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9 finalized, and certified form.

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11

12 MR. MITSUNAGA: For the record, prior to  
13 commencement of Mr. Day's deposition, I wanted to state  
14 something for the record. A few minutes ago, I handed to  
15 Mr. Lowney a pleading entitled "Objection to Amended  
16 Subpoena Duces Tecum of John Day." It is now in  
17 Mr. Lowney's possession. I would like to have this made an  
18 exhibit to this deposition proceedings.

9:45A 19 (Exhibit No. 1 marked.)

20 (Off-the-record discussion.)

21

22 EXAMINATION

23 BY MR. LOWNEY:

24 Q. Can you please state your name and your address  
25 for the record, please?

1           A.    John Day, P.O. Box 2930 North Bend, Washington.

2           Q.    And I want to thank you for coming out today.  I'm  
3           sorry if it caused you any inconvenience.

4                    You are under oath.  This is an important  
5           testimony for this lawsuit.  We're being asked to give --  
6           we're making a transcript here, so it's important that we  
7           speak our answers.  Whereas normally we might just nod,  
8           today we should say "yes" or "no."

9                    If you do not hear one of my questions, if you  
10          could please state so, or if you don't understand it, please  
11          say so.

12                   If you notice that a previous answer was  
13          incomplete or inaccurate, you can supplement or correct it.

14                   If you need a break, please state so.

15                   If you don't remember something, you can say you  
16          don't recall, but your recollection is an issue of fact in  
17          this case, and so if you do not recall the subject of the  
18          conversation -- the subject of the question, obviously you  
19          should say, "I don't recall."  But if you recall something,  
20          then to state, "I don't recall," would in fact be not  
21          correct and would be the same as giving false testimony, and  
22          so we want to be careful about that particular comment.

9:47A 23                   If you answer a question, I'll assume you've heard  
24          it and understood it and have given me your best  
25          recollection.

1 Do you understand those instructions?

2 A. Mm-hmm.

3 MR. MITSUNAGA: You need to answer "yes" or  
4 "no."

5 A. Yes.

6 MR. MITSUNAGA: Thank you.

7 Q. (By Mr. Lowney) Have you ever been deposed  
8 before?

9 A. Yes.

10 Q. Okay. In what context was that?

11 A. A lawsuit against another company.

12 Q. Okay. Related to construction issues?

13 A. Yes.

14 Q. How many preparation sessions did you have to  
15 prepare for today's deposition?

16 A. Two.

17 Q. Okay. Did you review any documents for this  
18 deposition?

19 A. Yes.

20 Q. What documents did you review?

21 A. I reviewed my e-mail and my calendar.

22 Q. Anything else?

23 A. No.

24 Q. You so you didn't review any news about this case?  
25 Have you reviewed any news about this case?

9:48A 1 A. No.

2 Q. Okay. Did you review the transcript of the Dino  
3 Rossi deposition?

4 A. No.

5 Q. Okay. And did you decide what documents to  
6 review, or did your lawyer give you certain documents to  
7 review?

8 A. I reviewed the documents that were requested in  
9 the subpoena.

10 Q. Okay. Did you talk with anyone beforehand about  
11 your testimony today, other than your lawyers?

12 A. No.

13 Q. Did you discuss your deposition with anyone in  
14 BIAW or MBA prior to coming here today?

15 A. No.

16 Q. And you were previously served with a Subpoena  
17 Duces Tecum asking you to bring certain documents. Did you  
18 bring any documents here today?

9:49A 19 A. No.

20 MR. MITSUNAGA: I'd like to object in terms of  
21 the -- to get a clarification. What subpoena you're talking  
22 about?

23 Q. (By Mr. Lowney) Did you receive a subpoena?

24 A. A couple of weeks ago.

25 Q. Okay. Do you have it with you now?

1 A. No.

2 Q. Okay. And that subpoena asked you to bring  
3 certain documents. Did you bring any documents with you  
4 today?

5 A. I did not find any documents that were relevant,  
6 except for --

7 MR. MITSUNAGA: I have two documents that I  
8 have brought on behalf of Mr. Day.

9 MR. LOWNEY: Okay.

10 MR. MITSUNAGA: And I'll go ahead and hand  
11 them to Mr. Day.

12 And you can hand them to Mr. Lowney. These are  
13 calendar entries.

14 MR. LOWNEY: Okay.

15 A. I went through my e-mail and went through my  
16 calendar, and these are the two calendar entries that I  
17 thought were relevant.

18 MR. LOWNEY: Okay. Thank you very much. If I  
19 could just -- these are copies. We can just make them  
20 exhibits?

9:50A 21 MR. MITSUNAGA: Yes.

22 MR. LOWNEY: That's fine. So these will be  
23 marked as Exhibit No. 2.

24 (Exhibit No. 2 marked.)

25 Q. (By Mr. Lowney) What did you do to search for

1 responsive documents?

2 A. I searched through my e-mail and I searched  
3 through my calendar.

4 Q. And how long did you -- Do you keep your deleted  
5 e-mail?

6 A. I delete my e-mail about every six months because  
7 the "In" box gets too full and it clogs up, so I deleted  
8 everything that I did.

9 Q. So the documents from 2007 probably wouldn't be  
10 something you would keep unless they were particularly  
11 important; would that be correct?

9:51A 12 A. I systematically delete stuff about every six  
13 months when my e-mail gets too full, so I don't know what  
14 the date cut off is.

15 Q. Can you briefly describe your employment history?  
16 You can be very brief.

17 A. I started my company in 1987. Prior to that, I  
18 worked in commercial construction for a couple of other  
19 companies.

20 Q. And how many people work for you?

21 A. Today, six.

22 Q. When did you first get involved with the Building  
23 Industry Association of Washington or one of its affiliates?

24 A. I think I was asked to join the Master Builders  
25 Association in 1990.

9:52A 1 Q. Were you asked personally or --

2 A. I was asked by another member to join.

3 Q. And what has been your involvement in the Master

4 Builders Association?

5 A. I was -- I've been a board member of the Master

6 Builders Association for a number of years. I'm sorry, I

7 can't tell you --

8 Q. That's all right.

9 A. Something in the neighbor of six.

10 Q. Okay.

11 A. And then I became a chair officer, a second vice

12 president, a couple of years ago, and now I'm about to

13 become the president.

14 Q. Congratulations. And so when does that -- when

15 does your term as president begin?

16 A. In December.

17 Q. Okay. And what about involvement with the BIAW?

18 What is your involvement with the statewide organization?

9:54A 19 A. When I became a chair officer, I felt that it was

20 appropriate to be a BIAW board member. Each local has a

21 certain number of seats on that board, so I've been on that

22 board for maybe two years, and I've gone to three board

23 meetings.

24 Q. Do you remember which board meetings you went to?

25 A. One last week and one last winter in Olympia and

1 one in June of '07 - I think it was June '07 - in up in  
2 Semiahmoo.

3 Q. And you have also been the finance chair; is that  
4 right, of Master Builders Association?

5 A. Yes.

6 Q. And what was the term of that position?

7 A. That's a one-year term. It's -- the second vice  
8 president is also the finance chair.

9:55A 9 Q. Okay. And when did you hold that?

10 A. That would have been in 2007.

11 Q. Is it calendar years that you hold positions, from  
12 January to December?

13 A. It's December to December.

14 Q. Okay.

15 A. So for all practice purposes --

16 Q. So December '06 to --

17 A. Yeah.

18 Q. Okay. And what did you do as finance chair?

19 A. Chaired the finance committee meetings.

20 Q. And what does the finance committee do?

21 A. The finance committee is responsible for monthly  
22 review of the budget compared to actual expenses and report  
23 to the board.

24 Q. And are you familiar with the organization Member  
25 Services Corporation?

9:56A 1 A. I've never heard of it.  
2 Q. What's that?  
3 A. I've never heard of it.  
4 Q. I want to talk briefly about your experience with  
5 politics. Have you ever been involved with a political  
6 committee?  
7 A. Yes.  
8 Q. What committee?  
9 A. Affordable Housing Council.  
10 Q. And that is the Master Builders Association of  
11 King and Snohomish Counties affiliated PAC; is that correct?  
12 A. Yes.  
13 Q. Have you been involved with any other political  
14 committees, other than the Affordable Housing Council?  
15 A. No.  
16 Q. What was your role with the Affordable Housing  
17 Council?  
18 A. I'm just a member.  
19 Q. When you say "a member," you mean a contributor or  
20 do you mean you're a member of the board?  
21 A. As far as I know, I'm a member.  
22 Q. Okay. Do you go to meetings of the Affordable  
23 Housing Council?  
9:57A 24 A. Yes.  
25 Q. Okay. How often are the meetings held?

1 A. Depending on the year, four to six times a year.

2 Q. And how long have you been doing that?

3 A. Two years.

4 Q. Okay. And have you held any leadership positions  
5 at the Affordable Housing Council?

6 A. No.

7 Q. And what about the Washington Affordable Housing  
8 Council; are you affiliated with that?

9 A. No.

10 Q. Have you ever been a treasurer of a political  
11 committee?

12 A. No.

13 Q. Now, in approximately April of 2007, there were  
14 some building repairs apparently that were necessary on the  
15 Master Builders Association building. I guess I'll start by  
16 saying, what is that building? Is that some -- where is it,  
17 what is it where you have your headquarters?

9:58A 18 A. Master Builders Association owns a building in  
19 downtown Bellevue.

20 Q. Okay. How big of a building is it?

21 A. It's three stories, maybe 20,000 square feet.

22 Q. Oh, okay. And what was the construction that was  
23 necessary in approximately April of 2007?

24 A. I'm not sure about the timing, but --

25 Q. Okay.

1           A.    -- at some point in the last few years, we  
2 identified deficiencies in the exterior skin of the building  
3 and the roof.

4           Q.    And as chair of the finance committee, you helped  
5 to get -- to identify the costs of that project to fix  
6 those?

7           A.    I reviewed the cost of the -- the proposed cost of  
8 the project, and I'm not sure I was the chair of the finance  
9 committee when that review was done.  Maybe I was.

9:59A 10          Q.    Okay.  And do you recall how much you thought --  
11 around where the bids were coming in for that work?

12          A.    No.

13          Q.    Does it sound correct in the \$1.6 million to  
14 \$2 million range?  Does that sound ballpark?

15                   MR. MITSUNAGA:  Objection; calls for  
16 speculation.

17          Q.    If you recall.

18          A.    Your question was, do I remember the bids, and I  
19 don't remember the bids.

20          Q.    Okay.  That's okay for right now.

10:00A 21                So you mentioned -- do you recall that they  
22 were -- it was over a million dollars?

23          A.    I don't recall the bids.

24          Q.    Yeah.  Okay.  So you were present at the Semiahmoo  
25 meeting.  Were you there for the executive committee

1 meeting?

2 A. No.

3 Q. Okay. You were there for the board meeting?

4 A. Yes.

5 Q. Okay. And did you see Dino Rossi while you were  
6 there?

7 A. I saw him up on the podium.

8 Q. Okay. Do you recall seeing him before the  
9 meeting?

10 A. I didn't get a chance to speak with him before the  
11 meeting. And, actually, I don't recall seeing him before  
12 the meeting at all, no.

13 Q. When do you recall first noticing him?

14 A. When he went up for the podium.

15 Q. Okay. Do you remember how he was introduced?

10:01A 16 A. I do not.

17 Q. Do you have any recollection about it, the  
18 introduction?

19 A. I don't even remember who introduced him.

20 Q. Okay. Did you see him having conversations with  
21 anyone while you were there?

22 A. No, I didn't.

23 Q. Do you remember what he spoke about?

24 A. He gave a speech that I had heard before, spoke  
25 about Washington and issues related to Washington State.

1 Q. And did you see him after the meeting?

2 A. No, I didn't. He must have left.

3 Q. Is that a meeting that people stay over at? Do  
4 you get a room at Semiahmoo or come home after the meeting?

5 A. It's typically a several-day meeting. I arrived  
6 the night before just for the board meeting that day.

7 Q. And then left after the board meeting?

8 A. Yes.

9 Q. Who pays for those sort of costs to stay over the  
10 room costs? Is that something you cover, or is it covered  
11 by the organization?

10:02A 12 A. The Master Builders Association reimburses its  
13 members for the expense of going to the meeting.

14 Q. When did you first learn that BIAW was  
15 raising funds from local affiliates for the 2008 governor's  
16 race?

17 A. A board meeting at Master Builders Association  
18 sometime in early 2007.

19 Q. And what happened at that meeting?

20 MR. McGUIRE: Objection; vague.

21 Q. (By Mr. Lowney) You can go ahead and answer.

22 A. Okay.

23 MR. MITSUNAGA: I join in the objection, but  
24 go ahead.

25 A. Let's see. Two -- I remember for sure two of the

1 BIAW officers were there, maybe a third one, but I'm not  
2 positive about the third one. They asked for time at our  
3 board meeting to make a presentation, and it was granted by  
4 the chair officers, but it -- actually, it wasn't by the --  
5 the president granted the time and -- but they had not told  
6 us what their agenda was. So their presentation basically  
7 was to ask our entire board to contribute to governor's  
8 campaign.

10:04A 9 Q. (By Mr. Lowney) Does that sound like that could  
10 have been in April, or did this -- well, I'll strike that  
11 answer.

12 Was there more than one meeting at which BIAW  
13 officers attended to make such a request?

14 THE WITNESS: I'm sorry. Can he strike an  
15 answer?

16 MR. MITSUNAGA: You can clarify. You can feel  
17 free to clarify a prior answer if you need to.

18 THE WITNESS: But he just said he was going to  
19 strike the answer.

20 MR. LOWNEY: I'm sorry. I struck my next  
21 question.

22 THE WITNESS: Oh, okay. Sorry.

23 MR. LOWNEY: So, like, if I misstate my  
24 question or say it in a kind of not so good way, I might  
25 strike it and start from scratch?

1 THE WITNESS: Okay.

2 MR. LOWNEY: Could you read back the last  
3 question?

4 (Reporter read back as requested.)

10:05A 5 A. I don't understand that. Can you ask the question  
6 again or read it again?

7 Q. (By Mr. Lowney) I'll add to it. You said that  
8 you were at this board meeting when two to three officers  
9 spoke to the board and made a request. And I'm asking, did  
10 that happen at more than one board meeting or just one board  
11 meeting?

12 A. Just one board meeting.

13 Q. Okay. And so what did the officers say at that  
14 board meeting?

15 A. They asked us to contribute to the future  
16 governor's campaign, and they wanted us to contribute a  
17 significant amount, and they did this without ever talking  
18 to the chair officers about it, and it was a surprise.

10:06A 19 Q. And how did that make you feel, or the other  
20 officers, at the time?

21 A. I was pretty pissed off about it. And they were  
22 pretty arrogant about it. They came in just to make their  
23 presentation to our board like our board was going to do  
24 whatever the BIAW thought that they should do, and we're not  
25 BIAW and we don't do what they tell us to do.

1 Q. What else do you recall from that meeting? Do you  
2 recall people making comments about the request at that  
3 board meeting?

4 MR. MCGUIRE: Objection; compound calls for a  
5 narrative.

6 MR. MITSUNAGA: Join in the objection.

7 A. I remember them making the request and I  
8 remember -- I can only remember what my -- my personal  
9 reaction to it was very negative, and I thought it was  
10 inappropriate for them to be coming to us and asking us for  
11 money.

10:07A 12 Q. Do you remember other comments that were expressed  
13 by other board members?

14 A. Not specific, no.

15 Q. I'm going to hand you the ...

16 MR. LONEY: I have a single copy of this, I  
17 apologize, so if we can mark that and just hand it to the  
18 witness.

19 MR. MITSUNAGA: Can you identify it?

20 MR. LONEY: Yeah. These would be the Board  
21 of Directors meetings from April 30th, 2007.

10:09A 22 (Exhibit No. 3 marked.)

23 Q. (By Mr. Loney) I'm just going to hand those to  
24 you and give you a second to sort of look through and give  
25 you an opportunity to see if that reflects the meeting that

1 you've just been describing for me.

2 MR. LOWNEY: Can we go off the record for just  
3 a second?

4 (Off-the-record discussion.)

5 A. (Perusing.) Okay. I reviewed the document.

10:11A 6 Q. Thank you. Does this refresh your recollection  
7 that Daimon Doyle was one of the people who came to you, was  
8 one of the BIAW officers that came to your meeting?

9 A. Yes, Daimon Doyle, and the other one was Brad  
10 Spears.

11 Q. Do these minutes reflect that Brad Spears was  
12 there as well?

13 A. No, but it refreshed my memory that Brad Spears  
14 was the other one there. I was just trying to remember his  
15 name.

16 Q. Had you met these individuals before Daimon and  
17 Brad?

18 A. To my recollection, no.

19 Q. And did you feel that Daimon presented the  
20 proposal in an offensive way?

21 A. I was offended that they were making a proposal to  
22 our entire board without discussing it with the chair  
23 officers first. And I was trying to make that point to him,  
24 and at one point Brad just basically told me to shut up.

10:13A 25 Q. There are a couple comments that are -- that these

1 minutes reflect. One of them is -- it says, "Doug stated  
2 the MBA has a couple of make expenditures coming up for  
3 several million dollars. It is important to find out what  
4 our obligations to the association is." Does this refresh  
5 your recollection that these building exterior repairs at  
6 about this time were looming in the MBA budget?

7 A. I was fully aware of what the exterior building  
8 issues were.

9 Q. And does this comment here refer to those building  
10 issues, Doug's comments?

11 MR. MITSUNAGA: I'm going to raise an  
12 objection. Are you asking him to interpret the document or  
13 are you asking him what he recalls occurred at the meeting?

10:14A 14 MR. LONEY: Thank you for the clarification.

15 Q. (By Mr. Loney) Your recollection of the meeting,  
16 was Doug talking about the exterior repairs?

17 A. I believe Doug was probably talking about the  
18 exterior repairs, but that's -- you know, I'm not suppose --  
19 well, yeah, he was talking about the exterior repairs, sure.

20 Q. It also mentioned: "We don't need to give that  
21 kind of money right now." Do you remember how much money  
22 the BIAW was asking from MBA at that time?

23 A. I don't remember how much. It was a lot. I don't  
24 remember a specific number, though. I don't remember them  
25 asking for a specific number.

1 Q. Do you remember them talking about the donation of  
2 an excess retro refund based upon the difference between  
3 what actually was coming in and what was projected to come  
4 in to MBA?

10:15A 5 A. I do remember them, yes, I do. That was -- I  
6 think that was their specific request, that we donate the  
7 difference between what we actually get and what they had  
8 told us early in the -- earlier in the year in our -- that  
9 we would get.

10 Q. Did you ever personally feel a skepticism about  
11 the earlier numbers and the basis for them, based upon the  
12 way that they were asking for funds in this meeting?

13 A. No, because they're always different.

14 Q. Okay. Another comment was stated that "We tend to  
15 be a Democratic organization. It would be hard to explain  
16 to members who are Democrats." Do you recall that comment  
17 being made?

18 A. I don't recall any of the specific comments being  
19 made, but it was a long time ago.

10:16A 20 Q. There are Democrats in your organization; is that  
21 correct, in the MBA?

22 A. I would assume so. You know, we're located in  
23 King County and we've got 4,000 some odd members. Just  
24 statistically, it's probable that we have a lot of  
25 Democrats.

1 Q. Do you have any idea of what the percentages are?

2 A. That's not something we track. We have no idea.

3 Q. Are there any Democrats on your board, that you  
4 know of?

5 A. Yes, there definitely is.

6 Q. Okay. Are there any Gregoire supporters on your  
7 board?

8 A. Yes.

9 Q. When this person said, "We tend to be a Democratic  
10 organization," does that reflect that a majority of the MBA  
11 members are Democrats?

10:17A 12 MR. MITSUNAGA: Objection. You're asking him  
13 to speculate. He said he didn't recall any of the specific  
14 statements.

15 MR. MCGUIRE: The same objection, and lack of  
16 foundation.

17 Q. If you know.

18 A. I think you just asked the same question a  
19 different way. You know, there's no way for us to know how  
20 many of our members are Democrats and how many are  
21 Republicans.

22 Q. Okay. And then how did Daimon Doyle and Brad  
23 Spears react when these comments were made?

24 MR. MCGUIRE: Objection; lack of foundation,  
25 calls for speculation. He doesn't remember these comments,

1 he said.

2 MR. MITSUNAGA: Also raise an objection in  
3 regards -- it's ambiguous. Are you asking what statements  
4 they said in response or their physical response?

5 MR. LOWNEY: Both.

6 A. I have no recollection of them having any  
7 particular reaction at all.

10:18A 8 Q. (By Mr. Lowney) Does your company participate in  
9 the retro program, the BIAW retro program?

10 A. Yes.

11 Q. Why wasn't there a meeting -- why wasn't there a  
12 vote at the April 30th meeting? Whose decision was that?

13 A. There was no motion.

14 Q. Oh.

15 A. There was nothing to vote on.

16 Q. And it says here on the April 30th meetings that  
17 the BIAW request will be discussed further at the next  
18 meeting. Do you recall that, that that request was tabled  
19 until the next meeting?

20 A. There was nobody willing to make a motion to do  
21 anything about BIAW's request.

10:19A 22 Q. Have people ever told you that a majority of the  
23 MBA members are Democrats?

24 A. No.

25 Q. Has anybody ever told you that the majority of

1 members join for insurance?

2 A. No.

3 Q. Excluding the discussions at the May 21st meeting,  
4 which we'll talk about in a minute, and excluding  
5 discussions that may or may not have happened with Dino  
6 Rossi, did you have any other conversations with anyone  
7 about the BIAW's request made at the April 30th meeting?

8 A. I'm sure that I discussed it with the chair  
9 officers because I was fairly outraged about it.

10:20A 10 Q. Did you have a phone call with the chair officers  
11 about it?

12 A. I have no specific recollection of any specific  
13 conversation.

14 Q. Okay. After the board left at the conclusion of  
15 this meeting, did anyone hang around and talk about it?

16 A. I don't recall.

17 Q. Okay. Do you know if there were any e-mails that  
18 went back and forth about this request?

19 A. I don't recall.

20 Q. Okay. What about other documents that may reflect  
21 the request?

22 A. There may be -- in our meeting minutes, there may  
23 be -- it may have come up in other meetings.

24 Q. Okay. Who takes the minutes at the board  
25 meetings?

10:21A 1 A. Lynda Hester.

2 Q. Lynda Hester and -- oh, I'm sorry. I just noticed  
3 at the bottom of these minutes, it says "Brenda Renrick, MBA  
4 Secretary," so I guess that -- can we, from that, believe  
5 that Brenda was the one who took these particular minutes?

6 MR. MITSUNAGA: If you know.

7 A. It's possible. I don't -- she -- ordinarily,  
8 Lynda takes the meeting minutes. Now, if she wasn't there,  
9 it's possible that Brenda could have taken them at this  
10 meeting. I don't know.

11 Q. Okay. Are there any other recordings taken of the  
12 meetings?

13 A. Not to my knowledge.

14 Q. Now I want to talk with you about the call you  
15 received from Dino Rossi. Do you remember when that  
16 occurred?

10:22A 17 MR. MITSUNAGA: Objection; lack of foundation.

18 Q. (By Mr. Lowney) Did you receive a call from Dino  
19 Rossi?

20 MR. MITSUNAGA: Objection; overly broad. Can  
21 you identify what time frame we're talking about?

22 Q. (By Mr. Lowney) Have you ever received a phone  
23 call from Dino Rossi?

24 A. Yes.

25 Q. Okay. More than one?

1 A. Yes.

2 Q. Okay. Let's start with the first one. When was  
3 that, approximately?

4 A. 1996, I'm just guessing. I mean, it was a long  
5 time ago.

6 Q. And then was that a fund raising call?

7 A. It was an exploratory call, I believe. He was  
8 considering running for -- I can't remember the state  
9 legislature. And I'm sure I got the year wrong too, but ...

10:23A 10 Q. I you recall he ran for State Senate in '96, but  
11 that doesn't need to refresh your recollection.

12 After that time, when was the next call you  
13 received from him?

14 A. I don't know.

15 Q. Are you personal friends with him?

16 A. We know each other on a first-name basis, but we  
17 don't go out to dinner together, so --

18 Q. Okay.

19 A. I consider him a friend.

20 Q. Okay. Let's move up to 2006. Did you receive any  
21 calls from him in 2006?

22 A. Yes, I did.

23 Q. What was the subject of those calls?

24 A. He formed a nonprofit foundation.

25 Q. The Forward Washington Foundation?

1           A.    The Forward Washington Foundation.  He called to  
2    tell me about it.

10:25A 3           Q.    Okay.  What did he say about it?

4           A.    That was a long time ago.

5           Q.    Yeah.

6           A.    So he called to give me general information about  
7    what it -- what he was doing with it.

8           Q.    And did he talk about any run for governor at that  
9    time?

10          A.    No.

11          Q.    Were there any other calls that you recall in 2006  
12    from Dino Rossi?

13          A.    No.

14          Q.    Okay.  What about 2007, did you receive any calls  
15    from him?

16          A.    I don't remember receiving any calls from him.

17          Q.    And the record reflects in other places that there  
18    was a phone call that you received from Dino Rossi between  
19    April and May of 2007.  Does that sound correct to you.

10:26A 20                   MR. MITSUNAGA:  I would just raise an  
21    objection.  If you're going to refer to records, it's  
22    appropriate that you let the deponent review the records  
23    that you're referring to.  Are you willing to do that?

24                   MR. LOWNEY:  Well, I'm going to ask him his  
25    recollection first, but then -- but I mean we will -- before

1 I ask him about any documents, I will show him them.

2 MR. MITSUNAGA: Do you need the question read  
3 back?

4 THE WITNESS: No.

5 MR. MITSUNAGA: Okay.

6 A. No, I do not remember a specific phone call.

7 Q. (By Mr. Lowney) So you don't -- you remember --

8 A. It doesn't mean it didn't happen; I just don't  
9 remember.

10 Q. Okay. I will put the minutes --

10:27A 11 MR. LOWNEY: If you could please mark these.

12 (Exhibit No. 4 marked.)

10:29A 13 Q. (By Mr. Lowney) If you could just turn your  
14 attention to the final paragraph on the first page of what's  
15 been marked as Exhibit 4, where it says, "Doug moved into  
16 discussion regarding the request from BIAW to use excess  
17 money from the ROII refund to fund the BIAW's war chest."

18 Skipping down a little: "Doug, Joe, and John  
19 reported that they had received a call from Dino Rossi.  
20 John stated that he reiterated the Board's sentiment to Dino  
21 Rossi, stating that it was too early, and the association  
22 had building issues that needed to be resolved. Doug  
23 indicated that he would call Daimon and let him know that  
24 the MBA has taken no action, though it doesn't mean that the  
25 board won't take action later. September would be a good

1 time to make a decision."

2 Does that refresh your recollection about a call  
3 that you received in 2007 from Dino Rossi?

4 A. I get lots of calls, I have lots of conversations.  
5 You're talking about something that happened well over a  
6 year ago. I do not. I don't remember anything specific in  
7 any conversation that happened back then.

10:30A 8 Q. And you don't remember even receiving a call from  
9 Dino Rossi in 2007?

10 A. It doesn't mean it didn't happen, but I don't --  
11 sorry, don't remember. It might have happened. I probably  
12 get 20 calls a day.

13 Q. How often do you get calls from a major potential  
14 candidate?

15 A. Not very often, but that's also -- I'm not aware  
16 that -- that that was ...

10:31A 17 Q. Okay. Did you have any other conversations that  
18 you recall with Dino Rossi in 2007?

19 A. I had lunch with him and the other chair officers,  
20 or at least three of the other chair officers.

21 Q. Okay. Who was at the lunch?

22 A. Joe Schwab. I think it was Joe Schwab, Dave Main.

23 Q. How do you spell that last name?

24 A. M-a-i-n, who actually was not a chair officer at  
25 that point but was in line to be.

1                   And Jim Potter.

2                   Q.   And was it just the three of you meeting with Dino  
3 Rossi at that lunch?

4                   A.   I think that was four of us, and Dino and --

5                   Q.   Oh, sorry. Thank you.

6                   A.   And Dino came with a friend of his. I can't  
7 remember what his name is.

10:32A 8               Q.   And what did you talk -- where did you have lunch?

9                   A.   At the Bellevue Club.

10                  Q.   Is somebody a member there?

11                  A.   Well, I am, so at least I am, yeah.

12                  Q.   Okay. And what was the purpose of the lunch?

13                  A.   I wanted to get the chair officers together with  
14 Dino so that we could have an opportunity to try to convince  
15 him to run for governor.

16                  Q.   Did you ask him to lunch?

17                  A.   Yeah, I must have; I set up the lunch. I know  
18 that I'm the one that set up the lunch. Do I remember the  
19 specifics of exactly how I set it up? No, but I know I set  
20 it up.

21                  Q.   And did you call Dino Rossi and invite him?

22                  A.   I don't know if I called him or if I e-mailed him  
23 or exactly how I communicated with him, but I must have  
24 communicated with him because he was there.

10:33A 25               Q.   And did anyone else help set up the lunch, or was

1 it just between you and Dino Rossi?

2 A. Well, I communicated with the other chair  
3 officers.

4 Q. So you set up the lunch to encourage him to run  
5 for governor?

6 A. Mm-hmm.

7 Q. How did you express your encouragement to him at  
8 the lunch?

9 A. Just by being there, telling him that we wanted  
10 him to run for governor.

11 Q. Were you the one who told him that?

10:34A 12 A. I certainly would have told him that. Did  
13 everybody else tell him that? I don't have any recollection  
14 of the specific conversation. We didn't take any meeting  
15 minutes of that lunch.

16 Q. Did you have a conversation about support from the  
17 MBA if he does run for governor?

18 A. No.

19 Q. How about support from the BIAW?

20 A. No.

21 Q. Any support?

22 MR. McGUIRE: Objection; vague.

23 A. We were trying to talk him into running for  
24 governor.

25 Q. (By Mr. Lowney) And what did he say back to you?

1           A.    That it's a complicated decision that involves his  
2           family, and it's -- that he was thinking about it but not  
3           anywhere near to being committed to it.

10:35A 4           Q.    Did he say what percentage likelihood there was  
5           that he would be running?

6           A.    He characterized it at that point as being  
7           unlikely because of what happened in 2004.

8           Q.    What happened in 2004 that he expressed made him  
9           disinclined to run?

10          A.    He didn't say anything -- you know what happened  
11          in 2004, so I don't know what the question is.

12                   MR. MITSUNAGA:  The question is, what did he  
13          state, if you recall him stating anything.

14          A.    I don't remember him stating anything, no.

15          Q.    Do you have any recollection of the type of things  
16          he expressed that were disencouraging him the run?

17          A.    The only clear recollection I have is him telling  
18          us in no uncertain terms he wasn't sure he wanted to go  
19          through that again.

10:36A 20          Q.    Why did you tell him you wanted him to run for  
21          governor?

22          A.    Because I think he would be a good governor.

23          Q.    And did you talk about any public policy issues at  
24          lunch?

25          A.    Not that I can recall.

1 Q. Did you pay for the lunch?

2 A. I did.

3 Q. Did you pay on a credit card?

4 A. Probably.

5 Q. Is the Bellevue Club one of those things where -  
6 I've never been there - but where the member pays, the  
7 member has to pay because it's on account or something?

10:37A 8 A. No. The member has to make the reservation, but  
9 anybody can pay.

10 Q. Okay. After lunch, who left first after the  
11 lunch? Dino or the chair officers?

12 A. I don't recall.

13 Q. Okay. Did you have any other conversations with  
14 Dino Rossi after that lunch?

15 A. No.

16 Q. Did he ever send you e-mails after that lunch?

17 A. No.

18 Q. No other contact between you and Dino after the  
19 lunch? Between then and let's say October of 2007, did you  
20 have any other contact with Mr. Rossi?

21 A. None that I can remember specifically. I would be  
22 surprised if I didn't call him one or two other times to  
23 encourage him to run for governor, but I don't have a  
24 specific recollection of it.

10:39A 25 Q. Okay. But other than potentially calling him and

1 encouraging him to run, you don't believe that there were  
2 any other contacts?

3 A. No.

4 Q. If you did -- you know, you don't have specific  
5 recollection of making those phone calls, but do you have a  
6 vague recollection of making other phone calls to him to  
7 encourage him to run?

8 A. I have a vague recollection of calling him and  
9 getting the same response out of him, that he's thinking  
10 about it but not committed.

11 Q. In any of those discussions, did you talk about  
12 support from MBA in any way in the 2008 election?

13 A. No.

14 Q. Or what about from the BIAW?

15 A. No.

16 Q. Did you ever have a conversation with Dino Rossi  
17 about his fund raise -- about BIAW's fund raising plans?

10:40A 18 A. No.

19 Q. But if it happened during the phone discussion in  
20 April or May, which you don't remember -- I mean, you don't  
21 have any recollection of that, so it could have happened  
22 during that time?

23 MR. MITSUNAGA: Objection; calls for  
24 speculation.

25 MR. LONEY: Okay. I'll withdraw that.

1 Q. (By Mr. Lowney) After the lunch, did you talk  
2 with anybody? Did you talk with anybody about the lunch?

3 A. Not that -- not in particular, not specifically,  
4 no, that I can remember.

5 Q. Okay. And later, the finance committee did make a  
6 decision to set aside money for the governor's race; is that  
7 correct?

8 A. Not that I'm aware of, no.

9 Q. You don't recall the finance committee making a  
10 recommendation that money be put aside to support the  
11 governor's race in 2008?

10:41A 12 A. I am quite certain that there was no money put  
13 aside for the governor's race in 2008.

14 Q. Well, it might have been in 2007?

15 A. I'm quite certain that there was never any money  
16 set aside for the 2008 race in 2007 or any other time.

17 Q. And what about by the Affordable Housing Council?

18 A. I'm quite certain the Affordable Housing Council  
19 didn't commit any funds.

20 Q. And has the Affordable Housing Council expended  
21 any funds in the governor's race?

22 MR. MITSUNAGA: I'm going to raise an  
23 objection at this point in time as being beyond the scope of  
24 the Court's order.

25 MR. LOWNEY: I disagree, but your objection is

1 noted.

2 MR. MITSUNAGA: Go ahead and answer that  
3 question.

4 MR. LONEY: You can read it back.

10:42A 5 (Reporter read back as requested.)

6 A. I do not believe so.

7 Q. (By Mr. Loney) Have you heard about Mr. Rossi  
8 having any contacts with other BIAW-affiliated organizations  
9 in 2007 before he declared his candidacy?

10 MR. McGUIRE: Objection; vague.

11 MR. MITSUNAGA: Join the objection.

12 A. Well, he made the stump speech in Semiahmoo in  
13 June, so he would have been speaking to all 15 affiliates.

14 Q. (By Mr. Loney) Okay. Other than that?

15 A. No.

16 Q. And what other conversations have you had with  
17 anyone about BIAW's request for funds from local affiliates  
18 for the 2008 governor's race?

10:43A 19 A. I would have discussed it with the chair officers  
20 at the chair officers meetings because, like I said before,  
21 I was pretty outraged about it.

22 Q. And other than that, do you have any other  
23 recollection of other contacts, other conversations?

24 A. I probably would have discussed it with our  
25 executive as well, Sam Anderson.

1 Q. Okay. What about others?

2 A. (Witness shook head.)

3 Q. Okay.

4 MR. MITSUNAGA: I'm sorry. Was that a "no"?

5 THE WITNESS: That's no.

6 Q. (By Mr. Lowney) So, ultimately, when did you make  
7 the fine -- when did MBA the final decision not to give the  
8 money to BIAW in response to Daimon and Brad Spears'  
9 request?

10:44A 10 A. We never decided to seriously consider it, in my  
11 opinion.

12 Q. Have you ever heard of Dino Rossi's strategy for  
13 winning the governor's race in 2008?

14 A. No.

15 Q. Have you had conversations about independent  
16 expenditures in the governor's race in 2008?

17 A. No.

18 Q. Do you have any contacts with ChangePAC?

19 A. No.

20 Q. Have you had any contact with the BIAW about  
21 independent expenditures?

22 A. No.

23 Q. How about Its Time For a Change; have you had any  
24 contact with them?

25 A. Never heard of it.

10:45A 1 Q. Other than the conversations you've described to  
2 me, have you had other conversations about Dino Rossi  
3 running for governor in 2008 prior to him announcing his  
4 candidacy?

5 MR. MCGUIRE: Objection; vague. Conversations  
6 with Dino in particular?

7 Q. (By Mr. Lowney) Anyone, other than what we've  
8 described?

9 A. Probably. That's a pretty vague question; I  
10 agree.

11 Q. It's a broad question, it's not vague.

12 A. It's a broad question; okay. Fine.

13 MR. MCGUIRE: Objection; overbroad.

14 MR. MITSUNAGA: Join.

15 Q. (By Mr. Lowney) Well, any other conversations?  
16 We've talked about a whole number of them, and I'm wondering  
17 if you recall any others.

18 A. None specifically that I recall.

19 MR. LOWNEY: Why don't we take a five-minute  
20 break.

21 (Deposition at recess.)

10:57A 22 MR. LOWNEY: Back on the record, still under  
23 oath.

24 Q. (By Mr. Lowney) So we talked a little bit about  
25 Daimon Doyle and Brad Spears coming and making the request

1 at April 30th, and your reaction and other reaction of the  
2 board. My question is, what did the BIAW do to try and  
3 convince you? Did they make any other phone calls, or what  
4 do you remember?

5 A. Well, they actually spent the entire year bashing  
6 us publicly in their newsletters and -- their newsletters  
7 are specific things I can recall, but they made quite an  
8 effort to embarrass us at every chance they could.

9 Q. And did you feel like a big motivation -- and that  
10 was in -- excuse me. That was partly to convince you to say  
11 yes to Daimon Doyle's request?

10:58A 12 MR. MITSUNAGA: Objection; calls for  
13 speculation.

14 MR. McGUIRE: Same objection.

15 Q. (By Mr. Lowney) Was that your understanding?

16 MR. McGUIRE: Same objection.

17 MR. MITSUNAGA: Same objection.

18 Q. (By Mr. Lowney) Or ridiculing you for saying no?

19 A. I can't speculate particularly why they wanted to  
20 bash us, but they spent a lot of energy, negative energy,  
21 bashing the Master Builders Association during the last  
22 couple of years.

23 Q. I've seen some of it.

24 Do you recall any other efforts that were made by  
25 the BIAW to support their request to the MBA to donate to

1 their fund raising effort for the 2008 governor's race?

2 A. I don't recall anything specific, other than basic  
3 public humiliation, their attempt to publicly humiliate us  
4 in the -- within the organization of BIAW, and outside, for  
5 that matter.

10:59A 6 Q. That doesn't sound like a very effective fund  
7 raising strategy.

8 MR. MITSUNAGA: Objection. That's not a  
9 question, that's a comment.

10 Q. (By Mr. Lowney) Did anyone at BIAW, that you know  
11 of, make calls to the MBA about, after April 30th, about  
12 Daimon's request?

13 A. I believe Doug Barnes called Daimon Doyle to tell  
14 him that we were doing nothing.

15 Q. The minutes that we looked at before suggested  
16 that Doug was going to tell Daimon that September might be a  
17 good time to make a decision. Do you know whether there  
18 were any additional contacts between MBA and BIAW about that  
19 decision-making process?

20 A. Not that I can remember.

21 Q. Do you have any vague recollection of some  
22 contacts?

11:00A 23 A. I do not, but those weren't conversations that I  
24 would have been having.

25 Q. Okay. Who would have had them?



1 MR. MITSUNAGA: Well, you asked him "other  
2 contacts," which suggests that there was some contacts  
3 between Dino Rossi's campaign and the MBA.

4 MR. LONEY: Okay.

5 MR. MCGUIRE: Same objection.

6 MR. MITSUNAGA: So I'm raising an objection in  
7 that regard.

8 A. I'm not aware of any.

9 Q. (By Mr. Loney) Okay.

10 A. I'm sorry. Can I --

11 Q. Go ahead.

12 A. In 2008, Dino came to our officer installation  
13 dinner in December, and also to our auction in May.

11:02A 14 Q. So those were both in 2007; is that right?

15 A. Those were in -- I'm sorry. The officer  
16 installation dinner was December 2007, the auction was in  
17 May 2008.

18 Q. Okay. Did you have any conversations with Dino  
19 Rossi at those events?

20 A. At the auction, he sat at my table with his wife,  
21 so I guess I have to take back the prior comment. I have  
22 had dinner with him once.

11:04A 23 (Exhibit No. 5 marked.)

24 Q. (By Mr. Loney) I'm marking as Exhibit 5 some  
25 e-mails -- oh, I'm sorry.

1 I was just going to turn your attention to the  
2 second page of this e-mail string, an e-mail sent by you on  
3 June 4th, 2007, where you were identifying -- saying that  
4 you need to -- the need to agree on the source of funds for  
5 the \$2 million project. This was a discussion about the  
6 building exterior again?

7 A. Correct.

8 Q. Okay. And you suggest here that you were voting  
9 for half the money to come from the retro money; is that  
10 right?

11:05A 11 MR. MITSUNAGA: What's right? I mean what's  
12 the question? Did he write this e-mail?

13 Q. (By Mr. Lowney) Is that your position?

14 A. At the time that I wrote this e-mail, I was  
15 recommending to the -- I was concerned about the source of  
16 funds for the \$2 million bill that we were going to be  
17 experiencing, and I wanted to identify and commit to a  
18 source of funds. And so my recommendation was we -- we use  
19 the ROII's half of that.

20 Q. Okay. And is that what ultimately happened?

21 A. I'm not sure.

22 MR. LOWNEY: I'm going to pass you what will  
23 be No. 6, Exhibit 6.

24 (Exhibit No. 6 marked.)

11:06A 25 Q. (By Mr. Lowney) If you take a look at page 6 --

1       sorry, page 2 of Exhibit 6, it says, "A motion was made and  
2       seconded to approve the 2008 budget. Discussion ensued  
3       regarding a \$500,000 line item for the governor's race." Do  
4       you have recollection of -- any recollection of that  
5       discussion?

6             A.    I have a recollection that we had a discussion  
7       about it, yes.

8             Q.    And what do you recall?

9             A.    That --

10            MR. MITSUNAGA: I'm going to stop you for a  
11       minute there and object on the basis of privileged  
12       communications.

13            Q.    (By Mr. Lowney) Was your attorney at this  
14       meeting?

15            MR. MITSUNAGA: If you recall.

16            A.    I don't remember.

17            MR. MITSUNAGA: And by "your," you mean MBA's  
18       attorneys or --

19            Q.    (By Mr. Lowney) Can you look where it says who  
20       was in attendance and tell me if your attorney or MBA's  
21       attorney was there?

11:07A 22            A.    I do see that MBA's attorney was there.

23            Q.    Who was that?

24            A.    Bob Johns.

25            Q.    Okay. So excluding any privileged communication

1 from your attorney, can you tell me what you recall?

2 MR. MITSUNAGA: Well, I'm going to raise an  
3 objection. Communications from Mr. Johns as well as  
4 communications to Mr. Johns are privileged.

5 MR. LOWNEY: Okay.

6 Q. (By Mr. Lowney) So, other than communications to  
7 or from your attorney, can you recall this discussion?

8 MR. MITSUNAGA: Discussions by anyone in the  
9 room.

10 A. I recall that we had a very brief discussion, and  
11 it went nowhere, so there was -- there was no money put into  
12 the 2008 budget for ...

13 Q. (By Mr. Lowney) The governor's race?

14 A. The governor's race, yes.

15 Q. All right. And were you at a -- do you have any  
16 knowledge of the BIAW paying money to help pay down legal  
17 fees for Dino Rossi's 2004 election contest?

11:08A 18 MR. McGUIRE: Object; beyond the scope.

19 MR. MITSUNAGA: Join in the objection.

20 MR. LOWNEY: Okay.

21 A. I have no idea.

22 MR. LOWNEY: Okay. I don't have any other  
23 further questions. Thank you very much.

24

25

1 EXAMINATION

2

3 BY MR. MCGUIRE:

4 Q. Mr. Day, I just have a few questions for you. My  
5 name is Rob Maguire, and I represent the BIAW in this case.

6 Earlier, you testified that you were a BIAW board  
7 member; is that right?

8 A. That's right.

9 Q. Are you paid as a BIAW board member?

10 A. No.

11 Q. Is that a volunteer position?

12 A. Yes.

13 Q. How large is the BIAW board?

14 A. I don't know. It must be over 200 people.

15 Q. Do you, as an individual board member, have the  
16 authority to bind BIAW or act on its behalf?

17 A. No.

18 Q. Do you know the difference between BIAW, BIAW  
19 Member Services Corporation, and ChangePAC?

11:09A 20 A. No.

21 Q. Do you know whether those are separate legal  
22 entities?

23 A. I've never even heard of Member Services.

24 Q. Does BIAW control MBA?

25 A. No.

1 Q. Are they separate legal entities?

2 A. Yes.

3 Q. I'd like to ask you a few more questions about  
4 communications with Dino Rossi.

5 Prior to October 11, 2007, did Mr. Rossi ever tell  
6 you that he was a candidate for governor in the 2008 race?

7 A. No.

8 Can I elaborate?

9 Q. Sure.

10 A. He went out of his way to let me know that he  
11 wasn't.

12 Q. How did he do that?

13 A. Whenever I talked to him, I have a very clear  
14 recollection that he always went out of his way to say, "I  
15 have not committed. I have not decided to be a candidate."

16 Q. Prior to October 11, 2007, did Mr. Rossi ever give  
17 you any indication whatsoever that he intended to run for  
18 governor in 2008?

11:11A 19 A. No.

20 Q. Do you have any information whatsoever to suggest  
21 that prior to October 11, 2007, Dino Rossi was a candidate  
22 in the 2008 governor's race?

23 A. No.

24 Q. Did Mr. Rossi ever encourage MBA to raise for or  
25 give money to BIAW for any affiliated entity to promote a

1 Rossi candidacy in 2008?

2 A. No.

3 Q. Did Mr. Rossi ever approve of or consent to MBA  
4 raising money for or giving money to BIAW or any affiliated  
5 entity to promote a Rossi candidacy in 2008?

6 A. No.

7 Q. Did Mr. Rossi ever tell you to have MBA or BIAW  
8 run specific advertisements to promote a Rossi candidacy in  
9 2008?

10 A. No.

11 Q. Did Mr. Rossi ever tell you to have MBA or BIAW  
12 purchase commercial advertising space or broadcast time to  
13 promote a Rossi candidacy in 2008?

14 A. No.

15 Q. Did MBA ever give any money to BIAW or any  
16 affiliated entity to support a Rossi candidacy in 2008?

17 A. No.

18 Q. Did MBA run any advertisements in support of a  
19 Rossi candidacy in 2008?

11:12A 20 A. No.

21 MR. McGUIRE: Thank you, Mr. Day. I  
22 appreciate you coming in on a Friday on short notice and  
23 answering these questions. I have no more questions.

24 MR. LOWNEY: Thank you.

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