

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 17

March 28, 2013



Neeson & Associates
COURT REPORTING AND CAPTIONING INC.

141 Adelaide Street West | Suite 1108
Toronto, Ontario M5H 3L5
1.888.525.6666 | Fax: 416.413.0230

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

ELLIOT LAKE COMMISSION OF INQUIRY

--- This is DAY 17 in the Inquiry proceedings held before the Honourable Justice P.R. Bélanger, Commissioner, taken at the White Mountain Academy of the Arts, 99 Spine Road, Elliot Lake, Ontario, on Thursday, the 28th day of March, 2013, commencing at 9:00 a.m. ---

REPORTED BY: Lisa Barrett
CSR, CRR, RPR

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

2

3 Peter K. Doody, Esq.,

for the Commission

4 Nadia Effendi, Esq.,

for the Commission

5 James Maloney, Esq,

for Rodney Caughill

6 Peter Roy, Esq,

ELMAC/SAGE

7 Alexandra Carr, Esq.,

ELMAC

8 Robert MacRae, Esq.,

Robert Wood

9 Douglas Kearns, Esq.,

Retirement Living

10

and NorDev

11 Robert Howe, Esq.,

Algoma Central

12

Properties Inc.

13

14

15

16

17

18

19

20

21

22

23

24

25

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

I N D E X

PAGES

WITNESS: ROBERT E LEISTNER: ON FORMER OATH .. 3528

EXAMINATION-IN-CHIEF BY MR. DOODY

(CONTINUED) 3528 - 3525

CROSS-EXAMINATION BY MR. KEARNS: 3525 - 3554

CROSS-EXAMINATION BY MR. OUTERBRIDGE: ... 3554 - 3588

CROSS-EXAMINATION BY MR. CASSAN 3588 - 3629

CROSS-EXAMINATION BY MR. ROY: 3629 - 3658

CROSS-EXAMINATION BY MR. MACRAE 3658 - 3663

RE-EXAMINATION BY MR. DOODY: 3663 - 3675

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

INDEX OF EXHIBITS

NUMBER/DESCRIPTION	PAGE
--------------------	------

No exhibits entered.

1 -- Upon commencing at 9:10 a.m. on Thursday, March
2 28, 2013

3 THE CLERK: This hearing of the
4 Elliot Lake Commission Inquiry is now in session.
5 Please be seated.

6 THE COMMISSIONER: Good morning,
7 everybody. Mr. Doody.

8 MR. DOODY: Mr. Commissioner, just
9 a couple of points. If I could introduce to you
10 this morning, Mr. Peter Roy who is a partner of Mr.
11 Elliott's and is here representing ELMAC and SAGE.

12 THE COURT: Mr. Roy or Mr. Broadbent?

13 MR. ROY: Mr. Roy. I don't have
14 a sign.

15 THE COMMISSIONER: You don't have a
16 sign? Well, we should get one made for you then,
17 Mr. Roy.

18 MR. ROY: (sotto voce) Mr. Elliott
19 would love me to come up more frequently, so we'll
20 see.

21 THE COMMISSIONER: Welcome, sir.

22 MR. DOODY: Also an issue was raised
23 by a couple of my friends.

24 There is apparently some
25 miscommunication -- undoubtedly my fault -- on this

1 21-day rule with respect to exhibits filed.

2 And what I intended to communicate when
3 I spoke about this on the opening day, was that
4 exhibits that are filed as part of a mass filing, if
5 I can call it that, are entered as exhibits, and then
6 participants have 21 days in which they are entitled
7 to write to us and express their intention to bring --
8 if they believe that the document ought not to have
9 been accepted as an exhibit, they have 21 days to
10 write and say that they wish to move to have the
11 document expunged from the record.

12 But that is simply with respect to
13 whether the document ought to have been admitted as an
14 exhibit.

15 There is no suggestion that every
16 document that has been filed by the Commission as an
17 exhibit -- that the facts in that document are
18 necessarily accepted as true by the Commission.

19 As I indicated, I believe in the
20 opening, documents which have been filed are part of
21 the evidentiary record and you, Mr. Commissioner, in
22 my submission, are entitled to take account of them as
23 the basis for your factual findings, but you are
24 certainly, in our submission, by no means required to
25 accept that all of the facts are true.

1 The ultimate determination of the facts
2 is for you and these documents and other exhibits and
3 the oral evidence you hear, are all part of the
4 evidentiary mix upon which you can base your factual
5 findings.

6 So, hopefully that will clear up any
7 confusion amongst my friends.

8 THE COMMISSIONER: All right.

9 MR. DOODY: With that, Mr.
10 Commissioner, I just have one question to put to the
11 witness which I neglected to ask yesterday.

12 ROBERT E. LEISTNER: ON FORMER OATH
13 EXAMINATION-IN-CHIEF BY MR. DOODY
14 (CONTINUED):

15 Q. Mr. Leistner, we spoke yesterday
16 about the practice of Ms. Guertin from Retirement
17 Living forwarding to you information which she had
18 compiled from the consultants' examinations of the
19 building and other -- and the financial analysis,
20 et cetera.

21 Can you tell me, when did that
22 practice stop? Did it continue after the Agreement
23 of Purchase and Sale had been entered into?

24 A. I can't recall. I just don't
25 know.

1 MR. DOODY: Okay. Thank you, those
2 are my questions, Mr. Commissioner.

3 THE COMMISSIONER: Thank you. Any
4 questions in-chief by counsel for ...

5 MR. MALONEY: No, sir.

6 THE COMMISSIONER: No.

7 Cross-examination then.

8 MR. KEARNS: Good morning,
9 Mr. Commissioner. Good morning Mr. Leistner.

10 THE COMMISSIONER: Mr. Kearns.

11 CROSS-EXAMINATION BY MR. KEARNS:

12 Q. I'd like to talk a little bit,
13 Mr. Leistner, about events that may have occurred
14 prior to December '97, prior to your meeting in your
15 office with Mr. Farkouh and Mr. Bauthus and
16 Mr. Kennealy.

17 I believe that Mr. Farkouh is going
18 to give evidence that prior to this meeting there
19 was a meeting between you and he in his office as
20 the Mayor, in which you came in and as a courtesy
21 said to him, Mr. Mayor, you should know that plans
22 may be afoot for us to close the hotel and to tear
23 it down; do you remember a meeting such as that with
24 Mr. Farkouh prior to the December meeting?

25 A. I don't recall it specifically,

1 but I would suggest somehow we started talking about
2 it, and that would make a lot of common sense
3 because we -- if it was a serious issue like closing
4 the Algo Inn, I certainly would hope I would have
5 let him know.

6 Q. And you likely would have let
7 him know that prior to him showing up in your office
8 in December of --

9 A. Yes, sir.

10 Q. -- '97?

11 A. Yes.

12 Q. Mr. Kennealy, I think as well is
13 going to give evidence that he has a recollection of
14 a meeting with you and Mr. Liautaud and himself in
15 which it was discussed that Retirement Living might
16 take over just the hotel part of the Centre.

17 Do you remember a meeting such as
18 that?

19 A. Again, not specifically, but it
20 is correct, we did have, I think, more than one
21 meeting and I would put that in context where
22 Mr. Kennealy suggested that the hotel was important
23 to Retirement Living, and that does sound quite
24 logical that it happened.

25 Q. Well, in the information that

1 led up to the meeting in December and at the meeting
2 in December of '97, would you have made it clear
3 that it was part of a plan -- not necessarily the
4 plan, but part of a plan for ACP to close the hotel
5 and to tear it down?

6 A. That was discussed, at least
7 internally, about razing the hotel portion of the
8 building. It was at least discussed internally.

9 Q. And really that would make sense
10 to you financially, wouldn't it?

11 A. Yes, over the long term it
12 would, yes.

13 Q. Because if you were going to
14 close it, you are going to want to -- and you're
15 going to run the mall for as long as you can -- as
16 long as it's still profitable, you are going to want
17 to make sure your municipal taxes are as low as
18 possible and in order to do that you would need to
19 remove the hotel from the Centre; is that correct?

20 A. That is correct.

21 Q. I want to run a scenario by you.

22 I walk-into your office in December
23 of '97 and I say, "Mr. Leistner, I'd like to buy the
24 Algo Centre Mall, and hotel. I need, however, to
25 have a look at your books, and I need to do

1 a building structure assessment before I can make
2 an offer."

3 What would you say to me?

4 A. I can't say exactly because
5 we're foreseeing it, but I think the one thing we
6 would do that was -- that's a little bit similar,
7 for an instance, what happened in this actual case,
8 if I considered it, we would go back to this
9 disclosure issue, if I decided to give you
10 information, then any potential buyer would have to
11 sell it, if we didn't have a purchase sale agreement
12 because the Purchase and Sale Agreement covers the
13 confidentiality, in most cases.

14 Q. But, realistically,
15 Mr. Leistner, if I came in, in that scenario,
16 wouldn't you say to me, "Well, Mr. Kearns, we're
17 very interested in your offer but we will need to
18 see a formal Agreement of Purchase and Sale with
19 a significant deposit, with terms and conditions so
20 that we are clear that you are a serious buyer and
21 that there are rules and control over the
22 information that we're going to give you."

23 Aren't you going to insist on
24 a written Agreement of Purchase and Sale from me
25 before you entertain that?

1 A. I can't say that. It would
2 depend on the circumstances at the time.

3 Q. Okay. So you would agree with
4 me though, that as you yourself identified, in that
5 case, in the case that we are talking about with
6 Retirement Living and the City, that didn't happen.
7 Why did it not take that normal route? Why did it
8 not take the -- why didn't you turn to these guys
9 and say, "Look, if you're interested in buying it,
10 let's make a -- make an offer and we'll move from
11 there."

12 Why didn't you do that?

13 A. I think it was the complications
14 of any potential sale with respect to the
15 Algo Centre.

16 There was a lot of investigation to do,
17 I think from any buyer, and as with Retirement Living,
18 if they were the party at the time, I don't think it
19 was an easy process for them.

20 Q. Isn't it also true that this
21 meeting in December of '97, isn't necessarily about
22 a sale of the mall and it's not necessarily about
23 a sale of the mall to Retirement Living; isn't that
24 true?

25 A. I think from my side, I agree.

1 I think the concern was raised about the hotel, and
2 that's what started the process in motion.

3 Q. And this process that starts in
4 December '97, is an attempt by the City through
5 Retirement Living to get information about your
6 business, so that they know how to react to the
7 potential closing of the hotel, and what effect
8 that's going to have on the community; is that fair?

9 A. In my words, I think there was
10 great concern, yes, and I'm going to say on the
11 community, that's why the Mayor was involved, as
12 well as Retirement Living, and I think that's what
13 stimulated the discussion, and -- to see what
14 options there were out there, if any.

15 Q. Okay. It's just a point that
16 I'm trying to see, if you can agree with me, that it
17 is that this thing isn't moving forward into '98 as
18 a sale process.

19 In fact, it is moving forward into
20 '98 as an information gathering process; isn't that
21 true?

22 A. I'm not -- I don't -- I have
23 a problem answering it in that fashion because there
24 was more information than just the hotel, I believe,
25 put forward.

1 We put the whole Centre's information
2 forward.

3 Q. Well, you don't put the whole
4 Centre's information forward until, certainly after
5 the non-disclosure is signed in May.

6 So, I'm just talking --

7 A. Correct.

8 Q. I'm sorry, Mr. Leistner, I've
9 confused you.

10 I'm still talking about what's coming
11 out of this December meeting.

12 A. I would -- you -- it started
13 with the hotel. Absolutely. I will agree with you,
14 from a timing perspective, I cannot recall the dates
15 that we -- I'd have to go through the documents and
16 see the process of what happened when.

17 And I would -- you're 100 per cent
18 right, it started with the hotel concerns and then
19 somehow it morphed into a bigger picture, I'll call
20 it, with the Centre.

21 The timing is probably obvious in these
22 documents, and I'll live by what they say.

23 Q. Okay. Because when there's this
24 discussion in December of '97, there are quite
25 a number of options that are still available that

1 the community could look at.

2 The community had assisted Algoma
3 Central in -- financially, in attracting the Met to
4 the mall, hadn't they?

5 A. That's right.

6 Q. They'd made a substantial
7 contribution, substantial contribution to that?

8 A. That's correct.

9 Q. And so the City's involvement
10 with the Centre was obviously something that could
11 still be discussed as it related to the hotel, maybe
12 Retirement Living could take it over, maybe
13 Retirement Living could help you market it. It may
14 be that the City could have economic development
15 money for you.

16 All of these options would be
17 something that would be possible to be flowing from
18 the December meeting, wouldn't they?

19 A. I guess -- yes, anything's
20 possible. I would --

21 Q. Right.

22 A. I will not disagree with that.

23 Q. Okay. Because the terms of
24 reference that you eventually get from Mr. Bauthus
25 in January, talk about preparations of studies;

1 correct? It talks about a retail study. It talks
2 about a -- eventually a building assessment study.

3 These are just studies that are going
4 forward; is that correct?

5 A. I'd have to look in there and
6 remind me.

7 Can you give me a tab for that or?

8 Q. Pardon me?

9 A. Could you give me a tab for
10 that?

11 Q. That's a good one. I wasn't
12 going to refer you to that so I may not have the --

13 A. Oh --

14 Q. -- terms of reference.

15 Oh, 400?

16 Oh, no, they don't have any -- 400 is
17 the --

18 MR. DOODY: That would be Exhibit No.
19 2098, and Mr. Leistner, tab 23 of Volume 4.

20 MR. KEARNS: Thank you.

21 THE WITNESS: Thank you. Tab 23 was
22 the team, I believe.

23 MR. DOODY: On the second page there
24 is a description.

25 THE WITNESS: Oh, yes, thank you.

1 MR. KEARNS: Thank you. That's
2 exactly the page.

3 BY MR. KEARNS:

4 Q. So what comes out of this
5 meeting, the terms of reference is the collection of
6 information.

7 A. Yes.

8 Q. Right? And --

9 A. Yes.

10 Q. -- at some point there is going
11 to be a report done. Phase V, they're going to get
12 a report.

13 That's what comes out of the meeting
14 of December of '97, not an Agreement of Purchase and
15 Sale, not a commitment from Retirement Living to buy
16 it, but, in fact, the City is going to fund a close
17 look at your business?

18 A. I would agree.

19 Q. Okay. I wanted, I think, to do,
20 kind of, what you were talking about, which is look
21 at the documents and follow through as to when
22 Retirement Living appears to have become interested
23 in actually buying the document -- buying the
24 Centre.

25 We know that your -- the disclosure

1 agreement at tab 390 -- sorry, at Exhibit No. 390,
2 is signed on May the 15th of 1998.

3 A. I don't think it's tab 90.

4 Q. Tab 71 of Volume 3. It is on
5 the screen as well, Mr. Leistner, if that helps.

6 A. I'll find it in here.

7 Yes. Signed on May 12th, yes.

8 Q. And I'll talk to you a little
9 bit about this just at the end. But, I mean, May
10 the 12th, so really nothing occurs from your
11 perspective from the meeting in December until May
12 the 12th, May the 15th when your business signs it,
13 because nobody is getting any information from ACP
14 until this is signed?

15 A. Not that I recall, that is true.
16 I mean there might have been something
17 back-and-forth but nothing substantial, I would agree.

18 Q. Okay. I'd like to take you then
19 to tab -- sorry, again, Exhibit No. 3272.

20 Are you able to see it on the screen,
21 Mr. Leistner? It is a fax to you from Rhona Guertin
22 dated July 17th, '98, re a meeting on July 22nd.

23 It starts off asking you if you were
24 going to be at your office at 9:30 for the meeting
25 and asking you: Are you still at the Station Tower?

1 Volume 4, tab 14.

2 A. Thank you. That's better. Yes.

3 Q. So it appears to me, from
4 reading that, Rhona is asking you whether you're
5 still at the Station Tower, that suggests to me that
6 she hasn't been there, that this would be certainly
7 her first meeting with you there.

8 Do you have a recollection of whether
9 this is the first time that you start giving
10 Retirement Living the documents pursuant to --

11 A. No, I don't know. I mean, it
12 could be, but I do not know.

13 Q. Okay. The next exhibit I would
14 get you to look at is Exhibit No. 2090, which is
15 October 7th, '98.

16 And it's on the screen, Mr. Leistner,
17 if you can see it there. Do you feel more
18 comfortable looking at it in your books?

19 A. Yes, but that's pretty clear.
20 That's all right.

21 Q. And that's a -- a fax from Rhona
22 to you, dated October the 7th, 1998 asking for your
23 approval to provide some information to City
24 Council.

25 And I just draw your attention to the

1 fact that the information that she's talking about
2 is still about the hotel.

3 It appears that by September,
4 October, we're still dealing with the hotel, aren't
5 we? Retirement Living, the City, and -- are not yet
6 looking at the -- at the Centre.

7 A. I can't comment on that.
8 I really can't. You might be right.

9 Q. You will agree with me --

10 A. It --

11 (Simultaneous speakers - unclear)

12 Q. You will agree with me that
13 certainly the information that Rhona is looking to
14 give the City Council on October 7th is just about
15 the hotel?

16 A. Yes.

17 Q. Okay. And if I could take you
18 then to Exhibit No. 2093 which is a fax dated
19 December 17th, 1998. It looks like that.

20 It is a document that we looked at
21 yesterday, Mr. Leistner.

22 MR. DOODY: Tab 83?

23 THE WITNESS: Tab 83? Yes.

24 BY MR. KEARNS:

25 Q. I just -- from the documents

1 that I've looked at, this is, I think, the first
2 time that Rhona is asking you to allow her to share
3 information about the Centre with the board of
4 Retirement Living. And this is December the 17th,
5 1998.

6 Is that your recollection, as well,
7 that it was pretty much near the end of 1998 before
8 Retirement Living's inquiries were turning towards
9 the mall itself in its entirety?

10 A. I really don't know the
11 communications. I mean, I wouldn't say otherwise.

12 Q. I think when you read that
13 though, it's pretty clear that in accordance with
14 the non-disclosure agreement, Retirement Living or
15 Rhona, had not given to the board of directors of
16 Elliot Lake Retirement Living information with
17 respect to the Centre up until that point, any of
18 the information that's set out in 1 to 4?

19 A. I can't comment. I just don't
20 know. I -- the non-disclosure agreement, I think by
21 that September correspondence, it was the board had
22 issues going to the City, you are correct, but this
23 was to the board so I don't know. I don't --
24 I can't comment on what was discussed with the
25 board.

1 Q. Okay. I'm not asking you at all
2 to comment on that. I'm just saying that if Rhona
3 is abiding by the non-disclosure agreement which,
4 I presume you -- did you ever find any instances in
5 which Ms. Guertin or Mr. Kennealy had breached, or
6 Retirement Living had breached that agreement with
7 you?

8 A. No, but if you go back to her
9 September correspondence, the board -- she noted in
10 her September correspondence that the board had
11 signed their confidentiality agreements with respect
12 to Retirement Living information.

13 So since then on, I wouldn't know what
14 she was dealing with, with the board.

15 Q. Except she continues to tell
16 you --

17 A. Yes, she does.

18 Q. And you continue to make
19 significant comments on what it is that she can and
20 can't give to the board, as we can see in your notes
21 to this; won't you agree with me on that,
22 Mr. Leistner?

23 A. I don't think they are
24 significant comments. They are a wish list just to
25 keep it low key because we did not have any Purchase

1 and Sale Agreement.

2 Q. Okay.

3 A. And she didn't have to follow my
4 wishes.

5 Q. She --

6 A. But I'm not suggesting she gave
7 other information out either.

8 I don't know what she discussed with
9 the board.

10 Q. Okay. I'd like to just take you
11 back then to the Non-Disclosure Agreement which is
12 Exhibit No. 390.

13 A. Yes.

14 MR. KEARNS: Mr. Commissioner,
15 I apologize for heading back to this because I know
16 from your comments yesterday that you certainly
17 understand what this document means, but it appears
18 in certain circles that there is a sense that this
19 document represents some kind of a conspiracy by
20 Retirement Living to keep information out of the
21 hands of City Council.

22 BY MR. KEARNS:

23 Q. So I want to just talk to you
24 about that, okay?

25 You drafted this agreement,

1 Mr. Leistner?

2 A. Well, we would have drafted it.
3 My solicitors, and myself or with input both ways,
4 I guess.

5 Q. And essentially what it says is,
6 you can't show anything to anybody without our
7 consent; correct?

8 A. The essence, I think that's
9 true. As you go through the steps. Step 1, step 2,
10 step 3, through this agreement.

11 Q. But you've got to get through
12 other steps first.

13 The number one, overriding concept,
14 is that this is ACP's information and it doesn't go
15 to anybody without our approval; correct?

16 A. I think that's fair.

17 Q. Okay. And that's -- and there
18 is a good reason for that.

19 I mean, I don't want to -- I mean --
20 you don't want this information getting out into the
21 public, getting into other shopping centres, getting
22 into other people's hands who were competing with
23 you; it's your information. You need to keep
24 control of it, as you said.

25 A. Yes.

1 Q. Okay. The portion I think that
2 causes a lot of confusion is where there's talk
3 about the councillors and it being able to go to
4 them.

5 And I'm going to suggest to you that
6 arises from a conversation that would have gone like
7 this: Mr. Kennealy would have said to you, "Bob,
8 I've got a problem with the blanket non-disclosure
9 because we are going to be -- the City is funding
10 about \$20,000 worth of studies, and the agreement
11 that you are asking me to sign says that even after
12 we spend that \$20,000, we -- you may say, 'You can't
13 show that study -- those studies to anybody'."

14 Following me so far?

15 A. Yes.

16 Q. Okay. He goes on to say, "So
17 I need to deal with that. Here's the way I'd like
18 to deal with it. I'd like to deal with it by
19 putting in an exception with respect to these people
20 so that you agree right now, that we will be able to
21 show these people, under some circumstances, but
22 always we're going to be able to show these people
23 these two reports. I need the Non-Disclosure
24 Agreement to allow me to show these people these
25 reports."

1 Are you following me so far?

2 A. I concur, yes.

3 Q. Okay. Is that pretty much
4 online so far?

5 A. Yes.

6 Q. You say to him, "Richard,
7 I can't pre-approve that for you, because the only
8 person who could pre-approve that is somebody above
9 me, and, frankly, I'm not prepared to take this
10 arrangement that we have -- because there isn't
11 an agreement in place -- to that person because
12 I don't think that person's going to give it me. So
13 Richard, the best I can do for you is this, "If it
14 turns out we can't give you this information, we'll
15 give you the \$20,000 back."

16 A. That's correct.

17 Q. And isn't that exactly what that
18 says?

19 A. That's exactly the intent.
20 I think it says it, but that's exactly the intent
21 also.

22 Q. Okay. The last thing has to do
23 with Retirement Living being -- designating
24 a representative, okay? Under normal circumstances
25 this is an agreement between two corporate entities

1 which would bind everyone in both corporate
2 entities; is that correct?

3 A. Usually that's the way it's
4 supposed to be, correct.

5 Q. Okay. Now, you indicated
6 yesterday that you thought that it was a problem
7 that Mr. Kennealy had with the fact that there were
8 a couple of board members on Retirement Living from
9 the City, and he was concerned about their ability
10 to comply with the confidentiality and as a result
11 of this, the agreement provides that this doesn't
12 even go to the board of Retirement Living without
13 your approval; the only people who look at it are
14 Rhona and Richard; is that correct?

15 A. At this stage, yes.

16 Q. At this stage. I'm just
17 thinking though, in terms of how that came about.
18 Isn't it much more likely, Mr. Leistner, that it's
19 you that's concerned about the Retirement Living
20 board and not Mr. Kennealy, that you're the one
21 that's saying, "Look, I need to identify much more
22 carefully who in Retirement Living gets this
23 information."?

24 Isn't this more likely to come from
25 you?

1 A. Not at all. It was -- it came
2 from Retirement Living's side.

3 I would expect it to go to the board.
4 I'm in awe to think that anybody could run an
5 organization when their superiors can't get their
6 information.

7 This was the stepping stone, at your
8 request, at your client's request, Retirement Living,
9 because they came to us and said, "We can't sign off
10 on confidentiality for our board members because of
11 the relationship with City Council and two of your
12 members -- two or three of City Council were members
13 of the board, and that was left in limbo until you
14 sorted it out. But at some time you would have had to
15 go to your board and that was realized and I think
16 that was also the spirit and intent of this agreement.

17 Never tie your hands away from
18 reporting to your board.

19 Q. Well, why do we have to go to
20 our board? Mr. Leistner, I don't -- because here's
21 the issue: What is it that Retirement Living is
22 doing here? They're doing a study for the City.

23 A. You are doing a physical
24 inspection on the building also at the time.

25 Q. Yes. Which was part of the

1 study for the City. I just -- I don't know how the
2 board -- how you think the board of Retirement
3 Living gets involved in this task that Retirement
4 Living has taken on, for the City.

5 Have you seen the terms of that
6 agreement between the City and Retirement Living?

7 A. I might have seen them but no
8 I don't recall them.

9 Q. Okay. That's found at tab --
10 sorry, Exhibit No. 3233.

11 It is a by-law dated March 23rd, '98.
12 And Schedule A, third page in.

13 A. I don't have that tab.

14 Q. Hold on for a second. Volume 4,
15 tab 11.

16 A. I don't think it's tab 11. No,
17 it's 13.

18 Q. Last page of tab 11,
19 Mr. Leistner.

20 A. Yes.

21 MR. KEARNS: Okay. So, if we could
22 just make that -- the full page first, Ms. Kuka
23 please. That gets pretty tiny when we do that.

24 BY MR. KEARNS:

25 Q. Schedule A, Mr. Leistner,

1 represents the agreement that the City and
2 Retirement Living have with respect to the terms of
3 reference flowing from your meeting on December of
4 1997.

5 And what it says is that the City is
6 going to pay these amounts of money, at the bottom,
7 to Retirement Living, for the retail database, for
8 the retail survey, and for the physical building
9 condition and the determination of the fair market
10 value, and Retirement Living is going to deliver,
11 what is set out as a deliverable here.

12 So when Retirement Living is dealing
13 with you, do you not understand that what they're
14 dealing with is their obligations under this
15 agreement to produce these deliverables for the
16 City?

17 A. Sorry, say that again.

18 Q. Do you not understand that when
19 Retirement Living is dealing with you, when Rhona is
20 talking to you --

21 A. Okay.

22 Q. -- when they're getting this
23 information from you --

24 A. Yes.

25 Q. -- it's in order to fulfill the

1 obligations set out in this agreement, which is to
2 produce for the City these three items.

3 A. I did not put that in a text
4 with our agreement. How Retirement Living dealt
5 with the City was their process, not mine.

6 I was dealing with Retirement Living.

7 Q. Of course you were dealing with
8 Retirement Living because Retirement Living has been
9 tasked to do this job for the City because you would
10 not have given this information directly to the City
11 because of the nature of municipal affairs.

12 You want somebody independent who is
13 going to allow you to keep control of your
14 documents; right?

15 A. I would concur. Yes.

16 Q. Okay. So this is what they're
17 doing. I know that what you think they're doing is,
18 you think that they're getting this information in
19 order to do their due diligence to eventually make
20 you an offer, and that -- according -- of course,
21 they're going to need to deal with their board to do
22 that.

23 A. Yes.

24 Q. I mean, nobody is arguing that.
25 That's not what they're doing at this stage.

1 They're not doing that until much,
2 much later until 1998, in December of 1998; do you
3 understand now?

4 A. I -- I understand what you're
5 saying. I wasn't part of that -- part of the
6 process.

7 Algoma was not part of your objectives.

8 Q. But certainly Mr. Kennealy must
9 have made it clear to you that the City was funding
10 these two reports because why else would you agree
11 to refund him the money if the City couldn't see it?

12 A. We wouldn't refund it because
13 you wouldn't have the notwithstanding clause in the
14 NDA agreement, in the Non-Disclosure Agreement.

15 The purpose of the refund was because
16 of the specific request of the City Councillors.

17 If that wasn't in, there would be no
18 refunding; it wouldn't be an issue.

19 The one goes with the other. If he had
20 have gone out and performed that on his own, so be it,
21 take it or leave it.

22 Q. Right.

23 A. Yeah.

24 Q. I mean, if somebody makes
25 an offer on -- and in the course of the due

1 diligence they spend 50 grand on engineering reports
2 and they decide not to buy it, they -- you don't
3 give them the 50 grand back?

4 A. Correct.

5 Q. But there's a situation where
6 the -- I just -- it just surprises me that in light
7 of your offer to refund the \$20,000, that you
8 weren't aware that there was a direct connection
9 between that and the fact that the City was funding
10 it.

11 A. Oh, I'm not suggesting there
12 wasn't. I hope I'm not suggesting that.
13 I believe -- I was aware of that. I realize there
14 was some process going on between Retirement
15 Living -- there was. No question. I didn't follow
16 it through or look at the legalities or -- again we
17 were trying to deal with Retirement Living directly.

18 MR. KEARNS: Right. Okay. Thank
19 you, Mr. Leistner. Those were the only questions
20 I had.

21 THE COMMISSIONER: Thanks,
22 Mr. Kearns.

23 CROSS-EXAMINATION BY MR. OUTERBRIDGE:

24 Q. Good morning, Mr. Leistner. My
25 name is David Outerbridge. I'm the lawyer for Trow.

1 THE WITNESS: Yes, sir.

2 BY MR. OUTERBRIDGE:

3 Q. I wonder if we could start by
4 looking at Exhibit No. 596 which is a letter of
5 April 3rd, 1991, that you wrote to the Woolworth's
6 store and I'll just get you the tab number.

7 It's ...

8 MR. MacRAE: Volume 2, tab 55.

9 THE WITNESS: Yes, sir. I have it.

10 MR. OUTERBRIDGE: Perhaps we could
11 just move the letter up slightly so we could focus
12 on the third paragraph.

13 BY MR. OUTERBRIDGE:

14 Q. Just to situate us, this is
15 a letter that you were writing to -- at your -- one
16 of the tenants of the mall, Woolworths; is that
17 right?

18 A. Yes. It was head office by the
19 looks of the address, but yes.

20 Q. The letter talks about the
21 leakage issue and then in the third paragraph you
22 will see a statement there that Algoma Central had
23 conversed -- looking at the fourth line:

24 "... conversed with a new
25 consultant, Trow Consulting

1 Engineers."

2 And then you go on to describe Trow
3 in the bottom of that paragraph. You state that:

4 "Trow is a multi-disciplined
5 firm with offices in Canada and
6 the United States who
7 specialize in geoscience,
8 hydrology, environment,
9 concrete technology and
10 building sciences ..."

11 And you state that:

12 "... they have experience in
13 vehicular structures over malls
14 and habitable areas."

15 Do you see that?

16 A. Yes, I do.

17 Q. And that's what you told your
18 tenant about Trow in 1991.

19 A. Yes.

20 Q. And that was, in fact, your
21 understanding of Trow's experience and expertise?

22 A. It was my understanding, yes.

23 Q. That they were, in fact,
24 specialized in parking structures over malls and
25 habitable areas?

1 A. I wrote it, so I would have
2 picked it up from somewhere but --

3 Q. That was your belief at the
4 time?

5 A. That was my belief, yes.

6 Q. And that was the reason why Trow
7 was retained; that's why Trow was selected?

8 A. I believe it was, yes.

9 Q. And Trow was selected, as we
10 know to provide advice to Algoma on more than one
11 occasion; you retained them in '91 and then again in
12 '94 and '95?

13 A. Sounds correct, yes.

14 Q. And then after '95, again, you
15 went back to Trow with -- to ask them to quote on
16 the additional work of inspecting the design and the
17 as-built conditions?

18 A. Yes.

19 Q. And in each case it was, in
20 part, as a result of Trow's expertise in this area,
21 that you went to Trow?

22 A. I don't think the last one was,
23 but the first three, no doubt.

24 Q. If I could ask then to turn to
25 Exhibit No. 461 which is the Trow, November 1994

1 report. It's at tab 16 of Volume 3.

2 A. Yes.

3 Q. Now, you will recall that
4 yesterday Mr. Doody took you to some typewritten
5 notes that Mr. Caughill had prepared about Trow's
6 visit to the site in August of '94; do you remember
7 that?

8 A. Yes.

9 Q. These were the notes that
10 included the statement about not having a structural
11 problem yet, but that Mr. Iamonaco from Trow had
12 explained that the corrosion of the structural steel
13 would increase exponentially, if left untreated, or
14 something to that effect?

15 A. Yeah, if your leakage didn't
16 stop, yes.

17 Q. So, this report follows, in
18 time, that August visit, that those notes related
19 to.

20 A. Yes.

21 Q. And you told Mr. Doody yesterday
22 that you understood during this time period, based
23 on discussions you had had with Mr. Caughill,
24 arising from the August visit, that there was this
25 potential future structural issue relating to

1 corrosion of the steel?

2 A. The degradation was always
3 a concern, yes, because of the leakage, yes.

4 Q. So if I can turn to the
5 "Conclusion" section of this 1994 report.

6 It is section 10.0.

7 Thank you. Item number 2, if we look
8 at the second sentence states that:

9 "Water and salt penetration
10 through joints will cause
11 deterioration of the concrete,
12 pre-stressed cables, steel
13 beams ..."

14 And various other things.

15 This was -- we heard from
16 Mr. Caughill, that this statement, he felt was
17 consistent with the advice he'd received from Mr.
18 Iamonaco in August of '94 and I take it that this
19 meshed with the understanding that you'd acquired
20 from Mr. Caughill, as well, about what was happening
21 to the steel?

22 A. Specifically I don't recall
23 speaking to Mr. Caughill about this specific issue.

24 Q. Fair enough, let me rephrase the
25 question.

1 The question is: You had -- I think
2 you told Mr. Doody yesterday, you had the
3 understanding from discussions with Mr. Caughill
4 relating to the August visit that there was this
5 potential structural problem with corrosion of the
6 steel?

7 A. There was, as I recall it, yes,
8 there was surfaces rust on the steel, yes.

9 Q. Surface rust that you understood
10 could, in the future and over the long term result
11 in a structural issue?

12 A. Yes.

13 Q. And this statement that we were
14 just looking at, at item 2 of the conclusions in the
15 November 1994 report was consistent with that
16 understanding?

17 A. Yes.

18 Q. Now, if we look at the fourth
19 item, the long paragraph at the bottom there, there
20 is a description of the various things. We see part
21 way down the reference to the structural review and
22 analysis that they were recommending, and then
23 toward the bottom, we see the statement that,
24 I think Mr. Doody took you to yesterday, that Trow
25 does not feel that the percentage of de-bonded

1 topping produces an immediate concern, but they
2 state that it should be noted that with time, the
3 amount of de-bonding is likely to increase, thus
4 becoming a structural concern.

5 Do you see that?

6 A. Yes, I see it.

7 Q. And you read this or reviewed it
8 at the time, you mentioned yesterday you looked
9 at -- you tended to look at the conclusions over the
10 or the overview of the report?

11 A. I usually scanned, them, yes.

12 Q. And certainly at that time in
13 November of 1994 you were aware of this potential
14 future structural issue relating to the de-bonding
15 of the concrete topping?

16 A. Yes.

17 Q. Now, we see in, sort of, the
18 middle part of the paragraph, Trow's statement that
19 it's their opinion that a structural review and
20 analysis should be carried out to confirm whether
21 a bonded concrete topping is required, and to
22 further recommend possible modifications in order to
23 recommend a waterproofing system. Do you see that?

24 A. Yes.

25 Q. And so Trow, in this period, was

1 continuing to recommend to Algoma waterproofing of
2 the parking surface?

3 A. Yes.

4 Q. And they were recommending
5 a further review and analysis to figure out how best
6 to carry out that waterproofing?

7 A. Yes.

8 Q. If we can turn then to Exhibit
9 No. 429.

10 This is the memo that you prepared
11 for Mr. Cresswell that we looked at yesterday.

12 It's the 8 or 9-page memo from
13 November 28, 1994, which I'm told is the next tab,
14 tab 17 in your book.

15 A. Yes.

16 Q. Now, my understanding is that
17 this memo was prepared for Mr. Cresswell at his
18 request.

19 A. Yes, it was an overview of the
20 Elliot Lake complex.

21 Q. And he had asked you to prepare
22 it with a view to briefing the board; is that
23 right -- of Algoma?

24 A. Sorry, I didn't hear.

25 Q. He had asked you to prepare it

1 with a view to briefing the board of directors of
2 Algoma?

3 A. That's correct.

4 Q. And to your knowledge this memo
5 did, in fact, go to the board?

6 A. Yes, it did, I believe. Yes.

7 Q. If we can turn to the
8 page numbered 5 of the document, at the bottom under
9 "Physical Plant." You state in the first sentence
10 there, you say:

11 "... I am also concerned with
12 the long-term structural
13 integrity of the parking deck
14 due to the already mentioned
15 leakage problems. The subject
16 water leakage has caused
17 concerns with both the
18 disintegration of concrete and
19 the corrosion of structural
20 steel."

21 And this reflects the concerns we
22 were just talking about that you had.

23 You were aware that there was
24 a long-term potential structural problem relating to
25 both concrete and corrosion of steel?

1 A. Yes, it was a concern.

2 Q. And these were both -- both of
3 these concerns were based specifically on the advice
4 that Trow had given you?

5 A. Yes.

6 Q. Now, you recommend to -- in this
7 memo, you recommend a structural audit be performed
8 for the two purposes that are described there. One
9 being:

10 "... to determine whether ...
11 the useful life of the building
12 has been compromised ..."

13 And secondly:

14 "to determine answers to
15 certain specification
16 questions, in the case of
17 a major repair where the design
18 is changed to accommodate
19 a superior waterproofing
20 system."

21 Do you see that?

22 A. Yes.

23 Q. And it was -- I take it was the
24 Trow reports or the Trow analysis that led you to
25 have the question in your mind as to whether the

1 life of the building had been compromised?

2 A. Yes, the underlying reason
3 always being the leakage, yes.

4 Q. But it was the Trow analysis
5 that led to you feel a structural audit of whether
6 the building life had been compromised --

7 A. Yes.

8 Q. -- should be conducted?

9 A. Yes, again, the leakage time.

10 Q. I just want to pause for
11 a moment on the recommendation of a structural
12 audit.

13 The structural audit that you are
14 proposing in item (ii):

15 "to determine answers to
16 certain specification questions
17 in the case of a major
18 repair ... to accommodate a ...
19 waterproofing system."

20 That was the same structural audit,
21 or the same structural review and analysis, that
22 Trow had recommended in its November report of '94?

23 A. I wouldn't say it's exact.

24 It's my words and my thoughts process,
25 but, yes, it is sort of a carry-on from that, yes.

1 Q. And the second point, I just
2 wanted to focus on was that, we see here that you
3 are talking -- you are saying to president Cresswell
4 and ultimately to the board of directors of Algoma
5 that you wanted an audit to be performed in order to
6 consider the specifications for a major
7 waterproofing repair; right?

8 A. Yes, it was an option. Yes. To
9 look for an option, yes.

10 Q. So at this point, in November of
11 '94, you personally -- and Algoma -- well, we'll
12 start with you personally, you personally hadn't
13 rejected the possibility of doing a major
14 waterproofing along the lines of what Trow had been
15 recommending?

16 A. I think that's a little bit of
17 a loaded question.

18 I think we considered exactly what Trow
19 recommended and we determined at this point in time
20 that it was not viable, but we certainly did not
21 reject looking at how to improve on it, to make it
22 viable. So it's the next step.

23 Q. Right. So that's my point,
24 whatever may have been concluded about viability up
25 to November of '94 you were still prepared to

1 consider that there might be a viable option
2 involving waterproofing?

3 A. Yes, sir.

4 Q. And you retained Trow to do that
5 subsequent review and analysis.

6 A. Yes, we did.

7 Q. And so you hadn't rejected Trow
8 as the appropriate advisor on the point?

9 A. No, we had not.

10 Q. And, in fact, Trow was the only
11 engineering consultant that Algoma ever asked for
12 advice on the waterproofing, on how to effect the
13 waterproofing?

14 A. I believe that's true, yeah.

15 Q. So, when you testified yesterday
16 about concluding that there was no viable
17 waterproofing option, I take it the conclusion that
18 you reached ultimately about viability was
19 a conclusion that was reached after the structural
20 review and analysis that is described here, so after
21 1994?

22 A. Well, it was up till then, and
23 we looked at your -- I'm going to say, the
24 '95 report also.

25 You did this report after the

1 '91 report. We looked at your options in '91, and
2 then we looked at your options subsequent to this
3 discussion.

4 Q. And so subsequent to this memo,
5 that's when the, sort of, ultimate, if I can use
6 that word, determination about viability was made by
7 Algoma?

8 A. The ultimate viability -- okay.

9 Q. And then if we could turn to
10 page 7 of the document. Item number 2 under the --
11 do you see the heading at the top of the
12 page "Write-down Considerations". Item number 2,
13 about halfway down the page, you reiterate the
14 comment about long-term structural concerns and you
15 say on the third line:

16 "... it is apparent the
17 building will not last
18 indefinitely without costly
19 repairs."

20 And I take it the costly repairs that
21 are being referred to there, are costly -- that's
22 a reference to the more significant waterproofing
23 repairs.

24 A. In general, yes. Yes.

25 Q. Let's turn then to the Trow 1995

1 report which is Exhibit No. 51.

2 You can't ...

3 A. I can't find it.

4 Q. It is tab 38, I'm told.

5 A. Oh, 38.

6 We're there.

7 Q. So, this is the report that
8 provides the results of the structural review and
9 analysis that Trow performed; is that right?

10 A. Yes.

11 Q. And this is, at least, in part,
12 the structural audit that you had referred to in
13 your memo to Mr. Cresswell?

14 A. Yes.

15 Q. And if we look at paragraph 2,
16 we see the statement by Trow of the purpose for the
17 structural review and analysis. And they identify
18 two purposes that they say were previously discussed
19 with Mr. Caughill.

20 One was to confirm whether the
21 concrete topping is required, and they refer to
22 several inconsistencies in the original drawings for
23 this project.

24 And I'm not going to focus on that
25 piece.

1 The other purpose of the structural
2 review and analysis was to determine what type of
3 waterproofing system could be installed, i.e. thick
4 or thin on the deck, depending on the allowable
5 loading of the slab due to the waterproofing system.

6 And you will agree with me that Trow
7 isn't stating here that the purpose of their
8 analysis was to determine whether a waterproofing
9 system could be applied; right? They're saying
10 their analysis was to determine what type of
11 waterproofing system should be -- could be
12 installed.

13 A. That's what they're saying, yes.

14 Q. And my review of the Trow 1995
15 report leads me to the conclusion that there is no
16 discussion in here about whether, in fact,
17 waterproofing is doable or viable, that the
18 discussion here is about how much load the building
19 can take and correspondingly, what type of
20 waterproofing system can be installed in light of
21 that load; is that a fair read of the report?

22 A. I think that's a fair read.

23 Q. And if we can go to page 2, item
24 number 1.2 near the top, we see Trow's statement
25 confirming that -- you will see in the second

1 sentence of that section they say:

2 "Therefore ..."

3 In the first sentence they go through
4 the amount of loading that the core slabs with
5 a fully bonded concrete topping can safely support,
6 as they say, and then their conclusion is:

7 "Therefore, a waterproofing
8 system up to a weight of 20 psf
9 can be installed over the
10 existing concrete topping once
11 the de-bonded portions of the
12 topping are repaired."

13 Now, there is no indication here that
14 there is any uncertainty or question as to whether
15 a waterproofing system of that weight is available;
16 right?

17 Trow doesn't suggest there is any
18 doubt over that?

19 A. Of the maximum weight of 20,
20 yes, 20 psf.

21 Q. And much of the rest of the
22 report we see actually outlines their proposal for
23 what they describe as Option 1, the waterproofing
24 option, for carrying out this waterproofing at less
25 less than 20 psf.

1 A. Say that again.

2 Q. Much of the rest of this report
3 sets out Trow's recommended option for remediating
4 the parking slab which is their proposal for
5 waterproofing -- waterproofing the slab; right?

6 A. As long as you can do it under
7 20 psf, yes, I think that was their intention, yes.
8 Or what you're saying, I guess.

9 Q. And I think you agreed with
10 Mr. Doody yesterday that Trow's professional opinion
11 as set out in this report, was that at 20 psf
12 waterproofing system, 20 psf or less was in fact
13 achievable. That was the opinion they were giving
14 to you?

15 A. That's the opinion Trow was
16 giving to us.

17 Q. Let's turn then to the third
18 page, item number 4. Mr. Doody took you to this
19 yesterday, but focused on the inspection regime that
20 Trow was talking about here.

21 I just want to focus on the first
22 part of that section 4. Trow recommends an update
23 survey of the parking deck be carried out in the
24 spring of 1996. They say:

25 "... in order to gather the

1 information and repair
2 quantities ... to prepare
3 repair specifications for the
4 rehabilitation of this parking
5 deck."

6 And -- do you see that sentence?

7 A. Yes.

8 Q. And you understood that Trow was
9 offering to prepare these repair specifications for
10 Option 1?

11 A. Yes.

12 Q. And if we move to page 5, and
13 after the next page actually, we see Trow gave you
14 a cost estimate for Option 1 and included in that
15 cost estimate, under "Engineering" we see
16 a reference to there being preparation of
17 specification documents; do you see that?

18 A. Yes.

19 Q. And then at the bottom of
20 page 5, we see a last paragraph, a recommendation by
21 Trow, that they be retained to prepare repair
22 specifications, and then in the last sentence they
23 say that:

24 "Should you wish to have
25 these services carried out by

1 others, we would suggest ..."
2 And then over to the next page:
3 "... that Trow ... be
4 retained for a general review
5 of the repair specifications to
6 verify that our recommendations
7 are properly interpreted and
8 implemented in the
9 specifications and that they
10 are in accordance with the
11 present state of knowledge."

12 Do you see that?

13 A. Yes, I see it. Yes.

14 Q. So there is no question that
15 Trow offered to Algoma to prepare specifications to
16 carry out the waterproofing regime that they were
17 proposing of 20 pounds per square inch or less --
18 square foot, I'm sorry. Square inch would be
19 a problem.

20 A. Yes, it would be a problem. And
21 even I know that and I'm not --

22 Q. Let me rephrase the question,
23 restate the question.

24 There is no question that Trow was
25 offering to Algoma in its '95 report to prepare

1 repair specifications to carry out the waterproofing
2 at 20 pounds per square foot or less?

3 A. I would agree that's what
4 they're offering, yes.

5 Q. And Algoma never asked Trow to
6 prepare those specifications?

7 A. No, we did not.

8 Q. And I think you agreed with
9 Mr. Doody yesterday that, to your knowledge, there
10 was never any communication with Trow of any type,
11 inquiring whether -- whether the 20 pounds per
12 square foot was viable?

13 A. I can't answer that, I don't
14 know. It would have -- Mr. Caughill would have done
15 that.

16 Q. And that -- and Mr. Caughill's
17 testimony was that he didn't have any recollection
18 of communicating with Trow about it either, and --

19 A. Okay, fine.

20 Q. And I take it from your
21 testimony and his testimony that Algoma has no
22 information -- I mean, there's no other source of
23 information about communications with Trow, other
24 than those that Mr. Caughill would have had, I take
25 it?

1 A. Correct. Correct.

2 Q. Now, we heard testimony from Mr.
3 Dell'Aquila from Trow last week, that the 20 pounds
4 per square foot waterproofing option was achievable
5 and he took us to his notes that he prepared in
6 November of 1995 where he identified specific
7 products that he was considering for that work, and
8 he took us to the calculations where he analyzed
9 what thickness of asphalt would be needed for the
10 20 pounds per square foot.

11 He also testified that under the
12 regime or the waterproofing system that he was
13 contemplating, that no protection board was
14 required.

15 I take it from your testimony, Algoma
16 never asked Trow for any of that information?

17 A. I'm not aware of it.

18 Q. He also testified that nothing
19 had changed since '95 that would cause him to
20 believe that this 20 pounds per square foot
21 waterproofing system was not viable.

22 You -- other than what Mr. Caughill
23 told you, I take it you don't have any information
24 personally to the contrary?

25 A. Correct.

1 Q. Now, you testified yesterday
2 that -- I think the words you used was -- that you
3 were confident, and I think you meant you
4 cumulatively at Algoma, that Algoma was confident,
5 I think was the word you used, that the 20 pounds
6 per square foot waterproofing system that Trow was
7 proposing was not viable. And I know you used the
8 word "viable"?

9 A. I'm not sure "confident", but
10 that was my understanding, that's right.

11 Q. And I just want to be clear
12 about the source of that understanding.

13 We know you're not an engineer --

14 A. No.

15 Q. So you were relying upon your
16 advisors for your own understanding about viability?

17 A. That's correct. When it came to
18 the weight load, yes, that's correct.

19 Q. And your advisors were Trow and
20 Mr. Caughill.

21 A. Yes, and I think Mr. Caughill
22 used Kadlec's advice and Coreslab's advice as to the
23 maximum weight limits prior to that.

24 Q. And I think with Mr. Doody
25 yesterday -- you're not aware of a specific piece of

1 advice from Mr. Kadlec saying that a 20-pound
2 waterproofing system did not exist?

3 A. That's correct. Correct.

4 Q. Now, I think Mr. Caughill's
5 evidence was that he had spoken to certain
6 contractors who told him that they weren't aware of
7 a waterproofing system that was 20 pounds per square
8 foot or less; is that your understanding of where he
9 got his information from?

10 A. I can't comment.

11 Q. You are not aware of him having
12 got that information from another engineer, for
13 example?

14 A. No. I do not know the answer to
15 that.

16 Q. And so, to the extent that you
17 personally or Algoma generally had a view as to the
18 viability of the Trow 20 pounds per square foot
19 option for waterproofing, it was really just based
20 on Mr. Caughill's conversations with people in the
21 field, contractors and that sort of thing?

22 A. Well, I would like to say "his
23 investigation", but --

24 Q. But his investigation really
25 consisted of these inquiries that we've just been

1 talking about?

2 A. I can't answer that.

3 Q. His investigations wouldn't
4 consist of anything more than what he told us about
5 when he testified.

6 A. I will agree with that.

7 Q. So when coming to the
8 conclusions about the viability of the 20 pounds per
9 square foot water option -- waterproofing option,
10 you had -- I take it you had the Trow advice and you
11 had Mr. Caughill's advice and those were the two
12 pieces of advice that were weighed in coming to the
13 conclusion on viability?

14 A. And we had Option 2.

15 I mean, we had viable question over
16 here, and we had Trow suggesting this, with -- we had
17 reservations as you just suggested, Mr. Caughill had
18 reservations, and we had Option 2. So, we shifted
19 because of that.

20 There was unknown questions with your
21 proposal, to make sure we did Option 2, at least, as
22 far as the main thing in there was fixing the
23 de-bonded concrete, I believe.

24 Q. And I'll take you to Option 2 in
25 a moment, but you say there were unanswered

1 questions. These are the questions that Algoma
2 didn't ask Trow?

3 A. Fair enough. I would question
4 why Trow didn't offer them but ...

5 Q. Well, Trow was offering to
6 prepare -- they did offer them, right? They offered
7 to prepare the specifications, to show you how to do
8 it?

9 A. Fair enough.

10 Q. And if we look at the page on
11 the screen, we see that the very last thing Trow
12 said in the last piece of advice they gave you was
13 that if you have any questions, please don't
14 hesitate to contact the office; fair?

15 A. Yeah, that's fair.

16 Q. Now, I'm not here to say one way
17 or the other whether it was wrong for Algoma not to
18 waterproof the roof. I will leave that to other
19 people.

20 But I do want to suggest to you, sir,
21 that if Algoma had had a genuine interest in
22 waterproofing the roof, you would have posed the
23 questions to Trow that we've been talking about.

24 A. We had -- we were dealing with
25 Trow by that time, what, four years, and there was

1 some frustration, for a word.

2 Q. Well, you say there was
3 a frustration. A few months later you called them
4 up again and asked them to quote on another piece of
5 work. I take it you weren't that frustrated with
6 them?

7 A. That was a different project.
8 I mean, it was a different -- it wasn't related to
9 this issue.

10 Q. The -- the short point is
11 though, sir, if Algoma had had a genuine interest in
12 waterproofing, as opposed to ongoing maintenance,
13 you would have investigated. You would have asked
14 the question.

15 It is not as though Trow was putting
16 up a road block to you finding out what the
17 specifications were that they were proposing to
18 prepare for you?

19 A. I'm not -- when we looked at it,
20 it appeared to be -- it wasn't viable, and that was
21 the information we had, and that's how we made our
22 decision to revert to the other option, at least in
23 the interim.

24 I would agree we did want to look
25 at it, I will call it a water -- a new waterproofing

1 system.

2 In what terms, I can't define that.
3 I'm not that technical in that area, but -- but we
4 didn't keep calling you back to not try and get the
5 right answer. We were trying to get the right answer
6 that would work for this complex.

7 Q. Right. And I won't belabour the
8 point, sir.

9 My last question on this point is
10 simply: If you were trying to get to waterproofing,
11 surely you would have asked Trow, "How do we do it?"

12 A. Well, as I said, we were four
13 years later. I'm not sure our advancement was that
14 much.

15 Q. Now, my understanding, from what
16 you told Mr. Doody yesterday, is that the reason
17 Trow was retained in the first place was because
18 Algoma, generally, and Mr. Caughill specifically,
19 were stumped, I think was the word used in figuring
20 out a solution to the leakage; is that right?

21 A. I think that's fair, yes.

22 Q. And so, at the end of the piece
23 in 1995, you had the same two players, Trow and
24 Caughill giving you different advice on how to solve
25 the problem and you chose the Caughill advice.

1 A. Well, we chose Option 2. That's
2 for sure.

3 Q. Let's --

4 A. Which was in your report.

5 Q. Let's turn to Option 2 then.

6 If we can turn to page 4 of the
7 report that's on the screen, the Trow '95 report.

8 We see Option 2 is listed there. And
9 I won't take you through all the items, but in
10 summary, it's -- it involves fixing the de-bonded
11 concrete and doing repairs without putting
12 a waterproofing membrane on; is that --

13 A. That's correct.

14 Q. -- a fair description?

15 Now, if we go down to the bottom of
16 the page where the recommendations are stated, we
17 see in the first paragraph, that Trow recommends
18 Option 1.

19 A. Yes.

20 Q. And there's nowhere in this
21 report that Trow actually says that Option 2 is
22 recommended.

23 A. Okay.

24 Q. Well, let me put it another way:
25 There is nowhere in this report that Trow says that

1 Option 2 is a viable means of solving your leakage
2 problems on a complete basis.

3 A. I will agree with you. It
4 doesn't, but it's there.

5 Q. And if we look at paragraph (b),
6 we see a reference to Option 2 assuring complete
7 repair -- Option 1, I'm sorry, assuring complete
8 repair, so that's the waterproofing option?

9 A. Uh-hmm.

10 Q. Sorry, you have to say "yes" or
11 "no" rather than --

12 A. Sorry, Option 1 is the
13 waterproofing option, yes.

14 Q. Right. And so Trow is telling
15 you that Option 1, the waterproofing will assure
16 complete repair; is that fair?

17 A. Does it say "Complete repair"?

18 Q. Paragraph (b)?

19 A. Yes, it does.

20 Q. And in the next paragraph, (c),
21 the second sentence, you will see the statement
22 there that:

23 "Option 2 only addresses
24 a small ..."

25 And if you go over to the next page:

1 "Option 2 only addresses
2 a small percentage of the
3 problem."

4 So the advice you were getting from
5 Trow is that if you went with Option 2, you would
6 only be addressing a small percentage of the leakage
7 problem; right?

8 A. Correct.

9 Q. So it is not as though Trow is
10 presenting you with two options and saying you could
11 use either, they were telling you that Option 2
12 actually would only resolve a small percentage of
13 the problem?

14 A. But at least it was good in the
15 interim until hopefully another option came by.

16 Q. And just going back to the
17 previous page, under Option 2, the first element of
18 that option is described as being:

19 "To identify leaking cracks
20 and de-bonded concrete topping
21 areas in the roof slab."

22 And then the rest of that option
23 talks about replacing, among other things, replacing
24 the de-bonded concrete topping.

25 My understanding from Mr. Caughill is

1 that, although Algoma did replace some of the
2 de-bonded concrete topping, it did not, in fact,
3 replace all of it.

4 I think his estimate was somewhere
5 between 30 and 50 per cent of the concrete topping
6 was replaced.

7 Does that accord with your
8 understanding?

9 A. I am very surprised to hear
10 that. I understood -- I mean, it takes a little bit
11 of time to do it, I understood it was all replaced
12 and any found de-bonded concrete.

13 I wouldn't -- I will -- if Mr. Caughill
14 said that's the amount, he would know.

15 Q. And so, assuming that he is
16 right, that Mr. Caughill is right about the amount
17 of de-bonded concrete that was replaced, Algoma then
18 would have not actually implemented it, Option 2 in
19 its entirety.

20 It would have partially implemented
21 this option that would only partially solve the
22 problem?

23 A. I will give you that, yes, sir.

24 MR. OUTERBRIDGE: Thank you. Those
25 are my questions.

1 THE COMMISSIONER: I'm really having
2 problems understanding why you didn't go back to
3 Trow.

4 If this was my house and I was in your
5 situation and I paid good money to get an opinion, and
6 I get the opinion and one guy says to me, who's
7 working for me, that the first option won't work and
8 the people I've paid good money for are saying the
9 second option won't work, the first thing I would do
10 is go back to the guy I paid good money to and say,
11 "Look, I've got a problem here. I paid money and I'm
12 not getting a result. What's wrong with -- is there
13 anything wrong with the opinion I'm getting from my
14 guy?"

15 That you would have stopped at that
16 point and gone to a partial Option 2 is beyond me.
17 I am having a lot of difficulty understanding that.

18 THE WITNESS: It -- it seemed it was
19 all to do with the weight load, that it was not even
20 close to being able to be feasible, and I think
21 that's where our decision was made.

22 THE COMMISSIONER: But I would have
23 accepted the invitation of the fellow I'd paid good
24 money for, to come back to him if I saw a problem
25 with his report. But then you didn't accept -- you

1 didn't take him up, you didn't take Trow up on the
2 invitation.

3 That wouldn't have cost extra money, at
4 least to explain the quandary that you were having.

5 THE WITNESS: Well, we thought they
6 understood our quandary very completely.

7 I mean, over the years it was going on
8 for four years by then, and the quandary from day 1
9 was the weight load and it was always the concern.

10 THE COMMISSIONER: All right.

11 Mr. Cassan.

12 MR. CASSAN: Good morning,
13 Mr. Commissioner.

14 CROSS-EXAMINATION BY MR. CASSAN:

15 Q. Good morning Mr. Leistner.

16 I'm Paul Cassan. I'm counsel for the
17 City of Elliot Lake.

18 A. Yes, sir.

19 Q. I've got some questions with
20 relation to this process and the City.

21 I apologize, I've not been able to
22 figure out all the tabs in your brief, but the first
23 one I want to take you to is Exhibit No. 11-11,
24 which is Volume 1, tab 157, I understand.

25 MS. KUKA: Is that 11 dash 11 or --

1 MR. CASSAN: 11-00011? It should be
2 the April 25th, 1991 letter.

3 THE WITNESS: Sorry, did you say
4 tab 57?

5 BY MR. CASSAN:

6 Q. I believe it is your Volume 1,
7 tab 157.

8 Sorry, 57. You don't have a 157.

9 MR. DOODY: Volume 2, tab 57.

10 THE WITNESS: Thank you.

11 BY MR. CASSAN:

12 Q. And particularly -- that's the
13 letter I'm looking for. Thanks.

14 It is -- it's the second page of
15 tab --

16 MR. DOODY: That would be Exhibit No.
17 11-12.

18 MR. CASSAN: 12. Thank you.

19 MS. KUKA: 11-12.

20 MR. CASSAN: 11-12. No, I'm looking
21 for the 1991 letter. That's the one. Thank you.

22 BY MR. CASSAN:

23 Q. Have you had a chance to have a
24 look at that letter?

25 A. I'm just scanning it now.

1 Q. Sure.

2 A. Okay.

3 Q. So I just wanted to point out
4 that that letter is written, apparently, on April
5 the 25th of 1991.

6 One of the things that I'm going to
7 be doing, Mr. Leistner, is taking you through
8 a time-line, so I want you to pay attention to the
9 dates.

10 A. Okay.

11 Q. So the letter comes to your mall
12 manager on April the 25th.

13 And if we could scan down, Ms. Kuka,
14 to the bottom.

15 At the bottom of that letter,
16 Mr. Leistner, we see notes that have been identified
17 as notes of Mr. Pigeau, who was the Chief Building
18 Official.

19 And it looks like, on May 1st, 1991,
20 he met with Larry Liautaud, and "Mr. Liautaud
21 advised that an engineer had been retained to
22 analyze the problem" -- sorry, I think it says,
23 "hired" -- "to analyze the problem and a report was
24 forthcoming."

25 Were you made aware of that meeting

1 that Mr. Pigeau had with Mr. Liautaud?

2 A. I'm not aware of it.

3 Q. Did Mr. Liautaud advise you that
4 he proposed to give the engineering report to the
5 City?

6 A. I don't recall any of this. He
7 might have. I don't know.

8 Q. So, Mr. Pigeau testified that he
9 was expecting that Mr. Liautaud was going to give
10 him the engineer report. I take this to be the Trow
11 Report, the first Trow Report that you got.

12 That's what Mr. Liautaud is talking
13 about; do you agree with that?

14 A. That's the only report,
15 I believe we would have had at the time.

16 Q. At that time, for sure?

17 A. Or coming. I don't know if it
18 was done yet or ...

19 Q. Right. So Mr. Liautaud, I take
20 it, is suggesting that he's going to give Mr. Pigeau
21 that report and on that basis, Mr. Pigeau is
22 expecting to receive that information.

23 Now, I want to talk about the process
24 of when Trow got hired, and when you started to seek
25 Trow's advice.

1 And I think that that starts in
2 October of 1990. Does that make sense to you?

3 A. Yes, it does.

4 Q. And you were seeking that report
5 to get some professional advice on the difficulty
6 you were having with the roof?

7 A. Yes.

8 Q. And if I can turn you to Exhibit
9 No. 422 which is November 22nd, 1990, a letter from
10 Mr. Caughill to Trow. That's at your tab 42 in
11 Volume 2, I believe.

12 A. Thank you.

13 Q. So this is the letter that
14 Mr. Caughill drafts to Trow, laying out what you're
15 looking for.

16 Now, if we could flip over to the
17 next page, this version is not signed, and I would
18 suggest that this is actually a draft of the letter.

19 Do you agree with that?

20 A. I can't answer that. I don't
21 know.

22 Q. You didn't get a copy of the
23 draft from Mr. Caughill?

24 A. I may or may not have.

25 Q. Were you talking to Mr. Caughill

1 about his searching for an engineer who was going to
2 help you?

3 A. Oh, yes, definitely.

4 Q. And so you're -- you were aware
5 of and involved with this process?

6 A. Yes.

7 Q. Okay. So then if we could go to
8 Exhibit No. 423, which is the November 29th, 1990
9 memo to you from Mr. Caughill.

10 And I understand that's tab 45 and
11 I think --

12 A. Yes.

13 Q. -- it's again, Volume 2?

14 A. Yes.

15 Q. You've got that?

16 A. Yes, I have, thanks.

17 Q. So, in this document,
18 Mr. Caughill is explaining to you the roof work that
19 was done up until 1990.

20 Why did this memo come to be? Did
21 you ask for it?

22 A. No. I mean, I shouldn't say
23 that. I don't know why it came to be.

24 Q. But Mr. Caughill goes through
25 the work that's been done so far, and provides that

1 to you so you are having some discussions about,
2 I suggest, what you're going to be asking the
3 engineers to do.

4 A. Yes. I mean, I believe that
5 Mr. Caughill would do his memos -- it might be
6 a memo to file and he would do it for just record
7 keeping, and then copy, as he might think relevant.

8 Q. And so would it be fair to
9 suggest that this is background work that
10 Mr. Caughill is doing with you to get authorization
11 for the purchase order for the Trow Report?

12 A. And probably giving -- maybe
13 giving Trow background.

14 Q. Uh-hmm. Well, so let's talk
15 about that.

16 Let's move to Exhibit No. 1089,
17 1-0-8-9.

18 That's a December 3rd, 1990 letter
19 from Mr. Caughill to Trow. It's the next tab, 46.

20 This looks very similar,
21 Mr. Leistner, to the Exhibit No. 422 that I showed
22 you and suggested was a draft letter.

23 If we flip over the page, Ms. Kuka,
24 we'll see this one's actually signed.

25 So I would suggest, Mr. Leistner,

1 this is the final version of the letter.

2 A. I would say --

3 Q. And is this -- I'm sorry.

4 A. No.

5 Q. Does this refresh your memory
6 into whether you were involved in the first part of
7 the letter as being a draft that was discussed
8 between you and Mr. Caughill?

9 A. I -- I -- whether I was involved
10 in the draft?

11 Q. Uh-hmm.

12 A. It would have been on a broad
13 basis, at least, yeah.

14 Q. So if we can flip over the page,
15 we see the attachment to the letter.

16 And this, Mr. Leistner, looks a lot
17 like the memo we had looked at earlier at Exhibit
18 No. 423.

19 It is dated the same date, November
20 29th, but you will agree with me that a lot of
21 information at the bottom of that has been removed.

22 Specifically, if I take you -- if we
23 look at this, it ends at:

24 "Used THC900 USA on some
25 joints ..."

1 If I take you back to Exhibit No. 423
2 which is your tab 45, you will see the discussion of
3 the:

4 "Joint over furniture, shoes,
5 men's wear and centre isle
6 (sic), caulked with THC900 ...
7 has not been a problem since.
8 These joints were continually
9 leaking previously (Woolco).

10 Joint over library caulked
11 with THC900."

12 Leaks with respect to the lotto
13 booth.

14 "Crack to be repaired next to
15 south ramp."

16 Discussion with Mr. Aho and
17 discussion with Mr. Willey.

18 So those are removed from the
19 document that goes to Trow that you suggested might
20 be giving Trow background information.

21 Do you know why that information was
22 removed?

23 A. Well, I think the one is
24 a description of what exactly what was done.
25 Prepare a summary for the joints. Prepared. The

1 difference is they were describing work done,
2 I believe.

3 (sotte voce).

4 Q. Yeah, they're describing work
5 done in the whole memo, but it seems that you take
6 away -- I shouldn't say "you" -- it seems that the
7 company, whoever drafted this, Mr. Caughill,
8 perhaps, removed some information about problems
9 that you were having and I'm trying to understand
10 why you wouldn't have told that to Trow?

11 A. I can't tell you.

12 Q. But you'll agree with me that
13 you gave less information to Trow than that memo
14 originally had?

15 A. I think -- I think if you read
16 closely, he was sorting out the products and what
17 was done, versus -- for example, if you go through
18 the -- through the first and second, we're talking
19 about the THC900, the next one, as you go down:

20 "Crack to be repaired next to
21 south ramp".

22 That's not an issue for Trow.

23 J.C. Willey's opinion that the joints
24 were not dust free. I mean, that's not an issue for
25 Trow.

1 I think he was just cleaning up the
2 memo and saying here's the kind -- here's the action
3 we took specifically to do these things by product.

4 Now, I've got to leave it at that,
5 but that's my glance at it.

6 Q. So he didn't think it was worth
7 mentioning the rest of these issues to Trow?

8 I mean, J.C. Willey's opinion that the joints were
9 not dust free and the caulking was not adhering?

10 That was one of the things you wanted
11 Trow to comment on about why the repairs you were
12 doing weren't working.

13 A. I -- I think they wanted Trow to
14 give their opinion why things weren't working. That
15 was our opinion. That -- and I won't say any more.
16 I didn't vet it so ...

17 Q. Okay, we can move on.

18 THE COMMISSIONER: Let's take our
19 morning break --

20 MR. CASSAN: Sure.

21 THE COMMISSIONER: -- at this point,
22 Mr. Cassan.

23 THE CLERK: Order. All rise.

24 This hearing will recess for 20
25 minutes.

1 --- RECESS AT 10:31 A.M.

2 --- RESUMED AT 10:54 A.M.

3 MR. CASSAN: Ms. Kuka, could you
4 bring up Exhibit No. 2064?

5 That's January 28th, 1991. That's the
6 purchase order.

7 Yep. Tab 48.

8 BY MR. CASSAN:

9 Q. Do you have that, Mr. Leistner?

10 A. Oh, yes, I do. I'm sorry. Yes.

11 Q. So this is the purchase order
12 for the first Trow report. This is the trigger for
13 them to start their work, as I understand it.

14 Did you know that this was being
15 prepared? Did you authorize this?

16 A. Yes, in some form. You might
17 not see my signature, but yes.

18 Q. No, we see Mr. Caughill's
19 signature on it --

20 A. Yes.

21 Q. -- but I'm understanding that
22 you were involved with the decision?

23 A. Yes.

24 Q. At this time, in your
25 discussions with Mr. Caughill, was there any

1 discussion that you should talk to the City, to let
2 them know you're going to proceed with this
3 inspection?

4 A. No. Not at all.

5 Q. When I say that you should, I
6 don't suggest that there's a legal obligation for to
7 you do that; I just want to know if you had those
8 discussions.

9 A. No. We didn't have those
10 discussions.

11 Q. If we can then turn to Exhibit
12 No. 592, the purchase order is dated January 28th,
13 1991. Exhibit No. 592, this is the letter that
14 Mr. Caughill sends to Trow with the purchase order.

15 I note that the date on this is
16 February 25th, 1991. Do you know why it took a
17 month between the purchase order and the letter
18 going out?

19 A. No. I have no idea.

20 Q. There's a discussion about
21 Mr. Aho at the bottom of that letter.

22 Did you talk to Mr. Caughill about
23 Mr. Aho?

24 A. No, I did not.

25 Q. Did you understand -- okay.

1 So that portion of the letter, you
2 weren't aware -- you weren't aware of that
3 discussion?

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

5 Q. So this is the document that
6 goes to Trow to say: Go ahead with the job.

7 If I can turn you now to Exhibit No.
8 1108, this is the photo log by Trow, dated
9 April 22nd, 1991.

10 I'm not going to ask you about the
11 specifics of that, but about the date up at the top
12 of it.

13 So this appears to me to indicate
14 that Trow was on site doing their work on
15 April 22nd, 1991; do you agree with that?

16 A. I really can't see the document
17 on the screen. Do you know what tab it is?

18 MR. CASSAN: Can you just blow up the
19 date at the top, Ms. Kuka?

20 BY MR. CASSAN:

21 Q. Volume 3, second tab, 10.

22 A. Just to be clear, I think -- did
23 you say Trow prepared this?

24 Q. Yes.

25 A. Oh. Okay.

1 Q. And really, what I'm doing with
2 this, Mr. Leistner, is just locating in time when
3 they're on site at the mall doing their work.

4 A. Well -- oh, okay. Well, the one
5 in the -- I'll agree that says April 22nd, '91.

6 Q. And does that coincide with your
7 information that that's when they were on site doing
8 their inspection?

9 A. It seems logical, but I don't
10 know the answer.

11 MR. CASSAN: So if we could go to the
12 bottom of that page, Ms. Kuka.

13 BY MR. CASSAN:

14 Q. Photo number 24 lists that Trow
15 was in the library, and takes pictures of the:

16 "Underside - metal pans,
17 garden hoses discharging water
18 into pail."

19 And then on the next page at the top,
20 number 25, again is another photo of the library.

21 So from that, I take it that Trow was
22 actually in the library taking pictures on
23 April 22nd; would you agree with me?

24 A. I would agree with you.

25 Q. And you understood that Trow was

1 really doing a survey of the entire interior of
2 the -- of the mall, as well as the exterior?

3 A. Yes. Yes.

4 Q. Now, did you have any
5 discussions about what Trow was to say to people or
6 how they were to identify themselves when they were
7 doing their work?

8 A. No, I did not.

9 Q. Is there any reason to believe
10 that they would not have identified themselves as
11 engineers hired by the owner to look at the mall?

12 A. I -- I would be surprised if
13 there was any -- no.

14 Q. It would make sense to me that
15 if somebody asks: Why are you taking pictures,
16 they're going to say: Well, we're doing some work
17 for the owner of the mall.

18 So do you have any explanation
19 about -- and I want to take you back to Exhibit No.
20 11-12, which is the April 25th letter to
21 Mr. Liautaud.

22 So when we look at the date on that,
23 Mr. Leistner, that's three days after Trow was in
24 the library taking pictures; right?

25 A. Yes.

1 Q. And now the library is writing,
2 saying that they're concerned and they want you to
3 do something, but they've just seen engineers in
4 there taking pictures three days before the letter;
5 right?

6 A. Yes.

7 Q. So that, to me, seems odd, and
8 I'm just wondering if you have any idea whether Trow
9 or somebody from Algoma Central encouraged the
10 library to write this letter?

11 A. Oh, I can't say that. I have no
12 idea.

13 Q. No? You don't know why, three
14 days after the engineers are actually in looking at
15 it, all of a sudden there's a complaint?

16 A. No. I have no idea.

17 Q. If I can refer you, then, to the
18 Trow report, which is Exhibit No. 35, dated May 1st,
19 1991?

20 MR. MALONEY: 59.

21 BY MR. CASSAN:

22 Q. I understand that's at your
23 tab 59, Volume --

24 A. Thank you.

25 Q. Volume 2.

1 So I understand that this is -- the
2 date on this is May 1st, 1991. Would you agree with
3 that?

4 A. Yes.

5 Q. And did you receive it on that
6 day?

7 A. Oh, I can't answer that. I
8 don't --

9 Q. You don't know when you received
10 it?

11 A. No. It usually -- usually goes
12 right to Mr. Caughill.

13 Q. All right. Now, I understand
14 that this report was not given to the City?

15 A. I believe that's true.

16 Q. And on page 17, particularly
17 number 6, the conclusion --

18 MR. CASSAN: Can we back up,
19 Ms. Kuka? There, 13, number 6 at the bottom.

20 BY MR. CASSAN:

21 Q. I take it this -- do you have
22 that page?

23 A. I don't, but I can read it well
24 on the screen, so ...

25 Q. So that's where Trow tells you:

1 "It is our opinion that the
2 design used for this roof slab
3 is inappropriate in achieving a
4 watertight condition over
5 commercial areas."

6 I take it you didn't expect that
7 finding?

8 A. I -- I can't say what we
9 expected. I don't know.

10 Q. But that's a fundamental issue,
11 that: We have a fundamental problem with the system
12 that was installed?

13 A. Yes. Yes.

14 Q. So that was a serious issue, I
15 would suggest.

16 Now, we've looked at the April 25th
17 letter, and I took you to the discussion with
18 Mr. Liautaud and Mr. Pigeau, and that took place on
19 May 1st, 1991, which is the same day as the report.

20 So I took from that letter that
21 Mr. Liautaud was going to give the report to
22 Mr. Pigeau.

23 When you saw these findings, were you
24 aware of a discussion to advise Mr. Liautaud not to
25 give that report to Mr. Pigeau?

1 A. No, not at all.

2 Q. And do you know how the decision
3 came to be made not to give the report to
4 Mr. Pigeau?

5 A. I can't answer that. I'm not
6 aware of the whole discussion that you're talking
7 took -- that you said took place between
8 Mr. Liautaud and Mr. Pigeau.

9 Q. Did Mr. Caughill ask you if it
10 would be okay to produce this, or did Mr. Liautaud
11 ask you?

12 A. I -- I don't recall any such
13 conversation.

14 MR. CASSAN: Can we look at the next
15 page, Ms. Kuka? Can you zoom in on the handwriting
16 at the top, if possible?

17 BY MR. CASSAN:

18 Q. Do you have on -- your paper
19 copy?

20 A. Yes, I do. Thank you.

21 Q. Do you know whose handwriting
22 that is?

23 A. No, but it's mentioning Beta
24 Engineering and John Kadlec, so ...

25 Q. And I see that it says:

1 "John Cadlec (sic)
2 - concrete topping was required.
3 10-15%
4 - dead load making it unsafe"

5 Is that what that says?

6 A. I -- I believe so. And it was
7 talking about the weight load, adding the wearing
8 course, yes.

9 Q. So does this mean that
10 Mr. Kadlec told you that the roof as constructed was
11 unsafe at this point?

12 A. No, to -- to add the extra wear
13 course under Option 1, I believe, it's referring to.

14 Q. So this comes out of a
15 discussion when you're evaluating the options?

16 A. I -- I believe so, yes.

17 Q. Can I take you to Exhibit No.
18 273, which is a letter from Mr. Liautaud to Janet
19 Taylor?

20 I understand that's at tab 60 of your
21 Volume 2, Mr. Leistner.

22 A. Yes.

23 Q. So this letter indicates that
24 you're working on the problem. And I'll draw your
25 attention to the last paragraph. There is a

1 sentence -- it's the second sentence -- that says:

2 "By the fall of last year
3 after only marginal success, we
4 conversed with a new
5 consultant, Trow Consulting
6 Engineers. After much
7 discussion, a plan was
8 formulated and on their advice
9 a multitude of testing should
10 be completed in the spring of
11 1991 ..."

12 Now, this letter is dated May 7th,
13 1991; right?

14 A. Yes.

15 Q. And you will agree with me that
16 that is certainly written in the future tense, that
17 section that I just read to you?

18 A. Yes.

19 Q. Which indicates to the reader, I
20 would suggest, that work is going to be done, but,
21 in fact, the work is complete and the report's
22 complete at that point.

23 Why was the letter written in that
24 manner?

25 A. I -- I do not know.

1 Q. It seems to be indicating to the
2 reader that the work and the report was yet to come.
3 And I just want to know if that was -- if that was
4 the intent, because Mr. Pigeau was certainly
5 expecting the report and it was already in the
6 possession -- I guess I shouldn't say that.

7 It was completed, anyway, if it
8 wasn't in the possession of the company.

9 A. I can't answer the timing.

10 Q. And on the second page, we see
11 that that letter was copied to Mr. Pigeau, so --

12 A. Yes.

13 Q. -- it would be reasonable for
14 him to expect, from that letter, that the work was
15 to be done yet, and that their report would still be
16 forthcoming; do you agree with that?

17 A. I don't know if it talks about
18 giving the report in this letter, without looking at
19 it, but -- does he?

20 Q. I'm sorry, I missed your --

21 A. I don't know if he talks about
22 giving Mr. Pigeau this report, in this letter.

23 Q. Well, he's talked about that on
24 his May 1st meeting.

25 A. Right. In this handwriting,

1 yes.

2 Q. I would take from this letter
3 that he's saying the work is to be done and a report
4 will be forthcoming.

5 I just don't understand why if the
6 report's already done, that's the information you're
7 being -- you're giving to the City.

8 And when I say "you" I --

9 MR. HOWE: Sorry. Mr. Commissioner,
10 this is an interesting discussion, but we're dealing
11 with a letter that's written by a dead person.

12 My friend is assuming that the Trow
13 report was delivered on the day it was dated.

14 And this is sort of one assumption
15 piled on another one, and I'm not objecting because
16 there's anything objectionable about the question, per
17 se. I just don't know where we're going, and this is
18 all speculation in my view, sir.

19 THE COMMISSIONER: There is some
20 merit to that suggestion, Mr. Cassan.

21 In any event, I think you have your
22 answer.

23 MR. CASSAN: I do.

24 BY MR. CASSAN:

25 Q. I was about to move on to

1 tab 87 -- sorry, Exhibit No. 431, which is a
2 May 17th, 1991 financial report.

3 This is, I understand, tab 61 of your
4 Volume 2?

5 A. Yes, I have it. Thank you.

6 Q. Oh, okay. Good.

7 A. Thank you.

8 Q. Do you know who prepared this?

9 A. I -- I do not know, but it looks
10 like the work of our controller, Bill -- William
11 Egan.

12 Q. I'm interested in the
13 handwriting in the bottom right corner.

14 A. That would be mine.

15 Q. That's yours? Okay.

16 So when -- do you know when he wrote
17 this?

18 I understand that the financial
19 report was prepared or is dated May 17th, 1991. Do
20 you know when this handwriting was put on the
21 report?

22 A. No, I do not.

23 Q. Your first bullet says:

24 "What do they think it's
25 worth?"

1 And the second one says:

2 "How about" -- something --

3 "tied to inflation." [As

4 read.]

5 Were you in negotiations at that time
6 with somebody to purchase at that time?

7 A. No, this -- this is just the
8 Algo Inn.

9 Q. Okay.

10 A. I believe. If -- if you look at
11 the top, it is not the Centre.

12 Q. Okay.

13 A. It is just the Algo Inn.

14 And -- and what it is, is an analysis
15 about closing one, two or three floors of the hotel.
16 I can tell that by looking at it.

17 And I can't really tell you much more.

18 Q. So what did you -- do you
19 remember what you meant by:

20 "What do they think it's
21 worth?"

22 Were you negotiating with somebody to
23 buy or take over the mall -- I'm sorry, the hotel?

24 A. Not back in '91, if that's when
25 this was prepared.

1 Q. And that's why, in fairness, I
2 asked you if you could tell when the handwriting was
3 put on, because you may have done it later. I just
4 was trying to understand that, so that we understand
5 what's going on at the time.

6 A. Yeah. I can't suggest back in
7 '91, I can't recall any -- any analysis like this.
8 We -- this would be more conducive to something we
9 would have done in the later '90s, when we were
10 looking at closing the hotel.

11 Q. Do you recall, were you in
12 discussions with any party at that time to buy the
13 hotel?

14 A. In '91?

15 Q. Yes.

16 A. Not that I recall.

17 Q. If I can take you to Exhibit No.
18 424, please, that's the minutes of a June 11th, 1991
19 meeting at the mall.

20 And I understand from the top of it
21 that you're present, Mr. Liautaud's present,
22 Mr. Willey and Mr. Caughill. So the team is
23 actually in Elliot Lake?

24 A. Yes.

25 Q. And this meeting goes from 10:25

1 in the morning until 3:15 in the afternoon. I take
2 that from the top and the bottom of the minutes.

3 You're discussing, it appears, that
4 the Trow report won't be accepted carte blanche.

5 Was there any discussion at that
6 point about providing the Trow report to the City?

7 A. I don't believe it came out --

8 Q. Did --

9 A. -- in discussion. I --

10 Q. Did Mr. Liautaud tell you about
11 his discussion with Mr. Pigeau, and that Mr. Pigeau
12 might be expecting the report?

13 A. I -- I don't recall that he did.
14 I don't believe the issue -- I don't recall ever
15 discussing the issue about giving the reports, any
16 report to the City.

17 Q. If I can take you to Exhibit No.
18 492, which is a September 19th, 1991 memo from Bob
19 Topp, that's at your tab 72 of Volume 2,
20 I understand, Mr. Leistner.

21 A. Thank you. Thank you.

22 Q. Now, I know that Mr. Doody asked
23 you about this yesterday.

24 Did you actually have discussions
25 with Mr. Topp about these options, or was it simply

1 the memo?

2 A. Oh, no, we -- we discussed it
3 now and again. It was an ongoing conversation.

4 Q. So it looks like, at this point,
5 the consideration is in the air, for sure, to sell
6 the property?

7 A. Yes.

8 Q. And then he talks about
9 abandonment of the property?

10 A. Yes.

11 Q. And I heard your evidence
12 yesterday about a structured decommissioning.

13 Do you -- another interpretation of
14 "abandonment" would be that you would walk away from
15 it for taxes; right? And then they would revert to
16 the City for non-paid taxes?

17 Was that what you were looking at
18 doing here?

19 A. I -- I don't think there was any
20 specific meaning to the abandonment of the property.

21 As you just said, there's different
22 ways to do it. You can do it structured; you can --
23 can you walk away?

24 But I think it was very clear here
25 Mr. Topp suggested without any liability, legal

1 liability.

2 This was really a brainstorming memo,
3 to --

4 Q. I just -- sorry to interrupt
5 you.

6 A. No. It was a brainstorming
7 memo.

8 Q. I just don't understand why he
9 would use the word "abandon" as opposed to
10 "demolish"?

11 A. Well you can abandon, you can
12 close it, you can demolish it.

13 I guess there's all kinds of ways to --
14 in some ways, all -- it is -- it is the same thing as
15 selling the properties. There are various ways to
16 sell a property. There are various ways to, shall I
17 say, walk away from a property, whether it is closed
18 and decommissioned; do it in an orderly fashion.

19 Q. Can I take you, then,
20 Mr. Leistner, to Exhibit No. 427, the February 3rd,
21 1992 memo from you to Mr. Cresswell?

22 A. I have it.

23 Q. And I take it the bottom section
24 of that letter, you are trying to value the
25 property, and you are using a -- you are discussing

1 the income approach, and you are talking about the
2 difficulty with future cash projections, which would
3 deal with the residual value of the mall; right?

4 A. Yes.

5 Q. And it seems that at the bottom,
6 you've identified as potential problems, negative
7 factors including "unexpected capital costs" and the
8 "roof deck parking concern."

9 And there's been a recommendation to
10 sell the mall for whatever the market will bear.

11 THE COMMISSIONER: Do you want to
12 bring it up just a bit, Ms. Kuka? Thank you.

13 BY MR. CASSAN:

14 Q. Now, it appears to me that you
15 were looking at -- in preparing this document --
16 potential negative effects to the value of the mall.

17 Did you have any discussions about
18 the possibility of the City finding out about the
19 Trow report and ordering you to repair the roof?

20 A. That never came up. There -- we
21 were always trying to repair the roof, so there was
22 never a -- it -- it was never a thought.

23 Q. So when you talk about
24 "unexpected capital costs" and the "roof deck
25 parking concern," you had not discussed a

1 contingency about what would happen if the building
2 department came and said: You've got to replace this
3 roof?

4 A. That was never a specific
5 discussion with us, no.

6 Q. Was that one of the reasons
7 that -- that your company did not provide the
8 engineering reports to the City?

9 A. Because of selling?

10 Q. No.

11 A. Or be --

12 Q. Because of a concern that the
13 City, if they got the reports, might enforce the
14 Property Standards by-law of the Building Code?

15 A. No. That -- no, that was never
16 a topic.

17 Q. Because that would certainly --

18 A. That --

19 Q. That would certainly force you
20 to spend a lot of money right now, wouldn't it?

21 A. Well, I think it would make you
22 make a decision. That's right.

23 Don't forget we are being -- dealing
24 with an economic obsolete building.

25 Q. Absolutely.

1 A. So it would -- it would just
2 maybe make you go one way or the other quicker.

3 Q. But in either case, whether
4 you -- one way or the other, I take that to mean
5 either repair or demolish?

6 A. Or close, yeah.

7 Q. Right. In either case, that's
8 going to be a substantial impact on your cash flow?

9 A. Well, it changes that project,
10 yes.

11 Q. Certainly does.

12 May I take you to Exhibit No. 402,
13 which is a document, from the fax header, dated
14 July 24th, 1992?

15 A. I can't find the tab.

16 I can use the screen for this if -- I
17 have no problem with that.

18 Q. Okay. This, Mr. Leistner,
19 appears to be a letter of intent dealing with a
20 company called Conas Holdings Inc.

21 Have you seen this document before,
22 before preparing for the hearing?

23 A. I -- I don't recall it before
24 the hearing.

25 Somehow it came from Aird & Berlis and

1 it was addressed to our president. Now, our president
2 probably passed it on to me.

3 Q. Mm-hmm. And this is at your
4 tab 75, I understand, of Volume 2.

5 With respect to the fax header, this
6 is from Aird & Berlis.

7 Now, do you know, were they acting
8 for Conas, or were they acting for you?

9 A. Oh. That would be our
10 solicitors at that time.

11 Q. So who is Conas Holdings?

12 A. I have no idea.

13 Q. You weren't involved in these
14 discussions?

15 A. No. I can't recall how this
16 originated.

17 Q. Because it looks like in 1992,
18 there is a company that's looking at purchasing the
19 mall; would you agree with that?

20 A. Yes.

21 Q. Did you provide the Trow reports
22 to Conas?

23 A. I'm not sure how that went down,
24 whether we -- gave any information to Conas. I --

25 Q. You weren't involved with this

1 Conas at all, I'm taking from your evidence?

2 A. I cannot recall anything about
3 it. I believe that offer -- if you go to the last
4 page -- wasn't signed, so I'm not sure -- I'm not
5 sure how it originated, and I am not sure how it --
6 where it -- how it ended.

7 Q. And just to be fair to you, I
8 see this initially as a letter of intent, not an
9 actual offer to purchase.

10 A. Yeah. And -- and we do -- I do
11 refer to a letter of intent in another document, but
12 I don't know if it's this one or not.

13 Q. All right. We can move on.

14 MR. CASSAN: Can I get Exhibit No.
15 1117?

16 BY MR. CASSAN:

17 Q. And I'm not sure what tab it is,
18 Mr. Leistner, but if you are content to look at the
19 screen, I am just interested in the dates and what
20 this tells us is going on.

21 This appears to document work that's
22 being done by Trow the second time around, and this
23 is the core log; would you agree with that?

24 A. Yes.

25 Q. So this appears to indicate that

1 cores are being drilled August 24th of 1994.

2 So I take from that that Trow was on
3 site again, doing work August the 24th of 1994?

4 A. Yes.

5 Q. Then if I can take you to
6 Exhibit No. 611, this is an inspection summary
7 performed by -- or written by Mr. Caughill, I take
8 it.

9 And it indicates that Trow was on
10 site August 23rd and 24th of 1994.

11 And if I can just draw your attention
12 to the second paragraph, it says:

13 "Aug 23. - Trow arrived at
14 9:30 a.m. and began visual
15 inspection of the roof deck and
16 the retail premises (interior),
17 and a walk of the roof deck
18 itself."

19 I take it from that that Trow, again,
20 is inside the mall, looking at the various retail
21 spaces at that point, on August 23rd?

22 A. Yes. It appears.

23 Q. Now, if I can take you to
24 Exhibit No. 11-11, and this is the September 12th,
25 1994 letter to Mr. Bauthus.

1 And this is not in your tabs. This
2 is one that I e-mailed that we would be referring
3 you to.

4 Thank you.

5 Mr. Leistner, I'm not sure if you did
6 have a chance to look at this letter.

7 A. I don't recall. Do I have that
8 in the tab?

9 Q. It's not in your tabs.

10 It is one that I advised that we
11 would be referring you to, so I don't know if you
12 had a chance to look at.

13 A. Oh. Okay.

14 Q. But this is the second complaint
15 from the library. And I'm less interested in the
16 content with you, Mr. Leistner --

17 A. Oh. Okay.

18 Q. -- than in the date.

19 And I note that it's dated September
20 the 12th, 1994, so three weeks after Trow was in
21 again.

22 So, again, it strikes me as
23 interesting that engineers for Algoma Central are in
24 the mall and presumably the library, doing what I
25 would expect to be coming up with a solution to fix

1 the leaks. And then again, after that, there's
2 another complaint from the library.

3 So you may not be able to answer
4 again, but do you know why or is there anything
5 you're aware of about why this letter was prompted
6 after the engineers are in, looking at the building?

7 A. No, I do not. It's -- it's a --
8 a surprise to me.

9 Q. Does it strike you as odd?

10 Typically, I would understand a
11 complaint would come in and then you'd look at a
12 solution, rather than look at a solution and then a
13 complaint come in.

14 Does that strike you as odd?

15 A. Well, it's a little odd. It's a
16 coincidence, is it -- that's -- I don't know.

17 Q. Two coincidences?

18 A. Yes.

19 Q. The next document I want to ask
20 you about is the November 9th, 1994 Trow report that
21 comes after these inspections. It doesn't matter if
22 you turn it up or not.

23 I just want to know: Did you tell the
24 Municipality about the second report?

25 A. I have no idea if -- if it came

1 out in a conversation, but not with me. I would
2 suggest we did not formally tell them, to my
3 knowledge.

4 Q. I think you did not.

5 Now, you were aware, I presume, that
6 repair work was being done in the mall by your
7 forces, including things like replacing the unbonded
8 concrete topping; right?

9 A. Yes.

10 Q. And at one point there was some
11 cutting into the core slabs; were you aware of that?

12 That was done with the assistance of
13 Mr. Meyer.

14 A. Yes. That, I recall.

15 Q. Now, the building inspector
16 indicated that -- indicated that for that work you
17 would need a building permit, but no building permit
18 was applied for.

19 Were you involved in the decision not
20 to apply for a building permit?

21 A. No. And I believe it wasn't a
22 decision not to apply. I think we didn't realize we
23 should have applied.

24 Q. Thank you. I realized when I
25 was asking the question it was not terribly fair.

1 And so you're saying that you didn't
2 think -- or you didn't realize that a building
3 permit would have been necessary?

4 A. I think -- I have to talk for my
5 staff, but I'm -- I believe they tried to get
6 building permits when they thought they had to.

7 Q. Mm-hmm?

8 A. In this case, I think it was an
9 unknown.

10 Q. I just note that in none of the
11 work that Algoma Central was doing on the roof was a
12 building permit applied for, when the expansion
13 joints were replaced or the cutting of the slabs or
14 the de-bonded topping.

15 Certainly there were lots of building
16 permits applied for when work was being done inside,
17 tenant fit-ups and so on. I think there are about
18 200 building permits for the history of the mall.

19 But I just wondered -- your
20 information about why there wasn't one for the work
21 that you were doing on the mall?

22 A. My thought process was I thought
23 that they were repairs. I -- and I think that was
24 the same reasoning for Algoma's thought process,
25 incorrect as it may be.

1 Q. I want to ask you about Nick
2 Hirt.

3 Did you take steps in advance of your
4 testimony to review Mr. Hirt's documents so that you
5 could tell us about what Mr. Hirt did on this
6 project?

7 A. No, I did not.

8 Q. I understand that he was an
9 engineer?

10 A. Yes, he was.

11 Q. Did you work with Mr. Hirt for
12 very long?

13 A. Yes.

14 Q. Did he actually, typically, do
15 engineering work on your projects?

16 A. I don't know if he gave advice
17 or not, in any way, shape or form.

18 I didn't see him actually doing
19 engineering work, from a design perspective, for
20 example.

21 Q. I don't know if you heard the
22 evidence of Mr. Kadlec, who was the engineer on this
23 project, during the construction. And I know that
24 you weren't there during the construction.

25 A. Mm-hmm.

1 Q. But Mr. Kadlec indicated that
2 Mr. Hirt chose the H.S. Peterson roof system and did
3 the engineering, and that Mr. Kadlec relied on
4 Mr. Hirt.

5 Do you have any knowledge of that?

6 A. No, I don't.

7 Q. In the course of your work at
8 the mall, did you ever find drawings or calculations
9 done by Mr. Hirt with respect to choosing the roof
10 system?

11 A. No, I did not.

12 MR. CASSAN: Thank you very much,
13 Mr. Leistner. Those are my questions.

14 THE WITNESS: Thanks.

15 THE COMMISSIONER: Thank you.

16 Mr. Roy?

17 CROSS-EXAMINATION BY MR. ROY:

18 Q. Mr. Leistner, my name is Peter
19 Roy. I am part of the counsel group for SAGE and
20 ELMAC.

21 In light of the questioning of
22 Mr. Outerbridge and other of my friends, I've tried
23 to glean a few remaining questions out of my
24 intended cross. I think I'll be fairly brief, sir.

25 You were being asked this morning by

1 Mr. Kearns about the confidentiality agreement and
2 your expectation of whether or not the board of
3 Retirement Living would ultimately receive the
4 information that was covered by a confidentiality
5 agreement.

6 A. Yes.

7 Q. Do you recall that?

8 And as I heard your reaction, it was
9 that if a board is considering a material matter --
10 you understand the concept of materiality?

11 A. Yes.

12 Q. That if it's considering a
13 material matter, it needs to have all of the
14 information that's available in order to make an
15 informed decision?

16 A. Yes.

17 Q. And it was in that context and
18 with that expectation that you would prepare your
19 reports for the board of your companies?

20 A. Yes.

21 Q. Algoma Commercial Properties,
22 and the parent company?

23 A. Yeah.

24 Q. I may just refer to them as "the
25 company" if that's okay with you.

1 A. Yes.

2 Q. So when I look at Exhibit No.
3 492, which is your memorandum of November 28, 1994,
4 I wonder if we could pull that up, please.

5 A. Oh, that's -- okay. That's ...

6 MR. ROY: No, I don't -- Exhibit No.
7 429. I'm sorry if I said 492.

8 I understand that we're going to, in
9 the future, get the indexed -- or witness volume lists
10 in advance, so that might facilitate the
11 cross-referencing.

12 MR. DOODY: Mr. Roy is correct. And
13 now that it's on the record, we will have to do it.

14 [Laughter.]

15 MR. ROY: That wasn't my intention.
16 It wasn't my intention to slip something in.

17 We had a discussion and an agreement,
18 Mr. Commissioner, and ...

19 THE COMMISSIONER: I don't know
20 anything about that.

21 MR. ROY: My friend quite kindly said
22 he would do that.

23 I was merely apologizing for not
24 knowing the cross-referencing numbers.

25 BY MR. ROY:

1 Q. When you prepared that document,
2 you intended that to be a full disclosure for the
3 board in order to discuss the future of the mall in
4 its deliberations, did you not?

5 A. If -- if I prepared for the
6 president, it is up to him whether he brings it to
7 the board.

8 Q. But you knew -- you --

9 A. But I do it for that purpose,
10 yes.

11 Q. And you do it with that
12 expectation in mind?

13 A. Yes.

14 Q. That he will bring it to the
15 board?

16 And to your knowledge, was this
17 brought to the board?

18 A. If this is the one that he
19 wanted to bring, I'm sure he did.

20 Q. He probably did.

21 Was the -- was a decision to write
22 off the mall -- if that decision had been made, to
23 abandon, then write it off, would that have been
24 material to the company?

25 A. I think Mr. Topp, our VP of

1 finance, would make that decision.

2 It -- it may be material to Algoma
3 Central Properties Inc. but it may not be material to
4 Algoma Central Corporation, the mother company, for
5 the --

6 Q. And --

7 A. So I can't answer ...

8 Q. Okay.

9 A. I can't answer that, if it's
10 material from an -- I think you're talking from an
11 accounting point of view.

12 Q. I'm actually talking from -- the
13 company, the parent company, was publicly-traded,
14 was it not?

15 A. Yes.

16 Q. So it was a listed company and
17 had a requirement to disclose material information,
18 on an ongoing basis?

19 A. Yes.

20 Q. As a reporting issuer?

21 A. I think that's fair.

22 Q. It's in that context that I'm
23 asking.

24 A. Yeah. Well, we did report it in
25 a note, so ...

1 Q. A note to the financial
2 statement?

3 A. Yes.

4 Q. And you reported what, the fact
5 that --

6 A. The write --

7 Q. -- that you were going to write
8 it down?

9 A. The write-down itself.

10 Q. That was a partial write-down?

11 A. Well, it was a -- yeah. A
12 write-down.

13 Q. From about 15 million to about
14 around six and a half million?

15 A. Well, yes, the net book value
16 went from -- down to six and a half and -- 11 and
17 some million, I guess it was. But anyway, it was
18 written down by \$5.1 million, I believe.

19 Q. Right, but you were still
20 contemplating, were you not, a further write-down as
21 time went on? You would still --

22 A. Oh, this is '94. It was written
23 down in '92, and it was addressed again in '94 and
24 it was decided not to.

25 I think it was always -- I think

1 prudently you're always looking for any impairment
2 value of assets, and if you think there might be a
3 compromise in value.

4 Q. Right. But one of the
5 possibilities was to abandon the property and write
6 it off entirely?

7 A. Oh, if we had abandoned it, it
8 would have had to have been written off, yes.

9 Q. And that would have been
10 material at the time?

11 A. I can't say it would be material
12 for the company.

13 Q. Could I just change focus for a
14 moment, sir?

15 Exhibit No. 45, I believe, has your
16 request to Trow to remove portions of their report?

17 A. Yes.

18 Q. And you concurred, and spoke
19 with Mr. Caughill about this request.

20 And if we look at Exhibit No. 46,
21 Trow comes back to you and says: The reason we want
22 to include this discussion of the item 1, the
23 purpose of the structural review and analysis --
24 they explain why?

25 A. Yes.

1 Q. You'd wanted that taken out and
2 they're saying: We want to put it in.

3 A. We said take it out because it
4 wasn't in the scope.

5 They came back and said it should be
6 in, and so we said: Well, leave it in.

7 Q. So if we look at the purchase
8 order, which I won't take you to -- my friend took
9 you to it this morning -- if you look at the
10 purchase order, that would set out the scope of
11 Trow's retainer, would it not?

12 A. I'm sorry?

13 Q. If you look at the purchase
14 order that was issued by your company to Trow for
15 the work it was doing?

16 A. On?

17 Q. On this report.

18 Did that set out the scope of the
19 work that you expected?

20 A. I'm not sure. I would believe
21 that it would be in Mr. Caughill's correspondence,
22 for sure.

23 I'm not sure it showed up on the
24 purchase or order or not.

25 Q. Right. But in any event, you

1 agreed, then, to that staying in the Trow report?

2 A. Yes. They said it was important
3 and so it stayed.

4 Q. You agreed that it was
5 important?

6 A. Yes.

7 Q. Did you ever make any similar
8 requests to any other engineering firm, to remove
9 portions of a report?

10 A. Oh, I -- I believe I have, yes.

11 Q. With respect to the mall?

12 A. Oh, this -- this mall? Maybe
13 not. I -- I can't recall. I don't -- not that I
14 have seen in the last few days.

15 Q. So was it your practice to vet
16 preliminary reports, and make a determination as to
17 whether or not the contents fell within what you saw
18 to be the scope of the report?

19 A. I always questioned if
20 something -- well, I tried to question if something
21 wasn't within the scope, yes, and would query why
22 it's there.

23 Q. So we know, then, that it was
24 your practice to read the preliminary report, in
25 order to determine whether you should be paying for

1 it?

2 A. It -- it was to read -- it was
3 to get a feel for the scope and what they were
4 doing, because usually we did -- when you do a --
5 when you request a report, you have a scope to guide
6 you.

7 Q. Right. But in order to make
8 sure that that was being followed, you'd read the
9 preliminary report; yes?

10 A. I would scan it, or in many a
11 case, in cases with the engineering, I'd have
12 Mr. Caughill give me an overview of it.

13 Q. And if he raised any questions,
14 would you then --

15 A. Oh, then we'd look at it.

16 Q. -- vet the report?

17 A. Then we'd look at it, yes.

18 Q. You'd look at it more closely?

19 A. Yes.

20 Q. You'd read it?

21 A. Oh, not necessarily read it;
22 maybe read a -- read a clause out of it or whatever,
23 but ...

24 Q. You -- by "you," the company
25 retained Mr. Meyer to prepare a report; it was

1 discussed yesterday afternoon.

2 And in that report, Mr. Meyer
3 recommended the installation of a permanent barrier
4 to -- I believe it was a seven-foot height barrier;
5 do you remember that recommendation?

6 A. Yes.

7 Q. Did you tell anybody during the
8 course of the negotiations for the sale of the mall
9 to Retirement Living, did you tell anybody acting
10 for Retirement Living that that recommendation had
11 been made?

12 A. Not that I recall, no.

13 Q. Do you know if anybody else from
14 your company disclosed that recommendation?

15 A. Discussed it? Not that I
16 recall, no.

17 MR. ROY: Could I have Exhibit No.
18 492, please?

19 BY MR. ROY:

20 Q. So that's Mr. Topp's three
21 points. You've discussed this already, and I won't
22 take you through the whole thing. But if we look at
23 item 1, "Continue operating the property"?

24 A. Yes.

25 Q. He said:

1 "... as long as it generates
2 positive incremental cash flow
3 (after any negative deferred
4 income taxes)."

5 Did the mall actually generate these
6 positive incremental cash flows?

7 A. Oh, they -- they generated cash
8 before interest, yes.

9 Q. So -- but the -- when you
10 factored in the interest component -- even after you
11 paid off the debt, you had that notional interest
12 charge -- the mall was always in a loss position,
13 was it not?

14 A. From an implied debt, it was,
15 yes.

16 Q. From this date forward, the '91
17 forward?

18 A. From 1980 forward.

19 Q. The whole time?

20 A. Yes, from when it was built. It
21 was the debt on it when it was built that
22 accumulated.

23 Q. And it was always in a loss
24 position?

25 A. If you included the debt, yes.

1 Q. Right. Okay.

2 You said yesterday in your evidence
3 that you wanted to find a responsible purchaser; do
4 you recall that?

5 A. Yes.

6 Q. And you didn't want to go out
7 and sell it to somebody who just might flip it or --
8 perhaps you could tell me, what do you mean by "a
9 responsible purchaser"?

10 A. If you go out and -- well, I
11 think it's somebody who looks at it diligently and
12 does their studying.

13 There's many -- if you market something
14 very quickly and there's a -- there's lots of buyers
15 out there if you put it out in the marketplace.

16 And with these particular -- with this
17 particular centre, from a long-term perspective, it --
18 it's got limitations because of the market it's in and
19 everything else.

20 And so you wanted somebody to look at
21 it from a long-term value basis and say: Why are we
22 here? And why do we want to be here in the long term?

23 And -- and that -- Mr. Cresswell and I
24 had this conversation probably around '97 when our
25 discussions started, '97, '98, when our discussions

1 started with Retirement Living about the importance of
2 the hotel.

3 And we said: Rather than go out and
4 market it, let's just focus on this and see what
5 happens. If nothing happens, so be it; if it moves
6 forward, that's good.

7 And -- and if it means leaving some
8 money on the table from going out to market, that's
9 all right, because a responsible buyer will look at it
10 and look at the long-term problems and benefits with
11 it.

12 Q. And I'll come to the long-term
13 problems, but you knew there were significant
14 long-term problems with this mall at the time;
15 right?

16 A. The -- the degradation was
17 always a long-term concern. Absolutely.

18 Q. Absolutely. And that, I suggest
19 to you, was one of the reasons why you wanted a
20 responsible purchaser, who would go in and fix those
21 problems if they could?

22 A. That was our hope.

23 Q. That was your hope?

24 And you hoped that when Retirement
25 Living purchased it, they would do exactly that?

1 A. We hoped.

2 Q. And that --

3 A. We hoped it would be looked
4 after.

5 We -- we didn't know what exactly it
6 needed, and we were having difficulty, as you said,
7 trying to figure out what options were there.

8 Q. Well, I didn't say that. You --

9 A. No, I just --

10 Q. You might have said that?

11 A. Yes.

12 Q. Trow was pretty clear about what
13 they said you should do?

14 A. And we had viability options,
15 and maybe our -- our -- we've lived with it too
16 long. Maybe -- were we making the right decisions?

17 We thought we were being very prudent
18 with it, so ...

19 Q. When you say "viability
20 options" --

21 A. Oh, that was --

22 Q. -- are you talking about
23 economic viability?

24 A. No, no. That -- that --

25 Q. Physical viability?

1 A. That was our last -- no, I was
2 talking about Trow being a -- having a viable option
3 or not. We -- that -- that we could deal with from
4 a permanent basis with the leakage.

5 Q. Right. But I just want to
6 understand the context in which you're using that
7 word.

8 Is that economically viable?

9 A. No, structurally viable. Yes.

10 Q. Structurally viable? Feasible?

11 A. Yeah, feasible. Yes, with the
12 weight -- we had the weight load concern over our
13 head.

14 Q. I'm sorry, I didn't hear that.

15 A. The weight load.

16 Q. Yes?

17 A. It was all a weight load issue,
18 sorry.

19 Q. Okay. You knew, did you not,
20 sir, that Retirement Living board was being told
21 that the building was structurally sound, including
22 the parking deck, and it had been well maintained?

23 I get that from Exhibit No. 3276.

24 A. That was ...

25 Q. Tab 24, Volume 4.

1 A. Is that on a -- was that an
2 attachment that Rhona sent to me under a
3 different -- yes.

4 Q. I believe it is. You were asked
5 about this yesterday.

6 I believe it had to do with an
7 explanation of what was being reported to the board?

8 A. Yeah. I don't know when I
9 received it, but I think I acknowledged she sent me
10 this. So that would have been where -- when I saw
11 this.

12 Q. So as a result of this, Exhibit
13 No. 2093, you knew what the board was being told
14 about the state of the property?

15 A. I would have seen this, yes.

16 When -- when was this date, though? I
17 think that's important.

18 MR. ROY: Could I have Exhibit No.
19 2093?

20 THE WITNESS: December?

21 BY MR. ROY:

22 Q. December 17th, '98.

23 MR. MALONEY: 43, tab 8.

24 MR. ROY: We don't need the index in
25 advance. We just get them from everybody here.

1 It's great.

2 BY MR. ROY:

3 Q. And those are your notes, I
4 believe, on the right?

5 A. Yes, they are.

6 Q. Yeah. So we know you saw this
7 and you reviewed it.

8 So this was, I believe, an
9 attachment?

10 A. It -- it was at this point, I
11 believe, that the board was -- it was back in
12 September that Rhona said the board was subject to
13 the confidentiality agreement, so -- so they -- I --
14 I didn't approve this to go to the board.

15 Q. But you knew that this is what
16 the board was being told?

17 A. I did see this, yes, on --

18 Q. So you did know, you knew what
19 the board was being told about the state of the
20 property and the state of the maintenance?

21 A. Yes.

22 Q. And you also knew at that time,
23 and you'd known since May of 1991, that the design
24 used for the roof was inappropriate for achieving a
25 watertight condition?

1 A. Yes.

2 Q. You knew that?

3 And you knew as of May '91 it was
4 very likely that further deterioration, that leakage
5 would continue to occur if the entire slab and
6 expansion joints are not waterproofed? You knew
7 that?

8 A. Yes.

9 Q. Mr. Outerbridge took you through
10 several more documents I won't bore you with, but
11 you knew in August of '94, if we could look at
12 Exhibit No. 611 -- that's a report of a visit with
13 Mr. Iamonaco.

14 I really should let Ms. Carr do this.
15 She knows more about it than I do, but it's the second
16 page, sir.

17 A. Mm-hmm?

18 Q. I refer you to that last
19 paragraph.

20 You knew that the corrosion would
21 accelerate exponentially --

22 A. If the leakage did not --

23 Q. -- if the leakage continued?

24 A. Mm-hmm.

25 Q. And you'd believed -- you'd

1 concluded based on, I guess, your knowledge -- and I
2 think Mr. Outerbridge may have elicited the fact
3 that that included the company's knowledge -- that
4 the leakage, in the company's view, could not be
5 stopped?

6 A. Not without some kind of newer
7 system.

8 Q. You had not been told of
9 anything to date that you felt would enable the
10 owner of the property to stop that leakage?

11 A. Yeah. We -- we couldn't find
12 any option. That's correct.

13 Q. So it follows, does it not, that
14 unless some new solution was discovered, that the
15 deterioration would continue to accelerate in the
16 hands of any purchaser?

17 A. It's -- that's where you have to
18 do an estimated useful life and make your decision
19 on it.

20 That was always our decision, and --
21 and it would be a decision for anyone coming in, and
22 what would they request require to do to make any
23 repairs to extend a useful life. And the --

24 Q. Well, the estimated useful life
25 would depend upon an appreciation of the

1 accelerating, deteriorating condition?

2 A. Okay. I'll -- I'll say that's
3 a fair statement.

4 Q. And I mean, it's not pure
5 accounting. We are getting off into areas that I
6 suspect neither of us are expert in.

7 A. I certainly am not.

8 Q. And I don't profess to be, but
9 I'm sure there were people in your company who had
10 that expertise.

11 A. Mm-hmm.

12 Q. So unless a purchaser knew of
13 this condition, and the accelerating condition, the
14 severity of it, they'd be left with a ticking time
15 bomb, would they not?

16 A. Well, I think that that's taking
17 it out of context.

18 These -- this -- this purchaser had a
19 detailed report from Halsall, and their -- I'll just
20 say the Halsall Group. It is not for me, as an
21 accountant, as you say, to question what Halsall says.
22 I cannot do that.

23 We expressed our concerns very clearly,
24 to do the required studies, whatever they needed, and
25 that is why we did two or three things. Way up front,

1 we said we cannot -- we don't have the expertise to
2 represent or warrant the condition in this building.
3 We -- we --

4 Q. Did you say that in writing?

5 A. No. Well, actually we did. It
6 ended up in writing in the Purchase and Sale
7 Agreement. We also put "as is."

8 When I say it sended up in there,
9 it's -- it's not in there. There was no
10 representation or warranty, which there usually is.

11 We put in very clearly "as is." We --

12 Q. Well, I don't want to cut you
13 off if you --

14 A. Well, it's very clear. I think
15 we have to be very clear.

16 And I think those are the two most
17 important points, to say "as is," what does it mean?
18 We -- we can't offer any condition assessment on
19 this --

20 Q. Well, you are hinting at a
21 problem, aren't you?

22 A. Hinting? I mean --

23 Q. "As is"? "As is," you're
24 hinting at a problem?

25 A. I don't think we're hinting at

1 all. And, you know, we suggested to go out and get
2 a detailed condition survey, which they did by a
3 reputable company, I believe.

4 Q. Excuse me for a minute, sir. Do
5 you know --

6 THE COMMISSIONER: Let him complete
7 his answer.

8 MR. HOWE: I was going to say the
9 same thing, sir.

10 THE WITNESS: And thirdly, the price
11 reflected it. It wasn't just a "buyer beware."

12 I mean, we did not go out and market
13 the property. We honestly thought it was in the
14 \$6 million range, and that's why we went to a very --
15 we thought -- very lowball price, just to give someone
16 an opportunity and the time to take a good look at it.

17 BY MR. ROY:

18 Q. Finished?

19 A. I think for a minute.

20 Q. Okay. But you know from that
21 memo that was given to you, you know the board was
22 being told, the board of Retirement Living was being
23 told that it was structurally sound and that it had
24 been well maintained? You knew that?

25 A. The board, we did not restrict

1 the board.

2 The board, by the September letter, had
3 the rights to -- to -- I mean, there was no difference
4 between the board and -- and anyone else in that
5 organization.

6 The board had the right to see
7 everything, as far as I was concerned by Ms. Guertin's
8 letter. And all they had to do, if the board wanted
9 to know anything, is -- is send the letter in as -- as
10 per the Non -- Non-Disclosure Agreement.

11 Q. And did that happen?

12 A. They didn't do it, so it tells
13 me one of two things: They didn't want to know, or
14 they did have the right to know.

15 It was one or the other. There is no
16 between.

17 Q. They had to send you a letter to
18 see; right?

19 A. Yeah. I took it by -- I took
20 it, and if -- I took it by September -- it was
21 either the 22nd or 28th -- that they were bound by
22 the confidentiality, which means they could have
23 every piece of information that we sent to
24 Retirement Living.

25 Now, if I'm incorrect in my

1 interpretation of that September letter, certainly
2 they could have looked at their Non-Disclosure
3 Agreement and look at the clause and say: Oh, the only
4 reason why we don't have a right is because we didn't
5 send Algoma a notice of it.

6 They had the right to all this.

7 Q. I'm just probing your knowledge,
8 sir. Okay?

9 And based on the information you had,
10 you knew what the board had been told. Did you have
11 any information that they'd been told anything other
12 than that it was structurally sound and well
13 maintained?

14 A. I had -- I -- no. I have no
15 information what they were told.

16 I mean, I'm not part of Retirement
17 Living's organization. How would I possibly know?

18 Q. You said that this wasn't -- you
19 didn't want to embark on a "buyer beware" exercise;
20 right?

21 A. That's right.

22 Q. Caveat emptor, you are familiar
23 with that term?

24 A. Well, as a layman.

25 Q. As a layman? We're all ...

1 Yesterday, you were asked:

2 "Question: Okay, and we'll
3 get to those discussions in a
4 moment, but if I understand
5 what you've been telling me,
6 once you entered into
7 discussions with Retirement
8 Living, which started in or
9 about the end of '97; right?

10 Answer: Mid-'97.

11 Question: You were proceeding on
12 the basis that they would do their
13 due diligence and would deal with
14 it, once they bought it?

15 Answer: If they bought it, yes.

16 Question: And as a result, your
17 concerns were not as significant
18 with respect to the long-term
19 problems?

20 Answer: Well, I think the buyer
21 has to get it from themselves. Any
22 purchaser does."

23 That, to me -- now, admittedly I'm
24 not a layman, sir, but that sound awfully like
25 "buyer beware."

1 Did you approach the sale and these
2 negotiations with the thought in mind that the buyer
3 had to discover whatever it might, in the process of
4 its due diligence?

5 A. No, I believe they had to
6 satisfy themselves. I don't -- you don't say
7 "discover."

8 I mean, we only had so much
9 information. I -- I can't -- I'm not going to advise
10 them on structural issues and -- and estimated useful
11 life. It's -- I cannot do that. I do not have that
12 technical ability.

13 Q. No, but you had the ability to
14 decide not to go ahead and fix the problem, that you
15 had the knowledge that, as far as your company was
16 concerned, it couldn't be fixed.

17 And did you think it was appropriate
18 at any time to share that information with
19 Retirement Living?

20 A. I think it came down to useful
21 life, is what the issue is. And that's what we
22 tried to make -- minimize and make the price
23 reflect.

24 Any building such as that, it's
25 determined how long its useful life is, both economic

1 and physically.

2 Q. It's a fairly simple question I
3 asked.

4 A. And? Sorry?

5 Q. Did you ever disclose or did you
6 feel you should disclose that information to the
7 board of Retirement Living?

8 A. I'm not sure on what
9 information.

10 Q. The information that, in your
11 opinion, it couldn't be fixed.

12 A. Well, you say it couldn't be
13 fixed. We --

14 Q. I'm not saying it, sir; you said
15 it.

16 A. No. We dealt with the leakage
17 issue the best we could. I mean, as -- as much as
18 the Option 2 is there, that's what prolonged the
19 useful life.

20 We're not saying it would have lasted
21 the original design life, and it was obvious it
22 wouldn't. And I think that's where the whole energies
23 of the exercise get -- get in some kind of mixed up
24 context.

25 Q. Is that a "yes" or a "no"?

1 A. It's -- what was it? I'm still
2 not sure what your question is.

3 Q. Did you tell anybody on the
4 board of Retirement Living that, in your opinion,
5 this could not be fixed?

6 A. Fixed in whose context? I mean,
7 we -- we fixed it the best we could, so it now had a
8 limited life.

9 If someone could fix it in a different
10 way and extend it, which maybe there was some kind of
11 new process coming down the chute in a year or two or
12 three, then there might be options.

13 Q. I --

14 A. And --

15 Q. I'm confused. Is that a "yes"
16 or a "no"?

17 A. A "yes" or a "no," did we tell
18 the ...

19 Q. Did you tell them?

20 A. In -- in our opinion, we could
21 not fix it viably. That's right.

22 Q. Did you tell them?

23 A. I don't know if it was asked.

24 We --

25 Q. Did you tell them?

1 A. No, I don't recall. I don't
2 recall telling --

3 (Simultaneous speakers - unclear)

4 Q. Do you know if anybody from the
5 company told them?

6 A. I -- we had a lot of discussions
7 with Retirement Living. I do not recall. Telling
8 them, sorry. I do not recall telling them
9 specifically that it cannot be fixed. I'm ...

10 MR. ROY: Thank you, sir. Those are
11 my questions.

12 THE WITNESS: Very good.

13 THE COMMISSIONER: Mr. MacRae?

14 MR. MacRAE: Thank you,
15 Mr. Commissioner.

16 CROSS-EXAMINATION BY MR. MACRAE:

17 Q. Good afternoon, Mr. Leistner.
18 My name is Rob MacRae, and I'm counsel for Mr. Bob
19 Wood.

20 A. Yes, sir.

21 Q. And I believe you know Bob Wood,
22 as well, too, from Sault Ste. Marie?

23 A. Many years ago I did, yes.

24 Q. Your expertise is financial. I
25 understand you're a certified accountant?

1 A. A chartered accountant, yes.

2 Q. Chartered accountant? And when
3 you take a look at a business, you have the
4 opportunity to review the historical financial
5 statements for a business; am I correct?

6 A. Usually.

7 Q. Usually? Well, let's take a
8 publicly-traded company, such as the ACR.

9 If someone was to take a look at the
10 performance of the Algoma Central Railroad, they
11 could do -- or the ACR Properties, they could do
12 that by reviewing the audited financial statements
13 that are filed on an annual basis, could they not?

14 A. For Algoma Central Corporation?

15 Q. Yes.

16 A. Yes, they could.

17 Q. And that information is actually
18 regulated, or the provision of that information is
19 regulated by the Generally Accepted Accounting
20 Principles; am I correct?

21 A. Yes, I think you're correct.

22 Q. All right.

23 MR. MacRAE: If I could ask you,
24 Ms. Kuka, to turn to Exhibit No. 3007, the last
25 page?

1 BY MR. MacRAE:

2 Q. This is the NORR report. You've
3 heard it referenced?

4 A. Yes, I have. Sorry, yes. I've
5 heard it referenced. I'm not familiar with it.

6 Q. I would ask you to read the top
7 paragraph, the first bullet, and then I have some
8 questions.

9 But before you read it, I would like
10 to make the point that you've given evidence with
11 respect to the willingness that you evidenced
12 regarding the transfer of engineering reports.

13 You indicated that you had offered
14 them to Mr. Kennealy from Retirement Living?

15 A. Yes.

16 Q. So given that background, I'd
17 ask you to read that bullet.

18 A. Okay.

19 Q. All right. Thank you.

20 Now, I'm assuming -- as your evidence
21 is clear -- that you made the offer to provide the
22 documentation to Mr. Kennealy, but this report --
23 and the authors of this report indicate in the
24 second sentence of that bullet that the -- in fact,
25 I'll start at the beginning:

1 "It was noted that between
2 transferences of ownership,
3 engineering reports pertaining
4 to the condition of the
5 structure do not appear to have
6 been passed on to subsequent
7 owners."

8 And again, your evidence is that you
9 made that offer.

10 "This has in some cases
11 delayed or hampered the
12 effective repair of the rooftop
13 waterproofing in this
14 particular case. The outcome
15 of subsequent engineering
16 reports could have been
17 informed by the findings of
18 earlier investigations. It is
19 recommended that it should be
20 mandated and enforced that all
21 information pertaining to the
22 conditions of the structure
23 should be provided to
24 prospective owners."

25 Now, given your experience as a

1 senior property manager with the Algoma Central
2 Properties, I would ask you about your opinion as to
3 whether you agree with that recommendation:

4 " ... that it should be
5 mandated and enforced that all
6 information pertaining to the
7 conditions of the structure
8 should be provided to
9 prospective owners."

10 A. Without any cons to think about,
11 it does sound like a -- a good recommendation.

12 Q. All right. Those are my --

13 A. I'm not a --

14 Q. I'm sorry?

15 A. I'm not in the legal business.

16 I don't know what ramifications that are, but --

17 Q. Right. But on a practical
18 level --

19 A. On the practical level at some
20 point --

21 Q. -- you agree that it's a fair
22 recommendation?

23 THE COMMISSIONER: They do it for
24 used cars; they should do it for used buildings?

25 THE WITNESS: Very good, sir.

1 MR. MacRAE: Thank you, Mr. Leistner
2 and Mr. Commissioner. Those are my questions.

3 THE COMMISSIONER: Thank you.

4 Mr. Bisceglia?

5 MR. BISCEGLIA: No questions.

6 MR. DOODY: I just have a few
7 questions, Mr. Commissioner.

8 RE-EXAMINATION BY MR. DOODY:

9 Q. Mr. Leistner, do you recall
10 telling my friend Mr. Roy that, after September of
11 1998, even if it was not clear from the
12 correspondence that Ms. Guertin and Mr. Kennealy
13 were free to share information with the board of
14 directors, they would have known from the
15 Non-Disclosure Agreement that all they had to do was
16 give you notice?

17 Do you recall giving him that
18 evidence?

19 A. I think I said something like
20 that.

21 They had to give notice and we'd give
22 approval. I just ...

23 Q. And so I want to just clear that
24 up, if you turn to Exhibit No. 390, tab 71, sir, of
25 Volume 3.

1 This is the Non-Disclosure Agreement
2 and if you go to the second page, under (v), you
3 will see it says this:

4 "The representatives of ELRL
5 will be made up of only those
6 persons which have the prior
7 written approval of the
8 Corporation."

9 Do you see that, sir?

10 A. Yes.

11 Q. And you'll recall the evidence
12 we went through yesterday, where you had, in fact,
13 written a formal letter to Ms. Guertin specifying
14 that the persons who had that written approval were
15 her and Mr. Kennealy; correct?

16 A. Yes. Earlier.

17 Q. So am I not correct in
18 understanding that, in order for any information to
19 be shared with the board of directors, she had to
20 either get your prior written approval or ask for
21 your prior written approval that she could give any
22 information to the members of the board, by having
23 those persons be named pursuant to this provision?

24 A. I -- I think I'm going to agree
25 with you, we -- that was --

1 Q. She had -- there were only two
2 choices.

3 One, she had to get you to say: Yes,
4 you can give this specific information to the board.
5 And that's what she did, and you told her what she
6 could and couldn't tell them; right?

7 A. I -- yes.

8 Q. And her other option was to ask
9 you to give blanket permission to give any
10 information, by having the members of the board
11 nominated as representatives by you; right?

12 A. I would suggest that's correct,
13 and ...

14 Q. Do you recall telling -- sorry?

15 A. No, I'm sorry. I'm just --

16 Q. Is there something you wanted to
17 add?

18 A. -- thinking. I'm thinking here,
19 looking for a ...

20 Sorry. Go ahead.

21 Q. I'm going to move onto something
22 else, unless there is something you want to add to
23 that.

24 A. Oh, okay. It was more of we
25 thought the -- I thought that the permission was

1 granted in the September letters that I referred to
2 yesterday.

3 Q. Right. And we looked at those.

4 A. And if there was no
5 clarification, then it should have been asked here.
6 So, sorry, no.

7 Q. Sir, do you recall telling me --
8 sorry, telling my friend Mr. Roy that the Agreement
9 of Purchase and Sale made it clear that there was no
10 warranty about the condition of the building?

11 A. My understanding was that. I --

12 Q. And I wonder if we could --

13 A. Uh-oh. Uh-oh.

14 Q. I'm not disagreeing with that
15 entirely, sir.

16 I'm just wondering if you could turn
17 up Exhibit No. 710. And, Mr. Leistner, the
18 Agreement of Purchase and Sale is at tab 92 of
19 Volume 3.

20 A. Okay.

21 MR. MacRAE: And if you go to the
22 page which ends 2913, Ms. Kuka. Actually, if you
23 could go to the -- 2913, not 2931. Actually, if you
24 go to 2912, it is probably better.

25 BY MR. MacRAE:

1 Q. So this is Article 5, which sets
2 out the representations and warranties, and you will
3 see that it begins in Article 5.1 by saying:

4 "The Vendor hereby represents
5 and warrants to and in favour
6 of the Purchaser that, as of
7 the date of this Agreement and
8 as of the Closing Date ..."

9 There then are a number of specific
10 representations and warranties.

11 And if you turn over the page to
12 subparagraph (k), the last warranty on the part of
13 the vendor, it says the vendor warranties and
14 guarantees that:

15 "... the Vendor has not
16 received notice from any
17 governmental authority having
18 jurisdiction that the current
19 use of the Property cannot be
20 lawfully continued or requiring
21 any remedial work to be done to
22 the Property."

23 You see that, sir?

24 A. Yes.

25 Q. And, sir, can you tell me, were

1 the concerns that you had about information about
2 the building and its condition being disclosed to
3 the City, were they in any way related to the
4 presence of this, which I suggest to you is a
5 standard representation and warranty found in almost
6 every Agreement of Purchase and Sale?

7 Were you concerned in any way that if
8 that information was disclosed to the City, it might
9 result in a remedial work order, which would prevent
10 the transfer of the property?

11 A. No, it -- it wasn't in the
12 thought process at all.

13 Q. Sir, my final set of questions
14 is with respect to questions that my friend
15 Mr. Kearns asked you.

16 You will recall Mr. Kearns suggesting
17 to you and asking you that, by September, the --
18 September of 1998, the activities of Ms. Guertin,
19 Mr. Kennealy and Retirement Living were still
20 related only to the hotel and not the mall, and that
21 there was no discussion about purchase of the mall
22 until the fall; do you recall that?

23 A. Yes.

24 Q. I wonder if you could turn up
25 Exhibit No. 3272, which is in Volume 4, sir, at

1 tab 14.

2 And Mr. Kearns took you to this
3 document, and directed you to certain provisions
4 which deal with the hotel, and suggested to you that
5 this showed that they were -- Retirement Living was
6 interested in the hotel at that time.

7 This is a fax dated July 17, 1998.
8 And as Mr. Kearns suggested to you, it relates to
9 what appears to have been, potentially, the first
10 meeting between Mr. Guertin and yourself in the
11 Sault.

12 And you will see that she says:

13 "I was hoping to discuss
14 several items during our
15 meeting."

16 And item number 2 is:

17 "Mall leases/tenants."

18 Do you see that, sir?

19 A. Yes.

20 Q. And item number 4 is:

21 "Floor plans/blueprints."

22 She indicates she would like to take
23 copies with her for the architect.

24 Do you recall that an architect had
25 been retained by that time for the purpose of

1 examining the entire mall area?

2 A. Yes, I think it had.

3 Q. Number 5 is:

4 "Non-disclosure for
5 architect/engineer."

6 Again, that relates to the mall area,
7 sir?

8 A. Yes, it does.

9 Q. And then she goes on to say:

10 "In order to complete our
11 inventory of retail/commercial
12 space in the community I was
13 hoping you would be able to
14 provide me with specific
15 information such as:

16 1. Occupied square footage
17 broken into retail, and office space
18 occupied."

19 You will agree with me that the
20 reference to "retail" means that she was looking at
21 the mall?

22 A. Yes.

23 Q. Similarly, she was interested in
24 vacant space broken into retail, and office space
25 vacant. And again, the retail space would

1 necessarily be in the mall?

2 A. Yes.

3 Q. And, sir, I wonder if you could
4 turn to -- bear with me -- Exhibit No. 386, which is
5 tab 73 of Volume 3.

6 Sir, this is a non-disclosure
7 covenant, which, as you'll see from the bottom of
8 the page -- if you just pull it up a bit,
9 Ms. Kuka -- was obtained from Algoma productions.

10 And if you turn to the second page,
11 you will see that this was executed by Nicholls
12 Yallowega Belanger, the architects retained to look
13 at the mall area; correct?

14 A. Correct.

15 Q. So certainly in July, you will
16 agree with me that Ms. Guertin was looking at and
17 interested in the mall?

18 A. I would have to agree with you
19 on this.

20 Q. And --

21 A. And I had my timing incorrect, I
22 guess, this morning.

23 Q. And finally, if I could ask you
24 to look at tab 70 of Volume 3, which is Exhibit No.
25 397, sir, this is -- as you can see from the bottom,

1 again -- a production from your company.

2 And it's a letter dated January 30th,
3 1998, to Ms. Guertin from Nicholls Yallowega
4 Belanger.

5 And you will see that in the second
6 paragraph, the author of the letter writes:

7 "My understanding is that the
8 acquisition of the building is
9 being considered and, as part
10 of a larger Phase I analysis,
11 you are interested in
12 establishing the condition of
13 the building, any major
14 deficiencies and the potential
15 costs for repairs."

16 Sir, am I -- would I be correct in
17 concluding that, as at January 30th, you were aware
18 that Retirement Living was, as this letter says,
19 considering the acquisition of the building?

20 A. I'm not sure I was aware that --
21 at that time. I -- it would have been a short time
22 after, I -- I'm going to assume. I ...

23 Q. Thank you, sir.

24 A. Okay.

25 MR. DOODY: Those are my questions.

1 THE COMMISSIONER: Mr. Maloney?

2 MR. MALONEY: I have no questions.

3 THE COMMISSIONER: Nothing further?

4 I take it that takes care of everybody.

5 Well, thank you very much,

6 Mr. Leistner. That's all.

7 We're trying to get a plane to come in
8 a little earlier, so thank you for permitting that to
9 be done.

10 I wish everybody a happy Easter, a
11 happy Easter holiday with your families, a safe trip
12 back to your homes, and then a safe return here for
13 Tuesday of next week, 9 o'clock in the morning, when
14 we start all over again.

15 MR. HOWE: Mr. Commissioner -- Mr.
16 Commissioner, over here.

17 THE COMMISSIONER: I can only hear --
18 you see, it always comes out from there, so I'm
19 never sure who is talking to me.

20 Thank you. Yes, Mr. Howe?

21 MR. HOWE: I won't be able to make it
22 next week, but my associate Robert Richler will be
23 filling in for me.

24 THE COMMISSIONER: Mr. Richler?

25 MR. HOWE: Yes. And I'm sure he'll

1 do a much better job.

2 THE COMMISSIONER: Thank you very
3 much.

4 THE CLERK: Order. All rise.

5 This Inquiry is now adjourned until
6 9 o'clock on Tuesday, April the 2nd.

7 --- Whereupon at 12:23 p.m. the Inquiry proceedings
8 adjourned to 9:00 a.m. on Tuesday, April 2, 2013

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

REPORTER'S CERTIFICATE

I, LISA M. BARRETT, RPR, CRR, 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
correct transcript of my shorthand notes so taken.

Dated this 28th day of March, 2013.

Lisa Barrett

NEESON & ASSOCIATES

COURT REPORTING AND CAPTIONING INC.

PER: LISA BARRETT, RPR, CRR, CSR

<hr/> \$ <hr/>	13 3550:17 3605:19	3606:19 3610:24	25 3602:20	402 3620:12
\$20,000 3546:10,12 3547:15 3554:7	14 3669:1	<hr/> 2 <hr/>	25th 3589:2 3590:5,12 3600:16 3603:20 3606:16	42 3592:10
\$5.1 3634:18	15 3634:13	2 3545:9 3555:8 3559:7 3560:14 3568:10,12 3569:15 3570:23 3579:14,18,21,24 3583:1,5,8,21 3584:1,6,23 3585:1,5,11,17 3586:18 3587:16 3589:9 3592:11 3593:13 3604:25 3608:21 3612:4 3615:19 3621:4 3656:18 3669:16	273 3608:18	422 3592:9 3594:21
\$6 3651:14	15th 3539:2,12	20 3571:8,19,20, 25 3572:7,11,12 3574:17 3575:2, 11 3576:3,10,20 3577:5 3578:7,18 3579:8 3598:24	28 3526:2 3562:13 3631:3	423 3593:8 3595:18 3596:1
<hr/> 1 <hr/>	16 3558:1	20-pound 3578:1	28th 3599:5 3600:12 3652:21	424 3614:18
1 3542:18 3545:9 3571:23 3573:10, 14 3583:18 3584:7,12,15 3588:8,24 3589:6 3608:13 3635:22 3639:23 3670:16	17 3562:14 3605:16 3669:7	200 3627:18	2912 3666:24	427 3617:20
1-0-8-9 3594:17	17th 3539:22 3541:19 3542:4 3612:2,19 3645:22	2013 3526:2	2913 3666:22,23	429 3562:9 3631:7
1.2 3570:24	1980 3640:18	2064 3599:4	2931 3666:23	43 3645:23
10 3601:21	1990 3592:2,9 3593:8,19 3594:18	2090 3540:14	29th 3593:8 3595:20	431 3612:1
10-15% 3608:3	1991 3555:5 3556:18 3589:2, 21 3590:5,19 3599:5 3600:13, 16 3601:9,15 3604:19 3605:2 3606:19 3609:11, 13 3612:2,19 3615:18 3646:23	2093 3541:18 3645:13,19	<hr/> 3 <hr/>	45 3593:10 3596:2 3635:15
10.0 3559:6	1992 3617:21 3620:14 3621:17	2098 3537:19	3 3539:4 3545:10 3558:1 3601:21 3663:25 3666:19	46 3594:19 3635:20
100 3535:17	1994 3557:25 3559:5 3560:15 3562:13 3567:21 3623:1,3,10,25 3625:20 3631:3	21 3527:6,9	30 3586:5	461 3557:25
1089 3594:16	1995 3568:25 3570:14 3576:6 3582:23	21-day 3527:1	3007 3659:24	48 3599:7
10:25 3614:25	1996 3572:24	21nd 3539:22 3601:9,15 3602:5, 23 3652:21	3233 3550:10	492 3615:18 3631:3,7 3639:18
10:31 3599:1	1997 3551:4	23 3537:19,21 3623:13	3272 3539:19 3668:25	<hr/> 5 <hr/>
10:54 3599:2	1998 3539:2 3540:22 3541:19 3542:5,7 3553:2 3663:11 3668:18 3669:7	23rd 3550:11 3623:10,21	3276 3644:23	5 3563:8 3573:12, 20 3667:1 3670:3
11 3550:15,16,18 3588:25 3634:16		24 3602:14 3644:25	35 3604:18	5.1 3667:3
11-00011 3589:1		24th 3620:14 3623:1,3,10	38 3569:4,5	50 3554:1,3 3586:5
11-11 3588:23 3623:24			390 3539:1 3544:12 3663:24	51 3569:1
11-12 3589:17, 19, 3603:20			3:15 3615:1	55 3555:8
1108 3601:8			3rd 3555:5 3594:18 3617:20	57 3589:4,8,9
1117 3622:15			<hr/> 4 <hr/>	59 3604:20,23
11th 3614:18			4 3537:19 3540:1 3542:18 3550:14 3572:18,22 3583:6 3668:25 3669:20	592 3600:12,13
12 3589:18			400 3537:15,16	596 3555:4
12th 3539:7,10, 12 3623:24 3624:20	19th 3615:18			<hr/> 6 <hr/>
	1st 3590:19 3604:18 3605:2			6 3605:17,19

3569:9,17 3570:2, 8,10 3613:14 3614:7 3635:23	approve 3646:14	attempt 3534:4	barrier 3639:3,4	block 3581:16
analyze 3590:22,23	April 3555:5 3589:2 3590:4,12 3601:9,15 3602:5, 23 3603:20 3606:16	attention 3540:25 3590:8 3608:25 3623:11	base 3528:4	blow 3601:18
analyzed 3576:8	architect 3669:23,24	attracting 3536:3	based 3558:22 3564:3 3578:19 3648:1 3653:9	board 3542:3,15, 21,23,25 3543:9, 10,14,20 3544:9 3548:8,12,20 3549:3,10,13,15, 18,20 3550:2 3552:21 3562:22 3563:1,5 3566:4 3576:13 3630:2,9, 19 3632:3,7,15,17 3644:20 3645:7, 13 3646:11,12,14, 16,19 3651:21,22, 25 3652:1,2,4,6,8 3653:10 3656:7 3657:4 3663:13 3664:19,22 3665:4,10
annual 3659:13	architect/ engineer 3670:5	audit 3564:7 3565:5,12,13,20 3566:5 3569:12	basis 3527:23 3584:2 3591:21 3595:13 3633:18 3641:21 3644:4 3654:12 3659:13	Bob 3546:7 3658:18,21
answering 3534:23	area 3557:20 3582:3 3670:1,6	audited 3659:12	Bauthus 3529:15 3536:24 3623:25	bomb 3649:15
answers 3564:14 3565:15	areas 3556:14, 25 3585:21 3649:5	Aug 3623:13	beams 3559:13	bonded 3561:21 3571:5
anybody' 3546:13	arguing 3552:24	August 3558:6, 18,24 3559:18 3560:4 3623:1,3, 10,21 3647:11	bear 3618:10	book 3562:14 3634:15
anything's 3536:19	arises 3546:6	authority 3667:17	began 3623:14	books 3531:25 3540:18
apologize 3544:15 3588:21	arising 3558:24	authorization 3594:10	beginning 3660:25	booth 3596:13
apologizing 3631:23	arrangement 3547:10	authorize 3599:15	begins 3667:3	bore 3647:10
apparent 3568:16	arrived 3623:13	authors 3660:23	belabour 3582:7	bottom 3551:6 3556:3 3560:19, 23 3563:8 3573:19 3583:15 3590:14,15 3600:21 3602:12 3605:19 3612:13 3615:2 3617:23 3618:5
apparently 3526:24 3590:4	Article 3667:1,3	aware 3554:8, 3561:13 3563:23 3576:17 3577:25 3578:6,11 3590:25 3591:2 3593:4 3601:2 3606:24 3607:6 3626:5,11	belief 3557:3,5	bought 3654:14, 15
appeared 3581:20	as-built 3557:17	awe 3549:4	believed 3647:25	bound 3652:21
appears 3538:22 3541:3 3544:17 3601:13 3615:3 3618:14 3620:19 3622:21, 25 3623:22 3669:9	asks 3603:15	<hr/> B <hr/>	benefits 3642:10	brainstorming 3617:2,6
applied 3570:9 3626:18,23 3627:12,16	asphalt 3576:9	back 3543:8 3544:11, 3547:15 3554:3 3557:15 3582:4 3585:16 3587:2,10,24 3596:1 3603:19 3605:18 3613:24 3614:6 3635:21 3636:5 3646:11	Berlis 3620:25 3621:6	breached 3543:5,6
apply 3626:20, 22	assessment 3532:1 3537:2 3650:18	back-and-forth 3539:17	Beta 3607:23	
appreciation 3648:25	assets 3635:2	background 3594:9,13 3596:20 3660:16	beware 3651:11 3653:19 3654:25	
approach 3655:1	assistance 3626:12		bigger 3535:19	
approval 3540:23 3545:15 3548:13 3663:22 3664:7,14,20,21	assisted 3536:2		Bill 3612:10	
	assuming 3586:15 3611:12 3660:20		bind 3548:1	
	assumption 3611:14		Bisceglia 3663:4,5	
	assure 3584:15		bit 3529:12 3532:6 3539:9 3566:16 3586:10 3618:12	
	assuring 3584:6,7		blanche 3615:4	
	attachment 3595:15 3645:2 3646:9		blanket 3546:8 3665:9	

break 3598:19	by-law 3550:11 3619:14	3604:21 3605:18, 20 3607:14,17 3611:20,23,24 3618:13 3622:14, 16 3629:12	cetera 3528:20	3643:12 3650:14, 15 3660:21 3663:11,23 3666:9
briefing 3562:22 3563:1			chance 3589:23 3624:6,12	
bring 3527:7 3599:4 3618:12 3632:14,19	C		change 3635:13	CLERK 3526:3 3598:23
brings 3632:6	cables 3559:12	Caughill 3558:5, 23 3559:16,20,23 3560:3 3569:19 3575:14,24 3576:22 3577:20, 21 3579:17 3582:18,24, 3585:25 3586:13, 16 3592:10,14,23, 25 3593:9,18,24 3594:5,10,19 3595:8 3597:7 3599:25 3600:14, 22 3605:12 3607:9 3614:22 3623:7 3635:19 3638:12	changed 3564:18 3576:19	client's 3549:8
broad 3595:12	Cadlec 3608:1		charge 3640:12	close 3529:22 3531:4,14 3538:16 3587:20 3617:12 3620:6
Broadbent 3526:12	calculations 3629:8		chartered 3659:1,2	closed 3617:17
broken 3670:17, 24	call 3527:5 3535:19 3581:25		Chief 3590:17	closely 3597:16 3638:18
brought 3632:17	called 3581:3 3620:20		choices 3665:2	closing 3530:3 3534:7 3613:15 3614:10 3667:8
building 3528:19 3531:8 3532:1 3537:2 3549:24 3551:8 3556:10 3564:11 3565:1,6 3568:17 3570:18 3590:17 3619:1,14,24 3625:6 3626:15, 17,20 3627:2,6, 12,15,18 3644:21 3650:2 3655:24 3666:10 3668:2	calling 3582:4		choosing 3629:9	
buildings 3662:24	Canada 3556:5		chose 3582:25 3583:1 3629:2	Code 3619:14
built 3640:20,21	capital 3618:7, 24		chute 3657:11	coincide 3602:6
bullet 3612:23 3660:7,17,24	carefully 3548:22	Caughill's 3575:16 3578:4, 20 3579:11 3599:18 3636:21	circles 3544:18	coincidence 3625:16
business 3534:6 3538:17 3539:12 3659:3,5 3662:15	Carr 3647:14	caulked 3596:6, 10	circumstances 3533:2 3546:21 3547:24	coincidences 3625:17
buy 3531:23 3538:15 3554:2 3613:23 3614:12	carried 3561:20 3572:23 3573:25	caulking 3598:9	City 3533:6 3534:4 3536:14 3538:16 3540:23 3541:5,14 3542:22 3544:21 3548:9 3549:11, 12,22 3550:1,4,6 3551:1,5,16 3552:2,5,9,10 3553:9,11,16 3554:9 3588:17, 20 3591:5 3600:1 3605:14 3611:7 3615:6, 3616:16 3618:18 3619:8, 13 3668:3,8	collection 3538:5
buyer 3532:10, 20 3533:17 3642:9 3651:11 3653:19 3654:20, 25 3655:2	carry 3562:6 3574:16 3575:1	caused 3563:16	City's 3536:9	comfortable 3540:18
buyers 3641:14	carry-on 3565:25	Caveat 3653:22	clarification 3666:5	commencing 3526:1
buying 3533:9 3538:23	carrying 3571:24	cent 3535:17 3586:5	clause 3553:13 3638:22 3653:3	comment 3541:7 3542:19, 24 3543:2 3568:14 3578:10 3598:11
	cars 3662:24	centre 3530:16 3531:19,24 3533:15 3535:20 3536:10 3538:24 3541:6 3542:3,17 3596:5 3613:11 3641:17	cleaning 3598:1	comments 3543:19,24 3544:16
	carte 3615:4	Central 3536:3 3555:22 3604:9 3624:23 3627:11 3633:3,4 3659:10, 14 3662:1	clear 3528:6 3531:2 3532:20 3540:19 3542:13 3553:9 3577:11 3601:22 3616:24	commercial 3606:5 3630:21
	case 3532:7 3533:5 3557:19 3564:16 3565:17 3620:3,7 3627:8 3638:11 3661:14	Centre's 3535:1,4		Commission 3526:4 3527:16, 18
	cases 3532:13 3638:11 3661:10	centres 3545:21		Commissioner 3526:6,8,15, 3527:21 3528:8, 10 3529:2,3,6,9, 10 3544:14
	cash 3618:2 3620:8 3640:2,6,7	certified 3658:25		
	Cassan 3588:11,12,14,16 3589:1,5,11,18, 20,22 3598:20,22 3599:3,8 3601:18, 20 3602:11,13			

3554:21 3587:1, 22 3588:10,13 3598:18,21 3611:9,19 3618:11 3629:15 3631:18,19 3651:6 3658:13, 15 3662:23 3663:2,3,7	3609:21,22 3651:6 3670:10	conclusions 3560:14 3561:9 3579:8	Consideration s 3568:12	3543:15
commitment 3538:15	completed 3609:10 3610:7	concrete 3556:9 3559:11 3561:15, 21 3563:18,25 3569:21 3571:5, 10 3579:23 3583:11 3585:20, 24 3586:2,5,12,17 3608:2 3626:8	considered 3532:8 3566:18	continuing 3562:1
common 3530:2	completely 3588:6	concur 3547:2 3552:15	consist 3579:4	contractors 3578:6,21
communicate 3527:2	complex 3562:20 3582:6	concurr 3547:2 3552:15	consisted 3578:25	contrary 3576:24
communicatin g 3575:18	complications 3533:13	concluded 3635:18	consistent 3559:17 3560:15	contribution 3536:7
communicatio n 3575:10	comply 3548:10	condition 3551:9 3606:4 3646:25 3649:1, 13 3650:2,18 3651:2 3661:4 3666:10 3668:2	conspiracy 3544:19	control 3532:21 3545:24 3552:13
communicatio ns 3542:11 3575:23	component 3640:10	conditions 3532:19 3557:17 3661:22 3662:7	constructed 3608:10	controller 3612:10
community 3534:8,11 3536:1, 2 3670:12	compromise 3635:3	conductive 3614:8	construction 3628:23,24	conversation 3546:6 3607:13 3616:3 3626:1 3641:24
companies 3630:19	compromised 3564:12 3565:1,6	conducted 3565:8	consultant 3555:25 3567:11 3609:5	conversations 3578:20
company 3597:7 3610:8 3619:7 3620:20 3621:18 3630:22, 25 3632:24 3633:4,13,16 3635:12 3636:14 3638:24 3639:14 3649:9 3651:3 3655:15 3658:5 3659:8	Conas 3620:20 3621:8,11,22,24 3622:1	confident 3577:3,4,9	consultants' 3528:18	conversed 3555:23,24 3609:4
company's 3648:3,4	concept 3545:13 3630:10	confidentiality 3532:13 3543:11 3549:10 3630:1,4 3646:13 3652:22	Consulting 3555:25 3609:5	copied 3610:11
competing 3545:22	concern 3534:1, 10 3559:3 3561:1, 4 3564:1 3588:9 3618:8,25 3619:12 3642:17 3644:12	confirm 3569:20	contact 3580:14	copies 3669:23
compiled 3528:18	concerned 3548:9,19 3563:11 3604:2 3652:7 3655:16 3668:7	confirming 3570:25	contemplating 3576:13 3634:20	copy 3592:22 3594:7 3607:19
complaint 3604:15 3624:14 3625:2,11,13	concerns 3535:18 3563:17, 21 3564:3 3568:14 3649:23 3654:17 3668:1	confused 3535:9 3657:15	content 3622:18 3624:16	core 3571:4 3622:23 3626:11
complete 3584:2,6,7,16,17	concluded 3566:24 3648:1	confusion 3528:7 3546:2	contents 3637:17	cores 3623:1
	concluding 3567:16	connection 3554:8	context 3530:21 3630:17 3633:22 3644:6 3649:17 3656:24 3657:6	Coreslab's 3577:22
	conclusion 3559:5 3567:17, 19 3570:15 3571:6 3579:13 3605:17	cons 3662:10	contingency 3619:1	corner 3612:13
		consent 3545:7	continually 3596:8	corporate 3547:25 3548:1
		consideration 3616:5	continue 3528:22 3543:18 3639:23 3647:5 3648:15	Corporation 3633:4 3659:14 3664:8
			continued 3528:14 3647:23 3667:20	correct 3530:20 3531:19,20 3535:7 3536:8 3537:1,4 3542:22 3545:7,15 3547:16 3548:2,4, 14 3554:4 3557:13 3563:3 3576:1,25
			continues	

3577:17,18 3578:3 3583:13 3585:8 3648:12 3659:5,20,21 3664:15,17 3665:12	Cross-examination 3529:7,11 3554:23 3588:14 3629:17 3658:16	de-bonding 3561:3,14	decommissioning 3616:12	3649:1
correspondence 3542:21 3543:9,10 3636:21 3663:12	cross-referencing 3631:11,24	dead 3608:4 3611:11	deferred 3640:3	deterioration 3559:11 3647:4 3648:15
correspondingly 3570:19	cumulatively 3577:4	deal 3546:17,18 3552:21 3554:17 3644:3 3654:13 3669:4	define 3582:2	determination 3528:1 3551:9 3568:6 3637:16
corrosion 3558:12 3559:1 3560:5 3563:19, 25 3647:20	current 3667:18	dealing 3541:4 3543:14 3551:12, 14,19 3552:6,7 3580:24 3611:10 3619:23 3620:19	degradation 3559:2 3642:16	determine 3564:10,14 3565:15 3570:2,8, 10 3637:25
cost 3573:14,15 3588:3	cut 3650:12	dealt 3552:4 3656:16	delayed 3661:11	determined 3566:19 3655:25
costly 3568:18, 20,21	cutting 3626:11 3627:13	debt 3640:11,14, 21,25	deliverable 3551:11	development 3536:14
costs 3618:7,24	D	December 3529:14,24 3530:8 3531:1,2, 22 3533:21 3534:4 3535:11, 24 3536:18 3538:14 3539:11 3541:19 3542:4 3551:3 3553:2 3594:18 3645:20, 22	deliverables 3551:15	difference 3597:1 3652:3
Council 3540:24 3541:14 3544:21 3549:11,12	dash 3588:25	decide 3554:2 3655:14	delivered 3611:13	difficulty 3587:17 3592:5 3618:2 3643:6
councillors 3546:3 3553:16	database 3551:7	decided 3532:9 3634:24	Dell'aquila 3576:3	diligence 3552:19 3554:1 3654:13 3655:4
counsel 3529:4 3588:16 3629:19 3658:18	date 3595:19 3600:15 3601:11, 19 3603:22 3605:2 3624:18 3645:16 3648:9 3667:7,8	decision 3581:22 3587:21 3599:22 3607:2 3619:22 3626:19, 22 3630:15 3632:21,22 3633:1 3648:18, 20,21	demolish 3617:10,12 3620:5	diligently 3641:11
covered 3630:4	dated 3540:22 3541:18 3550:11 3595:19 3600:12 3601:8 3604:18 3609:12 3611:13 3612:19 3620:13 3624:19 3669:7	decisions 3643:16	department 3619:2	direct 3554:8
covers 3532:12	dates 3535:14 3590:9 3622:19	deck 3563:13 3570:4 3572:23 3573:5 3618:8,24 3623:15,17 3644:22	depend 3533:2 3648:25	directed 3669:3
Crack 3596:14 3597:20	David 3554:25	decommissioned 3617:18	depending 3570:4	directly 3552:10 3554:17
cracks 3585:19	day 3527:3 3588:8 3605:6 3606:19 3611:13		deposit 3532:19	directors 3542:15 3563:1 3566:4 3663:14 3664:19
Cresswell 3562:11,17 3566:3 3569:13 3617:21 3641:23	days 3527:6,9 3603:23 3604:4, 3637:14		describe 3556:2 3571:23	disagree 3536:22
cross 3629:24	de-bonded 3560:25 3571:11 3579:23 3583:10 3585:20,24 3586:2,12,17 3627:14		describing 3597:1,4	disagreeing 3666:14
			description 3537:24 3560:20 3583:14 3596:24	discharging 3602:17
			design 3557:16 3564:17 3606:2 3628:19 3646:23 3656:21	disclose 3633:17 3656:5,6
			designating 3547:23	disclosed 3639:14 3668:2,8
			detailed 3649:19 3651:2	disclosure 3532:9 3538:25 3632:2
			deteriorating	

discover 3655:3,7	documentation 3660:22	economically 3644:8	3629:3 3637:8 3638:11 3660:12 3661:3,15	evidenced 3660:11
discovered 3648:14	documents 3527:20 3528:2 3535:15,22 3538:21 3540:10 3541:25 3552:14 3573:17 3628:4 3647:10	effect 3534:7 3558:14 3567:12	engineers 3556:1 3594:3 3603:11 3604:3, 14 3609:6 3624:23 3625:6	evidentiary 3527:21 3528:4
discuss 3632:3 3669:13	Doody 3526:7,8, 22 3528:9,13 3529:1 3537:18, 23 3541:22 3558:4,21 3560:2, 24 3572:10,18 3575:9 3577:24 3582:16 3589:9, 16 3615:22 3631:12 3663:6,8	effective 3661:12	entered 3527:5 3528:23 3654:6	exact 3565:23
discussed 3530:15 3531:6,8 3536:11 3542:24 3544:8 3569:18 3595:7 3616:2 3618:25 3639:1, 15,21	draft 3592:18,23 3594:22 3595:7, 10	effects 3618:16	entirety 3542:9 3586:19	EXAMINATION -IN-CHIEF 3528:13
discussing 3615:3,15 3617:25	drafts 3592:14	Egan 3612:11	entire 3603:1 3647:5 3670:1	examinations 3528:18
discussion 3534:13 3535:24 3568:3 3570:16, 18 3596:2,16,17 3600:1,20 3601:3 3606:17,24 3607:6 3608:15 3609:7 3611:10 3615:5,9,11 3619:5 3631:17 3635:22 3668:21	draw 3540:25 3608:24 3623:11	element 3585:17	entirety 3542:9 3586:19	examining 3670:1
discussions 3558:23 3560:3 3594:1 3599:25 3600:8,10 3603:5 3614:12 3615:24 3618:17 3621:14 3641:25 3654:3,7 3658:6	drawings 3569:22 3629:8	elicited 3648:2	entities 3547:25 3548:2	exception 3546:19
disintegration 3563:18	drilled 3623:1	Elliot 3526:4 3542:16 3562:20 3588:17 3614:23	entitled 3527:6, 22	Excuse 3651:4
doable 3570:17	due 3552:19 3553:25 3563:14 3570:5 3654:13 3655:4	Elliott 3526:18	environment 3556:8	exercise 3653:19 3656:23
document 3527:8,11,13,16, 17 3538:23 3541:20 3544:17, 19 3563:8 3568:10 3593:17 3596:19 3601:5, 16 3618:15 3620:13,21 3622:11,21 3625:19 3632:1 3669:3	dust 3597:24 3598:9	Elliott's 3526:11	essence 3545:8	exhibit 3527:9, 14,17 3537:18 3539:1,19 3540:13,14 3541:18 3544:12 3550:10 3555:4 3557:25 3562:8 3569:1 3588:23 3589:16 3593:8 3594:16,21 3595:17 3596:1 3599:4 3600:11, 13 3601:7 3603:19 3604:18 3608:17 3612:1 3615:17 3617:20 3620:12 3622:14 3623:6,24 3631:2, 6 3635:15,20 3639:17 3644:23 3645:12,18 3647:12 3663:24 3666:17 3668:25
	E	ELMAC 3526:11 3629:20	essentially 3545:5	exhibits 3527:1, 4,5 3528:2
	e-mailed 3624:2	ELRL 3664:4	estimate 3573:14,15 3586:4	exist 3578:2
	earlier 3595:17 3661:18 3664:16	embark 3653:19	estimated 3648:18,24 3655:10	existing 3571:10
	easy 3533:19	emptor 3653:22	event 3611:21 3636:25	expansion 3627:12 3647:6
	economic 3536:14 3619:24 3643:23 3655:25	enable 3648:9	events 3529:13	expect 3549:3 3606:6 3610:14
		encouraged 3604:9	eventually 3536:24 3537:2 3552:19	
		end 3539:9 3542:7 3582:22 3654:9	evidence 3528:3 3529:18 3530:13 3578:5 3616:11 3622:1 3628:22 3641:2 3660:10,20 3661:8 3663:18 3664:11	
		ended 3650:6		
		ends 3595:23 3666:22		
		energies 3656:22		
		enforce 3619:13		
		enforced 3661:20 3662:5		
		engineer 3577:13 3578:12 3590:21 3591:10 3593:1 3628:9,22		
		engineering 3554:1 3567:11 3573:15 3591:4 3607:24 3619:8 3628:15,19		

3624:25	3548:7 3554:9	fell 3637:17	3583:10	forwarding
expectation	3556:20,23	fellow 3587:23	flip 3592:16	3528:17
3630:2,18	3563:5 3567:10	felt 3559:16	3594:23 3595:14	found 3550:9
3632:12	3570:16 3572:12	3648:9	3641:7	3586:12 3668:5
expected	3586:2 3609:21	field 3578:21	Floor 3669:21	fourth 3555:23
3606:9 3636:19	3634:4 3648:2	figure 3562:5	floors 3613:15	3560:18
expecting	3660:24 3664:12	3588:22 3643:7	flow 3620:8	frankly 3547:9
3591:9,22 3610:5	factored	figuring 3582:19	3640:2	free 3597:24
3615:12	3640:10	file 3594:6	flowing 3536:17	3598:9 3663:13
experience	factors 3618:7	filed 3527:1,4,16,	3551:3	frequently
3556:12,21	facts 3527:17,25	20 3659:13	flows 3640:6	3526:19
3661:25	3528:1	filing 3527:4	focus 3555:11	friend 3611:12
expert 3649:6	factual 3527:23	final 3595:1	3566:2 3569:24	3631:21 3636:8
expertise	3528:4	3668:13	3572:21 3635:13	3663:10 3666:8
3556:21 3557:20	fair 3534:8	finance 3633:1	3642:4	3668:14
3649:10 3650:1	3545:16 3551:9	financial	focused	friends 3526:23
3658:24	3559:24 3570:21,	3528:19 3612:2,	3572:19	3528:7 3629:22
explain 3588:4	22 3580:3,9,14,15	18 3634:1	follow 3538:21	front 3649:25
3635:24	3582:21 3583:14	3658:24 3659:4,	3544:3 3554:15	frustrated
explained	3584:16 3594:8	12	foot 3574:18	3581:5
3558:12	3622:7 3626:25	financially	3575:2,12 3576:4,	frustration
explaining	3633:21 3649:3	3531:10 3536:3	10,20 3577:6	3581:1,3
3593:18	3662:21	find 3539:6	3578:8,18 3579:9	fulfill 3551:25
explanation	fairly 3629:24	3543:4 3569:3	footage 3670:16	full 3550:22
3603:18 3645:7	3656:2	3620:15 3629:8	force 3619:19	3632:2
exponentially	fairness 3614:1	3641:3 3648:11	forces 3626:7	fully 3571:5
3558:13 3647:21	fall 3609:2	finding 3581:16	foreseeing	fund 3538:16
express 3527:7	3668:22	3606:7 3618:18	3532:5	fundamental
expressed	familiar 3653:22	findings	forget 3619:23	3606:10,11
3649:23	3660:5	3527:23 3528:5	form 3599:16	funding 3554:9
expunged	Farkouh	3606:23 3661:17	3628:17	furniture 3596:4
3527:11	3529:15,17,24	fine 3575:19	formal 3532:18	future 3558:25
extend 3648:23	fashion 3534:23	Finished	3664:13	3560:10 3561:14
3657:10	3617:18	3651:18	formally 3626:2	3609:16 3618:2
extent 3578:16	fault 3526:25	firm 3556:5	formulated	3631:9 3632:3
exterior 3603:2	favour 3667:5	3637:8	3609:8	
extra 3588:3	fax 3540:21	fit-ups 3627:17	forthcoming	G
3608:12	3541:18 3620:13	fix 3624:25	3590:24 3610:16	garden 3602:17
	3621:5 3669:7	3642:20 3655:14	3611:4	gather 3572:25
F	feasible 3587:20	3657:9,21	forward	gathering
	3644:10,11	fixing 3579:22	3534:17,19,25	3534:20
facilitate	February	fixed 3655:16	3535:2, 3537:4	gave 3544:6
3631:10	3600:16 3617:20	3656:11,13	3640:16,17,18	3573:13 3580:12
fact 3534:19	feel 3540:17	3657:5,6,7 3658:9	3642:6	
3538:16 3541:1	3638:3 3656:6			

3597:13 3621:24 3628:16 general 3568:24 3574:4 generally 3578:17 3582:18 3659:19 generate 3640:5 generated 3640:7 generates 3640:1 genuine 3580:21 3581:11 geoscience 3556:7 give 3529:18 3530:13 3532:9, 22 3537:7,9 3541:14 3543:20 3547:12,14,15 3554:3 3586:23 3591:4,9,20 3598:14 3606:21, 25 3607:3 3638:12 3651:15 3663:16, 3664:21 3665:4,9 giving 3540:9 3572:13,16 3582:24 3594:12, 13 3596:20 3610:18,22 3611:7 3615:15 3663:17 glance 3598:5 glean 3629:23 good 3526:6 3529:8,9 3537:11 3545:18 3554:24 3585:14 3587:5,8, 10,23 3588:12,15 3642:6 3651:16 3658:12,17 3662:11,25 governmental 3667:17 grand 3554:1,3	granted 3666:1 great 3534:10 3646:1 group 3629:19 3649:20 guarantees 3667:14 Guertin 3528:16 3539:21 3543:5 3663:12 3664:13 3668:18 3669:10 Guertin's 3652:7 guess 3536:19 3545:4 3572:8 3610:6 3617:13 3634:17 3648:1 guide 3638:5 guy 3587:6,10,14 guys 3533:8 <hr/> H <hr/> H.S. 3629:2 habitable 3556:14,25 half 3634:14,16 halfway 3568:13 Halsall 3649:19, 20,21 hampered 3661:11 hands 3544:21 3545:22 3549:17 3648:16 handwriting 3607:15,21 3610:25 3612:13, 20 3614:2 happen 3533:6 3619:1 3652:11 happened 3530:24 3532:7 3535:16	happening 3559:20 head 3555:18 3644:13 header 3620:13 3621:5 heading 3544:15 3568:11 hear 3528:3 3562:24 3586:9 3644:14 heard 3559:15 3576:2 3616:11 3628:21 3630:8 3660:3,5 hearing 3526:3 3598:24 3620:22, 24 height 3639:4 helps 3539:5 hesitate 3580:14 hinting 3650:20, 22,24,25 hired 3590:23 3591:24 3603:11 Hirt 3628:2,5,11 3629:2,4,9 Hirt's 3628:4 historical 3659:4 history 3627:18 Hold 3550:14 Holdings 3620:20 3621:11 honestly 3651:13 hope 3530:4 3554:12 3642:22, 23 hoped 3642:24 3643:1,3 hoping 3670:13 hoses 3602:17	hotel 3529:22 3530:16,22 3531:4,7,19,24 3534:1,7,24 3535:13,18 3536:11 3541:2,4, 3613:15,23 3614:10,13 3642:2 3668:20 3669:4,6 house 3587:4 HOWE 3611:9 3651:8 hydrology 3556:8 <hr/> I <hr/> i.e. 3570:3 lamonaco 3558:11 3559:18 3647:13 idea 3600:19 3604:8,12,16 3621:12 3625:25 identified 3533:4 3576:6 3590:16 3603:10 3618:6 identify 3548:21 3569:17 3585:19 3603:6 ii 3565:14 impact 3620:8 impairment 3635:1 implemented 3574:8 3586:18, 20 implied 3640:14 importance 3642:1 important 3530:22 3637:2,5 3650:17 improve 3566:21	in-chief 3529:4 inappropriate 3606:3 3646:24 inch 3574:17,18 include 3635:22 included 3558:10 3573:14 3640:25 3648:3 including 3626:7 3644:21 income 3618:1 3640:4 inconsistencie s 3569:22 incorrect 3652:25 increase 3558:13 3561:3 incremental 3640:2,6 indefinitely 3568:18 independent 3552:12 index 3645:24 indexed 3631:9 indicating 3610:1 indication 3571:13 inflation 3613:3 information 3528:17 3530:25 3532:10,22 3534:5,20,24 3535:1,4 3538:6 3539:13 3540:23 3541:1,13 3542:3, 16,18 3543:12 3544:7,20 3545:14,20,23 3547:14 3548:23 3549:6 3551:23 3552:10,18 3573:1 3575:22, 23 3576:16,23
--	---	--	--	---

3578:9,12 3581:21 3591:22 3595:21 3596:20, 21 3597:8,13 3602:7 3611:6 3621:24 3627:20 3630:4,14 3633:17 3652:23 3653:9,11,15 3655:9,18 3656:6, 9,10 3659:17,18 3661:21 3662:6 3663:13 3664:18, 22 3665:4,10 3668:1,8 3670:15	integrity 3563:13 intended 3527:2 3629:24 3632:2 intent 3547:19, 20 3549:16 3610:4 3620:19 3622:8,11 intention 3572:7 3631:15, 16 interest 3580:21 3581:11 3640:8, 10,11 interested 3532:17 3533:9 3538:22 3612:12 3622:19 3624:15 3669:6 3670:23 interesting 3611:10 3624:23 interim 3581:23 3585:15 interior 3603:1 3623:16 internally 3531:7,8 interpretation 3616:13 3653:1 interpreted 3574:7 interrupt 3617:4 introduce 3526:9 inventory 3670:11 investigated 3581:13 investigation 3533:16 3578:23, 24 investigations 3579:3 3661:18 invitation 3587:23 3588:2	involved 3534:11 3550:3 3593:5 3595:6,9 3599:22 3621:13, 25 3626:19 involvement 3536:9 involves 3583:10 involving 3567:2 isle 3596:5 issue 3526:22 3530:3 3532:9 3549:21 3553:18 3555:21 3558:25 3559:23 3560:11 3561:14 3581:9 3597:22,24 3606:10, 3615:14, 15 3644:17 3655:21 3656:17 issued 3636:14 issuer 3633:20 issues 3542:22 3598:7 3655:10 item 3559:7 3560:14,19 3565:14 3568:10, 12 3570:23 3572:18 3635:22 3639:23 3669:16, 20 items 3552:2 3583:9 3669:14	Joint 3596:4,10 joints 3559:10 3595:25 3596:8, 25 3597:23 3598:8 3627:13 3647:6 July 3539:22 3620:14 3669:7 June 3614:18 jurisdiction 3667:18	knowing 3631:24 knowledge 3563:4 3574:11 3575:9 3626:3 3629:5 3632:16 3648:1,3 3653:7 3655:15 Kuka 3550:22 3588:25 3589:19 3590:13 3594:23 3599:3 3601:19 3602:12 3605:19 3607:15 3618:12 3659:24 3666:22
informed 3630:15 3661:17 initially 3622:8 Inn 3530:4 3613:8,13 input 3545:3 inquiries 3542:8 3578:25 inquiring 3575:11 Inquiry 3526:4 inside 3623:20 3627:16 insist 3532:23 inspecting 3557:16 inspection 3549:24 3572:19 3600:3 3602:8 3623:6,15 inspections 3625:21 inspector 3626:15 installation 3639:3 installed 3570:3,12,20 3571:9 3606:12 instance 3532:7 instances 3543:4	integrity 3563:13 intended 3527:2 3629:24 3632:2 intent 3547:19, 20 3549:16 3610:4 3620:19 3622:8,11 intention 3572:7 3631:15, 16 interest 3580:21 3581:11 3640:8, 10,11 interested 3532:17 3533:9 3538:22 3612:12 3622:19 3624:15 3669:6 3670:23 interesting 3611:10 3624:23 interim 3581:23 3585:15 interior 3603:1 3623:16 internally 3531:7,8 interpretation 3616:13 3653:1 interpreted 3574:7 interrupt 3617:4 introduce 3526:9 inventory 3670:11 investigated 3581:13 investigation 3533:16 3578:23, 24 investigations 3579:3 3661:18 invitation 3587:23 3588:2	issue 3526:22 3530:3 3532:9 3549:21 3553:18 3555:21 3558:25 3559:23 3560:11 3561:14 3581:9 3597:22,24 3606:10, 3615:14, 15 3644:17 3655:21 3656:17 issued 3636:14 issuer 3633:20 issues 3542:22 3598:7 3655:10 item 3559:7 3560:14,19 3565:14 3568:10, 12 3570:23 3572:18 3635:22 3639:23 3669:16, 20 items 3552:2 3583:9 3669:14	Joint 3596:4,10 joints 3559:10 3595:25 3596:8, 25 3597:23 3598:8 3627:13 3647:6 July 3539:22 3620:14 3669:7 June 3614:18 jurisdiction 3667:18	knowing 3631:24 knowledge 3563:4 3574:11 3575:9 3626:3 3629:5 3632:16 3648:1,3 3653:7 3655:15 Kuka 3550:22 3588:25 3589:19 3590:13 3594:23 3599:3 3601:19 3602:12 3605:19 3607:15 3618:12 3659:24 3666:22
			K	
			Kadlec 3578:1 3607:24 3608:10 3628:22 3629:1,3 Kadlec's 3577:22 Kearns 3529:8, 10,11 3532:16 3537:20 3538:1,3 3541:24 3544:14, 22 3550:21,24 3554:18,22 3630:1 3668:15, 16 3669:2,8 keeping 3594:7 Kennealy 3529:16 3530:12, 22 3543:5 3548:7, 20 3553:8 3660:14,22 3663:12 3664:15 3668:19 key 3543:25 kind 3538:20 3544:19 3598:2 3648:6 3656:23 3657:10 kindly 3631:21 kinds 3617:13 knew 3632:8 3642:13 3644:19 3645:13 3646:15, 18,22 3647:2,3,6, 11,20 3649:12 3651:24 3653:10	L
			Kadlec 3578:1 3607:24 3608:10 3628:22 3629:1,3 Kadlec's 3577:22 Kearns 3529:8, 10,11 3532:16 3537:20 3538:1,3 3541:24 3544:14, 22 3550:21,24 3554:18,22 3630:1 3668:15, 16 3669:2,8 keeping 3594:7 Kennealy 3529:16 3530:12, 22 3543:5 3548:7, 20 3553:8 3660:14,22 3663:12 3664:15 3668:19 key 3543:25 kind 3538:20 3544:19 3598:2 3648:6 3656:23 3657:10 kindly 3631:21 kinds 3617:13 knew 3632:8 3642:13 3644:19 3645:13 3646:15, 18,22 3647:2,3,6, 11,20 3649:12 3651:24 3653:10	Lake 3526:4 3542:16 3562:20 3588:17 3614:23 Larry 3590:20 lasted 3656:20 Laughter 3631:14 lawfully 3667:20 lawyer 3554:25 laying 3592:14 layman 3653:24, 25 3654:24 leads 3570:15 leakage 3555:21 3558:15 3559:3 3563:15,16 3565:3,9 3582:20 3584:1 3585:6 3647:4,22,23 3648:4,10 3656:16 leaking 3585:19 3596:9 leaks 3596:12 3625:1 leases/tenants 3669:17 leave 3553:21 3580:18 3598:4

3636:6	level 3662:18,19	4,6 3551:2,7,10, 12,19 3552:4,6,8 3554:15,17 3630:3 3639:9,10 3642:1,25 3644:20 3651:22 3652:24 3654:8 3655:19 3656:7 3657:4 3658:7 3660:14 3668:19 3669:5	lotto 3596:12	10,16 3621:19 3623:20 3624:24 3626:6 3627:18, 21 3629:8 3632:3, 22 3637:11,12 3639:8 3640:5,12 3642:14 3668:20, 21 3669:17 3670:1,6,21
leaving 3642:7	liability 3616:25 3617:1		love 3526:19	
led 3531:1 3564:24 3565:5	Liautaud 3530:14 3590:20 3591:1,3,9,12,19 3603:21 3606:18, 21,24 3607:8,10 3608:18 3615:10		low 3531:17 3543:25	
left 3558:13 3649:14			lowball 3651:15	
legal 3600:6 3616:25 3662:15	Liautaud's 3614:21		M	
legalities 3554:16	library 3596:10 3602:15,20,22 3603:24 3604:1, 10 3624:15,24 3625:2	Living's 3542:8 3549:2 3653:17	Macrae 3555:8 3658:13,14,16,18 3659:23 3663:1 3666:21,25	malls 3556:13,24
Leistner 3528:12,15 3529:9,13 3531:23 3532:15 3535:8 3537:19 3539:5,21 3540:16 3541:21 3543:22 3545:1 3548:18 3549:20 3550:19,25 3554:19,24 3588:15 3590:7, 16 3594:21,25 3595:16 3599:9 3602:2 3603:23 3608:21 3617:20 3622:18 3624:5, 16 3629:13,18 3658:17 3663:1,9 3666:17	life 3564:11 3565:1,6 3648:18, 23,24 3655:11,21, 25 3656:19,21 3657:8	load 3570:18,21 3577:18 3587:19 3588:9 3608:4,7 3644:12,15,17	made 3526:16 3531:2 3536:6 3553:9 3568:6 3587:21 3590:25 3607:3 3632:22 3639:11 3660:21 3661:9 3664:5 3666:9	MALONEY 3529:5 3604:20 3645:23
letter 3555:4,11, 15,20 3589:2,13, 21,24 3590:4,11, 15 3592:9,13, 3594:18,22 3595:1,7,15 3600:13,17,21 3601:1 3603:20 3604:4,10 3606:17,20 3608:18,23 3609:12,23 3610:11,14,18,22 3611:2,11 3617:24 3620:19 3622:8,11 3623:25 3624:6 3625:5 3652:2,8, 9,17 3653:1 3664:13	light 3554:6 3570:20 3629:21	loaded 3566:17	main 3579:22	manager 3590:12 3662:1
letters 3666:1	limbo 3549:13	loading 3570:5 3571:4	maintained 3644:22 3651:24 3653:13	mandated 3661:20 3662:5
	limitations 3641:18	locating 3602:2	maintenance 3581:12 3646:20	manner 3609:24
	limited 3657:8	log 3601:8 3622:23	major 3565:17 3566:6,13	March 3526:1 3550:11
	limits 3577:23	logical 3530:24 3602:9	make 3530:2 3531:9,17 3532:1 3533:10 3543:18 3550:22 3552:19 3579:21 3592:2 3603:14 3619:21, 22 3620:2 3630:14 3633:1 3637:7,16 3638:7 3648:18, 3655:22 3660:10	marginal 3609:3
	lines 3566:14	long 3531:11,15, 16 3560:10,19 3572:6 3628:12 3640:1 3641:22 3643:16 3655:25	making 3608:4 3643:16	Marie 3658:22
	list 3543:24	long-term 3563:12,24 3568:14 3641:17, 21 3642:10,12,14, 17 3654:18	mall 3531:15,24 3533:22,23 3536:4 3542:9 3555:16 3590:11 3602:3 3603:2,11, 17 3613:23 3614:19 3618:3,	market 3536:13 3551:9 3618:10 3641:13,18 3642:4,8 3651:12
	listed 3583:8 3633:16	looked 3541:20 3542:1 3561:8 3562:11 3567:23 3568:1,2 3581:19 3595:17 3606:16 3643:3 3653:2 3666:3	marketplace 3641:15	market 3536:13 3551:9 3618:10 3641:13,18 3642:4,8 3651:12
	lists 3602:14 3631:9	loss 3640:12,23	mass 3527:4	material 3630:9, 13 3632:24 3633:2,3,10,17 3635:10,11
	live 3535:22	lot 3530:2 3533:16 3546:2 3587:17 3595:16, 3619:20 3658:6	materiality 3630:10	matter 3625:21 3630:9,13
	lived 3643:15	lots 3627:15 3641:14	maximum 3571:19 3577:23	Mayor 3529:20, 21 3534:11
	Living 3528:17 3530:15,23 3533:6,17,23 3534:5, 3536:12, 13 3538:15,22 3540:10 3541:5 3542:4,14,16 3543:6,12 3544:20 3547:23 3548:8,12,19,22 3549:8,21 3550:3,		making 3608:4 3643:16	meaning 3616:20
				means 3527:24 3544:17 3584:1 3642:7 3652:22 3670:20

<p>meant 3577:3 3613:19</p> <p>meeting 3529:14,18,19,23, 24 3530:14,17,21 3531:1 3533:21 3535:11 3536:18 3538:5,13 3539:11,22,24 3540:7 3551:3 3590:25 3610:24 3614:19,25 3669:10,15</p> <p>members 3548:8 3549:10, 12 3664:22 3665:10</p> <p>membrane 3583:12</p> <p>memo 3562:10, 12,17 3563:4 3564:7 3568:4 3569:13 3593:9, 20 3594:6 3595:17 3597:5, 13 3598:2 3615:18 3616:1 3617:2,7, 3651:21</p> <p>memorandum 3631:3</p> <p>memory 3595:5</p> <p>memos 3594:5</p> <p>men's 3596:5</p> <p>mentioned 3561:8 3563:14</p> <p>mentioning 3598:7 3607:23</p> <p>merit 3611:20</p> <p>meshed 3559:19</p> <p>met 3536:3 3590:20</p> <p>metal 3602:16</p> <p>Meyer 3626:13 3638:25 3639:2</p> <p>Mid-'97 3654:10</p>	<p>middle 3561:18</p> <p>million 3634:13, 14,17,18 3651:14</p> <p>mind 3564:25 3632:12 3655:2</p> <p>mine 3552:5 3612:14</p> <p>minimize 3655:22</p> <p>minute 3651:4, 19</p> <p>minutes 3598:25 3614:18 3615:2</p> <p>miscommunic ation 3526:25</p> <p>missed 3610:20</p> <p>mix 3528:4</p> <p>mixed 3656:23</p> <p>Mm-hmm 3621:3 3627:7 3628:25 3647:17, 24 3649:11</p> <p>modifications 3561:22</p> <p>moment 3565:11 3579:25 3635:14 3654:4</p> <p>money 3536:15 3551:6 3553:11 3587:5,8,10,11,24 3588:3 3619:20 3642:8</p> <p>month 3600:17</p> <p>months 3581:3</p> <p>morning 3526:6,10 3529:8, 9 3554:24 3588:12,15 3598:19 3615:1 3629:25 3636:9</p> <p>morphed 3535:19</p> <p>mother 3633:4</p> <p>motion 3534:2</p>	<p>move 3533:10 3555:11 3573:12 3594:16 3598:17 3611:25 3622:13 3665:21</p> <p>moves 3642:5</p> <p>moving 3534:17,19</p> <p>multi- disciplined 3556:4</p> <p>multitude 3609:9</p> <p>municipal 3531:17 3552:11</p> <p>Municipality 3625:24</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>named 3664:23</p> <p>nature 3552:11</p> <p>NDA 3553:14</p> <p>necessarily 3527:18 3531:3 3533:21,22 3638:21</p> <p>needed 3576:9 3643:6 3649:24</p> <p>negative 3618:6,16 3640:3</p> <p>neglected 3528:11</p> <p>negotiating 3613:22</p> <p>negotiations 3613:5 3639:8 3655:2</p> <p>net 3634:15</p> <p>newer 3648:6</p> <p>Nick 3628:1</p> <p>nominated 3665:11</p> <p>non-disclosure 3535:5 3542:14,</p>	<p>20 3543:3 3544:11 3546:8, 23 3553:14 3652:10 3653:2 3663:15 3664:1 3670:4</p> <p>non-paid 3616:16</p> <p>normal 3533:7 3547:24</p> <p>NORR 3660:2</p> <p>note 3600:15 3624:19 3627:10 3633:25 3634:1</p> <p>noted 3543:9 3561:2 3661:1</p> <p>notes 3543:20 3558:5,9,18 3576:5 3590:16, 17 3646:3</p> <p>notice 3653:5 3663:16,21 3667:16</p> <p>notional 3640:11</p> <p>notwithstandin g 3553:13</p> <p>November 3557:25 3560:15 3562:13 3565:22 3566:10,25 3576:6 3592:9 3593:8 3595:19 3625:20 3631:3</p> <p>number 3535:25 3545:13 3555:6 3559:7 3568:10, 12 3570:24 3572:18 3602:14, 20 3605:17,19 3667:9 3669:16, 20 3670:3</p> <p>numbered 3563:8</p> <p>numbers 3631:24</p>	<hr/> <p style="text-align: center;">O</p> <hr/> <p>OATH 3528:12</p> <p>objecting 3611:15</p> <p>objectionable 3611:16</p> <p>objectives 3553:7</p> <p>obligation 3600:6</p> <p>obligations 3551:14 3552:1</p> <p>obsolete 3619:24</p> <p>obvious 3656:21</p> <p>occasion 3557:11</p> <p>occupied 3670:16,18</p> <p>occur 3647:5</p> <p>occurred 3529:13</p> <p>occurs 3539:10</p> <p>October 3540:15,22 3541:4,14 3592:2</p> <p>odd 3604:7 3625:9,14,15</p> <p>offer 3532:2,17 3533:10 3552:20 3553:25 3554:7 3580:4,6 3622:3,9 3650:18 3660:21 3661:9</p> <p>offered 3574:15 3580:6 3660:13</p> <p>offering 3573:9 3574:25 3575:4 3580:5</p> <p>office 3529:15, 19 3530:7 3531:22 3539:24 3555:18 3580:14</p>
--	---	---	---	---

<p>3670:17,24</p> <p>offices 3556:5</p> <p>Official 3590:18</p> <p>one's 3594:24</p> <p>ongoing 3581:12 3616:3 3633:18</p> <p>online 3547:4</p> <p>opening 3527:3, 20</p> <p>operating 3639:23</p> <p>opinion 3561:19 3572:10,13,15 3587:5,6,13 3597:23 3598:8, 14,15 3606:1 3656:11 3657:4, 20 3662:2</p> <p>opportunity 3651:16 3659:4</p> <p>opposed 3581:12 3617:9</p> <p>option 3566:8,9 3567:1,17 3571:23,24 3572:3 3573:10, 14 3576:4 3578:19 3579:9, 14,18,21,24 3581:22 3583:1,5, 8,18,21 3584:1,6, 7,8,12,13,15,23 3585:1,5,11,15, 17,18,22 3586:18, 21 3587:7,9,16 3608:13 3644:2 3648:12 3656:18 3665:8</p> <p>options 3534:14 3535:25 3536:16 3568:1,2 3585:10 3608:15 3615:25 3643:7,14,20 3657:12</p> <p>oral 3528:3</p> <p>order 3531:18 3551:25 3552:19 3561:22 3566:5</p>	<p>3572:25 3594:11 3598:23 3599:6, 11 3600:12,14,17 3630:14 3632:3 3636:8,10,14,24 3637:25 3638:7 3664:18 3668:9 3670:10</p> <p>ordering 3618:19</p> <p>orderly 3617:18</p> <p>organization 3652:5 3653:17</p> <p>original 3569:22 3656:21</p> <p>originally 3597:14</p> <p>originated 3621:16 3622:5</p> <p>outcome 3661:14</p> <p>Outerbridge 3554:23,25 3555:2,10,13 3586:24 3629:22 3647:9 3648:2</p> <p>outlines 3571:22</p> <p>overriding 3545:13</p> <p>overview 3561:10 3562:19 3638:12</p> <p>owner 3603:11, 17 3648:10</p> <p>owners 3661:7, 24 3662:9</p> <p>ownership 3661:2</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>paid 3587:5,8,10, 11,23 3640:11</p> <p>pail 3602:18</p> <p>pans 3602:16</p>	<p>paper 3607:18</p> <p>paragraph 3555:12,21 3556:3 3560:19 3561:18 3569:15 3573:20 3583:17 3584:5,18,20 3608:25 3623:12 3647:19 3660:7</p> <p>Pardon 3537:8</p> <p>parent 3630:22 3633:13</p> <p>parking 3556:24 3562:2 3563:13 3572:4,23 3573:4 3618:8,25 3644:22</p> <p>part 3527:4,20 3528:3 3530:16 3531:3,4 3549:25 3553:5,7 3560:20 3561:18 3569:11 3572:22 3595:6 3629:19 3653:16 3667:12</p> <p>partial 3587:16 3634:10</p> <p>partially 3586:20,21</p> <p>participants 3527:6</p> <p>partner 3526:10</p> <p>party 3533:18 3614:12</p> <p>passed 3621:2 3661:6</p> <p>Paul 3588:16</p> <p>pause 3565:10</p> <p>pay 3551:6 3590:8</p> <p>paying 3637:25</p> <p>penetration 3559:9</p> <p>people 3546:19, 21,22,24 3548:13 3578:20 3580:19 3587:8 3603:5</p>	<p>3649:9</p> <p>people's 3545:22</p> <p>percentage 3560:25 3585:2,6, 12</p> <p>performance 3659:10</p> <p>performed 3553:20 3564:7 3566:5 3569:9 3623:7</p> <p>period 3558:22 3561:25</p> <p>permanent 3639:3 3644:4</p> <p>permission 3665:9,25</p> <p>permit 3626:17, 20 3627:3,12</p> <p>permits 3627:6, 16,18</p> <p>person 3547:8, 3611:11</p> <p>person's 3547:12</p> <p>personally 3566:11,12 3576:24 3578:17</p> <p>persons 3664:6, 14,23</p> <p>perspective 3535:14 3539:11 3628:19 3641:17</p> <p>pertaining 3661:3,21 3662:6</p> <p>Peter 3526:10 3629:18</p> <p>Peterson 3629:2</p> <p>Phase 3538:11</p> <p>photo 3601:8 3602:14,20</p> <p>physical 3549:23 3551:8 3563:9 3643:25</p>	<p>physically 3656:1</p> <p>picked 3557:2</p> <p>picture 3535:19</p> <p>pictures 3602:15,22 3603:15,24 3604:4</p> <p>piece 3577:25 3580:12 3581:4 3582:22 3652:23</p> <p>pieces 3579:12</p> <p>Pigeau 3590:17 3591:1,8,20,21 3606:18,22,25 3607:4,8 3610:4, 11,22 3615:11</p> <p>piled 3611:15</p> <p>place 3547:11 3582:17 3606:18 3607:7</p> <p>plan 3531:3,4 3609:7</p> <p>plans 3529:21</p> <p>plans/ blueprints 3669:21</p> <p>Plant 3563:9</p> <p>players 3582:23</p> <p>point 3534:15 3538:10 3542:17 3566:1,10,19,23 3567:8 3581:10 3582:8,9 3587:16 3590:3 3598:21 3608:11 3609:22 3615:6 3616:4 3623:21 3626:10 3633:11 3660:10 3662:20</p> <p>points 3526:9 3639:21 3650:17</p> <p>portion 3531:7 3601:1</p> <p>portions 3571:11 3635:16 3637:9</p>
---	--	---	--	--

posed 3580:22	3580:6,7 3581:18	3587:11,24	properly 3574:7	purchase
position	3596:25 3630:18	3590:22,23	properties	3528:23 3532:11,
3640:12,24	3638:25	3596:7 3606:11	3617:15 3630:21	12,18,24 3538:14
positive 3640:2,	prepared	3608:24 3620:17	3633:3 3659:11	3543:25 3594:11
6	3547:9 3558:5	3650:21,24	3662:2	3599:6,11
possession	3562:10,17	3655:14	property	3600:12,14,17
3610:6,8	3566:25 3576:5	problems	3616:6,9,20	3613:6 3622:9
possibilities	3596:25 3599:15	3563:15 3587:2	3617:16,17,25	3636:7,10,13,24
3635:5	3601:23 3612:8,	3597:8 3618:6	3619:14 3635:5	3650:6 3666:9,18
possibility	19 3613:25	3642:10,13,14,21	3639:23 3645:14	3668:6,21
3566:13 3618:18	3632:1,5	3654:19	3646:20 3648:10	purchased
possibly	preparing	proceed 3600:2	3651:13 3662:1	3642:25
3653:17	3618:15 3620:22	proceeding	3667:19,22	purchaser
potential	presence	3654:11	3668:10	3641:3,9 3642:20
3532:10 3533:14	3668:4	process	proposal	3648:16 3649:12,
3534:7 3558:25	present 3574:11	3533:19 3534:2,3,	3571:22 3572:4	18 3654:22
3560:5 3561:13	3614:21	18,20 3535:16	3579:21	3667:6
3563:24 3618:6,	presenting	3552:5 3553:6	proposed	purchasing
16	3585:10	3554:14 3565:24	3591:4	3621:18
potentially	president	3588:20 3591:23	proposing	pure 3649:4
3669:9	3566:3 3621:1	3593:5 3627:22,	3565:14 3574:17	purpose
pounds 3574:17	3632:6	24 3655:3	3577:7 3581:17	3553:15 3569:16
3575:2,11 3576:3,	presume 3543:4	3657:11 3668:12	prospective	3570:1,7 3632:9
10,20 3577:5	3626:5	produce	3661:24 3662:9	3635:23 3669:25
3578:7,18 3579:8	pretty 3540:19	3551:15 3552:2	protection	purposes
practical	3542:7,13 3547:3	3607:10	3576:13	3564:8 3569:18
3662:17,19	3550:23 3643:12	produces	provide 3540:23	pursuant
practice	prevent 3668:9	3561:1	3557:10 3619:7	3540:10 3664:23
3528:16,22	previous	product 3598:3	3660:21 3670:14	put 3528:10
3637:15,24	3585:17	products	provided	3530:21 3534:25
pre-approve	previously	3576:7 3597:16	3661:23 3662:8	3535:1, 3552:3
3547:7,8	3569:18 3596:9	profess 3649:8	providing	3583:24 3612:20
pre-stressed	price 3651:10,15	professional	3615:6	3614:3 3636:2
3559:12	3655:22	3572:10 3592:5	provision	3641:15 3650:7,
preliminary	Principles	profitable	3659:18 3664:23	11
3637:16,24	3659:20	3531:16	provisions	putting 3546:19
3638:9	prior 3529:14,18,	project 3569:23	3669:3	3581:15 3583:11
premises	24 3530:7	3581:7 3620:9	prudent 3643:17	
3623:16	3577:23 3664:6,	3628:6,23	prudently	quandary
preparation	20,21	projections	3635:1	3588:4,6,8
3573:16	probing 3653:7	3618:2	psf 3571:8,20,25	quantities
preparations	problem	projects	3572:7,11,12	3573:2
3536:25	3534:23 3546:8	3628:15	public 3545:21	query 3637:21
prepare	3548:6 3558:11	prolonged	3633:13 3659:8	question
3562:21,25	3560:5 3563:24	3656:18	publicly-traded	3528:10 3554:15
3573:2,9,21	3574:19,20	prompted	3633:13 3659:8	3559:25 3560:1
3574:15,25	3582:25 3585:3,7,	3625:5	pull 3631:4	3564:25 3566:17
	13 3586:22			
				Q

3574:14,22,23,24 3579:15 3580:3 3581:14 3582:9 3611:16 3626:25 3637:20 3649:21 3654:2,11,16 3657:2	22 3597:15 3605:23 3609:17 3613:4 3637:24 3638:2,8,20,21,22 3660:6,9,17	3542:6 3575:17	refund 3553:11, 12,15 3554:7	22 3597:8
questioned 3637:19	reader 3609:19 3610:2	recommend 3561:22,23 3562:1 3564:6,7	refunding 3553:18	repair 3564:17 3565:18 3566:7 3573:1,3,9,21 3574:5 3575:1 3584:7,8,16,17 3618:19,21 3620:5 3626:6 3661:12
questioning 3629:21	reading 3540:4	recommendati on 3565:11 3573:20 3618:9 3639:5,10,14 3662:3,11,22	regime 3572:19 3574:16 3576:12	repaired 3571:12 3596:14 3597:20
questions 3529:2,4 3554:19 3565:16 3579:20 3580:1,13,23 3586:25 3588:19 3629:13,23 3638:13 3658:11 3660:8 3663:2,5,7 3668:13,14	realistically 3532:14	recommendati ons 3574:6 3583:16	regulated 3659:18,19	repairs 3568:19, 20,23 3598:11 3648:23
quicker 3620:2	realize 3554:13 3626:22 3627:2	recommended 3565:22 3566:19 3572:3 3583:22 3639:3 3661:19	rehabilitation 3573:4	rephrase 3559:24 3574:22
quickly 3641:14	realized 3549:15 3626:24	recommending 3560:22 3562:4 3566:15	reiterate 3568:13	replace 3586:1,3 3619:2
quote 3557:15 3581:4	reason 3545:18 3557:6 3565:2 3582:16 3603:9 3635:21 3653:4	recommends 3572:22 3583:17	reject 3566:21	replaced 3586:6,11,17 3627:13
<hr/> R <hr/>	reasonable 3610:13	record 3527:11, 21 3594:6 3631:13	rejected 3566:13 3567:7	replacing 3585:23 3626:7
Railroad 3659:10	reasoning 3627:24	refer 3537:12 3569:21 3604:17 3622:11 3630:24 3647:18	related 3536:11 3558:18 3581:8 3668:3,20	report 3538:11, 12 3558:1,17 3559:5 3560:15 3561:10 3565:22 3567:24,25 3569:1,7 3570:15, 21 3571:22 3572:2,11 3574:25 3583:4,7, 21, 3587:25 3590:23 3591:4, 10,11,14,21 3592:4 3594:11 3599:12 3604:18 3605:14 3606:19, 21,25 3607:3 3610:2,5,15,18,22 3611:3,13 3612:2, 19,21 3615:4,6, 12,16 3618:19 3625:20, 3633:24 3635:16 3636:17 3637:1,9,18,24 3638:5,9,16,25 3639:2 3647:12 3649:19 3660:2, 22,23
raised 3526:22 3534:1 3638:13	reasons 3619:6 3642:19	reference 3536:24 3537:14 3538:5 3551:3 3560:21 3568:22 3573:16 3584:6 3670:20	relates 3669:8 3670:6	
ramifications 3662:16	recall 3528:24 3529:25 3535:14 3539:15 3550:8 3558:3 3559:22 3560:7 3591:6 3607:12 3614:7, 11,16 3615:13,14 3620:23 3621:15 3622:2 3624:7 3626:14 3630:7 3637:13 3639:12, 16 3641:4 3658:1, 2,7,8 3663:9,17 3664:11 3665:14 3666:7 3668:16, 22 3669:24	referenced 3660:3,5	relating 3558:25 3560:4 3561:14 3563:24	
ramp 3596:15 3597:21	receive 3591:22 3605:5 3630:3	referred 3568:21 3569:12 3666:1	relation 3588:20	
range 3651:14	received 3559:17 3645:9 3667:16	referring 3608:13 3624:2, 11	relationship 3549:11	
razing 3531:7	recess 3598:24 3599:1	reflect 3655:23	relevant 3594:7	
RE- EXAMINATION 3663:8	recollection 3530:13 3540:8	reflected 3651:11	relied 3629:3	
reached 3567:18,19		reflects 3563:21	relying 3577:15	
react 3534:6		refresh 3595:5	remaining 3629:23	
reaction 3630:8			remedial 3667:21 3668:9	
read 3542:12 3561:7 3570:21,			remediating 3572:3	
			remember 3529:23 3530:17 3558:6 3613:19 3639:5	
			remind 3537:6	
			remove 3531:19 3635:16 3637:8	
			removed 3595:21 3596:18,	

report's 3609:21 3611:6	3579:17,18	3549:2,8,21 3550:2,3,6 3551:2,7,10,12,19 3552:4,6,8 3554:14,17 3630:3 3639:9,10 3642:1,24 3644:20 3651:22 3652:24 3653:16 3654:7 3655:19 3656:7 3657:4 3658:7 3660:14 3668:19 3669:5	route 3533:7	screen 3539:5, 20 3540:16 3580:11 3583:7 3601:17 3605:24 3620:16 3622:19
reported 3634:4 3645:7	residual 3618:3	revert 3581:22 3616:15	Roy 3526:10,12, 13,17,18 3629:16, 17,19 3631:6,12, 15,21,25 3639:17, 19 3645:18,21,24 3646:2 3651:17 3663:10 3666:8	searching 3593:1
reporting 3549:18 3633:20	resolve 3585:12	review 3560:21 3561:19 3562:5 3565:21 3567:5, 20 3569:8,17 3570:2,14 3628:4 3635:23 3659:4	rule 3527:1	seated 3526:5
reports 3546:23, 25 3553:10 3554:1 3564:24 3615:15 3619:8, 13 3621:21 3630:19 3637:16 3660:12 3661:3, 16	respect 3527:1, 12 3533:14 3542:17 3543:11 3546:19 3551:2 3596:12 3621:5 3629:9 3637:11 3654:18 3660:11 3668:14	revised 3646:7	rules 3532:21	section 3559:5,6 3571:1 3572:22 3609:17 3617:23
represent 3650:2	responsible 3641:3, 3642:9,20	Richard 3547:6, 13 3548:14	run 3531:15,21 3549:4	seek 3591:24
representation 3650:10 3668:5	rest 3571:21 3572:2 3585:22 3598:7	rights 3652:3	rust 3560:8,9	seeking 3592:4
representation	restate 3574:23	rise 3598:23	<hr/> S <hr/>	selected 3557:7,9
s 3667:2,10	restrict 3651:25	road 3581:16	safely 3571:5	sell 3532:11 3616:5 3617:16 3618:10 3641:7
representative 3547:24	result 3548:10 3557:20 3560:10 3645:12 3654:16 3668:9	Rob 3658:18	SAGE 3526:11 3629:19	selling 3617:15 3619:9
representative	RESUMED 3599:2	ROBERT 3528:12	sale 3528:23 3532:11,12,18,24 3533:14,22,23 3534:18 3538:15 3544:1 3639:8 3650:6 3655:1 3666:9,18 3668:6	send 3652:9,17 3653:5
s 3664:4 3665:11	retail 3537:1 3551:7,8 3623:16, 20 3670:17,20,24, 25	roof 3580:18,22 3585:21 3592:6 3593:18 3606:2 3608:10 3618:8, 19,21,24 3619:3 3623:15,17 3627:11 3629:2,9 3646:24	salt 3559:9	sended 3650:8
representing 3526:11	retail/ commercial 3670:11	rooftop 3661:12	satisfy 3655:6	sends 3600:14
represents 3544:19 3551:1 3667:4	retained 3557:7, 11 3567:4 3573:21 3574:4 3582:17 3590:21 3669:25		Sault 3658:22 3669:11	senior 3662:1
reputable 3651:3	retainer 3636:11		scan 3590:13 3638:10	sense 3530:2 3531:9 3544:18 3592:2 3603:14
request 3549:8 3553:16 3562:18 3635:16,19 3638:5 3648:22	Retirement 3528:16 3530:15, 23 3533:6,17,23 3534:5, 3536:12, 13 3538:15,22 3540:10 3541:5 3542:4,8,14,16 3543:6,12 3544:20 3547:23 3548:8,12,19,22		scanned 3561:11	sentence 3559:8 3563:9 3571:1,3 3573:6, 22 3584:21 3609:1 3660:24
requests 3637:8			scanning 3589:25	September 3541:3 3542:21 3543:9,10 3615:18 3623:24 3624:19 3646:12 3652:2,20 3653:1 3663:10 3666:1 3668:17,18
require 3648:22			scenario 3531:21 3532:15	services 3573:25
required 3527:24 3569:21 3576:14 3608:2 3649:24			Schedule 3550:12,25	session 3526:4
requirement 3633:17			sciences 3556:10	set 3542:18 3551:11 3552:1 3572:11 3636:10,
requiring 3667:20			scope 3636:4, 10, 3637:18,21 3638:3,5	
reservations				

18 3668:13 sets 3572:3 3667:1 seven-foot 3639:4 severity 3649:14 shape 3628:17 share 3542:2 3655:18 3663:13 shared 3664:19 shifted 3579:18 shoes 3596:4 shopping 3545:21 short 3581:10 show 3545:6 3546:13,21,22,24 3580:7 showed 3594:21 3636:23 3669:5 showing 3530:7 sic 3596:6 3608:1 side 3533:25 3549:2 sign 3526:14,16 3546:11 3549:9 signature 3599:17,19 signed 3535:5 3539:2,7,14 3543:11 3592:17 3594:24 3622:4 significant 3543:19,24 3568:22 3642:13 3654:17 signs 3539:12 similar 3532:6 3594:20 3637:7 Similarly 3670:23 simple 3656:2	simply 3527:12 3582:10 3615:25 simultaneous 3541:11 3658:3 sir 3526:21 3529:5 3530:9 3555:1,9 3567:3 3580:20 3581:11 3582:8 3586:23 3611:18 3629:24 3635:14 3644:20 3647:16 3651:4,9 3653:8 3654:24 3656:14 3658:10, 20 3662:25 3663:24 3664:9 3666:7,15 3667:23,25 3668:13,25 3669:18 3670:7 site 3558:6 3601:14 3602:3,7 3623:3,10 situate 3555:14 situation 3587:5 slab 3570:5 3572:4,5 3585:21 3606:2 3647:5 slabs 3571:4 3626:11 3627:13 slightly 3555:11 slip 3631:16 small 3584:24 3585:2,6,12 solicitors 3545:3 3621:10 solution 3582:20 3624:25 3625:12 3648:14 solve 3582:24 3586:21 solving 3584:1 sort 3561:17 3565:25 3568:5 3578:21 3611:14 sorted 3549:14	sorting 3597:16 lotte 3597:3 sotto 3526:18 sound 3530:23 3644:21 3651:23 3653:12 3654:24 3662:11 Sounds 3557:13 source 3575:22 3577:12 south 3596:15 3597:21 space 3670:12, 17,24,25 spaces 3623:21 speakers 3541:11 3658:3 speaking 3559:23 specialize 3556:7 specialized 3556:24 specific 3553:16 3559:23 3576:6 3577:25 3616:20 3665:4 3667:9 3670:14 specifically 3529:25 3530:19 3559:22 3564:3 3582:18 3595:22 3598:3 3658:9 specification 3564:15 3565:16 3573:17 specifications 3566:6 3573:3,9, 22 3574:5,9,15 3575:1,6 3580:7 3581:17 specifics 3601:11 speculation 3611:18	spend 3546:12 3554:1 3619:20 spirit 3549:16 spoke 3527:3 3528:15 3635:18 spoken 3578:5 spring 3572:24 3609:10 square 3574:17, 18 3575:2,12 3576:4,10,20 3577:6 3578:7,18 3579:9 3670:16 staff 3627:5 stage 3548:15, 16 3552:25 standard 3668:5 Standards 3619:14 start 3540:9 3555:3 3566:12 3599:13 3660:25 started 3530:1 3534:2 3535:12, 18 3591:24 3641:25 3642:1 3654:8 starts 3534:3 3539:23 3592:1 state 3556:3,11 3561:2 3563:9 3574:11 3645:14 3646:19,20 stated 3583:16 statement 3555:22 3558:10 3559:16 3560:13, 23 3561:18 3569:16 3570:24 3584:21 3634:2 3649:3 statements 3659:5,12 states 3556:6 3559:8	stating 3570:7 Station 3539:25 3540:5 stayed 3637:3 staying 3637:1 Ste 3658:22 steel 3558:12 3559:1,12,21 3560:6,8 3563:20, 25 step 3545:9,10 3566:22 stepping 3549:7 steps 3545:9,12 3628:3 stimulated 3534:13 stone 3549:7 stop 3528:22 3558:16 3648:10 stopped 3587:15 3648:5 store 3555:6 strike 3625:9,14 strikes 3624:22 structural 3558:10,12,25 3560:5,11,21 3561:4,14,19 3563:12,19,24 3564:7 3565:5,11, 13,20,21 3567:19 3568:14 3569:8, 12,17 3570:1 3635:23 3655:10 structurally 3644:9,10,21 3651:23 3653:12 structure 3532:1 3661:5,22 3662:7 structured 3616:12,22 structures 3556:13,24
--	--	--	--	--

studies 3536:25 3537:3 3546:10, 13 3649:24	3623:6	3645:23 3663:24 3666:18 3669:1	telling 3584:14 3585:11 3654:5 3658:2,7,8 3663:10 3665:14 3666:7,8	thinking 3548:17 3665:18
study 3537:1,2 3546:13 3549:22 3550:1	superior 3564:19	table 3642:8	tells 3605:25 3622:20 3652:12	thirdly 3651:10
studying 3641:12	superiors 3549:5	tabs 3588:22 3624:1,9	tenant 3556:18 3627:17	thought 3548:6 3588:5 3618:22 3627:6,22,24 3643:17 3651:13, 15 3655:2 3665:25 3668:12
stumped 3582:19	support 3571:5	takes 3586:10 3602:15	tenants 3555:16	thoughts 3565:24
subject 3563:15 3646:12	supposed 3548:4	taking 3590:7 3602:22 3603:15, 24 3604:4 3622:1 3649:16	tended 3561:9	Thursday 3526:1
submission 3527:22,24	surely 3582:11	talk 3529:12 3536:25 3539:8 3544:23 3546:2 3591:23 3594:14 3600:1,22 3618:23 3627:4	tense 3609:16	ticking 3649:14
subparagraph 3667:12	surface 3560:9 3562:2	talked 3610:23	term 3531:11 3560:10 3641:22 3653:23	tie 3549:17
subsequent 3567:5 3568:2,4 3661:6,15	surfaces 3560:8	talking 3530:1 3533:5 3535:6,10 3538:20 3541:1 3551:20 3563:22 3566:3 3572:20 3579:1 3580:23 3591:12 3592:25 3597:18 3607:6 3608:7 3618:1 3633:10,12 3643:22 3644:2	terms 3532:19 3536:23 3537:14 3538:5 3548:17 3550:5 3582:2	tied 3613:3
substantial 3536:6,7 3539:17 3620:8	surprise 3625:8	talks 3537:1 3555:20 3585:23 3610:17,21 3616:8	terribly 3626:25	till 3567:22
success 3609:3	surprised 3586:9 3603:12	task 3550:3	testified 3567:15 3576:11, 18 3577:1 3579:5 3591:8	time 3533:2,18 3540:9 3542:2 3549:14,24 3557:4 3558:18, 22 3561:2,8,12 3565:9 3566:19 3580:25 3586:11 3591:15,16 3599:24 3602:2 3613:5,6 3614:5, 12 3621:10 3622:22 3634:21 3635:10 3640:19 3642:14 3646:22 3649:14 3651:16 3655:18 3669:6, 25
sudden 3604:15	surprises 3554:6	tasked 3552:9	testimony 3575:17,21 3576:2,15 3628:4	time-line 3590:8
suggest 3530:1 3546:5 3571:17 3574:1 3580:20 3592:18 3594:2,9, 25 3600:6 3606:15 3609:20 3614:6 3626:2 3642:18 3665:12 3668:4	survey 3551:8 3572:23 3603:1 3651:2	taxes 3531:17 3616:15,16 3640:4	testing 3609:9	timing 3535:14, 21 3610:9
suggested 3530:22 3579:17 3594:22 3596:19 3616:25 3651:1 3669:4,8	suspect 3649:6	Taylor 3608:19	text 3552:3	tiny 3550:23
suggesting 3544:6 3554:11, 12 3579:16 3591:20 3668:16	system 3561:23 3564:20 3565:19 3570:3,5,9,11,20 3571:8,15 3576:12,21 3577:6 3578:2,7 3582:1 3606:11 3629:2,10 3648:7	team 3614:22	THC900 3595:24 3596:6,11 3597:19	told 3556:17 3558:21 3560:2 3562:13 3569:4 3576:23 3578:6 3579:4 3582:16 3608:10 3644:20 3645:13 3646:16, 19 3648:8 3651:22,23 3653:10,11,15 3665:5
suggestion 3527:15 3611:20	tab 3537:7,9,19, 21 3539:1,3,4,19 3540:1 3541:22, 23 3550:9,13,15, 16,18 3555:6,8 3558:1 3562:13, 14 3569:4 3588:24 3589:4,7, 9,15 3593:10 3594:19 3596:2 3599:7 3601:17, 21 3604:23 3608:20 3612:1,3 3615:19 3620:15 3621:4 3622:17 3624:8 3644:25	tear 3529:22 3531:5	thick 3570:3	
suggests 3540:5		technical 3582:3 3655:12	thickness 3576:9	
summary 3583:10 3596:25		technology 3556:9	thin 3570:4	
	T		thing 3532:5 3534:17 3547:22 3578:21 3579:22 3580:11 3587:9 3617:14 3639:22 3651:9	
			things 3559:14 3560:20 3585:23 3590:6 3598:3,10, 14 3626:7 3649:25 3652:13	

<p>top 3568:11 3570:24 3601:11, 3602:19 3607:16 3613:11 3614:20 3615:2 3660:6</p> <p>topic 3619:16</p> <p>Topp 3615:19, 3632:25</p> <p>Topp's 3639:20</p> <p>topping 3561:1, 15, 3569:21 3571:5,10,12 3585:20,24 3586:2,5 3608:2 3626:8 3627:14</p> <p>Tower 3539:25 3540:5</p> <p>transfer 3660:12 3668:10</p> <p>transferences 3661:2</p> <p>trigger 3599:12</p> <p>Trow 3555:25 3556:2,4,18 3557:6,7,9,15,21, 25 3558:11 3560:24 3561:25 3564:4,24 3565:4, 22 3566:14,18 3567:4,7,10 3568:25 3569:9, 16 3570:6,14 3571:17 3572:15, 20,22 3573:8,13, 21 3574:3,15,24 3575:5,10,18,23 3576:3,16 3577:6, 19 3578:18 3579:10,16 3580:2,4,5,11,23, 25 3581:15 3582:11,17,23 3583:7,17,21,25 3584:14 3585:5,9 3587:3 3588:1 3591:10,11,24 3592:10,14 3594:11,13, 3596:19,20 3597:10,13,22,25 3598:7,11,13</p>	<p>3599:12 3600:14 3601:6,8,14,23 3602:14,21,25 3603:5,23 3604:8, 18 3605:25 3609:5 3611:12 3615:4,6 3618:19 3621:21 3622:22 3623:2,9,13,19 3625:20 3635:16, 21 3636:14 3637:1 3643:12 3644:2</p> <p>Trow's 3556:21 3557:20 3558:5 3561:18 3570:24 3572:3,10 3591:25 3636:11</p> <p>true 3527:18,25 3533:20,24 3534:21 3539:15 3545:9 3567:14 3605:15</p> <p>turn 3533:8 3557:24 3559:4 3562:8 3563:7 3568:9,25 3572:17 3583:5,6 3592:8 3600:11 3601:7 3625:22 3663:24 3666:16 3667:11 3668:24</p> <p>turning 3542:8</p> <p>turns 3547:14</p> <p>type 3570:2,10, 19 3575:10</p> <p>typewritten 3558:4</p> <p>typically 3625:10 3628:14</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>Uh-hmm 3584:9 3594:14 3595:11</p> <p>Uh-oh 3666:13</p> <p>ultimate 3528:1 3568:5,8</p> <p>ultimately</p>	<p>3566:4 3567:18 3630:3</p> <p>unanswered 3579:25</p> <p>unbonded 3626:7</p> <p>uncertainty 3571:14</p> <p>unclear 3541:11 3658:3</p> <p>underlying 3565:2</p> <p>Underside 3602:16</p> <p>understand 3544:17 3551:13, 18 3553:3,4 3588:24 3593:10 3597:9 3599:13 3600:25 3604:22 3605:1,13 3608:20 3611:5 3612:3,18 3614:4, 3615:20 3617:8 3621:4 3625:10 3628:8 3630:10 3631:8 3644:6 3654:4 3658:25</p> <p>understanding 3556:21,22 3559:19 3560:3, 3562:16 3577:10, 12,16 3578:8 3582:15 3585:25 3586:8 3587:2,17 3599:21 3664:18 3666:11</p> <p>understood 3558:22 3560:9 3573:8 3586:10, 11 3588:6 3602:25</p> <p>undoubtedly 3526:25</p> <p>unexpected 3618:7,24</p> <p>United 3556:6</p> <p>unknown 3579:20 3627:9</p>	<p>unsafe 3608:4, 11</p> <p>untreated 3558:13</p> <p>update 3572:22</p> <p>USA 3595:24</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacant 3670:24, 25</p> <p>vehicular 3556:13</p> <p>vendor 3667:4, 13,15</p> <p>verify 3574:6</p> <p>version 3592:17 3595:1</p> <p>versus 3597:17</p> <p>vet 3598:16 3637:15 3638:16</p> <p>viability 3566:24 3567:18 3568:6,8 3577:16 3578:18 3579:8,13 3643:14,19,23,25</p> <p>viable 3566:20, 22 3567:1,16 3570:17 3575:12 3576:21 3577:7,8 3579:15 3581:20 3584:1 3644:2,8, 9,10</p> <p>viably 3657:21</p> <p>view 3562:22 3563:1 3578:17 3611:18 3633:11 3648:4</p> <p>visit 3558:6,18, 24 3560:4 3647:12</p> <p>visual 3623:14</p> <p>voce 3526:18 3597:3</p> <p>volume 3537:19 3539:4 3540:1</p>	<p>3550:14 3555:8 3558:1 3588:24 3589:6,9 3592:11 3593:13 3601:21 3604:23,25 3608:21 3612:4 3615:19 3621:4 3631:9 3663:25 3666:19 3668:25</p> <p>VP 3632:25</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>walk 3616:14,23 3623:17</p> <p>walk-into 3531:22</p> <p>wanted 3538:19 3566:2,5 3590:3 3598:10,13 3632:19 3636:1 3641:3,20 3642:19 3652:8 3665:16</p> <p>warrant 3650:2</p> <p>warranties 3667:2,10,13</p> <p>warrants 3667:5</p> <p>warranty 3666:10 3667:12 3668:5</p> <p>water 3559:9 3563:16 3579:9 3581:25 3602:17</p> <p>waterproof 3580:18</p> <p>waterproofed 3647:6</p> <p>waterproofing 3561:23 3562:1,6 3565:19 3566:7, 14 3567:2,12,13, 17 3568:22 3570:3,5,8,11,17, 20 3571:7,15,23, 24 3572:5,12 3574:16 3575:1 3576:4,12,21 3577:6 3578:2,7,</p>
--	--	--	---	--

19 3579:9 3580:22 3581:12, 25 3582:10 3583:12 3584:8, 13,15 3661:13 watertight 3606:4 3646:25 ways 3545:3 3616:22 3617:13, 14,15,16 wear 3596:5 3608:12 wearing 3608:7 week 3576:3 weeks 3624:20 weighed 3579:12 weight 3571:8, 15,19 3577:18,23 3587:19 3588:9 3608:7 3644:12, 15,17 Willey 3596:17 3614:22 Willey's 3597:23 3598:8 William 3612:10 willingness 3660:11 wishes 3544:4 wondered 3627:19 wondering 3604:8 3666:16 Wood 3658:19, 21 Woolco 3596:9 Woolworth's 3555:5 Woolworths 3555:16 word 3568:6 3577:5,8 3581:1 3582:19 3617:9 3644:7	words 3534:9 3565:24 3577:2 work 3557:16 3576:7 3581:5 3582:6 3587:7,9 3593:18,25 3594:9 3597:1,4 3599:13 3601:14 3602:3 3603:7,16 3609:20,21 3610:2,14 3611:3 3612:10 3622:21 3623:3 3626:6,16 3627:11,16,20 3628:11,15,19 3629:7 3636:15, 19 3667:21 3668:9 working 3587:7 3598:12,14 3608:24 worth 3546:10 3598:6 3612:25 3613:21 write 3527:7, 3604:10 3632:21, 23 3634:6,7 3635:5 write-down 3568:12 3634:9, 10,12,20 writing 3555:15 3604:1 3650:4,6 written 3532:24 3590:4 3609:16, 23 3611:11 3623:7 3634:18, 22 3635:8 3664:7, 13,14,20,21 wrong 3580:17 3587:12,13 wrote 3555:5 3557:1 3612:16 <hr/> Y <hr/> year 3609:2 3657:11 years 3580:25 3582:13 3588:7,8	3658:23 yesterday 3528:11,15 3541:21 3544:16 3548:6 3558:4,21 3560:2,24 3561:8 3562:11 3567:15 3572:10,19 3575:9 3577:1,25 3582:16 3615:23 3616:12 3639:1 3641:2 3645:5 3654:1 3664:12 3666:2 <hr/> Z <hr/> zoom 3607:15
---	--	---