

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 24

April 10, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 24 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 10th, day of April, 2013 commencing at 9:00 a.m.

REPORTED BY: Helen Martineau
Certified Shorthand Reporter

1 A P P E A R A N C E S:

2 NADIA AUTHIER, Ms.,

3 BRUCE CARR-HARRIS, Esq., Commission Counsel

4

5 ALEXANDRA CARR, Ms., ELMAC/SAGE

6

7 DOUGLAS KEARNS, Esq., Elliot Lake Retirement

8 Living and NorDev

9

10 ROBERT MACRAE, Esq., Robert Wood

11

12 PAUL CASSAN, Esq., City of Elliot Lake

13

14 JOSEPH BISCEGLIA, Esq., Gregory Saunders

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19 Also present:

20 CHARLES SIMCO, Esq., for Michael Luciw

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16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS	PAGE
MICHAEL LUCIW, SWORN	
EXAMINATION-IN-CHIEF BY MR. CARR-HARRIS..	4721-4770
CROSS-EXAMINATION BY MR. KEARNS.....	4770-4778
CROSS-EXAMINATION BY MR. BISCEGLIA.....	4779-4781
CROSS-EXAMINATION BY MR. MACRAE.....	4781-4787
CROSS-EXAMINATION BY MS. CARR.....	4787-4796
FURTHER CROSS-EXAMINATION BY MR. MACRAE..	4796-4797
CROSS-EXAMINATION BY MR. CASSAN.....	4797-4801

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE
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[NONE MARKED]

1 --- Upon commencing at 9:00 a.m. on
2 Wednesday, April 10, 2013.

3 THE COMMISSIONER: Morning, everybody.

4 MR. CARR-HARRIS: Good morning, Mr.
5 Commissioner. We're calling Mr. Michael Luciw of
6 Nicholls Yallowega and Bélanger. Could you come
7 forward and be sworn, Mr. Luciw, please.

8 THE COMMISSIONER: And sir, you're
9 counsel for Mr. Luciw.

10 MR. SIMCO: I am. Charles Simco is my
11 name.

12 THE COMMISSIONER: Good morning, sir.

13 MR. SIMCO: Good morning.

14 MICHAEL LUCIW, sworn

15 EXAMINATION-IN-CHIEF BY MR. CARR-HARRIS:

16 Q. Good morning, Mr. Luciw.

17 A. Good morning.

18 Q. Could we just start with a little
19 background and your qualifications. I understand
20 you have a Degree in Architecture?

21 A. That is correct.

22 Q. And where did you get that and when?

23 A. University of Waterloo.

24 Q. And what year did you graduate?

25 A. Graduated in 1987.

1 Q. And you're a licensed architect in
2 Ontario?

3 A. Correct.

4 Q. And when were you originally
5 licensed?

6 A. January 1991.

7 Q. And could you just give us a brief
8 summary of your employment history since
9 graduation?

10 A. I graduated in 1987, I spent an
11 eight-month work term with at the time the former
12 predecessor firm of Nicholls Yallowega Bélanger
13 for an eight month work term in 1986. And I
14 returned upon graduation to the firm of Nicholls
15 Yallowega Bélanger. When I graduated in 1987 and
16 spent 12 years there until the end of 1998 where I
17 left to pursue a partnership with other colleagues
18 in Sudbury from 1998 to 2004. In 2004 I returned
19 to the current firm of Nicholls Yallowega Bélanger
20 where I'm currently a partner with the office.

21 Q. Thank you. So just to be clear, at
22 the outset you were involved with Nicholls
23 Yallowega and Bélanger for the first report on the
24 Algo Mall which was dated November 11th or 12th,
25 depending on what version you look at, 1998, but

1 you were not involved in the second report May 10,
2 1999?

3 A. That is correct.

4 Q. And you were not involved in the
5 second because you were employed elsewhere at the
6 time?

7 A. Correct.

8 Q. And for our purposes who were the
9 two -- for the report 1998 retainer, who were the
10 two principal persons occupied with that at your
11 firm, NYB?

12 A. Both myself and Blaine Nicholls, a
13 partner at the time.

14 Q. And at the time the Algo Mall was
15 owned by Algoma Central Properties?

16 A. That was our understanding.

17 Q. And what was your understanding of
18 why Retirement Living wanted this building
19 condition assessment?

20 A. They were in the process of
21 potentially purchasing the building. They had
22 offices in the facility and wanted us to do a due
23 diligence report for them in order to assess the
24 options for the purchase; and look at capital
25 expenditures that would be required to facilitate

1 the improvements that they were intending for the
2 building; and to look into the facility to find
3 out what outstanding capital costs or maintenance
4 costs might be impacting on their purchase
5 decision.

6 Q. Okay. And in terms of the condition
7 assessment, the building condition assessment, is
8 a prepurchase agreement assessment, is it any
9 different from any other building condition
10 assessment that you would conduct?

11 A. There are a number of different ways
12 of conducting a building condition assessment
13 depending on what you're tasked to do by the
14 client and for what purpose you're using it. So
15 there's a range of options available. Some are
16 predicated on what they're willing to spend,
17 others are what they're looking for in terms of
18 the scope of the undertaking.

19 Q. I'm sorry I didn't hear the last
20 part?

21 A. Others are predicated on what's
22 required in terms of the scope of the undertaking
23 so it varies from project to project.

24 Q. And on this project what was the
25 focus?

1 A. It was a cursory general review of
2 the building to ascertain the history of the
3 building, the general condition of a number of
4 elements on the building from the cladding to the
5 mechanical and electrical systems, a commentary on
6 the structure, waterproofing, et cetera, so it was
7 kind of that level.

8 There's also some notion that Elliot
9 Lake Retirement Living was looking to do some
10 significant improvements to the building as part
11 of their purchase to improve circulation,
12 marketing and esthetics. And we addressed some of
13 those concerns as well with a commentary and
14 review of the existing finishes, et cetera, and
15 also some budgets for them for consideration in
16 the big picture.

17 Q. And these included the parking deck
18 as well?

19 A. Correct.

20 Q. And, Mr. Luciw, by 1998 and this
21 particular retainer at the Algo Mall, had you
22 conducted a number of similar type building
23 conditions assessments?

24 A. Our office had done a number over
25 the years, yes.

1 Q. And you had been involved in those?

2 A. In some of them, not all of them.

3 Q. And was your involvement essentially
4 the inspector who went out and inspected the
5 property?

6 A. On some projects, yes, on others I
7 was support to the people that were out in the
8 field.

9 Q. And in this case Mr. Nicholls is the
10 principal partner?

11 A. Correct.

12 Q. And you were doing the field work?

13 A. That's correct.

14 Q. And did Mr. Nicholls come to the
15 site?

16 A. He attended the site with me on the
17 initial visit.

18 Q. September 17, 1998?

19 A. I believe it was before that.
20 September 17th was the date we did the actual
21 review with my consulting team.

22 Q. On the site?

23 A. On the site. We had attended the
24 site, Blaine and I, prior to that to meet with
25 Elliot Lake Retirement Living and the mall

1 management to have a cursory review and
2 familiarize ourselves with the actual building.

3 Q. Okay. And do you recall when the --
4 did you have one or more meetings with the
5 Retirement Living?

6 A. We had an initial meeting, Blaine
7 and I, with Retirement Living in July I believe of
8 1998. And then we attended the site with the
9 consultant team, Blaine wasn't present at that
10 visit. We did have a brief meeting just to get
11 acquainted with the person that was taking us on
12 the tour through the facility.

13 Q. Can I take you to then what is
14 Exhibit No. 121. Which is tab 9 in your brief
15 there?

16 A. Yes. Are you referring to the
17 nondisclosure agreement?

18 Q. No.

19 A. I have my own and this is another
20 one here, there's a couple.

21 Q. It's tab 9 of the brief we gave you.

22 A. Tab 9 shows the nondisclosure.

23 Q. What you should be looking at on the
24 first -- Exhibit No. 69. Try that.

25 And then could I take you in that tab,

1 Exhibit No. 69, to page 101. And you should be
2 looking at some handwritten notes?

3 A. Correct.

4 Q. And whose handwriting is that, Mr.
5 Luciw?

6 A. That would be Blaine Nicholls.

7 Q. And was that the meeting in July you
8 were referring to?

9 A. Correct.

10 Q. And you were present?

11 A. Yes.

12 Q. And Mr. Nicholls was present
13 obviously. Can you tell us who else was present?

14 A. Rhona Guertin, Richard Quinn and
15 Richard Kennealy from Elliot Lake Retirement
16 Living.

17 Q. Okay. And item two it says, issues,
18 can you read that for us?

19 A. :Parking deck appears to be main
20 problem due to extensive long term maintenance
21 work and cost."

22 Q. And did they tell you anything --
23 what did they tell you about the parking deck at
24 that point?

25 A. My recollection was that they had

1 concerns that it had been leaking for a long time.
2 And they wanted to repair and make sure that the
3 roof over the parking deck was not an ongoing
4 maintenance concern. They had indicated that
5 there was a number of repair programs under way.
6 The day we were there there was actually work
7 being conducted.

8 But as part of our overview and our
9 condition assessment they wanted us to recommend
10 solutions because they were looking at a
11 large-scale capital improvement plan for the
12 entire facility, and that was one of the critical
13 ones. Because an ongoing leakage is going to be
14 problematic in terms of trying to do any finish
15 or upgrades within the building.

16 THE COMMISSIONER: Would you mind, sir,
17 I'm having trouble hearing you. And would you
18 bear in mind that everything you say has to be
19 taken down by the Stenographer as well as
20 translated by the interpreters in the back.

21 THE WITNESS: Sure, no problem.

22 THE COMMISSIONER: Just slow down a bit
23 and speak up and we'll be happy. Thank you.

24 BY MR. WALLACE:

25 Q. So on the 23rd that was the

1 information you received about the parking deck.
2 Then over -- if you go over on the second page
3 under "issues" -- first of all, sorry, let's to
4 keep you on the first page. There is a reference
5 to a schedule there, item number 3.

6 A. Correct.

7 Q. What was the schedule as you
8 understood it for the delivery of the report?

9 A. Part of our understanding was that
10 Elliot Lake Retirement Living was doing some
11 business plans as part of the takeover of the
12 hotel facility. So they were looking at some
13 renovations to facilitate marketing, access,
14 convenience and reception, et cetera, to that
15 building or that portion of the building.

16 That was not necessarily part of our
17 purview. It was just a piece they were doing and
18 they wanted some budgeting information for some of
19 the renovations that were being contemplated for
20 that portion of the facility.

21 Q. Okay. And what about the -- was
22 there a schedule given to you at this meeting for
23 when they wanted the building condition assessment
24 delivered?

25 A. There were some discussion about it

1 and I recall they wanted something I believe the
2 latter part of August as a draft. I'm going by
3 memory on that.

4 Q. Okay. And if you go over to what is
5 the third page -- or the second page of the notes,
6 it says under "issues", and correct me if I'm
7 reading this incorrectly, but it says the second
8 bullet says,

9 "Retirement Living is looking to acquire
10 hotel, ACP [Algoma Central Properties]
11 will continue to operate mall with
12 upgrading. ACP has not viewed the
13 property as a long-term asset. They want
14 to pursue cash flow..."

15 And then can you read me the rest of it? And have
16 only --

17 A. "Spent money on..." And I don't
18 know what the last word says unfortunately.

19 Q. "On repairs" it looks like?

20 A. Yeah, that's correct.

21 Q. So it reads. "ACP has not viewed
22 the property as a long-term asset, therefore..."
23 I take it those three dots mean therefore.
24 "Therefore they want to pursue cash flow, plus
25 have only spent money on repairs." Is that

1 correct?

2 A. Correct.

3 Q. And then going through it the
4 next -- second bullet down from there under item
5 2. It says, "options to use of sand in winter."
6 What was that about? Do you recall?

7 A. I believe there was some discussions
8 about the leaks on the roof and the salt that was
9 used to de-ice the surface of the parking
10 structure. And there was some discussion about
11 trying to use sand only without the salt.

12 Q. Okay. Then over to the next page,
13 page 103 in the exhibit. Second line down it
14 says, "ACP has final say on release of the
15 report." What was that about? Do you recall?

16 A. I do not recall.

17 Q. Okay. And then it says, "Personnel
18 Larry Liautaud, mall manager." And Mr. Liautaud
19 wasn't there at the time at the meeting?

20 A. I don't believe so.

21 Q. And then item 5 says -- could you
22 read that for me?

23 A. "Does not appear to be any concern
24 in getting frank information."

25 Q. And what was the point of that

1 statement?

2 A. We were looking for drawings of the
3 existing facility so we could execution a review
4 of them before we attended the site with our sub
5 consultants to review the building. And we were
6 instructed that Larry Liautaud would be the
7 contact person to get that information from. And
8 we were directed by Elliot Lake Retirement Living
9 to contact that person and indicate what we were
10 looking for.

11 Q. And what do you -- what is meant by
12 "frank information" as opposed to any other kind
13 of information?

14 A. I think what we anticipated was that
15 they were going to give us whatever was available
16 in their files for our information prior to
17 attending the site.

18 Q. In effect you'd get full disclosure?

19 A. That was my understanding, yes.

20 Q. And then item 6 says
21 "confidentiality". And can you read that for me?

22 A. It just says "Results of study have
23 to be kept quiet and not discussed with staff.
24 Fact that a study is being done."

25 Q. And what was the concern there?

1 A. We weren't clear what the concern
2 was. We were just told it's a confidential review
3 and given that there was some significant
4 negotiations for the purchase of the mall that all
5 of our findings, and the fact that we were
6 investigating really should be kept confidential
7 between us and our client.

8 Q. Okay. And then it says, "a
9 nondisclosure covenant is a ACP". What was that?

10 A. That was something that came about
11 after our discussions with the owner where they
12 mentioned to us -- or with our client, sorry, that
13 the owner of the mall was going to be asking for a
14 Nondisclosure Agreement be signed by our team.
15 And that information came to us after that initial
16 meeting.

17 Q. And that was for what purpose?

18 A. We don't know.

19 Q. What's your impression?

20 A. My impression was that they didn't
21 want any of the results of our investigation being
22 made public or released to anybody other than ACP
23 and Elliot Lake Retirement Living.

24 Q. And then if you go over to the next
25 page of the notes, item 7. Item 7 says,

1 "Retirement Living will..." looks like
2 "...consider having a representative along with
3 the tour."

4 A. Correct.

5 Q. Is that the reference to site visit?

6 A. Correct.

7 Q. And did that ultimately happen.

8 A. I don't recall who was available or
9 represented Elliot Lake Retirement Living when we
10 did the site tour. I know there was
11 representation from Algoma Central Properties when
12 we attended the site with the consultant team?

13 Q. But you don't recall anybody from
14 Retirement Living?

15 A. I don't recall.

16 Q. And the person from Algoma did you
17 have any exchanges with that person?

18 A. We did have discussions and asked
19 them to tour us through areas of the building that
20 we wanted to see in terms of, you know, hotel
21 suites, the reception area, retail spaces in the
22 mall, the roof, mechanical areas and the parking
23 deck.

24 Q. Okay. And so they -- the person
25 from Algoma Central Properties basically took you

1 to places he thought would provide you with that
2 information?

3 A. Correct. And there was other places
4 where we directed him to show us certain things
5 that were of interest to our team.

6 Q. And you don't remember who that was?

7 A. I remember the name being Ken Snow
8 but I don't recall the details of that encounter.

9 Q. Okay.

10 A. It was a general, We want to see
11 these spaces in the building can you please show
12 us them? And they facilitated ladders, et cetera
13 for us to get into areas above our head whenever
14 possible.

15 Q. And could you read me the next, 8 is
16 "schedule" again. What do you make of those
17 notes?

18 A. It was a mechanical -- M/E tour
19 which is mechanical/electrical. And then an
20 architectural/structural, or an A/S tour and that
21 with myself and Halsall. And it says below that,
22 "meeting with Rhona to review conclusions."

23 Q. So you and the Halsall
24 representative did you know who that was at that
25 point?

1 A. We knew that Albert was the person
2 that was going to be coming up to Sudbury. We had
3 discussions with Mike Buckley and they advised us
4 that Albert would be taking care of that
5 particular project for Halsall.

6 Q. And the initials are MO.

7 A. That's me.

8 Q. That's you?

9 A. ML.

10 Q. Okay. And then it says here, "A
11 meeting with Rhona to review..." What's that last
12 word?

13 A. "...conclusions."

14 Q. Okay. Now apart from the July --
15 was there anything more in that meeting that you
16 recall that isn't reflected in the notes?

17 A. No.

18 Q. And were there any further meetings
19 before the site visit?

20 A. No.

21 Q. And did you have any contact with
22 anybody other than Mr. Nicholls and Mr. Celli --
23 or sorry, Mr. Nicholls before you came up to the
24 site for the site visit?

25 A. We had discussion internally in the

1 office in terms of the status of the report, and
2 the next steps that we were trying to organize the
3 team to get up to site. And we were waiting to
4 get the information from the mall owner in order
5 to do our presite visit review of the
6 documentation that was available.

7 Q. And who was your team that you took
8 with you from NYB?

9 A. It was myself from NYB, Albert Celli
10 from Halsall, Jeff Hunter and Greg Petryna from
11 LKM Engineering.

12 Q. And they were the electrical and
13 mechanical engineers?

14 A. Correct.

15 Q. Can I get you to go to Exhibit No.
16 874 that is tab 2 at my brief. And you should be
17 look at -- should be looking at a -- looks like a
18 fax from you, Mr. Luciw, and it's to Rhona Guertin
19 dated July 30th, 1998. Do you have that?

20 A. Yes, I do.

21 Q. And it says -- and you say.

22 "Dear Rhona, In anticipation of
23 providing you with a draft of our report
24 for the review of the Algo Centre before
25 mid-August, I have briefed our consultants

1 regarding the site visits that were
2 discussed. In preparation for these
3 visits we require copies of the existing
4 drawings (architectural, structural,
5 mechanical & electrical) of the building
6 for our preliminary review.

7 It is our understanding that Mr.
8 Larry Liautaud was to arrange to have
9 copies of the construction drawings and
10 any other pertinent reports or information
11 forwarded to our office. Due to your
12 urgency in having this report finalized
13 could kindly follow up with ACP to try and
14 expedite delivery of these documents?

15 Your assistance regarding this matter
16 is appreciated.

17 Once we had had an opportunity to
18 review the existing construction documents
19 we will be in a position to attend the
20 site to conduct more detailed field
21 reviews.

22 Please note I'll be forwarding the
23 duly executed nondisclosure covenants to
24 you shortly."

25 So basically you can't start until you

1 have these drawings?

2 A. Ideally we'd like to have a look at
3 the drawings before we go on the site so we can be
4 fully apprised of the existing conditions and what
5 we can anticipate in the building when we're doing
6 our review. It's just in everyone's best interest
7 to be able to understand the building and the
8 details of it prior to showing up on site.

9 Q. Would you agree that it would add a
10 considerable burden to you if you don't know what
11 the original design was?

12 A. Correct.

13 Q. Now, and in your note you say -- you
14 refer to other pertinent reports of information,
15 what are you referring to?

16 A. There was some indication when we
17 were doing the tour that they had done some
18 previous investigation, more specifically for the
19 waterproofing of the parking deck.

20 There were also documents with respect
21 to the base building electrical and mechanical
22 systems that we were hoping to get. Typically
23 reports related to the fire alarm system, or
24 sprinkler system, or other base building systems
25 that we kept on file so that we could develop an

1 opinion on what condition they were in or what was
2 done historically to them so when we're doing our
3 field review it's clear to us what to expect.

4 Q. Well this fax that you sent before
5 the inspection on September 17th, 1998, this was
6 sent before you went to the site?

7 A. Correct.

8 Q. So specifically and is this a
9 general request that you typically make for this
10 kind of information?

11 A. Generally, yeah, we do. We want to
12 get as much information up front from a client or
13 from a building owner so we can review it in
14 advance and prepare ourselves.

15 Q. Yeah.

16 A. And be clear what we're getting into
17 when we get on site.

18 Q. And so pertinent reports that you're
19 looking for, of the generic kind and information,
20 that would be helpful what -- give me some
21 examples of what you're referring to?

22 A. If they've done a roof inspection
23 with a survey to determine whether there is
24 wetting of the insulation, things of that nature.
25 Reports on the status of the fire alarm system if

1 there's been upgrading. If there's been
2 investigations done prior to that. If there are
3 hazardous material investigations that have been
4 conducted on the site.

5 It's good to know that information so
6 that if there are things that would compel us to
7 comment on the status of those things, or any
8 remedial work that is necessary, we'd be in a
9 position to do that without trying to guess what's
10 on the site when we get there.

11 Q. The more information the better?

12 A. Absolutely.

13 Q. And it would include engineering
14 reports, pre-existing engineering reports?

15 A. Correct.

16 Q. And it would include pre-existing
17 architectural reports?

18 A. Correct.

19 Q. And as you mentioned mechanical and
20 electrical. Anything that could assist you in
21 figuring out the condition of this building?

22 A. Absolutely.

23 Q. And so far as you're aware in your
24 profession this is a pretty standard operating
25 procedure to request the pertinent reports and

1 information?

2 A. Correct.

3 Q. Now, can I then take you back to
4 Exhibit No. 69. And at -- could you go to page
5 099 you'll see in the bottom right hand corner.
6 These are from YBA. There is another -- looks
7 like a fax this time from Mr. Nicholls. Are you
8 looking that?

9 A. Yes.

10 Q. And could you read it for me.

11 A. "Still haven't received any
12 drawings for the building and we can not
13 proceed with the work until we get them.
14 I'm concerned about meeting your schedule
15 given that the end of August is rapidly
16 approaching. I will leave this issue with
17 you. Thanks."

18 Q. All right. So it's the first -- the
19 first note from you was dated July 30th, 1998.
20 Now here's Mr. Nicholls writing August 20th about
21 almost three weeks later, or three weeks later.
22 Still no response?

23 A. Correct.

24 Q. And then you go back to tab 2,
25 Exhibit No. 84 -- sorry, Exhibit No. 874. There's

1 a further email from you on August 28, page 2 of
2 that exhibit. There is a fax --

3 THE COMMISSIONER: A fax rather than an
4 e-mail?

5 BY MR. CARR-HARRIS:

6 Q. It's a fax. Did I say e-mail?

7 A. Possibly.

8 Q. This is a fax from you dated August
9 28th, 1998. This is now over a week after Mr.
10 Nicholls had indicated they can't start without
11 the documents. And you're writing to Ms. Guertin
12 saying,

13 "I received your message of a few
14 days ago and am disappointed to report
15 that we still have not received any
16 construction drawings or other pertinent
17 reports or information from ACP.

18 Could you kindly confirm the status
19 that the documents and advise. Your
20 assistance regarding this matter is
21 appreciated."

22 So that's now some considerable passage
23 of time, a further week as I've indicated. Did
24 you ever -- can you tell us when you finally got
25 the reports?

1 A. We never did receive any reports.

2 Q. And what about the designs? The
3 drawings?

4 A. The drawings we received -- I do not
5 recall unfortunately the dates they arrived in the
6 office, but I know we scheduled once we received
7 them a trip to Elliot Lake on the 17th of
8 September. So I suspect that the drawings were
9 received between August 28th and September 17th.

10 Q. And how long would it take you to
11 review them before you would go up there?

12 A. Reasonably a couple of days for each
13 discipline to spend some time familiarizing
14 themselves with the documents and understanding
15 the lay of the land and what the systems that were
16 initially planned for the building were. Things
17 may vary and differ on site in terms of what's
18 actually there because equipment may have been
19 changed out as part of the maintenance program.
20 The building was pushing 18 years old at the time.

21 Q. Now I understand are your report,
22 and I can take you to it if you want me to, but
23 the drawings that you did receive were not
24 complete?

25 A. Correct.

1 Q. And in what ways were they not
2 complete?

3 A. Don't recall all of the particulars
4 of what was missing, but it appeared when you
5 looked at the indexes on some of the drawing
6 sheets they referenced drawings that weren't
7 included with the sets. That would have been our
8 way of ascertaining that some of the drawings were
9 missing.

10 Often times there may be references on
11 drawings to details and some of those drawings may
12 be missing as well. I'm just speculating going
13 back 15 years what was missing.

14 THE COMMISSIONER: Your voice is
15 dropping.

16 THE WITNESS: Sorry.

17 BY MR. CARR-HARRIS:

18 Q. We're not yet -- I don't think
19 architects are loud enough that's the problem.
20 But so in terms of your work was it your
21 impression that the documents you have are less
22 than perfect to do an analyst of the building?

23 A. It was as good we were going to get
24 at the time of reviewing them. So we took it upon
25 ourselves that they have nothing else so we have

1 to base our prereview of the documents based on
2 what's available to us.

3 Q. And did you -- what efforts did you
4 make with Ms. Guertin or otherwise to follow up on
5 what was missing at the time?

6 A. We didn't -- we just -- we
7 understood that that's all they had available and
8 that's all we were getting.

9 Q. And I think you pointed out in your
10 report again that there was really nothing about
11 -- you had no plans really to dealing with the
12 parking structure itself?

13 A. Correct.

14 Q. Apart from the original design of
15 the structural engineer and the architect?

16 A. That's correct.

17 Q. That's all you had?

18 A. That's all we had to go on.

19 Q. There were no drawing from Coreslab,
20 for example.

21 A. We had no shop drawing in that
22 package that I recall.

23 Q. And now I understand that during the
24 time then that you were looking for other
25 pertinent reports and drawings, and then

1 ultimately received what you got that you never
2 did receive any Trow reports, copies of Trow
3 reports?

4 A. Nothing.

5 Q. And the Trow reports are the ones
6 we've been referring to in this Inquiry. And the
7 first time you saw them was when we gave them to
8 you earlier this year?

9 A. That's correct.

10 Q. When I say we I mean the Commission,
11 correct?

12 A. Correct.

13 Q. And we were -- the reports indicate
14 that there are approximately three. And these
15 Trow reports I think you've said would have been
16 pertinent to your effort and should have been
17 supplied if they existed?

18 A. Correct.

19 Q. And having read them now, and I
20 understand you have at least once since we gave
21 them to you. And let me see if you can agree with
22 me that they reveal that Trow had conducted leak
23 surveys in the soffit and generally in the roof
24 structure in their reports and reported them in
25 their first two reports?

1 A. Correct.

2 Q. And that they had conducted corings
3 in the topping and the precast slabs to assess the
4 chloride content of those materials, is that
5 correct?

6 A. That's what I understood.

7 Q. And did you also know that the
8 visual soffit reports of evidence of leaks between
9 the report of 1991 and the report of 1994 those --
10 the evidence of leaks had more than doubled in
11 that three year time period. And that was
12 evidence we had heard from one of the witnesses
13 for Trow here at this Inquiry. Would that
14 information have been useful to you?

15 A. Yes.

16 Q. And can I show you what is Exhibit
17 No. 3132, which is right you there on the floor,
18 Exhibit No. 3142. That's it.

19 THE COMMISSIONER: Is that close enough.

20 THE WITNESS: Yes, thank you.

21 BY MR. CARR-HARRIS:

22 Q. The 1991 -- the evidence of leaks
23 identified in their survey in 1991 are shown in
24 green. The evidence of leaks in their survey in
25 1994 are shown in pink.

1 And Mr. Dell'Aquila who did the survey,
2 I have counted them up, but he tells us they more
3 than doubled between 1991 and 1994. And would
4 that have been a significant fact for you to know,
5 Mr. Luciw, at the time?

6 A. Yes.

7 Q. Do you have any knowledge,
8 information or belief as to why the Trow reports,
9 which were in the possession of Algoma Central at
10 the time, were not given to you or given the your
11 firm?

12 A. No knowledge that I can comment on.

13 Q. Can I get you to go the tab 4 of the
14 brief, Exhibit No. 874, which is the Nondisclosure
15 Agreement. You can see this is the Nondisclosure
16 Agreement and, you are familiar with its contents?

17 A. I am, yes.

18 Q. And you will agree that basically
19 what it provides is now -- that NYB was required
20 to enter into a nondisclosure covenant with Algoma
21 Central Properties not to reveal any information
22 except as indicated in that agreement. In other
23 words, it was the covenant following up on your
24 initial meeting which they raise at that time?

25 A. That's correct.

1 Q. And you signed it, turn over the
2 second page, as did Mr. Nicholls?

3 A. Correct.

4 Q. And in your experience is this a
5 common practice?

6 A. It's not common but it is requested
7 on occasion.

8 THE COMMISSIONER: Have we got the right
9 copy?

10 MR. CARR-HARRIS: My tab I have a
11 different exhibit. I'm looking for --

12 THE COMMISSIONER: What number.

13 MS. AUTHIER: 386.

14 MR. CARR-HARRIS: Sorry about that, Ms.
15 Kuka, 386. Yes.

16 BY MR. CARR-HARRIS:

17 Q. And in your experience then my
18 question was, Mr. Luciw, was this a common
19 practice to get nondisclosure covenants from
20 architects?

21 A. It wasn't common in our practice.
22 We do have on occasion the need to sign them for
23 certain types of projects that we do.

24 Q. And typically what kind of a project
25 would that be?

1 A. We do them with OLG, Ontario Lottery
2 and Gaming where they have very sensitive projects
3 that they're rolling out and they ask us to sign
4 them because they are at a very highly
5 confidential level in terms of the planning for
6 these facilities. And the publication of this
7 information to the rest of the world other than
8 OLG may compromise their ability to deliver a
9 project. We.

10 Have them with certain government
11 projects where we're asked to sign them as part of
12 the release of the documents to our office,
13 especially with courthouse buildings where floor
14 plans are released to architects for their review
15 in the proposal stage of the process. So they ask
16 us not to release any of that information so the
17 floor plans don't become public knowledge.

18 Q. And apart from those circumstances
19 is the use of such a covenant rare?

20 A. Correct.

21 Q. Now can I take you to -- the copy in
22 my brief is Exhibit No. 66, tab 6, which is the
23 November 12, 1998 report.

24 Now you've told us that your role in
25 this report involved going to the site and

1 conducting on behalf of NYB the site review?

2 A. That's correct.

3 Q. And Mr. Nicholls was he with you on
4 the site review?

5 A. Not on the field review, just the
6 initial site tour that we conducted prior to
7 assembling our consultant team to attend the site
8 in September.

9 Q. So that prior tour was when you were
10 up for the meeting of July 23rd?

11 A. Correct.

12 Q. And who went on the tour on the July
13 23rd?

14 A. Myself and Blaine Nicholls, and a
15 couple of the staff people from Elliot Lake
16 Retirement Living that we had met with. I forget
17 who was on the tour from Elliot Lake Retirement
18 Living. I would suspect that Rhona Guertin would
19 have conducted some of that tour for us.

20 Q. Again you'll have to keep your voice
21 up?

22 A. Sorry.

23 Q. Was there any maintenance staff with
24 you in July?

25 A. I do not recall.

1 Q. And do you recall what you saw in
2 July when you walked with Ms. Guertin or whoever
3 from --

4 A. It was just a cursory review of the
5 mall. Walking through the facility, showing us
6 the various spaces in the building, talking about
7 some of the their ideas they had in terms of
8 renovating the hotel, the lobby, the reception
9 area. We didn't really get into a detailed review
10 of any of the existing systems, finishes, et
11 cetera. It was really just a site tour to
12 familiarize ourselves prior to doing the review on
13 the lay of the land on site.

14 Q. And did you do any kind of review --
15 report or memorandum reporting on that site visit
16 or that tour?

17 A. No. It was more for our convenience
18 and just to familiarize ourselves with to site.

19 Q. Okay. Then if we fast forward to
20 September 17th, 1998, which was the field review
21 that you've described to us. Your role was to --
22 on behalf of NYB to be the representative there
23 for the site visit?

24 A. That's correct.

25 Q. And what exactly were you intending

1 the do in the -- what did you do in your site
2 review?

3 A. Well with our consulting team that
4 we'd assembled the intent was to at a very high
5 level provide -- conduct a visual review of the
6 existing building elements, ranging from interior
7 finishes, building envelope, roofing, the parking
8 structure, mechanical-electrical base building
9 systems, as well as structurally have Halsall
10 review on a cursory level through visual
11 inspection the structure of the building.

12 Q. And how long would you say you were
13 in the building doing that review?

14 A. I would estimate probably in the
15 order of six hours, five to six hours.

16 Q. And would you -- can we agree that
17 this was sort of phase one of the process, but the
18 survey was to make observations of the conditions
19 on the basis of this one day, six hour visit of
20 the visual side of the building.

21 And once you made those observations to
22 decide whether any further work needs to be done
23 for inspection or testing?

24 A. Correct.

25 Q. And this survey that you went on on

1 September 17th was not intended to be a
2 comprehensive survey of the structure?

3 A. It was a very high level giving an
4 opinion of what the problems might be, what the
5 condition of the finishes were, and what other
6 investigations would be warranted based on our
7 review.

8 Q. Thank you. And can you tell me now
9 when you saw the parking structure first from the
10 top and whatever you saw under, what was your
11 impression of the state of it?

12 A. It had been severely patched and
13 repaired over the years. There was evidence all
14 over the place on the roof deck that they were
15 cutting out portions of the topping and patching
16 it.

17 I recall on the day we were on the site
18 that there was some repair work being undertaken
19 by a crew. We weren't sure what repair they were
20 undertaking at the time.

21 Q. And you were aware from what you
22 were told, and what you saw that for some time
23 chloride-laden moisture had been penetrating the
24 building?

25 A. All we were told was that water was

1 leaking through the roof of the parking structure.
2 We had no knowledge of what kind of contamination
3 was going through that as well.

4 Q. And so in terms of what you saw were
5 you concerned about the structure from the
6 condition of what you visually saw on that first
7 visit?

8 A. Yes.

9 THE COMMISSIONER: And you used the
10 expression we've heard it before, a "high level
11 inspection" That is not an expression that I was
12 previously familiar with. We've had some
13 explanation of what it meant. Would the words
14 microscopic versus macroscopic be an adequate --

15 THE WITNESS: For the purposes of this I
16 would suggest that that wouldn't be an
17 unreasonable term to use. In architectural terms
18 we call it a high level, it's a visual inspection.
19 We're not doing any destructive testing, were not
20 doing sounding or detailed analysis in terms of
21 reviewing construction details through pulling
22 apart the envelope or the --

23 THE COMMISSIONER: I guess the
24 expression "high level" throws me off as a
25 neophyte.

1 THE WITNESS: It's intended to generally
2 provide an overview of what our impressions of the
3 building are based on our experience and our
4 visual review of the building.

5 THE COMMISSIONER: Thank you.

6 BY MR. CARR-HARRIS:

7 Q. And as a result of that, your
8 observations, was Mr. Celli with you while you
9 were making these observations?

10 A. He was.

11 Q. And could you -- and what was his
12 reaction to the state of the roof? Did he express
13 it to you?

14 A. We all talked about it in terms, you
15 know, the concern that water was getting in and
16 had been getting for quite some time, based on the
17 feedback we were getting on site from the
18 maintenance staff. And also from Elliot Lake
19 Retirement Living, who had been a tenant in the
20 mall for a number of years, and they had expressed
21 concerns to us initially when they engaged us for
22 the assignment that they had some reservations
23 about the amount of water coming into the building
24 historically.

25 Q. And so you summarize I think in the

1 report, I'm going to take you back to the report,
2 but the report -- the first part of the report is
3 you -- that's you, you prepared that initially?

4 A. Correct.

5 Q. And obviously Mr. Nicholls had some
6 say about it, but you were the person that was the
7 primary draftsman?

8 A. That is correct.

9 Q. And can I take you to Exhibit No.
10 66, which is tab 6. And just the first part of
11 your report I want to take you to is at page 11.
12 And just to be clear for the record, the report is
13 set up with an overview from you, the architect,
14 with your input from an architectural perspective,
15 and also an overview of what the other consultants
16 had said in their reports, and which are attached
17 as appendices to the report?

18 A. That is correct. We were relying on
19 the expertise of the subconsultant team that we
20 had engaged to assist us with the undertaking.

21 Q. So can I take you then to page 11?
22 It's also page 12 in Halsall document 13. And
23 it's under the heading "2.2 Parking Deck
24 Structure." And I refer you to this last
25 paragraph on that page and it says, and this is

1 referring to the other report. But it says,
2 "A more detailed review of the
3 parking deck structure is provided in
4 Appendix 'A'. Note there are concerns and
5 recommendations expressed by the
6 structural consultant regarding the
7 structural integrity of the concrete
8 slabs."

9 And that was true?

10 A. Correct.

11 Q. And,

12 "Recommendations are provide for
13 conducting additional inspection and
14 testing to accurately assess the extent of
15 any deterioration. The results of this
16 additional inspection and testing may have
17 significant cost implications if the
18 structural integrity of the slabs has been
19 affected."

20 So from what you saw at that point there
21 was an issue of whether the state of the
22 structural integrity of the building, correct?

23 A. We didn't know what the integrity --
24 what the state of the structure was. We couldn't
25 see it and there was no way of determining it

1 through a visual inspection. So it was part of
2 our recommendations to the client, notwithstanding
3 the fact that they wanted to replace the roof deck
4 and solve the problem, our concern was that if we
5 gave them a recommendation with a solution, or
6 options for solutions that the structural
7 integrity of the slabs would be compromised and
8 would have a significant impact on their budget
9 and the decision moving forward to purchase the
10 building.

11 So the expectation with this report was
12 to do the additional due diligence and destructive
13 and investigative testing to make sure that the
14 substrate was sound and able to accommodate the
15 proposed solution.

16 Q. And I accept that completely. But
17 my point really was if you'd walked up to that
18 building on September 17th, 1998 and saw a
19 pristine roof, went inside and looked at the
20 soffits and saw no staining you wouldn't be
21 concerned about the structural integrity, is that
22 correct?

23 A. That would be correct.

24 Q. And then it goes on, "Concerns and
25 restrictions regarding live loadings and

1 structural capacities are also indicated."

2 So these were concerns, and these
3 eventually led to further studies and
4 recommendation in the report that further studies
5 be carried out by the structural consultant. And
6 I know these came somewhat after you left. But I
7 just want to deal with part of them.

8 And there seemed to be a series of
9 drafts of this report that ultimately led to the
10 final version, that is to say the structural
11 report.

12 Can I take you to what -- first of all
13 to tab 9, Exhibit No. 69. And if you go back deep
14 in that exhibit, this isn't the way lawyers
15 organize paper. I want you to understand this is
16 how we got it so we have to put it in briefs
17 exactly as we got it so that everybody shares the
18 torture.

19 So if you go the page 0091, the bottom
20 right. You will see it's actually 000090 is the
21 cover sheet. And you should be -- could you just
22 back up to the fax cover sheet? There it is.
23 Perfect.

24 Now you'll see from you this is --
25 sorry, from Mr. Buckley to you, Mr. Luciw, October

1 5, 1998. "Attached is our report. I have
2 e-mailed the Word Perfect file to you as well."
3 And this appears to be a September, 30th, 1998
4 report, in effect three days after the site tour,
5 correct?

6 A. I believe so.

7 Q. And then as you look through it you
8 will see there are no reference to further studies
9 in that report -- draft report I should say.

10 Then can I take you the second draft
11 which is at tab 6, Exhibit No. 66, and you will
12 find that at page 0087 of that Exhibit No. 66.
13 And this is a day later, October 6, 1998 it's a
14 fax cover to you again, Mr. Luciw, from Mr.
15 Buckley. And he says, "A revised report as
16 requested." Did you request a further revised
17 report do you recall?

18 A. We did.

19 Q. And what was revised about it?

20 A. We had indicated to Halsall in our
21 discussions that we wanted to be more definitive
22 in terms of determining what things we couldn't
23 assess visually on the site so that we were clear
24 moving forward. As I mentioned earlier, that we
25 were not recommending budgets and directions for

1 the reroofing of the parking structure without
2 being absolutely confident that the substrate was
3 not compromised, and that the substrate would
4 perform as intended prior to reroofing.

5 Q. And when you say "substrate" you
6 mean include in that columns, beams and
7 connections?

8 A. Our initial take on it was the
9 precast concrete slabs. Our concern was
10 salt-laden moisture penetrating into the concrete
11 and causing -- I use the term for layman's terms
12 the concrete turning to mush and not being able to
13 satisfactorily support the waterproofing solutions
14 that were proposed.

15 So our initial take was that we had to
16 do more to satisfy ourselves that the structure
17 was not compromised by the ongoing leaking into it
18 and then come up with the final recommendation for
19 a fix for the waterproofing alternatives that we
20 proposed.

21 Because we had to do budgeting for the
22 client it was part of their overall -- our overall
23 mandate. And they were going to use this
24 information to do their due diligence and assess
25 the benefit of purchasing the building. They had

1 to know that information. So we felt it was
2 incumbent to request the additional inspections to
3 make sure that the structure was not compromised
4 at the time that we were proposing the roof
5 structure be rewaterproofed.

6 Q. Okay, thank you. So that was the
7 purpose of that.

8 There's a third draft. The second draft
9 that I've just taken you to does not again refer
10 to any further studies in this version of it.

11 A. Just to clarify, I don't have a copy
12 of that revised report, the October 6th fax
13 memorandum, so I'm not sure if that's the one that
14 makes reference to item 2.1 and 2.2 in the final
15 report.

16 Q. No, that would be draft three.

17 A. Okay, sorry.

18 Q. And that draft three, which is
19 virtually identical except for the addition of the
20 further studies, you will find is attached to a
21 fax at 075 of the same exhibit. Can I take you to
22 that? Exhibit No. 66.

23 And this is from Mr. Celli now from NYB
24 on November 11th, the report was delivered
25 virtually the next day or so I understand, is that

1 correct?

2 A. Yes.

3 Q. And this says,

4 "Please find the attached revised draft
5 copy of the structural portion for your
6 submission. The following is our opinion
7 of the associated costs..."

8 And you list them and you make certain
9 recommendations. But here attached you have what
10 is in effect the final version of the report, am I
11 correct?

12 A. Correct.

13 Q. And in this report, if you go over
14 to page 3 of the report you'll see under section
15 2.1 "Further Studies Listed."

16 And what can you tell us then, and I
17 think you were telling us before, what was your
18 role in developing these further studies?

19 A. I initiated the discussions with
20 Halsall, both Albert and Mike Buckley got
21 involved. And we wanted to be clear that there
22 were no concerns with the structure. So because
23 we couldn't assess it visually we wanted to make
24 it clear to our client that we recommend -- we
25 strongly advise you to carry out additional

1 studies to accurately assess any compromise to the
2 existing structure prior to undertaking a repair
3 and remediation project on that roof membrane.

4 Q. And that's what led to these
5 specific recommendations?

6 A. Correct. And this was based on the
7 experience of Halsall and their building
8 rehabilitation people that had specific expertise
9 in this area, that would assist us and the client
10 in determining whether or not the structure had
11 been compromised up to the date that we did the
12 report.

13 Q. And they agreed to what you wanted,
14 the kind of testing you wanted to do?

15 A. This was not me defining the type of
16 testing it was Halsall's recommendations --

17 Q. Yes.

18 A. -- based on our discussion with them
19 in terms of doing the due diligence for the
20 client.

21 Q. And ultimately you'll see in the
22 last two bullets you focus on the structural
23 supporting steel and the connections, as well as
24 the lateral restraints for the slabs?

25 A. That was based on Halsall's

1 recommendations.

2 Q. Yes. And do I take it you initiated
3 the conversation that we should be more specific
4 in what needs to be done in the second phase of
5 the testing?

6 A. Correct.

7 Q. And they ultimately agreed with you?

8 A. Yes. We put together the draft as a
9 working document, which is typical for pulling
10 these reports together. And then we have
11 discussions internally with our team in terms of
12 what things so we be recommending to the client in
13 terms of additional studies, or things that aren't
14 obvious to us on a study with a visual review. So
15 we left it as a draft to get the obvious
16 information out on the table to everyone on the
17 team, and then utilize our internal expertise to
18 vett through the process and come up with the
19 balance of the report.

20 Q. And so ultimately you prompted the
21 result -- the studies you specified in 2.1 and
22 Halsall develops the specifics of that?

23 A. Correct.

24 Q. And but for your intervention on
25 that -- this issue, would there have been any

1 further studies referenced in the report?

2 A. We had discussed it with Halsall.
3 So as the lead for the project our office is
4 responsible for co-ordinating it and engaging our
5 consultants in those discussions. So it is our
6 belief that Halsall had concerns and were wanting
7 to propose further studies be conducted by the
8 client.

9 Q. Thank you. And was it your view
10 that from -- in terms of the studies that would
11 look at the beams, the structural supporting
12 steel, including the connection, is that -- have
13 you been involved in recommending that kind of an
14 inspection before or supporting it?

15 A. Prior to this study?

16 Q. Yeah.

17 A. No.

18 Q. And ultimately these two bullets as
19 they appear here were dropped from the last
20 report. I appreciate you were gone by then, but
21 do you have any knowledge as to why they were?
22 I'm referring to the last two bullets in bullet
23 2.1, Further Studies.

24 A. I do not.

25 Q. You recall what date you left?

1 A. I believe it was November the 21st
2 of 1998.

3 Q. All right. Those are my questions.
4 Thank you, Mr. Luciw.

5 THE COMMISSIONER: Is there further
6 evidence that you would like to adduce, Mr. Simco
7 in-chief.

8 MR. SIMCO: No. Thank you, your Honour.

9 THE COMMISSIONER: We'll proceed to
10 cross-examination. Mr. Kearns.

11 MR. KEARNS: Thank you, Mr.
12 Commissioner. Once again this is happening more
13 quickly than I thought but I'm ready to go.

14 THE COMMISSIONER: We can take five
15 minutes.

16 MR. KEARNS: No, I'm fine. It may take
17 me a moment to get to the reports that I need.
18 Can I look at Exhibit No. 69 please. And I'm
19 looking for the notes of the meeting which I
20 believe is 098 or 099. The handwritten notes.

21 CROSS-EXAMINATION BY MR. KEARNS:

22 Q. Do you have that, Mr. Luciw?

23 A. Yes.

24 MR. SIMCO: I'm not aware that Mr. Luciw
25 knows which client Mr. Kearns is representing.

1 BY MR. KEARNS:

2 Q. Oh I'm sorry. Yes, thank you. Good
3 morning, Mr. Luciw, my name is Doug Kearns and I'm
4 the lawyer for Retirement Living. Nice to meet
5 you.

6 A. Same here, thank you.

7 Q. I thank my friend for that. And I
8 want to take you then to just some discussion
9 about this meeting. I understand these are Mr.
10 Nicholl's notes, is that correct?

11 A. That is correct.

12 Q. I want to talk about the records
13 first of all. So if we could go to page 2 of
14 this. And maybe page 3. Yes, I'm going to refer
15 you to the item between number 5 and number 6.
16 It's one line. But I think the -- it's "ML" I
17 believe your initials followed by -- is that
18 "contact" or "contract"?

19 A. I believe it says "contract".

20 Q. Okay. Did you -- who -- because
21 they're talking about the information there. And
22 I'm wondering whether or not, at least at this
23 meeting, it appeared that you were going to be the
24 person who was going to contact ACP in order to
25 get the drawings and other pertinent information

1 that you needed from them. Do you remember that?

2 A. I don't recall specifically the
3 discussion. But there was some discussion on site
4 with the building manager about getting the
5 information to us.

6 Q. Okay. And do you recall at least
7 initially that you were going to be the person
8 that was going to be responsible initially to get
9 that information from ACP?

10 A. I don't recall.

11 Q. Did you yourself at the start, or at
12 any time during the course of dealing with this
13 report, deal directly with ACP, Mr. Liautaud or
14 others, saying -- asking them to get -- to give
15 you the information that they promised you?

16 A. I don't recall whether there was
17 telephone conversations with them directly. I
18 know there was some discussion on site when we
19 were doing the site tour, the initial one. And
20 our point of contact our directions were all
21 communications were to be through Elliot Lake
22 Retirement Living and they would co-ordinate that
23 information for us. That's why the follow-up was
24 with Rhona to make sure they could prompt the
25 owner of the building to forward the required

1 documents in a timely manner.

2 Q. So you don't recall --

3 A. I don't recall the specifics of how
4 the communications with ACP were made.

5 Q. We've seen a couple, I think three
6 in total, faxes. One from Mr. Nicholls, two from
7 you to Rhona asking to get this information,
8 talking about how we've got a problem with
9 deadline. One of those, the one from you talks
10 about further to your telephone call from last
11 week. Do you remember that one? I think that's
12 870. I think that's Exhibit No. 874.

13 MS. KUKA: Is it this one?

14 BY MR. KEARNS:

15 Q. Yes, thank you. This is your note
16 to her?

17 A. That's correct.

18 Q. "I received your message of a few
19 days ago." Do you have any recollection of what
20 that message was and what the contents were?

21 A. I would suspect it was a telephone
22 message indicating she was trying to follow up
23 with mall management to get the documents and was
24 trying diligently to get the information in a
25 timely manner so that we could move forward on the

1 project.

2 Q. I think that's what I wanted to talk
3 to you about. In your dealings with Ms. Guertin
4 at Retirement Living we know that you're not
5 getting a lot of success. Are you getting the
6 sense that this is a problem with Ms. Guertin or
7 is this a problem with ACP?

8 A. In my opinion it was ACP not
9 disclosing the information to her to forward to
10 our office.

11 Q. In your dealings with Ms. Guertin
12 did you form any opinions about her competence in
13 terms of her ability to properly manage a project
14 like this?

15 A. None whatsoever. I had very few
16 dealings with her so I wasn't in a position to
17 develop that opinion.

18 Q. Okay. Do you know who the plans
19 finally came from? You told my friend that the
20 plans finally alive. They come from ACP?

21 A. I believe so because I recall
22 sending them back to ACP.

23 Q. And when you got them from ACP and
24 you reviewed them, did you again make requests
25 either of them or Ms. Guertin for more

1 information, or were you -- I think you said you
2 had come to the conclusion that that was all you
3 were going to get?

4 A. That's correct.

5 Q. And I want to take you then back to
6 where we were before the notes of that meeting,
7 please, Ms. Kuka. And if we could go back to page
8 one of that?

9 One of the things that they talk about
10 in paragraph 3 under "Schedule" is the
11 hotel/retail study. And there are two lines
12 underneath that. Something in August and
13 something in September.

14 I know these aren't your -- this isn't
15 your writing, but you guys are supposed to write
16 in a way that we could read. We could ask Mr.
17 Nicholls when he's here next week. Do you know
18 what it says?

19 A. It just says, "Compilation August,
20 present in September, will require a first draft
21 of study."

22 Q. Okay. "Compile" that was the word.

23 A. "Compilation" or "completion in
24 August, present in September. Will require first
25 draft of study."

1 Q. What was your recollection of what
2 this hotel/retail study was?

3 A. I believe it was something that
4 Elliot Lake Retirement Living was doing as part of
5 a business plan that they were preparing.

6 Q. And did they mention to you that
7 they were under a contract with the City to
8 provide them with information -- the City with
9 information with respect to retail in Elliot Lake?

10 A. We had no knowledge of any other
11 arrangements they had with any other people
12 involved with the project.

13 Q. Okay. If we could go to the next
14 page, please. Under "Issues" at the top, the
15 second line down indicates, "Retirement living is
16 looking to acquire the hotel." And below that,
17 "ACP will continue to operate the mall with
18 upgrading." Is it your recollection then that
19 Retirement Living was looking at the hotel here
20 primarily because ACP was going to continue to own
21 the mall?

22 A. No, it was my understanding that
23 there was an intent to purchase the entire
24 building subsequent to this meeting.

25 Q. Subsequent?

1 A. Or sorry, during this meeting there
2 was discussion about it. And subsequent to it the
3 discussions were about the entire building.

4 Q. No, I understand that the discussion
5 were about the entire building and that's clear.
6 Because you're engaged to provide a report for the
7 entire building. But Mr. Nicholls' notes are
8 fairly clear that, "Retirement Living is looking
9 to acquire the hotel." And "ACP will continue the
10 operate the mall." It doesn't sound to me like
11 Retirement Living is looking to buy the whole
12 center.

13 Now we may ask Mr. Nicholls for what his
14 notes mean. But you were at this meeting?

15 A. Correct.

16 Q. If these notes accurately reflect
17 the discussion then retirement living is not
18 looking to buy the hotel -- or to buy the mall,
19 would you agree?

20 A. Based on those notes, yes.

21 Q. Okay. And in fact what they're
22 talking to you about is how to spruce up the hotel
23 in some ways, right? In order to increase perhaps
24 its presentation?

25 A. I would disagree with that to some

1 effect because there was a lot of discussions in
2 that meeting about other considerations for
3 esthetic improvements to the mall that Retirement
4 Living was interested in us pursuing in our
5 report, including the installation of sky lights
6 in the mall areas, the talk of the roof deck, all
7 kinds of other base building things that didn't
8 affect the hotel that was part and parcel of the
9 overall, overarching discussions about the
10 potential to purchase the building.

11 Q. And what you've told us is that
12 you're not aware of any contract that the -- any
13 dealings with the City at all about what they're
14 up to?

15 A. No, none whatsoever.

16 Q. In the course of this meeting did
17 you become aware that ACP was looking to close the
18 hotel and demolish it?

19 A. No, I wasn't.

20 Q. Thank you. Those are my questions.
21 I appreciate that.

22 MR. MACRAE: I wonder if we might take
23 the morning break at this time so we can discuss
24 amongst Counsel how to proceed?

25 THE COMMISSIONER: Let's take our

1 morning break.

2 --- Break taken at 10:20 a.m.

3 --- Upon resuming at 10:40 a.m.

4 THE COMMISSIONER: Mr. Bisceglia.

5 MR. BISCEGLIA: Thank you, Mr.

6 Commissioner.

7 CROSS-EXAMINATION BY MR. BISCEGLIA:

8 Q. Mr. Luciw, I'm Joe Bisceglia, we met
9 earlier. And as I indicated to you I'm Counsel to
10 Greg Saunders who was an engineer with M.R. Wright
11 Associates when this incident occurred.

12 I have a few questions. Firstly am I
13 correct in saying that as a result of your
14 discussions with the people at Retirement Living
15 that they wanted information from your firm. And
16 they retained your firm for the purposes of
17 looking at this building, and you giving them some
18 idea as to what the costs were going to be to do
19 the work that they sort of outlined to you they
20 wanted to done. Is that correct?

21 A. Correct.

22 Q. And a major component of that would
23 have been to retrofit and do what was necessary to
24 stop the parking deck or roof from leaking, is
25 that correct?

1 A. Correct.

2 Q. And did you understand that they
3 were relying upon that information for the
4 purposes of A) to decide whether or not they were
5 going to buy the mall or the building; and B)
6 what price -- if they were going to buy it they
7 should pay for it, because they wanted to take
8 this into account in their own minds in
9 determining what they should be paying for it?

10 A. Correct.

11 Q. Did you at any time during the
12 course of your discussions with anyone at
13 Retirement Living, after your initial attendance
14 and meeting with them in July, and after the first
15 report that they could continue the course that
16 had been taken by Algoma Central, and just do
17 nothing with the roof?

18 A. That in our view was not an option.

19 Q. Is there anyway, based upon your --
20 when you were involved in this matter of -- that
21 they could come to the understanding that what
22 they had, and what had been done by Algoma, was
23 the appropriate continued course of action?

24 A. Not to my knowledge.

25 Q. Did you ever say or do anything that

1 would suggest to them they could keep repairing
2 the cracks in the roof as they had been doing?

3 A. No.

4 Q. Thank you.

5 THE COMMISSIONER: Mr. MacRae.

6 CROSS-EXAMINATION BY MR. MACRAE:

7 Q. Good morning, we met already but for
8 the purposes of the record my name is Rob MacRae
9 and I represent Mr. Bob Wood who has standing in
10 this Commission.

11 You're the first architect, aside from
12 the original architect who appeared, so I have a
13 couple of questions for you generally. Not with
14 respect to your report but rather just with
15 respect to some terms that we've heard, one of
16 them being "prime consultant". And I wonder if
17 you could provide the Commission with your
18 understanding of what a prime consultant is with
19 respect to the design and construction of a
20 building.

21 A. Typically the term "prime
22 consultant" essentially is the person who has the
23 contract directly with an owner. So in the case
24 of an architect when we're doing a building we're
25 engaged directly, through contract, usually a

1 standard OAA agreement with the building owner to
2 execute a project.

3 Q. And the OAA is an acronym for?

4 A. Ontario Association of Architects
5 have standard recommended forms of contract that
6 we typically utilize on a lot of our consulting
7 assignments.

8 Q. Now you understand that this
9 assignment would have been welcome back in 1979.
10 Are you able to indicate whether there would have
11 been standard forms at that time?

12 A. It varies from project to project.
13 In a project of this scope and magnitude it may
14 have just been a proposal with an agreement or a
15 purchase order from the owner the proceed with the
16 work.

17 Q. Now we've heard evidence here, as I
18 understand, the evidence that the owner of the
19 building was the -- or the owner was responsible
20 or took responsibility for obtaining a final
21 decision with respect to a roofing system that was
22 to be put on this building.

23 And in your experience as an architect,
24 is that generally left to the owner or is that
25 something that an architect would be responsible

1 for?

2 A. I'm not -- your question is not
3 clear. You're referring to Algoma Central
4 Properties?

5 Q. No, thank you. I'll try and clear
6 it up.

7 The evidence, as I understand the
8 evidence before the Commission, is that ACP
9 directed a certain roofing system to be utilized
10 on the project, and that that decision was left to
11 the owner and the architect did not make that
12 decision.

13 So my question to you is, based upon
14 your experience what would you do if an owner was
15 recommending a system that you didn't approve of?

16 A. Number of things I could do. One is
17 to send him a letter expressing our reservations
18 about the decision that they've made. Ultimately
19 I suspect one could walk from a project and not
20 incur any future liability if there is a system
21 that's being proposed that fundamentally you don't
22 have any confidence in utilizing for the building.

23 Ultimately it would be a question for
24 the association to provide me with legal direction
25 if there is a -- if there's a point in time where

1 we just cannot proceed on the basis of what the
2 owner is telling us to do.

3 Q. Thank you. Generally then who's
4 responsibility is it with respect to obtaining a
5 design for a roofing structure in the event of a
6 design process such as the architects involved?
7 Whose responsibility ultimately is it to determine
8 the applicability or the reliability of the
9 roofing system that's going to be used on a
10 building?

11 A. Typically it's the consulting team,
12 not necessarily the architect, but persons that
13 have the specific skills, and qualifications, and
14 expertise to specify those systems. So in the
15 case of -- in our office with a parking deck
16 structure of this nature we would defer to the
17 expertise of a qualified structural engineer that
18 has significant experience in doing those types
19 of structures, to ensure that in the interest of
20 the project and the consulting team are met.

21 Q. But when you -- thank you. And when
22 you bring up the issue of a structural engineer
23 if -- that leads into another question I had. If
24 structural design drawings are complete and an
25 architect requires changes to be made to the

1 building, how would you normally handle that
2 process as an architect?

3 A. When the tendered documents are
4 complete or when the design is complete?

5 Q. When the design is complete?

6 A. It's a co-ordinated effort between
7 the architect -- depending on your contractual
8 relationship with all your subconsultants, to
9 lead, direct, orchestrate and manage the whole
10 team so that the entire consulting team is aware
11 of the direction of the project, any revisions
12 that are being made, any decisions by an owner
13 that may impact on the progress of the project,
14 and the documents that are being prepared by the
15 consulting team.

16 It's not a simple answer and varies from
17 project to project. But essentially there's
18 somebody taking the lead and directing the
19 consulting team.

20 Q. And would that be the prime
21 consultant who would take that lead?

22 A. Typically that's the role of the
23 prime consultant when they've got the
24 subconsultants engaged by them directly. When
25 there's other situations where the owner will

1 engage the subconsultants directly, so it blurs
2 the relationship between an architect and a
3 subconsultant engineer on a project.

4 Q. In that case, if I could refer to it
5 as a quality control process to ensure that -- you
6 use the term, who it would affect, or who should
7 be involved. How would you typically make that
8 determination if you were the architect on the
9 job. How would you typically determine who should
10 be involved in discussions about the revision?

11 A. We typically look at the scope and
12 the extent of the revision. We have enough
13 experience and knowledge to understand what the
14 implications of a revision are and direct the
15 information to the appropriate subconsultant.

16 Q. And then who would follow up to
17 ensure that the appropriate subconsultants had
18 been in fact provided with the information, and
19 that information with respect to the revisions had
20 adequately been dispersed to the appropriate
21 people?

22 A. Typically in our typical prime
23 consulting arrangements when we hire the sub
24 consultants that would be our responsibility as
25 architects.

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

3 A. Thank you.

4 THE COMMISSIONER: Ms. Carr.

5 MS. CARR: Good morning, Mr.
6 Commissioner.

7 CROSS-EXAMINATION BY MS. CARR:

8 Q. Mr. Luciw, my name is Alexandra Carr
9 and I'm one of the lawyers for two of the
10 community groups that are participating in this
11 inquiry.

12 Like Mr. MacRae I'm going to ask you
13 some questions about the role of an architect in
14 the construction of a building such as this one.
15 And can you tell me have you been involved in --
16 as an architect in the construction of buildings
17 like this one often?

18 A. We've done some retail shopping
19 facilities with hotels and motels, not
20 specifically like this with a mixed-use facility.
21 But we have done in our 50 years of practice a
22 broad range of similar types of projects.

23 Q. Okay, thank you. And I want to ask
24 you some questions about the Certificate of
25 Substantial Completion, or Substantial

1 Performance, which is I think how it's called now.
2 Are you familiar with that term?

3 A. Yes I am.

4 Q. Can you explain to the Commission
5 what it is?

6 A. In broad terms it's a point in time
7 that deems the project to be ready for occupancy,
8 or for the use intended. It's also got a monetary
9 value attached to it from a contractual
10 perspective for the Construction Lien Act to set
11 the deadline for when lien holdbacks are due and
12 payable. So there's a number of mechanisms that
13 kick in at the sometime of substantial performance
14 of a project.

15 Q. Okay.

16 A. On a purely architectural level, the
17 building is ready and suitable for the use
18 intended, and all the major systems have been
19 verified, checked and confirmed with the architect
20 and all the subconsultants that have an interest
21 in the project.

22 Q. Have you ever signed and sealed a
23 Certificate of Substantial Performance without
24 visiting the site?

25 A. No. Somebody from our office would

1 attend the site prior to signing those documents.

2 Q. Is that true even in the situation
3 where the owner or the developer was acting as the
4 prime consultant?

5 A. It doesn't matter. Our obligation
6 is to the legislation and making sure we're doing
7 our due diligence as consultants, to ensure that
8 everyone that is affected by that certification
9 has the benefit of someone that's capable and
10 qualified to make the determinations attend the
11 site and review it.

12 Q. Thank you. I'm going a to take you
13 now to your report which is Exhibit No. 66, I
14 think it's tab 6 of your book.

15 A. Okay.

16 Q. And I'd like to look at page 12 of
17 that exhibit, section 2.2. I take it that prior
18 to finalizing this report you would have read the
19 reports of all of your subcontractor?

20 A. Correct.

21 Q. And Mr. Carr-Harris took you through
22 the second paragraph there so I'm not going to
23 read it on the record. But I'd like to read the
24 first paragraph just to refresh your memory.

25 "A rooftop parking deck structure is

1 located on the third floor of the
2 building. The deck surface generally
3 consists of a concrete topping wear layer
4 installed over precast concrete slabs.
5 It's our understanding that the integrity
6 of the waterproofing ability of this
7 structure has been a continuous
8 maintenance issue. From our review of the
9 existing drawings and visual inspection,
10 the presence of an integral waterproofing
11 membrane cannot be determined. Based on
12 the extent of surface applied sealants on
13 the concrete topping wear layer, we
14 suspect that the structure was constructed
15 without an integral waterproofing
16 membrane. Maintenance staff confirmed the
17 absence of a waterproofing membrane during
18 repair work that has been recently
19 executed for their parking deck
20 maintenance and concrete repair program"
21 And we've been over the second
22 paragraph. And I take it what you're saying from
23 this section of the report is the waterproofing
24 ability on this roof had been a continuous
25 maintenance issue. There's no waterproofing

1 membrane. There doesn't appear to be a
2 waterproofing membrane; you need to do some
3 further studies; and it might have some
4 significant cost implications for you. Would you
5 agree with me?

6 A. Just to clarify on that, the
7 solution -- the recommendation was to put a
8 waterproofing membrane of some type on that roof
9 and we gave two options in the report.

10 Q. Okay.

11 A. The concern I had was that by doing
12 that have we overlooked something that would lead
13 us to suspect that the structure has been
14 compromised? The integrity of the structure has
15 been compromised?

16 So the further studies were recommended
17 so if you implement -- if you purchase the mall
18 and you decide that you want to proceed with the
19 recommendations, and then you start opening up
20 that roof and the structure below it is
21 compromised then it's a significant undertaking to
22 make that good. So we wanted to be sure that the
23 advice we gave to Elliot Lake Retirement Living,
24 as part of the prepurchase investigation, was
25 satisfactory and sufficient for us to understand

1 that yes, the structured had not been compromised
2 to a point where we'd have to do significant
3 structural remediation prior to waterproofing.

4 Q. Okay. That helps, thank you.

5 Now I would like to turn to page 23 of
6 the same exhibit. Under section 6.1 you describe
7 the preliminary cost analysis and you say,

8 "This preliminary cost analysis is
9 intended to provide an order of magnitude
10 assessment of the construction costs
11 associated with the work described above
12 for the existing building."

13 So the preliminary cost analysis -- is
14 it fair to say that the preliminary cost analysis
15 is to tell your client what you anticipate will be
16 the most costly aspects of the building they're
17 looking at?

18 A. I wouldn't agree that it's the most
19 costly aspect. It's just generally based on the
20 scope of our undertaking. What the costs of those
21 items that were identified in our mandate, as well
22 as what we observed on site, would cost in order
23 to make the facility suit their requirements and
24 be able to withstand infiltration of water.

25 Q. Okay. And if we turn to section 6.2

1 which I think is on page 25. On this page and it
2 follows for about five pages.

3 You set out five items and you give a
4 cost estimation of what each of those five items
5 might cost. Would you agree with me that out of
6 all of the items described that require
7 construction costs the most expensive is going to
8 be the repairs to the parking deck?

9 A. Correct.

10 Q. Can we now turn to the conclusion in
11 this report which is on page 31? If you like to
12 take a minute to read that section. If you're
13 familiar with it --

14 A. I'm familiar with it, thank you.

15 Q. Okay. I'm just going to ask you,
16 would you agree with me that in these paragraphs
17 you're again suggesting that further testing be
18 done in order to establish the costs and an
19 effective waterproofing system?

20 A. I think we're intending to have
21 further studies done to determine the integrity of
22 the structure. I think the waterproofing costs
23 that we presented speak for themselves. They're
24 independent of any remedial repairs to the
25 structure.

1 Q. Okay, thank you. I'm going to show
2 you a couple of documents now, and I want to be
3 clear that I'm not showing them to you because I'm
4 suggesting you had any involvement in their
5 preparation. I'll ask you if you've seen them
6 before.

7 The first is Exhibit No. 2093. This is
8 a fax to Mr. Robert Leistner of Algoma Central
9 from Ms. Guertin of Retirement Living dated
10 December 17, 1998. Have you seen this document
11 before?

12 A. No, I have not.

13 Q. And she says at bullet point number
14 4 that she would like to present to the board "A
15 brief summary of the building condition assessment
16 completed by Nicholls, Yallowega and Bélanger (see
17 attached)." Do you see that there?

18 A. Yes.

19 Q. And that would appear to be the
20 report that you had prepared in 1998 given that
21 this document is dated December 17th, 1998?

22 A. Correct.

23 Q. And if we can now pull up Exhibit
24 No. 3276. Just for your knowledge, the
25 Commission's heard evidence that this was the

1 document that was attached to that fax. And if
2 you wouldn't mind just taking a moment to read
3 that document. Have you seen it before?

4 A. No.

5 Q. Would you agree with me that the
6 only mention of the roof parking deck in this
7 document is the third paragraph which reads, "The
8 initial inspection indicates that the building is
9 structurally sound, including the parking deck and
10 has been well maintained."

11 A. I would suggest that's an incorrect
12 statement.

13 Q. And that's an incorrect statement
14 because there's no mention that the waterproofing
15 system has been an ongoing maintenance issue? Is
16 that right?

17 A. Initially at the time of our report
18 we could not confirm, based on the visual
19 inspection, that the parking structure was
20 structurally sound.

21 Q. Thank you, those are my questions.

22 MR. MACRAE: It's a bit unorthodox, Mr.
23 Commissioner, but I wonder if I might be permitted
24 to ask one last question. It is with respect to a
25 term that I spoke with Mr. Truman about yes.

1 THE COMMISSIONER: Sure, go ahead.

2 FURTHER CROSS-EXAMINATION BY MR. MACRAE:

3 Q. Subject to any objections that your
4 Counsel may have, there's been a report completed;
5 by NORR, a forensic report following the collapse
6 of the mall, have you had an opportunity to review
7 that report?

8 A. I've reviewed it, not in detail but
9 I'm aware of it.

10 Q. In that report there's a description
11 of the environment in the mall as being a "marine"
12 environment. And the reason I raise to ask you
13 this additional question is because it occurs to
14 me that you were actually on site. And is "marine
15 environment" a term that you would use to describe
16 what you saw when you were at the site?

17 A. For me personally, no.

18 Q. Is there a reason why you wouldn't
19 use that term?

20 A. I think it can be construed as a
21 number of different things so I'd like to be a bit
22 more precise in defining what the environment is.
23 Is it chloride infiltration into the structure, or
24 is it a building full of aquariums? Not to be
25 facetious, but it can be misconstrued so I'd

1 probably be more clear as to how you describe the
2 environment.

3 Q. Thank you very much.

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

6 THE COMMISSIONER: Mr. Cassan.

7 MR. CASSAN: Thank you.

8 CROSS-EXAMINATION BY MR. CASSAN:

9 Q. Mr. Luciw, my name is Paul Cassan
10 and I'm Counsel for the City of Elliot Lake. I
11 understand that at the beginning of your
12 engagement you were told that you would be
13 signing -- or you would be asked to sign a
14 Nondisclosure Agreement?

15 A. Correct.

16 Q. And before you signed that agreement
17 did you make any inquiries of the City of Elliot
18 Lake with respect to the building?

19 A. No, we did not.

20 Q. You indicated that it was unusual
21 for you to be signing a Nondisclosure Agreement,
22 but did it change your methods of work or your
23 review of the building in any way?

24 A. No.

25 Q. And the fact that you were assigning

1 a Nondisclosure Agreement did that worry you or
2 cause you any concerns?

3 A. Based on the size Blaine Nicholls
4 and I have some discussion internally about
5 whether we should be having lawyers reviewing the
6 document. I know it went through to our legal
7 counsel in Sudbury just to comment on it.
8 Ultimately it was determined that it's really just
9 you're obligated not to release any of the
10 information based on your findings.

11 Q. And so did you come to understand
12 that that was just part of the purchase process?

13 A. We suspected that given the nature
14 of the high level negotiations that were under
15 way, or potentially were going to be under way,
16 that the confidentiality of anything found in that
17 would be only shared between the owner of the
18 property and Elliot Lake Retirement Living.

19 Q. So in light of that, once your
20 review was complete and your report was complete
21 did you share the report or any information from
22 the report with the City?

23 A. No.

24 Q. Why?

25 A. Because we were obligated under a

1 Nondisclosure Agreement not to divulge anything.

2 Q. Okay. Now I understand that you
3 have professional obligations as an architect that
4 if you see a condition that gives you concerns
5 about the public interest, which I take to mean a
6 danger to the public, that you would have an
7 obligation to disclose that. And so in light of
8 that circumstance --

9 THE COMMISSIONER: Well perhaps we ought
10 to ask Mr. Luciw whether or not he agrees with the
11 proposition.

12 BY MR. CASSAN:

13 Q. Sure. Do you agree that as an
14 architect you do have a professional obligation to
15 report something that is, I think in your terms,
16 in the Architect Act?

17 A. In the regulations that govern
18 architects in the province our obligation is the
19 public safety. So any regulations I would suggest
20 would supercede any Nondisclosure Agreement.

21 Q. Okay, thank you. And so if you saw
22 something that in your opinion presented a danger
23 to public safety, especially in this case, you
24 would have reported that, or you would have had an
25 obligation to report that notwithstanding the

1 Nondisclosure Agreement?

2 A. Correct.

3 Q. And so did you do that?

4 A. We did not.

5 Q. And why did you not do that.

6 A. Because at the time of our review we
7 deemed our investigation to be a work in progress.

8 Q. Okay.

9 A. And the there were other
10 investigations that were incumbent upon the owner
11 to undertake prior to us -- our client for that
12 matter -- to undertake prior to us making that
13 assessment.

14 So at the time of the report the
15 recommendations were to do additional stuff so
16 that we can ascertain whether or not, through
17 destructive testing and further investigations,
18 there was structural compromise through the leaks
19 that could not be seen and determined visually.

20 Q. To get to the point, did you see
21 anything in the inspections that you did do that
22 you thought presented a danger to public safety?

23 A. At the time of the preparation of
24 the report, no.

25 Q. And then you made recommendations

1 that further studies be done. Were you retained
2 to do further studies?

3 A. I left the office once the report
4 was tabled, a week and a half later. So I wasn't
5 involved with the project moving forward.

6 Q. All right. You did come back to the
7 firm after your sojourn at another firm, right?

8 A. Correct.

9 Q. Did you do any follow up with
10 respect to this property?

11 A. Did not, no.

12 Q. And --

13 THE COMMISSIONER: Would you remind me
14 again, sir, when you returned?

15 THE WITNESS: April of 2004.

16 THE COMMISSIONER: All right, thank you.

17 BY MR. CASSAN:

18 Q. And if your entire tenure at
19 Nicholls Yallowega with respect to this property,
20 did you ever provide any information to the City
21 with respect to the building condition?

22 A. Did not, no.

23 Q. Okay. Thank you very much, sir.

24 THE COMMISSIONER: Have we gone around
25 the room? Yes. Re-examination?

1 MR. SIMCO: I have no questions, your
2 Honour.

3 MR. CARR-HARRIS: I have no
4 re-examination.

5 THE COMMISSIONER: All right. Then that
6 seems to be it, Mr. Luciw. Thank you very much
7 for your evidence and for being here this morning.
8 And Mr. Simco, thank you.

9 MR. SIMCO: Thank you.

10 THE COMMISSIONER: I take it that's all
11 the evidence that counsel wish to present today.

12 MR. CARR-HARRIS: It is.

13 THE COMMISSIONER: Nine o'clock tomorrow
14 morning then. We'll see you all at that time.

15 --- Whereupon the inquiry proceedings
16 adjourned at 11:00 a.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 16th day of April, 2013

Helen Martineau

PER: HELEN MARTINEAU
CERTIFIED SHORTHAND REPORTER

0	<p>1994 4749:9,25 4750:3</p> <p>1998 4722:16,18, 25 4723:9 4725:20 4726:18 4727:8 4738:19 4741:5 4743:19 4744:9 4752:23 4754:20 4761:18 4763:1,3,13 4770:2 4794:10, 20,21</p> <p>1999 4723:2</p>	<p>3142 4749:18</p> <p>3276 4794:24</p> <p>386 4751:13,15</p>	9	<p>acting 4789:3</p> <p>action 4780:23</p> <p>actual 4726:20 4727:2</p> <p>add 4740:9</p> <p>addition 4765:19</p> <p>additional 4760:13,16 4761:12 4765:2 4766:25 4796:13</p> <p>addressed 4725:12</p> <p>adduce 4770:6</p> <p>adequate 4757:14</p> <p>adequately 4786:20</p> <p>advance 4741:14</p> <p>advice 4791:23</p> <p>advise 4744:19 4766:25</p> <p>advised 4737:3</p> <p>affect 4778:8 4786:6</p> <p>affected 4760:19 4789:8</p> <p>agree 4740:9 4748:21 4750:18 4755:16 4777:19 4791:5 4792:18 4793:5,16 4795:5</p> <p>agreed 4767:13 4768:7</p> <p>agreement 4724:8 4727:17 4734:14 4750:15, 16,22 4782:1, 4797:14,16,21</p> <p>ahead 4796:1</p> <p>alarm 4740:23 4741:25</p> <p>Albert 4737:1,4 4738:9 4766:20</p>
1	2	4	A	
<p>10 4721:2 4723:1</p> <p>101 4728:1</p> <p>103 4732:13</p> <p>10:20 4779:2</p> <p>10:40 4779:3</p> <p>11 4759:11,21</p> <p>11th 4765:24</p> <p>12 4722:16 4752:23 4759:22 4789:16</p> <p>121 4727:14</p> <p>12th 4722:24</p> <p>13 4759:22</p> <p>15 4746:13</p> <p>17 4726:18 4794:10</p> <p>17th 4726:20 4741:5 4745:7,9 4754:20 4756:1 4761:18 4794:21</p> <p>18 4745:20</p> <p>1979 4782:9</p> <p>1986 4722:13</p> <p>1987 4721:25 4722:10,15</p> <p>1991 4722:6 4749:9,22,23 4750:3</p>	<p>2 4732:5 4738:16 4743:24 4744:1 4771:13</p> <p>2.1 4765:14 4766:15 4768:21 4769:23</p> <p>2.2 4759:23 4765:14 4789:17</p> <p>2004 4722:18</p> <p>2013 4721:2</p> <p>2093 4794:7</p> <p>20th 4743:20</p> <p>21st 4770:1</p> <p>23 4792:5</p> <p>23rd 4729:25 4753:10,13</p> <p>25 4793:1</p> <p>28 4744:1</p> <p>28th 4745:9</p>	<p>4 4750:13 4794:14</p> <p>5</p> <p>5 4732:21 4763:1 4771:15</p> <p>50 4787:21</p> <p>6</p> <p>6 4733:20 4752:22 4759:10 4763:11,13 4771:15 4789:14</p> <p>6.1 4792:6</p> <p>6.2 4792:25</p> <p>66 4752:22 4759:10 4763:11, 12 4765:22 4789:13</p> <p>69 4727:24 4728:1 4743:4 4762:13 4770:18</p> <p>6th 4765:12</p>	<p>A' 4760:4</p> <p>a.m. 4721:1 4779:2,3</p> <p>A/s 4736:20</p> <p>ability 4752:8 4774:13 4790:6, 24</p> <p>absence 4790:17</p> <p>absolutely 4742:12,22 4764:2</p> <p>accept 4761:16</p> <p>access 4730:13</p> <p>accommodate 4761:14</p> <p>account 4780:8</p> <p>accurately 4760:14 4767:1 4777:16</p> <p>ACP 4731:10,12, 21 4732:14 4734:9,22 4739:13 4744:17 4771:24 4772:9, 13 4773:4 4774:7, 8,20,22,23 4776:17,20 4777:9 4778:17 4783:8</p>	
	3	7		
	<p>3 4730:5 4771:14 4775:10</p> <p>30th 4743:19 4763:3</p> <p>31 4793:11</p> <p>3132 4749:17</p>	<p>7 4734:25</p> <p>8</p> <p>8 4736:15</p> <p>84 4743:25</p> <p>870 4773:12</p> <p>874 4738:16 4743:25 4750:14 4773:12</p>	8	

Alexandra 4787:8	April 4721:2	assessment 4723:19 4724:7,8, 10,12 4729:9 4730:23 4792:10 4794:15	B	Bob 4781:9
Algo 4722:24 4723:14 4725:21 4738:24	aquariums 4796:24	assessments 4725:23	back 4729:20 4743:3,24 4746:13 4759:1 4762:13, 4774:22 4775:5,7 4782:9	book 4789:14
Algoma 4723:15 4731:10 4735:11, 16,25 4750:9,20 4780:16,22 4783:3 4794:8	architect 4722:1 4747:15 4759:13 4781:11,12,24 4782:23,25 4783:11 4784:12, 25 4785:2,7 4786:2,8 4787:13, 16 4788:19	asset 4731:13,22	background 4721:19	bottom 4743:5 4762:19
alive 4774:20	architects 4746:19 4751:20 4752:14 4782:4 4784:6 4786:25	assigning 4797:25	balance 4768:19	break 4778:23 4779:1,2
alternatives 4764:19	architectural 4739:4 4757:17 4759:14 4788:16	assignment 4758:22 4782:9	base 4740:21,24 4747:1 4755:8 4778:7	briefed 4738:25
amount 4758:23	architectural/ structural 4736:20	assignments 4782:7	based 4747:1 4756:6 4758:3,16 4767:6,18,25 4777:20 4780:19 4783:13 4790:11 4792:19 4795:18	briefs 4762:16
analysis 4757:20 4792:7,8, 13,14	Architect 4721:20	assist 4759:20 4767:9	basically 4739:25 4750:18	bring 4784:22
analyst 4746:22	area 4735:21 4767:9	assistance 4739:15 4744:20	basis 4755:19 4784:1	broad 4787:22 4788:6
anticipate 4740:5 4792:15	areas 4735:19, 22 4736:13 4778:6	Associates 4779:11	beams 4764:6 4769:11	Buckley 4737:3 4762:25 4763:15 4766:20
anticipated 4733:14	arrange 4739:8	association 4782:4 4783:24	bear 4729:18	budget 4761:8
anticipation 4738:22	arrangements 4776:11 4786:23	attached 4759:16 4763:1 4765:20 4766:4, 4788:9 4794:17 4795:1	beginning 4797:11	budgeting 4730:18 4764:21
appeared 4746:4 4771:23 4781:12	arrived 4745:5	attend 4739:19 4753:7 4789:1,10	behalf 4753:1 4754:22	budgets 4725:15 4763:25
appears 4728:19 4763:3	ascertain 4725:2	attendance 4780:13	belief 4750:8 4769:6	building 4723:18,21 4724:2,7,9,12 4725:2,3,4,10,22 4727:2 4730:15, 23 4733:5 4735:19 4736:11 4740:5,7,21,24 4741:13 4742:21 4743:12 4745:16, 20 4746:22 4755:6,7,8,11,13, 20 4756:24 4758:3,4,23 4760:22 4761:10, 18 4764:25 4767:7 4772:4,25 4776:24 4777:3,5, 4778:7,10 4779:17 4780:5 4781:20,24 4782:1,19, 4783:22 4784:10 4785:1 4787:14 4788:17 4790:2 4792:12,16 4794:15 4795:8 4796:24 4797:18, 23
appendices 4759:17	ascertaining 4746:8	attended 4726:16,23 4727:8 4733:4 4735:12	benefit 4764:25 4789:9	buildings
Appendix 4760:4	aspect 4792:19	attending 4733:17	big 4725:16	
applicability 4784:8	aspects 4792:16	August 4731:2 4743:15,20 4744:1,8 4745:9 4775:12,19,24	Bisceglia 4779:4,5,7,8	
applied 4790:12	assembled 4755:4	AUTHIER 4751:13	bit 4795:22 4796:21	
appreciated 4739:16 4744:21	assembling 4753:7	aware 4742:23 4756:21 4770:24 4778:12,17 4785:10 4796:9	Blaine 4723:12 4726:24 4727:6,9 4728:6 4753:14	
apprised 4740:4	assess 4723:23 4749:3 4760:14 4763:23 4764:24 4766:23 4767:1		blurs 4786:1	
approaching 4743:16			board 4794:14	
approve 4783:15				
approximately 4748:14				

4752:13 4787:16 bullet 4731:8 4732:4 4769:22 4794:13 bullets 4767:22 4769:18,22 burden 4740:10 business 4730:11 4776:5 buy 4777:11,18 4780:5,6 Bélanger 4721:6 4722:12, 15,19,23 4794:16	Celli 4737:22 4738:9 4758:8 4765:23 center 4777:12 Central 4723:15 4731:10 4735:11, 25 4750:9,21 4780:16 4783:3 4794:8 Centre 4738:24 Certificate 4787:24 4788:23 certification 4789:8 cetera 4725:6, 4730:14 4736:12 4754:11 change 4797:22 changed 4745:19 Charles 4721:10 checked 4788:19 chloride 4749:4 4796:23 chloride-laden 4756:23 circulation 4725:11 circumstances 4752:18 City 4776:7,8 4778:13 4797:10, 17 cladding 4725:4 clarify 4765:11 4791:6 clear 4722:21 4734:1 4741:3,16 4759:12 4763:23 4766:21,24 4777:5,8 4783:3,5 4794:3 4797:1 client 4724:14 4734:7, 4741:12 4761:2 4764:22	4766:24 4767:9, 20 4768:12 4769:8 4770:25 4792:15 close 4749:19 4778:17 co-ordinate 4772:22 co-ordinated 4785:6 co-ordinating 4769:4 collapse 4796:5 colleagues 4722:17 columns 4764:6 commencing 4721:1 comment 4742:7 4750:12 commentary 4725:5,13 Commission 4781:10,17 4783:8 4788:4 Commission's 4794:25 Commissioner 4721:3,5,8,12 4729:16,22 4744:3 4746:14 4749:19 4751:8, 12 4757:9,23 4770:5,9,12,14 4778:25 4779:4,6 4781:5 4787:4,6 4795:23 4796:1 4797:5,6 common 4751:5,6,18,21 communicatio ns 4772:21 4773:4 community 4787:10 compel 4742:6	competence 4774:12 Compilation 4775:19,23 Compile 4775:22 complete 4745:24 4746:2 4784:24 4785:4,5 completed 4794:16 4796:4 completely 4761:16 completion 4775:23 4787:25 component 4779:22 comprehensiv e 4756:2 compromise 4752:8 4767:1 compromised 4761:7 4764:3,17 4765:3 4767:11 4791:14,15,21 4792:1 concern 4729:4 4732:23 4733:25 4734:1 4758:15 4761:4 4764:9 4791:11 concerned 4743:14 4757:5 4761:21 concerns 4725:13 4729:1 4758:21 4760:4 4761:24 4762:2 4766:22 4769:6 conclusion 4775:2 4793:10 conclusions 4736:22 4737:13 concrete 4760:7 4764:9,10,12 4790:3,4,13,20	condition 4723:19 4724:6,7, 9,12 4725:3 4729:9 4730:23 4741:1 4742:21 4756:5 4757:6 4794:15 conditions 4725:23 4740:4 4755:18 conduct 4724:10 4739:20 4755:5 conducted 4725:22 4729:7 4742:4 4748:22 4749:2 4753:6,19 4769:7 conducting 4724:12 4753:1 4760:13 confidence 4783:22 confident 4764:2 confidential 4734:2,6 4752:5 confidentiality 4733:21 confirm 4795:18 confirmed 4788:19 4790:16 connection 4769:12 connections 4764:7 4767:23 considerable 4740:10 4744:22 consideration 4725:15 considerations 4778:2 consists 4790:3 constructed 4790:14 construction 4739:9,18
<hr/> C <hr/>				
call 4757:18 4773:10 called 4788:1 calling 4721:5 capable 4789:9 capacities 4762:1 capital 4723:24 4724:3 4729:11 care 4737:4 Carr 4787:4,5,7,8 Carr-harris 4721:4,15 4744:5 4746:17 4749:21 4751:10,14,16 4758:6 4789:21 carried 4762:5 carry 4766:25 case 4726:9 4781:23 4784:15 4786:4 cash 4731:14,24 Cassan 4797:6, 7,8,9 causing 4764:11				

4744:16 4757:21 4781:19 4787:14, 16 4792:10 4793:7	control 4786:5	4792:10,20 4793:7,18,22	4745:12 4763:4 4773:19	Dell'aquila 4750:1
construed 4796:20	convenience 4730:14 4754:17	counsel 4721:9 4778:24 4779:9 4796:4 4797:10	de-ice 4732:9	demolish 4778:18
consultant 4727:9 4735:12 4753:7 4760:6 4762:5 4781:16, 18,22 4785:21,23 4789:4	conversation 4768:3	counted 4750:2	deadline 4773:9 4788:11	depending 4722:25 4724:13 4785:7
consultants 4733:5 4738:25 4759:15 4769:5 4786:24 4789:7	conversations 4772:17	couple 4727:20 4745:12 4753:15 4773:5 4781:13 4794:2	deal 4762:7 4772:13	describe 4792:6 4796:15 4797:1
consulting 4726:21 4755:3 4782:6 4784:11, 20 4785:10,15,19 4786:23	copies 4739:3,9 4748:2	courthouse 4752:13	dealing 4747:11 4772:12	description 4796:10
contact 4733:7, 9 4737:21 4771:18,24 4772:20	copy 4751:9 4752:21 4765:11 4766:5	covenant 4734:9 4750:20, 23 4752:19	dealings 4774:3,11,16 4778:13	design 4740:11 4747:14 4781:19 4784:5,6,24 4785:4,5
contamination 4757:2	Coreslab 4747:19	covenants 4739:23 4751:19	Dear 4738:22	designs 4745:2
contemplated 4730:19	corings 4749:2	cover 4762:21, 22 4763:14	December 4794:10,21	decide 4755:22 4780:4 4791:18
content 4749:4	corner 4743:5	cracks 4781:2	decision 4724:5 4761:9 4782:21 4783:10,12,18	destructive 4757:19 4761:12
contents 4750:16 4773:20	correct 4721:21 4723:3,7 4725:19 4726:11,13 4728:3,9 4731:6, 20 4732:1,2 4735:4,6 4736:3 4738:14 4740:12 4741:7 4742:15, 18 4743:2,23 4745:25 4747:13, 16 4748:9,11,12, 18 4749:1,5 4750:25 4751:3 4752:20 4753:2, 11 4755:24 4759:4,8,18 4760:10, 4761:22, 23 4763:5 4766:1, 11,12 4768:6,23 4771:10,11 4773:17 4775:4 4777:15 4779:13, 20,21,25 4780:1, 10 4789:20 4793:9 4794:22 4797:15	crew 4756:19	decisions 4785:12	detail 4796:8
continued 4780:23	cost 4728:21 4760:17 4791:4 4792:7,8,13,14,22 4793:4,5	critical 4729:12	deck 4725:17 4728:19,23 4729:3 4730:1 4735:23 4740:19 4756:14 4759:23 4761:3 4778:6 4779:24 4784:15 4789:25 4790:2, 19 4793:8 4795:6, 9	detailed 4739:20 4754:9 4757:20 4760:2
continuous 4790:7,24	costly 4792:16, 19	cross- examination 4770:10,21 4779:7 4781:6 4787:7 4796:2 4797:8	deems 4788:7	details 4740:8 4746:11 4757:21
contract 4771:18,19 4776:7 4778:12 4781:23,25 4782:5	costs 4724:3,4 4766:7 4779:18	current 4722:19	deep 4762:13	deterioration 4760:15
contractual 4785:7 4788:9		cursory 4727:1 4754:4 4755:10	defer 4784:16	determination 4786:8
		cutting 4756:15	defining 4767:15 4796:22	determinations 4789:10
		D	definitive 4763:21	determine 4741:23 4784:7 4786:9 4793:21
		date 4726:20 4767:11 4769:25	Degree 4721:20	determined 4790:11
		dated 4722:24 4743:19 4744:8 4794:9,21	deliver 4752:8	determining 4760:25 4763:22 4767:10 4780:9
		dates 4745:5	delivered 4765:24	develop 4740:25 4774:17
		day 4729:6 4755:19 4756:17 4763:13 4765:25	delivery 4730:8 4739:14	developer 4789:3
		days 4744:14		developing 4766:18
				develops 4768:22

differ 4745:17	dispersed 4786:20	E	engagement 4797:12	4770:6 4782:17, 18 4783:7,8 4794:25
diligence 4723:23 4761:12 4764:24 4767:19 4789:7	document 4759:22 4768:9 4794:10,21 4795:1,3,7	e-mail 4744:4,6	engaging 4769:4	EXAMINATION -IN-CHIEF 4721:15
diligently 4773:24	documentation 4738:6	e-mailed 4763:2	engineer 4747:15 4779:10 4784:17,22 4786:3	examples 4741:21
direct 4785:9 4786:14	documents 4739:14,18 4740:20 4744:11, 19 4745:14 4746:21 4747:1 4752:12 4773:1, 23 4785:3,14 4789:1 4794:2	earlier 4748:8 4763:24 4779:9	engineering 4738:11 4742:13, 14	exchanges 4735:17
directed 4733:8 4736:4 4783:9	dots 4731:23	effect 4733:18 4763:4 4766:10 4778:1	engineers 4738:13	execute 4782:2
directing 4785:18	doubled 4749:10 4750:3	effective 4793:19	ensure 4784:19 4786:5,17 4789:7	executed 4739:23 4790:19
direction 4783:24 4785:11	Doug 4771:3	effort 4748:16 4785:6	enter 4750:20	execution 4733:3
directions 4763:25 4772:20	draft 4731:2 4738:23 4763:9, 10 4765:8,16,18 4766:4 4768:8,15 4775:20,25	efforts 4747:3	entire 4729:12 4776:23 4777:3,5, 7 4785:10	exhibit 4727:14, 24 4728:1 4732:13 4738:15 4743:4,25 4744:2 4749:16,18 4750:14 4751:11 4752:22 4759:9 4762:13,14 4763:11,12 4765:21,22 4770:18 4773:12 4789:13,17 4792:6 4794:7,23
directly 4772:13,17 4781:23,25 4785:24 4786:1	draftsperson 4759:7	eight-month 4722:11	envelope 4755:7 4757:22	existed 4748:17
disagree 4777:25	drawings 4733:2 4739:4,9 4740:1,3 4743:12 4744:16 4745:3,4, 8,23 4746:6,8,11 4771:25 4784:24 4790:9	electrical 4725:5 4738:12 4739:5 4740:21 4742:20	environment 4796:11,12,15,22 4797:2	existing 4725:14 4739:3, 18 4740:4 4754:10 4755:6 4767:2 4790:9 4792:12
disappointed 4744:14	drawings 4733:2 4739:4,9 4740:1,3 4743:12 4744:16 4745:3,4, 8,23 4746:6,8,11 4771:25 4784:24 4790:9	elements 4725:4 4755:6	equipment 4745:18	expect 4741:3
discipline 4745:13	drafts 4762:9	Elliot 4725:8 4726:25 4728:15 4730:10 4733:8 4734:23 4735:9 4745:7 4753:15, 17 4758:18 4772:21 4776:4,9 4791:23 4797:10, 17	essentially 4726:3 4781:22 4785:17	expectation 4761:11
disclosing 4774:9	draftsperson 4759:7	email 4744:1	establish 4793:18	expedite 4739:14
disclosure 4733:18	drawing 4746:5 4747:19,21	employed 4723:5	esthetic 4778:3	expenditures 4723:25
discuss 4778:23	drawings 4733:2 4739:4,9 4740:1,3 4743:12 4744:16 4745:3,4, 8,23 4746:6,8,11 4771:25 4784:24 4790:9	employment 4722:8	esthetics 4725:12	expensive 4793:7
discussed 4733:23 4769:2	dropped 4769:19	encounter 4736:8	estimate 4755:14	experience 4751:4,17 4758:3 4767:7 4782:23 4783:14 4784:18
discussion 4730:25 4732:10 4737:25 4767:18 4771:8 4772:3,18 4777:2,4,17	dropping 4746:15	end 4722:16 4743:15	estimation 4793:4	
discussions 4732:7 4734:11 4735:18 4737:3 4763:21 4766:19 4768:11 4769:5 4777:3 4778:1,9 4779:14 4780:12 4786:10	due 4723:22 4728:20 4739:11 4761:12 4764:24 4767:19 4788:11 4789:7	engage 4786:1	event 4784:5	
	duly 4739:23	engaged 4758:21 4759:20 4777:6 4781:25 4785:24	eventually 4762:3	
		engagement 4758:21 4759:20 4777:6 4781:25 4785:24	everyone's 4740:6	
		evidence 4749:8,10,12,22, 24 4756:13		

4786:13	18	Firstly 4779:12	general 4725:1, 3 4736:10 4741:9	Halsall's 4767:16,25
expertise 4759:19 4767:8 4768:17 4784:14, 17	familiarizing 4745:13	fix 4764:19	generally 4741:11 4748:23 4758:1 4781:13 4782:24 4784:3 4790:2 4792:19	hand 4743:5
explain 4788:4	fast 4754:19	floor 4749:17 4752:13,17 4790:1	generic 4741:19	handle 4785:1
explanation 4757:13	fax 4738:18 4741:4 4743:7 4744:2,3,6,8 4762:22 4763:14 4765:12,21 4794:8 4795:1	flow 4731:14,24	give 4722:7 4733:15 4741:20 4772:14 4793:3	handwriting 4728:4
express 4758:12	faxes 4773:6	focus 4724:25 4767:22	giving 4756:3 4779:17	handwritten 4728:2 4770:20
expressed 4758:20 4760:5	feedback 4758:17	follow 4739:13 4747:4 4773:22 4786:16	good 4721:4,12, 13,16,17 4742:5 4746:23 4771:2 4781:7 4787:5 4791:22	happen 4735:7
expressing 4783:17	felt 4765:1	follow-up 4772:23	government 4752:10	happening 4770:12
expression 4757:10,11,24	field 4726:8,12 4739:20 4741:3 4753:5 4754:20	forensic 4796:5	graduate 4721:24	happy 4729:23
extensive 4728:20	figuring 4742:21	forget 4753:16	graduated 4721:25 4722:10, 15	hazardous 4742:3
extent 4760:14 4790:12	file 4740:25 4763:2	form 4774:12	graduation 4722:9,14	head 4736:13
<hr/> F <hr/>	files 4733:16	forms 4782:5,11	green 4749:24	heading 4759:23
facetious 4796:25	final 4732:14 4762:10 4764:18 4765:14 4766:10 4782:20	forward 4721:7 4754:19 4761:9 4763:24 4773:25 4774:9	Greg 4779:10	hear 4724:19
facilitate 4723:25 4730:13	finalized 4739:12	forwarded 4739:11	groups 4787:10	heard 4749:12 4757:10 4781:15 4782:17 4794:25
facilitated 4736:12	finalizing 4789:18	forwarding 4739:22	Guertin 4728:14 4738:18 4744:11 4747:4 4753:18 4754:2 4774:3,6, 11,25 4794:9	hearing 4729:17
facilities 4752:6 4787:19	finally 4744:24 4774:19,20	frank 4732:24 4733:12	guess 4742:9 4757:23	helpful 4741:20
facility 4723:22 4724:2 4730:12, 20 4733:3 4754:5 4787:20 4792:23	find 4724:2 4763:12 4765:20 4766:4	friend 4771:7 4774:19	guys 4775:15	helps 4792:4
fact 4733:24 4734:5 4750:4 4761:3 4777:21 4786:18 4797:25	findings 4734:5	front 4741:12	<hr/> H <hr/>	high 4755:4 4756:3 4757:10, 18,24
fair 4792:14	fine 4770:16	full 4733:18 4796:24	Halsall 4736:21, 23 4737:5 4738:10 4755:9 4759:22 4766:20 4767:7 4768:22 4769:2,6	highly 4752:4
fairly 4777:8	finish 4729:14	fully 4740:4		hire 4786:23
familiar 4750:16 4757:12 4788:2 4793:13,14	finishes 4725:14 4754:10 4755:7 4756:5	fundamentally 4783:21		historically 4741:2 4758:24
familiarize 4727:2 4754:12,	fire 4740:23 4741:25	future 4783:20		history 4722:8 4725:2
	firm 4722:12,14, 19 4750:11 4779:15,16	<hr/> G <hr/>		holdbacks 4788:11
		Gaming 4752:2		Honour 4770:8
		gave 4727:21 4748:7,20 4761:5 4791:9,23		hoping 4740:22
				hotel 4730:12 4731:10 4735:20 4754:8 4776:16, 19 4777:9,18,22 4778:8,18

hotel/retail 4775:11 4776:2	including 4769:12 4778:5 4795:9	initials 4737:6 4771:17	4788:20	Jeff 4738:10
hotels 4787:19	incorrect 4795:11,13	initiated 4766:19 4768:2	interested 4778:4	job 4786:9
hour 4755:19	incorrectly 4731:7	input 4759:14	interior 4755:6	Joe 4779:8
hours 4755:15	increase 4777:23	inquiries 4797:17	internal 4768:17	July 4728:7 4737:14 4743:19 4753:10,12,24 4754:2 4780:14
Hunter 4738:10	incumbent 4765:2	inquiry 4748:6 4749:13 4787:11	internally 4737:25 4768:11	
I	incur 4783:20	inside 4761:19	interpreters 4729:20	K
idea 4779:18	independent 4793:24	inspected 4726:4	intervention 4768:24	Kearns 4770:10, 11,16,21,25 4771:1,3 4773:14
Ideally 4740:2	indexes 4746:5	inspection 4741:5,22 4755:11,23 4757:11,18 4760:13,16 4761:1 4769:14 4790:9 4795:8,19	investigating 4734:6	Ken 4736:7
ideas 4754:7	indicating 4773:22	inspections 4765:2	investigation 4734:21 4740:18 4791:24	Kennealy 4728:15
identical 4765:19	indication 4740:16	inspector 4726:4	investigations 4742:2,3 4756:6	kick 4788:13
identified 4749:23 4792:21	infiltration 4792:24 4796:23	installation 4778:5	investigative 4761:13	kind 4725:7 4733:12 4741:10, 19 4751:24 4754:14 4757:2 4767:14 4769:13
impact 4761:8 4785:13	information 4730:1,18 4732:24 4733:7, 12,13,16 4734:15 4736:2 4738:4 4739:10 4740:14 4741:10,12,19 4742:5,11 4743:1 4744:17 4749:14 4750:8,21 4752:7, 16 4764:24 4765:1 4768:16 4771:21,25 4772:5,9,15,23 4773:7,24 4774:9 4775:1 4776:8,9 4779:15 4780:3 4786:15,18,19	installed 4790:4	involved 4722:22 4723:1,4 4726:1 4752:25 4766:21 4769:13 4776:12 4780:20 4784:6 4786:7,10 4787:15	kindly 4739:13 4744:18
impacting 4724:4	initial 4726:17 4727:6 4734:15 4750:24 4753:6 4764:8,15 4772:19 4780:13 4795:8	instructed 4733:6	involvement 4726:3 4794:4	kinds 4778:7
implement 4791:17	initially 4745:16 4758:21 4759:3 4772:7,8 4795:17	insulation 4741:24	issues 4743:16 4760:21 4768:25 4784:22 4790:8, 25 4795:15	knew 4737:1
implications 4760:17 4786:14 4791:4		integral 4790:10,15	issue 4743:16 4760:21 4768:25 4784:22 4790:8, 25 4795:15	knowledge 4750:7,12 4752:17 4757:2 4769:21 4776:10 4780:24 4786:13 4794:24
impression 4734:19,20 4746:21 4756:11		integrity 4760:7, 18,22,23 4761:7, 21 4790:5 4791:14 4793:21	issues 4728:17 4730:3 4731:6 4776:14	Kuka 4751:15 4773:13 4775:7
impressions 4758:2		intended 4758:1 4764:4 4788:8,18 4792:9	involved 4722:22 4723:1,4 4726:1 4752:25 4766:21 4769:13 4776:12 4780:20 4784:6 4786:7,10 4787:15	
improve 4725:11		intending 4724:1 4754:25 4793:20	item 4728:17 4730:5 4732:4,21 4733:20 4734:25 4765:14 4771:15	L
improvement 4729:11		intent 4755:4 4776:23	items 4792:21 4793:3,4,6	ladders 4736:12
improvements 4724:1 4725:10 4778:3		interest 4736:5 4740:6 4784:19	J	Lake 4725:9 4726:25 4728:15 4730:10 4733:8 4734:23 4735:9 4745:7 4753:15, 17 4758:18 4772:21 4776:4,9 4791:23 4797:10, 18
in-chief 4770:7			January 4722:6	
incident 4779:11				
include 4742:13, 16 4764:6				
included 4725:17 4746:7				

land 4745:15 4754:13	4732:18 4733:6 4739:8 4772:13	4797:9	4776:17,21 4777:10,18 4778:3,6 4780:5 4791:17 4796:6, 11	4753:10 4770:19 4771:9,23 4775:6 4776:24 4777:1, 14 4778:2,16 4780:14
large-scale 4729:11	licensed 4722:1,5	M		
Larry 4732:18 4733:6 4739:8	lien 4788:10,11	M.R. 4779:10	manage 4774:13 4785:9	meetings 4727:4 4737:18
lateral 4767:24	lights 4778:5	M/e 4736:18	management 4727:1 4773:23	membrane 4767:3 4790:11, 16,17 4791:1,2,8
lawyer 4771:4	lines 4775:11	Macrae 4778:22 4781:5,6,8 4787:12 4795:22 4796:2 4797:4	manager 4732:18 4772:4	memorandum 4754:15 4765:13
lawyers 4762:14 4787:9	list 4766:8	macroscopic 4757:14	mandate 4764:23 4792:21	memory 4731:3 4789:24
lay 4745:15 4754:13	Listed 4766:15	made 4734:22 4755:21 4773:4 4783:18 4784:25 4785:12	manner 4773:1, 25	mention 4795:6, 14
layer 4790:3,13	live 4761:25	magnitude 4782:13 4792:9	marine 4796:11, 14	mentioned 4734:12 4742:19 4763:24
layman's 4764:11	living 4723:18 4725:9 4726:25 4727:5,7 4728:16 4730:10 4731:9 4733:8 4734:23 4735:1,9,14 4753:16,18 4758:19 4771:4 4772:22 4776:4, 15,19 4777:8,11, 17 4778:4 4779:14 4780:13 4791:23 4794:9	main 4728:19	marketing 4725:12 4730:13	message 4744:13 4773:18, 20,22
lead 4769:3 4785:9,18,21 4791:12	living 4723:18 4725:9 4726:25 4727:5,7 4728:16 4730:10 4731:9 4733:8 4734:23 4735:1,9,14 4753:16,18 4758:19 4771:4 4772:22 4776:4, 15,19 4777:8,11, 17 4778:4 4779:14 4780:13 4791:23 4794:9	maintained 4795:10	material 4742:3	met 4753:16 4779:8 4784:20
leads 4784:23	LKM 4738:11	maintenance 4724:3 4728:20 4729:4 4745:19 4753:23 4758:18 4790:8,16,20,25 4795:15	materials 4749:4	met already 4781:7
leak 4748:22	loadings 4761:25	major 4779:22 4788:18	matter 4739:15 4780:20 4789:5	methods 4797:22
leakage 4729:13	lobby 4754:8	make 4729:2 4736:16 4741:9 4747:4 4755:18 4761:13 4765:3 4766:8,23 4774:24 4783:11 4786:7 4789:10 4791:22 4792:23 4797:17	meant 4733:11 4757:13	Michael 4721:5, 14
leaking 4757:1 4764:17 4779:24	located 4790:1	major 4779:22 4788:18	mechanical 4725:5 4735:22 4736:18 4738:13 4739:5 4740:21 4742:19	microscopic 4757:14
leaks 4749:8,10, 22,24	long 4728:20 4729:1 4745:10 4755:12	make 4729:2 4736:16 4741:9 4747:4 4755:18 4761:13 4765:3 4766:8,23 4774:24 4783:11 4786:7 4789:10 4791:22 4792:23 4797:17	mechanical- electrical 4755:8	mid-august 4738:25
leave 4743:16	long-term 4731:13,22	major 4779:22 4788:18	mechanical/ electrical 4736:19	Mike 4737:3 4766:20
led 4762:3,9 4767:4	looked 4746:5 4761:19	major 4779:22 4788:18	mechanisms 4788:12	mind 4729:16,18 4795:2
left 4722:17 4762:6 4768:15 4769:25 4782:24 4783:10	lot 4774:5 4778:1 4782:6	major 4779:22 4788:18	meet 4726:24 4771:4	minds 4780:8
legal 4783:24	Lottery 4752:1	major 4779:22 4788:18	meeting 4727:6, 10 4728:7 4730:22 4732:19 4734:16 4736:22 4737:11,15 4743:14 4750:24	minute 4793:12
legislation 4789:6	loud 4746:19	major 4779:22 4788:18	minutes 4770:15	misconstrued 4796:25
Leistner 4794:8	Luciw 4721:5,7, 9,14,16 4725:20 4728:5 4738:18 4750:5 4751:18 4762:25 4763:14 4770:4,22,24 4771:3 4787:8	major 4779:22 4788:18	missing 4746:4, 9,12,13 4747:5	
letter 4783:17				
level 4725:7 4755:5,10 4756:3 4757:10,18,24 4788:16				
liability 4783:20				
Liautaud				

mixed-use 4787:20	4744:10 4751:2 4753:3,14 4759:5 4773:6 4775:17 4777:13 4794:16	observed 4792:22	option 4780:18	paragraph 4759:25 4775:10 4789:22,24 4790:22 4795:7
ML 4737:9 4771:16	Nicholls' 4777:7	obtaining 4782:20 4784:4	options 4723:24 4724:15 4732:5 4761:6 4791:9	paragraphs 4793:16
MO 4737:6	nondisclosure 4727:17,22 4734:9,14 4739:23 4750:14, 15,20 4751:19 4797:14,21	obvious 4768:14,15	orchestrate 4785:9	parcel 4778:8
moisture 4756:23 4764:10	NORR 4796:5	occasion 4751:7,22	order 4723:23 4738:4 4755:15 4771:24 4777:23 4782:15 4792:9, 22 4793:18	parking 4725:17 4728:19,23 4729:3 4730:1 4732:9 4735:22 4740:19 4747:12 4755:7 4756:9 4757:1 4759:23 4760:3 4764:1 4779:24 4784:15 4789:25 4790:19 4793:8 4795:6,9, 19
moment 4770:17 4795:2	note 4739:22 4740:13 4743:19 4760:4 4773:15	occupancy 4788:7	organize 4738:2 4762:15	part 4724:20 4725:10 4729:8 4730:9,11,16 4731:2 4745:19 4752:11 4759:2, 10 4761:1 4762:7 4764:22 4776:4 4778:8 4791:24
monetary 4788:8	NOTR 4796:5	occupied 4723:10	original 4740:11 4747:14 4781:12	participating 4787:10
money 4731:17, 25	notes 4728:2 4731:5 4734:25 4736:17 4737:16 4770:19,20 4771:10 4775:6 4777:7,14,16,20	occurred 4779:11	originally 4722:4	particulars 4746:3
month 4722:13	notion 4725:8	occurs 4796:13	outlined 4779:19	partner 4722:20 4723:13 4726:10
morning 4721:3,4,12,13, 16,17 4771:3 4778:23 4779:1 4781:7 4787:5	notwithstanding 4761:2	October 4762:25 4763:13 4765:12	outset 4722:22	partnership 4722:17
motels 4787:19	November 4722:24 4752:23 4765:24 4770:1	office 4722:20 4725:24 4738:1 4739:11 4745:6 4752:12 4769:3 4774:10 4784:15 4788:25	outstanding 4724:3	passage 4744:22
move 4773:25	number 4724:11 4725:3,22,24 4730:5 4751:12 4758:20 4771:15 4783:16 4788:12 4794:13 4796:21	offices 4723:22	overarching 4778:9	patched 4756:12
moving 4761:9 4763:24	N	OLG 4752:1,8	overlooked 4791:12	patching 4756:15
mush 4764:12	nature 4741:24 4784:16	ongoing 4729:3, 13 4764:17 4795:15	overview 4729:8 4758:2 4759:13,15	Paul 4797:9
	necessarily 4730:16 4784:12	Ontario 4722:2 4752:1 4782:4	owned 4723:15	pay 4780:7
	needed 4772:1	opening 4791:19	owner 4734:11, 13 4738:4 4741:13 4772:25 4781:23 4782:1, 15,18,19,24 4783:11,14 4784:2 4785:12, 25 4789:3	payable 4788:12
	negotiations 4734:4	operate 4731:11 4776:17 4777:10		paying 4780:9
	neophyte 4757:25	operating 4742:24	P	penetrating 4756:23 4764:10
Nice 4771:4	NYB 4723:11 4738:8,9 4750:19 4753:1 4754:22 4765:23	operating 4742:24		
Nicholl's 4771:10	O	opinion 4741:1 4756:4 4766:6 4774:8,17		
Nicholls 4721:6 4722:12,14,19,22 4723:12 4726:9, 14 4728:6,12 4737:22,23 4743:7,20	OAA 4782:1,3	opinions 4774:12		
	objections 4796:3	opportunity 4739:17 4796:6		
	obligation 4789:5	opposed 4733:12	package 4747:22	
	observations 4755:18,21 4758:8,9		pages 4793:2	
			paper 4762:15	

people 4726:7 4753:15 4767:8 4776:11 4779:14 4786:21	4752:14,17 4774:18,20	prepurchase 4724:8 4791:24	proceed 4743:13 4770:9 4778:24 4782:15 4784:1 4791:18	proposing 4765:4
perfect 4746:22 4762:23 4763:2	point 4728:24 4736:25 4760:20 4761:17 4772:20 4783:25 4788:6 4792:2 4794:13	prereview 4747:1	process 4723:20 4752:15 4755:17 4768:18 4784:6 4785:2 4786:5	provide 4736:1 4755:5 4758:2 4760:12 4776:8 4777:6 4781:17 4783:24 4792:9
perform 4764:4	pointed 4747:9	presence 4790:10	profession 4742:24	provided 4760:3 4786:18
performance 4788:1,13,23	portion 4730:15, 20 4766:5	present 4727:9 4728:10,12,13 4775:20,24 4794:14	program 4745:19 4790:20	providing 4738:23
period 4749:11	portions 4756:15	presentation 4777:24	programs 4729:5	public 4734:22 4752:17
permitted 4795:23	position 4739:19 4742:9 4774:16	presented 4793:23	progress 4785:13	publication 4752:6
person 4727:11 4733:7,9 4735:16, 17,24 4737:1 4759:6 4771:24 4772:7 4781:22	possession 4750:9	presite 4738:5	project 4724:23, 24 4737:5 4751:24 4752:9 4769:3 4774:1,13 4776:12 4782:2, 12,13 4783:10,19 4784:20 4785:11, 13,17 4786:3 4788:7,14,21	pull 4794:23
personally 4796:17	Possibly 4744:7	pretty 4742:24	pulling 4757:21 4768:9	purchase 4723:24 4724:4 4725:11 4734:4 4761:9 4776:23 4778:10 4782:15 4791:17
Personnel 4732:17	potential 4778:10	previous 4740:18	projects 4726:6 4751:23 4752:2, 11 4787:22	purchasing 4723:21 4764:25
persons 4723:10 4784:12	potentially 4723:21	previously 4757:12	promised 4772:15	purely 4788:16
perspective 4759:14 4788:10	practice 4751:5, 19, 4787:21	price 4780:6	prompt 4772:24	purpose 4724:14 4734:17 4765:7
pertinent 4739:10 4740:14 4741:18 4742:25 4744:16 4747:25 4748:16 4771:25	pre-existing 4742:14,16	primarily 4776:20	prompted 4768:20	purposes 4723:8 4757:15 4779:16 4780:4 4781:8
Petryna 4738:10	predecessor 4722:12	primary 4759:7	properly 4774:13	pursue 4722:17 4731:14,24
phase 4755:17 4768:4	precast 4749:3 4764:9 4790:4	prime 4781:16, 18,21 4785:20,23 4786:22 4789:4	Properties 4723:15 4731:10 4735:11,25 4750:21 4783:4	pursuing 4778:4
picture 4725:16	precise 4796:22	principal 4726:10	property 4726:5 4731:13,22	purview 4730:17
piece 4730:17	predicated 4724:16,21	prior 4726:24 4733:16 4740:8 4742:2 4753:6,9 4754:12 4764:4 4767:2 4769:15 4789:1,17 4792:3	proposal 4752:15 4782:14	pushing 4745:20
pink 4749:25	preliminary 4739:6 4792:7,8, 13,14	pristine 4761:19	propose 4769:7	put 4762:16 4768:8 4782:22 4791:7
place 4756:14	preparation 4739:2 4794:5	problem 4728:20 4729:21 4746:19 4761:4 4773:8 4774:6,7	proposed 4761:15 4764:14, 20 4783:21	
places 4736:1,3	prepare 4741:14	problematic 4729:14		
plan 4729:11 4776:5	prepared 4759:3 4785:14 4794:20	problems 4756:4		
planned 4745:16	preparing 4776:5	procedure 4742:25		
planning 4752:5				
plans 4747:11				

<p style="text-align: center;">Q</p> <hr/> <p>qualifications 4721:19 4784:13</p> <p>qualified 4784:17 4789:10</p> <p>quality 4786:5</p> <p>question 4751:18 4783:2, 13, 4784:23 4795:24 4796:13</p> <p>questions 4770:3 4778:20 4779:12 4781:13 4787:2,13,24 4795:21</p> <p>quickly 4770:13</p> <p>quiet 4733:23</p> <p>Quinn 4728:14</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raise 4750:24 4796:12</p> <p>range 4724:15 4787:22</p> <p>ranging 4755:6</p> <p>rapidly 4743:15</p> <p>rare 4752:19</p> <p>reaction 4758:12</p> <p>read 4728:18 4731:15 4732:22 4733:21 4736:15 4743:10 4748:19 4775:16 4789:18, 23 4793:12 4795:2</p> <p>reading 4731:7</p> <p>reads 4731:21 4795:7</p> <p>ready 4770:13 4788:7,17</p> <p>reason 4796:12, 18</p>	<p>recall 4727:3 4731:1 4732:6,15, 16 4735:8,13,15 4736:8 4737:16 4745:5 4746:3 4747:22 4753:25 4754:1 4763:17 4769:25 4772:2,6, 10,16 4773:2,3 4774:21</p> <p>receive 4745:1, 23 4748:2</p> <p>received 4730:1 4743:11 4744:13, 15 4745:4,6,9 4748:1 4773:18</p> <p>recently 4790:18</p> <p>reception 4730:14 4735:21 4754:8</p> <p>recollection 4728:25 4773:19 4776:1,18</p> <p>recommend 4729:9 4766:24</p> <p>recommendati on 4761:5 4762:4 4764:18 4791:7</p> <p>recommendati ons 4760:5,12 4761:2 4766:9 4767:5,16 4768:1 4791:19</p> <p>recommended 4782:5 4791:16</p> <p>recommending 4763:25 4768:12 4769:13 4783:15</p> <p>record 4759:12 4781:8 4789:23</p> <p>records 4771:12</p> <p>refer 4740:14 4759:24 4765:9 4771:14 4786:4</p> <p>reference 4730:4 4735:5 4763:8 4765:14</p>	<p>referenced 4746:6 4769:1</p> <p>references 4746:10</p> <p>referring 4728:8 4740:15 4741:21 4748:6 4760:1 4769:22 4783:3</p> <p>reffing 4727:16</p> <p>reflect 4777:16</p> <p>reflected 4737:16</p> <p>refresh 4789:24</p> <p>rehabilitation 4767:8</p> <p>related 4740:23</p> <p>relationship 4785:8 4786:2</p> <p>release 4732:14 4752:12,16</p> <p>released 4734:22 4752:14</p> <p>reliability 4784:8</p> <p>relying 4759:18 4780:3</p> <p>remedial 4742:8 4793:24</p> <p>remediation 4792:3</p> <p>remember 4736:6,7 4772:1 4773:11</p> <p>renovating 4754:8</p> <p>renovations 4730:13,19</p> <p>repair 4729:2,5 4756:18,19 4767:2 4790:18, 20</p> <p>repaired 4756:13</p> <p>repairing 4781:1</p>	<p>repairs 4731:19, 25 4793:8,24</p> <p>replace 4761:3</p> <p>report 4722:23 4723:1,9,23 4730:8 4732:15 4738:1,23 4739:12 4744:14 4745:21 4747:10 4749:9 4752:23, 25 4754:15 4759:1,2,11,12,17 4760:1 4761:11 4762:4,9,11 4763:1,4,9,15,17 4765:12,15,24 4766:10,13,14 4767:12 4768:19 4769:1,20 4772:13 4777:6 4778:5 4780:15 4781:14 4789:13, 18 4790:23 4791:9 4793:11 4794:20 4795:17 4796:4,5,7,10</p> <p>reported 4748:24</p> <p>reporting 4754:15</p> <p>reports 4739:10 4740:14,23 4741:18,25 4742:14,17,25 4744:17,25 4745:1 4747:25 4748:2,3,5,13,15, 24,25 4750:8 4759:16 4768:10 4770:17 4789:19</p> <p>represent 4781:9</p> <p>representation 4735:11</p> <p>representative 4735:2 4736:24 4754:22</p> <p>represented 4735:9</p> <p>representing 4770:25</p>	<p>request 4741:9 4742:25 4763:16 4765:2</p> <p>requested 4751:6 4763:16</p> <p>requests 4774:24</p> <p>require 4739:3 4775:20,24 4793:6</p> <p>required 4723:25 4724:22 4750:19 4772:25</p> <p>requirements 4792:23</p> <p>requires 4784:25</p> <p>reroofing 4764:1,4</p> <p>reservations 4758:22 4783:17</p> <p>respect 4740:20 4776:9 4781:14, 15,19 4782:21 4784:4 4786:19 4795:24 4797:18</p> <p>response 4743:22</p> <p>responsibility 4782:20 4784:4,7 4786:24</p> <p>responsible 4769:4 4772:8 4782:19,25</p> <p>rest 4731:15 4752:7</p> <p>restraints 4767:24</p> <p>restrictions 4761:25</p> <p>result 4758:7 4768:21 4779:13</p> <p>results 4733:22 4734:21 4760:15</p> <p>resuming 4779:3</p>
--	--	---	--	--

retail 4735:21 4776:9 4787:18	revisions 4785:11 4786:19	4736:16 4743:14 4775:10	4754:5 4794:3	4764:9 4767:24 4790:4
retained 4779:16	rewaterproofed 4765:5	scheduled 4745:6	shown 4749:23, 25	slow 4729:22
retainer 4723:9 4725:21	Rhona 4728:14 4736:22 4737:11 4738:18,22 4753:18 4772:24 4773:7	scope 4724:18, 22 4782:13 4786:11 4792:20	shows 4727:22	Snow 4736:7
retirement 4723:18 4725:9 4726:25 4727:5,7 4728:15 4730:10 4731:9 4733:8 4734:23 4735:1,9, 14 4753:16,17 4758:19 4771:4 4772:22 4776:4, 15,19 4777:8,11, 17 4778:3 4779:14 4780:13 4791:23 4794:9	Richard 4728:14,15	sealants 4790:12	side 4755:20	soffit 4748:23 4749:8
retrofit 4779:23	Rob 4781:8	sealed 4788:22	sign 4751:22 4752:3,11 4797:13	soffits 4761:20
returned 4722:14,18	Robert 4794:8	section 4766:14 4789:17 4790:23 4792:6,25 4793:12	signed 4734:14 4751:1 4788:22 4797:16	solution 4761:5, 15 4791:7
reveal 4748:22 4750:21	role 4752:24 4754:21 4766:18 4785:22 4787:13	send 4783:17	significant 4725:10 4734:3 4750:4 4760:17 4761:8 4784:18 4791:4,21 4792:2	solutions 4729:10 4761:6 4764:13
review 4725:1, 14 4726:21 4727:1 4733:3,5 4734:2 4736:22 4737:11 4738:5, 24 4739:6,18 4740:6 4741:3,13 4745:11 4752:14 4753:1,4,5 4754:4,9,12,14,20 4755:2,5,10,13 4756:7 4758:4 4760:2 4768:14 4789:11 4790:8 4796:6 4797:23	rolling 4752:3	sending 4774:22	signing 4789:1 4797:13,21	solve 4761:4
reviewed 4774:24 4796:8	roof 4729:3 4732:8 4741:22 4748:23 4756:14 4757:1 4758:12 4761:3,19 4765:4 4767:3 4778:6 4779:24 4780:17 4781:2 4790:24 4791:8,20 4795:6	sense 4774:6	Simco 4721:10, 13 4770:6,8,24	sort 4755:17 4779:19
reviewing 4746:24 4757:21	roofing 4755:7 4782:21 4783:9 4784:5,9	sensitive 4752:2	similar 4787:22	sound 4761:14 4777:10 4795:9, 20
reviews 4739:21	rooftop 4789:25	September 4726:18,20 4741:5 4745:8,9 4753:8 4754:20 4756:1 4761:18 4763:3 4775:13, 20,24	simple 4785:16	sounding 4757:20
revised 4763:15, 16,19 4765:12 4766:4	<hr/> S <hr/>	series 4762:8	sir 4721:8,12 4729:16	spaces 4735:21 4736:11 4754:6
revision 4786:10,12,14	salt 4732:8,11	set 4759:13 4788:10 4793:3	site 4726:15,16, 22,23,24 4727:8 4733:4,17 4735:5, 10,12 4737:19,24 4738:3 4739:1,20 4740:3,8 4741:6, 17 4742:4,10 4745:17 4752:25 4753:1,4,6,7 4754:11,13,15,18, 23 4755:1 4758:17 4763:4, 23 4772:3,18,19 4788:24 4789:1, 11 4792:22 4796:14,16	speak 4793:23
	salt-laden 4764:10	sets 4746:7	situation 4789:2	specific 4767:5, 8 4768:3 4784:13
	sand 4732:5,11	severely 4756:12	situations 4785:25	specifically 4740:18 4741:8 4772:2 4787:20
	satisfactorily 4764:13	shares 4762:17	skills 4784:13	specifics 4768:22 4773:3
	satisfactory 4791:25	sheet 4762:21, 22	sky 4778:5	speculating 4746:12
	satisfy 4764:16	sheets 4746:6	slabs 4749:3 4760:8,18 4761:7	spend 4724:16 4745:13
	Saunders 4779:10	shop 4747:21		spent 4722:10, 16 4731:17,25
	schedule 4730:5,7,22	shopping 4787:18		spoke 4795:25
		shortly 4739:24		sprinkler 4740:24
		show 4736:4,11 4749:16 4794:1		spruce 4777:22
		showing 4740:8		staff 4733:23 4753:15,23 4758:18 4790:16

stage 4752:15	4791:13,14,20	suggesting 4793:17 4794:4	4743:24 4750:13	4758:14 4763:22
staining 4761:20	4793:22,25 4795:19 4796:23	suit 4792:23	4751:10 4752:22	4764:11 4767:19
standard 4742:24 4782:1,5, 11	structured 4792:1	suitable 4788:17	4759:10 4762:13 4763:11 4789:14	4768:11,13 4769:10 4774:13 4781:15 4788:6
standing 4781:9	structures 4784:19	suites 4735:21	table 4768:16	testing 4755:23 4757:19 4760:14, 16 4761:13 4767:14,16 4768:5 4793:17
start 4721:18 4739:25 4744:10 4772:11 4791:19	studies 4762:3,4 4763:8 4765:10, 20 4766:15,18 4767:1 4768:13, 21 4769:1,7,10,23 4791:3,16 4793:21	summarize 4758:25	takeover 4730:11	things 4736:4 4741:24 4742:6,7 4745:16 4763:22 4768:12,13 4775:9 4778:7 4783:16 4796:21
state 4756:11 4758:12 4760:21, 24	study 4733:22, 24 4768:14 4769:15 4775:11, 21,25 4776:2	summary 4722:8 4794:15	taking 4727:11 4737:4 4785:18 4795:2	thought 4736:1 4770:13
statement 4733:1 4795:12, 13	subconsultant 4759:19 4786:3, 15	supplied 4748:17	talk 4771:12 4774:2 4775:9 4778:6	throws 4757:24
status 4738:1 4741:25 4742:7 4744:18	subconsultant 4785:8,24 4786:1,17 4788:20	support 4726:7 4764:13	talked 4758:14	time 4722:11 4723:6,13,14 4729:1 4732:19 4743:7 4744:23 4745:13,20 4746:24 4747:5, 24 4748:7 4749:11 4750:5, 10,24 4756:20,22 4758:16 4765:4 4772:12 4778:23 4782:11 4783:25 4788:6 4795:17
steel 4767:23 4769:12	subcontractor 4789:19	supporting 4767:23 4769:11, 14	talking 4754:6 4771:21 4773:8 4777:22	timely 4773:1,25
Stenographer 4729:19	Subject 4796:3	supposed 4775:15	talks 4773:9	times 4746:10
steps 4738:2	submission 4766:6	surface 4732:9 4790:2,12	tasked 4724:13	told 4734:2 4752:24 4756:22, 25 4774:19 4778:11 4797:12
stop 4779:24	subsequent 4776:24,25 4777:2	survey 4749:23, 24 4750:1 4755:18,25 4756:2	team 4726:21 4727:9 4734:14 4735:12 4736:5 4738:3, 4753:7 4755:3 4759:19 4768:11,17 4784:11,20 4785:10,15,19	timing 4773:1,25
strongly 4766:25	substantial 4787:25 4788:13, 23	surveys 4748:23	telephone 4772:17 4773:10, 21	telling 4766:17 4784:2
structural 4739:4 4747:15 4760:6,7,18,22 4761:6,21 4762:1, 5,10 4766:5 4767:22 4769:11 4784:17,22,24 4792:3	substrate 4761:14 4764:2,3, 5	suspect 4745:8 4753:18 4773:21 4783:19 4790:14 4791:13	tells 4750:2	tenant 4758:19
structurally 4795:9,20	success 4774:5	sworn 4721:7,14	tendered 4785:3	term 4722:11,13 4728:20 4757:17 4764:11 4781:21 4786:6 4788:2 4795:25 4796:15, 19
structure 4725:6 4732:10 4747:12 4748:24 4755:8,11 4756:2, 9 4757:1,5 4759:24 4760:3, 24 4764:1,16 4765:3,5 4766:22 4767:2,10 4784:5, 16 4789:25 4790:7,14	Sudbury 4722:18 4737:2	system 4740:23, 24 4741:25 4782:21 4783:9, 15,20 4784:9 4793:19 4795:15	terms 4724:6,17, 22 4729:14 4735:20 4738:1 4745:17 4746:20 4752:5 4754:7 4757:4,17,20	top 4756:10 4776:14
	sufficient 4791:25	systems 4725:5 4740:22,24 4745:15 4754:10 4755:9 4784:14 4788:18		topping 4749:3 4756:15 4790:3, 13
	suggest 4757:16 4781:1 4795:11			torture 4762:18
		T		total 4773:6
		tab 4727:14,21, 22,25 4738:16		tour 4727:12 4735:3,10,19 4736:18,20 4740:17 4753:6,9,

12,17,19 4754:11, 16 4763:4 4772:19 translated 4729:20 trip 4745:7 trouble 4729:17 Trow 4748:2,5, 15,22 4749:13 4750:8 true 4760:9 4789:2 Truman 4795:25 turn 4751:1 4792:5,25 4793:10 turning 4764:12 type 4725:22 4767:15 4791:8 types 4751:23 4784:18 4787:22 typical 4768:9 4786:22 typically 4740:22 4741:9 4751:24 4781:21 4782:6 4784:11 4785:22 4786:7,9, 11,22	4797:11 understanding 4723:16,17 4730:9 4733:19 4739:7 4745:14 4776:22 4780:21 4781:18 4790:5 understood 4730:8 4747:7 4749:6 undertaken 4756:18 undertaking 4724:18,22 4759:20 4767:2 4791:21 4792:20 University 4721:23 unorthodox 4795:22 unreasonable 4757:17 unusual 4797:20 upgrades 4729:15 upgrading 4731:12 4742:1 4776:18 urgency 4739:12 utilize 4768:17 4782:6 utilized 4783:9 utilizing 4783:22	versus 4757:14 vett 4768:18 view 4769:9 4780:18 viewed 4731:12, 21 virtually 4765:19,25 visit 4726:17 4727:10 4735:5 4737:19,24 4738:5 4754:15, 23 4755:19 4757:7 visiting 4788:24 visits 4739:1,3 visual 4749:8 4755:5,10,20 4757:18 4758:4 4761:1 4768:14 4790:9 4795:18 visually 4757:6 4766:23 voice 4746:14 4753:20	warranted 4756:6 water 4756:25 4758:15,23 4792:24 Waterloo 4721:23 waterproofing 4725:6 4740:19 4764:13,19 4790:6,10,15,17, 23,25 4791:2,8 4792:3 4793:19, 22 4795:14 ways 4724:11 4746:1 4777:23 wear 4790:3,13 Wednesday 4721:2 week 4744:9,23 4773:11 4775:17 weeks 4743:21 wetting 4741:24 whatsoever 4778:15 winter 4732:5 withstand 4792:24 witnesses 4749:12 wondering 4771:22 Wood 4781:9 word 4731:18 4737:12 4763:2 4775:22 words 4750:23 4757:13 work 4722:11,13 4726:12 4728:21 4729:6 4742:8 4743:13 4746:20 4755:22 4756:18 4779:19 4782:16 4790:18 4792:11 4797:22	working 4768:9 world 4752:7 Wright 4779:10 write 4775:15 writing 4743:20 4744:11 4775:15
<hr/> Y <hr/>				
Yellowega 4721:6 4722:12, 15,19,23 4794:16 YBA 4743:6 year 4721:24 4748:8 4749:11 years 4722:16 4725:25 4745:20 4756:13 4758:20 4787:21				