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1 IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
2 IN AND FOR MANATEE COUNTY, FLORIDA
3 CASE NO. 2013-CA-002679

4 KB HOME TAMPA LLC,
5 KB HOME ORLANDO LLC, and
6 KB HOME FORT MYERS LLC,

Plaintiffs,

7 vs.
8 A&D PLUS CONSTRUCTION SERVICES, INC.,
9 SMC SYSTEMS, INC. d/b/a Skye Tec,
10 ARCHER EXTERIORS, INC., ARTISTIC ALUMINUM, INC.,
11 ATRIUM FLORIDA, INC. d/b/a ATRIUM WINDOWS & DOORS,
12 INC., AVALON FLOORING, LLC, BRANCO LATH AND
13 STUCCO, INC., BUILDERS FIRSTSOURCE - FLORIDA, LLC,
14 CASMORE ENTERPRISES, INC., DJ KISHMAN ENTERPRISES,
15 INC., 3G AIR CONDITIONING & HEATING, INC. d/b/a
16 EASY A/C, FOX PROFESSIONAL COATING, INC.,
17 GALLO BUILDING SERVICE, INC., H&H STUCCO & STONE,
18 INC., H.F.S. TAMPA, INC., HAMWAY FLOORING, INC.,
19 J&E SPECIALTIES, INC., JUAN'S PLASTERING, INC.,
20 DIVISION 15-HVAC, INC. d/b/a JUST RIGHT AIR
21 CONDITIONING, KENNETH TAYLOR SERVICES, INC.,
22 MILLARD ROOFING, INC., PRO-BUILD EAST, LLC,
23 STINKERBUG, INC. d/b/a PROGRESSIVE PAINTING
24 CONTRACTORS, INC., RELIABLE ROOFING AND GUTTERS,
25 INC., S.E. ALUMINUM, INC., S.W. SPECIALTY SERVICES
OF SOUTHWEST FLORIDA, INC., SOUTHEAST FRAMING,
INC., TOTAL FIBERGLASS SERVICES, INC. TRI CITY
INSTALLATIONS, LLC, TRIAD BUILDING PRODUCTS, INC.,
TURLINGTON ENTERPRISES, INC. d/b/a TURLINGTON
CUSTOM STUCCO & PLASTERING, UNIVERSAL FOREST
PRODUCTS EASTERN DIVISION, INC. n/k/a UPF EASTERN
DIVISION, INC., 31-W INSULATION CO. INC., UNITED
SUBCONTRACTORS, INC. d/b/a NCR/WEST COAST
INSULATION, WATERS EDGE CONTRACTING OF FLORIDA,
INC., WEST COAST PROPERTY CONSULTANTS, INC.,
SILCOX KIDWELL & ASSOCIATES, PAUL KIDWELL, and
HURRI-BOLT, INC.,

Defendants.

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1 ARCHER EXTERIORS, INC.,
2 Third-Party Plaintiff,
3 vs.
4 LUX EXTERIOR, INC., JT CONSTRUCTION, INC.,
5 and JCSI CERTIFIED ROOFING CONTRACTORS, INC.,

Third-Party Defendants.

6 GALLO BUILDING SERVICES, INC.,
7 Third-Party Plaintiff,
8 vs.
9 RJ CONSTRUCTION GROUP, INC., JS CONTRACTOR OF
10 TAMPA, INC., GCJ CONSTRUCTION GROUP, INC.,
11 WEST CENTRAL FLORIDA CONSTRUCTION, LLC,
12 RAY CONTRACTING, INC., DALE HAYES MASONRY,
13 INC.,

Third-Party Defendants,

14 vs.
15 A&D PLUS CONSTRUCTION, INC. and BRANCO
16 LATH & STUCCO, INC.,

Cross-Claimants.

17 DEPOSITION OF MATTHEW BROWN
18 VOLUME 2
19 (Pages 93 - 232)

20 Thursday, October 22, 2015
21 1:21 p.m. - 4:19 p.m.
22 Gulf Coast Executive Business Center
23 Merrill Lynch Building
24 871 Venetia Bay Boulevard
25 Suite 230
Venice, Florida 34292

23 REPORTED BY:
24 LAURA M. SEMIK, RPR
25 Esquire Deposition Solutions - Tampa, Florida
813-221-2535 (800-838-2814)
Job No.: J0175826

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8 JAMES J. CANNON, ESQUIRE (Appeared via telephone.)	3 Cross-Examination by Mr. Marshall.....	101
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1 Deposition taken before Laura M. Semik,
2 Registered Professional Reporter and Notary Public
3 in and for the State of Florida at Large, in the
4 above cause.
5 * * * * *
6
7 WHEREUPON:
8 MATTHEW BROWN,
9 having been previously sworn, was examined and
10 testified as follows:
11 CROSS-EXAMINATION
12 BY MR. MARSHALL:
13 Q Mr. Brown, my name is Andrew Marshall
14 with Gallo Building Services. Are you familiar
15 with Gallo?
16 A Yes.
17 Q What is your familiarity with Gallo
18 Building Services?
19 A Gallo has done work for me in the past,
20 shell contracting work. There was a few months
21 after my tenure at KB that I did some Chinese
22 drywall work for Gallo.
23 Q And by "Chinese drywall work," what do
24 you mean?
25 A Gallo was contracted to do some Chinese

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1 drywall remediation for Taylor Morrison in Bonita
2 Springs, so I did some of that work for them.
3 Q Now, did you work with Gallo Building
4 Services prior to your involvement at Willowbrook?
5 A No.
6 Q And did you first become involved with
7 Gallo Building Services as you transitioned to
8 project manager at Willowbrook or as the regional
9 construction manager?
10 A As a project manager.
11 Q So as a project manager, you actually
12 knew the scope of work for Gallo; is that correct?
13 A Yes.
14 Q Are you familiar with any issues
15 regarding Gallo's work with regard to the
16 application of stucco on any of the buildings that
17 you were project manager of?
18 A Yes.
19 Q And what were those issues?
20 A Numerous issues: Gallo not supplying
21 stucco per ASTM standards, per building code, and
22 general good building practice.
23 Q Did you point those out to Gallo?
24 A Yes, I did.
25 Q And did they remediate or correct those

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1 issues prior to closing?
2 A Some yes, some no.
3 Q On the some no, is that when you would
4 contract with another subcontractor to come out
5 and remediate or correct the deficiencies prior to
6 closing?
7 A It was really not something that was to
8 be corrected before closing. It was more of the
9 overall application in general. I did meet with
10 Henry Glime, the principal of Gallo, on-site to
11 discuss some of those concerns.
12 In my daily role as a project manager, I
13 did point out to the on-site foreman and his
14 superior some of the concerns that I had with them
15 not following ASTM standards and the method in
16 which they applied the stucco. The times that I
17 did things were corrected but, you know, a lot of
18 it's concealed after the fact and I wasn't present
19 the entire time they were installing wire lath or
20 stucco.
21 Q Okay. Not applying stucco in accordance
22 with the ASTM standards, what standards did they
23 not comply with?
24 A General ASTM standards regarding the
25 application of wire lath, regarding the fasteners,

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1 regarding the laps.
2 One point of contention I had with Gallo,
3 specifically the stucco end of Gallo, I had
4 instructed both Henry and Kris Perry and the
5 on-site foreman, as well as the stucco workers
6 themselves, to pay close attention when installing
7 the stucco stops and plaster stop banding material
8 to not penetrate the flashings that were installed
9 by the roofer. Many of the stucco stops are
10 applied over the flashing. I instructed them to
11 use foam to adhere the stucco stop through the
12 flashing as opposed to nailing directly through
13 the flashing, which, obviously, if you're sealing
14 something up you don't want to poke holes through
15 it.
16 When I did point that out to them, it was
17 immediately corrected in the field. As I said
18 earlier, I can tell somebody this is not what you
19 should be doing, this is what you should be doing,
20 but then I'm working with the roofer on sealing
21 the next deck or with the homeowner or something
22 else so I'm not actually there to see every piece
23 they put up. Once it's put up and stuccoed over,
24 I can't tell what was done. I have to assume they
25 did adhere to my request.

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1 Some other ASTM issues --
2 Q Let me stop you there and talk about
3 those issues.
4 A Sure.
5 Q After they corrected the issues that you
6 pointed out, you mentioned that you're not sure if
7 they adhered to what you told them to do in
8 accordance with ASTM. On those buildings you
9 never went back and did any inspection to ensure
10 that they did or did not follow the ASTM as far as
11 the lapping issue; right?
12 A Yes and no. If I found that the laps
13 weren't correct and I told them to correct the
14 laps, they did. There's times when they're
15 working on the laps being corrected, I don't have
16 time to reinspect it, I'm taking them as a
17 licensed contractor on their word, especially
18 after speaking to the principal and supervisor of
19 the company, that it will be corrected. I saw
20 some of it was corrected, but then after the fact
21 there's stucco applied to it. At that point the
22 only way I would have to check it would be to go
23 in and rip out the work that was done.
24 Q Right. I guess that's my question. You
25 never ripped out any of the stucco on a building

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1 that you hadn't inspected and noticed an actual
2 deficiency; correct?
3 A No. I took Henry and Kris on their word
4 that it was taken care of.
5 Q Did you have to go back multiple times to
6 correct an issue? You said after you pointed it
7 out on certain buildings, they went and corrected
8 the issue. Did that happen at one building or
9 multiple buildings in succession?
10 A Multiple buildings.
11 Q Did you have more than one sit-down
12 discussion with Henry Glime and his staff?
13 A Multiple in person, multiple over the
14 phone, multiple via e-mail.
15 Q Can you guess as to how many
16 conversations you had with Gallo personnel as far
17 as not meeting ASTM standards?
18 A At least a dozen.
19 Q And now this is just for the buildings
20 that you were the project manager for; is that
21 correct?
22 A Yes. That was the only time that Gallo
23 actually worked for me in that area, so yes.
24 Q Can you look at the diagram that was
25 provided earlier and tell me what building numbers

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1 you were referencing?
2 A After putting up thousands of homes since
3 then, it's hard for me to recall exactly which
4 building was which. I can tell you that the best
5 that I can remember is Gallo was tasked with the
6 stucco again on that Black Walnut Way. That was
7 really where I was the project manager. I don't
8 remember specifically which buildings they were.
9 I believe most of the buildings in that area.
10 Q Did you notice the deficiencies as part
11 of a stage complete inspection?
12 A Yes and no. No, it didn't really get to
13 the point where it was a stage complete
14 inspection, it was more so in process.
15 Q Again, I don't mean to put words in your
16 mouth, but would you do a daily inspection of
17 every building?
18 A Absolutely.
19 Q Okay. And what did the daily inspections
20 include?
21 A Depending on where the stage of
22 construction was every home, every room, every
23 day. You know, at the stage where Gallo was doing
24 the stucco there wasn't a lot to inspect on the
25 interior other than the framing, which is

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1 something that gets looked at daily.
2 On the outside at that point it's more of
3 an in-progress inspection. It's, you know,
4 watching them as they're applying the wire lath
5 and stopping them and saying, hey, this isn't
6 lath, there's exposed wood, or you don't have
7 enough staples or nails, whatever the case is.
8 Q Did you feel adequately trained to point
9 out deficiencies in the stucco or the application
10 of stucco in accordance with ASTM?
11 A Yes.
12 Q As a general contractor or as a
13 superintendent for KB based on their training? If
14 you can differentiate; if you can't, let me know.
15 A Through my experience in the construction
16 industry, through my experience as a general
17 contractor.
18 Keep in mind a lot of the training that
19 was given at KB Home was conducted by me. I'm the
20 one who trained a lot of the superintendents and
21 ran construction training courses, so I would feel
22 that yes, I was qualified to do so.
23 Q Okay. Now, you ran the training program
24 for a lot of the superintendents in Florida, or
25 what was your region?

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1 A In the division.
2 Q Was that in your position as a regional
3 construction manager?
4 A Yes.
5 Q What type of training did you provide the
6 superintendents?
7 A Well, we had weekly meetings. We
8 discussed -- we had safety training. We had
9 training in the building process, training in
10 dealing with the homeowners, specific training on
11 different stages of construction. One week we did
12 slab, one week we did block, one week we did
13 framing, all the way through completion of the
14 home. Some of them were done in an office
15 setting. Many of them were done in the field as
16 it applied to the tasks we were discussing and
17 being trained on.
18 Q How did you train individual
19 superintendents as to inspecting a subcontractor's
20 work in regards to stucco application?
21 A We discussed what finished product should
22 look like. We discussed what the job should look
23 like prior to the stucco, especially in an area
24 like Willowbrook, you know, the Tyvek is important
25 prior to the wire lath and stucco application. We

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1 discussed means and methods that they'd use to
2 fasten the wire lath, what they needed to look for
3 down to, you know, one bag of stucco per 40 shovel
4 loads to make the mix right. Too much sand is not
5 good and not enough sand is equally not as good,
6 so we definitely got into the specificity of what
7 is required in stucco application. Part of that
8 also was the thickness that the stucco was
9 applied, which was one of the primary concerns
10 that I remember had, which I expressed to both
11 Mr. Perry and Mr. Glime.
12 Also the duration of time that it took to
13 apply the stucco in accordance with ASTM
14 standards. Stucco is not a cementitious coating,
15 it is a stucco application and it should be
16 applied by scratching, browning and texturing, not
17 just a one-day application process.
18 These are some of the things that I
19 discussed with the superintendents, project
20 managers, and customer service representatives so
21 they would be prepared in their job duties. It's
22 also something that I discussed directly with
23 Henry and Kris.
24 Q Were they ever provided the ASTM?
25 A In our training --

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1 MS. MENNITI: Sorry for interrupting.
2 This is Jennifer Menniti, for the record. All
3 of those on the phone, can we make sure we're
4 on mute, because I hear somebody making loud
5 noises.
6 MR. MARSHALL: Can you read back where we
7 were?
8 (The court reporter read the record as
9 follows: Were they ever provided the ASTM?
10 Answer: In our training --)
11 THE WITNESS: Whenever I conducted
12 training with the superintendents and other
13 staff members, there were always handouts that
14 were provided and that was part of the training
15 as to be reviewed. ASTM standards were one of
16 the things that were consistently handed out.
17 If we were doing a class on roofing, we handed
18 out ASTM standards on roofing, for block we
19 handed it out for block, obviously for stucco
20 for stucco and so forth.
21 We went over what the ASTM standards are.
22 Some of that was discussed with Henry and Kris.
23 Although, Henry and Kris were aware of what the
24 ASTM standards are. Adhering to ASTM standards
25 is a standard clause for any builder I've ever

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1 worked for in the scope of work and contract
2 with the trade partner that's doing whatever
3 work on that building.
4 BY MR. MARSHALL:
5 Q Okay. Now, you mentioned timing. I
6 assume the scratch coat takes a certain amount of
7 time. It has to cure --
8 Is that correct?
9 A Correct.
10 Q -- and then you have the brown coat and
11 then the finish coat?
12 Those timing issues or scheduling of
13 trades, that was KB's responsibility, correct, as
14 a superintendent?
15 A No.
16 Q Okay. So timing of various trades -- and
17 again, I don't mean to confuse you here, but I'm
18 not saying the timing of the start of stucco
19 application and then each subsequent coat -- like
20 the stucco trade is scheduled after let's say the
21 Tyvek, those timing and scheduling issues are KB's
22 responsibility; is that correct?
23 A Absolutely.
24 Q Do you ever recall a time where KB was
25 maybe pushing for a closing and stucco had to be

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1 applied in a one-coat application?
2 A No.
3 Q Is that something you believe KB would
4 ever do, push for a closing if it was not going to
5 meet an ASTM standard?
6 MR. COGBURN: Form.
7 THE WITNESS: I can't speak to what
8 KB Home as a corporation would do. I can tell
9 you that with KB and every builder I ever
10 worked for there were times when closings are
11 pushed or the work is expedited so that
12 closings can be made, but cutting corners and
13 not doing things the right way is not something
14 that myself nor any of the associates that
15 worked for me or I worked with instructed
16 anyone from Gallo to do, or any other company
17 for that matter.
18 BY MR. MARSHALL:
19 Q Okay. And that's based on?
20 A My personal experience.
21 Q Okay. You didn't actually speak with
22 Danny Vinson after the fact, after you left that
23 maybe this occurred or didn't occur; is that
24 correct? Just based on your knowledge of the way
25 they were, the people they were, that's your

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1 sense?
2 A I know that Danny did not instruct anyone
3 to do that while the two of us were out there
4 together. What happened with Danny -- or anyone
5 else for that matter -- after I left, I would be
6 speculating if I told you what conversations -- I
7 wasn't involved in any of those conversations so I
8 really have no idea.
9 Q And so I assume that another issue that
10 you had with Gallo's work with regard to the
11 application of stucco is the thickness of the
12 stucco?
13 A Yes.
14 Q A one-coat or three-coat system?
15 A Yes.
16 Q Any other issues with ASTM standards and
17 the application of stucco?
18 A Just the ones I mentioned.
19 Q Are you familiar with any issues with
20 Gallo's work with regard to framing?
21 A I wouldn't say that Gallo was a superb
22 framer. I can tell you I don't think -- I have no
23 knowledge of any framing issues that are directly
24 related to water intrusion issues or deck issues,
25 which is what we're here discussing. I can tell

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1 you that I had many conversations with both Kris
2 and Henry regarding the quality of Gallo's framing
3 work. They both met me on the job site and walked
4 through things. I was not happy with their
5 framing nor was Manatee County. They historically
6 consistently failed inspections with regard to
7 sheathing and framing.
8 Q Do you recall why they failed the
9 inspections?
10 A Not with detailed specificity as to what
11 failed on what building, but as an overall
12 statement that their work was not in accordance
13 with building code nor was it per plan. There
14 were things that were left out. There were things
15 that weren't completed or that were done
16 erroneously and not following what the EOR
17 recommended, which caused us to fail inspection
18 and have to make connections.
19 Q Just so I'm clear, your testimony is that
20 after the superintendents made their inspections
21 you brought a Manatee County inspector out and
22 they subsequently failed the framing inspections
23 on buildings that you worked on as project
24 manager?
25 A Yes.

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1 Q Since you trained the superintendents on
2 how to inspect the work of the subsequent trades
3 or various trades, did you train the
4 superintendents to actually carry with them plans
5 and specs as they did their inspections?
6 A Well, depending on what you're
7 inspecting. Some things you don't need plans for.
8 I mean, when you're inspecting what the roofer
9 applied to the deck you don't need the print
10 because it doesn't specify on the print what
11 you're looking for, that's building knowledge and
12 good practice.
13 In regard to the framing, that would be a
14 specific instance where, yes, you needed to open
15 up the blueprint and ensure what strap was being
16 used where and did this meet this uplift and
17 things of that nature.
18 Q So you're familiar with the transition
19 from the Hurri-Bolt system to hurricane strapping;
20 correct?
21 A That was started prior to my departure
22 from KB, but while I was there the Hurri-Bolt
23 system is what was used.
24 Q Okay. So on the buildings that you were
25 the project manager on, was that a Hurri-Bolt

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1 system being used or hurricane straps, if you
2 recall?
3 A Hurri-Bolt, I believe.
4 Q So you would have taken plans out and
5 inspected for Hurri-Bolt systems?
6 A Correct.
7 Q And to ensure that the wall panels were
8 installed correctly in accordance to plans and
9 specifications?
10 A Correct.
11 Q Is that part your job duty as a
12 superintendent, to ensure that the framing was
13 done according to the plans and specs?
14 MR. COGBURN: Form.
15 THE WITNESS: Ensuring everything is done
16 per plans and specs is the role of the project
17 manager or superintendent.
18 BY MR. MARSHALL:
19 Q So you're not just looking for glaring
20 deficiencies then? Anyone would notice a hole in
21 the wall, but you're supposed to determine whether
22 a sub performed its work in accordance with the
23 plans and specs?
24 MR. COGBURN: Form.
25 THE WITNESS: Yes.

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1 BY MR. MARSHALL:
2 Q In fact, you trained superintendents to
3 that effect?
4 A Yes.
5 Q Was Danny Vinson one of your trainees?
6 A No.
7 Q Do you know who trained Danny Vinson?
8 A No.
9 Q Was he part of any of the training that
10 you provided at all?
11 A No.
12 Q Do you know if he provided training for
13 KB?
14 A I don't know.
15 Q Are you privy to how KB selected
16 subcontractors at the Willowbrook project?
17 MR. COGBURN: Form.
18 THE WITNESS: I'm familiar with the
19 process and who made the selections. I don't
20 know exactly how the sausage was made, no.
21 BY MR. MARSHALL:
22 Q What's your understanding of the process?
23 A The process is that someone from the
24 purchasing department under the direction of
25 Mr. Burlingame requests bids from various

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1 subcontractors, whatever it be, roofing, stucco,
2 framing, whatever the case is. It's the
3 subcontractor's responsibility to use due
4 diligence in overseeing the print, visiting the
5 job site, knowing what needs to be done, reviewing
6 the scope of work that KB provides.
7 They sign a Schedule B -- before they
8 sign that they have discussions with Chad
9 regarding pricing. And when terms are met, Chad
10 makes a selection on who
11 that -- which vendor he's going to use. They sign
12 the Schedule B, the scopes of work, and that's how
13 we guys in the field get our framer, plumber,
14 electrician, so forth.
15 Q You have no input whatsoever in the
16 selection of subs?
17 A There were times we were asked an opinion
18 on what we thought of this person or what we
19 thought of that person, and whether our opinions
20 were solicited or not we frequently gave our
21 opinion on vendors, but ultimately the decision
22 was made by Mr. Burlingame.
23 Q Okay. Did you give your opinion on Gallo
24 at the time of selection?
25 A Not at the time of selection. Frequently

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1 thereafter.
2 Q I assume that was to keep them on and pay
3 them more, is that the case?
4 A No.
5 Q Now, prior to Mr. Burlingame coming on,
6 did the selection process differ?
7 A No, the process was the same. The man
8 who made the final decision was different, but the
9 process was still the same.
10 Q Okay. Does Mr. Burlingame have any
11 construction background or history?
12 A No.
13 Q Okay. So the person making the final
14 determination of materials on the project had no
15 construction background?
16 A Not to my knowledge.
17 Q In fact, several times he ignored your
18 recommendations for project fixes even though you
19 were a certified general contractor?
20 MR. COGBURN: Form.
21 THE WITNESS: Correct.
22 BY MR. MARSHALL:
23 Q Are you familiar with how KB maintained
24 or strengthened relationships with its
25 subcontractors?

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1 A Yes.
2 Q And how was that?
3 A KB put a lot of emphasis and focus on
4 working with vendors as trade partners rather than
5 subcontractors. A lot of emphasis was put on
6 fostering a relationship that would become a
7 long-term relationship where as KB would grow
8 obviously the subcontractor doing a good job would
9 have the opportunity to grow as well, you know,
10 kind of we're-all-in-this-together approach.
11 A big emphasis was put on reducing costs
12 to the subcontractor, but not in regard to using
13 cheaper material. I can see your smile. It was
14 more so to ensure that the roofer wasn't sending a
15 10-man crew out to a job that hadn't passed
16 inspection yet and now his guys have to leave, or
17 I didn't have Gallo come out with a crew to stucco
18 and the walls aren't done yet, because that costs
19 the subcontractor money.
20 So if we can run a tight job site as
21 superintendents and project managers, that would
22 allow the subcontractors to operate more
23 efficiently creating a cost savings to them. At
24 the end of the day this is business and this isn't
25 philanthropic work -- we all come here to get a

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1 paycheck -- and that would foster a good
2 relationship between us and the trade partners,
3 which hopefully would be a long-term relationship.
4 Q You said you worked with Gallo Building
5 Services with regard to the application of stucco
6 when you were the project manager. Did you see
7 anyone applying stucco from a different sub on
8 those homes?
9 A Not as the project manager, I don't
10 believe so. As the regional construction manager,
11 yes.
12 Q As the regional construction manager --
13 and again, if my timeline is off, let me know.
14 You were the regional construction manager prior
15 to your time as project manager?
16 A Correct.
17 Q Did you know of a second-tier sub as far
18 as the application of stucco that Gallo had, as a
19 regional construction manager?
20 A When I was the regional construction
21 manager Gallo was not working in that community.
22 Q Okay. So you had prior knowledge of
23 Gallo prior to Willowbrook?
24 A I never worked with them before. I mean,
25 I saw their trucks on the road, I knew they were a

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1 shell contractor, yes.
2 Q If you know, did KB have a prohibition
3 against subcontractors subbing out the work it was
4 awarded to a second-tier sub?
5 A I don't know of a specific prohibition
6 that did not allow that. I know that that was
7 frowned upon and it was not something that was
8 encouraged. It's part of the nature of the
9 business, though, every place I've ever been.
10 Unfortunately, people will have a sub of a sub of
11 a sub of a sub.
12 Q Did KB have any type of policy that if it
13 saw a second-tier sub on-site that it would
14 attempt to postualize it and bring it on as a
15 first-tier sub?
16 A Not to my knowledge. To be honest with
17 you, the guys in the field -- being a project
18 manager in the field I don't know if Henry's
19 subbing out the work to a separate stucco company
20 who's then subbing the work to a crew. I don't
21 see everyone's paperwork and insurance. I just
22 tell them to be here on Tuesday and make sure they
23 do what they're supposed to.
24 Q If you saw a van and stucco applicators
25 come out in a different shirt with a subcontractor

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1 on it, is that something that would alert you to
2 the fact that there's a second-tier sub there?
3 A Not necessarily. If a 15-man crew rolled
4 out of a van and they were all wearing the same
5 T-shirt and it was not a Gallo T-shirt, that would
6 raise a red flag, but I think I have a Gallo
7 shirt, but that doesn't mean I work for Gallo and
8 I still have some KB shirts, but I don't work for
9 them either.
10 Q But you did work for Gallo and you did
11 work for KB.
12 A I did.
13 Q Did KB ever come to you and ask your
14 opinion on the hiring of Branco Stucco & Lath?
15 A Not that I recall.
16 Q As superintendent if you were to notice a
17 deficiency in the work of a trade, what was the
18 protocol to remedy the situation? Was there one
19 in place?
20 A Well, yes, there was one in place. One
21 is to first and foremost stop the -- if you're
22 witnessing someone installing something
23 incorrectly, you stop them from what they're doing
24 and instruct them how to do it correctly, notify
25 their supervisor, their foreman, or the principal

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1 of the company, whatever it may be.
2 Consistent deficiencies require a little
3 bit more attention and those would be one of the
4 cases where we would send out an e-mail to the
5 principal of the company, or, as I did, I made a
6 phone call to Henry and asked them to meet me out
7 on-site so we can, you know -- I think actually I
8 didn't call Henry. I think Henry called me after
9 seeing all my e-mails and getting all my
10 voicemails and he said, hey, I think we should
11 meet out there, we need to make you happy.
12 Q And at any time a deficiency's identified
13 by the superintendent, that delays the
14 construction schedule; right?
15 A No, not necessarily.
16 Q If it's a quick fix it doesn't, if it's a
17 more extreme fix it might?
18 A It would depend on what it was you're
19 fixing. I mean, me stopping the stucco guy and
20 saying, hey, listen, don't nail through the
21 flashing, you need to use foam, that doesn't delay
22 anything, that's just kind of don't do it this
23 way, do it this way. The three-ply column we
24 talked about earlier, yeah, sure, that's something
25 that would delay construction.

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1 Q When they applied a one-coat system in
2 essence and applied all three coats at the same
3 time, what was the remedy there? Did they tear it
4 out and start it over?
5 A I don't recall what building it was, but
6 I remember maybe 39 or 40 they applied another
7 coat to the building.
8 Q On top of the --
9 A On top of the existing coat.
10 Q But not another two coats?
11 A No. Well, at that point the thickness
12 had been met. I guess you could call it two
13 coats, they had to scratch everything and come
14 back and texture it. You can call the texture
15 coat the third coat.
16 Q Out of curiosity, I think you mentioned
17 there were three superintendents when you were the
18 regional construction manager; is that correct?
19 A Correct.
20 Q And then when you were present as the
21 project manager there were two project managers
22 running Willowbrook?
23 A Correct.
24 Q And then when you left -- and again, I
25 guess you guess there was only one, Danny Vinson,

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1 that remained --
2 A Yes.
3 Q -- is that accurate?
4 A Yes.
5 Q Did construction slow at that point?
6 A I wouldn't know.
7 Q In hindsight, do you wish there was more
8 oversight of personnel from KB on-site at
9 Willowbrook?
10 A No, I don't feel in any way that was an
11 issue at any point in time.
12 Q Being in the Marine Corps you're fairly
13 thorough; would you agree?
14 A Yes.
15 Q Would you agree that not everybody's as
16 thorough as yourself?
17 A I'm sure some people are more thorough
18 than others and some in different ways.
19 Everyone's different.
20 Q In your opinion, were KB's
21 superintendents adequately trained to identify
22 gaps in wall panels?
23 MR. COGBURN: Form.
24 THE WITNESS: Yes.
25 BY MR. MARSHALL:

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1 Q Were they adequately trained to identify
2 wall panels that were placed in a manner
3 inconsistent with the plans?
4 A Yes.
5 Q Were they adequately trained to identify
6 stucco that was applied too thin or too thick?
7 MR. COGBURN: Form.
8 THE WITNESS: Yes.
9 BY MR. MARSHALL:
10 Q Were you in charge of the hiring and
11 placing the superintendents at Willowbrook as the
12 regional construction manager?
13 A No.
14 Q Do you know who was?
15 A Prior to me getting up there I had no
16 involvement in it. Mark Parsons, when I took over
17 as the regional construction manager, those folks
18 were relieved of their duties with KB Home, and
19 Sean McNelis, who was the director of
20 construction, transferred some of the guys from
21 down south up there.
22 Q Okay. Was there a requirement to have a
23 general contractor's license to be a
24 superintendent?
25 A No.

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1 Q Were you involved in or do you recall any
2 discussions about cost savings associated with
3 hiring superintendents that weren't licensed?
4 MR. COGBURN: Form.
5 THE WITNESS: That's not a conversation
6 that -- I remember never having that
7 conversation. Most superintendents aren't
8 licensed general contractors.
9 BY MR. MARSHALL:
10 Q So they rely strictly on the training
11 provided by the builder to be able to point out
12 defects or construction issues?
13 A No.
14 Q What would they rely on?
15 A Field experience. I was a construction
16 manager for years before I became a general
17 contractor. There are some people that go through
18 an entire career who don't become a general
19 contractor but they're still competent and
20 qualified to run a project for a builder, they
21 just don't have the desire to have the general
22 contractor's license and do something on their
23 own.
24 Q And so essentially it's on-the-job
25 training, correct, field experience? Are you

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1 learning from a trade or from the builder that you
2 work for?
3 MR. COGBURN: Form.
4 THE WITNESS: I think it depends. Each
5 case is different. Every person is different.
6 Their life experiences that get them to the
7 position where they're at is different. Some
8 of the superintendents that have worked for me
9 were actually framers in the field for 15
10 years, so I don't think he really needed me to
11 training him on framing. It's hard to make a
12 general statement like that.
13 BY MR. MARSHALL:
14 Q Okay. I think I asked you this earlier,
15 but I'll make sure. Since you were let go in
16 2009, have you spoken to any of the
17 superintendents assigned to the Willowbrook
18 project?
19 A Yes.
20 Q Did you speak with them about the
21 project?
22 A No.
23 Q I believe you talked earlier about WCPC,
24 West Coast Property Consultants.
25 A Yes.

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1 Q They were a third-party inspector, I
2 believe you testified to; correct?
3 A Yes.
4 Q And at what point did they inspect?
5 A Somewhere between Tyvek being complete
6 and wire lath being complete and one more time
7 when the home was complete.
8 Q Did they ever inspect the framing?
9 A Yes. I mean, the framing was part of
10 their inspection when they came at the point of
11 looking at it when the Tyvek was installed and
12 often cases when the wire lath was installed.
13 Q Were you ever on-site during one of those
14 inspections?
15 A Yes.
16 Q Did they have a set of plans with them?
17 A Of course.
18 Q Do you believe that it was their job to
19 also ensure that the building was built in
20 accordance with plans and specs?
21 MR. COGBURN: Form.
22 THE WITNESS: No.
23 BY MR. MARSHALL:
24 Q If that wasn't their job, what are they
25 inspecting for?

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1 A Well, their job is not to enforce that
2 the building is built per specs, that's the job of
3 the project manager and of the subcontractors who
4 have taken on the responsibility of doing whatever
5 type of work that it is. Their sole purpose was
6 to come in as a third party, extra set of eyes,
7 come in and inspect what work has been done at
8 that point primarily from a water intrusion
9 perspective and make recommendations on any
10 deficiencies that they saw.
11 Q Okay. Now, deficiencies, if they're
12 looking for water intrusion issues and they're not
13 really there to inspect whether or not the work
14 was done according to plans and specs, are they
15 there to determine if it was done in accordance
16 with the building code?
17 A They're looking at it from an end result
18 standpoint of is this is going to leak or not. If
19 they see something that needs to be done that's
20 above and beyond what building code dictates or
21 above and beyond what the plan dictates, they make
22 their recommendation, but it's also a combination
23 of all of the above. I mean, they are familiar --
24 they are very familiar with ASTM standards, with
25 building code, and they are familiar with the

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1 blueprint, they've looked at it numerous times and
2 are familiar with the product, so I think they
3 take all of that into consideration when they make
4 their recommendations.
5 Q When they're pointing out deficiencies,
6 they'll point out deficiencies in the building
7 whether it's not in accordance with the plans and
8 specs, not in accordance with the building code or
9 in compliance with the building code, and also
10 potential design issues; am I correct in that?
11 A I wouldn't say that design issues unless
12 there's something that they -- there's an issue
13 that we bring to their attention or we might have
14 a systematic problem and we ask them for a
15 solution.
16 They're mostly looking at ASTM standards,
17 the building code, and more than that it's a
18 performance-based inspection. The blueprints
19 really don't tell you anything about how to
20 waterproof that home. There are specific
21 instructions on what strap to use here, what to
22 use there, just general notes.
23 Q Did they provide a report after
24 inspecting each building?
25 A Yes.

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1 Q Have you ever seen one of those reports?
2 A Yes.
3 Q How about for the eight to 12 buildings
4 you were the project manager for at Willowbrook?
5 A Yes.
6 Q Did they ever bring up to your attention
7 or KB missing hurricane straps?
8 A No.
9 Q Incorrect framing?
10 A They weren't inspecting the structural
11 integrity of the framing. They might have brought
12 things up framing-wise as it could potentially
13 affect a water intrusion situation such as the
14 fascia returns touching the block wall -- it's not
15 pressure-treated wood, there's no paper behind
16 it -- that is a specific instance where they might
17 say, hey, the way you framed this is incorrect.
18 Q What about the application of stucco,
19 incorrect application?
20 A Yes.
21 Q If West Coast Property Consultants gave a
22 report to KB that said that there was incorrect
23 stucco application on one of the eight to 12
24 buildings, was it remediated at that time?
25 A Yes.

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1 Q Did they come out and reinspect?
2 A Yes. Depending on what the situation
3 was.
4 Q What do you mean by that?
5 A Well, they were in the neighborhood
6 frequently, so many times they went back. Most of
7 the stuff that they looked at in regard to stucco
8 was done at their final inspection. They're
9 coming there typically before the stucco's
10 installed. There was some times where they might
11 have come and the wire lathers were there
12 installing wire lath and they took a look at that,
13 but usually when they looked at stucco application
14 it was at the final inspection. And typically
15 when they came back to inspect the next building
16 they did go back and take a look at anything that
17 was deficient.
18 Q I don't mean to sound smug, but how is it
19 possible for Gallo to have failed a framing
20 inspection if the subcontractor does his job, the
21 superintendent comes and inspects, West Coast
22 Property comes out and inspects and provides a
23 report for any deficiencies which are then
24 remediated and reinspected, everyone misses it and
25 then Manatee County comes out and fails the

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1 framing?
2 A Well, number one, like I said before,
3 WCPC is looking at framing from a water intrusion
4 standpoint. They're not looking to see if you
5 have an HUS 26 installed on girder 4X as opposed
6 to an MSTM 18. He wouldn't know what to look at
7 with that. Really, the primary responsibility of
8 ensuring the framing is done correctly in that
9 particular case would fall on Gallo and
10 specifically Henry as the license holder.
11 Gallo had foremen in place whose sole
12 responsibility was to ensure that the framing was
13 done correctly. And although the superintendents
14 and project managers make an effort to ensure that
15 it's done, the primary responsibility of ensuring
16 that the framing is done per plan, per code, and
17 ready for the inspector is handled directly by
18 Gallo's not subcontractors, but foremen and
19 supervisors, Kris Perry, Joe, any one of those
20 guys.
21 When the superintendent goes in and
22 checks, he checks the best that he can, but he has
23 a lot of other responsibilities: homeowner
24 meetings, meeting with the roofer, checking to
25 make sure that the stucco guy is not nailing

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1 through the flashing and all that kind of stuff.
2 He does the best he can to ensure that everything
3 is ready, but there's a lot of components that go
4 into that, so ultimately the Gallo foremen and
5 then the check and balance for that is the city
6 inspector or the county up there.
7 Q But more superintendents would have
8 relieved some of that pressure to get to five
9 different places at the same time; right?
10 A No. I don't think it would have been
11 cost prohibitive nor is it standard procedure for
12 any builder I've ever worked for in the years I've
13 been doing this, to pay a superintendent who's
14 going to spend, you know, four or five hours of
15 the day inspecting a subcontractor's work to
16 ensure that it's done right. If you did that you
17 would need an on-site roofing superintendent to
18 check Millard to make sure that they put their
19 shingles on right and you would need an on-site
20 superintendent to check the block guy. At that
21 point we're doing it ourselves, we're not
22 subcontracting the work.
23 Q I'll hit on one thing you said. They
24 didn't inspect the structural components of a
25 building, West Coast Property Consultants;

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1 correct?
2 A That was not their sole purpose.
3 Sometimes there was an overlap in how those
4 structural components affected water intrusion,
5 which was the primary purpose of their inspection.
6 Q Did you have another third-party
7 consultant company that came out to inspect
8 structural issues?
9 A No.
10 Q Are you familiar with a company named
11 PEICO?
12 A PEICO, yes.
13 Q What was their role at Willowbrook?
14 A PEICO was a third-party inspector that I
15 hired as the regional construction manager to come
16 in and inspect the three-ply columns that I
17 mentioned before that had a problem. When those
18 were repaired, those were repaired correctly
19 through the county with a permit.
20 In my dealings with the building official
21 at Manatee County, they did not have time or the
22 resources to have inspectors on standby all the
23 time to check those, so we did what's commonly
24 known as permit by affidavit, which is where you
25 have a licensed third-party P.E. come in and

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1 inspect the work and certify that the work was
2 done correctly, so that's what PEICO did for us.
3 Q You said earlier that the primary
4 responsibility in the framing and even stucco
5 application would be on the subcontractor; is that
6 correct?
7 A Yes.
8 Q So some responsibility would bore on KB?
9 MR. COGBURN: Form.
10 THE WITNESS: Yes.
11 BY MR. MARSHALL:
12 Q Who was responsible for purchasing
13 material at Willowbrook, KB, or the various
14 trades?
15 A It changed throughout different points in
16 the process. Originally it was pretty much
17 standard in the marketplace that everything was
18 turnkey where the subcontractor supplied their own
19 materials. As the market began to contract, some
20 materials were supplied by the builder in a lot of
21 cases, KB included, and the subcontractor provided
22 labor only, but even through that period of time
23 most of the material was supplied by the vendors.
24 Q Okay.
25 A The only case I think in Willowbrook

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1 where it was not is with regard to the wall
2 panels.
3 Q Not even hurricane straps?
4 A Well, the hurricane straps are -- the
5 hurricane straps both. The hurricane straps are
6 typically supplied by the truss manufacturer and
7 in the case of the wall panels, what was required
8 for the wall panels, that was supplied through the
9 lumber supplier.
10 Q Right. So the truss manufacturer would
11 supply the hurricane straps to KB and KB in turn
12 would supply those to the framers?
13 A Yes.
14 Q Do you recall any occasions where a
15 subcontractor disagreed with the materials that KB
16 selected for use on a particular job?
17 A No.
18 Q What about the peel-and-stick in Phase I?
19 A Well, I think the peel-and-stick was more
20 so my objection than the roofer and I don't know
21 if the roofer objected to Chad or not. I mean,
22 like I stated earlier, I wasn't involved in those
23 conversations.
24 Q Okay. You don't recall receiving an
25 e-mail from an employee of the roofer?

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1 A I received lots of e-mails from the
2 roofer.
3 Q Specifically saying that she didn't feel
4 like it was proper application and that they
5 shouldn't use that material?
6 A That e-mail was sent directly to me?
7 Q I'm just asking you if you recall.
8 MR. COGBURN: Form.
9 THE WITNESS: I don't recall an e-mail
10 that was sent directly to me regarding that.
11 BY MR. MARSHALL:
12 Q Do you recall providing testimony to the
13 Attorney General on October 22nd, 2013?
14 A Yes.
15 Q I'm going to read this, and then I'll
16 hand it to you to see if it refreshes your
17 recollection.
18 A Sure.
19 Q On page 68 of that deposition, starting
20 on line 9, "She actually e-mailed Chad, Danny, and
21 myself stating, hey, we'll put in -- basically,
22 we'll put in whatever you want to put in, but I'm
23 telling you this is not the product you want to
24 use, it's not made for that application, you're
25 going to have problems down the road."

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1 And let me --
2 MR. LUBLINER: I have a clean copy.
3 BY MR. MARSHALL:
4 Q Does that refresh your recollection?
5 A Is this the e-mail, or is this my
6 testimony?
7 Q Your testimony on October 22nd, 2013. I
8 know it's been a number of years.
9 A It has been a number of years and
10 probably tens of thousands of e-mails since.
11 I don't remember her sending the e-mail
12 to me, but I think I do recall the e-mail being
13 sent. I think it was more sent -- it was between
14 her and Chad was the correspondence. But, yes, I
15 recall now I think her telling purchasing that
16 that was not the material to use.
17 Q Just so we're clear, the testimony you
18 provided on page 68 of the deposition given to the
19 Attorney General on October 22nd is an error?
20 A Maybe it's not an error. My memory was
21 probably better in 2013 than it is in 2015
22 regarding something that happened in 2007.
23 Q Do you recall how the situation was
24 handled by KB?
25 A In regard to?

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1 Q The disagreement between whether or not
2 to use peel-and-stick.
3 A As I stated earlier, ultimately the
4 decision by Mr. Burlingame was made on what
5 product was to be used.
6 Q And again, Mr. Burlingame has, to your
7 knowledge, no construction experience?
8 A Correct.
9 Q Was there a process in place for
10 subcontractors to alert KB if they were low on
11 materials on the site or on the job site?
12 A I don't think there was a codified
13 process. Most of the subcontractors supplied
14 their own material. The only case where they
15 didn't supply their own material was really in
16 essence the wall panels and some of the lumber
17 components that hold the wall panels together and
18 if that was the case, you know, shortages happen.
19 Typically, we had extra material on-site that they
20 could pull from; if not, Kris or Joe, or whoever
21 the foreman was at the time, would call me or text
22 me or Danny or e-mail both of us and say, hey, I'm
23 short X, Y, and Z in this quantity at building
24 whatever.
25 Q I want you to assume that they did tell

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1 the superintendent that they were missing
2 hurricane straps. What would you expect the
3 superintendent to do at that point?
4 A Get them the straps.
5 Q Again --
6 A I recall times where something came up
7 missing and Joe came to me and said, hey, listen,
8 I'm missing six of these, four of these, and 10 of
9 these. I remember saying, really, dude, you're
10 going to call me up on the final hour? What do
11 you want me to do? You supply them, I'll give you
12 an extra work order for them. That's how it was
13 handled.
14 Q Who's Joe?
15 A A foreman for Gallo who was directly in
16 charge of framing and managing Gallo's
17 subcontractors that were on-site.
18 Q In that case they would have to handle
19 purchasing the hurricane straps?
20 A Correct.
21 Q Through your vendor at that point? I
22 can't remember the vendor's name. UFP, I believe
23 it was.
24 A No, no.
25 Q However they were going to come about

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1 the --

2 A Some of those straps you can buy at

3 Home Depot or Lowe's. I just wasn't going to run

4 to Lowe's and expense a couple straps, you know,

5 so we went the Gallo guys to go get what they

6 needed.

7 Q Did they bring the work order to you at

8 that point? When you told them to go out, we'll

9 give you a new work order for these straps, did

10 they give that work order to you?

11 A It was handled different ways. Sometimes

12 Joe said, hey, man, I got that stuff for you, you

13 have to write me a work order for 100 bucks, 50

14 bucks; sometimes they e-mailed. It was handled

15 all different ways.

16 Q Were they ever told not to worry about

17 it, it's not that big of a deal?

18 A Absolutely not.

19 Q Do you agree that under no circumstance

20 should there be a missing hurricane strap in a

21 building?

22 A Oh, I would agree with that, yes.

23 Q And you certainly shouldn't close on the

24 house with the missing hurricane strap with all

25 the inspections that were done and everything

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1 else?

2 A Well, I don't think you should close a

3 home any time there's a latent defect in it.

4 Whether or not you knew about the latent defect is

5 another matter.

6 Q Would that be a latent defect, a missing

7 hurricane strap?

8 A I would think a missing hurricane strap

9 would be something you wouldn't want to close a

10 home with. I would think that's a defect that

11 could affect the structural integrity and the life

12 and safety of the people living in that home, so I

13 would say, yeah, you wouldn't close a home like

14 that.

15 Q When you alerted KB Home about the use of

16 spruce instead of southern yellow pine, did they

17 immediately stop closing new homes?

18 A Not immediately.

19 Q What did it take to get them to stop

20 closing?

21 MR. COGBURN: Form.

22 BY MR. MARSHALL:

23 Q What's your opinion as to why KB was

24 reluctant to delay closings to fix the incorrect

25 columns?

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1 A Why they were reluctant to stop the

2 closings or --

3 Q To delay the closings.

4 A Why they were reluctant to close them? I

5 mean, I didn't think we were here about opinions

6 and assumptions; we're here to talk about facts.

7 I can't get into Steve George's head nor can I get

8 into Rick Carruthers' head on why they made those

9 decisions.

10 I can tell you that I identified a

11 problem that I felt was a serious problem, I

12 brought it to the attention of everyone and anyone

13 that was in the chain of command to let them know

14 that this was a serious issue and it needed to be

15 remedied. At that point we discussed

16 Ruben O'Neill coming, that's when Ruben came, and

17 Ruben and I had a conversation.

18 Q And Ruben O'Neill is the HR manager?

19 A Correct.

20 Q What would he have to do with a

21 construction matter?

22 A I wouldn't know.

23 Q Did he contact you?

24 A Yes.

25 Q After you had already made the

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1 determination that spruce was, in fact, placed

2 instead of southern yellow pine and you elevated

3 it up the chain?

4 A Yes.

5 Q What was the nature of those discussions?

6 A Well, it was really one discussion. I

7 met Ruben at Willowbrook -- this was the meeting

8 that we discussed earlier in the deposition --

9 Ruben asked me what was going on. I explained the

10 situation to him, what the defect was, what my

11 opinion was, we just really ran the gamut on the

12 entire situation, discussed a few other things

13 that were going on in the division, staffing,

14 normal stuff. That was the last conversation I

15 had with Ruben.

16 Q Is that normal practice when you were

17 there, for an HR person to be involved in a

18 construction decision?

19 A Well, I wouldn't say it was normal or

20 abnormal. That was the first time that I had a

21 situation come up of that nature.

22 Q How about the next time you made a

23 recommendation to reduce the risk of water

24 intrusion or some other defect, was there an HR

25 manager involved?

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1 A No.
2 Q I believe you said earlier that some of
3 your recommendations as far as a single flashing,
4 I guess, in the slider door -- I'm not a
5 construction person, so if I misspeak I apologize.
6 Some of your recommendations were taken, others
7 were not?
8 A Correct.
9 Q Were you ever given reasons as to why
10 your recommendations were not implemented?
11 A No.
12 Q Would you have liked to have known?
13 A Of course.
14 Q During your time at Willowbrook, did you
15 ever receive pressure from your superiors to
16 deliver the townhomes on schedule?
17 A That's a loaded question. The name of
18 this business at every builder I've ever worked
19 for is delivering the homes on time. It goes
20 beyond a business responsibility and a
21 responsibility to shareholders when you've got a
22 handful of people that are planning their child's
23 school and moving and everything else, you kind of
24 have to deliver on the promise and get them in
25 when you told them you were.

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1 Q I understand.
2 Did KB take any steps to ensure buildings
3 were completed in a timely manner?
4 A Of course, that was the name of the game.
5 Q What steps did they take?
6 A Ensuring that the homes were moving, that
7 construction was commencing and getting done in a
8 timely fashion, that there was vendors on-site to
9 take care of the work.
10 Q Did you have a time frame from start to
11 finish to finish a building?
12 A We did. I don't recall what the schedule
13 was and how accurate we were in meeting that
14 designated time frame.
15 Q And so I assume then that there was a
16 specified time frame for stucco application and
17 the various trades to be done in order to hit a
18 closing date or a building completion date;
19 correct?
20 A Yes.
21 Q I believe you testified that
22 superintendents and project managers were directly
23 reporting to you at some point when you were
24 regional construction manager; is that correct?
25 A Yes.

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1 Q At that time were you in charge of the
2 superintendent's rate of pay and bonuses?
3 A To a certain degree.
4 Q You could give him a raise if you wanted
5 to?
6 A I could submit for a raise to be put in.
7 Ultimately, it had to be approved by the division
8 president and by human resources. Bonuses were
9 based off of a certain matrix. I did have a
10 certain degree of latitude as far as discretionary
11 bonus goes.
12 Q What type of matrix did KB use?
13 A There were several things that factored
14 in. A small portion of it was cycle time, a small
15 portion was overages, but primarily the focus on
16 the bonus was based on customer satisfaction.
17 Q What's cycle time?
18 A Start to finish of a home.
19 Q Most likely part of customer satisfaction
20 would be the fact that they received their home in
21 a timely manner; correct?
22 A That is a part of it.
23 Q Was it a step bonus meaning if you met a
24 certain percentage of cycle time you would receive
25 this bonus and if you had a higher rate of

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1 efficiency, you received a higher bonus?
2 A Honestly, it's hard for me to recall.
3 The bonus structure changes frequently. I don't
4 remember what it specifically was at that time.
5 For the most part a small piece of the bonus is
6 whether you made the cycle time or not. The other
7 part on the overages was kind of a cut-and-dried
8 thing and the same thing with the customer
9 satisfaction, it's based on surveys.
10 Q What's overages?
11 A Variable purchase orders that are written
12 to complete the home, things that are not
13 incorporated in the budget, not line items.
14 Q If a superintendent said I need 10 more
15 hurricane straps than what was provided, is that
16 an overage? It's a variable purchase order;
17 correct?
18 A Yes and no; it depends. Sometimes that's
19 just a shortage in what was delivered, in which
20 case you're not having to -- it's not a variable
21 purchase order and the supplier would send it back
22 out. Variable purchase orders also judged against
23 the bonus aren't necessarily, you know, purchasing
24 errors or things like that aren't held against the
25 superintendent, it's more so superintendent

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1 errors.
2 Q So a purchasing error, then, would be
3 they didn't adequately ship the materials or KB
4 didn't order enough?
5 A Something that wasn't included in the
6 scope of work whether it was time, material,
7 labor, whatever the case is.
8 Q And so am I right in assuming that
9 overages is a bad thing, the higher the number the
10 worse it looks on your opportunity to receive a
11 bonus?
12 A No, not necessarily, depending on what
13 the overages are. If the overages are as a direct
14 result of mistakes made by the construction
15 manager in the field, obviously that looks better
16 to not have a lot of those, but some of them don't
17 reflect on the superintendent. That's why they're
18 coded. If it's a purchasing error, obviously the
19 superintendent isn't held accountable for a
20 mistake that the purchasing department made.
21 Q If it was a result of a different issue,
22 it would be coded differently in the system?
23 A There's scores of codes to put in as to
24 why you're having to do something like that.
25 Q And would the person who is coding know

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1 all the issues on-site to be able to code it
2 correctly?
3 A Well, the superintendent codes it when
4 they submit the request. When I submit an extra
5 work order for whatever the case is I have to put
6 a description on there as to what it is that I
7 need, how much, and in that same work order I put
8 the code as to why.
9 Q The cynic in me is asking why wouldn't
10 they always code it as being someone else's issue
11 and then they would never get hit for overages?
12 A At some point what happens in the dark
13 always comes to light. You can't just pencil-whip
14 everything, there's other people that review it.
15 You can't say it's a purchasing error when the
16 work order is going to go to the purchasing
17 department and you're saying, hey, it's your
18 fault, you should have ordered 20 straps, not 10,
19 and the purchasing guy looks at it and says I did
20 order 20, I didn't order 10, that's what's in the
21 contract. You can only finesse the paperwork so
22 much.
23 Q So even if these are issues that need to
24 get done to prevent water intrusion or any other
25 issue, they would actually get dinged for ordering

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1 additional materials?
2 MR. COGBURN: Form.
3 THE WITNESS: No.
4 BY MR. MARSHALL:
5 Q Would you say that superintendents have
6 financial incentive to overlook items that were
7 not glaring deficiencies?
8 A No.
9 Q Were they ever recognized for pointing
10 out deficiencies as not being built per plans and
11 specs or the Florida Building Code?
12 A I can't really speak on such a macro
13 level as to who was praised for what for stuff
14 five or six years ago. I can tell you that the
15 guys directly who reported to me if they brought
16 something to my attention like that, they would
17 have gotten kudos for bringing something like that
18 up.
19 Q You're kind of the exception, aren't you?
20 A Again, I can't really speak for other
21 people. I can tell you what I would have done. I
22 can tell you what I did do as a regional
23 construction manager, and I certainly would have
24 commended and publicly commended somebody who
25 brought something to my attention.

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1 Q Just in this deposition you've pointed
2 out the spruce-versus-southern-yellow-pine issue,
3 the fact that you disagreed with the
4 peel-and-stick and a whole host of other issues.
5 Did you also recommend a higher grade of paint and
6 caulk to be applied?
7 A I did.
8 Q And they didn't take you up on that
9 recommendation either?
10 A No, they did not.
11 Q In fact, the peel-and-stick was such a
12 big issue that you removed your license being
13 applied to that, or as the qualifier; is that
14 correct?
15 A That was part of the reason, yes.
16 Q What were the other parts of the reason?
17 A Some of the things we just discussed.
18 Q Have you ever known anyone else to do
19 that, remove their license as the qualifier when
20 they disagreed with the way something was being
21 built?
22 A Yes. Not specifically at KB, but in
23 general that's the wise thing to do.
24 Q Okay. To you it's a quality control
25 issue?

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1 A Well, it's a personal responsibility
2 issue. If I'm the license holder, I want to
3 ensure that what's being done under my license is
4 done to my satisfaction. It kind of goes back to
5 the conversation that we had before regarding the
6 roofing. If I'm the roofer and you say, hey, do
7 this -- or whoever it is, the electrician -- I go
8 back and tell the electrician on the job site,
9 hey, I need to get this done, don't worry about
10 how you do it, just throw it together, he'd
11 probably laugh in my face and say, this is my
12 license, I'm not risking my license for this. It
13 was the same thing with me.

14 Q But you kept your job, right, at KB for a
15 time period after you removed your license?

16 A For a short period, yes.

17 Q There's no guarantee that the subs would
18 have been kept on the project as a subcontractor
19 if they disagreed with KB and went against their
20 wishes. Do you agree?

21 A Well, I don't think it's -- I couldn't
22 speculate as to what would happen with that. I
23 mean, I didn't keep my job as the qualifier. I
24 was on as a superintendent. I mean, if someone
25 was asking you to do something that you felt was

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1 unethical, or whatever the case is, I would think
2 that as a responsible contractor you would not
3 want to do that work.

4 Q During that time period was that a
5 booming market?

6 A No. At that time the market already
7 started to contract.

8 Q Were you part of any value engineering
9 discussions with regard to the Willowbrook
10 project?

11 A Not really.

12 Q You qualified that "not really." Did you
13 have a partial discussion about value engineering,
14 or was there any discussion?

15 A Value engineering became the new buzz
16 word and business model for every builder in
17 southwest Florida during that time. I did not sit
18 down with Mr. Burlingame nor anyone else in upper
19 management and have a discussion of what my
20 thoughts or the ramifications were on value
21 engineering, but as it was something that was
22 taking place in the industry, sure, we had
23 conversations about it. Danny and I talked about
24 it. Painters were talking about it. Everyone was
25 talking about it.

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1 Q I don't know if you've ever heard the
2 term LPTA, lowest price technically acceptable.
3 Is that in essence what KB was doing at that
4 point?

5 A I've never heard that term.

6 Q What's your understanding as to why KB
7 chose to use OSB instead of plywood at
8 Willowbrook?

9 A I don't really know. I was not involved
10 in those decisions. That was the material that
11 was being used prior to me getting there. That
12 was the material that was specified on the print.
13 You know, there always is a better product I think
14 that you can use. I'm not a big proponent of OSB,
15 but a lot of the builders here locally use OSB for
16 their roofs and for their wall systems. How they
17 come to that conclusion, I don't know.

18 Q As part of your training as regional
19 construction manager, I believe you testified
20 earlier that you received training in quality
21 control; is that correct?

22 A Yes.

23 Q What was the nature of that training?

24 A Well, as I stated earlier, we had
25 Internet-based modules that we took from corporate

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1 on, you know, different things in regards to a
2 quality aspect to look at, which the
3 superintendents had a lot more of than the
4 regional managers. It's assumed at the regional
5 manager level you should be able to be giving
6 training and not receiving it as much.

7 Q At some point after being laid off, did
8 you file suit against KB Home?

9 A Yes.

10 Q And what was the nature of the suit?

11 A It was -- I don't know. I'm not an
12 attorney nor did I bring counsel with me. I don't
13 know what the legal term for it is. I guess you
14 would say a wrongful termination.

15 Q Was it under the Whistleblower Act?

16 A Like I said, I don't know the legalese
17 and the terminology that was used and the filing
18 of the motions and --

19 Q Did you believe you were terminated for
20 bringing up quality control issues, for lack of a
21 better term, to KB superiors?

22 A Yes.

23 MR. COGBURN: Form.
24 BY MR. MARSHALL:

25 Q Did you settle that case with KB?

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1 A Yes.
2 Q Is it subject to a confidentiality
3 agreement?
4 A Yes.
5 Q Is counsel for KB representing you in
6 this matter at all?
7 A No.
8 Q He's not here on your behalf today?
9 A No.
10 Q Did you have discussions with him
11 yesterday?
12 A I actually just met him downstairs.
13 Q Did he talk to you on the phone
14 yesterday, counsel for KB?
15 A He did.
16 Q What was the nature of those discussions?
17 A I asked him if there was any way I would
18 not have to go, because it's very inconvenient for
19 me here in the fourth quarter with a lot of homes
20 getting ready to close, and take the day off of
21 work. Although I love you attorneys, this is not
22 a very pleasurable experience. It was the same
23 conversation that I had with the office for
24 Millard Roofing, or the attorney for them, when I
25 called and said, hey, what time, where is it, and

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1 do I really have to come.
2 MR. COGBURN: And I told you it was
3 today.
4 THE WITNESS: Yes, you did, because I was
5 under the impression it was tomorrow.
6 BY MR. MARSHALL:
7 Q Subsequent to settling the lawsuit, have
8 you had any discussions with anyone at KB with
9 reference to the Willowbrook project?
10 A Yes.
11 Q And who did you have discussions with?
12 A Well, I mean, I've spoken to Danny. I've
13 spoken to Cathy. I see Bobby Zahn frequently.
14 John Turner works with me now. I don't think
15 there's ever been a point in time where we've
16 specifically had a conversation about leaking
17 decks at Willowbrook and all the wonky stuff that
18 we're talking about today. I think it was more
19 of, hey, do you remember when we were up in
20 Willowbrook, that kind of thing.
21 Q Did you have any discussions with
22 Danny Vinson after his deposition?
23 A No. I didn't even know that Danny was
24 deposed. I wish we could have done it together.
25 Q No, you don't, trust me.

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1 A I'm a little more friendly than Danny.
2 Q I wouldn't put that on the record.
3 MR. MARSHALL: I think that's all I have.
4 Thank you.
5 MR. COGBURN: Let's take a five-minute
6 break.
7 (Recess taken from 2:43 p.m. to
8 2:54 p.m.)
9 CROSS-EXAMINATION
10 BY MR. FORD:
11 Q Mr. Brown, my name is Tim Ford. I
12 represent Universal Forest Products in this
13 action. I'm going to ask you a few questions.
14 I'll try not to repeat some of the stuff you've
15 been through, but you know how that goes.
16 Initially, you were shown this transcript
17 that you read from earlier today, which is your
18 testimony for the Attorney General's Office,
19 October 22, 2013, and I think you previously
20 testified you recall giving that testimony?
21 A Yes.
22 Q And it was under oath?
23 A Yes.
24 Q Is there any reason sitting here today
25 that you don't believe that the testimony you gave

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1 at that proceeding was truthful and accurate?
2 A No.
3 Q And do you believe that, frankly, it
4 might be a better reflection of your recollection
5 since it was closer in time than maybe your
6 recollection today?
7 A Probably.
8 Q I'm going to go ahead and mark this as an
9 exhibit to your deposition since we may refer to
10 it here and there.
11 (Exhibit No. 285 was marked for purposes
12 of identification.)
13 BY MR. MARSHALL:
14 Q And I might refer to some parts of that
15 in a moment, but we'll go to it when we get there.
16 You mentioned before your lawsuit against KB Home
17 and a settlement of that lawsuit and that it
18 contained a confidentiality provision; correct?
19 A Yes.
20 Q Can you enlighten me as to what
21 specifically in the settlement is confidential?
22 A Again, excuse me, but I'm not an
23 attorney. It was my understanding that everything
24 regarding the settlement and the issues regarding
25 Willowbrook were subject to that confidentiality



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1 agreement.
2 MR. COGBURN: I'll speak to KB's view,
3 if you'd like.
4 MR. FORD: Sure.
5 MR. COGBURN: I don't mean to interrupt
6 your questioning.
7
8 MR. FORD: I don't have a copy of what it
9 says. I'm curious if there are specific
10 limitations.
11 MR. COGBURN: I think the only
12 confidentiality was the existence of a
13 settlement of the matter. KB doesn't have an
14 objection to talking about the settlement or
15 maintaining that. There's also a
16 nondisparagement clause. I spoke with
17 Mr. Brown in advance of the deposition this
18 morning to make sure that he understood that KB
19 was not intending or did not have any plans to
20 use the nondisparagement clause in any way to
21 chill his testimony or to impact it.
22 You had that understanding before
23 starting today; correct?
24 THE WITNESS: Correct.
25 MR. COGBURN: With that, ask your

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1 questions.
2 MR. FORD: The amount of the settlement,
3 is it confidential?
4 MR. COGBURN: It would be, but we're
5 happy to allow it for purposes of today.
6 MR. FORD: On the record as opposed to,
7 quote/unquote, "sealing" it?
8 MR. COGBURN: I think we ought to treat
9 it as confidential until further notice. I
10 mean, it can be in the deposition transcript,
11 but before filing it let's have a discussion
12 about it. Is that fair game for everyone?
13 MR. MARSHALL: No problem.
14 MR. FORD: The last question: Does KB
15 have an objection to producing a copy of the
16 settlement agreement itself under those same
17 terms?
18 MR. COGBURN: Under those same terms, no
19 objection.
20 BY MR. FORD:
21 Q With that in mind and that objection
22 noted for the record and reservation made by KB
23 Home, let me ask you, Mr. Brown, do you recall
24 what the amount of the settlement was that you
25 entered into with KB Home?

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1 A I do not.
2 Q Did it involve payment of funds to you?
3 A Yes.
4 Q Do you know whether or not it involved
5 payment of funds in excess of \$100,000?
6 A No.
7 Q Do you know if it was in excess of
8 \$10,000?
9 A Yes.
10 Q Any ability --
11 MR. COGBURN: Do you want to take a
12 break?
13 MR. FORD: Do you have a copy it?
14 MR. COGBURN: I thought I did. Actually,
15 just keep going.
16 MR. FORD: If you can find it, that would
17 be great.
18 BY MR. FORD:
19 Q Consistent with the reservations and the
20 statement made by Mr. Cogburn a moment ago,
21 Mr. Brown, is it fair to say nothing to do with
22 your lawsuit against KB Home or your settlement
23 affects your testimony here today?
24 A No, absolutely not.
25 Q You'll be as truthful and honest as you

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1 can be regarding KB Home or anything like that?
2 A Of course.
3 Q Would the same be true for your testimony
4 if you were to be called at the trial of this
5 case?
6 A Absolutely.
7 Q You spoke earlier about the role of the
8 KB superintendents on the job and you had a lot of
9 testimony today about that. Can you speak to your
10 understanding of KB's role as the general
11 contractor overall with respect to its obligations
12 at Willowbrook?
13 A I'm not really sure what you're referring
14 to specifically. I can say that the
15 responsibility of the general contractor, or
16 KB Home acting as the general contractor being as
17 they're the builder, wouldn't change from
18 Willowbrook to any other community and ultimately
19 it's the job of the general contractor to oversee
20 the job.
21 Q And you'd agree that KB Home as the
22 general contractor is generally responsible for
23 all of the work that's performed at Willowbrook?
24 MR. COGBURN: Form.
25 THE WITNESS: Define "responsible."

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1 BY MR. FORD:
2 Q Well, for example, there's a defect and
3 the homeowner's complaining, you would agree that
4 the general contractor bears responsibility to the
5 homeowner for that issue?
6 A Yes.
7 Q And as far as an obligation to supervise,
8 coordinate, schedule the subcontractors, the
9 trades, that KB, as the general contractor, has
10 that obligation and role also?
11 A I'd agree with that.
12 Q And I'm reading from your prior
13 testimony, which is helpful -- you can look at
14 this if you want -- but there's a statement made
15 where you said, "The general contractor is in less
16 of a hands-on role and more of a management role
17 and is involved in scheduling, overall product,
18 ensuring everything is built according to print,
19 and making sure everything is built according to
20 the Florida Building Code."
21 Do you agree with that statement?
22 A Yes.
23 Q There's a lot of testimony in
24 Exhibit 285, which is this transcript, regarding
25 what you've described as a very uncomfortable time

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1 when you were raising these issues with various
2 folks at KB Home about the means and methods of
3 construction, the products being used, et cetera,
4 and specifically regarding closings and the
5 closings schedules. Some of this initial
6 testimony related to spruce versus the yellow pine
7 wood product issue. What do you mean in general
8 by it being an uncomfortable time?
9 A Well, just that, it was an uncomfortable
10 time. I felt that after I raised the issues, I
11 was looked upon differently.
12 Q And in what way and by whom?
13 A By the management team at the time.
14 Q I know there was a time period in which
15 you were removed from your role as regional
16 construction manager and removed from Willowbrook
17 and you came back. Did you feel that your removal
18 was part of that discomfort?
19 A Yes.
20 Q And as a result of the issues you raised,
21 that you were literally pushed out of Willowbrook?
22 A I think that my position as regional
23 construction manager down to project manager was a
24 direct result of that, yes.
25 Q Did that come with a decrease in your

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1 pay, salary?
2 A Yes.
3 Q Why did you stay on with KB Home?
4 A Well, at the time the market was
5 contracting. I really didn't have a lot of other
6 options at that time.
7 Q Would it be fair to say had you had other
8 comparable options you would have left?
9 A Yes.
10 Q Did you actively pursue other options at
11 that time?
12 A To a certain degree. Most people were
13 laying people off, you know, there was a lot of
14 reduction in force across the board throughout the
15 industry, so to a certain degree, yes.
16 Q Understood. And I wanted to spend a
17 moment -- and I'm going to scribble on my paper
18 here -- on a timeline, if you can help me out.
19 There was a period of time when you
20 indicated you were regional construction manager
21 and you were at Willowbrook and you indicated
22 roughly about a six-month period. Is that
23 generally accurate?
24 A Where I was the regional construction
25 manager?

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1 Q Yes.
2 A To the best of my knowledge, that's an
3 accurate timeline.
4 Q And that would have been sometime during
5 2006?
6 A I believe so, yes.
7 Q Okay. And then do you know whether or
8 not that general period of time stretched from '05
9 to end of '06, or was it generally in '06?
10 A No, it was in '06.
11 Q And then there was a period of time when
12 you left, you were demoted from regional
13 construction manager, and you went and worked in
14 other communities in the southern part of the
15 state, southwest Florida; is that correct?
16 A Correct.
17 Q What period of time was that? I think
18 your prior testimony was six months, but I might
19 be incorrect.
20 A To the best of my knowledge, I believe it
21 was around six months.
22 Q And then you come back to Willowbrook as
23 a project manager?
24 A Correct.
25 Q And do you think when you came back, that

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1 was in the '07 period?
2 A The latter part of '07 or beginning '08.
3 The dates are all -- this was a long time ago. A
4 lot's transpired since.
5 Q Sure.
6 And then my understanding is that you
7 were terminated from KB in April of 2009. Does
8 that refresh your memory, or is that accurate?
9 A Yes.
10 Q So is it fair to say from whenever you
11 came back as PM at Willowbrook where you served
12 alongside Danny Vinson, that literally from that
13 late '07, early '08 period all the way until your
14 termination, were you in the role as PM at
15 Willowbrook?
16 A What do you mean the "role as PM"?
17 Q In other words, I'm just trying to get a
18 feel for your timeline. We have you coming back
19 to Willowbrook as a PM in late '07.
20 A After you refreshed my memory with the
21 April of '09, it was probably early '08.
22 Q Early '08. And then you leave
23 Willowbrook in April of '09. During that entire
24 period of time, so the rest of '08 and first
25 quarter of '09, were you at Willowbrook in the

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1 capacity you've been testifying today as a PM?
2 A Yes.
3 Q In other words, you didn't leave at the
4 end of '08 and go do something else?
5 A Correct.
6 Q I think you testified earlier when you
7 left KB as an employee it was from Willowbrook?
8 A Yes.
9 Q Okay. Thank you.
10 And so it might be a year-and-a-half
11 period of time in which you were there as a PM,
12 '08 into summer of '09?
13 A Probably closer to a year. A year to a
14 year-and-a-half, yes.
15 Q I'm just trying to clarify. I was a
16 little confused. There were a lot of dates thrown
17 out. I'm not holding you to this. There will be
18 other records that can verify this stuff.
19 There was reference to folks either
20 referring to you directly or indirectly as Chicken
21 Little and testimony about, you know, Mr. Brown
22 raising issues that the sky is falling or it's not
23 a big deal, making a mountain out of a mole hill.
24 Do you recall that testimony from the AG exhibit
25 in front of you or just from your own

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1 recollection?
2 A From both.
3 Q Okay. Tell me generally what that refers
4 to. What was being referenced when people were
5 referring to you as Chicken Little?
6 A Just pretty much as you stated, that I
7 was making a big deal out of something that wasn't
8 necessarily a big deal.
9 Q And would that generally encompass the
10 types of items you've testified to already this
11 afternoon, whether it be the peel-and-stick issue
12 with the decking or need for better caulking or
13 waterproofing products, those types of issues?
14 A I think more specifically it had to do
15 with the spruce-and-southern-yellow-pine issue
16 that we were discussing.
17 Q And then there's also some reference in
18 that testimony about Chinese drywall. Was that
19 also an issue?
20 A That was, yes.
21 Q You testified earlier that you don't
22 believe there was Chinese drywall at Willowbrook;
23 is that correct?
24 A Yes.
25 Q Is it fair to say that at some point in

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1 time when the Chinese drywall issue came to light
2 you were raising to those higher up at KB that,
3 hey, we should investigate this property to see if
4 they have Chinese drywall; would that be accurate?
5 A I don't think it was specifically
6 directed at Willowbrook. It was directed towards
7 the homes that we had just built and closed in the
8 past two years in various locations to include
9 Willowbrook.
10 Q And do you know sitting here today
11 whether KB undertook any specific investigation of
12 Chinese drywall with respect to these various
13 properties?
14 A Yes.
15 Q Is it fair to say you were not directly
16 involved in that investigation?
17 A Yes.
18 Q And you've indicated that you do not
19 believe that Willowbrook had Chinese drywall. Did
20 you ever hear from someone or see a report that
21 indicated that Willowbrook was inspected and it
22 doesn't have Chinese drywall?
23 A No.
24 Q What is it that leads you to believe that
25 Willowbrook did not have Chinese drywall?

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1 A I had spoke to Cathy regarding some of
2 the Chinese drywall remediation things that had
3 occurred. Many of those homes, although I was no
4 longer with KB, many of those homes were
5 constructed under my license, so obviously I had
6 an interest in whether they were going to be
7 remedied or left alone.
8 In my discussions with Cathy many
9 communities came up, many homeowners that I had
10 remembered; Willowbrook was not one. I don't know
11 for sure if there was any in Willowbrook or not, I
12 just didn't hear about any and I heard of several
13 others.
14 Q There was some prior testimony by you,
15 and also some of the statements made in your prior
16 testimony with the Attorney General, that during
17 this consolidation process there was obviously a
18 lot of turnover, a lot of rotating positions, and
19 downsizing of positions. Do you believe that that
20 process that KB went through to, quote/unquote,
21 "downsize" during the recession impacted KB's
22 ability to perform its duties and responsibilities
23 at Willowbrook?
24 MR. COGBURN: Form.
25 THE WITNESS: No.

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1 southern-yellow-pine-versus-spruce wall panel
2 thing, as the regional construction manager I
3 pulled people from every community and said, okay,
4 you guys can do without one guy, I'm going to
5 bring him up here in Willowbrook to help us get
6 through. This is what's going on.
7 Q It's fair to say generally you understand
8 that KB has a responsibility to have enough people
9 out there to be watching and doing what it needs
10 to do when the project is being constructed;
11 correct?
12 A Yes.
13 MR. COGBURN: Form.
14 BY MR. FORD:
15 Q You didn't feel like there was any time
16 when you didn't have those resources?
17 A No.
18 Q There is reference to a letter you wrote,
19 if I recall your testimony, to the Attorney
20 General -- you might have typed it -- and you
21 mailed a carbon copy to yourself. Do you recall
22 that?
23 A Yes, I do.
24 Q Do you have a copy of that letter? Do
25 you maintain a copy of that personally?

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1 BY MR. FORD:
2 Q And how so or why not?
3 A Well, like I stated in my earlier
4 testimony repeatedly, I don't think the problem
5 was with KB Home being understaffed. I think it
6 was a combination of design, installation, and
7 material.
8 Q Is it fair to say that in general
9 staffing needs, whether it be the number of
10 superintendents on-site or PMs that are out at
11 Willowbrook daily -- these are KB folks -- that at
12 some point prior to your involvement, like when
13 you were the regional construction manager that
14 you had more people than were there later in like
15 '06 versus '08? Were there more folks in '06 than
16 in '08?
17 A Well, I think it varied. I think, you
18 know, there were times when additional manpower
19 was brought in throughout '06 through '09, which
20 is not uncommon in the industry. If you have a
21 community that has a lot of closings, it makes
22 sense that you take some people from some of the
23 communities that don't have as many closings and
24 put them in.
25 When we had the issue of the

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1 A I don't think I have a copy of it. Once
2 my issues were resolved with Willowbrook, you
3 know, I don't remember the dates as vividly as I
4 did at one time and I got rid of all the
5 paperwork.
6 Q Do you recall who you sent that letter to
7 or who it's addressed to?
8 A Yes. Steve George, the division
9 president at the time for KB Home Fort Myers LLC.
10 Q And it's a letter that would have come
11 from you, it would have been signed by you?
12 A Yes.
13 Q Was it a typewritten letter?
14 A Yes.
15 Q You testified earlier about a number of
16 failed inspections. I'm referring specifically to
17 your testimony regarding framing. If an
18 inspection failed, would you agree that it would
19 have been -- the failure would have been addressed
20 and remediated?
21 A Absolutely it would have been addressed
22 and remediated because you can't proceed with the
23 construction of the home unless the inspection's
24 passed.
25 Q And is it your recollection, at least for

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1 the buildings you worked on at the time you were
2 out there, that all the buildings had closed and
3 passed inspection ultimately?
4 A They wouldn't be issued certificates of
5 occupancies without passing.
6 Q That's a yes, though?
7 A Yes.
8 Q You've mentioned some design issues being
9 a concern, specifically the third-floor roof. Did
10 you have an understanding that KB architecture, or
11 a KB-related entity, was the architect of record
12 for Willowbrook?
13 A Yes.
14 Q Did you ever have any conversations with
15 anybody at KB architecture about any issues
16 regarding Willowbrook?
17 A No, not directly.
18 Q Are you familiar with any kind of, for
19 lack of a better term, internal RFI process that
20 would involve KB architecture?
21 A Not architecture. Yes, but not at the
22 superintendent/project manager level.
23 Q At what level would that type of
24 discussion happen?
25 A Generally changes in architecture were

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1 something that would have been handled through the
2 person in charge of purchasing at the direction of
3 the division president and the sales VP.
4 Q And give me your understanding of
5 architecture as it relates to the KB architecture
6 plans. And what I mean by that is obviously
7 there's an architect that designs the look, the
8 layout of the buildings and the project; correct?
9 A Yes, that would be architecture.
10 Q And then the architectural drawings also
11 include a ton of specifications, details,
12 citations to code and references that comport to
13 means and methods of construction. Would you
14 agree with that?
15 A No.
16 Q We don't have a set of plans to look at,
17 but you don't believe that kind of detail is put
18 into the plans by the architect?
19 A I know for certain that it's not.
20 Q Okay. And that type of detail that I'm
21 referring to, that's the kind of information that
22 may be put into, what, the structural drawings?
23 A Yes.
24 Q So it's your understanding that
25 KB architecture really is there to design the

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1 look, the layout, the dimensions of the building?
2 A That's exactly correct. They draw the
3 picture, the engineer of record decides how it
4 gets put together.
5 Q Gotcha. With respect to the same topic,
6 RFIs, did you have any involvement, whether it was
7 as a regional construction manager, or in your
8 role as PM at Willowbrook, with respect to RFIs or
9 questions with the engineer of record?
10 A Yes.
11 Q And I know you mentioned Silcox Kidwell.
12 Would some of those conversations have been with
13 their office?
14 A Yes.
15 Q Were those very formal, in other words by
16 a clear RFI, or were some of them informal?
17 A The initial discussions were done through
18 electronic correspondence. For the most part they
19 were done through electronic correspondence.
20 There were subsequent conversations that were
21 handled on the fly in the field on the phone with
22 the EOR.
23 Q When you say electronic response, would
24 that primarily be e-mail?
25 A Solely e-mail, yes.

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1 Q And was it routine for someone from
2 Silcox Kidwell to be on-site?
3 A No.
4 Q If they were on-site it would be for a
5 specific issue?
6 A Yes.
7 Q At some point in time the -- go ahead. I
8 didn't mean to cut you off.
9 A No, I just thought of something we talked
10 about earlier.
11 Q Go ahead.
12 A I don't remember who it was, but someone
13 asked if a third-party consultant other than PEICO
14 came out and, yes, Robert Case from Land
15 Investment Services, I did solicit his help with
16 the spruce-versus-southern-yellow-pine issue as he
17 is a licensed P.E. and did handle some structural
18 things for us, not in Willowbrook, but in other
19 areas. I did have him come in and we paid him to
20 do his own analysis of what was wrong, what needed
21 to be fixed and all that.
22 Q Is it fair to say, at least from your
23 understanding, that all the issues at Willowbrook
24 that involve the spruce-pine, quote-unquote,
25 "defect" were remediated?

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1 A Yes.

2 Q And as far as you know, any issues with

3 the use of spruce was removed and/or remediated

4 under the watch of a licensed P.E.?

5 A Yes.

6 Q There came a time where the EOR changed

7 from Silcox to SEI. Are you familiar with that?

8 A I'm sorry, what was that with Silcox?

9 Q There came a time when the engineer of

10 record for certain buildings at Willowbrook

11 changed from Silcox Kidwell to another engineer,

12 SEI, or Structural Engineers, Inc., I think is

13 what they go by. Do you recall that change?

14 A Vaguely I remember. I think that there

15 was a change at some point, but it occurred while

16 I was not there, and I think when I came back up

17 there the change had already been made. But at

18 that point all of the spruce -- that had already

19 been long handled.

20 Q And that's helpful only in the timeline.

21 You tell me if this is correct. When you were

22 there initially as the regional construction

23 manager all the buildings you worked on, it's your

24 understanding, were Silcox-engineered buildings?

25 A Yes.

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1 Q And then you left for a little while and

2 you came back as a PM; correct?

3 A Yes.

4 Q And is it fair to say that some of the

5 buildings you worked on as a PM would have been

6 Silcox buildings and some of them may have been

7 SEI buildings?

8 A I don't really recall.

9 Q You'd have to specifically know the

10 building and see the plans?

11 A If I saw the plans, yeah, obviously it's

12 stamped on the bottom. I don't remember off the

13 top of my head who was the engineer of record for

14 what building, you know.

15 Q Understood.

16 One of the significant changes I'll

17 represent to you between the Silcox design and the

18 SEI design regarding the hurricane uplift was the

19 use of a Hurri-Bolt system versus a strapping

20 system. In other words, all the Silcox buildings

21 utilized the Hurri-Bolt system. Do you recall

22 that?

23 A I don't remember. I remember using the

24 Hurri-Bolt system. I don't remember which

25 engineer and what buildings --

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1 Q Okay.

2 A -- were what.

3 Q The buildings were designed and planned

4 as stick frame construction and at some point KB

5 purchased and utilized a wall panel construction.

6 Are you familiar with that?

7 A Yes.

8 Q Are there any concerns or thoughts you

9 had with respect to the need to revise the design

10 or the plans to reflect wall panel construction

11 versus stick frame?

12 A To revise the plan?

13 Q Correct.

14 A No.

15 Q Did you ever have any conversations with

16 any of the framers, as they were framing the

17 buildings, that they had trouble or were in any

18 way confused with erecting the buildings with the

19 wall panels?

20 A Not that I recall. I mean, everyone was

21 pretty clear.

22 Q Are you familiar with any kind of

23 documentation provided by the wall panel

24 manufacturers that identified, whether they're

25 called layout drawings or placement drawings, for

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1 the wall panels?

2 A Yes.

3 Q Are those documents that you would have

4 had copies of?

5 A Those are documents that would have come

6 out with the wall panels. There would have been

7 copies on-site. There's a copy that's submitted

8 with the plan and copies were readily available in

9 my office. I didn't walk around with the layout,

10 but, yes, it was in my office for me to view as

11 needed.

12 Q Do you recall ever needing to have

13 meetings with the framers on any specific issues

14 regarding how do I erect this wall panel, where

15 does it go kind of issue?

16 A No.

17 Q In your experience just as a contractor,

18 have you worked on other projects that involved

19 wall panel construction?

20 A Yes.

21 Q Would you agree that it's pretty standard

22 and routine construction practice in the industry?

23 A Yes.

24 Q Is it your experience that most framers

25 don't have a problem with wall panel construction?

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1 A Yes.
 2 Q Do you have an opinion as to whether or
 3 not framers need any kind of specialized training
 4 to construct a building with wall panels versus
 5 stick frame construction?
 6 A No. Obviously, they need to understand
 7 the product they're building and understand the
 8 plan and where the wall panels get laid out, but
 9 it's easier to put wall panels together than
 10 conventionally framed.
 11 Q Do you know whether or not KB Home
 12 internally has its engineer of record or its
 13 architects review wall panel documents provided
 14 by the wall panel manufacturer?
 15 A I don't know for certain who reviews what
 16 at that level.
 17 Q In other words, it wasn't part of any job
 18 duty you ever had to make sure the engineer of
 19 record signed off on the wall panel layout plans?
 20 A No.
 21 Q Do you know if the engineer of record had
 22 any involvement with reviewing wall panel layout
 23 drawings or documents?
 24 A I don't know for certain.
 25 Q I represent Universal Forest Products.

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1 does that change your testimony that maybe UFP was
 2 on-site at some point?
 3 A Yes.
 4 Q Do you recall any specific conversations
 5 or issues you ever had with Michael Sherman?
 6 A Not specifically other than in general
 7 when is this coming, you know, that kind of thing.
 8 Q Same vein of questions regarding UFP
 9 specifically. Do you recall ever having any
 10 issues with, hey, the wall panels showed up and
 11 they're broken, they're wrong, we need new ones,
 12 or any deficiencies with them?
 13 A I don't personally recall anything being
 14 wrong. I remember there might have been times
 15 where we had -- actually, I take that back. I
 16 think we did have some that came out at times that
 17 didn't have the proper fasteners or the proper
 18 amount of fasteners, I should say, particularly on
 19 the edges of the building in the corners where
 20 it's more important that it be a specific way as
 21 called out by the engineer, maybe having a broken
 22 panel here or there. Typically, the broken panels
 23 were fixed in the field, resheathed or whatever
 24 the case is. And as far as the amount of
 25 fasteners, that's something where the framer would

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1 Do you know who that is?
 2 A Yes.
 3 Q I'll refer to them as UFP. Had you
 4 worked with UFP prior to the Willowbrook project?
 5 A I worked with Forest Products many moons
 6 ago.
 7 Q Okay. Let me ask you this: In the
 8 Willowbrook project do you recall working with UFP
 9 as a wall panel supplier for that project?
 10 A No.
 11 Q Do you have a recollection in your mind
 12 now as to, as you were trailing off your days at
 13 KB at the Willowbrook project, whether or not UFP
 14 was already on-site providing wall panels or not?
 15 A To the best I can recall, I don't believe
 16 that they were.
 17 Q Do you recognize the name
 18 Michael Sherman?
 19 A Yes. He was a salesperson for one of the
 20 lumber companies, yes.
 21 Q I'll represent to you that
 22 Michael Sherman works for UFP.
 23 A Okay.
 24 Q In telling you that and you generally
 25 recollecting that you knew he was a salesperson,

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1 have added fasteners and UFP would have been
 2 notified, you know, hey, pay more attention on the
 3 next go-around.
 4 Q To be clear on the fasteners, I don't
 5 think they're the same as a strap, but these are
 6 standalone metal products the framer installs as
 7 they construct the wall panels or the building?
 8 A No, I'm referring to the sheathing on the
 9 panels. When I say fasteners, I don't mean
 10 hurricane straps, I mean like nails.
 11 Q Okay. I'm just trying to clarify.
 12 Explain to me what you mean by there's
 13 missing fasteners. I'm not following you.
 14 A Well, I don't recall what the pattern
 15 was. Every engineer is different. Let's say, for
 16 instance, for the sake of argument that the
 17 corners were supposed to be nailed at four inches
 18 on center and maybe they came out at eight inches
 19 on center, so at that point -- and I recall that
 20 coming up -- a phone call or e-mail notification
 21 was sent, hey, these didn't come out nailed right.
 22 I think it might have been Gallo, who was the
 23 framer, took it from eight inches on center --
 24 they're out there with the nail gun anyway -- and
 25 they made it four.

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1 Q Would it be fair to say that you would
2 rely on Gallo or any framer, whether it's their
3 sub or another framer on the job, to make sure
4 that the building is constructed per plans, and so
5 if a wall panel needs more nails or something
6 else, that they are responsible for making sure
7 that complies with plans and specs?
8 A That's absolutely their responsibility.
9 The superintendent isn't going to go climb up on
10 an extension ladder three stories up to see if the
11 nail heads are popping out at four inches or six
12 inches on center. As a superintendent I wouldn't
13 try to go in and decipher the wiring in the house.
14 I have faith in the electrician being a licensed
15 electrician that he's doing his part correctly.
16 Q Whether it be as the regional
17 construction manager or as the project manager out
18 there, you did rely on the framer to make sure
19 that the buildings were properly framed up and
20 constructed per plans?
21 A Absolutely.
22 Q You mentioned like sometimes there might
23 be a broken member or something wrong. Is it
24 standard that that kind of stuff is fixed in the
25 field?

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1 A It depends on what it is. There are some
2 fixes inside the truss literature or the wall
3 panel literature and it will have standard fixes
4 for common things that happen. In that case you
5 refer to the drawings and what the standard fix
6 is. There are other cases where it's a more
7 serious problem and in that particular case a
8 repair detail is required by the engineer not of
9 record, but the truss engineer or the panel
10 engineer separate from the EOR.
11 I couldn't tell you what buildings or
12 what, but I'm sure that throughout my tenure at
13 Willowbrook there was probably a broken truss web
14 here or there and a letter was requested from UFP
15 or BFS, hey, THD is broken at this web, what do
16 you want me to do.
17 Q In any event, it's your understanding or
18 expectation that, whether it be the framer himself
19 or KB's inspectors, those kinds of issues would
20 get caught and adequately addressed and
21 remediated?
22 A Yes.
23 Q If they weren't, were those the types of
24 things that you would hope the Manatee County
25 inspector would identify?

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1 A Yes.
2 Q In your opinion, from your experience out
3 there, how detailed was the Manatee County
4 inspecting as it related to framing?
5 A I think they were pretty detailed. I
6 mean, there were different inspectors out there,
7 some of them more detailed than others, but all in
8 all I think they were detailed in their
9 inspections.
10 Q There was testimony earlier about we got
11 tagged a bunch and we had to deal with those
12 issues. Would it be fair to say it was because
13 they were doing pretty detailed inspections?
14 A Absolutely.
15 Q Did you ever have any issues with
16 Manatee County inspectors with respect to whether
17 or not they were adequately inspecting the
18 buildings?
19 A No.
20 Q Did KB have any kind of process where it
21 walked -- let me give you an example. You know
22 you're calling out for a framing inspection
23 tomorrow, was there a process where you or a super
24 would walk the building with the framer before
25 Manatee County showed up for the inspection?

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1 A Absolutely. I mean, again, I don't think
2 there was some codified this is the procedure that
3 we need to do, but common sense would dictate in
4 the industry, particularly for a framing
5 inspection, which is the most important inspection
6 throughout the process, if you're calling in a
7 framing inspection it's probably a good idea that
8 you walk it first. There were times I walked with
9 Joe or with Kris. There were times that I walked
10 myself. There were times I walked with Danny.
11 There were times Danny walked himself.
12 If we walked by ourselves we got with
13 whomever the framer was and said, hey, listen, you
14 need to fix X, Y, and Z, let's go over there and
15 take a look, so I think it was a combination of
16 all of the above.
17 Q Again, I'm not a contractor, I don't have
18 the experience you have. When the framing
19 inspections are happening, is there more focus put
20 on structural concerns, or is it everything? Is
21 it plans, specs, code?
22 A Well, plans, specs, and code are
23 structural concerns. That's solely what they are.
24 Does Manatee County come out and look and see what
25 your stucco finish looks like when it's done, no,

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1 they don't worry about aesthetics, they're not
2 there to inspect water intrusion issues, there's
3 no specified building code that would dictate for
4 them to do so.
5 When they come out, particularly on
6 framing, it is all structural, is what's built in
7 the field in accordance with what was submitted
8 and approved by Manatee County, simple as that.
9 Q Okay. In this lawsuit, I'll represent to
10 you that there's issues or there's some
11 allegations about what has been referred to as
12 gaps in sheathing, one floor and another floor
13 match up and the sheathing doesn't come all the
14 way down or doesn't connect and there will be gaps
15 in the sheathing. Do you recall that being out
16 there at Willowbrook when you did any inspections?
17 A Yes.
18 Q When you found gaps in sheathing, what
19 would be the typical course of action?
20 A Immediately notify the framer for him to
21 fix it.
22 Q How would the framer fix it, if you know?
23 A Well, it depends on what types of gaps in
24 the sheathing you're referring to and how it's
25 applied. I think you could probably get somebody

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1 who handles forensics in construction to go back
2 and reverse engineer and try to find a problem
3 with anything and say, well, that wasn't like this
4 or was like that and that's why this happened.
5 But being out in the field and looking at
6 it, it depends. Sometimes they're panelized and
7 the two wall panels were just not held tight
8 enough; if that's the case they might take the
9 two-bys that are holding them together and pull
10 everything together. There might be times where
11 maybe something wasn't lapping from the first
12 floor to the second floor; if that's the case they
13 might be able to -- it's a hypothetical -- they
14 might be able to add, there might be something
15 they might have to replace. And a gap in the wall
16 panel is something that Manatee County would look
17 at as well, which really is more of a structural
18 concern, not a waterproofing concern, because the
19 sheathing has nothing to do with the waterproofing
20 of the home.
21 Q What do you mean by that?
22 A The sheathing doesn't -- a gap in the
23 sheathing is not going to cause a water intrusion.
24 The sheathing is not what waterproofs the home.
25 That's why we don't build houses out of plywood

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1 and sheathing and leave them like that, because
2 surely they would leak. That's not what gives you
3 the waterproofing. What gives you the
4 waterproofing is the Tyvek, the wire lath, the
5 stucco, the painting, here in Florida how it's
6 sealed up.
7 Q So if there are nonstructural gaps in the
8 sheathing and then it's Tyveked, it's properly
9 lathed and stuccoed and painted and sealed, as far
10 as the waterproofing issue goes that gap or that
11 issue with the sheathing is not the issue; is that
12 fair?
13 A That is. I'm of the mindset if there's
14 something wrong and you see it, it should be
15 addressed regardless of whether it's an issue or
16 not. I wouldn't want one of my homeowners to come
17 in a home and see a hole in their sheathing. I
18 wouldn't build a home for my mother -- which is
19 the conversation we had in training. I tell all
20 the guys, pretend you're building this for your
21 mother.
22 I wouldn't specifically overlook that
23 thinking it's nothing, but to answer your specific
24 question, yes, you could have a hole the size of
25 this transcript right here and if it was properly

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1 Tyveked, wire lathed, stuccoed and painted, it
2 wouldn't leak.
3 Q Have you ever heard of the term in the
4 industry nickel gap?
5 A A gap greater than a nickel.
6 Q Specific to the use of OSB as a sheathing
7 product installed under stucco, and specific to I
8 guess ASTM C1063, there's reference to an
9 eighth-inch gap, or nickel gap, as far as when you
10 about sheathing during construction. Are you aware
11 of that issue in ASTM 1063?
12 A In regard to how it affects water
13 intrusion?
14 Q Yes, or in any respect. Do you have any
15 understanding of that?
16 A Refresh my memory.
17 Q Are you familiar with the APA, American
18 Plywood Association?
19 A Yes.
20 Q Have you ever read any of their
21 recommendations as far as the installation and use
22 of plywood regarding stucco construction?
23 A Yes.
24 Q Are you familiar with a recommendation
25 that the APA makes that says when you're

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1 installing sheathing in construction that's going
 2 to have stucco installed over it, that you should
 3 not abut sheathing, you should leave a little
 4 gap --
 5 A For expansion.
 6 Q -- for expansion/contraction of the OSB
 7 if it's to get wet whether during construction or
 8 otherwise? Are you familiar with that general --
 9 A Yes.
 10 Q Was it part of your practice in
 11 inspecting the buildings at Willowbrook to observe
 12 whether or not the exterior sheathing on the
 13 buildings was installed with a nickel gap?
 14 A I recall them coming out panelized, in
 15 which case the sheathing was already fastened to
 16 the framing members prior to. That gap is already
 17 set, that's done in a factory, so I would assume
 18 that it's done correctly.
 19 As far as joining two panels together,
 20 the overall condition of the wall sheathing is
 21 something that we looked at, specifically does it
 22 have an eighth-of-an-inch gap, very hard to
 23 determine.
 24 On a building that's three stories, from
 25 ground level to look up and tell if you have an

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1 eighth-inch gap in the OSB, you know, I'm relying
 2 on the framer, he was up there putting it in. I'm
 3 assuming that he installed it correctly. You
 4 know, if you can see something buckling or
 5 something, then, yes, you would be able to see
 6 that and you would have them remedy it.
 7 Q Let me back you up for a minute.
 8 First, do you have an opinion as to
 9 whether or not in the Willowbrook construction
 10 under the Florida Building Code, whatever was
 11 applicable at the time, whether or not a nickel
 12 gap, or an eighth-inch gap, is required between
 13 the sheathing?
 14 A I don't know that it's required by
 15 Florida Building Code, no.
 16 Q And just in your experience as a general
 17 contractor, I mean, do you have an opinion on
 18 that? When you watch construction, do you always
 19 say, hey, where's the nickel gap, or is that not
 20 an issue raised in the past?
 21 A It depends on what product we're using
 22 and whether it's conventionally framed or
 23 panelized. I assume on a panelized product it's
 24 coming out from a lumber company who specifically
 25 designed them and put them together, so I'm

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1 assuming that it's done correctly. If the guys
 2 are in the field conventionally framing, then,
 3 yes, it's something we pay attention to.
 4 Q Is it something that if the panels came
 5 out without any gap, is that something that you
 6 readily would be able to notice?
 7 A It all depends on where you saw them at.
 8 Not necessarily.
 9 Q The first floor of these buildings at
 10 Willowbrook, if I recall from the plans -- I
 11 wasn't there during construction -- is block?
 12 A Correct.
 13 Q And the second and third floor are the
 14 panels?
 15 A Correct.
 16 Q And it's fair to say that most of the
 17 exterior sheathing came out on the panels?
 18 A Correct.
 19 Q And so I guess I'm just trying to
 20 understand whether or not it's your expectation
 21 that either you or your people or your framer
 22 would be inspecting for the need for this
 23 eighth-inch gap, or nickel gap, that we're
 24 referring to. Do you have an opinion on that one
 25 way or the other?

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1 A Well, I think everyone's responsible to a
 2 certain degree if they see something that's not
 3 correct, that they would bring it to somebody's
 4 attention or do something about it. I think the
 5 framer would be more likely to see a problem with
 6 that since he's the one who unbundles it and he's
 7 the one who installs it. I think first and
 8 foremost the primary responsibility of ensuring
 9 that nickel gap is through the company who sent
 10 out a finished wall panel. They're the ones who
 11 physically sheathed it, so my expectation would be
 12 that they would ensure it was fastened at the
 13 correct spacing with the correct fasteners and the
 14 fasteners had the correct spacings.
 15 Q You mentioned buckling or bowing. Do you
 16 have a recollection as to whether or not during
 17 construction framing inspections, what have you,
 18 there were panels that were buckling or bowing?
 19 A There might have been -- I can safely say
 20 that there were probably a few instances where
 21 there was some buckling on wall panels and that
 22 was corrected.
 23 Q And just generally if that happened, how
 24 do you correct it or what is done? Do you know?
 25 A Well, it depends on where it is. Some

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1 could be trimmed, some has to be removed and
2 resheathed. Was it a buckling issue that happened
3 because it wasn't nailed correctly, was it a
4 buckling issue that happened because it sat and
5 got wet and swelled, really just depends on the
6 specific condition.
7 Q I'm not going to hold you to this because
8 it's probably pretty much a guess by you, but
9 based on your experience you might have an idea.
10 The panels come out and they're not covered or
11 wrapped or anything, are they?
12 A Yes.
13 Q They are?
14 A Yes.
15 Q Okay. And then the framer uncovers them
16 and goes and sticks them up on the building and
17 constructs the building. And at some point the
18 buildings are dried and Tyveked and all that;
19 correct?
20 A Yes.
21 Q How long would you think an average
22 building at Willowbrook, whether a four-plex,
23 six-plex -- maybe the six-plexes were longer
24 because it's a bigger building -- are out in the
25 elements getting rained on and getting wet in the

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1 general construction of a building, if you know?
2 A Every case is different. I can't recall
3 every instance on every building in Willowbrook,
4 but as a general statement the panels get there
5 within a day or two of needing to be installed
6 they're covered, and they're installed. Typically
7 it takes a week to two weeks to erect the building
8 and sheath the roof. Then, depending on how the
9 framer fared on the inspection, a day or two
10 dealing with inspections. At that point the
11 building gets dried in, roofed and Tyveked, so,
12 you know, two weeks probably on average.
13 Q Thank you.
14 Do you have any understanding of this
15 current litigation by KB Home against the various
16 subcontractors in this case?
17 A Vaguely. I mean, when I got served I
18 read the summons and I can kind of deduce what
19 this is about, yes.
20 Q Did you have an understanding independent
21 of when you left KB that the buildings had
22 tremendous water intrusion issues and there was a
23 lot of PR issues and problems with the community
24 after construction? You generally have that
25 understanding?

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1 A From the time of me leaving until where
2 we are now, yes, I'm aware. My name's been in the
3 newspaper, so yes, I'm aware.
4 Q And do you have an understanding that KB
5 entered into a settlement with the condominium
6 association and spent a tremendous amount of time
7 and money repairing the project?
8 A I have no idea what KB did after I left.
9 I'm not privy to all that.
10 Q I'm just asking you today, just based on
11 being around, did you have an understanding they
12 spent a bunch of money fixing the property?
13 A I know they spent a bunch of money, they
14 went back in and tore decks off, put decks back
15 on. Other than that, I don't know who's paying
16 for what. I have no idea.
17 Q I'll represent to you that this lawsuit
18 is KB Home's claims against the various
19 subcontractors for defective workmanship relating
20 to the construction of the project. Did you have
21 that general understanding?
22 A I did when I saw the summons, yes.
23 Q In other words, you saw the list of all
24 the parties?
25 A Yes. I didn't think KB was the ones who

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1 called me here to be deposed. I assumed it was
2 you guys, yeah.
3 Q Fair enough.
4 Based on your experience working with KB
5 and your testimony regarding KB's responsibility
6 as general contractor inspecting, supervising the
7 work, selecting the materials, do you have an
8 opinion as to whether or not KB bears some level
9 of responsibility for the construction of
10 Willowbrook and the subsequent cost to repair
11 Willowbrook?
12 MR. COGBURN: Form.
13 THE WITNESS: When they give me a gavel
14 and a robe, I'll be smart enough to make those
15 decisions.
16 BY MR. FORD:
17 Q Just based on your testimony today on the
18 responsibilities that you had for KB Home
19 inspecting the work and KB selecting the products
20 and overseeing the construction, do you have an
21 opinion as to whether or not KB, as general
22 contractor, is responsible for the proper
23 construction of the project?
24 MR. COGBURN: Form.
25 THE WITNESS: Are you asking for my



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1 opinion?
2 BY MR. FORD:
3 Q Yeah.
4 A My opinion would be I think all parties
5 share some responsibility in what needs to be
6 remediated.
7 Q And would you agree that KB is one of
8 those parties?
9 A I would say so.
10 Q I guess just a final set of questions
11 with regard to UFP. I want to clarify, as you sit
12 here today, you're not aware of any specific
13 defects that you were aware of when you were out
14 there with UFP's wall panels at the project?
15 A Correct.
16 Q You don't recall any specific
17 conversations, meetings, e-mails, anything like
18 that regarding UFP's wall panels?
19 A Not about deficiencies, just normal
20 business.
21 Q And, likewise -- I may have already asked
22 you this -- you don't have any specific
23 recollection of any conversations with any framers
24 while you were out there that they didn't know how
25 to up the wall panels, that they were confused,

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1 anything like that?
2 A No.
3 Q I think to clarify, you said that
4 whatever the wall panel layout documents are, you
5 would have had a copy of them. Was there a
6 trailer on-site, your trailer, or something that
7 you housed stuff in, or was it more mobile than
8 that?
9 A No, we had the entire three-car garage of
10 the model as our office and everyone had access to
11 it whenever they wanted.
12 Q That's what I'm trying to clarify. Those
13 kinds of documents, the layout documents for the
14 wall panels, a copy would have been retained at
15 that office?
16 MR. COGBURN: Form.
17 THE WITNESS: There was a copy in the
18 permit board at the time of framing. UFP puts
19 a copy in the panels for the framer. When he
20 opens them up they're right there for him.
21 And all the trade partners that worked
22 for me in Willowbrook had free access to Danny
23 and I's office without us being there; it was
24 left open. They knew where the plans were,
25 they knew what order they were put in, and they

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1 were instructed if you if you need something to
2 go in the office and get it.
3 BY MR. FORD:
4 Q One final question on the wall panel
5 layout documents being in the board with the
6 plans. Do you know whether or not when
7 Manatee County comes to inspect the framing that
8 they use those in any way, or do they strictly
9 rely on the plans and specifications that have
10 been permitted by Manatee County?
11 A It depends on the inspectors. For the
12 most part they're inspecting what's off of the
13 blueprint, the
14 signed-and-sealed-submitted-and-approved-by-
15 Manatee-County blueprint.
16 MR. FORD: That's all I have for you.
17 Thank you, sir.
18 MR. REYNOLDS: I'll go.
19 CROSS-EXAMINATION
20 BY MR. REYNOLDS:
21 Q Good afternoon, Mr. Brown. My name is
22 Charles Reynolds, I represent Builders
23 FirstSource. Mr. Ford's been really thorough, so
24 I may jump around a little bit here. I apologize.
25 You testified about the issue of the

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1 spruce and the yellow pine. I just want to see if
2 I can define that a little bit. As I understand
3 it, that had to do with the wood for a particular
4 column in a portion of each building; is that
5 right?
6 A Yes.
7 Q Because when I read part of your
8 statement, it wasn't clear to me. You weren't
9 saying that the wall sheathing or the other panels
10 should have been spruce, but this column area
11 should have been a yellow pine product?
12 A One specific three-ply column separating
13 the windows and the sliding glass door on the
14 second and on the third floor.
15 Q Okay. And I know you've testified to
16 this before, but just for clarity of the record
17 with my questioning, that situation was remediated
18 and fixed by Builders FirstSource; is that
19 correct?
20 A It was fixed. I handled overseeing
21 fixing it.
22 Q Okay.
23 A I mean, at that point there wasn't that
24 much Builders FirstSource did. I know they were
25 backcharged for something. Technically, I guess

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1 they paid for a lot of it.
2 Q Somebody fixed it?
3 A Yes.
4 Q And was that during your time as a
5 regional supervisor?
6 A Yes.
7 Q Okay. Did you have any direct dealings
8 with Builders FirstSource, you yourself?
9 A Extensive.
10 Q Okay. Who did you talk to at Builders
11 FirstSource?
12 A Who didn't I talk to at Builders
13 FirstSource? I pretty much talked to the entire
14 management team. I remember Jeff Oliver
15 specifically. I don't remember everyone's name.
16 When I discovered the issue and I raised the flag,
17 needless to say there was folks from BFS upper
18 management on-site pretty much daily.
19 Q Okay. And is that the response you would
20 have expected if you raise a red flag to somebody?
21 A Absolutely.
22 Q Okay. So at some point in time that
23 situation got fixed and you moved on to other
24 concerns of the project. Fair enough?
25 A Yes.

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1 project supervisor?
2 A Yes.
3 Q And do you recall any issues with the
4 orientation of the framing, or did anybody ever
5 raise that to you?
6 A No.
7 Q And if I heard you right earlier, you
8 said that framing inspection was the most
9 important inspection that takes place; correct?
10 A I would say so.
11 Q And so the framer has a chance to walk it
12 with you or with somebody prior to inspection;
13 correct?
14 A Yes.
15 Q And Manatee County inspects it?
16 A Yes.
17 Q And I believe at some point in time there
18 was a third-party inspection that occurred. Was
19 that for the framing, or did I mix that up? Was
20 that for something else?
21 A It was primarily for water intrusion.
22 There was some overlap, you know, in how the
23 framing affected water intrusion. So...
24 Q Okay. With regard to Builders
25 FirstSource other than the

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1 Q And so going forward it was not an issue
2 because it had been fixed and so all the new
3 construction that occurred after the notice was
4 the proper yellow pine product?
5 A Correct.
6 Q Mr. Ford talked a little bit about this,
7 but any gaps that may or may not have been present
8 in the wall panels, is that something that would
9 have been readily visible to you or to a
10 supervisor during any inspection, or of you, of
11 the work?
12 A Well, it would be readily available to
13 the framer and the foreman for the framing
14 company.
15 Q Okay. I just wanted to make sure it
16 wasn't a latent defect. You could see it if you
17 were there?
18 A Correct.
19 Q What about the orientation of the OSB --
20 Do you know what I'm talking about?
21 A The grain?
22 Q Yes.
23 -- being vertically or horizontally
24 aligned, is that something that you were able to
25 readily see in your job in your capacity as

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1 spruce-versus-yellow-pine issue, were there other
2 issues that arose with the wall panel that you
3 remember having to be addressed by BFS?
4 A Nothing systematic, nothing out of the
5 ordinary. The same, as with UFP, maybe a panel
6 here wasn't nailed right or something here.
7 Nothing systematic.
8 Q Okay. And you used the term earlier
9 field fix with regard to the framers, they see an
10 issue and they do a field fix. Can you explain to
11 me what that might be? What does that mean?
12 A Well, in any truss package or any wall
13 panel package from any company I've ever worked
14 with, there are general notes for common things
15 that will occur where they give you generic
16 instructions on what to do in the field to fix
17 those. So basically they're saying if this is the
18 type of situation that occurs, you don't need to
19 do an RFI and get a letter from us, this package
20 that we're giving you should suffice the county,
21 this is what we want you to do on this generic
22 fix. If it's something that's more involved, it
23 would require a specific letter from the engineer
24 of the truss manufacturer.
25 Q So would most field fixes not have to be

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1 reviewed or signed or sealed by an engineer?
2 A As long as the problem and the fix is
3 what was annotated in the documentation provided
4 by the truss company or the wall panel company,
5 then that's a correct statement.
6 Q Okay. You mentioned this just briefly.
7 After the wall panels are delivered, did you say
8 they were covered for a period of time or they are
9 not covered?
10 A No, they typically were covered.
11 Q Okay. And after delivery did BFS stay
12 on-site, or did they deliver them and somebody
13 takes delivery of them and then they leave? Is
14 that the general operation?
15 A The latter, correct.
16 Q Was there a process for signing for that
17 material? Did you have to acknowledge getting it
18 in some way?
19 A For the most part, no. When I was
20 regional manager, we did have issues regarding
21 shortages. At that point, I instructed the guys
22 to pay closer attention to the delivery and try to
23 identify any shortages or damages so that they
24 could notify whomever the supplier was quickly so
25 that it would be remedied and taken carry of

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1 without a hiccup.
2 Q This is where I'm going to jump around a
3 little bit. You talked with prior counsel about
4 the meeting that occurred with Mr. O'Neill out at
5 the site. Is my recollection correct, it was
6 Mr. O'Neill who requested to talk to you?
7 A Yes.
8 Q Okay. And did he give you a reason for
9 wanting to talk to you?
10 A Not specifically, no.
11 Q I had the same question, which is why
12 would a human resources person have called you up
13 about any issue with regard to an on-site problem?
14 Did he have some specific concern that he
15 addressed to you?
16 A He just expressed that he was on a
17 factfinding mission to see what was going on and
18 what had transpired. Ruben was in human
19 resources, but I mean he played other roles, too.
20 He was part of the executive team and, you know --
21 Q Did he indicate to you that he was having
22 trouble finding qualified people to work on the
23 project?
24 A No.
25 Q You made a comment a little earlier --

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1 actually a lot earlier -- that some of the
2 subcontractors in the area were not capable of
3 doing some things. Do you remember that
4 testimony?
5 A Refresh my memory.
6 Q You were mentioning earlier that in this
7 area some of the subcontractors couldn't handle
8 certain tasks and jobs, and I wanted to know what
9 you meant by that.
10 A Well, I think in the context that I was
11 making the statement, it was in regard to the
12 overall design of Willowbrook being constructed,
13 second and third floor, out of frame material.
14 Q Okay.
15 A Most of the subcontractors locally are
16 not -- it's more of a regional thing. I'm sure
17 the guys in California wouldn't know what to do
18 with cinder block, they don't do CMU construction,
19 but they're probably more familiar with a
20 structure like that than necessarily the labor
21 force down here.
22 Q Okay. Did you have any concern about the
23 ability to do the second- and third-floor wall
24 panel construction?
25 A No.

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1 Q Did KB have a person who was assigned a
2 job title of value engineering vice president or
3 value engineering person?
4 A I don't really remember. I didn't get
5 too much involved in what the bean counters did.
6 Q No one came on-site and said, I'm the
7 vice president of value engineering or anything
8 like that?
9 A No.
10 Q When you talked a little bit about WCPC,
11 did they produce a report of any kind after they
12 would complete this inspection?
13 A Yes.
14 Q And who was that furnished to?
15 A It was furnished to the on-site
16 supervisors and someone at the division level.
17 Q Okay. And then how was the decision made
18 as to whether or not to take WCPC's
19 recommendations, if any, and implement them?
20 A Well, for the most part, I mean if WCPC
21 made a recommendation, a lot of times it was
22 something we had identified as well and already
23 had taken measures to remedy it. In some cases
24 maybe it was something we didn't see and in a case
25 like that it was handled in a different way.

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1 Sometimes I would send an e-mail to the trade
2 partner and say, hey, take a look at this report,
3 we need to fix it. Sometimes I made a phone call.
4 It depended on what needed to be fixed and were
5 the people on-site or not, what stage they were
6 in.
7 Q Was there ever a WCPC recommendation that
8 was not implemented?
9 A I think WCPC made recommendations. I
10 don't know if they were all implemented. I know
11 all of the recommendations they made regarding
12 something that was deficient was taken care of.
13 Q In terms of Manatee County, is there a
14 framing inspection and is there a wall sheathing
15 inspection? Are those two separate things, or did
16 they occur together?
17 A Separate inspections.
18 Q Do you ever recall there being a failed
19 wall sheathing inspection out at Willowbrook as
20 opposed to framing?
21 A Yes.
22 Q Do you recall how many times that might
23 have happened?
24 A I don't recall the exact number of times.
25 I know that it did happen on occasion primarily

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1 due to what we discussed earlier regarding the
2 nailing pattern on the prefabricated wall panels.
3 Q So was it the same inspector who would do
4 both inspections?
5 A There was numerous inspectors that
6 inspected. They rotated. They do that purposely.
7 Q Was there a separate wall sheathing
8 inspector and a framing inspector, or did the
9 inspections occur simultaneously?
10 A They don't have to occur simultaneously.
11 They usually don't occur simultaneously.
12 Q Okay.
13 A And they are done by whomever is a
14 licensed structural inspector for Manatee County.
15 Q Okay.
16 A Typically, the wall sheathing is done at
17 the same time as the roof sheathing, which is
18 immediately following completion by the framer,
19 and that's what allows you to dry-in the roof and
20 the walls.
21 Q Okay. And is it your recollection that
22 if you failed a wall sheathing inspection, it
23 typically had to do with a nailing pattern so in
24 the field they could add another nail to fix that
25 problem?

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1 A That's not the only reason you could fail
2 a wall sheathing inspection, but I would say 95
3 percent of failed wall sheathing inspections are
4 for fasteners.
5 Q Do you ever recall a Manatee County
6 inspector failing Willowbrook for a wall sheathing
7 inspection due to a gap?
8 A Not a wall sheathing inspection, but a
9 framing inspection.
10 Q In other words, they failed a framing
11 inspection because of a gap with the wall
12 sheathing?
13 A Correct.
14 Q And do you recall what the problem was?
15 A There was too large of a gap --
16 Q Okay.
17 A -- in the wall sheathing.
18 Q Do you remember how you addressed that
19 situation or how that situation was addressed or
20 fixed?
21 A Yes. A small piece of plywood, which in
22 the field they would call a rip, was installed and
23 the two-by-fours on the edge of adjacent wall
24 panels were brought in closer together and
25 everything was railed.

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1 Q Okay. And then it was reinspected and
2 passed?
3 A Correct.
4 Q What was the time or the approximate date
5 of your settlement with KB?
6 A I have no idea.
7 Q Was it in the last two years?
8 A No.
9 Q You referenced that you had weekly
10 meetings with project superintendents and the
11 supervisors would have weekly meetings; is that
12 correct?
13 A I was referring to the community team
14 meeting.
15 Q Community team meeting.
16 A Sales counselors, customer service
17 representatives, superintendents for each
18 neighborhood met together with a sponsor.
19 Q Were there records kept of those
20 meetings?
21 A There were.
22 Q Like minutes of the meetings, or was
23 there a form that you would fill out?
24 A It was a form.
25 Q And who maintained those? Would you turn

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1 them in someplace? Were they kept someplace?
2 A It was turned in and kept at the division
3 level.
4 Q Just from my personal experience, in some
5 of these projects there will be weekly meetings of
6 various contractors who maybe are working that
7 week on something and those are kept as well as
8 weekly meetings. Did you ever have those kinds of
9 meetings among the subs?
10 A Primarily they were safety meetings,
11 which there was not minutes kept but more so
12 attendance.
13 Q Other than the issue with the columns and
14 the spruce versus the yellow pine, do you have any
15 recollection of having to call Builders
16 FirstSource for any issue related to their wall
17 panels?
18 A No.
19 MR. REYNOLDS: I think that's all I have.
20 Thank you.
21 MR. KRASINSKI: Before we go forward, do
22 you want to get an understanding of what we're
23 in for?
24 (Discussion off the record.)
25 MR. FORD: For the record, we talked

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1 about there being nine to ten more folks with
2 questions, probably a few more hours,
3 Mr. Brown, so I think the consensus is to break
4 for today. Is there someone here that can step
5 up to say they will re-notice or subpoena or
6 continue this deposition?
7 MR. KOPACZ: I don't think you need
8 another subpoena. He's still under subpoena.
9 MR. FORD: You'll agree to reappear? It
10 may be in a month. We don't know when it will
11 be.
12 THE WITNESS: I completely understand the
13 subpoena thing. We'll have to work on the
14 scheduling part.
15 MR. FORD: Is there someone that wants to
16 take the lead?
17 MR. LUBLINER: I'll do it.
18 MR. KOPACZ: Is there a better day of the
19 week that's more convenient for you?
20 THE WITNESS: Is it going to be a
21 marathon like today?
22 MR. LOVE: For the benefit of those on
23 the phone, who volunteered to take the lead?
24 MR. LUBLINER: Jason Lubliner with A&D
25 will do it.

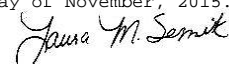
Page 227

1 COURT REPORTER: Did you want to order?
2 MR. KOPACZ: Sure.
3 COURT REPORTER: Did you want to read and
4 sign?
5 MR. COGBURN: You don't want to waive --
6 I'm not your lawyer -- but you can always waive
7 later.
8 MR. WOODARD: Madam Court Reporter, this
9 is Michael Woodard. I'll take a copy.
10 MR. FORD: Copy.
11 MR. KOPACZ: You have the right to read
12 what she wrote up or you can trust that she
13 wrote up everything that was said accurately.
14 That's your right, either way.
15 THE WITNESS: Can I read it later?
16 MR. COGBURN: Yes. They'll mail you a
17 copy.
18 COURT REPORTER: What is your address?
19 THE WITNESS: 2276 McTague,
20 M-c-T-a-g-u-e, Street, North Port, 34291.
21 (The deposition was adjourned at 4:19
22 p.m.)
23
24
25

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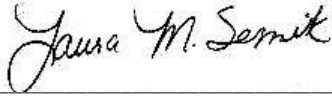
CERTIFICATE OF REPORTER

1 STATE OF FLORIDA)
2 COUNTY OF HILLSBOROUGH)
3
4
5 I, Laura M. Semik, Registered Professional
6 Reporter, certify that I was authorized to and did
7 stenographically report the deposition of
8 MATTHEW BROWN; pages 93 through 227; that a review
9 of the transcript was requested; and that the
10 transcript is a true record of my said
11 stenographic notes.
12 I further certify that I am not a relative,
13 employee, attorney, or counsel of any of the
14 parties, nor am I a relative or employee of any of
15 the parties' attorneys or counsel connected with
16 the action, nor am I financially interested in the
17 action.
18 Dated this 1st day of November, 2015.
19
20
21
22
23
24
25



Laura M. Semik, RPR

Page 229

1 CERTIFICATE OF OATH
2
3 STATE OF FLORIDA)
4 COUNTY OF HILLSBOROUGH)
5
6
7 I, Laura M. Semik, Registered Professional
8 Reporter, Notary Public, State of Florida at
9 Large, certify that MATTHEW BROWN personally
10 appeared before me on October 22, 2015 and was
11 duly sworn.
12
13 Signed this 1st day of November, 2015.
14
15 
16
17
18 Laura M. Semik, RPR
19 Notary Public, State of FL
Commission No. EE 844129
Expires: 02/06/2017
20
21
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1 DEPOSITION ERRATA SHEET
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17
18 SIGNATURE: _____ DATE: _____
19 MATTHEW BROWN
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1 DEPOSITION ERRATA SHEET
2
3 Our Assignment No. J0175826
4 Case Caption: KB Home vs. A&D, et al.
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6
7 DECLARATION UNDER PENALTY OF PERJURY
8
9 I declare, under penalty of perjury, that I
10 have read the entire transcript of my Deposition
11 taken in the captioned matter or the same has been
12 read to me, and the same is true and accurate,
13 save and except for changes and/or corrections, if
14 any, as indicated by me on the DEPOSITION ERRATA
15 SHEET hereof, with the understanding that I offer
16 these changes as if still under oath.
17
18
19 Signed on the ____ day of _____, 20__.
20
21
22 _____
23 MATTHEW BROWN
24
25

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1 DEPOSITION ERRATA SHEET
2
3 Page No. _____ Line No. _____ Change to: _____
4 Reason for change: _____
5 Page No. _____ Line No. _____ Change to: _____
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18 SIGNATURE: _____ DATE: _____
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