

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 84

August 12, 2013



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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 84 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 the 12th day of August, 2013, commencing at 9:00
a.m.

REPORTED BY: Deana Santedicola
CSR, CRR, RPR

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1	A P P E A R A N C E S:	
2	Bruce Carr-Harris, Esq.,	Commission Counsel
3	& Kyle Lambert, Esq.,	
4		
5	Roger Oatley, Esq.,	Victims' Families
6	& Shenthuran Subramaniam, Esq.	
7		
8	Paul Cassan, Esq.,	City of Elliot Lake
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10	Chuck Myles,	SAGE
11	& Keith Moyer	
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13	Roland Aube, Esq.,	ELMAC
14	& Douglas Elliott, Esq.,	
15	& Shawn Richard, Esq.,	
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19	Michael Title, Esq.,	Eastwood Mall Inc.
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21	John Picone, Esq.,	Halsall Associates
22		Limited
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24	Leo Longo, Esq.,	Ontario Building
25		Officials Association

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1	A P P E A R A N C E S (CONT'D):	
2	Charles Criminisi, Esq.,	Coreslab
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4	Charles Simco, Esq.,	Nicholls Yallowega
5		Bélanger
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7	Heather MacKay, Ms.,	Government of Ontario
8	& Judith Parker, Ms.,	
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10	Robert MacRae, Esq.,	Robert Wood
11		
12	John Curtis, Esq.,	Thomas Derreck
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14	David Outerbridge, Esq.,	EXP Global Inc.
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1 -- Upon commencing at 9:00 a.m.
2
3 THE COMMISSIONER: Good morning,
4 everybody.
5 I thank you all for ruining a part of
6 my weekend. I say "a part of my weekend" because
7 on Friday night I got a call from my 12-year-old
8 grandson who said, Would you like to come watch my
9 soccer tournament in Sudbury on Saturday? So I
10 thought long and hard for about two seconds, and I
11 leave it to you to guess where I was on Saturday.
12 In any event, thank you for these
13 materials which are very well done.
14 I'm going to have to be I suppose a
15 little bit brutal in insisting on adherence to the
16 time requested and allocated on part of the index
17 before me. I have a timer here, and I'll pretend
18 I'm a Court of Appeal judge for a day or a Supreme
19 Court of Canada judge for a day.
20 And that being said, then I'll start
21 with Mr. Oatley's submissions. There we are,
22 Mr. Oatley.
23 MR. OATLEY: Thank you, sir.
24 And I will say just a few words as we
25 begin about the families and the women we lost, and

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1 then I will comment, sir, on the roles played by
2 various parties and, finally, I'll touch on the
3 recommendations we have made.
4 We represent, of course, the families,
5 the family of Lucie Aylwin. Rachelle and Réjean
6 Aylwin who are here are the parents of Lucie. They
7 lived in Elliot Lake for 28 years before moving to
8 Sudbury. Réjean has worked in the mines all his
9 life and continues to do so.
10 They also have a son Stefan who is an
11 engineer in Alberta.
12 Rachelle and Réjean used to speak to
13 Lucie on the phone every single day. Lucie was
14 born in Quebec. After a year and a half there, she
15 moved to Elliot Lake with her family. She
16 graduated from Cambrian College with a Diploma in
17 Business Administration, and she was a full-time
18 career counsellor at College Boreal in Sudbury.
19 Lucie also worked at the lottery kiosk in the Algo
20 Mall twice a month.
21 She was engaged to be married. The
22 wedding date was set, and of course, it will never
23 take place. And she was working at the lottery
24 kiosk in the mall on June 23rd, 2012, and was 37
25 years old.

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1 Doloris Perizzolo was born in Kirkland
2 Lake. She moved to Serpent River where her parents
3 lived. She had three daughters and a son who
4 predeceased her. And she moved to Elliot Lake in
5 1957. She is the mother of Teresa Perizzolo and
6 Cindy Lee Allan who are both here.
7 Teresa was born and raised in Elliot
8 Lake. Teresa is married to Darren Latulippe who
9 works at Canadian Tire here in Elliot Lake.
10 Doloris worked as a waitress at the
11 Capital Restaurant here in Elliot Lake and then at
12 St. Joseph's Hospital in the kitchen for 20 years.
13 She retired in 1994. She had a happy retirement
14 until she lost her husband and she was still
15 grieving but starting to come out of her grieving
16 when she died. She was starting to engage in the
17 community again, and she would go to the Algo Mall
18 every day. It was her getaway. She liked to
19 scratch tickets at the kiosk and that is why she
20 was there.
21 Let me turn then to the role of the
22 owners, first of all.
23 We know that the Algo Mall roof leaked
24 from the day it was built and that no one would
25 spend the money to fix it.

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1 Algo Central Properties, the developer
2 and first owner, knew of the threat to the
3 structural integrity of the roof from continuing
4 leakage when it received the Trow Engineering
5 Reports in the early 1990s. Algo chose not to
6 prevent leaking and further structural damage by
7 spending the money to properly repair the roof.
8 Instead, it sold the building and passed on the
9 problem to Retirement Living.
10 Algo Central Properties, its directors
11 and senior management willfully concealed their
12 knowledge of the leaks and the warnings in the Trow
13 Report from the next purchaser, Retirement Living.
14 Retirement Living knew of the threat to
15 the structural integrity of the building from
16 continuing leakage when it received the Nicholls
17 Halsall Engineering Report in 1998.
18 Retirement Living chose not to prevent
19 leaking and further structural damage by spending
20 the money to properly repair the roof. Instead, it
21 sold the building and passed on the problem to
22 Robert Nazarian's company, Eastwood Mall.
23 Retirement Living, its directors and
24 senior management willfully concealed the
25 information of the leaks and the warnings in the

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1 Halsall Report from Nazarian and his company.
2 Nazarian and his company, Eastwood,
3 knew of the continuing leaking and the severe
4 rusting of the structural steel at least when
5 engineer Robert Wood showed Nazarian his 2012 draft
6 report, complete with photos of the rust, just two
7 months before the collapse and the death of Lucie
8 Aylwin and Doloris Perizzolo. At that time, it was
9 not too late to prevent their deaths.
10 I turn now to the role of engineer
11 Robert Wood. Wood was no longer licensed to
12 practice as a professional engineer at the time of
13 his survey and his report in 2012. Wood failed to
14 survey key elements of the structure of the roof
15 and to find advanced damage to the structure that
16 was there to be found, damage that would be
17 described in the NORR Report as what would be
18 expected in a marine environment.
19 Wood falsified his report at Nazarian's
20 request and he failed to take any action in
21 response to his findings, when taking action could
22 have prevented the death of Lucie Aylwin and
23 Doloris Perizzolo.
24 Robert Wood was the last person with
25 professional training who could have prevented this

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1 tragedy just two months before the building
2 collapsed.
3 At least Wood apologized, is somewhat
4 remorseful and accepted the consequences of his
5 actions. The families do not condone Wood's
6 behaviour, but they appreciate his honest
7 acceptance of his role. He stands alone as the
8 only person in this entire tragedy to accept any
9 blame for the preventable collapse of this building
10 and the death of these innocent women.
11 I turn to the role of the City of
12 Elliot Lake.
13 The staff and elected officials of
14 Elliot Lake brought shame to the citizens of this
15 community. It is only common sense that decades of
16 water and road salt leaking from a roof parking lot
17 into a steel structure is going to cause corrosion
18 and a threat to the structural integrity of the
19 building.
20 Tom Derreck recognized the threat. So
21 did Councillor Nancy McTaggart who warned of
22 another collapse like the one in the Sault.
23 Chief Building Officials Allard and
24 Ewald were incompetent and/or willfully blind to
25 the threat to the integrity of the steel structure

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1 from decades of leakage. Allard ignored the
2 leakage for years.
3 Once Allard was aware of the rusting
4 and the threat to the integrity of the building, he
5 issued a Notice of Violation but he failed to
6 follow up and failed to ensure anything was done
7 about it.
8 Ewald was concerned enough to request
9 an engineering assessment, but he failed to
10 recognize that the engineering report was cursory
11 and incomplete even with respect to the areas where
12 leakage had been most significant.
13 City staff chose to hide behind a lack
14 of public complaints. What particularly hurts for
15 the families is that no City staff member had the
16 courage to accept his failures or to demonstrate
17 any remorse.
18 The families are just as distressed
19 that Tom Derreck, the only staff member who was
20 concerned about the roof, was fired by the City.
21 The City's government and staff simply
22 failed the citizens of Elliot Lake.
23 And I turn finally to the roles of
24 Mayors George Farkouh and Deputy Mayor and then
25 Mayor Rick Hamilton. The families are most

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1 disturbed by the actions of these two men.
2 Mayor Farkouh was on the Board of
3 Directors of Retirement Living during the entire
4 time that Retirement Living owned the mall. While
5 Retirement Living owned the mall, George Farkouh
6 was Mayor and on the Board of Directors of the
7 company as well.
8 Rick Hamilton was the Deputy Mayor and
9 on the Board of Directors of the company for the
10 last two years that Retirement Living owned the
11 mall.
12 The Commission can only conclude that
13 George Farkouh and Rick Hamilton lied at this
14 Inquiry when they minimized their knowledge of the
15 ongoing leaks in the roof and when they denied any
16 knowledge of the Nicholls Halsall Engineering
17 report.
18 The only way to reconcile their
19 evidence with that of Councillor Collett, who said
20 one would have to be deaf, dumb and blind not to
21 know about the leaks, is to conclude that Farkouh
22 and Hamilton were lying to protect themselves.
23 The Halsall Report was clear about the
24 ongoing and worsening structural risk posed by
25 continuing leakage in the roof. Retirement Living

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1 obtained the Halsall Report in 1998, years before
2 the collapse of the roof and before the sale of the
3 building.
4 It is simply inconceivable that
5 directors of this company would not be aware of a
6 document that spoke to the risk to the structural
7 integrity of such a significant corporate asset as
8 this mall. Discussion about the threat of
9 continuing leakage must have been a continuing item
10 at Board meetings and among Board members of this
11 small private company.
12 Even as elected City officials, even as
13 the Mayor in the case of George Farkouh and Deputy
14 Mayor in the case of Rick Hamilton, willfully
15 concealed this information concerning the threat to
16 public safety from the public they were sworn to
17 protect.
18 As elected officials, George Farkouh
19 and Rick Hamilton had a duty and they had the
20 opportunity to prevent the deaths that occurred and
21 the losses my clients have suffered.
22 That neither George Farkouh nor Rick
23 Hamilton showed the slightest remorse for their
24 actions is the most painful aspect of this Inquiry
25 for the families of Lucie Aylwin and Doloris

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1 Perizzolo.
2 That both men chose instead to claim a
3 lack of knowledge was a further affront to the
4 Inquiry, to the people of Elliot Lake and to the
5 families that suffer the loss of their loved ones
6 every day.
7 I come to a brief outline of some of
8 our recommendations.
9 We suggest the Commissioner recommend
10 to the Province of Ontario that it enact
11 legislation making it an offence for the owner of a
12 building and the directors of any corporation that
13 owns a building to withhold any information that
14 has an impact on the structural integrity of a
15 building or on the safety of users of the building.
16 We suggest the Commission recommend
17 that the Province of Ontario should remove
18 responsibility for enforcement of local or
19 provincial legislation concerning health and safety
20 from small communities that do not have the
21 resources for proper enforcement. The
22 responsibility should instead rest with district or
23 county governments.
24 These families are concerned, with
25 Walkerton in our past, with the collapse of this

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1 mall in our past, what small municipality will be
2 next if small municipalities without the resources
3 retain control over these important areas.
4 And finally, we suggest the Commission
5 recommend to the province that it amend the
6 Municipal Conflict of Interest Act to provide that
7 any elected official of a municipal corporation who
8 withholds information from the public that bears on
9 public safety should be barred from ever again
10 holding public office anywhere in Ontario.
11 Thank you, sir.
12 THE COMMISSIONER: Thank you very much,
13 Mr. Oatley.
14 Mr. Aubé, you are going to make
15 submissions?
16 MR. AUBÉ: Very short, yes, Mr.
17 Commissioner.
18 THE COMMISSIONER: Thank you.
19 MR. AUBÉ: Mr. Commissioner, for the
20 record, my name is Roland Aubé and, as you know, I
21 am a member of a team of lawyers that represents
22 ELMAC, the Elliot Lake Mall Action Committee, a
23 group of citizens that includes one of
24 Mrs. Perizzolo's daughters, Roberta Raeburn, as
25 well as other victims of the Algo Centre Mall

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1 collapse.
2 Our committee also includes mall
3 tenants and mall employees, who apart from the
4 victims and their families, were among those most
5 directly impacted by the collapse of the mall.
6 We have tried to give a voice to the
7 people of Elliot Lake, and as I said, I'll be very
8 brief and I'll leave the more elaborate remarks to
9 my associate, Mr. Elliott.
10 First, however, on behalf of our legal
11 team and of all the participants, I wish to thank
12 Commission Counsel and congratulate them on the
13 quality of the work they have performed under very
14 difficult circumstances. The logistics were huge.
15 The organization was impressive. And every request
16 for assistance from the Commission or to the
17 Commission was dealt with expeditiously.
18 Mr. Commissioner, I think you should be
19 proud that the citizens of Ontario and of Elliot
20 Lake have been well served by your staff, including
21 the interpreters, the registrars, the reporters
22 and, of course, Ms. Kuka, who is now known far and
23 wide as the loyal and efficient keeper of the
24 records.
25 My role in this Inquiry has been away

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1 from here in providing logistical support to our
2 legal team, but as the only lawyer -- local lawyer
3 on our team, I have had the unique opportunity to
4 speak with local people repeatedly and with clients
5 and friends in the community throughout this
6 Inquiry.

7 Over and over again I was asked, How
8 could this have been allowed to happen? And I
9 submit, Mr. Commissioner, that there is a very
10 simple answer.

11 Canadians are a trusting people. We
12 trust that people drive on the right side of the
13 road. We trust that cars stop at red lights. We
14 trust that our roads will be plowed in the winter
15 so we can go to work. We trust persons in
16 authority to act appropriately. And we have this
17 odd belief that buildings will stand up and do not
18 leak.

19 Elliot Lakers are no different. We
20 were, by and large, a trusting lot. We trusted
21 that the builders of the Algo Centre Mall would
22 build it properly. We trusted that the engineers
23 and architects that designed the mall would do
24 their jobs properly. For 32 years Elliot Lakers
25 trusted that the owners of the mall property would

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1 manage and maintain it properly. We trusted that
2 those public officials responsible for our safety
3 would act properly. We trusted that our public
4 officials would protect us.

5 And, Mr. Commissioner, as is evident in
6 this Inquiry, this trust was violated by many over
7 many, many years.

8 Trust is like a mirror. Once broken,
9 you can never look at it the same way again. And
10 trust, once lost, is almost impossible to regain.

11 We are asking you, Mr. Commissioner, to
12 do the impossible, through your recommendations to
13 restore our trust.

14 That is the message from ELMAC.
15 And my friend will have some other
16 comments.

17 THE COMMISSIONER: Thank you very much,
18 Mr. Aubé.

19 Mr. Elliott.

20 MR. ELLIOTT: Mr. Commissioner, the
21 collapse of the Algo Centre Mall on June 23rd,
22 2012, devastated the people of Elliot Lake. The
23 catastrophic failure of a shopping mall roof was so
24 unusual that it shocked the world.

25 No one should risk their lives by going

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1 shopping in a mall or by going to work at a lottery
2 kiosk. We must rely on builders, owners,
3 architects and engineers to build safe buildings.

4 The only safeguards we have as citizens
5 against the incompetent, the reckless and the
6 greedy are our regulators.

7 An ordinary citizen cannot verify the
8 safety of a roof parking deck and has no power to
9 do so. We have no choice but to rely on our
10 regulators to keep a watchful eye on our behalf and
11 to take action where necessary to protect public
12 safety.

13 How did this happen? Who or what
14 caused it and why? These are some of the questions
15 that you must answer, Mr. Commissioner, and today
16 ELMAC offers its views for your assistance.

17 In his testimony, Bob Nazarian said
18 that the mall was doomed. We do not agree. The
19 word "doom", Mr. Commissioner, implies that this
20 tragedy was inevitable. The mall's collapse was
21 not inevitable. It was not a natural disaster
22 caused by unforeseen snow load or by an earthquake.
23 This tragedy was caused by human flaws and human
24 failures. It was entirely preventable.

25 The leaks at the mall were persistent

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1 and notorious. The bladders, hoses and garbage
2 cans collecting water were obvious to anyone
3 visiting the second floor of the mall. Anyone in a
4 position of responsibility who has testified that
5 they did not notice any of this either failed to
6 conduct a proper investigation or were not honest
7 with this Commission.

8 You will soon hear from the other
9 participants, some who created the structure, some
10 who later owned it and some who inspected it.

11 It was inspected by many engineers,
12 from the time it was being built to a few months
13 prior to the collapse.

14 The Ministry of Labour not only
15 inspected it many times, their offices were
16 actually located in the mall for many years.

17 The City of Elliot Lake Building
18 Department not only inspected it, their offices
19 were located immediately adjacent to the mall.

20 We will listen carefully, but we do not
21 expect anyone to take any responsibility for
22 contributing to this disaster. Rather, fingers
23 will be pointed at others.

24 Indeed, in our view, in the testimony
25 before this Commission, only Mr. Monroe, an

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1 American of the Harry S. Peterson Company, was
2 prepared to show some accountability for his role
3 in this tragedy by acknowledging that the Peterson
4 System failed to work in this case because of
5 design flaws.

6 However, there is no one person who is
7 responsible for this calamity.

8 Who is responsible for this tragedy?
9 The builders? The owners? The inspectors?

10 The short answer is all of the above.

11 When the Algo Centre Mall opened for
12 business in the boom year of 1980, it was touted as
13 Elliot Lake's crowning achievement, a symbol of our
14 prosperity.

15 Like the Trojan horse, this impressive
16 creation of people from afar was welcomed into the
17 heart of our city by an unwitting populace. We did
18 not know that its creators had hidden within it a
19 great danger, a danger that would lead to death,
20 ruined lives and the devastation of our City. The
21 problems began in the very beginning and they
22 continued to the very end.

23 The collapse of the mall was the result
24 of a series of flawed economically-driven decisions
25 and inadequate regulatory oversight that allowed a

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1 poorly designed and constructed building to be
2 erected, occupied and to deteriorate to the
3 dangerous state that existed immediately prior to
4 its failure.

5 While there are some unique features
6 about the story of this mall's collapse, the
7 testimony has revealed disturbing systemic flaws
8 that tell us that a similar disaster could happen
9 anywhere in Ontario.

10 During the design phase, Algoma Central
11 Properties, notwithstanding a lack of experience
12 and expertise, acted as its own general contractor.
13 There is no law against it. It appointed an
14 individual, Nicolas Hirt, to supervise the project,
15 notwithstanding the fact that he lacked the
16 appropriate skill and experience. His approach to
17 the project was to stress cost-cutting over safety.

18 ACP employed the services of an
19 architect, James Keywan, who in turn hired a
20 structural engineer, John Kadlec of Beta
21 Engineering. These two men oversaw this project by
22 remote control from their offices in Southern
23 Ontario. These two men adopted Hirt's cost-cutting
24 approach and submitted to his design directions
25 without exercising sound professional judgment.

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1 ACP and its team made key design errors
2 that created a ticking time bomb.

3 First and foremost, ACP decided to use
4 an unusual and risky design. There would be a roof
5 top parking deck over occupied areas of the mall.
6 This decision was made to save money in order to
7 save construction costs of an additional parking
8 lot on the rocky terrain where the mall was built.

9 It was well known by 1980 that concrete
10 parking structures in Canada were crumbling due to
11 the combined effects of water and salt. Despite
12 this, ACP decided not to put any canopy or other
13 protection over the surface of the parking deck.
14 It would be fully exposed to the elements.

15 Keywan and Kadlec were both
16 uncomfortable with the unusual decision to put an
17 open parking deck over occupied space, but they
18 went along with ACP's decision.

19 ACP also decided to use hollow concrete
20 slabs for the roof deck in order to save money.
21 However, the concrete slabs did not meet the
22 project specifications.

23 The roof as designed did not even
24 direct water to the drains, leading to persistent
25 ponding over the years.

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1 ACP made another fatally bad design
2 choice in order to save money. It decided not to
3 use a conventional waterproof membrane to protect
4 the roof from water and salt. ACP gambled on an
5 experimental choice, the cheaper Peterson System.
6 The Peterson System had never been used in
7 connection with an exposed parking deck composed of
8 hollow core slabs, never.

9 The Peterson System was known to be
10 susceptible to snowplow damage and performed poorly
11 in snowy climates like Elliot Lake.

12 It was a bad choice. Moreover, it was
13 installed improperly in winter conditions because
14 of pressure to open the mall quickly.

15 Keywan and Kadlec confirmed substantial
16 compliance of the building with the Ontario
17 Building Code without a site inspection and without
18 any direct knowledge of the building's compliance.

19 If they had bothered to inspect the
20 site, Mr. Commissioner, as the evidence has made
21 clear, they would have known that the roof was
22 already persistently leaking in the area about to
23 be occupied by Woolco.

24 The City of Elliot Lake Building
25 Department inspected the mall. They knew that the

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1 roof was leaking, especially in the Woolco area.
2 Despite this, Woolco was allowed to open for
3 business along with the rest of the mall.
4 It quickly became apparent that the
5 Peterson System was not working. Despite this
6 failure to perform from the outset and the Peterson
7 System's maximum working life of 10 years, not 32,
8 this waterproofing system was never replaced or
9 restored by ACP or by any subsequent owner. In
10 fact, it appears subsequent owners did not even
11 know that the roof was built using the Peterson
12 System.
13 The roof leaked. It leaked from the
14 beginning. It leaked for 30 years, and over time
15 the leaks only got worse.
16 A time bomb was ticking. Unless it was
17 diffused by experts before it was too late,
18 disaster would surely result.
19 It is said that the owners did not
20 appreciate the risks these leaks posed. This is
21 ludicrous. Every sensible owner knows that no roof
22 lasts forever and no roof should be allowed to leak
23 for 30 years.
24 ACP and subsequent owners also knew
25 that the roof was not designed for heavy vehicles

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1 or traffic, but no one took effective steps to
2 limit access to the parking deck. This put further
3 strain on a poorly designed roof.
4 ACP eventually sought professional
5 advice from Trow. ACP then proceeded to ignore
6 that advice, Trow's advice to permanently fix the
7 leaking roof by retrofitting the deck with a
8 waterproof membrane, as ought to have been
9 installed in the first place.
10 In fact, acting directly contrary to
11 Trow's advice, ACP opted to carry on with its
12 ineffective maintenance program whose costs could
13 be passed on to tenants as additional rent.
14 This pattern of ignoring professional
15 advice and sticking to the unsuccessful maintenance
16 program, the cheap temporary fix, was repeated by
17 both subsequent owners. It is noteworthy that ACP
18 stuck to the program even after it had learned that
19 Kadlec had lost his licence and after Kadlec's
20 other roof at their Station Mall had failed.
21 The economic situation in Elliot Lake
22 went into a bust cycle in the 1990s with the
23 cancellation of the Ontario Hydro contracts.
24 Woolco closed its store in 1994. ACP wrote down
25 half of its investment in the mall after deciding

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1 that the roof could not be repaired economically.
2 It is not that it could not be renovated or
3 restored technically, but it was not economical.
4 ACP was considering closing or even
5 demolishing the hotel. ACP opted instead to sell
6 the mall to Elliot Lake Retirement Living but chose
7 not to disclose its conclusion that the leaking
8 roof could not be repaired economically. In
9 effect, it passed off a ticking time bomb of its
10 own creation to Retirement Living.
11 Retirement Living knew that the roof
12 leaked at the time it purchased the mall. They
13 turned to professional advice. They hired Nicholls
14 Yallowega Bélanger and their engineers Halsall in
15 connection with the purchase.
16 Retirement Living was given two options
17 by Halsall. Retirement Living had no engineers on
18 its staff but chose to reject both those
19 recommended professional options. It chose to
20 continue with the same ineffective maintenance
21 program that had been used without success by ACP,
22 using largely the same staff, the cheap temporary
23 fix.
24 The leaks continued in places like the
25 library and spread to new areas like Scotiabank.

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1 Retirement Living may have been
2 motivated by the loftier goal of preserving Elliot
3 Lake as a viable retirement community in the wake
4 of the closure of the mines. However, it chose to
5 invest a million dollars in a golf course instead
6 of investing in the permanent fix to the roof with
7 a conventional membrane. It did make sure the
8 floors sparkled but it never stopped the leaks.
9 Like ACP, Retirement Living chose the
10 cheap temporary fix and then passed on the ticking
11 time bomb to a new purchaser.
12 There is a conflict in the evidence
13 about what Bob Nazarian knew or was told at the
14 date the mall was purchased. The initial purchase
15 price admitted by Nazarian to be a terrific
16 investment was reduced by 2 million dollars because
17 of improvements he wanted to make to the property
18 and suspicions he had about the mall. And there is
19 no doubt eventually he received the Halsall Report.
20 The evidence is clear that the mall was
21 producing a very healthy return on investment.
22 That return would have continued if the leaks had
23 been stopped. Nazarian failed to spend the million
24 dollars his various experts told him was necessary
25 to fix the roof. Nazarian was driven by his desire

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1 to extract his money from the mall investment, to
2 spend as little as possible on the mall and to
3 funnel it into other projects for the benefit of
4 himself and his family.

5 All of his evidence about not having
6 the money to fix the roof lacks credibility. He
7 had the resources, but he was only willing to spend
8 other people's money for the costly permanent fix.
9 He was determined not to invest any of his own
10 money in renovating the roof of this self-described
11 black hole. If he had chosen to do so, this
12 tragedy could have been avoided and the mall might
13 have continued to operate at a very healthy rate of
14 return.

15 While pursuing various half-baked
16 schemes to patch the roof or close it down,
17 Nazarian actively misled others about what was
18 being done about the roof, including his
19 unsuccessful attempt to fleece ELNOS using the sham
20 company Empire Roofing and Restoration.

21 Nazarian concentrated on trying to
22 re-mortgage the property while seeking to unload
23 this time bomb on some other unlucky purchaser.
24 Unfortunately, time ran out.

25 Every owner was advised about the

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1 desirability of a permanent fix, a retrofit to
2 install the waterproof membrane that should have
3 been installed in the first place. They all
4 rejected that professional advice in favour of the
5 in-house solution, cheap temporary fixes that they
6 could charge back to their tenants. This was an
7 approach that had a long track record of failure.

8 There is an old adage,
9 Mr. Commissioner, that the definition of "insanity"
10 is doing the same thing over and over again and
11 expecting a different outcome. No roof lasts
12 forever and it should have been apparent that this
13 roof and its failed waterproofing system needed to
14 be replaced, not repaired. This was far beyond a
15 maintenance issue.

16 While the three owners shoulder a
17 significant portion of the responsibility for this
18 disaster, others must share in that responsibility.

19 This catastrophe marks a failure of the
20 engineering profession to adequately protect the
21 public interest. This mall did not lack for
22 attention from engineers. In fact, it was
23 inspected by many engineers. There was no sharing
24 of information between those engineers and no
25 engineer raised the alarm with the City or others

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1 in power. They all clearly saw their duty to be to
2 their various customers alone and not public
3 safety.

4 Most disgracefully, in the months
5 before the collapse a report pronouncing the mall
6 structurally sound was produced by Bob Wood, an
7 engineer who had already lost his licence. Wood
8 watered down his report at the behest of Nazarian,
9 apparently without the knowledge of its licensed
10 co-author, Mr. Saunders.

11 This disaster also marks a failure of
12 the regulators entrusted with overseeing the safety
13 of people working in or simply using this building.

14 The words of Deputy Mayor Al Collett
15 resonate still: What are we going to do, wait for
16 someone to die?

17 Unfortunately, Mr. Commissioner, the
18 answer to that question turned out to be yes.

19 The Ministry of Labour failed the
20 workers in the mall, including the late Lucie
21 Aylwin. The MOL offices were in the leaking mall
22 for a long time, and yet they took no action to
23 initiate a proper investigation or to call in their
24 own engineering staff. No order was ever made by
25 the MOL to stop the leaking, despite multiple

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1 complaints, until it was too late.

2 It was extremely disturbing to ELMAC
3 that the ADM, Sophie Dennis, pronounced this
4 performance by her branch to be satisfactory and
5 unworthy of an independent review by her federal
6 counterparts.

7 More shocking still is the position of
8 Ontario that pursuant to the IRS principle that
9 somehow the vulnerable workers in the mall are
10 responsible for the safety of the workplace and
11 thus somehow apparently responsible for this
12 tragedy.

13 All the workers could do is what they
14 did do, Mr. Commissioner, complain. The rest was
15 up to Ms. Dennis and her team of careless,
16 indifferent and ineffective investigators who
17 failed utterly in their mandate to protect workers.
18 Who could forget the dismissive e-mail sent by the
19 Ministry the very day the mall collapsed.

20 The implication of Ontario's position
21 is that Lucie Aylwin should have prevented the roof
22 from falling in, not the Ministry of Labour. It is
23 nothing short of offensive.

24 The City of Elliot Lake is responsible
25 for enforcing the Ontario Building Code and its own

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1 by-laws. It allowed the mall to be occupied
2 despite the leaky roof. It was well aware of the
3 leak problem because one of the worst areas of
4 leaking was in its own public library. There was a
5 litany of complaints from those brave librarians.
6 The City had an engineer on staff, but
7 if it lacked the internal expertise, it could have
8 hired its own independent engineer for advice. The
9 City clearly treated the mall with kid gloves
10 because of its economic importance to the City and
11 to the City coffers.
12 The City finally issued an order to
13 stop the leaks in 2006 but then never followed up
14 effectively. When the City was confronted with the
15 dramatic evidence of dangerous decay when concrete
16 fell into Hungry Jack's in 2011, it still declined
17 to take action for fear that it might result in the
18 closure of the mall.
19 Its bureaucratic defence before this
20 Commission that the problem is that no written
21 complaint was ever filed is devoid of credibility.
22 What the City has the audacity to call
23 in its written submission an alleged piece of
24 cement was shown, and we all saw the pictures,
25 Mr. Commissioner; it clearly was a dangerous piece

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1 of concrete. That piece of concrete was shown to
2 the Deputy Mayor and Mayor and brought to the
3 attention of the Chief Building Official. What
4 more should be required of a citizen? And would a
5 new written complaint have produced any different
6 results than they had in the past when the
7 librarians complained in writing persistently?
8 There is absolutely no reason to think so.
9 The City's short-sighted efforts to
10 protect the mall as an economic asset not only
11 ruined lives, they resulted in an economic
12 catastrophe for Elliot Lake.
13 Although we have just begun Phase II,
14 Mr. Commissioner, I cannot help but make this
15 observation. If only the province and the City had
16 used their power to prevent this tragedy, instead
17 the full power and resources of the City and state
18 were deployed only after it was too late, too late
19 for people like the Quintes who lost their business
20 altogether and too late for Yves Bérubé whose
21 business was crippled, too late for people like
22 Jason Morrissey, Jean-Marie Marceau and Adam
23 Amyotte who will always bear the physical and
24 emotional scars of this disaster.
25 Most of all, too late for Lucie Aylwin

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1 and Doloris Perizzolo and their grieving families,
2 including Roberta Raeburn.
3 Although we have just begun phase --
4 our recommendations are detailed in our written
5 submissions. They must be viewed as preliminary
6 until the Inquiry is complete. For example, we did
7 not have the benefit of reviewing some of the
8 helpful suggestions made by the other participants
9 in this Inquiry.
10 However, I have time to highlight just
11 a few of those suggestions, Mr. Commissioner.
12 First, Ontario should notify the
13 Building Departments of all municipalities that
14 they should be alert to the dangers of any
15 structures in their communities featuring parking
16 decks over occupied space in light of the Elliot
17 Lake tragedy. Such structures should be thoroughly
18 inspected by a qualified structural engineer with
19 special attention to examining the strength of
20 connections.
21 Secondly, open parking decks should
22 never be constructed over occupied areas in Ontario
23 in future.
24 Third, a specific rule should be
25 developed for engineers and architects about

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1 guarding against becoming dupes of their clients
2 and compromising public safety.
3 Fourth, a central registry for
4 structural engineering reports on commercial
5 buildings should be established. Engineers
6 conducting inspections should be required to
7 consult prior reports in connection with any
8 inspection.
9 For municipalities, periodic proactive
10 inspections should be mandatory for large occupied
11 commercial properties based on how many people use
12 the property, age and the nature of that use.
13 The Ontario Government should call on
14 the Federal Department of Labour to investigate the
15 conduct of the Ministry of Labour in this case.
16 The Ministry of Labour and municipal
17 officials must share information and cooperate when
18 structures are used as workplaces. Simply put,
19 Mr. Commissioner, the left hand must know what the
20 right hand is doing.
21 The province should mobilize additional
22 psychiatric resources to assist the victims of this
23 tragedy.
24 This brief oral presentation can only
25 provide highlights of our written submissions. I

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1 want to acknowledge the hard work of all members of
2 our legal team who participated in creating the
3 record of this Commission and who contributed in
4 particular to the creation of our final written
5 submissions.

6 I also want to thank all the members of
7 ELMAC, especially those who provided information
8 and testimony to the Commission to aid in its work.

9 This has been a painful process for the
10 people of Elliot Lake, but I believe it will be
11 seen ultimately to have been a helpful and healing
12 process. The truth must be revealed for in that
13 process there is accountability.

14 We do recall. We will never move on
15 from our memories, Mr. Commissioner, but with luck
16 we can move on with our memories.

17 The people of Elliot Lake are resilient
18 people. We have persisted in keeping this
19 beautiful community alive through many tough times.
20 Elliot Lake shall endure thanks to the spirit of
21 its people.

22 Mr. Commissioner, we thank you and your
23 team once again for your hard work and wish you the
24 best of luck as you embark on the critical task of
25 crafting your findings on Phase I.

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1 We have confidence that you will be as
2 unsparing in your criticism of past failures as you
3 will be wise in recommending how such problems can
4 be avoided in future.

5 I know that I speak for all members of
6 our legal team when I close by saying that it has
7 been an honour and a pleasure to appear before you
8 in Phase I, and we will do our best to assist you
9 in Phase II.

10 Thank you.

11 THE COMMISSIONER: Thank you very much,
12 Mr. Elliott, for those eloquent words, and I do
13 acknowledge the very complete, thorough and
14 professional submission made by your team. It will
15 be very helpful.

16 All right then, we can move along with
17 Algoma Central Properties, Mr. Howe.

18 And I understand, Mr. Howe, that these
19 submissions will encompass those of Rod Caughill
20 and Robert Leistner; is that correct?

21 MR. HOWE: Not necessarily,
22 Mr. Commissioner. My client Algoma Properties of
23 course is separately represented by myself and my
24 firm.

25 The witnesses, Messrs. Leistner and

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1 Caughill, were represented by Mr. Maloney of Hughes
2 Amys, and he has indicated that he has no
3 additional submissions to make on behalf of his
4 clients.

5 THE COMMISSIONER: All right, thank
6 you. Go ahead then, sir.

7 MR. HOWE: Thank you, sir.

8 Like Messrs. Aubé and Elliott, I would
9 like to begin by thanking you, thanking your staff,
10 Commission Counsel and all Counsel for the
11 participants for the courtesies shown to my client
12 and me.

13 I would also like to thank the people
14 of Elliot Lake for their hospitality. I have
15 gotten to know a number of them during the hearing,
16 and it has been a real pleasure to meet and
17 socialize with them.

18 I'm going to respond to certain of the
19 major allegations made against my client, and I
20 would like to begin with the allegation made by
21 ELMAC that the choice of the Peterson System was
22 motivated by cost.

23 And, Mr. Commissioner, what I am going
24 to do is in the course of my submissions, I am
25 going to footnote the evidence where you can find

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1 support for the things that I have to say in our
2 written submission.

3 You may recall that there was evidence
4 that Peterson was one of the leading suppliers of
5 traffic deck membranes, and the evidence for that
6 is summarized at paragraph 24 of our submission.

7 You will recall as well that there was
8 evidence that they had an excellent reputation, and
9 you will recall that Mr. Kadlec volunteered in his
10 evidence that they were known to have the, quote,
11 "best system in the world", and that can be found
12 at paragraph 42 of my client's submission.

13 To rebut the allegation that my client
14 was simply motivated by cost, I would refer you to
15 the recommendation that Peterson made to my client
16 for the composite slab system. That can be found
17 at paragraph 29 of our submission.

18 And if I can just simply highlight what
19 Peterson was telling my client in the period in
20 1979, you may recall, Mr. Commissioner, that there
21 were two options that were presented to my client.
22 The one option was the sandwich system, and the
23 second option was the composite slab system.

24 And Peterson recommended the composite
25 slab system in these words:

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1 "Despite the conventional wisdom
2 that the traditional sandwich slab
3 concept is best, we would strongly
4 recommend that the composite slab
5 system is the best long-term
6 solution because of the reduced
7 number of field problems we have
8 experienced with this approach, the
9 ease of future maintenance and the
10 lower initial cost. The fact of the
11 matter is that the track record for
12 double slabs is not good, while the
13 composite slab approach, while fewer
14 in number, has proved very
15 successful."
16 [As read.]
17 In other words, the evidence in its
18 totality, sir, suggests that although cost was a
19 factor, it was not the driving factor. My client
20 was not motivated solely by reason of cost factors
21 in choosing the Peterson System.
22 Next, ELMAC is critical of the location
23 of the parking deck and ELMAC has submitted that
24 the choice was motivated, again, by cost.
25 First of all, there is no evidence for

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1 that allegation, and secondly, that allegation
2 totally ignores Elliot Lake's June 22, 1978,
3 resolution, 369/98, the details of which are set
4 out in paragraphs 21 and 22 of the written
5 submission.
6 That resolution set out a buffer area
7 where no buildings, structures or parking was
8 permitted and which was to be left in the natural
9 wooded state. In effect, that resolution prevented
10 my client from using land south of the mall site to
11 build additional parking spaces.
12 There is an allegation as well from
13 Nicholls and from the families, the Aylwin and
14 Perizzolo families, that my client, to use my
15 words, deep-sixed the Trow Reports; in other words,
16 my client actively concealed the Trow Reports from
17 Retirement Living.
18 I would like to begin by saying that
19 there was no obligation in the first instance to
20 provide the reports, and secondly, the evidence is
21 all to the contrary. You may recall Mr. Leistner
22 testified that he had offered the reports to
23 Mr. Kennealy who said that they were not needed
24 because he was having his own comprehensive report
25 prepared.

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1 To be fair, Mr. Kennealy could not
2 recall that conversation.
3 That evidence is summarized at
4 paragraph 131 of the Algoma written submission.
5 Mr. Leistner's testimony is consistent
6 with the Halsall testimony. The Halsall
7 representatives testified that access to the Trow
8 Reports wouldn't have changed their reports, as
9 they would have been consistent in any event with
10 the Halsall findings. And you can find support for
11 that set out and summarized at paragraph 118 of the
12 written submission.
13 The allegation from Nicholls and the
14 families also ignores the evidence of three
15 witnesses that the Trow Reports were left at the
16 mall when the mall was sold to Retirement Living.
17 The evidence is clear that the Trow
18 Reports remained at the mall and they were seen by
19 Nazarian's employees. And evidence of that can be
20 found at paragraph 133 of the written submission.
21 The conclusion, Mr. Commissioner, is
22 that the Trow Reports were available to be reviewed
23 by anyone affiliated with the mall, and to suggest
24 that they were somehow concealed or deep-sixed is
25 inappropriate and contrary to the evidence.

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1 ELMAC describes the parking deck as a
2 ticking time bomb. My friend Mr. Elliott talked
3 about a Trojan horse this morning.
4 Mr. Commissioner, insofar as my client
5 is concerned, those analogies are inappropriate
6 because they assume that someone has an evil
7 intent, that someone in secret intends to cause
8 harm to others. And there is no evidence of any of
9 those components with respect to my client's
10 involvement with the mall.
11 The better analogy, Mr. Commissioner, I
12 submit is that the parking deck was more akin to a
13 cancer, a cancer which at some time morphed from
14 benign into malignant.
15 No one knows for sure when the morphing
16 took place, but we do know both retrospectively and
17 prospectively, according to Halsall, Nicholls, NORR
18 and Retirement Living, the mall was structurally
19 sound in 1999. There was no evidence that it was
20 not structurally sound at the time of the sale to
21 Retirement Living. And that evidence is summarized
22 at paragraphs 155 to 156 of the written submission.
23 Mr. Commissioner, subject to any
24 questions that you may have, those are my
25 submissions.

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1 THE COMMISSIONER: Thank you very much,
2 Mr. Howe.
3 And then we will go right to
4 Mr. Kearns.
5 MR. KEARNS: Good morning,
6 Mr. Commissioner.
7 THE COMMISSIONER: Good morning,
8 Mr. Kearns.
9 MR. KEARNS: Like others before me, I
10 would like to personally say to you, sir, that it
11 has been an honour to appear before you. The
12 qualities that you have brought every day to this
13 Commission have been extremely helpful to the
14 community in the troubles that it has faced and the
15 issues that we deal with.
16 Your sense of humour, your hard work,
17 your compassion I think is what comes through the
18 most, and it certainly has been a pleasure to deal
19 with you, this of course being my last day to deal
20 with this topic.
21 I would like to talk first of all about
22 our submissions, the submissions of Retirement
23 Living and NorDev. It reminds me of the lament
24 that the person says I apologize for writing such a
25 long letter; I didn't have the time to do a short

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1 one.
2 And I think that we all did our best to
3 do the short one, and that took a lot of time. We
4 have had 80 days of work, and to put all that
5 together into what we hope, what all of us hope,
6 and I particularly hope for me into a coherent,
7 comprehensive and hopefully a forceful submission
8 is what I think we all strove for.
9 I know you have read it. I'm not going
10 to go through it in detail. It is there and I know
11 that you can refer to it at a later time if you
12 feel the need to do that.
13 I would like to talk about some of the
14 submissions of other Counsel.
15 We have all been in court cases and we
16 understand the adversarial position, and we know
17 that we often want to make sure that our case is
18 put forward in the strongest possible way and that
19 the weaknesses of our opponents are shown in the
20 most powerful way. That is just what we get. And
21 I think that in order to do that, though, you still
22 need to be fair, because if you get off of that,
23 get outside of those parameters, then you lose the
24 interest of the person that you are writing to, and
25 that was you.

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1 And I think that to a large extent, the
2 submissions that you have fall exactly within those
3 parameters.
4 I do have a couple of concerns with
5 respect to them, though, and they deal with two
6 issues that we have looked at specifically a lot at
7 the Commission. The first is the Non-Disclosure
8 Agreement and the second is the Halsall Report.
9 What troubles me the most about the
10 Non-Disclosure Agreement is that we are all, except
11 for the SAGE representatives, trained lawyers. We
12 know how to read a contract. We know what it means
13 and we know what it doesn't mean, and that contract
14 is clear that it is what ACP required to give the
15 information to Retirement Living who was hired by
16 the City to do a report.
17 The concept that this Non-Disclosure
18 Agreement somehow created a conflict of interest
19 for Mr. Kennealy so he couldn't talk to his Board
20 about it, he couldn't talk to the City about it, as
21 if this was some conspiracy of silence is just
22 improper. It is just not what happened. It is not
23 what the document says.
24 There is no -- I mean, we know now
25 there isn't a single document that was produced to

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1 Retirement Living from ACP that they weren't able
2 to provide to anyone. So it is an issue that has
3 been created I think for the purpose of mischief.
4 The second one is the Halsall Report.
5 Throughout the submissions of my friends, there is
6 the sense that the Halsall Report was hidden from
7 the Retirement Living Board, from the City, from
8 Eastwood Mall, that somewhere in that report there
9 is information that would be seriously detrimental
10 to the interests of Retirement Living and needed to
11 be hidden. That is just not the case.
12 The Halsall Report, to the extent that,
13 you know, there is a lot of parsing about words and
14 anything, but I agree with Mr. Howe, it said that
15 in 1999 this is a building that is structurally
16 sound and it gives no warnings about what will
17 happen if it is not properly cared for. It says it
18 doesn't need a membrane. It says rout and seal
19 will work.
20 Now, I know that the submissions will
21 be full of the difference between what Halsall says
22 rout and seal means and what Retirement Living
23 thought rout and seal means. But you can put
24 lipstick on a pig; it is still a pig. And it is
25 still rout and seal. It is not a membrane. They

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1 said we didn't need one. And that is what that
2 report says.
3 Why would you hide that report from
4 anyone? As I said in my submissions, it was a
5 sales tool. What prospective purchaser would you
6 not want to show that report to? And you can say,
7 well, maybe it is too old. Maybe show it to them
8 in 2005. Mr. Clinckett in his evidence was
9 prepared to rely upon it in 2008. So that is a
10 piece of mischief as well I think.
11 You might remember that at the start of
12 my submissions many months ago I asked you to
13 consider that Elliot Lake needed to be in a better
14 place when the Inquiry was finished than it was at
15 that particular time, and I am still troubled by
16 that.
17 I'm troubled by that because of the
18 nature of some of the submissions that you have
19 heard. I speak particularly of Mr. Derreck's
20 submission.
21 Mr. Derreck came to Elliot Lake a year
22 after Retirement Living sold the mall, served with
23 Mr. Farkouh as the Mayor for approximately two
24 months.
25 His submission appears to me to be a

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1 one-pager. He is the first guy who comes to town
2 who understands how serious the problem is. He
3 understands how to fix it. He brings it to the
4 Council, says you have got a Property Standards
5 By-Law, here you need to use it, to enforce it,
6 convinces Council to do that and then is fired
7 before he can make sure that it happens.
8 I mean, that is his position, and it is
9 a laudable position. I mean, Mr. Derreck had the
10 opportunity and did his best to do a real service
11 to this community.
12 But you look at his submission and it
13 is 40 pages, of which over half is a diatribe
14 against Retirement Living and Richard Kennealy and
15 George Farkouh, and I just wonder where that comes
16 from.
17 And you know, we hear the same this
18 morning from my friend Mr. Oatley, that his last
19 group of people that he looks at are Mr. Farkouh
20 and Mr. Hamilton, and particularly Mr. Farkouh and
21 he says that his clients are most shocked by what
22 Mr. Farkouh did. I don't know whether that is in
23 2005 or 2006, and it has to do with the Halsall
24 Report and again trying to hide that from someone
25 and I dealt with that before.

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1 But that is what shocks the families
2 the most?
3 If I can, Mr. Commissioner, I'll tell
4 you what shocks me the most. This Commission
5 appears on its face to be about a collapse of a
6 building, but it is more than that. It is about
7 the collapse of a building with people in it. I
8 think we all can agree that if there were not
9 people who were injured and killed in this
10 collapse, it would not be the subject of an Inquiry
11 of the Province of Ontario.
12 What I am shocked by the most is that
13 after a piece of concrete falls from the roof in
14 May of 2011, nothing is done. That to me is
15 shocking. We know what that means.
16 Ms. Saari from Coreslab looked at the
17 photos. I asked her to look at them. She said
18 that is a piece of the Coreslab. You see that
19 line, that brown line that runs down there, that is
20 the tendon. What has happened is the tendon has
21 been attacked by chloride and water. It has
22 rusted, it has expanded, and it has popped the
23 bottom piece of the concrete off. That is what
24 happened.
25 So what anybody looking at that, an

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1 engineer looking at that would say if they had the
2 chance in May of 2011, we have got two problems.
3 More pieces may drop off this concrete. That piece
4 that you saw I think, Mr. Commissioner, could have
5 killed somebody. It was a big, heavy, sharp piece.
6 And that piece that it was attached to no longer
7 has the weight-bearing capacity that it had before.
8 You'll remember that Halsall, when
9 Halsall said to us in '98 that we needed more
10 information before they could give us an opinion
11 about the structure, they were worried about the
12 concrete protecting these tendons, because without
13 the tendons, the concrete doesn't have the ability
14 to hold the weight that is expected for it.
15 We have that in May of 2011, and the
16 owner of the building does nothing. You know, we
17 have his evidence about a phone call to Bob Wood
18 who says it is something like the tenants are
19 saying it is concrete, but we think it is mushy.
20 Bob, can you make sure that when you do your report
21 for us later on next year for BDC that you go and
22 have a look at that spot and make sure it is okay.
23 That is how I understand Mr. Nazarian's evidence.
24 Such a conversation could never have
25 happened. If Bob Wood or any engineer had been

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1 made aware in 2011 or even in 2012 that the ceiling
2 is falling in, it wouldn't have been a matter of
3 I'll look at that next year. It would be we need
4 to get on that right away.
5 And the mall owner, it is his building.
6 It is his responsibility to do that. It is his
7 engineers he needs to get to do that, and he didn't
8 do that and I think that is what should shock us
9 the most.
10 I would like to finish off -- and I'm
11 not doing too bad for time -- with just a little
12 bit about Elliot Lake, Mr. Commissioner. You have
13 been here for quite a time now. I would just like
14 to make a few comments about this community and
15 what it means to me and what it means to a lot of
16 the people that are here.
17 I came to this community in 1981. It
18 is the only place I have ever worked. It seemed
19 like I was making a really good decision. I was
20 coming to a boom town. My wife -- I was from
21 Toronto, born and raised in Toronto. My wife was
22 from a small French Canadian village outside of
23 North Bay. She wanted to live in the north. She
24 wanted to live in a French community. Elliot Lake
25 was that. Many, many of our miners, most of our

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1 miners came from Quebec.
2 And you felt like you were getting in
3 at the ground floor, and it was a boom town. It
4 was extremely busy, and for ten years things went
5 really, really well.
6 And then, as you know, in 1990, 1991,
7 the announcement that the mines are closing. At
8 that point, I'm not sure I have made the right
9 decision after all. I'm looking at starting a
10 career somewhere else ten years in.
11 So what is this City going to do? I
12 remember driving around this community on a Sunday
13 night with all of the lights out in whole
14 communities because people needed to leave. They
15 had to find a place to work. These were people who
16 were used to a healthy income. They needed to find
17 mining jobs and they weren't here and they had to
18 leave town. And whole communities, whole sections,
19 whole streets and cul-de-sacs were dark. I'm
20 thinking, what am I going to do?
21 Well, I stuck it out. In 1991 the
22 community came up with the idea of Retirement
23 Living. I didn't come up with that idea. The
24 people on Council did. Mayor Farkouh, his
25 Councillors came forward with this idea, talked to

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1 the mining company, put this thing forward.
2 It was my partner who actually acted
3 for Retirement Living at the start, but when he
4 left in 1992, I took over in 1993. By 1993 we had
5 the land; we had the buildings; we had about 1500
6 units. We had those.
7 But by 1993 when Mr. Kennealy came
8 here, we were in bad shape. We had mortgage-free
9 buildings. We weren't able to fill them. We
10 needed management to get us to move forward. And I
11 remember Dick Diot who was our Chairman at that
12 time said to the Board, this Kennealy, I think he
13 is the guy, and if you don't take him, we are going
14 to be in big trouble. And the Board listened and
15 they hired him.
16 And by 1997 when we pick up the story,
17 Retirement Living is doing well. They are making a
18 couple million dollars a year. They are able to
19 put a million dollars of that every year back into
20 capital, and they are able to put aside a million
21 dollars. That is kind of how we worked in those
22 years.
23 And then we learned that the Algo
24 Centre, the Algo Mall was planning to close the
25 hotel, and not just close the hotel,

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1 Mr. Commissioner, but close it and tear it down
2 because you don't want an empty building that you
3 are paying tax on. That would have been
4 devastating for the community. It would have been
5 devastating for the Retirement Living program. But
6 it was still a major risk for this program to take
7 on.
8 You know, this idea that Ms. Guertin
9 and Mr. Kennealy and perhaps Mr. Farkouh and others
10 for some reason put this over on the Board and
11 pushed this thing on for their own personal gain, I
12 just don't know where that comes from.
13 You have got Retirement Living in '97
14 and '98 and '99 just doing well, not doing
15 spectacularly. It would have continued to be
16 profitable without the hotel. It wouldn't have
17 been the same future for Elliot Lake, but it would
18 have continued to be profitable.
19 And I am certain that if Mr. Kennealy
20 and Ms. Guertin and others had come to the Board
21 and said this is too much of a risk for us; we
22 don't know how to run a hotel; we don't know how to
23 run a mall; we don't --
24 MR. CARR-HARRIS: Excuse me,
25 Mr. Commissioner, this is beginning to sound more

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1 like evidence from Mr. Kearns, who was an active
2 participant at the time, and I just caution him on
3 that, that I gather he is not putting himself up
4 for cross-examination.
5 MR. KEARNS: What was that about? I
6 really don't understand that.
7 THE COMMISSIONER: Just continue,
8 Mr. Kearns, and without waxing into evidence
9 obviously. I'm not taking it as evidence.
10 MR. KEARNS: Well, thank you,
11 Mr. Commissioner, because I think it is important
12 that you understand what these people do for this
13 community.
14 THE COMMISSIONER: So long as the
15 submissions you make, of course, arise out of the
16 evidence we have before us, but I'm going to give
17 you some latitude in that respect.
18 Go ahead, please.
19 MR. KEARNS: Thank you.
20 Well, where do I pick that up then?
21 THE COMMISSIONER: I think the
22 Commission, Mr. Kearns, understands the important
23 and central role that Elliot Lake Retirement Living
24 played in this community and how important its
25 contribution was. I don't think there is any doubt

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1 about that.
2 If that is one of the points that you
3 are attempting to make, I don't think that I can
4 come to any other conclusion but that the result or
5 the results that it achieved were spectacular. But
6 that is not the issue that we are dealing with at
7 this point.
8 And I understood and I understand that
9 the courage and the contribution and the expertise
10 and the voluntariness of much of the effort is what
11 salvaged to a large extent this community. But
12 again, that is a marginal issue. I'm not saying it
13 is not important. It was crucial to Elliot Lake,
14 but it is perhaps marginal and corollary to the
15 issues that we are pursuing.
16 MR. KEARNS: All right. Well, I think
17 then, Mr. Commissioner, I'll go back to what I said
18 to start with.
19 My penultimate point will be that
20 everything that I really did want to say to you is
21 included in my written submissions.
22 The ultimate point I would like to
23 make, though, is that the City of Elliot Lake after
24 this collapse has made a determination, in my view,
25 not to be defined by the tragedy but to be defined

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1 by the recovery.
2 The way that -- and you will hear about
3 this in Phase II, and just forget Phase I to start
4 with completely. The City Council, the CAO, the
5 members of the community like ELNOS, the Chamber of
6 Commerce, groups of people like that came from
7 Retirement Living and put together and made a
8 conscious decision that once the dust had settled,
9 once the rescue had happened, once that they were
10 able to grieve and take into account what had
11 happened, that we need to move forward.
12 And, Mr. Commissioner, your report will
13 be part of our ability to move forward, and that
14 harkens back then to the concern that I said to you
15 on day one which is that the community needs your
16 report to be a positive influence on where we go
17 from here.
18 Those are my submissions.
19 THE COMMISSIONER: Thank you very much,
20 Mr. Kearns.
21 Now might be an appropriate time. It
22 is a little early, but rather than interrupt
23 someone, we'll take our morning break now and start
24 again in 20 minutes, Mr. Registrar.
25 -- RECESSED AT 10:16 A.M.

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1 -- RESUMED AT 10:40 A.M.
2 THE COMMISSIONER: Good morning, Mr.
3 Simco.
4 MR. SIMCO: Good morning,
5 Mr. Commissioner.
6 I'm making submissions on behalf of my
7 client, Nicholls Yallowega Bélanger, Blaine
8 Nicholls and Michael Luciw.
9 The issues raised with them in relation
10 to this Inquiry was whether they ensured Halsall
11 inspected the connections of the steel structure
12 and properly reported on those items and whether
13 they notified the owner that the waterproofing
14 system was not appropriate and could affect
15 structural stability.
16 As we have heard evidence that Michael
17 Luciw was not associated with NYB, as I'll refer to
18 them by acronym, after November of 1998, I would
19 submit that any alleged shortcomings in relation to
20 the May '99 Halsall Report simply cannot apply to
21 him.
22 I intend to make submissions on the
23 following points.
24 First, Algoma, owner of the mall during
25 my client's retainer, placed no reliance on my

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1 clients for any explanation, notification or
2 advice.

3 Second, NYB's scope of work was for a
4 pre-purchase building condition survey, nothing
5 more.

6 Third, the effect of Algoma's failure
7 to disclose technical documents.

8 Fourth, Retirement Living's follow-up
9 to the May 1999 report.

10 And fifth, Halsall's inspection of
11 connections.

12 With respect to the first issue, I
13 submit that Algoma as owner of the mall during my
14 client's retainer did not rely on my clients to be
15 advised of the appropriateness of the waterproofing
16 design or the effect of water infiltration on the
17 structural stability.

18 Mr. Leistner of Algoma testified that
19 Algoma knew the waterproofing system was not
20 working from the get-go. Rod Caughill observed
21 that as well when he joined Algoma as of 1986.

22 Trow proposed options to essentially
23 complete construction of the roofing system which
24 the mall had originally not received, in essence.

25 But it would be expensive. Algoma did

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1 its cost-benefit analysis and as of 1992 considered
2 selling the mall. The business case simply did not
3 justify keeping it. Algoma was conscious of the
4 rate of deterioration of the structure as a result
5 of the Trow investigations in the early to mid
6 '90s.

7 Algoma was advised to fix the problem.
8 The cost was immense with continuing risk involved,
9 and Algoma decided to sell.

10 Algoma did not need the Halsall Reports
11 to be aware that the waterproofing design was
12 inappropriate or that water infiltration could
13 affect the structural stability of the mall.

14 To the contrary, the evidence at this
15 Inquiry has shown that my clients were compelled to
16 sign a non-disclosure covenant as required by
17 Algoma to keep its investigative information
18 confidential from anyone except Rhona Guertin and
19 Richard Kennealy. Algoma did not want such
20 information to enter the public domain. If my
21 clients breached the covenant, they would be
22 exposed to potential claims by Algoma.

23 As for notification of Algoma, NYB knew
24 that Algoma would receive a copy of its reports
25 indicating the state of the mall. That was

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1 confirmed at the initial meeting when Retirement
2 Living advised NYB that Algoma would have the final
3 say on the release of the NYB Halsall Report.

4 There is no doubt that Algoma, having
5 reviewed the various consultants' reports, had
6 ample information that the design of the
7 waterproofing system was not appropriate, as it was
8 obviously not working for 20 years, more or less.

9 They also knew about issues of
10 structural stability from the Trow Reports, the NYB
11 Halsall Reports, as well as their own observations.

12 My next point is NYB's scope of work
13 was for a pre-purchase survey with cost estimates
14 and not for the preparation of design or
15 construction documents and specifications to enable
16 parking deck repairs.

17 Retirement Living retained NYB for a
18 high level pre-purchase building assessment, not as
19 a design consultant who was preparing construction
20 documents such as plans and specifications for
21 construction purposes.

22 Rhona Guertin of Retirement Living
23 approached Blaine Nicholls of NYB not as an owner
24 but as a client who was a prospective purchaser.
25 As part of its due diligence, Retirement Living was

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1 generating the numbers for repair estimates. NYB
2 agreed to provide a general assessment of the
3 building and to develop a budget for potential
4 immediate costs in its 1998 report. NYB understood
5 that if the mall was acquired by Retirement Living,
6 the repair proposals would be translated into
7 further steps and then into action.

8 NYB and its sub-consultant Halsall
9 never progressed to the stage of preparing design
10 documents or specifications for any aspect of the
11 mall's renovation. While Halsall did perform a
12 structural condition assessment of the mall in its
13 May 1999 report, that was for the stated objective
14 of identifying existing conditions requiring repair
15 and developing repair strategies. They gave a
16 general description of the alternate repair
17 approaches and an opinion as to estimated costs.

18 Nowhere in the 1998 NYB Halsall Report
19 or in the 1999 Halsall Report do there appear
20 construction plans or specifications, illustrated
21 details, formatted bid documents, recommended
22 pre-qualified bidding contractors or proposals for
23 construction managers, et cetera.

24 NYB's further involvement does not
25 become relevant in this process unless Retirement

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1 Living buys the building and proceeds with the
2 recommended repairs.

3 Of course, neither NYB nor Halsall were
4 ever advised of that step. They had no idea
5 frankly until this Inquiry arose or this incident
6 arose that Retirement Living had proceeded to
7 acquire the mall.

8 The reports of 1998 and 1999 were not
9 intended to act as construction manuals for lay
10 people. They were engineered repair strategies and
11 budget opinions, not a repair guide.

12 My next point is with regard to lack of
13 disclosure.

14 The effect of Algoma's decision to
15 withhold the Trow Reports created an information
16 gap as to the technical performance of the mall in
17 its first 15 years of existence.

18 NYB's proposal stated that as a first
19 stage of preparing its building condition survey,
20 it would obtain information and drawings regarding
21 the building. As we have seen, NYB received no
22 cooperation in that regard. It asked repeatedly in
23 writing for drawings and any technical reports and
24 was expecting frank information from the owner.

25 Algoma acknowledged through

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1 Mr. Leistner that it would not disclose the Trow
2 Reports to Retirement Living or its consultants.
3 NYB's expectation of frank information was not met.
4 It is submitted that this was an unusual position
5 to be taken by a vendor of a building with
6 knowledge of a major design deficiency.

7 The Trow Reports would have been a
8 useful tool not only for Halsall but also for
9 subsequent engineering consultants involved with
10 the building. It stood or they stood as a
11 historical record of the progression and rate of
12 corrosion of the building commencing in 1991.

13 With the reports Halsall could have
14 tracked and continued the progressive analysis of
15 corrosion in 1999 for the attention of Retirement
16 Living as well as future owners. Halsall was left
17 to investigate with no historic technical record or
18 even original design documents.

19 The next point, sir, is the action
20 taken by Retirement Living in response to Halsall's
21 May 1999 report.

22 The '98 report established an upper
23 limit of 1.8 million to repair the parking deck.
24 It warned that waterproofing repair costs would not
25 include any remedial work to the concrete core

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1 slabs, that that amount was just for waterproofing.
2 The report recommended additional
3 investigation to assess the existing structure. As
4 Blaine Nicholls testified, they wanted to determine
5 if the structure had deteriorated beyond the point
6 of repairing and waterproofing. The top range
7 expense for repair was known to Retirement Living
8 in its negotiations with Algoma to purchase the
9 mall. We know that the price was negotiated down,
10 the purchase price, by a substantial amount before
11 Halsall produced its second report which came up
12 with an optional strategy.

13 Halsall concluded in the second report
14 that the parking deck could be sealed under an
15 engineered rout and seal program, a departure from
16 Mr. Snow's previous efforts.

17 Halsall maintained its \$433,000 Option
18 1 repair scheme would work and had worked elsewhere
19 for Halsall with qualified contractors, good
20 materials, proper detailing and strong engineering
21 oversight.

22 Having obtained the benefit of a lower
23 repair estimate, Mr. Quinn of Retirement Living
24 interpreted Halsall's revised recommendation in its
25 second report to represent a fix-it-yourself

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1 option. He felt that such a straightforward repair
2 really meant no change to Mr. Snow's existing
3 methods, which meant in the circumstances no repair
4 at all.

5 Mr. Snow testified that his methodology
6 for maintaining the parking deck did not change
7 during the entirety of his employment between 1989
8 and 2005. Mr. Quinn alluded to a 15-minute
9 discussion with Mr. Truman on the roof deck, which
10 Halsall denies, where in 15 minutes Mr. Truman
11 apparently or supposedly imparted his engineering
12 knowledge sufficient to repair this long-term
13 ailing structure.

14 It is not a reasonable position to say,
15 in my submission, that Mr. Snow and his cleaning
16 staff could achieve a standard of repair equivalent
17 to Halsall, a seasoned structural and building
18 envelope engineer.

19 The point is that Halsall was not
20 consulted after the train left the station with
21 Retirement Living as owner. Notwithstanding that
22 the structure continued to leak as it had before,
23 no one from Retirement Living contacted NYB or
24 Halsall to ask why its recommended repair strategy
25 was not working. They didn't go back because that

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1 would mean hiring engineers and contractors and
2 they were not prepared to do that.
3 The management of this issue by
4 Retirement Living was not reasonable, in my
5 submission, and to attempt to allege that the
6 consultants' conduct in this matter was
7 contributory is a response, in my submission, which
8 does not ring true.
9 Connections is my next reference.
10 NYB and Mr. Nicholls as architects were
11 not responsible for the structural inspection of
12 this building or for the correctness of the
13 engineering recommendations. However, Mr. Nicholls
14 has the highest regard for Halsall and testified
15 that its investigations in this building were
16 performed in a competent and professional manner.
17 The steel structure and connections
18 were reviewed by Halsall, were inspected and
19 photographed and were holding up well as of 1999.
20 There is no evidence that the connections lacked
21 structural integrity in 1999.
22 In that context, the connections were
23 one part of a steel structure which as a whole was
24 inspected and found to be in serviceable condition,
25 with a lot more life if leaks were stopped.

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1 NYB was entitled to rely on Halsall to
2 do its job within its engineering discipline and to
3 believe that Halsall would present its findings and
4 recommendations to the required professional
5 standard, which Halsall achieved in NYB's view.
6 In summary, we say that NYB acted as a
7 competent architect in the course of its brief
8 involvement with the mall. It assembled a
9 qualified team, carried out a competent building
10 condition assessment and arranged for an engineer
11 who made reasonable recommendations which were not
12 followed. I submit that there was no inappropriate
13 conduct on the part of my clients in the execution
14 of their mandate.
15 We have made only one recommendation,
16 sir, in our written submissions, in effect that
17 technical reports related to the physical condition
18 of a building should be accessible to building
19 authorities and subsequent owners.
20 And those are my submissions.
21 THE COMMISSIONER: Thank you, Mr.
22 Simco.
23 MR. SIMCO: Thank you.
24 THE COMMISSIONER: Okay, that takes us
25 then to Mr. Criminisi.

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1 MR. CRIMINISI: Yes, good morning.
2 THE COMMISSIONER: Good morning, sir.
3 MR. CRIMINISI: Good morning,
4 Mr. Commissioner.
5 I appear on behalf of Coreslab, and I
6 don't have the benefit of having been at this
7 Inquiry for as much as -- for as long as many of
8 the others here, but I'll do my best to address
9 some of the issues as we see them.
10 THE COMMISSIONER: Thank you.
11 MR. CRIMINISI: We will make the
12 following points in our submissions.
13 First, Coreslab's hollow core slabs did
14 not cause the collapse.
15 Two, the slabs were designed and met
16 the plans and specifications of the building.
17 Three, the slabs performed in excess of
18 what they were designed for.
19 And four, some confusion caused by a
20 few unfortunate passages in the NORR Report will be
21 clarified.
22 The first submission then, Coreslab and
23 its hollow core slabs were not the cause of the
24 collapse. This was verified by NORR in its report
25 and Dr. Saffarini in his evidence. Although this

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1 is a simple statement that takes very little time
2 to say, it cannot be overemphasized.
3 The hollow core slabs were the
4 structural components that fell in the collapse but
5 they were merely a passive participant.
6 As the extensive evidence led at this
7 Inquiry has shown, the collapse was caused by the
8 failure of the steel structure that held up the
9 slabs, a failure that was in turn caused initially
10 by a questionable building design, then the lack of
11 proper waterproofing and then by years of neglect,
12 insufficient maintenance and misguided attempts to
13 stem the flow of water into the building.
14 It is from this starting point that I
15 wish to examine the case.
16 Firstly, as I indicated, the slabs met
17 the owner's specifications as well as Coreslab's
18 own engineered design, and this will be elaborated
19 upon later in these submissions.
20 Secondly, the slabs were found to be in
21 good condition by many who examined them, NORR and
22 other engineers over the years.
23 As will be detailed later in these
24 submissions, the slabs had load capacities
25 exceeding those specified. The specification was

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1 120 pounds per square foot. Sonia Saari, the
2 current Coreslab engineer, testified that there is
3 a safety factor built into the load capacity and
4 that 120 pounds per square foot would effectively
5 be 170 pounds per square foot.
6 Trow in 1980 did a test of the load
7 capacity and found it to be 152 pounds per square
8 foot.
9 And finally, heavy vehicles rode on the
10 slabs for many years, and Ms. Saari testified that
11 these heavy vehicles require a load capacity of 250
12 pounds per square foot.
13 In looking at this case, my intent is
14 to provide clarity. In my quest for clarity, I
15 will address areas where confusion has been created
16 by a misinterpretation of the factual record. Each
17 of these areas will be examined and debunked so
18 that the cloud of confusion is lifted.
19 The main areas of confusion have been
20 created by a few unfortunate passages in the NORR
21 Report. These passages and related evidence have
22 been adopted by some of the participants to this
23 Inquiry. In this adoption, the participants have
24 simply accepted NORR's opinion at face value
25 without a thorough examination and study.

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1 We have done the requisite examination
2 study and found that NORR's views on these points
3 are ill-founded.
4 In so doing and stating, we are not
5 criticizing NORR, for they did a wonderful job of
6 illuminating the cause of the collapse, which was
7 the central focus of their report. As
8 Dr. Saffarini himself said in his oral evidence,
9 the focus of their work in the report was not to
10 criticize anyone or cast blame.
11 As such, their report has to be taken
12 with a grain of salt when it deals with matters of
13 criticism and blame as opposed to finding the cause
14 of the collapse. A clear distinction should be
15 drawn between their work on the cause of the
16 collapse and that of criticism.
17 With regard to the cause of the
18 collapse, they did extensive forensic study and
19 analysis to come to their conclusions.
20 With regard to criticism, NORR had an
21 imperfect and incomplete record upon which they
22 drew their conclusions.
23 With the benefit of a more complete
24 record and examination and proper context for some
25 of the events, some of their conclusions can and

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1 should be questioned.
2 Let's now examine each of these areas
3 of criticism, how they caused confusion and how
4 they relate to Coreslab and their hollow core
5 slabs.
6 There will be three points that I will
7 address here to dispel some of this confusion.
8 The first is NORR's use of load tables
9 in assessing the load capacity of the hollow core
10 slabs.
11 Secondly, Coreslab's alleged
12 misrepresentation during the bidding process.
13 And third and finally, Coreslab's
14 alleged thwarting of waterproofing solutions.
15 The first point, the load tables.
16 Virtually all of NORR's criticism of Coreslab is
17 built upon the foundation of one misguided
18 interpretation. As such, it is best if we examine
19 this interpretation before moving on to other
20 points.
21 In the limited Coreslab documentation
22 that was available for NORR, they found Exhibit No.
23 1926, a load table, which states that for 31-foot
24 long 8-inch high slabs, the load capacity is 87
25 pounds per square foot. This was a document they

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1 placed heavy emphasis on.
2 The first reference to their load
3 table, for your reference, is at page Roman numeral
4 five.
5 What NORR did is they simply took the
6 87 pounds per square foot load capacity as set out
7 in the load table, compared it with the contract
8 specification of 120 pounds per square foot and
9 concluded that the hollow core slabs installed at
10 the mall were built with less than the requisite
11 capacity.
12 In so doing, NORR ignored the load
13 testing that was carried out by Trow Engineering
14 and also ignored an engineering certification made
15 by the Coreslab engineer which certified that the
16 load could withstand 120 pounds per square foot.
17 This heavy emphasis on the load table
18 was misguided and unreasonable for the following
19 reasons.
20 Firstly, it was not the Coreslab load
21 table in existence at the relevant time. The
22 correct one was Exhibit No. 5162. NORR did not
23 rely on this correct load table.
24 Having said that, the correct one still
25 shows 87 pounds per square foot, but the point in

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1 making this is to illustrate the imperfect nature
2 of the information and documentation at NORR's
3 disposal.

4 Secondly, load tables are issued by
5 manufacturers of the machines used to make the
6 slabs, and they are simply a sales tool and a
7 guide. They are intended to be used by prospective
8 customers who are considering using hollow core
9 slabs to roughly assess what length and depth of
10 slab they will need for a given application.

11 Dr. Saffarini of NORR in his
12 cross-examination stated that he does not disagree
13 that load tables are only a guide, although he went
14 on to say that the actual designed load capacity
15 should not be that far off the load table.

16 Thirdly, load tables being only a guide
17 are superceded by the actual job-specific
18 engineering and design. Hollow core slabs are a
19 robust product, and this was stated by NORR in
20 their evidence.

21 More importantly, the slabs are an
22 engineered product. They are not an off-the-shelf
23 product like a two-by-four that one would purchase
24 at Home Depot. They are custom designed and built
25 for each and every project. For this reason,

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1 Coreslab has always had engineers on staff. In
2 this case, Coreslab's engineer of the day, David
3 Hellyer, specifically designed the hollow core
4 slabs to have a 120 pound per square foot load
5 capacity and this was confirmed in a letter that he
6 sent to the owner's representative and which is
7 Exhibit No. 1922.

8 NORR was aware of this letter, as it
9 referred to it in their report. Dr. Saffarini in
10 his cross-examination stated that he would have
11 accepted this letter as evidence of the load
12 capacity but for certain additional letters that
13 were written by subsequent Coreslab engineers, and
14 I'll address those letters later on.

15 Fourthly, the objective evidence shows
16 that the slabs had more than the requisite
17 capacity.

18 To prove this, firstly, the safety
19 factor built into the hollow core slabs. As I
20 indicated, Sonia Saari testified that in effect
21 these slabs had 170 pounds per square foot
22 capacity. The safety factor was acknowledged by
23 Dr. Saffarini in his cross-examination, although he
24 quibbled with how the safety factor is to be used.

25 Secondly, in 1980 Trow independently

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1 tested the load capacity and found it to be 152
2 pounds per square foot. And if you take into
3 account the safety factor I just mentioned, then
4 the actual load capacity will be significantly more
5 than 152.

6 And thirdly and finally, heavy vehicles
7 such as buses and trucks were allowed to park on
8 top of the slabs, even though the building was not
9 designed for them. Ms. Saari indicated that this
10 would require a 250 pound per square foot load
11 capacity.

12 Next, Ms. Saari calculated the load
13 capacity, and she did a very thorough analysis and
14 filed her analysis with this Commission as Exhibit
15 No. 5149 and Exhibit No. 5150. In her thorough
16 analysis she found that the load capacity of the
17 slabs was in fact 120 pounds per square foot.

18 NORR, on the other hand, did not do
19 this type of an analysis and simply relied on the
20 load table.

21 And the hollow core slabs were found to
22 be by many in good condition.

23 So in summary, with regard to the load
24 table issue, when we carefully examine NORR's
25 evidence and its conclusion that the slabs had a

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1 load capacity of 87 pounds per square foot as
2 opposed to 120, this conclusion cannot stand in the
3 face of the above-noted evidence. As such, it
4 should be rejected.

5 Furthermore, a few of its other
6 conclusions, detailed in a moment, should be
7 rejected as they are built on the same untenable
8 foundation, and I'll turn to these.

9 But before I do so, an important point
10 must be made. The issue of load capacity is really
11 a red herring. The slabs did not cause the
12 collapse. There is no evidence that they failed.
13 In fact, to the contrary, NORR says that they did
14 not fail but one of the connections of the steel
15 structure holding them up failed. As such, it
16 matters not whether or not the slabs met the
17 requisite load capacity.

18 NORR themselves at page Roman numeral
19 five of their report say, and I quote:

20 "Despite these points, the
21 deficiency in the HCS", hollow core
22 slabs, "play no direct role in the
23 ultimate failure of 2012."
24 And at page 126 they say, and I quote:
25 "[...] the collapse occurred due

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1 to the loss of capacity due to
2 corrosion and not due to exceeding
3 the design load."
4 As such, even according to NORR's own
5 report, this was a red herring.
6 Turning back to NORR's two other
7 conclusions built on the aforesaid foundation of
8 the load table, the next is that Coreslab misled
9 the owners in an aggressive bidding process, and
10 "aggressive" is a word used by NORR.
11 At pages Roman numeral nine as well as
12 pages 9 and 10 of their report NORR states that the
13 hollow core slabs were structurally deficient, in
14 other words, that they did not meet the requisite
15 load capacity, and that Coreslab made
16 misrepresentations to the owner during the bidding
17 process.
18 The alleged misrepresentations were
19 twofold. One is that the load capacity was not as
20 represented; two, that the first -- sorry, and I
21 have already addressed that alleged
22 misrepresentation because they relied on the load
23 table.
24 Secondly, they indicated that Coreslab
25 misrepresented whether or not a bonded topping was

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1 required in order to achieve the 120 pounds per
2 square foot requirement.
3 On this point of the bonded topping,
4 the record is very clear. First of all, the plans
5 and specifications did not call for a bonded
6 topping, and the reference here is to Exhibit No.
7 181, drawing S-4. These plans show a topping on
8 top of insulation on top of the slab, and therefore
9 it is not composite or bonded. And these plans and
10 specifications were provided to Coreslab in order
11 for it to bid.
12 Secondly, Coreslab was consistent
13 throughout the bidding process that it was not
14 necessary to have a bonded topping in order to
15 achieve the 120 pounds per square foot load
16 capacity, and in this regard I refer to its bid at
17 Exhibit No. 1792 and notes of a call with
18 Mr. Hellyer, Exhibit No. 1915. And these are
19 referred to at pages 58 and 74 of the NORR Report.
20 There was another bidder that bid when
21 Coreslab did and that was Precon, and this other
22 bidder flip-flopped on the point of the requirement
23 of a bonded topping.
24 There were notes of conversations with
25 them at Exhibit No. 629, and these notes show that

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1 originally Precon said that a bonded topping was
2 not required and then, within a day later, they
3 changed their mind and said it was required.
4 As such and as acknowledged by NORR in
5 cross-examination, it was reasonable for the owner
6 to go with Coreslab, with the Coreslab bid, as
7 Coreslab had been consistent, whereas Precon had
8 not and it flip-flopped. This flip-flopping would
9 not have inspired confidence in the owner.
10 Finally, Sonia Saari in her analysis
11 calculated that the load was 120 pounds per square
12 foot without a bonded topping.
13 As such, we submit that there was no
14 misrepresentations with regard to the bonded
15 topping. It was not required. And Coreslab was
16 consistent in this regard throughout the bidding
17 process.
18 Furthermore, Coreslab's actions cannot
19 be interpreted as aggressive.
20 The third criticism that was levelled
21 at Coreslab was that it thwarted waterproofing
22 efforts. NORR at page 42 of its report first
23 refers to this and refers to a letter written in
24 1995 by Coreslab's then engineer Shahid Shaikh,
25 Exhibit No. 1782.

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1 When we analyze the letter, it is one
2 that is written from one engineer speaking to
3 another. The context is with regard to Trow's
4 waterproofing report of November 1994 which was
5 revised in January of 1995, and those documents,
6 Trow's Reports are Exhibit No. 44 and Exhibit No.
7 417.
8 Trow recommended one of two options, an
9 asphaltic layer sitting on the existing topping,
10 and this was referred to by NORR at page 42 of its
11 report. NORR characterized the load of this
12 asphaltic layer as being a somewhat small load.
13 Turning back to Mr. Shaikh's letter,
14 essentially what he was saying in it was that
15 increasing the depth of the topping does not
16 increase the live load and it is cancelled out by
17 the dead load, which is by virtue of more weight.
18 Therefore, the total load capacity remained the
19 same at 120 pounds per square foot; therefore, this
20 is good as the building gets proper waterproofing
21 without adding to the load.
22 The NORR Report continues on and looks
23 at the ATA Report, Exhibit No. 51, and this report
24 was done as part of the Trow review process.
25 At page 3 of the ATA report in item 6.1

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1 in the conclusions there is a reference to a
2 meeting with Mr. Shaikh wherein he says that you
3 need a composite topping. And he had said this
4 earlier in Exhibit No. 41 and Exhibit No. 1927.
5 But at page 4, under the heading
6 "Recommendations" in the ATA Report, item 7.3, it
7 says that 20 pounds per square foot -- that a
8 waterproofing having a 20 pounds per square foot
9 load could be added without adversely affecting the
10 overall load capacity.
11 Although Dr. Saffarini in his evidence
12 was skeptical about this approach, he admitted that
13 they had found a way out and that they had gone
14 ahead with the -- sorry, that ATA and Trow had gone
15 ahead with their recommendation, notwithstanding
16 and including what Mr. Shaikh had said.
17 And Trow you will recall is the same
18 firm that did the load testing in 1980 and found it
19 to be 152 pounds per square foot, so presumably
20 they felt confident that the load capacity was more
21 than enough to take on this additional
22 waterproofing.
23 So therefore, notwithstanding
24 Mr. Shaikh's views, Trow and ATA recommended that
25 the work be done.

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1 Unfortunately, it wasn't done, but in
2 any event, the point is that Coreslab did not
3 thwart the waterproofing efforts.
4 In conclusion, I want to reiterate that
5 Coreslab's slabs did not cause the collapse. They
6 were designed and met the plans and specs. They
7 performed in excess of what they were designed for.
8 And the confusion caused by some unfortunate
9 passages in NORR's report have been clarified,
10 namely, the load tables which were relied upon by
11 NORR and were the foundation of its criticism of
12 Coreslab are only a guide and are superceded by the
13 actual engineered design. In light of this and the
14 slab's actual superior performance, NORR's reliance
15 on the load tables was unreasonable.
16 Secondly, Coreslab did not mislead the
17 owner during the bidding process. To the contrary,
18 they were forthright and consistent throughout and
19 it was reasonable for the owner to go with them as
20 opposed to Precon who flip-flopped.
21 Finally, Coreslab did not thwart the
22 waterproofing efforts. To the contrary, they aided
23 the process in collaboration with ATA and Trow.
24 And those are my submissions. Thank
25 you.

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1 THE COMMISSIONER: Thank you,
2 Mr. Criminisi.
3 Mr. Title, thank you.
4 MR. TITLE: Thank you, Commissioner.
5 I wish to reiterate the various
6 comments made to date, this morning about the
7 superlative manner in which Commission Counsel and
8 the Commission itself has conducted this matter.
9 I want to proceed by indicating a brief
10 analysis of the causation issues principally, and
11 with the benefit of having read some of my
12 friends' or all of my friends' written submissions,
13 to provide some recommendations regarding
14 preventative measures that might be taken in the
15 future.
16 And in this regard, I have relied very
17 heavily on the evidence of Mr. Jeffries, the
18 provincial engineer for the Ministry of Labour, who
19 testified with the most obvious experience, wisdom
20 and concern for public safety for the Province of
21 Ontario and I placed heavy emphasis in my written
22 submission on his testimony and I do today. So I
23 will refer to that and his meaningful description
24 of the root causes of this collapse.
25 And to begin that discussion, I wish to

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1 adopt the analogy raised by my friend, Mr. Oatley,
2 when he said that this collapse was more like a
3 cancer than any other possible analogy, that is,
4 that we are looking at a process which is affected
5 both by time and by lack of treatment, lack of
6 effective treatment and has a root cause. And if
7 left untreated for a long enough period of time, we
8 have an advanced disease that becomes incurable.
9 So I do believe that that analogy is
10 fairly appropriate, in particular when examined
11 alongside the corrosion timeline provided by NORR
12 in its excellent analysis of the 29-year period --
13 actually, the 32-year period in total that this
14 corrosion continued.
15 So I'll take you to the quote from
16 Mr. Jeffries, which is at page 10 of our written
17 submission, a quote from his report when he stated
18 that:
19 "The ongoing leakage" -- and the
20 word "ongoing" is important -- "and
21 the deterioration of the structural
22 capacity of the building are
23 directly related."
24 And that refers as well to the timeline
25 issue.

<p style="text-align: right;">Page 20635</p> <p>1 "The fact that owners of the mall 2 continued to use inappropriate 3 solutions to address the leakage 4 issues eventually led to the 5 collapse and death of two people." 6 He states: 7 "Early on in the history of the 8 mall professional advice was given 9 to apply a proper and long lasting 10 solution (a waterproof membrane), 11 but in an effort to save money, 12 cheaper solutions were implemented." 13 Mr. Jeffries was questioned by Counsel 14 for NorDev, my friend Mr. Kearns. He asked 15 Mr. Jeffries: 16 "Which professional advice are you 17 referring to having been given 18 here?" 19 And Mr. Jeffries responded the Halsall 20 Report of 1998 and 1999, and there were previous 21 reports from Trow Group. 22 So Mr. Jeffries specifically alluded to 23 Algo Central, Algocen and NorDev as the owners who 24 early on in the history of the mall implemented 25 cheaper solutions than those recommended by</p>	<p style="text-align: right;">Page 20637</p> <p>1 "What are the inadequacies in 2 these kinds of reports?" 3 Three of them performed during my 4 client's ownership. 5 And Dr. Saffarini stated that -- a 6 number of things, but in its essence he stated: 7 "[...] these reports should 8 include [...] a fair assessment of 9 the risk and a fair assessment of 10 the cost that would be involved to 11 remedy or mitigate that risk. So if 12 that is what is at the core of the 13 objective, then how you meet that, 14 in terms of doing exhaustive testing 15 or going through a reporting or 16 analysis or whatever, that becomes 17 the detail, but the report has to 18 meet these main objectives [...] We 19 found that, perhaps, these 20 objectives were not consistently met 21 and certainly, the issue of the 22 structural safety ultimately was not 23 served by the various inspections 24 that were carried out." 25 He goes on to say that in reference to</p>
<p style="text-align: right;">Page 20636</p> <p>1 professional engineers in an effort to save money. 2 Mr. Jeffries traced these cheaper 3 solutions to the events which ultimately led to the 4 collapse of the building and the death of two 5 persons. 6 And I emphasize this because when we 7 again look at the timeline from 1979, 1980, to the 8 date when my client purchased the mall in 2005, 25 9 years of leakage and corrosion had already elapsed 10 and occurred during the ownership of those two 11 parties. 12 By 2005, NORR identified that the 13 structural steel in the mall was likely already 14 critically affected. 15 Dr. Saffarini referred to the first 25 16 years of inaction as a key causation factor and 17 that by that date it ought to have been evident to 18 an inspector that there was structural damage. He 19 criticizes the reports of Construction Control Inc. 20 performed in 2005 and he criticized the reports of 21 M.R. Wright in 2009 and 2012. 22 And I brought him through that in my 23 cross-examination of Dr. Saffarini, and I set that 24 out in our written submission at page 9 and I asked 25 him:</p>	<p style="text-align: right;">Page 20638</p> <p>1 2009 and the M.R. Wright Report: 2 "I think that the bulk of our 3 findings indicate the kind of 4 reporting that needed to be made, in 5 terms of documenting the leakage, 6 setting alarms [...] as to what the 7 consequences of these leakages are, 8 and so on [...]" 9 And he refers specifically to 10 opportunities missed, that is, that a report was 11 done in 2005 when the structure was very likely 12 compromised according to NORR and 2009 by which 13 time 29 years of leakage had occurred, and 14 according to Dr. Saffarini: 15 "Using our timeline for the rate 16 of corrosion progression, we would 17 have considered that by that time 18 there must have been locations which 19 were, perhaps, in severe and 20 certainly in the medium stage." 21 So the result of that analysis is that 22 Eastwood Mall Inc. owned the property for four 23 years as of 2009, and by that time NORR found that 24 corrosion had progressed to a severe and certainly 25 medium stage of corrosion.</p>

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1 Now, we noticed from its graph, a very
2 detailed graph of the distressed members throughout
3 the mall that they were numerous and they ought to
4 have been detected.
5 So those are two very serious missed
6 opportunities.
7 So the combination of Dr. Saffarini's
8 findings and Mr. Jeffries' findings in looking at
9 the corrosion timeline and the lack of effective
10 solutions is that 29 years of leakage occurred that
11 led to a critical state in the structure of the
12 building.
13 Now, I go on to deal with problems of
14 disclosure in my written submission, and Mr. Oatley
15 in his excellent written submission also referred
16 to elements of tort and contract that also deal
17 with disclosure obligations and, in particular,
18 false or negligent misrepresentations. And it is
19 of course not this Commission's task to make
20 findings in that direction, but we use them as a
21 guideline for our submissions.
22 I think it is obvious that tort and
23 contract remedies are not adequate, so by referring
24 to that doctrine, I want to make that submission to
25 you. They are designed to provide financial

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1 compensation only between private parties, and the
2 doctrines do not assist us in terms of general
3 public health and safety.
4 But I would also point out that the
5 conduct of NorDev in its sale to Eastwood Mall Inc.
6 very likely amounted to a false misrepresentation
7 under civil doctrine, civil law doctrine. And when
8 I deal with that, I have also set out
9 Mr. Kennealy's testimony when I questioned him in
10 cross-examination.
11 I put that forward to suggest that this
12 was another fault line in this case. It was
13 submitted earlier by Counsel that Algo Central, and
14 I think Mr. Howe stated this, had no obligation to
15 submit the Trow Report to Elliot Lake Retirement
16 Living. That well may be because the obligation
17 arises either by contract or by some duty of care
18 under the law.
19 He may well be right that in that
20 transaction there was no obligation. But I submit
21 that in the transaction between NorDev and Eastwood
22 Mall Inc., there was active misrepresentation that
23 would qualify for a finding of fraudulent
24 misrepresentation under the civil law.
25 And I set out that exchange in our

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1 written submission when I asked Mr. Kennealy in
2 cross-examination, first of all, which is at page
3 14:
4 "Question: And as you pointed out
5 earlier, you therefore did not carry
6 out either Option 1 or Option 2 at
7 any of the time that Nordev owned
8 the property from 1999 to 2005; is
9 that correct?
10 Answer: As outlined here, yes."
11 And I am referring to the Halsall
12 Report, Exhibit No. 5348.
13 And I think it is common ground that
14 NorDev did not carry out Option 1 or Option 2 of
15 the Halsall Report. The rout and seal option was
16 required to be supervised by an engineer, designed
17 by an engineer and carried out by specialty
18 contractor to ensure correct detailing and
19 installation. It wasn't done.
20 And my next question was:
21 "Question: And your evidence is,
22 as you indicated to Mr. Elliott,
23 that from 1999 when you purchased
24 the property until 2005 when you
25 sold it, you had not entered into

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1 any major capital expenditures in
2 relation to the roof whatsoever, is
3 that correct?
4 Answer: Yes."
5 And the question:
6 "Question: And from what I
7 understand of your evidence, you and
8 Ms. Guertin were involved in
9 answering questions for purposes of
10 the due diligence phase of the
11 agreement, is that correct?
12 Answer: Yes.
13 Question: You were aware that
14 Mr. Nazarian and his lender were
15 conducting a building survey?
16 Answer: Yes.
17 Question: And did you indicate
18 to Mr. Nazarian that you had
19 received estimates of \$433,000, or
20 possibly over \$700,000 to conduct
21 concrete restoration and waterproof
22 repairs to the roof?
23 Answer: I don't think we
24 actually said a number. Like we
25 told him of the maintenance program

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1 that we had, and we told him we had
2 folks come in and look at it when we
3 purchased it. I do not believe we
4 gave him a number."
5 Now, if this statement is closely
6 analyzed and if this is the statement that he made
7 to Mr. Nazarian, he is admitting that he omitted
8 the projected cost of the repairs that he well knew
9 from the Halsall Report. He knew they were costs
10 of \$433,000 or possibly over \$700,000.
11 He says:
12 "I don't think we actually said a
13 number."
14 Well, that is a very serious omission.
15 "[...] we told him of the
16 maintenance program that we had, and
17 we told him we had folks come in and
18 look at it [...]"
19 That statement is misleading. It gives
20 the impression that his maintenance program was
21 approved by some folks that looked at it,
22 presumably professionals or professional engineers,
23 and that wasn't true. No maintenance program was
24 ever recommended or approved.
25 And he says again:

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1 "I do not believe we gave him a
2 number."
3 So he gives the impression that he had
4 an approved system of maintenance and omitted to
5 give the projected costs which he was aware of when
6 asked in the course of the due diligence phase.
7 Now, the law is that misrepresentation
8 can occur by omission very easily. And even though
9 this transaction involved an as-is clause, there
10 remains liability for a latent defect if the defect
11 is not discoverable by usual observations. So here
12 we had what I would consider to be a latent defect,
13 in my submission. You had a missing membrane. You
14 had a membrane that was not replaced and you had a
15 maintenance program that was not effective or nor
16 recommended. None of that was told to Mr.
17 Nazarian. None of that is covered by the as-is
18 clause.
19 And if it is misleading, then it falls
20 under the doctrine of false misrepresentation.
21 That would have to also be material and relied upon
22 and cause damage, but we need not go through all
23 the hoops. Mr. Oatley did that in his written
24 submission.
25 I only point that out because I have

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1 made the submission that the statements made were
2 unlawful under the civil law, in my submission, and
3 they led to serious difficulties during the first
4 four years of ownership by Eastwood Mall Inc. They
5 led to a precarious position where there was
6 inadequate understanding of the depth of the
7 problem, the technical aspects of the solution.
8 All of that was withheld from Eastwood Mall Inc.
9 It was left to its own devices and it wasted time
10 on our corrosion timeline. By 2009, as I
11 indicated, we had a critical condition existing.
12 So I submit that that non-disclosure
13 was very, very serious in these circumstances.
14 So with regard to what I have said in
15 my submissions is the inadequacy of tort law or
16 even contract law in these circumstances, I have
17 had the benefit of reading many of my friends'
18 recommendations with great interest, and in
19 particular, there are recommendations regarding
20 standards and protocols for inspectors.
21 And in this regard, I refer to
22 Dr. Saffarini's testimony as to what he would
23 expect in a properly conducted inspection, and I am
24 gleaned from his testimony on page 9 and I have
25 set out -- I am setting out a list of what I

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1 believe those steps should be, and there may have
2 to be a protocol under the Ontario Building Code to
3 codify those various segments of an Inspection
4 Report for it to comply with the Ontario Building
5 Code. So that is one of our recommendations.
6 And the first is that there must be an
7 identification of the issues. Clearly, that failed
8 in this case. And there must be a detailed effort
9 if necessary to uncover materials, such as drywall
10 or other materials, a sustained effort to identify
11 the structural issues.
12 Secondly, Dr. Saffarini speaks of a
13 risk assessment.
14 Thirdly, he speaks of a remedy and cost
15 assessment.
16 Fourthly, he speaks of -- and this is
17 one recommended by Mr. Jeffries -- a distinct
18 structural safety assessment. In other words, it
19 may not be sufficient for an architect to conduct a
20 building condition survey, but there should always
21 be an engineer conducting an analysis of the
22 structural aspects of the building for purposes of
23 these reports.
24 Dr. Saffarini states that there should
25 be warnings and alerts regarding potential

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1 consequences.

2 And finally, he makes the important

3 recommendation that if additional scope is

4 required, then it should be stated in the report,

5 additional scope or further investigation, and to

6 detail what that further investigation needs to be.

7 For example, if Mr. Wood is retained to deal with

8 an Order to Comply, he should not stop with the

9 Order to Comply.

10 In fact, in my submission, Mr. Wood

11 limited his own scope. In his letter of

12 acknowledgment that he had been engaged, Mr. Wood

13 stated to Mr. Fabris, I am pleased to accept the

14 engagement, et cetera. I will attempt to verify

15 the validity of the City's concerns.

16 He was not asked to verify the validity

17 of the City's concerns. He was asked to deal with

18 the Order to Comply. It appeared as though he

19 narrowed his own scope, which is just the opposite

20 of what he ought to do, that is, to examine the

21 matter thoroughly, and I would agree with

22 Mr. Oatley's characterization that it was at

23 cursory report, and make recommendations for

24 additional scope if needed and further

25 investigation.

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1 And if those six steps were followed in

2 every single Inspection Report, I believe that it

3 is possible that we could avoid such tragedies in

4 the future.

5 Those are my submissions, sir.

6 THE COMMISSIONER: Thank you,

7 Mr. Title.

8 Counsel who have made submissions and

9 who wish to leave don't have to stay if they don't

10 wish to. That is fine.

11 Mr. Myles, I think you are next.

12 MR. MYLES: Mr. Commissioner, Mr. Moyer

13 will speak for SAGE.

14 THE COMMISSIONER: Thank you.

15 Mr. Moyer.

16 MR. MOYER: Good morning,

17 Mr. Commissioner.

18 THE COMMISSIONER: Good morning, sir.

19 MR. MOYER: My name is Keith Moyer.

20 I'm representing SAGE along with Mr. Myles.

21 The Commission of Inquiry has been

22 convened to gather factual evidence as to what may

23 have been the cause of the collapse of the Algo

24 Centre Mall in 2012 and to ask for public input on

25 ways to prevent such an incident from reoccurring.

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1 It has further been tasked with

2 reviewing what occurred after the collapse by way

3 of emergency procedures for rescue and recovery by

4 municipal forces and provincial and outside

5 agencies. This latter task shall not be addressed

6 in this brief, but in a separate brief when Phase

7 II of the Inquiry is completed.

8 At least one member of our organization

9 has been present at all sessions of the Inquiry

10 hearings and, coupled with the review of documents

11 by many of our members and reviewing of transcript

12 evidence, SAGE has endeavoured to carefully follow

13 and understand all evidence given and recorded.

14 From this exhaustive undertaking we

15 have garnered many observations which shall be

16 articulated later in this brief and a number of

17 what we consider pertinent recommendations for

18 consideration by Mr. Commissioner and his staff and

19 Counsel.

20 It should be emphasized that no member

21 of SAGE has a law degree or legal background, and

22 we have done our best to follow details of the

23 Inquiry as it unfolded and attempted to gather

24 information and formulate observations based on

25 what we have heard and seen in an effort to assist

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1 the Commissioner to arrive at his final

2 recommendations based on some grass roots, common

3 sense observations from people who live here.

4 We apologize for any lack of incorrect

5 legal proceedings and wording.

6 The collapse of the Algo Centre Mall in

7 2012 was a tragedy that affected the lives of most

8 citizens of Elliot Lake in some way. SAGE

9 represents seniors of Elliot Lake who comprise

10 perhaps the largest demographic of the community.

11 The mall was important to many seniors

12 who depend on its location and convenience for

13 their shopping and some services. However, seniors

14 were not the only citizens affected.

15 SAGE originally became involved due to

16 what was viewed as some rather serious shortcomings

17 on what occurred post-collapse but since has

18 discovered that there were also many unidentified

19 actions or inactions which led up to the collapse.

20 As testimony unfolded, it was

21 discovered that those who ought to have known

22 certain conditions appeared to have no idea or

23 simply had no desire to know how bad things were

24 becoming.

25 It appeared that almost every resident

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1 knew things were bad and getting worse with almost
2 continued water penetration into and through the
3 roof and onto vital structural steel supports of
4 the structure.
5 Those who ought to have known and ought
6 to have demanded immediate action to stop this
7 deterioration appeared to have been in denial, that
8 is, until the last owner took possession.
9 SAGE felt that in the interests of
10 truth and to prevent such a tragedy from ever
11 reoccurring that it may be able to gather facts and
12 formulate recommendations to the Commissioner for
13 his consideration and submission to a higher power.
14 A number of SAGE members are from
15 varied backgrounds which involve construction
16 management, building management, as well as
17 emergency response, so it was felt that SAGE could
18 make some effective and meaningful contribution to
19 the Commission of Inquiry.
20 Observations.
21 While a good deal of evidence presented
22 has been sketchy and peppered with many cases of
23 memory loss, much has come to light as to what led
24 up to this unfortunate occurrence which led to the
25 death of two innocent citizens of this community

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1 and the upset of many more lives and livelihoods.
2 One, it has become quite clear that an
3 original design was undertaken against the
4 professional advice of engineers and architects to
5 satisfy economic concerns.
6 Two, it has been quite clear that lack
7 of diligence and maintenance -- sorry, lack of
8 diligent maintenance and proper corrective actions
9 through three successive owners allowed continued
10 deterioration of the structure despite numerous
11 engineering reports pointing out concerns and
12 identifying recommended corrective action, again,
13 based on apparent economic concerns.
14 It would appear that many decisions
15 were made in secret between a compliant Municipal
16 Council and the first two owners of the facility
17 with little regard for what was happening through
18 many years right in front of their eyes.
19 Four, it would appear that a number of
20 professional reports identifying concerns and
21 actions were never brought to the attention of
22 municipal officials who could have ordered
23 immediate actions or to the attention of subsequent
24 owners of the facility.
25 Five, it would appear that through the

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1 ownership of the first two owners of the facility
2 no action was ever sought by municipal or other
3 authorities until the current and last owner took
4 possession, despite the fact that everyone in the
5 municipality knew of continued leakage from the
6 roof and complaints from the municipality's own
7 library staff.
8 Six, it would appear that a
9 bureaucratic system for complaints prevented the
10 municipality from ever recognizing that anyone had
11 complained about the conditions in the facility,
12 always citing a systemic barrier of process and
13 procedure which the public was never made fully
14 aware of. People believed that their concerns
15 would be addressed while in reality they were being
16 ignored.
17 Seven, it would appear that the
18 purchase of the mall by the second owner was
19 carried out with as much secrecy as possible
20 between the purchaser and the co-operative
21 municipal Mayor who also sat on the Board of
22 Directors of the same purchaser. Minimal
23 information was given to Council by the
24 Mayor/director in steering a decision of Council to
25 fund a couple of studies in a building evaluation

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1 of the mall and none of the levels were ever
2 produced as required by the contract. In addition,
3 the extent of the problems with said building and
4 recommendations and cost to remediate were not
5 given to the Board itself in order for them to
6 arrive at a decision to purchase it.
7 Eight, it would appear that the second
8 owner was making healthy profits but chose to
9 collect wealth rather than spend the monies on
10 recommended remedial work to stop the leakage and
11 further deterioration, and the municipality chose
12 to turn a blind eye to continuing leakage despite
13 being informed by their own library employees and
14 instead chose to hide behind an artificial
15 requirement to get a written complaint sent
16 directly to the Chief Building Official.
17 Nine, it would appear that the third
18 owner either did not know what he was purchasing or
19 refused to undertake the due diligence to find out
20 what he was facing.
21 Ten, it would appear the third owner
22 became profit-driven and simply promised things in
23 hopes the problems could be resolved with band-aids
24 and those seeking remedy would eventually leave him
25 alone.

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1 Eleven, it would appear that despite an
2 entire year passing since the collapse, the City of
3 Elliot Lake has done nothing to improve the
4 procedures and policies and is awaiting the
5 recommendations to come forth from this Commission
6 before taking any positive action.
7 Recommendations.
8 SAGE has put forth 16 individual
9 recommendations directed to all participants and
10 Commission Counsel along with a rationale for each.
11 We have also presented eleven
12 individual observations which our recommendations
13 were partially based on, as well as six comments
14 which we felt were relevant to the purpose of the
15 Commission of Inquiry.
16 In closing, SAGE would like to express
17 our appreciation to both Mr. Commissioner and the
18 Commission staff and Counsel for permitting us to
19 participate on behalf of our members and other
20 citizens of Elliot Lake. We have appreciated the
21 opportunity to observe, listen, think outside our
22 daily lives and be permitted to actively
23 participate, develop and submit our recommendations
24 for the consideration of Mr. Commissioner and his
25 final recommendations to the Province of Ontario.

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1 Thank you.
2 THE COMMISSIONER: Thank you,
3 Mr. Moyer.
4 Well, we are moving right along. I'm
5 reminded of the song by Simon and Garfunkel which
6 goes way back, and I would sing it to you if I had
7 a better voice. Slow down, you are going too fast,
8 we gotta make the morning last.
9 That being said, Mr. Outerbridge, I'll
10 hear from you.
11 MR. OUTERBRIDGE: I'm afraid I can't
12 indulge you. I think I only have about five or ten
13 minutes of submissions, Mr. Commissioner, but I
14 will speak slowly.
15 The testimony last week,
16 Mr. Commissioner, I think has put the Inquiry in a
17 much needed perspective. The pain and loss of
18 those directly affected is a reminder of why we are
19 here and why it is important to explore the events
20 carefully and fully and to develop a path forward.
21 And Trow has sought in its submissions to assist in
22 a limited way in providing what it hopes is a full
23 and careful review of the facts relating to Trow
24 and to identify some relevant considerations for
25 policy proposals going forward.

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1 What I want to do today in just a few
2 minutes is to identify the core facts relating to
3 Trow's involvement. Ultimately, I think any
4 party's involvement in the mall can be distilled
5 down to a few essential facts in terms of what is
6 important to the Inquiry and in terms of what is
7 distinctive to that party, and so there is four
8 facts relating to Trow that I wish to highlight.
9 The first is that Trow identified the
10 potential threat to the structural integrity of the
11 roof in its reports, and I emphasize this point for
12 two reasons. One is it is notable in itself
13 because it shows that the structural issue was
14 foreseeable, that the threat to the structural
15 integrity of the mall was foreseeable. It is also
16 notable because of the early stage at which that
17 point was raised in the Trow Reports.
18 Trow examined the mall in 1991, which
19 was 21 years before the collapse, and identified a
20 potential threat to the structural integrity of the
21 mall 21 years before the mall collapsed, and again
22 in 1994, 18 years before the mall collapsed.
23 It was structurally sound at the time,
24 as NORR concluded, but despite that we see
25 statements like the following in the '91 Trow

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1 Report, a recommendation that repairs be carried
2 out as soon as possible in order to, quote,
3 "maintain the structural integrity of the slab";
4 and in the '94 report a statement that with time
5 the amount of debonding is likely to increase, thus
6 becoming a structural concern; and then in the '95
7 report, the most pronounced reference to the
8 structural issue, the conclusion that repairs must
9 be carried out as soon as possible in order to
10 maintain the structural integrity of the slab
11 because, quote, "it will not be able to safely
12 carry the dead load of the topping".
13 So that is the first point I wanted to
14 emphasize, that the potential for a structural
15 failure of this still sound mall was foretold at an
16 early stage.
17 Secondly, Trow's advice was understood.
18 I think there has been an issue sometimes in this
19 Inquiry about whether engineers were making
20 themselves understood. This was not a case about
21 engineering advice that was minimized or not
22 understood. Mr. Caughill and Mr. Leistner both
23 testified that they did understand what Trow was
24 telling them, and we see Mr. Leistner's
25 understanding quite clearly articulated in the memo

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1 that he wrote to the president of Algoma when he
2 specifically said that he, Leistner, was:
3 "[...] concerned with the
4 long-term structural integrity of
5 the parking deck", and I'm reading
6 from his memo, "due to the already
7 mentioned leakage problems. The
8 subject water leakage has caused
9 concerns with both the
10 disintegration of the concrete and
11 the corrosion of the structural
12 steel."
13 [As read.]
14 That is a statement to the president of
15 Algoma in 1994, and the evidence from Mr. Leistner
16 was that his concerns about the concrete and the
17 steel derive from the Trow Reports.
18 So this was advice given and advice
19 understood and the link to corrosion was
20 understood.
21 The third point is that Trow not only
22 identified the issue but identified the solution
23 that would have prevented the collapse, identified
24 it in 1991 and again in 1995, consistently
25 recommending a waterproofing membrane and an

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1 asphalt wearing course.
2 Trow's evidence was that this solution
3 would have addressed all of the forms of
4 deterioration that the mall was experiencing, the
5 deterioration to the steel, the concrete and
6 everything else.
7 Dr. Saffarini in his oral testimony and
8 NORR in their report confirmed that the
9 waterproofing option was viable, and in fact,
10 Dr. Saffarini in this room described it as the
11 ideal solution and the only effective solution.
12 Mr. Jeffries in his report described it as a proper
13 and long-lasting solution.
14 So again, 21 years and, again, in 1995
15 17 years in advance of the collapse not only the
16 problem but the solution were articulated.
17 Finally, the fourth point I would raise
18 about the Trow involvement is that Trow's advice
19 was that the repairs should be carried out as soon
20 as possible. The '91 report states that it should
21 be carried out as soon as possible and before any
22 further ingress of chlorides. The letter that came
23 from Trow after the '91 report in 1991 said to
24 do -- or talked about doing the repairs now,
25 quote/unquote.

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1 The "as soon as possible" language we
2 see again in their later reports, and they
3 specifically talk about beginning exploratory work
4 in the spring of 1996 in their '95 report.
5 So in conclusion on the facts relating
6 to Trow, the problem of water leakage was
7 identified; the danger that it posed was
8 identified; the solution was identified; and the
9 timing was identified, all more than 20 years
10 before the collapse.
11 In closing, I just want to address
12 briefly that, subject to any questions you may
13 have, Mr. Commissioner, on the policy submissions
14 Trow has not included in its brief specific
15 recommendations, but what Trow did do, as you will
16 have seen, is review policy proposals that others
17 have put forward through the course of this Inquiry
18 and comment on some of the pros and cons and
19 considerations to be taken into account.
20 For that purpose, Trow assembled a
21 panel of three experts in the engineering aspects
22 of parking structures. The initial Chair of the
23 CSA Parking Structures Standard, Mr. John Bickley,
24 was one of those people. The subsequent Chair and
25 Current Co-Chair of the CSA Parking Structures

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1 Standard, Mr. Andy Camaker, also was involved. And
2 Mr. John Rile, who is a 60-year veteran of concrete
3 structural engineering -- or he is not a structural
4 engineer. He is a veteran of concrete structures
5 and providing engineering advice relating to
6 concrete. And they have provided, as you will see
7 in the Trow submissions, some input on those
8 various options.
9 And I guess the one thing I would
10 stress is that what emerges through that
11 discussion, because we assembled those three
12 gentlemen and had an internal panel discussion
13 about these points, is that that discussion, and I
14 know that is the purpose of your own panel
15 discussions coming up, identified a number of both
16 pros and cons of the various recommendations, or if
17 not cons, at least things to think about, that the
18 recommendations need to work and they need to not
19 produce unintended negative consequences and we
20 have tried to articulate some of those thoughts in
21 the submissions.
22 Subject to any questions, those are my
23 submissions. Thank you.
24 THE COMMISSIONER: Thank you very much,
25 Mr. Outerbridge. We'll be looking very carefully

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1 at those recommendations in particular.
2 And Mr. Hodgson.
3 Good morning, sir.
4 MR. PICONE: Good morning,
5 Mr. Commissioner. I'm not Mr. Hodgson. For the
6 record, I'm John Picone, his colleague.
7 THE COMMISSIONER: Yes, you have been
8 here before.
9 MR. PICONE: Yes, and I am here to make
10 submissions on behalf of Halsall, Michael Buckley
11 and Albert Celli.
12 And I only have three points that I
13 would like to make very briefly, and in so doing I
14 hope to respond to some of the other submissions
15 you have received in writing and that we have heard
16 this morning.
17 The first of those points is that we
18 aren't dealing with circumstances in which the
19 owners, specifically Retirement Living, wasn't
20 aware of the problem or of the leaks.
21 The second point I would like to
22 discuss is that Retirement Living ignored Halsall's
23 recommendations and instead continued with an
24 ineffective approach that had been used by Algoma
25 before them.

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1 And the third point that I would like
2 to make is that Halsall's inspections were entirely
3 sufficient and adequate and their reports were
4 accurate.
5 So for the first point I would like to
6 say that the Halsall 1999 report does make it clear
7 that there was deterioration at points of leakage
8 and corrosion was occurring where steel was exposed
9 to water.
10 In their written submissions Retirement
11 Living has said that this might not be obvious to a
12 layperson, but we do know that it was obvious to
13 Mr. Kennealy. He did testify that he was aware of
14 this, and I think that is the point.
15 And the people affiliated with
16 Retirement Living were also aware. We have seen
17 Exhibit No. 85 a number of times, and that is an
18 e-mail from Randy Beltramin to Bruce Caughill, and
19 I won't read what it says. It is set out in our
20 written submissions. But it does make it very
21 clear that Retirement Living is doing a continue
22 as-is approach as opposed to what was recommended.
23 Now, this e-mail was annotated, "Randy
24 [Beltramin] spoke with Richard today". Now, we
25 don't know which Richard that is and we don't have

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1 evidence that that conversation took place but for
2 this annotation, but this could be Richard Kennealy
3 or Richard Quinn, and I don't think it matters. I
4 think the point I am trying to make is that
5 Retirement Living was aware of the problem.
6 And I don't think there is any merit to
7 the suggestion that they weren't aware of the
8 extent of the leaks. The Commission has received
9 an abundance of evidence in this regard which was
10 very nicely summarized in the submissions of ELMAC,
11 and I won't repeat any of those examples here.
12 And the second point I wanted to make
13 was that although Retirement Living knew about the
14 problem, they ignored Halsall's recommendations.
15 Now, Halsall in their report said the
16 roof needed to be fixed and gave two options to
17 control the leakage. The option to do nothing or
18 to continue as is wasn't presented by Halsall.
19 We have heard Ken Snow's evidence.
20 Now, Ken Snow told us that he and his team simply
21 continued to do what they had done when ACP owned
22 the mall.
23 And we heard Richard Quinn's evidence,
24 and this was I think inconsistent at times, but he
25 did say that Retirement Living's intention was to

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1 keep doing what ACP had done but, in his words,
2 properly. He also said that perhaps they had been
3 optimists and perhaps they had been naive.
4 Now, Mr. Kennealy admitted twice under
5 cross-examination, once when he was questioned by
6 Mr. Elliott and once when he was questioned by
7 Mr. Title, that Retirement Living hadn't followed
8 Halsall's recommendations. When Mr. Elliott asked
9 him the question:
10 "Question: I said you didn't
11 actually follow their advice. They
12 gave you two options --"
13 Mr. Kennealy responded:
14 "Answer: We did not choose one of
15 the two options, that is correct."
16 So why not take Halsall's advice? In
17 my respectful submission, it was because of money.
18 And I am not going to go into the details of
19 capital expenditure versus operating expense. That
20 is set out in our written submissions and in the
21 written submissions of others, and I will leave it
22 at that.
23 Now, Retirement Living in their written
24 submissions has suggested that even though they
25 didn't follow Halsall's recommendation, Halsall's

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1 rout and seal option wouldn't have worked, as if
2 this somehow diminishes their responsibility for
3 what they did do, which was a continue as-is
4 approach.

5 And I would make the respectful
6 submission, Mr. Commissioner, that it isn't
7 necessary for you to make a finding in respect of
8 Halsall's rout and seal option except for a finding
9 that Retirement Living never pursued it. The fact
10 of the matter is simply it was never tried and it
11 isn't part of the narrative.

12 What did happen was Retirement Living
13 continued to do what they had done before and that
14 wasn't effective and that led to certain
15 consequences.

16 If Retirement Living had proceeded with
17 Halsall's rout and seal option and it hadn't have
18 been successful, then perhaps people could say for
19 certain that it wouldn't have been effective, but
20 that didn't happen.

21 Now, this rout and seal option was
22 never attempted and nobody really knows what would
23 have happened. It is hypothetical. But in my
24 respectful submission, the rout and seal option was
25 viable and I think that is supported by the best

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1 evidence we have.

2 Some individuals have testified that it
3 wouldn't have been effective. Some individuals
4 have testified that it wouldn't be a complete fix.
5 But nobody has given us an engineering explanation
6 as to why it wouldn't have worked. Nobody has
7 taken the stand and walked us through why Halsall's
8 rout and seal option would not have been viable,
9 but on the other hand, we do have three
10 professional engineers who testified that the
11 option was viable and two of these engineers
12 studied the deck themselves in 1999. Both of these
13 engineers were supervised by a senior engineer,
14 Michael Buckley, who testified when cross-examined
15 by Counsel for Retirement Living that Halsall's
16 rout and seal option was a viable option at a lower
17 price.

18 Now, Mr. Celli never said, as it has
19 been suggested in some written submissions, that
20 the ongoing maintenance of a rout and seal option
21 meant that leaks would continue. In fact, when he
22 was cross-examined by Counsel for Retirement
23 Living, he said the rout and seal option properly
24 done would have kept the building dry.

25 And Mr. Truman offered similar

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1 evidence. He said that the rout and seal option,
2 if it were done properly, would have been viable.

3 Now, Mr. Buckley, Mr. Celli and
4 Mr. Truman, in my respectful submission, are in the
5 best position to give an opinion on the viability
6 of this option, and in the absence of any
7 explanation as to why it wouldn't have worked, I
8 would submit that this Commission should accept
9 their evidence.

10 The final point I wanted to make was
11 that Halsall's investigations and inspections of
12 the mall were sufficient and that their report was
13 accurate.

14 Now, Retirement Living acknowledged in
15 its written submissions that the purpose of
16 Halsall's 1999 report was to obtain information for
17 the purchaser to make a decision about whether or
18 not to buy the mall, not to deal specifically with
19 the leaking issue. And my friend, Mr. Simco, has
20 elaborated on this and I am not going to.

21 There is no guide for inspecting
22 corrosion of structural steel in Ontario for
23 enclosed occupied structures, and there is no
24 evidence, there is absolutely no evidence that
25 Halsall's conduct or that of its representatives

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1 ever fell below the standard of practice for a
2 professional engineer practising in Ontario in 1998
3 or 1999. In fact, NORR agreed that Halsall's
4 inspection menu was reasonable.

5 Halsall's 1999 report concluded:
6 "Corrosion of the steel structure
7 is minor, consisting of surface
8 corrosion or minor scaling of less
9 than 1 millimetre."
10 [As read.]

11 Now, Mr. Buckley clarified that that
12 was at the worst locations.

13 Dr. Saffarini testified that the
14 section loss measured by Halsall was consistent
15 with NORR's conclusions.

16 Now, having observed this section loss,
17 which was very minor, Halsall determined that there
18 was no reason to anticipate the development of a
19 critical condition, and it can't be said that
20 Halsall should have recommended an inspection
21 program when that would have been part of the
22 continue as is or do nothing option.

23 Halsall gave Retirement Living two
24 options, and in Mr. Truman's words, they were fix
25 it or fix it. And Halsall couldn't have reasonably

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1 anticipated that successive owners of the mall
2 would not take and would not be required to take
3 adequate steps to rectify the continuous leakage
4 problem.
5 As we have said in our written
6 submissions, in Halsall's experience, an owner
7 simply doesn't allow the roof of its structure to
8 leak continuously on its patrons for years.
9 It would seem that Halsall was the last
10 engineering firm to report on section loss, and
11 although it was insignificant in 1999, it is
12 unfortunate that other engineers subsequent to
13 Halsall didn't make similar reports.
14 But I would submit that other than with
15 the benefit of hindsight, there is no basis for any
16 criticism of the work done by Halsall or its
17 representatives in 1998 and 1999, and there is
18 certainly no evidence that Halsall's conduct in
19 those years was contrary to any engineering
20 standard of practice and there isn't any basis for
21 any finding of misconduct against Halsall or its
22 representatives.
23 Now, Mr. Commissioner, unless you have
24 any questions, those are Halsall's submissions.
25 THE COMMISSIONER: Thank you very much,

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1 Mr. Picone. I'll be reading those. I have looked
2 at them briefly, and I will be and Commission
3 Counsel will be reading them and considering them
4 very carefully.
5 Thank you very much.
6 MR. PICONE: Thank you.
7 THE COMMISSIONER: And I haven't seen
8 Mr. Shime here this morning. He is next on my
9 list. Have you any intelligence in that respect,
10 sir?
11 MR. CARR-HARRIS: No, and I haven't
12 spoken to him, but some of the out-of-towners like
13 Mr. Shime may have assumed there were specific days
14 they had to appear the way it is divided up in the
15 order.
16 And so I think you would have to
17 canvass the collected lawyers here if anybody who
18 hasn't --
19 THE COMMISSIONER: And I have been
20 informed, just looking down the list that counsel
21 for Mr. Keywan and Mr. Caughill, Bruce Caughill,
22 that is, will not be seeking to make submissions --
23 MR. CARR-HARRIS: That's correct.
24 THE COMMISSIONER: -- oral submissions.
25 And jumping ahead then, the next would

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1 be counsel for Mr. Derreck, Mr. Curtis.
2 MR. CURTIS: Good morning,
3 Mr. Commissioner. I was sort of planning on doing
4 this tomorrow. I'm sorry, I'm not entirely
5 prepared to go ahead today, I apologize.
6 THE COMMISSIONER: Yes, and although we
7 didn't lay out a particular schedule, apart from
8 time requested --
9 MR. CURTIS: It was in the order I
10 think that I saw, that it said Tuesday.
11 THE COMMISSIONER: It may have. I
12 haven't seen that. The only one I have seen is
13 this particular index.
14 Is anyone else prepared to go ahead at
15 this time?
16 MR. CARR-HARRIS: No volunteers?
17 THE COMMISSIONER: Now, I can't fault
18 people for not having been ready, bearing in mind,
19 as I say, the pace at which we have been
20 proceeding.
21 Do you have any suggestions for me,
22 Mr. Carr-Harris?
23 MR. CARR-HARRIS: Well, I have no
24 suggestions on how to get somebody to get up and
25 speak who doesn't want to, but I think the only

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1 suggestion we can is to notify everybody that this
2 is moving more quickly than we thought and
3 everybody should be here tomorrow --
4 THE COMMISSIONER: And ready to
5 proceed.
6 MR. CARR-HARRIS: -- ready to go,
7 because we could very well finish this tomorrow at
8 this rate, from the sounds of things.
9 THE COMMISSIONER: For sure. And so
10 with that, I think we'll break for the day then and
11 we'll start tomorrow morning at 9 o'clock nominally
12 with Mr. Shime; if not, we'll go directly to you,
13 Mr. Curtis. Will you be ready to go tomorrow?
14 MR. CURTIS: Absolutely, yes, and I
15 apologize.
16 THE COMMISSIONER: That is fine, and as
17 I say, it is understandable. I'm not being
18 critical. Things have progressed very quickly.
19 And so we'll start again tomorrow
20 morning, either with Mr. Shime, if he is present,
21 and if not, then with Thomas Derreck's
22 representation.
23 MR. CARR-HARRIS: Thank you,
24 Mr. Commissioner.
25 THE COMMISSIONER: Thank you.

<p>1 2 -- Adjourned at 12:15 p.m. 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 20675</p>
<p>1 REPORTER'S CERTIFICATE 2 3 I, DEANA SANTEDICOLA, RPR, CRR, 4 CSR, Certified Shorthand Reporter, certify: 5 That the foregoing proceedings were 6 taken before me at the time and place therein set 7 forth; 8 That the testimony of the witness 9 and all objections made at the time of the 10 examination were recorded stenographically by me 11 and were thereafter transcribed; 12 That the foregoing is a true and 13 correct transcript of my shorthand notes so taken. 14 15 16 17 Dated this 12th day of August, 2013. 18 19 <u>Deana Santedicola</u> 20 21 NEESON & ASSOCIATES 22 COURT REPORTING AND CAPTIONING INC. 23 PER: DEANA SANTEDICOLA, RPR, CRR, CSR 24 25</p>	<p>Page 20676</p>

<p style="text-align: center;">\$</p> <hr/> <p>\$433,000 20613:17 20642:19 20643:10</p> <p>\$700,000 20642:20 20643:10</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 20613:18 20641:6, 14 20670:9</p> <p>1.8 20612:23</p> <p>10 20571:7 20627:12 20634:16</p> <p>10:16 20605:25</p> <p>10:40 20606:1</p> <p>118 20589:11</p> <p>12-year-old 20551:7</p> <p>120 20619:1,4 20622:8,16 20624:4 20625:17 20626:2 20628:1,15 20629:11 20630:19</p> <p>126 20626:24</p> <p>131 20589:4</p> <p>133 20589:20</p> <p>14 20641:3</p> <p>15 20611:17 20614:10</p> <p>15-minute 20614:8</p> <p>1500 20601:5</p> <p>152 20619:7 20625:1,5 20631:19</p> <p>155 20590:22</p> <p>156 20590:22</p> <p>16 20655:8</p> <p>17 20660:15</p> <p>170 20619:5 20624:21</p>	<p>1782 20629:25</p> <p>1792 20628:17</p> <p>18 20657:22</p> <p>181 20628:7</p> <p>1915 20628:18</p> <p>1922 20624:7</p> <p>1926 20621:23</p> <p>1927 20631:4</p> <p>1957 20553:5</p> <p>1978 20588:2</p> <p>1979 20586:20 20636:7</p> <p>1980 20567:12 20569:9 20619:6 20624:25 20631:18 20636:7</p> <p>1981 20599:17</p> <p>1986 20607:21</p> <p>1989 20614:7</p> <p>1990 20600:6</p> <p>1990s 20554:5 20572:22</p> <p>1991 20600:6,21 20612:12 20657:18 20659:24 20660:23</p> <p>1992 20601:4 20608:1</p> <p>1993 20601:4,7</p> <p>1994 20553:13 20572:24 20630:4 20657:22 20659:15</p> <p>1995 20629:24 20630:5 20659:24 20660:14</p> <p>1996 20661:4</p> <p>1997 20601:16</p> <p>1998 20554:17 20559:1 20606:18 20610:4,18 20611:8 20635:20 20670:2</p> <p>1999 20590:19 20594:15 20607:9 20610:13,19</p>	<p>20611:8 20612:15, 21 20615:19,21 20635:20 20641:8, 23 20664:6 20668:12 20669:16 20670:3,5</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 20574:16 20641:6, 14</p> <p>20 20553:12 20605:24 20609:8 20631:7,8 20661:9</p> <p>2005 20595:8 20596:23 20636:8, 12,20 20638:11 20641:8,24</p> <p>2006 20579:13 20596:23</p> <p>2008 20595:9</p> <p>2009 20636:21 20638:1,12,23 20645:10</p> <p>2011 20579:16 20597:14 20598:2, 15 20599:1</p> <p>2012 20552:24 20555:5,13 20564:22 20599:1 20626:23 20636:21 20648:24 20650:7</p> <p>21 20588:4 20657:19,21 20660:14</p> <p>22 20588:2,4</p> <p>23rd 20552:24 20564:21</p> <p>24 20586:6</p> <p>25 20636:8,15</p> <p>250 20619:11 20625:10</p> <p>28 20552:7</p> <p>29 20586:17 20638:13 20639:10</p> <p>29-year 20634:12</p>	<hr/> <p style="text-align: center;">3</p> <hr/> <p>3 20630:25</p> <p>30 20571:14,23</p> <p>31-foot 20621:23</p> <p>32 20563:24 20571:7</p> <p>32-year 20634:13</p> <p>369/98 20588:3</p> <p>37 20552:24</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 20631:5</p> <p>40 20596:13</p> <p>41 20631:4</p> <p>417 20630:7</p> <p>42 20586:12 20629:22 20630:10</p> <p>44 20630:6</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>51 20630:23</p> <p>5149 20625:15</p> <p>5150 20625:15</p> <p>5162 20622:22</p> <p>5348 20641:12</p> <p>58 20628:19</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6.1 20630:25</p> <p>60-year 20662:2</p> <p>629 20628:25</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7.3 20631:6</p> <p>74 20628:19</p>	<hr/> <p style="text-align: center;">8</p> <hr/> <p>8-inch 20621:24</p> <p>80 20592:4</p> <p>85 20664:17</p> <p>87 20621:24 20622:6,25 20626:1</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 20627:12 20645:24</p> <p>90s 20608:6</p> <p>91 20657:25 20660:20,23</p> <p>94 20658:4</p> <p>95 20658:6 20661:4</p> <p>97 20602:13</p> <p>98 20598:9 20602:14 20612:22</p> <p>99 20602:14 20606:20</p> <p>9:00 20551:1</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m. 20551:1 20605:25 20606:1</p> <p>ability 20605:13</p> <p>above-noted 20626:3</p> <p>absence 20669:6</p> <p>absolutely 20580:8 20669:24</p> <p>abundance 20665:9</p> <p>accept 20556:8 20557:16 20647:13 20669:8</p> <p>acceptance 20556:7</p> <p>accepted 20556:4 20619:24 20624:11</p>
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