

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 ) File No. SF-03390-A

5 SUNWEST MANAGEMENT, INC. )

6

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8

9

10 WITNESS: Michael J. Deines

11 PAGES: 1 through 60

12 PLACE: Securities and Exchange Commission

13 Testimony Room D

14 44 Montgomery Street

15 San Francisco, California 94104

16 DATE: Thursday, January 22, 2009

17

18 The above-entitled matter came on for hearing, pursuant  
19 to notice, at 9:40 a.m.

20

21

22

COPY

23

24

Diversified Reporting Services, Inc.

25

(202) 467-9200

26

## 1 APPEARANCES:

2 On behalf of the Securities and Exchange Commission:

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4 KASHYA K. SHEI, ESQ.

5 Office of Enforcement

6 United States Securities and Exchange Commission

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9 (415) 705-2331

10

11 On behalf of the Witness:

12 WILLIAM B. CROW, ESQ.

13 Schwabe, Williamson &amp; Wyatt

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16 Portland, Oregon 97204

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18

19 Also in Attendance via Telephone:

20 PATRICK FITZGERALD, Enforcement Officer

21 JASON AMBERS, Enforcement Officer

22 State of Oregon

23 Division of Finance and Corporate Securities

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25 Salem, Oregon 97301

## C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Michael James Deines		4
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	23	Subpoena, Production/Appearance	6
8	24	Highlands Senior Living Properties,	15
9		LLC PPM	
10	25	ML2 Senior Living Property, PPM	27
11	26	Belton Senior Living PPM	39
12	27	Canterbury Gardens & Magnolia	41
13		Gardens PPM	
14	28	Fisher's Landing Assisted Living PPM	44
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17		PREVIOUSLY INTRODUCED EXHIBITS	
18	EXHIBITS:	DESCRIPTION	IDENTIFIED
19	1	SEC Information Form 1662	5
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## 1 P R O C E E D I N G S

2 MR. LIFTIK: We are on the record at 9:40 a.m. on  
3 January 22, 2009

4 Please raise your right hand.

5 Whereupon,

6 MICHAEL JAMES DEINES

7 was called as a witness and, having been first duly sworn,  
8 was examined and testified as follows:

9 EXAMINATION

10 BY MR. LIFTIK:

11 Q Please state your full name and spell it for the  
12 record?

13 A Michael James Deines. Do you need me to spell  
14 Michael? All right, M-i-c-h-a-e-l. James is J-a-m-e-s.  
15 Deines, D-e-i-n-e-s.

16 Q Mr. Deines, we've already met. But I am Michael  
17 Liftik and with me is Kashya Shei. We are Officers of the  
18 Commission for the purposes of this proceeding.

19 This is an investigation by the United States  
20 Securities and Exchange Commission in the matter of Sunwest  
21 Management, Inc., Sf-03390, to determine whether there have  
22 been violations of certain provisions of the federal  
23 securities laws.

24 However, the facts developed in this investigation  
25 might constitute violations of other federal or state, civil

1 or criminal laws.

2 Prior to the opening of the record, you were  
3 provided with a copy of the formal order of investigation in  
4 this matter. It will be available for your examination  
5 during the course of this proceeding.

6 Mr. Deines, have you had an opportunity to review  
7 the formal order?

8 A Yes.

9 Q Also prior to the opening of the record you were  
10 provided with a copy of the Commission's Supplemental  
11 Information Form 1662. A copy of that notice has previously  
12 been marked as Exhibit 1.

13 Mr. Deines, have you had an opportunity to review  
14 Exhibit 1?

15 (SEC Exhibit No. 1 was referred to.)

16 A Yes.

17 Q Do you have any questions concerning this notice?

18 A No.

19 Q Mr. Deines, are you represented by counsel?

20 A Yes.

21 Q Would Counsel please identify himself?

22 MR. CROW: William B. Crow, C-r-o-w.

23 MR. LIFTIK: State the firm and address, please?

24 MR. CROW: Schwabe -- attorney at Schwabe,  
25 Williamson and Wyatt, at the Pacwest Building in Portland,

1 Oregon.

2 MR. LIFTIK: Mr. Crow, are you representing  
3 Mr. Deines as his counsel today?

4 MR. CROW: Yes, I am.

5 MR. LIFTIK: Would the other persons appearing by  
6 phone please identify themselves?

7 MR. FITZGERALD: This is Patrick Fitzgerald. I'm  
8 an Enforcement Officer with the State of Oregon, Division of  
9 Finance and Corporate Securities.

10 MR. AMBERS: I'm Jason Ambers, and I'm an  
11 Enforcement Officer as well.

12 BY MR. LIFTIK:

13 Q Mr. Deines, I'm going to hand you what's been  
14 marked as Exhibit 23.

15 Have you seen this document before?

16 (SEC Exhibit No. 23 was marked for  
17 identification.)

18 A No.

19 Q Do you understand that this is the subpoena  
20 pursuant to which you are appearing today?

21 A I guess I understand it now that you tell me that.

22 Q Mr. Deines, I'm going to be asking you a series of  
23 questions today. As you can see, everything that is being  
24 said here is being recorded.

25 So I ask that all your answers to my questions be

1 verbal rather than shakes of the head.

2 If you do not understand a question, please let me  
3 know.

4 MR. CROW: Before you proceed, Mr. Liftik, I have  
5 a statement I wish to make on the record.

6 Mr. Deines is here pursuant to a subpoena. He --  
7 because of the early nature of this investigation and the  
8 proceedings, Mr. Deines will be refusing to answer based upon  
9 his constitutional rights under the Fifth Amendment.

10 Most of the questions which I expect you will be  
11 asking will -- his response will be just that that he will  
12 refuse to answer based on the advice of counsel and his  
13 rights under the Fifth Amendment of the Constitution of the  
14 United States.

15 As I mentioned to you within the last several days,  
16 we are hopeful that within the next several months Mr. Deines  
17 will be able to appear voluntarily and provide the testimony  
18 that you wish.

19 But because of the early nature of these  
20 proceedings and what we don't know yet about the  
21 investigation and the fact that there are bankruptcy  
22 proceedings pending which will involve the necessity of  
23 Mr. Deines participating in a series of efforts to protect  
24 investors and lenders, he will not be testifying to any  
25 substantive matters today.

1           A     Under advice, I'm not answering that question at  
2 this time.

3           Q     Mr. Deines, I'm not authorized to compel you to  
4 give evidence or testimony as to which you assert your  
5 privilege against self-incrimination. And I have no  
6 intention of doing so.

7                     In addition, I do not have the authority to compel  
8 your testimony by granting you immunity from prosecution.

9                     Any question that I ask hereafter will be with the  
10 understanding that if you wish to assert your privilege, you  
11 need merely to state that you refuse to answer on the grounds  
12 that your answer might incriminate you.

13                    In other words, you are not compelled to answer any  
14 further questions if you believe that a truthful answer to a  
15 question might show that you committed a crime and you wish  
16 to assert your privilege against self-incrimination.

17                    Accordingly, if you answer any questions, you will  
18 be doing so voluntarily.

19                    Do you understand this?

20           A     Yes.

21           Q     You should be aware that if you refuse to answer a  
22 question based on your Fifth Amendment privilege, a judge or  
23 jury may take an adverse inference against you in a civil  
24 action that the SEC may determine to bring against you.

25                    That means that the judge or jury would be



1 permitted to infer that your answer to the question might  
2 incriminate you.

3 Do you understand this?

4 A Yes.

5 BY MS. SHEI:

6 Q Sir, on your previous answer when you put based on  
7 advice of counsel, are you at that point invoking your Fifth  
8 Amendment privilege?

9 A Yes.

10 Q Okay. And that privilege is specifically against  
11 self-incrimination?

12 A Yes.

13 Q Okay. So as we go forward, if you would like to  
14 invoke your privilege, let's state on the record that  
15 you -- you can say, I take the Fifth or I invoke my privilege  
16 against self-incrimination.

17 Either one we will make clear for the record that  
18 when you state those words, you are invoking your privilege  
19 against self-incrimination under the Fifth Amendment.

20 A Okay.

21 BY MR. LIFTIK:

22 Q Mr. Deines, are you the President of Canyon Creek  
23 Development?

24 A I take the Fifth.

25 Q Are you also a Director of Canyon Creek

1 Development?

2 A I take the Fifth.

3 Q As we go forward, I'm going to refer to Canyon  
4 Creek Development as CCD, and that's just for the record.

5 Mr. Deines, do you own one percent of CCD?

6 A I take the Fifth.

7 Q Is it true, Mr. Deines, that CCD is responsible for  
8 acquiring assisted living facilities for Sunwest Management,  
9 Inc. to manage?

10 A I take the Fifth.

11 Q And is it true that CCD is also responsible for  
12 acquiring raw land to develop into assisted living facilities  
13 for Sunwest to manage?

14 A I take the Fifth.

15 Q Mr. Deines, has CCD been responsible for at least  
16 130 offerings to tenant-in-common interests to investors?

17 A I take the Fifth.

18 Q Mr. Deines, were you responsible for locating and  
19 researching potential properties for CCD to acquire through  
20 tenant-in-common offerings?

21 A I take the Fifth.

22 Q And, again, for the purposes of the record, I will  
23 refer to tenant-in-common as TIC's or TICs.

24 Were you responsible for performing the due  
25 diligence on the properties that CCD acquired through TIC

1 offerings?

2 A I take the Fifth.

3 Q And is it true, Mr. Deines, that CCD sponsored TIC  
4 investments in individual properties which were ostensibly  
5 offered by either a co-owner or operator entity for each  
6 individual property?

7 A I take the Fifth.

8 Q For all practical purposes, is it true, Mr. Deines,  
9 that CCD was the offerer of these TIC offerings?

10 A I take the Fifth.

11 Q Did CCD arrange to have TIC interests sold by an  
12 entity called Canyon Creek Financial?

13 A I take the Fifth.

14 Q You understand, don't you, Mr. Deines, that Canyon  
15 Creek Financial is owned one hundred percent by Jon Harder?

16 A I take the Fifth.

17 Q As President of CCD, were you responsible for  
18 overseeing all of its operations?

19 A I take the Fifth.

20 Q As President of CCD, were you responsible for  
21 overseeing all of its employees?

22 A I take the Fifth.

23 Q As President of CCD, were you responsible for  
24 overseeing all of its finance and accounting functions?

25 A I take the Fifth.

1 Q Mr. Deines, did CCD's strategic decisions include,  
2 but were not limited to, which properties to acquire, how to  
3 structure acquisitions, how to attract investors, how and  
4 when to expand operations?

5 A I take the Fifth.

6 Q And as President of CCD, were you responsible for  
7 implementing CCD's overall strategy?

8 A I take the Fifth.

9 Q And is it true, Mr. Deines, that this strategy was  
10 determined collectively by you and Jon Harder?

11 A I take the Fifth.

12 Q You participated in all strategic decisions with  
13 Jon Harder regarding CCD; didn't you?

14 A I take the Fifth.

15 Q Did CCD earn a fee from each offering that it  
16 sponsored?

17 A Is it true, as I understand it, that the way CCD  
18 made money was the volume and amount of offerings it  
19 sponsored?

20 A I take the Fifth.

21 Q Were you responsible for preparing the private  
22 placement memoranda for properties CCD was offering to TIC  
23 investors?

24 A I take the Fifth.

25 Q Again, for the benefit of the record, I will refer

1 to the tern private placement memorandum as PPM's.

2 Mr. Deines, you were responsible for all of the  
3 content contained within the PPM's; were you not?

4 A I take the Fifth.

5 Q Did Jon Harder work with you on preparing the  
6 PPM's?

7 A I take the Fifth.

8 Q Did Jon Harder work with yo on preparing the PPMs?

9 A I take the Fifth.

10 Q Mr. Deines, did you know that these PPM's would be  
11 relied on by investors to make investment decisions?

12 A I take the Fifth.

13 Q Mr. Deines, you knew that it was important that  
14 these documents be truthful and accurate?

15 A I take the Fifth.

16 Q Mr. Deines, did you know that it was important that  
17 these documents not omit material facts?

18 A I take the Fifth.

19 Q Did you review the PPM's before they were  
20 distributed to investors.

21 A I take the Fifth.

22 Q And, Mr. Deines, you were aware were you not, that  
23 Jon Harder reviewed the PPM's before they went to investors?

24 A I take the Fifth.

25 Q After reviewing PPM's, if there was anything you

1 knew was not accurate, did you have an obligation to correct  
2 the document?

3 A I take the Fifth.

4 Q And after reviewing these PPM's, if there were any  
5 material facts of which you were aware that were omitted from  
6 the document, did you have an obligation to correct the  
7 document?

8 A I take the Fifth.

9 Q Mr. Deines, you were responsible for the  
10 representations made in each and every PPM for a CCD-offered  
11 offering, were you not?

12 A I take the Fifth.

13 Q Mr. Deines, I'm going to hand you what's been  
14 marked as Exhibit 24.

15 And, Mr. Crow, I apologize, it's a very lengthy  
16 document and it's actually two-sided so in order to save a  
17 tree, I just -- I thought perhaps you could look on it;  
18 right?

19 (SEC Exhibit No. 24 was marked for  
20 identification.)

21 MR. CROW: All right, I will.

22 BY MR. LIFTIK:

23 Q If that's acceptable to you.

24 Mr. Deines, I'm handing you what's been marked as  
25 Exhibit 24. I'm going to be asking you questions about this

1 document. And you can take as much time as you'd like to  
2 review it.

3 Have you seen this document before?

4 A I take the Fifth.

5 Q All right. You recognize this document as a PPM  
6 prepared by CCD because you oversaw all the offerings  
7 sponsored by CCD of which this is one; is that correct?

8 A I take the Fifth.

9 Q Mr. Deines, this is a true and accurate copy of the  
10 PPM that was sent to potential investors; is that correct?

11 A I take the Fifth.

12 Q For the record, Exhibit 24 is a document entitled  
13 Highlands Senior living Property LLC. It is a very lengthy  
14 document that the first page contains Supplement Number 1 to  
15 Confidential Offering Memorandum. But I note that within  
16 Exhibit 24 contains the entire body of the offering  
17 memorandum

18 Mr. Deines, you are familiar with the entity called  
19 Highlands Senior Living Property LLC; are you not?

20 A I take the Fifth.

21 Q And you understand that that refers to the property  
22 known as Chestnut Hill; correct?

23 A I take the Fifth.

24 Q This document, Exhibit 24, was prepared in the  
25 ordinary course of CCD's business; was it not?

1 A I take the Fifth.

2 Q Mr. Deines, was it the regular practice of CCD's  
3 business to prepare offering memorandums such as this one?

4 A I take the Fifth.

5 Q Mr. Deines, were you involved in the preparation of  
6 this document Exhibit 24?

7 A I take the Fifth.

8 Q Mr. Deines, were you involved in the selection of  
9 the Chestnut Hill property for acquisition through a TIC  
10 offering?

11 A I take the Fifth.

12 Q Mr. Deines, you performed a due diligence on the  
13 Chestnut Hill property; did you not?

14 A I take the Fifth.

15 Q Did you oversee employees who prepared the due  
16 diligence on the property?

17 A I take the Fifth.

18 Q Mr. Deines, I would like to direct your attention  
19 to -- unfortunately this is not Bates Stamped, a page, it's  
20 about a third of the way through.

21 A Is there a number?

22 Q There are none. I can find it for you if you'd  
23 like.

24 A Sure.

25 Q Okay, Mr. Deines, I'm going to direct your



1 attention to a page about two-thirds of the way through, it's  
2 entitled Highlands Senior Living Property, Confidential  
3 Offering Memorandum. At the bottom, the date of the  
4 memorandum is November 2nd, 2006.

5 And I'd like to direct your attention to the last  
6 bullet point on the bottom of the page in which it says that,

7 "Approximately 56 percent of the units of  
8 the property are currently occupied which  
9 result in negative cash flow to the  
10 master tenant for some period of time.

11 The master tenant does not increase  
12 occupancy and generate cash flow prior to  
13 exhaustion of its operating reserves, the  
14 master tenant may be unable to pay its  
15 debts, including its debt obligations and  
16 its obligations to pay or rent."

17 And, Mr. Deines, you knew at the time that this  
18 document was created that the Chestnut Hill property was  
19 losing money; correct?

20 A I take the Fifth.

21 Q And you knew this because part of your job in  
22 overseeing CCD-sponsored offerings was to understand the  
23 occupancy level of each sponsored offering; correct?

24 A I take the Fifth.

25 Q Now I direct your attention in particular to the

1 language in this last bullet point which says that the --

2 "If the master tenant does not increase  
3 occupancy and generate positive cash  
4 flow, it may be unable to pay or rent."

5 Is it true -- you are aware, are you not,  
6 Mr. Deines, that until July 2008 no CCD-sponsored offering  
7 failed to pay its TIC investors; correct?

8 A I take the Fifth.

9 Q And is it true, Mr. Deines, that the Chestnut Hill  
10 property paid its TIC investors even though it was losing  
11 money?

12 A I take the Fifth.

13 Q Now we have page numbers that we can work off of.

14 MR. CROW: Oh, good.

15 BY MR. LIFTIK:

16 Q I direct your attention to page 10 of this --  
17 not the tenth page of Exhibit 24, but it's the tenth page  
18 here -- and I direct your attention to the disclosure  
19 approximately in the middle of the page that says,

20 "The master tenant's interests and the  
21 tenants-in-common interests are diverse".

22 In particular, I direct your attention to the  
23 language which says,

24 "The master tenant can exercise  
25 discretionary control in a manner that

1 does not serve the best interest of  
2 purchasers, for instance, the master  
3 tenant may spend discretionary funds to  
4 spur the long-term growth of the master  
5 tenant's business rather than in a manner  
6 that provides greater security for the  
7 payment of the master lease obligations  
8 or repayment of the mortgage loan."

9 It's true, is it not, Mr. Deines, that the master  
10 tenant has no business other than leasing this property?

11 A I take the Fifth.

12 Q The master tenant referred to here on page 10 is a  
13 special purpose entity created for this sole purpose?

14 A I take the Fifth.

15 Q And you were aware of this were you not?

16 A I take the Fifth.

17 Q And you were aware of this because it was your job  
18 as President of CCD to oversee CCD-sponsored offerings;  
19 correct?

20 A I take the Fifth.

21 Q This disclosure fails to include material facts  
22 concerning how the master tenant used cash; correct?

23 A I take the Fifth.

24 Q And you are aware, Mr. Deines, that this disclosure  
25 wasn't accurate at the time it was made?

1           A     I take the Fifth.

2           Q     If you could turn to page 12. I direct your  
3 attention to the disclosure in the middle of the page that  
4 states,

5                     "The projected financial results of the  
6 property may not accurately predict  
7 actual performance."

8                     And the language that says,

9                     "The master tenant must be economically  
10 successful in order to pay your rent."

11                    It's true, Mr. Deines, is it not that the master  
12 tenant depends on the operations of this property to generate  
13 revenue?

14           A     I take the Fifth.

15           Q     And in this PPM it disclose -- it provides  
16 projections of financial results to potential investors;  
17 correct?

18           A     I take the Fifth.

19           Q     And those projections only discuss the financials  
20 of this particular property; correct?

21           A     I take the Fifth.

22           Q     And this statement here that we're looking at on  
23 page 12 indicates that to investors that their rent payments  
24 depend on the successful operation of the property does it  
25 not?

1 A I take the Fifth.

2 Q Mr. Deines, does this disclosure fail to include  
3 material facts concerning how the master tenant made its TIC  
4 rent payments?

5 A I take the Fifth.

6 Q And you were aware, Mr. Deines, were you not, that  
7 this disclosure was inaccurate at the time it was made?

8 A I take the Fifth.

9 Q If you could turn to page 13. It's on the other  
10 side.

11 MR. CROW: Comes right after 12.

12 BY MR. LIFTIK:

13 Q Now at the top of the page -- I direct your  
14 attention to the disclosure at the very top. And if it's  
15 easier for you, take the clip off.

16 It says,

17 "The projected financial results of the  
18 property are more optimistic than recent  
19 historical performance."

20 Is it true, Mr. Deines, that in fact the  
21 projections provided to investors in this PPM were not  
22 reasonable under the circumstances?

23 A I take the Fifth.

24 Q And you knew, Mr. Deines, did you not, that the  
25 projections were overly optimistic and misleading?

1           A     I take the Fifth.

2           Q     That this statement indicates to investors that  
3     operating cash flow will be the source of their rent  
4     payments; correct?

5           A     I take the Fifth.

6           Q     And this disclosure fails to include material facts  
7     concerning Sunwest's track record of meeting its projections;  
8     correct?

9           A     I take the Fifth.

10          Q     Mr. Deines, you are aware that this disclosure was  
11     inaccurate at the time it was made, were you not?

12          A     I take the Fifth.

13          Q     I direct your attention to page 17.

14                 And I would direct your attention to the disclosure  
15     in the middle of the page which states,

16                 "The master tenant has limited capital in  
17                 a negative network and you may not  
18                 receive rent payments under the master  
19                 lease as anticipated."

20                 In particular, the language which says,  
21                 "That therefore may be unable to pay its  
22                 rent obligations if the property does not  
23                 generate new resident deposits and  
24                 operating income as projected."

25                 It's true, Mr. Deines, that this master tenant had

1 no assets; correct?

2 A I take the Fifth.

3 Q And that the only real source of money for rent  
4 payments to TIC investors was the operation of the property;  
5 correct?

6 A I take the Fifth.

7 Q And that is the case in each and every offering  
8 that CCD sponsored under this structure; correct?

9 A I take the Fifth.

10 Q And, again, this disclosure tells investors that  
11 operating cash flow will be the source of their rent  
12 payments; does it not?

13 A I take the Fifth.

14 Q And you understood that at the time this disclosure  
15 was made; correct?

16 A I take the Fifth.

17 Q If you turn to page 41, please?

18 I direct your attention to the top of page 41 which  
19 says Summary of Master Lease, and the last half of that  
20 paragraph which states,

21 "The master tenant will operate the  
22 property for its own benefit and will be  
23 entitled to retain any positive  
24 difference between the property's net  
25 operating cash flow and rental payments

1           due to or for the benefit of the tenants-  
2           in-common under the master lease."

3           Mr. Deines, you understood that this language means  
4           that the master tenant is not entitled to take any money out  
5           of the property until it can meet its TIC -- its obligations  
6           to the TIC investors; right?

7           A     I take the Fifth.

8           Q     This disclosure fails to include material facts  
9           concerning how cash from the operations of the property is  
10          used; correct?

11          A     I take the Fifth.

12          Q     And you were aware that this disclosure was  
13          inaccurate at the time it was made; correct?

14          A     I take the Fifth.

15          Q     I'd like to direct your attention to the pro formas  
16          which are at the very end of the document -- off of page  
17          numbers. And I'm not going to be asking you a particular  
18          question about any particular pro forma.

19                 But I would note that the last 15 or so pages  
20          contain various pro formas and financial projections.

21                 It's true, Mr. Deines, that these pro formas relate  
22          only to the Chestnut Hill property; is that right?

23          A     I take the Fifth.

24          Q     And these pro formas do not disclose anything about  
25          the operations of other Sunwest-managed properties, do they?



1           A     I take the Fifth.

2           Q     And you were responsible for putting these  
3 projections in the PPM's; correct?

4           A     I take the Fifth.

5           Q     These projections were not reviewed by Sunwest  
6 operations personnel to determine if they were reasonable;  
7 were they?

8           A     I take the Fifth.

9           Q     Mr. Deines, you are aware that these projections  
10 were not met; correct?

11          A     I take the Fifth.

12          Q     And, Mr. Deines, there was no basis to believe  
13 these projections could be met; was there?

14          A     I take the Fifth.

15          Q     And, Mr. Deines, you knew at the time that these  
16 were drafted that Sunwest had a history of not meeting  
17 projections that it put in -- that CCD put in the PPMs that  
18 it distributed to investors; correct?

19          A     I take the Fifth.

20          Q     Let's just take a short break.

21          A     Sure.

22          Q     We'll go off the record at 10:06.

23                   (Off the record.)

24           MR. LIFTIK:     Back on the record.

25           MR. CROW:     Are we through with Exhibit 24?