

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

SEAWEST INVESTMENT ASSOCIATES,  
LLC, a Washington limited  
liability corporation,

Plaintiff,

vs.

LUIN LEISHER and SHIRLEY  
LEISHER, husband and wife,

Defendants and  
Third-Party Plaintiffs,

vs.

COMMONWEALTH LAND TITLE COMPANY  
OF PUGET SOUND, LLC,

Third-Party Defendants.

No. 08-2-34857-1 SEA

**FILED**  
KING COUNTY, WASHINGTON

JUL 29 2010  
SUPERIOR COURT CLERK  
BY ANDREW T. HAYES  
DEPUTY

DEPOSITION UPON ORAL EXAMINATION OF

MATTHEW DAVIS

Tuesday, May 4, 2010



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# 5/4/2010 Deposition of Matthew Davis

## I N D E X

Witness: MATTHEW DAVIS

Page(s)

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Examination by Mr. Daudt	5
Examination by Mr. Johnson	75

## E X H I B I T S

No.	Description	Identified
57	2-page e-mail string dated 10/2/08, Subject: Revised Addendum	5

## E X H I B I T S R E F E R E N C E D

No.	Page(s)
9	78
19	76

No.	Deposition of Kenneth Bloch	Page(s)
34	30-page Residential Real Estate Purchase and Sale Agreement between Seawest and the Leishers, signed and dated 11/4/04, Bates- stamped CPS 0001 - 0030 and WPB 0002 - 0031	11

# 5/4/2010 Deposition of Matthew Davis

## EXHIBITS REFERENCED - (Continuing)

No.	Deposition of Kenneth Bloch	Page(s)
37	2-page Third Extension Agreement between Seawest and the Leishers, extending closing date to 9/30/08, signed by Seawest and dated 8/20/08, Bates-stamped CPS 0035 - 0036 and WPB 0039 - 0040	55
41	2-page letter to the Leishers from Matthew Davis, Re: Property Maintenance, dated 12/12/06	12
44	2-page letter to Kenneth Bloch from Matthew Davis, Re: Leisher/Seawest, dated 7/11/08	17
50	2-page e-mail string between Matthew Davis and Rob Weber, Subject: Confirming extension of Closing date, dated 9/30/08, Bates-stamped DEMCO 0081 - 0082	54
52	4-page document containing e-mail to Paula Magee from Rob Weber, Subject: Leisher/Seawest, dated 10/1/08, attaching Form of Deed and Closing Addendum, Bates-stamped WPB 0518 - 0521	46
53	1-page e-mail to Rob Weber from Matthew Davis, Subject: Leisher, dated 10/1/08, Bates-stamped DEMCO 0074	47
54	3-page document containing e-mail to Matthew Davis from Rob Weber, Subject: Revised Addendum, attaching Addendum to PSA, Bates-stamped WPB 0546 - 0548	48

1 BE IT REMEMBERED that on Tuesday, May 4, 2010, at 1:03  
2 p.m. at the law offices of Foster Pepper, PLLC, 1111 Third  
3 Avenue, Suite 3400, Seattle, Washington, appeared the  
4 aforementioned witness before Katie J. Nelson, CCR, RPR, Notary  
5 Public in and for the State of Washington, residing in  
6 Redmond.

7 WHEREUPON, the following proceedings were had, to wit:

8 (Exhibit Number 57 marked.)  
9

10 MATTHEW DAVIS, having been called as a witness by the  
11 Third-Party Defendants was duly sworn  
12 and testified as follows:  
13

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

15 BY MR. DAUDT:

16 Q Good afternoon. Could you please state your full name  
17 and address for the record.

18 A My what?

19 Q Full name and address.

20 A Matthew Davis; 3233 56th Place Southwest, Seattle,  
21 Washington 98116.

22 Q Have you had your deposition taken previously, Mr. Davis?

23 A Never.

24 Q Really?

25 A Really. I've been on the other side countless times but

1 never had the pleasure.

2 Q Having indicated that, you know the ground rules for  
3 depositions?

4 A Pretty well.

5 Q If you need to take a break, just let me know.

6 My name is Mike Daudt. We are here for the Seawest  
7 vs. Leisher vs. Commonwealth lawsuit concerning a  
8 transaction for purchase and sale of real estate in the  
9 city of Lake Sammamish that is the subject of the  
10 lawsuit. You're familiar with that transaction, I take  
11 it?

12 A I am.

13 Q I guess, before I get into that, I'll just ask a few  
14 background questions. Where did you go to law school?

15 A University of Kansas.

16 Q When did you graduate from there?

17 A 1991.

18 Q And where did you go to college?

19 A University of Kansas and University of Grenoble.

20 Q Did you graduate from Kansas?

21 A Yes.

22 Q What year was that?

23 A 1986. 1987. 1987, I believe. I'm not sure.

24 Q Okay. What did you do after law school? Where did you  
25 go to work?

1 A After law school I left the state of Kansas and came to  
2 Seattle. Passed the bar exam and worked at Rohan,  
3 Goldfarb & Shapiro from 1991 to 1994.

4 Q Here in Seattle?

5 A They were.

6 Q They were. When did they cease to be here in Seattle?

7 A Well, the attorneys are still here. Michael Goldfarb is  
8 an attorney in solo practice. Tony Shapiro is a partner  
9 at Hagens Berman Shapiro. Bob Rohan, I have no idea.

10 Q And where did you work after that?

11 A Demco Law Firm.

12 Q So you've been with Demco from what period of time?

13 A 1994 to the present.

14 Q And I take it you're a partner there now?

15 A I am a member -- shareholder, yes.

16 Q Okay. And when did you become a shareholder?

17 A January 1, 2005.

18 Q Do you have an area of emphasis or focus in your law  
19 practice?

20 A Whatever interests me. I really don't. I tend to do a  
21 lot of real estate related stuff, but...

22 Q What percentage of your practice would fall under the  
23 real estate umbrella?

24 A Probably 60.

25 Q And what's the rest of it, just in general terms?

1 A Antitrust, guardianships, little personal injury, some  
2 securities work, business formation, other litigation.  
3 That's probably the last year.

4 Q Okay. Has it changed much in the last five years?

5 A No, I just -- a lot of people refer cases to me and I --  
6 I don't -- I don't do criminal law and I don't do family  
7 law. Other than that, I do it.

8 Q Within real estate, how much litigation versus  
9 transactional?

10 A I would probably say 70 percent litigation; 30 percent  
11 transactional. And my transactional stuff is not -- I do  
12 do closings. It's not typical transactional stuff, it's  
13 usually transactional with a dispute twist.

14 Q What do you mean by that?

15 A Difficult transactions where the parties are not getting  
16 along.

17 Q So in other words, not necessarily at the outset of a  
18 transaction but where there are some issues that have  
19 arisen during the course of it --

20 A Right.

21 Q -- that need some lawyering?

22 A You can call it prelitigation, a lot of it. Some work I  
23 do straight-up transactional, it's just not a big focus.

24 Q Okay. Setting aside this case, does the -- you're  
25 familiar with the term/phrase Form 17? You know what



1           that is?

2           A     Very; yes.

3           Q     That's the seller disclosure form that has come up with  
4                 to carry out the seller disclosure requirement of  
5                 Washington statute?

6           A     Right.

7           Q     How does it come up in your real estate practice?

8           A     Well, it comes up in my real estate practice in that I  
9                 confer, at least on an annual basis, with the people of  
10                the legislature who talked about revising it. I teach  
11                classes to real estate agents and to lawyers about it. I  
12                litigate cases arising out of it on both sides. I would  
13                say that the disclosure statement, or the lack of a  
14                disclosure statement, is probably a focal point in half  
15                of the real estate litigation I do.

16          Q     And when you say it's a "focal point," in other words,  
17                 half of the real estate litigation you're doing, it's  
18                 absent, or is it misrepresentations that's contained on  
19                 it?

20                         MR. OSBORN: Let me suggest something; you're  
21                         both going to have problems. You need to pause, Matt,  
22                         between his question and your answer --

23                         THE WITNESS: Fair enough.

24                         MR. OSBORN: -- and slow down. Because you're  
25                         not turning red yet, but the reporter will soon and it

1 will be your fault. So slow down, guys.

2 THE WITNESS: Who are you with?

3 THE COURT REPORTER: I'm with Watkins  
4 Reporters.

5 THE WITNESS: Phew, I don't want to make my own  
6 court reporters mad.

7 I would say that it's a focus either, and a question,  
8 of whether or not it was given, whether it was  
9 supplemented, or whether or not it was accurate. All  
10 three of those.

11 Q (By Mr. Daudt) Does it come up that often, where it's  
12 just flat-out not there?

13 A Yes.

14 Q Well, any way, in terms of transactional work that you  
15 do, do you ever find yourself in position of advising  
16 clients one way or another on whether it should be done,  
17 or what the consequences of, if you're representing a  
18 buyer, of it not being there?

19 A Of the disclosure statement?

20 Q Mm-hm (answers affirmatively).

21 A If I represent a party in a transaction, the subject of  
22 the disclosure statement comes up necessarily.

23 Q What about its absence or --

24 A The discussion would be, in the first instance, whether  
25 or not a disclosure statement of any kind is required.

1 And the second would be the consequences once it is  
2 delivered, and when representing a buyer, to ensure they  
3 understand the deadlines and the rights that they have,  
4 and the manner in which they would have to exercise those  
5 rights.

6 Q Okay. Let me go ahead and have you take a look at one of  
7 the exhibits in front of you, Number 34. It's right  
8 there.

9 I've had other witnesses testify about this being the  
10 purchase and sale agreement between Seawest and the  
11 Leishers.

12 Did you have occasion to review that at any point in  
13 time in the past?

14 A Yes.

15 Q I'll get into the background of it a little bit more.  
16 But since we were talking about Form 17, I wanted to ask  
17 you, when you were looking at it at the time you were  
18 working for Seawest, did you ever notice that there was  
19 not a Form 17?

20 A No.

21 Q Why not? Or just didn't come up, or...?

22 A I was not involved with this transaction at the time that  
23 it was negotiated. And as a result, I assumed that a  
24 disclosure statement was provided in connection with the  
25 initial contract formation.

1           And it, because I was involved so much later than  
2           contract formation, it simply did not occur to me as a  
3           possibility it would not have been provided.

4       Q     Okay. When did you first get involved in this  
5           transaction?

6       A     Date wise, would be hard to say. I've given you guys my  
7           e-mails. It would be sometime around the earliest of the  
8           e-mails that I produced. I'm thinking in maybe the 2005  
9           or 2006 time frame, but I'm just operating on a guess  
10          right there.

11      Q     Well, why don't you turn to Exhibit Number 41 in front of  
12           you. These are all exhibits that have been marked in  
13           prior depositions.

14           Give you a chance to read through that.

15      A     Right.

16      Q     Do you recognize Exhibit 41?

17      A     I do.

18      Q     It's a letter you wrote to the Leishers in connection  
19           with this transaction?

20      A     It is.

21      Q     It's dated December 12, 2006?

22      A     Yes.

23      Q     Was this at or around the time you were first becoming  
24           involved in this transaction?

25      A     Yes.

1 Q Can you give me an understanding as to why you were  
2 being -- I mean, the letter obviously speaks for itself;  
3 I guess we don't need to reread the letter. But beyond  
4 the issues described in the letter, was there any other  
5 reason, that you can tell me, why you were being engaged  
6 in connection with this transaction?

7 MR. OSBORN: I would instruct you not to  
8 testify with regard to what you were told by Matt Aatai  
9 or anyone else from Seawest.

10 THE WITNESS: By December of 2006, I was acting  
11 in a capacity that I would say was general counsel to  
12 Seawest. And I was dealing with this because it was an  
13 issue that came up in a transaction of Seawest's that I  
14 handled in the ordinary course just like any other.

15 Q (By Mr. Daudt) I see.

16 A So I would say that, just because I at least believed  
17 that I was general counsel at the time.

18 Q Okay. You were general counsel, I mean, you were working  
19 for Demco, but you're their go-to lawyer?

20 A By "general counsel," I just mean that I was -- I was an  
21 attorney who was on call for Seawest. And that when  
22 something, for example, when something like this came up,  
23 there was no establishment of a new attorney-client  
24 relationship. There was no, really, new matter opened,  
25 it was simply just the ongoing process of providing --

1 Q General advice?

2 A -- advice as needed.

3 Q When did you first start working for Seawest as an  
4 attorney?

5 A I am not sure. I believe it was 2004, but I'm not  
6 positive.

7 Q And did that then develop into this, as you're calling  
8 it, general counsel --

9 A Yes.

10 Q -- kind of relationship?

11 A Yes. I started representing them in an earnest money  
12 dispute --

13 Q I see.

14 A -- and it just evolved.

15 Q Have you represented Seawest in litigation as counsel of  
16 record?

17 A Yes, yes.

18 Q Do you know how many times?

19 A More than six, less than 12.

20 Q Are these lawsuits where they are suing or being sued or  
21 both?

22 A Both. Ranging from landlord-tenant matters to lien  
23 claims, condemnation case, at least the aftermath of a  
24 condemnation case, so a wide variety.

25 Q How about lawsuits involving purchase and sale agreements

1           that have not closed for some reason? Have you handled  
2           any of those for Seawest?

3       A     No.

4       Q     Were you involved in dealing with the City of Sammamish  
5           also in connection with the Leisher property?

6       A     Yes.

7       Q     What was your role in that?

8       A     The role changed over time, but it was essentially  
9           working with the City of Sammamish to try to resolve  
10          certain land use or environmental concerns to their  
11          satisfaction.

12      Q     As you sit here today, do you recall what those issues  
13          were?

14      A     My recollection is a bit vague, but my -- my recollection  
15          is that a trench was dug on the property and that the  
16          city later objected to that trench. And the question  
17          concerned whether digging the trench was a violation of  
18          ordinance and what was going to be done about it.

19      Q     Who dug the trench, do you know?

20      A     I don't know. I never found out.

21      Q     Did it matter for purposes of your dealings with the  
22          Leishers?

23      A     I don't think it mattered for what I did. It was a  
24          question that other people were very focused on, but it  
25          didn't affect my own dealing with the city.

1 Q Well, and I can appreciate it wouldn't necessarily affect  
2 what you're doing with the city. I guess now I'm turning  
3 back to the Leishers and dealing with that transaction.

4 As I understand it, that trenching work, which I take  
5 it amounted to, from the City's perspective, draining of,  
6 or partial draining of, a wetland created a code  
7 violation. I take it a code violation was something  
8 along the lines of, you're either draining or grating or  
9 doing something without a required permit. Was that  
10 generally what happened?

11 A That was generally, that something was done without a  
12 required permit. I never got a distinct answer from the  
13 City of Sammamish as to what exactly required a permit  
14 and why.

15 Q Do you recall that it resulted in a code violation being  
16 recorded on the property?

17 A I do.

18 Q And that created, then, an issue on title?

19 A It did create an incumbrance on title.

20 Q Do you recall what -- how that issue, then, was  
21 approached in the Leisher transaction?

22 A I recall that Ken Bloch and I had many discussions about  
23 it and probably e-mails. I really don't remember, other  
24 than it being an issue, how it was resolved. I'm not  
25 even entirely sure as to what the positions of the



1 parties were, other than that the Leishers said that they  
2 were not responsible for it. Documents would certainly  
3 refresh my recollection.

4 Q We do have at least some of the documents that might help  
5 you recall some of that. If you could turn to Exhibit  
6 Number 44. Give you a chance to look at that, and I'll  
7 ask you if you recall this document.

8 A I do recall this.

9 Q Did you write this letter?

10 A Yes, I did.

11 Q Referring to this letter, does this refresh your  
12 recollection at all concerning the code violation issue?

13 A In part, it does.

14 Q Okay. Having read this letter, well -- let me strike  
15 that and start over.

16 It appears from this letter that at least on behalf  
17 of Seawest, you were taking the position that it was the  
18 Leishers' responsibility to cooperate to remove the  
19 violation?

20 A It was my position that -- I would say yes, it was my  
21 position that the Leishers were required to cooperate  
22 with any efforts to cure the violation. Yeah, I would  
23 say that's true.

24 Q And now that you've read the letter, can you explain to  
25 me why -- what source of -- what was the source of their

1 duty to cooperate in that regard? Let's say -- well, let  
2 me take a step back here.

3 I'll just represent to you that I've heard some  
4 testimony to the effect that this might -- that the  
5 trenching that led to the code violation might have been  
6 done by Seawest or, you know, at Seawest's direction. If  
7 that were the case, what would the Leishers', really,  
8 duties be there, to clear that code violation?

9 A Well, I think the Leishers, in the first instance, had a  
10 duty to maintain the property in its existing condition.  
11 And so the -- I think that that duty would, at least in  
12 my mind, encompass a duty to cooperate with efforts if  
13 the purchaser had done something that caused an  
14 enforcement action, to cooperate with that. But more  
15 broadly, I would say that the implied duty of good faith,  
16 which requires the parties to cooperate so that both may  
17 obtain the benefit of the agreement, would require that  
18 the owner at least sign off on documents to permit that  
19 to happen, given the fact that the owner is the only one  
20 withstanding to do so.

21 Q Okay.

22 A That would be one of the rare instances in which I think  
23 the implied duty of good faith would actually directly  
24 apply.

25 Q Okay. While we're on this letter, the letter, near the

1 end of it, states that, essentially, Seawest's request or  
2 demand, depending on how you want to put it, that  
3 Leishers comply with the terms concerning the condition  
4 of the property at closing, and then ends, that  
5 paragraph, "Any failure to do so will result in damages  
6 to Seawest or jeopardize the closing."

7 Do you see that?

8 A Yes.

9 Q Was this a genuine expression of an intention on the part  
10 of Seawest to potentially not close the transaction, if  
11 this item was not satisfied?

12 A This is a statement that Seawest will enforce its legal  
13 rights if the Leishers do not perform the agreement. And  
14 it's a factual statement that if they don't perform, they  
15 would be liable for damages. And that if they don't  
16 perform in a material way, that that would excuse  
17 Seawest's performance.

18 But it's a future-looking statement about the fact  
19 that Seawest would exercise its rights if the Leishers  
20 don't perform. So I think that it's -- when I write  
21 things like this, I try to be very precise. And it is  
22 not a -- it is not a statement that Seawest will not  
23 perform under the existing facts. And it's -- I believe  
24 it explicitly acknowledges that what Seawest could do  
25 about any future breach would depend upon the nature of

1 the breach.

2 So I would say no, it's definitely not a statement  
3 that Seawest, at that point, had any intention not to  
4 perform or was threatening not to perform.

5 Q Your intent in this letter was to communicate,  
6 essentially, if things got worse than they were at the  
7 present time, that that might result in a material breach  
8 that could justify nonclosing?

9 A Well, things wouldn't have had to have gotten worse. If  
10 things had stayed the way they were up to closing and  
11 were the same at closing as they were when I wrote the  
12 letter, then the Leishers would have been in breach of  
13 the agreement. Whether or not that breach would be  
14 material and justify Seawest's failure to perform was a  
15 question that I wasn't even contemplating at the time,  
16 but it was certainly within the realm of the possible  
17 consequences.

18 So it's a simple statement that, we expect you to  
19 perform, and if you don't, whatever consequences the law  
20 visits upon you, we will -- we will invoke.

21 Q Okay. Well, would it be fair to say that you at least  
22 wanted to get the message across to Mr. Bloch, Leishers'  
23 attorneys, that there was a possibility of the  
24 transaction not closing?

25 MR. JOHNSON: Object to the form.

1 THE WITNESS: I don't -- it wasn't my  
2 intention. And as I read the letter, there's no  
3 suggestion that the agreement will not close.

4 I think there's a statement that, If you don't  
5 perform, that's going to jeopardize closing. Which, to  
6 me, is a way of saying that, If you expect Seawest to  
7 close, you have to perform yourself.

8 And I guess, buried within that somewhere, is the  
9 implied statement that, And if you don't, then Seawest  
10 might not perform. But that's, at least to my way of  
11 thinking, so deeply buried and so contingent upon other  
12 things, that I don't think that that's -- I don't think  
13 that threat should be read into the letter.

14 Q (By Mr. Daudt) Okay.

15 A I have situations where I have written letters where I've  
16 said, If this is not done, we will not close. And this  
17 intentionally was not that kind of letter.

18 Q I'm going to turn back to Exhibit 34. Wanted to have you  
19 focus on, if you would, on the page that has Bates Number  
20 WPB 0017. It's probably about halfway through  
21 Exhibit 34.

22 And the Paragraph L there is the last paragraph on  
23 that page. Just read that to yourself. Let me know when  
24 you've had a chance to read it enough.

25 A I have.

1 Q You're familiar with the paragraph, I take it? You  
2 didn't take long to read it.

3 A I'm very familiar with this paragraph.

4 Q Why is that?

5 A I've read it many times.

6 Q Why?

7 A This is the kind of paragraph that, in any transaction, I  
8 would pay careful attention to, because it substantially  
9 affects postclosing rights. And I'm sure that I also  
10 read it many times in connection with my conversations  
11 with Ken Bloch.

12 Q Did it bare on the -- some of these issues you were  
13 addressing in your letter as well?

14 A Yes. And that would be in connection with, in part, the  
15 last e-mail that we looked at, in which I pointed out  
16 that Seawest had a right to expect performance of  
17 Leishers' obligations under the purchase and sale  
18 agreement.

19 And one of the reasons why, in a situation like this,  
20 I advised my clients to monitor performance and to insist  
21 upon performance is that clauses like Paragraph L make it  
22 virtually impossible after closing to enforce a cure of  
23 some nonperformance that existed at closing.

24 Q So, for example, the trash and junk and so forth that  
25 apparently there was some quantity of on the property

1 prior to closing, and you had a concern that this might  
2 affect the ability of Seawest to complain about that or  
3 seek some remedy for that after closing?

4 A I would think that after closing, under Subparagraph I  
5 here, it would be almost impossible for Seawest to raise  
6 any complaint about the condition of the building or the  
7 condition of the property after closing.

8 And so if closing is going to be a formal acceptance  
9 by Seawest of the actual existing condition of the  
10 property, then Seawest has rights before closing but not  
11 after, and so that would make me focus on something like  
12 this.

13 Q Okay. Did it ever occur to you that this language in  
14 this paragraph, I think it's L rather than I, just based  
15 on alphabetical --

16 A Oh, Paragraph I, I meant Subparagraph I, about five lines  
17 down.

18 Q Oh, or little one, I guess, is what I would call it?

19 A Sure. I don't use those in my own writing. I guess it's  
20 a small Roman numeral one.

21 Q Probably good to avoid it for that very reason.

22 A Exactly.

23 Q Did it ever occur to you, in looking at any of this  
24 language in this paragraph, that it might have some  
25 bearing on whether the seller would be excused or would

1 be deemed to have waived a Form 17 disclosure?

2 MR. OSBORN: I think you misspoke. You said  
3 seller would have been deemed to waive.

4 MR. DAUDT: You're right. Let me re-ask the  
5 question.

6 Q (By Mr. Daudt) At the time you were working on this  
7 transaction, in 2008 or prior, did it occur to you in  
8 your review of this paragraph that it might be deemed a  
9 waiver of the buyer's right to receive a Form 17 seller  
10 disclosure?

11 A No, that would not occur to me.

12 MR. JOHNSON: Object to the form of the  
13 question.

14 THE WITNESS: No, that would not occur to me  
15 from this paragraph.

16 Q (By Mr. Daudt) Why not?

17 A Because this paragraph could not possibly be a waiver of  
18 the right to receive the disclosure statement.

19 Q Why is that? Why do you feel that way?

20 A Because the form of the disclosure statement itself is  
21 mandated by statute word for word, and so it's not a  
22 substitute for the disclosure statement.

23 And we know how picky the legislature is about the  
24 statute, the statutory form, because they change it  
25 almost every year.



1           It could not be a waiver, because the RCW 64.06.020,  
2           Subsection 2 or 3, I think, discusses waiver. And the  
3           requires -- unless the buyer has waived the right to  
4           receive the disclosure statement, that's -- that language  
5           requires pretty explicit waiver language, and I believe  
6           that there is even language in the legislative history,  
7           if it is legislative history, to that effect.

8           But in my experience, language like this would -- I  
9           have never seen any successful argument based on anything  
10          other than a straight, "I waive the right to receive the  
11          real property transfer disclosure statement."

12       Q    So in your opinion, an effective waiver would have to say  
13           something along the lines of, Buyer hereby waives the  
14           right to receive the seller disclosure required under RCW  
15           64.06, or something along those lines?

16       A    It would have --

17                   MR. JOHNSON: Hold on. Object to the extent it  
18           calls for legal conclusion or legal opinion.

19                   THE WITNESS: In my experience, that is both,  
20           would be the requirement of the law but also would be,  
21           universally, the approach that I've seen courts take when  
22           faced with that question.

23       Q    (By Mr. Daudt) Was the seller disclosure requirement  
24           under RCW 64.06 something that was ever discussed between  
25           you and Mr. Bloch or anyone else at the Wolfstone firm?

1 A No.

2 Q Did you develop a view at the time you were working on  
3 this, as to whether a Form 17 seller disclosure is  
4 something that would have been required by the statute?  
5 In other words, whether this transaction was subject to  
6 the seller disclosure requirement under RCW 64.06?

7 A I knew after speaking with Matt Aatai for about five  
8 minutes about this transaction that a disclosure  
9 statement was required.

10 Q And that was back in '06?

11 A Yes.

12 Q Okay.

13 A We did not discuss it but I -- I -- from the moment he  
14 began discussing the transaction with me, I knew that one  
15 was required. I simply assumed that it had been given.

16 Q What information was it that caused you to develop that  
17 view?

18 A That he was purchasing a piece of real property with a  
19 single-family residence on it.

20 Q And I don't know if you followed the course of the  
21 litigation in this case at all or not, have you?

22 A To a degree. I haven't read pleadings, but I've -- I've  
23 been kept generally familiar. I don't even know who the  
24 parties are right now or what the status is, so I guess  
25 not too much.

1 Q Are you familiar with the order that -- the orders that  
2 have been entered into Seawest's favor in this case?

3 A In a very general sense. I don't believe I've read any  
4 of them.

5 Q Have you gained an understanding that the judge  
6 essentially agreed with your opinion on the view of  
7 whether the Form 17 was required in this case?

8 A That is my understanding.

9 Q I take it that's no great surprise to you?

10 A It is -- it is not. This is a topic that comes up  
11 regularly in my life and that I don't consider to be  
12 subject to much, if any, debate.

13 Q At what point in time did your work on this transaction  
14 come to an end, if it did?

15 A My work on this case came to an end on the closing date,  
16 when Seawest tendered payment to the closing agent.

17 Q You weren't thereafter asked to do anything further on  
18 the transaction?

19 A No.

20 Q I think you've been handed -- well, it's in the pile  
21 there, Exhibit Number 57. Should be at the bottom of the  
22 pile.

23 MR. OSBORN: What is 57?

24 MR. DAUDT: It is this one right here  
25 (indicating), Chris. We just marked it.

1 MR. OSBORN: Okay. Thank you.

2 Q (By Mr. Daudt) Let me know when you've had a chance to  
3 review --

4 A I have.

5 Q -- Exhibit Number 57.

6 Do you recall this exchange of e-mails?

7 A I do.

8 Q So the closing date that you were referring to a moment  
9 ago, was it October 2, 2008?

10 A It appears so. I don't have an independent recollection,  
11 but it does appear so.

12 Q And you're making that statement based on what you see in  
13 Exhibit 57?

14 A Right. The dates on the e-mails.

15 Q Was this in reference to -- the e-mails from Mr. Weber in  
16 reference to some documentation that they were preparing  
17 to extend the closing date by an additional day to  
18 October the 3rd?

19 A This is their e-mail to me asking for signatures on an  
20 addendum to extend the closing date. And I'm not sure if  
21 it's a one-day extension or not.

22 Q Okay. In the middle of the -- well, towards the bottom  
23 of the first page of Exhibit 57, there's an e-mail from  
24 you which states, "I am off on a camping trip with one of  
25 my kids. Will forward to Aatai."

1 Do you see that?

2 A Yes.

3 Q I realize this may draw an objection, but I'll ask  
4 anyway.

5 Did you forward it to Mr. Aatai?

6 MR. OSBORN: I don't mind you answering that  
7 question.

8 THE WITNESS: Yes.

9 Q (By Mr. Daudt) Okay. And did you do so for the first  
10 time at some point after 1:46 p.m. on October 2, 2008?

11 A Yes.

12 Q Without getting into the substance of the communications,  
13 do you recall whether you spoke to Mr. Aatai thereafter  
14 about that document?

15 A I did.

16 Q Okay. Did that occur on October the 2nd or at a later  
17 date?

18 A That occurred on October 2nd.

19 Q Well, it appears you were camping on October the 2nd --

20 A I was.

21 Q -- 2008.

22 A I was. I was on Vashon Island with my son.

23 Q You were on Vashon, so you were within cell phone range;  
24 your cell phone was working?

25 A Yes, I was within cell phone range, but my cell phone

1 battery was drained.

2 Q Well, how were you --

3 A I turned my car on and powered the battery up for half an  
4 hour and then used my phone until it drained again. And  
5 then I turned my car on and powered the battery up again.

6 Q Sounds like a heck of a camping trip. Sorry.

7 A It was -- it was not the way I had planned it.

8 Q Was this the only matter you were having to put a fire  
9 out on?

10 A Actually, no.

11 Q All right. Had you been in contact with Mr. Aatai  
12 earlier in the day about this transaction?

13 MR. OSBORN: I'm going to instruct you not to  
14 answer.

15 Q (By Mr. Daudt) Did you pick up the e-mail -- well, let  
16 me just ask you about it, and find the e-mail. I'm not  
17 putting my hands on it right off.

18 There's an e-mail that I'll describe for you, and you  
19 tell me if you remember it, that came out from Mr. Weber  
20 early in the day on October the 2nd. And that e-mail, in  
21 sum and substance, said, The statutory warranty deed is  
22 not here, or did not arrive.

23 Do you recall that e-mail?

24 A Bottom of page -- bottom of Exhibit 57, Page 1?

25 Q There it is. You're certainly right.

1           That e-mail looks like it was sent out on -- at 10:00  
2           a.m.?

3       A     Right.

4       Q     And the question I have for you, I guess, is, did you --  
5           can you tell me, you know, approximately when you picked  
6           up that e-mail on your phone?

7       A     Between 10:00 and 10:15 a.m.

8       Q     You were on your e-mail at that time basically?

9       A     Yes.

10      Q     Okay. Did you conclude, when you picked up that e-mail  
11           between 10:00 and 10:15 a.m. on October the 2nd from  
12           Mr. Weber, that the transaction was not going to close on  
13           October the 2nd due to the absence of the deed?

14      A     No.

15      Q     Why not?

16      A     I already knew that.

17      Q     You already knew what?

18      A     That the transaction was not going to close. I did not  
19           conclude anything from the e-mail.

20      Q     You knew before 10:00 a.m. on October the 2nd, 2008, that  
21           it wasn't going to close?

22      A     Yes.

23      Q     How did you know that?

24                   MR. OSBORN: Instruct you not to answer. I  
25           think.

1 THE WITNESS: My recollection is that I had  
2 confirmed directly with escrow that it did not have the  
3 deed.

4 MR. OSBORN: Apparently, I'm not going to  
5 instruct him.

6 THE WITNESS: Well, I'm not going to...

7 MR. DAUDT: He's got it figured out. He knows  
8 what line he can cross or can't cross.

9 Q (By Mr. Daudt) So that happened sometime on the morning  
10 of October the 2nd, 2008?

11 A Yes.

12 Q How did that come about? Did you call them? They call  
13 you?

14 A I called them.

15 Q Why did you call them?

16 A I called them to find out if they had a deed.

17 Q Why would that even have come up?

18 A I can't answer that question.

19 Q I see. Did you call them on the basis of any kind of  
20 information that there might have been some sort of  
21 problem that resulted in the deed not being there?

22 MR. OSBORN: I think I'm going to instruct you  
23 not to answer. As a matter of fact, I am going to  
24 instruct you not to answer.

25 THE WITNESS: Well, then I'm not even going to  
32



1 think about it if you don't want me to.

2 MR. OSBORN: You don't need to, because I'm not  
3 changing my mind.

4 Q (By Mr. Daudt) Well, sitting here today, do you have  
5 approximate time frame of when you -- when that phone  
6 call took place, that you called Commonwealth to find out  
7 about the status of the deed?

8 A As I recall, it would have been between 9:30 and 10:00  
9 a.m. on October 2, 2008.

10 Q Were you in communication with -- without getting into  
11 the content of it, were you in communication with Mr.  
12 Aatai on October the 2nd, 2008?

13 A Yes.

14 Q At what point, or points, in time during the day?

15 MR. OSBORN: Object, and instruct you not to  
16 answer.

17 MR. DAUDT: On the basis of when he spoke to  
18 him?

19 MR. OSBORN: When you pin it down this way,  
20 what you're doing is coming at a whole lot of different  
21 things from a variety of angles, which are designed to  
22 reveal the content of attorney-client communications,  
23 which you're not going to do.

24 So I object, and you're instructed not to answer.

25 MR. DAUDT: All right.

1 Q (By Mr. Daudt) Can you tell me whether you spoke to  
2 him -- were you in contact with him by telephone?

3 A Yes.

4 MR. OSBORN: He's already testified to that.

5 THE WITNESS: Yes.

6 Q (By Mr. Daudt) Okay. Were you on the telephone with him  
7 more than once that day?

8 MR. OSBORN: Going to object and instruct you  
9 not to answer.

10 Q (By Mr. Daudt) Were you on the telephone with anyone  
11 else at Seawest that day?

12 MR. OSBORN: Object and instruct you not to  
13 answer.

14 Counsel, I'm just not going to allow you to  
15 triangulate here, because there are ways just to do  
16 precisely that. And we're done with that line of  
17 inquiry.

18 I instruct you not to answer.

19 MR. DAUDT: It's privileged whether he spoke to  
20 anyone at Seawest that day about anything?

21 MR. OSBORN: He's already testified he spoke to  
22 someone at Seawest.

23 Q (By Mr. Daudt) Okay. Anyone else at Seawest?

24 MR. OSBORN: Now you're starting to  
25 triangulate, and I'm not going to allow you.

1           So, instruct you not to answer.

2           MR. DAUDT: We will be taking this up with the  
3 judge.

4           THE WITNESS: Don't make me come back.

5           MR. DAUDT: On that point, Chris, because I  
6 don't think whether he was in communication with anyone  
7 else at Seawest is not a matter of privilege.

8           MR. OSBORN: Why don't you explain to me how  
9 it's relevant, and then maybe I'll consider it. If it's  
10 not to determine what the substance of the communication  
11 is, explain it, and then I'll be interested. You're  
12 going to have to explain it to the judge so might as well  
13 explain it to me now, and maybe I'll change my position.

14           Hearing no explanation, I assume I'm right. It's an  
15 effort to triangulate and instruction stands.

16           MR. DAUDT: Well, I'm not going to concede that  
17 point, but --

18           MR. OSBORN: Go ahead and offer the  
19 explanation. Truly, I don't want Matt coming back  
20 either, but I can't think of any reason except you want  
21 to find out what he was communicating with his client  
22 about, and you're not going to find that out.

23           MR. DAUDT: Okay. I guess at this point --

24           MR. OSBORN: I'm not going to waive the  
25 privilege.

1 THE WITNESS: I'm not asking you. I'm just  
2 simply...

3 Q (By Mr. Daudt) I do have to ask, Mr. Davis, is  
4 Mr. Osborn representing you as your attorney at this  
5 deposition?

6 A No, I -- my understanding is that Mr. Osborn represents  
7 Mr. Aatai, and that I am taking Mr. Osborn's instructions  
8 to me to be equivalent of Mr. Aatai's instructions. The  
9 privilege belongs, as I understand it, to Seawest and  
10 therefore to Mr. Aatai. But no, he does not represent  
11 me.

12 MR. OSBORN: I wouldn't try.

13 MR. JOHNSON: Let's put it this way. Is Osborn  
14 going to send you a bill when this is all over?

15 MR. OSBORN: I wouldn't try that.

16 THE WITNESS: Given that he works at Foster  
17 Pepper, most likely.

18 MR. DAUDT: Are you going to pay it?

19 MR. JOHNSON: Why don't we take a quick break.

20 (Recess taken from 1:55 to 1:59)

21 MR. DAUDT: Back on the record.

22 I'm not going to beat the dead horse here, but, for  
23 the record, I do want to put on, I guess, just a little  
24 bit of a summary of the types of questions I would ask  
25 him, understanding you're going to object --

1 MR. OSBORN: Keep asking questions. Don't stop  
2 just because I objected to that. Go ahead and ask your  
3 questions.

4 MR. DAUDT: I don't want to get you all ticked  
5 off at me, Chris.

6 MR. OSBORN: I'm not going to get ticked off at  
7 you. I'm just going to instruct the witness not to  
8 answer.

9 MR. DAUDT: All right.

10 (Pause in proceedings.)

11 MR. DAUDT: Off the record.

12 (Discussion held off the record.)

13 MR. DAUDT: Back on.

14

15 E X A M I N A T I O N - (Continuing)

16 BY MR. DAUDT:

17 Q All right. Well, I'll go ahead and run through a few of  
18 these, then, and I'll go ahead and ask you, did anyone at  
19 Seawest suggest or ask you whether you had any  
20 information about the -- well, strike that.

21 Was there ever any communication concerning the  
22 subject of the deed being present at closing on October  
23 the 2nd between you and anyone at Seawest?

24 MR. OSBORN: Object. Instruct you not to  
25 answer.

1 Q (By Mr. Daudt) Was there any communication between you  
2 and anyone at Seawest concerning any topic other than  
3 this transaction on October 6, 2008? That is to say, any  
4 other work that, you know, you may have been involved  
5 with for them in your capacity as general counsel?

6 MR. OSBORN: Object; instruct you not to  
7 answer.

8 Q (By Mr. Daudt) Were there other active matters, be they  
9 transaction or litigation matters, of any kind other than  
10 the Leisher transaction, that you were handling at that  
11 time?

12 MR. OSBORN: You may answer.

13 THE WITNESS: Yes.

14 Q (By Mr. Daudt) Okay. Did you have any communication  
15 with the Wolfstone firm, other than these e-mails we see  
16 reflected on Exhibit 57, on October the 2nd, 2008?

17 A No.

18 Q So no phone calls with Mr. Weber or Mr. Bloch that day?

19 A I did not speak with them that day, no.

20 Q How about following that day, did you talk to them about  
21 this transaction?

22 A I don't think so.

23 Q Were you on the phone with Mr. Aatai when Mr. Aatai was  
24 present in -- physically present in the Commonwealth  
25 offices the afternoon of October the 2nd, 2008?

1 MR. OSBORN: I'm thinking. Object and instruct  
2 you not to answer.

3 Q (By Mr. Daudt) Were you --

4 MR. OSBORN: Thank you for pausing, by the way,  
5 on this. Sorry, Mike.

6 Q (By Mr. Daudt) Did you have any reason to believe that  
7 Mr. Aatai was working with any other attorneys on this  
8 case, or on this transaction, on October the 2nd, 2008?

9 MR. OSBORN: Object to the extent the  
10 information comes from Mr. Aatai or Seawest. If it comes  
11 from any other source, I'll allow the answer.

12 Q (By Mr. Daudt) Well --

13 A Other than anything that Mr. Aatai may have told me?

14 MR. OSBORN: Or Seawest.

15 THE WITNESS: Okay. Other than anything that  
16 someone at Seawest may have told me, I was very confident  
17 that no other attorney than me had any involvement in  
18 this transaction on behalf of Seawest.

19 Q (By Mr. Daudt) And again, as of October 2, 2008?

20 A As of October 2nd.

21 Q Were you involved in making any revisions to any of the  
22 documents that were being submitted to closing on October  
23 the 2nd, 2008?

24 MR. OSBORN: Objection. I'm not sure what  
25 you're referring to. The purchase and sale agreement?

1 The addenda?

2 MR. DAUDT: Any of the documents being  
3 submitted to closing --

4 THE WITNESS: Right.

5 MR. DAUDT: -- on October the 2nd.

6 MR. OSBORN: Being submitted, not ones already  
7 there?

8 Q (By Mr. Daudt) Being submitted on October the 2nd, 2008.

9 A I was involved in documents -- I was involved before  
10 October 2nd regarding documents that were submitted to  
11 escrow, and I don't know when they were submitted to  
12 escrow. I was not involved in the -- actually, yes is  
13 the answer to your question.

14 Q Which documents, if you can recall? Document or  
15 documents.

16 A I believe that I was involved in the preparation of a  
17 notice that was delivered to escrow.

18 Q A notice of what?

19 A I believe that I was involved in the preparation of an  
20 instruction to escrow. I do not know if the instruction  
21 was ever delivered to escrow, but I was involved in the  
22 preparation of an instruction to escrow to close the  
23 transaction, if the transaction could be closed on  
24 October 2, 2008, but not to close the transaction if it  
25 was unable to close the transaction on the stated closing



1 date. I have not seen such a document.

2 Q Was it your understanding that that document was  
3 something that was supposed to be delivered on October  
4 the 2nd, or thereafter, to the escrow agent?

5 A It was my understanding that that document was being  
6 prepared so that it could be delivered to the closing  
7 agent. I don't know if I would go so far as to say "was  
8 supposed to be."

9 Q Is it possible that the document was not submitted for  
10 some reason?

11 A Entirely.

12 Q Okay. Did you speak directly to anyone at Commonwealth  
13 on October 2nd, 2008, other than the conversation you  
14 described between 9:00, or 9:30 and 10 o'clock,  
15 concerning the deed?

16 A I had one conversation. I don't remember who I spoke to  
17 there. The name Shelly could be completely wrong, but it  
18 percolates in the back of my brain.

19 Q About what?

20 A Whether or not the closing agent had a deed to record.

21 Q So there was just the one conversation?

22 A Yeah, just the one. Yeah.

23 Q Okay. And was that the only subject of discussion  
24 between you and the person at Commonwealth that day?

25 A Yes.

1 Q Prior to October the 2nd, 2008, did you have any direct  
2 verbal, telephonic, or otherwise verbal, communication  
3 with anyone at Commonwealth about this transaction?

4 A I am not sure. I don't recall one way or the other. It  
5 would not be unusual that I would. But I don't have any  
6 specific recollection.

7 (Pause in proceedings.)

8 MR. DAUDT: Go off the record for a second.

9 (Discussion held off the record.)

10 MR. DAUDT: All right. Back on.

11 Q (By Mr. Daudt) In terms of the course of dealing in  
12 general with the closing agent, did the closing agent,  
13 was she in communication directly with Mr. Aatai?

14 A I believe so.

15 Q And concerning what exactly?

16 A Mr. Aatai is an experienced party in real estate  
17 transactions. And so I would assume that escrow would  
18 send him escrow instructions, proposed documents and so  
19 forth, settlement statements, and that he would review  
20 them and be in touch with them. With some clients I  
21 would typically get involved in that process, but with  
22 Seawest, I did not.

23 Q So would it be fair to say, then, in terms of your work  
24 on this file, you were not necessarily reviewing  
25 everything that Commonwealth was generating?

1 A That would be entirely true.

2 Q So what was the scope, really, of what you were reviewing  
3 for Seawest on this transaction?

4 A I was reviewing anything that Seawest asked me to, and I  
5 was reviewing any documents that were exchanged back and  
6 forth between me and Mr. Bloch's office.

7 Q Okay.

8 A And that would be it.

9 Q Did you submit, on behalf of Seawest, any closing  
10 instructions for this transaction?

11 A I did not and I would not with Seawest.

12 Q Why?

13 A Because Mr. Aatai is perfectly capable of doing that  
14 himself.

15 Q Do you know if Mr. Aatai submitted escrow instructions on  
16 behalf of Seawest?

17 A I have no idea. Mr. Aatai is someone with whom I have  
18 great confidence, and I would expect him to take prudent  
19 course and do what needs to be done.

20 Q I'm sorry if this appears redundant, but I think I need  
21 to ask. Did you review the escrow instructions that were  
22 generated by Commonwealth for this transaction?

23 A I did not, to the best of my knowledge.

24 Q Did you review the title commitment generated by  
25 Commonwealth for this transaction?

1 A I reviewed at least one of the preliminary title  
2 commitments. I did not review the final title  
3 commitment, to the best of my knowledge.

4 Q Why were you reviewing the earlier title commitment?

5 A In part because of the violation that was recorded by the  
6 City of Sammamish, and in part because that is something  
7 that I think is typically something that Seawest has had  
8 me do on a transaction where I worked for it.

9 Q Was there an expectation on Seawest's part, and I guess  
10 I'm asking this in terms of what its position was, and  
11 vis-a-vis the Leishers, that the Leishers were somehow  
12 going to be required to clear that code violation from  
13 title prior to closing?

14 A Without looking at the actual correspondence between Mr.  
15 Bloch and me, I don't recall that either side ever  
16 reached what I would call a position.

17 Q Let me ask it this way: I mean, given the nature of the  
18 violation and what it was going to take to have it  
19 removed, was it, in your mind, a realistic expectation  
20 that that could happen?

21 A That would could happen?

22 Q That it could be cleared from title prior to closing, if  
23 closing was indeed going to happen on October the 2nd,  
24 2008.

25 A Well, my understanding and expectation after talking with  
44

1 the folks at Sammamish, was that the monetary portion  
2 could be cured by payment, and that the City would still  
3 expect the violation itself to be cured at some point in  
4 the future.

5 So the encumbrance, the title encumbrance, could be  
6 cured at closing. The underlying requirement to do  
7 remedial work could be done later.

8 Q Well, I'm sorry if you said this, and I may have just  
9 lost the thread, what is it that you understood would  
10 have been required to cure the title encumbrance?

11 A Payment.

12 Q That's it; just pay it?

13 A Yeah.

14 Q Done?

15 A Right.

16 Q They wouldn't have required some sort of corrections  
17 certification or something?

18 A No, no.

19 Q Do you recall that the closing agent was asked on October  
20 the 1, 2008, to transmit to the Leishers documents  
21 necessary for closing on that day -- for closing the  
22 following day, on October the 2, 2008?

23 A I knew nothing about that.

24 Q Did you have some understanding that -- well, did you  
25 have any understanding one way or the other as to when

1 Commonwealth was going to be transmitting documents that  
2 had to be executed for closing to the Leishers?

3 A I did not know that the Leishers were out of the area. I  
4 did not know the documents needed to be transferred --  
5 transmitted to the Leishers.

6 Q Did you have some understanding that they were here  
7 locally?

8 A No. It wasn't a concern of mine.

9 Q I'd like to have you look at Exhibit Number 52. Let me  
10 know when you've had a chance to review that.

11 A Oh. Okay.

12 Q Having reviewed that e-mail at Exhibit 52, does that  
13 refresh your recollection about your understanding of the  
14 timing, at the time, of Commonwealth's transmission of  
15 closing documents to the Leishers?

16 A No, it doesn't.

17 Q Did you receive this e-mail at the time?

18 A I don't recall it. It wouldn't surprise me if I did.  
19 But if I did, I would not have done anything with it  
20 other than forward it to Seawest.

21 When this was sent, I would have been either on  
22 Vashon Island or on my way to Vashon Island. And so I  
23 would not even have been able to open the PDF file.

24 Q Do you recall one way or another whether you responded to  
25 Mr. Weber's e-mail at Exhibit 52?

1 A I don't. I don't recall at all. Although, if I look at  
2 Exhibit Number 53, it appears that I sent him something.

3 Q I was going to ask you about that. I'll go ahead and do  
4 that now. Have you had a chance to look at 53?

5 A Yes.

6 Q This e-mail sort of tails off without a conclusion.

7 A It does indeed.

8 MR. JOHNSON: I'm sorry, what exhibit?

9 MR. DAUDT: 53.

10 Q (By Mr. Daudt) Do you recall whether this e-mail was  
11 actually sent to Mr. Weber or perhaps just left as a  
12 draft and --

13 A No, this -- this e-mail was sent.

14 Q It was sent?

15 A Yes.

16 Q And why do you believe that? Do you recall getting some  
17 response or having some discussion with Mr. Weber about  
18 it?

19 A Because on October 1st at 1:05 p.m., I was on Vashon  
20 Island with my cell phone as my only means of  
21 communication. And my cell phone does not save drafts;  
22 the cell phone I had at the time does not save drafts.  
23 And in order for this e-mail to exist in this format, it  
24 made it to my Exchange server. If it made it to my  
25 Exchange server, it went.

1 Q Okay.

2 A And the reason it ends so abruptly is because I have a  
3 habit sometimes, of when I'm using my phone, to  
4 accidentally hit send before -- so this is just -- that  
5 is the entire e-mail, I'm sure.

6 Q What provoked this e-mail at Exhibit 53? It's not in  
7 reply to something you're getting from Mr. Weber, so I'm  
8 curious as to whether there was a phone call between you  
9 and he or Mr. Bloch about this subject.

10 A I have a recollection of talking to someone about this  
11 transaction, someone at Mr. Bloch's office, while I was  
12 driving from the Vashon ferry to the campground. I'm  
13 sort of inferring, if you will, that that must have been  
14 Mr. Weber.

15 And the timing of this abrupt e-mail suggests to me  
16 that this might have been in response to a conversation  
17 with him, but I'm not sure. That's an inference on my  
18 part.

19 Q As you sit here today, can you recall what was discussed?

20 A Not at all. I can't even be certain that I talked to him  
21 on the phone. I just have a recollection of talking to  
22 someone about this transaction while I was driving to the  
23 campground, and I know for a fact that it was not Mr.  
24 Aatai, and it was not escrow.

25 Q If you look at the next e-mail on Exhibit 54. I'd like



1 you to take a look at that, and I'll ask you a couple  
2 questions about it.

3 I can see you're processing this. So my question is  
4 going to be, do you recall having a conversation between  
5 1:05 p.m. and 4:56 p.m. on October the 1st, 2008, with  
6 Mr. Bloch concerning deal points for this transaction?

7 A It -- it seems like I did. But I can't tell you whether  
8 that's because it did or whether it's because my mind is  
9 telling me that it did.

10 But it seems to me that if I was dealing with  
11 Mr. Weber, that means that Ken Bloch was not in his  
12 office. It seems to me that Ken and I might have spoken,  
13 but I sure don't remember much more.

14 Q As you sit here today, can you recall there being a  
15 discussion about modifying the purchase price between you  
16 and anyone at the Wolfstone firm on October 1, 2008?

17 A I don't have a specific recollection, but that seems  
18 entirely consistent with everything else that we did.  
19 And it -- it would not surprise me at all if that had  
20 happened, so it's -- based on my dealings with Mr. Weber,  
21 if he sent an e-mail to me saying that a reduction of  
22 \$7,500 was agreed to, I would tend to assume that he's  
23 telling the truth.

24 And the general subject matter of this is familiar to  
25 me, so I believe these topics were discussed.

1 Q And "these topics," being essentially the --

2 A The fine for the violations.

3 Q I'm sorry?

4 A The fine for the violations.

5 Q Fine for the violations and also miscellaneous equipment  
6 and personal property remaining on the property?

7 A Right.

8 Q Is it fair to say that those final points, then, in terms  
9 of final purchase price, items of personal property being  
10 left by the Leishers on the property, and the code  
11 violation, were finally agreed to near the end of the day  
12 on October 1, 2008?

13 A I don't know that I would characterize it as "finally  
14 agreed to." I think it might be more accurate to say  
15 amended or modified, because I think that both of those  
16 were addressed by the existing agreement. And the  
17 parties may have had a disagreement over the  
18 interpretation, but I don't think the parties had a  
19 disagreement over what the agreement consisted of.

20 And so at this point, I don't think that we were --  
21 we were not coming to an agreement, we were modifying and  
22 horse trading, if you will.

23 But I don't think that -- so if this was signed  
24 around, and I don't know whether it was or not, but if  
25 this was, in fact, signed around, then it would be a

1 modification of an agreement that was already in place.

2 I don't mean to be overly technical with you.

3 Q It's fine.

4 A It's sort of the way --

5 Q I guess that does raise a question about this. Do you  
6 have any knowledge one way or another about whether  
7 Seawest signed the closing addendum that is attached to  
8 Exhibit 54?

9 A I have no idea.

10 Q Was it your understanding that that was the plan? I  
11 mean, this is being presented to you as something, it  
12 sounds like from Mr. Weber's e-mail, that the parties had  
13 negotiated and agreed to the day before closing. Was  
14 that your understanding at that time, that that was what  
15 was going to happen?

16 A Not necessarily. Ken Bloch and I were always, to my  
17 understanding, very clear in our dealings with each other  
18 that we were acting in a representative capacity but did  
19 not have the agreement to bind our clients unless we  
20 actually said that we did. And there were instances in  
21 which, under CR 2A, we did bind our clients. But  
22 documents like this were always not considered to be  
23 actually binding until and unless the principals signed.  
24 And in fact, there were instances, I believe, in which  
25 the principals modified the agreement after Ken Bloch and

1 I had hammered out our respective differences.

2 Q Let me ask you that. I guess in general terms, in terms  
3 of your course of dealing with Mr. Bloch, I take it, what  
4 you're saying, for CR 2A purposes, there were some  
5 writings between the two of you that you felt were  
6 understood to be binding on your respective clients?

7 A Yes.

8 Q Was it required in your understanding for those writings  
9 to say, I am authorized by my client to make this deal,  
10 or similar words to that effect?

11 A No.

12 Q So how would we know from looking at those e-mails which  
13 of your comments were intended to be binding upon your  
14 clients and which weren't?

15 A Any statements that I made which were -- which were  
16 binding on Seawest would, A, be likely to reference CR 2A  
17 but not necessarily, but would be stated in the Seawest  
18 investment or, Seawest hereby agrees, blah. It would be  
19 in the third person and it would be Seawest and it would  
20 be a declarative statement about Seawest agreeing to do  
21 something or agreeing to certain terms, such that it was  
22 unambiguous.

23 And so, in -- if I say, for example, Matt thinks he  
24 should not have to pay an extension fee because of the  
25 barn and because Leisher is not ready to vacate, even

1           though I'm purporting to say what Matt thinks, it's not  
2           an actual position; it's just what he thinks.

3           So I think that if you -- if I found an example, it  
4           would be pretty abundantly clear.

5       Q    That's not the sort of thing you're agreeing to anything  
6           anyway, right?

7       A    No, but there were instances because -- because of how  
8           difficult it was to get the parties to agree sometimes,  
9           it's my recollection, I'm pretty sure about this, that  
10          there were times when we were 4:00 p.m. the day before a  
11          closing date under the agreement and we had reached an  
12          agreement on another extension.

13          And in that situation, Mr. Bloch didn't have access  
14          to the Leishers necessarily; I didn't have access to Mr.  
15          Aatai necessarily, in which, at least I think I exchanged  
16          correspondence with him, in which I said, Seawest hereby  
17          agrees to pay a \$5,000 extension fee in exchange for a  
18          30-day extension.

19          That kind of language plainly is binding Seawest.  
20          But other than that, it's just exchanging documents that  
21          need to be signed by the principals.

22       Q    Certainly, you know, if you're sending a document that  
23           has signatures, lines, that calls out for the clients to  
24           sign it, I think everyone would agree clients need to  
25           sign off on that before it becomes binding.

1 But I think it's the -- well, let me just ask it with  
2 respect to Exhibit Number 50. And directing your  
3 attention to, really, the first e-mail in this  
4 chronologically, the first e-mail which appears at the  
5 bottom of the second page on Exhibit 50.

6 A Okay.

7 Q Are you there with me?

8 A Yeah.

9 Q This is your e-mail to Rob Weber, cc'd to Matt Aatai,  
10 stating -- well, subject matter: "Confirming extension  
11 of closing dates." Stating, "This will confirm we have  
12 continued the closing date in the Leisher sale to Friday  
13 October 3, 2008" --

14 A Sure.

15 Q -- "so we can get these issues worked out."

16 Are you there with me?

17 A I'm taking a look at that.

18 Okay. That would be my attempt to do that, yes.

19 Q Meaning that you intended this to convey a binding  
20 commitment, at least as an open position, a binding  
21 commitment that could be accepted by the Leishers to  
22 close on that date?

23 A Well, that would tend to state my -- yeah, I guess you  
24 could call that an offer, in contractual terms, yes.

25 Q And this is consistent -- was it the case at the time you

1 sent that e-mail that you were operating under an  
2 addendum that had September the 30th as the closing  
3 deadline for the transaction?

4 A I don't remember what the closing date was, but it  
5 wouldn't surprise me.

6 Q Go ahead --

7 A I know that we were tight like that.

8 Q -- and have you take a look at Exhibit Number -- do you  
9 recall how many extensions there were?

10 A Enough to fill the baseball team. I have no idea. There  
11 were a dozen.

12 Q Really?

13 A Yeah. Really.

14 Q Well, okay. A dozen reduced to writing executed by both  
15 parties or --

16 A I -- my recollection is, I would think there were  
17 probably a dozen reduced to writing. I might be wrong.  
18 I mean, it's a fairly old memory at this point. I know  
19 we did lots and lots of extensions.

20 Q I'm going to ask you to look at Exhibit Number 37. While  
21 you're looking for it, I guess, I mean, in general terms,  
22 can you tell me why there were so many extensions on this  
23 transaction?

24 A There were extensions for a variety of reasons. There  
25 were extensions because we didn't think that the seller

1 was in a position to perform, and we wanted to give the  
2 seller time to perform. There were extensions for the  
3 convenience of Seawest, for travel reasons. There were  
4 extensions to allow us to try to resolve disputes over  
5 whether certain things were one party or the other's  
6 responsibility.

7 Q Tell me about the Leishers not being able to perform.  
8 What was the issue there in terms of their performance?

9 A They were not ready to move out of the house on the  
10 closing date. I mean, the house was crammed full of  
11 stuff. They hadn't removed any of the farm equipment.  
12 They hadn't removed any of the horse stalls. The  
13 property had -- moving out of that property would be  
14 removing a lifetime of accumulation on the part of the  
15 Leishers. They had not started. They had not done  
16 anything. And the closing date was there.

17 And so we discussed a number of different  
18 possibilities of giving them time after the closing date  
19 to complete removing stuff, but as I recall, there was  
20 also an extension of the closing date to permit that.

21 Q You also mentioned something about convenience of  
22 Seawest. Why don't you tell me more about that.

23 A As I recall, Mr. Aatai was going to be out of the country  
24 for an extended period of time, which I believe actually  
25 included one of the closing dates. And since he would



1 not be available or present, the parties agreed to extend  
2 it, as I recall.

3 Q All right. Taking you back to Exhibit Number 37. It's a  
4 document entitled, "Third Extension Agreement."

5 A Uh-huh (answers affirmatively).

6 Q Can you take a look at this? Once you've had a chance to  
7 look at it, the question is, do you recall being involved  
8 in helping to prepare or at least negotiate this  
9 document?

10 A I definitely was involved in negotiating this. I don't  
11 think I drafted it.

12 Q Can you tell what the deadline was, that was set for  
13 closing, in this document?

14 A September 30, 2008.

15 Q Okay. So taking us, now, back to your September 30,  
16 2008, e-mail and putting it together, is it safe to  
17 assume that, essentially, what was transpiring here was  
18 you, once again, come to a closing deadline, we're not  
19 able to put it together for whatever reason, and  
20 therefore you, on behalf of Seawest, were offering to  
21 close at a later date, namely October 3, 2008?

22 MR. JOHNSON: What exhibit are we on, Mike?

23 MR. OSBORN: 50.

24 MR. DAUDT: We're back on 50?

25 THE WITNESS: Yes.

1 Q (By Mr. Daudt) And I also note that one of the following  
2 sentence states, this is at the end of the second page of  
3 Exhibit 50, "Once we get the issues resolved, we may need  
4 to continue the closing date a few more days to get  
5 signatures."

6 A Right.

7 Q Do you see that?

8 Now, why would that be the case? Why would you have  
9 to continue it even longer to get signatures?

10 A I don't remember. I would, I think, only be talking  
11 about my side, so it may have been I was unaware of Mr.  
12 Aatai's availability.

13 Q What were the issues that needed to be resolved?

14 A I would assume, because of the proximity in time, that  
15 the document we just looked at, having to do with the --  
16 I would assume it's referring to the issues that are  
17 discussed in the addendum that is attached to Exhibit  
18 Number 54.

19 Q Now, it appears that, in response to your 12:03 p.m.  
20 e-mail on September 30, 2008, Mr. Weber responds that he  
21 would prefer Thursday, which was October the 2nd,  
22 correct?

23 A Right.

24 Q And he was stating that because he was planning to not be  
25 in the office on October the 3rd; is that right?

1 A Yes.

2 Q So it appears, from this exchange of e-mail, that the  
3 dates were, the date of October the 2nd was settled upon  
4 in part out of convenience of the attorneys involved, or  
5 at least one of the attorneys involved; is that fair to  
6 say?

7 A Sure.

8 Q Would it also be fair to say, then, there is nothing  
9 particularly magical about the October 2nd date; that  
10 there wasn't a specific event or condition, outside of  
11 the control of the parties to the transaction that  
12 compelled them to choose October the 2nd, 2008, as  
13 opposed to October the 3rd, 2008?

14 A Well, I would answer that in two ways. One is, I don't  
15 think there is anything magical about the specific date  
16 of October 2th versus October 3rd. There very definitely  
17 was something magical about the closing date and it being  
18 a specific date. And not once, in any of the  
19 negotiations we had, did any of us lose track of that.

20 Q Well, you say that, but then you also said, in the final  
21 sentence of your September 3rd e-mail, that you may need  
22 to continue a few more days to get signatures.

23 A Right.

24 Q Which implies that there wasn't anything magical about  
25 the quote/unquote, "closing date," doesn't it?

1 A Which -- which is to say that, if we don't close on the  
2 date we agreed to now, we need to agree to a new date.

3 But in terms of -- in terms of external events  
4 controlling the dates, there was no difference between  
5 October 2nd or October 3rd or October 15th. But there  
6 was a -- there was an absolute need on both sides to have  
7 a closing date that was the closing date and not to let  
8 it pass.

9 Q I'm sure you have to have an official date in any  
10 transaction, right? You have to have a settlement --

11 A Actually, no. The law in Washington is that, the parties  
12 don't have a closing date, the court will impose a  
13 reasonable one.

14 Q But somebody has to ultimately impose it --

15 A Right.

16 Q -- and have a date. Because you have to have a recording  
17 date, right? It gets recorded on a day?

18 A Sure.

19 Q You have a settlement statement that has to be prepared  
20 that is going to vary somewhat depending on, usually on  
21 what day you close, in terms of prorations for property  
22 taxes, and all sorts of other items that get dealt with,  
23 right?

24 A Right.

25 Q So at some point, somebody has to either impose the date

1 or the parties have to mutually agree upon?

2 A Well, and in real estate, as the law has evolved, a  
3 closing date has significance far beyond just a date of  
4 calculation or recording. The consequences of  
5 performance or nonperformance on the closing date are so  
6 absolute that it -- whatever date we pick suddenly  
7 becomes the only date that matters.

8 Q Unless the court comes along later, as you say, and  
9 imposes a reasonable time?

10 A Right.

11 Q Which they do sometimes?

12 A They do sometimes. Not usually with the "time is of the  
13 essence" clause, but they do sometimes.

14 Q Well, they've done it even when there's "time's of the  
15 essence" clause; would you agree with me there?

16 A I believe I'm aware of instances where that has been done  
17 under circumstances giving rise to a stop-hold, yes.

18 MR. DAUDT: I apologize, I'm in need of  
19 checking my -- actually, I do have an outline, believe it  
20 or not. And I checked to see if I -- maybe I can hand  
21 you off for the time being.

22 THE WITNESS: I'm going to run and use the  
23 restroom real quick.

24 MR. DAUDT: Okay. Let's take a break.

25 (Recess taken from 2:52 to 2:57 p.m.)

1 EXAMINATION - (Continuing)

2 BY MR. DAUDT:

3 Q I take it that -- well, you didn't really get involved in  
4 any of the seller disclosure issues. As you said, you  
5 assumed it was something that had been done. You know  
6 now, of course, there was no seller disclosure --

7 A Right.

8 Q -- given by the Leishers.

9 Given that circumstance, would you agree with me that  
10 Seawest could have, at any time subsequent to the  
11 execution of the real estate purchase and sale agreement,  
12 exercised its right to rescind under the seller  
13 disclosure statute?

14 A Yes. Up to a period three days after they got the  
15 disclosure statement in the end, from Leisher, or up to  
16 the point they actually closed.

17 Q All right. And there was no seller disclosure statement?

18 A Right. I'm saying had -- yeah, right.

19 Q The way the facts of this case actually --

20 A Because they didn't have one, they could walk away any  
21 time.

22 Q -- transpired, they could have, Seawest could have,  
23 rescinded the transaction on October the 2nd, on October  
24 the 1st, 2008, or any date prior to that?

25 MR. JOHNSON: Object to the form of the

1 question.

2 THE WITNESS: They could rescind any time up to  
3 closing. Yes.

4 Q (By Mr. Daudt) Right.

5 A Up to the point they actually closed. Not the closing  
6 date, but to the act of closing, yes.

7 Q Since there was no closing, they could have rescinded on  
8 --

9 A Absolutely.

10 Q -- October the 2nd, October the 1st or --

11 A Or October the 5th, for that matter.

12 Q Right. Or, well, that was a Sunday, so I guess -- but  
13 anyway, they --

14 A Right.

15 Q John Crittenden, does that name ring a bell?

16 A Yes, it does.

17 Q What was Mr. Crittenden's -- well, did you ever speak to  
18 Mr. Crittenden?

19 A I've spoken with Mr. Crittenden.

20 Q You have?

21 A Yes.

22 Q When?

23 A Years before.

24 Q How do you know Mr. Crittenden?

25 A I know Mr. Crittenden because he was the significant

1 other of another client in another case.

2 MR. JOHNSON: You realize he's the only person  
3 that's talked to Mr. Crittenden?

4 MR. DAUDT: That's why we're all shocked. Holy  
5 cow.

6 THE WITNESS: I have represented Mr. Crittenden  
7 in some small matter in perhaps the year 2004.

8 Q (By Mr. Daudt) Do you know where Mr. Crittenden is?

9 A I could find out.

10 Q Really? How would you find out?

11 A I would contact his significant other and the mother of  
12 his son.

13 Q Who are? Or who is, I guess. I assume this is the same  
14 person of which you speak.

15 A Same person.

16 Q Sorry.

17 A If memory serves me, and I have to warn you that I am  
18 notoriously bad with names, but I believe her name is  
19 Laura Lambert.

20 Q So how do you know Laura Lambert?

21 A I represented her. I represented her and a bunch of her  
22 neighbors in a lawsuit against Quadrant.

23 Q Is that how you got to know Mr. Crittenden?

24 A That is how I got to know Mr. Crittenden in the first  
25 instance.



1 Q I see. What kind of a lawsuit was that?

2 A Coldwell and -- Coldwell Banker represented Quadrant  
3 selling houses in Sammamish. The Quadrant -- the  
4 Coldwell Banker agent represented to buyers that the  
5 adjacent property was going to be greenbelt. After they  
6 purchased, it was turned into apartments.

7 Q Okay.

8 A My clients were unhappy about that. So that case  
9 ultimately went to trial. Mr. Crittenden was not a  
10 party, because he was not entitled to the house.

11 Q Okay. So when were you last in communication with Mr.  
12 Crittenden?

13 A I think about three years ago.

14 Q Did you ever communicate with him about this transaction?

15 A No.

16 Q Where, in terms of last known, I guess, address, where  
17 does this Laura -- is it Laura Lambert?

18 A If I'm right, which is not a very good bet given me and  
19 names. My wife has to wear a name tag.

20 I don't know if she sold her property. I would  
21 suspect, though, that I probably have a cell phone number  
22 for Mr. Crittenden.

23 Q In your contacts, in your office?

24 A Yeah. When we take a break I can see what I can find out  
25 for you.

1 Q That would be appreciated.

2 Was Ms. Lambert a named plaintiff in the lawsuit  
3 against --

4 A Yes.

5 Q -- it was styled against Quadrant?

6 A Versus, I think the case was styled against Coldwell  
7 Banker, and I'm trying to remember what the first  
8 plaintiff's name was. Chris Brain and I took that to  
9 trial ten years ago.

10 Q You're kidding me. Really? I'm a former partner of  
11 Chris's, so I guess I could find out.

12 MR. OSBORN: You probably know Crittenden  
13 yourself. Your memory is worse than Matt's.

14 MR. JOHNSON: Been holding out on us this whole  
15 time?

16 THE WITNESS: Chris and I are pretty good  
17 friends. If you just mention my name to Chris, he will  
18 advise and tell you that he won, even though he lost.

19 MR. DAUDT: That's true; there are very few  
20 cases Chris Brain loses.

21 THE WITNESS: He did just beat me up in Skagit  
22 County in another case unfortunately.

23 But if you ask him, he'll definitely remember the  
24 case I went to trial on.

25 I don't think he will have contact information for

1 Mr. Crittenden, but I can get it to you.

2 Q (By Mr. Daudt) They might have a caption.

3 Who was he representing?

4 A He was representing Coldwell Banker Bain.

5 Q All right. So was Quadrant named in the lawsuit?

6 A Quadrant was named in the lawsuit, but there was an  
7 arbitration provision in the contracts with Quadrant. So  
8 it was bifurcated, then we reached an agreement under  
9 which Coldwell Banker stipulated to liability under the  
10 Consumer Protection Act, in exchange for us not pursuing  
11 Quadrant. So we went to trial for damages under the  
12 Consumer Protection Act.

13 Q I see. Long away around that.

14 Did you remember who the named plaintiff was in that?

15 A No, but I can, if we take a break, I can get all that for  
16 you.

17 Q Were you at all involved in -- well, strike that.

18 Do you recall having to deal at all with the deeds of  
19 trust for this transaction?

20 A No.

21 Q Do you --

22 A I may have, but I have no recollection.

23 Q Did they ever find their way into your hands?

24 A I have no recollection of having seen them or having even  
25 known of any issues relating to them.

1 Q Okay. ALTA extended policy, is that something you were  
2 at all involved in?

3 A No. Decision made long before my involvement. I assume  
4 the survey would have been done long before my  
5 involvement, so no.

6 Q Let me just say, in somebody's documents I've seen  
7 reference to Sean Youssefi at Seawest as having seemingly  
8 had some role to play in the type of title policy that  
9 Seawest wanted. Do you have an understanding as to  
10 whether that was sort of within his purview at Seawest  
11 or...?

12 A By the way, Sean is no longer with Seawest; he's gone off  
13 to do his own thing. But I don't think they had  
14 purviews. I don't recall -- I know I've discussed the  
15 Leisher case at some point with Sean Youssefi, but -- and  
16 it wouldn't surprise me if he were involved at that  
17 level. But if he was, it was outside of anything that I  
18 did. My dealings with Leisher were exclusively with Matt  
19 Aatai in terms of substance.

20 Q Okay. In terms of other work for Seawest, did you deal  
21 with Sean Youssefi?

22 A All the time.

23 Q So what was his role in the company?

24 A Sean did a lot of the -- a lot of the planning work, but  
25 he also seemed to be doing an awful lot of the, for lack

1 of a better way of putting it, the actual work involved  
2 in doing things like plats, the actual marshalling the  
3 information and putting together the presentation  
4 packages, and submitting things.

5 Q Okay. When did he leave the company?

6 A I think I got an e-mail about three weeks ago.

7 Q From him?

8 A Yeah.

9 Q Saying what?

10 A Just saying, I've decided to go off and do other things.

11 I don't have any knowledge about it, but I would tend  
12 to suspect that it's just the fact that with the economy  
13 the way it is, Seawest is not nearly as busy as it was.

14 Q Did you meet with Mr. Aatai on October the 3rd, 2008?

15 A I don't remember. But if I was back from Vashon Island  
16 in time, it is highly likely that I did. But I don't  
17 think I would have been back from Vashon Island in time.

18 In the ordinary course, I would have expected to, but  
19 I don't have any recollection of doing it, and it seems  
20 to me that we didn't leave Vashon Island until after  
21 noon. And with kids in the car, I don't think so; I  
22 don't think I would have had a chance to.

23 Q It sounds like it is your recollection that you did come  
24 back on Friday, October 3rd from Vashon?

25 A I'm not positive, but I think so. But it could have been

1 even the next day. I just don't remember. And I'm not  
2 one of those people that keeps calendars of what I did  
3 years ago, so I could probably figure it out, but it  
4 would take some doing.

5 Q Maybe just to help jog your memory, any reason why you  
6 would be camping during the week as opposed to continuing  
7 on the weekend?

8 A Because with a school full of five year olds, you've got  
9 a limited amount of time that you can really do that.  
10 And because the facility that we were using probably  
11 wasn't available on the weekend for us -- I'm trying to  
12 remember if we slept there one night or two, and I cannot  
13 remember. It seems to me that we may have slept there  
14 two nights. But because there were so many of us, it was  
15 like the whole school or something, that and the facility  
16 we used belonged to somebody else. I don't think we had  
17 it for the weekend.

18 Q Okay. On what date was there a final agreement between  
19 Leishers and Seawest on all of the terms of the contract?

20 A Well, if you say "final agreement," by meaning, the very,  
21 very last day on which the parties reached an agreement,  
22 depend on whether or not the September 30th document we  
23 were looking at was executed.

24 I would start from -- I don't know the answer to that  
25 question. But what I would do is start from October 2nd

1 and work back until the last document that I had that was  
2 signed around; I would say that was the final date. The  
3 first final agreement was long before I was involved.

4 Q Understood. That was modified?

5 A Many times.

6 Q So what I'm trying to hone in on at this point, is when  
7 the final modification, I suppose, if you will, when did  
8 that occur?

9 A I would say, if Exhibit Number 54 -- if the addendum to  
10 Exhibit Number 54 was signed around, then I would say it  
11 would have been when that document was signed around. If  
12 that was not signed around, then I would say it was on --

13 Q Are you looking --

14 A My legal conclusion, anyway, is that at that point -- I  
15 don't want to claim to be God here or anything -- would  
16 have been on September 30th, at 12:20 p.m., in which I  
17 sent the e-mail confirming the October 2nd closing date.

18 Q What document are you referring to?

19 A Exhibit 50.

20 Q And you're referring to --

21 A My e-mail that was sent on 12:20 p.m. at the bottom of  
22 Page 1 of Exhibit 50, extending the closing date pursuant  
23 to his request to October 2nd.

24 Q All right. Well, I'm trying to -- still trying to find  
25 this. You're saying --

1 A Very bottom.

2 Q Where you're saying "confirmed"?

3 A Uh-huh (answers affirmatively).

4 Q I see.

5 A Yes.

6 Q So you're -- I'm sorry. So your e-mail, so we're looking  
7 at Exhibit Number 50 --

8 A Right.

9 Q -- which is an exchange of e-mails. You're making  
10 reference to the e-mail sent at 12:20 p.m. --

11 A Right.

12 Q -- on September 30, 2008, from you to Rob Weber stating,  
13 "Confirmed"?

14 A Yes. I sent him an e-mail at 12:03 saying, "This is  
15 confirming my understanding of October 3rd."

16 He responded back saying, "I would prefer until  
17 Thursday. Please confirm."

18 And then I wrote back saying, "Confirmed"; confirming  
19 Thursday.

20 To me, at that point, we've, under CR 2A, or just  
21 under agency principles, committed to October 2nd closing  
22 date.

23 Q All right.

24 A That would --

25 Q And at that time, there was then a meeting of the minds,



1           you believe, with respect to all the other terms and  
2           conditions of the contract?

3       A     Yes.

4       Q     Which was what?  What, with respect to the personal  
5           property left on the premises?  What was the meeting of  
6           the minds as of September 30, 2008, at 12:20 p.m. on that  
7           issue?

8       A     The meeting of the minds was that Leisher would get his  
9           stuff out of the property before closing.  And the  
10          meeting of the minds was that, by accepting the deed at  
11          closing, Seawest accepted the property in its existing  
12          condition.

13      Q     Okay.  And you're saying that by virtue of the written  
14          documents that have been signed around, I take it?

15      A     Right.

16      Q     I assume you would acknowledge that Mr. Bloch might not  
17          agree with that?

18      A     Right.

19      Q     Wasn't he taking the position, at that time, that, in  
20          fact, they were not so obligated?

21      A     Sure.  And, I mean, the fact that parties disagree over  
22          the meaning of their agreement does not undo an  
23          agreement.  Thank God, because if it did, then agreements  
24          would obviously have no -- no meaning.  The question --  
25          we enforce what is written, and what's written is, he

1 promises to do this, and we agreed that we get what we  
2 get and we don't throw a fit.

3 So you would have to read those two together. And if  
4 the only option that Seawest would have would be to  
5 refuse to close, claiming that he was in breach, which  
6 sets up that fight.

7 But the terms of the agreement are the terms of the  
8 agreement. We had different subjective interpretations  
9 but that doesn't matter.

10 Q And is it your position, then, that the extension of time  
11 to October the 2nd was in place and binding as of your  
12 September 30, 2008, 12:20 p.m. e-mail, regardless of  
13 whether the parties subsequently executed a closing  
14 addendum to that effect?

15 A Yes.

16 Q So the closing addendum actually wasn't necessary for  
17 closing?

18 A Well, the closing addendum was another modification to  
19 the agreement. But parties are always free to propose  
20 modifications to an agreement at any time. If it's not  
21 accepted by the other side, then that leaves the party  
22 and the agreement where they were.

23 So if that was signed around before closing, that  
24 would have been part of the agreement. If it was not  
25 signed around before closing and the transaction closed,

1 it would not be part of the agreement. But it doesn't  
2 affect the underlying question of whether we have an  
3 agreement.

4 Q Okay.

5 MR. DAUDT: It's all yours.

6

7

E X A M I N A T I O N

8 BY MR. JOHNSON:

9 Q Mr. Davis, my name is Logan Johnson, I represent the  
10 Leishers. You and I have never met, have we?

11 A No.

12 Q I want --

13 A I've never met him either, by the way.

14 Q Fair enough.

15 A Chris, I've met.

16 Q I want to touch on something you were discussing with  
17 Mr. Daudt a little bit earlier, and that is, at times,  
18 you acted in representative capacity for Mr. Aatai, and  
19 other times you left it to Mr. Aatai to execute documents  
20 and bind himself. Is that a fair summary of some of your  
21 previous testimony?

22 A I would say I always acted in a representative capacity.  
23 There were times that I also bound him through my  
24 actions. Generally, I did not do that; generally, I  
25 simply let him execute documents and didn't make any

1 commitments on his behalf.

2 Q Right. And that's because, you told us earlier, you have  
3 complete confidence in Mr. Aatai and his abilities as a  
4 sophisticated real estate developer?

5 A It's also in part because I'm very conscious of the fact  
6 that as an attorney, I'm not a decision maker --

7 Q Fair enough.

8 A -- except when I'm given that authority.

9 Q Fair enough. And that, in fact, was what was occurring  
10 on the 2nd, right? You were away camping, and Mr. Aatai,  
11 being perfectly capable, showed up at closing and signed  
12 certain documents to bind himself and so forth, fair?

13 A Yeah, I don't know how -- I guess I'm not sure what is  
14 meant by "to bind himself," because --

15 Q To bind Seawest.

16 A Well, I think he was performing rather than binding  
17 himself.

18 Q Okay.

19 A I don't want --

20 Q I appreciate the distinction.

21 He was performing?

22 A Right.

23 Q Okay.

24 MR. JOHNSON: Do we still have the Exhibit 19  
25 from yesterday that we used?

1 MR. OSBORN: Yeah, I do. I'll let...

2 Q (By Mr. Johnson) Mr. Davis, I've handed you what's been  
3 previously marked as Exhibit 19. And you'll see that  
4 this is a closing addendum to the purchase and sale  
5 agreement. And you'll see on the first page here  
6 (indicating), you'll note here that it's signed by Luin  
7 and Shirley Leisher?

8 A Right.

9 Q You see on the second page it was signed by your client  
10 Matt Aatai, also on October 2, 2008?

11 A I don't see dates --

12 MR. OSBORN: Next page.

13 THE WITNESS: Oh.

14 MR. DAUDT: Next page.

15 THE WITNESS: 2:30 on 10/2/08, signed by seller  
16 on 10/1, received on 10/2. Got it. Okay. Sure.

17 Q (By Mr. Johnson) And would you agree with me that by  
18 signing this document on October 2nd, Mr. Aatai was at  
19 least agreeing to the terms of the purchase and sale  
20 agreement as incorporated in this addendum?

21 Or to state the question alternatively, he was  
22 performing on these terms?

23 A Yeah. I mean, typically I would expect, in an addendum  
24 like this, to see something that says that the terms of  
25 the agreement remain in effect. I don't see that.

1           So I don't know that he was agreeing to the terms  
2           of the purchase and sale agreement. But he was  
3           acknowledging its existence, certainly, and he was  
4           agreeing to change the closing date to October 2, 2008.  
5           But he certainly acknowledges that it's a valid  
6           agreement.

7       Q     This is an addendum -- just so we're clear -- this is an  
8           addendum --

9       A     Right.

10      Q     -- to the purchase and sale agreement?

11           Mr. Davis, I've handed you what's previously been  
12           marked as Exhibit 9. I'll represent to you these are  
13           documents that came out of Commonwealth's file and are  
14           the documents signed by Mr. Aatai on the date of closing,  
15           October 2, 2008.

16           I want to direct your attention to the page that's  
17           been Bates labeled CPS 0161.

18      A     Okay.

19      Q     And this is a copy of the statutory warranty deed,  
20           correct?

21      A     Yes.

22      Q     That's Mr. Aatai's signature at the top of the page where  
23           it says, Approved as to FSCM and content?

24      A     It appears to be, yes.

25      Q     And you're familiar with Mr. Aatai's signature,

1 obviously?

2 A I am.

3 Q And it's dated October 2, 2008, correct?

4 A Yes.

5 Q On the next Page, 162, there's a listing of the terms  
6 and/or violations to which the property being taken is  
7 subject to. Do you see that?

8 A Yes.

9 Q If we turn to the next page, CPS 0163, that's the notice  
10 of the housing code violation that you and Mr. Daudt were  
11 discussing earlier, correct?

12 A Yes.

13 Q If I understood your prior testimony, the Form 17 issue  
14 never came up prior to closing, or on the day of closing;  
15 is that correct?

16 A That's correct.

17 Q The first time the Form 17 issue came up was after the  
18 date of closing, correct?

19 A Correct.

20 Q Okay. And that was October 6, 2008, does that sound  
21 correct?

22 A I don't know.

23 Q Okay. But you do have a specific recollection that it  
24 was after the designated day of closing, fair?

25 A I know that it was not brought up with me on or before

1 the closing date.

2 Q Fair enough.

3 MR. JOHNSON: Mr. Davis, I believe those are  
4 all my questions. Thank you.

5 I'll pass the witness.

6 MR. DAUDT: Nothing further for me.

7 MR. JOHNSON: Actually, could you check and see  
8 if you have Mr. Crittenden's cell phone number.

9 THE WITNESS: Yeah, why don't I do that.

10 MR. OSBORN: We can go off the record for that.

11

12 (Signature reserved.)

13 (Deposition concluded at 3:26 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON       )  
                                  ) ss  
County of King               )

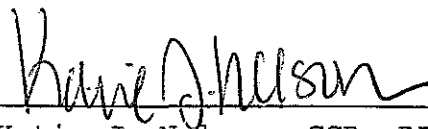
I, the undersigned Notary Public in and for the State of Washington, do hereby certify:

That the annexed transcript of the Tuesday, May 4, 2010, Deposition of MATTHEW DAVIS was taken stenographically by me and reduced to typewriting under my direction;

I further certify that I am not a relative or an employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or outcome thereof;

I further certify that the annexed transcript of the Tuesday, May 4, 2010, Deposition of MATTHEW DAVIS is a full, true, and correct transcript, including all objections, motions, and exceptions of counsel made and taken at the time of the foregoing proceedings to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 9th day of May, 2010.



Katie J. Nelson, CCR, RPR

Notary Public in and for the State  
Washington, residing in Redmond  
My Commission expires October 9, 2011  
CCR License No. 2971

