

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Thursday, June 2, 2022 at 9:30 a.m.

VOLUME 23

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Colin Bourrier	

Chris Buck	For Dufferin Construction
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Jennifer Roberts	For Golder Associates
Nivi Ramaswamy	Inc.

ALSO PRESENT:

Fady Toban

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1 Arbitration Place Virtual

2 --- Upon resuming on Thursday, June 2, 2022

3 at 9:30 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning.

8 MS. LAWRENCE: May I proceed?

9 JUSTICE WILTON-SIEGEL: Please
10 do.

11 MS. LAWRENCE: Thank you.

12 BRIAN APPLEBEE; RESUMED

13 CONTINUED EXAMINATION BY MS. LAWRENCE:

14 Q. Good morning,
15 Mr. Applebee.

16 A. Good morning.

17 Q. Yesterday we were talking
18 about the June 6 progress meeting with the City
19 and we're going to go back to that now.

20 Registrar, can you bring up
21 CIM103, please, slide 22. Thank you.

22 Mr. Applebee, this is the
23 presentation that we were looking at yesterday
24 that was delivered at that meeting. So, we're in
25 June at the first progress meeting. CIMA has done

1 some analysis of the collision history at this
2 point. Is that right?

3 A. Yes. That appears to be
4 correct, yes.

5 Q. In the presentation
6 there's a number of points about signage and other
7 things and markings that are raised. I'm not
8 going to take you to those, but I do note that the
9 presentation specifically notes the Mud Street
10 on-ramp, which CIMA calls ramp 6.

11 Do you remember the reason why
12 the Mud Street ramp in particular was identified
13 in this early presentation?

14 A. I believe there was
15 information from the start of the project from the
16 City itself that this was a ramp that they were --
17 had concerns with in the past and had done some
18 signage changes to and they wanted us to obviously
19 include it in the review, but also to evaluate the
20 changes that had been made to see if it had had
21 any impact. I guess there had been what they were
22 considering a significant number of collisions
23 associated with this particular ramp.

24 Q. And at this stage, what
25 had your analysis revealed about whether the

1 countermeasures that the City had already put in
2 place had resulted? Let me try that again.

3 What had you found at that
4 point about those countermeasures?

5 A. I believe that we
6 reviewed the collisions and obviously we had the
7 historical collisions, the same as they had, we
8 identified that there were a number of collisions
9 at this location, and I believe we reviewed the
10 countermeasures that had been put in place and
11 identified that perhaps there was more that could
12 be done. There was nothing -- I don't believe
13 there was anything wrong with what had been done,
14 but there may be a few extra additional items that
15 we had noted could be completed to help augment, I
16 guess, what had been completed by the City.

17 Q. Thank you. Registrar,
18 can you go to slide 23, image 23, the next image.

19 So, here, this is still in
20 respect of ramp 6 and CIMA's presentation
21 indicates that speed management treatments further
22 in advance of the curve, so to slow down earlier.
23 Is that right?

24 A. Correct. That's right,
25 yes.

1 Q. And then there's a
2 reference to innovative treatments potentially
3 including pavement markings, signage and
4 high-friction pavement surface treatment.

5 I'm going to ask you about
6 that last one. What is a high-friction pavement
7 surface treatment that was being recommended here?

8 A. I don't have the specific
9 expertise with respect to that, but my
10 understanding is is that it's something that can
11 be added to the surface of the asphalt itself that
12 improves the friction value of the asphalt, so
13 effectively it adds more friction, it adds more
14 grit or some other manner of adding friction to
15 the asphalt surface itself.

16 Q. Okay. Who on your team
17 had suggested this as a potential countermeasure?

18 A. I don't recall
19 specifically, but -- yeah, I don't recall
20 specifically who would have identified that.

21 Q. Okay. Registrar, can you
22 bring up CIM8423, please, and could you call out
23 the fifth paragraph. No, I'm sorry. Yes, the
24 third paragraph from the bottom. Sorry, that took
25 me a moment. "City okay with."

1 So, this is the notes of that
2 same meeting:

3 "CIMA okay with examining
4 high-friction pavement on
5 ramps, however, main line
6 has a different new
7 pavement that may not be
8 recommended to be
9 overlaid with high
10 friction."

11 At this point, was CIMA
12 considering recommending high-friction pavement
13 applications on any part of the main line?

14 A. I don't specifically
15 remember, but given this note, I would assume that
16 the discussion was had about high-friction
17 pavements or overlays for in general in the study
18 area, and then this clarification was provided to
19 us by the City.

20 Q. Do you recall who from
21 the City provided you with this clarification?

22 A. Not specifically, no.

23 Q. Do you recall any further
24 information provided by the City about the
25 different new pavement?

1 A. No. I just recall that
2 there was some discussion, basically what it says
3 here, that there had been, you know, a
4 non-typical, I guess, for Hamilton streets anyway,
5 pavement asphalt used on the actual Red Hill
6 itself and that they were not prepared to change
7 it at that time. They were watching to see how it
8 progressed through time and it wasn't something
9 that they wanted to have changed at this point.

10 It was, my recollection, it
11 was a fairly generic discussion, though. No
12 specifics. Frankly, I only learned about the
13 specific of it after preparing for this. I don't
14 recall any of that discussion myself.

15 Q. Okay. Registrar, leaving
16 this up with the call out, if possible, can you
17 also bring up OD, chapter 6, page 28, paragraph
18 58. Thank you, Registrar. Yes, exactly. And if
19 you can call out 58 for me, please. Perfect.
20 Thank you.

21 Mr. Robertson, one of your
22 colleagues, when you circulated the initial
23 version of these minutes, changed the word "may"
24 in the call out above, changed this from "may" --
25 pardon me, from "would" to "may." That is:

1 "However, the main line
2 has different new
3 pavement that would not
4 be recommended for an
5 overlay."

6 Changed it to "may not be."

7 Did you discuss this proposed change with
8 Mr. Robertson?

9 A. I don't remember any
10 specific discussion about that, no.

11 Q. Did you have any views
12 about his change?

13 A. I can't recall if I did
14 and if the word was changed back to "would" or
15 "may." Yeah, I don't recall any specific issue
16 with that or discussions about it, to be honest.

17 Q. Did that change in
18 language matter to your future work?

19 A. I don't believe so. I
20 mean, I think the word "may" and the word "would"
21 could be interchangeable in this context. "Would"
22 is a little bit more of a positive than "may." I
23 don't know that it changed anything as far as my
24 work was concerned in this.

25 Q. Okay. Registrar, you can

1 take that down and if you could call up HAM51991.

2 So, this is the next progress
3 meeting, about a month later, on June 3, 2013. We
4 see that you attended with some individuals from
5 the City and some of your colleagues. Do you see
6 that?

7 A. I do, yes.

8 Q. Do you remember this
9 meeting?

10 A. Not specifically, no.

11 Q. Okay. Registrar, can you
12 call up as the other image HAM51990, please. And
13 you'll see in the second paragraph of the meeting
14 minutes it says:

15 "BA introduced
16 presentation."

17 Am I correct in interpreting
18 that as you introduced a presentation and it's
19 the --

20 A. Yes.

21 Q. -- presentation that's
22 attached?

23 A. Correct, yes.

24 Q. Great. Did you create
25 this slide deck?

1 A. I'm not sure if I did.
2 Oftentimes these slide decks were created by the
3 technical team and I might have assisted or put it
4 together, but I don't think it would have been
5 typical for me to create the entire thing, no.

6 Q. Okay. Registrar, can you
7 go to image 2 of 990, please. So, there's a recap
8 of findings. That's the same findings that you
9 had reported in the earlier progress meeting. Is
10 that right?

11 A. That looks similar, yes.

12 Q. Registrar, can you go to
13 image 3, please.

14 Some of this presentation
15 includes a summary of the enhanced interchange
16 safety analyst tool and explaining what that was.
17 Were you involved in generating the information
18 using this tool?

19 A. No, I wouldn't have been
20 involved in that. I'm not sure how to use that
21 tool.

22 Q. Do you understand how to
23 interpret results coming out of that tool?

24 A. At a very high level,
25 yes, but that was not my expertise.

1 Q. Registrar, can you go to
2 image 9 of 990, please. Thank you.

3 So, I'm not going to take you
4 through all this presentation, but am I correct
5 that it reflects CIMA's initial conclusions to
6 this point on the various segments of the main
7 line and on the ramps?

8 A. Yes. This says Dartnall
9 3, 4 and 5, which I believe are segments of the
10 highway around that area, correct.

11 Q. And just using this as an
12 example, there -- actually, I just want to make
13 sure that you're seeing both parts.

14 Registrar, can you go up one
15 image on there. Thank you.

16 So, just to start at the
17 beginning of the findings for these segments, and
18 so there's a collision review with reference to
19 48 percent of the collisions are single motor
20 vehicle. Was that included because that was
21 notable?

22 A. Yes, I would think so.
23 Yes.

24 Q. And then there's a
25 geometry review, which is about the length of the

1 speed change?

2 A. Yeah. That's what it
3 looks like, yes.

4 Q. Registrar, can you go
5 back to the next image, please.

6 There's continuum of geometry
7 review and then you put in some potential
8 countermeasures. So, I'm not going to ask you
9 about the specific ones there, but looking at the
10 right-hand side, at this point in the process, had
11 CIMA completed the cost-benefit analysis?

12 A. It appears that we had at
13 least done an initial run of the cost-benefit,
14 yes.

15 Q. And at this point you're
16 not actually giving monetary numbers for cost;
17 you're just giving low, medium, high. Is that
18 right?

19 A. Yes. That's what it
20 looks like, absolutely. Yeah.

21 Q. And is that standard, to
22 stage the process like this to give your client a
23 sense of cost rather than specific amounts?

24 A. In a larger project like
25 this, yes, it would be more typical until we had

1 final costs perhaps from the client themselves,
2 but also to ensure that, you know, we're going in
3 the right direction and not spending too much time
4 on the nitty-gritty details of costing items.

5 Q. Okay. Registrar, can you
6 go to the next image in 990, please.

7 So, you'll see one of the
8 potential countermeasures is pavement friction
9 surface testing/improve pavement friction through
10 high-friction pavement. Do you see that?

11 A. I do, yes.

12 Q. So, we're talking about a
13 main line segment here. Can you explain why CIMA
14 included testing/improve pavement friction for
15 this main line segment?

16 A. I would assume that it
17 was because of the findings of the collision
18 review identifying wet weather, run off road or
19 single motor vehicle collisions.

20 Q. Okay. Registrar, can you
21 bring up the fifth paragraph of the meeting
22 minutes, please.

23 So, you'll see here in the
24 minutes, again, a comment to not include
25 high-friction pavement countermeasure on the main

1 line due to the specialized nature of existing
2 pavement. Was that a direction from the City?

3 A. It certainly looks that
4 way, yes.

5 Q. Okay. Registrar, can you
6 move the call out down just a little. Thank you.

7 So, here, am I correct that
8 that slash on the potential countermeasure is an
9 alternative, two different alternatives, friction
10 testing or improve pavement friction?

11 A. Well, the first, the
12 pavement surface friction testing actually isn't a
13 countermeasure, it's a study, so I think they are
14 not maybe and/or but they're two different things
15 that sort of point in the same direction. One is
16 to understand what the friction level is currently
17 and the other would be actually changing the
18 friction of the pavement. They could be done
19 independently of each other, but yes. They're
20 similar but one is not a countermeasure, the other
21 is.

22 Q. Okay. Was CIMA's
23 recommendation at this point to do them
24 concurrently?

25 A. It certainly appears that

1 way. It doesn't specify there, so --

2 Q. Okay. And you don't have
3 a recollection today?

4 A. I can't say for certain,
5 no.

6 Q. Okay. At the meeting,
7 did anyone explain what they meant where it says:

8 "Due to specialized
9 nature of existing
10 pavement --"

11 And then did they explain what
12 they meant by ongoing monitoring?

13 A. I don't specifically
14 remember that, no. Only, again, the general
15 discussion around, you know, it was a different
16 type of asphalt for them I guess they hadn't used
17 before and they were keeping an eye on it as it
18 aged, but nothing specific, I don't recall.

19 Q. Thank you. Registrar,
20 can you go to image 29, please.

21 So, this is a potential
22 countermeasure and it says at the top "for
23 freeways and ramps." At this point, what was
24 CIMA's preliminary conclusions in respect of full
25 illumination?

1 A. It appears, based on
2 this, that full illumination was warranted based
3 on TAC and MTO on-ramps and freeway sections.

4 Q. And on the right-hand
5 side where there's the CFM and then there's
6 benefit and cost, is it fair to say that CIMA had
7 commenced the benefit-cost analysis by this
8 meeting?

9 A. Yes. It appears at a
10 very high level that had been done.

11 Q. Registrar, can you close
12 the call out on image 991 and can you -- this
13 might be more difficult to do. Can you close
14 image 990 and bring up the second page of
15 image 991 so that we have image 1 and image 2 of
16 991 up. Thank you. And then can you call out
17 "for costs" at the bottom and then as it extends
18 to the next page. Thank you.

19 So, on costs, the minutes
20 reflect:

21 "CIMA will include
22 illumination
23 recommendations in the
24 report."

25 Did you understand that

1 included the recommendation we were just looking
2 at, for full illumination of the freeway and the
3 ramps?

4 A. At this point I would
5 assume I did, yes.

6 Q. You don't have a
7 recollection either way?

8 A. No, I don't.

9 Q. If you had received some
10 other direction from the City at this point, would
11 that have affected your work going forward?

12 A. I'm not sure it would
13 have affected our work going forward, other than
14 we may have made an adjustment, which we ended up
15 doing to the report itself and to the final
16 recommendation based on information that we
17 received. But at this point, I don't think that
18 we had received any clarification one way or the
19 other, at least it doesn't appear to be.

20 Q. Maybe I'll put it
21 differently. If you had received direction to
22 limit your assessment of illumination, is it fair
23 to say you wouldn't have done more work on the
24 aspect that had been limited?

25 A. I think that's fair to

1 say, yes.

2 Q. Okay. It says:

3 "MF indicated that CIMA
4 should use MTO costing
5 information."

6 Is MF Mike Field?

7 A. Yes.

8 Q. And am I correct that MTO
9 costing information is slightly different than TAC
10 costing information?

11 A. So, I don't know that TAC
12 has costing information. MTO, I think the
13 direction here was related to using MTO costs for
14 highway illumination rather than City costs for
15 highway illumination, most likely because the City
16 doesn't typically install the type of lighting
17 that you would install on a freeway-type design.
18 MTO does, and so they have a more robust costing
19 setup that you can utilize.

20 Q. Okay. And that's for the
21 special kinds of lights that are on freeways and
22 how far apart they're spaced, that kind of thing?

23 A. Correct, yes. It's often
24 high-mast lighting versus your typical street
25 lighting that you would have on a city street.

1 Q. Okay. And those are more
2 expensive?

3 A. Yes.

4 Q. Registrar, you can close
5 this image, please. If you can bring up
6 OD chapter 6, page 35, paragraph 75, please.

7 So, you sent a copy of the
8 PowerPoint presentation we were just looking at to
9 City staff and to Dr. Hadayeghi for review and
10 comment. Do you remember that?

11 A. I don't specifically
12 remember sending it, but I did.

13 Q. Okay. You also sent it
14 to Mr. Kirchknopf at the City?

15 A. Correct, yes. He was
16 copied on that, it looks like.

17 Q. Registrar, can you close
18 that call out and call out 76, please.

19 Do you recall receiving this
20 e-mail from Mr. Kirchknopf that references:

21 "Regarding the main line
22 pavement treatment,
23 City's asset management
24 has retained Golder
25 Associates to oversee all

1 testing and monitoring.
2 Please contact Ludomir
3 directly if you require
4 further information about
5 weight in motion or
6 friction testing on the
7 main line."

8 Do you remember receiving this
9 e-mail?

10 A. I don't remember
11 receiving that specifically, no.

12 Q. Did you have any contact
13 with Golder in 2013?

14 A. I did not.

15 Q. To the best of your
16 knowledge, did anyone at CIMA have contact with
17 Golder at this time?

18 A. To the best of my
19 knowledge, I don't believe so.

20 Q. To the extent that you
21 have a recollection, what did you understand this
22 message to mean?

23 A. I understand this message
24 to mean that simply Golder had been retained by
25 the City to do the monitoring that I assume was

1 referenced in those meetings, the ongoing
2 monitoring, and that they could undertake friction
3 testing and weight in motion testing as part of
4 that work.

5 Q. Did you understand this
6 to be a direction to contact Golder?

7 A. No, definitely not.

8 Q. Did you receive any test
9 results or data from Golder in 2013?

10 A. I did not, no.

11 Q. To your knowledge, did
12 anyone at CIMA?

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

14 Q. Did you have any
15 discussions with staff at the City about Golder's
16 retainer?

17 A. I don't recall having any
18 discussions, no.

19 Q. Before the 2013 CIMA
20 report was finalized, did anyone at the City tell
21 you that Golder had arranged for friction testing
22 to be performed on the Red Hill?

23 A. Nobody had told me that,
24 no.

25 Q. Thank you. Registrar,

1 you can close this and if you can open up CIM369,
2 the native version, please.

3 While that is coming up, is
4 the drafting of CIMA consultation reports, are
5 they a collaborative process amongst CIMA staff?

6 A. For a report of this
7 nature, they would definitely be collaborative,
8 yes.

9 Q. Fair to say different
10 people are drafting different parts and then
11 someone is compiling it all together and making
12 sure it flows?

13 A. Correct, yeah. Each of
14 the technical specialties would effectively create
15 their section and then somebody would put it
16 together in a final document, yes.

17 Q. Registrar, can you go to
18 internal page 3, which is page 9 of 59. Can you
19 make that a bit smaller. All right, so that's
20 internal page 9. Can you go to internal page 3.
21 Thank you. I will try to find out the best way to
22 give those directions for native files.

23 Mr. Applebee, this is the
24 study scope and this reflected the scope as you
25 understand it at the time, when you were

1 finalizing this draft?

2 A. I would say yes.

3 Q. Including the bullet

4 point Review of Illumination?

5 A. Correct, yes.

6 Q. Okay. And you'll see on
7 the right-hand side there is a note from Brian
8 Malone, so just to orient you, this version is the
9 version that you sent to Mr. Malone and
10 Dr. Hadayeghi for comment before it went out.

11 A. Okay.

12 Q. So, there's a note here
13 from Mr. Malone:

14 "Must add context of
15 lighting. This was
16 another element that we
17 restricted by the EA and
18 is out of scope."

19 Do you see that?

20 A. I do see that, yes.

21 Q. Okay. Registrar, can you
22 go to page 17, please.

23 Down at the bottom,
24 Mr. Applebee, can you read this? We don't do the
25 same sort of call outs, where it says Illumination

1 Results?

2 A. Yeah, I can read that.

3 Q. So, the first sentence

4 is:

5 "The full illumination

6 justification was

7 completed for three

8 interchanges, Dartnall

9 Road, Mud Street and

10 Greenhill Avenue, as well

11 as for the entire study

12 area."

13 And that summarizes the work

14 that CIMA had done up to this point?

15 A. Yes, that would be

16 correct.

17 Q. Registrar, can you go to

18 the next page, please. The very last paragraph,

19 it says:

20 "Based on the TAC

21 warrant, continuous full

22 illumination is suggested

23 for the whole study

24 area."

25 Do you see that?

1 A. Yes.

2 Q. The last sentence of the
3 first paragraph?

4 A. I see that, yes.

5 Q. Thank you. And,
6 Registrar, can you click on where it says area,
7 where it's highlighted, right up at the top, the
8 last sentence of the first paragraph, the very
9 last word. Apologies, Registrar. Do you want me
10 to try that direction again? In the last sentence
11 of the first paragraph, "based on the TAC
12 warrant." There we go. If you can click on that
13 or highlight it, I just want to show that comment
14 that is attached to that.

15 Mr. Applebee, can you see how
16 the second of the comments from Dr. Hadayeghi has
17 now been moved over just to show that those are
18 connected?

19 A. I do see that, yes.

20 Q. Great. And he says:
21 "Shouldn't we talk about
22 the environmental
23 constraint? Didn't we
24 get a report that
25 highlights we cannot do

1 full lighting?"

2 Had you ever received a report
3 that highlighted we cannot do full lighting?

4 A. I don't recall receiving
5 any report at this point. No, not specifically.

6 Q. Okay. Did you receive a
7 report at any time that highlighted that, quote,
8 unquote, "we cannot do full lighting"?

9 A. I think CIMA may have
10 received something from the EA that was originally
11 done by Lura Consulting or somebody like that, but
12 I don't know when we may have received that or
13 where that may have come from. I recall seeing it
14 in the materials in preparation, but I don't
15 recall specifically getting it.

16 Q. Okay. Do you recall
17 receiving something like that while you were an
18 employee of CIMA?

19 A. I don't recall that, no.

20 Q. Okay. So, just so it's
21 clear, in your mind looking back, at this time, in
22 2013 -- maybe I'll say it like this. In respect
23 of the finalization of this 2013 report, do you
24 recall receiving a report that highlighted that we
25 cannot do full lighting?

1 A. I don't recall receiving
2 that report, no.

3 Q. Okay. And if you could
4 just scroll to the other comments that Mr. Malone
5 makes, the next comment. There we go. Thank you,
6 Registrar.

7 Do you see that, where it
8 says:

9 "At the least, we must
10 follow this conclusion
11 with the recognition that
12 the achievement of
13 warrant does not mean
14 they are being
15 recommended. They need
16 to be assessed in
17 relation to approvals
18 constraints"?

19 A. I do see that, yes.

20 Q. Was this information
21 about these approval constraints, was that new
22 information to you when you received these
23 comments?

24 A. I assume it would have
25 been, yes. Certainly --

1 Q. You don't --

2 A. I don't remember

3 specifically, but...

4 Q. Registrar, can you go to
5 page 36, please. Sorry, page 37, please. Thank
6 you.

7 And then here, it says
8 similarly, under Illumination, 6.1.1, that:

9 "The outcome of the TAC
10 illumination warrant
11 indicated that full
12 illumination of the
13 corridor and ramps is
14 justified."

15 So, when you say "corridor"
16 here, is that the main line?

17 A. Yes, that would represent
18 the main line.

19 Q. Okay. And then the next
20 paragraph, the Benefit-Cost Ratio:

21 "The calculated benefit
22 would be a reduction of
23 48.5 collisions over a
24 five-year period and at a
25 cost of \$1.69 million."

1 Do you see that?

2 A. I do see that.

3 Q. So, by this point, CIMA
4 had actually done a complete costing using the MTO
5 cost information?

6 A. It certainly appears that
7 way, yes.

8 Q. Okay. Can you close this
9 out, Registrar, and open up OD, page 37,
10 paragraph 82. Thank you.

11 So, Mr. Malone provided
12 comments. Those were the comments we were just
13 looking at. And in his e-mail where he enclosed
14 those comments back to you, he said:

15 "We need to discuss the
16 lighting. Is it in scope
17 or not? As written, it's
18 a hand grenade that will
19 go off in the City's
20 hands."

21 Actually, it might be easier
22 if we actually go to the document. Can you go to
23 HAM -- sorry, it's not HAM. CIM8124. Sorry, I
24 misspoke. CIM8129, please. Thank you.

25 You see in the middle of this

1 page there's a reference to the e-mail that I just
2 read out?

3 A. I see it, yes.

4 Q. And then your response is
5 at the top:

6 "I believe it was in
7 scope, but I don't recall
8 receiving anything from
9 Mike that would act as an
10 'out.' Apparently there
11 was a report. Maurice,
12 did you receive this?"

13 Did you get anything from
14 Maurice or any report in response to this e-mail?

15 A. I don't recall receiving
16 anything from Maurice or anyone else in response
17 to this, no.

18 Q. Okay. Did you have
19 discussions with Mr. Malone about what he meant in
20 his question about whether it was in scope and his
21 comment, "it's a hand grenade"?

22 A. I don't remember having
23 any discussions with Mr. Malone about this, no.

24 Q. Registrar, can you now go
25 to 8124, please.

1 So, the e-mail we were just
2 looking at was Friday, July 26 and now we're
3 looking at an e-mail from Monday, July 29. This
4 is an e-mail from you to Mr. Nolet where you say:

5 "We are going to remove
6 the overall lighting from
7 the report."

8 Overall lighting, that's the
9 main line lighting?

10 A. Yeah. It's poorly
11 worded, but I believe that's what it was in
12 reference to, yes.

13 Q. So, what happened from
14 that e-mail with Mr. Malone and the comments that
15 he sent you on Friday and this e-mail to Mr. Nolet
16 on Monday that led you to tell Mr. Nolet that you
17 were going to remove the overall lighting?

18 A. I don't recall
19 specifically, but I guess I took it as direction,
20 whether there was a discussion that I don't recall
21 or whether I took it as direction from the e-mail
22 exchange that what's quoted here is overall
23 lighting wasn't going to be included in the
24 report. It was going to be for the ramps.

25 Q. Okay. Did you speak to

1 anybody at the City over the weekend to clarify
2 the scope?

3 A. I wouldn't have spoke to
4 anyone over the weekend at the City, no.

5 Q. Okay. Maybe that Monday
6 morning?

7 A. I don't recall speaking
8 to anybody. This is at 8:12 in the morning, so I
9 very highly doubt that I spoke to anybody on a
10 Monday morning about that.

11 Q. Okay. Maybe I'll ask the
12 question a little bit more broadly. Between
13 receiving Mr. Malone and Dr. Hadayeghi's comments
14 on Friday and then sending this e-mail, did you
15 speak to anybody at the City?

16 A. I don't recall speaking
17 to anybody at the City.

18 Q. And do you recall
19 speaking to Mr. Malone about this?

20 A. I don't specifically
21 recall speaking to him either.

22 Q. Okay. And Dr. Hadayeghi?

23 A. No.

24 Q. Anybody else at CIMA that
25 you speak to about this?

1 A. Not that I recall.

2 Q. Okay. Registrar, you can
3 take this down and if you can pull up the native
4 version of CIM371 and if you could go to page 3,
5 please. Okay, so that's internal page 3. Can you
6 go to page 9, please. There we go. That's
7 properly internal page 3.

8 So, you'll see under Scope, it
9 says:

10 "Review of
11 illumination --"

12 There's been a track changes
13 addition:

14 " -- in specific areas
15 only, i.e., not through
16 the study area."

17 Registrar, could you just
18 hover over that track changes. I think you're
19 hovering over it, but can you hover over the --
20 apologies, Registrar. From my unclear direction,
21 under Study Scope at the bottom, the green track
22 changes that say, "in specific areas only." There
23 we go.

24 So, that is your additions at
25 8:35 on the 29th, on the Monday?

1 A. Yes, that is. Yeah.

2 Q. And was this change
3 reflective of the e-mail in which you said,
4 "remove overall lighting"?

5 A. Yes. This would be
6 consistent.

7 Q. Registrar, can you go to
8 page 20, please.

9 So, here you'll see that
10 you've added in at the very last line:

11 "On the understanding
12 that decision to
13 illuminate was
14 inextricably linked to
15 environmental concerns
16 and approvals, review of
17 full illumination was not
18 undertaken but restricted
19 to spot locations."

20 And that's your track changes?

21 A. Yes.

22 Q. Would you agree with me
23 that CIMA actually had done a review of full
24 illumination?

25 A. Yes, I would agree that

1 the review was done.

2 Q. So, a review of full
3 illumination -- pardon me. Review of full
4 illumination was not undertaken, that's not true,
5 is it?

6 A. Correct. That's not
7 fully accurate, yes.

8 Q. Okay. Can you go to
9 page 43, Registrar.

10 And so, here, you've also
11 deleted the reference to the warrant outcomes and
12 to the benefit-cost ratio. Do you see that?

13 A. Yes. Under the overall
14 study area, yes.

15 Q. And on whose direction
16 did you remove this as a countermeasure?

17 A. I don't specifically
18 recall the direction, but I believe it would have
19 been consistent with the other changes that were
20 made after the e-mail received.

21 Q. The one from Mr. Malone?

22 A. I would have to assume,
23 yes, correct.

24 Q. Did you have any
25 discussions with Mr. Malone about these changes

1 after you made them?

2 A. I don't recall any
3 specific discussion; however, Mr. Malone and/or
4 Dr. Hadayeghi would have reviewed this before it
5 went out.

6 Q. Okay. And when it went
7 out, the deletions we've just looked at, they were
8 in fact deleted, not included. Is that right?

9 A. I believe. I would have
10 to check the document, but I believe that that's
11 correct, yes.

12 Q. Okay. Registrar, can you
13 close this and go to OD, page 45, paragraph 105,
14 please.

15 It's going to come up as a
16 call out that you sent a draft version to the City
17 instructing clients. Was it typical for CIMA to
18 send draft versions to its clients?

19 A. I would say it was
20 typical, especially on a larger project, yes.

21 Q. What was the purpose of
22 the sharing draft reports?

23 A. Well, primarily to ensure
24 that we were providing the client with the scope
25 of the work that we had said we would and also for

1 them to have a chance to review the proposed
2 countermeasures and other findings and to provide
3 any feedback that they might have based on that.

4 Q. Okay. Registrar, can you
5 go to CIM8113. Thanks.

6 You'll see at the top of the
7 chain this is an e-mail from Mr. Cooper to you on
8 August 8, "See our comments below."

9 Registrar, can you show
10 image 1 and image 2 together and if you can call
11 out the second bullet on image 2, please.

12 So, this is in an e-mail from
13 Mike Field to Mr. Cooper and others at the City,
14 which is then forwarded to you. And Mr. Field
15 says:

16 "The illumination of the
17 main line has been
18 excluded. This is
19 decision is based upon
20 information that we
21 provided to CIMA."

22 And then he goes on to say:

23 "The exclusion is not
24 well explained."

25 So, just stopping there, where

1 Mr. Field says that this decision was based on
2 information that we provided to CIMA, to your
3 knowledge, what information did the City provide
4 to CIMA that resulted in the illumination of the
5 main line being excluded from the report?

6 A. To my knowledge, it would
7 have been the discussions that were had previously
8 at the progress meetings.

9 Q. We looked at those and
10 there wasn't anything about excluding main line.
11 There was only a reference to being cautious. Is
12 that the reference that you're talking about?

13 A. That would have been the
14 reference I was talking about from the City
15 themselves, like, to me.

16 Q. Okay. So, you had those
17 two progress meetings and then you complete the
18 draft of the report that includes the full
19 illumination review. Why would you do that if you
20 had thought that the main line was excluded at
21 those progress meetings?

22 A. I don't know that that
23 information -- obviously we prepared the report
24 with that full in there, and so information
25 provided directly to me, as I said, wasn't to

1 necessarily exclude it. That information came
2 later on through those e-mails and comments that
3 were provided that I would assume have come from
4 the City at that point from comments made through
5 the drafting of the report.

6 Q. Okay. So, you said the
7 comments made. Do you mean the comments that
8 Mr. Malone and Dr. Hadayeghi made in the report?

9 A. Correct, yes.

10 Q. Okay. So, that's not
11 from the City?

12 A. That's not directly from
13 the City, no.

14 Q. Okay. So, in August,
15 August 8, what information did you have from the
16 City that excluded full illumination of the main
17 line, if anything?

18 A. I don't believe that I
19 personally had any information from the City at
20 that point.

21 Q. Okay. Mr. Field goes on
22 to say:

23 "The exclusion was not
24 well explained."

25 Then he says:

1 "Considering that
2 illumination of the main
3 line is the first request
4 in the council motion to
5 review, I think there
6 should be far more
7 explanation as to why it
8 was excluded."

9 So, at this point, in August,
10 having received this e-mail, had you seen a copy
11 of the council motion?

12 A. I had not, no.

13 Q. What did you take from
14 this comment from Mr. Field in terms of what far
15 more explanation to add?

16 A. I would have taken that
17 we would have needed to expand the text around the
18 exclusion of the illumination of the main line.

19 Q. Okay. Let's close this
20 and, Registrar, if you can open OD 6, page 45,
21 paragraphs 106 and 107. Thank you.

22 So, in the next term of the
23 draft, the excerpt in 106 was added and the
24 underlined sentence in paragraph 107 was added.
25 I'm not going to take you into those.

1 Was this in response to
2 Mr. Field's request for a better explanation of
3 the exclusion of main line illumination?

4 A. It certainly seems to be,
5 yes.

6 Q. The first sentence in
7 106:

8 "However, as noted,
9 illumination of the main
10 line section of the Red
11 Hill or the RHVP was not
12 examined for this study."

13 You'll agree with me that's
14 not an accurate statement as to CIMA's work?

15 A. Correct, yes.

16 Q. Why did you include that
17 statement using that language?

18 A. I can't recall why I
19 specifically did that. I would agree that it's
20 poorly worded and not fully accurate, but why it
21 was worded that way, I can't say.

22 Q. It's not fully accurate.
23 It's not accurate at all, is it?

24 A. No. It was looked at.

25 Q. Okay. Registrar, can you

1 go to paragraph 119 of the same OD.

2 So, we've gone through a
3 couple of drafts to the City now and you've
4 completed another round of comments in September.
5 Just stopping in September, did Mr. Moore, that is
6 Gary Moore, ever contact you to discuss the draft
7 report?

8 A. I have never spoken to
9 Mr. Moore, no.

10 Q. Did you ever come to
11 learn his views of the draft report from anybody
12 else?

13 A. No, I did not.

14 Q. Registrar, can you go to
15 page 61, paragraph 155, of this same document.

16 So, in October you send an
17 updated version of the report where you changed
18 some words as well as the text in the body. Just
19 in terms of time, that was in October of 2013. Do
20 you remember sending this particular version in
21 October?

22 A. Not specifically. There
23 was a few versions. I don't recall this one
24 specifically, no.

25 Q. Okay. Did you have any

1 involvement in the preparation of the report that
2 City staff prepared for the Public Works
3 committee?

4 A. No, I didn't.

5 Q. Is it typical that you
6 don't have that kind of involvement?

7 A. Yeah, that would be
8 typical.

9 Q. Registrar, can you bring
10 up page 70, paragraph 177, please.

11 So, this is an e-mail that you
12 were not copied on. It's from Mr. Lupton to
13 Mr. White and Mr. Ferguson and it says:

14 "I reviewed with Gary."

15 And they're speaking about the
16 staff report that summarizes the CIMA report. In
17 the third line it says:

18 "I'm not asking to change
19 opinions, but to soften
20 and stage the report."

21 And I believe that reference
22 is to the CIMA report:

23 "Similar to what we have
24 done in our info report,
25 i.e., do this first and

1 measure results, please
2 sit down with CIMA and
3 make this happen. Please
4 ensure you manage this
5 directly."

6 Did you ever discuss modifying
7 the CIMA report to reflect the City staff report
8 with Mr. Ferguson or Mr. Cooper?

9 A. I don't recall
10 specifically discussing that, no.

11 Q. What about Mr. White?

12 A. No, definitely not with
13 Mr. White.

14 Q. Did you deal with
15 Mr. White at all during the CIMA report?

16 A. No, I never dealt with
17 Mr. White. No.

18 Q. Okay. Registrar, can you
19 bring up page 71, paragraph 181, please. Thank
20 you. Can you actually bring up the next
21 image side by side. Thank you.

22 So, Mr. Applebee, you e-mailed
23 Mr. Cooper in November of 2013 and it says:

24 "I attached a Word
25 document to this e-mail

1 that has our suggested
2 wording additions based
3 on our meeting
4 yesterday."

5 Does that refresh your memory
6 about whether you spoke to Mr. Cooper about
7 modifying the CIMA report?

8 A. No, it doesn't help. No.
9 But obviously I must have.

10 Q. Okay. You say to
11 Mr. Cooper:

12 "We have avoided using
13 too many actual dates as
14 we feel it could
15 potentially put the City
16 in a liability position
17 if someone were to look
18 back in retrospect and
19 the City had not
20 completed the work by a
21 specific date for
22 whatever reasons. This
23 is why we try to use
24 ranges generally."

25 And then you say, "Please

1 review." Can you explain your comment about
2 potential liability?

3 A. I mean, again, I think
4 it's poorly chosen words, but effectively we tried
5 to say that, you know, we didn't want to have
6 specific dates in there that could be potentially
7 problematic when, in fact, due to the nature of
8 the actual recommendation not being ultra time
9 sensitive, having dates in there might make it
10 appear that way.

11 Also, we can't control, nor do
12 we have any say, over information on their ability
13 to actually do something by a specific date, so
14 time ranges are more typical, the short, the
15 medium, the long-term ideas rather than saying,
16 you know, you need to do these changes by next
17 Tuesday. I think that over -- it makes it seem
18 like it's more time sensitive than it truly
19 actually is; therefore, the use of ranges would be
20 more consistent with a report of this nature or in
21 general recommendations.

22 Q. Okay. And your idea to
23 change it to ranges -- pardon me. The idea to
24 change it to ranges, was that your idea or was
25 that Mr. Cooper's?

1 A. I don't specifically
2 recall that. Again, it's a typical thing to do,
3 to have ranges, so it potentially could have come
4 from either.

5 Q. Okay. Can you close that
6 call out and can you call out 182. Thank you.

7 And so, you'll see the revised
8 text that you sent over had signage to be
9 completed end of 2013, early 2014, pavement
10 marking and PRPM recommendations beginning in the
11 spring of 2014, and PRPMs installed with the next
12 planned resurfacing in the medium term, and then
13 illumination, undertake illumination of other
14 countermeasures and monitor their effectiveness
15 for a period of at least one year.

16 And who came up with those
17 ranges to put into the report?

18 A. I can't specifically say
19 who would have come up with those ranges. It
20 could have been a collaborative effort. It could
21 have been CIMA.

22 Q. I'm going to suggest to
23 you that you received information from the City
24 about when they thought they would do these
25 countermeasures and then you put them into the

1 report.

2 A. Okay.

3 Q. I'm suggesting. What do
4 you think about that?

5 A. I mean, that could be --
6 again, we often work with clients to understand
7 their abilities to undertake work, you know.
8 Putting signage in in the short term makes sense.
9 Repainting during the manual rehab program in the
10 spring would, again, make sense from an
11 operational perspective, but painting a road
12 perhaps, you know, in the winter isn't a good idea
13 and, therefore, it would be done during the
14 spring.

15 Again, all of these types of
16 countermeasures weren't necessarily so time
17 sensitive that they needed to be done, as I said,
18 like the next day or anything like that, that
19 these ranges were reasonable and in line with what
20 could be accomplished in the real world. So,
21 again, it's possible that it was a collaborative
22 effort between CIMA and the City or it could have
23 been suggested by us.

24 Q. Okay.

25 A. I don't --

1 Q. Do you -- sorry to
2 interrupt.

3 A. No. I was just saying I
4 don't have a specific recollection either way.

5 Q. Okay. For the
6 illumination recommendations, it says:

7 "The City will undertake
8 the implementation of
9 other countermeasures and
10 monitor their
11 effectiveness for a
12 period of at least one
13 year."

14 I read that now as staging out
15 that recommendation. Would you read that the same
16 way?

17 A. I would -- yes, I would
18 read that as a staging out of the recommendation
19 to try something first, monitor and then move
20 forward.

21 Q. In terms of ranges
22 generally, when you used short-term ranges, when
23 you just say short term in a recommendation, what
24 does that mean to you in terms of a time frame?

25 A. Usually it would be zero

1 to three or five years, depending on sort of the
2 overall report itself.

3 Q. Then you have medium term
4 listed here at five to ten years. Is that your
5 usual range for medium term?

6 A. That would be typical,
7 yes.

8 Q. And then what about long
9 term?

10 A. Usually we would say
11 something like ten-plus years.

12 Q. For long term, is it fair
13 to say often you have to start long-term projects
14 much before the ten-year mark in order to complete
15 them by ten years?

16 A. If you want them
17 completed in year ten, often you would have to
18 start them much before that, yes.

19 Q. Okay. And if CIMA
20 discovered something that was a significant and
21 urgent safety issue, would CIMA have a
22 professional obligation to put that into a report?

23 A. If it was urgent, if it
24 was very urgent, it was something that we found in
25 the field during the course of our investigation,

1 we wouldn't have put it in the report. We would
2 have notified the client likely via e-mail or
3 phone call.

4 Q. Okay. So, otherwise you
5 just put short term and that's zero to five,
6 whenever a client can get to it?

7 A. Effectively, yes.
8 Anything super urgent wouldn't have been included
9 in here. We would have made it known to them
10 immediately.

11 Q. Okay. Registrar, can you
12 pull up OD 80 and 81 at the same time, please.
13 Pardon me, yes, page 80 and 81.

14 So, in December, Mr. Cooper
15 responded to your message from November 19 and
16 said:

17 "Go ahead with the
18 wording changes,
19 instructed you to make
20 them."

21 Then if you on to page 81, you
22 asked:

23 "Do you want the date
24 changed on the report to
25 December? It currently

1 says October and I can't
2 remember if we're going
3 to keep the original date
4 on the report or not.
5 Doesn't matter to me
6 either way."

7 And the report that Mr. Cooper
8 says originally is fine and then you provide a
9 copy of report that has your changes made and
10 suggested in November, finalized in December, but
11 the date on the front page of the report is
12 October 2013.

13 Given CIMA's practices at the
14 time, should the date on the cover of the 2013
15 report been updated to the date it was delivered?

16 A. It probably should have
17 been; however, the date isn't or wasn't the full
18 indication that the version had changed. There
19 was an EOX number that would have indicated that
20 it was not the same as the previous one.

21 Q. Okay. That's something
22 internal to CIMA, an identifier that CIMA would
23 understand?

24 A. It is and may likely have
25 been understood by others looking at the cover

1 page, that it had an edition number on it.

2 Q. So, if this one was E05,
3 is that the designation you're talking about?

4 A. Correct. That's the
5 edition, yes.

6 Q. Okay. Having delivered
7 the final report -- I should ask this. Was this
8 the final report?

9 A. I believe that the
10 December E05 was the final report.

11 Q. Okay. And at the time,
12 was it CIMA's practice to actually use the word
13 "final" on the cover page?

14 A. From recollection, I
15 think it varied depending on the client. It
16 wasn't unusual to use it, but it wasn't also not
17 unusual not to put it on it.

18 Q. Okay. Having delivered
19 the final report, did CIMA have any further
20 obligation to the City in respect of this
21 retainer?

22 A. Not to my knowledge, no.

23 Q. Did you have any
24 meaningful involvement in the project that led to
25 the 2015 CIMA report?

1 A. From my recollection, I
2 think I was involved in a couple of e-mails early
3 on in the discussion about that particular
4 project, but my recollection is is my involvement
5 dropped off relatively quickly and then I resigned
6 my position on the 31st of July in 2015 and I'm
7 pretty sure after that I didn't have or wouldn't
8 have had any involvement at all.

9 Q. Okay. After you
10 resigned, how long did you stay to transition?

11 A. I believe it was three
12 weeks. I started at the City of St. Catharines on
13 the 24th of August, which I think was three weeks
14 later.

15 Q. Okay. Registrar, can you
16 bring up CIM10010 and if you can go to image 2,
17 please.

18 So, just to orient you to what
19 this is, this is an e-mail from Golder to -- this
20 is an e-mail from Mr. Moore to Mr. Malone,
21 forwarding an e-mail from Golder. And then if you
22 can go to image 1, and then Mr. Malone forwarded
23 it to you.

24 Is that the e-mails that you
25 were just referenced that you were copied on?

1 This is August 7 of 2015.

2 A. Yeah. I see this.

3 Q. You said, "I was involved
4 in some early e-mails." Was this the extent of
5 the e-mails that you were involved in?

6 A. Sorry. I see I was
7 involved in this. No, this is not what I was
8 referencing. I believe there was some discussion
9 about the actual scope of the 2015 report that I
10 had some, again, very preliminary involvement in
11 that I recall.

12 Q. Okay. For these e-mails,
13 can you go back down to image 2, please.

14 They're about friction numbers
15 on the Red Hill. That's the subject line. Why
16 did Mr. Malone copy you -- why did you receive
17 these e-mails, if you know?

18 A. I don't know. I'm not
19 sure why, especially given the date.

20 Q. Do you have any
21 particular expertise in friction testing?

22 A. I don't have any
23 expertise in friction testing, no.

24 Q. Thank you. Those are my
25 questions.

1 Commissioner, it's 10:40,
2 recognizing it's a little early for our morning
3 break, but we're only sitting for the morning
4 today. May I propose that we take a break, I can
5 confer with counsel and then we can provide a
6 sense of the rest of the morning for you?

7 JUSTICE WILTON-SIEGEL: That
8 would be fine. Let's take a 15-minute break and
9 we'll return, then, at five to 11:00.

10 --- Recess taken at 10:41 a.m.

11 --- Upon resuming at 10:56 a.m.

12 MS. LAWRENCE: Thank you.

13 BY MS. LAWRENCE:

14 Q. Mr. Applebee, I actually
15 have one more set of questions before I'm done.

16 Registrar, can you bring up
17 HAM41871. Thank you. And we're going to internal
18 page 20, image page 26. Sorry, that was not the
19 right image page. Can you skip forward to
20 internal page 20. You're on page 13 now. Maybe
21 you can't do that. One more. Thank you. And if
22 you can call out first -- no, actually, just leave
23 it.

24 Mr. Applebee, turning to the
25 first paragraph, this is the paragraph that I took

1 you to in the overview document that had been
2 added in this last version E05. Do you remember
3 that discussion that we just had?

4 A. I do, yes.

5 Q. Did you draft, you
6 personally, this paragraph that was added?

7 A. I don't recall if I
8 personally added that or not.

9 Q. There are two footnotes
10 in that paragraph, footnote 12 and footnote 13,
11 and you'll see at the bottom they're referenced as
12 the "Red Hill Valley Parkway Impact and Design
13 Process" and the "Red Hill Valley Parkway Public
14 Consultation Report" from Lura Consulting?

15 A. Yes.

16 Q. Where did CIMA obtain
17 those two referred documents from?

18 A. I don't specifically
19 recall if we were provided them from the client or
20 if they are publicly available by Googling them.
21 I'm not sure.

22 Q. Okay. Do you recall
23 personally looking at those two documents?

24 A. I don't specifically
25 recall looking at them, no.

1 Q. Okay. Thank you,
2 Commissioner. Those are my questions.

3 JUSTICE WILTON-SIEGEL: Okay.

4 MS. LAWRENCE: I'm advised by
5 my friends that Dufferin and the Ministry don't
6 have any questions, that Golder estimates
7 15 minutes and that the City estimates 45.

8 JUSTICE WILTON-SIEGEL: Okay,
9 then why don't we proceed with Ms. Roberts.

10 EXAMINATION BY MS. JENNIFER ROBERTS:

11 Q. Good morning,
12 Mr. Applebee. I'm Jennifer Roberts. I'm counsel
13 to Golder.

14 A. Good morning.

15 Q. Commissioner, may I
16 proceed?

17 JUSTICE WILTON-SIEGEL: Yes,
18 please proceed.

19 MS. JENNIFER ROBERTS: Thank
20 you.

21 BY MS. JENNIFER ROBERTS:

22 Q. Mr. Applebee, there's
23 just a small framework of evidence I just want to
24 go through with you.

25 Am I right in recalling that

1 you were the project manager for the 2013 CIMA
2 report?

3 A. Yes, that's correct.

4 Q. Okay. I just want to go
5 through the process by which CIMA finalized its
6 reports. Can we please go to overview document 6,
7 image 71, paragraph 181.

8 So, my friend Ms. Lawrence
9 just took you to this. This is finalizing the
10 CIMA report and this is the point at which you're
11 putting in some date ranges. So, I think, if I'm
12 understanding this process, this is one of the
13 very last revisions to the report. Is that right?

14 A. Based on the date, yes.
15 It definitely seems that way.

16 Q. Okay. And you've taken
17 comments and you're incorporating them in the
18 final version, so that's what's happening here?

19 A. Correct, yes.

20 Q. Okay. Can we please go
21 to image 77, paragraph 194.

22 So, then, I take it what
23 happens here is that you follow up with Mr. Cooper
24 of the City to find whether they have any
25 further -- have they got any comments on the

1 suggested changes to the report?

2 A. Yes. That's what it
3 appears, yes.

4 Q. And you're waiting to
5 hear back that the version is acceptable so that
6 you can deliver the final report. Is that right?

7 A. Yes, correct.

8 Q. Okay. And can we please
9 turn to image 80, 207. Yeah, actually, you can
10 leave it that way. Sorry. Take away the call out
11 and just leave the two pages. I think we can read
12 them.

13 So, understanding from the
14 title part here that this is the final version on
15 December 9, 2013. So, on December 9, 2013,
16 Mr. Cooper responded to your message saying:

17 "The go-ahead for the
18 wording -- "

19 Sorry, advising that he had
20 received the go-ahead for the wording changes and
21 asking you to proceed to make final copies. Do
22 you see that?

23 A. I do, yes.

24 Q. And it looks as though in
25 the final copies, and if we go over to the next

1 page, and my friend took you to this about the
2 date change, and you made the decision or, sorry,
3 and the decision was made that the date would not
4 be changed to December, it would be left as
5 October, as the final version. That's what
6 happened here?

7 A. Yes, that's what happened
8 there.

9 Q. Okay. In paragraph 208,
10 you sent Mr. Cooper a PDF of the updated report.
11 Can we please go to Hamilton 41870. Okay.

12 So, you write to Stephen
13 Cooper saying:

14 "Please find attached the
15 PDF version of the
16 updated report. The
17 printed reports will
18 follow likely Wednesday."

19 So, the cover e-mail doesn't
20 identify this as the final report. Can we please
21 go to it, and I think that is 418710001, is the
22 attachment. There we go.

23 Can you tell from the front
24 page of this that it is the final report that CIMA
25 delivered to Hamilton?

1 A. I can tell because I know
2 that E05 version was the final report that went
3 out, so it has that notation under the date.

4 Q. Okay. Can we please turn
5 to the next image. And this report just has the
6 project team identified from CIMA here. There are
7 no signing lines for CIMA on this. Was it the
8 practice in 2013 that CIMA did not sign its final
9 reports?

10 A. From my recollection, it
11 depended on the type of report that it was, but it
12 wasn't uncommon that they weren't signed. There's
13 no signature line here. I don't know if the
14 original hard copy was signed or stamped. I'm not
15 sure. But it's not reflected in the PDF.

16 Q. Okay. But if there was
17 signing lines, you would have expected to see --
18 sorry. If it was signed, wouldn't you have
19 expected to see signing lines here?

20 A. I would expect to see
21 that, yes.

22 Q. Okay. So, does that not
23 indicate to you that probably this version was not
24 signed?

25 A. It indicates that, yes.

1 Q. Okay. Thank you, sir.

2 Those are my questions.

3 MS. CONTRACTOR: Good morning,

4 Mr. Commissioner. I have a few questions for

5 Mr. Applebee. May I proceed?

6 JUSTICE WILTON-SIEGEL: I'm

7 going to ask, if you don't mind, if we could just

8 take a two-minute break. There's a matter that's

9 shown up on my screen that I have to deal with.

10 If you could stand by, Ms. Contractor, I'm just

11 going to delete my video here for a moment.

12 MS. CONTRACTOR: Certainly.

13 JUSTICE WILTON-SIEGEL: Okay.

14 Thank you for your patience. Ms. Contractor,

15 please proceed.

16 MS. CONTRACTOR: Thank you,

17 Commissioner.

18 EXAMINATION BY MS. CONTRACTOR:

19 Q. Good morning,

20 Mr. Applebee. My name is Delna Contractor. I'm

21 counsel to the City and I'm going to ask you about

22 a few issues my friends have asked you about and a

23 couple new points.

24 I just wanted to understand

25 generally the process that CIMA undertook in

1 preparing its reports. And I take it ultimately,
2 Mr. Applebee, that it would be important that the
3 safety review report that CIMA prepares for its
4 client reflects their opinion on what
5 recommendations could or should be implemented in
6 the study area?

7 A. I would agree, yes.

8 Q. And that includes any
9 recommendations with respect to timelines?

10 A. Correct, yes.

11 Q. And I understand that
12 it's a common practice for CIMA to share drafts of
13 the report with the client and to receive feedback
14 from that on the report?

15 A. It's common. I think
16 that's common in the industry, yes.

17 Q. And as part of that
18 feedback, they may include their prior history
19 with a particular measure and their views about
20 the efficacy, the challenges with implementation,
21 and those types of factors?

22 A. They could include that
23 stuff, yes, absolutely.

24 Q. And based on their
25 feedback, I take it that if CIMA agreed with any

1 suggestions that are made by the client, that they
2 would revise the report accordingly?

3 A. If we agreed and if it
4 was consistent with our recommendations, then we
5 likely would have no issue revising the report
6 accordingly.

7 Q. Right. And conversely,
8 if CIMA did not agree, it would not accept those
9 suggestions and implement those provisions?

10 A. That's correct.

11 Q. Right. And so, you would
12 agree with me that essentially CIMA would not
13 include any recommendations, including
14 recommendations with respect to timeline, in its
15 safety review reports that it did not agree with?

16 A. I would agree that we
17 would not include that, correct.

18 Q. Okay. And,
19 Mr. Registrar, could we please go to CIM8082,
20 image 13.

21 I want to chat now about the
22 objective of the safety review at a high level.
23 And I understand that the objective of that review
24 was to -- we can look at the Study Objectives
25 section there, but it was to review a portion of

1 the Red Hill and determine the safety performance
2 and recommend viable potential measures that could
3 be implemented to increase the safety performance
4 of drivers.

5 And so, essentially CIMA's
6 mandate was to provide its opinion on the safety
7 performance, identify any measures that the City
8 could implement and a timeline by which the City
9 could implement those measures. Is that correct?

10 A. That's correct, yes.

11 Q. And we heard from
12 Mr. Malone yesterday that the term "should be
13 considered" has a very specific meaning in traffic
14 and transportation engineering and that it's used
15 intentionally by CIMA. And, specifically, he
16 indicated that the phrase means that the measure
17 should be done, unless there's a reason not to.

18 Is that consistent with your
19 understanding of CIMA's use of the word "should be
20 considered"?

21 A. Yeah, that would be my
22 understanding. That's typical in the industry,
23 especially now.

24 Q. Okay. And was it typical
25 in 2013, to the best of your recollection?

1 A. Yes. I believe it was
2 just before then that in the industry it began to
3 change where "should" took on quite a more
4 definitive meaning.

5 Q. Right. And we see here
6 that the study objective is for recommendations
7 that the City could implement, but of course if
8 there were measures that the City should
9 implement, then CIMA would have identified those
10 as well?

11 A. Correct, yes. Those
12 words would have been used in the context of their
13 meaning, for sure.

14 Q. They would have been used
15 in specific ways?

16 A. Correct, yes.

17 Q. And just to be clear, if
18 "should be considered" means that the action
19 should be done unless there's a reason not to,
20 "could be considered" suggests that an action
21 could be done but is not required. Is that fair?

22 A. I would say that's fair,
23 yes.

24 Q. And, if we go to image 4,
25 please, Mr. Registrar, we see here that there are

1 timelines associated with the countermeasures that
2 are referenced in the report and that the
3 timelines are defined. And so, short term is
4 defined from zero to five years, medium term, five
5 to ten years, and long term is ten-plus years. Is
6 that right?

7 A. That's correct, yeah.

8 Q. And essentially this
9 means that CIMA recommends that the City consider
10 implementing the short term at some point between
11 zero and five years?

12 A. Yes.

13 Q. Unless the recommendation
14 was a should, in which case it would be the City
15 should implement that measure between zero to five
16 years. Is that right?

17 A. Correct, yes.

18 Q. Okay. And I would like
19 to chat now about the continuous illumination on
20 the Red Hill in the context of the 2013 report.
21 And we see that for the 2013 report and the 2015
22 report, there are a number of progress meetings
23 that CIMA attended with the City and that after
24 each meeting, CIMA prepared progress meeting
25 minutes.

1 And I gather, Mr. Applebee,
2 that the purpose of preparing those minutes is to
3 capture the key points of the discussion and any
4 decisions that are made and any follow-up tasks.
5 Is that correct?

6 A. Yes, that would be
7 correct.

8 Q. And if we could go,
9 please, Mr. Registrar, to CIM8453, which are the
10 meeting minutes for the June 6 meeting. Thank
11 you.

12 And, if we look at the line
13 that starts with, "CIMA needs to be cautious with
14 illumination," it might be on the next page.
15 Right. So, it's item 4, Open Discussion.

16 And I believe your evidence
17 yesterday, Mr. Applebee, that was that coming out
18 of this meeting on June 6, you understood that the
19 assessment of continuous illumination, and that is
20 illumination throughout the study area, was part
21 of the scope of work for the 2013 report?

22 A. Yes.

23 Q. And, Mr. Registrar,
24 perhaps we could show both pages of the meeting
25 minutes. Thank you.

1 And, Mr. Applebee, please take
2 a second to review if you need to, but could you
3 confirm that these minutes reflect all of the
4 follow-up tasks from this meeting, to the best of
5 your recollection?

6 A. To the best of my
7 recollection, I believe they would, yes.

8 Q. And if there were
9 directions from the City for CIMA to obtain
10 further information to speak to anyone else, you
11 would expect that these minutes would include
12 that?

13 A. If there was specific
14 direction for CIMA to follow up, then they would
15 have been noted in these minutes, yes.

16 Q. Mr. Registrar, could we
17 please go to OD 6, image 37. Okay.

18 So, we don't need to call
19 anything out as long as, Mr. Applebee, you can see
20 the paragraphs okay at this size.

21 A. I can.

22 Q. Okay. Great. I'm going
23 to be chatting about paragraph 82 and 83
24 generally. And we see that on July 26, Mr. Malone
25 provides comments in a draft report that you have

1 sent to him, and that's -- you were taken to it
2 earlier, but at this point no draft has gone out
3 to the City. Is that right?

4 A. Yes, that's correct.

5 Q. And here Mr. Malone asked
6 or states, rather:

7 "We need to discuss
8 lighting. Is it in scope
9 or not?"

10 And here you understood him to
11 mean continuous lighting in the study area?

12 A. Yes. I believe that was
13 my understanding at the time, was continuous
14 lighting or lighting in general. It was very
15 generic in the original scope.

16 Q. Right. And you
17 understood his e-mail, his statement, to mean that
18 he was not clear as to whether continuous
19 illumination was in scope or not?

20 A. It certainly appeared
21 that way, yes. That's how I would have taken
22 that.

23 Q. And your response was:

24 "I believe that this was
25 in scope."

1 And, again, "this" refers to
2 continuous lighting in the study area?

3 A. It would have -- yes,
4 continuous and any other lighting along the entire
5 study area --

6 Q. Right. And when you say:
7 "We could write it out
8 similar to the geometry
9 given adequate background
10 if we think this is
11 better."

12 The "we" referenced in that
13 sentence is CIMA. Correct?

14 A. I believe that's written
15 in relation to CIMA, yes. We are the authors.

16 Q. Right. And write it out,
17 you meant write continuous lighting of the study
18 area out of the report. Is that right?

19 A. So, yeah. Again, it's
20 poorly worded, I suppose, but the idea was that we
21 would provide explanation in the report as to why
22 it was not in scope, similar to what we had done
23 in relation to the geometry review in that we
24 weren't reviewing certain aspects of the geometry
25 of the actual road.

1 Q. Right. But at this point
2 your understanding is that it is in scope?

3 A. Yes. That was my
4 understanding, absolutely, because I wrote that
5 right there.

6 Q. Right. And so, in that
7 second paragraph, you're not referencing any
8 direction from the City with respect to whether
9 it's in scope or not, but you're referencing what
10 CIMA could do, given the use of "we" there. Is
11 that correct?

12 A. Yes, that's correct. And
13 I believe my evidence previously was that I hadn't
14 personally received any information from the City
15 one way or the other to myself.

16 Q. So, one way or the other,
17 that you thought that it was in scope. Right?
18 So, you understood it to be in scope?

19 A. Correct.

20 Q. So, you hadn't received
21 anything from the City that would exclude it from
22 the scope?

23 A. At that point, I had not,
24 no.

25 Q. Right. And the second

1 line in that second paragraph, which states:

2 "We received no comment
3 from the City on our
4 presentation that we sent
5 over."

6 And I just want to take you
7 through a couple of documents then with respect to
8 that statement.

9 So, if we could go to -- well,
10 let me ask you first. Given that this is July 26,
11 and the presentation you're referring to is the
12 one that was provided on July 3. Is that right?

13 A. I believe that would be
14 the one, yes.

15 Q. And perhaps,
16 Mr. Registrar, could we go to that presentation,
17 which is at HAM51990 and image 29 specifically.

18 And this is the slide on
19 page 29 from that July presentation and it states:

20 "Full illumination on
21 ramps and freeways meets
22 the TAC and MTO
23 warrants."

24 And, again here, this is
25 referring to illumination for the entire study

1 area. Correct?

2 A. It is, yes. So, full
3 illumination isn't the technically correct term,
4 but that's what it is relating to, yes --

5 Q. Right. That would be
6 continuous?

7 A. Correct, yes.

8 Q. Okay. And, if we can
9 keep that page up and also go to HAM51991, which
10 are the minutes from that meeting?

11 THE REGISTRAR: Sorry,
12 counsel. Do you mind just repeating the call out
13 for me?

14 MS. CONTRACTOR: Of course.
15 HAM51991.

16 THE REGISTRAR: Thank you.

17 MS. CONTRACTOR: My pleasure.

18 BY MS. CONTRACTOR:

19 Q. Let me just adjust
20 something here. Sorry, folks. I'm just having a
21 bit of a glitch. Okay.

22 And if we look under
23 Presentation, which might be on the annually --
24 no. Just give me one second. Sorry, the page
25 that we were just at. Yeah, maybe let's call that

1 out. Right. Thanks very much.

2 The paragraph that starts
3 with, "For geometric design aspects," do you see
4 that?

5 A. I do, yes.

6 Q. So, this says:

7 "For generic design
8 aspects, CIMA should
9 include text in the
10 report describing the
11 design philosophy and not
12 specifically examine
13 design features in the
14 report."

15 And so, this reflects the
16 City's view not to examine design features in the
17 2013 report. Is that right?

18 A. That's correct, yes.

19 Q. And if we look under
20 Costs, which I think that might be on the next
21 page perhaps, Mr. Registrar, yes, the bottom of
22 this page, thank you.

23 It says:

24 "CIMA will include
25 illumination

1 recommendations in the
2 report. MF indicated
3 that CIMA should use MTO
4 costing information
5 rather than Hamilton
6 costs due to type of
7 lighting."

8 And, again, that reference
9 is -- the illumination there is to continuous
10 illumination or full illumination on the study
11 area. Correct?

12 A. At the time, that was my
13 understanding, yes.

14 Q. Right. And so, here,
15 other than the guidance provided by MF, who I
16 believe is Mr. Field, regarding costing, these
17 minutes don't reflect any comment from the City on
18 the PowerPoint with respect to illumination.

19 Again, we can pull up both
20 pages, Mr. Applebee, just to be fair to you and so
21 you have a chance to review. Would that be
22 helpful?

23 A. Yeah. I mean, I didn't
24 see any reference to that, no.

25 Q. Right. And certainly

1 there was no reference to CIMA not reviewing
2 illumination in the way that the minutes captured
3 the City's view regarding geometric design review.

4 Is that right?

5 A. That's correct, yes.

6 Q. Okay. And, if we could
7 go now, please, Mr. Registrar, to OD 6, image 37,
8 back to where we were.

9 So, again, when you say, "We
10 received no comment from the City on our
11 presentation that we sent over," specifically the
12 presentation that you're referring to is the last
13 slide that we just went to, which is that full
14 illumination, i.e., continuous illumination, on
15 ramps and freeway meets the TAC and MTO warrants.
16 That's what you're referring to there?

17 A. Yes.

18 Q. And when you say no
19 comment, you're referring to the fact that the
20 City had no comments with respect to that last
21 slide, as we just spoke about?

22 A. Yeah. That would be my
23 understanding of that, absolutely.

24 Q. Right. Okay. And I
25 think you've indicated that between this e-mail

1 that we're looking at here where you respond to
2 Mr. Malone and the next e-mail, CIM8124 -- and
3 perhaps, Mr. Registrar, we can have both these
4 pages up. I can't see the second page. I don't
5 know if others can. Sorry, so it's just a black
6 screen for me, other than the OD page.

7 THE REGISTRAR: Sorry,
8 counsel. I don't think it's 8214. I think it's a
9 different --

10 MS. CONTRACTOR: My apologies.
11 One second.

12 THE REGISTRAR: Is it 8423?

13 MS. CONTRACTOR: It may be.

14 Let me just double check. And it is 8124. Sorry,
15 so it is 8124, CIM8124. Thanks. Okay.

16 BY MS. CONTRACTOR:

17 Q. So, Ms. Lawrence took you
18 to this e-mail, noting that paragraph 1 there
19 where you're asking -- where you ask your
20 colleague to remove overall lighting from the
21 report. And I believe you confirmed overall
22 lighting, again, references continuous lighting.
23 Correct?

24 A. Yes, correct.

25 Q. And between the e-mail at

1 paragraph 83, where you -- sorry. Between the
2 e-mail at paragraph 33 and the e-mail you sent to
3 Mr. Nolet, and I think you said you don't recall
4 having any conversations with City staff in terms
5 of you don't recall any conversations between City
6 staff?

7 A. I don't recall having any
8 conversations with City staff, no.

9 Q. Right. And given your
10 role on this project, which I understood to be a
11 conduit between City staff and the technical team
12 and partners on the file, I take it part of your
13 responsibility was the sharing of information
14 between the two groups. Is that fair?

15 A. Yes. Anything that would
16 have come through me, I would share as necessary,
17 absolutely.

18 Q. So, if you would have had
19 a call or an e-mail from the City between the
20 July 26 or the e-mail at paragraph 83 and the
21 e-mail from July 29, you would have sent an e-mail
22 to your colleagues to relay the City's comments.
23 Correct?

24 A. That would be my common
25 practice had I received something, yes.

1 Q. And I take it you haven't
2 seen any e-mails between you and City staff or you
3 and your colleagues from the period of time in
4 between these two e-mails, the first where you
5 send Mr. Malone an e-mail noting that you
6 understood lighting to be in scope, and the second
7 e-mail where you ask your colleague to remove
8 continuous lighting from the report, nothing to
9 suggest that there was any communications with the
10 City between those two?

11 A. I don't recall seeing any
12 e-mails related to that going from myself to the
13 City, no.

14 Q. Okay. Thanks very much.
15 Mr. Registrar, could we please go to 8082.001, the
16 2013 CIMA report, and image 14 specifically,
17 please. And call out that entire section just so
18 it's a bit bigger.

19 So, this section talks about
20 the limitations of the 2013 study and I want to
21 understand a bit more specifically about what this
22 says. And so, if we look at the second paragraph,
23 which says:

24 "The design choices on
25 the facility were

1 intimately linked to
2 approvals."

3 Do you see that?

4 A. I do, yes.

5 Q. And then it goes on to
6 say in the next paragraph:

7 "Because of the unique
8 area and because of the
9 cost associated with
10 building a roadway on the
11 escarpment, the City
12 identified several design
13 refinements to the
14 alignment of the roadway
15 within the valley. These
16 refinements 'consider
17 environmental benefits,
18 driver safety and
19 construction cost.'"

20 So, what this says is that,
21 you know, design refinements were made on the Red
22 Hill and that those refinements were responsive to
23 the unique area of the Red Hill Valley, the
24 construction costs, the environmental benefits and
25 driver safety. Is that correct?

1 A. Yes. That's what that
2 quote says, absolutely.

3 Q. Okay. And then it goes
4 on to give specific examples of those refinements
5 and we see that the third plus sign says:

6 "Restricting illumination
7 to the intersections and
8 the on and off-ramps."

9 It does not say that an
10 environmental assessment prohibited continuous
11 illumination on the Red Hill. Correct?

12 A. That specific bullet does
13 not say that, no.

14 Q. Right. But not just that
15 bullet, but the paragraph above it. Right?

16 A. No. That's a very short
17 quote taken from that document. I can't say today
18 whether that document specifies that or not.

19 Q. Right. But, generally,
20 what this paragraph is stating is there were
21 design refinements made and those refinements were
22 reflective of a number of factors, including
23 environmental benefits, driver safety,
24 construction costs. Nowhere does it say -- and
25 I'm not just referencing the quote. That entire

1 paragraph does not state that illumination was
2 restricted because of prohibitions in the
3 environmental assessment. Correct?

4 A. No, that statement
5 doesn't say that.

6 Q. And if we go to the
7 footnote 4 just below, that is the Lura report
8 that you were referring to earlier, Lura
9 Consulting?

10 A. Yeah.

11 Q. Right. And I think my
12 friend asked you how you may have obtained the
13 report and I think you said either it was publicly
14 available or the City provided it to you, but
15 clearly you had a copy of it before you finalized
16 the 2013 report?

17 A. Yes.

18 Q. And if we go to --
19 Registrar, if we could keep that page up and go to
20 HAM2638. So, this is the Lura report and if we go
21 to image 8, it provides a general description.
22 It's a very long report, so I'm not going to take
23 you through the whole thing, but the general
24 purpose of the report and a background of the
25 consultation process is provided on this page.

1 And while you're reviewing
2 that, Mr. Applebee, I'll just note that this
3 report will be Exhibit 63.

4 JUSTICE WILTON-SIEGEL: Thank
5 you.

6 EXHIBIT NO. 63: Lura
7 Consulting report,
8 HAM2638.

9 BY MS. CONTRACTOR:

10 Q. And so, the background of
11 the report is provided here. And then if we go to
12 image 87 and if we can pull out the first --
13 that's strange. My 87 is slightly different.

14 Sorry. If we can go back two
15 pages, please, and if we can call out the first
16 row of that table. So, you see here on the left
17 it says:

18 "Serious potential
19 impacts are not addressed
20 in either report.
21 (Natural areas adjacent
22 to the indirect impact
23 zone will be
24 compromised)."

25 And then on the right-hand

1 side it states:

2 "Michael Measure of the
3 Toronto-based Fatal Light
4 Awareness Program was
5 contacted regarding the
6 possible effects of
7 expressway light on
8 wildlife behaviour. He
9 stated that artificial
10 lighting (street
11 lighting, highway light
12 standards, vehicle
13 lights) can affect the
14 breeding habits of birds;
15 however, these effects
16 are difficult to quantify
17 and studies are limited.
18 Mitigation measures
19 should aim to limit usage
20 of light standards to
21 intersections and on and
22 off-ramps."

23 Do you see that?

24 A. Yes, I see that.

25 Q. Okay. Is there a way,

1 Mr. Registrar, to have this section up that you
2 have called out with the section of the report
3 that we were looking at, even if it's just the far
4 right column.

5 I don't know if you can see
6 that any better, but the point I wanted to make is
7 that the reference in the CIMA report, which again
8 aren't to prohibitions in this section with
9 respect to the environmental assessment but about
10 design refinements made to reflect environmental
11 benefits and construction costs, and the specific
12 site and reference is to this Lura report, which
13 specifically talks about mitigation measures, as a
14 result of which continuous illumination or,
15 rather, illumination should be restricted to
16 interchanges and off-ramps.

17 So, this is -- and there's a
18 few other references in the report, but this
19 report supports what is described in the Study
20 Limitation section that we see here?

21 A. Yes.

22 Q. If we could go to
23 image 58 of the 2013 CIMA report that you have up
24 already, Mr. Registrar. And we can take down the
25 Lura report. Okay. And could we please call out

1 the high-friction pavement, that first paragraph.

2 This recommendation or the
3 reference, rather, to install high-friction
4 pavement in the report was made with respect to
5 ramp 6, and the last line of that paragraph states
6 that the City could consider installing this
7 treatment on approach to and through the curve at
8 the end of the ramp. Do you see that?

9 A. I do, yes.

10 Q. And it does not state
11 that the City should install high-friction
12 pavement. Correct?

13 A. Correct, yeah. That is
14 clear.

15 Q. Right. And you agreed
16 with me earlier that CIMA is intentional about its
17 use of "should" and "could"?

18 A. Correct, yes.

19 Q. And if we could go to
20 image 66, please, and if we look at -- so, this is
21 the summary of countermeasures broken down into
22 ramp segments, and for ramp 6 you'll see that one
23 of the recommendations is to install high-friction
24 pavement and that it's listed as a short-term
25 countermeasure. Correct?

1 A. Yes, that's correct.

2 Q. Okay. And so, the
3 guidance in the CIMA report with respect to
4 high-friction pavement is that the City could
5 consider installing high-friction pavement on
6 ramp 6 at some point from November 2014, which is
7 when the report -- sorry, 2013, rather, which is
8 when the report was finalized, and November 2018,
9 which is five years. Is that fair to say?

10 A. That's fair to say.

11 Q. Okay. If we could go to
12 OD paragraph 6, I'm sorry, OD 6, image 35.

13 So, Ms. Lawrence took you to
14 the e-mail at paragraph 76 and I believe you
15 agreed that you were being informed about Golder
16 Associates' work on the Red Hill as a result of
17 the friction testing recommendation that was
18 included in some of earlier drafts of the report
19 and discussed at the progress meeting?

20 A. Yes. That's my
21 understanding of that, yeah.

22 Q. And given what we
23 discussed earlier about your role on this project,
24 being a conduit of information, you would have
25 shared this information with the technical team

1 and the partners on the CIMA side working on the
2 2013 report?

3 A. It would have been my
4 typical practice to share that information, yes.

5 Q. Right. And if we go to
6 CIM10011, you were taken to this e-mail as well.
7 And I take it that when you received this e-mail
8 from Mr. Malone where he says, "FYI and review,"
9 you would have reviewed Mr. Moore's note or the
10 e-mail from Mr. Moore below?

11 A. I believe I would have
12 reviewed it, yes.

13 Q. Right. And,
14 Mr. Registrar, if we can pull up the second page
15 of that. Perfect.

16 You see that the e-mail that
17 Mr. Moore forwards to Mr. Malone is an e-mail from
18 Dr. Uzarowski from Golder Associates. Correct?

19 A. Yes, that's correct.

20 Q. And I take it,
21 Mr. Applebee, that at this point you did not
22 recall that the City had invited CIMA to reach out
23 to Golder in 2013 if they had any questions about
24 friction testing?

25 A. No. I wouldn't have

1 recalled that probably.

2 Q. Right. And so, you
3 didn't share with or remind Mr. Malone of the
4 City's invitation to contact Golder from 2013?

5 A. I don't believe I did. I
6 don't recall that specifically, no.

7 Q. Okay. Those are my
8 questions for you, Mr. Applebee. Thanks for all
9 your time today.

10 JUSTICE WILTON-SIEGEL: Okay.
11 Dufferin and MTO have no questions?

12 MS. LAWRENCE: That's correct.
13 I mean, unless they pop up on the screen.

14 JUSTICE WILTON-SIEGEL: Okay.
15 And, Ms. Lawrence, anything further?

16 MS. LAWRENCE: Thank you,
17 Commissioner. I would like to take a short
18 five-minute break just to confirm my notes and if
19 I have any questions in re-exam. And, in any
20 event, I suspect I'll be quite brief.

21 JUSTICE WILTON-SIEGEL: Okay.
22 Let's take a five-minute break. We'll return at
23 five to 12:00.

24 --- Recess taken at 11:47 a.m.

25 --- Upon resuming at 11:55 a.m.

1 MS. LAWRENCE: Thank you.

2 FURTHER EXAMINATION BY MS. LAWRENCE:

3 Q. Thank you. Mr. Applebee,

4 I have a few questions in re-examination.

5 Registrar, can you bring up

6 HAM8082. Apologies, that is not the document that

7 I wanted. Just give me a second. I've done it

8 again. Can you bring up 8082.0001, please. Thank

9 you. And if you could go internal page 2, I

10 believe it is image 8. Thank you.

11 Mr. Applebee, do you recall

12 that Ms. Contractor asked you questions about the

13 reference to the third paragraph and the three

14 crosses, three Xs?

15 A. Yes, I do.

16 Q. She also took you to the

17 Lura report?

18 A. That's correct.

19 Q. And she asked you or she

20 put to you the Lura report supports what is

21 described in the Study Limitation section that we

22 see here. That was her question and she was

23 referring to those paragraphs, the third and the

24 Xs. Do you remember she asked those questions?

25 A. Yes, I do.

1 Q. And in response to her
2 assertion or her proposition to you that the Lura
3 report supports what's described here, you said
4 correct?

5 A. Correct.

6 Q. What recollection do you
7 have about what you did personally in 2013 to
8 confirm that the Lura report supports the language
9 that's set out in the Study Limitations section?

10 A. I personally don't recall
11 what I did with respect to that. I see that
12 there's some quotations here and notations,
13 footnotes, but I don't recall what my involvement
14 in that was personally.

15 Q. Did you draft this
16 section, 2.2, of -- this is draft E04?

17 A. I don't recall if I
18 drafted this specifically. Most of the report was
19 not drafted by me. I did some updates, but I
20 can't say for sure.

21 Q. Did you personally review
22 the Lura report in 2013?

23 A. I don't recall personally
24 reviewing that report, no.

25 Q. Thank you. As a more

1 general question, amongst those on the CIMA team,
2 were you the only conduit of information between
3 CIMA and the City?

4 A. No, I was not.

5 Q. Thank you. Those are my
6 questions in re-exam.

7 JUSTICE WILTON-SIEGEL: Okay.

8 Well, if that completes the questioning,
9 Mr. Applebee, thank you very much for appearing
10 before the inquiry. You're excused.

11 THE WITNESS: Thank you,
12 Commissioner.

13 JUSTICE WILTON-SIEGEL: And
14 then with the rest of us, I think that completes
15 what we're going to do today as well.

16 MS. LAWRENCE: It does.

17 JUSTICE WILTON-SIEGEL: So,
18 we'll stand adjourned until Monday morning at 9:30
19 and I invite everyone to have a good weekend.
20 Thank you.

21 --- Whereupon the proceedings adjourned at
22 12:00 p.m. until Monday, June 6, 2022 at 9:30
23 a.m.

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25