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BERNICE MOSER & ALLEN MOSER,	:	IN THE COURT of COMMON PLEAS
spouses,	:	COMMONWEALTH of PENNSYLVANIA
	:	MONTGOMERY COUNTY
	:	NO. 2023-21775
vs.	:	
PENMARK MANAGEMENT	:	
COMPANY, INC., et. al.	:	
	:	
Defendants.	:	CIVIL ACTION – LAW

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF  
REPLY TO PRELIMINARY OBJECTIONS OF  
DEFENDANT PENMARK MANAGEMENT COMPANY, INC.  
TO SECOND AMENDED COMPLAINT**

**I. MATTER BEFORE THE COURT**

The matter before the court is the Preliminary Objections filed by Defendant Penmark Management Company, Inc. (hereafter "Penmark") to Plaintiffs' Second Amended Complaint. Essentially, Penmark contends any effort to plead (and prove) Penmark's fraudulent conduct in 2015 and 2016 must be denied because the fraud was directed toward a non-party, and because reference to the fraudulent conduct as evidence of reprehensibility transforms that evidence into a cause of action for civil fraud, now barred by the 2-year statute of limitations.

**II. QUESTIONS PRESENTED**

Should Penmark's Preliminary Objections be overruled because the Second Amended Complaint does not plead the cause of action of civil fraud but instead pleads Penmark's fraudulent conduct as evidence relevant to Defendant's state of mind, intent, and reprehensibility.

**Suggested Answer: Yes.**

Should Pennmark's Preliminary Objections be overruled because the Second Amended Complaint pleads ample facts, supported by evidence, proving Pennmark's reckless, willful, and fraudulent conduct that resulted in Plaintiffs' harms.

**Suggested Answer: Yes.**

Should Pennmark's Preliminary Objections to enterprise liability be overruled where evidence already gathered constitutes a prima facie showing that: (1) there is a strong unity of interest and ownership such that the separateness of each Defendant no longer exists due to the "administrative nexus" coming down to the LLCs from Pennmark; and (2) adherence to any corporate fiction in this case would sanction fraud and promote injustice.

**Suggested Answer: Yes.**

### III. FACTS

This premise liability action arises from a fall of **June 21, 2022**, caused by years of deferred maintenance to the crumbling asphalt surfaces of the 50-year-old Coventry Mall in Pottstown, Pennsylvania, resulting in a mild traumatic brain injury (mTBI) to the Plaintiff, Nurse Bernice Moser.

The Coventry Mall was first opened to the public in **1967**. It was acquired **April 8, 2016**, by Pennmark. Pursuant to Pennmark's longstanding business model, the asset was deeded to Special Purpose LLCs (SPLLCs) which then contracted Pennmark to manage the property pursuant to a formal Management Agreement.

Pennmark is the controlling and liable entity. According to Pennmark CEO Robert Sichelstiel, the SPLLCs have *no role* in managing the property. See **Exhibit "A,"** Sichelstiel Dep. 18:13-16 (Nov. 26, 2025).<sup>1</sup> CEO Sichelstiel's deposition testimony is internally conflicted (discussed *infra*) but he *initially* insists Defendant Pennmark at Coventry Management Company, LLC (hereafter "Coventry Management") also had *no role* in managing the Coventry

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<sup>1</sup> The mini transcript of CEO Sichelstiel's deposition is attached in full as it will be cited several times herein.

Mall. *Id.* at 46:17-47;2. Yet, the SPLLCs and Coventry Management are the named insureds under the \$1 million liability policy, not Pennmark.

On **September 17, 2025**, an Order was entered requiring Pennmark to produce *its* liability policy (seq. 84).<sup>2</sup> No policy naming Pennmark as an insured was produced, despite the Order. On **October 11, 2025**, undersigned counsel pressed for Pennmark’s liability policy to be produced pursuant to the court order and, after receiving no response, threatened Pennmark with a motion for sanctions. On **October 30, 2025**, counsel for Pennmark replied, affirming all documents responsive to the discovery order had been produced, as verified by Pennmark. *See Exhibit “B,”* communications of counsel. Pennmark’s refusal to produce its liability policy is thus understood to mean there is no liability policy to produce.

On **January 15, 2026**, the Second Amended Complaint was filed adding willful and fraudulent misconduct, and corporate enterprise theory of liability. *See* Second Amended Complaint at averments 11-27 (**negligence and recklessness**), averments 44-63 (**willful and fraudulent misconduct**), and averments 64-81 (**corporate enterprise liability**).

Although rarely invoked, corporate enterprise liability is a limited form of veil-piercing available here, as an equitable remedy, because: (1) there is a strong unity of interest and ownership such that the separateness of each Defendant no longer exists due to the “administrative nexus” coming down to the LLCs from Pennmark; and (2) adherence to any corporate fiction in this case would sanction fraud and promote injustice. *See Mortimer v. McCool*, 255 A.3d 261 (Pa. 2021) (recognizing enterprise liability as an equitable remedy in Pennsylvania).

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<sup>2</sup> This Motion cites docket entries in lieu of attaching records where the corresponding averment is not critical to resolution of this Motion. Likewise, documents produced by Defendants are cited by the bate stamp numbers created by Defendants.

#### IV. ARGUMENT

“Malice, intent, knowledge, and other conditions of mind may be averred generally.” Pa.R.C.P. 1019(b). Our courts have consistently held that this rule applies to a plaintiff averring recklessness on the part of a defendant. Archibald v. Kemble, 971 A.2d 513 (Pa. Super. 2009). More recently, the Superior Court, sitting *en banc*, specifically recognized “the important distinction between the pleadings stage of the case and the summary judgment stage of the case.” Monroe v. CBH20, L.P., 286 A.3d 785, 799-800 (Pa. Super. 2022) (*en banc*).

At the pleadings stage, the rules allow a plaintiff to make a general averment of gross negligence or recklessness. When initially filing a complaint, a plaintiff may not be fully aware of the defendant’s state of mind. Only through discovery can the plaintiff ascertain what the defendant knew or should have known about the risk involved. It would place an undue burden on the plaintiff to plead specific facts about the defendant’s state of mind at the time a lawsuit is initiated. Id. This is a Second Amended Complaint and Plaintiffs have been provided with time to develop their case.<sup>3</sup> Citations to the record will thus be provided.

##### A. Negligence and Recklessness

Averments 11-28 and 35-42 of the Second Amended Complaint cite ample evidence to support allegations of both negligence and recklessness. The evidence proves Pennmark knew of the crumbling condition of its parking surfaces in 2015 pursuant to pre-inspections of the commercial property prior to acquisition, *a full seven years* prior to Plaintiff suffering a mTBI.

When assessing whether a plaintiff has established a prima facie showing sufficient to plead and prove facts in support of punitive damages, courts may consider expert opinion on the

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<sup>3</sup> There are motions to compel pending and, currently, only one of four Defendants have been deposed. The remaining three Defendants have been less than responsive to providing dates for their corporate designees. Further motions are thus anticipated. Fact discovery closes **3/17/26**.

ultimate issue of recklessness. See Novajosky v. North Penn Distributors, Inc., No. 17-CV-94 (C.P. Lacka. Co. Oct. 18, 2019) (Nealon, J.):

Noting that Pa.R.E. 704 permits an expert to offer an opinion that “embraces an ultimate issue,” the Superior Court held that “the trial court did not abuse its discretion in permitting expert witnesses to opine on the ultimate issue” of defendants’ reckless conduct.... We likewise have relied upon experts’ conclusions that defendants acted wantonly or recklessly in granting a plaintiff’s request for net worth discovery under Pa. R.C.P. 4003.7.

*Id.* at 14, citing unpublished non-precedential memorandum opinion, Kuchwara v. Williams, 2014 WL 10919995 (Pa. Super. 2014), *app. denied*, 631 Pa. 714, 109 A.3d 680 (20-15).

Plaintiffs’ liability expert reviewed the evidence gathered through two years of litigation.

At the conclusion of his report Jeffrey Lapin, CPM, states at Opinion 4:

The Defendants had actual notice of the unreasonably dangerous condition of the parking lot asphalt surfaces years before the DOI as a result of their due diligence and financing activities in 2015 and 2016 when the property was acquired, including a Property Condition Assessment Report (PCA). The condition of the parking surfaces was so severely deteriorated at that time that complete resurfacing was apparently necessary for safety but was not approved or completed during the 6-7 years before the Plaintiff’s fall. During that 6-7 year window the condition of the parking surfaces deteriorated further due to heavy traffic and plow trucks, presenting a known safety hazard for months or years prior to Plaintiff’s fall. Yet, in the year prior to Plaintiff’s fall, Defendants took no action to remedy the hazard beyond assigning a single maintenance man to apply cold patch to the expansive parking lots. No formal inspections were done by Defendants as required by industry standards. The lack of formal inspections is particularly problematic on this property since Defendants knew, since 2015, that the parking surfaces were crumbling. The need for closer monitoring was necessary. Defendants did the opposite.

....

An online Law Dictionary ([www.dictionary.thelaw.com](http://www.dictionary.thelaw.com)) defines Reckless Behavior as “Extremely careless behavior that rises above negligence, actions which are significantly beyond that standard of care that a reasonable person would exercise in similar circumstances.” The Legal Information Institute ([www.law.cornell.edu](http://www.law.cornell.edu)) defines Reckless Behavior as “Behavior that is so careless

that it is considered an extreme departure from the care that a reasonable person would exercise in similar circumstances.”

The Defendants knew, should have known and had reason to know about the extremely dangerous condition of the parking lot surface as a result of a) the proposals for parking lot resurfacing that they received when they purchased the property, b) reports by tenants and others at the Property about potholes and other dangerous conditions that existed on the DOI (in response to which, the Defendants’ had the one and only maintenance worker for the Property, Mr. Umstead, throw temporary cold patch over/into when he was infrequently at the Property), c) the amount of time and material being expended at the site to cold patch the holes and other unsafe surface elements by Mr. Umstead and d) the PCA that the Defendants undoubtedly had when they purchased the Property which would have identified the parking lot as being in need of immediate repair/resurfacing.

Moreover, the Defendants’ decision to lease space at the Property to Community Health and Dental Care, a healthcare provider serving patients who could reasonably be expected to be in various degrees of restricted mobility, including patients receiving physical therapy and patients with vision impairment (per Community Health and Dental Care’s website – [www.ch-dc.org](http://www.ch-dc.org)) is further demonstration of the Defendants’ complete lack of care for the reasonable safety of its tenants, tenant employees and other invitees.

A reasonably trained, experienced and careful property owner and manager, having that knowledge and following the standard of care which requires that level of care that a reasonably trained, experienced and careful property owner or manager would exercise, would have acted to immediately warn the public and effectuate comprehensive repairs or resurfacing as soon as they acquired the property to prevent injury.

Per the Defendant’s admissions in interrogatory responses, as detailed above, NO maintenance was performed to the parking lots in the twelve months prior to the DOI, despite the notice that the Defendants had of the unreasonably dangerous conditions.

Because the Defendants failed to warn the Plaintiff and/or repair/replace the unreasonably dangerous parking lot, despite the knowledge that they had that it was unreasonably dangerous and that it was reasonably foreseeable that someone would be injured, I believe that the Defendant’s conduct or behavior can be characterized as being so careless that it should be considered an extreme departure from the care that a reasonable person would exercise in similar circumstances or “Reckless” (this is ultimately the purview of the court of law should this matter go to trial).

See Exhibit “C,” Report of Jeffrey Lapin, CPM, Opinion 4, at 13-14 (Dec. 8, 2025). Thus, Pennmark’s preliminary objections should be denied.

**B. Willful and Fraudulent Misconduct Occurring in 2015 and 2016**

The central contention of Pennmark’s Preliminary Objections is that Plaintiffs’ efforts to plead and prove Pennmark’s fraudulent conduct must be denied because the conduct was directed toward a non-party, and because admitting the press releases into evidence creates a new cause of action barred by the statute of limitations. The press releases are attached for ease of reference as “Exhibit D.”

Plaintiffs do not contend that the evidence of Pennmark’s fraudulent conduct (press releases) constitutes a separate cause of action for civil fraud. Rather, the willful and fraudulent conduct is evidence bearing upon Pennmark’s state of mind in 2015-2016 when the property was acquired, and thus to a reprehensibility analysis.

Specifically, the fraudulent press releases tend to prove Pennmark knew - in 2015 prior to acquisition in 2016 - that the property was in immediate need of extensive repairs due to years of deferred maintenance, including replacement of the 50-year old parking surfaces. The fraudulent press releases tend to further support the conclusion that Pennmark did not possess the financial capital or investor backing to undertake these necessary repairs and thus created an elaborate fraud to ensnare tenants, particularly medical facilities, into long term leases by creating and publishing fraudulent press releases claiming to have raised \$60 million from investors to fund the necessary improvements.

Pennmark created and disseminated fake press releases to the public, on the internet to reach maximum exposure, announcing a \$60 million real estate investment fund, when no such fund ever existed. The evidence establishes that the representations were false, that Pennmark

knew they were false at the time of dissemination, and that Pennmark intentionally failed to disclose the falsity to parties to whom Pennmark targeted as tenants for its properties.

Pennmark's CEO specifically admitted under oath that these materials were included in leasing packages provided to potential tenants for the purpose of inducing them to sign long-term leases for Pennmark's distressed properties. He further admitted that no corrective disclosure was ever made to these potential tenants, even though he knew the representations about the \$60 million capital investment fund were false. *See Exhibit "A,"* Sichelstiel Dep. 90:6-96:18 (Nov. 26, 2025).

This complex and deliberate fraud is relevant and directly indicative of Pennmark's state of mind. Pennmark so clearly knew that the mall was in poor condition and that it would struggle to find and keep tenants as a result that it engaged in a complex fraud involving public statements and press releases publicizing a fictitious capital improvement fund to offset the fact that they knew tenants would not be satisfied with the condition the property was in. This state of mind evidence is directly relevant to the prayer for punitive damages the court has already considered in Plaintiffs' first Motion for Leave to Amend, filed **April 4, 2025** (seq. 37), granted **June 16, 2025** (seq. 51). On **December 12, 2025**, the Court thereafter overruled Pennmark's preliminary objections to allegations of recklessness averred in the first Amended Complaint (seq.109-110). The averments of willful and fraudulent misconduct in the Second Amended Complaint is merely an amplification of that existing claim, using new evidence that was only acquired on **November 26, 2025**, during the deposition of Pennmark CEO, Robert Stichelstiel. *See Exhibit "A,"* Sichelstiel Dep. 90:6-96:18 (Nov. 26, 2025). "A new cause of action does not exist if plaintiff's amendment merely adds to or amplifies the original complaint...." Junk v. East End Fire Dept., 396 A.2d 1269, 1277 (Pa. Super. 1978).

Defendants' narrow focus on direct plaintiff reliance ignores the clear factual showing of how the fraudulent conduct toward the employer foreseeably injured Plaintiff, and how the false promises made the property appealing to the employer, directly enabling Plaintiff's presence and injury. The fraudulent conduct was both a but-for and proximate cause of Plaintiff's presence (and thus her injury), and material to the lease transaction at hand. The causal chain, as pleaded and evidenced, is direct and foreseeable.

Moreover, the fraudulent conduct was directed toward *the public* at large, rather than a private individual or company. Specifically, the fraudulent press release was written and publicly disseminated on the internet. The fraud was designed to secure long term leases with community medical facilities (open to the public), which employ medical staff (members of the public), and to place those medical facilities at aging community shopping centers (open to the public), with the intent and hope that the community medical facilities would bring people (from the public) to the community shopping centers. These facts make Pennmark's fraudulent conduct more relevant to a reprehensibility analysis, not less.

As the U.S. Supreme Court held:

Respondent argues that she is free to show harm to other victims because it is relevant to a different part of the punitive damages constitutional equation, namely, reprehensibility. That is to say, harm to others shows more reprehensible conduct. Philip Morris, in turn, does not deny that a plaintiff may show harm to others in order to demonstrate reprehensibility. Nor do we. Evidence of actual harm to nonparties can help to show that the conduct that harmed the plaintiff also posed a substantial risk of harm to the general public, and so was particularly reprehensible - although counsel may argue in a particular case that conduct resulting in no harm to others nonetheless posed a grave risk to the public, or the converse. Yet for the reasons given above, a jury may not go further than this and use a punitive damages verdict to punish a defendant directly on account of harms it is alleged to have visited on nonparties.

Given the risks of unfairness that we have mentioned, it is constitutionally important for a court to provide assurance that the jury will ask the right question,

not the wrong one .... it is particularly important that States avoid procedure that unnecessarily deprives juries of proper legal guidance. We therefore conclude that the Due Process Clause requires States to provide assurance that juries are not asking the wrong question, *i.e.*, seeking, not simply to determine reprehensibility, but also to punish for harm caused strangers.

Phillip Morris USA v. Williams, 549 U.S. 346, 355 (2007). A limiting instruction is thus appropriate to prevent punishment for conduct toward non-parties.<sup>4</sup>

Although the statute of limitations is not relevant because Plaintiffs do not seek to plead and prove a new cause of action for civil fraud, it is worth noting that Pennmark's fraudulent conduct was concealed from Plaintiffs until **November 26, 2025**, when Coventry Management was forced, by court order, to submit to deposition. Coventry Management declined to be deposed prior thereto and only submitted to the deposition after this Court entered its Order of **November 25, 2025**, requiring it to appear for deposition on **November 26, 2025**, pursuant to Plaintiffs' Expedited Motion to Compel, filed **October 22, 2025** (seq. 93).<sup>5</sup> Coventry Management complied and designated Pennmark CEO Robert Stichelstiel as the designee for Coventry Management. The fraud engaged in by Pennmark in 2015 and 2016 was exposed during that deposition. *See Exhibit "A,"* Stichelstiel Dep. 90:6-96:18 (Nov. 26, 2025).

Finally, Pennmark's preliminary objections appear to confuse the evidence necessary to prevail at trial from averments sufficient to allow a claim to proceed at the pleading stage. Here,

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<sup>4</sup> Proposed Jury Charge: The jury may consider evidence of the 2015 press release solely for the purpose of assessing the defendant's state of mind, intent, and reprehensibility relevant to the claims at issue, and not to punish the defendant for any harm to persons or entities who are not parties to this case. You must not award damages to punish the defendant for injury to non-parties.

<sup>5</sup> Plaintiffs' prior attempts to secure this Deposition are well documented. A prior Motion to Compel the Deposition was filed **1/24/25** (seq. 21), stipulated Order entered **2/21/25** (seq. 28), Motion for Sanctions filed **3/10/25** (seq. 29), and Sanctions Order entered **3/20/25** (seq. 34). Despite the filings and orders, the Deposition did not take place thereafter because Defendant filed an affidavit claiming Plaintiffs failed to sue the correct management company and a motion to dismiss the lawsuit would soon be filed by Defendants, citing expiration of the statute of limitations. Plaintiffs thereafter successfully joined the correct management company – after expiration of the statute of limitations – pursuant to Pennsylvania's Fraudulent Concealment Doctrine. Defendant nevertheless refused to be deposed until this Court entered yet another Order on **11/25/25** (seq. 103-107), just days prior to the **12/17/25** discovery deadline then in force.

Plaintiffs are required only to “adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense.” Youndt v. First Nat. Bank of Port Alleghany, 2005 Pa. Super. 42, 868 A.2d 539, 544-45 (2005). The Preliminary Objections should thus be denied.

### **C. Corporate Enterprise Theory of Liability**

Pennmark opposes enterprise theory of liability, again citing expiration of the two year statute of limitations. Because veil piercing is a remedy rather than an independent cause of action, it does not have its own statute of limitations. Veil piercing is an equitable doctrine for the court to apply, not a jury. Clientron v. Devon IT, Inc., 154 F. Supp. 3d 132, 140-41 (E.D. Pa. 2015); Mortimer v. McCool, 255 A.3d 261, 277-86 (Pa. 2021) (describing veil piercing as an equitable doctrine and identifying the test courts apply). Given Pennmark’s apparent lack of liability insurance, one would expect it not to oppose corporate enterprise liability so that it too may be protected by the \$1 million liability policy of the SPLLCs against the compensatory damages flowing from the mTBI caused by Pennmark.

Regardless, application of the doctrine here is already well supported, and likely to become stronger. On **February 5, 2026**, Plaintiffs filed an *Omnibus Motion to Compel Documents Relevant to Enterprise Liability, Reckless Indifference & Willful Misconduct* (seq. 133). Evidence supporting enterprise liability already of record is cited therein as follows.

This lawsuit was filed more than nine months prior to the expiration of the 2-year statute of limitations (**June 21, 2024**). **Pennmark** was not sued. Instead, **Coventry Management** was sued because the loss occurred at the Coventry Mall.

On **December 12, 2023**, **Coventry Management** filed an Answer admitting it managed the Coventry Mall. See Answer (seq. 9), paragraph eight. On **April 19, 2024**, Plaintiffs were provided verified responses to written interrogatories affirming **Coventry Management**

managed the Coventry Mall. On **March 19, 2025** - after expiration of the statute of limitations – Defendants filed an Affidavit with this Court, executed by **Penmark’s** CEO (then CFO) Robert Sichelstiel, providing written testimony that **Coventry Management** “does not own or operate the mall or parking lots.” *See* Answer to Motion for Sanctions (seq. 32) at Exhibit “E.”

On **April 4, 2025**, Plaintiffs thus filed a Motion to file an amended complaint to join **Penmark** as a Defendant - after expiration of the statute of limitations - pursuant to Pennsylvania’s fraudulent concealment doctrine (seq. 37), granted **June 16, 2025** (seq. 51). On **August 5, 2025**, **Coventry Management** filed an Answer to Amended Complaint, once again admitting *it* managed the Coventry Mall, thus contradicting its Affidavit filed **March 19, 2025**. *See Coventry Management’s* Answer to Amended Complaint (seq. 59) at paragraph 10. **Coventry Management’s** Answer is verified by **Penmark** CEO Robert Sichelstiel; the same Robert Sichelstiel who executed the Affidavit filed with this Court wherein he provided written testimony denying **Coventry Management** managed the Coventry Mall.

CEO Robert Sichelstiel’s deposition was taken as the designee of **Coventry Management** pursuant to court order on **November 26, 2025**. Initially Sichelstiel insisted his Affidavit was accurate; **Coventry Management** did not manage the Coventry Mall. *See Exhibit “A,”* Sichelstiel Dep. 86-89 (Nov. 26, 2025). *See also* Sichelstiel at 46:23-472: “The only management company that would manage the property is Penmark Management Company, Inc.”

Yet by the end of the deposition (after confronted with a **July 29, 2016**, bid to apply sealant to the asphalt surfaces addressed to **Coventry Management** and marked “approved” by the handwritten signature of then Property Manager Chris Cafiero in the amount of \$39,400),

CEO Sichelstiel *changed his testimony again*, now claiming that **Coventry Management** did manage the Coventry Mall, but only prior to the **2020** COVID-19 shut down. *Id.* at 100-101.

For context, Plaintiffs' date of loss is **June 21, 2022**, suggesting **Coventry Management** may have in fact had a role in managing the property from **2016-2020**, covering four years preceding Plaintiffs' loss. Parsing out which entity contracted *and paid* for maintenance on the property, and if the work identified as having been "approved" was actually ever completed, is thus relevant not only to general liability, but also to enterprise theory of liability; if **Penmark** paid for all work including work contracted by **Coventry Management Company** it tends to support enterprise liability, particularly if the CEO/CFO cannot even identify which entity contracted and/or paid for necessary maintenance.

Moreover, if the work was *never* done (as suggested by CEO Sichelstiel at pages 15-20, discussed *infra*) then the evidence is relevant to reprehensibility. Thus, two days after CEO Sichelstiel's deposition was taken, **Coventry Management** was served a relevant Document Request on **November 28, 2025**.

On **January 15, 2026**, Plaintiffs thus filed their Second Amended Complaint averring facts in support of corporate enterprise liability as follows:

76. Defendants have worked together to sow confusion as to which Defendant was responsible for management operations of the subject property and thus which Defendant was or is liable for Plaintiffs' harms.

77. After more than two years of litigation it remains unclear which Management Company was managing the property prior to Plaintiffs' loss; whether both Management Companies were managing the property simultaneously; and whether Defendants are even able to articulate which Management Company manages the property due to Defendants' inability to separate each other from each other.

78. Alternatively, Defendants appear unwilling to differentiate themselves because they intend to continue a deception.

79. It is believed and thus averred that this confusion is being engendered by Defendants because Defendant Pennmark at Coventry Management Company, LLC (hereafter “Coventry Management Company”) had no legitimate business purpose for five years after its creation beyond concealing Pennmark as the liable entity responsible for maintaining the Coventry Mall in a reasonably safe condition, and Defendants now seek to obscure this fact.

80. The foregoing confirms: (1) there is a strong unity of interest and ownership such that the separateness of each Defendant no longer exists due to the “administrative nexus” coming down to the LLCs from Defendant Pennmark Management Company, Inc.; and (2) adherence to any corporate fiction in this case would sanction fraud and promote injustice.

81. Any verdict entered against any of the Defendant LLCs should be a verdict against Defendant Pennmark Management Company, Inc., and vice versa.

Further, CEO Robert Sichelstiel testified that critical maintenance work (sealant to the subject parking surfaces) may have never actually been completed despite the contractor bids to apply the sealant having been marked in handwritten notation, “Approved.” Sichelstiel was asked *if proof of payment by Coventry Management* exists and could be produced. Sichelstiel responded: “It says approved. I don’t know if the work was ever done or not .... I have no knowledge of that. I don’t know if it was done or that was done.” *Id.* at lines 15-20.

When pressed at the end of the deposition as to which Defendant paid for the maintenance and repairs to the subject parking surfaces, CEO Sichelstiel testified that it was not *either* Management Company but instead a deeded owner. *Id.* at 101. Plaintiffs contend production of the actual payments will prove the payments were made by **Pennmark**, thus supporting enterprise liability.

Finally, all Defendants have the same registered address, the same officers, the same members, share the same employees, share the same office equipment, share the same

maintenance equipment, share financial professionals, use the same webpage URL, use the same email addresses, use the same letterhead, receive and pay invoices from the same bank accounts whether credited to or against an LLC owner, and do not reasonably abide by corporate formalities. **Penmark's** CEO Robert Stichelstiel was provided with the opportunity to deny these facts as the corporate designee for **Coventry Management**. See Exhibit "A," Stichelstiel Dep. 99-109 (Nov. 26, 2025).

Therein CEO Stichelstiel conceded many details supporting enterprise liability but was unable to answer even basic questions about a ½ acre vacant parcel of land adjacent to the Coventry Mall that was deeded to **Coventry Management**, such as: (1) where the \$350,000 of capital was secured for the purchase since **Coventry Management** was a non-capitalized shell company for the five years preceding acquisition; (2) which entity pays the annual property taxes on the vacant ½ acre lot on behalf of **Coventry Management** since it apparently doesn't have its own bank account; and (3) which entity pays for the lawncare on the ½ acre vacant parcel, as depicted in photographs depicting a lawn and mailbox that is regularly maintained. *Id.* at 35:10-23; 107;7-109;21. See also Exhibit "E," arial image of the Coventry Mall showing vacant ½ acre parcel (bottom center), with three photographs of lawn and mailbox on the ½ acre parcel.

Robert Stichelstiel was the *CFO* of **Penmark** for many years prior to becoming the *CEO* in approximately 2023. *Id.* at 17;10-18. Yet, because he could not answer basic questions about how **Coventry Management** secured the capital to purchase the ½ acre parcel, or even if **Coventry Management** paid for lawncare of the ½ acre parcel, he directed undersigned counsel to ask the CPA of the **Penmark** enterprises these questions, Lon Seitz. *Id.* at 36;19-20.

A subpoena was recently served upon Lon Seitz for his deposition, but **Penmark** objected, on grounds of relevance. A compromise was offered: if Defendants authorize their

CPA to answer written interrogatories, no deposition would be required. It is anticipated that an additional motion will be necessary. Indeed, only 3 of 4 Defendants have been deposed and the remaining Defendants have declined to provide dates for depositions to be held prior to the deadline for fact discovery on **March 17, 2026**.

**V. CONCLUSION**

Penmark's Preliminary Objections should be overruled because the Second Amended Complaint does not plead the cause of action of civil fraud but instead pleads Penmark's fraudulent conduct as evidence relevant to Defendant's state of mind, intent, and reprehensibility. Further, the Second Amended Complaint pleads ample facts, supported by evidence, proving Penmark's reckless, willful, and fraudulent conduct that resulted in Plaintiffs' harms. Finally, Penmark's preliminary objections to averments of corporate enterprise liability should be overruled. Evidence already gathered constitutes a prima facie showing that: (1) there is a strong unity of interest and ownership such that the separateness of each Defendant no longer exists due to the "administrative nexus" coming down to the LLCs from Penmark; and (2) adherence to any corporate fiction in this case would sanction fraud and promote injustice.

DATE: 02/13/2026

MAYERSON LAW, P.C.

BY:



Benjamin Mayerson  
Attorney for Plaintiff

## Exhibit "A"

COURT OF COMMON PLEAS  
OF MONTGOMERY COUNTY, PENNSYLVANIA

- - -

BERNICE MOSER AND ALLEN	)	CIVIL ACTION - LAW
MOSER,	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
PENNMARK MANAGEMENT	)	
COMPANY, INC., ET AL.,	)	
Defendants.	)	NO. 2023-21775

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WEDNESDAY, NOVEMBER 26, 2025  
- - -

VIDEOTAPED DEPOSITION OF ROBERT  
SICHELSTIEL, JR., taken pursuant to Notice, by and  
before ERICA HEARN, Professional Court Reporter  
and Notary Public, commencing at 10:22 a.m. on the  
above-captioned date via Zoom Web Conference, by  
the hosting offices of MAGNA LEGAL SERVICES,  
1635 Market Street, 8th Floor, Philadelphia,  
Pennsylvania.

- - -  
MAGNA LEGAL SERVICES  
866-624-6221

www.MagnaLS.com



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and Pensmark Coventry Holdings

ALSO PRESENT: Daniel Ring, Esq.  
Luke Simpson, Video Specialist

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**DEPOSITION SUPPORT INDEX**  
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Testimony of: ROBERT ALEXANDER SICHELSTIEL, JR.

By: Mr. Mayerson 7

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**EXHIBITS**  
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Exhibit-1	Aerial Image	19
Exhibit-2	Deed (607-622)	n/a
Exhibit-3	Operating Agreement (623-639)	n/a
Exhibit-4	Deed (640-644)	n/a
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Exhibit-6	Complaint Coversheet	n/a
Exhibit-7	Answers	n/a
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Exhibit-9	(000123-127)	n/a
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Exhibit-12	Affidavit	n/a
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1 (It is agreed by and between  
2 counsel that signing, sealing, filing and  
3 certification are hereby waived and all  
4 objections, except as to the form of the  
5 question, are reserved until the time of  
6 trial.)  
7

8 ---  
9 VIDEO SPECIALIST: We are on the  
10 record. This begins Media No. 1 in the  
11 video deposition of Robert Sichelstiel in  
12 the matter of Bernice Moser, et al. vs.  
13 Pennmark at Coventry Management Company,  
14 LLC, et al. in the Court of Common Pleas  
15 of Montgomery County, Pennsylvania, 2023,  
16 Case No. 21775.

17 Today is Wednesday, November 26,  
18 2025 and the time is now 10:22 a.m.

19 This deposition is being taken  
20 via Zoom at the request of the Mayerson  
21 Law, P.C. The videographer is Luke  
22 Simpson of Magna Legal Services. The  
23 court reporter is Erica Hearn of Magna  
24 Legal Services.

Will counsel and all parties

1 present state their appearances and whom  
2 they represent.

3 MR. MAYERSON: This is Ben  
4 Mayerson on behalf of the Plaintiffs,  
5 Bernice and Allen Moser.

6 MR. NOVICK: Do you want me to go  
7 next? This is Bill Novick for Defendant,  
8 Pennmark Management Company, Inc.

9 MR. MCGUIRE: I'm Jack McGuire  
10 here for Pennmark at Coventry Management  
11 Company, LLC, PGOB Coventry Holdings, and  
12 Pennmark Coventry Holdings.

13 MR. RING: Hi, I am Daniel Ring,  
14 in-house counsel for the Pennmark  
15 entities, observing.

16 VIDEO SPECIALIST: Thank you,  
17 counsel.

18 Will the court reporter please  
19 swear in the witness.

20 - - -

21 ROBERT ALEXANDER SICHELSTIEL,  
22 JR., having been duly sworn, was examined  
23 and testified as follows:

24 - - -

1 EXAMINATION

2 BY MR. MAYERSON:

3 Q. Mr. Sichelstiel, thank you for making  
4 yourself available.

5 A. Sure.

6 Q. And your role here today is to answer  
7 questions on behalf of the company Pennmark at  
8 Coventry Management Company, LLC. You understand  
9 that?

10 A. Yes.

11 Q. Have you ever been deposed before?

12 A. Yes.

13 Q. Approximately, how many times?

14 A. Three.

15 Q. So I will truncate the typical  
16 instructions because you have been deposed on  
17 three prior occasions, and I will assume that  
18 you've heard similar instructions on three prior  
19 occasions, but if you feel like you want me to go  
20 through the instructions in more detail, I will.

21 But basically the most important thing is  
22 to make sure you've understood the question before  
23 you begin to answer it, and to make sure that that  
24 question gets properly transcribed onto the

1 record. And, therefore, it is important that you  
2 not answer a question until it has been asked and  
3 placed on the record to be sure that you have  
4 understood the question, and to be sure that the  
5 court reporter doesn't have to type down two  
6 people talking over each other. And that last  
7 part is probably the most important and  
8 problematic, in that lawyers and witnesses have a  
9 tendency to step on each other's answers and  
10 questions and that makes it very difficult for the  
11 court reporter.

12 So I have given you a rather lengthy  
13 version that might normally be broken down into  
14 specific sentences, but I think you're a  
15 sophisticated guy and I would just like to know  
16 whether you've understood everything I just said?

17 A. I do.

18 Q. Okay. So can you please tell us a little  
19 bit about your educational and professional  
20 background?

21 A. Okay. I have an undergraduate degree from  
22 Temple University in Economics International  
23 business and an MBA from Temple in Real Estate and  
24 Urban Land Studies. I have worked at Pennmark

1 Management Company, Inc. as from a bookkeeper up  
2 to the broker of record currently for about  
3 32 years. I have a broker's license in  
4 Pennsylvania and six other states.

5 Q. And with the broker's license, that gives  
6 you -- tell us about what role you use that  
7 license for.

8 A. To lease our properties and --

9 Q. I'm sorry.

10 A. Pennmark Management Company, Inc. would  
11 have a management agreement to lease properties in  
12 the various states.

13 Q. Do you need a broker's license to lease  
14 properties?

15 A. That's a tricky question. I believe you  
16 do unless you are acting as the owner.

17 Q. And you also need a broker's license to  
18 purchase real estate?

19 A. Not to purchase real estate, no. You can  
20 purchase your own property without a license.

21 Q. And when did you finish your education,  
22 approximately what year?

23 A. 1992.

24 Q. And when did you begin working for the

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1 Pennmark entities?  
2 A. I worked for Pennmark Management Company,  
3 Inc. in 1994.  
4 Q. And was it previously called Plymouth  
5 Greene, is that a prior company?  
6 A. No, not that I am aware of.  
7 Q. All right. Thank you.  
8 I would like to -- oh, also, have you been  
9 given a copy of the document production that your  
10 -- that was produced by you or your company on  
11 September 17, 2024 comprised of documents that  
12 were numbered 537 through 606?  
13 A. I am not sure.  
14 Q. Basically the construction bids to  
15 resurface the parking lots.  
16 A. I am not sure.  
17 Do you have a copy of the document that I  
18 could see?  
19 Q. So I --  
20 MR. MCGUIRE: Ben, sorry to chime  
21 in here.  
22 Bob, it's the full copy of the  
23 document production that I've sent you  
24 over.

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1 do that.  
2 THE WITNESS: That would have  
3 been sent, Ben, under what email? Who  
4 would have sent it to me?  
5 MR. MCGUIRE: Bob, it is just the  
6 one that I had sent you.  
7 THE WITNESS: Oh, yeah, it came  
8 from you?  
9 MR. MCGUIRE: Yeah.  
10 Ben is just referencing specific  
11 pages in it. He is referencing pages 535  
12 through whatever the last page he said  
13 that was.  
14 MR. MAYERSON: But it's 606.  
15 THE WITNESS: Bob, you sent it by  
16 via Dropbox?  
17 MR. MCGUIRE: I made a share of  
18 it, yeah.  
19 THE WITNESS: Yes, I have to find  
20 that link and then download it, right?  
21 MR. MCGUIRE: Of course.  
22 THE WITNESS: Yeah, I am not  
23 finding it, Ben. Jack, I am not finding  
24 it.

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1 THE WITNESS: Okay. Right.  
2 MR. MAYERSON: Okay.  
3 THE WITNESS: Yes.  
4 BY MR. MAYERSON:  
5 Q. Okay.  
6 Have you had a chance to peruse those  
7 documents before we came here --  
8 A. Like briefly.  
9 Q. -- yesterday?  
10 A. Briefly.  
11 Q. But you have a copy in front of you?  
12 A. No, I do not. I was not told to have a  
13 copy in front of me.  
14 Q. Do you have a copy accessible on your  
15 computer?  
16 A. Probably.  
17 THE WITNESS: You sent it. That  
18 is the Dropbox, right, Ben?  
19 MR. MAYERSON: Jack?  
20 MR. MCGUIRE: Yeah, it is the  
21 Dropbox link.  
22 THE WITNESS: All right. I can  
23 try and find it.  
24 MR. MAYERSON: Yeah, why don't we

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1 MR. MCGUIRE: That's fine. Ben  
2 should be able to pull it up, too, if  
3 that's easiest.  
4 MR. MAYERSON: Mr. Sichelstiel,  
5 did you find that set of documents?  
6 THE WITNESS: No. Normally in  
7 depositions they hand me stuff. I am not  
8 used to Zoom depositions.  
9 MR. MAYERSON: And that's  
10 specifically why I had requested  
11 yesterday that you have a copy available  
12 to make it easier for you and us, but it  
13 is --  
14 THE WITNESS: Request from me? I  
15 didn't get a request.  
16 MR. MAYERSON: Well, I sent it to  
17 your lawyer.  
18 THE WITNESS: Oh, okay.  
19 MR. MAYERSON: So you have it.  
20 THE WITNESS: No, I do not. I  
21 keep saying that. I do not have it.  
22 MR. MAYERSON: Okay. Jack, are  
23 you able to send that to him now?  
24 MR. MCGUIRE: Yeah. I mean, it

1 may be easier if we just show it over the  
2 share screen, but if you would rather do  
3 that, I can send a version now.

4 MR. MAYERSON: Well, the reason  
5 -- I am sorry. I am stepping over your  
6 response.

7 But the reason that I find that  
8 problematic is because I control turning  
9 the pages and it would be much easier if  
10 the witness can leaf through the pages  
11 without having to tell me which page to  
12 leaf through.

13 So we're all getting used to  
14 using Zoom, and I think it would be much  
15 easier for the witness to have control of  
16 the documents. So if we can do that,  
17 that would be great.

18 MR. MCGUIRE: That's fine, if  
19 that's how you want to do it, I need a  
20 minute, though.

21 I sent you the link, Bob.

22 THE WITNESS: I think I received  
23 it. Okay. Jack, which one is it, there  
24 is three attachments, all three?

1 these companies?

2 A. I believe so.

3 MR. MCGUIRE: Sorry. Ben, are  
4 you marking this as an exhibit?

5 MR. MAYERSON: If you want me to  
6 I can.

7 MR. MCGUIRE: I think it is  
8 better to have it just so we have the  
9 record clear.

10 MR. MAYERSON: Sure. We will  
11 then mark this as Exhibit-20.

12 (At this time, the court reporter  
13 marked the exhibit for identification as  
14 Exhibit-20.)

15 MR. MAYERSON: And I apologize  
16 for that it's going to be out of order,  
17 but I have marked exhibits for use at  
18 trial at this time, so this will be  
19 Exhibit-20.

20 MR. MCGUIRE: That is fine.

21 BY MR. MAYERSON:

22 Q. Does this Exhibit-20 accurately identify  
23 the entities involved in the subject property,  
24 being the Coventry Mall?

1 MR. MCGUIRE: The second one is  
2 the one he is specifically referencing.  
3 It is just in the three orders that we  
4 produced them, so there is the first one,  
5 0 to 535, whatever the number is, the  
6 500s. The second one is whatever number,  
7 500s to 600s, whatever that one is, is  
8 the one that that's referencing.

9 THE WITNESS: Okay. I got it.

10 MR. MAYERSON: Great. And I  
11 think we're ready to begin.

12 THE WITNESS: Okay.

13 BY MR. MAYERSON:

14 Q. I would like to show you a listing of  
15 entities so that we can get a proper framework of  
16 what we're doing today.

17 MR. MAYERSON: Can you share that  
18 document? There you go.

19 BY MR. MAYERSON:

20 Q. Mr. Sichelstiel, can you see the document  
21 up on the screen?

22 A. No, it says started screen share, double  
23 click. There it goes.

24 Q. Okay. So do you recognize the name of

1 A. Well first, I am only here as the  
2 corporate designee for Pennmark at Coventry  
3 Management Company, LLC, however, I have personal  
4 knowledge of the other ones.

5 Q. Yes. You're, in fact, the current CEO of  
6 the parent company, Pennmark Management Company,  
7 Inc., correct?

8 A. It is not a parent company. It is a  
9 management company.

10 Q. Are you the CEO of Pennmark Management  
11 Company, Inc.?

12 A. Correct.

13 Q. And you're the former CFO of Pennmark  
14 Management Company, Inc.?

15 A. Correct.

16 Q. And when did you become the CEO of  
17 Pennmark Management Company, Inc.?

18 A. Probably sometime in 2023.

19 Q. And you're also a member of Pennmark at  
20 Coventry Management Company, LLC?

21 A. Correct.

22 Q. All right. And Pennmark Coventry Holdings  
23 is the third company down there. Are you a member  
24 of that company?

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1 A. Yes.  
2 Q. And PGOB Coventry Holdings, are you a  
3 member of that property -- of that company?  
4 A. At the time of the alleged incident, no.  
5 Q. And currently?  
6 A. Yes.  
7 Q. Prior to the incident?  
8 A. No.  
9 Q. And PR Coventry Holdings, are you a member  
10 of that company?  
11 A. At the time and prior to the alleged  
12 incident no. Yes currently.  
13 Q. Okay. All right. Can you tell me whether  
14 or not any of the bottom three entities have a  
15 role in managing the property?  
16 A. No.  
17 MR. MCGUIRE: Objection to the  
18 form. You can answer, Bob.  
19 THE WITNESS: Oh. No.  
20 BY MR. MAYERSON:  
21 Q. Okay. And if I understand correctly, the  
22 bottom three entities have ownership interest in  
23 the property but do not manage the property?  
24 A. Correct.

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1 MR. MCGUIRE: Object to the form.  
2 Ben, as of when? As of what  
3 date?  
4 MR. MAYERSON: Today, yesterday,  
5 16 years ago.  
6 MR. MCGUIRE: You can answer.  
7 THE WITNESS: Not as of 16 years  
8 ago, so no, that would be incorrect.  
9 BY MR. MAYERSON:  
10 Q. All right. What period of time would that  
11 fairly represent or depict the property?  
12 A. Well, it's not the whole property, but I  
13 mean it's cut off, it's a zoom -- I mean, it's  
14 zoomed in, but it's approximately as of April 2016  
15 is when it was purchased.  
16 Q. You don't have any objection to this  
17 document being used during trial? Would you agree  
18 with me -- I am trying to authenticate this image.  
19 Is it authenticated? Do you agree this is a fair  
20 representation of an aerial view of the Coventry  
21 Mall taken by the -- Chester County at some point  
22 in time before today?  
23 MR. MCGUIRE: Objection to form.  
24 Bob, you can answer.

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1 Q. Okay.  
2 MR. MAYERSON: All right. So at  
3 this time, I would like to turn what will  
4 be identified and attached as Exhibit-1.  
5 (At this time, the court reporter  
6 marked the exhibit for identification as  
7 Exhibit-1.)  
8 BY MR. MAYERSON:  
9 Q. What I'm showing you is --  
10 A. That's the Coventry Mall, and Pennmark at  
11 Coventry Management, LLC owns that 17-3F-11.  
12 Q. So you're talking about the 0.45 acre lot  
13 on the left-hand side of the image below  
14 Laurelwood Road?  
15 A. Correct.  
16 Q. And is that the only property owned by  
17 Pennmark at Coventry Management Company, LLC?  
18 A. Yes.  
19 Q. Okay. I would like to show you as part of  
20 Exhibit-1 -- well, let me ask you a question.  
21 Does this accurately depict the property  
22 that we're talking about today, that being the  
23 Coventry Mall and a plot of land owned by Pennmark  
24 at Coventry Management Company, LLC?

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1 THE WITNESS: I guess it's not  
2 the whole property, no matter how you  
3 phrase it, it is not the whole property,  
4 but yes, it is a pretty close  
5 representation.  
6 MR. MAYERSON: Thank you.  
7 All right. So let's take a look  
8 at the photographs. There will be three  
9 photographs I am going to show you that  
10 are part of Exhibit-1.  
11 Tyler, can you show him all three  
12 for a couple of seconds each?  
13 BY MR. MAYERSON:  
14 Q. Do you recognize that plot of land?  
15 A. The third one, no, not really. The second  
16 one, that is the address of the property that was  
17 purchased. And the first one I am assuming is the  
18 same property because I can kind of see the mall  
19 in the background.  
20 Q. Okay. So going back to the aerial view,  
21 what I want to confirm is that these photographs,  
22 at least the two that you have identified, do  
23 depict the property owned by you, that being  
24 Pennmark at Coventry Management Company, LLC?

1 A. Correct.  
2 Q. All right. And moving forward, I will  
3 likely refer to you as Coventry Management  
4 Company. Is that okay?  
5 A. Well, no, they're totally separate. I am  
6 not here to talk about Pennmark Management  
7 Company.  
8 Q. I am sorry. You misheard what I said. I  
9 may refer to you as Coventry Management Company.  
10 Is that okay?  
11 A. I don't know what that is, but okay.  
12 Q. Well, it's Pennmark at Coventry Management  
13 Company, LLC. So I am simply asking you if I can  
14 refer to it without referencing Pennmark at the  
15 beginning and LLC at the end?  
16 A. Sure. Absolutely.  
17 Q. And you'll understand what I mean when I  
18 say Coventry Management Company?  
19 A. I do now, yes.  
20 Q. All right. Thank you.  
21 MR. MAYERSON: Now I would like  
22 to move to Exhibit-2.  
23 Tyler, why don't you go through  
24 the first three pages of this document so

1 Mr. Sichelstiel can see it.  
2 You can stop there. Let's just  
3 stay here.  
4 BY MR. MAYERSON:  
5 Q. Mr. Sichelstiel, this is a document  
6 produced from your attorneys that is marked from  
7 about page 607 through 622.  
8 A. Okay.  
9 Q. Can you identify that document?  
10 A. It looks like it is the deed for the  
11 purchase of the Coventry Mall.  
12 Q. All right. And that purchase took place  
13 on April 8th of 2016?  
14 A. Yes.  
15 Q. And --  
16 A. I am not sure. I am not sure. It says  
17 it's made the 1st of April, it would be effective  
18 the 8th of April, I don't know what that means, so  
19 either of those dates I am not sure.  
20 Q. But suffice it to say the Coventry Mall  
21 was acquired by the entities that we looked at  
22 from the outset as the owners in April of 2016?  
23 A. Correct.  
24 MR. MCGUIRE: Object to the form.

1 You can answer, Bob.  
2 THE WITNESS: Correct.  
3 MR. MAYERSON: Okay. I would now  
4 like to turn -- oh, and, Jack, you can  
5 make a decision at the end, but I would  
6 rather not attach all of these documents,  
7 because it will be very voluminous and  
8 they are Bates stamped by your office, so  
9 I don't see the need to attach them.  
10 So anything that is produced by  
11 your office and has your office's Bates  
12 stamp I do not intend to attach to the  
13 transcript, but you can let me know at  
14 the end of the dep.  
15 MR. MCGUIRE: That is perfectly  
16 fine with me.  
17 Ben, can we just identify them  
18 for the record the exact Bates numbers  
19 that are being viewed? I don't believe  
20 they were stated for these three  
21 documents?  
22 MR. MAYERSON: Yes. Tyler, can  
23 you give the first Bates number?  
24 MR. CHRIST: The Bates stamp for

1 this is 610 to 622 -- or actually 607.  
2 MR. MAYERSON: So it's page 607  
3 through 622.  
4 MR. MCGUIRE: Sorry. Ben, I am  
5 not -- there are only three pages shown  
6 to Bob.  
7 MR. MAYERSON: We'll go through  
8 each page. I am just saying --  
9 MR. MCGUIRE: Sorry. It's just  
10 if you show him three pages, I just want  
11 the record to be clear about what three  
12 pages he was shown, that way we don't  
13 have a --  
14 MR. MAYERSON: Well, the focus  
15 was on page 610, and -- or actually 609  
16 and 610.  
17 MR. MCGUIRE: Thank you.  
18 BY MR. MAYERSON:  
19 Q. So turning to Exhibit-3, can you identify  
20 the cover page of this document?  
21 A. It looks like the Operating Agreement for  
22 Pennmark at Coventry Management Company, LLC.  
23 Q. And that is the entity that you're here to  
24 talk about?

1 A. Correct, yes.  
2 Q. All right.  
3 MR. MAYERSON: So we will attach  
4 then -- or rather we will mark as  
5 Exhibit-3 the Pennmark at Coventry  
6 Management Company, LLC operating  
7 agreement Bates pages 623 through 639.  
8 BY MR. MAYERSON:  
9 Q. I will go through more of these pages  
10 since this document is more on point for the  
11 purpose that you're here today, Mr. Sichelstiel.  
12 So can you tell me what this document does  
13 or intends to do?  
14 A. I am not sure. I am not an attorney.  
15 I believe it's an operating agreement that  
16 tells how the company is formed and how it  
17 operates and how decisions are made, but I am not  
18 entirely sure.  
19 Q. Well, then having a broker's license  
20 wouldn't change your answer?  
21 A. It doesn't make me a lawyer, no.  
22 Q. Do you need a lawyer to understand an  
23 operating agreement?  
24 A. I don't need to be a lawyer to understand

1 anything, but I am just telling you what I know.  
2 Q. You did sign the document, right?  
3 A. Yes.  
4 Q. Do you normally sign documents you don't  
5 understand?  
6 A. On the advice of counsel, yes.  
7 Q. I'm sorry? What?  
8 A. If an attorney that represents me says  
9 it's okay to sign, I will sign it.  
10 Q. So is it your testimony that you only  
11 signed this document because your attorney told  
12 you to?  
13 A. Absolutely not. That's not what I said.  
14 You asked me what it was. I told you what  
15 I believed it was.  
16 Q. Okay. Well, I will ask a different  
17 question.  
18 The document, the operating agreement says  
19 it's effective March 17, 2016, correct?  
20 A. Yes.  
21 Q. And that was prior to the Coventry Mall  
22 being purchased in April of 2016?  
23 A. Correct.  
24 Q. Specifically less than a month prior,

1 correct?  
2 A. Yes, March 17th is almost a month before  
3 April 1st.  
4 Q. So you agree that this operating agreement  
5 was made contemporaneously with the purchase of  
6 the Coventry Mall?  
7 MR. MCGUIRE: Object to the form.  
8 You can answer.  
9 THE WITNESS: If  
10 contemporaneously means around the same  
11 time, then yes.  
12 BY MR. MAYERSON:  
13 Q. All right. And the operating agreement is  
14 for the operation of a specific limited liability  
15 company, correct?  
16 A. Correct.  
17 Q. And that's Pennmark at Coventry Management  
18 Company, correct?  
19 A. Correct.  
20 Q. So this agreement is supposed to set forth  
21 the duties, obligations, rights, responsibilities  
22 of Pennmark at Coventry Management Company?  
23 A. Correct.  
24 Q. Going down, I highlighted a particular

1 section that says Capital Account in quotation  
2 marks. Do you see that?  
3 A. Yes, I do.  
4 Q. And that falls under defined terms. So  
5 this section is defining certain terms that will  
6 be used in the agreement, correct?  
7 A. Correct.  
8 Q. All right. And so it's referencing  
9 accounts that will be maintained by the company  
10 for the member in accordance with provisions that  
11 are outlined below?  
12 A. That's what it says, yes.  
13 Q. And it talks about members' capital  
14 contributions, cash flow, income. Sound fair?  
15 A. That's what it says, yes.  
16 Q. Okay. So let's turn to the next page, and  
17 that goes on to define some additional terms, one  
18 of which we just mentioned, which are capital  
19 contributions, capital proceeds. Then I am going  
20 to go down to the one that says cash flow.  
21 A. Okay. I see it.  
22 Q. And so in that towards the bottom, it says  
23 that what the cash flow is used to pay or  
24 establish reasonable reserves for future expenses,

1 debt payments, capital improvements and  
2 replacements as determined by the manager.  
3 Can you tell me who the manager is?  
4 A. All right. Do you want to go back to the  
5 first page?  
6 Q. Yes.  
7 A. It is Donald F. Cafiero.  
8 Q. All right. Was he the manager from the  
9 date of inception for this agreement through  
10 today, or has that changed?  
11 A. That is changed.  
12 Q. All right. When did it change?  
13 A. When he passed away.  
14 Q. Oh, I am sorry to hear that. I did not  
15 know that Mr. Cafiero passed away.  
16 A. Yeah. October 25th of this year.  
17 Q. Sorry to hear. That was 30 days ago.  
18 A. Yeah.  
19 Q. All right. So he was the manager of this  
20 Coventry Management Company up until the day he  
21 died?  
22 A. I am not sure. He was in a memory care  
23 facility, so there was a plan in place to cover  
24 the properties and ownership while he was

1 incapacitated and now we're going through the  
2 estate issues right now.  
3 Q. All right. We're here to talk about an  
4 incident that happened to my client on June 21st,  
5 2022?  
6 A. He was still -- he was still at full  
7 capacity and in charge, yes.  
8 Q. Fine. Thank you.  
9 MR. MCGUIRE: Bob, try to give  
10 Ben time to finish the question.  
11 THE WITNESS: Oh, I'm sorry.  
12 MR. MCGUIRE: Let him finish the  
13 question. Let him finish and then go.  
14 THE WITNESS: Good point.  
15 MR. MCGUIRE: Sorry, Ben.  
16 BY MR. MAYERSON:  
17 Q. Okay. So for all periods of time prior to  
18 and on the date of June 21, 2022, Don Cafiero was  
19 the manager?  
20 A. Yes.  
21 Q. And specifically the manager of Coventry  
22 Management Company?  
23 A. Correct.  
24 Q. All right. So he was the person that

1 would determine all cash flow expenses, debt  
2 payments, capital improvements and replacements.  
3 Fair?  
4 A. Correct.  
5 Q. Down towards the bottom, third from the  
6 bottom of page 624 it says lender. It means a  
7 holder of a mortgage against the property.  
8 Was there a lender involved for these  
9 properties?  
10 A. No.  
11 Q. So when the property was purchased, it was  
12 done on a, I guess, cash basis?  
13 A. We are talking about -- you're asking  
14 about the property owned by **Coventry Management**,  
15 as you say --  
16 Q. Yes.  
17 A. -- or the whole mall --  
18 Q. No, just --  
19 A. -- both?  
20 Q. Yep.  
21 A. Yeah, no lender, it was paid for by cash.  
22 Q. And do you know where the capital came  
23 from to purchase the property?  
24 A. No.

1 Q. So going back towards all the way to  
2 page 638, this is the signature page to the  
3 operating agreement for Pennmark at Coventry  
4 Management Company, LLC, and I see that your  
5 signature appears on that together with Donald  
6 Cafiero and Christopher Cafiero; is that right?  
7 A. Correct.  
8 Q. And so there were three members of this  
9 limited liability company and those three members  
10 had signed this document?  
11 A. Correct.  
12 Q. And no other members?  
13 A. No.  
14 Q. And then the next page talks about  
15 ownership interest, and I see that there is a  
16 78 percent ownership interest by Donald Cafiero  
17 and 11 percent to you and Christopher Cafiero; is  
18 that accurate?  
19 A. Correct.  
20 Q. And then in the middle it says capital  
21 contributions and that's left blank. Can you tell  
22 me why it was left blank?  
23 A. No.  
24 Q. Were any capital contributions made?

1 A. I'm not sure. I'm not an accountant.  
2 Q. Well, if a capital contribution was made  
3 by Robert Sichelstiel, I would think you would  
4 know.  
5 A. Yes, I would know.  
6 I did not make a personal capital  
7 contribution. It may have been through a related  
8 entity with a distribution from a related entity,  
9 contribution to this entity.  
10 Q. If that had been done, should it have been  
11 recorded here?  
12 A. I am not sure. I am not an attorney.  
13 Q. Okay. Turning to Exhibit-4, and this is  
14 page 640 through 644, are you able to identify  
15 this document?  
16 A. That's the deed when we -- it's the deed  
17 when we purchased the less-than-a-half acre of  
18 ground, correct.  
19 Q. All right. So that's -- this is the deed  
20 to those photographs that we were looking at that  
21 showed the mailbox and the lawn there --  
22 A. And the view of the lawn, correct.  
23 Q. Right. Okay.  
24 So this is the deed reflecting that that

1 property was purchased on October 15th of 2021?  
2 A. Correct.  
3 Q. And the amount paid for the property was  
4 \$350,000?  
5 A. Yes.  
6 Q. Plus state tax and municipal transfer tax?  
7 A. I'm assuming we would have only paid one  
8 of them and the seller would have paid the other  
9 one.  
10 Q. Okay. So the property was acquired -- the  
11 half acre lot was acquired for \$350,000 on  
12 October 15, 2021, correct?  
13 A. Correct.  
14 Q. And then it was deeded to Pennmark at  
15 Coventry Management Company, Inc.?  
16 A. LLC. Yes.  
17 Q. LLC. Sorry.  
18 A. Yes.  
19 Q. Is that correct?  
20 A. Correct.  
21 Q. And do you know where the funds came from  
22 to purchase the property?  
23 A. No.  
24 Q. Would there be documents in your office

1 that would reflect that?  
2 A. I'm assuming if I had -- probably  
3 distribution from a related property and a  
4 contribution to this company.  
5 Q. All right. So -- and the reason I ask  
6 this is that I don't see any evidence that this  
7 company was capitalized, and so I'm just wondering  
8 where the money came from to purchase the  
9 property.  
10 And if you could, I'll be making a formal  
11 request for that, if you could start gathering  
12 those documents for your attorney, I certainly  
13 would appreciate it.  
14 A. They will contact the appropriate parties  
15 at Pennmark to gather them. I would not know  
16 where to gather that.  
17 Q. I'm sorry. Who would be the appropriate  
18 party to gather that information?  
19 A. We have an outside accountant, a CPA that  
20 handles our books, Lon Seitz  
21 Q. Does that CPA do the books for Pennmark at  
22 Coventry Management Company?  
23 A. Yes.  
24 Q. And for Pennmark Management Company, Inc.?

1 A. Yes.  
2 Q. And for the other three entities that own  
3 the Coventry Mall?  
4 A. Correct.  
5 Q. Okay. And who is the accountant?  
6 A. His name is Lon, L-O-N, Seitz, S-E-I-T-Z.  
7 Q. Where is he located?  
8 A. I think Colmar, PA.  
9 Q. Thank you.  
10 MR. MAYERSON: Now I would like  
11 to turn to what will be Exhibit-5.  
12 (At this time, the court reporter  
13 marked the exhibit for identification as  
14 Exhibit-5.)  
15 BY MR. MAYERSON:  
16 Q. And there are two images and they're  
17 somewhat duplicative of what we already talked  
18 about, but I just want to make sure that we are on  
19 the same page.  
20 Is this the half acre or .45 acre lot that  
21 we have been talking about that was purchased by  
22 Pennmark at Coventry Management Company, LLC in  
23 October of 2021?  
24 A. Correct.

1 Q. And we see there that it sits on the edge  
2 of Laurelwood Road, and is that where the mailbox  
3 that we saw, is that situated on Laurelwood Road?

4 A. I believe so, yes.

5 Q. And is any mail received at that mailbox?

6 A. I don't know.

7 Q. And to your knowledge as the corporate  
8 designee, you don't know whether or not any  
9 mail -- whether or not that mailbox is used?

10 MR. MCGUIRE: Objection to the  
11 form.

12 THE WITNESS: I do not know.

13 BY MR. MAYERSON:

14 Q. Do you know who placed the mailbox there?

15 A. No.

16 Q. Do you know whether the mailbox was there  
17 when the lot was purchased?

18 A. No.

19 Q. Now I'm going to show you what will be  
20 marked as Exhibit-6, which will not be attached  
21 because it is simply the cover page to the lawsuit  
22 or the complaint that was filed against Pennmark  
23 at Coventry Management Company. And on the edge  
24 in the margin you'll see there is a date of

1 you know who Justin Bartholomew is?

2 A. Yes.

3 Q. Who is Justin Bartholomew?

4 A. He is a leasing agent at Pennmark  
5 Management Company, Inc.

6 Q. I'm sorry?

7 A. He is a leasing agent at Pennmark  
8 Management Company, Inc. I felt like I had to  
9 give the whole name.

10 Q. All right. So he is employed by Pennmark  
11 at -- Management Company, Inc.?

12 A. Correct.

13 Q. And how long has he been an employee  
14 there, approximately?

15 A. He has worked for us for seven or  
16 eight years, and he started out at Pennmark at  
17 Coventry Management Company, LLC, and then we  
18 brought him on to the parent company -- not the  
19 parent company, to the main management company  
20 I'll say.

21 Q. So at some point in time he was a -- he  
22 was on the payroll books of Pennmark at Coventry  
23 Management Company, LLC?

24 A. Correct. He was the mall manager, yes.

1 September 29, 2023. Do you see that?

2 A. Yes.

3 Q. So I will represent to you that that is  
4 the date that this lawsuit was filed against  
5 Pennmark at Coventry Management Company. Okay.

6 A. Okay.

7 Q. So moving to Exhibit-7, there is a  
8 document that was filed on December 12th of 2023,  
9 which you can see in the margin there, but do you  
10 recognize this document? Take a minute and read  
11 it.

12 A. Where is the date?

13 Q. On the margin there, 12 -- it's actually  
14 12/12/23. Do you see that?

15 A. Yeah, I am not sure. Yeah, I see the  
16 date. I am not sure if I'm -- it looks like all  
17 the other documents I have seen in this case.

18 Q. Well, if you could speak up, I couldn't  
19 hear you.

20 A. I'm sorry. I said it looks like all the  
21 other documents I have seen in this case. I am  
22 not sure about this one in particular.

23 Q. Well, this is a 22-page document verified  
24 at the end on page 22 by a Justin Bartholomew. Do

1 Q. So did he come on board then in 2016?

2 MR. MCGUIRE: Object to the form.  
3 You can answer.

4 THE WITNESS: I am not sure when.

5 BY MR. MAYERSON:

6 Q. Would he be the first mall manager?

7 A. Second.

8 Q. All right. So he came on board sometime  
9 after 2016?

10 A. Correct. I want to say 2017.

11 Q. Okay. I would like to turn to page three,  
12 paragraph eight. Can you read that to yourself?

13 A. Okay.

14 Q. All right. And the question, if I can  
15 summarize it, is that the allegation is that the  
16 defendants, who were Pennmark -- Pennmark at  
17 Coventry Management Company, Inc., and another  
18 entity PGOB Coventry Holdings, that they were  
19 engaged in the business of managing, maintaining,  
20 and operating the Coventry Mall. Do you agree  
21 with that summary of that allegation?

22 MR. MCGUIRE: Object to the form.

23 You can answer.

24 THE WITNESS: I agree that that's

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1 what it says, yes.  
2 BY MR. MAYERSON:  
3 Q. And the answer to that is that the  
4 Pennmark defendants admit this, correct?  
5 MR. MCGUIRE: Object to the form.  
6 You can answer.  
7 THE WITNESS: That's what it  
8 says, yes.  
9 BY MR. MAYERSON:  
10 Q. And then that was verified by Justin  
11 Bartholomew, who was once the mall manager and has  
12 since been employed by Pennmark Management  
13 Company, Inc., correct?  
14 A. Correct.  
15 MR. MCGUIRE: Object to the form.  
16 You can answer.  
17 BY MR. MAYERSON:  
18 Q. When Justin Bartholomew verified this  
19 answer to the complaint on December 12th, 2023,  
20 who was his employer?  
21 MR. MCGUIRE: Object to the form.  
22 You can answer.  
23 THE WITNESS: I am not sure.  
24 MR. MAYERSON: If I had to guess,

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1 than what's required under court rules, and that  
2 is required under court rules, so I hope you can  
3 take the time to look at that, but I will ask  
4 another question now.  
5 MR. MAYERSON: I'll go to  
6 Exhibit-8.  
7 I think that's out of order. I  
8 am looking for -- okay, yes.  
9 BY MR. MAYERSON:  
10 Q. All right. Can you take a look at the  
11 title of this document and tell me whether or not  
12 you recognize it?  
13 A. No.  
14 Q. So I will represent to you that this was  
15 produced by your attorney and it is an answer to  
16 written discovery requests of my client and was  
17 again verified by Justin Bartholomew on  
18 March 19th, or rather April 19th, 2024, if we go  
19 to page 18 of 18 we can see that.  
20 Do you agree that Justin Bartholomew  
21 verified these answers on April 19th, 2024?  
22 A. That's what it says, yes.  
23 MR. MCGUIRE: Object to the form.  
24 Now you can answer.

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1 I would say Pennmark Management Company,  
2 Inc., but I am not sure.  
3 BY MR. MAYERSON:  
4 Q. Well, I don't want you to guess to  
5 anything.  
6 A. Okay. Then I am not sure.  
7 Q. All right. Is that something that you can  
8 find out so that if it becomes necessary for us to  
9 take another deposition you'll know the answer to  
10 that?  
11 A. I am here on behalf of Pennmark at  
12 Coventry Management Company, LLC, so if there is a  
13 question about that I am happy to provide an  
14 answer. I am not digging into other information.  
15 You can get that --  
16 Q. I don't need it today.  
17 A. -- from it.  
18 Q. I am just saying I am going to ask you  
19 that question again if we meet again in another  
20 deposition.  
21 A. You can ask me again, but I am not going  
22 to do extra work. Thank you. Pass.  
23 Next question.  
24 Q. I am not asking you to do anything more

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1 THE WITNESS: Okay. Yeah, I  
2 mean, I didn't sign this, but yes.  
3 BY MR. MAYERSON:  
4 Q. All right. But he signed it, correct?  
5 MR. MCGUIRE: Object to the form.  
6 You can answer.  
7 THE WITNESS: I assume that's his  
8 signature. I don't know.  
9 BY MR. MAYERSON:  
10 Q. But is there an issue as to whether or not  
11 that's his signature, because if so we'll have to  
12 bring him in?  
13 A. I don't care who you bring in. I don't  
14 know if that's his signature.  
15 Q. Okay. That's fine.  
16 You see there that it says that it's made  
17 -- that it's signed subject to the penalties of  
18 unsworn falsification to authorities, that being  
19 18, Pa.C.S.A. Section 3904?  
20 A. Yes.  
21 Q. All right. I would like to turn to page 6  
22 of 18 of these Interrogatories.  
23 By the way, Interrogatories are nothing  
24 more than questions that are posed to Pennmark

1 Management -- Pennmark at Coventry Management  
 2 Company, LLC, which are required to be answered  
 3 under court rules.  
 4 And do you see the answer to number four  
 5 stating that Pennmark defendants admit they were  
 6 the entity responsible for the premises?  
 7 A. Well, that's what it says, yes, I am  
 8 reading it.  
 9 Q. And the Pennmark defendant specifically is  
 10 the Coventry Management Company and PGOB Coventry  
 11 Holdings, correct?  
 12 A. That's what that document says, yes.  
 13 Q. All right. And we've already agreed that  
 14 PGOB Coventry Holdings does not do any management  
 15 role on the property, correct?  
 16 A. Correct.  
 17 Q. All right. So the only management company  
 18 referenced there would be the Coventry Management  
 19 Company, correct?  
 20 THE WITNESS: All of this is --  
 21 MR. MCGUIRE: Object to the form.  
 22 Object to the form. You can answer.  
 23 THE WITNESS: No. The only  
 24 management company that would manage the

1 property is Pennmark Management Company,  
 2 Inc.  
 3 BY MR. MAYERSON:  
 4 Q. Why then did you or Pennmark at Coventry  
 5 Management Company claim in this Interrogatory  
 6 that it managed the company?  
 7 A. You'll have to ask the individual --  
 8 Q. The property. The property.  
 9 MR. MCGUIRE: Object to the form.  
 10 You can answer, Bob.  
 11 THE WITNESS: I am unable to  
 12 answer why other people do what they do  
 13 or say what they say. I can only tell  
 14 you what I think -- what I think and what  
 15 I know.  
 16 BY MR. MAYERSON:  
 17 Q. All right. Well then let's go to  
 18 answer 20.  
 19 Do you see where the answer of Coventry  
 20 Management Company is that the asphalt parking lot  
 21 was in good condition at or around the time of the  
 22 alleged incident, which was June 21st, 2022. Do  
 23 you see that?  
 24 MR. MCGUIRE: Objection.

1 Ben, you mean Pennmark at  
 2 Coventry Management Company, not Pennmark  
 3 Management Company, correct?  
 4 MR. MAYERSON: I am just asking  
 5 if -- yes.  
 6 I am asking if Pennmark at  
 7 Coventry Management Company, Inc. is  
 8 claiming that the asphalt parking lot was  
 9 in good condition at or around the time  
 10 of the alleged accident on June 22, 2022.  
 11 THE WITNESS: You mean Pennmark  
 12 Coventry Management, LLC?  
 13 MR. MAYERSON: Yes.  
 14 THE WITNESS: Okay.  
 15 I am reading what it says. "The  
 16 asphalt parking lot was in good condition  
 17 at or around the time of the alleged  
 18 incident."  
 19 BY MR. MAYERSON:  
 20 Q. Do you agree with that?  
 21 I agree that's what it says. I know  
 22 nothing about the parking lot.  
 23 Q. You don't know anything about the parking  
 24 lot?

1 A. I do not.  
 2 Q. Okay. Have you ever been to the parking  
 3 lot?  
 4 A. The parking lot, yes, I have been to the  
 5 parking lot. I am not sure what area we're  
 6 talking about.  
 7 Q. But you have been to the Coventry Mall?  
 8 MR. MCGUIRE: Ben, hold on. I do  
 9 just want to clarify these last few  
 10 questions mean in his personal capacity,  
 11 correct, because they have been asking  
 12 about him and whether or not he has been  
 13 there and his knowledge of it, not the  
 14 entity itself?  
 15 MR. MAYERSON: That's true.  
 16 MR. MCGUIRE: Ben, that's fine.  
 17 Then you can continue asking your  
 18 questions. Sorry. I just wanted to  
 19 clarify that for the record.  
 20 BY MR. MAYERSON:  
 21 Q. Okay. Can you tell me when you personally  
 22 were at the property, was it at the time of  
 23 purchase or after?  
 24 A. Both.

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1 Q. All right. And how frequently would you  
2 go to the property, once a year, twice a year?  
3 A. Three or four times a year.  
4 Q. And what was the purpose of going three or  
5 four times a year?  
6 A. Usually leasing, meet potential tenants,  
7 existing tenants, things like that.  
8 Q. Okay. And then on page six in answer to  
9 Interrogatory 6, it identifies Kelsey Olmstead as  
10 the on-site property manager. Do you see that?  
11 A. I see that, yes.  
12 Q. Do you agree with that?  
13 A. No.  
14 Q. Okay. Who was the on-site property  
15 manager?  
16 A. There would not have been an assigned  
17 on-site property manager. Kelsey Olmstead was  
18 like a maintenance man who would have maintained a  
19 few of our properties.  
20 Q. Okay. So all of this information was what  
21 we have just gone through was verified on  
22 April 19th of 2024, whether it was true or not, it  
23 was -- you agree it was all verified by Justin  
24 Bartholomew on April 19, 2024?

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1 You can answer.  
2 THE WITNESS: That's what that  
3 says, yes.  
4 BY MR. MAYERSON:  
5 Q. All right. And Pennmark defendants was  
6 the Coventry Management Company, right?  
7 MR. MCGUIRE: Object to the form.  
8 You can answer.  
9 THE WITNESS: We can go back to  
10 the first page. I am getting confused.  
11 Let's go back to the first page and see  
12 who the defendants are.  
13 MR. MAYERSON: Well, I can just  
14 tell you it is Pennmark Coventry  
15 Management Company, LLC and PGOB Coventry  
16 Holdings, LLC.  
17 THE WITNESS: Okay. Correct.  
18 BY MR. MAYERSON:  
19 Q. So you'll agree that this answer to an  
20 Interrogatory that was verified states that  
21 Coventry Management Company is not contending that  
22 the maintenance and repair of the parking lot was  
23 not the responsibility of Coventry Management  
24 Company?

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1 MR. MCGUIRE: Objection.  
2 Bob, I am instructing you not to  
3 answer. This question was already asked  
4 and answered.  
5 Ben, I understand what you're  
6 trying to get at, you can move on.  
7 MR. MAYERSON: What's the basis  
8 to instruct him not to answer?  
9 MR. MCGUIRE: You already asked  
10 the exact same question about when it was  
11 verified by Justin Bartholomew, so I am  
12 just instructing Bob to move on.  
13 MR. MAYERSON: Okay.  
14 BY MR. MAYERSON:  
15 Q. And finally I would like to go to page 14  
16 of 18. Answer to Interrogatory 23 and 24 both  
17 state the same thing, which I will just read into  
18 the record.  
19 "Pennmark defendants are not contending  
20 that the maintenance and repair of the parking lot  
21 was not the responsibility of Pennmark  
22 defendants."  
23 I have read that correctly, right?  
24 MR. MCGUIRE: Objection to form.

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1 A. Now that's a double negative --  
2 MR. MCGUIRE: Bob, hold up.  
3 Object to the form.  
4 Now you can answer.  
5 THE WITNESS: It's a double  
6 negative, so you're contending that it is  
7 the responsibility?  
8 MR. MAYERSON: I think that's  
9 what they're contending, right?  
10 THE WITNESS: I don't know.  
11 That's what it says.  
12 BY MR. MAYERSON:  
13 Q. All right.  
14 A. All I can do is read what it says.  
15 I did not verify this, I did not review  
16 it, I did not answer it.  
17 Q. Bob, I understand your response, sir, but  
18 I just want to make sure that you know you're here  
19 as a corporate designee and the scope of this  
20 deposition was to answer questions about your  
21 responses to the pleadings and to the written  
22 discovery --  
23 A. These are not my answers to the pleadings.  
24 I am reading what other people verified, that's

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1 all I can do.  
2 MR. MCGUIRE: Bob, Bob, I need  
3 you to let Ben finish his question. I  
4 know you're anticipating it.  
5 THE WITNESS: Yeah, it is crazy.  
6 MR. MCGUIRE: Sorry, Ben, if you  
7 want to restate, you're welcome to  
8 restate or say it again.  
9 BY MR. MAYERSON:  
10 Q. What I'm saying is that there is an  
11 obligation on you, Mr. Sichelstiel, to come to  
12 this prepared and to have reviewed some of these  
13 documents, and so I understand that that may not  
14 have been done here, but to the extent we have a  
15 future deposition of Pennmark Management Company,  
16 Inc., I hope that that is done so that these  
17 questions be can be answered with knowledge.  
18 MR. MCGUIRE: Bob, I am going to  
19 instruct you not to answer.  
20 Ben, if you take issues with his  
21 answers, you're welcome to take those  
22 issues up at trial. Do not criticize my  
23 witness or the extent of his preparation.  
24 He has reviewed the document production,

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1 BY MR. MAYERSON:  
2 Q. Do you agree that on July 18, 2022  
3 somebody in your organization was aware of my  
4 client's claim or fall or injury that occurred on  
5 June 21st, 2022?  
6 A. Well, I am here for on behalf of Pennmark  
7 at Coventry Management Company, LLC, that's not  
8 even indicated on this document.  
9 Q. So are you indicating that Pennmark at  
10 Coventry Management Company, LLC was unaware of my  
11 client's injury on July 18, 2022?  
12 A. I have no idea.  
13 MR. MAYERSON: All right. Then  
14 we will skip the photographs that were  
15 attached to that document and we will  
16 just proceed to Exhibit-10.  
17 MR. MCGUIRE: Ben, if you do want  
18 to show him these photographs, obviously  
19 we have no objection. If you want to  
20 show him, it is your deposition.  
21 MR. MAYERSON: It's fine. We'll  
22 move on. We'll save it for later.  
23 Tyler, go back to Exhibit-8. I  
24 get these got mixed up. Did you hear me?

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1 he has reviewed the rider, he has been  
2 fully prepared for this deposition on  
3 behalf of Pennmark at Coventry Management  
4 Company, LLC]  
5 Please continue with your  
6 questions.  
7 MR. MAYERSON: Well, I'd like to  
8 turn to Exhibit-9.  
9 This is the document that has  
10 been numbered Pennmark Document  
11 Production 000123 through -127.  
12 BY MR. MAYERSON:  
13 Q. And this document identifies Pennmark  
14 Coventry Holdings, LLC as an entity referable to  
15 this, but can you identify what this document is?  
16 Have you seen it before?  
17 A. I have not.  
18 Q. Do you agree that at the very least on  
19 July 18th -- well, you haven't seen it yet, so why  
20 don't you take a moment to read the first page.  
21 A. Okay.  
22 Q. Take a look at the second page.  
23 MR. MAYERSON: And let's just go  
24 back to the first page, Tyler.

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1 MR. CHRIST: I went back to  
2 Exhibit-8.  
3 MR. MAYERSON: The top of it.  
4 Keep going. There.  
5 All right. Sir, this will be  
6 marked as Exhibit-10, but this is -- you  
7 agree that this is an email from your law  
8 firm's office dated April 19, 2024?  
9 THE WITNESS: Yes.  
10 MR. MAYERSON: Okay. Sorry. I  
11 got confused. I apologize. I was  
12 looking for an email dated September 17th  
13 of 2024.  
14 Was that something that you have,  
15 Tyler? It was supposed to be part of  
16 Exhibit-10.  
17 MR. CHRIST: This is Exhibit-10.  
18 MR. MAYERSON: There it is, yeah.  
19 Is that part of Exhibit-10?  
20 MR. CHRIST: Yes.  
21 MR. MAYERSON: Oh, okay. I  
22 apologize.  
23 BY MR. MAYERSON:  
24 Q. Okay. So we're looking at an email dated

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1 September 17th of 2024. You agree that's an email  
2 from your law firm?  
3 A. Yes.  
4 Q. All right. And you agree that it is  
5 attaching clients from, you know, Pennmark at  
6 Coventry Management Company, LLC as a supplemental  
7 response to Plaintiff's document request?  
8 A. I agree that's what the email says, yes.  
9 Q. All right. And let's look at that  
10 document request then.  
11 And this is -- these are the documents  
12 that I had asked you to review. Yesterday I  
13 requested that you have a copy of these documents  
14 so that you could go through them.  
15 So let's look at the documents that begin  
16 at page 537. Let's go to that first document  
17 that's not numbered above this one. And this  
18 document was not numbered in the production, it  
19 was just on top of the production -- oh, there it  
20 is 536.  
21 So can you tell me what this document  
22 shows?  
23 A. It looks like the survey for the entire  
24 shopping center and then neighboring properties.

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1 Q. This is a document produced by your  
2 attorney on September 17, 2024, which appears to  
3 be a bid to do some work on the parking lots. Do  
4 you agree with that?  
5 A. That's what it says, yes.  
6 Q. All right. And it's addressed to Chris  
7 Cafiero?  
8 A. At Pennmark Management Company, Inc., yes.  
9 Q. Okay. And then that is dated April 22nd,  
10 and the next page shows a large green area.  
11 A. That is green, I agree.  
12 Q. Okay. Good, I'm glad we can agree on  
13 that.  
14 It looks like that corresponds with a bid  
15 to seal coat and stripe a portion of the Coventry  
16 Mall parking lots for a price of \$36,500 according  
17 to the April 22, 2016 letter to Chris Cafiero.  
18 And we can go back to it if you need to,  
19 but I would like to go to the next page, which is  
20 April 25, 2016.  
21 That is a bid -- do you see the prices?  
22 It says, blue area and green area, the prices down  
23 near the bottom?  
24 A. Yes.

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1 Q. Do you know what time period this was  
2 created?  
3 A. No.  
4 Q. It says end of October on the left-hand  
5 lower corner. Does that refresh your recollection  
6 at all?  
7 A. No.  
8 Q. Okay. Then we will go to the next  
9 document. And you agree these are all documents  
10 produced by you, right, your client -- your  
11 entity, that being Coventry Management Company?  
12 A. Okay. Sure.  
13 Q. And that's what we just showed in that  
14 email that will be part of Exhibit-10.  
15 A. Um-hum. Okay.  
16 Q. Okay. And specifically that these  
17 documents were produced on September 17th of 2024.  
18 Next page, please.  
19 And can you tell us what this document is?  
20 A. I don't know.  
21 Q. You don't know what this is?  
22 A. No, I've never seen it before.  
23 MR. MAYERSON: Turn a page up.  
24 BY MR. MAYERSON:

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1 Q. All right. And I don't see that this was  
2 ever accepted on the line below that, but it is  
3 indicating, if you can go to the next page, we can  
4 see the blue area and the green area, right? So  
5 is my understanding correct that this bid is to  
6 resurface the parking lots in the blue and green  
7 areas, according to that legend in the right-hand  
8 corner?  
9 A. I don't know.  
10 I mean, if you want me to read what it  
11 says, I can read what it says, but I don't have no  
12 knowledge of paving. I don't know what that  
13 means.  
14 It wasn't addressed to me. It wasn't even  
15 addressed to who was supposed to be the corporate  
16 designee for today. I don't know.  
17 Q. Well, these documents were produced by  
18 Coventry Management Company on September 17th of  
19 2024, so they were produced by you.  
20 A. But I am here as the corporate designee of  
21 --  
22 MR. MCGUIRE: Bob, Bob, Bob.  
23 Objection to the form, you can  
24 answer.

1 THE WITNESS: I am here as the  
2 corporate designee of Pennmark at  
3 Coventry Management Company, LLC.  
4 MR. MAYERSON: All right. I  
5 don't want to belabor the point, but  
6 these were documents produced by you.  
7 When I say you, I mean Pennmark at  
8 Coventry Management Company, LLC. We are  
9 here for the deposition of Pennmark at  
10 Coventry Management Company, LLC and  
11 we're looking at documents that were  
12 produced by Pennmark at Coventry  
13 Management Company, LLC on September 17,  
14 2024.  
15 THE WITNESS: And once again, I  
16 have never seen this before, but you can  
17 proceed.  
18 BY MR. MAYERSON:  
19 Q. Okay. No need to if you're saying that  
20 you can't answer the question about whether or not  
21 the blue area and green area were -- there was a  
22 bid to resurface those areas, you're incapable of  
23 answering that question, I accept that. Is that  
24 your answer?

1 A. Correct.  
2 MR. MCGUIRE: And hold on, Bob, I  
3 am going to object to this one. You are  
4 belaboring the point. This is document  
5 production of two entities, just to set  
6 the record straight, this one and one  
7 that co-owned the property.  
8 This deposition is not here for  
9 the entity that co-owned the property.  
10 This entity is for Pennmark at Coventry  
11 Management Company, LLC, just to make  
12 that clear.  
13 Ben, you may proceed with your  
14 questioning.  
15 MR. MAYERSON: All right. Now  
16 I'm looking at Document 542. This should  
17 be the next. There you go.  
18 BY MR. MAYERSON:  
19 Q. This is a proposal submitted to Pennmark  
20 Management Company, Inc. on March 26th of 2015,  
21 correct?  
22 A. That's what it says.  
23 Q. All right. So this is a document that was  
24 created in 2015 and submitted to Pennmark

1 Management Company, Inc., and it was still in your  
2 possession and produced to us in 2024. Agreed?  
3 MR. MCGUIRE: Objection to the  
4 form.  
5 You can answer.  
6 THE WITNESS: Yes.  
7 MR. MAYERSON: Now I would like  
8 to move to Document 581.  
9 BY MR. MAYERSON:  
10 Q. Now, this was a document that was also  
11 produced by you or Coventry Management Company on  
12 September 17th of 2024 and appears to be a June 5,  
13 2023 estimate to do some repaving work. Do you  
14 agree?  
15 A. It says and paving, yes. It doesn't say  
16 repaving. It says paving.  
17 Q. Do you recognize this document?  
18 A. No.  
19 Q. So you don't know why it was produced to  
20 us?  
21 MR. MCGUIRE: Objection to form.  
22 Bob, I am instructing you not to  
23 answer as that calls for communications  
24 between counsel and an attorney [sic].

1 Ben, you may move on.  
2 MR. MAYERSON: All right.  
3 MR. MCGUIRE: I'll just correct  
4 my previous statement, between counsel  
5 and a client, not counsel and an  
6 attorney.  
7 MR. MAYERSON: Okay.  
8 BY MR. MAYERSON:  
9 Q. So now I would like to move to page 592.  
10 Again, these are the documents that were produced  
11 on September 17th of 2024 by Coventry Management  
12 Company. 592.  
13 Now we have something that says Pennmark  
14 at Coventry Management Company, LLC, do you agree?  
15 A. I agree somebody handwrote that in, yes.  
16 Q. Do you know who handwrote it?  
17 A. No, but I do know above it that is Chris'  
18 handwriting and initials, CJC, Chris Cafiero.  
19 Q. Okay, but you don't know whose handwriting  
20 is in blue?  
21 A. No, it's different than Chris'.  
22 Q. But this looks like a bid that was  
23 accepted and approved by Chris Cafiero, right?  
24 A. It says cold patch approval, yes.

1 Q. Right. And that's May 10th, 2016?  
2 A. Correct.  
3 Q. All right. So let's go to the next page.  
4 Then the next page. Then the next page. All  
5 right. Here is another one approved, 5/10/16,  
6 same date, right?  
7 A. Correct.  
8 MR. MCGUIRE: Sorry. Just for  
9 the record, we're looking at Bates number  
10 595. Sorry, Ben.  
11 MR. MAYERSON: Yes.  
12 BY MR. MAYERSON:  
13 Q. And then if we go all the way down to 600,  
14 all right, and here is another one that was  
15 approved, part of the same set of documents but a  
16 later date of July 6, 2016, correct?  
17 A. Correct.  
18 Q. So was this work that was approved by  
19 Pennmark at Coventry Management Company?  
20 A. No.  
21 Q. Okay. Because we are going back to where  
22 it was handwritten, right, but we don't know who  
23 handwrote that?  
24 A. I have no idea.

1 Q. All right. But what are you -- how do you  
2 know that this was not approved by Pennmark at  
3 Coventry Management Company?  
4 MR. MCGUIRE: Objection to form.  
5 You can answer.  
6 THE WITNESS: Oh, I guess I  
7 assumed. Then I would have no idea. My  
8 actual answer -- I need to change my  
9 answer to I don't know. But it looked  
10 like it was handwritten in. I am not  
11 sure when it would have been done.  
12 BY MR. MAYERSON:  
13 Q. All right. But this work flow plan or  
14 this work was approved by Chris Cafiero on July 6,  
15 2016?  
16 A. Correct.  
17 Q. All right. Let's go to the next page.  
18 Now we have a bill for July 29, 2016, or a  
19 bid, a revised proposal. Do you see that at the  
20 bottom?  
21 A. Yep.  
22 Q. And this one is actually billed to  
23 Pennmark at Coventry Management Company, LLC. Do  
24 you see that?

1 A. Yes.  
2 Q. And I would like to go to page 605, which  
3 is -- it is a five-page document, do you see the  
4 page numbers, four, there you go, five, and this  
5 one was approved by Chris Cafiero on July 29th of  
6 2016 for \$39,400?  
7 A. Correct.  
8 Q. Right?  
9 A. Correct.  
10 Q. And this one was addressed to Pennmark at  
11 Coventry Management Company, LLC?  
12 A. Correct.  
13 Q. All right. So there should be proof of  
14 payment for this work, correct?  
15 A. I am not sure. It says approved. I don't  
16 know if the work was ever done or not.  
17 Q. So are you saying that it was -- there was  
18 never any seal coating applied to the area?  
19 A. I have no knowledge of that. I don't know  
20 if it was done or that was done.  
21 Q. One of the things I have been asking for  
22 is the proof of payment for any work done. And I  
23 don't see any proof of payment that the work was  
24 done. So either the work wasn't done or there is

1 proof of payment, right?  
2 A. Or it wasn't paid for.  
3 Q. You mean the work could have been done but  
4 not paid for?  
5 A. That's the third option. I am not saying  
6 that's what was done, but you said there was only  
7 two options.  
8 MR. MAYERSON: All I am trying to  
9 do is find an answer to this issue. So  
10 if -- you know, there will be a formal  
11 request, there is already a formal  
12 request, but I would like the receipt.  
13 And if there is none, I would like your  
14 client to tell us that there is none, or  
15 you to tell us that there is none.  
16 BY MR. MAYERSON:  
17 Q. All right. But sitting here today, you  
18 have no idea whether or not that was paved by  
19 Pennmark at Coventry Management Company, or even  
20 Pennmark Management Company, Inc., correct?  
21 A. Correct.  
22 MR. MCGUIRE: Objection to the  
23 form.  
24 You can answer, Bob.

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1 THE WITNESS: Correct.  
2 BY MR. MAYERSON:  
3 Q. And that's really the issue what I'm  
4 trying to find out, is who paid that \$39,400,  
5 Pennmark at Coventry Management Company or  
6 Pennmark Management Company, Inc., okay?  
7 THE WITNESS: Can I answer it,  
8 Jack, or?  
9 MR. MCGUIRE: If you understand  
10 what he's saying, you can answer.  
11 THE WITNESS: Yes. First,  
12 Pennmark Management Company, Inc. would  
13 never pay for anything. They are just  
14 the management company, so they would  
15 never pay from Pennmark Management  
16 Company, Inc.'s funds.  
17 It would probably have been paid  
18 by the property owner, Pennmark Coventry  
19 Holdings.  
20 MR. MAYERSON: Okay. So that  
21 payment seems to be missing from the  
22 document production. It was -- actually,  
23 there is a stipulated order that that was  
24 to be produced.

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1 A. It is an affidavit.  
2 Q. When did you prepare this affidavit?  
3 MR. MCGUIRE: Ben, just to be  
4 clear, you're asking in his personal  
5 capacity, not in his capacity of Pennmark  
6 at Coventry Management Company, correct?  
7 Because I believe this affidavit is on  
8 behalf of PGOB, not Pennmark at Coventry  
9 Management Company.  
10 MR. MAYERSON: I understand your  
11 objection.  
12 BY MR. MAYERSON:  
13 Q. Mr. Sichelstiel, I am asking you a  
14 personal question now.  
15 A. Okay.  
16 Q. And that question is, why -- and this is  
17 -- on the margin there is a court date of  
18 March 19th of 2025. And the first thing I would  
19 to do is establish that this affidavit was signed  
20 in March of 2025 and not March of 2024 as  
21 indicated on the affidavit. Is that fair?  
22 A. I imagine so. I am not sure, but yeah, I  
23 believe so.  
24 Q. Do you remember filling out this

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1 So somebody needs to go back and  
2 look for that, whether it's your  
3 accountant, bookkeeper, or somebody else,  
4 but there will be an additional motion  
5 filed if it's not produced.  
6 MR. MCGUIRE: Objection to the  
7 form.  
8 To the extent that even is a  
9 question, you can answer.  
10 THE WITNESS: Jack can get right  
11 on it.  
12 MR. MAYERSON: All right.  
13 BY MR. MAYERSON:  
14 Q. So all right. I would like to now go to  
15 Exhibit-12.  
16 Do you recognize this document?  
17 A. Yes.  
18 MR. MAYERSON: Do you want to  
19 show him the second page, Tyler?  
20 BY MR. MAYERSON:  
21 Q. Is that your signature at the bottom?  
22 A. Yes.  
23 Q. Okay. Can you tell me what this document  
24 is?

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1 affidavit?  
2 A. I didn't -- I signed it.  
3 Q. This was prepared by Counsel?  
4 MR. MCGUIRE: Objection.  
5 Bob, I am asking you not to  
6 answer that question, calling for  
7 attorney-client communications.  
8 Ben, you may proceed.  
9 MR. MAYERSON: Sure. So you  
10 didn't prepare this then?  
11 MR. MCGUIRE: Objection.  
12 Calling for attorney-client  
13 communications. Ben, you may proceed.  
14 You may ask him about the details  
15 of it. He signed and verified it, but  
16 about how it was prepared and how those  
17 communications occurred, you may not ask  
18 him.  
19 BY MR. MAYERSON:  
20 Q. Did you read it?  
21 MR. MCGUIRE: Objection. Same  
22 objection.  
23 Ben, you may proceed.  
24 MR. MAYERSON: You can answer the

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1 question.  
2 MR. MCGUIRE: No you cannot  
3 answer the question. Bob, do not answer  
4 the question.  
5 Ben, you may proceed with your  
6 questions. Once again you're asking him  
7 if he read something that may or may not  
8 have been sent by Counsel. That's  
9 directly calling for attorney-client  
10 communications. Ben, you know better.  
11 You may proceed.  
12 MR. MAYERSON: Jack, with all due  
13 respect, that falls way outside  
14 attorney-client privilege, whether he has  
15 read a document. I can ask him what  
16 documents he read in preparation for  
17 today's deposition.  
18 MR. MCGUIRE: That is a totally  
19 fair question. If you want to ask him  
20 that, if he has read it in preparation  
21 for today's deposition, that is a totally  
22 fair question, Ben, I 100 percent agree.  
23 If you want to ask about the contents of  
24 it, that's also a totally fair

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1 Q. And did you agree with its contents?  
2 A. Yes.  
3 Q. Did you make any changes to it?  
4 A. I am not sure.  
5 Q. Okay. Do you recollect signing this  
6 document in March of 2025, which would have been  
7 less than a year ago?  
8 A. I remember signing this document, yes.  
9 Q. All right. And do you agree that it was  
10 in 2025 and not 2024?  
11 A. Probably, yes.  
12 Q. Okay. Thank you.  
13 And we have established that you're  
14 signing this as the CEO of PGOB Coventry Holdings,  
15 correct?  
16 A. Correct.  
17 Q. And would your answer change if you were  
18 signing this on behalf of Pennmark at Coventry  
19 Management Company?  
20 MR. MCGUIRE: Object to the form.  
21 You can answer, Bob.  
22 THE WITNESS: No.  
23 BY MR. MAYERSON:  
24 Q. All right. So this document is supposed

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1 questioning, I 100 percent agree. If  
2 you're asking questions about the  
3 attorney-client communications and the  
4 preparing of this document, that is not  
5 permissible, and I will not let Bob  
6 answer those questions.  
7 MR. MAYERSON: I just want the  
8 record to be clear. I am asking the  
9 witness if he read the affidavit before  
10 he signed it. Is that what you're  
11 instructing him not to answer?  
12 MR. MCGUIRE: First of all,  
13 that's not the question that you stated.  
14 Are you asking him if he read a  
15 document before he signed it?  
16 MR. MAYERSON: Yes.  
17 MR. MCGUIRE: Okay. That he can  
18 answer.  
19 MR. MAYERSON: Thank you.  
20 THE WITNESS: Now?  
21 BY MR. MAYERSON:  
22 Q. Did you read this document before you  
23 signed it?  
24 A. Yes.

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1 to state a factual -- it's supposed to state facts  
2 that are after it, correct?  
3 A. Correct.  
4 Q. All right. So paragraph eight, can you  
5 read that into the record?  
6 A. Pennmark at Coventry Management Company,  
7 LLC owns the land where the mall sits but does not  
8 own or operate the mall or the parking lot.  
9 Q. And that's contrary to what was verified  
10 in the answer to the complaint that we went over  
11 previously, correct?  
12 A. Correct.  
13 MR. MCGUIRE: Objection to form.  
14 You can answer.  
15 THE WITNESS: Correct.  
16 BY MR. MAYERSON:  
17 Q. And it says that Pennmark at Coventry  
18 Management Company owns the land where the mall  
19 sits.  
20 Now, we've looked at those graphs, and  
21 it's a half acre of lot set apart from the mall.  
22 Can you clarify what you meant there?  
23 A. Owns the land next to where the mall sits.  
24 Q. Right. So it doesn't own the land where

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1 the mall sits, correct?  
2 A. No.  
3 Q. All right. In paragraph ten, it states,  
4 PGOB Coventry Holdings has no records relevant to  
5 Plaintiff's discovery demands, correct?  
6 A. Correct.  
7 Q. And those discovery demands included  
8 electronic communications between Kelsey Olmstead  
9 and his supervisor. Are you aware of that?  
10 MR. MCGUIRE: Objection to the  
11 form.  
12 You can answer, Bob.  
13 THE WITNESS: I believe so. I am  
14 having trouble remembering that.  
15 BY MR. MAYERSON:  
16 Q. All right. Do you have any knowledge,  
17 personal knowledge about the electronic  
18 communications of Kelsey Olmstead [ph.] in his  
19 role in maintaining the parking lots of the  
20 Coventry Mall?  
21 A. No.  
22 Q. Okay. Do you agree that this affidavit  
23 was filed in the court on March 19th of 2025?  
24 A. Correct.

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1 Q. Yeah. So the affidavit states that the  
2 Coventry Management Company does not manage the  
3 Coventry Mall, correct?  
4 A. Does not operate the mall.  
5 Q. And what is the distinction between  
6 operate and manage that you're making?  
7 MR. MCGUIRE: Objection to form.  
8 THE WITNESS: I don't know there  
9 is any. I am just reading what I wrote.  
10 Since one part of it was incorrect, I  
11 want to make sure we parse every word and  
12 get it correct.  
13 MR. MAYERSON: All right.  
14 BY MR. MAYERSON:  
15 Q. So you're here as a designee for Coventry  
16 Management Company today, so I will just ask  
17 you --  
18 A. I was a designee for Pennmark at Coventry  
19 Management, yes.  
20 Q. Right. Okay.  
21 So do you agree that your contention when  
22 you signed this affidavit and your contention  
23 today is that the Coventry Management Company does  
24 not manage the Coventry Mall?

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1 MR. MCGUIRE: Objection to the  
2 form.  
3 You can answer, Bob.  
4 THE WITNESS: Correct.  
5 MR. MAYERSON: Okay.  
6 BY MR. MAYERSON:  
7 Q. And in this affidavit, it basically says  
8 that Pennmark at Coventry Management Company does  
9 not own or operate the mall or does not manage the  
10 mall?  
11 MR. MCGUIRE: Objection to the  
12 form.  
13 You can answer.  
14 THE WITNESS: It does not --  
15 MR. MAYERSON: I'll rephrase --  
16 I'll rephrase the question.  
17 THE WITNESS: Okay.  
18 MR. MCGUIRE: Thank you.  
19 BY MR. MAYERSON:  
20 Q. This affidavit states that the Coventry  
21 Management Company does not manage the Coventry  
22 Mall, correct?  
23 A. Correct. It says does not operate, but  
24 yeah.

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1 A. Correct, yes.  
2 MR. MAYERSON: Okay. I would  
3 like to go to what will be Exhibit-13.  
4 Well, there was a -- go ahead,  
5 Tyler, pull it up.  
6 MR. MAYERSON: This is just an  
7 order establishing on June 16, 2025 that  
8 Plaintiffs were granted leave to file an  
9 amended complaint. Do you see that?  
10 THE WITNESS: Yes.  
11 MR. MAYERSON: And all I'm trying  
12 to do is establish a timeline here,  
13 June 16, 2025.  
14 And then Exhibit-14, which I am  
15 not going to attach, but is the amended  
16 complaint.  
17 MR. MCGUIRE: Are you intending  
18 on showing him the amended complaint --  
19 MR. MAYERSON: Yes.  
20 MR. MCGUIRE: -- if so, I would  
21 ask at the very least it be attached, if  
22 we are referencing it. If you're just  
23 talking about it, that's fine, but if  
24 you're asking the witness to --

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1 MR. MAYERSON: I am going to  
2 reference paragraph ten.  
3 MR. MCGUIRE: That's fair. Then  
4 I would request that at the very least  
5 that one page be attached.  
6 MR. MAYERSON: Take your time and  
7 read that --  
8 THE WITNESS: Yes.  
9 MR. MAYERSON: -- allegation.  
10 THE WITNESS: All right.  
11 MR. MAYERSON: Have you read it?  
12 THE WITNESS: Yes.  
13 BY MR. MAYERSON:  
14 Q. All right. Does it sound to you -- well,  
15 let me ask you this. Is this responsive pleading  
16 now saying that Pennmark Coventry Management --  
17 I'm sorry, that Pennmark at Coventry Management  
18 Company is now admitting that it manages  
19 maintaining and operating the Coventry Mall?  
20 MR. MCGUIRE: Objection to the  
21 form. Objection to the form. To the  
22 extent it states that, Bob, you may  
23 answer.  
24 THE WITNESS: That's what it

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1 A. I agree that June 5th was about four  
2 months ago, yes.  
3 Q. Okay. Well, all I'm asking you is  
4 August 5, 2025 is when this answer to our amended  
5 complaint was filed where Coventry Management  
6 Company admits that it manages the Coventry Mall,  
7 correct?  
8 MR. MCGUIRE: Object to the form.  
9 To the extent it states that and you  
10 understand, you can answer, Bob.  
11 THE WITNESS: I can read that's  
12 what it says. It is not true. I have  
13 already said this like three times now.  
14 BY MR. MAYERSON:  
15 Q. Well, yeah, I know, but we spent -- okay.  
16 I understand, and I just wish there would have  
17 been better clarity before because these kind of  
18 errors are problematic, and that's why we're here  
19 today to try and sort through. So that's what  
20 we're doing.  
21 A. I'll learn and I'll do better in the  
22 future. So let's go.  
23 Q. Yeah. Okay.  
24 So I would like to turn to page 30 of 30.

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1 says, yes. It is not true, but that's  
2 what it says, yes.  
3 BY MR. MAYERSON:  
4 Q. All right. So you agree with me that in  
5 your original answer to the complaint, this  
6 allegation was admitted, then in your affidavit it  
7 was denied, and in the amended complaint it is  
8 admitted again?  
9 MR. MCGUIRE: Objection to the  
10 form.  
11 Bob to the extent you understand,  
12 you can answer.  
13 THE WITNESS: I know you were  
14 about it, but it sounds like that's what  
15 happened, yeah. I can only tell you what  
16 I know and what is true. I can't -- I  
17 don't know anything about complaints or  
18 something like that.  
19 BY MR. MAYERSON:  
20 Q. Well, you see in the margin it's dated  
21 August 5, 2025?  
22 A. Yeah, I see it.  
23 Q. So it was about three months ago, four  
24 months? Less than four months ago, you agree?

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1 Can you tell me what that document is?  
2 A. A verification.  
3 Q. And who signed the verification?  
4 A. I did.  
5 Q. And that's dated August 4th of 2025?  
6 A. Correct.  
7 Q. And you're signing it on behalf of PGOB  
8 Coventry Holdings it looks like?  
9 A. Correct.  
10 Q. Do you know if you were signing it on  
11 behalf of anybody else other than PGOB Coventry  
12 Holdings?  
13 THE WITNESS: I am not sure.  
14 MR. MCGUIRE: Objection.  
15 Bob, I am actually going to  
16 object to this one.  
17 Ben, you're asking him his  
18 personal capacity, or him as the  
19 corporate designee of Pennmark at  
20 Coventry Management Company because --  
21 MR. MAYERSON: I'm sorry. We are  
22 on the wrong page.  
23 MR. MCGUIRE: Sorry. Yeah, I  
24 just want to clarify. Now that's --

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1 MR. MAYERSON: There it is. All  
2 right.  
3 BY MR. MAYERSON:  
4 Q. So this was another verification you  
5 signed on the same date for Pennmark at Coventry  
6 Management Company, LLC, correct?  
7 A. Correct.  
8 Q. So just to be clear on the original answer  
9 to the complaint, Justin Bartholomew verified that  
10 Coventry Management Company managed the Coventry  
11 Mall, correct?  
12 A. I don't remember that. Let's go back to  
13 that and check it out.  
14 Q. All right. That would be Exhibit-6 -- or  
15 actually Exhibit-7. Okay.  
16 This is the exact same allegation in the  
17 business of managing, maintaining, and  
18 operating --  
19 A. Okay. Got it. Yes, you are correct.  
20 Yes.  
21 Q. Pennmark Defendants admit, and that's on  
22 December 12th, 2023, right?  
23 A. Correct.  
24 Q. So Justin Bartholomew verified this answer

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1 Management Company did manage the Coventry Mall?  
2 MR. MCGUIRE: Object to the form.  
3 You can answer.  
4 THE WITNESS: Yes. We keep  
5 saying the same things. Yes.  
6 MR. MAYERSON: All right.  
7 BY MR. MAYERSON:  
8 Q. So now the question is, why did you do  
9 that?  
10 A. Why did I sign the document?  
11 Q. Yes.  
12 MR. MCGUIRE: Objection.  
13 Bob -- or, Ben, are you asking  
14 him in his capacity as the corporate  
15 designee or as the fact witness?  
16 MR. MAYERSON: As the corporate  
17 designee.  
18 MR. MCGUIRE: Okay. To the  
19 extent you understood, you can answer,  
20 Bob.  
21 THE WITNESS: I believe that  
22 involves my communication with the  
23 attorney. I don't know how to answer  
24 that.

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1 that Coventry Management Company managed the  
2 Coventry Mall, correct?  
3 A. Correct.  
4 MR. MCGUIRE: Objection to form.  
5 You can answer.  
6 THE WITNESS: That's what that  
7 says, yes.  
8 BY MR. MAYERSON:  
9 Q. And then when we go to your affidavit of  
10 March 19th of 2025 at Exhibit-12 --  
11 A. Um-hum.  
12 Q. -- and we don't have to go back if you'll  
13 agree with me that, that you were denying that  
14 Coventry Management Company managed the Coventry  
15 Mall?  
16 A. Correct.  
17 MR. MCGUIRE: Objection.  
18 You can answer, Bob.  
19 THE WITNESS: Correct.  
20 MR. MAYERSON: Yes?  
21 THE WITNESS: Yes.  
22 BY MR. MAYERSON:  
23 Q. All right. And then in the answer to the  
24 amended complaint, you verified that Coventry

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1 BY MR. MAYERSON:  
2 Q. Did you read the documents before you  
3 signed them?  
4 A. No.  
5 MR. MAYERSON: All right. I  
6 would like to turn to Exhibit-15.  
7 BY MR. MAYERSON:  
8 Q. Can you tell us what Globe Street is?  
9 MR. MAYERSON: Is that -15? All  
10 right.  
11 BY MR. MAYERSON:  
12 Q. So this is Exhibit-15, a publication by  
13 Globe Street. Do you know what Globe Street is?  
14 A. No.  
15 Q. You don't know what Globe Street is?  
16 A. No.  
17 Q. I thought it was in your industry, the  
18 Journal of Publication in the real estate  
19 industry.  
20 A. No.  
21 Q. Was that not true?  
22 A. I don't know. It looks like a news  
23 article.  
24 Q. So it's a commercial real estate news and

1 events brand that provides industry-focused  
2 reporting, analysis and conferences for owners,  
3 investors and developers, but you're unfamiliar  
4 with it?  
5 A. No, I don't read it. I don't know.  
6 Q. Right. Does your company provide press  
7 releases?  
8 A. No. Well, I don't -- it may. I am not  
9 sure. I don't do it.  
10 Q. Are you interviewed for press releases?  
11 A. No, I was not.  
12 Q. All right. Let's turn the page. Do you  
13 see that quote there that says --  
14 A. Yeah, that's not the way I talk. I did  
15 not say that.  
16 Q. Okay. And are you familiar with the Sixth  
17 Fund?  
18 A. No.  
19 Q. Because down at the bottom it says  
20 Coventry Mall is the first of several planned  
21 investments that are part of the Sixth Fund which  
22 closed in November of 2015 with \$60 million,  
23 according to Donald Cafiero, principal of  
24 Pennmark. Do you agree that that's what the

1 document says?  
2 A. I agree that's what it says, but there is  
3 not a Sixth Fund.  
4 Q. How many funds are there?  
5 A. Zero. They're all internal funds  
6 generated by properties that Don Cafiero owned.  
7 That's why there's three tenants in common that  
8 own the mall. It would have been three different  
9 -- two different properties that were sold and had  
10 to be reinvested as a 1031 exchange, which is why  
11 the tenants in common ownership structure is  
12 utilized.  
13 Q. So are you saying that the Coventry Mall  
14 was purchased with capital that was owned by the  
15 Pennmark entities and not by capital investors?  
16 A. Correct.  
17 Q. Okay.  
18 A. Two of them were -- two of them were  
19 properties that Don had sold and rolled into a  
20 1031 exchange in the Coventry. And the third was  
21 internal capital from a refinance of a related  
22 property. That would have been the one that Chris  
23 and I were a part of, the tenants in common.  
24 Q. And I think you said that the property --

1 is this property, the Coventry Mall property  
2 mortgaged?  
3 A. Yes.  
4 Q. And who holds the mortgage?  
5 A. It was Lakeland Bank, is now owned by  
6 Provident Bank.  
7 MR. MAYERSON: So I am going to  
8 show you now what is Exhibit-16, and I  
9 would like to go to the last page --  
10 actually, just go to the bottom. Go to  
11 page three of four. There we go.  
12 MR. MCGUIRE: Ben, just for the  
13 record, it seems like you all switched  
14 exhibits. Is this a different exhibit or  
15 just the same exhibit, different form?  
16 MR. MAYERSON: Yes. This is a  
17 different exhibit. This will be  
18 Exhibit-16.  
19 MR. MCGUIRE: Thank you.  
20 (At this time, the court reporter  
21 marked the exhibit for identification as  
22 Exhibit-16.)  
23 BY MR. MAYERSON:  
24 Q. Do you see that URL?

1 A. Yeah.  
2 Q. Is that the URL for Pennmark Management  
3 Company, Inc.?  
4 A. At the time it was.  
5 Q. Has it since changed?  
6 A. We have shortened it to just we purchased  
7 Pennmark.com. I believe Pennmark Properties may  
8 still lead you directly to Pennmark.com.  
9 Q. Do you agree that this was a document that  
10 was made available on that web page,  
11 Pennmarkproperties.com?  
12 A. I'm not sure. It may have been.  
13 MR. MCGUIRE: Object to form.  
14 Ben, I request you let him scroll  
15 through it.  
16 THE WITNESS: I have seen the  
17 article. I mean, there is no Sixth  
18 Midatlantic U.S. Real Estate Fund.  
19 BY MR. MAYERSON:  
20 Q. All right. So perhaps Don Cafiero is just  
21 marketing his business in referencing that?  
22 A. Could be, yes.  
23 Q. But you recognize the document?  
24 A. Yeah, I have seen it, yes.

1 MR. MCGUIRE: Ben, also, I am not  
2 trying to chime in here, but there is a  
3 URL at the bottom that says something  
4 different.  
5 MR. MAYERSON: That is fine.  
6 BY MR. MAYERSON:  
7 Q. Okay. And the other document that we  
8 looked at that is Exhibit-15, have you ever seen  
9 that document before?  
10 MR. MCGUIRE: Other than  
11 communications with counsel, Bob, you may  
12 answer.  
13 THE WITNESS: Oh, yeah, yeah, I  
14 have seen it, yes.  
15 BY MR. MAYERSON:  
16 Q. In what context?  
17 A. I don't know. I think they use it for --  
18 in our leasing packages when we send to tenants.  
19 Q. So Exhibit-15 is used in leasing packets  
20 sent to potential tenants or current tenants?  
21 A. Potential tenants.  
22 Q. And Exhibit-16, likewise, is something  
23 given to potential tenants?  
24 A. It could be. I am not sure. They look

1 the same to me.  
2 Q. Okay. It has similar content?  
3 A. Yeah, yeah. I am not sure which is which,  
4 but yeah.  
5 Q. Okay. **But you have seen both documents**  
6 **before?**  
7 A. Yes.  
8 Q. Exhibit-17, who is John Byrne?  
9 A. He is our property manager.  
10 Q. For what property?  
11 A. All the properties.  
12 Q. Including the Coventry Mall?  
13 A. Correct, yes.  
14 Q. How long has he been with the company?  
15 A. A year or two. I am not sure.  
16 Q. So he is relatively new?  
17 A. Correct.  
18 Q. And he wasn't with the company on June 21,  
19 2022?  
20 A. No.  
21 Q. So he also said he was unfamiliar with the  
22 **Sixth Fund**, which is understandable since he  
23 hasn't been with the company for very long, **but I**  
24 **am confused as to why you have never heard of it**

1 if it is talked about in those two publications  
2 that you provide to potential tenants. Can you  
3 explain that?  
4 A. Because it doesn't exist.  
5 Q. But you've heard of it?  
6 A. I have read the articles, yes.  
7 Q. And you provide the articles to potential  
8 tenants?  
9 A. Correct, yes.  
10 Q. But it doesn't exist?  
11 A. Correct.  
12 Q. Can you explain why you provide it to  
13 potential tenants if it's untrue or inaccurate?  
14 A. They're going to find it anyway. It's  
15 online.  
16 Q. Well, do you provide it with a disclosure  
17 that it's not true?  
18 A. No.  
19 Q. I am going to jump to Exhibit-19.  
20 Can you identify that document, which is  
21 No. 645 through 661?  
22 A. It looks like an operating agreement for  
23 one of the tenants in common that owns the mall.  
24 Q. And do you recognize Plymouth Greene

1 Development Associates, LP?  
2 A. Yes.  
3 Q. Earlier I asked you if you were familiar  
4 with Plymouth Greene, but I guess I didn't include  
5 Development Associates, LP.  
6 A. Yeah, this is a form agreement that would  
7 be used and it looks like they forgot to change  
8 the name.  
9 Q. Oh, what should the name be?  
10 A. I am not sure. But I'm assuming it should  
11 be -- based on the date it should be for PGOB  
12 Coventry Holdings, LLC, which is one of the  
13 tenants in common that own the mall.  
14 Q. Okay.  
15 A. Plymouth Greene Development Associates, LP  
16 owned a small building that was sold, and that was  
17 one of the 1031s that was used to purchase the  
18 mall.  
19 The PGOB in the front stands for Plymouth  
20 Greene Office Building so we could always track  
21 where 1031 exchanges came from.  
22 Q. And if you turn to page 660, which is the  
23 last page -- well, second to last page of this  
24 document, it looks like Donald Cafiero is the only

1 member of this LLC?  
2 A. At the time, correct.  
3 Q. Again, it indicates Plymouth Greene  
4 Development, LLC, but that's likely an error?  
5 A. Correct.  
6 Q. All right. And then the next page shows  
7 capital contributions, and again there is nothing  
8 there?  
9 A. Yeah. It seems to be a recurring theme in  
10 the operating agreements, yes.  
11 Q. Yeah. And you said this was -- the  
12 operating agreement was a form agreement?  
13 A. Correct.  
14 Q. Is the form agreement for Pennmark  
15 Management Company, Inc. likely similar?  
16 A. Well, there wouldn't be an operating  
17 agreement for a corporation.  
18 Q. Oh, right, okay. That makes sense.  
19 Okay. I would like to go back to -- well,  
20 let me start -- before we go back. Do you agree  
21 that an LLC is not merely a legal filing?  
22 A. I don't know what that means.  
23 Q. Well, an LLC is supposed to be a  
24 functioning organization defined by its control of

1 its own governance, its own operations and its own  
2 financial identity?  
3 A. I don't know.  
4 Q. Does Coventry Management Company, LLC hold  
5 any management meetings?  
6 A. Does -- can you repeat the question, does  
7 who? I think you're mixing names up.  
8 Q. Does Pennmark at Coventry Management  
9 Company, LLC --  
10 A. Right.  
11 Q. -- hold any meetings --  
12 A. Yes.  
13 Q. -- to discuss -- yes. How often does it  
14 hold meetings?  
15 A. I'm not sure. I think -- yeah, I think  
16 there is annual meetings of most of the LLCs, but  
17 I'm not sure.  
18 Q. Are any records kept of those meetings or  
19 documentation of the meetings?  
20 A. I am not sure. Check with counsel.  
21 Q. Do you mean your personal counsel?  
22 A. The corporate counsel.  
23 MR. MCGUIRE: Ben, if you can  
24 send over a request, we can have -- we

1 can perform a search.  
2 BY MR. MAYERSON:  
3 Q. Does Coventry Management Company have any  
4 employees?  
5 A. Does who?  
6 Q. Pennmark at Coventry Management Company,  
7 LLC, does it have any --  
8 A. It does not currently. It did originally  
9 in 2016.  
10 Q. Okay. And for how long did it have  
11 employees?  
12 A. Probably I believe until COVID, and that's  
13 when the mall was shut down legally and we had to  
14 lay every employee off.  
15 Q. Okay. So Coventry Management Company  
16 managed the interior of the Coventry Mall? I am  
17 not sure what you mean.  
18 A. Okay. When we first purchased property in  
19 2016, it was a traditional operating interior  
20 mall, which required cleaners, security, managers,  
21 event staff, outside staff. We did a good job of  
22 running it as an interior mall and had employees  
23 until COVID hit. The mall was required to shut  
24 down, we didn't need the employees, and we decided

1 to permanently close the mall, which is done, and  
2 we have now turned the mall inside out, it is more  
3 like a strip mall, so there is no need to have  
4 direct employees.  
5 Q. Thank you.  
6 So previously up until COVID, the LLC  
7 operated like a traditional LLC and had employees,  
8 books, bank accounts?  
9 A. Correct, yes.  
10 Q. So then if it paid for that seal coating  
11 we were talking about earlier in 2016, there  
12 should be an invoice payment for that?  
13 A. I am going to repeat, the management  
14 company would never -- any management company  
15 would not pay for invoices. It would be the  
16 property owner would have paid for it, Pennmark,  
17 one of the tenants in common, I believe Pennmark  
18 at Coventry Holdings, LLC would have been the one  
19 that would have paid for it.  
20 Q. All right. Does the Coventry Management  
21 Company lease space from Pennmark Management  
22 Company, Inc.?  
23 A. No.  
24 Q. Does it have its own equipment, printers

1 and computers?  
2 A. No.  
3 Q. So it merely uses the offices and assets  
4 of Pennmark, Inc.?  
5 MR. MCGUIRE: Objection to form.  
6 You can answer.  
7 THE WITNESS: No.  
8 BY MR. MAYERSON:  
9 Q. Can you explain the discrepancy, if any?  
10 A. There is no Pennmark, Inc., so.  
11 Q. I'm sorry. Does Pennmark at Coventry  
12 Management Company, LLC use the office space  
13 technology equipment like computers that belong to  
14 Pennmark Management Company, Inc.?  
15 A. [Correct, yes]  
16 Q. And is there any type of agreement setting  
17 the scope of that or compensation to be paid for  
18 that?  
19 A. [No]  
20 Q. Does or did it ever have -- does Pennmark  
21 at Coventry Management Company, LLC use a  
22 letterhead?  
23 A. I am not sure.  
24 Q. Does it have a specific email domain?

1 A. No.  
2 Q. Does it have a private phone line?  
3 A. It may have when the mall was operating,  
4 but not now. When it was operating the mall, it  
5 definitely would have.  
6 Q. So there would be proof of payment for  
7 that phone line that it owns?  
8 A. I am not sure. I would imagine so.  
9 Q. Right.  
10 A. I don't know. I don't know. [You're  
11 getting into bookkeeping] I don't know.  
12 Q. So I think you mentioned that Pennmark at  
13 Coventry Management Company, LLC did maintain its  
14 own bank accounts, correct?  
15 A. No, I didn't say that.  
16 Q. Oh. Did it ever maintain its own bank  
17 accounts?  
18 A. I am not sure. I am assuming it would  
19 have had to for payroll.  
20 Q. That's the question.  
21 A. Yeah, I am not sure. It definitely did at  
22 one time. I am not sure if it's still there.  
23 Q. And that's what I want to find out. Did  
24 it ever have its own bank accounts for payroll?

1 A. [Yes, it would have had to, yes].  
2 Q. And so who would be the person to contact  
3 to get proof of that?  
4 A. I am not sure, a bookkeeper or the  
5 accountant. I am not sure, one of the two.  
6 Q. Who is the bookkeeper?  
7 A. At the time or now? I mean, bookkeepers  
8 come and go.  
9 Q. At the time.  
10 A. I am not sure.  
11 Q. Well, I am talking about the five years  
12 after 2016.  
13 A. Yeah, I don't know. Off the top of my  
14 head, I have no idea.  
15 Q. Do you know when it maintained a separate  
16 general ledger profit/loss statement and balance  
17 sheets?  
18 A. I am not sure.  
19 Q. Do you have a direct supervisor?  
20 MR. MCGUIRE: Objection.  
21 Ben, are you asking him  
22 personally or him as the corporate  
23 designee?  
24 MR. MAYERSON: I guess both.

1 How about personally, do you have  
2 a direct supervisor?  
3 MR. MCGUIRE: You can answer,  
4 Bob.  
5 THE WITNESS: I don't believe so,  
6 no.  
7 BY MR. MAYERSON:  
8 Q. And so there is a distinction being drawn  
9 from you personally and you as a corporate  
10 designee. I think you said not personally, but as  
11 a corporate designee I assume it is the same  
12 answer?  
13 A. Yes, same answer.  
14 Q. Did Pennmark at Coventry Management  
15 Company, LLC maintain workers' compensation  
16 insurance in its name?  
17 A. I would imagine so, but I don't know.  
18 Q. It should issue as well W-2s for its  
19 employees?  
20 A. When it had employees, it would have, yes.  
21 We use a payroll service now.  
22 Q. Would it be the same payroll service for  
23 Pennmark Management Company, Inc.?  
24 A. Yes, but different accounts, yes.

1 Q. You don't know for sure?  
 2 A. They would have definitely been different  
 3 accounts. It was definitely different payroll.  
 4 Q. So I guess then we can agree that Pennmark  
 5 at Coventry Management Company was not like a --  
 6 or was it a disregarded entity? Do you know what  
 7 that means?  
 8 A. You're asking me?  
 9 Q. Yes.  
 10 A. Yeah, no, it can't be a disregarded entity  
 11 with three partners, I believe.  
 12 Q. Okay.  
 13 A. Or three members, I'm sorry. Wrong term.  
 14 Q. Does Pennmark Management Company, Inc.  
 15 charge a management fee to Pennmark at Coventry  
 16 Management Company, LLC?  
 17 A. No.  
 18 Q. Did Pennmark, Inc. ever pay any debt,  
 19 invoice, or operating expense on behalf of the  
 20 Coventry Management Company --  
 21 A. There is no Pennmark, Inc., so.  
 22 Q. I'm sorry. Okay.  
 23 So did Pennmark Management Company, Inc.  
 24 ever pay any debt or invoice of Pennmark at

1 Coventry Management Company, LLC?  
 2 A. No.  
 3 I would go one step further, no, Pennmark  
 4 Coventry Holdings may have as the owner of the  
 5 property.  
 6 Q. Okay.  
 7 I would like to go back to Exhibit-1.  
 8 That little plot of land that is owned by  
 9 Pennmark at Coventry Management Company, LLC  
 10 presumably has to pay property taxes every year?  
 11 A. Yes.  
 12 Q. Well, do you know who pays those property  
 13 taxes?  
 14 A. No, I am assuming the tenants in common,  
 15 Pennmark Coventry Holdings, LLC, would. The  
 16 I'm sorry.  
 17 Q. I'm sorry. Go ahead.  
 18 A. I am saying the property owner for the  
 19 mall would probably pay the taxes.  
 20 Q. But the property owners of the mall don't  
 21 own that lot, do they?  
 22 A. No. So it would have been paid as the  
 23 distribution to the partners' contribution to  
 24 Pennmark at Coventry Management, LLC to pay the

1 [taxes].  
 2 MR. MAYERSON: Tyler, go to the  
 3 next page.  
 4 BY MR. MAYERSON:  
 5 Q. Who pays to maintain that lawn?  
 6 A. It doesn't look like it is maintained at  
 7 all. It looks overgrown.  
 8 Q. Well, I mean, it doesn't look like my  
 9 garden. It does look a little bit like my yard.  
 10 A. The property was purchased with the intent  
 11 to combine it with the mall, however, the lender  
 12 for the mall, you have to be a single asset  
 13 entity, you cannot own any other properties, so  
 14 that's why Pennmark at Coventry Management  
 15 Company, LLC was used because it was no longer  
 16 being used for payroll.  
 17 Q. All right. And when you say used, you  
 18 mean the property was deeded to the LLC for  
 19 convenience?  
 20 A. Correct, because it could not -- it was  
 21 always intended to be combined with the mall. The  
 22 goal was to use this area of the property in the  
 23 future for residential, so we needed to acquire  
 24 this little piece that this lady owned. We

1 purchased it, we could not put it in the name of  
 2 the mall because the lender requires, you know,  
 3 you have no other property other than what they  
 4 mortgaged. So that's why this company was used  
 5 because we weren't using it for payroll anymore.  
 6 Q. Did you identify who the lender was?  
 7 A. Yeah, it was Lakeland originally and now  
 8 Provident.  
 9 Q. Provident Bank?  
 10 A. Provident Bank, yes.  
 11 Q. All right. And so who is it that cuts  
 12 these grass, weeds, whatever you want to call  
 13 them?  
 14 A. I am not sure. I am assuming it would be  
 15 Pennmark Management Company employee or an outside  
 16 service. I am not sure.  
 17 Q. And would there be an accounting between  
 18 the two companies if Pennmark Management Company,  
 19 Inc. is paying for the maintenance of this  
 20 property?  
 21 A. There should be, yes.  
 22 MR. MAYERSON: All right.  
 23 To be honest with you, I don't really  
 24 understand the answer that you gave as to

1 who pays the property tax every year on  
 2 this property, which it has only been  
 3 three or four years I guess.  
 4 So I will try to come to  
 5 understand it, but I guess at some point  
 6 it may be necessary to substantiate that  
 7 answer, that it was properly accounted  
 8 for, along with the maintenance of the  
 9 property, and maybe when we meet again I  
 10 will have a better understanding of it,  
 11 but for now I appreciate your answers. I  
 12 do understand much better now than I have  
 13 for the past couple of years. It was all  
 14 very confusing because of the yes we do,  
 15 no we don't, yes we do. But here we are,  
 16 and hopefully we are at the end of the  
 17 line, and again I appreciate you coming  
 18 here and maybe we'll meet again.  
 19 THE WITNESS: Okay.  
 20 Thank you.  
 21 MR. MAYERSON: Thanks.  
 22 VIDEO SPECIALIST: Counsel,  
 23 anything further for the witness?  
 24 MR. MCGUIRE: No.

1 MR. NOVICK: No questions.  
 2 MR. MCGUIRE: I have nothing.  
 3 VIDEO SPECIALIST: 12:21,  
 4 conclusion of video.  
 5 COURT REPORTER: Can counsel  
 6 state for the record whether they want  
 7 copies or not, please.  
 8 MR. NOVICK: Bill Novick, yes,  
 9 electronic mini, no add-ons, please.  
 10 MR. MCGUIRE: Same order for me  
 11 as Bill, electronic mini, no add-ons.  
 12 MR. MAYERSON: Same.  
 13 ---  
 14 (Witness excused.)  
 15 ---  
 16 (The deposition concluded at  
 17 12:24 p.m.)  
 18  
 19  
 20  
 21  
 22  
 23  
 24

CERTIFICATION

I, ERICA HEARN, Professional Court Reporter and Notary Public, do hereby certify that the foregoing is a true and accurate transcript of the stenographic notes taken by me in the aforementioned matter.

---

DATE: DECEMBER 1, 2025 \_\_\_\_\_

ERICA HEARN

## Exhibit "B"

## Ben Mayerson

---

**From:** Novick, William J. <WNovick@tthlaw.com>  
**Sent:** Thursday, October 30, 2025 10:31 AM  
**To:** Ben Mayerson  
**Cc:** Mills, Gwen A.; Emily Beam  
**Subject:** RE: Pennmark Mgmt Co Inc Discovery Answers - Moser v. Pennmark Management Company, Inc. Our file no. 666-53094

Ben,

We have produced all documents in our possession and, according to our client, in their possession. If you feel the need to file additional discovery motions, have fun. Gwen will follow up to confirm there are no outstanding policy documents but, as we verified in our responses previously issued, all documents in our possession have been turned over as of this time.

Thanks,  
Bill

**William J. Novick, IV**  
**Partner | Thomas, Thomas & Hafer, LLP**  
1550 Pond Road  
Suite 210  
Allentown, PA 18104  
610.332.7029  
[Bio | Firm](#)

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**From:** Ben Mayerson <ben@610law.com>  
**Sent:** Wednesday, October 29, 2025 3:54 PM  
**To:** Novick, William J. <WNovick@tthlaw.com>  
**Cc:** Mills, Gwen A. <GMills@tthlaw.com>; Emily Beam <emily@610law.com>  
**Subject:** Re: Pennmark Mgmt Co Inc Discovery Answers - Moser v. Pennmark Management Company, Inc. Our file no. 666-53094

10/29/25

Bill,

**Do you intend to produce the applicable liability insurance policy for your client?**

If not, I have no option but to file another motion for sanctions.

Ben

## Exhibit "C"

**Jeffrey S. Lapin, CPM®**  
**Expert's Opinion Report - REVISED**  
**Bernice and Allen Moser v. Pennmark at Coventry Management Co., Inc., and Pennmark**  
**Coventry Holdings, LLC, et al**  
**December 8, 2025**

NOTE: This REVISED opinion report supersedes any prior opinion reports issued by the expert and applies with equal force to all Defendants in this matter, including Pennmark Management Co., Inc., Pennmark Coventry Holdings, LLC, Pennmark at Coventry Management Company, LLC and PGOB Coventry Holdings, LLC.

Counsel representing Bernice and Allen Moser (hereinafter "Plaintiffs") has asked me to discuss the standard of care applicable on or about 6/1/22 (hereinafter the DOI), to the owners and managers of a commercial shopping center located in Chester County, Pennsylvania, known as the Coventry Mall (hereinafter the "Property"), operated by Pennmark Management Co., Inc. (hereinafter "the Defendants") with regard to inspection, maintenance and safety protocols for parking lots intended to be used by customers and other members of the public.

Counsel has further asked me, on the basis of my particularized knowledge, skills, education, experience, training, and review of the documents referenced in this report, to opine to a reasonable degree of professional certainty as to whether the Defendant to the above-captioned action breached said standard of care in any respect. What follows is my report on these subjects.

**Professional Qualifications:**

Curriculum Vitae of Jeffrey S. Lapin, Certified Property Manager ("CPM®")

- I. Education:
  - Master of Business Administration (MBA) – Pepperdine University, Malibu, California - 1998
  - Bachelor of Science – Bus. Admin. – University of Southern California (USC), Los Angeles, California – 1981
- II. Professional Qualifications:
  - Former V.P., Property Management, Licensed Real Estate Officer, partner and Supervising CPM® for a national real estate investment management company. Retired August, 2021.
  - Certified Property Manager (CPM®) – Institute of Real Estate Management ([www.irem.org](http://www.irem.org))

- Accredited Residential Manager (ARM®) - Institute of Real Estate Management ([www.irem.org](http://www.irem.org))
- Member and Distinguished Real Estate Instructor (DREI®) – Real Estate Educators Association (REEA®)
- Former Adjunct Professor – University of Tennessee Chattanooga – Gary Rollins College of Business – Real Estate Fundamentals (FIN 3710) and California State University Sacramento – College of Business – Real Estate Principles (FIN 19)
- 2021 - Present – Member Knowledge Solutions Advisory Council – IREM® National
- Member – IREM® Best Practices Working Group – Contributor to 2020 Best Practices publication by the Institute of Real Estate Management (ISBN-13: 978-1-57203-290-3)
- 2016 President – Institute of Real Estate Management (IREM®) Chapter 22 – Sacramento, California
- IREM® CPM® of the year – 2014 & 2017
- Co-Author and Certified Instructor – IREM® national CPM® (Certified Property Manager) designation curriculum - MNT402 (Managing Maintenance Operations and Property Risk)
- Certified IREM® Instructor for FIN402 (Budgeting, Cash Flow and Reporting for Investment Real Estate) & ETH800 (Ethics for the Real Estate Manager).
- Creator and frequent presenter of numerous live and webinar courses for IREM®.
- Instructor – BOMI® International (Building Owners and Managers Institute International) – Design, Operation and Maintenance of Building Systems, Part I & II and Environmental Health and Safety.
- Faculty Instructor –Tennessee Real Estate Education Systems (TREES)– TN Pre-license Education Courses
- Tennessee Licensed Course Instructor – Tennessee Real Estate Commission (Lic. #14119873)
- Certified Distance Educator – ARELLO (Assoc. of Real Estate Law Officials)
- Member – IREM® Academy of Authors
- Member – AAOA (American Apartment Owners Association)

I have been a property manager and/or property management supervisor, property owner and commercial property management company co-owner involving residential and commercial properties for 40 years. I recently retired from actively owning and managing property and now serve as an instructor and expert witness in cases involving the standard of care for property management and/or property owners for properties of all types.

I hold a Certified Property Manager (CPM®) designation and an Accredited Residential Manager (ARM®) designation from IREM® (for whom I teach in-person and online classes for qualification of new CPM's and ARM's and other property management related topics).

I am a published author of property management related articles including topics such as landlord/property management maintenance and safety standards (see below).

I have been an Expert Witness in property management, landlord liability and the standard of care for residential and commercial properties since 2015, having been retained in over 100 separate matters.

#### **Peer-reviewed Journal Articles Authored in the Previous Ten Years**

- I. Lapin, J.L. (2025). Raising Standards. *Journal of Property Management Vol. 90, No. 5, September/October, 2025.*
- II. Lapin, J.L. (2020). Come On Back, the Air is Fine! New Technology in HVAC Systems May Help Property Managers Reassure Nervous Tenants. *Journal of Property Management Vol. 86, No. 1, January/February, 2021.*
- III. Lapin, J.L. (2018). Do You Speak Finance? How Owner Buy-In Begins by Positioning Potential Expenses as Investments. *Journal of Property Management Vol. 83, No. 2, March/April, 2018, 28-30.*
- IV. Lapin, J.L. (2018). Five Steps Every Property Manager Should Take to Improve Maintenance. *Journal of Property Management Vol. 83, No. 3, May/June, 2018, 28-30.*
- V. Lapin, J.L. (2017). For Safety's Sake: A Reasonable Standard of Care for Commercial Properties. *Journal of Property Management Vol. 82, No. 1 – Jan/February, 2017, 9-12.*

**Statement of Compensation of Expert**

My rates and compensation for expenses in this case are charged based on the following:

- Case materials review/calls/emails/reports - \$450.00/hr.
- Deposition time - \$550.00/hr.
- In-court testimony - \$585.00/hr.
- Travel time - \$450.00/hr.
- Mileage – IRS current rate
- Other expenses – as incurred

**List of Cases in Last Four Years in Which Expert Testified at Hearing/Trial or in Deposition**

- Meyer v. 1800 M Street Owner, LP et al [Superior Court for the District of Columbia, Civil Division] (Case No. 2022 CA 000093 B)
- Barnes v. Brookside, et.al [State Court of Fulton County, State of Georgia] (Case No. 2020CV00537)
- Rubin v. Solon Gershman, Inc., et al. [Circuit Court of St. Louis County, Missouri] (Case No. 21SL-CC03447)
- Freshley v. Yale, et al. [U.S. District Court for the Middle District of Tennessee, Nashville Division] (Case No. 3:20-cv-01015)
- Haro v. Rodges Industrial Park, et al. [Circuit Court of Cook County, Illinois County Department, Law Division] (Case No. 2020 L 002190)
- Thomas Jarman, et al vs. Twiddy and Company of Duck, Inc. [Gen. Court of Justice, Superior Court Division, County of Johnson] (Case No. 21 CVS 568)
- Turner v. Renters Warehouse Nevada, L.L.C. [District Court, Clark County, Nevada] (Case No. A-21-835588-C)
- Robinson v. Unit Owners Association [Circuit Court, Arlington County, Virginia] (Case No. CL-23000976-00)
- Yarbrough v. FirstService Residential Texas, et al [County Court, Dallas County, Texas] (Case No. CC-23-06152-E)
- Hughes v. Shi H. Brown, Huntsville Apartment Group, LLC et al [Circuit Court of Madison County, Alabama] (Case No. CV-2023-900219)

Miles v. Tesco Properties, Cornella Slaughter, et al [Circuit Court of Hinds County, Mississippi] (Case No. 2023-484)

Bourne v. Tesco Properties, Lakeview Manor Apt's, et al [Circuit Court of Hinds County, Mississippi] (Case No. 2023-510)

Tiggs v. Chatham Commons Condo Assoc., et al [Circuit Court of Cook County, Illinois] (Case No. 2023 L 004368)

Thomas v. KRG, et al [Circuit Court for Baltimore County, Maryland] (Case No. TBD)

Doston v. Integrity, et al [State Court of Lowndes County, Georgia] (Case No. 2024SCV0707)

Krieger v. Walmart, Inc. [Circuit Court for Cocke County, Tennessee] (Case No. 37091-1)

Lancaster v. 11837 MHD, LLC, Atrium Properties, LLC, et al [District Court of Douglas County, Nebraska] (Case No. D01C1240008495)

#### Documents and Materials Reviewed

In preparation for writing this opinion, I personally reviewed the following documents and exhibits:

1. Deposition Transcripts:
  - a. Bernice Moser
  - b. Kelsi Umstead
  - c. Chris Cafiero
  - d. Robert Sichelstiel, Jr.
2. Pleadings and Other Discovery Materials:
  - a. D's Answers to RPT's
  - b. Sierra Claim Services, LLC Investigative Reports (#1, 2 & 3)
  - c. Answer to P's Complaint
  - d. D's Responses to P's RFA
  - e. D's Responses to P's RFP
  - f. Various Asphalt Bids
  - g. D's Document Production
  - h. Filed Complaint (and Amended Complaint)
  - i. Penmark Answers to Roggs
  - j. Penmark Answers to RTP's
  - k. Penmark Deed and Operating Agreements
  - l. Purchase price of both properties

- m. Verification of John J. Byrns
- n. Property Management Agreement
- o. Answer to Document Request by Penmark Management Company, Inc.
- p. Aerial of Parking Lots
- q. Press release of 4/12/16
- r. Press release of 11/10/15
- s. Front two pages of Warranty Deed
- t. Motion for Financial Records of D's
- u. Penmark Answers to Interrogatories – 10/6/25
- v. Amended Complaint – 6/17/25
- w. Local newspaper story of April 2016 quoting Cafiero: "One of the first things they'll see is paving work and pothole repair in the parking lot."
- x. 07-18-25 Discovery Requests to Penmark (PCA at No. 4)
- y. 09-17-25 Order Requiring Full Responses to 07-18-25 Discovery Requests (including PCA)
- z. 10-06-25 Answer to 07-18-25 Discovery Request (Claiming PCA no longer available at purchase was in 2013)
- aa. 10-06-25 Verification to 10-06-25 Answer to Discovery (Defendant affirming attorney prepared response that PCA is no longer available)
- bb. 11-07-25 Document Request for Financial Records to Penmark, Inc.

3. Other Expert's Reports – Opinion report of Raymond R. Miller, P.E.

**Facts Considered in Forming Expert's Opinions:**

On or about June 21, 2022 (hereinafter the "DOI"), 68-year-old Bernice Moser (Ms. Moser) was an employee of Community Health and Dental Care, a lawful tenant of the subject Property who was lawfully present at the Property on the DOI. On her break, Ms. Moser visited a farmer's market, set up in the parking lot of the Subject Property near her employer's offices. While walking back to her employer's offices, Ms. Moser fell while traversing the parking lot and was injured.

Later investigation revealed that Ms. Moser had unsuspectingly encountered broken and poorly maintained asphalt/macadam on the parking lot surface, one of many parking lot hazards at the subject Property, which caused her to lose her footing and strike her head on the asphalt surface of the parking lot. Ms. Moser said that she did not see the hazardous condition while she was walking and was not expecting to encounter such a hazard. At the very least it is clear that Ms. Moser did not appreciate the hazardous condition of the parking surface.

At the time of her fall, and for years prior thereto, the Defendants were engaged, individually and/or collectively, in the business of managing, maintaining, and operating the Property, a shopping and commercial center known as the Coventry Mall, situated in Pottstown, Chester County, Pennsylvania.

The Property was purchased several years before the Plaintiff's fall. At that time (2015-2016), several bids were secured from contractors to resurface, seal and restripe the entire parking lot as it was already in a dilapidated condition, suffering from deferred maintenance. Yet this necessary maintenance was not undertaken by the Defendants over the ensuing six years creating a condition that was unreasonably dangerous to the public due to the expansive areas of deteriorating and failed asphalt/macadam.

The Defendants' maintenance worker on the DOI, whom the Defendants incorrectly referred to as the "On-site Property Manager", Mr. Kelsey Umstead (who referred to himself as a "Maintenance Man") (hereinafter "Mr. Umstead") was the only employee of the Defendant who performed temporary repairs on some of the potholes and other hazardous conditions in the parking lot of the Subject Property by using cold patching.

According to the Pennsylvania Dept. of Transportation's website (PennDOT – [www.pa.gov](http://www.pa.gov) – PUB 370E) cold patch is considered a temporary patching material for repairs during winter months until warmer weather, when more permanent pothole patching using warm mix asphalt should be done. According to the testimony of Defense witness Chris Cafiero, he did not have any recollection of hiring anyone else (employee or contractor) to perform repairs to the parking lot prior to the DOI except Mr. Umstead (using the cold patch). *Cafiero 31:9*.

Mr. Umstead said that, rather than working from a survey, inspection or study detailing the hazardous conditions in the parking lot of the Property, he was, at the time of the Plaintiff's fall, just responding reactively to work orders sent to him by email from the corporate office of the Defendants, most of which resulted from calls to the corporate office by tenants of the Property about parking lot hazards. This is below the standard of care. *Umstead 31:7, 44:17*.

Umstead also confirmed that he did not independently identify hazardous conditions in the parking lot, which is very large and included over 54 acres of asphaltic covering on the DOI. He said that he is the only one that did this work at the Property on the DOI, with virtually (90% of the time) no assistance from other employees of the Defendants or third-party contractors. Mr. Umstead was asked about the loose gravel depicted in photos of the subject parking lot. He was asked what he believed was the source of the loose material (which is a slip and fall hazard). He responded "I'm not an expert. I'm just a maintenance man." *Umstead 17:9, 74:23*, <https://northcoventrytownship.com/north-coventry-township-acknowledges-receipt-of-minor-subdivision-plan-for-coventry-mall-cvs-parcel/>.

Mr. Umstead also said that he often went to five or six other commercial shopping center properties owned and operated by the Defendants during the same workday and responded daily to multiple work orders for each of those properties, in addition to his work at the Property. He said that he had worked at the Property since 2021, and that in addition to repairing potholes in the parking lot, he also cleaned bathrooms and hallways, mopped floors and whatever else is on the work orders sent to him ("Generally, you just take the work orders as you get them..."). *Umstead 13:17, 15:9, 16:7, 16:18*.

When asked when he usually visited the Property and how much time he spent there, Mr. Umstead said that he was usually there for "Generally, an hour a day", which he said was first thing in the morning and that he drove through the property, picked up trash and looked for vandalism (he did not mention looking for parking lot hazards such as deteriorating asphalt). Because of the work he had to do at the other properties, Mr. Umstead said that he was only at the Property during the week (M-F) and that overtime was not usually allowed. He added that "If I see something, I take care of it." *Umstead 17:16, 17:18.*

Mr. Umstead said that in addition to his other duties, in the winter, he shoveled snow off of walkways and used a snowplow to push snow on the expansive parking lot at the Property. In fact, he described himself as the "First line of defense against snow removal at (the subject Property)". *Umstead 18:17, 19:14.*

Therefore, by Mr. Umstead's admission, he was not an expert on parking lot maintenance and repair, was largely unsupervised by the Defendants, was admittedly over-stretched so much that he only had one hour a day, five days a week to maintain the vast expanse of parking lots at the subject Property and did not have a set schedule of duties. He also said that he did not perform actual, documented inspections and was, by his own admission, purely reactive, not proactive in that he said that he just responded to work orders emailed to him and went wherever the work order directed him to go. *Umstead 22:7.*

When asked how he determined which areas of failed asphalt pavement needed patching or maintenance, Mr. Umstead said that there was "No real form or pattern. You just...as you find stuff, you repair it." He later confirmed that he had no process to decide which areas of asphalt to patch. "I have no process. It's pretty much as needed." This is below the standard of care which requires that maintenance personnel have appropriate oversight and direction and that they act proactively to find and correct hazards before anyone is injured. *Umstead 26:9, 61:16.*

And when asked if the Defendants supervised his work at the Property, including parking lot repairs, Mr. Umstead said that he was unaware of who would drive around the Property (or when) and identify areas of the lot that need to be patched. He added that "I usually just get an email stating (that) something was spotted and I should go take care of it." This is also beneath the standard of care in that it is purely reactive, and because no real inspections or prioritizing of work was occurring, the Defendants were 100% dependent upon tenants or visitors to advise the property owner/manager of hazards. *Umstead 26:7, 27:20, 61:13, 61:21.*

The Defendants were, on the DOI, experiencing unusually high employee turnover. Mr. Umstead said "We go through a lot of people in the office, so I couldn't tell you if (Property Manager Sara Sota) was working here when all this happened." This may have contributed to the lack of clear direction and supervision of Mr. Umstead's activities as he was not sure who was actually managing the Property. As stated above, the testimony indicates that Umstead was, on the DOI, considered by the Defendants to be the "On-site Property Manager", meaning that the Defendants did not replace the property manager, but rather just gave that title to Umstead

without him having any training, background, education, experience or certification in managing such a large shopping center. *Umstead 31:17.*

Mr. Umstead was interviewed by Sierra Claim Services, LLC (hereinafter "Sierra") on July 12, 2022 in connection with the law suit filed by the Plaintiff. He provided several statements to the Sierra Investigator including that it is "Hard to keep up the whole parking lot of the mall alone." He also said that there are public buses and heavy vehicles that drive through the lot which is private property, including the area where the Plaintiff fell and that snow plows also "Cut up the asphalt on the lot during winter when they do the plowing, so there are potholes throughout each year." *Sierra Investigative Report 000124.*

Mr. Umstead also told the Sierra investigator that the "Remaining tenants of the mall would contact him about any issues if they see him roaming around, but the tenants also call the office, and the office contacts (him regarding) any issues or work orders, and he takes care of it." Again, it is not proper procedure for an owner/manager of such a property to depend on tenants or visitors to report hazards. *Sierra Investigative Report 000124.*

Mr. Umstead was asked in testimony, to discuss the statements he made to Sierra, including the statements about the buses and heavy commercial vehicles that were traversing the parking lot and causing some of the damage to the asphalt surface. He said that the heavy truck traffic was "Constant, every day, all day, once an hour." He added that "They destroy the parking lot." And that "There are potholes throughout each year." The Defendants clearly had knowledge (Notice) of this activity and the damage that it was doing to the parking lot at the Property, and that it was making the lot unsafe, but took no action to stop or redirect it. *Umstead 42:16, 42:21, 44:3.*

When asked if he was aware of any resurfacing or resealing of the parking lot before the DOI, given the well-known unsafe condition of the parking lot on the DOI, Umstead said that it had not been done since he started in 2021. Mr. Chris Cafiero, who was a senior executive at the Defendant company(s), said that his role at the company was to "Maintain the property in a safe condition." Mr. Cafiero confirmed that he also had no recollection of the Defendants having had the parking lot adjacent to Community Health and Dental resurfaced by a contractor despite the fact that Mr. Cafiero admitted receiving a bid to do exactly that in 2016. *Umstead 46:18, 47:2, Cafiere 9:1, 53:23.*

Mr. Umstead also said that it was difficult for him to patch all the deteriorated pavement areas around Community Health and Dental because cars were always parked in the lot when he was there (M-F, daytime). When asked if he was ever required to come in on weekends when cars would not be there, he responded that he had not been asked to do that because "We don't have overtime unless it's specifically allowed." *Umstead 85:10.*

Mr. Umstead was then asked if he could have asked his supervisors for approval to have Community Health and Dental park vehicles in a certain area in order to facilitate asphalt repairs. He said that he never did that. This is contrary to industry standard practice – proper parking lot maintenance and repair requires that cars not be parked where work has to occur. *Umstead 84:17, 85:7, 85:10, 86:9.*

On July 8, 2022, Sierra telephonically interviewed Mr. Justin Bartholomew, representative of Defendant owner entity Pennmark Coventry Holdings, LLC and the Defendant's Mall Manager for the Property in 2016 about the subject incident. Mr. Bartholomew said the following about the condition of the subject parking lot on the DOI: "...he said when there are reports of holes that need to be filled (from the Plaintiff's employer Community Health and Dental), (the Defendants) would (fill them) usually within 48-72 hours. However, (the Defendants) were closing the mall, so they were not doing major repairs." (emphasis mine). *Sichelstiel 40:24, Sierra Investigative Report 000124.*

Mr. Umstead told Sierra's investigator in an in-person interview on July 12, 2022 that he was, on the DOI, on-site and handled any issues, did maintenance and he said he filled the potholes manually as needed, "But it is hard to keep up the whole parking lot of the mall alone." This is consistent with Mr. Umstead's sworn testimony.

#### **Duties of Defendants per the Property Management Agreement**

The Property Management Agreement, which was entered into between Pennmark Management Co., Inc. and Pennmark Coventry Holdings, LLC dated 4/8/2016 (hereinafter the "Agreement") states, among other things, that the Manager (Pennmark Management Co.) is to "Maintain and repair the Property...in compliance with Owner's (Pennmark Coventry Holdings, LLC) directives and competitive with properties of comparable size and quality."

The Agreement also states that all employees are considered employees of (Pennmark Management Co.) and their salaries charged back to the Owner.

The Agreement further sets forth a Standard of Maintenance which the Manager is to meet. The standard states that the Manager is to "Cause the Property to be maintained in a first-class condition, including external and internal areas of the building, sidewalks, signs, parking lots..." The discovery material provided indicates that the Property was not being maintained in a "first-class condition."

The Agreement also states that the Manager is to "Make or cause to be made, all repairs....as may be required in the course of the ordinary maintenance and care of the Property." Again, this was not being done on the DOI.

With regard to administration of the leases at the Property, the Agreement states that the Manager is to "Consider, and where reasonable, attend to complaints of tenants."

Concerning corporate authority, the Agreement sets forth that the "Manager represents and warrants that the Manager is Pennmark Management Company, Inc." The Agreement was signed by Donald Cafiero as both Managing Member of Owner and as President of Manager.

Article 7 of the Agreement (Accounting and Financial Matters) states that the Manager is keep records for the Owner, including books and records of the Property...showing all receipts, expenditures and "All other records necessary or convenient for the recording of the results of operations of the Property" and that such records are to be kept in a "Secure location." This is

consistent with the industry standard of care and is a crucial responsibility of a commercial property management company. The Defendants reported however, that the records requested were lost due to the passage of time (which is less than 10 years).

Per the testimony of Mr. Robert Sichelstiel, the CEO for the Defendant owner/manager, the Defendants had obtained financing for the purchase of the mall Property from a "Lender" (likely Lakeland/Provident Bank per the deponent). It is standard for any bank lender, as well as for any entity contemplating the purchase of such a large commercial property, to require that a Property Condition Assessment Report or "PCA" be obtained during the underwriting or due diligence process on a new loan, refinancing or cash purchase in order to provide the parties with an independent, third-party assessment of the condition of the asset, including any deferred maintenance, and current and future repairs and replacements.

Such PCA reports for lenders are usually conducted in accordance with the American Society for Testing and Materials or ASTM International standards, including the ASTM E2018-15 Standard for the Baseline Property Condition Assessment Process. <https://store.astm.org/e2018-15.html>.

The PCA for the Property was not produced by the Defendants in discovery despite the document request by the Plaintiff (see Document Requests of 7/18/25 and 11/7/25). In fact, the Defendants denied that they had any such records due to the time that had passed since acquiring the Property in 2016 (not 2013 as claimed/verified by Defendant on 10/6/25). Industry standard practice and the aforementioned Article 7 of the Agreement however, require the Defendant Manager to keep such records for the Owner in a secure location as part of the permanent records of the Property. It is therefore implausible that the PCA for this Property does not exist. *Sichelstiel 92:3, 92:5, 108:11, 109:7, 109:10.*

#### **Penmark's Answers to P's Interrogatories:**

Penmark Management Company's Objections and Answers to Plaintiff's Interrogatories was recently provided. Some notable responses are as follows:

Number 7 – Defendant was responsible for the maintenance and repair of the parking spaces. Employee Kelsey Umstead was identified as the Defendants' "On-site property manager" on the date of the incident. Prior discovery responses and deposition testimony revealed that Kelsey Umstead was not the on-site property manager but rather was performing repairs and maintenance. Mr. Umstead did not identify any property management duties, skills, training, education or experience in property management. There appears to have been no property manager of the Property on the DOI.

Number 8 – Regarding details of parking lot repairs, the Defendant answered that "To the best of Defendant's knowledge and belief", no maintenance or repair work was performed (to the parking lot) in the twelve months preceding the DOI. This is despite the actual notice that the Defendants had regarding the unreasonably dangerous condition of the asphalt parking surfaces before the DOI, including the area where the Plaintiff fell.

Number 9 – The Defendant was asked when the parking lot was seal coated in the area where the Plaintiff fell from the date of purchase of the Property through the DOI, and who last performed the seal coating. The Defendant’s response was that “Maintenance of parking spaces was not performed specific to businesses contained within the subject premises.” This response should be interpreted as an admission that no seal coating or other meaningful maintenance/repair was ever done during the Defendant’s ownership of the Property (2016 – 2022) in the area where the Plaintiff fell.

Number 12 – With regard to completion of documented inspections of the parking lot by the Defendants, which is a vital part of the standard of care, the Defendant stated that documented inspections were not “Required” (by the Manager) and that “Kelsey and Ollie (Maintenance Workers) were onsite regularly performing inspections.” The industry standard is that if inspections are not documented, then they did not occur, as is the case here.

**Statement of Expert’s Opinions:**

Based upon my particularized knowledge, skills, education, experience, and training, and my review of the above-identified documents, I am prepared to offer the following opinions to a reasonable degree of professional certainty. I reserve the right to supplement and/or amend these opinions should additional information be made available to me.

- 1. Careful and responsible property managers, and reasonably trained and qualified management personnel of commercial properties similar to the Property and their supervisors, exercising ordinary and prudent care, have a responsibility to maintain those properties in a reasonably safe condition and to take reasonable steps to prevent or mitigate harm to tenants, customers and other invitees so as to protect the health and safety of those individuals. This is the industry standard of care applicable to the Property on the DOI and is consistent with the Borough of Pottstown, Pennsylvania standard of care as set forth in the adopted International Property Maintenance Code (see below) and applicable national standards for maintenance and repair of Properties like the Property.**
- 2. Plaintiff Bernice Moser, acting in a reasonable and normal manner for a tenant employee walking through the employer’s designated parking lot on the DOI, lost her footing on longstanding crumbling and unreasonably dangerous asphalt (macadam) on the subject parking lot as she traversed the lot. The Defendants had not properly repaired or replaced the asphaltic parking lot surfaces and had not placed or posted any warning signs, barricades or other means to warn Ms. Moser of the hazardous conditions of the parking lot. Ms. Moser had legal reason to be at the Property and in this area of the parking lot, was not in a restricted or barricaded area and had the right to presume that the subject parking lot was reasonably safe and free of hazards to pedestrians on the DOI.**
- 3. The Defendants are the entities responsible for the reasonable upkeep and maintenance of the Subject Property, including the parking surfaces. The photographs of the subject parking lot provided as a part of the reports prepared by**

Sierra, clearly show numerous areas of the parking lot used by the Plaintiff's employer, Community Health and Dental, that were in deteriorated or severely deteriorated condition, including numerous holes and depressions, raised and sunken edges, failed patches, loose gravel material and severely cracked expanses of asphaltic coverings. Therefore, the subject parking lot was not reasonably safe for pedestrians on the DOI, including the Plaintiff, as a result of these conditions and it was reasonably foreseeable that someone traversing this parking lot would trip or slip and fall on the dangerous asphalt, as the Plaintiff did.

4. The Defendants had actual notice of the unreasonably dangerous condition of the parking lot asphalt surfaces years before the DOI as a result of their due diligence and financing activities in 2015 and 2016 when the property was acquired, including a Property Condition Assessment Report (PCA). The condition of the parking surfaces was so severely deteriorated at that time that complete resurfacing was apparently necessary for safety but was not approved or completed during the 6-7 years before the Plaintiff's fall. During that 6-7 year window the condition of the parking surfaces deteriorated further due to heavy traffic and plow trucks, presenting a known safety hazard for months or years prior to Plaintiff's fall. Yet, in the year prior to Plaintiff's fall, Defendants took no action to remedy the hazard beyond assigning a single maintenance man to apply cold patch to the expansive parking lots. No formal inspections were done by Defendants as required by industry standards. The lack of formal inspections is particularly problematic on this property since Defendants knew, since 2015, that the parking surfaces were crumbling. The need for closer monitoring was necessary. Defendants did the opposite.

The likely reason for the Defendant's lack of proper repair and maintenance or replacement of the parking surface asphalt, despite their knowledge of its unreasonably dangerous condition, is revealed in the statements by Mr. Bartholomew to Sierra that the Defendants were closing the mall and wanted to avoid any major repairs to the parking lot.

An online Law Dictionary ([www.dictionary.thelaw.com](http://www.dictionary.thelaw.com)) defines Reckless Behavior as "Extremely careless behavior that rises above negligence, actions which are significantly beyond that standard of care that a reasonable person would exercise in similar circumstances." The Legal Information Institute ([www.law.cornell.edu](http://www.law.cornell.edu)) defines Reckless Behavior as "Behavior that is so careless that it is considered an extreme departure from the care that a reasonable person would exercise in similar circumstances."

The Defendants knew, should have known and had reason to know about the extremely dangerous condition of the parking lot surface as a result of a) the proposals for parking lot resurfacing that they received when they purchased the property, b) reports by tenants and others at the Property about potholes and other dangerous conditions that existed on the DOI (in response to which, the Defendants'

had the one and only maintenance worker for the Property, Mr. Umstead, throw temporary cold patch over/into when he was infrequently at the Property), c) the amount of time and material being expended at the site to cold patch the holes and other unsafe surface elements by Mr. Umstead and d) the PCA that the Defendants undoubtedly had when they purchased the Property which would have identified the parking lot as being in need of immediate repair/resurfacing.

Moreover, the Defendants' decision to lease space at the Property to Community Health and Dental Care, a healthcare provider serving patients who could reasonably be expected to be in various degrees of restricted mobility, including patients receiving physical therapy and patients with vision impairment (per Community Health and Dental Care's website – [www.ch-dc.org](http://www.ch-dc.org)) is further demonstration of the Defendants' complete lack of care for the reasonable safety of its tenants, tenant employees and other invitees.

A reasonably trained, experienced and careful property owner and manager, having that knowledge and following the standard of care which requires that level of care that a reasonably trained, experienced and careful property owner or manager would exercise, would have acted to immediately warn the public and effectuate comprehensive repairs or resurfacing as soon as they acquired the property to prevent injury.

Per the Defendant's admissions in interrogatory responses, as detailed above, NO maintenance was performed to the parking lots in the twelve months prior to the DOI, despite the notice that the Defendants had of the unreasonably dangerous conditions.

Because the Defendants failed to warn the Plaintiff and/or repair/replace the unreasonably dangerous parking lot, despite the knowledge that they had that it was unreasonably dangerous and that it was reasonably foreseeable that someone would be injured, I believe that the Defendant's conduct or behavior can be characterized as being so careless that it should be considered an extreme departure from the care that a reasonable person would exercise in similar circumstances or "Reckless" (this is ultimately the purview of the court of law should this matter go to trial).

5. The Defendants violated the International Property Maintenance Code (IMPC) as adopted by the Borough of Pottstown, PA, Municipal Code, Chapter 5 (Code Enforcement), Part 3, Section 301 (Adoption of Code). IMPC (2018) Section 305.4 requires the property owner to maintain walking surfaces in "Sound condition and good repair."

The Defendants were not maintaining the subject parking lot in sound condition and good repair on the DOI:

- a) The expanse of the parking lot at the Property was too large for just one worker (Mr. Umstead), with no training, no direction and little to no staff or contractors to support his efforts, especially in light of Mr. Umstead's assignments of work at other properties managed by the Defendants. In addition, the Defendants provided Mr. Umstead only the tools/equipment needed to temporarily cold patch potholes. Mr. Umstead told Sierra that he depended on work orders or verbal notice from the remaining tenants of the Property in order to know what areas of the parking lot were hazardous. He also stated that he needed help maintaining the parking lot but never received any help. He confirmed these statements under oath.

Due to Mr. Umstead's unreasonably expansive assignments to perform maintenance at five to six other properties owned and managed by the Defendants, Mr. Umstead had only one hour a day, Monday through Friday (with no overtime allowed) to address the parking lot at the Property, along with picking up trash, cleaning floors and other duties. Neither Mr. Umstead or anyone else associated with the Defendants did or was tasked with performing proper inspections or surveys of the parking lot to prioritize or "Triage" the areas that needed repair.

Therefore, he was only able to react to the work orders wherein customers or tenants reporting parking lot hazards as he had time, balancing this work with the work orders he received for other work, including work at five or six other shopping centers managed by the Defendants.

- b) The conditions of the parking lot depicted on the photographs taken by Sierra clearly indicate large expanses of crumbling and failed asphalt in the area used by Community Health and Dental for parking. These areas are not suitable to be properly repaired by the use of cold patch (the method that the Defendants used). Rather, these areas had failed to an extent that industry standards dictate and the bids received by the Defendants recommended, that the proper method to restore the parking lot to a reasonably safe condition would have been to cut out the bad areas and replace them with new asphalt or resurface the entire lot.
- c) The Defendants should have been properly supervising and supporting Mr. Umstead, including but not limited to ensuring that Mr. Umstead had time or reasonable assistance to properly address the parking lot inspections and repairs, and that he was conducting the aforementioned documented inspections and taking appropriate actions when hazardous

conditions were identified. During such inspections, any areas of the parking lot that exhibited hazardous characteristics, such as the area where the Plaintiff fell, should have been immediately barricaded to warn and keep pedestrians away until a proper repair/resurfacing could occur.

6. The unreasonably dangerous condition of the parking lot surfaces on the DOI is the proximate cause of the Plaintiff's injuries. If the Defendants had followed the industry standard of care and applicable Pottstown, PA law, and acted with the degree of care that a reasonably qualified, trained and experienced owner/manager would exercise in similar circumstances by reasonably and proactively providing adequate warnings to keep unsuspecting pedestrians away from the dangerous parking lot elements, and then correctly fixed the hazardous condition in a reasonable period of time, it is more likely than not that the Plaintiff would not have fallen on the DOI.

I reserve the right to amend or append this opinion report if additional discovery materials are provided for my review.

*Jeff Lapin*  
Jeffrey S. Lapin, CPM®

December 8, 2025

Dated

## Exhibit "D"

EXHIBIT

EXHIBIT-18NOV 28, 2025EH

# Pennmark Management Company Raises \$60 Million for Sixth Mid-Atlantic U.S. Real Estate Fund

PRESS RELEASE • UPDATED: NOV 10, 2015

**Plymouth Meeting, PA, November 10, 2015 (Newswire.com)** -Pennmark founder Donald Cafiero today announced that it has raised \$60 Million for its real estate fund, reaching the fund's hard cap. Focused on the Mid-Atlantic area of the U.S., the Pennmark team of investment professionals makes opportunistic investments across retail centers in secondary and tertiary markets.

Pennmark's five prior funds have been active in most areas of commercial real estate including, retail, office, industrial, flex, the hospitality industry and most recently, conversion of prior uses to first class medical centers in areas such as Beaver Falls, PA, Waynesburg, PA and Sewell, NJ. In commercial real estate, Pennmark has invested in over three million square feet in areas such as Clearfield, Pennsylvania, Washington Courthouse, Ohio, Lancaster, Pennsylvania, and many more Pennsylvania, New Jersey, New York, and Ohio markets.

*"The Clearfield area is seeing great benefits from having Pennmark investing in Clearfield County. The improvements Pennmark is making to their commercial retail properties are helping to create jobs and are having a positive impact on our community."*

*Mark McCracken, County  
Commissioner*

Operated in the U.S. since 1972, Pennmark has been successfully developing commercial properties that bring together superior tenants, prime locations and exciting architectural designs. It is The Pennmark Process that is at the heart of our success in managing numerous commercial properties throughout the

Delaware Valley, which brings together strong site selection, creative leasing solutions and a thorough design and construction implementation. Christopher Cafiero, VP of Construction and Property Management is able to plan and construct medical centers at generally half the cost of major medical agencies.

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"The Clearfield area is seeing great benefits from having Penmark investing in Clearfield County. The improvements Penmark is making to their commercial retail properties are helping to create jobs and are having a positive impact on our community." Mark McCracken Clearfield County Commissioner

**"The community of Washington Court House is thrilled with a retail tenant for the PennMark property on Columbus Ave. Successful repurposing of former big box retail locations is never easy and requires an owner with vision and a local community willing to work with the property owner. In our case, Washington Court House and PennMark were a great fit." – Joe Denen City Manager Washington Courthouse, Ohio**

Robert Sichelstiel, CFO and Broker of Record has been with the team since 1994, said, "We appreciate the strong support of our communities and local government agencies. We believe the robust interest in rural communities is an acknowledgement of our successful focus on opportunistic investments in real estate, and we look forward to continuing to create value in our portfolio."

Dr. William Grigsby Ph.D., Community Development Liason said, "I have always insisted on creating value within small local communities, and rural places where we are invested in. Penmark gives back and provides direct support to the communities in which it works in."

If there is a property you would like to submit, please contact Robert Sichelstiel at 610-272-6500, X 125. As with all dealings with Penmark, confidentiality is assured and brokers are always protected.

**TAGS**

Case# 2023-21775-136 Docketed at Montgomery County Prothonotary on 02/13/2026 11:07 AM. Fee = \$0.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

10/14/25, 10:07 AM

Penmark Management Company Raises \$60 Million for Sixth Mid-Atlantic U.S. Real Estate Fund | Newswire

Community investment Real Estate

**ABOUT PENMARK REAL ESTATE DEVELOPMENT AND INVESTMENT COMPANY**

Penmark is a full service Commercial Real Estate Development and Management Company with a portfolio of approximately two million square feet of retail, and office located throughout Pennsylvania, New Jersey and Ohio.

[www.penmarkproperties.com](http://www.penmarkproperties.com)

Penmark Real Estate Development and Investment Company  
1000 Germantown Pike , #Suite A-2  
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19462

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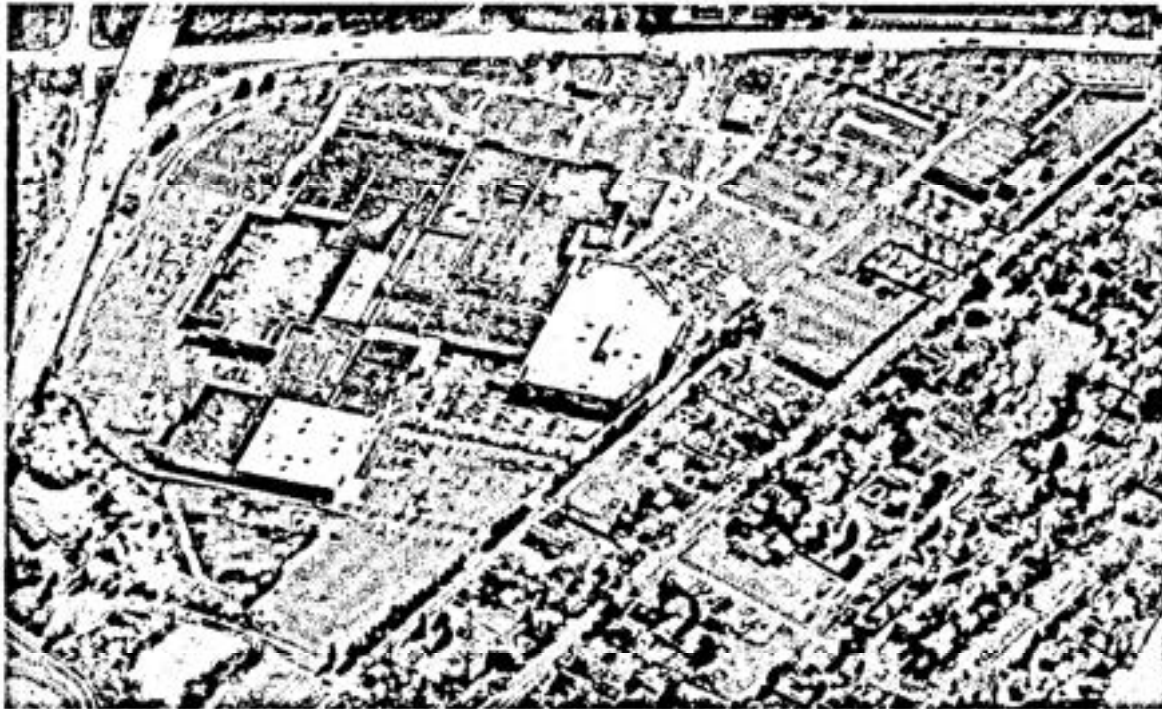


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## Penmark Management Acquires Pottstown Mall Property

By [Steve Lubetkin](#) & [stevlubetkin](#)

📅 April 12, 2016 at 04:00 AM



POTTSTOWN, PA — Penmark Management Company has acquired Coventry Mall, a 796,869 square-foot property located at 351 W. Schuylkill Road in Pottstown, PA. Penmark plans to add dining and entertainment destinations to the property. CBRE Group's Jim Pasquarella and Bill Tourtellotte brokered the sale.

“Penmark's involvement in the Coventry Mall signals a huge step in the right direction towards helping rejuvenate a mall and community that 

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10/21/25, 9:30 AM

Penmark Management Acquires Pottstown Mall Property

struggled through the recession,” says Pasquarella. “As we have seen in Penmark’s prior projects, their investment will create jobs and bring a new and exciting energy to North Coventry Township.”

“We appreciate the strong support of our communities and local government agencies,” says Penmark CFO Robert Sichelstiel. “We believe the robust interest in rural communities is an acknowledgement of our successful focus on opportunistic investments in real estate.”

Focused on the Mid-Atlantic area of the US, Penmark makes opportunistic investments across retail centers in secondary and tertiary markets.

Coventry Mall consists of an enclosed regional mall, a neighboring strip and three additional outparcel developments. The enclosed mall portion of the property consists of approximately 684,660 square-feet that was originally constructed in 1966 and is anchored by Boscov’s, Kohl’s and Dick’s Sporting Goods. A fourth anchor space was previously occupied by Sears.

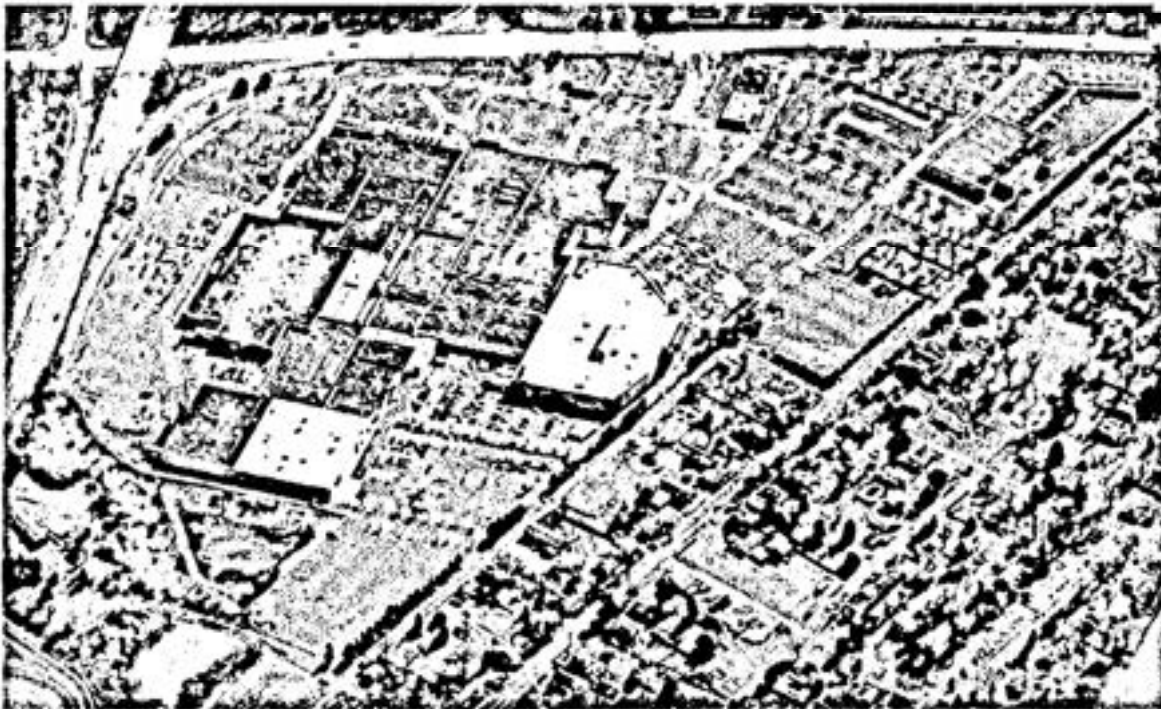
“Coventry Mall is the first of several planned investments that are part of its sixth fund, which closed in November 2015 with \$60 million,” says Donald F. Cafiero, principal of Penmark.

Penmark’s five prior funds have been active in most areas of commercial real estate including, retail, office, industrial, flex, the hospitality industry and most recently, conversion of prior uses to first class medical centers in areas such as Beaver Falls, PA, Waynesburg, PA and Sewell, NJ. In commercial real estate, Penmark has invested in more than three million square feet in areas such as Clearfield, Pennsylvania, Washington



Courthouse, Ohio, Lancaster, Pennsylvania, and many more Pennsylvania, New Jersey, New York, and Ohio markets.

“The successful repurposing of a mall location is never easy and requires an owner with vision and a local community willing to work with the property owner,” says Kevin Hennessey, North Coventry Township Manager. “In this case, North Coventry Township and Penmark are a great fit and we look forward to working with them to rejuvenate the Coventry Mall.”



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“Penmark's involvement in the Coventry Mall signals a huge step in the right direction towards helping rejuvenate a mall and community that struggled through the recession,” says Pasquarella. “As we have seen in



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## Exhibit "E"

COUNTY OF CHESTER  
PENNSYLVANIA



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EXHIBIT-I/NOV 26, 2025/EH

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County of Chester

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