have here today, and so that would be an important
25 element of this, and the Galland versus Clovis case tells

1 us that the park owner must recover reasonable costs of
2 proceedings, so I'll be talking about the costs and the
3 proceedings.

4 Now, mobile home parks are a little bit of a
5 unique animal in real estate law and real estate
6 practice. Basically, in a mobile home park such as this
7 one where you've got split ownership -- you've got the
8 homeowners, they own their home, the mobile home -- and
9 although they're called "mobile," they're really not that
10 mobile. They rarely, if ever, get moved.

11 ARBITRATOR: I might have mentioned it before
12 you arrived, but my parents lived in a mobile home for
13 the last 20 years of my father's life up in Buellton, so
14 I have, certainly, just enough knowledge to be really
15 dangerous. I have some knowledge of mobile home park
16 issues and rent increases and some things that they did
17 in that park, which has nothing to do with this one, but
18 just so you know.

19 MR. BALLANTINE: I appreciate that. That helps
20 me because not everyone has that background and
21 knowledge, so I appreciate that.

22 And so as your Honor knows, essentially what
23 the homeowner has is a ground lease, essentially, with
24 the park owner to rent the space and the improvements on
25 the space, which are typically like the utilities

1 pedestal and things like that, and the homeowner does
2 everything else, puts the home on and improves the space.

3 ARBITRATOR: The park owners at, I think it's
4 called, is at River Grove, I think is what it was, mobile
5 home park --

6 MR. BALLANTINE: Yes.

7 ARBITRATOR: -- they let my dad put up a 45-,
8 50-foot ham radio antenna and tower and all of that,
9 right in the park.

10 MR. BALLANTINE: Wow.

11 ARBITRATOR: That doesn't happen real often.

12 MR. BALLANTINE: That's right. It must have
13 been quite a monument in the park there.

14 ARBITRATOR: Yeah. He was popular. Seriously,
15 people would come over to do the ham radio with him in
16 the evenings and that kind of thing. It was kind of a
17 social gathering in the park.

18 MR. BALLANTINE: Right. And that's one aspect
19 of mobile home park living people like, they're close
20 together and there's a social community there, and so
21 that's what we have.

22 So that's what we're dealing with today, is
23 that unique animal of a mobile home park and that split
24 ownership, and that's the reason why rent control is
25 important. The homeowner makes a significant investment

1 in their home, and the concern is that if they're
2 subjected to a rapidly increasing rent, that could be a
3 problem for them. The flip side, though, is that -- and
4 I think sometimes that's a misperception a homeowner may
5 have, is that the rent control ordinance means that rent
6 can never be increased beyond what the ordinance says --
7 for example, in this case 75 percent of CPI -- and that's
8 just not the case.

9 I mean again, in normal commercial real estate
10 or residential real estate in a rental situation, if the
11 landlord has an expense relating to the property, they
12 are going to have to recover that expense through a rent
13 increase. In this case, in the mobile home context,
14 because we have the rent control ordinance, it allows the
15 homeowners to basically tender that issue to a hearing
16 process in this case here.

17 So rent control doesn't mean that rents can
18 never go up, but it does provide a format for review of
19 that, and that review does come at a cost. It comes as a
20 cost to everyone, and Galland says that the park owner
21 has to get the cost that they incur going through a
22 process for a rent increase. Otherwise they never get it
23 back.

24 So in this case, we're dealing with a park in
25 the unincorporated area of Santa Barbara County called

1 Nomad Village Mobile Home Park. It's near San Marcos
2 Pass and there are several mobile home parks in that
3 area. So anyway, the Santa Barbara County Rent Control
4 Ordinance is what governs this.

5 It's a 150-space park. It was developed quite
6 a while ago, in the 1950s. It was initially operated by
7 a company called Nomad Village, Inc., which ran it for 50
8 years, and I actually represented Nomad Village, Inc.,
9 for a while. Their ground lease expired in 2008 and an
10 entity called Lazy Landing, LLC, became the new ground
11 lessee.

12 And let me talk about that for a second. This
13 is not an unusual situation in mobile home parks.
14 Sometimes the operator of the park is, basically, a
15 ground lessee -- somebody owns the ground, the land, they
16 don't want to run a park and so they basically lease out
17 the land, and that's always been the case for Nomad
18 Village. Nomad Village, Inc., was the ground lessee for,
19 like I said, 50 years, and then Lazy Landing took over
20 the ground lease or entered into a new ground lease with
21 the property owner.

22 So when we talk about the park owner, we're
23 talking about Lazy Landing because they don't own the fee
24 interest but they own the long-term leasehold interest.
25 They contract to an entity called Waterhouse Management

1 Corporation, which, then, is the actual park operator.
2 They provide the manager, they employ the on-site manager
3 and they provide management and oversight of the
4 operation of the park, the actual day-to-day operator on
5 behalf of the park owner, Lazy Landing. And those are
6 two terms we see in the code, "operator" and "owner," and
7 under that, Lazy Landing is the owner, Waterhouse
8 Management is the operator.

9 Mr. Ken Waterhouse is here today. He'll be
10 testifying and talking about the things that the park
11 management does to operate this park. They are,
12 obviously, the ones that incur all of the expenses of
13 operating the park and they are the party in interest
14 seeking the rent increase here, now that the residents
15 have objected to it and essentially tendered this as a
16 hearing issue.

17 So let's talk about the rent increase a little
18 bit. I want to go through a few of the exhibits to let
19 your Honor know what the evidence will show in this case.

20 First we have Exhibit 1, the notice of rent
21 increase. I guess you can say that's the document that
22 started this proceeding. Under the mobile home residency
23 law -- and I should note that's another background
24 underlying this proceeding, is a California Civil Code, a
25 portion called the Mobile Home Residency Law, and that's

1 the group of statutes that govern relations between the
2 park owner and the tenants relative to the --
3 essentially, the ground leases that the tenants have in
4 the park.

5 What the Mobile Home Residency Law, or MRL,
6 says is that any notice of rent increase must be at least
7 90 days, so it must be at least 90 days' notice of a rent
8 increase to the homeowners. What the ordinance says is
9 that the park can only raise the rent one time a year, so
10 once every 12 months, or not more than every 12 months.
11 So on March 31, the park management issued a notice of
12 rent increase, effective 90 days after that, or maybe 92
13 days after that, but anyway, July 1, 2016.

14 So Exhibit 1 is the notice of rent increase,
15 and one of the things that it says is that it does inform
16 the homeowners, as the ordinance requires, that the rent
17 increase is in excess of 75 percent of the CPI, and so
18 they give notice of that.

19 It also let's the homeowners know that there
20 will be a meet and confer available for homeowners'
21 representatives, if they choose to designate
22 representatives and send them to that meet and confer.
23 That's required by the rules. That's in Exhibit 1, in
24 the notice.

25 The notice goes one step further in also saying

1 that there will be an informational meeting for all
2 residents that park management will provide. That's not
3 required by the order, but management deemed that to be a
4 good idea in this case, to have the opportunity for all
5 homeowners to come and understand the basis for the rent
6 increase.

7 ARBITRATOR: I recall that from your brief,
8 those took place on the same day, one at 6:00 and the
9 more formal meeting with the representatives at the
10 mobile home owners at 7:30 that evening.

11 MR. BALLANTINE: Exactly, that's right. And it
12 was noticed here and did occur on those days, and
13 Mr. Waterhouse was present and he will talk about that.

14 The other part of the rent increase notice was
15 a spreadsheet, Exhibit 2, and I think that this will be a
16 useful document in this hearing because it delineates
17 what the components of the rent increase are in what I
18 think is an easily understandable fashion so that we can
19 see each and every component and then we can talk about
20 what those components are. They all have support.

21 This document, Exhibit 2, was prepared by
22 Dr. Michael St. John, who, actually, I'd like to
23 introduce right now.

24 This is Dr. St. John right here.

25 ARBITRATOR: Good morning, Dr. St. John.

1 DR. ST. JOHN: Good morning, sir.

2 MR. BALLANTINE: Dr. St. John is an economist
3 and his area of specialty as an economist is rent control
4 proceedings, and he's a specialist at preparing analyses
5 relative to returns and to prepare rent increase notices
6 that comply with rent control laws.

7 The ordinances are all different. One of the
8 things, in California there's no statewide rent control.
9 Many jurisdictions have them. They are all a creature of
10 the local jurisdiction, and so in this case --

11 ARBITRATOR: I understand the state statute
12 simply empowers the local entities to be able to do that.

13 MR. BALLANTINE: That's correct, yes.

14 So they have different complexions but, as
15 Dr. St. John will say, they have say lot of commonality
16 as well. Dr. St. John looked into this ordinance and
17 he'll talk about that.

18 So in any event, this spreadsheet was prepared
19 by Dr. St. John and it explains in numeric fashion the
20 basis of the rent increase.

21 And I will note -- we don't have to go to it
22 yet -- but Exhibit 3 is a useful document to go with
23 Exhibit 2 because it's more of a narrative explanation of
24 each of the items. It was condensed onto one page and
25 it's again a narrative explanation, and so Exhibits 1

1 through 3 were all given to the homeowners within the
2 rent increase notice to let them know of the rent
3 increase and what the basis of the rent increase was, and
4 again I think they'll be useful documents in this
5 hearing, to understand what they are. We'll talk about
6 them more, but let me just go through them on Exhibit 2
7 so that we get a little bit of an overview.

8 The first component is the CPI increase, and
9 that is variable, and the reason why it's variable is
10 that the CPI increase is a percentage and it's a
11 percentage of the homeowner's base rent. Every homeowner
12 has a different base rent, or potentially a different
13 base rent because when there's a turnover -- that is,
14 when a mobile home sells, then there's a right by the
15 park owner every five years to increase -- I should say
16 if there hasn't been a sale in the preceding five years,
17 there's a right by the park owner to increase the rent by
18 10 percent. So they call that a limited vacancy control.
19 It puts a lid on the amount of rent that it can be
20 increased when there's a sale, and what that does is,
21 essentially, it, depending on how you look at it,
22 protects the homeowner's investment in the home because
23 it allows -- it makes that home valuable, the on-site
24 rent controlled aspect of the home valuable because the
25 rents have some limitation on what they can be increased.

1 From the park owner's perspective there's kind
2 of a rent control premium -- that is, the homeowner gets
3 to sell something of value -- that is, an on-site mobile
4 home that has value because it's on site, so it's all set
5 up and it's under a rent control, there's a limitation of
6 rent, which is usually well below market.

7 So there's a premium there that the seller,
8 homeowner/seller gets to enjoy, but on the other hand it
9 also helps stability in mobile home prices, and so when
10 somebody buys they know that when they sell there's going
11 to be a limitation on the rent increase when they sell,
12 and that helps preserve value, so those are kind of the
13 competing issues there.

14 But in any event, what that means for us today
15 is that -- so what we're talking about is having these
16 various sales in these parks and so rents are not all the
17 same, like you may have in an apartment complex or
18 similar, at least. There's some range, not a huge range,
19 but some range, so the numbers are a little bit
20 different, so that's why the numbers are variable. And
21 again, the CPI increase is a percentage, the CPI itself
22 is a percentage, and then we go to 75 percent of that
23 percentage.

24 Now, one thing that did come out of the meet
25 and confer was that the homeowners felt that instead of

1 the CPI being 2.4, the applicable CPI being 2.4, it
2 should have been 2.3. The park owner agreed with that,
3 or said that's a reasonable argument and agreed to that
4 and made that, actually, adjustment. So although it was
5 noticed at 2.4, the rents that were actually charged, the
6 CPI increase was actually 2.3, or 75 percent of 2.3.

7 ARBITRATOR: To make sure I understand it, the
8 notice said that the park was basing its right to
9 increase the rent based on CPI by 2.4 percent, and at the
10 meet and confer conference you had, the mobile home
11 homeowners, said, well, our information is it should only
12 be 2.3 and essentially the park said close enough we'll
13 go with that?

14 MR. BALLANTINE: Exactly.

15 And in fact Dr. St. John will even talk about
16 that, the CPI increase and where the number came from,
17 and we agree the homeowners were correct.

18 What's essentially happened is over time the
19 index that's referred to in the ordinance no longer
20 exists, so there's now kind of a successor CPI index, and
21 we think it was perfectly appropriate, the number -- the
22 index that the homeowner said should be used, and like
23 your Honor said, it was close enough, it really doesn't
24 make a huge difference, but I did see what I understood
25 the homeowners' position in their brief was that they

1 have a dispute with the CPI number, and I think that's
2 been resolved. We can look at that, but I think that
3 we're in agreement on that number.

4 ARBITRATOR: Okay.

5 MR. BALLANTINE: The next increase is what's
6 called, line item 2, an MNOI increase, and that's stands
7 for maintenance of net operating income, MNOI.

8 And Dr. St. John calculated that. He's
9 qualified to do that. He will talk about how that was
10 done. This particular MNOI increase was done pursuant to
11 the Santa Barbara County Rent Control Ordinance, which
12 has a specific way that it's supposed to be calculated,
13 and he'll talk about that. And I think Dr. St. John
14 actually calls the ordinance a modified MNOI approach,
15 and that's what was calculated pursuant to that.

16 And basically the idea of that is, since --
17 well, we're dealing with a rent control ordinance that
18 puts a limitation on the amount of rent that a park owner
19 can increase, and so the one hand, for the homeowners,
20 you're trying to get stability, but to the park owner,
21 the park owner has to be able to recover their increased
22 costs, so the idea of the MNOI is that it's a formula to
23 make sure that the park owner is in fact, when they have
24 increased operating costs, that they can recover those
25 increased operating costs through rent increase. So it

1 calculates that, says what that number is, and in this
2 case there was a calculation of \$29.31, and basically
3 that's to reflect the increased operating costs from the
4 last time there was an MNOI done for this park, which I
5 believe was in 2011, and Dr. St. John will talk about
6 that, how that was calculated.

7 Now, these are permanent rent increases. So
8 they have temporary and permanent rent increases. A
9 permanent rent increase changes the base rent and that's
10 it, the base rent then becomes a new number going
11 forwards, at least until -- I would say forever, but
12 until the park closes down or something, no longer is a
13 park or something else dramatic changes.

14 A temporary increase is, by definition,
15 temporary, meaning it's of a limited duration. We'll
16 talk about what those durations were, but essentially the
17 temporary increases were -- they are temporary, and the
18 idea behind a temporary increase is that it's -- it's
19 to -- well, let me back up for a second.

20 The idea behind a permanent increase, for
21 example, the MNOI, is to try to take an estimation of
22 what the general day-to-day operating costs of the park
23 are that have the gone up, because especially, again, if
24 we have a rent control regime that does not allow an
25 annual rent increase of a full CPI, what we're generally

1 going to find happens over time is that the operating
2 costs to run a park exceed the amount of the rent
3 increase, which is not unusual because the rent increase
4 on an annual basis is only 75 percent of CPI, unless
5 something extraordinary is done. So the MNOI is to try
6 to pick up whatever that increased operating cost is, the
7 day-to-day operating costs.

8 The temporary rent increase is different. The
9 idea for that is to compensate the park owner for an
10 extraordinary, nonrecurring cost.

11 Now, there's, I think, a little confusion by
12 the homeowners in their brief as to the nature of a
13 temporary increase, that that could only be for a capital
14 improvement or expense, and that's not the case. The
15 capital improvement or expense is a great example of a
16 temporary rent increase because, almost by definition,
17 it's a nonrecurring cost. For example, you put a new
18 roof on the clubhouse, or you build a new clubhouse, or
19 you expand the clubhouse. Well, that may happen more
20 than once in the life of a mobile home park but it's not
21 going to happen every year, that's not an operating cost.
22 If one year you add onto the clubhouse and have a huge
23 cost for that, if that were going to be the basis of a
24 temporary increase -- excuse me, if that were going to be
25 the basis of a permanent rent increase -- in other words,

1 if we said our operating costs have gone up by \$500,000
2 this year, the homeowners would say, well, wait a minute,
3 that's not fair, that's not true you know, you just had
4 this one-time, big expense because you built this
5 clubhouse, but that's really going to have a life of some
6 period of time, that's not an appropriate, to make that
7 the basis of a permanent rent increase because that's not
8 a recurring cost, that's an extraordinary cost. And
9 maybe they won't have it all in one year, construction
10 sometimes make more a year, but the point is that you're
11 going to have a group of expenses that are not going to
12 be reoccurring every single year. It's not a reflection
13 of an increased operating cost, it's an unusual or
14 extraordinary event that happened, and so in this case
15 we've got some capital improvements that are the basis of
16 the rent increase.

17 The other aspect of the temporary increase,
18 though, are professional fees, and the homeowners say
19 that, well, that's not a capital expense. Well, maybe
20 that's not a capital expense, although some of it does
21 actually relate to capital items, but it's an
22 extraordinary cost, and we'll talk about what those were.
23 This isn't something, hopefully, that will be recurring
24 every single year. This did take place over several
25 years, but it was for extraordinary proceedings relating

1 to a rent increase and a protracted lawsuit by the
2 homeowners against the park that the homeowners lost that
3 the park had to defend. Those are extraordinary. We're
4 not claiming those are normal operating costs, but we are
5 claiming the park owner should be able to recover those
6 in a temporary rent increase, and the Galland case tells
7 us the park owner is entitled to to recover it, and we
8 are putting that as a temporary increase because that's
9 more fair to the homeowners than to say that forever the
10 park is going to have massive professional fees every
11 single year, year in and year out, so that's the basis
12 for that.

13 So let me talk about what the evidence will
14 show about the capital improvement expenses. There were
15 basically two components of that. One was for common
16 area street paving inside the park. There's some roads
17 or streets or driveways, however you want to call them.
18 They are not the public street, they are on the park
19 property. They are the roads in and out of the park and
20 to get to all of the spaces in the park and for some
21 parking areas that are common to everyone. The park
22 resurfaced them, fixed them and striped them -- striping
23 meaning painted -- as necessary, and that cost, and we
24 have invoices for that, \$274,000 and change, and that was
25 an expense that the park had.

1 ARBITRATOR: 274 K?

2 MR. BALLANTINE: Yes. It's right here on
3 Exhibit 2, and then we'll have some backup invoices.

4 And actually maybe this is a good time to
5 mention the backup invoices, your Honor, would be Exhibit
6 6. And Exhibit 6 has a spreadsheet on the front that
7 shows the breakdown, so it shows the streets, that it was
8 done by Astro Paving and that there were three payments
9 made to Astro Paving as the job progressed, and they all
10 totaled up to the \$274,000 and change.

11 ARBITRATOR: Okay.

12 MR. BALLANTINE: Then the second component is
13 common area electrical work, and that was \$59,000, almost
14 \$60,000, and that was to basically install two new
15 transformers, electrical transformers. One of the
16 transformers was to power the -- we'll call it the
17 recreational and office building, the building that is
18 the recreational room, open to all residents, the office
19 that serves all of the residents, the pool area that
20 again serves all of the residents, and this kind of a
21 pool house. So obviously, all of that is common to the
22 entire park, that's common area, and so one of the new
23 electrical transformers was devoted to that building.

24 The second transformer was devoted to the
25 laundry room, the park laundry room that consisted of a

1 number of washers and dryers and some other utilities
2 that again are common to the entire park.

3 The third area was a line extension within the
4 park, and that's diagramed in Exhibit 6. I guess
5 Mr. Waterhouse will go through that, but there are some
6 drawings. The drawings were prepared by a local
7 electrical contractor, or electrical engineer, JMPE, and
8 they prepared drawings of all of these three aspects of
9 this electrical component.

10 And then the contractor was Taft Electric
11 Company, and their invoice is there, and they broke out
12 the three different projects, or at least, I think, two
13 of them, the line extension and the common area
14 transformers, and there's a breakdown of what the three
15 costs were. Maybe, like I said, it was probably two
16 different costs.

17 ARBITRATOR: I see the letter from Taft,
18 September 12, 2012, concerning that.

19 MR. BALLANTINE: Correct.

20 ARBITRATOR: All right.

21 MR. BALLANTINE: That was the cover letter, and
22 then Taft does have some progress billings in there, and
23 that's where the breakdown is for the two projects.

24 And also in there is -- yes, here we go -- it's
25 V14, page number. Oh, it does break them down, the two

1 transformers. Space 92, that was the line extension for
2 space 92 with a scheduled value of \$7,000 and change, and
3 then there's two other values for the two transformers of
4 \$22,000 and \$25,000 and change.

5 ARBITRATOR: Looking at your evidence book,
6 Homeowners, do you find the pages that he's referring to?

7 MR. ALLEN: Uh-huh.

8 ARBITRATOR: Good. Want to make sure you're
9 tracking with us.

10 MR. BALLANTINE: Thank you.

11 All right, so essentially Exhibit 6, then, is
12 the information that will be in evidence about the
13 capital improvement costs.

14 So going back to Exhibit 2, then, Exhibit 2
15 shows us what those costs were for those two items, and
16 it shows that it was broken down by 15 years, so let me
17 talk again, go back to the ordinance.

18 What the ordinance says is that if the park has
19 capital items, they break them down by capital
20 improvements and expenses. I don't think it's material
21 as to which it is. We can look at the definitions and
22 even possibly have an argument as to which things are
23 improvements.

24 ARBITRATOR: It ends up proof solid, apples to
25 oranges.

1 MR. BALLANTINE: Exactly. The treatment is the
2 same under the ordinance, so we call them capital
3 improvements and expenses because it doesn't really
4 matter.

5 What it does say, in any event, is that they
6 should be amortized over a reasonable period, and that a
7 reasonable financing charge should be applied, and so in
8 the capital improvement and expenses items we've broken
9 it out by 15 years at a financing rate or interest rate
10 of 9 percent.

11 And to try to minimize controversy on this --
12 this has a little bit of history. The years, the 15
13 years was chosen because at a prior hearing that we'll
14 talk about in a little more detail, hopefully not too
15 much in this hearing, but in a prior hearing in 2011 when
16 there were some capital improvement items, the
17 homeowners, through an expert witness that they brought,
18 Dr. Kenneth Baar, B-a-a-r, a colleague of Dr. St. John's,
19 Dr. Baar opined that for work of this type, because we
20 were talking about street paving and electrical work, a
21 15-year amortization would be an appropriate period of
22 time, so we decided again to try to minimize the
23 controversy and go with it, so that was chosen.

24 And we think that's reasonable, by the way. So
25 we agree with that. It's not unreasonable for these

1 items, so we went with a 15-year period. We think it's
2 reasonable and we think it's conceded essentially by the
3 homeowners' representative through the qualified expert
4 witness that they had.

5 The interest rate of 9 percent was chosen
6 because at that 2011 hearing the arbitrator awarded a
7 financing rate of 9 percent. We think the same factors
8 are in play now. We thought it was reviewed once and an
9 arbitrator found that to be a reasonable number, that was
10 a reasonable number to go with. Mr. Waterhouse and
11 Dr. St. John will also testify it's a reasonable number
12 in the industry, looking at it, the 9 percent interest
13 rate.

14 I would note that the park owner has to get a
15 rate of return or interest for the capital items if they
16 are not going to collect it now, because essentially what
17 they've done is, as the evidence in Exhibit 6 shows, that
18 in 2014 they paid out the money, \$274,000 plus \$59,000,
19 about \$333,000. That was cash out then. Under this
20 ordinance and under the rent proposal, we have to wait 15
21 years to get paid back. \$333,000 over 15 years, that's
22 worth a lot less, spreading it out over 15 years, than if
23 we were to get it today. The park owner had to spend the
24 money today. Taft Electric didn't want to wait for 15
25 years, nor did Mr. Maloney at JMPE, so the park had to

1 pay for it now. That's not a surprise. That's not
2 unusual. I can't imagine it's remotely controversial,
3 that the park had to pay it.

4 But to recover the money that they had to pay
5 out over 15 years -- they need to get a rate of return on
6 that, or we believe under the law that would be
7 confiscatory, it would deprive them of a fair rate of
8 return. They would be losing money if they had to extend
9 and go out \$333,000 now and take 15 years to recover that
10 money. So that's the reason for an interest rate, and
11 the 9 percent was a reasonable rate in the industry and
12 something that an arbitrator found in similar
13 circumstances to be reasonable. Again to try to minimize
14 controversy, thought that was a reasonable number to go
15 with.

16 The next area of the temporary increase are
17 professional fees. \$400,000 of that was to reimburse the
18 park for monies incurred through February of this year
19 for defense of homeowners' appeal of a lawsuit
20 essentially stemming from the 2011 rent increase.

21 Those were all driven by, essentially, the
22 homeowners either appealing the rent increase awarded by
23 the arbitrator in 2011 and forcing the park to have to
24 defend that and pursue legal proceedings necessary to
25 defend that and secure an arbitration award, which the

1 park owner did, and to a substantial degree; and to
2 defend against a lawsuit that we'll talk about a little
3 bit that the homeowners brought claiming that the park
4 owner is not entitled to collect any rent from 2008. The
5 homeowners lost that lawsuit, but the park had to defend
6 it, and that was a fairly expensive and protracted
7 proceeding.

8 ARBITRATOR: Were any sanctions imposed during
9 the lawsuit by Judge Anderle or Judge Sterne under 128.7?

10 MR. BALLANTINE: No, your Honor. They were not
11 requested and they were not --

12 ARBITRATOR: Well, the Court has the authority
13 to do it on its own motion under that Code of Civil
14 Procedure section and I didn't see any reference to it
15 and I was just curious.

16 MR. BALLANTINE: No. There was some discovery
17 sanctions that were imposed against the homeowners at
18 some point in time although they were ultimately not
19 assessed or agreed not to pursue that, and that was
20 discovery sanctions.

21 But no, there were no 128.7 sanctions, although
22 I think that that case probably would have qualified for
23 it. It wasn't in the park owner's interest to litigate
24 that issue. We think it's a more straightforward
25 approach to do it now. I mean regardless, really, of

1 whether or not it was frivolous or not -- I think it was,
2 but we can kind of --

3 ARBITRATOR: I was just thinking if there was,
4 there may some credit issues --

5 MR. BALLANTINE: Oh, yes, absolutely.

6 ARBITRATOR: -- depending on what my ultimate
7 ruling is in this case.

8 MR. BALLANTINE: I agree completely. If the
9 park owner has received anything from the homeowners or
10 any homeowner in that, then the homeowners would be
11 entitled to a credit.

12 I would note that the park owner did obtain
13 costs through a memorandum of costs against the homeowner
14 and that was never paid. So if it were paid, that would
15 be a credit, I would concede, but it was never paid. So,
16 you know, it's outstanding, but I think it would be
17 resolved if the park owner were to recover the fees and
18 costs in this case, and that would probably be a good way
19 to do it, since I don't think the homeowners --

20 ARBITRATOR: The costs that were incurred in
21 that litigation is not part of the \$400,000 that is
22 represented by the memorandum of costs that were
23 approved?

24 MR. BALLANTINE: It is part of the \$400,000.

25 ARBITRATOR: Okay.

1 MR. BALLANTINE: Well, I guess I should say
2 kind of a yes and no, your Honor. The \$400,000,
3 actually, at the end of the day, the park incurred
4 through the billing that you'll see, it will be in
5 evidence, about \$407,000. The park owner just rounded it
6 down. I think at the time we didn't have an exact
7 figure, but in any event the park owner is willing to
8 take the \$400,000. It's just an easier number to round
9 down and go with.

10 So one way to look at it is -- I don't think
11 the costs were \$7,000, but in any event -- but
12 nevertheless, the itemization in that exhibit would
13 include all of the costs that went onto the cost bill, so
14 our position would be that if park owner recovers the
15 \$400,000 through this rent increase, then the costs would
16 be satisfied, and we agree that that's the case, and that
17 would be a good result for the homeowners' representative
18 in the sense that I don't think she needs to have an
19 outstanding judgment in the way of a cost bill hanging
20 over her head. The park owner got the costs awarded,
21 never took any steps to collect it.

22 ARBITRATOR: Understand.

23 MR. BALLANTINE: The second component of that
24 is \$110,000, and that's for what we call the space rent
25 increase proceedings -- essentially, this proceeding that

1 we're in now.

2 Now, where did the \$110,000 come from? Again
3 we thought that it was a reasonable number because that
4 was the amount of fees and costs awarded to the park
5 owner in the 2011 arbitration, and so looking at a
6 similar proceeding, we were looking at a similar number.
7 That was a retainer number, and let me explain to your
8 Honor why that is. There's a little bit of a nuance
9 here, but I think it becomes pretty clear.

10 So retainers are not unusual for professional
11 services, but the unique thing about this is, because
12 we're under the mobile home rent control ordinance and
13 we're under the laws, basically the way it works is that
14 the park owner has to notice a rent increase, which the
15 park owner did, as we've been talking about.

16 Ultimately, if the homeowners choose to
17 challenge that, then a proceeding like this happens. At
18 the end of that proceeding -- I don't think there's any
19 dispute from the park owners -- the homeowners conceded
20 that in the last proceeding, that the park owner is
21 entitled to recover its reasonable fees and costs
22 incurred in that proceeding, and the park owner is
23 entitled to get that awarded by the arbitrator at the end
24 of the proceeding, kind of like a lawsuit case where you
25 go to court, there's a judgment issued, and then if

1 there's an attorney's fees contract clause or statute in
2 play, then after the end of the proceeding, the
3 prevailing party's determined and the judicial officer
4 makes a determination based upon the evidence of what an
5 appropriate fee award is, fee and cost award is to the
6 prevailing party.

7 I think, at least from the last time around in
8 2011, the homeowners and the park owner agreed that was
9 the appropriate proceeding to use here. So essentially
10 what happens is there's an arbitration and then
11 afterwards the park owner submits its fees and costs, the
12 homeowners have a chance to comment on it, the hearing
13 officer then makes an award based upon the evidence
14 that's before it.

15 Now, obviously, right now we're in November of
16 2016. When the park owner had to issue the notice of
17 rent increase, that was in March of 2016, so we're
18 looking at something in the future that is conceivably
19 when we are standing before your Honor now, in the
20 future, and asking for a rent increase and for an award
21 of fees to compensate the park owner for that proceeding.

22 The exact number, obviously, isn't known in
23 March of 2016. But why does it have to be a component of
24 the rent increase at the time? Because the ordinance
25 says that the hearing officer cannot award any more than

1 the park owner noticed back when they issued the rent
2 notice, so the park owner has to issue a rent notice that
3 it's going to want to have included costs of an
4 arbitration proceeding, they want to include that in the
5 notice so that it's, hopefully, expeditiously done in one
6 proceeding, so they have to come up with an anticipated
7 number of what that is because otherwise, even if a
8 hearing officer agreed that the park owner is entitled to
9 every dime that it asks for at the end of the hearing, if
10 it didn't include that number in the rent increase
11 notice, then the hearing officer is in a position where
12 they are awarding more money that was noticed by the rent
13 increase notice, which the ordinance says we can't do.

14 So it's a little bit of a chicken-and-egg
15 thing. So the rent increase notice, if the park owner is
16 going to ask for fees, and we are for this proceeding,
17 then the notice has to include a factor to cover that in
18 order to be a valid notice, in order to empower the
19 arbitrator to actually make an award that would stand up
20 under the ordinance, because otherwise again the award
21 would conceivably exceed the ordinance.

22 So that's why it was done in a retainer idea --
23 in other words, an estimated amount -- and the amount was
24 picked as a reasonable amount with the idea that in 2011
25 there was an arbitration award of a certain amount, and

1 so that's where that number came from. That was the
2 number awarded by the arbitrator in the last proceeding.

3 What will happen with that may be a little bit
4 of a question. What's essentially happened since
5 February of this year, the \$400,000 figure, is that the
6 homeowners have twice appealed the 2011 arbitration award
7 administratively and the park has gone through two
8 administrative hearings. Actually four administrative
9 hearings -- two Board of Supervisors hearings and two
10 arbitrations which have resulted in an arbitration award
11 being issued on August 26 of this year, and so actually
12 in the interim since the notice was given there's been
13 more proceedings than just this one, so more than were
14 anticipated by the park owner at the time, so we may not
15 even be with the \$111,000, but the park owner will have
16 to deal with that. We can't ask for more than the
17 \$110,000. But what we may proffer to your Honor is, if
18 we come up with a new number, is extending it over more
19 years than the seven years. That would keep the number
20 down and that may be one approach to -- we'd really like
21 to resolve everything in this hearing instead of having
22 to do another rent increase notice and potentially
23 another hearing. I think that's, frankly, in everyone's
24 interest, to have some judicial economy here. So we'll
25 provide a little more meat on that. Dr. St. John is the

1 one who does these type of analyses and can talk about
2 how this was prepared and done.

3 I would note that in this case both of those
4 fees are allocated over seven years. You know, the seven
5 years, there's nothing necessarily magic about that.
6 There's no, really, reasonable life of that, although
7 it's about five years' worth of litigation so, you know,
8 seven years seemed like a reasonable time frame to extend
9 it out over.

10 The other thing is, again trying to minimize
11 controversy, the 2011 arbitration included some
12 components for professional fees. That was a seven-year
13 amortization as well. The arbitrator found that was
14 reasonable then, we thought it was reasonable now, so
15 that's the reason for that number.

16 So those are the components.

17 So then in Exhibit 2 we have a summary to see
18 how it all adds up, and we have the CPI increase that's
19 variable, the MNOI increase at \$29.31 for permanent rent
20 increase, and then we have the two temporary increases,
21 one is 15 years and one is seven years, and that adds up
22 to a total of \$108.61. Of that, the largest portion,
23 \$79.30 is a temporary, for either seven or 15 years.

24 As I said, Exhibit 3 is a little bit of an
25 explanation of these. It's a nice summary. I think it

1 will be something that we can go back to after this
2 hearing and reference to have a little bit of a summary
3 of what each of these components did, and again this was
4 designed to also inform the residents of what the
5 components were of this rent increase.

6 Exhibit 4 I won't spend much time on right now.
7 This was the MNOI analysis prepared by Dr. St. John, and
8 he will let your Honor know how he did that and how that
9 was calculated and how it was that he arrived at the
10 number that he did.

11 Two things, the two documents at the end of
12 this exhibit are the two CPI -- or two CPI documents.
13 The first -- so the last two, of the last two pages of
14 this exhibit, the first of the two, so second to last, is
15 CPI, but I call it base numbers. Those were used in the
16 MNOI analysis because it's got a CPI component that
17 Dr. St. John will talk about, and he's far better
18 qualified do that than I, so I'll let him do that.

19 The next page of that is the February 2016 CPI
20 index, and that's what was used to calculate the CPI rent
21 increase that I talked about earlier, and what the
22 ordinance says is that the CPI index, you're supposed to
23 use the 12-year -- I guess they call it the 12-year
24 average for the month preceding the month in which the
25 rent increase notice was issued. The rent increase

1 notice was issued in March and so we looked at February,
2 and, indeed, February was the latest or the most recent,
3 I guess is the way to look at it, at the time, in March,
4 it was the most recent CPI index that was there, that was
5 available.

6 And in that you can see the 2.4 and the 2.3
7 numbers. Now we have the index as Los Angeles, Riverside
8 and Orange County. It's called something different than
9 the ordinance because it's changed, but that's a
10 reasonable number and that's a reasonable index. And if
11 you look at it, it's kind of the second entry down in
12 terms of there's a U.S. city average and then there's the
13 Los Angeles, Riverside, Orange County, and if you follow
14 over to the right it says there's a percentage change and
15 it says "Year ending January 2016" and then "February
16 2016," and that's a 2.4, and that's under the index for
17 all urban consumers, CPI-U.

18 Then if you go a little bit to the right
19 there's another set of numbers, and those are for urban
20 wage earners and clerical workers called CPI-W, and if
21 you look for the year ending February 2016, there's a
22 2.3.

23 The homeowners, if I understand it correctly,
24 took the position that that was the index that should
25 have been used. Okay, fair enough. We're willing to use

1 that, and did use that, so that's the number that was
2 used and so the CPI increase was 75 percent of the 2.3.

3 The next exhibit is Exhibit 5, and those are
4 books and records, profit-and-loss numbers for the park,
5 and Dr. St. John used those for the CPI -- I'm sorry, for
6 the MNOI calculations.

7 Next we have Exhibit 6. I think I talked about
8 that. These are the capital expenditure items. They are
9 the invoices, the plans and the actual checks and some of
10 the money, at least, that was paid to the contractors.

11 Exhibit 7, your Honor, is the invoice, or it's
12 really a summary of account of the legal proceedings from
13 November 2, 2011, to February 29, 2016, and this involves
14 essentially what I would call predominantly the rent
15 proceedings -- collectively, the rent proceedings because
16 they all govern -- they all related to the park
17 owner's professional expenses or legal expenses related
18 to obtaining the 2011 -- and securing the 2011 rent
19 increase and defending against the homeowners' claims
20 that the park owner wasn't entitled to charge any rent at
21 all in the park.

22 There are some entries, as I think the
23 homeowners have pointed out, that probably relate to
24 dealing with the County on securing the permits and
25 approvals for the capital expenditures, the capital

1 expense items, primarily the permitting on the electrical
2 infrastructure to the argument that that doesn't relate
3 directly to rent. I think it does because it really
4 relates directly to a rent increase for a capital item.

5 The other way to characterize it would be as a
6 capital expense item because it's professional fees
7 dealing with securing the permitting for the electrical
8 items, and professional fees is part of -- just like the
9 engineering fees for designing the electrical system,
10 would be essentially a capital item. So really, either
11 way you look at it it's a temporary rent increase matter,
12 doesn't deal with the day-to-day operation of the park,
13 and dealt with an extraordinary event -- that is,
14 securing the permitting for the electrical system in the
15 park.

16 There's least one entry per day for which
17 there's a bill, and each item attempts to explain in
18 detail the professional services performed or the
19 out-of-pocket expenses incurred by my office in order to
20 do this litigation or legal work that's reflected
21 therein. It's pretty detailed, and in fact it's 36
22 pages. And we see, then, at the end on the last page, as
23 I indicated, it actually exceeds \$400,000. It's
24 \$407,000.

25 The next is the invoice for the \$110,000, and

1 not much there. It shows the balance. It shows that the
2 hourly rate for the work performed under this would be
3 \$450 an hour. That was my standard rate being charged
4 ever since at least March 31 of this year and the
5 foreseeable duration of this proceeding.

6 And the back side of that page is the check
7 that was issued in payment of that retainer.

8 Exhibit 9, I guess, is kind of an interim
9 exhibit. There is an invoice for St. John & Associates.
10 It's really a summary of invoices to show the charges
11 that were made. Some of those in September 2011 were
12 already recovered in the prior proceeding, and at the end
13 of this we'll itemize what's not been paid. And in fact
14 there's an update because, obviously, this only goes
15 through February of this year. There's more expenses
16 after that time, including today.

17 Exhibit 10 and 11 I thought would be useful
18 documents for your Honor. I guess this gets into the two
19 cases of litigation that we'll be talking about, and the
20 reason why I thought it was useful was these are the
21 court dockets for these two cases, so it gives your Honor
22 a good idea of all of the documents that were filed.

23 Some of the other exhibits that I have here are
24 what we thought were some of the more significant
25 documents in that case, primarily court rulings. The

1 nice thing about the court rulings, or most of them, have
2 an actual decision that explains the factual background
3 for the issue being ruled on as well as the basis for the
4 ruling, so they provide a nice explanation of what the
5 issue was that was adjudicated by the judicial officer.
6 I included a few pleadings, but not many.

7 So, obviously, the documents were voluminous.
8 I didn't think it was efficient for everyone here to
9 present binder after binder of all the pleadings and
10 discovery in the case. I think that the pleadings are
11 summarized in other court filings. The pleadings and
12 other court filings are summarized in Exhibits 10 and 11,
13 the dockets, and the work on the park side, at least,
14 relative to the pleadings and the briefing and the
15 discovery and everything else is itemized in some detail
16 in the invoice or the summary of account, Exhibit 7 that
17 I talked about, but Exhibits 10 and 11 are the official
18 record of the court, the docket of the court and give
19 your Honor a good idea of what documents were filed, when
20 it was filed, again who filed it, what the document was
21 called, et cetera.

22 So the first case summary -- I guess I should
23 provide a little bit of background for this case. I
24 talked about in the hearing brief so I won't repeat it or
25 go into detail, and I'm sorry the hearing brief was so

1 long but I tried to provide a summary of what was a
2 fairly lengthy proceeding.

3 ARBITRATOR: Oh, I couldn't tell you from
4 memory dates and filings and hearings and all of that,
5 but I certainly read everything that you presented, just
6 as I read everything that Ms. Hamrick presented for the
7 homeowners.

8 MR. BALLANTINE: Thank you. Appreciate that.
9 So we tried to provide a nice, chronological
10 summary. So essentially what happened was the arbitrator
11 after a hearing issued an award on December 20, 2011.
12 The park was satisfied with the award. It awarded about
13 \$96 out of \$161 requested. The park was willing to live
14 with that. The homeowners were not; they appealed it to
15 the Board of Supervisors.

16 The park owner then decided to do a limited
17 appeal on one issue, which had to do with a ground lease
18 expense passed through the park that the park owner
19 thought they were entitled to. The arbitrator saw it
20 differently.

21 It went before the Board of Supervisors. The
22 Board of Supervisors eliminated every single rent
23 increase granted by the arbitrator, including the
24 increase in property taxes, and remanded the property tax
25 for reconsideration by the arbitrator.

1 He did, and he upheld his prior award.
2 Everything else had been vacated by the Board of
3 Supervisors.

4 The park owner thought that was an extreme
5 violation of the law and the ordinance and so filed a
6 writ proceeding against the County naming the homeowners
7 as real party in interest, and that's what Exhibit 10 is,
8 it's the docket for that, and I think I called it the
9 Nomad writ proceeding, and so that was essentially to ask
10 the Superior Court, Judge Anderle, to review the Board of
11 Supervisors' action in vacating the entire arbitrator's
12 award.

13 The homeowners appeared in that proceeding,
14 they participated in that proceeding, they filed a number
15 of motions and requests for discovery, which were
16 actually denied because it was a writ, administrative
17 writ preceding. It's not done with discovery, it's done
18 on the administrative record, which I'll note is
19 reflected in the case summary on page 3. It notes that
20 volumes 1 through 5 of the -- maybe even more than
21 that -- no, I guess that's right, 1 through the 5 of the
22 administrative record was filed. That was filed back in
23 early 2013.

24 Initially the park owner thought that this
25 would be adjudicated fairly quickly because it's just on

1 the administrative record and briefing, but you'll see
2 there's a number of motions that were filed by the
3 homeowners that protracted these proceedings for about a
4 year.

5 Ultimately, the writ of mandate issue was
6 tendered to the court. It was briefed. The park owner
7 submitted a lengthy brief on the topic on the legal
8 issues regarding -- well, legal and factual issues from
9 the administrative record regarding the rent increase,
10 and it was heard by Judge Anderle and he issued an order
11 and that's one of the exhibits here.

12 That's a useful document because he does, as he
13 often does, a very detailed explanation of the factual
14 issues tendered before him and his resolve. The resolve
15 was primarily to uphold the arbitrator's award or, in
16 some cases, because the homeowners had raised questions
17 about it, to remand it back to the arbitrator to say, you
18 know, make findings, more specific findings to support
19 that award. And so that was done and ultimately it did
20 go back to the arbitrator and he did make those findings,
21 and I'll talk about that in a few minutes in a very
22 summary form.

23 But this case summary shows the administrative
24 writ proceedings that the park owner had to pursue in
25 order to --

1 ARBITRATOR: Judge Anderle's ruling on that
2 writ proceeding is found at what exhibit?

3 MR. BALLANTINE: Good question. Let me get
4 that for you. It is, your Honor, Exhibit 36, and it's
5 entitled "Order on Writ of Mandate."

6 ARBITRATOR: Okay, thank you.

7 MR. BALLANTINE: You can see there's a short --
8 an order itself and then the decision is attached to
9 that.

10 ARBITRATOR: Okay.

11 MR. BALLANTINE: And several of the exhibits
12 prior to that are some various, like I said, some of the
13 law and motion proceedings in that and show some of the
14 motions and, specifically, the rulings. I think the
15 rulings showed that there were some -- that the
16 homeowners were misguided.

17 Essentially, one of the big issues that the
18 homeowners tendered was then foreshadowed in the lawsuit
19 against the park, and that is essentially that the
20 homeowners took the position that the park is required
21 under the law to have what's called a permit to operate
22 issued by the appropriate enforcement agency. That part
23 of the claim we agree with completely.

24 The homeowners then claimed that there was
25 never a proper permit to operate issued by the

1 enforcement authority -- in this case, the County. That
2 the park owner and the County disagreed with. There were
3 permits issued to operate each and every year for the
4 operation of this park. We think that was a groundless
5 claim. Nevertheless, the homeowners pursued that. They
6 first raised it in the writ proceeding. That was not
7 directly adjudicated in the writ proceeding because Judge
8 Anderle ruled that was not a claim that you ever made in
9 the administrative record and so therefore we're dealing
10 with the administrative record, that's what's before me,
11 so the park owner -- the homeowners sued, then, the park
12 owner, the County and actually the ground lessor as well
13 in the writ proceeding.

14 What I think we tried to show in the pleading
15 that we filed, though, is that all of the factual bases
16 by which the homeowners lost that case, their writ case,
17 were all before the homeowners in the initial writ
18 proceeding. The facts are pretty simple and
19 straightforward.

20 Essentially the facts are this: Exhibit 13 and
21 Exhibit 14, what I'll be talking about right now, Exhibit
22 13 is a statewide form issued by the Department of
23 Housing and Community Development, and the Department of
24 Housing and Community Development, or HCD, which
25 essentially is the regulatory agency on a statewide basis

1 that governs the operation of mobile home parks from the
2 park side.

3 They sometimes delegate their regulatory
4 authority to a local entity -- in this case, the County.
5 So essentially the County has stepped in as the local --
6 essentially, as the HCD, the regulatory authority. So
7 we're using a statewide form, the HCD form, but it's the
8 County that's kind of administering form and the process.

9 As I mentioned before, because this becomes a
10 little relevant for background, in 2008 the Nomad
11 Village, Inc.'s, ground lease expired and Lazy Landing
12 became the ground lessor to take over the operation of
13 the park. That's an LLC that was formed to operate this
14 park or to basically be kind of the park owner as the
15 ground lessor of this park.

16 They hired Waterhouse Management Corporation, a
17 management company that Mr. Waterhouse runs to
18 essentially be the operator of the park, the day-to-day
19 manager.

20 Waterhouse Management Corporation's an
21 experienced mobile home park operator. They operate
22 parks all over the state of California, they've been
23 doing it for many years, they know what they're doing.
24 This isn't their first time that they have taken over the
25 operation of a park.

1 They did exactly what they were supposed to do
2 in Exhibit 13. They submitted to the County an
3 application for permit to operate to let the County know
4 that the ownership and management of the park had
5 changed. They told the park -- excuse me, they told the
6 County the park name, Nomad Village --

7 ARBITRATOR: The document is self-explanatory.

8 MR. BALLANTINE: Excuse me?

9 ARBITRATOR: The document is self-explanatory.

10 MR. BALLANTINE: It is, indeed.

11 What I'll point out is they reported the
12 owner's name as Lazy Landing -- again that's the ground
13 lessor -- and as the manager, as Waterhouse Management.

14 All of the information was accurate, all
15 submitted to the County.

16 Exhibit 14 are the permits to operate that were
17 issued each and every year, at least for the relevant
18 years, 2009 to -- I'm not sure if I got into '16. This
19 case was resolved in 2015. I think, actually, we do have
20 the 2016.

21 What the homeowners noted -- and one aspect of
22 this is correct -- they noted that the permit to operate
23 issued by the County -- this is a County form -- said for
24 several of those years, almost all of those years, the
25 owner was Nomad Village, Inc. They contend that that

1 wasn't accurate. I guess it was inaccurate. Nomad
2 Village, Inc., went out of business.

3 The homeowners claimed that that therefore
4 rendered this permit to operate invalid and therefore
5 Waterhouse Management and Lazy Landing were not entitled
6 to collect any rent ever in the park, so therefore no
7 rent increase, no rent.

8 The County disagreed that interpretation. The
9 County is the people that generated this document. The
10 County generated these permits to operate based upon the
11 information that they got from the application for permit
12 to operate. Why they left "Nomad Village, Inc.," on
13 there was a mystery to everyone, I think. But in any
14 event, the idea was that somehow that rendered the
15 document invalid as a permit to operate -- which, by the
16 way, I note that every one of them was issued, as the
17 operator, to Waterhouse Management Corporation. They
18 were the operator, they were doing the day-to-day
19 operation, they submitted -- they received the bill every
20 year from the County for the permit to operate and they
21 sent the check from Waterhouse Management and they
22 received this permit to operate as the operator. They
23 were clearly the operator. There's no dispute they were
24 the operator.

25 ARBITRATOR: It could be a scrivener's error of

1 some kind.

2 MR. BALLANTINE: Exactly. And a scrivener's
3 error doesn't mean that several million dollars in rent
4 can't be collected in this park, and yet that's what we
5 litigated, and Exhibit 11 is the litigation of that very
6 issue. And I would note that in the -- that the
7 homeowners were provided with Exhibit 13 early on in the
8 first case. They had that document.

9 Exhibit 11 is the docket for what wound up
10 being a very long case on a very simple issue, petition
11 for writ of mandate, basically sought a writ of mandate
12 against the County. They named the park owner, Lazy
13 Landing and Waterhouse Management Corporation as real
14 parties in interest. They also named the Bells -- the
15 Bells are the ground owners, the ground lessors. The
16 Bells have a ground lease with Lazy Landing. The ground
17 lease requires Lazy Landing to indemnify the Bells for
18 operation of the park, so therefore Lazy Landing had to
19 defend the Bells in this case as well as themselves, and
20 we did.

21 Ultimately the case, after some briefing, not a
22 lot of law and motion, but a lot of discovery, was
23 resolved by summary judgment in favor of the park owner
24 and the County, and that summary judgment is attached as
25 Exhibit 41.

1 And maybe more to the point -- well, let's see.
2 I just noticed this. In my version, I think 41 should
3 actually be the order granting summary judgment, and it's
4 the judgment. And Exhibit 42 is also the judgment, so I
5 will get that corrected.

6 The reason why I make that note is Exhibit 41
7 should be the order granting summary judgment and that
8 will explain the basis of the court's ruling granting
9 summary judgment, and that may be a useful document. So
10 we'll get that supplemented so your Honor has the benefit
11 of what Judge Sterne thought about the case and the basis
12 for the summary judgment ruling, but in any event, these
13 accurately reflect the fact that ultimately summary
14 judgment was granted in favor of the County and the park
15 owner.

16 And so, then, it is these proceedings that
17 provide some what I would call backup or documentation,
18 at least to give your Honor an idea of the legal work
19 that was done that supported -- supporting Exhibit 7.
20 Exhibit 7, of course, lays out all of the work that was
21 done to do the discovery and prepare the pleadings.

22 And then I guess going back in the exhibit list
23 a little bit, we've also provided for the benefit of your
24 Honor several things from the rent proceeding because we
25 thought that might be important either from our

1 perspective or from the issues that we understood that
2 the homeowners might be raising.

3 Exhibit 15 is basically two things. Exhibit 15
4 is the list of arbitration exhibits that the park owner
5 presented, just to give your Honor an idea of what that
6 was in the 2011 proceeding, and then it also includes, of
7 those exhibits, Exhibit J from the 2011 proceeding, and
8 the reason why Exhibit J is relevant here appears to be,
9 as I noted in the homeowners' arbitration brief, that
10 they seemed to claim that the park owner already received
11 in the 2011 reimbursement for capital expense items at
12 issue in this arbitration. That's inaccurate.

13 Mr. Waterhouse and Dr. St. John can talk about
14 that, but Exhibit J shows the itemization totalling
15 \$62,000 of the specific items of capital improvement
16 expenses that were covered in that proceeding, and all of
17 those are either 2011 or before and you'll see that in
18 Exhibit 6. All of the capital expense items that are at
19 issue in this proceeding date from after that time, I
20 think 2014, maybe 2013 as well.

21 Then I've also provided the hearing transcript,
22 Exhibit 16. I don't expect your Honor to read it, but I
23 wanted it to be available if a question came up as to
24 whether or not something was done or said at that
25 hearing. We've got the complete transcript.

1 And I note it was reported by our court
2 reporter here today, Mr. McClure. He's an expert at
3 these mobile home proceedings.

4 And then, your Honor, I think we gave you all
5 of the opinions and awards issued by the arbitrator in
6 that proceeding. So again with the idea of not giving
7 you voluminous records of every single thing that's out
8 there, because there's a lot, at least the awards helps
9 summarize what the arbitrator ultimately found.

10 I think we also included the homeowners'
11 appeals, because the homeowners appealed repeatedly.

12 And let me describe essentially what the upshot
13 of the issue was, is that in 2011 the park owner did a
14 rent increase notice that had several different -- a
15 number of different factors, like here today. One of the
16 factors that was in contention was when the park owner
17 took over the operation of the park, they were required
18 by their lender to reserve \$320,000 to repair the streets
19 and to do electrical improvements to the park, and they
20 had that as a reserve, they were holding it in a reserve,
21 they paid the money in, and they paid interest on that
22 money because they borrowed the money to put in from 2008
23 to 2011.

24 By 2011 they bids for all of the paving work
25 and they had an estimate, at least, of what the

1 electrical was going to cost, although that was still in
2 a state of flux because the park was still negotiating
3 with the County on the permit for the electrical work.

4 It's a fairly esoteric and complicated thing,
5 electrical systems in old -- and this is an old park --
6 in old mobile home parks and so all those complexities
7 were being worked out.

8 The park owner went forward with the rent
9 increase at that time for two reasons: One, it had paid
10 the \$320,000 in in real dollars, and, secondly, there
11 were some other components from a property tax increase
12 that the County had issued in 2009 for 2008, the park
13 owner felt it was important to go forward with the rent
14 increase, and I would note that the homeowners claimed
15 that, as with the case of the property taxes, that the
16 park was too late because a year had gone by. They were
17 wrong, there's no statute of limitations, but they
18 claimed, well, too much time had gone by, so the park
19 owner was trying to balance getting contemporary
20 information to the homeowners with trying to expedite
21 this through one proceeding.

22 The park owner could show that work was
23 committed to do these two projects and that the \$320,000
24 was actually paid and the park owner knew from the bids
25 that it had that the work was going to far exceed that.

1 Ultimately, Judge Anderle found that the
2 \$320,000, as a group, wasn't allowed because a lump sum
3 wasn't allowed. He didn't feel it was definite and
4 certain enough -- the work. We beg to differ. We think
5 it was identified, but in any event that's what Judge
6 Anderle found in his ruling. He did find, though,
7 however, that the itemization, that the arbitrator could
8 award that if the arbitrator wanted to, the \$62,000 that
9 I showed your Honor from Exhibit J, and that's ultimately
10 what the arbitrator did, awarded the \$62,000.

11 So at that point the park owner had two
12 choices -- to do it the hard way or the easy way. The
13 hard way, to appeal to Judge Anderle and say he was
14 mistaken about the definite and certain, or to simply
15 say, okay, now we've done the work, we have the actual
16 invoices for -- I mean this isn't speculative, this is in
17 the ground, this is there, we can notice a new rent
18 increase, here's the invoices.

19 And when I say "here," I mean we just talked
20 about them, Exhibit 6. Here's the invoices, here's the
21 hard dollars, it was \$333,000 plus the \$62,000 that was
22 already awarded, so of what we estimate was going be in
23 excess of \$320,000 came out to \$400,000; in other words,
24 the \$330,000 plus change of this, plus the \$62,000 and
25 change came out to about \$400,000. So what's at issue

1 right now is the \$333,000 or so, what we've itemized in
2 Exhibit 2.

3 The homeowners have said in their arbitration
4 brief that that was either -- they say two things. One,
5 already awarded -- well \$62,000 was -- or reviewed and
6 denied by the court. Well, that's not true. It wasn't
7 denied by the court. The court said the \$320,000 sinking
8 fund, or escrow fund that was paid for, that wasn't
9 sufficiently definite and certain, you need to itemize.

10 So we've done that. Not only have we itemized,
11 but we actually show actual invoices because the work was
12 done and completed.

13 Ultimately, at the end of the proceedings the
14 homeowners -- they were successful in not getting all of
15 the \$320,000 assessed, but ultimately it was apparent to
16 everyone that electrical work was going to be done, and
17 in fact was done, and I would note the arbitrator
18 retained jurisdiction to make sure the work was done in
19 his arbitration award. Ultimately the work was done, and
20 essentially that's what happened.

21 So at the end of the arbitration proceedings
22 the homeowners essentially got nowhere. They had a fee
23 reduction in some of the -- actually, they didn't get any
24 reductions. The arbitrator reduced several items
25 slightly from what we asked for. We said fine, we'll

1 live with that, and that's ultimately what the latest
2 arbitration award says. And the latest arbitration award
3 is, I think, Exhibit -- I'm going to have to hunt that
4 down. Well, I'll have to hunt that down.

5 I note that we also provided to your Honor
6 several what they call board letters --

7 ARBITRATOR: March 5, 2016, is that the one
8 you're looking for?

9 MR. BALLANTINE: There's actually one after
10 that, that's what I was looking for, and I don't see
11 that. I'll have to identify it later and let your Honor
12 know which one that is.

13 ARBITRATOR: Okay.

14 MR. BALLANTINE: All right. And I would note
15 that the latest award is currently under appeal by the
16 homeowners and is set for review by the Board of
17 Supervisors in December.

18 As a final point, I would note -- we cited this
19 in our brief -- essentially, just to talk about the
20 exhibits, pretty much what we have before your Honor,
21 other than the first few exhibits, which are specific for
22 this notice of rent increase and for the financial
23 calculations and so forth, essentially all of these other
24 exhibits are from either the rent control proceedings,
25 the administrative proceedings or the court proceedings,

1 and essentially they are official records.

2 So the idea, the evidentiary basis for this is
3 the rule that we cited in the rules governing this that
4 say that the arbitrator can consider official records,
5 and so we have presented a select few of these official
6 records from the court proceedings to give your Honor an
7 idea of, essentially, the proceedings that were done to
8 back up the legal work and the, essentially,
9 admissibility. The basis for those would be they are
10 official records and therefore proper matters for the
11 arbitrator to consider in this rent proceeding.

12 ARBITRATOR: All right.

13 MR. BALLANTINE: And with that, I thank your
14 Honor very much for your patience in going through all of
15 this with me.

16 ARBITRATOR: My pleasure.

17 We have been going about an hour and a half,
18 folks. Why don't we take a 15-minute recess. Our court
19 reporter's fingers can certainly use it. Then we'll then
20 come back and start with whatever the homeowners have for
21 me and then we'll get to the respondent's witnesses and
22 see if we can get this thing focused.

23 So we're in recess for 15 minutes. I'd like
24 everybody back at 45 past the hour.

25 (A short recess was taken.)

1 ARBITRATOR: All right, let's get started.

2 Mr. Allen, you indicated you didn't think you
3 had any witnesses, you were simply going to cross-examine
4 or had some questions for the respondent's expert. Is
5 that still the case?

6 MR. ALLEN: That's correct.

7 ARBITRATOR: Okay. I assume in terms of
8 documentary evidence -- well, I shouldn't make any
9 assumptions. It's like the old joke. I assume, though,
10 that you don't have any other documentary evidence beyond
11 which Ms. Hamrick attached to her briefs, is that --

12 MR. ALLEN: I do, I do have.

13 ARBITRATOR: Okay. Would you show those
14 documents, please, to defense counsel, Mr. Ballantine, if
15 he hasn't seen them.

16 MR. ALLEN: Okay.

17 ARBITRATOR: And if he has any objection to
18 them we will deal with that. I doubt he will, but we
19 will see.

20 I've received what appear to be three
21 documents. The first one is entitled "Nomad Village
22 Table 3-A, MNOI Analysis, 2007-2010." It has three
23 pages.

24 I have a second document, "Nomad Village,
25 Return Analysis," which is a single page.

1 And then a two-page document that is entitled
2 "Comparison Return on Investments for 2012 to 2016 Listed
3 Mobile Home Parks Held for Sale," and that's a two-page
4 document, which I'm now going to staple.

5 As the Respondent has used numbers, I will give
6 you letters. The first document I will list as A, the
7 second one I'll list as B, and the third one I will list
8 as C.

9 MR. ALLEN: There are actually four.

10 ARBITRATOR: What am I missing?

11 MR. ALLEN: The one -- the two you say, they
12 are separate, the two last ones.

13 ARBITRATOR: Oh, I'm sorry. Then Exhibit D
14 will be "Nomad Village Return on Capital and Net
15 Operating Income."

16 Is that correct? Okay, there are those four.

17 Any objection to those being received at this
18 time, Counsel?

19 MR. BALLANTINE: I think I do. I don't know
20 what the authentication is for these. Like, for example,
21 D purports to be finances of our park, but I don't think
22 it's anything that I've seen that we prepared.

23 Exhibit C looks like are they're numbers from
24 something and we don't really know what they are, what
25 the basis is. I mean I kind of understand what they

1 purport to be, so again, lacks foundation.

2 And I think A and B -- I'd like Dr. St. John to
3 look at them, but they look to me like these were
4 actually documents he prepared, and if that's the case,
5 fine.

6 ARBITRATOR: They look very much like documents
7 I've seen before in either your exhibit book here or
8 attached to your brief.

9 MR. BALLANTINE: Your Honor, it does. Ours
10 refer to a different period of time, so they are not the
11 same document, but I agree with you, format-wise, they
12 look the same, so I assume they may well have been
13 prepared by Dr. St. John.

14 ARBITRATOR: Let me ask Mr. Allen.

15 Mr. Allen, who he prepared what we've marked
16 for identification as Petitioner's Exhibit B, the "Nomad
17 Village Fair Return Analysis"? That document comes from
18 what source and who is the author?

19 MR. ALLEN: That was given to us by St. John.

20 ARBITRATOR: That was given to you by
21 Mr. St. John?

22 MR. ALLEN: Yes.

23 ARBITRATOR: When, approximately?

24 MR. ALLEN: Four or five years ago.

25 MR. BALLANTINE: I assume he means somewhere in

1 the 2011 rent --

2 ARBITRATOR: The litigation, okay.

3 And Exhibit C, the comparison, the "Comparison
4 of Return on Investment, 2012 to 2016 Listed Mobile Home
5 Parks Held for Sale," that document comes from where and
6 the author of it or publisher of it is whom?

7 MR. ALLEN: I created it.

8 ARBITRATOR: You created it?

9 MR. ALLEN: Yes.

10 ARBITRATOR: Okay, then you will probably have
11 to testify about it and we'll let counsel call you in his
12 case-in-chief so he can do that, just for my convenience,
13 do it that way.

14 MR. BALLANTINE: Okay, sure.

15 ARBITRATOR: And we'll hold that in abeyance.
16 It's marked for identification but not yet received.

17 And the Nomad Village Exhibit D, "Return on
18 Capital and Net Operating Income," the author of that
19 document is?

20 MR. ALLEN: It me.

21 ARBITRATOR: Is you?

22 MR. ALLEN: Yes.

23 ARBITRATOR: So we'll hold both of those.

24 Any objections, then, to A and B at this time
25 being received? We're not dealing with relevance or

1 probative weight, just dealing with are they admissible
2 for whatever value they do or do not have.

3 MR. BALLANTINE: I have the authentication
4 issues. I think if Dr. St. John authored it I won't have
5 the foundational ---- I just asked him if he did it, and
6 he doesn't recognize it, but it's a long time ago.

7 Let me suggest this, to make this go along. As
8 to the two Dr. St. John documents, we'll accept the
9 homeowners' representation they were prepared. If we
10 find out in reviewing otherwise that it somehow appears
11 to have been materially changed, we'll address that in
12 post-hearing briefing --

13 ARBITRATOR: So we'll hold off on C and D
14 pending the sequence in which you want to address that
15 issue --

16 MR. BALLANTINE: Okay.

17 ARBITRATOR: -- before they are received.

18 (Petitioner's Exhibits A and B
19 received into evidence.)

20 ARBITRATOR: Now, I have received an exhibit
21 notebook which you have received which has exhibits, most
22 of which have been discussed by counsel in his opening
23 statement to me. They are indexed and have
24 identification summaries on the entire book.

25 Do the homeowners have any objection to my

1 receiving these for whatever value they have in my review
2 and deliberations in this case?

3 MR. ALLEN: I don't believe so.

4 ARBITRATOR: In that case, Exhibits 1 through
5 43 in the notebook are received without objection.

6 (Respondent's Exhibits 1 - 43
7 received into evidence.)

8 MR. BALLANTINE: Thank you, your Honor.

9 I would note one thing. Miss Davis pointed out
10 one thing to me, and she was right. One of the exhibits
11 is incomplete. She identified that. I looked at what we
12 had exchanged with the homeowners previously. It's the
13 financial statements. We gave them a complete set.
14 What's in the book is incomplete. We are getting that
15 corrected so that it will be a complete set. Miss Davis
16 pointed that out. So it's not new documents, but we'll
17 get the complete set.

18 ARBITRATOR: Will that be here sometime today?

19 MR. BALLANTINE: Yes. My office is working on
20 it right now.

21 ARBITRATOR: Good. Thank you for that.

22 All right, then there being no witnesses to be
23 called by the petitioner, we'll have the Respondent call
24 their first witness.

25 MR. BALLANTINE: Thank you, your Honor.

1 Your Honor, I'd like to call the president of
2 Waterhouse Management, Mr. Ken Waterhouse.

3 ARBITRATOR: Thank you.

4 As far as I am concerned, he can sit right at
5 counsel table and you can do your direct examination from
6 there.

7 Raise your right hand, sir.

8 Do you solemnly swear or affirm that the
9 testimony you give in this hearing will be the truth, the
10 whole truth and nothing but the truth?

11 MR. WATERHOUSE: Yes, I do.

12 ARBITRATOR: State your full name for me.

13 MR. WATERHOUSE: Kenneth George Waterhouse.

14 ARBITRATOR: Thank you.

15 You may enquire.

16 MR. BALLANTINE: Thank you, your Honor.

17
18 KENNETH WATERHOUSE,
19 having been sworn, was examined
20 and testified as follows:

21
22 EXAMINATION

23 BY MR. BALLANTINE:

24 Q. Mr. Waterhouse, what is your current position?

25 A. The owner and president of Waterhouse

1 Management Corporation, and 50 percent owner of Lazy
2 Landing, LLC.

3 Q. What is Lazy Landing, LLC?

4 A. It's Nomad Mobile Home Park.

5 Q. The ground lessor?

6 A. Yes.

7 Q. Tell us, what does Waterhouse Management do?

8 A. Waterhouse Management is a professional
9 management company that primarily manages mobile home
10 parks. We have 90-plus mobile home parks in California
11 that we own and manage, and one in Reno, primarily do
12 day-to-day operations for the entire parks.

13 Q. And that's a company you own?

14 A. Yes.

15 Q. Did you start that company?

16 A. Yes, in 1997.

17 Q. Okay. How long have you been in the mobile
18 home park business?

19 A. Since 1994.

20 Q. Tell us a little bit about your educational
21 background.

22 A. I graduated from Brigham Young University and
23 bachelor's of science in business management.

24 Q. I understand you hold some records at BYU
25 University.

1 A. Yes, track and field records. I still hold
2 some records. I went on a full scholarship.

3 Q. Tell me a little bit more about your background
4 managing mobile home parks. Tell us what you do to
5 manage mobile home parks, in broad terms.

6 A. We manage mobile home parks. We started off
7 managing mobile home parks, just managing them, fee
8 management for other owners, and slowly developed into
9 where we started buying and selling the parks. We do
10 day-to-day operations, including everything from hiring
11 the managers onsite, to rent increases, the general
12 ledgers, profit-and-loss statements, all the day-to-day
13 operations, capital improvement items, hearings such as
14 these -- everything you can possibly think of within the
15 mobile home park business we do.

16 Q. All right very good.

17 A. We've been doing only mobile home parks since
18 '97, so nothing else but mobile home parks.

19 Q. You said you managed over 90 parks?

20 A. Own and manage over 90 mobile home parks in
21 California, and one in Reno, Nevada.

22 Q. Among those the work that you do in managing
23 these mobile home parks, does that include planning and
24 overseeing capital improvements to the parks?

25 A. Yes.

1 Q. In the course of the work that you do managing
2 parks do you have occasion to hire attorneys and
3 supervise their work?

4 A. Yes.

5 Q. And you've done that on a fair number of
6 occasions?

7 A. Many times, yes.

8 Q. And do you still look at attorneys' bills and
9 evaluate them?

10 A. Yes, I do.

11 Q. For Nomad Village Park, when did Waterhouse
12 Management and Lazy Landing get first involved with Nomad
13 Village?

14 A. August 2008.

15 Q. And that was when they took over the ground
16 lease for that park?

17 A. Yes.

18 Q. So do I understand correctly, then, that Lazy
19 Landing has a ground lease from the fee owner of the
20 property?

21 A. Yes.

22 Q. Of the entire park?

23 A. Correct, 34 years.

24 Q. Thirty-four years. Which, hopefully, wouldn't
25 have been subject to property tax increase, correct?

1 A. Yes.

2 Q. But that didn't happen, right?

3 A. Yes.

4 Q. And the County raised the property tax at that
5 time?

6 A. Yes.

7 Q. And did that and other things result in Nomad
8 Village management asking for a rent increase?

9 A. Yes.

10 Q. That was in 2011?

11 A. Yes.

12 Q. You were personally present at the arbitration
13 hearing in that matter?

14 A. Yes, I was.

15 Q. For the entire hearing?

16 A. The entire hearing, yes.

17 Q. You testified as well?

18 A. Yes.

19 Q. Are you familiar with what happened and the
20 exhibits and everything?

21 A. Yes, I am.

22 Q. So let's talk about now. Directing your
23 attention to Exhibits 1 through 3, let's start with 1.
24 It's entitled "Nomad Village Mobile Park." Was that a
25 notice of rent increase that went out to the homeowners?

1 A. Waterhouse Management Corporation employees
2 sent notices out.

3 Q. And did that include every single homeowner in
4 the park?

5 A. Yes. They were sent both by first-class mail
6 and hand delivered to each resident in the park.

7 Q. Okay. And was this developed by Waterhouse
8 Management in conjunction with consultation with
9 professionals, consulting with this?

10 A. Yes.

11 Q. And was Exhibit 2 part of the package as well?

12 A. Yes.

13 Q. And Dr. St. John prepared this?

14 A. Yes.

15 Q. And Exhibit 3, was that part of the package as
16 well?

17 A. Yes, it was.

18 Q. All right. Let's see, let's address a couple
19 of things with Exhibit 1, with the notice.

20 Starting off with the second-to-the-last
21 paragraph, there's a reference to an informational meet
22 and confer. Do you see that?

23 A. Yes, I do.

24 Q. Are you familiar with those events?

25 A. Yes, I was there.

1 Q. Okay. You were there. Tell us about -- were
2 they held on April 19?

3 A. They were held on April 19. Approximately 6:00
4 p.m. we started the meetings to meet with the entire park
5 first. We went over the basis of what we're doing, the
6 rent increase, et cetera, and then --

7 Q. Let me stop you there. Were there residents
8 there?

9 A. Yes, there were at least 75 residents there.

10 Q. Okay. And then what happened after that?

11 A. After that we met with park representatives,
12 the HOA, approximately five people.

13 Q. You mean on the homeowners' side?

14 A. Yes.

15 Q. Who was there for the park?

16 A. I was there, Edwin Garcia was there.

17 Q. Anyone else?

18 A. And our attorney, James Ballantine, yes.

19 Q. And I'm sorry, I stopped you. Who is
20 Mr. Garcia?

21 A. He's my vice president of Waterhouse Management
22 Corporation.

23 Q. And did you and Mr. Garcia attend with full
24 settlement authority?

25 A. Yes.

1 Q. And were you both personally familiar with the
2 bases for the rent increase?

3 A. Yes.

4 Q. Tell us, without going into the details of any
5 settlement discussions per se, can you tell us what
6 generally happened at that meeting?

7 A. The first meeting or the second meeting?

8 Q. The second meeting.

9 A. The second meeting, we met with the
10 representatives of the HOA of the park and discussed the
11 rent increase. We discussed what we did, what we were
12 going to do, and we talked about the consumer price
13 index. They said it was 2.3, we had 2.4, and we said no
14 problem, we'll take care it, adjusted it.

15 We talked about possibly attending mediation,
16 we talked about possible settlements. So this is
17 continuing to go on and on and on, and as it continues,
18 the attorney's fees get higher, and the time in
19 litigation, and we thought maybe we can resolve this if
20 we can mediate it or talk among ourselves, but it never
21 happened.

22 Q. Okay. With respect to the CPI going from 2.4
23 to 2.3, does your office, Waterhouse Management, do you
24 do the billing or supervise the billing for the rent
25 bills?

1 A. Yes, we do.

2 Q. And that's something you personally direct?

3 A. Correct.

4 Q. And who in your office is in charge of that?

5 A. Sharon Jennings, the CFO.

6 Q. Did you direct her to charge, essentially, the
7 CPI calculation of 2.3 instead of 2.4?

8 A. Yes, I did.

9 Q. Is that what happened? When ultimately the
10 went increase went into effect, the CPI portion of that
11 went into effect on July 1, 2016, was that calculated
12 upon the basis of 2.3 instead of 2.4?

13 A. Yes, it was. I actually called her during our
14 meeting. I took a break and called her and asked her
15 about the 2.4, 2.3 and the clarification, and told her to
16 change it to 2.3 during our meeting that day.

17 ARBITRATOR: Was this the meeting with the 75
18 people or the meeting with the four or five?

19 WITNESS: The four or five. We were talking
20 with the HOA, met with them separately afterwards, per
21 rent control.

22 We sat and talked about mediation, talked about
23 what we wanted to do, and then I took a break for a
24 second, and since the 2.4, 2.3 was brought up, I called
25 my CFO at home. She was prepared, on line, waiting for

1 me. I went through it with her and basically it was just
2 what Mr. Ballantine was saying earlier, it was just a
3 wage earner versus -- just a difference in the
4 calculation, of how it was read, so I told her to adjust
5 it to 2.3, and we did.

6 ARBITRATOR: Thank you.

7 You may continue.

8 BY MR. BALLANTINE:

9 Q. Did that 2.3 versus 2.4, did that come up for
10 the first time in the meeting with the five?

11 A. Yes, it did.

12 Q. And then did you follow up with Ms. Jennings
13 when the bills went out to make sure when they actually
14 went out they were based on 2.3?

15 A. Yes.

16 Q. At this meeting was anything provided, were
17 documents provided to the homeowners' representative,
18 talking about the second meeting, were documents provided
19 to the homeowners' representatives?

20 A. Yes, a full set of documents were given to
21 them.

22 Q. Each and every one of them?

23 A. Yes.

24 Q. At the park's expense?

25 A. Yes.

1 Q. And ultimately settlement efforts were made but
2 the mediation was never -- the offer was never picked
3 up by the -- agreed to by the homeowners?

4 A. Unfortunately, no, it was not.

5 Q. And I guess I will substitute in a few minutes
6 the complete set, but looking at Exhibit 5, just in
7 general terms, are these the profit-and-loss statements
8 of the park for at least the period that's depicted?

9 A. Yes.

10 Q. Tell us a little bit about the accounting at
11 Waterhouse Management and how these, in general terms,
12 how these are generated.

13 A. These are generated with software. We have
14 accounts receivable, accounts payable, and then they
15 basically are tallied up every month and then broken
16 down, so you do basically a P&L, cash-flow statement and
17 balance sheet for each property.

18 Q. Okay. And is it performed pursuant to GAAP?

19 A. Yes, generally accepted accounting principles,
20 absolutely, yes.

21 Q. And does Waterhouse Management have both
22 in-house, essentially, financial accounting people as
23 well as an outside accountant?

24 A. Yes. We have our own accounting department,
25 and then we have Galina, Incorporated, who does all of

1 our tax returns for us and reviews the financial
2 statements and makes journal entries for the next year,
3 depreciation, et cetera.

4 Q. So in the normal course of business, then,
5 would all the Waterhouse Management financial statements
6 pertaining to Nomad Village Park then go through that
7 process?

8 A. Yes. It goes through a process in the sense
9 that we have a system called AMSI. There's no meaning
10 for AMSI, just AMSI. It's a computer program used under
11 GAAP principles. In fact, if a journal entry is ever
12 changed, it's never deleted, it can never be deleted off
13 the books. If there's a mistake made by a bookkeeper
14 that entry can never be deleted, it shows up, so nothing
15 can be ever changed. So you can't cook the books,
16 basically. That's what this is used for. So we use that
17 specific program, and have been using that program for
18 15-plus years.

19 Q. So the Exhibit 5, which again we'll supplement
20 for all years in question, but were those all of the
21 financial statements, would those, then, have formed the
22 basis for tax returns filed by the entity?

23 A. Yes.

24 Q. And I guess the entity would be Lazy Landing?

25 A. Lazy Landing, correct.

1 Q. And then were the financial statements, just as
2 you've talked about, were those financial statements
3 provided to Dr. St. John to use in his analyses that
4 we'll hear about later?

5 A. Yes, they were.

6 ARBITRATOR: Tell me again what AMSI stands
7 for.

8 WITNESS: I was saying it doesn't stand for
9 anything, just AMSI.

10 MR. BALLANTINE: I think it's the name of the
11 company.

12 WITNESS: Correct, but there's no meaning
13 behind it, like IBM.

14 ARBITRATOR: They are the ones that create this
15 computer program that you use to do your, essentially,
16 data entry and from which you prepare your P&L and other
17 such --

18 WITNESS: Yes, they are a nationwide
19 corporation that specifically sells their product and
20 monthly base maintenance fees to many apartment
21 buildings, commercial buildings, mobile home park owners,
22 et cetera.

23 ARBITRATOR: Okay, thank you.

24 BY MR. BALLANTINE:

25 Q. Let's go to Exhibit 6. In general terms does

1 Exhibit 6 relate to the capital expenditures that Nomad
2 had?

3 A. Yes, it does.

4 Q. Then Dr. St. John, did he prepare this, this
5 first page?

6 A. Yes.

7 Q. Let's walk through the spreadsheet, that's
8 probably the easiest way do it, and then we'll look at
9 the invoices and the other details, but this gives us a
10 nice overview.

11 So the first entry is for streets, and there's
12 three entries for Astro Paving. Do you see that?

13 A. Yes, I do.

14 Q. First of all, were those all expenses that
15 Nomad Village incurred and paid?

16 A. Yes.

17 Q. So tell us a little bit about the paving
18 project. What was done in the park?

19 A. The paving project was bid by -- we got several
20 bids. Because we have 90-plus parks, we do a lot of
21 paving, we know most of the pavers, so we went out to
22 bid. Astro Paving, who we've used many times, came back
23 with the competitive bid, best bid, and then they
24 basically did the streets with a two-inch overlay, plus
25 they had to grind the streets, stripe the streets, make

1 sure the water flowed a certain way in the streets, and
2 that was all done and paid for.

3 Q. And then for Astro, looking at page V2, is that
4 the -- I don't know if that's an invoice or a bid, but
5 essentially is that an invoice or bid for the work?

6 A. Yes. This was the actual bid and then the
7 invoice, and as you can see here where they put in two
8 inches of new asphalt, two inches, they had to put in
9 speed bumps, all the striping. You asked about the
10 striping, had to --

11 ARBITRATOR: You might slow down just a bit.

12 MR. BALLANTINE: Sorry.

13 ARBITRATOR: Our court reporter's fingers are
14 starting to smoke.

15 BY MR. BALLANTINE:

16 Q. Do you see the last paragraph there it talks
17 about the water?

18 A. Yes, drainage and sloping for water, sloping at
19 125 percent, making sure the water basically doesn't go
20 into the homes and doesn't puddle in the streets.

21 So we've used Astro Paving, been working with
22 them for about 16 years. They are one of our vendors,
23 one of the many vendors we have.

24 Q. They were the lowest bid when it went out to
25 bid?

1 A. Yes.

2 Q. And then did somebody at Waterhouse then
3 supervise the work after it was done to make sure it was
4 done in accordance with that bid?

5 A. Yes.

6 Q. And it was?

7 A. It was Mr. Garcia, the vice president of
8 Waterhouse Corporation.

9 Q. And the area of the park that was covered by
10 this, was that all common area?

11 A. Yes.

12 Q. Tell us about that. What does the park have?
13 What was paved?

14 A. What was paved was 136,000-plus square feet of
15 the park, the entire park, the public entryways, the
16 roadways, anything near the clubhouse, common areas was
17 completely paved.

18 Q. Okay.

19 A. It was all common area. They go into the park
20 and out of the park.

21 Q. And does the park have the responsibility to
22 maintain those?

23 A. Yes.

24 Q. And is that something that needed to be done?

25 A. Yes.

1 Q. In your opinion, with your background you've
2 just told us about, was this a reasonable and necessary
3 expense for the operation of Nomad Village?

4 A. Yes, it is.

5 Q. Okay. And I think after this page V3 and some
6 of these, if we see, for example -- well, let's just look
7 at V3 as an example. Is this an example of a copy of a
8 check made to Astro Paving?

9 A. Yes, it is.

10 Q. And that would support this paving project?

11 A. Yes.

12 Q. And I see, for example, that one is for
13 \$60,000?

14 A. Correct.

15 Q. So if we go back to the spreadsheet
16 Dr. St. John prepared, I think we see an entry somewhere
17 for a \$60,000 payment, and that's what that is?

18 A. Yes.

19 Q. All right. I don't think we need to go through
20 all of the specific billings for that one, so let's talk
21 a little bit about the electric work.

22 There's two entries for Taft Electric? Do you
23 see those?

24 A. Yes.

25 Q. Were those both paid by Waterhouse Management

1 or on behalf of Lazy Landing?

2 A. Yes, they were.

3 Q. Tell us a little bit about that work. Was this
4 a project that was also put out to bid?

5 A. Yes, it was.

6 Q. Was Taft the most competitive bid?

7 A. Yes, they were.

8 Q. Tell us a little bit about the project. Maybe
9 for that doing a visual might be better. If we can
10 find -- so I have page 9 here, V9. Is that the bid or
11 the proposal?

12 A. Proposal, yes.

13 Q. And I note that it's made out to JMPE
14 Electrical Engineers. Who are they?

15 A. They are the electrical engineers we hired,
16 specifically Mr. Malone, to help us with this task of
17 correcting the electrical problems within the park.

18 Q. Okay. And in fact, then it reference -- maybe
19 this is a good way. It references, then, some drawings?

20 A. Yes.

21 Q. Were those drawings prepared by Mr. Malone?

22 A. Yes, they were.

23 Q. So I think, yeah, they are all together. Pages
24 V10, -11 and -12, were those drawings prepared by
25 Mr. Malone?

1 A. Yes, they were.

2 Q. And so on 10 we see, I guess, electric problems
3 on a line drawing or line diagram?

4 A. Yes.

5 Q. Do you know, in the context of a mobile home
6 park, what is a line drawing or line diagram?

7 A. A line diagram is basically showing where the
8 transformer lines go to, the main lines that go down and
9 then the feeders that go to each mobile home.

10 Q. Does Nomad Village have a number of
11 transformers?

12 A. Yes.

13 Q. So let's talk about this project. Did this
14 project involve the installation of two new transformers?

15 A. Yes, it did.

16 Q. What were the transformers for?

17 A. The first transformer was for, mainly, the
18 entire common area, the clubhouse, pool room, that area.
19 The second transformer was mainly for the laundry room
20 area.

21 Q. Let's look at V11. Is that kind of a drawing
22 of the entire park?

23 A. Yes, it is.

24 Q. And let's see, so that shows the 150 spaces and
25 mobile homes in the park?

1 A. Yes.

2 Q. And then kind of at the top center there's
3 something called "Pool."

4 A. Correct.

5 Q. Tell us what that area is there.

6 A. That's the pool area, recreational building,
7 clubhouse, and manager's office.

8 Q. And the transformer that was installed in that
9 area, was that specifically and exclusively for common
10 area?

11 A. Yes, it was.

12 Q. And then it's upside down, but around the
13 center, just below the pool and towards the center of the
14 drawing there's something that says "Laundry."

15 A. That's where the second transformer was
16 replaced.

17 Q. Is that a building?

18 A. Yes.

19 Q. Tell us about that building a little bit.

20 A. It's a laundry building for the residents' use,
21 to wash and dry their clothes.

22 Q. So it contains a number of washers and dryers?

23 A. Yes.

24 Q. Which have a high electrical demand?

25 A. Yes, they do.

1 Q. And then in the same exhibit, page 12, another
2 drawing. Does this show the line?

3 A. Yes.

4 Q. And tell us about that line. Is that a line
5 that the park is required to maintain?

6 A. It was a park maintained line to space 92.

7 Q. Okay. And was that a regulatory requirement,
8 that space 92 be given a brand-new line?

9 A. Yes, it was.

10 Q. Next we see, I guess, page 13. We can start
11 with that and move on. Well, 13 and 14 are kind of
12 together. It's entitled "Application for Certificate of
13 Payment Made to Waterhouse Management from Taft."

14 Can you tell us what that is?

15 A. We had to give them a payment, started paying
16 when they started doing the work, so that was a payment
17 before they started the work, telling us what the
18 original contract sum was and then total completed to
19 date, \$31,529.50, and then the balance to finish this
20 first transformer.

21 Q. Okay. So this showed the current payment due
22 was the first installment of \$31,000?

23 A. Yes, on the transformer, correct.

24 Q. And then the balance was \$28,000, and that was
25 after -- payable later?

1 A. Yes.

2 Q. And then page 14, does this have a breakdown of
3 the two different or three different parts of the
4 project?

5 A. Yes, it does. It has the line extension to
6 space 92 and the two transformers.

7 Q. Okay. So, then, the line extension to space
8 92, the scheduled value was about \$7,000 and change?

9 A. Yes, it was.

10 Q. All right. And then transformer, the two
11 transformers, were those the two that you told us about
12 to the pool/recreational area and the laundry?

13 A. Yes.

14 Q. And those are \$22,000 and \$25,000 and change?

15 A. Yes.

16 Q. And then I think we see a couple of -- next we
17 see a check for \$31,000?

18 A. Correct.

19 Q. Was that issued and paid by Waterhouse
20 Management?

21 A. Yes, it was.

22 Q. And then I guess this 16 is the back side of
23 the check, maybe, or the cancelled check?

24 A. Yes.

25 Q. And then page 17, is that the balance -- the

1 bill for the balance of the work?

2 A. Yes, it is.

3 Q. And was that paid as well?

4 A. Yes, it was.

5 Q. And again, similar question as I asked before:
6 Did management then take steps to make sure that the work
7 was actually done pursuant to the bid by Taft?

8 A. Yes, we did.

9 Q. And you were satisfied?

10 A. Yes, we were.

11 Q. Okay. And then page 18, that's another
12 progress bill showing all of the work --

13 A. Yes.

14 Q. -- performed.

15 And 19 and 20, is that the check for the final
16 payment?

17 A. Yes.

18 Q. And then Waterhouse Management also incurred
19 costs, you indicated, for the planning?

20 A. Yes, we incurred costs from JMPE and
21 Mr. Malone, and it was for engineering and drafting
22 costs.

23 Q. And that related to the project we've been
24 looking at?

25 A. Yes, it does.

1 Q. And was that paid by Waterhouse Management?

2 A. It was.

3 Q. And in your opinion as a park owner and
4 operator, and again you've told us about your experience,
5 was this electrical project done by Taft Electric, was
6 that reasonable and necessary for the operation of Nomad
7 Village Mobile Home Park?

8 A. Yes, it was.

9 Q. And with respect to the engineering work done
10 by Mr. Malone, was that necessary and reasonable for the
11 park to properly do the job?

12 A. Yes.

13 Q. Was Mr. Malone the one who interfaced with the
14 County to get the permit?

15 A. Mr. Malone and Mr. Ballantine.

16 Q. Okay. And then so we have an invoice and a
17 check. And then V23, is that another invoice?

18 A. Yes, final revisions, yes.

19 Q. And I guess yet another invoice. Oh, did
20 Mr. Malone interface with the electrical company to make
21 sure the job was done pursuant to his plans?

22 A. Yes, he did.

23 Q. And then on 25 I think we see a check to
24 Mr. Malone?

25 A. Yes.

1 Q. Okay. So maybe just going back to the cover
2 page, just to sum things up, so this essentially shows
3 that for this project the total expenditures for the
4 project we've looked at in this exhibit was \$333,790?

5 A. Correct.

6 Q. And that was all money that Waterhouse
7 Management or Lazy Landing paid for Nomad?

8 A. Correct, Waterhouse Management paid it for Lazy
9 Landing.

10 Q. Okay.

11 A. Their account.

12 Q. And we see some dates here, too. So the
13 electrical work was done in 2013?

14 A. Yes, correct.

15 Q. And then the paving came along in the summer of
16 2014?

17 A. Correct, because one of our concerns was we
18 didn't want to do the streets first and then have to dig
19 up part of the streets to do the electrical, so we had to
20 wait to do electric first and then do the streets.

21 Q. Okay. And I guess summer is a good time to do
22 streets as well.

23 A. Best time, yes.

24 Q. All right. And did Waterhouse Management,
25 through Mr. Malone, obtain permits for all of the

1 electrical work that was done?

2 A. Yes, we did.

3 Q. And the ultimate resolution, the electric work
4 that was done, was that a process of some back and forth
5 with the County to finally resolve it through what was
6 actually done?

7 A. Quite a bit of back and forth with the County,
8 including involving you, Mr. Ballantine, assisting us,
9 with Mr. Malone, in getting permits and answers as to
10 what were supposed to do, what was to be done next.

11 Q. Okay. We talked, or I talked about the 2011
12 arbitration. You testified that you were there. Let me
13 ask this question: Is anything on the Exhibit 6, was any
14 of that awarded to the park, those expenses ever in the
15 2011 -- or not ever, but was that ultimately awarded to
16 the park in the 2011 arbitration?

17 A. No.

18 Q. Since we're on that topic, let's skip down to
19 Exhibit 15. Exhibit 15, the first page here, and second
20 page, is that a list of exhibits that your park proffered
21 in the 2011 arbitration?

22 A. Yes, it is.

23 Q. Let me go to the final page of that, Exhibit J.
24 Was this an exhibit from that 2011 arbitration?

25 A. Yes.

1 Q. Did you testify personally about this exhibit
2 at that arbitration?

3 A. Yes.

4 ARBITRATOR: Which exhibit is that?

5 MR. BALLANTINE: I'm on Exhibit 15 and the last
6 page of that, which is an exhibit within an exhibit
7 entitled Exhibit J.

8 ARBITRATOR: Got it.

9 BY MR. BALLANTINE:

10 Q. And, Mr. Waterhouse, I think I asked you, you
11 testified about this exhibit at the 2011 arbitration?

12 A. Yes, I did.

13 Q. And looking at this top group of expenses,
14 then, there's a total of \$62,000 and change. Was that
15 amount ultimately awarded by the arbitrator in that 2011
16 arbitration or the follow-up?

17 A. Yes, it was.

18 Q. Is there anything in that group that is common
19 or the same as Exhibit 6 that we just looked at?

20 A. No.

21 Q. All right, let's go to a different topic. Let
22 me go to Exhibit 7. Exhibit 7 is entitled "Summary of
23 Account" from my office, and it indicates the client was
24 management Lazy Landing, LLC. It says it's a summary of
25 account.

1 Mr. Waterhouse, are you familiar with this
2 summary of account document?

3 A. Yes, I am.

4 Q. Are you generally familiar with the contents of
5 the document?

6 A. Yes.

7 Q. Tell us a little bit about -- you said you have
8 experience hiring lawyers and supervising their work,
9 correct?

10 A. Yes.

11 Q. Tell us a little bit about how do you that.
12 Are attorney bills something you look at?

13 A. Yes, I look at them, review them, sign them,
14 basically initial them, and then they're paid by our
15 accounting department.

16 Q. And you've done that on many occasions with
17 many lawyers?

18 A. Yes, we have.

19 Q. All right. Were you generally familiar with
20 the legal work that was being done as it was being done
21 that's reflected in this Exhibit 7?

22 A. Yes, I was.

23 Q. Did you look at documents?

24 A. I did.

25 Q. And you talked to your lawyer?

1 A. Yes.

2 Q. And kept abreast of what was going on?

3 A. I did.

4 Q. Was that work reasonable and necessary for the
5 operation of the park?

6 A. It was.

7 Q. And tell us a little bit about that. You don't
8 have to go point by point, but in general terms what
9 happened, what did the park have to do?

10 A. We had to defend ourselves against litigation
11 from the residents for a rent increase, then appealed the
12 rent increase, to the writ of mandate, the County
13 Supervisors gave us nothing for the increase, and a
14 continuing scale just kept rolling on and on and on,
15 where every time we did anything within the park we were
16 challenged and so we had to keep defending ourselves.

17 Q. And at some point the park was sued by the
18 homeowners claiming that they didn't have a permit to
19 operate?

20 A. Yes.

21 Q. Was that something the park was required to
22 defend?

23 A. Absolutely. You have to have a permit to
24 operate to be open --

25 Q. Okay.

1 A. -- and collect rents.

2 Q. And the park had to show that it actually had
3 that?

4 A. Absolutely.

5 Q. You've got experience in reviewing legal work
6 bills?

7 A. Yes.

8 Q. In your opinion as the person that ultimately
9 had to make a decision to pay this bill or these bills,
10 was the work reasonable and necessary for Waterhouse
11 Management and Lazy Landing?

12 A. It was reasonably necessary for this case, yes.

13 Q. All right. Now, this is, of course, a summary
14 that summarizes a great deal of work. The total was
15 substantial. It's about \$407,000.

16 Tell us a little bit about your -- did you
17 ultimately evaluate the amount of money that ultimately
18 was still being paid by Waterhouse Management and Lazy
19 Landing for the legal work?

20 A. Yes.

21 Q. And do you have experience in other cases, big
22 cases involving big legal bills?

23 A. Absolutely, two big cases in the last several
24 years. One was with American Canyon, and we basically
25 were sued by the city there and the attorney fees were

1 approximately \$450,000, and that was only about a
2 two-year suit.

3 The second one was the County of Los Angeles
4 where it was again close to \$400,000 attorney fees for a
5 lesser time than, even, this.

6 Q. Okay. And the hourly rate for this period of
7 time, \$425 an hour, is that in line with what mobile home
8 park lawyers in the state of California charge for work
9 involving mobile home parks?

10 A. Yes, anywhere between \$400 to \$475 to \$500 per
11 hour.

12 Q. Okay. And then moving to Exhibit 8 -- well,
13 before I leave 7, Exhibit 7, did the park pay some of
14 these fees?

15 A. Yes.

16 Q. Tell us a little bit about this. Was the park
17 generating enough money to pay all of the legal bills
18 that it got?

19 A. No.

20 Q. So what happened?

21 A. Myself and the other partner had to take it out
22 of our own pockets to pay for the legal fees.

23 Q. Moving to Exhibit 8, that's an invoice for
24 retainer for the rent proceedings initiated in this case.
25 Do you see that?

1 A. Yes, I do.

2 Q. And what's your understanding of this document?

3 A. It was a retainer to Mr. Ballantine in regards
4 to this case, and the \$110,000 was used based on 2011
5 first arbitration that we had with the homeowners, and so
6 the \$110,000 was a number used and talked about, myself
7 and Mr. Ballantine, and that was an estimated amount,
8 retainer. I'm not sure if that would be only used or,
9 most likely, it would be higher than that.

10 Q. At the meet and confer did you have a
11 conversation with the homeowners to let them know that if
12 that was not all consumed that the homeowners would
13 receive, essentially, a rent reduction for any amounts
14 that weren't used?

15 A. Yes.

16 Q. And then was this \$110,000 retainer actually
17 paid?

18 A. Yes, it was.

19 Q. And that was June 30?

20 A. Yes, it was.

21 Q. And that was shortly after the rent control
22 proceedings were actually initiated by the homeowners?

23 A. Yes.

24 Q. And to your knowledge, it's your understanding
25 work has been performed pursuant to this retainer, these

1 proceedings?

2 A. Yes, it has.

3 Q. All right. Exhibit 9 is an invoice, or I think
4 it's actually a summary of invoices from St. John &
5 Associates. Do you see that?

6 A. Yes.

7 Q. Is this a summary of some of some, but not all,
8 of the invoices received by Waterhouse Management for
9 Dr. St. John's work?

10 A. Yes, it is.

11 Q. Tell us a little bit about -- did you
12 personally make the determination to hire Dr. St. John
13 for work related to Nomad Village?

14 A. Yes, we did.

15 Q. Why did you choose to do that?

16 A. Because Dr. St. John is an expert economist in
17 the field of mobile home parks, rent increases, operating
18 income, and he's one of the top people in California
19 dealing with this, and we've worked with him over the
20 years.

21 And going into 2011 we had to hire him. The
22 residents hired Kenneth Baar, who again is one of the top
23 economists in the state, except he's --

24 Q. Except he's not an economist, right?

25 A. Yes. I said he's an economist, but he's not,

1 but he's good at what he does. And so we had
2 Dr. St. John on our side, the residents had Kenneth Baar,
3 another expert, as their expert witness on their side,
4 and so when it came to it, we decided to hire
5 Dr. St. John to assist us in calculating all the numbers
6 to make sure that the numbers we give the residents were
7 the correct numbers.

8 BY MR. BALLANTINE:

9 Q. You mentioned Dr. Baar a little bit. Which
10 side of the street, so to speak, does Mr. Baar walk on?

11 A. Mr. Baar mainly works for the residents.

12 Q. So he's kind of the resident expert on rent
13 control issues?

14 A. Yes, he is.

15 Q. And was Dr. Baar actually present at the 2011
16 arbitration proceeding involving Nomad that you were at?

17 A. Yes, the entire time.

18 Q. Did he testify?

19 A. Yes.

20 Q. And were you there during his testimony?

21 A. I was.

22 Q. Let me ask you. Of course we have the
23 transcript, but do you recall what he said about the
24 park's right to recover legal fees and administrative
25 fees in connection with the rent control proceedings?

1 A. He specifically he stated that the park owners
2 had the ability to get those attorney fees back, legal
3 fees back.

4 Q. And is that consistent with your understanding
5 as well, as the park owner and operator?

6 A. Yes.

7 Q. And if the homeowners had not filed a petition
8 to request arbitration, would the park have incurred all
9 of the fees that it did?

10 A. Not at all.

11 Q. And so the park wouldn't have any fees at all
12 to pass on to the homeowners?

13 A. No.

14 Q. Let me go to Exhibit 10 and 11. We'll start
15 with 10. I'm not sure if you've seen -- I think you have
16 seen this document before. Have you seen this document
17 before?

18 A. Yes.

19 Q. So 10 relates to the case in which Lazy Landing
20 and Waterhouse Management, I think, were both petitioners
21 against the County, the County of Santa Barbara, and
22 Ms. Hamrick is the homeowners' representative, the real
23 party in interest.

24 Are you familiar with this case?

25 A. Yes.

1 Q. How did the case come about?

2 A. The case came about with regard to the permit
3 to operate.

4 Q. I think this was the challenge to the board.

5 A. Oh, the challenge, yes. There's so many cases.
6 The challenge to the board, challenging the Board of
7 Supervisors in regards to -- the Board of Supervisors met
8 with the residents behind closed doors, privately, and
9 then we met the Board of Supervisors at a Board of
10 Supervisors meeting --

11 Q. In this very room?

12 A. -- in this very room, and we were told that we
13 get nothing, zero.

14 We followed their rent control guidelines to a
15 T. We had expert witnesses, we had a great arbitrator,
16 we were given a certain number, and we agreed with that
17 number. The residents went and discussed with the County
18 supervisors that they didn't like the number, and the
19 County supervisors voted in fact that we get nothing,
20 zero. And so then we basically had to fight them for
21 that, get it remanded, went through the other judge. It
22 was remanded back to the arbitrator. That took forever
23 to get that done because then the County wasn't meeting
24 for a long time. They only meet certain times. So it
25 was finally remanded back to them. We met with the

1 arbitrator --

2 Q. When you say "met," you don't mean a private
3 meeting --

4 A. No, no, the second hearing.

5 Q. Just like this?

6 A. Yes.

7 Q. Okay.

8 A. So this was basically to defend ourselves
9 against the County's blatant disregard, really, for the
10 arbitrator's decision.

11 Q. And again, without going through all of the
12 stuff, but do you see there's a number of dates and
13 entries of different documents, some of which you
14 probably wouldn't be familiar with, but some of which
15 would. Looking through these, do you recognize that
16 there were various documents that either you hired legal
17 counsel to prepare and file in court on your company's
18 behalf or received from the homeowners?

19 A. Yes.

20 Q. And again, that was work that you were involved
21 in as it was proceeding?

22 A. Yes, I was.

23 Q. So looking at -- we'll do 10 since we're
24 looking at it. This would be the petition by the park
25 against the County?

1 ARBITRATOR: Is that 10 or is that 11?

2 MR. BALLANTINE: Ten. I'm sorry, yes, 10 is
3 the petition by the park against the County, and 11 is
4 the petition by the homeowners against the park and the
5 County.

6 ARBITRATOR: I thought we were finished with
7 the one by the park against the County.

8 MR. BALLANTINE: Fair enough. I was confused
9 on that. I was going to ask a follow-up question on that
10 one. Thank you for the clarification. I wasn't very
11 clear.

12 Q. With respect to just looking at 10, in your
13 experience as a mobile home park operator, was this
14 lawsuit necessary to protect the interests of the park?

15 A. It was absolutely necessary.

16 Q. And were the costs that the park incurred
17 reasonable and necessary for the operation of the park to
18 get what it needed to get?

19 A. It was.

20 Q. Okay. Thank you.

21 Now I'm on 11.

22 ARBITRATOR: Okay.

23 BY MR. BALLANTINE:

24 Q. So 11, the petition is Deborah Hamrick. Who,
25 to your understanding, is Deborah Hamrick?

1 A. HOA president.

2 Q. Representative of the homeowners?

3 A. Yes.

4 Q. And was this a lawsuit that was filed against
5 both the board and the park?

6 A. Yes.

7 Q. And do you see it also names as real parties in
8 interest the Bells, Robert and Randy Bell?

9 A. Yes.

10 Q. Who are they?

11 A. They are the landowners.

12 Q. Do you lease the land from them?

13 A. Yes, we do.

14 Q. I mean Lazy Landing does?

15 A. Yes, Lazy Landing does.

16 Q. Did Lazy Landing have, at least, an arguable
17 duty to defend the Bells when they got sued by
18 Ms. Hamrick?

19 A. Yes, we're required to defend them.

20 Q. Did Lazy Landing and Waterhouse Management in
21 fact do that?

22 A. Yes.

23 Q. Did you incur legal cost for doing so?

24 A. Yes, we did.

25 ARBITRATOR: Let me interrupt for a moment.

1 Did I understand you to say there was a written
2 agreement, essentially a hold harmless and duty to defend
3 agreement that you had relative to your business with the
4 Bells, is that correct? You had a duty to defend them
5 under that agreement?

6 WITNESS: Yes, sir.

7 ARBITRATOR: Thank you. I thought I heard that
8 but I was trying to catch up. I wasn't sure.

9 BY MR. BALLANTINE:

10 Q. What was that document?

11 A. The land lease agreement.

12 Q. And that land lease agreement, was that one of
13 the documents in evidence in the 2011 arbitration?

14 A. Yes.

15 MR. BALLANTINE: I don't know that we have it
16 here, your Honor.

17 ARBITRATOR: I don't know that, either. I just
18 was being -- the defense of the Bells is obviously an
19 issue, an economic issue. I wanted to make sure I
20 understood his testimony.

21 MR. BALLANTINE: Right. And we can provide
22 that ground lease as well. It was in the prior
23 arbitration.

24 ARBITRATOR: I don't believe I need it, but if
25 you think it's appropriate, you may do so.

1 MR. BALLANTINE: Thank you.

2 Q. So looking through this Exhibit 11, it's kind
3 of like 10, it's a bunch of dates and various documents,
4 probably some of which you've seen and some of which not.

5 I'm not going to go through everything, but
6 I'll ask you to kind of take a look at this and tell us,
7 are these documents, some of these, are these documents
8 you recognize?

9 A. Some, yes.

10 Q. And tell us about that, what were these,
11 documents you got by the homeowners?

12 A. By the homeowners and by Mr. Ballantine.

13 Q. And the subject of these documents, some of
14 these you recognize as documents the park filed?

15 A. Yes.

16 Q. And you authorized them to be filed?

17 A. Yes.

18 Q. And were you generally following this lawsuit
19 as it progressed as well?

20 A. I was.

21 Q. And did you receive and look at documents
22 related to the case as it progressed?

23 A. I did.

24 Q. And was this a case that was necessary for the
25 park to defend?

1 A. Absolutely.

2 Q. And tell us about that.

3 A. In regards to the permit to operate, the
4 homeowners were claiming that we didn't have a permit to
5 operate, which means we cannot collect the rents from the
6 residents and we can't -- and we did have a permit to
7 operate. We showed that to them. They still continued
8 to say we didn't.

9 Then they not only sued us, but the County, who
10 was helping them out with the first arbitration, sued
11 them, saying that we didn't. We had to go through all
12 this and so on basically to show good faith from us that
13 we did have a permit to operate. It's one of the first
14 things we do, is have a permit to operate in the park.
15 It's very simple. It's one of the first things our CFO
16 does. It was done within 16 days. We filed it properly.

17 Q. So let's actually go to that. That's probably
18 a good segue. Let me skip down a couple of exhibits.
19 I'm going to look at Exhibits 13 and 14. I'll start with
20 Exhibit 13.

21 I think you kind of may have alluded to this,
22 but let me ask you. Let's look at Exhibit 13, and first
23 question, do you recognize this document?

24 A. Yes, I do.

25 Q. Is this a document generated by your office?

1 A. Yes, it is.

2 Q. The form wasn't, obviously, but the writing?

3 A. Yes.

4 Q. And who in your office prepared this document?

5 A. CFO Sharon Jennings.

6 Q. And was that within the scope of one of the
7 things she's responsible for doing?

8 A. Yes.

9 Q. And is this the first time your office ever
10 filed such a document or one of many times?

11 A. Many times.

12 Q. All right. So tell us a little bit about -- as
13 his Honor said before, the document kind of speaks for
14 itself, but tell us a little bit in the context of what
15 happened with Waterhouse Management and Lazy Landing and
16 Nomad Village, how this document came about and what it
17 is.

18 A. Simple. Anytime there's a change of ownership
19 you have to pay for a permit to operate, and this is an
20 amended permit to operate, amending it to Nomad Village,
21 the name of the park, and then you have to tell the
22 manager who it is, Waterhouse Management Corporation, and
23 then just to have to supply it to, usually, the state.

24 And part of the confusion is HCD, Housing and
25 Community Development, they oversee all mobile home

1 parks. At some points in time counties and cities will
2 take over for HCD because of the budget constraints, but
3 they have to follow the mirror image of the HCD and all
4 the codes. So this was simply a form to fill out and
5 send in, which we did, and pay the fees, which we did,
6 and the obtained the permit to operate.

7 Q. Okay. And to your knowledge, is the mobile
8 home park operator -- the information you provided, was
9 that accurate and appropriate for the circumstances
10 involved here?

11 A. Yes.

12 Q. Okay. Let's go to Exhibit 14. It's actually a
13 group of documents. Are these the permits to operate?

14 A. Yes, they are.

15 Q. And do you see that it says in the about the
16 middle of page 2 "Waterhouse Management Corporation"?

17 A. Yes.

18 Q. Is that the location of your office?

19 A. Yes, it is.

20 Q. And so Waterhouse Management is basically the
21 operator, day to day, of Nomad Village, correct?

22 A. Yes, it is.

23 Q. And is it in that context, then -- are they the
24 one that -- in the normal course of things are they the
25 ones that receive the permit to operate from the agency

1 that issues it for the park?

2 A. Yes.

3 Q. And is this something that was received by
4 Waterhouse Management?

5 A. Yes, it was.

6 Q. All right. And does Waterhouse Management get
7 a bill every year from the appropriate agency, in this
8 case Santa Barbara County, for the permit to operate?

9 A. Yes.

10 Q. And they pay that bill?

11 A. Yes.

12 Q. And they have done that every year?

13 A. Yes.

14 Q. To your knowledge, does that cover the years
15 from 2008 to 2016?

16 A. Yes, it does.

17 Q. And to your knowledge, at all times that
18 Waterhouse Management operated the park has it had a
19 permit to operate?

20 A. Yes.

21 Q. Do you see here up at the top here it says
22 "Owner, Nomad Village, Inc."?

23 A. Yes.

24 Q. At the time, would you have described it a note
25 to that?

1 A. At the time we thought it was -- at the time we
2 thought it was basically the Bells, that they were naming
3 the Bells as the landowners and not us.

4 Q. Okay. The Bells, meaning they owned the land?

5 A. Yes.

6 Q. And Lazy Landing has a long-term ground lease?

7 A. Yes.

8 Q. Then going back to Exhibit 11 --

9 ARBITRATOR: Let me interrupt for a moment. In
10 my notebook, tab 14, which are the permits, the last one
11 I show is issued February 19, 2015, and was for that
12 year. I don't see in my exhibits one for 2016. I assume
13 from his testimony that one was obtained, but am I
14 missing or misreading the document?

15 MR. BALLANTINE: I think if you look in the
16 upper left.

17 WITNESS: The upper left-hand corner it says
18 "2016, permit to operate," paid on -- the date was
19 February 19, 2015, going through to 2016.

20 ARBITRATOR: I see that now. Thank you. I
21 missed that. You're correct.

22 MR. BALLANTINE: Thank you.

23 Q. Going back to Exhibit 11, and essentially I
24 asked you about that. I asked you about Exhibit 11.
25 That was the lawsuit about the permit to operate, and so

1 essentially you were telling us a little bit about the
2 facts. Those are the facts you were talking about,
3 correct?

4 A. Yes, they were.

5 Q. Was that, in totality, this case that's
6 partially involved in the -- embodied or summarized in
7 this Exhibit 11, was that necessary for the park to
8 pursue or defend?

9 A. Absolutely it was.

10 Q. All right. And you reviewed the costs of the
11 litigation, correct?

12 A. Yes, I did.

13 Q. And were those reasonably and necessarily
14 incurred by the park?

15 A. Yes, they were.

16 Q. Did the park have any choice but to incur these
17 legal fees?

18 A. No.

19 Q. So let me go back to the beginning and then
20 pick up on one other thing.

21 A. Back to the beginning, meaning Exhibit 1?

22 ARBITRATOR: You say go back to the beginning,
23 I wanted to say, oh, please don't.

24 MR. BALLANTINE: Don't worry, I'm not going to
25 repeat everything I said.

1 Q. I want to discuss with you, Mr. Waterhouse, a
2 provision in this rent notice, and I think maybe the best
3 way to do it is -- I'm sorry, but let me just read
4 several sentences, and I'm just going to do it not that
5 we all can't read it, but just so we're all literally on
6 the same page and following this and we get it in the
7 record, and then I'm going to ask you about what this
8 means and kind of explain it.

9 I'm looking at the second page of this letter
10 and it's the one, two -- third paragraph from the top.
11 Actually, the second paragraph from the top, I'll start
12 with. I'll note that it references the arbitrator has
13 recently ruled and upheld most of the park's rent
14 increase as noticed, with the primary exception of
15 capital items which were planned but not all been
16 implemented by park management at the time of the rent
17 increase.

18 The reference there, is that the ones that had
19 now been paid, was that the Exhibit 6?

20 A. Yes, the electrical and paving.

21 Q. Okay. And then the next paragraph says: "Park
22 management plans to accept the arbitrator's most recent
23 award. If it becomes final, then that will be the end of
24 the proceeding and park management will issue rent
25 credits to all homeowners after giving notice of the

1 amount and duration of the rent credits."

2 Then it says: "If the homeowners appeal the
3 current arbitration, park management will defend that
4 appeal to recover the increased rent and all additional
5 defense costs, including professional fees."

6 So I want to talk about the credits and what
7 that means. We don't have to go into numbers right now,
8 we'll have Dr. St. John to help us with the numbers, but
9 how does that work in an arbitration process such as
10 this? If the arbitrator awards a number that's less than
11 the total amount that the park owner noticed, is that
12 difference paid to the homeowners by a rent credit?

13 A. It's paid by rent credit over the same initial
14 time that it was collected.

15 Q. Okay. And so let's go back to 2011. In 2011,
16 the rent increase that was noticed was about \$160, is
17 that correct?

18 A. Yes.

19 Q. Ballpark.

20 And the amount awarded by the arbitrator in his
21 December 20, 2011, award was about \$96 or so?

22 A. Correct.

23 Q. Okay. And during that time period from when
24 that became effective in May 2011 to the end of December
25 2011, had the park been noticing and collecting the \$160

1 rent increase?

2 A. Yes.

3 Q. And was the park authorized to do that, in your
4 understanding of the ordinance?

5 A. Yes, it is.

6 Q. And what did the park do regarding that
7 differential from the \$160 to the \$96 that was ultimately
8 awarded at the end of 2011?

9 A. I believe we started crediting it back in July.
10 I don't know about the year. Was that 2012? Yes, 2012
11 we started crediting back the amount of the difference.

12 Q. I think it was January-February that it
13 started.

14 A. Yes.

15 Q. And it was credited back over the same period
16 of time that it had been collected?

17 A. Yes.

18 Q. Now, at this point we've got an arbitration
19 award that had, back in '11, credited -- or maybe
20 "credited" is not the right word -- had awarded a rent
21 increase in part, one of the elements was based on the
22 \$320,000, correct?

23 A. Yes, it was.

24 Q. But ultimately out of that when the arbitrator
25 made his remand award, about \$62,000 of that was

1 ultimately allowed, correct?

2 A. Yes.

3 Q. So there's a difference of about \$240,000.

4 A. Yes.

5 Q. Dr. St. John can give us the exact number.

6 What does the park plan to do regarding that
7 difference?

8 A. Pass that on to the residents.

9 Q. Meaning through a credit?

10 A. Through a credit, yes.

11 Q. So we're not trying to collect now again for
12 something already collected before, correct?

13 A. No.

14 Q. All right. And is the park waiting for the --
15 well, what, if anything, is the park waiting for in order
16 to decide how to come up with the numbers, the credit
17 number?

18 A. Finality from the County in regards to the last
19 appeal that we just did. We just can't get a final
20 answer. That's our biggest concern. We're trying to get
21 a final answer so we can figure out what all the numbers
22 are, and once we get that number, we can figure it out,
23 start the credits, debits and put this to bed.

24 MR. BALLANTINE: All right, thank you.

25 I have nothing further.

1 ARBITRATOR: Thank you very much.

2 Mr. Allen, do you have any questions by way of
3 cross-examination for this witness?

4 MR. ALLEN: I do.

5 ARBITRATOR: Thank you.

6

7 CROSS-EXAMINATION

8 BY MR. ALLEN:

9 Q. I want to go back to Exhibit 5. Do we have the
10 corrected Exhibit 5 now?

11 MR. BALLANTINE: I think we do. Maybe, your
12 Honor, I'd suggest -- I will represent I haven't looked
13 at it. My office brought me what I think is the
14 corrected 5. Let me suggest that it would be appropriate
15 during a break that I give it to Mr. Allen so that he can
16 look at it and be satisfied with it and so forth,
17 although, of course, we can give it to him whenever he
18 wants.

19 ARBITRATOR: Well, we're ten minutes before
20 noon. I'm planning to take a lunch break for everybody
21 at noon.

22 Do you want to have an opportunity to review
23 the corrected Exhibit 5 before you do your
24 cross-examination?

25 MR. ALLEN: That would be fine. From the

1 packet that they had sent, and it was in the PDFs that
2 you received, there was the financial statements which
3 is, I believe, is what it should be, is the financial
4 statements from 2010 through 2015.

5 ARBITRATOR: Okay.

6 MR. ALLEN: As long as that's what they are --

7 ARBITRATOR: Okay, if you're going to ask
8 questions you need to have the right document so you are
9 asking questions and have an understanding of what you're
10 asking about.

11 MR. ALLEN: Right.

12 ARBITRATOR: So why don't we do this. I'll
13 direct counsel to provide you with your corrected copy of
14 Exhibit 5, and I'll have it provided to the clerk for me,
15 and we will take a lunch break.

16 How long do we need for lunch? Can we get back
17 to doing this at, say, 1:15?

18 MR. BALLANTINE: That's fine for us.

19 ARBITRATOR: All right. And for our scheduling
20 purposes, this afternoon, when Mr. Allen's
21 cross-examination is complete, Dr. St. John is right here
22 and ready to go.

23 His direct examination you have estimated to
24 take approximately how long, Counsel?

25 MR. BALLANTINE: You know, I think we have

1 covered a lot with Mr. Waterhouse, so hopefully we can
2 cover things pretty quickly, half an hour, maybe an hour.
3 I'll talk to him over lunch. I think we can make it go
4 pretty quick.

5 ARBITRATOR: I assume there will be some
6 cross-examination of Dr. St. John.

7 MR. ALLEN: Correct.

8 ARBITRATOR: And then there will be argument
9 and we will be done for the day. Is that accurate?

10 MR. BALLANTINE: That's our perspective.

11 ARBITRATOR: We're definitely going to need to
12 deal with Exhibits C and D, if you need a foundation for
13 that. The rules of evidence, according to the documents
14 that I have been provided in --

15 MS. DAVIS: Your Honor, how do we handle a
16 request for judicial notice or official notice? Would
17 that be listing the California codes on a piece of paper
18 and giving it to you or just putting it on the record?

19 ARBITRATOR: Well, obviously, if you want me to
20 look at it you're going to have to tell me what it is and
21 it would be easier if you wrote it down so that counsel
22 could have it, also.

23 I'll certainly be looking at the applicable
24 statutes, but with regard to the other exhibits, page 15
25 of the mobile home rent control rule for hearing in the

1 County of Santa Barbara, it says, in part, "Hearings need
2 not be conducted according to technical rules relating to
3 evidence and witnesses. Any relevant evidence is
4 admissible if it is the sort of evidence that responsible
5 persons are accustomed to relying upon in the conduct of
6 serious affairs regardless of the existence of any common
7 law or statutory rule which might make improper the
8 admission of such evidence over civil objections."

9 Is goes on to say: "Hearsay evidence may be
10 used for purposes of supplementing or explaining other
11 evidence but shall not be sufficient in itself to support
12 a finding unless it would be admissible over objection in
13 civil action."

14 So this is telling me, as the arbitrator, this
15 being the first Santa Barbara mobile home rent hearing I
16 have presided over, that essentially the rules of
17 evidence are small claims on steroids.

18 MR. BALLANTINE: Fair enough.

19 ARBITRATOR: So almost no rules other than it
20 shouldn't be frivolous, kind of.

21 So with regard to you asking me to take to
22 judicial notice of certain statutes in the code, if you
23 would make a list of those and give them to counsel and
24 we'll deal with them right after the lunch break or --
25 well, we'll deal with them right after they rest and then

1 we'll deal with the exhibits and your request for
2 judicial notice and all of that at that time, if that
3 will work for you. Yes?

4 MS. DAVIS: Yes.

5 ARBITRATOR: All right, good.

6 MR. BALLANTINE: Thank you.

7 ARBITRATOR: In that case, we're in recess
8 until 1:15.

9 (The lunch recess was taken.)

10 ARBITRATOR: Back on the record in the matter
11 of In re Nomad Village Homeowners Mobile Park rent
12 increase dispute.

13 One thing I should have taken care at the start
14 and apparently I did not, although there is no objection
15 from or nothing raised by the homeowners, is there now a
16 dispute that the meet and confer did not occur?

17 MR. ALLEN: We don't believe it did.

18 ARBITRATOR: You do not believe it did?

19 MR. ALLEN: No.

20 ARBITRATOR: Okay.

21 Ma'am, were you going to say something?

22 MS. DAVIS: Oh, I didn't hear the question.

23 ARBITRATOR: The question was, there's been
24 testimony from Mr. Waterhouse concerning the meet and
25 confer and the discussions that took place, both

1 informally at 6:00 o'clock on a date in March, and the
2 same evening at 7:30 in which there was a negotiation in
3 which the CPI increase, which the park had one figure,
4 the homeowners suggested another, there was a phone call
5 made, that was reduced and everybody had that discussion.
6 That appears to be a meet-and-confer process. Is it the
7 homeowners' position that meet and confer did not occur?

8 MR. ALLEN: That's correct.

9 ARBITRATOR: And you base that on what?

10 MR. ALLEN: On the rules for a hearing, that
11 they were supposed to have all the documents necessary by
12 a certain time and we were not allowed those documents.

13 ARBITRATOR: The documents are supposed to be
14 made available for review, as I recall the provisions of
15 the statute. It's your position that if they were there
16 for you to look at and you didn't have copies for
17 yourself, that negates meet and confer, is that my
18 understanding?

19 MR. ALLEN: It is. The whole idea behind those
20 documents is so you can take them, review them and have a
21 fruitful meeting. They were purposefully kept from the
22 homeowners.

23 ARBITRATOR: Okay.

24 Response, please.

25 MR. BALLANTINE: Yes, your Honor. Two things

1 on that.

2 I read the rule as being essentially what your
3 Honor stated, which was that the requirement is that they
4 be made available, and they were made available during
5 business hours at the park office at all times for the
6 homeowners, starting on April 9, and so I think that was
7 properly done.

8 Moreover, the park, because the homeowners
9 asked for it, we elected to make copies for each and
10 every homeowners' representative at our expense and give
11 them to them at the meet and confer, so they had them.

12 We also offered to have follow-up meet and
13 confer or even a formal mediation after that time and
14 even sent an e-mail proposing that, and so my position
15 is, No. 1, we did everything we had to to start off with
16 regarding making the documents available, and I would
17 note that what the rule says is that they have to be made
18 available to the homeowners' representatives. We
19 actually went beyond that and made them available for
20 everyone because we were never told who the homeowners'
21 representatives were, and one at one point when we were
22 asked for them to take the document out of the office, we
23 asked, well, who are the homeowners' representatives,
24 because they are the people who are supposed to have the
25 document, and they said, we're not going to tell you

1 until the meet and confer, and I think that's in an
2 e-mail attached to the summary adjustment motion. I may
3 be mistaken, maybe it's something I saw that happened.

4 In any event, we did at the meet and confer
5 have the -- first of all, the meet and confer happened.
6 There was a meeting, and I think the homeowners are
7 talking about a different issue, about having documents
8 available, and that's different. The meet and confer
9 happened, we met on the day in question, your Honor
10 summarized Mr. Waterhouse's testimony and that indeed
11 happened, and actually indeed it did accomplish
12 something.

13 And moreover, like I said, the documents were
14 to the degree that the homeowners think they were
15 entitled to them, each and every one who actually
16 identified themselves as a homeowners' representative at
17 that meeting for the first time was given those
18 documents, and they were given a chance to follow-up with
19 management, too, to have some other interaction, and they
20 declined to do so.

21 Although, actually, in fairness to the
22 homeowners, that's not true. They were invited to submit
23 an offer in response to the notice of rent increase in
24 the documents that we gave them. They said they were not
25 prepared to negotiate at that meeting, but afterwards

1 they did actually send a written kind of an offer. It
2 was very tentative, but it was the outlines of an offer.
3 And park management responded to that suggesting we sit
4 down in a mediation. I think a meet and confer
5 absolutely did happen, and I, frankly, commend the
6 homeowners' representative for their conduct during that
7 process. We didn't resolve it, but it was a courteous
8 and cordial process that, like I said, actually did
9 result in one issue, the CPI issue.

10 ARBITRATOR: Anything further on that issue?

11 MR. ALLEN: Yeah. I don't know that any of
12 that stuff happened as far as not knowing. He was
13 dealing with Debra, so he knew that Debra was a
14 representative. It was asked on the first day that they
15 were supposed to be available whether they could be
16 copied, in any way made a copy of --

17 ARBITRATOR: Were those documents subsequently
18 made available to and provided to the homeowners?

19 MR. ALLEN: Not until the meeting.

20 MS. DAVIS: Not until the end of the meeting.

21 MR. ALLEN: Not in the until the end of the
22 meeting. And they are supposed to be provided within
23 this 10-day period so the homeowners can go through them,
24 so they can prepare.

25 ARBITRATOR: Okay.

1 MR. ALLEN: So there was no preparation
2 allowed. There was no meeting. There was no meet and
3 confer per the rules.

4 ARBITRATOR: All right. The matter is now
5 submitted?

6 MR. ALLEN: Yes.

7 ARBITRATOR: Counsel?

8 MR. BALLANTINE: Again I would say the
9 documents were at all times made available to anyone who
10 identified themselves as a homeowners' representative.

11 ARBITRATOR: I understand.

12 MR. BALLANTINE: And that was done and they
13 were made available. And my recollection is we were
14 giving copies during the middle of meeting, and in fact
15 we went through them and in fact there were some
16 questions about the documents and we went through the
17 documents with the homeowners.

18 ARBITRATOR: I find that the due process
19 standard meet and confer as required by the ordinance did
20 occur, and that's my ruling on that issue.

21 There was one other issue I wanted to raise.
22 Hold on a second. No, that was part of the summary
23 judgment motion, so that's all.

24 Okay, we're now ready for cross-examination of
25 Mr. Waterhouse.

1 Mr. Allen, are you prepared?

2 MR. BALLANTINE: Your Honor, I have one
3 housekeeping issue to raise at some point.

4 ARBITRATOR: All right, let's get it out of the
5 way.

6 MR. BALLANTINE: As I indicated, I noticed
7 during my opening that one document was mistakenly
8 duplicative of another. Exhibit 42 was the same as, in
9 the binder, as 43, just by mistake, so I have replacement
10 No. 42. That's the order granting summary judgment.

11 ARBITRATOR: Okay. If you'll give a copy,
12 please, to Mr. Allen, and I will replace Exhibit 42.

13 Any objection to my receiving that corrected
14 exhibit, Mr. Allen?

15 MR. ALLEN: No.

16 ARBITRATOR: Thank you, sir.

17 MR. BALLANTINE: And then one new exhibit that
18 was left off of the list that I didn't notice until
19 today. This is the opinion and award revised on remand
20 by the arbitrator as the final one. There were several,
21 and this is -- should be a new Exhibit 44.

22 ARBITRATOR: Would you show it, please, to
23 Mr. Allen. Let me take a look at it. It appears to be
24 the order of Mr. Biersmith of August 28, 2016.

25 Any objection to this being marked and received

1 as Exhibit 44?

2 MR. ALLEN: No.

3 ARBITRATOR: Thank you. I'll mark it here as
4 Exhibit 44. We don't need a separator tab.

5 All right. Mr. Allen, your cross-examination
6 of Mr. Waterhouse.

7

8 CROSS-EXAMINATION

9 BY MR. ALLEN:

10 Q. All right, looking at Exhibit 5, which we now
11 have the corrected version, you stated that these
12 financial statements, which appear to be 2010 through
13 2015, couple months into '16, you said these are all
14 presented in GAAP compliance?

15 A. Yes.

16 Q. Okay. And I assume, then, that is the basis
17 for the tax returns, are based on these as well?

18 A. Yes.

19 Q. Okay. And then you'd mentioned some of the
20 attorneys bills that you've seen. You said you've seen,
21 signed off on some of the attorney bills?

22 A. Yes.

23 Q. Could you point out the attorney expenses
24 within the GAAP financial statements.

25 ARBITRATOR: I'm sorry, I didn't hear the

1 question.

2 MR. ALLEN: I asked for him to point out or
3 reconcile the GAAP financial statements legal expenses to
4 the amounts that they are asking the homeowners to pay.

5 ARBITRATOR: All right.

6 WITNESS: In 2011, \$21,223.

7 ARBITRATOR: What was the date of that entry?

8 MR. ALLEN: That was for the year of December
9 31, 2011.

10 The next year, December 31, 2012, for 2012,
11 it's \$72,913.50.

12 For 2013, \$48.

13 December 31, 2014 through to date, \$1,376.96.

14 ARBITRATOR: \$1,376.96, is what I heard,
15 Mr. Allen, for ending December 13, 2014?

16 MR. ALLEN: Correct.

17 Nothing in -- nothing in 2015.

18 2016, February 29, 2016, \$150,000, even.

19 ARBITRATOR: These expenses represent -- these
20 legal expenses are charged for what, Mr. Waterhouse?

21 WITNESS: For this lawsuit in progress.

22 ARBITRATOR: For this particular lawsuit
23 that's -- not this case, but the one that is presently
24 involved in --

25 WITNESS: There's additional fees that we paid

1 ourselves out-of-pocket, as we said earlier, that were
2 not reflected here. As a partner, if the property cannot
3 afford to pay the fees, then the partnership themselves
4 have to pay the fees, which we do, and then down the road
5 we hope to be reimbursed for those these fees.

6 We still have a lot of fees we are hoping to
7 collect, and there's still more fees that we may have to
8 pay, incur later on because again we have no finalization
9 of what's is going on with this lawsuit, so the fees are
10 the fees. That are due, and they are payable.

11 ARBITRATOR: Just haven't all been paid to this
12 date?

13 WITNESS: Correct.

14 ARBITRATOR: Okay. Next question?

15 BY MR. ALLEN:

16 Q. In the \$72,900, that was from the prior, from
17 the 2011 arbitration?

18 A. What is that?

19 Q. It was paid in 2012. I believe it was the
20 amount for the 2011 arbitration.

21 ARBITRATOR: The number I wrote down was
22 \$72,913.50.

23 MR. ALLEN: Yes.

24 WITNESS: Yes, all the legal fees paid were for
25 the litigation of the 2011 in regards to this lawsuit,

1 fair return process.

2 BY MR. ALLEN:

3 Q. Are you counting those in the fees this time?

4 A. We are not. We're counting them because we
5 didn't get them last time, so we are counting them. We
6 are not saying -- we're counting them because when it was
7 remanded back to the court they didn't take all the
8 attorney fees because they weren't done yet, and as the
9 residents continued on and continued on and sued us and
10 sued the County, the fees kept going up.

11 So there were fees that we tried to charge for
12 initially, and then there were fees that were charged
13 afterwards for this one now, because this new period of
14 return we are now charging all the fees after the
15 arbitrator awarded us a decision and then it went to the
16 County supervisors, then it went to the judge, remanded
17 back to the County, remanded back to the arbitrator,
18 another award given, they appeal that again, so it's an
19 ongoing thing, so it's difficult to say what the bills
20 are that we're going to be paying, it's what we owe and
21 we pay them as we can, and sometimes it may not be the
22 exact timing because sometimes I'll have to ask
23 Mr. Ballantine wait a few months, we're gathering other
24 money together, because when it comes out of pocket,
25 people think we can just write a check. We have that

1 money our bank accounts, our personal bank accounts, to
2 write checks, and so we do that, and there was sometimes
3 a time lapse in that.

4 ARBITRATOR: All right. Next question, sir.

5 BY MR. ALLEN:

6 Q. Just to be clear, you're asking for this
7 \$72,913.50 again?

8 MR. BALLANTINE: Objection. Vague and
9 ambiguous.

10 ARBITRATOR: I didn't understand the question.

11 BY MR. ALLEN:

12 Q. \$72,913.50 -- that was awarded last time and
13 I'm asking if they are asking -- I believe he just said
14 they are asking for it again. They are asking for the
15 same exact amount again.

16 MR. BALLANTINE: Well, vague and ambiguous. I
17 think the confusion is he's mixing apples and oranges.

18 MR. ALLEN: No.

19 ARBITRATOR: Hold on.

20 MR. BALLANTINE: What we're asking for is the
21 money that -- or the fees that were incurred as reflected
22 on the account statement that is submitted as Exhibit 7.
23 He's confusing -- that's the bill that shows the work
24 that was done. We're not asking for money referencing a
25 specific line item in the account statement or the profit

1 and loss. I think that's the confusion.

2 MR. ALLEN: There's no confusion. If it's
3 GAAP -- they stated that this is their tax returns and
4 GAAP statements, if it's not entered there, it didn't
5 happen. So what we have right now is a bunch of
6 documents that Ballantine created outside and now they
7 are saying, oh, well, I paid those out-of-pocket. Those
8 have nothing to do with Lazy Landing. They shouldn't
9 even be discussed.

10 ARBITRATOR: Okay. So those documents have
11 been received in evidence with that objection. They are
12 in, therefore, the record of this case. I understand
13 your position, but that's argument, that's not
14 cross-examination, and I'll hear your argument on that
15 issue at the end. I understand the nomenclature issue
16 that you're having on the defense side, and I understand
17 the position of the petitioner.

18 Do you have any other questions of the witness?

19 MR. ALLEN: Yes.

20 Q. You discussed No. 6, the capital items and the
21 electrical work. Was the electrical work mentioned in
22 the lease at all?

23 A. I don't recall.

24 MR. BALLANTINE: Well, clarification. I assume
25 the lease question -- you mean the ground lease?

1 MR. ALLEN: Yes.

2 MR. BALLANTINE: Okay.

3 WITNESS: I don't recall.

4 BY MR. ALLEN:

5 Q. Was the electrical work ever the responsibility
6 of the property owners?

7 A. Yes.

8 Q. And did you take that over on the contract?

9 MR. BALLANTINE: Vague and ambiguous.

10 BY MR. ALLEN:

11 Q. Did you take responsibility for the electrical
12 work?

13 A. We take responsible for the park, so anything
14 in the future, and if we buy a park and there's issues
15 that we know about that we have to fix, we will fix them.
16 And then if there's a rent control ordinance, we'll abide
17 by the rent control ordinance and pass those fees
18 through, even though we knew they possibly existed when
19 we purchased the property. So it's standard operating
20 procedure for anybody who buys a property, will pass it
21 through because we take -- it's part of the process that
22 we do.

23 Q. Was there anything in the lease regarding the
24 health and safety violations in regards to the
25 electrical?

1 MR. BALLANTINE: Vague and ambiguous.

2 ARBITRATOR: Well --

3 MR. ALLEN: Did you understand it?

4 ARBITRATOR: You've said there were health and
5 safety violations. I don't know what the health and
6 safety violations are, so I'm not sure that the witness
7 would, either. If there were health and safety
8 violations, you might lay the foundational question,
9 asking him what health and safety violations, if any,
10 existed at the time the property was purchased, and then
11 your question would make sense.

12 BY MR. ALLEN:

13 Q. What were the health and safety violations that
14 existed at the time of purchase?

15 A. Repeat that, please.

16 ARBITRATOR: What were the health and safety
17 violations, if any, that existed at the time of the
18 purchase with regard to the park property itself?

19 WITNESS: None that I know of that were health
20 and safety issues.

21 BY MR. ALLEN:

22 Q. What were the health and safety issues?

23 ARBITRATOR: He said none that he can remember.
24 Repeat your --

25 WITNESS: None that I can recall, safety and

1 health issues within the park.

2 BY MR. ALLEN:

3 Q. Were there any violations from the County
4 whatsoever?

5 A. There were no County violations to us at the
6 time of purchase.

7 Q. Were there any to the Bells? Were there any on
8 the property?

9 MR. BALLANTINE: Objection. I'm not sure --

10 MR. ALLEN: How about if I just tell you, since
11 they won't --

12 ARBITRATOR: Well, right now we're going --
13 we'll get there.

14 At the time of purchase of the property, were
15 you aware of any preexisting violations for which the
16 Bells had been cited by the County of Santa Barbara
17 relative to the purchase?

18 Is that the question?

19 WITNESS: That the Bells had been cited for?
20 No, sir.

21 ARBITRATOR: Okay. The answer was "no."

22 MR. ALLEN: Okay.

23 Q. So the legal fees that you -- you said that
24 they are refundable to you, and you base that on an
25 expert of some sort?

1 A. Refundable?

2 Q. That you get -- that somehow you can just start
3 charging the homeowners with them?

4 A. Based on the 2011 arbitration, the hearing
5 officer granted us attorney fees, including your expert
6 witness who stated that we were entitled to those fees
7 and any other additional fees that may be incurred for
8 this arbitration. That was Kenneth Baar, your expert
9 witness who stated to the arbitration judge that we were
10 entitled to legal fees.

11 MR. ALLEN: Well, first of all, I don't know
12 that Kenneth Baar is an expert. I don't know that they
13 should be able to bring that up.

14 ARBITRATOR: Apparently, according to the
15 record, he testified in that proceeding as an expert
16 witness called by the homeowners.

17 MR. ALLEN: Okay. Is there anywhere in the
18 ordinance that states that legal fees should be able to
19 be passed through?

20 MR. BALLANTINE: Well, objection to the extent
21 he's calling for an expert conclusion or legal
22 conclusion. We can look at the ordinance to decide that.
23 I'm not sure if it's relevant, what this witness's
24 understanding of that is.

25 ARBITRATOR: I agree that it does call for a

1 legal conclusion that this witness is not technically
2 legally competent to make. It's a question that I had
3 planned to ask, actually, at argument time so why don't
4 we hold it until then. I'm going to ask that very
5 question for my own edification at the time of closing
6 argument.

7 BY MR. ALLEN:

8 Q. You said that the credit can be paid over a
9 period, over the same period that they were collected.
10 Where do you get that from? Where did you get that
11 information from?

12 A. From legal representation of Mr. James
13 Ballantine.

14 MR. ALLEN: All right, that's it.

15 ARBITRATOR: Okay. Any redirect?

16 MR. BALLANTINE: No. Thank you for the
17 opportunity.

18 ARBITRATOR: Thank you very much.

19 The Respondent will call the next witness.

20 MR. BALLANTINE: I'll call Mr. Michael
21 St. John.

22 ARBITRATOR: Dr. St. John, would you raise your
23 right hand.

24 Sir, do you solemnly swear or affirm the
25 testimony you're going to give in this arbitration

1 hearing will be the truth, the whole truth and nothing
2 but the truth?

3 WITNESS: I do.

4 ARBITRATOR: Thank you.

5 State your full name for me, please.

6 WITNESS: Michael St. John.

7 ARBITRATOR: Thank you.

8 And we've been referring to you as "doctor." I
9 assume you have a doctorate degree in some discipline?

10 WITNESS: I do.

11 ARBITRATOR: What is that doctorate degree, in
12 what discipline?

13 WITNESS: Economics.

14 ARBITRATOR: Ph.D. in economics?

15 WITNESS: I've a Ph.D. in economics.

16 ARBITRATOR: Thank you. You may enquire.

17

18 MICHAEL ST. JOHN,
19 having been sworn, was examined
20 and testified as follows:

21

22 EXAMINATION

23 BY MR. BALLANTINE:

24 Q. Let's start with your educational background.
25 Before you got your Ph.D. you did undergraduate work,

1 correct?

2 A. I did.

3 Q. Tell us about that. Where did you go?

4 A. Harvard College.

5 Q. Did you get a degree there?

6 A. I did, B.A.

7 Q. In what?

8 A. It was called social relations.

9 Q. And then when you proceeded -- you pursued
10 graduate studies after that, correct?

11 A. I did.

12 Q. Where, what institution?

13 A. UC Berkeley?

14 Q. And what did you study there?

15 A. Economics.

16 Q. And within economics did you have an area
17 within economics that you focused on for your graduate
18 studies?

19 A. Regulatory economics.

20 Q. Regulatory economics.

21 Did you prepare a scholarly paper, major
22 scholarly work in the regulatory economics field?

23 A. Well, my dissertation was titled "The Impact of
24 Rent Control on Value of Rental Property."

25 Q. So fair to say your graduate studies within

1 regulatory economics focused specifically on the topic of
2 rent control?

3 A. Yes.

4 Q. Tell us a little bit about the rent control
5 study, the work you did in graduate studies. Just tell
6 us about that.

7 A. Well, the dissertation was interesting. I
8 think it was an important topic. It addressed the
9 question as to whether rent control impacts the value of
10 property and the findings were yes, that rent control
11 impacts the value of the property in much the way we
12 would expect through economic theory: The lowering of
13 rent by rent control proportionally lowers the value of
14 the property, just as one might expect.

15 Q. Have you done scholarly research and writing
16 specifically in the areas of law and rent control?

17 A. Well, yes. I mean I wrote a major paper called
18 "Fair Return in the California Courts" that summarized a
19 lot of decisions at law about the fair return principle,
20 and reviewed cases and the economic principles behind
21 those cases, and it reviewed, for example, the fair
22 return methods that are used in mobile home rent
23 control -- actually, mobile home rent control and
24 apartment rent control, because I've dealt with both.

25 ARBITRATOR: Was that paper "Fair Return in the

1 California Courts" -- was that paper published in any --

2 WITNESS: No, that's self-published. It's not
3 published in an academic journal.

4 ARBITRATOR: Thank you.

5 MR. BALLANTINE: And we can make that available
6 for your Honor if you'd like.

7 ARBITRATOR: I don't need it.

8 MR. BALLANTINE: Okay.

9 Q. Tell us about the mobile home rent control
10 aspect of that a little bit, and fair return.

11 Well, actually, let's talk about fair return.
12 Tell us a little bit about what that means in the context
13 of rent control and fair return.

14 A. Well, the relevant decisions of law all say
15 that rent control is okay, but that rent control
16 organizations -- cities, counties -- have to allow
17 property owners a fair return on investment.

18 Having said that, the court decisions don't go
19 further -- don't go much further than that. They don't
20 spell out what fair return on investment really means,
21 and that's why I undertook that study. I really wanted
22 to find out how we can, from an economist's point of
23 view -- I'm not a lawyer, I don't do legal analysis, so
24 the title of my paper was "Fair Return in the California
25 Courts," but really it's from an economist's point of

1 view to address this question of how can we establish in
2 these kind of proceedings what a fair return is, because
3 that's the major principle by which rent control is
4 supposed to operate, and it's tricky.

5 Q. Okay. And in that analysis did you look at
6 cases involving specifically mobile home rent control?

7 A. Yes.

8 Q. Tell us a little bit about fair return, then,
9 in the mobile home park context.

10 A. I'm not quite sure where your question points.
11 I mean fair return in the mobile home context is -- well,
12 there are many different ordinances, and they all say
13 that a fair return is required, but most of them don't
14 say how to do it. Some of them indicate how to do it,
15 but they don't all say the same thing.

16 Q. All right.

17 A. And that's an understatement.

18 Q. And I guess that's a great bridge to my next
19 question, which is going to be a bit more practical.

20 You talked about your scholarly work. Have you
21 worked as a consultant on issues of apartment and mobile
22 home rent control?

23 A. Yes, I've been doing that for some 35 years.

24 Q. Thirty-five years. And tell us the types of
25 things you do as a consultant in the area of mobile home

1 rent control.

2 A. Well, mostly in mobile home rent control it's
3 very much like this. I prepare analysis and then appear
4 at hearings and attempt to identify what would be a fair
5 return and what impact that would have on the rents, on
6 the space rents charged.

7 Q. All right. And have you qualified as an expert
8 witness in these types of proceedings before?

9 A. I have.

10 Q. Would it be fair to say on many occasions?

11 A. Many occasions.

12 Q. And the work that you do in these types of
13 hearings, is that typically on behalf of park owners?

14 A. It is typically on behalf of park owners or
15 sometimes on behalf of cities and counties.

16 Q. With respect to doing that work, tell us a
17 little bit about what it involves, what it has involved.

18 Actually, let me ask you a more focused
19 question.

20 You've indicated there are various ordinances
21 throughout California?

22 A. That's true.

23 Q. And that they are typically very different?

24 A. They are typically very, very different.

25 Q. And it's always a local ordinance that you're

1 working under, no statewide ordinance, is that correct?

2 A. That's true, it's the local ordinance that
3 addresses the fair return question.

4 Q. So they vary from municipality to municipality?

5 A. They do.

6 Q. All right. In this case, have you reviewed the
7 Santa Barbara County mobile home rent control ordinance?

8 A. Yes, I have.

9 Q. At some point you were retained in this case to
10 provide some consulting and testimony regarding rent
11 control?

12 A. That's right, initially with the prior case and
13 now with this case.

14 Q. And that's what I was going to ask. Did you
15 appear as an expert witness in the 2011 case involving
16 this park?

17 A. I did.

18 Q. And you prepared a fair return analyses for
19 that?

20 A. I did.

21 Q. Have you also, then, subsequently done
22 consulting for -- rent analyses for what has wound up
23 being this case -- that is, the 2016 rent increase?

24 A. Yes, for this case.

25 Q. Okay. Let's go to the exhibits and talk about

1 them. I'll just go through them in order.

2 No. I I won't spend much time on, but do you
3 recognize Exhibit 1?

4 A. Yes. I didn't prepare it, but I recognize it.

5 Q. It would be fair to say there's numbers in
6 there that you, at least, were consulted on in generating
7 for the actual rent increase?

8 A. Yes.

9 Q. So you were involved in the preparation of
10 content?

11 A. Content, yes, indeed.

12 Q. Very well. Let's go to Exhibit 2, maybe our
13 main exhibit here. Do you recognize Exhibit 2?

14 A. Yes.

15 Q. Is that a document you prepared?

16 A. Yes.

17 Q. Tell us a little bit about it. Did you use
18 your training and expertise as an economist with
19 experience in mobile home rent control matters to
20 generate Exhibit 2?

21 A. Yes.

22 Q. All right. Tell us a little bit about this
23 document. Did you prepare it on a spreadsheet?

24 A. I did.

25 Q. It breaks down the various components of the

1 rent increase, correct?

2 A. Yes. I might say in this and other cases, we
3 make a distinction between a permanent increase and a
4 temporary increase. A permanent increase would be a
5 permanent increase in the space rents that would endure
6 over time, and a temporary would be usually an amortized
7 amount that would be amortized over a time period -- in
8 this case, 15 years for the capital improvements and
9 seven years for the professional fees.

10 Q. All right. And that distinction or that
11 bifurcation, permanent and temporary increase, is that
12 fairly typical, a fairly typical distinction that we see
13 throughout the mobile home rent control?

14 A. Yes.

15 Q. All right. Now tell us a little bit about
16 that. A permanent rent increase -- how does that come
17 about?

18 A. Well, a permanent rent increase would basically
19 be generated by expenses that increase over time. The
20 major principle of almost all rent control ordinances,
21 and certainly the Santa Barbara County ordinance, is that
22 park owners can apply for rent increase that will
23 reimburse them or cover the expense increases that may
24 have occurred.

25 Q. And the Santa Barbara County ordinance provides

1 for that?

2 A. Yes.

3 Q. And that's fairly typical?

4 A. That's fairly typical.

5 Q. From the standpoint of a fair return
6 analysis -- that is, for ensuring that a park owner is
7 able to earn a fair return from the park -- is it
8 important that they're able to recover operating cost
9 increases through rent increase?

10 A. Yes. I mean that's been well established in
11 the cases at law, and I think it's accepted by
12 practically everyone who deals in this area.

13 Q. Okay.

14 A. Ken Baar, who you mentioned before, by the way,
15 and who is a prominent expert who normally testifies on
16 behalf of the homeowners, he would certainly agree with
17 that, that expenses should be able to be addressed and
18 passed through to the homeowners.

19 Q. All right. And I guess that reminded me, I
20 wanted to ask you, you mentioned Dr. Baar. That's
21 Dr. Kenneth Baar?

22 A. Yes.

23 Q. And he's an expert that you see frequently in
24 the mobile home rent control context?

25 A. Yes. He and are I the two experts who have

1 written on these topics and we often appear together --

2 Q. All right.

3 A. -- in opposition.

4 Q. Right. He's your kind of worthy opponent?

5 A. Worthy opponent, indeed.

6 Q. Did you happen to notice him present at the

7 2011 rent control hearing in the Nomad matter?

8 A. Yes, I recall he was there.

9 Q. Did he testify?

10 A. Yes, he did.

11 Q. Did he express opinions?

12 A. He did.

13 Q. And do you recall which party called him as a
14 witness?

15 A. Well, the homeowners.

16 Q. And in that case I guess should I ask you,
17 also, were the homeowners represented by legal counsel in
18 that arbitration hearing in 2011?

19 A. I think Mr. Stanton was their attorney.

20 Q. And that's Bruce Stanton?

21 A. Yes.

22 Q. Is he an attorney who represents, usually,
23 homeowners in various mobile home rent control matters?

24 A. Yes.

25 Q. And Dr. Baar -- were you present throughout his

1 testimony?

2 A. As I recall, yes.

3 Q. All right. I may ask you a few questions about
4 that later.

5 So let's get into the permanent versus
6 temporary increases.

7 Let me ask, then, about permanent increase,
8 particularly referencing the spreadsheet, Exhibit 2, that
9 you prepared. Items 1 and 2 are part of the permanent
10 increases, correct?

11 A. That's true. The ordinance provides -- there
12 are CPI increases that occur every year and they are
13 essentially automatic. Then what I call an MNOI increase
14 is allowed, upon proof, and it would also be permanent.

15 Q. Right. An MNOI analysis is not automatic?

16 A. Not automatic, it would be required to come to
17 a hearing like this one. It would be subject to the
18 decision of the hearing officer.

19 ARBITRATOR: In the reading the Santa Barbara
20 ordinance, I didn't see the term "MNOI" or what it
21 supposedly stands for. I assume "MNOI" is going to be a
22 term of art, is that correct?

23 WITNESS: It is, and thank you for raising that
24 because I had intended to say that. I am so used to this
25 term of art, "MNOI," or maintenance of net operating

1 income, that I simply use that name for a process that
2 could be given a different name in this ordinance.

3 ARBITRATOR: How is that expressed, if at all,
4 in this ordinance?

5 WITNESS: Well, that's another good question.
6 It's quite complex. The ordinance, the Santa Barbara
7 County ordinance is unusual in certain respects. It is
8 not unusual in that it highlights expense increases as
9 something that should be passed through to homeowners.
10 It is a bit unusual in the actual protocol that it lays
11 out by which a fair return is supposed to be computed,
12 and we'll get to that when we get to that document.

13 BY MR. BALLANTINE:

14 Q. Right. And you prepared Exhibit 3, correct?

15 A. I did.

16 MR. BALLANTINE: Your Honor, I was thinking
17 about going through Exhibit 2 to sort of get the overview
18 of the basis for the rent increase and then getting into
19 the MNOI.

20 ARBITRATOR: I think your first witness covered
21 that rather adequately. I don't know that we need an
22 economist to explain what it is to either the petitioner
23 or to me.

24 MR. BALLANTINE: Okay.

25 ARBITRATOR: I understand the capital

1 improvement and expenses that are reflected in that, and
2 I understand the professional fees that are being sought.
3 While there may be disputes as to what amounts are
4 reasonable, I don't think either they or I don't
5 understand what it is you're seeking.

6 I'm principally concerned with where in the
7 ordinance expenses such as legal fees in the Santa
8 Barbara version of things can be applied.

9 MR. BALLANTINE: Okay.

10 ARBITRATOR: That would help me immensely.

11 MR. BALLANTINE: Good.

12 WITNESS: Should I mention about the rate and
13 the number of years for the amortization?

14 ARBITRATOR: Yes, that would be good.

15 MR. BALLANTINE: Yes, that's fine. So before
16 we get into the depths of the MNOI, why don't we talk
17 about how he did the temporary calculations and
18 then we'll --

19 ARBITRATOR: Yes.

20 MR. BALLANTINE: But I understand your Honor
21 has got some questions on MNOI, and we'll get into that.

22 So let's talk about the temporary increases
23 before we get back to the permanents --

24 ARBITRATOR: Right.

25 MR. BALLANTINE: -- and how that was

1 calculated.

2 Q. So starting with the capital improvements and
3 expenses, explain how you calculated that.

4 A. To do an amortization, one needs to choose a
5 rate of interest and a number of years, and we chose, in
6 this case, 15 years and 9 percent.

7 The per-month figure is simply a calculation,
8 it's an amortization calculation that can be done on a
9 handheld computer or handheld device or computer, and it
10 amortizes the capital amount, which is, in the case of
11 the street paving, it was \$274,629 capital and then
12 amortized over 15 years at 9 percent, it comes out to
13 \$2,839 and change per month, and dividing that by 150,
14 comes out to \$18.93 per space per month.

15 Q. And same process with the common area
16 electrical work?

17 A. Same process.

18 I might say there's no particular magic to
19 either the years or the rate. In general, most
20 ordinances say or the practice is to choose a number of
21 years that roughly matches the life of the improvement,
22 and these things are --

23 ARBITRATOR: You said "matches" and then what?

24 WITNESS: The life, the life of the
25 improvement.

1 And it's a judgment call, and -- it's a
2 judgment call, and sometimes homeowners get involved with
3 this because as you extend the number of years, the
4 amount, as you might expect, becomes lower, but on the
5 other hand, the longer the period, the more interest the
6 homeowners are asked to pay. So some homeowners say no,
7 no, make it a shorter time period, we don't mind paying a
8 higher amount but we prefer to pay it only for five years
9 or ten years rather than 15, so it's somewhat variable
10 and somewhat subject to negotiation.

11 BY MR. BALLANTINE:

12 Q. As to the 15 years, was that a number that
13 Dr. Baar had discussed in the 2011 arbitration as being
14 an appropriate number of years for these types of capital
15 improvements?

16 A. You know, I can't recall what Dr. Baar might
17 have said, but he may very well have. It certainly seems
18 to me a number that might be chosen. It's not out of the
19 ordinary to have 15 years for improvements like these.

20 Q. You've looked at the ordinance about capital
21 improvements, correct?

22 A. Yes.

23 Q. Does the ordinance say that this is the method
24 that's supposed to be followed -- that is, that it's
25 supposed to be amortized over an appropriate number of

1 years and at a certain financing rate?

2 A. You know, I can't recall exactly how he puts
3 it, but yes, that's my interpretation because the
4 ordinance certainly uses the term "amortization," so the
5 amortization concept is embedded in the ordinance and
6 this is, I believe -- I believe that these calculations
7 follow that concept.

8 Q. And do you recall that the ordinance talks
9 about a financing charge or financing rate?

10 A. Yes.

11 Q. And would that be embodied in the rate, the
12 .09?

13 A. It is embodied in the .09. And there again
14 there's some flexibility, there's some variability.
15 Honest people might disagree about the rate. 9 percent,
16 as I recall, is a rate that was accepted by all parties
17 in the prior matter and so it seemed that following that
18 rate made sense.

19 Q. Well, in any event, it was accepted by the
20 arbitrator in the prior matter, correct?

21 A. Well, I guess that's a better way to put it.

22 Q. Based on your experience, though, in doing
23 these types of things, these types of hearings, is 9
24 percent a reasonable rate for what we're talking about
25 here?

1 A. Yes, it seems like a reasonable rate. I mean
2 if homeowners were to say, oh, it should be 7.5 or if a
3 park owner were to say no, no, no, 10, I wouldn't have
4 any way to say 9 is the one number. There's a range
5 around which reasonable people can disagree.

6 Q. In your professional opinion, the 9 percent is
7 a reasonable number?

8 A. I think 9 percent is a reasonable number.

9 Q. And same thing for the amortization period, in
10 your opinion, is 15 years a reasonable number for, again,
11 the assets that we're talking about?

12 A. It is.

13 And let me comment just a little further on the
14 rate. 9 percent in a time when interest rates are
15 historically low, 9 percent seems like a very good rate.

16 The park owner in this case and similar cases
17 is being asked to advance large sums for the benefit of
18 the park and, in the end, for the benefit of the park
19 owners, park residents. And there's some risk associated
20 with these investments and therefore a rate higher
21 than -- certainly higher, for example, than an interest
22 rate on a bank deposit or higher than, perhaps, a
23 mortgage on a single-family home because it's more risky.
24 There's, of course, a huge regulatory risk in this
25 environment because we don't know until awarded what

1 amounts will be awarded.

2 Q. So in other words, in this case the park owner
3 has -- well, the capital expense is laid out, over
4 \$300,000 in cash, and now they are sitting here now in a
5 hearing in which that the right to recover that is
6 challenged?

7 A. That's right.

8 Q. And also would it be fair to say that there's
9 an economic principle that a dollar today is worth more
10 than a dollar in 15 years or over 15 years?

11 A. Yes, that would certainly be true.

12 Q. If the park owner were to get the \$333,000 back
13 over 15 years but no interest, would that have a negative
14 economic effect on the park owner?

15 A. Yes.

16 Q. And tell us about that.

17 A. Well, park owners or any investors are not
18 going to want to shell out that kind of money and not get
19 a return on their money, and it's a well-established
20 principle in cases in law as well as economic principle
21 that park owners deserve, should get a return on any
22 capital improvement amounts.

23 Q. And in fact, if they were to get the \$333,000
24 but failed to get any interest on it, would that
25 essentially deprive them of a fair rate of return on that

1 money?

2 A. Well, it would because they wouldn't be getting
3 any return on their money. They might get it back, but
4 they wouldn't get any return at all, and that's what
5 courts might call confiscatory.

6 Q. I like that word, "confiscatory."

7 A. I hesitate to use that word because that's not
8 an economist's term, it's more of a legal term, but yes.

9 Q. And that legal term essentially --
10 "confiscatory" essentially means a property owner is not
11 getting a fair rate of return on their investment in a
12 property?

13 A. Yeah, that's right.

14 Q. And they are not getting a fair rate of return
15 on the property because of some ordinance, government
16 ordinance or ruling?

17 A. Uh-huh, that would be so.

18 Q. So essentially what's happening, then, is the
19 government -- the reason why it's called "confiscatory"
20 is the government is confiscating, or taking, their
21 property?

22 A. That's correct. I couldn't have put it so
23 clearly in legal terminology, but yes.

24 Q. But that is kind of the legal principle we're
25 talking about, the legal cases underlying this is the

1 issue, the idea that, hey, the government can't enact an
2 ordinance that takes property from people?

3 A. Yes.

4 Q. Okay.

5 A. I might just say one more thing on that. You
6 know, the courts have said that these matters are to be
7 decided on the basis of expert opinion. That would say
8 that we economists are empowered or charged with saying
9 what a fair return is, that -- how do I say -- not all
10 courts have followed that principle. Sometimes courts
11 impose their own ideas about what a fair return is.

12 Q. All right. So we talked about capital
13 improvements and expenses, and just going down to
14 professional fees, would it be fair to say the general
15 principles of what we just talked about are the same?

16 A. I would say the same principles apply to
17 professional fees or other major items of expenditure
18 that really need to be amortized in order for it to be
19 fair, because I mean here we have professional fees of
20 almost half a million dollars, close to half a million
21 dollars, large portions of which probably occurred in a
22 particular year.

23 If that was true, and if we did a net operating
24 income analysis using that particular year, it would be
25 unbalanced because legal fees of, let's say, \$100,000 to

1 \$200,000 are not often incurred in any one year, so the
2 practice is to take any such amounts out of the equation,
3 sum them, which has been done here, the \$400,000 plus
4 \$110,000, and then amortize all of it.

5 Q. So let me summarize a couple things. So would
6 it be fair to say that temporary increases are not just
7 for capital improvements and expenses?

8 A. In the standard practice of this type of case,
9 that's true.

10 Q. Talking about in the context of, let's say,
11 mobile home rent control?

12 A. In the context of mobile home rent control.
13 There are other items -- for example,
14 professional fees -- that may be largely an amount other
15 than capital improvements and that lend themselves to the
16 amortization process.

17 Q. Is one of the typical features of those types
18 of expenses that we're talking about, the nonrecurring
19 nature of them but their unusual expense, that you
20 wouldn't expect a park owner to have year in and year
21 out?

22 A. That's what I mean, was trying to say a minute
23 ago. Yes, that these expenses don't happen again and
24 again, whereas all the other expenses in a
25 profit-and-loss statement, in the books and records are

1 recurring -- or I should say most are recurring. And
2 when an item is large and nonrecurring, then the practice
3 is to amortize it as opposed to leaving it in the normal
4 analysis.

5 Q. So two of the components would be if an item is
6 large and nonrecurring, then that tends to be an
7 indicator that a temporary increase is the appropriate
8 way to address that, is that fair to say?

9 A. Yes, that is fair to say.

10 And this was agreed to in the case of
11 professional fees in the last adjudication involving
12 Nomad, as I recall. There, too, I think Kenneth Baar
13 agreed that they should be handled in that way.

14 Q. I was going to ask you that. Were you there
15 when Dr. Baar testified that the appropriate approach for
16 whatever the amount was, legal and professional fees,
17 related to the arbitration hearing and any subsequent
18 writ-related proceeding should be handled by this way --
19 that is, a temporary rent increase, amortized?

20 A. Yes. I mean he and I have actually interacted
21 on numerous cases around the state and that has been the
22 standard way of approaching these things.

23 Q. And did you hear Dr. Baar testify that he
24 agreed that the park owner was entitled to recover some
25 amount, a reasonable amount of the costs incurred for

1 professional fees for the rent proceedings?

2 A. Yes, I do recall that.

3 Q. Okay. And would that be consistent with his
4 testimony in other cases that you've heard him say?

5 A. Yes, it would.

6 Q. And in your opinion, do you agree with that?

7 A. Yeah, I agree with that.

8 Q. And so looking at the two elements of these
9 professional fees, one was defense of the homeowners'
10 appeal to the Board of Supervisors of the arbitration
11 award in 2011 and the litigation following that, is that
12 the type of professional fees that you and Dr. Baar had
13 been talking about to which the park owner is entitled to
14 recover?

15 A. Yes.

16 Q. And the 2016 space rent increase proceedings,
17 again for this type of proceeding, is that the same
18 thing?

19 A. Yes, it is.

20 I mean I might just say, in addition, the
21 principle is that all costs, if they exceed the base-year
22 cost, have to be reimbursed by homeowners, that rents
23 have to be increased to reimburse the park owner with
24 these amounts.

25 So the question we're talking about right now

1 is whether they should be reimbursed on an annual basis
2 permanently or whether they should be reimbursed on an
3 amortized basis. One way or another, they have to be
4 reimbursed. The park owner, in other words has --
5 there's no other source for increased expenses. If the
6 expenses go up, either gradually or suddenly or on a
7 one-time basis, all of those cases would call for space
8 rent increases to cover those costs. They have to be
9 covered one way or another.

10 Q. Okay.

11 A. There's no other pocket from which they can
12 come, there's no other place from which they can come,
13 and otherwise park owners would be -- the return that
14 park owners would receive would go down and down and
15 down.

16 Now, of course, park owners do get the
17 automatic rent increase, which is a CPI increase. In
18 this jurisdiction I believe it's 75 percent of CPI. I
19 don't know if you want me to get into that topic about
20 partial indexing, but in any case --

21 ARBITRATOR: I don't think we need you to do
22 that.

23 WITNESS: Okay. But my point at this moment is
24 only to say that park owners, of course, do get that
25 amount, whatever we may consider it, and the question is,

1 are those amounts sufficient to compensate the park owner
2 for capital improvements, professional fees and other
3 costs increase, and in this case they are not.

4 BY MR. BALLANTINE:

5 Q. And does the ordinance essentially say that the
6 park owner is entitled to recover, through rent increase,
7 increased operating expenses for the park?

8 A. Yes.

9 Q. One last question with respect to the
10 professional fees. Well, I guess two questions.

11 The rate is the 9 percent. Would your
12 testimony about the capital improvements apply the same
13 for the 9 percent for professional fees?

14 A. Yes.

15 Q. So let's not repeat that.

16 The amortization period is 7 years, correct?

17 A. Yes.

18 Q. In your professional opinion doing this, is
19 that a reasonable number of years for this type of rent
20 increase?

21 A. The logic is that this type of proceeding might
22 occur once in seven years, and in fact, the last was in
23 2011, and now we are 2016, so it's been a little short,
24 five years. So this time period could be five years, but
25 seven might be -- we don't know, maybe it will be nine

1 years next time, so seven is kind of an estimate of how
2 often these kind of things happen.

3 Q. Was the seven years also the period accepted by
4 the arbitrator in the last proceeding for the temporary
5 rent increases for the professional fees that were passed
6 through in that occasion?

7 A. Yes, I believe it was.

8 Q. Okay. In your opinion, is that a reasonable
9 number to use in this case?

10 A. Yes.

11 Q. Okay. So let's go to the CPI and the MNOI
12 increase. Let's actually talk about the -- I think the
13 MNOI, and also you can talk about the CPI, generally how
14 that works.

15 And Exhibit 3, that's a little bit of a
16 description about your spreadsheet, each of the elements
17 of your spreadsheet, correct?

18 A. Yes.

19 Q. All right. So I may have misspoken a moment
20 ago. If I called the MNOI "Exhibit 3," it's really
21 Exhibit 4, and it's entitled "Nomad Village MNOI
22 Analysis."

23 Dr. St. John, is that a document you prepared?

24 A. Yes.

25 Q. Let's get to the basic question that his Honor

1 asked, which is tell us a little bit, what does MNOI
2 analysis mean, and particularly how is it authorized in
3 this ordinance?

4 A. Okay, so there are several columns in the
5 spreadsheet, and I'm going to focus first on columns E
6 and F. Columns E and F are the books of record. The
7 books of record are in the record and anyone can check
8 and make sure that the numbers in columns E and F are
9 simply taken without adjustment of any kind from the
10 books of record.

11 Q. And that's exhibit -- it's the next exhibit,
12 actually, Exhibit 5?

13 A. Yes, uh-huh.

14 Q. All right, go ahead.

15 A. So that's what I began with. In all these
16 cases, I begin with books of record, and so there's
17 nothing complicated about E and F. They are just
18 repeating the books of record.

19 The analysis, what I call MNOI analysis is in
20 columns H and I, where most of the items are simply
21 repeated from books of record without adjustment, but
22 there are some adjustments. For example, we can go down
23 on the first page and make some -- I can explain some of
24 the adjustments.

25 So line 9 is called "Offset for Amortizations,"

1 and \$120,762 is subtracted, and this is in order to take
2 out of the income received in 2015 those amounts which
3 were received in compensation for capital improvements
4 from the last increase.

5 Q. Okay.

6 A. And that leaves the net, \$653,267. If we
7 didn't do that, then it would appear in the analysis that
8 the park was receiving \$120,762 in permanent income
9 whereas the \$120,762 is temporary income, and if we
10 didn't take it out, then the analysis would not
11 compensate the park owner for the expense increases that
12 have occurred.

13 Q. All right. And to ask a more basic question,
14 maybe two basic questions, you've got two different years
15 here, 2010 and 2015, correct?

16 A. Oh, yeah. Thank you for bringing that up.

17 Q. So the MNOI analysis, is that a way to compare
18 how much expenses went up over some -- over, say, a base
19 year and an end year to how income went up, or not?

20 A. Income and expense, yes. I mean that's quite
21 standard, and the reason we take, in this analysis, the
22 reason we take 2010 as the beginning year is that it was
23 the ending year in the last analysis. So these are
24 retained typically from one to another to another, and
25 the reason why 2015 was used is that this was the last

1 full year when we began doing this analysis.

2 Q. And would it be fair to say -- I see it's got a
3 date of April 6, 2016. This was prepared in around March
4 and April 2016 in anticipation of the rent increase
5 notice?

6 A. Exactly.

7 Q. All right. Well, I think to save some time,
8 rather than going to through all of the line items we'll
9 save that in case there's some questions so we at least
10 understand the concept, and maybe kind of take us through
11 the analysis very quickly to the end and give a quick
12 summary of how it's done, and then if there's questions
13 we can go from there.

14 A. Well, I might just highlight one more example,
15 which is note No. 2. The notes are in column G2. It
16 indicates that I have removed from the MNOI analysis the
17 electric income and gas income, and then down below in
18 line 38 and 39 I've removed the expenses for electricity
19 and gas, and this is because there's a lot of decisions
20 saying, basically, that the electric and gas, which are
21 submetered to the residents -- charged to the park,
22 submetered to the residents -- that these items are
23 controlled by the PUC.

24 And there's some cases that you may remember,
25 James. I don't remember the cases. Hillsborough --

1 Q. Yes.

2 A. -- comes to mind is a case that said that the
3 PUC, they claimed jurisdiction over these and they said
4 these amounts shouldn't be included in a fair return
5 analysis, so we typically take them out.

6 It doesn't actually make very much difference
7 because there are expenses and then there's income from
8 the residents, and it doesn't make a huge amount of
9 difference. But anyway, that's an adjustment that we do
10 make, and I wanted to highlight that one. There are
11 other adjustments that I could talk about, but I am
12 understanding that you want to go through this kind of
13 quickly.

14 Q. I'd like to get the overview down, and then if
15 there are questions we can go back to them.

16 ARBITRATOR: I'll point out that we've only got
17 until 5:00 today to get this thing done. The parties
18 should govern themselves accordingly.

19 MR. BALLANTINE: Understood. And I think we'll
20 be able to do that. We'll move through this. I think we
21 can go through this pretty quickly. If we miss something
22 and there's a question, we'll just go back.

23 ARBITRATOR: If there's a question, we can
24 answer them. Be as expeditious as you can. I don't want
25 to cut anybody off. I will have a hard time finding a

1 date on my calendar when I can come back if we don't get
2 it done.

3 MR. BALLANTINE: Understood. Let's try to get
4 it done today. I don't think there's that much.

5 ARBITRATOR: Thank you.

6 WITNESS: So let's go through page 1, page 2,
7 page 3 is the ending point for this, and it simply
8 summarizes the income in the base year and the comparison
9 year, the operating expenses, base year-comparison year,
10 and, therefore, the net operating income, base year and
11 comparison year.

12 BY MR. BALLANTINE:

13 Q. Okay. So fair to say that as you went through
14 these three pages you had some income and expenses with
15 the adjustments that you identified, as an economist
16 specializing in this area, deemed to be appropriate for
17 coming up with an MNOI analysis to arrive at income and
18 expense numbers?

19 A. That's right.

20 Q. All right. And then let's go to page 4, and
21 then do you do some adjustments?

22 A. Well, page 4 follows the ordinance. The
23 ordinance has a system and it says these numbers, 1, 2,
24 3, through 7 are specified in the ordinance, these are
25 the steps that are supposed to be taken, and the end

1 result is the space rent increase that is presumably
2 allowable.

3 Q. And what's that number?

4 A. \$29.31 per space per month.

5 Q. All right. Thanks.

6 And in your opinion that's done -- this is an
7 MNOI-style analysis that's done pursuant to what the
8 ordinance here says?

9 A. Right. Page 4 follows the ordinance as close
10 as I can tell.

11 Q. All right. And Exhibit 5, these were the
12 financials that you base that analysis on?

13 A. That's right.

14 Q. All right. Page 6, is that a spreadsheet that
15 you prepared based on the capital expense numbers?

16 A. Yes. I mean that's simply a summary --

17 ARBITRATOR: Page 6? You mean Exhibit 6?

18 MR. BALLANTINE: I misspoke. Thank you, your
19 Honor.

20 WITNESS: It's actually -- oh, I see.

21 BY MR. BALLANTINE:

22 Q. It doesn't have an Exhibit V on the bottom for
23 various reasons, because that's what was given to the
24 homeowners, but there's a 6 here.

25 A. Okay. So, yeah, this is simply a summary of

1 what is being requested in the capital expense category.

2 Q. All right. And that's the one that you carried
3 over to Exhibit 2 to do your calculations?

4 A. Yes.

5 Q. And actually I realize that in Exhibit 4 I
6 forgot to talk about the last two pages, but I think we
7 can do it quickly.

8 The very last page of Exhibit 4 is -- tell us
9 what that is.

10 A. Well, this is not a chart that I prepared, so
11 I'm just looking at it. It appears to be a Consumer
12 Price Index summary for various cities and U.S. city
13 average.

14 Q. Okay. And would this be the index we'd be
15 working from, in your opinion, under the ordinance?

16 A. Right, the Los Angeles-Riverside-Orange County
17 line would be the one.

18 And then, of course, often when we use the term
19 "CPI" we mean CPI-U, but in this particular case this
20 ordinance uses CPI-W, so we would use the numbers over to
21 the right, and those index numbers, and then the percent
22 changes would be the ones we use, and I was here earlier
23 and heard the testimony about the 2.3 as opposed to the
24 2.4.

25 Q. Okay. And so you see that under the 12 months

1 ending February 2016?

2 A. I do.

3 Q. So the ordinance says we're supposed to use the
4 month -- the month prior to the month -- the 12-year --
5 the 12-year -- or the year change for the month prior to
6 the month, the date of the monthly rent that goes out,
7 which in this case was March, we would use February,
8 correct?

9 A. That's right.

10 Q. And so the number would be 2.3?

11 A. That's right.

12 Q. Okay. And your MNOI analysis, also, is based
13 on a CPI --

14 A. That's right, that's right. So I downloaded
15 this particular chart from the Bureau of Labor Statistics
16 website.

17 Q. Just so we're clear, so the record is following
18 it, I backed up one page from the one we were just
19 looking at. So it's the second-to-the-last page of
20 Exhibit 4, and is that the chart you said you downloaded?

21 A. Yeah.

22 Q. And those are the CPI numbers that are
23 contained in the MNOI analysis?

24 A. Yes.

25 Q. And then I think Exhibit 9 is a group of

1 invoices from your office. Was this an accurate listing
2 of work that was done on behalf of Nomad Village Park
3 through February?

4 A. Yes.

5 Q. Have you incurred additional costs since then?

6 A. Yes.

7 Q. You can provide those and we can submit them
8 later, correct?

9 A. Yes.

10 Q. And by the way, is it your experience that
11 typically the way fees are requested in a hearing such as
12 this is that there's an application for fees, including
13 yours and the attorneys' and anything else after the
14 hearing itself for the hearing officer to then review and
15 make an award?

16 A. Yes. I mean it can hardly be done otherwise.

17 Q. All right. And you heard Dr. Baar testify and
18 agree with that approach?

19 A. Yes.

20 Q. And then the final thing I want to ask you
21 about is a little more tangible.

22 You heard Mr. Waterhouse talk about waiting for
23 finality of the arbitration, kind of the pending
24 arbitration from 2011 in order to come up -- have a final
25 number for the rent increase.

1 A. Yes.

2 Q. And you heard him talk about, then, the idea
3 that there would be a credit to homeowners if there is
4 indeed anything owing -- in other words, if the amount
5 allowed was less than what was actually billed?

6 A. Yes.

7 Q. Is that something you're -- is that something
8 you can calculate?

9 A. Surely, yes.

10 Q. And so you can provide us with calculations
11 once we get that finality?

12 A. Yes.

13 MR. BALLANTINE: Okay, thank you. I think I'll
14 leave it at that.

15 Thank you.

16 ARBITRATOR: Thank you.

17 Cross-examination, please.

18

19 CROSS-EXAMINATION

20 BY MR. ALLEN:

21 Q. You had mentioned that you've done many of
22 these hearings and you have always been on the side of
23 management, save for when you're doing it for a
24 municipality of some sort, is that correct?

25 A. Yes.

1 Q. And when you are representing management, you
2 always are requesting increase in rents?

3 A. Well, I wouldn't encourage a park to go forward
4 unless there was good reason to believe that it was
5 defensible.

6 Q. And that's always based on your analysis?

7 A. It's always based on analysis, and it starts
8 with the books of record.

9 Q. All right. And looking at this, it appears
10 that it's structured to reduce the differences in net
11 operating income. I've looked at a few of yours and they
12 all do, is that correct?

13 A. I'm sorry, I didn't understand your question.

14 Q. That what it does in the analysis columns is it
15 reduces the differences in the net operating income
16 between the base and the target.

17 MR. BALLANTINE: I'm a little unclear, your
18 Honor, if he's asking the witness about a specific
19 exhibit or something else. He should have it in front of
20 him if he is asking --

21 ARBITRATOR: Which page, so that --

22 MR. ALLEN: Page 3.

23 ARBITRATOR: Page 3 of what exhibit?

24 MR. ALLEN: Exhibit 5.

25 MS. DAVIS: The MNOI analysis sheet.

1 MR. BALLANTINE: That's Exhibit 4, your Honor.

2 ARBITRATOR: All right. Do you have that now
3 in front of you doctor?

4 WITNESS: I do, thank you.

5 MR. BALLANTINE: Which page?

6 ARBITRATOR: The question again.

7 MR. ALLEN: Page 3.

8 MR. BALLANTINE: Page 3.

9 ARBITRATOR: Page 3, I'm sorry. Yeah, go
10 ahead.

11 BY MR. ALLEN:

12 Q. It's structured to reduce the differences in
13 the net operating income from the base year to the target
14 year.

15 A. When you say it's structured, I mean I think
16 you mean --

17 Q. Does it --

18 ARBITRATOR: Let him finish his answer. If he
19 did not answer what you thought he was going to answer,
20 you can clarify it.

21 Finish your answer.

22 WITNESS: It's not structured for that purpose,
23 it's is simply structured to create an analysis that is
24 consistent with principles of fair return analysis.

25 There are some things that don't belong in a

1 fair return analysis and they are taken out. For
2 example, the income and expenses with regard to the
3 utilities, as I mentioned before. So it's not structured
4 for any particular purpose and doesn't always have the
5 same result.

6 BY MR. ALLEN:

7 Q. And it is structured to exaggerate expenses, is
8 that correct?

9 A. No, it's structured to create a listing of
10 expenses that is fully accurate and appropriate for a
11 fair return analysis.

12 Q. Okay. Could you look at my Exhibit A, please.

13 ARBITRATOR: Exhibit A is the Nomad Village
14 table 3A MNOI analysis.

15 MR. BALLANTINE: I'm looking. The doctor and I
16 have a disagreement over who has that exhibit. We'll
17 find it in a moment. Sorry, your Honor.

18 ARBITRATOR: Exhibit A is a three-page
19 document.

20 MR. BALLANTINE: I think I know what it is. I
21 think I found it. The doctor was correct, it was in our
22 exhibit binder in a flap. We have Exhibit A in front of
23 us, your Honor.

24 ARBITRATOR: That's all right.

25 With regard to petitioner's Exhibit A, which

1 has been received in evidence, ask your question.

2 BY MR. ALLEN:

3 Q. Look on the third page, please.

4 A. Yes.

5 Q. In both of these, these were both prepared by
6 you, both applying the same analysis, you came up with
7 very different numbers for 2010 as you do 2010 on the
8 current produced document. Could you please reconcile
9 the net operating income of \$166,881.14 that you have in
10 table 3A to the \$233,717.09 that you came up with using
11 the same analysis.

12 A. Okay. First of all, the column F on your
13 Exhibit A matches column E on our Exhibit 4, just to
14 establish that. So the books of record are identical,
15 the books of record we used in 2011 and the books of
16 record we used now are identical.

17 Now, I did the analysis again. I did the
18 analysis anew, and it would take me some time to see what
19 differences there are between these two, and I might have
20 checked this before this hearing but I did not, I didn't
21 refer back to the details of the prior case, so I don't
22 know that I can do this on the stand.

23 Q. Well, I believe that the arbitrator would like
24 to know. I mean we're presenting professional analysis,
25 supposedly. It was done here, and when it's in the base

1 year, you know, we have the desired result from
2 management that would happen in the base year, and I
3 think he wants -- he'd like to hear this, so I think he
4 would like you to reconcile it.

5 ARBITRATOR: Well, don't presuppose for me at
6 this point. The doctor has indicated that the
7 \$338,629.57 number, I think it was, for 2010, total
8 office and administration, and the total operating
9 expense in your Exhibit A, line F, and in his current
10 exhibit are identical for 2010. The problem I see is
11 that this is a reference between 2007 and 2010, and the
12 current is 2010 to 2015. The ultimate numbers in
13 comparing those two are going to come out -- seem to come
14 out different. I've not capable of doing it, but it
15 seems to me it's going to come out different.

16 MR. ALLEN: No, what I'm talking about is
17 solely the 2010 analysis versus the 2010 analysis. He's
18 correct in that the book of records isn't exactly the
19 same, and what I'm saying is applying what would seem to
20 be, if it had any science to it whatsoever, any math to
21 it whatsoever would come out to be the same.

22 As the questions I asked before, is it made to
23 exaggerate the expenses? Well, if you want to look at
24 it, the differences are all there.

25 ARBITRATOR: The question is, is the difference

1 between Petitioner's Exhibit A and Respondent's Exhibit
2 4, page 3, are the calculations made to exaggerate in
3 favor of the Respondent?

4 Is that the question?

5 MR. ALLEN: I'm sorry, would you could you
6 repeat that?

7 ARBITRATOR: Yeah. As I understood your
8 question, you're asking if the analysis and the way it
9 was done in your Exhibit A versus their current Exhibit 4
10 was done in a manner to purposefully exaggerate in favor
11 of management. Is that what I understand your question
12 to be?

13 MR. ALLEN: I asked him to reconcile the two
14 differences. That part of it is apparent. I mean you
15 can see that. What I was asking him was to reconcile the
16 differences. It should be the same; in other words, 2010
17 should be 2010.

18 ARBITRATOR: Okay. But as I look at 2010 in
19 both columns, you've got it in column F and he's got it
20 in column E, the numbers look to be precisely the same in
21 2010 in the books of record.

22 MR. ALLEN: That's true.

23 ARBITRATOR: Okay. And now we go to 2015,
24 which isn't in your exhibit, so I'm confused about your
25 question. We appear to be comparing apples and oranges

1 and I'm not understanding it.

2 MR. ALLEN: Okay. It's column I in my exhibit
3 versus column H in his exhibit. They are both 2010. We
4 took the same base year, the same year amounts. As you
5 said, they are precisely -- they are exactly the same
6 from the books of record, but when he applies his
7 analysis he came up with two very different numbers.

8 ARBITRATOR: Column H in your exhibit is for
9 2007 --

10 MR. ALLEN: Column I.

11 ARBITRATOR: I'm not tracking with you. Column
12 I in your analysis for 2010?

13 MR. ALLEN: Yes.

14 ARBITRATOR: Oh, I see what you're saying, yes.
15 Excuse me. The analysis -- what he's saying, and I'm not
16 sure mathematically what it means, he's saying he thinks
17 that column I in his Exhibit A and column H in your -- in
18 respondent's Exhibit 4 should be the same.

19 Is that what you're saying?

20 MR. ALLEN: If he prepared -- yes, if the
21 analysis --

22 ARBITRATOR: The question is why are they
23 different and can you explain the difference?

24 WITNESS: I traced it, I've got it.

25 ARBITRATOR: It took me a while.

1 WITNESS: Thank you.

2 MR. BALLANTINE: Well, wait a minute, that's --
3 so the -- I guess one of the questions, should they be
4 the same or not, and that hasn't been answered yet.

5 ARBITRATOR: Well, the real question is: Can
6 you reconcile that, which I interpret to mean should they
7 be the same, should they be different, why are they not
8 the same, why are they different.

9 MR. BALLANTINE: Fair enough.

10 WITNESS: Exactly. No, Mr. Allen put his
11 finger on a good question and I have a good answer.

12 ARBITRATOR: Okay.

13 WITNESS: And it's line 87 in Exhibit A,
14 compared to line --

15 ARBITRATOR: 87 in Exhibit A?

16 WITNESS: Yes, line 87 in Exhibit A, land lease
17 payment.

18 ARBITRATOR: All right, hang on. Okay, land
19 lease payments, okay.

20 WITNESS: And the 2010 number is \$113,340.74.

21 ARBITRATOR: Okay.

22 WITNESS: On the chart prepared for this
23 hearing, it's line 84. This is Exhibit 4, line 84, and
24 column H, and it's \$56,432.79, which happens to be
25 exactly half. And the reason is that in the prior

1 hearing, the hearing officer decided that the park could
2 not use the 20 percent land lease fee but could only use
3 a 10 percent land lease fee, so I adjusted line 84 and
4 column H in accordance with the decision by the prior
5 arbitrator.

6 In the prior case, it was ruled that the park
7 manager could not use or pass through the 20 percent fee,
8 even though it is a 20 percent fee, but for reasons that
9 I won't go into any further the hearing officer decided
10 it shouldn't be a 20 percent fee, it should be a 10
11 percent fee, and my decision when I was doing this
12 exhibit -- this is a good example of what the MNOI
13 analysis does. It adjusts the actual numbers in
14 accordance with a variety of things, and in this case it
15 was in accordance with the rulings of the prior hearing
16 officer saying no, no, you can't charge 20 percent fee,
17 you can only charge 10.

18 ARBITRATOR: Okay.

19 WITNESS: And the note No. 4, James is pointing
20 out that note 4 on page 3 of the current chart says "Land
21 lease payments included 10 percent of gross income per
22 arbitration decision."

23 ARBITRATOR: Okay.

24 MR. BALLANTINE: All right.

25 BY MR. ALLEN:

1 Q. And does that have any analytical purpose?

2 A. Well, I mean I felt when I was doing this that
3 I should conform to what the prior hearing officer said.
4 I mean if we use the bigger numbers, I think you would be
5 here telling me no, no, that was decided in the last
6 case, and I would actually think you're right.

7 I think something like this, as a matter of
8 principle, once decided shouldn't be relitigated,
9 relitigated, relitigated, so I simply accepted that this
10 time. And the reason, of course, that my number was the
11 higher number the last time was he hasn't decided it yet.
12 So last time we asked for the whole amount, but he
13 decided you can't use the whole amount, so this time I'm
14 using half the amount.

15 MR. ALLEN: I'm not sure I understand that.
16 We're talking about the expenses of the business.

17 ARBITRATOR: What he's saying, and I have not
18 read the transcript, which is one of the exhibits that I
19 have received and I may end up having to read that, too,
20 which I was hoping not to have to do, but once -- the
21 prior arbitrator should know you can't use the full
22 expenses, the 20 percent, you can only use the 10
23 percent, I'm cutting it in half, that document still
24 exists in its original form showing 20 percent, because
25 it's a part of that record.

1 In doing the analysis for this contest, this
2 period, rather than use 20 percent, which the prior
3 arbitrator said no, you can't use that, that's too much,
4 we're going to use 10 percent, he accepted that. It
5 sounds like he disagrees with the arbitrator's wisdom or
6 analysis, but that's not the point. He made that
7 decision and the doctor agreed to abide by that, and he
8 did these calculations based on that premise.

9 MR. ALLEN: Correct.

10 ARBITRATOR: So the numbers would have to end
11 up different and, frankly, would end up better for the --
12 seems it would be better for the homeowners than it would
13 be for the park, under that analysis. But I'm a lawyer
14 and a judge, rather than a mathematician or an economist.

15 The first income tax return I ever filed paper
16 route -- no, what was I doing? In any event, it was a
17 1040 short and I was 17 years old and I figured the IRS
18 owed me -- you know, make under \$425? They sent me
19 notice that said I owed \$315. I have done not my own tax
20 return since then.

21 So I am not the mathematician, but I understand
22 the logic of what he answered your question and I believe
23 it's responsive. So if you have more questions, go right
24 head and ask your questions.

25 BY MR. ALLEN:

1 Q. Just to be clear, the arbitrator didn't tell
2 you what you could use in your MNOI, is that correct?

3 A. Well, in effect, he did. As to that item, he
4 said you can't use the whole amount, you can only use
5 half. And I believe -- I don't recall precisely, but I
6 believe I amended your Exhibit A -- upon hearing the
7 arbitrator's decision, I amended it so that the outcome
8 would be correct according to his decision.

9 Q. So in this instance, now that expense that has
10 been taken out and it's in the base year which lowers
11 your base year expenses by \$60,000, exaggerating the
12 difference?

13 A. Well, that's why -- I'm not quite sure how to
14 answer your question. If it's a question, may it be
15 repeated?

16 ARBITRATOR: Would you read it back, please.
17 (Record read by reporter.)

18 WITNESS: No, because the 2015 amount is
19 similarly adjusted.

20 BY MR. ALLEN:

21 Q. Similarly, but you cut it in half.

22 A. Well, no, it is the same, cut it in half. Both
23 the 2010 and the 2015 actual numbers are cut in half,
24 just as the hearing officer instructed.

25 Q. I get that it's half, but you know that half of

1 different numbers end up in different numbers, right?

2 A. I can't dispute that.

3 Q. Let's move on.

4 So let's go back to this removal of what you
5 call offsets or amortizations?

6 A. Yes.

7 Q. Do you have any documentation as to how you
8 came about this number?

9 A. Are you referring to Exhibit 3?

10 Q. Offset for amortization is on page 1.

11 ARBITRATOR: Of Exhibit 4?

12 MR. ALLEN: Of Exhibit 4.

13 ARBITRATOR: You're talking about line 9 of
14 page 1?

15 MR. ALLEN: Yes.

16 ARBITRATOR: The question has to do with page 1
17 of Exhibit 4, "Nomad Village MNOI Analysis, 2010-2015"?

18 WITNESS: Yes.

19 ARBITRATOR: "Offset for amortizations," and
20 you have minus \$120,000.

21 WITNESS: Right. That is the amount of
22 amortizations that were being passed through in 2015 to
23 the residents.

24 BY MR. ALLEN:

25 Q. The question was, do you have any documentation

1 to back up this number?

2 A. You know, I'm not sure if I do, because I don't
3 believe the books of record distinguish between the two,
4 and I think I had to do a calculation. I probably talked
5 to the controller at Waterhouse and she probably helped
6 me figure that out. I must have it in my notes, but I
7 don't have it here at this table.

8 Q. So as part of your analysis, you're wiping out
9 \$120,762 that was actually cash received?

10 A. It was.

11 Q. And you're telling the arbitrator that he
12 should not consider those monies as monies that the
13 business received?

14 A. Right, because those monies were received for
15 capital improvements and it would be inappropriate to
16 include those in this analysis.

17 Q. But you just said that there's no documentation
18 for what those are and it's still money received.

19 A. Well, I beg to differ. I didn't say there's no
20 documentation, I said I don't have it at this table.

21 Q. So in effect, if you remove it from this year,
22 you're basically saying that you would like to include it
23 again in the increase?

24 A. You know, your question points to this fact
25 about these kind of analyses. We keep the capital

1 improvement amounts separate, and I believe they are
2 separate on the billing you receive every month.

3 Capital amounts are not included in the base on
4 which the annual increases are calculated, and therefore
5 the billing company carefully keeps the rent amount clear
6 and separate and the capital improvement reimbursement
7 amounts on a separate line -- or a separate column.

8 Then you pay the rent, which is comprised of
9 several components. There's the rent and then there's
10 the capital improvement reimbursement and there may be
11 other pass-throughs, there may be utility costs and so
12 forth, so all of that appears on your bill every month.

13 And now that you're reminding me, that would be
14 the documentation, it would be that kind of documentation
15 that I must have used in order to compute this \$120,000
16 figure, and I apologize, by the way, for not having it at
17 my disposal, and I could produce it hereafter. It would
18 be easy.

19 Q. Did you base this on the book of records you
20 recall earlier that we were discussing that they were
21 done in compliance with GAAP?

22 A. I'm not an accountant. I don't know the
23 meaning of that term.

24 Q. Sure, but do you remember earlier today we
25 discussed that?

1 A. I do. I was here and I did hear something
2 about GAAP.

3 Q. Okay. And in the book of records, at least you
4 can testify that every bit of those amounts are included
5 in rental income, account 4100. On your MNOI, line 8,
6 it's all rental income, correct?

7 A. You're saying on the MNOI, line 8 is the rental
8 income. Those are amounts that were received.

9 Q. Okay. On page 2, line 97, you have a note 5.
10 Note 5 says "Legal and consulting services were included
11 in previous award."

12 How does that relate to property tax
13 supplemental?

14 A. I'm sorry, Mr. Allen, direct me again. On
15 line --

16 ARBITRATOR: Page 2, Doctor, the bottom line,
17 line 97. It says --

18 WITNESS: Oh, "Property Taxes, Supplemental."

19 ARBITRATOR: "Supplemental." You have a
20 footnote under column G, and footnote 5 says "Legal and
21 consulting services were included in previous award."

22 The question is, what does that mean?

23 WITNESS: Well, I'll the note number is wrong.
24 I should have said note No. 6 which says "Supplemental
25 property tax were included in previous award."

1 ARBITRATOR: This should be 6 instead of 5?

2 WITNESS: Uh-huh. It's note 6, not footnote 5.

3 ARBITRATOR: Okay.

4 MS. DAVIS: What about No. 4?

5 BY MR. ALLEN:

6 Q. So page 2, line 92, note 4, "Land Lease
7 Payments," what does that have to do with outside
8 consulting services?

9 A. It's probably the same error. Once again,
10 line -- which line are you looking at?

11 Q. Line 92.

12 A. "Outside Services Consulting."

13 ARBITRATOR: Refers to --

14 WITNESS: Yeah, sorry, that should be 5.

15 ARBITRATOR: Okay.

16 BY MR. ALLEN:

17 Q. And line 84, "Land Lease Payments," note 2,
18 "PUC regulated items removed."

19 A. That should be note 4.

20 ARBITRATOR: And it looks like the note two
21 lines below that, line 86, should be footnote 5.

22 MR. BALLANTINE: Yes.

23 WITNESS: Correct.

24 ARBITRATOR: Okay. I've got that one
25 corrected.

1 Thank you, Mr. Allen. That's helpful.

2 BY MR. ALLEN:

3 Q. On page 4, line 124, it says "The following
4 methods set out in the ordinance at 100 percent
5 indexing."

6 Can you explain what that means?

7 A. Sure. The term "indexing" is used to refer to
8 the practice in these kinds of cases of not using the
9 whole of the inflation, of not using the actual inflation
10 number but using some other number. So page 4 is
11 calculated based on using 100 percent indexing, or 100
12 percent of inflation, not an arbitrary lower percentage.

13 Q. I believe that the ordinance has 100 percent
14 indexing, does it not? Or .75?

15 A. You know, my reading of the ordinance is it
16 gives .75 indexing for the annual adjustment, but it
17 doesn't specify as to the fair return adjustment.

18 And it shouldn't, by the way, because, you
19 know, ordinances cannot dictate what fair return is, and
20 there is no way that 75 percent of inflation can possibly
21 compensate owners properly for expense increases and
22 providing a fair return on investment.

23 Q. Well, let's look at that. The ordinance does
24 in fact have an item for fair return. It's in section 5,
25 item 1.

1 A. When you say section 5, do you mean of the
2 ordinance?

3 Q. Yes.

4 A. Is the ordinance in the record?

5 MR. BALLANTINE: Yes, it is, actually.

6 BY MR. ALLEN:

7 Q. Yes.

8 MR. BALLANTINE: Do you mean 11A-5?

9 MR. ALLEN: Appears to be I-1.

10 MR. BALLANTINE: Let's find it. All right.

11 WITNESS: Yeah.

12 BY MR. ALLEN:

13 Q. Okay. And so you first grant one half the
14 automatic increase. The automatic increase is defined up
15 in G, "The arbitrator shall automatically allow a rent
16 increase of 75 percent of the CPI increase (hereinafter
17 'automatic increase.')

18 So according to the ordinance, the arbitrator
19 can only provide for one half of each individual's
20 automatic increase as a fair return. The arbitrator
21 shall have no discretion to award additional amounts as
22 just and reasonable return on investment.

23 ARBITRATOR: But as I read that, for whatever
24 it's worth, it appears to only to deal with the automatic
25 increase, it doesn't appear to deal with any of the other

1 increases that may be considered in a "notice of
2 increase," quote-unquote, in rent, that that section
3 appears to deal only with the automatic increase, which
4 is the base rental increase.

5 MR. ALLEN: Well, it's what comes next after
6 it. But I think that his line 130 is trying to say that
7 this 27,000 is what our -- let's just look at the first
8 phase, the \$29, and half of that is for a return on
9 investment where the ordinance would only allow, maybe,
10 say, if your automatic increase was \$6.00, it would only
11 allow \$3.00, and it's dependent upon the automatic
12 increase of each space. It doesn't allow for this amount
13 across the board; it's not calculated that way.

14 ARBITRATOR: I understand your argument.

15 I'm not sure that the doctor is capable of
16 answering in terms of his legal expertise. I read 5 and
17 the four sections under that all dealing exclusively with
18 the automatic increase of general rent. That's what I
19 see at the moment.

20 MR. BALLANTINE: And maybe if I can make a
21 comment that, hopefully, will move this along, and maybe
22 I caused it by hurrying through this.

23 These two pages, Exhibit 4 and page 5,
24 Dr. St. John did this analysis, he did one at 20 percent
25 indexing, one at 75 percent indexing. We understood

1 there may be an argument by homeowners about the 75. We
2 have both numbers done at 75 and 100 percent indexing.

3 ARBITRATOR: I understand that.

4 MR. BALLANTINE: Okay.

5 BY MR. ALLEN:

6 Q. So then the next sentence is basically the same
7 for operating costs, and then additional operating costs
8 in No. 3, but you never spell out what operating costs
9 you're requesting an increase for. Can you explain that
10 to us?

11 A. Yes. The comparison-year operating costs of
12 2015, operating cost is \$525,212.31, and that appears on
13 page 3 of the MNOI analysis.

14 The base-year operating cost, \$432,868.67, is
15 the comparable numbers for 2010 on page 3.

16 So the increase in operating costs according to
17 the MNOI analysis between 2010 and 2015 is \$92,343.64.

18 Q. The actual operating expenses changed what,
19 about \$44,000?

20 A. Yes.

21 Q. At the same time revenue increased over
22 \$200,000?

23 A. Yes.

24 Q. 20 percent is due as a rent payment on that
25 rent revenue, is that correct?

1 A. I'm sorry, I didn't understand the question.

2 Q. The rental payments to the Bells is 20 percent,
3 correct?

4 A. You mean the rental payment to the park?

5 Q. The lease payments to the Bells.

6 A. Oh, the ground lease, okay. And your question
7 is?

8 Q. So 20 percent of \$200,000 is \$40,000, and that
9 takes care of that.

10 There's a few differences here. Wouldn't you
11 say that these expenses are pretty much transitory?

12 A. Well, the lease payments are not transitory.

13 Q. No, they are not, and they account for pretty
14 much the totality of any expense increase, so any other
15 differences, would you not say, are transitory?

16 A. I'm not sure what you mean by "transitory."

17 Q. Okay. They will vary from year to year.

18 A. Expenses do vary from year to year.

19 Q. So there's been no appreciable expense
20 increases that would require increase in revenues, is
21 that true?

22 A. Well, when you say "appreciable," I mean even
23 from the books of records, the operating expenses went up
24 from \$638,000 and change to \$672,000 and change, so there
25 was an increase. I wouldn't call it negligible.

1 Q. Yes, but we just took care of -- there was over
2 \$200,000 in revenue increases, which means the lease
3 payments would be over \$40,000 of that. The difference
4 wouldn't be negligible.

5 ARBITRATOR: Is that a question?

6 BY MR. ALLEN:

7 Q. Wouldn't it?

8 A. I'm really not following. It sounds more like
9 an argument you want to make, and I don't see it that
10 way.

11 Q. Okay. What expenses require another 10 percent
12 return on investment every single year for the rest of
13 eternity?

14 A. You know, Mr. Allen, I've done this analysis in
15 the same way I've done this analysis for dozens of other
16 parks. These kinds of deductions and adjustments are
17 standard, and how it comes out is how it comes out.

18 Q. How it comes out is how it comes out.

19 According to the ordinance, "Itemized amounts
20 for increased operating costs" -- well, let me back up.

21 "Where the noticed increase in excess of 75
22 percent CPI, management shall itemize the amounts for
23 increase the operating costs."

24 Are there any itemized operating costs on the
25 rent increase?

1 A. All of them. All of the increases are
2 itemized.

3 Q. So you're not itemizing any particular -- you
4 can't point out any particular expenses that went up?

5 A. Well, sure, I can. You can, too. Just look at
6 the chart.

7 Q. So based on your analysis, we'll come up with
8 this 8.3 percent number and you multiply that based on
9 total revenues?

10 A. Yes.

11 Q. So you believe that you're due an increase
12 based on sewer income?

13 A. You know, I followed the ordinance to the best
14 of my ability, and it doesn't say to treat sewer income
15 any different from anything else.

16 Q. So your analysis is that, yes, that according
17 to the ordinance you can apply an 18.3 percent on the
18 sewer income, okay.

19 How about water income?

20 A. Well, I think you're talking about expenses,
21 not income, at this moment.

22 Q. I'm talking about the income that you applied
23 the 8.3 percentage to come up with your justified rent
24 increase. You based it on water income.

25 A. When you say I based it, the ordinance says to

1 take the CPI increase and multiply it by the base year
2 income. That's what I did.

3 Q. Wait, where does it say that?

4 A. You know, the automatic increase is on income.
5 That's how it's computed. I'm not finding the line in
6 here where it says that, but that's how your increase --
7 your annual increase is computed every year. It's always
8 been that way. It's on base rent.

9 Q. But the base rent is not what you were
10 calculating your calculations on, is that correct?

11 A. Well, the base rent for this adjudication is
12 2010.

13 Q. That makes no sense whatsoever.

14 A. I mean every year, every year, whatever the
15 rents are, they are increased by 75 percent of the CPI.
16 That's what we call the automatic increase, and it's
17 based on rents.

18 So when they say in subsection (i) to determine
19 the amount of an increase in excess of the automatic
20 increase, the arbitrator shall "first, grant one-half of
21 the automatic increase to management as a just and
22 reasonable return on investment."

23 So to my way of reading this, that means to
24 take half of the amount computed by the CPI increase
25 times the base rent, which in this case would be the 2010

1 rents.

2 Q. But yet that's not what you did. You took the
3 total of what you call MNOI income of \$656,585.76, is
4 that correct?

5 A. Yes.

6 Q. And that is not the base rent, is that correct?

7 A. Well, I think it is the base rent.

8 Q. You do?

9 A. I do.

10 Q. You don't think it includes sewer income, you
11 don't think it includes water income? How about laundry
12 income? How about clubhouse? How about returned check
13 charges? How about late charges?

14 A. I'm seeing that you're -- you're bringing our
15 attention to the difference between total income and
16 rental income. You know, it has never -- it did not
17 occur to me to think about that distinction. I simply
18 used the total income. At least I suppose I did. I mean
19 I can't do the math in my head. Both lines are right
20 there, there's space rent income, line for 2010 is
21 \$564,327; the total income, line 108, is \$656,585.

22 Q. You don't need to do the math in your head.
23 You did the math and you had line 23 from page 1 and you
24 carried that number over to page 4, line 28.

25 A. I see. I see. I see. So you're pointing out

1 that I used the total income and not the space rent
2 income, and according to what I said a minute ago, it
3 should be applied -- that the automatic increase would be
4 applied to the space rent income and not the total the
5 income.

6 Mr. Allen, I think you're right.

7 ARBITRATOR: All right. That being the case,
8 let's go off the record for just a second.

9 (Discussion off the record.)

10 ARBITRATOR: We're back on the record.

11 Our distinguished clerk has liberated this room
12 for us for Thursday, January 5, beginning at 10:00 a.m.
13 until we get through. We will continue the
14 cross-examination of Dr. St. John at that time.

15 In the interim, I'll ask Dr. St. John to
16 calculate an alternative -- I'll call it an alternative
17 calculation to the one that's already been done using
18 only rental income as the basis, and include the other
19 income as was brought out in cross-examination and raised
20 some interesting issues relative to the unique
21 Santa Barbara County ordinance, so we're all on the same
22 page of what we need to do.

23 I'm also going to ask the parties to be
24 prepared in their closing argument to analyze for me the
25 impact of the Galland versus City of Clovis case. You

1 might make a note of this. It's in his brief but I'll
2 give it to you again because it's interesting. It's a
3 2001 case, 24 Cal.4th 1003, as would be applicable to a
4 mobile home rent control ordinance 11A, paragraph 5,
5 beginning at F through I.

6 MR. BALLANTINE: That's 11-A-5, subsection F.

7 WITNESS: Yes, F through I, there are
8 subsections under each of the letters.

9 MR. BALLANTINE: Yes.

10 ARBITRATOR: Because that's the one where it
11 tells the arbitrator how to determine the amount of any
12 increase in excess of the automatic increase. It is
13 convoluted, to say the least. You would think the United
14 States Congress had enacted it. But I want to have
15 everybody's input, advice and argument/counsel from both
16 side of the counsel table when this matter will be
17 submitted to me and, hopefully, that will allow me to not
18 ask for additional written briefing and I can take the
19 matter under submission then.

20 I may ask the parties, and I hope you will
21 agree, because five days later I'm leaving for two weeks,
22 and I'm not taking this file with me, to Great Exuma
23 Island, Emerald Bay, in the southern Bahamas.

24 MR. BALLANTINE: Can we just go there to argue
25 it?

1 ARBITRATOR: If you want to come and argue over
2 mai-tais at Sandals, the answer is no.

3 I would like to have those issues addressed
4 because those are going to go to how I structure --
5 assuming I grant an award, and I'm not saying that I'm
6 thinking that way, but assuming I grant an award that is
7 in excess of 75 percent of the CPI covering other items,
8 I need to have the input of the parties, how that should
9 be structured.

10 Now, from your standpoint as unrepresented
11 petitioners, Mr. Allen, I'm going to need to have you be
12 able to advise me about what I am asking for on the
13 hypothetical that I might award something more than the
14 75 percent increase in the base rent, which means you're
15 going to be preparing an analysis that is not the way you
16 prefer the case to come out. I want you to do one the
17 way you prefer the case to come out, but I want to have
18 your input and analysis in case I don't buy into it.
19 Because what I want to do, as I said a few minutes ago
20 off the record, on the record I'll say I want to avoid
21 the treadmill of appeals and writs and all of that. That
22 simply screws up the detail for everybody.

23 MR. ALLEN: You'd like that as part of --

24 ARBITRATOR: I just want you to be prepared to
25 discuss it with me. If you want to have it in writing,

1 that's fine. The doctor is going to testify to it.

2 And, Doctor, if you could -- Skype can be
3 arranged. If it is too costly or more costly than the
4 park wants to pay for, I'm perfectly happy to have the
5 doctor appear by Skype to finish his cross-examination.

6 MR. BALLANTINE: Thank you for that.

7 ARBITRATOR: Live witnesses are always better,
8 that's my own personal bias, but I understand that
9 there's more than my bias that's involved in any case.
10 It's your case, not mine, and I have lost the ability --
11 I retired in May of 2011. I no longer can give
12 enforceable orders. I never made orders even as a judge
13 if I wasn't prepared to enforce them. And of course my
14 wife says you never had that power at home, which is
15 true.

16 I would prefer to have you here, but I'm not
17 going to be offended if you're not.

18 And the same is true, it's up to you whether or
19 not you want to be here. It's your choice,
20 Mr. Waterhouse.

21 MR. WATERHOUSE: Thank you.

22 ARBITRATOR: Then we'll see everybody. We're
23 in recess, then, until -- does anybody need a written
24 notice?

25 MR. BALLANTINE: No, I don't need a written

1 notice, but I have kind of a question to make sure I
2 understand what we're doing that day. I understand what
3 you want before then or to be prepared.

4 ARBITRATOR: What we're going to do is finish
5 the doctor's cross-examination. If you have any other
6 witnesses, you will call them. The petitioner has the
7 right to call rebuttal witnesses. They presented no
8 direct evidence in their case-in-chief, they went first
9 today and had nothing but some documentary evidence.

10 Oh, we'll need to decide about their Exhibits C
11 and D.

12 MR. BALLANTINE: I think we decide, then, too,
13 I think we're -- I think Mr. Allen was going to testify
14 about it.

15 ARBITRATOR: Okay.

16 MR. BALLANTINE: He said he prepared it and I
17 think you said why don't we just call him and he can talk
18 about it.

19 ARBITRATOR: We'll do that, then.

20 MR. BALLANTINE: Can I get a time estimate from
21 petitioners regarding the cross?

22 ARBITRATOR: The cross-examination, depending
23 on what Dr. St. John has, could be half an hour, could be
24 an hour. I don't think it should be more than that.

25 Is that a fair estimate?

1 MR. ALLEN: Yeah, you might want to extend that
2 out to a possible an hour and a half, but still, on the
3 other side, the half hour might be correct as well.

4 ARBITRATOR: You never know.

5 But I'm going to limit their response to true
6 rebuttal, true rebuttal witnesses.

7 MR. BALLANTINE: Can we get a disclosure of
8 rebuttal witnesses?

9 ARBITRATOR: Any live witnesses that you would
10 intend to call?

11 Well, rebuttal is rebuttal. They don't have to
12 do that. I'm not going to require that.

13 MR. BALLANTINE: Okay. I mean we're almost
14 done with Dr. St. John as it is. It seems like we've had
15 most of the case.

16 ARBITRATOR: Do you have any witnesses you
17 think you're going to want to call when they get through?

18 MR. ALLEN: I don't know of any at this time.

19 ARBITRATOR: That's a fair representation. We
20 accept that.

21 MR. BALLANTINE: Fair enough.

22 ARBITRATOR: All right.

23 MS. WAGNER: I have one request. The documents
24 that you guys exchanged between one another earlier this
25 morning, the exhibits, can you send copies to me, e-mail

1 me PDFs so I can put them in my record.

2 MR. BALLANTINE: Sure, we'll send hard copy or
3 PDF next week.

4 MS. WAGNER: Great, thank you.

5 ARBITRATOR: All right, then with everybody's
6 permission I'm going to take the exhibit notebook I have
7 and both received and marked but not received
8 petitioner's exhibits home with me so that I can do some
9 reading between now and then and be ready for you guys on
10 the 5th.

11 Anything else before we adjourn?

12 MR. BALLANTINE: One note. Just a thought. I
13 don't think it affects things now, but just so you're
14 thinking about it, your Honor, how you want to handle it.
15 As I kind of prefaced in my comments and examination of
16 Dr. St. John, with respect to our request for fees and
17 costs related to this hearing, I think what I would be
18 proposing at the next hearing is a very short briefing
19 schedule on that that would allow us to submit our
20 billings, allow the homeowners to comment on them and
21 then we tender that issue for your Honor. Essentially
22 like attorney's fees law and motion proceeding. I think
23 it's more of an FYI, but that was my thought on what we'd
24 ask at that time.

25 ARBITRATOR: It sounds like a reasonable way to

1 handle it. We can, maybe, have a conference call
2 informally, not reported but an informal conference call
3 on that issue if everybody agrees.

4 MR. BALLANTINE: That would be fine with us.

5 ARBITRATOR: All right.

6 Everybody have a great weekend.

7 (The proceedings recessed at 4:02 p.m., to
8 reconvene on Thursday, January 5, 2017, at
9 10:00 a.m.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA BARBARA)

I, MARK McCLURE, CSR NO. 12203, a Certified
Shorthand Reporter for the County of Santa Barbara, State
of California, do hereby certify:

That said hearing was taken down by me in
stenotype at the time and place therein named, and
thereafter reduced to typewriting by computer-aided
transcription under my direction.

I further certify that I am not interested in
the event of the action.

WITNESS my hand this _____ day of
_____, 2016.

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