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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

KATHLEEN McHUGH, and DEANNA SCHNEIDER, Individually and on behalf of all persons similarly situated,
Plaintiffs,
vs. CASE NO. 11-CV-724
MADISON-KIPP CORPORATION,
CONTINENTAL CASUALTY COMPANY,
UNITED STATES FIRE INSURANCE COMPANY and ABC INSURANCE COMPANIES 1-50,
Defendants,
and
MADISON-KIPP CORPORATION,
Cross-Claimant,
vs.
CONTINENTAL CASUALTY COMPANY,
COLUMBIA CASUALTY COMPANY and UNITED STATES FIRE INSURANCE COMPANY,
Cross-Claim Defendants,

(Caption continued)
DEPOSITION OF
PETER M. UTTECH
Madison, Wisconsin
January 8, 2013
4:00 p.m. to 5:27 p.m.
Kathy A. Halma, RPR

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1 and
2 CONTINENTAL CASUALTY COMPANY and
3 COLUMBIA CASUALTY COMPANY,
4 Cross-Claim Defendants
5 and
6 LUMBERMENS MUTUAL CASUALTY
7 COMPANY, AMERICAN MOTORISTS
8 INSURANCE COMPANY, and JOHN DOE
9 INSURANCE COMPANIES 1-20,
10 Third-Party Defendants.

11 A P P E A R A N C E S
12 THE COLLINS LAW FIRM, P.C., 1770 North
13 Park Street, Suite 200, Naperville, Illinois, 60563, by
14 MR. EDWARD J. MANZKE, ejmanzke@collinslaw.com, appeared
15 on behalf of the Plaintiffs.
16 VARGA, BERGER, LEDSKY, HAYES & CASEY,
17 125 South Wacker Drive, Suite 1250, Chicago, Illinois,
18 60606-4473, by MR. MICHAEL D. HAYES, mhayes@vblhc.com,
19 appeared on behalf of the Plaintiffs.
20 MICHAEL, BEST & FRIEDRICH, LLP, 100 East
21 Wisconsin Avenue, Milwaukee, Wisconsin, 53202, by MR.
22 JOHN A. BUSCH, jabusch@michaelbest.com, appeared on
23 behalf of Madison-Kipp Corporation.
24 MICHAEL, BEST & FRIEDRICH, LLP, One
25 South Pinckney Street, Suite 700, Madison, Wisconsin,
53703, by MS. LEAH H. ZIEMBA, lhziemba@michaelbest.com,
appeared on behalf of Madison-Kipp Corporation.
TROUTMAN SANDERS, LLP, 55 West Monroe
Street, Suite 3000, Chicago, Illinois, 60603-5758, by
MR. CHRISTOPHER H. WHITE,
christopher.white@troutmansanders.com, appeared on
behalf of the Defendant Continental Casualty Company.
MEISSNER, TIERNEY, FISHER & NICHOLS,
S.C., 111 East Kilbourn Avenue, 19th Floor, Milwaukee,
Wisconsin, 53202-6622, by MS. JENNIFER KREIL,
jbk@mtfn.com, appeared on behalf of United States Fire

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1 Insurance Company.
2 DEUTCH & WEISS, LLC, 7670 North Port
3 Washington Road, Milwaukee, Wisconsin, 53217, by MR.
4 CHARLES W. KRAMER, charles.kramer@mweisslaw.net,
5 appeared on behalf of American Motorists Insurance
6 Company.
7 I N D E X
8 PETER M. UTTECH
9 By Mr. Busch.....5
10 By Mr. White.....41
11 By Mr. Kramer.....51
12 By Ms. Kreil.....54
13 E X H I B I T S
14 No. 1 Discovery Documents; PLF_162_S_MARQ_000001
15 to 000124.....5
16 No. 2 Answers to Defendant Madison-Kipp Corporation's
17 First Set of Interrogatories.....5
18 No. 3 Answers to Defendant United States Fire
19 Insurance Company's First Set of
20 Interrogatories.....5
21 No. 4 Responses to Defendant Madison-Kipp
22 Corporation's First Set of Requests for
23 Documents and Things.....5
24 No. 5 Responses to Defendant United States Fire
25 Insurance Company's First Set of Requests
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1 No. 7 RJN Letter, 7-20-12; RJN011684 to 97.....38
2
3
4 (The original transcript was sent to Attorney
5 Bianchi.)
6
7 (The original exhibits were retained by the court
8 reporter and attached to the original transcript.
9 Copies were attached to all ordered copies.)
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<p>1 TRANSCRIPT OF PROCEEDINGS 2 (Exhibits 1 through 5 were marked.) 3 PETER M. UTTECH, called as a witness 4 herein by the Defendants, after having been first 5 duly sworn, was examined and testified as 6 follows: 7 EXAMINATION 8 BY MR. BUSCH: 9 Q Please state your name. 10 A Peter M. Uttech. 11 Q And what's your current home address? 12 A 4710 Onyx Lane, Madison. 13 Q And can you briefly describe for me your 14 educational background since high school. 15 A Four years of college. 16 Q Where did you go to school? 17 A Oshkosh. 18 Q Did you obtain a degree? 19 A Yes. 20 Q And in what? 21 A Bachelor of science. 22 Q In any area of specialty or major? 23 A Economics and mathematics. 24 Q Can you briefly describe your work history since 25 graduating from college?</p>	<p>1 duties that you had during that time period? 2 A Well, I started out managing branches. I did a 3 little bit of everything. 4 Q Did you originate loans? 5 A I originated loans. 6 Q And then you also served as a branch manager? 7 A Correct. 8 Q I'm going to show you what's been marked as 9 Exhibit 2 and ask you if you can identify that, 10 please. Well, I will identify it for the record. 11 These are the Answers to Interrogatories to 12 Defendant Madison-Kipp Corporation's First Set of 13 Interrogatories. Do you recall drafting these 14 and signing these, if you look on the back page? 15 A Yes, I do. 16 Q And do you recall -- And this is just for 17 identification purposes. Do you recall answering 18 these questions and signing them? 19 A Yes, I do. 20 Q Let me show you what's been marked as Exhibit 3, 21 which is Class Members' (Peter Uttech and Louise 22 Loehnertz Uttech) Answers to Defendant United 23 States Fire Insurance Company's First Set of 24 Interrogatories. If you look on the last page, 25 you will see your signature there, as well, in</p>
Page 6	Page 8
<p>1 A The majority of my work history was in the 2 savings and loan business for 34 years. 3 Q And what did you do in the savings and loan 4 business? 5 A Well, my last assignment was retail branch 6 manager on the west side at the Hilldale office. 7 Q Did you work for one savings and loan during that 8 time period? 9 A Yes, First Federal Savings & Loan, which was 10 purchased by First Federal of LaCrosse and then 11 by Associated Bank. 12 MS. KREIL: Can you speak up a little 13 bit. I'm having a really hard time hearing you. 14 THE WITNESS: Sure. 15 BY MR. BUSCH: 16 Q Are you retired now? 17 A I'm retired. 18 Q And when did you retire? 19 A 2005. 20 Q Have you had any jobs, part time or otherwise, 21 since retirement? 22 A I'm a volunteer and I am a caregiver. 23 Q Can you briefly describe for me while employed by 24 Associated Bank, First Federal and all its 25 predecessors, was their a progression of job</p>	<p>1 the verification. Do you recall answering these 2 questions and signing that document? 3 A Yes, I do. 4 Q And do you recall doing so to the best of your 5 ability at the time? 6 A Yes, I do. 7 Q Okay. Let me show you what's been marked as 8 Exhibit 4, which is -- and Exhibit 5, which are 9 your responses to the first request for documents 10 first promulgated by Madison-Kipp, which is 11 Exhibit 4, and then by United States Fire 12 Insurance, which is Exhibit 5. Do you see those? 13 A This one is from -- 14 Q If you look on the last page, I think you will 15 probably see it. 16 A Okay. 17 Q And do you recall, sir, that you were asked by 18 your lawyers or otherwise to make a diligent 19 search for documents relating to the property at 20 162 South Marquette? 21 A Yes. 22 Q And did you make such a diligent search? 23 A I did. 24 Q Let me show you what's been marked as Exhibit 1, 25 which I have on the bottom PLF_162_S_ MARQ_000001</p>

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1 through 000124, which I represent to you is the	1 MR. BUSCH: I didn't see a copy of it in
2 documents that were proffered to us as being	2 the documents that were produced. I will go
3 responsive to the document requests made to you.	3 through that list again. But, Ed, if there's
4 If you could just take a moment to take a look at	4 not, I may want a copy of it.
5 it, and do those appear to be the documents that	5 BY MR. BUSCH:
6 you supplied in response to the request for	6 Q Do you recall, sir, what your monthly rental is?
7 production of documents?	7 A \$910.
8 A Yes, they are.	8 Q And how does that compare to the rental that you
9 Q When did you purchase 162 South Marquette?	9 received on a monthly basis prior to
10 A 1977.	10 December 2010?
11 Q Can you describe for me the circumstances under	11 A Slightly more.
12 which you purchased it?	12 Q What did you receive in December of 2010?
13 A I purchased it as an investment for college funds	13 A I don't remember. It was rented to my son.
14 for my young son at the time. I had a goal of	14 Q Is \$910 the most you have ever gotten on a
15 purchasing another one, but ran out of money.	15 monthly basis from 162 South Marquette?
16 Q Is this the only -- And you used it kind of as a	16 A For that property, yes.
17 rental property. If I say it's a rental	17 Q And that's the only property that you own?
18 property, is that a fair description?	18 A Correct.
19 A Um-hum.	19 Q How did you establish the \$910 a month rental
20 Q How many units are there in this property, one or	20 value?
21 two?	21 A I tried to look in the newspaper to figure out
22 A One unit.	22 what current market rents were going for and then
23 Q Okay. Did you ever live in it as your home?	23 adjust for my circumstances there to be able to
24 A No, I did not.	24 get a renter to pay my holding costs until I
25 Q Have you continuously rented it since 1977 to the	25 could sell it.
Page 10	Page 12
1 present?	1 Q And what are your holding costs?
2 A Yes.	2 A I have a small mortgage on it. I have real
3 Q Has there ever been a time when it's been	3 estate taxes, insurance.
4 unoccupied?	4 Q And on a monthly basis do you know what your
5 A Yes.	5 carrying costs are for 162 South Marquette?
6 Q When?	6 A Not exactly.
7 A December of 2010 until about September of 2011.	7 Q Does the \$910 defray the total expense?
8 Q During that time period did you attempt to rent	8 A Yes.
9 the place?	9 Q And on top of it you receive some incremental
10 A No. I had it listed for sale.	10 income?
11 Q Okay. Since September 2011 have you rented the	11 A Yes.
12 location?	12 Q Do you know the amount of the incremental income
13 A Yes.	13 you receive?
14 Q Okay. And to whom have you rented it?	14 A No.
15 A I think it was --	15 Q You said that you wanted to take into
16 Q I will tell you that in your answers to	16 consideration your current circumstance, so you
17 interrogatories you list Pierre Stephenson and	17 looked at the rental value on the east side. Is
18 Sarah Wykhuis?	18 that fair to say?
19 A Yes.	19 A Yes.
20 Q That's W-Y-K-H-U-I-S, Sarah with an H and Pierre	20 Q And did you reduce it based upon what you viewed
21 with two Rs and an E and Stephenson with a P-H	21 to be your then current circumstance?
22 and S-O-N.	22 A Yes.
23 Do you have a lease rental agreement	23 Q How much?
24 with Mr. Stephenson and Ms. Wykhuis?	24 A Enough so I could rent it.
25 A I do.	25 Q So \$910, at least as of the time you rented it,

Page 13	Page 15
<p>1 represented to you the fair market rental value? 2 A No. 3 Q What in your opinion was the fair market rental 4 value? 5 A In excess of \$1,000. 6 Q How much in excess of \$1,000? 7 A Probably like \$1,100. 8 Q And that's based upon your review of similar 9 rents in the area? 10 A Yes. 11 Q Correct? 12 A Yes. 13 Q Did you have a discussion with Mr. Stephenson and 14 Ms. Wykhuis about what you viewed to be the 15 circumstances of the home when you rented it to 16 them? 17 A I did. 18 Q What did you say to them? 19 A I said there was currently an investigation of 20 vapors and there was a remediation system 21 installed; it was ongoing and I would keep them 22 apprised. He was concerned about planting a 23 garden in the back yard. I said I couldn't 24 answer that. 25 Q Do you know if he has planted a garden in the</p>	<p>1 your son? 2 A Right. 3 Q You didn't go out and do an independent view as 4 to what the market was? 5 A No. 6 Q But from time to time you would increase the 7 rent? 8 A Correct. 9 Q What prompted you to put the property up for sale 10 in 2010? 11 A My son moved out and he bought a house, and I 12 decided at that point in time I wanted to sell 13 the house. 14 Q Okay. And what did you do in preparation for 15 sale of the home? 16 A Quite a bit of rehab, upgrading it, making it 17 presentable as an owner occupied single family 18 home. 19 Q Did you keep track of the money that you put in 20 to the home? 21 A I did. 22 Q How much did you put into the house? 23 A I don't know off the top of my head. 24 Q If I wanted to know the answer to that, could it 25 be retrieved even as we speak?</p>
Page 14	Page 16
<p>1 back yard? 2 A I don't believe so. 3 Q How long is the lease? 4 A Until March 31, 2013. 5 Q Prior to December 2010, had you ever discounted 6 the rental payments for what you believed to be 7 the circumstances on your property? 8 A No. 9 Q And prior to December of 2010, you were receiving 10 something less than \$910 a month? 11 A Yes. 12 Q But the first time you decreased what you 13 believed to be the fair market value, rental 14 value, was when you leased the property in 15 September of 2011? 16 A I need to clarify that. My son lived in the 17 property, and so he probably wasn't paying full 18 market rent. 19 Q But is it fair to say during the time your son 20 lived there, which is what, about eight or nine 21 years? 22 A Correct. 23 Q You would adjust the rent from time to time? 24 A Yes. 25 Q It was a matter of discussion between you and</p>	<p>1 A Definitely. 2 Q Okay. Did you keep ledger, like a tax ledger as 3 to what you put into the property, or do you have 4 receipts or how did you keep track? 5 A Both, receipts and ledger. 6 Q As you sit here today, do you have any 7 recollection as to how much money you put into 8 the property? 9 A I'm guessing, but, you know, \$6,000 or more. 10 Q Less than ten, but more than six? 11 A I can't speak to that. 12 Q Okay. You can't identify it? 13 A It was substantial and I can identify it. I had 14 to take it as depreciation, and it was done in 15 the view of trying to sell the house. 16 Q Okay. 17 A New furnace, new windows, refinished wood floors, 18 redid the kitchen. It's all in my records. 19 Q Okay. And over what period of time did that take 20 place, do you know? 21 A From December 2010 to July of 2011. 22 Q So between those two dates was the house up for 23 sale? 24 A Correct. 25 Q Was there a period of time when it was not for</p>

Page 17	Page 19
<p>1 sale?</p> <p>2 A No.</p> <p>3 Q Now I'm going to make reference to certain</p> <p>4 documents that are in that pile of Exhibit 1, and</p> <p>5 I'm going to reference them by looking at the</p> <p>6 Bate stamp on the bottom. It's this pile right</p> <p>7 here. It will be in this pile right here</p> <p>8 (indicating).</p> <p>9 So I'm going to have you look first, you</p> <p>10 may want to take the clip off, but keep them in</p> <p>11 order because I'm going to bounce around a little</p> <p>12 bit. If you look at the bottom and look for a</p> <p>13 document that bears the last three numbers or the</p> <p>14 Bate stamp 118. It's a letter to you from URS</p> <p>15 dated December 4, 2003. Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And it relates to samples taken on your -- Why</p> <p>18 don't you take a moment and just -- I'm going to</p> <p>19 ask you, not in any detail, but just if you want</p> <p>20 to take a moment to look at it to refresh your</p> <p>21 recollection as to the content of that document</p> <p>22 and the subject.</p> <p>23 A Okay.</p> <p>24 Q Do you recall in or about December of 2003 being</p> <p>25 apprised that Madison-Kipp Corporation was taking</p>	<p>1 A Yes.</p> <p>2 Q Do you recall those circumstances?</p> <p>3 A Yes.</p> <p>4 Q And you didn't object to it, did you?</p> <p>5 A No.</p> <p>6 Q Between that, 2004 and, let's say, 2010 when you</p> <p>7 put your property up for sale, do you recall any</p> <p>8 interactions with Madison-Kipp at all in regard</p> <p>9 to the absence, presence or issue of PCE on your</p> <p>10 property?</p> <p>11 A Well, they kept telling me everything was okay.</p> <p>12 Q Who are "they?"</p> <p>13 A Madison-Kipp, DNR.</p> <p>14 Q And do you recall the means and manner that they</p> <p>15 informed you that things were okay?</p> <p>16 A Letters like this.</p> <p>17 Q Okay. So between 2004 and let's say just as a</p> <p>18 date the date you put it up for sale in 2010, you</p> <p>19 had no belief that there was any concern with</p> <p>20 regard to PCE on your property?</p> <p>21 A On soil.</p> <p>22 Q On soil. How about with regard to vapor?</p> <p>23 A Vapor, nothing was said about vapor up to that</p> <p>24 point.</p> <p>25 Q That's what I wanted to know. Nothing was said</p>
Page 18	Page 20
<p>1 soil samples from the back yard of your rental</p> <p>2 property?</p> <p>3 A Yes.</p> <p>4 Q Prior to this, and using this as a basis to</p> <p>5 refresh your recollection, if it helps, do you</p> <p>6 recall having any interaction with Madison-Kipp</p> <p>7 or the Wisconsin DNR in regard to the absence or</p> <p>8 presence of PCE on your property?</p> <p>9 A I don't remember.</p> <p>10 Q Okay. Take a look at the document -- the next</p> <p>11 document which starts at 121. This is a document</p> <p>12 dated November 11, 2004 from RSV Engineering. Do</p> <p>13 you see that?</p> <p>14 A Yes.</p> <p>15 Q Signed by a Robert Nauta. Do you see that?</p> <p>16 A Yes.</p> <p>17 Q If you could just take a moment and look over</p> <p>18 this. Read as much as you want or look over it.</p> <p>19 I just have a couple of questions.</p> <p>20 A Okay.</p> <p>21 Q Does this refresh your recollection that sometime</p> <p>22 in 2004 you were apprised of the fact that</p> <p>23 Madison-Kipp was going to inject a reagent into</p> <p>24 property along the border, and that they were</p> <p>25 going to monitor it thereafter?</p>	<p>1 about vapor before 2010, correct? Nothing was</p> <p>2 said to you, correct?</p> <p>3 A Right.</p> <p>4 Q If you take a look at the same set of documents,</p> <p>5 if you look at Document 6, this is a letter to</p> <p>6 you from Madison-Kipp dated August 20, 2010 from</p> <p>7 Mr. Meunier regarding environmental monitoring</p> <p>8 indicating that further testing for soil vapor</p> <p>9 would be done. Do you see that?</p> <p>10 A Yes.</p> <p>11 Q As you sit here today, recognizing that -- I'm</p> <p>12 just going off the documents you produced. Is</p> <p>13 this the first recollection you have or the</p> <p>14 earliest recollection you have of subsurface soil</p> <p>15 vapors being tested on your property?</p> <p>16 A Clarify that for me.</p> <p>17 Q Well, in 2004 you were aware that there was vapor</p> <p>18 testing going on on the Madison-Kipp property,</p> <p>19 correct?</p> <p>20 A Right.</p> <p>21 Q Were you aware of any vapor testing being done on</p> <p>22 your property, per se?</p> <p>23 A Yes, they put probes in.</p> <p>24 Q Okay. And they were monitored from time to time?</p> <p>25 A Right.</p>

Page 21	Page 23
<p>1 Q And would you get the results of that monitoring</p> <p>2 from time to time?</p> <p>3 A Yes, and they said everything is okay, and all of</p> <p>4 a sudden they said, "Hey, they jumped, now we</p> <p>5 have to do more testing."</p> <p>6 Q And that was in 2010?</p> <p>7 A Yes, so then the big issue took place.</p> <p>8 Q All right. And it was sometime in the late</p> <p>9 summer or fall of 2010?</p> <p>10 A That's correct.</p> <p>11 Q And that was at or about the time you were</p> <p>12 putting your house up for sale, correct?</p> <p>13 A It was after I had the house up for sale, because</p> <p>14 I had to amend the Real Estate Condition Report</p> <p>15 reporting this to whomever was going to make an</p> <p>16 Offer to Purchase.</p> <p>17 Q Let's take a look at Document 97. Now this is an</p> <p>18 Offer to Purchase your property, correct?</p> <p>19 A That's correct.</p> <p>20 Q And this was an offer from Stephanie Daugherty</p> <p>21 Dennis?</p> <p>22 A That's correct.</p> <p>23 Q And Wayne Dennis?</p> <p>24 A That's correct.</p> <p>25 Q And it was in the amount of \$140,520?</p>	<p>1 not replaced the furnace as of that date?</p> <p>2 A Correct.</p> <p>3 Q And then it says, "Have a licensed electrician</p> <p>4 fix reverse polarity outlets in the kitchen and</p> <p>5 bring into compliance outlet in the ceiling in</p> <p>6 the basement."</p> <p>7 A That was done.</p> <p>8 Q That was done?</p> <p>9 A Yes.</p> <p>10 Q And this is all a result of an inspection report?</p> <p>11 A Correct.</p> <p>12 Q Three, install two steel jack posts near wood</p> <p>13 post currently in the basement. Was that done?</p> <p>14 A No.</p> <p>15 Q Okay. That appears to be some suggestion that</p> <p>16 structurally there needed to be some</p> <p>17 reinforcement, correct? It's suggested. I'm not</p> <p>18 saying it was needed.</p> <p>19 A It's suggested, and he was wrong again.</p> <p>20 Q Has that ever been done?</p> <p>21 A No.</p> <p>22 Q And then it says, "Have all windows that are</p> <p>23 painted shut or stuck shut so they open except</p> <p>24 the window over the sink going to the</p> <p>25 three-season porch."</p>
Page 22	Page 24
<p>1 A Yes.</p> <p>2 Q If you look at Page 103, I believe there's a</p> <p>3 counteroffer on your part for \$142,000.</p> <p>4 A Yes.</p> <p>5 Q And then if you look at the next document,</p> <p>6 there's a counteroffer, 10/21/10, for the</p> <p>7 purchase price to be \$142,000 with a credit. Do</p> <p>8 you see that?</p> <p>9 A Yes.</p> <p>10 Q And then there's an amendment to the offer on</p> <p>11 Page 105 dated November 1, 2010?</p> <p>12 A Yes.</p> <p>13 Q And it talks about have a qualified HVAC person</p> <p>14 inspect, clean or repair/replace the furnace as</p> <p>15 needed to be in a safe condition?</p> <p>16 A Yes.</p> <p>17 Q Do you see that?</p> <p>18 A Yes.</p> <p>19 Q I believe you said you put in a new furnace into</p> <p>20 the facility. Was it after October of 2010 you</p> <p>21 put the new furnace in?</p> <p>22 A January of 2011. We had the furnace checked out,</p> <p>23 it was okay. The inspector was wrong.</p> <p>24 Q Okay. But as of this date, October -- excuse</p> <p>25 me -- November 1, 2010, the previous -- you had</p>	<p>1 A That was done.</p> <p>2 Q And then on Page 106 is an amendment where the</p> <p>3 ping-pong table was deleted from the Offer to</p> <p>4 Purchase?</p> <p>5 A Yes.</p> <p>6 Q Okay. And then there's an amendment on 107 dated</p> <p>7 November 20, 2010 where the financing date is</p> <p>8 extended to 11/24/2010?</p> <p>9 A Yes.</p> <p>10 Q And then on 108 there's an 11/24/2010 where the</p> <p>11 financing date is extended to 12/20/10?</p> <p>12 A Yes.</p> <p>13 Q And then there's a Cancellation Agreement dated</p> <p>14 12/10/2010 cancelling the Offer to Purchase,</p> <p>15 correct?</p> <p>16 A What number?</p> <p>17 Q That's 109. It's on the bottom 109.</p> <p>18 A I signed it 12/15.</p> <p>19 Q Okay. That's fine. Document 109 is the</p> <p>20 Cancellation and Mutual Release?</p> <p>21 A That's correct.</p> <p>22 Q Okay. Now what was the status of the condition</p> <p>23 report on the property, if you recall, as of that</p> <p>24 date?</p> <p>25 A In what regards?</p>

Page 25	Page 27
1 Q Well, hang on. Let me see. I think I can help	1 A I don't know.
2 you out. Directing your attention to Page 93?	2 Q But that was -- that came out at either 143 or
3 A Yes.	3 145?
4 Q There's a condition report, and I believe it's	4 A It was 144.
5 dated January 3, 2011, is that correct?	5 Q Now did Mr. and Mrs. Dennis, were they unable to
6 A Yes.	6 get financing? Is that the reason that they
7 Q The contract with Mr. and Mrs. Dennis was	7 cancelled their agreement?
8 cancelled on December 15, 2010, and the Real	8 A That's what my understanding is.
9 Estate Condition Report that you have in front of	9 Q You did not have a conversation with them?
10 you was executed on January 3, 2011, correct?	10 A Unh-unh.
11 A Correct.	11 MR. HAYES: You have to answer out loud.
12 Q Was there a Real Estate Condition Report that	12 THE WITNESS: No, I did not.
13 existed prior to January 3, 2011?	13 BY MR. BUSCH:
14 A Yes.	14 Q Your agent told you that?
15 Q And this one that's dated January 3, 2011, if you	15 A Yes.
16 look on Page 94, it says, "See attached letter	16 Q Did you make any disclosures to Mr. or
17 about DNR vapor sampling."	17 Mrs. Dennis in regard to the vapor issues as part
18 A Yes.	18 of the sale process?
19 Q And then there's an attachment. "Seller was	19 A I did.
20 notified recently that the Madison-Kipp	20 Q Okay. When did you do that?
21 Corporation and DNR will be doing additional	21 A It was after I had that late summer notice and
22 monitoring of possible ground vapors to finalize	22 then the follow-up meeting at Madison-Kipp.
23 the testing they have been doing over the last	23 Q Sometime before they signed the Offer to Purchase
24 several years. These additional tests will be at	24 in October?
25 no cost to the property owner. If any readings	25 A That's correct.
Page 26	Page 28
1 are not acceptable, a remediation system will be	1 Q Okay. So you disclosed to Mr. and Mrs. Dennis
2 installed at no charge to the property owner."	2 before they signed this offer that there had
3 Then it says, "See attached letter." I don't	3 been -- you had been contacted in August or so of
4 have the attached letter.	4 2010 regarding further vapor testing?
5 Did the real estate -- I have looked for	5 A I had to.
6 another Real Estate Condition Report prior to	6 Q I'm trying to get it chronologically.
7 this. Do you know what the Real Estate Condition	7 A Yes.
8 Report prior to the one of January 3, 2011 stated	8 Q And with that knowledge they signed this
9 in regard to the ground vapor issue?	9 agreement, correct?
10 A I don't recall, but this is the one -- This	10 A Correct.
11 condition report is the one when I relisted it	11 Q And they signed it without any condition with
12 January 3, 2011, because the listing had expired.	12 respect to the vapor issue, correct?
13 There's a lot of paper.	13 A That's correct.
14 Q I understand.	14 Q They did, however, request a property inspection?
15 A I can get you anything you want.	15 A Yes.
16 Q Okay. Now in your answers to interrogatories I	16 Q And it was as a result of that property
17 will just tell you that you said that there had	17 inspection that they submitted a counteroffer
18 been two appraisals that were done, one for	18 that requested that you do certain items to fix
19 \$144,000 and one for \$145,000.	19 it, correct?
20 A Correct.	20 A Yes.
21 Q Was there an appraisal that was done in regard to	21 Q And you did some of them and some of them you did
22 the Offer to Purchase that was submitted by Mr.	22 not do, correct?
23 and Mrs. Dennis, if you know?	23 A Yes.
24 A Yes.	24 Q But even though you did some, they still didn't
25 Q And who did that, if you recall?	25 buy?

Page 29	Page 31
<p>1 A That's correct.</p> <p>2 Q Because you understood that they could not get</p> <p>3 financing?</p> <p>4 A That's correct.</p> <p>5 Q Did you ever talk to their loan officer?</p> <p>6 A I did not.</p> <p>7 Q And whatever knowledge you got you got from your</p> <p>8 real estate agent?</p> <p>9 A That's correct.</p> <p>10 Q I'm going to go through some documents to kind of</p> <p>11 set a chronology. Let's go to the document with</p> <p>12 66 on the bottom. That's an Offer to Purchase</p> <p>13 where the buyer is a Mr. Michael Bennett?</p> <p>14 A Yes.</p> <p>15 Q And this was executed on or about January 18,</p> <p>16 2011?</p> <p>17 A Yes.</p> <p>18 Q And this is after you had amended the disclosure,</p> <p>19 the Real Estate Condition Report?</p> <p>20 A There was a new disclosure.</p> <p>21 Q Right. This is the new disclosure?</p> <p>22 A Right. That's a new disclosure.</p> <p>23 Q And you can take a moment and satisfy yourself,</p> <p>24 but was there anything in this offer that</p> <p>25 referenced that condition report?</p>	<p>1 would indicate --</p> <p>2 As you sit here today, do you recall</p> <p>3 what the price was that you ultimately agreed to</p> <p>4 with Michael Bennett?</p> <p>5 A I don't recall.</p> <p>6 Q Okay. Directing your attention to Page 23, this</p> <p>7 is a series of emails?</p> <p>8 A What was the page?</p> <p>9 Q Page 23.</p> <p>10 A Okay.</p> <p>11 Q And it starts on Page 24, which is an email from</p> <p>12 you to Mr. Nehls-Lowe in regard to test results.</p> <p>13 A Yes.</p> <p>14 Q And then it follows on the next page in this</p> <p>15 email chain indicating that you received a</p> <p>16 telephone call sometime in the middle of the page</p> <p>17 on the 18th of February 2011 where Mr. Nehls-Lowe</p> <p>18 explained to you the February results of the</p> <p>19 tests?</p> <p>20 A Yes.</p> <p>21 Q And then there's an email on top of that where</p> <p>22 you're sending -- it looks like all these</p> <p>23 emails -- to Gary Lukens, who I assume is your</p> <p>24 realtor?</p> <p>25 A Yes.</p>
Page 30	Page 32
<p>1 A They have the standard language about a Real</p> <p>2 Estate Condition Report in the offer, that I had</p> <p>3 to provide one.</p> <p>4 Q Which you did, correct?</p> <p>5 A Yes.</p> <p>6 Q And it's the one that you executed on or about</p> <p>7 January 3rd?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 MR. MANZKE: John, I'm not sure if</p> <p>11 there's a question pending.</p> <p>12 BY MR. BUSCH:</p> <p>13 Q The offer was for \$135,000, correct, on the first</p> <p>14 page?</p> <p>15 A I don't remember. What's the number?</p> <p>16 Q Sixty-six.</p> <p>17 A Yes.</p> <p>18 Q And if you look at Page 75, it indicates that on</p> <p>19 or about January 20, 2011 you countered?</p> <p>20 A 75 is my --</p> <p>21 Q It looks to me like you countered. I can't tell</p> <p>22 what the amount was. Was the counter based</p> <p>23 upon -- Was it a monetary counter?</p> <p>24 A I don't recall.</p> <p>25 Q Okay. Somewhere there would be a document that</p>	<p>1 Q Okay. Do you recall sending those emails on or</p> <p>2 about that time?</p> <p>3 A I do.</p> <p>4 Q Okay. As you sit here today, there are a series</p> <p>5 of emails, and we can go through them, but as you</p> <p>6 sit here today, what's your best recollection as</p> <p>7 to the ultimate resolution, if there were any, in</p> <p>8 regard to what to do about the test results that</p> <p>9 came from your sub-slab and indoor air testing?</p> <p>10 A Very confusing. Mr. Nauta thought it was okay.</p> <p>11 Mr. Nehls-Lowe had concerns. All I wanted to do</p> <p>12 is get a certification that would be acceptable</p> <p>13 to my buyer that would buy my house.</p> <p>14 Q Did you ever receive such a certification?</p> <p>15 A Not in time.</p> <p>16 Q Okay. Did you ever receive -- Did you get one</p> <p>17 after the fact?</p> <p>18 A Sort of, but by then everything else was hitting</p> <p>19 the sink.</p> <p>20 Q Okay.</p> <p>21 A We were promised in September that they were</p> <p>22 going to work on this, and you can see in one of</p> <p>23 my emails my frustration with dealing with these</p> <p>24 people.</p> <p>25 Q A mitigation system ultimately was installed?</p>

Page 33	Page 35
<p>1 A Yeah.</p> <p>2 Q When was it?</p> <p>3 A March 28th, and the closing was supposed to be</p> <p>4 the 30th. It was like pulling teeth, and then it</p> <p>5 was too late.</p> <p>6 Q The buyer had walked before March 30th?</p> <p>7 A Yes.</p> <p>8 Q Okay. Directing your attention to 54, Document</p> <p>9 54, this is a Statement of Denial from MGIC</p> <p>10 addressed to Michael Bennett and Associated Bank.</p> <p>11 Do you recall the circumstances under which you</p> <p>12 received this?</p> <p>13 A I believe I got it from my realtor.</p> <p>14 Q And it says that the basis for the denial --</p> <p>15 Because it's a Statement of Denial, correct?</p> <p>16 A Yes.</p> <p>17 Q It says, "The property does not meet MGIC's</p> <p>18 minimum underwriting standards due to property</p> <p>19 condition or home is located in area of</p> <p>20 contamination. MGIC required appraiser to</p> <p>21 address all areas and find comp in area.</p> <p>22 Appraiser did neither. Appraisal was sent to</p> <p>23 management and property denied." Do you see</p> <p>24 that?</p> <p>25 A Yes.</p>	<p>1 immediate health concern in the house as the</p> <p>2 issue is with the soil below the subject</p> <p>3 basement. My concern is the water seeping into</p> <p>4 the basement could very well be contaminated and</p> <p>5 could be releasing PCE vapors in the air. Again,</p> <p>6 I'm not an expert in this area, but I would</p> <p>7 recommend further tests and fully agree with the</p> <p>8 Department of Health Services in that a radon</p> <p>9 sub-slab depressurization system be installed in</p> <p>10 this house. This will help to mitigate potential</p> <p>11 radon in the house, as well." Do you see that?</p> <p>12 A Yes.</p> <p>13 Q That was the recommendation?</p> <p>14 A Yes.</p> <p>15 Q And, in fact, a mitigation system was installed,</p> <p>16 correct?</p> <p>17 A Yes.</p> <p>18 Q But even with that caveat, the appraiser gave a</p> <p>19 fair market value of \$145,000, correct?</p> <p>20 A Yes, but if you were a lender, would you lend on</p> <p>21 that property?</p> <p>22 Q I'm just saying it's \$145,000 is what he gave as</p> <p>23 an appraisal?</p> <p>24 A You didn't answer my question.</p> <p>25 Q Well --</p>
Page 34	Page 36
<p>1 Q And that was as of March 17, 2011, correct?</p> <p>2 A Correct.</p> <p>3 Q All right. If you look at 56, Document 56</p> <p>4 through Document 65, that's an appraisal that was</p> <p>5 done on March 22, 2011?</p> <p>6 A Um-hum.</p> <p>7 Q And its opinion is that a fair market value was</p> <p>8 \$145,000. Do you see that?</p> <p>9 A Assuming there were no issues.</p> <p>10 Q Well, directing your attention to Page 63, it</p> <p>11 states, does it not, that the condition of the</p> <p>12 property -- It states, "My concern is that there</p> <p>13 is potential soil and water contamination with</p> <p>14 this property, and the presence of water in the</p> <p>15 basement, no matter how small, raises a concern</p> <p>16 for public safety. Because I'm not an expert in</p> <p>17 this area, I have no way of determining past,</p> <p>18 present or future health concerns. My feeling is</p> <p>19 that this potential issue needs to be resolved</p> <p>20 one way or another or this could have a very</p> <p>21 negative effect on the subject's value or</p> <p>22 marketability. According to the Department of</p> <p>23 Natural Resources and the Department of Health</p> <p>24 Services, tests have been completed and the end</p> <p>25 result was that there did not appear to be an</p>	<p>1 MR. MANZKE: You have to answer the</p> <p>2 questions, Peter.</p> <p>3 BY MR. BUSCH:</p> <p>4 Q Well, this is dated five days after the denial.</p> <p>5 Do you know if Mr. Bennett ever submitted this</p> <p>6 appraisal to MGIC or to his lenders?</p> <p>7 A I do not know.</p> <p>8 Q Okay. Directing your attention to Page 86, this</p> <p>9 is a Cancellation Agreement submitted to you by</p> <p>10 Mr. Bennett that you signed on 4/4/11, correct?</p> <p>11 A Yes.</p> <p>12 Q Okay. You returned the \$1,000 earnest money,</p> <p>13 correct?</p> <p>14 A That was returned.</p> <p>15 Q And it ended the agreement?</p> <p>16 A That's correct.</p> <p>17 Q Did you ever talk directly with Mr. Bennett?</p> <p>18 A I did not.</p> <p>19 Q As you sit here today, you do not know if he</p> <p>20 submitted the March 22, 2011 appraisal to his</p> <p>21 lenders?</p> <p>22 A I do not know.</p> <p>23 Q Did you continue to list your home after</p> <p>24 Mr. Bennett --</p> <p>25 A Yes.</p>

Page 37	Page 39
<p>1 Q Okay. And how long did you list your home?</p> <p>2 A I think the standard listing was six months from</p> <p>3 January.</p> <p>4 Q So that comports with the fact that I think you</p> <p>5 said you leased it sometime in July of 2011.</p> <p>6 A July or September, somewhere in there.</p> <p>7 Q Okay. Did you receive any further offers on your</p> <p>8 home?</p> <p>9 A There were a couple of them.</p> <p>10 Q I don't have any copies of them. Were they</p> <p>11 written offers?</p> <p>12 A They were written offers.</p> <p>13 Q Were they at a level acceptable to you?</p> <p>14 A No.</p> <p>15 Q Do you know how much they were?</p> <p>16 A I don't recall.</p> <p>17 Q Do you have copies of them?</p> <p>18 A Yes.</p> <p>19 Q As you sit here today, do you have any -- Well,</p> <p>20 we will just get copies of them.</p> <p>21 You didn't accept them because you</p> <p>22 didn't think they represented the fair market</p> <p>23 value of the property?</p> <p>24 A Correct.</p> <p>25 Q You thought it was higher, the fair market value,</p>	<p>1 A No.</p> <p>2 Q Okay. Take a look at Exhibit 7. By the way, do</p> <p>3 you know if ARCADIS did that work, the sealing</p> <p>4 and the painting?</p> <p>5 A No.</p> <p>6 Q Did they do it?</p> <p>7 A Not that I'm aware of.</p> <p>8 Q Okay. Looking at Exhibit 7, this is a letter to</p> <p>9 you dated July 20, 2012. Do you recall receiving</p> <p>10 this letter?</p> <p>11 A Yes.</p> <p>12 Q And it reports the results of samples taken --</p> <p>13 soil samples taken in two locations in your back</p> <p>14 yard?</p> <p>15 A Yes.</p> <p>16 Q And it indicated that there were no VOCs detected</p> <p>17 in any of the samples. Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Okay. Did that give you any level -- Did you</p> <p>20 receive any level of relief in learning that</p> <p>21 fact?</p> <p>22 A For the soil I did, eight years late.</p> <p>23 Q Okay. Have you had discussions with your current</p> <p>24 tenant about extending the terms of the lease</p> <p>25 beyond 2013?</p>
Page 38	Page 40
<p>1 than what they were offering?</p> <p>2 A Yes.</p> <p>3 (Exhibits 6 and 7 were marked.)</p> <p>4 BY MR. BUSCH:</p> <p>5 Q I'm going to show you what's been marked as</p> <p>6 Uttech Exhibit 6 and Uttech Exhibit 7. Uttech</p> <p>7 Exhibit 6 is a letter to you from Jennine Trask</p> <p>8 indicating the results of an inspection of a</p> <p>9 sub-slab depressurization system at your home.</p> <p>10 Do you see that? Take a moment to take a look at</p> <p>11 it.</p> <p>12 A Yes.</p> <p>13 Q Do you recall at some point in time ARCADIS</p> <p>14 personnel came into your home and inspected the</p> <p>15 sub-slab depressurization system?</p> <p>16 A Yes.</p> <p>17 Q You gave them access to do it, and they came in</p> <p>18 and did it?</p> <p>19 A Yes.</p> <p>20 Q And there are certain recommendations made with</p> <p>21 regard to promote continued successful operation,</p> <p>22 one being sealing the crack around the patched</p> <p>23 concrete, and the other is painting the exterior</p> <p>24 piping and brackets. Were those done? Did you</p> <p>25 do that?</p>	<p>1 A No.</p> <p>2 Q Do you intend to continue leasing?</p> <p>3 A As well as I can.</p> <p>4 Q In your experience, when is the optimum time to</p> <p>5 seek replacement tenants?</p> <p>6 A Summer.</p> <p>7 Q But you have not had discussions with either of</p> <p>8 the two tenants that are there now as to whether</p> <p>9 they wish to extend the lease?</p> <p>10 A No.</p> <p>11 MR. BUSCH: Ed, if I could have a moment</p> <p>12 to talk to my colleague.</p> <p>13 MR. MANZKE: Okay.</p> <p>14 (A recess was taken.)</p> <p>15 BY MR. BUSCH:</p> <p>16 Q Have you ever had any discussions with the city</p> <p>17 assessor about the value of your property for tax</p> <p>18 purposes?</p> <p>19 A No.</p> <p>20 Q Have you attempted to reduce the tax value, the</p> <p>21 assessed value?</p> <p>22 A No.</p> <p>23 Q Have you ever had any radon testing at your home?</p> <p>24 A No.</p> <p>25 Q When was the last time you refinanced that</p>

Page 41	Page 43
<p>1 property.</p> <p>2 A In the '90s.</p> <p>3 Q Have you had an appraisal done on the property</p> <p>4 recently in the last year and one-half?</p> <p>5 A No, other than when it's for sale.</p> <p>6 Q Other than the ones we have talked about, you</p> <p>7 have not had an appraisal done?</p> <p>8 A No.</p> <p>9 Q Have you asked that an appraisal be done?</p> <p>10 A No.</p> <p>11 Q Have you made any decision as to whether you are</p> <p>12 going to lease or sell at the expiration of the</p> <p>13 current lease?</p> <p>14 A My desire is to sell.</p> <p>15 Q Are you going to put it up for sale?</p> <p>16 A It depends.</p> <p>17 Q On what?</p> <p>18 A On if these issues about the vapors can be</p> <p>19 resolved and eliminated.</p> <p>20 MR. BUSCH: I have no further questions.</p> <p>21 EXAMINATION</p> <p>22 BY MR. WHITE:</p> <p>23 Q Good afternoon, Mr. Uttech. My name is Chris</p> <p>24 White. I represent Continental Casualty Company</p> <p>25 and Columbia Casualty Company, which are some of</p>	<p>1 Q Several miles away?</p> <p>2 A Yes.</p> <p>3 Q And do you know how long she lived at that</p> <p>4 location on the west side?</p> <p>5 A A long time.</p> <p>6 Q Back into the 1980s or earlier?</p> <p>7 A 1980s, early 1980s.</p> <p>8 Q Okay. Your Onyx Lane residence, approximately</p> <p>9 how far is that located from Madison-Kipp?</p> <p>10 A About two or three miles.</p> <p>11 Q In this lawsuit are you claiming that you</p> <p>12 sustained any damages that occurred between</p> <p>13 January 1, 1980 and January 1 of 1987?</p> <p>14 A Any damages? The damage that occurred is the</p> <p>15 questionable value of the property. You know, I</p> <p>16 don't know how that came about.</p> <p>17 Q Okay. All of the attempts you have made to sell</p> <p>18 the property have been in 2010 and later?</p> <p>19 A Correct.</p> <p>20 Q You didn't attempt to sell the property at any</p> <p>21 time between 1980 and 1987, did you?</p> <p>22 A No.</p> <p>23 Q My understanding from your testimony earlier is</p> <p>24 that the rent you receive from the current tenant</p> <p>25 exceeds your costs of owning and maintaining the</p>
Page 42	Page 44
<p>1 Madison-Kipp's past insurance companies. I have</p> <p>2 a few follow-up questions. The first is</p> <p>3 concerning your Onyx Lane home in Madison. How</p> <p>4 long have you lived at that residence?</p> <p>5 A Since 1979.</p> <p>6 Q Are you married?</p> <p>7 A I am.</p> <p>8 Q Were you married in 1979?</p> <p>9 A Yes.</p> <p>10 Q To the same woman?</p> <p>11 A No.</p> <p>12 Q When did you and your current wife become</p> <p>13 married?</p> <p>14 A I better know that, right? September 20, 2008.</p> <p>15 My previous wife died.</p> <p>16 Q Your current wife, is her name Louise?</p> <p>17 A Correct.</p> <p>18 Q Do you know where Louise lived prior to moving in</p> <p>19 with you?</p> <p>20 A Yes.</p> <p>21 Q Where is that?</p> <p>22 A On 4906 Eyre Lane, Madison, Wisconsin.</p> <p>23 Q And where in Madison relative to Madison-Kipp is</p> <p>24 that location?</p> <p>25 A It's on the west side, near west side.</p>	<p>1 property, is that correct?</p> <p>2 A No.</p> <p>3 Q Does it cover your costs?</p> <p>4 A It covers the costs.</p> <p>5 Q So essentially you are neither making or losing</p> <p>6 money on this property, it's just sort of a wash?</p> <p>7 A I'm making some money on it. I don't know the</p> <p>8 exact amount. It's all relative. What's your</p> <p>9 return on the investment. If the property value</p> <p>10 is zero, it's a pretty good return.</p> <p>11 Q Well, but what I'm getting at is from month to</p> <p>12 month on a -- just on a money in versus money out</p> <p>13 basis, are you currently making money, losing</p> <p>14 money or neither making or losing money on the</p> <p>15 property?</p> <p>16 A There's a small cash flow.</p> <p>17 Q And since 1979 when you purchased the home --</p> <p>18 A '77.</p> <p>19 Q '77. Since 1977 has there always generally been</p> <p>20 a positive cash flow on the property?</p> <p>21 A Most of the time, but it was close because I did</p> <p>22 repairs on the roof, new roof, new driveway, and</p> <p>23 that eats it up for awhile.</p> <p>24 Q Prior to your current tenant, the previous tenant</p> <p>25 in the home was your son, is that correct?</p>

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1 A My current tenant started in -- It was he and his
 2 brother when it started in September of 2011, and
 3 then when I renewed that lease, it was one of the
 4 brothers with his girlfriend. Prior to that it
 5 was my son and a number of different roommates.
 6 Q Okay. This is maybe going back in time. Looking
 7 at your interrogatory answers, it looks to me
 8 like your son first started renting the house in
 9 approximately the year 2000?
 10 A That's right.
 11 Q Is that correct?
 12 A Yes.
 13 Q Was the home rented prior to 2000? In other
 14 words, was there a tenant immediately before you
 15 son?
 16 A Yes.
 17 Q Did your son pay the rent as the previous tenant
 18 or did you give him a family discount?
 19 A I don't know the relationship from the previous
 20 renter to my son's rent, but I gave him a family
 21 discount as long as he kept the property up and
 22 did some of the maintenance for me.
 23 Q How did you locate your current tenant?
 24 A I put a sign in the front yard.
 25 Q Did you take out any ads in the paper or

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1 anything?
 2 A No.
 3 Q On the sign did you post what rent you wanted to
 4 charge for the unit?
 5 A No.
 6 Q It was just a phone number and call if you are
 7 interested?
 8 A That's right.
 9 Q When the tenant that's currently renting your
 10 unit called, what was the first discussion you
 11 had with respect to what the rent amount would
 12 be?
 13 A I told him it was \$895.
 14 Q And what was the tenant's response?
 15 A He jumped at it.
 16 Q Isn't the current rent slightly higher than that?
 17 A I raised it 15 bucks to 910 for the principle.
 18 Q Okay. So the tenant accepted the rent amount
 19 that you threw out there, and there was no back
 20 and forth discussions?
 21 A Right.
 22 Q Do you believe it is safe for the tenant to
 23 continue living in the home?
 24 A I'm not an expert. I don't know how to answer
 25 that.

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1 Q What I'm getting at is if you believed it was
 2 unsafe for anyone to live in the home, you
 3 wouldn't continue to rent it, would you?
 4 A I asked him if he had any children. My concern
 5 was for children. He has a six-year-old son.
 6 He's divorced. I said, "Is he going to be
 7 staying with you," and he said, "No, he will
 8 visit on the weekends." That made me feel
 9 better. I would not want to be put in a position
 10 that a child develops something and then sues me
 11 as a result of me having that property.
 12 Q Okay. But as far as you're aware, there's
 13 nothing unsafe for an adult to live in the home?
 14 MR. MANZKE: I will object on
 15 foundation. You can answer, if you can.
 16 THE WITNESS: What's that?
 17 MR. MANZKE: I just made an objection on
 18 foundation for the record, but you can answer to
 19 the extent you can.
 20 THE WITNESS: Well, I told you my first
 21 wife died. She was very sensitive to perfumes
 22 and petroleum products. I don't use any perfume
 23 products. Here we're talking about a cancer
 24 causing agent in a home that is coming to that
 25 home through no fault of my own. Does it concern

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1 me? Yes, it does. Yes, it does.
 2 BY MR. WHITE:
 3 Q Okay. You haven't had any specific conversations
 4 with the DNR, the Department of Health about
 5 whether or not it's safe for someone to continue
 6 living in the home, have you?
 7 A Well, when we had that offer, I was trying to get
 8 them to write a statement. They wouldn't write
 9 one.
 10 Q With respect to the two accepted offers you had
 11 on your home, with respect to the reason why
 12 those offers ultimately didn't close, did you
 13 speak to anyone other than to your own realtor
 14 about the reasons why those sales didn't close?
 15 A In regards to the transaction or just in
 16 conversation with other people?
 17 Q Either.
 18 A I probably shared the information with other
 19 people that are in the neighborhood. They all
 20 knew that I had difficulty selling it, and that
 21 related to them because they own property.
 22 Q Apart from talking with your neighbors about your
 23 efforts to sell the property, did you receive any
 24 information from anybody other than your own
 25 realtor as to the reason why neither of those

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1 sales closed?
 2 A Mainly from my realtor. You know, they like to
 3 do all the talking.
 4 Q You mentioned that you received other written
 5 offers following the Bennett offer that fell
 6 through?
 7 A Um-hum.
 8 Q Do you have any recollection as to what the
 9 offered purchase price was for any of those
 10 offers?
 11 A The only thing I remember is they were lowballs
 12 and they wanted me to do a whole bunch of stuff,
 13 and once they got in there, they weren't --
 14 Q Do you recall anything about the dollar amount of
 15 the offers or would you just have to look at the
 16 documentation?
 17 A I would have to look.
 18 Q Okay. And then if I could direct your attention
 19 to Page 94 of Exhibit 1.
 20 A Which exhibit?
 21 MR. BUSCH: The big one.
 22 MR. WHITE: That big stack of papers.
 23 BY MR. WHITE:
 24 Q All right. I want to look at Question No. 17.
 25 A Okay.

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1 Q All right. Question No. 17 has a statement and
 2 then a place where you can answer "yes," "no," or
 3 "not applicable," and below that there's a line
 4 where it says "Explain." Do you see that?
 5 A Yes.
 6 Q Okay. And on the line where it says "Explain,"
 7 you make reference to an attached letter from the
 8 DNR about this vapor sampling issue that we have
 9 been talking about, right?
 10 A Right.
 11 Q With respect to the answer to this question, the
 12 question is, "I am aware of a defect caused by
 13 unsafe concentrations of, or unsafe conditions
 14 relating to, or the storage of hazardous or toxic
 15 substances on neighboring properties. Such
 16 defects might include, but are not limited to,
 17 environmental hazards resulting from an adjacent
 18 or nearby dump, gas station or commercial
 19 industrial business which improperly uses/handles
 20 toxic substances." Do you see that?
 21 A Yes.
 22 Q And your answer to that question was no, is that
 23 correct?
 24 A Yes.
 25 MR. WHITE: That's all that I have.

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1 Thank you.
 2 MR. KRAMER: I have a few this time.
 3 BY MR. KRAMER:
 4 Q I'm Charles Kramer. I represent Lumbermens. You
 5 are looking at Exhibit, I believe it's Exhibit 1,
 6 this big stack of documents in front of you, and
 7 we talked about Page 94 of that, is that correct?
 8 A Yes.
 9 Q This is the second Real Estate Condition Report
 10 that was prepared, correct?
 11 A Yes.
 12 Q Now if you look at Pages 121 through 124 at the
 13 very end?
 14 A Yes.
 15 Q The four pages, 121 through 124, form part of a
 16 letter dated November 11, 2004?
 17 A Yes.
 18 Q Did you disclose the existence of the
 19 November 11, 2004 letter in the prior Real Estate
 20 Condition Report?
 21 A I don't remember.
 22 Q Do you have a copy of that prior Real Estate
 23 Condition Report?
 24 A I can get one.
 25 MR. KRAMER: Okay. I'd like one,

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1 please. I'd like to make that request on the
 2 record.
 3 BY MR. KRAMER:
 4 Q Now if you look at the very last page, Page 124,
 5 there's a spot that's labeled in a gray trapezoid
 6 HA-25. Do you see that?
 7 A Yes.
 8 Q Is that on your property?
 9 A Yes.
 10 Q When you received this letter in 2004, did you
 11 do -- Strike that.
 12 The letter that is dated November 11,
 13 2004 indicates that there was a level of PCE
 14 found on your property, correct?
 15 A That's correct.
 16 Q And it was your understanding back in 2004 that
 17 those PCEs were alleged to have come from
 18 Madison-Kipp, correct?
 19 A Yes.
 20 Q Did you do anything back in 2004 to investigate
 21 the extent of any potential contamination on your
 22 property by Madison-Kipp?
 23 A No, because I figured they were a good corporate
 24 neighbor and they were going to inject this thing
 25 to take care of it.

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1 Q After the injection happened, did you do anything
 2 to investigate whether the injection actually
 3 remedied the property?
 4 A I didn't. I assume they did.
 5 Q Okay.
 6 A But they didn't.
 7 Q Back in 2004 did you do anything to
 8 investigate -- Strike that.
 9 In 2011 when the first set of tenants
 10 post withdrawn offers contacted you, were the
 11 people that you rented to the first set of people
 12 that contacted you with regard to renting the
 13 property?
 14 A Yes.
 15 Q Okay. You mentioned, sir, in connection with the
 16 sale that you did a number of improvements to the
 17 property?
 18 A Yes.
 19 Q Have you been depreciating those items?
 20 A Yes.
 21 Q And so when and if you eventually sell the
 22 property, you are going to have to pay capital
 23 gains on any recapture that you have?
 24 A That's correct.
 25 Q You said that you worked at a savings and loan

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1 while you were -- or during your working and
 2 non-retired life?
 3 A Yes.
 4 Q Did you have any responsibility for approving
 5 lending?
 6 A Yes.
 7 Q And did your responsibilities include approving
 8 lending on homes?
 9 A Yes.
 10 Q Did you ever approve a loan on a property that
 11 had a radon issue?
 12 A When I was lending, radon wasn't an issue.
 13 Q Did you ever approve a loan that was on a
 14 property that had an environmental issue?
 15 A No.
 16 Q And the damages that you are claiming are the
 17 result from the sigma of having a property with
 18 environmental issues?
 19 A Yes.
 20 MR. KRAMER: Nothing further.
 21 MS. KREIL: I have a couple questions.
 22 EXAMINATION
 23 BY MS. KREIL:
 24 Q My name is Jennifer Kreil on behalf of United
 25 States Fire Insurance Company. I think you just

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1 told Mr. Kramer that you never approved a loan on
 2 a property that had environmental issues?
 3 A That's correct.
 4 Q Is that because that didn't arise or because you
 5 outright rejected those?
 6 A I don't recall.
 7 Q Okay. You also talked to a couple different
 8 people here about the offers that you received
 9 after the Michael Bennett offer. Do you recall
 10 whether you countered any of those offers?
 11 A Yes.
 12 Q Do you remember -- Well, let's start with this.
 13 Do you remember how many offers you received?
 14 A I would be guessing. I mean, there were two or
 15 three of them.
 16 Q Okay. Do you know if you countered two or three
 17 offers?
 18 A Probably.
 19 Q Okay.
 20 MS. KREIL: I think that's all the
 21 questions I have.
 22 MR. BUSCH: Sorry to have messed up your
 23 afternoon. Thank you.
 24 MR. MANZKE: We'll reserve.
 25

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1 CERTIFICATE OF WITNESS
 2
 3
 4 I, PETER M. UTTECH, have read the
 5 foregoing page and the corrections, if any, having been
 6 noted. The same is now a true and correct transcript
 7 of my testimony.
 8
 9 _____
 10 PETER M. UTTECH
 11
 12
 13 STATE OF WISCONSIN)
 14 _____ COUNTY)
 15
 16 Subscribed and sworn to before me this
 17 ____ day of _____, 2013.
 18
 19 _____
 20 Notary Public
 21 In and for the State of Wisconsin
 22 My commission expires _____, ____.
 23
 24
 25

<p>Page 57</p> <p>1 STATE OF WISCONSIN) 2 MILWAUKEE COUNTY) 3 I, KATHY A. HALMA, Registered 4 Professional Reporter and Notary Public in and for the 5 State of Wisconsin, do hereby certify that the 6 deposition of PETER M. UTTECH, was taken before me at 7 the law offices of MICHAEL, BEST & FRIEDRICH, LLP, One 8 South Pinckney Street, Suite 700, Madison, Wisconsin, 9 on the 8th day of January, 2013, commencing at 4:00 10 o'clock in the afternoon. 11 That it was taken at the instance of the 12 Defendants upon verbal interrogatories. 13 That said statement was taken to be used 14 in an action now pending in the UNITED STATES DISTRICT 15 COURT FOR THE WESTERN DISTRICT OF WISCONSIN, in which 16 KATHLEEN MC HUGH, et al., are the Plaintiffs and 17 MADISON-KIPP, et al., are the Defendants and 18 MADISON-KIPP CORPORATION is the Cross-Claimant and 19 CONTINENTAL CASUALTY COMPANY, et al., are the 20 Cross-Complainants and LUMBERMENS MUTUAL CASUALTY 21 COMPANY are the Third-Party Defendants. 22 A P P E A R A N C E S 23 THE COLLINS LAW FIRM, P.C. 1770 North 24 Park Street, Suite 200, Naperville, Illinois, 60563, by 25 MR. EDWARD J. MANZKE, ejmanzke@collinslaw.com, appeared on behalf of the Plaintiffs.</p>	<p>Page 59</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <hr style="width: 80%; margin-left: auto; margin-right: 0;"/> <p>Notary Public in and for the State of Wisconsin</p> <p>Dated this 16th day of January, 2013, Milwaukee, Wisconsin.</p>
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<p>Page 58</p> <p>1 VARGA, BERGER, LEDSKY, HAYES & CASEY, 2 125 South Wacker Drive, Suite 1250, Chicago, Illinois, 3 60606-4473, by MR. MICHAEL D. HAYES, mhayes@vblhc.com, appeared on behalf of the Plaintiffs. 4 MICHAEL, BEST & FRIEDRICH, LLP, 100 East 5 Wisconsin Avenue, Milwaukee, Wisconsin, 53202, by MR. 6 JOHN A. BUSCH, jabusch@michaelbest.com, appeared on 7 behalf of Madison-Kipp Corporation. 8 MICHAEL, BEST & FRIEDRICH, LLP, One 9 South Pinckney Street, Suite 700, Madison, Wisconsin, 10 53703, by MS. LEAH H. ZIEMBA, lhziemba@michaelbest.com, appeared on behalf of Madison-Kipp Corporation. 11 TROUTMAN SANDERS, LLP, 55 West Monroe 12 Street, Suite 3000, Chicago, Illinois, 60603-5758, by 13 MR. CHRISTOPHER H. WHITE, 14 christopher.white@troutmansanders.com, appeared on 15 behalf of the Defendant Continental Casualty Company. 16 MEISSNER, TIERNEY, FISHER & NICHOLS, 17 S.C., 111 East Kilbourn Avenue, 19th Floor, Milwaukee, 18 Wisconsin, 53202-6622, by MS. JENNIFER KREIL, 19 jbk@mtfn.com, appeared on behalf of United States Fire 20 Insurance Company. 21 DEUTCH & WEISS, LLC, 7670 North Port 22 Washington Road, Milwaukee, Wisconsin, 53217, by MR. 23 CHARLES W. KRAMER, charles.kramer@mweisslaw.net, 24 appeared on behalf of American Motorists Insurance 25 Company. 18 That said deponent, before examination, 19 was sworn to testify the truth, the whole truth, and 20 nothing but the truth relative to said cause. 21 That the foregoing is a full, true and 22 correct record of all the proceedings had in the matter 23 of the taking of said deposition, as reflected by my 24 original machine shorthand notes taken at said time and 25 place.</p>	
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