

EXHIBIT E

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IN THE UNITED STATES DISTRICT COURT
IN THE DISTRICT COURT OF ARIZONA
PHOENIX DIVISION

MARVIN SAPIRO and)
GLORIA SAPIRO, his wife,)
)
Plaintiffs,)
)
vs.)
)
SUNSTONE HOTEL INVESTORS, LLC.,)
SUNSTONE HOTEL INVESTORS, LP.,)
)
Defendants.)
-----)
Case No. CIV 03 1555 PHX SRB)

VIDEOTAPE DEPOSITION OF JEFF HAMMERMEISTER

Taken Wednesday, June 1, 2005

From the Hour of 8:54 a.m. to 11:21 p.m.

Pages 1 through 114, inclusive
Volume 1

Taken by Counsel for Plaintiff

at

Offices of Heartland Court Reporters
100 Cushman Street, Suite 308
Fairbanks, Alaska 99701

Reported by:
CAROL A. McCUE, RMR
Heartland Court Reporters

COPY

1 hospitality management at college, did you receive
2 formal training at any -- by any of your employers?

3 A. The first two years with Red Lion in a
4 management training capacity, that would be on the job,
5 how to be a general manager, training.

6 Q. Okay.

7 A. And after that, no.

8 Q. Have you taken any seminars on the industry
9 ever since?

10 A. No.

11 Q. What did the general manager training involve?

12 A. Working in all the departments as a Lion
13 employee, and as a mid-level supervisor.

14 Q. Uh-hum. Was it to give you a sense of how the
15 hotel worked?

16 A. How each job functioned in the property.

17 Q. All right. Okay. Did you ever receive any
18 training or education about Legionnaires?

19 A. No.

20 Q. Do you remember hearing about the Legionnaires
21 outbreak in Philadelphia?

22 A. No.

23 Q. When was the first time you remember hearing
24 Legionnaires?

25 A. At Sheraton San Marcos.

1 A. And then through several revisions or versions
2 of that, targets are set for the following year. And
3 then those are the -- those are the -- the goals.

4 Q. And those are the ones that are used, among
5 other things, to establish your goals?

6 A. Correct. Part of it, right.

7 Q. All right. Who did -- who reviewed this
8 budget?

9 A. The regional vice-president is who I -- I
10 dealt with. And then above that, I have no idea.

11 Q. Who were your regional vice-presidents while
12 you worked at Sunstone? Let's start with the Hilton at
13 Carson.

14 A. Phil Dignan.

15 Q. And at Concord?

16 A. Phil Dignan.

17 Q. And at the San Marcos?

18 A. Phil Dignan.

19 Q. Is he still with Sunstone, do you know?

20 A. Yes. He's the -- his -- his region is West
21 Coast, the West.

22 Q. How often did he travel to San Marcos while
23 you were there?

24 A. Usually monthly.

25 Q. Why did he travel to San Marcos? What did he

1 do while he was there?

2 A. He would -- he had -- he was responsible for a
3 property we had in Flagstaff, property we had in Mesa.

4 Q. What do you mean he was responsible for it?

5 A. It was part of his region.

6 Q. Okay.

7 A. Other general managers.

8 Q. Okay.

9 A. Flagstaff, Mesa, Tucson, and Chandler was in
10 that region. So when he came out, he was on a -- on a
11 route to all of them.

12 Q. Uh-hum. What would a typical visit by him be
13 like?

14 A. Walk the property. Review guest comments, of
15 course. Review sales activity. Review operating
16 numbers based on the budget. Any issues that --
17 that -- that the franchise might have, Sheraton or
18 Hilton or whatever the case may be.

19 Q. Right.

20 A. And how we were working to improve on those
21 guest scores.

22 Q. All right. Do you know the actual name of the
23 entity that -- that you received a paycheck from?

24 A. Sunstone Hotels is -- is what I know.

25 Q. Do you know whether Phil worked for the same

1 Q. Uh-hum.

2 A. Pretty much a daily -- a daily walk-through
3 that I would do.

4 Q. Did you have a formal review process for
5 Mr. Marrs?

6 A. Did I -- did I personally have a --

7 Q. Uh-hum.

8 A. No.

9 Q. No. How was Mr. Marrs compensated?

10 A. Same as I, through the payroll system of
11 Sun -- Sunstone Hotels.

12 Q. Did he have a bonus or just a base salary?

13 A. I believe just a base. There -- there could
14 have been a bonus. I don't recall that.

15 Q. Okay. Do you know whether Marrs kept current
16 with the industry through any training?

17 A. I don't know.

18 Q. Did Sunstone pay for training for continuing
19 education for its engineers?

20 A. I don't know.

21 Q. Let's put this aside for one moment. I would
22 like to show you something else.

23 (Pause.)

24 BY MR. SCHMIDT:

25 Q. Do you know who Gary Stewart is?

1 Mr. Hammermeister in the course and scope of his
2 employment with the San Marcos.

3 MR. SCHMIDT: Okay. That's fine. Great.

4 MR. KLEIFIELD: I'll give you the rest of that
5 stack back. He doesn't need it.

6 BY MR. SCHMIDT:

7 Q. Let me show you, then, what we will mark as
8 Exhibit 13?

9 THE REPORTER: 14.

10 MR. SCHMIDT: 14? Okay. SUNSI274 and 275.

11 (Exhibit 14 marked.)

12 BY MR. SCHMIDT:

13 Q. Let's see. Look at the bottom right-hand
14 corner, and it has a date on it, it says 9/10/03.

15 A. Yes.

16 Q. What does -- what does this document appear to
17 you to be?

18 A. It's one of several Health Department property
19 inspections that -- when they would come to the
20 hotel -- or any hotel, but the San Marcos. This is
21 a -- an inspection of the hotel, the guest room part of
22 their -- their visit.

23 Q. Okay.

24 A. Which would -- I believe it's two, maybe three
25 times a year that they would come up. There would also

1 be one for the kitchen, one for the restaurant, one for
2 different areas.

3 Q. And the remarks area, the first remark says,
4 note, new business name. Do you see that, in the
5 bottom remarks?

6 A. Okay. Yes.

7 Q. Do you know why there was a new business name
8 for the San Marcos at this time?

9 A. The Sheraton sign came off the building on
10 September 1st, I believe.

11 Q. Okay. And do you believe that's what that
12 refers to?

13 A. Right.

14 Q. The next line in the remarks says, advisory,
15 and it lists a number of items that seem to reflect the
16 remediation efforts that were undertaken at the
17 San Marcos.

18 A. Okay.

19 Q. I'd like to review them with you to see if
20 they meet with your recollection of what was done.

21 It says, the hot lines were super-heated and
22 hyperchlorinated. Do you remember that?

23 A. Do I remember them writing this or do I
24 remember this being done?

25 Q. No. That it was -- that it was done?

1 training, instruction, or guidance on the subject of
2 Legionella, legionellosis, or Legionnaires Disease?

3 A. No.

4 Q. With regard to the Westmark, we've already
5 talked about the nature of that hotel chain, have they
6 ever provided you any guidance, instruction, or
7 training on the subject of Legionella, legionellosis,
8 or Legionnaires Disease?

9 A. No.

10 Q. In the course of your 25 years' experience in
11 the hotel industry, in the course of your education and
12 training in a hotel program at Oregon State University,
13 no one has ever provided you any training, instruction,
14 guidance that a particular standard of care applies to
15 the hotel industry relative to managing the risk
16 presented by Legionella in a hotel setting, true?

17 A. True.

18 MR. SCHMIDT: Objection. Form.

19 BY MR. SCHMIDT:

20 Q. You were shown Exhibit Number 2, which was a
21 document you told us you had never seen before. In the
22 course of your time at the three Sunstone properties
23 you were at, you never saw this document, true?

24 A. That's true.

25 Q. In the course of time at the three Sunstone

1 properties you were at, it was never adopted by you as
2 some type of standard that applied to the operation of
3 the hotels that you were involved in, true?

4 MR. SCHMIDT: Objection. Leading.

5 THE WITNESS: True.

6 BY MR. KLEIFIELD:

7 Q. In the course of the three properties that you
8 were at with Sunstone, you never received any
9 instruction, e-mail, letter, anything from anyone at
10 Sunstone advising this was to be adopted as a set of
11 standards by you or by the hotel that you were then
12 managing, true?

13 MR. SCHMIDT: Objection. Leading.

14 THE WITNESS: True.

15 BY MR. KLEIFIELD:

16 Q. You were asked questions about a document
17 called Sunstone 500, this is an excerpt from
18 Exhibit Number 2, talking about Legionnaires
19 Disease, and specifically whether or not Mr. Marrs
20 adhered to the standards in this document. You
21 have no knowledge or information that Mr. Marrs did
22 or did not do any of the things called out in this
23 document, true?

24 MR. SCHMIDT: Objection. Leading.

25 THE WITNESS: True.

EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MARVIN SAPIRO and GLORIA SAPIRO,)
his wife,)

Plaintiffs,)

vs.)

CIV 03 1555 PHX SRB

SUNSTONE HOTEL INVESTORS, L.L.C.,)

SUNSTONE HOTEL INVESTORS, L.P.,)

Defendants.)

DEPOSITION OF ROBERT MARRS

PHOENIX, ARIZONA

September 23, 2004

3:04 p.m.

PREPARED FOR: THE COURT
(ORIGINAL)

REPORTED BY: DEBRA M. GALVIN, RPR, CSR
Certificate No. 50375

Page 14

1 Q So when you took over, what work, if any, did you
 2 do relative to -- again, air conditioning, water systems, ice
 3 machines -- that type of -- that's what we're talking about.
 4 A Sure.
 5 Q Okay. What did you specifically do?
 6 A I assessed the overall condition of the property
 7 and started a preventive maintenance program.
 8 Q Who was your immediate predecessor in that
 9 position, if you know?
 10 A I believe it was a gentleman named Terry Martin.
 11 Q And was -- do you know why Terry Martin left that
 12 position?
 13 A I don't have any knowledge of that.
 14 Q Was Mr. Martin there when you got there?
 15 A No.
 16 Q All right. When you said you took over the
 17 position, you assessed the overall condition of the property
 18 relative to the -- we're talking now like the -- we'll call
 19 it, broadly, the water system between -- I'm saying
 20 "broadly."
 21 And just so we understand what I'm talking about,
 22 ice machines, water that goes into the rooms and out of the
 23 rooms, air conditioning -- anything relating to those.
 24 That's what I'm talking about when I say "water
 25 system."

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1 Is that okay to refer to them that way, or should
 2 we refer to them separately?
 3 MR. KLEIFIELD: Well, I'm going to object to that
 4 proposition, simply because it can be mischaracterized in
 5 that fashion. How about mechanical systems?
 6 I understand you're trying to be efficient in
 7 what you're doing, but I'm just concerned about
 8 mischaracterization.
 9 Q (By Mr. Davis) Well, I want it to be clear for you,
 10 Mr. Marrs, so obviously I want to be as precise as possible.
 11 So let's break it down then. Let's talk about air
 12 conditioning first.
 13 A Okay.
 14 Q What did you do with respect to air conditioning?
 15 A I evaluated the overall condition of the air
 16 conditioners in the facility.
 17 Q And what, if any, maintenance was performed on the
 18 air conditioning?
 19 A I started a PM sheet.
 20 Q What's a PM sheet?
 21 A That's a preventive maintenance sheet.
 22 (Whereupon, Exhibit No. 1 was marked.)
 23 Q (By Mr. Davis) And just for the record, I've marked
 24 a copy of your subpoena as Exhibit 1. And I really don't
 25 need for you to identify it, but just so it's logical.

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1 And I'll show you what was handed to me as part of
 2 the production in this case, and I'll mark it as Exhibit 2
 3 and ask you: Is this the preventive maintenance sheet that
 4 you just described?
 5 A Yes.
 6 (Whereupon, Exhibit No. 3 was marked.)
 7 Q (By Mr. Davis) All right. And tell me how that
 8 sheet is prepared, if you know.
 9 A Well, being able to keep track of critical pieces
 10 of equipment, I identified what I felt were the critical
 11 pieces of equipment for the property that needed maintenance
 12 or attention and listed them on an Excel spread sheet.
 13 And then I started tracking what I did to each
 14 piece of equipment.
 15 Q Okay. Well, the document I've handed you, then, is
 16 Exhibit 2, which is marked as SUNST113 and 114 -- that is a
 17 document that you prepared during the time you were at the
 18 San Marcos?
 19 A Correct.
 20 Q And did you -- you maintained this on a computer at
 21 the San Marcos?
 22 A Yes, a computer.
 23 Q Obviously, it would have been updated as the
 24 different dates came about; is that correct?
 25 A Correct.

Page 17

1 Q Did you keep any other records regarding your
 2 preventive maintenance program on the computer?
 3 A No.
 4 Q So this is the only record that you have kept
 5 relative to any preventive maintenance activities that you
 6 performed; is that correct?
 7 A Yes. I developed this.
 8 Q And I'm going to ask you more detail about this in
 9 a minute, but are there any other documents that you prepared
 10 for regular maintenance items that were performed?
 11 A There was an Excel spread sheet that I developed to
 12 track regrouting and recaulking of bathtub tile and room
 13 preventive maintenance.
 14 Q So one was bath and shower grout, and the other was
 15 room maintenance?
 16 A It was all -- it was combined into one. It was
 17 to -- for the bath and shower, to keep track of what rooms
 18 had been addressed and what rooms still were in need of being
 19 addressed.
 20 Q And that was -- did you then go and do a
 21 room-by-room inspection at the hotel?
 22 A I would inspect a percentage of the rooms. I might
 23 inspect five to ten rooms a week for condition.
 24 Q And just so it's clear, how many rooms were at the
 25 San Marcos?

Page 18

1 **A 295.**
 2 Q Now in your work as the director of engineering at
 3 the San Marcos, I see here in Exhibit 2, the first item says
 4 "Boiler Main Building."
 5 What is that -- what is that one line-reference, if
 6 you could -- do you see what I'm talking about, sir?
 7 **A Yes.**
 8 Q Okay.
 9 **A That is the boiler that feeds the main lodge**
 10 **building that controls -- that feeds the banquet area and the**
 11 **restaurant and hotel restrooms.**
 12 **So it serves just the old, original building from**
 13 **1912.**
 14 Q And how many boilers were there in the San Marcos?
 15 **A Three boilers.**
 16 Q The reason I -- it looks to me that there would be
 17 four boilers according --
 18 **A Four. The fourth boiler was for the cooling tower.**
 19 **So, yes, there would be four boilers.**
 20 Q I'm just looking at your sheet, where it says
 21 "Boiler Main Building, Boiler East, Boiler West" --
 22 **A Yes.**
 23 Q -- and "Boiler Tower."
 24 **A That's correct.**
 25 Q And so we know what the terminology is, Boiler East

Page 20

1 **A Yes.**
 2 Q Okay. What did you -- what did you have the water
 3 set at? What temperature did you have the water set at?
 4 **A 130 is where the boilers were set at upon my**
 5 **arrival at the property.**
 6 Q And did you maintain that setting --
 7 **A Yes.**
 8 Q -- during the time you were --
 9 **A Yes.**
 10 Q And were you able to confirm that the water was, in
 11 fact, heated to that temperature?
 12 **A Yes.**
 13 Q How?
 14 **A With a temperature meter.**
 15 Q How did you do that, though? I mean, just -- let
 16 me withdraw that. Did you specifically go in and measure the
 17 heat of the water?
 18 **A Yes.**
 19 Q Okay. When did you do that?
 20 **A Several occasions.**
 21 Q Can you give me approximate times of when you would
 22 have done that relative to your approximate 18-month
 23 employment there?
 24 **A I would have done it probably once every two weeks**
 25 **in various areas of the building upon doing a room**

Page 19

1 is what?
 2 **A That would be the boiler that would feed the rooms**
 3 **closest to the main building.**
 4 Q And Boiler West -- what would that be?
 5 **A It would feed the rooms west of -- I don't remember**
 6 **the room numbers off the top of my head, but the rooms were**
 7 **broken -- there's like 250 rooms in that bank.**
 8 **125 rooms were on one boiler, 125 rooms were on the**
 9 **other boiler.**
 10 Q And those boilers -- what was their function?
 11 **A Provided hot water for the guest rooms.**
 12 Q And what was the function for the boiler for the
 13 tower?
 14 **A It is to heat the water in the winter for the water**
 15 **source heat pumps for the closed loop for the air**
 16 **conditioning. It's for the closed loop for the air**
 17 **conditioning.**
 18 Q And during the time in which you were there, did
 19 you have -- I'm talking now specifically about the boilers
 20 that would have served the guest rooms as opposed to the main
 21 building. So I guess that would be the Boiler East and the
 22 Boiler West?
 23 **A Uh-huh.**
 24 Q Did you make determinations as to what temperature
 25 the hot water should be heated to?

Page 21

1 inspection. Or when working on the air conditioning, I would
 2 also take a temperature reading of what -- the water temp
 3 we'd have in the room.
 4 Q Did you record those in any place?
 5 **A No.**
 6 Q What was the purpose, then, of doing the testing of
 7 the temperature?
 8 **A Twofold. To make sure that we had warm enough**
 9 **water and make sure the water wasn't too hot so we didn't**
 10 **scald somebody.**
 11 Q Did you ever have -- receive any complaints that
 12 the water was too hot while you were working there?
 13 **A Yes.**
 14 Q How often had you received those complaints?
 15 **A I know of one.**
 16 Q What?
 17 **A I know of one.**
 18 Q You said one complaint?
 19 **A Yeah.**
 20 Q And, conversely, did you receive any complaints
 21 that the hot water wasn't hot enough?
 22 **A I know of -- I know of one, yes.**
 23 Q Are there any documents that would reflect any
 24 response or any recording of those two complaints that you
 25 just described for me?

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT COURT OF ARIZONA

MARVIN SAPIRO and GLORIA)
SAPIRO, his wife,)
)
Plaintiffs,)
)
vs.)
)
SUNSTONE HOTELS INVESTORS,)
L.L.C.; SUNSTONE HOTEL)
INVESTORS, L.P.,)
)
Defendants.)

No. CIV03-1555 PHX SRB

CERTIFIED
COPY

DEPOSITION OF MATTHEW R. FREIJE

San Clemente, California

Friday, September 16, 2005

Volume 2

Reported by:
LINDA M. UNGER
CSR No. 11403
Job No. 631777

1 would have rendered -- would have been rendered
2 ineffective in managing the risk presented by
3 legionella?

4 A Well, first of all, I never said that,
5 period --

6 Q Okay.

7 A -- that the tanks were so old that the cleaning
8 would have been ineffective. I said that the cleaning
9 would have not guaranteed legionella control.

10 Q Where do you say in this report anywhere that
11 it's your opinion or conclusion that cleaning would not
12 have been sufficient to achieve legionella control?

13 MR. SCHMIDT: Objection. Mischaracterizes
14 former testimony.

15 BY MR. KLEIFIELD:

16 Q I think just point to the page and line number.

17 A I don't really refer to it directly. I believe
18 I refer to it indirectly by pointing out that on page 3,
19 second paragraph, that it's important to not only take
20 the preventive measures, but to test the water to make
21 sure the preventive measures are working, which
22 indicates that the preventive measures will not always
23 in themselves keep the bacteria under control.

24 I don't mention the age of the tanks. In
25 particular, in part, I didn't know at that point what

1 legal conclusion.

2 THE WITNESS: In the report, I state that it's
3 important for hotel operators to incorporate reasonable
4 legionella preventive measures in design, installation,
5 operation and maintenance of domestic water systems.
6 That would include draining, cleaning and disinfecting
7 hot water tanks periodically.

8 I didn't site every preventive measure;
9 otherwise the report probably would have been 60 pages
10 long or so because that's just one of many preventive
11 measures.

12 I did, however, refer to Sunstone's own
13 engineering manual on page 4 which says to drain down
14 all storage tanks on a regular basis.

15 BY MR. KLEIFIELD:

16 Q So you agree with me that your opinion includes
17 a conclusion that in order to reasonably maintain the
18 premises to manage the risk represented by legionella
19 that you believe that the San Marcos should have
20 drained, cleaned and disinfected its hot water storage
21 tanks periodically; correct?

22 A That's one of many measures I think should have
23 been taken, yes.

24 Q What's the basis for your opinion with respect
25 to that particular task?

1 A Hot water tanks are conducive to legionella
2 contamination, especially vertical tanks, but horizontal
3 tanks can be as well. One reason for that is that most
4 tanks maintain water temperature at the set point in
5 only about 65 percent of the tank, so at the bottom part
6 of the tank, it tends to be cooler than in the top part
7 of the tank. So at the bottom where it's not as hot and
8 where is also the place that sediment and other debris
9 accumulates, that's where legionella tend to flourish.

10 So it's important to periodically drain out
11 that sediment and blow it out, so to speak, to clean out
12 the tank periodically.

13 Q And you contend that every business entity in
14 the hospitality industry with hot water storage tanks is
15 required to do that in order to manage the risk
16 presented by legionella in their domestic water system;
17 true?

18 MR. SCHMIDT: Objection. Form;
19 mischaracterizes former testimony.

20 THE WITNESS: I believe it's recommended
21 practice. It's proper practice for any domestic hot
22 water system of this sort.

23 BY MR. KLEIFIELD:

24 Q Okay. Who suggests that it's recommended
25 practice for any domestic hot water system of this sort,

1 three of the first four from the bottom deal with the
2 health care risk management or health facilities
3 management for hospital infection control; true?

4 A Yes.

5 Q Now, you said that your reports, Nos. 302 and
6 303, were available for purchase; correct?

7 A Yes.

8 Q And you advertised their availability for
9 purchase on your web site; correct?

10 A Yes.

11 Q Any other sources where -- strike that.

12 Any other methods where you advertised these
13 reports for purchase?

14 MR. SCHMIDT: Objection. Form.

15 THE WITNESS: Yes, I believe there were. I
16 just can't remember them now, but I know that there were
17 other forms of advertising.

18 BY MR. KLEIFIELD:

19 Q Any other reference materials that support your
20 proposition that hotels should drain, clean and sanitize
21 their hot water storage tanks periodically in order to
22 reasonably manage the risk presented by legionella?

23 A None that are with me. I limited what I
24 brought here today to either government or industry
25 association guidelines that were published prior to 2003

1 in the United States.

2 There are a number of industry articles in
3 magazines that have mentioned that and guidelines
4 published outside the United States where legionella
5 awareness is higher and preventive measures have been
6 more widely published, and I didn't bring those.

7 Q You're not aware of any governmental law that
8 requires a facility such as the San Marcos to drain,
9 clean and sanitize its hot water storage tanks
10 periodically to manage the risk presented by legionella,
11 are you?

12 MR. SCHMIDT: Objection. Form; calls for a
13 legal conclusion.

14 THE WITNESS: I know of no law that requires
15 those measures.

16 BY MR. KLEIFIELD:

17 Q And separate and aside from the extent to which
18 you choose to interpret OSHA technical manual Chapter 7,
19 you're not aware of any governmental code or regulation
20 that requires that, are you?

21 MR. SCHMIDT: Same objection.

22 THE WITNESS: There might be some in certain
23 localities. I don't know of any national or any federal
24 document that would be considered law that would require
25 it.

1 Q How many times have you been retained by a
2 hotel to sample their domestic water systems and found
3 the presence of legionella in sufficient concentrations
4 as to pose a health risk to guests staying at the hotel?

5 A I don't know, but it would be -- it would be
6 very low. As I mentioned, most of the risk assessment
7 work I've done sampling has been in hospitals.

8 Q Okay. Try to recall one for me where you've
9 been hired by a hotel to perform sampling of domestic
10 water systems and the results of those samples
11 demonstrated legionella present in sufficient
12 concentrations to be a health risk to guests staying in
13 the hotel.

14 A I can't think of one.

15 Q Tell me how many times you've been hired by a
16 hotel to perform sampling of its domestic water system
17 to determine the extent and concentrations of legionella
18 present in that water system.

19 A Well, I can't think of any offhand.

20 Q The sampling you performed was May of 2003;
21 correct?

22 A Yes.

23 Q Have you performed any scientific study or
24 analysis regarding the promulgation rate of legionella
25 bacteria of any particular sera group of any particular

1 environment?

2 A Could you define promulgation rate.

3 Q Sure. How quickly it multiplies.

4 A There's not a consensus among microbiologists
5 as to what that is. It's -- what I generally go by is
6 every twelve hours.

7 Q Have you performed any type of regression
8 analysis based upon the samples that you performed in
9 this case?

10 MR. SCHMIDT: Objection to form.

11 THE WITNESS: To take the samples that were
12 collected from the San Marcos and do an analysis as to
13 how fast they were replicating?

14 BY MR. KLEIFIELD:

15 Q How fast they were replicating and over what
16 time they replicated to achieve the concentrations that
17 you sampled.

18 A No. I don't know of anyone who has ever done
19 that analysis ever.

20 Q You agree with me that the samples were taken
21 at the property in August of 2003; correct?

22 A I don't remember exactly when it was. I must
23 have the report somewhere, but I recall that it was
24 around that time.

25 Q And do you remember that the results of those

1 samples demonstrated the presence of legionella in much
2 higher concentrations than the samples that you obtained
3 in May of 2003?

4 A Generally, yes.

5 Q As a general statement, the results of the
6 second samples demonstrated that there was greater
7 proliferation of legionella than when you were on the
8 property and sampled?

9 MR. SCHMIDT: Objection. Mischaracterizes
10 testimony and lacks foundation.

11 THE WITNESS: I would have to do a comparison
12 of sample sites themselves to see where at the property
13 they sampled, but in general, just the general results
14 were that they found higher concentrations. It was a
15 different laboratory, and that could have had some part
16 in it.

17 BY MR. KLEIFIELD:

18 Q You're not aware of the extent to which the
19 difference in the laboratories accounts for the
20 difference in the concentrations of legionella with
21 respect to the samples?

22 A Some laboratories are more proficient in
23 finding it than others. I can't say exactly the
24 difference between these two, if there is any.

25 Q You can't say there was any difference between

1 BY MR. KLEIFIELD:

2 Q I'm not asking you to assume the routing. I'm
3 simply dealing with the ambient temperature range in all
4 lines.

5 If you've got a line that is proven to go
6 underground and is proven to have an ambient water
7 temperature in the promulgation range in May but not in
8 February, the potential for promulgation is greater in
9 May than in February based upon that factor; true?

10 MR. SCHMIDT: Same objection. Form.

11 THE WITNESS: The water in the cold water
12 piping could be more conducive in May than in February.
13 I don't believe it would affect the hot water piping in
14 either case, no.

15 BY MR. KLEIFIELD:

16 Q You didn't sample in February; true?

17 A No, I did not.

18 Q You performed no scientific analysis to
19 ascertain the likely concentrations of legionella at any
20 location on the property in February as compared to May;
21 true?

22 A I didn't test in February.

23 Q And of the tests that you did in May, you've
24 not done any scientific analysis of those results to
25 ascertain what the likely concentrations were in

1 February based upon the test samples that you had
2 evaluated by a lab; true?

3 A No such tests exist.

4 Q Likewise, you didn't take what you sampled, the
5 results of those samples that you performed in May, to
6 ascertain the extent to which there were pathogenic
7 concentrations of legionella in November of 2002; true?

8 A No such tests exist.

9 Q The second numbered paragraph of your February
10 11th, 2005, report conveys the statement that, quote,
11 "Martin Sapiro would not have been exposed to high
12 levels of legionella bacteria during his stay at the San
13 Marcos if the property owner or manager or other party
14 responsible for the hotel, presumably Sunstone Hotel
15 Investors, LP, or Sunstone Hotel Management, Inc.,
16 hereinafter referred to as Sunstone, had routinely
17 tested that hotel water system for legionella and taken
18 appropriate steps in response to the results." Have I
19 read that correctly?

20 A I believe so, yes. I didn't -- I wasn't sure
21 exactly where you were reading, but I think you read it
22 correctly.

23 Q Do you believe that any sample that reveals any
24 level of pathogenic or nonpathogenic legionella in a
25 domestic water system in a hotel setting requires

1 want to maintain the system to prevent legionella
2 contamination and they're testing to find out if their
3 preventive measures are working, then it doesn't lead to
4 a false sense of security.

5 BY MR. KLEIFIELD:

6 Q Do you agree that legionella amplifiers can
7 cause legionella to become heavily colonized very
8 quickly?

9 MR. SCHMIDT: Objection. Form.

10 THE WITNESS: I would have to have more of an
11 explanation of that.

12 BY MR. KLEIFIELD:

13 Q We talked about this briefly earlier, and that
14 is the rate at which legionella can promulgate. Do you
15 have an opinion regarding the extent to which legionella
16 can promulgate to pathogenic levels in a welcome
17 environment, in a conducive environment?

18 MR. SCHMIDT: Objection. Form; incomplete
19 hypothetical.

20 BY MR. KLEIFIELD:

21 Q How quickly it can go from a nonpathogenic to a
22 pathogenic level.

23 MR. SCHMIDT: Same objection.

24 THE WITNESS: Well, legionella can --
25 legionella counts can go from nondetectable to fairly

1 high counts in a short period of time.

2 In some instances, for example, if there's
3 water pressure shock -- perhaps the city is working on a
4 water main and it shakes loose piping and biofilm comes
5 loose -- there have been outbreaks associated with those
6 events because of the rapid increase in legionella
7 levels in the water.

8 BY MR. KLEIFIELD:

9 Q What do you mean by short time? In your
10 understanding of the documents in that respect, what's
11 that quantification? What's a short time?

12 A It could even be minutes.

13 Q Okay.

14 A But absent those types of events, it's not
15 likely to change substantially over time from being safe
16 to unsafe, for example, without some kind of
17 intervention, without some kind of disinfection
18 procedure or, in the other scenario, some type of
19 introduction of organic contaminants in the water that
20 would be nutrients for legionella.

21 So a system that's just basically left to
22 operate as usual, it would follow these same
23 laboratory-defined replication rates which are not
24 entirely agreed upon by microbiologists, but would be
25 roughly every twelve hours.