

ELLIOT LAKE COMMISSION OF INQUIRY

DAY 9

March 14, 2013



Neeson & Associates
COURT REPORTING AND CAPTIONING INC.

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

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ELLIOT LAKE COMMISSION OF INQUIRY

--- This is Day 9 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 14th day of March, 2013, commencing at 9:30 a.m.

REPORTED BY: Deana Santedicola
CSR, CRR, RPR

1 A P P E A R A N C E S:
2 Peter K. Doody, Esq., for the Commission
3 Ivana Nenadic, Ms., for the Commission
4 Robert Howe, Esq., Algoma Central
5 Properties
6 Leo Longo, Esq., Ontario Building
7 Officials Association
8 Douglas Elliot, Esq., ELMAC/SAGE
9 Alexandra Carr, Ms., ELMAC
10 Joseph Bisceglia, Esq., Gregory Saunders
11 Robert MacRae, Esq., Robert Wood
12 Paul Cassan, Esq., City of Elliot Lake
13 Douglas Kearns, Esq., Retirement Living and
14 NorDev
15 David Outerbridge, Esq., EXP Global Inc.
16 James Maloney, Esq., Rod Caughill
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10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGES

SUBMISSIONS RE ADJOURNMENT.....1621-1632
RULING.....1632-1633

WITNESS: RODNEY CAUGHILL
EXAMINATION IN-CHIEF BY MR. DOODY
(CONT'D).....1634-1727

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

INDEX OF EXHIBITS

NUMBER/DESCRIPTION	PAGE NO.
(No Exhibits Marked)	

1 -- Upon commencing at 9:00 a.m. on Thursday, March
2 14, 2013.

3

4 THE COMMISSIONER: Good morning,
5 everybody. Good morning, sir.

6 THE WITNESS: Good morning.

7 THE COMMISSIONER: Mr. Doody.

8 MR. DOODY: Good morning,
9 Mr. Commissioner.

10 Mr. Commissioner, there is an issue
11 which has arisen, which I have had some discussion
12 with some of my friends about.

13 As you will know, sir, there was an
14 engineering firm by the name of NORR has been
15 retained by the Crown to prepare a report in
16 respect of the causes of the collapse, and the
17 individual responsible for that report will be
18 testifying at this Commission.

19 They delivered an interim report which
20 was dated I believe November, and that has been
21 made available to the participants for some time.

22 They have prepared a final report,
23 which was delivered to us I believe yesterday and
24 has now been loaded on the Relativity database so
25 that it is available to all participants.

1 I have not read it. I read it --

2 THE COMMISSIONER: It is rather
3 voluminous, I gather.

4 MR. DOODY: It is voluminous,
5 Mr. Commissioner. I read a summary of it last
6 night. It explores the causes of the collapse and
7 goes into the history of the owners and
8 professionals who have dealt with the mall since it
9 was built.

10 It deals with the time obviously when
11 Algoma Central owned the mall. It deals with the
12 reports from the Trow Engineering firm.

13 Some of my friends have asked that Mr.
14 Caughill's cross-examination by them be postponed
15 until Tuesday so that they will have had an
16 opportunity to read the report which would
17 potentially influence their cross-examination.

18 As I have indicated, I have not read
19 the report. I have read a summary of it. From my
20 review, I have my doubts as to whether there is
21 anything new raised in it, but of course, I'm not
22 sitting in the chairs that my friends are sitting
23 in and they may well see it differently. And when
24 the entire report is read, it may be seen
25 differently.

1 We are faced with two or three
2 competing issues here, Mr. Commissioner.

3 One is that we need to move forward and
4 without delay complete this evidentiary phase of
5 the inquiry.

6 The second is, however, that we must be
7 fair to the participants and also fair obviously to
8 the witnesses.

9 So we have considered a number of
10 options.

11 One would be to have me finish my
12 examination in-chief of the witness and postpone
13 the cross-examination until Tuesday.

14 And what Commission Counsel have
15 proposed is -- well, and I should say another
16 alternative which has been suggested by some of my
17 friends is simply proceed and, if my friends wish
18 to apply later to bring Mr. Caughill back and ask
19 him questions arising out of the NORR Report, that
20 they be given an opportunity to make that
21 application, as some of them were told on an
22 earlier date.

23 Commission Counsel's position,
24 Mr. Commissioner, is that the cross-examinations
25 today should not be delayed. When I finish my

1 examination in-chief, my friends should be required
2 to commence their cross-examinations.

3 If, after reading the report over the
4 weekend, they wish to put further questions to Mr.
5 Caughill arising out of the NORR Report, in other
6 words, not new questions that they ought to have
7 thought of before they read the NORR Report but
8 arising out of the NORR Report, then they would --
9 we would bring Mr. Caughill back on Tuesday morning
10 for that purpose.

11 Some of my friends may wish to address
12 you on that point, Mr. Commissioner, and obviously
13 the decision is yours.

14 THE COMMISSIONER: Thank you.

15 Who wants to comment?

16 Mr. Kearns.

17 MR. KEARNS: Good morning,
18 Mr. Commissioner.

19 I did bring this to Mr. Doody's
20 attention last evening as I was preparing for Mr.
21 Caughill, the fact that we learned yesterday
22 afternoon that the NORR Report was ready.

23 I made a couple of suggestions, both of
24 which he has commented on.

25 The position being put forward today by

1 Commission Counsel is acceptable to me. I think we
2 should go ahead and conclude Mr. Caughill to the
3 extent that we can today, but it will be on the
4 understanding that Mr. Caughill will be produced on
5 Tuesday morning to answer those questions that
6 those of us may have arising from the report.

7 THE COMMISSIONER: I gathered that
8 Mr. Doody was undertaking to do that precise thing.

9 MR. DOODY: Yes.

10 MR. KEARNS: Okay, that is fine with me
11 then.

12 THE COMMISSIONER: Okay, anyone else?
13 Yes, sir.

14 MR. BISCEGLIA: Mr. MacRae is not here,
15 but when we began this hearing, Mr. Commissioner,
16 we were quite concerned that we did not have the
17 NORR Report.

18 THE COMMISSIONER: Well, you had the
19 interim report.

20 MR. BISCEGLIA: We did. We did.

21 And the NORR Report, as I see it from
22 my client's perspective and perhaps even from the
23 Commissioner's perspective, at the end of the day,
24 will be one of the primary pieces of evidence upon
25 which you are going to look at because the NORR

1 Report seems to review and analyze the involvement
2 of the various participants historically with
3 respect to the structure and on or at the time or
4 shortly before the collapse and then the forensic
5 investigation that followed thereafter.

6 It would appear to me, with the
7 greatest of respect to my friend's suggestion, that
8 for us to proceed to start the cross-examination of
9 Mr. Caughill in the absence of having that final
10 report would be, in my respectful view,
11 inappropriate, because a cross-examination doesn't
12 simply involve a number of specific questions on
13 specific items. One begins a cross-examination
14 laying the groundwork for the ultimate question
15 that one wants answered. And to do that without
16 reviewing the complete and final report, including
17 the forensic, puts us in a very difficult position.

18 The other point is this. It appears
19 now from the evidence that we have already heard
20 that Mr. Caughill was involved in setting the
21 parameters. I don't know if he dictated those
22 parameters to Trow. He was involved in setting the
23 terms of reference for Trow. He was involved in
24 the actual inspection that ultimately was made
25 around 1995. He had made notes of that, of what

1 was done on that particular two- or three-day span.

2 And it seems to me that if the Trow
3 report deals -- I'm sorry, if the NORR Report deals
4 with anything in that area, it would be appropriate
5 for us to have that information before we begin the
6 cross-examination.

7 So with the greatest of respect to the
8 proposal, I find it very difficult to proceed with
9 the cross-examination not knowing what is there,
10 and then we are going to get into the argument,
11 well, geez, you have covered that off when you
12 cross-examined him the other day; you really can't
13 get into it again.

14 Well, that is the dilemma that we face,
15 and at the end of the day, sir, in the whole ambit
16 of the time frames of this Commission being formed
17 and continuing its task, a half-day is not going to
18 be a significant interruption in the proceedings.

19 So I would ask that after my friend is
20 finished with the examination in-chief, that he
21 have the opportunity to review that report, and if
22 he wants to ask further questions of Mr. Caughill
23 in-chief, and then we proceed with our
24 cross-examination.

25 Thank you, sir.

1 THE COMMISSIONER: Thank you.

2 Mr. Maloney?

3 MR. MALONEY: Mr. Commissioner, thank
4 you.

5 To pick up on Mr. Bisceglia's point,
6 counsel knew they didn't have the report when we
7 started this process two days ago, and they were
8 prepared presumably to carry on and conduct the
9 cross-examination.

10 My position is that we should do that.
11 We should complete Mr. Caughill's examination
12 in-chief and cross-examination.

13 I understand Mr. Bisceglia's point, it
14 is only potentially a half-day delay, but it is not
15 quite that simple because, in fairness to the
16 witness, there is scheduling involved but there is
17 also costs involved.

18 So my position is that we are here. We
19 would like to proceed. Counsel, to my knowledge,
20 were prepared to proceed until I received notice of
21 this issue sometime late last evening, and I think
22 that is what we should do.

23 THE COMMISSIONER: Well, you understood
24 in any event that your client was going to be back
25 here on Tuesday one way or the other.

1 MR. MALONEY: I was anticipating we
2 would be completed today, if --

3 THE COMMISSIONER: Well, you were
4 hoping that that would be the case.

5 MR. MALONEY: Yes.

6 THE COMMISSIONER: But I can hardly
7 refuse at the very least Commission Counsel's
8 submission that he be brought back on Tuesday,
9 because there are I gather some differences between
10 the original or interim report and the final
11 report.

12 And so the proposal made by Mr. Doody,
13 at the very least that proposal requires his
14 attendance back here on Tuesday in any event.
15 Regardless of whether I adopt Mr. Bisceglia's
16 position or Mr. Doody's position, they are not
17 going to be finished with Mr. Caughill today in any
18 event.

19 MR. MALONEY: If they are not finished
20 today, then of course we'll be back here on
21 Tuesday, but --

22 THE COMMISSIONER: I mean, I could not
23 refuse the request made that Mr. Caughill, out of
24 fairness, return on Tuesday so that counsel have an
25 opportunity to review the entire report over the

1 weekend, the intervening four days.

2 In any event, I take your point, sir.

3 MR. MALONEY: Thank you,

4 Mr. Commissioner.

5 THE COMMISSIONER: Thank you.

6 Mr. Elliot.

7 MR. ELLIOT: Yes, Mr. Commissioner. I
8 want to thank Mr. Doody for his quite reasonable
9 proposal of compromise.

10 Unfortunately, on this occasion I'm
11 going to have to support the position of
12 Mr. Bisceglia. I read the first interim NORR
13 Report. It is an exceptionally long, complex,
14 detailed technical report, and for my unfortunate
15 brain, I never worked at any higher position in
16 construction than a labourer. It does take me some
17 time to get through it, and I actually require the
18 assistance of a consultant to be able to understand
19 it.

20 So I will need to sit down with the
21 NORR Report with a consultant and to be able to
22 understand how it affects my cross-examination.

23 And I agree totally with Mr. Bisceglia.
24 A cross-examination is not just something that you
25 throw together out of pieces. It is kind of a

1 painting. It is -- you have to balance the whole
2 composition if you are experienced counsel.

3 And if I might say, Mr. Commissioner,
4 some words in French, in my little bilingualism,
5 justice is better than speed.

6 Thank you.

7 THE COMMISSIONER: Mr. MacRae, you came
8 in late, but I gather you understand the gist of
9 the proposals that have been made to me.

10 MR. MacRAE: Thank you,
11 Mr. Commissioner. I clearly do.

12 I have one submission, and that is that
13 I would really welcome the opportunity to review
14 this with my client. While I may be his counsel
15 attending here today, it really is about Mr. Bob
16 Wood and his opportunity to make sure that the
17 questions that are asked fully reflect the evidence
18 that is before the Commission.

19 So not only on behalf of myself, but
20 I'm asking for the opportunity to consult. It is a
21 very important report. It has been reviewed by my
22 client, and with the final report, I think it is
23 very important for my client to have the
24 opportunity to have input through myself.

25 THE COMMISSIONER: Thank you.

1 Anyone else wish to make comments?

2 Two factors weigh in making my
3 decision.

4 One is the importance of the report. I
5 have no doubt that this is a crucial and central
6 report that weighs in an important way in the
7 equation that will eventually lead to answers, and
8 it needs to be carefully analyzed.

9 The other factor is that Mr. Doody's
10 position to me this morning is not that he has
11 reviewed the report and is able to state
12 categorically that there are minor differences. He
13 has read -- and this is not a criticism of
14 Mr. Doody, but he has only read a summary of the
15 report and tells me that he has not found major
16 differences between the final report and the
17 interim one.

18 The fact remains that that report has
19 not been analyzed in detail either by Commission
20 Counsel and/or Counsel for the participants.

21 That being so and reluctantly I
22 acquiesce to the request made by Mr. Bisceglia and
23 Mr. Elliot, considering, as I say, the nature of
24 the report and the potential for differences being
25 perhaps more than, and only time will tell, those

1 characterized by Mr. Doody as being relatively
2 minor.

3 And so we will complete the examination
4 in-chief of Mr. Caughill today and then,
5 reluctantly, because I recognize that we are using
6 up valuable time, but I'll allow counsel to defer
7 their cross-examination in totality until Tuesday
8 of next week. In the hope of making up a bit of
9 lost time, we'll start at 9 o'clock on Tuesday of
10 next week.

11 Thank you.

12 Mr. Doody.

13 MR. DOODY: Thank you,
14 Mr. Commissioner, and just one point.

15 If I communicated that there were no
16 differences --

17 THE COMMISSIONER: I don't think you
18 did. No, I took it that your message to me was
19 that there were differences but that they were not
20 major differences.

21 MR. DOODY: Yes, and --

22 THE COMMISSIONER: Is that correct?

23 MR. DOODY: To put it more clearly, and
24 it is undoubtedly my fault, there are -- the report
25 deals with the issues arising out of the Algoma

1 ownership years and the Trow reports. The first
2 report did not deal with them.

3 So when I said it didn't raise anything
4 new, what I meant to say -- what I meant to
5 communicate was it doesn't raise anything that
6 ought to have been new to the participants or,
7 indeed, except for the one area of which I spoke,
8 that have not been dealt with in my examination
9 in-chief.

10 THE COMMISSIONER: All right.

11 RODNEY CAUGHILL: PREVIOUSLY SWORN.

12 EXAMINATION IN-CHIEF BY MR. DOODY

13 (CONT'D):

14 Q. Thank you, Mr. Commissioner.

15 Mr. Caughill, if I could ask you to
16 turn up Exhibit No. 461, tab 216.

17 A. I'm sorry, sir, which volume are
18 we in?

19 Q. Oh, sorry, Volume 3.

20 A. 3, sorry.

21 Yes, sir.

22 Q. This is the first -- sorry, this
23 is the draft Trow report provided as a result of
24 the 1994 retainer. It is dated November 9th, 1994,
25 and it is directed to you, although I note that

1 they got your name wrong on the first page.

2 A. Yes, sir.

3 Q. Not a good marketing move, I would
4 have thought.

5 But as I understand it, the purpose of
6 this was to provide this to you for your comments
7 and subsequent revision after your comments; is
8 that fair?

9 A. That's correct, yes.

10 Q. And I wonder if I could just take
11 you through some of what is in the report. If I
12 could ask you to turn to the third page, it has got
13 a lower case letter "a" in the bottom right-hand
14 corner and it is headed "Abstract". And starting
15 on the third paragraph from the bottom, the authors
16 write:

17 "The soffit of the suspended roof
18 slab was generally in good condition
19 but indicated evidence of excessive
20 leakage through the joints of the
21 precast hollow slabs above the mall
22 level. The steel beams were noted
23 to be rusted at locations where
24 evidence of leakage was observed.
25 Some water stains were also noted on

1 the soffit of the pedestrian walkway
2 slabs. Some metal pans and pails
3 were noted above the false ceiling
4 in the stores to divert the water
5 leakage.

6 The structural steel members are
7 sound with some surface corrosion.
8 The chloride ion content is
9 generally higher in the concrete
10 topping and contamination of the
11 precast slab is at its initial
12 stage. Corrosion of the embedded
13 reinforcement can be expected to
14 continue at all areas of leakage.

15 A structural review and analysis
16 is recommended to determine the
17 capacity of the roof slab and to
18 provide the necessary data in order
19 to discuss the various options for
20 the placement of the waterproofing
21 system."

22 And then if you go to page 10 of the
23 report, the number on the bottom of the page, Ms.
24 Kuka, is 2978.

25 MS. KUKA: This one?

1 BY MR. DOODY:

2 Q. That is it, thank you.

3 Reading under the heading "Underside
4 Visual Survey", this is the field test results, in
5 the second paragraph the authors wrote:

6 "The underside of the suspended
7 parking deck was predominantly
8 covered with suspended false ceiling
9 panels. Numerous water stains were
10 noted on the false ceilings at
11 various locations throughout the
12 mall. Several rusted false ceiling
13 tracks were also noted.

14 Upon removal of some of the false
15 ceiling panels, it was noted that
16 the water stains on the false
17 ceiling coincide with the joints
18 between the precast members. Some
19 active water leaks were also noted.

20 The top and bottom flanges of the
21 steel beams were noted to be rusted
22 at the locations where there was
23 evidence of water leakage. Portions
24 of the fireproofing on the bottom
25 flanges of the beams were noted to

1 be missing as a result of water
2 damage. In some areas, the
3 insulation foil covering showed rust
4 stains. The insulation metal clips
5 were also noted to be rusting.

6 Some rusted drainpipe elbows and
7 metal conduits were also noted.

8 Some ceiling tiles were noted to
9 be bulging as a result of water
10 leakage.

11 The bottom flange of the steel
12 beam along line 5 near core no. 3,
13 which was considered the worst
14 condition of the rusted beams noted,
15 was measured by removing the scaled
16 rust. The thickness of the bottom
17 flange was measured to be 18 mm."

18 And then at page 11, the next page, the
19 second paragraph:

20 "Cores Nos. 3 and 6 were taken
21 full depth through the concrete
22 topping and precast slab over the
23 steel beam. The top flange of the
24 steel beam at the core location was
25 found to contain some surface rust."

1 And then at page 14 under the heading
2 "Discussion" the authors wrote:

3 "The underside visual survey
4 showed that the roof level contained
5 numerous water stains and rusted
6 false ceiling tracks. The water
7 stains coincide with the caulked
8 precast slab joints over the steel
9 beams. At locations of evidence of
10 water leakage, the steel beams were
11 noted to be rusting. Some
12 fireproofing on the bottom flange of
13 the steel beams was missing at
14 several areas due to water damage.
15 Several corroded conduits were also
16 noted along the rusted beam."

17 And then under the heading
18 "Conclusions" the authors wrote on the next page:

19 "The high chloride ion content in
20 the concrete topping, coupled with
21 the effect of freeze-thaw action,
22 will likely cause further
23 deterioration to the concrete
24 topping wearing surface. Based on
25 the test results, it appears that

1 the chlorides have begun to
2 contaminate the precast slabs which
3 could likely cause rusting of the
4 prestressing strands in the slabs.
5 This is most likely to occur at
6 areas of leakage.

7 The soffit of the precast hollow
8 core structural slab exhibits
9 numerous signs of leakage, mainly
10 through the control joints between
11 the precast panels. Water and salt
12 penetration through joints will
13 cause deterioration of the concrete,
14 prestressed cables, steel beams,
15 sprayed-on fireproofing for steel
16 beam, false ceiling tiles and
17 electrical conduits to increase.

18 Based on our review of the
19 structural steel beams at selected
20 locations where the worst evidence
21 of leakage was noted, the beams
22 appeared to be sound with some
23 surface corrosion.

24 Based on our review of the
25 original structural, architectural

1 and precast slab drawings, there are
2 several inconsistencies in whether
3 the concrete topping is required to
4 be bonded to the precast slabs."

5 And this point, sir, if I could just
6 ask you, this point, as I understand it, relates to
7 the issue we discussed yesterday, which was whether
8 the concrete topping had to be bonded to the
9 precast slabs in order to provide, in other words,
10 was that part of the load-bearing platform;
11 correct?

12 A. That is correct.

13 Q. And that was one of the issues
14 that you wanted Trow to deal with in this report;
15 correct?

16 A. Not only in this report. That is
17 one of the issues we were trying to deal with for
18 five years, four years.

19 Q. Right, right, that was a very
20 important issue?

21 A. Extremely, yes, sir.

22 Q. Because from your perspective, you
23 needed to know it in order to know what your
24 options were?

25 A. Absolutely.

1 Q. And they went on to say:
2 "During our telephone conversation
3 with the precast slab manufacturer,
4 Core Slab, they indicated that the
5 concrete topping should be bonded to
6 the precast slabs, however, their
7 drawings are inconsistent with what
8 they have verbally stated."

9 Sir, what did you understand them to
10 mean by that?

11 A. There was another big question
12 mark. That is -- what they -- just inconsistencies
13 again.

14 Q. And yesterday we looked at the --
15 somebody turned the heat up again,
16 Mr. Commissioner.

17 THE COMMISSIONER: Yes. Mr. Registrar,
18 could you call the building people. There is a lot
19 of hot air coming through, the top.

20 MR. DOODY: The heat lamp is not
21 supposed to be over me, Mr. Commissioner.

22 BY MR. DOODY:

23 Q. In any event, we looked yesterday
24 at the note, at the document from the Coreslab
25 engineer and from Mr. Kadlec, both of which said

1 that the topping needed to be bonded in order to
2 provide the structural support required; correct?

3 A. That was -- our understanding was
4 that all along, yes, sir.

5 Q. And what Trow seems to be saying
6 here is that when you go back to look at the
7 Coreslab drawings, and these would be drawings
8 prepared by Coreslab at the time they did the job,
9 if you go back and look at them, they are
10 inconsistent with what Coreslab was now saying?
11 That is what Trow is saying here, right?

12 A. That's correct.

13 Q. And they go on to say:

14 "It is our opinion that a
15 structural review and analysis
16 should be carried out to confirm
17 whether a bonded concrete topping is
18 required and to further recommend
19 possible modifications in order to
20 recommend a waterproofing system.
21 We suggest this assessment be
22 carried out as soon as possible."

23 Stopping there, so what Trow is saying
24 is because of this inconsistency, you need to do a
25 structural review and analysis to finally answer

1 this question, right?

2 A. Yes, sir.

3 Q. And they went to say:

4 "As was noted in Trow's 1991
5 condition survey report,
6 approximately 10% of the concrete
7 topping is debonded, predominantly
8 at the caulked control joint
9 locations. Assuming that the
10 percent of debonded concrete topping
11 has not increased substantially, we
12 do not feel that the percentage of
13 previously noted debonded topping
14 produces an immediate concern."

15 I'll stop there. They did not in this
16 report look at the change in the amount of debonded
17 concrete since their first report; correct?

18 A. I don't believe they did, no.

19 Q. Okay. You told us yesterday that
20 one of the reasons you wanted them to do this
21 report was so that you would have -- that you had a
22 baseline of the condition in 1991 and you wanted to
23 see what changes had occurred since that time;
24 correct?

25 A. That is correct.

1 Q. And the amount of concrete topping
2 which had debonded was one of the elements that
3 could have led to structural defects, particularly
4 if the topping was required to be bonded in order
5 to provide the support, right?

6 A. That is correct, but in fairness
7 to Trow, we had been removing and bonding those
8 sections all along.

9 Q. So you thought -- it was your view
10 that it was not worse; it might be better?

11 A. That's correct, yes.

12 Q. And then they went on to say:

13 "However, it should be noted that,
14 with time, the amount of debonding
15 is likely to increase, thus becoming
16 a structural concern."

17 And that is what the report provided.
18 And, sir, what was the reaction of you and the
19 people at Algoma Central to this report?

20 A. We had mixed reaction, as I
21 recall. One, we were -- we felt somewhat relieved
22 that they identified that there was -- that things
23 were not getting rapidly worse in any way. They
24 stated that in the area of the worst leaking, the
25 steel had not deteriorated, very minuscule surface

1 rust. The concrete topping was certainly higher in
2 its chloride ion content I guess than what we had
3 anticipated but not substantially. And all in all,
4 we were reasonably pleased that what we were doing
5 was at least holding its own.

6 Q. But is it fair to say that what
7 this report said was not inconsistent or was
8 essentially the same as what Mr. Iamónico had told
9 you verbally on August the 24th of 1994 when you --
10 I'm talking about the typed notes that you prepared
11 following the inspection report, that you didn't
12 have a problem yet, but it was going to increase
13 exponentially if you didn't fix it?

14 A. That's correct.

15 Q. And if I could ask you to, just to
16 put this next question in context, if I could have
17 you go back, Ms. Kuka, to the third page of this
18 exhibit, it ends in 2968. If you go down to the
19 very last paragraph of this, and this is the
20 abstract, and the authors wrote:

21 "A structural review and analysis
22 is recommended to determine the
23 capacity of the roof slab and to
24 provide the necessary data in order
25 to discuss the various options for

1 the placement of the waterproofing
2 system."

3 Now, if I could now ask you to turn up,
4 Ms. Kuka, Exhibit No. 461, which is at tab 22 of
5 this book, Mr. Caughill. Oh, I'm sorry, this is
6 the wrong document. Tab 219, Mr. Caughill, and I
7 believe it is Exhibit No. 45.

8 That is it.

9 This is a fax, sir, from you to Trow
10 dated December the 5th, 1994, and if you turn to
11 the second page, Ms. Kuka, you write to
12 Mr. Dell'Aquila:

13 "We have reviewed the report for
14 the Algo Centre (as submitted) and
15 we offer the following:

16 1) In the Abstract the statement
17 is made 'A structural review and
18 analysis is recommended...system'
19 This statement seems contrary to the
20 objectives as stated further into
21 the report. This statement should
22 be removed."

23 Can you tell me why you asked Trow to
24 remove that statement, sir?

25 A. Yes. First of all, I wrote the --

1 or I sent the fax with these comments, but they
2 were after discussions. It wasn't -- it certainly
3 wasn't all my decision. Mr. Leistner, who you will
4 be interviewing later, is -- has always been noted
5 for being very meticulous in what he sends out, and
6 in the original report we had not asked for a
7 structural review. He was just covering it off
8 saying we didn't ask for it, don't include it in
9 that report, unless you can -- and the comment was,
10 in the roundtable, unless you can tell us why it
11 should be there in this report.

12 Q. And so this was Mr. Leistner's
13 idea, not yours?

14 A. That's correct.

15 Q. And in the original draft report,
16 what they had said was that a structural review and
17 analysis is recommended to determine the capacity
18 of the roof slab and to provide the necessary data
19 in order to discuss the various options for the
20 waterproofing system, and they had also said in the
21 conclusion that, at point number 4, that they were
22 recommending that because there was an
23 inconsistency between the Coreslab drawings and
24 what they were told by Coreslab as to whether the
25 topping needed to be bonded, right?

1 A. That's correct.

2 Q. And one of the prime concerns, as
3 you told me earlier, that you had at that time and
4 for a number of years was precisely that question,
5 whether it needed to be bonded, right?

6 A. That is correct.

7 Q. And so what Trow was saying to you
8 was, well, they are saying it does, but we are not
9 satisfied and so you need to do a further analysis.

10 What I don't understand, sir, and
11 perhaps you could assist me, is how that request or
12 suggestion that you do further analysis was not
13 precisely what you had asked Trow to do?

14 A. Mr. Leistner felt that wasn't
15 specific in our terms of reference on the purchase
16 order or the agreement to do the -- that or the
17 report.

18 Q. Did you agree with him on that
19 point?

20 A. I agreed with him that it wasn't
21 there in the request, and that is the draft report.

22 Q. Right.

23 A. I think if you look at the final,
24 it was left in there.

25 Q. Right.

1 A. And it was our suggestion that
2 they leave it there -- not our suggestion they
3 leave it there. We had no objection to leaving it
4 there once we had discussed it with them.

5 Q. But just to be clear, they put it
6 in the draft; they put it in there because they
7 felt it was important to answer this question in
8 order to tell you what you needed to know --

9 A. That --

10 Q. -- and you made the suggestion we
11 just looked at and then they responded with the
12 final; that is what happened, right?

13 A. That is correct, yes.

14 Q. And if we turn to their response
15 at tab 22, Mr. Caughill, Exhibit No. 461, I think.

16 MS. KUKA: The one we were just looking
17 at?

18 BY MR. DOODY:

19 Q. Yes -- hold on, let me just see.

20 Sorry, 46, Exhibit No. 46, yes. This
21 is their response to your comments, and if you turn
22 to the next page, that is it, Messrs. Dell'Aquilla
23 and Iamónico wrote and said in response to your
24 suggestion about removing their comment, they
25 wrote:

1 "The purpose for the structural
2 review and analysis is to confirm
3 whether the concrete topping is
4 required since there are several
5 inconsistencies in the original
6 drawings on this project and in
7 addition to further recommend
8 possible modifications in order to
9 determine what type of waterproofing
10 system can be installed (i.e. thick
11 or thin) depending on the loading
12 the slab can take due to the
13 waterproofing system as noted in the
14 report Conclusions page no. 15, item
15 4."

16 And they say:

17 "Please find attached a revised
18 copy of the abstract which
19 elaborates on the above."

20 And then if you go on to three pages to
21 the page ending 860, they have -- and as I
22 understand it, just so that we can understand the
23 documents, they provided you with a draft in
24 November; you made your comments; they then wrote
25 you back in this document, and they attached to it

1 only the pages that they proposed changing, right?

2 A. That is correct.

3 Q. So that the document we are just

4 looking at now, Exhibit No. 46, is not a copy of

5 the entire revised report but only of the pages

6 that they proposed changing? Or maybe I'm wrong.

7 No, I'm right. If you look through it, you'll see

8 that is what they have done?

9 A. Yes, yes, you are correct.

10 Q. So the change that they make in

11 response to your query is at the bottom of the page

12 of the abstract and it is in italics, and as I

13 understand it, it is in italics to -- it is

14 essentially like black-lining, it is to show you

15 the changes; is that right?

16 A. That is correct, yes.

17 Q. It is not to be -- it is not meant

18 to be an indication of emphasis?

19 A. No.

20 Q. Right. And they write in the

21 bottom paragraph:

22 "A structural review and analysis

23 is recommended to determine whether

24 the concrete topping is required and

25 to provide the necessary data in

1 order to discuss the various options
2 for the placement of a new
3 waterproofing system specifically
4 with respect to the allowable
5 additional load the slab can take
6 due to the waterproofing system."

7 That is their response, right?

8 A. That is correct.

9 Q. And that response, what was your
10 reaction to that response?

11 A. It was perfectly fine with us.

12 Q. And it made it clear, as I
13 understand it, that what Trow was recommending was
14 not a further structural analysis for its own sake,
15 but specifically to answer this question that had
16 been plaguing you for, as you put it, a number of
17 years?

18 A. Yes, sir.

19 Q. After you got this, these
20 revisions on January 31st, 1995, what, if anything,
21 did you do about the problem?

22 A. In January we couldn't do
23 anything.

24 Q. All right.

25 A. Except --

1 Q. Because of the weather?

2 A. Because of the weather and to
3 maintain -- and we maintained what we had been
4 doing all along. If a leak developed, we went and
5 fixed it.

6 Q. And did you make any decisions at
7 that time about whether you were going to get the
8 structural analysis to determine whether the
9 topping needed to be bonded?

10 A. We did at one point. I can't tell
11 you exactly what the timing was, but we did, yes.

12 Q. Later that year?

13 A. Yes.

14 Q. Okay. If I could ask you to turn
15 up tab 227, Exhibit No. 443. This is a quote from
16 Vector Restoration to you dated March 24th, 1995,
17 and it is a quote to do repair work on the
18 concrete; correct?

19 A. That is correct, yes.

20 Q. And ultimately, was Vector hired
21 to do this work?

22 A. Yes, they were.

23 Q. It says under the heading on the
24 first page:

25 "We propose the following remedial

1 action:

2 The cracks would be routed out to
3 a depth of 1/2 [inch] x 1/4 [foot]
4 in width [...]"

5 That is a typo, right? The single
6 ditto mark means foot, but that is a typo?

7 A. Oh, yes, sorry.

8 Q. That's a typo?

9 A. That's right. That wouldn't be a
10 rout.

11 Q. That would not be a rout?

12 A. No, sir.

13 Q. I assume what they meant was to a
14 depth of 1 one-half inch times a one-quarter inch
15 in width?

16 A. Yes.

17 Q. Although I'm not sure what that
18 means. Can you help us?

19 A. Just that the depth was going to
20 be twice the width in this case, but they were
21 talking about the -- more of the hairline cracks
22 there than the control joints.

23 Q. Okay, so they were saying routed
24 out so that the height was -- or the depth was
25 twice the width?

1 A. That is correct.

2 Q. And were those instructions given
3 to -- well, first of all, Vector was hired to do
4 the work, and I think from what you told us
5 earlier, they were hired to do work where your own
6 forces, where the work was too great for your own
7 forces to deal with it?

8 A. That is correct, yes.

9 Q. And did your own forces continue
10 to work on the roof deck fixing cracks while Vector
11 was doing their work?

12 A. I believe they were, yes.

13 Q. And that would be Mr. Snow and his
14 team?

15 A. Yes.

16 Q. And were they -- well, put it this
17 way. Where did those specifications about the
18 depth being twice the width, where did they come
19 from, do you know?

20 A. They came from Vector.

21 Q. So that was their idea?

22 A. Yes.

23 Q. And was Mr. Snow and his team
24 instructed to rout out cracks in the same
25 proportion, with the same specs?

1 A. No, they had a -- their
2 instructions, as we discussed yesterday, were
3 basically twice the width to the depth, two-to-one.

4 Q. So this is the opposite?

5 A. Yes, but bear in mind that Vector
6 uses -- they did use they called it a C-10 crack
7 chaser. It sounds a lot more ominous than it is,
8 but it is a -- the control joints that our forces
9 were working on were straight lines. These guys
10 from Vector used a machine which was a big Dremel
11 tool. It is like it was a small bit that they
12 could follow irregular lines and contours very
13 easily. Our equipment couldn't do that.

14 Q. And how did that affect the
15 appropriate proportions?

16 A. I really can't answer that. That
17 is what Vector did for a living and it was their
18 recommendation that that would work. I assume it
19 was because that equipment would make a nice clean
20 cut and follow the cracks.

21 Q. Does the depth-to-width ratio have
22 anything to do with the ability of the caulking to
23 adhere and maintain its adherence?

24 A. I don't believe so.

25 Q. All right. If I could ask you to

1 turn up Exhibit No. 457, tab 32, Mr. Caughill, this
2 is a memorandum to file from you dated May 23rd,
3 1995, and it refers to a conversation you had that
4 date with a gentleman by the name of Albert Giommi
5 from National Supply and his recommendations for
6 the bonding of new concrete to old. And I won't
7 read them into the record but, sir, were those
8 recommendations different from what you had been
9 doing at that point?

10 A. They were essentially the same. I
11 had approached Mr. Giommi because he represented a
12 supplier of numerous concrete products, and I just
13 asked him to give us something firm, rather than
14 just my statement, something firm from his
15 suppliers what they would recommend as far as
16 proper procedures.

17 Q. And at the bottom of the page
18 under the heading "Caulking of Joints", Mr. Giommi
19 apparently told you:

20 "Minimum width should be 4 times
21 the anticipated movement, sealant
22 depth should not exceed the width."

23 How does that relate to the proportions
24 that we have been talking about where the year
25 before you had been saying that the ratio should be

1 one-to-two and Vector was saying two-to-one? Is
2 this something else? Is this yet another
3 appropriate ratio?

4 A. This is saying not to exceed
5 one-by-one.

6 Q. That is what I read, unless, just
7 to be fair, the bottom line says:

8 "Use a bond breaker in the bottom
9 of the joints to prevent 3 sided
10 adhesion."

11 And the depth should not exceed the
12 width of the sealant, the depth of the sealant --

13 A. Correct.

14 Q. So he may be talking about that
15 the sealant would not extend to the bottom of the V
16 joint if there was a backer rod underneath it,
17 right?

18 A. Yes, it depends on the -- if the
19 gap between -- that we were trying to fix was the
20 full depth of the topping, 3 inches, no, we would
21 not caulk all the way to the bottom. That is what
22 he is saying there. If it is deep, we put in a
23 backer rod to prevent the sealant from going all
24 the way to the bottom.

25 Q. But in any event, am I correct to

1 understand from what we have just been talking
2 about, this exhibit, the last one and what you told
3 us yesterday, that you were receiving varying
4 advice about the appropriate width and depth of the
5 V joint to create where there were cracks?

6 A. Yes, originally we were following
7 the Peterson System and their recommendation as far
8 as the size of the cracks and stuff, and that is
9 what we followed because that is what we had, is
10 the Peterson System. And then different
11 manufacturers of different sealants have different
12 methods of application. Like if you -- if we
13 ordered stuff from Tremco, it might have said that
14 the Dymonic, which we used at one point, it was a
15 different profile. If we used the Dymaric, which
16 was another different one, which we did use at one
17 point as well, was different again; it was a
18 two-part system. So that they varied with the
19 manufacturer.

20 Q. But Mr. Giommi was not talking
21 about a specific -- at least the note does not say
22 that Mr. Giommi was talking about a specific
23 product?

24 A. No.

25 Q. He is a concrete guy?

1 A. He is a supplier of concrete
2 products.

3 Q. So when he is making the comment
4 about caulking of joints, am I correct to read that
5 that he is not dealing with a specific product but
6 simply a general recommendation?

7 A. I believe that -- sorry, I believe
8 that was a general recommendation from the people
9 he had spoken to.

10 Q. And was that passed on to Mr. Snow
11 and his men?

12 A. Yes, sir.

13 Q. If I could ask you to turn up the
14 next tab, Mr. Caughill, which is Exhibit No. 1093,
15 this is a memorandum -- or a fax, rather, from you
16 to Trow, and on the second page -- well, first of
17 all, on the first page, sorry, Ms. Kuka, in the box
18 under "Notes" it says:

19 "Domenic: please find attached a
20 list of questions that we would like
21 answered in addition to anything
22 else you propose to provide. Please
23 call at earliest convenience to
24 discuss timing."

25 And this is June 23, 1995, about five

1 months after you got the final version of the
2 report resulting from their 1994 work.

3 Can you tell me, sir, why were you
4 sending this to Trow at that time?

5 And if you could turn to the second
6 page, Ms. Kuka.

7 A. I can't recall. I can't recall
8 all the discussions among -- ahead of that.

9 Q. If you look to the first
10 question -- well, first of all, you start off by
11 saying:

12 "In response to your proposal
13 dated March 31, 1995 we offer the
14 following:"

15 And I don't seem to have the proposal
16 from Trow dated March 31st, but you say under the
17 heading "Structural Analysis Proposal":

18 "The following items should be
19 addressed in the analysis:

20 1) Is the topping required? Is
21 it required to be bonded to the
22 planks?

23 if YES

24 how is it expected to remain
25 bonded? how can it work?

1 i) are there any alternatives to
2 the concrete.

3 ii) what is the minimum
4 thickness/weight/strength etc. of
5 the options.

6 iii) what percentage of debonding
7 is acceptable with the current
8 topping? of the alternates?

9 iv) what are the load limits of
10 the existing combination (planks and
11 wear course) and of the alternates?"

12 And then you say if the answer to
13 whether the topping is required is no, you have the
14 questions:

15 "i) can the topping be removed
16 without damage to the slabs.

17 ii) what are the load limits of
18 the slabs.

19 iii) " --

20 well, you haven't numbered it "iii",
21 you have numbered it "2":

22 "2) Is the structural steel
23 capable of taking an additional load
24 (assuming that the slab/topping
25 composite is strong enough to take

1 that load.)

2 if YES

3 i) to what limits".

4 So you were asking, as I understand it,
5 sir, all of these questions in an attempt to, first
6 of all, determine whether the question you had been
7 seeking an answer for for quite awhile could be
8 answered, that is, whether the topping needed to be
9 bonded; and then secondly, depending on the answer,
10 what your options were?

11 A. Yes, sir.

12 Q. And if you look at the second-last
13 question with the number 2 in front of it, you say:

14 "Is the structural steel capable
15 of taking an additional load
16 (assuming that the slab/topping
17 composite is strong enough to take
18 that load)".

19 What were you asking them there?

20 A. We were just trying to make sure
21 that they addressed the whole assembly, not just
22 the planks and the topping.

23 Q. Was it a question about the
24 condition of the structural steel as at 1995, given
25 the water, or was it a condition about the

1 theoretical capacity based on the design?

2 A. It was the theoretical capacity
3 based on the design.

4 Q. So just to be clear, you were not
5 asking them to analyze the effect of the water on
6 the structural steel --

7 A. No.

8 Q. -- at that point?

9 A. No, sir.

10 Q. And -- but what you were asking
11 them to do was to do an analysis to answer the
12 question that they had suggested be answered in
13 their last report?

14 A. Yes, sir.

15 Q. And if you turn to the next tab,
16 sir, at Exhibit No. 48, this is their proposal and
17 I note that it is dated March 31, 1995, revised
18 July 28th, 1995, and revised August 11th, 1995. Do
19 you know why it was revised on all of those
20 occasions?

21 A. The revision in July reflects what
22 we just discussed in that past exhibit.

23 Q. All right.

24 A. What the change was between that
25 one and the August 11th I'm not sure. I can't

1 answer why that revision took place.

2 Q. Okay. If you turn -- on the first
3 page Trow sets out the questions that they
4 understand they are to answer, and question number
5 1 is:

6 "Is the topping required? Is it
7 required to be bonded to the hollow
8 core slabs?

9 If yes, how is it expected to
10 remain bonded? How can it work?

11 i) are there any alternatives to
12 the concrete?

13 ii) what is the minimum
14 thickness/weight/strength etc. of
15 the options?

16 iii) what percentage of debonding
17 is acceptable with the current
18 topping? or the alternate?

19 iv) what are the load limits of
20 the existing combination (core slab
21 and wear course) and of the
22 alternates?"

23 And then turning over to the next page,
24 at question number 2 they say that they are going
25 to answer is:

1 "Is the structural steel capable
2 of taking an additional load
3 (assuming that the slab/topping
4 composite is strong enough to take
5 that load).

6 If Yes,
7 i) to what limits

8 If No,
9 i) can the steel be beefed up?
10 how?

11 3. Referencing the 2 previous
12 Trow reports:

13 i) What is the estimated life of
14 the composite roof deck? (assuming
15 that the leakage will be controlled
16 to not exceed the past levels
17 experienced between 1991 and 1994).
18 What would cause the failure? Will
19 it be caused by degradation of the
20 steel or the concrete (or both) by
21 the chloride concentrations or by
22 some other element (please define)."

23 And that question, sir, that they were
24 agreeing to answer appears to me to be related to
25 the effect of the water; am I correct?

1 A. Yes, sir.

2 Q. And so you were asking Trow, to
3 put it simply, tell me how long the deck is likely
4 to last, assuming that the leakage doesn't get any
5 worse than it was over the last three years, and
6 what will cause the failure, right?

7 A. Yes, sir.

8 Q. And why was it that you wanted to
9 know that, sir?

10 A. We were trying to put this to bed.
11 We were -- we wanted to get answers to all our
12 questions and do what we could.

13 Q. And would I be fair to conclude
14 from these answers and from what we have talked
15 about over the last day, day and a bit, is that you
16 recognized that the water had the potential to
17 cause structural damage and you wanted to be
18 certain that the building would not be used longer
19 than its structural capacity?

20 A. Yes.

21 Q. If I could ask -- sorry, that was
22 just my own feedback, I guess.

23 If I could ask you to turn up tab 38,
24 Mr. Caughill, and that is Exhibit No. 51, this is
25 the report which Trow provided as a result of that

1 request we just looked at. It is dated November
2 6th, 1995. And what they did was, as they say, as
3 they point out in the last paragraph on page 1,
4 they retained the firm of Alex Tobias Associates
5 Limited to do a structural analysis, right?

6 A. That is correct.

7 Q. So Trow subcontracted out the
8 structural analysis portion of this issue?

9 A. Yes.

10 Q. And if I can ask you to turn to
11 the seventh page of this exhibit, which is the
12 first page of the Tobias report which is submitted
13 with this report, it is dated October 6, 1995, and
14 Tobias sets out their objective on the first page
15 of their report and that is:

16 "To evaluate existing garage roof
17 structure in order to determine:

18 1. Whether the existing concrete
19 topping is required to be bonded to
20 the coreslab.

21 2. What is the load capacity of
22 the existing structure.

23 3. How much load can be added to
24 the existing structure to allow for
25 new waterproofing system."

1 And, sir, that, as I read that, Tobias
2 was not being asked to determine the effect of the
3 water on the structure; is that right?

4 A. That appears to be that way, yes.

5 Q. And if you turn over to the next
6 page of the Tobias report, you see under item 4
7 they say in "Assumptions":

8 "1. The garage roof structure was
9 constructed in conformity to the
10 existing drawings.

11 2. All garage roof structural
12 components including concrete and
13 steel are structurally sound. Any
14 defect and/or deterioration will be
15 repaired properly.

16 3. Garage roof areas are for
17 passenger vehicles only."

18 Sir, as I understand that paragraph,
19 Tobias is saying these are the assumptions we are
20 operating under and they specifically say we are
21 assuming that there is no problem with the
22 structural soundness of the components, and if
23 there is, it is minor and it can be fixed promptly,
24 correct -- or properly rather, not promptly?

25 A. That would be safe, yes.

1 Q. And that simply underlines that
2 what Tobias was doing was a theoretical analysis
3 and not one based on inspection of the condition of
4 the structure?

5 A. That is correct.

6 Q. And if you turn to page 3 of the
7 report, they set out their conclusion. First of
8 all, on the top of that page, they deal with the
9 structural capacity, and they say on item 3 under
10 "Steel Beams":

11 "According to our analysis, the
12 allowable superimposed total load
13 including concrete topping is 120
14 [pounds per square foot]
15 approximately."

16 So that was their conclusion; correct?

17 A. That is correct.

18 Q. And then under the heading
19 "Conclusion" they wrote:

20 "Based on the foregoing
21 information and findings, our
22 comments are as follows:

23 1. During the Sept. 22, 1995
24 meeting at Trow's office, Mr. S.
25 Shaikh stated that the concrete

1 topping has to be fully bonded to
2 the core slabs."

3 Stopping there, Mr. Shaikh was the
4 professional engineer who had provided the one-page
5 report or memorandum that we looked at yesterday
6 the year earlier which said the topping needs to be
7 bonded, right?

8 A. That is correct.

9 Q. So what Tobias is telling us here
10 is that when they met him in September of '95, he
11 told them the same thing?

12 A. Yes.

13 Q. Then they say in item 2:

14 "The 8 inch core slabs with fully
15 bonded topping can safely support
16 the basic snow and rain load of 53
17 [pounds per square foot] or 50
18 [pounds per square foot] vehicle
19 load as well as 20 [pounds per
20 square foot] superimposed dead
21 load."

22 And so what they are saying, if I
23 understand that correctly, is that in addition to
24 the expected load from the vehicles, you could
25 apply an item of any sort on the roof deck and it

1 could safely support it so long as its weight was
2 no greater than 20 pounds per square foot?

3 A. That is correct.

4 Q. They then identify particular
5 areas in item number 3, particular areas in the
6 roof deck which could be overstressed due to snow
7 piling and rain load, and then they conclude in
8 item 4:

9 "Our structural analysis indicates
10 that the steel beams can generally
11 sustain the loads from 8 inch core
12 slabs with 3 inch concrete topping
13 plus the basic snow and rain load of
14 53 [pounds per square foot] or 50
15 [pounds per square foot] vehicle
16 load as well as 20 [pounds per
17 square foot] superimposed dead
18 load."

19 So that was their conclusion, as I
20 think they had said in what I read you earlier, and
21 that is in addition to the cars or the snow, you
22 can put 20 pounds per square foot on it?

23 A. Yes, sir.

24 Q. And that was then taken up by Trow
25 in their report, and if I could take you back to

1 page 2 of the Trow report, which is the second page
2 of the exhibit, they answer the questions you asked
3 them to answer. First of all:

4 "Is the concrete topping required?
5 Is it required to be bonded to the
6 hollow core slabs?"

7 Number 1:

8 "The concrete topping has to be
9 fully bonded to the core slabs if
10 the topping is to remain [...]"

11 So they are passing on Tobias's
12 conclusions which, according to Tobias, were a
13 result of what they had been told by Mr. Shaikh,
14 right?

15 A. That is correct.

16 Q. Number 2:

17 "The 8 inch core slabs with a
18 fully bonded concrete topping can
19 safely support the basic snow and
20 rain load of 53 [pounds per square
21 foot] or 50 [pounds per square foot]
22 vehicle load as well as 20 [pounds
23 per square foot] superimposed dead
24 load. Therefore, a waterproofing
25 system up to a weight of 20 [pounds

1 per square foot] can be installed
2 over the existing concrete topping
3 once the debonded portions of the
4 topping are repaired."

5 Sir, I read that as saying that you can
6 put a membrane on as long as it doesn't way more
7 than 20 pounds -- or a membrane and wearing course
8 as long as it doesn't weigh more than 20 pounds per
9 square foot?

10 A. Yes, sir.

11 Q. They then in item number 3 say
12 that:

13 "It has also been determined
14 through the structural analysis that
15 [...] [there are particular areas
16 which] could be overstressed due to
17 snow piling and rain load:"

18 And they identify them.

19 And then under the question number 2:

20 "'Is the structural steel capable
21 of taking additional load?'"

22 And they say:

23 "ATA structural analysis indicates
24 that the steel beams can generally
25 sustain the loads from the 8 inch

1 core slabs with a 3 inch concrete
2 topping plus the basic snow and rain
3 load of 53 [pounds per square foot]
4 or 50 [pounds per square foot]
5 vehicle load as well as 20 [pounds
6 per square foot] superimposed dead
7 load."

8 Sir, you will agree with me that in
9 answering that question, Trow was not providing any
10 opinion with respect to the actual capacity of the
11 steel given the water leakage that had been
12 occurring for at this point 15 years?

13 A. That is correct, yes.

14 Q. Item number 3 they say:

15 "'What is the estimated life of
16 the composite roof deck?'"

17 And they write:

18 "The roof deck presently contains
19 areas of debonded concrete topping."

20 THE COMMISSIONER: Have we moved on?

21 BY MR. DOODY:

22 Q. Oh, sorry, page number 3, Ms.

23 Kuka. Thank you, Mr. Commissioner.

24 They say:

25 "The roof deck presently contains

1 areas of debonded concrete topping.
2 These areas need to be removed and a
3 new bonded topping installed to
4 maintain the structural integrity of
5 the slab. This should be carried
6 out as soon as possible. If the
7 debonded topping is not repaired,
8 the core slabs will not be able to
9 safely carry the dead load of the
10 topping since the topping and core
11 slabs must be bonded. Ongoing
12 leakage through the joints in the
13 topping and core slabs will continue
14 to cause deterioration of the
15 topping and core slabs due to
16 freeze/thaw cycles and chloride
17 contamination of the core slabs and
18 subsequent corrosion of the
19 prestress strands in the core slabs
20 and the supporting steel beams."

21 Sir, my first question about this is
22 did you carry out the removal of the debonded
23 concrete topping and a new bonded topping, as was
24 recommended by Trow?

25 A. We were doing that on a regular

1 basis.

2 Q. So you continued to do what you
3 had been doing?

4 A. Absolutely.

5 Q. My second question, sir, about
6 this is did this answer the question? You had
7 asked them how long is it going to last. did you
8 get an answer to that question?

9 A. No.

10 Q. And, sir, what, if anything, did
11 you do or say with respect to Trow about what you
12 have told me are their failure to answer two of the
13 key questions, the effect of the water on the
14 structural steel and the life of the deck? Did you
15 go back to them and say, answer these questions?

16 A. I don't recall that we did or we
17 did not.

18 Q. Can you tell me why you didn't?

19 A. I don't recall whether we did or
20 we did not.

21 Q. Okay, you don't recall?

22 A. No.

23 Q. You'll agree with me that there is
24 no document in which you asked that question --
25 those questions?

1 A. Correct.

2 Q. And if you had asked those
3 questions, would you expect it to have been done in
4 writing and left in the file of Algoma Central
5 Properties?

6 A. I would expect it would have been,
7 yeah.

8 Q. Trow goes on to say in item number
9 4:

10 "'How often should the structure
11 be investigated?'"

12 And they wrote:

13 "We would recommend that an update
14 survey of the parking deck be
15 carried out in the spring of 1996 in
16 order to gather the information and
17 repair quantities (i.e., amount of
18 debonded concrete topping, etc.) to
19 prepare repair specifications for
20 the rehabilitation of this parking
21 deck. Once the parking deck has
22 been repaired and waterproofed, the
23 Algo Centre maintenance personnel at
24 this structure should carry out a
25 visual inspection of the parking

1 deck on a monthly basis."

2 Sir, did you do an update survey of the
3 parking deck in the spring of 1996?

4 A. I don't recall one, no.

5 Q. Can you tell me why not?

6 A. No, I can't tell you why not.

7 Q. At the bottom of page 3 under the
8 heading "Repair Options" Trow set out two options,
9 and their first option is, as they put it:

10 "Removal and Replacement of
11 Debonded Concrete Topping and
12 Installation of a Waterproofing
13 System to the Entire Deck."

14 And they say that that means:

15 "Remove any existing 'thin'
16 waterproofing materials and concrete
17 sidewalks from the roof level to
18 expose the top surface of the
19 concrete topping."

20 The next page, secondly:

21 "Identify areas of debonded
22 concrete topping and carry out
23 concrete topping repairs as
24 required.

25 c) Install additional or modify

1 existing drains as required.

2 d) Install a new expansion joint
3 waterproofing system in slab.

4 e) Install a new asphaltic based
5 waterproofing system on the entire
6 parking deck and pedestrian walkway
7 areas [...]

8 f) Install a one storey roof
9 canopy structure over the existing
10 garage roof in areas where the core
11 slabs could be overstressed [...]"

12 And essentially, what they are saying
13 is clean up the concrete and put a membrane down on
14 top of it, right?

15 A. With a wear course, yes.

16 Q. With a wear course. And it was
17 their recommendation that that could be done and
18 would not overburden the slab; correct?

19 A. To a maximum of 20 pounds was
20 their recommendation, yes.

21 Q. And it was their conclusion that
22 that could be done, that there was such a product
23 available?

24 A. They did not state that.

25 Q. They did not, but did you -- well,

1 let's put it this way. Did you think that they had
2 made the recommendation without determining whether
3 it could be done?

4 A. I can't tell you that. I can tell
5 you that when we were researching options all
6 along, the addition of an asphaltic wear course
7 from crews that do install for MTO and the City and
8 everything else told us that the minimum they would
9 recommend putting down would be 2 and a half inches
10 of asphalt, which would have added 25 pounds on its
11 own, let alone the membrane and the protection
12 board.

13 Q. Did you ask Trow what they -- what
14 product they were thinking of that would fit within
15 their parameters they determined?

16 A. I don't think we had got to that,
17 no.

18 Q. And did you ever get to that?

19 A. I don't recall that we did.

20 Q. Their option 2 was to:

21 "a) Identify leaking cracks and
22 debonded concrete topping areas in
23 the roof slab.

24 b) Locally remove concrete
25 topping in the deteriorated areas to

1 expose the top surface of the core
2 slabs.

3 c) Install additional or modify
4 drains as required.

5 d) Install a new expansion joint
6 waterproofing system in slab.

7 e) Install caulking in joints in
8 the repair areas and conduct local
9 caulking repairs to portions of
10 debonded caulking in the joints in
11 other areas of the parking deck.

12 f) Install a one storey roof
13 canopy structure over the existing
14 garage roof in areas where the core
15 slabs could be overstressed due to
16 snow piling and rain load [...]"

17 Sir, am I correct that you did not do
18 that?

19 A. No, you are not correct.

20 Q. I'm not correct?

21 A. No, sir.

22 Q. What --

23 A. With the exception of installing
24 the roof, we were doing all that other stuff all
25 the time.

1 Q. But you did not install the roof?

2 A. The roof overtop of the could be
3 overstressed areas, we did not do that, but the
4 other options (a) through (e), yes.

5 Q. That was what you had been doing
6 all along?

7 A. We had been doing that all along.

8 Q. And Trow recommended option 1 and
9 they priced it out at 1.25 million to 1.479 million
10 with --

11 THE COMMISSIONER: Where are you
12 reading now from?

13 MR. DOODY: -- some additional costs?

14 THE COMMISSIONER: Where are you
15 reading that from?

16 BY MR. DOODY:

17 Q. Oh, I'm sorry, the next page. So
18 the cost estimate for option 1 is set out on the
19 next page, and they priced it out at 1.25 to 1.47
20 million plus some additional costs, and they noted
21 that some increase in deterioration with time must
22 also be expected. That was their recommendation;
23 correct?

24 A. That's correct.

25 Q. And was there discussion within

1 Algocen about whether to follow that
2 recommendation?

3 A. I don't recall the discussions.
4 We did discuss the price as it is stated there, 1.4
5 million. It left out a whole lot of costs that we
6 would have had to analyze before we could do
7 anything.

8 Q. Did you analyze those costs?

9 A. I don't know how detailed we got,
10 but we did review them, saying that this would be
11 an extremely low number.

12 Q. And what conclusion did you reach
13 about the -- whether to follow the advice?

14 A. I don't recall what happened above
15 me.

16 Q. What was your recommendation?

17 A. I really didn't make one. My
18 recommendation was that installing the -- an
19 asphaltic-based wear course to stay within the
20 parameters of the 20 pounds per square foot was
21 going to be extremely difficult to achieve, and it
22 wasn't there in anything we had researched
23 previously.

24 Q. Before making that recommendation,
25 did you ask -- why did you not ask Trow what they

1 meant by it, what their product was?

2 A. I don't know. I can't answer
3 that.

4 Q. And when you say you didn't make
5 the decision, who made the decision?

6 A. That would have happened
7 definitely above my pay grade.

8 Q. Who was above your pay grade?

9 A. Almost everybody. I'm not trying
10 to --

11 Q. I walked right into that one.

12 A. I'm not trying to be flippant,
13 sir. I'm just saying that in the hierarchy, I was
14 not too far up the totem pole.

15 Q. All right, but who was above you?
16 Mr. Leistner, obviously?

17 A. In this instance, yes,
18 Mr. Leistner would be above me, and then above him
19 would be our President and CEO and our Board,
20 like --

21 Q. Right, Mr. Cresswell was the
22 President -- or the CEO rather?

23 A. At that time -- he was President
24 at that time.

25 Q. Right, and that was the senior

1 executive position in the Central company, as I
2 understand it?

3 A. Correct, yes.

4 Q. And then obviously he reports to
5 the Board?

6 A. Yes.

7 Q. All right. But you were not privy
8 to those discussions?

9 A. No.

10 Q. And were you privy to any
11 discussions about the financial issues related to
12 whether an investment of this sort should be made
13 in light of the economic situation of the mall?

14 A. No, sir, I certainly did not.

15 Q. And can you tell me why you did
16 not put the roof over the areas of potential
17 overstressing identified by Tobias?

18 A. No, I honestly can't answer that.

19 Q. Do you recall any discussion about
20 that?

21 A. No.

22 Q. If I could ask you to turn to tab
23 43, sir, which is Exhibit No. 430. Sir, this is a
24 memorandum entitled "Algo Centre Return on
25 Investment/Options". Have you seen this memorandum

1 at any time prior to the commencement of this
2 inquiry?

3 A. No, sir.

4 Q. In the third paragraph the author
5 writes:

6 "In addition, since the license
7 for the professional engineer
8 involved in construction of the Algo
9 Centre has been rescinded, we must
10 now perform a three step examination
11 of the project."

12 Sir, as I understand it, at or about
13 this time, which was -- it appears to be February
14 21 of 1996, if you look to the last page.

15 A. Yes, sir.

16 Q. At or about this time,
17 Mr. Kadlec's licence had been suspended by the PEO;
18 is that your recollection?

19 A. It is.

20 Q. Were you aware of that at the
21 time?

22 A. At which time?

23 Q. In the spring of '96.

24 A. Yes.

25 Q. Okay. Were you part of

1 discussions about what, if anything, the company
2 should do about that as a result of that fact?

3 A. No, no.

4 Q. Okay.

5 A. Not in discussion as to what we
6 should do. Once a decision was made what we were
7 going to do, I was involved, yes.

8 Q. So this document says after --
9 following on what I just read, it says the
10 three-step examination should be:

11 "i) review the structural drawings
12 to ensure the design meets
13 professional standards.

14 ii) ensure the building is
15 constructed to design, and

16 iii) ensure the quality of the
17 workmanship."

18 Were you told that that was the
19 decision?

20 A. Yes.

21 Q. And what instructions were you
22 given in respect of that decision?

23 A. We were going to retain a
24 professional to review Mr. Kadlec's design and the
25 building in its -- and the building as it relates

1 to the structural design.

2 Q. And who told you that?

3 A. That would be Mr. Leistner.

4 Q. And did you understand that it was
5 to be a design review, as just -- in accordance
6 with the terms I just read to you from this
7 document?

8 A. Yes.

9 Q. In other words, have a look at the
10 drawings to see if it was done in accordance with
11 the standards at the time, ensure that it has been
12 constructed to the design, and then ensure that the
13 workmanship in the construction was up to par?

14 A. Correct.

15 Q. All right. As I understand it --
16 well, let's turn to the next tab, sir, which is
17 Exhibit No. 456, tab 45.

18 A. Tab 45?

19 Q. Yes.

20 A. Sorry, I was on the wrong one.

21 Q. This is your letter, sir, to --
22 oh, yes, I must have written the wrong --

23 THE COMMISSIONER: I'm getting,
24 Mr. Doody, the usual distress signals, and it is
25 understandable, we have been going for an hour and

1 25 minutes.

2 So I propose that we take our break now
3 and start again at a quarter to 11:00.

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

6 -- RECESSED AT 10:23 A.M.

7 -- RESUMED AT 10:45 A.M.

8 BY MR. DOODY:

9 Q. Thank you, Mr. Commissioner.

10 We now have up on the screen, Mr.
11 Caughill, Exhibit No. 52, which is tab 45 in the
12 book before you. And this is your letter to
13 Mr. Dell'Aquila at Trow dated April 24th, 1996,
14 and you start off by saying:

15 "As per our discussion [...]"

16 And given that and the document we just
17 looked at, I assume you spoke to him about this
18 beforehand, right?

19 A. That is correct, sir.

20 Q. And you then set out, first of
21 all, your objectives, first:

22 "1) to confirm that the building
23 was designed in accordance with good
24 engineering practices and standards
25 [...]"

1 2) that the construction did in
2 fact mirror the design."

3 So you were not asking for a
4 determination of the effect of the water on the
5 structure over time?

6 A. That is correct.

7 Q. And just so that we are clear, the
8 purpose for this, this report, as I understand it
9 from your evidence so far, was to give -- to
10 satisfy the company that the building had been
11 designed and constructed appropriately in
12 accordance with good standards?

13 A. That is correct.

14 Q. And then you set out the terms of
15 reference and you say:

16 "We are requesting a proposal from
17 Trow Consulting Engineers Ltd. for:

18 - Design Analysis of the
19 Structural Components of the Centre
20 as per the Structural Drawings
21 provided (by Beta Engineers, John
22 Kadlec P. Eng.)

23 - On site review of any areas
24 that may be identified as suspect
25 following the drawings review

1 - Spot check of the beam design
2 and field conditions to verify
3 construction as per the design."

4 And that is what you were asking them
5 for, right?

6 A. That is correct.

7 Q. And if I could ask you to turn up
8 tab 48, Exhibit No. 410, this is a letter from
9 Mr. Cooper at Trow dated June 12, 1996, in response
10 to your request that we just looked at requesting a
11 proposal, and they set out on the first page, they
12 effectively mimic what I just read, that is, what
13 your objectives and the terms of reference will be.

14 And then if you turn to the second
15 page, they say starting on the fourth paragraph:

16 "Based upon our preliminary review
17 of the drawings and the Terms of
18 Reference for this assignment, we
19 propose the following scope of
20 work."

21 And they propose exactly what they are
22 going to do.

23 And then in item number 8 they include
24 this:

25 "8. Exposing and measurements of

1 existing structural members where
2 details (design) are not available.

3 9. Spot checking of structural
4 steel connections. Carry out
5 welding inspections and/or torque
6 testing of bolts where and if
7 required."

8 Were you -- what was your reaction to
9 the scope of work proposed by Trow?

10 A. They were going beyond what we
11 asked them to do.

12 Q. In what way?

13 A. Carrying out weldings and torque
14 testing of bolts was beyond what we had asked for,
15 and then in items 10 and 11, the general review to
16 identify any deteriorated structural components
17 and, 3, removal of portions of existing steel
18 elements for strength testing of suspect members,
19 this was going beyond what we had asked them to do.

20 Q. And why did you not want them
21 to -- well, I'm sorry, I take it from your answer
22 that you did not want them to do that?

23 A. That would have been a separate
24 examination.

25 Q. And why did you not want them to

1 do that?

2 A. The purpose of the whole thing was
3 just to verify the building was constructed as per
4 the structural drawings and -- we were questioning
5 the integrity of the structural engineer at the
6 time.

7 Q. Okay, so did you care about or
8 were you worried about whether there were
9 structural components which were deteriorated or
10 the soundness of the welds and the bolts?

11 A. Certainly we were concerned with
12 that, but not under the terms of this contract,
13 what we were asking.

14 Q. And the bolts, just so that I
15 understand it, the horizontal I-beams upon which
16 the core slabs rested were supported at the
17 vertical columns by welding, right?

18 A. In some cases.

19 Q. And the welds, the -- but they
20 were welded to an angle iron which was itself
21 bolted to the structural steel horizontal beams;
22 correct?

23 A. In some cases. In other cases, it
24 was supported directly on top of the columns and
25 bolted at that point.

1 Q. Right, and bolted, so the bolts
2 were, as I understand it, an integral part of the
3 connections?

4 A. They always are, yes.

5 Q. And can you tell me why, if you
6 were concerned about the potential deterioration of
7 the structural steel components as at 1996, you did
8 not want them to be looked at or considered in this
9 report?

10 A. Under the terms of what we were
11 asking, we were not asking for another structural
12 review of the building.

13 Q. Well, I understand that, but we
14 have already established from your evidence so far,
15 as I understand it, that there had not been an
16 analysis of the effect of the water on the
17 structural steel components; correct?

18 A. That is correct.

19 Q. And would I be fair in
20 concluding -- well, first of all, you have told me
21 you were concerned about that, and in fact, you
22 were concerned about it as far back as that
23 handwritten note we looked at of the group meeting;
24 you recall that, right?

25 A. That is correct, yes.

1 Q. And Trow here appears to be
2 proposing that you do exactly that. And what I am
3 trying to understand and give you an opportunity to
4 explain, sir, is why Algoma Central did not want
5 that to be done at that time or, indeed, at any
6 time since that note we looked at?

7 A. In terms of this document, we
8 were -- we were not -- we were questioning the
9 engineer, as per a suggestion by -- I don't know
10 where that suggestion came from, but it was
11 somebody had notified Mr. Leistner that
12 Mr. Kadlec's licence had been revoked and we should
13 be looking at his designs, and that is what we were
14 doing, looking at his design only.

15 This would have been a separate
16 proposal to go further.

17 Q. Right, and I guess -- I understand
18 that, and what I am asking you, sir, is why that
19 wasn't done?

20 A. I can't answer that.

21 Q. Okay. If I could ask you to turn
22 to -- just a second, bear with me -- tab 300 -- or
23 sorry, the second tab 13, Mr. Caughill, and that is
24 Exhibit No. 2084. And this is a memorandum to file
25 by you dated June 18th, 1996 in respect of the Trow

1 proposal, and it says at the top:

2 "Proposal received by fax June
3 12/96".

4 You go through the terms of reference.
5 You set out their price, which was \$17,000. You
6 set out what is not included in the price. And
7 then you write:

8 "They are prepared to do torque
9 testing of bolts but as per P. Myer
10 [sic] [...]"

11 And the gentleman's name was actually
12 Meyer, right, M-e-y-e-r?

13 A. That's correct.

14 Q. And that was just a typo?

15 A. That's correct.

16 Q. "As per P. Myer, P. Eng., this is
17 not required."

18 I take it from this that you spoke to
19 Mr. Meyer at some time between the June 12 proposal
20 of Trow and this note to file on the 18th?

21 A. Yes.

22 Q. Okay, what can you tell us about
23 that? Who initiated that contact?

24 A. I did.

25 Q. And what was the purpose of the

1 contact?

2 A. To get a second quote on the
3 review that we had asked for.

4 Q. And how did the subject of torque
5 testing come up?

6 A. I must have told Paul, Mr. Meyer,
7 that Trow had -- was recommending we do this torque
8 testing and I wanted his opinion.

9 Q. And what did Mr. Meyer tell you?

10 A. That he didn't feel the torque
11 testing would have been required under the scope
12 that we were looking for.

13 Q. Okay. And if I could ask you to
14 turn up tab 47, sir, this is Exhibit No. 409, this
15 is the fax cover page that accompanied the Trow
16 proposal which was sent on the 12th of June and it
17 contains first in the block printed words from
18 Mr. Cooper, he wrote in the second sentence:

19 "We believe that this approach is
20 what you require and will address
21 your concerns."

22 And then in the handwritten, there is a
23 handwritten note there, and is that Mr. Leistner's
24 writing?

25 A. It is.

1 Q. And it looks to me like it says:
2 "[Meeting] with Rod C. Rod to get
3 quote from Paul Meyer 96/06/19".

4 So that is June 19th, '96; correct?

5 A. Correct.

6 Q. So it looks to me like the
7 chronology is you got the proposal from Trow on the
8 12th. On the 18th you spoke to Meyer and told him
9 you were interested in getting a quote. He said --
10 and you told him what Trow had proposed. Mr. Meyer
11 said you don't need to do torque testing. You
12 spoke to Mr. Leistner, and he said, well, get a
13 quote from Mr. Meyer?

14 A. That is correct.

15 Q. And the result of that was, if I
16 could ask you to turn to tab 49, Exhibit No. 455,
17 Mr. Meyer's quote and he wrote:

18 "Our firm is prepared to [...]"

19 This is on July the 5th of 1996:

20 "Our firm is prepared to perform
21 the following design check and
22 review services for the Algo Centre.
23 All work would be done by Paul Meyer
24 P. Eng.

25 1) Review of the structural

1 design of the Algo Centre, based on
2 the original 'S' structural framing
3 drawings prepared by James Keywan
4 Architect and The Beta Engineering
5 Group Ltd., sealed by J.J. Kadlec P.
6 Eng. This review would be made
7 using relevant Codes in place at the
8 time of original design and
9 construction.

10 2. On site review and spot
11 checking of the structural framing,
12 to confirm that the sizes of members
13 and the connections are in
14 conformance with original design and
15 accepted construction practices.

16 3. If necessary, a more detailed
17 examination of any areas that are
18 found to be deficient in design or
19 construction, as determined in the
20 structural design review."

21 And he gives you a price for that of
22 \$4,200, right?

23 A. That is correct.

24 Q. And what was your reaction to this
25 quote?

1 A. He had quoted on exactly what we
2 had asked, and I recommended we take it.

3 Q. Did you give Mr. Meyer the Trow
4 reports of the previous five years?

5 A. I offered those reports to
6 Mr. Meyer, and he did not want them.

7 Q. Okay.

8 A. His reasoning was he wanted to
9 be -- to have a totally unbiased opinion of what
10 he was looking at.

11 Q. Did you tell Mr. Meyer that Trow
12 had concluded that the waterproofing system as
13 designed was inappropriate to maintain a watertight
14 seal?

15 A. That was definitely part of our
16 discussions, yes. Whether I told him that Trow
17 said it was inappropriate or not, he was -- in our
18 discussions, he was familiar with what our problems
19 were and he would have come to the same conclusion.

20 Q. Did he know that Trow had examined
21 the structure three times and provided three
22 reports?

23 A. Yes.

24 Q. And did you tell him about the
25 prolonged history of the leaks over the 16 years

1 since the mall had been opened?

2 A. I am sure we discussed that, yes.

3 Q. Did you tell him how you were
4 dealing with them?

5 A. Yes.

6 Q. Did you tell him the
7 recommendations that had been made in respect of a
8 membrane system?

9 A. We did discuss it, yes.

10 Q. What did you tell him, do you
11 recall?

12 A. This is -- like I have no
13 documentation to back it up. But in our
14 discussions, yes, I would have told him that they
15 were talking about a membrane with the wear course.
16 And his opinion at that time was -- I think he was
17 saying he was suspect that we would be able to
18 support it. But whether that was -- it wouldn't
19 have been before he did the examination. That
20 would have -- that discussion would have taken
21 place after.

22 Q. After he had looked at them?

23 A. After he had looked at the
24 drawings, yes.

25 Q. Did you ask him for a formal

1 opinion on that issue?

2 A. I don't recall that we did.

3 Q. And Mr. Meyer provided --

4 Mr. Meyer attended at the site, right?

5 A. Yes, on a couple of occasions.

6 Q. And while he was there, there were
7 workers from I think Vector working on the roof?

8 A. Yes.

9 Q. And I am not going to take you
10 through them all, but he provided a number of
11 preliminary or interim reports on issues related to
12 the cracks and the cracking that was seen on the
13 roof?

14 A. Yes. Paul, he was not there to
15 look at that in specifics, but when he was there
16 doing his review of the building, he identified
17 that Vector was replacing some concrete. They were
18 working on one of the Geni joints, and Paul flagged
19 it right away that there was some discrepancy with
20 what -- the way the slabs were placed and what was
21 shown on the original drawings. And that is when
22 he called Mr. Leistner in first, because I was
23 away, and then I joined them a few days later.

24 Q. And as a result, Coreslab was
25 notified and there was -- those issues were

1 discussed with Coreslab, right?

2 A. Yes, we actually had Coreslab
3 on-site.

4 Q. And those issues were, if I
5 correctly understand them, and tell me if I'm
6 right, they were related to the issue of why cracks
7 were developing and what ought to be done about
8 that?

9 A. Not -- that is partially it.

10 Q. And what else was it?

11 A. When Vector was replacing the Geni
12 joint I believe it was they were doing at that
13 point, they had exposed a butt joint that was too
14 tight. As I showed in that drawing yesterday --
15 not that drawing, the modified etch-a-sketch that I
16 did yesterday, the design was for a 2-inch
17 separation between the slabs on the butt joint.

18 When Mr. Meyer was there, he identified
19 right away that that -- it appeared to be too
20 tight, and he suggested we bring in core -- or the
21 engineers from Coreslab to discuss if that was
22 something moving, if the -- or what the problem
23 was.

24 Ultimately, it was determined that it
25 was too tight, and with Coreslab's approval and

1 recommendation, we cut roughly I'll say an inch,
2 but it was probably less than that, I don't know
3 what the actual number was, off the end of the
4 slabs so we would maintain that 2-inch gap that was
5 requested, specified.

6 Q. How many butt joints were affected
7 by that or that you had to fix?

8 A. I don't recall but it was one
9 joint, but it was pretty much across the roof, I
10 believe. It was fairly significant.

11 Q. And so what did the fix consist
12 of?

13 A. Trimming them back to their design
14 gap between them, and then the replacement of the
15 joints and the nosings and the Geni joint as per
16 Vector's contract.

17 Q. Oh, this was at one of the large
18 expansion joints?

19 A. Yes, I believe that is where we
20 were. I'm not -- I've got to take that back. I
21 believe that is where it was. I was on-site, but
22 it is a long time ago.

23 Q. Okay. And then Mr. Meyer gave you
24 his final report, which is at tab 49 -- oh, sorry,
25 I'm wrong. At tab 65, Exhibit No. 258 -- oh, let

1 me get this. Sorry, Exhibit No. 65, tab 258, yes.
2 And this is his final report, that is correct, Mr.
3 Caughill?

4 A. Yes, it appears to be.

5 Q. And that is your note up in the
6 right-hand corner? I think it says "REL", and that
7 is Mr. Leistner, "Final report for your review"?

8 A. Yes, it is.

9 Q. And Mr. Meyer wrote in the second
10 paragraph, he wrote:

11 "I found that the structural steel
12 framing is generally acceptable and
13 in conformance with the Ontario
14 Building Code in effect at the time
15 of construction. Precast concrete
16 slabs were all designed in
17 conformance with the Ontario
18 Building Code and were generally
19 installed correctly. We found a
20 problem with an expansion joint on
21 gridline 10 in the precast concrete
22 slabs at the roof parking area
23 during my investigation and
24 corrective action was taken at that
25 time."

1 I'll stop there. That is -- is that
2 what you were referring to and what you just
3 described to me about the butt joints that were too
4 close together?

5 A. That is, sir, yes.

6 Q. Moving on to the third page of
7 Mr. Meyer's report, he goes through the loads on
8 the deck, and then on the third page he writes
9 under the heading "Analysis of Structural Steel and
10 Precast Concrete Slabs at Parking Deck Area":

11 "When the structural steel system
12 supporting the parking area is
13 analyzed using the correct 50
14 [pounds per square foot] live load,
15 it is found to be fully in
16 compliance with the Ontario Building
17 Code. This includes both full
18 loading and the 'full and partial'
19 condition."

20 And then I'll come back to the next
21 paragraph, the paragraph two below that, and then
22 under the heading "Conclusions" he says:

23 "The conventional portions of the
24 building have been designed in
25 conformance with the Ontario

1 Building Code in effect at the time
2 of construction. All of the
3 construction reviewed by me on site
4 appeared to be constructed properly
5 and no significant defects were
6 seen.

7 The original design engineer made
8 two errors in the design of the
9 Gerber girder structural steel
10 framing system at the parking deck.

11 1) to not consider the effect of
12 'full and partial' loading on the
13 roof and.

14 2) used a live load value of 50%
15 higher than that required by the
16 Ontario Building Code.

17 Fortunately, the second error
18 made the final product more
19 conservative than might have
20 otherwise been built, and more than
21 compensated for the effects of the
22 first error."

23 Stopping there, what he was saying
24 there, as I understand it, and tell me if I'm
25 right, is that he made two errors but the combined

1 effect of the two errors is that the structural
2 strength of the parking deck was actually stronger
3 than -- was actually greater than had originally
4 been thought to be?

5 A. I wouldn't agree with that in
6 total. I would think we still hit the 120 pounds
7 per square foot, but we were a little negative on
8 one side but more positive on another, which
9 negated any -- I think we ended up with the same
10 thing.

11 Q. I thought it --

12 THE COMMISSIONER: He doesn't say
13 compensated. He says "more than compensated".

14 BY MR. DOODY:

15 Q. Yeah, I thought it was more than a
16 wash. I thought it looked like it was stronger
17 than had initially been --

18 A. I would accept that.

19 Q. And then turning to the last page,
20 he wrote:

21 "Concrete slabs at the parking
22 deck may have been overloaded in the
23 past leading to cracks in the
24 grouted joints between slabs. This
25 does not compromise the strength of

1 the slab but may be leading to
2 cracks in the waterproof concrete
3 topping and water entry into the
4 building. Ongoing monitoring of the
5 slabs for leaks and prompt repair of
6 those leaks should continue.

7 I believe that foundations,
8 structural steel and precast
9 concrete slabs are all capable of
10 supporting the loads to which they
11 might be subjected and are in
12 conformance with the Ontario
13 Building Code in effect at the time
14 of construction."

15 That was Mr. Meyer's conclusion to you?

16 A. Yes, sir.

17 Q. And he gave you no report, as I
18 read the document, with respect to the effect of
19 the water on the structure?

20 A. No, he did not.

21 Q. And although in his proposal,
22 Exhibit No. 455 at tab 49, he said that he proposed
23 doing an on-site review and spot-checking of the
24 structural framing to confirm that the sizes of
25 members and the connections are in conformance with

1 the original design and accepted structural
2 practices -- accepted construction practices, he
3 did not make any -- he did not address those issues
4 in his report, that is, the issue of the
5 connections; is that right?

6 A. That is correct.

7 Q. And did you notice the fact that
8 he didn't mention the connections in his report
9 when he delivered it?

10 A. Yes.

11 Q. And did you talk to him about it?

12 A. I don't recall the discussions
13 with him, but the fact they weren't there we
14 considered to be a good sign.

15 Q. And why is that?

16 A. If there had been problems, he
17 would have identified it, the same as he did with
18 the roof slabs when he was on-site.

19 Q. So you concluded that silence on
20 the topic meant everything was okay?

21 A. When placed in with the rest of
22 his report, yes.

23 Q. Going back to his report, which is
24 at Exhibit No. 65, tab 58, and the second-last page
25 of it, in the paragraph -- the third paragraph he

1 writes:

2 "I was informed during my visits
3 to the site that loaded buses may
4 have travelled on the roof at some
5 time in the past. Gates placed a
6 number of years ago at the ramps to
7 the roof deck now prevent this from
8 occurring. Unless packed closely
9 together, even a few buses would not
10 overstress the structural steel
11 framing, since the beams and columns
12 support areas of deck much larger
13 than the area of a bus. However,
14 the wheel loads of a bus are applied
15 to one precast slab at a time and
16 may have caused some damage. My
17 suspicion is that the slabs
18 themselves have not been damaged,
19 but that the grouted joints between
20 the slabs may have been cracked or
21 loosened by the buses. This would
22 explain why even today's light
23 traffic may be causing differential
24 motion of the slabs which translates
25 to cracks in the topping above."

1 And then turning to the last page,
2 under the heading "Recommendations" he writes:

3 "As the building was found to be
4 in conformance with the Ontario
5 Building Code and capable of
6 supporting the required loads, no
7 modifications or alterations to the
8 structural system are required. I
9 would suggest that the most serious
10 problem that the structural system
11 faces would be large heavy vehicles
12 going onto the parking deck.

13 Currently, there are movable
14 gates at the bottom of the ramps
15 that lead to the parking deck.
16 These prevent access by large
17 vehicles. The gates have been made
18 movable in order to provide access
19 for large vehicles (fire trucks) in
20 emergency situations. I have
21 confirmed that the Elliot Lake Fire
22 Department will not go onto the roof
23 with large trucks, nor do they need
24 to do so. They will not travel
25 beyond the upper part of the ramps.

1 As such, I think that it would be
2 reasonable to place permanent
3 non-movable barriers at the top of
4 the ramps that would ensure that
5 large vehicles do not go onto the
6 parking area. These barriers could
7 consist of steel frames that have a
8 clearance of less than 7 feet
9 underneath. These would allow for
10 the passage of passenger cars and
11 the 4x4 pickup trucks used to clear
12 snow from the roof. I would be
13 pleased to discuss the details of
14 such a barrier with you."

15 I take it you read that part of the
16 report?

17 A. Yes, sir.

18 Q. And I'm just going to take you to
19 Exhibit No. 454, tab 63. This is a memorandum
20 which appears to have your initials at the bottom
21 dated March the 3rd, 1997?

22 A. Correct.

23 Q. And you say that it is comments of
24 the review of the structural report dated October
25 23, 1997, and that I suggest is a typographical

1 error in respect of the date because the report is
2 dated October 23rd of '96?

3 A. Either that, or I was extremely
4 clairvoyant. Yes, sir, it is a typo.

5 Q. And you write in the third bullet:

6 "placement of permanent barricades
7 at the top of the ramps to prevent
8 large vehicles from accessing the
9 parking deck. Currently the
10 barricades at the base of the North
11 and South ramps are removable (tilt
12 up out of the way). Our current
13 practice is to leave these
14 barricades in place until the time
15 of snow removal. At that point they
16 are swung out of the way to allow
17 trucks to back up to the top of the
18 ramp to be loaded by front end
19 loaders. Presently these units are
20 counter balanced so that if they are
21 struck accidentally, they will swing
22 up and away, preventing major damage
23 to the barricades or the vehicle.
24 At present they do not allow
25 oversized or high vehicles to access

1 the ramp, if they were placed at the
2 top of the ramp, such vehicles would
3 be force[d] to back down against the
4 traffic. These units are and have
5 been serving their purpose and are
6 in effect doing the same job as that
7 referred to by Mr. Meyer and could
8 be left intact at their present
9 location."

10 Was that your conclusion, sir?

11 A. Mine and the group, yes.

12 Q. And who was in the group?

13 A. It would have been Mr. Liautaud,
14 '97, and Mr. Willey had already retired at that
15 point, so it would have been Mr. Liautaud,
16 Mr. Leistner, myself, and that is probably the
17 three of us at that point.

18 Q. And Mr. Meyer said, in effect, you
19 should make them non-movable; and your response
20 was, no, they need to be moved because of snow
21 removal, to sum it up?

22 A. If they were to be placed at the
23 top of the ramp, ramps, snow removal would have
24 been a little more difficult, but by leaving them
25 at the bottom of the ramp, we negated any large

1 vehicles from going up there, period. And it is
2 not just snow removal trucks. We were talking
3 about motor homes and pickups with campers, like
4 anything oversized. If these things were at the
5 top, you would have somebody coming up there in a
6 Winnebago and then having to back on a circuitous
7 route down back onto either Hillside or Ontario
8 Avenue, which would have been operationally
9 terrible.

10 And then the snow removal, none of that
11 large equipment was ever on the deck to start with,
12 or it was not supposed to be, not during our tenure
13 it wasn't. And by leaving them at the bottom, we
14 felt that it served its purpose in both respects.

15 Q. Well, first, my first question,
16 sir, is what you just told me, the first point you
17 made about the ramps would be -- sorry, that the
18 barriers would be problematic at the top of the
19 ramp, you don't make that point in the note here?
20 The only point that you make in the note here is
21 that this would cause problems for snow removal?

22 A. Oh, it would cause problems for
23 snow removal as well, yes.

24 Q. But the point you just gave me
25 about that they would be more problematic if they

1 were at the top than the bottom, you'll agree with
2 me you didn't make it in the memorandum?

3 THE COMMISSIONER: Well, he does say
4 that.

5 MR. DOODY: Oh, I'm sorry.

6 THE COMMISSIONER: "[...] such vehicles
7 would be force[d] to back down against the
8 traffic."

9 BY MR. DOODY:

10 Q. Okay, I stand corrected.

11 My second question, sir, based on what
12 you tell me is that the difficulty with swinging --
13 sorry, Mr. Meyer seemed to be saying that they need
14 to be permanent, not temporary, and whether they
15 are at the top or bottom of the ramp, they could
16 still be made permanent, right?

17 A. They -- they could have been, yes,
18 but if they were permanent at the bottom, we would
19 not be able to get equipment up there that was used
20 to haul the snow away.

21 Q. Okay, thank you, sir. One more
22 question. You'll agree with me that if they could
23 be swung aside, as they were and I believe
24 continued to be until the time of the collapse, it
25 was possible for people to circumvent the barrier?

1 A. It would be a deliberate effort on
2 somebody's part to do it, yes.

3 Q. And were you satisfied that that
4 was not occurring during your tenure?

5 A. Yes.

6 Q. And what steps did you take to
7 ensure that it was not occurring?

8 A. Our staff -- I mean, we certainly
9 didn't monitor them 24/7, but our staff had in
10 their daily routine were to make sure those
11 barricades were in place every morning, and in
12 place and they had not been swung out of the way.
13 We monitored traffic, and I mean, if we found
14 somebody was up there, we got them off.

15 Q. And the front-end loaders that are
16 referred to in this note, are they the loaders that
17 you described to me yesterday, which I think you
18 said were used to clear snow from the corners?

19 A. Yes and no. We used to allow, and
20 our contractors, they would use, for lack -- for
21 reference, I guess, a tractor similar to the ones
22 we saw yesterday to scoop the snow out of the
23 corners because the plows couldn't get in there,
24 and they would push it out onto the ramps.

25 Now, the -- if there was enough snow

1 there, the contractors would use a bigger vehicle
2 on the ramp to lift that snow into the trucks.

3 Q. So your system was that the larger
4 vehicles would stay on the ramp?

5 A. Absolutely.

6 Q. Which, as you had told us
7 yesterday, was not a ramp with open air underneath
8 it but was more like a paved hill?

9 A. A sloped driveway, yes.

10 Q. A sloped driveway, okay.

11 Now, sir, when you -- let me back up.
12 In your time at the -- when your company owned the
13 mall, in your involvement did you ever consider
14 giving the Trow reports to the City of Elliot Lake?

15 A. I did not.

16 Q. Were you aware that there was a
17 property standards by-law at the City of Elliot
18 Lake which required that properties be maintained
19 in a structurally sound condition and that any
20 deteriorated components be repaired and that
21 buildings be watertight? Were you aware of that?

22 A. In general terms, yes.

23 Q. Okay. Did you ever give
24 consideration to the issue of whether the mall was
25 in compliance with those portions of the property

1 standards by-law?

2 A. Not deliberately. I mean, we were
3 just maintaining the building.

4 Q. Did you ever discuss that with any
5 other people in the company?

6 A. No.

7 Q. Was there ever any discussion of
8 whether the information contained in the Trow
9 reports should be given to the City?

10 A. No.

11 Q. And on your part, was there ever
12 any consideration given to that issue?

13 A. None. I really wasn't aware that
14 I would have to.

15 Q. I'm not telling -- I'm not saying
16 you did have to.

17 A. No, I'm just -- yes, okay, sorry.

18 Q. I don't believe there is a legal
19 obligation to do that, so I don't want to mislead
20 you on that point. My question was simply did you
21 ever think about doing it?

22 A. No, it was not part of my thought
23 process at all.

24 Q. When did you become aware that
25 Retirement Living was considering buying the

1 building?

2 A. I don't recall the timing, but it
3 was not long before the process was in motion.

4 Q. Well, the first talks took place
5 in the fall of 1994, and the Agreement of Purchase
6 and Sale was signed -- and I may get this wrong --
7 I believe in the late spring/early summer of 1995
8 and it closed in July, late June?

9 MR. KEARNS: I think you mean in
10 '99 --

11 BY MR. DOODY:

12 Q. Sorry, not '95, '99, yeah, and so
13 talks began in the fall of 1998. There was a
14 formal Agreement of Purchase and Sale signed in the
15 late spring of 19 -- February 23rd of 1999, and it
16 closed I believe in June of 19 -- June 10th of
17 1999?

18 A. I don't recall the dates, but it
19 was certainly not in the initial discussion stages.
20 It would have been obviously before the closing
21 date, but I can't tell you how much before that,
22 but not a lot.

23 Q. Did you have any discussions with
24 anybody in the company about whether Retirement
25 Living should be given copies of the Trow reports

1 and Mr. Meyer's report?

2 A. No, I didn't.

3 Q. Did you think about whether that
4 should be done yourself?

5 A. I was waiting for a direction at
6 some point as to what they wanted me to compile, I
7 guess.

8 Q. Did anybody tell you to give them
9 or not give them?

10 A. Reports?

11 Q. Yes.

12 A. No, that was never discussed.

13 Q. So that issue was never raised
14 with you?

15 A. No.

16 Q. Did you ever tell anybody from
17 Retirement Living before they closed on the
18 purchase that the design -- that you had been told
19 and that you had concluded that the design was
20 inappropriate in respect of maintaining a
21 watertight structure?

22 A. I have never had discussions with
23 anybody from Retirement Living.

24 Q. Going back to the City, looking at
25 it now, do you think that the City, that there

1 would have been some merit in giving the City the
2 Trow reports or the information contained in the
3 Trow reports?

4 A. I -- no, I don't think so.

5 Q. Why not?

6 A. There was nothing that would
7 warrant, in our opinion, the City involvement. We
8 were maintaining a building.

9 Q. But the property standards by-law
10 said that the building had to be kept in a
11 watertight condition, and you had been told that
12 the design was inappropriate to achieve that
13 result. In fact, you knew it wasn't watertight,
14 right?

15 A. Yes, sir, the City of Elliot Lake
16 knew it wasn't watertight. I'm not meaning the
17 City -- the Corporation of the City of Elliot Lake
18 did.

19 Q. Sorry, I didn't hear exactly what
20 you just said.

21 A. I said the Corporation of the City
22 of Elliot Lake. I wasn't referring to the
23 residents when I said that.

24 Q. Oh, okay, so the municipality knew
25 about it?

1 A. Oh, absolutely.

2 Q. How did they know about it?

3 A. We have seen documentation already
4 from I think Mrs. Fazekas was one, copies to Roger
5 Pigeau complaining about roof leaks. The Library
6 Board was aware of it. I mean, we certainly
7 weren't keeping any secrets.

8 Q. Okay, but given that the City knew
9 it leaked, do you think it would have assisted the
10 City in deciding what to do about it if they had
11 had the consultants' reports you obtained during
12 your tenure?

13 A. Possibly. I can't answer that.

14 Q. But in any event, you did not
15 think about it at the time?

16 A. No.

17 Q. And you had no discussions with
18 Mr. Leistner or anyone else about that?

19 A. No, sir.

20 Q. Okay. You obtained the -- you
21 told us yesterday that you obtained the Trow
22 reports for, among other reasons, to get a baseline
23 of the condition of the structure and then the
24 second report to see how it had progressed since
25 then; correct?

1 A. That is correct.

2 Q. And am I correct that the purpose
3 of a baseline was, among other things, so that you
4 could see how quickly the deterioration was
5 progressing, if at all?

6 A. That was the prime interest there,
7 yes.

8 Q. And that as a result, it would
9 have been most useful for you to keep that, those
10 reports over time so that you could in fact see how
11 it was progressing?

12 A. Yes.

13 Q. Did it occur to you that the new
14 owners, Retirement Living, might have an interest
15 in that issue for the same reasons that you did
16 when you were working for the owner?

17 A. I never thought about it.

18 MR. DOODY: Okay. Now,
19 Mr. Commissioner, those are my questions. I may,
20 after reading the new NORR Report over the weekend,
21 have more questions for Mr. Caughill, although I
22 have to say I don't think that is a likelihood.

23 THE COMMISSIONER: All right. Anybody
24 have anything to add, anything further?

25 We'll adjourn then until 9 o'clock on

1 Tuesday of next week.

2

3 -- Adjourned at 11:30 a.m.

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REPORTER'S CERTIFICATE.

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify:

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

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

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

Dated this 14th day of March, 2013.

Deana Santedicola

NEESON & ASSOCIATES

COURT REPORTING AND CAPTIONING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

\$	16 1702:25	21 1688:14	1670:6 1673:8 1679:9	6
\$17,000 1698:5	18 1638:17	216 1634:16	409 1699:14	6 1638:20 1669:13
\$4,200 1701:22	18th 1697:25 1698:20 1700:8	219 1647:6	410 1693:8	63 1715:19
1	19 1723:15,16	22 1647:4 1650:15 1671:23	43 1687:23	65 1706:25 1707:1 1712:24
1 1647:16	1991 1644:4,22 1667:17	227 1654:15	430 1687:23	6th 1669:2
1655:14 1662:20	1994 1634:24 1646:9 1647:10 1662:2 1667:17 1723:5	23 1715:25	443 1654:15	7
1666:5 1669:3,18	1995 1626:25 1653:20 1654:16 1658:3 1661:25 1662:13 1664:24 1665:17,18 1669:2,13 1671:23 1723:7	23rd 1716:2 1723:15	45 1647:7 1690:17,18 1691:11	7 1715:8
1670:8 1671:23	1996 1679:15 1680:3 1688:14 1691:13 1693:9 1696:7 1697:25 1700:19	24/7 1720:9	454 1715:19	8
1674:7 1684:8,18	1997 1715:21,25	24th 1646:9 1654:16 1691:13	455 1700:16 1711:22	8 1672:14 1673:11 1674:17 1675:25 1693:23, 25
1691:22 1700:25 1709:11	1998 1723:13	25 1682:10 1691:1	456 1690:17	860 1651:21
1.25 1684:9,19	1999 1723:15,17	258 1706:25 1707:1	457 1658:1	9
1.4 1685:4	19th 1700:4	28th 1665:18	46 1650:20 1652:4	9 1633:9 1694:3
1.47 1684:19	2	2968 1646:18	461 1634:16 1647:4 1650:15	95 1672:10 1723:12
1.479 1684:9	2 1663:21,22 1664:13 1666:24 1667:11 1669:21 1670:11 1672:13 1674:1,16 1675:19 1682:9, 20 1692:1 1701:10 1709:14	2978 1636:24	47 1699:14	96 1688:23 1700:4 1716:2
1/2 1655:3	2-inch 1705:16 1706:4	3	48 1665:16 1693:8	96/06/19 1700:3
1/4 1655:3	20 1672:19 1673:2,16, 1674:22,25 1675:7,8 1676:5 1681:19 1685:20	3 1634:19,20 1638:12,20 1659:9,20 1667:11 1669:23 1670:16 1671:6,9 1673:5,12 1675:11 1676:1, 14,22 1680:7 1694:17 1701:16	49 1700:16 1706:24 1711:22	97 1717:14
10 1636:22 1694:15 1707:21	2013 1621:2	300 1697:22	4x4 1715:11	99 1723:10,12
10% 1644:6	2084 1697:24	31 1662:13 1665:17	5	9:00 1621:1
1093 1661:14		31st 1653:20 1662:16	5 1638:12	9th 1634:24
10:23 1691:6		32 1658:1	50 1672:17 1673:14 1674:21 1676:4 1708:13	A
10:45 1691:7		38 1668:23	50% 1709:14	a.m. 1621:1 1691:6,7
10th 1723:16		3rd 1715:21	51 1668:24	ability 1657:22
11 1638:18 1694:15		4	52 1691:11	absence 1626:9
11:00 1691:3		4 1648:21 1651:15 1658:20	53 1672:16 1673:14 1674:20 1676:3	Absolutely 1641:25 1678:4 1721:5
11th 1665:18,25			58 1712:24	
12 1693:9 1698:19			5th 1647:10 1700:19	
12/96 1698:3				
120 1671:13 1710:6				
12th 1699:16 1700:8				
13 1697:23				
14 1621:2 1639:1				
15 1651:14 1676:12				

abstract 1635:14 1646:20 1647:16 1651:18 1652:12	adhere 1657:23	alternates 1663:8,11 1666:22	1688:13 1697:1 1707:4 1715:20	asphaltic- based 1685:19
accept 1710:18	adherence 1657:23	alternative 1623:16	application 1623:21 1660:12	assembly 1664:21
acceptable 1625:1 1663:7 1666:17 1707:12	adhesion 1659:10	alternatives 1663:1 1666:11	applied 1713:14	assessment 1643:21
accepted 1701:15 1712:1,2	adopt 1629:15	ambit 1627:15	apply 1623:18 1672:25	assignment 1693:18
access 1714:16, 18 1716:25	advice 1660:4 1685:13	amount 1644:16 1645:1,14 1679:17	approach 1699:19	assist 1649:11
accessing 1716:8	affect 1657:14	analysis 1643:15,25 1646:21 1647:18 1648:17 1649:9, 12 1651:2 1652:22 1653:14 1654:8 1662:17, 19 1665:11 1669:5,8 1671:2, 11 1673:9 1675:14,23 1692:18 1696:16 1708:9	approached 1658:11	assistance 1630:18
accidentally 1716:21	affects 1630:22	analyze 1626:1 1665:5 1685:6,8	appropriately 1692:11	Associates 1669:4
accompanied 1699:15	afternoon 1624:22	analyzed 1632:8,19 1708:13	approval 1705:25	assume 1655:13 1657:18 1691:17
accordance 1690:5,10 1691:23 1692:12	agree 1630:23 1649:18 1676:8 1678:23 1710:5 1719:1,22	and/or 1632:20 1670:14 1694:5	approximately 1644:6 1671:15	assuming 1644:9 1663:24 1664:16 1667:3, 14 1668:4 1670:21
achieve 1685:21	agreed 1649:20	angle 1695:20	April 1691:13	assumptions 1670:7,19
acquiesce 1632:22	agreeing 1667:24	answers 1632:7 1668:11,14	Architect 1701:4	ATA 1675:23
action 1639:21 1655:1 1707:24	agreement 1649:16 1723:5, 14	anticipated 1646:3 1658:21	architectural 1640:25	attached 1651:17,25 1661:19
active 1637:19	ahead 1625:2 1662:8	anticipating 1629:1	area 1627:4 1634:7 1645:24 1707:22 1708:10, 12 1713:13 1715:6	attempt 1664:5
actual 1626:24 1676:10 1706:3	air 1642:19 1721:7	apparently 1658:19	areas 1636:14 1638:2 1639:14 1640:6 1670:16 1673:5 1675:15 1676:19 1677:1,2 1680:21 1681:7, 10 1682:22,25 1683:8,11,14 1684:3 1687:16 1692:23 1701:17 1713:12	attendance 1629:14
added 1669:23 1682:10	Albert 1658:4	appeared 1640:22 1705:19 1709:4	argument 1627:10	attended 1704:4
addition 1651:7 1661:21 1672:23 1673:21 1688:6	Alex 1669:4	appears 1626:18 1639:25 1667:24 1670:4	arisen 1621:11	attending 1631:15
additional 1653:5 1663:23 1664:15 1667:2 1675:21 1680:25 1683:3 1684:13, 20	Algo 1647:14 1679:23 1687:24 1688:8 1700:22 1701:1		arising 1623:19 1624:5,8 1625:6 1633:25	attention 1624:20
address 1624:11 1699:20 1712:3	Algocen 1685:1		asphalt 1682:10	August 1646:9 1665:18,25
addressed 1662:19 1664:21	Algoma 1622:11 1633:25 1645:19 1697:4		asphaltic 1681:4 1682:6	author 1688:4
	allowable 1653:4 1671:12			authors 1635:15 1637:5 1639:2,18 1646:20
	alterations 1714:7			Avenue 1718:8
	alternate 1666:18			aware 1688:20 1721:16,21 1722:13,24

<p>awhile 1664:7</p> <hr/> <p>B</p> <hr/> <p>back 1623:18 1624:9 1628:24 1629:8,14,20 1643:6,9 1646:17 1673:25 1678:15 1696:22 1706:13, 1708:20 1712:23 1716:17 1717:3 1718:6, 1719:7 1721:11</p> <p>backer 1659:16, 23</p> <p>balance 1631:1</p> <p>balanced 1716:20</p> <p>barricades 1716:6,10,14,23 1720:11</p> <p>barrier 1715:14 1719:25</p> <p>barriers 1715:3, 6 1718:18</p> <p>base 1716:10</p> <p>based 1639:24 1640:18,24 1665:1, 1671:3,20 1681:4 1693:16 1701:1 1719:11</p> <p>baseline 1644:22</p> <p>basic 1672:16 1673:13 1674:19 1676:2</p> <p>basically 1657:3</p> <p>basis 1680:1</p> <p>beam 1638:12, 23,24 1640:16 1693:1</p> <p>beams 1635:22 1637:21,25 1638:14 1639:9, 10,13 1640:14,19, 21 1673:10</p>	<p>1675:24 1677:20 1695:21 1713:11</p> <p>bear 1657:5 1697:22</p> <p>bed 1668:10</p> <p>beefed 1667:9</p> <p>began 1625:15 1723:13</p> <p>begin 1627:5</p> <p>begins 1626:13</p> <p>begun 1640:1</p> <p>behalf 1631:19</p> <p>Beta 1692:21 1701:4</p> <p>big 1642:11 1657:10</p> <p>bigger 1721:1</p> <p>bilingualism 1631:4</p> <p>Bisceglia 1625:14,20 1630:12,23 1632:22</p> <p>Bisceglia's 1628:5,13 1629:15</p> <p>bit 1633:8 1657:11 1668:15</p> <p>black-lining 1652:14</p> <p>block 1699:17</p> <p>board 1682:12 1686:19 1687:5</p> <p>Bob 1631:15</p> <p>bolted 1695:21, 25 1696:1</p> <p>bolts 1694:6,14 1695:10,14 1696:1 1698:9</p> <p>bond 1659:8</p> <p>bonded 1641:4, 8 1642:5 1643:1, 17 1645:4 1648:25 1649:5</p>	<p>1654:9 1662:21, 25 1664:9 1666:7, 10 1669:19 1672:1,7,15 1674:5,9,18 1677:3,11,23</p> <p>bonding 1645:7 1658:6</p> <p>book 1647:5 1691:12</p> <p>bottom 1635:13, 15 1636:23 1637:20,24 1638:11,16 1639:12 1652:11, 21 1658:17 1659:7,8,15,21,24 1680:7 1714:14 1715:20 1717:25 1718:13 1719:1, 15,18</p> <p>box 1661:17</p> <p>brain 1630:15</p> <p>break 1691:2</p> <p>breaker 1659:8</p> <p>bring 1623:18 1624:9,19 1705:20</p> <p>brought 1629:8</p> <p>building 1668:18 1689:14, 25 1691:22 1692:10 1695:3 1696:12 1704:16 1707:14,18 1708:16,24 1709:1,16 1711:4, 13 1714:3,5 1722:3 1723:1</p> <p>buildings 1721:21</p> <p>built 1622:9 1709:20</p> <p>bulging 1638:9</p> <p>bullet 1716:5</p> <p>bus 1713:13,14</p> <p>buses 1713:3,9, 21</p>	<p>butt 1705:13,17 1706:6 1708:3</p> <p>buying 1722:25</p> <p>by-law 1721:17 1722:1</p> <hr/> <p>C</p> <hr/> <p>C-10 1657:6</p> <p>cables 1640:14</p> <p>call 1642:18 1661:23</p> <p>called 1657:6 1704:22</p> <p>campers 1718:3</p> <p>canopy 1681:9 1683:13</p> <p>capable 1663:23 1664:14 1667:1 1675:20 1711:9 1714:5</p> <p>capacity 1636:17 1646:23 1648:17 1665:1,2 1668:19 1669:21 1671:9 1676:10</p> <p>care 1695:7</p> <p>carefully 1632:8</p> <p>carried 1643:16, 22 1677:5 1679:15</p> <p>carry 1628:8 1677:9,22 1679:24 1680:22 1694:4</p> <p>Carrying 1694:13</p> <p>cars 1673:21 1715:10</p> <p>case 1629:4 1635:13 1655:20</p> <p>cases 1695:18, 23</p> <p>categorically 1632:12</p>	<p>Caughill 1623:18 1624:5,9, 21 1625:2,4 1626:9,20 1627:22 1629:17, 23 1633:4 1634:11,15 1647:5,6 1650:15 1658:1 1661:14 1668:24 1691:11 1697:23 1707:3</p> <p>Caughill's 1622:14 1628:11</p> <p>caulk 1659:21</p> <p>caulked 1639:7 1644:8</p> <p>caulking 1657:22 1658:18 1661:4 1683:7,9, 10</p> <p>caused 1667:19 1713:16</p> <p>causing 1713:23</p> <p>ceiling 1636:3 1637:8,12,15,17 1638:8 1639:6 1640:16</p> <p>ceilings 1637:10</p> <p>central 1622:11 1632:5 1645:19 1679:4 1687:1 1697:4</p> <p>Centre 1647:14 1679:23 1687:24 1688:9 1692:19 1700:22 1701:1</p> <p>CEO 1686:19,22</p> <p>chairs 1622:22</p> <p>change 1644:16 1652:10 1665:24</p> <p>changing 1652:1,6</p> <p>characterized 1633:1</p> <p>chaser 1657:7</p>
--	---	---	---	---

<p>check 1693:1 1700:21</p> <p>checking 1694:3 1701:11</p> <p>chloride 1636:8 1639:19 1646:2 1667:21 1677:16</p> <p>chlorides 1640:1</p> <p>chronology 1700:7</p> <p>circuitous 1718:6</p> <p>circumvent 1719:25</p> <p>City 1682:7 1721:14,17 1722:9</p> <p>clairvoyant 1716:4</p> <p>clean 1657:19 1681:13</p> <p>clear 1650:5 1653:12 1665:4 1692:7 1715:11 1720:18</p> <p>clearance 1715:8</p> <p>client 1628:24 1631:14,22,23</p> <p>client's 1625:22</p> <p>clips 1638:4</p> <p>close 1708:4</p> <p>closed 1723:8, 16</p> <p>closely 1713:8</p> <p>closing 1723:20</p> <p>Code 1707:14,18 1708:17 1709:1, 16 1711:13 1714:5</p> <p>Codes 1701:7</p> <p>coincide 1637:17 1639:7</p>	<p>collapse 1621:16 1622:6 1626:4 1719:24</p> <p>columns 1695:17,24 1713:11</p> <p>combination 1663:10 1666:20</p> <p>combined 1709:25</p> <p>commence 1624:2</p> <p>commenceme nt 1688:1</p> <p>commencing 1621:1</p> <p>comment 1624:15 1648:9 1650:24 1661:3</p> <p>commented 1624:24</p> <p>comments 1632:1 1635:6,7 1648:1 1650:21 1651:24 1671:22 1715:23</p> <p>Commission 1621:18 1623:14, 23 1625:1 1627:16 1629:7 1631:18 1632:19</p> <p>Commissioner 1621:4,7,9,10 1622:2,5 1623:2, 24 1624:12,14,18 1625:7,12,15,18 1628:1,3,23 1629:3,6,22 1630:4,5,7 1631:3,7,11,25 1633:14,17,22 1634:10,14 1642:16,17,21 1676:20,23 1684:11,14 1690:23 1691:5,9 1710:12 1719:3,6</p> <p>Commissioner 's 1625:23</p>	<p>communicate 1634:5</p> <p>communicated 1633:15</p> <p>company 1689:1 1692:10 1721:12 1722:5 1723:24</p> <p>compensated 1709:21 1710:13</p> <p>competing 1623:2</p> <p>complete 1623:4 1626:16 1628:11 1633:3</p> <p>completed 1629:2</p> <p>complex 1630:13</p> <p>compliance 1708:16 1721:25</p> <p>components 1670:12,22 1692:19 1694:16 1695:9 1696:7,17 1721:20</p> <p>composite 1663:25 1664:17 1667:4,14 1676:16</p> <p>composition 1631:2</p> <p>compromise 1630:9 1710:25</p> <p>concentrations 1667:21</p> <p>concern 1644:14 1645:16</p> <p>concerned 1625:16 1695:11 1696:6,21,22</p> <p>concerns 1649:2 1699:21</p> <p>conclude 1625:2 1668:13 1673:7</p>	<p>concluded 1702:12 1712:19</p> <p>concluding 1696:20</p> <p>conclusion 1648:21 1671:7, 16, 1673:19 1681:21 1685:12 1702:19 1711:15 1717:10</p> <p>conclusions 1639:18 1651:14 1674:12 1708:22</p> <p>concrete 1636:9 1638:21 1639:20, 23 1640:13 1641:3,8 1642:5 1643:17 1644:6, 10,17 1646:1 1651:3 1652:24 1654:18 1658:6, 12 1660:25 1661:1 1663:2 1666:12 1667:20 1669:18 1670:12 1671:13,25 1673:12 1674:4,8, 18 1675:2 1676:1, 19 1677:1,23 1679:18 1680:11, 16,19,22,23 1681:13 1682:22, 24 1704:17 1707:15,21 1708:10 1710:21 1711:2,9</p> <p>condition 1635:18 1638:14 1644:5,22 1664:24,25 1671:3 1721:19</p> <p>conditions 1693:2</p> <p>conduct 1683:8</p> <p>conduits 1638:7 1639:15 1640:17</p> <p>confirm 1643:16 1651:2 1691:22 1701:12 1711:24</p> <p>confirmed 1714:21</p>	<p>conformance 1701:14 1707:13, 17 1708:25 1711:12,25 1714:4</p> <p>conformity 1670:9</p> <p>connections 1694:4 1696:3 1701:13 1711:25 1712:5,8</p> <p>conservative 1709:19</p> <p>consideration 1721:24 1722:12</p> <p>considered 1623:9 1638:13 1696:8 1712:14</p> <p>consist 1706:11 1715:7</p> <p>constructed 1670:9 1689:15 1690:12 1692:11 1695:3 1709:4</p> <p>construction 1630:16 1688:8 1690:13 1692:1 1693:3 1701:9,15, 19 1707:15 1709:2,3 1711:14 1712:2</p> <p>consult 1631:20</p> <p>consultant 1630:18,21</p> <p>Consulting 1692:17</p> <p>CONT'D 1634:13</p> <p>contact 1698:23 1699:1</p> <p>contained 1639:4 1722:8</p> <p>contaminate 1640:2</p> <p>contamination 1636:10 1677:17</p>
--	--	--	---	--

<p>content 1636:8 1639:19 1646:2</p> <p>context 1646:16</p> <p>continue 1636:14 1656:9 1677:13 1711:6</p> <p>continued 1678:2 1719:24</p> <p>continuing 1627:17</p> <p>contours 1657:12</p> <p>contract 1695:12 1706:16</p> <p>contractors 1720:20 1721:1</p> <p>contrary 1647:19</p> <p>control 1640:10 1644:8 1655:22 1657:8</p> <p>controlled 1667:15</p> <p>convenience 1661:23</p> <p>conventional 1708:23</p> <p>conversation 1642:2 1658:3</p> <p>Cooper 1693:9 1699:18</p> <p>copies 1723:25</p> <p>copy 1651:18 1652:4</p> <p>core 1638:12,24 1640:8 1642:4 1666:8,20 1672:2, 14 1673:11 1674:6,9,17 1676:1 1677:8,10, 13,15,17,19 1681:10 1683:1, 14 1695:16 1705:20</p> <p>Cores 1638:20</p>	<p>coreslab 1642:24 1643:7,8, 10 1648:23,24 1669:20 1704:24 1705:1,2,21</p> <p>Coreslab's 1705:25</p> <p>corner 1635:14 1707:6</p> <p>corners 1720:18,23</p> <p>correct 1633:22 1635:9 1641:11, 12,15 1643:2,12 1644:17,24,25 1645:6,11 1648:14 1649:1,6 1650:13 1652:2,9, 16 1653:8 1654:18,19 1656:1,8 1659:13, 25 1661:4 1667:25 1669:6 1670:24 1671:5, 16,17 1672:8 1673:3 1674:15 1676:13 1679:1 1681:18 1683:17, 19,20 1684:23,24 1687:3 1690:14 1691:19 1692:6, 13 1693:6 1695:22 1696:17, 18,25 1698:13,15 1700:4,5,14 1701:23 1707:2 1708:13 1712:6 1715:22</p> <p>corrected 1719:10</p> <p>corrective 1707:24</p> <p>correctly 1672:23 1705:5 1707:19</p> <p>corroded 1639:15</p> <p>corrosion 1636:7,12 1640:23 1677:18</p>	<p>cost 1684:18</p> <p>costs 1628:17 1684:13,20 1685:5,8</p> <p>counsel 1623:14 1625:1 1628:6,19 1629:24 1631:2, 14 1632:20 1633:6</p> <p>Counsel's 1623:23 1629:7</p> <p>counter 1716:20</p> <p>couple 1624:23 1704:5</p> <p>coupled 1639:20</p> <p>cover 1699:15</p> <p>covered 1627:11 1637:8</p> <p>covering 1638:3 1648:7</p> <p>crack 1657:6</p> <p>cracked 1713:20</p> <p>cracking 1704:12</p> <p>cracks 1655:2, 21 1656:10,24 1657:20 1660:5,8 1682:21 1704:12 1705:6 1710:23 1711:2 1713:25</p> <p>create 1660:5</p> <p>Cresswell 1686:21</p> <p>crews 1682:7</p> <p>criticism 1632:13</p> <p>cross-examination 1622:14,17 1623:13 1626:8, 11,13 1627:6,9,24 1628:9,12 1630:22,24</p>	<p>1633:7</p> <p>cross-examinations 1623:24 1624:2</p> <p>cross-examined 1627:12</p> <p>Crown 1621:15</p> <p>crucial 1632:5</p> <p>current 1663:7 1666:17 1716:12</p> <p>cut 1657:20 1706:1</p> <p>cycles 1677:16</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daily 1720:10</p> <p>damage 1638:2 1639:14 1663:16 1668:17 1713:16 1716:22</p> <p>damaged 1713:18</p> <p>data 1636:18 1646:24 1648:18 1652:25</p> <p>database 1621:24</p> <p>date 1623:22 1658:4 1716:1 1723:21</p> <p>dated 1621:20 1634:24 1647:10 1654:16 1658:2 1662:13,16 1665:17 1669:1, 1691:13 1693:9 1697:25 1715:21, 24 1716:2</p> <p>dates 1723:18</p> <p>day 1625:23 1627:12, 1668:15</p> <p>days 1628:7 1630:1 1704:23</p>	<p>dead 1672:20 1673:17 1674:23 1676:6 1677:9</p> <p>deal 1634:2 1641:14,17 1656:7 1671:8</p> <p>dealing 1661:5 1703:4</p> <p>deals 1622:10,11 1627:3 1633:25</p> <p>dealt 1634:8</p> <p>debonded 1644:7,10,13,16 1645:2 1675:3 1676:19 1677:1,7, 22 1679:18 1680:11,21 1682:22 1683:10</p> <p>debonding 1645:14 1663:6 1666:16</p> <p>December 1647:10</p> <p>decision 1624:13 1648:3 1686:5 1689:6,19, 22</p> <p>decisions 1654:6</p> <p>deck 1637:7 1656:10 1667:14 1668:3 1672:25 1673:6 1676:18, 25 1679:14,21 1680:1,3,13 1681:6 1683:11 1708:8, 1709:10 1710:2,22 1713:7, 1714:12,15 1716:9 1718:11</p> <p>deck?' 1676:16</p> <p>deep 1659:22</p> <p>defect 1670:14</p> <p>defects 1645:3 1709:5</p> <p>defer 1633:6</p> <p>deficient 1701:18</p>
--	--	---	---	---

define 1667:22	1701:16	directly 1695:24	1684:13,16	effect 1639:21
degradation 1667:19	details 1694:2 1715:13	discrepancy 1704:19	1690:24 1691:4,8 1710:14 1719:5,9 1723:11	1665:5 1667:25 1670:2 1678:13 1692:4 1696:16 1707:14 1709:1, 11 1710:1 1711:13,18 1717:6,18
delay 1623:4 1628:14	deteriorated 1682:25 1694:16 1695:9 1721:20	discuss 1636:19 1646:25 1648:19 1653:1 1661:24 1685:4 1703:9 1705:21 1715:13 1722:4	Doody's 1624:19 1629:16 1632:9	effectively 1693:12
delayed 1623:25	deterioration 1639:23 1640:13 1677:14 1684:21 1696:6	discussed 1641:7 1650:4 1657:2 1665:22 1703:2 1705:1	doubt 1632:5	effects 1709:21
deliberate 1720:1	determination 1692:4	discussion 1621:11 1639:2 1684:25 1687:19 1689:5 1691:15 1703:20 1722:7 1723:19	doubts 1622:20	effort 1720:1
deliberately 1722:2	determine 1636:16 1646:22 1648:17 1651:9 1652:23 1654:8 1664:6 1669:17 1670:2	discussions 1648:2 1662:8 1685:3 1687:8,11 1689:1 1702:16, 18 1703:14 1712:12 1723:23	draft 1634:23 1648:15 1649:21 1650:6 1651:23	elaborates 1651:19
delivered 1621:19,23 1712:9	determined 1675:13 1682:15 1701:19 1705:24	distress 1690:24	drainpipe 1638:6	elbows 1638:6
Dell'aquila 1647:12 1650:22 1691:13	determining 1682:2	ditto 1655:6	drains 1681:1 1683:4	electrical 1640:17
Department 1714:22	developed 1654:4	divert 1636:4	drawing 1705:14,15	element 1667:22
depending 1651:11 1664:9	developing 1705:7	document 1642:24 1647:6 1651:25 1652:3 1678:24 1689:8 1690:7 1691:16 1697:7 1711:18	drawings 1641:1 1643:7 1648:23 1651:6 1670:10 1689:11 1690:10 1692:20, 25 1693:17 1695:4 1701:3 1703:24 1704:21	elements 1645:2 1694:18
depends 1659:18	dictated 1626:21	documentation 1703:13	drawing 1705:14,15	Elliot 1630:6,7 1632:23 1714:21 1721:14,17
depth 1638:21 1655:3,14,19,24 1656:18 1657:3 1658:22 1659:11, 12,20 1660:4	differences 1629:9 1632:12, 16,24 1633:16,19, 20	documents 1651:23	drawings 1641:1 1643:7 1648:23 1651:6 1670:10 1689:11 1690:10 1692:20, 25 1693:17 1695:4 1701:3 1703:24 1704:21	embedded 1636:12
depth-to-width 1657:21	differential 1713:23	Domenic 1661:19	Dremel 1657:10	emergency 1714:20
design 1665:1,3 1689:12,15,24 1690:1,5,12 1692:2,18 1693:1, 3 1694:2 1697:14 1700:21 1701:1,8, 14,18,20 1705:16 1706:13 1709:7,8 1712:1	differently 1622:23,25	Doody 1621:7,8 1622:4 1625:8,9 1629:12 1630:8 1632:14 1633:1, 12,13,21,23 1634:12 1637:1 1642:20,22 1650:18 1676:21	driveway 1721:9,10	emphasis 1652:18
designed 1691:23 1692:11 1702:13 1707:16 1708:24	difficult 1626:17 1627:8 1685:21 1717:24		due 1639:14 1651:12 1673:6 1675:16 1683:15	end 1625:23 1627:15 1706:3 1716:18
designs 1697:13	difficulty 1719:12		Dymarc 1660:15	ended 1710:9
detail 1632:19	dilemma 1627:14		Dymonic 1660:14	ending 1651:21
detailed 1630:14 1685:9	directed 1634:25		<hr/> E <hr/>	ends 1646:18
			earlier 1623:22 1649:3 1656:5 1672:6 1673:20	Eng 1692:22 1698:16 1700:24 1701:6
			earliest 1661:23	engineer 1642:25 1672:4 1688:7 1695:5 1697:9 1709:7
			easily 1657:13	engineering 1621:14 1622:12 1691:24 1701:4
			economic 1687:13	

engineers 1692:17, 1705:21	evidentiary 1623:4	1666:9 1672:24 1684:22	false 1636:3 1637:8,10,12,14, 16 1639:6 1640:16	fireproofing 1637:24 1639:12 1640:15
ensure 1689:12, 14,16 1690:11,12 1715:4 1720:7	examination 1623:12 1624:1 1627:20 1628:11 1633:3 1634:8,12 1689:10 1694:24 1701:17 1703:19	experienced 1631:2 1667:17	familiar 1702:18	firm 1621:14 1622:12 1658:13, 14 1669:4 1700:18,20
entire 1622:24 1629:25 1652:5 1680:13 1681:5	examined 1702:20	explain 1697:4 1713:22	fault 1633:24	fit 1682:14
entitled 1687:24	exceed 1658:22 1659:4,11 1667:16	explores 1622:6	fax 1647:9 1648:1 1661:15 1698:2 1699:15	fix 1646:13 1659:19 1706:7, 11
entry 1711:3	exception 1683:23	exponentially 1646:13	February 1688:13 1723:15	fixed 1654:5 1670:23
equation 1632:7	exceptionally 1630:13	expose 1680:18 1683:1	feedback 1668:22	fixing 1656:10
equipment 1657:13,19 1718:11 1719:19	excessive 1635:19	exposed 1705:13	feel 1644:12 1699:10	flagged 1704:18
error 1709:17,22 1716:1	executive 1687:1	Exposing 1693:25	feet 1715:8	flange 1638:11, 17,23 1639:12
errors 1709:8,25 1710:1	exhibit 1634:16 1646:18 1647:4,7 1650:15,20 1652:4 1654:15 1658:1 1660:2 1661:14 1665:16, 22 1668:24 1669:11 1674:2 1687:23 1690:17 1691:11 1693:8 1697:24 1699:14 1700:16 1706:25 1707:1 1711:22 1712:24 1715:19	extend 1659:15	felt 1645:21 1649:14 1650:7 1718:14	flanges 1637:20, 25
essentially 1646:8 1652:14 1658:10 1681:12	excessively 1635:19	extent 1625:3	field 1637:4 1693:2	flippant 1686:12
established 1696:14	executive 1687:1	extremely 1641:21 1685:11, 21 1716:3	file 1658:2 1679:4 1697:24 1698:20	foil 1638:3
estimate 1684:18	exhibits 1640:8	F	final 1621:22 1626:9,16 1629:10 1631:22 1632:16 1649:23 1650:12 1662:1 1706:24 1707:2,7 1709:18	follow 1657:12, 20 1685:1,13
estimated 1667:13 1676:15	existing 1663:10 1666:20 1669:16,18,22,24 1670:10 1675:2 1680:15 1681:1,9 1683:13 1694:1, 17	face 1627:14	financial 1687:11	foot 1655:3,6 1671:14 1672:17, 18,20 1673:2,14, 15,17,22 1674:21, 23 1675:1,9 1676:3,4,6 1685:20 1708:14 1710:7
etch-a-sketch 1705:15	expand 1681:2 1683:5 1706:18 1707:20	faced 1623:1	find 1627:8 1651:17 1661:19	force[d] 1717:3 1719:7
evaluate 1669:16	expect 1679:3,6	faces 1714:11	findings 1671:21	forces 1656:6,7, 9 1657:8
evening 1624:20 1628:21	expected 1636:13 1662:24	fact 1624:21 1632:18 1692:2 1696:21 1712:7, 13	finally 1643:25	foregoing 1671:20
event 1628:24 1629:14,18 1630:2 1642:23 1659:25		factor 1632:9	fine 1625:10 1653:11	forensic 1626:4, 17
eventually 1632:7		factors 1632:2	finish 1623:11, 25	formal 1703:25 1723:14
evidence 1625:24 1626:19 1631:17 1635:19, 24 1637:23 1639:9 1640:20 1692:9 1696:14		failure 1667:18 1668:6 1678:12	finished 1627:20 1629:17, 19	formed 1627:16
		fair 1623:7 1635:8 1646:6 1659:7 1668:13 1696:19	fire 1714:19,21	Fortunately 1709:17
		fairly 1706:10		forward 1623:3 1624:25
		fairness 1628:15 1629:24 1645:6		
		fall 1723:5,13		

found 1632:15 1638:25 1701:18 1707:11,19 1708:15 1714:3 1720:13	gather 1622:3 1629:9 1631:8 1679:16	12	hired 1654:20 1656:3,5	important 1631:21,23 1632:6 1641:20 1650:7
foundations 1711:7	gathered 1625:7	grouted 1710:24 1713:19	historically 1626:2	in-chief 1623:12 1624:1 1627:20, 23 1628:12 1633:4 1634:9,12
fourth 1693:15	gave 1706:23 1711:17 1718:24	guess 1646:2 1668:22 1697:17 1720:21	history 1622:7 1702:25	inappropriate 1626:11 1702:13, 17
frames 1627:16 1715:7	geez 1627:11	guy 1660:25	hit 1710:6	inch 1655:3, 1672:14 1673:11, 12 1674:17 1675:25 1706:1
framing 1701:2, 11 1707:12 1709:10 1711:24 1713:11	general 1661:6, 8 1694:15 1721:22	guys 1657:9	hold 1650:19	inches 1659:20 1682:9
freeze-thaw 1639:21	generally 1635:18 1636:9 1673:10 1675:24 1707:12,18	<hr/> H <hr/>	holding 1646:5	include 1648:8 1693:23
freeze/thaw 1677:16	Geni 1704:18 1705:11 1706:15	hairline 1655:21	hollow 1635:21 1666:7 1674:6	included 1698:6
French 1631:4	gentleman 1658:4	half 1682:9	homes 1718:3	includes 1708:17
friend 1627:19	gentleman's 1698:11	half-day 1627:17 1628:14	honestly 1687:18	including 1626:16 1670:12 1671:13
friend's 1626:7	Gerber 1709:9	handwritten 1696:23 1699:22, 23	hope 1633:8	inconsistencie s 1641:2 1642:12 1651:5
friends 1621:12 1622:13,22 1623:17 1624:1, 11	Giommi 1658:4, 11,18 1660:20,22	happened 1650:12 1685:14 1686:6	hoping 1629:4	inconsistency 1643:24 1648:23
front 1664:13 1716:18	girder 1709:9	haul 1719:20	horizontal 1695:15,21	inconsistent 1642:7 1643:10 1646:7
front-end 1720:15	gist 1631:8	headed 1635:14	hot 1642:19	increase 1640:17 1645:15 1646:12 1684:21
full 1638:21 1659:20 1708:17, 18 1709:12	give 1658:13 1692:9 1702:3 1721:23	heading 1637:3 1639:1,17 1654:23 1658:18 1662:17 1671:18 1680:8 1708:9,22 1714:2	hour 1690:25	increased 1644:11
fully 1631:17 1672:1,14 1674:9, 18 1708:15	giving 1721:14	heard 1626:19	<hr/> I <hr/>	indication 1652:18
<hr/> G <hr/>	good 1621:4,5,6, 8 1624:17 1635:3, 18 1691:23 1692:12 1712:14	hearing 1625:15	I-beams 1695:15	individual 1621:17
gap 1659:19 1706:4,14	grade 1686:7,8	heat 1642:15,20	i.e 1651:10 1679:17	influence 1622:17
garage 1669:16 1670:8,11,16 1681:10 1683:14	great 1656:6	heavy 1714:11	lamonico 1646:8 1650:23	information 1627:5 1671:21 1679:16 1722:8
gates 1713:5 1714:14,17	greater 1673:2 1710:3	height 1655:24	idea 1648:13 1656:21	
	greatest 1627:7	hierarchy 1686:13	identified 1645:22 1687:17 1692:24 1704:16 1705:18 1712:17	
	gridline 1707:21	high 1639:19 1716:25	identify 1673:4 1675:18 1682:21 1694:16	
	groundwork 1626:14	higher 1630:15 1636:9 1646:1 1709:15	ii 1663:3,17 1666:13 1689:14	
	group 1696:23 1701:5 1717:11,	hill 1721:8	iii 1663:6,19,20 1689:16	
		Hillside 1718:7	importance 1632:4	

informed 1713:2	interruption 1627:18		Keywan 1701:3	learned 1624:21
initial 1636:11 1723:19	intervening 1630:1	J	kind 1630:25	leave 1650:2,3 1716:13
initially 1710:17	interviewing 1648:4	J.J. 1701:5	knew 1628:6	leaving 1650:3 1717:24 1718:13
initials 1715:20	investigated?' 1679:11	James 1701:3	knowing 1627:9	led 1645:3
initiated 1698:23	investigation 1626:5 1707:23	January 1653:20,22	knowledge 1628:19	left 1649:24 1679:4 1685:5 1717:8
input 1631:24	investment 1687:12	job 1643:8 1717:6	Kuka 1636:24,25 1646:17 1647:4, 11 1650:16 1661:17 1662:6 1676:23	legal 1722:18
inquiry 1623:5 1688:2	Investment/ options 1687:25	John 1692:21	L	Leistner 1648:3 1649:14 1686:16, 18 1690:3 1697:11 1700:12 1704:22 1707:7 1717:16
inspection 1626:24 1646:11 1671:3 1679:25	involve 1626:12	joined 1704:23	labourer 1630:16	Leistner's 1648:12 1699:23
inspections 1694:5	involved 1626:20,22,23 1628:16,17 1688:8 1689:7	joint 1644:8 1659:16 1660:5 1681:2 1683:5 1705:12,13,17 1706:9,15 1707:20	lack 1720:20	let alone 1682:11
install 1680:25 1681:2,4,8 1682:7 1683:3,5,7,12 1684:1	involvement 1626:1 1721:13	joints 1635:20 1637:17 1639:8 1640:10,12 1655:22 1657:8 1658:18 1659:9 1661:4 1677:12 1683:7,10 1704:18 1706:6, 15,18 1708:3 1710:24 1713:19	Lake 1714:21 1721:14,18	letter 1635:13 1690:21 1691:12 1693:8
Installation 1680:12	ion 1636:8 1639:19 1646:2	July 1665:18,21 1700:19 1723:8	lamp 1642:20	level 1635:22 1639:4 1680:17
installed 1651:10 1675:1 1677:3 1707:19	iron 1695:20	June 1661:25 1693:9 1697:25 1698:2,19 1699:16 1700:4 1723:8,16	large 1706:17 1714:11,16,19,23 1715:5 1716:8 1717:25 1718:11	levels 1667:16
installing 1683:23 1685:18	irregular 1657:12	justice 1631:5	larger 1713:12 1721:3	Liautaud 1717:13,15
instance 1686:17	issue 1621:10 1628:21 1641:7, 20 1669:8 1704:1 1705:6 1712:4 1721:24 1722:12	Kadlec 1642:25 1692:22 1701:5	late 1628:21 1631:8 1723:7,8, 15	licence 1688:17 1697:12
instructed 1656:24	issues 1623:2 1633:25 1641:13, 17 1704:11,25 1705:4 1712:3	Kadlec's 1688:17 1689:24 1697:12	laying 1626:14	license 1688:6
instructions 1657:2 1689:21	italics 1652:12, 13	Kearns 1624:16, 17 1625:10 1723:9	lead 1632:7 1714:15	life 1667:13 1676:15 1678:14
insulation 1638:3,4	item 1651:14 1670:6 1671:9 1672:13,25 1673:5,8 1675:11 1676:14 1679:8 1693:23	key 1678:13	leading 1710:23 1711:1	lift 1721:2
intact 1717:8	items 1626:13 1662:18 1694:15		leak 1654:4	light 1687:13 1713:22
integral 1696:2	iv 1663:9 1666:19		leakage 1635:20,24 1636:5,14 1637:23 1639:10 1640:6,9,21 1667:15 1668:4 1676:11 1677:12	Limited 1669:5
integrity 1677:4 1695:5			leaking 1645:24 1682:21	limits 1663:9,17 1664:3 1666:19 1667:7
interested 1700:9			leaks 1637:19 1702:25 1711:5,6	lines 1657:9,12
interim 1625:19 1629:10 1630:12 1632:17 1704:11				list 1661:20
				live 1709:14

living 1657:17 1723:25	lost 1633:9	mall 1622:8,11 1635:21 1637:12 1687:13 1703:1 1721:13,24	25 1697:24 1715:19 1719:2	modifications 1643:19 1651:8 1714:7
load 1653:5 1663:9,17,23 1664:1,15,18 1666:19 1667:2,5 1669:21,23 1671:12 1672:16, 19,21,24 1673:7, 13,16,18 1674:20, 22,24 1675:17 1676:3,5,7 1677:9 1683:16 1709:14	lot 1642:18 1657:7 1685:5 1723:22	Maloney 1628:2,3 1629:1, 5,19 1630:3	men 1661:11	modified 1705:15
load-bearing 1641:10	low 1685:11	manufacturer 1642:3 1660:19	mention 1712:8	modify 1680:25 1683:3
load?' 1675:21	lower 1635:13	manufacturers 1660:11	Messrs 1650:22	monitor 1720:9
loaded 1621:24 1713:3 1716:18	M	March 1621:1 1654:16 1662:13, 16 1665:17 1715:21	met 1672:10	monitored 1720:13
loaders 1716:19 1720:15,16	M-e-y-e-r 1698:12	marketing 1635:3	metal 1636:2 1638:4,7	monitoring 1711:4
loading 1651:11 1708:18 1709:12	machine 1657:10	materials 1680:16	methods 1660:12	monthly 1680:1
loads 1673:11 1675:25 1708:7 1711:10 1713:14 1714:6	Macrae 1625:14 1631:7,10	mark 1642:12 1655:6	meticulous 1648:5	months 1662:1
local 1683:8	made 1621:21 1624:23 1626:24, 25 1629:12,23 1631:9 1632:22 1647:17 1650:10 1651:24 1653:12 1682:2 1686:5 1687:12 1701:6 1709:7,18,25 1718:17 1719:16	maximum 1681:19	Meyer 1698:12, 19 1699:6,9 1700:3,8,10,13,23 1702:3,6,11 1704:3,4 1705:18 1706:23 1707:9 1717:7,18 1719:13	morning 1621:4,5,6,8 1624:9,17 1625:5 1632:10 1720:11
Locally 1682:24	maintain 1654:3 1657:23 1677:4 1702:13 1706:4	means 1655:6, 18 1680:14	Meyer's 1700:17 1708:7 1711:15	motion 1713:24 1723:3
location 1638:24 1717:9	maintained 1654:3 1721:18	meant 1634:4 1652:17 1655:13 1686:1 1712:20	million 1684:9, 20 1685:5	motor 1718:3
locations 1635:23 1637:11, 22 1639:9 1640:20 1644:9	maintaining 1722:3	measured 1638:15,17	mimic 1693:12	movable 1714:13,18
long 1630:13 1668:3 1673:1 1675:6,8 1678:7 1706:22 1723:3	maintenance 1679:23	measurements 1693:25	mind 1657:5	move 1635:3
longer 1668:18	major 1632:15 1633:20 1716:22	meeting 1671:24 1696:23 1700:2	Mine 1717:11	moved 1717:20
looked 1642:14, 23 1650:11 1669:1 1672:5 1691:17 1693:10 1696:8,23 1697:6 1703:22,23 1710:16	make 1623:20 1631:16 1632:1 1652:10 1654:6 1657:19 1664:20 1685:17 1686:4 1712:3 1718:19, 20 1719:2 1720:10	meets 1689:12	minimum 1658:20 1663:3 1666:13 1682:8	movement 1658:21
loosened 1713:21	making 1632:2 1633:8 1661:3 1685:24	members 1636:6 1637:18 1694:1,18 1701:12 1711:25	minor 1632:12 1633:2 1670:23	moving 1705:22 1708:6
		membrane 1675:6,7 1681:13 1682:11 1703:8, 15	mimic 1693:12	MTO 1682:7
		memorandum 1658:2 1661:15 1672:5 1687:24,	mind 1657:5	Myer 1698:9,16
			Mine 1717:11	N
			minuscule 1645:25	National 1658:5
			minutes 1691:1	nature 1632:23
			mirror 1692:2	needed 1641:23 1643:1 1648:25 1649:5 1650:8 1654:9 1664:8
			mislead 1722:19	negated 1710:9 1717:25
			missing 1638:1 1639:13	negative 1710:7
			mixed 1645:20	
			mm 1638:17	

<p>nice 1657:19 night 1622:6 non-movable 1715:3 1717:19 NORR 1621:14 1623:19 1624:5,7, 8,22 1625:17,21, 25 1627:3 1630:12,21 North 1716:10 Nos 1638:20 nosings 1706:15 note 1634:25 1642:24 1660:21 1665:17 1696:23 1697:6 1698:20 1699:23 1707:5 1718:19,20 1720:16 noted 1635:22, 25 1636:3 1637:10,13,15,19, 21,25 1638:5,7,8, 14 1639:11,16 1640:21 1644:4, 1645:13 1648:4 1651:13 1684:20 notes 1626:25 1646:10 1661:18 notice 1628:20 1712:7 notified 1697:11 1704:25 November 1621:20 1651:24 1669:1 number 1623:9 1626:12 1636:23 1648:21 1649:4 1653:16 1664:13 1666:4,24 1673:5 1674:7,16 1675:11,19 1676:14,22 1679:8 1685:11 1693:23 1704:10 1706:3 1713:6</p>	<p>numbered 1663:20,21 numerous 1637:9 1639:5 1640:9 1658:12</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>objection 1650:3 objective 1669:14 objectives 1647:20 1691:21 1693:13 obligation 1722:19 observed 1635:24 occasion 1630:10 occasions 1665:20 1704:5 occur 1640:5 occurred 1644:23 occurring 1676:12 1713:8 1720:4,7 October 1669:13 1715:24 1716:2 offer 1647:15 1662:13 offered 1702:5 office 1671:24 ominous 1657:7 on-site 1705:3 1706:21 1711:23 1712:18 one-by-one 1659:5 one-half 1655:14</p>	<p>one-page 1672:4 one-quarter 1655:14 one-to-two 1659:1 Ongoing 1677:11 1711:4 Ontario 1707:13,17 1708:16,25 1709:16 1711:12 1714:4 1718:7 open 1721:7 opened 1703:1 operating 1670:20 operationally 1718:8 opinion 1643:14 1676:10 1699:8 1702:9 1703:16 1704:1 opportunity 1622:16 1623:20 1627:21 1629:25 1631:13,16,20,24 1697:3 opposite 1657:4 option 1680:9 1682:20 1684:8, 18 options 1623:10 1636:19 1641:24 1646:25 1648:19 1653:1 1663:5 1664:10 1666:15 1680:8 1682:5 1684:4 order 1636:18 1641:9,23 1643:1, 19 1645:4 1646:24 1648:19 1649:16 1651:8 1653:1 1669:17 1679:16 1714:18 ordered 1660:13</p>	<p>original 1629:10 1640:25 1648:6, 15 1651:5 1701:2, 8,14 1704:21 1709:7 1712:1 originally 1660:6 1710:3 overburden 1681:18 overloaded 1710:22 oversized 1716:25 1718:4 overstress 1713:10 overstressed 1673:6 1675:16 1681:11 1683:15 1684:3 overstressing 1687:17 overtop 1684:2 owned 1622:11 1721:12 owners 1622:7 ownership 1634:1</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>packed 1713:8 pages 1651:20 1652:1,5 pails 1636:2 painting 1631:1 panels 1637:9, 15 1640:11 pans 1636:2 par 1690:13 paragraph 1635:15 1637:5 1646:19 1652:21 1669:3 1670:18 1688:4 1693:15 1707:10 1708:21 1712:25</p>	<p>parameters 1626:21,22 1682:15 1685:20 parking 1637:7 1679:14,20,21,25 1680:3 1681:6 1683:11 1707:22 1708:10,12 1709:10 1710:2, 21 1714:12,15 1715:6 1716:9 part 1641:10 1688:25 1696:2 1702:15 1714:25 1715:15 1720:2 1722:11,22 partial' 1708:18 1709:12 partially 1705:9 participants 1621:21,25 1623:7 1626:2 1632:20 1634:6 passage 1715:10 passed 1661:10 passenger 1670:17 1715:10 passing 1674:11 past 1665:22 1667:16 1710:23 1713:5 Paul 1699:6 1700:3,23 1704:14,18 paved 1721:8 pay 1686:7,8 pedestrian 1636:1 1681:6 penetration 1640:12 PEO 1688:17 people 1642:18 1645:19 1661:8 1719:25 1722:5</p>
--	---	---	--	--

percent 1644:10	point 1624:12	1636:11 1637:18	1685:23	1688:11
percentage 1644:12 1663:6 1666:16	1626:18 1628:5, 13 1630:2	1638:22 1639:8	price 1685:4	prolonged 1702:25
perfectly 1653:11	1633:14 1641:5,6 1648:21 1649:19	1640:2,7,11 1641:1,4,9	1698:5,6 1701:21	prompt 1711:5
perform 1688:10 1700:20	1654:10 1658:9 1660:14,17	1642:3,6 1707:15, 21 1708:10	priced 1684:9,19	promptly 1670:23,24
period 1718:1	1665:8 1669:3 1676:12 1695:25	1711:8 1713:15	primary 1625:24	proper 1658:16
permanent 1715:2 1716:6 1719:14,16,18	1705:13 1717:15, 17 1718:16,19,20, 24 1722:20	precise 1625:8	prime 1649:2	properly 1670:15,24 1709:4
personnel 1679:23	pole 1686:14	precisely 1649:4,13	printed 1699:17	properties 1679:5 1721:18
perspective 1625:22,23 1641:22	portion 1669:8	predominantly 1644:7	prior 1688:1	property 1721:17,25
Peterson 1660:7,10	portions 1637:23 1675:3 1683:9 1694:17 1708:23 1721:25	preliminary 1693:16 1704:11	privy 1687:7,10	proportion 1656:25
phase 1623:4	position 1623:23 1624:25 1626:17 1628:10, 18 1629:16	prepare 1621:15 1679:19	problem 1646:12 1670:21 1705:22 1707:20 1714:10	proportions 1657:15 1658:23
pick 1628:5	1630:11,15 1632:10 1687:1	prepared 1621:22 1628:8, 20 1643:8	problematic 1718:18,25	proposal 1627:8 1629:12, 13 1630:9
pickup 1715:11	positive 1710:8	1646:10 1698:8 1700:18,20 1701:3	problems 1702:18 1712:16 1718:21,22	1662:12,15,17 1692:16 1693:11 1697:16 1698:1,2, 19 1699:16 1700:7 1711:21
pickups 1718:3	postpone 1623:12	preparing 1624:20	procedures 1658:16	proposals 1631:9
pieces 1625:24 1630:25	postponed 1622:14	present 1716:24 1717:8	proceed 1623:17 1627:8, 23 1628:19,20	propose 1654:25 1661:22 1691:2 1693:19, 21
piling 1673:7 1675:17 1683:16	potential 1632:24 1687:16 1696:6	presently 1676:18,25 1716:19	proceedings 1627:18	proposed 1623:15 1652:1,6 1694:9 1700:10 1711:22
place 1666:1 1701:7 1703:21 1715:2 1716:14 1720:11,12 1723:4	potentially 1622:17 1628:14	President 1686:19,22,23	process 1628:7 1722:23 1723:3	proposing 1697:2
placement 1636:20 1647:1 1653:2 1716:6	pounds 1671:14 1672:17,18,19 1673:2,14,15,16, 22 1674:20,21,22, 25 1675:7,8	prestress 1677:19	produced 1625:4	protection 1682:11
plaguing 1653:16	1676:3,4,5 1681:19 1682:10 1685:20 1708:14 1710:6	prestressed 1640:14	produces 1644:14	provide 1635:6 1636:18 1641:9 1643:2 1645:5 1646:24 1648:18 1652:25 1661:22 1714:18
planks 1662:22 1663:10 1664:22	practice 1716:13	prestressing 1640:4	product 1660:23 1661:5 1681:22 1682:14 1686:1 1709:18	
platform 1641:10	practices 1691:24 1701:15 1712:2	pretty 1706:9	products 1658:12 1661:2	
pleased 1646:4 1715:13	precast 1635:21	prevent 1659:9, 23 1713:7 1714:16 1716:7	professional 1672:4 1688:7 1689:13,24	
plows 1720:23		preventing 1716:22	professionals 1622:8	
		previous 1667:11 1702:4	profile 1660:15	
		previously 1634:11 1644:13	project 1651:6	

<p>provided 1634:23 1645:17 1651:23 1668:25 1672:4 1702:21 1704:3,10</p> <p>providing 1676:9</p> <p>purchase 1649:15 1723:5, 14</p> <p>purpose 1624:10 1635:5 1651:1 1692:8 1695:2 1698:25 1717:5 1718:14</p> <p>push 1720:24</p> <p>put 1624:4,25 1633:23 1646:16 1650:5,6 1656:16 1659:22 1668:3, 10 1673:22 1675:6 1680:9 1681:13 1682:1 1687:16</p> <p>puts 1626:17</p> <p>putting 1682:9</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quality 1689:16</p> <p>quantities 1679:17</p> <p>quarter 1691:3</p> <p>query 1652:11</p> <p>question 1626:14 1642:11 1644:1 1646:16 1649:4 1650:7 1653:15 1662:10 1664:6,13,23 1665:12 1666:4, 24 1667:23 1675:19 1676:9 1677:21 1678:5,6, 8,24 1718:15 1719:11,22 1722:20</p> <p>questioning 1695:4 1697:8</p>	<p>questions 1623:19 1624:4,6 1625:5 1626:12 1627:22 1631:17 1661:20 1663:14 1664:5 1666:3 1668:12 1674:2 1678:13,15,25 1679:3</p> <p>quote 1654:15, 17 1699:2 1700:3, 9,13,17 1701:25</p> <p>quoted 1702:1</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>rain 1672:16 1673:7,13 1674:20 1675:17 1676:2 1683:16</p> <p>raise 1634:3,5</p> <p>raised 1622:21</p> <p>ramp 1716:18 1717:1,2,23,25 1718:19 1719:15 1721:2,4,7</p> <p>ramps 1713:6 1714:14,25 1715:4 1716:7,11 1717:23 1718:17 1720:24</p> <p>rapidly 1645:23</p> <p>ratio 1657:21 1658:25 1659:3</p> <p>reach 1685:12</p> <p>reaction 1645:18,20 1653:10 1694:8 1701:24</p> <p>read 1622:1,5,16, 18,19,24 1624:7 1630:12 1632:13, 14 1658:7 1659:6 1661:4 1670:1 1673:20 1675:5 1689:9 1690:6 1693:12 1711:18 1715:15</p>	<p>reading 1637:3 1684:12,15</p> <p>ready 1624:22</p> <p>reasonable 1630:8 1715:2</p> <p>reasoning 1702:8</p> <p>reasons 1644:20</p> <p>recall 1645:21 1662:7 1678:16, 19,21 1680:4 1682:19 1685:3, 14 1687:19 1696:24 1703:11 1704:2 1706:8 1712:12 1723:2, 18</p> <p>received 1628:20 1698:2</p> <p>receiving 1660:3</p> <p>RECESSED 1691:6</p> <p>recognize 1633:5</p> <p>recognized 1668:16</p> <p>recollection 1688:18</p> <p>recommend 1643:18,20 1651:7 1658:15 1679:13 1682:9</p> <p>recommendati on 1657:18 1660:7 1661:6,8 1681:17,20 1682:2 1684:22 1685:2,16,18,24 1706:1</p> <p>recommendati ons 1658:5,8 1703:7 1714:2</p> <p>recommended 1636:16 1646:22 1648:17 1652:23 1677:24 1684:8</p>	<p>1702:2</p> <p>recommended. ..system' 1647:18</p> <p>recommending 1648:22 1653:13 1699:7</p> <p>record 1658:7</p> <p>reference 1626:23 1692:15 1693:13,18 1698:4 1720:21</p> <p>Referencing 1667:11</p> <p>referred 1717:7 1720:16</p> <p>referring 1708:2</p> <p>refers 1658:3</p> <p>reflect 1631:17</p> <p>reflects 1665:21</p> <p>refuse 1629:7,23</p> <p>Registrar 1642:17</p> <p>regular 1677:25</p> <p>rehabilitation 1679:20</p> <p>reinforcement 1636:13</p> <p>REL 1707:6</p> <p>relate 1658:23</p> <p>related 1667:24 1704:11 1705:6</p> <p>relates 1641:6 1689:25</p> <p>Relativity 1621:24</p> <p>relevant 1701:7</p> <p>relieved 1645:21</p> <p>reluctantly 1632:21 1633:5</p> <p>remain 1662:24 1674:10</p>	<p>remains 1632:18</p> <p>remedial 1654:25</p> <p>removable 1716:11</p> <p>removal 1637:14 1677:22 1680:10 1694:17 1716:15 1717:21, 23 1718:2,10,21, 23</p> <p>remove 1647:24 1680:15 1682:24</p> <p>removed 1647:22 1663:15 1677:2</p> <p>removing 1638:15 1645:7 1650:24</p> <p>repair 1679:17, 19 1683:8 1711:5</p> <p>repaired 1670:15 1675:4 1677:7 1679:22 1721:20</p> <p>repairs 1680:23 1683:9</p> <p>replacement 1680:10 1706:14</p> <p>replacing 1704:17 1705:11</p> <p>report 1621:15, 17,19,22 1622:16, 19,24 1623:19 1624:3,5,7,8,22 1625:6,17,19,21 1626:1,10,16 1627:3,21 1628:6 1629:10,11,25 1630:13,14, 1631:21,22 1632:4,6,11,15, 16,18, 1633:24 1634:2,23 1635:11 1636:23 1641:14,16 1644:5,16,17,21 1645:17,19 1646:7,11</p>
--	---	--	--	---

1647:13,21 1648:6,9,11,15 1649:17,21 1651:14 1652:5 1662:2 1665:13 1668:25 1669:12, 13,15 1670:6 1671:7 1672:5 1673:25 1674:1 1692:8 1696:9 1706:24 1707:2, 1708:7 1711:17 1712:4,8,22,23 1715:16,24 1716:1	1682:5 respect 1621:16 1626:3, 1627:7 1653:4 1676:10 1678:11 1689:22 1697:25 1703:7 1711:18 1716:1 respectful 1626:10 respects 1718:14 responded 1650:11 response 1650:14,21,23 1652:11 1653:7,9, 10 1662:12 1693:9 1717:19 responsible 1621:17 rest 1712:21 rested 1695:16 Restoration 1654:16 result 1634:23 1638:1,9 1668:25 1674:13 1689:2 1700:15 1704:24 resulting 1662:2 results 1637:4 1639:25 RESUMED 1691:7 retain 1689:23 retained 1621:15 1669:4 retainer 1634:24 retired 1717:14 Retirement 1722:25 1723:24 return 1687:24 review 1622:20 1626:1 1627:21 1629:25 1631:13 1636:15 1640:18,	24 1643:15,25 1646:21 1647:17 1648:7,16 1651:2 1652:22 1685:10 1689:11,24 1690:5 1692:23, 25 1693:16 1694:15 1696:12 1699:3 1700:22, 25 1701:6,10,20 1704:16 1707:7 1711:23 1715:24 reviewed 1631:21 1632:11 1647:13 1709:3 reviewing 1626:16 revised 1651:17 1652:5 1665:17, 18,19 revision 1635:7 1665:21 1666:1 revisions 1653:20 revoked 1697:12 right-hand 1635:13 1707:6 rod 1659:16,23 1700:2 RODNEY 1634:11 roof 1636:17 1639:4 1646:23 1648:18 1656:10 1667:14 1669:16 1670:8,11,16 1672:25 1673:6 1676:16,18,25 1680:17 1681:8, 10 1682:23 1683:12,14,24 1684:1,2 1687:16 1704:7,13 1706:9 1707:22 1709:13 1712:18 1713:4,7 1714:22 1715:12 roughly 1706:1 roundtable 1648:10	roul 1655:10,11 1656:24 route 1718:7 routed 1655:2, 23 routine 1720:10 rust 1638:3,16,25 1646:1 rusted 1635:23 1637:12,21 1638:6,14 1639:5, 16 rusting 1638:5 1639:11 1640:3 <hr/> S <hr/> S' 1701:2 safe 1670:25 safely 1672:15 1673:1 1674:19 1677:9 sake 1653:14 Sale 1723:6,14 salt 1640:11 satisfied 1649:9 1720:3 satisfy 1692:10 scaled 1638:15 scheduling 1628:16 scoop 1720:22 scope 1693:19 1694:9 1699:11 screen 1691:10 seal 1702:14 sealant 1658:21 1659:12,15,23 sealants 1660:11 sealed 1701:5 second-last 1664:12 1712:24	sections 1645:8 seeking 1664:7 selected 1640:19 sending 1662:4 sends 1648:5 senior 1686:25 sentence 1699:18 separate 1694:23 1697:15 separation 1705:17 Sept 1671:23 September 1672:10 served 1718:14 services 1700:22 serving 1717:5 set 1671:7 1680:8 1684:18 1691:20 1692:14 1693:11 1698:5,6 sets 1666:3 1669:14 setting 1626:20, 22 seventh 1669:11 Shaikh 1671:25 1672:3 1674:13 shortly 1626:4 show 1652:14 showed 1638:3 1639:4 1705:14 shown 1704:21 sic 1698:10 side 1710:8 sided 1659:9 sidewalks 1680:17
---	---	--	--	--

sign 1712:14	sitting 1622:22	soffit 1635:17 1636:1 1640:7	22 1674:20,21,23 1675:1,9 1676:3, 4,6 1685:20 1708:14 1710:7	1715:7
signals 1690:24	situation 1687:13	somebody's 1720:2	staff 1720:8,9	step 1688:10
signed 1723:6, 14	situations 1714:20	sort 1672:25 1687:12	stage 1636:12	steps 1720:6
significant 1627:18 1706:10 1709:5	size 1660:8	sound 1636:7 1640:22 1670:13 1721:19	stains 1635:25 1637:9,16 1638:4 1639:5,7	stop 1644:15 1708:1
signs 1640:9	sizes 1701:12 1711:24	soundness 1670:22 1695:10	stand 1719:10	Stopping 1643:23 1672:3 1709:23
silence 1712:19	slab 1635:18 1636:11,17 1638:22 1640:8 1641:1 1642:3,4 1646:23 1648:18 1651:12 1653:5 1666:20 1677:5 1681:3,18 1682:23 1683:6 1711:1 1713:15	sounds 1657:7	standards 1689:13 1690:11 1691:24 1692:12 1721:17 1722:1	stores 1636:4
similar 1720:21	slab/topping 1663:24 1664:16 1667:3	South 1716:11	start 1626:8 1633:9 1662:10 1691:3,14 1718:11	storey 1681:8 1683:12
simple 1628:15	slabs 1635:21 1640:2, 1641:4,9 1642:6 1663:16, 18 1666:8 1672:2, 14 1673:12 1674:6,9,17 1676:1 1677:8,11, 13,15,17,19 1681:11 1683:2, 15 1695:16 1704:20 1705:17 1706:4 1707:16, 22 1708:10 1710:21,24 1711:5,9 1712:18 1713:17,20,24	span 1627:1	started 1628:7	straight 1657:9
simply 1623:17 1626:12 1661:6 1668:3 1671:1 1722:20	sloped 1721:9, 10	specific 1626:12,13 1649:15 1660:21, 22 1661:5	starting 1635:14 1693:15	strands 1640:4 1677:19
single 1655:5	small 1657:11	specifically 1653:3,15 1670:20	state 1632:11 1681:24	strength 1694:18 1710:2, 25
sir 1621:5, 1625:13 1627:15, 25 1630:2 1634:17,21 1635:2 1641:5,21 1642:9 1643:4 1644:2 1645:18 1647:9,24 1649:10 1653:18 1655:12 1658:7 1661:12 1662:3 1664:5,11 1665:9, 14,16 1667:23 1668:1,7,9 1670:1,18 1673:23 1675:5, 10 1676:8 1677:21 1678:5, 10 1680:2 1683:17,21 1686:13 1687:14, 23 1688:3,12,15 1690:16,21 1691:19 1697:4, 18 1699:14 1708:5 1711:16 1715:17 1716:4 1717:10 1718:16 1719:11,21 1721:11	snow 1656:13,23 1661:10 1672:16 1673:6,13,21 1674:19 1675:17 1676:2 1683:16 1715:12 1716:15 1717:20,23 1718:2,10,21,23 1719:20 1720:18, 22,25 1721:2	specifications 1656:17 1679:19	stated 1642:8 1645:24 1647:20 1671:25 1685:4	strong 1663:25 1664:17 1667:4
sit 1630:20		specifics 1704:15	statement 1647:16,19,21,24 1658:14	stronger 1710:2,16
site 1692:23 1701:10 1704:4 1713:3		specs 1656:25	stay 1685:19 1721:4	struck 1716:21
		speed 1631:5	steel 1635:22 1636:6 1637:21 1638:11,23,24 1639:8,10,13 1640:14,15,19 1645:25 1663:22 1664:14,24 1665:6 1667:1,9, 20 1670:13 1673:10 1675:20, 24 1676:11 1677:20 1678:14 1694:4,17 1695:21 1696:7, 17 1707:11 1708:9,11 1709:9 1711:8 1713:10	structural 1636:6,15 1640:8, 19,25 1643:2,15, 25 1645:3,16 1646:21 1647:17 1648:7,16 1651:1 1652:22 1653:14 1654:8 1662:17 1663:22 1664:14, 24 1665:6 1667:1 1668:17,19 1669:5,8 1670:11, 22 1673:9 1675:14,20,23 1677:4 1678:14 1689:11 1690:1 1692:19,20 1694:1,3,16 1695:4,5,9,21 1696:7,11,17 1700:25 1701:2, 11,20 1707:11 1708:9,11 1709:9 1710:1 1711:8,24 1712:1 1713:10 1714:8,10 1715:24

structurally 1670:13 1721:19	suppliers 1658:15	1714:8,10 1721:3	test 1637:4 1639:25	1643:8 1644:23 1645:14 1649:3 1654:7 1662:4 1683:25 1684:21 1686:23,24 1688:1,13,16,21, 22 1690:11 1692:5 1695:6 1697:5,6 1698:19 1701:8 1703:16 1706:22 1707:14, 25 1709:1 1711:13 1713:5, 15 1716:14 1719:24 1721:12
structure 1626:3 1669:17, 22,24 1670:3,8 1671:4 1679:10, 24 1681:9 1683:13 1692:5 1702:21 1711:19	Supply 1658:5	T	testifying 1621:18	
stuff 1660:8,13 1683:24	support 1630:11 1643:2 1645:5 1672:15 1673:1 1674:19 1703:18 1713:12	tab 1634:16 1647:4,6 1654:15 1658:1 1661:14 1665:15 1668:23 1687:22 1690:16, 17,18 1691:11 1693:8 1697:22, 23 1699:14 1700:16 1706:24, 25 1707:1 1711:22 1712:24 1715:19	testing 1694:6, 14,18 1698:9 1699:5,8, 1700:11	
subcontracted 1669:7	supported 1695:16,24	taking 1663:23 1664:15 1667:2 1675:21	theoretical 1665:1, 1671:2	
subject 1699:4	supporting 1677:20 1708:12 1711:10 1714:6	talk 1712:11	thick 1651:10	
subjected 1711:11	supposed 1642:21 1718:12	talked 1668:14	thickness 1638:16	
submission 1629:8 1631:12	surface 1636:7 1638:25 1639:24 1640:23 1645:25 1680:18 1683:1	talking 1646:10 1655:21 1658:24 1659:14 1660:1, 20,22 1703:15 1718:2	thickness/ weight/ strength 1663:4 1666:14	times 1655:14 1658:20 1702:21
submitted 1647:14 1669:12	survey 1637:4 1639:3 1644:5 1679:14 1680:2	talks 1723:4,13	thin 1651:11	timing 1654:11 1661:24 1723:2
subsequent 1635:7 1677:18	suspect 1692:24 1694:18 1703:17	task 1627:17	thin' 1680:15	Tobias 1669:4, 12,14 1670:1,6,19 1671:2 1672:9 1674:12 1687:17
substantially 1644:11 1646:3	suspended 1635:17 1637:6,8 1688:17	team 1656:14,23	thing 1625:8 1672:11 1695:2 1710:10	Tobias's 1674:11
suggest 1643:21 1714:9 1715:25	suspicion 1713:17	technical 1630:14	things 1645:22 1718:4	today 1624:25 1625:3 1629:2,17, 20 1631:15 1633:4
suggested 1623:16 1665:12 1705:20	sustain 1673:11 1675:25	telephone 1642:2	thinking 1682:14	today's 1713:22
suggestion 1626:7 1649:12 1650:1,2,10,24 1697:9,10	swing 1716:21	telling 1672:9 1722:15	thought 1624:7 1635:4 1645:9 1710:4,11,15,16 1722:22	told 1623:21 1644:19 1646:8 1648:24 1649:3 1656:4 1658:19 1660:2 1672:11 1674:13 1678:12 1682:8 1689:18 1690:2 1696:20 1699:6 1700:8,10 1702:16 1703:14 1718:16 1721:6
suggestions 1624:23	swinging 1719:12	tells 1632:15	three-day 1627:1	tool 1657:11
sum 1717:21	SWORN 1634:11	temporary 1719:14	three-step 1689:10	top 1637:20 1638:23 1642:19 1671:8 1680:18 1681:14 1683:1 1695:24 1698:1 1715:3 1716:7,17 1717:2,23 1718:5, 18 1719:1,15
summary 1622:5,19 1632:14	swung 1716:16 1719:23 1720:12	tenure 1718:12 1720:4	throw 1630:25	
summer 1723:7	system 1636:21 1643:20 1647:2 1648:20 1651:10, 13 1653:3,6 1660:7,10,18 1674:25 1680:13 1681:3,5 1683:6 1702:12 1703:8 1708:11 1709:10	terms 1626:23 1649:15 1690:6 1692:14 1693:13, 17 1695:12 1696:10 1697:7 1698:4 1721:22	Thursday 1621:1	
superimposed 1671:12 1672:20 1673:17 1674:23 1676:6		tenure 1718:12 1720:4	tight 1705:14,20, 25	
supplier 1658:12 1661:1		terrible 1718:9	tiles 1638:8 1640:16	
			tilt 1716:11	
			time 1621:21 1622:10 1626:3 1627:16 1630:17 1632:25 1633:6,9	

<p>topic 1712:20</p> <p>toping 1638:22 1677:10</p> <p>topping 1636:10 1639:20,24 1641:3,8 1642:5 1643:1,17 1644:7, 10,13 1645:1,4 1646:1 1648:25 1651:3 1652:24 1654:9 1662:20 1663:8,13,15 1664:8,22 1666:6, 18 1669:19 1671:13 1672:1,6, 15 1673:12 1674:4,8,10,18 1675:2,4 1676:2, 19 1677:1,3,7,10, 13,15,23 1679:18 1680:11,19,22,23 1682:22,25 1711:3 1713:25</p> <p>torque 1694:5, 13 1698:8 1699:4, 7,10 1700:11</p> <p>total 1671:12 1710:6</p> <p>totality 1633:7</p> <p>totally 1630:23 1702:9</p> <p>totem 1686:14</p> <p>tracks 1637:13 1639:6</p> <p>tractor 1720:21</p> <p>traffic 1713:23 1717:4 1719:8 1720:13</p> <p>translates 1713:24</p> <p>travel 1714:24</p> <p>travelled 1713:4</p> <p>Tremco 1660:13</p> <p>Trimming 1706:13</p> <p>Trow 1622:12 1626:22,23 1627:2 1634:1,23</p>	<p>1641:14 1643:5, 11,23 1645:7 1647:9,23 1649:7, 1653:13 1661:16 1662:4,16 1666:3 1667:12 1668:2, 25 1669:7 1673:24 1674:1 1676:9 1677:24 1678:11 1680:8 1682:13 1684:8 1685:25 1691:13 1692:17 1694:9 1697:1,25 1698:20 1699:7, 15 1700:7,10 1702:3,11,16,20 1721:14 1722:8 1723:25</p> <p>Trow's 1644:4 1671:24</p> <p>trucks 1714:19, 23 1715:11 1716:17 1721:2</p> <p>Tuesday 1622:15 1623:13 1624:9 1625:5 1628:25 1629:8, 14,21,24 1633:7,9</p> <p>turn 1634:16 1635:12 1647:3, 10 1650:14,21 1654:14 1658:1 1661:13 1662:5 1665:15 1666:2 1668:23 1669:10 1670:5 1671:6 1687:22 1690:16 1693:7,14 1697:21 1699:14 1700:16</p> <p>turned 1642:15</p> <p>turning 1666:23 1710:19 1714:1</p> <p>two- 1627:1</p> <p>two-part 1660:18</p> <p>two-to-one 1657:3 1659:1</p> <p>type 1651:9</p>	<p>typed 1646:10</p> <p>typo 1655:5,6,8 1698:14 1716:4</p> <p>typographical 1715:25</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate 1626:14</p> <p>ultimately 1626:24 1654:20 1705:24</p> <p>unbiased 1702:9</p> <p>underlines 1671:1</p> <p>underneath 1659:16 1715:9 1721:7</p> <p>underside 1637:3,6 1639:3</p> <p>understand 1628:13 1630:18, 22 1631:8 1635:5 1641:6 1642:9 1649:10 1651:22 1653:13 1660:1 1666:4 1670:18 1672:23 1687:2 1688:12 1690:4, 15 1692:8 1695:15 1696:2, 13,15 1697:3,17 1705:5 1709:24</p> <p>understandabl e 1690:25</p> <p>understanding 1625:4 1643:3</p> <p>understood 1628:23</p> <p>undertaking 1625:8</p> <p>undoubtedly 1633:24</p> <p>unfortunate 1630:14</p>	<p>units 1716:19 1717:4</p> <p>update 1679:13 1680:2</p> <p>upper 1714:25</p> <p>usual 1690:24</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valuable 1633:6</p> <p>varied 1660:18</p> <p>varying 1660:3</p> <p>Vector 1654:16, 20 1656:3,10,20 1657:5,10,17 1659:1 1704:7,17 1705:11</p> <p>Vector's 1706:16</p> <p>vehicle 1672:18 1673:15 1674:22 1676:5 1716:23 1721:1</p> <p>vehicles 1670:17 1672:24 1714:11,17,19 1715:5 1716:8,25 1717:2 1718:1 1719:6 1721:4</p> <p>verbally 1642:8 1646:9</p> <p>verify 1693:2 1695:3</p> <p>version 1662:1</p> <p>vertical 1695:17</p> <p>view 1626:10 1645:9</p> <p>visits 1713:2</p> <p>visual 1637:4 1639:3 1679:25</p> <p>volume 1634:17, 19</p> <p>voluminous 1622:3,4</p>	<hr/> <p style="text-align: center;">W</p> <hr/> <p>walked 1686:11</p> <p>walkway 1636:1 1681:6</p> <p>wanted 1641:14 1644:20,22 1668:8,11,17 1702:8</p> <p>wash 1710:16</p> <p>water 1635:25 1636:4 1637:9,16, 19,23 1638:1,9 1639:5,6,10,14 1640:11 1664:25 1665:5 1667:25 1668:16 1670:3 1676:11 1678:13 1692:4 1696:16 1711:3,19</p> <p>waterproof 1711:2</p> <p>waterproofed 1679:22</p> <p>waterproofing 1643:20 1647:1 1648:20 1651:9, 13 1653:3,6 1669:25 1674:24 1680:12,16 1681:3,5 1683:6 1702:12</p> <p>watertight 1702:13 1721:21</p> <p>wear 1663:11 1666:21 1681:15, 16 1682:6 1685:19 1703:15</p> <p>wearing 1639:24 1675:7</p> <p>weather 1654:1, 2</p> <p>week 1633:8,10</p> <p>weekend 1624:4 1630:1</p> <p>weigh 1632:2 1675:8</p>
--	---	--	---	--

weighs 1632:6	1716:5
weight 1673:1 1674:25	writes 1688:5 1708:8 1713:1 1714:2
welded 1695:20	writing 1679:4 1699:24
welding 1694:5 1695:17	written 1690:22
weldings 1694:13	wrong 1635:1 1652:6 1690:20, 22 1706:25 1723:6
welds 1695:10, 19	wrote 1637:5 1639:2,18 1646:20 1647:25 1650:23,25 1651:24 1671:19 1679:12 1699:18 1700:17 1707:9, 10 1710:20
wheel 1713:14	
width 1655:4,15, 20,25 1656:18 1657:3 1658:20, 22 1659:12 1660:4	
Willey 1717:14	
Winnebago 1718:6	
witnesses 1623:8	
Wood 1631:16	
words 1624:6 1631:4 1690:9 1699:17	
work 1654:17,21 1656:4,5,6,10,11 1657:18 1662:2, 25 1666:10 1693:20 1694:9 1700:23	
worked 1630:15	
workers 1704:7	
working 1657:9 1704:7,18	
workmanship 1689:17 1690:13	
worried 1695:8	
worse 1645:10, 23 1668:5	
worst 1638:13 1640:20 1645:24	
write 1635:16 1647:11 1652:20 1676:17 1698:7	
	<hr/> Y <hr/>
	year 1654:12 1658:24 1672:6
	years 1634:1 1641:18 1649:4 1653:17 1668:5 1676:12 1702:4, 25 1713:6
	yesterday 1621:23 1624:21 1641:7 1642:14, 23 1644:19 1657:2 1660:3 1672:5 1705:14, 16 1720:17,22 1721:7