

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

CASE NO. 409-cv-00193-RH-WCS

Eva Locke, Patricia Anne Levenson, *
Barbara Banderkolk Gardner, National *
Federation of Independent Business, *

Plaintiffs, *

vs. *

Joyce Shore, in her official capacity as *
Chair of the Florida Board of Architecture *
and Interior Design; John P. Ehrig, in his *
official capacity as Vice-Chair of the *
Florida Board of Architecture and Interior *
Design; and Aida Bao-Garciga; Roassana Dolan; *
Wanda Gozda; Mary Jane Grigsby; Garrick *
Gustafson; E. Wendell Hall; Eric Kuritzky; *
Roymi Membiela and Lourdes Solera, in their *
official capacities as members of the *
Florida Board of Architecture and Interior *
Design, *

Defendants. *

_____ *

The deposition of J. EMORY JOHNSON taken by Counsel
on behalf of the Plaintiffs in Glynn County, the reading and
signing of the deposition being waived; taken before Erin B.
Poepping, Certified Court Reporter, 2661, at the offices of
Advanced Verbatim Reporting, Inc., 1607 Norwich Street,
Brunswick, Georgia 31520, on Monday, November 23, 2009,
beginning at approximately 4:04 p.m. and concluding at
approximately 6:31 p.m.

Advanced Verbatim Reporting, Inc.
1607 Norwich Street
Brunswick, Georgia 31520
(912) 264-1552 or (877) 848-7957

1 APPEARANCES:

2 FOR THE PLAINTIFFS:

3 CLARK NEILY
Institute for Justice
4 901 N. Glebe Road, Suite 900
Arlington, Virginia 22203
5 (703) 682-9320
6

FOR THE DEFENDANTS:

7
JOHNATHAN A. GLOGAU
8 Cheif, Complex Litigation
PL-01, The Capitol
9 Tallahassee, Florida, 32399
(850) 414-9650, ext. 4817

10
11 COURT REPORTER:

12 ERIN B. POEPPING
Advanced Verbatim Reporting, Inc.
13 1607 Norwich Street
Brunswick, Georgia 31520
14 (912) 264-1552
15
16
17
18
19

20
21 Advanced Verbatim Reporting, Inc.
22 1607 Norwich Street
23 Brunswick, Georgia 31520
24 (912) 264-1552 or (877) 848-7957
25

INDEX

1

2 I. J. Emory Johnson:

3 Cross-Examination by Mr. Neily 4

4 II. Certificate of Reporter 84

5 III. Disclosure 85

E X H I B I T S

6

7

8

9

Exhibit Number	Description	Page
EJ-1	August 25, 2008 Letter to James Burby	25
EJ-2	July 10, 2007 Board of AID Minutes	25
EJ-3	IDAF Website	40
EJ-4	Renderings by Juan Montoya Design Corporation . .	77
EJ-5	Furniture Layouts	79
EJ-6	May 29, 2009 Letter to David Minacci & June 3, 2009 Letter to Emory Johnson	57

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (OATH ADMINISTERED TO THE WITNESS.)

2 CROSS-EXAMINATION

3 BY MR. NEILY:

4 Q Good afternoon, Mr. Johnson.

5 A Hello.

6 Q Tell us your full name if you would, please, sir.

7 A James Emory Johnson.

8 Q I understand that you're working up here in Georgia
9 right now; is that true?

10 A Yes, sir.

11 Q Have you ever had your deposition taken before, sir?

12 A No, sir. If I remember correctly.

13 Q Just a couple of ground rules that will make things
14 go more smoothly. The first one is to make sure that we don't
15 talk over each other. If you will just let me finish my
16 question, then I will let you finish your answer and we will
17 get a clean record, okay?

18 A Yes, sir.

19 Q The only other one that really comes up a lot is in
20 conversation we often use nonverbal responses, whether it's a
21 nod of the head, shrug of the shoulders, or kind of a grunt.
22 It's difficult for the court reporter to get down so if you
23 would just answer all of my questions verbally we will get a
24 better record, all right?

25 A Yes, sir.

1 Q Then the last one is just if there is any question
2 that I ask you that you don't feel that you understand, let me
3 know that instead of trying to answer it, okay?

4 A Yes, sir.

5 Q Tell me basically what you do today to earn a living.

6 A Today I serve as a project director for two projects.
7 I work on behalf of the Board of County Commissioners in two
8 Georgia communities.

9 Q And you have your own business, correct?

10 A That's correct. Yes.

11 Q What is the name of that business?

12 A J. Emory Johnson Interior Design Consultants, Inc.
13 Cottage Grove Incorporated.

14 Q And is that located in Tallahassee?

15 A That is correct.

16 Q How long have you had that business?

17 A 1988.

18 Q I see you have some documents in front of you, are
19 those documents that you brought in response to a subpoena
20 that you were served in this case?

21 A Yes, sir.

22 Q Can I have a look at those real quick?

23 A (Complies.)

24 That addresses Item 2.

25 Q Okay. And I am just going to describe these as you

1 hand them to me so that the record will be clear.

2 The thing that you said that is in response to Item 2
3 was a letter dated May 29, 2009 from you to David Minacci.
4 That is paper clipped to a June 3, 2009 letter from you to
5 David Minacci, correct Mr. Johnson?

6 A No, sir. That is incorrect. It's paper clipped to a
7 letter from Mr. Minacci to Emory Johnson.

8 Q I stand corrected. Thank you.

9 So tell me if you would what the other paper clipped
10 stack was that you handed to me, the one that has an e-mail
11 dated October 29, 2009 from you to David Minacci?

12 A Yes, sir.

13 You had requested any documents that I had received --
14 excuse me, all documents discussing this lawsuit, merits of
15 the plaintiffs' challenge to Florida's interior design law.
16 This set of paper clipped documents are the only other
17 documents that I have so you will need to read through those.

18 The last item, and I apologize there is not a copy of
19 these, these were received at a meeting that I attended about
20 two weeks ago. One is the report of -- I guess it's Jere
21 Bowden.

22 Q Right. Right.

23 A The other is a response from the State of Florida
24 Office of the Attorney General written by Lisa Waxmen.

25 Q If I could take a look at those real quick.

1 A (Complies.)

2 Q I will hand both of those items back to you. I don't
3 think we will need to go into those further.

4 A Thank you.

5 Q Let's just take like three minutes and go off the
6 record to just skim through these real quick and we will
7 continue the deposition.

8 (A short break was taken.)

9 MR. NEILY: Back on the record.

10 BY MR. NEILY:

11 Q I will come back to these letters in a moment. Let's
12 just talk a little bit more about your business, Mr. Johnson.
13 What kinds -- I gather from the name that it's an interior
14 design business, right?

15 A Yes, sir.

16 Q What kinds of projects do you do? Can you sort of
17 summarize for me the sorts of projects you work on?

18 A In the last two years they have been private offices,
19 medical waiting area, county office, currently a courtroom,
20 also a private residence.

21 Q Is that a pretty good representation?

22 A That's a pretty good representation.

23 Q Are you currently doing any work for the State of
24 Florida or for any entity that is working for the State of
25 Florida?

1 So for example, my understanding is there was a time
2 when you were an expert for the Smith, Thompson Law Firm. In
3 that role you essentially provided insight or guidance on the
4 interpretation and application of Chapter 481 to the people
5 who were working at the firm in an enforcement capacity for
6 the Board; is that correct?

7 A That's correct.

8 Q So that's kind of what I have in mind, are you doing
9 anything like that right now?

10 A No, sir.

11 Q What line of work were you in before you got involved
12 in the interior design business?

13 A In 1967 I cleaned ovens for Florida State University
14 out of student housing. Beginning in 1969 I began working
15 with a retail furniture business in Tallahassee. I graduated
16 from Florida State in 1972 and I believe it was 1974 that I
17 sat for the NCIDQ exam and opened my own firm in 1977 as an
18 interior design firm.

19 Q Were you the principal of that firm in '77?

20 A Yes.

21 Q What was it called?

22 A Fifth Avenue Interiors.

23 Q Was there anything in particular that made you change
24 the name? I think you told me you changed the name to Emory
25 Johnson in 1988.

1 A Yes, sir.

2 Q What was it?

3 A The firm was purchased in 1985.

4 Q Did you keep working there for a while?

5 A Three years, approximately.

6 Q And then you went out on your own again?

7 A Yes.

8 Q What sort of degree did you get from Florida State in
9 1973?

10 A Bachelor of science.

11 Q In what?

12 A Housing and interior designing.

13 Q Did you pass the NCIDQ when you took it in 1974?

14 A Yes.

15 Q The first try?

16 A No, sir.

17 Q How many times did you have to take it?

18 A Twice.

19 Q I noticed that you presently sit on Florida State
20 University's Interior Design Advisory Board; is that correct?

21 A Yes, sir.

22 Q Can you give me a sense of what that involves?

23 A I have sat on several boards for the university. The
24 one currently is to listen and observe the faculty with the
25 work of students and also to participate for any scholarship

1 requirements or needs that the program may have.

2 Q Are there any particular needs or issues that seem
3 most prevalent in the last let's say year or two?

4 A My emphasis has always been towards student
5 scholarship when it involves Florida State.

6 Q Is that student scholarship in the work they do or
7 the financial support they receive?

8 A Financial support they receive.

9 Q I saw on the FSU -- Florida State University
10 Department of Interior Design has an alumni news page and I
11 see you were honored with what looks like a bench dedicated in
12 your honor recently; is that right?

13 A Yes, sir.

14 Q Do you know what that was for?

15 A Yes, sir.

16 Q What was that for?

17 A I chaired a development board committee for the
18 College of Human Science for slightly over ten years, during
19 which time the college generated an excess of \$20 million of
20 new funding.

21 Q In the writeup about the dedication of the bench the
22 statement on the website says, "Emory has practiced design in
23 Tallahassee for years and has been an avid supporter of design
24 licensure." Is that an accurate statement?

25 A That is an accurate statement.

1 Q Do you know Dr. Lisa Waxmen at Florida State
2 University?

3 A Yes, sir.

4 Q How do you know Dr. Waxmen?

5 A Only because she's on the faculty.

6 Q You don't socialize with her or anything?

7 A No, sir.

8 Q Did you suggest her or recommend her to serve as an
9 expert witness in this case for the State?

10 A No, sir.

11 Q Did you discuss either -- well, let's start this way,
12 did you discuss with her the fact that you were being deposed
13 in this case?

14 A No, sir.

15 Q Did you discuss whether the fact that she had been
16 deposed in this case?

17 A No, sir.

18 Q Have you read her deposition?

19 A No, sir.

20 Q Have you talked to anybody about it?

21 A No, sir.

22 Q Have you ever taught interior design, Mr. Johnson?

23 A One class.

24 Q Where did you teach?

25 A Florida State University.

1 Q When was that, roughly?

2 A Roughly 1980.

3 Q And do you remember what the class was?

4 A Business principles.

5 Q Was that sort of business principles applicable to
6 the interior design field specifically?

7 A Yes, sir.

8 Q Are you doing anything else to earn a living right
9 now, other than what we have already talked about? In other
10 words, do you have any other sources of income at this time,
11 besides your business, J. Emory Johnson Interior Design
12 business that you told me about already?

13 A Could you --

14 Q Yeah.

15 Are you working at anything else? Let's say some
16 people write books, some people deliver newspapers. I am just
17 curious whether you have any other sources of income like
18 that.

19 A No, sir.

20 Q Are you currently a member of any professional
21 organizations relevant to the interior design field?

22 A No, sir.

23 Q Have you been a member of any professional
24 organizations relative to the interior design field?

25 A Yes, sir.

1 Q Which ones?

2 A Let's see, ASID was one and whatever its predecessor
3 was, which at the moment I can't remember it's name.

4 Q I can't either, to tell you the truth.

5 How about the Interior Design Association Foundation,
6 IDAF?

7 A I have contributed one check to them. I don't know
8 if that qualifies me as a member or not.

9 Q When was that, roughly?

10 A Sometime within the last 12 months.

11 Q Was there anything in particular that prompted you to
12 give them a check at that time?

13 A No, sir.

14 Q I believe, according to some information on IDAF's
15 website that I saw, it says you were a member of ASID North,
16 and I got that that's North Florida at one point; does that
17 sound right to you?

18 A That is correct.

19 Q Did you hold any leadership positions with that
20 chapter?

21 A Yes, sir.

22 Q What was that position?

23 A I started as a regional vice president, regional
24 director, chapter treasurer, president-elect, president, past
25 president, legislative affairs VP, and I don't remember if

1 there were any others or not.

2 Q That's fine.

3 Can you give me a sense of what timeframe we're talking
4 about here?

5 A Mid 70's, approximately to early 80's. Well, as late
6 as early 90's.

7 Q Was there any particular -- what would you say during
8 that timeframe or during the latter part of that timeframe was
9 the most important issue facing ASDA North that they were
10 involved in?

11 A We had a couple of major fundraisers. Those funds
12 were primarily utilized for scholarship and the development of
13 some new scholarships. There were a couple of issues facing
14 the divisions of the chapters within the State of Florida. We
15 also, in the mid 90's, pursued interior design legislation.

16 Q At the time that ASID North was pursuing interior
17 design legislation was that while you were holding offices or
18 had you -- I guess I am trying to line up the timeframe. I
19 think I just heard you give me with what I understand to be
20 the timeframe of sort of the practice act legislation. I was
21 just wondering if you were holding any leadership positions at
22 the time ASID North was pushing for legislation.

23 A I believe I was VP of legislation in '94.

24 Q And if I understand the chronology correctly that's
25 when the push was -- well, the terminal push for the practice

1 act legislation, true?

2 A Yes, sir.

3 Q Did you work on that issue?

4 A Yes, I did.

5 Q We'll come back to that in a moment.

6 First I would like to find out what is your
7 understanding of the lawsuit that the plaintiffs in this case
8 filed and that you have been asked to show up today and
9 testify in connection with.

10 A I am rather sad to say I don't have much of an
11 understanding of it.

12 Q Have you read any of the documents that were filed in
13 the case to your knowledge?

14 A I read an early document, a multipart document and
15 that was I would have to say several months back. I read the
16 document, filed the document as I do with most materials under
17 my desk in a trash can.

18 Q Do you recall reading anything else besides that one
19 document in terms of documents that have been filed in
20 connection with the lawsuit?

21 A No, sir.

22 Q Did you ever read -- there was something called a
23 preliminary injunction order, it was issued by the Court in
24 August of the past year, August of '09 so about four months
25 ago, three months ago, did you read that?

1 A That document was forwarded to me, I glanced at the
2 front cover, honestly did not see my name in it, filed it
3 under my desk.

4 Q In the circular file?

5 A In the circular file.

6 Q Have you ever heard of an organization called the
7 Interior Design Protection Counsel, IDPC?

8 A Yes, sir.

9 Q What is your understanding of that organization?

10 A I don't have an understanding of it.

11 Q Have you ever been on IDPC's website to your
12 knowledge?

13 A Yes. As to when, I can't tell you.

14 Q Do you remember anything about it at all?

15 A Nothing at all, other than I believe its home is
16 based out of New Hampshire.

17 Q What about the website of my organization, the
18 Institute for Justice, do you know if you have ever been on
19 that website?

20 A Yes, sir. I have.

21 Q What made you go on that website or why did you?

22 A I believe you were speaking at an event in south
23 Florida. And again, numerous e-mails came in, opened one,
24 read it, filed it, took a look at your organization and filed
25 that also.

1 Q I am getting the feeling that you're using the word
2 "filed" for trashed; is that right?

3 A Trashed. We could agree on that term.

4 Q Excellent.

5 Did you review any materials in preparation for your
6 deposition here today that you can think of?

7 A Only what I have.

8 Q So you have shown me everything that you looked at?

9 A You have what I have.

10 Q Do you know a woman named Janice Young?

11 A Yes.

12 Q How do you know Janice Young?

13 A We have known one other both professionally and
14 socially for a number of years.

15 Q My understanding is she's more or less the moving
16 force behind the IDAF organization; is that your understanding
17 as well?

18 A Sir, I have no idea.

19 Q You don't?

20 Have you ever visited her at her home in Jacksonville?

21 A Yes, I have.

22 Q Did you know that her home address is the same
23 address as is for IDAF?

24 A I would believe you if you told me that, yes.

25 Q I will represent that to you.

1 A Yes.

2 Q Have you ever written any content for the IDAF
3 website?

4 A No, sir. But I do know that I wrote a response which
5 apparently, judging by e-mails, was duplicated and entered as
6 being a response I had to offer.

7 Q On their website?

8 A I am not sure if it was on their website or not.

9 Q Can you sort of elaborate on that? I am not sure I
10 know what you're talking about, your response to what?

11 A Recently there was -- and I can't even tell you what
12 the issue was, they asked my opinion on or Janice or one of
13 their members asked my opinion. I wrote an opinion and
14 discovered quickly that once you write one e-mail you write
15 millions of them.

16 Q So that sort of got lunched into the electric
17 stratosphere?

18 A That's correct.

19 Q What did they want your opinion about?

20 A Sir, I can't even remember.

21 Q Do you remember roughly the timeframe?

22 A It would have been within the last three months.

23 Q Were they asking your opinion about some issue in
24 this lawsuit?

25 A Sir, I have no idea.

1 Q Let me ask you if you would, Mr. Johnson, to see if
2 you can find that e-mail. Maybe ask Ms. Young to see if she
3 can find it. And if it turns out that it comes in the ambit
4 of Item Number 1 of the subpoena duces tecum that we served on
5 you which you have in front of you, basically all documents
6 about the lawsuit or the merits of the plaintiffs' challenge,
7 I would appreciate it if you would forward that e-mail to me,
8 the statement. Would you agree to do that, sir?

9 A Yes, sir. I would be more than happy to make that
10 contact.

11 Q Thank you.

12 A I might even add I will ask if it were not to her, if
13 she has any idea who may have received it.

14 Q Great. I appreciate it.

15 Do you know Joyce Shore?

16 A Yes, sir.

17 Q How do you know Ms. Shore?

18 A She's a member of the Board of Architecture and
19 Interior Design and our paths have crossed through the years
20 as interior designers.

21 Q Have you ever discussed this lawsuit or the challenge
22 to licensing in Florida with Ms. Shore that you can remember?

23 A No, sir. Not that I can remember.

24 Q As we have discussed a few moments ago, Mr. Johnson,
25 there was a period of time which you were employed for the law

1 firm of Smith, Thompson, Shaw & Manausa in Tallahassee,
2 correct?

3 A If you could define "employed".

4 Q David Minacci referred to you during a deposition
5 that I took in this case as an expert for his law firm,
6 pertaining to application of Chapter 481 of the Florida
7 Statutes. If you have some other understanding of your role
8 why don't you just tell me what your understanding of the role
9 was.

10 A The term "expert" came from his office. I did not
11 originate that, it's not a created term I would use.
12 "Employ", if we are going to define employ as I was paid at an
13 hourly rate per a contract that they provided, yes, I was
14 employed because I was paid for services rendered.

15 Q Paid by Smith, Thompson?

16 A Paid by Smith, Thompson.

17 Q Just if you could generally describe for me what were
18 the services that you rendered under that contract?

19 A The law firm would have delivered to my office files
20 which were being reviewed, files that they had received, that
21 they had already completed all of their legal review of and
22 asked from a professional or from a practicing interior
23 designer's standpoint if I concurred or disagreed with their
24 recommendation or with their findings.

25 Q As I understand it, the findings pertained basically

1 to decisions, whether to proceed with disciplinary action
2 against a particular business or individual, correct?

3 A Yes, sir.

4 Q When did you first sort of come under contract with
5 Smith, Thompson, if you recall?

6 A Approximately five years ago, four to five years.

7 Q So around 2004, 2005, somewhere in that timeframe?

8 A That actually would be my best guess. Yes, sir.

9 Q Do you remember how that came about? Was that
10 something that you went looking for, did somebody approach
11 you; do you remember?

12 A No, sir. I received a call. I receive it being in
13 the late fall from Mr. Minacci. At that time I had never met
14 him before and he asked if I would consider reviewing files,
15 that his firm had received a contract with the Board of
16 Architecture and Interior Design. And my name had been
17 recommended to them to review the interior design cases.

18 Q Would you consider yourself to have any particular
19 qualifications or insight that the average state licensed
20 interior designer would not have had in order to fulfill that
21 particular request?

22 A No, sir.

23 Q My understanding is that you were deeply involved in
24 both the formulation and the negotiating for the practice act;
25 is that true?

1 A Yes, sir.

2 Q Did anybody ever express to you that was a reason why
3 they were interested in having you as an expert, because you
4 had that sort of personal experience with the Legislature
5 itself?

6 A Yes, sir.

7 Q Who expressed that to you?

8 A Mr. Minacci.

9 Q In one of the documents that you handed me in
10 response to the deposition subpoena, the one dated May 29,
11 2009, it looks like you have it in front of you.

12 A Yes, sir.

13 Q If you turn to the second page about five lines down
14 there is a sentence that says, "My e-mail was probably hastily
15 written and without much thought as to its tone or content,
16 other than, as I recall, the day it was written followed the
17 day I was in a meeting in Tiffton, et cetera."

18 I don't see the e-mail to which you're referring in
19 that letter included in the materials.

20 A Sir, I don't have a copy of it.

21 MR. NEILY: Jon, I will probably find out from you
22 after the deposition, is that something that I can get
23 ahold of, if David has it? We can talk about that later.

24 BY MR. NEILY:

25 Q Mr. Johnson, I notice from reviewing various minutes

1 of the Board of Architecture and Interior Design meetings that
2 you seem to have attended the meetings fairly regularly; is
3 that your recollection as well?

4 A Yes, sir.

5 Q Did you make it a point to attend as many of those
6 meetings as you could?

7 A Yes, sir.

8 Q Why did you do that?

9 A I was paid to be there by Mr. Minacci.

10 Q So that was part of your contract that you just
11 described to me?

12 A No, sir. He asked that I attend and he reimbursed my
13 expenses for attending.

14 Q Including paying you for your time?

15 A Yes, sir.

16 Q What was he paying you for your time, roughly?

17 A Something along the order of 50 an hour.

18 Q Do you have an understanding of sort of why
19 Mr. Minacci wanted you to be there or what he expected of you
20 for that money?

21 A No, sir.

22 Q Even if he didn't give you a formal statement of sort
23 of here is why I expect you to be there, I assume you felt
24 that you were there with some sort of purpose; is that fair to
25 say?

1 A It was typically his opinion since the probable cause
2 meeting was scheduled at the same time as the Board meetings
3 and he preferred to have both of his consultants as well as
4 the majority of his staff at the probable cause meetings. And
5 those probable cause meetings were often times held in
6 conjunction with the Board meetings.

7 Q So you were sort of there to answer any questions
8 that might come up?

9 A Yes, sir.

10 Q When you say, "both of his consultants," I gather you
11 mean one consultant was an interior design consultant and that
12 was you, correct?

13 A Yes, sir.

14 Q And then he had presumably an architecture
15 consultant, correct?

16 A Yes, sir.

17 Q Was that Trent Manausa at the time?

18 A Yes, sir.

19 Q I will mark a couple exhibits and I would like to
20 talk to you about each of them.

21 The first one I am marking is an unsigned letter dated
22 August 28, 2008 from you to James Burby. The second letter --
23 I'm sorry, this is Board meeting minutes dated July 10, 2007.
24 I will mark that one Exhibit -- I am sorry, the latter one I
25 have marked is EJ-2. The first one I handed you, the James

1 Burby letter, is EJ-1.

2 (Plaintiff's Exhibit Numbers EJ-1 and EJ-2
3 marked for identification.)

4 MR. GLOGAU: I guess I need to just voice an
5 objection on the letter, unless you can establish that it
6 was actually sent.

7 MR. NEILY: We're getting there.

8 A Yes, sir. I reviewed that.

9 Q So you have taken about a minute to review Exhibit
10 EJ-1, which is the August 25 letter to James Burby. Let me
11 just ask you a couple of basic questions about that.

12 It has your name on it on the last page, although as I
13 mentioned it is unsigned. Do you recall writing that letter,
14 sir?

15 A Yes, sir.

16 Q Do you recall if you ever sent it?

17 A I could only assume I did.

18 Q But as you sit here today you don't have any specific
19 recollection?

20 A Right.

21 Q Fair enough.

22 Let's shift to Exhibit 2 for just a minute, EJ-2.
23 You're welcome to read the whole thing if you want to. I am
24 just going to sort of summarize it and you're welcome to read
25 it and see if my summary is accurate. I think it's on -- it's

1 42 pages and I only copied the first ten of them because the
2 incident I was interested in starts on page 5. It's the David
3 Davis case up there on the top; do you see that?

4 A Yes, sir.

5 Q Basically as I understand it Mr. Davis essentially
6 took over a family business that sells flooring, cabinets, and
7 countertops. He got involved in a project apparently
8 involving some either renovations or replacement of existing
9 materials in the common areas of a condominium and there was
10 some allegations that he may have gone further than that and
11 actually sort of participated in what seems to have been an ad
12 hoc design team.

13 The reason I was sort of interested in that is there
14 was quite a bit of dialogue back and forth between Board
15 members -- well first of all, you were there it appears and --

16 A No, sir. If I can interrupt?

17 Q Sure.

18 A I am not sure, unless my name is into this dialogue,
19 I am not sure if I was there or not.

20 Q Sure. Turn to page 9 if you would.

21 A Thank you.

22 Q Do you see the second full paragraph?

23 A Thank you. Now if I could read it, please?

24 Q Sure.

25 A Yes, sir. I will try and answer.

1 Q Great.

2 What I was focusing on in the pages like 5 to 10 was
3 that there was this dialogue between Board members about the
4 scope of the law and, for example, if you look at page 8,
5 second paragraph. It says, "Mr. Kuritzky commented that the
6 Board was saying that if a hotel wanted to replace the carpet
7 in a meeting room then they would be required to hire a
8 licensed architect or interior designer."

9 Do you see that? Do you see that statement?

10 A On page 8?

11 Q Page 8, second paragraph. The one that begins,
12 "Mr. Kuritzky commented."

13 A Thank you. Yes, sir.

14 Q And then Ms. Clark, who I assume refers to Mary Ellen
15 Clark the Board's lawyer, sort of disagreed with that
16 statement.

17 But what I understand to be going on is essentially a
18 dialogue between members of the Board and some of the Board
19 staff as to, for example, whether if a hotel, for example,
20 wanted to replace all of the carpeting in a hallway. The
21 hotel could go out and specify that carpeting for itself or
22 whether it would have to involve a licensed interior designer
23 or architect in order to make that specification.

24 Assuming that is an accurate summary of the basic
25 dialogue that was going on, as you sit here today do you have

1 a position whether the owner of a hotel wanting to replace
2 carpeting in a corridor would be able to specify new carpeting
3 without involving a design professional or would they have to
4 involve a design professional to make that specification?

5 A Sir, I can't speak to Mr. Kuritzky or Ms. Clark's
6 comments, obviously. However, to attempt to answer your
7 question. Yes, sir, I would.

8 It would be my understanding of the Florida Statutes
9 that if it is a replacement of a product which impacts any of
10 the life safety codes or if it's required by the building
11 departments in a specific governmental jurisdiction that those
12 products meet certain standards and if those standards can
13 only be applied through or specified by an architect or
14 interior designer licensed in Florida then yes, sir, the hotel
15 would be required or would highly suggest that they would use
16 those services.

17 Q What law or regulation would provide that only an
18 architect or an interior designer could specify particular
19 items let's say in a hotel, other than the one we're talking
20 about today?

21 A Sir, I think you would have to look under the
22 category of applicable codes.

23 Q My understanding is that those codes don't speak
24 specifically to someone -- to a requirement, for example, that
25 someone be a licensed interior designer or architect.

1 So for example, my understanding, again correct me if I
2 am wrong, is that, for example, in Georgia the owner of that
3 hotel would be able to go out and just buy new carpet or a new
4 bed or really do anything let's say in the nature of
5 furnishings and replace those items without hiring an interior
6 design or an architect. Do you have a different
7 understanding?

8 A Sir, you're asking me for a legal opinion and I am
9 not licensed as an attorney in either state.

10 Q Well, you did used to serve as a consultant for the
11 Florida Interior Design Board, at least through the contract
12 with Smith, Thompson, having to use you to advise them on
13 these kinds of things as I understand; is that not true?

14 A Sir, I never served as an attorney.

15 Q I didn't say you did.

16 A Thank you.

17 Q You accept money and be paid to offer conclusions or
18 at least advice and input about whether particular conduct was
19 or was not covered by the Florida interior design law, true?

20 A Yes, sir.

21 Q So I am not asking you for a legal conclusion, I am
22 asking you for a response that would be in roughly the same
23 context or drawing upon the same knowledge and experience,
24 just like when you were a consultant.

25 A The only thing I could say is I never dealt with

1 hypotheticals at that time and I don't deal with hypotheticals
2 now.

3 Q Well, that's unfortunate. I am going to have to be
4 honest with you, that's not a decision that you're able to
5 make in this room. If I ask you a question that you're able
6 to answer you are obligated to attempt to do so. If you
7 can't, then you can't.

8 A Well, I can't.

9 Q Fair enough.

10 If you would turn to page 2 of the Jim Burby letter. I
11 am going to ask you a question about the last full paragraph
12 on page 2, it's the one that begins, "History and actions;" do
13 you see that paragraph?

14 A Yes, sir.

15 Q If you go down to five lines from the bottom, the
16 last sentence begins, "I do not remember." Let me know when
17 you see that, please.

18 A Yes, sir.

19 Q That sentence reads: "I do not remember your
20 participation in 1994 to protect your business activity or the
21 interest of consumers. However, as the individual who chose
22 to file and fund a significant portion of the legal action
23 against the state Board as well as the person who drafted the
24 original language for the practice act I do remember others
25 who stood shoulder to shoulder for its passage 60 days later

1 on the final day of the 1994 Florida Legislative Session."

2 Do you see that sentence?

3 A Yes, sir.

4 Q Are the representations in that sentence accurate as
5 you sit here today?

6 A Yes, sir.

7 Q Did you in fact draft the original language for the
8 practice act?

9 A Yes, sir.

10 Q And when I say "practice act" I am meaning
11 essentially the amendment to Florida's interior design law,
12 Chapter 41 of the Florida Statutes that transformed the
13 interior design law from a title act to a practice act; do you
14 understand what I mean by that?

15 A Yes, sir.

16 Q And that was what you drafted?

17 A Yes, sir.

18 Q What was the 1993 lawsuit or it's not '93, the legal
19 action against the state Board to which you're referring in
20 that sentence?

21 A In approximately either '93 or early '94, the Board
22 of Architecture and Interior Design proposed a rule, and if we
23 could we will just call it supervisory control. And within
24 that rule was a requirement -- and I can't speak to the
25 specifics of the requirement just the general terms of it --

1 that all work related to residential as well as commercial
2 spaces for the specifications of materials, finishes,
3 furnishings, either loose or fixed, be it nonbearing walls all
4 would be required to be under the purview and supervision of a
5 licensed architect.

6 Q You said that was a proposed rule?

7 A Yes, sir.

8 Q Was it ever formally adopted by the Board?

9 A No, sir. It was not. It moved into an
10 administrative hearing and a challenge.

11 Q Your challenge?

12 A Mine.

13 Q Or the challenge you helped fund?

14 A There were challenges, yes.

15 Q Was there more than one?

16 A I challenged it, ASID North challenged it, ASID South
17 challenged it I believe. That's been many years ago.

18 Q When you say "challenged" do you mean specifically
19 lawsuits?

20 A They all joined in one party as one party to the
21 suit.

22 MR. GLOGAU: It would have been an administrator
23 challenge under Chapter 120.

24 A Thank you.

25 MR. GLOGAU: Florida was also sort of a unique place

1 where you could challenge a rule before it goes into
2 effect. And it never goes into effect if it is
3 successfully challenged.

4 MR. NEILY: That's helpful. Thanks.

5 Let me ask either one of you and get by this real
6 fast. Was that in a court system or in front of an
7 administrative body?

8 MR. GLOGAU: They call them administrative law judges
9 now, they used to call them hearing officers.

10 BY MR. NEILY:

11 Q And I gather the administrative hearing officer ruled
12 against the proposed rule in essence; is that basically what
13 happened, Mr. Johnson?

14 A No, sir. I can't give you the legal terminology for
15 what happened but it was realized that there was an error in
16 either the document or the publication.

17 Q So there was a technical shortcoming in the rule and
18 it just never went into effect?

19 A Never went into effect.

20 Q It says that you spent or you funded a significant
21 portion of the legal action; is that true?

22 A I am not sure if I did a significant proportion. I
23 know out of my small budget that I work off of it was a
24 significant dollar amount to me.

25 Q Was that sort of you kicked in money towards

1 attorney's fees or something?

2 A I retained my own attorney.

3 Q Do you remember who that was?

4 A Gary Williams of the Ausley & McMullen Law Firm.

5 Q That's a good firm. I know them.

6 I gather you were happy with the result and the
7 outcome?

8 A Yes.

9 Q Do you have a recollection of sort of when that came
10 to a head in terms of like when did you realize you were out
11 of the woods on that particular regulation?

12 A I'm sorry, I don't.

13 Q When did you get the ruling that said that the
14 regulation would not go into effect or do you recall?

15 A Again, I would say either the latter part of '93 or
16 early '94.

17 Q If you would look on page 2 of Exhibit EJ-1 which is
18 the Burby letter, I wanted to ask you about sort of the last
19 sentence or last two sentences in the first paragraph there.
20 So about halfway down the page, we're talking about
21 essentially maybe seven lines up from the end of the first
22 paragraph there, "In an attempt to protect."

23 A Okay.

24 Q The second to last sentence, four lines up from the
25 bottom says, "Because of this legal action the rule was

1 withdrawn."

2 And that is what we just discussed, correct?

3 A Yes, sir.

4 Q The next sentence says, "If only the actions of a
5 limited number of architects had ceased at that time all
6 issues would most likely have been resolved and Florida would
7 have retained its interior design title act."

8 Do you see that?

9 A Yes, sir.

10 Q Can you explain the significance of that sentence to
11 me, please?

12 A It was my general feeling at the time, and again
13 reflecting on something that happened that many years ago,
14 there was a continued push by some members of the
15 architectural profession that interior design as well as
16 interior decorating should all fall under supervisory control.

17 Q Of architects?

18 A Of architects. Period. End of statement.

19 Q Right.

20 A And those persons that I was aware of then, whether
21 or not they even exist to this day, that was their desire; was
22 that both entities as well as mom and pop furniture stores,
23 kitchen designers, you name it across the board of both home
24 furnishings and then office furnishings would all serve under
25 their supervisory control.

1 Q Sort of an industry staged takeover of a lot of
2 businesses it sounds like in a sense. Maybe not a takeover
3 but sort of making all of these different businesses have to
4 operate under the ambit of architects from then on or under
5 the supervision of architects?

6 A Those would be your words, but yes.

7 Q And in fairness, I am not trying to put words in your
8 mouth. I get a sense both from what you have written to
9 Mr. Burby and from our discussion that you felt pretty
10 strongly that that would have been a bad thing, true?

11 A Correct.

12 Q Would you go so far as to say it would have been an
13 unjust or unfair thing?

14 A The feeling at the time was yes, it would have been
15 unjust and also unfair. I remember a conversation with my
16 firm's accountant at the time that my business would probably
17 be subject, if I remember right, to a loss of about 50 percent
18 of our dollar value.

19 Q And how did you come up with that sort of rough
20 calculation?

21 A The accountant looked at the work that I did day in
22 and day out, the same accountant that I have had for a number
23 of years, I continue to have the same one and he looked at the
24 general type of work that I do. And talking with members of
25 the law firm, when they compared the work that I did most of

1 the work would have to go under a licensed architect.

2 Q So even if you could still do the work you would have
3 to kick some of that fee upstairs to the architect if you're
4 under their supervisory control?

5 A I have no idea how the process would work.

6 Q I guess what I am just trying to get a sense of was
7 the calculation based on the idea that there is a big chunk of
8 the work that I am presently doing that I am not going to be
9 allowed to do anymore.

10 A No, sir. In 1994 the conception and the idea that
11 was floated was that at that point in time supervisory control
12 meant that the work was done within the office of.

13 Q Of the architect?

14 A Of the architect.

15 Q I see.

16 It sounds like it might not have even been an option
17 for you to say well, I have got this project that needs to be
18 done under your supervisory control. I will bring in the
19 architect to kind of quote/unquote oversee things but I will
20 do the bulk of the work and get paid most of the fee.

21 A It would not have been possible for me, it would not
22 have been possible for Home Depot.

23 Q Yeah. Okay.

24 I want to focus on the last bit of that sentence there,
25 the last sentence of the first paragraph on page 2. It says,

1 "If only the actions of a limited number of architects had
2 ceased at that time all issues would most likely have been
3 resolved and Florida would have retained its interior design
4 title act."

5 Do you see that?

6 A Yes, sir.

7 Q What is the significance of that part of the
8 statement, "That Florida would have retained its interior
9 design title act?"

10 A I am sitting here reading this now and I have no idea
11 what I was saying with that statement. I can't even venture
12 to guess.

13 Q Would you tell me about what you remember about -- I
14 think we agreed that you both drafted and sort of negotiated
15 the passage of or participated in the negotiation and passage
16 of the 1994 practice act amendment, correct?

17 A I participated in.

18 MR. GLOGAU: Both?

19 MR. NEILY: Yeah.

20 Mr. Johnson both drafted and participated in the
21 negotiation.

22 MR. GLOGAU: I see.

23 BY MR. NEILY:

24 Q My sort of understanding and experience of these
25 sorts of legislative processes is there is often a certain

1 amount of horse trading involved. In other words, the law
2 doesn't end up the way it started out in most cases; is that
3 your understanding as well?

4 A That is correct.

5 Q Did any of that happen with what I am going to call
6 the practice act legislation? Was there some amendments?

7 A Yes.

8 Q Can you describe for me sort of any of the
9 significant ways in which it changed from what you had
10 originally drafted in terms of the form in which it was
11 drafted?

12 A No, sir. Without seeing the language of the draft
13 form that was handed in and what was finally published or
14 voted out by the Legislature, no, sir.

15 Q Well, for instance, do you remember if the proposed
16 practice act started off with a residential exemption or was
17 that something that was added in the sort of give and take of
18 the legislative process?

19 A Sir, I would say that I remember having that in.

20 Q From the beginning?

21 A From the beginning.

22 Q What about the retail sales exemption?

23 A Yes, sir. If I remember right, the wording possibly
24 changed, the concept was there.

25 Q What about the provision that enabled people to do

1 what I call "grandfather in" for a period of time? In other
2 words, people that did not possess what came to be the
3 statutory requirements of education, examination, and approved
4 experience, work experience.

5 You understand there was a period of time where people
6 who lacked one or more of those qualifications were allowed to
7 be licensed anyway, correct?

8 A Yes, sir.

9 Q Do you know if grandfathering was a concept that
10 existed all along or was that added at some point?

11 A I don't remember. I could address that though in
12 that if it was not included in its original draft I would not
13 be surprised because of the Florida legislative history on
14 grandfathering.

15 Q Can you briefly elaborate on that? I gather you mean
16 that Florida typically includes grandfathering.

17 A That's my understanding.

18 Q Do you know of any other occupations or professions
19 where that happened at?

20 A I believe for psychologists.

21 Q Anything else?

22 A I don't have any other knowledge, other than possibly
23 the practice of law.

24 (Plaintiff's Exhibit Number EJ-3 marked for
25 identification.)

1 Q Let's take a look at this. This is a somewhat big
2 document and I really don't have very many questions about it.
3 As always, you're welcome to read as much or as little as you
4 want. These are selective printouts from the IDFA website.

5 MR. GLOGAU: That's way too small for me to read.

6 MR. NEILY: It was a choice between content and size.
7 Like I said, I only have a couple of questions.

8 BY MR. NEILY:

9 Q Sir, would you just turn to the second page there of
10 Exhibit EJ-3.

11 A Okay.

12 Q There is a representation that I have heard a lot and
13 I have never been able to get to the bottom of it and I am
14 wondering if you can help. It is the first sentence of the
15 second paragraph in the text at the bottom, the one that
16 begins, "Without the interior design practice act."

17 Do you see that?

18 A Yes, sir.

19 Q The representation on IDAF's website is that,
20 "Without the interior design practice act the laws clearly
21 indicate that commercial interiors can only be completed by
22 licensed architects and projects that currently allow some
23 2,300 interior designers, and that is redundant, interior
24 designers, to sign and seal drawings for building permits will
25 be lost forever."

1 Do you see that?

2 A Yes, sir.

3 Q I am not aware of any law that says that in the
4 absence of Florida's interior design practice act only
5 architects could work on commercial interiors, are you aware
6 of any such law or regulation?

7 A I have no idea where this language came from.

8 Q Well, putting aside the language, are you aware as
9 you sit here today, sir, of any law or regulation that would
10 prevent nonarchitects from working on commercial interiors?

11 MR. GLOGAU: Objection. Calls for legal opinion.

12 Go ahead and answer if you can.

13 A Sir, I don't know.

14 Q Let me ask you this: You have been a practicing
15 interior designer for more than 30 years, right?

16 A Almost since the practice act came into place.

17 Q No. I mean you have been working as an interior
18 designer, yes?

19 A I have been working as an interior designer.

20 Q For 30 years you have worked as a consultant/expert,
21 I realize "expert" is not your term, in effect for the
22 Board -- the State Board through the Smith, Thompson Law Firm.

23 You have known for some time that there is a lawsuit
24 challenging the practice act and I am curious whether you feel
25 any concern that if that lawsuit is successful do you have any

1 reason to believe that you will not be able to continue doing
2 whatever work you have been doing all along in Florida?

3 A Sir, that one is an issue that I have never been able
4 to resolve. Obviously others have already made up their mind
5 that I can't speak for them.

6 Q As you sit here today you just don't know one way or
7 the other; is that true?

8 A I don't know one way or the other.

9 Q Fair enough.

10 Do you know what percentage? According to the State
11 Board as of a couple months ago there were 2,850 active state
12 licensed interior designers. Assuming that is true, do you
13 know what percentage of those were grandfathered in without
14 possessing one or more of what are sometimes referred to in
15 shorthand as the three E's; education, experience, or
16 certified or approved -- I am sorry, education, examination,
17 or approved experience.

18 So the question is: Of the 2,850 state licensed
19 interior designers currently active in Florida do you know the
20 percentage that were grandfathered in without possessing one
21 or more of those credentials?

22 A No, sir.

23 Q Let's assume that there is at least some number of
24 people out there that were grandfathered in without possessing
25 -- well, let's change that a little bit. I will represent to

1 you that it is clear, based on responses that we have gotten
2 from the defendants in this case, that it is at least possible
3 that there are people currently working as state licensed
4 interior designers in Florida who are grandfathered in under
5 the statute without possessing one of the three E's;
6 education, experience, or examination.

7 I am curious why there is nothing in the law that
8 requires those people, assuming they exist, to disclose that
9 status to potential customers. The reason I am curious is
10 because one of the things that I hear a lot from people on the
11 other side of this issue, in other words the pro-regulation
12 side, is that it's very important for customers to know the
13 qualifications of the person they're dealing with.

14 It just strikes me if that were true it would have been
15 quite simple to add into the law or disclose your requirement
16 that if somebody was grandfathered in until they basically get
17 up to snuff, so to speak and possess all of the three E's,
18 they should have to represent or disclose to potential
19 customers which are the ones they lack.

20 Was that ever something that was considered?

21 MR. GLOGAU: Objection. Did he consider that as he
22 was drafting it?

23 Q Yeah. Did you ever consider adding such a provision
24 in drafting it?

25 A No, sir.

1 Q Any particular reason why not?

2 A No, sir.

3 Q Have you ever heard of this idea before I just sort
4 of introduced it to you just now?

5 A No, sir. Not that I can remember.

6 Q Now that it's been broached to you, do you have a
7 thought one way or the other whether or not that might be
8 good, to included in the law?

9 A No, sir. That is outside of my expertise.

10 Q You drafted this law and I assume you had a reason or
11 you had certain ideas of what you wanted to accomplish when
12 you drafted the law; is that true?

13 MR. GLOGAU: I am going to object to the extent that
14 he testified I think, correct me if I am wrong, he didn't
15 put the grandfather clause in at all, that he thought it
16 was put in by the Legislature.

17 Q Let's assume that is a given, but let me rephrase my
18 question.

19 I assume that in drafting the proposed practice act you
20 had certain things that you thought that it would be good for
21 it to achieve, certain goals; is that true?

22 A Yes, sir.

23 Q Was one of those goals to ensure that customers in
24 Florida when hiring an interior designer to do non-residential
25 work could count on the fact that the person they hired had

1 some minimum level of qualifications?

2 A Yes, sir.

3 Q What is that minimum level of qualification?

4 A A six year component of education, experience, and
5 examination. As well as followed by that would have been
6 continuing education after the fact.

7 Q So given that that was one of the goals that you had
8 in mind, does it concern you as you sit here today that there
9 are people who are permitted to hold themselves out as state
10 licensed interior designers in Florida who may lack one or
11 more of those components that you just described and are not
12 required to disclose that fact to the people that might wish
13 to hire them?

14 A Sir, many things in life concern me.

15 Q Is that one of them?

16 A It's one of very many.

17 Q My understanding, Mr. Johnson, is that during at
18 least part of the time when you were serving as a consultant
19 to the Smith, Thompson Law Firm you were also employed by the
20 Board to review application files; is that true?

21 A No, sir.

22 Q I will rephrase the question and insert the word
23 Department of Business and Professional Regulation instead of
24 Board, now is it true?

25 A Sir, I am not sure if the word "employed" -- I am not

1 sure that I ever received any compensation. If you have
2 information for it then I would be more than happy to look at
3 it and agree or disagree with whatever information you have.

4 If I could state I am not trying to hide anything --

5 Q No. I appreciate that.

6 A -- I just don't remember.

7 Q I appreciate that.

8 I will just read you what I have in mind here.

9 There is a representation in the defendants' responses
10 to some written discovery request that we sent that is
11 specifically in response to Interrogatory Number 8. I can
12 show that to you in a moment. Actually, I have an extra copy
13 if you would like to follow along, I am not going to mark
14 this.

15 It's the last paragraph at the bottom of the page which
16 is the relevant one. But you're welcome to read the whole
17 thing, of course.

18 A Yes, sir.

19 Q You chuckled a little bit about five seconds ago when
20 you were reading something, it looks like Interrogatory Number
21 8, could you tell me what it was?

22 A I don't remember being hired by -- somewhere in that
23 paragraph it says --

24 Q About six lines down from the top of page 3?

25 A "Hired him to review application files."

1 Maybe my memory is incorrect but I don't remember being
2 hired which would convey that I was paid a salary to do those.
3 If I remember, I volunteered to do those because no one else
4 wanted to take the time to review them. So I did that as a
5 volunteer to the agency.

6 At some point in time you may discover later on that
7 the Department or the Agency or the Board, whoever attempted
8 to place me on salary or to quote hire me to do that only to
9 be told no, we can't hire him or you should not hire him, we
10 should hire someone else.

11 So again, if there is something somewhere else I would
12 be happy to know that. The rest of this sentence, just to
13 respond to it, I am not aware that any action started with me
14 reviewing files. I have no idea what anyone prior to me
15 reviewing files may or may not have done. I raised some
16 issues on some of these files that I reviewed at the time,
17 obviously. I would assume that anyone else -- but I should
18 never say I assume anything. So I don't know how anyone else
19 did.

20 The fact that they stopped receiving them, I have no
21 idea. That would appear to me to be an Agency or Department
22 or Board issue.

23 Q Do me a favor, if you would, the document that you
24 have in front of you is marked DM-7 on the bottom.

25 A DM-7.

1 Q Yeah. I am not going to add it to this but at least
2 we will all know what we're talking about.

3 If you turn to page 6 of that document, bottom left,
4 Interrogatory Number 21. It basically just asks what happened
5 with 12 different disciplinary actions and the sole basis of
6 those disciplinary actions, and I have looked at the full file
7 for each one of them.

8 That is a person who applied to the Board to be
9 licensed as an interior designer and described themselves on the
10 application form as an interior designer, and a disciplinary
11 proceeding was initiated and actually went even past the
12 probable cause panel. In other words, the probable cause
13 panel found probable cause to proceed against each of these
14 people.

15 In the defendants' response to that interrogatory it
16 identifies you as the person who initiated those. It
17 specifically uses the language "initiated" on the second line
18 on the bottom page of page 7 on the right-hand column.

19 I guess my question is would that seem consistent with
20 your memory?

21 A Sir, two issues. One, I do not remember and the
22 other, without knowing if these cases ever moved to the Board,
23 I don't know if they are privileged or not and so I could not
24 address any of these cases.

25 Q I represent to you that each one of them has been

1 terminated and my understanding is that makes them
2 non-privileged, if that helps address that concern.

3 A I'm sorry, without Mr. Minacci telling me that. But
4 thank you.

5 Q You're saying that you would need to hear this from
6 Mr. Minacci in order to respond to my question?

7 A Yes.

8 Q Well, respectfully, Mr. Johnson --

9 MR. GLOGAU: These are unlicensed practice cases and
10 those are not privileged.

11 THE WITNESS: Thank you.

12 Q So now we're left with one concern I guess, that you
13 just don't remember any of this; is that true?

14 A I do not remember the particular cases. No, sir. I
15 do not.

16 Q As you sit here today do you think it's reasonable
17 for the Board to initiate a disciplinary proceeding against
18 somebody who simply describes themselves -- for no other reason
19 that describing themselves as an interior designer on an
20 application to be licensed as an interior designer?

21 A Sir, I believe the statutes makes a reference to
22 implying that you are an interior designer without holding an
23 interior design license.

24 Q Well, the statute certainly forbids people who are
25 not interior designers from using the term "interior designer"

1 or words to that affect to describe themselves, and I can show
2 you that if you would like to see it.

3 I am showing you Florida Statute 481.223. I represent
4 to you that the relevant text is found in subparagraph (1)(c)
5 top of page 16 of the handout I am giving you.

6 A Yes, sir.

7 Q And do you see the text I just read?

8 A Yes.

9 Q And really my question is: Do you think it's
10 reasonable?

11 I mean, somebody files an application, the application
12 asks them what they do. I have seen it, I have read it. And
13 they say well, I am an interior designer and describes what
14 they do. And let's assume it was an accurate description
15 because they were doing residential interior design.

16 My question is just do you think it's reasonable to
17 initiate a disciplinary proceeding against a person if that is
18 all they did?

19 A Sir, my interpretation at the time would have been
20 that I discovered something by reading each one of these
21 individuals, that if they used the title interior designer why
22 would they already -- or if they were already using the title
23 interior designer why would they be filing an application for
24 a license to practice in interior design.

25 That is simply said to be a red flag that quite

1 possibly they were quite possibly already practicing interior
2 design. Whether I was right or wrong, I don't know. That's
3 why I forwarded it to someone else to make that decision
4 because that was not a decision that I would make.

5 Q You do realize that it would have been perfectly
6 lawful for them to practice interior design in residential
7 settings, correct?

8 A No, sir.

9 Q You don't agree with that?

10 A I don't agree with that.

11 Q Well, what about that statement do you disagree with?

12 A My reference would be to (6)(a)481. "A person who
13 performs interior design services or interior decorator
14 services for any residential application provided that such
15 person does not advertise as or represent himself or herself
16 as an interior designer."

17 Q Well, that is a limitation on how they can hold
18 themselves out, correct?

19 A Yes, sir.

20 Q But it specifically says that they can practice
21 interior design in residential settings without a license,
22 correct?

23 A Could you rephrase, please?

24 Q Sure.

25 As I understand the provision that you just read out

1 loud it states that a person may perform residential interior
2 design services without being a state licensed interior
3 designer.

4 A Provided that person does not advertise as or
5 represent himself or herself as an interior designer.

6 Q So those are inextricably bound together in your
7 mind, the holding out and the performance of services?

8 Let me just be clear. My take on what happened from
9 reading these files is that these people were working as
10 interior -- they are performing interior design services in a
11 residential setting. They were asked on the application what
12 do you do and they described themselves as -- well, they said
13 I am an interior designer.

14 And it seems to me that they're in a difficult position
15 because the term that most accurately describes what they do
16 is arguably interior designer. But then they got disciplined
17 for using that term in an application even though it actually
18 may in their own mind have been the most accurate term to
19 described what they do.

20 Do you see the dilemma that person may be in?

21 A Sir, I believe those people were in a very difficult
22 situation. I believe as a result -- I may be mistaken again,
23 but I believe as a result of a number of these cases appearing
24 that the Board changed its application format to give better
25 understanding and directions to its applicants.

1 Q So you agree with me that they may have been in a
2 dilemma at some point but you think it may have been sort of
3 clarified by the Board?

4 A Yes, sir. That's my understanding.

5 Q Mr. Johnson, you recently testified in Florida
6 Legislature in connection with at least a couple of different
7 bills that were proposed last spring or they were being
8 considered last spring and would have amended Florida's
9 interior design law. One of which had to do with commercial
10 food service equipment providers and the other had to do with
11 office furniture suppliers; do you remember that?

12 A Yes, sir.

13 Q My recollection in listening to -- well, I listened
14 to one hearing during which you testified, I believe it was
15 April 1 of 2009. You seemed quite strongly opposed to both
16 bills; do you recall that?

17 A If I can answer your question by saying you had asked
18 for documents, any documents that I may have. I searched all
19 of my records for any such notes where possibly I could be
20 prepared to answer questions and to tell you I have memory of
21 standing before the committees. I, however, can't tell you
22 what my comments were. But if you have those, I would be
23 happy to review those.

24 Q I do. Unfortunately you're not going to be able to
25 read them because of my chicken scratch. I can read them to

1 you, they might jog your memory.

2 At the April 1 committee hearing you told --

3 A I'm sorry, sir. Let me stop you there. Unless you
4 have a transcript of those I don't think it would be fair of
5 me to assume that what you are reporting back to me are my
6 exact words.

7 Q Fair enough. If you knew me better you probably
8 wouldn't disagree.

9 But I tell you what, I will represent to you that you
10 said these things. If you don't have any memory of it that's
11 fine, let me know. And if it refreshes your recollection you
12 can let me know that too.

13 A Read away.

14 Q You represented to the committee on April 1 that, "I
15 stand before you as the expert witness to the prosecuting
16 attorney on issues involving interior design for the State
17 Board of Architecture and Interior Design." Those comments
18 are available on-line. You will find that comment at 32
19 minutes and 43 seconds into the hearing.

20 You then offered an example of a farmer in south
21 Georgia who's irrigation pond overflowed and that had never
22 happened before.

23 At 34 minutes and 7 seconds into the hearing you
24 mentioned an incident that happened in the house office
25 building in 1994 when it was discovered that furniture and a

1 TV monitor had been placed in front of a fire exit apparently
2 after some renovations. You paraphrased, "A Legislature said
3 this should not happen in the State of Florida, this should
4 not happen in our house or in anyone's house."

5 Then you have those statements to refresh your
6 recollection about your testimony on April 1 in front of that
7 committee.

8 A Sir, if you have the documentation that said I was
9 there on April 1 I can only assume that, but I do not remember
10 making the comments.

11 Q Do you remember any of the testimony?

12 A No, sir.

13 Q Let's put aside your testimony and what you did or
14 didn't say. You do remember that a bill was proposed and
15 debated last spring that would have provided an exemption for
16 commercial food service equipment suppliers from the normal
17 coverage of the interior design practice act, correct?

18 A I remember that a bill was filed, I don't remember
19 what the bill asked.

20 Q Well, on a May 29, 2009, a letter that you sent to
21 David Minacci and that you brought to your deposition today,
22 it looks to me like you're referring to that legislative
23 effort in the fourth paragraph of that letter.

24 That letter I will go ahead and mark it. I will mark
25 it out of order because I have a system. It will be Exhibit

1 EJ-11. Let me just trade with you if I could. You already
2 have this marked as your copy, I don't want to mess up your
3 system either. I tell you what, see if you can get that
4 exhibit sticker to stick to what you have already got marked
5 there.

6 Just so we are on the same page we have got marked as
7 Exhibit EJ-11 May 29, 2009 letter from you to David Minacci,
8 correct?

9 (Plaintiff's Exhibit Number EJ-11 a/k/a EJ-6
10 marked for identification.)

11 A Correct.

12 Q Read the fourth paragraph to yourself if you would
13 and let me know when you're ready to discuss it.

14 A Yes, sir.

15 Q It expresses I think a certain amount of
16 consternation, perhaps even bitterness about the legislative
17 process; do you think that's a fair summary of that paragraph?

18 A Never.

19 Q No?

20 A No.

21 Q In the second sentence it says, "I was not
22 privileged, thankfully, to the behind-the-scenes agreements
23 that placed the level of restaurant dealers into their new
24 exempt role while leaving the office dealers outside on the
25 curb. As a matter of record, I had offered in several

1 instance to draft language which, again in my opinion, could
2 have offered each of these parties entry into classifications
3 to ensure their area of expertise while at the same time
4 ensuring customers of protection."

5 Do you see that?

6 A Yes, sir.

7 Q Can you tell me, please, what is the significance of
8 the sentence, if you recall not being privileged to be behind
9 the scenes?

10 A I considered myself very fortunate not to have had to
11 have dealt downtown anymore than I did because you must
12 understand there was no compensation for me to appear at any
13 time. I took time away from my own business to appear.

14 Q Were you compensated in 1994 when you --

15 A No.

16 Q -- were the negotiator on the practice act?

17 A No, sir. I was not.

18 Q You seem to feel differently about this particular
19 issue. In other words, the bills that were before the
20 Legislature in the spring of 2009 as you just mentioned not
21 being compensated as compared to 1994 when you worked on the
22 practice act and also were not compensated, why the
23 difference?

24 A I'm sorry, where did you read that?

25 Q You just testified that you were thankful not to be

1 behind the scenes and you made the comment that you were not
2 compensated to be a part of this kind of lobbying process,
3 correct? In 2009?

4 A Obviously my words were mistaken by you. I was just
5 thankful not to be there.

6 Q Why did you mention not being compensated then?

7 A Draw your own conclusions. I'm sorry, I meant no
8 intent about being compensated or not being compensated.

9 Q What is the significance of the statement about the
10 fact that behind-the-scenes agreements that placed the level
11 of restaurant dealers into their new exempt role while leaving
12 the office dealers outside on the curb, what does that mean?

13 A You have to read that on into the second paragraph or
14 into the second sentence. "As a matter of record, I had
15 offered in several instances to draft language which again, in
16 my opinion, could have offered each of these parties entry
17 into classifications to ensure their area of expertise while
18 at the same time ensuring consumers a protection though in all
19 instances my offers apparently fell short."

20 I can't tell you the individuals I made an offer to at
21 various points when I would be downtown, but from my
22 viewpoint, which obviously my viewpoint carries no weight
23 other than any other citizen in the State of Florida. But
24 from my viewpoint that if these two individual groups, namely
25 restaurant dealers and the office dealers, if they chose to

1 enter some creative language into the legislative process and
2 probably with the right advocates, organizations, such as
3 yours or AIA or the numerous other advocate groups, that
4 possibly they could have come in. And I emphasis the word
5 "possibly".

6 The Legislature may have seen fit to bring in a
7 subclause or another clause just as there is a clause now of
8 interior design architecture, interior decorators, and Chapter
9 481, that quite possibly a person could come in as a
10 restaurant designer or a person could come in as whatever this
11 other term is in here, so as a restaurant dealer or a
12 restaurant designer or an office dealer.

13 I remember making the comments -- remember even I think
14 making those comments to Ms. Young as well as some people from
15 either Mr. Burby or some of Mr. Burby's associates possibly.
16 That if you were to look at the statute and you wanted to
17 address that type of clause and that type of professional
18 designation, that quite possibly you could if you would
19 include going back to using your term of grandfathering.

20 Again, of continuing education and ensuring that
21 consumers were protected and then in the future that those
22 individuals would eventually move into a process where they
23 too had to have education, experience, and examination in the
24 eyes of the Florida Legislature to protect consumers.

25 Q None of those things were done, were they?

1 A None that I am aware of.

2 Q I represent to you that the law currently with
3 respect to commercial food service equipment providers is that
4 provided they make certain disclosures, essentially that
5 they're not licensed and a couple of others, they may now
6 provide what amount to space plans in connection with the sale
7 and installation of their equipment.

8 And in fact, if one of them wanted to hire me, for
9 example, tomorrow, despite the fact that I know nothing about
10 any of that, they could send me out in the field. Again,
11 provided certain disclosures were made and I could draw
12 specifications and space plans.

13 Do you have a different understanding?

14 A Doesn't that language go farther? And this is a
15 question.

16 Q Sure.

17 A Doesn't that language go farther to say that if it
18 impacts the building codes or life safety then they must or
19 shall include or employ a licensed architect or an engineer?

20 Q According to the terms of the statute the exemption
21 only applies if the designs, specifications, or layouts are
22 not used for construction or installation that may affect
23 structural, mechanical, plumbing, heating, air conditioning,
24 ventilating, electrical, or vertical transportation systems.

25 My understanding is that the way the law however has

1 been interpreted is that whatever it was that commercial food
2 service equipment providers were doing -- for example, Harry
3 Pierce. I have seen his drawings, they are definitely
4 specifications and space plans. They can do those things now.
5 Again, providing that they disclose their non-license status.

6 The law says what it says, let's assume that that's
7 true. If it's true, do you think that is -- do you think that
8 puts the public at risk in Florida if commercial food service
9 equipment suppliers are no longer subject to the provisions of
10 Chapter 481?

11 A Sir, my response to that is that is a decision by the
12 Florida Legislature.

13 Q One that you opposed last spring.

14 A It's a decision by the Florida Legislature.

15 Q I get you. I am just trying to sort of get an
16 understanding of where you're coming from.

17 I will tell you that I am was surprised to see that
18 exemption because the effect, as I understand it now, is that
19 if you looked at like the ground floor of a hotel you would
20 have to be a state licensed interior designer to just go in
21 and do a space plan to rearrange the furniture in the lobby,
22 but you wouldn't have to be a state licensed interior designer
23 to do the space plan for where everything is going to go in
24 that commercial kitchen of the restaurant in the hotel. And
25 that strikes me as difficult to reconcile. Again, assuming

1 that's true.

2 If that is an accurate summary of where things stand
3 now, would that concern you as somebody who was one of the
4 moving forces behind getting a practice act here in Florida in
5 the first place?

6 A Again, sir, the actions that the Florida Legislature
7 takes on thousands of issues, who's to second guess their
8 reasons for implementing new laws?

9 Q I am not here to second guess or even ask you to
10 second guess. I am really more asking you as someone who has
11 been an advocate.

12 I think we agreed that the Florida State alumni page
13 was accurate where they described you as adamant, in favor of
14 licensure for designers. That's more of the spirit in which I
15 am asking.

16 A Yes, sir. And if you're asking me that for an
17 advocate for interior -- the practice of interior design, yes,
18 sir. For the practice of restaurant design or whatever they
19 wish to call themselves, no, sir. I don't have a position on
20 that at this point in time.

21 Q I am not sure I understand that answer. I don't want
22 to stay on this point much longer but I do want to try to get
23 an understanding.

24 Some people say the premise behind this basic law that
25 you have to be a state licensed interior designer in Florida

1 is that you could put the public at risk if non-licensed
2 people were allowed to do a space plan or specify items for
3 the inside of a commercial space. You understand that, right?

4 A Yes, sir.

5 Q The popular perception seems to be, and I think it's
6 correct but we don't need to agree on that today, that
7 commercial food service equipment suppliers have effectively
8 been exempted from those restrictions. Their employees don't
9 need to be state licensed interior designers to do a space
10 plan for a commercial kitchen.

11 A Could I interrupt you?

12 Q By all means.

13 A Do they need to be an architect?

14 Q No. No.

15 A Thank you.

16 Q And it really is my understanding that if one of them
17 wanted to hire me tomorrow and send me out in the field that
18 would be okay. Again, provided certain disclosure provisions
19 are met.

20 And that just strikes me as difficult to reconcile
21 because it seems to me that if there really is a health,
22 safety, and welfare concern here, which just to be candid
23 about I don't think there is. But I have been told by a lot
24 of people, like Janice Young and others that there is.

25 It seems like a commercial kitchen would be a place

1 where you would want to have a pretty high level of oversight
2 and yet that is the one place in a commercial setting where
3 they have actually lessened the amount of oversight. And that
4 just strike me as anomalous and I would like to get your
5 reactions and see if you agree with that.

6 A If I understand your question, and I could ask you to
7 rephrase it numerous times and I am still not sure if I am
8 understanding your question so I will make a stab at
9 answering.

10 Do I understand what passed? No, sir. I don't. Do I
11 understand why it passed? No, sir. I don't. Do I understand
12 the ramifications of if someone is injured? No, sir. I
13 don't.

14 Q Were you the one who wrote -- do you remember if you
15 were the one that wrote into the practice act the term
16 "nonstructural interior elements of a building or structure"?

17 A I don't remember writing that in. Although, I do
18 remember the language probably came from the original title
19 act. I am not sure that is original language.

20 Q I don't understand that term, can you explain it to
21 me? Can you tell me what constitutes a nonstructural interior
22 element for a building or structure?

23 A It would be a nonsupporting wall.

24 Q Looking around this room that we are sitting in here
25 today, would the table in front of us be a nonstructural

1 interior element?

2 A Typically it would be declared as loose furnishings.

3 Q Well, furnishings are defined as interior design in
4 the statute so do you think it's a nonstructural interior
5 element or not?

6 A If you would like to take that definition that far I
7 would not typically. I would depend upon other definitions.

8 Q Like what?

9 A Furnishings.

10 Q What about the window treatments, is that a
11 nonstructural interior element of the building or structure?

12 A Typically in my opinion that would be nonstructural,
13 but I would have to let others formulate that decision.

14 Q So the window treatments that I am looking at here,
15 which are basically just some curtains and some wooden
16 Venetian blinds, that would be a nonstructural interior
17 element?

18 A If that's the way the State Board would review those.

19 Q Well, my understanding is you used to essentially
20 function in the role of the person to whom David Minacci -- he
21 told me under oath that when he had a question of this kind **he**
22 **would come to you for clarification;** is that true or not true?

23 A Sir, I stopped in that role earlier this year so --

24 Q But you used to play that role, right?

25 A So anything I would tell you would just be a personal

1 comment that I may or may not have at this particular point in
2 time.

3 Q I get that. I am really just trying to get a sense
4 of whether you have an understanding of what falls in that
5 definition and what doesn't.

6 A The draperies to me would be a nonstructural.

7 Q Interior element?

8 A Except I would never address them as being
9 nonstructural, I would address them as being furnishings.

10 Q But just so we're really clear, if somebody were to
11 specify a window treatment that would be covered by the
12 definition of interior design --

13 A Yes.

14 Q -- under the statute, correct?

15 A If it's in a public space or if applicable building
16 codes come into play.

17 Q Why don't we go back and this might help shed some
18 light, go back to Exhibit EJ-1 which is the James Burby
19 letter. And if you would, turn to page 4.

20 The second paragraph of page 4 of Exhibit EJ-1 states,
21 "In addition, the Board is represented by an Assistant
22 Attorney General from the Florida Attorney General's office
23 and it has been the opinion of the Attorney General's office
24 for the past several years that any reference to commercial
25 settings for furniture must be performed by a licensed

1 architect or interior designer."

2 Do you see that?

3 A Yes, sir.

4 Q Is that an accurate statement of your understanding
5 of --

6 A That was at the time. Yes, sir.

7 Q So if someone were to specify this particular table
8 to put in this room. And I will represent to you that we are
9 in a business right now, we're not in a residence. We're at a
10 court reporting business. If someone were to specify this
11 particular table for the room that we're sitting in here,
12 you're understanding is that that would be something only a
13 state licensed architect or interior designer could do,
14 correct?

15 A Based upon the opinion of the Assistant Attorney
16 General who served as the Board's counsel.

17 Q Is that Mary Ellen Clark?

18 A Yes, sir.

19 Q And just to sort of finish up. We're also sitting on
20 a carpet. Would the person who specified the carpet for the
21 room that we're sitting in here, would that person need to be
22 a state licensed architect or interior designer?

23 A Yes, sir.

24 Q What about the paint on the walls of the room that we
25 are sitting in?

1 A If it's impacted by the building codes.

2 Q Why does that matter?

3 A Fire spread.

4 Q That means statutorily based on the language of the
5 statute, I don't see that that is relevant but you are saying
6 that it is in your view?

7 A I believe there is language that is applicable to
8 building codes.

9 Q Well, that comes into play when you are talking about
10 retail sales exemptions. I am talking about the person that
11 specified the paint for the interior of the room not in
12 connection with the retail sale.

13 A I stand corrected.

14 Q So the person who specified the paint would need to
15 be a state licensed -- or someone who decided what paint to
16 put on the walls would need to be a state licensed interior
17 designer or architect, correct?

18 A Yes.

19 Q What about this light that is hanging over the table,
20 would the person that specified that light need to be an
21 interior designer or architect, state licensed?

22 A I would think so, yes.

23 Q I will tell you that one of the issues in this
24 case -- I believe what is going to be one of the issues in
25 this case is that the scope of the law and whether people can

1 understand what it does or doesn't cover. So I am going to
2 ask you some questions of that nature and I have some
3 documents of that nature that I would like you to look at when
4 I ask you these questions.

5 One is actually something that came up in my family.
6 My brother-in-law for a period of time was a carpenter, a
7 general contractor, and he used to do work for Ralph Lauren
8 among others all over the country including Florida. And the
9 work essentially involved going into like a shopping mall and
10 being responsible for building out the store, Polo Outlet
11 stores specifically. This would include everything. They
12 would literally just gut the existing store and they would
13 come in and build it out the way a Polo store looks.

14 I used to actually work for him. I didn't work for him
15 in Florida but I have worked on one of these projects. On any
16 given day I probably saw anywhere between three and four
17 people doing like rough sketches of various kinds for things
18 like shelving, dressing rooms, the location of different kinds
19 of product towers, so forth.

20 And my brother-in-law will testify that he did dozens
21 of those kinds of drawings working on these kinds of projects
22 in Florida. Would it be a violation of the law in your view
23 if, for example, a carpenter was working on this kind of a
24 build out project, saw that let's say the number of dressing
25 rooms called for on the blueprints that he's working off of

1 would not fit in the space allocated and basically sketched
2 out a proposed fix so they were going to do three dressing
3 rooms instead of four or shave 6 inches off of each dressing
4 room. Would the creation of that drawing violate Florida's
5 interior design law if it were done by someone who is not a
6 state licensed interior designer in your view?

7 A Yes, sir.

8 Q Sorry?

9 A Yes, sir.

10 Q Feel free to elaborate. I didn't want to cut you
11 off, were you going to --

12 A No.

13 Q Same question. If the same person did a sketch to
14 show, for example, one of his workers how to make some
15 shelving that didn't fit in the space allocated, how to make
16 that shelving fit. In other words, he draws a sketch and he
17 says look, it's too wide. I will have to shave off two inches
18 off this end and it will fit in this space now. Would that
19 sketch that shows the worker how to make that shelving fit the
20 space --

21 A Sir, I have no idea.

22 Q Why were you able to answer the first question but
23 not the second?

24 A Most likely the first probably falls under the
25 practice of architecture. When you're to read through that

1 definition, the second one, there is so many possibilities for
2 that question. Are those shelves recessed, are they into a
3 walkway, do they extend into a door, do they cover a sprinkler
4 head, are they within 18 inches of a sprinkler head or is
5 there any sprinkler in the building.

6 I'm sorry, hopefully your brother-in-law is a licensed
7 general contractor and is aware enough of Florida building
8 codes that he would have involved the correct people. I might
9 add that's reason enough not to shop in one of the Polo shops.

10 My brother-in-law who did the exact same work, was a
11 licensed contractor as he did work in shopping malls.

12 Q It turns out there are a lot of retail retailers in
13 Florida of which the same scenario is true.

14 A Sir, I would tell you that in 1994 when the language
15 was drafted Florida Retail Federation worked actively to see
16 to it that their members were protected by the interior design
17 practice act.

18 Q I understand what you're saying. I am just telling
19 you that witnesses in this case will testify that it is
20 actually quite common for people who are not licensed interior
21 designers or architects or licensed general contractors to
22 make drawings of buildings they are working on.

23 A I don't mean to be argumentative but I think there
24 are plenty of people who have far too much alcohol in their
25 system and they still continue to drive also.

1 Q Yeah.

2 Do you know how many states regulate the practice of
3 interior design?

4 A No, sir. I do not.

5 Q Would it surprise you to hear that only three of the
6 50 states regulate the practice of interior design?

7 A No, sir.

8 Q Why not?

9 A It's a relatively new profession I would think.

10 Q I was at a wedding in Mexico a couple of weeks ago,
11 it rained. They had to bring what was supposed to be an
12 outside wedding in. Assuming the wedding planner had to sort
13 of sketch out for the caterer where to set-up the tables, the
14 food trays, so forth and so on, would the production of those
15 drawings constitute a violation of Florida's interior design
16 law?

17 A Sir, I have no idea what the law is in Mexico.

18 Q No. No. Assuming this was in Florida.

19 A Sir, I don't know. You're bringing a wedding planner
20 from Mexico into the State of Florida. I don't know. I don't
21 know.

22 Q What if it was a Florida wedding planner?

23 A Right. Does the layout of those table impact the
24 ingress or egress of that space?

25 Q Do you think that matters under the context of the

1 law?

2 A Yes, sir.

3 Q Where in the law does whether a particular item
4 affects ingress or egress effect whether it's covered?

5 A If I were reading it I would read it into the
6 definition of interior design.

7 Q And why would you do that?

8 A Because that's my personal understanding of it.

9 Q Can you base that personal understanding on any text
10 in the law?

11 A Only in my reading and personal interpretation of
12 481.203(8).

13 Q That's a hard one to answer. The tables as I recall
14 were about ten feet across. So let's say it was a wedding in
15 Florida. We have tables about ten feet across and they fill
16 up like half of the room and the other half is filled up with
17 like catering equipment.

18 Can you visualize that? Can you answer the question or
19 is it not enough detail?

20 A It is enough detail. If you are comfortable being in
21 the room and if you are comfortable hiring the wedding planner
22 to do your own space and if you're comfortable taking the
23 personal liability to cover all of the exit doors and all
24 means of escape should one of the candelabras on your wedding
25 planner's table have wax that melts onto a textile that then

1 goes up in flames. If you are comfortable with that, I am
2 still not and I don't think that Florida Legislature was
3 either.

4 Q And if somebody were to get ahold of those drawings
5 showing the placement of the tables and the catering tables
6 and the food stations, and if they had turned those drawings
7 over to the Board and you had been asked by Smith, Thompson to
8 review those and determine whether you thought that those
9 drawings fell within or without the interior design law what
10 would your reaction have been?

11 A I don't know what my opinion would have been.

12 Q What additional information would you need?

13 A I would need information on the applicable local
14 building codes, the state codes --

15 Q Why would you need information on the codes?

16 A Sorry, I lost my train of thought.

17 Q My question was: Why would you need to know
18 information about the building codes? As I read the law it
19 just says you can't make a drawing relating to the interior
20 elements of a building or space. It has nothing to do with
21 building codes unless we are talking about retail sales
22 exemption but we are not. We're talking about just somebody
23 doing a drawing to show the caterer where to set-up.

24 A I need you to rephrase it again.

25 Q Sure.

1 So there is no retail sales in my example because it is
2 a wedding planner making a drawing for a caterer; do you
3 understand that?

4 A I understand that.

5 Q So what I am wondering is why do you think it matters
6 whether those tables are covered by a building code? Because
7 as I read the law it just says you can't do a drawing if
8 you're not a state licensed interior designer if the drawing
9 relates to the nonstructural interior elements of a building
10 or structure.

11 A My only reply to that would be that's where our two
12 legal counsels disagree. Obviously you read the statute in
13 one fashion, the legal counsel I depend upon reads it in a
14 different fashion.

15 Q Which legal counsel is that?

16 A C. Gary Williams, Ausley & McMullen.

17 Q What does Gary Williams think about it?

18 A You would have to ask Mr. Williams.

19 Q Well, you brought him up. Apparently you have an
20 understanding of whether --

21 A Sir, you would have to ask Mr. Williams. I learned a
22 long time ago never to --

23 Q But you did. You told me that I have one
24 interpretation and Mr. Williams' has another.

25 A Well, that's why you will need to --

1 Q You're going to have to answer the question to the
2 best of your ability, Mr. Johnson.

3 A Mr. Williams' advice to me was that building codes
4 are applicable to the work that I do.

5 Q I don't understand that.

6 A I'm sorry. That's the best answer I can give you.

7 Q Let me try it differently.

8 What if I were getting married here in Florida, my
9 wedding planner asked me if it was legal for her to sketch out
10 a floor plan to show the caterer how to set-up the room and
11 that floor plan was going to depict where the tables are and
12 maybe even a dais and the hot food for the caterer and so
13 forth.

14 I honestly don't know what I would tell her. I think
15 it would actually be illegal for her to make that drawing but
16 I don't know for sure, do you know?

17 A No, sir.

18 Q Do you know what a rendering is?

19 A Yes, sir.

20 Q What is your understanding of a rendering?

21 A Typically it would be considered a drawing of a
22 proposed installation.

23 (Plaintiff's Exhibit Number EJ-4 marked for
24 identification.)

25 Q I will show you what's been marked as Exhibit EJ-4.

1 I represent to you --

2 A Excuse me one second. My understanding is that it
3 would be a couple of hours and a couple for me is two hours.

4 Q Yeah. I thought it would go quicker. I have about
5 15 minutes.

6 A I am here.

7 Q I am showing you what's been marked as Exhibit EJ-4.
8 I represent to you that that is a collection of documents that
9 I have pulled and copied from the Board's disciplinary action
10 against an interior designer named Juan Montoya. I didn't
11 copy the whole file but I will tell you and represent to you
12 that the project pertained to the International Design Center
13 in Naples, Florida.

14 Are the graphics that make up Exhibit EJ-4 renderings
15 based on your understanding of that word?

16 A I would consider them so. Yes, sir.

17 Q Assuming those relate to or are conceptions of sort
18 of the interior of a building, a commercial building,
19 specifically the International Design Center and they
20 represent Mr. Montoya's vision of what it would look like
21 inside, looking at those drawings would you say that those are
22 covered or not covered by Florida's interior design law in the
23 sense that you have to be a state licensed interior designer
24 to produce a drawing?

25 A Sir, I have no idea. There is nothing here for me to

1 read for scale or finishes. I don't even know if Mr. Juan
2 Montoya is a licensed interior designer in the State of
3 Florida.

4 Q He's not. At least he was not at the time he was
5 disciplined.

6 What more would you need to know whether it would be
7 permissible for a non-licensee to create this sort of drawing?

8 A My assumption was that the interpretation of the
9 Board was that renderings -- excuse me one second. I don't
10 know.

11 (Plaintiff's Exhibit Number EJ-5 marked for
12 identification.)

13 Q I will show you what's been marked as Exhibit EJ-5.
14 I am putting that exhibit sicker under the previous sticker
15 which is DM-8.

16 I will represent to you that these are drawings that
17 were made by an individual who sells display racks to retail
18 stores including retail clothing stores. These are drawings
19 that that individual prepared in the course of selling display
20 equipment to a customer.

21 Are these drawings covered or not covered by Florida's
22 interior design laws as you understand it?

23 A As I understand it, if I could reference EJ-4 and
24 EJ-5 at the same time --

25 Q Sure.

1 A -- please, sir?

2 I would assume that based on the definition of interior
3 design that these are either studies or drawings, thus those
4 would be covered by the interior design law.

5 Q Are you referring to EJ-5 specifically or both?

6 A I am referring to both EJ-4 and EJ-5.

7 Q So your view is that both would be covered by the
8 law?

9 A That would be my understanding based off of what you
10 have shown me.

11 You indicated that EJ-5 is possibly by a furniture
12 fixture company, I would have to see additional information on
13 that one.

14 Q EJ-5 I will represent to you was created by an
15 individual who is in the business of selling display racks to
16 retailer. I believe this was a clothing store, if that helps.

17 A That one could very easily also be considered as the
18 practice of interior design.

19 Q I just have a couple more questions.

20 Mr. Johnson, I gather that you're aware that in January
21 of 2009 the Board issued what I referred to as a declaratory
22 order in response to an application that IDAF filed pertaining
23 to basically what office furniture sellers could or could not
24 do in terms of creating drawings and specifications to go with
25 their products. Are you aware of such an order?

1 A I am aware that such an order was either requested or
2 filed, but I had no idea what -- at least I don't think I know
3 the contents of that.

4 Q I will show it to you. I won't make it an exhibit.
5 I will just show it to you and see if it jogs your memory.

6 A If one of you would please translate for me and let
7 me know what I have just read.

8 Q I had the same problem.

9 A Obviously the two of you are the attorneys in the
10 room.

11 Q Mr. Johnson, you have just taken about a minute and a
12 half or two minutes to review what I have marked as -- I
13 didn't mark it, it's been marked previously as Exhibit DM-4
14 and that's the January 23, 2009 declaratory order by the
15 Board.

16 As you sit here today do you have any recollection of
17 that document or what its significance is?

18 A No, sir. I don't.

19 Q Then I am not going to ask you about it.

20 Mr. Johnson, are you aware of any evidence that
21 Florida's licensing of interior designers and specifically the
22 requirement that you be a state licensed interior designer in
23 order to perform non-residential interior design work provides
24 any actual benefits to public health, safety, or welfare?

25 A Could you rephrase, please?

1 Q Sure.

2 What I am wondering is if you are aware of any evidence
3 that --

4 A If we can take a break?

5 Q Sure.

6 (A short break was taken.)

7 BY MR. NEILY:

8 Q The good news is we are literally on my last
9 question.

10 A Thank you.

11 Q Basically I am just looking -- I want to know if
12 you're aware of any evidence that the licensing of interior
13 designers in Florida has sort of benefited the public in any
14 documentable way.

15 A Sir, I cannot give you any written evidence. I have
16 not done research into that. It would be my hope that through
17 mandatory continuing education that individuals that call
18 themselves interior designers are aware of some of the code
19 issues that should be involved in commercial spaces. However,
20 I don't profess to be able to tell you if that in fact has
21 happened or has not happened.

22 Q I appreciate that. That's all the questions I have.

23 MR. NEILY: We're going to do one thing on the record
24 by way of clean. This exhibit that I marked as EJ-11, I
25 shouldn't have created a gap in my exhibits so what I am

1 going to do is just put the sticker EJ-6 over it so we
2 don't have a gap in the exhibits.

3 I used exhibits 1 through 5 and we have this odd jump
4 to 11 so I am changing Exhibit EJ-11 and Mr. Glogau and I
5 already discussed this and I have now changed Exhibit
6 EJ-11 to EJ-6. And for the record, EJ-6 is a May 10, 2009
7 letter from Mr. Johnson to Mr. Minacci and also a June 3,
8 2009 letter from Mr. Minacci to Mr. Emory.

9 THE WITNESS: And I believe you had asked that I
10 return a previous check to you. Here is your check number
11 7356 dated October 27, 09 in the amount of \$41.87.

12 MR. NEILY: Fair enough.

13 Mr. Glogau, do you have anything?

14 MR. GLOGAU: Nope.

15 MR. NEILY: We're done. Thank you.

16 (A conversation was held off the record.)

17 MR. NEILY: Back on the record.

18 Mr. Johnson has asked to receive a copy of the
19 transcript of this deposition. Mr. Glogau has advised him
20 that it is a public record and upon request he will
21 provide Mr. Johnson with such a copy.

22 Is that satisfactory?

23 THE WITNESS: Yes. Thank you.

24 (Deposition concluded.)

25

CERTIFICATE OF COURT REPORTER

STATE OF GEORGIA :
COUNTY OF GLYNN :

I, ERIN B. POEPPING, Certified Court Reporter 2661, acting as such, hereby certify that the foregoing deposition of J. EMORY JOHNSON, after having been duly sworn by me, was reported by me, and then transcribed by me and that the same contains a true, correct and complete transcription of said deposition.

I FURTHER CERTIFY that I am neither of kin nor counsel to any party hereto, and am in nowise interested in the event of the cause.

I FURTHER CERTIFY that I have provided to all counsel participating in the deposition herein with the disclosure affirmation as required by the Georgia Board of Court Reporting and that said affirmation will be attached and made a part of the record hereof.

The witness elected to waive reading and signing the deposition.

IN WITNESS WHEREOF, I hereby affix my hand and seal this the 30th of November, 2009.

Erin B. Poepping, CCR, 2661
Advanced Verbatim Reporting, Inc.
1607 Norwich Street
Brunswick, Georgia 31520
(912) 264-1552 or (877) 848-7957

1 STATE OF GEORGIA

2

COUNTY OF GLYNN

3

4 DISCLOSURE OF COURT REPORTER

5

I hereby certify as follows:

6

7

1. I am not disqualified as a court reporter for the taking of depositions in this matter due to a relationship of interest under the provisions of O.C.G.A. 9-11-28(c);

8

9

2. That I am a Georgia Certified Court Reporter;

10

3. That I am here as a independent contractor of Advanced Verbatim Reporting;

11

12

4. That Advanced Verbatim Reporting was contacted by the office of the taking attorney to provide court reporting services for this deposition;

13

14

5. That I will not be taking this deposition under any contract prohibited by Georgia law;

15

16

This 23rd day of November, 2009.

17

Court Reporter

18

19

20

21

22

Advanced Verbatim Reporting, Inc.
1607 Norwich Street
Brunswick, Georgia 31520
(912) 264-1552 or (877) 848-7957

23

24

25