

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 November 1, 2006
9 Jefferson City, Missouri
Volume 2
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12 Manager of the Manufactured)
Housing and Modular Units Program)
13 of the Public Service Commission)
Complainant,)
14)
15 v.) Case No. MC-2006-0389
Blakely Manufactured Homes,)
16)
17 Respondent.)
18 CHERLYN D. VOSS, Presiding,
REGULATORY LAW JUDGE.
19
20 CONNIE MURRAY,
STEVE GAW,
21 LINWARD "LIN" APPLING,
22 COMMISSIONERS.
23 REPORTED BY:
24 KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES
25

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11 FOR: Blakely Manufactured Homes.

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18 FOR: Staff of the Missouri Public
19 Service Commission.

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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 THROUGH 8 WERE MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE VOSS: We'll begin with entries of
5 appearance, beginning with the Director.

6 MR. BERLIN: Appearing on behalf of the
7 Director of the Manufactured Housing and Modular Units
8 Program of the Public Service Commission, Robert S.
9 Berlin, Post Office Box 360, Jefferson City, Missouri
10 65102, and also appearing on behalf of the Director is
11 Blaine Baker at the same address.

12 JUDGE VOSS: Thank you. And on behalf of
13 the Blakelys?

14 MS. CRANE: Good morning. Appearing on
15 behalf of Blakely, Blakely Manufactured Homes, 411 Court
16 Street, Fulton, Missouri.

17 JUDGE VOSS: Thank you. I am Judge Voss.
18 We are here today to hear the complaint filed by the
19 Manager of the Manufactured Housing and Modular Units
20 Program of the Public Service Commission vs. Blakely
21 Manufactured Homes, Case No. MC-2006-0389.

22 And due to witness list similarities, we
23 are going to begin by calling all witnesses in the order
24 recommended by Staff on the behalf of the Director. If I
25 call the Director Staff during the course of the

1 proceeding, I apologize. And then if there's a need to
2 recall a witness at a later time, we'll do that.

3 I would like to now begin by considering
4 pending motions. Did you want to raise your motion now?

5 MR. KRAUSS: Yes, your Honor. My name is
6 Eric Krauss. I previously electronically filed an entry
7 for Mr. Blakely and Blakely Manufactured Homes.
8 Mr. Blakely and Blakely Manufactured Homes has been and
9 continues to be represented by Sue Crane. We see no
10 benefit towards duplicate representation in this matter.
11 For the record, I do represent Mr. Blakely in a civil
12 proceeding concerning the same facts but filed by the
13 Kings in Circuit Court, but I do wish to withdraw my
14 representation in this proceeding before this committee.

15 JUDGE VOSS: Thank you. Does anyone object
16 to the motion to withdraw?

17 MR. BERLIN: Yes, your Honor. The
18 Staff -- and I use the term Staff to represent in this
19 proceeding the Director or Manager of Manufactured Housing
20 and Modular Units Program. Staff counsel does object
21 to counsel's motion to withdraw on the basis that it
22 touches -- a granting of a motion for leave to withdraw
23 touches on the issue of Mr. Blakely's ability to proceed
24 further with paying any civil claims damages that may
25 result from the civil litigation that is running

1 concurrently with this proceeding, and at this point we
2 don't know the particular arrangements of the agreements
3 between Mr. Blakely and his insurance carrier, and so that
4 is a concern that we have.

5 JUDGE VOSS: Do you see -- let me make sure
6 your mics are on. I get e-mails from people when people
7 cannot be heard or seen, so I think everybody's on. The
8 little light looks green, but it may not actually be on,
9 so hit it and if it gets more green...

10 Do you see any reason why letting him go
11 would affect the facts of the case that the Commission
12 would decide? Not letting him go, but releasing him as
13 counsel.

14 MR. BERLIN: Allowing counsel for the
15 insurance company to withdraw from this case may touch on
16 the ability of the King family to collect any damages as a
17 result of civil litigation. I believe that the issues are
18 sufficiently related with regard to this case, and as
19 again my concern, the concern of Staff and the Director is
20 that it may in some way touch upon the ability of the King
21 family going forward in their civil litigation and the
22 potential for collection of damages as the only way in
23 which the King family may collect is through the insurance
24 carrier of Mr. Blakely.

25 MR. KRAUSS: Your Honor, may I respond?

1 JUDGE VOSS: Yes, please.

2 MR. KRAUSS: Your Honor, we are not
3 attorneys for the insurance company. We have been
4 retained by the insurance company to represent Mr. Blakely
5 in the civil action. However, we do not represent the
6 insurance company. We are not their coverage counsel, and
7 we have no say nor any desire to speak towards any
8 coverage matters.

9 Our duty is to defend Mr. Blakely in the --
10 in the private lawsuit and not to make any sorts of
11 decisions about insurance coverage and the desire or
12 ability of the insurance carrier to pay.

13 JUDGE VOSS: The insurance carrier is not
14 involved in this case?

15 MR. KRAUSS: No.

16 JUDGE VOSS: You are not representing them?

17 MR. KRAUSS: No.

18 JUDGE VOSS: You are representing
19 Mr. Blakely, presumably duplicately?

20 MR. KRAUSS: Yes, correct. We're
21 representing Mr. Blakely in the civil matter.

22 JUDGE VOSS: So releasing you as co-counsel
23 would not in any way affect the insurance carrier's
24 liability?

25 MR. KRAUSS: No.

1 JUDGE VOSS: Does Staff have any response?

2 MR. BERLIN: I have no response.

3 JUDGE VOSS: I'm going to take a break now,
4 go up and get the Commissioners before opening statements,
5 and they may want to consider this issue, since it is
6 contested, so I will ask them before I make any formal
7 decision. Okay. We are going to take a brief break while
8 I go get the Commissioners.

9 (A BREAK WAS TAKEN.)

10 JUDGE VOSS: Okay. We'll begin with
11 opening statements, beginning with Staff on behalf of the
12 Director.

13 MR. BERLIN: Good morning. May it please
14 the Commission?

15 This is a complaint case that has been
16 brought by the Manager of the Manufactured Housing and
17 Modular Units Program of the Public Service Commission
18 against Blakely Manufactured Homes. The story behind this
19 complaint case begins in Fulton, Missouri on a very dark,
20 stormy night in March of this year. And unfortunately for
21 the parties involved in this case and for the homeowners,
22 Larry and Joyce King, there is no happy ending to this
23 story.

24 As a result of damage that their new
25 modular home sustained during the course of the storm, it

1 became known to the Manager that, No. 1, there was a new
2 modular unit home involved, and that there may be
3 violations in the setup and installation of the home. And
4 as a result of the Manager becoming aware of this
5 situation, a site inspection was conducted by field
6 inspector Tim Haden and field inspector supervisor Gene
7 Winn and a site inspection report was prepared as a result
8 of the inspectors conducting their inspection regarding
9 the installation and setup of this home.

10 The findings of the setup violations are
11 what gave rise to this complaint case filed by the
12 Manager. The site inspection report that I will refer to
13 through the course of today's proceeding contains nine
14 serious violations of Commission rules regarding the
15 proper setup and installation of the Kings' new modular
16 unit home that they had purchased from Blakely
17 Manufactured Homes in Fulton.

18 These nine violations pertain to how the
19 home was installed on its foundation, how the home
20 sections were connected together, how the home was
21 supported from underneath, how the roof sections were
22 attached and assembled, and how the staircase to the
23 basement was constructed.

24 And during the course of today's
25 proceeding, I will take the Commission through each of the

1 nine violations in detail as a result of the live
2 testimony that will be offered today. And it is my belief
3 that the evidence to be presented in this hearing through
4 both live testimony and through the exhibits that will be
5 offered and admitted into evidence in this proceeding,
6 which will also include the site inspection report, that
7 this evidence will clearly prove to the Commission each of
8 the nine violations that are or make up the nine separate
9 counts in the complaint case against Blakely Manufactured
10 Homes.

11 Missouri law, specifically Chapter 700,
12 Section 100, subsection 3, paragraph 6, holds the dealer
13 of modular unit homes responsible for the proper initial
14 setup of the modular unit. Commission rules that govern
15 in this proceeding are 4 CSR 240-123.065. It is that rule
16 which makes the dealer responsible to arrange for the
17 proper initial setup of a new modular unit home, and that
18 rule also defines the proper initial setup to mean
19 installation of that new modular unit home in accordance
20 with the manufacturer's installation manual.

21 Commission rule 4 CSR 240-123.080 is the
22 rule that requires all modular unit homes to be set up or
23 installed according to the manufacturer's installation
24 manual. And it also requires that the structure shall be
25 manufactured in accordance with the International

1 Residential Code 2000, which this Commission has adopted
2 through its rules.

3 And finally with regard to the Missouri
4 Revised Statutes, it is Chapter 700, Section 115,
5 subsection 2 which provides for the seeking of penalties
6 for each violation that is determined by the Commission as
7 a result of this proceeding.

8 During the course of this hearing, I intend
9 to call the following witnesses in the following order:
10 Mr. Ron Pleus, who is the Manager, often referred to as
11 the Director, one and the same, of the Manufactured
12 Housing and Modular Unit Program. I'll then call
13 Mr. Larry King, the homeowner, also Joyce King, the
14 homeowner, Tim Haden, the Staff or program field
15 inspector, and Gene Winn, the field inspector supervisor.

16 And finally, in concluding my statements, I
17 would like to remind the Commission that what I am here
18 for today in this complaint is to prosecute nine separate
19 and serious violations in the installation and setup of
20 this modular unit home.

21 And I would like to also inform the
22 Commission that currently there is civil litigation
23 pending in the Callaway County Circuit Court with regard
24 to the claims of Larry and Joyce King with respect to
25 property damage, medical expenses and other related

1 damages, and those issues are not what are before us
2 today.

3 I am seeking a finding from the Commission
4 on each of the violations, and I'm also seeking authority
5 from the Commission to pursue penalties against Blakely
6 Manufactured Homes in Circuit Court. That concludes my
7 opening statement. For the benefit of all involved in
8 this proceeding, I do have copies of pertinent statutes
9 and Commission rules if it would be helpful to pass those
10 out, and I offer that to you, Judge.

11 JUDGE VOSS: Okay. Thank you. We'll let
12 you know.

13 And then now we will hear the opening
14 statement from Blakely, and then we'll address the pending
15 motion.

16 MS. CRANE: May it please the Commission?
17 Sue Crane. I've never had the pleasure of being in front
18 of the Commission before.

19 I appear here for Mr. Blakely of Blakely
20 Manufactured Homes as a sole proprietorship, and I have
21 heard the opening statement of Staff in regards to what
22 we're proceeding on today. I've been working on this case
23 from the beginning, and as part of what I want to talk to
24 you about in this opening statement is the fact that my
25 client has been placed in one of those positions we

1 sometimes see in the law where there's a conflict going on
2 and he's between a rock and a hard place.

3 We have from the beginning attempted to
4 settle the matter that is before the Commission today, to
5 offer something up as a settlement. My client has no dog
6 in this fight almost at this point, because he's willing
7 to surrender his license, does not want to be in the
8 business anymore. So anything that he would do as a duty
9 to -- if he were subpoenaed and here today to respond to
10 you might come in conflict with his contractual
11 obligations to the insurance coverage in the pending
12 litigation, and so he is not here. He was not subpoenaed,
13 and so he is not here.

14 There may be things that would be helpful
15 to you, the Commission, in understanding what happened
16 here, but as his attorney, hold it against me that I made
17 the decision to protect him in both proceedings, in this
18 proceeding as well as that one.

19 The ultimate goal I understand is for the
20 Kings to be made whole, and while we can go through the
21 complaints today and hear what happened in regards to
22 whether there were violations or not, the fact that there
23 might be a compromise simply makes it impossible for me to
24 do much more than cross-examine what witnesses the Staff
25 is going to be calling and asking you to just take into

1 consideration the wording of the law that's before you and
2 what we have here.

3 So my intentions are that I have listed the
4 Kings as witnesses on my case if it becomes necessary, but
5 I may cross-examine them and then not need to call them at
6 my time. So we are looking at nine specific complaints,
7 and that is what I am proceeding on without my client
8 today.

9 JUDGE VOSS: Thank you. Now, would you
10 like to approach the Bench or approach the podium?

11 MR. KRAUSS: Your Honor and the Commission,
12 my name is Eric Krauss, and I entered on behalf of
13 Mr. Blakely electronically a month and a few weeks back.
14 I currently represent Mr. Blakely in the pending civil
15 litigation. Attorney Sue Crane has been and continues to
16 represent Mr. Blakely in this administrative hearing.
17 Neither of us see any utility for me to remain entered in
18 this proceeding before the State. Sue Crane has handled
19 the entirety of these proceedings, and my entry is merely
20 duplicative.

21 Counsel for the Staff has brought up his
22 concern that somehow my withdrawal may affect the ability
23 of the Kings to receive payment for their damages in the
24 civil action. I would like to stress again that I am
25 Mr. Blakely's defense counsel in the civil action. I do

1 not represent Mr. Blakely's insurance company. I don't
2 represent Mr. Blakely's insurance company here either.

3 Seeing as Mr. Blakely is represented in
4 this proceeding by his primary counsel, who has
5 represented him from the beginning, and seeing that my
6 withdrawal would cause no prejudice to any party in this
7 proceeding or in the civil case, I ask this Honorable
8 Commission to grant my motion for leave to withdraw.

9 JUDGE VOSS: Staff want to restate its
10 position?

11 MR. BERLIN: Yes, your Honor. The Staff is
12 opposed to Mr. Krauss' motion for leave to withdraw as
13 counsel on behalf of Mr. Blakely because the Staff has a
14 fundamental concern with the ability of the King family to
15 recover in its civil proceeding. And while those issues
16 are not before us today, Staff is not aware of how any
17 granting of that motion may touch upon the ability of
18 Mr. King to collect in a civil proceeding with regard to
19 any action this Commission may take to permit Mr. Krauss
20 to be dismissed from this proceeding.

21 We are not aware of the particularities of
22 the policies that exist between Mr. Blakely and his
23 insurance company. And I do believe that, as Mr. Krauss
24 explained earlier, he was assigned by the insurance
25 company to represent Mr. Blakely in the civil proceedings

1 as well, and he did enter an appearance in this case back
2 in August of 2006. So that is Staff's concern, your
3 Honor, with regard to his motion.

4 JUDGE VOSS: Commissioner Murray, do you
5 have any questions?

6 COMMISSIONER MURRAY: I'll pass.

7 COMMISSIONER GAW: Let me ask you just a
8 few questions. First of all, clarification from whoever
9 wants to do this. The Defendant in this case is or is not
10 a corporation?

11 MS. CRANE: Is not.

12 COMMISSIONER GAW: Is not a corporation.
13 It's a sole proprietorship, that's its status?

14 MS. CRANE: Yes.

15 COMMISSIONER GAW: And in regard to -- in
16 regard to the case, the civil case that's pending, who --
17 are both of you entered in on that case, Ms. Crane and
18 Mr. Krauss?

19 MS. CRANE: No.

20 COMMISSIONER GAW: Mr. Krauss, you're the
21 only attorney or only representation in that case?

22 MR. KRAUSS: Yes, your Honor.

23 COMMISSIONER GAW: And that's through your
24 firm, what -- can you pronounce it?

25 MR. KRAUSS: Wuestling & James. Rick

1 Wuestling, principal of the firm, is also entered in the
2 civil matter.

3 COMMISSIONER GAW: The firm itself is
4 representing?

5 MR. KRAUSS: Yes.

6 COMMISSIONER GAW: And Staff, would you
7 mind giving me a little bit better explanation about from
8 a legal standpoint what your concern is about the
9 Wuestling firm not being involved in this case? Is there
10 some -- is there some particular legal ramification that
11 you can point to as a result that prejudices the alleged
12 victims in this case?

13 MR. BERLIN: Commissioner Gaw, Staff's
14 concern is that -- and as I say, it is a concern that is
15 backed by an understanding that any possibility of
16 recovery for the King family will be through Mr. Blakely's
17 insurance company.

18 Staff is aware that Mr. Blakely has a duty
19 of cooperation with his insurance company and that the
20 insurance company has a duty to defend him. Staff's
21 concern is that a granting of Mr. Krauss' motion for leave
22 to withdraw from this proceeding may touch upon the duty
23 of cooperation, or the duty to defend rather, and those
24 are some insurance pieces that I'm expressing a concern
25 for.

1 COMMISSIONER GAW: I understand the concern
2 from the Defendant's standpoint. If there is a -- if the
3 Defendant is -- and I'm going to ask that question
4 directly in a moment if it hasn't already been answered.
5 The Defendant is waiving his rights under his contractual
6 relationship with his insurance company to have the firm
7 that has been retained on his behalf by the insurance
8 company to be here, how is that -- how does that then get
9 outside of that relationship between the Defendant and his
10 insurance company?

11 I'm not saying that it might not. I'm just
12 trying to understand what your theory is that it has some
13 impact on the alleged victims here. Do you understand
14 what I'm asking?

15 MR. BERLIN: I think that I understand your
16 question, Commissioner Gaw, and I simply cannot answer
17 that because I don't know the specific terms and the
18 conditions between -- with regard to Mr. Blakely's
19 insurance policy with his insurance carrier.

20 COMMISSIONER GAW: But that's a -- isn't
21 that a relationship that is -- that is purely about the
22 Defendant in this case and his rights to be defended under
23 the insurance policy or have defense provided for him?
24 How does that extend out as a ramification to the -- to
25 the alleged victims in this case? Give me a legal theory

1 where it might have an adverse impact on them.

2 MR. BERLIN: Commissioner Gaw, when this
3 case was originally docketed, the Staff, with the
4 agreement of Mr. Blakely's counsel, moved for continuance
5 of this proceeding.

6 COMMISSIONER GAW: Okay.

7 MR. BERLIN: And the reason that that was
8 done was that we weren't aware of whether or not
9 Mr. Blakely was covered or would be defended by his
10 insurance carrier.

11 COMMISSIONER GAW: Whose motion was that?

12 MR. BERLIN: I believe that, going back
13 through the record -- I'd have to look and see, but I
14 believe we filed a motion for continuance citing that
15 there were certain legal issues with regard to the civil
16 proceedings that were of concern.

17 COMMISSIONER GAW: You're telling me that
18 Mr. Krauss' firm did not file that motion?

19 MR. BERLIN: Correct, Commissioner Gaw.

20 COMMISSIONER GAW: Okay.

21 MR. BERLIN: And we continued this
22 proceeding on the theory that there may be a potential --
23 there may be a potential whereby Mr. Blakely could be
24 viewed as having violated his duty of cooperation with his
25 carrier.

1 not enter an appearance into this case.

2 COMMISSIONER GAW: Does anyone object to me
3 asking Mr. Riley what his viewpoint is on this issue?

4 MR. BERLIN: I have no objections.

5 COMMISSIONER GAW: Mr. Riley, would you
6 mind answering a couple of questions for me?

7 MR. RILEY: Not at all.

8 JUDGE VOSS: Would you identify yourself
9 for the court reporter?

10 MR. RILEY: Yes. Thomas K. Riley,
11 R-i-l-e-y, Fulton, Missouri.

12 COMMISSIONER GAW: Mr. Riley, do you have
13 any opinion about this whole issue?

14 MR. RILEY: No.

15 COMMISSIONER GAW: Do you see it as a
16 problem if we release the Wuestling firm from being a part
17 of this proceeding today?

18 MR. RILEY: I am unable to articulate
19 exactly how that could be a problem. It might be -- the
20 concern is if Mr. Blakely would do something in these
21 proceedings and the insurance would later say, well, you
22 didn't cooperate, you did something in the PSC proceeding
23 that I then use against him by collateral estoppel, that
24 was our concern.

25 With his attorney retained by the insurance

1 company entered in this case, I think it can be said that
2 that may be less likely that the insurance company would
3 say that, would look at these proceedings and say, wait a
4 minute, you just waived one of our defenses. Well, the
5 attorneys they represented are in.

6 That would seem to me to be less likely,
7 but I cannot connect the dots for you and assert in good
8 faith that, well, if Eric Krauss withdraws, then I can
9 articulate for you how we lose coverage. It's just kind
10 of a vague concern there, but no, I can't say that gives
11 you a legal theory on which allowing that firm to withdraw
12 here would result in loss of insurance coverage.

13 COMMISSIONER GAW: Okay. Thank you,
14 Mr. Riley. I don't know if anyone else has any questions
15 for you.

16 JUDGE VOSS: I have one question.

17 MR. RILEY: Yes.

18 JUDGE VOSS: Do you think Mr. Blakely's
19 failure to appear in this proceeding or failure of his
20 attorney to call him --

21 COMMISSIONER GAW: Maybe we should ask
22 Mr. Krauss that.

23 MR. KRAUSS: I was not involved in that
24 decision. If I may, my appearance in this proceeding has
25 no connection whatsoever with any sort of coverage issue

1 with Mr. Blakely. I represent Mr. Blakely as his defense
2 counsel in the private lawsuit. I do not represent the
3 insurance company there. I do not represent the insurance
4 company here. My representation of Mr. Blakely before
5 this Commission has nothing to do with any sort of
6 coverage issue between Mr. Blakely and the insurance
7 company.

8 MR. RILEY: And in response to your
9 question and response to what Mr. Krauss said, I don't see
10 how it would, because I think he's not here so that he
11 avoids making any admissions that may damage him. That is
12 not to say, with all due respect to the insurance
13 industry, which of course really loves attorneys and vice
14 versa, that they may not try to find a way to get out of
15 any coverage obligation. They may try to find anything
16 that he does or does not do as a basis to get out of
17 coverage, which puts Ms. Crane in a difficult position and
18 they're trying to work through that.

19 With respect to Mr. Krauss, it's true he
20 represents the insured, Mr. Blakely, but he's got
21 obligations not to do things that lose -- in my opinion,
22 he's got obligations -- he's, of course, best suited to
23 define those for himself. I think he has obligations when
24 retained by the insurance company not to do things that
25 would lose his client insurance coverage.

1 That puts him in a difficult position, and
2 he's paid by the insurance company, and I like him to be
3 in a difficult position. I'd like for him to be here,
4 maybe tapping on Ms. Crane's shoulder and say, well, maybe
5 don't do that. Maybe that could be raised by the
6 insurance. It is nothing more definite than that. And I
7 don't think that Mr. -- to answer that question as
8 specifically as I can, I don't think Mr. Blakely's failure
9 to appear here could be successfully used as a basis to
10 avoid coverage.

11 COMMISSIONER GAW: Let me ask a couple
12 other questions, but thank you, Mr. Riley, very much.

13 MR. RILEY: Thank you.

14 COMMISSIONER GAW: I apologize for
15 imposing.

16 Ms. Crane, has your client consented to
17 Mr. Krauss not being involved further with this case?

18 MS. CRANE: Yes.

19 COMMISSIONER GAW: And, Mr. Krauss, what is
20 the reason why you seek to not be further involved in this
21 case?

22 MR. KRAUSS: Well, again, we were retained
23 to represent Mr. Blakely in the pending civil litigation.

24 COMMISSIONER GAW: Yes, I understand, but
25 you entered your appearance here.

1 MR. KRAUSS: We entered here to monitor and
2 observe as co-counsel to Sue Crane. Sue Crane never
3 withdrew, and she always has represented Mr. Blakely and
4 his interests.

5 COMMISSIONER GAW: So what is your reason
6 to -- what is your reason for now seeking to no longer be
7 a part of this case after having entered your appearance
8 on behalf of the Defendant?

9 MR. KRAUSS: I believe Blakely has a right
10 to choose who his counsel is to represent him. There
11 would be no prejudice to anyone if --

12 COMMISSIONER GAW: Stop for a minute.
13 You're going beyond my question. So your statement to us
14 is that you are being directed by the Defendant to not be
15 a part of this proceeding; is that accurate or not
16 accurate?

17 MR. KRAUSS: I wouldn't say he's directing
18 us.

19 COMMISSIONER GAW: What would you say,
20 then?

21 MR. KRAUSS: It's his -- he hired Sue Crane
22 to represent him in this proceeding. We entered not to
23 represent him but so we could have a part in observing and
24 monitoring this litigation. Mr. Berlin in a phone call
25 with him made it apparent to me --

1 COMMISSIONER GAW: Wait a minute. Hold it.
2 I don't want to get into your-all's conversations right
3 now. I just want to know the reason why -- whether you
4 have been directed by the Defendant to not be further a
5 part of this proceeding in front of the Commission.

6 MR. KRAUSS: He has -- he has not directed
7 us to withdraw.

8 COMMISSIONER GAW: All right. Whose idea
9 was it to withdraw from further proceedings in this case?

10 MR. KRAUSS: It really was our idea as
11 counsel.

12 COMMISSIONER GAW: All right. And did you
13 consult with the insurance company that is paying the bill
14 about whether or not you should be further involved in
15 this case?

16 MR. KRAUSS: In this case, yes.

17 COMMISSIONER GAW: And they said? If you
18 wish to convey that.

19 MR. KRAUSS: Well, I mean, I believe that
20 is privileged communication.

21 COMMISSIONER GAW: Could be. Yes, it could
22 be. I want to know -- and if that's the case, that you
23 can't tell me what the insurance company's position is on
24 that and you haven't been directed by the Defendant to
25 withdraw, then I think I have no further questions.

1 MS. CRANE: Commissioner Gaw, may I add
2 something to that?

3 COMMISSIONER GAW: Sure.

4 MS. CRANE: Counsel did not ask Mr. Blakely
5 if he wanted them to enter. So there's never been
6 anything discussed there even for them to come in.

7 COMMISSIONER GAW: You didn't object to
8 that, did you?

9 MS. CRANE: I didn't object to it.

10 COMMISSIONER GAW: Okay. Thank you.

11 MS. CRANE: The other thing that I wanted
12 to add here is that the position that my client's been put
13 in in this proceeding moving forward, I had requested that
14 we work towards some sort of a settlement where the
15 Commission is satisfied and the litigation continues, my
16 client's obligations are not harmed in any way, and the
17 fact that we're moving forward on the hearing at all is --
18 puts him in a bad situation.

19 If this hearing wasn't occurring -- that
20 litigation is quite early in proceedings. I think
21 discovery is still just now being exchanged, and I had
22 even as late as yesterday suggested to Staff that we not
23 have this hearing so that we wouldn't have these issues
24 clouding the ultimate goal here, the ultimate goal being,
25 No. 1, what the Commission wants to do with my client, and

1 No. 2, whether or not the Kings get recovery.

2 COMMISSIONER GAW: I'm a little confused.

3 Are you saying that your client was wishing to admit to
4 the allegations and have the Commission decide the
5 penalties?

6 MS. CRANE: Well, we had -- I had
7 researched the duty to cooperate obligation to the point
8 where I started getting nervous if he did make any kind of
9 admissions, would that then cause trouble with the
10 coverage, and so I had moved forward with a stipulation
11 where he didn't admit, but that the Commission moved
12 forward on penalties, and that's where we got to.

13 COMMISSIONER GAW: Okay. Is there a --
14 when was this motion to withdraw filed?

15 JUDGE VOSS: Yesterday.

16 COMMISSIONER GAW: Okay. All right. Thank
17 you.

18 JUDGE VOSS: Any other questions? Can we
19 take like a five-minute break to make a decision?

20 (A BREAK WAS TAKEN.)

21 JUDGE VOSS: We're back on the record. I
22 believe due to the fact that the motion was filed so late
23 and that the Plaintiff is not here to release the
24 Plaintiff -- excuse me -- the Respondent is not here to
25 release the counsel, I think the motion is going to be

1 denied. Hopefully this will be a brief hearing, so it
2 will not be an undue amount of time out of Mr. Krauss'
3 schedule.

4 Okay. Would Staff like to call its first
5 witness?

6 MR. BERLIN: Yes, your Honor. The Staff
7 calls as its first witness Mr. Ron Pleus.

8 (Witness sworn.)

9 JUDGE VOSS: Thank you.

10 RONALD J. PLEUS testified as follows:

11 DIRECT EXAMINATION BY MR. BERLIN:

12 Q. Thank you, Mr. Pleus. For the record, will
13 you please state your full name and position.

14 A. Ronald J. Pleus. I'm Manager of the
15 Manufactured Housing and Modular Units Program of the
16 Missouri Public Service Commission.

17 Q. And are you often referred to as the
18 Director of the program as well?

19 A. Yes.

20 Q. Mr. Pleus, how long have you served as
21 program manager?

22 A. Since 2002.

23 Q. In the State of Missouri, Mr. Pleus, are
24 modular unit home dealers responsible for the setup and
25 installation of new modular unit homes sold by the dealer?

1 A. Yes.

2 Q. In Missouri, what standards must the
3 modular unit home dealer follow when setting up and
4 installing a new modular unit home?

5 A. The requirements in the manufactured
6 installation manual.

7 Q. And do Commission rules require that these
8 standards for setup be followed?

9 A. Yes.

10 Q. Is Blakely Manufactured Homes a licensed
11 registered dealer for modular unit homes?

12 A. Yes. To the best of my knowledge, their
13 license is still in effect for 2006.

14 Q. And to the best of your knowledge, his
15 registration is still current with the Commission?

16 A. Yes.

17 MR. BERLIN: Your Honor, may I approach the
18 witness?

19 JUDGE VOSS: Yes.

20 BY MR. BERLIN:

21 Q. Mr. Pleus, I just handed you a document
22 that appears to be a dealer registration. Can you
23 identify that document, please?

24 A. Yes. It's a license, certificate of dealer
25 registration for the Manufactured Housing and Modular

1 Units Program for 2006 issued to Blakely Manufactured
2 Homes, 3784 County Road 318, Fulton, Missouri,
3 Registration No. 1025001.

4 Q. Thank you, Mr. Pleus. And this
5 registration, as I understand from your previous answer,
6 is current?

7 A. Yes.

8 MR. BERLIN: And that exhibit is premarked
9 as Staff Exhibit No. 1. Your Honor, I have another
10 document which is premarked as Exhibit 2HC, application
11 for registration, and would ask that the Commission grant
12 a standard Protective Order because I have two HC exhibits
13 that will be offered into evidence.

14 JUDGE VOSS: Does anyone have objection to
15 the standard Protective Order being issued in this case?

16 MS. CRANE: No. I would request the same.

17 JUDGE VOSS: Granted.

18 MR. BERLIN: Your Honor, may I approach the
19 witness?

20 JUDGE VOSS: Yes, you may. I'll state for
21 the record, in case it's necessary, that anything that's
22 marked HC in this proceeding will be handled in accordance
23 with the standard Protective Order to be issued later
24 today.

25 BY MR. BERLIN:

1 Q. Mr. Pleus, I just handed to you a document
2 premarked as Staff Exhibit 2HC. Can you please identify
3 this document?

4 A. It's an application for manufactured home
5 or modular units certificate of dealer registration for
6 2006 for Blakely Manufactured Homes, physical address of
7 the company, 3784 County Road 318, Fulton, Missouri.

8 Q. And according to the application, is
9 Blakely Manufactured Homes licensed or registered to sell
10 manufactured homes and modular unit homes?

11 A. Yes. Via this registration application and
12 the license issued him in Exhibit 1 gives him the
13 authority to operate as a dealer of manufactured homes.

14 Q. And with regard to this particular
15 complaint case, Mr. Pleus, did you authorize that a site
16 inspection be conducted of the modular unit home purchased
17 by Larry and Joyce King?

18 A. Yes.

19 MR. BERLIN: Your Honor, I have no further
20 questions of Mr. Pleus at this time.

21 JUDGE VOSS: Did you want to offer
22 Exhibits 1 and 2HC into the record?

23 MR. BERLIN: Yes, your Honor. I would like
24 to move that Exhibit 1 and Exhibit 2HC be admitted into
25 evidence.

1 JUDGE VOSS: Are there any objections to
2 the admission of those exhibits?

3 MS. CRANE: No.

4 JUDGE VOSS: Hearing none, they will be
5 admitted.

6 (EXHIBIT NOS. 1 AND 2HC WERE RECEIVED INTO
7 EVIDENCE.)

8 JUDGE VOSS: Would you like to call your
9 next witness? Excuse me. Never mind. New judge, getting
10 ahead of myself.

11 Cross-examination?

12 CROSS-EXAMINATION BY MS. CRANE:

13 Q. As Director, is it your understanding -- I
14 heard you say that the dealers are responsible for the
15 setup when they sell a modular home; is that a fair
16 statement?

17 A. Yes.

18 Q. And so are they responsible regardless of
19 whe-- by the regulations regardless of whether they
20 physically do it or someone that they sub out to does it?

21 A. Yes. Unless there's a signed written
22 waiver that gives them that exemption under the statutes,
23 the dealer in the case of a modular home is responsible
24 for the proper initial setup of the home.

25 Q. Is there another license available to an

1 individual or a company such as an installer's license or
2 some other layer, or is it simply the dealer's license
3 that we're talking about?

4 A. For modular units, it's the dealer's
5 responsibility.

6 Q. And is the manufacturer under
7 responsibility to send, for instance, the correct
8 installation manuals and paperwork with the home that they
9 send?

10 A. Normally that's what does occur, yes.

11 Q. And am I understanding it correctly that
12 when a dealer contracts with someone to -- for a home, if
13 the home is not there on the site or even if the home's
14 there on the site, that there's some paperwork sent prior
15 to the installation manual such as something called a bank
16 package? Do you know what that is?

17 A. No, ma'am.

18 Q. Okay. Is there paperwork sent ahead to get
19 the site ready for the home?

20 A. No.

21 Q. So all of it comes at one time, as far as
22 you understand the process?

23 A. The documentation from the manufacturer to
24 the dealer should -- normally does come with the home when
25 it's shipped from the manufacturer to the dealership. The

1 plans, et cetera, are approved prior to the home being
2 built.

3 MS. CRANE: I don't have anything further.

4 JUDGE VOSS: Commissioner Murray, do you
5 have any questions?

6 COMMISSIONER MURRAY: I don't have any.
7 Thank you.

8 JUDGE VOSS: Commissioner Gaw?

9 COMMISSIONER GAW: I do not right now.
10 Thank you.

11 JUDGE VOSS: Commissioner Appling? No
12 further questions. Witness is excused.

13 Staff, would you like to call your next
14 witness?

15 MR. BERLIN: Yes, your Honor. Staff calls
16 Mr. Larry King.

17 JUDGE VOSS: Mr. King, good morning.

18 (Witness sworn.)

19 JUDGE VOSS: Thank you. Your witness.

20 MR. BERLIN: Thank you.

21 LAWRENCE KING testified as follows:

22 DIRECT EXAMINATION BY MR. BERLIN:

23 Q. Mr. King, for the record, if you would,
24 please state your full name for the Commission and your
25 current address.

1 A. Lawrence Evan King, 493 Saber Circle, Saber
2 Village, Fulton, Missouri.

3 Q. Mr. King, did you purchase a modular unit
4 home from Blakely Manufactured Homes in Fulton?

5 A. Yes.

6 Q. And was this a new modular unit home that
7 you purchased?

8 A. Yes, it was.

9 MR. BERLIN: Your Honor, may I approach the
10 witness?

11 JUDGE VOSS: Yes, you may.

12 BY MR. BERLIN:

13 Q. Mr. King, I just handed to you a document
14 that is premarked as Exhibit No. 3 HC. Can you, for the
15 Commission, identify this document?

16 A. I believe it's the sales slip for us
17 ordering the modular home.

18 Q. Is this the sales contract that you entered
19 into with Blakely Manufactured Homes for your new home?

20 A. Yes, it is.

21 Q. Okay. Down at the bottom of this
22 particular form, I see a signature that appears to read
23 Lawrence King, buyer. Is that your signature?

24 A. Yes, it is.

25 Q. Mr. King, when you purchased this home from

1 Blakely, was installation and setup included?

2 A. Yes, it was.

3 Q. Mr. King, did you sign any waivers or other
4 documents regarding that installation of the home?

5 A. No, I didn't.

6 Q. Mr. King, if you can recall, when did you
7 move into your new modular unit home?

8 A. We arrived on Friday, the 10th of March,
9 about noon. Well, we were -- we had a moving van come
10 from California. That's when we started moving the
11 furniture in.

12 Q. So did you move into the home on Friday?

13 A. Well, we got about half of it unloaded
14 on Friday. Then we finished up on the Saturday, about
15 five o'clock or so.

16 Q. And, Mr. King, what was your understanding
17 regarding whether or not your new home was ready to move
18 into?

19 A. Well, I believed it was ready, yeah.

20 Q. How did you know that it was ready to move
21 into?

22 A. Well, we had several conversations with
23 Mr. Blakely. Like I said, we were in California, you
24 know, and we talked back and forth because there was a lot
25 of delays due to the weather and different things, but

1 what exact day, I don't know. But, I mean, I wasn't going
2 to load up a moving van, you know, take everything out of
3 storage and bring it up here to put it in storage.

4 Like I said, it was before we left
5 California. I'm not even sure which day we left. I don't
6 know if it was the Saturday before that. Seemed like we
7 loaded on Saturday and left on Sunday.

8 Q. And so you had a telephone conversation
9 with Mr. Blakely?

10 A. Yes. Like I said, we had probably several,
11 you know, off and on, waiting for the modular to get ready
12 and everything else that was going on with it.

13 Q. And when did you arrive at your new home in
14 Fulton?

15 A. It would have been Friday, March 10th.

16 Q. Was Mr. Blakely there?

17 A. Yes. He met us out on -- actually right
18 out on the road.

19 Q. Did he tell you at any time when you met
20 Mr. Blakely that day that the home was not ready to move
21 into?

22 A. No. As far as I can recall, they still
23 were working on the ductwork down in the basement, but
24 other than that, everything was ready.

25 Q. Okay. And did Mr. Blakely assist you in

1 any way in moving into your home?

2 A. Well, he -- he had to put rock down because
3 it had been raining, and then we had to bring the moving
4 van up the hill. It did get stuck, so he helped us pull
5 it out and lined it up on the door that we loaded into,
6 because there was no steps yet.

7 Q. And so did Mr. Blakely do anything or take
8 any action to tell you or stop you from moving into the
9 home?

10 A. No. As a matter of fact, like I said, his
11 son actually put the ramp in the door just to make sure it
12 was lined up.

13 Q. The ramp in the door, is that a ramp that
14 would allow you to move furniture into the home?

15 A. Yes.

16 MR. BERLIN: Okay. Mr. Blakely, I have no
17 further questions, and I thank you for your appearance
18 here today.

19 THE WITNESS: Thank you.

20 JUDGE VOSS: Cross-examination? I'm sorry.
21 Did you want to move for Exhibit 3 to be admitted?

22 MR. BERLIN: Yes, your Honor. I'd move
23 that Exhibit 3HC be admitted into evidence.

24 JUDGE VOSS: Are there any objections?

25 MS. CRANE: No objection.

1 JUDGE VOSS: Seeing none, it's admitted.

2 (EXHIBIT NO. 3HC WAS RECEIVED INTO
3 EVIDENCE.)

4 JUDGE VOSS: Go ahead.

5 MS. CRANE: Thank you.

6 CROSS-EXAMINATION BY MS. CRANE:

7 Q. Mr. King, on Friday, March 10th, where did
8 you and your wife stay?

9 A. Well, I think we -- well, we spent the
10 night in the motor home.

11 Q. The motor home that you had brought from
12 California?

13 A. Yes.

14 Q. And on then Saturday, March 11th, did you
15 stay in that home as well?

16 A. No. Actually, we still slept out in the
17 motor home.

18 Q. So then Sunday, March 12th, didn't you
19 start out the night in the motor home and then made a
20 decision sometime in the night to go into this home that
21 we're speaking of?

22 A. No. We were -- we were in there. We just
23 didn't sleep in there because we hadn't had all the beds
24 made up or anything like that. We were just more
25 interested in situating -- actually, we started out in the

1 kitchen unpacking dishes and that sort of thing, so --

2 Q. Okay. So you were setting up furniture and
3 such, but as far as where you were spending the night, you
4 were still in the motor home?

5 A. Yes, because we hadn't brought in any
6 bedding or set up any of the beds yet.

7 Q. And had you done any kind of a walk through
8 with Mr. Blakely prior to Sunday?

9 A. Well, the only walk through we did was when
10 we first moved -- or first brought the truck up there.
11 Afterwards we went through the basement and just up the
12 steps, but we really did not do a walk through.

13 Q. And when I say a walk through, I want to
14 make sure you and I are on the same page, that you didn't
15 go through the entire home with Mr. Blakely and go over
16 everything and --

17 A. No, not really. Like I said, we just kind
18 of walked in the basement and went up the steps and just
19 kind of walked around, around the house. We didn't -- you
20 know, we weren't what you would call a walk through, I
21 wouldn't, no.

22 Q. And you were putting the furniture in the
23 house as much because you didn't have anywhere else to
24 store it, right?

25 A. Well, there's no point in bringing it all

1 the way from California and storing it in another thing
2 because I don't really like moving.

3 Q. So the conversation about the furniture and
4 Mr. -- with Mr. Blakely was, you might as well put it in
5 the house in the meantime?

6 A. Well, I don't know. The way you're wording
7 it, it doesn't sound right. There was nothing said. We
8 just started putting stuff in, boxes and furniture. It
9 was not setting -- we were just setting it in the house.
10 We weren't really setting it up.

11 Q. Okay. And in regards to the stairs that go
12 down to the basement, do you remember having conversation
13 with Mr. Blakely about that you wanted to do something a
14 little different or had something specific in regards to
15 the railing and such on those stairs?

16 A. I remember I just asked him who did the
17 stairs. I remember asking that question. I guess he -- I
18 think he said that they did it. I didn't really have
19 anything. I was just wondering who did it.

20 Q. Do you know -- can you today think of why
21 it was something unique for you to ask who did the stairs
22 in particular?

23 A. Because I didn't think there was a
24 handrail, if I recall right. I haven't been back in
25 there, but I don't know. For some reason or another,

1 going up, seems like on the right-hand side, I don't
2 remember railing being in there.

3 Q. Did you have a discussion with him or
4 someone on his behalf about the type of handrail that you
5 wanted in there?

6 A. No.

7 Q. Do you know if your wife had a discussion
8 with him about that?

9 A. Not that I know of.

10 Q. Okay. And so on Sunday when you started
11 out in the motor home for the evening, did you make
12 contact with anyone before you decided you were going to
13 go into this home and stay?

14 A. Why would I contact anybody? We went in
15 and out all night, moving stuff in and out all day.

16 Q. Did a family member call you to say, maybe
17 you'd better get in the home, there was a storm coming?

18 A. No.

19 Q. Your sister or your wife's sister didn't
20 call?

21 A. My sister was there most of the day helping
22 us unpack stuff.

23 Q. Where was she, then, once you bedded down
24 for the night? Was she living somewhere else?

25 A. We weren't in bed yet. We were -- like I

1 said, we were still unpacking, dishes mostly. Like I
2 said, spent most of the time in the kitchen.

3 Q. So did you -- I guess I'm not
4 understanding. Did you go to the motor home to make -- to
5 bed down for the night and then make a decision to go to
6 the modular home?

7 A. No. We were still carrying stuff in out of
8 the motor home to put in the house. We hadn't got all the
9 bedding yet. Like I say, we were back and forth,
10 especially on Sunday, because after we got the van
11 unloaded on Saturday, we had to take it back to the dealer
12 in Columbia. I think the deadline was either Sunday,
13 Sunday or Monday, otherwise they'd charge us more. So we
14 basically just unloaded the van so we could get it back,
15 because I think we had a week from the time that we rented
16 it. So like I said, we were back and forth from the motor
17 home, because we were still carrying stuff out of the
18 motor home into the house.

19 Q. How late were you up doing that?

20 A. Well, which night?

21 Q. I'm sorry. On Sunday night, how late were
22 you still moving things in?

23 A. We were still up. We hadn't went to sleep
24 yet.

25 Q. And when you say we were still up, are you

1 saying you were still up when the storm hit?

2 A. Yes.

3 Q. So that was my question, and I probably
4 wasn't asking it the right way. So on Sunday you're
5 telling us that you were still moving furniture in and
6 unpacking stuff when this storm hit?

7 A. Well, we had just about everything -- we
8 had everything in out of the moving van on Saturday. Then
9 we took that back to Columbia on Sunday, did a little
10 shopping, then we got back, we started unloading the motor
11 home. So we were still, like I said, carrying the stuff
12 in and out from the motor home into the house. We hadn't
13 went to sleep yet. We were -- we were thinking about
14 going to bed, but we hadn't made it yet.

15 Q. Were you going to go to bed in the motor
16 home?

17 A. No. We were going to stay in the house.

18 Q. Do you remember what time it was when this
19 storm hit?

20 A. It was after 12, 1 o'clock.

21 Q. So you were up all that --

22 A. That would have been on Monday, though.

23 Q. Monday morning?

24 A. Yeah.

25 Q. So you were up all through Sunday evening

1 into Monday morning unpacking?

2 A. Yeah, we slept in late Sunday. Like I
3 said, we went to Columbia, took that back. Then when we
4 got back, we started unloading the rest of that stuff out
5 of the motor home.

6 Q. Can you tell me then where your sister was?

7 A. She was in her house next door.

8 MS. CRANE: I don't have anything further.

9 JUDGE VOSS: Commissioner Murray, do you
10 have any questions?

11 COMMISSIONER MURRAY: I'm going to pass at
12 this time.

13 JUDGE VOSS: Commissioner Gaw, do you have
14 any questions?

15 COMMISSIONER GAW: A few, thanks.

16 QUESTIONS BY COMMISSIONER GAW:

17 Q. Good morning, Mr. King.

18 A. Good morning.

19 Q. Thank you for coming today. Unlike some of
20 the individuals out in the audience, I don't have the full
21 picture of what happened here, so -- and without going on
22 to an extended process, I'd like to hear from you a little
23 bit about, first of all, that picture behind you that's on
24 the wall has MC-2006-0389 at the top of it and says
25 something about the title of the case, and there's a

1 picture on it. Do you see that?

2 A. Yes.

3 Q. What is that picture?

4 A. That's a picture of the modular home that

5 we purchased after the storm or whatever went through.

6 Q. All right. When did that -- when did that

7 storm go through that --

8 A. Well, it would have been --

9 Q. -- damaged that house?

10 A. Actually Monday morning. I don't know

11 what -- exact what time. Somewhere between -- after

12 midnight, that's all I know.

13 Q. What month?

14 A. Pardon?

15 Q. What month was it?

16 A. March.

17 Q. Of this year?

18 A. Yes.

19 Q. 2006?

20 A. March 13th.

21 Q. Okay. And I assume that before the storm

22 that house didn't look like the picture there?

23 A. Yeah, it didn't.

24 Q. It wasn't broken apart, right?

25 A. No.

1 Q. Okay. And you bought that modular home
2 from who?

3 A. Clarence Blakely.

4 Q. And that's the Blakely Manufactured Homes
5 Sales Company?

6 A. Yes.

7 Q. And does it operate out of Fulton,
8 Missouri?

9 A. Yes.

10 Q. And is that where you -- where you went to
11 buy that home originally?

12 A. Yes.

13 Q. Okay. And where was that home when that
14 picture was taken? Where is that location?

15 A. 310 -- 3607 County Road 328.

16 Q. Fulton, Missouri?

17 A. Yes.

18 Q. Okay. Is it sitting -- in that picture, is
19 it sitting on a foundation of some sort?

20 A. Well, you can see the foundation there.
21 That's what it was setting on, yes. It's kind of turned.

22 Q. Okay. At this angle, it's a little blurred
23 to me, but I think I see it now. So was it -- is it
24 sitting on the foundation in that picture in the same way
25 that it was sitting before the storm?

1 A. No.

2 Q. How was -- how did it change as a result of
3 the storm --

4 A. Well --

5 Q. -- in regard to the foundation and how it
6 sat on it?

7 A. You can see the top of the foundation wall
8 there, and it was set squarely on that. You know, you
9 would just see the wall, the cement and then, you know,
10 the thing was connected straight down with the wall.

11 Q. Okay. Was there -- were you aware whether
12 any additional work was supposed to be done on that house
13 by the -- by Blakely before that -- just before that
14 storm?

15 A. As far as the house goes? No.

16 Q. Yes.

17 A. No.

18 Q. The work was supposed to be done?

19 A. Yes.

20 Q. Okay. And you were in the process of
21 moving in?

22 A. Yes.

23 Q. Was there anything else that needed to be
24 done before you moved in, as far as you knew at that
25 point?

1 A. No, not that I know of. I mean, we hadn't
2 went through a list or anything.

3 Q. Right.

4 A. We were going to go -- Monday, we were
5 going to do a walk through.

6 Q. Who was going to do that with you?

7 A. Mr. Blakely and my wife and I.

8 Q. Okay. And this was a walk through on
9 Monday, which would have been when in relationship to when
10 the storm occurred?

11 A. Well, it would have been that Monday
12 morning. This happened, like I said, after midnight, the
13 12th, so actually it was 13th, so it would have been that
14 morning.

15 Q. Okay.

16 A. Or that day.

17 Q. But the walk through was just for you-all
18 to go -- what was your understanding what the walk through
19 was about? Let me ask you that.

20 A. Well, if there was anything that we seen
21 that was flawed or whatever, I guess that's what they call
22 it. I haven't bought a house in years, so I don't --

23 Q. But there wasn't any -- you don't know of
24 any restriction in you going ahead and moving in the day
25 before?

1 A. No.

2 Q. Were you in that house when the storm went
3 through?

4 A. Yes.

5 Q. I don't want to go through all of the
6 wonderful details -- and I'm being sarcastic -- of what
7 happened there, but who else was in that home with you?

8 A. My wife, Joyce.

9 Q. Okay. Anybody else?

10 A. Two dogs and a cat.

11 Q. And what happened just very basically
12 without going into the whole story? What happened when
13 the storm hit to you-all in the house?

14 A. Well, we'd been listening to the radio,
15 storm warnings throughout, and -- well, I don't know.
16 They had just called -- as far as we know, everything was
17 called off, or that's what the radio said. And we were
18 sitting there, and then we heard this funny noise, very
19 loud, and the wife looked at me. We were sitting at the
20 table, kitchen table, I believe, and she says, well, you
21 think we ought to go downstairs? And I said, yes.

22 And so -- well, we got up and started
23 towards the stairs, and I was a little bit ahead of her.
24 I think I was on the second or third step, and I turned
25 around to see where she was at, and next thing I know,

1 crawling out from underneath it.

2 Q. Okay. Underneath -- from underneath the
3 house?

4 A. Yes.

5 Q. Is that a basement where that foundation
6 is?

7 A. Yes. It's what they call a walk-out.

8 Q. Okay. And that's where you were?

9 A. Well, that's where we were headed.

10 Q. Didn't quite make it?

11 A. Faster than what we wanted.

12 Q. What was faster than what you wanted?

13 A. Well, we didn't finish walking down the
14 stairs.

15 Q. I see. And that's when all of this
16 happened with the stairs?

17 A. Yes.

18 Q. Okay. And what time of night was it again?

19 A. That would have been, I think, somewhere
20 after midnight.

21 Q. Just --

22 A. Before 1. I'm not sure what time.

23 COMMISSIONER GAW: Thank you, sir.

24 THE WITNESS: Thank you.

25 JUDGE VOSS: Commissioner Appling?

1 QUESTIONS BY COMMISSIONER APPLING:

2 Q. How you doing, Mr. King?

3 A. Good, thank you.

4 Q. Just a couple questions, please.

5 Was this foundation specifically laid for
6 this home or was it already there before the home?

7 A. No. It was laid there for the home.

8 Q. For the home. The day you moved in, was
9 there ever a time that you and Mr. Blakely -- or you asked
10 him, is this home prepared and ready to move into?

11 A. No. We were under that understanding
12 before we left California.

13 Q. That he told you that the home was prepared
14 for you to move into?

15 A. Yes.

16 COMMISSIONER APPLING: Okay. Thank you
17 very much.

18 JUDGE VOSS: Commissioner Murray?

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Good morning.

21 A. Good morning.

22 Q. Did Mr. Blakely tell you that on the
23 telephone, that the home was ready to move into?

24 A. Yes. I don't know as though he really told
25 me because most of the time I don't like to talk on the

1 phone, so it probably would have been my wife, but --

2 Q. But you don't recall him telling you that?

3 A. No, I don't recall talking to him about
4 that. I remember we had one conversation before we left
5 because I wanted to make sure that we could get the truck
6 up to the door, because he had to order rock, which I
7 don't know. At the time he laughed because they were
8 having a drought, so he didn't think there was going to be
9 a need for gravel. I said, well, I'll leave that up to
10 you, then, just as long as it's ready for when we get
11 there.

12 Q. Did you personally have any conversation
13 with him -- with Mr. Blakely regarding the final walk
14 through?

15 A. No. Like I said, as far -- my
16 understanding was we was going to go through one on
17 Monday.

18 Q. How did you gain that understanding?

19 A. Because -- well, when we got there, like I
20 said, I was more interested getting everything out because
21 we wanted to get the moving van back to the thing so we
22 wouldn't have to pay another day.

23 Q. My question is, how did -- where did you
24 arrive at the understanding that there would be a final
25 walk through on Monday?

1 A. Well, like I said, after we walked in
2 before we started unloading -- well, we were walking
3 through, I said, well, I really don't want to go through
4 everything right now today. I would rather be able to
5 spend my time unloading and stuff, is the way that I
6 understand it. I mean, exactly what was said, I don't
7 know.

8 Q. Okay. But was it your understanding that
9 Mr. Blakely was there to go through the final walk through
10 on -- was it Saturday?

11 A. No. He was there on Saturday, as a matter
12 of fact, because the garage hadn't been poured yet, and he
13 had the cement man come over there. They were going
14 through trying to line out when they could put the
15 foundation in for the garage.

16 Q. But you said you were not ready to walk
17 through the entire place at that time. Had he suggested
18 that you do so?

19 A. No. Like I said, I don't really know
20 exactly what was said, but I just said, well, I didn't
21 want to go through everything right now because I didn't
22 know, but I would rather spend my time unloading.

23 Q. And what was Mr. Blakely wanting to go
24 through at that time? What was your understanding?

25 A. He didn't seem very concerned about it

1 either. Like I said, I didn't really have -- we really
2 didn't say anything. I just figured he would be there
3 Monday and then we'd go through, and if there was any
4 flaws or whatever, we'd make up a list and do that on
5 Monday.

6 COMMISSIONER MURRAY: All right. Thank
7 you.

8 JUDGE VOSS: I had a question, just to
9 clarify.

10 QUESTIONS BY JUDGE VOSS:

11 Q. What did you think was going to happen at
12 the walk through, an inspection for little superficial
13 things that might need yet to be finished?

14 A. Probably.

15 JUDGE VOSS: Is there any recross -- I'm
16 sorry. Any other Commissioner questions?

17 (No response.)

18 JUDGE VOSS: Recross based on questions
19 from the Bench?

20 (No response.)

21 JUDGE VOSS: No recross. Redirect?

22 MR. BERLIN: I have a question, your Honor,
23 just a couple.

24 REDIRECT EXAMINATION BY MR. BERLIN:

25 Q. Mr. King, I think in response to some

1 questions from Commissioner Gaw and perhaps the other
2 Commissioners, you indicated that you moved some goods out
3 of a motor home; is that correct?

4 A. Yes.

5 Q. Where was the motor home in relationship to
6 that -- to your modular unit home?

7 A. It would have been sitting right there on
8 the left-hand side where the -- it would be right on the
9 right -- on the left.

10 Q. About how many feet away, would you say?

11 A. Maybe 15 -- 10, 15, something like that.

12 Q. Was the motor home damaged?

13 A. It had, I think the air conditioning was
14 tore off, and the awnings, and the steps got bent.

15 Q. Was the motor home upright?

16 A. Yes.

17 MR. BERLIN: I have no further questions,
18 your Honor.

19 COMMISSIONER GAW: Judge, would it be
20 possible, if it hasn't been marked and put into evidence,
21 to have that picture marked, at least so that it's
22 referred to some way in the questions that we ask about
23 the pictures, so it's clear in the record? I'm not sure
24 whether that's already in or not or if it's going to come
25 in.

1 JUDGE VOSS: Is that picture part of the
2 inspection report that will --

3 MR. BERLIN: Your Honor, those photographs
4 were taken during the conduct of the inspection, and they
5 are part of the PowerPoint presentation that is being
6 reflected upon the screen, and that PowerPoint
7 presentation has been premarked into evidence, and I will
8 be going through those photographs with the housing
9 inspector or the field inspector that -- and the -- both
10 the field inspectors that made those photographs.

11 COMMISSIONER GAW: If there's some way of
12 identifying that particular picture that's up there on the
13 screen right now so that it can be -- it is clear when we
14 were asking questions earlier about that picture, what we
15 were referring to, that would be helpful.

16 MR. BERLIN: Yes.

17 COMMISSIONER GAW: Is there some way to do
18 that now?

19 MR. BERLIN: For the record, that is page 1
20 of the PowerPoint presentation premarked as Exhibit No. 6.

21 COMMISSIONER GAW: And for the record, when
22 I was asking questions earlier, that is the picture that I
23 was referring to when I was inquiring of Mr. King. Thank
24 you.

25 JUDGE VOSS: And I guess that will be

1 addressed by the witnesses that did the inspection and
2 offered into evidence at that time. Commissioner Murray
3 has additional questions.

4 COMMISSIONER MURRAY: Yes. I'm sorry,
5 Judge, but --

6 JUDGE VOSS: No problem.

7 COMMISSIONER MURRAY: A few more things I
8 want to ask.

9 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

10 Q. Was it your understanding that there was
11 still work to be done on the house at the time that you
12 talked to Mr. Blakely on Saturday?

13 A. Not on the house, no. Like I said, the
14 only thing that they were doing was they were still
15 working on the vent for the heat and air conditioning on
16 Friday, and I don't know if he come back on Saturday or
17 not. I don't recall.

18 Q. Was that -- was it your understanding that
19 everything else was complete at that time?

20 A. Yes. We used the refrigerator, stove,
21 everything, dishwasher. We were using everything.

22 Q. Had you been given any assurances that
23 everything was complete?

24 A. Yes. Well, I mean, I don't know what you
25 mean by assurances.

1 Q. Had anyone told you that --

2 A. Everything was working.

3 Q. Had you inquired as to whether everything
4 was complete?

5 A. I didn't ask that particular question that
6 way. I just --

7 Q. Did anyone volunteer that it was or was
8 not?

9 A. Well, like I said, as far as I know, he
10 showed us the refrigerator, the stove and everything else,
11 and it was all working, so, you know --

12 Q. But I'm asking you, did anyone say anything
13 to you in regard to whether everything had been completed
14 or whether there were still things to be completed?

15 A. Like I said, I don't remember any exact
16 conversation. The only thing that he did say was whoever
17 was doing the installing on the thing, they were down in
18 the basement. That's the only thing I know that wasn't
19 completed.

20 Q. And when you say the thing, would you
21 specify again what that was?

22 A. The vents for the heating and air
23 conditioning.

24 COMMISSIONER MURRAY: Okay. Thank you.

25 COMMISSIONER GAW: Judge, let me ask the

1 reverse of that, because I think Commissioner Murray's
2 asking a question that both of us have been trying to get
3 an answer to.

4 FURTHER QUESTIONS BY COMMISSIONER GAW:

5 Q. Was Mr. Blakely onsite prior to the storm
6 when you were present?

7 A. He was there on Friday when we first moved
8 in, and he did come back, like I said, Saturday because he
9 was getting with the cement man.

10 Q. Okay. And did he see you onsite, to your
11 knowledge? Did you have a conversation with him at all
12 while you were there prior to the storm where the house
13 was? Did you talk to him? Did he see you? Were you --

14 A. Yes. Like I said, yes, because I was
15 outside going over the cement with him on Saturday.

16 Q. Did you have your motor home there at the
17 time?

18 A. Yes.

19 Q. Did you have any boxes that you had moved
20 in at the time?

21 A. Well, yes.

22 Q. Into the house?

23 A. Yes. As a matter of fact, he drove the
24 motor home up there because when we come down the
25 driveway, I guess the worker that was working on the vents

1 had a flat tire, so we had to wait for him to get that
2 fixed so we could get in. So we parked there. I guess
3 that's kind of when we really walked up and just kind of
4 went through the house, and then after the tire got fixed,
5 he drove the motor home up on the site.

6 Q. And did he see you unloading boxes into the
7 house?

8 A. Yeah, we were -- well --

9 Q. Was he there while you were unloading boxes
10 into the house?

11 A. Well, like I said, they put the ramp in the
12 door, you know, and then we started unloading stuff, then
13 they left.

14 Q. Who opened the house up for you when you
15 got there?

16 A. He did.

17 Q. All right. Did he tell you not to move
18 anything into the house, not to move into the house?

19 A. No, sir.

20 COMMISSIONER GAW: All right. Thank you.

21 JUDGE VOSS: Any further Commissioner
22 questions?

23 (No response.)

24 JUDGE VOSS: Any additional recross or
25 redirect?

1 MR. BERLIN: No, Judge.

2 MS. CRANE: No.

3 JUDGE VOSS: Seeing none, this witness is
4 excused. Thank you, Mr. King.

5 Okay. We'll take a ten-minute break before
6 we bring Mrs. King up. Thank you.

7 (A BREAK WAS TAKEN.)

8 JUDGE VOSS: We're back on the record.

9 Staff, would you call your next witness?

10 MR. BERLIN: Staff calls Mrs. Joyce King.

11 JUDGE VOSS: Good morning, Mrs. King.

12 THE WITNESS: Good morning.

13 (Witness sworn.)

14 JOYCE KING testified as follows:

15 DIRECT EXAMINATION BY MR. BERLIN:

16 Q. Thank you, Mrs. King, for appearing here
17 this morning. If you would, for the record, please state
18 your full name and current address for the Commission.

19 A. Joyce Janet King, 493 Saber Circle, Fulton,
20 Missouri.

21 Q. And, Mrs. King, did you purchase a modular
22 unit home from Blakely Manufactured Homes in Fulton?

23 A. Yes.

24 MR. BERLIN: May I approach the witness?

25 JUDGE VOSS: Yes.

1 BY MR. BERLIN:

2 Q. Mrs. King, I just handed to you a document
3 that is a sales agreement that was just admitted into
4 evidence as Exhibit No. 3HC. Have you had -- have you
5 seen this document before?

6 A. Yes.

7 Q. And can you identify this, please?

8 A. It's a contract for Blakely to our modular
9 home.

10 Q. And down at the very bottom, I see a
11 signature that appears to say Joyce King. Is that your
12 signature?

13 A. Yes, it is.

14 Q. And, Mrs. King, did the purchase of this
15 home include delivery and setup?

16 A. Yes.

17 Q. Mrs. King, did you sign any waivers or
18 other documents regarding the setup or installation of the
19 new home?

20 A. No.

21 Q. Did you in any way assist the dealer in the
22 delivery and setup?

23 A. No.

24 Q. Installation of the home?

25 A. No.

1 Q. No? And, Mrs. King, if you can recall,
2 when did you move into your new home?

3 A. We arrived in Fulton on the 10th of March,
4 and started unloading the truck that day.

5 Q. And, Mrs. King, how did you become aware
6 that the home was ready to move into?

7 A. Through phone calls with Mr. Blakely.

8 Q. And did you participate in those phone
9 calls?

10 A. Yes.

11 Q. And did Mr. Blakely indicate to you that
12 the home was ready to move into?

13 A. Yes.

14 Q. Did Mr. Blakely assist you in any way in
15 moving into your new home?

16 A. Just getting the truck up to the position
17 to unload it, the moving truck.

18 Q. So was he present when you moved furniture
19 into the home?

20 A. He was there for a little while when Larry
21 started moving stuff in, yes.

22 Q. And when you began this process of moving
23 the truck, had you had an opportunity to go through the
24 home?

25 A. We did sort of a fast walk through, more or

1 less. We had to wait a while, and then he took us in
2 through the basement, and we went through pretty much the
3 whole house.

4 Q. And was it your impression that the home
5 was ready to move into?

6 A. Yes.

7 Q. And did at any time Mr. Blakely tell you to
8 not move into the home?

9 A. No.

10 MR. BERLIN: I have no further questions
11 for this witness, your Honor. I thank you, Mrs. King, for
12 your appearance here today.

13 JUDGE VOSS: Cross-examination?

14 CROSS-EXAMINATION BY MS. CRANE:

15 Q. Mrs. King, was it the way things went that
16 you were the one that was on the phone with Mr. Blakely
17 for the most part when you were still in California?

18 A. Yes.

19 Q. Your husband said he doesn't like talking
20 on the phone.

21 A. Right.

22 Q. So you were the one to. Do you remember
23 when you had your last telephone conversation with
24 Mr. Blakely before you actually headed out?

25 A. I believe I phoned him -- or I phoned him

1 and told him we were leaving California. That must have
2 been about the 3rd of March.

3 Q. And it took you several days to get from
4 California to Missouri, I understand?

5 A. Right.

6 Q. March 10th is when you were actually in
7 Missouri; is that right?

8 A. Right. Uh-huh.

9 Q. And so prior to that last conversation with
10 him, do you remember the conversation you had in regards
11 to the house, whether or not it was ready to be moved
12 into?

13 A. He said it was ready, and that's why we
14 loaded up and moved back.

15 Q. Did he say it will be ready by the time you
16 get here or that it's already ready?

17 A. It's already ready.

18 Q. Do you agree with your husband that
19 March 10th, that Friday, that the two of you did still
20 sleep in your motor home?

21 A. Yes.

22 Q. And did you sleep in your motor home on
23 Saturday?

24 A. Right.

25 Q. Now, he says that you were in the modular

1 home through the evening, it sounds like, even up into the
2 early morning hours unpacking things; is that right?

3 A. Yes.

4 Q. You hadn't bedded down for the night --

5 A. No.

6 Q. -- in the motor home?

7 A. No.

8 Q. And --

9 A. The other beds weren't made either, so --

10 Q. Where were you going to bed down, do you
11 know?

12 A. No. I don't remember where we were going
13 to bed down, no.

14 Q. Did you have any conversation with your
15 husband's sister about a storm coming?

16 A. No.

17 Q. Did anyone call you prior to this storm
18 coming, talk to you about there's a storm coming?

19 A. Before that storm came, we were on the
20 phone with his sister sometimes.

21 Q. Tell me about the conversations with the
22 sister.

23 A. They were watching TV and they could see
24 the storms, but then the storms were all called off.

25 Q. And did you have any conversations with

1 Mr. Blakely on that Sunday?

2 A. No.

3 Q. Did you yourself talk to Mr. Blakely on

4 that Saturday?

5 A. No.

6 Q. When you got to the home, what I'm hearing

7 from your husband is that the truck had to be backed up to

8 the home and that there weren't any steps up to the home;

9 is that right?

10 A. Right.

11 Q. Okay. And that the basement had to be --

12 or the -- excuse me. The garage had to be worked on or

13 something had to be done with that; is that right?

14 A. Right.

15 Q. And that there wasn't any railing on the

16 downstairs, the basement downstairs steps; is that right?

17 A. There wasn't -- there was none on the

18 right-hand side. There was a piece of 2x4 or something.

19 Q. Something temporary?

20 A. Uh-huh.

21 Q. And so that had to be taken care of; is

22 that right?

23 A. Uh-huh.

24 Q. And did you yourself have any conversation

25 with Blakely about the railing?

1 A. No.

2 Q. There was also then the ductwork for the
3 heating had to be worked on; is that right?

4 A. Yes. There was a boy there working on
5 that.

6 Q. And that wasn't going to be done or it
7 didn't get done on Saturday; is that right?

8 A. I believe he finished up on Saturday, yes.

9 Q. So was there anything else that you can
10 remember that still needed to be done on the house?

11 A. The house itself?

12 Q. The house itself.

13 A. No.

14 Q. Okay. When you qualify that by saying
15 house itself, was there something else that needed to be
16 done?

17 A. Well, the garage.

18 Q. The garage. Okay. And you didn't go
19 through -- you said you went through like a quick walk
20 through when you first got there; is that right?

21 A. Yes.

22 Q. Just to see your new home?

23 A. Uh-huh.

24 Q. Did you have a conversation with Blakely
25 about, we'll go through a walk through first of the week

1 to go through everything?

2 A. No.

3 Q. Okay. Was your husband having more contact
4 with him once you were in person with him or were you
5 about the same?

6 A. About the same.

7 Q. Okay. And if I'm understanding you
8 correctly, you're saying that when you were back in
9 California -- well, let me ask it this way: What were the
10 words that Mr. Blakely used to say -- that made you pack
11 up and head to Missouri?

12 A. He told us the house was ready.

13 Q. When you got there on Friday, did you have
14 a conversation with, well, we need to get this moving van
15 back, so we'd like to get the stuff unloaded, don't want
16 to put it in storage, just want to go ahead and get it in?
17 Did you have any conversation along those lines --

18 A. No.

19 Q. -- with Blakely?

20 Did you tell Mr. Blakely that you were
21 going to be, you and your husband, physically staying in
22 the home on Friday?

23 A. No.

24 Q. Did you tell him you were going to be
25 staying in the motor home?

1 A. No, we didn't have that conversation.

2 Q. Other than the things that you and I just

3 talked about that we saw still needed to be worked on,

4 would you have necessarily known what still needed to be

5 worked on or were you relying on the conversations between

6 you, your husband and Mr. Blakely?

7 A. Between the three of us talking.

8 Q. Now, on Sunday evening, Monday morning,

9 where were you when this storm first hit?

10 A. In the kitchen.

11 Q. Do you remember what you'd been doing?

12 A. Putting things, dishes up.

13 Q. Had you made any plans to go to bed or were

14 you going to make it an all-nighter?

15 A. Well, sometimes we do all-nighters.

16 Q. So I take it that you hadn't made any plans

17 at that point?

18 A. No.

19 Q. Had you done anything different from

20 Saturday to Sunday evening as far as your bed --

21 A. No.

22 Q. -- and where you would be sleeping?

23 So your beds were still made up in the

24 motor home at that point?

25 A. Oh, yes.

1 Q. Nothing had been done in the modular home
2 to set it up for you to move in?

3 A. Bed frames were up.

4 Q. Anything else?

5 A. (Witness shook head.)

6 Q. Okay. Do you remember who made the call?
7 Did you call Mr. Blakely or did he call you in regards to
8 this phone conversation saying the house was ready?

9 A. He called us.

10 Q. I think I may have asked this question --
11 forgive me if I have -- but did you talk to Blakely about
12 the stair railing? Did you point out to him any concerns
13 about the fact that there wasn't a railing up yet?

14 A. No.

15 Q. Did you point it out to your husband?

16 A. No.

17 Q. Did he point it out to you?

18 A. No.

19 Q. Was it something -- I mean, on Friday or
20 Saturday, was that of a concern to you that something
21 needed to be done?

22 A. No.

23 Q. How do you know that something needed to be
24 done, then?

25 A. I didn't know. It was just -- you know,

1 didn't look right.

2 Q. Okay.

3 A. I never lived in a two-story before.

4 Q. Okay. But you don't remember thinking, I
5 need to make a point of talking to Blakely about that in
6 particular?

7 A. No. The bottom -- the basement wasn't
8 finished. We were going to finish the basement.

9 Q. Okay. So that begs a question then when
10 you say the basement wasn't finished.

11 A. I meant, you know, walls -- excuse me,
12 walls and stuff like that.

13 Q. So the contract was that it would be on a
14 basement, but unfinished, and it was up to you and your
15 husband to finish that?

16 A. The walls and plumbing and stuff like that.

17 Q. Do you remember in the beginning that you
18 actually were the ones that were picking out someone to do
19 the basement to begin with?

20 A. There was one boy we had in mind. I
21 don't -- I can't remember his name. And Mr. Blakely asked
22 me if he should get in touch with him, and I said no, we
23 don't -- not yet, because we're not sure.

24 Q. Now, was that in regards to doing the
25 finishing the basement or actually pouring the concrete

1 have any questions?

2 COMMISSIONER MURRAY: Just a couple.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good morning, Mrs. King.

5 A. Good morning.

6 Q. When was the house originally scheduled to
7 be ready for you to move in?

8 A. Well, there were a lot of delays, so I'm
9 not -- I don't know if there was actually a date set.

10 Q. Now, were you living just -- were you in
11 temporary quarters in California awaiting the --

12 A. We were in our motor home.

13 Q. And had you been living in your motor home
14 for some time or was it just -- had you moved out of
15 something else into the motor home to wait for the
16 completion of this house?

17 A. We sold our home in September, and then we
18 started living in the motor home.

19 Q. Okay. You didn't expect that this house
20 was going to be ready in September?

21 A. Oh, no, no, no.

22 Q. Do you have any conception of how -- any
23 memory of how long the delay was for completion?

24 A. Well, according to the contract, we
25 purchased it 10/18, October.

1 Q. But when did you think it would be ready to
2 move in? Were you given a date at that time?

3 A. I knew it would be after December, but no,
4 we didn't have a date.

5 Q. You didn't know exactly when it would be?

6 A. No.

7 Q. So there wasn't -- there wasn't a real
8 urgency that you --

9 A. No.

10 Q. I mean, you were okay in your motor home
11 the way you were?

12 A. Uh-huh.

13 Q. When you hired Mr. Gentry to pour the
14 basement, was there any kind of an arrangement between him
15 and Mr. Blakely that you know of in terms of coordinating
16 the foundation with the home itself?

17 A. That I don't know.

18 Q. And that -- I am assuming that you paid
19 Mr. Gentry separately from your contract that we have in
20 evidence here?

21 A. Yes.

22 Q. Did you have any concerns with the work
23 that Mr. Gentry did?

24 A. Not 'til after the storm, but I had asked
25 Mr. Blakely to oversee the work done, and that was in

1 December I talked to him about that, because we had to
2 leave and go back to California.

3 Q. And did he agree to do that?

4 A. Yes.

5 Q. And did he do that?

6 A. The best of my knowledge, he did.

7 Q. And you said you had concerns after the
8 storm with Mr. Gentry's work?

9 A. Well, just the pictures.

10 Q. I'm sorry. I don't know what you're
11 referring to.

12 A. Well, the way the cement broke up, the
13 walls.

14 Q. Is Mr. Gentry a defendant in the civil
15 suit?

16 A. I don't know.

17 COMMISSIONER MURRAY: I think that's all I
18 have. Thank you.

19 JUDGE VOSS: Commissioner Gaw?

20 QUESTIONS BY COMMISSIONER GAW:

21 Q. Just a few. How are you?

22 A. Fine, thank you.

23 Q. Thanks for coming.

24 A. Uh-huh.

25 Q. Can you tell me again, I think I heard you

1 say a while ago that you were told by Mr. Blakely when you
2 were in California that the house was ready?

3 A. Yes.

4 Q. Can you give me his exact words, if you
5 recall them, to the extent that you can?

6 A. Just that he said the house was ready.

7 Q. Okay.

8 A. Uh-huh.

9 Q. And did you tell him that you were coming
10 out?

11 A. Yes.

12 Q. Okay. And did he know ahead of time, did
13 you tell him that you were going to be there that weekend
14 when you did arrive? Was he aware that you were going to
15 show up then?

16 A. I had phoned him before we left, and then
17 he -- I phoned him in Springfield, and he said, well, when
18 you get to Jeff City, give me a call, and he'd meet us at
19 the house.

20 Q. Okay. And did he ever tell you prior to
21 the storm not to move into the house?

22 A. No.

23 Q. All right. The foundation work, do you
24 know when it was completed?

25 A. Not right offhand, no.

1 Q. Do you have any knowledge at all about when
2 it was generally? I mean, was it done -- you mentioned
3 December earlier, and I'm just curious about whether it
4 was done just before you got there and the house put on it
5 or if you know?

6 A. I don't know.

7 Q. That's okay. Just whatever you're familiar
8 with, is all I'm looking for. And the picture behind you
9 that I've referred to earlier --

10 A. Uh-huh.

11 Q. -- that's up on the wall, is that a fair
12 representation of that angle of your house after the storm
13 in March?

14 A. Well, we didn't see it in March. We didn't
15 see it until May probably.

16 Q. When was the storm?

17 A. In March.

18 Q. In March. Okay. After the storm, you
19 didn't see the house until sometime after that?

20 A. Right.

21 Q. That was because of why?

22 A. We were in the hospital.

23 Q. Okay. And so when you did finally see the
24 house in May, did it look like that picture?

25 A. No. It's worse.

1 Q. It was worse by then?

2 A. (Witness nodded.)

3 Q. Okay. But is that a -- is that the
4 house --

5 A. Yes.

6 Q. -- that you -- we've been referring to in
7 this that you were moving into?

8 A. Yes.

9 Q. And your answer was yes, wasn't it?

10 A. Yes.

11 COMMISSIONER GAW: That's all I have.

12 Thank you, ma'am.

13 JUDGE VOSS: Commissioner Appling?

14 QUESTIONS BY COMMISSIONER APPLING:

15 Q. Mrs. King, how you doing?

16 A. Just fine, thank you.

17 Q. I make the assumption that this is the
18 first time that you have ever lived in a manufactured
19 home?

20 A. Right.

21 Q. I won't ask the next question, whether
22 you'll ever live in one again.

23 COMMISSIONER APPLING: I don't think I have
24 any more questions. I just -- I don't know what else to
25 say. Thank you.

1 JUDGE VOSS: Is there recross?

2 MR. BERLIN: Yes, Judge.

3 REDIRECT EXAMINATION BY MR. BERLIN:

4 Q. Mrs. King, earlier I believe you were asked
5 some questions regarding the basement and it being
6 finished?

7 A. Right.

8 Q. Just to clarify what this term finishing
9 means --

10 A. Uh-huh.

11 Q. -- could you please explain your
12 understanding of finishing?

13 A. Well, we were going to add walls and make
14 rooms in the basement.

15 Q. Does that mean you were going to make a
16 living space finished off much like the living space --

17 A. Yes.

18 Q. -- on the primary floor?

19 A. Yes.

20 Q. Mrs. King, when you purchased this home,
21 was it your understanding that this was a turnkey home,
22 that you would -- when you purchased the home, that you
23 would be able to move directly into the home?

24 A. Yes.

25 Q. And that home would also include a

1 foundation?

2 A. Yes.

3 Q. And basement?

4 A. Yes.

5 Q. You indicated earlier in a response to a
6 question that you paid directly a Mr. Butch Gentry who did
7 some concrete work; is that correct?

8 A. Yes.

9 Q. Did you supervise the concrete work,
10 Mrs. King?

11 A. No.

12 Q. Who supervised the concrete work?

13 A. Mr. Blakely was supposed to.

14 Q. Did Mr. Blakely tell you that he would
15 supervise that work?

16 A. Yes.

17 MR. BERLIN: No further questions. Thank
18 you.

19 COMMISSIONER MURRAY: Judge?

20 JUDGE VOSS: Commissioner Murray?

21 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

22 Q. I just have a few more questions to ask
23 you, and that is -- starts with when you purchased the
24 home from Blakely, and I don't see it here anywhere on the
25 contract that was submitted in evidence, but was there any

1 discussion about the suitability of that home to be set on
2 a basement or whether -- whether that home was designed to
3 sit on just a slab foundation or whether it was designed
4 to sit on a basement or either/or? Did you have any
5 discussion with Blakely about that, whether that home was
6 suitable to have a basement?

7 A. Yes. Uh-huh.

8 Q. And what were you told?

9 A. That it was suitable to be put on the
10 basement.

11 Q. And at that time, the -- well, the contract
12 stated that the order includes delivery and complete
13 setup. It doesn't say anything about a basement or your
14 being responsible for a basement that I see. And I'm just
15 trying to understand what your representation -- what
16 representations were made to you about how it would be set
17 up?

18 A. We were going to be here, you know, to
19 supervise that ourselves, but then my brother was sick, so
20 we went to California. And I asked Mr. Blakely if he
21 would be the contractor and supervise.

22 Q. When you say contractor, you mean to
23 supervise the work done by Mr. Gentry?

24 A. Uh-huh.

25 Q. And you said, I believe, that he did agree

1 to do that?

2 A. Yes, he did.

3 Q. And then did you follow up with him

4 afterwards to see whether he was actually there to

5 supervise it and what he thought of the work?

6 A. No.

7 Q. You didn't ask?

8 A. No, I didn't.

9 Q. Have you ever talked to him about whether
10 he supervised the foundation work?

11 A. No. We only saw him that weekend.

12 Q. So you never did ask if everything turned
13 out all right on the foundation?

14 A. I would assume that it did.

15 Q. But you -- and you did not ask. You
16 assumed it, but did not ask; is that correct? I just want
17 to make sure I'm understanding what you're saying.

18 A. I guess that's right.

19 COMMISSIONER MURRAY: Judge, I think that's
20 all now. Thank you.

21 JUDGE VOSS: Commissioner Appling?

22 FURTHER QUESTIONS BY COMMISSIONER APPLING:

23 Q. Ms. King, I'm sorry, but who did you get
24 Mr. Gentry's name from? Who gave you Mr. Gentry's name?

25 A. Mr. Blakely.

1 Q. Mr. Blakely. So you made the assumption
2 that he had been doing work for Mr. Blakely before?

3 A. Right. Right.

4 Q. Okay. You was in California, California?

5 A. Right.

6 Q. And you were there how long when you bought
7 the home? How long were you in Fulton?

8 A. From the end of September to --

9 Q. After Christmas?

10 A. -- about the 9th of December, we went back
11 home.

12 Q. And you entered into this contract with
13 Mr. Blakely and Mr. Gentry in good faith that they would
14 do what they told you they were going to do?

15 A. Yes.

16 COMMISSIONER APPLING: Okay. Thank you
17 very much.

18 JUDGE VOSS: Commissioner Gaw?

19 COMMISSIONER GAW: No, thank you.

20 JUDGE VOSS: Any other redirect or recross?

21 (No response.)

22 JUDGE VOSS: Well, then, Ms. King, you're
23 excused. Thank you. It is about ten 'til noon. Do we
24 want to take a lunch recess and begin with the Staff
25 technical witnesses after lunch? I assume they each will

1 take a fairly significant amount of time.

2 MR. BERLIN: That's agreeable to Staff,
3 your Honor.

4 JUDGE VOSS: Let's take a lunch recess and
5 we'll return at one o'clock.

6 (A BREAK WAS TAKEN.)

7 JUDGE VOSS: We're back on the record.
8 Staff, would you like to call your next witness?

9 MR. BERLIN: Staff calls Tim Haden.

10 (Witness sworn.)

11 JUDGE DALE: Thank you.

12 TIM HADEN testified as follows:

13 DIRECT EXAMINATION BY MR. BERLIN:

14 Q. Mr. Haden, for the record, would you please
15 state your full name and how you are employed.

16 A? My name is Tim Haden, employed as an
17 inspector for the Missouri Public Service Commission
18 Manufactured Housing and Modular Units Program.

19 Q. And how long have you been employed in that
20 position?

21 A. Since August of 1994.

22 Q. Mr. Haden, right behind you, you will see a
23 photograph. Have you seen that before?

24 A. Yes, I have.

25 Q. Did you conduct a site inspection of the

1 King family home?

2 A. Yes, I did.

3 Q. Could you please tell the Commission how
4 you came around to conducting this inspection?

5 A. Yes. I first saw the King home in an
6 article in the Fulton Sun newspaper. The article stated
7 that it was a new modular unit that had been damaged
8 during a windstorm. Later that morning I contacted my
9 boss, Ron Pleus, the Director of the Manufactured Housing
10 and Modular Units Program, told him what I had read in the
11 paper and suggested that I go by and take a look at the
12 site and find out a little bit more about it. He agreed,
13 said go by and take a look at it.

14 So later that morning, I did. I went out
15 to the address of the home. When I got there, there was
16 some of the family members at the home. I introduced
17 myself, told them who I was. They started asking
18 questions about the home, and I explained to them that we
19 could do an inspection, but I wanted to contact my office
20 again. Due to the seriousness of the problems here and
21 the condition the home was in, I felt like we needed more
22 people onsite. So I called. That afternoon, we came
23 back. Gene Winn was with me, my supervisor, and Ron
24 Pleus, the Director, and we proceeded to do the inspection
25 at that point.

1 Q. When you conducted your field site
2 inspection, did you take any photographs?

3 A. Yes. I took some and Gene took some on
4 some digital images, too.

5 MR. BERLIN: Your Honor, may I approach the
6 witness?

7 JUDGE DALE: Yes, you may.

8 BY MR. BERLIN:

9 Q. I've just handed the witness Exhibit No. 6,
10 premarked as Exhibit No. 6, the first page of which is the
11 image projected upon the screen. This is a PowerPoint
12 presentation that contains photographs and diagrams
13 related to each of the nine counts. There are some
14 general overall photographs of the home. This PowerPoint
15 presentation reflects, as I said earlier, the nine counts,
16 nine violations, and before I move to get this admitted
17 into evidence, I would like to ask you, Mr. Haden, have
18 you seen this document before?

19 A. Yes, I have.

20 Q. And have you seen each page of the 14-page
21 document?

22 A. Yes, I have.

23 Q. For the purpose of this hearing, are the
24 photographs contained in this document true and accurate
25 representations of what you observed during your conduct

1 of the field site inspection of this home?

2 A. Yes, they are.

3 Q. And there are diagrams contained in the
4 later pages, specifically pages 6 through 14 that deal
5 with each of the counts. Do those diagrams, to the best
6 of your information, knowledge and belief represent the
7 true manufacturer installation instructions?

8 A. Yes, they do.

9 MR. BERLIN: Your Honor, I would move that
10 premarked Exhibit No. 6 be admitted into evidence.

11 MS. CRANE: No objection.

12 JUDGE VOSS: Are there any other
13 objections?

14 (No response.)

15 JUDGE VOSS: Then it will be admitted.

16 (EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

17 BY MR. BERLIN:

18 Q. Okay. Mr. Haden, could you please explain
19 again to the Commission what that photograph represents?

20 A. This photograph is of the King home. This
21 particular shot is of the west end of the home where the
22 home was originally setting on a foundation basement wall
23 right here. This shot shows the house in its final
24 resting position just a little bit east of the foundation
25 wall (indicating).

1 that as page No. 3?

2 MR. BERLIN: Yes, Commissioner Murray, that
3 is page No. 3 of this exhibit.

4 BY MR. BERLIN:

5 Q. On page No. 4, could you please explain to
6 the Commission what that photograph represents?

7 A. This is looking across the top of the
8 wood-framed wall portion of the walk-out basement. This
9 is the -- you see the concrete walls. This would be one
10 end of the basement, and then you have a back wall on the
11 other side, and a concrete wall on this end and then a
12 wood-framed wall that runs the length of the home across
13 the south side of the basement. This is the top of that
14 wall (indicating).

15 Q. Can you explain what that top of the wall
16 is and the material on the top there?

17 A. This is a two-by constructed wall. This is
18 where the home floor actually rested right on top of this
19 wall. This material here is a spray foam-type insulation
20 to prevent air infiltration into the basement area of the
21 home. This is where the home should be fastened across
22 the top of here (indicating). There were no visible
23 fasteners that we could see anywhere connecting the top of
24 this wall to the floor rim joists of the home.

25 Q. Moving to page 5 photograph, could you

1 please explain to the Commission what that photograph
2 represents?

3 A. This is another shot of that walk-out
4 section on the outside or the road side of the home.
5 Again, the home before it moved was setting across the top
6 of this wall right here, and then this is the west end of
7 the poured concrete basement, and this end right here
8 would be setting along the top of this wall (indicating).

9 Q. And I think, based on your earlier comment,
10 am I correct in understanding that this outside wall that
11 I'm pointing to, the front outside wall, is a constructed
12 wall, correct?

13 A. That's correct. Wood construction.

14 Q. Wood construction. And the home was
15 sitting on top of that wall, correct?

16 A. That's correct.

17 Q. And was the home fastened to that wall in
18 any way that you observed?

19 A. There were no fasteners between the top of
20 that wall and the floor of the home.

21 Q. On Count 1 of the Manager's complaint
22 against Blakely, Count 1 is that Blakely failed to
23 properly attach the Kings' home onto the basement
24 foundation in accordance with manufacturer instructions.
25 Mr. Haden, could you please explain to the Commission what

1 the appropriate standard is and what you observed?

2 A. This drawing in the upper left-hand corner
3 is from the manufacturer's Four Seasons Housing --

4 JUDGE VOSS: Excuse me just one second.
5 Could you speak a little more directly into the mic, make
6 sure it's on. I just got an e-mail that they can't hear
7 you.

8 THE WITNESS: I'm sorry.

9 JUDGE VOSS: That's fine.

10 THE WITNESS: It's hard to look and talk at
11 the same time. What this drawing is is from Four Seasons
12 Housing modular unit installation instructions. It shows
13 the detail of the home in relationship to the concrete
14 wall. This portion right in here is the basement wall,
15 the top of the wall. This shows the field-installed sill
16 plate, and then this section in here is actually the
17 bottom of the home (indicating).

18 The instructions require a sill plate to be
19 placed on top of the concrete wall and anchored to the
20 wall with 5/8 inch diameter anchor bolts. Those anchor
21 bolts have a minimum embedment of seven inches into the
22 concrete. The sill plate is then applied to the top of
23 the wall and bolted down with those anchor bolts, and once
24 the home is positioned on top of that sill plate, the home
25 is fastened to the sill plate using the 16-D nail spaced

1 at six inches on center around the perimeter of the home.

2 This is actually what holds the home to the
3 foundation wall. What we saw out there was -- is in this
4 picture right here on the bottom left, is we didn't have a
5 sill plate, for one, at all. No anchor bolts embedded
6 into the concrete. What we had was an anchor strap, what
7 we call a Minute Man anchor strap embedded into the
8 concrete, and this strap is used to connect a -- mostly
9 pier-set homes to ground anchors. That's the way we have
10 it approved.

11 What they have done is drilled a hole
12 through that and used a quarter-inch by inch-and-a-half
13 lag screw screwed into the side of this sill plate -- this
14 drawing, and these straps were spaced approximately two to
15 four feet from the corners, and then another six or seven
16 feet along the top of the wall. And then again on this
17 back wall here, this is your walk-out section of your
18 basement (indicating). There was no fastened there at
19 all.

20 Q. Mr. Haden, are those -- are those straps as
21 depicted there in the photographs approved for use for
22 installation of a modular unit home to this foundation?

23 A. No, they are not approved for that
24 application. We have an approval for this strap used in
25 conjunction with ground anchors. I also contacted Minute

1 Man, the manufacturer, and asked them if they had any
2 additional approvals for this application, and they said
3 no.

4 Q. Did the manufacturer's instructions or
5 manual call for or permit the use of this strap as a way
6 to anchor the home to the foundation wall?

7 A. No, it did not.

8 MR. BERLIN: May I approach the witness?

9 JUDGE VOSS: Yes, you may.

10 BY MR. BERLIN:

11 Q. Mr. Haden, I just brought to you what
12 appears to be an anchor strap premarked as Exhibit No. 7.
13 Can you identify that strap?

14 A. This is one of those straps that we just --
15 that we see sticking out of the concrete foundation wall.
16 When we were on the site, Gene picked that strap up -- it
17 had come loose -- and brought it, but this is actually one
18 of those straps (indicating).

19 MR. BERLIN: Your Honor, I would move that
20 premarked Exhibit No. 7 be admitted into evidence.

21 JUDGE VOSS: This is the strap itself?

22 MR. BERLIN: That is the physical strap
23 that Mr. Haden just testified that was found onsite during
24 the conduct of his inspection report.

25 JUDGE VOSS: Are there any objections to

1 that exhibit?

2 MS. CRANE: No.

3 JUDGE VOSS: Hearing none, it will be
4 admitted.

5 (EXHIBIT NO. 7 WAS RECEIVED INTO EVIDENCE.)

6 BY MR. BERLIN:

7 Q. On Count 2, Blakely failed to properly
8 support the centerline of the Kings' home with the
9 necessary jack posts according to manufacturer
10 instructions. Mr. Haden, could you please explain to
11 the Commission what the appropriate standard is according
12 to the manufacturer and what you observed?

13 A. Again, this is a drawing directly from the
14 manufacturer's installation instructions, page 10.1,
15 modular unit installation instructions from Four Seasons.
16 This shows the placement of the centerline jack posts, the
17 length of the home. These are spaced at various intervals
18 underneath concentrated loads along the marriage lines.
19 This is what supports the center of the home, basically
20 (indicating).

21 These are spaced -- they have measurements
22 here anywhere from four to six feet apart throughout the
23 centerline of this home. What we have out there, we had
24 these jack posts, this is the mating line or the
25 centerline of the home right here (indicating). These

1 posts were spaced evenly at approximately nine feet apart
2 throughout the length of the home.

3 Q. Just for purposes of clarification,
4 Mr. Haden, you used the term marriage line. Could you
5 explain what that means to the Commission?

6 A. Yes. The two sections come together,
7 called centerline or mating line or marriage line, that's
8 the connection of the two sections when they come
9 together.

10 Q. How many jack posts are required in the
11 installation of this home?

12 A. The drawing shows 14 jack posts, two of
13 which are on the outside corners of stairwell opening, so
14 there would be 12, yeah, along the center directly
15 underneath the centerline of the home.

16 Q. And did you find 12 or 14 -- correct me if
17 I understood you right, but did you find 14 jack posts?
18 You indicated 14 are required; is that correct?

19 A. Yes, 14 total, including the outside
20 corners of the stairwell opening.

21 Q. Were 14 jack posts used in this
22 installation?

23 A. We couldn't find that many. It was a
24 little hard to determine where these -- all these posts
25 were, since the home had shifted off the foundation, part

1 of the home was off on the ground where we couldn't see.
2 What we could see was posts evenly spaced at approximately
3 nine feet apart on center. So that would calculate out to
4 six or seven posts along that centerline where we had 12
5 required, so about half the number of jack posts used as
6 what was required.

7 Q. So if I understand, then, the spacing of
8 the jack posts that you observed was nine feet spacing; is
9 that right?

10 A. That's correct.

11 Q. Does the manufacturer's instructions allow
12 nine foot spacing?

13 A. No, it does not.

14 Q. Count 3, Blakely failed to properly attach
15 the supporting jack posts to the home's center beam and to
16 the concrete footing according to the manufacturer's
17 foundation drawings. Mr. Haden, for the Commission, could
18 you please explain what the appropriate manufacturer's
19 installation standard is and what you observed?

20 A. This figure at the bottom of the page here
21 is directly from the Four Seasons modular unit
22 manufacturer installation instructions. This shows the
23 proper attachment of the support posts along the
24 centerline of the home. This area right in here is where
25 the home actually comes together. This would be the top

1 of the post (indicating). They require two No. 10 by
2 2-inch screws into the centerline beam.

3 This is the actual centerline of that home,
4 right there where the two sections come together, and the
5 top of this post is fastened. They used a 3/8 or 5/16 lag
6 bolt. It's a little hard to tell exactly, but that's
7 about the size of it, and it's only in the one side of the
8 home. So there was no fastening over here on this other
9 side of the home where the manufacturer does require two
10 fasteners, one on each side (indicating).

11 This is the bottom of the post, resting
12 on the concrete floor. The manufacturer requires four 5/8
13 by 8 inch anchor bolts in the bottom holding the base of
14 the post. There is no fastening whatsoever on any of
15 these posts at the bottom jack post (indicating).

16 Q. Going back to the photograph of the top
17 part of the jack post that I'm pointing to, where it
18 appears to be fastened to the support beams or what you
19 call the centerline, in observing the fastener that was
20 used, is that fastener approved by the manufacturer?

21 A. That is not the fastener that the
22 manufacturer tells us to use in their installation
23 instructions. This is actually a little larger. It may
24 or may not be a problem, but a lot of times when you use
25 too large of a fastener into the edge of a beam it could

1 damage that beam or split it or weaken it some. They tell
2 you to use a No. 2, which is smaller -- or No. 10, which
3 is a smaller screw into the edge of that two-by.

4 Q. Moving on to Count 4, Blakely failed to
5 properly fasten the home's hinged roof according to
6 manufacturer installation instructions. Mr. Haden, please
7 identify to the Commission the appropriate manufacturer
8 standard for installation and what you observed.

9 A. This particular unit comes with a hinged
10 roof for transportation purposes. A section of the roof
11 hinges down so that the home can be transported down the
12 highway, and when it's brought to its final position, this
13 roof is lifted, we have a two-piece king post. This part
14 of the roof or king post swings out from underneath the
15 roof and sets over here on these stubbed king posts, and
16 that's what brings the roof up and holds it into position.

17 These hinged king posts are supposed to be
18 fastened to the stubbed king posts with two No. 8 by 3
19 screws at each stub location. This is one side of the
20 home, and this is the other side of the home. Neither one
21 of these hinged king post walls are fastened or were
22 fastened to any of the stubbed king posts (indicating).

23 This is after the home had been moved,
24 these king posts actually shifted off of the stubbed king
25 post (indicating).

1 Q. Approximately how many king posts are used
2 in this roof section?

3 A. The king posts, there's a king post for
4 every rafter. These rafters I believe are spaced at
5 16 inches on center, so there's a king post every
6 16 inches the length of this home. I don't know the exact
7 number of how many there are.

8 Q. So of these king posts, were any of them
9 fastened in any fashion to the -- to the base?

10 A. There is a factory-installed member that
11 keeps these all in alignment, and when they swing that out
12 here, this member right here will keep all the king posts
13 that's installed at the plant, but the fastening goes from
14 this king post to this king post stub (indicating), and
15 there was none of them fastened.

16 Q. Moving on to Count 5, Blakely failed to
17 properly fasten in place the drop-in roof ridge sections
18 of the home in accordance with manufacturer installation
19 instructions. For the Commission, Mr. Haden, could you
20 please identify the appropriate manufacturer installation
21 standard and what you observed?

22 A. Once the roof is raised and the king posts
23 are properly aligned, you have a section of ridge right
24 here. This is the top rail of that section of roof that
25 gets raised, and there's a member right there, and then

1 this section drops in and these two members are supposed
2 to be fastened together using two No. 8 times 3-inch
3 screws per bay (indicating).

4 A bay is this section from here to here.
5 This is the actual peak section that came loose when the
6 house was shifted from its foundation. This is the edge
7 of that ridge, which would be, in the drawing, this member
8 right here. What we have here is a whole bunch of
9 shimming. For some reason this ridge didn't drop in and
10 fit correctly, whether it was the positioning of the king
11 post or the alignment of the roof, they put approximately
12 four, five inches worth of shims on each side of this
13 ridge member (indicating).

14 There was nails holding these shims in and
15 these two-bys here were nailed in, but there should not be
16 any shimming between this ridge section and the top of the
17 roof member.

18 Q. You indicated that nails were used to
19 secure the shimming or the section to the roof. Can you
20 please explain that?

21 A. Yes. There was -- the shims that they put
22 in were nailed into the ridge section, and the final shim
23 here was nailed to the top of the roof section to hold it
24 in place (indicating). I didn't see any screws really. I
25 just saw nails.

1 Q. Are nails approved by the manufacturer for
2 installation of this drop-in roof ridge section?

3 A. According to the installation instructions,
4 they require two No. 8 screws on each rail per bay. So
5 no, there are no nailing schedules for this piece.

6 Q. Moving on to Count 6, Blakely failed to
7 properly fasten together the end walls of both home
8 sections in accordance with manufacturer installation
9 instructions. Mr. Haden, for the Commission, would you
10 please explain what the appropriate manufacturer
11 installation instruction calls for and then what you
12 observed?

13 A. The manufacturer provides a fastening
14 schedule. This chart, again, is out of the manufacturer's
15 installation instructions for the installation of the
16 modular units. When the home is positioned together, they
17 require the end walls of the two sections to be fastened
18 together using a No. 8 by 3 screw spaced 12 inches apart
19 on center.

20 This is, again, the west end of the home.
21 This is one edge of one section, and this is the other
22 edge of the other section, and when these sections were in
23 their final position and set up, these end walls should
24 have been fastened together with the No. 8 times 3-inch
25 screws spaced at 12 inches on center.

1 What we found out there was some metal
2 straps with small screws holding them on one side and then
3 over to the other side. There's two visible in this
4 picture. I didn't see any others. There's one right
5 there and there's one right there, that pulled loose, of
6 course, when the home was shifted from its foundation
7 (indicating).

8 Q. Are the metal straps that are depicted in
9 that photograph approved for securing the home sections
10 together?

11 A. No, they're not.

12 Q. Moving on to Count 7, Blakely failed to
13 properly construct the home stairway to the basement in
14 accordance with the International Residential Code 2000.
15 Mr. Haden, for the Commission, would you please explain
16 the appropriate standard for this construction and what
17 you observed?

18 A. The home is manufactured to comply with the
19 2000 International Residential Code, and any additions to
20 the home or modifications or alterations would have to
21 comply to that code as well. This is an image of the
22 stairs leading to the basement from the home. This is the
23 tread where you step if you were walking up the stairs.
24 This is where your foot would land, and then that would be
25 the next tread (indicating). We measured the treads.

1 This tread is nine inches. The code
2 requires a minimum tread of ten inches and a
3 three-quarters inch nosing if the back of the stairs are
4 enclosed, which these are. This has -- this is a riser
5 area, and it's -- they are solid, enclosed. So the tread
6 depth would be required to be ten inches minimum and again
7 with a three-quarter-inch nosing on that.

8 Q. And was there a three-quarter-inch nosing?

9 A. No. This is a flat edge of the tread
10 that's even with the back of the riser. There is no
11 nosing on those stairs.

12 JUDGE VOSS: I didn't hear you say which
13 page this is.

14 MR. BERLIN: Well, this is Count 7. I've
15 been going by counts, but it is page 12.

16 JUDGE VOSS: Thank you.

17 COMMISSIONER MURRAY: Judge, I was thinking
18 the record wasn't going to be very clear on that. I think
19 it needs to be made clear that all of these references to
20 each count are related to the document that's in evidence
21 and the specific page for each count.

22 JUDGE VOSS: I'm not sure how to go back
23 and do all of it now. Can we go by page number, by count?

24 COMMISSIONER MURRAY: Perhaps at the end he
25 can just verify that every photograph that he referenced

1 was depicted on the page correlating to the count.

2 MR. BERLIN: I can do that.

3 JUDGE VOSS: Thank you. I was trying to
4 listen to the page references and didn't hear one that
5 time. Thank you.

6 BY MR. BERLIN:

7 Q. Moving on to Count 8, which is page 13 of
8 this exhibit, Blakely failed to install guards on the
9 sides of the home's basement stairway in accordance with
10 International Residential Code 2000. Mr. Haden, for the
11 Commission, would you please explain the appropriate
12 standards and what you observed?

13 A. The International Residential Code requires
14 that stairs, unless they're enclosed by walls, would have
15 to have guards on the side a minimum of 34 inches high
16 above the stairs to protect the edges of the stairs from
17 people falling off or things like that.

18 This is a profile of the stairs coming down
19 to the basement. Then this is where you walk. That's the
20 tread. That's a tread and that's a tread and so forth
21 (indicating). These are open on both sides. There's no
22 guards, nothing to protect the edges of these stairs or
23 the people traveling these stairs.

24 Q. So it would be correct to say that there's
25 no guard that would prevent someone from falling over

1 on -- from the staircase?

2 A. That's correct.

3 Q. Moving on to Count 9, which is page 14,
4 Blakely failed to install a handrail on the home's
5 basement stairway in accordance with the International
6 Residential Code 2000. Mr. Haden, for the Commission,
7 would you please identify the appropriate standard and
8 what you observed?

9 A. In addition to the guards, the sides of the
10 stairs, there would be at least one handrail required on
11 one side of the stairwell, so that when you travel up
12 these stairs, you would have a handrail at least, like I
13 say, on one side to hang onto. This is the entire
14 stairway, and again, you don't see any guards, you don't
15 see any handrails, and we couldn't see where any were ever
16 applied to it.

17 Q. Mr. Haden, I just notice in the photograph
18 on Count 9 that there appears to be a pole or a post
19 laying across the stairway. Could you identify that,
20 please?

21 A. This, I think, is one of the jack posts
22 that was either originally underneath the stairwell
23 opening or underneath the centerline of the home. That's
24 where it was when we saw it.

25 MR. BERLIN: What I'd like to do is -- for

1 the Commission is to go back and just identify each page
2 of Exhibit No. 6, just for the record.

3 JUDGE VOSS: You might make a statement
4 that all of the references made thus far were in reference
5 to this exhibit.

6 MR. BERLIN: All references made thus far
7 by Mr. Haden refers to Exhibit No. 6, pages 1 through 14.
8 Page 1 is the cover page. Page 2 is a photograph of the
9 entire home. Page 3 is a photograph of the interior of
10 the home. Page 4 is a photograph of the outer wall of
11 the home. Page 5 is a photograph of the two roof sections
12 of the home that are off of the foundation.

13 Page 6 is Count 1 with a photograph of the
14 foundation wall. Count 2 is page 7 with a photograph of
15 the jack posts underneath the centerline of the home.
16 Count 3 are two photographs of the jack posts used in the
17 construction of this home.

18 JUDGE VOSS: And Count 3 is on page 8?

19 MR. BERLIN: Count 3 is on page 8.
20 Count 4, page 9, is a photograph of the hinged roof
21 sections and the king posts referred to earlier by Mr.
22 Haden. Count 5, which is page 10, is a photograph of the
23 drop-in roof ridge section of the home. Count 6, on page
24 11, is a photograph of the two sections of the home.

25 Count 7, which is page 12, is a photograph

1 of the stairway in the basement of the home, specifically
2 of the tread to the stairway. Count 8, which is page 13,
3 is a photograph of the stairway itself. And Count 9,
4 which is page 14, is another photograph of the stairway
5 with what appears to be a jack post laying across it.

6 BY MR. BERLIN:

7 Mr. Haden, have I accurately described this
8 exhibit?

9 A. Yes, you have.

10 MR. BERLIN: Your Honor, I do have an
11 electronic copy of this, and I can also enter that into
12 evidence if that would be of benefit to the Commission on
13 a CD.

14 JUDGE VOSS: I don't know that the
15 Commission would need an electronic copy. If it would
16 assist the court reporter, she might like an electronic
17 copy.

18 I do have a question about this exhibit.
19 Who generated it? Did you generate this?

20 THE WITNESS: I think I assisted with some
21 of the photographs, but I didn't actually generate the
22 PowerPoint presentation, no.

23 MR. BERLIN: This was an assembly of
24 information contained in the site inspection report, which
25 I'm going to. And I will tie the site inspection report

1 conducted by Mr. Haden to this exhibit.

2 JUDGE VOSS: So while you're listing the
3 counts in this, you're not stating them as any type of
4 testimonial evidence, but as your restatement of counts
5 alleged in the complaint?

6 MR. BERLIN: That's correct.

7 JUDGE VOSS: I just wanted to clarify that
8 for the record.

9 MR. BERLIN: I restated the counts for the
10 purposes of explaining the violation.

11 JUDGE VOSS: Okay. The picture was
12 designed to be evidence of? I just want to --

13 MR. BERLIN: That is correct.

14 BY MR. BERLIN:

15 Q. Mr. Haden, did you cause to be prepared a
16 field site inspection report of this home?

17 A. Yes, I did.

18 MR. BERLIN: Your Honor, may I approach the
19 witness?

20 JUDGE VOSS: Yes, you may.

21 BY MR. BERLIN:

22 Q. Mr. Haden, can you please identify the
23 document that I just passed out to you?

24 A. This is a copy of my field inspection
25 report, site inspection report.

1 Q. Pages 1 and 2 with the attachments of what
2 appears to be manufacturer instructions?

3 A. That's correct. I have two pages of the
4 site inspection report and then some attachments from the
5 manufacturer, Four Seasons, installation manual.

6 Q. Mr. Haden, are there any changes you wish
7 to make to this document at this time?

8 A. On the second page of my inspection report,
9 Item No. 5 at the top of the page, line 7 of that
10 paragraph, I have half-inch by seven-inch minimum
11 and then embedded anchor bolt. That should actually be
12 5/8 diameter anchor bolt.

13 Q. All right.

14 JUDGE VOSS: Could you repeat that?

15 THE WITNESS: On page 2 of my site
16 inspection report, Item No. 5, line 7, I state half-inch
17 by seven-inch minimum embedment in anchor bolt and that
18 should be 5/8 inch.

19 JUDGE VOSS: Thank you.

20 MR. BERLIN: I'd like to note to the
21 Commission that page 2 of 2 on Mr. Haden's inspection
22 report, starting with a summary of problems, Item No. 5,
23 going all the way down to Item No. 13, is a description of
24 the nine violations or nine counts that I just went
25 through on Exhibit No. 6, the PowerPoint presentation.

1 BY MR. BERLIN:

2 Q. Mr. Haden --

3 COMMISSIONER MURRAY: Was that a question
4 for the witness?

5 JUDGE VOSS: No.

6 MR. BERLIN: I'm just merely stating that
7 this site inspection report, page 2, Items No. 5 through
8 13 are the -- what is referred to with respect to each
9 violation, each count of the complaint case.

10 COMMISSIONER MURRAY: You generally
11 establish that through the witness, don't you?

12 MR. BERLIN: Yes, I do.

13 COMMISSIONER MURRAY: You should do that.

14 BY MR. BERLIN:

15 Q. Mr. Haden, have I -- could you please
16 describe items No. 5 through 13 for the Commission?

17 A. Items 5 through 13 are the nine items that
18 we cited as defective in the setup of the home, which are
19 the counts mentioned in this complaint.

20 Q. And earlier I believe you said that the
21 attachments are the manufacturer instructions that you
22 referred to on those items?

23 A. That's correct.

24 Q. Mr. Haden, aside from the change that you
25 just recently made, based on your best information and

1 belief, is this site inspection true and correct?

2 A. Yes, it is.

3 MR. BERLIN: Your Honor, with that, I would
4 move to admit the site inspection report into evidence as
5 already premarked as Exhibit 4.

6 JUDGE VOSS: Are there any objections to
7 that exhibit?

8 (No response.)

9 JUDGE VOSS: Hearing none, it will be
10 admitted.

11 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

12 MR. BERLIN: Your Honor, may I approach the
13 witness?

14 JUDGE VOSS: Yes, you may.

15 BY MR. BERLIN:

16 Q. Mr. Haden, I just handed to you a document
17 that at the very bottom says 2000 International
18 Residential Code. Can you identify this document, please?

19 A. These are copies of a couple of pages out
20 of the 2000 International Residential Code book.

21 Q. Does this portion of the International
22 Residential Code apply to the IRC violations that you
23 noted in your site inspection report?

24 A. Yes, in my site inspection report I
25 reference these sections of the International Residential

1 Code as violations.

2 MR. BERLIN: Your Honor, I would move that
3 premarked Exhibit 5, two pages from the 2000 International
4 Residential Code, be admitted into evidence.

5 JUDGE VOSS: Are there any objections to
6 that?

7 MS. CRANE: I'd like to place an objection
8 because I don't know that it's been established that this
9 becomes applicable to Missouri's Code of State
10 Regulations. I don't know that there's been any
11 foundation laid that ties these two together.

12 JUDGE VOSS: Would you like to address that
13 objection?

14 MR. BERLIN: Yes, your Honor. Just a
15 second, please. Your Honor, under 4 CSR 240-123.080, code
16 for modular units of the Commission rules, specifically
17 paragraph 3 states that the structure shall be
18 manufactured in accordance with and meet the requirements
19 of the following building codes, of which the
20 International Residential Code 2000 is adopted by the
21 Commission through this rule.

22 JUDGE VOSS: And that's something I see
23 that can be addressed in briefing as well. This can be
24 admitted for the value that it has. Do you have any other
25 objections?

1 MR. BERLIN: I would just state also for
2 the record that these two pages are the International
3 Residential Code standards that are reflected and
4 addressed by Mr. Haden in the PowerPoint presentation,
5 Exhibit No. 6.

6 JUDGE VOSS: Again, you might ask Mr. Haden
7 to confirm that.

8 BY MR. BERLIN:

9 Q. Mr. Haden --

10 A. That is correct.

11 Q. -- could you please confirm that?

12 JUDGE VOSS: Hearing no further objections,
13 Exhibit 5 is admitted.

14 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

15 MR. BERLIN: Your Honor, that completes my
16 questions for Mr. Haden at this time.

17 JUDGE VOSS: Cross-examination?

18 CROSS-EXAMINATION BY MS. CRANE:

19 Q. Mr. Haden, I'm not going to do the
20 PowerPoint since I don't know this. I'm going to refer to
21 the documents if we can when we're going through this.
22 Okay?

23 A. That's fine.

24 Q. Can you tell me as part of your job -- and
25 this may be a very obvious question, but your job is to

1 determine if a violation has occurred, whether it be with
2 a dealer of manufactured or modular homes as well as a
3 manufacturer; is that right?

4 A. That's correct.

5 Q. And so when you were inspecting this site,
6 you were looking at not only the dealer and his
7 responsibilities but the manufacturer's responsibilities
8 as well?

9 A. That's correct. It was a little hard to
10 see much defect on the manufacturer's part, given the
11 condition that the house was in, though.

12 Q. Is there anything in the code or the regs
13 that require the manufacturer to provide the proper
14 instruction manuals to the dealer?

15 A. Yes. The manufacturer has to provide a
16 method of installation of the home.

17 Q. Is it a violation, then, if they do not
18 provide the proper manuals?

19 A. It would be something that I would call the
20 manufacturer and ask them to provide to the dealer. If a
21 dealer contacted me and said, I don't have installation
22 instructions and can't get them, I would contact that
23 manufacturer myself and require that they send those
24 installation instructions.

25 Q. The instruction manual paperwork that you

1 received or have used today to testify to, where did you
2 get that from?

3 A. From that manufacturer, Four Seasons.

4 Q. You were not able to get anything from
5 Mr. Blakely, were you?

6 A. I didn't ask him for anything.

7 Q. Did you talk to him about what he had
8 received from Four Seasons?

9 A. He told us that he received a book from
10 Four Seasons, but I didn't elaborate much on that with
11 him.

12 Q. Did he talk to you about the -- okay. So
13 when you say you didn't elaborate, no conversation with
14 him about what it was that Four Seasons gave him?

15 A. Well, after we did the inspection, we went
16 to his lot, Gene Winn and I did, and he held up an
17 installation instruction manual for a Four Seasons HUD
18 house and he said, this is what I got with the home. I
19 didn't ask any other questions. I don't know what they
20 sent with that home.

21 Q. So he represented to you, though, at least
22 at that time, that they had given him a HUD home
23 installation manual?

24 A. That's what he said.

25 Q. Did he say to you as well that they had

1 represented to him that it was okay to be using that
2 manual?

3 A. No.

4 Q. Did he -- did he say anything further about
5 the manual?

6 A. No.

7 Q. Did you show him any of the paperwork from
8 the instruction manual you received from Four Seasons?

9 A. I didn't have it with me when I went to his
10 lot. I didn't get that until later.

11 Q. So later did you ever share with him what
12 you had received from Four Seasons?

13 A. I don't believe I've seen Mr. Blakely since
14 then.

15 Q. Did you ever make comparisons to what Four
16 Seasons provided you with and what Mr. Blakely held up
17 that day to tell you -- to say, this is what Four Seasons
18 gave me?

19 A. Between the modular installation
20 instructions and the HUD installation instructions?

21 Q. Correct.

22 A. Actually, I have, yes.

23 Q. Okay. In regards to things such as the
24 jack posts, for instance, in the modular home, I
25 understand from your testimony and your evidence that

1 there are

2 14 jack posts required in this home; is that correct?

3 A. That's correct.

4 Q. And the home that the manuals that

5 Mr. Blakely said that he got showed how many jack posts

6 were required, do you remember?

7 A. I don't remember.

8 Q. If I were to tell that you it was nine,

9 would that refresh your memory? Does that sound about
10 right?

11 A. That could possibly be it.

12 Q. Is that consistent with what you saw when
13 you said that there would have been seven in line with
14 what you saw in the home and then those two extra on
15 either side?

16 A. The installation manual that Mr. Blakely
17 had is a generic-type manual. In order to determine how
18 many jack posts are required along the centerline of the
19 home, you would have to have a separate document,
20 particular to that home, and that home -- you'd get that
21 from the manufacturer. That document varies depending on
22 the type of floor or frame or lack of frame that the home
23 has.

24 The -- I think the document you're talking
25 about is for a PH-4 system, which is a HUD home, and that

1 particular floor system, I think, has nine jack posts
2 underneath it.

3 Q. And did Mr. Blakely also talk to you about
4 the fact that this was the very first modular home that he
5 had ever sold?

6 A. I think he said the first and last.

7 Q. He had been selling manufactured homes up
8 to this point?

9 A. HUD.

10 Q. HUD homes?

11 A. HUD homes, yes.

12 Q. If we looked at Exhibit No. 4 on page --
13 well, Exhibit 4 doesn't have them by pages once we get
14 past 2, so I'm going to go through this. We've got the
15 first two pages are your site inspection. Let's go
16 through. What's the next page?

17 A. The manufacturer's installation
18 instructions, page FN-2.0.

19 Q. Yes.

20 A. Okay.

21 Q. And then the next page, what is that page?

22 A. That is foundation diagram 10.1.

23 Q. Okay. I look at that particular diagram
24 and I see on there where it says approved February, I
25 think it's 10th of 2006. Can you tell me about that stamp

1 on that document?

2 A. That is an approval stamp from TRA, which
3 is Four Seasons Housing's third-party approval agency.
4 They review the documents and approve them.

5 Q. So would this document have been out on the
6 market before that February 10th date?

7 A. It's possible. I don't know.

8 Q. Who is it, again, that puts that stamp of
9 approval on there?

10 A. This is T.R. Arnold & Associates' stamp, it
11 says right on it, if that's the one you're looking at.

12 Q. Yeah. You may be able to see it better
13 than I can to know what it is.

14 A. TRA, which is a third-party agency that
15 reviews their documents for compliance to the code.

16 Q. Okay. One of the concerns that you did see
17 with Four Seasons when you looked at this incident was the
18 fact that they sold this home prior to being approved in
19 the state of Missouri, right?

20 A. That's correct.

21 Q. So would it be consistent that we're
22 looking at documents that hadn't even been approved in the
23 state of Missouri as well?

24 A. They would not have been approved. Doesn't
25 mean they didn't exist, though.

1 Q. Would that be consistent with Mr. Blakely
2 not having been provided with the proper paperwork for
3 this home, then?

4 A. I actually have no direct knowledge of what
5 Mr. Blakely was supplied with by the manufacturer.

6 Q. And I'm not asking you what he was directly
7 supplied -- you directly -- I'm asking you would that be
8 consistent with his position?

9 A. I don't know what his position is.

10 Q. He told you and held up to you the manual
11 that was different from these documents?

12 A. The page that you're referring to would not
13 have been in that manual anyway.

14 Q. Okay. Can you tell me what a bank package
15 is?

16 A. I don't know.

17 Q. You've never seen a bank package?

18 A. I don't think so.

19 MS. CRANE: May I approach?

20 JUDGE VOSS: Yes.

21 BY MS. CRANE:

22 Q. I've handed you a document, and I guess
23 really what I'm wanting to do with that is for you to look
24 at it, tell me if you can identify it. If you can't, we
25 can't do anything with it. But have you ever seen such a

1 thing?

2 A. Well, some of these contained in this
3 document labeled bank package are floor plans and some
4 diagrams. I don't see any approval stamps on them or
5 anything like that. So I have never seen a document like
6 this, and I really don't know what it is for.

7 Q. So if I were to ask you about the industry
8 practice between manufacturers and dealers, you would not
9 be familiar with manufacturers sending bank packages ahead
10 of the home so that the site could get prepared?

11 A. Well, I know manufacturers can provide
12 dealers with certain information prior to the production
13 of the home for the purposes of site preparation. I have
14 not seen this type of document used for that. I don't
15 know what this document is used for. Bank package to me
16 indicates it's for a loan or something, but I don't know.
17 But there are documents that can be provided to the dealer
18 for the preparation of the site.

19 Q. Okay. So if the home was purchased in
20 September, as the Kings testified to earlier today, and
21 then ordered, it's very possible that some of the
22 paperwork came ahead of the home in order to get the site
23 ready?

24 A. That's very possible.

25 Q. Okay. Now, as part of your position, are

1 you familiar with the chronology of having to set up one
2 of these homes, what happens first and what happens last
3 and everything between there?

4 A. Well, I think so.

5 Q. Okay. In regards to what you have
6 testified to, are there things that could have still been
7 done on this home? For instance, we're looking at --
8 we've got the picture up of page 14 of Exhibit No. 6 left,
9 the stairs, the handrails that you're talking about could
10 have still been put up on that stairwell; is that right?

11 A. Before the home was shifted from the
12 foundation?

13 Q. Yes.

14 A. I think so.

15 Q. And can you tell me, just for me as a
16 layperson, what's the difference between guards and
17 handrails?

18 A. Well, guards would be like if you had a
19 wall on each side of the stairway, that's a guard. That's
20 something that protects the people that travel up and down
21 the stairs from falling off the side of the stairs
22 basically. That could also be a spindled railing, if you
23 will, where you have intermittent posts and a top rail,
24 bottom rail that would be at least a minimum of a certain
25 height. In this case 34 inches would be the minimum

1 height.

2 Your handrail could actually be
3 incorporated into the guards, if you were using that type
4 of a configuration, like a railing with spindles and then
5 a handrail on top, whereas if you had a solid wall, you
6 might just have a handrail attached to the wall. At any
7 rate, you're required to have either a handrail
8 incorporated with the guards or a handrail on the wall,
9 one or the other, and either a wall next to the stairs or
10 an intermittent post-type railing. That would be your
11 guards.

12 Q. And just so we can kind of make this easier
13 on everyone, let me go through it. We just hit on that
14 one because it was up there on the wall. Let's take up
15 No. 4 and look at page 2 of 2 on No. 4. In regards to
16 No. 5, that is your No. -- Exhibit No. 4, which that's
17 your site inspection. Okay. No. 5 is the attachment to
18 the basement. Am I right?

19 A. That's correct, yes.

20 Q. Now, I'm going to assume you're going to
21 tell me that that should have been done before we were
22 putting this house on that basement; is that right?

23 A. I think that's the only way it could be
24 done.

25 Q. Okay.

1 JUDGE VOSS: Can I ask you a question? Can
2 you clarify tying the two documents together? I want to
3 make sure that I know where they're at. If I understand
4 right now, you said it's Count 5.

5 MS. CRANE: No. Look at Exhibit No. 4,
6 page 2 of 2, paragraph 5.

7 JUDGE VOSS: Paragraph 5, okay.

8 MS. CRANE: And that is, I believe, their
9 Count 1.

10 JUDGE VOSS: I just wanted to make sure
11 that it was --

12 MS. CRANE: Thank you for that.

13 JUDGE VOSS: I was afraid it wouldn't be
14 accurately reflected in the record. Thank you.

15 MS. CRANE: Thank you. Okay.

16 MR. BERLIN: Your Honor, I would just say
17 that if counsel wishes, she can go back and go through
18 that document with the pointer. Yes.

19 BY MS. CRANE:

20 Q. So we're all on the same page on this one,
21 it should have been done before. What about, then,
22 Count 2, if you want to go to the next one, which is going
23 to be page 7 of Exhibit 6 and paragraph 6 of Exhibit 4.
24 That's the number of jack posts?

25 A. Yes.

1 Q. Same thing, right?

2 A. Jack posts can be added after the home is
3 set up.

4 Q. Okay. All right. Let's go on to Count 3,
5 which is going to be page 8 on that exhibit. And then I'm
6 going to start confusing myself -- paragraph 7 in
7 Exhibit 4. The attachments of those jack posts, could
8 those attachments have been done?

9 A. Well, the hard part would be the bottom,
10 but yes, I believe it could be -- anchor bolts could be
11 installed and the jack posts could be fastened in place.

12 Q. Okay. How about Count 4, page 9 of
13 Exhibit 6. Tell me about the chronology of that. Could
14 that have been done or was that -- that's a done deal?

15 A. The king posts should be fastened --
16 positioned properly in place and fastened during the
17 installation of the home. If the king posts were actually
18 in the right place, and it's hard to say at this point,
19 you could always go back and add fasteners to them. But
20 all of that is done during the installation of the home.

21 Q. In regards to Count 4 as well, this is
22 looking at this home after it's hit by this storm. How
23 much of this is storm damage that you're going to have to
24 speculate on what was done here and how much of this you
25 know you can say accurately was improper installation?

1 MR. BERLIN: Your Honor, I have to object
2 to the question because it calls for speculation.

3 MS. CRANE: Actually, I'm trying to
4 differentiate. I'm not asking for him to speculate. I
5 want him to tell us what wasn't speculation.

6 JUDGE VOSS: Objection overruled.

7 THE WITNESS: Repeat for me what you're
8 asking. I'm sorry.

9 BY MS. CRANE:

10 Q. Can you tell us -- and maybe I'll make it a
11 little bit clearer. We're looking at this thing after
12 this storm hits, correct?

13 A. That's correct.

14 Q. And we're talking about very specific
15 things that when I look at this picture and look at the
16 allegations, I want to know how much of this you are
17 accurately able to identify and are not speculating
18 because you've got storm damage?

19 A. Well, what I wrote up here was the
20 fastening of the hinged king post to the stubbed king
21 posts, and there was no speculation there. That's -- the
22 bottom portion of that -- these king posts are supposed
23 to be fastened to this stubbed king post with two No. 8
24 times 3-inch screws at each post. There were no screws
25 ever in these, so there is no speculation.

1 The fact that this wall is slipped back, I
2 didn't cite anything on my report about that. I don't
3 know where this wall was originally positioned when the
4 home was together. We know it's not in the correct
5 position now, but it may never have been or it may have
6 slipped when the home slipped. But the fasteners were
7 never in place.

8 Q. Okay. Count 5, then, let's look at that
9 one. That's going to be page 10 of Exhibit 6. First
10 question that we were going over with this is chronology.
11 Is this something that should have been done, would have
12 been done, couldn't be changed?

13 A. It's obvious to me that the shims were
14 added to the sides of this ridge section. They should not
15 be there. It's hard to speculate why they were put there.
16 It could be related to the king post problem in the attic.
17 It could be related to the alignment or level of the home.
18 Those things we don't know. We do know that the shims are
19 not supposed to be there, and we do know that the
20 fastening is supposed to be, and those are the two things
21 that I cited, and there's no speculation there.

22 Q. Okay. And in looking at this one in
23 particular, when we talk -- when I hear the word shim, I
24 think of trying to get something to line up that's not
25 lined up; is that a fair statement?

1 A. Shim is to fill in a space.

2 Q. The normal procedure when these type homes
3 are put together, the roof line of each section comes up
4 to each other, and in an ideal world it's a perfect line
5 that gets filled in; is that right?

6 A. Well, with this particular unit, it's a
7 little different than some. A lot of units, this is
8 actually the mating line where, when the two roofs come
9 up, they come together. This unit has a hinged area here
10 and here and then a peak section that actually drops in.
11 And if everything was perfect, it would align perfectly to
12 complete the peak of the roof.

13 Q. What guidelines are there -- or perhaps I
14 should be asking what does the code require of the dealer
15 when the manufacturer ships a package and it doesn't line
16 up?

17 A. I do periodic lot inspections throughout a
18 territory in central Missouri, and we visit with dealers
19 quite often. We always instruct the dealers to contact us
20 or the manufacturer if things don't go right on a setup.
21 We will try to help them or we'll try to work with the
22 manufacturer to figure out what the problem is. If it's a
23 manufacturing issue, then at that time the manufacturer
24 should be brought in to make the necessary corrections to
25 the home.

1 Q. Do you know how often you are having to do
2 that kind of work? I mean, is that a common problem with
3 these type of homes?

4 A. I wouldn't say it's common. There are
5 times when things don't go together right in the field and
6 we're contacted by dealers to come out and see if we can
7 figure out what the problem is.

8 Q. All right. Let's go then to Count 6.
9 Count 6, which is page 11 of Exhibit No. 6, chronology
10 here. The question being, is this something that had to
11 have been done when it was put together or could something
12 have been done after the fact or could still have been
13 done before those people moved in?

14 A. Well, they installed the siding over the
15 top of this joint, so it was completed. In order to come
16 back and refasten this wall correctly, you would have to
17 remove the vinyl siding from the home.

18 Q. And all of the allegations that we've
19 talked to up to this point, regardless of whether the
20 dealer did it or had someone -- a sub doing it, the code
21 required -- I mean, he's the one responsible; is that
22 right?

23 A. On a modular, the dealer, the
24 responsibility lies on the dealer.

25 Q. All right. So let's look at Count 7,

1 page 12. This is the size of the stairs. I'm going to
2 make an assumption that there's nothing changing here,
3 this is what it was; is that right?

4 A. Looks like that's the way they were built.

5 Q. Okay. All right. And then, of course,
6 Count 8 and Count 9 you and I discussed. These are
7 page 13 and 14 of this exhibit in regards to the
8 difference between the guard and handrails; is that right?

9 A. That's correct.

10 Q. And that we discussed whether or not
11 something could have been done even after this thing was
12 put up and before that storm, correct?

13 A. We discussed it, yes.

14 Q. And you want to just for the record again
15 tell me, could guards and handrails still have been put up
16 in that home?

17 A. Yes.

18 Q. Now, inspecting this home, you became
19 familiar with the guidelines from the manufacturer in
20 regards to what this home can withstand; is that right?
21 For instance, wind, do you remember?

22 A. I'm not sure if I understand what you're
23 asking me.

24 Q. One of the things that is required of the
25 manufacturer is a seal on the home that shows what it is

1 capable of withstanding?

2 A. A seal, no. I don't think that's -- a seal
3 is required to be on a home that states that. The seal
4 would be the codes the home was built to, I believe. The
5 data plate.

6 Q. Okay.

7 A. The data plate will contain some
8 information about the construction of the home.

9 Q. Okay. My lay knowledge is showing up here.
10 This particular home that we're talking about, then, the
11 data on it showed that it could withstand a
12 90-mile-an-hour wind; is that right?

13 A. I think that's correct, yes.

14 Q. So when we look at the different
15 allegations, violations that have been pled here, we don't
16 necessarily know what that means in something more than a
17 90-mile-an-hour wind; is that right?

18 Let me ask it a different way. If this
19 home were built to code by following the manufacturer's
20 instructions, it is said to then withstand a
21 90-mile-an-hour wind?

22 A. That's correct.

23 Q. It's not guaranteed to withstand anything
24 more than a 90 mile-an-hour wind?

25 A. I don't believe so.

1 MS. CRANE: Okay. I don't believe I have
2 anything further.

3 JUDGE VOSS: Commissioner Murray, do you
4 have any questions?

5 COMMISSIONER MURRAY: I do, thank you.

6 QUESTIONS BY COMMISSIONER MURRAY:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. I've got a few questions for you. Some
10 of them have already been covered, so I'll have to go
11 through my notes here. It may take me a little bit. As
12 to Count 2, the support jack posts, were they covered with
13 anything like sheetrock or anything, any type of covering
14 or are they just open?

15 A. They're just open, exposed.

16 Q. So are they between the concrete base of
17 the basement and the ceiling of the basement?

18 A. Basically, yes. The floor of the home,
19 which is the ceiling of the basement, yes.

20 Q. The method of installation to which you
21 referred in your drawings, I'm not sure the exhibit
22 number, but that was something that you received from Four
23 Seasons; is that what you stated?

24 A. That's correct, yes.

25 Q. And when you asked for that, did you

1 request from Four Seasons a copy of the specific manual
2 that they had supplied to Blakely for that particular
3 home?

4 A. No, I did not.

5 Q. What did you request from Four Seasons?

6 A. I asked them for a copy of their modular
7 and installation instructions that pertained to this home.

8 Q. And do you know the date that that manual
9 was compiled?

10 A. The one I received?

11 Q. Yes.

12 A. I don't think I know the exact date of
13 that.

14 Q. So you don't really know whether it was
15 available at the time of this particular installation?

16 A. I don't guess I personally know that, no.

17 Q. Would you explain, if you can, in broad
18 terms what the difference would be between the modular
19 installation instructions and the HUD instructions? Am I
20 stating that correctly?

21 A. Yeah. A HUD home is built to the Federal
22 Manufactured Home Construction and Safety Standards, which
23 is a federal code home, and the modulars are built to the
24 2000 IRC, which is the modular code adopted by the
25 Commission. The -- one of the differences --

1 Q. I'm sorry. Stop there a second. You're
2 going a little fast. The modular is the 2000 what?

3 A. International Residential Code, or IRC.

4 Q. And that is what was introduced, I believe,
5 as Exhibit 5; is that correct?

6 A. Yes, that's part of it. That's just a
7 couple of pages out of the book.

8 Q. And those pages were the only relevant
9 pages to this particular complaint; is that correct?

10 A. These pages are relevant to the stairways
11 from the home to the basement.

12 Q. And is it correct that our rules reference
13 those -- reference that 2000 International Code and
14 require that installations be in accordance with it?

15 A. That's correct, yes.

16 Q. All right. Go ahead, if you remember where
17 you were.

18 A. I think I forgot what you asked me. You
19 want to know the difference between the HUD and the
20 modular --

21 Q. Yes.

22 A. -- installation?

23 Q. The installation requirements, yes.

24 A. The actual installations for a basement are
25 very similar. The HUD book actually states -- shows the

1 use of a sill plate anchored to the foundation wall
2 basically the same way, and the home nailed to that sill
3 plate, basically the same way. There's not a lot of
4 difference.

5 Q. Okay. And that would relate to which
6 count?

7 A. Count 1, I believe. Yes, Count 1.

8 Q. Count 1 of the complaint.

9 All right. Count 2, the centerline
10 support, I believe counsel for Blakely questioned you
11 about that and I believe you said that the HUD
12 requirements there would have been nine?

13 A. Well, it's not necessarily a HUD
14 requirement, but the manufacturer's installation
15 requirements will vary depending on the type of floor
16 system the home has. The -- I think the diagram she was
17 referring to was what they call a PH floor, which is a
18 home that still has the transportation chassis on it. A
19 HUD house, that has less posts underneath it than a mod
20 home that he actually set.

21 This is a mod home. So it's hard to
22 confuse a HUD home for a mod, because the HUD house
23 doesn't have a frame and a mod does.

24 Q. Okay. And Count 3 would be related to that
25 same item; is that correct?

1 A. That's just the installation of those
2 posts.

3 Q. And then the hinged roof, what would --
4 what would the difference between the two manuals there
5 be?

6 A. I don't believe there would be any
7 difference. On a hinged roof, there's fastening involved
8 between the king posts. When you lift that roof and sit
9 those king posts together, they have to be fastened
10 together. And most of the requirements in any manual that
11 I've seen is the two No. 8 screws per post, and that's
12 whether it's mod or HUD. There may be a few variations
13 from manufacturer to manufacturer, but that's pretty
14 standard.

15 Q. What about Count 5?

16 A. Count 5 is the drop-in peak section ridge,
17 and again, if I had to shim something with five inches
18 worth of shim anywhere, I would suspect a problem.

19 Q. Well, I'm asking you what would have been
20 required in the HUD installation requirements?

21 A. When it comes to fastening these structural
22 members, I don't think you'll find much difference between
23 a HUD and a mod, because if you have a hinged roof on a
24 HUD and a hinged roof on a mod, the fastenings are going
25 to be very similar. I don't know the exact difference in

1 this particular home, but I would assume they'd probably
2 be the same.

3 Q. What about Count 6?

4 A. In-wall fastening, again, is pretty
5 standard in any home, whether it's a HUD or not, you know,
6 12 inch on center, No. 8 screws, fastening the two
7 sections together.

8 Q. Count 7?

9 A. Well, this is directly out of the IRC code.
10 This would not apply to a HUD-built home.

11 Q. When you cite -- let's see. Count 1 on --
12 or I'm sorry -- Count 7 on page 12 of Exhibit 4, the
13 complaint I guess -- and I'm not sure if this is exactly
14 how the complaint is stated, but Blakely failed to
15 properly construct the home stairway to the basement in
16 accordance with the International Residential
17 Code 2000, and then you say that is a violation of, and
18 cite the rules that that violates. But it's -- is it
19 clear from our rules that installation must comply with
20 the International Residential Code?

21 A. Well, it is to me. A dealer, I think, if
22 he's going to sell homes, he has to understand what code
23 the homes are built to. I think it's fair to say that if
24 I was going to build a set of steps on one of these homes,
25 I would have to build them to some requirements, and in

1 this case, it's the 2000 International Residential Code.
2 I would understand it and I would expect a dealer to. If
3 they don't understand it, they can always call us and ask.

4 Q. And then Count 8, that would be the same
5 requirement?

6 A. Correct.

7 Q. That it comply with the International
8 Residential Code 2000?

9 A. That's correct, yes.

10 Q. Count 9, same thing?

11 A. Yes. That's, again, part of the stairway
12 requirements.

13 Q. Some of your counts just require the
14 manufacturer to install in accordance with the
15 manufacturer's instructions; is that correct? I'm
16 sorry -- the --

17 A. Dealer.

18 Q. The dealer's instructions; is that correct?

19 A. Yes.

20 Q. And if the dealer had given Mr. Blakely the
21 instructions to install exactly as the installation
22 occurred, would there be a violation for those particular
23 counts?

24 A. If the manufacturer had given to Blakely
25 the installation instructions and Blakely had followed

1 those instructions, there would not be a violation.

2 Q. For those counts only, but there still
3 would be for the International Code Requirements?

4 A. No. The manufacturer's installation
5 instruction also comply to the 2000 International
6 Residential Code. They, the manufacturer, must meet or
7 exceed the minimum requirements of the International
8 Residential Code.

9 Q. The manufacturer must?

10 A. Yes. And the manufacturer is the one that
11 designs the installation of the home.

12 Q. So as long as the dealer follows the
13 instructions of the manufacturer, the dealer has complied;
14 is that what you're saying?

15 A. Yes.

16 Q. I'm a little confused with the questioning
17 you had regarding the approval stamps for some of the
18 installation instructions that you cited. For example,
19 the T.R. Arnold, I believe it was a stamp of approval
20 dated February 10 of '06. When -- we're talking about '05
21 for this particular installation, are we not, or are we
22 talking about '06? Are we talking about March of '06?

23 A. I don't know when the home was
24 physically -- I don't know if that's been determined or if
25 I know when the home was actually physically installed on

1 this basement.

2 JUDGE VOSS: On the record they said that
3 it was in March of this year.

4 THE WITNESS: That's when they moved into
5 the home.

6 BY COMMISSIONER MURRAY:

7 Q. But we don't know exactly when the
8 installation took place?

9 A. I don't think I do. I don't think I have
10 that information.

11 Q. Are there any time lines or events
12 identified in our rules by which time each one of those
13 items must be completed?

14 A. No. As far as the installation of the
15 home?

16 Q. Uh-huh.

17 A. No. No.

18 Q. They're not tied to the occupancy, prior to
19 occupancy or any specific event or timeline?

20 A. I don't believe our rules have anything
21 about that.

22 Q. You were questioned about manufacturer's
23 instructions being to a standard that would withstand a
24 90-mile-per-hour wind. Do you recall that?

25 A. That's the design wind load for our area

1 here.

2 Q. Okay. Do you know and did you in your
3 investigation determine what wind velocity occurred in the
4 storm on March --

5 A. March 12th I believe, or 13th. No, I don't
6 know what the wind loads were, what velocity of wind we
7 had.

8 Q. And in not checking that with -- I'm
9 assuming that's available through the Weather Bureau or
10 some location would have that information, but is there a
11 reason that you did not consider that important?

12 A. Well, at this point, this home was not tied
13 to this foundation. It never had a chance no matter what
14 the wind velocity was.

15 Q. And it was clear from your investigation to
16 you that -- well, for example, Count 1, that the home had
17 never been properly attached onto the basement foundation?

18 A. That's correct. The absence of the sill
19 plate, once a home is set on the foundation wall, there's
20 no way to add a sill plate to the wall unless you remove
21 the home from the foundation. That sill plate has to go
22 on that concrete wall before you set the home on the wall.

23 Q. Are you aware of any instruction manual
24 that would provide for an attachment without a sill plate
25 and the bolts I believe that you said were required to

1 be --

2 A. I'm not aware of anything like that.

3 Q. Are you aware of any instruction that
4 doesn't require a sill plate?

5 A. In a --

6 Q. For any type of manufactured or
7 HUD-approved home?

8 A. In a HUD-approved home, that's probably
9 possible when you're not dealing with a load-bearing
10 perimeter-type foundation. In a modular, I don't -- I'm
11 not aware of any application where you wouldn't have a
12 sill plate on a foundation wall, in a single-family,
13 anyway, type dwelling.

14 Q. What kind of obligation does a dealer have
15 to verify that the instructions are appropriate, the
16 instructions that the manufacturer is supplying are
17 appropriate for the specific installation?

18 A. Well, the installation instructions that
19 the manufacturers supply are going to contain information
20 that applies to that home and some information that does
21 not apply to that home. It may apply to a different type
22 of home. It's like any manual you receive, it's going to
23 contain information that doesn't particularly apply to the
24 product you own.

25 So you have to read through that manual,

1 just as I did, and decide what applies to this home based
2 on what it is. Whether it has a frame or not a frame,
3 what type of floor system it is, those are things you have
4 to figure out for yourself in -- to set this home.

5 If there's things you don't understand, the
6 manufacturer should be contacted, or again, our
7 department. All these dealers know to contact us if they
8 need help or assistance in understanding what's required
9 in the setup.

10 So it's clear to me when I look through there when I see
11 what I understand. What's required is to install it on
12 that foundation, and it should be, again, clear to that
13 dealer that's doing the installation.

14 Q. And it would be clear by references to --
15 what would be an example of a reference that would make it
16 clear, for example, if he had a HUD manual in front of him
17 that that would not apply to this particular home?

18 A. Well, the HUD manual shows a frame on the
19 house, a transportation chassis, a metal chassis that
20 remains on the house, and this home doesn't. This home
21 is -- the transportation chassis is actually removed from
22 the home. So you don't -- you don't have that to deal
23 with.

24 Q. And it doesn't take an expert to know that,
25 is that -- I mean, any layman would be able to determine

1 that, is that --

2 A. Well, any layman would be able to determine
3 whether or not it had the chassis. I mean, you can look
4 at it and see there's no chassis. If you're selling -- I
5 mean, he knew he was selling a modular unit and he knew
6 they didn't have a frame on it. The frame was removed
7 once it was set up. So that would be the area of
8 installation that you need to concentrate on how to
9 install this home.

10 Q. So the fact that this was his first modular
11 unit that he'd ever sold should not have prevented him
12 from realizing that, is that your --

13 A. I don't think it would be an excuse for not
14 realizing it.

15 COMMISSIONER MURRAY: I think that's all I
16 have. Thank you.

17 JUDGE VOSS: Commissioner Gaw?

18 COMMISSIONER GAW: I think I'm okay.
19 Thanks.

20 JUDGE VOSS: Commissioner Appling?

21 QUESTIONS BY COMMISSIONER APPLING:

22 Q. How you doing, Mr. Haden?

23 A. Commissioner.

24 Q. Let's go back to Count 1, if you could.

25 Can you run that back on your machine there?

1 A. Yes.

2 Q. It's page 6, I believe, Count 1. The strap
3 there that has the screw between it, what is that on top
4 of that? Is that glue that yellow, or is that insulation?

5 A. This right here (indicating)?

6 Q. Yes.

7 A. That's the spray foam sealant --

8 Q. Okay. Got you.

9 A. -- they use for insulation purposes.

10 Q. What is the strap that's sticking out there
11 with the screw in it, what is that used for?

12 A. This right there (indicating)?

13 Q. Correct. That's what they used to tie that
14 home to the foundation?

15 A. That's the Minute Man anchor strap that is
16 approved for use in anchoring a home in conjunction with
17 ground anchors. It's not approved for embedment into
18 concrete and then drilling a hole through it and using a
19 bolt and screwing it to the house, but that's the way they
20 used it.

21 Q. Should there have been bolts embedded in
22 the concrete?

23 A. Yes, along the top of this wall right here,
24 you should have these bolts right here (indicating).

25 Q. And how many would you have?

1 A. How many should you have? There should be
2 a bolt within one foot of each end of each sill plate, and
3 then spaced every six feet, maximum, along the top of that
4 wall.

5 Q. And there was none embedded?

6 A. There was none there.

7 Q. Okay. Also, one more question for you.

8 Once you get this house to the site and the foundation has
9 been laid and you're ready to pull the house up on that,
10 how do you get it? Do you lift it up with a crane or do
11 you roll it on or how is that done?

12 A. There's two different methods. They either
13 use a crane or they roll it across and then let it down on
14 the wall. I'm not sure how this particular home was
15 placed.

16 Q. Last question. Did the owner, not -- yes,
17 the -- not the manufacturer, but Mr. Blakely, did he have
18 someone sub to do this for him or is the person a part of
19 his business that installed this building?

20 A. It's my understanding that he did use some
21 subs, but when we talked with him after our inspection, at
22 that point he told us he did it. So I'm not real sure
23 what all he subbed out or what he did.

24 Q. Do you know, can you recall how long he's
25 been in business and doing manufactured homes?

1 A. I don't believe I know exactly.

2 COMMISSIONER APPLING: Okay. Thank you
3 very much.

4 COMMISSIONER GAW: Real quick, Judge.

5 QUESTIONS BY COMMISSIONER GAW:

6 Q. Just if you would, when you were discussing
7 the questions with -- from Commissioner Appling, you were
8 pointing to the pictures on the board with your -- with
9 your pointer. Would you mind maybe going back and
10 describing what it is that you're pointing at as you're --
11 as you were going through your explanation?

12 First of all, in -- there are two visuals
13 on the board in front of us, and this is under Count 1, as
14 I look over to the right; is that correct?

15 A. That's correct.

16 Q. And on the left side there's a picture on
17 the bottom and a diagram on the top; is that correct?

18 A. That's correct.

19 Q. And on the bottom, there -- there appears
20 to be some piece of metal sticking out of concrete. Do
21 you see that?

22 A. Yes.

23 Q. And you were talking to Commissioner
24 Appling about that, and what did you say it was?

25 A. I said this is what they used to tie this

1 home to the foundation. This is the metal strap that we
2 have approved to use with ground anchors on more or less a
3 pier-set home. These are -- they're called Minute Man
4 frame straps, is actually what they're called.

5 Q. Okay. And you said that was not
6 appropriate for use as it is pictured?

7 A. It is not approved for use in this
8 application, no.

9 Q. And then you said there should have been
10 something different done, and you pointed to the diagram
11 above; is that correct?

12 A. Yes.

13 Q. All right. Now, tell me what you were
14 pointing to, describe it for me.

15 A. This diagram above is -- shows the concrete
16 wall with the 5/8-inch anchor bolts embedded into the
17 concrete.

18 Q. And the anchor bolts are at the bottom of
19 the drawing, is that --

20 A. This right here (indicating)?

21 Q. -- towards the bottom of the drawing
22 portion itself; is that correct? They're vertical?

23 A. They're vertical, yes.

24 Q. And there are three vertical objects there.
25 Do you see those?

1 A. This right here (indicating).
2 Q. There are three of them, right? Am I
3 correct about that?
4 A. No, this is a -- this is the wall. This is
5 a section of the concrete foundation wall (indicating).
6 Q. It's vertical, correct?
7 A. It is vertical.
8 Q. All right. And then in the middle of those
9 two vertical pieces, which you're saying is the wall,
10 there's another vertical piece; is that correct?
11 A. That's correct.
12 Q. And the middle piece is what?
13 A. That is the anchor bolt.
14 Q. All right. And then above it, the
15 horizontal piece then that's right above that, what is
16 that?
17 A. That is a site-installed sill plate.
18 Q. And what is a sill plate?
19 A. Sill plate is the board that goes on top of
20 the foundation wall and anchors to it with those anchor
21 bolts, and then the home is fastened to that sill plate.
22 That's what holds the home onto the basement foundation.
23 Q. And it's wood?
24 A. It is wood, treated wood.
25 Q. Treated wood. And that sill plate, was it

1 present in this house?

2 A. No.

3 Q. Nowhere around the foundation?

4 A. No.

5 Q. And it should have been all the way around
6 the foundation?

7 A. Yes.

8 Q. And the bolts that you have pointed to, the
9 one bolt in the diagram, were there any bolts of that
10 sort?

11 A. No.

12 Q. And that's what pertains at least in part
13 to your Count 1?

14 A. Yes.

15 COMMISSIONER GAW: I don't have any further
16 questions. Thank you.

17 JUDGE VOSS: I had a couple questions real
18 quick.

19 QUESTIONS BY JUDGE VOSS:

20 Q. You mentioned that the mod-- in response to
21 questions from Blakely, that the modular had not been
22 approved in Missouri, but it's my understanding that this
23 modular had been -- it was previously approved in
24 Missouri?

25 A. I think that's correct.

1 Q. But that those plans have to be reapproved
2 periodically?

3 A. They have to be renewed annually.

4 Q. And when you said that if the -- when
5 installing the home complies with the manufacturer's
6 instructions, then the dealer has complied with our rules
7 and regulations as you understand them?

8 A. Yes.

9 Q. Okay. So when the -- you may not know
10 this. When a plan is approved or reapproved annually, do
11 they submit any type of proposed setup instructions with
12 that?

13 A. With a renewal, sometimes not.

14 Q. But with the initial application?

15 A. With the initial plan approval, there'll be
16 setup instructions contained in that package usually.

17 JUDGE VOSS: I don't have any further
18 questions. Any more questions from the Bench?

19 (No response.)

20 JUDGE VOSS: Is there any redirect?

21 MR. BERLIN: No questions, Judge.

22 JUDGE VOSS: Is there any recross based on
23 questions from the Bench?

24 MS. CRANE: No.

25 JUDGE VOSS: That will be all then. Thank

1 you, Mr. Haden. You may step down.

2 I think it's probably time for a break.

3 We've been going for about an hour and 20 minutes. Let's
4 take a ten-minute break.

5 (A BREAK WAS TAKEN.)

6 JUDGE VOSS: Staff, would you like to call
7 your next witness?

8 MR. BERLIN: The Staff calls Field
9 Inspection Supervisor Gene Winn.

10 (Witness sworn.)

11 JUDGE VOSS: Thank you. Your witness.

12 GENE WINN testified as follows:

13 DIRECT EXAMINATION BY MR. BERLIN:

14 Q. Mr. Winn, again for the record, would you
15 please state your name and how you are employed by the
16 Commission.

17 A. Silas Eugene Winn, and I'm the inspector
18 supervisor for the Manufactured Housing and Modular Units
19 Program.

20 Q. Mr. Winn, did you participate in the site
21 inspection report of the King family modular unit home
22 installation?

23 A. Yes, I did.

24 Q. Is it standard procedure for two inspectors
25 to participate in an onsite inspection report?

1 A. Not standard, no.

2 Q. Why did you participate in this particular
3 site inspection report?

4 A. In this particular report, well, more in
5 the inspection than the report, was because of the safety
6 of the home. Because of the situation with the home, we
7 felt it would be better if there was two people there
8 doing the inspection.

9 Q. And during your presence onsite, did you
10 take photographs of the -- of the home?

11 A. Yes, I did.

12 Q. During your presence onsite, did you
13 collect a Minute Man strap?

14 A. Yes, I did.

15 Q. And is that the strap that was identified
16 as Exhibit No. 7 that is right in front of the court
17 reporter?

18 A. Yes.

19 Q. So would it be correct to say that you and
20 Inspector Tim Haden participated in preparing or taking
21 the photographs of this site?

22 A. That's correct.

23 Q. Mr. Winn, have you had an opportunity to
24 review the site inspection report and the attached
25 manufacturer installation instructions to that report?

1 A. Yes, I have.

2 Q. Is that site inspection report with its
3 attachments of the manufacturer installation instructions
4 true and correct to the best of your knowledge,
5 information and belief?

6 A. Yes, they are.

7 Q. Mr. Winn, have you had an opportunity to
8 review Exhibit No. 5, which are the two applicable pages
9 of the IRC 2000 or the International Residential Code
10 2000?

11 A. Yes.

12 Q. Is that the applicable standard?

13 A. Yes, it is.

14 Q. For this installation?

15 A. Yes.

16 Q. Mr. Winn, have you had an opportunity to
17 review or observe the PowerPoint presentation marked as
18 Exhibit No. 6?

19 A. Yes.

20 Q. Are the photographs contained in Exhibit
21 No. 6, which are pages 1 through 14, true and accurate
22 representations of what you observed when you conducted
23 your onsite inspection of this modular unit home?

24 A. Yes, they are.

25 Q. Are the diagrams that are listed on each of

1 the counts or I should say each of the counts which
2 reflect the violations on Exhibit No. 6 true and correct
3 manufacturer installation instructions or diagrams for
4 this modular unit home?

5 A. Yes.

6 Q. Mr. Winn, have you been present during the
7 entire course of these proceedings today?

8 A. Yes, I have.

9 Q. Have you had the opportunity to listen to
10 the testimony provided by Inspector Tim Haden?

11 A. Yes, I have.

12 Q. Are you in agreement with the testimony
13 provided by Mr. Haden during the course of testimony
14 today?

15 A. Yes.

16 Q. Are there any corrections you wish to make
17 as a result of Mr. Haden's -- your observation and
18 listening to Mr. Haden's testimony?

19 A. No.

20 MR. BERLIN: Your Honor, I have no further
21 questions for this witness.

22 JUDGE VOSS: Cross-examination?

23 CROSS-EXAMINATION BY MS. CRANE:

24 Q. Mr. Winn, did you have any conversations
25 with Mr. Blakely when you did the inspection?

1 A. Yes.

2 Q. Did you talk to him about what he had been
3 provided from Four Seasons in regards to installation?

4 A. Mr. Blakely showed me an installation
5 manual for HUD-built homes.

6 Q. Did he talk about that this was similar to
7 what they had provided him or did he say that was the
8 manual?

9 A. He said that's what he had been provided.

10 Q. How many manuals are provided when a home
11 is sent from the manufacturer?

12 A. Normally one with each home.

13 Q. Is it -- is there an installation manual
14 and an owner's manual?

15 A. Yes. With the HUD-built homes there is an
16 installation manual and an owner's manual.

17 Q. So for a modular, there's just the one?

18 A. Yes.

19 Q. And it's called what?

20 A. Installation manual.

21 Q. Installation manual. Okay. Is it
22 procedure to leave the installation manual in the home for
23 the homeowner?

24 A. Yes.

25 Q. And is that part of the walk through

1 process when that's done?

2 A. Normally the installation manual is given
3 to the homeowner -- if the homeowner has anything to do
4 with the setup, it's given to them prior to the
5 installation of the home.

6 Q. If they have anything to do with the setup?

7 A. That's correct.

8 Q. So if they don't have anything to do with
9 the setup?

10 A. It could be in the homeowner's packet or
11 given to them at the closing, I would say.

12 Q. Are you familiar with when a home is
13 shipped from the manufacturer, whether or not any items
14 used in installation are shipped with that home?

15 A. Such as?

16 Q. Such as the sill plate that we're talking
17 about this morning?

18 A. No.

19 Q. Say that again.

20 A. No. Normally a sill plate is not unless
21 the house -- some homes are built -- especially HUD-built
22 homes, are built with a sill plate already attached to the
23 house itself. But for a modular, a sill plate -- I've
24 never seen one with a sill plate attached to it, and they
25 would not ship that with the home, or no one that I know

1 of.

2 Q. Okay. So is there anything sent with the
3 home that are part of the installation, like those straps
4 or the anchor bolts or anything like that?

5 A. No, not those anchor bolts. There may be
6 shingles and things that it would actually take to
7 assemble the house, the drop-in sections of roof, the
8 shingles, stuff like that.

9 Q. Well, that was going to be my next
10 question. The drop-in section of the roof, that would be
11 one of the things sent with the home?

12 A. Yes.

13 Q. Did you talk to Mr. Blakely in regards to
14 what Four Seasons had represented to him as the correct
15 installation of this home?

16 A. No, I did not.

17 Q. Did he talk to you about that they had
18 represented to him that it was okay to do installation
19 like he'd been doing with the manufactured homes?

20 A. No.

21 Q. If you had heard that, would that give you
22 concern about Four Seasons?

23 A. It would.

24 Q. You were aware that this was the very first
25 modular home that Mr. Blakely had purchased and set up; is

1 that right?

2 A. Yes, that's what he told us.

3 Q. Do you have any reason to believe
4 otherwise?

5 A. No.

6 Q. Do the HUD homes require any compliance
7 with the International Residential Code book?

8 A. No. HUD homes are built strictly to the
9 federal -- Federal Instruction 3280.

10 Q. And you were asked the question on direct
11 about having heard Mr. Haden's testimony. Is your
12 testimony the same in regards to under cross-examination
13 what Mr. Haden testified to?

14 A. Yes.

15 Q. Were you part of the process of getting the
16 manufacturer's installation paperwork from Four Seasons?

17 A. No. Mr. Haden contacted them and got it.

18 Q. Did you compare the HUD manual that
19 Mr. Blakely showed you to the Four Seasons manual that
20 they provided to see what went wrong here?

21 A. I did.

22 Q. Is it consistent with what you've heard
23 today as to what went wrong here?

24 A. It's consistent -- the setup of the two,
25 the modular or the HUD manual are pretty consistent on

1 what the requirements are. They're basically the same,
2 following the same guideline as to the fastening, the
3 bolts, things like that.

4 Q. So, for instance, the difference between
5 the 14 jack posts and the 9 jack posts?

6 A. The difference between the jack posts,
7 again, would depend upon the model of the house, the type
8 of floor system it has, whether it has an on-frame or the
9 HUD one. It varies on the different HUD-built homes,
10 different modulars. It could vary with each home,
11 depending on the construction of that house.

12 Q. And when I hear Mr. Haden testify, and I
13 assume you concur, with the statement that as long as the
14 dealer follows the manufacturer instructions, he's in
15 compliance, that assumes the manufacturer provides the
16 proper installation paperwork, correct?

17 A. That's correct.

18 Q. That's also assuming that the
19 manufacturer's instructions are in compliance themselves?

20 A. That's correct.

21 MS. CRANE: I don't have anything further.

22 JUDGE VOSS: Commissioner Murray?

23 QUESTIONS BY COMMISSIONER MURRAY:

24 Q. Good afternoon. If Mr. Blakely had
25 received from the manufacturer the HUD manual that's been

1 referenced here, would there have been the same
2 violations?

3 A. If it was set up the way it is now, yes, it
4 would be the same violations.

5 Q. Including -- including the counts related
6 to the support centerline?

7 A. Yes. They were not properly attached to
8 the floor or to the house itself.

9 Q. And that would have been required in either
10 manual; is that correct?

11 A. Yes.

12 Q. Can you tell me the significance of the
13 statement in paragraph 4 on page 1 of the site inspection
14 report? Do you have that? I didn't mark down the number
15 of that exhibit.

16 A. Which item was that, ma'am?

17 Q. It's No. -- Exhibit No. 4, and it's
18 Item No. 4 on page 1. Let me know when you're there. The
19 site inspection report that was filed here as Exhibit
20 No. 4. Yes.

21 A. Okay.

22 Q. The last paragraph or last sentence in that
23 paragraph says the new plan approval for this model was
24 not approved by the Missouri Public Service Commission
25 until March 1, 2006, and then it cites Commission rule.

1 What is the significance of that statement?

2 A. This was to the manufacturer. At the time
3 we done this inspection, we wrote this up that the plan
4 had not been approved when the house had been sold to
5 Mr. Blakely, or had not been reapproved, I should say.
6 The model had been approved by the manufacturer
7 previously. They had just let the model expire.

8 Q. And when it had previously been approved,
9 were there tie-down instructions that were also approved
10 with it?

11 A. There should have been instructions talked
12 about the fastening to the foundation, yes.

13 Q. Okay. And the fact that that model had not
14 been reapproved until March 1, would that have affected
15 the complaint against the dealer in any way?

16 A. It shouldn't.

17 COMMISSIONER MURRAY: I don't think I have
18 anything else.

19 JUDGE VOSS: Commissioner Gaw?

20 QUESTIONS BY COMMISSIONER GAW:

21 Q. Mr. Winn, just for purposes of
22 clarification, when were you onsite inspecting this house,
23 manufactured house or modular home?

24 A. I believe it was March the 13th. I was
25 there on the first day that Mr. Haden went out. He went

1 out there first and seen the house, then he called us and
2 then I went out there that afternoon with him.

3 Q. All right. So -- and was that the only
4 time you were there?

5 A. No. I was there a couple of times after
6 that, but I don't remember the specific dates.

7 Q. Were you there by yourself or with someone
8 else?

9 A. I believe Mr. Haden was with me every time
10 I was out there.

11 Q. Okay. And your testimony that you've given
12 reflects what you saw on all of the occasions, and you
13 haven't excluded anything in regard to something that you
14 might have seen at those subsequent occasions?

15 A. No, sir.

16 Q. Was Blakely Manufactured Homes Sales, they
17 had a license to do what from the Missouri Public Service
18 Commission?

19 A. They had a license to sell manufactured
20 homes or modular units.

21 Q. All right. Is that -- are those two
22 separate licenses or one?

23 A. There can be two separate licenses. We
24 have some dealers that only sell modular, so they apply
25 for a modular license, and we have some that sell only

1 manufactured homes, so they apply for a manufactured home
2 license. But we do have some that they check both boxes
3 because they're going to sell both.

4 But normally if someone applies for a
5 manufactured home license and then they decide they're
6 going to sell a modular home occasionally, we do not
7 require them to get another license just for the modular
8 home. We allow them to use the same license, because it's
9 still -- they're registered as a dealer with the
10 Commission.

11 Q. Is there a different amount of money that
12 you pay if you get -- if you check both of those boxes
13 that you mention?

14 A. Not that I'm aware of.

15 Q. And what is required if someone gets a
16 license in regard to being entitled to receive the
17 license? What are the requirements, if you know?

18 A. I'm not sure of all the requirements.

19 Q. Who would know that?

20 A. Mr. Pleus.

21 Q. Maybe I need to ask Mr. Pleus that. I
22 don't want to belabor this, but when we get done, I will.
23 I'll delay further questions at this point. Thanks.

24 JUDGE VOSS: Commissioner Appling? I had
25 one question, and to some extent I think Commissioner

1 Murray may have asked this, but I want to clarify.

2 QUESTIONS BY JUDGE VOSS:

3 Q. As the home was anchored and set up, if it
4 was a manufactured house instead of a modular unit, would
5 it have been in compliance?

6 A. As it was set up and anchored, no, it would
7 not have been.

8 JUDGE VOSS: That's all I have.

9 COMMISSIONER MURRAY: I have one more.

10 JUDGE VOSS: Okay. Commissioner Murray?

11 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

12 Q. In regard to Count 7, which is related to
13 the stairway to the basement, Count 7, 8 and 9 are related
14 to the stairway, the question just occurred to me, and I
15 don't know that it makes much difference here for this
16 proceeding, but are those stairways actually put together
17 by the dealer?

18 A. Yes.

19 Q. They're constructed by the dealer and
20 installed by the dealer?

21 A. Yes, ma'am.

22 Q. And I just was a little curious with the
23 photographs on pages 13 and particularly page 14. The
24 stairway appears -- and it may be just the photograph, but
25 it appears to be very vertical. And I'm not sure how I

1 can accurately ask my question, but other than the depth
2 of the individual stairs, is that constructed properly?

3 A. Yes. This stairway looks to be -- it looks
4 weird in this picture because it's actually lifted off of
5 the floor partially. And this house, this stairway is
6 going over the top of that base wall, because this house
7 is moved approximately 14 feet from where it originally
8 was, sideways. That stair would come down at a flatter
9 rate to the floor than what it shows in this picture.

10 COMMISSIONER MURRAY: Okay. Thank you.

11 JUDGE VOSS: Any other Commissioner
12 questions?

13 (No response.)

14 JUDGE VOSS: Is there any redirect?

15 MR. BERLIN: No questions.

16 JUDGE VOSS: Any recross?

17 MS. CRANE: Just one.

18 RECROSS-EXAMINATION BY MS. CRANE:

19 Q. I just wanted to make sure because of a
20 question from Commissioner Murray on Exhibit 4, which is
21 the site inspection, where you talk about it says, the new
22 plan approval for this model in paragraph 4.

23 A. Yes.

24 Q. I guess when I look at that, I see the new
25 plan, and I wonder what that means. To me that means new.

1 A. It should have been the renewal of the plan
2 approval, but they have to -- the plan had been approved
3 before the model had been approved, but it has to be
4 renewed annually.

5 Q. Okay. So where would you find that that
6 thing had been approved before? How would we know that?

7 A. We can go into our computer list and look
8 for that model and it will bring up the model if it's been
9 approved before.

10 MS. CRANE: Okay. I don't have anything
11 further.

12 JUDGE VOSS: Any more questions from the
13 Bench?

14 COMMISSIONER GAW: I'm sorry, but that --
15 FURTHER QUESTIONS BY COMMISSIONER GAW:

16 Q. So the approval previously that had been
17 done was for what again?

18 A. It was for that model. It had expired and
19 they had to get the plan renewed.

20 Q. Who had to get the plan?

21 A. The manufacturer, Four Seasons.

22 Q. And when had it expired?

23 A. I don't remember for sure when it had
24 expired, but it had expired before they built the house.

25 Q. And when was it actually renewed?

1 A. It was renewed March 1st, 2006, after the
2 house was built.

3 Q. All right. And what's the consequence of
4 not having a plan that's in effect when -- what's the
5 consequence of that?

6 A. We -- well, as we did in this here, Four
7 Seasons was contacted and there was, I believe, a stip and
8 agreement between Four Seasons and the Commission over
9 that not being approved at the time.

10 Q. Well, what's the consequence of not having
11 done that in that stip, do you know?

12 JUDGE VOSS: I might be able to address
13 this.

14 COMMISSIONER GAW: Let me make sure he
15 doesn't know the answer to that first.

16 THE WITNESS: The consequence of not having
17 a plan approved?

18 BY COMMISSIONER GAW:

19 Q. Yes.

20 A. The consequence of not having a plan
21 approved, we could -- the Commission could suspend the
22 license, revoke the license of the manufacturer.

23 Q. All right. And now what are the
24 expectations, if you know, that this -- that Staff has for
25 dealers who have homes with -- that have plans that have

1 expired, as far as approval is concerned?

2 A. If a dealer has a home that was built under
3 the approval and the plans expire, there's nothing for the
4 dealer. As long as the plan was approved when the dealer
5 bought the house, then the model is still approved. It's
6 fine.

7 Q. Is that the case in this matter?

8 A. No. In this matter, the model wasn't
9 approved when the dealer bought the house.

10 Q. So in that case, what is the dealer
11 supposed to do?

12 A. Well, that would not go against the dealer
13 in that case, even though the dealer should have been sent
14 proper instruction and should have set it up according to
15 the installation instructions, we wouldn't file anything
16 against the dealer because the manufacturer hadn't got the
17 plan approved. We'd go back to the manufacturer.

18 Q. That's not my question. And what I'm
19 asking you is, what is a dealer supposed to do in that
20 event? What is -- is a dealer supposed to -- what's the
21 duty of the dealer as far as the --

22 A. If the dealer knows the model --

23 Q. -- the Staff is concerned in those
24 circumstances?

25 A. Well, if a dealer knew the plan wasn't

1 approved, he should contact our department or not buy the
2 house, for one thing. But if he doesn't know the plan's
3 not approved, the dealer probably wouldn't know the plan
4 wasn't approved unless he contacted us.

5 Q. And the plan that you're referring to, what
6 is that plan?

7 A. It's a plan. It's for the specific model.
8 We call it a model.

9 Q. Tell me what the plan is for. What is the
10 plan? Just generally what is that? Plan to do what?

11 A. It's a plan they send in for approval. It
12 shows the roofing, the floor systems, the plumbing, the
13 electrical, general construction of the house.

14 Q. Okay.

15 A. That's --

16 Q. What does that have to do with setup?

17 A. That plan would have nothing to do with the
18 setup, other than unless it has some setup requirements in
19 it, but normally the setup requirements are all in the
20 installation manual. So it would have nothing to do with
21 the setup of a home.

22 COMMISSIONER GAW: I'll ask Mr. Pleus the
23 rest of my questions. Thank you, Mr. Winn.

24 JUDGE VOSS: Commissioner Appling?

25 QUESTIONS BY COMMISSIONER APPLING:

1 Q. Is the plan included, would that include
2 the specs of the house?

3 A. Yes, it does.

4 COMMISSIONER APPLING: Okay. Thank you.

5 JUDGE VOSS: Are there any other questions
6 from the Bench for this witness?

7 (No response.)

8 JUDGE VOSS: Any other redirect or recross?

9 MR. BERLIN: No, Judge.

10 JUDGE VOSS: Then you're excused, Mr. Winn.
11 And I believe we need to recall --

12 COMMISSIONER GAW: I don't want to
13 interfere with whatever else is going on out here.
14 Whenever it's appropriate, I'd like to ask Mr. Pleus a few
15 questions.

16 JUDGE VOSS: Mr. Winn was the last listed
17 witness, so it would be appropriate to recall the
18 Director.

19 COMMISSIONER GAW: Mr. Pleus?

20 RON PLEUS testified as follows:

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Mr. Pleus, you know you're still under
23 oath, correct?

24 A. Yes, sir.

25 Q. Just a few questions. First of all, when

1 a -- do you agree with what was just testified to in
2 regard to the -- a license issued to both manufactured and
3 modular homes?

4 A. Yes.

5 Q. And so you can -- you can apply to do one,
6 the other or both; is that correct?

7 A. Yes.

8 Q. And the fee is the same?

9 A. Yes.

10 Q. And are the requirements the same in order
11 to be issued a license to do either one or both?

12 A. Yes.

13 Q. All right. And are there certain
14 requirements in regard to understanding certain processes
15 that are required in regard to setting up either one of
16 those types of homes?

17 A. Yes.

18 Q. What are those?

19 A. As part of the application packet, we will
20 send out various things such as anchors that are approved
21 and, you know, state statutes, rules that apply to HUD
22 homes versus modular homes and those type of things.
23 There's the application packet, and the renewal packet is
24 about that thick and it contains various amounts --

25 Q. When you say that thick, how thick is that?

1 A. I'd say quarter of an inch, yes.

2 Q. Go ahead. I'm sorry.

3 A. And it will give them, you know, contacts
4 of manufacturers, our phone numbers, you know, those types
5 of things, to contact if they have questions regarding
6 what they can do with their license, the records they are
7 to keep, their monthly reports they have to file and all
8 those kind of things, and each renewal packet and each
9 registration packet.

10 Q. Now, does that license that you're
11 referring to allow that individual license holder,
12 whatever their entity officially is, to do setup of those
13 homes?

14 A. For modular homes, the dealer is
15 responsible for the installation of the home.

16 Q. And that's pursuant to state statute or
17 rule or what?

18 A. That is pursuant to state statute, yes.

19 Q. Okay. And do those requirements in some
20 way require the dealer to set up the modular home in a
21 certain fashion?

22 A. Well, Commissioner, under the law it says
23 the dealer is responsible for the proper initial setup of
24 the home.

25 Q. All right. What does that mean, proper

1 setup? How does -- how is that determined, in your
2 opinion?

3 A. And then specifically in the rules we
4 address the installation of homes, and in the rules it
5 specifically says that each home is to be set up pursuant
6 to the manufacturer's installation manual for that
7 particular model home.

8 Q. All right. Is there any issue in this
9 case, to your knowledge, in regard to the question of what
10 manual should have been used in order to do proper setup
11 of the modular home in question here?

12 A. Is there any question as to what manual
13 should have been used? No, sir.

14 Q. All right. And the setup violations that
15 are alleged to have occurred here, are they setup
16 violations that pertain to that particular manual or to
17 other setup requirements that may appear in rules or other
18 requirements of the Commission?

19 A. They pertain to the installation
20 instructions that are in the manual and, for example, the
21 stairwell, that is pursuant to the International
22 Residential Code that we have adopted.

23 Q. Okay.

24 A. So they are a combination of the two.

25 JUDGE VOSS: I don't believe the manual is

1 in evidence.

2 THE WITNESS: I don't think the complete
3 manual is in evidence, just the specific pages that apply
4 to each count.

5 COMMISSIONER GAW: So those specific
6 provisions that you-all are referencing have been
7 introduced into evidence; is that correct, Judge?

8 JUDGE VOSS: Yes, and admitted.

9 COMMISSIONER GAW: I think that's all I
10 have. Thank you.

11 JUDGE VOSS: Commissioner Murray?

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Mr. Pleus, in that you included the pages
14 from the manual that you got from Four Seasons --

15 A. Yes.

16 Q. -- in relation to each count in your
17 complaint --

18 A. Yes.

19 Q. -- would it be possible for you to provide
20 to us the relevant pages from the HUD manual, which I
21 understand from Mr. Winn's testimony that even if the
22 dealer had followed that manual, each one of those counts
23 would have also been a violation because he did not follow
24 the instructions from that manual either; is that correct?

25 A. In some of the counts and some of the

1 violations, there would be a direct correlation. We would
2 probably have to tie those together for you, because the
3 HUD codes are under Chapter 3280, the IRC codes are under
4 the International Residential Code. So you wouldn't have
5 page 1 matching page 1 possibly or page 4 matching page 4,
6 but there would be some very similar instructions that
7 would apply to both in some of the cases.

8 Q. Okay. And are you sure, sitting here
9 today, that each one of the counts in your complaint
10 involves an installation methodology or method that was
11 used that would not be in accordance with the HUD manual?

12 A. In accordance with the HUD manual, I'm
13 relatively sure, Commissioner, that they would not apply
14 to either the HUD manual or the modular instructions.

15 Q. Is there any --

16 A. 100 percent, no, I can't say 100 percent,
17 but there are different requirements for the two different
18 homes.

19 Q. And when you say you can't say it
20 to 100 percent, are there any counts in which you are
21 100 percent sure that there would be a violation even if
22 the dealer had been relying on the wrong manual?

23 A. I'd say specifically, yes, with the sill
24 plate, the jack posts, the fastening of the jack posts to
25 the floor, the fastening of the jack posts to the home,

1 all of those counts are very similar in both cases and we
2 find that applying with both types of homes when we
3 inspect them.

4 Q. So that would be Count 1, Count 2, Count 3?

5 A. That's correct.

6 Q. What about Count 4?

7 A. That would be very similar, if not
8 identical.

9 Q. Similar requirement in either manual?

10 A. Yes, ma'am.

11 Q. Count 5?

12 A. Yes.

13 Q. Similar requirement --

14 A. Very similar --

15 Q. -- in either manual?

16 A. Yes.

17 Q. So that as it was installed here, it would
18 not be in compliance with either manual?

19 A. That's correct.

20 Q. Count 6?

21 A. Same.

22 Q. Would not be in compliance with either
23 manual?

24 A. With either manual.

25 Q. Count 7, International Residential Code?

1 A. Yeah.

2 Q. That's 7, 8 and 9?

3 A. Could be different.

4 Q. Counts 7, 8 and 9 would be covered by the
5 International Residential Code?

6 A. Yes.

7 Q. And that's a violation of that in all three
8 of those counts?

9 A. Yes.

10 COMMISSIONER MURRAY: Thank you. That's
11 all.

12 FURTHER QUESTIONS BY COMMISSIONER GAW:

13 Q. Just to clarify, is there any question
14 about what the dealer should have been relying on the
15 instructions that went with this particular home and not
16 the HUD requirements? Is there any question that that's
17 what he should have been relying on? Let me ask it.
18 What should --

19 A. He should have been relying on the
20 International Residential Code and the manufacturer
21 modular home instructions for that model home.

22 Q. Is that what he was required to do under
23 the rules of the Commission?

24 A. Yes, sir.

25 COMMISSIONER GAW: Nothing further.

1 Thanks.

2 COMMISSIONER MURRAY: Just one more bit of
3 clarification there.

4 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Under the rules, does it not say that
6 proper installation -- proper initial setup means
7 installation and setup of the modular unit in accordance
8 with the installation manual provided by the manufacturer?

9 A. That's correct.

10 Q. So it is in accordance with the manual that
11 was provided by the manufacturer?

12 A. That's correct.

13 FURTHER QUESTIONS BY COMMISSIONER GAW:

14 Q. And, Mr. Pleus, is it your understanding
15 that he was provided by the manufacturer with a different
16 manual?

17 A. It's my understanding.

18 Q. Do you know whether he was provided with a
19 different manual than what was supposed to be provided to
20 him?

21 A. Do I know? No, sir. What I was told --

22 Q. I didn't ask you what you were told.

23 A. Yes. Okay.

24 JUDGE VOSS: Take a five-minute break, and
25 then we should be able to wrap everything up. Just real

1 quick five minutes.

2 (A BREAK WAS TAKEN.)

3 JUDGE VOSS: Let's go back on the record.

4 COMMISSIONER GAW: Judge, I want a couple
5 other points.

6 BY COMMISSIONER GAW:

7 Q. Mr. Pleus, I want to just make sure this is
8 clear from my standpoint. The modular unit plan, is it or
9 is it not the same as the installation guide?

10 A. They're two different documents.

11 Q. All right. And real briefly, what is a
12 modular unit plan?

13 A. That basically are the specifications for
14 the home, which include all of the construction standards,
15 the ventilation standard, the insulation that's in the
16 home, views of front and back of the home, a standard
17 floor plan that is just like any residential floor plan
18 for a site-built or stick-built home.

19 Q. And what is the installation manual?

20 A. The installation manual will show how the
21 home should be bolted together, all the utilities from
22 both halves of the home are hooked together, how it should
23 be secured to a foundation, crawl space or anchored to the
24 ground, all of those type of standards, what appliances
25 and stuff are -- electrical requirements that are in the

1 home and those types of things.

2 Q. And if a -- if a modular unit plan is
3 currently not approved for a particular home that a dealer
4 is receiving to sell, what is the dealer supposed to do?
5 Are there particular requirements for a dealer who is in
6 that situation?

7 A. Normally, sir, that is the responsibility
8 of the manufacturer to submit the plans for approval for
9 the area they're going to be delivered into, and it's
10 their responsibility to renew those plans on an annual
11 basis to make sure there are no changes to those plans
12 during the course of a year.

13 Q. Okay. And what kind of changes might
14 occur, just generally speaking?

15 A. Size of the home, three bedroom to four
16 bedroom, two bath to two and a half bath, anything that
17 can change the systems that are in the home.

18 Q. All right. And again, that is separate
19 from the installation manual?

20 A. Yes, sir. We receive that before we
21 normally receive the installation manual.

22 Q. Are those documents available to dealers
23 that are filed here?

24 A. Yes, dealers can get them from us, but
25 normally they get them from the manufacturer.

1 COMMISSIONER GAW: Thank you.

2 JUDGE VOSS: Commissioner Murray, do you
3 have any additional questions?

4 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Just one, and this is probably -- this has
6 probably been covered, but does -- is there an approval
7 for the installation manual?

8 A. Yes. The third-party engineer who designs
9 and approves the specifications before we receive them,
10 they also stamp that manual, and they also stamp the floor
11 plans before we receive them.

12 Q. Before the manufactured housing department
13 receives them?

14 A. Yes. Yes.

15 Q. And you received the installation manuals
16 then?

17 A. Yes. With the initial application for that
18 home.

19 Q. Okay. So then you received -- it would be
20 accurate that you received the installation manual for
21 this particular home when it was approved initially?

22 A. Yes.

23 Q. And then when -- each time it was renewed,
24 and then again on March whatever date, I don't recall that
25 date now that it was resubmitted.

1 A. I can't recall.

2 Q. March 1st, 2006?

3 A. Okay. For sure, okay. But if the home and
4 the design of the home and the model of the home is not
5 changed, we won't require them to resubmit an installation
6 manual. If that home remains the same and they're just
7 renewing the plan, we can use that installation manual.
8 Now, sometimes there are addendums and things like that
9 that go with a home, because if you have a home approved
10 for a couple years, there may be products that come along
11 that make it easier to install the home or something, and
12 then they may make an amendment or addendum to that
13 installation manual.

14 Q. Was the model when the -- when the plan was
15 submitted for reapproval on March 1, 2006, was this model
16 changed?

17 A. No.

18 Q. So would it be accurate that you did not
19 receive a new installation manual at that time?

20 A. That would be correct.

21 Q. What was the date?

22 A. Of the original?

23 Q. The latest date at which you had received
24 an installation manual.

25 A. I don't know, Commissioner, without going

1 through the files.

2 Q. Is it true for every model, there is an
3 installation manual on file?

4 A. Yes.

5 COMMISSIONER MURRAY: All right. Thank
6 you.

7 JUDGE VOSS: Any redirect based on
8 questions from the Bench?

9 MR. BERLIN: No, Judge.

10 JUDGE VOSS: Any recross?

11 MS. CRANE: Yes.

12 RE-CROSS-EXAMINATION BY MS. CRANE:

13 Q. I want to make sure that from the
14 Commissioners' questions that I understand what you're
15 saying. If Mr. Blakely had not received the modular home
16 installation manual, he would not have known to follow the
17 International Residential Code in regards to Count 7, 8
18 and 9, correct, because HUD follows a different guideline?

19 A. That's a correct statement.

20 Q. And I heard the inspector, Inspector Haden,
21 say that he looked at the installation plans that showed
22 nine jack posts for the plan that Mr. Blakely had,
23 comparing it to the 14 jack posts from the manufacturer's
24 manual, and that that was consistent with what he saw in
25 the home, the nine jack posts; is that right?

1 A. I am not sure I have the exact number of
2 jack posts that were in the home, if that was nine or
3 whatever.

4 Q. Well, I heard you say that there would
5 still be a violation, and I wanted to clarify that if they
6 found that it could have been consistent with what he was
7 given, then there wouldn't be a violation?

8 A. That's correct, especially with regard to
9 the attachment of those jack posts to the home floor
10 joists and to the basement itself, those are the same
11 requirements.

12 Q. Which is a different count in your
13 complaint?

14 A. That's correct.

15 Q. And in regards to the attachments, I heard
16 testimony that potentially the house was not finished. I
17 mean, that was one of the questions here, correct?

18 A. Finished as in?

19 Q. As in the owners are moving in to live.
20 Do you know if it was finished for the owners to move in
21 to live?

22 A. We were told by -- the Staff was told by
23 Mr. Blakely that he was finished with the home.

24 Q. Okay. In regard to what Mr. Haden saw in
25 regards to attaching the jack posts, he said that that

1 could have still been done, correct?

2 A. Yes.

3 Q. And do you agree, I don't know if it was
4 Mr. Winn or Mr. Haden who said that a dealer doesn't
5 necessarily know whether or not plans are approved, that
6 that's the manufacturer's responsibility?

7 A. That's correct.

8 Q. And when your inspectors were communicating
9 with Mr. Blakely and heard from him that he was provided
10 one set of manuals different from what they saw were the
11 correct manuals, why didn't they follow up the
12 manufacturer on that?

13 JUDGE VOSS: I don't recall that being said
14 on the record anywhere, and this witness wasn't a party to
15 those conversations. I hate to object on behalf of Staff,
16 but I think --

17 MS. CRANE: Never had a judge object for
18 somebody before, but if that's what we do, that's what we
19 do.

20 JUDGE VOSS: I want Staff to potentially
21 address that. Maybe I think we're getting outside the
22 realm of the knowledge of this witness.

23 MR. BERLIN: I don't quite --

24 MS. CRANE: Well, he's --

25 JUDGE VOSS: Maybe ask your question again.

1 MR. BERLIN: Judge, I did not understand
2 the question.

3 JUDGE VOSS: Ask your question again. You
4 were asking him, I think, to ask why Staff did something
5 when they said they did something that I don't recall they
6 said they did, basically. I recall from earlier that you
7 asked the Staff witnesses did Mr. Blakely say that he got
8 a different set of plans, and I don't recall any of them
9 saying yes, and you just asked this witness if they did
10 that, why didn't they follow up with it. That was my --

11 MS. CRANE: My recollection of what was
12 said was that they did. So I guess that's where we've got
13 the problem, because I heard them say that they did, that
14 he held up a HUD manual.

15 MR. BERLIN: Judge, I think the testimony
16 reflects that Staff witness -- Staff witnesses could not
17 testify as to what manual he did receive from the
18 manufacturer. That had -- that was in the testimony.

19 MS. CRANE: So do I get to ask my question?

20 JUDGE VOSS: Go ahead, if Staff I just --
21 didn't understand why you were asking this witness that
22 question.

23 MR. BERLIN: Judge, I would just say that
24 if this has to do with testimony provided by Mr. Haden, he
25 is available or we can go back through the record as to

1 his testimony.

2 JUDGE VOSS: That's fine. You don't have
3 to defend the objection. If you don't truly have an
4 objection to it, that's fine.

5 MR. BERLIN: I'd like to understand what
6 the question is first before I make the objection.

7 JUDGE VOSS: Well, she'd asked it. Go
8 ahead. Sorry.

9 MS. CRANE: I've totally forgotten my
10 question now, that's where we're at with that. So I guess
11 the objection gets sustained that way.

12 BY MS. CRANE:

13 Q. If there was a concern by your Staff that
14 the wrong manual was sent to Mr. Blakely, should they have
15 followed up on that with the manufacturer?

16 A. Again, ma'am, I wasn't involved in that
17 conversation. I think we did contact the manufacturer,
18 which the -- which has been testified to, and received the
19 information that applied to that particular home.

20 You know, Mr. Blakely knew when he ordered
21 the home that it was a modular home. This is the modular
22 home that we approved the plan for, and this is the
23 modular home number that's on the contract. So that was
24 -- should have been obvious at the time that was not a HUD
25 code built home.

1 Q. If you -- if your inspectors had learned
2 that there were communications from the manufacturer that
3 they were really no different, to go ahead and follow the
4 HUD plans, would that have given concern to the Staff to
5 follow through on the manufacturer?

6 A. It may have caused some concern to follow
7 through on that point, but at that point, you know, if
8 Mr. Blakely says that, the manufacturer may have said I
9 sent him five copies. You know, we would just have to
10 evaluate the information that we're given and go from
11 there.

12 Q. Okay. So did you receive any information
13 from the manufacturer that he sent particular -- the
14 manufacturer sent a particular manual?

15 A. Did I? No.

16 MS. CRANE: I don't have anything further.

17 COMMISSIONER GAW: Judge, may I inquire of
18 counsel briefly? Because I'm a little -- I just need some
19 clarification. Is the Defendant in the case maintaining
20 that he received the wrong manual from the manufacturer?
21 And that's my first question, just from your position.

22 MS. CRANE: Yes.

23 COMMISSIONER GAW: Is that the position?

24 MS. CRANE: Yes.

25 COMMISSIONER GAW: But your client isn't

1 here to testify to that, correct?

2 MS. CRANE: No.

3 COMMISSIONER GAW: And is there any -- is
4 there any evidence that you believe has been offered into
5 the record that's firsthand information that says that
6 that's the case --

7 MS. CRANE: I --

8 COMMISSIONER GAW: -- that you can recall?

9 MS. CRANE: I recall from the evidence, and
10 I believe it was Mr. Haden, that he had a conversation
11 with Mr. Blakely. Mr. Blakely showed him the HUD manual
12 and that Mr. Haden then compared the diagram that shows
13 the 9 jack posts as compared to the 14 jack posts.

14 COMMISSIONER GAW: This was a conversation
15 with your client?

16 MS. CRANE: He had a conversation with my
17 client in regards to the manual, and then I don't know if
18 it was -- I don't know if it was with my client that he
19 compared the two, but I know that -- I believe testimony
20 from Mr. Haden is that he did then compare them, yes. So
21 I -- you're right in asking me. My client's not here. I
22 can't put him on in that regards. I guess my position
23 would be the burden is on Staff in this matter.

24 COMMISSIONER GAW: And that's an argument
25 in regards to what's actually required on their elements

1 of their case.

2 MS. CRANE: Right.

3 COMMISSIONER GAW: Is there -- did anyone
4 offer this document into evidence that you just referred
5 to?

6 MS. CRANE: The document of the HUD manual?
7 No.

8 COMMISSIONER GAW: Yes.

9 MS. CRANE: No.

10 COMMISSIONER GAW: Okay. Thank you very
11 much for clarifying that. Mr. Berlin, do you have
12 anything different to suggest to me?

13 MR. BERLIN: Commissioner Gaw, I can only
14 state that it has already been entered into evidence, the
15 proper installation instructions that govern each of those
16 separate violations according to the modular unit home
17 instruction manual provided by the manufacturer on the
18 proper installation of this modular unit home. So that is
19 in the record, along with the appropriate or relevant IRC
20 code provisions that relate specifically to the stairway
21 and handrail.

22 MS. CRANE: May I add something to that?

23 COMMISSIONER GAW: Sure.

24 MS. CRANE: I'm sorry to belabor the point.
25 I just think it's very important in my representation of

1 my client. What I heard from Mr. Haden was that manual,
2 the manufacturer instructions that he's going from today,
3 he got from the manufacturer after the fact. He got them
4 directly from the manufacturer, not the manual
5 instructions that were provided to my client.

6 COMMISSIONER GAW: And are you suggesting,
7 do you believe and are you advocating for as a part of
8 your defense that it is a necessary element of this
9 Staff's case to show that there was a -- that the correct
10 manual for installation was provided to your client? Is
11 that your position?

12 MS. CRANE: Yes. I look at -- I was going
13 to read from the code, which Commissioner Murray did, that
14 says provided by the manufacturer, and that is most
15 definitely part of my defense.

16 COMMISSIONER GAW: And you read that to
17 mean that it's provided by the manufacturer to the dealer?

18 MS. CRANE: Correct.

19 COMMISSIONER GAW: And is that Staff's
20 position in reading that particular section of the rule,
21 or has Staff evaluated that?

22 MR. BERLIN: I'd like to know which
23 specific rule you're referring to, because I will quote
24 4 CSR 240.123.065. Paragraph 2 states, as used in this
25 rule, proper initial setup means installation and setup of

1 the modular unit in accordance with the installation
2 manual provided by the manufacturer of the modular unit
3 and in complete compliance with the code and with all of
4 the provisions regarding setup in Section 700.010 to
5 700.115 RSMo.

6 Now, 4 CSR 240-123.080, paragraph 7 states
7 that all modular units shall be set up or installed
8 according to the manufacturer's installation manual,
9 and that is -- and that is the standard by which Staff
10 has gone by. We have testified -- I believe Staff witness
11 Haden has testified that he does not know what
12 specifically or what specific information was provided by
13 the manufacturer to the dealer.

14 COMMISSIONER GAW: My question to you,
15 Mr. Berlin, is whether you believe it is a necessary
16 element of your case, at least in that part. That refers
17 to that rule section that you -- that you show evidence
18 that the correct manual was given to the dealer, because
19 as I understand defense attorney in this case, she
20 believes that that is a necessary element of at least one
21 portion of your case, and I'm asking you whether you agree
22 with her or not?

23 MR. BERLIN: I disagree, Commissioner Gaw.

24 COMMISSIONER GAW: All right. Is it your
25 belief that it is -- it is only necessary to establish

1 that there is a manual that exists and whether or not
2 there's compliance? And I don't want to put words in your
3 mouth here. You can say it, whatever your argument.

4 MR. BERLIN: If I understand your question,
5 what we have presented here today is what I believe to be
6 evidence of violations of the manufacturer's installation
7 manual for this particular modular unit home, and I've
8 entered into the record as evidence the appropriate
9 manufacturer's installation manual, which is the same
10 manual and instructions that the dealer should have
11 followed when he installed and set up this home.

12 COMMISSIONER GAW: I understand. I
13 understand what your argument is, and I guess I understand
14 that you don't believe it's necessary to establish in your
15 case that a particular manual was delivered to the dealer,
16 but the defense attorney here is arguing that it is, if I
17 understand correctly. I don't want to put words in her
18 mouth either.

19 MR. BERLIN: But, Commissioner Gaw, I think
20 I understand your question. It is not an element of my
21 case to establish what exactly the dealer received from
22 the manufacturer.

23 COMMISSIONER GAW: At least I understand
24 that you have a legal argument on that. I apologize for
25 belaboring it, but I think it needed a little

1 clarification. Thank you.

2 I don't have anything further.

3 Commissioner Murray may.

4 COMMISSIONER MURRAY: I just want to ask
5 Mr. Pleus a question regarding the provision of the
6 installation manual.

7 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

8 Q. I believe it was testified to earlier, and
9 I don't believe it was you who said that either ordinarily
10 or many times, and I can't remember which, the manual is
11 provided to the purchaser, the installation manual is
12 provided directly to the purchaser. Is that your
13 understanding?

14 A. Many times there's a -- the manual can be
15 presented to the purchaser after the installation.

16 Q. After the installation?

17 A. Yes, because there may be homeowner
18 responsibilities, you know, certain things to do to make
19 sure the home is maintained that are homeowner
20 responsibilities.

21 Q. Should that be the case? Should that
22 generally be done, the manual? Should the homeowner
23 receive a copy of the manual?

24 A. Yes, and as part of -- you know, the
25 dealers's responsibilities as a registered dealer for the

1 proper and initial setup of the home, if you're going to
2 sell the home, you need to have the manual which gives you
3 the instructions and installation requirements to do that
4 properly for the consumer.

5 Q. So you -- the dealer should have that
6 installation manual prior to selling the home?

7 A. Maybe not specifically prior to selling it,
8 but certainly prior to starting the installation of the
9 home, specifically if it's on a basement or crawl space
10 which requires, you know, specific materials and products
11 to attach that home properly to the foundation. You would
12 need to make sure you can do that before you start -- you
13 take the home out to the site and begin installation.

14 Q. And if a dealer wanted to obtain a copy of
15 the manual and the manufacturer were not readily
16 available, where else could the dealer go to get a copy of
17 the appropriate manual?

18 A. They could come to us or contact us, and we
19 could make sure that they get an installation manual for
20 the home.

21 Q. Is there any place else?

22 A. No, not that I'm aware of, ma'am. But
23 normally manufacturers want to make sure there's an
24 installation manual for the home because they -- they
25 offer a warranty for the home, and the warranty is based

1 upon the proper installation. If it's not setup properly,
2 the warranty can be voided. So the manufacturers normally
3 readily make that document available to the dealer prior
4 to installation of the home.

5 COMMISSIONER MURRAY: Thank you.

6 JUDGE VOSS: Any additional questions for
7 this witness, cross?

8 MR. BERLIN: No questions, Judge.

9 JUDGE VOSS: In that case, you may be
10 excused, Mr. Pleus. I know there was one premarked
11 exhibit that wasn't offered. Did you want to offer that
12 or was it -- you had an exhibit marked that you didn't
13 offer?

14 MS. CRANE: Right. Correct.

15 JUDGE VOSS: I just wanted to clarify since
16 it hadn't been admitted into evidence.

17 I see briefing, one round, is one round of
18 briefing acceptable to everybody? Normally I do
19 approximately 15 days after the transcript, which is due
20 out on November 17th, but that leads us to December 8th
21 and I'll be in the middle of AmerenUE public hearings
22 going on. I'm going to give the parties until December
23 15th, that Friday, for briefing.

24 MR. BERLIN: That's agreeable to us, your
25 Honor.

1 JUDGE VOSS: In that case, we will go off
2 the record.

3 WHEREUPON, the hearing of this case was
4 concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
19 My commission expires March 28, 2009.
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