ELLIOT LAKE COMMISSION OF INQUIRY

DAY 9

March 14, 2013

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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

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Leo Longo, Esq.,	Ontario Building Officials Association
Douglas Elliot, Esq.,	ELMAC/SAGE
Alexandra Carr, Ms.,	ELMAC
Joseph Bisceglia, Esq.,	Gregory Saunders
Robert MacRae, Esq.,	Robert Wood
Paul Cassan, Esq.,	City of Elliot Lake
Douglas Kearns, Esq.,	Retirement Living and NorDev
David Outerbridge, Esq.,	EXP Global Inc.
James Maloney, Esq.,	Rod Caughill

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

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

THE WITNESS: Good morning.

THE COMMISSIONER: Mr. Doody.

MR. DOODY: Good morning, Mr. Commissioner.

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

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

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

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

I have not read it. I read it --

THE COMMISSIONER: It is rather voluminous, I gather.

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

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

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

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

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

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

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

So we have considered a number of options.

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

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

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

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

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

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

THE COMMISSIONER: Thank you.

Who wants to comment?

Mr. Kearns.

MR. KEARNS: Good morning, Mr. Commissioner.

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

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

The position being put forward today by

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

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

MR. DOODY: Yes.

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

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

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

THE COMMISSIONER: Well, you had the interim report.

MR. BISCEGLIA: We did. We did.

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

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

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

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

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

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

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

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

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

Thank you, sir.

THE COMMISSIONER: Thank you.

Mr. Maloney?

MR. MALONEY: Mr. Commissioner, thank you.

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

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

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

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

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

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

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

MR. MALONEY: Yes.

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

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

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

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

weekend, the intervening four days.

In any event, I take your point, sir.

MR. MALONEY: Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you.

Mr. Elliot.

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

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

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

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

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

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

Thank you.

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

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

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

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

THE COMMISSIONER: Thank you.

Anyone else wish to make comments?

Two factors weigh in making my decision.

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

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

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

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

characterized by Mr. Doody as being relatively minor.

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

Thank you.

Mr. Doody.

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

If I communicated that there were no differences --

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

MR. DOODY: Yes, and --

THE COMMISSIONER: Is that correct?

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

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

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

THE COMMISSIONER: All right.

RODNEY CAUGHILL: PREVIOUSLY SWORN.

EXAMINATION IN-CHIEF BY MR. DOODY (CONT'D):

Q. Thank you, Mr. Commissioner.

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

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

Q. Oh, sorry, Volume 3.

A. 3, sorry.

Yes, sir.

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

they got your name wrong on the first page.

A. Yes, sir.

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

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

A. That's correct, yes.

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

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

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

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

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

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

MS. KUKA: This one?

BY MR. DOODY:

Q. That is it, thank you.

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

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

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

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

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

Some rusted drainpipe elbows and metal conduits were also noted.

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

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

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

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

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

> "The underside visual survey showed that the roof level contained numerous water stains and rusted false ceiling tracks. The water stains coincide with the caulked precast slab joints over the steel beams. At locations of evidence of water leakage, the steel beams were noted to be rusting. Some fireproofing on the bottom flange of the steel beams was missing at several areas due to water damage. Several corroded conduits were also noted along the rusted beam."

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

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

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

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

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

Based on our review of the original structural, architectural

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

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

A. That is correct.

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

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

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

A. Extremely, yes, sir.

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

A. Absolutely.

Q. And they went on to say:

"During our telephone conversation with the precast slab manufacturer, Core Slab, they indicated that the concrete topping should be bonded to the precast slabs, however, their drawings are inconsistent with what they have verbally stated."

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

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

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

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

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

BY MR. DOODY:

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

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

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

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

A. That's correct.

Q. And they go on to say:

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

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

this question, right?

A. Yes, sir.

Q. And they went to say:

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

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

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

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

A. That is correct.

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

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

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

A. That's correct, yes.

Q. And then they went on to say:

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

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

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

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

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

A. That's correct.

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

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

the placement of the waterproofing system."

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

That is it.

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

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

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

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

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

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

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

A. That's correct.

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

A. That's correct.
Q. And one of the prime concerns, as you told me earlier, that you had at that time and for a number of years was precisely that question, whether it needed to be bonded, right?
A. That is correct.
Q. And so what Trow was saying to you was, well, they are saying it does, but we are not satisfied and so you need to do a further analysis.
What I don't understand, sir, and perhaps you could assist me, is how that request or suggestion that you do further analysis was not precisely what you had asked Trow to do?
A. Mr. Leistner felt that wasn't specific in our terms of reference on the purchase order or the agreement to do the -- that or the report.
Q. Did you agree with him on that point?
A. I agreed with him that it wasn't there in the request, and that is the draft report.
Q. Right.
A. I think if you look at the final, it was left in there.
Q. Right.

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

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

A. That --

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

A. That is correct, yes.

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

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

BY MR. DOODY:

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

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

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

And they say:

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

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

only the pages that they proposed changing, right?

A. That is correct.

Q. So that the document we are just looking at now, Exhibit No. 46, is not a copy of the entire revised report but only of the pages that they proposed changing? Or maybe I'm wrong. No, I'm right. If you look through it, you'll see that is what they have done?

A. Yes, yes, you are correct.

Q. So the change that they make in response to your query is at the bottom of the page of the abstract and it is in italics, and as I understand it, it is in italics to -- it is essentially like black-lining, it is to show you the changes; is that right?

A. That is correct, yes.

Q. It is not to be -- it is not meant to be an indication of emphasis?

A. No.

Q. Right. And they write in the bottom paragraph:

"A structural review and analysis is recommended to determine whether the concrete topping is required and to provide the necessary data in

order to discuss the various options for the placement of a new waterproofing system specifically with respect to the allowable additional load the slab can take due to the waterproofing system." That is their response, right?

A. That is correct.

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

A. It was perfectly fine with us.

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

A. Yes, sir.

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

A. In January we couldn't do anything.

Q. All right.

A. Except --

Q. Because of the weather?
A. Because of the weather and to maintain -- and we maintained what we had been doing all along. If a leak developed, we went and fixed it.
Q. And did you make any decisions at that time about whether you were going to get the structural analysis to determine whether the topping needed to be bonded?
A. We did at one point. I can't tell you exactly what the timing was, but we did, yes.
Q. Later that year?
A. Yes.
Q. Okay. If I could ask you to turn up tab 227, Exhibit No. 443. This is a quote from Vector Restoration to you dated March 24th, 1995, and it is a quote to do repair work on the concrete; correct?
A. That is correct, yes.
Q. And ultimately, was Vector hired to do this work?
A. Yes, they were.
Q. It says under the heading on the first page:
"We propose the following remedial

action:

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

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

A. Oh, yes, sorry.

Q. That's a typo?

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

Q. That would not be a rout?

A. No, sir.

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

A. Yes.

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

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

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

A. That is correct.
Q. And were those instructions given to -- well, first of all, Vector was hired to do the work, and I think from what you told us earlier, they were hired to do work where your own forces, where the work was too great for your own forces to deal with it?
A. That is correct, yes.
Q. And did your own forces continue to work on the roof deck fixing cracks while Vector was doing their work?
A. I believe they were, yes.
Q. And that would be Mr. Snow and his team?
A. Yes.
Q. And were they -- well, put it this way. Where did those specifications about the depth being twice the width, where did they come from, do you know?
A. They came from Vector.
Q. So that was their idea?
A. Yes.
Q. And was Mr. Snow and his team instructed to rout out cracks in the same proportion, with the same specs?

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

Q. So this is the opposite?

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

Q. And how did that affect the appropriate proportions?

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

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

A. I don't believe so.

Q. All right. If I could ask you to

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

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

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

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

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

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

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

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

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

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

A. Correct.

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

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

Q. But in any event, am I correct to

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

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

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

A. No.

Q. He is a concrete guy?

A. He is a supplier of concrete products.

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

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

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

A. Yes, sir.

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

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

And this is June 23, 1995, about five

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

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

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

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

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

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

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

"The following items should be addressed in the analysis:

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

if YES

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

i) are there any alternatives to the concrete.

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

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

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

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

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

ii) what are the load limits of the slabs.

iii) " --

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

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

that load.)

if YES

i) to what limits".

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

A. Yes, sir.

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

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

What were you asking them there?

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

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

theoretical capacity based on the design?

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

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

A. No.

Q. -- at that point?

A. No, sir.

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

A. Yes, sir.

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

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

Q. All right.

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

answer why that revision took place.

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

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

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

i) are there any alternatives to the concrete?

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

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

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

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

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

If Yes,

i) to what limits

If No,

i) can the steel be beefed up? how?

3. Referencing the 2 previous Trow reports:

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

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

A. Yes, sir.

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

A. Yes, sir.

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

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

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

A. Yes.

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

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

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

A. That is correct.

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

A. Yes.

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

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

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

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

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

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

A. That appears to be that way, yes.

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

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

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

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

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

A. That would be safe, yes.

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

A. That is correct.

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

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

So that was their conclusion; correct?

A. That is correct.

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

> "Based on the foregoing information and findings, our comments are as follows:
>
> 1. During the Sept. 22, 1995 meeting at Trow's office, Mr. S. Shaikh stated that the concrete

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

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

A. That is correct.

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

A. Yes.

Q. Then they say in item 2:

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

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

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

A. That is correct.

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

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

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

A. Yes, sir.

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

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

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

Number 1:

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

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

A. That is correct.

Q. Number 2:

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

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

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

A. Yes, sir.

Q. They then in item number 3 say that:

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

And they identify them.

And then under the question number 2:

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

And they say:

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

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

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

A. That is correct, yes.

Q. Item number 3 they say:

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

And they write:

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

THE COMMISSIONER: Have we moved on?

BY MR. DOODY:

Q. Oh, sorry, page number 3, Ms. Kuka. Thank you, Mr. Commissioner.

They say:

"The roof deck presently contains

areas of debonded concrete topping. These areas need to be removed and a new bonded topping installed to maintain the structural integrity of the slab. This should be carried out as soon as possible. If the debonded topping is not repaired, the core slabs will not be able to safely carry the dead load of the topping since the toping and core slabs must be bonded. Ongoing leakage through the joints in the topping and core slabs will continue to cause deterioration of the topping and core slabs due to freeze/thaw cycles and chloride contamination of the core slabs and subsequent corrosion of the prestress strands in the core slabs and the supporting steel beams."

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

A. We were doing that on a regular

basis.

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

A. Absolutely.

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

A. No.

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

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

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

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

Q. Okay, you don't recall?

A. No.

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

A. Correct.

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

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

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

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

And they wrote:

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

deck on a monthly basis."

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

A. I don't recall one, no.

Q. Can you tell me why not?

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

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

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

And they say that that means:

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

The next page, secondly:

"Identify areas of debonded concrete topping and carry out concrete topping repairs as required.

c) Install additional or modify

existing drains as required.

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

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

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

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

A. With a wear course, yes.

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

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

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

A. They did not state that.

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

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

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

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

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

Q. And did you ever get to that?

A. I don't recall that we did.

Q. Their option 2 was to:

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

b) Locally remove concrete topping in the deteriorated areas to

expose the top surface of the core slabs.

c) Install additional or modify drains as required.

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

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

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

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

A. No, you are not correct.

Q. I'm not correct?

A. No, sir.

Q. What --

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

Q. But you did not install the roof?
A. The roof overtop of the could be overstressed areas, we did not do that, but the other options (a) through (e), yes.
Q. That was what you had been doing all along?
A. We had been doing that all along.
Q. And Trow recommended option 1 and they priced it out at 1.25 million to 1.479 million with --
THE COMMISSIONER: Where are you reading now from?
MR. DOODY: -- some additional costs?
THE COMMISSIONER: Where are you reading that from?
BY MR. DOODY:
Q. Oh, I'm sorry, the next page. So the cost estimate for option 1 is set out on the next page, and they priced it out at 1.25 to 1.47 million plus some additional costs, and they noted that some increase in deterioration with time must also be expected. That was their recommendation; correct?
A. That's correct.
Q. And was there discussion within

Algocen about whether to follow that recommendation?

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

Q. Did you analyze those costs?

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

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

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

Q. What was your recommendation?

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

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

meant by it, what their product was?

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

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

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

Q. Who was above your pay grade?

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

Q. I walked right into that one.

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

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

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

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

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

Q. Right, and that was the senior

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

A. Correct, yes.

Q. And then obviously he reports to the Board?

A. Yes.

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

A. No.

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

A. No, sir, I certainly did not.

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

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

Q. Do you recall any discussion about that?

A. No.

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

at any time prior to the commencement of this inquiry?

A. No, sir.

Q. In the third paragraph the author writes:

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

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

A. Yes, sir.

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

A. It is.

Q. Were you aware of that at the time?

A. At which time?

Q. In the spring of '96.

A. Yes.

Q. Okay. Were you part of

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

A. No, no.

Q. Okay.

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

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

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

ii) ensure the building is constructed to design, and

iii) ensure the quality of the workmanship."

Were you told that that was the decision?

A. Yes.

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

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

to the structural design.

Q. And who told you that?

A. That would be Mr. Leistner.

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

A. Yes.

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

A. Correct.

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

A. Tab 45?

Q. Yes.

A. Sorry, I was on the wrong one.

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

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

25 minutes.

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

MR. DOODY: Thank you, Mr. Commissioner.

-- RECESSED AT 10:23 A.M.

-- RESUMED AT 10:45 A.M.

BY MR. DOODY:

Q. Thank you, Mr. Commissioner.

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

"As per our discussion [...]"

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

A. That is correct, sir.

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

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

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

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

A. That is correct.

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

A. That is correct.

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

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

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

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

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

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

A. That is correct.

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

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

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

And they propose exactly what they are going to do.

And then in item number 8 they include this:

"8. Exposing and measurements of

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

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

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

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

Q. In what way?

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

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

A. That would have been a separate examination.

Q. And why did you not want them to

do that?

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

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

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

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

A. In some cases.

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

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

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

A. They always are, yes.

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

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

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

A. That is correct.

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

A. That is correct, yes.

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

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

This would have been a separate proposal to go further.

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

A. I can't answer that.

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

proposal, and it says at the top:

"Proposal received by fax June 12/96".

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

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

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

A. That's correct.

Q. And that was just a typo?

A. That's correct.

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

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

A. Yes.

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

A. I did.

Q. And what was the purpose of the

contact?

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

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

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

Q. And what did Mr. Meyer tell you?

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

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

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

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

A. It is.

Q. And it looks to me like it says:
"[Meeting] with Rod C. Rod to get quote from Paul Meyer 96/06/19".
So that is June 19th, '96; correct?
A. Correct.
Q. So it looks to me like the chronology is you got the proposal from Trow on the 12th. On the 18th you spoke to Meyer and told him you were interested in getting a quote. He said -- and you told him what Trow had proposed. Mr. Meyer said you don't need to do torque testing. You spoke to Mr. Leistner, and he said, well, get a quote from Mr. Meyer?
A. That is correct.
Q. And the result of that was, if I could ask you to turn to tab 49, Exhibit No. 455, Mr. Meyer's quote and he wrote:
"Our firm is prepared to [...]"
This is on July the 5th of 1996:
"Our firm is prepared to perform the following design check and review services for the Algo Centre. All work would be done by Paul Meyer P. Eng.
1) Review of the structural

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

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

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

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

A. That is correct.

Q. And what was your reaction to this quote?

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

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

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

Q. Okay.

A. His reasoning was he wanted to be -- to have a totally unbiassed opinion of what he was looking at.

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

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

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

A. Yes.

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

since the mall had been opened?

A. I am sure we discussed that, yes.

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

A. Yes.

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

A. We did discuss it, yes.

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

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

Q. After he had looked at them?

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

Q. Did you ask him for a formal

opinion on that issue?

A. I don't recall that we did.

Q. And Mr. Meyer provided -- Mr. Meyer attended at the site, right?

A. Yes, on a couple of occasions.

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

A. Yes.

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

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

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

discussed with Coreslab, right?

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

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

A. Not -- that is partially it.

Q. And what else was it?

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

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

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

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

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

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

Q. And so what did the fix consist of?

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

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

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

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

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

A. Yes, it appears to be.

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

A. Yes, it is.

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

"I found that the structural steel framing is generally acceptable and in conformance with the Ontario Building Code in effect at the time of construction. Precast concrete slabs were all designed in conformance with the Ontario Building Code and were generally installed correctly. We found a problem with an expansion joint on gridline 10 in the precast concrete slabs at the roof parking area during my investigation and corrective action was taken at that time."

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

A. That is, sir, yes.

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

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

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

> "The conventional portions of the building have been designed in conformance with the Ontario

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

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

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

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

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

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

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

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

Q. I thought it --

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

BY MR. DOODY:

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

A. I would accept that.

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

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

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

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

That was Mr. Meyer's conclusion to you?

A. Yes, sir.

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

A. No, he did not.

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

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

A. That is correct.

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

A. Yes.

Q. And did you talk to him about it?

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

Q. And why is that?

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

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

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

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

writes:

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

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

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

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

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

I take it you read that part of the report?

A. Yes, sir.

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

A. Correct.

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

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

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

Q. And you write in the third bullet:

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

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

Was that your conclusion, sir?

A. Mine and the group, yes.

Q. And who was in the group?

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

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

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

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

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

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

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

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

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

THE COMMISSIONER: Well, he does say that.

MR. DOODY: Oh, I'm sorry.

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

BY MR. DOODY:

Q. Okay, I stand corrected.

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

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

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

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

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

A. Yes.

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

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

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

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

Now, the -- if there was enough snow

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

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

A. Absolutely.

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

A. A sloped driveway, yes.

Q. A sloped driveway, okay.

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

A. I did not.

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

A. In general terms, yes.

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

standards by-law?

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

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

A. No.

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

A. No.

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

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

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

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

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

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

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

building?

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

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

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

BY MR. DOODY:

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

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

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

and Mr. Meyer's report?

A. No, I didn't.

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

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

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

A. Reports?

Q. Yes.

A. No, that was never discussed.

Q. So that issue was never raised with you?

A. No.

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

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

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

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

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

Q. Why not?

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

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

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

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

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

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

A. Oh, absolutely.
Q. How did they know about it?
A. We have seen documentation already from I think Mrs. Fazekas was one, copies to Roger Pigeau complaining about roof leaks. The Library Board was aware of it. I mean, we certainly weren't keeping any secrets.
Q. Okay, but given that the City knew it leaked, do you think it would have assisted the City in deciding what to do about it if they had had the consultants' reports you obtained during your tenure?
A. Possibly. I can't answer that.
Q. But in any event, you did not think about it at the time?
A. No.
Q. And you had no discussions with Mr. Leistner or anyone else about that?
A. No, sir.
Q. Okay. You obtained the -- you told us yesterday that you obtained the Trow reports for, among other reasons, to get a baseline of the condition of the structure and then the second report to see how it had progressed since then; correct?

A. That is correct.

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

A. That was the prime interest there, yes.

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

A. Yes.

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

A. I never thought about it.

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

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

We'll adjourn then until 9 o'clock on

Tuesday of next week.

-- Adjourned at 11:30 a.m.

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

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