

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 25

April 11, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 25 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, 11th 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 EFFENDI, Ms.,
3 DUNCAN AULT, Esq., Commission Counsel
4
5 DOUG ELLIOTT, Esq.,
6 ALEXANDRA CARR, Ms., ELMAC/SAGE
7
8 DOUGLAS KEARNS, Esq., Elliot Lake Retirement
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11 ROBERT MACRAE, Esq., Robert Wood
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13 PAUL CASSAN, Esq., City of Elliot Lake
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[NONE MARKED]

1 --- Upon commencing at 9:00 am. on
2 Thursday, April 11, 2013.

3 THE COMMISSIONER: Morning everybody.

4 MS. EFFENDI: Morning, Mr. Commissioner.

5 THE COMMISSIONER: Just before you
6 start, I take it everyone has been made aware
7 we'll only be sitting until 12:45 today. And that
8 any cross-examination uncompleted of Mr. Quinn,
9 the current witness, will go over to the 16th. I
10 think you put that in your memo had you not?

11 MS. EFFENDI: Yes, the participants have
12 been advised.

13 THE COMMISSIONER: Thank you very much.
14 Go ahead then please.

15 RICHARD QUINN, sworn.

16 EXAMINATION-IN-CHIEF BY MS. EFFENDI.

17 THE COMMISSIONER: Good morning, Mr.
18 Quinn.

19 THE WITNESS: Good morning.

20 MS. EFFENDI: Mr. Commissioner, Mr.
21 Quinn is represented by Mr. Kearns who is sitting
22 on my right.

23 THE COMMISSIONER: Yes.

24 MS. EFFENDI: Before I start I'd like to
25 just for the record to indicate that the exhibits

1 that will be entered during the examination of Mr.
2 Quinn, Mr. Richard Kennealy and Ms. Rhona are
3 Exhibit No. 2143 to Exhibit No. 2323.

4 BY MS. EFFENDI:

5 Q. Mr. Quinn, I would like to start,
6 before we delve into the issues, a bit about your
7 background. I understand that you went for two
8 years to college to study for a Diploma in
9 Electronics Technology?

10 A. That's correct.

11 Q. I understand that following that you
12 went to the military for a few years.

13 A. Yes.

14 Q. And you've also worked for Bell
15 Canada for several years.

16 A. Approximately two.

17 Q. Okay.

18 THE COMMISSIONER: Which branch of the
19 military, sir?

20 THE WITNESS: The Navy.

21 THE COMMISSIONER: That's the right
22 answer.

23 THE WITNESS: We're off to a good start.

24 BY MS. EFFENDI:

25 Q. Absolutely. You subsequently worked

1 in Elliot Lake for the mines for several years, is
2 that correct?

3 A. I left Bell Canada, came to the --
4 yes, came to the mines for approximately a year, a
5 year and a half I think.

6 Q. And I understand that you've also --
7 during that time you also took courses at a number
8 of universities and qualified to teach Technology
9 in high schools, is that correct?

10 A. The position of teaching at the high
11 school came before going back to school.

12 Q. Okay. And so you taught in high
13 school in Elliot Lake in Technology and Guidance?

14 A. Yes.

15 Q. Okay. I understand that in 1990 you
16 were hired by Elliot Lake Retirement Living?

17 A. That's correct.

18 Q. And can you tell us what position --

19 A. 1990 or 1991?

20 Q. 1990-91 then. And what position did
21 you hold at that time?

22 A. I was property manager for
23 Retirement Living.

24 Q. Okay. Can you describe to us
25 generally what were your duties as property

1 manager?

2 A. I would take care of all of the
3 physical assets of the corporation, everything
4 from daily maintenance -- or I oversaw everything
5 from daily maintenance of the buildings, to the
6 custodians, the preparation of move-ins and
7 move-outs, the capital expenses, the improvements
8 to the buildings. If you could physically touch
9 it I took care of it. I ensured its viability.

10 Q. And I understand that Retirement
11 Living owned a number of properties?

12 A. Yes.

13 Q. Can you describe to us, generally
14 we've heard a lot of different things about what
15 Retirement Living is about. You're the first
16 witness we have here that has worked for
17 Retirement Living. Can you describe to us its
18 purpose?

19 A. Elliot Lake Retirement Living was
20 designed or its purpose was to -- initially was to
21 bridge the gap between the mines closing in Elliot
22 Lake and the loss of all of those jobs, and
23 sustaining this community to -- until something
24 new came, until another industry came or until,
25 you know, employment was available in other

1 sectors of the community.

2 It -- and by that we did that by
3 attracting retirees to the community and renting
4 to them and making life more affordable in Elliot
5 Lake than the communities they come from.

6 Q. Thank you. Can you describe to us
7 what is the relationship between Retirement Living
8 and the City of Elliot Lake as you understood it?

9 A. They were totally independent
10 beings, but we had to work together to -- I mean
11 the purpose of Elliot Lake Retirement Living was
12 to sustain the community, was to provide jobs for
13 people who were here, and allow us to live with
14 our families and not have to move. And so the
15 purpose -- or the working relationship between the
16 City and Elliot Lake Retirement Living is more
17 like, in my view, was, you know, let's work
18 together to make this a viable place.

19 Although totally independent of each
20 other, there's, you know, City Council and the
21 Board of Directors for Elliot Lake Retirement
22 Living.

23 Q. And we heard there was two
24 representatives of City Council that sat on the
25 Board of Retirement Living, is that correct?

1 A. Yes.

2 Q. And I understand that you held the
3 position of property manager and worked for
4 Retirement Living until December 2010, is that
5 correct?

6 A. That's correct.

7 Q. And you then went to retire but came
8 out of retirement to work in August of 2011 for
9 the Algoma District Service Administration Board?

10 A. That's correct.

11 Q. Now when you were property manager
12 for Retirement Living, how many people did you
13 supervise?

14 A. Direct supervision?

15 Q. Yes.

16 A. In the office there was three to
17 four of us that did the administration. Three
18 worked for me. And out of the office there was --
19 all of the custodians that I think until probably
20 -- I'm taking a guess, probably 2004 the
21 custodians were contractors and then we brought
22 them in to actually working for Elliot Lake
23 Retirement Living. Those custodians were in the
24 individual buildings taking care of the buildings
25 for us on a daily basis.

1 Q. Okay.

2 A. And then although they didn't work
3 -- they were not employed by Retirement Living
4 there was all of the other contractors and trades
5 people that did work for Retirement Living.

6 Q. So is it fair to say that your team
7 was between three and four people during that time
8 that you worked for Retirement Living.

9 A. The?

10 Q. The direct?

11 A. Yes.

12 Q. And those people assisted you in
13 your job to manage and ensure that all those
14 properties were taken care of?

15 A. That's correct.

16 Q. And were you considered part of
17 management, Mr. Quinn?

18 A. Yes.

19 Q. And who else was part of management
20 at Retirement Living?

21 A. Richard Kennealy is the general
22 manager.

23 Q. Is he the person that you reported
24 to?

25 A. Yes.

1 Q. Rhona Guertin who is the business
2 development and finance person. Marielle Brown
3 who -- Marielle Brown was the market arm.

4 THE COMMISSIONER: The name.

5 THE WITNESS: Marielle. There were
6 others brought in in the last few years as well.
7 Mark Hutchinson was also part of the management
8 team in the last couple of years, three years I
9 think maybe, maybe four.

10 BY MS. EFFENDI:

11 Q. What was the position of Mr.
12 Hutchinson?

13 A. Client services, client liaison.
14 More of a -- I would be considered hardware and he
15 would be considered software. He -- social
16 worker.

17 Q. Okay. I would like now to deal with
18 two issues we've heard throughout this Inquiry.
19 One this retail study and the issue of the
20 purchase of the mall very quickly with you. So
21 first of all, did you personally have any
22 communication or interaction with Algoma Central
23 Properties in relation to the purchase of the
24 mall?

25 A. No.

1 Q. So you weren't involved in that
2 aspect on behalf of Retirement Living?

3 A. No.

4 Q. Did you take part in any way in
5 relation to this retail study that was
6 commissioned by the City of Elliot Lake and that
7 Retirement Living did for the City?

8 A. No.

9 Q. Ms. Kuka, if we could pull please,
10 Exhibit No. 7-2. This is a business plan, Mr.
11 Quinn, that was prepared for the purchase of the
12 Algo Centre Mall. Did you play any role in the
13 preparation or the discussions surrounding the
14 preparation of this business plan?

15 A. No.

16 Q. Now let's take a step back. Before
17 you started working for Retirement Living in 1990
18 or 1991 had you ever visited the mall before?

19 A. Yes.

20 Q. Okay. And can you describe to us
21 what was your impression at the time of the mall?

22 A. It was a mall. What can I -- I'll
23 not sure what you're looking for there? What was
24 my impression of the mall?

25 Q. Yeah, what was your impression? Was

1 it a nice place to visit? Was it pleasant to go
2 there?

3 A. I don't have a lot of -- it was a
4 mall. It was -- it was not -- oh -- I need -- I'm
5 not sure what you want.

6 Q. I just want to know what your sense
7 was about state of the mall. When you walked in
8 what is it that you thought about it?

9 A. I was in mall --

10 Q. And I'm talking about the period
11 prior to you starting to work for Retirement
12 Living?

13 A. Oh prior?

14 Q. Yes.

15 A. In the weeks before.

16 Q. Let's say in the years before when
17 you were in Elliot Lake and you visited the mall.

18 A. I can't think of a word or -- it was
19 a mall. I'm sorry, I'm --

20 Q. Did you look forward to going to the
21 mall?

22 A. No, that's shopping.

23 THE COMMISSIONER: Principally you were
24 going there to shop, sir. You weren't going there
25 to socialize, or conduct business, or anything of

1 that nature.

2 THE WITNESS: No. No, it was either I
3 needed to purchase something or --

4 BY MS. EFFENDI:

5 Q. Would you describe it as a nice
6 place?

7 A. A nice place.

8 Q. A nice place to visit? A nice place
9 to hang out? A nice place to go to shop?

10 A. It was the same as going to the mall
11 in Sudbury, or Sault Ste. Marie, or anywhere else.
12 It's a mall. I'm -- I'm trying to help you here
13 but I'm lost for words.

14 Q. We've heard all different things
15 from different people about their impression when
16 they would go to the mall. Some people said to us
17 that it was a desolate place, it wasn't the
18 prettiest of places, it was dark. Some other
19 people didn't have any impression. So I'm just
20 looking for your impression about it generally.
21 If you're telling me it's a mall, it's a mall then
22 that's fine?

23 A. Okay.

24 Q. Did you see any leaks in the mall
25 when you were there prior to 1990, 1991?

1 A. Yes.

2 Q. Okay. And how far back do you
3 recall seeing these leaks?

4 A. Well I'll answer this way I think.
5 I was at the opening of Shopper's Drug Mart
6 because I was invited the day the mall opened.
7 And at that time I recall part of the mall not
8 being open yet because the other stores came in
9 later, and there was talk then that the place
10 leaked.

11 Q. So that was from the moment it
12 opened in 1980?

13 A. That's correct.

14 Q. Okay. And aside from -- so that
15 portion of the mall that was closed because of the
16 leaks --

17 A. No, I didn't say that.

18 Q. It wasn't open yet.

19 A. It wasn't open yet. Shopper's was
20 one of the first stores to open and a friend of
21 mine just happened to be the owner, the operator
22 and I was invited to the opening. And, you know,
23 everybody was looking forward to the opening of
24 the mall. And everybody thought it was a great
25 place.

1 Q. Do you recall what is that portion
2 of the mall that was not open yet?

3 A. There was not very much open. The
4 section where the -- there used to be a pool
5 there, and a restaurant and where the elevators
6 are, and the shipping and receiving. And there
7 was only a few stores open upstairs.

8 Q. Okay. And do you recall where you
9 noticed the leaks at the mall?

10 A. No.

11 Q. Did you notice leaks at Woolco?

12 A. What period are we talking about?

13 Q. Prior to 1990?

14 A. Prior to 1990.

15 Q. Prior to you working for Retirement
16 Living.

17 A. I didn't pay a lot of attention. I
18 knew there was leaks prior to 1990, yes.

19 Q. Okay. Do you recall seeing any
20 buckets or tarps prior to 1990?

21 A. Not something that would stick in my
22 mind, to.

23 Q. Is it fair to say though that prior
24 to you starting to work for Retirement Living you
25 knew that there were leaks in the mall?

1 A. That's correct.

2 Q. I understand that Retirement Living
3 moved as a tenant into the mall as of 1992-93?

4 A. That's correct.

5 Q. And it moved across from the library
6 and its offices were under the hotel?

7 A. That's correct.

8 Q. I'd like to address with you now a
9 report that we've been discussing a lot at this
10 Inquiry, it's been called the Nicholls Yallowega,
11 Belang r 1998 report.

12 MS. EFFENDI: Ms. Kuka, if you could
13 pull for us please Exhibit No. 874. And if we
14 could go please to page 004.

15 BY MS. EFFENDI:

16 Q. So this, Mr. Quinn, is a letter
17 dated January 30th, 1998 and it's authored, if we
18 go to page 3 it's authored by Mr. Blaine Nicholls
19 who worked for architectural firm Nicholls
20 Yallowega, B langer. And it was sent to Ms.
21 Guertin on January 30th, 1998. If we look at the
22 second paragraph of this letter he says to her --
23 well he starts by saying,

24 "I'm pleased to be able to provide
25 the following proposal for the preparation

1 of a Building Condition Assessment for the
2 Algo Centre Mall in Elliot Lake.

3 My understanding is that the
4 acquisition of the building is being
5 considered and, as part of the larger
6 Phase 1 analysis, you are interested in
7 establishing the condition of the
8 building, any major deficiencies and the
9 potential costs for repairs."

10 Were you involved, sir, in the
11 discussions surrounding the assessment, this
12 initial assessment that was being conducted of the
13 mall?

14 A. No.

15 Q. Were you involved in any
16 communications with Nicholls Yallowega Bélanger?

17 A. No.

18 Q. And this is not a trick question,
19 the reason I ask you this is --

20 MS. EFFENDI: If we can go, Ms. Kuka, to
21 Exhibit No. 69, and more specifically to page 101.

22 BY MS. EFFENDI:

23 Q. These notes, Mr. Quinn, we were told
24 yesterday that these notes are notes from Mr.
25 Nicholls, the author of the letter we just looked

1 at. And you'll see at the top it says, "BN Blair
2 Nicholls notes from meeting." The file, and "July
3 23rd, 1998." And it appears to be notes he took
4 at a meeting where the individual present at the
5 meeting were BN Blair Nicholls, ML Michael Luciw.
6 And it says, "Rhona, Richard Quinn and Richard
7 Kennealy."

8 When we look at these notes you will see
9 at number 2, "Issues" he indicated, "parking deck
10 appears to be main problem due to extensive
11 long-term maintenance work."

12 Do you recall being present at that
13 meeting with these individuals?

14 A. No, I don't.

15 Q. Okay. So you wouldn't have had any
16 involvement in relation to the proposal Nicholls
17 Yallowega did for Retirement Living in terms of
18 discussing the proposal and the work they would do
19 for that first assessment?

20 A. No.

21 Q. Were you consulted by Ms. Guertin or
22 Mr. Kennealy regarding that work that was going to
23 be conducted by Nicholls Yallowega, Bélanger?

24 A. Not that I recall.

25 Q. Do you have any idea why Retirement

1 Living would have approached the architectural
2 firm of Nicholls Yallowega Bélanger to do that
3 assessment?

4 A. You want to know why they would
5 approach --

6 Q. Yes.

7 A. If they had intentions of buying the
8 mall they would want their opinion, a professional
9 opinion.

10 Q. And had Nicholls Yallowega Bélanger
11 done work for Retirement Living before?

12 A. Not that I know of.

13 Q. So there was no prior relationship
14 with that architectural firm?

15 A. Not that I know of.

16 Q. If we could go, Ms. Kuka, to Exhibit
17 No. 390. This, Mr. Quinn is the Nondisclosure
18 Agreement that was entered between Algoma Central
19 Properties and not-for-profit Retirement Residence
20 of Elliot Lake, Retirement Living. And it was
21 entered on May 12, 1998 approximately. Were you
22 aware of the existence of this Nondisclosure
23 Agreement between the two entities?

24 A. No, I was not.

25 Q. Do you recall signing this

1 Nondisclosure Agreement?

2 A. Me signing?

3 Q. Yes.

4 A. No.

5 MS. EFFENDI: If we could go, Ms. Kuka,
6 to Exhibit No. 463.

7 THE COMMISSIONER: I'm sorry, Ms.
8 Effendi, are you alleging that his signature is on
9 it?

10 MS. EFFENDI: No, I was not. I was just
11 curious and wanted to inquire whether Mr. Quinn
12 had signed it. Because as we can see, Mr.
13 Commissioner, if we go to the last page of that
14 document, Ms. Kuka. This one is signed by Mr.
15 Kennealy. And I believe -- we do have in our
16 possession one signed by Ms. Guertin but not one
17 signed by Mr. Quinn. So I just inquiring as to
18 whether or not he remembers signing one.

19 BY MS. EFFENDI:

20 Q. So on October 1998, Mr. Quinn,
21 Retirement Living received a draft report from
22 Nicholls Yallowega Bélanger following that
23 proposal we looked at a few minutes ago. And that
24 is the draft report in front of us. Do you recall
25 seeing this draft report?

1 A. Vaguely. I'm -- timelines are a
2 little vague in that area. I'm not sure what I
3 saw in the spring and what I saw in the Fall but I
4 don't think so.

5 Q. Okay. Do you recall any discussion
6 with Ms. Guertin or Mr. Kennealy with regard to
7 this draft report that would have been sent in
8 October of 1998?

9 A. I'm not sure if I ever saw the
10 draft. There's another one after this one that I
11 saw, but I'm not sure if I saw the draft. I may
12 have, but I can't say yes or no with any degree of
13 certainty.

14 Q. Okay. So you wouldn't recall any
15 revision or suggestions of revision that would
16 have been given to Nicholls Yallowega Bélanger
17 from you for this draft report in 1998?

18 A. Yeah. I'm trying to be as accurate
19 as I can. And I may have seen this one I may not.
20 And I'm -- I don't -- boy, I wish my memory was
21 better. But it's just --

22 THE COMMISSIONER: That's fine sir, just
23 tell us what you remember and if you don't
24 remember that's fair. It's a long timing ago.

25 THE WITNESS: I may have seen it and I

1 felt -- I'm foggy as to whether I saw the final
2 one or the draft.

3 BY MS. EFFENDI:

4 Q. Let me put it this way. There are
5 two reports we'll be discussing today. You and I
6 this is the first one that people keep referring
7 to as the Nicholls Yallowega Bélanger. And then
8 we'll be looking at another one later that is the
9 1999 Halsall report. So this is the draft of the
10 first report.

11 And the final report --

12 MS. EFFENDI: If we can pull it up, Ms.
13 Kuka. Is Exhibit No. 66.

14 BY MS. EFFENDI:

15 Q. And that's the final report of
16 Nicholls Yallowega Bélanger.

17 And this was given to Retirement Living
18 approximately around November 12, 1998. Again I
19 gather that you're not sure whether or not you've
20 seen this report?

21 A. Can I see more of this one? Can I
22 see page 2 if you don't mind?

23 Q. We'll turn to the next page
24 actually. Let's go to the next page, Ms. Kuka, if
25 we could. Would it be helpful for you, Mr. Quinn?

1 THE COMMISSIONER: Does Mr. Quinn have
2 the brief.

3 MS. EFFENDI: Mr. Quinn declined to have
4 the brief earlier, but if it would be of
5 assistance to him I would be happy to bring the
6 brief up.

7 BY MS. EFFENDI:

8 Q. Would you like to have the paper
9 copy in front of you, Mr. Quinn?

10 A. If you don't mind. I'm okay now.

11 Q. Okay.

12 A. The dust has settled. I have not
13 seen this one.

14 Q. Okay. So just to clarify, was the
15 confusion in your mind with the 1999 Halsall that
16 you would have seen?

17 A. That's correct.

18 Q. Okay. I still would like to ask you
19 a few questions about this one if you don't mind.
20 So if we to page 4 of the report, it's actually
21 .0005. You'll see on this page, Mr. Quinn, at the
22 bottom there were it says "Involvement", it's also
23 right in front of you.

24 A. Okay.

25 Q. It's indicated here,

1 "Input from staff of Elliot Lake
2 Retirement Living has been key to the
3 preparation of this study. An initial
4 visit to the Algo Centre Mall was made by
5 Michael Luciw and Blaine Nicholls of
6 Nicholls Yallowega Bélanger Architects to
7 meet with Elliot Lake Retirement Living.
8 A project briefing by Ms. Rhona Guertin
9 and Mr. Richard Kennealy outlined the
10 basis for the review."

11 Do you recall being present at the
12 meeting in the presence of these two architects?

13 A. No.

14 Q. If we can then turn the page to page
15 6 of the report. You'll see that at the top it's
16 indicated that,

17 "For the initial part of the study,
18 existing construction document information
19 was made available by Mr. Larry Liautaud,
20 Manager of the Algo Centre Mall, for our
21 review. This included the following
22 drawings that were loaned to our office:

- 23 - Architectural Drawings...
24 - Structural Drawing...
25 - Structural Steel Shop...

1 - Electrical Drawings..."

2 Would you have been the one in
3 communication with Mr. Liautaud to obtain these
4 documents, Mr. Quinn?

5 A. No.

6 Q. Do you recall speaking to Mr.
7 Liautaud around that period of time about the
8 mall?

9 A. No.

10 Q. If we go at the bottom of the page,
11 the last line, you'll see it says.

12 "Subsequent to the review of the
13 available construction documents, a tour
14 of the existing complex was conducted on
15 Wednesday, September 17, 1998 but Mr. Ken
16 Snow from the Building Maintenance
17 Department of Algoma Central Properties.
18 Also in attendance were Albert Celli
19 representing the structural engineering
20 firm of Halsall Associates Limited, Greg
21 Petrina and Greg Hunter representing the
22 mechanical and electrical engineering
23 firm, Leipziger Kaminker Mitelman and
24 Partners Inc. Engineers along with Michael
25 Luciw, Architect for Nicholls

1 Yallowega..."

2 Do you recall being present on a tour
3 during that time with Mr. Snow and these
4 individuals?

5 A. No.

6 Q. Do you recall meeting anyone from
7 Nicholls Yallowega Bélanger or Halsall in 1998?

8 A. Not in 1998.

9 Q. Now if we go to page 11 of this
10 report, you'll see that that is a section of the
11 report that addressed the issue of the parking
12 deck structure. And it references a more detailed
13 review of the parking deck structure that is found
14 at Appendix A. So if you keep flipping, Mr.
15 Quinn, and you pass page 32, you'll see that the
16 next page is a bit different and at the bottom it
17 says "Halsall." Do you have that in front of you?

18 A. Yes.

19 Q. So this is the 1998 Halsall Report.
20 Do you recall seeing this report?

21 A. In 1998? No.

22 Q. Okay. Did you see it subsequently?
23 Because again I just want to -- it is not a trick
24 question. There are two reports. 1998 and 1999 I
25 want to see whether or not you were aware of the

1 existence of this report, the 1998 report?

2 A. No. At that time? No, I don't
3 believe I knew anything about it or I hadn't seen
4 it.

5 Q. And in 1999 you became aware of the
6 existence of the 1998 when you started working
7 with the steps leading up to the 1999 report, is
8 that fair?

9 A. I'm not sure. And I don't think I
10 got involved in this process until this spring of
11 1999.

12 Q. Okay. Fair enough.

13 A. You know, what I saw after that, you
14 know, like I may have been introduced to this in
15 the spring. But at the time it was -- when it was
16 first published or put out I did not.

17 Q. Okay. So this report was prepared
18 by Mr. Albert Celli, you'll see his name at 1.3.
19 I gather from what you've told me you wouldn't
20 have met Mr. Celli, is that correct?

21 A. I don't believe I did, no.

22 Q. Okay. If we go to page 2 of the
23 Halsall Report, you'll see in the middle of the
24 page it says --

25 A. The 1998 one.

1 Q. Yes. In the middle of the page it
2 says "Parking Deck Structure".

3 A. Yes.

4 Q. Okay. At the bottom of the page it
5 says, "From the underside of the parking deck --

6 THE COMMISSIONER: Not too fast.

7 BY MS. EFFENDI:

8 Q. "...we observed some corrosion of
9 the structural steel beams and columns,
10 indicating past leaking of the deck. We
11 were unable to review the condition of the
12 underside of the precast concrete slab
13 panels as they were covered with foiled
14 insulation and wire mesh."

15 And if we turn to the next page to the
16 paragraph that starts with, "At this time". Do
17 you see that, Mr. Quinn?

18 A. Yes.

19 Q. "At this time we can note render
20 an opinion as to what the true state of
21 the deck is, nor what long term costs can
22 be expected. However, given the age of
23 the structure, deterioration of the
24 concrete slabs may begin to occur now or
25 in the near future. This could result in

1 significant maintenance costs for the
2 remainder of the building life."

3 Do you recall, Mr. Kennealy or Ms.
4 Guertin informing you of these findings that were
5 made by the structural firm Halsall?

6 A. Not that I recall.

7 Q. Okay. And if we look at the -- just
8 in the middle of this page where it says "Further
9 Studies". You'll see in here that Halsall
10 recommended that further studies be conducted of
11 the parking deck. And they have enumerated here a
12 number of items that they recommended be done. Do
13 you recall speaking to Ms. Guertin or Mr. Kennealy
14 about these additional studies that needed to be
15 conducted?

16 A. This is the 1998?

17 Q. So the 1998 report recommended
18 additional studies to be conducted in the future.
19 Do you recall discussing with the management at
20 Retirement Living these additional studies?

21 A. Not that I recall.

22 Q. Okay. And we'll get to the 1999
23 report in a moment. If we go to page 4, so it's
24 just the next page, you'll see that at the top
25 it's entitled "Waterproofing Protection Systems".

1 And you'll see in here that Halsall basically at
2 that point in time in 1998 made two
3 recommendations. In the first paragraph they
4 recommended, "A rubberized membrane covered with
5 an asphaltic wear course could be installed."
6 Whereas in the second paragraph they alternatively
7 recommended that the, "concrete topping.... and
8 insulation be removed and that a membrane could
9 then be applied with proper detailing."

10 And if we -- in respect of these two
11 options Nicholls Yallowega Bélanger then did a
12 costing. And the costing can be found, if you go
13 back to the Nicholls Yallowega Bélanger to page 26
14 and 27. Actually it's 25, 26 of the report. Do
15 you see at the bottom where it says, Waterproofing
16 Repairs - Option A"?

17 A. On which page, 26?

18 Q. So 25 at the bottom. And I'm
19 looking at the Nicholls Yallowega report that is
20 also on the screen in front of you?

21 A. Yes.

22 Q. And so the outline here are the
23 elements of Option A of putting the waterproofing
24 membrane over the existing topping. If you turn
25 to page 26 it goes on to detail all the elements.

1 And they basically indicate that that option would
2 cost \$606,000 approximately.

3 And then they go on to cost the second
4 option, Option B, which is removing the existing
5 topping and then placing the membrane and that is
6 1.8 million. Do you see these numbers?

7 A. Yes.

8 Q. For the transcript we need to make
9 sure we say yes or no. Do you recall discussing
10 these two options about -- and both of them
11 involving a waterproofing membrane with Mr.
12 Kennealy or Ms. Guertin?

13 A. No, not at that time.

14 Q. Can you tell us, Mr. Quinn, when you
15 first learned that Retirement Living was in the
16 process of buying the mall?

17 A. In the spring of 1999.

18 Q. In the spring of 1999, okay. So we
19 understand there's evidence before the Commission
20 that an Agreement of Purchase and Sale was signed
21 in February of 1999 but the transaction only
22 closed in June of 1999. So you would have been
23 made aware of the purchase in between those two
24 dates?

25 A. Yes.

1 Q. Okay. Is it fair to say that you
2 transitioned into the mall business from the
3 previous work you had been doing before during
4 that period of the spring of 1999?

5 A. Yes.

6 Q. During that transition into the
7 business of the mall, do you recall speaking to
8 anyone from Algoma Central Properties to learn
9 about the mall?

10 A. No.

11 Q. Do you recall speaking to Mr. Larry
12 Liautaud who was the mall manager at the time?

13 A. Not about the property, no.

14 Q. You would have had conversations but
15 not related to the mall?

16 A. Good morning. How you doing.

17 Q. Okay. Do you recall speaking to Mr.
18 Jim Wiley who also worked for Algoma Central
19 Properties and would come down on occasion from
20 Sault Ste. Marie?

21 A. No.

22 Q. So you wouldn't have received any
23 information from Algoma Central properties or
24 documents that they would have given you during
25 that transition?

1 A. No.

2 Q. I'd like to show you several
3 document reports that were commissioned by Algoma
4 Central Properties at the time it owned the mall.
5 And just to ask you whether or not you've ever
6 seen these documents before.

7 MS. EFFENDI: Ms. Kuka, if we could pull
8 please Exhibit No. 35.

9 BY MS. EFFENDI:

10 Q. And the first batch of documents are
11 what we've called here the Trow reports. You'll
12 see them in front of you. And just tell me
13 whether or not you recall ever seeing this. This
14 is a Trow report that was given to Algoma Central
15 Properties in May of 1991. Would you have ever
16 seen this document?

17 A. No.

18 MS. EFFENDI: If we can go to Exhibit
19 No. 44, Ms. Kuka.

20 BY MS. EFFENDI:

21 Q. This report is a report from Trow
22 again dated November 9, 1994. Do you recall ever
23 seeing this document?

24 A. No.

25 Q. If we go to Exhibit No. 46. If we

1 can go to the second page. Perfect. This is
2 again an additional report that was provided by
3 Trow to Algoma Central properties, specifically
4 Mr. Rod Caughill in January 1995. Do you recall
5 seeing this document, sir?

6 A. No.

7 Q. The next one is Exhibit No. 51.
8 This is again November 6, 1995. Would you have
9 seen this report, Mr. Quinn?

10 A. No.

11 Q. Now, we've heard that Algoma Central
12 Properties, during its ownership also hired an
13 engineer by the name of Paul Meyer and he did some
14 work for them. And I'd like to show you some
15 photos and a report that he prepared for them, so
16 you can let us know whether or not you had ever
17 seen these documents before.

18 MS. EFFENDI: So if you could pull
19 Exhibit No. 2181, Ms. Kuka and go to page 45.

20 BY MS. EFFENDI:

21 Q. So I'm going to show you several
22 pictures that were taken by Mr. Meyer when he came
23 to visit the mall. And if you could tell me
24 whether or not you've ever seen these pictures
25 before. So this is one -- and he took over 80

1 photos so I'm not going to show you the 80 photos,
2 I'll show you just a sample of them and you tell
3 me whether or not you've seen them before. Have
4 you ever seen this picture?

5 A. No.

6 MS. EFFENDI: If we could go, Ms. Kuka,
7 to page 49.

8 BY MS. EFFENDI:

9 Q. Yes?

10 A. When you -- you're asking me if I've
11 seen this photo at the time? Like before --
12 because there's a lot of this stuff that I've been
13 exposed to in the last couple of weeks.

14 Q. Let me rephrase. Before Commission
15 Counsel provided you with all these documents had
16 you ever seen these photos before?

17 A. No, not that I recall.

18 MS. EFFENDI: And so this is page 49,
19 Ms. Kuka, that we have in front of us? This is
20 49? Thank you.

21 BY MS. EFFENDI:

22 Q. Do you recall seeing that photo?

23 A. No.

24 Q. What about page 51? Do you recall
25 seeing that photo?

1 A. No.

2 Q. I think it's upside down but still.

3 THE COMMISSIONER: Can you rotate it
4 90-degree left?

5 BY MS. EFFENDI:

6 Q. Yes. It's the -- it's okay, there's
7 another one that is similar and we can take a look
8 at. Page 53. Do you recall seeing that photo?

9 A. No.

10 Q. And finally, page 59.

11 A. No.

12 Q. If we go to Exhibit No. 65. So this
13 Mr. Quinn, we've heard is a report prepared by Mr.
14 Paul Meyer for Algoma Central Properties. And in
15 his report he speaks about different issues among
16 others load on the parking deck, structural steel,
17 precast slab on the parking deck. Do you recall
18 ever seeing this report?

19 A. No.

20 Q. If we can go to Exhibit No. 2173.
21 So this is the Agreement of Purchase and Sale, and
22 let me just pull the exact page here.

23 MS. EFFENDI: If we can go to the page
24 that ends with 81, Ms. Kuka.

25

1 BY MS. EFFENDI:

2 Q. You'll see that this is the
3 Agreement of Purchase and Sale that was entered
4 between Retirement Living and Algoma Central
5 Properties in February 1999. Were you involved in
6 any way in the preparation or the discussions
7 surrounding this agreement?

8 A. No.

9 Q. Now, if we could take a look at just
10 to change topics slightly. There were -- we
11 understand that there was an appraisal report that
12 was conducted, an appraisal that was conduct of
13 the mall commissioned by Retirement Living and I
14 would like to ask you a few questions about that.
15 And it's Exhibit No. 711.

16 So you'll see here, Mr. Quinn, this is
17 the appraisal report that the Commission has and
18 it's dated April 15, 1999. And it's been prepared
19 by Mr. John Shames. Have you ever seen this
20 report before?

21 A. No.

22 MS. EFFENDI: If we can go, Ms. Kuka, to
23 Exhibit No. 712 that is the second part of this
24 report. And more specifically to the page that
25 ends with 2961.

1 BY MS. EFFENDI:

2 Q. So this is a portion of Mr. Shames
3 report. You'll see that at the top here he deals
4 with the design and the layout of the mall. And
5 he indicates at the top,

6 "Typical of Mall designs for the period.
7 The only fault with the design since new
8 is the rooftop parking area. This area is
9 over the roadway tail area of the mall and
10 has been a high maintenance item due to
11 continuous water leakage and staining of
12 ceiling tiles in various parts of the
13 mall. I understand that a new, more
14 effective roofing material is now being
15 used and the problem is less severe."

16 Did you ever meet Mr. Shames, Mr.
17 Quinn?

18 A. Yes.

19 Q. Do you recall meeting him in the
20 context of his appraisal of the mall?

21 A. No, I use used to work for Mr.
22 Shames.

23 Q. Do you have any idea of where you
24 would have obtained this information about the new
25 roofing material being used for the mall?

1 A. No. There are very few people in
2 Elliot Lake -- it's small community. I was 16
3 when I worked for Mr. Shames.

4 Q. So you know him very well from your
5 work with him. Now what I'd like us to do is take
6 a look at the 1999 Halsall which I understand from
7 your previous answers you were involved in?

8 A. Yes.

9 Q. So if we could take a look, first,
10 at Exhibit No. 741. So this, Mr. Quinn is a
11 letter from Mr. Michael Buckley to Mr. Blaine
12 Nicholls dated March 9, 1999. And the letter
13 outlines the details of the study that they
14 recommend, they being Halsall, be conducted with
15 respect to the mall. And more specifically with
16 respect to a work plan associated with repair to
17 the parking deck. Do you recall ever seeing this
18 letter?

19 A. No.

20 Q. So if we take a look at these six
21 items that are mentioned there in terms of the
22 additional study that they recommend being
23 conducted, you'll see that they indicate, for
24 example, number one, drill and obtain powder
25 sample; two, expose and visually inspect precast

1 concrete slabs; three, expose the topside of a
2 precast concrete; four, obtain samples; five,
3 inspect the condition of the structural steel; and
4 the last one, inspect condition of beam and
5 bracing connections.

6 Were you aware that these were the six
7 items that had been requested -- or that Halsall
8 had recommended be conducted for their second
9 report?

10 A. Not at that time, no.

11 Q. Okay. So when -- do you ever learn
12 that these are the items that had to be looked at?

13 A. I got involved when you know,
14 probably a few days a week, two weeks prior to
15 them showing up on the deck and knowing that there
16 was an engineering study being done.

17 Q. Okay, fair enough.

18 MS. EFFENDI: If we could go to Exhibit
19 No. 68, Ms. Kuka.

20 BY MS. EFFENDI:

21 Q. So this is a fax that was sent by
22 Mr. Blaine Nicholls to Ms. Guertin on March 12th,
23 1999, a few days after that other letter we just
24 looked at. And he's outlining in this fax
25 basically the areas that should be studied further

1 as part of this second assessment.

2 And you'll see that the first item is,
3 "Building Code Life", the second is "Structural
4 Analysis of the Parking Deck, Halsall." Which is
5 what we've looked at in terms of the additional
6 studies. And the third item is,
7 "Environmental/Designated Substances," which is to
8 be conducted by Pinchin. Do you recall seeing
9 this document before I go any further.

10 A. No.

11 Q. If we take a look at the second page
12 of this document, they indicate at the top that
13 they will just co-ordinate this work, Nicholls
14 Yallowega Bélanger. They won't be preparing the
15 report themselves. And they indicate the price.
16 And then the third paragraph they say the
17 following,

18 "All three firms have advised they can
19 proceed with their work immediately and
20 that concluding their reports for early
21 April is achievable. A first issue will
22 be scheduling the visits, especially since
23 some of this work will be disruptive to
24 some of the tenants. Also, as with the
25 first study, it will be necessary to make

1 a drawings for the building available to
2 the engineers. It may be advisable for
3 Richard Quinn to proceed to get a full set
4 of documents copied for your and our use.
5 This would obviate the need to continually
6 go back to search for the appropriate
7 documents in the landlord's files."

8 Do you recall being tasked with
9 obtaining all the documents in terms of the
10 drawings for the building?

11 A. No, I don't.

12 Q. Okay. Do you remember speaking
13 about anyone about getting these documents?

14 A. No, I don't.

15 Q. Okay. Do you remember ever being in
16 possession of any documents at that early stage
17 about the mall?

18 A. Not that I recall, no.

19 Q. Okay. And I'm going to now -- I'll
20 go into details as to what was conducted leading
21 up to the 1999 report. But very generally can you
22 describe to us what was your involvement of the
23 1999 work that was conducted leading up to that
24 report? Just generally and we'll go into details?

25 A. I think probably a couple of weeks

1 or a week before Halsall showed -- was to do the
2 investigation of the mall I was informed that, you
3 know, they were looking at purchasing the mall.
4 And this was going to happen and you need --
5 Richard, you need to do this. You need to be
6 aware that this is happening. And, you know,
7 we're going to need you to do this and that.

8 And so you know, there was a transition.
9 And you asked me if I'm the one that went and got
10 the documents from Algo Centre properties. I
11 don't recall getting the documents. But it is
12 something that is quite conceivable that I would
13 have been tasked with. Do I recall it? No I
14 don't.

15 You know, I -- my name is mentioned in
16 that document because, you know, probably when Mr.
17 Kennealy and Ms. Guertin were discussing getting
18 this done, you know, they probably would have
19 said, Okay, now is the time to get Richard
20 involved here because we need -- and this is going
21 to be his tasks in this process. So this is, you
22 know, I slowly got my feet wet, you know, probably
23 during this period.

24 Q. Okay. We understand that the second
25 report from Halsall was prepared by a Mr. Truman

1 and a Mr. Buckley. Do you recall speaking or
2 meeting with Mr. Buckley?

3 A. Not Mr. Buckley, no.

4 Q. Okay. I understand that you -- do
5 you recall speaking to Mr. Truman?

6 A. Yes.

7 Q. And we'll get into some of those
8 discussion that you had with him. Did you know
9 Mr. Truman?

10 A. Yes.

11 Q. And how did you know him prior to
12 the Halsall --

13 A. He was a student when I was a
14 teacher.

15 MS. EFFENDI: Ms. Kuka, if we can go to
16 Exhibit No. 66, specifically page 71. And if we
17 could concentrate on the first part of the at the
18 top there and go to the second.

19 So you see here at the top, Mr. Quinn,
20 these are handwritten notes from Halsall. We
21 understand from evidence that's been led that the
22 first section are handwritten notes from Mr.
23 Buckley. And the bottom part are handwritten
24 notes from Mr. Truman.

25 At the top you see it's dated March 22,

1 1999. And it says, "Algo Centre Mall, call from
2 Blaine Nicholls. Richard Quinn will deal with all
3 contractor stuff. K.J. Beamish." And then it
4 says a word that I can't decipher there, "labour
5 and equipment."

6 Do you recall what your involvement
7 would have been in relation to what he's
8 describing here? Contractor, labour, equipment?

9 A. They -- because they were going to
10 do some intrusive work on the deck they would have
11 needed the right labour to do the work. And, you
12 know, contractors such as Beamish to supply the
13 concrete to refurbish, you know, whatever openings
14 that they did.

15 Q. So am I to understand then that you
16 had a crew staff ready to assist Halsall when they
17 were coming up this to do some of this study and
18 analysis and inspections?

19 A. Yes.

20 Q. Okay.

21 A. I wouldn't say a crew, Ken Snow and
22 probably, you know one of the -- a representative
23 from Beamish.

24 Q. Okay. So a couple of individuals?

25 A. Yes.

1 Q. Now if we take a look at the bottom
2 part. That was March 22nd it appears there was a
3 conversation between Mr. Buckley and Mr. Nicholls
4 as to how things were going to happen.

5 And then if we go to the bottom of the
6 page, Ms. Kuka, this is dated March 30th, 1999,
7 10:35 a.m. And these notes are the notes of JDT,
8 Jeff Truman. And you'll see at the top it says,
9 "RQ" underneath the date. And it says, "would
10 like to look at two other concessions"? Not
11 clear, "garages". And he seems to be describing a
12 conversation that he would have had with you, RQ,
13 your initial. Can you tell us what this is about?

14 A. Since they were coming up --

15 Q. "They" being Halsall?

16 A. Halsall.

17 Q. Yeah?

18 A. And I thought it was a good time to
19 maybe introduce them to two parking decks that I
20 had -- I wanted a professional opinion on. And
21 they -- one on them was at 1 Washington, a parking
22 structure, and the other was at 100 Warsaw. And I
23 wanted them to have look at it and tell me if it
24 was within their expertise to -- maybe we could
25 get them to do some work on those two other

1 structures.

2 Q. And those two other structures are
3 they similar to the mall in the sense that you
4 have tenants underneath the parking?

5 A. No, these are strictly concrete
6 parking structures.

7 Q. Okay. So basically this is you
8 telling Mr. Truman, When you come down come and
9 take a look at these two other buildings.

10 A. Yeah, I think I had to buy him lunch
11 to get him there.

12 Q. Well it looks like it because if you
13 look at the bottom it says, "JDT can still have a
14 drive by to confirm your thoughts, RQ, okay, meet
15 for breakfast Monday morning at 8:15." So you
16 bought him breakfast.

17 A. Oh, it was less expensive.

18 Q. So that was dated March 30th, 1999.
19 I gather then in April, a few days later, you met
20 with Mr. Truman? He came up to Elliot Lake? Is
21 that a yes?

22 A. Yes.

23 Q. Okay. Do you recall how long he was
24 up in Elliot Lake visiting and inspecting the
25 mall?

1 A. Two are three days. I think it was
2 two.

3 Q. Okay. When Mr. Truman showed up in
4 Elliot Lake at the mall do you recall whether or
5 not he asked you whether you had in your
6 possession any reports or architectural plans in
7 relation to the mall?

8 A. Did he ask me?

9 Q. Yes, did he ask you that.

10 A. Not that I recall.

11 Q. Okay. Do you know whether or not he
12 asked anyone else? Because you indicated to us
13 you had Mr. Snow, another staff member present
14 there. Do you know if he asked any of the others?

15 A. No, I don't.

16 Q. Can you tell us what it is that he
17 did exactly during his visit?

18 A. I'm not sure I can tell you exactly
19 what he did. But from my recollection I remember
20 them drilling or boring a few holes in the
21 concrete, taking samples of the concrete.

22 Q. Let's the start with that. I have a
23 few questions for you about that. When you say
24 taking samples of the concrete you're talking
25 about the parking deck?

1 A. Yes.

2 Q. And who would have done the
3 drilling? Is it Mr. Truman?

4 A. No.

5 Q. So it's the team he had with him?

6 A. No, I believe it was Beamish. It
7 could have been Beamish or one of our own
8 maintenance crew.

9 Q. Okay. Do you recall if Mr.
10 Truman --

11 MR. KEARNS: I just want to be careful
12 here. Our own maintenance crew? We're in April
13 of -- we seem to be confusing the fact that
14 Retirement Living doesn't own the mall at this
15 point. I think that should be clear.

16 THE WITNESS: Sorry, the mall crew.

17 BY MS. EFFENDI:

18 Q. That's fine. So you indicated -- to
19 clarify that the mall crew or Beamish would have
20 been doing the drilling. Do you recall whether or
21 not Mr. Truman came up to visit the mall with
22 anyone else? Was he alone when he came up to
23 visit?

24 A. Yes, I think he was.

25 Q. Okay. And you said that you

1 remember him taking samples. Do you recall
2 discussing with him where he should be taking
3 these samples?

4 A. No. Just to expand a little bit, I
5 wasn't working at the mall at the time. And --
6 but I -- because Jeff was a student of mine and I
7 knew that this was going on it was kind of a --
8 you know, I have to go up on the deck, and I have
9 to go talk to Jeff because he was a student. And
10 I wanted him to look at these other properties.

11 My involvement in what was going on at
12 the time of the investigation was limited. I also
13 had the other properties to go take care of and
14 see, and things like that. So I was -- I was not
15 there all the time that they were doing their
16 investigation.

17 Q. Okay. Is it fair to say though that
18 you weren't there just for a social visit. You
19 were there because you had tasked by the
20 management of Retirement Living that this
21 assessment would be conducted?

22 A. I was more curious on how they were
23 going to do it than making sure that they did.
24 I'm not qualified to make sure that they were
25 doing it properly. That's their work, they are

1 the engineers. They certainly didn't need my
2 supervision.

3 Q. So just so I understand then, are
4 you telling me that you went there just by
5 curiosity because you had no role to play in it
6 whatsoever? That you could have not have went if
7 it wasn't Mr. Truman that had been there?

8 A. I could have not went, yes.

9 Q. Okay. So you went there because it
10 was Mr. Truman, your former student, and you knew
11 him and you wanted to say hi to him?

12 A. That's oversimplifying it, but
13 somewhere in the middle. Like, you know, their
14 task was to come and assess a property that did
15 not belong to us. I knew, you know, the purpose
16 of the study. But it wasn't to go make sure that
17 they did it right because I'm not qualified to do
18 that. It was more to go see what they were doing.

19 MS. EFFENDI: Okay. Can we pull up, Ms.
20 Kuka, Exhibit No. 2327.

21 BY MS. EFFENDI:

22 Q. So this document, Mr. Quinn, is
23 actually an architectural plan of the mall. And
24 you'll see that there are little drawings there on
25 it in red and green. And you just indicated to us

1 that you recall holes being made and samples being
2 taken on the parking deck.

3 Mr. Truman, when he testified this week
4 before the Commission, indicated that he had made
5 openings on the parking deck where those elements
6 in red are located. Do you recall being there
7 with him when he did these openings?

8 A. I recall being there for one of
9 them.

10 Q. Okay. Which one do you recall being
11 there for?

12 A. It would be number 2.

13 Q. Okay. Do you recall why it is that
14 --

15 THE COMMISSIONER: Which number 2?

16 THE WITNESS: The red number 2.

17 THE COMMISSIONER: Thank you.

18 BY MS. EFFENDI:

19 Q. Do you recall why that particular
20 opening was made at that location?

21 A. No, I don't.

22 Q. Did he discuss with you why it is
23 that he was doing certain openings at certain
24 places?

25 A. Did I ask the question? I can't

1 recall the conversation, no. I'm -- did he say
2 why he was doing that particular -- he might of
3 but I don't recall.

4 Q. Okay. Do you remember if he had a
5 conversation with any of the maintenance staff
6 that were up there about where he should be doing
7 openings?

8 A. No, I don't.

9 Q. Okay. Were you there on the deck
10 when he first arrived? When he first took a look
11 at the parking deck?

12 A. No, no.

13 Q. So explain to me what how -- how you
14 met Mr. Truman when he first came up? Did you
15 went for breakfast with him and then what? What
16 is it that you remember doing with him?

17 A. We went for breakfast or brunch I
18 think on his second day not the first day.

19 Q. Okay.

20 A. I remember going out on the deck,
21 you know, I mean it was a normal work day for me
22 because I was -- I had the other properties. So I
23 would have gone to my office, made sure that, you
24 know, to answer my messages on the phone and find
25 out what was going on. And I probably had a full

1 work day of my own doing my regular work. And
2 part of my regular work would be to visit
3 different sites in the community, the other
4 properties.

5 And I recall going -- it might have been
6 -- I would -- I'm taking a guess here what time.
7 Later in the morning and going out on the deck and
8 the guys were doing all this work. And, you know,
9 I went over and I had a look and talked to Jeff,
10 and then else was there. And, you know, just
11 curious. How's it going? What's going on?
12 What's your plan? All that.

13 Q. Okay. And what did Mr. Truman tell
14 you that his plans were?

15 A. I don't think he went into detail to
16 tell me.

17 Q. Okay. Did he tell you whether or
18 not he went around the entire deck and inspected
19 everything?

20 A. I don't recall.

21 Q. And I believe you indicated earlier
22 and it's fair to say that at that point in time
23 you weren't very familiar with the deck or the
24 mall itself, is that fair?

25 A. That's fair.

1 Q. And I gather that Mr. Truman would
2 have been speaking to the mall crew that was there
3 on the deck?

4 A. Yes.

5 Q. So you mention Mr. Snow.

6 A. Yes.

7 Q. You recall Mr. Snow being there?

8 A. Yes.

9 Q. Okay. Do you recall who else was
10 there?

11 A. No.

12 Q. Okay?

13 A. There were other people there, I
14 don't recall who they were.

15 Q. Okay. Can you tell us -- we've
16 heard a lot about the maintenance crew and the
17 team that was in place. Can you tell us who was
18 that team? When Retirement Living bought the mall
19 the team was comprise of who exactly?

20 A. The maintenance -- the mall
21 maintenance crew was Ken Snow was the foreman of
22 leader who -- he would assign the work to the guys
23 every -- there was routine work to be done in the
24 mall every day and he with assign those tasks to
25 his group.

1 Q. Okay.

2 A. Al LeBreche was one of the crew
3 members. Jeff Parsons was another member and
4 Chris Folz.

5 Q. And we've heard the name Ray
6 LeBlanc?

7 A. I'm confused as to when -- I think
8 he may have been there as well. But I'm not sure
9 -- Jeff Parsons left that Fall.

10 Q. Fall of 1999?

11 A. The Fall of 1999. And I believe
12 that Ray was his replacement.

13 Q. So you would have hired Ray?

14 A. That's the confusing part, I don't
15 remember doing that but -- I don't recall hiring
16 Ray. But I don't think he was part of the initial
17 crew that -- when I got there or when we took
18 possession of the mall.

19 Q. Until Mr. Truman testified we hadn't
20 heard the name of Jeff Parsons. So was Mr.
21 Parsons someone who worked similar task as Al
22 LeBreche and Chris Folz and Mr. Snow?

23 A. Yes.

24 Q. And Mr. Truman testified this week
25 that Mr. Parson is the one that showed him around

1 and toured the premises with him, do you have a
2 recollection of that?

3 A. No.

4 Q. Do you know who would have advised
5 the maintenance crew of the arrival of Mr. Truman
6 would that have been you? Because we saw earlier
7 a note that you would be in charge of the
8 contractors and the staff.

9 A. That would -- I believe would have
10 been Mr. Liautaud because at the time the crew
11 didn't work me. I was a tenant in the building.

12 Q. So would you have spoken to Mr.
13 Liautaud then to tell him, look, these guys are
14 coming in?

15 A. Probably not, no.

16 Q. So would who would have told him.

17 A. Mr. Kennealy, Rhona, Ms. Guertin.

18 Q. Okay. So you don't really then,
19 just to come back to that note we were looking at.
20 You don't recall being in charge of gathering up
21 the team for the arrival of Mr. Truman?

22 A. That wouldn't have been my
23 responsibility because they weren't working for me
24 at the time.

25 Q. Okay?

1 A. I may have been the one that
2 contacted Beamish or something like that but --

3 Q. Okay. On that day that you came up
4 on the deck and Mr. Truman was there doing work,
5 do you recall whether or not the maintenance crew
6 was also doing their own repairs? Aside from what
7 Mr. Truman was doing.

8 A. No. I couldn't say that I noticed
9 what their tasks were that day.

10 Q. Okay. So do you recall whether or
11 not Mr. Truman at the time would have provided any
12 indication to the maintenance guys as to the
13 quality of work they were doing?

14 A. One of the things that I do recall,
15 and when it happened and where it happened is a
16 little bit foggy. So, you know, bear that in
17 mind. But I think that that day when we were
18 talking about numbers around that area number 2,
19 like I recall somebody was taking, you know,
20 preparing that particular spot for Mr. Truman's
21 inspection.

22 And we were talking. And Ken Snow and
23 I, again I say Ken because I think it was Ken.
24 But I swore on the Bible here so I'm going to make
25 sure that my memory's not foggy.

1 I believe it was Ken, and I, and Jeff
2 that were talking about how the deck had been
3 maintained. And at that time, you know, like I
4 say it could have been Al, or it could have been
5 Jeff Parsons, but there was someone else there.
6 And we were talking about how the sealant was
7 applied and how the grouting was done. And you,
8 know, the 2-to-1 ratio and the proper method and
9 all this kind of stuff.

10 And I believe it was that day. And
11 because it was -- either one of those two days
12 because that's the only time that Jeff was around.
13 So sometime within those two days, you know, I
14 remember having that conversation and other small
15 talk. How he was doing. How university went.
16 How his job was. And, I mean, many things
17 happened.

18 It was kind of a neat day because here
19 is this student that I had taught that is now, you
20 know, a professional. And it was kind of a -- it
21 was fun.

22 Q. So just to clarify and go back into
23 more detail if we could with some of the
24 information you provided us. First of all I just
25 want to be clear, do you remember being more than

1 once on the parking deck with Mr. Truman? Because
2 I thought I understood from your previous answer
3 you remember going there once and seeing what he
4 was doing.

5 A. It could have been multiple times
6 because like I said I was going out, getting in my
7 vehicle, going somewhere else and then I would
8 come back. I would go in and out of my office
9 three, four, five times. Probably not five times
10 but two or three or four times a day. So during
11 those periods of in-and-out if I had five minutes
12 to go talk to them I would.

13 Q. Okay. Now coming back to the
14 discussion you were just describing to us where
15 you were around that area number 2. And you said,
16 You recalled you were all talking about the
17 grouting the sealant and all that. I want to
18 understand who was saying what in that
19 conversation that you just described. So who was
20 it? Was it the maintenance staff, i.e., either
21 Mr. Parson or Mr. Snow that was describing to Mr.
22 Truman what they were doing? Or was it Mr. Truman
23 telling them how to do it?

24 A. It was probably both.

25 Q. Okay.

1 A. You know, like Jeff would say, This
2 is the proper way. Or this is, you know, you have
3 to have the 2-to-1 ratio, you've have the backing
4 rod in, you've gotta do this, you've gotta do
5 that. And we said, the crew, you know, either
6 agreed with him or, you know, asked questions.
7 And it was a discussion on the proper way of doing
8 it.

9 Q. Okay. Did Mr. Truman at any time
10 opine or give an opinion as to whether or not what
11 had been done so far was appropriate, or not
12 appropriate, or good, or not good, or did he give
13 an opinion about the repairs.

14 A. I don't recall.

15 Q. You don't recall. Did he at any
16 time during that discussion tell you or the staff
17 that he didn't think that the staff had the proper
18 expertise to do this work?

19 A. I don't think so, no.

20 Q. Did he ever tell you during that
21 discussion that you needed a contractor to do some
22 of these repairs?

23 A. No.

24 Q. Did he tell you that you needed a
25 certain type of qualified worker to do this kind

1 of work?

2 A. No.

3 Q. Now I want to come back to this
4 issue of -- you said that you recall Mr. Truman
5 kind of explaining what would be the right
6 approach -- the appropriate way of doing these
7 repairs. When Mr. Truman testified this week, I
8 just want to be fair to you and get your reaction
9 to that. It was put to him that you might be
10 providing evidence this morning about the fact
11 that he instructed on how to rout the cracks and,
12 you know, put in the backer rods and that kind of
13 stuff. And his answer to that was that he didn't
14 recall providing any instruction to anyone when he
15 did his inspection on the deck at the time.

16 And Mr. Snow when he testified a few
17 weeks ago also said that he didn't recall anyone
18 giving him any kind of training on how to do it,
19 except for those suppliers of products. So I'm
20 just trying to understand, you know, the
21 discrepancy here.

22 Is your evidence today that you recall
23 instructions being with given by Mr. Truman
24 specifically to Mr. Snow and whoever else was
25 present?

1 A. It's what I recall.

2 Q. Okay.

3 A. And as I said earlier, I just want
4 to clarify, you know, was it Mr. Snow that was
5 standing there, or was it Jeff Parsons, or Al
6 LeBreche? That I'm unsure of. But I was there,
7 Mr. Truman was there, the discussion was about the
8 proper way of sealing those cracks.

9 Q. One of the things that Mr. Truman
10 testified to this week is that he remembers being
11 given a sheet of paper with kind of an outline of
12 the procedure of a what had been done so far in
13 terms of the repairs. Do you recall that
14 happening?

15 A. No, I don't.

16 Q. Do you recall when you first started
17 managing the mall, when Retirement Living took
18 possession of it, having a procedure put in place
19 on paper about what should be done for the repairs
20 and a step-by-step?

21 A. A written procedure?

22 Q. Hmm hmm.

23 A. Probably not, no.

24 Q. Do you recall one being in place
25 when you came on to the job?

1 A. Not that I recall.

2 Q. Okay.

3 A. But I do recall the discussion --
4 many discussions on how to properly seal the
5 cracks.

6 Q. And discussion with your staff?

7 A. Yes.

8 Q. Okay. So we'll get to that in a
9 moment. One of the other aspects of the
10 inspection that was conducted by Mr. Truman, he
11 indicated to us, that not only did he visit the
12 parking deck, but he also visited inside the mall.
13 Do you recall that?

14 A. No, I don't.

15 Q. Okay. He indicated, just so you
16 know, the spots in green there he advised us that
17 those are the openings that he had done inside of
18 the mall. Were you present when he did these
19 openings?

20 A. No.

21 Q. So you wouldn't be able to tell us
22 whether or not he examined the beams or the
23 connections?

24 A. No.

25 Q. Or whether he removed some

1 insulation to take a look at the beams?

2 A. No.

3 MS. EFFENDI: If we could take a look,
4 Ms. Kuka, to Exhibit No. 121 page 289.

5 BY MS. EFFENDI:

6 Q. So you will see that these are notes
7 that were provided to us by Halsall. They appear
8 to be notes from Mr. Truman and he indicates at
9 the top, "Retirement Living, General Notes.
10 Richard Quinn, jeff Truman's high school teacher.
11 Richard Kennealy, big boss. (Jeff Truman's
12 sister's boyfriend's dad). Board essentially
13 listens to RK. RQ happy Jeff Truman came to do
14 work. Jeff Truman went to lunch with Richard
15 Quinn."

16 A. I knew I bought him lunch.

17 Q. Before we move on. Since you've
18 just interrupted, do you recall giving this
19 information to -- this information to Mr. Truman
20 while you were having that conversation? Where
21 would Mr. Truman have received all this info?

22 A. I don't recall having him take notes
23 when we're having lunch if, you know -- we could
24 have -- just could have been a conversation over
25 the lunch.

1 Q. That's what I mean. This is some
2 information that you would have given to him
3 during lunch time?

4 A. It could be.

5 Q. Okay. Then he says after that,
6 "Prefers to give work to folks from the north.
7 Jeff Truman plugged AAC going to Sudbury and that
8 JKT and JDT could go up to go work." And then he
9 says, "Retirement Living has 200 million in
10 properties. 1 plus 3 Washington." And he gives
11 other addresses there.

12 "Doesn't have reserve plan. Only have \$7
13 million. Decided to upgrade homes and
14 buildings to get them sold, rented and
15 generate [something] cash flow. Energy
16 plan. Pitch reserve plan. Jeff Truman
17 pitched Halsall being better and offered
18 to come for a presentation any time."

19 Do you recall that? Mr. Truman giving a
20 pitch to you?

21 A. It's part of everybody's job to try
22 to get business.

23 Q. Okay.

24 A. Yeah, this is probably notes of a
25 conversation over the lunch you know. On how we

1 do business. What we do, and don't do. And.

2 Q. So you give him an explanation a bit
3 of what Retirement Living had in terms of
4 properties, what it was you were looking at in
5 terms of the work you needed, and then he
6 gathered the information and probably did these
7 notes after?

8 A. Yes. And I was trying to get him to
9 have a look at those two other buildings, those
10 two other structures.

11 Q. Okay. Now let's take a look at the
12 Halsall Report, but before we jump to that, we'll
13 see from Exhibit No. 2183, that the Halsall report
14 was first provided -- a draft of it anyway, was
15 first provided to Retirement Living on April 22nd,
16 1999. So it was provided to you and Ms. Guertin
17 in draft form by Mr. Truman. And we'll get to
18 that report in a second.

19 It appears from another letter, and
20 that's Exhibit No. 121, page 197. So you see here
21 this is Mr. Truman now sending a letter to Mr.
22 Nicholls indicating that he had sent to you and
23 Ms. Guertin a draft of the report on April 22nd
24 because it was required for a board meeting that
25 was going to take place on at that evening.

1 Before I jump to the draft report do you
2 recall being present at this board meeting?

3 A. No.

4 Q. So let's take a look at the draft
5 report. It's Exhibit No. 1466. Do you recall,
6 Mr. Quinn, receiving the draft report?

7 A. Yes.

8 Q. And I gather you would have reviewed
9 it?

10 A. I believe so, yeah.

11 Q. Okay. And do you recall having any
12 revisions, or asking Mr. Truman to make any
13 revisions or changes to the report?

14 A. No.

15 Q. Okay. Is it fair to say that if
16 there were portions of this report that you didn't
17 understand that you would have called up Mr.
18 Truman and discussed those with him?

19 A. Yes.

20 Q. Do you recall discussing the draft
21 raft with Ms. Guertin or Mr. Kennealy?

22 A. Do I recall specifically?

23 Q. Or not specifically, just discussing
24 the report?

25 A. No. We would have. I'm sure we

1 would have.

2 Q. Okay. Do you recall the content of
3 those conversations?

4 A. No. I don't remember the content of
5 the conversation, but since we didn't ask for any
6 revisions, you know --

7 Q. So is it fair to say that the
8 management team at Retirement Living understood
9 the report and they were satisfied with it and
10 were waiting for the final version?

11 A. Yes.

12 Q. If we could go to the final version
13 of the report, that's Exhibit No. 70. So this is
14 the report when we were talking about the 1998
15 this is the one you remembered, is that fair.
16 When we were talking about the 1998 this is one
17 you remember seeing?

18 A. This is the 1999 one?

19 Q. Yes.

20 A. Yes.

21 Q. And to be fair I'll give you a paper
22 copy, Mr. Quinn.

23 MS. EFFENDI: Mr. Commissioner, I'll
24 just approach the witness.

25

1 BY MS. EFFENDI:

2 Q. So this is the 1999 report. You
3 recall seeing this report at the time?

4 A. Yes.

5 Q. Okay. Let's start with the first
6 page, page it says I. If you turn to the page
7 after the cover.

8 A. Okay.

9 Q. So you'll see that at the top there
10 it indicates that, At the request of Blaine
11 Nicholls, of Nicholls Yallowega, Bélanger that a
12 structural condition assessment of the deck was
13 completed. And then it describes what the
14 building is. Two-storey commercial mall, with
15 six-storey hotel complex. And then it goes on to
16 talk about the parking deck that has a 57mm bonded
17 concrete topping over the precast panels, do you
18 see that? And then the last sentence, the report
19 says, "A waterproofing membrane was not provided."

20 Did you know that before receiving this
21 report that there was no waterproofing membrane on
22 the deck?

23 A. No.

24 Q. Were you surprised?

25 A. No.

1 Q. Why not?

2 A. It leaked.

3 Q. Fair enough. And if we go down
4 you'll see that they identify the objective of the
5 report and they talk about the major form of
6 deterioration which included leakage, corrosion
7 and debonded. And then they go on to talk about
8 their recommendation and the two options. It
9 looks like engineers all like two options.

10 So they indicate here, "Our
11 recommendation for repair Option 1 are:", and they
12 list six items that they recommend should be done.

13 "Rout and seal all joints and
14 cracks...Remove sealant from the underside
15 of the joints and walkway; Clean and paint
16 ...structural steel; Reinstall
17 spray-applied fireproofing to the
18 structural steel; Replace corroded
19 suspended ceiling hangers ... and
20 Reinstall batt insulation..."

21 And then they opine that the cost of
22 this repair would be \$433,000.

23 And then if we go to next page you'll
24 see that they then provide as an alternative
25 Option number 2. "A bonded membrane system with

1 asphalt overlay." And the approximate cost of
2 that would be \$776,000, including GST.

3 So do you recall reviewing these two
4 options when you received the report?

5 A. Yes.

6 Q. And generally speaking what do you
7 understand these options to mean?

8 A. What did I understand them to mean?

9 Q. Yeah what --

10 A. There were two ways of approaching
11 the problem of leakage on the deck. Option number
12 1 was to -- was to basically continue what the
13 practice that was being done prior to our
14 ownership.

15 And Option number 2 was, as it's
16 described in this is, to remove the topping, put a
17 membrane down and some asphalt on top of it. And
18 those are the two. There's advantages and
19 disadvantages to each.

20 Q. And did you recall discussing these
21 two options with Mr. Kennealy and Ms. Guertin?

22 A. Yes.

23 Q. And describe to us that discussion.

24 A. Describe that discussion?

25 Q. What was discussed?

1 A. Which option made more sense for
2 Retirement Living to pursue.

3 Q. So did you discuss those advantages
4 and disadvantages you just mentioned to us?

5 A. More than likely.

6 Q. Okay. And what were those
7 advantages and disadvantages as you understood
8 them?

9 A. Well they're listed in this report
10 so we would have talked about them and discussed
11 them.

12 Q. But I'm asking about what you
13 understood?

14 A. You're asking a lot. What I
15 understood?

16 Q. Yes. I want to understand the
17 discussion, what you and Mr. Kennealy and Ms.
18 Guertin discussed.

19 A. We discussed -- I can't -- I'm not
20 sure that I can describe to you the conversation
21 because I don't recall the conversation. I can
22 tell you what the conversation that we likely had,
23 but who said what, and where, and when, and things
24 like that I don't think that -- I don't recall
25 those specifics. But I can tell you that we

1 looked at both of these options and Option 1 had
2 -- is continuing the practice that ACP was doing.
3 And Option 2 there was a lot more involvement in
4 Option number 2.

5 And there is not -- the end result
6 wasn't much different. The end result was that --
7 and they say in this report, That there will be
8 ongoing maintenance. There will be ongoing
9 sealing, you know. There will be ongoing
10 maintenance in both forms of remediation to
11 problem.

12 Q. So as I understand it you decide --
13 Retirement Living decided to go with Option 1?

14 A. Yes.

15 Q. Okay. And what you've said to us is
16 you decided do that because Option 2 in the mind
17 of you, Mr. Kennealy and Ms. Guertin didn't lead a
18 solution that was better than Option 1?

19 A. Pretty well.

20 Q. Was the issue of cost a factor in
21 the decision?

22 A. More than likely. I mean if you're
23 looking at two options and there's not a much more
24 benefit for the most expensive one, why would you
25 do it?

1 Q. And did you not question yourself
2 why Option 1 was recommended if it was the same
3 thing as what Algoma Central Properties was doing,
4 given that the mall kept leaking?

5 A. No. The way I interpreted it was
6 that Option number 1, done properly, would satisfy
7 -- would give us the results that we were hoping
8 for. And, you know, in comparison to number two.
9 Neither one of these -- it doesn't say anywhere in
10 this report that neither one of these would
11 totally stop water from entering the mall. It
12 says that these -- here are two options that will
13 do the best job for you, you know, in the
14 situation that you have. A deck that is parked on
15 above this building; and it's made of concrete;
16 and it doesn't have a membrane; and there is snow
17 that accumulates on it; and there's mechanical
18 drains for water to flow to and all of this. This
19 is a bad situation. Here is two options that will
20 minimize the -- it will minimize the bad pact on
21 the mall.

22 Q. So is it fair to say then that you
23 weren't trying to achieve a waterproof deck?

24 A. We were told that given the winter
25 conditions, and the conditions of snow removal and

1 all of those things, it would probably unlikely --
2 we would unlikely achieve 100% watertightness.

3 Q. And who told you that?

4 A. Oh jumpin'. I was hoping you
5 wouldn't ask that because I don't know. I think
6 even this report leads you to understand that.

7 Q. Well I'd like you to show me where
8 in this report it says that because I haven't seen
9 that in the report.

10 A. Well -- okay. I'd have to go
11 through this in a lot of detail. I don't know
12 exactly where it says it.

13 Q. So your understanding of this report
14 and the advice of Mr. Truman was, there's not a
15 perfect solution but the best of these two
16 solutions is number one, but it's not going to be
17 one hundred percent leak free. Is that fair?

18 A. That's fair.

19 Q. So basically Retirement Living
20 decided to keep on doing what Algoma was doing but
21 do it "properly", to use your word?

22 A. Yes.

23 Q. Yes? No?

24 A. That was the intent. I'm not trying
25 to say that it wasn't done properly before that.

1 It's just that we -- we were being optimists that
2 we thought that, you know, given a really good
3 valiant effort that, you know, we could do this.
4 We could stop the water. Because we were there.
5 I was there every day. It's not -- we were on
6 site. We were tenants. We -- our whole objective
7 was to look at this and say, you know, like if we
8 do this really, really good and focus on keeping
9 the water out of this we can do this.

10 Q. And when you say "we" do you mean
11 you and the maintenance crew?

12 A. It was everybody's intent. It was
13 Rhona Guertin's intent, it was Richard Kennealy
14 intent. It was my intent. It was the mall
15 maintenance staff's intent. It was everybody's
16 intent to keep that water out of there as much as
17 we possibly could. With the realization however
18 that every spring, you know, after the snow
19 removal; and the vehicle movement on there; the
20 freeze-thaw cycles; the fact that it's concrete
21 and the stupid stuff cracks; that every spring we
22 would have to go back and ensure that we did it
23 again and resealed those cracks and make sure that
24 no water got No. And we thought yeah. And maybe
25 we were naive, but we thought we could do it.

1 Q. And did you go back to Mr. Truman
2 and say, Look, you're providing me two options but
3 neither of them will give me a one hundred percent
4 leak free mall?

5 A. No.

6 Q. Why not?

7 A. We didn't own the mall at the time
8 of this report. This report was given to us as a,
9 you know, like a -- it was commissioned for one
10 reason. Like is this mall purchasable? Is it
11 smart for us? What are buying here? And that's
12 what this thing is all about, to give to the
13 Board. To give us knowledge from a professional
14 point of view of this -- are we buying a lemon
15 here or not?

16 Q. And eventually Retirement Living did
17 decide to buy the mall?

18 A. Yes.

19 Q. So once Retirement Living was owner
20 of that mall -- and to be fair, this report was
21 commissioned by Retirement Living, it wasn't
22 commissioned by Algoma Central Properties?

23 A. Hmm hmm.

24 Q. Did you ever think, Okay, let's go
25 pack to Mr. Truman about these two options he gave

1 to us and see whether or not he can give us an
2 option that would provide for 100% leak free mall?

3 A. No. No, no. We didn't go back.
4 There was no reason to go back, though.

5 Q. Why not?

6 A. This is very clear on what to do.
7 Here are two solutions to your problem. I mean --
8 and my mind is very clear. Here is Option number
9 1, here is Option number 2. Neither one of them
10 is a perfect solution. This one, you know, is --
11 you guys -- you're able to manage this option.
12 You're here, you're on site, you can do it. You
13 know, it was not a very difficult decision.

14 Q. We heard this week from Mr. Truman
15 that in his view these two options were equally
16 good and that if he had been asked which option is
17 better, putting aside the issue of cost, he would
18 have recommended Option number 2. Do you have
19 anything to say about that?

20 A. Well the report doesn't say that.
21 Here is Option number 1 and number 2. This one --
22 which one do you want? And we picked number one.

23 Q. On the issue of costs, before I let
24 go. Because you did agree with me that cost was
25 one of the factors discussed in determining which

1 option to go with. Is that fair?

2 A. It was a factor.

3 Q. Okay. Exactly. One of many
4 factors?

5 A. Yes.

6 Q. Do you recall telling Mr. Truman
7 that there were financial constraints on
8 Retirement Living?

9 A. No.

10 Q. And the reason I ask -- sorry.

11 A. There's financial constraints on
12 everything. Did I say that to Mr. Truman? I
13 don't recall saying that, no.

14 Q. And the reason why I ask is because
15 if we go back to Exhibit No. 1465?

16 THE COMMISSIONER: Perhaps we can
17 examine that, Ms. Effendi, after the morning
18 break?

19 MS. EFFENDI: Thank you.

20 THE COMMISSIONER: We'll rise for 20
21 minutes.

22 --- Break taken at 10:45 a.m.

23 --- Upon resuming at 11:05 a.m.

24 BY MS. EFFENDI:

25 Q. Before the break, Mr. Quinn, we were

1 about to go Exhibit No. 1465. We were discussing
2 the two options. And the discussion you would
3 have had at Retirement Living as to which option
4 you're going to take. And you indicated to me
5 that one of the factors, a factor, was cost. And
6 I asked you whether or not you recall whether or
7 not you told Mr. Truman that Retirement Living had
8 any financial constraints. And I think that you
9 said to me that you don't recall telling him that.

10 And I just want to bring you to this
11 letter because you'll see that this is a letter
12 that was sent from Mr. Buckley and Mr. Truman to
13 Mr. Nicholls, who was co-ordinating all these
14 additional studies in 1999. And you'll see that
15 he says in the second paragraph there, he says,

16 "Though leakage through the parking deck
17 has been an ongoing problem, we have found
18 no evidence of structural deterioration
19 compromising the integrity of the
20 structure."

21 And I pause here for a second. He was
22 attaching to this letter the final report that
23 we're looking at, okay?

24 He goes on to say,

25 "While waterproofing the parking deck is

1 feasible, we suggest a program of joint
2 resealing be affected instead, with
3 consideration given a proper joint
4 detailing. This approach, in our opinion,
5 is the most cost effective particularly
6 where financial constraints exist."

7 So again, I'm just going to ask you
8 again, do you recall telling him anything about
9 costs or financial constraints?

10 A. Not that I recall.

11 Q. Okay. Once you received the report
12 from Halsall, the final report, did you speak to
13 Mr. Truman about these two options?

14 A. No.

15 Q. You would the speak to him about his
16 report?

17 A. No.

18 Q. Why not?

19 A. I didn't see any need to. It was
20 clear.

21 Q. So in your view the report was clear
22 and you understood what he was -- what his
23 findings and his recommendations were?

24 A. Yes.

25 MS. EFFENDI: If we could go back, Ms.

1 Kuka, to Exhibit No. 70. And if we could go to
2 the first page following the cover page.

3 BY MS. EFFENDI:

4 Q. So coming back to the Option number
5 1, Mr. Quinn, when I said is the option that --
6 which I understanding the option that Retirement
7 Living decided to adopt.

8 What was your understanding as to the
9 timing of when these items under number one had to
10 be done and completed?

11 A. The timing you mean how long a
12 period of time to complete the process?

13 Q. Yeah. In other words, did you
14 understand that all of these items had to be
15 completed that summer, 1999? Or did you
16 understand that they could be completed within a
17 period of a few years? Or what is it that you
18 understood that you could do?

19 A. We understood that this had to be --
20 it had a time period of, you know, multiple years
21 before it needed to be complete. I mean they
22 talked about a phase-in approach and that's what
23 we took it as.

24 Q. Okay. And when you speak of
25 phased-in approach, if you look at the bottom, the

1 last sentence. The report says, "If required we
2 could prepare a phased repair approach for Option
3 1 tailored to your financial constraints." Did
4 you go back to Mr. Truman and say, Look, we want
5 to do the phased-in approach and tell us how to do
6 it?

7 A. No.

8 Q. Did you ask him whether your
9 understanding of being able to do that for over a
10 number of years was the proper approach?

11 A. Did we discuss it? No.

12 Q. Okay. Mr. Truman when he testified
13 this week before the Commission indicated that he
14 thought the preferable way of doing the repairs
15 would have been to do them in one year. Do you
16 recall him telling you that at any moment in time?

17 A. No.

18 Q. Did you at any point speak to Mr.
19 Truman about him preparing for Retirement Living
20 repair specifications or maintenance instructions
21 that you could use to implement this option?

22 A. Specifically to this problem, no.

23 Q. What do you mean when you say
24 specifically to this problem?

25 A. As you saw earlier in the lunch

1 notes, you know, did we discuss Halsall, you know,
2 doing work for us in the future? He did put a
3 pitch in there for, We're an engineering firm.
4 We'll come up and do work for you, but not
5 specifically for this work.

6 Q. Okay. So for this work you didn't
7 go back to him and say, Okay, we're going with
8 Option 1. Can you prepare repair specs for us?

9 A. No.

10 Q. And why not?

11 A. Because Option 1 is well within the
12 capabilities of this being done by our own forces,
13 by our -- by the mall crew itself.

14 Q. So let's address that answer for a
15 few minutes.

16 MS. EFFENDI: If we could go, Ms. Kuka,
17 to page five of the report, it's actually page
18 nine of the doc ID.

19 BY MS. EFFENDI:

20 Q. This page, Mr. Quinn, is a summary
21 of the cost for the two options that were
22 recommended by Halsall. You'll see that Option 1
23 is rout and seal all joints and cracks, and Option
24 2, waterproofing membrane and asphalt topping. So
25 the Option number 1, you see there that he

1 indicates that as part of that option he
2 recommends "contractors mobilization and site
3 protection." And then he goes on to include
4 construction contingencies, permit and testing,
5 engineering design and project management. Let's
6 take those one by one.

7 Did you hire a contractor to oversee the
8 work?

9 A. No.

10 Q. And why not?

11 A. Because this was in my view well
12 within the capabilities of the crew that was
13 working there at the time.

14 Q. And how do you know that? Because
15 to be fair they had been doing the work for the
16 past number of years, and the mall had continued
17 to leak. So how did you know that what they had
18 been doing was proper?

19 A. Well, we had to -- we had that
20 discussion with, you know, with Jeff on the
21 parking deck at location number two on the proper
22 way of -- and the proper procedure of doing things
23 and it's -- it's not rocket science. If it's
24 properly administered this option is quite viable,
25 which they said. And it can be done by, you know,

1 the guys that had been doing for ten years.

2 Q. Mr. Snow when he testified he
3 indicated to us that despite their best efforts
4 the mall continued to leak. So do you agree with
5 me that they were able to do so much, I mean the
6 work that they had been doing so far had not led
7 to a leak-free mall.

8 A. It had not led to a leak-free mall
9 but it was getting better.

10 Q. When you say "it was getting better,
11 " do you mean it was getting better when
12 Retirement Living bought it? Or it was getting
13 better at the end of the ownership of Algoma
14 Central Properties?

15 A. It was getting better at -- as in --
16 in that period of time when we were in -- when we
17 were looking at purchasing the mall, you know,
18 there was progress being made on the leaks.

19 Q. Just coming back to those
20 discussions that you had with Mr. Truman on the
21 roof with Mr. Snow. And you indicated you weren't
22 sure if it was Mr. Snow, Mr. Parson or who else.
23 Do you recall how long that discussion would have
24 been about how the proper procedure should be? A
25 few minutes?

1 A. Ten, fifteen minutes.

2 Q. Okay. Did Mr. Truman physically
3 show the workers how to do it?

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

5 Q. So who did the overseeing of the
6 work of the maintenance team if there was no
7 contractor? Who oversaw the work of your staff?

8 A. During our ownership?

9 Q. Let me back track for a second. I'm
10 jumping here. So you decided to opt for Option 1.
11 And I assume that you implemented Option 1?

12 A. Yes.

13 Q. And the maintenance staff that you
14 described to us earlier, Mr. Snow, Mr. Folz, Mr.
15 LeBreche, Mr. LeBlanc, they're the team that you
16 had in place to do that work?

17 A. Yes.

18 Q. And who oversaw their work in order
19 to implement Option 1?

20 A. On a broad basis I was, and on a
21 daily basis on site, you know, ensuring that the
22 work was done properly would be Ken Snow.

23 Q. Okay. And had you ever before, Mr.
24 Quinn, managed the work on a roof deck parking
25 with tenants underneath?

1 A. No.

2 Q. Had you done your own research about
3 the mall to ensure that those repairs were being
4 done properly?

5 A. Prior to our ownership?

6 Q. Yes.

7 A. No.

8 Q. Had you ever visited any other mall
9 with roof deck parking to learn and make sure that
10 what you were doing at the Algo Mall was the
11 appropriate procedure?

12 A. Prior to our ownership or during our
13 ownership?

14 Q. Let's start with prior and you can
15 tell me during?

16 A. Prior to our ownership no, I had
17 not.

18 Q. And during?

19 A. During our ownership I took a trip
20 to the Bramalea mall because I understood that
21 they were doing work on a deck there. And I went
22 down and had a look at how they were doing it to
23 see if there was anything I could learn.

24 Q. And when was that? Do you remember
25 when was that strip?

1 A. Honestly no, I can't recall.

2 Q. Would it have been closer to the
3 date when Retirement Living owned it or at the
4 back end in 2005 when they sold it?

5 A. It would have been either 2000 or
6 2001.

7 Q. Okay. And did you speak with anyone
8 at that mall?

9 A. Yes.

10 Q. And who did you speak to over there?

11 A. The manager. The mall manager. I
12 think he was either the mall manager or the mall
13 technical person, like my equivalent.

14 Q. And do you recall the name of that
15 individual?

16 A. I should because it was a funny name
17 -- an odd name. No, I don't recall it. I could
18 find it.

19 Q. If you do I'm sure that your
20 Counsel, Mr. Kearns, will provide it to the
21 Commission. So what did that person tell you?

22 A. It was a disappointing visit because
23 their mall was totally, totally, totally different
24 than ours. Their parking deck was -- there was no
25 semblance, there was no relationship between the

1 two types of parking decks. Theirs had multiple
2 layers it had -- I took -- I remember taking
3 pictures of it because I couldn't believe -- I
4 wanted to show Mr. Kennealy and Rhona the vast
5 difference between the two.

6 They had -- it was designed for -- there
7 was shipping and receiving was on the top of this
8 mall. So transports, fully-loaded transports
9 drove on it and everything. So there was in -- I
10 didn't learn anything at that mall because it was
11 so different.

12 Q. So the design was completely
13 different so you couldn't take what they were
14 doing over there and apply it at the Algo?

15 A. No. That's right.

16 Q. Okay. If we keep on looking and
17 you'll see that at Option 1. The third item
18 underneath the option is, "engineering design and
19 project management." Did you hire an engineer to
20 do a design of those repairs when you decided to
21 implement Option 1?

22 A. No.

23 Q. And again why didn't you do that?

24 A. We didn't see any need to. I mean
25 we had instructions. We knew how to put the

1 sealant down. We knew how to prepare the grout or
2 the cracks and grout and do all of those things.
3 Why would I need somebody to write specifications
4 for that?

5 Q. And when you say "we knew" to be
6 fair you hadn't been doing that type of work. It
7 was the maintenance staff that was there
8 previously that had that knowledge, is that fair?

9 A. Partially. You know, there's also
10 -- there's not -- salespeople that sell a product
11 are very, very knowledgeable about their product.
12 A lot of times more so than the engineer that may
13 recommend it. Engineers get their information
14 from product description and the salespeople that
15 sell it to them. The same as medication, you
16 know, the manufacturer of the medication knows
17 more about it than the doctor does. And in this
18 case a lot of times it's the same thing.

19 The product that we used on the mall has
20 a lot of technical people behind it. And Ontario
21 Concrete Products are where we bought the
22 material, you know. We had discussions with them.
23 We went to visit them as a matter of fact in
24 Sudbury. So it wasn't just the fact of 15 minutes
25 with Mr. Truman on the deck was the extent of our

1 knowledge on how to do things. There was other
2 people involved as well.

3 Q. So describe to me that trip to
4 Ontario Concrete. Who went to visit them?

5 A. Ken and I.

6 Q. And what kind of discussion -- what
7 did they tell you?

8 A. There was more than one. I remember
9 one occasion where the salesman came to the site.

10 Q. To the Algo Mall?

11 A. Yes. And the next time was when we
12 went to a concrete -- an OCP seminar on various
13 types of concrete products. And we took the time
14 to talk to I think it was the -- I think it was
15 the Tremco rep on how the apply the -- I'm not
16 sure if it was the Tremco manufacturer's rep, but
17 he was knowledgeable about the product and that's
18 where we got some of the information.

19 Q. Okay. And when that first visit
20 when someone came to the mall, did that individual
21 show you exactly how to do the routing and
22 grouting and put in the sealant?

23 A. Did they show us as in physically
24 show us.

25 Q. Yes?

1 A. No, it was a discussion.

2 Q. And when you went to their site and
3 there was a Tremco rep present, again I gather he
4 showed you how to use that product. Did he show
5 you every step of the way how to rout and grout?

6 A. It was a discussion.

7 Q. Okay.

8 A. At no time did anybody take a
9 grinder and say, This is how you do it. I mean
10 there are certain aspects of that process that are
11 very simple to do.

12 Q. Unfortunately though within -- in
13 the 20-year period of time that that had been done
14 with Algoma they weren't successful in
15 implementing the procedure you described as
16 simple.

17 A. Routing and grouting and making sure
18 that you have a Vee formation on the crack that
19 you're trying to fix is not difficult. Proper
20 priming, and cleaning, and making sure there's no
21 dust, and the care that's taken in preparing the
22 material to put into is a little bit more
23 technical.

24 Q. Mr. Snow when he was here advised us
25 that in fact being able to ensure that all the

1 cracks were in Vee form wasn't an easy thing. He
2 said that sometimes you couldn't get it to be in a
3 Vee form.

4 A. There are -- there are situations
5 when if it's a hairline crack, you know, at some
6 point you have to make a decision. If you're
7 looking at a hairline crack, which may allow water
8 to penetrate, you have to make a decision. Do I
9 rout and grout this and make it, you know, an inch
10 wide rather than a hairline crack? Or do I just
11 take the router and just trace it and then put a
12 little bit of the product on it? You know,
13 there's hairline cracks and it didn't make sense
14 to gouge them out to be able to do the full
15 process with a backer rod and everything like
16 that. Hairline cracks are an application of
17 slight grout and an application of the product

18 Q. And is it fair to say that on the
19 deck you had a variety of different cracks? Some
20 of them with hairline and some of them were not
21 because of the passage of time?

22 A. Yes.

23 Q. Did you at any point put together on
24 paper a procedure that had to be followed by the
25 maintenance team?

1 A. No.

2 Q. Just so that the record is clear,
3 the individuals that were doing the work were Mr.
4 Snow, Mr. LeBreche, Mr. Folz and Mr. LeBlanc?

5 A. Yes.

6 Q. You didn't do any of the work did
7 you?

8 A. No.

9 Q. And did you hire any additional
10 staff to do the work?

11 A. No.

12 Q. Did you ever ask Mr. Truman whether
13 you -- the maintenance staff that you had could do
14 the work?

15 A. No.

16 Q. Did any summer student do the work?

17 A. I believe we had a summer student
18 there probably one summer I think, there might
19 have been two summers. But they would not do the
20 sealing of the crack. They would be supervised
21 and on the grinder, you know, preparing and
22 grinding the cracks for the sealant.

23 Q. Okay. Did you show Mr. Snow, or
24 anyone else from the maintenance team, the Halsall
25 report?

1 A. I don't believe so, no.

2 Q. And is it fair to say that you would
3 have --

4 MS. EFFENDI: If we go back, Ms. Kuka,
5 to actually the page previous to this one, just
6 page 4 of the report. And at the top there.

7 BY MS. EFFENDI:

8 Q. Is it fair to say that you would
9 have instructed your team to implement these six
10 items? And I'll go through them with you, but I
11 wanted to know whether you instructed them, You
12 know, guys, we need to do this? Yes, for the
13 record?

14 A. Yes to you going through them
15 individually and then I will answer individually.

16 Q. Okay. So let me ask you this, did
17 you instruct them to do all of them?

18 A. No.

19 Q. Okay. So let's go one-by-one then.

20 "Rout and seal all joints and crack in the
21 parking deck topping and walkway canopies,
22 ensuring a proper joint profile and
23 surface preparation prior to placing the
24 sealant."

25 So did you do that repair?

1 A. Yes.

2 Q. Okay. And can you describe to us
3 exactly the step-by-step repair that was done in
4 order to achieve that first element here?

5 A. The step-by-step process of fixing a
6 crack?

7 Q. Yes, please.

8 A. Well first of all you would identify
9 and find all of the cracks on the deck. You want
10 me to start right from the beginning?

11 Q. Yeah.

12 A. Like in the spring?

13 Q. Well I want you to describe to us
14 what you did when you got this report, Retirement
15 Living became owner in June 1999. Did you then
16 say, Okay, let's implement and put into action
17 these recommendations?

18 A. Yes.

19 Q. Okay. So we're June of 1999.
20 Describe to us exactly what you -- or you and your
21 maintenance team did to achieve the number one
22 item here?

23 A. The first -- there was a -- there
24 was also -- this was the first summer that we were
25 taking over the mall that we talk about. That we

1 were taking over the mall. That the crew was new
2 to me. There was an introduction period between
3 me and the guys, and what our expectations were,
4 and what Retirement Living was about, what we were
5 trying to achieve, et cetera, et cetera.

6 And it was -- it was presented to them
7 that this was one of -- or this was the biggest
8 task that we had. That this crew, them, would by
9 the end of the summer have gone over this deck and
10 we would have fixed every crack. We would expect
11 that at the end of September there would be not a
12 drop of water enter that mall.

13 We went out and we -- I talked to Ken
14 and, you know, said, you know, Where do you buy
15 the product? What is this product? I got
16 educated on a little bit more on what the product
17 was, how much it cost, where it comes from, who
18 the sales reps are. All of this kind of stuff.
19 And then we went out and asked. How much do you
20 need? If we have to make -- do the best job we
21 possibly can here what do you need? Do you need
22 -- how much product first of all do you need? How
23 much is -- have you got enough men to do the job?
24 Do you need more tools?

25 The focus -- and the biggest -- the

1 biggest focus we had with those -- or I had with
2 those guys was to do that deck as best we possibly
3 could.

4 Q. Can I ask you a question before you
5 go on. Did you discuss with Mr. Snow the two
6 options? Did you get his point of view as to
7 whether or not -- as to which option was better?

8 A. I don't think so.

9 Q. It's fair to say that he probably
10 had a lot of knowledge about that deck and the
11 repair that had been done over the last 20 years?

12 A. Yes.

13 Q. Okay. So you basically looks like
14 you gave them a pep talk to the team and then what
15 happened? I assume that they went ahead and did
16 the routing and the sealing of the joints?

17 A. Yes.

18 Q. So describe to us how did you decide
19 which areas of the deck to do first?

20 A. I didn't. I was not the person who
21 chose, You have to do this first, you have to do
22 that first. There was -- I relied on Ken's
23 knowledge of where the leaks had occurred that
24 year, that winter and spring, and what were the
25 emergencies. Where were the worst spots? What

1 you, you know, with the intent of doing the whole
2 deck that, you know, it was more or less his
3 choice on where to start, where to finish. What
4 was -- what was -- where were the most important
5 leaks? Who are the most -- who are the most --
6 where were the most contentious issues with the
7 tenant below? How many people can we affect or
8 make happy, you know, as soon as possible? Those
9 kinds of things were all part of his decision
10 making on where he would start and seal first.

11 Q. So you basically delegated that
12 aspect of the process to him? Did you tell him,
13 Okay, go do a survey of the deck and decide which
14 one to start and delegate it to your guys?

15 A. Ken knew where, yes.

16 Q. Okay.

17 A. Did I delegate it to him? Yes. He
18 had a lot more knowledge about the deck than I did
19 at the time, for sure.

20 Q. And did he come up with a plan of
21 how to do these repairs that summer of 1999?

22 A. Probably in his head, yes.

23 Q. Did he share that plan with you?

24 A. More than likely.

25 Q. I'm just trying to understand how

1 involved you were in that process? Did you just
2 say to Ken, Look I'm delegate this entire issue of
3 routing and grouting to you. Handle it and once
4 in a while let me know what the status is?

5 A. No, it wasn't once in a while. I
6 would on a daily basis find out the progress,
7 where they were at, what they needed, how can I
8 help? Is there anything that -- we know what the
9 end product wants to be, we want the end product
10 to be. What is the it that you need to get there
11 by the end of the summer? And I would check with
12 them, you know, one, two, three times a day
13 depending on the need.

14 The information and the know how and
15 where the leaks were, that was all -- Ken was much
16 more knowledgeable about those issues than I was
17 at that time, you know. Like, he'd been there for
18 ten years and I was there for a month so you rely
19 on people that have the knowledging.

20 Q. So it's fair to say then that he
21 surveyed the deck, came up with a plan as to which
22 areas were priorities and delegated the work to
23 his guys. And you would on a daily basis go up to
24 him and make sure that the work is being done,
25 make sure they had material and equipment?

1 A. Ken didn't delegate the work to his
2 guys. Ken was the leader of the group and he was
3 there ensuring that it was done right, and yes.

4 Q. That's a fair point. You're right.
5 Mr. Snow did indicate to us that he did some of
6 that work himself?

7 A. He did a lot of the work himself.

8 Q. Okay. So once they determined which
9 area of the deck was priority, what are the next
10 steps that they did? Did you know what steps it
11 is that they had to follow? Or did you again
12 delegate that step-by-step procedure to Mr. Snow
13 to ensure that it was done by all the guys?

14 A. It was a joint effort, a team
15 effort. I would, you know, I'd -- I mean
16 everything depended on the weather. So first
17 thing in the morning Ken would say, What are we
18 doing? I use we. What are you doing today?
19 Where's our crew going to be and what are we
20 doing? And he'd say, Well I heard the weather
21 forecast is it might rain by noon. So we have to
22 be finished. We can only do this big of a section
23 because it's going to rain at noon or 3:00. He
24 knew, he would check the weather and find out what
25 the deck was like. If it was wet you couldn't do

1 anything. The proper conditions had to be there
2 in order for them to work. And Ken led the
3 charge. He was the one that was in charge of
4 where and when and how much and what to do.

5 Q. Okay. And so once he determined
6 that it was a good day to do the work what was the
7 next step of the workers?

8 A. The next step?

9 Q. So they would then grind -- just
10 trying to understand, technically speaking, what
11 is it that they were doing?

12 A. They would find the crack that they
13 were working on. Let's say it was one specific
14 crack that was long and would take the whole day
15 to do. Two or three guys would start with the
16 grinders and they would chase the crack all the
17 way through, make sure that, you know, they knew
18 the extent or the length of the crack. They would
19 grind it to the length it was required. They
20 would clean it, blow it and put a primer on it and
21 then prepare the mixture and make sure that
22 everything was fine, and then they would pour.
23 The product was poured into the crack.

24 Q. Okay. Then I gather some time would
25 be -- it would be then set aside to kind of make

1 sure that it would set?

2 A. Yes.

3 Q. Is that fair? We heard this week
4 from Mr. Buckley, who also signed the report with
5 Mr. Truman, that in order to do the work he
6 described the engineering specs as followed. And
7 I would like to get your reaction about those
8 items. And I'd like you to think about whether or
9 not you and your team actually did and implement
10 those items. And he said -- and the question from
11 Mr. Kearns was.

12 "QUESTION: What are the engineers specs
13 that you were going to need to make sure
14 that are properly adhered to make sure the
15 stuff goes back right."

16 And Mr. Buckley said,

17 "ANSWER: In general you have to have the
18 appropriate temperature, the temperature
19 moisture contents of the slab, the
20 appropriate materials, the appropriate
21 joint profiles, the appropriate traffic
22 control program, so that you're not
23 opening the deck up to use too soon after
24 the installation. The installation has to
25 consider how the depth of installation so

1 that it's not subject to abuse from
2 snowplows, that's a fairly broad statement
3 of the requirements."

4 So this is what Mr. Buckley thought were
5 the requirements in order to implement this
6 routing and sealing. Did your team and yourself
7 follow that procedure?

8 A. Yes.

9 Q. Okay. Did you understand that that
10 was the procedure that had been followed before
11 within -- when I say before I mean when Algoma
12 Central Properties owned the mall?

13 A. Pretty well, yes.

14 Q. And when did you -- so this -- the
15 recommendation was to rout and seal all joints and
16 cracks. So do you recall when those repairs would
17 have been completed?

18 A. Usually starting June, July, August,
19 those three months.

20 Q. Okay. I just want to be clear for
21 the record. Are you telling me that that process
22 of routing and sealing the joint is something that
23 you did on an annual basis starting in June and
24 finishing in September?

25 A. Depending on the weather. End of

1 May, June, July, August, yes.

2 Q. Okay. So that was -- it wasn't kind
3 of a one-time shot deal. We'll do it all and it
4 will stick. We have to do it on an annual basis?

5 A. Yes.

6 Q. And did you rout and seal all the
7 joints every year?

8 A. Yes.

9 Q. All of them?

10 A. All of them. No, all of the ones
11 that leaked. All of the ones that were a problem.
12 We did not take out the previous year's work and
13 do it over again if that's what you're asking.

14 Q. Okay. And had you spoken to anyone
15 like Mr. Truman or Mr. Buckley about that
16 understanding? About the fact that in your mind
17 what you needed to do was do exactly the routing
18 and the sealing of those leaking joints every
19 year? Did you get them to confirm that that's
20 what this recommendation was all about?

21 A. No.

22 Q. If I could take you to Exhibit No.
23 2222. And I understand that these are minutes of
24 a project meeting. And we have several of those
25 that have been provided to us by Retirement

1 Living. And if we can go down to -- so we see
2 here there appears to be a project meeting of May
3 30th, 2000.

4 MS. EFFENDI: If we keep going down
5 there, Ms. Kuka, and I believe it's on the next
6 page, there's a mention of a parking deck.

7 BY MS. EFFENDI:

8 Q. You see here number 14, "Parking
9 Deck."

10 "To notify tenants of the work to be done.
11 Let hotel staff know so they can put
12 tenants on the other side of mall. RG -
13 talk to Beamish to get work done in a
14 manner that least disrupts tenants "
15 I gather that those initials are Ms. Guertin?

16 A. I would think.

17 Q. Among all of the minutes that we
18 have these are the first ones that we have been
19 able to find for May 2000 that mention work on the
20 parking deck. As far as you recall did the work
21 of the routing and the sealing of the joints
22 start that first summer, 1999?

23 A. Yes.

24 Q. Okay.

25 MS. EFFENDI: And if we go, Ms. Kuka, to

1 the following exhibit, Exhibit No. 2223. And
2 again I believe it's on the following page. You
3 see "Parking Deck" again. Same item mentioned
4 here in June 2000. I gather the work was ongoing?

5 A. Yes.

6 Q. And then if we keep on going to the
7 following week, June 12, and that's Exhibit No.
8 2224?

9 MR. KEARNS: Mr. Commissioner, I wonder
10 if I might slow this down a bit. Because I'm not
11 sure Mr. Quinn has seen these documents before.
12 I'm not sure if they were available at his
13 original interview. So he might take a moment to
14 understand what they are.

15 THE COMMISSIONER: Perhaps you can
16 expand a bit, Ms. Effendi, on what it is we're
17 looking at?

18 BY MS. EFFENDI:

19 Q. Let's go to the first page, Mr.
20 Quinn, have you seen this document before?

21 A. Yes.

22 Q. Okay.

23 A. Maybe not lately.

24 Q. And describe to us what these are?

25 A. They are minutes of a management

1 meeting that we would have had.

2 Q. And I gather that these happened on
3 a regular basis?

4 A. Yes.

5 Q. Okay. And the one we're looking at
6 here is from June 12, 2000?

7 A. Yes.

8 Q. And the one that we looked at
9 earlier was May 30th, 2000. And I think we also
10 looked at the June 2nd, 2000. And they all appear
11 to identify, if we can go back to the second page.
12 They all appear to identify work being done on the
13 parking deck. I gather that that was one of the
14 things that was being done that summer?

15 A. Yes.

16 THE COURT REPORTER: Mr. Commissioner,
17 I'm having some technical issues with the
18 computer.

19 THE COMMISSIONER: We'll take five
20 minutes.

21 --- Break taken at 11:43 a.m.

22 --- Upon resuming at 11:52 a.m.

23 MS. EFFENDI: Mr. Commissioner, before
24 the break we were just looking at the project
25 meeting minutes that is Exhibit No. 2224. If you

1 can go back to the first page, Ms. Kuka, it's
2 dated June 19, 2000.

3 BY MS. EFFENDI:

4 Q. And then on the second page we see
5 that again there is an item, item 14 is "Parking
6 Deck. "To notify tenants of work to be done. Let
7 hotel staff know so they can put tenants on other
8 side of mall." Should I understand from this, Mr.
9 Quinn, that repairs were still ongoing on June 19
10 regarding routing and sealing of the roof deck?

11 A. Yes. It must have been more than
12 that because it was not common practice to book
13 tenants on the other side of the hotel when we
14 were doing routing and sealing.

15 Q. Okay. What else do you think it
16 would have been that would have led to --

17 A. I don't know.

18 Q. -- that notice being given?

19 A. I don't know.

20 Q. Okay. Now, if we can take a look at
21 Exhibit No. 2226. This appears to be minutes of
22 again a meeting but this time in July, on July
23 4th. And at the bottom of the page item 11 it's
24 indicated, "Parking Deck. Last year's work almost
25 done. New work starting now." Do you know what

1 was meant by that?

2 A. No.

3 Q. Is it possible that in 1999 you
4 wouldn't have finished resealing all the joints
5 and you completed that work in 2000?

6 A. No.

7 Q. So your evidence is that in 1999 the
8 routing and sealing of all the joints was
9 completed?

10 A. Yes.

11 Q. Okay. I thought you mentioned in
12 one of your descriptions of the work being done
13 the use of backer rods?

14 A. Yes.

15 Q. So I understand that that was one of
16 the tools used by the maintenance team in order to
17 seal the joints?

18 A. Yes.

19 Q. And what was your understanding of
20 the reason why one would be using a backer rod?

21 A. We were -- what you don't want when
22 you're using that sealant is that you don't want
23 it to have a 3-point connection, both sides and
24 the bottom. You want to -- you want to put a
25 backer rod at the bottom of the Vee groove so that

1 when you put the sealant in that it's only
2 connected on both sides -- both walls of the Vee
3 groove. So that if -- with contraction and
4 expansion it acts as an elastic and it's allowed
5 to move. If it's connected at the bottom it tends
6 to tear.

7 Q. Okay. And we also heard from Mr.
8 Buckley and Mr. Truman this week that the use of
9 bond breaker tape could have been necessary in
10 certain cases. You would the use that kind of
11 tape to limit the 3-sided adhesion?

12 A. No.

13 Q. And you've mentioned now a couple of
14 times the issue of the joint profile.

15 MS. EFFENDI: So if we could take a look
16 -- go back to Exhibit No. 70, Ms. Kuka. And more
17 specifically to page 9 of the report.

18 BY MS. EFFENDI:

19 Q. And if you go at the bottom there we
20 see that there's these observations that were
21 noted by Mr. Truman and then his assessment of
22 these observations. And the one that I'm
23 interested in is observation number 3. He
24 indicates, "Backer rod in topping joint. Joint
25 profile 1:2." And then in the assessment he says,

1 at number 3,

2 "Joint is full depth of the topping.

3 Backer is required to avoid three-sided
4 adhesion and to provide a proper joint
5 profile of 2:1 with depth. Profile in
6 excess of this reduces the performance of
7 the sealant and may cause damage to the
8 adjacent concrete."

9 Is that something that was applied, this
10 2:1 ratio to the cracks when the repairs were
11 conducted on the mall of the roof deck?

12 A. Yes. And as I said earlier, there
13 are hairline cracks that were done slightly
14 different because in order to do this you'd have
15 to go deeper and --

16 Q. And then you didn't want to create a
17 deeper crack.

18 A. That's right.

19 Q. And just to be clear, is your
20 evidence that the person who advised the
21 maintenance team on how to do -- on doing this
22 two-one ratio was that Mr. Truman on that deck,
23 during that 15 minute discussion?

24 A. Yes.

25 Q. And did you then inform the rest of

1 the team about this two-one ratio?

2 A. We discussed it at length.

3 Q. Okay. Now let's go back to Exhibit
4 No. 70. I want to go now to -- is there anything
5 else that you would have done in relation to that
6 first item of routing and sealing all joints?
7 Have we covered pretty much everything that, you
8 know, your team would have done in order to
9 achieve that first action point?

10 A. I don't believe so. I think we've
11 covered it all.

12 Q. Okay.

13 MS. EFFENDI: Ms. Kuka, if we can go
14 back to Exhibit No. 70, page 4 of the report.

15 BY MS. EFFENDI:

16 Q. So the second item there that was
17 also recommended by Halsall, was to "Remove
18 sealant from the underside of the joints in the
19 walkways." What did you understand that to
20 involve?

21 A. When we acquired the mall there is
22 an exterior deck along the Ontario Avenue side of
23 the building that had some sealant that filled the
24 crack on the underneath side of that walkway. And
25 it was -- it was to be taken out to allow water,

1 you know, to fall through and not hold it in that
2 walkway.

3 Q. Okay. And did you do those repairs?

4 A. Yes.

5 Q. Okay. And when did you do those
6 repairs? Did you do them the summer of 1999?

7 A. I don't believe so. I think we did
8 those in the following year.

9 Q. In 2000?

10 A. 2000 or 2001. Because the main
11 focus was to keep water out of the building, the
12 -- this was a walkway. And, you know, it was
13 outside the building so the -- the initial full
14 blown work was done to keep water out of the
15 inside.

16 We did this maybe in 2000 or 2001 and it
17 went along with the next recommendation to clean
18 and paint the exterior structural steel.

19 Q. Okay. And did you do that?

20 A. Yes.

21 Q. And that was done also in the
22 subsequent year --

23 A. 2000, 2001 one of those.

24 Q. Okay. And we heard from Mr. Snow
25 that this cleaning and painting of the structural

1 steel was something that was recurrent because
2 water would, you know, leak on the steel and then
3 it would corrode again and then you'd have to
4 paint it again, is that your recollection?

5 A. There was always cosmetic stuff that
6 needed to be done. But the one I remember -- this
7 was a big job. And I remember that one
8 specifically because it was such a big job. It --
9 all of the support beams underneath that walkway
10 were sandblasting and it was disruptive to
11 business because they were right by the front
12 door. They were sand blasted, brushed, scraped,
13 painted with a two-part paint and, you know, that
14 was -- that was a big job.

15 Q. Okay. And now item number four,
16 "Reinstate spray-applied fireproofing to the
17 structural steel." What did you understand that
18 to mean?

19 A. That would have been to get a
20 contractor to come in and replace any fireproofing
21 that would have fallen from the structural steel.

22 Q. Okay. And did you do those repairs?

23 A. No.

24 Q. And the next one. "Replace corroded
25 suspended ceiling hangers." What was that all

1 about?

2 A. These ceilings that are above us now
3 are called a suspended ceiling. And they are held
4 up by wires at all of the joints that are tied up
5 to the ceiling, to the concrete ceiling above.

6 And they would -- if they were rusty they would
7 come off. And they would be replaced as part of
8 any maintenance that was -- needed to be done.

9 Q. So this is something you did on an
10 as-needed basis?

11 A. Yes.

12 Q. And then finally, "Reinstate all
13 batt insulation at the underside of the parking
14 deck."

15 A. No.

16 Q. You didn't do that one?

17 A. No.

18 Q. And you may have already told us but
19 I want to be clear, did you advise Mr. Truman
20 after you received his report that you were going
21 to go ahead with Option 1 and that you would get
22 your own staff to do the work?

23 A. No.

24 Q. Did you ever speak to Mr. Truman
25 after he delivered that report?

1 A. Once a few years after this,
2 probably in -- I'm guessing 2004, 2005, a couple
3 of years after this was done.

4 Q. And what did he call you about?

5 A. Just that he had gone on his own
6 and, you know, if we ever needed his services that
7 he was available. He would like to do work in his
8 local community.

9 Q. Did he talk to you about the parking
10 deck?

11 A. No.

12 Q. Now I would just like to leave the
13 issue of the Halsall report because in fact that
14 report -- just so we're -- was delivered prior to
15 Retirement Living owning the mall, prior to the
16 closing, is that correct?

17 A. That's correct.

18 Q. Okay. And I -- we understand that
19 the closing of that transaction took place in June
20 1999. So then in June you transition into mall
21 business, is that correct?

22 A. Yes.

23 Q. Is it fair to say that from the
24 moment you went -- Retirement Living became owner
25 of the mall you noticed that there were leaks in

1 the mall when you first came in in June 1999.

2 Were there leaks?

3 A. Yes.

4 Q. And I understand that in fact there
5 were leaks, for example, in the library?

6 A. Yes.

7 Q. And if I could take you to Exhibit
8 No. 2181, and specifically to page 0324.

9 MS. EFFENDI: In fact, Ms. Kuka, if we
10 could go to page 0308.

11 BY MS. EFFENDI:

12 Q. So this document, Mr. Quinn, you'll
13 see it's a document that is authored by Andrea
14 Leddy who was personnel manager at the City of
15 Elliot Lake. If we go back to the first page
16 you'll see that it's addressed to Elliot Lake
17 Retirement Living and the subject line is the
18 Elliot Lake Public Library. And in the letter Ms.
19 Leddy says that.

20 "The Joint Health and Safety Committee of
21 the City of Elliot Lake conducted an
22 inspection at the....Library....[and] this
23 was reviewed at our August...meeting where
24 it was recommended by the Committee that
25 the recommendations and a history of all

1 concerns of past inspection be forwarded
2 to you as the new landlord with a view
3 that some of the outstanding issues can be
4 addressed and move on to conclusion."

5 And attached to that letter were those
6 inspection reports and a number of memos that were
7 exchanged between the library and the City of
8 Elliot Lake. Did you receive a copy of this
9 letter, Mr. Quinn?

10 A. Actually I'm looking at the writing
11 at the top of that.

12 Q. Yes.

13 A. It looks like mine. I don't
14 remember the letter itself but that writing looks
15 like mine.

16 Q. Okay.

17 A. I'm not a very good writer.

18 Q. I'm not sure I understand what's
19 written on there but it says something health
20 2000, 2.5 billion, IHS Integrated Health. Does
21 that have anything to do with the library?

22 A. I don't know.

23 Q. Okay. Well that's okay. My
24 question, so can we assume that you would have
25 received a copy of this letter?

1 A. Likely, yes.

2 Q. Okay. So I gather though, is it
3 fair to say, that in 1999 you knew that the
4 library were having issues with leaks?

5 A. Yes.

6 Q. Okay. And if we go to -- now page
7 0324 this is a handwritten note. Is that your
8 note, Mr. Quinn?

9 A. Yes.

10 Q. And it's dated September 30th, 1999.
11 And it says, "Met with Barb and addressed two
12 concerns. 1) Toilet drain to be plugged and
13 capped. 2) Change three ceiling tiles." Barb
14 Fazekas?

15 A. Barb Fazekas.

16 Q. And the reference in there to
17 ceiling tiles. Do you recall what the
18 circumstances of this discussion?

19 A. More than likely stains in the
20 ceiling tiles and she wanted them changed.

21 Q. And do you recall whether or not you
22 would have changed them?

23 A. Yes.

24 Q. Okay. Now put yourself, you know,
25 you have redone -- put yourself back in your shoes

1 in the Fall of 1999. You've regROUTED, resealed
2 all the joints. You did some of the work that was
3 recommended by Halsall. Is it fair to say that
4 those repairs did not completely stop all the
5 leaks?

6 A. In September 1999 I would -- I would
7 bet that all of the leaks were gone.

8 Q. And did that remain the case
9 throughout the period until Retirement Living sold
10 the mall?

11 A. No.

12 Q. Okay. And so what is your
13 recollection then in terms of the leaks coming
14 back after that Fall, 1999.

15 A. Well then you start the winter --
16 the weather, you know? You have the Fall rains,
17 you get the freeze-thaw of winter, you get snow
18 removal, you get traffic on the deck. It takes
19 abuse. It's outside at -20, -30, -40 -- not -40.
20 It doesn't get that cold here.

21 Q. I hope not.

22 A. We see -20 and the weather
23 conditions are the weather conditions. And you,
24 know, you get back to the spring and when things
25 start to thaw. Then you get a phone call from a

1 tenant saying, Listen, I have a leak. There's
2 water coming in here. And then the guys would be
3 dispatched and they -- Yeah, there's water coming
4 in here. And they'd run upstairs on deck and find
5 -- try to find where the water is coming in. And
6 at that time of year, and you know this time of
7 year, May, February, March, April, May. You know,
8 if there was a thaw then you'd run upstairs, find
9 it, you know, take the torches out, melt whatever
10 was around it. Get a caulking gun and put some
11 caulking on whatever crack you found. And
12 hopefully that would take care of it.

13 This would go on for, you know, until
14 June, you know. Like things would crop up during
15 that period of time. And then in June, by that
16 time you knew where all the cracks were because
17 you did the temporary repair in the early winter,
18 end of spring.

19 And we'd start our summer program all
20 over again. And the guys would spend two months,
21 two and a half, depending on the severity and what
22 happened during the winter.

23 Q. During that period of time where the
24 spring thaw occurred every year, were there any
25 locations in the mall that were more prone to

1 leaks than others?

2 A. Yes.

3 Q. Can you tell me what those are?

4 A. The library.

5 Q. Yeah.

6 A. Scotiabank and Woolco.

7 Q. Okay. Which eventually became
8 Zellers.

9 A. Zellers.

10 Q. Okay. And were -- in those areas
11 would you say that every time it rained it leaked?
12 How frequent were the leaks in those areas that
13 you just mentioned to me?

14 A. It wouldn't leak every time it
15 rained. And it would depend on -- it would depend
16 on several factors. It would depend on how heavy
17 the rain was. Sometimes they were minor leaks.
18 Sometimes we had torrential downpours where the
19 building didn't leak at all. You know? It
20 depended on the time of year, the type of rain,
21 the wind, the, you know, whether there was slush
22 or snow on the deck. Many factors, you know,
23 contributed to how bad the deck would leak.

24 Q. Okay. I'd like to show you just a
25 couple of pictures of the library and you can tell

1 us if they reflect your recollection of the time.
2 I'll show them all to you and you can tell me at
3 the end.

4 MS. EFFENDI: If we can pull up, Ms.
5 Kuka, Exhibit No. 2037.

6 MR. KEARNS: In order to be fair to the
7 witness we should know the dates of these
8 pictures. I understand he might be saying, Did it
9 look like that when you owned it? But he is
10 entitled to know the date when these pictures were
11 taken.

12 THE COMMISSIONER: Yes, Mr. Effendi.

13 MS. EFFENDI: All we know is that these
14 pictures were take in the period of 2005, 2006.
15 I'm not sure if it's 2006 or 2005.

16 BY MS. EFFENDI:

17 Q. So this is the first picture, Mr.
18 Quinn. Do you recall tarps being put on the books
19 at the library?

20 A. Yes, I do.

21 Q. So is that an accurate reflection of
22 what you remember it looked like one of the times
23 when it leaked at the library.

24 A. It could, yes.

25 Q. Okay. And Exhibit No. 2041. Again

1 we see here that there is missing tiles. And we
2 heard from Ms. Barb Fazekas who testified that
3 when the tiles would get wet they would be
4 removed. Is that your recollection as well of the
5 state of the library when it would leak?

6 A. That seems a little bit much. Did I
7 ever see tiles removed from the ceiling of the
8 library? Yes. Have I ever seen -- there seems to
9 be close to a dozen taken off here. I don't
10 recall anything that drastic.

11 Q. Okay. Ms. Fazekas testified that
12 this was an accurate reflection of the situation
13 while she was there. And she was there until June
14 of 2006. So it could have been any time during
15 that period of time.

16 With respect to the library, is isn't it
17 true that in fact the issue of leaks was such a
18 concern to the library that in 2000 Retirement
19 Living looked at the possibility of moving the
20 library to a different location?

21 A. I do remember something about that,
22 yes.

23 Q. And am I right that you then
24 consulted Mr. Bruce Caughill, who we'll talk about
25 him in a second, about the possibility of moving

1 them somewhere else and you looked at the issue of
2 loads?

3 A. Yes.

4 Q. And eventually unfortunately there
5 was no other location to give to them given the
6 issue of loads and the square footage that they
7 required, is that correct?

8 A. That's correct, yes.

9 Q. And I just wanted -- if we could
10 pull Exhibit No. 11-13. This is a letter from Ms.
11 Fazekas to Mr. Kennealy in which she -- the
12 subject is ceiling condition in library. And
13 she's writing another letter of complaint. She
14 says "regarding the deplorable condition of the
15 ceiling over the library." She says,
16 "Considerable money and effort were expended to
17 paint our premises in September." That is
18 September of 2002.

19 "However, our site can never look
20 attractive given the state of the ceiling
21 and concomitantly, the look of the library
22 with plastic covering over the
23 bookshelves, drip buckets in the aisles to
24 protect the rug and gaps in the ceiling
25 where tiles have become so water laden

1 that they have fallen on the floor."

2 Do you recall that period of time in
3 2002 when you would have dealt with this situation
4 with this tenant?

5 A. Not specifically. That particular
6 incident -- I was in the library several times.
7 Was this one of the times? It could have been? I
8 don't recall it specifically.

9 Q. Is it fair to say that it wasn't
10 unusual for the library to have leaks? It was one
11 of those areas that you mention that was prone to
12 leaks when it rained?

13 A. It was one of our problem areas.
14 Unusual? It depends on what you mean by unusual.
15 Did it leak every time it rained? No.

16 Q. But it had leaks?

17 A. Yes.

18 Q. For example, contrary to the
19 Retirement Living location which was under the
20 hotel it didn't have any leaks?

21 A. That's correct.

22 Q. Now, if we could take a look at
23 Exhibit No. 13-5. I would like to look at the
24 Bank of Nova Scotia. You mentioned that as one of
25 the areas that had leaks. And this was an e-mail

1 that was sent from Robert Jurmalietis to Elliot
2 Lake Retirement Living. And it was on February
3 15th, 2005 entitled "Damaged Ceiling Tiles." And
4 he was the bank manager at the time, is that
5 correct?

6 A. I'm -- I believe so.

7 Q. I believe so. That's what his title
8 says at the bottom of the e-mail. Do you recall
9 dealing with Mr. Jurmalietis?

10 A. No.

11 Q. Okay. He say in the e-mail,

12 "You may recall that a few days ago a
13 ceiling tile collapsed in the Bank, from
14 the weight of water stemming from a leak
15 in the roof. This damaged tile remains in
16 place, and creates an unsightly and
17 unprofessional image for us.

18 Would you kindly have your maint
19 people attend the branch and replace the
20 destroyed tile, as well as have them
21 replace the numerous damaged tiles
22 previously reported to you.

23 Would you also advise your intention
24 as to having the carpet cleaned in the
25 area that the collapsed tile was located.

1 There remains an unsightly water stain
2 where the water landed, and soaked into
3 the floor."

4 And there is a handwritten note at the
5 bottom. Am I correct that that's your
6 handwriting?

7 A. Yes.

8 Q. And it says, "When do we tell him
9 that we have already gone above and beyond the
10 service we need to give?" And that's your
11 initials. Do you recall that incident?

12 A. Yes. Vaguely, yes I do.

13 Q. And what do you mean by you have
14 already gone above and beyond the service?

15 A. That pertains to insurance. Every
16 tenant is required to have tenant insurance where
17 what damages that occur within their rented space
18 is covered by their insurance, and that's one of
19 them.

20 Like this particular incident, if I
21 recall correctly, we had done a -- he bent over
22 backwards and did a lot of things that no other
23 landlord would do. And you know, you get to a
24 point where you say, we've done everything we can
25 do and we've cleaned up, we've done this and that,

1 at what point do you stop? And that is what my
2 comment is at the bottom of there.

3 And that probably went back to RK and
4 Rhona, or Richard Kennealy and Rhona. And that's
5 the question. You know, do you want me to
6 continue to service this guy at the level we are?
7 Or do we tell him that he should get a hold of his
8 insurance company?

9 Q. Am I right, Mr. Quinn, that the roof
10 though was a responsibility of the landlord not
11 the tenants?

12 A. It -- yes, it is. And any building
13 that you have the structure is the responsibility
14 of the landlord.

15 Q. Okay.

16 A. However, every lease agreement
17 states that, you know, the contents of, you know,
18 the landlord is to do the -- to the best of his
19 ability keep water out, or nature out of the
20 building. And when it -- when nature succeeds to
21 beat you it's the tenants responsibility to
22 contact their insurance to get the claims done.

23 Q. So do you recall what happened here?
24 Did Retirement Living keep on replacing the tiles
25 at BNS or did you tell them, Do it yourself at

1 your own cost?

2 A. I was looking for guidance here.
3 This note would have gone back to my superior,
4 which is Richard Kennealy. And, you know, I was
5 asking him, what do I do here? Do we tell him
6 that he's now, you know, at the point where he
7 should be contacting his insurance? Or do you
8 want me to go and get the carpet cleaned?

9 Q. And you don't recall what those
10 instructions were to you?

11 A. I don't know.

12 Q. Aside from BNS you mention Zellers
13 and you mention the library, were there any other
14 areas that had leaks. That kind of jump out at
15 you?

16 A. Yes, the area above what is now the
17 food court area and that end of the mall.

18 Q. So when you say --

19 A. Buck or Two.

20 Q. Sorry, I didn't catch the last thing
21 you said.

22 A. Buck or Two and the MPP's office.
23 And I forget the name of the store -- over
24 Foodland.

25 Q. So is that the escalator?

1 A. Yes.

2 Q. It might be helpful so that I know
3 exactly what you're referring to.

4 MS. EFFENDI: Ms. Kuka, can you pull up
5 Exhibit No. 3237 again. Sorry, I have a better
6 suggestion, Exhibit No. 3003.

7 BY MS. EFFENDI:

8 Q. So that is a floor plan and we also
9 see the grids on there. And you have a mouse next
10 to you, Mr. Quinn, and you will be able to point
11 to us exactly those areas. So let's start. So
12 you indicated the Woolco/Zellers so that's at the
13 left of our screen?

14 A. Yeah. The Woolco area. Oops. The
15 Woolco area would be here.

16 Q. And then BNS was right next to it,
17 is that correct?

18 A. In this area here.

19 Q. And then the library was at the
20 back?

21 A. Right here.

22 Q. And then what are those other areas?
23 You mentioned where was Buck or Two?

24 A. In this area.

25 Q. Okay.

1 A. Sorry, this one here. See this one?

2 Q. Yeah.

3 A. There was also leaks in there.

4 THE COMMISSIONER: Describe that for the
5 record.

6 BY MS. EFFENDI:

7 Q. So the area at the bottom right side
8 of the image where right now it says actually
9 Dollarama that was Buck or Two?

10 A. Yes.

11 Q. A portion of it was Buck or Two?

12 A. Yes.

13 Q. And the portion that is now
14 indicated SAAN is a portion that you indicate also
15 had leaks?

16 A. Yes.

17 Q. Okay. Anywhere else?

18 A. This area here. There might have
19 been a leak there but there were very few. The
20 general concentration of leaks was from here to
21 here. And there were -- there were some leaks
22 here, not as bad. My recollection is that they
23 were not as bad as what the library, the Bank of
24 Nova Scotia and Woolco were. That was the most --
25 the one that was more likely to have leaks in the

1 spring.

2 Q. Okay. Just so I understand
3 correctly, you pointed at the library, the top
4 part of the space that was around by Zellers, and
5 the bottom part where it says SAAN and Dollarama
6 are the areas where it was prone to leakage. And
7 around this I see BNS that was the area that was
8 prone to leakage.

9 The area though at the bottom where we
10 have the walkway and the escalator was not an area
11 prone to leakage? Did I understand that
12 correctly?

13 A. In this area here?

14 Q. So that area is A2, A3, A4, 5, 6, 7,
15 8, 9 and A1?

16 A. Yes.

17 Q. So those tenants were not prone to
18 leakage?

19 A. That's right.

20 Q. Was there any leakage around the
21 kiosk around the escalator?

22 A. Yes. This area here.

23 Q. So that is the escalator that we
24 see?

25 A. The escalator is here.

1 Q. So it says K4 there, right? It says
2 stairs and it says K4?

3 A. In this area here.

4 Q. And I think right now it says
5 Rachelle Unisex Hair.

6 A. Yes, that's now the food court.

7 Q. Okay. So if we could now go to -- I
8 would like to show you a few correspondence that
9 you had with the tenant Buck or Two that you've
10 mentioned to me.

11 If we could go to Exhibit No. 2181 at
12 page 335. And this is a letter dated March 17,
13 2003 from Maria Arkilander and Glenn Shelley. The
14 first paragraph talks about hydro costs, but the
15 second -- and for the record the letter is
16 addressed to NorDev, which I understand was the
17 actual owner of the mall. Is that correct, Mr.
18 Quinn?

19 A. That's correct.

20 Q. And in the letter they say.

21 "Also due to the warmer weather there have
22 been significant leaks throughout our
23 store, light lenses are stained with water
24 on the floor requiring buckets to stop the
25 pooling. Some lenses are still containing

1 water. I would like to know when this
2 problem will be corrected and when stained
3 tiles will be replaced as well as the
4 lenses cleaned."

5 Is that an accurate reflection of the
6 situation at Buck or Two on March 17, 2003? It
7 looks like it was the thaw season there?

8 A. Yes.

9 Q. And you respond to Ms. Arkilander
10 and indicate to her.

11 "Due to the parking area being
12 situated on the roof of our building,
13 water infiltration occurs occasionally.
14 Constant attention to deck is part of our
15 on-going maintenance and springtime is
16 especially vulnerable due to abuse of snow
17 removal and winter weather.

18 We as the landlords endeavor to keep
19 water away from the interior of the
20 building; however, when leaks occur it is
21 the tenants or the tenant's insurance
22 policies responsibility to remedy any
23 damages that occur in their premises."

24 So that is a bit of what you were
25 telling us about the BNS situation, correct?

1 A. Yes.

2 Q. And your response was, Sir, look,
3 we're doing the repairs. Every year we try and
4 seal the cracks, is that correct?

5 A. Yes.

6 Q. And it's not perfect. Water
7 infiltration does occur, is that correct?

8 A. This particular situation, over and
9 above this letter, we had attended to correct
10 their needs. We had gone in and cleaned up and
11 fixed tiles and -- even though my letter says, you
12 know, go see your insurance, we still went ahead
13 and did some work for them.

14 Q. And why did you do that?

15 A. Because we're nice people.

16 Q. You wanted them to stay in the mall,
17 is that fair? You wanted them to be Happy
18 tenants?

19 A. The whole objective of this is to
20 ensure that our tenants were happy and not just
21 the fact that they wanted to stay there. I mean,
22 we needed this for the community. It was an
23 effort to keep retail in Elliot Lake and shopping
24 at the mall and having outlets and the whole
25 thing.

1 Q. And I don't want to press this issue
2 too, too much but there was a subsequent letter
3 that was sent by Buck or Two. If we go to page
4 339. It appears at this time that this letter
5 came from head office at Buck or Two and it's
6 addressed to you. And again it indicates.

7 "Dear Richard,

8 It has been brought to our attention
9 that due to the parking lot being situated
10 on the roof of the building, water
11 infiltration has occurred resulting in
12 damages within our leased premises.

13 As per the lease, it is the
14 landlord's responsibility for structural
15 repairs to the roof, due to the fact that
16 there is a parking lot situated above the
17 lease premises. With respect to our
18 insurance policy, the Landlord is
19 responsible for any damages that occur
20 within the premises which are a direct
21 result of structural damage to the
22 building.

23 Please take this as our formal
24 request for you to remedy the situation
25 immediately."

1 Do you recall whether or not, Mr. Quinn,
2 there was a response provided to Ms. Kapadia who
3 appears to be the author of this letter?

4 A. I don't believe I responded to her.

5 Q. Okay.

6 A. This has to do with I believe the
7 same letter that you read before with Ms.
8 Arkilander, and I remember that one.

9 Q. So it's related to that situation.
10 And in that spring of 2003 they were leaking and
11 expressing their concerns to you?

12 A. I believe so.

13 Q. And if I understand your evidence
14 you went in there above and beyond despite saying
15 to them that it's their insurance policy that
16 should cover it.

17 MS. EFFENDI: Can we go now, Ms. Kuka,
18 to page 341.

19 BY MS. EFFENDI:

20 Q. This appears to be another letter
21 from the same tenant. Is that correct, Mr. Quinn?

22 A. Yes.

23 THE COMMISSIONER: Are we looking at the
24 right one?

25 MS. EFFENDI: Sorry.

1 THE COMMISSIONER: That is a letter from
2 NorDev.

3 MS. EFFENDI: It's a letter that is
4 written by Maria and Glenn and signed by Maria
5 Arkilander and addressed to NorDev. And
6 unfortunately we don't have a date on this one.
7 But if you go back a page, Ms. Kuka, there an
8 identical copy stamped with a receive date and it
9 says April 10, 2003.

10 BY MS. EFFENDI:

11 Q. And the other one has handwritten
12 notes and I wanted to see if those were yours, Mr.
13 Quinn?

14 A. No.

15 Q. Again it appears that the tenant has
16 concerned about the issue of the ceiling tile
17 replacement and the cleaning of the water, and
18 that's approximately a month later. And they say
19 that they have "...not heard from you since the
20 home office sent you the letter in regards to
21 who's responsibility it was to fix the problem and
22 its necessary repairs."Do you recall what happened
23 following this?

24 A. No, I don't.

25 Q. And now if we can go to page number

1 343 this is a fax that you sent to Mr. Kearns in
2 June of 2003, a couple of months later. Is that
3 correct?

4 A. Yes.

5 Q. And you say to him,
6 "Doug I received this letter June 2003.
7 Today a gentleman in the mall gave a copy
8 of it to Ray our maintenance man to give
9 to me. He said that someone was
10 distributing this to mall customers."
11 And if we go to the next page you'll see
12 that it's a fax cover. And then if we go the
13 other one, this one is a bit blurry but lucky
14 enough the next page is better quality.

15 And this appears to be coming from the
16 head office of Buck or Two and that is June 30th,
17 2003. And he mentions at the top,

18 "Further to your letter of April 4,
19 2003, regarding responding to Ms.
20 Kapadia's letter regarding the roof leaks
21 on the above-mentioned property, this file
22 has been given to me for review and
23 response.

24 Please be advised that after a
25 thorough review of this file, there is no

1 signed lease agreement that could be
2 located."

3 And then she goes on. If you skip to
4 the next paragraph it's "Furthermore..." And then
5 the next one she says.

6 "We have been advising about this
7 ongoing problem regarding the roof leaks
8 for self years now, both verbally and in
9 writing. Now, not only has your lack of
10 action had an impact on the sales of the
11 store (as customers don't like water
12 dripping on their heads while they shop),
13 this has also destroyed inventory in the
14 store, as well as the ceiling tiles and
15 now the electrical system. Moreover,
16 further complications will arise if a
17 customer slips and falls as a result of
18 water on the floor from the leaking roof.

19 This situation has become
20 intolerable."

21 Do you recall what actions were taken by
22 Retirement Living following this letter, Mr.
23 Quinn?

24 A. No, I don't.

25 Q. Do you agree with the author that

1 they had been suffering from leaks for a number of
2 years and expressing those issues to you,
3 Retirement Living to be fair?

4 A. No, I don't. This makes it sound
5 like you know, it was a continuous ongoing problem
6 and I -- I don't recall Buck or Two being -- did
7 it leak? Yes, no doubt about it. But was it a
8 continuous problem where it warranted a letter
9 from a lawyer? No.

10 There were -- I remember one occasion
11 that -- I think -- it had to do with this. And I
12 was asked and told that there was a leak at Buck
13 or Two. And when I went there they told me that
14 greeting cards had been destroyed and, you know,
15 et cetera, et cetera, and we were going to pay for
16 it. And I went there and I saw no evidence of any
17 materials being -- having water on them or
18 anything like that.

19 I specifically remember that one because
20 Mr. Shelley was quite upset with me that I had
21 gone to his store at their request. And he said I
22 was rude to one of his employees. And I wasn't.
23 Don't think I was anyway. But that's why I
24 remember this issue. And, you know, from what I
25 recall of the situation of, you know, that

1 particular incident. Certainly doesn't warrant a
2 letter from a lawyer.

3 Q. Are you aware of any other times
4 that it leaked? Is that the only time you recall
5 a leak at that location was the card incident?

6 A. No, there was another time where the
7 lenses and ceiling tiles were wet.

8 Q. Now you indicated to me earlier when
9 we were talking about -- I believe it's -- when we
10 were talking about BNS that the responsibility of
11 the landlord is to try and do their best to
12 maintain the roof in proper condition. Did I
13 understand that correctly?

14 A. Yes.

15 Q. That being said, when you
16 implemented that Option number 1 is it fair to say
17 that it did continue to leak when it was the
18 spring, when it had -- sometimes when it rained it
19 would leak in the mall at certain places that you
20 have indicated to us on the plan?

21 A. Yes.

22 Q. Did it ever occur to you to call
23 back Mr. Truman and say, Look, Mr. Truman this
24 option doesn't work. It's still leaking.

25 A. Did it occur to me to call him back?

1 No, it did not.

2 Q. Did you call anyone else to say,
3 Look, what can we do about these leaks?

4 A. We had a lot of internal discussions
5 on what could be done, should be done, who you
6 would talk to. But we never -- we did not go out
7 and get another study done to find out what we
8 could do, no.

9 Q. And why not?

10 A. Because we had this one done and
11 they told us what to do.

12 Q. But it continued to leak, you were
13 getting complaints from tenants.

14 A. We continually got better results
15 year after year after year. When we left -- when
16 we left the mall or when the mall was not ours any
17 more there were minimal leaks.

18 I remember an incident when there was --
19 there was a downpour, like a -- it was cats and
20 dogs all over the place. It was raining cats and
21 dogs, as the expression says. And I remember
22 being concerned and went over to see. And I
23 remember there being Al and Ken Snow. And I said,
24 How are we doing? How are we doing? What's the
25 report? And they told me there was four leaks. I

1 said, Four? You know? And he said, Yeah, four
2 leaks. And he said, Richard, that's great. He
3 said, We used to get 53 leaks. The record for
4 that building was 53 leaks, buckets all over the
5 place, all over the mall. And this was a horrible
6 rain and we had four. Did I feel good about that?
7 There was four leaks. I feel bad that there was
8 four leaks. But did I feel good that there wasn't
9 53 buckets out there? You're darn right I did. I
10 felt great, because we were actually getting
11 somewhere. So when you say that this didn't work
12 I don't agree. It did work, was working and we
13 were getting somewhere.

14 Q. Is it fair to say though that you
15 did not consider any other option, you did not go
16 outside to hire another consultant or another
17 engineer to conduct an assessment to see whether
18 or not you can reduce the leaks even further?

19 A. Saw no need to do that because we
20 were winning the battle.

21 Q. Now, I'd like to address with you
22 the topic of Mr. Bruce Caughill. And your
23 relationship -- and Retirement Living's
24 relationship with him. When is it that Retirement
25 Living first started hiring Mr. Caughill?

1 A. He was doing business with us for --
2 jumpin', he did work for Retirement Living in
3 other buildings for -- I can't remember the first
4 time but a long time.

5 Q. Okay. So prior to Retirement Living
6 owning the mall?

7 A. For sure.

8 Q. Okay.

9 A. He was my go-to guy. When it got to
10 -- when I needed professional advice I would phone
11 Bruce.

12 Q. So you would consult Mr. Caughill
13 regularly, is that fair?

14 A. Yes.

15 Q. Did you know that Mr. Caughill's
16 brother Rod Caughill had worked at Algoma Central
17 Properties?

18 A. Did I know him?

19 Q. Did you know Bruce Caughill and Rod
20 Caughill were brothers?

21 A. Yes.

22 Q. Okay. And I'd like to take you to
23 Exhibit No. 77?

24 THE COMMISSIONER: I just remind you
25 that it's a quarter to 1:00, but I'm prepared to

1 give you more time, Ms. Effendi.

2 MS. EFFENDI: I can't promise that I
3 will be done, Commissioner, in the next 15 minutes
4 so I wouldn't want to say that. I think it will
5 probably take me another half hour. I'm in your
6 hands.

7 THE COMMISSIONER: I was going to say
8 the same thing. It matters not to me, but
9 obviously there are concerns involving
10 transportation at this time. So I mean we can
11 stop now if you want to go for another five or ten
12 minute.

13 MS. EFFENDI: This is a perfect time to
14 stop.

15 MR. ELLIOTT: It's preferable, Mr.
16 Commissioner, I understand that the weather in
17 Toronto is terrible.

18 THE COMMISSIONER: It is. I have to get
19 a number of people off on a plane to Ottawa so
20 it's coming our way too. Thank you, we'll rise
21 and begin again on Tuesday, the 16th.

22 --- Whereupon the Inquiry proceedings
23 were adjourned at 12:45 p.m.

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REPORTER'S CERTIFICATE

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

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

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

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

Dated this 17th, day of April, 2013.

Helen Martineau

PER: HELEN MARTINEAU

CERTIFIED SHORTHAND REPORTER

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