

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2021-015089 CA 01

MANUEL DREZNER,
Plaintiff,

-vs-

CHAMPLAIN TOWERS SOUTH
CONDOMINIUM ASSOCIATION, INC.,
Defendant.

-----/

PROCEEDINGS BEFORE HONORABLE MICHAEL A. HANZMAN
STATUS CONFERENCE

Remote Proceeding
Zoom Videoconference

Thursday, September 30, 2021
9:00 a.m.

1 A P P E A R A N C E S

2 RECEIVER: MICHAEL I. GOLDBERG, ESQUIRE

3 ON BEHALF OF THE RECEIVER, MICHAEL I. GOLDBERG:

4 BERGER SINGERMAN, LLP
1450 Brickell Avenue
5 Suite 1900
Miami, Florida 33131
6 (305) 755-9500
Singerman@bergersingerman.com
7 BY: PAUL S. SINGERMAN, ESQUIRE

8 ON BEHALF OF THE PLAINTIFFS:

9 GROSSMAN, ROTH, YAFFA & COHEN, P.A.
2525 Ponce de Leon Boulevard
10 Suite 1150
Coral Gables, Florida 33134
11 (305) 442-8666
Rwf@grossmanroth.com
12 BY: RACHEL W. FURST, ESQUIRE
Szg@grossmanroth.com
13 BY: STUART GROSSMAN, ESQUIRE14 THE MOSKOWITZ LAW FIRM
2 Alhambra Plaza
15 Suite 601
Coral Gables, Florida 33134
16 (305) 740-1423
Adam@moskowitz-law.com
17 BY: ADAM MOSKOWITZ, ESQUIRE
Joseph@moskowitz-law.com
18 BY: JOSEPH M. KAYE, ESQUIRE19 KOZYAK, TROPIN & THROCKMORTON
2525 Ponce de Leon Boulevard
20 Suite 900
Coral Gables, Florida 33134
21 (305) 372-1800
Jal@kttlaw.com
22 BY: JAVIER A. LOPEZ, ESQUIRE
Hst@kttlaw.com
23 BY: HARLEY S. TROPIN, ESQUIRE
Tjl@kttlaw.com
24 BY: TAL J. LIFSHITZ, ESQUIRE
Ekay@kttlaw.com
25 BY: ERIC S. KAY, ESQUIRE

1 A P P E A R A N C E S (Continued)

2 PODHURST ORSECK, P.A.
3 1 Southeast 3rd Avenue
4 Suite 2300
5 Miami, Florida 33131-1716
6 (305) 358-2800
7 Rmclid@podhurst.com
8 BY: RICARDO M. MARTINEZ-CID, ESQUIRE

9 THE MERLIN LAW GROUP, P.A.
10 777 South Harbour Island Boulevard
11 Suite 950
12 Tampa, Florida 33602
13 (813) 229-1000
14 Wmerlin@merlinlawgroup.com
15 BY: WILLIAM "CHIP" MERLIN, JR., ESQUIRE

16 AKERMAN LLP
17 201 East Las Olas Boulevard
18 Suite 1800
19 Fort Lauderdale, Florida 33301
20 (954) 463-2700
21 Eric.rapkin@akerman.com
22 BY: ERIC D. RAPKIN, ESQUIRE

23 ON BEHALF OF PHILADELPHIA INDEMNITY INSURANCE
24 COMPANY:

00:00:03 25 GOLDBERG SEGALLA, LLP
26 222 Lakeview Avenue
27 Suite 800
28 West Palm Beach, Florida 33401
29 (561) 618-4450
30 Dblumenthal@goldbergsegalla.com
31 BY: DUSTIN C. BLUMENTHAL, ESQUIRE

32 ON BEHALF OF WESTERN WATERPROOFING:

33 KUBICKI DRAPER
34 25 West Flagler Street
35 Penthouse
36 Miami, Florida 33130
37 (305) 982-6699
38 Slh@kubickidraper.com
39 BY: SHAWN L. HAIRSTON, ESQUIRE

40

1 A P P E A R A N C E S (Continued)

2 ON BEHALF OF NV5, INC.:

3 COLE, SCOTT & KISSANE, P.A.
4 9150 South Dadeland Boulevard
5 Suite 1400
6 Miami, Florida 33156
7 (305) 350-5331
8 George.truitt@csklegal.com
9 BY: GEORGE R. TRUITT, JR., ESQUIRE

10 ON BEHALF OF 8701 COLLINS DEVELOPMENT, LLC:

11 GREENBERG TRAURIG, P.A.
12 101 East Kennedy Boulevard
13 Suite 1900
14 Tampa, Florida 33602
15 (813) 318-5700
16 Weinsteind@gtlaw.com
17 BY: DAVID B. WEINSTEIN, ESQUIRE

18 ALSO PRESENT:

19 ON BEHALF OF MIAMI-DADE COUNTY:

20 MIAMI-DADE COUNTY ATTORNEY'S OFFICE
21 111 Northwest 1st Street
22 Suite 2810
23 Miami, Florida 33128
24 (305) 375-4948
25 Anita@miamidade.gov
26 BY: ANITA VICIANA, ESQUIRE

27 ON BEHALF OF THE TOWN OF SURFSIDE:

28 WEISS, SEROTA, HELFMAN, COLE, BIERMAN & POPOK
29 2525 Ponce de Leon Boulevard
30 Suite 700
31 Coral Gables, Florida 33134
32 (305) 854-0800
33 Larango@wsh-law.com
34 BY: LILLIAN ARANGO, ESQUIRE
35 Trecio@wsh-law.com
36 BY: ANTHONY L. RECIO, ESQUIRE

1 A P P E A R A N C E S (Continued)

2 ALSO PRESENT:

3 AVISON YOUNG
4 2020 Ponce de Leon Boulevard
5 Suite 1200
6 Miami, Florida 33134
7 (305) 447-7842
8 Michael.fay@avisonyoung.com
9 BY: MICHAEL T. FAY

10 ADDITIONAL SPEAKERS:

11 Lisa Love
12 Alfredo Lopez
13 Sara Nir
14 Martine Weber
15 Oren Cytrynbaum
16 Tali Naibryf
17 Sergio Lozano
18 Susie Rodriguez
19 Brett Lozano
20 Randy Rose
21 Mindy Cassel

04:26:57 1 Thereupon --

04:26:57 2 THE COURT: Good morning, ladies and
00:00:-34 3 gentlemen. The Court is now going to call
00:00:-33 4 the matter of the In Re: Surfside Champlain
00:00:-30 5 Towers South Collapse Litigation, Case No.
00:00:-28 6 2021-15089.

00:-01:-36 7 Let me have appearances from the
00:-01:-34 8 receiver, lead counsel, defense counsel,
00:-01:-30 9 and any counsel for any governmental
00:-01:-27 10 entities or agencies in that order, please.

00:-01:-23 11 MR. SINGERMAN: Good morning, Judge
00:-01:-21 12 Hanzman. May it please the Court, I'm Paul
00:-01:-18 13 Singerman from Berger Singerman. Our firm
00:-01:-17 14 is counsel to Michael I. Goldberg,
00:-01:-13 15 Your Honor's court-appointed receiver.
00:-01:-11 16 Mr. Goldberg is present participating in
00:-01:-09 17 the Zoom hearing. Thank you, Your Honor.

00:-01:-07 18 MR. GOLDBERG: Good morning,
00:-01:-06 19 Your Honor.

00:-01:-04 20 MR. TROPIN: May it please the
00:-01:-03 21 Court, Harley Tropin, co-chair representing
00:-01:-01 22 the plaintiffs.

00:00:-59 23 MS. FURST: Your Honor, Rachel
00:00:-57 24 Furst, co-chair lead counsel, also
00:00:-55 25 representing the plaintiffs.

00:00:-51 1 MR. GROSSMAN: Good morning, Judge.

00:00:-49 2 It's Stuart Grossman, liaison counsel,
00:00:-44 3 Grossman Roth.

00:00:-44 4 MR. MARTINEZ-CID: Good morning,
00:00:-43 5 Your Honor. Ricardo Martinez-Cid, lead
00:00:-43 6 counsel for personal injury and wrongful
00:00:-40 7 death claims.

00:00:-38 8 MR. MOSKOWITZ: Good morning,
00:00:-37 9 Your Honor. Adam Moskowitz, co-lead
00:00:-35 10 counsel for the economic loss victims.

00:00:-32 11 MR. LOPEZ: Good morning,
00:00:-31 12 Your Honor. Javi Lopez with Kozyak Tropin,
00:00:-28 13 co-lead counsel for the economic loss
00:00:-26 14 victims.

00:00:-26 15 MR. MERLIN: Good morning, Your
00:00:-24 16 Honor. Chip Merlin, coverage counsel for
00:00:-23 17 the claimants.

00:00:-18 18 THE COURT: Any other lead counsel
00:00:-16 19 that would like to make an appearance this
00:00:-14 20 morning?

00:00:-12 21 Okay. Let me hear appearances of
00:00:-09 22 any defense counsel or counsel for any
00:00:-06 23 insurance carriers, please.

00:00:-04 24 MR. BLUMENTHAL: Good morning,
00:00:-03 25 Your Honor. Dustin Blumenthal for

1 Philadelphia Indemnity Insurance Company.

00:00:06 2 THE COURT: Any other defense
00:00:08 3 counsel or insurance counsel that would
00:00:09 4 like to make an appearance this morning?

00:00:12 5 MR. HAIRSTON: Good morning,
00:00:13 6 Your Honor, this is Shawn Hairston from
00:00:17 7 Kubicki Draper. I'm representing Western
00:00:20 8 Waterproofing.

00:00:20 9 THE COURT: Who, I'm sorry?

00:00:21 10 MR. HAIRSTON: Western
00:00:24 11 Waterproofing.

00:00:24 12 THE COURT: Western Waterproofing.
00:00:26 13 Okay. Very good. Any other defense or
00:00:33 14 insurance counsel?

00:00:33 15 MR. TRUITT: Yes, Your Honor, George
00:00:35 16 Truitt from Cole, Scott & Kissane. We're
00:00:36 17 on behalf of the non-party NV5, Inc., and
00:00:41 18 NV Global. We're the subject of the
00:00:47 19 subpoena, the objections.

00:00:48 20 THE COURT: All I need is
00:00:49 21 appearances now, counsel.

00:00:51 22 MR. TRUITT: Understood.

00:00:51 23 THE COURT: Any other appearances of
00:00:54 24 defense counsel or insurance counsel?

00:00:56 25 MR. WEINSTEIN: Yes, Your Honor,

00:00:57 1 good morning. David Weinstein with
00:00:57 2 Greenberg Traurig representing 8701 Collins
00:01:08 3 Development, LLC.

00:01:08 4 THE COURT: Any appearance from
00:01:09 5 counsel from any governmental entities or
00:01:11 6 agencies involved in or monitoring this
00:01:14 7 case?

00:01:15 8 MS. ARANGO: Good morning,
00:01:16 9 Your Honor. Lillian Arango and Anthony
00:01:20 10 Recio, Town attorneys from the Town of
00:01:22 11 Surfside. We also have with us Andrew
00:01:25 12 Hyatt and Jason Brittany, our Town
00:01:27 13 managers. Thank you.

00:01:28 14 MS. VICIANA: Good morning,
00:01:29 15 Your Honor, Anita Viciana from Miami-Dade
00:01:35 16 County.

00:01:35 17 THE COURT: Okay. I need everybody
00:01:37 18 to please do me a favor, and if you're not
00:01:39 19 speaking, I need you to make sure you're on
00:01:41 20 mute so we don't get any background noise
00:01:44 21 or interference with the hearing. So
00:01:47 22 unless you're speaking, please put your
00:01:49 23 devices on mute, thank you.

00:01:50 24 Okay. Mr. Goldberg, let's start
00:01:55 25 with an update on where we are as far as

00:01:59 1 the assistance payments, the contract for
00:02:02 2 the sale of the property, the appraisal,
00:02:04 3 and any other matters you want to bring up.

00:02:07 4 MR. GOLDBERG: Thank you, Your Honor
00:02:08 5 and good morning, everybody. Your Honor,
00:02:10 6 as we typically do, I'll walk through the
00:02:14 7 various categories that I update the Court
00:02:16 8 and all the parties of interest on, and
00:02:19 9 then Mr. Singerman has two important
00:02:22 10 motions which I previewed last week, one
00:02:24 11 being the sale and bid procedures motion,
00:02:26 12 and the second one being the personal
00:02:29 13 property cash motion, for lack of a better
00:02:33 14 term, that he'll present to the Court.

00:02:37 15 THE COURT: Very good.

00:02:38 16 MR. GOLDBERG: All right.
00:02:39 17 Your Honor, with respect to assistance
00:02:41 18 payments, we had an increase of one payment
00:02:44 19 of assistance payments in connection with
00:02:46 20 relocation. So we have a total assistance
00:02:50 21 payments applied for of 95 and 85 approved,
00:02:57 22 10 denied.

00:02:58 23 Your Honor, as you're aware and I
00:03:04 24 don't know if anybody else is aware, last
00:03:05 25 week on an ore tenus motion you approved an

00:03:10 1 additional 5,000 of relocation expense, and
00:03:14 2 you entered an order late last night, and
00:03:17 3 I want to let all the victims know that
00:03:19 4 we'll start that process immediately to get
00:03:22 5 them the additional funds that they qualify
00:03:25 6 for. So thank you for entering that order
00:03:28 7 late last night, Your Honor.

00:03:30 8 To date total relocation paid is
00:03:34 9 390,000, and total end-of-life benefits
00:03:38 10 paid is 92,000, so that the total
00:03:41 11 assistance paid to date is 482,000.
00:03:45 12 We still have 518,000 left in the generous
00:03:49 13 donation by Mr. Ruiz, but that will
00:03:52 14 certainly go down as we make the additional
00:03:55 15 assistance payments.

00:03:57 16 Your Honor, next, with respect to
00:03:59 17 the bank accounts, there has been no
00:04:01 18 significant change. We still have slightly
00:04:05 19 under 50 million by my best count as of two
00:04:08 20 days ago, 49 million and approximately
00:04:13 21 760,000 dollars. The only change would be
00:04:15 22 the accrual of a nominal amount of
00:04:19 23 interest. As the Court is aware, we're
00:04:21 24 getting very little interest, but it's in a
00:04:23 25 safe and secure place.

00:04:25 1 THE COURT: Okay.

00:04:25 2 MR. GOLDBERG: With respect to the
00:04:26 3 insurance, Your Honor, Philadelphia is on,
00:04:31 4 and we thank them. We're making some
00:04:34 5 progress with them. We've exchanged a
00:04:36 6 memorandum of understanding that looks like
00:04:39 7 we're on our way to resolving a payment of
00:04:43 8 at least a portion of some of the fees and
00:04:47 9 expenses owed -- incurred by Berger
00:04:50 10 Singerman in representing the association
00:04:54 11 or me as receiver of the association, and
00:04:56 12 we look forward to finalizing that with
00:05:00 13 Philadelphia. We also are setting up
00:05:03 14 mediation with a couple of the other
00:05:05 15 carriers, and we are optimistic that
00:05:09 16 we will make progress.

00:05:10 17 With respect to the property,
00:05:14 18 Your Honor, the fencing, if it hasn't
00:05:18 19 started as of today, it will start very
00:05:22 20 shortly. The County, again, has graciously
00:05:25 21 agreed to pay for the fencing, and we will
00:05:29 22 utilize a process whereby the County will
00:05:31 23 undertake starting the fencing prior to
00:05:34 24 actually getting the permit, so it should
00:05:38 25 expedite.

00:05:39 1 The good news is that should
00:05:41 2 expedite the ability for us to effectuate
00:05:46 3 turnover as quick as possible, hopefully in
00:05:48 4 the next couple of weeks, and we'll start
00:05:51 5 getting the experts on the property so that
00:05:53 6 they can start doing their noninvasive
00:05:57 7 testing pursuant to the previous protocol
00:05:59 8 entered by the Court.

00:06:01 9 Your Honor, in connection with that,
00:06:04 10 I have been in touch with Mr. Kilsheimer,
00:06:07 11 who is the expert for the Town of Surfside,
00:06:11 12 and we communicate regularly. And
00:06:14 13 Mr. Kilsheimer, who is an absolute
00:06:20 14 gentleman that I have a very good
00:06:21 15 collaborative relationship with, has
00:06:25 16 informed me, and we appreciate it, that the
00:06:28 17 Town of Surfside has agreed to pick up at
00:06:30 18 least the initial cost of the dewatering
00:06:33 19 equipment and obtaining the permits on
00:06:37 20 that.

00:06:38 21 Basically, at the last hearing
00:06:42 22 I told you the property has about a foot
00:06:44 23 and a half of water on it. Before the
00:06:46 24 experts can go on the property or even
00:06:50 25 conduct the Lidar, which they fly drones

00:06:53 1 over the property, they need to dewater it.
00:06:55 2 It's an expensive process.

00:06:58 3 Mr. Kilsheimer basically told me
00:07:00 4 that the equipment that they would rent,
00:07:03 5 it's a minimal of a 30-day rental, and
00:07:07 6 it requires the property to start draining
00:07:09 7 about a day or two or three before the
00:07:12 8 experts can do their work.

00:07:16 9 So basically, the water will drain
00:07:21 10 into a catch basin. It's the Town of
00:07:23 11 Surfside's catch basin, and it will be
00:07:26 12 distributed out of that pursuant to the
00:07:28 13 Town of Surfside's controls.

00:07:32 14 The good news is this should save
00:07:37 15 the estate about 25, \$30,000, and it will
00:07:42 16 enable next Thursday, Mr. Kilsheimer plans
00:07:48 17 to fly drones over with Lidar, and we want
00:07:52 18 to invite all the experts to come in.
00:07:54 19 If they need to fly their drones or work
00:07:58 20 collaboratively with Mr. Kilsheimer on the
00:08:00 21 sharing of the data from the drones,
00:08:04 22 however they want to do it, but that's the
00:08:06 23 plan, and we plan to reach out to everybody
00:08:09 24 today.

00:08:09 25 The reason I am discussing this now

00:08:12 1 is I'm going to make an ore tenus motion in
00:08:15 2 a minute to approve the execution of a
00:08:18 3 permit so that this can be undertaken.
00:08:21 4 It is noninvasive to the property, and
00:08:24 5 it is very similar to the permit you
00:08:26 6 approved me to execute last week in
00:08:29 7 connection with the County for dewatering.

00:08:32 8 This came up suddenly, so we did not
00:08:35 9 have time to get a formal motion in front,
00:08:38 10 but I can assure the Court that it is
00:08:40 11 represented to me by the Town of Surfside
00:08:42 12 and Mr. Kilsheimer, who is on here if the
00:08:46 13 Court has any questions, that this will not
00:08:49 14 in any way damage the property, it's
00:08:50 15 necessary for all of the experts.

00:08:54 16 The Town of Surfside will pick it up
00:08:56 17 at their own expense. They are
00:08:56 18 representing that they will retain all the
00:09:00 19 necessary permits and requirements, and the
00:09:00 20 water is going, again, into their catch
00:09:02 21 basin and discharged under their control.

00:09:05 22 So, Your Honor, unless you have any
00:09:07 23 questions, I would make an ore tenus motion
00:09:11 24 simply to approve my authorization to
00:09:15 25 execute the permit, and then Mr. Kilsheimer

00:09:19 1 and I will contact all the experts, invite
00:09:22 2 them on, and they may be able to change the
00:09:25 3 date. We want to do this, but this will
00:09:28 4 also dewater the property again for when
00:09:31 5 all the experts need to come on in a couple
00:09:34 6 of weeks or so to do their access protocol.

00:09:37 7 THE COURT: All right. Does anybody
00:09:40 8 wish to be heard on the receiver's ore
00:09:43 9 tenus motion to authorize the issuance of a
00:09:48 10 permit so the Town of Surfside and the
00:09:51 11 experts can dewater the property and do the
00:09:56 12 drone inspections?

00:09:58 13 MR. GROSSMAN: I do, Judge, Stuart
00:10:02 14 Grossman. We are hearing this from
00:10:04 15 Mr. Goldberg for the first time, and it's
00:10:07 16 our custom and habit before agreeing to any
00:10:10 17 procedure that would take place on the
00:10:12 18 property itself, including dewatering, to
00:10:16 19 have an opportunity to speak to our
00:10:19 20 experts.

00:10:20 21 I appreciate what Michael has done,
00:10:23 22 and I don't object to the notion of
00:10:26 23 it being dewatered, but we would just like
00:10:29 24 to run this by them, and it will take not
00:10:33 25 more than a day. So before you execute the

00:10:37 1 order, I'd like at least an opportunity to
00:10:39 2 get back to you to see what our experts
00:10:42 3 say. They're spread around the country.

00:10:46 4 MR. GOLDBERG: Your Honor, I have no
00:10:47 5 objection to that. That's a fair and
00:10:49 6 reasonable request, and I apologize both to
00:10:51 7 Mr. Grossman and the entire -- all parties
00:10:56 8 in interest. This is sort of a very sudden
00:10:59 9 thing, but that is in my opinion a
00:11:01 10 reasonable request.

00:11:02 11 Perhaps we can wait 24 hours to
00:11:05 12 submit the order, and maybe that will give
00:11:06 13 Mr. Grossman enough time to speak with the
00:11:10 14 experts if that's acceptable to the Court
00:11:12 15 and Mr. Grossman.

00:11:13 16 THE COURT: Here's what we're going
00:11:15 17 to do. I'm going to grant the motion
00:11:17 18 subject to any objection which I will give
00:11:19 19 the parties until noon tomorrow to assert.
00:11:25 20 By noon tomorrow if there's not been any
00:11:28 21 formal objection filed, Mr. Goldberg, you
00:11:30 22 are to submit the order, and I will execute
00:11:33 23 it tomorrow afternoon.

00:11:36 24 Mr. Goldberg, will you favor us with
00:11:38 25 a copy of your proposed order, please.

00:11:40 1 MR. GOLDBERG: Of course, and it's
00:11:41 2 simply going to be I am hereby authorized
00:11:44 3 to execute a permit, but, yes, of course
00:11:46 4 I will get that to the plaintiffs group,
00:11:48 5 and you'll have that within a couple of
00:11:51 6 hours after the hearing.

00:11:52 7 THE COURT: All right. So let me
00:11:55 8 extend a thanks to the Town of Surfside for
00:11:59 9 agreeing to pick up that expense and spare
00:12:02 10 the estate of that expense. That's very
00:12:05 11 commendable, and the Court always
00:12:07 12 appreciates its cooperation and its
00:12:10 13 willingness to work with the receiver and
00:12:12 14 to minimize the expense to the estate. So
00:12:15 15 thank you -- thank you to the Town of
00:12:15 16 Surfside.

00:12:20 17 All right. What's next,
00:12:21 18 Mr. Goldberg?

00:12:22 19 MR. GOLDBERG: Your Honor, just --
00:12:23 20 there's a few more items. Quickly, the
00:12:26 21 condominium termination lawsuit was filed,
00:12:29 22 and we are in the process of working along
00:12:32 23 with the plaintiffs group in perfecting
00:12:37 24 service of process, and we're moving
00:12:39 25 forward, you know, forthwith with that so

00:12:43 1 there's no delay in this case.

00:12:47 2 With respect, Your Honor, to the
00:12:50 3 sales process, again, shortly,
00:12:52 4 Mr. Singerman will present the motion.
00:12:57 5 Mr. Fay was driving today, but I just
00:12:59 6 wanted to let the Court and everybody know
00:13:02 7 that he continues to vigorously market the
00:13:05 8 property internationally.

00:13:06 9 I have statistics on all of the
00:13:09 10 websites and everything and the emails, but
00:13:11 11 I don't want to go through that and give
00:13:14 12 statistics unless the Court or anybody else
00:13:16 13 wants to hear about the number of downloads
00:13:18 14 and emails sent out and everything like
00:13:21 15 that.

00:13:21 16 I have that ready if the Court wants
00:13:24 17 it, but I was not going to go through
00:13:26 18 it unless the Court wants me to do that
00:13:28 19 specifically.

00:13:28 20 THE COURT: I don't think that's
00:13:29 21 necessary this morning.

00:13:31 22 MR. FAY: Your Honor, it's Michael
00:13:33 23 Fay. I am on the phone, so if you need me
00:13:37 24 for anything in the next couple of minutes,
00:13:40 25 I'd be happy to answer any questions.

00:13:42 1 THE COURT: Okay. Well, stay with
00:13:43 2 us, Mr. Fay, because I'm going to hear the
00:13:44 3 motion to approve the sale of the property
00:13:46 4 next or shortly, I'm not going to say next,
00:13:50 5 so stay with us as long as you can. All
00:13:56 6 right?

00:13:56 7 MR. GOLDBERG: Your Honor --

00:13:56 8 THE COURT: Mr. Goldberg, bring me
00:13:58 9 up-to-date on the appraisals and any other
00:14:01 10 matters that you just want to advise me on
00:14:03 11 before I turn to Mr. Singerman and hear the
00:14:06 12 motion to approve the sale of the property
00:14:10 13 to East Oceanside Development.

00:14:12 14 MR. GOLDBERG: I will, I just have
00:14:12 15 a few more matters, and then I'll update
00:14:15 16 you on the appraisal if that's okay with
00:14:17 17 the Court.

00:14:18 18 THE COURT: Okay.

00:14:18 19 MR. GOLDBERG: Your Honor, the next
00:14:19 20 thing I've been working on is I've already
00:14:22 21 commenced conversations with the County
00:14:23 22 who, again, is just unbelievably responsive
00:14:27 23 to everything, to start getting access to
00:14:32 24 the experts to the two off-site locations.
00:14:36 25 That also includes conversations with the

00:14:40 1 State Attorney's Office who is also
00:14:44 2 extremely cooperative and responsive.

00:14:46 3 I will -- before we submit any
00:14:50 4 protocols to the Court, we will share
00:14:52 5 it with the plaintiffs group and any other
00:14:55 6 parties in interest like we did with the
00:14:56 7 previous protocols.

00:14:58 8 Again, the County has two off-site
00:15:01 9 locations. One is where rubble was moved
00:15:07 10 and looked through, which the County has --
00:15:15 11 rubble that is deemed of less significant
00:15:18 12 evidentiary value, and the items that were
00:15:21 13 deemed of more significant evidentiary
00:15:24 14 value were moved into an indoor warehouse
00:15:27 15 and are housed there.

00:15:29 16 With respect to the outside lot, the
00:15:34 17 County has arranged along with the police
00:15:39 18 and is currently happening now, today, as
00:15:42 19 we are here, yesterday and tomorrow, to
00:15:45 20 take families to the off-site location so
00:15:49 21 that they can view it, and Magic City
00:15:55 22 Casino graciously lent their parking lot as
00:15:59 23 a staging area for that to happen.

00:16:00 24 Additionally, on that outside lot,
00:16:04 25 there's 119 destroyed vehicles that the

00:16:09 1 County will eventually want to dispose of.
00:16:12 2 We're in the process of preparing a motion
00:16:13 3 for authorization for those vehicles to be
00:16:16 4 disposed of. I understand that the
00:16:18 5 insurance companies have paid out on all of
00:16:21 6 those vehicles, and they are the ones that
00:16:23 7 own it, so we will be providing notice to
00:16:25 8 the insurance companies that those vehicles
00:16:27 9 will be destroyed.

00:16:28 10 In addition, the County in about a
00:16:31 11 month from now wants to clear the lot, and
00:16:35 12 we will also be providing notice with an
00:16:38 13 access protocol to all the experts and
00:16:40 14 parties in interest so they can go to the
00:16:42 15 lot and view that and lodge any objections
00:16:46 16 prior to that being cleared, because,
00:16:49 17 again, in an abundance of caution, the
00:16:52 18 County and the receivership want to make
00:16:54 19 sure that nothing that anybody else may
00:16:57 20 deem significant that the County may have
00:16:59 21 previously classified as insignificant is
00:17:02 22 disposed of without everybody having an
00:17:05 23 opportunity.

00:17:05 24 So I'm working on that protocol.
00:17:08 25 Again, we will run it by the entire

00:17:10 1 plaintiffs group and all parties in
00:17:12 2 interest that we know of prior to
00:17:14 3 submitting that to the Court, and again,
00:17:17 4 we will do the same with the protocol that
00:17:19 5 I'm working on with the State Attorney's
00:17:22 6 Office to obtain access to all parties in
00:17:25 7 interest to the inside warehouse.

00:17:27 8 I expect we'll have that to you
00:17:29 9 either at the next hearing or the hearing
00:17:31 10 after, but we're shooting to get that to
00:17:34 11 you at the next hearing.

00:17:35 12 THE COURT: Try to get that to me by
00:17:37 13 next week, please. I'd like -- I'd like to
00:17:40 14 take it up next Wednesday. Okay?

00:17:42 15 MR. GOLDBERG: I will work on it and
00:17:43 16 try to get that done, Your Honor,
00:17:45 17 absolutely. We have to exchange it with
00:17:48 18 all the plaintiffs groups and everything,
00:17:50 19 so it does take some time.

00:17:51 20 Your Honor, this week we also, with
00:17:55 21 Mr. Goodman who is on the plaintiffs' legal
00:17:58 22 team, we finalized -- I think we're there,
00:18:01 23 a protocol for me to reimburse the
00:18:04 24 plaintiffs pursuant to the Court's former
00:18:08 25 verbal statements from the bench that

00:18:10 1 I should reimburse them for their experts
00:18:10 2 and their costs. We put together a
00:18:15 3 protocol on that that will be submitted to
00:18:16 4 the Court to be entered so that could be
00:18:18 5 accomplished.

00:18:19 6 Two last things, one being the
00:18:22 7 appraisal, Your Honor. First, zoning.
00:18:24 8 Mr. Kazden and the City of Surfside are
00:18:30 9 cooperating with one another in moving
00:18:33 10 forward, and most of this week was spent
00:18:38 11 confirming the height and square footage of
00:18:44 12 the preexisting building which the city had
00:18:46 13 said we'd be able to replicate.

00:18:48 14 So we're just confirming exactly
00:18:51 15 what was there. Some of the records are
00:18:52 16 not the best, but Mr. Kazden and the city
00:18:55 17 are working on that. And again, we
00:18:57 18 appreciate Ms. Arango, Mr. Recio, and the
00:19:02 19 City of Surfside working collaboratively
00:19:06 20 with Mr. Kazden and the architects and
00:19:09 21 engineering on that, because zoning will
00:19:11 22 play an important role in the sales
00:19:13 23 process.

00:19:14 24 Finally, Your Honor, tomorrow
00:19:15 25 I expect to file the final appraisal, which

00:19:18 1 I have. We'll do it under a notice of
00:19:21 2 filing, and it will be visible for the
00:19:26 3 Court and everybody else to see, and we
00:19:28 4 expect to file it tomorrow.

00:19:29 5 THE COURT: So, Mr. Goldberg, what
00:19:30 6 is the aggregate value of the units per
00:19:33 7 your appraisal?

00:19:36 8 MR. GOLDBERG: Of all the units
00:19:38 9 together, Your Honor?

00:19:38 10 THE COURT: Yes, the aggregate value
00:19:41 11 of all the units on the day before the
00:19:44 12 incident, what's the aggregate appraised
00:19:46 13 value of all the units combined?

00:19:48 14 MR. GOLDBERG: According to the MAI
00:19:52 15 appraisal, as of June 23rd, which is the
00:19:55 16 day before, the aggregate value of all of
00:19:58 17 the units, 136 units, is \$95,657,254.

00:20:11 18 THE COURT: Okay. All right. So to
00:20:16 19 transition into a topic the Court wants to
00:20:19 20 bring up, and I want counsel to start
00:20:21 21 looking at two issues for me and be ready
00:20:24 22 to discuss them with me next week as far as
00:20:27 23 a briefing schedule, the Court has
00:20:29 24 indicated before that it's inclined to
00:20:34 25 believe, although is certainly open-minded,

00:20:38 1 that the funds generated from the sale of
00:20:41 2 the land and the funds generated from the
00:20:44 3 property insurance, because the land is
00:20:47 4 owned by all unit owners and because the
00:20:51 5 property insurance insures the physical
00:20:53 6 structure, the Court's inclination subject
00:20:56 7 to briefing and argument, was that those
00:21:01 8 assets would have to be used to pay all
00:21:05 9 unit owners for the value of their
00:21:07 10 condominiums first.

00:21:09 11 I want counsel to be prepared to
00:21:14 12 discuss with me next week their positions
00:21:17 13 on that, and if necessary, a proper
00:21:21 14 briefing schedule so the Court can take up
00:21:24 15 that legal issue. The legal issue being,
00:21:29 16 are the people who own the units, the
00:21:32 17 condominium, all the victims, entitled to
00:21:36 18 have the proceeds of the land and the
00:21:38 19 property insurance used to pay for the
00:21:42 20 condominiums first, and that's an issue
00:21:46 21 I want you all to be prepared to discuss
00:21:46 22 this.

00:21:49 23 The second issue I want counsel to
00:21:51 24 begin looking at is whether, assuming there
00:21:55 25 is substantially more in proceeds realized

00:21:59 1 from the sale of the land and the property
00:22:02 2 insurance than the appraised value of the
00:22:04 3 units, does the statute, the termination
00:22:09 4 statutes and the law provide that the unit
00:22:14 5 owners are entitled to their appraised
00:22:17 6 value or would the Court be obligated to
00:22:21 7 pay the economic victims the entire amount
00:22:27 8 of what's realized from the land and the
00:22:29 9 property insurance.

00:22:31 10 So if, for example, the Court
00:22:33 11 accepts the appraisal and the unit owners
00:22:37 12 can be paid \$95 million or so and in that
00:22:42 13 way receive fair value for their units, can
00:22:45 14 the Court take the excess amount, and let's
00:22:49 15 assume the land were to sell for,
00:22:50 16 hypothetically, 150 million, and we have 30
00:22:54 17 million in property insurance for 180
00:22:57 18 million from those two sources, does the
00:22:59 19 Court have the discretion and the ability
00:23:03 20 to use the excess, meaning the excess 85 or
00:23:06 21 \$90 million, to compensate for death and
00:23:10 22 personal injury claims.

00:23:12 23 Now, I want these legal issues to be
00:23:15 24 teed up, and I want them to be addressed,
00:23:17 25 because when there is a closing on this

00:23:18 1 property, and hopefully that will occur
00:23:21 2 early next year, February, March, when
00:23:24 3 there is a closing, I do not want to start
00:23:27 4 taking up those issues at that time and
00:23:29 5 delay the distribution.

00:23:32 6 I want these legal issues briefed
00:23:34 7 and resolved so when there is a closing,
00:23:36 8 if it turns out that the property owners
00:23:40 9 are entitled to their appraised value, and
00:23:44 10 that has to be paid first, I want to be in
00:23:46 11 a position to compensate all unit owners
00:23:50 12 for the value of their property, and I want
00:23:52 13 to be able to do it immediately.

00:23:53 14 So if there's going to be a dispute
00:23:56 15 on this, and if issues need to be briefed
00:23:59 16 and legal questions need to be decided,
00:24:02 17 I intend to make those decisions by the end
00:24:07 18 of the year so that the matter is ready to
00:24:08 19 go. So I want you all to start thinking
00:24:11 20 about what your various positions are on
00:24:13 21 those two topics and what would be an
00:24:16 22 appropriate briefing schedule.

00:24:17 23 It appears to me that they're purely
00:24:20 24 legal issues, so they should be ready to be
00:24:22 25 briefed and decided by the Court promptly.

00:24:26 1 So you be ready to speak to me next week on
00:24:28 2 what your positions are on these two
00:24:31 3 issues, and if there is -- if there's a
00:24:35 4 dispute, how long you think you need to
00:24:37 5 brief the matter so they can be argued, and
00:24:40 6 the Court can enter an appropriate order.

00:24:43 7 All right. Mr. Goldberg --

00:24:46 8 MR. GOLDBERG: Yes, Your Honor.

00:24:47 9 THE COURT: -- is there anything
00:24:48 10 else you'd like to report before I ask
00:24:50 11 Mr. Singerman to present the motion to
00:24:52 12 approve the sale to East Oceanside?

00:24:55 13 MR. GOLDBERG: Nope, Your Honor,
00:24:56 14 I am done with my portion of the
00:24:58 15 presentation this morning.

00:24:59 16 THE COURT: Very good.

00:25:03 17 Mr. Singerman? Mr. Singerman?

00:25:11 18 MR. SINGERMAN: May it please the
00:25:13 19 Court, Paul Singerman for Michael Goldberg
00:25:15 20 as receiver. I take it from your comments,
00:25:17 21 Your Honor, the Court prefers to take up
00:25:17 22 the sale of the real property in advance of
00:25:20 23 the protocol for the return of personal
00:25:21 24 property. I'm prepared to do so.

00:25:25 25 THE COURT: Yes, let's take up the

00:25:27 1 motion for approval of the signed contract
00:25:29 2 with East Oceanside Development.

00:25:33 3 MR. SINGERMAN: Yes, sir, Your
00:25:34 4 Honor. I want to join Mr. Goldberg and
00:25:37 5 Your Honor for your previous remarks in
00:25:40 6 thanking Mr. Fay and his team at Avison
00:25:44 7 Young for their extraordinary efforts in
00:25:44 8 getting the receiver to a position to seek
00:25:46 9 the relief he's seeking today.

00:25:48 10 I'd also thank mine and our
00:25:51 11 colleagues at Ackerman for their
00:25:53 12 extraordinary work in short order on
00:25:55 13 getting the contract prepared that's
00:25:57 14 attached to the motion which has been
00:25:58 15 signed by the purchaser and will be signed
00:26:02 16 by Mr. Goldberg pending Your Honor's
00:26:03 17 approval of the motion before you.

00:26:04 18 In that regard, one of
00:26:06 19 Mr. Goldberg's law partners, Mr. Rapkin, is
00:26:10 20 participating in the hearing this morning
00:26:11 21 by Zoom, and if I need a lifeline in
00:26:13 22 respect to any of Your Honor's questions
00:26:15 23 about the transaction or questions from any
00:26:17 24 of the victims or counsel, I may ask Your
00:26:20 25 Honor to call on Mr. Rapkin as well.

00:26:24 1 With that being said, Your Honor,
00:26:26 2 if I may proceed. We're before you today
00:26:29 3 on the receiver's expedited motion for
00:26:32 4 entry of an order approving the purchase
00:26:35 5 and sale agreement attached to the motion
00:26:36 6 as Exhibit A approving --

00:26:42 7 THE COURT: All right. Please,
00:26:43 8 folks, you need to be on mute if you're not
00:26:45 9 speaking. I don't want to have to ask
00:26:47 10 again. If you're not speaking, please put
00:26:50 11 yourself on mute.

00:26:51 12 Mr. Singerman, continue.

00:26:54 13 MR. SINGERMAN: Thank you very much,
00:26:55 14 Your Honor. So the relief being sought
00:26:57 15 today, Your Honor, as I indicated, was
00:26:59 16 entry of an order approving a purchase and
00:27:01 17 sale agreement attached to the motion as
00:27:03 18 Exhibit A, approving the competitive
00:27:05 19 bidding and sales procedures described in
00:27:07 20 the motion, and scheduling dates to conduct
00:27:09 21 an auction and hearing to consider final
00:27:12 22 approval of the sale and granting any other
00:27:15 23 relief that the Court thinks is
00:27:17 24 appropriate.

00:27:17 25 So as of this moment, Your Honor, as

00:27:19 1 I've indicated, the purchaser has signed
00:27:22 2 the contract that has been fully negotiated
00:27:25 3 and is attached to the motion as Exhibit A.
00:27:28 4 Mr. Goldberg has not yet signed. When
00:27:31 5 Mr. Goldberg signs, we then have, upon the
00:27:36 6 full execution of the agreement, what's
00:27:39 7 defined in the agreement as the effective
00:27:42 8 date. That's important for everything that
00:27:46 9 follows in terms of timing.

00:27:49 10 First, Your Honor, within five days
00:27:51 11 of the effective date, the purchaser is
00:27:54 12 obligated to post with the escrow agent a
00:27:58 13 deposit in the amount of \$16 million.

00:28:05 14 After --

00:28:06 15 THE COURT: Okay. Hold on,
00:28:08 16 Mr. Singerman. I thought that -- I thought
00:28:10 17 that deposit wasn't due until the 60-day
00:28:13 18 due diligence ran when I looked at the
00:28:15 19 contract. Am I mistaken?

00:28:18 20 MR. SINGERMAN: With respect, Your
00:28:19 21 Honor, you are.

00:28:20 22 THE COURT: Okay.

00:28:20 23 MR. SINGERMAN: Deposit is due
00:28:21 24 within five days of the effective date, and
00:28:24 25 the -- then what happens next, Your Honor,

00:28:29 1 is upon the later of 60 days from the
00:28:32 2 effective date or the date on which the
00:28:37 3 seller, that is Mr. Goldberg as receiver,
00:28:40 4 issues notice to the purchaser of its right
00:28:44 5 to access the property and commence
00:28:47 6 inspection. That date, whichever it is,
00:28:51 7 later of 60 days from the effective date or
00:28:54 8 Mr. Goldberg's notice of the right to enter
00:28:57 9 upon the property and commence inspection,
00:28:59 10 commences what's called the "inspection
00:29:01 11 period."

00:29:02 12 That period, Your Honor is 60 days,
00:29:05 13 60 days from the later of those two dates.
00:29:08 14 During that period it's important for the
00:29:10 15 Court and all parties in interest to
00:29:14 16 understand the purchaser can terminate the
00:29:18 17 contract and receive all but \$100 back for
00:29:24 18 any reason --

00:29:28 19 THE COURT: I thought it was
00:29:29 20 150,000.

00:29:32 21 MR. SINGERMAN: No.

00:29:35 22 MR. RAPKIN: It's \$150,000.

00:29:40 23 MR. SINGERMAN: I apologize. Thank
00:29:43 24 you, Mr. Rapkin and thank you, Your Honor.
00:29:44 25 All -- the \$100 that I'll refer to later,

00:29:45 1 that's in the event of a termination that
00:29:48 2 is permitted under the contract by the
00:29:50 3 purchaser for cause in only two
00:29:54 4 circumstances that would allow the
00:29:55 5 purchaser to do that after the inspection
00:29:57 6 period passes and the purchaser decides to
00:29:59 7 stay in the deal in advance of the
00:30:02 8 purchase.

00:30:02 9 So the purchaser has 60 days, Your
00:30:07 10 Honor, to undertake the inspection of the
00:30:09 11 property and for any reason during that
00:30:14 12 period, the purchaser may terminate the
00:30:17 13 contract and receive the deposit back
00:30:20 14 except for the \$150,000, that which we've
00:30:24 15 just spoken.

00:30:24 16 At the end of the inspection period,
00:30:28 17 the deposit is hard and nonrefundable
00:30:34 18 except in the circumstances of the
00:30:36 19 termination of the contract in accordance
00:30:39 20 with the provisions of Paragraph 3 of the
00:30:42 21 contract dealing with either the passage of
00:30:47 22 time, and the termination rights are as
00:30:52 23 follows, what ten months -- if the
00:30:56 24 conditions precedent to closing and the
00:30:59 25 approval orders as defined in

00:31:02 1 Paragraph 27-A of the agreement are not
00:31:04 2 entered, and the seller, that's
00:31:07 3 Mr. Goldberg, can terminate the contract
00:31:10 4 within 18 months of the effective date
00:31:13 5 if those conditions aren't satisfied
00:31:16 6 either. Provided, however, Your Honor,
00:31:19 7 if Mr. Goldberg seeks to terminate the
00:31:22 8 contract for failure of the ability to
00:31:25 9 satisfy the title condition in
00:31:27 10 Paragraph 3-C, the purchaser has the right
00:31:30 11 to waive the failure of that condition and
00:31:33 12 close into whatever title is available from
00:31:37 13 the title insurer notwithstanding the
00:31:41 14 contractual rights bargained for respect of
00:31:45 15 the conditions of title under the
00:31:46 16 agreement.

00:31:47 17 So assuming, Your Honor, that the
00:31:50 18 purchaser does not terminate during the
00:31:52 19 inspection period and we have a transaction
00:31:56 20 that is hard, subject only to seller's
00:32:00 21 default or the termination based on the
00:32:03 22 temporal features to which I just referred,
00:32:06 23 then and at that point the bid procedures
00:32:09 24 become relevant in the contract and
00:32:12 25 competing bids would be due within 45 days

00:32:17 1 after the inspection period ends.

00:32:20 2 So, Your Honor, to make this simple
00:32:24 3 and to give Your Honor an assessment of the
00:32:28 4 projected timeline, assume for a moment
00:32:31 5 that the effective date is today and that
00:32:35 6 is the signing of the contract by
00:32:37 7 Mr. Goldberg without regard to the
00:32:39 8 subsequent condition of Mr. Goldberg
00:32:41 9 issuing written notice to the purchaser
00:32:43 10 that it may access the property to commence
00:32:46 11 inspections, but just assume that it is
00:32:48 12 today, then the inspection period would go
00:32:52 13 through December 15th, 60 days from
00:32:56 14 September 30th.

00:32:57 15 At that time, bids -- competing bids
00:33:04 16 from third-party prospective competing
00:33:08 17 bidders would be due 45 days thereafter.
00:33:11 18 That would be on or about January 30th of
00:33:17 19 2022, and the bid procedure motion before
00:33:20 20 you, Your Honor, specifies the attributes
00:33:23 21 and requirements for a qualified competing
00:33:26 22 bid. I can enumerate them if you wish.
00:33:29 23 They're set forth in the motion.

00:33:32 24 In sum, Your Honor, they are a
00:33:34 25 contract that is redlined against the

00:33:37 1 contract attached to the motion as
00:33:39 2 Exhibit A, a deposit of \$16 million, a
00:33:45 3 purchase price of not less than
00:33:48 4 \$120,300,000, a closing date that comports
00:33:55 5 with the outside closing date that is in
00:33:57 6 the contract before Your Honor, and no
00:34:00 7 financing contingency as well as letters
00:34:03 8 indicating the identity of the purchaser
00:34:06 9 and the like.

00:34:06 10 Assuming, Your Honor, that no
00:34:11 11 competing bids are received on or before
00:34:14 12 the competing bid deadline, which for
00:34:18 13 purposes of the hypothetical I've offered
00:34:20 14 the Court is January 30th of 2022, then
00:34:24 15 Mr. Goldberg would promptly file a notice
00:34:27 16 of no competing bids and ask for Your Honor
00:34:30 17 to take up the final approval of this
00:34:33 18 contract promptly.

00:34:35 19 If there are competing bids,
00:34:38 20 Mr. Goldberg and his advisors, including
00:34:44 21 Avison Young, Akerman, and Berger
00:34:44 22 Singerman, will work to reconcile the
00:34:48 23 contractual differences in any competing
00:34:50 24 bids received, visit with the competing
00:34:53 25 bidders, and then ask Your Honor to

00:34:57 1 schedule an auction to be conducted by
00:34:59 2 Mr. Goldberg in open court before you to
00:35:03 3 determine the highest and best bidder for
00:35:06 4 the real estate in Mr. Goldberg's
00:35:09 5 discretion subject to Your Honor's
00:35:11 6 ratification.

00:35:13 7 We expect, Your Honor, that
00:35:15 8 Mr. Goldberg and his advisors in the case
00:35:19 9 of competing bids would want somewhere
00:35:22 10 between 10 days and 2 weeks to visit with
00:35:25 11 competing bidders and to bring before you
00:35:27 12 the request for the auction and the conduct
00:35:29 13 of the auction.

00:35:29 14 We will in that circumstance, Your
00:35:33 15 Honor, be requesting a hearing immediately
00:35:35 16 following the auction in order for Your
00:35:40 17 Honor to ratify the determination by
00:35:43 18 Mr. Goldberg of the highest and best
00:35:45 19 bidder.

00:35:46 20 The bid increments in the auction,
00:35:50 21 if there is an auction, Your Honor, are
00:35:52 22 \$100,000 per bid. Judge, I'm going to,
00:35:58 23 with your permission, stop there and invite
00:36:02 24 you to ask me any questions that you have
00:36:04 25 about the bid procedure, and if you'd like,

00:36:06 1 I, along with Mr. Rapkin, if he chooses to
00:36:10 2 join me to correct any other mistakes I may
00:36:12 3 make, will respond to any questions that
00:36:14 4 you have or any questions of any party in
00:36:16 5 interest.

00:36:17 6 THE COURT: So my first question,
00:36:18 7 I assume East Oceanside Development, LLC,
00:36:21 8 is a single-purpose entity, correct?

00:36:25 9 MR. SINGERMAN: I would assume
00:36:26 10 that's right, Your Honor. It's organized
00:36:28 11 under the laws of Delaware, but I assume
00:36:31 12 it's formed for this purpose, and the
00:36:32 13 contract does provide, Your Honor, for East
00:36:35 14 Oceanside Development, LLC's, right to
00:36:37 15 assign the contract to an affiliate,
00:36:38 16 if it were to choose to do so, and provide
00:36:41 17 Mr. Goldberg and his advisors notice
00:36:43 18 thereafter.

00:36:44 19 THE COURT: Okay. So I assume,
00:36:47 20 then, that once the contract goes hard,
00:36:49 21 Mr. Goldberg's remedy is the deposit in the
00:36:52 22 event of a default, right?

00:36:54 23 MR. SINGERMAN: Mr. Goldberg's sole
00:36:55 24 remedy in the event of a purchaser default
00:36:58 25 is the deposit. The purchaser's remedy in

00:37:01 1 the event of Mr. Goldberg's default is the
00:37:03 2 recovery of the deposit or seeking specific
00:37:06 3 performance.

00:37:07 4 THE COURT: All right. And does the
00:37:09 5 contract provide that any and all disputes
00:37:12 6 arising out of the contract, including
00:37:14 7 claims to the deposit, et cetera, will be
00:37:16 8 litigated here, and this Court will have
00:37:19 9 jurisdiction over the parties?

00:37:21 10 MR. SINGERMAN: It does.

00:37:22 11 THE COURT: So there's no
00:37:24 12 possibility of collateral litigation
00:37:26 13 outside the confines of this Court,
00:37:29 14 correct?

00:37:29 15 MR. SINGERMAN: Your Honor, I don't
00:37:31 16 believe there is any such possibility that
00:37:33 17 is contractually provided for. As Your
00:37:37 18 Honor knows, parties can commence
00:37:41 19 litigation --

00:37:42 20 THE COURT: What I want to make sure
00:37:43 21 is that there's exclusive jurisdiction and
00:37:46 22 exclusive mandatory venue provision such
00:37:49 23 that any dispute arising out of the
00:37:52 24 contract is required to be litigated in the
00:37:54 25 confines of this case, and that everybody

00:37:58 1 stipulates and agrees to that, so in the
00:38:00 2 event there's a default and Mr. Goldberg
00:38:03 3 makes a claim to the deposit, and the buyer
00:38:06 4 makes a claim for breach or anything that
00:38:09 5 would prevent retention of the deposit,
00:38:11 6 that that matter is handled here
00:38:13 7 expeditiously, and I'm not faced with the
00:38:18 8 prospect of collateral litigation in either
00:38:20 9 another forum or another court.

00:38:22 10 Does the contract -- does the
00:38:23 11 contract make that perfectly clear?

00:38:25 12 MR. SINGERMAN: Your Honor, I have
00:38:27 13 reviewed the contract several times, I've
00:38:29 14 reviewed it again during the course of the
00:38:32 15 hearing, I don't believe the contract does
00:38:34 16 contain the exclusive jurisdiction
00:38:37 17 provision.

00:38:37 18 I'd ask Your Honor to allow me to
00:38:39 19 have Mr. Rapkin confirm that, and
00:38:42 20 naturally, Your Honor, we will attend to
00:38:44 21 that if it does not.

00:38:46 22 THE COURT: Mr. Rapkin?

00:38:47 23 MR. RAPKIN: Yeah, I agree, it does
00:38:48 24 not. That provision that disputes can only
00:38:51 25 be in the confines of this case. We'll

00:38:53 1 have to add that paragraph, and we'll have
00:38:55 2 the buyer approve it.

00:38:57 3 THE COURT: All right. So have the
00:39:00 4 buyer approve that, because I'm not going
00:39:02 5 to authorize the contract absent that.

00:39:05 6 MR. SINGERMAN: Yes, Your Honor.

00:39:06 7 THE COURT: Again, mandatory
00:39:08 8 jurisdiction, mandatory and exclusive venue
00:39:11 9 for any and all disputes related to or
00:39:14 10 arising out of or in connection, the
00:39:17 11 broadest possible clause possible, are
00:39:19 12 litigated exclusively within the confines
00:39:22 13 of this case, and that there will be no
00:39:25 14 filings anywhere else in the event of any
00:39:28 15 disputes arising out of this agreement.

00:39:32 16 MR. SINGERMAN: Yes, sir.

00:39:33 17 THE COURT: Okay.

00:39:34 18 MR. SINGERMAN: We will make that
00:39:36 19 addition and obtain the purchaser's --

00:39:39 20 THE COURT: So this company, this
00:39:40 21 single-purpose entity, I understand, is an
00:39:43 22 affiliate of DAMAC Properties; is that
00:39:46 23 correct?

00:39:46 24 MR. SINGERMAN: Yes, sir, Your
00:39:47 25 Honor, from the United Arab Emirates,

00:39:51 1
00:39:51 2
00:39:53 3
00:39:55 4
00:39:58 5
00:40:03 6
00:40:05 7
00:40:07 8
00:40:09 9
00:40:09 10
00:40:11 11
00:40:15 12
00:40:19 13
00:40:21 14
00:40:24 15
00:40:27 16
00:40:30 17
00:40:32 18
00:40:35 19
00:40:39 20
00:40:42 21
00:40:45 22
00:40:48 23
00:40:50 24
00:40:53 25

that's correct.

THE COURT: Okay. Very good. And, Mr. Fay, you obviously are aware of who those principals are, Mr. Sajwani, and this is a real entity that's done substantial business, as I understand it, outside the United States, correct?

MR. FAY: Yes, Your Honor, that's correct.

THE COURT: Okay. All right. So is there anything in this contract that prevents the receiver from taking backup contracts from other interested parties, or are those parties required to wait until the due diligence is done and participate in the bid auction process?

MR. SINGERMAN: The bid procedures that are provided for in the motion, Your Honor, explicitly provide for Mr. Fay and his team along with the receiver to continue marketing the property from and after -- at any time prior to the completion of the inspection period.

The bid procedures as formulated and as is customary with respect to Your Honor,

00:40:55 1 do not contemplate the receiver entering
00:40:59 2 into an alternative competing bid prior to
00:41:05 3 the inspection period. They don't, also,
00:41:08 4 Your Honor, prohibit it.

00:41:11 5 The contract is explicitly clear in
00:41:13 6 two different provisions that the receiver
00:41:16 7 is, with his professionals, marketing the
00:41:20 8 property and soliciting third party higher
00:41:22 9 and better bids and that disclosure is made
00:41:26 10 and the purchaser in the contract by
00:41:28 11 signing it acknowledges and agrees to that
00:41:31 12 and acknowledges and agrees that it may
00:41:34 13 lose the property to a higher and better
00:41:37 14 bidder.

00:41:39 15 THE COURT: Okay. What are the
00:41:41 16 purchaser's -- what are the purchaser's
00:41:43 17 remedies in the event of a default or
00:41:45 18 alleged default on the part of
00:41:47 19 Mr. Goldberg? Does the purchaser have a
00:41:52 20 specific performance remedy?

00:41:54 21 MR. SINGERMAN: The purchaser does,
00:41:55 22 in fact, have a specific performance
00:41:58 23 remedy, that is, the right to seek specific
00:42:03 24 performance in the event the purchaser does
00:42:06 25 not seek the return of its deposit as it's

00:42:09 1 alternative exclusive remedy.

00:42:11 2 THE COURT: Okay. Well, I would
00:42:11 3 like you to go back to the purchaser. I do
00:42:14 4 not want a specific performance remedy in
00:42:15 5 the event of a seller default. I want them
00:42:19 6 to be able to get their deposit back and
00:42:21 7 see if you all can agree on a liquidated
00:42:24 8 damages remedy for them.

00:42:27 9 My concern is, if for whatever
00:42:29 10 reason this doesn't close and the purchaser
00:42:31 11 claims that Mr. Goldberg is in default, I
00:42:34 12 don't want them to be able to tie the
00:42:36 13 property up with a specific performance
00:42:38 14 action and a lis pendens, and thereby
00:42:43 15 impair the Court from closing with another
00:42:46 16 buyer.

00:42:46 17 I want to give the purchaser a
00:42:48 18 remedy in the form of a return of its
00:42:52 19 deposit, and if it's determined that
00:42:53 20 Mr. Goldberg breached the contract, I want
00:42:55 21 to give them liquidated damages of a
00:42:58 22 reasonable amount, it can be millions,
00:43:01 23 3 million, 5 million, whatever it may be,
00:43:04 24 I want them to be able to sue for
00:43:06 25 liquidated damages, but I don't want them

00:43:08 1 to be able to tie up the property with
00:43:11 2 years of litigation in a lis pendens and
00:43:14 3 prevent the sale to another buyer in the
00:43:17 4 event they allege that Mr. Goldberg is in
00:43:20 5 default.

00:43:20 6 They can have their deposit back,
00:43:23 7 they can have a substantial liquidated
00:43:26 8 damages penalty if they win the case, but I
00:43:28 9 don't want the property being subject to a
00:43:30 10 specific performance claim.

00:43:32 11 MR. SINGERMAN: Your Honor,
00:43:32 12 I understand the Court's position and
00:43:35 13 ruling, and I don't offer what I will offer
00:43:38 14 next in argument. I wish to make sure Your
00:43:41 15 Honor is aware of the provisions of section
00:43:43 16 12-B of the contract addressing default,
00:43:46 17 and in particular, Your Honor, the last
00:43:48 18 sentence thereof which I'm going to read to
00:43:51 19 you.

00:43:51 20 The last sentence of 12-B says, "In
00:43:55 21 no event shall purchaser be entitled to
00:43:59 22 seek specific performance of this agreement
00:44:02 23 if the Court approves the sale of the
00:44:03 24 property to a different purchaser in
00:44:06 25 accordance with the bid procedures."

00:44:08 1 So, Judge, again --

00:44:11 2 THE COURT: My only concern -- and
00:44:13 3 listen, I -- listen, you guys -- you guys,
00:44:19 4 as I've said before, are the creme de la
00:44:22 5 creme, and I don't want to micromanage your
00:44:26 6 contract, because I know both Ackerman and
00:44:29 7 your firm, Mr. Singerman, are the best
00:44:31 8 there is, but I want to make sure there's
00:44:32 9 no ambiguity, and if the seller accuses --
00:44:36 10 excuse me, if the buyer claims a breach on
00:44:39 11 the part of Mr. Goldberg, that I am in no
00:44:43 12 way prevented from selling the property to
00:44:46 13 another buyer and under no circumstances
00:44:48 14 can there be a lis pendens and title to
00:44:53 15 this property be clouded during that
00:44:56 16 litigation.

00:44:56 17 I would prefer that the purchaser's
00:44:59 18 remedy be the return of their deposit a
00:45:01 19 substantial liquidated damages remedy so
00:45:04 20 that we're litigating over money and
00:45:06 21 there's no argument that they're entitled
00:45:09 22 to specific performance.

00:45:11 23 If you think that sentence you read
00:45:13 24 to me makes that perfectly clear and it is
00:45:16 25 without ambiguity, then I'm fine with it,

00:45:19 1 but I want you and Mr. Rapkin and
00:45:21 2 Mr. Goldberg to take another look at
00:45:23 3 it with the buyer's counsel and just make
00:45:26 4 sure that it is very clearly understood,
00:45:28 5 and that there's no play in the joints on
00:45:30 6 this contract. Okay?

00:45:32 7 MR. SINGERMAN: Yes, sir, Your
00:45:34 8 Honor, I understand the Court's position,
00:45:35 9 I'm grateful for it, and we'll do exactly
00:45:38 10 as the Court directed. Mr. Rapkin and
00:45:41 11 Mr. Goldberg and I will visit and either in
00:45:42 12 the order that we hope we will be permitted
00:45:45 13 to tender, if Your Honor grants the relief
00:45:48 14 Mr. Goldberg is seeking by the Motion C, a
00:45:51 15 revision to Paragraph 12 or no revision
00:45:55 16 which will indicate that we do have the
00:45:57 17 comfort that Your Honor is seeking.

00:45:59 18 THE COURT: Okay. I just want to
00:46:01 19 make sure that in the event of a dispute,
00:46:03 20 the Court is free to sell the property to
00:46:05 21 another buyer, and I don't want to impair
00:46:09 22 the purchaser's rights. They can have a
00:46:13 23 right to deposit, they can have the right
00:46:16 24 to a liquidated damages penalty if they
00:46:19 25 win, I just don't want the asset tied up as

00:46:21 1 a result of litigation.

00:46:23 2 MR. SINGERMAN: Yes, sir.

00:46:23 3 THE COURT: So you guys take another
00:46:25 4 look at it and make sure that that issue is
00:46:27 5 covered and that the forum venue provisions
00:46:30 6 are tight and unambiguous and as broad as
00:46:33 7 possible, and those are the only concerns
00:46:35 8 and issues I have after my looking at the
00:46:39 9 contract.

00:46:39 10 Are there any other points that you
00:46:41 11 would like to highlight for us,
00:46:43 12 Mr. Singerman, before I open the floor and
00:46:45 13 allow everybody to be heard?

00:46:47 14 MR. SINGERMAN: Yes, sir, Your
00:46:48 15 Honor, very briefly. Your Honor, you've
00:46:52 16 previously inquired about the opportunity
00:46:55 17 for competing bidders to have access to the
00:46:58 18 purchaser's due diligence, expert reports
00:47:01 19 and the like. I wish to make clear to you
00:47:03 20 that Mr. Rapkin and his team addressed this
00:47:06 21 issue explicitly in the contract.

00:47:08 22 The contract provides that the
00:47:10 23 purchaser is obligated to provide copies of
00:47:13 24 all due diligence reports that it obtains
00:47:16 25 within five days of receipt, and the

00:47:18 1 contract provides, Your Honor, that in the
00:47:21 2 event that the purchaser is not the
00:47:24 3 successful bidder, it is entitled to
00:47:27 4 reimbursement of its due diligence related
00:47:30 5 expenses in an amount up to \$200,000.

00:47:36 6 THE COURT: And any bid -- any
00:47:38 7 subsequent bid has to be at least 300,000
00:47:41 8 over their purchase price, correct?

00:47:44 9 MR. SINGERMAN: Yes, sir, Your
00:47:45 10 Honor. The qualified --

00:47:46 11 THE COURT: So presumably that would
00:47:48 12 be absorbed in the higher bid.

00:47:50 13 MR. SINGERMAN: The rationale for
00:47:50 14 the initial bid of the competing bidder
00:47:54 15 being \$120,300,000 is exactly as Your Honor
00:47:57 16 indicated. It's to provide for the estate
00:48:00 17 having money to pay the expense
00:48:02 18 reimbursement and the \$100,000 initial
00:48:05 19 incremental initial bid.

00:48:08 20 THE COURT: Very good. Okay. Thank
00:48:09 21 you, Mr. Singerman. Anything else you'd
00:48:11 22 like to point out?

00:48:12 23 MR. SINGERMAN: No, Your Honor,
00:48:13 24 thank you.

00:48:14 25 THE COURT: Okay. Let me hear from

00:48:15 1 any counsel who wishes to be heard on the
00:48:18 2 motion requesting that the Court approve
00:48:22 3 the proposed agreement with East Oceanside
00:48:25 4 Development, LLC, and approve the proposed
00:48:28 5 bid procedures and auction procedures
00:48:31 6 involving the disposition of the asset.
00:48:34 7 Anybody wish to be heard?

00:48:39 8 Okay. So what I'm going to do,
00:48:45 9 Mr. Singerman, is I'm going to grant the
00:48:48 10 motion conditioned upon revision to the
00:48:51 11 jurisdiction venue provision of the
00:48:51 12 contract consistent with what I said
00:48:53 13 earlier, and contingent upon your looking
00:48:58 14 at the contract and either revising it or
00:49:01 15 being assured that there is no ambiguity
00:49:04 16 and that the property is not going to be
00:49:06 17 subject to lis pendens or being tied up in
00:49:09 18 litigation should there be a dispute
00:49:12 19 between these parties.

00:49:14 20 MR. SINGERMAN: Yes, sir, Your
00:49:14 21 Honor. Thank you very much, Judge.

00:49:16 22 THE COURT: So once you get the
00:49:17 23 revisions of the contract and have clarity
00:49:20 24 on those points, I don't need a further
00:49:22 25 hearing, you'll submit the revised contract

00:49:25 1 with the proposed order, and I will enter
00:49:28 2 the order.

00:49:32 3 MR. SINGERMAN: Thank you very much,
00:49:33 4 Your Honor.

00:49:34 5 THE COURT: Okay. All right. Do
00:49:40 6 you want to take up the protocol motion,
00:49:42 7 now, Mr. Singerman?

00:49:43 8 MR. SINGERMAN: Yes, Your Honor,
00:49:44 9 thank you very much, Judge. May it please
00:49:46 10 the Court, this is the receiver's motion
00:49:48 11 for entry of an order approving a protocol
00:49:50 12 for processing and returning certain
00:49:53 13 personal property items to victims and
00:49:56 14 related to the cash found at the property.

00:49:59 15 Your Honor may recall that at the
00:50:01 16 hearing before you on September 10th,
00:50:06 17 Mr. Goldberg reported to Your Honor and all
00:50:08 18 parties in interest the visit that he and
00:50:11 19 I had to the sites at which what
00:50:15 20 Mr. Goldberg referred to as the
00:50:17 21 construction debris or rubble that was
00:50:21 22 stored in a separate warehouse facility at
00:50:24 23 which various personal property was stored,
00:50:26 24 and there was a colloquy between you and
00:50:28 25 Mr. Goldberg, and a number of the victims

00:50:30 1 had questions after the motions were
00:50:35 2 presented at that hearing about the
00:50:37 3 protocol -- about the process that was
00:50:39 4 being then contemplated.

00:50:41 5 Your Honor asked Mr. Goldberg to
00:50:42 6 revisit this issue with the County and try
00:50:45 7 to come up with what I'll call a more
00:50:48 8 streamlined and efficient and expeditious
00:50:53 9 process for the return of whatever personal
00:50:54 10 property is able to be returned and also
00:50:59 11 the dealing with the cash.

00:51:01 12 Immediately after that hearing,
00:51:03 13 Mr. Goldberg engaged in substantial
00:51:05 14 discussions with the County, and the
00:51:07 15 protocol that's before you in the motion
00:51:08 16 that I'm now presenting was crafted by
00:51:11 17 Mr. Goldberg and the County and reflects
00:51:14 18 the recommendation of Mr. Goldberg and the
00:51:16 19 County for dealing with this important and
00:51:19 20 sensitive issue.

00:51:21 21 So there are four types of property
00:51:25 22 addressed by this protocol, four types of
00:51:28 23 property. The first is what is described
00:51:32 24 in Footnote 1 on Page 2 of the motion
00:51:35 25 called "Soft Items." Your Honor, soft

00:51:38 1 items, Mr. Goldberg explained this briefly
00:51:41 2 on September 10th, very briefly, these are
00:51:45 3 items that can absorb moisture, not hard
00:51:49 4 items made of metal or wood or other.

00:51:54 5 To be clear, there's no
00:51:55 6 contemplation, because of the contamination
00:51:59 7 of the soft items and the extraordinary
00:52:01 8 cost of attempting to decontaminate them,
00:52:05 9 there's no contemplation of the return to
00:52:08 10 victims of soft items, both because of the
00:52:11 11 cost, the health risk, and the delay.

00:52:16 12 The other second bucket of personal
00:52:18 13 property, noncash personal property, is
00:52:20 14 hard goods. Mr. Goldberg also described
00:52:24 15 hard goods. These could be rings, pieces
00:52:27 16 of identifiable metal or non-moisture
00:52:33 17 absorbing jewelry and the like.

00:52:35 18 The third bucket of personal
00:52:38 19 property referred to in the motion are 17
00:52:40 20 safes, and the last bucket of property
00:52:44 21 described in the motion is cash.

00:52:48 22 Your Honor, what the protocol
00:52:51 23 provides for in respect of each of the
00:52:56 24 three buckets of property that are
00:52:59 25 available to be decontaminated and in one

00:53:05 1 form or another returned to victims is as
00:53:07 2 follows: Mr. Goldberg proposes that as to
00:53:13 3 the hard goods, the receiver photograph the
00:53:16 4 hard goods, post the photographs on the
00:53:20 5 receivership website, provide every victim
00:53:24 6 or party in interest who requests
00:53:27 7 it credentials, sign-in, log-in, and
00:53:33 8 password to access the photographs.

00:53:35 9 Mr. Goldberg proposes to put on the
00:53:37 10 website a claim form, and from the date of
00:53:40 11 posting the photographs and noticing there
00:53:45 12 on the receivership website, Mr. Goldberg
00:53:45 13 can also do a notice of filing in the
00:53:50 14 record before you that the photographs have
00:53:51 15 been posted, claimants would have 30 days
00:53:54 16 within which to assert a claim to the
00:53:58 17 personal property.

00:53:58 18 If there is only one claimant in
00:54:03 19 respect of a particular item of personal
00:54:06 20 property, Mr. Goldberg would evaluate the
00:54:10 21 claim form, get comfort that the claimant
00:54:16 22 is entitled to the return of the property,
00:54:19 23 and then -- and then file a motion seeking
00:54:21 24 authority to return the property subject of
00:54:25 25 a single claim to the claimant.

00:54:28 1 THE COURT: Why can't I just give
00:54:30 2 him that authority in the protocol order?

00:54:33 3 MR. SINGERMAN: You could,
00:54:33 4 Your Honor. Mr. Goldberg was, I think,
00:54:35 5 with the County endeavoring to be
00:54:38 6 particularly cautious, and one reason for
00:54:42 7 that, Your Honor, you've kind of
00:54:44 8 anticipated the last paragraph of the
00:54:47 9 motion, Paragraph 16, which is the request
00:54:50 10 on the part of the County and Mr. Goldberg
00:54:52 11 as receiver for a hold harmless or your
00:54:57 12 immunization of the County and the receiver
00:55:00 13 for the return of property if later, after
00:55:03 14 it is done, a party claims that the return
00:55:06 15 to a particular person was wrongful and
00:55:08 16 that another person -- another claimant was
00:55:11 17 entitled to the property.

00:55:12 18 So the thought, I think, Your Honor,
00:55:14 19 was that by providing notice by motion and
00:55:17 20 bringing it before you, then that relief
00:55:20 21 sought in Paragraph 16 of the motion is
00:55:25 22 more appropriate.

00:55:27 23 If Your Honor is comfortable without
00:55:29 24 court approval in the case of a single
00:55:32 25 claimant and Your Honor is still

00:55:34 1 comfortable offering Mr. Goldberg and the
00:55:35 2 County the relief sought by Paragraph 16,
00:55:39 3 I'm certain Mr. Goldberg --

00:55:41 4 THE COURT: Well, basically --
00:55:42 5 basically we're going to have a bar order
00:55:45 6 that if the claim is not made within that
00:55:47 7 30-day period, it's extinguished, and the
00:55:51 8 receiver can provide the property to any
00:55:56 9 party who made a claim, right?

00:55:59 10 MR. SINGERMAN: Yes, sir,
00:55:59 11 Your Honor.

00:56:00 12 THE COURT: So I'm okay if you want
00:56:02 13 to do a subsequent motion and order.
00:56:05 14 It just seems it might be more efficient
00:56:07 15 that if it was only a single claim, and if
00:56:10 16 the receiver, after his investigation,
00:56:17 17 concludes that the claim is valid or has no
00:56:20 18 reason to doubt its validity, that he could
00:56:24 19 simply provide the property or tender the
00:56:26 20 property to the sole claimant without
00:56:29 21 further court order.

00:56:30 22 But if the receiver -- like I said,
00:56:32 23 I'm not going to micromanage it. If the
00:56:35 24 receiver feels more comfortable having to
00:56:37 25 file a subsequent motion and having a

00:56:39 1 hearing on it, kind of belts and
00:56:42 2 suspenders, that's okay as well.

00:56:43 3 So if there are competing claims,
00:56:46 4 I assume the receiver will try to resolve
00:56:49 5 those competing claims, and in the absence
00:56:52 6 of that, they will be brought to the Court,
00:56:55 7 right?

00:56:55 8 MR. SINGERMAN: That's precisely
00:56:56 9 correct, Your Honor, and I don't have a
00:56:57 10 single thing to add about that relief
00:57:00 11 sought by the motion.

00:57:03 12 THE COURT: So that would be as to
00:57:04 13 hard items and the safes and any materials
00:57:07 14 in the safe.

00:57:08 15 MR. SINGERMAN: The safe has a
00:57:10 16 slightly more thorough protocol, and it is
00:57:14 17 simply this, Judge, this won't take more
00:57:15 18 than 90 seconds.

00:57:17 19 The protocol provided for in the
00:57:18 20 motion is for Mr. Goldberg, a County
00:57:20 21 representative, and a locksmith to be
00:57:23 22 present when each safe is opened, for the
00:57:26 23 contents of the safe to be inventoried,
00:57:31 24 each safe, and then if the contents of the
00:57:36 25 safe indicate who the owner of the safe and

00:57:40 1 the contents are, Mr. Goldberg would file a
00:57:43 2 motion and confirm his authority to return
00:57:47 3 the safe and the contents to that claimant,
00:57:50 4 and if there is any dispute or uncertainty
00:57:54 5 about -- if there's a dispute regarding the
00:57:58 6 safe or its contents, that would be brought
00:58:00 7 to Your Honor.

00:58:01 8 If the contents of the safe do not
00:58:05 9 sufficiently identify the owner of the safe
00:58:08 10 and the contents, then the protocol
00:58:10 11 provides for Mr. Goldberg and the
00:58:12 12 receivership and estate to retain the safe
00:58:14 13 and the contents until further order of the
00:58:18 14 Court. And unless Your Honor --

00:58:19 15 THE COURT: And assuming you open
00:58:21 16 the safe and there's nothing in there that
00:58:24 17 ties the items in the safe to a particular
00:58:28 18 owner, would the contents of the safe be
00:58:33 19 subject to the protocol of hard items and
00:58:37 20 photographed to be put up on the website
00:58:40 21 with a 30-day claim period, or is it a
00:58:43 22 separate protocol?

00:58:44 23 MR. SINGERMAN: Your Honor, the
00:58:45 24 direct answer to the Court's inquiry, which
00:58:47 25 is a good one, is the protocol as drafted

00:58:50 1 does not contemplate that possibility.
00:58:53 2 I think that Your Honor's question gives
00:58:56 3 rise to a thoughtful suggestion, and with
00:59:01 4 Your Honor's permission, we would propose
00:59:02 5 in the order approving the protocol that in
00:59:04 6 the circumstance Your Honor has identified,
00:59:06 7 that is, the contents of the safe not
00:59:09 8 giving rise to the identity of the owner,
00:59:11 9 that we would revert back to the protocol
00:59:13 10 for the personal property.

00:59:16 11 Your Honor, I apologize, for doing
00:59:19 12 so, and I know it's slightly more than 90
00:59:22 13 seconds, but if you would inquire of
00:59:24 14 Mr. Goldberg whether that's acceptable to
00:59:25 15 him, since we have not contemplated this
00:59:28 16 possibility, I would be grateful.

00:59:30 17 MR. GOLDBERG: Your Honor, yes, and
00:59:31 18 thank you for the opportunity. At least
00:59:34 19 one safe owner has told me that they have a
00:59:38 20 safe that has items in there of value but
00:59:43 21 without identification in there, yet they
00:59:46 22 can provide me with the combination to the
00:59:48 23 safe and a description of the items in the
00:59:51 24 safe.

00:59:52 25 And I feel that if somebody is able

00:59:55 1 to provide me with that detailed
00:59:58 2 information, the combo, the items in the
01:00:01 3 safe, and a description of the safe, that
01:00:04 4 that is sufficient evidence of ownership of
01:00:06 5 the safe, that I could return that safe to
01:00:10 6 that individual. So --

01:00:12 7 THE COURT: After motion and other
01:00:16 8 victims are given an opportunity to be
01:00:18 9 heard?

01:00:19 10 MR. GOLDBERG: Absolutely,
01:00:20 11 Your Honor. Everything will be brought
01:00:22 12 before Your Honor and pursuant to motion
01:00:24 13 and approval before anything is handed
01:00:26 14 over.

01:00:26 15 THE COURT: Okay. So we're talking
01:00:27 16 about, then, what we do in a circumstance
01:00:32 17 where neither the victim, through
01:00:36 18 statements such as the combination of the
01:00:40 19 safe or other things or the items
01:00:41 20 themselves, satisfy you as to ownership,
01:00:47 21 then what do we do?

01:00:48 22 We photograph the items with the
01:00:51 23 safe and we put that -- we make them
01:00:53 24 subject to the hard item protocol that
01:00:55 25 we discussed earlier?

01:00:56 1 MR. GOLDBERG: I think that makes
01:00:57 2 sense, Your Honor.

01:00:58 3 THE COURT: All right. I agree. So
01:01:01 4 if you're -- so the way the order will be
01:01:05 5 is that if you're -- if you're satisfied
01:01:07 6 that the safe and the contents therein have
01:01:13 7 been identified by a victim or family
01:01:15 8 member and you're reasonably -- you're
01:01:19 9 reasonably satisfied that the safe and the
01:01:24 10 items in it belongs to the person who has
01:01:26 11 made the claim, you simply file a motion,
01:01:29 12 we'll give everybody a right to be heard,
01:01:31 13 see if there are any competing claims, and
01:01:31 14 if not, I'll enter an order.

01:01:33 15 In the event you open a safe and the
01:01:35 16 items do not -- are not sufficient to
01:01:38 17 identify which owner or unit owns the items
01:01:43 18 and no other information has come to your
01:01:48 19 attention from any victim that would
01:01:50 20 suggest they own the item, then you make
01:01:52 21 it subject to the protocol for hard items
01:01:55 22 and you photograph the safe itself with all
01:02:00 23 the items found in it and it will be
01:02:02 24 subject to the 30-day claim protocol and
01:02:05 25 it will be up on the website.

01:02:07 1 MR. GOLDBERG: That makes perfect
01:02:09 2 sense, Your Honor.

01:02:09 3 THE COURT: Okay. So we'll do
01:02:11 4 it that way. Does anybody wish to be
01:02:13 5 heard, and counsel for any of the victims
01:02:16 6 or family members or anybody else who is
01:02:19 7 interested wish to be heard on the proposed
01:02:21 8 protocol?

01:02:22 9 Let's just stay with the hard items
01:02:25 10 and the safes before we move on to the
01:02:27 11 cash. Anybody wish to be heard on those
01:02:29 12 protocols for the hard items and the safes
01:02:32 13 and the items found in the safes?

01:02:35 14 Okay. Let's --

01:02:41 15 MR. GOLDBERG: Your Honor, if I may,
01:02:42 16 just one last thing, and I apologize,
01:02:45 17 I think this is the right time. In a
01:02:46 18 call -- since the motion was filed -- since
01:02:47 19 the date the motion was filed but in a
01:02:49 20 call, in speaking with the County, soft
01:02:53 21 items technically include photographs;
01:02:57 22 however, most of the photographs or many of
01:03:00 23 the photographs are destroyed.

01:03:05 24 There are some photographs that may
01:03:08 25 be able to be saved, even though they're

01:03:11 1 soft items, and Mayor Levine Cava has
01:03:15 2 instructed the police and the County to do
01:03:18 3 everything possible, and I fully agree with
01:03:22 4 her and understand her and thank her for
01:03:24 5 that, because it costs money, to do
01:03:27 6 everything possible to salvage photographs,
01:03:30 7 because as the Court and everybody else on
01:03:34 8 here understands, that could be some of the
01:03:36 9 most important treasures of a family.

01:03:41 10 They are exploring ways to
01:03:44 11 potentially clean and scan the photographs
01:03:46 12 so that they can be downloaded by the
01:03:49 13 family, and they're exploring all ways to
01:03:52 14 save it. So I don't want anybody to think
01:03:54 15 that if there are photographs that could be
01:03:57 16 salvaged, that they're going to just be
01:04:01 17 thrown away. They're going to do
01:04:03 18 everything they can to save that, and that
01:04:05 19 is Mayor Levine Cava's direct, for lack of
01:04:09 20 a better term, order or direction to the
01:04:12 21 County officials and the police, and that
01:04:15 22 was something I had found out about earlier
01:04:18 23 this week.

01:04:20 24 THE COURT: Okay. Well, I want to
01:04:24 25 thank the Mayor. She's been remarkably

01:04:28 1 attentive to this case, and the Court
01:04:30 2 greatly appreciates that attentiveness and
01:04:35 3 her doing everything within her executive
01:04:38 4 power to help these victims and make these
01:04:42 5 processes easier.

01:04:45 6 As I said earlier, I'm not going to
01:04:47 7 micromanage the process and order these
01:04:52 8 soft items be decontaminated at County
01:04:57 9 expense. I don't think I have the
01:04:58 10 authority to do that and would not do
01:04:59 11 it even if I had such authority, but to the
01:05:02 12 extent photographs and other personal
01:05:04 13 items, even though they're characterized as
01:05:07 14 "soft," can be protected and preserved and
01:05:10 15 made available to family members, I think
01:05:12 16 that's terrific.

01:05:15 17 I, again, thank the Mayor for
01:05:18 18 getting involved in that process and doing
01:05:19 19 whatever she can and whatever the County
01:05:21 20 can do to preserve those items and make
01:05:25 21 them available to victims. I think that's
01:05:27 22 great, and it's much appreciated by the
01:05:32 23 Court.

01:05:32 24 So, Mr. Goldberg let's -- or
01:05:33 25 Mr. Singerman, let's finish up the protocol

01:05:37 1 by talking about your proposed protocol
01:05:39 2 with respect to the cash that was found on
01:05:45 3 site. What's the proposed protocol there?

01:05:47 4 MR. SINGERMAN: Thank you very much,
01:05:48 5 Your Honor. This will not take a great
01:05:50 6 deal of Your Honor's time. The cash
01:05:52 7 subject of the protocol has two subparts.
01:05:54 8 The first is what's referred to in
01:05:56 9 Footnote 2 on Page 3 of the motion as
01:05:59 10 "easily identifiable cash."

01:06:00 11 Easily identifiable cash would be,
01:06:03 12 for example, Your Honor, cash found in a
01:06:07 13 wallet, a purse, or other container that
01:06:11 14 itself has identification of the owner of
01:06:14 15 that wallet, purse, or other container.

01:06:17 16 The protocol provides for that cash
01:06:20 17 along with the unidentifiable cash, which
01:06:24 18 I'll address in a moment, to be returned to
01:06:27 19 the United States Department of Treasury
01:06:29 20 for processing and then a refund to the
01:06:35 21 receivership estate of the cash tendered to
01:06:38 22 the Department of Treasury.

01:06:42 23 Parenthetically, Judge, for all cash that
01:06:43 24 the receiver currently has or will soon
01:06:47 25 have control over, the Department of

01:06:50 1 Treasury has advised that that cash needs
01:06:52 2 to be transmitted to Washington in an
01:06:55 3 armored car. The protocol seeks Your
01:06:58 4 Honor's authority for the receivership
01:07:00 5 estate to pay the costs of that transport,
01:07:02 6 and then for the receivership estate to
01:07:05 7 reimburse itself when the Treasury
01:07:07 8 Department refunds to the receivership
01:07:12 9 estate the cash or in a check.

01:07:15 10 For the easily identifiable cash, as
01:07:18 11 defined in Footnote 2, that cash would go
01:07:22 12 to the identified owner. For the
01:07:26 13 unidentified cash, that's cash that the
01:07:30 14 motion reflects is in the approximate
01:07:32 15 amount of \$750,000, that cash would,
01:07:36 16 likewise, be transmitted with the easily
01:07:39 17 identifiable cash to the Department of
01:07:41 18 Treasury, processed over a period that
01:07:45 19 could be months that the County and the
01:07:47 20 receiver are working with the Department of
01:07:50 21 Treasury asking for its help in
01:07:51 22 accelerating that process.

01:07:52 23 When received by Mr. Goldberg for
01:07:54 24 the receivership estate, the unidentifiable
01:07:57 25 cash will be held by the receivership

01:08:00 1 estate, net of the cost of transport,
01:08:03 2 pending further order of Your Honor.

01:08:08 3 THE COURT: And what would be the --
01:08:11 4 and what's the claim protocol?

01:08:14 5 MR. SINGERMAN: Judge, there is no
01:08:17 6 separate claim protocol for the
01:08:18 7 unidentifiable cash that's proposed by the
01:08:22 8 protocol, nor, Your Honor, do we think one
01:08:25 9 is necessary, as that would become a
01:08:30 10 segregated -- it would be kept segregated
01:08:33 11 but just another receivership asset, and
01:08:36 12 the overall allocation, which would be
01:08:38 13 explored as amongst the various claimants
01:08:42 14 represented by the class counsel and any
01:08:44 15 other third-party claimants. I think Your
01:08:46 16 Honor will inform where in these pots of
01:08:51 17 money the unidentifiable cash sits.

01:08:55 18 MR. GOLDBERG: Your Honor, if I may?

01:08:56 19 THE COURT: I guess -- I guess the
01:08:57 20 issue I have with that is if a victim wants
01:08:59 21 to say, Judge, I had \$100,000 under my
01:09:06 22 mattress or my father, I know had \$100,000
01:09:13 23 in his desk drawer and wants the right to
01:09:18 24 present that claim, maybe it would not be
01:09:21 25 compelling, maybe it would not succeed,

01:09:24 1 maybe it would, I'm not prejudging
01:09:26 2 anything, but we have no mechanism for a
01:09:29 3 victim to advance that claim?

01:09:32 4 MR. GOLDBERG: Your Honor, if I may.
01:09:33 5 Maybe this was a miscommunication between
01:09:36 6 Mr. Singerman and I. Yes, so when I get
01:09:39 7 back the unidentified cash, I will file a
01:09:42 8 notice with the Court of the receipt of the
01:09:45 9 unidentified cash, and I do believe the
01:09:48 10 Court should entertain a claims process
01:09:50 11 where individuals can come before the Court
01:09:53 12 and attempt to provide some evidence that
01:09:56 13 the cash is owned by them, because I think
01:10:01 14 that is necessary to afford due process
01:10:04 15 before any cash can be, you know, forfeited
01:10:08 16 over to the receivership estate for the
01:10:11 17 benefit of all creditors. So I think --

01:10:12 18 THE COURT: I agree. It may be a
01:10:15 19 very difficult burden of proof, and the
01:10:18 20 Court probably would not be inclined to
01:10:20 21 award cash to somebody without compelling
01:10:26 22 evidence that would tie that cash to a unit
01:10:28 23 or particular victim, I think it would be a
01:10:31 24 very steep hill for somebody to climb, but
01:10:35 25 I can't foreclose a victim's ability to

01:10:38 1 make that claim.

01:10:39 2 So there has to be some protocol for
01:10:43 3 victims who want to advance such a claim to
01:10:46 4 be able to do so and have the matter
01:10:48 5 addressed by the Court.

01:10:52 6 MR. SINGERMAN: Your Honor,
01:10:53 7 if I may, Paragraph 13 of the motion before
01:10:56 8 you does not in any way preclude that
01:10:59 9 protocol. It simply provides that with
01:11:02 10 respect to cash where a particular owner is
01:11:05 11 not able to be identified, the receiver
01:11:07 12 will hold the funds received from the
01:11:10 13 Treasury with respect to unidentifiable
01:11:13 14 cash to be distributed to the victims of
01:11:15 15 the collapse in accordance of future court
01:11:19 16 orders.

01:11:19 17 THE COURT: What I'd like to do is
01:11:21 18 maybe enter an order now which gives
01:11:24 19 victims 30 days from today, or maybe a
01:11:27 20 larger period of time, to assert in a
01:11:32 21 verified motion under oath a claim to cash,
01:11:36 22 and if nobody does, then we don't have to
01:11:39 23 go any further, and the cash that is not
01:11:43 24 attributable to anybody by way of a wallet
01:11:47 25 or purse or other things you mentioned

01:11:48 1 earlier, it just simply goes into the
01:11:51 2 receivership estate.

01:11:52 3 But if somebody wants to advance a
01:11:54 4 claim, I don't see why it shouldn't be now.
01:11:58 5 Either people know or have reason to
01:12:02 6 believe that their unit or their family's
01:12:04 7 unit had a substantial amount of cash and
01:12:07 8 want to make a claim, or they don't. I
01:12:10 9 don't see any need for further deliberation
01:12:12 10 on the point.

01:12:13 11 So why can't I simply enter an order
01:12:15 12 that if anybody wants to make a claim to
01:12:18 13 cash that is not tied to a particular
01:12:22 14 wallet or purse, to basically
01:12:25 15 unidentifiable cash, if anybody wants to
01:12:29 16 advance such a claim, they have 30 days to
01:12:31 17 do so by filing a motion with -- a verified
01:12:34 18 motion under oath making their claim to the
01:12:37 19 cash, and then we can have an appropriate
01:12:41 20 hearing. Why can't we do that now?

01:12:44 21 MR. GOLDBERG: Your Honor --

01:12:44 22 MR. SINGERMAN: I'm sorry.

01:12:45 23 MR. GOLDBERG: No, we can certainly
01:12:46 24 do it. One practical issue may be I don't
01:12:49 25 know how much cash I will get back that --

01:12:56 1 either from the cleansing process, or maybe
01:12:59 2 it cannot be completely identifiable, but
01:13:03 3 it is quite possible, and I'm just letting
01:13:05 4 the Court and everybody know, that we have
01:13:07 5 claims for cash that far exceed the amount
01:13:10 6 of cash recovered, because it is highly
01:13:14 7 likely that a bunch of cash was completely
01:13:20 8 destroyed, and so it's highly likely you're
01:13:25 9 going to face claims that far exceed the
01:13:28 10 amount of cash that is ultimately returned
01:13:31 11 in the form of a check by Treasury.

01:13:35 12 THE COURT: So you've already got
01:13:38 13 claims for cash?

01:13:39 14 MR. GOLDBERG: I have had people
01:13:41 15 submit to me several claims of cash
01:13:46 16 anywhere ranging from \$4,500, to \$130,000,
01:13:52 17 but, again, Your Honor, nobody has -- the
01:13:56 18 only way I know, in my experience in
01:13:59 19 dealing with receiverships, is if I can --
01:14:02 20 that you can identify cash which is
01:14:05 21 fungible that can't be tied to anything
01:14:07 22 specific, is to have a serial number run.

01:14:11 23 We are, I expect, going to have
01:14:15 24 claims for cash that far exceed the amount
01:14:19 25 of cash coming back with nobody being able

01:14:23 1 to particularly identify any specific cash.

01:14:27 2 That will present a very big
01:14:29 3 evidentiary problem in the individual
01:14:31 4 attempting to prove their ownership of the
01:14:32 5 cash and this Court in trying to distribute
01:14:34 6 that cash. So I just want to let the Court
01:14:37 7 know, before we go down that claims
01:14:39 8 process, we probably should see how much
01:14:41 9 cash we get back, and then conduct the
01:14:44 10 claims process from that; however, that's
01:14:46 11 completely up to the Court, if you want to
01:14:48 12 handle that now.

01:14:49 13 THE COURT: I don't know why we'd
01:14:51 14 have to -- in other words, what the problem
01:14:53 15 with making people either assert their
01:14:55 16 claim now or forever hold their peace. In
01:14:59 17 other words, at least that would let us
01:15:02 18 know who is asserting a claim and for how
01:15:05 19 much by making people file it under oath.
01:15:08 20 It doesn't have to be anything so formal,
01:15:10 21 but it has to be a verified claim sworn to,
01:15:15 22 and the basis for the claim, and that will
01:15:18 23 at least let us know the aggregate claims
01:15:21 24 we're really dealing with, because, you
01:15:23 25 know, at this point I assume people are

01:15:25 1 sending you emails or writing you letters
01:15:28 2 saying, you know, dad had cash, or I had
01:15:30 3 cash, or, you know, I know my sister kept,
01:15:35 4 you know, 30,000 in her desk drawer,
01:15:38 5 whatever the case may be.

01:15:41 6 I assume you're getting those
01:15:43 7 informal type of claims, but when the Court
01:15:47 8 imposes the requirement that a claim be
01:15:49 9 submitted and sworn to and the basis for
01:15:51 10 the claim be articulated, it may weed out
01:15:53 11 some of that, and maybe we're not going to
01:15:55 12 be dealing with very many.

01:15:57 13 So why not require the victims or
01:16:00 14 the family members to advance their claim
01:16:02 15 now or that's it? I mean, at some point
01:16:07 16 we've got to see what we're dealing with
01:16:11 17 here.

01:16:11 18 MR. GOLDBERG: Your Honor, that's a
01:16:12 19 good suggestion, and taking the next step
01:16:14 20 upon that, if it's acceptable to the Court,
01:16:16 21 I will have my office prepare a simple cash
01:16:19 22 claim form that can be posted on the
01:16:21 23 website. If we get that posted next week,
01:16:25 24 perhaps we can set a claims bar date on
01:16:29 25 cash of -- we're not going to get the money

01:16:31 1 back from the IRS, so we have some time,
01:16:34 2 but perhaps we can give a 60-day claims bar
01:16:37 3 date and set it somewhere around the end of
01:16:40 4 November, and that will be -- we will have
01:16:42 5 the universe of the claims by that time
01:16:45 6 known before we get the check back from the
01:16:47 7 IRS.

01:16:48 8 THE COURT: Just prepare a simple
01:16:49 9 form for me to approve that identifies the
01:16:51 10 party making the claim, whether they're the
01:16:53 11 owner or tenant of the unit or whether
01:16:57 12 they're making a claim on behalf of a
01:16:59 13 family member or some third party, a brief
01:17:03 14 factual basis for the claim, and a
01:17:07 15 verification signed by the party making the
01:17:10 16 claim.

01:17:10 17 It doesn't even have to be under
01:17:12 18 oath, but just a verification that to the
01:17:14 19 best of their knowledge the facts are true
01:17:17 20 and correct, and they believe there's a
01:17:19 21 good faith basis to make a claim for the
01:17:22 22 cash amount sought. Give them the 60 days,
01:17:25 23 and then we'll at least know what we're
01:17:29 24 dealing with in terms of aggregate claims.

01:17:31 25 MR. GOLDBERG: Absolutely, Your

01:17:32 1 Honor. We'll do that.

01:17:33 2 THE COURT: And we'll have some
01:17:34 3 formal process as opposed to you just
01:17:36 4 getting emails and letters and things from
01:17:38 5 victims trying to perfect their rights.

01:17:42 6 MR. GOLDBERG: Absolutely, Your
01:17:43 7 Honor. We will do that.

01:17:44 8 THE COURT: All right?

01:17:45 9 MR. GOLDBERG: Thank you.

01:17:46 10 THE COURT: Okay. All right. Does
01:17:47 11 anybody wish to be heard, any counsel for
01:17:50 12 any of the victims wish to be heard on the
01:17:53 13 proposed claim protocol for cash that the
01:18:00 14 receiver has articulated as modified by the
01:18:04 15 court?

01:18:04 16 All right. Mr. Goldberg,
01:18:05 17 Mr. Singerman tweak those protocols
01:18:08 18 consistent with our discussion this
01:18:10 19 morning, and submit the orders, and I'll
01:18:12 20 enter them promptly.

01:18:13 21 MR. SINGERMAN: Thank you very much,
01:18:14 22 Your Honor.

01:18:14 23 THE COURT: All right. Anything --
01:18:18 24 let me circle back on a couple of things.
01:18:21 25 There's been some chat about the appraisal.

01:18:24 1 I just want to try to clarify, because some
01:18:27 2 of the victims seem a bit uncertain on
01:18:29 3 this, maybe justifiably so.

01:18:32 4 Mr. Goldberg, I assume the appraisal
01:18:35 5 was a fair market value based appraisal,
01:18:38 6 it was not based upon County assessment
01:18:41 7 records and things of that nature? It was
01:18:43 8 a fair market appraisal estimating what the
01:18:47 9 fair market value of the unit would have
01:18:49 10 been in the open market had it been sold in
01:18:52 11 an arm's length transaction the day before
01:18:56 12 the collapse, correct?

01:18:57 13 MR. GOLDBERG: Yes, Your Honor, it's
01:18:58 14 an MAI fair market value appraisal based on
01:19:01 15 comps, both in the building, the south
01:19:04 16 building, the north building, the east
01:19:06 17 building, and other buildings in the area.
01:19:07 18 What the appraiser did was take each
01:19:10 19 individual unit -- and just for clarity,
01:19:13 20 and it will be set forth in the appraisal
01:19:15 21 I'll file, they did the 6th Floor, which
01:19:17 22 was the mid-center of the building.

01:19:20 23 They went and evaluated each line on
01:19:23 24 the 6th Floor. They compared that to
01:19:27 25 comparable sales in the building itself

01:19:31 1 prior to the collapse as well as the
01:19:33 2 neighboring buildings. They came up based
01:19:36 3 on those comparable sales considering
01:19:39 4 similar lines, similar views, and came up
01:19:43 5 with an estimated fair market value.

01:19:45 6 Then they took that 6th Floor
01:19:48 7 appraisal, and they went up, because in
01:19:50 8 this building, I have come to learn, that
01:19:53 9 on the higher floors, especially the 12th
01:19:57 10 floor, there may have been bigger
01:19:59 11 balconies. We gave -- he adjusted those
01:20:03 12 upwards from that 6th Floor to account for
01:20:05 13 the higher floor and the differing
01:20:08 14 balconies.

01:20:09 15 Then he went down, and he lowered
01:20:11 16 slightly, I think one percentage point, for
01:20:16 17 lower floors in doing that. So it was
01:20:20 18 based on fair market value and comps.
01:20:22 19 There were two highly unique units in the
01:20:25 20 building. One was a penthouse which sold a
01:20:30 21 month before for \$2,880,000, and the value
01:20:39 22 was pegged precisely at that, because
01:20:42 23 it was an arm's length transaction a month
01:20:44 24 before. I think it was just at 2 million
01:20:47 25 9, and then there was a combined unit that

01:20:48 1 was unique that he had it separately
01:20:52 2 appraised, those, because he could not
01:20:54 3 extrapolate off the 6th Floor to the value
01:20:57 4 of those, so we actually ran separate
01:21:00 5 appraisals on those two units, but
01:21:03 6 everything was based on comparable market
01:21:05 7 transactions and square footage prices with
01:21:07 8 the analysis of the views and everything
01:21:11 9 being taken into consideration.

01:21:15 10 THE COURT: There was no discount on
01:21:17 11 the valuation for the problems that we now
01:21:19 12 know were present in this building,
01:21:21 13 correct? In other words, this was
01:21:23 14 appraised as though the building were in
01:21:25 15 adequate condition, there were no
01:21:27 16 significant maintenance problems or nothing
01:21:29 17 about the building itself that would have
01:21:32 18 negatively impacted its market value,
01:21:36 19 correct?

01:21:36 20 MR. GOLDBERG: Correct, this was
01:21:38 21 appraised as of June 23, 2021, when none of
01:21:41 22 the issues were known and every unit was
01:21:43 23 considered to be in good condition.

01:21:47 24 THE COURT: Okay.

01:21:47 25 MR. GOLDBERG: So that's how the

01:21:49 1 appraisal was done, and all of these
01:21:51 2 criteria will be set forth in the appraisal
01:21:56 3 that we will file with the Court tomorrow.

01:21:58 4 THE COURT: All right. Any
01:21:59 5 appraisal that you file with the Court
01:22:01 6 tomorrow, please also put it up on your
01:22:04 7 website so any unit owner can look at
01:22:06 8 it and see what the appraiser's assessment
01:22:09 9 of their unit's value was on the day before
01:22:11 10 the collapse. So file it with the Court
01:22:14 11 and put it up on your website as well for
01:22:17 12 me. Okay?

01:22:18 13 MR. GOLDBERG: Absolutely. And just
01:22:19 14 so everybody knows, it's going to be
01:22:21 15 appraisal for each of the 6th Floor lines,
01:22:23 16 there will be a schedule attached with the
01:22:25 17 up and down adjustments, and the two
01:22:28 18 additional separate appraisals that were
01:22:30 19 done. It's a very detailed -- it's like a
01:22:32 20 90-page report.

01:22:33 21 THE COURT: It doesn't have a figure
01:22:35 22 per unit? Do people have to look at the
01:22:38 23 6th Floor and then make the adjustment
01:22:40 24 themselves, or is there a place they can
01:22:43 25 look and just say, I lived in Unit 903, and

01:22:45 1 go and see what 903 is appraised at?

01:22:48 2 MR. GOLDBERG: The schedule will be
01:22:49 3 attached which will show the appraised
01:22:51 4 value of every unit in the building.

01:22:54 5 THE COURT: Okay. Excellent. Thank
01:22:56 6 you.

01:22:56 7 MR. GOLDBERG: Thank you.

01:22:57 8 THE COURT: All right before I turn
01:22:58 9 to counsel for the victims and defense
01:23:05 10 counsel and deal with some discovery and
01:23:08 11 other issues, is there anything else that
01:23:10 12 the receiver or his counsel would like to
01:23:13 13 bring to the Court's attention or update us
01:23:15 14 on?

01:23:16 15 MR. GOLDBERG: Not from me, Your
01:23:17 16 Honor. Thank you.

01:23:18 17 MR. SINGERMAN: And, Your Honor, not
01:23:19 18 from me either. Thank you very much,
01:23:21 19 Judge.

01:23:21 20 THE COURT: Okay. Thank you,
01:23:22 21 gentlemen. Get those orders ready and get
01:23:26 22 the adjustments made to the contract, and
01:23:29 23 let's get the orders executed, hopefully no
01:23:32 24 later than tomorrow. All right?

01:23:34 25 MR. SINGERMAN: Yes, Your Honor.

01:23:35 1 MR. GOLDBERG: Yes, Judge.

01:23:37 2 THE COURT: All right. Let me turn
01:23:38 3 to Mr. Tropin and Ms. Furst and any other
01:23:42 4 class counsel and give us an update, and I
01:23:48 5 know we have a couple of discovery matters
01:23:50 6 involving NV5 and 8701 Collins Development.
01:23:56 7 So who would like to be heard?

01:24:01 8 MR. TROPIN: Thank you, Judge.
01:24:02 9 I think we have a little background noise
01:24:04 10 from somebody.

01:24:05 11 THE COURT: Yeah, yeah.

01:24:06 12 MR. TROPIN: Thank you, Your Honor.
01:24:07 13 Harley Tropin, we will be brief. First,
01:24:11 14 let's start by thanking the receiver,
01:24:14 15 Mr. Goldberg, Mr. Fay, and the people
01:24:17 16 working for them for pushing through.
01:24:19 17 We've been able to watch at close hand the
01:24:22 18 amount of work that's gone on to what
01:24:25 19 you've heard today.

01:24:26 20 I know the Court is well aware of
01:24:28 21 it, but we're grateful for what we know has
01:24:30 22 been an incredibly expedited process, and
01:24:34 23 also, and the Court has said this, we want
01:24:36 24 to reassure the people whose property is
01:24:39 25 being sold that there will be this process

01:24:41 1 the Court has described before any proceeds
01:24:43 2 are paid out, so that everybody will have
01:24:47 3 an opportunity to have their positions be
01:24:51 4 heard.

01:24:54 5 The team that Ms. Furst and I are
01:24:57 6 privileged to lead has been working hard at
01:25:00 7 assimilating this evidence so that we can
01:25:03 8 meet the deadlines that the Court is well
01:25:05 9 aware of. Evidence is now starting to come
01:25:07 10 in. Witnesses are being interviewed, and
01:25:13 11 we now are seeing the first discovery
01:25:15 12 disputes.

01:25:16 13 Frankly, rather than taking more of
01:25:17 14 the Court's time, Ricardo Martinez-Cid, who
01:25:19 15 is heading up our discovery and
01:25:21 16 investigation committee, has got the first
01:25:24 17 of what I think are going to be a few more
01:25:28 18 discovery disputes, and so both Ms. Furst
01:25:30 19 and I are happy to answer any questions you
01:25:34 20 may have or it may be more appropriate just
01:25:37 21 to start teeing up these discovery
01:25:40 22 disputes, so whatever the Court's pleasure.

01:25:43 23 THE COURT: Well, unless you have
01:25:45 24 anything to update us on any further,
01:25:49 25 it looks like you guys are proceeding along

01:25:52 1 and doing your investigation. You intend
01:25:53 2 to meet the deadline proposed by the Court
01:25:56 3 in filing your amended pleading by
01:25:59 4 mid-November, correct?

01:26:00 5 MR. TROPIN: Judge, we are moving
01:26:02 6 Heaven and Earth to do that, and it may be
01:26:05 7 at some point either Rachel or I will
01:26:08 8 grovel before you and ask for some more
01:26:10 9 time, but we're not there yet. We are
01:26:12 10 doing whatever we can to meet that
01:26:15 11 deadline, and we intend to do so.

01:26:18 12 THE COURT: Okay. So let's turn to
01:26:19 13 the two discovery issues that we have. The
01:26:22 14 Court has read the discovery and the
01:26:23 15 responses and understands what the
01:26:26 16 objections are with respect to 8701
01:26:31 17 Collins. I was a little bit unclear about
01:26:35 18 the response provided by NV5. It was
01:26:38 19 really to me not much of a response at all,
01:26:41 20 but let's proceed.

01:26:48 21 Mr. Martinez-Cid, are you going to
01:26:50 22 be handling these on behalf of the movants?

01:26:54 23 MR. MARTINEZ-CID: Yes, Your Honor.

01:26:56 24 THE COURT: And we have counsel for
01:26:57 25 NV5 present, correct, that's Mr. Truitt?

01:27:01 1 MR. TRUITT: Yes, Your Honor.

01:27:02 2 THE COURT: And we have counsel for
01:27:05 3 8701 Collins present as well, correct?

01:27:08 4 MR. WEINSTEIN: Yes, Your Honor.

01:27:09 5 THE COURT: Have you all met and
01:27:11 6 conferred on these objections and discovery
01:27:13 7 issues pursuant to the complex business
01:27:16 8 rules?

01:27:17 9 MR. MARTINEZ-CID: Your Honor,
01:27:20 10 we have met and conferred with counsel for
01:27:22 11 8701 Collins Development. Unfortunately,
01:27:26 12 our attempts to meet and confer with
01:27:28 13 Mr. Truitt on NV5's notice of compliance
01:27:35 14 were unanswered.

01:27:36 15 We received an email from Mr. Truitt
01:27:39 16 this morning just before the hearing,
01:27:41 17 apologizing for not responding to the
01:27:45 18 previous attempts to communicate, so
01:27:47 19 we were unable to connect beforehand.

01:27:53 20 THE COURT: Okay. So let's start
01:27:53 21 with the NV5 issues. Tell me what the
01:27:55 22 issues are and what relief you're seeking,
01:27:57 23 and then we'll turn to 8701 Collins. Tell
01:28:01 24 me what NV5 is? What did they do?

01:28:07 25 MR. MARTINEZ-CID: They are a

01:28:08 1 geotechnical and foundation engineering
01:28:10 2 firm. They have critical information that
01:28:14 3 plaintiffs need to assess all of the
01:28:15 4 contributing causes to the collapse of
01:28:18 5 these towers.

01:28:21 6 One of the things --

01:28:22 7 THE COURT: How did they gather this
01:28:24 8 information? Did they do work on the
01:28:25 9 project? Are they an expert or something?
01:28:27 10 What was their role here?

01:28:34 11 MR. MARTINEZ-CID: They were hired
01:28:35 12 by 8701 Development to conduct a
01:28:37 13 geotechnical and foundational analysis.
01:28:39 14 They are the ones who took readings on the
01:28:41 15 vibrations that were going to -- that they
01:28:45 16 were subjecting adjacent properties to.
01:28:47 17 They were hired to minimize the adverse
01:28:50 18 impacts on existing adjacent structures
01:28:53 19 like the Champlain Towers building.

01:28:57 20 They were hired to assess the
01:28:58 21 negative impact of the settlement of the
01:29:00 22 ground below and around the 87 Park they
01:29:03 23 were building at and to carry out the
01:29:05 24 foundational work in such a way as to
01:29:08 25 minimize those.

01:29:10 1 You heard earlier from the receiver
01:29:15 2 about dewatering. Again, dewatering is
01:29:18 3 something that can have adverse effects as
01:29:20 4 well on neighboring properties, and they
01:29:23 5 were hired for that as well. So they are a
01:29:25 6 critical party to provide discovery to the
01:29:28 7 Court.

01:29:28 8 THE COURT: So I assume you believe
01:29:29 9 that their file and the data that they
01:29:33 10 gathered and the assessments that they made
01:29:36 11 are reasonably calculated to lead to
01:29:40 12 admissible evidence, causes or concurrent
01:29:42 13 causes of this collapse?

01:29:44 14 MR. MARTINEZ-CID: Absolutely, Your
01:29:45 15 Honor, and their notice of compliance with
01:29:47 16 the Court specifically represents that in
01:29:50 17 that the Paragraph 3 in discussing what
01:29:53 18 they are seeking to withhold from discovery
01:29:57 19 says namely, "Vibration measurements and
01:30:01 20 monitoring during foundation work and
01:30:03 21 observations and documentation of the
01:30:06 22 association's property." So that is at the
01:30:10 23 crux of the --

01:30:11 24 THE COURT: They're seeking to
01:30:12 25 withhold that on what basis?

01:30:15 1 MR. MARTINEZ-CID: They are claiming
01:30:16 2 that they are perhaps subject to some sort
01:30:20 3 of work product or privileged information
01:30:22 4 that the developer would be able to assert.
01:30:25 5 Frankly, it's strange credulity.

01:30:29 6 THE COURT: I thought they did this
01:30:30 7 work as part of the process of constructing
01:30:32 8 the building?

01:30:33 9 MR. MARTINEZ-CID: They did, Your
01:30:34 10 Honor.

01:30:34 11 THE COURT: It was years ago. This
01:30:36 12 wasn't in anticipation of litigation.

01:30:38 13 MR. MARTINEZ-CID: This was five
01:30:39 14 years ago, Your Honor, and it is --

01:30:39 15 THE COURT: Okay. It seems to me --
01:30:42 16 it seems to me that their files are
01:30:44 17 reasonably calculated to lead to the
01:30:47 18 discovery of admissible evidence. They're
01:30:47 19 highly probative. I can't fathom any
01:30:51 20 privilege that attaches to them, so let me
01:30:53 21 hear from Mr. Truitt and find out why these
01:30:56 22 materials are not being timely produced.

01:30:58 23 MR. TRUITT: Yes, Your Honor, George
01:31:00 24 Truitt from Cole, Scott & Kissane on behalf
01:31:02 25 of NV5, Inc. What's noticed today is NV5

01:31:07 1 Global, Inc., but I assume it's the NV5,
01:31:10 2 Inc., subpoena that we're here to talk
01:31:11 3 about. They are two separate companies.

01:31:13 4 NV5, Inc., provided a number of
01:31:16 5 services; geotechnical construction
01:31:20 6 materials, testing, preconstruction
01:31:23 7 condition, survey of the Champlain Towers
01:31:26 8 South, and vibration monitoring during
01:31:28 9 certain foundation work.

01:31:31 10 The reason that we've asserted the
01:31:33 11 work product objection and attorney-client
01:31:37 12 privilege as to some of the documents is
01:31:42 13 there is typically anticipated some type of
01:31:47 14 litigation or claim by the properties when
01:31:52 15 developers develop their properties on the
01:31:53 16 beach in particular, and, in fact, that
01:31:58 17 happened here.

01:31:58 18 THE COURT: It happened here five
01:32:00 19 years later. Are you suggesting to me when
01:32:03 20 you go out and do your field work in the
01:32:03 21 ordinary course of business in assisting
01:32:08 22 the developers to put up a building, that
01:32:10 23 there's like a presumption that you
01:32:12 24 reasonably anticipate litigation? Is that
01:32:15 25 what you're suggesting to me, counsel?

01:32:17 1 MR. TRUITT: I am suggesting that,
01:32:19 2 Your Honor.

01:32:19 3 THE COURT: Okay. Well, that
01:32:20 4 suggestion can be put aside, because it's
01:32:24 5 completely frivolous. So what's the next
01:32:27 6 basis for purporting to withhold documents
01:32:31 7 that are clearly reasonably calculated to
01:32:35 8 lead to admissible evidence on the cause of
01:32:36 9 this collapse, what's the next basis for
01:32:39 10 withholding documents?

01:32:40 11 MR. TRUITT: We agree that they are
01:32:42 12 relevant documents, that it's not something
01:32:46 13 we dispute, and there was a claim by the
01:32:48 14 association during -- when the vibrations
01:32:51 15 were occurring, so it's not the case
01:32:55 16 that --

01:32:55 17 THE COURT: Okay. Well, your work
01:32:57 18 product privilege argument is overruled.
01:32:59 19 What's the next basis for -- these were
01:33:02 20 obviously documents created in the ordinary
01:33:05 21 course of your client doing its
01:33:07 22 geotechnical work on behalf of the
01:33:09 23 developer who was building a building, and
01:33:11 24 that those are materials prepared in the
01:33:14 25 ordinary course of your business, there was

01:33:16 1 nothing about them that was in anticipation
01:33:18 2 of litigation. So what's the next basis
01:33:20 3 for withholding these records?

01:33:23 4 MR. TRUITT: Your Honor, there are
01:33:24 5 some records in the -- in those that have
01:33:26 6 been withheld where there were attorneys
01:33:29 7 involved. In fact, when the association
01:33:31 8 complained about the vibrations, which has
01:33:34 9 been published in the Miami Herald, there's
01:33:38 10 an article recapping what happened five
01:33:40 11 years ago.

01:33:40 12 The association made contact with
01:33:42 13 the developer, they made a claim that the
01:33:46 14 vibrations were causing their building to
01:33:49 15 shake, and there was attorney -- there were
01:33:52 16 attorneys involved on behalf of the
01:33:55 17 developer and attorneys involved on behalf
01:33:56 18 of the association. So within --

01:33:59 19 THE COURT: And your client -- your
01:34:00 20 client, as a contractor that was hired to
01:34:03 21 do this geotechnical work, were privy to
01:34:07 22 those attorney-client communications and
01:34:08 23 have those in its file?

01:34:11 24 MR. TRUITT: We know that -- no --
01:34:13 25 well, how do I answer that? We know there

01:34:17 1 was an attorney involved on behalf of the
01:34:19 2 developer, and we don't know -- we were a
01:34:22 3 consultant to the developer, providing
01:34:25 4 these services, vibration monitoring and
01:34:29 5 preconstruction condition survey, none of
01:34:32 6 which are required by the building code or
01:34:34 7 by law.

01:34:35 8 They're private services to the
01:34:37 9 developer for the developer's own use.
01:34:39 10 That's our position, and when --

01:34:43 11 THE COURT: Is there some privilege
01:34:44 12 that attaches to documents that were
01:34:48 13 provided to a developer for its use? Is
01:34:51 14 there a privilege I'm unaware of that
01:34:54 15 attaches to such documents?

01:34:56 16 MR. TRUITT: Other than the work
01:34:57 17 product documents that we asserted and the
01:34:57 18 Court has rejected, no.

01:35:00 19 THE COURT: Okay. So your entire
01:35:01 20 file, everything subpoenaed, is going to be
01:35:03 21 produced, and all documents in your
01:35:06 22 possession, custody, or control responsive
01:35:08 23 to the subpoena are to be produced within
01:35:12 24 10 days, subject to a privilege log.

01:35:15 25 If you believe any documents in your

01:35:17 1 client's possession, custody, or control
01:35:18 2 are, in fact, covered by the
01:35:20 3 attorney-client privilege or other
01:35:22 4 recognized evidentiary privilege, you can
01:35:25 5 put them on a log, identify the author,
01:35:28 6 recipient, the date of the document, the
01:35:30 7 privilege you believe attaches, and I will
01:35:31 8 conduct an in-camera review.

01:35:33 9 Short of being put on a privilege
01:35:35 10 log, all documents in your client's
01:35:37 11 possession, custody, or control responsive
01:35:40 12 to this subpoena shall be produced to
01:35:42 13 Mr. Martinez-Cid within 10 days from today.

01:35:46 14 Mr. Martinez-Cid, you prepare an
01:35:48 15 appropriate order, please, and put it up on
01:35:51 16 CourtMAP.

01:35:53 17 MR. MARTINEZ-CID: Yes, Your Honor.
01:35:54 18 Thank you.

01:35:57 19 THE COURT: Is that it with respect
01:35:59 20 to NV5, Inc., or NV5 Global, Inc.?

01:36:03 21 MR. MARTINEZ-CID: Yes, Your Honor.

01:36:05 22 MR. WEINSTEIN: Judge, if I may,
01:36:06 23 David Weinstein, Greenberg Traurig, may
01:36:09 24 it please the Court. There are a couple
01:36:09 25 of details regarding NV5 I can fill in that

01:36:12 1 Mr. Truitt may not be aware. There was,
01:36:14 2 indeed, Your Honor, a demand letter by
01:36:16 3 counsel to the developer, you know, before
01:36:19 4 a shovel ever hit the dirt in 2016 at the
01:36:23 5 project. There was, indeed, dialogue
01:36:28 6 between counsel for the developer and
01:36:30 7 counsel for the condominium association
01:36:32 8 that predated counsel, and counsel was
01:36:34 9 involved in recommending that NV5, as to
01:36:38 10 the two scopes of work that the Court has
01:36:40 11 heard, the vibration monitoring and
01:36:43 12 preconstruction survey, they were done, at
01:36:46 13 least in part, at the direction of counsel.

01:36:49 14 More importantly, Your Honor, our
01:36:51 15 client has not claimed, not asserted any
01:36:54 16 privilege with respect to NV5 documents.
01:36:56 17 That is not what's going on here, Judge.
01:36:58 18 What's going on is that our client and
01:37:02 19 counsel well understand, Judge, the
01:37:04 20 magnitude of this tragedy, the seriousness
01:37:07 21 of this case, and we have taken
01:37:09 22 it seriously.

01:37:10 23 In that regard, Your Honor, we did a
01:37:13 24 comprehensive document collection of
01:37:14 25 6 terabytes of data, Judge. That's

01:37:18 1 25 million documents, approximately
01:37:21 2 100 million pages.

01:37:23 3 We had three meetings -- we've had
01:37:25 4 three meetings with members of the
01:37:27 5 plaintiffs' steering committee.

01:37:29 6 THE COURT: I'm sorry, Mr.
01:37:29 7 Weinstein, what is it you're addressing
01:37:31 8 now? I've ruled on the NV5 documents. Are
01:37:33 9 you addressing something else or are you --

01:37:35 10 MR. WEINSTEIN: I'm addressing,
01:37:36 11 Judge, that if there are privileged
01:37:39 12 documents there, and I'm going to tell you
01:37:41 13 we're going to come out at the other end of
01:37:43 14 the tunnel, and within the ten days the
01:37:45 15 Court has prescribed, the privilege would
01:37:46 16 be ours, not theirs, and that -- those
01:37:48 17 documents are currently being reviewed.

01:37:51 18 We've reached an agreement with
01:37:53 19 plaintiffs' counsel to a rolling
01:37:55 20 production, Judge, and the next tranche of
01:37:58 21 documents that we are reviewing contain the
01:38:00 22 NV5 documents.

01:38:02 23 THE COURT: All right. But --
01:38:09 24 I understand what you're saying,
01:38:10 25 Mr. Weinstein, but let me make something

01:38:14 1 clear. Documents that were prepared and
01:38:15 2 work undertaken by NV5 in the ordinary
01:38:17 3 course of its retention and in assistance
01:38:18 4 of your client building the structure are
01:38:22 5 not work product, and that fact is not
01:38:25 6 changed by the circumstance that a claim
01:38:27 7 happened to be made when vibrations were
01:38:29 8 occurring.

01:38:29 9 The documents were not prepared in
01:38:32 10 anticipation of litigation. They were
01:38:36 11 prepared by NV5 in the ordinary course of
01:38:39 12 its business doing contract work for the
01:38:41 13 developer, and they're not privileged
01:38:42 14 simply because during the course of that
01:38:44 15 work a claim was asserted.

01:38:47 16 Now, you take a look at the
01:38:49 17 documents that NV5 has been ordered to
01:38:51 18 produce, and if you want to assert any kind
01:38:53 19 of privilege, you make sure the documents
01:38:55 20 are put on a privilege log that complies
01:38:59 21 with Florida law, and I will address the
01:39:01 22 privilege claim.

01:39:02 23 But don't waste my time with
01:39:05 24 privileges that do not have a proper
01:39:08 25 foundation. And as I've said, you know,

01:39:10 1 if your client hired NV5 to do work in the
01:39:14 2 ordinary course of its business to prepare
01:39:16 3 this site and to assess this site, that is
01:39:20 4 not work product. So take a look at the
01:39:23 5 documents. If you believe any of them are
01:39:25 6 attorney-client privilege or you believe
01:39:28 7 that any of them that were done later, work
01:39:30 8 that may have been done later was really in
01:39:33 9 anticipation of litigation, if there was
01:39:35 10 extra work done in response to a claim or
01:39:38 11 something to the effect, make your
01:39:40 12 privilege log, and I'll do an in-camera
01:39:44 13 inspection.

01:39:44 14 MR. WEINSTEIN: That's all we were
01:39:46 15 requesting, Judge. Time to get through
01:39:50 16 these documents and make our own evaluation
01:39:53 17 independent of NV5.

01:39:55 18 THE COURT: Well, you've got 10
01:39:56 19 days. So get through them, make your
01:39:58 20 evaluation, assert your privileges, but to
01:40:00 21 the extent there's not a privilege
01:40:02 22 asserted, all documents in NV5's
01:40:04 23 possession, custody, or control responsive
01:40:06 24 to this subpoena shall be on
01:40:08 25 Mr. Martinez-Cid's desk within 10 days.

01:40:14 1 All right. Let's talk about the
01:40:15 2 issues directly with 8701 Collins. That
01:40:19 3 obviously is the single-purpose entity that
01:40:21 4 built the building next door, correct?

01:40:25 5 MR. MARTINEZ-CID: Yes, Your Honor.

01:40:25 6 THE COURT: Okay. So you all have
01:40:27 7 raised a number of objections that the
01:40:29 8 Court has looked at. Mr. Martinez-Cid,
01:40:31 9 let's proceed with your request for this
01:40:34 10 information.

01:40:35 11 MR. MARTINEZ-CID: Thank you,
01:40:36 12 Your Honor. First, we would turn to
01:40:39 13 request No. 60, and that is for all
01:40:42 14 communications with the Town of Surfside.
01:40:44 15 Just to remind everyone, the building at
01:40:49 16 8701 Collins is in the Town of Miami Beach,
01:40:53 17 so we do not believe this should be a very
01:40:56 18 voluminous file or request, but clearly
01:40:59 19 communications with the Town of Surfside
01:41:01 20 would be regarding effects of this building
01:41:05 21 on the neighboring adjacent property in
01:41:08 22 that Town, and so we think very carefully
01:41:11 23 calculated to come forward with
01:41:15 24 admissible -- potentially admissible
01:41:18 25 evidence in this case, Your Honor.

01:41:20 1 THE COURT: Mr. Weinstein?

01:41:22 2 MR. WEINSTEIN: Your Honor, we have
01:41:23 3 no objection to producing communications
01:41:25 4 with the Town of Surfside that relate to
01:41:27 5 any of the issues in this case,
01:41:28 6 geotechnical, structural, engineering,
01:41:30 7 foundation, dewatering, any of those
01:41:33 8 issues. Let me be clear, Judge, that --

01:41:36 9 THE COURT: All -- go ahead.

01:41:38 10 MR. WEINSTEIN: I'm sorry,
01:41:39 11 Your Honor, that we're not objecting to any
01:41:40 12 documents in response to this subpoena that
01:41:42 13 have anything to do with the core issues in
01:41:44 14 this case. The only documents --

01:41:47 15 THE COURT: I'm not -- I'm not
01:41:47 16 letting parties, and in particular third
01:41:51 17 parties, decide what may or may not be the
01:41:53 18 core issues in this case. So all
01:41:55 19 communications between your client and the
01:41:57 20 Town of Surfside that relate to this
01:41:59 21 building, that being the building conducted
01:42:03 22 at 8701 Collins, are to be produced and
01:42:06 23 your objection is overruled. I don't even
01:42:08 24 know what the core issues are going to be
01:42:11 25 in this case yet, and I'm certainly not

01:42:14 1 letting your client decide in his
01:42:17 2 discretion what those issues are.

01:42:18 3 So to the extent there are
01:42:19 4 communications with the Town of Surfside
01:42:20 5 that relate to this building and this
01:42:22 6 structure that was built next door to
01:42:24 7 Champlain Towers, your objections are
01:42:26 8 overruled and the documents are to be
01:42:29 9 produced.

01:42:30 10 What's next, Mr. Martinez-Cid.

01:42:32 11 MR. MARTINEZ-CID: I apologize,
01:42:33 12 Your Honor, but if I could just ask for one
01:42:35 13 caveat on that. If it can be any documents
01:42:38 14 regarding the Town of Surfside that relate
01:42:40 15 to this building or any adjacent or nearby
01:42:45 16 buildings. I wouldn't want any limitation
01:42:47 17 for a communication.

01:42:48 18 THE COURT: Well, if a document is
01:42:50 19 sent that addresses a nearby building but
01:42:52 20 it's sent in connection with the
01:42:54 21 construction of this building -- I mean,
01:42:55 22 unless 8701 Collins built another building
01:42:59 23 in the Town of Surfside, then the order
01:43:02 24 pretty much covers everything.

01:43:03 25 All their communications with the

01:43:04 1 Town are going to likely relate to this
01:43:07 2 building unless they have other projects
01:43:09 3 there.

01:43:09 4 MR. MARTINEZ-CID: As a
01:43:10 5 single-purpose entity, that's why we think
01:43:14 6 that just any communication should be
01:43:16 7 covered and we are -- we just don't want
01:43:18 8 any room in the joints, as the Court said.

01:43:22 9 THE COURT: Okay. Well, it has to
01:43:24 10 be involving this project. In other words,
01:43:25 11 if a principal from 8701 wrote a letter to
01:43:29 12 the Mayor to thank him for doing a good job
01:43:33 13 and to make a contribution to his campaign
01:43:37 14 account, maybe it doesn't relate to this
01:43:38 15 project. Okay?

01:43:38 16 MR. MARTINEZ-CID: Thank you, Your
01:43:38 17 Honor.

01:43:39 18 THE COURT: If it has anything to do
01:43:41 19 with this building being constructed and
01:43:46 20 the Town of Surfside, anything arguably to
01:43:48 21 do with this building, it better be
01:43:49 22 produced. Okay?

01:43:50 23 MR. MARTINEZ-CID: We appreciate
01:43:51 24 that, Your Honor.

01:43:51 25 THE COURT: All right. What's next?

01:43:53 1 MR. MARTINEZ-CID: All other
01:43:54 2 requests can be grouped under requests
01:43:56 3 regarding 87th Terrace. If Your Honor
01:44:00 4 would permit me to share my screen for a
01:44:03 5 moment, I think I can quickly demonstrate
01:44:06 6 the relevancy of these documents.

01:44:08 7 THE COURT: Yes.

01:44:10 8 MR. MARTINEZ-CID: So as the Court
01:44:12 9 is seeing, I hope, is an overhead picture
01:44:16 10 preconstruction of 8701. This is the
01:44:21 11 Champlain Towers site here. This is the
01:44:23 12 pool deck that is reported to have first
01:44:28 13 collapsed. This street here, Your Honor,
01:44:30 14 is 87th Terrace.

01:44:33 15 What is very unusual to, I think,
01:44:37 16 all of us working on this case, is that
01:44:39 17 this public roadway was privately sold to
01:44:47 18 8701 by the City of Miami Beach. This is
01:44:52 19 really interesting, because this is a
01:44:55 20 Street view. If Your Honor will notice,
01:44:58 21 next to Champlain Towers we have a sidewalk
01:45:01 22 here, we have street lights, we have 87th
01:45:05 23 Terrace.

01:45:07 24 Once all of the transfer of 87th
01:45:10 25 Terrace occurred, this is what it looked

01:45:14 1 like, right up to the property at Champlain
01:45:20 2 Towers.

01:45:20 3 THE COURT: So the transfer of that
01:45:23 4 property enabled the developer at 87 to
01:45:26 5 basically move further north with the
01:45:30 6 project closer to the building.

01:45:32 7 MR. MARTINEZ-CID: And to build
01:45:33 8 almost -- well, actually, it would have had
01:45:35 9 to undertake work actually abutting
01:45:38 10 directly the property as they moved even
01:45:44 11 the sidewalk and lights. So --

01:45:46 12 THE COURT: So you want the
01:45:47 13 documents generated in connection with the
01:45:49 14 request for this purchase, amounts that
01:45:52 15 were paid, the negotiations, why this
01:45:55 16 property was being sought by 8701, you
01:45:59 17 basically want documents reflecting the
01:46:01 18 negotiations and sale of this parcel?

01:46:04 19 MR. MARTINEZ-CID: Yes, Your Honor.

01:46:05 20 THE COURT: Which was done in
01:46:07 21 connection with the development of 8701,
01:46:11 22 right?

01:46:11 23 MR. MARTINEZ-CID: Absolutely,
01:46:12 24 Your Honor.

01:46:13 25 THE COURT: Okay. So what's the

01:46:14 1 objection, counsel?

01:46:16 2 MR. WEINSTEIN: The objection, Your
01:46:17 3 Honor -- well, there's no objection to most
01:46:18 4 of it. There's 80 requests. 63 of them,
01:46:21 5 okay, deal with the actual work that
01:46:23 6 Mr. Martinez-Cid has described.
01:46:26 7 We asserted no objection with respect to 87
01:46:29 8 Terrace documents.

01:46:31 9 The only objection we've asserted,
01:46:33 10 Judge, is the underlying transactional
01:46:35 11 documents which implicate the financing and
01:46:39 12 those types of things. There's no dispute,
01:46:42 13 Judge.

01:46:43 14 THE COURT: And the basis for the
01:46:44 15 objection, it's obviously not privileged.
01:46:45 16 So the basis of the objection is what, that
01:46:47 17 it's not reasonably calculated to lead to
01:46:50 18 the discovery of admissible evidence?

01:46:50 19 MR. WEINSTEIN: Yes, Judge, and let
01:46:51 20 me explain. There's no dispute we acquired
01:46:55 21 the property. There's no dispute we made
01:46:57 22 part of the property part of the project.
01:46:59 23 So whether we acquired that property as a
01:47:02 24 result of the vacation of 87 Terrace,
01:47:05 25 whether we bought it outright from a

01:47:08 1 private owner, whether we purchased it in
01:47:09 2 an auction, we purchased it, and that is
01:47:11 3 not in dispute, and we used it, and that is
01:47:14 4 not in dispute.

01:47:15 5 So what the underlying transaction
01:47:18 6 was which occurred years before
01:47:21 7 construction started has nothing to do with
01:47:24 8 whether or not subsequent activities --

01:47:27 9 THE COURT: So you don't want to
01:47:28 10 produce the contract, for example?

01:47:31 11 MR. WEINSTEIN: Well, everything
01:47:32 12 that was with the City of Miami Beach,
01:47:34 13 Judge, was done in the Sunshine and is a
01:47:36 14 matter of public record and can be obtained
01:47:40 15 from the City of Miami Beach. What we
01:47:42 16 don't want to produce is underlying
01:47:44 17 financing-related documents, you know,
01:47:46 18 internal to the members of our client.
01:47:49 19 That has nothing to do with the collapse of
01:47:51 20 that building.

01:47:52 21 THE COURT: Well, when you say
01:47:53 22 it has nothing to do with this, I haven't
01:47:55 23 seen the documents, right? But let's
01:47:56 24 assume there's a statement in your
01:47:58 25 financing or in your application for

01:48:00 1 financing that says, and I'm just throwing
01:48:04 2 out a hypothetical, I have no reason to
01:48:06 3 believe this is there, but let's assume in
01:48:08 4 your application for financing you
01:48:09 5 represented to Miami Beach or represented
01:48:12 6 to a lender that you've conducted
01:48:14 7 geotechnical testing, and that your
01:48:17 8 acquisition of this will not put -- that
01:48:19 9 you have determined that this acquisition
01:48:22 10 will not put Champlain Towers at risk, and
01:48:25 11 you indemnify and hold them harmless,
01:48:29 12 hypothetically. I'm not saying it's there
01:48:31 13 or not. Could that not be reasonably
01:48:34 14 calculated to lead to the discovery of
01:48:35 15 admissible evidence in this case?

01:48:36 16 MR. WEINSTEIN: Indeed, Your Honor,
01:48:37 17 and it would be responsive to one of the
01:48:39 18 other 63 requests, and it would be
01:48:42 19 produced. They've hit this, Judge --

01:48:45 20 THE COURT: All right. So your
01:48:46 21 objection to producing these documents is
01:48:48 22 pure relevancy, right?

01:48:50 23 MR. WEINSTEIN: Yes, Judge, and what
01:48:52 24 we would ask is that the Court sustain our
01:48:55 25 objection without prejudice, ask the

01:48:57 1 plaintiffs to go through the millions of
01:49:00 2 pages of documents that we're going to
01:49:02 3 produce, and if after reviewing them, they
01:49:04 4 believe that there's something relating to
01:49:06 5 87th Terrace that's relevant that we have
01:49:09 6 not produced, that they bring it before the
01:49:11 7 Court at that time.

01:49:11 8 THE COURT: All right.

01:49:13 9 MR. WEINSTEIN: Our vendor tells us,
01:49:15 10 Judge, there's 18,000 documents, additional
01:49:18 11 documents, that relate to the City of Miami
01:49:21 12 Beach in some way, so this is burdensome.
01:49:24 13 And again, there were public hearings on
01:49:26 14 this. They can do a 119 request to the
01:49:29 15 city. We simply ask you to deny their
01:49:31 16 request without prejudice with leave to
01:49:33 17 bring it back before the Court if after
01:49:36 18 reviewing the remaining documents, they
01:49:42 19 think they still need them.

01:49:42 20 THE COURT: All right. The Court
01:49:43 21 overrules the objection and finds that the
01:49:45 22 documents being sought are reasonably
01:49:47 23 calculated to lead to admissible evidence
01:49:48 24 in this case. The Court rejects the
01:49:51 25 burdensome and expense objection, it's not

01:49:55 1 supported by any affidavit or any other
01:49:55 2 evidentiary showing, it's simply a
01:49:56 3 boilerplate burdensome objection which the
01:49:59 4 Court rejects, nor is it a basis to deny
01:50:03 5 discovery because it might be available
01:50:04 6 from other sources.

01:50:06 7 Plaintiffs or the class counsel are
01:50:09 8 entitled to know what statements were made
01:50:12 9 regarding this acquisition, what
01:50:14 10 representations were made, what indemnities
01:50:17 11 may have been provided, and the documents
01:50:19 12 are clearly reasonably calculated to lead
01:50:23 13 to the discovery of admissible evidence,
01:50:24 14 they're not privileged, nor will it be an
01:50:26 15 undue burden or expense to produce.

01:50:28 16 So the objections to the documents
01:50:31 17 involving 8701's acquisition of the 87th
01:50:37 18 Terrace closure or property are all fair
01:50:40 19 game and will be produced.

01:50:42 20 How much time do you need to make
01:50:44 21 the production, Mr. Weinstein?

01:50:48 22 MR. WEINSTEIN: Judge, we have an
01:50:49 23 agreement with the plaintiffs steering
01:50:51 24 committee to produce on a rolling basis and
01:50:54 25 complete by the end of October with a

01:50:55 1 privilege log to be served two weeks after
01:50:58 2 each production.

01:50:59 3 We'll meet that schedule with
01:51:01 4 respect to these documents and all other
01:51:03 5 documents that have been requested.

01:51:05 6 THE COURT: Okay. Let me make
01:51:06 7 something very clear so everybody
01:51:09 8 understands, because we have a lot of
01:51:11 9 victims here. The Court's ruling on these
01:51:13 10 matters is simply a question of discovery,
01:51:16 11 whether materials sought are reasonably
01:51:19 12 calculated to lead to admissible evidence.
01:51:21 13 If they are, they're discoverable, unless
01:51:23 14 they're privileged.

01:51:24 15 The Court is only ruling on
01:51:26 16 discovery objections, and nothing that this
01:51:29 17 Court says should be interpreted to suggest
01:51:32 18 that there is any viable claim or any
01:51:35 19 liability of any type on the part of this
01:51:38 20 developer. That remains to be seen.

01:51:42 21 Our task here, you know, my desk
01:51:45 22 right behind me says "We who labor here
01:51:48 23 seek the truth." I have found that these
01:51:50 24 documents are relevant in the search for
01:51:52 25 the truth, but I have not -- nothing I have

01:51:55 1 said or none of my rulings should be
01:51:58 2 interpreted by anyone, and in particular
01:52:00 3 victims, who are laypeople, to suggest that
01:52:04 4 8701 Collins Development has any liability
01:52:09 5 here whatsoever or did anything or failed
01:52:12 6 to do anything that may have been a
01:52:14 7 contributing cause to this tragedy.

01:52:16 8 Now, that's what counsel is
01:52:19 9 investigating. I have found that these
01:52:20 10 documents are relevant to that
01:52:25 11 investigation. They may have liability,
01:52:27 12 they may not. They may be sued, they may
01:52:30 13 not, but don't interpret anything this
01:52:32 14 Court has said or any of its rulings as a
01:52:36 15 suggestion that this Court has reached any
01:52:37 16 opinion or has any inkling as to whether or
01:52:41 17 not there's a basis for liability on the
01:52:42 18 part of this developer, and I want to make
01:52:44 19 that perfectly clear.

01:52:45 20 So rolling production is fine.
01:52:47 21 I want it done by the end of October.

01:52:50 22 MR. WEINSTEIN: Understood,
01:52:51 23 Your Honor.

01:52:51 24 THE COURT: Okay. What's the next
01:52:52 25 issue, Mr. Martinez-Cid?

01:52:54 1 MR. MARTINEZ-CID: That covers all
01:52:55 2 the issues, Your Honor. We appreciate the
01:52:58 3 Court's time.

01:52:58 4 THE COURT: Okay. All right. So
01:53:01 5 you'll prepare appropriate orders, counsel,
01:53:03 6 and submit them up on CourtMAP.

01:53:06 7 MR. MARTINEZ-CID: Yes, sir.

01:53:07 8 THE COURT: Anything else with class
01:53:08 9 counsel? Now that we've handled the
01:53:12 10 discovery, I assume we're finished with
01:53:15 11 class counsel, correct?

01:53:16 12 MR. TROPIN: Yes, Your Honor. The
01:53:19 13 only thing we would say, and we appreciate
01:53:21 14 the Court's ruling, if Mr. Weinstein could
01:53:24 15 make the documents available as
01:53:27 16 expeditiously as possible given the
01:53:29 17 deadlines and expedited nature, that all
01:53:31 18 the parties are working as hard as they
01:53:33 19 can.

01:53:34 20 THE COURT: I have every expectation
01:53:36 21 that counsel of his caliber and given the
01:53:39 22 seriousness of this incident and the need
01:53:41 23 to ascertain or attempt to ascertain the
01:53:45 24 cause or contributing cause of this tragic
01:53:47 25 event, that they will do everything in

01:53:49 1 their power to make that rolling production
01:53:52 2 timely and to roll out these documents as
01:53:55 3 they are ready to go, right, Mr. Weinstein?

01:53:57 4 MR. WEINSTEIN: Yes, Your Honor.
01:53:58 5 We've produced 5,000 already. There will
01:54:01 6 be another production within the next day
01:54:04 7 or two, today or tomorrow, and we'll
01:54:06 8 continue to produce as expeditiously as
01:54:08 9 we can as the Court has directed.

01:54:11 10 THE COURT: Very good. Thank you,
01:54:13 11 counselor.

01:54:13 12 MR. TROPIN: Thank you, Judge.

01:54:14 13 MR. WEINSTEIN: Thank you,
01:54:14 14 Your Honor.

01:54:15 15 THE COURT: All right. Is there
01:54:15 16 anything that any defense counsel or
01:54:17 17 insurance counsel would like to take up
01:54:19 18 before I open the floor to hear from any
01:54:20 19 victims who may want to express any
01:54:23 20 concerns to the Court?

01:54:27 21 Very good. Give me one second,
01:54:29 22 please.

01:54:40 23 All right. Having now dealt with
01:54:42 24 all legal matters that were teed up for
01:54:45 25 this morning, let me now open up the floor,

01:54:47 1 as I always do, to see if any of the
01:54:49 2 victims or family members have any concerns
01:54:52 3 that they would like to address with the
01:54:54 4 Court that have not been already and
01:54:57 5 adequately dealt with.

01:55:04 6 Any victims who wish to be heard
01:55:06 7 this morning or any family members?

01:55:08 8 MR. WEBER: Can I speak?

01:55:09 9 THE COURT: Who is --

01:55:11 10 MR. WEBER: My name is Martine
01:55:16 11 Weber, I used to own Apartment 112 for 40
01:55:20 12 years, and when you were talking about
01:55:22 13 two -- that there were only two special
01:55:26 14 apartments in that building, I wanted to
01:55:29 15 tell you that my apartment was special, and
01:55:31 16 I give you why it was special. It has
01:55:33 17 ceilings of 13 feet, direct entrance to the
01:55:37 18 beach, 1,000 feet private terrace, that is
01:55:43 19 something that was prohibited after
01:55:45 20 Hurricane Andrew.

01:55:46 21 THE COURT: Ma'am, let me stop you
01:55:48 22 there. You're going to see the appraisal
01:55:53 23 that Mr. Goldberg is going to post
01:55:55 24 tomorrow, and you'll see what the appraised
01:55:57 25 value for your unit is. Before I make any

01:56:00 1 decisions in this case on how these units
01:56:03 2 are going to be valued, whether it will be
01:56:05 3 by the appraisal or whether it will be by
01:56:08 4 declaration, before I make any decisions,
01:56:11 5 everybody is going to have an opportunity
01:56:12 6 to be heard in the event they challenge or
01:56:15 7 have an issue with the appraised value of
01:56:19 8 their unit.

01:56:19 9 So this is premature. I'm not
01:56:23 10 surprised to hear that when some people --
01:56:25 11 I won't be surprised to hear that when some
01:56:28 12 people see the appraisal, they're going to
01:56:30 13 believe their property was worth more.
01:56:32 14 That's going to come as no surprise to the
01:56:34 15 Court.

01:56:34 16 Now, the fact of the matter is that
01:56:39 17 people have a lot of reasons to believe
01:56:40 18 that their unit might be worth more than
01:56:43 19 its appraised value. Most people who own
01:56:47 20 property, if I sent an appraiser out,
01:56:50 21 whether for purposes of financing or for
01:56:52 22 any other reason, most people who own
01:56:54 23 property would probably believe that the
01:56:56 24 appraiser underestimated its value, and I'm
01:57:00 25 not going to be surprised if that's the

01:57:02 1 case here.

01:57:02 2 But at some point the Court has to
01:57:04 3 use objective evidence and make a decision
01:57:07 4 as to what the fair market value of these
01:57:10 5 units were, and, you know, it's not going
01:57:14 6 to be -- it's not science, it's an art, and
01:57:19 7 it's not going to be perfect. The
01:57:21 8 valuation is not going to be precise, and
01:57:24 9 this is going to be one of those times
01:57:27 10 where the perfect may have to be sacrificed
01:57:30 11 for the good, and we're going to have to do
01:57:32 12 our best to value these units.

01:57:33 13 Now, I also want you all to keep in
01:57:38 14 mind the reality. Let's talk about the
01:57:40 15 reality for a minute. The appraiser valued
01:57:43 16 these units on the day before the collapse
01:57:45 17 assuming the negative information we now
01:57:47 18 know about this building was not in the
01:57:49 19 marketplace. So as a matter of reality,
01:57:55 20 these appraisals are going to be for an
01:57:58 21 amount higher than those units were
01:58:00 22 actually worth, because the day before the
01:58:03 23 collapse, this building was obviously in
01:58:05 24 disrepair.

01:58:06 25 I don't think anybody disagrees with

01:58:08 1 that. So I see some people shaking their
01:58:12 2 head. You all can have your opinions, but
01:58:16 3 if the state of this building had been
01:58:18 4 adequately disclosed to a buyer the day
01:58:21 5 before, these units probably couldn't have
01:58:22 6 been sold at all. So keep that in mind,
01:58:25 7 take a look at the appraisal, you'll see
01:58:28 8 what the value is attributed to your unit,
01:58:31 9 but the only thing I can assure you and
01:58:34 10 other unit owners is before any decision is
01:58:36 11 made, you're going to have a right to be
01:58:38 12 heard on it.

01:58:39 13 And I'm not making any decision
01:58:41 14 today to adopt that appraisal. In fact,
01:58:44 15 I haven't made a decision to use the
01:58:46 16 appraisal method. I may very well go with
01:58:49 17 the declaration and the percentage in the
01:58:50 18 declaration attributable to each unit.

01:58:53 19 So if a decision is made -- okay.
01:58:57 20 So if a decision is made to use the
01:59:00 21 appraisal, before I attribute any value to
01:59:05 22 any units, everybody will have a fair
01:59:07 23 opportunity to be heard. Okay?

01:59:11 24 MS. LOVE: Your Honor, this is Lisa
01:59:12 25 Love. I have a question.

01:59:13 1 THE COURT: Yes, Ms. Love.

01:59:15 2 MS. LOVE: On the appraisal.

01:59:16 3 THE COURT: Yes.

01:59:17 4 MS. LOVE: You have one appraisal.

01:59:19 5 Are you going to get or are we going to

01:59:23 6 consider other appraisals?

01:59:25 7 THE COURT: No, I'm not having the

01:59:29 8 estate go through the expense of multiple

01:59:31 9 appraisals. You know, there's a

01:59:34 10 marketplace for condominiums on Miami

01:59:37 11 Beach. Unless somebody points to me some

01:59:40 12 glaring deficiency in the procedure or

01:59:43 13 method used by this appraiser that would

01:59:45 14 call his conclusions or estimates into

01:59:48 15 question, it is not the Court's intention

01:59:51 16 to get additional appraisals.

01:59:54 17 MS. LOVE: So, Your Honor, on that

01:59:56 18 note, is it possible we can get, then, a

01:59:58 19 review of the appraisal, because you're

02:00:01 20 basically requiring us to be able to review

02:00:03 21 an appraisal, and --

02:00:05 22 THE COURT: Well, you can

02:00:06 23 certainly -- any victim or any owner is

02:00:09 24 certainly free to take the receiver's

02:00:12 25 appraisal, and if they have serious doubt

02:00:14 1 about whether that appraisal was accurate
02:00:16 2 or whether it was done in accordance with
02:00:18 3 accepted methods that appraisers, that MAI
02:00:23 4 appraisers typically use, you are free to
02:00:28 5 take that appraisal to anybody you like and
02:00:29 6 get a second opinion, but the state is not
02:00:31 7 going to do that unless somebody brings to
02:00:32 8 my attention some glaring deficiency in
02:00:35 9 either the method used by the appraiser or
02:00:37 10 something else that would impact the
02:00:40 11 reliability of his conclusions.

02:00:45 12 Okay. Anybody else?

02:00:50 13 Yes, Ms. Love.

02:00:51 14 MS. LOVE: I'm sorry, just one
02:00:53 15 additional point, Your Honor, to which you
02:00:55 16 said about the evaluation of the
02:00:57 17 apartment -- I mean, of the condos, and
02:00:59 18 that they were worth less than -- well,
02:01:03 19 probably they were really worth less than
02:01:05 20 what we thought they were worth.

02:01:07 21 THE COURT: Yes.

02:01:08 22 MS. LOVE: But that analysis that
02:01:09 23 you're using is a day-after analysis, and
02:01:11 24 so I would hope that --

02:01:13 25 THE COURT: No, no, no, I'm not

02:01:14 1 using -- no, no, Ms. Love. Let me make
02:01:17 2 something very clear. The appraiser's
02:01:20 3 assessment is based upon what he believes
02:01:22 4 the condos would trade for in an open
02:01:25 5 market with all material information in the
02:01:28 6 marketplace. Now, had those condos been
02:01:31 7 traded the day before, you know, the
02:01:36 8 material information regarding the
02:01:37 9 condition of the building as a whole likely
02:01:40 10 would not have been in the marketplace.

02:01:44 11 For example, the person who bought
02:01:45 12 the penthouse a month before this tragic
02:01:49 13 event for 2.8 million, it is probably
02:01:51 14 highly unlikely that that buyer was aware
02:01:54 15 of the actual condition of this building,
02:01:56 16 because if they were, it's highly unlikely
02:01:59 17 they would have paid \$2.8 million for that
02:02:02 18 penthouse.

02:02:03 19 So what I'm suggesting to you to
02:02:05 20 consider is that the appraised value the
02:02:07 21 day before assumes an open market sale with
02:02:12 22 what we know now not being in the
02:02:15 23 marketplace, and that's why I say that
02:02:19 24 these appraised values are probably going
02:02:21 25 to exceed -- greatly exceed the actual

02:02:26 1 value of these units had the information
02:02:29 2 we now know been in the marketplace.

02:02:34 3 Okay. Anything else that the
02:02:36 4 victims would like to bring up today?

02:02:39 5 MR. LOPEZ: Yes, good morning,
02:02:40 6 Your Honor.

02:02:40 7 THE COURT: Yes.

02:02:41 8 MR. LOPEZ: Good morning,
02:02:41 9 Your Honor. My name is Alfredo Lopez. I'm
02:02:44 10 unit owner 605.

02:02:46 11 THE COURT: Yes, Mr. Lopez.

02:02:47 12 MR. LOPEZ: I wanted to ask you a
02:02:48 13 question getting back to the -- I'm not
02:02:51 14 arguing about the aggregate appraised
02:02:52 15 value. You mentioned the number being
02:02:55 16 \$95 million, and let's take that as an
02:02:59 17 assumption that the value of the property
02:03:01 18 will be sold by \$120 million.

02:03:04 19 So the extra \$25 million that are
02:03:08 20 there, I don't know if I misunderstood you,
02:03:11 21 but you said that whatever excess money is
02:03:14 22 over the market value is going to go
02:03:17 23 exclusively to the people who died and the
02:03:20 24 people who were injured in this?

02:03:22 25 THE COURT: No, no, no, no, I raised

02:03:24 1 that as an issue for counsel to address.
02:03:27 2 Now, as I read the statute, when a condo is
02:03:30 3 terminated in this form and the assets are
02:03:35 4 sold, there is an amount unit owners are
02:03:40 5 entitled to based upon the value of their
02:03:43 6 units. This is obviously an unprecedented
02:03:46 7 situation where the amount of the land, the
02:03:50 8 amount that's going to be realized for the
02:03:52 9 land, combined with the property insurance
02:03:55 10 might greatly exceed the fair market value
02:03:59 11 of the units.

02:04:00 12 MR. LOPEZ: Correct.

02:04:01 13 THE COURT: Then we also have unit
02:04:03 14 owners who perished in this event.

02:04:05 15 MR. LOPEZ: Correct.

02:04:06 16 THE COURT: So what I have asked
02:04:07 17 counsel to research for me is whether
02:04:11 18 I have the ability and discretion once
02:04:15 19 every unit owner is paid fair market value
02:04:18 20 and is, therefore, made whole for the value
02:04:21 21 of their unit, whether I have the ability
02:04:23 22 and discretion to take the excess money and
02:04:28 23 allow it to be used to compensate those
02:04:30 24 unit owners and others who perished in the
02:04:33 25 building.

02:04:34 1 I have not made any decision on that
02:04:36 2 at this point. These are issues that
02:04:38 3 I have raised and want briefed, because
02:04:41 4 I want to be in a position, when the funds
02:04:45 5 are available, to make a distribution as
02:04:47 6 opposed to starting to look at those issues
02:04:49 7 at that time and delaying the process, but
02:04:52 8 no decisions have been made.

02:04:57 9 MR. LOPEZ: All right. Very good.
02:04:58 10 Thank you very much.

02:04:59 11 THE COURT: All right. Any other
02:05:00 12 matters that any victim would like to
02:05:02 13 address with the Court?

02:05:07 14 MR. CYTRYNBAUM: Yes, Your Honor,
02:05:08 15 it's Oren Cytrynbaum, if I can take a
02:05:10 16 moment.

02:05:10 17 THE COURT: Mr. Cytrynbaum.

02:05:12 18 MR. CYTRYNBAUM: I know you've been
02:05:12 19 missing me.

02:05:13 20 THE COURT: You reappeared.
02:05:14 21 You've reappeared.

02:05:16 22 MR. CYTRYNBAUM: I'm sorry, I have
02:05:17 23 no video where I am right now, but I'm glad
02:05:21 24 everybody is doing well, and I heard
02:05:22 25 everything you had to say, and not to be

02:05:25 1 contentious, but you keep saying we should
02:05:27 2 be getting all the owners fair market
02:05:30 3 value, and fair market value, we're looking
02:05:34 4 at an appraisal, but the truth is that
02:05:37 5 appraisal and what you call fair market
02:05:39 6 value is the sale of a unit if it was put
02:05:41 7 on the market one-by-one.

02:05:43 8 If a developer came in to buy out
02:05:47 9 our building if it never collapsed, in a
02:05:50 10 similar situation of developers buying out
02:05:52 11 our land, we would be getting above fair
02:05:55 12 market value. This is a sale that was not
02:05:57 13 done by choice, which is even worse.

02:05:59 14 So I think that needs to be taken
02:06:01 15 into account that fair market value is
02:06:02 16 actually the total value of the whole
02:06:05 17 building if a developer buys it out as a
02:06:07 18 stalking horse at 120.

02:06:09 19 THE COURT: But, you know, Oren, the
02:06:11 20 building wasn't for sale, that wouldn't
02:06:13 21 have been able to happen unless about 90
02:06:16 22 percent or maybe even 100 percent of the
02:06:18 23 unit owners agreed to that. So that
02:06:21 24 speculative, "had the whole building been
02:06:23 25 sold, we would have gotten more" argument

02:06:26 1 is, in my view, not particularly
02:06:28 2 compelling.

02:06:29 3 If somebody gets the fair market
02:06:32 4 value -- the question is going to be in
02:06:36 5 this case -- the first question is going to
02:06:37 6 be in this case is whether the first monies
02:06:40 7 go to pay even fair market value, because
02:06:43 8 some might argue that all the money should
02:06:45 9 be put in a pot and distributed pro rata to
02:06:49 10 everyone, including those who have death
02:06:51 11 and injury claims, and that would make
02:06:53 12 people who own condos get less than even
02:06:56 13 the fair market value of their units, but
02:06:59 14 assuming -- assuming I reject that
02:07:01 15 argument, and I agree that everybody who
02:07:04 16 owned a unit should get at least fair
02:07:07 17 market value, then the question is going to
02:07:08 18 be do I need to pay people more than fair
02:07:13 19 market value because of some hypothetical
02:07:15 20 prospect that someone might have bought the
02:07:18 21 whole thing, or is it more equitable and
02:07:20 22 fair to give everybody the fair market
02:07:22 23 value for their units and then allow the
02:07:25 24 excess, as opposed to anybody who owned a
02:07:27 25 unit getting more than fair market value,

02:07:29 1 in other words a windfall, to use the
02:07:32 2 excess monies to compensate those unit
02:07:35 3 owners who perished in this tragedy, and
02:07:38 4 I think I have a lot of equitable
02:07:40 5 discretion in a matter like this, but
02:07:42 6 I have asked the lawyers to start looking
02:07:44 7 at it and briefing it, and I can assure you
02:07:47 8 that I will not make a decision until
02:07:51 9 everybody has a full and fair opportunity
02:07:52 10 to be heard.

02:07:53 11 But there are a lot of issues
02:07:57 12 surrounding this. This is a case that is
02:08:00 13 unprecedented, and remember that if the
02:08:03 14 excess money -- if everybody gets paid the
02:08:05 15 fair market value of their unit, it's not
02:08:09 16 that the excess money is going to third
02:08:12 17 parties who have nothing to do with the
02:08:15 18 building. The excess money would be used
02:08:16 19 to pay for the death of those people who
02:08:20 20 were your neighbors. So like I said, I've
02:08:25 21 made no decisions on this, I've asked the
02:08:28 22 lawyers to address it for me, and it will
02:08:31 23 be fully vetted and aired before any
02:08:34 24 decisions were made.

02:08:36 25 MR. CYTRYNBAUM: I think you should

02:08:37 1 also get some -- us and you, the Court,
02:08:41 2 provided with what the percentage value is
02:08:45 3 if it was done by the declaration, just to
02:08:48 4 see the side-by-side analysis.

02:08:50 5 THE COURT: Yeah, I'm sure we can do
02:08:51 6 that without much difficulty.

02:08:53 7 Mr. Goldberg, that shouldn't be a problem,
02:08:56 8 right?

02:08:56 9 MR. GOLDBERG: That's not a problem,
02:08:57 10 but the issue with that is what is the
02:08:59 11 denominator?

02:09:00 12 THE COURT: Yeah, that is a problem.
02:09:02 13 That is the problem. In other words,
02:09:03 14 we can't really do that, because, you know,
02:09:06 15 we can do it if we took the -- in other
02:09:08 16 words, we can do it if we took the
02:09:10 17 appraised value of the 95 million and
02:09:13 18 change, and then just said, okay, we're
02:09:15 19 going to distribute that based upon not an
02:09:18 20 appraisal of the units themselves, but
02:09:19 21 we're just going to assume that it was
02:09:21 22 95,657,259, and then say what would
02:09:26 23 everybody get if I used the declaration.
02:09:28 24 We can certainly do that, right,
02:09:30 25 Mr. Goldberg?

02:09:31 1 MR. GOLDBERG: That's exactly right,
02:09:32 2 but the question is what are we dividing
02:09:35 3 up?

02:09:36 4 THE COURT: What we're basically
02:09:39 5 doing is we're taking the same pot, we're
02:09:41 6 taking the appraiser's fair market value
02:09:43 7 and aggregate fair market value, and
02:09:45 8 instead of distributing it based upon his
02:09:47 9 assessment of each unit, we're just
02:09:51 10 hypothetically assuming there were
02:09:52 11 95,657,259 of cash, how would it be
02:09:58 12 distributed under the declaration on a
02:10:00 13 straight percentage basis.

02:10:03 14 MR. GOLDBERG: Correct.

02:10:03 15 THE COURT: That way people can
02:10:05 16 compare whether they're getting more or
02:10:07 17 less under the appraisal method versus
02:10:09 18 declaration method.

02:10:11 19 MR. GOLDBERG: Right.

02:10:12 20 MR. CYTRYNBAUM: I was assuming
02:10:13 21 more --

02:10:13 22 MR. GOLDBERG: Go ahead, Mr.
02:10:13 23 Cytrynbaum. I think we're talking over,
02:10:16 24 but you were assuming that the denominator
02:10:20 25 that would be split up included the sales

02:10:22 1 price and the insurance proceeds, yet the
02:10:25 2 Court is assuming -- not assuming anything,
02:10:30 3 but in the statement is saying it would be
02:10:32 4 95 split up either by fair market value or
02:10:35 5 by declaration.

02:10:36 6 MR. CYTRYNBAUM: Correct, I'm
02:10:37 7 thinking the minimum would be the 120
02:10:40 8 if it's the stalking horse plus 30
02:10:43 9 insurance, and I know these are not exact
02:10:45 10 numbers, but let's say 150, and let's say
02:10:48 11 each person owned 1 percent or .75 percent
02:10:51 12 of the entire building.

02:10:52 13 THE COURT: Okay. But that assumes
02:10:54 14 something that I'm -- that I certainly
02:10:57 15 haven't ruled on, which is that the
02:11:00 16 economic claims get the entire amount
02:11:02 17 realized in the value of the land and the
02:11:04 18 property insurance.

02:11:05 19 MR. CYTRYNBAUM: Being property
02:11:07 20 owners, that was the assumption.

02:11:08 21 THE COURT: Okay. Well, we don't
02:11:10 22 have to do that comparison, unless I accept
02:11:12 23 that argument, which I have not to date,
02:11:15 24 but what you're basically arguing is even
02:11:17 25 if the fair market value comes in at 95

02:11:21 1 million, if the land and the insurance
02:11:25 2 proceeds come in at \$180 million, that
02:11:28 3 the -- that that entire 180 million would
02:11:30 4 be distributed to condo owners without
02:11:34 5 regard to death and injury claims, and
02:11:35 6 I got to tell you, unless the law compels
02:11:38 7 me to reach that result, it's highly
02:11:40 8 unlikely I'm going to do that.

02:11:43 9 So I don't want to give anybody
02:11:45 10 false expectations. We had 98 people who
02:11:48 11 perished in this, and if the choice that
02:11:50 12 I have to make is between giving the unit
02:11:52 13 owners substantially more than the fair
02:11:55 14 value of their unit or taking that excess
02:11:57 15 and making it available to those people and
02:11:59 16 family members who died, I'm going to be
02:12:02 17 going with the latter route.

02:12:04 18 So I've asked the lawyers to brief
02:12:07 19 it, I'm keeping an open mind, but at some
02:12:12 20 point these decisions are going to have to
02:12:14 21 be made, they're very difficult, and we'll
02:12:17 22 brief them, but it's going to be very --
02:12:19 23 it's going to be sad in my view if we see
02:12:22 24 unit owners going up against one another on
02:12:26 25 this issue.

02:12:27 1 It seems to me that if people --
02:12:31 2 if unit owners are paid the fair market
02:12:38 3 value of their unit, exactly what they
02:12:38 4 would have been paid in an open market sale
02:12:42 5 had they sold, that they would be satisfied
02:12:44 6 with that economic recovery, and would not
02:12:46 7 want to see a windfall at the expense of
02:12:48 8 others who died in this tragedy.

02:12:51 9 So you all think about it. Again,
02:12:53 10 I'm going to hear from everyone. I'm not
02:12:55 11 making any decisions, but I have thrown
02:12:58 12 these issues out only because I want them
02:13:00 13 addressed quickly so we're in a position to
02:13:02 14 pay people when the money comes in the
02:13:05 15 house. Okay?

02:13:08 16 MR. CYTRYNBAUM: Thank you.

02:13:10 17 THE COURT: All right. Any other
02:13:11 18 comments or statements or concerns that any
02:13:14 19 unit owners wish to raise or any victims?

02:13:17 20 MS. NIR: Yes.

02:13:18 21 THE COURT: Ms. Nir?

02:13:21 22 MS. NIR: Yes.

02:13:21 23 THE COURT: Good morning.

02:13:25 24 MS. NIR: I didn't have a chance
02:13:26 25 until today to speak and to tell about my

02:13:29 1 story. It's very hard for me. I was
02:13:31 2 renting Unit 111, and if you don't mind,
02:13:35 3 I'd like to share my story if it's fine
02:13:40 4 with the Court.

02:13:40 5 THE COURT: Okay, Ms Nir. Go ahead.
02:13:42 6 You were renting a unit.

02:13:44 7 MS. NIR: Yeah, I was renting Unit
02:13:47 8 111. I was living on the ground floor, and
02:13:49 9 I want to share the story of the miracle
02:13:52 10 that we had, and it's still very hard for
02:13:58 11 us, especially for my kids.

02:14:00 12 The same night I arrived home around
02:14:02 13 12:30, and I was busy talking with my two
02:14:06 14 kids that just got home also before, and
02:14:08 15 I didn't hear anything. About 12:50
02:14:11 16 I start to hear knocking sound on the
02:14:14 17 walls. I was thinking that somebody is
02:14:17 18 hanging pictures, and it was more intense,
02:14:22 19 and I said, okay, maybe somebody is a new,
02:14:24 20 it's a new person that's coming, just
02:14:26 21 moving here, and it had a lot of pictures
02:14:29 22 to put, so there was more knocking sounds.

02:14:31 23 I tried to ignore it. Then about
02:14:34 24 1:10, 1:10 -- about 1:10 I heard --
02:14:40 25 I thought somebody is smashing the wall

02:14:43 1 above me. Then I was really mad. I said,
02:14:46 2 okay, people start to do renovation,
02:14:48 3 probably they want to do open concept, to
02:14:52 4 break the wall between the kitchen and
02:14:53 5 living room. This really made me mad.
02:14:56 6 I went out --

02:14:56 7 THE COURT: Ms. Nir -- Ms. Nir,
02:14:58 8 first of all, I'm thankful -- I assume you
02:15:05 9 and all your family members survived this,
02:15:08 10 correct?

02:15:08 11 MS. NIR: Yes, thank God.

02:15:10 12 THE COURT: And I'm sure it was a
02:15:11 13 very traumatic experience.

02:15:13 14 MS. NIR: Yes.

02:15:14 15 THE COURT: And I thank you for
02:15:15 16 coming on and being ready to share that
02:15:18 17 with us, but I've got a lot of people in
02:15:20 18 this, and I've got some other hearings set,
02:15:22 19 so tell me -- I know this must have been
02:15:23 20 very traumatic. I assume all of you got
02:15:26 21 out safely, but is there a concern or
02:15:29 22 something about the case that you'd like to
02:15:31 23 raise with me?

02:15:31 24 MS. NIR: Yeah, I want to know where
02:15:33 25 is the renter in here at the end?

02:15:35 1 THE COURT: Okay. The renters --
02:15:38 2 the renters -- you know, when you ask me
02:15:40 3 where the renters are, if renters suffered
02:15:43 4 loss, either economically or otherwise,
02:15:47 5 they're included in the definition of the
02:15:49 6 putative class that's been filed in this
02:15:51 7 case, and their claims will be considered
02:15:54 8 as well. That's where the renters are.

02:15:57 9 MS. NIR: I understand.

02:15:58 10 THE COURT: Okay. Did you lose --
02:16:01 11 did you lose personal property as a result
02:16:03 12 of this? Were you able to get your
02:16:05 13 belongings out or did you lose your --

02:16:06 14 MS. NIR: No.

02:16:07 15 THE COURT: Did you lose your
02:16:09 16 belongings in the collapse?

02:16:11 17 MS. NIR: Of course, I lost
02:16:12 18 everything. I went out. I didn't know
02:16:14 19 that I'm going for my life.

02:16:14 20 THE COURT: Yeah.

02:16:17 21 MS. NIR: I just went out. I didn't
02:16:17 22 even take my phone.

02:16:19 23 THE COURT: Yeah, so you need to, to
02:16:21 24 the extent you can, you need to inventory
02:16:24 25 the items that you lost, and when it comes

02:16:26 1 time to distributing funds or allocating
02:16:29 2 recoveries in this case, the claims of the
02:16:32 3 renters are going to be considered along
02:16:34 4 with the claims of everybody else. Okay?

02:16:38 5 MS. NIR: Thank you.

02:16:39 6 THE COURT: Thank you. Any other
02:16:41 7 victims or family members that would like
02:16:43 8 to address the Court?

02:16:45 9 MS. NAIBRYF: Hi, Judge Hanzman. My
02:16:47 10 name is Tali Naibryf.

02:16:47 11 THE COURT: Hi, Tali.

02:16:47 12 MS. NAIBRYF: We have not spoken,
02:16:55 13 but I lost a 21-year-old family member who
02:16:58 14 perished in the collapse.

02:16:59 15 THE COURT: I'm sorry, I couldn't
02:17:00 16 hear you, Tali. You lost a family member
02:17:05 17 in the collapse?

02:17:05 18 MS. NAIBRYF: Yes, I lost my
02:17:06 19 brother. He was 21, Ilan Naibryf. You've
02:17:10 20 spoken before with my mother, Monique
02:17:13 21 Salazar, and my father, Carlos Naibryf.

02:17:15 22 THE COURT: Yes.

02:17:15 23 MS. NAIBRYF: I had a question about
02:17:17 24 the assessment that you've mentioned, the
02:17:20 25 appraisal and the fair market value of the

02:17:23 1 condos, and that I've known, you know,
02:17:27 2 we know that there were repairs that needed
02:17:30 3 to be made and there was an estimated cost
02:17:32 4 for those repairs. So my question is how
02:17:35 5 will that be taken into account with the
02:17:37 6 way the property is valued and the funds
02:17:41 7 allocated?

02:17:41 8 THE COURT: Well, first of all,
02:17:42 9 Tali, we haven't spoken before, but I've
02:17:45 10 spoken to your mom a couple of times. I'm,
02:17:49 11 again, very sorry for your family's loss.
02:17:52 12 I can't imagine the difficulty you're going
02:17:54 13 through, and I appreciate you coming on and
02:17:58 14 sharing that with us.

02:18:00 15 So when the appraiser is done with
02:18:06 16 his assessment of fair market value, that
02:18:09 17 appraisal assumes that these units will be
02:18:12 18 traded on the open market the day before
02:18:14 19 the collapse, and it assumes that there
02:18:16 20 will be no extraordinary information
02:18:18 21 disclosed about the state of the building.

02:18:21 22 In other words, that appraisal is
02:18:23 23 simply what the unit would sell for in the
02:18:25 24 open market assuming the building were in
02:18:26 25 the condition that one would expect this

02:18:29 1 building to be in with no need of
02:18:33 2 extraordinary repairs or no perilous
02:18:36 3 conditions, which is why I say that in all
02:18:39 4 likelihood, if people receive the amount
02:18:41 5 that that appraisal estimates their unit
02:18:45 6 at, they're probably getting more than what
02:18:47 7 the unit was really worth had the
02:18:50 8 information we now know been in the
02:18:51 9 marketplace.

02:18:53 10 Do you follow me?

02:18:54 11 MS. NAIBRYF: Uh-huh, yes.

02:18:55 12 THE COURT: Because had the
02:18:57 13 information -- had the information we now
02:18:59 14 know been in the marketplace, these units
02:19:01 15 may very well have been worthless or very
02:19:05 16 close to worthless, because nobody's going
02:19:07 17 to pay to buy a unit in a building that is
02:19:10 18 at risk of imminent collapse. You would
02:19:13 19 agree with me there, right?

02:19:15 20 MS. NAIBRYF: Right.

02:19:16 21 THE COURT: So yes, could the
02:19:17 22 building have been repaired? Yes. Were
02:19:19 23 there repair estimates? But I'm trying to
02:19:21 24 give everybody the benefit of the doubt and
02:19:24 25 say what would these units have been worth

02:19:24 1 trading in the open market assuming the
02:19:24 2 building were in a condition that one would
02:19:29 3 reasonably expect a building of this age to
02:19:30 4 be in, not the actual condition we now know
02:19:35 5 this building was in on June 23rd, right?

02:19:38 6 MS. NAIBRYF: Yes, thank you.

02:19:40 7 THE COURT: All right. And thank
02:19:42 8 you for coming on today and sharing your
02:19:44 9 thoughts with us.

02:19:46 10 Any other victims or family members
02:19:49 11 who would like to be heard this morning
02:19:51 12 before we adjourn until next week?

02:19:54 13 MR. LOZANO: My name is Sergio
02:20:01 14 Lozano. I lost my parents that night.
02:20:02 15 I had an apartment in Champlain East, and
02:20:06 16 saw the building within seconds of
02:20:08 17 it collapsing. The question I have for you
02:20:13 18 is --

02:20:14 19 THE COURT: I'm so sorry to hear
02:20:17 20 that, Sergio.

02:20:18 21 MR. LOZANO: The question I have --
02:20:20 22 and I owned, prior to January, apartment
02:20:24 23 1003 above my parents. Thank God I moved
02:20:28 24 to Champlain East. If not, I wouldn't be
02:20:31 25 speaking to you today.

02:20:32 1 There was a special assessment made
02:20:34 2 back in 2006 (sic) for the renovation of a
02:20:39 3 hall which should be --

02:20:40 4 THE COURT: Did you say 2006?

02:20:41 5 MR. LOZANO: 2016, I apologize.
02:20:45 6 2017 or 2018 there was a special assessment
02:20:48 7 for the renovation of the hallways. That
02:20:52 8 money was never used, and it was assigned
02:20:54 9 for the concrete restoration, which was not
02:20:58 10 used because the building collapsed.

02:21:00 11 Is that money going to be refunded
02:21:03 12 to the property owners?

02:21:06 13 THE COURT: So, Sergio, my
02:21:07 14 understanding is that when the receiver
02:21:10 15 first took over this case, there were
02:21:12 16 substantial funds that had been collected
02:21:15 17 for purposes of assessments that obviously
02:21:19 18 did not have to be done because of -- that
02:21:25 19 obviously did not have to be done because
02:21:28 20 of the building collapse, so my
02:21:32 21 understanding is the receiver returned
02:21:35 22 those funds.

02:21:36 23 Am I mistaken, Mr. Goldberg?

02:21:39 24 MR. GOLDBERG: No, Your Honor,
02:21:41 25 you're correct, but what Sergio is raising

02:21:45 1 is there is a small amount, I will call
02:21:51 2 it relatively a de minimus amount of money
02:21:55 3 left in from a prior assessment in an
02:21:57 4 account, but some of it was used, and we
02:22:00 5 can't trace it to any particular unit
02:22:02 6 owner, and I'm not talking about a lot of
02:22:05 7 money, but we do have some amount from a
02:22:08 8 prior assessment that I think -- and I'm
02:22:11 9 not entirely sure, but I think it was used
02:22:14 10 by the board for other purposes or maybe
02:22:16 11 even for repair purposes, but the entire
02:22:19 12 assessment from 2016, the money is just not
02:22:22 13 there to be returned.

02:22:26 14 THE COURT: Okay.

02:22:27 15 MR. GOLDBERG: We did return -- we
02:22:28 16 did return the 2021 assessment money that
02:22:31 17 was prepaid to everybody, I believe, or
02:22:33 18 virtually everybody that we got a claim
02:22:34 19 from.

02:22:35 20 THE COURT: Does that answer your
02:22:36 21 question, Sergio?

02:22:37 22 MR. LOZANO: Yes, and I have one
02:22:38 23 other question for you. I know this has --
02:22:40 24 you can't rule on this, but I just want to
02:22:43 25 make the Court aware of this. My parents'

02:22:46 1 apartment was on a Lady Bird deed titled to
02:22:51 2 me. So I presently own the apartments
02:22:54 3 since both my parents perished.

02:22:56 4 We had Universal insurance,
02:22:58 5 Universal Casualty, Universal Insurance.
02:23:02 6 They refused to pay for the loss of use of
02:23:06 7 the apartment, because my parents perished,
02:23:09 8 even though I'm the owner of the apartment
02:23:11 9 now.

02:23:12 10 THE COURT: Well, I can't --
02:23:14 11 obviously, I can't get into that. Are you
02:23:16 12 one of the units that were subject to
02:23:19 13 Universal tender that went through the
02:23:21 14 receivership, or did you have -- was your
02:23:24 15 payment made for your content --

02:23:27 16 MR. LOZANO: No, it was made
02:23:28 17 directly to my parents' estate, because
02:23:30 18 even though my name was on the title of the
02:23:33 19 property on a Lady Bird deed, they refused
02:23:35 20 to pay me, and used the excuse that my
02:23:38 21 parents perished, so they don't have to pay
02:23:41 22 out for the loss of use.

02:23:42 23 THE COURT: Okay. So obviously
02:23:44 24 that's an issue -- an individual issue
02:23:46 25 between you and Universal. Your right is

02:23:50 1 not before me, and I certainly can't rule
02:23:53 2 on it. I understand that there might be
02:23:55 3 some people in the same situation as you,
02:23:59 4 and I can't really give you legal advice,
02:24:01 5 but maybe one of the lawyers who represents
02:24:04 6 the class with which you're included might
02:24:07 7 be able to assist you, at least talking
02:24:10 8 that issue through, and whether it makes
02:24:13 9 any sense to file a supplemental claim or
02:24:16 10 even litigation or whatever it is you want
02:24:18 11 to do, but I can't get involved in those
02:24:20 12 types of individual issues here, but
02:24:22 13 I understand what you're saying.

02:24:23 14 It doesn't sound particularly right
02:24:26 15 to me. I don't know if the policy has loss
02:24:29 16 of use coverage. Maybe there is a defense
02:24:32 17 to that coverage based upon the fact that
02:24:34 18 your parents held legal title, even though
02:24:37 19 you had a Lady Bird deed.

02:24:41 20 So everybody knows, a Lady Bird deed
02:24:44 21 refers to Lady Bird Johnson who had some
02:24:48 22 interest in some real estate, but it's
02:24:51 23 basically a deed that passes title,
02:24:53 24 correct, Sergio, upon --

02:24:55 25 MR. LOZANO: That's correct.

02:24:55 1 MR. GOLDBERG: It's a life estate
02:24:57 2 deed, Your Honor. That's what it is.

02:24:59 3 THE COURT: Right, it's a life
02:25:00 4 estate deed. So you're the legal owner,
02:25:03 5 but your parents had the right to live
02:25:05 6 there during their lifetime.

02:25:06 7 MR. LOZANO: Correct.

02:25:07 8 THE COURT: I do not know what
02:25:08 9 impact the Lady Bird deed status has on the
02:25:12 10 loss of use coverage in your policy, but
02:25:13 11 like you said earlier, it's something
02:25:13 12 I can't really comment on.

02:25:15 13 Anything else, Sergio? I'm very
02:25:18 14 sorry for your loss, and I appreciate you
02:25:21 15 joining us. I like to see victims joining
02:25:23 16 us. I think it's important that you guys
02:25:26 17 hear what's going on and stay abreast of
02:25:29 18 all the developments. I know that it may
02:25:34 19 be difficult at times to listen to this.
02:25:36 20 I appreciate how many victims have chosen
02:25:39 21 to join us, and I encourage you to continue
02:25:41 22 to do so, so thank you.

02:25:43 23 MR. LOZANO: Thank you.

02:25:44 24 THE COURT: Okay. Any other -- any
02:25:46 25 other victims or family members that would

02:25:48 1 like to address the Court before we adjourn
02:25:52 2 until next period of time?

02:25:53 3 MS. RODRIGUEZ: Your Honor, this is
02:25:54 4 Susie Rodriguez.

02:25:56 5 THE COURT: Ms. Rodriguez, good
02:25:58 6 morning.

02:25:58 7 MS. RODRIGUEZ: How are you today?
02:25:59 8 Good morning. There was money in special
02:26:02 9 assessment accounts that, I believe, were
02:26:04 10 forwarded to Mr. Morabito to start the
02:26:06 11 project. Has that money been refunded?

02:26:11 12 THE COURT: Mr. Goldberg, are you
02:26:13 13 aware of funds that may have been sent to
02:26:19 14 Morabito Construction in order to start the
02:26:22 15 work?

02:26:22 16 MR. GOLDBERG: I'm not aware of the
02:26:24 17 details of that, Your Honor. I thank
02:26:25 18 Ms. Rodriguez for bringing that to our
02:26:28 19 attention, and we'll look at that
02:26:29 20 immediately.

02:26:30 21 THE COURT: Thank you,
02:26:31 22 Ms. Rodriguez.

02:26:33 23 MS. RODRIGUEZ: Thank you.

02:26:33 24 THE COURT: Okay. Before
02:26:34 25 we adjourn, any other unit owners or family

02:26:37 1 members who would like to address the
02:26:38 2 Court.

02:26:39 3 MR. LOZANO: Yes, sir, Judge. Brett
02:26:44 4 Lozano here, Penthouse 10. I received the
02:26:47 5 word that Miami-Dade -- somebody had
02:26:51 6 mentioned Miami-Dade was going to refund
02:26:53 7 homeowners or the families of regarding
02:26:57 8 2021 tax payments made to the County.

02:27:04 9 THE COURT: Okay.

02:27:04 10 MR. LOZANO: Have you heard anything
02:27:05 11 in reference to that?

02:27:07 12 THE COURT: I certainly haven't.

02:27:09 13 Mr. Goldberg, have you heard
02:27:10 14 anything about any property taxes being
02:27:13 15 refunded by Miami-Dade County?

02:27:15 16 MR. GOLDBERG: I have not heard
02:27:17 17 anything about a refund. I've only heard
02:27:19 18 about suspension of payments of future
02:27:22 19 taxes, Your Honor.

02:27:23 20 THE COURT: Ms. Viciano, are you
02:27:26 21 representing the County? You're on mute,
02:27:28 22 counsel.

02:27:28 23 MS. VICIANA: Thank you so much,
02:27:29 24 Your Honor. Yes, I represent Miami-Dade
02:27:33 25 County, and I will inquire.

02:27:34 1 THE COURT: Thank you. Can you
02:27:35 2 inquire as to that and report back to me
02:27:38 3 next Wednesday?

02:27:40 4 MS. VICIANA: Is the next status
02:27:43 5 conference on next Wednesday or Thursday?

02:27:45 6 THE COURT: Yeah, we're going to
02:27:47 7 have a status conference Wednesday of next
02:27:47 8 week at 9 a.m.

02:27:48 9 MS. VICIANA: Thank you, Your Honor.

02:27:50 10 THE COURT: Can you find out whether
02:27:51 11 the County has any intention of refunding
02:27:55 12 property taxes on these units for the year
02:27:56 13 2021 and let me know by next Wednesday?

02:27:59 14 MS. VICIANA: Okay. Of course,
02:28:01 15 Your Honor.

02:28:01 16 THE COURT: Thank you, counsel.

02:28:05 17 Okay. All right. Anybody else who
02:28:07 18 wishes to address the Court or raise any
02:28:09 19 concerns or questions?

02:28:12 20 MR. ROSE: Yeah, Your Honor, this is
02:28:14 21 Randy Rose.

02:28:16 22 THE COURT: So, Mr. Rose, I received
02:28:17 23 your email. I was extremely impressed with
02:28:22 24 some of your thoughts and observations, and
02:28:26 25 I want to thank you for your contribution.

02:28:28 1 MR. ROSE: Thank you very much.

02:28:29 2 I just had a comment about you mentioned
02:28:36 3 about the purchase of the Penthouse No. 2,
02:28:38 4 that you can't imagine anybody would want
02:28:41 5 to buy that if they knew about the
02:28:43 6 property. Well, we had a beautiful
02:28:45 7 property, and, unfortunately, lost the
02:28:51 8 owner of Penthouse 2, because he
02:28:54 9 was living, him and his wife, in his Unit
02:28:55 10 901.

02:28:56 11 He knew exactly what he was getting.
02:28:58 12 He went to the board meetings. He owned
02:29:01 13 for many years. So I just want to let you
02:29:05 14 know that he was well aware of the
02:29:07 15 condition of the building, the \$16 million
02:29:11 16 assessment.

02:29:12 17 THE COURT: Well, Randy, I have to
02:29:14 18 believe -- and I don't mean to quarrel with
02:29:19 19 you, but it seems fairly self-evident that
02:29:24 20 whoever bought it was not aware of the
02:29:26 21 peril this building was actually in.

02:29:31 22 You know, we can quarrel about --
02:29:33 23 you know, again, I don't want to quarrel
02:29:36 24 with you, but, you know, in hindsight
02:29:38 25 we now know that this building was

02:29:40 1 obviously in substantial disrepair and in
02:29:45 2 imminent danger. We know that because
02:29:48 3 it collapsed, and buildings don't collapse
02:29:51 4 for no reason, so --

02:29:54 5 MR. ROSE: I agree. I don't mean to
02:29:56 6 interrupt you, but as we see now around
02:30:02 7 Town, most of us know what we can see as
02:30:05 8 observable but not underground. So
02:30:08 9 considering that, I would agree with you
02:30:09 10 that with the rest of the condominiums that
02:30:12 11 we have throughout the country, we don't
02:30:15 12 know how everything was built, just by
02:30:20 13 obvious observation the building was not in
02:30:25 14 that condition. Thank you very much.

02:30:26 15 THE COURT: Thank you, Randy. Thank
02:30:28 16 you, again, for your correspondence to the
02:30:30 17 receiver and your thoughts. They've been
02:30:32 18 very helpful.

02:30:34 19 MR. ROSE: Thank you.

02:30:34 20 THE COURT: Okay. Any other victims
02:30:36 21 or unit owners who would like to be heard?

02:30:39 22 MS. CASSEL: Judge Hanzman.

02:30:40 23 THE COURT: Yes.

02:30:41 24 MS. CASSEL: I am not a victim or a
02:30:44 25 unit owner. I'm Dr. Mindy Cassel, a

02:30:49 1 psychologist and the cofounder of the
02:30:51 2 Children's Bereavement Center. If you have
02:30:54 3 the time, I would appreciate the
02:30:56 4 opportunity to address the Court and the
02:30:58 5 victims' families of the Surfside tragedy.

02:31:01 6 THE COURT: Well, since you appeared
02:31:02 7 and have been very patient today and
02:31:05 8 observed this hearing, I'll give you a
02:31:06 9 couple of minutes as you might have some
02:31:09 10 information or some services that may
02:31:11 11 benefit victims. So I appreciate you being
02:31:13 12 here, and why don't you take two minutes
02:31:18 13 and tell us what's on your mind.

02:31:20 14 MS. CASSEL: That's all I need.
02:31:21 15 Thank you so much. I wanted to explain who
02:31:24 16 we are and what we do. For over 22 years,
02:31:27 17 the Children's Bereavement Center, also
02:31:30 18 known as the CBC, has been a haven and a
02:31:33 19 resource for grieving families. We serve
02:31:36 20 children, teens, and adults, and we provide
02:31:39 21 resources and training for professionals in
02:31:42 22 the community agencies throughout South
02:31:44 23 Florida.

02:31:44 24 All CBC grief groups are facilitated
02:31:51 25 by experienced mental health professionals

02:31:51 1 who are trained and supervised in the CBC
02:31:55 2 helpful grieving model.

02:31:57 3 As we have for the parents and
02:31:59 4 siblings of students killed in the Parkland
02:32:00 5 school shooting, the CBC has created
02:32:03 6 dedicated groups for those who have
02:32:06 7 suffered the loss of loved ones in this
02:32:09 8 terrible tragedy in Surfside.

02:32:10 9 All groups are currently offered
02:32:12 10 online, and they're open to anyone,
02:32:14 11 including extended family and their
02:32:16 12 children as well as close friends. These
02:32:18 13 groups are offered in English and in
02:32:21 14 Spanish for adults, and as with all our CBC
02:32:25 15 groups, they are free of charge.

02:32:26 16 Grief groups are a powerful tool
02:32:30 17 providing validation, comfort, camaraderie,
02:32:33 18 and information. By creating a community
02:32:37 19 of griever, groups offer mutual
02:32:40 20 understanding and support for those who
02:32:42 21 truly get it, and they are a barometer to
02:32:47 22 which to comprehend one's own journey after
02:32:50 23 loss.

02:32:50 24 We realize that grief is an
02:32:52 25 expression of love for those who we have

02:32:55 1 lost. The CBC is here for everyone
02:32:58 2 impacted by this tragedy in the days,
02:33:00 3 months, and even years ahead to assist the
02:33:03 4 support -- with the support and the
02:33:07 5 expertise to process grief, adjust to life
02:33:09 6 after loss, and to find comfort and hope
02:33:12 7 along the way.

02:33:14 8 If you or someone you know is in
02:33:16 9 need of CBC grief support, please contact
02:33:20 10 the Children's Bereavement Center by phone,
02:33:23 11 email, or on our website. I have provided
02:33:26 12 this information in the chat room.

02:33:29 13 And thank you, Judge Hanzman, for
02:33:31 14 the opportunity to reach out to those
02:33:33 15 impacted by this terrible tragedy, and to
02:33:36 16 support -- to offer them the support
02:33:42 17 through the CBC.

02:33:44 18 I'd also like to thank those
02:33:46 19 attorneys as well, including Harvey Tropin,
02:33:51 20 Paul Singerman, Adam Moskowitz, Luis
02:33:53 21 Barreto, along with others who have shared
02:33:56 22 our information with their clients and
02:33:58 23 their colleagues in the Court. It truly
02:34:01 24 takes a village to support families after
02:34:05 25 such a profound trauma and loss as this.

02:34:08 1 THE COURT: Thank you, Ms. Cassel.

02:34:10 2 You know, when I first took the bench,
02:34:13 3 I spent five years in dependency court
02:34:18 4 treating and dealing with cases involving
02:34:21 5 abused, abandoned, and neglected kids, and
02:34:24 6 I'm very familiar with your organization
02:34:25 7 and the outstanding work that you do,
02:34:30 8 helping people get through times such as
02:34:32 9 this, and I'm very thankful for you coming
02:34:37 10 on today and taking a few hours of your
02:34:39 11 time to sit through this hearing and to
02:34:41 12 offer your services.

02:34:43 13 I hope that those family members in
02:34:45 14 need will take you up on that generous
02:34:48 15 offer. So thank you very much for
02:34:50 16 attending today, and on that note, we're
02:34:52 17 going to be in adjournment, and I will see
02:34:55 18 you all next Wednesday at 9 a.m. for our
02:34:58 19 next scheduled hearing, and I look forward
02:35:01 20 to addressing some of the matters that
02:35:02 21 we raised today and that we put off until
02:35:05 22 next week. So everybody have a nice week
02:35:08 23 and weekend, and I'll see you all next
02:35:10 24 Wednesday.

02:35:10 25 Mr. Goldberg, Mr. Singerman,

02:35:14

1

Mr. Martinez-Cid, please get these orders

02:35:16

2

uploaded as soon as possible so I can enter

02:35:19

3

orders memorializing the rulings entered by

02:35:21

4

the Court this morning. The Court is in

02:35:25

5

recess.

6

(Thereupon, the hearing was

7

concluded at 11:37 a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

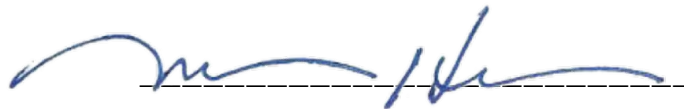
CERTIFICATE OF REPORTER

STATE OF FLORIDA :

COUNTY OF MIAMI-DADE :

I, Matthew J. Haas, shorthand
reporter, do hereby certify that I was authorized
to and did stenographically report the foregoing
remote Zoom proceedings and that the transcript
is a true and complete record of my stenographic
notes.

Dated this 2nd day of October,
2021.



MATTHEW J. HAAS
Court reporter