

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 19
April 03, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 19 in the Inquiry proceedings held before the Honourable Justice P.R. Belangér, Commissioner, at the White Mountain Academy of the Arts, 99 Spine Road, Elliot Lake, Ontario, on the 3rd, day of April, 2013 commencing at 9:00 a.m.

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Certified Shorthand Reporter

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5 Duncan Ault, Esq.,
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22 Paul Cassan, Esq., City of Elliot Lake
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24 Douglas Kearns, Esq., Retirement Living and
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1 --- Upon commencing at 9:00 a.m. on
2 Wednesday, April 3, 2013.

3 THE COMMISSIONER: Good morning. Good
4 morning, Mr. Burling.

5 MR. SHOEMAKER: Morning, Mr.
6 Commissioner. Morning, Mr. Burling.

7 THE WITNESS: Good morning.

8 LARRY BURLING, previously sworn

9 RE-EXAMINATION BY MR. M. SHOEMAKER:

10 Q. Have you got your documents in front
11 of you, Mr. Burling?

12 A. I do, yes.

13 Q. If I could take you to tab 13, which
14 is Exhibit No. 6-6. This is the Property
15 Standards by-law and yesterday you were asked
16 about several sections in the by-law including
17 section 2, section 4, section 5. I want to take
18 you to a section that you had briefly mentioned,
19 but hadn't had the opportunity to review. That
20 would be section 9.3 on page 23, sub (c).

21 Now it states,

22 "The Officer may grant an extension
23 of the time limit for compliance with any
24 Order given by him pursuant to the
25 provisions of the Property Standards

1 By-law, provided there is evidence of
2 intent to comply with any such Order, or
3 the conditions exist which, in the opinion
4 of the Officer prevent immediate
5 compliance."

6 Now, you were mentioning yesterday the
7 idea that Algocen was making continuous efforts,
8 and you had briefly mentioned this section. Could
9 you explain if this is what you were thinking of
10 when you had mentioned that?

11 A. Yes, I was. And in particular as
12 long as the party is showing intent to comply
13 usually that's about as far as the process begins.
14 Or goes I should say.

15 Q. And they were doing that how? How
16 were they showing intent to comply?

17 A. Well, they had an ongoing program of
18 maintenance and they weren't ignoring the problem.
19 We've come to learn that they did undertake
20 several engineering studies as well to try and
21 remediate the problem.

22 Q. I also wanted to ask you about one
23 of the questions that my friend, Mr. Wallace, put
24 to you. He had asked you about the Trow Report,
25 specifically there was a paragraph 6 that said

1 that the design is not great at achieving a
2 watertight condition. Not those words exactly,
3 but along those lines.

4 Do you recall if there was ever a formal
5 property standards complaint about the roof leaks
6 at the mall?

7 A. No, there was never a formal proper
8 complaint filed during my tenure.

9 Q. Thank you. Now, if I could take you
10 to tab 35, which is Exhibit No. 274. This of
11 course we had the opportunity to look at
12 yesterday. And in the bottom left, you cc'd Mr.
13 Pigeau and members of Council, is that right?

14 A. Yes.

15 Q. And so my question is, once this
16 correspondence was sent to them, was it your
17 responsibility to ensure follow-up?

18 A. No.

19 Q. And would you leave it to the
20 appropriate department head to ensure that the
21 matters were dealt with within their purview of
22 responsibility?

23 THE COMMISSIONER: This is your witness,
24 that is a leading question.

25 MR. SHOEMAKER: Of course.

1 BY MR. SHOEMAKER:

2 Q. Once it was forwarded would -- do
3 you believe that the chief or the head of that
4 department would be competent to deal with such a
5 matter?

6 A. Yes.

7 Q. That's my question for that. If I
8 could take you to tab 37, which is Exhibit No.
9 273. This we saw yesterday is a letter from I
10 believe Mr. Liautaud back to Mrs. Taylor in reply
11 to the letter we had just looked and it's not
12 indicated whether or not you're cc'ed. I believe
13 you said you may have been, but you were not
14 positive. And along the same lines, as you see
15 Roger Pigeau is cc'd here and you had sent him the
16 correspondence of the previous letter, did you
17 have any reason to doubt Mr. Pigeau's ability to
18 deal with the matter?

19 A. No.

20 Q. I take you to --

21 THE COMMISSIONER: Proper question there
22 would have been something which is not leading.
23 And this is re-examination of your own witness and
24 you're providing the answer and eliciting yes or
25 no answers. You can make it general when you put

1 the question to your witness as to how he
2 conceived Mr.Pigeau's ability to handle the
3 question, that kind of thing, but to elicit
4 strictly yes or no answers through leading
5 questions is not appropriate in re-examination.

6 MR. SHOEMAKER: Thank you, your Honour.

7 BY MR. SHOEMAKER:

8 Q. If I could take you to tab 42, that
9 is Exhibit No. 11-12.

10 The question I have about this matter is
11 you -- we see that there is some correspondence
12 perhaps dealing with certain matters in the
13 letter. And my question is, I suppose, how would
14 the library have gone ahead and ensured that this
15 -- if it wasn't first answered in its entirety,
16 how would they have gone ahead and ensured that
17 this complaint did not -- complaint, if you can
18 characterize it as that, did not fall off the
19 radar, and it stayed, you know active?

20 A. Well, I think she has a number of
21 options, you know, she would probably -- since she
22 had the support of her Board to pen this letter to
23 the CAO, she would likely report back to the
24 Board, and the Board may or may not provide
25 further direction in a resolution for a follow-up

1 letter back to the CAO asking for a progress
2 report, referencing the first letter, and asking
3 if there's been any progress made.

4 Q. And you had mentioned yesterday also
5 that you had had conversations with Ms. Fazekas
6 from time to time?

7 A. Yes.

8 Q. Had this issue ever come up in your
9 conversations?

10 A. This particular issue?

11 Q. The issue of -- sorry, I should have
12 been clearer. The issue of ensuring her complaint
13 was heard?

14 A. I don't have any specific
15 recollection about that, no.

16 Q. And if it had, you would have
17 advised her?

18 A. To follow up with another written
19 letter, not to, you know, wait forever for a
20 response from the previous letter.

21 Q. Thank you. Can you turn to tab 37,
22 or, sorry, 47, which is Exhibit No. 6-8. I guess
23 specifically at page 8 of this report. This is
24 the -- a report from yourself on the levels of
25 service that we had reviewed yesterday.

1 I was hoping to clarify a point you made
2 yesterday. This report was from 1995, but my
3 understanding is was it a codification of
4 long-standing practice at City Hall?

5 A. Yes, it was.

6 Q. And when you were in the property
7 standards -- when you were a by-law enforcement
8 officer in the 1970s, was this the policy even
9 then?

10 A. Yes, it was.

11 Q. You were asked several questions
12 yesterday about how the CBO might have dealt with
13 certain matters under the Property Standards
14 by-law in terms of passive enforcement and
15 inspections. I was just hoping to clarify whether
16 your evidence was based on your experience from
17 your time as a by-law enforcement officer or
18 whether it was a hypothetical as to how you would
19 have expected Mr. Pigeau or any CBO would have
20 dealt with the issue.

21 A. It was based upon experience.

22 Q. And I was hoping to ask you about a
23 question that was put to you by Mr. Aube
24 yesterday. He had put to you that the complaint
25 process was onerous. Do you recall that?

1 A. Yes, I do.

2 Q. After someone had come to City Hall
3 if they had been directed to the clerk's
4 department, would the -- you had mentioned that
5 you would even offer to write a complaint letter
6 to them. At that point, is it not true that the
7 complainant would essentially only have to sign
8 the complaint after you had drafted it for them?
9 They would tell you about it and you then you
10 would draft it and they would sign it?

11 A. That's correct.

12 Q. But that never occurred with respect
13 to the Algocen, did it?

14 A. No, it never happened.

15 Q. And would you characterize that
16 process?

17 MR. BISCEGLIA: Mr. Commissioner, I
18 didn't have any questions before my friend started
19 asking some of these questions, but I may have
20 now. My appreciation for the first time according
21 to the evidence led at this particular point from
22 Mr. Burling is that the complainant -- my
23 appreciation of the evidence at this point is that
24 a private citizen who had a complaint would have
25 to actually sign a formal document or sign off.

1 That's the first time I hear this evidence and I
2 think that's contrary to the evidence that we
3 heard up to this point.

4 THE COMMISSIONER: And again, Mr.
5 Shoemaker, it's elicited through a leading
6 question. It's not -- you're giving the answer to
7 your -- do you understand the concept of leading
8 questions?

9 MR. SHOEMAKER: Yes, yes.

10 THE COMMISSIONER: And so the objection
11 made by Mr. Bisceglia is an appropriate one and it
12 arises out of the manner in which you're putting
13 questions to your witness.

14 MR. SHOEMAKER: I suppose the question
15 was not, you know -- you had mentioned yesterday
16 that the -- it was best practices if the complaint
17 was in writing, did you not?

18 THE WITNESS: Yes, I did.

19 BY MR. SHOEMAKER:

20 Q. And you offered to write out the
21 complaint, is that right?

22 A. I would typically offer that
23 service.

24 Q. But it's not the case that that ever
25 -- did that ever occur?

1 A. Not with respect to property
2 standards complaint for the Algo Mall.

3 Q. And there was no specific form --
4 was there a specific form that --

5 A. No, there was not.

6 Q. I wanted to take you to tab 50,
7 which is -- I'm sorry, Exhibit No. 249. This is
8 an interoffice memo along with a CAO's report
9 concerning the retail study building commission
10 assessment and fair market valuation of the mall.
11 And I was hoping you could explain -- you used the
12 word -- you explained to Mr. Kearns a little bit
13 yesterday. You clarified your use of the word
14 partnership. And I was hoping you could explain
15 in what sense of the word you were using the word
16 partnership yesterday?

17 A. Certainly. It wasn't a partnership
18 in a corporate sense or any other kind of legal
19 sense. It was that both parties had a common goal
20 to ensure that the municipality, first of all,
21 survived and then rose again to prosperity.

22 And to that end, the City and Elliot
23 Lake nonprofit Retirement Living were partners.

24 Q. And you would agree that in this --
25 would you --

1 MR. WALLACE: Any question that starts
2 with would you agree is headed for problems.

3 THE COMMISSIONER: Mr. Shoemaker,
4 please.

5 MR. SHOEMAKER: I was in the process of
6 rephrasing that one, your Honour.

7 BY MR. SHOEMAKER:

8 Q. Mr. Kearns characterized it in this
9 instance as a commercial relationship. Is that
10 your understanding of what this relationship was
11 for this purpose?

12 A. Well, for the purposes of the
13 agreement, yes, it was a commercial relationship.

14 Q. And could I take you to Exhibit No.
15 3233? It's not in the materials, but it is by-law
16 9813. It's not in the binder, but you have the
17 by-law in front of you.

18 You were asked yesterday about whether
19 you had followed up on this by-law as one of the
20 signatories. And my question is, did you sign
21 every by-law?

22 A. Yes, that was a requirement of my
23 statutory duties.

24 Q. And is your signature on the by-law
25 a sign that it is your responsibility?

1 A. No, not necessarily.

2 Q. Okay.

3 MR. SHOEMAKER: Those are all my
4 questions.

5 THE COMMISSIONER: Thank you. Mr.
6 Wallace.

7 MR. WALLACE: Yes.

8 RE-EXAMINATION BY MR. WALLACE:

9 Q. You were taken to the Property
10 Standards by-law at Exhibit No. 6-6, tab 13. And
11 you were specifically referred to section 9, sub
12 3. And you -- you talked about that section. But
13 in point of fact, this section had absolutely no
14 applicability to the Algo Mall because the pre--
15 the condition precedent for that section is that
16 that an order has been made and there never was
17 any orders made, correct?

18 A. That's correct.

19 Q. Okay. So this section really has
20 nothing to do with the by-law enforcement scheme
21 and the Algo Mall?

22 A. I disagree with that. It outlines
23 the principles of relating to the enforcement of
24 all bylaws and regulatory bylaws in the
25 municipality, and that, you know, as long as

1 people are co-operating and moving towards
2 compliance, doesn't matter if it's the zoning
3 by-law or the property standards by-law, usually
4 that's sufficient to stay any further legal
5 proceedings.

6 Q. But in point of fact here, in order
7 to bring into play section 9-3(C), there has to be
8 an order in existence?

9 A. And there has to be a complaint to
10 start the process too.

11 Q. There never was an order made,
12 correct?

13 A. That is correct.

14 Q. So that section has no applicability
15 to what actually happened at the Algo Mall.

16 A. In the absence of a complaint under
17 the Property Standards by-law, I agree with you,
18 that never happened.

19 Q. Okay. When you were talking this
20 morning about the necessity for a written
21 complaint signed by the complainant and Mr.
22 Shoemaker asked you, was your knowledge of that
23 based on a hypothetical or based on your own
24 experience? And you indicated this was your own
25 experience, correct?

1 A. Correct.

2 Q. So can we take it from that that
3 when you were charged with enforcing the bylaws
4 here, which included the property standards,
5 correct?

6 A. No. I don't believe the Property
7 Standards by-law was adopted until -- while I was
8 serving as by-law enforcement officer.

9 Q. It was or was not?

10 A. Was not.

11 Q. Okay. But in any event, this was
12 the approach you took to by-law enforcement, is
13 that correct?

14 A. It was -- yes, it was. You know,
15 for example, we didn't accept anonymous
16 complaints. This whole notion of getting it in
17 writing is part of the evolutionary development of
18 best practices relating to by-law enforcement. In
19 the early days, as I would characterize it when I
20 was a by-law enforcement officer, it wasn't common
21 practice necessarily to get it in writing. But it
22 was definitely common practice to make sure that
23 the party who was filing the complaint would be on
24 your board in the event that there would be
25 subsequent legal proceedings and they'd have to be

1 participating in the process possibly as a
2 witness.

3 You wanted to make sure that that
4 principle didn't change.

5 Q. So it would be your evidence that
6 from your own practice that from the start of the
7 process, the complainant would be told that they
8 may be required to participate in the process
9 somewhere down the line?

10 A. Correct.

11 Q. Okay. Now, Mr. Aube asked you some
12 questions and categorized the process as somewhat
13 onerous. But in your -- in your answers to him
14 that you indicated that one of the things that is
15 done, and you just repeated that, is that you
16 informed the complainant that their participation
17 may be required down the road, correct?

18 A. Correct.

19 Q. Now, in the property standards
20 context, you also told us in answer to Mr. Aube's
21 question yesterday that one of the things that you
22 tell the complainant, or you would expect that the
23 complainant would be told, is the economic
24 consequences of making the complaint, correct?

25 A. I might not use the term economic

1 consequences. I would -- may say you realize that
2 the end result that's spelled out in the by-law is
3 the closing of the building and the demolition of
4 the building.

5 Q. Fair enough. But so you in fact in
6 specifics tell them what the economic consequences
7 could be of making and pursuing the complaint,
8 correct? Isn't that what you just told us?

9 A. No, I don't believe -- you know, I
10 wouldn't go into detail and analyze the economic
11 consequences of it. You know, there obviously
12 would be economic consequences arising out of it,
13 but I don't know that that would even enter into
14 the discussion.

15 Q. Well, would not the closing of the
16 mall be an economic consequence?

17 A. No. Well, I'm being picky here,
18 but, no. Closing of the mall is not an economic
19 consequence, but it causes economic consequences.

20 Q. Okay. You're painting a very dire
21 picture for the complainant, correct?

22 A. I'm showing them -- trying to
23 demonstrate the seriousness of this undertaking
24 and what the result could be, yes.

25 Q. And the -- these -- this scenario

1 you're painting, without the benefit of any idea
2 of the veracity or the seriousness of the
3 complaint, correct?

4 A. Correct.

5 Q. And the complainant does not have
6 the responsibility for enforcing the Property
7 Standards Bylaws, does he or she?

8 A. No.

9 Q. That responsibility falls on the
10 City, correct?

11 A. Once they receive a properly filed
12 complaint, it does become their responsibility.

13 Q. The by-law doesn't empower the
14 citizens of Elliot Lake to enforce the Property
15 Standards by-law, does it?

16 A. Um, that would invoke a very, you
17 know, a theoretical discussion where by all
18 responsibility -- you know, citizens do bear
19 responsibility to a certain degree. You know,
20 they have a responsibility to you know, respect
21 the bylaws. They need to be a part of the process
22 and any passive complaint system. I mean, it
23 wouldn't work unless there was some participation
24 on the part of the citizens of the community.

25 Q. No, but the citizens aren't

1 empowered to enforce the by-law. The Property
2 Standards Officer and -- from the city is the one
3 who is empowered under the by-law to do just that,
4 correct?

5 A. Once a properly filed complaint is
6 filed, yes.

7 Q. Okay. So the complainant does not
8 bear the responsibility for the enforcements,
9 correct? It's out of their hand once the
10 complaint's made?

11 A. Not entirely. I mean, if we become
12 embroiled in a legal situation down the road,
13 which, you know, you can reasonably anticipate, if
14 we don't have their support and their
15 participation, the case could fall apart.

16 Q. Well, let -- why don't we deal with
17 reality here? First of all, there never was a
18 proceeding of prosecution under the Property
19 Standards by-law in your tenure, correct?

20 A. No, I don't believe so.

21 Q. Well, you told us that yesterday.

22 A. Yes.

23 Q. And you also told us that in order
24 to assess the merits of the complaint -- sorry,
25 the prosecution could be done without a

1 complainant because the property standards person,
2 the inspector, would see with their own eyes
3 whether the condition existed or did not exist,
4 right?

5 A. I disagree with that and I disagree
6 with that because, you know, if we found ourselves
7 before a court where we were defending an order,
8 lawyers would typically take a very close look at
9 the process to make sure that if there was no
10 flaws in the execution of the powers under the
11 by-law.

12 And they would take a look at the
13 policies in place regarding it, particularly the
14 passive policies that were adopted by the Council
15 to ensure that they were followed.

16 They would make sure -- and foundational
17 to that is a properly filed complaint, that is the
18 trigger that gives -- places the onus on the
19 municipality to act. And without that in place,
20 then the whole process falls apart.

21 Q. You have an inspector who conducts a
22 proper inspection and determines that there is a
23 problem such that the property does not meet the
24 minimum standards under the Property Standards
25 by-law.

1 A. You're one step ahead of the process
2 when you say that. The process begins with a
3 properly filed complaint. That empowers the
4 Property Standards Officer to exercise his
5 responsibilities under the Property Standards
6 by-law.

7 Q. So it's -- it would be your position
8 then, that if a -- an inspection was conducted and
9 showed a problem existed that if for some reason
10 the inspector was silly enough to do an inspection
11 without a written complaint, and even though he
12 find a problem, nothing would happen? Is that
13 what you're saying?

14 A. I suspect that if we found that
15 under a review by a court that it would probably
16 be quashed because the officer didn't follow
17 established passive enforcement practices and
18 acted inappropriately.

19 Q. Okay. I want to get back to my
20 point here, though, is that you have told us that
21 you make the complainant aware of -- you may not
22 agree with me with my term economic consequences,
23 I'll say the consequences, the larger consequences
24 of making the complaint, correct?

25 A. Correct.

1 Q. And you would agree with me that the
2 ultimate responsibility for the enforcement of the
3 by-law is on the city, correct?

4 A. Once a properly filed complaint is
5 received, yes.

6 Q. Now, by bringing the consequences or
7 the economic consequences into play, are you not
8 bringing the cost or the consequences into
9 conflict with the safety of the building and,
10 hence, the safety of the occupants?

11 A. No. That's -- I don't believe
12 that's the case.

13 Q. And by putting it that way when you
14 put to the person, the complainant, at the start
15 of the process, if you go through with this, this
16 is what could happen, you are in turn shifting the
17 responsibility for the enforcement from the city
18 to the citizen. They are left with this choice,
19 do I go ahead and risk these things or not?
20 Correct?

21 A. Correct.

22 Q. And the responsibility then becomes
23 the complainants, the citizens as to whether they
24 pursue the complaint or not, correct?

25 A. Correct.

1 Q. And not the city's?

2 A. Correct.

3 Q. And that's not what the by-law says,
4 is it?

5 A. That's -- I -- the by-law to me is
6 silent on that. What says is it is the passive
7 enforcement policies adopted by the Council.

8 Q. And it's -- it would be your
9 position, then, that the responsibility to
10 determine if the by-law gets enforced becomes that
11 of the citizen?

12 A. In effect, if no one's complaining,
13 no one's rights need protecting.

14 Q. And complaining means signing a
15 piece of paper, not opening their mouth, but
16 signing a piece of paper?

17 A. In this instance because of the
18 seriousness of the undertaking and the best
19 practices, it does mean that, yes.

20 Q. Thank you.

21 THE COMMISSIONER: Thank you, anything
22 else? Thank you very much, Mr. Burling, that's
23 all.

24 THE WITNESS: I hope I've been helpful.

25 THE COMMISSIONER: Thank you. Mr.

1 Doody, do you need a minute or two or are you
2 ready to go?

3 MR. DOODY: I'm ready to go. The next
4 witness is in the hallway and Mr. Ault was going
5 to ask him to come in. Everybody at the front
6 table is ready to go, so we'll get going.

7 Mr. Snow, if you could just take the
8 witness box.

9 THE COMMISSIONER: Morning, sir.

10 KEN SNOW, sworn.

11 EXAMINATION-IN-CHIEF BY MR. DOODY:

12 Q. Morning, Mr. Snow.

13 A. Morning.

14 Q. I'm just going to ask you a few
15 background questions so that the Commission
16 understands your background and how it is that you
17 came to be here in Elliot Lake. I understand
18 you're 48 years of age?

19 A. Hmm hmm.

20 Q. And you are a native of
21 Newfoundland?

22 A. Yes, sir.

23 Q. And you studied, I understand, power
24 engineering at a college or trades and technology
25 in St. John's and then worked in St. Anthony at a

1 power plant?

2 A. Yes, sir.

3 Q. And I understand you moved to Elliot
4 Lake in 1989 to work in the mines, but when you
5 got here, the mines were closing and the job
6 disappeared, is that right?

7 A. Yes, sir.

8 Q. And so you were hired in 1989 by
9 Algoma Central Properties to work at the mall and
10 you reported the Larry Liautaud and Jim Willey, is
11 that right?

12 A. Yes, sir.

13 Q. And I understand, Mr. Liautaud
14 worked in Elliot Lake, Mr. Willey worked in the
15 Sioux, but would come down about once a week to
16 Elliot Lake, is that right?

17 A. Yes, sir.

18 Q. And you were working, hired to work
19 on maintenance at the mall?

20 A. Yes.

21 Q. And after a number of months, you
22 were promoted to become the maintenance
23 supervisor, is that right?

24 A. Or lead hand, yeah.

25 Q. And you worked in that position from

1 1989 until 2005, shortly after Mr. Nazarian's
2 company bought the mall, is that right?

3 A. Just before or around that time,
4 anyway.

5 Q. Okay. Can you tell me, what were
6 the duties -- what were your duties as lead hand
7 or maintenance supervisor?

8 A. Just to delegate work for the guys
9 beneath me, order supplies.

10 Q. Would you do the work yourself as
11 well?

12 A. I worked alongside the guys, yeah.

13 Q. Okay. And how many people would you
14 supervise?

15 A. Well, it was myself and four other
16 guys.

17 Q. Okay. Can you tell us who they
18 were?

19 A. Chris Folz, F-O-L-Z, I think. Allan
20 Lebrache, Ray LeBlanc and another guy, Claude
21 Socier I think it was. He pretty much done the
22 grounds keeping work or cleaning up.

23 Q. Okay. And can you tell us, sir,
24 what was the situation with respect to leaks at
25 the mall when you started in 1989?

1 A. Well, you didn't like to see rain,
2 there was lots of leaks. I won't say lots. It
3 was enough to keep you busy anyway.

4 Q. What happened when it rained?

5 A. Oh, well, shortly after it started
6 raining, we would get calls from tenants that
7 there was leaks so we'd have to go to the store
8 put up pails or whatever to catch the leak and go
9 to the roof deck and find where it was getting in
10 and do a temporary patch.

11 Q. How long after it started to rain
12 did it typically leak? And I'm talking now about
13 when you started your work there in 1989.

14 A. Well, I think it leaked from day
15 one.

16 Q. No, but, I didn't ask the question
17 very well. From the time it started to rain, if
18 it was a good rainstorm until the leaks started to
19 show up in the mall, how long a period of time
20 would that be?

21 A. Oh, probably an hour, two hours.

22 Q. Where were the worst areas?

23 A. High traffic areas like coming off
24 the ramps, north and south ramp. Just where the
25 high traffic was traveling on the roof deck

1 itself.

2 Q. Okay. And did you have any
3 difficulty in the areas around the Woolco store
4 and the library?

5 A. Yeah.

6 Q. And did you -- what did you think
7 was causing those leaks?

8 A. Well, the caulking in the joints
9 would become debonded from the concrete itself and
10 that's how the water was getting into the building
11 itself.

12 Q. Did the slabs ever move?

13 A. I think so.

14 Q. Can you tell us what -- what
15 happened when, as you put it, the slabs sometimes
16 moved?

17 A. You could hear a thumping or a -- as
18 the cars went from joint to joint.

19 Q. Hmm hmm.

20 A. Why I'm saying it moved, there was
21 hangers, the AC units used to hang from those
22 slabs.

23 Q. Underneath the slabs?

24 A. And if you were above the false
25 ceiling, you could actually see them sway a bit,

1 so something was moving there. It had to be the
2 slabs.

3 Q. Okay. And did you come to any
4 conclusion as to what the result was of that -- of
5 that movement that you just told us about? Did
6 you see any relationship between that and cracks?

7 A. Well, the cracks were developing
8 everywhere there was a Coreslab joint underneath.
9 So something was moving enough to bring the cracks
10 up through the wear slab.

11 Q. Okay. So you talked about the
12 Coreslabs and the wear slabs and just so that
13 we're clear on your evidence, as I understand it
14 there is a layer, there was a layer of preformed,
15 prestressed concrete slabs which rested directly
16 on steel I-beams, right?

17 A. Correct.

18 Q. And above that, there was the
19 wearing course of somewhere in the neighbourhood
20 of 3 inches of concrete which was poured on top of
21 that, right?

22 A. Correct.

23 Q. And there were what we've called
24 control joints tooled in the poured concrete above
25 the butt joints between the ends of the slabs,

1 right?

2 A. Yes, sir.

3 Q. Is that what you meant by control
4 joints?

5 A. Well, the control joints were going
6 north to south. The main joints were going east,
7 west.

8 Q. Okay.

9 A. That was the butt end of the joints
10 -- of the core slabs.

11 Q. It might help if we took a look at a
12 photograph. I wonder if we could have -- and this
13 is a document which we'll enter as a new Exhibit
14 No. 2113. If we could have that brought up. Can
15 we have it on the big -- oh, we actually have a
16 hard copy. Okay.

17 So you just told us about north, south
18 and east-west joints. And this is a photograph of
19 the top of the -- of the mall taken shortly after
20 the collapse. So you can see the collapsed area
21 there, the middle. And this is, for the record,
22 Exhibit No. 2113.

23 And so you can see lines in the concrete
24 running in two directions, one parallel to the
25 front of the hotel, in this direction. And that's

1 what you meant by -- so we have -- we have lines
2 running in this direction parallel to the front of
3 the hotel and that is what you mean east-west,
4 right?

5 A. Yes, sir. Parallel to the hotel it
6 would be the butt ends of the core slabs. Except
7 for at the end of the hotel, the cores change
8 direction there.

9 Q. Okay. So let's -- so the record is
10 clear, let's talk about two areas. So the area
11 here which is to the -- to the west of the
12 collapsed area, we'll call that the Woolco area,
13 okay? Although Woolco is actually further down
14 outside the picture, correct?

15 A. I think that Woolco is down this way
16 at this end. That would be over --

17 Q. Okay. Let me see if I've got this
18 right. This building right here that we're
19 looking at, is that the hotel?

20 A. That's the hotel.

21 Q. Okay. So the area then at the
22 bottom of this photograph, at the bottom of the
23 exhibit, is the area which extends, on the right
24 hand side of the photograph, extends towards the
25 Woolco area, right?

1 A. Yes.

2 Q. Okay. And therefore the stripes
3 that are running as we say -- as you said east,
4 west, are they the butt joints, is that what you
5 said?

6 A. Yes, sir.

7 Q. And the stripes that are running --
8 the stripes in the concrete that are running
9 north, south, at least in the area of the bottom
10 half of the picture are the longitudinal joints?

11 A. Right. Control joints.

12 Q. You call those control joints. And
13 they are running along the long edges of the core
14 slabs?

15 A. Yes, sir.

16 Q. Okay. So we can see on this
17 photograph that there are, in some areas, like
18 this area here which is between the silver car
19 which is parked in the -- about the center of
20 photograph and the blue car which is on the left
21 hand side of the lower right quadrant of the
22 photograph, there is one area in which it appears
23 the darker striped indication of the joint, there
24 is quite a distance between them, probably 12 feet
25 or so, right?

1 A. Twelve or fifteen feet I think it
2 was, around that.

3 Q. Right. And then the one immediately
4 to the right of that, there is another stripe
5 which is -- which is only about a third of the way
6 across running parallel to the control joint at
7 the 15-foot mark. Can you explain to us how --
8 how that happened that there would be a -- what
9 looked like a crack that was filled at that space
10 on the right hand of those two rectangles and none
11 on the left hand one?

12 A. Well, that's the joint of the core
13 slab underneath the crack actually worked its way
14 up through the wear slab itself.

15 Q. Okay. So this would be a new -- a
16 new crack that you and your forces had to fill?

17 A. Yes, sir.

18 Q. Okay. So as I understand it, when
19 the roof was new, the control joints, the runs
20 running along the longitudinal joints between the
21 core slabs, they were only every three slabs
22 originally, right?

23 A. I'm not sure what you're --

24 Q. Okay.

25 A. Every three slabs?

1 Q. In the area -- in the slab -- in the
2 rectangle that we just looked at between the
3 silver car and the blue car where it looks like
4 there's about 15 feet between the two longitudinal
5 joints with no crack in between them?

6 A. Okay, yeah.

7 Q. As I understand it, that's the way
8 it was originally intended, right?

9 A. Yes, sir.

10 Q. And then later, cracks -- in some
11 cracks, as we can see from the lines, developed in
12 areas where there had not originally been a
13 control joint, right?

14 A. Yes.

15 Q. And how -- can you tell us from your
16 experience how was it that the cracks developed in
17 number? Because if you look at that photograph,
18 Exhibit No. 2113, you can see that for a large
19 number of the longitudinal joints there is a crack
20 which has been filled in over every longitudinal
21 joint and it's not just every third longitudinal
22 joint, right? You'll agree with me?

23 A. Hmm hmm.

24 Q. And you have to say yes or no,
25 because hmm hmm doesn't work for the transcript.

1 A. Yes.

2 Q. That's okay. Everybody does the
3 same thing. How was it that those cracks
4 developed over the longitudinal joints?

5 A. Well, I think it was every joint of
6 the core slab beneath the wear slab where they
7 joined underneath, it eventually wore up through
8 or worked its way up.

9 Q. Okay. And the -- in addition to
10 these control joints and the joints along the
11 longitudinal and then the joints -- what did you
12 call the lines over the butt joints?

13 A. We used to call them mains. The
14 main joints.

15 Q. Okay. And in addition to those
16 there were also three expansion joints, right?

17 A. Yes, sir.

18 Q. And what was an expansion joint,
19 from your understanding working on the roof?

20 A. Well, a Gennie joint. It was
21 actually a rubber mechanical joint that was able
22 to expand and contract with the movement of the
23 deck.

24 Q. Right. And there were three of them
25 and one of them was right over the top of the

1 Woolco store, correct?

2 A. It was right at the inside entrance
3 to Woolco, about half way across the building.

4 Q. I'm going to show you another
5 photograph Exhibit No. 3005?

6 THE COMMISSIONER: Has the last one
7 being marked as an exhibit?

8 MR. DOODY: Yes, that was Exhibit No.
9 2113.

10 THE COMMISSIONER: I was just wondering
11 if it was actually marked.

12 MR. DOODY: The physical copy, no.
13 Should we do that?

14 THE COMMISSIONER: Yes.

15 MR. DOODY: We'll mark the physical copy
16 that we were looking at as the next exhibit.

17 THE COMMISSIONER: 2113 and 3005, right?

18 MR. DOODY: Just so that we're clear,
19 the one I just took off the easel, Mr.
20 Commissioner, the electronic copy has been marked
21 as an exhibit.

22 THE COMMISSIONER: That is 2113.

23 MR. DOODY: Do we need to mark the paper
24 copy as well?

25 THE COMMISSIONER: Yes, make it 2113-C,

1 or whatever you want.

2 MS. KUKA: 2114.

3 THE COMMISSIONER: Okay. That's fine.

4 EXHIBIT NO. 2114: Large photo board
5 depicting aerial view of Algo Mall parking
6 deck after the collapse.

7 THE COMMISSIONER: And then Exhibit No.
8 3005 is what? 3006?

9 MS. KUKA: 2115.

10 EXHIBIT NO. 2115: Large photo board
11 depicting view Algo Mall and surrounding
12 streets and buildings.

13 BY MR. DOODY:

14 Q. So I was asking you about the
15 expansion joint and this is a -- this exhibit,
16 sir, is a -- is another photograph taken shortly
17 after the collapse. But it's -- it shows the
18 various -- well, it shows the whole mall. And
19 there are -- there were a number of expansions --
20 there were three expansion joints as I understand
21 it, sir, and one of them is this line here?

22 A. Yes, sir.

23 Q. And that's running east west over
24 the top of the Woolco store, right?

25 A. Well, that would be right at the

1 entrance to Woolco on the inside.

2 Q. Right. And then there was an
3 expansion joint in front of the hotel that
4 extended over the top of the -- where cars coming
5 up the north ramp?

6 A. Yes, right at the corner.

7 Q. Right. And then there was an
8 expansion joint that ran along the -- a line
9 between the southeast corner of the hotel to the
10 entrance to the escalators and then further over
11 to the parapet wall, right?

12 A. Yes, sir.

13 Q. And those three expansion joints,
14 did they cause you any trouble in terms of
15 leaking?

16 A. Yes, they -- all of them were
17 replaced at one time while I was there.

18 Q. And can you tell us, sir, we've
19 heard about debonded concrete in other evidence
20 before. Debonding of the wearing coarse the
21 normally 3-inch thick concrete wearing coarse.
22 Did -- did you encounter problems with that
23 becoming debonded from the slabs below?

24 A. At the joints or just in general?

25 Q. Anywhere.

1 A. Yes, sir.

2 Q. And was it particularly at the
3 joints?

4 A. No. Anywhere.

5 Q. Okay. And how did you -- how did
6 you deal with debonded concrete?

7 A. We usually have a contractor come in
8 and cut out the debonded areas and put new
9 concrete in.

10 Q. Okay.

11 A. And we seal it.

12 Q. Okay. In addition to the debonded
13 concrete, you had to repair the -- the cracks as
14 well, right?

15 A. Yes, sir.

16 Q. And how did you learn to do the
17 repairs on the cracks?

18 A. Well, there was several times that
19 the suppliers of the products actually come in and
20 monitored what we were doing and if they seen that
21 we were doing anything wrong, they would let us
22 know.

23 Q. Okay.

24 A. But we just followed the same
25 procedures from when I started what they were

1 doing and we just continued on in the same process
2 because that is the way they wanted it done.

3 Q. And can you tell us, sir, what was
4 that process? What did you do?

5 A. Well, where the joints let go from
6 the concrete, you could probably just pick it up
7 and walk with it. But where it did stick to the
8 concrete, you had to cut it out, clean it, we used
9 to grind it clean, then vacuum it out, prime it
10 and pour THC900.

11 Q. Okay.

12 A. Into the joint.

13 Q. Okay. You told us about two
14 different problems, so we'll start with the first
15 one. You said where the -- where the caulking
16 became debonded from the concrete, you could just
17 lift it up, right?

18 A. Pretty much, yeah.

19 Q. Did that happen very often?

20 A. That was the problem. That was the
21 main cause of the -- all the leaks.

22 Q. Okay. And so when that happened,
23 what did you do if the caulking had become
24 debonded from the concrete, what did you do?

25 A. We cut out that area and grind the

1 concrete until you were into a hard concrete and
2 --

3 Q. What kind of tool did you use to
4 grind it out?

5 A. Just a hand-held grinder with
6 grinding wheels or diamond-tipped grinding wheels.

7 Q. Okay. And was that work different
8 from when the concrete became -- when the concrete
9 spalled at the joints?

10 A. Well, it was pretty much the same
11 process, I think, just two different ways.

12 Q. Sometimes the caulking came off the
13 concrete and sometimes the concrete spalled and
14 the calking was still stuck to the concrete, but
15 it was bad concrete?

16 A. Yeah.

17 Q. Okay. So you had to take out the
18 caulking and grind the concrete down with a
19 grinder, then -- then what was the next step in
20 the process?

21 A. We'd clean it good, put a primer on
22 that come with the product, wait for that to dry
23 and then we'd mix up the THC, and poured it into
24 the joints.

25 Q. Okay. And then what happened? It

1 set up and it was fixed?

2 A. Yeah. The THC was a -- a three
3 component product, it's almost like an epoxy.

4 Q. Right.

5 A. It was a hardener and a colour pack.
6 The colour pack was just to make sure that the
7 product was mixed completely. If it wasn't mixed
8 completely, you'd see streaks in the product. So
9 you mixed it until there was no streaks and you
10 poured it in. It was a self-leveling product and
11 you tried to keep it down below beneath this
12 surface of the concrete so the weight of the
13 vehicles didn't affect the joints or the snowplow
14 didn't hook it or.

15 THE COMMISSIONER: How long did that
16 take to cure?

17 THE WITNESS: It varied on the
18 temperature, but within an hour it was -- it might
19 have been tacky but --

20 THE COMMISSIONER: Fairly rapid?

21 THE WITNESS: Yeah.

22 THE COMMISSIONER: Not talking days.

23 THE WITNESS: It's not a five-minute
24 epoxy, but pretty much the same principle.

25 THE COMMISSIONER: Sure.

1 BY MR. DOODY:

2 Q. How long would it take you to, say,
3 if you were doing a joint from along the east-west
4 line over Woolco, how long with it take you to go
5 from one side to the other to do that?

6 A. With three guys, about 12 hours.

7 Q. And could you do this any time of
8 the year, sir?

9 A. No. We -- just in the summer time
10 once the deck reached, well, 20 degrees outside at
11 least, but the deck would be a lot warmer in the
12 summer time. It retained the --

13 Q. So you could not do it in the winter
14 time?

15 A. No.

16 Q. And did it have to be dry when you
17 were doing it?

18 A. Oh, yes.

19 Q. So what would you do when leaks
20 developed in the rest of the year, not in the
21 summer time? The spring when it was raining or
22 the winter or the late fall?

23 A. You had two guys sweeping water away
24 and a guy with a torch and a guy with a temporary
25 patch we used Dymonic in a tube and it set up

1 fairly rapidly. So we would keep the water away,
2 dry it off and apply this Dymonic.

3 Q. So that would not allow you to do
4 the grinding or sealing and priming that you
5 talked about?

6 A. No, you would not do that in the
7 rain.

8 Q. And how long would that type of a
9 patch last?

10 A. Providing the traffic was kept off
11 of it, you might have to do it two or three times
12 until you managed to get it into the joints
13 properly.

14 Q. And then you'd have to fix that
15 again in the spring of the year when it warmed up?

16 A. Yes, sir.

17 Q. And did you have a standard practice
18 that you followed every spring?

19 A. Yes, we'd walk every joint. Well, I
20 had a map pretty much like that and I would mark
21 what was priority one, two, three, and just be a
22 lot of red marks.

23 Q. And what was -- how did you
24 prioritize them?

25 A. Where they were leaking inside. The

1 ones that were most visible and doing the most
2 damage inside. High traffic areas inside.

3 Q. So you did that in the spring and
4 then how did you proceed over the course of the
5 summer? Did you simply go through and patch those
6 areas in order of priority?

7 A. Pretty much.

8 Q. And that involved you following the
9 process you just told us about. That is you tear
10 up the joints, grind it out, prime, seal and put
11 down the Tremco product?

12 A. Yes, sir.

13 Q. And did that typically -- how long
14 did that process take that you started every
15 spring of seeing where you had to do the repairs
16 and then putting the repairs in place? How long
17 did you work to get that done?

18 A. As soon as the deck was cleared,
19 we'd be out there the first two or three weeks
20 just patching anything that we seen that could be
21 a leak or -- it was never-ending. It was ongoing
22 all the time.

23 Q. Okay. And did you see new cracks
24 develop over the course of your time working
25 there, sir?

1 A. Oh, yes.

2 Q. And how common was that?

3 A. Quite common actually. The -- where
4 the core slabs joined, those cracks just keep
5 developing all the time.

6 Q. And could you predict where new
7 cracks were going to develop?

8 A. No.

9 Q. So was it a -- were you chasing
10 cracks?

11 A. Pretty much.

12 Q. And when debonded concrete was cut
13 out, as you've told us sometimes outside
14 contractors were called in to cut out the debonded
15 concrete and replace it, did that sometimes cause
16 problems?

17 A. Well, you had to keep it sealed up
18 until the concrete hardened which is usually 28
19 days. And plus you had to keep it wet so that it
20 didn't shrink too much. So we were fighting
21 ourselves there, you know.

22 But it was quite bit of work that went
23 into it until we could seal it.

24 Q. And when the concrete -- the
25 debonded concrete was being cut out, did that

1 cutting out cause new cracks to develop?

2 A. I don't think so.

3 Q. Okay. I'm just going to take you
4 back to Exhibit No. 2113. There is an area --
5 there is an area which is on this exhibit just --
6 just east of the -- sorry, just west of the -- of
7 the yellow -- looks like yellow tape may have been
8 laid down right after the collapse. But it has a
9 darker area in sort of looks like almost a
10 basketball key. Do you see that?

11 A. Yes, sir.

12 Q. Can you tell us what would have
13 caused that area to end up looking like that?

14 A. Well, after a while when the new
15 concrete did set up and shrink, you would get a
16 crack that would develop around the perimeter of
17 the new concrete. So just as a precaution there,
18 we would seal that as well to prevent water from
19 getting down there and freeze/thaw.

20 So, yeah, I guess it did create new
21 joints.

22 Q. So you had to -- when the debonded
23 concrete went in, you then had to go around and
24 seal the edges of the debonded concrete to prevent
25 further cracks?

1 A. Yes, sir.

2 Q. When you were doing the repair work,
3 sir, was there a particular shape you tried to
4 achieve in the joint that you were grinding out
5 and preparing to put the caulking material into?

6 A. When new concrete was poured, yeah,
7 there was a V-joint like probably a two to one
8 ratio. But on the main joints itself, you work
9 with what was there. And it -- in some places it
10 wasn't a two to one ratio.

11 Q. When you say two to one, is that
12 twice as wide as it is deep or twice as deep as it
13 is wide?

14 A. Yes, in both cases. Like it varied.

15 Q. So some -- was there a particular
16 ratio that you were trying to achieve?

17 A. Well, it depends. Some guys used to
18 say you want it twice as wide as deep. And other
19 guys would say, you want it twice as deep as wide.

20 Q. And what did you and your men do?

21 A. Actually we thought wider was a
22 little bit better than deeper because it made the
23 product thinner and gave it more elasticity.

24 Q. And did you try to achieve any
25 particular width-depth ratio or did you -- let me

1 put it this way. In the cracks -- not the newly
2 poured concrete, but the cracks that developed
3 that you were working on as they developed, you
4 said -- you said you didn't follow the profile
5 issue too carefully there. What did you do there?

6 A. Well, like it wouldn't be an inch or
7 -- if it was a quarter inch wide, it might be a
8 half inch deep. But that was not always the case.

9 Like you could be grinding and a chunk
10 of concrete fall out or pop out. So you would not
11 have that two to one ratio that --

12 Q. And what would you do then?

13 A. Well, work with what you had, you
14 know.

15 Q. Do the best you could?

16 A. Yeah.

17 Q. And did you ever use a backer rod,
18 sir?

19 A. Yes, sir.

20 Q. And when would you -- and as I
21 understand a backer rod is -- it's a -- usually
22 made of styrofoam or some material like that. It
23 is a cylindrical shape and you put it into the
24 crack first and then put on top of it the caulking
25 material, is that right?

1 A. Yes, sir.

2 Q. And when would you use a backer rod?

3 A. Pretty much just on the main joints
4 itself because they were deep enough to use the
5 backer rods, and you wanted -- so the product
6 didn't go all the way to the bottom of the joint
7 itself.

8 Q. And you used your own -- your own
9 discretion as to when to put a backer rod and when
10 not to?

11 A. On the main joints it was pretty
12 much in every joint.

13 Q. Okay. And the point or the purpose
14 was, as you say, you didn't want the caulking
15 material to go too deep?

16 A. Well, you didn't want presided
17 adhesion or you wouldn't get the proper movement
18 in the joint itself.

19 Q. Okay. Sir, did the techniques that
20 you used to deal with the leaks on the roof change
21 over the 16 years you worked at the mall?

22 A. No.

23 Q. So you say the techniques never
24 changed. Did your crew get better at their job
25 over the 16 years?

1 A. I think so.

2 Q. Did you see an improvement?

3 A. We got better at finding the leaks,
4 that's for sure. We used to be able to go up and
5 pinpoint them pretty fast on the roof.

6 Q. And did the leaks ever completely go
7 away, sir?

8 A. For a short period of time, I think
9 we were down to one leak maybe or -- and that
10 might be one that come in 50 feet away and ran
11 across insulation or something before it come
12 through. But for a time we were pretty good
13 there, but.

14 Q. How long would that last?

15 A. Until the following winter, I guess,
16 until the freeze-thaw and snowplow, and the spring
17 of the following year you had more leaks.

18 Q. And was there any particular period
19 of time -- let me put it this way. When you say
20 that you had it down to almost zero for a period
21 of time, was that under which owner, Algoma or
22 Retirement Living? Do you remember?

23 A. I think with both of them at some
24 time we were pretty good with the leaks. But they
25 never completely stopped, that's for sure.

1 Q. What proportion of your staff's time
2 was spent dealing with leaks?

3 A. Summer time, probably 60 per cent.

4 Q. Do you remember tarps and hoses in
5 the library?

6 A. Yes. Yeah, well, they would put
7 tarps over the books just as a precautionary
8 thing. But there was always a tray or a hose that
9 just tried to keep the damage down if it did leak
10 there.

11 Q. And what was your experience with
12 the leaks in the library? Did they get to the
13 level you've told us about where there were almost
14 none or none?

15 A. We did have them stopped for a
16 while, but that was a very high traffic area so it
17 wouldn't be stopped for too long.

18 Q. Okay. When Retirement Living bought
19 the mall in 1999, were there pails and hoses in
20 the common areas at the time they bought it?

21 A. I don't think so.

22 Q. Okay.

23 A. One or two maybe. I don't think.

24 Q. Okay. Was the Woolco Zellers area
25 an issue for leaks? You told us about the

1 library. What about the Woolco store that then
2 became the Zellers store?

3 A. Yeah, there was leaks there as well.

4 Q. And did you come to any conclusion
5 as to why that was a bad area for leaks?

6 A. Well, it was pretty much like the
7 rest of the deck, sort of high traffic areas
8 leaked or leaks developed more regularly in the
9 high traffic areas.

10 Q. And what about the Scotiabank area
11 which as I understand it was north of the
12 expansion joint over Woolco? Where the -- was
13 that a problematic area for leaks?

14 A. At times, yes.

15 Q. Okay. And now I wonder if I could
16 have -- just take this down.

17 If I could have Exhibit No. 70 up and
18 this -- this document is in your -- have you got a
19 brief there in front of you?

20 A. No, sir.

21 Q. And this is at tab 4 of your brief,
22 sir, and it's also on the screen in front of you.
23 This is the -- this is a report which was
24 delivered to Retirement Living on May 10th, 1999.
25 And it deals with the structural condition of the

1 mall.

2 Did you -- did you ever see this report,
3 sir?

4 A. No, sir.

5 Q. Okay. Do you remember showing the
6 engineer around the mall when Algoma -- showing an
7 engineer around the mall when Algoma was getting
8 ready to sell?

9 A. When Algoma was --

10 Q. So in the late 1998 or the fall of
11 1998 or late April of 1999.

12 A. I think so, yeah.

13 Q. I'm just going to ask you to turn to
14 page four of this report, sir. And the page ends
15 in 08.

16 This is at the top of the page the
17 engineers who did the study in May of 1999
18 recommended that the following things be done.
19 And I'm just going to go through them one by one
20 and ask if you did them.

21 They recommended firstly,

22 "Rout and seal all joints and cracks
23 in the parking deck topping and walkway
24 canopies, ensuring a proper joint profile
25 and surface preparation prior to placing

1 the sealant."

2 Did you rout and seal all of the joints
3 in the parking deck topping and walkway canopy,
4 sir?

5 A. At one time all of them, yeah, but
6 that was just an ongoing thing.

7 Q. Sorry, when you say at one time, are
8 you telling me that one year you ripped them all
9 out and redid them all? Or you did the ones that
10 leaked as time went on?

11 A. Well, the ones that leaked, but
12 overall, like, at one point all the joints had
13 been replaced.

14 Q. Over the 16 years you were there
15 they had all been replaced, is that what you're
16 saying?

17 A. Yes.

18 Q. Secondly, "Remove sealant from the
19 underside of the joints in the walkways." Did you
20 do that, sir?

21 A. Some areas were done. I don't think
22 all of them were done, no.

23 Q. The third item was, "Clean and paint
24 all exterior structural steel, particularly the
25 beams along the walkways."

1 Did you do that after Retirement Living
2 bought the mall?

3 A. Yes, I believe we did.

4 Q. Okay. And what was the result of
5 that?

6 A. Well, you really couldn't get inside
7 the siding, so the following year it would look
8 rusty again because the rust would just wash down
9 over the fresh paint and it would look the same
10 thing. So really it looked like you didn't do
11 anything.

12 Q. Okay. And the next thing they
13 recommended was to "Reinstate spray-applied
14 fireproofing to the structural steel." Did you do
15 that, sir?

16 A. No, sir.

17 Q. Did anyone have any -- back up.
18 When Retirement Living owned the mall, to whom did
19 you report?

20 A. Richard Quinn.

21 Q. Okay. Did he ever give you any
22 directions about reinstating spray-applied
23 fireproofing?

24 A. No, sir.

25 Q. The next item is, "Replace corroded,

1 suspended ceiling hangers (as part of regular
2 maintenance)." Did you do that, sir?

3 A. No, sir.

4 Q. And the final item was, "Reinstate
5 all batt insulation at the underside of the
6 parking deck." Did you do that?

7 A. No, sir.

8 Q. And did Mr. Quinn give you any
9 instructions about replacing the ceiling hangers
10 that were corroded or reinstating the bat
11 insulation?

12 A. No.

13 Q. Okay. I wonder if I could ask you
14 to turn up, Ms. Kuka, Exhibit No. 121 at page 0279
15 and, Mr. Snow, this is at tab 3 and it's the page
16 following the blue sheet. So it's page 0279.

17 If you could blow up the top half of the
18 page, that's it. Mr. Snow, I understand that
19 these notes were taken by a gentleman by the name
20 Jeff Truman who worked for -- was an engineer
21 working for Halsall, the engineering firm retained
22 by Retirement Living who on April 6, 1999, was
23 conducting an inspection in the mall. And if you
24 look at where it says below opening number 4, the
25 notes then say, second bullet, "...rust scale on

1 both beams (Gerber beams), more on drop-in
2 (smaller) beam, 1 mm to 4 mm thick scale (small
3 percentage of x-section)." And then it says,

4 "Spray applied fireproofing generally
5 in place (vermiculite) may be holding
6 moisture against steel. (Super noted that
7 after it was applied was more difficult to
8 find leaks because fireproofing held water
9 & permitted it to run behind)."

10 Do you recall making that comment to one
11 of the engineers from that firm that was there in
12 April of 1999, sir?

13 A. No, sir. And while I was, there was
14 never no fireproofing applied to the beams, not
15 that I could remember.

16 Q. In no location was there
17 fireproofing sprayed onto the beams?

18 A. Not that I'm aware of, no, or not
19 that I can remember.

20 Q. Okay. Was there not a difficulty
21 with fireproofing getting wet from water leaking
22 onto it.

23 A. If it did get wet, it would fall off
24 the beam. That was the problem.

25 Q. So you remember that happening?

1 A. Oh, yeah.

2 Q. So when you say you do not recall
3 fireproofing being on the beams, did you --

4 A. Well, there was quite a few areas
5 where it had fall away from the beams and leaked
6 on the beams.

7 Q. Okay. So this problem that is
8 described here that after fireproofing was applied
9 it was more difficult to find leaks, because the
10 fireproofing held the water and permitted it to
11 run behind, you don't recall that being a
12 difficulty?

13 A. No, sir.

14 Q. Okay?

15 THE COMMISSIONER: When there is a
16 reference to super, could it have been someone
17 else, sir, other than you? Where it says super
18 noted that.

19 THE WITNESS: I'm not sure what that's
20 all about. Like I say, I can't ever remember new
21 insulation being applied to the beams or
22 fireproofing.

23 BY MR. DOODY:

24 Q. Might it have been Mr. Quinn? No he
25 was not there in April of 1989. He had not bought

1 it yet.

2 A. It might have been someone else.

3 THE COMMISSIONER: Mr. Doody, I'm sorry.
4 Who are you reporting to? Who is your immediate
5 boss?

6 THE WITNESS: Larry Liautaud or Jim
7 Willey.

8 THE COMMISSIONER: So could the
9 expression "super" apply to one of those guys?

10 THE WITNESS: It could be, sir. I'm not
11 sure.

12 THE COMMISSIONER: Was your position
13 described as the "super" the "superintendent"?

14 THE WITNESS: Well, supervisor.

15 THE COMMISSIONER: Supervisor.

16 BY MR. DOODY:

17 Q. And what was Mr. Liautaud's title?
18 He was the mall manager?

19 A. He was the manager.

20 Q. Sir, in your time at the -- when you
21 were working for Algoma, do you recall ever
22 speaking with Mr. Rod Caughill about methods or
23 costs of fixing the leaks?

24 A. Just in general conversation, but
25 not a lot, no.

1 Q. And what about with Mr. Liautaud or
2 Mr. Willey, you would the talk to them about the
3 roof?

4 A. Again, just in general conversation
5 during lunch or something like that.

6 Q. Okay. Did you ever talk about
7 putting a membrane or whether there was a membrane
8 on the roof?

9 A. I'd been in conversations where it
10 was discussed, but I was the labourer.

11 Q. Did you discuss the cost -- did you
12 ever discuss the cost or method of repairing the
13 roof with Mr. Kennealy, Ms. Guertin or Mr. Quinn?

14 A. Myself and Richard might have
15 discussed it just in a general conversation, but
16 not with Mr. Kennealy or Rhona.

17 Q. Now, do you recall, sir, at the foot
18 of the ramps, both the north ramp and south ramp
19 there were barriers restricting vehicle access to
20 the roof?

21 A. Yes, sir.

22 Q. And were they put in during your
23 time or were they there when you started?

24 A. They were always there.

25 Q. Okay. And I understand they could

1 be -- they could be moved or swung aside?

2 A. Yes.

3 Q. Not easily, but it could be done?

4 A. Yes.

5 Q. Were you aware of large trucks or
6 large vehicles, rather, bigger than a pickup truck
7 being on the roof during your time there?

8 A. No. It might have happened once
9 or twice, but as rule, no.

10 Q. How did they deal with the
11 snowplowing issue when you were there? How did
12 they take the snow off the roof?

13 A. It was plowed and picked up and put
14 in dump trucks that were on the ramp itself.

15 Q. So what kind of vehicles did the
16 plowing?

17 A. Four-by-four pickups.

18 Q. And the dump truck stayed on the
19 ramp?

20 A. Yeah.

21 Q. Sir, at the time that the mall was
22 sold by Retirement Living to Eastwood, the last
23 owner, what was the situation with respect to the
24 leaks?

25 A. Well, again you never stopped it

1 completely, but -- and I won't say we had it under
2 control, but it was generally okay, I think. But
3 there was always a leak somewhere.

4 Q. And, sir, I should have asked you
5 this earlier. You told us about the work that you
6 did on the roof every summer. Did you ever use
7 students to work on the roof?

8 A. Yes. But they were just -- like
9 sweeping the deck, cleaning, vacuuming or -- not
10 grinding or, you know, anything that you
11 considered fairly important or they were just
12 general labour.

13 Q. Did you ever consider, sir, during
14 your time there, the effect of the water on the
15 structural steel?

16 A. Yeah, we discussed it lots actually.

17 Q. Who was we? Who did you discuss it
18 with?

19 A. The guys that I worked with and
20 myself.

21 Q. And what was the nature of your
22 discussion?

23 A. Just wondering, you know, thinking
24 out loud, wondering what it was doing to the
25 structure.

1 Q. Did you ever discuss this with Mr.
2 Quinn?

3 A. Right offhand, I don't recall any
4 particular conversation, but I'm sure we did
5 discuss it somewhere along the way.

6 Q. And do you recall what if anything
7 Mr. Quinn said about that issue?

8 A. No, sir.

9 Q. Did you ever discuss it with Ms.
10 Guertin?

11 A. Not that I recall, no.

12 Q. Did you have many dealings with Ms.
13 Guertin?

14 A. No, not a lot.

15 Q. Did you ever discuss this issue with
16 Mr. Kennealy?

17 A. Just like he would come out and
18 check on us once in a while, but, no, not a lot.

19 Q. Okay. Did you ever discuss that
20 issue with Mr. Liautaud or Mr. Willey?

21 A. Regarding the --

22 Q. The effect of the water on the
23 steel.

24 A. Well, just in general conversation.
25 Like just wondering what was happening. But I'm

1 pretty sure they had reports that said what was
2 happening or --

3 Q. And were you ever shown any
4 engineering reports during your time at the mall?

5 A. No, sir.

6 Q. Okay. Thank you, sir, those are my
7 questions. My friends may have some questions for
8 you.

9 THE COMMISSIONER: Would this be an
10 appropriate time to take the morning break?

11 --- Break taken at 10:35 a.m.

12 --- Upon resuming at 10:55 a.m.

13 THE COMMISSIONER: Mr. Bisceglia.

14 CROSS-EXAMINATION BY MR. BISCEGLIA:

15 Q. Mr. Snow. I'm the lawyer for Mr.
16 Doug Saunders who is an engineer with M.R. Wright
17 and Associates who did some work at the mall.

18
19 Q. I have a few questions for you.
20 Firstly, with respect to your background, based on
21 your evidence, am I correct in saying that coming
22 to work in Elliot Lake for the owners of the Algo
23 Mall, you began your learning process with respect
24 to roofing and roofing compounds and materials?

25 A. Pretty much.

1 Q. And up to that point in time while
2 you had been educated at college and so on, you
3 had no prior experience with respect to the issues
4 that faced you when you came here to work at the
5 Algo Mall with respect to the roof, is that fair?

6 A. Yes, sir.

7 Q. And having arrived here, did you
8 receive your instructions in that regard from Mr.
9 Liautaud or Mr. Willey?

10 A. Mr. Willey.

11 Q. And during the period of time that
12 you were there, it's my appreciation that you had
13 no engineer or anyone with any technical knowledge
14 on the matter of roofing assist you, other than
15 the suppliers of the product that you were using?

16 A. Correct.

17 Q. And am I correct in saying that the
18 staff that did the repairs for and on behalf of
19 the Algo Corporation or for Retirement Living,
20 were the same staff that maintained the mall and
21 did the general clean up and maintenance, sir?

22 A. Yes, sir.

23 Q. And so that when you weren't
24 otherwise occupied repairing the roof, you would
25 be removing the trash or cleaning the floors,

1 cleaning the parking lots, et cetera?

2 A. No. The janitorial staff pretty
3 much done the trash and the cleaning, but there
4 was lots of other things to be doing. Hotel
5 repairs, mall repairs. Lots to be done.

6 Q. And would you say that with the
7 passage of time after you began working there that
8 you were the more experienced individual working
9 at the mall who had knowledge of the issues
10 involved in the roof maintenance?

11 A. There was three of us that were
12 pretty good at it or in our own mind anyway.

13 Q. Thank you. Just help me out, my
14 impression is of your evidence that at no given
15 time was sort of half the roof area taken apart,
16 recaulked and fixed up by Algoma Central, that you
17 did the repairs on an as-needed basis and a
18 continuing basis, is that fair?

19 A. I'm not sure what you're asking.

20 Q. Well, if the suggestion was that at
21 one point in time around 1990 or 1991 there was a
22 significant section, or not significant, at least
23 more than half the area of the roof was repaired
24 by way of removing the debonded concrete and all
25 of the caulking, do you remember that happening?

1 A. I remember doing a complete joint
2 from east to west from wall to wall in the Woolco
3 area.

4 Q. Just in that one area?

5 A. The debonded areas were cut out and
6 repaired.

7 Q. On an as-needed basis or just in
8 that one area?

9 A. Well, it was one summer there was
10 quite bit of work done there. I think that's what
11 you're referring to. Like the whole roof deck
12 wasn't shut down if that's what you're saying.

13 Q. Was half of it shut down or just the
14 area over the Woolco store?

15 A. There were times when half of it was
16 shut down like when the expansion joint itself was
17 cut out and replaced. But the joints itself, no,
18 we wouldn't close the deck for that.

19 Q. Okay. With respect to the
20 observations that you made about the slab, I
21 understand that when the slabs would warm up, the
22 joints between the slabs would close in, is that
23 fair?

24 A. Yes.

25 Q. And when it got colder, there would

1 be -- the joint would expand, you'd have a bigger
2 section between the two slabs, is that fair?

3 A. Contract, yeah.

4 Q. And was that a common occurrence,
5 sir, while you were there?

6 A. Yes.

7 Q. And was there any one area of the
8 roof deck where there was movement or something
9 that could be described as a bounce?

10 A. Well, it all bounced if you had a
11 vehicle going across the deck at a high rate of
12 speed. I don't know about bounce.

13 Q. Can you describe the kind of
14 movement that you yourself noted or observed or
15 felt when you were on the roof deck?

16 A. More of a thump, I guess. You were
17 aware that something just travelled across that
18 section of the roof, that's for sure.

19 Q. And when you heard that, what
20 observation and what did you see in terms of
21 movement, if anything?

22 A. Well, it was not that you could see
23 it as much as we'd feel it maybe.

24 Q. Did you feel the slabs moving?

25 A. There was a bit of flex there, I

1 think, yeah.

2 Q. Okay. At some point, was there any
3 concern that the expansion point or the Gennie
4 joints, if you will, were a problem? That they
5 weren't doing what they were supposed to be doing?

6 A. The Gennie joints?

7 Q. Yes. I heard that expression used
8 in earlier evidence.

9 A. Well, that is the rubber mechanical
10 joint. They were -- overall they were in pretty
11 good shape, I think, yeah. The original one
12 become debonded from the two sections and after
13 the -- it was replaced at some point. I think a
14 couple of areas did become debonded from the
15 bullnose again, but it was repaired.

16 Q. But at some point -- excuse me. At
17 some point, though, did you not see someone coming
18 up there where they had to cut that because it
19 wasn't doing what it's supposed to be doing? In
20 other words, the joint had closed in and it wasn't
21 acting as an expansion joint?

22 A. When they went to replace the
23 original joint itself, they discovered that the
24 cores had moved tight together so we had to cut
25 out a small portion to give it that room for

1 movement.

2 Q. But you yourself had not made that
3 observation or any of the employees of the mall
4 had not made that observation until some engineer
5 came to do an inspection, is that fair?

6 A. Well, you really couldn't see it
7 until the joint was removed itself. You couldn't
8 see the core slabs touching.

9 Q. Okay. While you were there, did you
10 ever get involved in the pouring of cement or
11 repairing the either the top coating or the slabs?
12 That is, the forces on behalf of Retirement Living
13 or Algoma?

14 A. No, that was always contracted out.

15 Q. And did you make any observations as
16 to whether or not when they poured that concrete
17 some of the concrete would get into the joint
18 that's between the slabs?

19 A. No. It was -- the joint was
20 trowelled in. The cores itself were --

21 Q. When they removed the debonded area
22 which is about three inches in thickness, is that
23 fair? Three inches of cement on top of the slab
24 roughly.

25 A. Depends on the location. Some areas

1 were thicker than three inches.

2 Q. On average?

3 A. Well, you could say three on the low
4 end, yeah.

5 Q. Were some more than -- significantly
6 more than three inches?

7 A. Well, three inches probably around
8 the drains itself. And there was areas that went
9 to five inches, if not more.

10 Q. So when those areas were removed of
11 the debonded concrete or the cement, beneath that
12 would be the hollow core slab, is that fair?

13 A. Yes, sir.

14 Q. And often the debonded areas would
15 be areas over two or three slabs, is that correct?

16 A. Yeah.

17 Q. And some of those debonded areas
18 would also include areas of the butt joints, is
19 that fair?

20 A. Yes, sir.

21 Q. And were you there when that work
22 was being done and did you see how they were doing
23 that?

24 A. Yeah.

25 Q. It wouldn't be Algoma forces or

1 Retirement Living forces that actually did that
2 work. That was done by others.

3 A. Contractors.

4 Q. And did your staff or your crew play
5 any role in effecting that repair, either
6 resealing it or recaulking it before the cement
7 was poured or was that left totally to the
8 contractor?

9 A. If there was any damage to the core
10 slab itself, we usually just caulked any damage
11 that was at the core slab itself or I think one
12 time there was pitchitain or something. Just
13 something to seal that because there was grout in
14 between the slabs themselves.

15 Q. That's the point I'm coming to.
16 When the debonded concrete was removed and the
17 slabs were exposed, am I correct in saying that
18 the areas between the slabs, that somebody would
19 put in grout or put some cement in there?

20 A. No. Pretty much it was always
21 grouted, but if you were jackhammering or
22 chiseling, sometimes you might nick the grout or
23 something you would repair that.

24 Q. Who would do that? Who would
25 determine the nature and extent of the grouting or

1 the level of repair or maintenance with respect to
2 the slab? Was that your forces or was that done
3 by the contractors?

4 A. The contractors.

5 Q. And during the time that you were
6 there when that work was being done, did you ever
7 observe it being supervised by an engineer or
8 someone who appeared to you at least to be
9 qualified to appreciate what was going on?

10 A. There was -- yeah. First, when all
11 this started, there was an engineer who --

12 Q. Do you recall who that was?

13 A. No, sir.

14 Q. Do you know who the contractor was?

15 A. The contractor was Beamish.

16 Q. Okay. Now, in the course of your
17 trying to maintain a certain level of water
18 protection for the tenants on an ongoing basis,
19 did you have any discussions or conversations with
20 Mr. Willey or Mr. Liautaud as to why they didn't
21 replace the complete roof or Algoma didn't replace
22 the complete roof? Informal or otherwise.

23 A. I think it all comes down to the
24 cost.

25 Q. I understand that, but I'd like you

1 to help us out, sir, as to the nature of those
2 casual discussions or serious discussions so we
3 might appreciate why it was that the tenants
4 didn't always have a roof over their head that
5 didn't leak and why it was that you and your staff
6 would have to do the work that you did on an
7 annual basis and why it was that no one else
8 seemed to be able to come up with a solution to
9 the problem.

10 I'm going to suggest to you that you did
11 have those conversations, and at the end of the
12 day you're probably right, it had to do with
13 costs.

14 But can you enlighten us about those
15 discussions, whether it was over coffee or a beer
16 or otherwise?

17 A. Well, just in general conversation.
18 I don't remember any specific conversation about,
19 you know, why or why not. I didn't make those
20 decisions.

21 Q. I understand. But did you as the
22 person, lead hand or otherwise involved in it,
23 didn't you ever say to your superiors, you know,
24 this is -- this isn't working. We've got to
25 figure something else out. We've got to do this,

1 that or the other thing?

2 A. No. I don't think I was that close
3 to my superiors that I would talk to them like
4 that, but just in general conversation you would
5 say something. But I always thought it wasn't
6 done because they couldn't afford to do it.

7 Q. Okay. You indicated in your
8 evidence that on occasion Mr. Kennealy from
9 Retirement Living came to check on you I think was
10 your word?

11 A. Well, he would just take a walk
12 around the deck.

13 Q. While the repairs were being done?

14 A. Yeah, just to see what the guys were
15 up to.

16 Q. Did you ever see Mr. Caughill, when
17 Algoma owned the property, doing that?

18 A. Yes, sir.

19 Q. And was he there for extended
20 periods of time to see what you were up to?

21 A. Yeah, he was there quite a bit when
22 there was big projects on the go.

23 Q. And I gather from your earlier
24 evidence, you never received any instructions from
25 him as to what you should or shouldn't be doing or

1 how you should be effecting the repairs, is that
2 fair?

3 A. Well, he would follow our procedures
4 and that and we -- like we never deviated from the
5 way we were shown to do it or told to do it so.

6 Q. But he never gave you any specific
7 instructions or direction in that regard, is that
8 fair?

9 A. Not instructions per se, but --

10 Q. Or tell you what to do?

11 A. Yeah, at times, well, let's try this
12 or something, you know. But no, we just continued
13 applying the product the way we were shown by the
14 suppliers and anything outside of that was the
15 contractor doing the contract work or concrete
16 work, the expansion joints or the Gennie joints
17 were done by other guys so we were pretty much
18 just doing the joints itself.

19 Q. Did you ever see anyone from City
20 Hall, so to speak, on the parking structure?

21 A. Not that I recall, no.

22 Q. And you never applied for any
23 building permits while any of this work was being
24 done?

25 A. I didn't. I wasn't told that I had

1 to. I just assumed that it was done above me.

2 Q. Thank you very much, sir.

3 MR. BISCEGLIA: Those are all my
4 questions.

5 THE COMMISSIONER: Thank you. Mr.
6 MacRae.

7 MR. MACRAE: Thank you, Mr.
8 Commissioner.

9 CROSS-EXAMINATION BY MR. MACRAE:

10 Q. Good morning, Mr. Snow, my name is
11 Rob MacRae and I represent Bob Wood who is an
12 individual who has standing at this hearing. I
13 have a couple of questions for you to start with
14 respect to if I could get Exhibit No. 213
15 displayed, that would be very helpful.

16 This is a picture that shows the area of
17 collapse and I have some questions about the area
18 as it existed before the collapse, but I thought
19 this picture might be helpful for us to have a
20 reference.

21 Do you recall during the period of time
22 that you were at worked at the property,
23 regardless of who you worked for, do you recall
24 the installation of a roof drain, a new roof drain
25 in that area?

1 A. Not -- it must have been prior to me
2 being here because it was never done while I was
3 there.

4 Q. Do you recall there being a roof
5 drain in that area?

6 A. Yes, sir.

7 Q. During the period of time that you
8 worked at the mall, were there any new roof drains
9 installed?

10 A. No.

11 Q. And the roof drain in that area, can
12 you tell me approximately where it was? Was it in
13 the middle of the area? Was it closer to the
14 entranceway?

15 A. I -- probably pretty close to the
16 center maybe, if I remember correctly.

17 Q. Fair enough. Now, on -- in that
18 picture, you can see on the left hand side it's an
19 aerial photo. We see the top of the hotel and
20 then we also see a parapet, the small roofing area
21 that comes out on the left hand side and I think
22 that was the entranceway into the hotel from the
23 mall parking lot, was it not?

24 A. Yes, sir.

25 Q. Do you recall there being a step in

1 that area?

2 A. There was a step and a wheelchair
3 ramp, I believe, yeah.

4 Q. And that would have been out of
5 concrete -- made out of concrete, do you recall
6 that?

7 A. Yes, sir.

8 Q. Did you ever do any service work
9 with respect to that step or was it always there?

10 A. I don't recall. I think it was
11 always there.

12 Q. Thank you. You also -- this morning
13 you talked about when new concrete would be poured
14 on the top that there was a 28-day curing period.
15 And what did you understand the 28 days to be
16 required for?

17 A. Well, for -- in order for the
18 concrete to cure, I think, that was the ideal time
19 at least anyway. We would wait 28 days. If it
20 wasn't cured, the product probably wouldn't adhere
21 to the sides of the joints. But 28 days, I think,
22 is the curing time for the concrete itself.

23 Q. That's what your --

24 A. That's what we went by anyway.

25 Q. Fair enough. And you also indicated

1 that you would try and keep the concrete moist or
2 wet during that period of time.

3 A. Well, the first few days anyway so
4 it wouldn't dry out too fast and crack and we'd
5 cover it with burlap and keep it wet or damp
6 anyway.

7 Q. And then once the 28 days was over,
8 was there a requirement for a passage of time
9 before you could put the sealants on or did you
10 give it -- did you do it right up to the 28 days?

11 A. If it got to the 28 days, we
12 probably would work with it after that, yeah.

13 Q. And if the new cement or the new
14 concrete, rather, was placed and you waited 28
15 days, did the contractor generally put the
16 sealants down or was that always your
17 responsibility?

18 A. We took care of the joints with the
19 sealants.

20 Q. That was your expertise and you did
21 all of the sealants?

22 A. I don't know about expertise, but
23 that's what we done.

24 Q. Fair enough. So your evidence is
25 that the contractor wasn't responsible for the

1 sealant?

2 A. No.

3 Q. Your crews were responsible for the
4 sealant.

5 I wonder if I might, Ms. Kuka, have
6 Exhibit No. 693.

7 While that's coming up, Mr. Snow, you
8 indicated when Mr. Bisceglia asked you some
9 questions that you recall there was a contractor
10 who did some work cutting the end of core slabs at
11 the expansion joint?

12 A. Yes, sir.

13 Q. Right. And were you involved in
14 that or were you just monitoring it?

15 A. I think we were doing joints on the
16 roof in other areas, but I do recall it. I wasn't
17 responsible for it or anything.

18 Q. You weren't responsible for it?

19 A. No. This group done their own
20 thing.

21 Q. Would you have been responsible for
22 putting the sealants back in? Putting the
23 expansion joint back in?

24 A. No. They done everything. Removed
25 the old one, put the new one back in.

1 Q. And this is a picture that is taken
2 during that period of time. And directly
3 underneath the saw in front of the contractor or
4 the individual's feet that would be the ends of
5 the core slab, am I correct?

6 A. That's what it looks like, yes.

7 Q. Do you recall seeing that?

8 A. Yes.

9 Q. And it also appears that the topping
10 is cut back to about the middle of the picture?

11 A. Yes.

12 Q. How would you go about removing the
13 topping from a core slab when it needed to be
14 removed?

15 A. Well, I didn't do this. This is the
16 contractor itself I think that was Vector, Vector
17 Restoration, out of Stoney Creek by the look of
18 that one. And they would get the depth of the
19 wear slab, make a saw cut, and very gently chisel
20 out. But that looked like it was debonded there
21 so it would probably let go fairly easy.

22 Q. All right. I wonder if I might
23 have, Ms. Kuka, Exhibit No. 695.

24 When there was a debonded area that you
25 were responsible for or that you were going to

1 take care of, did you actually remove the
2 concrete, your crews?

3 A. No, that was contractors.

4 Q. And when you say contractors, they
5 were general contractors? Was it always Beamish?

6 A. No. Back in the beginning I think
7 it was a local concrete guy that actually took the
8 contract on. Other than Beamish, I think it was
9 Mr. Claude Beaumier.

10 Q. From Beaumier Construction in Elliot
11 Lake?

12 A. Yes.

13 Q. And during that period of time, did
14 any contractors ever talk to you about a building
15 permit and ask you if there was a building permit?

16 A. No.

17 Q. And then with respect to the
18 repairs, as you were completing the repairs over
19 the years, would you keep a diary of any of the
20 repairs or keep notes?

21 A. I did have a map showing the dates
22 so I knew which concrete was done so I could have
23 a time line or get a life cycle how long things
24 would last.

25 But there was a log kept of it, yes.

1 Q. And who was responsible for that
2 log? Was that your log?

3 A. Yeah.

4 Q. And did you store it somewhere or
5 where would it be kept?

6 A. It would have been in my office.

7 Q. And when you left the employment at
8 the mall, did you leave that document behind?

9 A. It should have been there somewhere,
10 yeah.

11 Q. All right. When you talk about a
12 life cycle, it would be important for you to know
13 when there had been some work done in an area so
14 that you could determine how would it help you to
15 determine when you should go back to look at that
16 area?

17 A. Well, we just started doing repairs
18 so you kind of want to have some kind of idea of
19 what -- okay, this was five years ago and you see
20 the condition of it, you know? Just to have
21 something to reference back to.

22 Q. Well, it sounds like an excellent
23 idea, I'm just asking when you -- would you look
24 at it to see whether you needed to do a repair or
25 would you look at it to see if you had done a

1 repair already?

2 A. Well, just by looking at the deck,
3 you could tell if you'd done a repair. You know,
4 you'd see the patch work or -- no, it was just my
5 own personal notes to just have to have something
6 to reference by.

7 Q. So that you could do your job well?

8 A. Or try anyway.

9 Q. All right, fair enough. And then
10 lastly with respect to snow removal, were you
11 responsible for any of the snow removal at the
12 mall?

13 A. That was contracted out, but we did
14 have a maintenance guy that -- if the contractor
15 was there, he would do the parapet wall with a
16 snowblower so the plows wouldn't go tight to the
17 parapet wall, tear up the caulking in the corners.

18 There was always a maintenance guy on
19 site if they were plowing.

20 Q. And would that be you as well too
21 sometimes?

22 A. No.

23 Q. That wasn't your responsibility.
24 When you say they used a snowblower, they went
25 around the outside of the perimeter of the mall?

1 A. Yes, just so the plows wouldn't go
2 tight to the walls of the mall itself.

3 Q. And are you familiar enough with how
4 the snowplowing was done that you can answer some
5 questions about the snowplowing?

6 A. I'll try.

7 Q. Fair enough. What types of trucks
8 were used to do the snowplowing?

9 A. Four-by-four pickups would plow
10 towards the ramps itself, but then it would be a
11 loader put it in a dump truck at the ramp.

12 Q. And would the loaders be on the mall
13 or just on the ramp?

14 A. I never seen it, but I think at
15 times there was -- before me, I can't say what
16 happened before I was there.

17 Q. Well, during the time that you were
18 at the mall, did you ever see a large vehicle and
19 possibly a tour bus, a Greyhound bus or something
20 of that nature, on the roof of the mall?

21

22 A. No, sir.

23 Q. Did you ever see any transports on
24 the roof of the mall?

25 A. No.

1 Q. Thank you very much, Mr. Snow, those
2 are my questions.

3 MR. MACRAE: Thank you, Mr.
4 Commissioner.

5 THE COMMISSIONER: Thank you. Mr.
6 Kearns.

7 CROSS-EXAMINATION BY MR. KEARNS:

8 Q. Hello, Mr. Snow. My name is Doug
9 Kearns and I'm the lawyer for Retirement Living.

10 A. Hi.

11 Q. Hi. I want to try and get a sense
12 of the calendar year for what happens in different
13 months. I'm speaking particularly here of the
14 Retirement Living period from 1999 to 2005. If
15 you can kind of concentrate your recollections on
16 that period of time.

17 So January, I'm going to take you from
18 January through to December. We start on January
19 1st of any given year. When does the usual spring
20 maintenance work plan start?

21 A. Pertaining to the deck itself?

22 Q. Repairs to the deck and to the
23 joints?

24 A. Just as soon as the deck was bare
25 from ice, snow, we would start walking it and do

1 any repairs that you would come across or
2 temporary repairs anyway.

3 Q. So can we --

4 A. Well, this time of year I guess.

5 Q. Okay. So sort of in April. So for
6 the first three months, there's not a lot that you
7 can do by way of regular maintenance at all on the
8 roof?

9 A. If any joint was bare, you would
10 walk that joint and do any patching that you see,
11 nicks from the plow or debonding.

12 Q. So you would still walk it on a day
13 that it was plowed clear or clean, you'd walk it
14 and if you saw some areas, you'd try and caulk
15 those or at least to seal it on a temporary basis?

16 A. Yes, sir.

17 Q. Now, in this period of time from
18 January to April, while it's still cold, what kind
19 of frequency is there with the leaks during this
20 period of time?

21 A. I'm not sure I know what you're
22 asking.

23 Q. I'm just wondering whether during
24 the year there are times when the parking deck
25 leaks more than others?

1 A. Well, this would be the worst time,
2 this time of year, like after snowplows and the
3 freeze-thaw cycles. When a freeze and thaw, a
4 small debonded area would become a big debonded
5 area. So you were trying to eliminate anything
6 where water could get in and in the spring of the
7 year this is the rainy season.

8 THE COMMISSIONER: I think Mr. Kearns is
9 talking about January to April when it's really
10 cold. Am I wrong --

11 MR. KEARNS: Yes, exactly.

12 THE COMMISSIONER: Then would there be
13 less leakage when it would be sub-zero or that.

14 THE WITNESS: Yes.

15 THE COMMISSIONER: So come April or late
16 March there would be more thaw.

17 THE WITNESS: Yes.

18 BY MR. KEARNS:

19 Q. So in April things start to get
20 serious. You've got freeze-thaw, you've got
21 spring rain, you've got the runoff from the snow.
22 You've got a lot of water on the -- this is the
23 worst time of the year, is that correct?

24 A. Yes, sir.

25 Q. And it's still at a time where it's

1 going to be difficult for you to get and properly
2 repair this area because of the difference in the
3 temperatures and the wetness?

4 A. Yeah. It would be just a temporary
5 patch. And you'd walk the deck once a week anyway
6 just to see if anything new had developed or just
7 to keep up on it.

8 Q. When would this period, this spring
9 period, when would it kind of be over so that
10 you're no longer dealing with this particular high
11 frequency problem? When does that stop? If it
12 does.

13 A. Well, you just keep it temporarily
14 patched until May or June or until the
15 temperatures got right that you would use the THC.

16 Q. So by May or June, are the leaks now
17 starting to decrease? Are they less frequent
18 during --

19 A. Well, any bad area you would do it
20 with THC. So you would start to reduce the amount
21 of leaks around May or June, in the summer months
22 anyway.

23 Q. Okay. So during the summer months,
24 the tenants are going to be subjected, likely, to
25 less leaks during this period of time, is that

1 correct?

2 A. Yes, in general, yeah.

3 Q. Okay. Now, let's just jump then,
4 let's say that by June or July the leaks are at
5 the summer point and at the summer point is where
6 you guys are you're out there every day. You
7 started, I presume, this program of checking all
8 of the joints and cleaning them. Probably the
9 best time of the year in terms of the fewest
10 leaks, is that fair?

11 A. Well, like I say, we would take care
12 of the worst ones first so and then it would
13 slowly go downhill. You'd have fewer and fewer
14 leaks. So by the end of the summer, it would be
15 the best time I think.

16 Q. The end of the summer?

17 A. Yes.

18 Q. So August?

19 A. Yes.

20 Q. Okay. So from August then let's
21 jump to the end of December. During that period
22 of time, during those four or five months, is
23 there another period of time in the calendar where
24 the leaks start again? The way that they were
25 very frequent in the spring time, did they start

1 again sometime in the fall?

2 A. I don't think so. Not unless
3 something happened that, you know, depending on a
4 drain let go or something. After the summer
5 repairs were done, it was usually pretty good.

6 Q. And that would follow through right
7 through until the spring of next year?

8 A. Correct.

9 Q. Okay. So you've got maybe two or
10 three months in which there's a real problem and
11 you guys are up there all the time, March, April,
12 May? Okay.

13 MR. DOODY: That wasn't the evidence of
14 the witness. The evidence of the witness was Mr.
15 Kearns said to him by June or July it was pretty
16 good and the witness responded, no, by the end of
17 August it was pretty good. So it wasn't two or
18 three months. It was April through August, which
19 by my count, is somewhat longer than two or three
20 months.

21 BY MR. KEARNS:

22 Q. Can you help me with what he just
23 said, Mr. Snow?

24 A. Well, in the spring of the year we
25 start repairing joints. I don't know. But I

1 never paid attention, but it was a longer period
2 that it was without leaks I think. But we were on
3 the roof from spring until the following fall.
4 The time frame without leaks, I couldn't tell you.
5 Like I said it was always a leak somewhere.

6 But in the fall the leaks were better.

7 Q. Now, when you say there's always a
8 leak somewhere, are you saying that every single
9 day in the course of a year there is water from
10 the deck going into some tenant's property?

11 A. Yeah.

12 Q. Even when it's not raining?

13 A. Well, no, it had to be raining.

14 Q. Well, then you -- that's what I'm
15 trying to get a sense of, Mr. Snow.

16 A. Okay.

17 Q. Is how every time that it rains, is
18 there ever a time that it rains at any of time of
19 the year where, you know, the system worked, there
20 was no leak into the --

21 A. There was times, yeah.

22 Q. And what times of the year would
23 that normally be?

24 A. Oh, I wouldn't be able to be that
25 specific.

1 Q. More likely during the summer than
2 the fall?

3 A. Well, I -- we repaired it all summer
4 long, so it would be around that time. Summer,
5 fall, we were down to close to zero leaks or you
6 know there was always one. You never stopped it
7 completely.

8 Q. Now, when you get a call during the
9 course of the day from somebody at Retirement
10 Living or from a tenant and it's raining and
11 there's a leak in their tenant space, you'd first,
12 I think, help them deal with the issue in their
13 space, correct?

14 A. Sure.

15 Q. And then you would go and try to
16 find the leak?

17 A. Yes, sir.

18 Q. What are you looking for when you're
19 going to try to find that leak?

20 A. Usually it was an area that the
21 caulking became debonded from the concrete. So if
22 you walked the joint, well, you knew where you
23 were to on the inside, so you go to that general
24 area on the deck and you watch anything that you
25 thought water would go down through in that

1 general area.

2 Q. Okay, so I understand that. So
3 you're going to walk, you're going to find a spot
4 and you're going to go, you know, that's probably
5 where the leak is coming in, is that right?

6 A. Ninety-five per cent of the time we
7 were right on the money.

8 Q. Right on the money. I guess what
9 I'm not clear on is before it leaked, wouldn't you
10 have been able to identify that same spot just by
11 walking along and saying to yourself, you know,
12 this is probably a spot that's going to leak, we
13 need to fix that?

14 A. And we usually did.

15 Q. Okay.

16 A. But if you had a vehicle that went
17 over and skidded a tire or something, they would
18 tear out that repair, or, you know, it was still
19 receiving traffic, so the repairs didn't last
20 forever. You know what I mean?

21 Q. Hmm hmm.

22 A. Temporary patches didn't anyway.

23 Q. So are you saying that one day you
24 could walk the deck -- let's say you walked a
25 joint one day and it looked fine and the next day

1 it rains, there's water coming in, you go up, you
2 find that joint and you go, gosh that's where the
3 water's coming in?

4 A. Could be the same area we patched
5 the week before, you know what I mean, but the
6 calking got tore, it was just a patch, so.

7 Q. So the caulking then that is
8 failing, is it failing primarily because of the
9 wear and tear that it's receiving from vehicles
10 and snowplows going over it?

11 A. The temporary patch we put on was
12 just a caulking, so it didn't last forever. But
13 like the THC, most times I think it was the
14 concrete that was powdery or the joint itself let
15 go or the spalding of the concrete.

16 Q. So that concrete issue then, that's
17 not necessarily one that resulted vehicles going
18 over it or is it?

19 A. No. I think it was probably the
20 long term wear of the concrete.

21 Q. Was there ever a time during the
22 years that Retirement Living owned the deck and
23 the center in which you went to Richard Quinn, or
24 anyone at Retirement Living, and said, look, we
25 need more men. We need more sealant. We need

1 something more. You guys have got to give us
2 this.

3 Did you ever go to them with a request
4 for resources that they said, no, we're not going
5 to do that?

6 A. No, sir. I always got what I asked
7 for when it comes to materials and that, but I
8 didn't ever recall asking for more labour.

9 Q. When you're using this grinder, you
10 talked about grinding if you had a crack, I guess
11 you'd have to grind it to turn it into a joint.

12 Is it always -- is the grinder that
13 you're using, is it creating a Vee in the concrete
14 topping?

15 A. Yeah, but you work it a little bit
16 to make it a little bit wider. It is a Vee.

17 Q. It is a Vee, okay. I'd like to show
18 you Exhibit No. 273. This is a letter, Mr. Snow,
19 dated May 7th, 1991. So you will have been
20 working there for a couple of years by this time.

21 It's a letter from Mr. Liautaud and it's
22 addressed to the library. And I just want to read
23 the second paragraph to you.

24 "As you are no doubt aware, we had
25 continuous problems until 1986, when after

1 much examination we implemented a new
2 maintenance procedure which worked
3 consistently until the spring of 1990 with
4 the exception of one major expansion joint
5 which had to be redone in July of 1989.
6 Apart from the latter, we also
7 waterproofed the deck in 1989 for added
8 protection."

9 Now, Mr. Liautaud here is talking about
10 a period of time up until the spring of 1990 when
11 things seemed to have been working fairly well.
12 Do you remember you would only have been there for
13 a couple of years, it may be difficult for you,
14 but were things relatively under control during
15 the period of time he is talking about?

16 A. Well, anything in that paragraph, I
17 started in the fall of 1989, so I didn't know what
18 was done prior to that.

19 Q. Okay. He talks about a new
20 maintenance system works consistently until the
21 spring of 1990. So you've been there just a few
22 months. Do you recall in the spring of 1990, this
23 would have been your first spring, that it was a
24 pretty bad year and there was a lot of leaks?

25 A. Yeah. I -- I think everybody was

1 puzzled as to why there were so many, but there
2 was quite a few debonded areas or something that
3 spring. I don't know. I think it's the weather
4 from the previous -- the type of winter it was,
5 or.

6 Q. If I can just take you to the next
7 paragraph and just read you the first part. It
8 says, "Due to the large number of leaks that
9 occurred in the spring of 1990, we redid, 100% of
10 the joints over the entire mall area..." Okay,
11 you would have been there?

12 A. Hmm hmm.

13 Q. Did you recall having redone 100% of
14 the joints the over the entire mall area?

15 A. No. It was -- unless he's just
16 referring to the main joints, the butt end joints
17 like running east to west, the main joints.

18 Q. Okay. Did you do all of those
19 joints?

20 A. All the mains were done, yes.

21 Q. So every butt joint was done in the
22 spring of 1990?

23 A. Yes, sir.

24 Q. And he goes on to say in that
25 paragraph, "...which needless to say, did not fix

1 all of the leaks."

2 Is that your recollection as well? So
3 having redone all of the butt joints, it still
4 didn't help?

5 A. Well, you still have many control
6 joints going north to south, so there's still lots
7 of potential for leaks there.

8 Q. Wasn't there potential for leaks in
9 the butt joints that had been redone?

10 A. Sure, yeah.

11 Q. Okay. Because it just seems that
12 this project that they do, it sounds like a lot of
13 work, and you would have been part of that?

14 A. Hmm hmm.

15 Q. Seems not to have any particularly
16 positive effect on the leaks that the tenants were
17 experiencing?

18 A. Not -- probably not what was
19 expected.

20 Q. This is quite a big area, the
21 parking deck area. I mean, we know that it leaks
22 in some places very badly, like Woolco and Bank of
23 Nova Scotia and the library, Zellers later.

24 Are there areas of the parking deck,
25 though, while you were there that just frankly

1 didn't ever leak at all?

2 A. Yup.

3 Q. And in those areas, how long was the
4 sealant lasting?

5 A. Well, in the 16 years I was there,
6 I'm pretty sure that most of the joints were
7 replaced at some time or another. But like on the
8 back parapet wall, there was very few leaks in
9 that area, but there was very little traffic in
10 that area as well so.

11 Q. Okay. I'd like to take up the big
12 picture again, which is -- when you look at that,
13 Mr. Snow, in the top part where the deck of the
14 deck -- the top. All right. That is where we
15 find the library, Bank of Nova Scotia and the
16 Woolco/Zellers, is that correct?

17 A. Yes, sir.

18 Q. The part that's closer to us, closer
19 to this side, up until the edge, are -- does this
20 area leak as well?

21 A. At times, yeah.

22 Q. Okay. How often does it leak?

23 A. Oh -- I don't know. I can't hazard
24 a guess. But it was much more infrequent than the
25 center part of the deck where the traffic is to.

1 Q. So are there significant portions of
2 the parking deck that don't need much maintenance
3 on an ongoing basis?

4 A. Yes, sir.

5 Q. And if you're looking at it there,
6 and I'm just -- let's just -- we'll talk about the
7 whole thing. Are you able to as a percentage just
8 give me an estimate of what part of that parking
9 deck area, and I'm referring as well to the part
10 that is at the front, this side of the hotel.
11 What a percentage of that was pretty much under
12 control most of the time?

13 A. Well, you wouldn't have traffic
14 there, but where a joint went from east-to west,
15 if water got in the joint itself it could run
16 anywhere. The potential for the water to run the
17 whole length of the deck, you know, it could creep
18 along the core slab 10, 15 feet and then fall
19 through. But there was so many variables that
20 when it rains, if it got through the top -- the
21 joint on the top, it could come through anywhere.
22 So a high traffic area or like the back part of
23 the wall was a fairly good area, but there was
24 very little traffic back there. Except where it
25 come around the corner of the hotel and that was

1 directly over the library. That was a very bad
2 area. Or coming off -- you could see the dark
3 spot down through the center of the deck, that was
4 a high traffic area. So that was probably the
5 worst of it.

6 Q. In the time that you were there, did
7 it ever occur to you that a good plan to deal with
8 this would have been to essentially shut down the
9 roof, the parking deck for a period of time, take
10 out every single -- clean out every single joint,
11 take the sealant out of every one, butt joints,
12 control joints, and reseal the whole deck? Is
13 that something that you think would have been a
14 wise thing to do?

15 A. Probably was, but I didn't make
16 those decisions.

17 Q. I guess the question I'm asking is,
18 are there areas there that wouldn't have needed
19 that and in fact that might have caused more
20 trouble than it cured?

21 A. Well, then you're reducing the
22 amount of traffic or parking areas, so I don't
23 know. Yeah, the ideal thing, I guess, would have
24 been to close it and deal with it in a way that
25 lasts, you know. We were repairing it and still

1 we had issues so.

2 Q. You wouldn't expect that to be any
3 type of a 10-year solution, would you?

4 A. I don't think so.

5 Q. Okay. Mr. Doody asked you, and I'm
6 afraid I didn't listen -- didn't hear your answer,
7 he asked you one of the things on that list that
8 the engineer had suggested was to remove the
9 sealant from the bottom of the core slabs at
10 walkways. Do you remember him asking you whether
11 you did that or not?

12 A. Yes, sir. Some areas were done. I
13 don't think it was all done though.

14 Q. Okay. Were there other -- we've
15 talked about the contractors like Vector, but I'm
16 talking about Retirement Living now. What
17 contractors were working on the mall, other than
18 you, the staff of the company, during the time
19 that Retirement Living owned the mall?

20 A. If any, it was just Beamish doing
21 concrete work.

22 Q. And you never did any of the
23 concrete work yourself even when Retirement Living
24 was running the mall?

25 A. Not that I recall, no.

1 Q. We talked about the fireproofing of
2 the beams underneath. Is that something you ever
3 did during the course of the time that you were
4 there?

5 A. No, sir.

6 Q. Is that something that was done by
7 contractors?

8 A. I don't recall it ever being done
9 while I was there.

10 Q. Okay. Thank you, those are my
11 questions.

12 THE COMMISSIONER: Ms. Carr.

13 CROSS-EXAMINATION BY MS. CARR:

14 Q. Morning, Mr. Commissioner. Mr.
15 Snow, my name is Alexandra Carr and I'm one of the
16 lawyers representing two community groups that are
17 participating in this inquiry.

18 I have -- I only have a few questions
19 for you today. We heard evidence yesterday that
20 in May 1995, you and Mr. LeBlanc were appointed as
21 municipal law enforcement officers to control
22 parking on the roof deck. Do you have any
23 recollection of that?

24 A. Yeah.

25 Q. And what was your understanding of

1 why that was done?

2 A. It wasn't just for the parking deck,
3 it was just for any infractions. People parking
4 in handicapped spots or -- I don't think it was
5 anything to do with the parking deck itself. It
6 was just general parking violations.

7 Q. Okay. Did it have anything to do
8 with the volume of vehicles that were allowed onto
9 the parking deck?

10 A. No.

11 Q. No. My friends Mr. Doody and Mr.
12 MacRae asked you about snow removal from the roof
13 and I think what your answer was that the dump
14 trucks were allowed onto the ramps and that the
15 snow -- and that 4X4 vehicles were plowing the
16 actual roof deck.

17 And you also said that, to be fair, that
18 you didn't have direct knowledge of what was going
19 on with respect to the snowplowing. But you may
20 be able to help me, were you ever aware of
21 vehicles that are called huff loaders being used
22 on the roof to pick up piles of snow from the roof
23 deck, and moving them towards the ramp so that the
24 dump trucks could take them off of the ramp and
25 off of the roof?

1 A. Well, there was loaders that
2 actually loaded the snow into the dump trucks, but
3 the policy was for the 4X4s would plow it to the
4 ramp and the loaders loaded there. Now, what
5 happened at night when I wasn't there, I don't
6 know. But the policy was that the 4X4s would
7 clear the deck and the loaders load it to the
8 trucks at the ramp so.

9 THE COMMISSIONER: The loaders stayed on
10 the ramp.

11 THE WITNESS: Well, that was the policy.
12 Now, perhaps at times they did go on the deck
13 somewhere, but.

14 THE COMMISSIONER: Did you see that?

15 THE WITNESS: Personally, no.

16 BY MS. CARR:

17 Q. Would your men have been present --
18 one of your men have been present when -- I think
19 you may have already answered that.

20 A. Well, there was a guy present when
21 the snowplowing was done and that was one of the
22 reasons why he was present.

23 Q. To control that?

24 A. Yeah.

25 Q. So you would expect that if a huff

1 loader was allowed onto the roof deck, you would
2 have been advised that that had happened and your
3 man would have tried to control that?

4 A. Yeah.

5 Q. Okay. Thank you very much.

6 THE COMMISSIONER: Mr. Cassan.

7 MR. CASSAN: Thank you, Mr.

8 Commissioner.

9 CROSS-EXAMINATION BY MR. CASSAN:

10 Q. My name is Paul Cassan and I'm
11 counsel for the City of Elliot Lake.

12 My friends -- I guess Mr. Bisceglia
13 asked you about building permits. Did you have
14 any discussions with your supervisors about the
15 need for a building permit for the repair work,
16 particularly the replacement of the expansion
17 joints or the replacement of the debonded concrete
18 topping?

19 A. Well, I'm aware of the need for it.
20 When it comes to the replacement of the expansion
21 joints, that was all taken care of above me. So I
22 -- I never questioned whether there was permits or
23 -- because I have very little to do with it.

24 Q. In fact, there were in permits taken
25 out. And I just wondered if you heard of any

1 discussion about -- about why that was. Why no
2 permits were taken out or whether there was any
3 discussion that you heard.

4 A. No, sir. Like I said, I was just a
5 labourer and a lot went on above me that I didn't
6 question.

7 Q. Sure. I understand that you
8 participated in some of the tours that the
9 engineers took of the property on your various
10 occasions. Do you recall that?

11 A. I recall letting people in certain
12 areas and no specific one though.

13 Q. So the Trow engineers came to the
14 mall on April 22nd, 1991, and they toured around
15 the building and took various photographs. Do you
16 remember touring the Trow guys around?

17 A. I think so, yeah.

18 Q. And do you remember taking them into
19 the library?

20 A. Not specifically, no, but I probably
21 did, but.

22 Q. Sure. Do you have any recollections
23 of discussions that took place between the Trow
24 engineers and tenants in the mall?

25 A. No.

1 Q. What they were doing?

2 A. No.

3 Q. Thank you, sir, those are my
4 questions.

5 THE COMMISSIONER: Mr. Richler.

6 CROSS-EXAMINATION BY MR. RICHLER:

7 Q. Good morning, Mr. Snow. My name is
8 Robert Richler. I'm a lawyer for Algoma Central.

9 MR. RICHLER: And Mr. Commissioner, I
10 have not had the opportunity to address the court
11 before and I would like to say good morning to you
12 as well.

13 THE COMMISSIONER: We were advised that
14 you would be coming.

15 MR. RICHLER: Yes, Mr. Howe advised me
16 that he has referenced me a few times in my
17 absence.

18 THE COMMISSIONER: Only in favourable
19 terms.

20 BY MR. RICHLER:

21 Q. Mr. Snow, this morning my friend
22 who's the counsel for Retirement Living asked you
23 a few questions about the time when Retirement
24 Living owned the mall and he was referring to that
25 time in particular. I'm, as I mentioned, counsel

1 for Algoma, so my questions will focus more on the
2 time before Retirement Living took over.

3 And I want to ask you sort of about what
4 he was talking about, sort of the life cycle of
5 the repairs. And as I understand it, during the
6 average year as you related to him, basically
7 there was no real leaks of any major consequence
8 sort of from January until March or April when the
9 thaw-freeze cycle started to happen. And then, if
10 I understand your evidence correctly, it was worst
11 sort of at that time going in through the early
12 spring into the summer as you guys fixed up the
13 worst of the leaks. And as it went on, it slowly
14 got better and there were fewer leaks. And as you
15 got the major ones done, obviously the leaks
16 decreased and you got to the smaller leaks and
17 whatnot. Until eventually by, say, the summer
18 time at some point it was in fairly good shape.
19 The roof. And then it stayed in fairly good
20 shape, you having to do whatever repairs would
21 come up or still hadn't been done through until
22 the fall time.

23 And then pretty much from the fall as
24 things got colder and your repairs were done,
25 things were in a fairly good state and that would

1 continue through the winter up until the following
2 March.

3 Is that an accurate --

4 MR. DOODY: Mr. Commissioner, that's an
5 extraordinarily long question. I'm not sure how
6 the witness can adequately answer.

7 THE COMMISSIONER: Well, let's find out
8 if he can.

9 THE WITNESS: Yes.

10 MR. DOODY: The witness does a better
11 job than I do, obviously.

12 THE WITNESS: That's pretty much the
13 cycle.

14 BY MR. RICHLER:

15 Q. Thank you, Mr. Snow. And my
16 question to follow up on that is, that was while
17 Retirement Living was there.

18 Would you say that during the time that
19 Algoma Central opened the mall, the life cycle was
20 pretty much the same?

21 A. Yes, sir.

22 Q. Okay, thank you. You earlier said
23 that you couldn't predict the location of the
24 cracks where they would show up. But generally,
25 were they along where those core slabs were, if

1 they were going to happen, is that generally where
2 most of them would occur is along core slab
3 locations?

4 A. Yes, sir.

5 Q. And when you would do repairs, I
6 know the temporary repairs you said partially go
7 over and cause problems, but when you did the
8 permanent repairs and those were actually done, do
9 you have any idea of how long those would last?

10 A. Some areas would last all year, but
11 some areas if the concrete was soft or powdery or
12 it would debond again, so like it is a very big
13 roof. There was a lot of variables. And you
14 couldn't protect -- pick any specific area and say
15 that, you know, but usually the worst of it was in
16 the traffic areas itself.

17 Q. And during the time when Algoma was
18 owning the mall, did you have similar experiences
19 as you sort of mentioned with the Retirement
20 Living people where if you made requests for
21 assistance or more materials or whatnot, Algoma
22 was fairly cooperative in helping you out and
23 giving you the materials you needed and the
24 support you needed?

25 A. Yes, sir.

1 Q. And in fact during the time where
2 Algoma was the owners of the mall, would you say
3 that most of the worst areas were fixed during
4 that time?

5 A. Yes, sir.

6 Q. And the techniques that you used as
7 time went on, my understanding from your evidence
8 is that they stayed the same for most of the time
9 you were there. The actual technique didn't
10 change, but you may have changed the materials or
11 fine tuned it. Would that be accurate?

12 A. We never changed anything. The
13 product stayed the same, techniques stayed the
14 same. The scope got bigger.

15 Q. Thank you, those are my questions.

16 THE COMMISSIONER: Mr. Longo, anything?

17 MR. LONGO: Thank you, Mr. Commissioner.
18 I have no questions of this witness.

19 THE COMMISSIONER: Does that cover
20 everybody. Anything in re-examination?

21 MR. DOODY: No re-examination, Mr.
22 Commissioner.

23 THE COMMISSIONER: Thank you very much,
24 Mr. Snow, it's been very helpful.

25 THE WITNESS: Thank you.

1 MR. DOODY: Mr. Commissioner,
2 unfortunately our next witness is traveling from
3 British Columbia and so we have nothing to fill
4 the afternoon.

5 THE COMMISSIONER: Whatever shall we do?

6 MR. DOODY: We'll find some little thing
7 to occupy our time, I'm sure.

8 THE COMMISSIONER: Who is your next
9 witness?

10 MR. DOODY: Our next witness is Mr. Paul
11 Meyer, an engineer who's traveling from BC. He
12 was retained by Algoma in 1996.

13 THE COMMISSIONER: All right. Anything
14 else, Counsel?

15 MR. LONGO: Mr. Chairman, I just want --
16 Mr. Commissioner, I'm sorry, I apologize. I just
17 wanted to let you know that I'll be retiring for
18 the next couple of weeks back to Toronto and
19 watching the proceedings there. I'll be returning
20 when further municipal and building official
21 witnesses are called. But I just -- I'd also ask
22 Ms. Kuka, who's been very kind, when she
23 distributes exhibit lists and that to keep a
24 running pile for me so when I do return I will
25 have it.

1 THE COMMISSIONER: We'll wave to you
2 occasionally.

3 MR. LONGO: I'll give you one of these.

4 THE COMMISSIONER: Thank you. We'll
5 start again at 9:00 tomorrow morning then.

6 --- Whereupon the Inquiry proceedings
7 were adjourned at 12:05 p.m.

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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth;

That the testimony of the witness and
all objections made at the time of the examination
were recorded stenographically by me and were
thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken.

Dated this 8th day of April 2013

Helen Martineau

PER: HELEN MARTINEAU

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