

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 In re:

4 FURR'S SUPERMARKETS, INC.,

5 Debtor.

 No. 7-01-10779 SA

6 TRANSCRIPT OF PROCEEDINGS
7

8 BE IT REMEMBERED that the above-entitled
9 matter came on for Final Hearing on TGAAR's Claim for
10 Administrative Expense, before The Honorable JAMES S.
11 STARZYNSKI, United States Bankruptcy Judge, at the hour
12 of 9:00 a.m. on Wednesday, January 15, 2004, at the
13 United States Courthouse in Albuquerque, New Mexico.
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17 A P P E A R A N C E S

18 For the Trustee:

 David Thuma, Esq.

19 For TGAAR:

 Robert Witt, Esq.
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1 THE COURT: Okay. Good morning. We are
2 here on TGAAR's -- actually in the Furr's Supermarket,
3 Inc., case, Chapter 7 now. And we are here now
4 specifically for the final hearing on TGAAR's
5 administrative claim.

6 Appearing here this morning are the following
7 persons: For TGAAR, first of all , Mr. Robert Witt.

8 MR. WITT: Yes, sir.

9 THE COURT: Okay. Good morning, sir.

10 MR. WITT: Glad to meet you.

11 THE COURT: And you have some people with
12 you?

13 MR. WITT: Yes, sir, Mr. Glasscock,
14 who's --

15 THE COURT: Mr. who?

16 MR. WITT: Glasscock, Gary Glasscock.

17 THE COURT: Okay.

18 MR. WITT: G-L-A-S-S-C-O-C-K, and Mr. Gary
19 Baily.

20 THE COURT: I'm sorry.

21 MR. WITT: Gary Baily.

22 THE COURT: Gary Bagley?

23 MR. WITT: Baily.

24 THE COURT: Oh, Baily.

25 MR. WITT: B-A-I-L-Y.

1 THE COURT: Okay.

2 MR. WITT: They are both principals of
3 TGAAR. There's two TGAAR entities and they're principals
4 of both entities, Your Honor.

5 THE COURT: Why don't you go ahead and
6 have a seat.

7 MR. WITT: Thank you.

8 THE COURT: Before we go any further, let
9 me just tell you that we are using two recording systems
10 today. One, the official record is being kept by the
11 court reporter, by Ms. Sara Edmonds Truske here, but
12 we're also doing a trial run with a system that we're
13 going to be using exclusively sometime in the future
14 which is a digital audio recording system. So everything
15 that we say is being taken down on a couple of -- and
16 stored simultaneously on a couple of hard drives -- sound
17 all right? Great -- on a couple of hard drives.

18 And the reason I mention that particularly is
19 because when we leave, we're going to turn off the --
20 when we walk out of here, we turn off the digital audio
21 recording system, but if we forget to turn it off it will
22 continue to pick up anything you say.

23 We have also fine-tuned it well enough that it
24 actually picks up stuff pretty clearly from anywhere here
25 within the well of the Court, including if you -- you

1 know, comments that are made when you're not really very
2 near from the mic.

3 You will note also that your microphone -- the
4 microphones essentially are designed to amplify
5 everybody's voice so they can be heard. There is a mute
6 button which if you press it it will keep your voice from
7 being broadcast throughout the courtroom. It will not,
8 however, keep your voice from being recorded by the
9 digital audio recording system. So if you want to confer
10 with your client what you need to do, is like they do in
11 those Senate hearings where somebody puts his hand over
12 the mic and whispers, you know, in his fellow Senator's
13 ear or something like that.

14 That's what you need to do to make sure that
15 you don't get your voice on the digital audio recording
16 system.

17 And also, just to let you know, our plans
18 essentially are while we work through this process, when
19 we actually go live with the digital audio recording
20 system, we're going to destroy all of these previous
21 recordings because they are not official ones and there
22 may be folks would have said stuff on those records that
23 don't need to be disclosed perhaps; who knows. So they
24 won't be there for posterity but you want to know that
25 you make sure they are not recording now; okay.

1 So having said that, let me just say that it
2 is helpful generally for us if you speak into -- near the
3 microphones and for that purpose we have sort of adopted
4 a process which is used in some courts where folks just
5 sit here and address the court, so you don't need to
6 stand up; okay.

7 MR. WITT: Yes, sir.

8 THE COURT: As you can tell from this long
9 and involved introduction we're still in the shakedown
10 phase of getting this process down including Court
11 protocols and so forth.

12 You're welcome, when you question witnesses
13 and address the Court or do anything else, to either sit
14 in your chair, or if you want, you feel more comfortable,
15 you can go over and use the mic at the wit -- at the
16 evidence presentation station, otherwise known in some
17 places as a podium.

18 Okay. So we have Mr. Witt, Mr. Gary Glasscock
19 and Mr. Gary Baily.

20 MR. WITT: Yes, sir.

21 THE COURT: Okay; thank you very much, for
22 TGAAR.

23 For the Trustee, we have Mr. Thuma and the
24 Trustee herself.

25 MR. THUMA: Yes, Your Honor.

1 THE COURT: Okay. All right. And one
2 other thing before I forget, being that this is now the
3 21st century, anybody who has a cell phone, if you
4 haven't already turned it off, you're perfectly free at
5 this point to pull it out of your pocket, look at it,
6 make sure it is off and if it's not off, to turn it off;
7 okay.

8 So now, let's see, before we go any further,
9 we need to do a couple more housekeeping matters, at
10 least a couple more.

11 One is to deal with the question of exhibits
12 and the other is to deal with the sequestration of any
13 witnesses, although what you're telling me, Mr. Witt, is
14 that TGAAR is actually two entities and Mr. Glasscock and
15 Mr. Baily are representatives today of each of those two
16 entities; is that correct?

17 MR. WITT: Yes, sir.

18 THE COURT: All right. So it sounds to me
19 like there's no sequestering involved there.

20 MR. THUMA: Well, Your Honor, I'm not sure
21 that's true. I think there's only one TGAAR entity that
22 has filed a claim and it seems to me under Rule 615 you
23 would need to order that only one person represent the
24 claimant.

25 MR. WITT: Your Honor, I believe both

1 TGAAR entities have filed a claim. One of them is the
2 management agent, one manages the properties, the other
3 owns the properties. I think they are both on the claim.
4 I could be mistaken.

5 THE COURT: When you're talking about the
6 claim, are you talking about the amended motion or
7 application for payment of administrative expenses?

8 MR. WITT: Yes, sir.

9 THE COURT: Okay; that's --

10 MR. WITT: I think on the amended one they
11 are both on the amended application, which I believe is
12 Exhibit G to the Trustee's exhibit book.

13 THE COURT: Right, Document 1928. So
14 you're talking about TGAAR Properties, Inc., d/b/a
15 Westwood Village Shopping Center, and TGAAR West Texas,
16 Inc.; are those the two entities you're talking about?

17 MR. WITT: Yes, sir.

18 THE COURT: Okay. And each of them has
19 some sort of, for lack of a better way of putting it,
20 ownership claim in the claim that has been filed, some
21 sort of ownership interest in the claim?

22 MR. WITT: Yes, sir.

23 THE COURT: Any different thoughts about
24 that, Mr. Thuma, or further argument?

25 MR. THUMA: I guess this is kind of news

1 to me. If one is a management company and one owns the
2 center, I'm not sure the management company has the
3 actual claim to these -- to the rent, to the storage
4 charges, to the damage. If they do, if there's a
5 legitimate claim by each entity, then I guess Mr.
6 Glasscock can be the representative of one and Mr. Baily
7 for the other.

8 I am a little bit -- I would be a little
9 surprised if they both actually had a monetary claim
10 against this estate, but I don't know that for sure.

11 THE COURT: Well, I think at this stage I
12 am going to treat both entities as having a claim, at
13 least for purposes of making this ruling about
14 sequestering witnesses and we'll allow both of them to
15 stay here.

16 MR. WITT: Your Honor, we won't -- I think
17 they have a witness coming later, we won't sequester him
18 either.

19 THE COURT: Well, you know, I think
20 sequestering witnesses is kind of a good idea --

21 MR. WITT: Okay.

22 THE COURT: -- and all these expert judges
23 who write these long tomes about conducting trials, all
24 suggest that sequestering witnesses is what a judge ought
25 to do even if the parties don't want to.

1 In any event, we'll deal with that issue when
2 it comes up. At this time both Mr. Baily and Mr.
3 Glasscock -- Mr. Baily and Mr. Glasscock are entitled to
4 stay and participate as representatives of the two
5 claimants.

6 And, of course, Ms. Gonzales as the Trustee is
7 entitled to stay as well.

8 Okay. Exhibits. Do we have an agreement with
9 respect to what exhibits can be admitted under -- without
10 objection under the rules that we have here?

11 Are you familiar with that, Mr. Witt, the idea
12 of admitting the exhibits with -- at least as to
13 authenticity, that sort of thing, and it doesn't preclude
14 anybody from arguing that an exhibit has so little worth
15 it ought to be essentially be -- so little weight that it
16 ought to essentially be disregarded?

17 MR. WITT: Yes, sir, and I believe our
18 agreement is that they all ought to all be admitted.

19 MR. THUMA: That's right, Your Honor. I
20 think we've reserved the right to argue relevance, but we
21 can let them all in.

22 THE COURT: Okay. That means that, let's
23 see, start with TGAAR's exhibits, TGAAR Exhibits 1
24 through 35, right?

25 MR. WITT: Yes, sir.

1 THE COURT: And Trustee Exhibits A through
2 I. Did I get all of them, Mr. Thuma?

3 MR. THUMA: Yes, Your Honor.

4 THE COURT: Those will all be admitted
5 without objection.

6 Is there anything else then that we need to
7 discuss before we start with opening statement?

8 MR. THUMA: Your Honor, I would like to
9 just kind of throw out for consideration the order of
10 witnesses.

11 Mr. Witt and I have agreed that he's the
12 movant, he'll go first. I have two witnesses and he has
13 two witnesses.

14 Mr. -- the auctioneer, Mr. Parker, is going to
15 be here around 11:00 o'clock. He's flying up from El
16 Paso and he's booked on a 6:00 o'clock flight back, so I
17 would like to get him done today. And I'm told by the
18 Trustee that she has plans to be out of town tomorrow so
19 I need to get her done today, too.

20 I don't know how this is going to go but those
21 are my -- the constraints on my witnesses as far as time.

22 MR. WITT: I think we will be able to get
23 through and actually our flight back to Midland goes back
24 through El Paso, so I'm sure we're on the same Southwest
25 Airlines flight with Mr. Parker.

1 THE COURT: Okay. I'm sort of assuming
2 that we're going to get this trial done today so --

3 MR. WITT: We brought our bags with us;
4 we're ready to go home.

5 THE COURT: Always a good sign.

6 MR. THUMA: And, Your Honor, in that
7 connection, as you may know, a lot of the testimony
8 that's being submitted today is being submitted by
9 deposition because there are a number of witnesses in
10 Midland that didn't come out.

11 We don't have those deposition transcripts yet
12 available to you because there are some problems with
13 Federal Express and the airlines yesterday. So they're
14 going to be coming to me, I'm going to highlight my
15 portions and we'll submit them to the Court.

16 It was my thinking that because those
17 depositions contain a lot of material that you are going
18 to need to consider, it might make more sense for us to
19 do closing by some kind of a writing rather than orally
20 because I'm not sure it would make a lot of sense to
21 argue today what's in those deposition transcripts before
22 you have had a chance to review them.

23 MR. WITT: Your Honor, that's fine with
24 me.

25 In fact, I don't know if you heard from Mary

1 that Mr. Thuma and I talked to her yesterday. Our
2 exhibits and our deposition transcripts got lost on
3 Federal Express on the way up here. Last we heard they
4 were on a truck being driven from Memphis to Albuquerque
5 through Dallas, but we did come up -- for some reason the
6 court reporter made two original deposition transcripts
7 so we have them, I'll submit those to Mr. Thuma right now
8 if you want me to. Do you want them now or do you want
9 them later?

10 MR. THUMA: I don't think I need them
11 until --

12 MR. WITT: Okay. I'll give them to you
13 later.

14 THE COURT: Well, I don't have a problem.
15 We frequently just make sure we get the live evidence in
16 first and then folks -- because that requires traveling
17 and time out of everybody's schedules and so forth and
18 then we take additional evidence later on and written
19 argument if folks want to do that or we do oral argument
20 by phone, that sort of thing or you can come here and do
21 oral argument in person; doesn't make any difference; up
22 to you.

23 But the idea basically is that get all the
24 live witnesses in and out so that part is done, we cut
25 down on travel and expense and that sort of thing.

1 So that's fine. I don't have any problem with
2 doing the depositions -- with receiving that at a later
3 time and you-all just tell me what it is you want me to
4 read and not read.

5 MR. WITT: All right. That'll be fine.

6 THE COURT: So then we'll just do -- we'll
7 do oral argument or we'll do written argument, whichever
8 you-all prefer, at some later time when we're sure we've
9 got everything and had a chance to read it; okay.

10 MR. WITT: Yes, sir.

11 MR. THUMA: Thank you, Your Honor.

12 THE COURT: All right. Sounds good. So
13 are we ready now for opening statement?

14 MR. WITT: Yes, Your Honor.

15 MR. THUMA: Yes, Your Honor.

16 THE COURT: Okay.

17

18 OPENING STATEMENT

19 BY MR. WITT:

20 Robert Witt for the TGAAR parties, Your Honor.
21 I'm going to be brief. We have already filed extensive
22 cross motions for summary judgment so the Court, I think,
23 is fairly familiar with the dispute.

24 My parties bought a shopping center in
25 Midland, Texas, a number of years back and it was under a

1 20-year lease originally with Safeway Stores. By the
2 time they bought it Furr's had purchased the Safeway
3 lease and was occupying and running a grocery store from
4 that facility.

5 Things went along fine for a number of years
6 until the bankruptcy was filed in February of 2001. Rent
7 was paid during the bankruptcy. They continued to
8 operate the store.

9 And as you may recall, at the end of August we
10 got a letter with the keys but they didn't move anything
11 out of the store. In fact, there were lots of
12 cigarettes, liquor, all kinds of things plus all of the,
13 what I'll call the store equipment was left in the store.

14 My clients responded to the letter sending the
15 keys by phone calls, received a solicitation to make a
16 bid, they made a bid, they never heard anything. They
17 tried to call, find out what was going on, nothing
18 happened. No one answered the phone.

19 Finally the case was converted in December and
20 contact was made with the Chapter 7 Trustee, one contact.
21 She never got back to them. They tried a number of times
22 to contact her, finally a motion was filed for the
23 auction order and an auction order was entered in I think
24 around April or May of 2002 and the auction was held on
25 Thursday, May 30 of 2002.

1 Bidders -- the auctioneer told people they had
2 to have their stuff out in two to three days and the
3 auctioneer actually left the auction at noon the next day
4 all his people except one. That guy hardly showed up
5 after that, really after the first day didn't show up at
6 all.

7 It was total chaos. We have photographs
8 showing what the store looked like when we finally got
9 possession. We wrote a couple of letters which are
10 Exhibits 33 and 34, saying what is going on, all this
11 stuff is left, we don't really have possession of our
12 store. I mean, what are you going to do with a grocery
13 store full of stuff that's -- and even if the stay had
14 been lifted as to the store, it wasn't lifted as to the
15 equipment so we really couldn't do anything with the
16 store.

17 Finally, on July 3, 2002, Mr. Thuma, after we
18 had some conversations, wrote us a letter, very nice
19 letter, telling us we could junk the rest of the stuff in
20 the store, throw away the trash that was left and that
21 actually gave us for the first time real authority to
22 take possession of the store.

23 Over the next three months our people worked
24 on cleaning, just cleaning out the junk, a lot of the
25 junk and they incurred costs.

1 In the process of removing the equipment which
2 we believe is going -- we're going to show was totally
3 unsupervised by the Trustee and the auctioneer, just an
4 incredible amount of damage was done.

5 I mean, it might be appropriate if you drop
6 bombs in Baghdad for a place to look like that, but this
7 is not appropriate. This never happened to my clients.
8 They have real a estate business. This is very unique
9 for anything to be left in this kind of condition. I
10 mean literally there were people bidding \$10 for sinks
11 and then jerking them off the wall, breaking pipes,
12 pulling holes in the wall. They wouldn't even cut the
13 anchors, just jerking wires out of the thing, ruining all
14 the wires, cutting -- sawing off copper tubing, ruining
15 the copper tubing forever. Just knocking holes in walls
16 and all kinds of stuff, leaving a colossal mess.

17 But I think the first thing I would like to
18 focus on is going to go back to the auction order which
19 is our Exhibit 13. And on Page 3, Paragraph 1, there is
20 some important statements in that letter.

21 It says the debtor has authority to conduct
22 the auction sale and sell the equipment. We were very
23 much in favor of that because we just wanted them to get
24 it out so we could do something with our store.

25 THE COURT: Okay. Let me just suggest

1 that as opening statement I guess my thought would be
2 that what you do is just provide, what, a brief preview
3 of what the evidence will be and the direction that
4 you're going.

5 MR. WITT: All right. Well, the evidence
6 will be that Mr. Parker didn't do what was required in
7 his auction order which was, "shall remove all the store
8 equipment from each and all the stores and leave them in
9 broom clean condition."

10 We've got evidence in -- we've broken down
11 into three parts in our Exhibit 35. It's basically clean
12 up costs, losses we have incurred for the delays in
13 obtaining possession of the store after the auction
14 caused by the auctioneer's conduct, damages caused by the
15 removal of the stuff on Page 2 of Exhibit 35 and then
16 Pages 3 and 4, Page 3, analyzes the damages for
17 possession of the store, for the holdover by the Trustee
18 during the Chapter 7 case and the last page covers the
19 period after September 1, 2001, through the end of the
20 year, through -- until the date of conversion.

21 We believe that the evidence shows that my
22 clients have had a tremendous loss. We are not trying to
23 take advantage of the bankruptcy estate in any way. What
24 we're claiming here is a token of what we really lost.
25 And we just would like to make a partial recovery of what

1 we think the Court should allow. Thank you.

2 THE COURT: Thank you.

3

4 OPENING STATEMENT

5 BY MR. THUMA:

6 Your Honor, like all of the landlords that
7 were involved with Furr's when store leases were
8 rejected, TGAAR admittedly lost a lot of money.

9 Furr's was a major tenant of this center and
10 when it shut down in August of 2001, there was no
11 question TGAAR was badly hurt financially. It has taken
12 them a long time to find a new tenant, the buildout was
13 expensive for these new tenants.

14 At one point Mr. Glasscock said that we're out
15 a million dollars and I believe that may be right.

16 Unlike the other landlords we have dealt with,
17 however, it doesn't appear to the Trustee that TGAAR was
18 content to take its losses and move on.

19 And we think that the hearing we have here
20 today is kind of a culmination of a series of attempts by
21 TGAAR to recoup the losses caused by the rejection of the
22 lease.

23 The first attempt was when the administrative
24 claim was filed in November for \$90,000, November 2001,
25 that claim was withdrawn.

1 Next attempt we think was when TGAAR started
2 billing the Trustee \$15,000 a month for storing equipment
3 in addition to billing rent of \$19,000 a month and at the
4 same time offering to the Trustee to buy the equipment
5 for \$5800, with what we think is a clear attempt to try
6 to force the Trustee to sell cheap.

7 When the Trustee didn't do that, we think that
8 the landlord got in the middle of the auction process in
9 an improper way and caused a lot of problems what I'm
10 afraid the Court is here to clean up today.

11 In August of 2002, TGAAR filed a motion for
12 administrative expense, asking not for \$90,000 but for
13 \$119,000 in storage and damage claims, notably the damage
14 claim at that time was for \$15,000.

15 Two months later it filed an amended claim
16 asking for \$194,000 of administrative expense including a
17 damage claim that had leapt from \$15,000 to \$120,000.

18 And now on the morning of trial, today, if you
19 look at their Exhibit 35 they want you to award them
20 \$390,000 in damages.

21 We think that that's a wildly inflated claim
22 and if you really parse through it and see what happened,
23 and see what the claim is based upon, the actual figure
24 is zero or very close to it.

25 The first part of that claim and the largest

1 amount for storage or rent, \$213,500. This is despite
2 the fact that you have ruled already in this matter that
3 they don't get rent and that the storage amount is capped
4 by the value of the equipment which is undisputed to have
5 sold with a net recovery to the estate of \$19,000, but
6 today they are asking you to award them \$213,500.

7 Next they've got a cleanup claim of \$9,000. I
8 won't really go into the problems with that claim but we
9 think there are three substantial problems with that
10 \$9,000 claim and that after you hear the evidence you
11 will conclude that that claim may not be zero, but ought
12 to be close to zero and it may well be zero based upon
13 what went wrong at the auction and who caused what went
14 wrong and what could have happened differently had the
15 auction proceeded as it should have.

16 Finally, there's something that's a brand new
17 claim that I learned about yesterday, \$61,500 in
18 so-called delay damages, essentially rent for four months
19 for the period of time that I guess it took from the
20 auction through the disposal of the unsold store
21 equipment. This was never pled, was never the subject of
22 discovery and shouldn't be considered we don't think
23 because it was never brought before the Court until I
24 learned about it yesterday.

25 Furthermore on the merits it seems like the

1 evidence will certainly show that TGAAR was not damaged
2 by delay because they had no tenant and that during this
3 summer of 2002 it was actively negotiating with
4 replacement grocery store tenants including Wal-Mart and
5 was not damaged by alleged delay in removing the unsold
6 equipment.

7 In fact, the evidence will show that it wasn't
8 until December 2002 this TGAAR actually gave up its hope
9 to find a grocery store tenant and signed up with
10 Goodwill for a portion of the space and has got another
11 tenant for another portion of the space.

12 Furthermore, I think the evidence will be
13 clear that if they had a tenant in the wings and they
14 really needed to move this equipment out, it wouldn't
15 take four months, probably take more like four days.

16 Then finally we get to I think the most
17 emotional part about this which is the alleged damage to
18 their building when the auctioned off equipment was
19 removed. That's \$107,000 worth is what they claim. We
20 think that when you hear the evidence about what actually
21 happened and you go through that damage claim and you
22 really try to see what exactly happened and how do you
23 know what kind of damage was incurred and how do you know
24 how much it would cost to fix it and was it really
25 something that was caused by removal of the equipment or

1 was it something that Furr's did because it operated a
2 grocery store for 20 years on that location and you go
3 through all that, you will see that that number is wildly
4 inflated and it's another attempt by TGAAR to recoup on
5 their lost lease.

6 And there are some substantial proof problems
7 that I think are very troubling with this damage claim.
8 For example, about \$40,000 of it is for electrical and
9 refrigeration and plumbing. That's substantiated by two
10 one-page bids or proposals. One's dated in January;
11 one's dated in February. The evidence is uncontradicted
12 that those documents were prepared in May or June of 2003
13 and backdated.

14 The evidence will show that the contractors
15 were actually on-site that did this alleged damage repair
16 were actually doing tenant buildouts for Goodwill. They
17 made no attempts to differentiate what they were doing at
18 the time that was repairing alleged damage with what they
19 were doing to build out the space.

20 Then after the fact, TGAAR goes to these
21 people, will you please break out what we say the damage
22 was and what it cost to repair it. And on deposition
23 cross-examination these people could not give any backup
24 for how they arrived at their numbers and couldn't
25 explain why they did these, what looks like dummy

1 invoices or dummy bids, when they had already been paid
2 for the work months ago. It just didn't look right to
3 me. I don't think it will look right to the Court.
4 Similarly with the walls, ceiling and doors, that's an
5 \$18,000 item. That invoice wasn't backdated. I don't
6 think it was dated April 24, but the person who did that
7 work again didn't have any records to really segregate
8 what he did that was repairing damage to what he did to
9 build out for Goodwill and he admitted that a lot of what
10 he replaced, in the way of dry wall and ceiling grid and
11 ceiling panels was to repair greasy walls from 20 years
12 of operating as a grocery store or damage of that sort.
13 He didn't know how you could allocate that type of damage
14 repair from the damage caused by removal of equipment.

15 And then finally, and I will be done, there's
16 a claim of \$50,000 for tile, to replace a tile floor.
17 The evidence will show I think -- we don't know for
18 sure -- but it looks like during the removal process a
19 piece of equipment was dragged across the floor, it
20 caused a gouge in the tile. And just to replace the
21 gouged tile would cost about \$5600, I think the evidence
22 shows. To replace the entire floor would cost \$50,700.
23 I think the evidence will be -- now it's undisputed that
24 of the two parts where the damage occurred, one part is
25 now Goodwill covered by carpet, the other part is now

1 Southern Career Institute and that tile had been removed
2 at their request because they didn't want 20-year-old
3 grocery store tile. I think when you see -- look at the
4 pictures and hear the testimony, look at the evidence you
5 will conclude there is no way that Goodwill or anybody
6 else would have agreed to take and lease out new space on
7 a new lease with that 20-year-old grocery store tile.
8 Something had to be done with it. It couldn't be used.
9 Therefore, this gouge that they say is worth \$50,000 to
10 them, we think is actually a zero dollar damage claim
11 because that tile couldn't be used no matter what
12 happened, gouge or no gouge.

13 So we don't think this is a split-the-baby
14 type of hearing and that they want 400 and so you ought
15 to give them 200, we think if you get down through this
16 the award ought to be zero or close to it and that's what
17 we are going to try to prove to you today.

18 THE COURT: Okay. Mr. Witt.

19 MR. WITT: Yes, sir.

20 THE COURT: Call your first witness.

21 MR. WITT: Mr. Glasscock.

22 THE COURT: Okay. Mr. Glasscock, please
23 step forward, sir, face the court reporter and be sworn.

24

25

1 GARY GLASSCOCK

2 having been sworn, testified as follows:

3

4 DIRECT EXAMINATION

5 BY MR. WITT:

6 Q. State your name.

7 A. Gary Glasscock.

8 Q. Where do you live and for how long?

9 A. Midland, Texas, for 28 years.

10 Q. What is your college education?

11 A. I went to Abilene Christian University,
12 graduated in 1976 with a business degree.

13 Q. And what is your occupation generally?

14 A. Right now we're owner -- I am an owner of two
15 companies, partial owner. Oil and gas operations and
16 commercial real estate.

17 Q. And who are the owners -- the real estate
18 companies; are they called TGAAR?

19 A. Yes, sir.

20 Q. And who are the owners in TGAAR?

21 A. Gary Baily and myself.

22 Q. And how did you become partners in TGAAR?

23 A. Gary and I have been partners along with
24 another partner Randy Prude in the oil and gas business
25 for 22 years. And we developed some commercial

1 properties in 1989.

2 Q. Before you joined up as TGAAR, with Mr. Baily
3 and Mr. Prude, what did you do before that?

4 A. I was employed by Pennzoil Oil Company as a
5 landman and before that with Gulf Oil.

6 Q. You went to Gulf right out of college?

7 A. Correct.

8 Q. Generally describe the types of business that
9 TGAAR engages in?

10 A. TGAAR is set up to buy commercial properties
11 meaning shopping centers, office buildings, medical
12 buildings. We buy them and lease them out.

13 Q. And how long has TGAAR been in the real estate
14 business?

15 THE COURT: Could I just -- would you
16 distinguish which TGAAR you're talking about here? I
17 don't know that it makes a difference or are you talking
18 about both of them or --

19 A. TGAAR Properties, Inc. is the managing partner
20 for several of the TGAARs, so I don't know how to best
21 describe which one you want me to be, but I'll --

22 Q. Okay. And the TGAAR -- whatever the name is,
23 Your Honor.

24 THE COURT: TGAAR West Texas, Inc.

25 Q. TGAAR West Texas, Inc., does it own the Furr's

1 building?

2 A. Yes, it does.

3 Q. How many properties does TGAAR own today?

4 A. I believe we own ten.

5 Q. And since the time you have been in business
6 how many properties have you owned?

7 A. Probably upwards of 20.

8 Q. What geographical areas?

9 A. Mostly west Texas. We have had one in New
10 Mexico, but generally west Texas.

11 Q. In Midland in particular?

12 A. Midland, Levelland, Big Spring, La Mesa,
13 Brownwood.

14 Q. Are you familiar with the commercial real
15 estate market in Midland, Texas?

16 A. Yes, I am.

17 Q. Are you familiar with the rent rates for the
18 various types of commercial properties that are located
19 in Midland, Texas?

20 A. Yes, I am.

21 Q. Now if I refer to Store 966, will you
22 understand that is the designation given by Furr's in
23 their bankruptcy to the Furr's store that you own?

24 A. Correct.

25 Q. Where is that located?

1 A. The 4300 block of Illinois which would be at
2 the corner Illinois Street and Midland Drive in Midland,
3 Texas.

4 Q. When did TGAAR purchase it?

5 A. 1997.

6 Q. And who was the tenant at the time?

7 A. In that particular store where Furr's was,
8 Furr's was the tenant but we've got -- that shopping
9 center has multiple tenants but they were the anchor
10 tenant.

11 Q. And is -- Your Honor, can we have one of the
12 exhibit volumes? I think I gave one up -- is there one
13 up there?

14 THE COURT: Yes, he's got it there.

15 Q. Mr. Glasscock, can you -- is Exhibit 1 in that
16 exhibit in front of you a copy of the Safeway lease that
17 the original owners of the building entered into?

18 A. Yes, it is.

19 Q. And the first page of it is a modification?

20 A. Correct.

21 Q. And was it a 20-year lease?

22 A. Yes, it is.

23 Q. And the rent was paid until the bankruptcy; is
24 that right?

25 A. Correct.

1 Q. What happened after the bankruptcy was filed?

2 A. Well, the -- there was a time of, I think it
3 was in June before the lease -- we had six months before
4 the lease was to expire, we were to notify the tenants
5 saying would you like to renew. We had a renewal that
6 they did sign and enter into. That renewal was for
7 another six years. So we had a renewal at that point but
8 we didn't get paid after a certain period of time in that
9 same year. They said that was invalid.

10 Q. Look at Exhibit 1 and turn to Page -- I mean
11 Paragraph 16 at the top of Page -- I don't believe the
12 pages are numbered --

13 THE COURT: Excuse me, did you say the
14 renewal was for six years?

15 A. For five years, 2006.

16 THE COURT: Five years.

17 A. That's correct.

18 THE COURT: Five years.

19 A. Five years. Did I say six? Excuse me.

20 THE COURT: I thought you said six, but
21 you meant five.

22 A. Yes, I was getting my '06 and my five years.
23 It was a five year renewal that they signed.

24 Q. (By Mr. Witt) Okay. So it would have ended in
25 the year 2006?

1 A. December 31, 2006, correct.

2 Q. That renewal, that option was exercised by
3 Furr's under Paragraph 16?

4 A. Yes, sir.

5 Q. And that paragraph required them to exercise
6 that option at least six months prior to the expiration
7 of the lease?

8 A. Correct.

9 Q. And the lease was going to expire on December
10 31, 2001?

11 A. That's correct.

12 Q. So the last day to exercise the option would
13 have been June 30, 2001?

14 A. Yes, sir.

15 Q. And did you have any conversations with the
16 Furr's people about that?

17 A. Yes.

18 Q. And just briefly tell me what those were?

19 A. I believe I talked to two people, Mr.
20 Mortensen and Ms. Novus, I think it's Carolyn Novus, I
21 believe that's her name, both of which were -- told me
22 that they were waiting on -- before they could sign that,
23 they were trying to find a way to sell these stores out
24 of bankruptcy and that a company by the name of Fleming
25 was very interested in buying these stores. And so until

1 they really got a good handle on what they wanted to do
2 and if they could sell them, they couldn't sign.

3 So I made numerous calls up to somewhere in
4 June, middle of June and finally said, "Yes, we have
5 got -- looks like we have a deal here. We want to go
6 ahead and enter into an extension with you."

7 Q. And if you will turn to Exhibit Number 2, is
8 that a copy of a letter you received from Steve
9 Mortensen, President of Furr's?

10 A. Yes, it is.

11 Q. Dated June 18, 2001, exercising the option?

12 A. Yes, it is.

13 Q. He states in there at the last sentence the
14 lease will now expire on December 31, 2006?

15 A. Correct.

16 Q. Did Mr. Mortensen tell you that this letter
17 was meaningless?

18 A. Absolutely not.

19 Q. Did you rely on this letter?

20 A. We did.

21 Q. Okay. Did you believe that Mr. Mortensen had
22 authority to send you this letter and exercise that
23 option?

24 A. He signed as president and chief operating
25 officer. Yes, I do believe he had the authority.

1 Q. Did he tell you there was any problem with --
2 if the lease -- that this might go up in smoke or
3 anything?

4 A. No.

5 Q. So you believed you were leased for another
6 five years?

7 A. Absolutely.

8 Q. Okay. And if he had not sent you this letter,
9 if he had not exercised this option, what would you have
10 done differently at that time?

11 MR. THUMA: Objection; calls for
12 speculation.

13 THE COURT: Overruled.

14 A. Well, in our business when someone doesn't
15 exercise their option, then we turn around and send them
16 a termination letter and tell them that their lease will
17 expire on an expiration date, in this case would have
18 been December 31, 2001.

19 Q. And if you had sent a termination letter,
20 would you have then looked for other tenants?

21 A. Oh, sure.

22 Q. But because of this letter did you look for
23 other tenants?

24 A. At that time, no.

25 Q. And if you look generally at Exhibits 3, 4, 5,

1 6 and 7 in this exhibit book, they are all various
2 bankruptcy pleadings, well, let's say 3, 4, 5 and 6.

3 A. Okay.

4 Q. Generally, if you read those, Furr's was in
5 the process of selling this store?

6 A. Correct.

7 Q. And then do you believe that Furr's needed to
8 exercise this option in order to sell Store Number 966?

9 A. Yes.

10 Q. Would it be hard to sell a grocery store like
11 that if the lease was expiring in six months?

12 A. They couldn't do it.

13 Q. Look at Exhibit Number 7, third party
14 purchaser notice. Is that a notice where Fleming
15 designated that MAO Enterprises in Sweetwater would buy
16 the store?

17 A. Yes, this is the Fleming Company I was talking
18 about.

19 Q. Look at the last page back there. Do you see
20 where it says Store Number 966?

21 A. Yes, sir.

22 Q. Says MAO Enterprises, attention Jerry Lawrence
23 and Jay Lawrence. Do you know the Lawrences?

24 A. Yes, I do.

25 Q. What business are they in?

1 A. The grocery business.

2 Q. Like Lawrence --

3 Q. Lawrence brothers Grocery. They have got
4 several grocery stores. As a matter of fact, they have
5 one in Midland as well.

6 Q. Now at some point did you find out that this
7 sale fell through, the sale of all these stores?

8 A. Yes.

9 Q. And about when did you hear about that?

10 A. I want to say I was walking in the Furr's
11 store around the first week of August 2001, visiting with
12 the manager because he and I had become -- kind of
13 started communicating as to if he had heard anything, if
14 I heard anything, we were just keeping each other
15 informed and at some point somewhere in that time period
16 before the 15th, I believe, he said, the deal is not
17 going to go down, they are going to shut the store.

18 Q. Okay. By the way, did TGAAR ever execute a
19 waiver of the landlord's lien to the banks?

20 A. I don't remember seeing one; I can't recall
21 that.

22 Q. Is it your understanding that under Texas law
23 that the landlord's lien trumps the bank?

24 MR. THUMA: Objection; calls for a legal
25 conclusion.

1 MR. WITT: I'm just asking for his
2 understanding. Your Honor.

3 THE COURT: So what's the value of --
4 what's the relevance of his understanding as opposed to
5 my understanding of what the law is?

6 MR. WITT: I'm sure your understanding is
7 much more important, Your Honor.

8 THE COURT: No, well --

9 MR. WITT: And we'll cover that in the
10 brief afterwards. You may even disagree with me on it,
11 but I was just asking the witness what his understanding
12 was.

13 THE COURT: Yes, I know, but what is the
14 relevance? What difference does it make what his
15 understanding is?

16 MR. WITT: Probably none at this point.

17 THE COURT: In that case I'll sustain the
18 objection without prejudice.

19 Q. (By Mr. Witt) Did Furr's, in fact, ask for a
20 landlord's waiver a few months before the bankruptcy?

21 A. Yes, they did.

22 Q. Did they tell you anything about their
23 financial problems at that point when they were asking
24 about that?

25 A. We had already heard rumors, got some

1 indication that they were in financial problems.

2 Q. But did they tell you anything when they
3 asked?

4 A. No, they did not.

5 Q. Now turn to Exhibit Number 8. Is Exhibit
6 Number 8 a letter dated August 31, 2001, that you
7 received from Furr's with the keys?

8 A. Yes, sir.

9 Q. And the second sentence of the letter, it
10 says, "Furr's hereby surrenders possession," do you see
11 that? Second sentence of the first paragraph.

12 A. Yes.

13 Q. Tell me what was the condition of the store
14 after August 31, like on September 1?

15 A. It was just like August 15. You could have
16 held a grocery store in there and they would have been in
17 business.

18 Q. Was there lots of food in there?

19 A. A lot of the food had been taken out. There
20 were five or six pallets, probably six foot by six foot
21 by six foot cubes of cigarettes in the back that they
22 were wanting to move out that hadn't been moved out.
23 There was some beer. There were several aisles of some
24 canned goods. They were -- they had most of them on
25 pallets ready for -- they told me somebody was going to

1 come get them and put them in one of their other stores.

2 Q. Did you -- did they call you from time to time
3 to ask you to open the store to remove those items?

4 A. Yes.

5 Q. And did you always cooperate?

6 A. Yes.

7 Q. And let them take whatever they wanted to?

8 A. Yes.

9 Q. Now after -- beginning in September who was
10 paying the real estate taxes?

11 A. Legally or by default?

12 Q. Who actually paid them?

13 A. We paid them.

14 Q. What about the electricity?

15 A. We paid it.

16 Q. Even though the store was closed, could you --
17 since the store was closed could you cut the electricity
18 off?

19 A. Well, no, there were -- several of the pallet
20 jacks are electric that they use. They ride semi on the
21 back so you had to have power to run several items and in
22 August and September, in Midland, Texas, it's about 116
23 degrees sometimes, so you had to have the air
24 conditioning on at times.

25 Q. And who was paying the electricity bills?

1 A. TGAAR.

2 Q. And what do they run; what's the minimum bill
3 a month even when the store is closed; what do they run
4 about?

5 A. Just to have the meter set there?

6 Q. Yes.

7 A. \$700.

8 Q. Okay. How did you respond -- wait. Going
9 back to Exhibit 8, look at the second paragraph. Do you
10 see where it says Furr's would like to discuss with you
11 how best to dispose of equipment Furr's owns that is in
12 your store?

13 A. Yes.

14 Q. What did you do in response; did you respond
15 to that?

16 A. Well, in the next sentence down it talks about
17 a man by the name of Craig Franks, to call him at this
18 particular number and -- if I am interested in buying the
19 equipment in the store. And I turned around and called
20 him, you know, that day or the next day after I got the
21 letter, asked him, do you have any idea what you want for
22 the equipment and his response was, well, after --

23 MR. THUMA: Objection; hearsay.

24 MR. WITT: Your Honor, it's Furr's, I
25 don't know -- they inherited it. I don't believe it's --

1 there's no hearsay if it's objection to a statement by
2 the party.

3 MR. THUMA: Furr's is not a party in this
4 case.

5 MR. WITT: I believe they have inherited
6 the case and they get it like it is.

7 THE COURT: Well, is there any question
8 that this guy Craig Franks is actually a Furr's
9 representative?

10 MR. THUMA: I don't think so. He was an
11 employee of Furr's Supermarket, Inc., during the Chapter
12 11; I'm sure that's true.

13 MR. WITT: You know, one of our claims is
14 during the Chapter 11 case, so I don't how they can
15 object to that.

16 THE COURT: I'm sorry?

17 MR. WITT: One of our claims is during the
18 Chapter 11 case for the use of the space and he was the
19 one at Furr's as the evidence will develop that was in
20 charge of dealing with this equipment and this space.
21 Says so right in the letter that's already been admitted.

22 THE COURT: Well, the letter has been
23 admitted but --

24 MR. WITT: I can probably work around it.

25 THE COURT: Yes, I don't think -- with

1 respect to the objection, I am going to sustain it at
2 least as to the truth of the matter that's recited. If
3 you want to have the testimony admitted for purposes of
4 the fact that somebody said a certain thing to him, then
5 based on that he says what he heard was somebody saying X
6 and based on that he acted a certain way, that would be
7 one thing, but that doesn't mean that X is taken as a
8 fact or anything in this case. I will sustain the
9 objection in that sense.

10 Q. (By Mr. Witt) Okay. Mr. Glasscock, is --
11 look at Exhibit 9. Is that a letter you sent to Mr.
12 Franks?

13 A. Yes.

14 Q. Okay. Was this letter sent to Mr. Franks in
15 response to the letter that's Exhibit 8 and your
16 conversations with Mr. Franks?

17 A. That's correct.

18 Q. Tell me what the conversations were in which
19 you responded with this Exhibit 9?

20 MR. THUMA: Same objection, if he's
21 soliciting the same answer.

22 MR. WITT: But at this time, Your Honor,
23 I'm offering it just for the purpose, not if the truth,
24 to prove the truth of the matter, but to show why Mr.
25 Glasscock responded with Exhibit Number 9, which is all I

1 need anyway.

2 THE COURT: Okay. Well, it's admitted for
3 that purpose yes -- it is admitted for that purpose, so
4 go ahead.

5 A. Based on my conversation with Mr. Franks, I
6 asked him what he expected to get from the property, what
7 he would like to get for the fixtures that were there and
8 he said somewhere between \$5,000 and \$10,000. So I said
9 if I submit a bid, you'd consider it, and he said yes we
10 would.

11 Q. So did you then send what has been marked as
12 Exhibit Number 9 to Mr. Franks?

13 A. I did.

14 Q. And what did you get as a response?

15 A. I didn't hear from Mr. Franks again.

16 Q. Did you ever try to contact him?

17 A. Yes, I did.

18 Q. What happened when you tried to contact him?

19 A. I actually tried to contact him. I tried to
20 contact Carolyn Novus. Evidently either the phones were
21 shut off or they were inundated with calls and didn't
22 have enough personnel to answer the phone.

23 Q. Now you knew Furr's was still in a bankruptcy
24 at that time?

25 A. Correct.

1 Q. And so you knew you couldn't touch the
2 equipment, right?

3 A. Correct.

4 Q. What was your understanding about taking
5 possession of the store?

6 A. Well, we got the keys but we actually couldn't
7 take possession with all the equipment that was there. I
8 mean, There was nothing we could do. We had an order
9 that we couldn't move anything.

10 Q. Okay. Did you send bills? Did you continue
11 sending bills out to Furr's?

12 A. Yes, we sent -- as opposed to rent bills we
13 sent storage fee bills because we were told at one time
14 that they could pay storage for the equipment. So we
15 came up with a fair number and billed them accordingly
16 for the equipment.

17 Q. Okay. Now from the time you sent Exhibit 9,
18 which is on September 13, 2001, until the conversion
19 date, December 18, did you ever hear from anyone from
20 Furr's?

21 A. I did not.

22 Q. Let's look at Number 10. Are these the copies
23 of the bills that you sent?

24 A. Well, our company sent, yes, that's correct.

25 Q. And did you think there was also one probably

1 for September?

2 A. I'm sure there was. I don't see it in here
3 but I'm sure there was.

4 Q. Was it probably also in the amount of \$15,000?

5 MR. THUMA: Objection, Your Honor; leading
6 the witness.

7 THE COURT: Sustained.

8 Q. (By Mr. Witt) What do you know -- do you know
9 what you sent a bill for?

10 A. If one was sent for September it would have
11 been for \$15,000.

12 Q. Now at one point beginning in February the
13 amount drops to \$10,000?

14 A. Yes.

15 Q. Can you explain that to the Court?

16 A. That may be something you want to ask Mr.
17 Baily. I could tell you what he told me, but you may
18 want to ask him or I can go ahead and tell you.

19 Q. What's your understanding?

20 A. My understanding is that he had talked with
21 the Trustee and was trying to help get this thing done
22 quicker. He said he would be glad to help lower it if he
23 needed to to make this deal go down faster.

24 Q. What was -- are you familiar with storage
25 rates in Midland, Texas?

1 A. Yes.

2 Q. Have you ever owned storage buildings?

3 A. We have.

4 Q. What's the fair rate for storage that's un-air
5 conditioned?

6 A. It runs somewhere between \$3 and \$4 a foot.

7 Q. And how many square feet were there?

8 A. 44,000 plus or minus.

9 Q. How much would that be a month? Do you need a
10 calculator?

11 A. No. At \$4 it's roughly \$180,000 a year or so.

12 Q. Which would be how much a month?

13 A. \$15,000.

14 Q. So you thought the \$15,000 was about the going
15 rate for storage space in Midland, Texas, at this time?

16 MR. THUMA: Objection; leading the
17 witness.

18 THE COURT: Sustained.

19 Q. (By Mr. Witt) Do you believe these bills --
20 do you believe -- what do you believe a fair rate for
21 storage during this point in time was?

22 A. Well, either what we billed out which was at
23 \$4 roughly a foot or maybe a little more. It's hard to
24 find air conditioned space for storage.

25 Q. Now the Trustee has as one of his exhibits

1 Exhibit Number A. Can you look at that? Do you have a
2 white notebook?

3 A. Yes.

4 Q. There's an invoice there for \$19,000; do you
5 see that, for December?

6 A. Yes.

7 Q. The \$19,000 was the rent amount when they were
8 paying rent?

9 A. That's correct.

10 Q. Do you give any explanation for why this bill
11 was sent in addition to a storage bill for the month of
12 December?

13 A. I would think it is a mistake. It is probably
14 the computer and it was just a glitch. I don't see any
15 others that we had sent.

16 Q. Now the conversion to Chapter 7 occurred in
17 late December. When did you discover the occurrence of
18 that event?

19 A. Sometime before Christmas.

20 Q. And did Mrs. Gonzales, who is sitting over
21 here, contact you or Mr. Baily?

22 A. Mr. Baily.

23 Q. Okay. Now look at Exhibit Number 13. It's
24 about this -- I think this order was entered in about
25 March, it's not dated, but was this about the time you

1 hired me?

2 A. Yes.

3 Q. Do you remember this order?

4 A. Yes.

5 Q. Okay. Now look at the third page of the
6 order; do you see that?

7 A. Yes, I do.

8 Q. Paragraph Number 1?

9 A. Yes.

10 Q. Okay. In the first sentence does it say,
11 "Debtor has authority to conduct an auction sale of the
12 store equipment at former stores, then it lists 966.

13 MR. THUMA: Your Honor, I object to
14 reading what a document says and then asking the witness
15 if the document says that.

16 THE COURT: Well, I assume he's setting
17 this up for some further questioning.

18 MR. WITT: I am.

19 THE COURT: Alerting me what sentence to
20 have in mind as he asks further questions, so I'll
21 overrule the objection.

22 Q. Do you see that sentence, Mr. Glasscock?

23 A. Yes.

24 Q. Was TGAAR opposed to this auction order and
25 having the auction sale?

1 A. No.

2 Q. What was their position on it?

3 A. Let's get it out of there. I want to get rid
4 of the equipment.

5 Q. Had you been trying to get rid of it for a
6 long time?

7 A. We asked numerous times when we got ahold of
8 people and we thought we had -- it was going to be either
9 taken by a bid or they were going to come get it or they
10 were going to try to sell it to us or something. So yes,
11 we had been trying to get rid of it.

12 Q. Okay. And look down at the fourth line from
13 the bottom? Do you see the sentence that says, "As part
14 of the auction process"?

15 A. Yes.

16 Q. Now it says, "As part of the auction process
17 Mr. Parker shall remove all the store equipment from each
18 of the former stores and will leave them in a broom clean
19 condition"; do you see that?

20 A. I do see that.

21 Q. And is that what TGAAR wanted to occur?

22 A. Yes.

23 Q. Based on that order is that what TGAAR
24 believed would occur when the auction was held?

25 A. Yes.

1 Q. Did anyone ever tell you that they were just
2 going to take out some of the equipment and leave the
3 junk?

4 A. No.

5 Q. Now some representatives -- did some
6 representatives of the auction company come to visit to
7 look at the store?

8 A. Yes.

9 Q. Was that with you or Mr. Baily?

10 A. Actually Mr. Baily talked to them one day,
11 then I talked to them the next day.

12 Q. Tell me about the visit. Tell me what you
13 know about the visits Mr. Baily had and tell me about
14 your visits.

15 A. Well, I think they are very similar. My visit
16 was we walked the store. We tried to figure out a
17 pathway the auction would take, which direction, what
18 doors to go in, what not to go in. We came to a
19 conclusion in the back of the store is a -- well, looking
20 at the map, if I can, I'll point to it. At the top of
21 that map, the back -- do you want me to get up there and
22 show you or --

23 MR. WITT: Your Honor, can the witness
24 approach the map?

25 THE COURT: Sure.

1 A. Do you want me to roll that forward?

2 THE COURT: This will be a good
3 experiment. It'll be fine. Actually we've got the
4 map -- we've got the -- you think it may not be working.
5 Why don't you grab that microphone. There's one back
6 there behind Mr. Baily. Is it turned on? Do you want to
7 go over and make sure it's turned on. And you can either
8 use it on the stand or you can just take it out and use
9 it as a hand held mic, if you'd like.

10 A. Where I was talking about was this portion of
11 the room --

12 THE COURT: That's what you have
13 outlined --

14 A. Outlined in red, yes, sir.

15 THE COURT: Thank you.

16 A. Anyway, that portion of the room is where when
17 we were walking through this store, I had built out a
18 school. It's called Midland Christian School and they
19 had some miscellaneous basketball goals, doors, just some
20 equipment they had there and that I told them that I
21 could store it there in the back of this store along with
22 our church. I had remodeled some space for them, they
23 had some carpet and some other things that are back in
24 here.

25 So the auctioneer and I decided that -- to his

1 suggestion, by the way -- that if we just block this area
2 off and this area off, anything that was part of Furr's
3 we'll just bring forward to the open areas and that way
4 everybody could see it and get to it. Seemed easier.

5 Q. Mr. Glasscock, who exactly -- how many people
6 were you meeting with?

7 A. I met with just that one gentleman.

8 Q. One gentleman. Was he the actual -- was it
9 Mr. Parker?

10 A. No.

11 Q. Did you ever see Mr. Parker in this two-day
12 period?

13 A. I believe I did. I never was introduced to
14 him. I saw him the second day, I believe.

15 Q. Excuse me, I'm talking about --

16 A. Which would be the next day of the auction.

17 Q. No, no. You and I were not communicating. I
18 am talking about the time when they came out before the
19 auction.

20 A. No, I have not seen him there.

21 Q. Mr. Parker didn't come out?

22 A. Never saw him.

23 Q. When you were talking about meeting Mr.
24 Parker; was that at the auction?

25 A. At the auction.

1 Q. And the day after the auction?

2 A. Correct.

3 Q. So did the auctioneer's representatives have
4 any objections to doing what you suggested?

5 A. No, he thought it was a great idea. It was
6 basically his idea.

7 Q. Did they tell you what they thought they would
8 get at the auction for the sale of everything?

9 MR. THUMA: Objection; asks for hearsay.

10 MR. WITT: Your Honor, this is the
11 auctioneer and the auctioneer is the agent of the
12 trustee. These are agents of agents. I don't think
13 there's any hearsay objection to be made.

14 THE COURT: Yes, I think there is clearly
15 a hearsay objection. He may be representing the
16 hearsay -- he may be representing the Trustee for
17 purposes of sale, but fundamentally for evidentiary
18 purposes I don't think that you can say that it is
19 admissible essentially the same as if he were here today.
20 So I think it is a different sort of standard and I will
21 sustain that objection, unless you have got another basis
22 for getting it in.

23 MR. WITT: No, sir.

24 Q. (By Mr. Witt) So what else happened during
25 your visit at this preauction visit with the

1 representatives of the auctioneer?

2 A. As far as I am concerned, not a whole lot. He
3 was walking around, he was going to tag some items, begin
4 tagging items shortly and then have the auction I believe
5 that next Thursday.

6 Q. Were you cooperative?

7 A. Oh, absolutely.

8 Q. Did you attend the auction?

9 A. Yes.

10 Q. Going back to this stuff in the space marked
11 in red, how many square feet do you believe that
12 constitutes?

13 A. Probably somewhere between 1200 and 1500
14 square feet.

15 Q. Can you also for the Judge's benefit mark the
16 north and south ends of the building? Okay. And the
17 front where the entrance is.

18 A. The front door would be at the south.

19 Q. Okay. Then did you attend the auction?

20 A. For a short period, yes.

21 Q. Did you see any advertising for the auction?

22 A. No.

23 Q. How well was the auction attended?

24 A. When I was there which was about two hours
25 after it had started, there was probably six people

1 bidding and maybe 12 total standing around.

2 Q. Okay. Do you think things were bringing good
3 prices?

4 A. No. If I was the trustee and I had been there
5 I would have been disappointed.

6 Q. Now tell me how long did the auction take?

7 A. I believe it just took that one day.

8 Q. Did you go over there the next day?

9 A. Yes, I did.

10 Q. Was anyone with you?

11 A. My wife.

12 Q. Okay. And what did you observe that day?

13 A. Well, That was the day I got a little bit
14 upset. Again, I'm going to point to the map.

15 We came in these doors from this side -- can
16 you see from there?

17 MR. THUMA: Yes.

18 A. We came in these doors. This area right here
19 which is -- again I am going to outline it -- is the
20 pharmaceutical area.

21 Q. Is that in the southwest corner?

22 A. That would be the southwest corner, correct.

23 THE COURT: If we're going to have a
24 record here, do you have a different color pen or do you
25 have a particular scheme? I mean, you've now outlined a

1 second area in red as opposed to the church/school area
2 which was in the back of the store so this is in the
3 southwest corner of the store there, the pharmaceutical
4 area, you're outlining that in green; is that right?

5 A. Yes, sir

6 THE COURT: Okay.

7 A. This area here. We walked in these doors and
8 immediately my eye caught to this direction which would
9 be the southwest corner in the green box and --

10 Q. Now what was in that while it was operating as
11 a grocery store?

12 A. I don't know if you're familiar with, when you
13 come into a pharmaceutical area, they always have a real
14 nice counter and they have roll-up cages in most of them
15 where they can protect the drugs in the back and glass
16 that encompasses, you know, all the way around the
17 counter and behind it, it had probably 15 shelving units
18 that would hold medicines and whatnot and then back in
19 here was a small restroom and a sink area.

20 So anyway, I walk in the store and look over
21 there, this whole area here again where I'm going to put
22 an X in green -- had been -- it looked like somebody had
23 run through it with a car. It was just destroyed.

24 There was glass laying around. The cages
25 which are the metal cages that hang from the ceiling

1 grid, one guy was standing on this table and had just
2 ripped it off the wall. These are put in with, they are
3 tied into the metal struts above the ceiling but these
4 had been taken out.

5 But what had happened here was a guy come
6 through after I found out with a forklift, come through
7 the X to the back southwest corner of this to get this
8 sink that was in this corner that he took the forklift,
9 stuck it under the cabinet and pulled it off the wall.

10 And I -- he was already making his way back
11 here to the back and I found him back here with the
12 forklift and a pallet with stuff about this tall on it of
13 just junk at that point, I mean, it was just ruined
14 basically and I confronted him at that point.

15 Q. And what did you tell him?

16 A. I asked him, "What the heck are you doing?" I
17 said, "Why are you doing this?" He said, "Well, we had
18 to get it out of there." And I said, "Why did you
19 destroy what was there?"

20 Q. And these were -- were these things that were
21 destroyed, were they fixtures that were affixed to the
22 building?

23 A. Oh, absolutely. It would be like your house.
24 At your house, it would be a sink in your house and a
25 cabinet, a nice cabinet that was attached to the wall.

1 Q. Did they unscrew the sinks?

2 A. No, that's the point. I mean, they lifted and
3 pulled out and the plumbing was pulled, the copper was
4 stretched from the wall where it was snapped and and then
5 sawed when he got it out, the PVC and the hole in the
6 sheetrock from where they had torn it out.

7 Q. So there were holes left in the Sheetrock?

8 A. Yes.

9 Q. What about all the cabinets and stuff before
10 you go --

11 A. Well, all this counter top was destroyed. He
12 went right through it.

13 Q. All right.

14 A. The shelving units were pushed back and over
15 on top of each other in this general area right down here
16 to the south, south of the X, kind of stacked over on top
17 of each other in pieces.

18 Q. Now did they also take the commode out of that
19 corner?

20 A. It's not there, yes.

21 Q. Did -- you didn't see them take it?

22 A. No.

23 Q. But it was gone?

24 A. Yes.

25 Q. All right. What else did you observe?

1 A. So anyway, when I was following this guy and
2 it was easy to follow his trail. I don't know if you
3 hunt but a blood trail, you follow the deer after you've
4 shot him, you can see the trail. There was a gouge in
5 the tile and I think Mr. Thuma had already alluded to
6 this -- that went from this corner, this X -- I am going
7 to show you it in blue -- from here to those doors.

8 Q. Now back in this northeast corner, what is
9 located back there?

10 A. Up here in the northeast corner, this is where
11 everything came into the store. This is actually
12 extended over this way. It's a loading dock, probably
13 another 20 feet out this direction to my right, to the
14 east. But this is where everything came in and out of
15 the store, all the food and everything.

16 Q. And had this guy caused the gouge?

17 A. Oh, yes, he admitted it.

18 Q. And what actually caused the gouge?

19 A. Well, the best I could tell, he had made
20 several trips using basically the same path. There was
21 another one that kind of went off this angle, but the
22 main one was on this blue line. He had taken a pallet
23 jack, stuck the forks of the forklift and then would pull
24 it behind him as opposed to pushing forward, he'd pull it
25 behind him. He didn't realize that one side of the

1 pallet jack either had a nail or a screw or something to
2 the bottom when you got weight on it, it went to the
3 floor and the weight caused it to gouge the floor several
4 times all the way through that.

5 Q. How deep was the gouge?

6 A. Well, it was probably close to a 16th of an
7 inch. Vinyl tile -- this is all called vinyl coated
8 tile, VCT tile. And VCT tile is about an eighth of an
9 inch thick. So at least on parts of it, halfway through
10 it.

11 Q. What else did you witness?

12 A. Let's see, we were -- the guys had just been
13 in the bakery, which is on the east side of the building
14 which is right here. I am circling that in orange.
15 Again, somebody had taken forklifts, picked up the bakery
16 equipment off the walls. Now these weren't just
17 refrigerator units, these were all the sinks that are
18 connected to the wall, these are the baking units that
19 are in the walls. These were -- there was a row of
20 ovens. All these things were just jerked out.

21 Q. They were built into the wall?

22 A. Everything was connected to the wall on the
23 outside of the walls. Then there's another wall right
24 through here, again -- right through here, the bakery
25 items set here on each side of that wall and out here on

1 the counters. These items here on the front were
2 freestanding. These were on each side of this wall and
3 this wall went around.

4 Q. Okay. And had they damaged anything over
5 there?

6 A. This is where Tierro Drywall, which we'll
7 introduce I guess at some point in time, did most of
8 their repair work. All these outside walls where these
9 cases were all around the building where things had just
10 been taken and ripped off the walls so holes as big your
11 head every two feet were found.

12 Q. Could those things have been removed without
13 tearing up the walls?

14 A. Oh, absolutely. I think you can do anything
15 if you try.

16 Q. But -- now did you see Mr. Parker when you
17 were there?

18 A. I saw Mr. Parker during the auction, yes, what
19 I think is Mr. Parker.

20 Q. What about the day after?

21 A. No, I never saw him then.

22 Q. Okay. Was anyone there from the auctioneer?

23 A. There was a Hispanic man there, short heavysset
24 guy that sat at the front door. He was kind of
25 monitoring things coming in and out.

1 Q. Was he doing any -- done anything to stop any
2 of the damage that had occurred?

3 A. No.

4 Q. Did you visit with him about it?

5 A. I asked him -- his word or response to me when
6 I asked him why is this going on, why are you ripping us
7 off and he said we were told we could take it out any way
8 we needed to.

9 Q. Okay. All right. Did you come back again?

10 A. I came back Saturday. I think that would be
11 the 1st, June 1st.

12 Q. The 30th, is that on a Thursday? I do have a
13 calendar here if you would like to look.

14 THE COURT: Just tell us and we can
15 probably take judicial notice.

16 Q. I believe May 30, the day of the auction, is a
17 Thursday.

18 A. I think it was.

19 Q. So the day after, when you were witnessing the
20 blue line being made, that would have been Friday, right?

21 A. Correct.

22 Q. You said you came back Saturday?

23 A. Correct.

24 Q. Was anyone from the auctioneer there on
25 Saturday?

1 A. I didn't see anybody on Saturday.

2 Q. How much of the store equipment had been
3 removed by that time?

4 A. By that time, less than half.

5 Q. Were there any announcements made at the
6 auction about when this stuff had to be purchased had to
7 be removed?

8 A. Within three to five days after the auction.

9 Q. After three days and after five days how much
10 of the stuff still remained?

11 A. Almost the same amount.

12 Q. Very little --

13 A. Very little of it. It was a weekend and I
14 don't know if they decided they didn't want to come get
15 it on the weekend or what, but it was not moved.

16 Q. Did -- now you had a guy named Frank -- what's
17 Frank's last name?

18 A. Gutierrez.

19 Q. -- that was working for you at the time?

20 A. Correct.

21 Q. He doesn't work for you anymore?

22 A. No.

23 THE COURT: I'm sorry, what was Frank's
24 last name, sir?

25 A. Gutierrez. Gutierrez.

1 THE COURT: Gutierrez? Thank you.

2 A. That's Texas for Gutierrez.

3 THE COURT: Like La Mesa.

4 A. Exactly.

5 Q. (By Mr. Witt) What was Frank's general duty
6 for your company?

7 A. Frank was our hotshot guy. He was kind of
8 our, what we call an engineer, property engineer. He'd
9 go around if a light bulb was out or a door was out of
10 whack or if a window was broken. He was my fix-it guy.

11 Q. And did Frank do anything about letting people
12 in?

13 A. Yes, Frank ended up -- after they called us
14 and said the doors were locked and we said, well, they've
15 got a key and they said well, nobody's here. They being
16 the auction people had a key. Nobody is here. What do
17 we do. These are the buyers. I said, "Frank, go over
18 there, open the doors, check them at noon, close the
19 doors at 5:00." And we did that for several days.

20 Q. Now during this period who is paying all of
21 the electricity?

22 A. We are.

23 Q. And you're paying the electricity, you're
24 paying the taxes and insurance?

25 A. Yes.

1 Q. Who did it appear -- during the period in time
2 when you were at the auction who did it appear to be the
3 main buyer?

4 A. I don't have his name. I do know that he was
5 a friend of Mr. Parker because Mr. Parker alluded that
6 he had gone to several auctions with him and he was from
7 El Paso best I know.

8 Q. Did anyone talk to you about selling copper
9 out of the coffin cases?

10 A. Selling copper?

11 Q. Yes.

12 A. They talked about removing copper out of
13 coffin cases.

14 Q. All right. Tell me about that. First of all,
15 what's a coffin case?

16 A. Coffin case is the old -- the old stores, old
17 grocery stores used to have these, they're about the size
18 of this table where we're each sitting and they're
19 open-topped. They would suck air from the bottom and
20 cool the air to almost freezing temperatures on the top.
21 Then that air would go into the store, it would help cool
22 the store. But that's what -- they were open, we would
23 all reach, we would all get our stuff out of those. They
24 call them old coffin cases. They don't use them any
25 more.

1 Q. Mr. Glasscock, just for clarification, I am
2 looking at Exhibit 19. Second page photograph Number
3 2.3. Do you see any coffin cases in 2.3?

4 A. Yes, I do.

5 Q. And they're just, they're the low lying ones
6 in front of those --

7 A. They are about three feet tall, that's
8 correct, and probably 120 feet long.

9 Q. All right. And what exactly did they want to
10 do with these coffin cases?

11 A. Well, refrigerant runs in copper and so they
12 wanted to take the copper that lies underneath in the
13 bottom of the cases and take that copper out and sell it
14 at salvage.

15 Q. And what did you tell them?

16 A. You're welcome to do that but you have to take
17 the whole case.

18 Q. Did they just leave them?

19 A. Yes.

20 Q. Did anyone ever protest? I mean, when you had
21 these conversations with them, did anyone ever object to
22 it?

23 A. You mean in the sense of --

24 Q. In what you were telling them?

25 A. No, they didn't object.

1 Q. All right. Mr. Baily took some photos at one
2 point, did he not, of your store?

3 A. Correct.

4 Q. I think you can go back and sit back down.

5 THE COURT: Can you do me a favor. How do
6 you spell again Mr. Baily's last name.

7 MR. WITT: B-A-I-L-Y.

8 MR. BAILY: B-A-I-L-Y.

9 THE COURT: Oh, B-A-I-L-Y; okay; thank you
10 very much.

11 Q. (By Mr. Witt) Mr. Glasscock, can you turn to
12 Exhibit Number 19?

13 A. Yes.

14 Q. There is three pages there, photos are
15 numbered -- do you see numbers of each photo?

16 A. Yes.

17 Q. On each page. Just start with the first page,
18 explain generally, first of all, are those photos taken
19 of the store?

20 A. Yes.

21 Q. About when were they taken? Were they taken
22 before the auction or after the auction?

23 A. I would guess in July which would be after the
24 auction.

25 Q. And just go through the photos, just start

1 with 1.1 and just tell the Court generally where that is
2 on the exhibit up here and --

3 A. The white standing -- they're actually, I
4 believe they're security panels. When you pass through
5 them if you have -- if something's got a sticker on, it
6 will ring. That's at the front of the store, south end
7 of the store between the green box and the orange box on
8 the west side, so it's at the front of the store, all
9 along the front.

10 Q. Okay. You see those wires on the ground?

11 A. Yes.

12 Q. Do you see a blue wire coming down --

13 A. Yes.

14 Q. -- from the ceiling?

15 A. Yes.

16 Q. Were those wires capped?

17 A. Well, no, this blue wire happens to be
18 communication wire. It is part of the security wire.
19 And probably is not a hot wire. The wires that you
20 probably are referring to are the red wires and the
21 yellow wires, those, none of those are capped.

22 Q. Okay.

23 A. Those are just -- most of them looked like
24 they're pulled, pulled out from the floor because they're
25 too long to be just snipped off at the base so they have

1 been yanked out.

2 Q. And what happens when you yank a wire out?

3 A. It's useless. If you stretch a wire, for
4 safety purposes you can't use the wire.

5 Q. Now was this at the time these photos were
6 taken were those electrical wires in accordance with
7 Midland codes?

8 MR. THUMA: Objection; unless there's a
9 foundation that he's knowledgeable about electrical
10 code --

11 MR. WITT: I'm just trying to show --

12 THE COURT: Whoop, whoop, let him finish,
13 first of all.

14 MR. THUMA: Your Honor, I object. It
15 seems like it's calling for either expert testimony or
16 legal conclusion. I don't think the foundation has been
17 laid that he's qualified to opine about compliance or
18 noncompliance with electrical codes.

19 MR. WITT: Your Honor, I can back up if --
20 and very easily show this man is very knowledgeable about
21 the code requirements and things meeting code. I mean,
22 the Court can almost take judicial notice that wires that
23 are laying loose that are hot will kill people, are not
24 in code but --

25 THE COURT: Well --

1 MR. WITT: I can back up and --

2 THE COURT: The building is not occupied.
3 I don't know whether that -- I mean, I can't take
4 judicial notice. That's not really obvious.

5 If the store was occupied and being used I
6 think it would be a matter of common sense that it
7 violates some kind of code somewhere, I would think, but
8 I don't know about a store that's in theory unoccupied.

9 So if you want to try and qualify him to talk
10 about what Midland code is based on his experience and
11 that sort of thing, you're welcome to do so.

12 Q. (By Mr. Witt) Mr. Glasscock, do you have
13 experience with the various codes the City of Midland has
14 in place?

15 A. I am a general contractor with the City of
16 Midland. I'm a general contractor with Abilene, Texas.
17 I have been so for over 15 years. I have built out over
18 a million square feet of office space and shopping center
19 space. I take -- I have built freestanding buildings. I
20 have built a 160,000 square foot school building. I have
21 remodeled 100,000 square feet of a church building. I
22 have done numerous freestanding buildings.

23 Every building I have to do has to be up to
24 code. I have to get a building permit. I have to go in
25 and get these guys to bless it so when I go to get a

1 building permit, and say, okay, guys, I want to remodel
2 this space, I have to submit to them a plan that says
3 what we're going to do and then they come and inspect it.
4 I don't call them, they come on their own.

5 Each individual electrician, plumber,
6 mechanical they have to call on their own to check on
7 what they had done that.

8 Q. Was this -- after -- you -- let's back up a
9 minute. After the auction, do you recall that I made a
10 couple attempts to inquire about the status of all this
11 equipment in the store?

12 A. Yes.

13 Q. And look back at Exhibits Number 33 and 34.

14 A. Okay.

15 Q. Okay. And is Exhibit 33 a letter I sent to
16 David Thuma?

17 A. It is.

18 Q. And I copied Mr. Baily with it?

19 A. Correct.

20 Q. And is Exhibit Number -- first letter was June
21 17, right?

22 A. Right.

23 Q. And so it would have been about almost three
24 weeks after the auction, right?

25 A. Correct.

1 Q. Next letter is June 26?

2 A. Correct.

3 Q. That's almost four weeks after the auction?

4 A. Correct.

5 Q. And both letters basically are inquiring about
6 when are they going to get the stuff out of the store,
7 right?

8 MR. THUMA: Objection; documents speak for
9 themselves.

10 Q. Is that your understanding?

11 A. That is --

12 THE COURT: I think documents do speak for
13 themselves.

14 Q. (By Mr. Witt) All right. And did we finally
15 get on July 3 a letter from Mr. Thuma, Exhibit 18?

16 A. Yes.

17 Q. And does it speak -- this letter obviously
18 speaks for itself, but when was the first time you felt
19 that you could actually go in and move any of this store
20 equipment?

21 A. I personally felt after we got this letter.

22 Q. Before that did you feel like you were
23 prohibited?

24 A. Yes.

25 Q. Okay. So after this letter you believe these

1 photos were taken?

2 A. Yes.

3 Q. And do you believe the premises, the
4 electrical wiring was up to code?

5 MR. THUMA: Objection, Your Honor; leading
6 and the witness hasn't been qualified as an expert. If
7 we're going to go down this path again, I would like to
8 do some voir dire.

9 MR. WITT: Voir dire him.

10 THE COURT: Okay. It is leading. I'll
11 sustain the objection on that basis and if you are going
12 to voir dire with respect to this witness, you can go
13 ahead and do it. You want to qualify him as an expert?

14 MR. WITT: Yes.

15 THE COURT: Okay.

16

17 VOIR DIRE EXAMINATION

18 BY MR. THUMA:

19 Q. Mr. Glasscock, are you qualified as an
20 electrical contractor?

21 A. Do I have an electrical contractor's license
22 or what are you asking?

23 Q. Yes. You said you are a contractor, general
24 contractor?

25 A. Correct.

1 Q. You're not an electrical contractor?

2 A. Correct.

3 Q. You're talking about the code. What code are
4 you referring to?

5 A. Talking about the electrical code and plumbing
6 codes, mechanical codes. Any time you get -- you have to
7 pass these codes to get a certificate of occupancy and
8 obviously, as you look at the pictures, you can see I
9 could not get a certificate of occupancy to put a new
10 tenant in here.

11 Q. You didn't do any electrical work on this
12 building, did you?

13 A. Personally?

14 Q. Yes.

15 A. No.

16 Q. In fact, you hired an electrical contractor to
17 do a large amount of work on this building?

18 A. Most of it, yes.

19 Q. Didn't that electrical contractor testify in
20 this case about what he found and what he saw?

21 A. You mean under deposition?

22 Q. Yes.

23 A. Yes.

24 Q. And now you are going to try to repeat his
25 testimony and duplicate what he said?

1 A. No, you just asked me if I was a general
2 contractor and I told you what I know and knowledge,
3 working knowledge of the situation.

4 Q. Do you know what section of the electrical
5 code is you think is violated by what you see in these
6 photographs?

7 A. No.

8 MR. THUMA: Your Honor, I guess we have
9 the testimony already, it's going to be submitted to you.
10 Mr. Glasscock is not primarily -- he's not an electrical
11 contractor at all, he's a general contractor. It doesn't
12 seem to me that he has been qualified as a witness to
13 testify as an expert and give his expert opinion whether
14 something is or is not in compliance with the applicable
15 electrical code.

16 THE COURT: Okay. I think it's pretty
17 clear at this point that based on his experience as a
18 general contractor, he's got, undoubtedly got some
19 knowledge, at least a working knowledge of what the
20 requirements are for electrical contractors, electrical
21 work, electrical construction in connection with
22 commercial building and that sort of thing.

23 It just seems to me as a general contractor,
24 especially with all that he's done, while he may not be
25 qualified specifically as an electrical contractor, he's

1 got to have a general idea what the rules are with
2 respect to, you know, live wires and hot wires and stuff
3 like that, if nothing else for safety purposes.

4 So I am going to find that at least to the
5 extent of the questions that have been asked so far that
6 I think that this witness has the requisite specialized
7 knowledge that will assist me as the trier of fact to
8 understand the evidence or to determine a fact in issue
9 because this witness is qualified as an expert by his
10 knowledge, skill, experience, training and/or education
11 and he can testify on this issue, on something this
12 broad, it seems to me, on something this general; okay.

13 If we're going to go into a lot of details
14 about the Midland code and a lot of real technical stuff,
15 then I am going to reconsider that, but on this general
16 topic like this, I can't believe that he doesn't know
17 what's required and what's not required just like it's
18 the back of his hand.

19 So the answer is that he can testify as an
20 expert.

21

22 DIRECT EXAMINATION (Continued)

23 Q. (By Mr. Witt) Mr. Glasscock, after we
24 received David Thuma's letter dated July 3, was the store
25 left in a condition that would pass codes in Midland,

1 Texas?

2 A. Absolutely not.

3 Q. And explain generally, without going into a
4 lot of detail, why.

5 A. Well, there's many evidences you can cite but
6 the biggest ones were nothing at the panel boxes were
7 turn off, meaning the breakers.

8 If you are in your house, everybody's got
9 breaker panels and it will say refrigerator or it will
10 say lights or whatever. On a simplistic view I'm giving
11 you this.

12 But in a grocery store, it's the same way, it
13 will say cash register, it will say lights, it will say
14 freezers. Those were not turned off and the wires were
15 laying there with the ends, the bare copper sticking out
16 of them.

17 Q. Is that dangerous?

18 A. Absolutely.

19 Q. Somebody could have gotten killed; is that
20 right?

21 MR. THUMA: Objection; he's leading the
22 witness.

23 A. I just think it's very dangerous --

24 THE COURT: Stop.

25 A. Oh, sorry.

1 THE COURT: One of the rules is when there
2 is an objection they didn't want you to talk any more.
3 You have to not talk until I have ruled on the objection;
4 okay.

5 A. Yes, sir.

6 THE COURT: And as hard as this is going
7 to be, Mr. Witt, you really need to restrain yourself
8 from these leading questions.

9 MR. WITT: Okay.

10 THE COURT: So the objection is sustained.

11 Q. (By Mr. Witt) All right. Let's look at Photo
12 1-2 on Exhibit 19. Tell me what that shows.

13 A. From here it looks like it was part of a P
14 trap. P trap meaning a sewer trap that can go either
15 under a, maybe a sink or a meat locker, something to
16 catch drainage and water. Again it looks like there is
17 some blue wire which I think, again, is part of that
18 security wire that's at the front. I can't tell you
19 exactly what part of the store that one was taken.

20 Q. Does it look like there's some caps on some of
21 the wires?

22 A. Yes. I'll tell you those caps, at this point
23 a lot of those caps were put on by my people.

24 Q. Now there's black, and then there's, on the
25 vinyl tile, there's black and there's more of a cream

1 color?

2 A. Right.

3 Q. Tell me what the black is?

4 A. The black is probably just old wax, old food,
5 old water that got under there that mixed with dirt.
6 It's just, it's underneath a cabinet that -- or a
7 shelving unit that's probably a half an inch off the
8 ground so you can't mop under it. You can see where your
9 mop lines are. That's where the cabinet is on the dark
10 versus the light. That's the width of the shelving unit
11 or whatever was sitting on top.

12 Q. So something has been sitting on that black
13 part?

14 A. Correct.

15 Q. Now is that black part, was that permanently
16 there, was it damaged or would it come off?

17 A. This particular one, I'm not sure, but most of
18 them came off, but it took a lot of work.

19 Q. Did you do that initially or --

20 A. No, that was down the road.

21 Q. Let's look quickly at the photos on the second
22 page. 2-2, does that show a lot of --

23 A. That was soft drinks on one side and I think
24 this was the one with the pickles and something on the
25 other side. Several of those were behind the shelving

1 units. They came back to back so when you see aisles on
2 each side the shelving units back to back and it had a
3 space between the backs. People would either push it
4 behind or it fell behind or it fell under and they kicked
5 it under.

6 Q. Okay. And 2.1, what part of the store is that
7 in?

8 A. This is the bakery which on the map up there
9 is in the orange.

10 Q. And are there tiles missing?

11 A. Ceiling tiles?

12 Q. Yes.

13 A. Around the back side, yes.

14 Q. Over back in the back, is there wallboard
15 missing back there?

16 A. Yes.

17 Q. And then 2.3 --

18 A. As a matter of fact, that's -- going back to
19 that one where the wallboard is missing, you can kind of
20 see coming down from the ceiling, that's where the panel
21 boxes were, two or three of them are gone. I guess they
22 thought that went with whatever they bought, electrical
23 panel boxes.

24 Q. So they took the panel boxes out?

25 A. Yes.

1 Q. Those are like electrical panel boxes? They
2 just took them?

3 A. Well, I guess the machine was wired up into it
4 and --

5 Q. What about 2.3?

6 A. 2.3 is taken from the southwest corner looking
7 back to the northwest corner, the middle of the store
8 were where the coffin cases were. Behind the coffin
9 cases are reach-in coolers. They are about three feet
10 wide but they are all connected, probably 120 long and
11 they're double-sided.

12 Q. So they left all that?

13 A. They were sold, but they were left. I think
14 they found out -- they moved the first five or six of
15 them and it was such a horrendous task, that they left
16 them for what they paid for them. I think, we can look
17 back but they had them marked how much was paid and it
18 was one cent on the dollar.

19 Q. But those were left after July 3?

20 A. Right.

21 Q. Let's look at 3.2, Page 3.

22 Q. This was the meat market. That's just one of
23 the items they decided they wanted pieces off and then
24 left it. Again, wires are hanging off the floor there.
25 That trap was full of water where it drained. Down --

1 the top part of that picture on 3.2 is, you can see some
2 damage along that wall where they pulled something out of
3 it and it's sitting out there in the aisle.

4 The lower picture is inside the meat market
5 where they decided to take the sink that was attached to
6 the wall, the big long stainless steel sink. Then there
7 was another one in the other corner further on and you
8 can see where that one is gone as well.

9 3.3, that says Produce, so it is right -- it
10 would be north of the pharmacy. They left those
11 freezers, they decided they didn't want those.

12 Q. Didn't want what?

13 A. Those freezers. They said they couldn't sell
14 those again. So they left everything in the produce and
15 going back to that corner.

16 Q. Okay. Now do you believe the auctioneer
17 complied with the Court order and removed all the store
18 equipment?

19 A. No.

20 THE COURT: Let me just ask a question.
21 How much longer do you think the testimony is going to
22 be? I'm thinking about giving everybody a break for
23 about ten, 15 minutes.

24 MR. WITT: At least half way. This will
25 be my longest witness. I am at least half through.

1 THE COURT: Okay. Well, in that case
2 we're going to take a break. When is your person coming,
3 at 11:00?

4 MR. THUMA: He should be here shortly.
5 I'm beginning to think we're not going to finish today at
6 this rate. I have a fairly extensive cross-examination.
7 Sounds like the witness won't pass until after lunch.

8 THE COURT: Okay.

9 MR. THUMA: So I guess we'll just need to
10 figure out --

11 THE COURT: We'll talk about that. Let's
12 take -- is a ten-minute break enough for everybody?

13 MR. THUMA: Yes, Your Honor.

14 THE COURT: Okay; let's do that.

15 (A recess was taken.)

16 THE COURT: Mr. Glasscock, if you would
17 retake the stand, please. Thank you.

18 We have a new person here in the courtroom.

19 MR. THUMA: Yes, Your Honor. This is Mr.
20 Parker, the auctioneer.

21 THE COURT: Okay. He's here as a fact
22 witness?

23 MR. THUMA: Yes, Your Honor.

24 THE COURT: Okay. I think we ought to
25 sequester him unless he's going to testify right now.

1 What were you saying earlier with respect to his
2 schedule, do you all have any agreement on him?

3 MR. WITT: No, but I don't mind calling
4 him next.

5 THE COURT: Calling him next?

6 MR. WITT: After Mr. Glasscock. We'll get
7 him out in plenty of time.

8 MR. THUMA: I appreciate that. I do want
9 to -- he's an unpaid witness. I would like to not ruin
10 more than one day of his time.

11 THE COURT: Okay. That would be fine, but
12 I am thinking that if he's a fact witness as opposed to
13 an expert witness, he needs to be sequestered, right?

14 MR. THUMA: Yes, Your Honor. That's up to
15 you. We haven't -- neither party has moved to sequester
16 but I gather your protocol is to sequester.

17 THE COURT: Yes, pretty much.

18 So, Mr. Parker, what you'll need to do is step
19 outside of the courtroom, but before you leave, what are
20 we talking about in terms of time? We're going to run at
21 least through noon with this witness; is that right?

22 MR. THUMA: Yes, Your Honor.

23 THE COURT: Then we're going to run for
24 some time after that, too?

25 MR. THUMA: I believe so. I believe -- I

1 don't know when I am going to get the witness. If I get
2 him before lunch time, I'll start my cross-examination,
3 but I don't think there's any way I can finish.

4 THE COURT: What's your situation, Mr.
5 Parker? When are you --

6 MR. PARKER: I have a flight back at 6:35
7 tonight.

8 THE COURT: Do you have other things going
9 on here in town you can be doing?

10 MR. PARKER: No, sir, I don't.

11 THE COURT: Okay. Well then, let's, I
12 guess, finish this witness at this point. And then I can
13 just tell you, first of all, there's coffee available in
14 the hearing room right -- you go out the door, turn left
15 and there's a hearing room with coffee. Then if you want
16 some reading material, including today's New York Times,
17 you can go right up the hall there and go into chambers
18 and sit down with the Times. Coffee and the Times, I
19 mean, candidly it doesn't get much better than that in my
20 opinion, but --

21 Okay. And any time you want to come in and
22 retrieve your stuff, Mr. Parker, you're welcome to do so.

23 Okay; all right. Let's see, Mr. Glasscock,
24 you understand you're still under oath, sir?

25 A. Yes, sir.

1 Q. (By Mr. Witt) Mr. Glasscock, would you turn
2 to Exhibit Number 20. Are these copies of photographs
3 that you took?

4 A. No, sir.

5 Q. That Gary took?

6 A. Gary took.

7 Q. What do they depict?

8 A. They depict -- if you look at the plat we have
9 on the easel, they depict the blue line from where the
10 guy with the pallet drug it from the front of the store
11 to the back of the store.

12 MR. WITT: Your Honor, I would like to say
13 that I would like to be able to submit the original
14 photos of these. I think they are much better quality.
15 They are on that Federal Express truck.

16 THE COURT: Sure; that's fine.

17 MR. WITT: When we finally retrieve them,
18 I'll submit them to you.

19 THE COURT: Yes, that's fine

20 Q. Now look at the 1-2, what is that? Where is
21 the damage there?

22 A. Well, there again I think what you said is
23 right, there's a couple lines you can't see but the main
24 line looks to be a dotted line right through the middle
25 of the tiles and then to the north of that there's

1 another line that sweeps through down back to the left.

2 When I say a line, again, I mean a gouge in the vinyl
3 tile.

4 Q. Do the other photos also reflect gouges?

5 A. Yes, they do.

6 Q. Okay. Now how deep were these gouges?

7 A. These large ones in particular are close to a
8 sixteenth of an inch.

9 Q. Were you familiar with this tile and the
10 quality of it?

11 A. Yes, I put a lot of this down.

12 Q. And the nondamaged -- well, except for the
13 damage, what was the shape of this tile?

14 A. Well, it has been used as a grocery store and
15 buffed out and it cleans up very nice. If you go back to
16 some, I think two exhibits back, if you will look at it,
17 Exhibit 19, Picture 2.2, when that floor is buffed, you
18 can see the sunlight coming in on it, that's a pretty
19 good looking floor.

20 Q. Now is it possible to fix these gouges in any
21 way?

22 A. No.

23 Q. Can you buff these gouges out?

24 A. No, you don't want to buff down too far, you
25 would have to sand and then you lose the shine and the

1 texture and it doesn't work. Besides that, it's cheaper
2 to replace them.

3 Q. How many square feet of tile would have had to
4 be replaced just to replace the tiles that were gouged
5 out?

6 A. We had an estimate, I believe it was 3,000 --
7 5,000 square feet of tile that would have to be replaced
8 of the gouged areas.

9 Q. Could you just replace the gouged areas?

10 A. You can just replace the gouged areas but
11 vinyl tile is such that two, three years at best shelf
12 life, meaning in warehouses where they sell it, stores,
13 you'll never get the same dye lot, it will never look the
14 same.

15 As a matter of fact, when we were standing out
16 in the hallway out here, Your Honor, I noticed you have
17 got a gouge going from your elevator all the way back to
18 the coffee room and --

19 THE COURT: You're right. We --

20 A. -- and I would tell you if you were to replace
21 that now, you would not match that marble. You can but
22 it would probably be pinks and different colors so it
23 would not match. I don't know if you would be happy with
24 it. That is a guess on my part, but --

25 THE COURT: I'm okay with the gouge,

1 frankly.

2 A. Okay. So if you don't replace it, you're okay
3 with the gouge, there you go.

4 THE COURT: My standards are not what you
5 want to be referring to.

6 A. But the point is, once you get one of those,
7 it is near impossible to fix from an economic standpoint,
8 you must replace or live with it.

9 Q. But for the damage, was the tile in good
10 enough shape that it could have been used for a number of
11 years?

12 A. It was at the front of the store, so if it
13 wasn't in good shape I am assuming Furr's under their
14 quality control would have changed it out.

15 Q. Okay. Now when the store equipment wasn't
16 removed from the store following the auction, what did
17 you do?

18 A. When it wasn't removed?

19 Q. Yes, after July 3.

20 A. After we got the letter from Mr. Thuma?

21 Q. Yes, sir.

22 A. At that time I got two or three of our
23 employees and hired a few more and basically day to day
24 we just put them over there and step by step from one
25 side of the building to the other side of the building

1 started to clean up.

2 Q. Okay. How long did it take?

3 A. I know we were there July and August,
4 September and we still didn't have it all out.

5 Q. Look back at Exhibit 19, Photograph Number
6 2-3. During this period did you remove those coffin
7 cases and those reach-ins that are at the back of Picture
8 2.3?

9 A. Some of them. Some of them were there up
10 until almost December.

11 Q. But did you have to hire dumpsters?

12 A. We rented dumpsters. We probably had \$3,000
13 or \$4,000 worth of dumpsters, I'd guess, \$2,000 or
14 \$3,000; I can't really remember.

15 Q. Okay. And did this, having to remove the
16 store equipment and all the junk in the store, did it
17 delay you in being able to re-lease the store?

18 A. To re-lease the store?

19 Q. Yes.

20 A. Personally I think it did. When I show a
21 space in an office building or a medical building, unless
22 it is near pristine, being walls painted, nice carpet,
23 it's hard for other people to visualize how something
24 will look. If they come in here and see it like that,
25 it's pretty distressing.

1 Q. How long do you think you were dispossessed of
2 use and enjoyment of the premises by reason of the
3 failure to remove the store equipment; how many months?

4 A. I would say we went for a year from the time
5 we got the keys and from that point about another three
6 or four months.

7 Q. After the auction -- after the auction how
8 long was it?

9 A. After the auction was what, June 2002?
10 Probably six months after the auction.

11 Q. Did you have any tenants that -- prospective
12 tenants that you lost during this period?

13 A. Yes.

14 Q. Tell me about that.

15 A. Company by the name of Dollar Tree which is a
16 Dollar General type store. I don't know if you have
17 those here in New Mexico or not. They are a national
18 company, national recognition. They have several
19 thousand stores. They started opening stores in west
20 Texas.

21 They approached us in April of that year
22 before the auction. I sent them a plat similar to the
23 one that's on the easel. I marked off a space of 20,000
24 square feet if they were interested. They responded that
25 they'd like to do some demographics.

1 They came out, did their demographics, were
2 excited about the location because that's the clientele
3 they wanted on that part of our city that's the clientele
4 they were reaching. They said they would love to do it
5 but they couldn't do it if it was after September because
6 that gets into their Christmas season. Anything after
7 it -- it's part of their package they sent to me.
8 Anything after September, we can't open the store.

9 THE COURT: I don't understand what after
10 September means.

11 A. Well, they stock -- this -- we didn't get
12 possession of this physically to remove everything until
13 July and when that happened we had to clean it up, get it
14 ready for them. I couldn't get it ready for them by
15 September which would be two more months for them to move
16 in and have all of their equipment and all their goods to
17 sell for their Christmas. So they had to be up and going
18 by September was the problem.

19 THE COURT: Okay.

20 A. By September of '02.

21 THE COURT: By the end of September, you
22 mean, they had to be up and going?

23 A. Yes, I had to have it ready for them by that
24 time so I couldn't have it ready for them by that time.

25 THE COURT: You had to have it ready for

1 them in time to be able to move in, to stock the store,
2 do all that stuff, be up and ready --

3 A. For Christmas.

4 THE COURT: -- open the doors for sales as
5 of say October 1, 2002?

6 A. That's correct.

7 Q. (By Mr. Witt) Did they open a store
8 elsewhere?

9 A. So they found a store a mile and a half north
10 and moved into it. It was already ready to go.

11 Q. Is TGAAR -- did it attempt to mitigate its
12 damages by getting new tenants?

13 A. We contacted numerous people, grocery stores,
14 drug stores, Save A Lots, Wal-Mart's, a storage facility
15 for files, just several of those.

16 Q. And did you finally lease part of the store to
17 Goodwill?

18 A. I did.

19 Q. And after that did you lease a part of the
20 store to Southern Institute?

21 A. Southern Career Institute, yes, I did.

22 Q. That's part of the Caplan?

23 A. Yes.

24 Q. And look at Exhibits 28 and 29. I think 28
25 and 29 are actually stuck in the back because the

1 notebook got too full.

2 A. Okay.

3 Q. And are those the leases that you entered into
4 with those parties?

5 A. Yes.

6 Q. And it states the terms and the dates when
7 they started to rent?

8 A. Yes.

9 Q. And how much of the space is still unleased?

10 A. There's approximately 8,000 feet on the north
11 end.

12 Q. Are you still trying to lease that space?

13 A. Yes, we are.

14 Q. Turn to Exhibit 35.

15 A. 35?

16 Q. Yes, sir.

17 THE COURT: Let me ask, is the space
18 that's unleased the space that was the church and school?

19 A. That's part of it, Your Honor. The other
20 space is --

21 MR. WITT: Can I ask him to draw it, Your
22 Honor?

23 THE COURT: That would be fine.

24 A. Pick a color. White?

25 THE COURT: Sure.

1 Q. (By Mr. Witt) What corner are you going to be
2 in?

3 A. I'm going to be in the northwest corner. I'll
4 start there. Can't get it off. From right here to here,
5 about the center of the building, this divides, this
6 would be Goodwill. On the east side, this would be
7 Caplan or the Career Institute on the west side. This
8 area that's up here that I'm hatching in black
9 encompasses the area that's available for lease.

10 THE COURT: Okay; thanks.

11 Q. (By Mr. Wittt) While you're up, did Goodwill,
12 did they carpet a portion of their store?

13 A. Yes, they carpeted from where the black X is
14 south. They used the tile that was in the store in the
15 back.

16 Q. Why was it carpeted instead of using the
17 existing vinyl tile?

18 A. They -- earlier I alluded to this thing, some
19 people can't see what it's going to look like. If you
20 look at those pictures in Exhibit 19, again, it showed
21 the black in between the aisles where we had swept it
22 out, you could still see those and they didn't think we
23 could get it clean. So I cleaned it for them and they
24 still said, "I think we would rather have carpet." We
25 gave into them basically. Actually if I would have

1 pulled up the tile and retiled it, it was more expensive
2 than doing the carpet.

3 Q. All right. You can take a seat.

4 Exhibit 35, first page, under clean up costs,
5 do you see those numbers and those descriptions?

6 A. Yes, sir.

7 Q. Just tell the Court what those are.

8 A. Labor would be those gentlemen that I told you
9 I hired on a daily basis, the FICA, insurance, workmen's
10 comp, unemployment tax, those things are the next line
11 which would be the \$1060. The dumpster fees are
12 \$3,056.69.

13 Q. And if you look at Exhibit 17 in the book.

14 A. Okay.

15 Q. Is that a summary of the pay costs followed by
16 copies of the checks and timecards?

17 A. Yes.

18 Q. And were these full-time employees of yours?

19 A. Yes and no. Some of them were; some of them
20 weren't. Most of them were not full-time.

21 Q. And --

22 A. Frank was the only one I think on here I can
23 tell.

24 Q. Did you have to pay FICA taxes on all of the
25 wages paid?

1 A. I can't answer that. If it is on this other
2 sheet, I assume we did. I just -- whatever the total is.
3 Some of them were just labor but I can't remember.

4 Q. And then the dumpster down there, the figure
5 \$3,000-some-odd; what were those for?

6 A. The junk.

7 Q. That were these --

8 A. All of the stuff you see remaining in the
9 store that was continually hauled off.

10 Q. Okay. And you had to pay for the dumpster
11 fees?

12 A. Yes.

13 Q. And look at Exhibit 16. Is that a chart of
14 the dumpster invoices and the copies of the invoices
15 attached?

16 A. Yes.

17 Q. Okay. And do you believe you should have had
18 to pay all of these costs?

19 A. No.

20 Q. Why not?

21 A. Because from day one, we followed the order.
22 We basically did everything they asked us to do from the
23 Bankruptcy Court to whenever we let them in, we worked
24 with them and we did not get this left in broom swept
25 condition.

1 Q. The order said, "shall remove all equipment";
2 was that done?

3 A. No.

4 Q. And getting it -- and were these costs just to
5 get it in broom clean condition and remove equipment?

6 A. To get it almost in broom clean condition.

7 Q. In fact, you still had some coffin cases and
8 reach-ins that you hadn't even --

9 A. Yes.

10 Q. -- that this didn't even cover, right?

11 A. Yes.

12 Q. All right. Look down further. We have got
13 listing the Southern Institute monthly rental, Goodwill
14 monthly rental. Could you have leased it to these
15 parties earlier if they had gotten the store equipment
16 out right after the auction?

17 A. We put Goodwill off for about eight months, so
18 yes.

19 Q. You could have gotten Goodwill in?

20 A. Earlier, yes.

21 Q. And you just -- were they delayed getting in
22 because of the way that the store was left?

23 A. Until we got the letter in July, we could not
24 move anything. And prior to when I was talking to them
25 and getting them in was probably in April or maybe March,

1 probably March. And I would venture to say we didn't
2 know that we were having an auction at that time, I don't
3 believe.

4 Q. If you had gotten Dollar Tree, would Dollar
5 Tree have been better than these tenants?

6 A. Well, in a shopping center, when you have
7 financing like we do on this particular center, the first
8 question a banker will ask you is are there any national
9 tenants in these buildings. You can get a lot of local
10 people that want to try to put in a restaurant or a
11 clothing store, whatever, but the meat of a center is
12 based on the national tenant. And so yes, a Dollar Tree,
13 a Dollar General, those kinds are the kind of people you
14 want.

15 Q. What about the buildout costs for Dollar Tree;
16 would they have been more or less than Goodwill or
17 Southern?

18 A. See, that was the other good thing. All we
19 had to do is give them the box. It would be like giving
20 them this room right here and fix the walls and they were
21 going to come in and paint them, do any flooring they
22 want to do or not do. That was it.

23 Q. Whereas on Goodwill did you have a lot of
24 build out?

25 A. Yes, we did.

1 Q. With Southern did you have a lot of build out?

2 A. Yes, we did.

3 Q. Okay. Turn the page, please. Now the second
4 page of Exhibit Number 35, does that list our claims for
5 damages caused by the auctioneer and the way the
6 equipment that was removed?

7 A. Yes.

8 Q. Let's go through the first one, electrical
9 repair. That is the estimate from the guy who did the
10 work, right?

11 A. Right.

12 Q. We are submitting that by deposition. But do
13 you think that's an accurate figure, a low figure, a high
14 figure?

15 A. I think that's probably a low figure.

16 Q. Why is that?

17 A. We spent over \$100,000 with that guy on the
18 Goodwill side. This probably got us back to where we
19 could start doing the work would be my guess.

20 Q. What do you mean, "it got us back to where we
21 could start doing the work"?

22 A. Well, for Goodwill, Goodwill wanted us to tear
23 out a certain area to remodel or put in an office or
24 something, without the panels, for example, in the
25 bakery, the bakery side where the orange circle is, the

1 panels were gone, so we had to put in new panels run all
2 the way back to where the hatched area is that we're
3 still leasing. That's where all the electrical came in.
4 We call those home runs. Home runs mean you have to go
5 back to the source with one wire in conduit and take it
6 all the way back. Those panels were pulled and the wire
7 was stretched. The guy with D&E Electric who did the
8 work, said that he would not use those wires, he could
9 not get them passed. So he had to run new wire and a
10 panel from that area back. So that does not reflect on
11 here, that cost.

12 Q. Okay.

13 A. This cost was mostly entire building, fixing,
14 clipping, snipping, pulling, redoing. And then it got
15 in, when we got to the Goodwill lease, they spent the
16 majority of their time over at the Goodwill lease. I had
17 to have them in within 90 days of the time they signed
18 their lease.

19 Q. Do you believe that any of that \$19,000 figure
20 for the electrical repair is for stuff done to build out
21 for Goodwill or was it for damages?

22 A. I don't believe that, because that's what the
23 gentleman told me.

24 Q. What about the next line, plumbing and Freon
25 says renewal.

1 MR. WITT: I got a typo, Your Honor, that
2 ought to be removal.

3 Q. Plumbing and Freon removal. Can you tell me
4 about that?

5 A. Yes, that's an interesting one. I think it
6 goes back to my earlier statement about the guy with the
7 forklift that ripped it out of the wall in the pharmacy,
8 the sink.

9 Everything was just wide open. If we hadn't
10 had the water turned off, we'd have had some real
11 problems because that was just wide open.

12 The Freon is from all of the refrigerant that
13 runs in the boxes, the reach-in coolers, the compressors
14 that they decided they need to take with the coolers and
15 they just lifted them, either sawed them, sawed the
16 copper off with what they call a Sawzall or a clip, you
17 know, they clipped them with a hand clipper and just left
18 them to the open air.

19 Q. What does that do when they're left to the
20 open air?

21 A. Well, I'm not an expert in this field except
22 for the fact that under -- a general contractor has to
23 maintain -- with the EPA, you cannot take Freon out of
24 any concealed compressor unit without the right
25 technology. These guys were just snipping them and

1 grabbing them and it was going everywhere.

2 Q. Okay. Do you believe this \$18,000 figure for
3 the plumbing and Freon removal is an accurate figure just
4 to correct the damage that was done by removal of the
5 equipment?

6 A. Again, I hold these guys confidence. They've
7 done a lot of work for me. If they say it is, it is.

8 Q. Did they do a lot more work for you in getting
9 the store ready for the new tenant?

10 A. Yes, they have.

11 Q. Did they charge a lot more than that number?

12 A. Yes, they have.

13 Q. Wall repairs, \$17,000, almost \$18,000, tell me
14 about that.

15 A. Well, that store is probably 200-some-odd feet
16 long by 180 feet wide. That's a lot of Sheetrock when
17 some of it goes to the ceiling. Most of that didn't get
18 damaged above ten feet. But there is considerable damage
19 all along the perimeter of that building.

20 Q. Does wall repairs, does this also include tile
21 replacements?

22 A. Ceiling tiles?

23 Q. Yes.

24 A. Yes, it does.

25 Q. And tell me why the ceiling tiles had to be

1 replaced?

2 A. Well, when they took the -- for example, in
3 the bakery they would take out a couple of those big
4 bakery items along that center wall where the orange is
5 on the map. As they pulled them off the wall, I guess
6 they didn't realize they had vent hoods that went all the
7 way to the roof, 20-some-odd feet high. Those vent hoods
8 started falling down through the ceiling. And when they
9 took this, they decided, well, we'll just go upstairs and
10 get the compressor on top. They took that, took it off
11 the roof and left me holes, some of them as big as this
12 desk, didn't cover them back up.

13 Q. Was any of this wall repair work that's part
14 of that \$17,000 figure, was it for the building out of
15 new walls for Goodwill or Caplan?

16 A. No.

17 Q. Is it for damage to the walls from the way
18 stuff was removed from the store?

19 A. My understanding that's all it was for. Now
20 this figure does include he hauls off his own materials
21 and brings his own materials.

22 Q. The next one, small item, \$34 for Mason
23 Drywall, we'll skip over that. Scissor lift rental; why
24 is that on there for \$506?

25 A. It is easier to get on one of those lifts to

1 get above ceiling height where some of the duct work was
2 hanging down. That was mainly what we used to replace
3 ceiling tiles they had pulled out in the grid. That's an
4 expensive ordeal.

5 Q. And the floor damage, \$50,000 figure; what's
6 that for?

7 A. Well, the whole front of the store where all
8 of the shelving, where all the goods were is about 35,000
9 feet. If you were to replace the whole floor I think
10 that figure is pretty accurate.

11 Q. Okay. If you replace only the damaged part, is
12 the footnote down there accurate?

13 A. Yes.

14 Q. \$5640?

15 A. Correct.

16 Q. Now without going into any great detail, turn
17 the page. Does the next page reflect the -- for the
18 times, various times of possession from -- during the
19 Chapter 7 case from December 19 to the end of the year,
20 from January 1 through June 2nd which is we picked
21 because it's three days after the auction, right?

22 A. Yes.

23 Q. And then July 3, June 3 to July 3, three
24 categories, does that show cost or the amount of rent
25 that would have accrued during those periods?

1 A. Yes.

2 MR. THUMA: Your Honor, I would like to
3 lodge an objection to leading the witness.

4 THE COURT: Sustained.

5 MR. WITT: All right. I'm sorry, Your
6 Honor, just trying to move this along a little faster,
7 but I'll slow down.

8 Q. (By Mr. Witt) Tell me about the first one
9 under there, under December 19 to December 31, tell me
10 what that reflects?

11 A. This is the lease that was under Chapter 7
12 from December 19, 2001, to December 31, 2001. There's a
13 partial month because they went from 11 to 7 during
14 December. Those numbers added together were
15 \$9100-some-odd.

16 Q. Okay.

17 A. The next one is January 1, 2002, to June 2,
18 2002, the day after the auction, that totaled \$105,000.
19 That is the amount of rent that would have been paid in
20 that time period plus ad valorem taxes.

21 The third one is for June 3 to July 3, for
22 just another month's rent under that same scenario.

23 Q. It's got the pro rata amount of ad valorem
24 taxes for those periods?

25 A. Yes, it does.

1 Q. The \$19,000 and the ad valorem taxes are based
2 on the actual Furr's lease?

3 A. Yes.

4 Q. It is Exhibit Number 1, right?

5 A. Yes.

6 MR. THUMA: Objection; leading the
7 witness.

8 THE COURT: Yes, sustained.

9 Let me ask you a question. Is the ad valorem
10 tax rate, does that change, sir?

11 MR. WITT: Your Honor, we've put in the ad
12 valorem -- were you asking the witness?

13 THE COURT: I'm asking the witness. Does
14 the ad valorem tax rate change? Did it change?

15 A. After they left?

16 THE COURT: No. Well, let me tell you
17 what I am looking at here.

18 A. It did; it got reduced.

19 THE COURT: Oh, it did?

20 A. Because it got reduced at some point, I don't
21 know which year, but it did get reduced.

22 THE COURT: Beginning in 2002? Because it
23 looks to me, just looking at the numbers, you have got
24 rent for almost \$8,000 for a period of what, a week and a
25 half or so, but that's \$1165 for your ad valorem tax.

1 And then for the second entry there from January to June,
2 it's \$96,000 but ad valorem tax is only \$9,000. See
3 the percentage seems to be significantly different.

4 A. Yes, I do believe it was reduced; that's
5 correct.

6 THE COURT: All right, thank you.

7 A. I think -- we get our tax notice in May, end
8 of May in Texas. I don't know what they do here, but
9 then you have the right to protest or file for protest.
10 We went down subsequently stating we no longer had
11 business there, that we wanted the tax removed or
12 lowered, excuse me.

13 THE COURT: Okay; thank you.

14 Q. (By Mr. Witt) Just to clarify, Mr. Glasscock,
15 turn to Exhibit 15, the chart of the ad valorem taxes
16 with some ad valorem tax statements attached. Does that
17 show the 2001 ad valorem taxes and the 2002?

18 A. Yes, this is what we were talking about,
19 correct.

20 Q. Both for Midland Appraisal District and for
21 Midland County?

22 A. Correct.

23 Q. And does it show that it was reduced?

24 A. It went from \$33,308 to \$21,351 in 2002 and
25 then in 2003 it was \$21,807.

1 Q. Those are the same figures that we used back
2 in our chart on 35, right?

3 A. Yes.

4 Q. Now down -- we have some footnotes down at the
5 bottom for --

6 A. Well, the first one is, I think I said this,
7 it went from 11 to 7 halfway through the month and the
8 second one is the rents from January of 2002 to June
9 2002.

10 Q. Excuse me, I wasn't clear. I'm directing you
11 down to the footnotes at the bottom of the page. See the
12 footnotes where it says pro rated invoice for 2001,
13 \$6300, Exhibit 10?

14 A. Oh, yes.

15 Q. Turn back to Exhibit 10 while you're at it.
16 In Exhibit 10 is what we looked at earlier,
17 the statements for \$15,000 later reduced to \$10,000
18 for -- that you sent to them for storage, right?

19 A. Correct.

20 Q. And do the footnotes reflect -- whereas the
21 chart reflects the rent at the Furr's rent rate under the
22 lease, do the footnotes reflect the invoices?

23 A. Yes, it appears to.

24 Q. Okay. And you believe that -- do these
25 reflect the time during the Chapter 7 case where you

1 couldn't use the store because the store equipment was
2 there?

3 A. Yes.

4 Q. Do you think it would be fair if you were
5 limited to the net sales price of the equipment?

6 A. No.

7 Q. Why is that?

8 A. Well, for one we didn't have access to our
9 building under the court order until July 3 of 2002.
10 We couldn't move anything; we couldn't remove anything.

11 Q. And turn to the last page.

12 A. 35?

13 Q. Exhibit 35, yes. Is that the same thing but
14 showing the damages for the period during the Chapter 11
15 case from after they turned the keys over to you?

16 A. Yes.

17 Q. And in the footnote, it's the pro rated
18 invoices in Exhibit 10?

19 A. Yes.

20 Q. Now all during this period of time reflected
21 on Page 3 and 4 of Exhibit 5, were you all paying ad
22 valorem taxes?

23 A. Yes.

24 Q. Electricity?

25 A. All expenses.

1 Q. And insurance?

2 A. Yes.

3 Q. Did the Trustee ever offer to pay any of
4 those?

5 A. No.

6 Q. Did you even pay for the electricity they used
7 when they were doing the auction?

8 A. Yes. And the cleanup they were doing.

9 Q. Did you ever have any janitorial crew for
10 Store 966?

11 Q. You mean while Furr's was operating and
12 running a grocery store did they have their own --

13 A. That was a triple net -- that was a triple net
14 deal. We don't furnish any janitorial.

15 Q. Did you ever have any janitorial crew? I'm
16 not talking about those guys that helped you out --

17 A. I don't have a janitorial crew. I do not have
18 a janitorial crew.

19 MR. WITT: Okay. Your Honor, I think I'm
20 going to pass the witness.

21 THE COURT: Okay.

22 MR. THUMA: I think I'll at least start up
23 at the podium.

24

25

1 CROSS-EXAMINATION

2 BY MR. THUMA:

3 Q. Mr. Glasscock, tell me as an initial matter
4 which TGAAR entity owns this real estate we have been
5 talking about?

6 A. TGAAR West Texas, Inc.

7 Q. What interest does TGAAR Properties, Inc.,
8 have in this real estate?

9 A. One percent.

10 Q. And explain that to me.

11 A. TGAAR West Texas, Inc., is the holder of the
12 note and then there's a general -- Texas general
13 liability company that TGAAR Properties is the general
14 partner and managing partner and then Gary and I own the
15 remaining.

16 Q. Well, TGAAR West Texas, Inc., is a
17 corporation; is it not?

18 A. Correct.

19 Q. Does it hold the deed?

20 A. That's a good question. Financing is in it.
21 I think it does. I don't know. I can't answer that
22 right off the top of my head.

23 Q. Explain to me what type of a claim TGAAR
24 Properties, Inc., has against the Chapter 7 estate?

25 A. What kind of a claim?

1 Q. Yes. Sounds to me all these claims relate to
2 ownership of the property and doesn't sound to me like
3 TGAAR Properties, Inc., has any ownership interest in
4 this strip center.

5 A. We own all of TGAAR Properties, Inc. We own
6 all the TGAAR entities.

7 Q. I know you and Mr. Baily own one way or the
8 other everything. But I am talking about the ownership
9 of that particular claim. Isn't it owned by TGAAR West
10 Texas, Inc.?

11 A. Again, I can't answer that, I don't know which
12 one of those entities.

13 Q. Whoever owns the real estate owns the claim;
14 wouldn't that be a fair thing to say?

15 A. Yes.

16 Q. And your best knowledge right now is TGAAR
17 West Texas, Inc., owns the real estate but you're not
18 sure?

19 A. I think it is.

20 Q. It does?

21 A. I think so.

22 Q. Okay. This center that we're talking about,
23 when was it built?

24 A. '79, '80, '81.

25 Q. Before Furr's stopped operating how many other

1 tenants were in the center?

2 A. Before they stopped?

3 Q. Yes.

4 A. We were probably 80 percent full, so I don't
5 know how many tenants that would be, there were 15 or 20.

6 Q. The location that was operated by Furr's
7 started out as a grocery store back in 1981; is that
8 right?

9 A. That's correct.

10 Q. It's been a grocery store ever since?

11 A. Correct.

12 Q. And, for example, tile, isn't the tile,
13 doesn't that date back to when Safeway opened the store
14 in '81?

15 A. Yes.

16 Q. How about the walls and the ceiling; do you
17 know if that was original?

18 A. No.

19 Q. Don't know one way or the other?

20 A. No.

21 Q. When did you first reenter the store after
22 August 31 of 2001?

23 A. Probably September, first week in September
24 sometime.

25 Q. What did you do after you got notice, Furr's

1 sent you the keys and I don't know, did you get a copy of
2 the order granting you stay relief for that location?

3 A. No.

4 Q. What did you do after you got the keys from
5 Furr's and reentered the store?

6 A. I made sure which keys went where, then I
7 changed the locks on the front and rear doors.

8 Q. What did you do with any perishables that were
9 left at the store?

10 A. We had to have them hauled off.

11 Q. Whatever happened to the cigarettes and the
12 liquor?

13 A. They came and got them, Furr's.

14 Q. Did you do any cleanup of the store between --
15 other than hauling off the perishables between, say,
16 September of 2001 and the auction?

17 A. I think we were always doing some little
18 miscellaneous stuff, nothing drastic. The biggest thing
19 was the meat that was left in the meat area. It was so
20 rancid we had to have a special group come in and haul it
21 off. It was in several tubs.

22 Q. And that was in September of 2001?

23 A. I believe September.

24 Q. When did you start sending the bills for
25 storage charges?

1 A. Well, I noticed in here in the exhibits it
2 showed October. I believe there was a September but I
3 can't actually say that.

4 THE COURT: I'm sorry, excuse me. Would
5 you ask that question again and remind me what the
6 question was.

7 Q. (By Mr. Thuma) When did you first start
8 billing Furr's for storage charges?

9 A. And I said under the exhibits it shows that we
10 sent them a bill in October but I thought we sent them
11 one in September as well, but since it's not there, I
12 can't tell you yes or no.

13 THE COURT: Thanks. I just had a --

14 A. That's okay.

15 THE COURT: -- one of those that happens
16 when some of us turn 57.

17 MR. THUMA: I'll let you know in 20 years
18 when I get to that age.

19 THE COURT: That didn't help your case at
20 all, Mr. Thuma.

21 MR. WITT: I'm there.

22 MR. THUMA: I'm just a little optimistic
23 on my estimation.

24 Q. (By Mr. Thuma) Can you tell me when you first
25 began the effort to re-lease the space?

1 A. It had to be sometime after the first of the
2 year of 2002.

3 Q. Why the delay between the end of August of
4 2001 and the beginning of 2002?

5 A. Well, I got a letter from Carolyn Novus said
6 she wanted to work out a deal on the equipment, they had
7 people wanting to come in, would I be willing to help
8 them out. Yes, I said, followed up with a letter that to
9 the same effect and then there was a conversation and
10 then we had several conversations during that time about
11 did we want to buy the equipment, were we interested in
12 it, what did we think.

13 And also, you know, their lease, their
14 original lease ran until the end of December 2001. We
15 were just having conversations back and forth.

16 Q. You were referring to a letter that's in your
17 exhibit book about talking to Craig Franks, trying to
18 work out a deal. Is that the letter you're talking
19 about?

20 A. That may be it. Which one is it and I'll tell
21 you?

22 Q. Exhibit Number 8.

23 A. Yes.

24 Q. Now that letter refers, does it not, simply
25 to -- attempting to work out something about the

1 equipment; is that right?

2 A. No, it says, "I hereby surrender possession of
3 the premises on August 31," and then it does in the
4 second paragraph also mentions disposing of the equipment
5 of Furr's and what we would like to do.

6 Q. You took this letter as maybe holding out the
7 hope that you could continue to have Furr's as a tenant?

8 A. No, Furr's was our tenant.

9 Q. Did you understand that the lease was rejected
10 as of August 31?

11 A. No.

12 Q. Did you have counsel in the Furr's case?

13 A. Let's see when -- I can't answer when I got
14 counsel.

15 Q. Were you aware of the court order that allowed
16 Furr's to reject that lease?

17 A. After the fact, yes.

18 Q. And isn't it true that you must have been
19 aware pretty promptly because you started billing Furr's
20 for storage in September?

21 A. About?

22 Q. You must have been known the lease was over or
23 else you wouldn't have billed them for storage on top of
24 rent?

25 A. That may be true. I don't think it is on top

1 of the rent.

2 Q. In any event, there was a delay of about four
3 months before you started attempting to relet; is that
4 right?

5 A. Correct.

6 Q. When you did start to try to find a new
7 tenant, what did you do?

8 A. Sent out letters, made numerous phone calls,
9 sent out packages showing the shopping center,
10 demographics, the rent rates of the area, just normal
11 things we send to try to entice tenants.

12 Q. Did you hire a broker?

13 A. No.

14 Q. Is it your typical procedure not to list your
15 properties with brokers?

16 A. Yes.

17 Q. Have you ever listed a property with a broker?

18 A. Yes.

19 Q. When do you decide to list and when do you
20 decide not to?

21 A. Generally speaking I have a -- I tend to do
22 better with one on one. I like to meet the people. And
23 if I can't seem to find it through my contacts, then I'll
24 give somebody a one-time listing. Most of the brokers
25 in town know to call me if they have an interested

1 person, I will pay them their commission.

2 Q. How long do you give yourself before you
3 decide to list with a broker?

4 A. Varies from property to property.

5 Q. Was this property ever listed with a broker?

6 A. No.

7 Q. How about the other portions, not the Furr's
8 space but any of the other vacant --

9 A. No.

10 Q. Isn't it true that when you started marketing,
11 you made substantial efforts to find a new grocery store
12 tenant?

13 A. Yes.

14 Q. Can you tell me why that is?

15 A. It is logical. You had all -- everything was
16 there ready to go and it seemed like the easiest way to
17 put somebody in there was to put a grocery store in it.

18 Q. And it is true, isn't it, you didn't really
19 stop that effort until December of 2002 when Wal-Mart
20 told you they weren't going to go in?

21 A. Yes. Well, it would probably have been
22 November, I guess. That's probably true.

23 Q. In your deposition you said December; do you
24 know which is right?

25 A. I don't recall.

1 Q. And isn't it true that it was only after that
2 letter from Wal-Mart that you decided to put Goodwill --
3 you were talking about putting Goodwill in another one of
4 your locations and you decided, after you got the
5 Wal-Mart letter to just go ahead and put them in this
6 location?

7 A. Yes.

8 Q. Would you agree with me that if you were able
9 to find a grocery store tenant that wanted to use the old
10 equipment, that it would save them a substantial amount
11 of money to just take over on site as it was versus
12 installing their own equipment?

13 A. Well, I would hope to, but most of the time
14 most of the people that came in found the equipment
15 wasn't what they needed, it was out of date. J.
16 Lawrence, Super Mercado, Ralph Lowe, those people that
17 had looked at it were going to just restock with their
18 own equipment.

19 Q. Isn't it true there were some prospects that
20 you had who would have used the existing equipment?

21 A. The only one was Dollar Tree wanted to use
22 some of the shelving units.

23 Q. So you didn't talk to any prospect with a
24 grocery store that would have used the equipment?

25 A. Seems like there may have been one, but I

1 can't recall.

2 Q. What was your purpose for bidding to purchase
3 the equipment?

4 A. To get rid of it.

5 Q. Was it your intent to buy and then remove it?

6 A. My intent was to buy it, then have it hauled
7 off, yes.

8 Q. So in your thinking you weren't -- it never
9 occurred to you to keep in the hope that you could
10 attract a tenant because it's so much cheaper to just
11 move in as is rather than stock new equipment?

12 A. No, that's probably a fair question. I think
13 if I could have enticed somebody to use that equipment,
14 that would have been great.

15 Q. And --

16 A. As a matter of fact, Super Mercado did that
17 very thing with the other store they took over.

18 Q. Would you disagree with me that if you just go
19 in and get brand new equipment installed, it could cost
20 you a million dollars?

21 A. I have no idea. It cost a lot.

22 Q. Now can you tell me -- explain to the Court
23 why it is fair to charge Furr's \$15,000 a month storage
24 on equipment that you offered to pay \$5800 for?

25 A. It has nothing to do with the equipment. I

1 don't care if there was just one grocery bag in there,
2 they were leasing the building, not the equipment.

3 Q. So you thought it was fair to charge three
4 times per month what you bid on the equipment?

5 A. It didn't have anything to do with the
6 equipment, I am leasing them the building.

7 Q. Were you aware that during the Chapter 11 and
8 the Chapter 7 the Trustee -- neither the trustee nor the
9 debtor-in-possession had ever sold equipment for as
10 little as \$5800?

11 A. No.

12 Q. Did you make any effort to find out what it
13 was selling for?

14 A. Mr. Craig told me he would sell it to me
15 between \$5,000 and \$10,000. He felt that's what he would
16 be telling them they would be getting on this used
17 equipment and that's what he told me.

18 Q. Why do you think they never took up your
19 offer?

20 A. You're asking the wrong person; I don't know.

21 Q. Did you ever think about increasing your
22 offer?

23 A. No. We tried to call them back; nobody
24 responded.

25 Q. Did you ever increase your offer to Yvette

1 Gonzales, the Trustee?

2 A. No.

3 Q. Did you ever make her an offer to buy it for
4 \$5800?

5 A. Back in that original letter I sent, yes.

6 Q. When you talked to her on the phone, did you
7 ever offer to buy it?

8 A. I made the bid of 5775, yes.

9 Q. But that was in a letter to Furr's, not to the
10 Trustee; is that right?

11 A. Yes.

12 Q. Did you ever tell the Trustee, "I'll give you
13 5800 bucks for your equipment"?

14 A. I did not.

15 Q. What was the nature of your conversation with
16 the Trustee?

17 A. I have never talked to the Trustee.

18 Q. Okay. That was Mr. Baily?

19 A. Correct.

20 Q. Was it you or Mr. Baily that decided to reduce
21 the storage charges from \$15,000 to \$10,000?

22 A. Mr. Baily.

23 Q. Are you charging storage to the school or the
24 church?

25 A. No, it's a donation.

1 Q. If you moved all the equipment into one corner
2 of that store, do you have any idea how many square feet
3 it would take up?

4 A. About 1200 square feet to 1500 square feet.

5 MR. WITT: Objection; I don't think he
6 understands --

7 Q. I'm talking about the Furr's store equipment,
8 not the church and school equipment.

9 A. Oh, excuse me. I have no idea. It was
10 humongous. It could take up half the store probably.

11 Q. How much money are you asking the Court to
12 award you today; do you know?

13 A. Whatever is written down here.

14 Q. I said in my opening \$390,000; does that sound
15 right?

16 A. If that's what it's added up to, that sounds
17 right.

18 Q. Isn't it true when you filed your original
19 motion for administrative expense, it was a much lower
20 figure?

21 A. I would have to look to see. I don't know if
22 I did or not. Did I file it or did our attorney file it?

23 Q. Take a look at Trustee's Exhibit F.

24 A. Okay.

25 Q. Which was filed, looks like August 20, 2002?

1 A. Okay.

2 Q. Turn to Page 8 which I think is the listing of
3 what you're asking for.

4 A. Okay.

5 Q. Isn't it fair to say in August of 2002 you
6 asked for the sum of \$174,349 plus \$5,000 plus \$15,000?

7 A. Let's see, it says 174 and then you go down
8 and it says \$70,500 -- yes.

9 Q. If you add that up it looks like it is a
10 little under \$200,000, all three categories?

11 A. Probably. I didn't add it up but probably.

12 Q. Can you explain why when you filed your
13 amended motion two months later this \$15,000 figure for
14 damages was increased to \$120,000?

15 A. Okay. Would you tell me when we filed this
16 particular one that I'm looking at?

17 Q. Yes, August 20 is the date stamp on Page 1.

18 A. Of 2002?

19 Q. 2002.

20 A. That's halfway through my cleanup period,
21 correct?

22 Q. I don't know.

23 A. Yes, it is correct. So it's from July through
24 September I believe is when we were cleaning up. I
25 didn't have any idea how much it was going to cost to do

1 it. It was an estimate at best.

2 Q. What changed between August 20 and mid October
3 that made you increase your damage estimate by seven
4 fold?

5 A. Well, one, there's bills that were actually on
6 top of what was probably showed here we were trying to
7 get an idea and the rent.

8 Q. I'm talking about the damage, I'm not talking
9 about storage, I'm talking about damage to the building
10 that increased from your estimate of \$15,000 to \$120,000.

11 A. I don't know.

12 Q. Can you think of anything that changed
13 between -- in that 75-day period that would have caused
14 that?

15 A. Other than all the bills we have got in.

16 Q. Isn't it true that you actually didn't get any
17 damage repair bills in until the following year?

18 A. Yes.

19 Q. So that would not be an explanation for the
20 jump.

21 A. Let's see, from 2002, you're talking June,
22 from June 2002; is that correct?

23 Q. Well, August 20, 2002, to October 30, 2002.

24 A. I don't have any explanation. Maybe Mr. Baily
25 can help you with that one.

1 Q. It's true, isn't it, that the work on the
2 building did not begin until about mid January of that
3 next year?

4 A. No.

5 Q. That's not true?

6 A. That's not true.

7 Q. Tell me when -- okay, other than the clean up
8 work.

9 A. Okay.

10 Q. All right. So the cleanup work started in --

11 A. That's correct.

12 Q. Okay.

13 A. We did do some in December when we found out
14 but not a whole lot.

15 Q. Then can you explain to me -- look at your
16 amended motion, the part that adds up what you want and
17 explain to me why what you're asking for today is higher
18 than what you asked for in October. And I will have to
19 except Paragraph 3 where you ask for \$1.3 million just
20 because you want all of the rent under the lease.

21 But apart from that item can you explain why
22 it is higher today than it was in October?

23 A. Well, you tell me where to look. I'm not
24 looking at anything. Show me. Where am I supposed to be
25 looking at, what exhibit?

1 Q. Well, I guess I was comparing Exhibit 35 where
2 you add up your \$390,000 and then compare it to what you
3 asked for in your motion which apart from this \$1.3
4 million only adds up to \$223,000.

5 A. I think it speaks for itself. We just went
6 through that, the different expenses resulting from the
7 order, violation of the auction order.

8 Q. Now isn't it true that when you filed your
9 amended motion you didn't ask for this category of
10 damages called delay damages of \$61,000?

11 A. I don't know.

12 Q. Is that something you came up with or was that
13 your lawyer?

14 A. I did not not come up with that number.

15 Q. Do you think that when -- after July 3 when
16 you got my letter that said you could remove the unsold
17 equipment that you moved that equipment as quickly as you
18 could?

19 A. I did it in a timely manner, yes.

20 Q. Isn't it true that if you had a tenant that
21 was ready to sign up and you had to vacate their portion,
22 whether it is 15,000 feet on this side or 14,000 on the
23 other side, that you could have moved that equipment in a
24 matter of days?

25 A. Possibly but at that point I had already lost

1 that tenant, so I wasn't going to spend that extra amount
2 of money and labor and equipment to move something if I
3 didn't have anybody to put in there.

4 Q. And that tenant you're talking about is
5 Dollar --

6 A. Dollar Tree.

7 Q. You said you talked to them in April?

8 A. March or April.

9 Q. And they needed to be in by September. How
10 many months is that?

11 A. Six, seven, eight, nine, whatever.

12 Q. Why is it you could have gotten Goodwill moved
13 in in 90 days and you couldn't get the Dollar tenant in
14 in that amount of time you had?

15 A. We had the store. It was in our possession.

16 Q. Did you ever --

17 THE COURT: What was the last sentence?

18 A. It was in our possession.

19 THE COURT: The store?

20 A. The store at that point, yes, because we got
21 the letter from Mr. Thuma July 3 saying now we can have
22 the store.

23 THE COURT: Okay.

24 A. At that point was the only time.

25 THE COURT: That doesn't refer to April.

1 A. No, I'm talking about at that point.

2 Q. (By Mr. Thuma) Did you make any effort in
3 March or April to get this whole business resolved so you
4 could do the build out and keep Dollar as tenant? For
5 example, did you file anything in Bankruptcy Court saying
6 I need --

7 A. I don't know. I know Mr. Baily had several
8 talks with the Trustee.

9 Q. Did you even tell the Trustee that you got to
10 get this stuff moved out right away because we have a
11 tenant?

12 A. I didn't talk to the Trustee.

13 Q. Do you know if Mr. Baily ever said that or --

14 A. I couldn't tell you that.

15 Q. But you want the Judge to, when you leave here
16 today, you want him to believe that if these problems
17 that you're talking about hadn't occurred, you could have
18 had Dollar -- the Dollar tenant, Dollar Tree as a tenant?

19 A. We were going negative in our accounting with
20 the bank at about \$20,000 a month because of this tenant
21 and another tenant that we lost up in Levelland so yes, I
22 think I was pretty motivated to make this deal happen.

23 Q. But you weren't sufficiently motivated to
24 notify the Trustee or anybody --

25 A. We were --

1 THE COURT: Wait! Stop! You need to let
2 him finish asking his question, then you can answer;
3 okay.

4 A. Okay.

5 Q. (By Mr. Thuma) You weren't sufficiently
6 motivated -- I mean, I guess you don't because you didn't
7 ever talk to the Trustee, but to your knowledge no one
8 ever told the Trustee you got to get this stuff out right
9 now, we have a tenant?

10 A. I have no idea.

11 MR. THUMA: Your Honor, should I keep
12 going?

13 THE COURT: It is noon, isn't it. Yes.
14 We have got a bankruptcy law section meeting. Let's get
15 back together again at 1:30. I take it your cross-
16 examination is not just about to conclude?

17 MR. THUMA: It is not.

18 THE COURT: Okay. Let's get together at
19 1:30. Why don't you-all talk a little bit before 1:30
20 about timing and how much more time that you're actually
21 going to get all of the evidence in from live witnesses;
22 okay.

23 MR. WITT: Yes, sir.

24 MR. THUMA: Yes, Your Honor.

25 (Noon recess.)

1 THE COURT: Mr. Glasscock, you should --
2 yes, that's right, sir, you've got it exactly.

3 MR. THUMA: Your Honor, as far as
4 scheduling, what we have agreed during the break is to
5 finish up Mr. Glasscock, call Mr. Parker as the next
6 witness. I will do the cross-examination of Mr. Parker
7 and Mr. Witt will do -- I'll do the direct, Mr. Witt will
8 do the cross, I think we'll see where we are at that
9 point.

10 The current plan is to call Mr. Baily next but
11 I know that my client has got some issues with picking up
12 her kids. So we kind of wanted to see what time of day
13 it was after we finish with Mr. Parker, then do whatever
14 makes the most sense for everybody.

15 THE COURT: Is your client planning -- are
16 you going to put your client on the stand?

17 MR. THUMA: Yes, she's testifying today.

18 THE COURT: Okay. That sounds fine. And
19 finishing up with Mr. Glasscock includes redirect?

20 MR. THUMA: I thought Mr. Witt was going
21 to waive redirect.

22 THE COURT: The question was --

23 MR. BAILY: He's talking to you.

24 MR. WITT: I was not listening; sorry.

25 THE COURT: Until you heard waive

1 redirect? No, finishing up with Mr. Glasscock includes
2 redirect, right?

3 MR. WITT: Yes, sir.

4 THE COURT: Okay.

5

6 CROSS-EXAMINATION (Continued)

7 BY MR. THUMA:

8 Q. Mr. Glasscock, let me ask you, on the portion
9 of the drawing you have up there where the church and the
10 school property was stored, is it your testimony that
11 that's the only part of the store that the auctioneer
12 didn't have access to?

13 A. Yes, sir.

14 Q. And this is, I guess I'm talking about the day
15 of the auction as opposed to the checkout thereafter?

16 A. I see what you're saying. I believe so. We
17 may have -- and just to -- we may have moved that pink
18 line down some to where they couldn't have access but the
19 stuff was there there in the pink area, correct the
20 school.

21 Q. There are four walk-ins in that back area.
22 Can you tell the Court whether your recollection is that
23 they had access to all of those walk-ins?

24 A. They had access to those walk-ins. The
25 walk-in in the middle, dead center, there was nothing in

1 that walk-in, but yes, they had access to it.

2 MR. THUMA: If I may, Your Honor.

3 THE COURT: Sure.

4 A. Are you talking the day of the auction?

5 Q. Yes.

6 A. No, they -- on that walk-in, they did not have
7 access.

8 Q. How about these two walk-ins?

9 A. Yes.

10 Q. How about this area in here?

11 A. Yes.

12 Q. How about this walk-in?

13 A. No.

14 Q. How about right in this area here?

15 A. To right about somewhere right in there.

16 Q. So that there was a line over here?

17 A. Yes.

18 THE COURT: You know, if this is really
19 important, you may want to just put a letter W or
20 something like that for walk-in or WI.

21 MR. THUMA: Maybe the best thing to do
22 would be to have the witness.

23 THE COURT: What? Can't hear David?

24 Okay. If you're going to be over there, use the other
25 mic; okay.

1 MR. THUMA: Probably the best thing to do
2 would be to have the witness draw the area that was not
3 available to the auctioneer on the day of the auction, if
4 that's okay.

5 THE COURT: Yes. Can you do that, Mr.
6 Glasscock?

7 A. Yes, sir.

8 THE COURT: Okay.

9 A. I'll use this green color again, Your Honor.

10 THE COURT: Sure. Thank you.

11 A. It goes from this point catty corner to a wire
12 caged area. There was sheetrock probably four feet tall
13 with some wooden two by fours behind it to hold it up and
14 best recollection it's right here was the other one.

15 Q. (By Mr. Thuma) If you can draw the bottom
16 boundary as far toward the south.

17 A. That's probably not correct.

18 Q. If you look at those rooms that are just south
19 of the line you drew, is there access from the inside of
20 the store?

21 A. There is a door there and there is a doorway
22 there.

23 Q. Okay. And this particular store -- I guess
24 you can probably sit down, again, if that's okay.

25 In this store was there a compressor room?

1 A. Separate room?

2 Q. Yes.

3 A. No, sir.

4 Q. Where were the compressors located?

5 A. On the roof, most of them.

6 Q. Were they exposed to the elements or were they
7 underneath the roof?

8 A. There were some in the ceiling above the
9 ceiling itself but most of them were on the roof.

10 Q. Did the auctioneer have access to those
11 compressors?

12 A. They went up there and looked at them, yes.

13 Q. Was that the day of the auction?

14 A. I'm not sure.

15 Q. I thought there was some deposition testimony
16 that somebody had to get a bolt cutter and cut the lock
17 to get to the roof?

18 A. I don't know. I didn't --

19 Q. But it's your testimony that the auctioneer
20 had access to the compressors at all relevant times?

21 A. Yes.

22 Q. Do you recall any discussion with the
23 auctioneer about whether the auctioneer could sell those
24 compressors?

25 A. Yes.

1 Q. What's your recollection?

2 A. He wanted to sell the compressors separately
3 from the walk-in units in the back.

4 Q. Did you agree to that?

5 A. No.

6 Q. What did you want him to do?

7 A. I wanted them to sell it all as one unit.

8 Q. And when you say sell all as one unit, what
9 are you talking about?

10 A. Either sell all the walk-ins together, each
11 individual walk-in and the compressor that goes with it
12 and nothing separate.

13 Q. How many compressors were there at that store;
14 do you have any idea?

15 A. I don't have any idea.

16 Q. Is it your testimony that each walk-in had a
17 compressor that was on top of it?

18 A. Some did.

19 Q. And where were the other compressors?

20 A. On the roof.

21 Q. And you said to Mr. Parker, "I don't want you
22 to sell the walk-ins unless you sell the compressor
23 that's attached to it"?

24 A. That and I said you can't tear -- see, the
25 walk-ins had concrete on top. There was a second story.

1 If you look on there, it shows ladders and storage on
2 each one of those?

3 Q. Yes.

4 A. The one in the middle, the middle walk-in,
5 that's where all the air conditioning and electrical set
6 on top of that one. So to remove those, I said, "I don't
7 care if you do that, but if you destroy the walls, you
8 have to put it back the way you found it." And he said,
9 "Then I'm not going to sell them." He said, "Can I sell
10 the doors?" I said, "No."

11 Q. Was that all walk-ins that had that
12 configuration of just that one?

13 A. Those in the back did.

14 Q. All four in the back?

15 A. Yes.

16 Q. All four in the back had concrete ceilings?

17 A. Yes.

18 Q. And what was on top of the concrete ceiling?

19 A. All kinds of stuff; I don't know. Well, I do
20 know. They had racks from old shelving units. They had
21 all kinds of boxes and paraphernalia above each one.

22 Q. Had you read the terms of the court order
23 about access before blocking off a part of that store?

24 A. Yes.

25 Q. So you were aware that you were required to

1 give access?

2 A. And I gave it.

3 Q. So it's your opinion that you gave unfettered
4 access to the auctioneer?

5 A. I was asked to block that area off by the
6 auction company.

7 Q. When did you -- you said you had a meeting
8 before the auction with -- was it one person or two?

9 A. One.

10 Q. Do you remember the name or description of the
11 person you met with?

12 A. Hispanic, short, round, very large guy.

13 Q. How long before the auction was it?

14 A. I don't recall. I had thought it was a couple
15 days but I don't really recall.

16 Q. It's your testimony this person, whoever it
17 is, was the one that suggested walling off the back of
18 the store?

19 A. Yes.

20 Q. Did you talk with this person about access to
21 the walk-ins freezers or the compressors or anything like
22 that?

23 A. No, it wasn't brought up.

24 Q. What eventually happened to the walk-ins?

25 A. The center walk-in is still there. The

1 walk-in to the northeast corner is still there because
2 all the walls go to the deck all the way to the ceiling
3 so they're 24- or 26-foot walls, whatever they were. The
4 two on the far northeast -- I mean, northwest corner, a
5 guy came and asked if he could remove them, would I give
6 them to him. I said, "Absolutely, if you take all the
7 walls, everything down and do it properly," and he did.

8 Q. Why wouldn't you allow Mr. Parker to auction
9 off those two?

10 A. I did.

11 Q. So your testimony is, no problem, you can go
12 ahead and sell them?

13 A. You can auction them, but you have to put it
14 back the way you got it and don't destroy those walls.
15 And he said he wouldn't do that, he wouldn't put a
16 stipulation on that.

17 Q. I don't understand the difference. Didn't the
18 person that took them for nothing --

19 A. This was after the fact.

20 Q. When was it?

21 A. I would say it was probably when we had the
22 Caplan lease, when we were remodeling that area.

23 Q. Do you have any idea what you can auction off
24 a walk-in for?

25 A. No, but you can look and see what he auctioned

1 off those little ones for over there.

2 Q. Isn't it true, Mr. Glasscock, that the
3 auctioneer never was able to control access to the
4 building?

5 A. What do you mean, control?

6 Q. Well, that you had a key and Mr. Gutierrez had
7 a key and then the landlord and its agents were letting
8 people in apart from any control that -- or any letting
9 in that the auctioneer was doing?

10 A. No, that's not true.

11 Q. It's true that you did have a key?

12 A. Absolutely.

13 Q. In fact, isn't it true that you gave a key to
14 Jim Spar?

15 A. Yes.

16 Q. So how can you say that it's not true that the
17 auctioneer had control over the premises; you're giving
18 keys out to buyers?

19 A. Because the auctioneer -- he went there with
20 the auctioneer. The auctioneer had left. He couldn't
21 get his stuff out, so I gave him a key. There was nobody
22 on the premises with the auction company.

23 Q. When did you give Mr. Spar a key?

24 A. I don't recall; within the first three days.

25 Q. Let's say the day after the auction, didn't

1 you have a key to the premises?

2 A. Yes.

3 Q. And didn't Mr. Gutierrez have a key to the
4 premises?

5 A. Yes.

6 Q. Didn't you agree, in fact, to let some
7 preacher come in at night and remove surveillance
8 equipment?

9 A. That he bought?

10 Q. Yes.

11 A. Yes.

12 Q. Isn't that inconsistent with saying the
13 auctioneer had control over the premises?

14 A. I don't know; there wasn't an auctioneer
15 there.

16 THE COURT: Whoop, whoop. I'm sorry; what
17 did you say, sir?

18 A. There was not an auctioneer there. They had
19 left and gone back to El Paso.

20 Q. This was the day after the auction?

21 A. That's exactly correct.

22 Q. So your testimony is that the day after the
23 auction, the auctioneer was gone, never came back?

24 A. After lunch nobody was there.

25 Q. How often were you there the day after

1 auction?

2 A. I went there probably twice to make sure it
3 was locked up.

4 Q. Twice the same day?

5 A. Yes.

6 Q. And you never saw anybody again?

7 A. No.

8 Q. Do you know when it was that you gave Mr. Spar
9 a key?

10 A. Sometime in those next days.

11 Q. I guess the day after the auction was a
12 Friday?

13 A. Yes.

14 Q. Were you there on Saturday?

15 A. Yes.

16 Q. Sunday?

17 A. I don't recall; I may have been. I drove by
18 there, yes.

19 Q. What was happening on Sunday?

20 A. I don't recall.

21 Q. Was it open?

22 A. I don't recall.

23 Q. Did you go inside?

24 A. No, I saw a bunch of trailers out in front,
25 but I didn't go inside. I didn't see any activity.

1 Q. Were you at the auction when the auctioneer
2 announced that buyers would have to get their purchased
3 equipment out within four or five days after the sale?

4 A. No, that was told to me.

5 Q. It is true, isn't it, that Mr. Spar, one of
6 the buyers, couldn't testify at his deposition that he
7 didn't destroy or he didn't damage the property, couldn't
8 say whether he did or not; do you remember that
9 testimony?

10 A. Say the question again.

11 Q. He couldn't testify at his deposition whether
12 or not he damaged the property, your building, when he
13 removed what he bought?

14 A. I don't know if he did or not. We would have
15 to look at his testimony.

16 Q. For the people that were removing equipment
17 days or weeks after the auction, whether or not they got
18 a key from you or how they got in, is it your contention
19 that the auctioneer was responsible for any damage that
20 they caused?

21 A. I just look at the order; I don't know. I
22 just -- the order says that he will leave it in a broom
23 swept condition and I assume the Trustee had control over
24 the auctioneer.

25 Q. So if Mr. Spar causes damage two weeks after

1 the auction because he comes in with a key you gave him,
2 removes his equipment and causes damage, you think that's
3 the auctioneer's responsibility?

4 A. I didn't see any damage from Mr. Spar.

5 Q. That's a hypothetical. If he did that, would
6 you say that's something --

7 A. I am not going -- that's a hypothetical answer
8 then; I don't have any idea.

9 Q. So you don't know?

10 A. No.

11 Q. Who other than Mr. Spar did you allow to come
12 in a long time after the auction was over?

13 A. What's a long time?

14 Q. Two weeks.

15 A. I don't know.

16 Q. Anybody?

17 A. Probably. There was so much stuff that was
18 left in there. Nobody got it out in the three to five
19 days like they said they would.

20 Q. Now if the auctioneer had just taken off the
21 day after the auction, how would people get into the
22 building?

23 A. That's a good question.

24 Q. Do you know?

25 A. They called us.

1 Q. So it's your testimony that people started
2 calling you the day after the auction to get access to
3 the building?

4 A. No, the auction was -- it was open the day
5 after the auction.

6 Q. Okay. And what about the day after that?

7 A. Day after that it was open.

8 Q. So it was open on Friday, Saturday --

9 A. And Sunday, I don't know. But there was
10 trailers out in front.

11 Q. How about Monday; do you know if it was open
12 on Monday?

13 A. You know, I think Frank went over there
14 several times but I can't give the exact date. You'll
15 have to look at his testimony.

16 Q. If you weren't there, how do you know that the
17 auctioneer's employee was not there?

18 A. Because nobody else had a key; the auction
19 people had gone.

20 Q. How do you know that if you didn't go over
21 there?

22 A. I was over there. He was not there Friday
23 afternoon. He was not there Saturday. His truck was not
24 there Sunday.

25 Q. But you didn't go in; you just drove by on

1 Sunday?

2 A. Correct. No lights were on.

3 Q. I know you can't remember exactly, but can you
4 give me any idea of how many people you were letting in
5 one week, two weeks after the auction?

6 A. No.

7 Q. When you let them in, was there any
8 supervision about the removal of their equipment?

9 A. I don't know. Frank was there quite a bit of
10 the time, but I don't know how much time.

11 Q. I gather that you later sold some of the
12 reach-ins for about \$1500?

13 A. I think that's correct.

14 Q. You said during your deposition you weren't
15 clear how much you got. Was it \$1500 or was it more?

16 A. I don't know. I do know \$1500 rings a bell,
17 but I can't answer that question.

18 Q. Who did you sell those reach-ins to?

19 A. I don't know their names.

20 Q. Were they local people?

21 A. Yes.

22 Q. Had you done business with them before?

23 A. No.

24 Q. Were they scrappers or --

25 A. I don't know.

1 Q. What was the agreement that you had reached
2 with them?

3 A. If they would haul them off, then they could
4 have them.

5 Q. How many reach-ins did you sell?

6 A. I didn't count them; I don't know.

7 Q. Just so the record is clear, tell the Court
8 what you mean by a reach-in?

9 A. Let's see. Go to Exhibit 19. Look at Number
10 2.3 photo. You can see what I call the coffin -- those
11 are coffin reach-ins basically. But the ones right
12 behind them, looks like white lines coming down, those
13 are what we call reach-in refrigerator units and they're
14 probably three feet wide, each door, is where you get
15 your ice cream and frozen peas, some of those kind of
16 things. And there's two or three rows of those; I can't
17 remember how many.

18 Q. Do you recall about when you sold the
19 reach-ins?

20 A. Well, it was after this picture obviously, so
21 it would have to be after July 3.

22 Q. Okay. Any recollection other than that?

23 A. No. Well, I'm going to tell you. We sold
24 another -- not sold another pair, we gave another set of
25 about ten of them in December of that year.

1 Q. While we're looking at these pictures, there
2 is it looks like a date stamp of June 26, 2002; is that
3 when those pictures were taken?

4 A. Where are you looking?

5 Q. I am looking at Picture 2.3 in the lower
6 right-hand corner and they all have the same date.

7 A. I can't read it.

8 Q. Look on the next page; it might be a little
9 clearer. Picture 3.3, on the lower right-hand corner.
10 Maybe your copy --

11 A. Yes, I'm sorry, 6/20 -- I don't know.

12 Q. 6/25 or 26; is that what yours says?

13 A. It may be 6/26; I'm sorry, I can't read it.

14 Q. And then on the pictures of the gouge, Exhibit
15 20, they weren't taken until the following January; isn't
16 that right?

17 A. Yes.

18 Q. Can you explain to me why some were taken in
19 June and some were taken the following January?

20 A. Well, there's still -- I think it's still --
21 there's some pictures, I don't know if they are in here
22 or not, that are of the same time period.

23 Q. I looked for the gouge in these pictures on
24 Exhibit 19; I could not find it. Could you find a
25 picture that shows that gouge?

1 A. Well, let's see. No, it's right off the
2 picture 1.1. It's going to be just right off the side of
3 that.

4 Q. Any idea why you didn't photograph the gouge
5 back in June?

6 A. Maybe he had too much stuff on it; I don't
7 know. I didn't photograph it.

8 Q. Whatever happened to the copper tubing that
9 was throughout the store?

10 A. When you say throughout, are you talking under
11 slab?

12 Q. Well, the copper tubing that ran from the
13 refrigeration cases to the compressors?

14 A. That's what I'm saying, under slab. It is
15 probably still there.

16 Q. Is it your testimony that that is not
17 removable?

18 A. Unless you have a jackhammer and four or five
19 young men to take it out.

20 Q. Didn't your refrigeration and plumbing person
21 testify that they removed that copper tubing?

22 A. The ones on the back walls? You got to be --
23 you got to remember, there's probably 20 or 30 aisles, a
24 lot of copper tubing; some of them underground; some are
25 overhead. I need to be, I guess, more specific.

1 Several, several items were accessible, but several items
2 were not.

3 Q. Isn't it true that the copper tubes that runs
4 under the slab are in chases and that you can remove the
5 tubing because when they built it, they built a bigger
6 hole so you can slide the tube in and then slide it out?

7 A. Not here.

8 Q. That's not true in this particular store?

9 A. I don't know; I haven't seen it.

10 Q. So you don't really know?

11 A. No.

12 THE COURT: What was the word that you
13 used, chase.

14 MR. THUMA: A chase.

15 THE COURT: C-H-A-S-E?

16 A. Yes, it's a chaseway is what he's talking
17 about.

18 THE COURT: Is that what it's called?

19 A. Yes.

20 Q. (By Mr. Thuma) What happened to the coffin
21 cases?

22 A. They stayed there almost until the end of
23 December.

24 Q. Then what happened to them?

25 A. They were scrapped.

1 Q. Were they -- what do you mean, scrapped?

2 A. I paid a guy to come in and take them apart.
3 I said anything you want in them, you're welcome to them.

4 Q. Okay. But you didn't incur any costs to
5 remove them?

6 A. Yes, I did.

7 Q. What costs did you incur?

8 A. It's -- I don't know if it's in here or not,
9 but it's Mr. Herrera and his brother that did it. I just
10 paid him by the hour.

11 Q. I thought you just testified you did a deal
12 where he could take them out in exchange for all the --

13 A. That's a different one.

14 Q. Okay.

15 A. But I paid him to take it out. I mean, he had
16 to take them apart before he could get anything out of
17 them. There is no real value there.

18 Q. How much did you pay Mr. Herrera?

19 A. It was by the hour; I don't know.

20 Q. Why isn't that -- that's not part of your
21 claim, is it?

22 A. Remember I told you we had some other expenses
23 in December?

24 Q. Yes.

25 A. It's not on here.

1 Q. Did you try to find a buyer for the coffin
2 cases or at least somebody to take them out in exchange
3 for the --

4 A. Yes, nobody wanted to touch them.

5 Q. What efforts did you make to do that?

6 A. Murphy's Restaurant Equipment which is the
7 biggest one in town, called them, they just said they had
8 no use for them. And two of the guys over there from
9 Mexico with the first of the removal of the shelving, I
10 asked if they would like them. They said they didn't have
11 any use for them. They didn't get any bids on them.

12 Q. Did you contact any scrap metal business?

13 A. No.

14 Q. There are people in the Midland-Odessa area
15 that deal in scrap metal?

16 A. It wasn't my deal. I didn't care. I didn't
17 want any money out of them.

18 Q. Even if they had value, you didn't want to get
19 any value out of them?

20 A. I wasn't going to chase it for \$500.

21 Q. Whatever happened to the compressors?

22 A. Well, some of them are gone. Most of them are
23 gone.

24 Q. Isn't it true, and I think you were there at
25 the deposition, that your refrigeration person testified

1 there were 19 that were still there that he took away?

2 A. That he took away?

3 Q. Yes.

4 A. No, those 19 are for the air conditioning,
5 though, as well. They weren't just for freezers and
6 those kinds of things.

7 Q. What is your testimony about whether the
8 compressors were on site or taken out?

9 A. They're on site. Whether they are allowed to
10 take them because they're bolted down, that's a different
11 decision.

12 Q. Were these compressors ever sold to anybody to
13 your knowledge?

14 A. No.

15 Q. Did you ever make any attempt to sell the
16 compressors?

17 A. No.

18 Q. Do you have any idea what you could have
19 gotten if you'd sold them?

20 A. Used compressors?

21 Q. Yes.

22 A. Nothing.

23 Q. You have no idea or you think you'd get
24 nothing?

25 A. I have no idea, it's just --

1 Q. Now in your testimony this morning you
2 described a little bit about someone driving a forklift
3 and your contention is that they damaged the premises.
4 Did you tell them to stop?

5 A. Yes.

6 Q. Did they stop?

7 A. When I left they were not on the forklift
8 anymore.

9 Q. At what point -- you testified about damage to
10 the pharmacy area and then the gouge. What other damage
11 did you actually see personally?

12 A. Did I see them do?

13 Q. Yes.

14 A. I saw a guy tearing out -- in the pharmacy
15 area tearing out the roll cages from the ceiling,
16 unbolting them and then they were tack-welded, so he was
17 beating on them with a large hammer.

18 Q. Is this the same guy or a different guy?

19 A. Different guy.

20 Q. Did you tell him to stop?

21 A. Yes.

22 Q. Did he stop?

23 A. He said well they told me I could get them.
24 Well, the thing was hanging halfway down and it was
25 either going to be dangerous to leave it. I said, "Well,

1 go ahead and finish that one." That's what I told him.

2 Q. And then did he do anything else?

3 A. I didn't see it.

4 Q. Anything else that you actually saw?

5 A. No.

6 Q. Now you had some testimony about something
7 with the bakery. Did you actually see any -- you said
8 there were holes in the wall?

9 A. You have to understand when the store was
10 empty, the bakery was in full go. After the auction --

11 THE COURT: Was what? I'm sorry.

12 A. In other words, it was up and running, I'm
13 sorry, in full go, everything was running and they were
14 serving bakery items and cakes and everything up to the
15 day that they closed Furr's.

16 Q. Yes.

17 A. After the auction it looked like a grenade
18 went off over there.

19 Q. Did you see anyone causing damage, you,
20 personally?

21 A. Personally, no.

22 Q. So your testimony about the bakery is what you
23 saw after the fact?

24 A. After the end of the first day of the auction,
25 yes.

1 Q. After the end of the first day?

2 A. Yes.

3 Q. So the auction was Thursday, so it was at the
4 end of the day Thursday?

5 A. When somebody was taking some stuff out over
6 there, yes.

7 Q. I thought you just said you didn't see any
8 other damage? Are you saying -- is this after they took
9 it out or while they were taking it out?

10 A. When I went over there it had already been
11 taken out and removed to the center of the room.

12 Q. What exactly had been taken out?

13 A. I don't know; there was five or six ovens,
14 some plumbing, tables, I mean some giant wash tables,
15 looked like a big wash -- dish washer type machine; I
16 don't know what it is. A pizza oven, pie oven. I don't
17 know; just all bakery items.

18 Q. Turn to Exhibit 19, Page 2, there's Picture
19 2.1. Correct me if I'm wrong, I think this is the only
20 picture we have of the bakery area; is that right?

21 A. That's the only one in here I think. We may
22 have more; I don't know.

23 Q. Can you point out to me any damage to the
24 ceilings or walls in this photograph?

25 A. Yes, if you look directly at the back, you'll

1 see where it's discolored, kind of a brown.

2 Q. Yes.

3 A. That was all Sheetrocked and now it's gone.
4 That's where those panels were, the electrical panels,
5 they're gone. If you go around to the right, which is
6 probably --

7 Q. Let me go back to this discolored. To me it
8 looks like it was something that was in front of that
9 wall and it didn't get painted. Are you saying that's
10 not paint, that's -- there's nothing there?

11 A. No, it is not.

12 Q. What is that discolored? What is it? It's
13 not open air.

14 A. Well, it's probably plywood. The Sheetrock
15 was attached to -- when they screwed it in, whatever was
16 there probably stuck to the back of the machine.

17 Q. Okay. And you're sure about that?

18 A. Yes.

19 Q. All right. What else?

20 A. And what are these wires and plumbing sticking
21 out of this cabinet up here at the front? That's been
22 torn off a wall some place.

23 Q. When you say torn off the wall, I don't see a
24 torn wall, I just see the wires.

25 A. Well, these pictures are to show you what

1 happened. I think it is pretty evident that things were
2 being destroyed. I don't know what all these ceiling
3 tiles are laying over here on the floor next to the big
4 silver thing in the middle. I don't know why all that's
5 there.

6 Q. You think those are ceiling tiles?

7 A. Well, there's two-by-four pieces, it looks
8 like. That's what's in the ceiling up there.

9 Q. Do you have any idea how the photographer
10 selected what to photograph?

11 A. I didn't take the pictures.

12 Q. For example, why isn't there a photograph of
13 the pharmacy area? You had a pretty lurid description of
14 damage, I would think you would photograph it so we could
15 see it?

16 A. Let's look and see if there is. How about
17 1.1. There is one. See that white thing sticking out
18 there at the front at the very back? That's the counter.
19 If you go right next to it, there's a big open hole,
20 that's where the other part of the counter was. There's
21 no glass. There's no cage. There's is no shelving. You
22 can see almost all the way through there looks like on
23 mine.

24 Q. This is a photograph that shows the damage to
25 the pharmacy area?

1 A. Yes.

2 Q. While we're looking at this picture, it looks
3 to me like in this picture and the one under it and in
4 several others the electrical wires coming up from the
5 ground are -- have wire nuts on them; is that right?

6 A. Yes, we did that.

7 Q. Now when did you do that and -- when did you
8 do that?

9 A. Probably within a week or so after the
10 auction.

11 Q. When you say "we," who is "we"?

12 A. I believe that's either going to be Colby
13 Easterwood with D&E Electric.

14 Q. Didn't he testify in his deposition that he
15 didn't start work at that location until January of 2003?

16 A. I don't know.

17 Q. But you're saying now that he actually did
18 some work eight months before that?

19 A. Well, it would be my guess that it was either
20 Colby or Frank, but I think it was Colby.

21 Q. Did you ever get a bill for what Colby did
22 shortly after the auction?

23 A. I don't know.

24 Q. That's not part of your damage claim, was it?
25 Was that bill substantial or do you remember?

1 A. I don't remember.

2 Q. Isn't it possible that these wire nuts were
3 put on by the people who removed the equipment?

4 A. I didn't see anybody put a wire nut on when I
5 was walking through there.

6 THE COURT: I'm sorry; were you done with
7 your answer?

8 A. Yes, sir.

9 THE COURT: What did you say, a wire net?

10 A. Nut.

11 THE COURT: Oh, nut.

12 MR. THUMA: A wire nut, Your Honor, that
13 red thing in Picture 1.2 that holds two wires together.

14 THE COURT: Oh, we're on 1.2; I'm sorry.
15 I kept looking at 1.1.

16 MR. THUMA: You can see them. They're
17 smaller, but those little red items that are at the end
18 of a wire.

19 THE COURT: You knew what he was talking
20 about clearly.

21 A. Yes, sir.

22 THE COURT: Sorry; apparently I'm the only
23 one who doesn't.

24 MR. THUMA: I was explaining a wire nut to
25 my partner, Bob Jacobvitz not long ago.

1 Q. (By Mr. Thuma) Do you know who Ray Shellack
2 is?

3 A. No.

4 Q. He was before this Court buying grocery
5 stores. You don't recognize him as someone who owns
6 grocery stores in the west Texas area?

7 A. Never heard of him.

8 Q. Do you know if Jim Spar, when he took out his
9 equipment, put on wire nuts and properly disconnected the
10 electricity from his equipment?

11 A. No.

12 Q. So you don't really know for sure whether it
13 was the buyers, your hotshot man or an electrician that
14 did this?

15 A. I know the first couple days it was not the
16 buyers because we had to rectify the situation.

17 Q. Not a single buyer that properly --

18 A. No, I take it back. Murphy put wire nuts on
19 his and Jim Spar is in the construction business, I'm
20 going to best guess that he did his.

21 Q. You don't know whether Ray Shellack and his
22 maintenance crew would properly disconnect --

23 A. I don't know Ray Shellack.

24 Q. When did you change the locks at the location?

25 A. Probably sometime in the next week after the

1 auction.

2 Q. Does June 7 sound about right?

3 A. Yes, that's probably right.

4 Q. Now wasn't there a fellow there named Henry
5 from the second hand store in El Paso that was still
6 removing equipment on June 7?

7 A. I don't recall; I don't know. There was
8 people in there, yes.

9 Q. How did they get access to the store?

10 A. Frank opened the door for them.

11 Q. Do you recall seeing this Henry person on the
12 three or four or five days after the auction? You do
13 not?

14 A. No, I'm sorry, no.

15 Q. When did the cleanup, your cleanup start?

16 A. July sometime.

17 Q. Could we tell by looking at the paystubs that
18 are one of your trial exhibits?

19 A. Could you tell what?

20 Q. When the cleanup started.

21 A. I don't know.

22 Q. It looks to me, if you look through it, that
23 the first day that time was charged was July 31; does
24 that sound about right? Or maybe the 29th was in there.
25 Let's take a look.

1 A. Give me the exhibit number and I'll go to it.

2 Q. 17.

3 A. Okay. Give me your question again?

4 Q. When did the cleanup start for which you are
5 seeking compensation?

6 A. Probably that first week, it looks like first
7 week in August.

8 Q. And if you kind of go through these stubs, it
9 looks like it was all done by -- almost all done by the
10 end of September and there's one stub for \$95 the first
11 week of October.

12 A. Well, to clarify that, that wasn't all the
13 cleanup. It was what I ordered them to do. It was all
14 the major things to get out of the way.

15 Q. What were these people doing from the 1st of
16 August through the end of September?

17 A. They were scraping up those black crud lines
18 and throwing away all the jars that were laying around
19 and all the pieces that were left that nobody took.

20 Q. Is it your contention that the Trustee or the
21 auctioneer should have scraped up the black that was
22 underneath the gondolas?

23 A. My contention is that whatever the order said
24 by the -- to the Trustee and that she signed off on, yes,
25 I think it should have been broom swept.

1 Q. Can you get the black stuff off with a broom?

2 A. You can get the black stuff off.

3 Q. Isn't your testimony earlier today that you
4 had to buff it and even after you buffed it, you couldn't
5 get it cleaned up enough for Goodwill to take the tile?

6 A. No, That's not exactly right. I did say that,
7 but the reason they -- I still had a gouge in the tile
8 from front to back in their main show room, that there's
9 no way I could cover that. I couldn't get rid of that
10 because it was in an aisle. It wasn't under where the
11 gondolas were.

12 Q. So you're changing your testimony?

13 A. I am clarifying my testimony.

14 Q. That sounds like a change to me, wouldn't you
15 agree, that you used -- you said before lunch that --

16 A. I told you I gave in on their situation; and
17 that's the reason.

18 Q. That was because of the black marks that
19 were --

20 A. Well, they used them in the back. We got them
21 up. In their back part of that we used that tile. There
22 was -- those aisles went all the way to the back wall.

23 Q. Now the carpet stops here, right?

24 A. Correct.

25 Q. You said the gouge kept going?

1 A. Correct.

2 Q. Is there a gouge right here?

3 A. Yes.

4 Q. But that doesn't seem to bother them?

5 A. No, not back there on that tile.

6 Q. And there were black marks from 20 years of
7 having shelves along in here?

8 A. All the way to the back wall.

9 Q. All the way to the back wall?

10 A. Right there.

11 Q. You said this morning that you tried to get
12 them as clean as you could and they looked at it and
13 said, "Ah, we don't like it, we want carpet"?

14 A. That's not exactly how I said it, no.

15 Q. What's your contention now?

16 A. It is still the same. Goodwill is a nonprofit
17 organization. I am going to be as good to those people
18 as I can. That particular deal, when we did the back
19 part of that room, it turned out great. But I told them,
20 I cannot get rid of the scratch, the black marks were
21 going to have to be worked on pretty hard. We got them
22 buffed out down to where you almost couldn't see them.
23 He would have accepted it if I would have pushed it.

24 Q. Isn't it true that when the carpet was laid,
25 your tile man put in 65 square feet of mismatched tile

1 over -- had nothing to do with the gouge, had to do with
2 filling in holes because you had conduit and
3 refrigeration, they have to plug 65 square feet of holes.
4 Then you also had a bunch of circles where you had
5 electrical conduit coming out, you put concrete over that
6 because it's real hard to cut circles out of tile and
7 didn't even bother; isn't that all true?

8 A. No, it's not hard to cut circles with tile,
9 with CVT tile. The fact of the matter is we decided to
10 put carpet in. The best way to cover those spots like
11 you're talking about is to go ahead and put another piece
12 of tile in.

13 Q. What I am saying is that Goodwill had a lot of
14 problems. They had the gouge. They had these black
15 marks and it had all these holes in the tile that are
16 just a fact of life if you are running a grocery store?

17 A. Well, what you can do you can take a heat gun,
18 you can heat up that tile from the other side where
19 Caplan is and it matches perfect. We put it right in the
20 hole. We do that many times.

21 Q. Okay. And it is true Caplan, you took up all
22 the tile on this side?

23 A. Yes, I did.

24 Q. So you could have gotten enough tile --

25 A. Oh, yes.

1 Q. -- to fill up the gaps?

2 A. There's 15,000 square feet over there.

3 Q. That's right, but that didn't happen.

4 A. No, it did not. I gave in to Goodwill and put
5 in new carpet.

6 Q. It is true, isn't it, that you ordered about
7 15 dumpsters in August and September of 2002?

8 A. That's probably right.

9 Q. What went into those dumpsters?

10 A. Well, go back to Exhibit 19 and you can see.
11 All the stuff that was left.

12 Q. And it is true, isn't it, that what went into
13 the dumpsters was not trash, it was the unsold equipment?

14 A. No, that's not true.

15 Q. Didn't you testify in your deposition when I
16 asked you that same question, I said give me the portion
17 that was trash and the portion that was equipment and you
18 said it was all equipment?

19 A. I'd have to relook at that; I do not remember
20 that. That couldn't be right, if you look at the pickle
21 jars laying on the floor; that's trash.

22 Q. You think if you really look at the pictures,
23 that you're going to -- we're talking about 30-yard
24 dumpsters. That's an enormous amount of space. Do you
25 think if you look at these pictures you're going to find

1 even a tenth of one dumpster that could be filled with
2 these pickle jars?

3 A. What do you think -- I guess I don't
4 understand your question. What do I think went in there?

5 Q. Well, all I know is what you testified to. You
6 said it was the left over equipment that went into the
7 dumpsters.

8 A. Okay.

9 Q. Is that right?

10 A. A lot of it, yes.

11 Q. What did the store look like after September
12 2002; was it clean and bare?

13 A. After probably October it was in pretty good
14 shape except for the coffin -- whatever you want to call
15 those freezers in the middle and the reach-in freezers
16 beside those and there's a couple of meat ones in the
17 back.

18 Q. Other than the coffin cases, the reach-ins and
19 a couple of the meat cases, it was pretty bare and pretty
20 clean in October of 2002?

21 A. Yes.

22 Q. Why is it that when Mr. Percy, who is with
23 your refrigeration contractor, when he said he went out
24 in the store in mid January, he said it was in a shambles
25 and looked it had been vandalized?

1 A. I think it does because when you look at it,
2 even though it was swept up, it still looks like a
3 grenade went off. There's holes in the walls everywhere,
4 the ceiling is missing.

5 Q. All right. Why did Mr. Mussar of Tierro
6 testify when he began his work it looked like there were
7 mountains of trash in the store and he started in January
8 of 2003?

9 A. I don't know.

10 Q. How about your electrician, Colby Easterwood,
11 he said in January or February of 2003 the place was
12 dirty and cluttered?

13 A. I know where this stuff is. It's in the back
14 of the store. It was piled up about 15 feet high. There
15 was quite a bit still back there in the back. What I'm
16 referring to is the front of the store where we cleaned
17 it out and swept it up. But there was -- there were
18 still enormous amounts of boxes. They probably left
19 hundreds and hundreds of boxes and crates and those kinds
20 of things in the back of the store against these walls.
21 They may be accurate on those statements.

22 Q. Okay. I guess the Judge can read their
23 testimony and see if they limited it to the back of the
24 store.

25 A. Sure.

1 Q. Now tell the Court where you think that in
2 January 2003 there was still clutter?

3 A. I know where there was clutter. It was by the
4 walk-in to the upper northeast corner, all that area
5 going out to the dock because that's where we had piled
6 the stuff, the junk, the crud to go into the dumpsters.

7 Q. Why wasn't that trash put in the dumpsters
8 back in August and September?

9 A. I don't know. It probably just accumulated
10 after that point.

11 Q. Accumulated from where?

12 A. Well, if Frank didn't have anything to do, I
13 would send Frank by there and just clean up. This was an
14 ongoing project for months. We didn't have a dumpster
15 back there after September, I don't think. I just hated
16 to send one out. They get real expensive.

17 Q. How would you haul the trash after September?

18 A. Well, I piled it up, evidently.

19 Q. So when Mr. Gutierrez testified that after his
20 work in August and September it looked "pretty clean" and
21 "pretty bare," that wasn't totally accurate?

22 A. I think it was. I think it was pretty clean
23 and pretty bare in the front of the store.

24 Q. Let's talk about your damage claim for the
25 damage to the building. I gather that your damage claim

1 is based upon essentially four charges or bids from four
2 people. And that is Mr. Mussar of Tierro; is that right?

3 A. Correct.

4 Q. That's walls and ceiling and he provided you
5 with a document. Take a look at that document. Exhibit
6 25. Is this the basis for your claim of \$18,000 for wall
7 and ceiling?

8 A. Yes.

9 Q. When did you ask Mr. Tierro to give you this
10 document?

11 A. Mr. Tierro?

12 Q. I'm sorry, Mr. Mussar.

13 A. Mr. Mussar. I don't recall. It's probably
14 sometime around this, when it was written.

15 Q. And it's true, is it not, that you actually
16 had received another invoice from Mr. Mussar that you
17 will find in the white books as Exhibit Number I?

18 A. Yes.

19 Q. Exhibit Number I is the real invoice that you
20 got from Mr. Mussar, isn't it?

21 A. What does that mean?

22 Q. Well, it's the one that he gave you and you
23 paid for it?

24 A. Yes.

25 Q. And that's about \$42,000?

1 A. Yes.

2 Q. Then if you go back to your Exhibit 25, this
3 \$17,956 is part of that \$41,986?

4 A. Yes.

5 Q. Now these documents are dated the same day.
6 He wasn't giving you two invoices that would total
7 \$62,000, was he?

8 A. No.

9 Q. So you had asked him at some point to prepare
10 Exhibit 25?

11 A. Yes, I asked him to break out his repair cost
12 versus his other costs.

13 Q. And you know, don't you, that when he was
14 doing the work that he billed you for in Exhibit I, that
15 he was not keeping track of alleged repair cost versus
16 build out for Goodwill; isn't that right?

17 A. I don't know that, but I did ask him to give
18 me his best guess estimate.

19 Q. What we have here in your Exhibit 25 is his
20 best look-back guess of what he spent to repair?

21 A. Yes.

22 Q. And isn't it also true that when he did his
23 look back best guess, he didn't differentiate between
24 damage caused by removal of equipment and damage caused
25 by the fact that Furr's had run a bakery for 20 years in

1 part of the store that he was fixing?

2 A. I think that the only true part about that is
3 there's going to be some grease in the bakery area and
4 that's acceptable, you know, that's 20 years of grease
5 along whichever wall that was, 20 feet, had nothing to do
6 with the other walls.

7 Q. But he took out the greasy wall and the greasy
8 ceiling, didn't he?

9 A. So I'm assuming he took it off his bill.

10 Q. No, he testified that he did not take it off
11 his bill, that this 17,956 includes that.

12 A. That 20 feet?

13 Q. Includes that type of replacement.

14 A. Okay.

15 Q. Are you contending today that the Trustee
16 should be liable for replacing the dirt and grease on the
17 walls?

18 A. No.

19 Q. This Exhibit 25 is wrong, isn't it?

20 A. Probably by \$1,000.

21 Q. The fact of the matter is you don't know how
22 much of what he replaced was because there was a hole in
23 the wall because someone took something or because the
24 wall was greasy?

25 A. Well, I know there's no other greasy walls

1 there except for in the bakery area.

2 Q. What about 20 years of wear and tear on just
3 the store in general; wouldn't there be other problems
4 with walls because of that?

5 A. I'm looking around in here. I don't know how
6 old this building is, it's probably 20 years old, maybe
7 50 years old; I don't know.

8 Q. You estimated \$1,000 off. Mr. Mussar's
9 estimated, that his best guess was that maybe half of
10 what he did was repairing problems having to do with just
11 normal wear and tear?

12 A. All I know is the ones that had holes in them,
13 split, broken, pulled off the wall, needed to be
14 repaired.

15 Q. You don't know, you have no evidence about
16 what exactly that was and how much it cost to fix it,
17 other than --

18 A. I would just say whatever Bill said it was,
19 I'm going to go with what he said.

20 Q. If he said he didn't know, then you're going
21 to say you don't know; is that right?

22 A. I'm going to say I don't know.

23 Q. Let's go to the bill for the electric, which
24 is your Exhibit 23. No, it's not; I apologize; it's your
25 Exhibit 22.

1 Now it's true, isn't it, that you asked Mr.
2 Easterwood to prepare this bill in May or June of 2003?

3 A. I don't know if it was that late, but yes, I
4 did.

5 Q. It was around then, around, I think your
6 testimony in your deposition was about May of 2003?

7 A. April, May, that sounds right.

8 Q. And he gives you this document which is dated
9 in February. Can you explain to the Court why he did
10 that?

11 A. I asked him to give me the damage part of his
12 bill which was \$100,000-some-odd.

13 Q. Isn't it true that when he was doing that
14 \$100,000-some-odd of work, he made no attempt at the time
15 to separate what you claim was damage repair versus what
16 was tenant build out for Goodwill?

17 A. I have no idea.

18 Q. If he so testified, then you wouldn't disagree
19 with him?

20 A. Yes.

21 Q. This description that he put on this, what he
22 called a proposal says complete rewire of old Furr's
23 building due to demo of all Furr's equipment, any idea
24 where that description came from?

25 A. No.

1 Q. Do you think that's a fair description of what
2 he's seeking to charge you \$19,000 for?

3 A. No, I think it is about ten percent of what it
4 is.

5 Q. When you talked to Mr. Easterwood and asked
6 him to put that together, did you tell him to backdate
7 the document?

8 A. No.

9 Q. Did he give you any resistance because he had
10 not kept any records about what might go into this?

11 A. He said he could pull his tickets; he had
12 tickets on everything.

13 Q. Do you know if he actually did pull the
14 tickets?

15 A. I assume he did; he gave me a bill.

16 Q. I asked him for the tickets at his deposition
17 and he didn't have them and I haven't seen them since.
18 They are not here. Do you have any idea whether this
19 number comports with the tickets?

20 A. No, I do not.

21 Q. Did you ever tell Mr. Easterwood in January or
22 February of 2003 that, quote, "I think I've got a grocery
23 store moving in here"?

24 A. No.

25 Q. So if he so testified in his deposition, you

1 think he was in error?

2 A. Correct.

3 Q. Isn't it true that when he began work he knew
4 that your new tenant was going to be Goodwill?

5 A. I don't know if he did or not.

6 Q. Isn't it true that he began work in January or
7 February of 2003?

8 A. February, yes.

9 Q. And you had signed the lease with Goodwill on
10 January 15, 2003?

11 A. Correct, but I had not got any permits to give
12 to him to give to the contractors to start working on it.
13 That takes about two or three weeks process.

14 Q. Well, you wouldn't turn an expensive
15 electrician loose in the old Furr's building, say put it
16 back the way it should be because I have another grocery
17 store tenant when you'd signed a lease with Goodwill,
18 would you?

19 A. No, I would have probably told him, get me
20 where I can get it back to put a tenant in on this one
21 side.

22 Q. Do you remember saying that to him?

23 A. I had several conversations with these guys.

24 Q. And the total bill that Mr. Easterwood
25 rendered to you was in excess of \$100,000?

1 A. Correct; that's for the Goodwill side.

2 Q. I take it -- Page 2 of this exhibit is an
3 invoice. But I take it you had no intention of ever
4 paying that because hadn't you already paid it?

5 A. I don't know.

6 Q. When did you pay the \$100,000 to D&E Electric?

7 A. We paid as we went so I am assuming he got
8 some up front and some in the middle and some at the end
9 when they finished.

10 Q. Isn't it true they must have finished before
11 May because the move-in date for Goodwill was in May?

12 A. They got most of it done; They got enough to
13 get a certificate of occupancy, yes.

14 Q. So there was never any intention on his part
15 to collect this invoice nor on your part to pay it?

16 A. No, I think it is part of the whole invoice.
17 That is just a break out is what it was.

18 Q. Isn't it true that break out that occurred
19 after the actual invoicing had taken place?

20 A. No.

21 Q. It is not true?

22 A. This to me is probably an invoice that he
23 generated to show us what the damages were.

24 Q. Well, yes, he generated it after the fact
25 because you asked him to. He didn't generate it in the

1 normal course of his business, did he?

2 A. I don't know.

3 Q. You don't know?

4 A. No.

5 Q. I thought you testified both today and at your
6 deposition --

7 A. It's 2/23; I don't know. You asked me about
8 this specific --

9 THE COURT: Wait a minute, let him finish
10 asking his question, then you get to answer all you need
11 to.

12 Q. (By Mr. Thuma) We have already established
13 that in May of 2003 you asked him to prepare this
14 document, he prepared it and he dated it in February;
15 isn't that right?

16 A. What I am answering you is I don't know if it
17 was already prepared. I told him I needed a break out.
18 I didn't tell him what date.

19 Q. Now if his deposition testimony that we're
20 submitting to the Court that he prepared it in response
21 to your request, he never had it before, you would accept
22 that as true, wouldn't you?

23 A. Sure.

24 Q. If that is, in fact, the case, isn't it true
25 that he had no intention of collecting this invoice and

1 you had no intention of paying him more than once for the
2 work that he did?

3 A. I'm not paying twice, but it is part of the
4 work he did, yes.

5 Q. Can you tell from this invoice exactly what he
6 did so that, let's say, you're the Judge, you want to
7 find out how much to award TGAAR, but you want to make
8 sure you're giving the right amount to the Judge, is
9 there any guidance in this exhibit about compensable work
10 versus stuff that maybe shouldn't be compensated?

11 A. Well, that's a hard question. The whole idea
12 of not being able to use wiring and panel boxes and
13 having to redo things when things were ripped out of the
14 circuit breakers, he just had to do an awful lot of work
15 to get it back to where we could actually start working
16 on somebody else's space. Whether he put it in -- you
17 know, if you want it put in detailed form, it could
18 probably be done; but we don't have it here in front of
19 us.

20 Q. I took his deposition last June, I believe,
21 and it wasn't done between June and today.

22 A. Did you request that?

23 Q. I believe I did; I can't remember.

24 A. Okay.

25 Q. Based on Exhibit 22, there's no way you, I or

1 a Court or anybody else can go through and decide if
2 \$19,000 is high, low or right on the money?

3 A. I guess if you want to call him a liar, I
4 guess you could do that, because to me what you're
5 indicating is these gentlemen, these are blue-collar
6 guys, they work hard, they do a lot of work for me. I
7 asked them to do something, give me an idea what it cost
8 to get this place where we could put some more people in
9 and they did it. Whether you want to hammer on them,
10 that's up to you.

11 Q. Well, let me put it another way, maybe he
12 didn't know what the legal standard would be if he did a
13 piece of work, whether that ought to be tagged to the
14 Trustee, the Chapter 11 estate or you. I mean, how's he
15 supposed to know that?

16 A. Well, we don't even hardly know that.

17 Q. That's right. Didn't it occur to you when the
18 work was being done, it would be vital to have a good
19 record at the time the work was done of what you were
20 going to subsequently ask the estate to pay for?

21 A. I wasn't thinking about that.

22 Q. Now this work that Mr. Easterwood charged you
23 for, this was done long after the high school kids you
24 hired spent two months in the premises; isn't that right?

25 A. Correct, yes.

1 Q. Is it your contention that the wiring was no
2 longer in a dangerous condition when Mr. Gutierrez and
3 the high school kids were working there?

4 A. Yes, we disconnected the -- we threw the
5 breakers on the panel boxes except for just some lights.

6 THE COURT: I'm sorry; you what? What did
7 you say about the breakers?

8 A. We threw the breakers to the off position so
9 they wouldn't -- nothing would be on.

10 THE COURT: Okay; thank you.

11 Q. (By Mr. Thuma) Let's turn now to the Bosworth
12 Company invoice, Exhibit 24. When did you ask --

13 A. I don't have an exhibit -- oh, here it is.
14 Excuse me.

15 Q. When did you ask Farris Parson to prepare this
16 document?

17 A. I don't recall. It was probably some time
18 around the same time I asked the others.

19 Q. Isn't it true in your deposition you said it
20 was probably June 2003?

21 A. I don't recall.

22 Q. If that's true and you said it was right
23 around the time, why is that document dated in January?

24 A. Because that's before they started working on
25 the Goodwill space, so he had to demo it out is my

1 understanding.

2 Q. Now this reads, if you didn't know better,
3 like a bid. I take it this document -- they weren't
4 actually bidding on anything when they prepared this in
5 June of 2003?

6 A. No.

7 Q. Do you know why it was prepared to look like a
8 bid?

9 A. He prepared it; I didn't.

10 Q. Did you look at it, question him about it
11 after he gave it to you?

12 A. No.

13 Q. Do you have any idea how Bosworth came up with
14 this figure of \$18,450?

15 A. No.

16 Q. Do you have any idea what it means when they
17 say, "Demolition of items as needed to allow
18 construction"?

19 A. No.

20 Q. How much did Bosworth charge you overall?

21 A. I'm not sure.

22 Q. Was it over \$100,000?

23 A. I think it was under \$100,000.

24 Q. Do you know whether or not when Bosworth did
25 the work they did, they were trying to keep track of

1 damage repair versus build out?

2 A. No, I do not.

3 Q. We talked a little about you using the back of
4 the store to store property from a church and a school.
5 It is also true you used the back of the store to store
6 TGAAR property; isn't that right?

7 A. Yes.

8 Q. What kind of TGAAR property were you storing?

9 A. I had some glass doors from the center that
10 were there. We had some two by fours, some paint from
11 the outside; just miscellaneous items.

12 Q. In your testimony this morning you said, I
13 think, correct me if I'm wrong, that you could have
14 gotten Goodwill in earlier except for the problems you
15 had with the auctioneer and the Trustee; is that right?

16 A. I believe that's correct.

17 Q. You do think that you could have got them in
18 earlier but for that?

19 A. I think if everything was out of the store,
20 yes, we could have got them out.

21 Q. Isn't it true that what happened was that you
22 were continuing to try to find a grocery store tenant
23 hoping, I guess, primarily to attract a Wal-Mart
24 neighborhood center, whatever they call them, and that it
25 wasn't until December that you got the notice from

1 Wal-Mart they weren't going to go in, that's when you
2 decided to put Goodwill in the place?

3 A. Yes, I really was hoping Wal-Mart would go in
4 there, but that had nothing to do with putting off
5 Goodwill because they wanted to be in before Christmas,
6 there is no way I could get the store ready.

7 Q. You didn't even -- I mean, before Christmas
8 you were going to put them someplace else because you
9 were hoping Wal-Mart would go in there?

10 A. No.

11 Q. I thought Wal-Mart notified you in December?

12 A. They did.

13 Q. Okay. I mean before the notification of
14 Wal-Mart there's no way you were going to put Goodwill in
15 the former Furr's store, was there?

16 A. Well, Wal-Mart didn't know if they were going
17 to take the whole store.

18 Q. You couldn't take the chance of putting
19 Goodwill in half of it and hoping that Wal-Mart would
20 take the remainder, could you?

21 A. I don't know. I am going to do what is best,
22 what's good for the company.

23 MR. THUMA: Your Honor, I will pass the
24 witness.

25 MR. WITT: Your Honor, I will be brief.

1 THE COURT: Sure.

2

3 REDIRECT EXAMINATION

4 BY MR. WITT:

5 Q. Mr. Glasscock, Mr. Thuma asked you about what
6 was done to work this problem out with the store
7 equipment, what you did. What did Furr's do to work out
8 this problem during the Chapter 11?

9 A. We never received anything from Furr's.

10 Q. After you sent that Exhibit 9, you never got
11 any contact with them?

12 A. No, sir.

13 Q. You tried to call them several times?

14 A. Yes, sir.

15 Q. And what happened when the phone rang?

16 A. Well, first two times it just rang off the
17 wall. I just assumed that they were inundated with
18 calls. After that we just didn't -- we didn't have the
19 number. It was disconnected.

20 Q. Then after the conversion to Chapter 7, what
21 was done by the Chapter 7 Trustee to work this out?

22 A. Only thing I knew of is she contacted Mr.
23 Baily by phone and they had a conversation.

24 Q. How many conversations?

25 A. I don't know. Gary tried several times. I

1 think there was only one time, to my knowledge. We never
2 received any documentation or anything from her.

3 Q. Were these walk-ins in the back, are they
4 absolutely built into the building?

5 A. Absolutely.

6 Q. You talked about the concrete ceilings. Were
7 there floors above these walk-ins?

8 A. They're all storage areas, yes. They've got
9 ladders going up to each one of them.

10 Q. If you just took -- what would happen if you
11 just took out the walk-ins, what would happen to the
12 floors?

13 A. It would drop. It was an actual part of the
14 ceiling of the walk-in, but it was connected to the
15 walls.

16 Q. So they really wanted to remove the walls, but
17 they didn't want to remove the ceiling?

18 A. Right.

19 Q. And did you say that Jim Spar got a key after
20 the auctioneer left?

21 A. Yes.

22 Q. There were no more auctioneers there?

23 A. That's correct.

24 Q. Did Mr. Spar ask you for the key?

25 A. Yes.

1 Q. And do you believe Frank, who was working for
2 you at the time, was letting people in in the morning and
3 closing up at night?

4 A. The reason we were doing -- they had a
5 tremendous amount of items to move and we didn't want to
6 hold up these guys, to not get it out, so yes, we opened
7 it and let them get their stuff.

8 Q. Now on this exhibit up here on the board on
9 the Goodwill side there is a black line and below, south
10 of it is an X?

11 A. Yes, sir.

12 Q. North of that black line, is that part of the
13 store or what is back there?

14 A. Yes, that's their loading -- well, the loading
15 area is back where the docks are in the northeast corner.
16 That's where they sort all their clothing, have tables
17 and racks of clothing in there.

18 Q. Behind the black line, is that part of the
19 store itself where they --

20 A. Yes.

21 Q. -- where people, customers come?

22 A. No, customers don't go there; I'm sorry.

23 Q. So the flooring looked okay for this kind of
24 work area?

25 A. Yes.

1 Q. Did Mr. Thuma go back there?

2 A. I believe he did.

3 Q. Now these parties that prepared Exhibits 22
4 through 25 -- you know which exhibits I'm talking about,
5 Bosworth --

6 A. Yes, sir.

7 Q. -- Tierro, D&E. Did you ever ask any of those
8 parties to resubmit or redo what they sent you?

9 A. No, I did not.

10 Q. Do you know if any of these people are like
11 professional witnesses?

12 A. No.

13 Q. What kind of people -- just describe in
14 general what kind of people are these?

15 A. I think I said earlier, just the kind of guy
16 that would do an honest day's work for an honest dollar.
17 They are just reputable in town, it's the only ones I
18 have used for 20 years for miscellaneous things.

19 Q. And what exactly did you ask them to do?

20 A. I asked them to give me an idea of what they
21 think they spent on the cleanup part of that Goodwill
22 store and some of the back part of the storage area.

23 Q. Just repairing --

24 A. Repairing the damage that was done.

25 Q. Was any -- do you think any of those estimates

1 they gave you are part of any of the new buildout?

2 A. I wouldn't think so.

3 Q. Did you tell any of them how to prepare their
4 invoices?

5 A. No.

6 Q. Did you tell them how to date their invoices?

7 A. No.

8 MR. WITT: No further questions.

9 THE COURT: Okay. You may step down, sir.

10 Would it make sense to take a break right now
11 before we start on Mr. Parker, who's the next witness?

12 MR. THUMA: Yes, Your Honor.

13 THE COURT: Being taken out of order,
14 right?

15 MR. WITT: Yes, sir.

16 THE COURT: Okay. With the understanding
17 whatever Mr. Parker testifies to, at least in my head,
18 sort of gets bracketed, moved over to their part of the
19 case, doesn't count as part of your case.

20 The reason I mention that is in case there's a
21 motion for some kind of judgment or verdict, sort of like
22 a motion to dismiss or something like that at some point.

23 MR. THUMA: I don't think there will be
24 such a motion. That should not be an issue.

25 THE COURT: Well, makes that easy. Okay;

1 good. About a ten-minute break; does that work for
2 everybody?

3 MR. THUMA: Yes, Your Honor.

4 (A recess was taken.)

5 THE COURT: Ready for Witness Number 2.

6 MR. THUMA: Your Honor, the Trustee calls
7 Walter Parker.

8 THE COURT: Okay. Please step forward and
9 be sworn, Mr. Parker. Walk right up to the court
10 reporter here and raise your hand.

11

12

WALTER PARKER

13

was sworn and testified as follows:

14

15

DIRECT EXAMINATION

16

BY MR. THUMA:

17

Q. Mr. Parker, can you please state your full

18

name.

19

A. Walter Parker.

20

Q. Give the Court your background and experience

21

in the auction business.

22

A. Well, I have been in it over 15 years this

23

time and about four 45 years ago in Colorado. I do all

24

the work in El Paso for the Small Business Administration

25

and have been doing it for about 13 years. We do mostly

1 business liquidations. I don't know what else to say.

2 Q. What states do you operate in?

3 A. What state?

4 Q. What states.

5 A. Texas and New Mexico, mostly west Texas, New
6 Mexico. We have a location in Lubbock. We have a
7 location in El Paso. We have an auction house in each of
8 those two places.

9 Q. How many auctions have you run in, I guess
10 what I'll call former Furr's store locations?

11 A. Well, we did the Furr's corporate office, the
12 Furr's corporate warehouse. We did their district office
13 in El Paso. We did their district warehouse in El Paso.
14 We did two stores in Albuquerque and we did two in
15 eastern New Mexico. We did the Midland store. We did a
16 couple in El Paso and we just did one in Deming, but it
17 wasn't for Furr's, but it was an old Furr's store.

18 Q. Did you have any trouble with the other
19 auctions that you've done?

20 A. Not a bit.

21 Q. Did you have trouble with the auction in
22 Midland with the landlord TGAAR?

23 A. Beg pardon?

24 Q. Did you have trouble with this Midland auction
25 with the landlord?

1 A. Well, when we got there, the back was all
2 blocked off. We couldn't get to most of the walk-ins.
3 We couldn't get to the compressor room. We couldn't get
4 to any -- we didn't know what was back there. We just
5 didn't know.

6 And Mr. Glasscock said that we couldn't go
7 back there, that he had things stored there. And then he
8 asked me if we were going to sell the walk-ins. I said
9 yes. He said you can't sell the walk-ins. You'd have to
10 take the wall down, it will ruin the wall, so we didn't
11 sell the walk-ins.

12 Q. That conversation you were just describing,
13 when did that take place?

14 A. The morning before we started the auction.

15 Q. So the same day as the auction?

16 A. Yes.

17 Q. In the morning?

18 A. Yes.

19 Q. What time of day did the auction start?

20 A. 10:00 o'clock.

21 Q. When were you there on site?

22 A. About quarter till 9:00.

23 Q. Was Mr. Glasscock there when you arrived?

24 A. No, but he came in later.

25 Q. Before the auction?

1 A. Yes.

2 Q. How did the discussion about the walk-ins come
3 up?

4 A. Well, there were some bidders that had asked
5 me, "Are you going to sell the walk-ins," and I said,
6 "Yes." And I guess he overheard me say yes, he said,
7 "You can't sell the walk-ins."

8 Q. Was there any other discussion that you can
9 recall about the walk-ins other than what you've just
10 describe?

11 A. Beg pardon?

12 Q. Anything else you can remember about talking
13 to Mr. Glasscock about the walk-ins?

14 A. Well, that's about it. The people that wanted
15 to buy them and he walked off away from me and they were
16 talking, I don't know whether he sold them the walk-ins
17 or I don't know what happened there.

18 Q. Tell me about the compressors.

19 A. Well, you couldn't get to the compressors.
20 The compressor room is upstairs in the back and we
21 usually sell the compressors, but we didn't sell them
22 this time.

23 Q. Was there any discussion that you had with Mr.
24 Glasscock about whether you could sell the compressors or
25 not?

1 A. No, they were in the back. We couldn't get in
2 the back.

3 Q. Do you typically sell compressors separate
4 from the refrigeration units that they are attached to?

5 A. Yes.

6 Q. Explain that to me and the Court, why you
7 would separate them?

8 A. Well, we sell the walk-ins, reach-ins, meat
9 cases, deli cases, any of the remote refrigeration in a
10 store and it is easier to sell them without compressors
11 and then one of the last things we sell is the
12 compressors. If the people that buy the refrigeration
13 units want compressors, they can bid on them.

14 But every time we have sold compressors, one
15 person usually ends up buying them all. We sell them
16 choice, high bidder gets first choice. And let's say
17 there's 15, 16 compressors in the Roswell -- in the
18 Ruidoso store, why we got I think two and a quarter
19 apiece for them and the bidder was from Mexico. He took
20 them. He said, "I want them all."

21 So it is -- if you were to sell the
22 compressors with the different units, then you would have
23 a lot of squabbles. One person would say, "That's my
24 compressor." "No, that's my compressor." And the only
25 way to trace, to know which compressor is which is to

1 turn on the refrigeration and see what the compressor
2 cools or to follow the Freon pipes.

3 So it's a lot simpler just to sell them
4 separate.

5 Q. In this auction in Midland did you end up
6 asking for bids on the compressors?

7 A. No, I didn't do that.

8 Q. Can you -- we have got a chart here. Could
9 you show the Court as best you can the part of the store
10 you didn't have access to on the day of the auction? You
11 can get up, walk over, use that microphone.

12 A. Well, you have it pretty well cordoned off
13 here.

14 THE COURT: Why don't you --

15 A. I don't know whether we could go --

16 Q. (By Mr. Thuma) Mr. Parker, why don't you use
17 that microphone so everyone can hear you.

18 A. Okay. This is where the barricade was and
19 these are the two walk-ins that we could see.

20 THE COURT: Can you describe, Counsel, I
21 mean, what he's talking about is the beginning of the
22 green line on the left-hand side up near the northwest
23 corner of the store and then he's indicated two walk-ins
24 which are in the northwest corner.

25 A. These two walk-ins, we didn't sell. These

1 were the only ones that were visible to us.

2 Q. (By Mr. Thuma) Mr. Parker, just so the record
3 is clear, when you say "these two," could you maybe
4 describe them as to where they are located in the store?

5 A. They are in this -- here's your main entrance
6 is down here.

7 Q. So that's the northwest corner of the store is
8 where those walk-ins are?

9 A. Northwest corner, yes.

10 Q. Okay. You could go into those two walk-ins?

11 A. Yes, we could see those but we couldn't get
12 into all of this back here.

13 Q. All of this, you mean the area shaded behind
14 the green line?

15 A. Well, I think it went all the way back into
16 here.

17 Q. One of the questions I wanted to ask you, did
18 you have access to the loading dock area on the day of
19 the auction?

20 A. No, I didn't.

21 Q. Did you have access to the walk-in that was on
22 the northeast corner of the building?

23 A. No.

24 Q. How about that walk-in that's kind of to the
25 left of those indicated stairs?

1 A. Here?

2 Q. Yes.

3 A. We didn't have any access to that, either.

4 Q. You did not?

5 A. No.

6 Q. Where were the compressors?

7 A. They are in here, the mechanical compartment
8 is upstairs somewhere here in the back.

9 Q. What's that label? I can't see it, it's too
10 far away. What's it say in text there?

11 A. Where, here?

12 Q. Yes.

13 A. Second floor above the mechanical compartment.
14 C-O-M. I am assuming that means compartment.

15 Q. Okay; thank you. You can go back to the
16 witness stand.

17 Tell the Court what the term make ready means?

18 A. Well, we send men in to do make ready for an
19 auction. Everything has to be organized, so that when we
20 sell it, we don't have to stop and pull stuff out or
21 anything. All the small stuff we box up and put on
22 tables or shelves so people can see it. We put tags on,
23 auction tags on all of the equipment, like the mixers and
24 the meat saws and things, we tag that. And on the
25 gondolas, there's a row of gondolas, we put a tag on the

1 end. Let's say there's 15 gondolas in a row. We put a
2 tag on the end with 15 times on it. So we put a tag on
3 each end. So when we come to that, the auctioneer,
4 whether it's me or one of my other auctioneers, can say
5 we have 15 gondolas here we're going to sell them so much
6 each, 15 times the money. So that everything moves fast.

7 Q. Tell the Court what a gondola is?

8 A. It's a shelf where they stock all of the
9 canned goods and boxed goods and everything. There's
10 island gondola which is shelves on both sides and a wall
11 gondola which is shelves just against a wall.

12 Q. Who did the make ready in this particular
13 auction in Midland?

14 A. George Galviz and Lorenzo Salcedo.

15 Q. Can you spell that last name of George?

16 A. G-A-L-A-V-I-Z.

17 Q. Do you know when the make ready occurred?

18 A. I don't know the exact date; it was a week
19 before.

20 Q. What day of the week was the auction, if you
21 recall?

22 A. I think it was a Thursday. It was a Thursday.

23 Q. When did you arrive in Midland?

24 A. Probably Wednesday night.

25 Q. Did you first see -- when did you first go to

1 the location for the auction?

2 A. I think it was the morning of the auction.

3 Q. On the date of the auction who from your
4 company was in attendance?

5 A. Myself, George Galaviz, Lorenzo, Iracelli,
6 computer operator and my wife was the cashier.

7 Q. Iracelli, is that a last name or a first name?

8 A. First name. I think her last name is Galaviz
9 and she's not -- I think she's a cousin's wife of
10 George's. There's some kind of a shirttail relationship
11 there.

12 Q. Were there any children present from your
13 company?

14 A. No, no, we had no children with us.

15 Q. How long did the auction last?

16 A. Oh, I don't exactly remember. I think until
17 about 4:00 o'clock.

18 Q. What kind of advertising had you done
19 beforehand?

20 A. We had mailed -- we had mailed postcards to
21 all the grocery stores in about a 300-mile radius of
22 Midland. We had mailed to bakeries and delis and we put
23 an ad in the Midland paper.

24 Q. Describe, if you know, the number of bidders
25 that signed up for the auction?

1 A. There were 39 bidders at the auction.

2 Q. Did you consider that poor, medium, good?

3 A. Well, it is a highly specialized auction, you
4 know, it is not something that the consumer -- it's not a
5 consumer type auction like a consumer type action we
6 might have 100, 150 people because they can buy consumer
7 goods but this is -- this was strictly a commercial
8 auction and that's about normal for a grocery store
9 auction.

10 Q. How long do you give buyers to remove their
11 equipment?

12 A. Beg pardon?

13 Q. How long do you give the buyers to remove
14 their equipment?

15 A. Usually about four or five days.

16 Q. Is that typical for all auctions?

17 A. Well, it's according to the auction, I had an
18 auction the other day I just give them the auction day
19 and the day after because it was not a very big auction.

20 Q. Have you been successful in other auctions,
21 let's say other Furr's auctions, for example, in selling
22 walk-in freezers?

23 A. Yes, sometimes they sell; sometimes they
24 don't, but most of the time they do. I sold -- they sell
25 for about 750, a thousand dollars. They don't sell for a

1 whole heck of a lot because of the labor. We sell them
2 as is, where is and whoever buys them has to do the labor
3 taking them out, so --

4 Q. But you have gotten 750 with the buyer doing
5 all the labor?

6 A. Yes.

7 Q. Why don't you look at this big black book of
8 exhibits that should be in front of you and look at
9 Exhibit 14. Is this your report of auction?

10 A. Yes.

11 Q. Did you consider the gross of about \$25,000
12 good, average, bad?

13 A. Well, for -- I think we did -- some things we
14 got real good money for and some things we didn't, but
15 that's the way it is at all auctions. I think this is
16 kind of a normal auction. For what we had to sell, I
17 would say we did all right.

18 Q. At the auction were you bidding for a second
19 hand store?

20 A. Yes. Leonard Hall owns a second hand store in
21 El Paso and he leaves me what we call absentee bids. And
22 on my terms and conditions, I publish terms and
23 conditions and hand them out to all bidders and absentee
24 bids are covered on that and all the procedures of an
25 auction are covered in my terms and conditions of

1 auction.

2 And the terms and conditions of auction is if
3 someone, let's say, leaves a \$100 bid on something, we
4 open it at \$50 and then we bid for them against the
5 people on the floor and if it goes over \$100, of course,
6 they don't get anything. But if it's -- maybe they can
7 buy it for \$80, \$85; who knows.

8 Q. Is it common practice to do that?

9 A. Usually at every auction we have absentee
10 bids. It's not anything strange.

11 Q. At the auction did you offer for sale any of
12 the air conditioning units at the premises?

13 A. Oh, no; that's part of the building.

14 Q. When did you leave Midland after the auction?

15 A. Early the afternoon the next day, probably
16 1:00, 1:30, somewhere around there.

17 Q. When did the buyers start taking their
18 purchased equipment?

19 A. On the day of the auction. They hauled stuff
20 out the day of auction they start hauling stuff out.

21 Q. Can they do it during the auction?

22 A. Yes, they do. We try to -- when we do an
23 auction, we try to do it, we start at the front and work
24 to the back so that when they start taking stuff out they
25 wouldn't be bringing it through the auction.

1 Q. I'm sorry; you said you left Midland about
2 when?

3 A. 1:00 or 1:30 the following day.

4 Q. So that would be Friday afternoon?

5 A. Friday afternoon.

6 Q. Where did you go?

7 A. Went to El Paso.

8 Q. That's where you live?

9 A. Yes.

10 Q. Did you go to the store before you left town?

11 A. Yes, I was there all morning.

12 Q. Tell the Court what you saw, I guess, on
13 Friday morning before you left town as far as what was
14 happening on site?

15 A. Well, people were taking things out and George
16 and Lorenzo were checking on them. And I walked around
17 the store a couple times and talked with people and one
18 fellow told me, he said, "Well," he said, "I bought those
19 reach-ins over there but," he said, "I'm just going to
20 leave them here for a while because I know the owners of
21 the store and they don't mind me leaving them and getting
22 them later."

23 I said, "Well, that's up to you."

24 Ray Shellack from San Angelo bought some
25 reach-ins and he said that he was going to send his crew

1 of people that handle that sort of thing to take them
2 out. I don't know when they came, whether they came the
3 next day or the day after or when.

4 Q. Did you see any damage occurring while you
5 were there?

6 A. Not while I was there, no, sir.

7 Q. Did you see anybody with a forklift while you
8 were there?

9 A. I don't remember seeing a forklift while I was
10 there.

11 Q. See anything, any damage to the pharmacy area?

12 A. No. You asked me that earlier and I checked
13 and we sold the pharmacy shelves. I think there were
14 eleven of them. We sold the pharmacy shelves in the
15 pharmacy. I didn't see any damage there when I was
16 there. I don't know when they picked up the pharmacy
17 shelves, but I looked on the list and we did sell
18 pharmacy shelves.

19 Q. Do you know a fellow named Roberto, a Mexican
20 national?

21 A. Yes.

22 Q. When did you first meet him?

23 A. At that Midland auction. I had never seen him
24 before that.

25 Q. Was he present the morning after the auction?

1 A. Yes, and he had his wife and two children
2 there with him.

3 Q. When you left town, who took over?

4 A. Lorenzo Salcedo.

5 Q. Did George leave with you?

6 A. Yes.

7 Q. So Lorenzo -- anybody else besides Lorenzo?

8 A. Well, not when I left town, no.

9 Q. What instructions did you give Lorenzo about
10 checkout?

11 A. Well, just to do a normal checkout, just see
12 that people were not tearing the building up, to see that
13 they weren't stealing from each other, taking things that
14 didn't belong to them.

15 And as they remove the stuff, I gave him a
16 bunch of garbage sacks, I said, just put the trash --
17 when you take those gondolas down, somehow or other over
18 the years product and papers and all sorts of things sift
19 down to the bottom so I asked him to put that stuff in
20 garbage sacks as they took the stuff out.

21 Q. Was there any trash evident prior to the start
22 of the auction?

23 A. No, we had the place pretty well cleaned up.

24 Q. Why don't you take a quick look at Exhibit 19,
25 if you would, and go to Page 2, the picture labeled 2.2.

1 A. Yes, I see that.

2 Q. Did you see that? Is that what you're talking
3 about?

4 A. Yes, that looks like a row of gondolas were
5 taken out there and this is all this debris left.

6 Q. Would you be able to see debris before you
7 removed the gondolas?

8 A. Oh, no.

9 Q. What kind of employee was Lorenzo?

10 A. Well, he was -- he needed supervision. But he
11 would do just about anything I asked him to do and he
12 never -- he never disappointed me. When I gave him a
13 job, he did the job.

14 Q. Had he done -- had you left him with checkout
15 before?

16 A. Yes, of course.

17 Q. Can you give the Court any idea of how many
18 times or how many auctions he had done the checkout?

19 A. Eight or ten.

20 Q. Had he ever done a checkout for grocery store
21 auctions?

22 A. I think one other.

23 Q. Ever had any problems before with him?

24 A. No, not a bit.

25 Q. How many days did you tell him to stay on

1 site?

2 A. Friday, Saturday, Sunday and Monday, four
3 days.

4 Q. Was he instructed to return to El Paso after
5 that?

6 A. Yes, he took the bus.

7 Q. So he did come back to El Paso on time?

8 A. Uh-huh.

9 Q. Did anyone take over after Lorenzo left?

10 A. The --

11 THE COURT: I'm sorry; was there an answer
12 to that question?

13 MR. THUMA: I think there was.

14 A. What's that?

15 THE COURT: The question to you was did he
16 get back to El Paso on time?

17 A. Well, I don't -- he got back there Monday
18 night late, I think. His dad picked him up at the bus
19 station, I understand.

20 THE COURT: Okay. I just didn't hear the
21 response.

22 A. Yes, I didn't -- the man that took over with
23 the secondhand store and took the gondolas down, drove
24 Lorenzo to the bus station is my understanding.

25 THE COURT: Okay.

1 Q. (By Mr. Thuma) How long -- what was the name
2 of that man?

3 A. Henry.

4 Q. He was with the secondhand store?

5 A. Yes, he's with the secondhand store. He's
6 their foreman, I guess, you might call him.

7 Q. How long was he out at Midland?

8 A. I would say about three or four more days
9 after that. I think they bought most of the gondolas and
10 they had a lot work to do to get them down. They had to
11 take them apart.

12 Q. Did you and Lorenzo ever have control over
13 access to the Midland location?

14 A. Did we --

15 Q. Did you ever have control over access to the
16 Midland location?

17 A. No -- you mean did we have complete control?
18 No. People were coming and going. Their maintenance
19 man, a fellow named Frank would let people in before we
20 got there, before Lorenzo got there and let people in
21 after he left.

22 MR. WITT: Your Honor, I'm going to
23 object. This witness is testifying as to things going on
24 when he wasn't there, he has no personal knowledge of
25 this. Now I'll take him on cross-examination and show

1 this, but it's just -- he's just talking about Frank
2 doing things after he left. We really ought to limit his
3 testimony to what he knows while he was there.

4 THE COURT: So your objection is to
5 foundation with respect to his testimony about what Frank
6 was doing?

7 MR. WITT: Yes, sir.

8 THE COURT: Okay. That's sustained. Do
9 you want to try and establish a foundation for this
10 testimony?

11 MR. THUMA: Yes.

12 Q. (By Mr. Thuma) Let me ask you first to
13 describe in a typical auction where you are the
14 auctioneer what kind of control do you have over access
15 to the place where the auction goods are?

16 A. Well, usually the building owner isn't in
17 evidence, isn't there. And we're responsible for getting
18 the stuff out in a workmanlike manner and without tearing
19 up the building. And sometimes we have to clean the
20 building, but most of the time we don't. Most of the
21 time we'll do the auction, we get the stuff out and then
22 the landlord sends in a crew to clean it up.

23 We told you we would clean it up, however. We
24 told you that we would leave it broom clean. And I asked
25 Lorenzo about that and he said that --

1 MR. WITT: Objection, Your Honor; hearsay.
2 We've already had a hearsay objection. He's not letting
3 me --

4 THE COURT: Wait! Just all you've got to
5 do is say hearsay; okay. It obviously can't be admitted
6 for the truth of the matter, but if you are going to try
7 and get it in on some other basis, what would that be?

8 MR. THUMA: I think it is hearsay, so --

9 THE COURT: Okay.

10 MR. THUMA: -- better not answer that
11 question.

12 THE COURT: The objection is sustained.

13 Q. (By Mr. Thuma) Let me take you back just for
14 a second to the typical situation and the control you
15 have over access. Do you have a key when you do the
16 auction?

17 A. Yes, we usually have a key to the premises.

18 Q. Does anybody else have a key?

19 A. We hope not.

20 Q. Do you announce when the auction starts, time
21 of day of the auction when --

22 A. When we will have a checkout man there and do
23 the checkout with the people.

24 Q. What did you do if someone wants to make a
25 different arrangement?

1 A. Well, we just had one in Deming and that
2 fellow bought all the copper and a bunch of cases and he
3 said that he wanted to wait until everyone else got their
4 stuff out, then he could bring his crew in. And I put
5 him in touch with the building owner or the man I was
6 doing the auction for and they got together and they
7 talked it out and made a schedule and that's what they
8 did.

9 But most of the time we supervise the removal
10 of the merchandise and equipment and at the end of that
11 we turn the keys back to whoever we got them from.

12 Q. Do you think that the situation you faced in
13 Midland was different than the typical situation you just
14 described?

15 A. Well, I think it is but, you know, all I have
16 to go on is what my employees told me.

17 Q. When you were there did the landlord have a
18 key?

19 A. Oh, yes, Frank, the maintenance man, had a
20 key, of course.

21 Q. Were you given a key?

22 A. We had a key for -- yes, we were given a key
23 and Lorenzo turned it over to Henry and then Henry, I
24 guess, went in there one day --

25 MR. WITT: Objection, Your Honor, same

1 objection. There's no foundation for this and he was not
2 present when this turnover occurred. He is testifying to
3 stuff he doesn't have any personal knowledge to.

4 THE COURT: All you have to do is say
5 foundation. What's the foundation?

6 Q. (By Mr. Thuma) How do you know what Henry did
7 or didn't do?

8 A. Well, Henry told me.

9 MR. THUMA: Okay.

10 MR. WITT: Objection, Your Honor, it's
11 going to be hearsay.

12 THE COURT: Sounds like hearsay to me.

13 MR. THUMA: Okay.

14 Q. (By Mr. Thuma) In your typical auction is the
15 landlord present the day of the auction?

16 A. Not usually. Sometimes they are; sometimes
17 they aren't. Usually I'm working for a bank or I'm
18 working for the Small Business Administration and it's my
19 complete responsibility. They're not interested in
20 standing around, watching what I'm doing.

21 Q. In the typical situation can anybody but you
22 decide when to let people in and out?

23 A. No.

24 Q. When you were in Midland, did you have that
25 same kind of control?

1 A. No.

2 Q. Why do you say that?

3 A. Well, let me try to think how to put it.

4 There were other keys out and the building was open when
5 we came the next day after the auction. When we came the
6 next day after the auction, the building had already been
7 opened. People were already removing stuff and we had
8 announced the time at 9:00 o'clock to start removing.
9 And again, that's what Lorenzo was facing is what I
10 understand; that's what I was told.

11 Q. Now let me ask you this. I don't think this
12 is hearsay, but I'll let Mr. Witt lodge an objection if
13 he wants to.

14 Were you ever given any -- did you ever have
15 any discomfort about what was going on as far as checkout
16 and the building being damaged after you left, based on
17 what -- did you feel like everything was going okay?

18 A. Well, no, I didn't have any discomfort. Most
19 of the people that bought that merchandise were stores,
20 chain stores and they have professional people to take
21 the equipment out and move it. It's not like selling to
22 a bunch of amateurs that are just going in helter-skelter.
23 These people know what they were doing. They have
24 licensed people working for them. And that's usually
25 what we're dealing with. We're not dealing with

1 amateurs.

2 Q. How did you handle the issue of disconnecting
3 refrigeration equipment that had Freon in them?

4 A. At the auction, I make an announcement at the
5 beginning of every auction that any refrigeration
6 equipment they had to have a refrigeration, licensed
7 refrigeration man evacuate the compressor before they
8 moved anything.

9 Q. What -- do you make a similar announcement
10 about handling disconnection of electrical --

11 A. Electrical and water, we tell them on
12 electrical, when they shut it off, to put wire nuts on
13 the end and on the water if there's no shut off valves,
14 they should cap the water lines.

15 Q. Do you have any recollection about the
16 removal -- well, strike that.

17 Did you sell any surveillance equipment,
18 security cameras?

19 A. Yes, we sold the whole surveillance system.

20 Q. When was that removed?

21 A. That was removed, I guess, the evening of the
22 auction. They came in after we left and did that.

23 Q. Did you give them permission to come in after
24 hours?

25 A. No, Mr. Glasscock gave them permission.

1 Q. When you were there the day of the auction
2 afterward, do you have any recollection of Mr. Glasscock
3 telling anybody else that they could come in after hours,
4 before hours, later on, things that were contrary to what
5 you told them?

6 A. No, I didn't talk to him again.

7 Q. How about Mr. Spar; you said that Mr. Spar --

8 A. I think he's the one that told me that he was
9 just going to leave the stuff there and take it out
10 later; that he knew the people that owned the building.

11 Q. Did you sell the coffin cases?

12 A. No, we didn't sell the coffin cases. We
13 didn't get any bids on them. We did sell -- let me --
14 there was one coffin case back by the deli and it was
15 self-contained, it had its own compressor. We did sell
16 that one. But the coffin cases that were in the row for
17 the frozen food cases, we didn't sell those.

18 Q. In other auctions have you been able to sell
19 the copper lines that run throughout a grocery store?

20 A. Yes, the copper -- refrigeration copper, not
21 water copper, just refrigeration copper.

22 Q. How much have you gotten in other cases?

23 A. At auction anywhere from, I have gotten as
24 high as \$1500 and as low as 500.

25 Q. If you sell for that kind of money, who

1 removes the copper?

2 A. The scrappers. The scrap people come in and
3 remove that copper and sell it for scrap. They probably
4 get \$4,000, \$5,000, \$6,000 for that copper, but they have
5 to take it out. There is troughs along on the floor,
6 like gutters in the floor that the copper is running down
7 to go from the compressors to the different units and
8 some of it is overhead. And so they have quite a job
9 getting that stuff out.

10 Q. Is there any salvage value in coffin cases?

11 A. Oh, yes, there's some copper in there and
12 there are some aluminum coils and some copper, also, in a
13 coffin case. And then the case itself, they can sell for
14 just for scrap, scrap metal which isn't very expensive,
15 but copper is close to a dollar a pound now. Aluminum is
16 up there, too.

17 Q. Have you ever sold a former Furr's location
18 and agreed to remove the unsold equipment as part of the
19 transaction?

20 A. Say that again?

21 Q. Have you ever done a Furr's auction where you
22 agreed to remove the unsold equipment as part --

23 A. Yes, I did that in Clovis.

24 Q. What arrangements did you make to get all that
25 done?

1 A. Well, we didn't sell any coffin case, we
2 didn't sell the meat cases. They were all old; no one
3 wanted them. And I called a local scrap dealer and gave
4 him all the copper in the building if he would remove the
5 meat cases and the coffin cases and everything. And he
6 agreed to do it and he did it.

7 Q. Do you know how long it took him to remove the
8 unsold equipment?

9 A. Two or three days; two or three days. All the
10 copper -- he was -- he had a crew of about five, six
11 people, they came in the afternoon of the auction and
12 started and they were really something.

13 Q. Do you think if you had total access to this
14 Midland location, you could have gotten something similar
15 done?

16 A. Yes, I surely could have.

17 MR. THUMA: Your Honor, I pass the
18 witness.

19 THE COURT: Okay.

20

21 CROSS-EXAMINATION

22 BY MR. WITT:

23 Q. Mr. Parker, we met before at your deposition
24 in El Paso; is that right?

25 A. Yes, sir, I remember.

1 Q. Do you remember giving that deposition?

2 A. Yes, sir.

3 Q. You think you testified truthfully at that
4 time?

5 A. Beg pardon?

6 Q. Did you testify truthfully at that deposition?

7 A. I hope so.

8 Q. What about your Affidavit that you filed with
9 this Court? We discussed that in your deposition. Do
10 you believe you testified truthfully in your Affidavit?

11 A. I hope so.

12 Q. Well, you didn't agree the day we took your
13 deposition?

14 A. Beg pardon?

15 Q. Didn't you agree with me on the day of your
16 deposition that you had not testified truthfully in your
17 Affidavit?

18 A. I might have -- I don't know whether I did or
19 didn't agree with you on that. Maybe my memory -- I have
20 a memory lapse from time to time. But, you know, some
21 things I remember; some things I don't.

22 Q. Have you remembered everything you testified
23 about today?

24 A. What -- yes is, what I said today, I remember,
25 that's what I do remember, yes.

1 Q. You just now said that if you had total -- I
2 believe the implication was if you had total access to
3 the store, you could have done something similar to these
4 coffin cases and sold them; is that what you said?

5 A. I said if I had access to the store, I could
6 have sold the -- gotten all the unsold stuff out of there
7 by bartering the copper to a scrapper is what I said.

8 Q. Now the only uncontrolled access you had is
9 the owner of the building had a key; is that right?

10 A. Well, yes, he and his maintenance man. I
11 don't know how many keys they had.

12 Q. How did that prevent you from selling the
13 coffin cases?

14 A. We didn't get any bids on them; we didn't get
15 any bids on them.

16 Q. That's not the question. My question --
17 listen to my question very clearly; okay, carefully; is
18 that fair?

19 A. I am listening.

20 Q. How is it that my client, the TGAAR people and
21 Frank having a key prevented -- to their own building,
22 prevented you from selling the coffin cases?

23 A. You mean to a scrapper; is that what you're
24 talking about?

25 Q. Yes.

1 A. All right. Number one, he told me that I
2 couldn't sell the walk-ins because I was going to ruin
3 the walls. So I was afraid to get a scrapper in there
4 for fear that all the floor would be taken up with the
5 copper and the ceiling, I just thought, well, this man is
6 not going to allow this to happen.

7 Q. He didn't want to damage it, right?

8 A. That's right. Now also, I didn't realize that
9 I was supposed to remove everything from that building.
10 I didn't have that in my agreement.

11 Q. Let's look at your agreement. Let me ask you
12 a question. Did the Trustee or the Trustee's attorney
13 ever give you a copy of the auction order of the Court
14 authorizing the auction?

15 A. No.

16 Q. Did they ever tell you that the auction order
17 required you to remove all the equipment?

18 A. Mr. Thuma told me that. When did you tell me
19 that?

20 THE COURT: Well --

21 MR. THUMA: I'm not allowed to testify.

22 A. Oh, he told me that yesterday or today, I am
23 not sure which.

24 Q. (By Mr. Witt) But back before the auction and
25 during 2002, no one told you, from the Trustee or Mr.

1 Thuma's office, that you were supposed to remove all the
2 equipment?

3 A. No.

4 Q. No one told you that the court order required
5 you to do so?

6 A. No one told me that; that's right.

7 Q. Did they tell you that you had to remove it in
8 a broom clean condition?

9 A. No, they didn't tell me that. I told them I
10 would do that. They didn't ask me to do that. I told
11 them I would do that.

12 Q. Let's look at Exhibit 32 in the black book.

13 A. Okay; I see that.

14 Q. This is the contract. Did you sign that
15 contract?

16 A. This is -- yes, this is Furr's. Yes, it is
17 one of my agreements.

18 Q. Do you remember in your deposition I asked for
19 a contract and Mr. Thuma told he would give me one?

20 A. That what?

21 Q. I asked for a copy of the contract you had
22 with the Trustee and Mr. Thuma said he would give me one;
23 do you remember that?

24 A. Yes.

25 Q. Well, this is what I got; okay, this exhibit

1 32.

2 A. Well, this is an old one.

3 Q. Let's look at it. Does it have your signature
4 on it?

5 A. Yes.

6 Q. And it is with Furr's Supermarkets?

7 A. Yes.

8 Q. It is back on September 10, 2001, right?

9 A. Yes.

10 Q. And I don't know if you know, but do you know
11 that's back during the Chapter 11 case or do you know the
12 difference?

13 A. This was in Chapter 11, yes.

14 Q. But you signed a contract with Furr's before
15 the Trustee was involved, right?

16 A. Yes.

17 Q. Now is this the form of contract that you used
18 later on --

19 A. Yes.

20 Q. -- with them?

21 A. Yes.

22 Q. But I believe you testified with me they just
23 signed a form contract; is that right?

24 A. They signed a contract like this.

25 Q. Did they make any modifications to it?

1 A. No, sir.

2 Q. Look down at Paragraph 4.

3 A. Okay.

4 Q. "Owner shall pay for the utilities when it is
5 necessary to turn them on and moving and storage expenses
6 when necessary."

7 A. Would you like me to explain that?

8 Q. Yes. I mean is that -- did I read it
9 correctly, first of all?

10 A. Beg pardon?

11 Q. Did I read that correctly?

12 A. Yes.

13 Q. Okay. Was that ever modified with the
14 Trustee?

15 A. Not that I know of, but that clause is in
16 there for a lot of times the banks and the SBAs give me
17 defunct businesses to sell and there's no electricity in
18 the building so we have to turn it on at our expense, and
19 then we pass that expense on to the owner.

20 And a lot of times also moving and storage
21 expenses. We'll get a business and the landlord says you
22 can't sell that business here, get that stuff out of the
23 building. And we move it and then we charge the owner
24 for that moving expense. That's what that clause is all
25 about.

1 Q. You charge the owner of the stuff sold or you
2 charge the owner of the building?

3 A. The owner of the equipment, the bank, whoever
4 owns the equipment.

5 Q. So in this case that would be the Trustee,
6 right?

7 A. Yes -- well, we didn't move anything for the
8 Trustee.

9 Q. Okay. But the Trustee obtained an order from
10 the court that said you were required, it said, "shall
11 remove all store equipment"?

12 A. Well, I was unaware of that; I'm sorry.

13 Q. You were unaware of that. But at the same
14 time you did that, you had a contract with her saying she
15 would pay for all utilities, moving and storage expenses;
16 is that right?

17 MR. THUMA: Objection; that's not what the
18 contract says.

19 Q. (By Mr. Witt) Let me just ask you what it
20 says. Does it say owner? The owner is the Trustee in
21 this case; is that right?

22 A. It says when it's necessary to turn them on.
23 It wasn't necessary to turn them on in Midland, they were
24 already on.

25 Q. Okay. I guess the landlord was just doing

1 that as sort of gratis?

2 A. I have no idea, sir.

3 Q. Okay. And then the -- but it does say the
4 owner shall pay. So I want to ask you a question, the
5 owner is the Trustee, right?

6 A. The owner is the Trustee, I would assume, the
7 Trustee or Furr's corporate. You know, you will have to
8 clarify that for me. I don't know whether it's Furr's is
9 the owner or the Trustee is the owner.

10 Q. Well, there's two parties to the agreement,
11 right? Are there two parties to the agreement?

12 A. Yes, sir.

13 Q. Let's look at the first line, says the
14 undersigned defined as the owner; you got that part?

15 A. Yes, sir.

16 Q. Then it goes down there and it says authorizes
17 Parker, and then it gives a lot of those things you have,
18 you know, titles you have, and it defines you as the
19 auctioneer, right?

20 A. Yes, sir.

21 Q. Now looking at that and looking at the
22 signature, only two signatures, you're the auctioneer,
23 right?

24 A. Yes, sir.

25 Q. And so the owner of the equipment is the

1 owner, right?

2 A. If you say so.

3 Q. Well, what does your contract say?

4 A. That's what it says.

5 Q. Okay. So the owner is -- in Paragraph 4, did
6 owner agree to pay for the moving and storage expenses?

7 A. When necessary. They weren't necessary in
8 this case.

9 Q. What about the court order? You think if
10 there's a Court order requiring removal of all the store
11 equipment, it's not necessary?

12 A. I am not aware of the court order; I'm sorry.
13 At that time I wasn't aware of that.

14 Q. Why don't you turn over to Exhibit 13.

15 A. Have I got this backwards? Here it is. I
16 guess I do have it backwards.

17 Q. Do you see 13?

18 A. I see it.

19 Q. Have you ever seen it before?

20 A. No, sir.

21 Q. All right. How much have you received as
22 commission for all these Furr's auctions approximately?

23 A. 20 percent of the gross sale.

24 Q. Do you know how much that is, total?

25 \$100,000, \$200,000?

1 A. No, nothing like that.

2 Q. How many have you gotten?

3 A. Well, we did -- probably -- let's see,
4 multiplying, maybe \$300,000 worth of business altogether.

5 Q. How many sales?

6 A. What's that?

7 Q. How many sales?

8 A. We had the corporate headquarters and the
9 corporate warehouse, the district warehouse and district
10 headquarters in El Paso and then we had one, two, three,
11 four, about five stores, six, seven stores, I think.

12 Q. Total sale proceeds were \$300,000?

13 A. Maybe \$350,000 to \$400,000.

14 Q. So \$400,000, you would have gotten \$80,000; is
15 that right?

16 A. Yes.

17 Q. Now you said, you testified that when "we" got
18 there, the back was blocked off?

19 A. Yes.

20 Q. You had two employees that showed up a week
21 ahead of time and you weren't there?

22 A. It was blocked off then, too, they told me.

23 Q. Do you have any personal knowledge --

24 MR. WITT: I object to that, Your Honor,
25 as being nonresponsive; ask it be stricken.

1 THE COURT: What are you asking to be
2 stricken?

3 MR. WITT: Yes, sir, I'm asking to be
4 stricken --

5 THE COURT: What are you asking to be
6 stricken?

7 MR. WITT: The part where he uses the
8 hearsay and says what people were told. I didn't ask him
9 what they were told, he just volunteered it.

10 THE COURT: Okay; I'll strike that.
11 Did you want to argue that, Mr. Thuma?

12 MR. THUMA: I think so. He's not offering
13 it for the truth of it, he's trying to explain why he
14 said what he said. So it is for a different purpose, is
15 to justify an answer he made. We're not offering it to
16 say what Lorenzo did or didn't say. You can't ask why
17 did you say that and then strike the answer when it turns
18 out he said it because of what somebody told you.

19 THE COURT: I'm sorry, I didn't hear him
20 say -- I thought the question to him was you weren't
21 there or something like that.

22 MR. WITT: That's what the question was.

23 MR. THUMA: No, the question was why did
24 you say you didn't have access.

25 THE COURT: All right. Let's just take

1 time out here for a second and I'd like the court
2 reporter to read back that question and then forward
3 until we engage -- until the objection was raised.

4 MR. WITT: Your Honor, let me just
5 withdraw it. I'd just as soon move on. It is going to
6 take up a lot of time; I'll withdraw.

7 THE COURT: Will that that work for you?

8 MR. THUMA: Sure.

9 THE COURT: Okay.

10 Q. (By Mr. Witt) All right. Mr. Parker, you
11 had employees show up there, right?

12 A. Beg pardon?

13 Q. You had two employees show up about a week
14 before?

15 A. Yes.

16 Q. You weren't there?

17 A. No.

18 Q. Do you know from your own personal knowledge
19 what this condition of the store was, what was back
20 there, what was blocked off at that time from your own
21 personal knowledge, not what someone told you?

22 A. Well, I wasn't there so I don't have personal
23 knowledge, but they called me on the phone when they were
24 doing the make ready --

25 MR. WITT: Objection. I asked if you had

1 personal knowledge.

2 THE COURT: Well, wait a minute. Don't
3 interrupt the witness. You can object and move to strike
4 or whatever, but don't interrupt the witness.

5 MR. WITT: Go ahead.

6 A. George Galaviz called me on the telephone and
7 said, "They've got this all blocked off and won't let us
8 get in the back, they won't let us get to everything." I
9 said, "Well, just do the best you can, George."
10 That's --

11 Q. Did you at that time call the Trustee and
12 complain or call Mr. Thuma?

13 A. No, I didn't; I should have, I guess.

14 Q. Did you ever call them and complain about
15 anything?

16 A. No, the day of the auction we just went and
17 sold what we could sell.

18 Q. How were you going to -- strike that.

19 A. Advertising was out on both cases.

20 Q. Now you said that the compressors were
21 upstairs in the back; is that right?

22 A. Yes.

23 Q. Aren't -- weren't the stairs available?

24 A. Well, it was blocked off back there.

25 Q. The stairs were blocked off?

1 A. Well, you couldn't get to the back to get to
2 the stairs.

3 Q. I thought you drew -- do you see the stairs on
4 the chart up there?

5 A. Yes, I see the stairs.

6 Q. Were they blocked off?

7 A. Well, we couldn't get to them. I don't know,
8 maybe we didn't try hard enough, but we -- when we saw it
9 was blocked off back there, you know, I don't know,
10 maybe --

11 Q. Didn't your people move stuff from that
12 upstairs portion down before you got there?

13 A. No.

14 Q. How do you know; you weren't there?

15 A. Well, I don't know what to tell you.

16 Q. How do you know there were compressors back
17 there in that area?

18 A. There were compressors in all the stores is
19 how I know.

20 Q. Did you ever see any compressors back there?

21 A. No, I sure didn't.

22 Q. You talked about in your deposition when you
23 finally admitted you didn't know if there were
24 compressors back there, didn't you?

25 A. I assumed there were compressors back there;

1 you bet.

2 Q. There were compressors on the roof, weren't
3 there?

4 A. Yes.

5 Q. And you didn't ask for bids on these
6 compressors, did you?

7 A. No, I sure didn't.

8 Q. Did you repair any damage that was done by
9 removal of any of the equipment?

10 A. I didn't see any damage to repair.

11 Q. Do you know if there was any damage done after
12 you left at noon on Friday?

13 A. I have no knowledge of any damage.

14 Q. Do you think if there was damage done by the
15 removal that you should have repaired it?

16 A. Beg pardon?

17 Q. If there was damage done, should someone have
18 repaired it?

19 A. Well, it's according to what type of damage
20 you're talking about.

21 Q. Well, like pulling sinks off walls. Do you
22 think it would be appropriate to pull a sink off a wall
23 and pull the wallboard down with it?

24 A. Well, I wouldn't think that would be
25 appropriate, no, sir.

1 Q. Do you think somebody ought to repair that
2 damage?

3 A. Well, if that happened. I don't know.

4 Q. Now you said when you left Lorenzo there -- do
5 you have any knowledge that Lorenzo was actually there at
6 any time after you left?

7 A. I wasn't there to check on him. I sure wasn't
8 there to check on him, but he phones me a couple of times
9 and I told him Henry was to come and take over and he was
10 going to take the bus back and he could have been, you
11 know, I don't know what to tell you on that.

12 Q. So Lorenzo didn't even have a car?

13 A. No, we left. We all were in my Suburban.

14 Q. It's a long way from that store to a motel,
15 isn't it?

16 A. No, I think it was about a mile.

17 Q. Is it an area you would walk through at night?

18 A. Yes, it was all right; sure.

19 Q. You gave him garbage sacks?

20 A. Yes, to put trash in.

21 Q. Was he supposed to leave the garbage sacks
22 there or was he supposed to remove them?

23 A. Well, we had no place to remove them. If
24 there had been a dumpster there, he would put them in the
25 dumpster.

1 Q. So if you could have used somebody else's
2 dumpster, you would have used their dumpster?

3 A. Well, we assumed there would be a dumpster
4 for that building.

5 Q. Why did you think Furr's had one for that
6 building?

7 A. They might have; I don't know.

8 Q. So your instructions were just to leave the
9 garbage sacks filled up there?

10 A. Yes, sir, if there was no dumpster.

11 Q. Do you know if he filled any garbage sacks up?

12 A. What's that?

13 Q. Do you know if Lorenzo even filled up one
14 garbage sack?

15 A. You're asking me for do I know?

16 Q. Do you know if Lorenzo even filled up one
17 garbage sack?

18 A. I assumed he did, but I don't know for sure.

19 Q. Okay. Isn't it true that the buyers couldn't
20 get their items they purchased out the front because the
21 doors were too small, and that they had to use the back
22 loading dock?

23 A. Not that I'm aware of; not while I was there.

24 Q. Are you not aware of anybody using the back
25 loading dock?

1 A. No, I'm not aware of that.

2 Q. Now what cleanup did you do before the
3 auction?

4 A. Well, they -- I didn't do any cleanup before
5 the auction. Do you mean my make ready men; what did
6 they do?

7 Q. Yes. While you were there did they do any
8 clean up --

9 A. Not while I was there.

10 Q. Do you have any personal knowledge they did
11 any cleanup before you arrived?

12 A. Well, I assume they did because it was clean
13 and neat. Everything was in its place. Everything was
14 boxed that needed to be boxed. There was no garbage
15 laying around on the floor or trash.

16 Q. Of the employees -- I believe you named four
17 of them that worked for you that were at the Midland
18 auction -- how many of them still work for you other than
19 your wife?

20 A. None.

21 Q. I believe you told me you couldn't even find,
22 was it George or Lorenzo, you didn't even know where he
23 was?

24 A. They are both in El Paso. Lorenzo moved.
25 Until about a month ago, he was living right across the

1 street from my office. And he moved from there, but his
2 dad lives right down the street from my office. And I
3 don't know where George moved.

4 Q. Are you aware during all this, you called it
5 comings and goings of people, are you aware of anybody
6 taking something that didn't belong to them?

7 A. No.

8 Q. Ever get any complaints?

9 A. No.

10 Q. You felt -- when you left you felt everything
11 was going okay, right?

12 A. I felt as if everything was under control.

13 Q. Do you know the difference in personal
14 property and fixtures that are affixed to the building?

15 MR. THUMA: Objection; to the extent it
16 calls for a legal conclusion.

17 A. What type of personal property are you talking
18 about?

19 THE COURT: Overruled to the extent that
20 he can talk about it.

21 Q. (By Mr. Witt) Personal property. Do you have
22 any idea what that means?

23 A. Yes, I know what personal property is. I know
24 what real property is. But what personal property are
25 you talking about?

1 Q. I'm talking about items that are affixed to
2 the building.

3 A. Well, there is certain things like that that
4 are called trade fixtures that are like a hood above a
5 restaurant grill or a hood in a grocery store is a trade
6 fixture. We can take that out even though it's affixed
7 to the building.

8 Q. What about commodes and sinks?

9 A. Hand sinks that are there to wash the hands of
10 the employees that are working are trade fixtures.
11 Commodes are not trade fixtures.

12 Q. Even if the sinks are affixed to the building,
13 are they --

14 A. The three-compartment sink that is a
15 commercial sink is a trade fixture. The little stainless
16 hand sink that's for the employee to wash his hands in
17 that area that he's working, the bakery or the meat
18 market or wherever and they are a commercial sink with
19 knee controls most of the time and they can be taken out
20 because they are trade fixtures just for that trade.

21 Q. That's your view?

22 A. Now in the restrooms, the commodes and sinks,
23 we can't take them out because they are part of the
24 building and they are not a trade fixture.

25 Q. Okay. Did you -- there was a lot of stuff, a

1 lot of store equipment in this Furr's store that wasn't
2 sold?

3 A. In which?

4 Q. In the Midland Furr's store?

5 A. Mostly the refrigeration cases.

6 Q. There was a large volume of that, right?

7 A. Yes.

8 Q. Did you feel any responsibility to remove it?

9 A. Well, I didn't feel any responsibility to
10 remove it. No one told me that it was in my agreement to
11 remove it.

12 Q. Did you give any instructions at the end of
13 the auction to people about how they were to remove stuff
14 or take care of it?

15 A. We gave instructions at the beginning of the
16 auction and throughout the auction every once in a while
17 when we would come to something like when we come to the
18 hoods, we tell them the hoods that you're buying are from
19 the ceiling down. They are not buying the tubing up to
20 it and they're not buying the extractor on the roof.
21 They are buying just the hood. That's the instructions
22 we give on hoods.

23 Q. But did you give any instructions about being
24 careful with the property, about things not to do in
25 destroying property when they were removing?

1 A. We asked them to do things in a workmanlike
2 manner, be responsible.

3 Q. At the end of the auction?

4 A. Not at the end of the auction, at the
5 beginning and at the different junctures where there
6 would be a concern.

7 Q. Do you remember giving those instructions
8 other than at the beginning of this auction?

9 A. What do you mean other than?

10 Q. You said something came up of some concern.

11 A. When we got to the hoods, we explained they
12 weren't getting the roof extractor, that they were just
13 getting the hood down below.

14 Q. Did you give anybody any instructions about
15 how to disconnect the pipes with Freon?

16 A. We told them that they had to evacuate them,
17 pump them down, evacuate the Freon from the compressors
18 and use a licensed refrigeration man to do it.

19 Q. Did you tell them that they couldn't saw off
20 the copper pipes?

21 A. No. After they remove the Freon, they can saw
22 the pipes. In fact, the scrappers don't even saw them,
23 they just bring in big bolt cutters and cut them; real
24 fast.

25 Q. You just assumed the copper pipes were going

1 to be scrapped?

2 A. The copper pipe is scrap.

3 Q. But you didn't do anything to cap them, did
4 you?

5 A. Beg pardon?

6 Q. You didn't do anything to tell people to cap
7 the copper pipes?

8 A. I didn't talk about copper pipe at that
9 auction. We didn't try to sell the copper pipe at that
10 auction and I explained to you before the reason.

11 Q. What about the copper pipes that were hooked
12 to the refrigeration units that you did sell, did you
13 give people instructions on --

14 A. We didn't sell any. We didn't sell any copper
15 pipes hooked to any refrigeration.

16 Q. Nothing was hooked to any Freon lines at that
17 store that was sold?

18 A. I explained that they bought the -- whatever
19 they bought, they didn't -- they can cut the pipe right
20 at the -- after they do the Freon. After they get the
21 Freon out they can cut the pipe but they can't go after
22 all the pipe in the building. Pipe doesn't go with the
23 meat cases or the reach-ins or any of it.

24 Q. Do you have any personal knowledge about
25 anyone saying, it was okay not to worry about the

1 cleanup?

2 A. No, I don't have any personal knowledge of
3 that.

4 Q. You know you testified in your Affidavit that
5 you had personal knowledge of that fact. You said
6 someone said you didn't have to do cleanup?

7 A. Well --

8 MR. THUMA: I object, Your Honor. Let me
9 get my objection on the record. We're talking about two
10 different things here. He does have personal knowledge.
11 It just happens to be inadmissible here.

12 When he signed the Affidavit, it was based
13 upon what people told him. It was perfectly legitimate.

14 This afternoon we have been very careful about
15 hearsay. I think that the witness is trying to be
16 careful about hearsay. That's why he's testified as he
17 did.

18 I think it is unfair to try to impeach his
19 testimony because he does think he knows what happened,
20 he just can't tell the Court because it's hearsay.

21 MR. WITT: All right.

22 THE COURT: Do you have a response, Mr.
23 Witt?

24 MR. WITT: Is that an objection?

25 MR. THUMA: Yes, I objected to your

1 argumentative statement.

2 THE COURT: Whoops! Whoops! Whoops!

3 There's an argumentative statement.

4 MR. THUMA: Well, there's a first time for
5 everything, Your Honor.

6 THE COURT: Yes. No, I mean, the
7 objection as I took it was to explain to me the
8 distinction that he was making. And I guess what I would
9 like is a response from you, Mr. Witt.

10 MR. WITT: Your Honor, let me just
11 withdraw the question. Let me move on to the next. I'm
12 trying to move this thing along; sorry about that.

13 THE COURT: That's okay.

14 Q. (By Mr. Witt) Mr. Parker, can you turn to
15 Exhibit 27?

16 A. What's that?

17 Q. Can you turn to Exhibit 27. You see Paragraph
18 Number 2?

19 A. Yes, sir.

20 Q. It states, "The facts stated in this Affidavit
21 are known to me to be true of my own knowledge or from my
22 business records"; do you see that?

23 A. Yes, sir.

24 Q. We talked about that in your deposition,
25 right?

1 A. I don't remember.

2 Q. Well, you really didn't have personal
3 knowledge or your own knowledge of a lot of things you
4 say in your Affidavit; is that right?

5 A. That's entirely possible, but all I had was
6 reports from -- not all, but some. I had reports from my
7 employees that I assumed were the truth. I still assume
8 they're the truth.

9 Q. Was there any cleanup while you were --
10 conducted while you were there?

11 A. No, there wasn't -- most of the debris is --
12 comes from when they take the gondolas out. That's where
13 all the stuff is; that's where all the debris is. When I
14 left, there wasn't anything, any gondolas being taken out
15 so I didn't see anything.

16 Q. So at the time after -- after you left on
17 Friday at noon, you don't know whether there was any
18 damage done?

19 A. There wasn't any when I left.

20 Q. Do you know whether there was any done after
21 that?

22 A. I don't know anything that happened after that
23 by personal knowledge.

24 MR. WITT: Pass the witness, Your Honor.

25 MR. THUMA: Just a couple questions, Mr.

1 Parker.

2

3

REDIRECT EXAMINATION

4 BY MR. THUMA:

5 Q. Would you have liked to sell the compressors
6 if you thought you had been able to?

7 A. Well, I would like to have handled that
8 auction like I handle all the rest them, but I was just
9 kind of dumbfounded when I found out that we were just
10 kind of hamstrung there. I -- you know, I certainly
11 wanted to get as much money as I could for my client.

12 Q. Do you have any recollection of when you first
13 heard from any source that TGAAR was alleging that there
14 was a lot of damage caused when the auctioned-off
15 equipment was removed?

16 A. Do I have any --

17 Q. Do you remember when you first heard that
18 that's what they were saying?

19 A. I think you told me.

20 Q. Was it a long time after the auction?

21 A. Oh, yes; probably a month or so.

22 THE COURT: I'm sorry; what was your
23 answer?

24 A. I said probably about a month or so after the
25 auction.

1 THE COURT: Thank you.

2 Q. (By Mr. Thuma) What was your reaction when
3 you heard that they were alleging that?

4 A. I didn't know what to think. I just didn't
5 know what to think. I just thought, boy, oh boy, oh boy,
6 I don't know what they're using the building for now, but
7 you know, once there's as grocery store there with all
8 that remote equipment that they have, all these gutters
9 they have got stuff to take out that most people when
10 they change the use of a grocery store building, they
11 have to probably pretty well remodel it because there's
12 just a lot of different things to do.

13 MR. THUMA: Nothing else, Your Honor.

14 MR. WITT: Nothing further, Your Honor.

15 THE COURT: Okay. You may step down, Mr.
16 Parker.

17 THE WITNESS: Thank you, sir.

18 THE COURT: This witness, I assume, can be
19 excused?

20 MR. THUMA: Yes, Your Honor.

21 MR. WITT: Yes, Your Honor.

22 THE COURT: Okay. Okay; thank you, Mr.
23 Parker.

24 Okay. It's almost quarter after 4:00. We've
25 still got 45 minutes. What would you all like to do

1 here?

2 MR. WITT: Your Honor, I think Mr. Parker
3 can catch his airplane. My clients would like to get
4 back tonight. The plane leaves at 7:00. The last plane
5 leaves at 7:00. I guess I don't know what time, how late
6 the Court goes? Do you shut down at 5:00?

7 THE COURT: Sometimes. We are not
8 going -- are we going to be able to get all the testimony
9 in today?

10 MR. WITT: I have Mr. Baily for -- I need
11 to call him probably for about, I am hoping, ten, 15
12 minutes. I have got -- I am not going to go through all
13 the stuff that I did with Mr. Glasscock. There is no
14 reason to replot that ground, just some things that are
15 unique to him and I think Ms. Gonzales is going to
16 testify but I think she has baby-sitting problems at 5:00
17 o'clock. So I was trying to be a little sensitive to
18 that if she needs to leave at 5:00, maybe we can put her
19 out of order, do her first and then do Mr. Baily.

20 But if we are not going to stay a little while
21 after 5:00 for Mr. Baily, then I would rather put him on
22 first so that maybe he wouldn't have to come back to
23 Albuquerque since at least Ms. Gonzales lives here.

24 THE COURT: Yes, I think the latter is
25 probably a pretty good suggestion, it seems to me like.

1 We can make arrangements to stay late if we
2 need to, but I am not clear, you have got maybe, what, 15
3 minutes with Mr. Baily?

4 MR. WITT: I think so, Your Honor.

5 THE COURT: And your cross-examination is?

6 MR. THUMA: Probably about the same amount
7 of time. I think Ms. Gonzales is going to be the
8 shortest witness. I think my direct is going to be more
9 like five or ten minutes.

10 Let me throw this out. What if we do Mr. Baily
11 now and if we don't get to Ms. Gonzales, what do you
12 think about doing her next week and you do it over the
13 phone or something?

14 MR. WITT: I'm up for whatever or I'll
15 come up or something, whatever. I think we may get
16 through if we just get started, unless anybody needs to
17 take a break.

18 THE COURT: Well, Jill, why don't you --
19 let me just ask my folks. How are you doing? Can you
20 stick around till maybe, what, quarter after 5:00; would
21 that be a reasonable time?

22 MR. WITT: I think we have a good shot at
23 it, Your Honor

24 THE COURT: Let's go ahead and do that.
25 If anybody not testifying needs to step out for some

1 reason, you're welcome to.

2 So what we do is Ms. Gonzales first. Is that
3 right? So that --

4 MR. THUMA: Doesn't matter to Ms.
5 Gonzales. We can go ahead and do Mr. Baily, do him in
6 order.

7 THE COURT: Okay. Mr. Baily then.

8 MR. WITT: I thought there was a child
9 pickup issue here.

10 MS. GONZALES: I thought we were going to
11 try to get it all in today.

12 THE COURT: We are.

13 MR. THUMA: 5:15 okay for picking up your
14 kids?

15 THE COURT: Yes. If we need to do you
16 first, so you can pick up the kids, let's just go ahead
17 and do that.

18 MS. GONZALES: It didn't matter. There is
19 a plan B so --

20 THE COURT: Okay. All right. So you're
21 on Plan B, Mr. Baily, you're on the witness stand.

22

23 GARY BAILY

24 was sworn and testified as follows:

25

1 DIRECT EXAMINATION

2 BY MR. WITT:

3 Q. State your name, please.

4 A. Gary Baily.

5 Q. And are you also from Midland, Texas?

6 A. Yes.

7 Q. And can you tell me the relationship between
8 TGAAR Properties, Inc., and TGAAR West Texas, Inc.?

9 A. TGAAR Properties, Inc., is the managing
10 partner of TGAAR West Texas, Inc. They are the employee
11 of all -- the employer all the people that have worked
12 and/or do work at the shopping center from time to time.

13 Q. And did TGAAR Properties, Inc., were they the
14 one that incurred the costs?

15 A. Yes, for the cleanup and for managing the
16 property.

17 Q. And the damage costs?

18 THE COURT: I'm sorry, tell me who was it
19 that incurred all the costs?

20 A. TGAAR Properties employed all the people that
21 did the cleanup cost.

22 THE COURT: Okay; thanks.

23 Q. (By Mr. Witt) They did this as the manager
24 for TGAAR West Texas, Inc.?

25 A. Yes.

1 Q. TGAAR West Texas, Inc., does it have any
2 employees or anything?

3 A. No.

4 Q. It's just managed by TGAAR Properties, Inc.,
5 right?

6 A. Yes.

7 Q. But it holds title to the property?

8 A. Yes.

9 Q. And so why did we file a joint claim for both
10 of them?

11 A. TGAAR Properties itself has incurred the
12 expenses of the cleanup costs as to employees.

13 Q. But TGAAR West Texas physically owns the
14 building, right?

15 A. Yes.

16 Q. Turn to the ad valorem tax statements. That's
17 Exhibit 12, I think. It's 15. Are these ad valorem
18 taxes represented in the chart and the statements
19 attached, are they for the whole shopping center or just
20 for Furr's?

21 A. There are, on the first -- on the second page
22 of the exhibit, there are shown to be four properties.
23 The bottom two are for the shopping center and the third
24 one is for the Furr's store alone.

25 Q. And that's similar on the others, right?

1 A. On the second page, also, the third one is for
2 the Furr's store alone.

3 Q. So the property taxes you incurred on -- shown
4 on Exhibit 15, those aren't for the rest of the shopping
5 center, they're just for Furr's?

6 A. Well, only as to the fourth one in the column,
7 but no, just as to the third one on the column on the
8 second page and the third property on the fourth page.

9 Q. But in the chart on the lead in, does that
10 include any property taxes other than for Furr's?

11 A. No.

12 Q. Now did you hear the discussion about the
13 motion we filed in August and an amended motion that was
14 filed in October?

15 A. Yes.

16 Q. Can you -- let's turn to those. I think they
17 are in the white volume, Exhibits --

18 MR. THUMA: F and G.

19 Q. -- F and G. Did you find them?

20 THE COURT: That's the white one?

21 A. Yes.

22 Q. (By Mr. Witt) Okay. Now the motion that's F,
23 what day is -- back on Page 9, what day is it signed?

24 A. 16th day of August, 2002.

25 Q. And on Page 21 -- I mean, Page 4 Paragraph 21,

1 what does it say about the cost for damages?

2 A. "TGAAR estimates that the cost -- that it will
3 cost be at least \$15,000 to repair the damage to the
4 Midland store."

5 Q. We made that claim -- it says at least, right?

6 A. Yes.

7 Q. We made a claim in this case for, looking at
8 Exhibit 35, for \$106,000 including \$50,000 for flooring;
9 is that right?

10 A. Yes.

11 Q. Tell me -- and you also heard the testimony
12 about the amended motion that was filed at the end of
13 October of 2002 for \$120,000 in damages?

14 A. Yes.

15 Q. You got all that?

16 A. Yes.

17 Q. Can you explain all that to the Court?

18 A. When the original document was filed and we
19 said the cost would be at least \$15,000, we had just
20 started the cleanup work and we really had no idea. When
21 the second -- when the amendment was filed in October, we
22 realized that the floor had been -- how badly the floor
23 was damaged, it would have to be repaired and to take up
24 the floor and to remove the mastic or the adhesive
25 underneath it, we found the mastic had asbestos in it and

1 that was going to be tremendously expensive to remove the
2 tile and the mastic, so we amended the claim in October.

3 Q. The claim in Exhibit 35 that you are making
4 here today, does that -- does it include any asbestos
5 removal, if you know?

6 A. We did have to remove some of the floor for
7 Caplan, but we did not for Goodwill.

8 Q. Did you include in this damage claim any of
9 the cost for removing of the Caplan floor?

10 A. No.

11 Q. Now did you ever have any -- strike that.

12 Did you ever do anything to work out this
13 problem with the store equipment being left in the store
14 with the Chapter 11 Furr's people or the Chapter 7
15 Trustee?

16 A. I didn't have anything to do with the Chapter
17 11, but as far as the Chapter 7 Trustee was concerned, in
18 late February of 2002, I was contacted by the Trustee
19 regarding some invoices that she had received regarding
20 the Furr's store.

21 Q. And tell me about that conversation.

22 A. Well, she called and wanted to know what the
23 invoices were for and I explained to her that the
24 equipment had been left in the store since early
25 September and we couldn't do anything with the store. We

1 were told we couldn't touch the equipment and we didn't
2 know who to contact.

3 And I explained to her that the invoices that
4 we'd been sending were for storage of the equipment. So
5 she understood and during that conversation we talked
6 about removing the equipment. We talked about being
7 compensated for the rent and she assured me that we
8 should be compensated for storing the equipment and --
9 unless the value of the equipment was less than what the
10 storage fees would be.

11 And I told her I didn't care as long as we
12 could get the decision out of them quickly because we
13 wanted the equipment out of the store. She said she
14 would call me back within the next two or three weeks
15 with a decision.

16 Q. Did she say what she would do if the storage
17 fees were more than the value of the equipment?

18 A. Yes, She said they she would abandon or
19 surrender the equipment to us and they would not have to
20 pay the storage fees.

21 Q. Did you just say she said she would get back
22 to you?

23 A. Within two to three weeks, yes, with a
24 decision.

25 Q. Now when's the next time you heard from her?

1 A. I don't believe if I spoke with her again. I
2 tried to call her many times, once in March, middle of
3 March, or maybe the third week in March and beginning
4 first of April. Gary Glasscock would come into my office
5 at least once a week and say, have you talked with the
6 Trustee, we need to get this equipment out of here, we've
7 got somebody interested in moving into the store, but we
8 can't do anything until we have got the equipment out of
9 here and they've got to have the store so they can start
10 working on it by the first of the summer.

11 Q. Was that the case?

12 A. Yes. And so I continued to try to contact the
13 Trustee and I never got a call back; left several
14 messages.

15 Q. Then shortly after that some motion was filed
16 and ended up in -- you hired me -- ended up in an auction
17 order, right?

18 A. Yes, that was in late April or early May when
19 we got notified of the auction.

20 Q. There was some testimony earlier about moving
21 the equipment to one side and how much space it would
22 take up. What was your estimate of how much space it
23 would take up in the store if the equipment was all moved
24 to one side?

25 A. Well, it would probably take up half of the

1 store but that would be totally impractical, because the
2 cost of moving the equipment and disconnecting it would
3 be -- well, it wouldn't make any sense economically to do
4 that.

5 Q. It would be a very substantial cost?

6 A. Oh, it would be tremendous cost.

7 Q. And did TGAAR feel that it could move the
8 equipment on its own?

9 A. No, we weren't supposed to touch the equipment
10 is what we were told by two different attorneys.

11 Q. Has TGAAR ever had a janitorial crew?

12 A. No.

13 Q. Now turn to Exhibit 19, please. You see
14 those?

15 A. Yes.

16 Q. Did you take those photos?

17 A. Yes, I did.

18 Q. Or the originals of those photos?

19 A. Yes.

20 Q. Do they have a date on them?

21 A. Yes, they do.

22 Q. Do you think that date is accurate?

23 A. As far as I know, yes.

24 Q. What does it look like to be the date on
25 there?

1 A. 6/26/02.

2 Q. And is that about when you took them?

3 A. Probably, yes.

4 Q. Now why did you take these photos?

5 A. I was out of town from the end of May about
6 the time the auction started until the middle of June, or
7 maybe until -- I was gone for almost three weeks. When I
8 got back in town, Gary came into my office after I had
9 had a chance for a day or so to open up my mail and said,
10 "You wouldn't believe what happened to the Furr's store,"
11 he said, "they've just totally destroyed it.

12 And I went over there and I was just appalled.
13 There were wires hanging from the ceiling, there was
14 Sheetrock hanging from the ceiling. There were studs.
15 There were holes in the walls. The ceiling was missing
16 in several places. You could see the sky through the
17 ceiling, through the roof in places. And there was
18 equipment and trash everywhere.

19 And the last time I had seen the store was in
20 May, when I had been there with one of the auctioneer's
21 representatives and the place was spotless.

22 Q. These holes in the ceiling, what was taken off
23 to leave the holes?

24 A. I believe it was the vent stacks from some of
25 the equipment out of the bakery. And some of the other

1 equipment that had vent stacks that went all the way up
2 through the ceiling and the roof -- through the ceiling
3 through the roof.

4 Q. Did you hear Mr. Parker say he told people not
5 to do that?

6 A. I heard him testify, yes.

7 Q. Now did you take those photos to depict what,
8 the damage done or just what did you take them for?

9 A. Yes, I just thought, I said, this isn't right.
10 I said my understanding of the Court order was they were
11 supposed to clean the store up, remove everything. And
12 so I went over and just took pictures so there would be
13 some evidence as to how bad the store looked. So I just
14 went over there with whatever was left in my camera and
15 took probably a dozen pictures or so.

16 Q. Now turning to the next exhibit, the floor
17 gouge photos. Why didn't you take those photos at the
18 same time?

19 A. I'm not sure when I took these pictures. It
20 could -- I don't know. I probably was just taking
21 pictures of the trash and the general condition of the
22 store. Maybe I was not aware of how badly damaged the
23 floor had been or Gary hadn't said anything to me at
24 first.

25 Q. You weren't there at the auction?

1 A. No.

2 Q. You didn't witness the floor gouging?

3 A. No.

4 Q. Was the store dark when you took these
5 pictures or was it lit up?

6 A. I don't remember. I would say by the
7 quality -- well, you mean the first pictures, Exhibit 19?

8 Q. Yes.

9 A. Oh, the lights were on. I can see the lights
10 were on in these pictures in some cases.

11 Q. Do you have any knowledge about any
12 compressors being located back in the -- where Mr. Parker
13 described them?

14 A. No.

15 Q. Do you know what was located in the back in
16 that area?

17 A. Back in the back?

18 Q. The back area where it's blocked off.

19 A. There was a lot of stored equipment for Gary's
20 church and for Midland Christian School and a few things
21 for us, some paint, some door frames, just miscellaneous
22 equipment.

23 Q. Could you look over in there and see it?

24 A. At what time?

25 Q. When you saw it, this blocked off equipment?

1 When did you see it?

2 A. Well, I have been to the store several times.
3 First time I saw it was when I met one of the
4 representatives of the auctioneer and that was in the
5 first couple weeks of May. I think I was the first
6 person to meet with one of the auctioneer's
7 representatives. We went through the entire store. He
8 wanted to see what was available. We walked all through
9 the back. We walked upstairs. We walked all over the
10 store.

11 And I explained to him what that equipment and
12 these things were in back. Obviously they didn't belong
13 to Furr's, it was obvious to him, too, and he suggested
14 we block off the back so that there wouldn't be confusion
15 with all the people coming in there.

16 He said, "There will be a lot of people here
17 and we don't want them back here, so let's just" -- he
18 had suggested, let's just block it off. I said fine. I
19 later told Gary that.

20 Q. Was that Mr. Parker?

21 A. No, it was one of his representatives.

22 Q. Do you have any knowledge about what used
23 compressors are worth?

24 THE COURT: Any knowledge of what?

25 Q. (By Mr. Witt) What the used compressors in

1 the store were worth, the ones that were left?

2 A. Oh, no, other than hearsay. I mean, I know
3 old compressors are basically worthless.

4 Q. Were there any compressors located in that
5 area that Mr. Parker said he assumed compressors would be
6 located?

7 A. I didn't see any.

8 Q. Briefly do you believe that the chart of
9 claims that's Exhibit 35, do you believe that the cleanup
10 costs were a reasonable estimate of the cost you all
11 incurred to clean up the place?

12 A. Yes.

13 Q. And do you believe that the delay in getting
14 the equipment out after the auction delayed you in
15 obtaining effective possession of the store?

16 A. Yes.

17 Q. And do you believe that claim on the first
18 page is a good estimate of how you were damaged?

19 A. Yes.

20 Q. Turn to the second page, claim for damage. Do
21 you believe those claims are reasonable estimates of the
22 damage caused?

23 A. I think they are low, if they are anything.

24 Q. Tell me why you think they are low?

25 A. Well, the electrical repair specifically, last

1 summer has we received the bills from D&E Electric for
2 the build out, I think we received the bills in June or
3 July, May, June and July, because they usually came in a
4 month or two after, I was shocked to see that the
5 electrical expense was close to \$100,000 for a build out
6 the size of the Furr's.

7 So I got the electrician in there and asked
8 him why the heck the expenses were so high. I said,
9 "This doesn't make sense." There's absolutely -- because
10 I'm the one who is usually in charge of paying the bills.

11 He explained to me --

12 MR. THUMA: Objection; sounds like we're
13 getting into hearsay.

14 MR. WITT: I agree.

15 Q. (By Mr. Witt) What did you find out?

16 A. The cost was probably twice what it should
17 have been because they had to rewire the entire building
18 as if no electricity was there at all. They had to redo
19 the panel boxes. They had to do -- he explained to me
20 they had to redo the panel boxes. They had to rerun all
21 the electricity in the entire building, because
22 everything there was ruined. They couldn't use any of
23 the electrical wiring that was in there from the grocery
24 store.

25 MR. THUMA: Your Honor, I object; same

1 objection; move to strike.

2 MR. WITT: That's his understanding. I
3 mean, he didn't testify as to what the guy said. I don't
4 believe it was hearsay.

5 THE COURT: Whoops; I missed that. You
6 had your hand in front of your face.

7 MR. WITT: I said I don't believe it's
8 hearsay. He didn't testify as to what the electrician
9 said.

10 MR. THUMA: Well, then, I guess the
11 objection is lack of foundation.

12 THE COURT: Yes, I mean, unless you can
13 establish he has some other source of knowledge other
14 than what the electrician told him.

15 Q. (By Mr. Witt) Did you have to replace a lot
16 of panel boxes?

17 A. Yes, we had to replace the electric wiring and
18 the panel boxes for this build out which compared to a
19 normal build out, I would say the expenses were at least
20 twice what we have ever incurred for something of this
21 size.

22 Q. Would these panel boxes have been used for
23 whatever tenant was there?

24 A. Of course.

25 Q. Do you believe they were damaged by the way

1 the equipment was removed from the store?

2 A. They were rendered useless; we couldn't use
3 them.

4 MR. WITT: Pass the witness.

5 THE COURT: Okay. Mr. Thuma.

6

7

CROSS-EXAMINATION

8 BY MR. THUMA:

9 Q. Mr. Baily, the ad valorem taxes that you
10 started out your testimony discussing, is that part of a
11 rent claim of yours or a storage claim?

12 A. Well, neither.

13 Q. Do you want us to pay for that ad valorem tax?

14 A. All the tenants in the shopping center
15 reimburse us for our -- for their proportionate share of
16 the taxes.

17 Q. Do you know under what basis you're asking the
18 Trustee to pay those ad valorem taxes?

19 A. I don't understand your question; I'm lost as
20 to --

21 Q. Why do you think we ought to pay them; under
22 what theory?

23 A. Because all our tenants in all of our
24 locations, all our retail locations, pay their
25 proportionate share of the taxes. That's part of their

1 lease. If they are renting or if they are retail store
2 or whatever the kind of location of whatever business
3 they have, that's part of the rental cost. It is always
4 included in the lease.

5 Q. So it would be in the nature of a rent claim
6 it sounds like; is that right?

7 A. It's reimbursement for expenses.

8 Q. Under a lease?

9 A. Under a lease. Yes, it's a different
10 category, it's not part of rent but it is reimbursement
11 of expenses.

12 Q. Were you involved in obtaining bids for
13 repairing any alleged damage?

14 A. No.

15 Q. Do you have any personal knowledge about what
16 the contractors did or didn't do to repair any alleged
17 damage?

18 A. Other than pay the bills and, as I testified a
19 minute ago, got into a discussion with the electrical
20 contractor as to why the expenses were so high and then
21 he explained to me why.

22 Q. Other than that, do you have any personal
23 knowledge?

24 A. No.

25 Q. Did you attend the auction?

1 A. No.

2 Q. Did you go into the store after the auction or
3 when is the first time you went to the store after the
4 action many?

5 A. Latter half of June.

6 Q. Do you have any personal knowledge about what
7 happened from May 28 to the latter -- the second half of
8 June at that location?

9 A. No, I do not.

10 Q. Do you know if after the second half of June,
11 any people were coming into that location to remove
12 equipment?

13 A. Not that I'm aware of.

14 Q. Is that something that you would know about?

15 A. I would have been told by either Gary
16 Glasscock or Frank.

17 Q. But you wouldn't know about it personally?

18 A. No.

19 Q. Is it your recollection that you talked to the
20 Trustee once or twice?

21 A. I believe I only talked to her once. It is
22 possible I talked to her the end of April but I don't
23 recall if I had that conversation because it was at the
24 same time we got the order for the auction but I think I
25 just talked to her once and that would have been the end

1 of February.

2 Q. Did you tell her at that time that you had a
3 prospective tenant and you needed to get the equipment
4 moved out right away?

5 A. No, I was just happy that we had gotten in
6 contact with somebody that was going to do something with
7 the equipment.

8 Q. Did you ever offer to her to buy the
9 equipment?

10 A. No.

11 Q. Did you ever discuss with the Trustee that
12 maybe we can work something out to keep the equipment in
13 place for a while, while you look for a grocery store
14 tenant?

15 A. I don't recall that conversation because
16 anybody that looked at the equipment up to that date
17 didn't want it.

18 Q. How many people had you had to go look at it?

19 A. None, to my personal knowledge.

20 Q. Did you ever -- I guess in this one time you
21 talked to her, at least to your recollection, did you
22 ever demand that she get it out right away?

23 A. No, because she -- it was a very friendly
24 conversation and the impression I got was that she was
25 going to get back to me within the next two or three

1 weeks with a decision, so I didn't feel like it was
2 necessary.

3 Q. After that phone call when you apparently
4 talked to Mr. Glasscock and all of a sudden felt a
5 pressure to move this equipment out because you might
6 have a prospective tenant, did you ever communicate that
7 to the Trustee?

8 A. That didn't start until April and I tried to
9 contact the Trustee at least once a week and never got a
10 call back.

11 Q. Did you ever file anything with the Bankruptcy
12 Court to get some relief because of the delay?

13 A. No.

14 Q. How many times do you think you left messages
15 with the Trustee's office?

16 A. Three or four.

17 Q. Did you have any personal involvement in the
18 cleanup of the location?

19 A. Yes.

20 Q. What involvement did you have?

21 A. In August and September I went by there on
22 occasion to see how the cleanup was going.

23 Q. Were you involved in the oversight of that
24 process?

25 A. In a secondary fashion. Gary Glasscock was in

1 charge of it and I would just go check on it
2 occasionally.

3 Q. I take it that wasn't your primary
4 responsibility at the time, you had other responsibilities
5 with this property?

6 A. That's correct.

7 Q. What was your primary responsibility with this
8 property during this period of time?

9 A. I usually was in charge of looking at leases
10 as to any potential problems with leases, any potential
11 problems with tenants, all the accounting, paying bills,
12 verifying bills. But this property is just one of ten
13 that we own, so it didn't take up a lot of my time unless
14 there is something major going on at the center.

15 Q. You talked a little bit about these
16 photographs you took on June 26. How many times had you
17 been in the building after the auction when you took
18 those photographs?

19 A. I had been in it one other time.

20 Q. After June 26 before, let's say, when this
21 motion was filed on August 20, how many times did you
22 visit the building?

23 A. Probably twice.

24 Q. I take it from your testimony that Mr.
25 Glasscock had also been in and out of the building, was

1 pretty familiar with its condition?

2 A. Yes.

3 Q. And he's a general contractor?

4 A. Yes.

5 Q. How is it then that the two of you, after
6 taking these photos, came up with an estimated \$15,000
7 damage claim that would jump 75 days later to \$120,000?

8 A. I believe the claim was at least \$15,000 and
9 at the time we made the claim, we had no idea what the
10 cost was going to be.

11 Q. Why didn't you?

12 A. Because we had just gotten started on the
13 cleanup.

14 Q. You did know about the gouge in the floor,
15 right?

16 A. I don't remember when I became aware of it; I
17 don't remember the date.

18 Q. You heard the testimony of Mr. Glasscock that
19 he was there almost the minute it happened?

20 A. Yes, I did hear that testimony.

21 Q. So he was aware of it?

22 A. Yes.

23 Q. And you heard his testimony that he looked at
24 the walls, saw holes in the walls and sounds like by the
25 20th of August he knew it all; isn't that right?

1 A. No, I don't believe he had any idea as to
2 damage to the plumbing or to the electrical work at that
3 time.

4 Q. Well, in these photographs, he was describing
5 what he thought was the damage to the electrical work?

6 A. Well, that was -- I don't think he knew at the
7 time. Also, at the time I don't think he knew what the
8 cost of repair to the floor was going to be. I don't
9 think we knew any of that. We had no idea.

10 I think the numbers we came up with -- we
11 didn't really start cleaning in there until the very end
12 of July and we probably came up with these numbers the
13 first week in August.

14 Q. You didn't really get any estimates between
15 August 20 and October 30 when you filed your amended
16 motion, did you?

17 A. I did not, no.

18 Q. Are you aware that anybody did?

19 A. I don't know. I assume Gary Glasscock did.

20 Q. There were compressors at the store, weren't
21 there?

22 A. I don't know.

23 Q. Well, you know it was run as a grocery store?

24 A. Yes.

25 Q. And you know that refrigeration equipment

1 needs to have compressors?

2 A. Yes.

3 Q. You know they are not on the grocery store
4 floor because they are too noisy?

5 A. Yes.

6 Q. So at some point in time weren't there remote
7 compressors?

8 A. There were at some point in time, yes.

9 Q. Do you have any idea where they were?

10 A. No, I never saw any of the compressors.

11 Q. Why didn't you, when you calculated your
12 claim, subtract the \$1500 you got from the cleanup costs
13 that you're claiming?

14 A. I'm sorry; I didn't understand the question.
15 Why didn't we subtract the \$1500 of cleanup cost?

16 Q. Were you aware that you received cash of \$1500
17 for selling some coffin cases?

18 A. I don't remember that, no.

19 Q. Do you remember Mr. Glasscock testifying to
20 that effect this morning?

21 A. Yes.

22 Q. Do you know why, when you calculated damage
23 for cleanup, you didn't deduct that?

24 A. No.

25 Q. Do you think -- let's say, you sold equipment

1 for \$100,000, do you think it would be legitimate to
2 claim cleanup costs and not do any offset for what you
3 got?

4 A. Well, on the other hand, there are a lot of
5 costs we incurred that we didn't include on this, also.

6 Q. But as a general matter, you think it would be
7 fair to offset your gains against your cleanup losses;
8 wouldn't you agree?

9 A. Well, at the time the equipment and things had
10 been turned over to us and they had been abandoned and so
11 I don't know if we had an obligation to offset any
12 expenses.

13 Q. Okay. So you think it would be fair, even if
14 you had a windfall, to charge the estate for the costs
15 and you get to keep the windfall?

16 A. Well, depends on the windfall, what's -- I
17 don't think \$1500 is considered a windfall.

18 Q. Regardless of the amount, \$1, \$100,000, do you
19 think it's fair to offset or do you think it's fair for
20 you to keep it and charge the estate for the balance or
21 for the whole thing?

22 A. Once the equipment -- once the store was
23 turned over to us and abandoned to us, anything in that,
24 if it's worth \$50 or \$50,000, in my opinion belongs to
25 us.

1 Q. All right. When did you come up with this
2 theory about delay damages, \$61,500?

3 A. I don't know the date when we came up with it.

4 Q. Within the last week or so, was it?

5 A. In the last month.

6 Q. Have you ever attempted to move equipment out
7 like the equipment that was unsold in this case, try to
8 get it out quickly because you have a new tenant? Have
9 you ever done that before or anything similar to that?

10 A. No, I have not.

11 Q. Any idea how long it might take you if you
12 really needed to step on it and get it out?

13 A. Just to get the equipment out?

14 Q. Yes.

15 A. I would just be speculating; I have no idea; I
16 have never tried. Couple weeks, probably.

17 Q. It's true, isn't it, that all you needed to do
18 with this Dollar Tree was to give them what's called a
19 vanilla box; is that right?

20 A. A white box.

21 Q. A white box.

22 A. Yes.

23 Q. That's all you needed. Isn't it true that you
24 had a much more extensive buildout for Goodwill?

25 A. Yes.

1 Q. Yet you were able to do the Goodwill buildout
2 in 90 days?

3 A. I don't remember how long it took. I think it
4 was more like 120 days, but I don't know. I wasn't in
5 charge of the buildout; I don't know specific times.

6 Q. Isn't it a little hard to believe that if you
7 really wanted to, you couldn't move the equipment out of
8 the portion of the store you were going to lease to
9 Dollar Tree and give them the white box within the time
10 needed for their schedule, if you really wanted to?

11 A. Their schedule that they wanted, they had to
12 have the store turned over to them no later than June 1st
13 was their date because they needed 60 to 90 days to get
14 the store ready and they wanted to be open in September.
15 By the time we got the store turned over to us, we were
16 in no hurry because Dollar Tree was gone. We had lost
17 them as a potential tenant. We had to have the equipment
18 out of there and the white box -- starting to make it a
19 white box, which means repair the walls, repair the
20 ceiling, repair the floors, make sure the air
21 conditioning equipment works. That probably would take a
22 good 30 days after we got the equipment out.

23 Q. So now it sounds like there is no way the
24 Trustee could have gotten the stuff out in time?

25 A. Sure, if they would have turned it over to us

1 the end of April or sometime in April, we could have
2 gotten it out. It would have cost a lot to get it out
3 that quick, but we would have gotten it out of there by
4 the first part of May and we would have gotten that store
5 cleaned up.

6 Q. So if the Trustee had just given it to you --

7 A. Or abandoned it like she alluded she probably
8 would.

9 Q. Didn't it make sense to try to work something
10 out as far as a purchase price that was a little bit
11 higher than the 5800 bucks you offered that made economic
12 sense for you and the Trustee --

13 A. In the first place --

14 Q. -- for the equipment rather than just taking
15 it?

16 A. What was the purchase price we offered; what
17 did you say?

18 Q. \$5800.

19 A. We didn't -- I didn't want to have to remove
20 it until we had to.

21 Q. Didn't you -- sounds to me like what you're
22 saying is if you had done that, you would have had a new
23 tenant, a national tenant, would have been a pretty good
24 result.

25 A. I never had a chance to talk to the Trustee.

1 I tried to contact her almost weekly from when we knew
2 the Dollar Tree was going to move in there or potentially
3 might move in there. I never got a call back. I didn't
4 know how to contact her.

5 I called weekly. I kept being told she would
6 call me back, she'd get the message; I never heard from
7 her. So I never had the chance to make that offer to
8 her. The only contact I had was when we were notified
9 that there was going to be an auction of the equipment.

10 Q. Probably wasn't too late even then, was it?

11 A. Well, we were under, I think it was a court
12 order. We were told we were going to auction the
13 equipment but first of all, it was too late because the
14 auction was going to be the end of May.

15 Q. Isn't it true you filed a response to the
16 motion to sell at auction and your response said you
17 don't mind the auction, you support the auction, you just
18 want to get all the money?

19 A. I don't remember what it said without -- that
20 would be total speculation.

21 MR. THUMA: I'll pass the witness.

22

23 REDIRECT EXAMINATION

24 BY MR. WITT:

25 Q. Mr. Baily, were you glad when you heard about

1 the auction coming up?

2 A. Yes.

3 Q. In fact, weren't you ecstatic saying --

4 A. Yes, we wanted to get the equipment out of
5 there as soon as possible.

6 Q. And you thought you'd get your store soon
7 after that?

8 A. We thought we'd have it the first part of
9 June.

10 Q. And you thought that all this stuff would be,
11 all that equipment would be removed?

12 A. That's what I was told by one of the
13 auctioneer's representatives, they'd be out of there by
14 the first week in June and I thought the store would be
15 cleaned out completely, everything.

16 MR. WITT: No further questions, Your
17 Honor.

18 MR. THUMA: Your Honor, just one follow-up
19 question.

20

21 RE CROSS-EXAMINATION

22 BY MR. THUMA:

23 Q. First week of June would have been too late to
24 save that Dollar Tree tenant, wouldn't it?

25 A. At the time we didn't know that, because we

1 thought outside chance if we could have gotten in there
2 middle of June. Gary kept hoping we could get in there
3 and just really bust out, get it to them, maybe they
4 would accept it a month late. We didn't realize that --
5 I mean, they said they had to have it by June 1. That
6 was our goal. We thought, well, maybe if we get it the
7 first week of June, we can get this thing built out and
8 turned over to them in July.

9 But as it drug out, I think it was the -- I
10 think by the first week in July or the second week in
11 July, we found out they had found another location, they
12 had given up on us.

13 Q. Did you have any idea -- you didn't really
14 know if they would have taken it a month late, did you?

15 A. If they what?

16 Q. If they would have taken it a month late?
17 That was just your hope or speculation?

18 A. We had no other indication otherwise that they
19 were even looking anywhere else. We didn't know that.
20 We were just hopeful that they would because they said
21 they wanted to be in there by June 1, but they hadn't
22 said if not, they were not going to consider the store
23 but that -- that was their deadline. We were just
24 hopeful they might take it July 1st.

25 MR. THUMA: No further questions.

1 FURTHER REDIRECT EXAMINATION

2 BY MR. WITT:

3 Q. How much space would they have taken?

4 A. I believe 20,000 square feet.

5 Q. And what would be the rent rate? Would it be
6 the same as Caplan and --

7 A. It was higher than Goodwill, slightly higher
8 than Goodwill. They were, I believe, going to sign a
9 longer term lease, also.

10 MR. WITT: No further questions.

11 THE COURT: Okay. You may step down, sir.

12 MR. THUMA: I'll call Yvette Gonzales.

13 THE COURT: Okay. Ms. Gonzales, please
14 step forward and be sworn.

15

16 YVETTE GONZALES

17 was sworn and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. THUMA:

21 Q. State your full name.

22 A. Yvette Gonzales.

23 Q. Describe your first contact with TGAAR.

24 A. I believe that I called Mr. Baily in January
25 of '02.

1 Q. What is the basis for that recollection?

2 A. Well, I had been processing the mail and I got
3 an invoice and I called to ask what it was about.

4 Q. Can you point the Court to the invoice?

5 A. It is Trustee Exhibit A.

6 Q. Any idea about when you first saw this?

7 A. Well, the invoice date says December 19, 2001,
8 which is the day of conversion and I was away for the
9 holidays. So when I came back at the beginning of the
10 new year, I would have gone -- been going through the
11 mail and seeing what this was and trying to figure out
12 what it was about. Then there's the telephone number for
13 TGAAR West Texas, Inc., on it.

14 Q. You heard Mr. Baily's testimony that he
15 recalls one conversation with you. How does that jibe
16 with your recollection?

17 A. I remember two conversations.

18 Q. His recollection is the conversation he was
19 remembering is late February. Do you remember a
20 conversation then?

21 A. I do.

22 Q. Tell the Court what you can remember about the
23 first conversation and then about the second?

24 A. The first conversation was, let's see, a
25 general information call, you know, to try to figure out

1 why I was getting a monthly invoice for over \$19,000 and
2 it was a very pleasant telephone call. Mr. Baily was
3 very nice. He just said Furr's has some equipment in
4 the store and I said I would try to find out more about
5 it. I was still very new to the case. I was trying to
6 figure out -- I was getting a lot of calls from a lot of
7 people. I didn't really know if Furr's owned it or if it
8 was part of a lease store and had gone to somebody else.
9 So I said I would try to get back with him when I had
10 more information.

11 Q. Was any offer made to you at that time?

12 A. I don't think so.

13 Q. Was there any discussion other than just there
14 is some equipment here and okay I'll get back to you?

15 A. That's the gist of the conversation.

16 Q. What did you do after that?

17 A. I believe -- well, I think I then talked to
18 you about the equipment and we determined that it was
19 owned equipment.

20 So I called Mr. Baily back and that was the
21 February 25 telephone call. And I remember it pretty
22 vividly because it was on my cell phone, I was sitting in
23 the parking lot of my daughter's school waiting for her
24 to get out. And we talked about what would be a good
25 situation for both Mr. Baily and his group and the estate

1 and he said that they had been exploring finding a
2 grocery store tenant and that perhaps we could work out a
3 deal.

4 Q. What else can you remember about anything you
5 said or anything he said during that February 25 call?

6 A. Well, my feeling, what I have been trying to
7 remember was that the estate wasn't going to get any
8 money. That TGAAR thought that they had -- that there
9 had been rent, that it had been in the store since the
10 Chapter 11 and that they had a lot of money between lost
11 rent and storage and that, you know, if we did work out a
12 deal, it would be where they could get the equipment and
13 the estate would get nothing.

14 Q. Were you ever offered any money for the
15 equipment?

16 A. No.

17 Q. What happened after that call?

18 A. I know that Mr. Baily called the office
19 several more times. There's a message slip for March 19.
20 Another message, voicemail that I picked up early --
21 well, around the 10th of April, because then I have a
22 notation that's 4/11, a telephone call to you saying that
23 we need to auction the equipment.

24 Q. So just to get this all in front of the court,
25 go to Exhibit C, kind of try to true this exhibit up to

1 what you just testified about.

2 A. Exhibit C is something that I created off of
3 phone message slips in preparing for my Affidavit. And
4 so it has the 12/19 invoice that I got. It has -- it
5 does not have the telephone call in January. That was
6 the call that I initiated and then -- or the call in
7 February.

8 And I looked through my cell phone records to
9 find that call. Then there's the 19th call that Mr.
10 Baily called the office, left a message and as a -- the
11 person who took the message made the notation that Mr.
12 Baily needs a decision on the equipment. Then the
13 voicemail from April 10 is not here because I just found
14 that the other day in going through a stack of stuff.

15 The 18th is another call from Mr. Baily which
16 I did not return because I knew at that point we were
17 going to file a motion to sell and I believe the motion
18 to sell was filed on April 24 and Mr. Baily called again
19 on the 26th. I just assumed that he hadn't received the
20 motion at that point.

21 Q. Did Mr. Baily during the two times you talked
22 to him, ever demand that you remove the equipment?

23 A. No.

24 Q. Did he ever tell you that TGAAR had a tenant,
25 they needed to get it out right away?

1 A. No.

2 Q. Did he demand that you do anything?

3 A. No, he was very nice.

4 Q. Did you talk about the storage charges?

5 A. He said that there were storage charges. I
6 never saw a storage charge bill. The bill that I saw was
7 the bill for rent in the \$19,000 number.

8 Q. Were you aware that TGAAR had offered the
9 Chapter 11 estate 5800 bucks to buy the equipment?

10 A. No.

11 Q. I guess in your mind you never had any offer
12 on the table at all?

13 A. That's right.

14 Q. Did you ever offer -- make an offer to him to
15 sell it for X dollars?

16 A. No, I thought that they were going out to try
17 to find a tenant because it made sense to them to move
18 another grocery store tenant in and at that point that we
19 could figure out some amount that everybody would be
20 happy with.

21 Q. Have you ever paid storage charges to any
22 other landlord?

23 A. No.

24 Q. With other landlords what did you negotiate as
25 far as keeping equipment on-site?

1 A. Other landlords have allowed me to keep the
2 equipment on premises for the very reason that they might
3 find a grocery store tenant and then they can work out a
4 deal. If it gets to the point where they find a tenant
5 and want the equipment out, then I got a call or you got
6 a call.

7 MR. THUMA: No further questions.

8

9

CROSS-EXAMINATION

10 BY MR. WITT:

11 Q. Ms. Gonzales, did you testify that you never
12 received a bill for the \$15,000 for storage?

13 A. That I never saw, personally, a bill for
14 \$15,000.

15 Q. The only bill you saw was the one marked as
16 Exhibit A?

17 A. That's correct.

18 Q. Have you reread your Affidavit that you filed
19 in this case?

20 A. I did, and there was a misunderstanding
21 between my attorney and myself. He had the \$15,000 bills
22 and the \$10,000 bills. And my procedure in the office
23 because I was getting a crate of mail every day and I
24 knew that some of the creditors were not on the mailing
25 list, so as bills came in I would put them -- check the

1 name against the separate mailing list and either I or my
2 secretary -- I turned it over to my secretary after a
3 certain amount of time -- would make sure the creditor
4 was on one of the lists and if they were, then that
5 invoice or that bill would go, you know, to be recycled
6 or something, but I never saw it.

7 Q. But you're aware of the fact you filed an
8 Affidavit in this case saying that you received the
9 \$15,000 storage bill?

10 A. And that is a mistake.

11 Q. The mistake occurred because it was actually
12 your attorneys that had that bill?

13 A. That's true.

14 Q. Okay. Well, did they get the other bills,
15 too? That was just for January 2002 storage bill.

16 A. Mr. Thuma has the other storage bills through
17 discovery which apparently you-all produced to him, but I
18 did not see them until a week ago.

19 Q. Your Affidavit was just incorrect?

20 A. And I was thinking that I -- I knew I had seen
21 an invoice and it turns out that it's this invoice for
22 rent and not for storage.

23 Q. Well, let me tell you what you also said. "It
24 is clear to me from my conversations with Mr. Baily that
25 he understands that the \$15,000 per month for storage was

1 much more than the equipment was worth," then you said
2 and was excessive?

3 A. And part of my --

4 Q. Do you remember making that statement?

5 A. Uh-huh.

6 Q. Not only you got the wrong bill, but you also
7 didn't remember the conversation correctly when you did
8 your Affidavit?

9 A. Well, my impression of the conversation is
10 that we talked about how much was being charged for
11 storage and also what the equipment might be worth and
12 that it was less than what the storage amount was was
13 what I remember Mr. Baily telling me.

14 Q. Your Affidavit doesn't say anything about this
15 other phone conversation you had, does it, the second
16 phone conversation?

17 A. No, I don't believe so.

18 Q. It says, "After our discussion in February, my
19 records indicate that Mr. Baily called me on March 19"?

20 A. That's right.

21 Q. So you said nothing about the February
22 conversation, did you?

23 MR. THUMA: Objection, Your Honor; that's
24 a misstatement of the Affidavit, Paragraph 4.

25 MR. WITT: Well --

1 THE COURT: Whatever it actually says, do
2 you actually want her to read what the Affidavit says?

3 MR. WITT: Yes, sir. If I can get a
4 second copy.

5 THE COURT: Is it in the exhibits here?

6 MR. WITT: No, it's not in the exhibits.

7 THE COURT: Oh, well, that could explain
8 why I'm not finding it here.

9 MR. WITT: Can I simply hand this to the
10 witness, ask her to read Paragraph 8?

11 THE COURT: Sure; that's fine.

12 Q. (By Mr. Witt) Could you read Paragraph 8 for
13 me, please?

14 THE COURT: This is an Affidavit dated
15 when?

16 MR. THUMA: November 27, 2002, Your Honor.

17 THE COURT: Is that correct, Ms. Gonzales?

18 MS. GONZALES: I don't have a file stamp.
19 There's a notation on here that says November 26, 2002.

20 THE COURT: I was just wondering whether
21 you actually signed it, if your signature is on there.

22 A. This one is not signed.

23 THE COURT: All right. Maybe I shouldn't
24 have asked. Read Paragraph 8.

25 Q. (By Mr. Witt) Would you just read Paragraph

1 8.

2 A. "After our discussion in February of 2002 my
3 records indicate that Mr. Baily called me on March 19,
4 2002. Mr. Baily left a message about the invoices, said
5 the store was full of equipment and said that he needed a
6 decision from me about what I wanted to do."

7 Q. All right. Did you ever make any real effort
8 to -- any effort at all to remove the equipment?

9 A. No.

10 Q. Did you ever make any effort to sell the
11 equipment before the auction?

12 A. No.

13 Q. Did you ever try to work out any kind of deal
14 with Mr. Baily?

15 THE COURT: With who? Mr. Who?

16 Q. With Mr. Baily, with TGAAR about that store
17 equipment?

18 THE COURT: Thank you.

19 A. Not discussing specific prices, no.

20 Q. Did you ever make an offer to him at all?

21 A. No, frankly I was waiting for an offer from
22 him.

23 Q. Now when you deal with this store equipment in
24 this store, were your hands -- were you influenced by the
25 banks, the secured lenders in this case?

1 A. No.

2 Q. Did you tell Mr. Baily you would get back to
3 him?

4 A. I did.

5 Q. You did. But you didn't get back to him?

6 A. Not -- I did not call him back after February
7 25.

8 Q. But he was very polite?

9 A. Very polite.

10 Q. Do you think -- did you hear your lawyer
11 criticize him for not making demands; did you hear that?

12 A. Well, I wouldn't characterize it that way.

13 Q. I mean, he made it clear he wanted to be paid
14 the storage, didn't he?

15 A. He said that he generally sent out the monthly
16 invoice and the tenor of the conversation was never, "I
17 want to be paid right now."

18 Q. Did he make it clear he wanted the equipment
19 moved?

20 A. The -- the message that was left with my
21 secretary on March 19 said he needs a decision on the
22 equipment. He never said anything about moving it.

23 Q. Do you recall the auction order?

24 A. Not off the top of my head, no.

25 Q. Do you realize that it says that Mr. Parker

1 was -- says, "shall remove all the equipment and leave
2 the store in a broom clean condition"?

3 A. Well, that's what I understand.

4 Q. You have never seen it? Why don't you turn to
5 Exhibit 13, Page 3, Paragraph Number 1 or -- Paragraph --
6 yes, Number 1. And do you see down four lines from the
7 bottom starting, "As part of the auction process"?

8 A. Yes, sir.

9 Q. Is this the first time you have seen this
10 order?

11 A. Probably not.

12 Q. Is this the first time you realized that it
13 says that Mr. Parker shall remove all the store equipment
14 from each of the former stores and will leave them in a
15 broom clean condition?

16 A. I -- what is your question?

17 Q. Is this the first time you realized this order
18 says that?

19 A. This is the first time I have read that
20 sentence that closely.

21 Q. Did you ever tell Mr. Parker that he had to
22 remove all the store equipment?

23 A. I have not talked directly with Mr. Parker.
24 He deals with my attorney.

25 Q. Do you know about the contract with the

1 auctioneer? Did you enter into a contract for this store
2 with the auctioneer?

3 A. I cannot recall a contract specifically for
4 this store.

5 Q. If Mr. Parker testified that it was his
6 standard form contract, do you know of anything to
7 dispute that?

8 A. No.

9 Q. Did you believe that the owner was agreeing in
10 that contract to pay all moving and storage expenses when
11 necessary?

12 A. I heard that testimony today.

13 Q. Do you think that he should have removed the
14 equipment?

15 A. Yes.

16 Q. Do you think he should have done it on a
17 timely basis?

18 A. Yes.

19 Q. Do you think it was proper for Mr. Parker
20 to -- what would be a timely basis?

21 A. Generally my auctioneers have the equipment
22 out within a couple weeks.

23 Q. Were you aware after the auction that he did
24 not have it out in a couple weeks?

25 A. No.

1 Q. Did you get a copy of my letter, which I wrote
2 to your counsel, of course, dated June 17, that's Exhibit
3 33?

4 A. I don't believe so.

5 Q. Did you get a copy of my letter dated June 26,
6 that's Exhibit 34?

7 A. I don't believe so.

8 Q. Okay. And you're an attorney, right?

9 A. Yes.

10 Q. You know it would be improper for me to write
11 to you directly; is that correct?

12 A. That's true.

13 Q. So I would have to write to your attorney,
14 right?

15 A. Yes.

16 Q. And did you authorize him to send out the July
17 3 letter?

18 A. Which is which exhibit?

19 Q. Exhibit 18.

20 A. I don't recall.

21 Q. Since the auction order says the store
22 equipment shall be removed, I guess by Mr. Parker, do you
23 feel that you have any responsibility for removing that
24 store equipment?

25 A. That's what the order says.

1 Q. Do you feel you have the responsibility? If
2 it ordered Mr. Parker to remove it, do you think you had
3 the responsibility to be sure that he did it or that you
4 did it?

5 A. And, you know, I also heard him testify that
6 said he felt that he didn't have the ability to remove it
7 as he has in other places.

8 Q. Do you believe he didn't have the ability to
9 remove it?

10 MR. THUMA: Objection; irrelevant.

11 MR. WITT: Well, she can answer the first
12 question.

13 THE COURT: She opened up the issue so I
14 think we need to let Mr. Witt examine.

15 Q. (By Mr. Witt) Go ahead; answer that question.

16 A. Can you repeat that for me.

17 MR. WITT: Can the court reporter please
18 read it back? It's too late in the day for me.

19 A. I don't know. I can't guess as to what he was
20 thinking.

21 Q. Well, even if he didn't have the ability to
22 remove it, maybe you didn't have the ability to remove
23 it, do you think my clients should have to pay for the
24 cost of doing that?

25 A. Well, I think a reasonable cost for removing

1 the equipment is within the terms of the order.

2 Q. Do you think the costs they listed back there
3 for the cleanup of the store were unreasonable?

4 A. Well, I wasn't in the store and I haven't -- I
5 don't know what broom clean condition means. I heard Mr.
6 Glass -- Glasscock -- it's late in the day for me, too --
7 testify about scrubbing. I mean, I don't know if I want
8 to buy anything from a grocery store again after seeing
9 the condition underneath those gondolas, but I think that
10 the claim is excessive.

11 Q. For the cleanup costs?

12 A. Yes.

13 Q. Why?

14 A. Because in looking at the pictures, you know,
15 it doesn't seem that, you know, tens of thousands of
16 dollars would be required to remove the equipment and to
17 clean it up, to sweep it out.

18 Q. Do you have any other basis than that?

19 A. No.

20 Q. Do you dispute that they actually incurred
21 those costs in cleaning it up?

22 A. Well, I haven't gone over the invoices in
23 depth to itemize out every single one and I haven't been
24 at the depositions of the electrician or the plumber to
25 know what actually had to be done.

1 Q. Now they were not able to get the thing -- you
2 agree that they were delayed in obtaining possession?

3 A. I don't agree with that.

4 Q. Well, if the equipment -- you say you thought
5 it ought to be out in two weeks?

6 A. You mean after the auction?

7 Q. Yes.

8 A. To a certain extent, but Mr. Parker also
9 testified that in another store somebody had gone in with
10 a group of four or five guys and gotten the whole store
11 cleaned out in less than a week.

12 Q. Could the TGAAR people have removed that
13 equipment before they got Mr. Thuma's letter dated July
14 3rd without violating the automatic stay?

15 MR. THUMA: Objection; calls for a legal
16 conclusion.

17 MR. WITT: She's a lawyer --

18 MR. THUMA: She's not testifying --

19 THE COURT: Wait! Stop! To the extent
20 that she can testify, she should be allowed to testify.
21 I'm sorry, Mr. Witt, I shouldn't have cut you off; it's
22 part of your argument; my apologies.

23 Go ahead and answer, the objection is
24 overruled.

25 A. I did not know that there was some problem

1 with the auction that early or that we could have gone in
2 there and done something about it right away.

3 Q. (By Mr. Witt) That's because you didn't get
4 my letter dated June 17, right? Is that right?

5 A. Well, I suppose, but June 17 is still a few
6 days after the auction.

7 Q. But you should have known by that time, right,
8 that letter was Faxed to your counsel?

9 A. I don't recall talking about or knowing about
10 this at the time.

11 Q. Do you think the store was damaged by the way
12 the equipment was removed?

13 A. I have no idea.

14 MR. WITT: Just a second, Your Honor.

15 Q. Was the auctioneer acting as your agent?

16 MR. THUMA: Objection; calls for a legal
17 conclusion.

18 THE COURT: To the extent the she can
19 answer, the objection is overruled.

20 A. I hired him as auctioneer to liquidate the
21 assets of the store.

22 Q. So whatever that contract that's been admitted
23 into evidence creates, whether it's an agency
24 relationship or not, that's what it creates; do you
25 agree?

1 A. I don't know.

2 Q. Didn't you get some complains back from the
3 Roswell store?

4 A. Pardon?

5 Q. Weren't there complaints made about the way
6 the auction and store removal and cleanup at the Roswell
7 store?

8 A. Not that I have I heard of, and no one's filed
9 a motion.

10 Q. Do you believe it was your obligation to
11 follow the auction order and uphold it?

12 A. I'm sorry; I don't understand your question.

13 Q. You know what the auction order is, don't you?

14 A. The one that you are referring to?

15 Q. Yes.

16 A. Yes.

17 Q. You know what that is?

18 A. Auction order?

19 Q. Yes.

20 A. Yes.

21 Q. Do you believe it was your obligation to
22 uphold it?

23 A. I believe that I am bound by the terms of the
24 orders of this court.

25 Q. Including that one?

1 A. Including that one.

2 MR. WITT: No further questions.

3 MR. THUMA: Your Honor, just a couple.

4

5 REDIRECT EXAMINATION

6 Q. Do you think TGAAR is bound by the orders of
7 this court?

8 A. Absolutely.

9 Q. Including the paragraph in that auction order
10 requiring them to give access to the auctioneer?

11 A. Yes.

12 Q. Do you think TGAAR should have given the
13 auctioneer control of the premises so he could control
14 the post auction checkout?

15 A. I do.

16 Q. Do you have an opinion about whether you
17 should get credit for any valuable equipment left behind
18 that could have been sold for good money?

19 A. I think that would be an appropriate thing to
20 do.

21 Q. One last question. Take a look at this
22 Exhibit D, this message on 3/19 where Mr. Baily says he
23 needs a decision on the equipment. Tell the Court what
24 did you think was really going on with these repeated
25 calls and letters and what they were really wanting you

1 to do.

2 MR. WITT: Objection; speculation.

3 THE COURT: Yes. I mean, how is this
4 relevant?

5 MR. THUMA: Your Honor, I think it's
6 relevant to the delay damage claim and the claim that the
7 Trustee should have done something other than what she
8 did because of what I understand she thought they were
9 trying to pressure her to do.

10 THE COURT: Is there a foundation question
11 here? I mean, are you asking her what was going on in
12 their minds?

13 MR. THUMA: No, what was going on in her
14 mind. What she thought they were attempting to force her
15 to do.

16 THE COURT: So if she testifies what was
17 going on in her mind, it doesn't have anything to do with
18 what was really going on, right?

19 MR. THUMA: It -- no it would explain the
20 actions that she took in response to the course of
21 correspondence and messages which they have clearly put
22 at issue and are criticizing her strongly for.

23 THE COURT: Well, on that basis it sounds
24 admissible to me, Mr. Witt. What's your thought?

25 MR. WITT: I don't know, Your Honor, seems

1 like speculation, but it's late in the day. Sounds like
2 we just got overruled, so go ahead.

3 THE COURT: Yes, okay. You can answer
4 that question.

5 A. I think that TGAAR's goal or objective would
6 have been to pressure me perhaps enough and to have high
7 enough invoices to make me abandon the equipment so that
8 they could have it and find another grocery store tenant
9 and not have to pay for the equipment.

10 MR. THUMA: No further questions.

11

12 RECROSS-EXAMINATION

13 BY MR. WITT:

14 Q. You talk about you thought that the TGAAR
15 people should have let Mr. Parker, the auctioneer, have
16 access. Do you have any knowledge, personal knowledge
17 that they weren't -- Mr. Parker and the auction people
18 were denied access?

19 A. I have no personal knowledge of what went on
20 in Midland.

21 Q. Do you think the TGAAR people should have
22 given up all their keys to their own building?

23 A. I think that auctions and auctioneers have to
24 be very careful about who has access and that protects
25 the landlord, it protects the estate and, you know, I

1 think that there's real issues when there's a lot of keys
2 floating around.

3 Q. But you didn't answer my question. Do you
4 think they should have given up all their keys to their
5 own building?

6 A. I have actually demanded that in the past in
7 other bankruptcy cases for the time being when the
8 auction is being prepped and during the auction and
9 during the pickup time.

10 Q. Do you think they should have; is that your
11 answer?

12 A. Well, then I think it would be a pretty clear
13 issue of who was at fault for any damage.

14 Q. Can you answer the question? Do you think
15 they should have given up their own keys to their own
16 building, yes or no?

17 A. Yes.

18 Q. Did anyone ever ask them to?

19 A. Not that I know of.

20 Q. Do you have any knowledge, personal knowledge
21 other than from what you have heard Mr. Parker testify,
22 that there was anyone from the auction company there
23 after noon on Friday?

24 A. I have no knowledge.

25 Q. Do you have any knowledge that the

1 representatives of the auction company didn't tell --
2 didn't meet with the TGAAR people two weeks before and
3 tell them it was fine to block off their own church stuff
4 back in the back?

5 MR. THUMA: Your Honor, this line of
6 questions has been asked and answered and it's
7 argumentative.

8 MR. WITT: Your Honor, he raised the deal
9 by asking about this access question and that access goes
10 to all this. This is my last question.

11 THE COURT: Okay; you need to answer the
12 question.

13 A. I have no knowledge.

14 MR. WITT: Pass the witness.

15 MR. THUMA: No further questions, Your
16 Honor.

17 THE COURT: Okay, folks. You may step
18 down, ma'am.

19 Do you rest?

20 MR. WITT: I rest, Your Honor; we have no
21 more evidence.

22 MR. THUMA: Your Honor, we rest. We need
23 to submit the deposition transcripts to you.

24 THE COURT: Oh, I'm sorry, I forgot about
25 depositions. Exclusive of submitting depositions and

1 that sort of thing --

2 MR. WITT: Yes, sir.

3 THE COURT: -- the parties are resting.

4 MR. WITT: Yes, sir.

5 THE COURT: Okay. It is 5:30 right now.

6 This is definitely the time when the place really shuts

7 down so I'm not sure about when we get together again.

8 What we do is get you on the phone when we need to

9 make -- in connection with making further arrangements;

10 okay.

11 So what I would suggest we all do is just pack

12 up and -- I mean, I don't mean to be rude, but the longer

13 you're here, the longer it's going to take you to

14 actually get outside the building. So this may be the

15 time to go, especially if you want to catch a 7:00

16 o'clock flight.

17 MR. WITT: We're ready to go, Your Honor.

18 THE COURT: Okay. Thanks. I'll shut up

19 then. Thank you. We're in recess.

20 (The Trial was adjourned at 5:30 p.m.)

21

22 * * * * *

23

24

25

1 I, Sara Edmonds Truske, certify that the
2 foregoing is a correct transcript from the record of
3 proceedings in the above-entitled matter.

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Sara Edmonds Truske
New Mexico CSR #68

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